

The Labour Court Annual Report 2020



Presented to the Minister for Enterprise, Trade and Employment
under Section 23(1) of the Industrial Relations Act 1946

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The Labour Court in Numbers (2020)



940 Appeals/Referrals



1065 Hearings Scheduled



794 Cases Completed



13 Members



22 (20.4wte) Admin Staff



€2.8m spend

Chairman's Foreword



Overview

The Labour Court like many organisations and sectors of society experienced a challenging year in 2020. The Court's activities were impacted by the public health emergency and the Court's capacity to hold physical hearings was reduced significantly. The Court responded to the challenge by realigning the operation of the Court to reflect changing circumstances.

Prior to March 2020 all hearings of the Labour Court since 1946 had been conducted in physical courtrooms. Following the imposition of health-related restrictions all hearings ceased for a period while physical courtrooms were reconfigured to meet public health guidelines to ensure the safety of users, staff and members.

As it became clear that it would not be immediately possible to hold hearings in a physical courtroom, the Court adapted its service delivery model. A virtual courtroom was developed following engagement with internal and external stakeholders, including the active participation of employer representative bodies, Trade Unions and members of the legal profession.

Written protocols to give order to virtual courtroom proceedings were developed to support the provision of an impartial and legally robust appeals process. On 4th November 2020, An Tánaiste and Minister for Enterprise, Trade and Employment signed two Statutory Instruments under the **Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020**, designating the Labour Court as a public body whose statutory provisions permitted it to hold meetings and hearings remotely. This development strengthened the Labour Court's capacity to convene hearings in a virtual courtroom in circumstances where it is satisfied that such a hearing is consistent with the necessity to ensure delivery of fair procedures.

Key Highlights

In support of the achievement of its statutory functions, the Labour Court advanced a number of initiatives during 2020 and some key elements are set out below:

Labour Court Rules

The Labour Court Rules, drawn up under statute, clarify and underpin the Court's procedures such that service users are facilitated to understand the requirements of the process. The Court continues to modernise, improve and simplify its rules. On 30th March 2020, the Court revoked the **Labour Court Rules 2019** and replaced them with **the Labour Court Rules 2020**.

Strategic Plan 2019-2021

The Labour Court continued to implement its strategic plan which is designed to ensure it is optimally positioned to deliver on its mission *“To provide high quality, fair and impartial arrangements for the resolution of industrial disputes and the determination of appeals in disputes based on employment law.”* The Strategic Plan has set goals and objectives for the Labour Court over a three-year period which enable it to focus on its key objectives and to allocate resources in a planned manner to contribute to its mission. The Court is on track to meet the objectives set out in the Strategic Plan.

Business Process Review

Efficient and effective administrative systems are central to the Labour Court’s capacity to deliver its statutory functions in a manner which enhances the delivery of effective service to the public. In 2020 the Court began the implementation of recommendations of the Business Process Review which was undertaken in 2019. Key among these were a move towards digitisation and the introduction of a new case management system for the Court. By the end of 2020, a specification for this system was being considered. The digitisation of the administration of hearings received an unexpected impetus from the public health emergency which overtook the State during the year, as the Court designed a system for hearing appeals remotely.

Virtual Courtroom

The virtual courtroom is designed as a means to deliver the Labour Court’s mandate to provide high quality, fair and impartial arrangements for the resolution of industrial disputes and the determination of appeals in disputes based on employment law, while prioritising the safety of all participants. It achieves, at minimal cost, the exploitation of available technology in order to provide an accessible, intuitive platform for disputing parties to set out their positions to the Court and to respond to the case being made against them in employment related disputes before the Court.

The development of the virtual courtroom harnessed a range of complementary initiatives already in train in the Labour Court, including the movement of the appeal process online, in a legally safe manner, the simplification of the appeal documentation and the implementation at speed of arrangements to allow parties to make their written submissions to the Court online.

Number of Referrals

In 2020, the Court received 940 referrals under the various statutes within its jurisdiction. This compares to 1,182 received in 2019 and represents a 20.47% decrease. The level of referrals in industrial relations cases decreased from 479 in 2019 to 316 in 2020, representing a 34% change. The level of referrals in employment rights cases decreased by 11.24% from 703 in 2019 to 624 in 2020.

In 2020, the proportion of referrals to the Court which were employment rights based was 66.38% - a change to the picture in 2015 when referrals of industrial relations and employment rights disputes were almost exactly 50:50. It is expected that this trend of a majority of referrals/appeals made to the Court arising in the area of employment rights as distinct from industrial relations will continue into the future.

Industrial Relations Overview

This report elsewhere records a continuing relatively low level of industrial dispute activity in the economy. The experience of a low rate of occurrence of industrial action in 2020 is consistent with

long run trends of dispute activity. Whereas the Court holds the view that the capacity of collective bargaining to effectively achieve resolution to the challenges faced by enterprises and workplaces generally is a key contributor to a stable industrial relations environment, the tale of 2020 must also take account of the restricted nature of workplace activity overall as a factor contributing to low levels of industrial disputes in the economy. It seems clear also that the shared priority of workers and employers in essential services including food manufacture and distribution, retail, health care, transport, waste and public administration to successfully deliver those essential services to the population may have meant that workplace relations issues might have occupied less of a focus than in more normal times.

Notwithstanding the effects of the pandemic and associated restrictions, however, parties across the economy have continued to progress trade disputes and employment law based disputes through the State's industrial relations institutions in an orderly fashion. The Court's recommendations in industrial disputes have continued to find voluntary acceptance in the overwhelming majority of cases, while the rate of appeal of rights-based decisions of the Court has remained very low. In the view of the Court this pattern of acceptance of the decisions and recommendations of the Court underscores the continuing validity of our dispute resolution infrastructure in both the voluntary and mandatory environments. The continuing commitment of the Court to minimise wait times for hearings ensures that the trusted position of the Court as the *Court of Last Resort* in industrial relations disputes and the *Single Appellate Body* in employment law based disputes remains relevant and essential to the maintenance of orderly workplace relations across the economy. The operational framework of the Court has, as earlier described, been fundamentally different in 2020 to what had been the experience previously. The Court must record the extraordinarily constructive response of workers, employers and their representatives to the introduction of a virtual courtroom and must acknowledge that it has been the willingness of those stakeholders to embark on the use of new courtroom technologies which has underpinned effective public service delivery by the Court throughout 2020. While the incidence of requests for postponement of hearings has been operationally challenging for the Court, I am satisfied that the vast majority of such requests have been genuine and reflective of real difficulties rather than of strategic attempts to delay the hearing of appeals or the investigation of trade disputes by the Court.

Changes in Court Membership during 2020

Mr Andrew McCarthy's term of office as a worker member of the Court concluded in April 2020. In June 2020 Mr Paul Bell, on the nomination of the Irish Congress of Trade Unions, was appointed by Minister English as a worker member to replace Mr McCarthy

Acknowledgement

I wish to place on record my appreciation of the work and dedication of the members and staff of the Labour Court throughout 2020. This has been a year of great change to long embedded administrative and courtroom procedures and platforms. The staff and members of the Court have demonstrated their commitment to public service in the manner in which they faced the challenge of change in 2020 and I would like to place on record my respect for their achievement in ensuring that workers and employers could continue to rely on the Court to deliver on its statutory mandate through the pandemic.

I wish to thank, in particular, Ms Fiona O’Dea who served as the Head of Administration of the Labour Court in the first half of the year until her departure on promotion and Ms Bernie Byrne who joined the Court in mid-year to take up that leadership role. Both of these colleagues provided me with invaluable and expert support in managing the administrative affairs of the Court in 2020.

