

Annual Review of Employment Law 2020

Long Programme

Day 1 Programme

Time	Session
9.15	<p>Get to Know Us: Familiarise yourself with the functions of our online event platform to ensure you maximise return on your investment. Scott Alexander, Head of Learning & Development, Legal Island.</p>
9.30	<p>Introduction and Welcome: David Johnston, Head of Diversity, Inclusion and Equality, PSNI, and Seònaid Ó Murchadha, Disability Employment Specialist</p>
9.40	<p>Review of an Extraordinary Year (Part 1): The Impact of Covid19 and Other Changes –Key Lessons</p> <p>Mark McAllister, Director of Employment Relations Services, LRA, sets out the key employment law changes affecting NI employers that have arisen during the Covid19 pandemic. For employers, lockdown and self-isolation, social distancing, shielding etc has created new employment problems, such as:</p> <ul style="list-style-type: none"> • Employees refusing to work with colleagues, along with risks of automatically unfair dismissals on health and safety grounds • Employees refusing to return to workplaces or attend physical training events • Employees demanding excessive levels of PPE • Employees refusing to take holidays, with a concomitant build-up of unused holiday entitlement • Employees demanding the right to work from home <p>There are many other Covid-related issues, such as employer liability for infections, that are covered elsewhere in this conference. You'd be forgiven for thinking 2020 was just about Covid-19 in relation to employment but you would be very wrong. Mark discusses the many other changes, including:</p>

	<ul style="list-style-type: none"> • Massive changes to NMW rules, • TUPE developments, • Maternity and Parental Bereavement Rights, • The introduction of Abortion rights with concomitant right of conscientious objection for relevant employees, • Early learnings from early conciliation; and, of course, • Lessons from the Job Retention Scheme and carry-over of leave <p>And relevant case decisions continue to fill the legislative policy vacuum in NI, with persuasive EAT decisions examining issues such as the Morrison’s vicarious liability case and the development of “philosophical belief” cases.</p> <p>NOTE: The contents of this session may change to reflect the most important and latest developments at November 2020. In part 2 of Mark’s review, he will look forward to employment-related changes he expects to see in 2021, with a particular focus on the impact of Brexit on NI’s employment laws.</p>	
10.20	Q&A with Mark McAllister – Mark answers queries from the audience	
10.30	Networking & Refreshment Break	
11.10	<p>Minimising Risks and Costs from Redundancy Selection</p> <p>Coronavirus killed many people. The policy of lockdown saved lives but led to a recession, the likes of which none of us have seen in our lifetime.</p> <p>Although some organisations have grown during the crisis, most organisations, if they haven’t closed completely, have had to make a number of staff redundant or have reduced their hours of work.</p>	<p>Regulating Home and Remote Working – Top Tips from a Leading Employment Lawyer</p> <p>Remote and homeworking are here to stay for many of us, regardless of a return to work. Prior to the Covid-19 lockdown, we might have expected to see legislation conferring a right to “disconnect” for employees arriving before too long.</p> <p>Regardless of anyone’s opinion on flexible working last year, the lockdown has let the homeworking genie out of the bottle, and it is not going back in. But homeworking and</p>

	<p>Employment tribunal claims will have increased at a seemingly exponential rate.</p> <p>The summer of 2020 saw record numbers of mass redundancies notified to the government. Any redundancy selection process will have problems, but some are inherently riskier than others. And certain approaches and management styles can increase or reduce the number of challenges to the process.</p> <p>In this session, Gareth Walls, Partner, A&L Goodbody recommends specific actions designed to minimise the risks and costs of redundancy selection processes.</p>	<p>other remote working brings risks, for employers and employees alike, along with benefits.</p> <p>In this session, Leeanne Armstrong, Legal Director, TLT discusses four key issues of homeworking for employers –</p> <ul style="list-style-type: none"> • Essential Contractual Provisions • Equality; • Health and Safety/Well-being; and • Training <p>and how to minimise risks from same.</p>
11.40	Q&A with Gareth Walls – Gareth answers queries from the audience	Q&A with Leeanne Armstrong - Leeanne answers queries from the audience
11.55	Networking & Comfort Break	
12.05	<p>Roundtable Discussion</p> <p>How to Engage & Motivate Home, Hybrid and Remote Workers</p> <p>Many employees, particularly those providing non-physical services, will continue to work from home or a remote location, and at times to suit</p>	<p>Roundtable Discussion</p> <p>Rethinking Your Employer Brand: Attracting and Retaining Business-critical Talent in a New Age of Work</p> <p>How your organisation can emerge from the downturn as an employer of choice. Sustaining a positive employer brand in these uncertain</p>

