

Ireland employment law update: what to expect in 2023

Insights - 07/02/2023

As we leave the January blues behind, we look forward to see what's on the horizon for employment law in Ireland in 2023. There have been a number of significant developments affecting employee rights, including sick leave, protection for whistleblowers, gender pay gap reporting, the right to request remote and flexible working, pensions, transparent and predictable working conditions and changes to the minimum wage, the living wage and tips and gratuities.

The Sick Leave Act 2022

The Sick Leave Act 2022 commenced on 1 January 2023 providing for the first ever statutory sick pay scheme (SSP) in Ireland. Employees are now statutorily entitled to be paid when they are absent due to illness. SSP is being introduced on a phased basis over a four-year period to help employers manage the additional cost, beginning with three paid sick days in 2023 and increasing annually thereafter.

SSP will be paid by employers at a rate of 70% of an employee's wage, subject to a daily maximum threshold of €110. Employees must have at least 13 weeks service with the company in order to be eligible for SSP and they must obtain a medical certificate from day one of their absence.

Employers who already offer paid sick leave will need to review their current policies and make the necessary amendments to ensure compliance.

[Read more about the changes being introduced under the Sick Leave Act 2022](#)

Enhanced protection for whistleblowers under the Protected Disclosures (Amendment) Act 2022 (the

PDA)

The PDA commenced on 1 January 2023. The PDA aims to extend the scope of protection already provided and give greater clarity for both whistleblowers and employers. Private sector organisations with 250 or more employees are required to establish formal reporting channels and procedures for workers to make protected disclosures.

Under the PDA, the definitions of "Worker," "Relevant Information" and "Relevant Wrongdoing" have been broadened. The scope for what would be deemed as "penalisation" has also been extended, and personal grievances in the workplace are excluded from the remit of the PDA following the Supreme Court's decision in *Baranya v Rosderra Irish Meats Group Ltd.*

[Read more about the other key provisions of the Protected Disclosures Act](#)

Gender pay gap reporting

The Gender Pay Gap Information Act 2021 (the **GPG Act**) was signed into law on 13 July 2021. The Employment Equality Act 1998 (Section 20A) (Gender Pay Gap Information) Regulations 2022 (the **Regulations**) followed in 2022 which provide further detail on how GPG reporting under the Act will work in practice.

Reporting obligations are dependent on the number of employees in an organisation, which will narrow in scope over the next 3 years. For 2022, organisations with 250 or more employees were required to report their GPG data. Interestingly a number of government departments are yet to report on their GPG, with no reason being given for this delay. Of the 15 government departments that have published a report, the average GPG stands at 8.59%.

Reports must be published on the company's website where it is accessible to all employees and the public for at least 3 years. Otherwise, a physical copy of the report must be available for inspection by employees and the public during normal business hours at the employer's registered office or principal place of business.

[Read more about the Gender Pay Gap Information Act and what should be included in a report](#)

Discussions on the EU Pay Transparency Directive (the Directive)

The Directive aims to establish pay transparency standards to strengthen the application of equal pay for equal work or work of equal value between men and women and help victims of pay discrimination to seek redress and enforce their equal pay right. Some provisions of the Directive seek to introduce an attempt to cure this issue, including

- **extension of the term worker** which now includes agency workers and those in the gig economy
- **prohibition of pay secrecy** so that both current workers and job applicants will be entitled to information about pay levels
- **scope of cover** does not only apply to a worker's basic salary, but also to other job-related benefits (e.g. bonus payments)
- **right to compensation** to ensure that any worker who has suffered harm caused by an infringement of any right under the Directive has the right to claim and obtain full compensation (e.g. the full recovery of back pay)
- **protection against victimisation** so that workers are not treated less favourably after having exercised their rights under the Directive

If adopted, member states will have two years to implement the Directive, however, IHREC recently released a new Code of Conduct on Equal Pay which is principally aimed in achieving the elimination of pay inequality in its entirety.

[Read more about the EU Transparency Directive](#)

[Read more about the Code of Conduct on Equal Pay](#)

Right to request flexible and remote working

The general scheme of the Work Life Balance and Miscellaneous Provisions Bill 2022 (the **Work Life Balance Bill**) proposes a number of legislative changes which are designed to allow for a better work life balance for parents and carers, to improve the representation of women in the labour market, and to provide all workers with the right to request remote work. The Work Life Balance Bill also provides an entitlement to leave for domestic violence for up to five days (unpaid), an extension of time which can be taken from work to breastfeed and an extension of maternity leave to transgender men.

