

DB FUNDING CRISIS

Difficulties with funding deficits for Defined Benefit schemes continue: it is estimated that no more than 10% of DB schemes currently meet the statutory minimum funding standard following the poor stock market performance over the last year. The problem is made worse by the downturn in the economy. With companies closing, their pension scheme is automatically wound up, crystallising recent losses and leaving workers and possibly pensioners in a precarious position.



The Minister for Social and Family Affairs last month proposed changes to priorities on winding up, section 50 orders reducing benefits and a new State annuity fund for insolvent DB schemes, as part of the Social Welfare and Pensions Bill 2009 (see our separate bulletin 'New Measures for Insolvent Pension Schemes').

The Government has promised to deliver a framework paper on pensions which will contain proposals arising out of last year's consultation process on the 2007 Green Paper on Pensions. Its arrival was first anticipated in January but at the time of writing it has not yet been published. It remains to be seen whether this framework paper will have any further solutions to the current funding crisis.

NEW EARLY RETIREMENT SCHEME FOR PUBLIC SECTOR

The Minister for Finance announced a new early retirement scheme for public sector workers in his Budget speech on April 7. Such employees may retire from age 50 with an immediate pension based on rights accrued to the date of early retirement. This pension will not be actuarially reduced for early payment. 10% of the gratuity may be taken at the date of retirement with the balance being taken at normal retirement age – 60 or 65.

There had been fears before the Budget that the right to take up to 1 1/2 times salary as a tax-free lump sum on retirement might be altered or done away with. In the event, pensions and lump sums were not affected by the Budget. However the Minister did say that the Commission on Taxation is examining the tax-free lump sum regime and he suggested that the 2010 Budget in December might bring about changes. In relation to the early retirement scheme, the deferred 90% of the gratuity would be paid at normal retirement age subject to tax law provisions at the date of early retirement – i.e. a public sector worker who retires now age 50 will receive the other 90% of their gratuity tax-free at age 60 or 65, even if the tax regime at that future day imposes tax on gratuities generally.

While the early retirement scheme will save money in the short-term, it will increase the total cost of those pensions as they are not actuarially reduced for early payment. Where a pension is paid 10 years before normal retirement date the total cost of that pension will increase by at least 50%. Of course immediate savings are required now, and the payment of a pension instead of an employee's salary, combined with the deferral of 90% of the gratuity will immediately reduce public sector spending. However, while there is a general ban on replacing these employees, their positions can be filled in specific cases or circumstances sanctioned by the Department of Finance. Where a position is thus filled the public sector will find itself footing the bill for both an unreduced pension and a current worker's salary where previously the payroll cost was for one salary alone.

INCOME CAP FOR PENSION CONTRIBUTIONS REDUCED

With effect from January 1, 2009, the maximum salary on which tax relief on personal contributions can be obtained has been reduced to €150,000. Previously the maximum salary was €275,239. This means that the maximum contribution, depending on age, is as follows:

AGE	MAXIMUM CONTRIBUTION AS A % OF REMUNERATION	MAXIMUM CONTRIBUTION WHERE REMUNERATION IS €150,000 OR MORE
Under 30	15%	€22,500
30 - 39	20%	€30,000
40 - 49	25%	€37,500
50 - 54	30%	€45,000
55 - 59	35%	€52,500
Over 60	40%	€60,000

There is no limit on employer contributions, other than ensuring that the entire fund value does not provide benefits in excess of Revenue limits.

EUROPEAN COURT RULES THAT HOLIDAYS ACCRUE DURING SICK LEAVE

On January 20, 2009 the European Court of Justice ruled in the case of **Stringer v Her Majesty's Revenue and Customs** that employees on sick leave continue to accrue annual leave during their sick leave. They are entitled to take this leave once they return to work. If they have not taken it by the time their employment terminates, the employer has to pay the employee in lieu.

This has an immediate impact on public sector workers. It will not affect the private sector until the Government enacts legislation: the Government is obliged to bring in such legislation if necessary to make sure that Irish law complies with the EU's Working Time Directive. Currently under the Organisation of Working Time Act, 1997, Irish employees who leave service without having taken all of their annual leave are only entitled to payment for untaken leave accrued in the year they leave, or if the employment terminates in the first half of the year, for untaken leave accrued in the previous year too.

This is likely to have a financial impact on employers with employees on sick leave, and may lead to employers managing sick leave more closely as a result.

EUROPEAN UNION AGENCY WORKERS DIRECTIVE

Since 2002 the European Council has been discussing a proposed Directive laying down the principle of non-discrimination against temporary workers, aiming to set minimum EU-wide standards and create a level playing field for companies in different Member States. This Directive was finally approved by the European Parliament on October 22, 2008.

The Agency Workers Directive will give agency workers the right to the same basic working and employment conditions as would apply if they had been recruited directly by the company in which they are performing work obligations. This means that agency workers will be entitled to the same pay, holidays, breaks and maternity rights as their permanent counterparts.

Benefits for agency workers arising from the Agency Workers Directive are as follows:

- Employers must inform agency workers or their staff of any permanent vacancies that become available, and give them the opportunity to apply for these posts.
- The Directive bans agencies from charging a worker a fee if he or she is recruited as a permanent employee by an end user (i.e. the employer using the agency worker).
- It prevents employers from placing restrictions on the use of temporary workers, such as preventing them from performing a particular role, unless this can be justified on objective grounds, such as health and safety concerns.

In addition the proposals will enable temporary workers to bring a claim before an Employment Tribunal for the difference in their pay if they can show that a permanent employee doing the same job is paid more. The claim will be against the agency rather than the company for which they are performing work, as it is the agency rather than the company who is legally responsible for paying the worker.

It is not clear at the moment to what extent this will affect Irish employers, as Irish legislation will have to be enacted by December 5, 2011 at the latest. The Directive gives the possibility of excluding agency workers who are permanently employed by the agency and are paid by the agency between assignments. It is also unclear whether there will be an obligation to provide equal pension benefits. The Directive allows member states to use their own definition of 'pay' so it may be possible to exclude pensions from the obligation. The Directive further says that it is up to member states to specify whether occupational social security schemes, including pension, sick pay or financial participation schemes are included.

Both agencies and companies using agency workers will need to work together in order to ensure that pay for agency staff is comparable to their permanent counterparts.

Having been adopted by the European Parliament, the directive is likely to come into law within the next few months after which time Member States will have three years to implement the provisions into national law. During this time they will also have to remove or justify any unequal treatment and will have to open their markets to temporary agency work.

The current economic downturn is likely to mean that demand for a flexible and disposable workforce will be high. Employers will need to be careful to ensure that in doing so they do not fall foul of this legislation and become exposed to potentially costly equal pay claims.

It should be noted that the requirement for equal treatment from day one can be bypassed through a social partners' agreement. The social partners are currently in discussion on this issue.

PARKING LEVY UPDATE

The Finance (No. 2) Act, 2008 introduced a new car parking levy where employers in designated urban areas provide their employees with a parking space. The annual rate of the levy is €200. The levy requires a Ministerial Order before it becomes effective. It is not now clear when or indeed if it will be introduced due to difficulties deciding on the urban areas to be designated.

Other Budget issues are covered in our separate Budget Bulletin.