

Employment Appeals Tribunal

Annual Report

2012

Presented to the Minister for Jobs, Enterprise and Innovation under
Section 39 (18) of the Redundancy Payments Acts 1967 to 2007



An Binse Achomhairc Fostaíochta
Employment Appeals Tribunal

Employment Appeals Tribunal's Mission Statement

‘To provide an inexpensive and relatively informal means for the adjudication of disputes on employment rights under the body of legislation that comes within the scope of the Tribunal’.



An Binnse Achomhairc Fostaíochta
Employment Appeals Tribunal

Contents

Chairman's Foreword	4
Members of the Employment Appeals Tribunal	6
Tribunal News 2012	7
Overview of Tribunal's work in 2012	8
Cases Referred	8
Cases Disposed	9
Cases referred and Disposed of in 2012	10
Redundancy Payments Acts 1967 to 2007	10
Unfair Dismissals Acts 1977 to 2007	11
Minimum Notice and Terms of Employment Acts 1973 to 2005	12
Organisation of Working Time Act 1997	13
Protection of Employees (Employers' Insolvency) Acts 1984 to 2004	13
Payment of Wages Act 1991	14
Terms of Employment (Information) Acts 1994 and 2001	14
Maternity Protection Acts 1994 and 2004	15
Parental Leave Acts 1998 and 2006	15
European Communities (Protection of Employment) Regulations 2000	15
European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003	15
Representation at Hearings	16
Other Activities	18
Postponements & Interpreters	18
Accessibility	18
Appeals to Higher Courts	19
European Association of Labour Court Judges	19
Attending at EAT Hearings	19
Archiving of Files	20
Customer Service and Charter	20
Freedom of Information Act 1997	21
Appendices	
Appendix 1: Cases received in 2012	22
Appendix 2: Cases Disposed of in 2012	23
Appendix 3: History and Composition of the Tribunal	24
Appendix 4: Hearings and Sittings	26
Appendix 5: Employment Rights and Industrial Relations Reform	27
Appendix 6: Overview of Legislation	29
Appendix 7: Glossary of Terms	34
Appendix 8: Advisory and Information Bodies	35

Chairman's Foreword

Dear Minister

I am pleased to submit the Annual Report of the Employment Appeals Tribunal for the year 2012 to you, in accordance with Section 39 (18) of the Redundancy Payments Acts 1967 to 2007.

The Tribunal is an independent quasi-judicial body. It has jurisdiction under several Acts of the Oireachtas and two statutory instruments to deal with individual employment rights disputes that arise either on the termination of the employment relationship or during the course of the employment.

The recent annual reports have shown that the productivity of the Tribunal has been increasing year on year. The number of cases disposed of has risen from 2,807 in 2007 to 7,624 in 2012, an increase of 172% in the period. I am happy to report that in 2012 the number of cases disposed of by the Tribunal was 2,001 cases more than were referred to it in that year. Over the past number of years this has been achieved through a combination of measures including streaming of cases. However, I would like, at this stage, to sound a warning note. There are presently approximately 5,000 cases awaiting a hearing, of these 37% are unfair dismissal cases. Due to the complex and contested nature of unfair dismissal cases, they almost invariably require protracted hearings and for this reason it has not been and is not feasible to stream these cases. These cases will present a challenge to the Tribunal and will have a downward effect on the number of cases disposed of in the future.

The major part of the Tribunal's work is adjudicating on disputes that arise on the termination of the employment relationship. These include claims for unfair dismissal, redundancy and minimum notice. Complaints against the decision of the Minister on employees' rights when their employer had been declared insolvent are also made directly to the Tribunal. Finally, claims in respect of holiday entitlements existing at the time of the termination of the employment relationship can be added on to any of the aforementioned claims/complaint.

In its appellate jurisdiction the Tribunal deals with disputes about matters occurring during the course of the employment relationship. A notable trend in recent years has been the steady increase each year in the percentage of the Tribunal's appellate work which, significantly, doubled from 12% in 2011 to 24% in 2012.

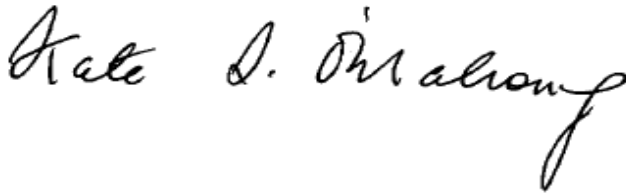
There has been a notable decrease in the number of cases referred to the Tribunal in 2012 as compared to the previous years. Between the years, 2004 to 2007 the number of cases referred to the Tribunal averaged 3,500 per year, with a downward trend in each of those years. In 2008 the first major increase occurred when 5,457 cases were referred to the Tribunal. An average of 8,800 was received in the years 2009-2011 with a high of 9,458 in 2009. The first major decrease in the number of cases referred occurred this year (2012) when the drop was from 8,458 in 2011 to 5,623 in 2012 (a 34% decrease). As can be seen the prevailing economic climate has a direct impact on the Tribunal's workload.

The European Association of Labour Court Judges (EALCJ) honoured Ireland and the Tribunal by appointing me as Chairman of the association for the year from June 2012

to June 2013. The EALCJ provides a valuable forum for interaction and discussion with our European colleagues on employment law.

I thank the Minister and the Department for facilitating the work of the Tribunal through the provision of resources in 2012. I thank the members of the Tribunal whose willingness to deal with extra cases at sittings has enabled the Tribunal to achieve its continuing good results again this year. Your commitment and dedication is much appreciated. A big 'thank you' to the Secretary, Mr David Small, to the secretaries and to other members of staff of the Secretariat for their continuing support and commitment to the work of the Tribunal.

