

# Labour Inspectorate get Teeth... and a New Name

## People Focus

Chartered Institute of Personnel and  
Development in Ireland  
Winter 2006 Volume 4: No 3

***Around this time next year HR managers will come across the latest acronym to hit the workplace when the ODERC or Office of Director of Employment Rights and Compliance, will swing into operation.***

Hewed from what has been described as one of the most litigious national agreements to date, the new statutory based office will be set up on an interim basis within the next few months and be fully operational by mid-2007.

Yet another consequence of the Irish Ferries and Gama disputes last year, ODERC is in effect a souped-up version of the labour inspectorate which is currently attached to the Department of Enterprise, Trade and Employment.

Prior to the Irish Ferries dispute, there were around 20 inspectors to police more than a dozen major pieces of employment protection legislation including the national minimum wage, the protection of young persons, working time directive as well as ensuring compliance with the Joint Labour Committees and employment regulation orders. In April 2006, in the wake of Gama, Minister Michael Martin increased the number of inspectors to thirty one. But last year, a total of 5,719 inspections were undertaken by these thirty one inspectors which included a considerable number of personnel and time devoted to the investigation into the Gama dispute.

A total of 25 twenty five cases arising from labour force inspectorate activity, were referred through the prosecution unit of the employment rights division to the chief state solicitors office for prosecution. A total of €469,000 underpaid to employees with respect to wages, overtime holiday pay etc, was collected by the inspectors.

But in the wake, what unions were claiming was the wholesale exploitation of immigrant workers, this was regarded as insufficient.

Unions complained that there were more dog inspectors than labour inspectors and this allowed the few unscrupulous employers to act with impunity, Employers too were keen to ensure that no fly by night operator achieved a competitive edge over the vast majority of good employers.

Now after months of tortuous negotiations at the pay talks agreement has been reached to set up ODERC which will operate separately from the Department of Enterprise with its own director and staff of ninety - triple the current number.

Advertisements for the job of director, which is ranked at assistant secretary level with a salary of up to €130,000 a year, was posted recently. Advertisements for accountants, lawyers and inspectors will be posted shortly.

There has been some discussion between the unions and IBEC over whether the various grades of inspectors would be best recruited from within the civil service as is currently the practice. The unions had offered to second some of its own officials as inspectors on the basis that they would be better placed to handle recalcitrant employers and would be only too aware of some of the 'less-than-legal' practices perpetrated by some employers.

But it is understood that recruiting from outside the civil service was frowned upon by some of the public service unions who realised some of their members would be on their backs for allowing promotional jobs to go outside. And this in a new body, which is, concerned with enforcing employment rights! Employers too were not exactly overjoyed at the prospect of union officials inspecting their member's books!

In the end, it was decided to stick with the civil service but greatly enlarge and strengthen the inspectorate.

Once the director and other key staff are appointed, the Department hopes to have the office operating on an interim basis within the next few months. The legislation to give effect to the Office is "a priority", according to the Department, and will be in place by mid-2007.

By then ODERC will operate out of brand new premises in Carlow town. The inspectorate was due to decentralise from its Adelaide Road premises and the decision is to proceed with the decentralisation plans with the new expanded office.

And judging from the Towards 2016 agreement which details the powers of ODERC, it will be well armed to confront the most devious of unscrupulous employers

In addition to a tripling of staff, the Office will also have accountants, lawyers and other key administrative staff to back up the inspectors. In a significant move, the new office together with authorised officers from the Department of Enterprise, will team up with existing joint investigation units from the Revenue Commissioners and Social and Family Affairs to investigate "appropriate cases".

These same units will also focus on the employment status of workers and force employers to explain when a particular worker has a contract of service rather than a contract for service. By forcing employers in certain circumstances to fill out forms specifying the status of its employees, Revenue will be able to determine where there seems to be a disproportionate level of self employment in the company.

The Office will also police new legislation, to be published again in 2007, which provide that every employee must have "an identifiable employer within the State who has legal responsibility for compliance with all aspects of the applicable employment rights legislation. Allied to this, all employers will be legally obliged to keep payroll and working time records, as they are currently required with regard to taxation and social welfare records.

Failure to keep up to date records will be a criminal offence subject to summary or indictable proceedings. The real sting in the tail here is that the penalty for non-maintenance of statutory employment records will be up to €250,000 on indictment, a far cry from the current maximum penalty of €3,000 for breaching employment rights laws.

The Enterprise Minister will have enhanced powers to authorise the labour inspectors to carry out an investigation of particular employments in relation to employment rights and compliance. In addition, ODERC can undertake investigations on its own initiative.

With the existing labour inspectorate coming under some criticism for failing to react fast enough to the disputes in Gama and ESB, the feeling is that once ODERC is up and running, it will come out with all guns blazing.

The more cynical would suggest that the new Office will have bagged its first high profile scalp in the months leading up to the general election.

SIPTU president, Jack O'Connor has already warned that the new standards protection measures agreed in Towards 2016, including the compliance measures above, be in place before extending free labour mobility to Romania and Bulgaria who are due to join the EU in less than three months time.