



# In Ireland, the Work Life Balance and Miscellaneous Provisions Act 2023 has been signed into law

Insights - 17/04/2023

The Work Life Balance and Miscellaneous Provisions, Act 2023 (the "Act") was signed into law by President Michael D. Higgins on 4 April 2023.

The Act introduces measures that will support employees in Ireland in balancing their family life, work life and caring responsibilities.

It is anticipated that the relevant sections of the Act will come into effect over the coming months. We are also awaiting the Workplace Relations Commission (the "WRC") to publish its Code of Practice (the "Code") which will provide further detail on the considerations relating to remote working.

## **Right to request remote working arrangements**

The Act introduces the statutory right for employees to make a request to work remotely and for that request to be dealt with in a transparent and expeditious manner.

An employee is required to have six months' continuous service with their employer before they are entitled to request a remote working arrangement. The detailed request must be submitted in writing at least eight weeks prior to the proposed commencement of the arrangement. The request should include the employee's reason for making the request and details of the proposed remote working location.

An employer must respond to the request within four weeks. However, this timeframe may be extended to eight weeks' if the employer is having difficulty assessing the workability of the request. In its response, the employer is expected to consider the needs of business and the employee as well as the provisions of the Code (which has yet to be published). If the employee's request is refused, they are entitled to be told the grounds for the refusal.

The WRC does not have jurisdiction to challenge the merits or the grounds of an employer's decision to refuse a request for remote working.

The Act provides that the remote working arrangements can be terminated if the employer is of the view that the arrangement is having an adverse impact on the business, or where an employer has reasonable grounds to believe that the remote working arrangement is being abused by the employee. Again, there is no recourse to the WRC for challenging the merits of this decision.

If an employer is in breach of the technical requirements to manage an employee's right to request remote working, the employee is entitled to make a claim before the WRC which could attract a potential award of up to four weeks' remuneration or a direction by the WRC to comply with the requirements.

In circumstances where the majority of employers in Ireland have remote working policies already in place (as a result of the alternative working arrangements required during COVID-19) it is likely that few employees will need to rely on this statutory basis. However, the Code will be welcomed by employers who require further guidance with their approach to remote working. It is also recommended that any request for remote working is documented between the employee and the employer, making the parameters of the arrangement clear.

## Right to request flexible working arrangements for caring purposes

The Act also introduces the right to request flexible working for caring purposes. This new leave will apply to employees who are relevant parents (as defined by the Act) or who provide personal care or support to another person who is in a specified relationship with an employee. This includes a spouse, civil partner, parent, sibling or person who resides in the same household as an employee.

The employee can only request this leave if the affected person requires significant care or support for a "*serious medical reason*." An employer is entitled to request relevant evidence of the serious medical condition such as a medical certificate.

In order for an employee to request flexible working arrangements for the care of a child, the child must be less than twelve years old or less than sixteen years old if they suffer with a disability or long-time illness. The remaining eligibility criteria for requesting flexible working arrangements for caring purposes mirror the criteria for requesting a remote working arrangement, referenced above.

There is no scope for the WRC to consider the merit of the employer's decision to refuse an employee's request to flexible working arrangements or to terminate the arrangement early, where the employer believes the arrangement is having a substantial adverse effect on the business or is

being abused by the employee.

However, the WRC can make an award of up to twenty weeks' remuneration where the employer breaches its obligations to manage an employee's flexible working request.

Due to the absence of specific commencement orders the Act is not in operation. In these circumstances, any request for remote or flexible working arrangements made by the employee should be dealt with in accordance with the employer's current policies. We would also recommend that where such leave is granted, that an agreement is entered into to document the parameters of the arrangement.

## **Unpaid leave for medical purposes**

The Act provides that an employee is entitled to five days unpaid medical leave in a twelve month period to provide "*significant care or support for a serious medical reason*" for a person that is in a specified relationship with the employee. A specified relationship includes the following: a spouse, civil partner, parent, sibling or person who resides in the same household as an employee.

This leave is entirely separate to force majeure leave. The difference being that force majeure leave allows a person to take paid leave for either three days in a 12 month period, or five days in a 36 month period for an urgent family matter.

## **Paid domestic violence leave**

The Act introduces this new leave which provides for five days paid leave for victims of domestic violence. Domestic violence leave will be paid by the employer at a daily rate which is yet to be determined by regulations to allow the affected employee to seek medical advice, legal representation and to engage with other specialist support services. The regulations will be enacted in due course.

## **Enhanced breast feeding rights**

The Act extends the current breastfeeding facilitation period from 26 weeks to 104 weeks following childbirth. During this time, an employee can avail of reduced working hours or paid time off. Employers are obliged to provide appropriate facilities in the workplace to enable a breastfeeding employee to return to work.

The Act also extends this right to transgender men who have given birth and are breastfeeding.

## **Key takeaways for employers**

Whilst the primary legislation is available, many of the key considerations of the Act will be

provided for in the anticipated regulations and Code. Employers should review their existing policies and procedures to ensure that they are in compliance with the Act. It is also recommended that if agreeing to remote or flexible working arrangements, it is properly documented, ideally by way of an agreement which will clearly set out the conditions of the arrangement, and explaining when or why the arrangement can be terminated by the employer.

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