IRELAND

Collective agreements

National reporter: Judge Kevin Duffy
Labour Court, Ireland

1. Definitions

1.1 What is the definition of the collective agreement in your country?

1.2 The term “collective agreement” means an agreement that regulates the rates of pay or the conditions of employment of a body of workers, made between an employer or a body representative of employers and a trade union or a body representative of workers.

1.3 Is there a distinction made between different types of collective agreements according to their source, content or scope (occupational or territorial)?

No.

2. Please summarize the history of collective agreements in your country.

Historically collective agreements were unlawful at common law as being in restraint of trade. This legal constraint was removed in the late nineteenth century. However, it was not until the end of the second war that State support was given to the process of collective bargaining and the conclusion of collective agreements. The Industrial Relations Act 1946 provided a number of mechanisms by which employers and trade unions were encouraged to resolve differences by negotiation and the conclusion of collective bargaining. Under the Act of 1946 parties could register a collective agreement with the Labour Court (which was established by the 1946 Act), thus making it legally enforceable.

From the 1940s onwards collective agreements became the principle means by which rates of pay and conditions of employment were determined. Over the past 15 to 20 years the incidence of collective bargaining and consequently the conclusion of collective bargaining has declined as trade union membership in the private sector has declined. Nonetheless collective agreements remain an important source of employment rights in relation to pay and conditions of employment.

Collective agreements can be concluded in respect of a particular firm or enterprise or in respect of a sector of industry. While sectoral agreements were common in the past, they are no longer prevalent and the most common form of collective bargaining (and agreements) is at the level of the individual company.

There can, however, be more than one collective agreement for either a company or a sector. Different agreements can be negotiated for different negotiating units. A negotiating unit is a grade, group or category of employees whose rates of pay and conditions of employment are determined separately from that of other workers within the employment
to which the agreement relates. Thus, separate agreements may exist for clerical or administrative workers and manual workers.

The established system of determining pay increases in Ireland has, since 1987, been by way of Social Partnership Agreements negotiated between social partners (principally trade unions and employers’ organisations) which deal with a broad range of social and economic issues. Each such agreement deals specifically with pay and to that extent the agreement constitutes a framework agreement, the provisions of which individual trade unions and employers are expected to adopt and incorporate within a collective agreement relating to the industry or sector as appropriate.

3. Collective agreement as a source of law

3.1 What are the constitutional or/and legal grounds of collective agreements?

There is no constitutional provision relating to the conclusion of collective agreements. The Constitution does recognise the right of citizens to join a trade union, but it has been held that this does not include a constitutional right to engage in collective bargaining through the trade union. The law facilitates parties in concluding collective agreements but it does not require them to do so. There are no statutory conditions relating to the conclusion of collective agreements which must be fulfilled. However, a body may only lawfully engage in collective bargaining if it is a trade union, an employers’ association, a staff association representing workers in a particular employment, or an individual employer.

3.2 Does a collective agreement have a contractual or statutory status (or both)?

There is a presumption in Irish law that the parties to a collective agreement do not intend to create legal relations. Hence a collective agreement is not normally enforceable in law. There are, however, exceptions to this rule.

- The parties may expressly provide that the agreement is intended to create legal relations or the conduct of the parties may be such as to imply such a term.
- The parties may register the agreement with the Labour Court under the Industrial Relations Act 1946 and this has the effect of making it legally enforceable.
- Parties may derogate from the provisions of certain provisions of the Working Time Directive by collective agreement. These agreements are legally enforceable.

3.3 The relationship between collective agreements and other sources of law

3.3.1. How do collective agreements receive legal status from the Constitution and the constitutional principles in force in your country?

See 3.2 above.

3.3.2. Relationships between collective agreements and general principles

A) Hierarchy of standard

1) Principle of hierarchy

a) Are collective agreements and covenants subject to superior standards?

b) Does a hierarchy of levels exist between collective agreements?
These concepts are unknown in Irish industrial relations law and practice. However collective agreements may not limit the application of statutory employment rights and an agreement which purports to do so is to that extent void.

2) Derogations
   a) Are collective agreements subject to the “principle of favour” (exemption “in melius” from the laws or higher-ranked agreements)?
      No.
   b) Can they be less favourable than the latter or is it acceptable that lesser ranked agreements contradict unfavourably (“in pejus”) to higher ranked agreements?
      There are no formal or statutory provisions governing such eventuality.

B) Principle of equality: non-discrimination and “equal pay for equal work”
   1) May collective agreements set conditions of unequal treatment and are these upheld as legal?
      No. An agreement which provided for unequal pay or permits discrimination is unlawful and void.
   2) Are collective agreements subject to the principle of equality?
      Yes.

