

# TARRANT & TARRANT



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EMPLOYMENT LAW  
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**Tarrant & Tarrant are an established law firm with a wide reputation for offering clients reliable, timely and cost-effective advice, expertise and proven experience in broad range of business sectors.**

The accelerated volume and complexity of employment legislation and industrial relations litigation puts the issue of legal risk as the top agenda for all employers.

Here at Tarrant and Tarrant we approach this in the following way. . .

### **Practical**

- > Taking a practical, commercial approach to giving legal advice and offer solutions that work best given the employers status. The idea of combining legal expertise with a commercial approach it services to enhance reputation more.

### **Imaginative**

- > By creating practical solutions there is a need then to be responsive in a creative, imaginative way. Strategy and planning is key in an area where it is necessary forecast problems before they arise and have clients in the correct situation to deal with problems when and if they arise.

### **Client-Centred and Timely**

- > To carry out a strategic and practical service, it is necessary to have an in-depth knowledge as to your clients business. Having a timely response in place for clients is our key goal.

### **Proactive**

- > We will proactively seeking to forecast our clients problems and consider our drive to engage with clients as the key to success.

### **Experience**

- > From an extensive knowledge base, an efficient and cost-effective service will be provided that will be moulded to the needs of clients.

## Our Services include:

### Discrimination, Equality and Diversity

- Direct and indirect discrimination
- Promotion
- Employment and dismissal
- Equal Pay
- Equality of Terms and conditions of employment
- Equal Pension rights
- Equal opportunities
- Dignity and respect policies
- Bullying, sexual and harassment claims
- Victimisation
- Reasonable accommodation of disability
- Mediation in equality disputes
- Investigation and appeals

## Daily Employment Issues:

- Advising on issues affecting day to day business like leave (annual, maternity, adoptive, carer's, parental)
- Flexible and part-time working
- Fixed term workers
- Working time
- Disciplinary and grievance matters
- Data protection
- Freedom of information
- Health and safety
- Pregnant workers
- Bullying and harassment
- Stress
- Grievance and disciplinary investigations
- Training on how to carry out investigations and make decisions
- Wages
- employees and employers rights and obligations in mergers, acquisitions and transfers of business

# Employee and Industrial Relations

- Advising on collective issues
- Dispute resolution
- Third Party intervention
- Trade union recognition
- Strike and industrial action
- Employee consultation on business changes
- Re-organisation in terms of redundancy
- Business transfers and industrial relations obstacles
- Employee representation related to information and consultation obligations

## Termination of Employment

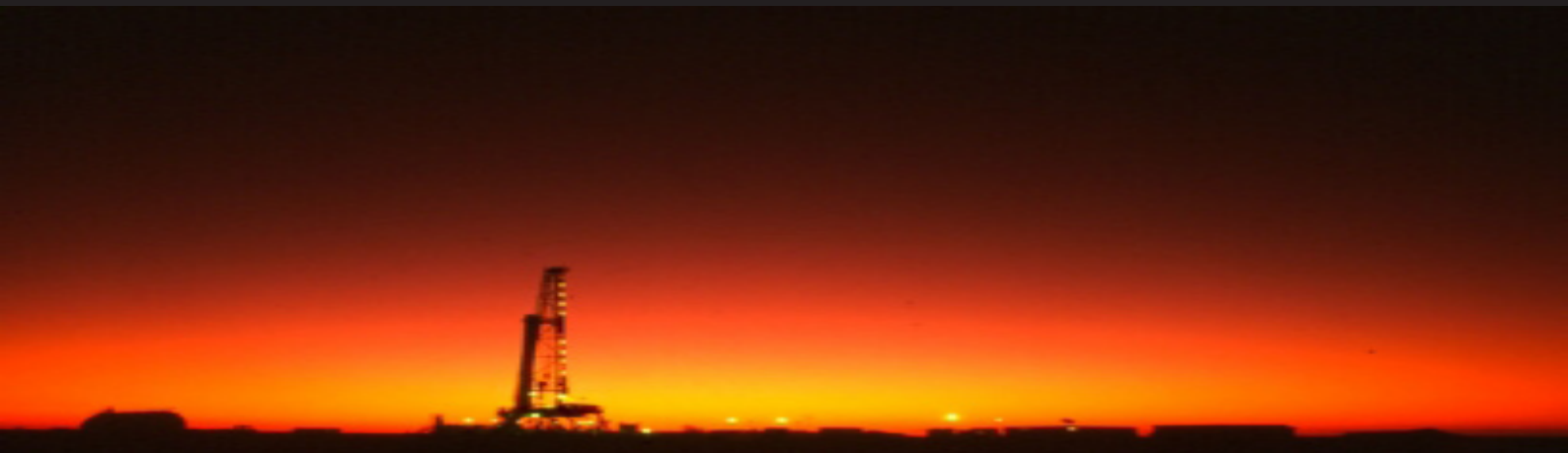
- Negotiation of and advice on severance packages and payments
- Termination of contracts at common law, unfair and discriminatory dismissal claims

