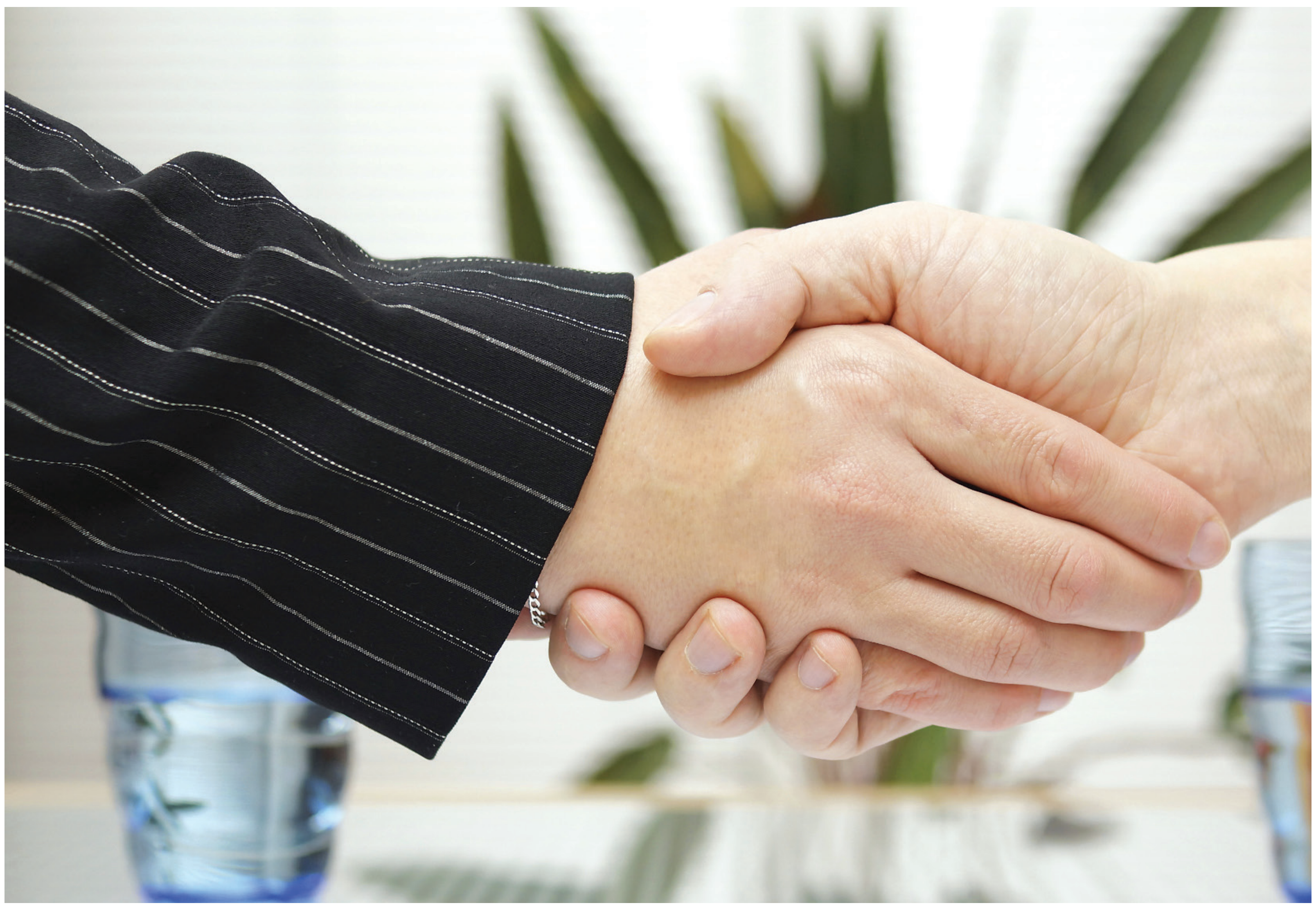

Employers need to know employment law to survive

Legislation to change the legal infrastructure surrounding employment dispute resolution is going through the Oireachtas

BY BARBARA TANZLER

Legislation is currently making its way through the Oireachtas which will, if enacted as currently drafted, drastically streamline the process for employees wishing to take a claim against their employers.

The current employment dispute bodies (the Equality Tribunal, the Employment Appeals Tribunal, the Rights Commissioner, the Labour Court and the Labour Relations Commission) will be distilled into two fora.

The new Workplace Relations Commission (WRC) will now be the one stop shop of first instance for all employment disputes while the Labour Court will expand its current duties to handle all appeals from the WRC.

The enforcement of decisions of both fora will be a straightforward application in the District Court.

With all of this in mind, now is the time for small business owners to look into ways to avoid a claim being taken in the first place. Today we focus on three areas often overlooked, but which are fraught with the potential for claims.

