INDUSTRIAL RELATIONS BODIES

Introduction
The system of industrial relations in Ireland is essentially voluntary in nature. This means that there has been agreement on all sides that the terms and conditions of employment of workers should be determined by the process of collective bargaining between an employer or employers' association and one or more trade unions, without the intervention of the State. Under this process standard issues like wages or hours of work are determined and, in addition, some collective agreements lay down procedural rules that govern the conduct of industrial relations.

Thus, collective bargaining and not the law is the primary source of regulation in the employment relationship in Ireland. Over the years, however, legislation has been enacted in certain areas (such as holidays, working hours, minimum notice, redundancy, dismissals and employment equality) laying down certain minimum standards that may be improved upon by collective bargaining but cannot be taken away or diminished.

The State's role in industrial relations in Ireland has been largely confined to facilitating the collective bargaining process through establishing by legislation a number of institutions to assist in the resolution of disputes between employers and workers. These institutions are: the Labour Relations Commission, the Rights Commissioner Service and the Labour Court. There are also some statutory provisions designed to back up the voluntary process, the most important being those concerning Joint Labour Committees, Registered Employment Agreements and Joint Industrial Councils.

Industrial Relations Act 1990

This legislation modified all the previous Acts and brought with it procedures that trade unions must follow if they wish to enter into disputes.

One of the main aims of the act was to promote good industrial relations and it works alongside the other legislation. Some of the bodies under this act carry out the function of adjudicating on the legislation.

There are also bodies who are there to try and resolve problems. These are:

The Labour Relations Commission
The Labour Relations Commission (LRC), which is comprised of equal numbers of employer and trade union representatives and independent representatives, all appointed by the Minister for Enterprise, Trade and Employment, was set up in 1991 under the Industrial Relations Act 1990. The Commission has general responsibility for the promotion of good industrial relations through the provision of a comprehensive range of services designed to help prevent and resolve disputes.

The Commission provides:

(i) an industrial relations Conciliation Service,
(ii) an industrial relations Advisory Development and Research Service (ADRS),
(iii) a Rights Commissioner Service.

The Conciliation Service assists employers and workers and their trade unions in resolving disputes where direct negotiations under collective bargaining have failed.

Industrial disputes must first be referred to the Commission except in situations where there is provision for referring disputes directly to the Labour Court or where the Commission waives its function of conciliation in a dispute. When an industrial dispute is referred to the Commission and the parties involved are agreeable to taking part in conciliation, the Commission assigns an Industrial Relations Officer to assist in resolving the dispute.

The Advisory Development and Research Service works with employers and employees to build and maintain good relationships in the workplace. It enables them to develop and implement the means to effectively solve their own problems. To avail of ADRS services, parties do not have to be in dispute.

The Commission undertakes other activities of a developmental nature, including;

(i) the review and monitoring of developments in the area of industrial relations,
(ii) the preparation in consultation with the social partners of codes of practice relevant to industrial relations,
(iii) industrial relations research and publications.

The LRC also has responsibility for operation of the Rights Commissioner Service that is an independent service of the Commission. The role of the Rights Commissioner Service is to investigate and recommend/decide on grievances referred by individuals or small groups of workers under relevant industrial relations/employment rights legislation.

The Rights Commissioner Service
The Rights Commissioners operate as a service of the Labour Relations Commission. While Rights Commissioners are appointed by the Minister for Enterprise, Trade and Employment, they are independent in their investigative functions. They are empowered by the Industrial Relations Act 1969 to investigate industrial disputes, other than disputes related to rates of pay, hours or times of work or annual holidays of a body of workers. Accordingly, they deal mainly with disputes involving individual workers. Their investigations are voluntary and are conducted in private.

Having carried out an investigation, a Rights Commissioner issues a recommendation - which is not binding on the parties involved - giving his/her opinion on the merits of the dispute. A party to a dispute under the Industrial Relations Acts may, however, appeal against a Rights Commissioner's recommendation to the Labour Court.
The decision of the Court on such appeals is binding on the parties to the dispute, though not legally enforceable.

In addition to their functions under the Industrial Relations Acts, Rights Commissioners investigate cases under the: -

- Unfair Dismissals Acts 1977 to 2005.
- Payment of Wages Act 1991.
- Terms of Employment (Information) Act 1994 and 2001.
- Maternity Protection Acts 1994 and 2004.
- Adoptive Leave Acts 1995 & 2005.
- Protection of Young Persons (Employment) Act 1996.
- Protection of Persons Reporting Child Abuse Act 1998.
- National Minimum Wage Act 2000.
- Protection of Employees (Part –Time Work) Act 2001.
- Protection of Employees (Fixed –Term Work) Act 2003.
- Organisation of Working Time Act 1997.
- Parental Leave Acts 1998 & 2006
- European Communities (Protection of Employees on Transfer of Undertakings)
- Regulations 2003.
- European Communities Protection of Employment Regulations 2000
- Carer's Leave Act 2001.

