Charities Working Across Borders

HR & Employment Law

A comparative Cross-Border Introduction

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Graphite HRM

We believe in giving our clients all the information they require to make an informed decision, assist them in the evaluation process and identify what is right for them. Our suite of products and services are here to protect your organisation.

Supporting Organisations to Deliver Best Practice in HR Policy, Procedure & Practice

Over 20 Years in Business: Graphite’s team of HR Consultants have a wealth of experience designing and facilitating bespoke Compliance Consultancy initiatives and on site training for our clients

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Consultancy Services Include

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- Disciplinary & Grievance Hearings & Appeals
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- HR Documentation Reviews
- One-to-One Consultation
- Bespoke Training Initiatives / in-house training workshops such as:
  - How to Deal with a Complaint of Bullying or Harassment
  - How to Manage the Discipline and Grievance Process
  - HR Essentials for Line Managers
  - Investigator Training
  - Performance Management
  - HR Strategy / Team Dynamics / Conflict Resolution
ROI & NI Employment Law Comparison

• Key Legislation

• Contracts of Employment

• Sick Pay

• Discipline & Grievance

• Protection from Discrimination

• Employment Law & The Legal System
Key Legislation - NI

- Employment Rights (NI) Order 1996;
- Employment (NI) Order 2003;
- Employment (NI) Order 2003 (Dispute Resolution) Regulations (NI) 2004;
- Fair Employment and Treatment (NI) Order 1998;
- Transfer of Undertakings (Protection of Employment) Regulations 2006;
- Service Provision Change (Protection of Employment) Regulations (NI) 2006;
- Sex Discrimination (NI) Order 1976;
- Race Relations (NI) Order 1997;
- Disability Discrimination Act 1995;
- Employment Equality (Sexual Orientation) Regulations (NI) 2003;
- Employment Equality (Age) Regulations (NI) 2006;
- Working Time Regulations (NI) 2016;
- Part-Time Workers (Prevention of Less Favourable Treatment) Regulations (NI) 2000;
- Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations (NI) 2002;
- Flexible Working Regulations (NI) 2015.
Key Legislation – ROI

- Unfair Dismissals Act 1997-2011
- Organisation of Working Time Act 1997
- National Minimum Wage Act 2000
- Protections of Employees (Part-Time Work), Act 2001
- Protection of Employees (Fixed Term Work) Act 2003
- Protection of Employees (Temporary Agency Work) Act, 2012
- Data Protection Act, 1988-2003
- Safety Health and Welfare at Work Act 2005
- Maternity Protection Acts, 1994-2004
- Adoptive Leave Acts, 1995-2005
- Paternity leave and Benefit Act 2016
- Industrial Relation Act 1969 and Amendments Act 2012
- Protection of Employment (exceptional Collective Redundancies and Related Matters) Act, 2007
Contracts of Employment - NI

• In NI, it is essential that all employees receive and sign a Contract of Employment with their employer.

• In addition to (or as part of) that Contract, each employee must receive a written statement setting out their main terms and conditions of employment (employment particulars).

• Each employee who has been continuously employed for a period of 1 month or more must receive this written statement within 2 months of commencing employment.

• This requirement is set out in Article 33 of the Employment Rights (NI) Order 1996.
Contracts of Employment - ROI

• In Ireland employees must receive a contract of Employment under the Terms of Employment (Information) Act 1994

• Identifies the minimum information requirements that an employer must provide to an employee in a written statement, not later than 2 months following commencement of employment
Sick Pay

➢ All employees in NI who are absent from work due to sickness are entitled to receive statutory sick pay (SSP) from their employer directly if they satisfy certain requirements.

➢ To be eligible for SSP, an employee must:
   ▪ Be employed under a contract of employment;
   ▪ Have been absent due to sickness for 4 consecutive days;
   ▪ Have notified their employer of the sickness in line with their employment contract & absence procedures;
   ▪ Be liable to pay Class 1 National Insurance Contributions; and
   ▪ Have weekly earnings of at least £113 (before tax) per week.

➢ The rate of SSP is currently £89.35 per week and is payable for a maximum of 28 weeks.

➢ It is no longer possible for employers to claim back SSP sums paid from the Government.

➢ Employers can offer enhanced contractual sick pay to their employees – but the terms of any scheme must meet the minimum statutory requirements.
Sick Pay

➢ In ROI there is **NO Statutory** entitlement to Sick Pay

➢ Employees may be entitled to Payment from the Department of Social Protection however, this will depend on how many PRSI Contributions the employee has made.

