



THE LABOUR COURT

An Chúirt Oibreachais



Labour Court User's Guide

This leaflet is provided as an information guide only and should be read in conjunction with the Labour Court Rules 2020, available on www.labourcourt.ie

THE LABOUR COURT

The Labour Court is an independent workplace dispute resolution body providing a comprehensive service for the resolution of disputes concerning industrial relations and employments rights. The Labour Court is publicly funded and, in general, provides its services free of charge to the public¹.

The Labour Court deals with two distinct types of cases. In industrial relations disputes it operates as a tribunal which hears both sides to a dispute and issues a written recommendation setting out its opinion on the merits of the dispute setting out how the particular dispute should be resolved. The parties to the dispute are expected to give serious consideration to the Court's recommendation.

In employment rights cases, the Court hears appeals of Adjudication Officers' decisions under all of the various employment law statutes where an individual worker makes a complaint alleging a breach of their statutory employment rights by their employer. These cases concern the statutory entitlements of workers, therefore, the Labour Court issues written decisions which are legally binding and enforceable on the parties. Decisions can be referred to the High Court, either by way of an appeal on a point of law or by way of judicial review of the proceedings of the Court.

The Court has the power to make rules for the regulations of its proceedings. Copy of the Court's current Rules are available at www.labourcourt.ie

1. If you wish to make an appeal but have failed to appear at the first instance hearing at the Workplace Relations Commission you will have to pay a fee of €300 when lodging your appeal.

How the Labour Court Works

The Labour Court operates by way of oral hearings before a division of the Court made up of three people. Each division for a hearing consists of a Chair/Deputy Chair and a representative of both employers and workers, participating on an equal basis.

Hearings relating to industrial relations cases are held in private, while hearings relating to employment rights cases are, subject to certain exceptions, held in public².

The primary role of the Labour Court in industrial relations disputes is to make recommendations for the resolution of disputes when other efforts have failed to resolve the dispute, i.e. workers and employers should, and in most cases are required to, first effectively utilise direct means of resolution and other machinery of the State e.g. the Workplace Relations Commission (WRC) Conciliation Service or the WRC Mediator/Adjudication Service. Where every effort to resolve the dispute has been made at the WRC and the dispute remains unresolved the matter may then be jointly referred to the Labour Court.

In employment rights cases, the worker must first refer their case to the WRC for adjudication. Where either party is dissatisfied with the decision of the Adjudication Officer, that decision can be appealed to the Labour Court. It is important to note that a case on appeal before the Labour Court is heard afresh (de novo) as though the first instance stage had not occurred. No new claims can be introduced at the appeal stage.

There are five stages to cases before the Labour Court and the sequencing will vary depending on whether the appeal is an industrial relations referral/appeal or an employment rights appeal.

1. Referral of dispute/appeal
2. Arrangement for a Labour Court hearing
3. Parties lodge written submissions
4. Hearing before the Court
5. Court issues its Recommendation/ Decision

2. A party to an employment rights appeal may apply to the Labour Court to have the hearing, or part of the hearing, conducted in private due to the existence of special circumstances.

Stage One: Referrals and Appeals

(a) Referral of Industrial Relations Cases to the Court

Referral by the WRC following conciliation

Where an industrial relations (normally collective) dispute - generally concerning rates of pay and/or conditions of employment and involving workers/trade unions and their employers - has not been resolved using the conciliation services of the WRC, both parties may request the Court to investigate the dispute. That request will be conveyed to the Court by the WRC.

Appeal of a Recommendation of an Adjudication Officer

Where a case under the Industrial Relations Act involving an individual worker has been heard by an Adjudication Officer and a Recommendation has been issued, either party to the dispute may appeal the Recommendation to the Labour Court; such appeals must be made to the Labour Court within **six weeks** of the date of the Adjudication Officer's Recommendation. For the avoidance of doubt, the date of the Adjudication Officer's Recommendation is counted as day 1 of the six weeks. Such referrals must be made using the Labour

Court Industrial Relations S13(9) Appeal Form available at www.labourcourt.ie.

