

Employment Law: Legislative Updater - April 2017

Contents

Notable Act

- Social Welfare Act 2016

Statutory Instruments

- National Minimum Wage Order 2016
- Employment Regulation (Amendment) Order (Contract Cleaning Joint Labour Committee) 2016
- Social Welfare (Consolidated Claims, Payments and Control) (Amendment) (No. 4) (Jobseeker's Transitional Payment) Regulations 2016
- European Union (Recognition of Professional Qualifications) Regulations 2017
- Immigration Act 2004 (Immigrant Investor Programme) (Application for Permission) (Fee) Regulations 2017
- Single Public Service Pension Scheme (Retirement on Medical Grounds) Regulations 2017
- Single Public Service Pension Scheme (Accrual of Referable Amounts while on Sick Leave) Regulations 2017
- Workplace Relations Act 2015 (Fixed Payment Notice) Regulations 2017
- Employment Permits Regulations 2017

Notable Bills

- Banded Hours Contracts Bill
- Employment Equality (Abolition of Mandatory Retirement Age) Bill 2016
- Employment Equality (Amendment) Bill 2016
- Pensions (Equal Pension Treatment in Occupational Benefit Scheme) Bill 2016
- Pensions (Amendment) Bill 2017
- Pensions (Amendment) (No. 2) Bill 2017
- Pensions (Amendment) (No. 3) Bill 2017
- Mediation Bill 2017
- Protection of Employees (Collective Redundancies) Bill 2017
- National Minimum Wage (Protection of Employee Tips) Bill 2017

Other Developments

- Legislative Programme Spring/Summer Session 2017

Welcome to the ByrneWallace Employment Law Legislative Updater - April 2017.

Summary of Legislative Developments

The Updater covers legislative updates from October 2016 to March 2017 (inclusive). There have been some important developments during this period, mainly in the area of proposed new legislation (bills) and the highlights of this issue include;

- The enactment of the Social Welfare Act 2016 which gives legislative effect to a range of Social Welfare measures announced as part of Budget 2017, including increases in weekly rates of maternity, adoptive and paternity benefit.
- The introduction of the National Minimum Wage Order 2016 increasing the national minimum hourly rate of pay to €9.25 from 1 January 2017.
- The European Union (Recognition of Professional Qualifications) Regulations which transposes Directive 2013/55/EU into Irish law. The purpose of the Directive is to make it easier for professionals to work across the EU.
- Three Bills each of which proposes to amend the Pensions Act 1990 to address situations in which solvent companies are the sponsors of insolvent pension schemes. The focus of each of the Bills is on defined benefit (i.e. final salary) pension schemes. The Bills come in the wake of a series of high-profile cases which highlighted the fact that Irish pensions legislation allows solvent companies to wind up their pension schemes.
- The introduction of two Bills, the Employment Equality (Abolition of Mandatory Retirement Age) Bill 2016 and the Employment Equality (Amendment) Bill 2016, which either seek to abolish mandatory retirement ages or restrict the application of mandatory retirement ages to certain circumstances.

- The National Minimum Wage (Protection of Employee Tips) Bill 2017 seeks to amend the National Minimum Wage Act 2000 to provide additional protections to employees in the service sector in order to ensure they receive tips or gratuities paid by customers.
- The Banded Hours Contracts Bill 2016, which proposes to confer a right on workers to request increased hours and a corresponding obligation on an employer to consider such a request.
- The Employment Permit Regulations 2017 have consolidated and revoked all regulations in this area into a single set of Regulations for ease of use, with some minor changes to employment identified as “critical” to the economy.

Notable Act

Social Welfare Act 2016

This Act gives effect to a range of Social Welfare measures announced on 11 October 2016 as forming part of Budget 2017. The following are the measures which are most significant for employment law purposes. The rates of maternity benefit, adoptive benefit and paternity benefit have increased by €5 from €230 to €235 per week. These increases are effective from 13 March 2017.

Between 1 January 2007 and 31 December 2011, following the accession of Romania and Bulgaria to the EU, nationals of those countries were, largely, required to have an employment permit.

Section 20 inserts a provision into the Social Welfare Consolidation Act 2005 which results in contracts of service in Ireland involving Romanian and Bulgarian nationals and their family members during the transitional period now fall within the categories of employments where a person is regarded as an “employed contributor” and as such PRSI contributions paid by Romanian or Bulgarian “employed contributors” during the transitional period are now recognised as valid for the purposes of maternity, adoptive and paternity benefit.