➢ Any entitlement to payment from the Dept of Social Protection only kicks in after the 6th day of absence (i.e. on the 7th day)

➢ Again, as with NI can offer enhanced contractual sick pay to their employees
Discipline & Grievance – Similar but some important differences

• Consistent approach - Write, Meet, Appeal (legislative requirement & Codes of Practice)

• Disciplinary Procedure = employer driven

• Grievance Procedure = employee driven

• In NI, all complaints, including those of bullying and harassment, are addressed through the grievance procedure.

• In Ireland – Different Legislation & Codes of Practice for handling B&H issues
Protection from Discrimination - NI

➢ In NI and ROI, it is unlawful for an employer to treat an employee less favourably on the basis of a protected characteristic / ground.

➢ In NI the following are classed as protected characteristics:
  - Sex (including pregnancy/maternity);
  - Marital/Civil Partnership Status;
  - Sexual Orientation – heterosexual, homosexual or bisexual;
  - Gender Reassignment/Identity;
  - Religious Belief (or lack thereof);
  - Political Opinion (NI only)
  - Age;
  - Disability;
  - Race
Protection from Discrimination - ROI

➢ In ROI 9 Grounds of Discrimination

• Gender - man or woman (includes transgender)
• Civil status - single, married, separated, divorced, widowed or in a civil partnership
• Family status - parent, *in loco parentis*
• Sexual orientation - heterosexual, bisexual or homosexual
• Religious belief - or lack of
• Age (16+)
• Disability - broadly defined
• Race - race, colour, nationality or ethnic or national origins
• Membership of the Traveller community
Protection from Discrimination


➢ The Equality Act 2010 (relevant to UK) does not extend to NI and in NI, there is no single piece of legislation which protects employees from discrimination.

➢ Instead, in NI the following pieces of legislation offer protection to employees:
  ▪ Sex Discrimination (NI) Order 1976;
  ▪ Employment Equality (Sexual Orientation) Regulations (NI) 2003;
  ▪ Fair Employment and Treatment (NI) Order 1998;
  ▪ Employment Equality (Age) Regulations (NI) 2006;
  ▪ Disability Discrimination Act 1995;

➢ As well as it being unlawful to discriminate against employees, it is also unlawful to discriminate against job applicants – in terms of being considered, invited for interview, being offered a job and the terms on which any job if offered.

➢ Employers are responsible for any acts of discrimination they commit. Employers can also be vicariously liable for the discriminatory acts of their employees or agents committed in the course of their employment/engagement.
• The following specialist bodies have been established in Northern Ireland to address employment law issues:

• **Industrial Tribunals** – unfair dismissal, failure to pay wages, discrimination (with the notable exception of religious & political discrimination), breach of contract, redundancy, working time, parental rights, health & safety in the workplace, public interest disclosures (whistleblowing), & failure to provide contracts or itemised pay-slips.

• **Fair Employment Tribunal** – discrimination on the grounds of religious belief or political opinion.

• The claim must be made on the prescribed form, known as an **ET1**. The ET1 must be submitted to OITFET within 3 months of the last act complained of taking place.

• The employer then has 28 days within which to lodge its response to those claims – on the prescribed form known as an **ET3**.

• Once the ET3 has been lodged, the Tribunal will conduct Case Management Discussions (CMDs) with a view to setting down a timetable for the Tribunal process and streamlining the issues, before setting the case down for hearing.

• Parties to Tribunal Proceedings have the right to appeal against the decision reached to the Tribunal itself, or to the Court of Appeal NI on a point of law.
Employment Law & The Legal System – ROI

**Type of Claim**
- Adoptive Leave Acts, 1995-2005
- Carers Leave Act, 2001
- Industrial Relations Acts, 1946-2012
- Maternity Protection Acts, 1994-2004
- Minimum Notice and Terms of Employment Act, 1973
- National Minimum Wage Act, 2000
- Organisation of Working Time Act, 1997
- Payment of Wages Act, 1991
- Protection of Employees (Fixed-Term Work) Act 2003
- Protection of Employees (Part-Time Work) Act, 2001
- Protection of Employees of Transfer of Undertakings Regulation, 2003 (TUPE)
- Redundancy Payments Acts 1967-2012
- Unfair Dismissals Acts, 1977-

**First Instance Hearing**
- Adoptive Leave Acts, 1995-2005
- Carers Leave Act, 2001
- Industrial Relations Acts, 1946-2012
- Maternity Protection Acts, 1994-2004
- Minimum Notice and Terms of Employment Act, 1973
- National Minimum Wage Act, 2000
- Organisation of Working Time Act, 1997
- Payment of Wages Act, 1991
- Protection of Employees (Fixed-Term Work) Act 2003
- Protection of Employees (Part-Time Work) Act, 2001
- Protection of Employees of Transfer of Undertakings Regulation, 2003 (TUPE)
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- Unfair Dismissals Acts, 1977-

**Appealed To**
- Labour Court
- High Court (on a point of law only)
Thank you for your time

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