I wish to thank An Tánaiste and Minister for Enterprise, Trade and Employment, Mr. Leo Varadkar and the Minister of State for Business, Employment & Retail, Mr. Damien English for their continuing support for the work of the Court. I would like to thank Dr Orlaigh Quinn, the Secretary General of the Department of Enterprise, Trade and Employment and Ms Clare Dunne, Assistant Secretary General of that Department with responsibility for the Workplace Regulation and Economic Migration Division for their continuing support for the Court as an institution at the centre of the State’s dispute resolution infrastructure and for their support to me as Chairman. I would like finally to acknowledge the critical work of Ms Tara Coogan and her team in the Workplace Regulation and Economic Migration Division which has been an invaluable support to the Court during the year.

Kevin Foley
Chairman
June 2021

Chapter 1 Functions of the Labour Court

1.1 General introduction

The Labour Court was established by the Industrial Relations Act 1946 with functions designed to assist in the resolution of industrial relations issues. The responsibilities and role of the Court have been considerably enhanced over the years both as a result of the increase in national and European employment legislation including the enactment of the Workplace Relations Act 2015, which provides that the Labour Court now has sole appellate jurisdiction in all disputes arising under employment rights' enactments.

The role of the Court can be broadly divided between its industrial relations work (those issues coming to the Court under the provisions of the Industrial Relations Acts), and its employment rights work (those cases referred to it under any of the Employment Rights Acts).



Mission Statement of the Labour Court

To provide high quality, fair and impartial arrangements for the resolution of industrial relations disputes and the determination of appeals in disputes based on employment law.



1.2 Industrial Relations

The involvement of the Labour Court in the industrial relations area is provided for in the Industrial Relations Acts 1946 to 2015 and it can take various forms, the main ones being as follows:

Investigation of Industrial Relations Disputes

A large proportion of the industrial relations disputes coming to the Court for investigation will already have been the subject of efforts by the Workplace Relations Commission (WRC) (by way of conciliation between the parties) to seek an agreed resolution. A dispute is 'referred' to the Court when both parties request the Court to investigate the dispute. When that request is made the Court will hold a hearing, following which it may and usually does, issue a 'Recommendation' setting out the Court's views, based on the merits of the dispute, as to what should represent a reasonable resolution of the issue(s) in dispute. The recommendation is not binding on the parties, but parties are expected to give serious and proper consideration to the recommendation of the 'Court of last resort' which they had earlier sought.

As an alternative to proceeding through conciliation with the WRC, disputes may be referred directly to the Court by one, or both parties with advance agreement to be bound by the Court's recommendation.

There are special provisions relating to disputes where negotiating arrangements are not in place within the employment. In such a case, the Court will issue a recommendation following its investigation and if the terms of the recommendation are not complied with within a given period, the Court may on request issue an enforceable 'Determination'.

Appeals of Adjudication Officer's Recommendations

An industrial relations dispute involving one worker may be referred first to an Adjudicator for a Recommendation. The Adjudicator's Recommendation may be appealed by either party to the Labour Court and having heard the parties, the Court will issue a 'Decision' that is binding on the parties.

Registration of Employment Agreements

The work of the Court in this area is described later in this Annual Report. Generally, it will involve the registration by the Court of an agreement on pay and conditions of employment of workers of any class, type or group, made between a trade union, or trade unions of workers and one or more than one employer, or trade union of employers that is binding only on the parties to the agreement in respect of the workers of that class, type, or group.

Sectoral Employment Orders

Upon receipt of a request, the Labour Court can initiate a review of the pay and pension and sick pay entitlements of workers in a particular sector and if it deems it appropriate, make a recommendation to the Minister on the matter. Such a request may be made by:

- A trade union of workers;
- A trade union or an organisation of employers; or
- A trade union of workers jointly with a trade union, or an organisation of employers (the trade union of workers and the organisation of employers must be substantially representative of the workers and employers in the sector to which the application relates).

If the Minister is satisfied that the process provided for in the Industrial Relations (Amendment) Act, 2015 has been complied with by the Labour Court, he/she shall make the Order. Where such an order is made it will be binding across the sector to which it relates and will be enforceable by the WRC.

Joint Labour Committees/Employment Regulation Orders

This area of the Labour Court's activities is also described later in this Report.

A Joint Labour Committee (JLC) is comprised of representatives of employers and workers in the relevant sector under an independent chairman. When it reaches agreement on terms and conditions, the JLC publishes details and invites submissions. Following consideration of any submissions, the Committee may make proposals for making an Employment Regulation Order (ERO).

An ERO is a statutory instrument setting out wages and conditions of employment applying to specified grades, or categories of workers in a particular sector. On foot of proposals received from the JLC for that sector and which have been adopted by the Labour Court, the Minister for Enterprise,

Trade and Employment makes an order confirming the terms of the ERO, if they are satisfied that the statutory conditions have been complied with. Every order made by the Minister must be laid before both Houses of the Oireachtas and can be annulled by resolution of either House.

Codes of Practice

The Industrial Relations Act 1990 makes provision for the preparation by the WRC of 'codes of practice' concerning industrial relations. Where such a code is in place, application may be made to the Labour Court for an interpretation of its terms. Also, a complaint of a breach of a code may be made to the Court.

1.3 Employment rights

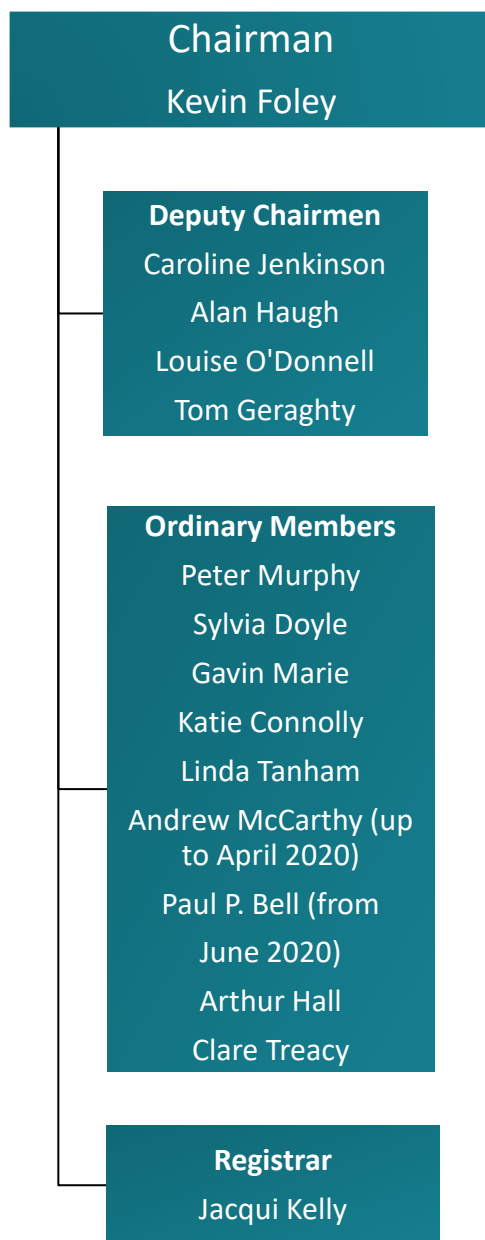
The main work for the Court in the area of employment rights involves acting as the single appellate body for appeal of decisions of Adjudication Officers of the WRC made under employment rights enactments.

The Court also approves collective agreements made under the Organisation of Working Time Act, 1997 and collective agreements regarding casual part-time employees under the Protection of Employees (Part-Time Work) Act, 2001.