C) Law and order
   1) Is there a definition of “social” law and order (which is different from “economic” or “management” law and order)?
      No.
   2) Is there a distinction between absolute and relative law and order?
      No.

D) Is there a duty of good faith in collective bargaining?
      No.

3.3.3. Collective agreements and other sources of law

A) Collective agreements and law
   1) Are collective agreements allowed to abridge rights that employees have been given by law?
      No – see reply to question 3.3.2.
   2) May the law itself annex a collective agreement?
      No.
   3) May a law delegate some of its powers to a collective agreement?
      No – the law-making function may not be delegated.

B) Collective agreements and regulations
1) Should collective agreements be extended by a regulation to govern the whole profession, even businesses that are not members of the signatory unions?

Agreements may be registered with the Labour Court under the Industrial Relations Act 1946 and they are then applicable to all employers and workers to whom they relate, even those who are not signatory to the agreement.

2) Are some collective agreements subject to approval by ministerial order?

No.

C) Collective agreements and customs

1) Does a collective agreement challenge custom when its object is the same?

Where there is a conflict between custom and practice and a collective agreement, the agreement takes precedence.

2) Does the voluntary enforcement by the employer of a collective agreement that normally does not apply to him/her constitute a custom?

Yes.

3) Have you something else to say about this point?

It is common for many employments to establish pay linkages to other employments so that collective agreements concluded in one employment will be followed by other employers. This constitutes a custom and practice which would be held as valid.

D) Collective agreements and the labour contract

4) Is the contract of employment allowed to contain clauses less favourable to the employee than the relevant collective agreement?

Yes, except where the agreement is registered. In practice the terms of the individual contract of employment would not be less favourable than the collective agreement.

5) Is the collective agreement incorporated into the contract of employment or does it remain independent from it?

Generally the terms of the collective agreement are incorporated into the individual contract of employment.

6) May a new collective agreement modify the contract of employment?

Yes – where its terms are incorporated.

4. Elaboration of collective agreements

4.1. Collective bargaining
4.1.1 How many levels of bargaining exist in your country?
Collective bargaining can take place at a national level as in the case of national wage agreements, at a sectoral level or at the level of individual employment.

4.1.2 How are they related?
Where national agreements are concluded their terms are then adopted at either a sectoral level or locally depending on how negotiations are normally conducted for the employment. Negotiations are either at the level of the individual employment (which is most common) or at the sector, in which event there are no negotiations at the level of the employments making up the sector.

4.1.3 Is collective bargaining freely decided or mandatory?
Freely decided.

4.1.4 What subjects may collective bargaining include?
There are no restrictions on subjects covered.

4.2. Conclusion of collective agreements

4.2.1. Signatories
a) Who can be parties to the collective agreement?
   (1) Only unions (or their representatives)?
       Only unions.
   (2) Also the employees, or work-council, or workforce delegates?
       No.
   (3) Other responses?
       No.
b) Must the parties meet a condition of representativity?
   No.
c) May the agreement be signed by only one union, though in the minority, or is it necessary that a majority of unions do not oppose the text of the agreement?
   Normally the union must be substantially representative.
d) Does a right of opposition exist?
   No.

4.2.2 Formal requirements
a) Must collective agreements be made in writing?
   Yes.
b) Must a notice be given?
   No.
c) Must collective agreements be registered?
No, but advantages can be obtained if they are.

5. The enforcement of collective agreements

5.1. Scope of collective agreements

5.1.1. Geographic area

a) National, regional, local?
   They can be any of these.

b) International?
   No.

5.1.2 Professional sphere

What jobs, professions or branches are concerned?

Any.

5.2 Determining which collective agreement is enforceable

5.2.1 Is the main activity of the business a criterion?

In the case of registered agreements, the principle business activity of the employer determines if the agreement applies.

5.2.2 What about the mandatory application of “extended” collective agreements?

This does not apply in Ireland.

5.2.3 Is it possible for an employer to voluntarily apply a collective agreement that does not apply to his/her business? Then, how to prove this voluntary enforcement?

Normally collective agreements are not enforceable in Irish law (see below).

5.2.4 Which collective agreement is to be enforced in case of coincidence of several agreements? According to what criteria?

Only registered agreements are enforceable or agreements which expressly provide that they are to be regarded as legally binding. They would take precedence over non-registered agreements.

5.3 Binding force of collective agreements

5.3.1 Are collective agreements enforceable upon signing?

See above. They are only enforceable on registration.