Appeals sent by post can be given to the Court in the ordinary course of the Court's business and the day of receipt will be recorded using a date stamp manually applied during the course of ordinary business on the day the appeal is received. Appeals submitted by email to **appeals@labourcourt.ie** can be made up to 12 midnight on the last day of the 6-week period and the date of receipt will be the date and time automatically recorded on the email system.

The Court has no power to extend time for the making of an appeal of a Recommendation of an Adjudication Officer made under the Industrial Relations Act, 1969.

Direct Referral by Worker(s)

A worker or workers in a trade dispute, or a trade union on his/her or their behalf, may directly refer a case to the Labour Court under Section 20(1) of the Industrial Relations Act, 1969, on condition that the worker(s) agree(s) in advance to accept the Labour Court's Recommendation. This may happen, for example, where the worker/trade union initially referred the dispute to the WRC Adjudication Service

but the employer did not agree to have the case heard by an Adjudication Officer. In such a case the WRC will inform the worker/trade union that the employer has not agreed to attend an Adjudication Officer hearing and that a direct referral may be made to the Labour Court under Section 20(1) of the Industrial Relations Act, 1969. Such referrals may be made using the relevant Section 20(1) Form which is available at www.labourcourt.ie

Direct Joint Referral by Worker(s) and Employer

A worker or workers and their employer who are engaged in a trade dispute may refer the dispute directly to the Labour Court under Section 20(2) of the Industrial Relations Act, 1969 on condition that both parties agree in advance to accept the Labour Court's Recommendation.

(b) Referral of Appeals of an Adjudication Officer's Decision to the Court in Employment Rights Cases

The Court hears appeals under all of the various employment law statutes where an individual worker complains of a breach of their statutory employment rights by their employer. Either or both parties may refer an appeal of an Adjudication Officer's Decision in employment rights cases to the Labour

Court within **42 days** of the date of the Adjudication Officer's Decision, using the Labour Court Employment Rights Appeal Form which is available at www.labourcourt.ie

The time limit of **42 days** starts from and includes the date of the Adjudication Officer's Decision. For the avoidance of doubt, the date of the Adjudication Officer's Decision is counted as day 1 of the 42 days.

Appeals sent by post can be given to the Court in the ordinary course of the Court's business and the day of receipt will be recorded using a date stamp manually applied during the ordinary course of business on the day the appeal is received. Appeals submitted by email at **appeals@labourcourt.ie** can be made up to 12 midnight on the 42nd day and the date of receipt will be the date and time automatically recorded on the email system.

Where an appeal has not been received within the 42-day period, the appellant can apply to extend the time for bringing an appeal in accordance with Section 44(4) of the Workplace Relations Act, 2015. That application will require to be supported by any relevant argument as part of the written submission required to be made to the Court as part of the substantive appeal [see below]. An application for extension of time is not a stand alone application and must be made as part

of the appeal. The Court may extend the time limit but only in exceptional circumstances.

The purpose of an appeal is not to review the Adjudication Officer's Decision but rather to hear the case afresh.

NOTE: Should any parties to an appeal want the Labour Court to correspond with them by electronic means, they must give notice in writing of their consent to receiving correspondence in that manner.

