



Employment law Health & Safety

David Ruddy
IPPN Limerick
February 20th



CONTRACTS OF EMPLOYMENT

Responsibilities of Boards



PRE CONTRACT ASPECTS

- Advertisement
- Interview
- Pre Employment Conditions
 - References
 - Medical Report
 - Garda Vetting/Child Protection



CONTRACT – USUAL TERMS

- Parties
- Date of Commencement
- Job Function / Description
- Hours of Work
- Place of Work
- Remuneration
- Probationary Term?
- Fixed Term
- Holidays
- Sick Pay
- Rest Periods/ Breaks
- Disciplinary Procedure
- Grievance Procedure
- Notice
- Miscellaneous



MISCELLANEOUS TERMS

- Child Protection Disclosure Clause
- Retirement
- Pension
- Attendance and Punctuality
- Safety Regulations
- Maternity Leave Entitlements
- Compassionate Leave



TERMS OF EMPLOYMENT (INFORMATION) ACTS 1994-2001

- Employers must provide written statement of basic terms
- Terms usually incorporated in any written contract



BASIC TERMS

- Employer may include additional terms, eg
 - Shift work requirements
 - Grievance Procedure
 - Disciplinary Procedure
 - Deductions from pay
 - Lay off/short time provisions
- All employees must receive written summary of dismissal procedures, within 28 days of commencement (Misconduct)



Minimum Notice and Terms of Employment Acts 1973-2005

- Entitles employees to statutory minimum notice

Service	Notice
13 weeks - 2 yrs	1 week
2 - 5 years	2 weeks
5 – 10 years	4weeks
10 – 15 years	6 weeks
Over 15 years	8 weeks



HOLIDAYS

- Organisation of Working Time Act 1997
- Annual Leave
 - 4 working weeks / one third of working week if 117 hours in calendar month / 8% of hours worked
 - General principle maintained: holidays taken at time convenient to employer (reasonable regard for family circumstances)
 - Public Holidays: day off or other paid day off




The Protection of Employee (Fixed Term Work) Act 2003

- Outlaws discrimination against fixed term workers
- Renewals must state objective grounds in writing
- F/T Contracts commencing after 14th July 2003
 - Aggregate of F/T contracts may not exceed 4 years
 - Unless there are Objective Grounds



UNFAIR DISMISSALS ACTS 1977-2007

- Presumption of Unfair Dismissal
- Capability, competence, qualification
- Conduct
- Redundancy
- Other substantial reasons

- 
-
- Expiry of Fixed Term / Fixed Purpose Contracts
 - Concept of Constructive Dismissal
 - Employee furnished with Disciplinary/Dismissal Procedures



- Claims: Rights Commissioner or Employment Appeals Tribunal

- Redress

- Reinstatement or re-engagement
- Compensation
 - 2 years remuneration ceiling



VETTING

- Garda Clearance
- Des Circular 63/2010
- Statutory Declaration/Form of Undertaking



Relevant Legislation

- Industrial Relations Act 1990
- Unfair Dismissal Acts 1977-2007
- Data Protection Acts 1988-2003
- Payment of Wages Act 1991
- Qualification and Training Act 1999
- Minimum Notice and Terms of Employment Acts 1973-2005



Relevant Legislation

- Teaching Council Acts 2001-2012
- Safety and Health at Work Act 2005
- Equal Status acts 2000-2011
- Maternity Protection Acts 1994-2004
- Adoptive Leave Acts 1995-2005
- Protection of Young Persons (Employment) Act 1996



Education Act 1998 S.24 (3)

“A BOM shall appoint teachers and other staff, who are paid from monies provided by the Oireachtas and may suspend or dismiss teachers and staff, in accordance with procedures agreed between the Minister and -----”



Education Act 1998

Section 22 (1)

“The Principal of a recognised school and the Teachers, under the direction of the Principal, shall have the responsibility (...) for the instruction provided to students in the school...”.

(substituted by S.6 of Education Amendment Act 2012)



Section 22 (2)

“The Principal and Teachers shall (...) (d) (...) carry out those duties that

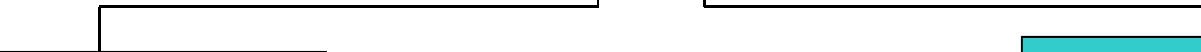
- (i) In the case of Teachers, are assigned to them by or at the direction of the Principal and
- (ii) In the case of the Principal, are assigned to him or by the Board.”



