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THE NEWSLETTER OF RICHARD GROGAN & ASSOCIATES SOLICITORS

Harassment in the Workplace

In Case ADJ15003 the AO in this case dealt with two significant issues.

Firstly what is harassment; and
Secondly the issue of investigations of complaints

What is Harassment?

The AO in this case quoted the case of Nail Zone Limited and A Worker EDA1023 which defined harassment as;

“The essential characteristics of harassment within the statutory meaning is that the conduct is;

- (a) Unwanted
- (b) That it has either the purpose or effect of violating a person’s dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person.

This suggests a subjective test and if the impugned conduct had the effect referred to at (b) of the subsection whether or not that effect was intended or whether or not the conduct would have produced the same result if a person of greater fortitude than the complainant, it constitutes harassment for the purposes of the Acts”.

The relevant section is Section 14A.

There is a defence where an employer shows that they have taken action to investigate and deal with the complaint immediately.

This was covered by the Labour Court in a case of Limerick Co. Council –v- Mannering EDA1210 which revolved around the issue as to whether or not there was an appropriate policy in place. In that case, as quoted by the Labour Court in this case, is one where the Court stated;

“The adequacy or otherwise of the investigation undertaken after the occurrence of the event complained of is irrelevant to the question of whether or not the respondent had taken steps which could have

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prevented that event from occurring. Rather, in cases such as this, this focus should be on whether or not the respondent had in place adequate policies and procedures intended to make all employees aware that harassment on any of the discriminatory grounds is unacceptable and will not be tolerated by the respondent”.

In case ADJ15003 the employee had an annual salary of €16,000. The legislation specifically provides in Section 82 for various levels of compensation up to two years wages or €40,000. In this case the AO awarded €40,000.

This case like the previous case from the Labour Court is important in reminding employers of the importance of having proper policies and procedures in place. Where an employer does not have the proper policies in place then in those circumstances claims against the employer will invariably be successful.

This may sound hard. It is, in our opinion, to highlight the importance of employers having procedures in place. Where there are procedures in place it minimises the potential for harassment.