1.4 Structure of the Labour Court

The Labour Court

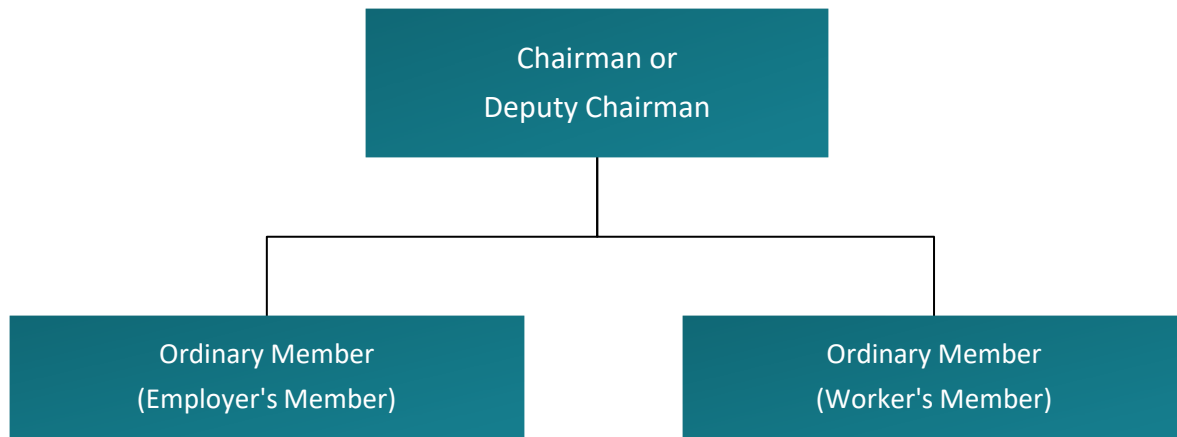
The Labour Court consists of 13 full-time members: A Chairman, four Deputy Chairmen and eight Ordinary Members, four of whom are Employer's Members and four of whom are Worker's Members.



Note: Appointment of the Chairman, Deputy Chairman and Registrar follows a public competition coordinated by the Public Appointments Service. Ordinary Members are appointed by the Minister for Enterprise, Trade and Employment following nomination by Ibec of Employer's Members and ICTU of Worker's Members.

Hearing

Each hearing of the Court is taken by a Division of the Court consisting of the Chairman, or a Deputy Chairman of the Court, a Worker Member and an Employer Member.

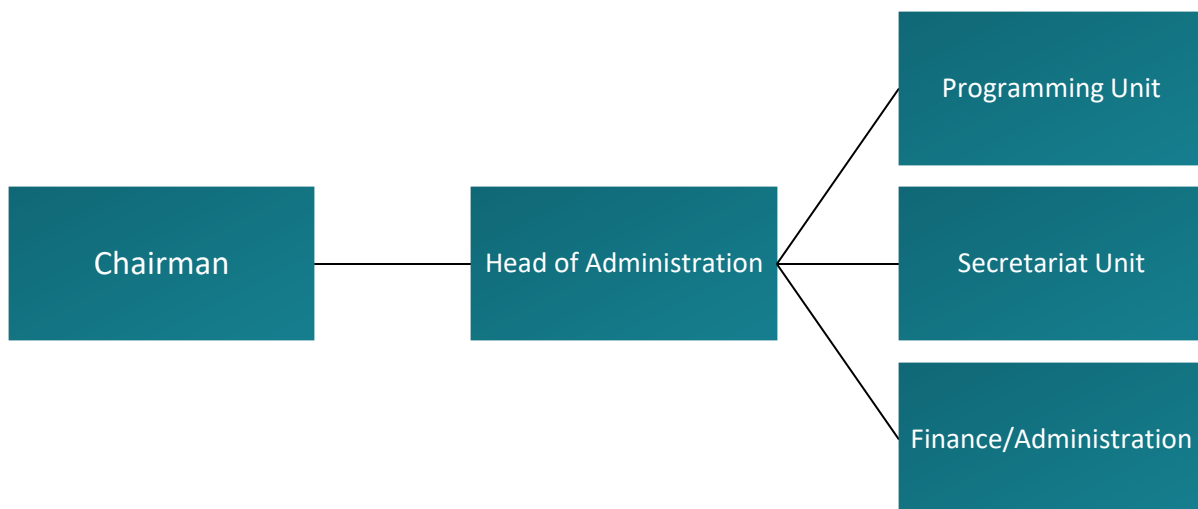


Registrar

The Registrar to the Labour Court sources and provides legal services and advice to the Labour Court in carrying out its statutory functions.

Labour Court Administration

The Labour Court is supported in its function by an administration service which is staffed by permanent employees who are civil servants and part of the staffing establishment of the Department of Enterprise, Trade and Employment, assigned for the time being to the Labour Court.



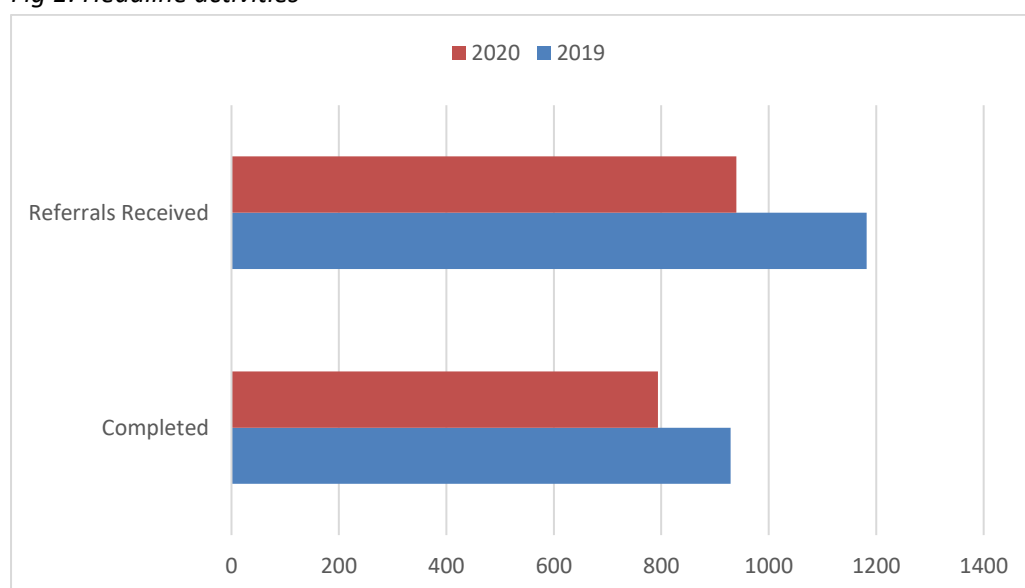
Chapter 2 The Year in Review

2.1 Headlines

During 2020, the Labour Court:

- received 940 appeals/referrals;
- 1065 hearings were scheduled;
- 373 postponements, arising from requests by the parties or as a result of COVID-19 restrictions, were granted;
- 794 Cases were completed; and
- 217 cases were ready to be programmed at the end of 2020.

