



EMPLOYMENT, PENSIONS AND EMPLOYEE BENEFITS

LK Shields | Employment Legislation Update January – June 2019

by **Aoife Bradley, Einde O'Donnell**

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12th July 2019 | by Aoife Bradley, Einde O'Donnell

This issue of our employment legislation update covers developments between January and June 2019.

In it we outline the main provisions of the Parental Leave (Amendment) Act 2019 and two new Sectoral Employment Orders in the construction and electrical contracting sectors.

We also update you on the Gender Pay Gap Information Bill 2019 and the proposals in relation to tips.

We look forward to hearing any comments or questions you may have in relation to the contents of this update.

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ACTS

Parental Leave (Amendment) Act 2019

This Act amends the Parental Leave Act 1998 to extend the current entitlement of parents to parental leave from 18 weeks to 26 weeks. The extension of the parental leave entitlement will be introduced on a phased basis with an additional 4 weeks' parental leave being available from September 2019 and the remaining 4 weeks' parental leave being available from September 2020. Employees who have already used some or all of the current 18 week parental leave entitlement will be able to avail of the additional eight weeks (in line with the phased introduction above). This is provided that their child has not exceeded 12 years of age.

This Act also increases the qualifying age of children for which parental leave can be taken from 8 years to 12 years.

It is expected that a commencement order for this Act will be published by the end of July.

Industrial Relations (Amendment) Act 2019

This Act facilitates access of members of An Garda Síochána to the Workplace Relations Commission and the Labour Court to avail of their services. It provides for members of An Garda Síochána to be entitled to bring any industrial relations disputes before the Workplace Relations Commission for mediation, conciliation and adjudication and to avail of the services of the Labour Court where required.

This Act was signed into law by the President on 7 July 2019 and is awaiting a commencement order.

BILLS

National Minimum Wage (Protection of Employee Tips) Bill 2017

This Private Members' Bill proposes to introduce provisions which will prohibit an employer from:

1. Withholding tips / other gratuities from an employee.
2. Making a deduction from an employee's tips / other gratuities.
3. Causing the employee to return or give his/her tips / other gratuities to the employer.

Any amount which is taken in this context by the employer will be considered a debt owing to the employee and will be treated as wages owed to that employee. The employee will be entitled to take a claim to the Workplace Relations Commission seeking redress where an employer has failed to comply with these provisions.

The Bill also proposes to make it an offence to contravene the provisions without lawful excuse. An employer found guilty of an offence could be liable to a fine up to €2,500 and / or imprisonment for a term not exceeding six months.

The Bill also obliges employers to display on menus, or in an otherwise suitable manner, its policy on the distribution of tips to employees.

The Bill has reached Second Stage in Dáil Éireann.

However, the Minister for Employment Affairs and Social Protection announced that the Government intends to introduce its own legislation to "regulate practices around tips and gratuities" and that Heads of Bill would be presented to the Cabinet by the end of June.

Parental Bereavement Leave (Amendment) Bill 2019

This Private Members' Bill proposes to amend the Parental Leave Acts 1998 and 2006 to give an entitlement to bereavement leave to an employee who has suffered bereavement of a child. It defines a child as a person under the age of 18. The Bill proposes that parental bereavement leave will be for a period of not less than 10 working days and that it shall be taken before the end of a period of 42 days of a child's death. The Bill also provides for a stillborn child born after 24 weeks of pregnancy.

Pensionable Age Task Force Bill 2019

This Private Members' Bill proposes the establishment of a Pensionable Age Taskforce. Its functions will be to conduct research, engage in public consultation, make recommendations and report on all aspects of the most appropriate age at which an individual shall be entitled to receive the State pension. The Minister will be required to consider and report on the recommendations made by the Pensionable Age Taskforce within twelve months of a report being presented to him / her.

Protection of Employment (Measures to Counter False Self-Employment) Bill 2018

We discussed this Private Members' Bill in our April 2018 update. The Bill completed Committee Stage in Seanad Éireann in March.

Prohibition of Bogus Self Employment Bill 2019

We outlined details of this Private Members' Bill in our April 2018 update.

Gender Pay Gap Information Bill 2019

This Government Bill proposes to amend the Employment Equality Acts 1998 to 2015 in order to require the Minister for Justice and Equality to make regulations that will oblige certain employers to publish information relating to the gender pay gap in their organisation. Where there is a gap, the employer will have to publish this information and detail the measures, if any, which are being taken to eliminate or reduce it.