DES Circular 60/2009

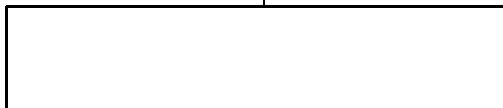
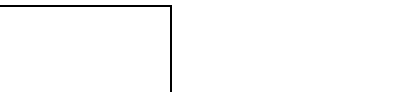
New Procedures for Suspension / Dismissal of Teachers & Principals

Section 24(3) Education Act (1998)
DES Circular 60/2009



Teachers

Principals



Professional
Competence
Issues

Other
Disciplinary
Issues

Professional
Competence
Issues
(Teaching only)

Other
Disciplinary issues
(non-teaching
activities)



Not teaching
Curriculum

Late

Admin
Principals Only



Non – Teaching Staff

Caretakers / Secretary etc



Statutory Instrument No 146 of 2000
Industrial Relations Act 1990

(Not Applicable to Probationary
Teachers)



Procedures ~ Stages

COMPETENCE ISSUES

Stage 1 ~ Informal

Stage 2 ~ Formal

Stage 3 ~ External
Review

Stage 4 ~ Hearing

Stage 5 ~ Appeal

OTHER DISCIPLINARY ISSUES:

Stage 1 ~ Verbal Warning

Stage 2 ~ Written Warning

Stage 3 ~ Final Written
Warning

Stage 4 ~ (Formal Hearing)
BOM Action

Stage 5 Appeal



Gross Misconduct

- Theft
- Fraud / Falsification of Documents
- Indecent emails/ Text messages (Circulation)
- Pornographic materials
- Serious Bullying / Harassment
- Violent / Disruptive behaviour



Gross Misconduct (cont'd)

- Gross negligence / dereliction of duties
- Refusing to comply with legitimate instructions resulting in serious consequences
- Incapacity, under influence of alcohol unprescribed drugs
- Serious breach of Health & Safety rules
- Serious misuse of school property
- Serious breaches of confidentiality



Gross Misconduct (Cont'd)

- Principal contacts Chairperson of the BOM
- Management Body Professional Assoc
- Contact insurance company (Advice)
- Legal Advice
- Investigation of complaint
- Hearing (Stage 4)
- Appeal



Gross Misconduct

- Dismissal without recourse to Stages 1-3
- To include Acts outside school
- Suspension on full pay pending investigation and conclusion of any appeal
- Teachers to be informed – Fair Procedures
- If upheld – usual consequence is Dismissal



Fair Procedures

Include:

- Presumption of innocence
- Allegations in writing and in advance
- Opportunity to respond and challenge
- Absence of Bias
- Representation



General Principals

- Act reasonably & fairly
- Confidentiality
- No intimidation or coercion of witnesses
- Proportionality
- Dignity of employee



Teaching Council Act 2001

- BOM furnishing information on dismissal of teacher
- De-registration of teacher to be considered

(Section not commenced yet)



Teachers Disciplinary Appeals Panel Cases 2009 – 2012

- 15 Cases
- 6 Dismissals
- 5 Suspensions without pay
- 1 Demotion
- 1 deduction of salary increments
- 1 suspension without pay
- 1 appeal ongoing



Summary

- Document every Stage and Meeting
- Ask teacher to sign meeting attendances
- Ensure fair procedures are followed and correctly documented
- Follow the procedures rigidly



Membership of the Panel

- BOM appoints:
- Rep Union Panel
- Chair from DES Panel
- Rep Management Body



Other Disciplinary Issues

- Conduct /Behaviour
 - Capability & Attendance / Sick Leave/Punctuality
 - Competence
 - Non teaching roles / Posts of responsibility
- (If in doubt use more detailed professional competence issues route)



Teachers other Disciplinary Issues

- Informal Stage (general)
- Child Abuse Allegations dealt with under Child Protection Guidelines
- Teacher offers explanation and or/ comment unsuccessful = Disciplinary Procedure



Sanctions

- Deferral / withdrawal of increment
- Demotion
- Other disciplinary action short of suspension
- Suspension with or without pay
- Dismissal



Appeals

May appeal at each stage of process

Stage 1 – To nominee of BOM

Stage 2 – To BOM

Stage 3 – To BOM

Stage 4 – Disciplinary Appeal Panel

Stage 5 – Appointed by BOM



If Principal Subject of complaints / offences

Chairperson of BOM administers
Stages 1 - 4



Actions relate to

- Conduct
- Threat to Health & Safety of Students
- Sustained failure to perform adequately the professional duties and responsibilities of a teacher



Barber V Somerset County Council

2004 (House of Lords)

- Work Related Stress

Held:

- Breach of the duty of care owed by the school

Management team to the teacher.