[Click here for full text \(in PDF format\)](#)

Statutory Instruments

National Minimum Wage Order 2016 [S.I. No. 516/2016]

This Order declares that from 1 January 2017 the national minimum hourly rate of pay for the purposes of the National Minimum Wage Acts is €9.25.

[Click here for full text \(in PDF format\)](#)

Employment Regulation (Amendment) Order (Contract Cleaning Joint Labour Committee) 2016 [S.I. No. 548/2016]

This Order provides for an increase in the rate of remuneration for workers employed in the provision of cleaning and janitorial services. The hourly rate will increase to €10.05 per hour from 1 December 2016 or 60 days after the effective date of this Order, this will increase to €10.40 from 1 December 2017, and finally to €10.80 from 1 December 2018. The Order provides for the calculation of annual leave, and that public holiday entitlements will be in accordance with the Organisation of Working Time Act 1997 and for other related matters.

The Order also requires employers to have a uniform procedure and provides that deductions/charges for uniforms shall cease for all existing employees.

It also provides for a sick pay scheme for workers. The Order provides that an employer must provide employees with rosters setting out all hours of work for a minimum period of one week which in ordinary circumstances must be provided at least 3 days prior to commencement. The Order also requires companies to have an operational procedure in place to deal with wage shortages and overpayments to employees.

Furthermore the Order sets overtime and Sunday premium rates to be paid in the sector and the rate of death in service benefit.

[Click here for full text \(in PDF format\)](#)

Social Welfare (Consolidated Claims, Payments and Control) (Amendment) (No. 4) (Jobseeker’s Transitional Payment) Regulations 2016 [S.I. NO. 621/2016]

In January 2016, the means test applicable to recipients of Jobseeker’s Transitional Payment was aligned to that of the One-Parent Family Payment and moved away from calculation of means on a daily basis to an entire disregard of €90 irrespective of the number of days

worked by the recipient. These Regulations provide that the weekly earnings disregard for recipients of the Jobseekers' Transition Payment will increase from €90 to €110, effective from 5 January 2017.

[Click here for full text \(in PDF format\)](#)

European Union (Recognition of Professional Qualifications) Regulations 2017 [S.I. No. 8/2017]

These Regulations transpose the amending Directive 2013/55/EU on the recognition of professional qualifications into Irish law. The purpose of the Directive is to make it easier for professionals to work across the EU.

These Regulations refine, enhance and expand existing systems of recognition and introduce new and innovative means to strengthen patient safety and consumer protection.

The key changes introduced include:

- Introduction of a European Professional Card system, which is an electronic certificate, for five categories of professionals (nurses; pharmacists; physiotherapists, mountain guides and real estate agents). This is the first EU-wide fully online procedure for the recognition of qualifications.
- Improvements to the 'automatic recognition' system by which seven professions (architects; doctors; nurses; midwives; dentists; pharmacists and veterinarians) have their qualifications recognized in other Member States by means of an accelerated process.
- While 'automatic recognition' is currently limited to the professions outlined above, the Directive facilitates its extension to other professions.
- A legal framework is introduced which enables professionals to exercise their profession in other Member States on a temporary or occasional basis where the service provider is:
 - Legally established in another Member State,
 - Moves to the State to pursue the profession on a temporary and occasional basis, and
 - If neither the profession nor the relevant education or training is not provided in the home Member State, the service provider has pursued that profession in another Member State(s) for at least one year during the 10 years preceding the provision of services.
- The online Internal Market Information System (IMI)

is adopted. This is an online software application which assists communication and information sharing between Competent Authorities across Member States.

- An 'alert mechanism' is introduced through IMI, to protect patients and consumers. The competent authority in the State will inform competent authorities in all other Member States about a professional whose activities in the State have been restricted or prohibited, even temporarily, by authorities or courts in the State. Affected professions include doctors, nurses, dentists, veterinary surgeons, midwives, pharmacists, professionals whose activities have patient safety implications, and professionals whose activities relate to educating minors.

[Click here for full text \(in PDF format\)](#)

Immigration Act 2004 (Immigrant Investor Programme) (Application for Permission) (Fee) Regulations 2017 [S.I. No. 10/2017]

Under the Immigrant Investor Programme, non-EEA nationals who invest a minimum of €1 million in an approved investment in Ireland and have a proven net worth of at least €2 million per investor can benefit from rights of residence for the applicant investor and their immediate family members. These Regulations provide that the fee for making an application under the Immigrant Investor Programme is €1,500.

