



EMPLOYMENT, PENSIONS AND EMPLOYEE BENEFITS

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# Employment Legislation Update: July — December 2019

by **Aoife Bradley, Jennifer O'Neill, Ciara O'Kennedy,  
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19th December 2019 | by Aoife Bradley, Jennifer O'Neill, Ciara O'Kennedy, Gillian Dully

This issue of our Employment Legislation Update covers developments between July and December 2019.

In this issue, we outline the main requirements and changes which have been introduced by the Parent's Leave and Benefit Act 2019.

We also review the proposals included in the forthcoming Payment of Wages (Amendment) Bill 2019, as well as changes made to the employment permits regime by Employment Permits (Amendment) (No. 2) Regulations 2019.

Please [get in touch](#) if you have any questions in relation to the contents of this update.

## Contents

### ACTS

Parent's Leave and Benefit Act 2019.

### BILLS

Payment of Wages (Amendment) Bill 2019.

### STATUTORY INSTRUMENTS

1. Employment Permits (Amendment) (No. 2) Regulations 2019 (S.I. No. 333/2019).
2. Employment Regulation Order (English Language Schools Joint Labour Committee Establishment Order) 2019 (S.I. No. 593 of 2019).
3. Social Welfare (Consolidated Contributions and Insurability) (Amendment) (No. 2) (Modified Insurance) Regulations 2019 (S.I. No. 591 of 2019).
4. Social Welfare (Consolidated Claims, Payments and Control) (Amendment) (No. 12) (Parent's Benefit) Regulations 2019 (S.I. No. 554/2019).
5. Parent's Leave and Benefit Act 2019 (Commencement of Certain Provisions of Part 5) Order 2019 (S.I. No. 553/2019) and Parent's Leave and Benefit Act 2019 (Commencement) Order 2019 (S.I. No. 629 of 2019).
6. European Union (Supplementary Pension Rights) Regulations 2019 (S.I. No. 447/2019).
7. Parental Leave (Amendment) Act 2019 (Commencement) Order 2019 (S.I. No. 356/2019).

# Acts

## Parent's Leave and Benefit Act 2019 (the 2019 Act)

This Act introduces the concept of paid parent's leave for employees in Ireland for the first time. The entitlement to parent's leave is in addition to existing entitlements to maternity, paternity, adoptive and unpaid parental leave.

The 2019 Act stipulates that all "relevant parents" are entitled to parent's leave.

"Relevant parents" are defined as one of the following:

- A parent of the child.
- A spouse, civil partner or cohabitant of the parent of the child.
- A parent of a donor-conceived child as provided for under section 5 of the Children and Family Relationships Act 2015.
- The adopting parent or parents of a child.
- The spouse, civil partner or spouse of the adopting parent of the child (if the parents have not adopted jointly).
- Each member of a married couple of the same sex, a couple that are civil partners of each other, or a cohabiting couple of the same sex.

### Entitlements

Each relevant parent is entitled to two weeks of parent's leave for a child born or adopted on or after 1 November 2019. There is no minimum service requirement for entitlement to parent's leave and employees are therefore entitled to parent's leave from the date of commencement of employment. Parent's leave can be taken as one continuous period of two weeks' leave or two periods of not less than one week. The 2019 Act does not oblige employers to pay employees while they are on parent's leave but individuals who have enough PRSI contributions will be entitled to receive parent's benefit (currently €245 per week) from the Department of Employment Affairs and Social Protection. It will be up to each employer to decide whether they wish to top up an employee's parent's benefit.

### Preservation of employment rights during parent's leave

All employment rights, other than an employee's right to remuneration, apply as normal during parent's leave. Employees are protected from any acts of penalisation arising from an employee availing of parent's leave and employees are entitled to return to the job held by the employee immediately before the commencement of such leave or a suitable alternative role.

### Timing

Employees will be required to notify their employer of the employee's intention to take parent's leave not later than six weeks before the commencement date of the parent's leave. An employer can postpone parent's leave if they form the view that it would have a "substantial adverse effect on the operation of their business, profession or occupation". The leave cannot be postponed for more than 12 weeks after the start date of the requested parent's leave, and the new date must be agreed by both the employer and the employee.

### Claims

The 2019 Act gives a right of action to employees to take a claim to the Workplace Relations Commission (WRC) where employers have breached their obligations under this Act. In such circumstances, the WRC may order the grant of parent's leave to the employee in question or an award of compensation not exceeding two weeks' remuneration to be paid to the employee.

## Future extension of parent's leave

The 2019 Act also provides for parent's leave to be increased to a maximum of nine weeks in the future and the Government has expressed an intention to do so in the coming years.

Parent's leave is also available for individuals who are self-employed.