## Dispute Resolution

- Provision of representation at dispute resolution
- Training of employers for dispute resolution

## Pensions and Employee Benefits

- Advising on trust deeds and rules
- Duties and obligations on trustees
- Pension legislation and case law
- Pension equality laws
- Legal implications of funding
- Advice to trustees, administrators and beneficiaries of trust funds
- Drafting employee share plans and option schemes



# Recruitment, Advertising, Appointment and Promotion of Employees

- Advising on interviews and recruitment
- Avoiding claims of discrimination in recruitment and promotion
- Service contracts
- Terms and conditions of employment
- Policies and Procedures
- Employee handbooks
- Union/Management agreements
- Statutory and common law obligations





## Contracts of Employment:

- Drafting of employment contracts
- Employing an independent contractor – what not to do!
- Dealing with employment agencies
- Challenging the fact of a dismissal
- Misconduct in the workplace
- Dishonesty and misconduct in the workplace
- Fixed term contracts
- Sizes of awards
- Employment Injunctions
- Employments governed by public Law
- Constitutional and natural justice for employment
- Fair procedures in specific cases
- Future employment prospects: the impact of the duty to preserve trust and confidence
- References
- Taxation and Termination Payments
- Novel remedies in employment solutions

## Health and Safety

- Duties on the employer
- New obligations under 2005 Act
- Powers of the Health and Safety Authority
- Employees with rights and responsibilities
- Creation of safety management systems
- Occupational health and safety
- Exemptions
- Improvement and Prohibition Notices
- Enforcement in Civil and Criminal Courts



# Employment Law Solutions

## Audit Programmes for Compliance for Employers

### Background

The basis for this programme is the noted increase in the obligations that employers have in Ireland. This is even more apparent with the establishment of NERA and the notable decisions made by Employment Appeals Tribunals for example where employers have been targeted in a harsh way in terms of monetary compensation to employees. It is time that employers formally attack the sources of compliance that are constantly plaguing the pockets of employers.

Part of NERA's aim is to make more workers aware of their employment rights. NERA was set up to go beyond the requirements for basic compliance for employment rights. The objective is to go further and secure tight-knit compliance that is neatly linked with adequate enforcement given the circumstances of the case before it.

Michael Martin, Minister for Enterprise, Trade and Employment requested that NERA be immediately operational so that it could realise its objectives by 2016. On that basis, NERA and its advisory board was established on an interim basis until the set down of legislation bringing about employment rights compliance.

Communication of NERA's message has been the crux of the campaign to date and its message is insulated in the communication to the public of compliance for the benefit of employees, employers and interested third parties.

NERA outlines that on its interim establishment in 2006, there were 2,000 inspections with 104 of those cases involving express breaches.

In light of NERA's results it is contemplated that the engine for compliance will become much more of a force in Ireland and therefore it is respectfully submitted that there is a need to provide complete and tailored auditing programmes for companies who will most likely be subject to an internal audit in the near future. Before looking at the standard package services that could be provided, it is necessary to look at the background to NERA below and the powers that have been given. The key is that their function is to secure employment rights and it will be necessary to find many avenues of compliance in order for this to happen.

## Powers of the Inspectorate

The power of the inspectorate will be focussing its attentions in 2008 at the security sector. Those within the security sector, which is a major growth area, will be targeted to ensure employees are aware of their employment rights and where they can go to find out more. For employers, the facility is always there to ensure they are aware of their own obligations. Where there is evidence of non-compliance this will give NERA the green light to act and ensure compliance through their express powers.

The specific industry sector targets will be a common pattern for NERA. This continued success will expand into other sectors and different areas of employment law compliance. For example, last year, the construction sector was set aside on the basis of priority as well as the projects under national minimum wage and protection of young persons. NERA has certainly made its impact by targeting growth areas and particularly certain pieces of legislation that are susceptible to the phrase more honoured in the breach than in the observance.

The inspectorate itself is based around the country – Carlow, Dublin, Shannon, Cork and Sligo, thereby enhancing its base presence and a solid network.

NERA has a total of 90 inspectors with the power to inspect employers records under legislation. Powers also extend to photocopying records and relevant documentation as well as the jurisdiction to seek information from certain persons.

Of the 98 cases that were referred to the Chief State Solicitors Office, 61 of them were concluded.

NERA dealt with 93,000 calls in 2007 as well as 5,800 emails and 990 personal callers. As part of their public profile campaign they participated in 11 exhibitions and made over 40 presentations to other organisations. It was noted by NERA that the three areas of popular query were in the areas of redundancy, holiday entitlements and payment of wages.

The Minister for Enterprise, Trade and Employment and NERA inspectors can bring proceedings against those employers who are detected breaching employment legislation during an inspection. On that basis, the courts may impose penalties on those employers for those offences. On an enforcement basis, the Minister can bring proceedings on behalf of employees regarding compliance to the Labour Court and Employment Appeals Tribunal.