[Click here for full text \(in PDF format\)](#)

Single Public Service Pension Scheme (Retirement on Medical Grounds) Regulations 2017 [S.I. No. 15/2017]

These Regulations prescribe the criteria for enhancement of the pension and retirement lump sum for members of the Single Public Service Pension Scheme who retire or are retired or discharged on medical grounds in accordance with section 29 of the Public Service Pensions (Single Scheme and Other Provisions) Act 2012.

[Click here for full text \(in PDF format\)](#)

Single Public Service Pension Scheme (Accrual of Referable Amounts while on Sick Leave) Regulations 2017 [S.I. No. 16/2017]

These Regulations provide that when a member of the Single Public Service Pension Scheme is absent on sick leave and paid remuneration at the half rate, his or her referable amounts will be calculated on the same basis as if the Scheme member was absent on sick leave on full pay during that time.

[Click here for full text \(in PDF format\)](#)

Workplace Relations Act 2015 (Fixed Payment Notice) Regulations 2017 [S.I. No. 32/2017]

These Regulations relate to Fixed Payment Notices prescribed for by Section 36(1) Workplace Relations Act 2015.

The Regulations revoke and replace the form of Fixed Payment Notices prescribed in the Workplace Relations Act 2015 (Fixed Payment Notice) Regulations 2015. The only change to the form is in relation to the banking details for the making of payments by electronic funds transfer.

[Click here for full text \(in PDF format\)](#)

Employment Permits Regulations 2017 [S.I. No. 95/2017]

These Regulations consolidate the Employment Permit Regulations (SI No. 432 of 2014), the Trusted Partner Regulations (SI No. 172 of 2015) and all subsequent amending statutory instruments.

The Regulations also provide for the following changes:

- Academics holding a Level 10 Qualification or equivalent (PhD), at least two years prior to the application date for an employment permit, with a minimum of one academic year of relevant teaching experience, and the employment is in a designated University or Institute of Technology, are added to the Highly Skilled Eligible Occupations List. This is in response to the changing needs of the economy and to help Universities and Institutes of Technology fulfil their obligation to hire the best staff available with the resources available to them.
- HGV drivers who have a CE or CE1 licence are removed from the Ineligible Categories of Employment List on a temporary basis. They are subject to a maximum quota of 120 General Employment Permits.
- Meat deboners remain off the Ineligible Categories of Employment List and are subject to a further maximum quota of 160 General Employment Permits. This brings their total General Employment Permits quota to 360 as 200 were made available under the 2015 Amendment Regulations.

[Click here for full text \(in PDF format\)](#)

Notable Bills

Banded Hours Contracts Bill 2016 [No. 39 of 2016]

This Bill provides that after 6 months of continuous employment, a worker or his or her trade union representative can request to be moved to an increased weekly band of hours where the requested hours exceeds the average hours worked weekly in the previous six months. Employers are obliged to consider such requests and to provide a reasoned response within 21 days of receipt of the request. Refusals are only permitted on objectively justified grounds where employers can demonstrate that the business is experiencing severe financial difficulties. Under the Bill employers are also obliged to provide information to employees on the overall availability of working hours. This Bill was referred to the Committee on Jobs, Enterprise and Innovation on 31 January 2017.

[Click here for full text \(in PDF format\)](#)

Employment Equality (Abolition of Mandatory Retirement Age) Bill 2016 [No. 107 of 2016]

This Bill will, if enacted, amend section 34 of the Employment Equality Acts. The amendment would prohibit employers from setting or contracting for a mandatory retirement age. Certain employees (such as members of An Garda Síochána, the Defence Forces, fire services and employees in certain security-related employment) would still be subject to mandatory retirement ages. The Bill would not, however, make it unlawful for an employer to set a voluntary retirement age or to provide financial incentives for the voluntary retirement of an employee at a particular age.

This Bill was referred to the Select Committee on Justice and Equality on 28 February 2017.

[Click here for full text \(in PDF format\)](#)

Pensions (Equal Pension Treatment in Occupational Benefit Scheme) Bill 2016 [No. 109 of 2016]

The purpose of this Bill is to provide for equal pension treatment in occupational benefit schemes in cases where employees who were unable to marry persons of the same sex may be deprived of certain pension benefits, and to provide for related matters. It seeks to address issues arising in the recent European case of Parris -v- Trinity College Dublin.

The Bill provides that it will constitute a breach of the principle of equal pension treatment on sexual orientation grounds for a scheme to fix, as a condition for entitlement to benefits in favour of an employee's spouse

before the employee attained a certain age to be fixed in the relevant legislation.