Rights Commissioner investigations under the above legislation, with the exception of the Payment of Wages Act, are carried out in private and the Rights Commissioners issue recommendations or decisions (depending on the legislation) which may be appealed by either side to the Employment Appeals Tribunal (or the Labour Court in the case of,

- the Organisation of Working Time Act 1997,
- the National Minimum Wage Act 2000,
- Protection of Employees (Part-Time Work) Act 2001 and
- Protection of Employees (Fixed - Term Work) Act 2003).

The Tribunal/Court then makes a determination, which is legally binding and enforceable.

Investigations under the Payment of Wages Act are conducted in public (unless a party requests otherwise) and Rights Commissioners issue legally binding decisions, which may also be appealed to the Employment Appeals Tribunal.

Employment Appeals Tribunal

The Employment Appeals Tribunal (EAT) is a more formal setting than the Rights Commissioner service and hears many cases on appeal from the Rights Commissioners.
The Tribunal consists of a Chairman and 22 Vice-Chairmen and a panel of 60 Members, 30 nominated by the Irish Congress of Trade Unions and 30 by Employers' Organisations. The Tribunal ordinarily acts in divisions, each division consisting of either the Chairman or a Vice-Chairman and two Members, one drawn from the employers' side of the panel and one from the trade union side. A Vice-Chairman of the Tribunal,

when acting as Chairman (at the request of the Minister or the Chairman), has all the powers of the Chairman.

The Tribunal Cases before the EAT are heard in a public forum.

The Tribunal determines matters of dispute arising under the

- Redundancy Payments,
- Minimum Notice,
- Maternity Protection,
- Adoptive Leave, Parental Leave,
- Unfair Dismissals,
- Protection of Employees (Employers' Insolvency),
- Payment of Wages,
- Terms of Employment (Information),
- Protection of Young Persons (Employment),
- Carer's Leave,
- Organisation of Working Time Act (in certain circumstances),
- Protection of Employees on Transfer of Undertakings Regulations and
- European Communities (Protection of Employment) Regulations.

Employees who are dissatisfied with a decision of an employer or a deciding officer in regard to their entitlement under the Redundancy Payments Acts, or an employer dissatisfied with a decision of the Minister in regard to a claim for rebate, may have the matter referred to the Tribunal for decision.

Time Limits

- A claim for a **redundancy** lump sum must be made in writing within 52 weeks following the date of dismissal or date of termination of employment. A person may lose entitlement to a redundancy lump sum if he does not WITHIN THE 52-WEEK PERIOD mentioned: give a written claim for redundancy lump sum payment to his employer or have the question of his right to such payment, or its amount, referred to the Employment Appeals Tribunal.
- The Employment Appeals Tribunal has discretion, if satisfied that failure by the employee to claim within the 52 week limit was due to reasonable cause, to extend that limit to 104 weeks from the date of dismissal or date of termination of employment
- If the 52 week period mentioned above has elapsed before the claim was made, the employee can be declared entitled to a redundancy lump sum ONLY BY DECISION OF THE TRIBUNAL. In such cases an employee must give a WRITTEN claim for redundancy to his employer within the 104 week period.
- A claim of **unfair dismissal** must be initiated within six months of the date of dismissal by giving written notice within that period to the Tribunal. The Tribunal has discretion to extend this time-limit to 12 months, but only in exceptional circumstances. A copy of the notice will be given by the Tribunal to the employer.

- Either party to a dispute under the **Maternity Protection Act** may appeal a decision of a Rights Commissioner to the Employment Appeals Tribunal within four weeks of the date on which the decision was communicated to that party.

Notices of Appears and Handling Appeals

In every case of an application by an employee against an employer, a copy of the application will be sent to the employer by the Secretariat of the Tribunal. This will be sent with a form which is known as a Notice of Appearance (Form T2). If the employer intends to contest the application he/she should, within 14 days of receiving a copy of the application, indicate by way of a counter statement on Form T2 the grounds of contesting the application and return the form to the Secretariat of the Tribunal. A copy of the employer's counter statement will be supplied to the employee.

