

ERF

Employment
& Recruitment
Federation

Employment Policy Update – 14th December 2023

What's on the regulation radar for 2024?

Siobhan Kinsella, President

with **Brendan McGinty**, ERF Policy Adviser and

Michael Freytag, Public Affairs Manager, WEC

14th December 2023

1. Pensions Auto Enrolment still expected in 2024
2. Increase in Statutory Sick Days for 2024
3. Work Life Balance and Miscellaneous Provisions Act 2023
 - a) New obligations for Medical Care Leave.
 - b) Domestic Violence Leave introduced
4. More Pay Transparency Measures lie ahead.
5. EU Developments and what's looming in 2024
6. Discussion / Questions

Agenda

Automatic Enrolment Retirement Savings Beckons

Arrangements to give effect to a proposed system of automatic enrolment in a retirement savings system is being progressed. The expected the legislation being the Automatic Enrolment Retirement Savings Systems Bill is likely to be in place before the end of 2024.

The AE scheme has the following design elements:

- **Private sector** employees **aged 23 to 60 years old earning over €20,000 pa** (not already in a qualifying occupational pension scheme) will be automatically enrolled.
- Contribution rates will be levied as a percentage of an employee's gross earnings calculated on **employee earnings up to €80,000**.
- Employees will be required to make fixed minimum contributions **starting at 1.5% of gross earnings (increasing to 3% in year 4, 4.5% in year 7 and 6% in year 10)**.
- Employers will be obliged to **match employee contributions**.
- The **State will top up** employee and employer contributions (Phased State contributions to range from 0.5% to 2%).
- Employees must remain in the scheme for 6 months and will be **free to opt out at a later date**.
- There will be a **facility to suspend or pause contributions** and to leave the scheme under certain conditions.
- Eligible employees who opt out or suspend contributions will be automatically re-enrolled at a later stage.
- There will be limited scope to access retirement funds before retirement.
- Employees who are contributing members of a qualifying scheme (i.e. one that meets prescribed minimum standards and contribution levels) will **not** be automatically enrolled.
- An independent body, the Central Processing Authority (CPA), is being established to administer and to set standards for the scheme.



Sick Leave Act 2022 – Change



- Took legal effect from 1st January 2023 - Phased in over 4 years as follows:
 - 2023 – 3 Days
 - **2024 – 5 Days (increase from 3-5 days to apply 1st January 2024)**
 - 2025 – 7 Days
 - 2026 – 10 Days
- Applies to those employed on a 'contract of employment' (& includes those on a Temporary Agency Work (TAW) contract) and SSL days may be **consecutive or non-consecutive days**.
- Actual rate to be paid at **70%** of wage, subject to daily **max of €110**.
- Does not prevent employers offering **better terms** or unions negotiating for more via a collective agreement.
- An employee can take a **complaint to the WRC** if they are not provided with SSL. Where compensation is awarded by the WRC or the Labour Court (on appeal) compensation of up to 4 weeks may be awarded. (*Note - WRC Decision - Katerina Leszczynska v Musgrave Operating Partners (2023) re S.9 of the Act, providing that the obligations under the Act "shall not apply to an employer who provides his or her employees a sick leave scheme where the terms of the scheme confer, ..., **benefits that are, as a whole**, more favourable to the employee than statutory sick leave."*)
- Employers must keep **proper records** (for 4 years) to include information on each employee who availed of sick leave. An employer who fails to maintain accurate records may on conviction be faced with a fine of up to **€2,500**.



Three Conditions of Entitlement:

- Employee must have worked for the employer for minimum of **13 weeks continuous service**.
- Be incapable of working due to "illness" or "injury"
- An employee must obtain a **medical certificate** signed by a registered medical practitioner stating that the person is "unable to work" to avail of SSP for each day of absence.



Other Leave Changes - Work Life Balance and Miscellaneous Provisions Act 2023 (1/2)



The Work Life Balance and Miscellaneous Provisions Act 2023 implements the EU Directive 2019/1158 aimed at improving female workforce participation and promoting gender equality in the workforce. Most of the Act's provisions are being commenced through a series of commencement orders.