This will apply where:

- On or before the date on which the employee attained the fixed age (i) he or she could not have married the beneficiary as they were of the same sex, or (ii) the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 was not in operation so the employee could not have entered into a civil partnership with the beneficiary, or a civil partnership entered into in another jurisdiction would not have been recognised.

And

- After the employee attained the age so fixed (i) he or she married or entered into a civil partnership with the beneficiary within 36 months of it being lawfully possible to do so, or (ii) the legal relationship entered into in another jurisdiction was recognised as a civil partnership in this jurisdiction.

This Bill was introduced on 8 December 2016.

[Click here for full text \(in PDF format\)](#)

Employment Equality (Amendment) Bill 2016 [No. 115 of 2016]

This Bill seeks to amend section 6 of the Employment Equality Act to abolish mandatory retirement as against an employee where that employee can show as a matter of fact, full fitness to work including the ability to carry out the work and tasks for which they are contracted in a satisfactory manner.

The following matters will be considered when assessing an employee's fitness to work:

- Physical and mental fitness;
- Ability to carry out the work and tasks effectively as required by contract; and
- Knowledge of, and experience in, the role of employment.

If the employee is deemed fully fit to work and this fact is accepted by the employer, he or she will not be subject to compulsory retirement for at least 12 months from the original compulsory retirement date. This may be reviewed annually.

This Bill was introduced on 14 December 2016.

[Click here for full text \(in PDF format\)](#)

Pensions (Amendment) Bill 2017 [No. 10 of 2017]

This Bill seeks to amend the Pensions Act 1990 to prevent a solvent employer being allowed to wind up a defined benefit pension scheme unless the pension scheme has assets equal to at least 90 per cent of its actuarially-calculated liabilities.

The Bill was introduced on 31 January 2017.

[Click here for full text \(in PDF format\)](#)

Pensions (Amendment) (No. 2) Bill 2017 [No. 14 of 2017]

This Bill would make it "illegal for a solvent company to wind up its defined benefit pension scheme" unless either (a) the value of the assets of the scheme is equal to or greater than the amount of the liabilities of the scheme or (b) the State regulatory body, the Pensions Authority, consents to the winding up of the scheme. This Bill also proposes to give rights to scheme members to request the Pensions Authority to prevent scheme members from being treated inequitably in a wind-up.

This Bill was introduced on 2 February 2017.

[Click here for full text \(in PDF format\)](#)

Pensions (Amendment) (No. 3) Bill 2017 [No. 17 of 2017]

This Bill is predicated on the fact that most Irish defined-benefit pension schemes are held in trust by trustees who are independent of the relevant employer. These trustees are obliged to act in the best interests of the scheme's members.

This Bill would apply where the scheme is being wound up, the relevant employer concerned is not insolvent and the value of scheme's assets is less than its liabilities. The Bill proposes that, in such circumstances, the relevant employer would be obliged to pay the difference in order that the scheme's assets would meet its liabilities. If the employer did not pay, the trustees would be empowered to sue the relevant employer for the amount of the difference.

This Bill was introduced on 7 February 2017.

[Click here for full text \(in PDF format\)](#)

Mediation Bill 2017 [No. 20 of 2017]

The Mediation Bill proposes to introduce a comprehensive statutory framework to promote the resolution of disputes through mediation as an alternative to court proceedings. While, the Bill expressly excludes

disputes arising within an employment context which are referred to statutory dispute-resolution processes such as those provided by the Workplace Relations Commission, it is of relevant to civil proceedings.

The Bill proposes placing a statutory obligation on solicitors and barristers to advise their clients to consider mediation as a means of resolving their dispute. A solicitor must provide their client with information in respect of the mediation services including the names and addresses of persons providing those services provide the client with information about the advantages and benefits of mediation. Should the client not avail of mediation and proceed with court proceedings, the originating document by which those proceedings are instituted must be accompanied by a statutory declaration sworn by the solicitor that they have performed their obligations in relation to the client.

The Bill was referred to the Select Committee on Justice and Equality on 22 March 2017.

[Click here for full text \(in PDF format\)](#)

Protection of Employees (Collective Redundancies) Bill 2017 [No. 31 of 2017]

This Bill seeks to provide for protections for employees in collective redundancy situations in which the employer is insolvent.

Where collective redundancies have arisen in circumstances in which the employer is insolvent, the High Court may order any person who appears to have (a) the use, control or possession of the property of the company, or (b) the proceeds of the sale or development of that property, to be delivered to them, or pay any sum in respect thereof, to the liquidator on such terms or conditions as the court thinks fit.