Yours sincerely



Kate T O'Mahony
Chairman



An Binnse Achomhairc Fostaitochta
Employment Appeals Tribunal

Members of the Tribunal

Chairman	Leachlain S O Catháin	Aidan O'Mara	Alice Moore
Kate T O'Mahony B.L.	Jeremiah O'Connor	James O'Neill	Joe Maher
Vice Chairmen	Peter J O'Leary B.L.	Tadg O'Sullivan	Mary Maher
Sinead Behan B.L.	Moya Quinlan	Neil Ormond	Dominic McEvoy
Kieran Buckley	Joe Revington S.C.	Dermot Peakin	Jim Moore
Pamela Clancy	Nicholas Russell	Pat Pierce	Maire Mulcahy
Charles Corcoran B.L.	Tom Ryan	Peter J Pierson	Helen Murphy
Eithne Coughlan (CR)	Jeremiah Sheedy	William Power	Phil Ni Sheaghdha
Ann-Marie Courell B.L.	Joseph Smith (CR)	Robert D E Prole	Owen Nulty
Fiona Crawford B.L.	Tony Taaffe	John Reid	Seamus O'Donnell
Emile Daly B.L.	Patrick Wallace (CR)	Máire Sweeney	Michael O'Reilly
Dorothy Donovan B.L.	Employers Panel	Liam Tobin	Ciaran Ryan
Catherine Egan B.L.	Gerry Andrews	Declan F Winston	Dave Thomas
John Fahy B.L.	Joe Browne	Jean Winters	Paddy Trehy
James Flanagan B.L.	Michael Carr	Employees Panel	Gerry Whyte
Veronica Gates B.L.	Pat Casey	Frank Barry	Owen Wills
Myles Gilvarry	Frank Cunneen	Tom Brady	Paddy Woods
Bernadette Glynn	Moss Flood	Eveta Brezina	
Dara Hayes B.L.	Angela Gaule	Al Butler	Secretary to the Tribunal
Graham Hanlon	Tom L Gill	Finbarr Dorgan	Mr David Small
Eamon Harrington	James Goulding	James Dorney	
David Herlihy	Eamon C Handley	Noel Dowling	CR – County Registrars
Patrick Hurley	Don Hegarty	Patsy Doyle	The Minister appointed 5
Elva Kearney B.L.	James Hennessy	Mary Finnerty	Country registrars on a
Margaret Levey B.L.	John Horan	John Flannery	pilot basis from
James M Lucey	Ben Kealy	John Flavin	30/9/2012 to 29/1/2013
Dermot MacCarthy S.C.	J J Killian	Tom J Gill	
Orna Madden B.L.	Con Lucey	Noirin Greene	
Roderick Maguire B.L.	Gerry McAuliffe	Helen Henry	
Sean Mahon	Cyril McHugh	Thomas A Hogan	
Mary McAveety	Finbar Moloney	James Jordan	
Jeananne McGovern B.L.	Don Moore	Hilary Kelleher	
Penelope McGrath B.L.	Desmond Morrison	Suzanne Kelly	
Sandra McNally	Michael J Murphy	Tony Kelly	
Patrick Meghan (CR)	Roger F Murphy	Frank Keoghan	
Fintan J Murphy (CR)	Michael Noone	Rosabel Kerrigan	
Eamonn Murray	William O'Carroll	Sean Mackell	
Niamh O'Carroll Kelly B.L.	Tom O'Grady	Michael McGarry	



Tribunal News 2012

In 2012, the Employment Appeals Tribunal

Received **5,623** cases

Disposed of **7,624** cases

Held **1,554** sittings



An Binnse Achomhairc Fostaitochta
Employment Appeals Tribunal

The nature of the Tribunal's work in 2012

Category	2011	2012
Cases Referred	8,458	5,623
Cases Disposed	6,723	7,624
Sittings	1,509	1,554

Overview of Tribunal's Work in 2012

Cases Referred

2011	2012	Difference
8,458	5,623	-2,835

As one of the frontline services directly impacted upon by the significant economic downturn, the Tribunal has seen a striking increase in cases received in recent years. However, in 2012 the number of cases received was significantly lower than in 2011.

The number of appeals against the recommendations of the Rights Commissioners continues to increase. The number received in 2012 (1,349) was 38% higher than those received in 2011 (978) and 81% higher than those in 2010 (747).

The top 3 categories of cases referred were

- | | |
|---|-----|
| (1) Unfair Dismissal (UD) | 31% |
| (2) Redundancy (RP) | 22% |
| (3) Minimum Notice & Terms of Employment (MN) | 17% |

Profile of Cases Referred

Legislation		% Breakdown referred in 2012	2012	2011
Redundancy Payment Acts 1967-2007	RP	22%	1,239	2,598
Unfair Dismissals Acts 1977-2007	UD	31%	1,742	2,107
Minimum Notice and Terms of Employment Acts 1973-2005	MN	17%	929	2,070
Organisation of Working Time Acts 1997	WT	7%	386	828
Payment of Wages Act 1991	PW	14%	811	478
Terms of Employment (Information) Acts 1994 and 2001	TE	5%	295	280
Protection of Employees (Employers' Insolvency) Acts 1984-2004	I	2%	108	48
European Communities (Protection of Employees on Transfer of Undertakings) Regulations, 2003	TU	1%	72	44
European Communities (Protection of Employment) Regulations 2000	PE	0.5%	28	1
Maternity Protection Acts 1994 and 2004	M	0.2%	11	2
Parental Leave Acts 1998 and 2006	PL	0.04%	2	2
TOTAL		100%	5,623	8,458

This table gives (1) a % breakdown of cases referred to the Tribunal 2012 and (2) a comparison between 2012 and 2011

Cases Disposed



2011	2012	Difference
6,723	7,624	+901 (+13%)

The number of cases disposed of rose from 6,723 in 2011 to 7,624 in 2012, which was an **increase** of 901 or **13%**. This was an improvement on the Tribunal's record in 2011 which had an 11% increase. Comparing the current figure of 7,642 against the 2007 figure of 2,807, shows a 172% increase in the number of cases disposed.

The Tribunal has been pro-active in driving efficiencies as it addresses the significant increase in demand for its services, at a time of constrained resources. Divisions of the Tribunal are sitting longer, listing more cases per hearing and seeking to manage the case load, so as to maximise efficiency. These efficiencies have resulted in a marked increase in the Tribunal's output over the last number of years.

The largest category of claims disposed of in 2012 was redundancy claims at 31%, followed by Minimum Notice at 27% and Unfair Dismissals, each at 24%. This mirrors the top three categories of cases referred to the Tribunal.

Profile of cases disposed of

Legislation		% Breakdown disposed in 2012	2012	2011
Redundancy Payment Acts 1967-2007	RP	31%	2,393	2,416
Minimum Notice and Terms of Employment Acts 1973-2005	MN	27%	2,046	1,612
Unfair Dismissals Acts 1977-2007	UD	24%	1,791	1,599
Organisation of Working Time Acts 1997	WT	10%	740	726
Terms of Employment (Information) Acts 1994 and 2001	TE	3%	229	180
Payment of Wages Act 1991	PW	5%	407	154
Protection of Employees (Employers' Insolvency) Acts 1984-2004	I	0.1%	10	30
Maternity Protection Acts 1994 and 2004	M	0.07%	5	5
Parental Leave Acts 1998 and 2006	PL	0.04%	3	1
TOTAL		100%	7,624	6,723