	<p>their domestic circumstances, for the foreseeable future. Engagement and motivation are so important to organisational development and, when done properly, they can be incredibly powerful and effective in promoting the employer brand, recruiting and retaining employees and building sustainable organisational growth.</p> <p>Emer Hinphey, Managing Partner, ThinkPeople, sets out the results of our survey into employer actions that have been used to motivate remote workers since lockdown began in March and discusses the results and options with our panel of experts. Is it now time for every HR Department to have a Working from Home Facilitator?</p> <p>Panel: Sam Davidson, Director of HR, Henderson Group and Nora Smith, Chief Executive, CO3.</p> <p>Guest employment law expert: Orlagh O’Neill, Partner, Carson McDowell.</p>	<p>times is a challenge facing many recruiters. Now more than ever attracting and retaining business-critical talent is essential for employers.</p> <p>Claes Peyron, MD of Universum, the global employer branding experts, is joined by a panel of leading HR specialists who are employed by companies who were recently commended at the NIJobs.com and Universum Most Attractive Employers Index 2020 in Northern Ireland.</p> <p>Claes and the panel will discuss how the downturn has impacted on employer branding and the talent attraction and retention strategies that will see your organisation through this crisis to emerge as the employer of choice for key talent.</p> <p>Panel: Kathryn Gilchrist, Head of Global Talent Acquisition, Kainos</p> <p>Guest employment law expert: Anna Beggan, Partner & Head of Employment Team, Tughans</p>
1.00	Lunch and Networking	
2.00	Welcome Back and Summary. Introduction to Afternoon Sessions: David Johnston and Seònaid Ó Murchadha	

<p>2.05</p>	<p>Overtime, Sleepovers and other Regular Payments</p> <p>We know that the PSNI/Agnew case on overtime and holiday has been accepted by the Supreme Court for an appeal. By the time our Annual Reviews of Employment Law take place in the autumn, we will have received that Court's Mencap decision on rates of pay for workers who are required to sleepover in a workplace as part of their duties – the case was heard in February 2020.</p> <p>These cases and others surrounding working time are more than a potentially large expense for most employers - they are an existential threat to some, given the size of the back-pay bill in NI and the pricing policies applied by some service providers.</p> <p>Kiera Lee, Partner, Mills Selig sets out all the relevant working time knowns and unknowns at November 2020 and how to minimise the risks to your organisation.</p>	<p>Mind Your Language: Tools to Help Navigate the New Contours of Workplace Conflict During the Pandemic</p> <p>We all have choices when it comes to the words we use, but most of us speak without actively considering the impact they might have on others. However, with many of us working remotely, we can lose out on the body language messages that indicate feeling and emphasis. Taking things in the wrong way, or putting your message across in the wrong way, is so much easier to do when all you have to go on is a voice on the end of a phone or a head in a Zoom call.</p> <p>Some words and phrases can have a 'greenhousing' effect on conflict, allowing open discussions to flourish without rancour, in an atmosphere of positivity. Others cause people to shrivel up or become aggressive. For example, suppose your boss or a colleague has a great idea that you think is, well, not so great. Could some words or phrases help get your point across, without rancour? Could others almost guarantee a fall out?</p> <p>Michelle Halloran, Principal Consultant, Human Resource Management Services, focuses on language that reduces conflict and defensiveness and will help you get your message across without causing an argument.</p>
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2.35	Networking & Comfort Break – Send in Your Questions	
2.45	<p>Reasonable Adjustments: A Practical Guide for Employers</p> <p>1 in 4 people will experience mental health issues in their lifetime, according to the OECD.</p> <p>Many more of us will become physically disabled, particularly as we age. There have been many decisions issued by tribunals and courts in relation to reasonable workplace adjustments for disabled employees and prospective employees since the Disability Discrimination Act 1998 was introduced across the UK.</p> <p>Adam Brett, Partner, Jones Cassidy Brett, and Legal Island have investigated over 250 published reasonable adjustment decisions and we will set out our practical guide to reasonable adjustments – what’s reasonable, in which circumstances, and what’s not – based on judicial application of the law.</p> <p>Takeaway: Every delegate will receive a copy of our guide, which sets out trends, themes, practical solutions, training exercises, information on assistance for disabled employees, and much more.</p>	<p>Employment Status and Employment Rights: A Perfect Storm</p> <p>We expect the decision in the <i>Uber v Aslam</i> case to be issued by the UK Supreme Court by the time of our Annual Review conference. That will likely transform the employment landscape but, in the meantime, we have seen occupations as disparate as hairdressers and tribunal judges being found to have ‘worker’ status, rather than being office holders or self-employed.</p> <p>Coupled with the introduction next year of changes to IR35 rules, millions of people could see their employment status radically change in the next few months.</p> <p>That changing status will bring with it new employment rights for individuals and, in many cases, massively increased costs for employers.</p> <p>Seamus McGranaghan, Director, O’Reilly Stewart Solicitors explains the recent developments and what employers should do now to prepare for a potential tsunami of new workers on their books.</p>

