

Irish Employment Law Update: Statutory Sick Leave Act due to commence in January 2023

News - 25/11/2022

The Sick Leave Act, 2022 (the “**Act**”) was signed into law on 20 July 2022 providing for the first ever statutory sick pay scheme (the “**Scheme**”) in Ireland. Up until now, Ireland was one of the few countries in the EU that did not place a statutory obligation on employers to pay sick leave.

Last month, it was announced that the scheme would officially commence on 1 January 2023. During a Dáil Éireann debate on Employment Rights Tánaiste and Minister for Enterprise, Trade and Employment Leo Varadkar said,

"Following detailed consideration of the issues surrounding the implementation of the statutory sick leave scheme, the Sick Leave Act will commence on 1st January 2023.

The Act is intended to provide a level of protection to employees who do not currently have employer-paid sick pay schemes, many of whom are low-paid and cannot afford to miss work. As a starting point, this scheme will cover the three waiting days before eligibility for Illness Benefit from the State. This is a progressive Act and will ensure, once commenced, that all employees are better off and will have financial protection from day one of a medically certified absence.

Employees whose employers did not pay them for the first 3 days of illness (to bridge the three-day gap before employees on sick leave were eligible to apply for Illness Benefit from the State) were not entitled to any statutory sick leave payment. The Act has been enacted to give a general right to statutory sick pay in Ireland, the introduction of which will be a major change for Irish employers. The Act will help resolve this gap and provides that sick pay will be paid by employers and implemented on a phased basis."

Key Provisions of the Act

Employers should familiarise themselves with the following key provisions:

Phased implementation: The Scheme is being phased in to help employers to manage the additional cost, which has been capped. Initially employees will be entitled to a statutory payment from their employer for first three days of illness. However, the Scheme is being implemented on a phased basis with entitlements increasing over the following four-year period to:

- 5 days in 2024;
- 7 days in 2025; and
- 10 days in 2026.

Once entitlement to sick pay from their employer ends, employees who need to take more time off may qualify for Illness Benefit from the Department of Social Protection, subject to PRSI contributions.

Rate of sick pay: Sick pay will be paid by employers at a rate of 70% of an employee's wage, subject to a daily maximum threshold of €110 which equates to an annual salary of €40,889.16.

Eligibility: To be eligible for statutory sick leave, an employee must have continuous employment with the same employer for at least 13 weeks. The employee will also have to be certified by a GP as unfit to work. Where an employee is on statutory sick leave the employee will be treated as if the employee has not been absent from work.

Interaction of the Scheme with the employment contract: The Act does not prevent more favourable sick leave provisions being made in the employment contract. Any less favourable treatment in an employment contract will be overridden by the Act.

Exemptions: The Act provides exemptions can be granted where the employer is experiencing severe financial difficulty.

Record- keeping: The employer must keep records for four years of the statutory sick leave taken by each employee. Failure by an employer to keep such records, without reasonable cause is an offence and liable on summary conviction to a maximum fine of €2,500.

Complaint procedure: Any complaints under the Act can be made to the Workplace Relations Commission (WRC).

Key Takeaways for Employers

The Act will apply to all employers both in the private and public sector. If an employer fails to implement the Scheme employees can bring a claim to the Workplace Relations Commission. In these circumstances employers should:

- review employment policies to ensure they clearly state the statutory sick leave entitlements;

- review the rate of sick pay available to their employees; and
- put in place an effective system for recording sick leave.

Read [The Sick Leave Act 2022](#) for more information.

Please contact Mary Gavin and/or Amy McNicholas of our Employment & Corporate Immigration team on 01 639 3000, or email ireland@ogier.com, should you require any employment law advice.

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