Cases referred and disposed of in 2012

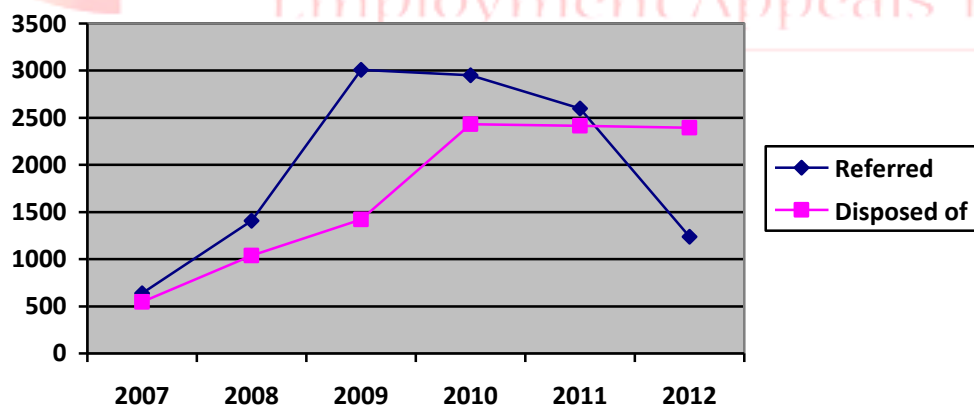
Redundancy Payments Acts 1967 to 2007

No of Cases referred	Allowed	Dismissed	Withdrawn during hearing	Withdrawn prior to hearing	Total Disposed
1,239	1,024	364	215	790	2,393

Due to the increase in redundancy cases referred to it over recent years, the Tribunal took the initiative to stream the hearing of redundancy cases in areas of high demand. During 2012 the Tribunal continued this streaming of redundancy cases and resulting in the disposing of a high of 2,393.

In 2012 there was a reduction of cases to 1,239 from 2,598 in 2011. This decrease is part of a continuing downward trend in the number of redundancy cases being referred to the Tribunal.

Redundancy Cases referred and disposed of from 2007-2012



Unfair Dismissals Acts 1977 to 2007

The Tribunal disposed of 1,791 Unfair Dismissal cases during 2012. This is a 12% increase over the year 2011 (1,599).

The percentage of first instance UD cases received was 83%, appeals 13% and implementations 4%. These percentages are more or less the same as in 2011.

Total Cases Referred	Total Disposed
1,742	1,791

First Instance

No. referred	Allowed	Dismissed	Withdrawn during hearing	Withdrawn prior to hearing	Total Disposed
1,450	311	347	285	578	1,521

Appeals

No. of Appeals	Upheld	Upset	Varied	Withdrawn	Total Disposed
230	58	34	22	95	209

Implementations

No. of Implementations	Upheld	Withdrawn	Total Disposed
62	50	11	61

The Tribunal awarded compensation amounting to €6,981,979.49 in 377 UD cases. The average compensation awarded by the Tribunal was €18,519.84. In addition to compensation, re-instatement was ordered in 4 cases and re-engagement was ordered in 10 cases.

Profile of Unfair Dismissal Awards in 2012

Compensation Award €	Number	Compensation Award €	Number
0	6	5001-6000	15
1-250	4	6001-7000	12
251-500	6	7001-8000	12
501-750	3	8001-9000	7
751-1000	10	9001-10000	20
1001-2000	24	10001-15000	43
2001-3000	23	15001-20000	40
3001-4000	7	20001-25000	24
4001-5000	25	>25001	96

Minimum Notice and Terms of Employment Acts 1973 to 2005

No of Cases referred	Allowed	Dismissed	Withdrawn during hearing	Withdrawn prior to hearing	Total Disposed
929	844	406	197	599	2,046

The number of Minimum Notice and Terms of Employment cases disposed of by the Tribunal has decreased marginally over the 2011 figure.

Organisation of Working Time Act 1997

No of Cases referred	Allowed	Dismissed	Withdrawn during hearing	Withdrawn prior to hearing	Total Disposed
386	194	168	143	235	740

Cases under the Organisation of Working Time Act can only be made in conjunction with cases under other Acts. The Tribunal only deals with the holiday cases under the Act. The number of cases referred decreased to 386 in 2012 compared to 828 in 2011, However, over the same period the number of cases disposed of by the Tribunal increased from 726 to 740 (+2%).

Protection of Employees (Employers' Insolvency) Acts 1984 to 2004

No of Cases referred	Allowed	Dismissed	Withdrawn Prior	Total Disposed
108	5	4	1	10

This is an area where there has been a continuing increase in the number of cases to the Tribunal. These relate to the number of appeals against the decision of the Minister for Social Protection. Only 5 appeals were referred in 2010 and this increased to 48 in 2011. In 2012 this trend has continued with 108 cases being referred to the Tribunal, a percentage increase of 125%. The number of cases disposed of in 2012 was 10.

Payment of Wages Act 1991

No of Cases referred	Upheld	Upset	Varied	Withdrawn	Total Disposed
811	173	30	4	200	407

In recent years there has been an upward trend in the number of appeals made to the Tribunal from decisions of Rights Commissioners under the Payment of Wages Act. The number of appeals has risen from 316 in 2011 to 811 in 2012, which was a 70% increase on the number of appeals referred in 2011.

The number of Payment of Wages cases disposed of by the Tribunal has increased from 154 in 2011 to 407 in 2012 (+164%).

Terms of Employment (Information) Acts 1994 and 2001

	No of Cases referred	Upheld	Upset	Varied	Withdrawn	Total Disposed
Appeal	195	81	13	7	44	145
Implementation	100	48	0	0	36	84

The number of cases disposed of under this Act has increased from 180 in 2011 to 229 in 2012. The total number of cases referred increased from 280 in 2011 to 295 in 2012.

Remaining Acts

Legislation	No of Cases referred	Upheld	Upset	Varied	Withdrawn	Total Disposed
Maternity Protection Acts 1994 and 2004	11	1	2	0	2	5
Parental Leave Acts 1998 and 2006	2	2	0	0	1	3
European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003	72	0	0	0	0	0
European Communities (Protection of Employment) Regulations 2000	28	0	0	0	0	0

In 2012 there was an increase in the number of Maternity Protection Acts appeals received by the Tribunal from 2 in 2011 to 11 in 2012.

Appeals received under the Parental Leave Acts 1998 and 2006 have remained the same as last year. Appeals referred under both the European Communities (Protection of Employees on Transfer of Undertakings) and the European Communities (Protection of Employees) increased in 2012. The European Communities (Protection of Employees on Transfer of Undertakings) increased from 44 in 2011 to 72 in 2012 and European Communities (Protection of Employees) increased from 1 in 2011 to 28 in 2012.

No cases were referred or disposed of in 2012 under the following Acts.

