Ireland: Industrial relations profile

Facts and figures
Area: 70,280 square kilometres
Language: English and Irish (Gaeilge)
Capital: Dublin
Currency: Euro

Economic background

<table>
<thead>
<tr>
<th>Metric</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>GDP per capita (2010) (in purchasing power standards, index: EU27=100)</td>
<td>128</td>
</tr>
<tr>
<td>Real GDP growth (% change on previous year) (2010)</td>
<td>-0.4%</td>
</tr>
<tr>
<td>Inflation rate (2011) (annual average rate of change 2010–2011)</td>
<td>2.5%</td>
</tr>
<tr>
<td>Average monthly labour costs, in € (2010)</td>
<td>€3,375.66</td>
</tr>
<tr>
<td>Average labour productivity (% change on previous year)</td>
<td>n.a.</td>
</tr>
<tr>
<td>Gross annual earnings, in € (2010)</td>
<td>€35,625</td>
</tr>
<tr>
<td>Gender pay gap (2009)</td>
<td>12.8%</td>
</tr>
<tr>
<td>Employment rate (15–64 years) (2010)</td>
<td>60.2%</td>
</tr>
<tr>
<td>Female employment rate (15–64 years) (2010)</td>
<td>56.3%</td>
</tr>
<tr>
<td>Unemployment rate (15–64 years) (2010)</td>
<td>13.4%</td>
</tr>
<tr>
<td>Monthly minimum wage</td>
<td>€1,461 for full-time adult employees on minimum wage of €8.65 per hour. (Please note the minimum wage was cut to €7.65 per hour for a short period in 2011 but was then restored)</td>
</tr>
</tbody>
</table>

Source: Eurostat; Central Statistics Office, Ireland

Industrial relations characteristics, pay and working time

<table>
<thead>
<tr>
<th>Metric</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trade union density (%) (2009) (Trade union members as a percentage of all employees in dependent employment)</td>
<td>34%</td>
</tr>
<tr>
<td>Employer organisation density (%) (Percentage of employees employed by companies that are members of an employer organisation)</td>
<td>No information</td>
</tr>
</tbody>
</table>
| Collective bargaining coverage (%)  
(Percentage of employees covered by collective agreements) | 44% (Estimate) |
|----------------------------------------------------------|---------------|
| Number of working days lost through industrial action  
per 1,000 employees (2011) | 3,695 |
| Collectively agreed pay increase (%)  
(annual average 2010–2011) | No formal data for 2010–2011 but research by employer body IBEC indicates that companies agreeing pay increases agreed a median figure of 2%. This was also backed by coverage of collectively agreed increases by specialist publication IRN. |
| Actual pay increase (%)  
(annual average 2009–2010) | -2.5% (hourly earnings) |
| Collectively agreed weekly working hours | 39 |
| Actual weekly working hours (2011) | 38.2 |

Sources: Eurostat; Central Statistics Office, Ireland; European Industrial Relations Observatory (EIRO)

Background

Economic context

Ireland is a small open economy, heavily dependent on international trade and foreign direct investment, especially from US multinationals. From the mid-1990s, the Irish economy expanded at historically unprecedented rates, which spurred high levels of employment growth and job creation and unemployment dipped to around 4.4% at the height of the country’s economic boom. However, during 2008, the economy was hit by a serious crisis, influenced both by international economic and financial turbulence, and domestic factors including a failed banking system and the bursting of a huge property ‘bubble’. There has been substantial restructuring and job losses since 2008, and unemployment rose rapidly to 14.5% in December 2011 as a result of the crisis. The Fianna Fail/Green coalition government imposed a number of austerity measures during 2009–2010 in an attempt to stem the crisis. But in November 2010, mounting debt problems forced the Irish government to apply for a €90 billion bailout from the EU and the International Monetary Fund. The EU–IMF Programme of Financial Support for Ireland is being implemented under a new Fine Gael/Labour coalition government which was elected in February 2011. In 2011 and into 2012 Ireland had successfully completed a number of reviews under the Programme.

Legal context

The industrial relations system has historically been characterised by ‘voluntarism’. In other words, this meant minimum intervention by the law rather than non-intervention by government in collective bargaining. Irish voluntarism evolved from the United Kingdom (UK) system in the years 1871 to 1906. In the collective industrial relations arena, this voluntarism traditionally involved an immunities-based, rather than a rights-based, legal system. Immunities were available
to trade unions for actions that would otherwise have been illegal in common law. In 1946, these immunities were complemented by the state provision of a non-legalistic dispute resolution institution – the Labour Court (An Chúirt Oibreachais).

In recent times however, there has been growing legalisation of the employment relationship – particularly the growth of individual rights-based employment law resulting from both domestic law and European labour law (see ‘Industrial relations context’, below).

**Industrial relations context**

The industrial relations system has changed quite significantly over the past 20 years or so, with some industrial relations commentators referring to a gradual erosion of voluntarism and collectivism and growing legalisation of the employment relationship – particularly the growth of individual rights-based employment law resulting from both domestic law and European labour law. Examples of the numerous areas of the employment relationship now regulated by individual rights-based employment law include unfair dismissal, redundancy compensation, health and safety, equality, maternity protection, adoptive and parental leave, atypical work and working time. In addition, a national minimum wage (NMW) was introduced in 2000 and is still one of the highest in the European Union at €8.65 per hour.

