



Recent Employment Legislation Updates

JANUARY 2023

Overview



Statutory Sick Pay

Pay (2023 Living Wage)

Dignity & Respect at Work (Code of Practice)

Gender Pay Gap Information Act 2021

Protected Disclosure Amendment Act 2022

Work Life Balance and Miscellaneous Provisions Bill 2022

Payment of Wages(Amendment) (Tips & Gratuities) Act 2022

European Union (Transparent and Predictable Working Conditions) Regulations 2022

Statutory Sick Pay



- From January 2023, statutory sick pay is 3 days
- The employee must have 13 weeks continuous service with their current employer.
- The employee will also require a sick cert from their GP on the first day of absence to claim for this benefit.
- Sick pay will be paid by employers at a rate of 70% of an employee's wage, subject to a daily threshold of €110.
- **Advice:** Update Sick Pay Policy and ensure all Employees are briefed.

Minimum Wage & Living Wage

- Minimum Wage increasing to €11.30 in January 2023.
- Leo Varadkar TD has announced the introduction of a national living wage for employees which will be set at 60% of hourly median wages in line with the recommendations of the Low Pay Commission.
- The National Minimum Wage is set to gradually increase over the coming years until it reaches 60% of hourly median earnings which is expected to happen in 2026.
- Therefore, From 2026 we will no longer have a National Minimum Wage and the National Living Wage will be Mandatory for all Employers.

| Age | % of National Minimum Wage | Rate |
|----------------|----------------------------|--------|
| 20 years old + | 100% | €11.30 |
| 19 years old | 90% | €10.17 |
| 18 years old | 80% | €9.04 |
| Aged Under 18 | 70% | €7.91 |

New Code of Practice on Sexual Harassment and Harassment at Work

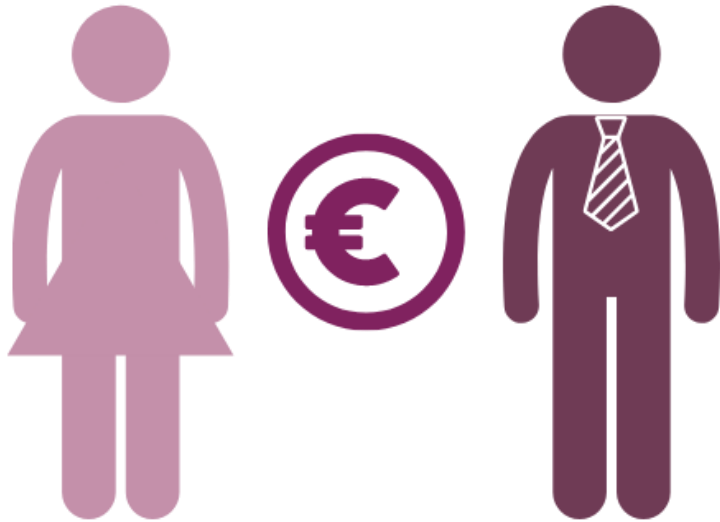
Senior level 'champion':

- The Code introduces a new concept of a 'champion'. It suggests that a senior individual (or individuals) in an organisation be designated as a 'champion', someone independent to advocate for a diverse workplace culture free from harassment and sexual harassment. However, there is recognition in the Code that this will not be practicable for all organisations depending on their size and resources. This may be a role that could be covered by the contact person who would have been appointed since the introduction of the bullying code of practice.

Statutory rights:

- The Code recommends that internal procedures should make it clear that employees who use the complaints procedure will still be entitled to make a statutory complaint under the Employment Equality Acts and that they specify the statutory time limits and clearly state that statutory time limits continue to run during internal investigations and pending the outcome of same.

Gender Pay Gap Information Act 2021



- This Act requires employers to:
 1. Report on the Gender Pay Gap in their organisation
 2. Provide details of measures being taken to reduce that gap
- Required to disclose the mean and median hourly wage gap for all employees.
- Must also release all data on bonus pay.
- Companies with 250+ staff must release in 2022, 150+ in 2024 and 50+ in 2025.
- No requirement on employers with less than 50 employees.
- Employers are required to pick a snapshot date in June 2022.
- Employers must publish the findings in December 2022, 6 months after the snapshot date.

