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Irish Thoroughbred
Breeders' Association





ITBA

WORKING FOR IRISH BREEDERS

Employment Law



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INTRODUCTION



Dear ITBA member,

The ITBA are hosting a number of seminars and workshops, outlining the requirements of Health & Safety, Legislative requirements, employment law, machinery operation, medicines, agriculture sprays etc., to help inform our members of the legal onus on them when running an equine and farm business today. Ignorance of these requirements are “no defence” if things were to go wrong. These events coupled with our Winter series of Veterinary Lectures, our annual Symposium together with regional meetings, we hope will be of great practical use to breeders.

This booklet follows a seminar, we hosted at the ITBA HQ during August 2014 on the subject of employment law and how it relates to stud farms. The seminar was presented by Ger Connolly of Mason Hayes & Curran, one of the partners in Ireland’s largest and award-winning business law firms, established 40 years ago.

A handwritten signature in black ink, appearing to read 'Derek Icton', written over a faint, stylized graphic element that resembles a signature or a logo.

Derek Icton
ITBA Chairman

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INTRODUCTION

The same employment laws apply to all employers, regardless of the number of employees employed by the employer. The laws are the same for a big company as they are for a one-man operation. This may seem unfair, as a large corporation will have a team of dedicated staff and specialised software to uphold employees' rights, while an individual has none, but the employee must have the same rights and entitlements under Irish law. Employees are now better aware of their rights thanks to the Internet and individuals frequently visit employment rights websites.

CONTRACT OF EMPLOYMENT

Under the provisions of the Terms of Employment (Information) Acts 1994–2012, every employee must be provided with a written statement of the terms and conditions of their employment within two months of commencement of employment. The reality is that many employees do not have a contract of employment. There are 13 terms and conditions, which an employer must, at the very least, include in an employee's written statement and these are as follows:

1. the full names of the employer and the employee
2. the address of the employer in the State / principal place of business or registered office
3. the place of work
4. the title of the job and nature of the work
5. the date of commencement of employment
6. in the case of a temporary contract of employment, the expected duration thereof or, if the contract of employment is for a fixed term, the date on which the contract expires
7. the remuneration of the employee
8. when and how the remuneration is payable (i.e. weekly, monthly or another pay reference period)
9. hours of work (including overtime)
10. any terms or conditions relating to paid leave (other than paid sick leave)
11. any terms or conditions relating to pensions and incapacity owing to sickness or injury
12. the period of notice of termination for both the employer and employee
13. a reference to any collective agreements which directly affect the terms and conditions of the employee's employment including, where the employer is not a party to such agreements, particulars of the bodies or institutions by whom they were made.

While an employer must, at the very least, provide a written statement of terms and conditions to the employee within two months of commencement of employment, ideally, a contract of employment can be put in place, even at a later date. It should obviously include only the terms and conditions currently operated. The absence of a contract can lead to difficulties when issues arise in the workplace.

Every employee must be provided with a copy of the employer's Disciplinary Policy within 28 days of commencement of employment. In addition, an employee must be provided with a copy of the employer's Grievances Procedures, IT & Electronic Communication Policy, and Bullying & Harassment Policy. The Irish employment tribunals often hear claims involving illegal downloads and use of employers' broadband so it is important to have a clear IT & Electronic Communication Policy in place.

WORKING HOURS

The Organisation of Working Time Act 1997 is very clear on an employee's hours of work and rest breaks. The maximum hours that can be worked is a 48-hour week averaged over a reference period of four months. 56 hours can be worked one week and 40 hours the following week, but the overall average in a four month period cannot exceed 48 hours.

All employees must be given a 15-minute rest break every 4.5 hours, 11 hours consecutive rest every 24 hours, and 24 hours consecutive rest every 7 days. All employees are entitled to paid annual leave as follows:

- 4 working weeks in a leave year in which the employee works at least 1,365 hours; or
- one-third of a working week for each month in leave year in which the employee works at least 117 hours; or
- 8% of the hours the employee works in a leave year (subject to maximum of 4 weeks).

Employees are also entitled to nine statutory public holidays. If required to work a public holiday, an employee is entitled to a paid day off within a month, an extra day's pay or an extra day's annual leave.