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Contracts: the ABCs

First and foremost – provide each and every employee with written terms and conditions of employment. So simple, yet so often ignored.

This document forms the basis of your relationship with your employee and will serve as the resource for both parties should anything go wrong.

Furthermore, failure to provide an employee with certain terms of employment in writing within two months of the commencement of the employment is a breach of the Terms of Employment (Information) Act 1994 and in the case of a successful claim by an employee, could result in an award of up to four weeks pay.

The terms required to be given in writing include:

- the names of the employer and employee, address of employer and place of work
- title of job, date of commencement of employment (and the expiration date if it is a fixed term or temporary contract)
- remuneration method and intervals, terms and conditions relating to hours of work (including overtime)
- paid leave, notice period, terms and conditions relating to incapacity for work due to illness or injury (including notification and certification of same), and
- pensions and reference to collective agreements which affect the employment.

Along with the required terms and conditions, it is important to have an employee handbook. This should cover:

- grievance and disciplinary procedures
- anti-bullying and harassment policies
- performance evaluation and reviews
- confidentiality agreements and internet usage policy.

All of the above tied in with the contract, if not covered in the contract itself. Be sure to implement and follow the procedures set out therein.

Without such written terms, employers could find themselves in difficulty when the terms of employment are broken and may face claims for unfair dismissal, constructive dismissal and/or claims under the Equality Acts.

Only renew a fixed term contract a maximum of two times, keeping in mind the maximum duration of all the contracts combined must be no more than four years.

At the renewal of any fixed term contract, you must give objective justification for not granting a contract of indefinite duration.

Failure to do this could result in the employee being awarded a contract of indefinite duration.

Show me the money

Provide your employees with written payslips for each payment, even if they're paid by direct debit, containing the gross wages payable and an itemised list of all deductions made.

For direct debit payments, provide payslips at regular intervals, for all other methods of payment provide them at the time of payment.

Failure to do this is a breach of the Payment of Wages Act 1991 and can result in a fine of up to €1,269.

With new inspection facilities and on the spot fines authority being given to the WRC in the proposed legislation, an oversight in this area could be quite costly.

If deducting wages (other than that required by law such PAYE or PRSI), the Payment of Wages Act 1991 requires that there must be prior written provision for such deduction in the contract of employment, the employee must be given one week notice prior to the deduction and it must be fair and reasonable in the circumstances.

This is true even in the case where the deduction is for an act or omission on the part of the employee such as till shortages or damage or breakage caused by the employee. This does not apply if the deduction is for an overpayment of wages or expenses to the employee.

Know your OWT

It is important to he aware of the requirements of the Organisation of Working Time Act, 1997). Beware public holidays, for example.

Employees who do not usually work the day of a public holiday (usually Monday) are in fact entitled to one-fifth of their normal weekly wages for the public holiday.

Those who work the public holiday are entitled to an additional day of annual leave, an additional day's pay or a paid day off within a month of the public holiday.

Part-time employees who work 40 hours in the five weeks prior to the public holiday are also entitled to the same.

Employees on maternity leave are entitled to leave for those that occur during their protective leave.

Keep in mind the maximum working week (48 hours) the minimum daily and weekly rest periods (11 hours between shifts plus at least one rest period of 24 hours each week), and breaks (15 minutes after four-and-a-half hours and 30 minutes after six hours).

As to annual leave, employees are entitled to the greater of the following for each leave year:

- four weeks for each year they work at least 1,365 hours or
- one-third of a week for each month they work at least 117 hours or
- eight per cent of hours worked in the year (to a maximum of four weeks)

Always keep records

It is vital to keep records of breaks, rest periods and annual leave for each employee. Not only is this required under the OWT, but will serve as your best evidence in defence of any claim taken against you.

LowDown Top Tips for SMEs

This week: Budget 2015 – changes explained

Elaine O'Regan

As SMEs around the country wait to see how Finance Minister Michael Noonan's planned Strategic Banking Corporation of Ireland (SBCI) and other small business banking initiatives pan out, we take a look at some of the more tangible SME announcements made in Budget 2015.

Employment and Investment Incentive Scheme

The Employment and Investment Incentive Scheme (EIIS) was first announced in the 2010 budget as an updated version of the Business Expansion Scheme (BES).

The BES was introduced in 2007 to allow investors in certain sectors to obtain income tax relief on their investments.

Its replacement, the EIIS, secured EU approval in November 2011, and came into effect the following month on budget day.

EIIS offered a tax incentive to private investors who invest medium-term equity capital in companies.

The EIIS initially shortened the required BES investment period from five to three years, and guaranteed income tax relief of 41 per cent in two stages: 30 per cent in the year of investment; and a further 11 per cent in the year following the three-year investment period.