The growth of individual employment law has led to the development of an increasingly complex system of institutional arrangements that operate in a quasi-legalistic fashion to adjudicate on cases. In 2011, Minister for Jobs, Enterprise and Innovation, Richard Bruton launched a reform of the current employment rights institutions. Under the plan, the existing five workplace relations bodies will be replaced by a new two-tier structure: a new Workplace Relations Commission and an expanded Labour Court. The Workplace Relations Commission will take on the functions of the Labour Relations Commission, the National Employment Rights Authority, the Equality Tribunal and the first instance functions of the Employment Appeals Tribunal (EAT). The Labour Court will become the single appeal body for all workplace relations appeals, including those currently heard by the EAT.

There has been a trend away from a bargaining-based towards a rights-based system for resolving individual disputes. Much of what formerly took place in the domain of collective bargaining is now handled by individual employment law and there has been a substantial accompanying increase in individual employees pursuing claims. However, this rights-based legislation forms only a ‘floor of rights’ and in some areas it is common for trade unions to negotiate improved terms through collective bargaining. This is notable, for instance, in the area of collective redundancy, where trade unions sometimes negotiate redundancy terms above the statutory minimum of two week’s pay for each year of service.

A problem facing trade unions is that the growth in employment legislation providing rights for individual employees has coincided with a decline in union density which stood at 34% in 2009. In other words, trade unions are not present in many workplaces, especially in the private sector. Procedures introduced in the Industrial Relations Acts 2001–2004 meant that trade unions could seek legally binding determination of pay and terms and conditions of employment by the Labour Court – in the event that the voluntary process failed – for members in companies that do not recognise a trade union for collective bargaining purposes. However, this legislation was rendered ‘redundant’ following a successful legal challenge in the Irish Supreme Court (An Chúirt Uachtarach) by the airline Ryanair in 2008. The last national agreement, the Transitional Agreement (concluded in September 2008), included commitments on revisiting employee representation rights in the wake of the Supreme Court judgement. But deadlines originally agreed in relation to this and other legal commitments have passed after the economic and financial crisis gripped the country; with the government subsequently having more pressing priorities.
More recently, two issues have reignited the debate on collective bargaining. Firstly, a commitment by the Fine Gael/Labour Government, in their 2011 joint programme for government, states: ‘We will reform the current law on employees’ right to engage in collective bargaining (the Industrial Relations (Amendment) Act 2011), so as to ensure compliance by the State with recent judgements of the European Court of Human Rights.’

Secondly, in 2012, the Committee on Freedom of Association at the International Labour Organisation made recommendations in relation to a complaint made against the Irish Government by the Irish Congress of Trade Unions (ICTU) on behalf of the Irish Airline Pilots Association (IALPA), which is a branch of the IMPACT union, with the support of the ITUC and the International Transport Worker’s Federation (ITF). One key recommendation stated as follows:

*In light of the above, and noting with interest the Government’s statement, contained in its communication from 11 July 2011, that the administration is committed in its Programme for Government to reform the current law on employees’ right to engage in collective bargaining (the Industrial Relations (Amendment) Act 2011) so as to ensure compliance by the State with recent judgments of the European Court of Human Rights, as well as the Government’s subsequent indication that its reply should not be taken as an indication that the Government will not be proposing any changes in the framework of the ongoing review of the procedures under the Industrial Relations (Amendment) Act 2001, particularly in the light of the Ryanair case, the Committee invites the Government, in full consultation with the social partners concerned, to review the existing framework and consider any appropriate measures, including legislative measures, so as to ensure respect for the freedom of association and collective bargaining principles set out in its conclusions, including through the review of the mechanisms available with a view to promoting machinery for voluntary negotiation between employers’ and workers’ organizations for the determination of terms and conditions of employment.*

Trade unions are now calling for legislation on collective bargaining to be enacted in advance of the centenary of the 1913 Lockout. However, employer groups remain vociferously opposed to mandatory trade union recognition for collective bargaining purposes, fearing it will jeopardise foreign direct investment (FDI) from multinationals.

Perhaps the most important trend in Irish industrial relations over the past 20 years was the introduction, evolution, and then subsequent breakdown in early 2010, of national-level collective bargaining and social dialogue (‘social partnership’). In 1987, the first of six centralised agreements or social pacts were negotiated. This agreement – the *Programme for National Recovery (PNR)* – was a response to the fiscal crisis in the mid-1980s. Subsequent successive national agreements established an institutionalised multipartite system of social partnership extending into the broad field of economic and social policy that has persisted to date. The most recent agreement – the *Transitional Agreement (2.8Mb PDF)* – was concluded by the government and social partners in late 2008. This national-level partnership involved a combination of consultation and negotiation among employer organisations, farmer representatives, trade unions, the government, and what is referred to as the ‘community and social pillar’.
Until the economic downturn hit Ireland in 2008, this model had been characterised by supporters as contributing to strong economic performance, rapidly growing employment, low levels of unemployment, rising real wages and decreasing levels of absolute poverty. However, at the same time, critics of the model pointed to growing relative wage and income inequality, comparatively high levels of relative poverty and low expenditure on public services compared with other advanced economies.

The social partnership model formally broke down in late 2009 after the Irish government announced that talks with the public sector unions aimed at securing reductions in the public pay bill had failed to create what the government saw as sufficient proposals. After the failure to reach consensus agreement, the government decided on a straightforward unilateral wage cut for over 250,000 public servants. Subsequently, in 2010, an agreement ‘The Public Service Agreement 2010–2014’ was reached between the government and public sector unions on a pay freeze, public sector reform and other matters.