- It gives parents and carers the right to request flexible work and introduces legal protections in the exercise of these rights. It also introduces unpaid leave for medical care reasons, paid leave for victims of domestic violence and give employees a right to request remote working. **A Code of Practice is being prepared by the WRC** to give guidance on the Right to Request Remote Working and/or Flexible Working and is expected in early 2024.



Medical Care Leave

- The Act creates an entitlement to up to 5 days' annual **unpaid** medical care leave for parents which is in **addition** to the existing entitlement to unpaid parental leave of 26 weeks for parents of children up to the age of 12 has been in place since 2020.
- The new entitlement also extends to workers caring for spouses or civil partners, co-habitees and direct family members including parents, siblings and grandparents where the relative in question is in need of significant care or support for a serious medical reason.
- The leave may not be taken in periods of less than one day.
- There is no minimum service requirement.
- These changes came into effect since **July 3rd, 2023**.



Other Leave Changes - Work Life Balance and Miscellaneous Provisions Act 2023 (1/2)



Domestic Violence Leave



- The Act provides for paid domestic violence leave of **up to 5 days' paid leave** in any consecutive 12-month period.
- The leave will be paid at the **full rate of pay** of the employee (known as Domestic Violence Leave Pay).
- The Minister for Children, Equality, Disability, Integration and Youth commenced the domestic violence leave from **27th November 2023**.
- It applies to any person of any age who works under a contract of employment, including part-time and fixed-term employees.
- There is **no service requirement** and there is no requirement for employees to provide evidence to support their need to take domestic violence leave.



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The Voice of Labour Market Enablers

Employment Policy Outlook 2024

**Shaping a favourable economic and policy environment for
the recruitment industry in Ireland**

Dr. Michael Freytag

Public Affairs Manager

ERF webinar

14 December 2023

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Agenda

1. The EU employment and social affairs agenda in 2024
2. Debates on the EU Directive on temporary agency work
3. The EU Pay Transparency Directive – issues to address in the transposition phase
4. The ongoing negotiations on the EU Directive on platform work
5. The EU AI Act and policy debates on artificial intelligence

WEC-Europe Manifesto for the EP Elections

Creating futureproof labour markets that work for all

- Introductory chapter presenting the WEC-Europe vision on labour markets that work for all, integrating FT Longitude project results in February/March and our core message on the Agency Work Directive: No revision, but work on enforcement of its core principles
- Public Affairs / policy section with a focus on three key areas:
 - **A new social contract that protects all** (social protection, portable rights, diverse forms of work)
 - **Skills to empower all in the labour market** (investment in skills, labour mobility, skills policies and public-private partnerships, career guidance & role of social partners)
 - **Fair and appropriate labour market regulation in times of digitalisation** (AI, diverse forms of work, platform work)
- Section on the economic and social role of the HR services industry

TAW - MAIN FINDINGS OF THE WEC REGULATORY REPORT 2023

Conditions for Establishment	Conditions for Use	Working Conditions	Social Protection	Social Dialogue, Collective Bargaining & Self-regulation
82% of countries require some form of government registration or licencing.	97% of countries have somehow limited the assignment of agency workers through conditions for use.	74% of countries legally recognise the agency work contract. Countries that didn't, do allow agency work but without an alternative employment contract.	Agency workers are mostly treated equally wrt access to social security benefits.	In 79% of cases, social dialogue exists between the agency work sector & trade unions. In 46% of cases, mostly in Europe, they engage in sectoral collective bargaining.
56% of countries require some form of financial commitment related to the setting up an employment agency.	56% of countries require an objective justification for the deployment of agency workers.	88% of countries have a regulation ensuring equal treatment/pay for agency workers. 47% of these allow for derogation from the rule.	In 91% of cases, conditions and thresholds to access social security do not differ.	Agency Worker Wages, Occupational Health & Safety, and Industry Quality are the main topics for Social dialogue.
56% set personal conduct or professional qualifications kinds of requirements on people governing the employment agency.	91% of respondents have joint liabilities in place for agency work assignments for agencies and clients.	Working conditions of agency workers are predominantly defined by national legislation and regulations that apply to user-companies (incl. via sectoral rules)	The tax wedge between agency work contracts and other employment contracts usually does not differ.	Sectoral Social Funds are predominantly West-European affairs, providing mostly Training and Occupational Health and Safety rights & benefits.
85% of the countries require periodic reporting from employment agencies.	56% of respondents have somehow limited the length of agency work assignments.	In 50% of countries the provision of triangular employment contract is limited to employment agencies.	If unemployed, an agency worker in 56% of countries has access to training (funds) through a gov-t scheme / public employment service.	Self-regulatory initiatives are present in 65% of countries, focusing on quality and compliance of employment agencies.

