



An Coimisiún um Chaidreamh san Áit Oibre
WORKPLACE RELATIONS COMMISSION

PROCEDURES IN THE INVESTIGATION AND ADJUDICATION OF EMPLOYMENT AND EQUALITY COMPLAINTS

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Employment and Equality Cases

Procedures for investigating complaints

These procedures set out for parties to complaints and their representatives the normal working practice of the Workplace Relations Commission (WRC) and the requirements with which the parties should comply. They are not intended to be exhaustive, nor to provide a legal interpretation of the Acts. Further information on individual Acts is available from www.workplacerelations.ie. The WRC reserves the right to vary these procedures generally and, as appropriate, in the circumstances of the individual case. It is incumbent on all parties to adhere to these procedures to the best of their ability; failure to do so may have implications for the processing or defence of the complaint.

1. Making a complaint to the Workplace Relations Commission

A person may make a complaint to the Workplace Relations Commission (WRC) where he or she believes there is a contravention of employment and/or equality legislation or has an individual grievance under industrial relations legislation. A complaint should be made using the Workplace Relations Complaint Form. The complaint form should be carefully filled out, giving the correct name and address of the employer/respondent, and all relevant sections completed. It is vital to check the correct legal name of the employer/respondent is entered on the form. Where a complaint is made to the WRC a copy of this form and any other materials sent will be copied to the respondent (certain exceptions may apply to complaints involving an inspection).

It is extremely important that the complainant keep the WRC informed of his or her current address and contact details as failure to do so could result in the complaint being dismissed.

2. Time limits for referring a case to the WRC

The Workplace Relations Act 2015 provides that a complaint or dispute must be referred within six months of the alleged contravention of the legislation (different

time limits apply for complaints under the Redundancy Payments Acts and the Equal Status Acts). The date on which a complaint or dispute is referred is the date it is received by the WRC. If a complaint is not within the time limit an extension may be granted by an adjudication officer up to a maximum time limit of 12 months where, in the opinion of the adjudication officer, the complainant has demonstrated reasonable cause for the delay (different time limits apply for extensions under the Redundancy Payments Acts and the Equal Status Acts). Complainants should make this extension application when submitting the complaint form or as quickly as possible afterwards giving detailed reasons and including any supporting documents. An adjudication officer has no power to extend the time limit beyond 12 months after the last alleged contravention (other than under the Redundancy Payments Acts).

3. When a case is referred to the WRC

The WRC is impartial as between the complainant and respondent and all material received from one party will be copied to the other, so that both parties are fully aware of all the material received.

The Act allows an adjudication officer at any time to dismiss a complaint if, in his or her opinion, it is frivolous or vexatious (section 42 of the Workplace Relations Act refers). Where a case is dismissed under this section, the complainant may appeal to the Labour Court. Such an appeal must be submitted within 42 days of the date of the decision of the adjudication officer.

4. Mediation

In certain cases the complaint or dispute may be sent to the Mediation Service with a view to attempting to encourage and facilitate both parties to resolve issues as an alternative to a formal hearing or an inspection. If one or both parties are unwilling to engage in early resolution or mediation or if attempts at resolving the issues are unsuccessful, the complaint will be referred to an adjudication officer for hearing. The mediation service will include both telephone and face to face mediation as the WRC determines.

5. Statements from Persons on Whom the Onus of Proof Rests in Employment Equality and Unfair Dismissal Complaints.

A clear statement setting out the details of the complaint will be required from the complainant in all employment equality cases and in all complaints of constructive unfair dismissal within the meaning of part (b) of the definition in section 1 of the Unfair Dismissal Act when submitting the form. In all other unfair dismissal cases a statement will be required from the respondent within 21 days of the date of the request by the WRC. A mere assertion or denial of the complaint without details does not comply with these procedures and can impact on the processing of the complaint or defence of the complaint. As cases will be scheduled for hearing within six to eight weeks of the referral it is essential that these procedures are complied with. Failure by a party to comply with this requirement (in whole or in part) will not impact on the listing of complaint(s) for hearing. An adjudication officer hearing the complaint may draw such inference or inferences as he or she deems appropriate where relevant information is not presented in a timely manner.

Employment Equality Cases

At the time of lodging the complaint form, the complainant must give as much detail as possible on the form itself.

