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# Institute of Directors

## Remuneration Trends

## Employment Law Issues

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- Changed landscape
- Shift from reward and retention to reduction
- The unthinkable a few years ago has happened
- Now a significant PR aspect to reward esp. executive reward

- Salary
- Bonuses
- Pension schemes
- LTIPs / Share Schemes
- Regulatory considerations
- The Future

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- Extensive salary reduction in private sector in 2009 esp.
  - IBEC Survey, Q1 2010 – on average pay change was 2.4% decrease v Q1 2009
  - EU : “unit” costs in Ireland fell by 3% in 2009
  - However, relative competitive disadvantage still at approx. 10%

- How was this achieved?
- Was / Is there a legal basis?
- What is the employer exposure?
- Not much litigation as a result
- Employee & Union reaction in practice – broadly a sensible one
- Ireland has won international acclaim on how pay has been rationalised

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- Many new schemes introduced
  - Still only limited litigation in Ireland
  - Trends
    - More Employer Discretion
    - Longer Vesting / Deferral of awards
    - Claw Back provisions
    - Restrictive Covenants
    - Schemes updated annually

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- Traditionally many bonus schemes stated to be “discretionary” but what does that mean?
  - Not absolute – must be reasonable exercise of employer discretion
  - Must not be irrational or in bad faith
  - Custom & Practice may be relevant
  - Finegan v Davy case (2007) High Court

- Already common in UK but only now being introduced in Ireland
- Deferrals
  - minimum 6/12 month
  - up to 2/3 year vesting periods
  - conditional payments
- Employee must remain employed (and not under notice)
- Risk adjusted
- Must be a clear contractual, brought to employee's attention
- Where applicable, delivery as shares (with vesting period) – not cash

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- Rare in practice
  - Clear contractual entitlement essential for employer
  - In practice may be difficult (and expensive) to enforce
  - Employers may need to be seen to make attempt
  - Some (but not all) executives have volunteered to waive rights as a result of media / public comment or shareholder concern

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- Non competes and non solicitations combined with deferral becoming more prevalent as a condition in bonus schemes
  - Are generally enforceable but disliked by courts
  - Need to be very clearly brought to employee's attention & be reasonable in scope of restriction
  - Employee needs to be made aware of consequences of joining competitor.

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- Pension is deferred remuneration
  - General and increasing move away from final salary Defined Benefit (DB) schemes
  - DB schemes a huge cost for employers
  - Many in substantial deficit
  - Defined Contribution schemes for new employees
  - Changes to incumbent schemes for existing employees

- Wind up DB scheme and transfer benefits
- Keep DB scheme but change future benefits
  - career average pensionable salary
  - cap on pensionable salary
  - Increasing or introducing employee contributions
  - Raising retirement age / pension age

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- Collective communication process
  - Trustee engagement
  - Expert pensions and actuarial advice
  - Employer's duty of good faith
  - Importance of explaining alternative benefit
  - Collective litigation rare – even though it may ultimately have biggest impact on employees

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- Values depressed options worthless (“underwater”) – less popular with employees
  - Many all employee schemes have been discontinued / suspended
  - But (esp. free) share awards can provide solutions for a cash strapped business
  - In some cases shares awards were offered in exchange for pay cuts – e.g. Independent Newspapers

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- Irish Credit Institutions (Financial Support) Scheme 2008
  - Covered Institution Remuneration Oversight Committee (CIROC) – approx 70 individuals in 70 banks
  - Covers institutions availing of government financial support
  - Influence of Irish Association of Investment Managers
  - Limits on executive remuneration incl. severance
  - Subject to executive's existing contractual rights

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- What next?
  - IBEC Survey
    - majority expect pay freeze in 2010
    - however expected average is a decrease for 2010 is 1%
  - Lessons need to be learned.
  - PR (and sometimes politics) will continue to play a significant role
  - Significantly different drafting of contracts and bonus scheme policies
  - Increase in role and power of Remuneration Committees and Non Executive Directors
  - Enhanced focus on Corporate Governance generally
  - Importance of internal communications

Thank you!

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