If the employer does not submit the counter statement he/she will not be entitled, as of right, to take part in the proceedings unless the Tribunal at its discretion decides to hear the case. Parties will assist themselves and the Tribunal greatly by giving as much detail as possible on the Notice of Appeal Form and on the Notice of Appearance Form respectively.

Representation of Parties at Hearings

A party to an application may appear and be heard in person or may be represented by counsel or solicitor or by a representative of a trade union or of an employers' organisation, or with the leave of the Tribunal, by any other person. Where a representative is nominated by a party to attend on his behalf, notice of hearing will be sent to that representative as well. It is not obligatory for a party to be represented at a hearing.

The Labour Court

The Labour Court, established under the Industrial Relations Act 1946, provides a comprehensive service for the resolution of disputes about industrial relations, equality, organisation of working time, national minimum wage, part-time work and fixed-term work matters. The Labour Court also:

- establishes Joint Labour Committees,
- makes **Employment Regulation Orders** on foot of proposals received from these Committees;
- registers Joint Industrial Councils; and registers Employment Agreements.

The Court consists of 9 full-time members – a Chairman, 2 Deputy Chairmen and 6 ordinary members representative of employers (3) and workers (3).

The constitution and operation of the Labour Court are governed by the Industrial Relations Act 1946 (as amended in 1969, 1976, 1990 and 2001). Its statutory functions are described in those Acts and also in the following enactments –

- the Anti-Discrimination (Pay) Act 1974,
- the Employment Equality Act 1977,
- the Pensions Act 1990,
- the Organisation of Working Time Act 1997,

- the Employment Equality Act 1998,
- the National Minimum Wage Act 2000,
- the Protection of Employees (Part-time Work) Act 2001and
- the Protection of Employees (Fixed-term Work) Act 2003.

The Labour Court is not a court of law. Effectively, for most purposes, the Labour Court acts as a court of last resort i.e. the services of the Court are availed of when the other options for the resolution of industrial relations disputes have been explored and exhausted. The Labour Court also acts as a court of appeal in relation to the decisions of Rights Commissioners, Equality Officers, and the Director of Equality Investigations.

Joint Labour Committees

Joint Labour Committees (JLCs) are bodies established under the Industrial Relations Act 1946 to provide machinery for fixing statutory minimum rates of pay and conditions of employment. They may be set up by the Labour Court on the application of (i) the Minister for Enterprise, Trade and Employment or (ii) a trade union or (iii) any organisation claiming to be representative of the workers or the employers involved. A JLC is made up of equal numbers of employer and worker representatives appointed by the Labour Court and a chairman and substitute chairman appointed by the Minister for Enterprise, Trade and Employment. JLCs operate in areas where collective bargaining is not well established and wages tend to be low.

The function of a JLC is to draw up proposals for fixing minimum rates of pay and conditions of employment for the workers involved. When proposals submitted by a JLC are confirmed by the Labour Court through the making of an Employment Regulation Order they become statutory minimum pay and conditions of employment for the workers concerned. Employers are then bound under penalty to pay wage rates and provide conditions of employment not less favourable than those prescribed.

There are 19 Joint Labour Committees covering the following activities: -

- Aerated Waters and Wholesale Bottling.
- Agricultural Workers.
- Brush and Broom.
- Catering (Dublin and Dun Laoghaire).
- Catering (Other).
- Contract Cleaning (Dublin).
- Contract Cleaning (Other).
- Hairdressing (Cork).
- Hairdressing (Dublin, Dun Laoghaire, Bray).
- Handkerchief and Household Piece Goods.
- Hotels (Dublin and Dun Laoghaire).
- Hotels (Other, excluding Cork).
- Law Clerks.
- Provender Milling.

- Retail, Grocery and Allied Trades.
- Security Industry.
- Shirtmaking.
- Tailoring.
- Women's Clothing and Millinery.

Registered Employment Agreements

A Registered Employment Agreement (REA) is a collective agreement made either
(i) between a trade union or unions and an individual employer or employers organisation or
(ii) by a registered Joint Industrial Council, which relates to the pay or conditions of employment of any class, type or group of workers and which has been registered with the Labour Court under the Industrial Relations Act 1946. The effect of registration is to make the provisions of an REA binding not only on the trade unions and employers involved in its negotiation but on others who were not parties to its negotiation but who are in the categories covered by the agreement. An REA can deal with any matter that comes under the general heading of pay or conditions of employment. An Agreement may provide for the variation of any of its provisions. Each REA must contain a disputes procedure that is binding.

