



CORPORATE FEATURE: COVID-19 PRESENTS NEW LEGAL CHALLENGES FOR BUSINESSES

COVID-19 is already presenting new legal challenges for businesses and employers in a number of key areas, including employment law, data & privacy and landlord and tenant matters, says the corporate law practice BHSM LLP. In an interview with Fingal Network Magazine two of its principals – Mark Homan, Managing Partner, and Richard Lee, Head of Employment – provide practical advice on how to avoid the potential pitfalls in these areas.

“As a result of COVID-19, issues such as remote working, revised work safety protocols and the impact of the vaccinations and return to work are only some of the employment related issues faced by business owners in Ireland over the next few years. The fallout from COVID-19 will undoubtedly create employment related challenges for employers and employees into the future,” says BHSM’s Head of Employment, Richard Lee.

Since early last year the firm has experienced a surge in enquiries from clients needing advice, often at very short notice, on the dos and don’ts of managing employees during a national emergency, which included laying off employees where required,

the introduction of short time working, temporary closures, redundancies and the legal ramifications of COVID-19 on such issues as annual leave, payment of wages and other terms and conditions of employment.

“Putting processes in place to facilitate and manage new emerging workplace environments (to include remote working) will become the norm” says Lee. “The issue of remote working has already been considered in the Workplace Relations Commission with a claimant successfully bringing a claim for constructive dismissal following a refusal of the employer to consider a remote working proposal. We will inevitably see an increase in employment related litigation as a result of the pandemic and, with this in mind, employers really should consider and review their employment practices because the workplace is changing for the foreseeable future, possibly forever.”

Lee also counsels caution in respect of existing employment contracts and policies and procedures. “It is crucial that employers ensure that they actually have contracts of employment in place for all employees. It is a legal requirement and you would be surprised at the number of businesses we encounter that don’t meet their statutory requirements on contracts, policies and procedures. In addition, we would recommend that contracts and policies are reviewed and updated regularly to take account of updates in employment legislation and to ensure that these documents are fit for purpose, particularly in the midst of a pandemic.”

Procedures in relation to workplace investigations, disputes and disciplinary matters require similar attention, Lee says. “Those procedures need to be robust and clearly set-out to employees. If this is not done, employers are immediately on the back

foot in respect of any employment related claims brought by employees. It is therefore advisable that employers review their employment related documentation and seek legal advice prior to rolling same out to employees.”

BHSM advise that companies should review their employment policies and contracts on a regular basis and at least every two years. There are a number of good reasons for this advice, Mark Homan emphasises. “The employment law legislation landscape is changing rapidly, and even more quickly with COVID-19, which means that policies can become out-of-date within a very short period.”

Another factor is the individuality of each business. “The difficulty for employers is that their policies and procedures are usually unique to them and these change as they grow. What suits a business when it’s just starting out, can look remarkably different



Mark Homan



in five years time and employment documentation needs to be updated to account for that. If you don’t think about it until a claim comes in, that’s far too late,” Homan says.

Like any service, frequent review need not be an elaborate and expensive affair, he adds. “Frequent reviews might be as simple as just touching base with your legal support; it’s a health check. The time and money spent reviewing HR policies in a systematic way can result in tremendous savings compared to dealing with a future issue down the line, like unfair dismissal, discrimination or equality claims. The cost of review can pale into insignificance compared to the ultimate cost of a claim.”

Privacy & Data Protection

Compliance with data protection legislation is another important area that businesses need to be sure they are on top of, says Homan. “Companies need to have their privacy policies fully up-to-date and in line with GDPR. It’s become such a prevalent area of law in its own right that we now have a specialist department working alongside the employment department to deal with it.

“That legislation was first introduced in 2018 and



since then the whole area has been changing at 100 mph. Businesses are still grappling with it and you’d be surprised at the number which haven’t brought their policies up to date. It’s not at the forefront of their thinking – but it should be, because the regulations are strict in terms of GDPR breaches and reporting them. Failure in relation to GDPR can land businesses in big trouble, so that needs to be looked at in tandem with the employment issues,” Homan says.

Property

Landlord and Tenant issues is the third area which has resulted in a considerable increase in client instructions as a result of COVID-19. “This has affected both sides of the contract, whether a business is receiving or paying rent. We’re advising business in relation to bespoke strategies around that, including developing appropriate pre-litigation strategies, as well as acting in litigation itself,” Homan says.

“Here, too, the value of getting ahead of the issue is evident for either landlord or tenant. Based on the problems that we have seen to date it, is clear that for any business which is impacted by the COVID-19 restrictions there is merit in getting their leasing documentation reviewed and in putting together quarterly and yearly projections on rental payments – be that as an expense or an income.”

BHSM – A fast growing legal practice

BHSM is a fast-growing, full service corporate law firm based in Dublin. Founded in 2012 as Baily Homan Smyth McVeigh, in less than a decade it has grown to a team of over 40 partners, solicitors and support professionals. Its main practice areas are: Corporate, Banking & Finance, Employment, Litigation & Dispute Resolution, Real Estate and Insolvency & Corporate Restructuring and it also has a private client offering. It has become widely recognised for its service provision in these core areas and in other niche sectors such as Life Sciences and the legal areas of Employment Law and Data & Privacy.

The firm, which will celebrate 10 years in business in 2022, works with clients across the full spectrum – from innovative start-ups and fast-growing indigenous medium-sized companies to large multinationals, with a depth of experience in such business areas as finance, agriculture, renewable energy, retail and hospitality.

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