

# KEEPING IN TOUCH

THE NEWSLETTER OF RICHARD GROGAN & ASSOCIATES SOLICITORS

## **Employment Law – Tips and Traps**

This article highlights some of the traps for those bringing claims and Tips for those defending.

National Minimum Wage Act 2000 claims are being dismissed for failing to comply with Section 23. Before bringing a claim the employee must issue a request under Section 23 as to their average hourly rate of pay, for a reference period, other than the current period, within the last 12 months.

A claim cannot issue for a period of one month or until a response is received, whichever is the earlier. A claim under the National Minimum Wage Act 2000 can go back for 6 years, not the usual 6 months.

Section 7 (2) (b) Payment of Wages Act catches many out. To lodge a valid appeal to the EAT the party appealing must also serve the other side. Failure to serve both means that the EAT has no jurisdiction.

In Payment of Wages claims the case of Health Service Executive and John McDermott 19th June 2004 confirms that the claim must be limited to the period of six months prior to lodging the claims. A claim in exceptional circumstances can be extended back for a further six months. If a claim exceeds the maximum statutory period the entire claim is statute barred. You should clearly quantify any period where a claim to extend time is being made.

In Working Time claims for holiday entitlements the Annual Leave year, despite what might be said in any contract, under the legislation, is a period commencing on 1st April in a year and finishing on 31st March in the following year. An employee who has not received their holiday entitlements, except in the case of a termination, cannot bring a claim during the statutory leave year.

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In the case of Public Holidays a claim must be lodged within six months of the relevant Public Holiday. Cases have been dismissed in the Labour Court where an employee has claimed that they have not received their “Bank Holidays”. The legislation in the Act is very specific and the phrase is “Public Holidays”.

The above are examples of errors which are made by employees when bringing claims. They also set out potential defences when acting for an employer.

**This is a guide only. Before acting or refraining from acting on anything contained in this guide, legal advice from a Solicitor should be obtained.**