Every employer is required to keep records of an employee's working hours and rest breaks and holidays. In the absence of records, and in the case of any dispute, the employer may need to resort to other proof available, which may not always be admissible. Therefore an employer should be careful to keep accurate records to show compliance with the provisions of the Organisation of Working Time Act 1997. The Irish employment tribunals regularly hear claims in relation to working hours.

MATERNITY LEAVE

The The Maternity Protection Acts 1994 and 2004 govern maternity leave in Ireland. An employee is entitled to 26 weeks' ordinary maternity leave together with an additional 16 weeks' additional maternity leave. An employee must commence maternity leave at least two weeks before the expected due date and she is not permitted to return to work for a period of at least four weeks following the birth of the child. An employee's right to annual leave and public holidays accrues whilst on both ordinary and additional maternity leave.

Like maternity leave, an adopting mother or a sole male adopter is entitled to statutory leave under the Adoptive Leave Acts 1995 and 2005. Employees are entitled to 24 weeks' ordinary adoptive leave and 16 weeks' additional adoptive leave. In addition, the Parental Leave Acts 1998 and 2006 provide for men and women to take unpaid leave of 18 weeks from their work in order to take care of a child under the age of eight (or a child of up to 16 years old where the child has a disability or a long-term illness or in the case of an adopted child, the leave must be taken within two years of the adoption order).

The Parental Leave Acts also entitle employees to reasonable time off work (force majeure leave) to deal with an emergency situation concerning a dependant. Leave of up to three days in any period of 12 consecutive months or five days in any period of 36 consecutive months may be taken. A partial day's absence is treated as a full day's leave.

PAYMENT OF WAGES

Minimum wage in Ireland is €8.65 per hour. The Payment of Wages Act 1991 states that every employee is entitled to a payslip. Employees have a statutory entitlement to receive a written statement of wages outlining the nature and amount of any deductions made.

UNFAIR DISMISSAL

An employee with over one year of continuous service is entitled to bring a claim under the Unfair Dismissals Acts 1977-2011. However, if the reason for the dismissal is pregnancy or trade union membership/activity, then employees are protected from day one of their employment. If an employee is found to have been unfairly dismissed, they may be entitled to up to two years' gross remuneration or re-instatement or re-engagement. The onus of proof is on the employer to prove that there were substantial grounds to justify the dismissal and if a finding of unfair dismissal is to be avoided, not only must the employer establish that the reasons for the dismissal were fair, but also that the procedures followed were fair and constitutionally acceptable.

An employee must institute proceedings for unfair dismissal within six months of the date of dismissal or, where there are exceptional circumstances, within 12 months.

It currently takes up to 18 months to get a hearing date in the Employment Appeals Tribunal. With each hearing heard in regional courts and often reported in the local newspapers, an unfair dismissal case can lead to adverse publicity for the employer.

REDUNDANCY

An employee Under the Redundancy Payments Acts 1967-2007, an employee must have been continuously employed for two years in order to be entitled to a statutory redundancy payment, which is calculated on the basis of two weeks' salary for every year of service, plus a bonus of one week's pay (capped at €600), in a tax-free lump sum. This sum is 100% payable by the employer.

There are five circumstances in which a genuine redundancy situation will be found to exist:

1. where the employer's business or place of employment has partially or completely closed down; or
2. where there has been a decrease in the employer's requirements for the category of qualification of the employees made redundant; or
3. where fewer or no employees are required due to a restructuring or reorganisation of the business or because there has been a downturn in trade; or
4. where the employer has decided that the work for which the employee had been employed should henceforth be done in a different manner for which the employee is not sufficiently qualified or trained; or
5. where the employer has decided that a person who is also capable of doing other work for which the employee in question is not sufficiently qualified or trained should henceforward do the work.

Even where there is a redundancy situation in existence, it is important to bear in mind that redundancies relate to positions rather than persons. Therefore employers must be careful to ensure that they select the right person for the redundancy. If the redundancy circumstances apply to one or more employees, selection cannot be in contravention of an agreed procedure relating to redundancy or be for some other automatically unfair reason for dismissal. All other things being equal, it is typical in Ireland for companies to operate the last-in, first-out 'LIFO' procedure.

