

Irene Minogue asks whether employers in Ireland are at risk of non-compliance with employment law

risky business

■ **As accountancy professionals, the word 'compliance' is rarely too far from our lips. However, there may be one area of compliance that we fail to manage adequately: the compliance rules and regulations that surround the employment of staff. In recent times, possibly due to substantial media attention aimed at some high profile cases, we have been made aware of the financial risks that we all carry as employers, but are we doing enough to comply with the legislation and manage these risks?**

As employers we have to be vigilant with regard to how we regulate the work environment, but as our time is precious, we may find ourselves asking:

- what are the compliance issues?
- what are the financial risks associated with non-compliance?
- what are the possible results of non-compliance?

what are the compliance issues?

There are over 35 pieces of employment law that we as employers must comply with, whether we employ one or 1000 members of staff. Some of our obligations are as follows:

- all employees (permanent, temporary or fixed term) must be provided with a contract/written particulars of employment within two months of commencing employment (Terms of Employment (Information) Acts 1994 – 2001)
- employees must receive, within 28 days of signing a contract of employment, a copy of the employer's disciplinary procedure (Unfair Dismissals Acts 1977 – 2001)
- all staff are entitled to a 15-minute break after 4.5 hours worked (Organisation of Working Time Act 1997)
- employers are legally obliged to maintain records of days and total hours worked by all employees for a period of three years

- any information relating to job applications, interviews, screening criteria or otherwise must be kept on file for a period of one year after application (Employment Equality Act 1998 and 2004).

If you were unaware of any of the above or know that you are non-compliant with any or all of the areas, you are at risk. To adhere to these regulations may seem time consuming and distracting from your core function of business. But what are the associated financial risks of non-compliance?

what are the financial risks associated with non-compliance?

All dismissals are deemed unfair until proven otherwise, so under employment law in Ireland, as an employer, you are effectively 'guilty until proven innocent'. Under unfair dismissals law, compensation can be up to two years' salary; this does not include legal costs or the cost of your time in defending a case.

Employment law in Ireland is hugely weighted on procedures. Much of employment practice is quasi legal, putting as much emphasis on the importance of procedures as on the law itself. Not having procedures in place can be a costly mistake. Historical cases under equality legislation and unfair dismissals have shown that where employers have ignored procedures, they have tended to lose the case.

A recent case heard under equality law demonstrated that having a comprehensive sick pay policy can not only save you financially in the event of a staff member being off sick, but can also prevent an employee from making a potential discriminatory claim. A company who dismissed a staff member on the grounds of incapacity, as she was out on long term sick claim, ended up paying the individual over €16,000 in awards. The reason for the payout was that the company had not followed an

adequate investigation of the illness and had not carried out adequate procedures in the dismissal. The court agreed that the employee was unable to attend work due to incapacity at that time, but the company failed to establish this at the time.

In addition to compensation payouts, there are other monetary risks associated with claims. Mounting legal costs in defending a case as well as the time taken in preparation and gathering evidence will certainly add to the financial pain.

the possible result of non-compliance

The Labour Inspectorate under the Department of Enterprise, Trade and Employment has the power to enter any premises, and demand to see working time records, contracts of employment and any documentation associated with the employment of your staff. For any breach of employment records, there is a potential penalty of €1900 + €650 for each day that the breach continues. You may have the best relationship with your staff, but a visit from a labour inspector could mean you paying out penalties, even if you are an exemplary employer.

The litigious society we live in has spurred many employees into taking cases against their employers. Between January and March 2003, the number of employment related claims referred to the Equality Tribunal jumped by more than 50% (source: Office of Director of Equality Investigations). The overall number of cases referred to the Labour Court in 2003 increased by almost 30% over the figure for 2002 (Labour Court Annual Report 2003). It is imperative that your organisation becomes 100% compliant with all aspects of employment law. ■

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