Sweeney V BOM Ballinteer Community College

- (High Court) 2011
- “A particularly vicious form of bullying involves isolating the victim in the workplace by influencing others and by undermining the victim’s standing in the organisation and amongst colleagues by disparaging references”



O' Toole V Co Offaly Co VEC

- (High Court) 2011
- Allegations concerning sexual harassment and bullying in the workplace



Becker v St Dominic's Secondary School (High Court) 2006

Mr Justice Clarke:

"The circumstances in which a Court may intervene is when a step, or steps, or an act

has been taken in the process that cannot be cured and which is manifestly at variance with the entitlement to fair procedures"



Cathy Mc Sorley

v

**The Minister for Education and Skills & Co
Kilkenny VEC**

High Court 2012

Minister ordered dismissal of school
principal

Was the decision reached in this
case

disproportionate?



Brown V Rathfarnham Parish NS High Court 2006

Rules of procedure mandatory not
discretionary



McGinn V BOM St Anthony's BNS Kilcoole 2004

"May the best man win"

Award of €10,000+ 2 years salary



O' Keefe V Hickey & Min for Education & Science (High CT)2009

- Vicarious Liability for sexual abuse of children did not attach to the State
- Damages awarded against school principal
- Appeal to European Court of Human Rights



Maynooth Statutes

264 # 2

- Abolished with effect from January 2012



Education (Amendment) Act 2012

Section 23 & 24 of Education
Act 1998 amended

Redeployment panels under
exclusive control of DES &
Public Expenditure & Reform



Education (Amendment) Act 2012

- S.30 only registered teachers will have a right of access to payment
(some exceptional circumstances)
- DES control over redeployment panels
- CPD may be mandatory



The Importance of Managing Staff Issues

- Follow the policy blindly & do not deviate from it
- Develop a mindset that isn't personal
- Its business and part of the role of a school leader
- Importance of competent advice
- Schools that don't manage get into trouble



The Importance of Managing Staff Issues

- Trust your judgement
- Principal “what should I do”
- Lawyer “what do you think you should do?”
- Principal “This is what I would do”
- Lawyer “Then that's what you should do?”



VICARIOUS LIABILITY

RYAN V MADDEN

1944 – Irish Reports

e.g. Junior Primary
School

Infant Class in Upper
Storey of Building.



OCCUPIERS' Liability Act 1995

- (1) Visitors
- (2) Trespassers
- (3) Recreational users



Running backwards In a field

Flynn

v

O' Reilly

High Court 1996

Supreme Court 1999




SAFETY, HEALTH AND WELFARE
ACT 2005
REPLACES

THE 1989 ACT
(as of 1st September 2005)



RISK ASSESSMENT AND THE SAFETY STATEMENT

5 STEPS TO A SAFETY
STATEMENT

- 
-
- Identify the risks
 - Assess the risks
 - Select the control measures
 - Write the safety statement
 - Record and review (annually)



ASSESS THE RISKS

The likelihood of the harm occurring and the severity of the consequences if it does arising from those hazards.




SELECT THE CONTROL MEASURES


Select appropriate measures to eliminate the hazards and where that cannot be done to reduce risks.



SAFETY HAZARDS	RISK ASSESSMENT			CONTROL MEASURES	REVIEW
	Low	Med	High		
Tree Roots through tarmac				Remove Roots and patch surface with tarmac	
Torn and curly edge carpet				Caretaker to fix and glue carpet	If problem persists - replace carpet
Spillages – slips and trips				Area to sealed off and wet care sign put in place	
Running in corridor				No running rule to be strictly enforced teacher always leaves class out of room	
Hot water / drinks on the corridor				Written memo prohibiting carrying drinks on yard	Annually
A.V Equipment is subject to regular maintenance checks				Annual electrical inspection	Annually



SAFETY HAZARDS	RISK ASSESSMENT			CONTROL MEASURES	REVIEW
	Low	Med	High		
Children outside office at lunchtime				Must have a written note to be kept off yard	How effective was the written note
Children being collected early from school				All children must be signed for in advance	
Fire windows in classrooms must be signposted				Get labels from Apex Fire	
Parking Cars on Fire Exits				All staff and parents informed in writing of parking on exits	Weekly
Broken Bottles on yard				Caretaker to check yard in advance each day	Weekly
Ice/snow				Caretaker to come to school early and salt / clear area	Weekly



	RISK ASSESSMENT			CONTROL MEASURES	REVIEW
	Low	Med	High		
Pupils seeking enrolment with a history of violence towards other pupils				Defer / refuse enrolment	Pending provision of adequate resources
Pupils seeking enrolment with a history of violence towards staff				Defer / refuse enrolment	Pending provision of adequate resources and training for staff
Pupils seeking enrolment with a history of damaging property belonging to previous schools				Defer/ Refuse enrolment	Pending safety audit



WRITE THE STATEMENT

When bringing the safety statement to the attention of employees it must be a form manner and, if necessary in a language that can be understood by employees. It should be done annually and on recruitment.