Employment Litigation Update: Collective Redundancies

As highlighted in our last article, COVID-19 has resulted in an increase in the number of redundancies across many sectors of the economy. This has affected the tourism, hospitality and airline industries in particular, which, as a result, have had to implement collective redundancies. This third article in our employment litigation series outlines the obligations on employers during the collective redundancy process and some of the repercussions for failing to comply with statutory requirements.

What is Collective Redundancy?

A collective redundancy arises where a specified number of employees in an establishment are made redundant within a 30 days consecutive period. The thresholds for determining whether an establishment will be required to comply with the collective redundancies process is set out under the Protection of Employment Acts, 1977 – 2014 (the "**1977 Act**"). This provides for the following thresholds:

- 5 employees in an establishment employing 21-49 employees;
- 10 employees in an establishment normally employing 50-99 employees;
- 10% of employees in an establishment normally employing 100-299 employees; or
- 30 employees in an establishment normally employing 300 or more employees.

In determining the number employed in an establishment, the employer must consider the average number of employees employed the 12 months preceding the date on which the first dismissal takes effect.[1] This will also include employees employed on fixed term contracts.

What are the obligations on employers in a collective redundancy process?

During a collective redundancy process, an employer is required to:

(i) Consult and inform the employee/Union representatives and employees

Consultation must be initiated at the earliest opportunity and in any event at least 30 days before the first notice of dismissal is given.

The employer must also consult with employee representatives and /or union representatives in respect of the proposed redundancies. This will include discussions on any steps taken by the employer to avoid the proposed redundancies or reducing the number of employees the employer proposes to make redundant. The employer will also need to explain the rationale for selecting employees for redundancy and demonstrate that employees have been selected in a fair and objective manner.

Where following consultation with the employee/union representatives the employer decides to proceed with the proposed redundancies, the employer must also individually consult with the employees at risk of redundancy.

Accordingly, no notice of dismissal or confirmation of redundancy may be given during the protected consultation period. Effectively, this consultation period acts as a moratorium on the employer giving any notice to dismiss any of the employees.

Section 10 of the 1977 Act sets out in detail the information that the employer is required to provide to the employee representatives.

(ii) Notify and inform the Minister of Employment Affairs and Social Protection (the "**Minister**")

The employer is obliged to notify the Minister of the proposed redundancies at least 30 days before the first dismissal takes effect. The legislation[2] sets out the information that the employer must provide to the Minister. A copy of the notification should also be provided to the employee representatives as soon as possible.[3] It should

[1] Section 8 of the 1977 Act
[2] Pursuant to Section 12 of the Protection of Employment Act, 1977, the Protection of Employment Act (Notification of Proposed Collective Redundancies) Regulations 1977 (S.I. No. 140 of 1977) and the Protection of Employment Order 1996
[3] Section 12(2) of the 1977 Act

be noted that the 30-day information and consultation process with the employee representatives and the 30-day notification to the Minister may run concurrently.

Failure to comply with the requirements under the 1977 Act

An employer who fails to:

(i) initiate consultations or to provide the information to the employee representatives shall be guilty of an offence and shall be liable on summary convictions to a fine not exceeding €5,000.

(ii) consult and inform the employee representatives under sections 9 and 10 of the 1977 Act could result in a complaint in the WRC from a trade union, staff association or the employees themselves. The WRC may order the employer to comply with the 1977 Act, take a specific course of action and/or require the employer to pay to the employee compensation of such amount (if any) as is just and equitable having regard to all of the circumstances, not exceeding 4 weeks' remuneration in respect of the employee's employment.

(iii) failure to notify the Minister according to the legislation can expose the employer to a fine of up to €5,000.

Most notably, if any collective redundancies take effect before the expiry of the 30 days which begins on the day that notification is given to the Minister, the employer shall be guilty of an offence and liable to conviction on indictment to a fine not exceeding €250,000.[4]

Challenging the Indiviudal Redundancy

In addition to bringing a claim for failure to comply with the 1977 Act, any employee can challenge the legitimacy of the redundancy. Our earlier article sets out in detail the potential litigation that can arise in this regard. As such, it is important to note, that as well as running the statutory consultation process required in line with the 1977 Act, it is also recommend that where possible, the employer engages in individual consultation with the affected employees.

For more information on how to comply with the statutory requirements for a collective redundancy during the COVID-19 crisis, please contact Bláthnaid Evans or Sheila Spokes of our Employment & Corporate Immigration team on +353 1 639 3000 or visit www.leman.ie.

[4] As per section 14(3) of the 1977 Act, the requirement prohibiting collective redundancies from taking place within the 30-day period from the date of notification shall not apply in the case of collective redundancies arising from the employer's business being terminated following bankruptcy or winding up proceedings or for any other reason as a result of a decision of a court of competent jurisdiction