- Adoptive Leave Acts 1995 and 2005
- Protection of Young Person (Employment) Act 1996
- Protection for Persons Reporting Child Abuse Act 1998
- Carer's Leave Act 2001
- Competition Acts 2002-2010
- Consumer Protection Act 2007
- Chemicals Act 2008

Representation

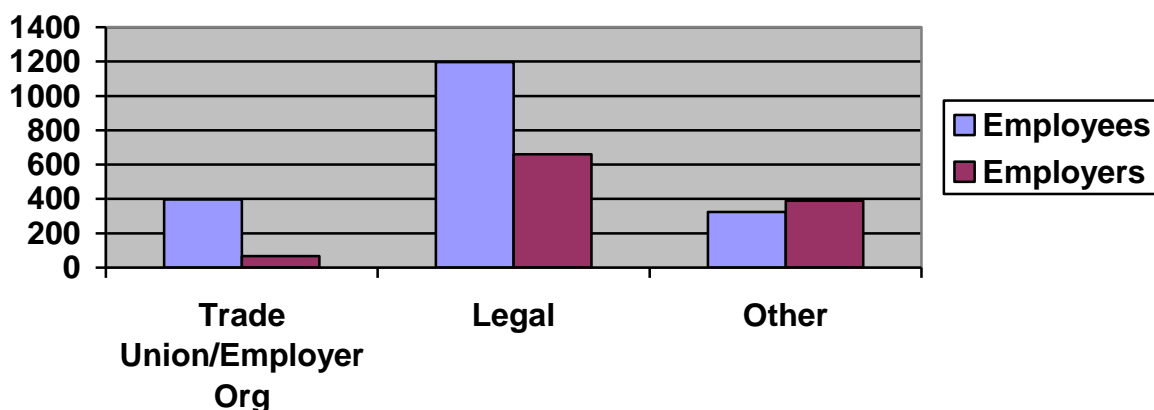
A party to an application may appear and be heard in person, or be represented by counsel or solicitor or by a representative of a trade union or by an employers' association or, with the leave of the Tribunal, by any other person. There is no requirement for representation in order to appear before the Tribunal.

Details of the representation under the various Acts or combination of Acts in 2012 are as follows:

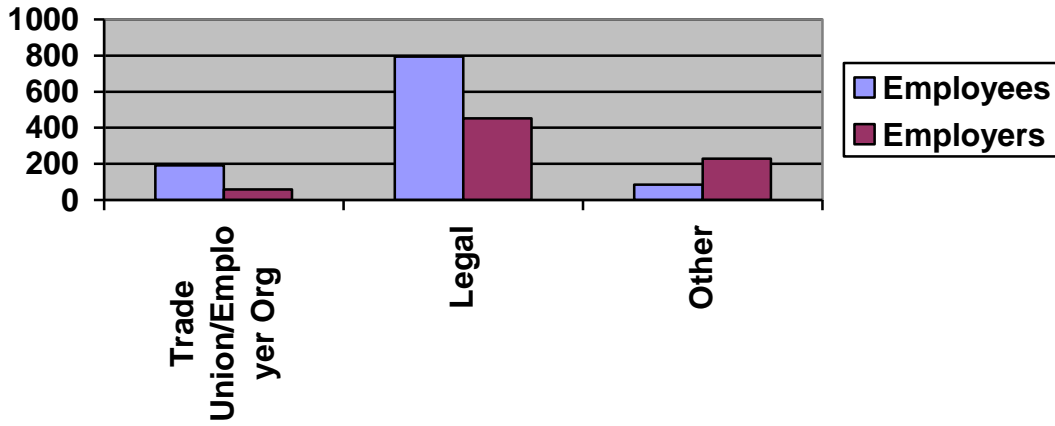
In 2012, 1,917 **employees** had representation at the hearing before the Tribunal. Of these in 397 cases representation was by Trade Unions, 1,196 was by legal representatives and 324 by other persons. In this period **employers** had representation in 1,116 cases. Of these 659 was by legal representatives, 390 by other persons and 67 by employers' associations.

It is notable that highest level of representation is in unfair dismissal cases. In 2012, 1,071 **employee** parties had representation (192 by trade unions, 794 by legal representatives and 85 by other persons) and 740 **employer** parties had representation (59 by employers' associations, 453 by legal representatives and 228 by other persons).

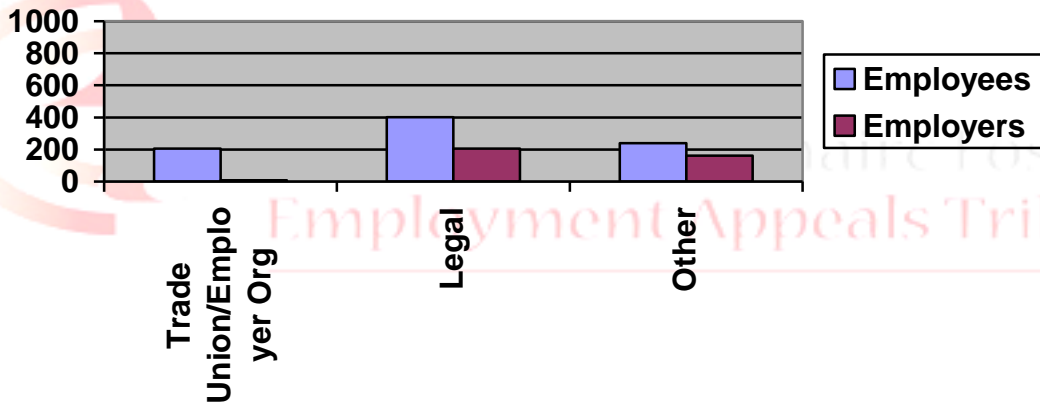
Representation under all Acts in 2012



Representation under Unfair Dismissal Acts in 2012



Representation under all Acts excluding UD in 2012



Other Activities

Postponements & Interpreters

Cases are set down for hearing and dates notified to the parties, on average five to six weeks in advance. Postponements may be granted only in exceptional circumstances. If a postponement is sought immediately, or within 5 working days of receiving the notice of hearing and the consent of the other party to the case has been obtained, it may be granted. If a postponement is sought later and/or without the consent of the other party it is unlikely to be granted. This setting down system, designed primarily for the convenience of parties, renders some applications for postponements inevitable but outside the control of the Tribunal. Postponements, which are applied for too close to the date of hearing and are granted, result in the loss of scheduled Tribunal sitting time. This loss of time adversely affects the setting down system, increases costs, and results in further delays between the date of referral of a claim and the date of hearing for all claimants.

In 2012, the total number of postponement applications was 516 of which 248 were granted and 268 refused. This resulted in 44.5 lost sitting days. This compares with a total of 463 postponement applications for 2011 of which 245 were granted and 218 were refused with 85.5 lost sittings days.

In addition to the above, the Tribunal, where it is found necessary, also facilitates a language interpreter service. Applications for an interpreter must be made before a sitting division of the Tribunal in advance of the hearing date. A variety of language interpretation requests were made during 2012, including Polish, Russian, and Lithuanian.