In December 2009, the Irish Business and Employers’ Confederation (IBEC) formally withdrew from the terms of the private sector pay agreement that had been negotiated as part of the Transitional Agreement (2.8Mb PDF) in 2008, paving the way for the first period of company-level bargaining in Irish industrial relations since 1987. Since 1987, basic pay levels for unionised workers had primarily been set by centralised wage agreements, with many non-union employers also ‘shadowing’ centrally set pay outcomes. In 2011 there were limited signs of local level wage bargaining emerging, confined largely to profitable export-led pharmaceutical, medical device and food sectors. (IE12010191)

Main actors

Trade unions

Main trends in trade union density

The membership estimate of Ireland’s trade union confederation, the Irish Congress of Trade Unions (ICTU) is based on unions’ own membership records of actual ‘paying members’ submitted to the Registrar of Friendly Societies and the Department of Enterprise, Trade and Employment (An Roinn Fiontar, Trádála agus Fostaíochta). The ICTU argue that trade union density in Ireland is close to or over 40%. Congress estimates that there were 633,000 union members in Ireland as of 2011: 600,000 members in ICTU-affiliated unions, and an estimated 33,000 members of non-ICTU affiliates, such as the National Bus and Rail Union (NBRU), the Psychiatric Nurses Association (PNA), garda representative organisations and the Permanent Defence Force Other Ranks Representative Association (PDForra). With 1,535,000 employees, this gives a 41% union density figure, Congress claim.

An alternative independent assessment of trade union membership is provided by special modules compiled by the CSO as part of its Quarterly National Household Survey (QNHS). According to the CSO, just over one-third of employees (34%) were union members in the second quarter of 2009. This represents an increase in the rate of union membership among employees from 31.5% in the second quarter of 2007, but is below the 2003 figure of 37.4%. In the second quarter of 2009, 37% of full-time employees stated that they were members of a union, compared with 20% of part-time employees. Among economic sectors the highest membership rate was in Public administration and defence (81%) and the lowest rate was in Accommodation and food service activities (6%). Among occupations the highest rate was in Associate professional and technical (50%) and the lowest rate was in Sales (15%). Membership was highest in larger organisations. The youngest and oldest employees remain far less likely to be union members than other age groups. In the second quarter of 2009, 47% of 45–54-year-old employees were union members.
However, only 4% of employees aged 15–19, 16% of those aged 20-25 and 24% of those aged 65 or over were members. Irish nationals are more than twice as likely to be union members as non-Irish nationals (37% compared with 14%). Finally, female employees (35%) had a higher rate of membership than males (32%).

The National Workplace Survey by the National Economic and Social Development Office (NESDO) and the Economic and Social Research Institute (ESRI) found that in 2009, 47.5% of employees said there was a trade union or staff association in their workplace. Just 34.3% said they were a member of a trade union or staff association.

ICTU has argued that the CSO data is an underestimation and does not constitute a comprehensive census of union membership and density levels. Rather, ICTU claims that the CSO household survey simply provides a ‘snapshot’ sample of workers. ICTU insists that its own data on actual ‘paying members’ is a more accurate reflection of union density.

Most important trade union confederations

One main trade union confederation exists in Ireland, the Irish Congress of Trade Unions (ICTU), which has 56 affiliated trade unions. ICTU’s remit covers both the Republic of Ireland (hereafter Ireland), where 43 trade unions operate, and Northern Ireland, where 32 affiliated trade unions operate. In 2011, affiliated unions had 579,578 members as against 596,743 in 2010.

In 2011 the ICTU launched a report by the Commission on the Future of Unions. The Commission was established on foot of a motion put forward by SIPTU at the ICTU biennial delegate conference in 2009, which proposed establishing ‘a Commission to review trade union organisation in Ireland, including structures and procedures, with the objective of optimising effectiveness through coordination of resources in the best interests of working people and their families over the period which lies ahead’. The members of the Commission are: Jack O’Connor, SIPTU general president; David Begg, ICTU general secretary; Eugene McGlone, deputy regional secretary, Unite; Peter McLoone, former IMPACT general secretary; Patricia McKeown, UNISON regional secretary. External members: Philip Jennings, general secretary of UNI Global Union and Philip Bowyer, deputy general secretary of UNI (joint chairs).

The Commission found that the most ‘urgent tasks’ for the union movement in Ireland are centred on five core objectives: a new strategic plan; new sectoral groups; issues related to ‘strategic organising’; developing a ‘communications capacity’; and redefining of the ‘mission and political activities of Congress’. It also proposed closer cooperation/collaboration between a number of groups of unions as follows:

- The four teaching unions, ASTI, INTO, TUI and IFUT,
- Two key public sector unions, IMPACT and the PSEU.
- Three quite distinct unions, IBOA (the banking/finance union), CWU (the communications union) and Mandate (the retail workers union)

But it stopped short of recommending any mergers.

There was a merger in 2007 between two UK-based trade unions: Amicus and the Transport and General Workers’ Union (T&G), to form the super-union UNITE. UNITE has about 100,000 members in Ireland – divided equally between Ireland and Northern Ireland.

A major change in the organisation of Ireland’s largest union, the Services Industrial Professional and Technical Union (SIPTU), began in 2010. The union has approved various changes, which include moving to a sectoral structure from regional units, almost tripling the resources put into organising new members, and having specialised staff deal with individual grievances.

Also, a number of unions, including SIPTU, have been engaged in organising campaigns in an attempt to recruit new members and organise in various sectors, like hotels and catering.

6/17
Employer organisations

Main trends in employer organisation density

For the most part, employers’ organisation density has not declined to the same extent as trade unions. But there is evidence of increased competition for membership – for example, competition in the SME sector between the Irish Small and Medium Enterprises Association and Small Firms Association.

