Beware of Time Limits in Employment Cases

Employment law specialist Richard Grogan warns that issues are coming before the WRC and the Labour Court where there are delays in lodging claims

The general provisions as set out in the Workplace Relations Act is that the period is six months from the date of occurrence of the relevant event. For "reasonable cause" it can be extended to 12 months.

The established test for deciding if an extension should be granted for reasonable cause was set out in the Labour Court in case *WTD0338 Cementation Skanska -v- Carroll*. Here the test was set out in the following terms:

"It is the court's view that in considering if reasonable cause exists, it is for the claimant to show that there are reasons which both explain the delay and afford an excuse for the delay. The explanation must be reasonable, that is to say it must make sense, be agreeable to reason and not be irrational or absurd. In the context in which the expression reasonable cause appears in the statute, it suggests an objective standard, but it must be applied to the facts and circumstances known to the claimant at the material time. The claimant's failure to present the claim within the six-month time limit must have been due to the reasonable cause relied upon. Hence there must be a causal link between the circumstance as cited and the delay and the claimant should satisfy the court, as a matter of probability, that had those circumstances not been present he/she would have initiated the claim in time. The length of the delay should be taken into account. A short delay may require only a slight explanation whereas a long delay may require more cogent reasons. Where reasonable cause is shown, the court must still consider if it is appropriate in the circumstance to exercise its discretion in favour of granting an extension of time. Here the court should consider if the respondent has suffered prejudice by the delay and should also consider if the claimant has a good arguable case."

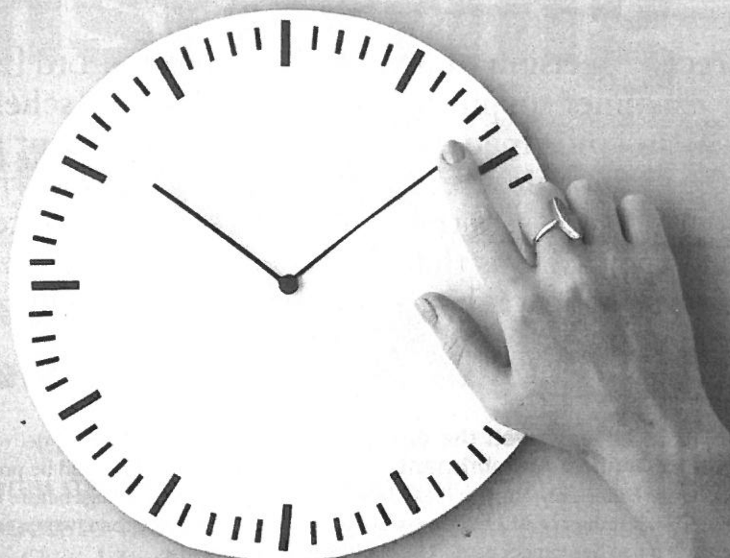
The reason for setting this out is that there are some issues which are coming up now where colleagues have sought extensions. In a recent case it was argued that there was a lag generally in the work of legal practitioners in the particular case in July and August of each year. They argued there was challenges of workload in a small legal practice and the fact that the solicitor had to investigate the matter. A further argument was made that a data access request was made.

There have been other cases where it has been argued by colleagues that due to the fact that they were busy, they were not in a position to deal with matters.

The approach of the Labour Court in these cases has been very clear and precise.

Where an individual comes to a solicitor, particularly

Richard Grogan is principal of **Richard Grogan & Associates Solicitors & Registered Tax Consultants.** His firm won the Employment Law team of the Year Award 2018 at the Irish Law Awards



if they are out of time, being outside the six-month period to bring a claim, the Labour Court is of the view that the solicitor should deal with this as an urgent matter that would require immediate attention.

Where a case is close to the time limit, then again, the Labour Court has taken the view that the solicitor must seek to put the claim in, on time.

Similar type cases have arisen relating to the time to put in an appeal which is 42 days from the date of a decision.

Of course, there are difficulties which offices have in dealing with cases. However, extensions of time are unusual in the WRC and the Labour Court. In dealing with cases, it would be my advice that if an individual is out of time to bring a claim or out of time to lodge an appeal when they come to you – that unless you are in a position to deal with the matter immediately, effectively within one or two days of them coming to you, then that is a type of case that it may be better to refer them to another office. If it is a case that the time limit to bring a claim or to appeal is very close again, unless you are in a position to deal with it within the relevant time limits, it is a matter which I would advise that a solicitor refuses to accept the engagement.

Any solicitor is entitled to refuse any engagement. If a client comes to you, very close to the time limits or where the time limit has expired then you are taking on a significant risk if you take that case on without having the time and resources to deal with it virtually immediately.

There are exposures to solicitors. In a recent case for example, the Labour Court held that the delay between the six months to bring a claim and the date that they first went to see the solicitor was reasonable because of the health issues which the employee, in that particular case was suffering from. However, the Labour Court did not accept the delay between that date and the date that the solicitor lodged the claim which was two months later. The Labour Court in that case refused to extend the time and the case failed.

The times limits in employment law cases are very tight. There is no automatic right to an extension. Reasonable cause must be shown. The test on reasonable cause, which I have set out, is quite restrictive. Where a claim is lost because an extension of time is not given and that delay is allocated in whole or to a significant extent as to how a solicitor ran the case, then there are serious exposures for that solicitor.

It is very hard for colleagues to refuse to take a case. However, it would be my advice that if you are pressed on time that unless you are sure you can deal with the matter urgently, it is better to refuse that assignment. It is better to lose a client than lose a case because you could not get the paperwork processed in time.

Where a case is close to the time limit then again, the Labour Court has taken the view that the solicitor must seek to put the claim in, on time