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Employment update: Ireland reintroduces the right to redundancy

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The Department of Enterprise, Trade and Employment (the "Department") in Ireland recently announced that employees who are laid off or placed on short time can once again apply for redundancy in the normal manner.[1]

Section 12A of the Redundancy Payments Act, 1967

The Department has confirmed that Section 12A of the Redundancy Payments Act 1967 (as amended) will no longer be in operation as of 30 September 2021.

The purpose of section 12A was to suspend an employee's right to seek redundancy if they had been laid off or placed on short time as a result of many businesses being forced to close or drastically reduce their operations to limit the spread of COVID-19. This provision was introduced as an emergency measure to protect employers at the beginning of the COVID-19 pandemic in March 2020. The provision has been extended six times since its introduction.

After 30 September 2021, employees will once again be entitled to claim redundancy if they are placed on lay off or short time (or both), provided that this period amounts to at least four consecutive weeks, or a period of six weeks within the last 13 weeks.

Notice of Intention

Employees should give notice to their employer of their intention to claim statutory redundancy as soon as reasonably practicable. Where employers, within four weeks of an employee's notice, do not reasonably expect an employee to return to work on their normal working hours for at least 13 weeks, that employee may be entitled to a statutory redundancy payment.

Special Payments

As statutory redundancy payments are calculated on the basis of reckonable service, employees who have been laid off or placed on short time in the three years prior to redundancy, risk losing reckonable service and in return, losing their statutory redundancy payment.

Accordingly, the State has confirmed that a special payment of up to a maximum of €1,860 shall be made available to workers who have lost out on reckonable service while temporarily laid off over the course of the pandemic and who are made redundant. In the event that employers are unable to meet their financial obligations in paying statutory redundancy to employees, employers will be able to borrow the money from the Social Insurance Fund.

The Department has confirmed that a "flexible and discretionary approach will be taken" in relation to recovering such payments, however, details of repayment have not yet been published.

What next?

Once section 12A is lifted on 30 September 2021, employees will be able to trigger redundancy and access redundancy payments in the usual way. The government estimates that approximately 56,000 lay offs could be "crystallised", costing between €30 million and €130 million.[2]

Employers should be aware of the possibility of an influx of notices from employees for statutory redundancy and the potential costs involved.

If you have any questions regarding the content of this article or would like to discuss how to successfully manage redundancy or employment disputes, please contact Bláthnaid Evans by emailing blathnaid.evans@ogier.com

[1] You can access the government's press release by clicking here.

[2] You can access the Irish Times article by clicking here.

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