

Employment Law: Legislative Updater - October 2016

Contents

Notable Acts

- Paternity Leave and Benefit Act 2016

Statutory Instruments

- Private Security (Licensing and Standards) (Locksmith) Regulations 2016
- Private Security Services Act 2004 (Commencement) Order 2016
- Employment Permits (Amendment) (No. 2) Regulations 2016
- Industrial Training (Accountancy Industry) Order 2016
- Industrial Training (Bakery Industry) Order 2016
- Industrial Training (Culinary Industry) Order 2016
- Industrial Training (Financial Services Industry) Order 2016
- Industrial Training (Heavy Goods Industry) Order 2016
- Industrial Training (Insurance Industry) Order 2016
- Employment Permits (Trusted Partner) (Amendment) Regulations 2016
- Paternity Leave and Benefit Act 2016 (Sections 30 and 31) (Commencement) Order 2016
- Paternity Leave and Benefit Act 2016 (Commencement) Order 2016
- Social Welfare (Consolidated Claims, Payments and Control) (Amendment) (No. 2) (Paternity Benefit) Regulations 2016
- Protected Disclosures Act 2014 (Disclosure to Prescribed Persons) Order 2016

Welcome to the ByrneWallace Employment Law Legislative Updater - October 2016.

Summary of Legislative Developments

The Updater covers legislative updates from July 2016 to September 2016 (inclusive). While there has not been significant activity during this period, there have been some important developments. The highlights of this issue include;

- The enactment of the long awaited Paternity Leave and Benefit Act which provides for two week's paternity leave for all "relevant parents" and the payment of a new social welfare payment of Paternity Benefit.
- The Employment Permits (Amendment) (No. 2) Regulations 2016 which facilitate the launch of the new Employment Permits Online System.

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Notable Act

Paternity Leave and Benefit Act 2016

This Act gives effect to the decision in Budget 2016 to provide two weeks' paternity leave following the birth or adoption of a child on or after 1 September 2016. The entitlement is not confined to biological fathers but rather to a "relevant parent" which includes adoption situations and civil partners and cohabitants of the mother of the child. The purpose of the leave is to enable the "relevant parent" to provide or assist in the provision of care to the child and to provide support to the mother of the child or the relevant adoption parent. A key requirement is that the leave must be used to take care of the child to which the leave relates. If it transpires that the leave is being used for other purposes, the employer can terminate the leave on the giving of written notice.

The Act provides that a relevant parent shall be entitled to 2 weeks paternity leave, such leave to be taken in a single period of time. Paternity leave can be taken between the date of confinement/placement and a date not later than 26 weeks after such a date.

Entitlement to paternity leave shall be subject to the employee notifying the employer in writing of their intention to take paternity leave. This should be as soon as reasonably practicable, but not later than 4 weeks before the expected week of confinement of the expectant mother concerned or the expected day of placement in adoption cases.

Part 3 of the Act relates to the protection of the employment of the employees who avail of paternity leave. It brings paternity leave in line with maternity and adoptive leaves and provides that the rights of the employee taking paternity leave shall be preserved during the period of leave. Additionally any purported terminations of employment while the employee is absent on paternity leave shall be void. The Act also prohibits the penalisation of an employee for having exercised their rights to take paternity leave.

Part 4 of the Act provides for the resolution of disputes relating to any entitlement of an employee under Parts 2 and 3 of the Act and outlines the remedies an adjudication officer of the Workplace Relations Commission may award, namely the granting of the leave for such period as may be specified and/or an award of compensation not exceeding two weeks remuneration, or both.

Part 5 inserts a new chapter 11A in to the Social Welfare Consolidation Act 2005 to provide a new social welfare payment of Paternity Benefit. Relevant parents who are in insurable self-employment are also entitled to this benefit. Payment of Paternity Benefit will be at the rate of €230 per week, subject to a person having the appropriate PRSI contributions.

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

Statutory Instruments

Private Security (Licensing and Standards) (Locksmith) Regulations 2016 [S.I. No. 343/2016]

The Private Security Services Act 2004 established the Private Security Authority (PSA). The Authority is responsible for controlling and supervising persons providing security services. The Act of 2004 requires that certain persons are licenced. These Regulations provide for the commencement of licensing of contractors and employees/individuals who engage in the provision of locksmith services.

Two types of licence are issued by the Authority: (1) Contractor Licences are required by companies, partnerships and sole traders providing security services in the Republic of Ireland and (2) Individual Licences (Employee Licences) are required by all those working in the security sector within the state whether employed by a licenced contractor or directly by a business as in house security personnel. Once licenses are issued by the PSA the individual or contractor will be placed on a register. Garda Vetting is a requirement of the application process for licences.

The Act further provides at section 37 that it shall be an offence to employ a person, or engage an independent contractor, to provide a security service if that person or the contractor is required to, but does not, hold a licence to provide the service. The offence attracts a penalty of (a) on summary conviction, a fine not exceeding €3,000 or imprisonment for a term not exceeding 12 months or both, or (b) conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years or both.

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

Private Security Services Act 2004 (Commencement) Order 2016 [S.I. No. 344/2016]

These Regulations provide that the offences provided for in section 37 of the Act will not commence in respect of contractors and employees/individuals who engage in the provision of locksmith services until 1 February 2017.

