

International Labour and Employment Compliance Handbook

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Edited by Salvador del Rey and Robert J. Mignin

Labour and Employment Compliance in Ireland

Second Edition

Duncan Inverarity
Sinead Grace



Wolters Kluwer
Law & Business

International Bar Association

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Further information

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About the International Labour and Employment Compliance Handbook

From 1976 through 1988, the International Bar Association and Kluwer Law International published the groundbreaking International Handbook on Contracts of Employment. This Handbook provided one of the first global overviews of the law of the employment relationship.

Since publishing the first edition, globalization of business has created an increased demand for knowledge of labor and employment laws throughout the world. Therefore, along with Kluwer, we decided to publish an updated Handbook which we have titled the International Labour and Employment Compliance Handbook.

This new Handbook is intended to be a practical guide by providing a general overview of key labor and employment issues in multiple jurisdictions. Each chapter is written so that it is easy to understand by lawyers and non-lawyers alike. Each country author has also followed a standard outline to assist readers in analysing employment issues in each country.

For the first edition of this new Handbook, we have included nineteen (19) different countries. In future editions, we will add new countries.

This Handbook would not have been possible without the help and assistance of many people. Most importantly, the individual country authors are all distinguished legal practitioners who spent considerable time drafting and revising their chapters to meet difficult deadlines. We thank each of them. Our friends at Kluwer, especially Ewa Szkatula, have done a wonderful job in keeping the editors and the authors on schedule. We are also indebted to Ginny Faber who has helped edit each chapter. Finally, we want to also express our gratitude to Elisabet Calzada and Sandra Peris of Cuatrecasas, Gonçalves Pereira, and Megan C. LeGear and Rhonda Jones of Baker & McKenzie LLP in Chicago for their valuable assistance in the coordination and organization of each of the chapters. Our warmest thanks to each of them.

ABOUT THE INTERNATIONAL LABOUR AND EMPLOYMENT COMPLIANCE HANDBOOK

We hope this Handbook will be a helpful and useful resource. We look forward to input and suggestions for future editions of the Handbook.

The Editors

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March 2013

Ireland

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IRELAND

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Table of Contents

1.	Legal Framework: Employment Laws	1
2.	Contracts of Employment	2
2.1.	Overview	2
2.2.	Written Employment Contracts	3
2.3.	Oral Contracts	4
2.4.	Employee Handbooks	4
2.5.	Job Descriptions	5
2.6.	Offer Letters	5
2.7.	Checklist of Do's and Don'ts	5
3.	Recruiting, interviewing, Screening, and Hiring Employees	6
3.1.	Overview	6
3.2.	Recruiting	6
3.3.	Employment Applications	6
3.4.	Pre-Employment Inquiries	7
3.5.	Pre-Employment Tests and Examinations	7
3.6.	Background, Reference, and Credit Checks	7
3.7.	Interviewing	8
3.8.	Hiring Procedures	9
3.9.	Fines and Penalties	9
3.10.	Checklist of Do's and Don'ts	9
4.	Managing Performance/Conduct	9
4.1.	Overview	9
4.2.	Coaching and Counselling	10
4.3.	Written Evaluations	10
4.4.	Warnings and Suspensions	10
4.5.	Checklist of Do's and Don'ts	10

TABLE OF CONTENTS

5.	Termination of Employees for Performance or Disciplinary Reasons	11
5.1.	Overview	11
5.2.	Separation / Severance Pay	11
5.3.	Fines and Penalties	12
5.4.	Checklist of Do's and Don'ts	12
6.	Layoff's, Reductions in Force, and/or Redundancies as a Result of Job Eliminations or Other Restructuring	12
6.1.	Overview	12
6.2.	Reductions in Force / Layoffs / Job Eliminations	12
6.3.	Fines and Penalties	15
6.4.	Checklist of Do's and Don'ts	16
7.	Labour and Employment Law Ramifications Upon acquisition or Sale of a Business	16
7.1.	Overview	16
7.2.	Acquisition Checklist	18
7.3.	Sale of a Business	18
7.4.	Sale Checklist	20
8.	Use of Alternative Workforces: independent Contractors, Contract Employees, and Temporary or Leased Workers	20
8.1.	Overview	20
8.2.	Independent Contractors	20
8.3.	Contract Workers/Fixed Term Contract	21
8.4.	Leased Workers	24
8.5.	Checklist of Do's and Don'ts	26
9.	Obligation to Bargain Collectively With Trade Unions: Employees' Right to Strike and a Company'S Right to Continue Business Operations	26
9.1.	Overview of Union's Right to Organize	26
9.2.	Right of Employees to Join Unions	27
9.3.	How Employees Select Unions	28
9.4.	Pre-election Campaigning	28
9.5.	Unfair Labour Practices	28
9.6.	Relocation of Work / Shutdown of Business	29
9.7.	Checklist of Do's and Don'ts	29
10.	Working Conditions: Hours of Work and Payment of Wages: By Statute or Collective Agreements	30
10.1.	Overview of Wage and Hours Laws	30
10.2.	Minimum Wage	30