Most important employer organisations

As of 2004, 11 employer representative bodies existed in Ireland, but it is difficult to provide an estimate of total member companies because membership may often overlap between different associations. The Irish Business and Employers Confederation (IBEC) is by far the largest employer organisation. IBEC directly represents the interests of over 4,000 direct affiliates from all sectors of economic and commercial activity. Total membership, including indirect members, is approximately 7,500 organisations. It was formed in 1993 following the merger of the Federation of Irish Employers (FIE) and the Confederation of Irish Industry (CII). IBEC is the umbrella body for leading business groups and sectoral associations, and it performs the dual functions of an employer organisation (handling industrial relations) and a trade association (promoting business more generally). It is the equivalent of ICTU on the trade union side.

Other notable national employer associations are the Small Firms Association (an independent affiliate of IBEC), the Chamber of Commerce Ireland (CCI), the American Chamber of Commerce in Ireland, and the Irish Small and Medium Enterprises Association (ISME). The SFA claims to represent 8,000 small firm members. ISME claims to represent in excess of 8,500 SME members. CCI claims to represent 60 member chambers representing over 13,000 businesses throughout the island of Ireland. The American Chamber of Commerce represents the interests of approximately 570 US firms in Ireland, encompassing nearly 100,000 employees.

A notable sector-specific employer representative organisation is the Construction Industry Federation (CIF). The CIF represents and serves over 3,000 members covering businesses in all areas of the Irish construction industry through a network of 13 Branches in three Regions in Ireland and through its 37 Sectoral Associations. The CIF also represents members on industrial relations matters.

Main employer developments

At the end of 2008, the CIF rejected the terms of the new national wage deal (called the ‘Transitional Agreement’), making it the first employer organisation to reject a national deal since Ireland’s social partnership process began in 1987. Subsequently, as noted previously, in December 2009, the Irish Business and Employers’ Confederation (IBEC) formally withdrew from the terms of the private sector pay agreement that had been negotiated as part of the Transitional Agreement (2.8Mb PDF) in 2008, paving the way for the first period of company-level bargaining in Irish industrial relations since 1987.

More generally, there have been some significant changes in employer organisations in Ireland in recent times. Employer organisations have had to adapt to changing circumstances and offer affiliates a much greater variety of services – notably in relation to advice on employment law, which has become more complex. Membership of employer organisations is often seen as a useful barometer of management’s approach to industrial relations. In the past, membership was traditionally associated with the pluralist model of collective industrial relations: namely, the presence in companies of trade unions and formal collective bargaining arrangements. However, the decline in union density, growth of the non-unionised private sector (notably in newly opened ‘greenfield sites’), and the accompanying utilisation of individualist human resource management
type practices, has meant that some companies may perceive membership of an employer organisation (a collective union of employers) to be incompatible with a more individualist and differentiated approach to employee management. This was illustrated when a major company, Independent News and Media (INM), disaffiliated from IBEC at the start of 2009.

A significant development in the role of the Chamber of Commerce Ireland (CCI) occurred in 2005. From 2005, an ‘insurance policy’ against employment law decisions in the courts was offered for the first time in Ireland, through a new employment consultancy service. The service, offered by the CCI as ‘ChambersHR’, includes information and representation as well as indemnification against employment awards. It appears to be a significant challenge to the services provided by other employer bodies, particularly IBEC. Up until that point, the CCI had largely confined itself to lobbying on business issues. However, with the ‘ChambersHR’ service, the CCI gave real intent of entering the market for employer representation services.

**Industrial relations**

**Collective bargaining**

<table>
<thead>
<tr>
<th>Levels of collective bargaining</th>
<th>National level (Intersectoral)</th>
<th>Sectoral level</th>
<th>Company level</th>
</tr>
</thead>
<tbody>
<tr>
<td>Principal or dominant level</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Important but not dominant level</td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Existing level</td>
<td></td>
<td></td>
<td>X</td>
</tr>
</tbody>
</table>

It is difficult to calculate a precise figure for collective bargaining coverage. However, it is estimated to be in the region of 44%, which is higher than the 34% rate of trade union density in 2009.

In the private sector, the National Workplace Survey by the National Economic and Social Development Office (NESDO) and the Economic and Social Research Institute (ESRI) found that in 2009, collective bargaining rates were as follows:

- Traditional manufacturing 29%
- Hi-tech manufacturing 31%
- Construction 18%
- Distribution 16%
- Financial/insurance/business 4%
- Hotel/restaurant/other 14%

Collective bargaining coverage in the public sector is estimated to be very high, with the vast majority of public sector workers members of unions and covered by the sectoral agreement, the Public Service Agreement 2010–2014.

Under the social partnership era, the presence of centralised bargaining was likely to have expanded bargaining coverage beyond union members and the presence of national agreements meant that, in practice, some companies with no trade union present often ‘shadowed’ the results of nationally bargained pay deals. Furthermore, in certain companies that have union members
and non-union employees, the terms of past national wage agreements were also extended in some circumstances to non-union employees. Collective agreements remain principally voluntarist, but legally binding elements seem to be increasing.

Registered Employment Agreements (REAs) are registered with the Labour Court and then cover an entire industry, including employers that are not members of the relevant employer organisations. There are currently REAs in the construction sector and in electrical contracting. In addition, Joint Labour Committees (JLCs) are independent bodies which determine minimum rates of pay and conditions of work for workers in a number of low-wage sectors such as catering, hotels, cleaning and retail grocery. Each JLC is composed of representatives of workers and employers in the sector concerned and an independent chairperson. The pay and conditions agreed by the representatives on the JLCs are given force of law in Employment Regulation Orders (EROs) made by the Labour Court on foot of proposals made to the Court by the JLCs.

