



## Alternative Dispute Resolution (ADR) – Options to Deal With Outstanding ER Issues (Caseloads) Post Covid-19

### Introduction

There is no doubt the Covid –19 pandemic brought significant and immediate challenges to the role of HR in every organisation irrespective of size. Whether classed as an essential service or not, employers had to change the way they worked and fast. This included considering a broad range of measures from remote working, staggered shifts / breaks and changes to the work environment to ensure social distancing requirements.

The impact too on employees is challenging where their personal income has reduced arising from the introduction of wage cuts, short time working or being put on temporary layoff. Also a key factor is whether an employer implemented the Emergency Covid-19 Temporary Wage Subsidy Scheme (WSS), or placed employees on temporary layoff to access the temporary Pandemic Unemployment Payment.

While all of these measures were implemented on a temporary basis in a direct response to the Covid -19 pandemic, the impact of these employer decisions in a post Covid-19 work environment may still lead to grievances and employee relations (ER) issues when the company tries to return to normal business.

It is likely that many companies will need time to rebuild their businesses and may not be in a position to reemploy all employees. In addition, many ER issues, both individual and collective, that were important before the Covid-19 pandemic may now have a different context for employees, In House Consultation forums or in unionised environments, for Union Committees. Amongst the more obvious issues as may be expected to arise will be those relating to restructuring / redundancy, staffing and recall procedures, work assignment and organisations issues, selection criteria underpinning employer decisions and pay restoration or reductions in a post Covid-19 environment.

The following are the typical procedural routes to deal with employee challenges, albeit individual or collectively, that an employer will need to consider in a post Covid-19 environment.

### Traditional Route

While many employers should first utilise internal procedures to manage individual grievances and collective disputes, the normal path under those established procedures is to refer unresolved issues or disputes to the Workplace Relations Commission (WRC) and if required,

ultimately to the Labour Court. This established statutory third-party resolution process is generally effective but can be time consuming.

The WRC suspended its services (adjudications, hearings, face to face meetings) on the 12 March 2020. It is highly likely that the period of suspension will extend until the emergency measures are lifted on the 05 May 2020 (date at time of writing article). It is inevitable that a back log of workload will now arise thereby creating delays in WRC services.

## Alternative Dispute Resolution

As such it may be an opportune time for employers to consider other forms of Alternative Dispute Resolution (ADR). In its simplest form the term ADR covers a wide variety of processes which are aimed at resolving disputes without recourse to legal action. The main ADR processes being Mediation, Arbitration, Conciliation and Adjudication. The choice of ADR may depend on the dynamics of the issue and the willingness of the parties to engage.

## ADR in the Workplace

However, from a workplace viewpoint, the most effective ADR interventions to consider are Mediation, Conciliation and for bigger organisations with more complex industrial relations / employee relations issues an Internal Resolution Tribunal to expedite issues in dispute. The purpose of these alternative interventions is to resolve the grievance / dispute without recourse to the Workplace Relations Commission or civil action through the Courts.

## Mediation and Conciliation

In the workplace setting there is little difference between Mediation / Conciliation and facilitation. Many companies use mediation as part of the grievance process. Some larger companies have nominated employees who are trained mediators, and who can independently assist fellow colleagues in resolving their conflict. More often the case external mediators are appointed who specialise in resolving workplace conflict. In the broader setting of a collective workplace issue(s), an experienced mediator will try to facilitate discussions between parties and with their agreement to mediate an agreed resolution to the issues in dispute with them.

## Internal Resolution Tribunals

In recent years there has been a considerable growth in the number of organisations, primarily in the unionised semi-state sector, who have established joint employer / employee (trade union) internal resolution tribunals to resolve local issues and disputes internally.

The first point in the process is normally for a mediation / conciliation meeting between the parties which is independently facilitated by a jointly agreed mediator to address the issues. Any issues not resolved at mediation are then jointly referred to a hearing of the internal Tribunal for a final recommendation / decision. The actual resolution process varies

depending on the organisation, but the common purpose is to address issues internally in a relatively short time frame.

### Proactive Engagement is Essential

As stated in the Law Reform Commission's Report, "Alternative Dispute Resolution – Mediation and Conciliation (2010:102), the proactive engagement with conflict, although initially seen as a less favourable option, may often produce positive results, which is why early dispute resolution in workplace disputes is important. Through engaging in difficult conversations and dealing with conflict situations, employees are likely to be more satisfied, reducing the stress and dissension in the workplace; and thus, increasing job satisfaction and improving productivity. ADR processes, such as mediation and conciliation, can assist in engagement in difficult conversations and can result in the early resolution of workplace disputes." (Report on Alternative Dispute Resolution – Mediation and Conciliation (2010:102))

### Conclusion

In conclusion, employers now need to start thinking proactively about how they will deal with the potential for, and range of, employee grievances and disputes in a post Covid-19 work environment. Perhaps it is time to consider alternative ADR processes that will help create a more harmonious and sustainable work environment for the future.

If any business has questions, or need further guidance or support on the issues discussed in this article, please do get in touch with me at [paul.obrien@stratis.ie](mailto:paul.obrien@stratis.ie).

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