Fig 1: Headline activities



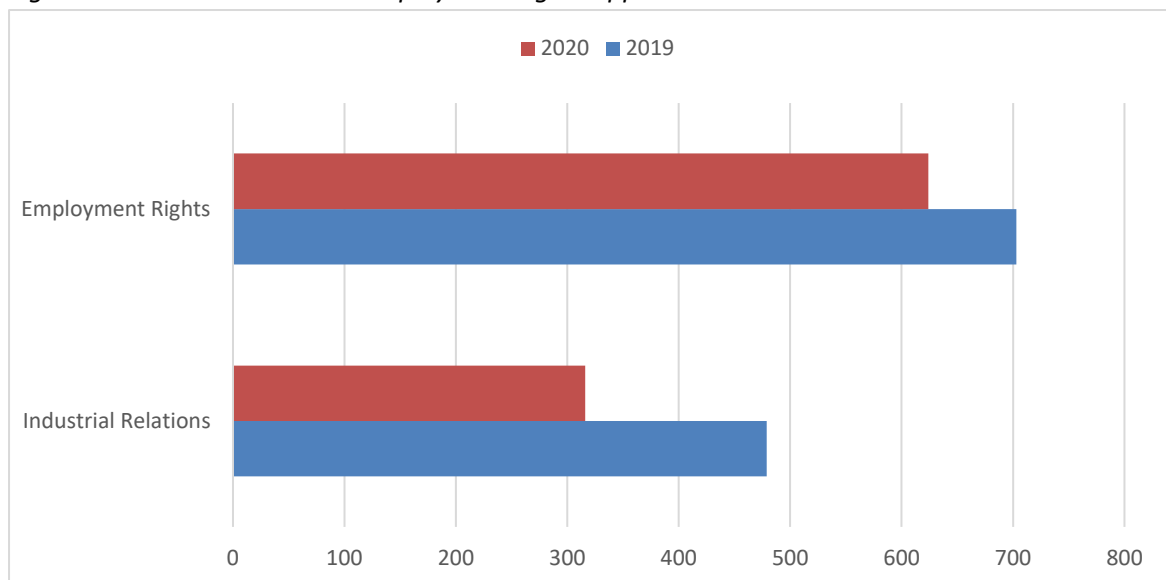
2.2 Appeals to the Court

Overall there was a 20.47% decrease in appeals to the Labour Court in 2020 compared to the previous year (from 1,182 to 940).

Referrals and Appeals under the Industrial Relations Acts 1946 to 2015 accounted for 33.61% of total referrals / appeals. This class of referral / appeal showed an overall decrease of 34% over the numbers of such appeals received in 2019 (from 479 to 316).

Appeals under employment rights legislation accounted for 66.38% of cases coming to the Court, an 11.24% decrease (from 703 in 2019 to 624).

Fig 2: Industrial relations and employment rights appeals to the Court



See Appendices [1](#) and [2](#) for a detailed breakdown of these headline appeal figures.

2.4 Hearings scheduled



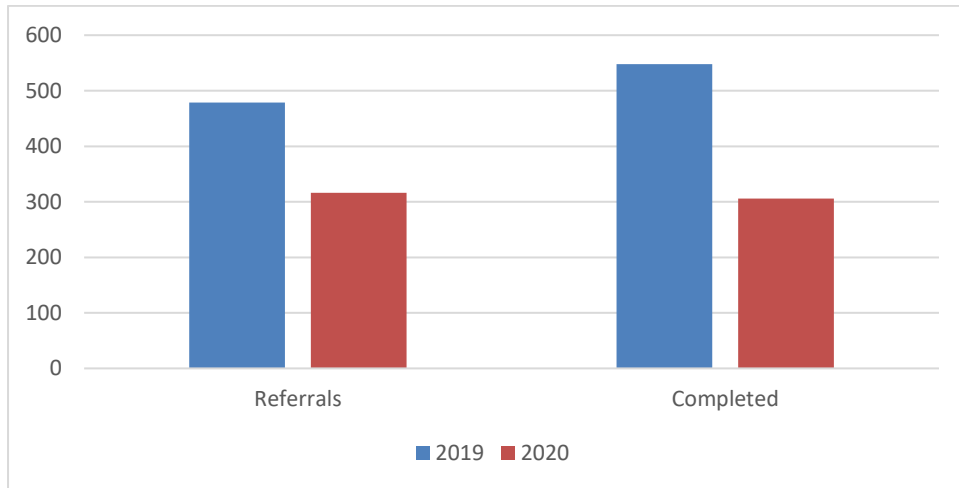
The Court scheduled a total of 1065 hearings in 2020 of which 35% were scheduled in a virtual courtroom. 373 postponements, arising from requests by the parties, or as a result of COVID-19 restrictions, were granted during 2020. COVID-19 impacted on the number of hearings held by the Court in 2020 with the capacity to hold physical hearings reduced significantly and throughout certain periods of lockdown was eliminated. The Court responded to the shutdown of its physical courtrooms in late March by the creation of a virtual courtroom. Virtual courtrooms became operational in June and since that time the Labour Court has operated a blend of virtual and physical courtrooms to ensure a continuation of service and to ensure that the maximum number of cases could be heard. The number and type of hearings held in the virtual courtroom increased as the Court and its users became more familiar with the system and as protocols were further developed.

2.5 Industrial Relations Cases

The number of cases received under the Industrial Relations Acts 1946-2015 received was 316. The number of cases completed (i.e. in respect of which a recommendation, determination, or decision issued, or the matter was withdrawn by the referral party) in 2020 was 306.

The text of each of the cases in which the Court issued a recommendation can be viewed on the Court's website www.labourcourt.ie.

Fig 3: Industrial relations cases activity



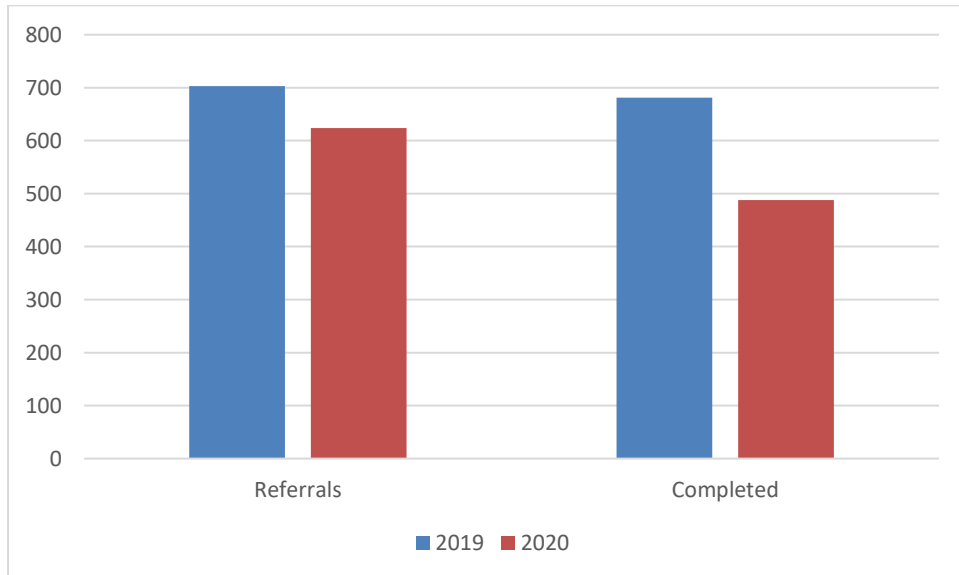
Information on the profile of industrial relations cases received and completed in 2020 are at [Appendix 1](#).

2.6 Employment Rights Cases

The number of employment rights appeals received by the Court in 2020 was 624. The number of cases completed (i.e. in respect of which a recommendation, determination, or decision issued or the matter was withdrawn by the referring party) in 2020 was 488.

The text of each of the cases in which the Court issued a determination can be viewed on the Court's website www.labourcourt.ie.