3.15	Q&A with Kiera Lee and Adam Brett – Kiera and Adam answer queries from the audience	Q&A with Michelle Halloran and Seamus McGranaghan – Michelle and Seamus answer queries from the audience
3.30	<p>Covid-19: Employer Liability for Infections and other litigation</p> <p>Art. 3 of the Health and Safety at Work (Northern Ireland) Order 1978 states: "It shall be the duty of every employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all his employees. "</p> <p>This requirement was not written with the Covid-19 pandemic in mind, but it continues to apply, and employers will doubtless be held vicariously liable for outbreaks within the workforce.</p> <p>Employees will be encouraged to blow the whistle on poor safety practices. In August 2020 it was reported that an NHS Trust had begun disciplinary proceedings against an employee who delayed treating a coronavirus patient due to concerns over PPE, in what is thought to be the first case of its kind. In July, we had reports from the US that several well-known companies had been sued by employees and relatives over the spread of</p>	<p>Redundancy and Helping Employees Move On: Exit Questions and Outplacement Options</p> <p>All organisations need some employee turnover to stay healthy and many of us have had more employee turnover than we had hoped for this year. It's much better that employees leave for positive reasons, but we know that, for many of us, the reason this year will be redundancy.</p> <p>Exit interviews – if you ask the right questions and create the right conditions to encourage openness and honesty – can give you valuable information for the future, even if the reason for leaving is, unfortunately, redundancy.</p> <p>Outplacement – helping employees move on through career guidance, re-training, counselling and more reduces the fall-out from redundancies and improves employer brand. Helen O'Brien, HR Consultant at BeyondHR, considers:</p> <ul style="list-style-type: none"> • Which questions elicit the most valuable information • Why you should create an 'alumni' network of former employees

	<p>Covid-19 in workplaces and the deaths of some employees.</p> <p>Certainly, litigation is inevitable, even for employers who think they are in a position to defend personal injury or negligence claims arising out alleged failure to comply with the above duty of care and the Covid-secure guidance provided by the relevant government authorities.</p> <p>In this session, Paul Gillen head of the employment team of Pinsent Masons in Northern Ireland, explains the risks for employers and how to mitigate same by reference to case law.</p>	<ul style="list-style-type: none"> • Why you should hold staying in touch days for former employees • Why you should inform former employees of developments and opportunities in your organisation, if not offer them first refusal • How to respond to negative online reviews by former employees • The value of outplacement and assisting employees to find new jobs or re-focus their career <p>Helen sets out her checklists of great exit interview questions and useful options for helping employees recover more quickly after being told their position is becoming redundant.</p>
4.00	Q&A with Paul Gillen - Paul answers queries from the audience	Q&A with Helen O'Brien – Helen answers queries from the audience
4.10	Summary and Close: David Johnston and Seònaid Ó Murchadha	
4.15	First Day of Conference Closes	

Day 2 Programme

Time	Session
9.15	<p>Welcome back: To ensure you maximise return on your investment, Scott Alexander, Head of Learning & Development, Legal Island, discusses key lessons from yesterday's sessions.</p>
9.30	<p>Introduction and Welcome: Becky Jones, former Legal Director and Compliance Officer, Coca Cola Hellenic and Conor Curran, Head of Diversity & Inclusion, Queen's University Belfast discuss the options for you to look forward to on the second day of our conference.</p>
9.40	<p>Northern Ireland Case Review 2020 and Key Next Steps</p> <p>NI has a very active tribunal system and our own employment judges that issue detailed and reasoned decisions. Jason Elliott BL, analyses case law and offers practical advice on what you should now do in order to comply with developing case law in NI. Some of the cases in this year's NI case law review include:</p> <p><i>James Robert Peifer v Sullivan Upper School [2019] NICA</i> (Recruitment; Sex Discrimination; Indirect Discrimination; Justification; Proportionality)</p> <p><i>Balcetis v Ulsterbus Ltd & Translink [2020] NIIT 2267/16</i> (Disability Discrimination; Unfair Dismissal)</p> <p><i>Wardle v RMS Cash Solutions Ltd [2020] NIIT 10277/19</i> (Unfair Dismissal; Gross Misconduct; Investigation)</p> <p><i>O'Hare v Northern Ireland Fire and Rescue Service [2020] NIIT 1086/19</i> (Unfair Dismissal; Reinstatement)</p> <p><i>O'Brien & Ors v General Council of the Bar of Northern Ireland & Ors [2020] NIIT 4195/17</i> (Age Discrimination; Objective Justification)</p> <p><i>Ekeolu v Murphy t/a Vaders Cleaning Solutions [2020] NIIT 17538/19</i> (Unlawful Deduction from Wages)</p>

