

Legal Island's Annual Review of Northern Ireland Employment Law 2022

Day 1: Annual Review of Employment Law, Wednesday 16 November 2022

Time	Session		
9.15	Get to Know Us: Familiarise yourself with the functions of our online event to ensure you maximise return on your investment. Christine Quinn from Legal Island's Knowledge Team welcomes delegates to our 2022 event.		
9.30	Introduction and Welcome from your Chairs: Becky Jones, Consultant and Coach and Sam Davidson, Group Human Resources Director at Henderson Group and Chair of CBI NI People and Skills Network.		
9.40	<p>Review of the Year (Part 1 – 2022 – Looking Back) with Mark McAllister, Director of Employment Relations Services, LRA</p> <p>This has been a massive year, where we have emerged from the worst aspects of Covid-19 and its impact on employment but still have many of the effects with us. So much has happened and Mark McAllister is here, as ever, to give his assessment of what's important for Northern Ireland's workplaces.</p> <p>Mark delivers his annual round-up of the key employment law developments in 2022 not covered elsewhere in detail in this programme and sets out the trends that have emerged since November last year. This year his review Part 1 includes:</p> <ul style="list-style-type: none"> • LRA Guidance on Harassment and Bullying • Top cases of the year part 1 • Bereavement Leave and Pay • Collective Dispute Trends and pay pressures • Domestic violence <p>NOTE: The contents of this session may change to reflect what have been the most important and latest developments at November 2022. Part 2 of Mark's review of the year closes this conference tomorrow and looks forward to what you should expect to happen in 2023.</p>		
10.20	Q&A with Mark McAllister – Mark answers queries from the audience.		
10.30	Networking and Refreshment Break		
11.10	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">Essential Comparative Employment Law Update for NI Employers</td> <td style="width: 50%;">Can Everyone Thrive in a Hybrid Workplace?</td> </tr> </table>	Essential Comparative Employment Law Update for NI Employers	Can Everyone Thrive in a Hybrid Workplace?
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	<p>We've been keeping you informed all year with our updates and webinars on the Comparative Employment Law Table prepared in association with Lewis Silkin LLP. But where are we now?</p> <p>Ciara Fulton, Partner, Lewis Silkin (NI) LLP takes you through the recent developments that all NI employers with employees in Great Britain or the Republic of Ireland should be aware of, including:</p> <ul style="list-style-type: none"> • Gender Pay Gap Reporting • Work Life Balance • Flexible / Remote working • Sick Pay • Union developments • Retained EU Law (Revocation and Reform) Bill (Brexit Freedoms Bill) 	<p>The rise of hybrid working in the wake of a mass transition to remote working has resulted in professionals spending more time at home, forcing a rebalancing of personal and professional priorities. However, the division of non-work responsibilities hasn't been equally split; women have largely taken up the duties of home schooling, domestic chores and emotional labour. Research shows that one in three women are considering downshifting or leaving their career. This 'brain-drain' should be of great concern to all organisations – so what can you do to ensure equality across your office, hybrid or WFH employees?</p> <p>Leeanne Armstrong, Legal Director of TLT discusses the changes you can make to your organisation to ensure equality of opportunity across the spectrum and that you cultivate and maintain your workforce, whether they are in the office, working from home or have a hybrid contract regarding their place or work.</p>
11.40	Q&A with Ciara Fulton	Q&A with Leeanne Armstrong
11.55	Networking and Comfort Break – Send in your questions for the roundtable discussions	
12.05	<p>Roundtable Discussion: Mental Health and the Law: The Do's and Don'ts</p> <p>The Covid crisis has sparked a dramatic rise in the numbers of people experiencing mental health problems, with 1.6 million waiting for specialised treatment and another 8 million who cannot get on the waiting list but would benefit from support. Many of these are employees and colleagues who need support and, in some cases, reasonable adjustments to help them attend or return to work.</p>	<p>The Ghost in the Machine – How to Stop Your Recruitment Processes Turning into a Horror Show!</p> <p>Ghosting, a phenomenon more akin to online dating has spooked its way into recruitment processes, leaving prospective employers and employees at their wits' end and occurs when a recruiter or a candidate completely stops returning calls, emails or texts. But what causes it and is there anything that can be done to prevent it?</p> <p>In this session led by Emer Hinphey Co-founder/Director of Think People and including Ryan Calvert, Head of HR Recruitment, UK and Ireland at</p>

