



Ireland's General Scheme for the Maternity Protection (Amendment) and Miscellaneous Provisions Bill 2024

Insights - 16/08/2024

A scheme proposing numerous amendments and new provisions to address gaps in the current legislative framework for employees during their maternity leave, specifically in relation to flexibility, discrimination, and harassment, has been approved by the Irish government.

Here, we outline key aspects of the General Scheme of the Maternity Protection (Amendment) and Miscellaneous Provisions Bill 2024 (the **Scheme**), while we await the draft bill from the Office of the Attorney General.

For further information on maternity leave or on the use of NDAs in Ireland, please contact a member of our Employment and Corporate Immigration team via their contact details below.

Amendments to the Maternity Protection Act 1994 (1994 Act)

Postponement of maternity leave

The Scheme proposes the introduction of a new provision allowing for the postponement of maternity leave where medical intervention is required for a serious physical health condition that carries a considerable risk to the life of the employee. This provision will allow those who require it to postpone some or all of their maternity leave for up to 52 weeks once the employer is notified in writing with an accompanying medical certificate stating the nature and extent of the employee's health condition and the required intervention.

Presently, this provision does not extend to serious mental health issues. An examination is being carried out by the Department of Children, Equality, Disability, Integration and Youth to determine if this extension is necessary. Mental health is a serious factor to consider in the workplace so the outcome of

this decision will be extremely important.

Maternity leave for members of the Oireachtas

Members of the Oireachtas are deemed officeholders rather than employees. At present, they do not have any entitlement to maternity leave. As such, specific provisions have been suggested for pregnant members of the Oireachtas, subject to notification of intention to take maternity leave in writing to the Clerk or Clerk-Assistant of Dáil Éireann or Seanad Éireann. The Scheme allows for 26 consecutive weeks of maternity leave, or 26 weeks with part postponement in certain specific circumstances. Postponement of maternity leave under this provision shall be permitted in instances where the mother is suffering from serious illness or where the child is hospitalised.

Additionally, the provisions allow for the father or other person to avail of maternity leave in instances where the mother of the child has died, if they are a member of the Oireachtas.

The Scheme notes that some provisions of the Maternity Protection Act that are not available to Members of the Oireachtas, those being additional unpaid maternity leave, provisions in relation to employment protections, or provisions in relation to internal Oireachtas matters.

Amendment to the Workplace Relations Act 2015 (2015 Act)

Section 41(7)(c) of the 2015 Act states that an Adjudication Officer shall not entertain a dispute referred to them in instances where there is a dispute in relation to the entitlements of an employee under the 1994 Act after a six-month period from the date that an employer is informed that an employee is pregnant, has recently given birth, or is breastfeeding.

The current position means that the time limit for bringing a claim under the 1994 Act has often expired by the time the employee returns to work, meaning that they do not get to benefit from protections afforded to them when returning to work after maternity leave.

The Scheme now seeks to amend Section 41(7)(c) to allow Adjudication Officers to reject claims after the expiration of a period of six months "beginning on the day immediately following the date of the occurrence of the dispute".

This amendment will ensure compliance with Article 11 of Directive 92/85/EC and further enhance the rights of those returning to work after maternity leave.

Amendments to the Employment Equality Act 1998 (1998 Act)

The Scheme proposes the insertion of a new section after Section 14 to the 1998 Act in relation to

Non-Disclosure Agreements (NDAs). Section 14 of the 1998 Act states that a person shall be guilty of an offence if they procure or attempt to procure another person to do anything that constitutes discrimination or victimisation as noted in the Act. The Act does not currently include the use of NDAs where allegations of sexual harassment or discrimination have been made.

The new provisions would prohibit the use of NDAs in instances where allegations of discrimination, harassment or victimisation occur and the purpose of the NDA is to conceal information in relation to that allegation, unless the employee requests for an NDA to be signed.

Furthermore, the provisions will ensure that in instances where an employee requests the use of an NDA, the employee will be provided with employer-funded independent legal advice prior to entering the agreement. Hopefully, the draft bill will give some context to the extent of this, with presumably a cap. There will be 14-day waiting period after an employee signs an NDA to allow the employee the opportunity to withdraw from the agreement, if they so wish.

The new provisions will ensure that employees are not pressured into signing an NDA under any circumstance and more specifically in relation to instances where allegations of discrimination, harassment or victimisation are made. There is scope for exceptions to the provisions in relation to disclosures under the Protected Disclosures Act 2014 and where disclosures are made directly to certain specified categories of persons such as An Garda Síochána, the national police and security service of Ireland.

The Scheme gives scope to the department to determine how they will regulate the use of NDAs in employment contracts where allegations occur after enactment of the legislation. We will have to wait to see what the bill looks like, but this could provide for a very different landscape in Ireland regarding claims of this type.

Key takeaways

The proposals put forward in the Scheme seek to strengthen protections for those availing of maternity leave. If successful, employers will need to adapt their policies and practices to accommodate the new provisions and ensure compliance.

The addition of provisions to the 1998 Act where the Act has been silent will bring further clarity to the legitimate use of NDAs. Employers will have to put the correct measures in place to support employees when allegations of discrimination or harassment are brought to their attention, including monetary support in instances where an employee opts for an NDA to be introduced.

However, as the Scheme is in the initial stages, it remains to be seen how the bill will be drafted. The bill has the potential to significantly change maternity and employment rights in Ireland

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