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**20/4/2010 LP:**

20 April 2010.

**Public Service Employers  
Handling Certain Industrial Relations Claims**

Dear Personnel Officer,

I would like to draw your attention to the attached advice to public service employers on handling-

- industrial relations claims in the context of the Financial Emergency Measures in the Public Interest (No. 2) Act 2009, and
- requests for referral of claims to the Rights Commissioner.

Please ensure that this advice is circulated to the manager responsible for personnel/industrial relations issues both in your Department and to all public service bodies under the auspices of your Department.

Yours sincerely,

Oonagh Buckley,  
Principal Officer.

## **Appendix A**

### **Handling Industrial Relations Claims in the context of the Financial Emergency Measures in the Public Interest (No. 2) Act 2009.**

1. While the Financial Emergency Measures in the Public Interest (No. 2) Act 2009 must be a major factor in the context of public service industrial relations claims, it does not prevent the making or processing of claims on the part of public servants in relation to their terms and conditions of employment. Any such claim, including any referral to a statutory or non-statutory industrial relations dispute resolution forum, should be handled as normal by public service management<sup>1</sup>, with a full defence made to any such claim on its merits. However, the provisions of the above legislation must also be applied strictly and brought to the attention of conciliation and adjudication bodies.

2. In seeking to resolve any claim which includes a claim for an increase in remuneration for any public servant or group of public servants (including claims for pay allowances or minor claims), your attention is drawn to sections 4 and 5 of the 2009 Act. In summary, Section 4 provides that a purported amendment of a relevant provision (e.g. a pay rate or contract) that would have the effect of increasing the remuneration payable to a public servant or group of public servants is of no effect except in certain specified and limited circumstances. Section 5 of the Act provides that public servant is not entitled to be paid more than the revised pay rate resulting from the reduction applied under the legislation with effect from 1 January 2010, and public service employers are not entitled to pay more. It also includes a provision that, where a body pays remuneration to a public servant higher than that provided for under the Act, the overpayment shall be recouped by the body.

3. In the context of the above, it is important to ensure that the attention of any third party forum seeking to resolve any dispute about or claim for an increase in remuneration (including claims for pay allowances or minor

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<sup>1</sup> i.e management continue their normal role in the operation of industrial relations machinery and make submission to/attend Labour Relations Commission, Labour Court, Conciliation Conferences etc.

claims) is drawn to the provisions of the 2009 Act, and specifically the implications of sections 4 and 5 of the Act in respect of any claim.

4. To that end, it is suggested that the following text be included in any public service management response to such a dispute or claim:

“Currently the public pay policy of the Government is dictated by the requirement to reduce significantly the public service pay bill. This reduction is necessary to meet the expenditure reductions required under the EU agreed programme for the stabilisation and recovery of the public finances.

The enactment of the Financial Emergency Measures in the Public Interest (No. 2) Act, 2009 provided for reductions of public service pay rates with effect from 1 January 2010. These pay reductions are also being augmented by a public service wide moratorium on recruitment and promotion and by other measures in the public service designed to effect a reduction in public service numbers and a consequent reduction in the public service pay bill. Any proposals for increases in public service pay rates are clearly inconsistent with these approaches.

It is against the current public service pay policy background outlined above that this claim must be considered. All claims however arising for additional payment, in addition to the normal critical examination of the scope for increasing payroll costs, must be considered in light of the terms of the Financial Emergency Measures in the Public Interest (No. 2) Act 2009.”

## **Appendix B**

### **Handling requests for referral of a claim to the Rights Commissioner**

#### **General Background**

1. The Rights Commissioner Service forms an important part of the State's Industrial Relations machinery. Rights Commissioners operate as a service of the Labour Relations Commission (LRC) but are independent in their functions of investigating trade disputes, grievances and claims under the legislation set out in Appendix 1, but not those connected with the rates of pay, hours or times of work, or annual holidays, of a group of workers (section 13(2), Industrial Relations Act, 1969).
2. Rights Commissioners issue the findings of their investigations in the form of either decisions or non-binding recommendations, depending on the legislation under which a case is referred. The relevant Acts govern whether an appeal against a Rights Commissioner's Recommendation or Decision is to the Labour Court or Employment Appeals Tribunal. Having heard the appeal, the Court, or Tribunal, will issue a decision, which is binding on the parties to the dispute.
3. Either party (management or individuals/union) to a dispute may object (in writing within 3 weeks) to a Rights Commissioner's investigation where the case has been referred under the Industrial Relations Acts, 1969–1990 or under the Unfair Dismissals Acts, 1977–2005.<sup>2</sup> Where such an objection is made, the Rights Commissioner cannot investigate the case. The applicant can instead request the Labour Court or, depending on the legislation, the Employment Appeals Tribunal to hear the case.

#### **Action by Departments, Offices and Public Service bodies when requested to be party to the Rights Commissioner Process**

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<sup>2</sup> A similar right of objection does not apply for referrals under the other relevant Acts as a Rights Commissioner investigates such cases in the first instance.

4. There appears to be an increasing trend of use of the Rights Commissioner Service to resolve trade disputes involving or affecting groups of workers within and across Departments, Offices and public service bodies under the Industrial Relations Acts 1969-1990. As noted above, such disputes or claims relating to pay or conditions of staff are not normally appropriate for consideration and determination by the Rights Commissioner Service.

5. In considering whether the Rights Commissioner is the most appropriate forum for resolving a particular dispute, regard must be had to the remit of the Rights Commissioners as specified in legislation. Where there is any doubt as to whether a claim is appropriate for referral to a Rights Commissioner, the Department or Office involved should consult on its proposed approach with the Public Service Management Division of the Department of Finance, in advance of deciding whether or not to object to the referral to participate in the Rights Commissioner process within the statutory timeframe.

6. This advice should be brought to the attention of all non-commercial State-sponsored bodies and any other public service bodies under the aegis of each Government Department. Such bodies should, in the case of any doubt as to whether a claim may have wider effects, consult with their parent Department in the first instance.

## **APPENDIX 1**

### **ACTS:**

1. Adoptive Leave Acts, 1995-2005
2. Carers Leave Act, 2001
3. Competition Acts, 2002-2006
4. Employees (Information & Consultation) Act, 2006
5. Employment Permits Act, 2006
6. Industrial Relations Acts, 1969-1990
7. Industrial Relations (Miscellaneous Provisions) Act, 2004
8. Maternity Protection Acts, 1994-2004
9. National Minimum Wage Act, 2000
10. Organisation of Working Time Act, 1997
11. Parental Leave Act, 1998
12. Payment of Wages Act, 1991
13. Protection of Employees (Fixed-Term Work) Act, 2003
14. Protection of Employees (Part – Time Work) Act, 2001
15. Protection of Young Persons (Employment) Act, 1996
16. Protections for Persons Reporting Child Abuse Act, 1998
17. Safety, Health and Welfare at Work Act, 2005
18. Terms of Employment (Information) Act, 1994
19. Unfair Dismissals Acts, 1977-2005

### **STATUTORYINSTRUMENTS:**

1. European Communities (Protection of Employment) Regulations, 2000
2. European Communities (Safeguarding of Employees Rights on Transfer of Undertakings) Regulations, 2003

3. European Communities (European PLC) (Employee Involvement)  
Regulations, 2006