

Workplace Relations Commission - Remote Hearings

For any organisation in the Community and Voluntary sector who may be party to a complaint at the Workplace Relations Commission an importance notice has been issued by the Commission.

By way of update the Workplace Relations Commission has issued notice to Parties, Representatives and Stakeholders on Remote Hearings clarifying the position of the Commission as a 'designated body' in line with the Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020 (Section 31) (Workplace Relations Commissions) (Designation) Order 2020 – SI 359/2020.

The Order allows the WRC to schedule any type of complaint submitted for adjudication as a remote hearing - subject to the scheduling being in the interests of justice and fairness per section 31(2) of the 2020 Act. This is even more relevant now as the country operates under level 5 of the restrictions.

The WRC have therefore stated that unless it appears to them that conducting proceedings via remote hearing could be unfair to any of the parties involved in a particular complaint or would otherwise be contrary to the interests of justice, the WRC will schedule the case as a remote hearing. It should be noted that in some cases part of a case may be suitable for remote hearing with the remainder heard in person, where circumstances allow.

In considering whether it would be unfair to the person or would otherwise be contrary to the interests of justice to proceed by way of remote hearing, the WRC have outlined that they will have due regard to fair procedure and natural justice and its obligations under equality legislation.

Where a party or parties to a claim object to a case being heard remotely the WRC will have regard to the following non-exhaustive set of factors when considering such objections:

- All cases will be considered amenable to remote hearing, unless the parties can demonstrate how holding a remote hearing might not be in the interests of justice or would breach fair procedures, both of which are subject to a high threshold.
- The length of the delay that will likely result if the hearing of the complaint(s) is to be held in person rather than remotely, subject to and informed by pertaining public health advice.
- The capacity and resources of the Workplace Relations Commission.
- The complexity of the case, the number of witnesses required to give evidence and whether the nature of any disputed evidence is such that fairness and justice require it to be evaluated by the Adjudicator in a face-to-face environment.
- The personal circumstances of either party or any participant which would include disability or any specific accommodations that they may require to effectively participate in the hearing (including the use of an interpreter or attendance of a support person).

- The ability of either party to engage in the hearing in a meaningful manner which would include considerations such as access to broadband and the requisite IT facilities.
- Whether the parties are represented; representation may favour the hearing being held by remote means.
- Whether there are any public health travel restrictions in place at the time of the objection which would preclude the WRC from scheduling a face to face hearing in relation to the complaint.
- Any specific exceptional circumstances in a particular case, which might present a material risk of unfairness or injustice.

Procedural Rules

The Commission are asking all parties and representatives to be positively disposed to remote hearings and have outlined a number of procedural rules that apply to this process to include the following:

- Where a party objects to the decision of the WRC in relation to a remote hearing, they may make submissions to the WRC within 5 working days of receipt of the hearing notice and such submissions will be considered by an Adjudication Officer.
- Where proceeding to hearing, the parties must comply with the WRC's procedures in relation to providing advance written submissions and witness lists (if applicable) as per section 31(1)(d) of the 2020 Act in order to avoid undue delay.
- A remote hearing in Employment Equality or Unfair Dismissal complaints may not proceed, in situations where all required written submissions and/or relevant documentation has not been forwarded by the parties and exchanged with the other side at least 21 days prior to the date of hearing.
- Submissions summarising the facts and legal issues and relevant supporting evidence should be paginated, with numbered paragraphs, for ease of reference at the hearing.
- All documents should be emailed to pru@workplacelrelations.ie with the case reference, and copied to the other side/s.
- The admissibility of any subsequent material will be a matter for determination by the Adjudication Officer having regard to the powers under section 31(1)(d) of the 2020 Act and the need to provide both parties with an effective remedy without undue delay.

Disclaimer – The information in this section is provided for reference purposes only to assist Employers with the government protocols and guidance from relevant statutory bodies and must be read in that context and should not be used for or interpreted as a legal definition of any of the information provided. Some of the information provided is per information published on the statutory body website at www.workplacelrelations.ie. Professional advice should always be sought before making any such decisions.

For further information or advice, please contact the designated HR & Employment Helpdesk at thewheelhrhelpdesk@adarehrm.ie or via telephone on (01) 5394661 Monday – Friday 9.00am- 5.00pm