	In this session, Seònaid Ó Murchadha leads a panel to discuss an employer's legal responsibilities in respect of mental health and, along with David Babington, CEO of Action Mental Health and Majella Culbert, Head of Employment Law at PWC , provides some examples of what employers can do to support mental health in the workplace and help create a more resilient workforce.	MCS Group, Stephen Killilea, Talent Acquisition Manager at Liberty IT , the panel discusses the reasons why ghosting occurs and what organisations can do to engage candidates in the process to prevent them getting the spooks!
1.00	Lunch and Networking	
2.00	Welcome Back and Summary. Introduction to Afternoon Sessions: Becky Jones and Sam Davidson	
2.05	<p>Dismissing Serial Complainers – Demonstrating Reasonableness</p> <p>In <i>Hope v the BMA</i> the EAT upheld a tribunal's decision that an employee who had raised numerous grievances, which he refused to progress or withdraw, had been fairly dismissed. So, how far must an employee go before s/he can be legitimately and lawfully dismissed for their actions? Put another way – how much do employers have to put up with before they can lawfully dispense with a disruptive employee and on what grounds does the dismissal take effect, misconduct or some other reason?</p> <p>Orlagh O'Neill, Partner and Head of Employment at Carson McDowell outlines how employers can lawfully deal with the moaning Minnie's and disruptive Dan's when contemplating dismissal.</p>	<p>Do You Really Care About Your Employees? Then Prove It – The Case for a Workplace Financial Wellbeing Policy</p> <p>In February 2022, the CIPD joined with the Joseph Rowntree Foundation in calling on all employers – large and small – to put in place a financial wellbeing policy that sets out their commitment to tackling in-work poverty, after research found that 1 in 8 working people were trapped in poverty. They urged employers to not only ensure they pay a fair and liveable wage, but to also explore how they can support financial wellbeing through employee benefits and financial education, and how they can help low-paid workers progress into higher paid roles.</p> <p>Charles Cotton, Senior Adviser for Performance And Reward from the CIPD argues that this is not a socialist pipe dream but simply good business sense and the right thing for everyone in society, as well as the workplace.</p>
2.35	Networking & Comfort Break – Send in Your Questions	
2.45	<p>You're fired; No, You're Not – A Review of the Law Around Fire/Re-Hire Strategies</p> <p>Earlier this year, the High Court granted an injunction restraining Tesco 'firing and rehiring' employees in an attempt to remove a contractual entitlement to enhanced pay. And what does the P&O</p>	<p>Holiday Pay Update – Where are we now?</p> <p>Case law on holiday entitlement/pay has continued to develop in the last year. In <i>Smith v Pimlico Plumbers Ltd</i>, the Court of Appeal held that the ECJ's earlier ruling in <i>King v Sash Window Workshop and anor</i> does allow a worker to carry over a right to payment for annual leave from one leave</p>

	<p>situation tell us about the strength (or otherwise) of our current laws in this area?</p> <p>In this session Emma McIlveen BL, provides guidance on the law regarding Fire/Rehire policies in Northern Ireland and GB and considers when it might be appropriate (and inappropriate) to use this risky strategy.</p>	<p>year to the next if the worker has been permitted to take annual leave but has not been paid for it. In addition, the Court ruled on breaks between holidays, disapplying the <i>Bear Scotland</i> case and favouring the NI Court of Appeal's decision in <i>PSNI v Agnew</i>. Agnew has been listed for hearing in December, so perhaps we'll get some answers? If the Brexit Freedoms Bill doesn't say otherwise of course! So, what does this mean for employers now in relation to holiday pay calculations? Must employers really calculate holiday pay entitlement on an individual basis each time a holiday is taken? And can claims for back payments really go all the way back to 1998?</p> <p>Paul Gillen, Partner in Lewis Silkin's Employment, Immigration and Reward division, brings us right up to date on the current position regarding holiday pay calculations by way of worked examples.</p>
3.15	Double Q&A with Orlagh O'Neill and Emma McIlveen BL	Double Q&A with Charles Cotton and Paul Gillen
3.30	<p>The Good and Bad News about Workplace Banter and Gossip</p> <p>In February 2022 a Catholic civilian worker who had to leave her job over alleged harassment by her Army boss was awarded more than £500,000 in compensation by a Fair Employment Tribunal, one of the highest awards ever at an NI tribunal. The employee argued that so-called jokes about her religion and gender eventually forced her to retire due to ill health in 2019.</p> <p>It is not the first (and most certainly won't be the last) time that an employer has defended harassment by managers or colleagues against other employees as simply 'banter' in the workplace.</p> <ul style="list-style-type: none"> • What are the warning signs and where should an employer draw the line when employees are being urged to bring the whole selves to work? 	<p>Striking Times: Negotiation Tips to Help You Avoid Industrial Action and Reset Employment Relations</p> <p>The cost-of-living crisis and rising inflation are significant drivers for the increased level of workplace discontent and industrial action, or threat of same, are very much on the increase in 2022. History tells us that most industrial disputes eventually end in settlement. However, a bad settlement can endanger the profitability or sustainability of an organisation. In this session, Michelle McGinley, Director of Legal & Policy, Employment Law at Employers Federation sets out:</p> <ul style="list-style-type: none"> • How to prepare for meetings with union representatives • How to understand their case for improved Ts and Cs • How best to set out your case for more reasonable Ts and Cs • How to reach a sustainable and fair settlement with union representatives