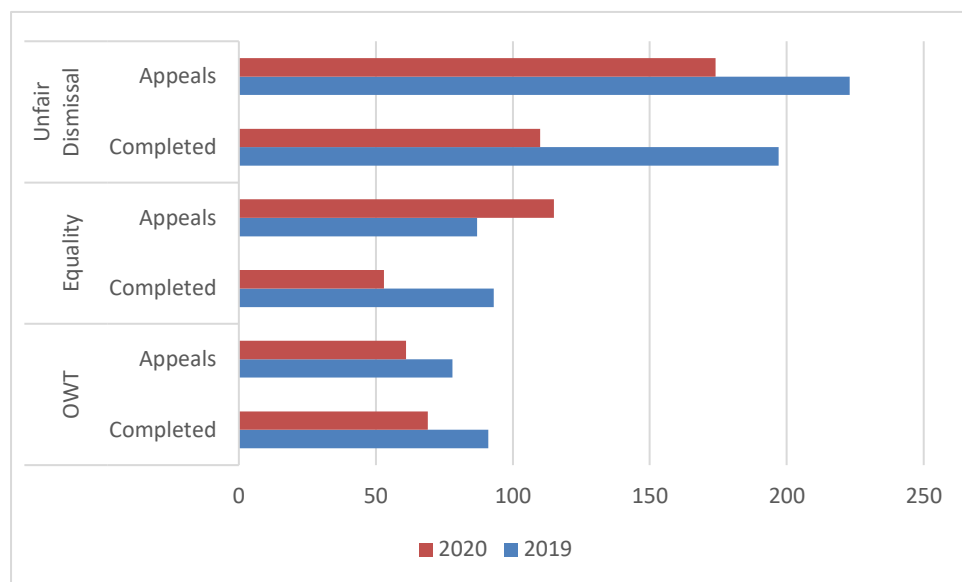
Fig 4: Employment rights appeals activity



Information on the profile of employment rights appeals received, completed and withdrawn in 2020 are at [Appendix 2](#).

Of the 624 employment rights appeals received by the Court during 2020, 56.08% were in respect of appeals under the Unfair Dismissals Acts, 1997 - 2017, Employment Equality Acts, 1998 - 2012 and the Organisation of Working Time Act, 1997.

Figure 5: Unfair Dismissal, Equality and Organisation of Working Time appeals activity



It is also the function of the Labour Court to determine appeals of Adjudication Officer decisions under the full range of employment protection legislation currently in being.

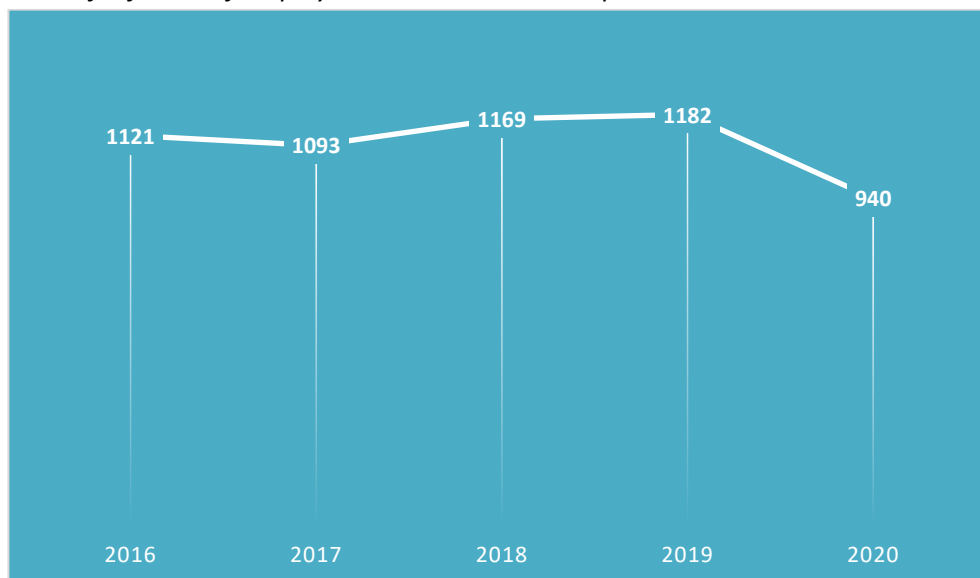
See [Appendix 2](#) for detailed case activity statistics.

Chapter 3 Dispute referrals

3.1 Five-year trend 2016 – 2020

The Court witnessed a continuing relatively low level of industrial dispute activity in the economy during 2020.

Fig 7: Number of referrals of employment and industrial disputes 2016 – 2020



3.2 Industrial Relations Climate in 2020

There was a total of seven industrial disputes in progress in 2020 involving 22,076 workers, whereas 42,656 workers were involved in nine industrial disputes in 2019.

Table 1: Industrial disputes 2016 -2020

Category	2020	2019	2018	2017	2016
No. of Disputes	7	9	10	10	10
No. of Firms	7	9	10	* n/a	10
No. of Workers	22,076	42,656	1,814	9,456	29,372
No. of Days Lost	21,704	**n/a	4,050	50,191	71,647

* The total number of firms involved in industrial disputes in 2017 is not available as the CSO was unable to establish the number of firms involved in one industrial dispute in the construction sector in Q2 and Q3 2017.

**The CSO were unable to establish the no. of days lost in Q4 2019 and therefore were unable to provide a total no. of days lost in 2019.

Source: Central Statistics Office

Chapter 4 Other Activities during 2020

4.1 Virtual Courtroom

The onset of the COVID-19 pandemic in spring 2020 had a significant impact on the capacity of the Labour Court to deliver its services. In response to this challenge, a virtual courtroom has been developed to allow the Labour Court to continue to fulfil its mandate to support the resolution of industrial disputes and to determine appeals in disputes based on employment rights. The virtual courtroom has been in operation at the Labour Court since June 2020, in addition to in-person hearings, to safely deliver Court services.

The Labour Court, since 1946, has operated exclusively on the basis of Court hearings taking place in physical courtrooms. That operating model requires the presence of disputing parties and the three-member Labour Court in one physical location in order to hear a case. Commonly, public access to hearings of the court in a physical courtroom is also a feature. The key to the Court's operations is the capacity to deliver service to parties engaged in disputation in the workplace.

The unexpected advent of the COVID-19 public health crisis deprived the Court of physical courtrooms and of its ability to convene physical hearings. That event immediately and catastrophically impacted on the capacity of the Court to deliver service to the public.

The Court established a working group focussed on exploiting technology to facilitate the creation of a virtual courtroom. The essential objective was the achievement of a virtual courtroom which was procedurally robust and fair to the point that the procedures involved would withstand judicial scrutiny.

The working group first engaged in a desk top study of the utilisation of technology to support Court hearings in selected jurisdictions across Europe and in state dispute resolution institutions across the world. Consultation with the Courts Service of Ireland and the confident response of the Department's ICT team were critical to the technology solution. The decision to engage widely with internal and external stakeholders in an open a transparent manner was the key lever to participation by key parties, to move, with participant confidence, a procedure which was long standing in format and deeply embedded as a physical exercise involving physical interaction to a platform which is entirely virtual and reliant on digital technology. This objective required an approach which allowed the Court's internal stakeholders as well as the Court's diverse range of users to understand the platform to the degree that they could develop real confidence in their own ability to engage with the Court effectively in this new way.

A series of written protocols to give order to virtual proceedings were developed to support the provision of an impartial appeals process. A user guide was quickly developed and has been made available to support participants in virtual hearings. These protocols and guides are live documents which are under constant revision and evolution, and the ongoing development of the virtual courtroom in step with the Court's administrative infrastructure is managed on an ongoing basis by a dedicated group comprised of Court members and staff. In addition, internal protocols were developed to assist and upskill the members of the Court and support staff in the delivery of a virtual service.

The introduction of a virtual courtroom has provided a successful alternative to physical hearings where these have been curtailed by the requirements of distancing, or wholly postponed during periods where movement has been restricted. Of the hearings heard between June 2020 and the end of the year, 70% were held in the virtual courtroom allowing the Court to maintain its service provision, despite the strictures ensuing from the pandemic. Both informal/anecdotal feedback as well as more structured feedback received from certain user group fora suggests that the virtual courtroom has been well received by what is an increasingly virtual-acclimatised public. Indeed, it is the Court's view that the level of virtual acclimatisation now permeating throughout our society is such that the virtual courtroom is not simply an adapted service but rather now is an 'enhanced' service for a more virtual friendly user landscape for the longer term.



The Labour Court's Virtual Courtroom received an award at the 2020 Civil Service Excellence and Innovation Recognition Event in November, in the award category 'Excellence in Customer Services.'



Representatives of the Virtual Courtroom team with the Award.

