



Irish court clamps down on employee injunctions in landmark judgment

By **Niall Pelly** - 26 February 2021

Last week the Court of Appeal handed down a landmark judgment which will significantly scale back the potential for employees to seek an injunction to prevent them being removed from their job. The judgment should make it far easier for businesses to remove poor performers.

The key takeaways of this ruling are:

- The judgment will rebalance power dynamic between employees and employers
- The decision could stem the flow of employment injunctions which are a huge time and cost burden on businesses

Employee injunctions pose a huge problem for Irish businesses seeking to terminate the employment of underperforming senior management. By effectively restricting injunctions to cases where an employee is threatened with dismissal for misconduct, this Court of Appeal decision (in *Donal O'Donovan v Over-C Technology Limited and Over-C Limited*) is likely to significantly reduce the circumstances in which an injunction can be successfully sought.

The case related to the termination of employment of the Chief Financial Officer of Cork-based technology company, Over-C Technology Limited in January 2020. The employee was still on his probation period at the time. After being told his contract was being terminated, he successfully applied for an injunction to restrain the company from effecting the termination. The Court of Appeal overruled the High Court decision to grant an injunction preventing his dismissal.

The original High Court decision attracted considerable attention as it undermined the ability of an employer to dismiss an employee during their probation period.

Employee injunctions are typically sought by an employee to restrict the termination of their employment. These orders force businesses to reinstate the employee into their role until a full hearing, which usually take at least 9-12 months to be heard. This

means the business has to retain the employee on their payroll in the meantime, which can be extremely costly, or effectively forces the employer to “buy them out” of their contract, by paying them a large premium to leave.

Under the terms of these injunctions employers are often unable to publicise the departure or appoint a successor, which can create significant disruption if the employee concerned holds a senior position.

This may be one of the most important employment law decisions in Ireland in years. It will considerably rebalance the power dynamic between employees and employers during contentious dismissals.

Injunctions can cost businesses hundreds of thousands of euros to defend, and can take months if not years, to settle. But it's not just the cost that concerns employers. Often the issue of greater concern is the uncertainty, instability, and managerial deadlock that results - particularly when it involves member of senior management.

This case is particularly important in making it clear that injunctions should be limited only to cases where an employee is being dismissed for misconduct, and especially so where an employee is still in their probation period.

If you would like to discuss the above case or if you have any other queries related to employment law in Ireland, please get in touch with Partner and Head of Dublin office [Niall Pelly](#).