It should be noted that JLCs are not a traditional form of collective bargaining. JLCs are a form of ‘de facto collective bargaining’ in sectors which have low levels of union density (The Report of Independent Review of Employment Regulation Orders and Registered Employment Agreement Wage Setting Mechanisms, 2011). The report states:

*JLCs are in reality a forum for de facto collective bargaining and EROs now prescribe terms and conditions which are typically found in collective agreements. However the system lacks three defining characteristics of collective bargaining. Firstly, not all of the terms are agreed between the participants in the process because the chairman can exercise a casting vote thus imposing terms with which one side or the other disagrees. Secondly, unlike collective bargaining, the outcome of the process is not subject to ratification by those on whose behalf the negotiations are conducted. Thirdly, there is no requirement for the parties who make up a JLC to be substantially representative of either workers or employers in the sectors to which they relate.*

In July 2011 Joint Labour Committees (JLCs) were ruled unconstitutional by the High Court and the ruling struck down existing Employment Regulation Orders (EROs) which set down minimum pay rates and terms and conditions in certain low-paid sectors. The government had already been in the process of reviewing JLCs with a view to introducing reforms. The Minister for Jobs, Enterprise and Innovation, Richard Bruton published the Industrial Relations (Amendment) (No. 3) Bill 2011 in December 2011 to implement reforms to the JLCs. According to a statement by the Department: ‘The Bill, when enacted, will implement the programme of reforms to the JLC/REA systems agreed by Government in July. It will radically overhaul the system so as to make it fairer and more responsive to changing economic circumstances and labour market conditions. It will also reinstate a robust system of protection for workers in these sectors in the aftermath of the High Court ruling.’

There are no other voluntary mechanisms of extension/application of the terms of collective agreements.

**Provision for opt-outs in collecting agreements**

Prior to the collapse of social partnership, under the national agreements, opt-out provisions were part and parcel of national wage agreements for over 20 years, and were strengthened in
Sustaining Progress in 2003, with the introduction of pay ‘assessors’ appointed by the Labour Relations Commission and the option of binding Labour Court recommendations on such issues. Under the last national agreement, the ‘Towards 2016 Review and Transitional Agreement’, an ‘inability to pay clause’ existed which meant ‘an employer may claim that it is not possible to pay the terms of the Transitional Agreement in full or in part and / or may seek some cost offsetting measures or may claim inability to pay the terms of the Transitional Agreement in circumstances where this would result in serious loss of competitiveness and employment’. The agreement continued:

If a dispute arises out of a claim of inability to pay by an employer, the onus will be on the employer to convince the union of the case and provide supporting arguments and full disclosure of information to the union. At LRC stage, assessors may be appointed from a pool, agreed with the employers and the unions, to examine the economic, commercial and employment circumstances of the employment involved and the LRC may also draw on the assistance of IBEC/CIF and ICTU representatives, where appropriate. The parties commit to full cooperation with the assessors and the employers commit to full disclosure of information to the assessors. In the event of no agreement being reached, the matter will be referred to the Labour Court under Section 20(2) of the Industrial Relations Act, 1969, and the confidential report of the assessor will form part of the report of the LRC to the Court and will be given serious weight by the Court. The onus will be on the employer to convince the Court of their case. The Court will issue findings only in respect of whether the employer can or cannot pay the terms of the Transitional Agreement at all and the parties will comply with the findings. All information disclosed as part of this process shall be treated on a confidential basis by all parties in receipt of such information.

Between 2004 and 2007, as many as 329 referrals were made to the Labour Relations Commission’s Conciliation Service under the clauses. Over this period, as many as 50 assessors were appointed and 38 cases were referred to the Labour Court. In 2008; 64 cases were referred to the LRC and just five cases sent to assessors. This compares with 86 cases in 2007.

The Public Service Agreement 2010–2014, negotiated in March 2010, which covers pay and reform in the public sector is subject to a clause which states: ‘The implementation of this Agreement is subject to no currently unforeseen budgetary deterioration.’

The so-called ‘get out of jail’ clause caused some controversy for unions balloting on the agreement and a clarification on this and other issues was issued.

The clarification issued in May 2010 states:

It is the expressed intention and expectation of the Government that there will be no further reductions in the remuneration of employees in the public service for the lifetime of this Draft Agreement subject to compliance with the terms of the Draft Agreement. The Government has agreed that the terms of paragraph 1.28 of the Draft Agreement which
stated, ‘The implementation of this Agreement is subject to no currently unforeseen budgetary deterioration’, will be applied in a bona fide manner by the Government side. Similar clauses have applied in previous agreements and it is not envisaged that, on the basis of any currently known facts, that the clause would be utilised. Adoption of the Draft Agreement will itself give a measure of certainty about policy and spending that will assist in the process of economic recovery. It is confirmed that, in the event that such a situation was to arise, the parties would meet at central level (i.e. Government/ICTU) to discuss the circumstances that had arisen and the implications for the Draft Agreement prior to any decision being taken that would adversely affect the pay provisions of this Agreement. The unions have made it clear that in the event of the Government invoking that provision the unions will cease to be bound by the terms of the Draft Agreement.