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

Employment Permits (Amendment) (No. 2) Regulations 2016 [S.I. No. 363/2016]

The Regulations amend the Employment Permits Regulations 2014 to facilitate the launch of the new Employment Permits Online System (EPOS). The system will allow applicants to submit their applications and supporting documents through EPOS and will also provide for the secure payment of fees by credit/debit card. This EPOS is designed to ensure faster processing of applications and fewer rejections. It will contain help information for applicants, mandatory fields which will ensure that questions do not remain unanswered and mandatory documentation lists corresponding to the specific application.

The Regulations also provide clarification for employers who use the SEPA Direct Debit online facility to make returns to the Revenue. The amendments allow them to submit evidence of P30 SEPA monthly direct debit payments when submitting supporting documentation with permit applications.

Furthermore the Regulations provide in order for an executive/head/sous/specialist chef to be eligible for an employment permit they must specialise in a non-EEA cuisine.

When applying for Intra-Company Transfer permits, trainees were required to be in employment with the employer for a period of 6 months prior to the transfer. This minimum period has been reduced to 1 month for trainees.

The Regulations also amend the highly skilled occupations in short supply list to include Paramedics, Respiratory Physiologists, Accountants working in MNC Global Audit Services, and Tax Consultants specialising in non-EEA tax consultancy. Additionally legal associate professionals have been added to the ineligible categories of employment list with the exception of employment of a person fluent in the official language, apart from English, of a state which is not a Member State of the EEA and who has market knowledge of that non-EEA state.

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Industrial Training Orders [S.I. Nos. 377-382/2016]

These Orders provide that An tSeirbhís Oideachais Leanúnaigh agus Scileanna (SOLAS), the successor to FÁS, shall exercise its functions in the creation of statutory apprenticeships in defined activities in the following areas:

- the accountancy industry;
- the baking industry;
- the culinary industry;
- the financial services industry;
- the heavy good industry; and
- the insurance industry.

Employment Permits (Trusted Partner) (Amendment) Regulations 2016 [S.I. NO. 403/2016]

These Regulations amend the Employment Permits (Trusted Partner) Regulations 2015 which facilitated the launch of the Trusted Partner Initiative in 2015. This initiative allows employers/connected persons/EEA contractors to apply for "Trusted Partner" status. Applicants who are granted this status are assigned a Trusted Partner Registration Number which allows them to use shorter, simplified application forms. These forms remove the requirement to replicate the same employer information in respect of each permit application or renewal. Apart from quoting their registration number, Trusted Partners are required to provide very limited additional information on application forms and as such the process is greatly simplified and shortened. There is no fee to apply to be a Trusted Partner and once approved the status is valid for 2 years. Applicants must be registered with the Revenue Commissioners and where applicable the Companies Registration Office/Registry of Friendly Societies.

These Regulations mirror the amendments provided in S.I. No. 363 of 2016 above in the context of Trusted Partner application and provide that applications to become a Trusted Partner can also be made online after the EPOS system is launched.

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

Paternity Leave and Benefit Act 2016 (Sections 30 and 31) (Commencement) Order 2016 [S.I. No. 434/2016]

This Order commences sections 30 and 31 of the Paternity Leave and Benefit Act 2016 from 3 August 2016. These sections amend the Social Welfare Consolidation Act 2005 to facilitate the payment of the new "paternity benefit".

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

Paternity Leave and Benefit Act 2016 (Commencement) Order 2016 [S.I. No. 435/2016]

This Order commences the remainder of the Paternity Leave and Benefit Act 2016 from 1 August 2016 apart from a specific provision of the definition of relevant partner which provides for where the child is a donor-conceived child within the meaning of Part 2 of the Children and Family Relationships Act 2015 as this provision is contingent on the commencement of that provision in the 2015 Act.

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

Social Welfare (Consolidated Claims, Payments and Control) (Amendment) (No. 2) (Paternity Benefit) Regulations 2016 [S.I. No. 442/2016]

These Regulations amend the Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007 (S.I. No. 142 of 2007) to provide for a number of amendments following the implementation of the Paternity Leave and Benefit Act 2016.

The Regulations set out under what circumstances persons employed abroad as volunteer development workers may qualify for paternity benefit. They further state that claimants of paternity benefit will be disqualified from receiving paternity benefit if during the relevant period they are engaged in any specified form of employment.

Employers of paternity benefit claimants may be required under the Regulations, to provide to the Minister certification that the claimant is entitled to paternity leave, details of the claimant's gross earnings and any other relevant particulars that may be required. Furthermore claimants may nominate their employer as the recipient of their paternity benefit on their behalf.

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

Protected Disclosures Act 2014 (Disclosure to Prescribed Persons) Order 2016 [S.I. No. 490/2016]

This Order amends those listed as prescribed persons to whom a protected disclosure may be made under section 7(2) of the Protected Disclosure Act 2014. It amends the description of matters in respect of which Chief Executive of the Irish Auditing and Accounting Supervisory Authority is prescribed as the recipient of disclosures of relevant wrongdoings to provide for "All matters relating to the functions of the Irish Auditing and Accounting Supervisory Authority as set out in section 905 of the Companies Act 2014 (No. 38 of 2014)".

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