Such assets or value will form part of the assets of the employer for the purposes of liquidation in accordance with the Companies Act 2014. Notwithstanding this, the entitlements of employees who have been made redundant as a result of the employer's insolvency will have priority over all other debts.

The Bill further provides that it will be a defence for the employer/transferee to produce a director's statement from the time of the transaction to the effect that a report of an actuary or accountant was produced at the time of the transfer which showed that the employer was in a position to discharge all accrued employee entitlements after the transfer was implemented.

The Bill proposes to insert a new Section 14A into the Protection of Employees (Employers' Insolvency) Act 1984 which provides for a consultation period. Section 14A provides that if a person contemplates a decision in relation to an asset of significant value over which it exercises control and it is known, or ought to be known, that, if implemented, the decision may lead to collective redundancies, he or she shall (a) inform the employer concerned of the proposed decision, and (b) provide the employer with information regarding the number of redundancies that may occur, the timeframe in which they may occur, and the financial and other resources available to the employer to meet debts to employees. Failure to do so is a criminal offence and such person may also be found personally liable to discharge the accrued liabilities of the employer, including the claims of its employees.

This Bill was introduced on 1 March 2017.

[Click here for full text \(in PDF format\)](#)

National Minimum Wage (Protection of Employee Tips) Bill 2017 [No. 40 of 2017]

This Bill seeks to amend the National Minimum Wage Act 2000 to provide additional protections to employees in the service sector to ensure that they receive tips or gratuities paid by customers.

The Bill prohibits an employer from withholding tips or other gratuities from an employee, making a deduction from an employee's tips or other gratuities or forcing an employee to return their tips or other gratuities to the employer. Contravention of this section will result in the amount withheld being treated as a debt owing to the employee. Employees may bring a claim against their employer for redress to the Workplace Relations Commission.

The Bill also provides that an employer must display on menus or elsewhere its policy on the distribution of tips to employees. Regulations to facilitate schemes for a common tip and service charge fund for distribution to employees will be introduced by the Minister.

A person who is found guilty of an offence under the Bill will be liable on summary conviction, to a maximum fine of €2,500 or, at the discretion of the court, to imprisonment for a maximum term of 6 months.

This Bill was introduced on 21 March 2017.

[Click here for full text \(in PDF format\)](#)

or civil partner, a requirement that the employee married or entered into a civil partnership with the beneficiary
Legislative Programme Spring/Summer Session 2017

In January 2017, the Government published its Legislative Programme. The Programme includes the following employment related bills:

- **Financial Services and Pensions Ombudsman Bill** which plans to amalgamate the Financial Services Ombudsman and the Pensions Ombudsman and to amend, update and restate the existing legislation to form one office dealing with pensions and financial services complaints. Pre-legislative scrutiny took place of this bill on 27 October 2016 and it is included in the Government's priority legislation for publication this session.
- **Health & Wellbeing (Calorie Posting and Workplace Wellbeing) Bill** which would require food premises to display calories on menus and to require all public sector employers to have and to report on a Health and Wellbeing policy. The heads of this bill are currently being drafted.

Work is also underway on the following proposed bills:

- **Industrial Relations Act 1990 (Amendment) Bill** which intends to provide Garda Representative Associations with access to the State Industrial Relations Institutions.
- **Family Leave Bill** to consolidate all family leave legislation with amendments.
- **Public Service Management (Amendment) and Civil Service Regulation (Amendment) Bill** to allow greater devolution of management and disciplinary functions.
- **Organisation of Working Time Act 1997 (Amendment) Bill** seeks to amend the Organisation of Working Time Act 1997 (OWTA) to remove the blanket exclusion of An Garda Síochána and members of the Defence Forces from scope of the OWTA and bring them within scope, subject to the application of the derogations permitted by the Working Time Directive.
- **The Protections for Employees on Insecure, Low Hour Contracts Bill** will seek to implement the policy response to the University of Limerick Study on Zero Hour Contracts and Low Hour Contracts.

[Click here for full details of the legislative programme.](#)

Contact Us



Emmet Whelan

Partner, Employment Law
+353 1 691 5209
ewhelan@byrnewallace.com



Aoife Clarke

Solicitor, Employment Law
+353 1 691 5499
aclarke@byrnewallace.com

Or any member of our
[Employment Law Department](#)

Contact Us

Dublin

88 Harcourt Street, Dublin 2, D02 DK 18, Ireland

Tel: +353 1 691 5000

Email: info@byrnewallace.com

www.byrnewallace.com