5.3.2 Do collective agreements apply automatically?

No.

5.3.3 Are collective agreements binding (imperative)?

See above.

6. Content of collective agreements

6.1 Is the content mandatory, or can the parties choose it freely (or both)?

It is mandatory.
6.2 Different subjects dealt with

6.2.1 Freedom of collective industrial organization?

There is constitutional right to join a trade union. There is also a statutory right to take industrial action. There is no right to bargain collectively.

6.2.2 Form and content of the contract of employment

- Requirements concerning the use of fixed-term contracts?
  They are as follow:
  (1) The objective grounds must be given in writing at each renewal.
  (2) The total duration of fixed-term contracts must not exceed 4 years unless there are objective grounds for a further renewal.
  (3) Where a contract exceeds 4 years it automatically becomes one of indefinite duration.

- Form of the contract: in writing; compulsory mentions?
  Contracts of employment may be oral but the details of the contractual terms must be given in writing.

- Various clauses
  o Covenant not to compete?
    Such covenants are common.
  o Compensation (financial) for covenant not to compete?
    No.
  o Probationary period?
    Yes, between 6 and 12 months.

6.2.3 Minimum wages?

Yes, €7.65 per hour.

6.2.4 Classification and career of staff members?

Yes – the job title and description must be given.

6.2.5 Hours of work

- On-call time and hours of “equivalence”?
  Yes.
- Vacation?
  Yes.
- Overtime and fixed wages?
  Yes.
- Compensatory rest?
  Yes.
- Part-time work?
  The rights of part-time workers are in accordance with the Directive on Part-time Work.
- Minimum rest time and maximum work time?
  No minimum – maximum is 48.
6.2.6 Rights of an employee who is on sick leave?

- Suspension of performance of the contract of employment?
  There is no legal right to payment from an employer while the employee is ill. However, most collective agreements provide for such payments for periods ranging from 4 weeks to 26 weeks per year. There are also social welfare entitlements.

- Guaranteed resources?
  As above.

- Job security?
  Generally, an employee may not be dismissed because of illness.

6.2.7 Discipline

Only where a sick pay scheme is abused.

6.2.8 Vocational training?

There is no general right and this would not normally be the subject of a collective agreement.

6.2.9 Follow-up of the agreement?

No.

7. Interpretation of and litigations relating to collective agreements

7.1 Which bodies are responsible for interpreting the collective agreements?

7.1.1 Joint boards?

No.

7.1.2 Other bodies or organizations?

The Labour Court.

7.1.3 What is the scope of their interpretation?

a) Is it binding for the judge?
   See above – an interpretation by the Labour Court is final.

b) Can it be retroactive?
   Yes.

7.1.4 Is the judge entitled to interpret him/herself collective agreements?

Yes.

7.2 Remedies against breach of collective agreements

7.2.1 Are penalties provided?

Only for registered agreements. Fines can be imposed.

7.2.2 Which body or authority ascertains violations?

The Labour Court or the High Court.

7.2.3 What are the civil remedies?
a) Individual claims?
   Yes.

b) Collective lawsuits?
   Yes.

7.3 Proceedings related to collective agreements

7.3.1 Is there a distinction made between individual and collective litigations in this matter?
   No.

7.3.2 Which court(s) or body(ies) have jurisdiction over legal matters relating to collective agreements?
   Rights Commissioners and the Labour Court.

7.3.3 How is the judge informed of the existence and content of a collective agreement? What is the role of the judge and the parties in litigation relating to collective agreements?
   A complaint may be made by either a trade union or an individual.

8. Altering and challenging of collective agreements

8.1 Cases and procedures

8.1.1 Do procedures exist for the review and termination of collective agreements?
   Yes.

8.1.2 What happens to collective agreements in the case of a transfer of undertaking or change of employer?
   It continues.

8.1.3 What happens before and during the time of expiration of the agreement?
   Normally an agreement remains in place until it is replaced by another agreement.

8.1.4 What is the procedure for substituting a collective agreement with another one?
   One agreement simply replaces another.

8.2 Can employees retain vested or established rights ("droits acquis") in case of termination of collective agreements?
   Yes.

9. Conclusions

9.1 Is there a policy promoting collective bargaining and contractual collective law?
   Yes – see above.

9.2 Are there problems concerning the relationship between contract of employment and collective agreements?
   No.
9.3 Does the connection between law and collective agreements operate in favour of employees (principle of favour, ratchet effect), or does it allow less favourable conditions?

Generally in favour of employees.

9.4 Are there any additional conclusions or problems you want to mention?