Stage Two: Arrangements for a Labour Court Hearing

- In an industrial relations dispute, where there is agreement at conciliation to jointly request an investigation of the dispute by the Court, the WRC will, if it is satisfied to do so, refer the matter to the Court. The Programming Section of the Court will then make contact with both parties giving details of when the written submissions will need to be received by the Court and giving a time, date and venue for the hearing.
- Where the Court receives an appeal of an Adjudication Officer's Recommendation under Industrial Relations legislation/Decision under Employment Rights legislation or a direct referral under Section 20(1) or Section 20(2) of the Industrial Relations Act, 1969, the Programming Section will similarly make contact with the parties giving details of when the written submissions will need to be received by the Court and giving a time, date and venue for the hearing. Appeals Forms may be downloaded from the Labour Court website www.labourcourt.ie and must be returned together with a copy of the Adjudication Officer's Recommendation/Decision.
- In the case of direct referrals by a worker(s) under Section 20(1) of the Industrial Relations Act, 1969, a Section 20(1) Form may be downloaded from the Labour Court website www.labourcourt.ie. This Form must be signed by the worker confirming that he/she will be bound by the outcome.
- Labour Court hearings take place in Dublin and a number of venues around the country. If an interpreter or other support is required, this request should be stated on the form when submitting the appeal/direct referral. Hearings are normally scheduled for 90 minutes but depending on the complexity of the case may be scheduled for a longer period.

Stage Three: Parties make written submissions

Submissions in cases referred under the Industrial Relations Acts and appeals made under Employment Rights Enactments other than the Employment Equality Acts and the Unfair Dismissals Acts

In respect of an employment rights case, the parties to an appeal must provide the Labour Court with **four copies** of their written submissions not later than **10 working days** in advance of a hearing. A further copy must be exchanged with the other side. Confirmation that the submissions have been exchanged between the parties must be given to the Court.

In respect of an industrial relations case, the parties to an appeal must provide the Labour Court with **six copies** of their respective written submissions not later than **7 working days** in advance of the date set for the hearing.

The purpose of a written submission is to aid the Court members' understanding of the party's position/arguments on the issue(s) being complained of or in dispute. The submission is an opportunity for each party to set out their case and state the reasons why they believe that their case should succeed. In employment rights cases, in addition to the submissions,

parties are required to submit details of witnesses, if any, to be heard as part of an appeal; witness statements should also be included. The Court does not take sworn evidence in industrial relations cases.

The main body of the written submission should be no more than 4 to 5 pages with relevant supporting documentation included as appendices. If a party wishes to draw the Court's attention to legal precedents, then a copy of these should be included with the submission. All pages of the submission, the appendices and any other submitted documentation should be numbered for ease of referral at the hearing.

Submissions of Appeals under the Employment Equality Acts and the Unfair Dismissals Acts

In the case of appeals under the Employment Equality Acts and the Unfair Dismissals Acts, different arrangements apply. In such cases, the Court will require the Appellant to submit **four copies** of its submission within **three weeks** of lodging the appeal setting out the factual and legal issues relied upon. A further copy must be sent by the Appellant to the Respondent. The Respondent will then be required to lodge **four copies** of its submission within

a further **three weeks**, and a further copy should similarly, be copied by the Respondent to the Appellant at the same time. Confirmation that the submissions have been exchanged between the parties must be given to the Court.

The submissions should be accompanied by a statement of the number of

witnesses, if any, that the party filing the submission intends to call at the hearing of the appeal. This information is required so as to facilitate the Court in estimating the time required for the hearing. When all such submissions have been received, then and only then will these cases be set down for a hearing.

NOTE: Submissions/documents/appendices provided to the Adjudication Officer at the first instance hearing are not passed to the Labour Court for the appeal – the WRC and the Labour Court are separate bodies. If you wish to bring any documentation to the Court’s attention, then it must be included with your submission to the Court.

The written submission should contain the following:-

A statement of the case: Clearly identify the issue(s) in dispute/details of the claim giving rise to the appeal and if relevant, the particular sections of the legislation being relied on.

Background: A concise statement of the factual background. In collective disputes include details of the company/ organisation, the number of staff employed, details of relevant terms and conditions of employment. In individual disputes include details of dates of employment, position(s) held and rate of pay. Give details of when the issue first arose, and the steps taken to try and resolve the dispute.

Arguments: Set out the key points in support of the case. Reference and include any Company/Union Agreements

or previous cases that support the arguments. Give a summary of any legal arguments and case law that will be relied upon in the course of an appeal. Include copies of cases being relied upon in support of the case, identify relevant paragraphs. Try and deal with arguments that the other party might make.

