



## **European network of legal experts in gender equality and non-discrimination**

### **NEWS REPORT**

<b>Country:</b>	Ireland
<b>Title:</b>	Workplace Relations Act 2015
<b>Date:</b>	3 March 2016
<b>Expert:</b>	Frances Meenan
<b><u>Context</u></b>	
<b>Issue at stake:</b>	Access to justice
<b>Ground of discrimination:</b>	Sex
<b>Source:</b>	Legislation
<b>Field:</b>	Employment
<b>Applicable law:</b>	Workplace Relations Act 2015; Directive 2006/54/EC

### **Content**

**Law development:** The Workplace Relations Act 2015 was signed into law by the President of Ireland on 20 May 2015. The Act commenced on 1 October 2015 in respect of new claims. The Act makes provision for the dissolution of the Labour Relations Commission, the umbrella body of the Equality Tribunal. All claims and disputes shall be referred to the Director General of the Workplace Relations Commission who then refers the claim or dispute to an adjudication officer who shall hear claims at first instance. A number of adjudication officers have been appointed; however, many of the original equality officers shall act as adjudication officers under the new Act. A claim under the Employment Equality Act 1998, the Equal Status Act 2000 or the Pensions Act 1990 shall be heard by an adjudication officer in like manner as such claim was heard by an equality officer of the Equality Tribunal. Such decisions may be appealed to the Labour Court and on a point of law to the High Court. There is also provision for mediation. The new Act also removes the right of direct access to the Circuit Court for a gender discrimination claim. Adjudication officers do not have to be lawyers.

If an employee is dismissed on a discriminatory ground (e.g. pregnancy or matters connected therewith or not permitted to return to work following maternity, adoptive, parental or carer's leave), he or she may elect to bring a claim under the Employment Equality Act 1998 or under the Unfair Dismissals Act 1977. Heretofore, if an employee brought a claim under the Unfair Dismissals Act 1977, the employee could elect to bring a claim to a rights commissioner (a private hearing) (unless the employer objected) or directly to the Employment Appeals Tribunal (a full public hearing with evidence heard on oath). The decision of a rights commissioner may be appealed to the Employment Appeals Tribunal and the decision of the Employment Appeals Tribunal may be appealed to the Circuit Court and on further appeal to the High Court.

**Key points of analysis:** Claims will be heard by an adjudication officer who will hold a private hearing; such decision may be appealed to the Labour Court and on appeal to the High Court on a point of law only. For the purposes of equality claims generally, there will probably be no change other than the removal of a right of election to bring a claim to the Circuit Court on the gender ground; however, such proceedings were rare.

The real difference will be where a claim is brought under the Unfair Dismissals Act 1977 that neither a lawyer may hear their claim nor will a judge appointed under the Constitution of Ireland hear their claim. In addition, at first instance the claim will be heard in private; heretofore, there was a right of election to have a rights commissioner hear the claim in private. It is arguable that this new statutory procedure is not in accordance with the Constitution of Ireland as under Article 34.1 justice must be administered in public. The Act has a number of benefits to include the same procedure and time limits for all employment claims. The time limit for all claims are six months from the date of the contravention of the statute with an extension of time of a further six months if reasonable case can be shown and all appeals from an adjudication officer to the Labour Court shall be made within 42 days of the date of communication of the decision; this time limit can be extended if there are 'exceptional circumstances'.

Hearings under the new statutory framework have only recently commenced, so it is too early to give a full analysis of the Act in practice.

If a claimant is dismissed for a pregnancy related reason, then the claimant may elect to bring the claim under the Employment Equality Act 1998 or the Unfair Dismissals Act 1977. As set out above, a claim under the Employment Equality Act will be heard by an adjudication officer and on appeal to the Labour Court (with the election to go to the Circuit Court removed) but also there is now a similar procedure to bring a claim under the Unfair Dismissals Act and now there is no right of appeal to the Circuit Court. So effectively, the right of all claimants to have access to the courts has been removed save for an appeal on a point of law or by way of judicial review.

There has been considerable criticism of this Act by a number of commentators (including this author). Inevitably there will be applications made to the High Court to judicially review procedures of the adjudicating bodies. There is likely to be an appeal on the constitutionality of the legislation sooner rather than later. Non-statutory procedures for the referral and hearing of claims have been published by the Workplace Relations Commission and the Labour Court.

**Internet link source:**

<https://www.workplacerelations.ie/en/>, accessed 22 February 2016.