Protected Disclosure (Amendment) Act 2022

- The Act has been amended to give effect to the EU Directive and to further enhance and strengthen the protections it provides.
 - Volunteers, unpaid trainees, board members, shareholders and job applicants now protected under the Act.
 - 1st January 2023 - All organisations with 250 or more employees must establish internal reporting channels
 - 17th December 2023 - All organisations with 50 or more employees must establish internal reporting channels
 - All public sector organisations regardless of size must establish internal reporting channels
 - Internal reporting channels must include specific timelines
 - A designated person or function must be trained on how to deal with reports/disclosures for the internal reporting channel
 - Employees must be made aware of external reporting channels and the role of the Prescribed Person
 - Employers and prescribed persons who receive protected disclosures will be required to acknowledge them and follow-up on the allegations made and give feedback to the reporting person within three months. This will give greater certainty to both employers and whistleblowers as to what will happen when a protected disclosure is made.
 - In civil proceedings the burden of proof will be reversed so that it will fall to the employer to provide that any alleged act of penalisation did not occur because the person made a protected disclosure.

Advice: Ensure policy is updated in line with amendments above. Identify and train designated impartial person.

Work Life Balance and Miscellaneous Bill 2022

- The Work Life Balance and Miscellaneous Bill 2022 is currently before the Seanad – third stage
- Code of Practice to follow
 1. Right to Request Remote Working
 2. Leave For Caring For Family Members
 3. Flexible Working for Caring Purposes
 4. Domestic Violence Leave



1. Right To Request Remote Working

- Any employee will have the right to request remote working
- An employer can only deny request if their explanation in line with reasons for refusal within the legislation
- There was previously 13 reasons listed for refusal however these have been updated and the current reasons listed within the Bill.



2. Work Life Balance and Miscellaneous Bill 2022 – To provide care

- An employee shall be entitled to leave **without** pay from their employment for the purposes of providing personal care or support to:
 - a child
 - spouse/civil partner
 - cohabitant
 - parent or grandparent,
 - sibling
 - someone who resides in the same household as the employee **and** who is in need of significant care or support for a serious medical reason.
- The leave shall not exceed 5 days in any period of 12 consecutive months and shall not be taken in a period of less than one day.



3. Work Life Balance and Miscellaneous Bill 2022 – Flexible Working for Carer/Parent

The following will be able to apply for flexible working arrangements for caring purposes:

An employee who is or will provide care to a child and that child is under 12 years of age or 16 years of age if the child has a disability or long-term illness

An employee providing care to a, spouse/civil partner, cohabitant, parent or grandparent, sibling or someone who resides in the same household as the employee

- The employee must:
 - have 6 months service to apply
 - put request in writing and provide supporting documentation
- Once a request has been made by an employee, the Employer should:
 - provide a response within 4 weeks
 - response should outline the arrangement and a commencement/end date for the arrangement



4. Work Life Balance and Miscellaneous Bill 2022 – Domestic Violence Leave

- Paid domestic violence leave at a prescribed daily rate
- Purpose of the leave is to facilitate the employee to:
 1. seek medical attention
 2. obtain services from a victim services organisation;
 3. obtain psychological or other professional counselling;
 4. relocate temporarily or permanently;
 5. obtain an order under the Domestic Violence Act 2018;
 6. seek advice or assistance from a legal practitioner
 7. seek assistance from the Garda Síochána.
- Domestic violence leave will consist of one or more days but shall not exceed 10 days in any period of 12 consecutive months.



Payment of Wages (Amendment)(Tips and Gratuities) Bill

- The aim of the Payment of Wages (Amendment) (Tips and Gratuities) Act is to:
 - provide clarity on the meaning of tips, gratuities and service charges
 - oblige employers to display prominently their policy on the distribution of both cash and card tips
 - oblige employers to distribute fairly, equitably and in a transparent manner, tips that are received in electronic form, that is, through debit or credit cards or smart phones
- Employer Obligations:
 - **Policy:** The Employer must have a Policy in place displaying in a clear and transparent way how cash tips, card tips, gratuities and service charges are distributed.
 - **Notice:** An Employer is legally required to display a 'Tips and Gratuities Notice' for their Employees and customers to be able to view freely.
 - **Written Statement:** This is a written document that an Employer is legally obliged to produce to employees detailing the electronic tips/gratuities obtained by the company in that period and how much the employee is receiving.
- **Advice** : Implement the employer obligations



European Union (Transparent and Predictable Working Conditions) Regulations 2022

Became Law in December 2022

Day 5 Statement must now include 5 more items including probation period.