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## Bills

### Payment of Wages (Amendment) Bill 2019

On 9 December 2019 the Minister for Employment Affairs and Social Protection, Regina Doherty T.D., announced that the Government has approved a revision of the draft Scheme of the Payment of Wages (Amendment) Bill 2019. The Scheme now includes a legal right for workers to receive "on a fair, transparent and equitable basis", tips and gratuities paid by electronic means such as by debit and credit cards. The Government has indicated that it is its intention that this Bill will progress as quickly as possible. The Government will also continue to oppose the progression of a similar Private Members' Bill.

The intention is that the Bill will introduce the following changes:

- An amendment to the Payment of Wages Act 1991 to ensure that tips and gratuities cannot be used to 'make-up' or satisfy a person's contractual wages.
  - A requirement on employers to clearly display, for the benefit of workers and customers, their policy on how tips, gratuities and service charges are distributed.
  - A legal entitlement for workers to receive tips and gratuities that are paid by customers in electronic form (i.e. debit or credit cards).
  - An obligation on employers to distribute electronically gifted tips to workers in a "fair, transparent and equitable manner".
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## Statutory Instruments

### 1. Employment Permits (Amendment) (No. 2) Regulations 2019 (S.I. No. 333/2019)

These Regulations amend the Employment Permits Regulations 2017-2019 to provide for:

- An increase in the minimum annual remuneration thresholds for Critical Skills Employment Permits.
- The extension of the period a vacancy must be advertised on the websites hosted by the Department of Employment Affairs and Social Protection prior to submission, from 14 to 28 days.
- An extension to the period after an offer of employment or publication of notice within which an application must be made for academic or third level institutions, to 120 days.
- An adjustment of the maximum limit of General Employment Permits which may be granted in respect of Dairy Farm Assistant to 101 and in respect of Boner (Meat) to 300.
- The inclusion of private educational institutions on Schedule 3 for Teaching and Educational Professionals in ICT programmes plus technical amendment to Schedule 3.
- A shortening of the required period of validity remaining on a foreign national passport from 12 to 6 months where an application for a permit is being made.

### 2. Employment Regulation Order (English Language Schools Joint Labour Committee Establishment Order) 2019 (S.I. No. 593 of 2019)

This Order fixes the statutory minimum rates of remuneration and other conditions of employment for academic, administrative, maintenance, cleaning and security staff in English Language Schools in the Republic of Ireland, which provide education and training in English as a foreign language and other English language related training courses.

### **3. Social Welfare (Consolidated Contributions and Insurability) (Amendment) (No. 2) (Modified Insurance) Regulations 2019 (S.I. No. 591 of 2019)**

These Regulations, which came into force from 1 November 2019, amend certain provisions of the Social Welfare (Consolidated Contributions and Insurability) Regulations 1996 to extend the entitlement to Parent's Benefit to Class B, C and D PRSI contributors. These Regulations have been introduced to make parent's leave available to individuals who are self-employed.

### **4. Social Welfare (Consolidated Claims, Payments and Control) (Amendment) (No. 12) (Parent's Benefit) Regulations 2019 (S.I. No. 554/2019)**

These Regulations, which came into force from 1 November 2019, provide that persons employed abroad as volunteer development workers may qualify for parent's benefit without having to satisfy the employment condition attached to the scheme. They also set out the contribution conditions to be satisfied by a volunteer development worker in order to qualify for parent's benefit.

### **5. Parent's Leave and Benefit Act 2019 (Commencement of Certain Provisions of Part 5) Order 2019 (S.I. No. 553/2019) and Parent's Leave and Benefit Act 2019 (Commencement) Order 2019 (S.I. No. 629 of 2019)**

These Orders provide for the commencement of the Parent's Leave and Benefit Act 2019 and enable the introduction of paid parent's leave with effect from 1 November 2019.

### **6. European Union (Supplementary Pension Rights) Regulations 2019 (S.I. No. 447/2019)**

These Regulations transpose certain obligations imposed by Directive 2014/50/EU (the Portability Directive) into Irish law by amending the Pensions Act 1990 to specify requirements in respect of "outgoing workers", meaning an active scheme member whose current employment relationship terminates for reasons other than becoming eligible for a supplementary pension and who moves between Member States, which will:

- Provide a right of entitlement to a refund of pension contributions where service in the relevant employment has terminated and the outgoing worker is not entitled to a preserved benefit under a scheme.
- Provide that trustees of a scheme may not effect a transfer payment from a scheme in respect of an outgoing worker unless consent to the transfer has been obtained.
- Specify that a waiting period of not greater than 12 months shall apply from the date of commencement of service in the relevant employment of the outgoing worker to become eligible to become a member of a scheme.

### **7. Parental Leave (Amendment) Act 2019 (Commencement) Order 2019 (S.I. No. 356/2019)**

This Order provides for the commencement of the Parental Leave (Amendment) Act 2019 on 19 July 2019 – the predominant purpose of which was to increase parental leave entitlement from 18 weeks to 22 weeks as of September 2019, and 26 weeks as of September 2020 – generally for parents of children aged up to 12 years.

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