Irish corporate immigration: shining the spotlight on employers' obligations

Insights - 02/12/2024

Ireland relies on recruiting talent from non-EEA countries to fill sectors in the labour market where there are identified shortages in certain skills. As foreign recruitment increases so do claims made to the Workplace Relations Commission (**WRC**) involving employees who require additional permission to work and reside in Ireland.

The cases below underscore the importance of employers being able to understand their legal obligations under Irish immigration law, as well as the need to follow fair and proper procedures when considering the termination of a foreign national's employment in Ireland.

Min Ling v The Square Dental Services Limited ADJ-00036773

Background

This case involved a Canadian national (**Dr Ling**) who came to Ireland to work as a dentist. Dr Ling commenced employment with the Square Dental Services Limited (respondent) on 18 October 2021 under a Critical Skills Employment Permit (**CSEP**). For this particular permit, where the role is not on the critical skills list, the salary threshold must be €64,000 or more.

Dr Ling initially agreed to accept a salary of €55,000 for the role and signed an employment contract on this basis. However, Dr Ling was not aware of the remuneration threshold of €64,000 required for a CSEP where the role is not contained on the Critical Skills Occupations List. The respondent subsequently informed her of this requirement and indicated on the CSEP application form that Dr Ling would be receiving a salary of €64,000. As the respondent included the higher figure of €64,000 on the CSEP application form, Dr Ling presumed that she would be receiving this as her salary.

Dr Ling stated that she did not receive an amended employment contract from the respondent and

claimed that her signature was forged on the contract submitted by the respondent as part of the CSEP application. Once the CSEP was granted and Dr Ling had commenced work with the respondent in Ireland, she was required to work overtime in order to meet the new salary threshold. Dr Ling refused this and stated she would only work 39 hours as was stipulated in her contract. Two days later, she was asked to sign a revised contract which provided for the original salary of €55,000 and was deducted €1,000 from two months' pay in respect of costs for applying for her CSEP. Such deductions are prohibited under the Employment Permit Acts 2003-2014 (**the EPAs**) which were in operation at that time Dr Ling was dismissed the day after she refused to sign the contract.

The WRC decision

Dr Ling submitted a number of complaints regarding her employment to the WRC including claims for payment of wages, organisation of working time and unfair dismissal.

In respect of the unfair dismissal claim, the Adjudication Officer (**the AO**) was required to consider this complaint as an act of penalisation under the Protected Disclosures Act 2014. The AO determined that Dr Ling's employment was terminated as a result of her having made a protected disclosure in her email in which she refused to accept the less favourable terms put to her by the respondent and in which she advised that any attempt by the respondent to alter the conditions of her CSEP would constitute an offence under section the EPAs, amounting to penalisation

Dr Ling was awarded compensation of €14,378 in respect of her unfair dismissal claim and €1,000 in respect of her payment of wages claim relating to the unlawful deductions for the costs associated with her CSEP application.

The Labour Court appeal

The respondent appealed the decision and attempted to justify the dismissal based on Dr Ling's alleged poor performance. However, the Labour Court examined the case under section 26 of the EPA which prohibits penalisation of an employee where their contractual terms and conditions are detrimentally affected. In the Labour Court, the respondent admitted to a lack of formal discussions regarding her performance and the unexpected demand to sign a revised contract with reduced salary terms. The Labour Court concluded that the real reason for Dr Ling's dismissal was the respondent's attempt to make her work additional hours beyond those specified in her employment permit without corresponding compensation.

The Labour Court ordered the respondent to pay Dr Ling compensation of €30,000.00 within 42 days of the ruling.

Poliane Fernandes Lima v Elland Distributors Limited Born Clothing (ADJ-00049872)

Background

Poliane Fernandes (**the complainant**) was a Brazilian national who had lived in Ireland for six years. She worked for the respondent company - Born Clothing - in both of its Galway and Dublin offices during her employment. The complainant's Irish Residence Permit (**IRP**) card was due to expire on 23 January 2024. Accordingly, the complainant submitted an application to renew her IRP card in November 2023.

On 23 January 2024, the complainant's IRP card expired and her renewal application had not yet been processed at that date. Born Clothing sought legal advice regarding the complainant's right to work and proceeded to terminate her employment on 25 January 2024. The complainant's renewed IRP card was issued a few days later on 28 January.

Although Born Clothing obtained legal advice on the matter, its legal advisors failed to advise on the grace period afforded to those who renew their IRP cards before their expiry date, allowing them to remain in Ireland and continue working under the terms of their current permission for a further eight weeks from the date of its expiry.

The WRC decision

The complainant submitted a claim to the WRC for unfair dismissal. The AO found that Born Clothing acted on incorrect information and without adequate investigation of the case at hand. Further, Born Clothing did not afford the complainant an opportunity to appeal the dismissal and was instead told to "go upstairs, get her belongings and leave."

In finding that the complainant was unfairly dismissed, the AO found that the complainant submitted her renewal application in good time before her current IRP card expiry and ought to have been entitled to avail of the eight-week grace period referred to above. The AO also stated that the information regarding the eight-week grace period was information that is readily available online to anyone who looks for it. The complainant was awarded €25,000.00 compensation which took into account the unfair dismissal and the impact on her employment prospects as, despite her efforts, the complainant had been unable to secure new employment since her dismissal with Born Clothing.

Key takeaways

The above cases demonstrate the need for employers to ensure they understand not only their obligations to follow fair procedures as an employer, but also their obligations under Irish immigration laws.

As Ireland continues to recruit non-EEA nationals to its labour market, familiarity with visa and employment permit requirements is even more heightened than previous years. Before taking any action regarding the employment status of an employee who requires additional permission to

work in Ireland, it is strongly advised that employers obtain legal advice as to their obligations when hiring non-EEA nationals such as the requirement to provide accurate and true information on any employment permit application, as well as considering all possible avenues when an employee's right to work is due to expire. Attempting to circumvent these conditions may constitute a breach of the EPAs spilling over into other relevant employment legislation (e.g., unfair dismissal), leading to significant financial repercussions.

How Ogier can help

For further information regarding the above cases or for advice in understanding your organisation's obligations with regards to foreign national recruitment and retainment, please contact a member of our Employment and Corporate Immigration team via their contact details below.

About Ogier

Ogier is a professional services firm with the knowledge and expertise to handle the most demanding and complex transactions and provide expert, efficient and cost-effective services to all our clients. We regularly win awards for the quality of our client service, our work and our people.

Disclaimer

Key Contacts

Bláthnaid Evans

Head of Employment and Corporate Immigration

Ireland

E: blathnaid.evans@ogier.com

T: +353 1 632 3113

Marianne Norton

Associate

Ireland

E: marianne.norton@ogier.com

Laura Higgins Mulcahy

Trainee Solicitor

Ireland

E: laura.higginsmulcahy@ogier.com

Related Services

Employment law