	<p><i>Bell v Department for Communities [2020] 62/18FET & 722/17IT</i> (Unlawful Deduction from Wages; Political Discrimination; Special Leave Policy)</p> <p><i>Cullen v Lennon t/a Lukas Blooms [2020] NIIT 7102/19</i> (Constructive Dismissal; Unfair Dismissal; Time Limits)</p> <p><i>Crean v BT Plc [2020] NIIT 612/19</i> (Unfair Dismissal; Gross Misconduct)</p> <p><i>Kearney v Department for Infrastructure [2020] NIIT 16062/18IT</i> (Unfair Dismissal; Gross Misconduct; Age Discrimination)</p> <p><i>Robinson v 4G Mobiles & Data Limited t/a Connect Comms [2019] NIIT 7077/19IT</i> (Unfair Dismissal; Modified Dismissal Procedure; Unlawful Deduction from Wages)</p> <p><i>McKinley v Brett Martin Ltd [2020] NIIT 6421/19IT</i> (Unfair Dismissal; Disability Discrimination; Reasonable Adjustments)</p> <p><i>Walsh v Belfast Metropolitan College [2020] 14129/18IT</i> (Unfair Dismissal; Statutory Procedure; Automatically Unfair)</p> <p><i>Lewis v Historic Royal Palaces [2019] NIIT 4374/19</i> (Unlawful Deduction from Wages; Time Limit 'Not Reasonably Practicable')</p> <p><i>Caren v Irish Hockey Company Ltd by Guarantee [2019] NIIT 17410/18</i> (Territorial Jurisdiction; Employment Status; Unfair Dismissal)</p> <p><i>Deman v Queen's University Belfast [2019] FET 5602/17</i> (Direct Discrimination; Race Discrimination; Religious Discrimination)</p> <p><i>Ansys v Sizzlers NI Ltd [2019] NIIT 9858/18</i> (Race Discrimination; Harassment; Statement of Terms and Conditions)</p> <p>NOTE: The contents of this session may change to reflect the most important and latest developments at November 2020.</p>
10.20	Q&A with Jason Elliott BL - Jason answers queries from the audience
10.30	Networking & Refreshment Break

11.10	<p>Brexit 2020: New Immigration and Visa Costs.</p> <p>Even before the covid-19 crisis, employers raised concerns over the cost of the government’s post-Brexit immigration plans, when a report claiming many British workers were “unwilling” to fill current vacancies was released. Half of all firms surveyed by the FSB said they would be unable to meet the immigration fees currently levied on employers hiring non-EU staff if extended to EU workers.</p> <p>Those halcyon pre-coronavirus days now seem a lifetime away, but new visa and immigration laws come into force in a few weeks, as a result of Brexit.</p> <p>Lisa Bryson, Partner, Eversheds Sutherland provides a practical explanation of the important rules and a template for employers to use, should they need to recruit from outside NI.</p>	<p>Remote Workplace Investigations and Disciplinary Hearings: Getting it Right</p> <p>Gone are the days for many of inviting lots of employees to provide witness statements in person or bringing everyone together in one room for a disciplinary or grievance hearing.</p> <p>Dismissal hearings were never the easiest of things to do but remote investigations and hearings bring different problems, not least confidentiality, and connection issues.</p> <p>On the other hand, there are some benefits, such as it being easier to find key words in soft copies and meetings can be recorded for cross-checking evidence.</p> <p>Christine Swail, Director, People Management Solutions, gives her top tips and provides a useful checklist for running remote investigations and hearings</p>
11.40	Q&A with Lisa Bryson – Lisa answers queries from the audience	Q&A with Christine Swail – Christine answers queries from the audience
11.55	Networking & Comfort Break	
12.05	Roundtable Discussion: D&I in 2021 & Beyond	Roundtable Discussion