EQUALITY

Discrimination is prohibited in Ireland under the Employment Equality Acts 1998–2011 ('the EEA') on nine distinct grounds: gender; civil status; family status; sexual orientation; religious belief; age; disability; race and membership of the Traveller community. In addition, an employer cannot discriminate against an employee on the grounds of his/her fixed term or part time status.

An employer cannot discriminate against an employee or a prospective employee on one of the nine grounds in the following areas:

- access to employment, conditions of employment, training and promotion;
- collective agreements;
- job advertisements;
- employment agencies;
- vocational training;
- certain vocational bodies e.g. trade unions and professional and trade associations.

Discrimination is defined as less favourable treatment. A person is said to be discriminated against if he or she is treated less favourably than another is, has been or would be treated in a comparable situation on any of the nine grounds specified above. The Equality Act 2004 extends the scope of the 1998 Act to persons engaged in a self-employed capacity, such as an independent contractor.

Employers may be liable for their employees' acts, including acts of discrimination or harassment, whether or not the act was done with the employer's knowledge or approval, provided the act was committed during the course of employment.

Discrimination can be direct or indirect. Direct discrimination occurs when an employer treats one person less or more favourably on account of their sex, race, etc, than they do another person of the opposite sex or of a different race. Indirect discrimination occurs where the employer applies a requirement or condition, which, on the face of it, applies to e.g. both sexes, or all races, but with which, in practice, a disproportionate number of one sex or race cannot comply and it is to their detriment.

HEALTH & SAFETY

The Safety, Health and Welfare at Work Act 2005 is the principal piece of health and safety legislation in Ireland. The 2005 Act provides that 'every employer shall ensure, so far as is reasonably practicable, the safety, health and welfare at work of his or her employees'. Therefore an employer has a liability to know where a risk exists and to take reasonable measures of prevention.

The 2005 Act further provides that an employer shall appoint at least one 'competent person' to be responsible for health and safety matters in the workplace and that such competent person be allowed adequate time, without loss of remuneration, to enable him/her to perform such functions as may be specified. In addition, there is an obligation on an employer to carry out a risk assessment and prepare a safety statement.

The Act provides for substantial fines and penalties for breaches of the health and safety legislation and workplace inspections are gathering speed.

WORK PERMITS

The Employment Permits Acts 2003 to 2012 make it an offence to employ an individual without an employment permit where one is required, and provides that any person contravening this provision of the Act could be liable on conviction on indictment to a fine of up to €250,000 or up to 10 years' imprisonment or both. Subject to some small exceptions, almost all non-EEA or non-Swiss nationals must have an employment permit to work in Ireland.

Either an employer or an employee can apply to the Minister for Jobs, Enterprise and Innovation for an employment permit.

Employers applying for employment permits are generally required to establish that they have made all reasonable efforts to fill the vacancy with a person for whom an employment permit is not required.

MINIMUM AGE

The employment of children and young persons is regulated by the Protection of Young Persons (Employment) Act 1996. The Act in general applies to young people under 18 years of age. Only those aged sixteen or older can legally work full-time. At 14-15, light work is allowed, with strict rules on maximum working hours, early mornings or night work, and rest breaks.

NERA

The National Employments Rights Authority is an employment watchdog ensuring the compliance and enforcement of employment rights legislation. NERA Inspectors may enter premises at reasonable times, interview employers and employees, take statements, examine and take copies of records and initiate legal proceedings. Inspections are carried out either to investigate a specific complaint or a team of inspectors may carry out random or targeted inspections in a particular sector of employment.

NERA inspectors may look for (amongst other things) contracts, payslips and working time records. NERA inspectors are now empowered to work with and exchange information with the Department of Social Protection and the Revenue Commissioners in Joint Investigation Units.

PAYE

Under the PAYE system, income tax is deducted by the employer at source from the wages or salary of an employee and paid over to the Revenue Commissioners. Income that is subject to PAYE includes 'salaries, fees, wages, perquisites, profits or gains arising from employment, including pensions'.

The amount of tax payable by an employee depends on his/her earnings and the rates and allowances that are applicable.