10.3.	Overtime	30
10.4.	Meal and Rest Periods	31
10.5.	Deductions from Wages	32
10.6.	Exemptions to Wage and Hour Laws	33
10.7.	Record keeping Requirements	34
a.	Information that Must Be Maintained	34
b.	Records that Must Be Retained	36
c.	Failure to Maintain Required Records	36
10.8.	Reductions in Compensation Caused by Economic Downturn	36
10.9.	Checklist of Do's and Don'ts	37
11.	Other Working Conditions and Benefits – By Statute, Collective agreements, or Company Policy	37
11.1.	Health and Other Insurance	37
11.2.	Pension and Retirement Benefits	37
11.3.	Vacation and Holiday Payments on Termination	38
11.4.	Leaves of Absence	39
a.	Personal Leave	39
b.	Medical or Sick-Leave	39
c.	Bereavement Leave	39
d.	Family Leave	40
e.	Pregnancy Leave	41
f.	Maternity Leave	41
g.	Injury at Work	43
11.5.	Checklist of Do's and Don'ts	43
12.	Workers' Compensation	43
12.1.	Overview	43
12.2.	Checklist of Do's and Don'ts	43
13.	Company's Obligation to Provide Safe and Healthy Workplace	43
13.1.	Overview of Safety and Environmental Laws and Regulations	43
13.2.	Requirements	44
13.3.	Rights of Employees	44
13.4.	Rights of Employer	45
13.5.	Specific Standards	45
13.6.	Injury or Accident at Work	45
13.7.	Workplace Violence	46
13.8.	Fines and Penalties	46

TABLE OF CONTENTS

13.9.	Checklists of Do's and Don'ts	46
14.	Immigration, Secondment and Foreign Assignment	47
14.1.	Overview Laws Controlling Immigration	47
14.2.	Recruiting, Screening and Hiring Process	47
14.3.	Obligations of Employer to Enforce Immigration Laws	47
14.4.	Fines and Penalties	48
14.5.	Secondment/Foreign Assignment	48
14.6.	Checklist of Do's and Don'ts	49
15.	Restrictive Covenants and Protection of Trade Secrets and Confidential Information	49
15.1.	Overview	49
15.2.	The Law of Trade Secrets	49
15.3.	Restrictive Covenants and Non-compete Agreements	50
15.4.	Checklist of Do's and Don'ts	50
16.	Protection of Whistleblowing Claims	51
16.1.	Overview	51
16.2.	Checklist of Do's and Don'ts	53
17.	Prohibition of Discrimination in the Workplace	53
17.1.	Overview of Anti-discrimination Laws	53
17.2.	Age Discrimination	55
17.3.	Race Discrimination	56
17.4.	Sex Discrimination/Sexual Harassment	57
17.5.	Handicap and Disability Discrimination	58
17.6.	National Origin Discrimination	59
17.7.	Religious Discrimination	59
17.8.	Military Status Discrimination	60
17.9.	Pregnancy Discrimination	60
17.10.	Marital Status Discrimination	60
17.11.	Sexual Orientation Discrimination	60
17.12.	Retaliation	61
17.13.	Constructive Discharge	61
17.14.	Checklist of Do's and Don'ts	61
18.	Smoking in the Workplace	61
18.1.	Overview	61
18.2.	Checklist of Do's and Don'ts	62
19.	Use of Drugs and Alcohol in the Workplace	62
19.1.	Overview	62
19.2.	Checklist of Do's and Don'ts	63

20.	AIDS, HIV, SARS, Blood Borne Pathogens	63
20.1.	Overview	63
20.2.	Checklist of Do's and Don'ts	63
21.	Dressing and Grooming Requirements	63
21.1.	Overview	63
21.2.	Checklist of Do's and Don'ts	64
22.	Privacy, Technology and Transfer of Personal Data	64
22.1.	Privacy Rights of Employees	64
22.2.	Checklist of Do's and Don'ts	65
23.	Workplace Investigations for Complaints of Discrimination, Harassment, Fraud, Theft, and Whistleblowing	66
23.1.	Overview	66
23.2.	Checklist of Do's and Don'ts	67
24.	Affirmative action / Non-Discrimination Requirements	67
24.1.	Overview	67
24.2.	Checklist of Do's and Don'ts	67
25.	Resolution of Labour, Discrimination and Employment Disputes: Litigation, Arbitration, Mediation, and Conciliation	68
25.1.	Internal Dispute Resolution Process	68
25.2.	Mediation and Conciliation	68
25.3.	Arbitration	69
25.4.	Litigation	69
25.5.	Fines, Penalties, and Damages	70
25.6.	Checklist of Do's and Don'ts	70
26.	Employer Recordkeeping, Data Protection and Employee Access to Personnel Files, and Records	71
26.1.	Overview	71
26.2.	Personnel Files	71
26.3.	Confidentiality Rules	72
26.4.	Employee Access	73
27.	Required Notices and Postings	73
27.1.	Overview	73
27.2.	Checklist of Do's and Don'ts	74

Legal Compliance in Ireland

1. LEGAL FRAMEWORK: EMPLOYMENT LAWS

Irish employment law is derived from a number of sources. Much of our legislation over the last number of years, particularly in the equality sphere, has been heavily influenced by our European obligations. The law of torts may also impose obligations on the employment relationship. The most obvious example of this is the duty of care employers owe employees for their safety while at work. Another factor which has also dictated the need for change has been the continuously evolving labour market and both employers' and employees' demands for flexibility in their status. This has resulted in the emergence of 'atypical' workers and various working patterns in the form of agency workers, part-time workers, and fixed-term workers. The decline in trade union density has also been an influential factor in the manner in which our laws have developed.

The following are the principal sources of Irish employment law:

- (a) *Common law*. This is law which has been developed by the courts or similar tribunals through judgments.
- (b) *Statute law*. This is written law which is set down by the legislature (the Oireachtas in Ireland is responsible for promulgating legislation).
- (c) *Secondary legislation (Statutory Instruments)* such as regulations or orders made under Acts.
- (d) *Bunreacht na hEireann (the Irish Constitution)*. There are a number of constitutional provisions which are of direct relevance to the employment relationship such as Article 40.1 which states that all citizens are to be treated equally before the law.
- (e) *Codes of Practice* – whilst these do not have binding legal effect they may be taken into account by a court or a tribunal in reaching a decision.