The Tribunal granted 255 applications to have interpreters at hearings during 2012 compared with 242 applications during 2011.

Accessibility

The Tribunal, on request, will take all practicable steps to provide special facilities for a person, with disabilities and/or other special needs. Parties are asked to notify the Tribunal in advance of the hearing of their requirements. This is clearly stated on the Tribunal's website and complaint form.

The Tribunal accommodated 2 requests for sign language facilities at hearings in 2012 compared with 3 in 2011. In addition a new loop induction system has been installed in the Davitt House hearing rooms.

Appeals to the Higher Courts

Determinations of the Tribunal, under some Acts, may be appealed on a point of law to the High Court. In 2012, the Tribunal was notified of 6 High Court cases which include both Judicial Reviews and cases on a point of law.

Determinations by the Tribunal in cases under the Unfair Dismissals Acts may be appealed to the Circuit Court within six weeks of the date on which the Determinations are communicated to the parties. The procedure for appealing Tribunal Determinations is set out in Circuit Court Rules (www.courts.ie). The regulations also provide a means for the Tribunal to be informed of the referral and result of cases appealed to the Circuit Court. Approximately 128 cases were appealed to the Circuit Court.

European Association of Labour Court Judges

The Tribunal is a member of the European Association of Labour Court Judges. This body provides the forum for building upon the working relationship that already exists between employment rights bodies of Europe. It also develops a greater understanding of the statutory employment rights conferred on workers in Europe and the various systems for the vindication of those rights. A representative of the Tribunal participated in a conference co-ordinated by the Association on “Equality in Employment for Older and Disabled people” in June 2012 in Berlin. The topics included fixed retired age and removing prejudice and encourage and protect older and disabled people. Due to the volume of EU Employment Law & Directives, it is important that the EAT is represented at these meetings, to keep abreast of developments in the law at a European level. In 2012, the Chairman to the Tribunal Ms Kate O’Mahony was appointed Chairperson to the European Association of Labour Court Judges.

Attending at EAT Hearings

Tribunal hearings are held in public. In any week the Tribunal could have visits from those whose cases may be pending in order to see or learn the procedure of hearings, members of the public with a general interest in employment rights, from voluntary sector groups, in particular groups from the Citizens’ Information Centres, and from community law groups.

The Tribunal receives requests from both third-level and postgraduate students. These requests generally focus on employment rights legislation and the role of the Tribunal. To facilitate groups it is better to contact the Tribunal secretariat in advance to ensure accommodation.

Archiving of Files

The Employment Appeals Tribunal is a scheduled body under the National Archives Act 1986. In general, records, which are more than 30 years old, held by scheduled bodies, must be transferred to the National Archives and be made available for inspection by the public. Following an inspection by officers of the National Archives on 6th April 2011, the National Archives have authorised, pursuant to section 7(3) of the National Archives Act 1986, that records referred to in the certificate (i.e. appeals under the relevant legislation) do not warrant preservation by the National Archives and have authorised their disposal in accordance with section 7(5) of the Act. The chairman of the Employment Appeals Tribunal has directed that case files completed 12 years ago or earlier can be destroyed annually.

Customer Service and Charter

The Tribunal is committed to quality customer service, and to deliver a service, having regard to available resources, that is both effective and efficient, and which at all times is provided in a courteous manner. The Tribunal respects the rights of all parties to a case. A description of the services provided by the Tribunal and how to avail of them, the contact details, relevant publications and frequently asked questions are all available on the website at www.eatribunal.ie.

An information booklet ***Guidelines for Practitioners appearing before the Tribunal*** is available on the above website.

The Tribunal maintains a Register of its Decisions and Determinations. The Register is open for inspection, free of charge, by any member of the public during normal business hours at the Office of the Secretariat, Employment Appeals Tribunal, Davitt House, 65A Adelaide Road, Dublin 2. Determinations are also available on the Tribunal website in line with the provisions of the Data Protection Acts.

It is our goal, having regard to available staffing and resources, to provide a high level of service to customers. Comments may be sent to the Employment Appeals Tribunal, Davitt

House, 65A Adelaide Road, Dublin 2, or by email to: eat@djei.ie. An online comment card is also available on the Tribunal's website.

Freedom of Information Act 1997

Currently, the Freedom of Information Act 1997 (as amended), does not apply to the Tribunal. However, the extension of the Freedom of Information legislation to the operation of the Tribunal, as well as other Bodies currently outside its scope, will be subject to a Government Decision in the future.



An Binnse Achomhairc Fostaíochta
Employment Appeals Tribunal

Appendix 1: Cases Received in 2012

	First Instance	Appeals		Implementation	Total
		By Employees	By Employers		
Redundancy	1,239				1,239
Minimum Notice and Terms of Employment	929				929
Unfair Dismissal	1,450	146	84	62	1,742
Protection of employees (Employers' Insolvency)	108				108
Organisation of Working Time	386				386
Maternity Protection		4	7		11
Payment of Wages		439	372		811
Terms of Employment (Information)		86	109	100	295
Parental Leave		2			2
European Communities (Transfer of Undertakings)		23	49		72
European Communities (Protection of employment)		3	25		28
TOTAL	4,112	703	646	162	5,623

Appendix 2: Cases Disposed of in 2012

The Tribunal disposed of 7,624 cases in 2012 which represents a 13.4% increase over cases disposed of in 2011.

First Instance

	Allowed	Dismissed	Withdrawn during Hearing	Withdrawn prior to hearing	Total
Redundancy	1,024	364	215	790	2,393
Minimum Notice and Terms of Employment	844	406	197	599	2,046
Unfair Dismissal	311	347	285	578	1,521
Protection of employees (Employers' Insolvency)	5	4	0	1	10
Organisation of Working Time	194	168	143	235	740
TOTAL	2,378	1,289	840	2,203	6,710

Appeals

	Upheld	Upset	Varied	Withdrawn	Total
Unfair Dismissal	58	34	22	95	209
Maternity Protection	1	2	0	2	5
Payment of Wages	173	30	4	200	407
Terms of Employment (Information)	81	13	7	44	145
Parental Leave	2	0	0	1	3
TOTAL	315	79	33	342	769

Breakdown of Appeals based on cases initiated by Employees or Employers

	Upheld	Upset	Varied	Withdrawn	Total
Employees	131	40	19	150	340
Employers	184	39	14	192	429
TOTAL	315	79	33	342	769

Implementations

	Upheld	Upset	Varied	Withdrawn	Total
Unfair Dismissal	50	0	0	11	61
Terms of Employment (Information)	48	0	0	36	84
TOTAL	98	0	0	47	145

Appendix 3: History and Composition of the Tribunal

The Redundancy Payments Act of 1967, which established the Redundancy Appeals Tribunal, was enacted on 18th December 1967. The creation of the Tribunal was considered an innovative move by the State in the area of employment rights. It was set up to ensure that a worker's statutory entitlement to redundancy was given the force as well as the full protection of the law. The Act thus established a forum within which the ordinary 'man in the street' could refer a case to have those rights vindicated. Apart from its continuing responsibility to hear appeals under the Redundancy Payments Acts, today, under its revised title, the Employment Appeals Tribunal now deals with cases under eighteen pieces of legislation. These range from cases for unfair dismissal to minimum notice, as well as hearing appeals from decisions and recommendations of the Rights Commissioner Service of the Labour Relations Commission.

