



Employment Law Information – Update

Excessive Hours of Work - Working Time Claims – What Is The Reference Period

The case of Swords Risk Services Ltd and Damien Sheahan being a decision of the Labour Court under reference DWT435 <http://www.workplacerelements.ie/en/Cases/2014/April/DWT1435.html> is important for clarifying the law of what the reference period is for a claim of working excessive hours.

The legislation is clearly set out in Section 15 Organisation of Working Time Act.

How this applies in practice is often open to discussion. In this case a complaint was made in February 2013. The employee had left work in October 2012.

The Court found;

“The Act does not prohibit the Court from calculating the average working week over a period of 6 months provided the effect of that calculation crystallises into an infringement of Section 15 of the Act within 6 months of the date on which the complaint was made by the complainant to the Rights Commissioner. In this case the complaint was made in February 2013. The complainant left work in October 2012. The complainant and the Respondent are entitled to calculate the average working week in the six months up to and including the date on which he ceased working for the company”.

What does this mean in practice?

An argument is sometimes put forward, before Rights Commissioners that the reference period will be the period from February 2013 to a date in September 2012. The effect of this Court ruling is that the averaging period would actually go back to April 2012.

This Court decision confirms that for claims of working excessive hours, which must be averaged over a four or six month period of time, that provided the claim is made within six months of the employment ceasing the employee can go back six months prior to the date of leaving provided the claim is made within 6 months of leaving the job. This decision has important consequences for anybody bringing or defending claims.

Before acting or refraining from acting on anything contained in this Guide legal advice from a Solicitor should be obtained.

2 May 2014.