Derogation provisions for Employment Regulation Orders (EROs) and Registered Employment Agreements (REAs) are to be introduced under the Industrial Relations (Amendment) (No.3) Bill, 2011. (See section on collective bargaining, above, for background.) An exemption is to be for a maximum of 24 months and a minimum of three months, with employers barred from seeking exemptions if they have already been granted an exemption in the case of the same workers in the previous five years. An exemption can be sought, not only if the employer has entered an agreement with the majority of the workers or their representatives, but also without agreement if the Labour Court is satisfied that the employer cannot maintain the terms of the ERO/REA and compliance would result in considerable layoffs and adverse effects on the survival of the employer’s business. Trade unions had argued consistently that such individual exemptions would undermine EROs/REAs, by creating an uneven playing field and allowing employers with exemptions to undercut their competitors, who would still be bound by the ERO/REA norms. To guard against this, the Bill requires the Labour Court to consider whether the exemption would have an adverse effect on employment levels and distort competition in the sector to the detriment of other employers. The Court also has to have regard to the implications of an exemption for the long-term sustainability of the employer’s business. In addition, the exemption cannot allow an hourly wage which is less than the National Minimum Wage and it must not reduce the pension contributions paid by the employer.

On 19 January 2012, in the announcement of the 2011 fourth quarter review of the Troika programme, one of the changes agreed to the Memorandum of Understanding between the government and the Troika was that the legislation would be amended to allow employers who get temporary ‘inability’ to pay exemptions of less than two years to seek extensions of those exemptions, for up to two years.

**Main mechanisms in wage bargaining coordination**

In the past national wage agreements set wage rates for unionised employers – many non-union employers also ‘shadowed’ national wage rates. The national minimum wage is also important for wage bargaining coordination, in terms of setting a minimum pay floor.

Following the collapse of national wage bargaining, in March 2010, IBEC and the ICTU agreed a new informal voluntary protocol that establishes a tripartite overarching procedure between the government, IBEC and ICTU with a view to managing future private sector pay claims. The
protocol provides negotiators with broad pay guidelines, using a set of criteria for issues like competitiveness.

The breakdown of national-level tripartite centralised ‘social partnership’ agreements in late 2009 has meant a move towards decentralisation in pay bargaining – in the private sector especially. Between 1987 and 2009, the national level was the most important arena for setting wages and working time through tripartite bargaining; in this regard, Ireland had quite a highly centralised bargaining system. While wages were set at national level during this period, local collective bargaining could also occur ‘around this’ at company level – for instance, in relation to productivity, restructuring or new work practice agreements. However, the breakdown of centralised bargaining has paved the way for a return to company-level collective bargaining in the private sector.

An element of centralised collective bargaining remains in the public sector, despite the breakdown of social partnership. The government and the public sector trade unions negotiated a bipartite deal on public service reform in June 2010 in exchange for a promise of no pay cuts before 2014 – ‘The Public Sector Agreement 2010-2014’, also called the ‘Croke Park agreement’. Employer associations were not party to the agreement. The four-year deal, which potentially covers 330,000 Irish public servants, was accepted by the Public Services Committee of the ICTU. The agreement was voted through by a majority of almost two to one and incorporates a four-year pay freeze, commitments by the government not to implement compulsory redundancies, and to maintain existing pension arrangements. In return, unions have signed up for a ‘transformation’ programme, including a commitment to yield major productivity improvements and efficiencies – as well as a broad commitment to maintain industrial peace. The wide range of workers affected by the deal includes civil servants, health workers, teachers and employees in the security services.

With the notable exception of the construction industry, the sectoral level is generally not a prominent level for collective bargaining.

Other issues in collective agreements

In terms of other major collective bargaining issues, issues relating to pensions have proved to be the biggest challenges facing employer and union negotiators. In the private sector, there have been significant pressures to move away from defined benefit (DB) pension schemes to less attractive – from an employee perspective – defined contribution (DC) schemes. DB pensions grant a guaranteed sum on retirement, unlike DC schemes, which do not offer this security.

Another key issue on the collective bargaining agenda both in the private and public sectors is job security, with unions wanting a commitment to voluntary and not compulsory redundancies. Issues such as training and lifelong learning and gender equality were major issues in tripartite national pacts, but the breakdown of social partnership means there is now uncertainty about engagement on these issues. Training is the subject of company-level collective bargaining, but this varies across employments.

Industrial disputes

According to data provided by the CSO, 3,695 days were lost to industrial disputes in 2011 and 6,602 days were lost to industrial action in 2010. Although CSO figures do not include disputes resulting in work stoppages of less than one day or if the total time lost is less than 10 person-days, they do indicate that, despite the break-up of social partnership and the current economic climate, levels of industrial strife, particularly in the private sector, remain at the relatively low levels experienced over the past decade or so. In 2009, 329,593 days were lost to industrial action. This spike in figures in 2009 was mainly due to industrial action in the public sector. The
largest industrial action in 2009 was the 24-hour national protest by public sector workers on 24 November 2009 in protest at planned cuts in public expenditure.

In early 2011, there was a high-profile dispute at the Davenport Hotel (part of the O’Callaghan Group) in Dublin over cuts to worker’s pay following the government decision to reduce the minimum wage by €1 per hour. (This was later reversed by the new government.) SIPTU, the union representing five minimum wage workers who refused to consent to a 10% pay cut, served strike notice and pickets were mounted on the hotel from 17 February. Pickets were lifted on 1 March to allow for referral of the dispute to the Labour Court. In a binding recommendation, the Labour Court found the Davenport Hotel should reinstate the five workers on their contracted rates of pay. The Court concluded that the employer’s actions ‘were not fair and reasonable’ and found that the workers should be paid ‘all the monies’ they would have earned, had they not been removed from the roster at the beginning of February.

In late 2011 / early 2012 a number of high-profile disputes and sit-ins were held by workers over redundancy payment. One particularly high-profile sit-in over redundancy payments by 23 workers at a Vita Cortex plant in Cork lasted 161 days in 2011/2012.

The main collective dispute mechanisms are the Labour Relations Commission, which provides conciliation and mediation services and the Labour Court, which adjudicates on collective industrial disputes.