The Bill proposes that the regulations will only apply to employers with 250 or more employees in the first two years after their introduction. It is proposed that this threshold will drop to employers with 150 or more employees after two years and after three years that it will apply to employers with 50 or more employees. The Bill does not propose that the regulations will apply to employers with fewer than 50 employees.

The information which must be published by employers under the regulations includes:

1. The differences between both the mean and the median hourly pay of male and female employees.
2. The difference between both the mean and the median bonus pay of male and female employees.
3. The difference between both the mean and median hourly pay of part-time male and female employees.
4. The percentage of male and female employees who received bonuses and benefits in kind.

The Bill also provides that the regulations may require the publication of information on the differences between both the mean and median hourly pay of male and female employees on temporary contracts, the percentage of employees in each of the four (lower, lower middle, middle and upper) quartile pay bands who are male and female or the publication of information by reference to job classifications.

In addition to the above requirements, the regulations may, but are not required to, prescribe the following:

1. The class of employer, employee and pay to which the regulations apply.
2. How the number of employees that an employer has and pay is to be calculated.
3. The form and manner in which information is to be published, along with the frequency of publication.

It is proposed that the regulations may require that employers ensure that personal data undergoes pseudonymisation on or before publication. It is also envisaged that employers will be required to publish their gender pay gap data on both their own website and a publicly accessible central website.

An employee who claims that his/her employer has failed to comply with the regulations may make a complaint to the Workplace Relations Commission who will investigate if there is a prima facie case warranting an investigation. The Workplace Relations Commission may order the employer to take a specified course of action to comply with its gender pay gap reporting obligations; there is no further remedy that may be ordered and there is no provision for payment of compensation or for imposition of a fine.

The Bill provides that the Minister may appoint designated officers to ensure the information published by employers is accurate. It is envisaged that the designated officers will have powers of investigation and the ability to prepare reports on matters specified by the Minister. It is further envisaged that in carrying out an investigation, the designated officer will have power to enter premises, obtain information, require persons to provide information and produce records, and inspect and copy those records. In the event that an employer fails to comply with a requirement of a designated officer during an investigation, the designated officer may apply to the Circuit Court for an order requiring the employer to comply with any such requirement.

The Irish Human Rights and Equality Commission may also apply to the Circuit Court where it has reasonable grounds to believe that an employer is not complying with its obligations.

The Bill is awaiting Committee Stage in Dáil Éireann.

Organisation of Working Time (Workers (sic) Rights and Bogus Self-Employment) (Amendment) Bill 2019

This Private Members' Bill proposes to amend the Organisation of Working Time Act 1997 to extend the terms of the Act to members of the Garda Síochána, the Defence Forces, persons engaged in sea fishing / other works at sea and trainee doctors.

In addition, it proposes to extend the rights to self-employed individuals to a daily rest period, rests and intervals at work, weekly rest periods, maximum average weekly working hours, night work rest periods, entitlement to annual leave and annual leave pay and entitlement to public holiday pay. The purpose of this extension of rights is to lessen the incentive for employers to engage in bogus self-employment.

The Bill makes it an offence for an employer to avoid the employer / employee relationship by drafting a contract that does not reflect the reality of the actual relationship.

The Bill provides that persons found guilty of an offence under the provisions will be liable to a class A fine (i.e. up to a maximum of €5,000) or imprisonment for a term not exceeding 12 months or to both.

STATUTORY INSTRUMENTS

Occupational Pension Schemes (Revaluation) Regulations 2019. S.I. No. 31/2019.

These Regulations provide for changes in the percentage by which the amount of a preserved benefit is to be increased or decreased in a specified year.

There shall be a 0.5% revaluation of preserved benefits under section 33 of the Pensions Act 1990, for 2018.

Occupational Pension Schemes (Funding Standard) (Amendment) Regulations 2019. S.I. No. 39/2019.

These Regulations amend the list of schemes excluded from the funding standard requirements set down in Part IV of the Pensions Act 1990, which list is specified in Schedule C of S.I. 419 of 1993 as previously revised by S.I. 268 of 2014.

The funding standard applies to defined benefit schemes. It ensures that sufficient assets are held in the scheme in order to meet liabilities in the event of the scheme being wound up. The trustees of schemes are required to submit actuarial funding certificates and funding standard reverse certificates to the Pensions Authority at regular intervals. The purpose of this is to certify if the scheme satisfies the funding standard and funding standard reserve at the effective date.

Provision for exclusion from the funding standard and the funding standard reserve requirements is provided for in Section 52 of the Pensions Act 1990.

Employment (Miscellaneous Provisions) Act 2018 (Commencement) Order 2019. S.I. No. 69/2019.