SICK LEAVE

In general an employee has no statutory right under employment law to be paid while on sick leave. Consequently, it is at the discretion of the employer to decide his/her own policy on sick pay and sick leave, subject to the employee's contract or terms of employment. An employer should have clear sick leave and sick pay policies in place regarding the management of sickness absence in its organisation and employees should be made aware of these policies. Sickness absence policies should set out clear rules in relation to a number of things, including,

but not limited to, how to report sickness absence, certifying sickness absence and details of absence management meetings and return to work procedures.

An employee may be entitled to illness benefit from the Department of Social and Family Affairs while on sick leave.

BULLYING & HARASSMENT

Bullying is defined as repeated inappropriate behaviour, direct or indirect, whether verbal, physical or otherwise, conducted by one or more persons against another or others, at the place of work and/or in the course of employment, which could reasonably be regarded as undermining the individual's right to dignity at work.

An isolated incident of the behaviour described in this definition may be an affront to dignity at work but as a once off incident is not considered bullying.

Harassment is different to bullying and is defined as any form of unwanted conduct related to any of the discriminatory grounds (gender, civil status, family status, race, age, religious belief, sexual orientation, disability or membership of the Traveller Community), being conduct which has the purpose or effect of violating a person's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person.

Sexual harassment is any form of unwanted verbal, non-verbal or physical conduct of a sexual nature which has the purpose or effect of violating a person's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person.

If an employee believes that he/she has been bullied or harassed on one of the nine grounds he/she can bring a case to the Equality Tribunal under the Employment Equality Acts.

If the employee feels that the bullying or harassment at work is so great that it causes his/her health (physical or psychological) to suffer or be affected, the employee may also bring a claim for compensation for personal injury.

The assessment of the damages due to an employee is made having regard to the particular injuries sustained by the employee together with his/her circumstances.

For personal injury actions in the Circuit Court the limit is €60,000.

COURT COSTS

Depending on the complexities of the case, a week in the High Court can cost anywhere between €70,000 and €100,000 and if you lose, that figure can be doubled, as you must pay the costs of the other side. Cases are therefore often settled outside of court. If you are insured, the insurance company may opt to act as it thinks best and may settle, even if you believe you are not liable.

DEALING WITH COMPLAINTS

An employer should have a clear procedure in place for dealing with the resolution of issues arising in the workplace. A grievance procedure should include an informal step and a formal step.

For a formal complaint, an employee should be required to put the grievance in writing and submit it to his or her manager. The written grievance should include the date of the alleged complaint, details of the complaint, the venue and any witnesses. The formal procedure should

have a number of stages including (but not limited to) a grievance hearing, an investigation and an appeal.

In appointing a member of the company to hear an investigation/disciplinary hearing/appeal, the employer should ensure that the appointed person has prior experience, knows their position in the company and will make a good witness.

An employer should also have a clear disciplinary procedure in place, which follows a number of steps and has various levels of disciplinary hearing. Generally, no disciplinary action should be taken before a proper investigation has been undertaken by the employer into the matter complained of.

When taking disciplinary action, be clear in the letter to the employee inviting them to a meeting:

- What are you inviting them to?
- Set out the allegations, linked to the employee's contract and the employer's policies / procedures
- Provide all relevant documents
- Allow the person to bring their own representative
- There should be no surprises when a person arrives at a disciplinary meeting.

Ensure it is not the same person who conducted the investigation who hears the disciplinary meeting. Be patient. Meetings can be repeated and can take several weeks or longer to reach a conclusion. Be clear in your reasons for your final decision and act proportionately. The employer must be able to show that it did the best it could by the appropriate measures and procedures.

Think before you act! Never make a decision on the day of the meeting, always make it the following day, having slept on it. If in any doubt, hold another meeting. Meeting, meeting, meeting – you'll never be criticised in a court or tribunal for holding meetings.

REFERENCE

You should always be able to stand over a reference you have given. If the employee has left under a cloud then a simple statement of service is sufficient: he/she worked for me as * from date to date on a daily basis. You do not have to expand on that. There is no obligation on an employer or ex-employer to give a reference to employees in respect of their ability, loyalty, etc.

Be very careful if asked to give a reference over the phone and don't be drawn into saying anything that an employee could then sue for.

THE PROCESS