The Labour Court was established under the Industrial Relations Act 1946. The Labour Court is an independent tripartite body that was originally established to support collective bargaining through a conciliation, mediation and arbitration service. The court consists of nine full-time members: a chair, two deputy chairs, three employee representatives and three employer representatives. Members of the Labour Court are appointed by the Minister for Enterprise, Trade and Employment. The court’s duties involve the investigation of industrial disputes that have not been resolved by the LRC, on the basis of submissions made by both employee and employer representatives, and the issuing of recommendations following its investigations. However, the Labour Court’s recommendations are – apart from certain instances – not legally binding and the parties are not obliged to use the services of the court in the event of a dispute. Moreover, access to the Labour Court is supposed to be dependent on both parties having exhausted all other dispute resolution procedures.

**Tripartite concertation**

As noted, between 1987 and 2009, Ireland had a history of tripartite policy concertation. For supporters of Ireland’s variant of tripartite pacts, one of the key benefits associated with centralised agreements was the opportunity for longer-term policy formulation. This national policy concertation focused on economic and social policy-making through the involvement of the government, employers, trade unions and consultative groups. For trade unions, in particular, social partnership provided them with a policy influence at the highest level and has, according to some, allowed them to ‘punch above their weight’. Moreover, they had a broader influence above and beyond economic workplace issues.

While the process of social partnership focused on the involvement of the government, employers and trade unions and industrial relations matters remained central to the process, over time a range of other groups, representing the community and voluntary pillar, joined the process. High-level negotiations on macroeconomic strategies were complemented by an expanding array of advisory committees, workings groups, conferences and forums. There was growing focus in relation to a range of supply-side initiatives including business development, work organisation, lifelong learning, social housing, poverty and social exclusion. However, some commentators argue that social partnership spawned far too many sub-groups and committees, with delivery of
concrete results often questionable. Evidence of misuse of funding has subsequently emerged in relation to some social partnership related activities. Supporters of the Irish model of tripartite concertation suggest that it may return in some shape or form, perhaps as a less ambitious type of ‘social dialogue’ over a core range of issues. For the time being, however, social partnership as it came to be known has fallen out of favour and some observers have blamed it for some of Ireland’s current economic and financial problems.

Workplace representation
The two main channels of employee representation at workplace level are trade unions and various types of works councils/joint consultative committees. Workplace trade unionism is based on voluntarism, although certain rules regulating union activities are codified by law. Regulation of statutory works councils is codified by law.

Trade union representation
By far the most common channel of employee representation at workplace level continues to be trade unions – either through collective bargaining or joint consultation. Workplace collective bargaining may encompass negotiations with management over issues such as pay, working time, terms and conditions of employment, pensions, sick pay and work organisation. Workplace collective bargaining is voluntarist, and workplace trade union representatives – shop stewards – engaged in collective bargaining are elected by union members.

As well as collective bargaining, trade unions may represent employees at the workplace by engaging management in Joint Consultative Committees (JCCs). Again, JCCs are voluntarist, and their core function is consultation of workers. The subject of consultation may vary widely, but may consist of consultation over ‘lower-level’ operational issues like pensions, employment and work organisation, as well as ‘higher-level’ strategic issues such as business plans, the financial situation and productivity. Trade union representatives or shop stewards are elected by union members. JCCs comprise members of management and union representatives. JCCs may also consist of non-union staff representatives. The committees are sometimes associated with voluntarist workplace ‘partnership’ agreements between employers and unions.

Non-union representation
For many years, workplace trade unionism was the sole channel of employee representation. This has changed, however, in recent years, as non-union employee representative structures have increased. In particular, for the first time, under Directive 2002/14/EC establishing a general framework for informing and consulting employees in the European Community, Ireland now has general statutory legislation governing employee representation. It is significant, however, that the information and consultation rights contained in Irish legislation have to be ‘triggered’ by groups of workers rather than being automatically applicable. The Employees (Provision of Information and Consultation) Act 2006 (372Kb PDF) gives employees the right to request that an employer enters into negotiations on an information and consultation structure – a ‘negotiated agreement’. In order to exercise this right, 10% of employees in an undertaking must make such a request (subject to a minimum of 15 and a maximum of 100 employees), with applications made in confidence either directly to the employer or to the Labour Court, unless employers volunteer to introduce information and consultation arrangements. The timeline for concluding a ‘negotiated agreement’ is six months from the commencement of negotiations.

Alternatively, or following failure to conclude a ‘negotiated agreement’, Standard Rules – as set out in Section 10 of the 2006 act – provide for elected representative Information and Consultation Employee Forums, which will be set up along the lines of ‘continental style’ employee representative works councils. However, Standard Rules must provide representative
arrangements – that is, it is not possible for employers to inform and consult directly with employees under Standard Rules. The Standard Rules stipulate that employee representatives must be employees of the undertaking, elected or appointed for the purposes of the information and consultation act. The employer is obliged to arrange for the election or appointment of representatives. An Employee Forum must be composed of not less than three or more than 30 elected/selected employee representatives only, who must be employees of the undertaking.

As intended in Directive 2002/14/EC, trade unions are not the sole channel for employee representation. However, the Employees Act provides that where it is the practice of the employer to conduct collective bargaining negotiations with a trade union or excepted body, and a union or excepted body represents at least 10% of the employees, those employees are entitled to have their own representatives on a pro-rata basis to non-union representatives. Therefore, much depends on trade union density and bargaining levels.