4.2 Joint Labour Committees

The Industrial Relations Acts 1946 - 2015 make provision for a system of Joint Labour Committees (JLCs), a mechanism designed to allow for the setting of statutory minimum rates of pay and conditions of employment in particular sectors.

A JLC is comprised of representatives of employers and workers in the relevant sector under an independent chairman. When it reaches agreement on terms and conditions, the JLC publishes details and invites submissions. Following consideration of any submissions, the Committee may make proposals for making an Employment Regulation Order (see 4.2 below).

The Labour Court supports the work of the JLCs by providing a Secretariat, accommodation and other facilities for their meetings.

Section 41A of the Industrial Relations Act, 1946 ('the Act') requires the Labour Court to carry out a review of each Joint Labour Committee (JLC) at least once every five years. The last such review was completed on 20 April 2018. Following the completion of that Review and the making of orders by the Minister following its completion the following JLCs are in existence:

1. Agricultural Workers
2. Catering
3. Contract Cleaning
4. Hairdressing
5. Hotels
6. Retail, Grocery and Allied Trades
7. Security Industry
8. English Language Schools Sector

Activities in this Area in 2020

The Contract Cleaning and the Security Industry JLC met in 2020 with a view to agreeing new/revised Employment Regulation Orders for their respective sectors.

An English Language Schools Joint Labour Committee Establishment Order was made by the Minister of State at the Department of Business, Enterprise and Innovation, Pat Breen, on 11th February 2020.

4.2 Employment Regulation Orders

An Employment Regulation Order (ERO) is a statutory instrument setting out wages and conditions of employment applying to specified grades or categories of workers in a particular sector. On foot of proposals received from the JLC for that sector and which have been adopted by the Labour Court, the Minister for Enterprise, Trade and Employment makes a statutory instrument confirming the terms of the ERO if he is satisfied that the statutory conditions provided for in the Industrial Relations (Amendment) Act 2012 have been complied with.

Activities in this area in 2020

An Employment Regulation Order (ERO) in respect of Contract Cleaners was adopted by the Labour Court and was given Statutory effect by Damien English, Minister of State for Business, Employment & Retail on 10 December 2020.

The Security JLC submitted draft proposals to amend the subsisting ERO (SI 23 of 2017) in October and December 2020.

4.3 Joint Industrial Councils

A “qualified Joint Industrial Council” (JIC) is a voluntary negotiating body for an industry or part of an industry and is representative of employers and workers. If it fulfils conditions set out in the industrial relations legislation, it may apply to the Labour Court for registration and the Court, if satisfied, will place it on the Register of Joint Industrial Councils.

The Labour Court facilitates the JICs by making available an officer of the Court to act as secretary at their meetings. At the end of 2020, there were 5 active JICs on the Register and as required by section 23(3) Industrial Relations Act 1946, details of these are included in [Appendix 3](#).

Apart from the five bodies on the Register of JICs, there are a number of other bodies which are engaged in similar activities, but which have not applied for registration – the Electrical Contracting Industry JIC and the State Industrial Employees JIC. The Labour Court makes available an officer of the Court to act as secretary at meetings of such bodies and officers of the Court attended four meetings of the State Industrial Employees JIC.

4.4 Registered Employment Agreements

The Industrial Relations (Amendment) Act 2015 provided for the reintroduction of a mechanism for the registration of employment agreements between an employer or employers and trade unions governing terms and conditions in individual enterprises.

The Industrial Relations (Amendment) Act, 2015 defines an employment agreement as:

“an agreement relating to the remuneration or the conditions of employment of workers of any class, type or group made between a trade union or trade unions of workers and one or more than one employer or a trade union of employers, that is binding only on the parties to the agreement in respect of the workers of that class, type or group.”

Where the Labour Court is satisfied that an agreement presented satisfies the relevant statutory requirements it will register the agreement. The effect of this is to make the provisions of the agreement legally enforceable in respect of every worker of the class type or group to which it is expressed to apply.

4.5 Sectoral Employment Orders

Sectoral Employment Orders (SEO's) were set up under the Industrial Relations Act 2015 to establish a mechanism for sectoral wage setting. The intent behind the current legislative framework is to establish minimum rates of pay that reflect the skills and training of the workers of a class, type or group (including apprentices), provision for sick leave and pension to apply to a sector. The SEO contains a dispute resolution procedure and so acts to promote industrial harmony and minimise unrest.

Upon receipt of a request to the Labour Court, it can initiate a review of the pay and pension and sick pay entitlements of workers in a particular sector and if it deems it appropriate, make a recommendation to the Minister on the matter. Such a request may be made by:

- A trade union of workers;
- A trade union or an organisation of employers; or
- A trade union of workers jointly with a trade union or an organisation of employers (the trade union of workers and the organisation of employers must be substantially representative of the workers and employers in the sector to which the application relates).

If the Minister is satisfied that the Court has complied with the provisions of the Industrial Relations (Amendment) Act, 2015, he/she shall make the Order. Where such an order is made it will be binding across the sector to which it relates and will be enforceable by the WRC.

Activities in this Area in 2020

In June 2020, the High Court ruled that the Sectoral Employment Order (Electrical Contracting Sector) Order (SI 251 of 2019), which provides minimum rates of remuneration and other matters for workers in the electrical contracting sector, was made ultra vires the parent legislation.

There were two High Court judgments, one in June and the other in July 2020. The first, or principal judgment held that the statutory instrument regulating the remuneration of electricians working in the construction industry, i.e. the Sectoral Employment Order (Electrical Contracting Sector) 2019, had not been validly made. This conclusion entailed two distinct findings. The first finding had been that the Minister of State, to whom the powers had been delegated, did not have jurisdiction to promulgate the secondary legislation in circumstances where the Labour Court had not complied with the requirements of Chapter 3 of the Industrial Relations (Amendment) Act 2015. The second finding was that the relevant chapter of the parent legislation, which purported to authorise the making of sectoral employment orders, is invalid having regard to the provisions of Article 15.2.1 of the Constitution. This declaration of unconstitutionality was stayed by the High Court in July 2020 pending an Appeal to the Supreme Court.

Leave to appeal the High Court ruling on Sectoral Employment Orders (SEOs) directly to the Supreme Court was granted 21 October 2020, along with a cross-appeal by the electrical contractor body which took the case.

Current Position:

The Supreme Court appeal was heard in February 2021 and the decision is awaited at time of writing.

SEO for Mechanical Engineering Building Services

In September 2020 the Labour Court received a joint application from Connect Trade Union and Unite the Union to conduct an examination into terms and conditions in the Mechanical Engineering Building Services Contracting Sector. Notice of the Court's intention to conduct an examination in accordance with section 15 of the Industrial Relations (Amendment) Act 2015 was published in November 2020. A public hearing to hear all interested parties and have regard to submissions made has not been fixed and no recommendation has been made to the Minister at time of writing.

SEO for Construction Industry

In October 2020, the Labour Court received an application from the Construction Industry Federation to conduct an examination into terms and conditions in the Construction Sector. No examination of the request has been made by the Court at time of writing.

5.0 Internal Services

Financial Management

The Labour Court is funded by the Exchequer, through the Department of Enterprise, Trade and Employment. Expenditure totalling €2,775,619 was incurred by the Court during 2020. This comprised €2,580,585 in respect of pay and €195,034 in respect of non-pay. All Labour Court finances are administered through the Department's budget and form part of the Department's accounts. As well as arranging its own tenders the Court also availed of drawdown from the Department in areas such as learning and development. Expenditure is monitored constantly and is reviewed on a monthly basis.

For details see [Appendix 5: Financial Report for 2020](#).

