

FEMPI hampers conduct of normal industrial relations, says legal advice

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Legal advice obtained by public service unions asserts that the ability of management across a wide range of public service bodies to negotiate local pay agreements remains hampered by emergency ("FEMPI") legislation, passed in 2009 due to the financial crash.

The trade unions, IRN understands, have been told that because section 4 of the FEMPI (No. 2) Act 2009 is still in place, the pre-crash mode of industrial relations has not yet resumed.

It is argued that the voluntarist nature of industrial relations has been compromised because a public-sector employer and its relevant Minister no longer have the sort of the authority they used to have to reach agreements in settling industrial disputes.

The legal advice furnished by Cathy Maguire SC, on the instructions of Daniel Spring & Co. Solicitors, says that the solution would be to repeal section 4 of the 2009 Act. Such a move would allow for the resumption of more normal industrial relations, of the sort that existed before the financial crash, it is argued.

Importantly, however, the DPER Minister would still have the ability to give or withhold approval for any such agreement, just as the Department of Finance had before creation of the DPER in 2011.

DPER'S POWER

The unions have been advised that section 4 of the 2009 Act (as amended in 2021) means that other than by Act of the Oireachtas, a legally binding decision in the law courts or the Labour Court, or in order to comply with previous collective agreements, public servants' pay can only be increased by the DPER Minister.

Before section 4 was introduced, public bodies could decide to increase pay with the consent of the relevant Minister and the approval of the Finance Minister.

Section 4 means the employer and the relevant Minister have de facto been taken out of the picture, the advice asserts.

The section 4 provision in effect, therefore, means that the 'old' arrangements have been overtaken by DPER's post-crash role.

The exception is for the civil service because section 4 doesn't make any practical difference to this group, whose remuneration comes under section 17 of the Civil Service Regulation Act 1956.

The essence of the advice is that the conduct of industrial relations should be restored to what prevailed before the emergency legislation was passed. Importantly, it says that such a course of action would have no implications for decisions made prior to any such repeal, a view that is grounded in section 27 (1) of the Interpretation Act 2005.