Out of time appeals: Where the appeal is out of time, the grounds on which an extension of time is sought.

Witnesses: The names of witnesses, if any, the party proposes to call to give evidence at the hearing of the appeal and a summary of the evidence each witness is expected to give.

Conclusion: Summarise the arguments and indicate what the Court should recommend/decide and why the case should succeed or not succeed.

Stage Four: Hearing before the Court

Conduct of the Hearing

The conduct of the hearing will be regulated by the Chairman of the Division of the Court hearing the case. A party to the case may be represented by:

- A Trade Union Representative
- A Representative of an Employers Organisation
- Solicitor or Counsel (consent of the Court is required in Industrial Relations cases)
- With the consent of the Court, any other person of their choosing

A Court Secretary attends the hearing to support the members of the Division in an administrative capacity. The Court Secretary takes no official record of the hearing. Any brief notes that may be taken by the Secretary are a personal aide memoire and do not form part of the Court record or of the Court file. As a matter of practice the Court Secretary is required to destroy their personal notes, if any, once the Court decision issues.

Court Proceedings on the Day of the Hearing

Parties should arrive at the hearing venue at least 15 minutes before the hearing

commences. The Court Secretary will be available on arrival to explain the formalities and protocol and for the parties to sign in before the hearing begins.

The Court Secretary will supply the names of the Court members prior to the start of the hearing. During the hearing the Chair of the Court may be addressed as "Chairman" or "Madam Chairman" and the members of the Court as Mr X or Ms X.

The Court Secretary shall announce the case and the parties will stand when the Court enters and leaves the Court. Except in such cases as the Court considers it convenient to take the written submissions as read, each party will read their submission in turn and will then be invited to comment on the other party's submission. This should not be taken as a further opportunity to re-state their case; rather it is simply an opportunity to comment on the opposing submission. To fully understand the case being presented, the Court will then proceed to ask questions of both parties.

The Court members are not advocates for either side. However, in an appeal made under an employment rights enactment, where one party is not represented by legal counsel or otherwise, the Court

may provide some assistance during the course of the hearing. Any such assistance will be provided within the limits of the Court's obligations to conduct a fair hearing.

All documentation submitted to the Court either in advance, during or after a

hearing is also made available to the other party in the case. The Court will not accept information from one party on a private and confidential basis. Information/documentation may not be furnished to the Court following a hearing unless the Court has specifically requested such information/documentation.

NOTE: The Court does not make a record of the hearing available to the parties. With the permission of the Court, in employment rights cases only, parties may arrange to have a court stenographer present at a hearing, at their own expense. The Court and the opposing party should be advised in advance of such arrangements.

Witnesses and Examination under Oath

In employment rights cases, the Court may take sworn evidence. Witnesses will be required to swear an oath or make an affirmation before the commencement of the hearing.

Attendance of witnesses is the responsibility of the party calling the witness. The Court may decide that it is not necessary to hear from all

witnesses identified by the parties. In limited circumstances, the Court may compel a witness to attend by issuing a formal witness summons. Witnesses are first questioned by their own side, and then cross examined by the other side; members of the Court may also ask questions of the witnesses in order to clarify what may in the view of the Court be unclear or in order to complete the incomplete. The Court's questioning of a witness is not a form of cross examination.

Stage Five: Court issues its Recommendation/Decision

After the hearing the Court will issue a written Recommendation/Decision as soon as is practical after the close of the hearing, usually within three weeks in industrial relations disputes and within six weeks in employment rights cases. There is no avenue of appeal from a Recommendation of the Labour Court in industrial relations cases.

Employment rights Decisions are appealable on a point of law only to the High Court and the Court's proceedings may be subject to judicial review.

The Labour Court cannot award legal costs³.

After the Recommendation/Decision is issued to both parties it is published on the Labour Court website www.labourcourt.ie

3. Under the National Minimum Wage Act, 2000 Act, the Court has the power to award reimbursement of reasonable expenses to an employee which were incurred in the bringing of a complaint under that Act.



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