Customer Service

The Labour Court operates under a Customer Service Charter and Action Plan 2019-2021. The Charter sets out the level of service users can expect to receive if they have occasion to avail of the Court's services. The Customer Action Plan describes how the commitments and standards set out in the Customer Charter will be delivered in accordance with the guiding principles of QCS that have been adopted across the public service.

Memorandum of Understanding

In 2020 the Labour Court prepared a Memorandum of Understanding (MoU) with its parent Department, the Department of Enterprise, Trade and Employment, in fulfilment of the requirement under the Government decision of 15 November 2011 and under the Public Service Reform Programme published on 17 November 2011 for each Department to, *inter alia*, put in place robust Service Level Agreements with its State Bodies by June 2012.

The Court undertook to provide an agreed level of service in accordance with the deliverables and performance criteria specified in its submitted annual work programme as set out in [Appendix 6](#) and in accordance with all relevant legislation.



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Appendices

Appendix 1: Industrial relations statistics

Table 1.1 Profile of industrial relations cases received

		2020	2019
Appeal of Adjudication Officer Decision	Section 13(9), Industrial Relations Act, 1969	89	127
	Section 10(1), Industrial Relations (Misc Prov) Act, 2004	0	1
	Section 45(A), Industrial Relations Act, 1946	23	4
Direct Referral	Section 20(1), Industrial Relations Act, 1969	141	207
	Section 20(2), Industrial Relations Act, 1969	0	1
	Section 2(1), Industrial Relations (Amendment) Act, 2001	1	3
	Section 26(5), Industrial Relations Act, 1990	0	4
	Section 12(1), Industrial Relations (Amendment) Act 2015	0	1
Conciliation Service	Section 26(1), Industrial Relations Act, 1990	62	131
Total		316	479

Table 1.2: Industrial relations cases activity 2020 by category

	Cases Received		Withdrawn & Completed			Decisions					
	Worker	Company	Withdrawn	Settled	Decisions	Upheld	Overtured	Varied	Time Limit Outside	Referral	Direct
Industrial Relations Acts, 1946 to 2015	1	0	0	0	0	0	0	0	0	0	0
S10 (1) IR (Misc Prov) Act 2004	0	0	4	0	0	0	0	0	0	0	0
S20(1) of IR Act 69	0	0	34	0	0	0	0	0	0	0	0
S32 Ind Relations Act, 1946	0	0	35	0	0	0	0	0	0	0	0
S33(1) Ind Relations Act, 1946	0	0	1	0	0	0	0	0	0	0	0
Section 2 (1), Industrial Relations (Amendment)Act,2001	1	0	0	0	0	0	0	0	0	0	0
Section 13(9), Industrial Relations Act, 1969	74	15	17	11	43	20	7	15	0	1	
Section 20(1), Industrial Relations Act, 1969	141	0	26	5	61	0	0	0	0	61	
Section 26(1), Industrial Relations Act, 1990	62	0	13	2	52	0	0	2	0	50	
Section 45(A) Industrial Relations Act, 1946	22	0	1	0	1	1	0	0	0	0	
Grand Total	301	15	131	18	157	21	7	17	0	112	

Appendix 2: Employment rights statistics

Table 2.1: Employment rights appeals 2020 activity by category

	Appeals Received		Withdrawn & Completed			Decisions				
	Worker	Company	Withdrawn	Settled	Decisions	Upheld	Overtuned	Varied	Time Limit	Outside Referral
Unfair Dismissal	133	41	56	15	39	21	6	9	1	2
Employment Equality Act	73	14	26	4	21	15	1	0	2	3
Organisation Working Time	46	15	59	0	10	1	2	5	1	1
Terms of Employment	34	21	9	5	12	1	5	4	1	1
Payment Wages	33	31	15	5	38	14	12	7	1	4
Min Notice & Term of Employment	20	16	15	3	12	9	1	0	0	2
Redundancy Payments	13	18	11	1	13	11	1	1	0	0
Safety, Health and Welfare	11	1	10	2	6	4	0	1	0	1
Protected Disclosure	12	2	2	3	6	2	0	1	0	3
Fixed-Term Work	8	0	14	0	3	2	1	0	0	0
Minimum Wage	8	0	6	0	6	2	1	2	1	0
Part-Time Work	4	0	11	0	0	0	0	0	0	0
Parental Leave	3	1	1	0	1	1	0	0	0	0
Protection Employee Employer Insolvency	3	0	0	0	0	0	0	0	0	0
Transfer of Undertakings	3	22	2	1	7	5	0	1	1	0
Consumer Protection	2	0	0	0	0	0	0	0	0	0

	Appeals Received		Withdrawn & Completed			Decisions				
	Worker	Company	Withdrawn	Settled	Decisions	Upheld	Overturned	Varied	Outside Time Limit	Direct Referral
Mobile Road Transport	1	0	0	1	0	0	0	0	0	0
Appeal Adjudication Officer	0	0	2	0	0	0	0	0	0	0
Carer's Leave	0	0	0	0	0	0	0	0	0	0
Criminal Justice Act	1	0	1	0	0	0	0	0	0	0
Maternity Protection	1	2	1	3	1	0	0	1	0	0
Protection of Employment Act	0	0	1	0	0	0	0	0	0	0
Pensions Act	1	0								
Reporting Child Abuse	1	0	0	0	0	0	0	0	0	0
Appeal of Compliance Notice	0	0	1	0	0	0	0	0	0	0
Health Act	0	0	3	0	0	0	0	0	0	0
Prevention Corruption	0	0	0	0	1	1	0	0	0	0
Provision Information Consultation	0	0	17	0	1	0	0	1	0	0
Section 77(12) Employment Equality Act	19	9	2	0	0	0	0	0	0	0
Temporary Agency Work	0	1	0	0	3	0	2	1	0	0
Total	430	194	265	43	180	89	32	34	8	17

Table 2.2: Profile of employment rights appeals received

Section /Act /Application	2020	2019	%
Unfair Dismissal Acts	174	223	-21.97%
Section 8A Unfair Dismissals Acts, 1977 - 2015	174	223	
Equality	115	87	32.18%
Section 83, Employment Equality Act, 1998	87	76	
Section 77(12), Employment Equality Act, 1998	28	11	
Payment of Wages	64	88	-27.27%
Section 7(1) Payment of Wages Act, 1991	64	88	
Organisation of Working Time	61	78	-21.79%
Section 28(1), Organisation of Working Time Act, 1997	56	69	
Section 28(8), Organisation of Working Time Act, 1997	5	9	
Terms of Employment	55	60	-8.33%
Section 8(1) Terms of Employment (Information) Act, 1994-2018	55	60	
Minimum Notice & Terms of Employment Acts	36	42	-14.29%
Minimum Notice & Terms of Employment Acts, 1973 – 2005	36	42	
Redundancy Payments Acts	31	29	6.90%
Redundancy Payments Acts, 1967 – 2014	31	29	
Protection of Employees on Transfer of Undertakings	25	14	78.57%
Section 11(1) EC (Protection of Employees on Transfer of Undertakings) Regulations, 2003	25	14	
Protected Disclosures	14	14	0.00%
Section 12(2), Protected Disclosures Act, 2014	14	14	
Safety, Health & Welfare at Work	12	17	-29.41%
Section 29(1) Safety, Health and Welfare at Work Act, 2005	12	17	
Protection of Employees (Fixed Term Work)	8	9	-11.11%
Section 15(1) Protection of Employees (Fixed-Term Work) Act, 2003	8	9	
National Minimum Wage	8	9	-11.11%
Section 27(1), National Minimum Wage Act, 2000	7	8	
Section 31(1), National Minimum Wage Act, 2000	1	1	
Protection of Employees (Part-Time Work)	4	8	-50.00%
Section 17(1) Protection of Employees (Part-time Work) Act, 2001	4	8	
Parental Leave	4	2	100.00%
Section 19(1), Parental Leave Acts, 1998 and 2006	4	2	
All other appeals received by the Court	13	23	
Protection Employees (Employers' Insolvency) Acts	3	0	n/a