	<ul style="list-style-type: none"> What safeguards must be in place for an employer to successfully defend a claim that they are liable for such discriminatory behaviour by employees? <p>The 'grapevine' is the informal communication network found within organisations and it's an unofficial and personal communication channel. It happens regardless of whether employees are in the workplace or working from home. Most employers might see it as a negative thing, but can it be a force for good, as well as bad for business?</p> <p>Kiera Lee, Director, Mills Selig explains.</p>	<ul style="list-style-type: none"> How to build long-term trust with your union counterparts and your workforce
4.00	Q&A with Kiera Lee .	Q&A with Michelle McGinley .
4.10	Summary and Close: Becky Jones and Sam Davidson .	
4.15	First Day of Conference Closes	

Day 2: Annual Review of Employment Law, Thursday 17 November 2022

Time	Session
9.15	Welcome back: To ensure you maximise return on your investment, Christine Quinn from Legal Island's Knowledge Team , discusses key lessons from yesterday's sessions.
9.30	Introduction and Welcome: Seònaid Ó Murchadha, Disability Consultant and Workplace Coordinator at See Change and Damian McAlister, Chief People Officer, Ulster University .
9.40	<p>The NI Case Review 2022 and Key Next Steps</p> <p>2022 saw the appointment of a new President of Industrial Tribunals and the Fair Employment Tribunal in NI in former Vice President, Noel Kelly, whose seemingly radical decision in 2018 regarding holiday pay calculation was ratified by the Court of Appeal. Recent months have seen the flow of NI cases increase substantially and we now have a good idea about cases being dealt with remotely and in person by NI employment tribunals. Jason Elliott BL sets out the main developments in cases such as these:</p>

- O'Donnell v Craigantlet Farms Ltd
- Craig v The Management Committee of Assistance Dogs Northern Ireland
- Wahab v Four Seasons (No 7) Limited
- Dawson v PMC Limited t/a Bluebird Care Holywood
- Taylor Sterling v Logan Wellbeing Belfast Limited & Ors
- Linton v FP McCann Ltd
- McCaughley v Footprints Women's Centre
- Dinsmore v Terex GB Limited

NOTE: Subjects covered in this session may vary from those shown and will focus on the most important NI cases by November.

10.20 **Jason Elliott BL** Answers Your Questions

10.30 Networking and Refreshment Break

11.10 **Social Media and the Impact of External Pressure to Dismiss**

From Premier League footballers kicking cats to Prime Ministers attending drink-fuelled 'work events' and the individuals appearing in the shocking social media post mocking the death of N.I. woman Michaela McAreeve, many incidents involving employees are now played out on social media (and 'the' media) to the extent that customers, suppliers, sponsors, or simple public condemnation, bring pressure on employers to part company with employees caught on camera doing inappropriate things. Where does an employer stand on this issue? Is an employer permitted to refer to external pressure in the disciplinary process? What statutory reason and standards must apply?

Louise McAloon, Partner & Head of Employment, Worthingtons, looks at case law and precedent in this enlightening session. Maybe we should post it online?

Transforming Employee Engagement and Performance: Embedding a Coaching Culture in Organisations (on a Tight Budget).

Marie Ferris, Founder of Thrive Coaching & Development, and her colleague **Clare Madden of Madden Coaching** discuss how budget restrictions led them to devise a bottom-up, organic coaching culture in Ulster University – a programme that won them an Irish National Training Award for Excellence in Coaching. Their aims were to develop leaders; improve communication; develop relationships; encourage shared problem solving; engage staff; and ultimately enhance individual and institutional performance. They achieved it by introducing a coaching culture across all stakeholders. So could you. Find out how at this session.