This Order provides for the commencement of the Employment (Miscellaneous Provisions) Act 2018 on 4 March 2019.

National Minimum Wage (Prescription of percentages of hourly rates of pay) Order 2019. S.I. No. 72/2019.

This Order sets the percentages of the national minimum hourly rate of pay in relation to specific categories of employees from 4 March 2019. The percentage of the national minimum hourly rate of pay shall be as follows:

- 70% for employees under 18 years of age
- 80% for employees who are 18 years of age
- 90% for employees who are 19 years of age

This Order repeals S.I. No. 99/2000 - National Minimum Wage Act, 2000 (Prescribed Courses of Study or Training) Regulations 2000.

Employment Permits (Amendment) Regulations 2019. S.I. No. 138/2019.

These Regulations amend the Employment Permits Regulations 2017:

- To facilitate changes to provide for the new Revenue Commissioners PAYE Modernisation Initiative. Revenue documentation that will now be required is as follows:-

- P30 or receipt for such return or a statement issued by Revenue Commissioners showing the monthly statutory return made by the employer dated within the 3 month period preceding the

application.

- P60 or a copy of or electronic access to an end of year income statement compiled by the Revenue Commissioners, demonstrating the foreign national employment history where applicable, and where necessary for each year that he or she has been in employment pursuant to the employment permit or if not available a P21 issued in respect of the permit holder.
- The P45 issued or evidence of the employment record held by the Revenue Commissioners indicating the end date of the employment following the foreign national's redundancy.

- To allow for the issue of 300 General Employment Permits in the occupation of transport and distribution clerks or assistants.
- To allow for the issue of 250 General Employment Permits in each of the occupations of bricklayer and plasterer.
- To make various changes to the Schedules as follows:

The addition of certain occupations to the Critical Skills List of Occupations:

- Civil Engineers
- Quantity Surveyors
- Construction Project Managers
- Mechanical and Electrical Engineers with BIM capabilities
- High Performance Directors and Coaches for high-level sport organisations

The removal of certain occupations from the Ineligible List of Occupations:

- Sheet Metal Workers
- Welding Trades
- Pipefitters
- Air-conditions and Refrigeration Engineers
- Shuttering Carpenters
- Glaziers, Window Fabricators and Fitters
- Scaffolders, Stagers and Riggers
- Crane Drivers
- Career Guidance Teachers in Secondary Schools.

Sectoral Employment Order (Construction Sector) 2019. S.I. No. 234/2019.

Sectoral Employment Order (Electrical Contracting Sector) 2019. S.I. No. 251/2019.

These Orders enforce two recommendations from the Labour Court regarding new minimum basic hourly rates of pay for the construction and electrical contracting sectors.

The Sectoral Employment Order (Construction Sector) 2019 sets out a 2.7% pay rate increase for construction workers from 1 October 2019 and again from 1 October 2020 (a total 5.4% increase over 2 years).

The Sectoral Employment Order (Electrical Contracting Sector) 2019 sets out a 2.7% pay rate increase for electrical contracting employees applying from 1 September 2019.

The Orders also provide for overtime payment for unsocial hours, sets out terms for pension and sick pay schemes together with an amendment to the normal working hours of construction and electrical contracting sector workers. It provides for 39 hours per week as normal working hours.

The procedures for individual or collective grievances or disputes are included. It is provided that workers or their trade unions are entitled to serve written notice of an individual or collective grievance or dispute on the employer (or the employer's representative) who must then respond within five working days. In the event that an individual grievance or dispute remains unresolved it is specified that it shall be referred to the Adjudication Service of the Workplace Relations Commission, with a possibility of an appeal to the Labour Court. In the event that a collective grievance or dispute remains unresolved it is specified that it shall be referred to the Conciliation Service of the Workplace Relations Commission and, if necessary, then to the Labour Court for investigation and recommendation. No form of industrial action can be taken before the

procedures have been complied with.

Social Welfare (Consolidated Claims, Payments and Control) (Amendment) (No. 9) (Days to be treated as days of Incapacity for Work) Regulations 2019. S.I. No. 241/2019.

These Regulations provide clarification on the day or days that can be deemed a day/days on which a claimant is incapable of working for the purposes of a claimant obtaining Illness Benefit.

Social Welfare (Consolidated Occupational Injuries) (Amendment) (No.2) (Provisions at to Incapacity for Work) Regulations 2019. S.I. No. 242/2019.

These Regulations provide clarification on the day or days that can be deemed a day/days on which a claimant is incapable of working for the purposes of a claimant obtaining Injury Benefit.

The content of this publication does not constitute legal or other professional advice and is not intended to be relied upon as such.

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