Of interest, is the possibility in the future of joint initiatives with other departments. With the Social Welfare and Pensions Act, 2007 it allowed for the sharing of information between certain bodies. Essentially, this allows for inspectors from NERA to join with Social Welfare Inspectors and Revenue Inspectors in facilitating early detection and most importantly, enforcement.

The construction industry is not the only specific target sector. The agriculture sector had 46 inspections with 59% of breaches detected with arrears of €135, 836.

The catering industry was inspected on 204 occasions with 61% of inspections showing breaches with arrears of €263, 066. The retail grocery had 139 inspections with a 30% detection rate and arrears of €39, 369. The hotel industry had 90 inspections with a 58% breach but a phenomenal arrears of pay amounting to €441, 330. The construction sector itself had 416 inspections with a 56% rate of breaches amounting to €1,226, 824

Under the minimum wage legislation, there were 1,939 inspections with arrears collected of €122, 015. Under the Payment of Wages Act, there were 2,655 inspections and arrears of just €196! There were 2, 639 inspections under the organisation of working time legislation with arrears of €3,360.

Overall, following 14, 244 calls, visits and inspections NERA calculated it to be 2,344 breaches of employment law in 2007.

Once a determination is set down by the Labour Court or the Employment Appeals Tribunal then the time limit given to the employer to comply is six weeks. There is a facility in existence in cases where an employer does not carry out the determination and another order can be granted this is completed.

There are instances where NERA refers potential prosecutions to other federations who are better able to deal with a prosecution given the particular sector that is involved. This would arise with CIMA for example (the Construction Industry Monitoring Agency) or the Construction Industry Federation for example. This ensures that compliance and prosecution will be dealt with in one forum or another.

Inspection is the second tier of involvement. There is a regionalised base of inspectorates with a large volume of inspectors.

Most importantly, the enforcement department of NERA allows for a determination of the Labour Court or the Employment Appeals Tribunal enforced through the Courts Service. This is certainly a novel and appropriate remedy. The question will be asked as to the effectiveness of such an enforcement mechanism in the future.

The central aim of the inspectorate is to detect a breach and subsequently ensure that breach is complied with in accordance with the legislation and in terms of rectification. The redress could take the form of payment of arrears due for example though the potential for redress is wide given the jurisdiction of the Labour Court and the Employment Appeals Tribunal. It will be of immense interest to see the kind of redress that will be determined in such cases.

NERA's powers derive from the following pieces of legislation: The Protection of Young Person (Employment) Act, 1996; the Organisation of Working Time Act, 1997; Parental Leave Act, 1998; National Minimum Wage Act, 2000; Carers Leave Act, 2001; Redundancy Payments Acts, 1967 to 2003; Employment Agency Act, 1971; Protection of Employment Act, 1977; Protection of Employees (Employers' Insolvency); Payment of Wages Act, 1991 and Employees (Provision of Information and Consultation) Act, 2003.

Overall, the powers of the inspector include the right to interview persons within the workplace, to review documentation as is necessary and as part of their investigation, to take copies of those records and most importantly to interview any relevant person given the circumstances of the inspection.

Of interest, is NERA's collation of material regarding the construction industry. Specifically, it refers to the registered employment agreements. Such agreements set out the criteria in accordance with minimum pay, overtime pay, working hours, rest periods, holidays and the sick pay scheme.

The records inspector will expect the following documentation which is to be made available on an inspection date allocated: employer registration number, full name address and PPS number for each employee, terms of employment for each employee, payroll details, copies of payslips, employees job classification, dates of commencement, hours of work for each employee, register of employees under 18 years of age, holidays and public holiday entitlements as well as any other documentation necessary to ensure compliance with the legislation.

# AUDIT PACKAGE

- > Review of written statements and terms of employment
- > Grievance and disciplinary procedure
- > Bullying and Harassment policy procedure
- > Recommendations as to codes of practice to be adopted (quasi-legal status)
- > Technology/Communications Policy Usage
- > Provision of correct payslips
- > Registered Employment Agreements Records
- > Minimum Wage Act Records
- > Payment of Wages Records
- > Organisation of Working Time records
- > Terms of Employment Records
- > Maternity Protection/Adoptive Leave/Parental leave/Carer's leave records
- > Unfair Dismissals Records
- > Protection of Employment/Redundancy Records
- > All other statutory employment records
- > New compliance requirements under the Employment Law Compliance Bill
- > Notices setting out entitlements under employment legislation/complaints
- > Procedures/contact details of NERA
- > Duty to resolve disputes at workplace level
- > Provision of mediation training under this level

## Top three categories of complaint to NERA

1. Redundancy
2. Holiday
3. Payment of Wages

## Joint investigations with Revenue -

Inspection will need:

- Employee Registration Number
  - Name address and PPS number for each employee
  - Terms of employment
  - Payroll details
  - Copies of payslips
  - Employee Job classification
  - Dates of Commencement and termination
  - Hours of work
  - Register of employees under 18 years
  - Holidays and public holiday details
- Prosecution = 98 in 2007/28 in first quarter 2008.
- Search Warrants
- Name and shame provisions
- Compliance notices, enforcement orders and fixed payment notices



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