- Adopted in 2008, transposed into national law by 2011. Main elements
 - Recognition of the positive role of agency work on the labour market
 - Need to appropriate regulation on temporary agency work, review of prohibitions and restrictions
 - Ensure the protection of agency workers based on the principles of equal treatment and equal pay. Option for derogations by social partners and in the case of open-ended contracts

- Several legal cases judged by the European Court of Justice in recent years. The most important ones have been:
 - The need to ensure an overall level of protection for agency workers (Article 5, equal treatment) – Time Partner
 - The temporary nature of agency work (Article 1) – Daimler case

- The European Commission hosted in 2023 a European Labour Law Conference on the Directive on temporary agency work.
 - Temporary nature of agency work
 - Role of Social Partners and overall level of protection
 - Cross-border activities of temporary work agencies
 - Possible avenues for a more effective Directive on temporary agency work

- **Why did the EU act on pay transparency?** Women in the EU earn on average 13% less than their male counterparts, and the gender pay gap has largely stagnated over the last decade. While a number of factors contribute to this difference, pay discrimination has been identified as one of the key obstacles to achieving gender pay equality.
- **Accessing information:** The new rules will make it compulsory for employers to inform job seekers about the starting salary or pay range of advertised positions, whether in the vacancy notice or ahead of the interview. Employers will also be prevented from asking candidates about their pay history.

Once in the role, workers will be entitled to ask their employers for information about average pay levels, broken down by sex, for categories of employees doing the same work or work of equal value. They will also have access to the criteria used to determine pay and career progression, which must be objective and gender neutral.

- **Reporting obligation:** Companies with more than 250 employees will be required to report annually on the gender pay gap in their organisation to the relevant national authority. For smaller organisations (initially those with over 150 employees), the reporting obligation will take place every three years.
- **Access to justice:** Under the new directive, workers who have suffered gender pay discrimination can receive compensation, including full recovery of back pay and related bonuses or payments in kind. While the burden of proof in pay discrimination cases has traditionally fallen on the employee, it will now be up to the employer to prove that they have not violated EU rules on equal pay and pay transparency. Penalties for violations must be effective, proportionate and dissuasive and will include fines.

EU Pay Transparency Directive – important elements from a business perspective (2/2)

- Shared responsibility of agency work sector and user companies: User companies determine pay rates based on equal treatment & equal pay for agency workers, but temporary work agencies are held liable with regard to compliance with gender pay transparency and equality.
- Agency workers change their jobs, positions and employment contracts more often than other workers and work assignments tend to be shorter, which leads to higher administrative burden with regard to the compliance with gender pay transparency and equality
- WEC-Europe addressed these issues in the legislative debate at European level, but as the pay transparency Directive takes a cross-sectoral approach, it was not possible to include specific provisions for the agency work sector. WEC-Europe members were also not in favour of asking for derogations or special rules with regard to pay transparency and equality.
- WEC Head Office developed a guide to support WEC member federations in the transposition phase of the Directive on pay transparency.
- National rules to transpose the Directive need to be adopted by 7 June 2026.