Undertakings with at least 50 employees came within the scope of the Employees (Provision of Information and Consultation) Act 2006 as of 23 March 2008. Irish legislation was enacted in July 2006, but few new information and consultation agreements have been concluded. Many commentators suggest that the Irish government transposed the legislation in a minimalist manner. A concern not to do anything that could jeopardise inward investment from American multinationals has loomed large in government policy in this regard.

Other forms of employee representation include various voluntary employer-sponsored non-union staff associations, company councils or ‘excepted bodies’ in the private sector. Moreover, there are also provisions for worker directors (company board) and representative forums (at sub-board level) in a number of commercial semi-state bodies.

### Main channels of employee representation

<table>
<thead>
<tr>
<th></th>
<th>Works council type (WC)</th>
<th>Trade union (TU)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Most important body</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>2 Alternative body</td>
<td>X</td>
<td></td>
</tr>
</tbody>
</table>

### Employee rights

In 2011, the Minister for Jobs, Enterprise and Innovation, Richard Bruton launched a reform of the current employment rights institutions. Prior to the planned reform the main institutions to ensure the enforcement of employee rights were the Labour Court, the National Employment Right Authority (the Labour Inspectorate), and the Health and Safety Authority (HSA). Other institutions with a remit to enforce employee rights and resolve employment-related disputes included the Equality Tribunal, Employment Appeals Tribunal (EAT) and the LRC Rights Commissioner Service.

Under the plan the existing five workplace relations bodies will be replaced by a new two-tier structure: a new Workplace Relations Commission and an expanded Labour Court. The Workplace Relations Commission will take on the functions of the Labour Relations Commission, the National Employment Rights Authority, the Equality Tribunal and the first instance functions of the Employment Appeals Tribunal (EAT). The Labour Court will become the single appeal body for all workplace relations appeals, including those currently heard by the EAT.
Pay and working time developments

Minimum wage

Since 2000 Ireland has had a statutory national minimum wage (NMW). The NMW is currently €8.65. The minimum wage was cut by €1 per hour to €7.65 from 1 February 2011 as part of the Fianna Fail/Green government’s four-year economic recovery plan under the EU–IMF programme of financial support. But a new Fine Gael/Labour government reversed the cut in the minimum wage and restored it to €8.65 from 1 July 2011. The reversal of the minimum wage cut had been a key election pledge by both Fine Gael and Labour.

As the minimum wage varies for different groups of workers, the table below outlines rates that apply in certain circumstances.

<table>
<thead>
<tr>
<th>% of full adult rate</th>
<th>Applies to:</th>
</tr>
</thead>
<tbody>
<tr>
<td>90%</td>
<td>Workers aged 18 years and over in the second year of employment, as well as workers aged over 18 years and undergoing the final third (lasting one month to a year) of a course of authorised training or study.</td>
</tr>
<tr>
<td>80%</td>
<td>Workers aged 18 years and over in the first year of employment, as well as workers aged over 18 years and undergoing the second third (lasting one month to a year) of a course of authorised training or study.</td>
</tr>
<tr>
<td>75%</td>
<td>Workers aged over 18 years and undergoing the first third (lasting one month to a year) of a course of authorised training or study.</td>
</tr>
<tr>
<td>70%</td>
<td>Workers aged under 18 years.</td>
</tr>
</tbody>
</table>

Pay developments

Most Irish private sector firms have responded to the crisis by freezing basic pay/salary at pre-crisis levels, while extra earnings have been cut. A significant minority have also cut basic pay levels, borne out by IBEC Quarterly Business Sentiment Survey for 2009, showing 56% of employers freezing pay and 25% cutting pay in 2009. A smaller minority had moderate pay increases, mostly under a national wage agreement struck in late 2008 – which most employers did not implement and was eventually abandoned at the end of 2009, ending national wage bargaining indefinitely. In the public service, pay was reduced by a progressive scale of 5–15% in December 2009 and net earnings were also hit by a levy from March 2009, also on a progressive scale of 5–10.5%.

Gender pay gap

According to figures published by the Central Statistics Office in August 2011, the unadjusted gender pay gap in Ireland was 12.8% in October 2009 compared with 12.4% in October 2008. The National Employment Survey 2008 and 2009 found that, in October 2009, men were more significantly represented in higher earnings brackets than women and a far higher proportion of female employees worked part-time than male employees. The latter partly explains the gender pay gap.
Working time

Under Ireland’s Organisation of Working Time Act 1997, 48 hours is the statutory working week. Working time has not featured for some time under national-level bargaining. The current collectively bargained weekly working time of 39 hours was agreed some time ago under a previous national bargaining round, and has remained unchanged since then.

Working time sometimes emerges as an issue in company-level bargaining, most recently usually relating to short-time working measures in response to the crisis. In the hotel and retail sectors for example, there is evidence of collectively bargained agreements on short-time working since the start of the recession.

A CSO ‘Analysis of Wage Bill Change in Enterprises and Components of Change, Quarter 3 2008 to Quarter 3 2009’ found that during this period of the economic crisis, average weekly paid hours were reduced by more than 2% in 51% of firms.

The average number of actual weekly hours for full-time employees in the fourth quarter 2011 was 31.6, down from 31.4 in Q4 2010 and 32.1 in Q4 2009.

Bibliography and links

European Industrial Relations Observatory (EIRO), various comparative studies and annual updates, available online at: http://www.eurofound.europa.eu/eiro/.
Industrial Relations News (IRN), http://www.irn.ie/.
Irish Business and Employers Confederation (IBEC), www.ibec.ie
Irish Congress of Trade Unions (ICTU), http://www.ictu.ie/.
Labour Court, www.labourcourt.ie
Labour Relations Commission, www.lrc.ie

Roisin Farrelly, IRN Publishing