The inaugural meeting of the first Redundancy Appeals Tribunal took place on 22nd March 1968, under the guardianship and protection of the first sixteen Members appointed to the Tribunal. The first Chairman, Mr John Gleeson, led the Tribunal. It heard its first appeal on 18th April 1968. Between that date and 31st December 1968, the Tribunal sat on seventy-five (75) days and heard a total of one hundred and thirty three (133) appeals. Eighty-three (83) of those appeals were heard in Dublin, and the remaining fifty appeals (50) were heard at various other venues around the country. From the start it was clear that the Tribunal would have a countrywide and therefore a national dimension to its work. Over forty years on, the Employment Appeals Tribunal continues the work started by the Tribunal. Indeed, instead of its early base of sixteen (16) members, in 2011, there are now one hundred and thirty one (131) members of the Tribunal.

➤ 2012 Composition of the Tribunal

At the beginning of 2012 the Tribunal consisted of a Chairman, forty eight Vice-Chairmen and a panel of eighty two other members, forty-one nominated by the Irish Congress of Trade Unions and forty-one by organisations representative of employers. During 2012 one vice chairman and one member resigned. At the end of 2012 there were 4 vacancies on the Tribunal.

The Tribunal acts in divisions, each consisting of either the chairman or a vice-chairman and two other members, one drawn from the employers' side of the panel and one from the trade union side. A vice-chairman of the Tribunal, when acting as chairman (at the request of the

Minister or the chairman) has all the powers of the chairman. Appeals are heard in public unless the Tribunal, on the application of either party and in the exercise of its discretion, decides that the hearing be heard in private.

➤ **The Secretariat**

The Secretariat is responsible for the administration of cases referred to the Tribunal under various employment rights legislation. Its role is to provide administrative support to the Tribunal. Civil Servants, assigned by the Department of Jobs, Enterprise and Innovation, comprise the staff of the Secretariat of the Tribunal.

The Secretary to the Tribunal is Mr David Small.



An Binnse Achomhairc Fostaíochta
Employment Appeals Tribunal

Appendix 4: Hearings and Sittings

The unprecedented growth in the referral of cases has impacted on the waiting period. As a result, the annual average waiting period has significantly increased over the past number of years to an approximate average waiting period of 77 weeks in Dublin and 82 weeks in provincial areas.

However, the waiting period does not tell the full story. Although the EAT conducts hearings in about 31 locations across the State, where the number of cases is relatively small, the Tribunal may wait until a sufficient number of cases are on hand before hearings in certain locations can be listed, so as to maximise value for money in relation to the costs of hearings outside the Tribunal Head Office. Once a critical mass of hearings is assembled, 5 days of hearings in a single location can reduce the waiting time in the area concerned significantly. This is also impacted upon by the number of postponement or adjournment applications received by the Tribunal from either party, which have an impact on the waiting period. These may relate to availability of key witnesses and a variety of other factors.

In 2012 the Tribunal sat on 240 days. In all, hearings were held at 31 different venues throughout the country to suit appellants and respondents.

The number of divisions sitting per day varied, with 7-8 being the average number of divisions sitting per day. The following tables sets out the venues per Province.

Leinster	Munster	Connaught	Ulster
Carlow	Clonakilty	Carrick on Shannon	Cavan
Drogheda	Clonmel	Castlebar	Donegal
Dublin	Cork	Galway	Letterkenny
Edgeworthstown	Ennis	Roscommon	Monaghan
Kilkenny	Limerick	Sligo	
Longford	Nenagh		
Mullingar	Thurles		
Naas	Tralee		
Portlaoise	Waterford		
Trim			
Tullamore			
Wexford			
Wicklow			

Appendix 5: Employment Rights and Industrial Relations Reform

The Minister for Jobs, Enterprise and Innovation Richard Bruton TD has commenced a major programme of reform of the State's workplace relations bodies. This reform will deliver a modern, user-friendly, world-class workplace relations system that will provide significant benefits for its users and society as a whole. The reform will make a substantial contribution to better business regulation, employee relations and public service reform. It will greatly improve the service for users while at the same time saving money for the taxpayer.

The Minister proposes to establish a two-tier Workplace Relations structure. This means that two statutorily independent bodies will replace the current five. There will be a new single body of first instance to be called the Workplace Relations Commission and a separate appeals body, which will effectively be an expanded Labour Court.

The new Workplace Relations Commission (WRC) will incorporate the functions of the Labour Relations Commission (including the Rights Commissioner Service), the Equality Tribunal, the Employment Appeals Tribunal (first instance jurisdiction only), and the National Employment Rights Authority (NERA). In addition, the WRC will provide an Early Resolution Service to facilitate and encourage the resolution of individual complaints at as early a stage as possible and so obviate the need for formal adjudication or investigation, to the greatest extent possible. The currently existing four bodies listed above will then be dis-established following the transfer of their functions to the WRC.

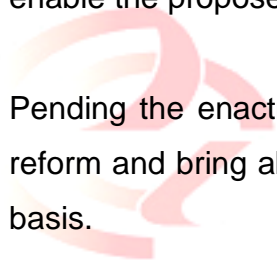
All first instance complaints will be made to the Workplace Relations Commission where three options for resolving complaints will be available – early resolution, inspection and adjudication. All appeals will be to the Labour Court with the only further appeal being to the High Court on a point of law (with the exception that appeals under the Equal Status Acts will be to the Circuit Court).

The Labour Court will be retained as a stand-alone statutory body and will be the single appellate body to deal with all appeals from the WRC. The Labour Court will continue to deliver all of its existing services (other than the small number of first instance functions transferring to the WRC) in addition to taking on the appellate functions of the EAT.

Significant progress has been made to date and in the last year; two public consultation processes were completed; two policy documents were published; a new single contact portal has replaced the five separate entry points; there are now no backlogs for Rights Commissioner hearings; a Single Complaint Form has replaced the 30 forms previously in use; a new workplace relations interim website is in place; a pilot Early Resolution Service is now seeking to resolve disputes at an early stage without the need for adjudication; responsibility for the Equality Tribunal (but not including the policy functions of the Minister for Justice and Equality concerning equality) was transferred from the Minister for Justice and Equality to the Minister for Jobs, Enterprise and Innovation with effect from 1st January, 2013.

