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EMPLOYMENT, PENSIONS AND EMPLOYEE BENEFITS

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# 2023 Employment Legislation Review and a Peek at 2024

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7th December 2023 | by

As we approach the end of 2023, we thought it would be useful to review the key changes that have affected employment law this year along with a preview of what is expected in early 2024.

## **Extension of statutory obligations under the Protected Disclosures legislation comes into force in December 2023**

The scope of the protected disclosures legislation will be extended on **17 December 2023** from employers with 250+ employees to employers with 50+ employees. In scope employers are obliged to establish internal reporting channels and procedures for the making of a protected disclosure.

In summary, employers are required to ensure that secure channels are in place for receiving a protective disclosure and to acknowledge receipt of the disclosure within seven days. A designated person or persons within an organisation must be appointed to undertake this role. This person is responsible for providing feedback to the discloser and to keep the discloser informed of the progress of the investigation and the outcome no later than three months from receipt of the disclosure. A failure to establish, maintain and operate the reporting channels and procedures may lead to significant fines and penalties being imposed, ranging €75,000 to €250,000, and/or imprisonment for up to two years.

There is no obligation to accept and follow up on anonymous complaints, but an employer may choose to do so.

The Government published updated Statutory Guidance in November 2023 for public bodies and prescribed persons under the Protected Disclosures Act 2014, as amended, which can be viewed [here](#). Whilst aimed at public bodies, the Guidance is useful for all employers who come within the scope of the legislation.

Employers should consider whether they fall within the scope of the legislation, and if so, it is likely that they will need to update their whistleblowing / protected disclosures policies.

## **Domestic Violence Leave came into force on 27 November 2023**

Domestic violence leave, introduced in the Work Life Balance and Miscellaneous Provisions Act 2023, is a new type of leave providing for five days paid leave for an employee who is suffering, or has suffered, domestic violence, in any period of 12 consecutive months, at their full rate of pay. There is no minimum service requirement to avail of this leave and employees will not be obliged to produce evidence in support of their application for leave. It is however acceptable for an employer to seek sufficient explanation from the employee in order to ascertain if an entitlement to domestic violence leave arises.

The intention of the leave is to enable the employee (or a 'relevant person' as defined under the legislation) to seek medical assistance, obtain support services and counselling, relocate either temporarily or permanently, seek legal advice or assistance, seek assistance from an Garda Síochána or to obtain a safety or barring order from the courts.

## Other Leave Entitlements

The Work Life Balance and Miscellaneous Provisions Act 2023 introduced other additional leave entitlements:

- Employees are entitled to up to five days unpaid leave for medical care purposes.
- Transgender men (who have given birth) can now access maternity and pregnancy related leave and entitlements.
- The number of weeks during which mothers are entitled to take paid time off work for breastfeeding purposes has been increased from 26 to 104.

The right to access to these entitlements has been in force since 3 July 2023.

## Right to Request Remote Working

The right to request remote working was introduced under the Work Life Balance and Miscellaneous Provisions Act 2023, but these provisions have not yet come into force. When operational, all employees will have a right to request remote working and employers will be required to have regard to a Code of Practice when considering requests for remote working. The Code of Practice has not yet been published, but it is expected that it will have a statutory status and that it will include guidance for employers and employees on their obligations. When considering remote working requests, employers will be required to have regard to the Code, in addition to the needs of the business and the employees.

## Flexible Working

The Work Life Balance and Miscellaneous Provisions Act 2023 also introduced the right to request flexible working arrangements for caring purposes, for parents and carers. This right will apply to employees who have six months' continuous service with their employer. This right will come into force following the publication of a Code of Practice, as referred to above.

## Gender Pay Gap Reporting

The Gender Pay Gap Information Act 2021 came into force on 31 May 2022. In June 2022, employers with 250+ employees were required to choose a 'snapshot' date within that month, to prepare a report on the gender pay gap (GPG) for the employees in their company on that date and to publish that report in December 2022 and December 2023. GPG reporting initially applied to public and private sector organisations of 250+ employees on the snapshot date in 2022 and 2023, but the scope is set to be extended to organisations with **150+ employees in 2024** and to organisations with 50+ employees from 2025.

An employer will have to report on:

- The mean and median wage gap for full time, part time and temporary employees.
- The mean and median bonus gap for full time, part time and temporary employees.
- The proportion of men and women that received bonuses.
- The proportion of men and women that received benefits in kind.
- The proportion of men and women in four quartiles.

Specific regulations and guidance apply to how the calculations should be carried out.

Employers are required to publish a statement setting out, in the employers' opinion, the reasons for the gender pay gap in their company and what measures are being taken or proposed to be taken by the employer to eliminate or reduce that pay gap. An employee can bring a claim to the Workplace Relations Commission (WRC) in respect of non-compliance with the legislation. The WRC can make an order requiring the employer to take a specified course of action to comply with the GPG legislation, but there are no provisions for compensation to be awarded or fines to be imposed for non-compliance. All decisions of the WRC are published with the parties named.

