Employment Law Information – Update

What Notice is an Employer Obliged to Give and Employee Entitled to Receive to be Obliged to Work Overtime?

This question regularly comes up in cases before Rights Commissioners and the Labour Court. In the recent case of Lucey Transport Limited and Marius Serenas DTW13141 http://www.workplacerelations.ie/en/Cases/2013/October/DWT13141.html the Labour Court gave a very considered decision on this point.

The Court stated in relation to the legislation;

"It seems to the Court that the underlying rationale of the provision is perfectly clear. It is directed at making a sensible distinction between situations in which an employee has a fixed start and finishing time around which he or she can have private or family life and those who cannot do so due to the unpredictability of their work commitments. Where an employee has a contractual entitlement to a fixed starting and finishing time he or she cannot be obliged to start or finish work at any other time as any variation from the contractual terms can only be by mutual agreement. Where, however, an employee's starting and finishing time is determined solely by the employer the law requires that in order to maintain some degree of work/life balance reasonable notice of starting and finishing times must be furnished by the employer".

The Court held that 24 hours' notice must be given and that failure to do so contravenes Section 17 of the Organisation of Working Time Act.

What does this mean in practice?

If an employee has a fixed starting and finishing time with no provision in the contract which requires the employee to undertake overtime then the employer cannot insist upon the employee doing overtime. Where a contract has a fixed starting and finishing time but there is provision allowing the employer to require the employee to undertake overtime then the employer must give 24 hours' notice of the requirement to work overtime.

There is an exception to this. Section 17 (4) of the Act confirms that where some unforeseen event intervenes then 24 hours is not required. The Labour Court has consistently held that unforeseen means that "cogent evidence" must be furnished if an employer is to rely on this.

What an unforeseen circumstance is will depend on the particular circumstances. What however is clear is that an unforeseen circumstance cannot be regularly occurring. It cannot occur, for example, every week.

Where an employee has no set starting and finishing times then again the employer must notify the employee at least 24 hours in advance of the start and finishing times.

In some businesses individuals will work on different shifts. These shifts may change from week to work. The law on this provides that the notice to employees of the requirement to work a particular shift for example a shift starting on a Monday must be notified the previous Friday. This is an exception to the 24 hour rule. If an employee comes to work on Monday at 9am and the employer wants to change the start time on Tuesday to 8am it is not sufficient to give notice at 9am on Monday as that will not be 24 hours. If however the employer wanted to change the finishing time on Tuesday to 6pm rather than 5pm it would be sufficient if the notice was given any time before 6pm on Monday.

The Lucy Transport case is important for restating the law on this issue. What is relevant however to both employers and employees is that failure to comply with this provision can result in significant awards.

In this particular case failure to notify the employee of finishing times was sufficient to result in an award, to the employee, of €2500.

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

2 May 2014