11.40	Q&A with Louise McAloon	Q&A with Marie Ferris and Clare Madden
11.55	Networking and Comfort Break – Send in your questions for the roundtable discussions	
12.05	<p>Roundtable Discussion: Women in Leadership</p> <p>In 2021 the UK Spencer Stuart Board Index found that women now represent 51% of all non-executive directors, up from 18% a decade ago. Ireland is backing an EU move to make listed company boards at least 33pc female by 2027. Under the rules, listed companies whose boards have less than 33% female representation - or 40% for non-executive directors - would have to give priority to women when choosing between equally qualified candidates for future posts. In Northern Ireland a record number of women were elected to the NI Assembly in the elections in May.</p> <p>It's clear that the number of women in positions of authority is on the rise, but Charlene Brooks, CEO of Parenting NI, leads a panel including Roseann Kelly, MBE, CEO, Women in Business, Margaret Sweeney, Executive Director and Chief Executive Officer of IRES REIT, Robert Baker, CEO, Potentia Talent Consulting to discuss what more needs to be done to help increase the number of women in senior leadership positions within organisations. This panel will explore the impact of unconscious bias, social media and what has been referred to as 'office housework' – tasks that are generally undertaken by women in the workplace but are not valued, such as tea-making, note-taking and many administrative tasks.</p>	<p>Roundtable Discussion: What is your sustainability IQ?</p> <p>Environmental, Social and Governance (ESG) topics are important for job applicants, investors, customers and employees alike. Key ESG HR issues concern how a company engages with its workforce, with a strong focus on a culture incorporating inclusion and diversity, and how it looks at issues of pay and equality. While the spotlight has been on environmental issues so far, the coronavirus pandemic has turned the focus firmly on the 'S' in ESG, with Covid-19 having the greatest impact on people and employment. This roundtable discussion addresses the following:</p> <ul style="list-style-type: none"> • What is ESG? • What impact will the Corporate Sustainability Reporting Directive have for companies in Northern Ireland? • Why does it matter? • What does it mean for HR Professionals? • How do you measure or score it? <p>Bob Semple leads this panel along with Gareth Walls, Partner and Head of Employment at A&L Goodbody and Liam McEvoy Co-founder of Sustain IQ.</p>
1.00	Lunch and Networking	

2.00	Welcome Back and Summary. Introduction to Afternoon Sessions: Seònaid Ó Murchadha and Damian McAlister .	
2.05	<p>Menopause is Very Much a Workplace Issue</p> <p>It was five years ago that we first discussed menopause as an employment issue at an annual review of employment law. Since then, there have been myriad articles, media reports and even TV shows about the issue. In 2019, a staggering 900,000 women decided to leave their job because of a mismatch between their role and menopausal symptoms, according to CIPD/Bupa research.</p> <p>In May 2022, employment tribunals in GB citing the menopause as the basis for a workplace grievance increased by 44% year on year.</p> <p>Rachel Penny, Partner in the Employment team at Carson McDowell gives an analysis of the now quite extensive case law on menopause in the workplace.</p>	<p>Working or Shirking from Home?</p> <p>Working from home at least part of the week has become the norm, but many employers are still unsure of whether employees are actually working or sitting in their pyjamas watching daytime television according to one recruitment business owner. But how can you be sure and what can you do about it?</p> <p>Seamus McGranaghan, Director, O'Reilly Stewart, discusses the data protection and employee relations implications of employee monitoring and suggests alternatives to getting information to help employers.</p> <ul style="list-style-type: none"> • How can you (lawfully) deal with this problem? • What evidence will you need? • Is it lawful to use information obtained through monitoring or surveillance? • Is this proactive management or snooping? • What are the dangers of getting it wrong?
2.35	Q&A with Rachel Penny	Q&A with Seamus McGranaghan
2.45	Networking & Comfort Break	
3.00	<p>Review of the Year (Part 2 – Looking Forward to 2023) with Mark McAllister, Director of Employment Relations Services, LRA</p> <p>In his second lecture of the event, Mark considers the likely employment law developments that we'll see in 2023 and what we can do <u>now</u> to mitigate risk and maximise opportunities. We don't just look at the bad stuff – there are some positives out there, if you care to look with Mark.</p> <ul style="list-style-type: none"> • The Brexit Freedoms Bill. • On 4th March 2022 the Committee for the Economy concluded a consultation on The Employment (Zero Hours Workers and Banded Weekly Working Hours) Bill. The Bill will make provision in respect of zero hours workers and banded weekly working hours, as you might expect. But what does it actually mean in practice and what lessons can be learned from the Republic of Ireland, who introduced similar 	

	<p>laws in 2015, particularly in the light of an EU Directive on Transparent and Predictable Working Conditions that must be implemented throughout the EU by October 2022?</p> <ul style="list-style-type: none"> • AI and automated HR decisions – relationships and algorithms can go horribly wrong • Where the EU is going with labour law – individual and collective – gig economy, collective bargaining, family friendly etc • Umbrella companies – the not so new bad practice? • Hybrid working – short and medium-term lessons learned <p>NOTE: The contents of this session may change to reflect the most important and latest developments that are expected for 2023 at November 2022 and that are not covered elsewhere in detail at this event.</p>
3.45	Q&A with Mark McAllister
3.55	Summary and Close: Seònaid Ó Murchadha and Damian McAlister .
4.00	Conference Closes

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