The legislation does empower the Irish Human Rights and Equality Commission to apply to the Circuit Court or the High Court for an enforcement order where there is suspected non-compliance.

## **Update on Statutory Sick Pay (SSP)**

The Sick Leave Act 2022 came into force in January 2023 on a phased basis. The leave entitlement from 1 January 2023 has been three days and is increasing on **1 January 2024 to five days**. It is intended that it will increase to seven days in 2025 and ten days in 2026.

SSP is provided to all employees at a rate of 70% of their wage but subject to a daily threshold of €110 per day. It is expected that this maximum cap may change and be amended over time to take account of changes in income and inflation. It applies to all employees with continuous service of 13 weeks or more.

The entitlement to sick leave applies from the first day of absence and does not need to run consecutively. To avail of statutory sick leave, employees are required to furnish a medical certificate from a registered medical practitioner covering each day of absence and stating that the employee is unable to work.

Employers who already operate a sick leave scheme are exempt from the obligations provided for under the Act where they can show that existing company benefits are as favourable or more favourable than the statutory entitlement.

If an employer fails to provide statutory sick pay, then an employee who submits a complaint may be awarded four weeks' pay in addition to their statutory sick leave entitlement.

Where an employer maintains it cannot afford to discharge its sick pay obligations, an exemption can be granted by the Labour Court, but availing of this exemption will require an employer to establish that it is suffering severe financial difficulties.

In the recent case of *Katerina Leszczynska v Musgrave Operating Partners* ADJ-00044889, the WRC examined, for the first time, an employer's obligation to pay SSP and the circumstances in which a company sick pay scheme is exempt from the obligation to pay SSP. The WRC found that employers who have company sick pay provisions that are more favourable to employees than the statutory sick pay will not be affected by the legislation. In assessing whether sick pay provisions are on the whole more favourable, the WRC took into account the following factors:

- the period of service of an employee before sick leave is payable
- the number of days that an employee is absent before sick leave is payable
- the length of time for which sick leave is payable
- the amount of sick leave payable
- the reference period of the sick pay scheme

## **Parent's Leave and Parent's Benefit**

It was announced in Budget 2024 that Parent's Leave and Parent's Benefit will be extended from seven to nine weeks of leave from August 2024.

Parent's leave is available to employees who are a 'relevant parent' (e.g., a parent or adopting parent of a child; or a spouse, civil partner or cohabitant of the parent of the child; or a spouse or civil partner of the adopting parent of the child) and whose child was born or adopted on or after 1 November 2019.

Parent's leave is available to each parent and there is no minimum length of service requirement for parent's leave. The leave, which may be taken in one continuous block or as two separate blocks (of no less than one week), must be taken within the first two years of the child's birth or adoption. There is no obligation on the company to pay an employee on parent's leave, but an employee may be entitled to the State Parent's benefit, provided the employee has sufficient PRSI contributions.

## Pensions (Auto-enrolment)

On 29 March 2022, the Minister for Social Protection announced the details of the Automatic Enrolment Retirement Savings System for Ireland, which is to operate on an 'opt-out' rather than an 'opt-in' basis. The scheme is expected to begin in the latter half of 2024. Auto-enrolment is expected to be gradually phased in over a decade, with both employer and employee contributions starting at 1.5%, and increasing every three years by 1.5% until reaching 6% in by 2034.

The scheme provides that the employer should match the employee contributions up to a maximum of €80,000 of earnings and the State will provide a corresponding top-up of €1 for every €3 saved by the employee up to a maximum of €80,000 i.e., for every €3 saved by an employee, a further €4 will be credited to their pension savings account between the employer and the State contribution. All employees who are not already in an occupational pension scheme, aged between 23 and 60 and earning over €20,000, will be automatically enrolled.

## National Living Wage

The Government announced the introduction of a national living wage for employees at the end of 2022. The national living wage will be set at 60% of hourly median wages. It will be introduced over a four-year period and will be in place by 2026, at which point it will replace the national minimum wage.

The National Minimum Wage Order 2023 sets the national minimum hourly rate of pay from 1 January 2024.

Aged 20 and over	€12.70
Aged 19	€11.43
Aged 18	€10.16
Under 18	€8.89

## Review, Reflect and React

Employers should review the recent and forthcoming changes that have been outlined and then reflect on those that are relevant to their organisations and the changes that will need to be introduced to ensure compliance with these obligations on employers and entitlements for employees. Then it is about implementation. That is likely to mean introducing new policies and procedures or amending those that are already in place.

For more information, please contact a member of our Employment Team.

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## About the Author