

What is an interim or interlocutory injunction?

An injunction is an order made by the Court directing a person or an entity to cease certain actions or to act in a particular way.

They can be permanent, or interim (temporary) or interlocutory (meaning that they apply until further order of the Court or the conclusion of a proceeding). This note focuses on interlocutory or interim injunctions and will refer to them as interim injunctions.

An interim injunction can be mandatory (requiring a person or entity to do something) but is usually prohibitory (requiring a person or entity not to do something).

Its purpose is normally to preserve the position of a party claiming to have suffered damage by an incorrect action, until that party's challenge to the action can be fully heard and determined by the Court.

An application for an interim injunction often needs to be heard urgently, and can either be [on notice](#) or [without notice](#) to the other party.

Because of the need for urgency, the Court proceeds in a summary way. This means it obtains its facts mainly from affidavits as opposed to relying upon the examination of witnesses in person.

What is the process?

The applicant must file and serve:

- a [statement of claim](#);
- a [notice of interlocutory application](#) for interim injunction;
- supporting [affidavits](#) from key witnesses setting out the facts relied on;
- an undertaking as to damages (see [High Court Rule 7.54\(1\)](#));
- an application for urgency; and
- a [supporting memorandum](#).

The application for urgency will be put before a Judge for prompt consideration, who may call an urgent teleconference to discuss it. It is therefore helpful if the details of the representative for the respondent (if known) are provided at the outset.

If urgency is granted, the Judge generally will then direct the respondent to file and serve:

- a [notice of opposition](#);
- supporting affidavits; and
- any other materials.

as soon as practicable.

In rare cases, where there is real urgency, an application can be made on an *ex parte* basis, i.e. without any other party being served. In those circumstances, it is up to the applicant to take all reasonable steps to ensure that the application and supporting documents contain all material that is relevant to the application, including any defence that might be relied on by any other party and any facts that would support the position of any other party (see [High Court Rule 7.23\(2\)\(b\)](#)).

The Court will schedule a hearing, which can be confidential if needed. There is no cross-examination other than in exceptional circumstances.

What factors does the court consider?

Despite it being a summary hearing, the Court is still obliged to form a view of the facts. However, because it is a summary hearing, the view that it forms under such circumstances is only provisional and subject to revision when there is a full hearing at a later date of all the evidence that the parties put forward.

Interim relief is in the Court's discretion. Having formed its provisional view of the facts, the practice of the Court when looking at whether to grant the application, is to pose these tests or questions:

- a) Is there an arguable case? That is, does the applicant have a real prospect of establishing their claim(s) at a full hearing?

- b) If so, is there an adequate alternative remedy available to the plaintiffs (other than an injunction)?
- c) If not, where does the balance of convenience lie?
- d) What is the overall justice of the case?

It follows from what has already been said, that if the facts are in issue, the dispute cannot be resolved at this stage. However, the dispute itself may be an element tending to show whether there is an **arguable case**.

Considering the **balance of convenience** means the Court looks at the relative hardships that may arise from granting or not granting the application; that is, whether the risk of doing an injustice to the applicant by refusing the injunction outweighs the risk of doing an injustice to the respondent by granting it.

It considers the following:

- a) The possible impact of the Court refusing interim relief, but it later emerging that the applicant's rights have been invaded, versus the possible impact of the Court granting interim relief but it later emerging that the respondent was entitled to act in the way complained of.
- b) Whether damages would adequately compensate the applicant if the injunction is refused, or the respondent if the injunction is granted. (Here, the undertaking as to damages given by the applicant is an important factor – are there assets to back it up?)
- c) The relevant interests of third parties who are not before the Court, including the public interest.
- d) The prior relevant conduct of the parties (for example, whether there was delay or wrongdoing by the applicant).

Considering the **overall justice** refers to a process during which the Court stands back from the details of the case and looks at the situation as a whole. This includes, in an appropriate case, the strength or weaknesses of the applicant's substantive case or the respondent's defence to it, so far as these are apparent at this early stage of the proceeding, and whether the grant or refusal of an interim injunction may have the practical effect of granting one party or the other final judgment without a full hearing.

Is a prompt substantive hearing an option instead?

Often, a prompt hearing of the substantive action itself is a practical and appropriate alternative to an interim injunction hearing. Applicants for interim relief should in all cases be prepared to explain to the Court why an interim injunction is needed in preference to an application for abridgment of time and other suitable directions which could enable a prompt substantive hearing by the Court, or by the Employment Relations Authority, as the case may be.

In addition, the Court expects in every case to be told how soon the substantive hearing can take place. The likely duration of interim relief is an important discretionary factor.

The Court will strive to make a decision quickly.

If an injunction is granted, the respondent must comply with it or risk being held in contempt.