CLIENT UPDATE

GENERAL DATA PROTECTION REGULATION TO HAVE MAJOR IMPACT ON IRISH LAW FROM MAY 2018

The General Data Protection Regulation (GDPR) will replace the previous European Directive on the 28th of May 2018.

Although it is a piece of European legislation, the Regulation will have "direct effect", which means it will automatically become part of Irish law.

The Regulation will bring about a number of major changes to Data Protection law in Ireland and enhance the level of data protection for individuals across the continent.

Firstly the GDPR will place a much higher threshold on companies in obtaining consent from individuals to store and process their personal data. Consent must be freely given, informed, specific and unambiguous. Moreover,the Regulation implies that it will require an affirmative act by individuals.

Therefore companies that wish to hold data will be required to have an 'opt-in' policy for the benefit of their customers.

The Regulation will also enhance the rights of individuals in obtaining copies of their data from companies.

The time for processing a data access request has been reduced to 30 days and will now be free of charge.

The GDPR also expressly recognises the right to be forgotten (that is to have your data deleted when no longer relevant) and the right to data portability (the right to have your data be easily accessible and transferable).

Companies will also have additional duties when there are victims of a security breach. Any data breach must be reported to the Data Protection Commissioner within 72 hours, and to the individuals concerned if it affects their privacy rights.

Any organisation that engages in regular and systematic monitoring of large amounts of data will be required to appoint a Data Protection Officer.

The GDPR allows for claims to be taken for material and non-material damages or breaches. A company may be fined for a breach for up to €20 million or 4% of annual turnover of the previous year.

IN THIS ISSUE

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DEFAMATION

RYANAIR LOSES DEFAMATION CASE AGAINST PILOTS AFTER FAILING TO SHOW MALICE

The airline Ryanair has lost a High Court action for defamation against three pilots.

Ryanair had taken the action after an email was sent in September 2013 with the subject "Pilot update: what the markets are saying about Ryanair".

Ryanair's case was that the article was defamatory as it implied that the company was involved in market manipulation.

The case went to trial before a jury, who interestingly agreed with Ryanair's case that the email's contents were defamatory, but still declined to find in their favour.

This was because the pilots had successfully raised the defence of 'Qualified Privilege' as provided for under the Defamation Act 2009.

This is a statutory defence which protects an individual from statements made to someone who has an interest in receiving the information, as long as the making of the statements are not motivated by malice.

An example of qualified privilege would be if someone approached their employer to inform them of their suspicions that another was stealing. Though such a statement is defamatory, the person is protected if it was made in good faith.

The key question for the jury to consider in Ryanair's case was whether the Defendants could rely on this defence, and whether the contents of the email were published in good faith.

Ryanair had argued that one of the pilots was motivated by malice, as he had been dismissed in 2013 several months before his retirement over an interview he gave to Channel 4.

However the jury disagreed with this and found that there was no malice, and the defence of qualified privilege was successful.

The Judge awarded costs against Ryanair, which would be expected to be substantial as the trial ran for seven weeks in the High Court.

PERSONAL INJURIES

RECENT COURT OF APPEAL DECISIONS SEE AWARDS BEING SLASHED

A new and developing approach to the assessment of damages for personal injuries in the Court of Appeal has become evident from recent cases.

Over the past two years, a significant amount of High Court personal injuries cases have had the amount of damages drastically reduced on appeal, and in some cases more than halved.

In the case of Payne v Nugent [2015] IECA 268 the Plaintiff had their award for general damages of €65,000 cut to €35,000. In the case of Nolan v Wirenski [2016] IECA 56 the Court of Appeal reduced the awards of damages for the Plaintiff by nearly 50%.

Similarly in the case of Shannon v O'Sullivan [2016] IECA 167 both Plaintiffs had their awards reduced by half.

The overarching theme evident from the judgments released in the above cases is that personal injuries awards must be proportionate, and that "modest injuries deserve modest awards".

The developing approach seems to place a great emphasis on the "spectrum" of personal injuries and their corresponding value, with injuries at the very top end of the spectrum justifying general damages of €450,000.

Therefore in deciding whether a High Court award is proportionate, the Court of Appeal has been considering the injuries in the context of the spectrum and how they relate to the most catastrophic injuries.

If the High Court therefore awards over €100,000 for injuries in which a plaintiff has made a full recovery, the Court of Appeal may consider this disproportionate in the context of €450,000 being the maximum damages awarded for a catastrophic injury.

Although the Court of Appeal has reiterated that it is required to be cautious and avoid second-guessing a trial judge's determination, the recent decisions are indicative of their willingness to overturn awards where they feel the sum is disproportionate.

SEXUAL HARRASSMENT

KEEPING SEXUAL HARASSMENT OUT OF THE WORKPLACE

The topic of sexual harassment has received much attention in the media over the past number of months.

Now more than ever it is important for employers to be aware of their obligations to ensure that such behaviour is kept out of the workplace.

The law relating to sexual harassment is governed by the Employment Equality Acts.

Under the Act, harassment is defined as "unwanted conduct" which is related to any of the nine discriminatory grounds, one of which is gender. The "unwanted conduct" can include speech, gestures or the production and display of words, pictures or other material.

The conduct does not have to emanate from another employee, but can come from a client, customer or other business contact.

If one feels that they have been a victim of sexual harassment, they have six months to bring a claim before the Workplace Relations Commission under the Employment Equality Acts. This time limit may be increased to 12 months if 'reasonable cause' is shown for the delay.

If the sexual harassment is so serious that it causes a significant impact on their health, then they may consider taking personal injuries actions to the courts.

For employers it is advised that they take preventative measure to ensure that they operate a safe workplace and have procedures in place to deal with any concerns relating to sexual harassment. This would involve putting in place effective grievance procedures and creating a comprehensive policy for ensuring that the dignity of all employees is protected at work.

All employees should be made aware of the expectations and responsibilities that they have under this policy.

It is not sufficient to just keep your policy 'on the shelf'; an employer is expected to be proactive with their obligations.

Employees should be made actively aware of this policy and if necessary given training on what their rights and responsibilities are.

Such steps are advisable to protect an employer from liability for sexual harassment under the Acts.

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