

Major developments in employment law in Ireland in 2021

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| The Irish employment law sector in 2021

As a new year begins, we take a look back on the major developments which evolved in the Irish employment law sector in 2021 and glance forward at what's to come in 2022.

Bullying in the Workplace

On 23 December 2020, the Code of Practice for Employers and Employees on the Prevention and Resolution of Bullying at Work (the “**Code**”) came into effect. The Code was jointly developed by the Health & Safety Authority and the Workplace Relations Commission (the “**WRC**”) and streamlines the previous codes of practice on this area.

The Code introduced a number of changes which the previous codes did not contain. For example, the Code now defines bullying and provides a non-exhaustive list of the kind of behavior which could and could not be considered bullying. The Code also places an onus on the employer to manage and conduct activities in the workplace so as to prevent bullying (so far as is reasonably practicable).

While failure to follow the Code is not an offence in and of itself, it is however admissible as evidence in any proceedings before the Civil Courts, the WRC, the Labour Court or indeed in criminal proceedings under the Safety, Health and Welfare at Work.

For further information on the Code, read our full [article](#).

The Right to Request Remote Working

Decisions regarding remote working had been at play pre-pandemic. In December 2019, the government published a report detailing the benefits it can have on workers, companies and the nation as a whole.[1] With the Covid-19 pandemic dominating discussions during 2020, a National

Remote Work Strategy (the “**Strategy**”)[2] was published by the government in January 2021, discussing its plans to legislate for the right of employees to request remote work.

In the wake of the Strategy being published, the WRC also found that an employee was constructively dismissed due to her employer failing to facilitate a remote working request.[3] The Adjudication Officer (the “**AO**”) in this case found that the employer failed to comply with health & safety measures, as well as adequately considering the complainant’s grievance and suggestions on how work could be done in and out of the office, in the safest way possible.

Legislation is currently still being prepared which will give employees a legal right to request remote working, however, it will ultimately be up to employers to agree to any such request.

For further information on the right to request remote working, read our full [article](#).

The Right to Disconnect

The Strategy also envisaged that the right to disconnect would be placed on a statutory footing. The right to disconnect is defined as a worker’s right to be able to disengage with work and refrain from engaging in work-related electronic communications outside of the employee’s normal working hours.

With remote working being the new norm, the Code of Practice on the Right to Disconnect came into effect on 1 April 2021. While failure by an employer to implement such a code is not an offence in itself, it is admissible in evidence in proceedings before a Court, the WRC and the Labour Court. The purpose of the Code is to provide guidance for employers on recording and managing employees’ working hours and implementing a right to disconnect policy in consultation with their staff.

For further information on the right to disconnect, read our full [article here](#).

The Constitutionality of Sectoral Employment Orders (“SEOs”)

On 18 June 2021, the Irish Supreme Court delivered its unanimous judgment in *National Electrical Contractors Ireland v Labour Court, the Minister for Business Enterprise and Innovation Ireland and the Attorney General*. [4] The Supreme Court overturned part of the High Court’s judgment which found that Chapter 3 of the Industrial Relations Act 2015 (the “**2015 Act**”) (which allowed for minimum pay and conditions to be set by SEOs) was unconstitutional. However, the Supreme Court did agree that the Labour Court acted ultra vires its powers conferred under the 2015 Act. As a result of this, the SEO for the electrical sector was struck down by the Supreme Court as unlawful.

For further information on the Supreme Court’s decision in the above case, read our full [article](#).

Statutory Sick Pay

Currently, in Ireland there is no legal requirement for employers to pay their employees while they are on sick leave. As such, entitlement to sick pay may arise pursuant to an employee's contract of employment or company policy. However, given the rise of employees falling ill during the Covid-19 pandemic, on 9 June 2021, the Tánaiste and Minister for Enterprise, Trade and Employment, Leo Varadkar TD (the "Tánaiste") approved the drafting of the Sick Leave Bill 2021 (the "Bill")^[5].

It is envisaged that statutory sick scheme will be phased in over a four year period, applying to employees with 13 weeks' continuous service as follows:

- three paid sick days in 2022,
- five paid sick days in 2023,
- seven paid sick days in 2024 and
- ten paid sick days in 2025.

However, draft legislation specifically provides for the number of statutory sick days to be varied, having regard the state of the economy, among other considerations.

For further information on statutory sick pay, read our full [article](#).

Gender Pay Gap Reporting

On 13 July 2021, the Gender Pay Gap Information Act 2021 (the "Act") was signed into law. The Act amends the Employment Equality Act 1998 and places an obligation on the Minister for Children, Equality, Disability, Integration and Youth (the "Minister") to introduce regulations requiring the private and public sector to report and publish information relating to their gender pay gap, why such a gap exists, and to explain the measures being taken to reduce the gap.

The gender pay gap refers to the difference between the average earnings of a man and a woman based on the gross hourly earnings of all paid employees. Among other things, the Act requires employers to explain how an employee's remuneration is calculated, the reasons for the differences and the measures (if any) that they intend to take to reduce the gap or to eliminate it completely.

For further information on gender pay gap reporting, read our full [article](#).

The Workplace Relations Act 2021 (the "WRC Act")^[6]

The WRC Act was signed into law by the President on 27 July 2021. The purpose of the Act is to remedy the issues identified by the Supreme Court in *Zalewski v. Adjudication Office and WRC*, Ireland and the Attorney General (the "Zalewski case")^[7] as it unanimously held that Adjudication

Officer in the WRC were administering justice. As such, existing legislation had to be amended in order to facilitate the procedural changes required to ensure that the WRC is acting in accordance with the Constitution.

Two significant effects of the WRC Act and the Zalewski case are that WRC hearings must now take place in public (due to the fact that Adjudication Officers were held to be administering justice) and that evidence at such hearings must now be given on oath.

For further information on the WRC Act and the Zalewski case, read our full [article](#).

The Return of the Right to Redundancy

In September of this year, the Department of Enterprise, Trade and Employment (the “Department”) recently announced that employees who are laid off or placed on short time can once again apply for redundancy in the normal manner. The Department confirmed that section 12A of the Redundancy Payments Act 1967 (as amended) would 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.

For further information on the return of return of the right to redundancy, read our full [article](#).

What can we expect in 2022?

What 2021 has showed us is that employment law is extremely susceptible to change in a bid to adapt to new working practices and conditions. With the above in mind, we can expect to see the introduction of statutory sick pay being rolled in on a phased basis, the commencement of gender pay gap reporting, many requests from employees seeking remote work and potentially, an increase in redundancies (depending on Ireland’s recovery from the Covid-19 pandemic).

For further information on any of the above issues, or assistance in drafting or updating company policies, please contact Bláthnaid Evans by emailing blathnaid.evans@ogier.com or Marianne Norton at marianne.norton@ogier.com

[1] Access this [Report](#).

[2] Access the [National Remote Strategy](#).

[3] [ADJ-00028293](#)

[4] [\[2021\] IESC 36](#)

[5] Access the [Sick Leave Bill 2021](#).

[6] Access the [Workplace Relations Act 2021](#).

[7] [\[2021\] IESC 24](#)

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Meet the Author



[Marianne Norton](#)

Associate

[Ireland](#)

E: marianne.norton@ogier.com

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