Work has commenced on the legislative programme and detailed design to deliver the reform. A significant amount of work has been completed on the legislative programme and the General Scheme of Bill was approved by Government for priority drafting at the Cabinet meeting on 24th July, 2012. It is expected that the Bill will be published in 2013 which would enable the proposed new structures to be put in place as early as possible thereafter.

Pending the enactment of the legislation, the Minister intends to continue to progress the reform and bring about further enhancements for users of the services on an administrative basis.



Employment Appeals Tribunal

Appendix 6: Overview of Legislation

The Employment Appeals Tribunal is a statutory body established to deal with and adjudicate on employment disputes under the following statutes. ***The information given below is intended as a guide only and does not purport to be a legal interpretation.***

Redundancy Payments Acts 1967 to 2007

Under the Redundancy Payments Act 2003 an eligible employee is entitled to two weeks statutory redundancy payment for every year of service together with a bonus week. The majority of the cases disposed of by the Tribunal under these Acts were cases by employees for redundancy payments on the grounds that they were dismissed by reason of redundancy. Other areas of dispute relate to questions as to whether alternative employment offered was suitable; associated companies; change of ownership of trade or business; continuity of employment; lay-off and short-time; calculation of amount of lump sums and normal weekly remuneration.

Minimum Notice and Terms of Employment Acts 1973 to 2005

In 2003, the Protection of Employees (Employers' Insolvency) Acts 1984 and 2001 were amended to allow cases for statutory notice entitlements, where the employer is insolvent, to be made directly to the Insolvency Payments Unit of the Department of Social Protection for payment from the Social Insurance Fund, without recourse to the Tribunal. The Civil Service Regulation (Amendment) Act 2005 extends the provisions of the Minimum Notice and Terms of Employment to civil servants as of 4th July 2006.

Unfair Dismissals Acts 1977 to 2007

The Unfair Dismissals Act 1977 was a major development in Irish employment law. It provides remedies for employees who are found by the Tribunal to have been unfairly dismissed from their employment. The remedies under the Act are: re-instatement, re-engagement or compensation up to a maximum of 104 weeks' remuneration. Cases for unfair dismissal may be initiated with the Tribunal or with a Rights Commissioner. A case under this Act may only be brought to the Tribunal if one of the parties objects in writing to a Rights Commissioner hearing the claim.

The Unfair Dismissals Acts now apply to most state employees including most civil servants. The exclusion from the Acts for most state employees was removed by the Civil Service Regulation (Amendment) Act 2005 and the relevant sections became operational on 4th July 2006.

Where a case for unfair dismissal is initiated with a Rights Commissioner, either party may appeal the Rights Commissioner's Recommendation to the Tribunal within six weeks of the date the Recommendation was communicated to the parties concerned.

Maternity Protection Acts 1994 and 2004

Disputes concerning entitlements under the Act must be brought to a Rights Commissioner in the first instance and then to the Tribunal by way of an appeal against the Rights Commissioner's Recommendation.

Protection of Employees (Employers' Insolvency) Acts 1984 to 2004

Financial entitlements of employees who lose their jobs as a result of their employers' insolvency are substantially protected under the 1984 Act as amended. Cases under the Act as amended, take the form of complaints against Decisions of the Minister for Social Protection to refuse all or part of a claim for payment in respect of arrears of wages, arrears of sick pay, arrears of holiday pay or payment of unpaid contributions to occupational pension schemes. Where a doubt exists as to whether a case is allowable or not, the Minister may refer the case to the Tribunal for a Decision. Such claims are paid out of the Social Insurance Fund.

The European Communities (Protection of Employees (Employers' Insolvency) Regulations 2005, S.I. No. 630 of 2005 has extended the Insolvency Payments Scheme to include all awards made by the Tribunal¹. This statutory instrument also extends cover to employees who are employed in Ireland by an employer who has become insolvent under the laws, regulations and administrative procedures of another member state.

Payment of Wages Act 1991

The Act establishes a range of rights for employees relating to the payment of their wages: a right to a negotiable mode of wage payment, a right to a written statement of wages and deductions, and protection against unlawful deductions from wages. The Act allows for an

¹ Awards made by the Tribunal under the Redundancy Payments Acts are also paid out of the Social Insurance Fund.

appeal to be made to the Tribunal against the Decision of a Rights Commissioner on complaints in relation to an unlawful deduction from wages.

Terms of Employment (Information) Acts 1994 and 2001

The main purpose of this Act is to impose an obligation on employers to provide a written statement to employees setting out certain particulars of the employees' terms of employment.

A dispute under the Act must first be brought before a Rights Commissioner. It may then be brought before the Tribunal by way of an appeal against the Recommendation of the Rights Commissioner in the matter

Adoptive Leave Acts 1995 and 2005

The purpose of this Act is to entitle female employees, and in certain circumstances male employees, to employment leave for the purpose of child adoption. A dispute under the Act must first be brought before a Rights Commissioner. It may then be appealed to the Tribunal by way of an appeal against the Decision of the Rights Commissioner in the matter.

Protection of Young Person (Employment) Act 1996

This Act provides, that the parent or guardian of a child or a young person, may present a complaint to a Rights Commissioner that an employer has contravened section 13 (preservation of existing rates of pay and conditions) or section 17 (refusal to co-operate with the employer in breaching the Act). An employer or an employee may appeal to the Tribunal from a Recommendation of a Rights Commissioner.

Organisation of Working Time Act 1997

Section 39 of the Organisation of Working Time Act, provides for a solution to difficulties encountered with the enforcement of Decisions of the Employment Appeals Tribunal and other specified bodies under the legislation administered by it, where details relating to an employer are incorrectly set out in a Tribunal Decision. Section 39 allows an employee, where an employer is inadvertently incorrectly identified before the Tribunal, to apply for leave to institute proceedings against the proposed employer, notwithstanding that the time line for instituting such cases might have expired. Section 40 allows an employee or his/her trade union to include a holiday complaint along with any proceedings being taken to the Tribunal in respect of any legislation coming within its jurisdiction.

Parental Leave Acts 1998 and 2006

The Parental Leave Act 1998 came into operation on 3rd December 1998. The Act provides for an entitlement for men and women to avail of unpaid leave from employment to enable them to take care of their young children, and for limited paid leave (*force majeure* leave) to enable employees to deal with family emergencies resulting from injury or illness of certain family members.

