

Employment legislation

– introductions, changes and proposals that employers need to be aware

by Derek McKay

Irish SMEs have been working tirelessly to stay ahead of the health crisis in an effort to mitigate its impacts on their business while adhering to Government advice, guidance and ongoing restrictions. A raft of new or amended legislation has been introduced recently by Government to help protect both employers and employees as well as legislating for changes that have previously been announced. Business owners could be forgiven for not being fully aware of some of these changes and how they could potentially affect their business and employees. The following article considers some of the most recent employment legislation and what it means for employers, as well as highlighting some proposed legislation.

Layoffs and Short time

Unfortunately, many employers found themselves in a situation where they had to place staff on short-term layoffs or short time to help secure the future of the business due to the impact of Covid-19 and the uncertainty surrounding it. The Redundancy Payments Acts 1967-2014 make provision for a period of lay-off or short time to be applied where an employer believes that such measures are temporary and that the employer is unable to provide an employee with work for which they are contracted either in a full time capacity or for a lesser period as laid out in the definition of short time.

There are some considerations we would recommend to employers if thinking about layoffs and short time. Firstly, check for the existence of an express term and condition that lay-off or short time can apply. Where an express term does not exist, the employer must consult with the employee and seek their agreement to apply a period of layoff or short time.

It is important that the employer approaches layoffs or short time with empathy and act in a reasonable manner, explain the rationale, apply fair and objective selection procedures and provide a reasonable period of notice if possible.

Fortunately, the supports provided by the Government to-date have helped negate the financial impacts of these situations.

Changes to the Redundancy Payment Act

To try and protect employers who placed employees on short-term layoffs or short time because of Covid-19, the Government introduced emergency measures in the Public Interest (Covid-19) Act 2020 that temporarily reduced the scope of the operation of the Redundancy Payments Act 1967 by the addition of Section 12A to the Redundancy Payments Act.

The insertion of Section 12A temporarily suspended the provisions in the Redundancy Payments Act that allowed those on a period of layoff or short time, (for 4 weeks or more, or for 6 weeks in the last 13 weeks), to give notice of their intention to claim for redundancy from their employer.

This provision was then temporarily suspended for the duration of the initial emergency period that was provided in the Emergency Measures Act as "the period beginning on 13th March 2020 and ending on 31st May 2020". This timeframe has been extended on a couple of occasions and currently ends 30th November 2020.

However, we would expect that this would be further extended until early in the new year. It is important to note that the employee's right to claim redundancy has not been removed but deferred for the emergency period in circumstances of temporary layoff or short time employment.

Workplace Relations Commission – compulsory remote hearings

The lockdown earlier in the year created a significant backlog in the hearing of complaints in the Workplace Relations Commission (WRC), which it is trying to address. To help, the Government recently signed an order under the Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020 directing the WRC to conduct all hearings remotely including giving of evidence using video link.

The WRC began trialling remote hearings in July, choosing some of the more straightforward complaints initially. However, parties to the complaints selected for remote hearing were not obliged to proceed with the hearing virtually and could opt for a face-to-face hearing instead. Obviously, this presented some issues for the WRC as the vast majority of parties were reluctant to participate and according to the WRC, only 16%

of parties consented to the remote hearing.

However, following the recent Order and effective from 24th September 2020, the WRC no longer needs consent from parties to proceed with a remote hearing. There is an exception to not conducting hearings remotely that states if the WRC believes it would be unfair to a concerned party or contrary to the interests of justice.

While the introduction of remote hearings will help reduce the backlog of complaints and speed up the resolution process, there are some potential issues. The absence of physical meetings may impact the potential to reach any agreements in advance of the hearing. Remote hearings can impact the opportunities for parties to communicate with the representatives and cross examination of witnesses maybe negatively impacted as a result of remote locations, which also highlights some further privacy issues as well.

The WRC has identified the need to establish procedures to ensure the conduct of remote hearings complies with its obligations to adhere to fair procedures and natural justice. We recommend that employers facing an upcoming WRC hearing familiarise themselves with any such procedures if called to a remote hearing and plan accordingly.

Pay & benefit changes

There are some recent changes to pay and benefits that employers should make themselves familiar with such as increases to the minimum wage and parental leave entitlements.

As of 1st January 2021, the National Minimum Wage will increase from €10.10 to €10.20 per hour and it is estimated to benefit over 120,000 employees.

Changes to the Parental Leave (Amendment) Act 2019, which extends the applicability and duration of parental leave, came into effect on 1st September 2020. From this date, a parent will be able to take up to 26 working weeks of unpaid leave for a qualifying child up to 12 years old.

The Budget 2021 detailed an increase to Parent's Leave/Benefit by an additional 3 weeks. This means that when this is enacted that each parent will be entitled to 5 weeks leave in total during the two years of a child's life, assuming all eligibility criteria has been satisfied.

It was announced in the recent budget that the number of waiting days for Illness Benefit, paid at €203 per week, will be reduced from six days to three days for new claims from the end of February 2021. An important point to note is that currently, employers are not obliged to provide sick pay to employees. If an employer does provide sick pay, the duration for the pay is at their discretion or as per their contractual terms with their employees. However, under a proposed private members' bill from the Labour Party, this may change in the future.

Currently any employee who is certified absent because of having, or suspected of having Covid-19, is entitled to the enhanced payment of €350 per week. Under the Labour Party proposals, it is recommended that parents of children who have to stay at home because of Covid-19 should also be entitled to this payment.

Proposed legislation to keep in mind

There are a number of pieces of proposed legislation that may impact businesses over the coming months, mainly in light of the impacts of Covid-19. The previously mentioned proposed bill from the Labour Party, Sick Leave and Parental Leave (Covid-19) Bill 2020, looks to extend force majeure parental leave where a child's school or childcare provider is closed due to an outbreak of Covid-19. Normally intended to provide for short periods of leave for urgent family situations, it allows for a maximum amount of three days leave in any 12-month period or five days in a 36-month period. However, the proposed legislation would place force majeure leave on a more long-term footing similar to other family leaves but without considering the necessity for some notice period.

Currently, the Government is also legislating for Statutory Sick Pay to be paid from the first day of an employee's absence from work due to illness or a requirement to isolate due to Covid-19 rather than day four. Once the legislation has been passed, this will apply retrospectively from 13th March of this year. There are also plans to bring forward legislation to allow employers reclaim Statutory Sick Pay paid for absence due to Covid-19.

The Safety, Health and Welfare at Work (Amendment) Bill 2020 is currently before Dáil Éireann, Second Stage and, if enacted, it will provide for a proactive health notification and surveillance. This means that a legal obligation will be placed on all employers and/ or workplaces to notify the Health and Safety Authority of any occurrences of Covid-19 in their workplace.

Finally, the increase in the Pension Age to 67, which was planned for introduction in January 2021, is now not proceeding. It was confirmed as part of the Budget that a Pensions Commission is to be established in line with the Programme for Government and the Minister will review once complete. Interestingly, our most recent HR Barometer research found that two thirds of organisations have a retirement age of 65 with 75% of these stating they have no plans to increase the age. In many instances, this has led to situations where people are being denied access to the State Pension upon retirement.



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