Contract of Employment now to be provided within 1 month and must include 4 more items including training details.

Probation Period now maximum of 6 months – (regardless of what was stated in their contract i.e., 11 months) and cut-off date is 1st February 2023.

An employee, has been in continuous service with an employer for at least six months, may request a form of employment with more predictable and secure working conditions.

If an employer is required to provide training to employee, this training must be provided free of charge to the employee, during working hours where possible, and is considered working time.

an employer cannot stop an employee from taking up employment with another employer, outside of the work schedule established with the first named employer.

Additional provisions to be provided to employees working abroad.

European Union (Transparent and Predictable Working Conditions) Regulations 2022

Became Law in December 2022

Day 5 Statement must now include:

- 1.The duration and conditions relating to a probationary period, if applicable
- 2.The place of work or, where there is no fixed or main place of work, a statement specifying that the employee is employed at various places or is free to determine his or her place of work or to work at various places;
- 3.The title, grade, nature or category of work for which the employee is employed or a brief description of the work;
- 4.The date of commencement of contract of employment;
- 5.Any terms and conditions relating to hours of work (including overtime).

European Union (Transparent and Predictable Working Conditions) Regulations 2022

Contract of Employment

- Now needs to be given within 1 month
- Must now include:
 1. The training, if any, to be provided by the employer;
 2. In the case of a temporary contract of employment, the identity of the user undertakings i.e., the person or firm hiring the agency worker
 3. If the work pattern of the employee is entirely or mostly unpredictable, the principle that the work schedule is variable, the number of guaranteed paid hours and the remuneration for work performed in addition to those guaranteed hours, the reference hours and days within which the employee may be required to work and the minimum notice period the employee is entitled to before the start of a work assignment;
 4. The identity of the social security institutions receiving the social insurance contributions attached to the contract of employment and any protection relating to social security provided by the employer.

European Union (Transparent and Predictable Working Conditions) Regulations 2022

Probationary Period

- Maximum of 6 months
- Can be extended to no more than 12 months if it would be in the interest of the employee
- Where an employee is currently on a probation period of longer than 6 months and has completed 6 months – their probation period will expire on 1 February 2023
- FTC Probation needs to be proportionate to the expected duration of contract and nature of the work
- Probationary period may be extended by the duration of employee absence.

Transition to another form of employment

- An employee, who has completed their probationary period and has been in continuous service with an employer for at least six months, may request a form of employment with more predictable and secure working conditions, where available, and receive a reasoned reply from their employer.

European Union (Transparent and Predictable Working Conditions) Regulations 2022

Training

- If an employer is required to provide training to employee, this training must be provided free of charge to the employee, during working hours where possible, and is considered working time.

Minimum Predictability of Work

- As well as the minimum notice period specified in the OMTA, a work assignment now must take place within the reference hours and days notified to the employee as part of their written terms.
- Where the notice of a work assignment provided to an employee is not within the minimum notice period of 24 hours or the work assignment is to take place outside the reference hours and days, the employee has the possibility to refuse the work assignment without adverse consequences.

European Union (Transparent and Predictable Working Conditions) Regulations 2022

Parallel Employment

- an employer cannot stop an employee from taking up employment with another employer, outside of the work schedule established with the first named employer or treat an employee adversely for taking up employment with another employer.
- An employer may restrict an employee from taking up other employment if they have objective grounds for doing so. E.g.:
 - Health and safety
 - Protection of business confidentiality
 - Integrity of public service
 - Avoidance of conflicts of interest
- Details of any restriction, including the objective grounds on which the restriction is based, must be included in the contract of employment

European Union (Transparent and Predictable Working Conditions) Regulations 2022

Working outside the state:

- The written statement to be provided to employees who are required to work outside the State must now also include:
 - The country or countries in which the work outside the State is to be performed and its duration.

Posted Workers

- Additional information must be provided, namely:
 - The remuneration to which the employee is entitled in accordance with the applicable law of the host Member State (i.e. Irish law)
 - Any allowances specific to the posting, if any, and any arrangements for reimbursing expenditure on travel, board and lodging;
 - The link to the official national website developed by the host Member State concerning the posting of workers and the provision of services

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