This was subject to the company either increasing employment numbers or expenditure on research and development (R&D). The scheme also broadened the range of companies to which the funding applied.

While BES was restricted to manufacturing and internationally traded services, EIIS was made available to the majority of SMEs.

Company investment limits under EIIS rose to €10 million compared to €2 million under the BES, with an annual investment limit of €2.5 million, up from the BES limit of €1.5 million.

Budget changes: The amount of finance that can be raised by a company under the scheme has been increased to €5 million annually subject to a lifetime maximum of €15 million.

Investment in the management and operation of nursing homes, medium-sized enterprises in non-assisted areas, and internationally traded financial services that are certified by Enterprise Ireland, will now also qualify under the scheme. The inclusion of hotels, guesthouses and self-catering accommodation has been extended by a further three years.

The required holding period for shares has been increased from three to four years.

The Seed Capital Scheme

The Seed Capital Scheme was introduced in Budget 2010, along with the EIIS, to offer a supportive tax-relief scheme to small businesses and investors.

The aim of The Seed Capital Scheme (SCS) was to encourage individuals to set up new businesses, by refunding tax paid in previous years to individuals who start their own business.

The amount of relief was restricted to the amount of the investment. The value of the refund depended on the amount of the individual's investment and their effective income tax rate.

> **The amount of finance that can be raised by a company under the EII scheme has been increased to €5 million**

For any particular year of investment, the refund was limited to the tax the individual paid in the previous six years, subject to certain conditions.

The scheme applied to former PAYE workers, but in the year prior to the investment, allowed that they could earn income from any source.

In the three years prior to that, however, it was required that employment income be their main source of income. Income not related to employment, meanwhile, could not exceed €50,000, or total PAYE income.

Those who availed of the scheme had to subscribe for ordinary shares in the company, acquire at least 15 per cent of its issued share capital and retain the shareholding for three years.

The relief was subject to a maximum investment of €100,000 in any tax year and was limited to the income tax paid by the individual.

You could not hold more than 15 per cent of shares in another company, unless the other company's turnover was less than €127,000 per annum, or it carried a qualifying trade.

Those who availed of the scheme were required to enter into relevant employment for a period of least one year with the new company, which had to be incorporated in the European Economic Area and carry on a relevant trade from Ireland.

The trades that qualified included software development, plant cultivation and green energy, international traded services, and research and development.

An individual could make a claim directly to the Revenue Commissioners once the qualifying company had started to trade.

Budget changes: The Seed Capital Scheme originally came into effect in respect of eligible shares issued, from November 2011 to December 2013, in line with the terms of the approval obtained from the European Commission under state aid rules. Budget 2015 has reintroduced the scheme as it is.

Foreign Earnings Deduction

A restricted Foreign Earnings Deduction was re-introduced in 2012, which would allow employees working overseas in the so-called "Brics" countries of Brazil, Russia, India, China and South Africa, to claim for an Irish tax refund.

The aim was to give the employees of Irish companies keen to expand abroad, an incentive to work in overseas locations.

The deduction was made available to employees working temporarily overseas in Brics countries, subject to a maximum claim of €35,000 and applicable for the tax years 2012, 2013 and 2014.

In order to qualify, these employees were required to remain in the Brics country for at least 60 days in a continuous 12-month period, which did not have to fall within a single tax year.

Budget changes: Budget 2015 extended the list of eligible countries to include Mexico, Chile and certain countries in the Middle East and Asia. The number of days employees are required to be abroad in a year to qualify for the deduction has been reduced to 40 days, and travel time has been included in this to make it easier for smaller companies to send employees on trade missions.

Movers & Shakers

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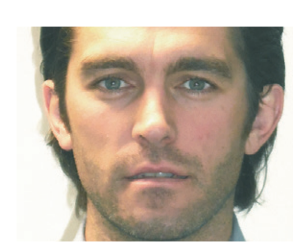
■ Aviva Ireland has appointed a new chief executive. Hugh Hessing has been Aviva Group's global lead in systems thinking and automation for two years. Before that, he spent two years as customer experience director with Aviva UK Life.

■ Breiffini Kennedy is Dawn Meats new international markets manager. Kennedy joins from Bord Bía, where he was international markets manager for two years, and Asia manager for four years.

■ Enclave Technologies has promoted Martin Moran to the position of technical manager. Moran has been a senior infrastructure engineer with Enclave for two years, having joined from Investec, where he was IT infrastructure engineer for one year.



■ Gavin Collins is joining MEC Access as account manager. Collins has been Clear Braces' marketing and communications manager for the past 12 months, and also spent a year as sponsorship manager with Screentime ShinAwiL.