

Collective Redundancies

With Covid 19 and its effects there are going to be situations where contracts of employment are changed. This may be the way employees work or a reduction in salary.

The termination of an employment contract following a workers refusal to accept a significant unilateral change to essential elements of the contract which operates to his / her detriment constitutes a redundancy for the purposes of Council Directive 95/59/EC of 20 July 1998. This issue arose in a case before the European Court of Justice in case C-422/14 which held that a significant change to essential elements of the employment contract for reasons not related to the individual employee concerned falls within the definition of “redundancy” for the purposes of Article 1(1) (A) of the Directive.

In that case it was held that for the purposes of determining whether there is a collective redundancy under the EU Directive that when calculating the number of redundancies, termination of an employment contract which occurs on the employers initiative for one or more reasons not related to the individual workers concerned are to be equated to redundancies provided that there are at least five redundancies.

In this case the question was one where there was a 25% reduction in the salary. What is interesting is that the CJEU stated that to establish whether there is a collective redundancy within the meaning of the Directive, the condition that there must be at least five redundancies relates not to termination of employment contracts that may be assimilated to redundancies but only to redundancies in the strict sense of the term.

The Court found that the fact that an employer unilaterally and to the detriment of the employee made significant changes to essential elements of the employment contract for reasons not related to the individual employee concerned falls within the definition of redundancy for the purposes of the Directive. The Court observed that redundancies are characterised by the lack of the workers consent. In the case before them the termination of the employment relationship of the worker who agreed to enter into a contract terminating that relationship arises from the changes made unilaterally by the employer, the essential element of the employment contract for reasons not related to the individual worker. That termination

therefore constitutes a redundancy. The Court held that one of the objectives of the Directive is to afford greater protection to workers in the event of collective redundancies a narrow definition cannot be given to the concept of redundancies.

This is an important case for collective redundancies going forward in the current environment. The effect of this is that if an employer sought to put in place a reduction in salary which employees did not consent to and effectively said if there was no agreement those who did not agree would be made redundant then if that employer, for example, has over 21 employees and five of them opt for redundancy then in those circumstances this is in effect a collective redundancy and the normal collective redundancy rules will have to apply. That means notifying the Minister but it also means having a full consultation period.

This will probably come as a surprise to many.