In employment equality cases the complainant must set out the facts, the link between the ground(s) cited and the alleged discrimination, any other relevant information and, where appropriate, any legal points the complainant may wish to make.

If no statement is received from the complainant in these cases the Director General may decide to dismiss the complaint for non-pursuit.

Constructive Dismissal

At the time of lodging the complaint form, the complainant must give as much detail as possible on the form itself.

The complainant must set out the facts leading to the constructive dismissal including, where relevant, details of grievance procedure followed, investigation undertaken by the respondent and, where appropriate, any legal points the complainant may wish to make.

If no statement is received from the complainant in these cases the Director General may decide to dismiss the complainant for non-pursuit.

All Other Complaints of Unfair Dismissal

In all other complaints of unfair dismissal the respondent must set out the facts of the events leading to the dismissal including, where relevant, disciplinary meeting(s) held, investigation undertaken, disciplinary hearing(s) conducted, internal appeal(s) conducted, any other relevant information and, where appropriate, any legal points the respondent may wish to make. This statement must be sent in within 21 days of the request by the WRC.

The Director General may, in exceptional circumstances, extend the time limit for the receipt of a statement. These should be sent by electronic means where possible.

6. All Other Employment and Equality Cases

In all other employment and equality complainants any relevant information and documentation will be required prior to the hearing. Where a respondent intends to rely in its defence on statutory records the respondent is required to maintain in relation to the subject matter of the complaint, these should be sent to the WRC prior to the hearing and by electronic means where possible.

Where a Respondent wishes to raise a legal point(s) in any employment or equality complaint to include matters such as the correct respondent; time limits; whether the complainant is an employee; where the fact of dismissal is in dispute or any

other legal issue these must be included in a statement sent to the WRC within 21 days of the date the complaint form is forwarded to the Respondent.

In all cases, an adjudication officer hearing the complaint may draw such inference or inferences as he or she deems appropriate where relevant information is not presented in a timely manner.

7. The hearing and decision

The WRC will contact the parties with a time and date for the hearing of the complaint and reasonable notice will be given. If any special requirements are needed by the parties, their representatives or their witnesses, as much notice as possible should be given in order to facilitate any such requirements. Each party may be asked to provide a list of persons they propose to bring as witnesses and the purpose of a particular witness.

A postponement of the hearing will be given in exceptional circumstances and only for substantial reasons. All requests must be made in writing as soon as possible to the WRC. The requesting party must give details of the reasons along with all relevant documentation.

If a complainant does not attend a hearing, the adjudication officer may find that the complaint fails for want of prosecution. If the respondent does not attend the adjudication officer may proceed and make a decision based on the information and evidence available.

It is the responsibility of the parties and their representatives to ensure that all relevant information has been sent to the WRC prior to the hearing and all witnesses are available on the day of the hearing. **The Adjudication officer will only grant an adjournment on the day of the hearing in exceptional circumstances and only for substantial reasons.**

The adjudication officer can ask questions of each party and of any witnesses attending. He or she will give each party the opportunity to give evidence, to call

witnesses, to question the other party and any witnesses, to respond and to address legal points. Witnesses may be allowed to remain or may be asked to come in only for their own evidence. The adjudication officer will decide what is appropriate, taking into account fair procedures, arrangements which will best support the effective and accurate giving of evidence and the orderly conduct of the hearing.

The Workplace Relations Act specifically provides that the proceedings will be heard “otherwise than in public”. Therefore, the adjudication officer cannot allow members of the general public, the press, or observers to attend hearings.

A hearing before an adjudication officer of the WRC is not a Court and is not subject to all the attendant formality. The final discretion as to the conduct of the hearing and the presence of any person rests with the adjudication officer subject to fair procedures and the interests of justice.

After the completion of the investigation, a written decision will issue within 28 working days or as soon as is practicable. All parties and witnesses will be anonymised and all decisions will be published on the website www.workplacerelations.ie

8. Appeals and enforcement

Either party may appeal the decision in writing to the Labour Court within 42 days of the date of the decision (decisions under the Equal Status Act must be appealed to the Circuit Court within 42 days of the date of the decision). If no appeal is lodged after this period, the decision is legally binding and may be enforced through the District Court.

9. Further Information

More information in relation to employment, equality and industrial relations legislation can be found on www.workplacerelations.ie or by telephoning the information line on 1890 80 80 90.