The Work Life Balance Bill goes further to provide for a statutory right to request remote work. On 9 November 2022, the Government approved the integration of the right to request remote working from the Right to Request Remote Work Bill 2022 into the Work Life Balance Bill ([read the Government's announcement approving the integration of the right to request remote working](#)). It is proposed that unlike flexible working, remote working requests will not be confined to caring purposes. Remote work will therefore be available to all workers.

An updated Work Life Balance Bill is currently being debated before the Dáil so it remains to be seen how remote working will be integrated. However, the government has confirmed that it anticipates the 13 specific grounds upon which an employer could refuse a request, as well as

general "business grounds" will be replaced by a more simple approach whereby the employer should consider both the needs of the company and the employee when considering a request.

[Read more about the Work Life Balance Bill](#)

[Read more about the previous Right to Request Remote Work Bill](#)

Modernisation under the Employment Permits Bill 2022 (the Permits Bill)

On 12 October 2022, the Minister for Business, Employment and Retail, Damien English TD, introduced the Permits Bill. The Permits Bill is intended to modernise the Irish employment permits system. Some of the key provisions of the Permits Bill include

- the introduction of a reasonable employment permit
- an extensive revision of the labour market needs test
- additional obligations on employers for granting an employment permit, such as training or accommodation support for migrant workers
- the facilitation of third party contracts

[Read more about the Employment Permits Bill](#)

EU Directive on Transparent and Predictable Working Conditions (the Transparent Directive)

The Transparent Directive was signed into law on 16 December 2022 which aims to provide each employee with clarity as to their terms and conditions of employment.

The Directive provides that probationary periods shall not exceed six months except where there are exceptional circumstances to do so. Where an employer is required by law or collective agreement to provide training to a worker, the training must be at no extra cost to the employee, count as working time and shall take place during working hours where possible.

Where an employee's work pattern is unpredictable, the worker shall not be required to work by the employer unless the work takes place within predetermined reference hours and days. An employee shall have the right to refuse a work assignment without adverse consequences where a work assignment falls outside of the reference hours and days, or, if the worker is not notified of the work assignment in accordance with a reasonable notice period.

The Directive also requires employers to provide employees with additional information by different deadlines. The imposition of four different deadlines will most likely cause difficulties in

circumstances where there will be a duplication of obligations.

[Read more about the provisions of the EU Directive on Transparent and Predictable Working Conditions](#)

Pensions and the Automatic Enrolment (AE) Retirement Savings Bill

AE provides for auto-enrolment in a workplace pension of employees between the ages of 23 and 60 earning more than €20,000. The system would operate on an "opt-out" basis meaning that employees who wish to opt-out can only do so after being enrolled for 6 months, at which point they would be refunded their contributions but then re-enrolled periodically.

In order to prepare employers for the additional cost they will incur as a result of AE, the scheme will be introduced over a phased basis during the next 10 years and is anticipated to commence in 2024 with both employer and employee contributions starting at 1.5% of gross salary and automatically increasing every 3 years until the maximum contribution of 6% is reached in year 10.

Further details of how the AE scheme will operate and interact with existing pension schemes operate by employers is yet to be seen.

Changes to employee wages

- **Tips and gratuities** - from 1 December 2022, the Payment of Wages (Amendment) (Tips and Gratuities) Act 2000 introduced new rules about how employers share tips, gratuities and service charges amongst employees. It also makes it illegal for employers to use tips and gratuities to make up basic wages. Workers are legally entitled to receive electronic tips and gratuities and they must be distributed in a fair manner. The employer must provide a statement to workers showing the amount of tips obtained in a period and the portion paid to the individual employee for that particular period. An employer cannot retain any share of electric tips
- **National minimum wage** - the national minimum wage increased to €11.30 per hour, effective from 1 January 2023
- **National living wage** - last November, the Tánaiste announced the introduction of a "national living wage" in a bid to eradicate low thresholds of pay for workers. The national living wage will be set at 60% of hourly median wages in line with recommendations from the Low Pay Commission. The increase of the national minimum wage is a good step towards achieving this aim

Key takeaways for employers

We expect to see continuous development in Irish employment law throughout 2023 and given the publicity surrounding the large number of redundancies currently taking effect in Ireland and throughout the world, employers ought to be aware of their new and continuing obligations and act proactively, particularly given that many of these obligations will commence, or have commenced, for the first time in 2023. Of course it remains to be seen how the provisions mentioned above will operate in reality and how any such claims/complaints will be dealt with by the relevant authorities. In a bid to avoid any such reprimand, employers should conduct a review of their workplace policies as soon as possible and take the necessary steps to ensure compliance.

For further information on any of the above issues, or assistance in drafting or updating company policies, please contact Bláthnaid Evans or Marianne Norton of our Employment and Corporate Immigration team on 01 639 3000.

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