



Comments and Recommendations on the Reform of the State's Employment Rights and Industrial Relations Structures and Procedures

Migrant Rights Centre Ireland (MRCI)

MRCI is a national organisation working to promote justice, empowerment and equality for migrant workers and their families. MRCI was first established in 2001 to bridge a gap in information services available to migrant workers and their families. It has since grown to become a leading organisation advocating for change on many of the critical issues affecting migrant workers and their families in Ireland.

MRCI provides a free legal information and advocacy service in its Drop in Service to migrant workers experiencing violations of their rights at the workplace. MRCI has assisted hundreds of migrant workers in lodging formal complaints, and in receiving settlements and awards for unpaid wages and other gross violations of their employment rights. Breaches typically include payment below the minimum wage, non-payment of holidays, and excessive working hours, among others.

Overall comment

MRCI welcome the opportunities that the reform proposal creates to streamline the Employment Rights Structures and Procedures if its effect is to create a more efficient and accessible service. However, the main concern is ensuring the integrity and the expertise of the Equality Tribunal on equality issues is maintained.

This submission identifies some of the key issues for Migrant workers and recommendations for change. The issues have been identified from the experience of casework carried out in the MRCI Drop in Centre.

The Role of the Equality Tribunal

The Equality Tribunal's role is very specific, responding to issue of discrimination and inequality as per the Equality Acts. For over a decade, the Tribunal has built up very specific skills and knowledge on equality issues. This work and expertise needs to be maintained and developed. We believe the capacity to address particular issues of discrimination, inequality and racism would not be present in a new structure.

Recommendation

- Maintain the Equality Tribunal in its current form.

Resolution of Disputes closer to the workplace at an early stage

It is always desirable to resolve disputes, where appropriate closer to the workplace. However, the majority of cases that MRCI deal with involve workers, who work in low paid, non-unionised sectors. In this context, bringing employers in to compliance with employment law is the issue that requires attention. On the spot fines to employers by labour inspectors to ensure compliance would be a useful mechanism to address problematic areas of employment like these. In our experience, it is only when workers leave the employment situation they have the courage to take cases to the employment rights structures. This is a key issue that needs to be considered.

Recommendations

- On the spot fines for employers who fail to adhere to employment legislation is required to bring them into compliance

Access to information on Employment Rights

While there are written and Internet sources of information on rights and entitlements, there remains an over reliance on oral methods of accessing information. It is also common for migrant workers to be told at recruitment stage or by employers that Irish labour law does not apply to them. This lack of information impacts on a person's ability to question, to challenge or to take the ultimate step of making a formal complaint.

Information should be provided by the government on employer's responsibilities and rights to employees directly. This would go some way in ensuring that workers have access to information about their rights and as such will know where they are being exploited.

Recommendations

- Information should be provided to employees directly about their rights and the employers responsibilities

Accessing support and representation

Accessing support and representation to seek redress for workplace exploitation is an extremely difficult process for any worker. For migrant workers not familiar with the basic avenues for accessing advice who are not in a trade union, or who cannot speak English, it is extremely difficult.

Access to legal advice is generally costly and beyond the bounds of possibility for most people, especially workers employed in low paid work. It is important that the new structure that is proposed facilitates workers to present cases in a congenial environment. In part, this could be achieved by simplified procedures at the tribunal and oral presentation of cases.

In cases where a worker has returned home and their employment case is ongoing, they should be facilitated to access the tribunal from abroad. Teleconferencing facilities should be available to enable workers to participate in the tribunal without requiring them to return to Ireland. The cost and organisations (visa, flights etc) of a return trip can be prohibitive.

Recommendations

- The Tribunal should ensure its procedures are simple and allow for workers to orally present their case in an informal environment that does not require legal representation.
- Allow for Teleconferencing facilities to facilitate workers to participate in the tribunal from their home country.

Language barriers

Where a migrant worker has little or no spoken English the process of making and proceeding with a complaint can be further complicated. An interpreter is essential whether at consultation stage or at the hearing itself. Where not provided by the body to which a complaint is made, the sourcing of an independent competent interpreter can be a difficult and a costly exercise. In proceedings before the Equality Tribunal an independent interpreter is provided. This is not the case in hearings before other Tribunals.

Where an interpreter is required, the costs are generally borne by the parties requiring the service. In some cases the costs of interpreting have been shared by both parties. It is our experience that interpreting is generally provided through community contacts of the complainant. Many people, where allowed, will use a friend from their own community to translate for them at the initial stages of a hearing.

Recommendation

- An interpreter service needs to be put in place.

Delays

From the initial lodging of a complaint to the date of the first hearing, on average three to five months will often have elapsed. This can further be extended by adjournments and other unforeseen delays. In certain tribunals the waiting time for the initial hearing could reach beyond 1 year. After an initial hearing additional hearings may be scheduled if the matter requires more time or is of an especially complicated nature. When the process is complete, a decision will be sent out after a period of six weeks or so. Following this decision the matter may be appealed to the next forum. It may take up to another five months before the appeal stage is concluded. In sum, a contentious complaint may take in excess of one year to come to conclusion. This presents many difficulties for the migrant worker who has to support themselves during this period, usually without social assistance. This will be the case where a complainant has not been successful in securing alternative employment, which may happen as a result of the restrictive nature of the work permit system or the unwillingness of potential employers to offer work to an undocumented person or offer a contract until they see the outcome of the complainant's case. In the case where alternative employment has been secured, protracted litigation can be very disruptive in relation to work. In this context a speedier, one tier structure is desirable but it must have the capacity to address the delay.

Recommendation

- To set up a streamlined structure that has the capacity and resources to address delay issues.

Legal status

Through no fault of their own, a worker can thus lose any legal right to live in Ireland, resulting in much associated difficulty. The workers who find themselves in such a situation will be under

great stress and anxiety as they feel they have no formal right to remain in the country and have in the process been criminalised despite being the ones who have experienced ill treatment.

In a growing number of cases where an employee has become undocumented and is therefore not legally resident in the country, employers have sought to rely on the defence of illegality of contract. This stems from the traditional position that where the employee is not legally entitled to work, their contract of work is illegal and therefore unenforceable. This presents obvious difficulties for an employee who has become undocumented through the negligence of their employer.

There has been case law which seeks to put some onus on the employer in such situations and allow a complainant to seek statutory protection, namely enforcing their employment rights. It is important that undocumented worker's employment rights are protected and that the inspectorate and the legal redress mechanisms follow through on it. To date, however, the inspectorate and redress bodies have indicated that they cannot or will not seek monies owed to undocumented workers. A bar to recovery of lost wages by an undocumented worker would lessen an unscrupulous employer's potential liability to undocumented workers and make it more financially attractive to hire them.

Recommendation

- Legislate so that all workers, regardless of their legal status, have the right to exercise their employment rights, and ensure there are no barriers to legal redress.

The Interface of National Employment Rights Agency (NERA) and the Labour Relation Commission (LRC)

The interface between NERA and the LRC needs to be coordinated. There needs to be a mechanism for an inspection and a claim to be processed at the same time. In our experience, current practice can result in NERA conducting an inspection and a worker not being aware that they can take a claim at the same time. Subsequently, this can result in a worker being out of time when they go to submit their claim to the LRC.

Recommendation

- Ensure that the interface between the LRC and NERA is coordinated and the worker is informed of their rights.

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