

WRC scoring highest IR conciliation success rate

ANDY PRENDERGAST

The annual report of the Workplace Relations Commission shows activity picking up on pre-Covid levels with its conciliation success rate coming in at 88%, a marginal increase on the year before.

The WRC annual report 2022 shows a conciliation success rate of 88%. Writing in the annual report, the since-retired director general of the WRC, Liam Kelly, notes high-profile examples where WRC conciliation was successful last year: Ryanair, Aer Lingus, Bus Eireann, Bausch and Lomb, Zenith Oil, Themo King, School Secretaries, and the extension of the “Building Momentum” agreement for the public service.

Of the issues that come before WRC conciliation, pay still dominates at 44% (the same as in 2021). Organisation Structure such as shift work, staffing, restructuring, rosters, hours of work, change in work practices, redeployment, and recruitment accounts for 28% of conciliation, while industrial relations issues such as changes to terms and conditions of employment, new technologies, union/management agreements, grading, productivity, outsourcing etc accounts for 19%.

Mediation has increased and the vast majority of settlements have a financial component

Of lesser frequency are issues pertaining to redundancy (2%); pensions (3%); types of leave (3%); and benefits such as bonuses, profit sharing, service pay, sick pay, staff incentives, expenses etc (1%).

While its conciliation service has experienced a growth in success, adjudication decisions appealed to the Labour Court have come back slightly, with 53% of appealed decisions being upheld at the Court (down from 62% in 2021). The number of adjudication decisions being varied or overturned by the Labour Court increased by 6 and 4 percentage points respectively.

Labour Court Outcomes	2018	2019	2020	2021	2022
Decisions issued	372	383	142	275	310
Upheld	179 48%	171 45%	69 49%	171 62%	166 53%
Varied	88 24%	110 29%	30 21%	47 17%	70 23%
Overtured	99 26%	81 21%	33 23%	50 18%	68 22%
Failed: jurisdiction/time limits/other	6 2%	21 5%	10 7%	7 3%	6 2%

INCREASE IN AGE DISCRIMINATION REFERRALS

Around 25% (3,363) of specific complaints referred to WRC adjudication were on pay issues. Employment equality referrals increased 37% to 1,275, while unfair dismissal referrals were down 10%, to 1,518. Redundancy claims have come back down to pre-Covid levels: there were 524 such referrals in 2022 compared to 3,894 in 2020.

Age discrimination case referrals have shot back up, by 176%, to 514 in 2022. There was a similar dramatic increase in age related referrals in 2018, while in other years age cases can drop significantly, revealing a volatility in this area of employment law.

Disability discrimination claims increased 8%, to 349. Referrals claiming discrimination on the ground of religion increased 58%, 65, while gender and race cases both dropped by 9% and 8% respectively.

The number of adjudication hearings held during 2022 increased 28%. Some 70% of adjudication hearings were in person, 30% held remotely. The WRC notes that adjudication hearings generally take longer than before due to the requirement for the affirmation of evidence on oath, cross-examination, following the Zalewski judgment of 2021. This has a knock-on impact on the availability of adjudicators and the number of cases that can be cleared, the Commission says.

The number of adjudication decisions/recommendations issued in 2022 was 1,968 – an increase of 27% from 2021.

MEDIATION REVIEW

Mediation increased in use and success at the WRC in 2022. Face to face (F2F) mediation has become more frequent than in previous years. The F2F mediation service shows a slightly better success rate using the virtual format, rather than in-person. The vast majority of mediated agreements include a financial settlement.

Following a review of its mediation service last year, the WRC now offers face to face mediation for pre-adjudication unfair dismissal cases (before this change only equality cases were face-to-face by default, all other cases were telephone mediation by default).

In September 2022, the Commission also launched a pilot “late request” mediation (LRM) service. This is to allow parties to an adjudication case to seek mediation after an adjudication hearing date has been set – with the option of continuing with the adjudication hearing if the mediation is unsuccessful.

The Commission notes the limitations to the service “include the proximity of the request for mediation to the hearing date, the availability of the parties and the availability of a mediator in circumstances where there is significant demand for mediation in other cases.”

A review of the operation and outcomes of the new Late Request Mediation pilot is to be conducted this year. Initial data suggests that 25% of the cases which requested LRM were resolved before the adjudication hearing, the annual report notes.

The WRC’s inspection service has regained momentum after the Covid years, with unpaid wages recovered in 2022 coming to €1.4m (up 45% on 2021). Nearly €0.5m of recovered wages was in food service activities.

There were 89 prosecutions taken by the WRC, 69 of which were successful.