<p>Join an internationally recognised panel of experts to discuss the most important 12 months ever in the D&I space. Subjects covered will include: the impact of Covid19 on equality & employment issues; the #Metoo campaign, Black Lives Matter and coming to terms with a racist past, plus JK Rowling's fight against censoriousness and closing down opposing views.</p> <p>Panel Discussion Facilitator: Barry Phillips BEM, Legal Island CEO and Chairman of The Diversity and Inclusion Discussion Forum.</p> <p>Panel: Raafi Karim Alidina International Speaker and Co-Author of "Building an Inclusive Organisation" 2019; Lisa Kepinski International D&I Consultant and Co-Author of "Inclusion Nudges-Guidebook" 2020; and Michael Wardlow - Ex Chair of Equality Commission for Northern Ireland</p> <p>Guest employment law expert: Ciara Fulton, Partner, Jones Cassidy Brett</p>	<p>Mental Health in the Workplace: Resilience in the Face of Adversity</p> <p>Lockdown and return to work have been difficult for many employees and managers. The fear of a new spike in Covid-19 cases or even a new viral epidemic is a huge worry for many of us. On the other hand, there is growing evidence that continued remote working is creating different mental health problems for those working from home.</p> <p>As we head into what will probably be the deepest economic recession any of us will ever have experienced, there has never been a more urgent time for us to consider mental health and resilience issues, both as a manager and an individual.</p> <p>In this roundtable discussion Niamh Sheills, Head of Leadership and Team Coaching at Advance Coaching and our panel provides practical tips for looking after your own physical and mental health during this time and how you might help those who are having some difficulty in coming to terms with our new reality.</p> <p>Guest employment law expert: Paul Gillen Partner, Pinsent Masons LLP and former Chair, CIPD NI.</p>
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1.00	Lunch and Networking	
2.00	Welcome Back and Summary. Introduction to Afternoon Sessions: Becky Jones and Conor Curran	
2.05	<p>Covert Recording in the 'Workplace' - When Might it be Lawful?</p> <p>In July 2020, the CIPD published an extensive report into workplace technology. Amongst its key findings were:</p> <ul style="list-style-type: none"> • 45% of employees believe that monitoring is currently taking place in their workplace - wherever that might be. • 86% believe that workplace monitoring and surveillance will increase in the future. • 73% of employees feel that introducing workplace monitoring would damage trust between workers and their employers. <p>Of course, the other side of the coin is that it has never been easier in these days of remote working for employees to covertly record private and confidential meetings from wherever they are based. In this session, Louise McAloon, Partner, Worthingtons Solicitors, sets out when it will (and will not) be lawful for employers and employees to covertly record each other's activities or interactions,</p>	<p>Data Protection Update for Employers 2020: Cyber Risk; Homeworking & More</p> <p>This has been a busy year for data protection issues. The lockdown and homeworking have only added to the list.</p> <p>Anna Flanagan, Senior Associate, Pinsent Masons, highlights a number of issues of importance to employers, including:</p> <ol style="list-style-type: none"> 1. Updates from Regulators and enforcement action during/after the pandemic 2. Working from home: risks associated with employee behaviour, employee monitoring, managing supplier contracts. 3. Returning to work: health monitoring, contact tracing, adjustment on a phased basis, and mission creep as the emergency eases. 4. Cyber risks: increase in COVID-19 related scams, and risks in employee behaviour. 5. International Transfers and Brexit: transferring personal data to third countries,

	wherever the 'workplace' might be located.	including the US following Schrems II decision. Support documents include the Pinsent Masons' whitepaper on data protection developments, including attacker trends.
2.35	Louise McAloon answers your questions	Anna Flanagan answers your questions
2.45	Networking & Comfort Break	
3.00	<p>Review of the Extraordinary Year (Part 2): Looking at What's to Come in 2021.</p> <p>Mark McAllister returns with Case Law Developments Part 2, plus cases and other employment-related developments to watch out for in 2021, such as this big one:</p> <p>Brexit - Which Employment Laws Will Still Apply in NI? The short answer to that question is most EU-derived employment laws and pretty much anything else we decide for ourselves. But that's a glib and simple answer that hides myriad complexities. The revised protocol on NI and Ireland within the EU Withdrawal Agreement safeguards specific rights, particularly in respect of the Race Equality Directive, the General Equality Framework Directive and the Employment Equality Directive. When coupled with the non-regression principle, it looks like all EU-derived laws, including those on working time, will continue to apply directly in NI for the foreseeable future. Mark McAllister sets out the applicable laws and how they should be applied in NI, post-Brexit.</p> <p>NOTE: The contents of this session may change to reflect the most important and latest developments at November 2020.</p>	
3.45	Q&A with Mark McAllister – Mark answers queries from the audience	

3.55	Summary and Close: Becky Jones and Conor Curran
4.00	Conference Closes

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