

Human Resources in 2021

by Caroline McEnery

2020 was a year that brought about much change, undoubtably in the economy, but also in practice. It tested HR professionals and managers to reactively manage their business and balance the risks of their decision making. We now need to regain our focus on the strategic direction of the business and HR management in 2021. To do so, there is still some juggling to do in navigating the Covid-19 vaccine roll out and the awareness of new EU Directives and Bill's pending which aim to change current practices. Whilst not all will be enacted in 2021 or in their current form, there are some important learnings for the preparation and strategic management of the HR function this year.

Covid-19 Vaccine

Many employers are now exploring the consideration of what vaccination looks like within their business and whether this is something they can legally enforce upon an employee.

At this point in time there are many legal matters to consider but ultimately enforcing that an employee gets the vaccine will expose the employer to risks.

Under Article 40.3 of the Constitution a person has an implied right to bodily integrity which has been recognized by the judiciary.

Therefore, any Act or imposition by the Irish Government to suggest that mandatory vaccination was necessary may well be challenged and struck down as being unconstitutional. As a result, it's unlikely at this stage that vaccinations will be enforceable.

Transposing the above into the employment setting, employers are going to need to balance their obligations under the Safety Health and Welfare at Work Act 2005 – 2014 and the Employment Equality Act 1998. This is likely to involve updating risk assessments to consider the point that many people may be vaccinated but also some may decide not to. This may be as a result of preferences or on the grounds of religion or disability. Employers may gently encourage employees to get the vaccine but it likely that this will be the extent that an employer can proceed with before potentially exposing themselves to litigation.

Working from home (Covid-19) Bill 2020

This Bill has been initiated with the aim of providing employees working from home; the right to switch off from work-related electronic communications after or before the employees working hours, require employers to provide a workstation and a flat rate payment to meet the additional expenses of working from home due to Covid-19 and to provide an appropriate policy to communicate measures regarding the same.

Organisation of working time (Amendment) (Right to disconnect) Bill 2020

This Bill which is of similar intent to the above, aims to amend the Organisation of Working Time Act 1997. This will establish practices which allow an employee to disconnect from work-related emails, texts, and calls outside of their working hours. This Bill also proposes protection against penalisation if an employee does not respond to a work-related communication after their working hours.

EU Directive on work-life balance/family-friendly changes

Ireland is a step ahead of this proposed Directive in many ways however, the most significant impact of this Directive for Irish employers, will be the introduction of the right of

parents and carers to request flexible working arrangements, such as:

- a. Reduced working hours
- b. Flexible working hours
- c. Remote working options

EU Directive on transparent and predictable working conditions

The aim of this directive is to enhance the transparency of ordinary working conditions. It will improve the existing standard for contracts of employment provided under the Terms of Employment (Information) Act 1994 and it will supplement the Employment (Miscellaneous Provisions) 2018 Act.

The key important updates are as follows:

Terms of employment

At present an employee should be issued with their 'core' terms of employment within 5 days of their start date under the Miscellaneous Provisions Act 2018 and all other terms must be provided within 2 months.

However now, under the Directive employers will be obliged to provide the employee with the more extensive terms of their employment within 7 days from the commencement of their employment.

These terms are as follows:

- a. The place of work; where there is no fixed place of work, the principle that the worker is employed at various places or is free to determine his or her place of work, and the registered place of business or, where appropriate, the domicile of the employer.
- b. Either:
 - i. the title, grade, nature or category of work for which the worker is employed or
 - ii. a brief specification or description of the work.
- c. The duration and conditions of the probationary period.
- d. The training entitlement provided by the employer.
- e. The amount of paid leave to which the worker is entitled and the procedures for allocating and determining such leave.
- f. The procedure to be observed by the employer and the worker when tendering notice of termination.
- g. The identity of the social security institutions receiving the social contributions attached to the employment relationship and any protection relating to social security provided by the employer.

Probation

The Directive restricts a contract of employment from providing a probation period which exceeds 6-months. Additionally, in fixed term contracts, the employer must pay consideration to the proportionality of the probationary period, taking into account the expected duration of the contract and nature of the work involved. However, there is a provision to allow probation periods to be longer than 6-months provided that it is justified by the nature of employment or the interest of the worker.

Limitations on outside employment

An employer, under this Directive will no longer be able to prohibit the employee from taking up employment outside of their normal work schedule, nor can the employee

be penalised for doing so, except where there are circumstances of incompatibility. This may arise in circumstances relating to; 'health and safety, the protection of business confidentiality, the integrity of the public service or the avoidance of conflicts of interests.

Minimum predictability on work

Article 10 of the Directive provides protection to unpredictable working where the working week is entirely or mostly unpredictable. The employee shall not be required to work unless the following conditions are met:

- The work takes place within predetermined reference hours and days referred to in the contract.
- The worker is informed of the work assignment within a reasonable notice period.

Where one or both of these conditions are not adhered to, the worker will have the right to refuse the work without any adverse consequences.

Work related training

Where training is provided for by the employer for work carried out by the employee, this should be provided free of cost, shall count as working time, and where possible, take place during working hours.

Equality (Miscellaneous Provisions) Bill 2021

This was initiated in January 2021 and it is therefore at very early stages in the Houses of the Oireachtas. As such, this Bill may or may not be enacted in its current form or at all. However, this Bill is interesting in that it aims to amend the Employment Equality Act 1998 and Equal Status Act 2000 by adding grounds for discrimination on the basis of someone's socio-economic disadvantage. By virtue of the interpretation of the Act, this means that any person who has a disadvantaged social status or economic status, or both, is protected against discrimination.

This may be indicated by their inclusion in socially or geographically identifiable groups who suffer from

one or more of the following:

- a. poverty,
- b. source of income,
- c. illiteracy,
- d. level of education,
- e. address, type of housing or homelessness,
- f. employment status,
- g. social or regional accent.

If this Bill is enacted, HR professionals and managers will need to update policies and undertake to update training for the team.

If you are an organisation based in the Republic of Ireland and require further information or advice relating to HR, please do not hesitate to contact our office on (066)7102887.



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Caroline is Managing Director of The HR Suite set up the Company in 2009. Its reputation has since established itself as one of the leading HR Consultancies in the Republic of Ireland.

Caroline a former member on the Low Pay Commission and a current Adjudicator with the WRC Caroline's background stemmed from a Masters in Human Resources in UL. Coupled with a chartered membership of the CIPD, a Mediator Qualification with the MII and her advocacy for female entrepreneurship participating as a lead mentor with the ACORNS programme Caroline speaks on a nationwide platform on the challenges and opportunities that present for Employers in Ireland.