The enforcement of the provisions of a Registered Employment Agreement may be effected in 2 ways under the Industrial Relations Acts. A trade union, an association of employers or an individual employer may complain to the Labour Court that a particular employer is not complying with an REA. If, after investigating a complaint, the Court is satisfied that the employer is in breach of an REA it may by order direct compliance with the agreement. Failure to comply with such an Order is an offence punishable by a fine.

The Industrial Relations Act 1990 introduced an additional enforcement procedure for REAs similar to that for Employment Regulation Orders. The Act requires an employer covered by an REA to keep records of wages paid and to retain them for three years to show that the Agreement is being complied with. The Labour Inspectors of the Department of Enterprise, Trade and Employment, are empowered to inspect these records, recover arrears and, if necessary, institute civil proceedings on behalf of workers if they are not receiving the minimum pay and conditions of employment laid down in an REA. There are 6 active industry-wide Registered Employment Agreements, covering the following activities: -

- Construction Industry, Whole State (Wages and Conditions of Employment).
- Construction Industry, Whole State (Pensions, Assurance and Sick Pay).
- Electrical Contracting Industry.
- Drapery, Footwear and Allied Trades (Dublin only).
- Printing Trade (City and County of Dublin).

Joint Industrial Councils

Joint Industrial Councils (JICs) are voluntary negotiating bodies for particular industries or parts of industries that are representative of employers and trade unions. A Council,

provided that it fulfills certain conditions, may register with the Labour Court as a Joint Industrial Council under the Industrial Relations Act 1946. The rules of such Councils must provide for the referral of disputes to the Council for consideration before resort is had to industrial action. A registered JIC may request the Labour Court to appoint a chairperson and secretary to the Council. There are 3 registered JICs and eleven unregistered Councils. The Court services unregistered as well as registered Councils if the parties request it. Industrial Relations Officers of the Labour Relations Commission act as chairpersons of the 3 registered Councils and 11 of the unregistered Councils. The 14 JICs are as follows:

Registered

- Joint Industrial Council for the Construction Industry.
- Joint Industrial Council for the Dublin Wholesale Fruit and Vegetable Trade.
- Joint Board of Conciliation and Arbitration for the Footwear Industry.

Unregistered

- Bacon Curing.
- Bakery and Confectionery Trades.
- Banks.
- Electrical Contracting Industry.
- Flour Milling.
- Grocery Provision and Allied Trades.
- Hosiery and Knitted Garments Manufacture.
- Printing and Allied Trades in Dublin.
- State Industrial Employees.
- Woollen and Worsted Manufacture.
- Eircom.

National Employment Rights Authority (NERA)

The National Employment Rights Authority (NERA) was established under the Social Partnership Agreement "Towards 2016" to achieve a national culture of employment rights compliance. NERA was established on an interim basis in February 2007 as an office of the Department of Jobs, Enterprise and Innovation. The Labour Inspectorate, the Employment Rights Information Unit and the Enforcement and Prosecution sections of the Department were transferred to NERA and are now NERA Inspection Services.

NERA was established to ensure compliance with employment rights legislation. NERA has five main functions in relation to employment legislation

1. Provision of Information in relation to Employment Rights.
2. Inspection of workplaces.
3. Enforcement of employment Rights Legislation.
4. Prosecution of Employers for non-compliance.
5. Protection of Young Persons in the Workplace.

NERA has power to prosecute under the following legislation:

- Protection of Young Persons (Employment) Act, 1996
- The Organisation of Working Time Act, 1997
- Parental Leave Act, 1998
- National Minimum Wage Act, 2000
- Carers Leave Act, 2001
- Redundancy Payments Acts, 1967 to 2003
- Employment Agency Act, 1971
- Protection of Employment Act, 1977
- Protection of Employees (Employers' Insolvency)
- Payment of Wages Act, 1991
- Employees (Provision of Information and Consultation) Act 2006
- Employment Permit Acts 2003 & 2006

In general NERA Inspectors have the following powers under the above legislation:

- To enter any premises at a reasonable time
- To demand sight of records
- To inspect records
- To take copies of records
- To interview and require information from any relevant person

Where a breach of Employment Rights legislation has been identified NERA's Inspection Services' primary role is to seek compliance with the legislation and rectification of the breach. This includes redress for the employees concerned and payment of any arrears due. In certain circumstances, including where the employer fails to rectify the matter, where breaches of the Protection of Young Persons (Employment) Act 1996 have been detected or where serious breaches of employment rights legislation have been detected NERA's Prosecution Services may refer the matter to the Chief State Solicitors Office with a view to initiating a prosecution in the Courts, subject to their advice