WEC-Europe position on the proposed Directive on Platform Work

Positioning the private employment services industry on a key topic in the European debate

Looking at the WEC-Europe Advocacy Strategy:

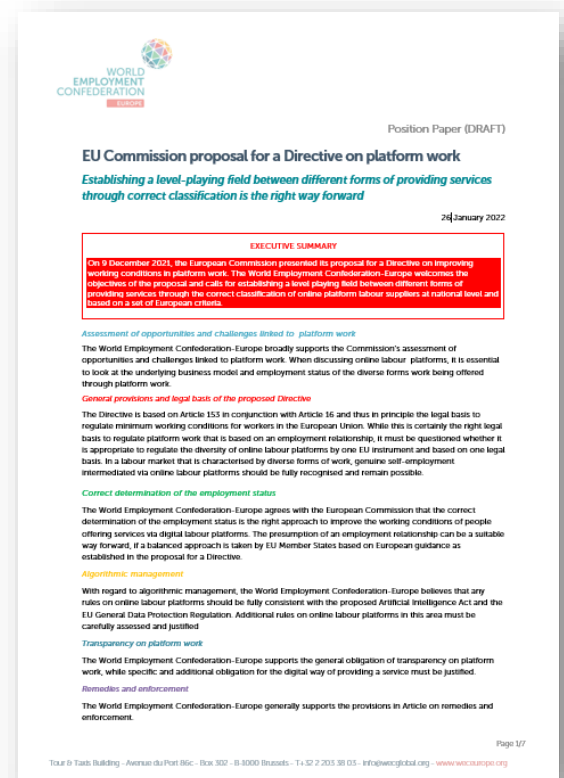
Ensure a level playing field and social protection for diverse forms of work by creating a shared WEC-Europe position on platform work and using this position in advocacy activities in 2022

Policy update: Commission proposal for a Directive on platform work adopted on the 8 December. Key elements: rebuttable presumption of an employment relationship, provisions on automated decision-making and AI, transparency obligation.

WEC-Europe position No major concern or discussion on the legal instrument of a Directive to regulate working conditions in platform work

- Need to recognise that platform work can be based on employment model and genuine self-employment. Correct classification is central. Support of a presumption of an employment relationship. Triangular work relationships via digital labour platforms should be organised via agency work
- Provisions on automated decision-making and artificial intelligence are supported as these are in line with the EU General Data Protection Regulation and the AI Act
- Transparency obligation should be proportionate and not imposed unjustified obligations on online platforms

Trilogue negotiations between EU Commission, EU Council and European Parliament started under the Spanish EU Council Presidency. No agreement could be reached and the main controversial point remains the employment status question. Discussions will continue under the Belgian Presidency, but it is uncertain whether an agreement can be reached. Debates may become politized due to the European Parliament elections



EU Artificial Intelligence Act is almost agreed at EU level

- The AI Act forms part of a broader framework for enabling the use of AI while mitigating risks. AI Act was proposed in 2021 and subject to two years of intensive negotiations at the EU level
- The proposed rules will:
 - Address risks specifically created by AI applications;
 - Propose a list of high-risk applications (these include several employment and recruitment-related uses of AI)
 - Set clear requirements for AI systems for high-risk applications
 - Define specific obligations for AI users and providers of high-risk applications;
 - Propose a conformity assessment before the AI system is put into service or placed on the market;
 - Propose enforcement after such an AI system is placed in the market;
 - Propose a governance structure at the European and national levels.
- General political agreement on the AI Act will be reached under the current EU Presidency, but a lot of details depend on implementation and application. Business and economic sectors can come up with their own risk assessment tools under the AI Act.
- The EU AI Act will not be the end of the political discussions on AI at the European level. Next European Commission will propose a legislative act on AI in Employment. Also, discussions at the global level, especially within the OECD context, as the OECD Employment Outlook of this year included a strong focus on AI

Private employment services advocacy messages on AI

- ✓ Initial WEC positioning when the Act was proposed with the agreement on key messages and outreach to policymakers
- ✓ Coordination of advocacy with main European employers' organisations and regular contacts with some technology-based companies such as IBM
- ✓ Publication of the WEC Principles on the ethical use of artificial intelligence in 2023
 - Core of the principles is the need to keep the human element centric.
 - AI systems used in the recruitment and employment industry should be beneficial for individuals and society as a whole.
 - AI systems should be designed to augment human capabilities, with clear processes in place to ensure that they remain under human direction and control at all times.
 - Transparency, explainability and traceability should be guaranteed to understand how these systems arrive at their decisions.
- ✓ Agreement on advocacy messages in 2023 for the final negotiation phase at the European level and publication of an opinion piece



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Michael Freytag

Public Affairs Manager

michael.freytag@wecglobal.org