Employees and employers are entitled to refer a dispute in relation to an entitlement under the Act to a Rights Commissioner. A reference to the Rights Commissioner concerning a dispute under the Act must be made in writing within 6 months of the occurrence of the dispute. However, disputes concerning the dismissal of an employee are dealt with under the provisions of the Unfair Dismissals Acts 1977 to 2001.

Protections for Persons Reporting Child Abuse Act 1998

The purpose of this Act is to provide protection from penalisation by their employers of persons who report child abuse “reasonably and in good faith” to designated officers of health boards or any member of the Garda Síochána. The avenue of redress for such a person is by way of complaint to a Rights Commissioner. There is also provision for an appeal from the Rights Commissioner by either party, to the Employment Appeals Tribunal. The Act came into operation on 23rd January 1999.

European Communities (Protection of Employment) Regulations 2000

These Regulations amend the Protection of Employment Act 1977, to provide for representation of, and consultation with employees in the absence of a trade union, staff association or excepted body; to provide for a right of complaint to a Rights Commissioner where an employer contravenes section 9 or 10 (information and consultation of employees) and to provide for increases in the levels of fines for offences.

There is a provision for the Rights Commissioner’s Decision to be appealed to the Tribunal within six weeks of the date that the Decision was communicated to the parties. Where a Rights Commissioner’s Decision has not been carried out a case for implementation may be referred to the Tribunal after the six-week period.

European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003

These came into force on the 11th April 2003. They revoke and replace the European Communities (Safeguarding of Employees’ Rights on Transfer of Undertakings) Regulations 1980, and the European Communities (Safeguarding of Employees’ Rights on Transfer of

Undertakings) (Amendment) Regulations 2000. They provide for representation of, and consultation with, employees in the absence of a trade union, staff association or excepted body. They also provide for a right of complaint to a Rights Commissioner, where an employer contravenes Regulation 8 (the information and consultation provision) and they provide for increases in the levels of fines for offences.

There is a provision for the Rights Commissioner's Decision to be appealed to the Tribunal within six weeks of the date that the Decision was communicated to the parties. Where a Rights Commissioner's decision or a determination of the Tribunal has not been carried out, a claim for implementation may be made after a six-week period to the Circuit Court.

Carer's Leave Act 2001

This Act provides for the entitlement of employees to avail of unpaid carer's leave from their employment, to enable them to care personally for persons who have been certified by the Department of Social Protection as requiring full time care and attention. The Decision of the Rights Commissioner may be appealed to the Tribunal within 4 weeks of the date the Decision was communicated to the parties. This time limit may be extended for a further period, not exceeding six weeks, if the Tribunal considers it reasonable to do so, having regard to all the circumstances.

Competition Acts 2002-2010

The Competition Acts 2002-2010 consolidated the existing competition and mergers legislation. Section 50 (3) of the Act provides protection for an employee, from penalisation by the employer, where the employee acting reasonably and in good faith, reports a breach of the Act. Schedule 3 of the Act sets out the avenue for redress, which is by complaint to a Rights Commissioner and an appeal lies to the Employment Appeals Tribunal.

Consumer Protection Act 2007

Section 87 of this Act provides protection of employees from penalisation for reporting breaches of the Act.

Chemicals Act 2008

Section 26 of this Act provides protection of employees from penalisation for reporting breaches of the Act.

Appendix 7: Glossary of Terms

Claimant	the person bringing the case.
Respondent	the person or company against whom the case is brought
Appellant	the person or company appealing a decision.
Division	the Tribunal acts in divisions, each consisting of either the chairman or a vice chairman and two other members, one drawn from the employer's side of the panel and one from the trade unions side; a vice chairman of the Tribunal, when acting as chairman (at the request of the Minister or chairman) has all the powers of the chairman.
Withdrawn	an application can only be withdrawn by the claimant or the claimant's representative.
Settlement	an agreement reached by the parties; this may happen before the hearing or at any time during the hearing; a determination will not issue in this case.
Liberty to re-enter	where the parties having reached agreement, the claim or appeal is withdrawn and a strict time limit is given by a division to re-enter the claim or appeal.
Disposed of	cases that are withdrawn prior to a hearing, withdrawn during a hearing or on which a determination issues.
Representation	a party may appear without representation, or be represented by counsel or solicitor, or by a representative of a trade union or an employers' organisation or with the leave of the Tribunal by any other person.
Determination	a determination is the decision of the Tribunal recorded in a document signed by the chairman and sealed with the seal of the Tribunal.
Register	determinations of the Tribunal are entered in a register, which is open for inspection by any person without charge during normal hours at the offices of the secretariat of the Tribunal.

This Glossary of the more common terms used in relation to proceedings before the Tribunal is not exhaustive or intended to be a complete glossary. It is the 'ordinary man's' guide to those common terms and is intended to assist understanding of the terminology.

Appendix 8: Advisory and Information Bodies

Department of Jobs, Enterprise and Innovation

23 Kildare Street
Dublin 2

Tel: +353 1 6312121 or LoCall 1890220222

www.djei.ie

The Labour Court

Tom Johnson House
Haddington Road
Dublin 4

Tel: 01 6136666

www.thelabourcourt.ie

Workplace Relations Customer Service

Government Buildings
O'Brien Road
Carlow

Tel: +353 59 9178990 or Lo Call 1890808090

www.workplacerelations.ie

National Employments Rights Authority

Government Buildings
O'Brien Road
Carlow

Tel: +353 59 9178990 or Lo Call 1890808090

www.employmentrights.ie

Redundancy Section

Department of Social Protection
Block C
The Earlsfort Centre
Lower Hatch Street
Dublin 2

Tel: 1890 800 699

www.welfare.ie

Citizens Information

Tel: +353 12 452 1600 or **Lo Call 1890 777 121** or +353 21 452 1600

Check www.citizensinformation.ie for your nearest information centre

Rights Commissioners

Tom Johnson House,
Haddington Road, Dublin 4, Ireland
Telephone: (01) 613 6700

Tel: Lo call: 1890 220 227 (outside (01) area)

www.lrc.ie

The Equality Tribunal

3 Clonmel Street
Dublin 2

Tel: 01-4774100

Email: info@equalitytribunal.ie

www.equalitytribunal.ie

The Courts Service

15 - 24 Phoenix Street North
Smithfield
Dublin 7

Tel: + 353 1 888 6000

www.courts.ie

The Companies Registration Office

Parnell House
14 Parnell Square
Dublin 1

Tel: +353 1 8045200

www.cro.ie

Insolvency Section

Department of Social Protection
Block C
The Earlsfort Centre
Lower Hatch Street
Dublin 2

Tel: 1890 800 699

www.welfare.ie

Revenue Commissioners

Check www.revenue.ie for your local revenue office

Note that the rates charged for the use of 1890 (LoCall) numbers may vary among different service providers*