Section /Act /Application	2020	2019	%
Section 33(1), Maternity Protection Act, 1994	3	4	-25.00%
Consumer Protection Acts 2007 and 2014	2	2	0.00%
Criminal Justice Act	1	0	n/a
Protection of Employees (Temporary Agency Work) Act, 2012	1	4	-75.00%
Reporting Child Abuse	1	0	n/a
Section 19, European Communities (Road Transport) (Organisation of Working Time of Persons Performing Mobile Road Transport Activities) Regulations, 2012	1	3	-66.67%
Section 81(1) Pensions Act, 1990	1	5	-80.00%
European Communities (Protection of Employment) Regulations, 2000	0	1	-100.00%
Section 15(1), Employees (Provision of Information and Consultation) Act 2006	0	1	-100.00%
Section 28, Workplace Relations Act, 2015	0	1	-100.00%
Section 42, Workplace Relations Act, 2015	0	0	n/a
Section 55(M)(11) Health Act 20004 and 2007	0	1	-100.00%
Section 8A(5), Prevention of Corruption (Amendment) Act 2001	0	1	-100.00%
Totals	624	703	-11.24%

Appendix 3: Registered Joint Industrial Councils

The following particulars of associations on the Register of Joint Industrial Councils during the period covered by this Report are given in accordance with the requirements of section 23(3) Industrial Relations Act, 1946.

1. Joint Board of Conciliation and Arbitration for the Boot and Shoe Industry of Ireland

Date of Registration: 10 July 1948

Secretary: Ms. C. Cronin/Ms. C. O'Reilly, The Labour Court

2. Joint Industrial Council for the Dublin Wholesale Fruit and Vegetable Trade

Date of Registration: 27 January 1964

Secretary: Ms. C. Cronin/Ms. C. O'Reilly, The Labour Court

3. Joint Industrial Council for the Construction Industry

Date of Registration: 26 July 1965

Secretary: Ms. C. Cronin/Ms. C. O'Reilly, The Labour Court

4. Joint Industrial Council for the Security Industry

Date of Registration: 12 December 2011

Secretary: Ms. C. Cronin/Ms. C. O'Reilly, The Labour Court

5. Joint Industrial Council for the Contract Cleaning Industry

Date of Registration: 19 December 2011

Secretary: Ms. C. Cronin/Ms. C. O'Reilly, The Labour Court

Appendix 4: Further information

Further information about anything contained in this Annual Report is available from:

The Labour Court
Lansdowne House
Lansdowne Road
Dublin 4
D04 A3A8

Phone: (01) 613 6666

Lo-call number (if calling outside (01) area): 1890 22 02 28

Email: info@labourcourt.ie

Website: www.labourcourt.ie

Query	Relevant section of the Labour Court	Contact
About a particular case <u>before</u> the hearing	Programming Section	(01) 6136608, 6136650, 6136610 Email info@labourcourt.ie
About a particular case <u>after</u> the hearing	Relevant Court Secretary	As indicated at the hearing
Joint Labour Committees Registered Employment Agreements/Sectoral Employment Orders Employment Regulation Orders	Relevant Court Secretary	As indicated at the hearing
General information about industrial relations and employment rights matters.	Workplace Relations Customer Services	1890 80 80 90

Appendix 5: Financial report for 2020

Table 5.1 Labour Court outturn 2020

Outturn	€
Pay	2,580,585
Non-pay	195,034
Total	2,775,619

Table 5.2 Main areas of non-pay expenditure

	€
Post/Telephones	49,749.84
Office Premises	47,669.64
Office Equipment & Supplies	47,025.23
Regional Hearings	10,630.38

Prompt Payments

During 2020 the Court continued to comply with the Prompt Payment of Accounts Act, 1997 as amended by the European Communities (Late Payment in Commercial Transactions) Regulations, 2002.

Appendix 6: Labour Court Work Programme for 2020

Key Actions and Performance Indicators

Strategic Objective	Objective	Performance
Strategic Priority 1: Provide an efficient and high quality service to court users	Deliver improved processing, listing and management of cases.	<ul style="list-style-type: none"> Progress made on implementing medium to long term Business Process Review (BPR) recommendations and in particular the development of a new Case Management System. Continued development of virtual courtroom to support increased numbers of remote hearings during COVID 19. Deliver on Customer Service standards agreed for 2021
	Ensure that all scheduled Court sittings are supported to meet the needs of all users.	<ul style="list-style-type: none"> Universal Design and Accessibility Policy drafted by end Q1 2021. Effect given to section 42 Irish Human Rights and Equality Commission Act 2013 by end Q1. Ongoing Participation in DETE's Disability Consultative Committee. Further develop virtual courtroom and new CMS interface with accessibility for users prioritised. Evidence based scheduling of regional programme to maximise capacity (if/when COVID-19 restrictions allow).
	Underpin the concept of the Labour Court as the court of last resort in the case of industrial relations disputes and as the single appellate body for all complaints made under the body of employment law with a strong brand identity and enhance communications with the public	<ul style="list-style-type: none"> Engagement with stakeholders to support public awareness of Labour Court Functions and activities New appeal forms and improved standard communications issued
	Develop appropriate customer service standards	<ul style="list-style-type: none"> Customer service standards for 2021 agreed
Strategic Priority 2: Develop and support Court members and	Support administrative staff development by identifying and addressing current and future training	<ul style="list-style-type: none"> Role profiles clearly linked to Labour Court 2021 Business Plan Focus placed on mentoring and coaching.

Strategic Objective	Objective	Performance
administrative staff	needs and ensuring that all staff are provided with the skills, knowledge and experience to perform and develop within their roles	<ul style="list-style-type: none"> • Staff participation in wider networks and working groups encouraged. • Staff mobility identified and implemented. • Underperformance issues addressed and supported by staff development • Induction Programme for new staff implemented.
	Provide for knowledge transfer to ensure Provide for knowledge transfer to ensure continuity of service when administrative staff move due to promotion, mobility or retirement.	<ul style="list-style-type: none"> • Procedure manuals regularly updated to reflect changes to administrative practices • Ongoing engagement with HR to ensure that staff changes are managed • Hold regular meetings with the Business Partner for the Labour Court
	Enhance internal communications	<ul style="list-style-type: none"> • Minutes of Labour Court meetings circulated to staff • Monthly staff meetings conducted • Quarterly administrative meetings with Chairman conducted and minutes circulated to staff • Effective communication by and between BPR implementation sub-groups
	Continue the professional development programme for Court members	<ul style="list-style-type: none"> • Organised professional development inputs to members organised by members' sub-committee/registrar. • Relevant academic studies by members supported.
Strategic Priority 3: Optimise technology and improve case management process	Generate efficiencies from greater use of online service delivery	<ul style="list-style-type: none"> • Progress made on implementing medium to longer term BPR recommendations. • New case management system designed to testing and training stages • Appropriate and relevant management information reports produced.
	Identify and implement more efficient processes and workflows	<ul style="list-style-type: none"> • Continued development of management information systems to measure and underpin improved service delivery.
	Enhance www.labourcourt.ie to provide improved and user-friendly access to information and online services for court users.	<ul style="list-style-type: none"> • Analytics tool used to monitor traffic and identify areas for improvement • Website nudges users to submit appeals via email

Strategic Objective	Objective	Performance
Strategic Priority 4: Ensure effective governance	Continue to adhere to DETE requirements in respect of business planning, risk management, records management, public procurement, financial procedures, GDPR and FOI.	<ul style="list-style-type: none"> • Processes and procedures put in place and maintained to ensure full corporate governance adherence • Timely reports submitted to DETE • Comprehensive business case for 2022 funding made to DETE as part of the annual estimates process.



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