

Ireland Update: EU (Transparent and Predictable Working Conditions) Regulations 2022

Background

On 16 December 2022, the European Union ("EU") (Transparent and Predictable Working Conditions) Regulations 2022 (the "Regulations") came into force transposing into Irish law, the Directive (EU) 2019/1152 on Transparent and Predictable Working Conditions (the "Directive").

Scope of the Regulations

The regulations apply to all employees in Ireland with limited exceptions such as employees who have less than four consecutive weeks' service and working hours that amount to an average of three hours or less per week.

New employees are entitled to a written statement of all terms and existing employees can request that the employer provide a statement containing the new mandatory terms in accordance with the Regulations.

Top Ten New Terms

1. *What does an employer have to provide in writing? When?*

Within one month of the start date, an employer is now required to provide a written statement of terms to include the following new matters:

- Training entitlements;
- The identity of the social security institution receiving the social insurance contributions where the employer chooses the social institution.

Where the employee's work pattern is unpredictable, inform the employee:

- The principle that the work schedule is variable;
- The number of guaranteed paid hours;
- Pay for additional hours;
- Working hours / days; and
- Advance notice of working hours that must be a minimum of 24 hours before the first day, or where applicable, the proposed day in each week that the employee is required to work.

Within five days of the start date, an employer is now required to provide a written statement of terms to include the following matters:

- Detail on the calculation of an employee's remuneration to include detail on the initial basic amount, any other component elements, the frequency and method of payment and the pay reference period;
- The place of work, or where no fixed or main place of work, a statement specifying that the employee is employed at various places or is free to determine the place of work;
- The title, grade, nature or category of work or a brief specification or description of the work;
- The date of commencement of employment;

- Any terms and conditions relating to hours of work and overtime; and
- Where applicable, the duration and conditions of a probationary period.

2. ***Is there a prescribed form for the written statement of terms?***

Yes. The written statement of terms must be:

- Signed and dated by or on behalf of the employer; and
- Be provided in (i) paper form or (ii) in electronic form, provided that the information is accessible, it can be stored and printed and the employer retains proof of either the transmission or receipt of the electronic form.

3. ***What happens if an employer changes parts of an existing contract of employment such as on promotion or redeployment?***

Employers are now required to notify the employee in writing of the nature and date of any change made to the written statement, no later than the day that the change takes effect.

4. ***Changes to the Use of Probationary Periods***

There are new limitations on probationary periods:

- A probationary period cannot exceed six months;
- An employer may extend the probationary period on an exceptional basis where this period:
 - Does not exceed 12 months; and
 - Would be in the interests of the employee.

- Where an employee is absent during the probationary period due to maternity leave, paternity leave, adoptive leave, parental leave, carer's leave, sick leave or other leave period, the probation must be suspended for the duration of the absence and be completed on their return.

Fixed Term Workers – Proportionate Probationary Periods

The Regulations also amend the Protection of Employees (Fixed-Term Work) Act 2003 and provide that where a fixed-term employee is subject to a probationary period, the length of this period should be proportionate to the duration of the fixed-term contract and the nature of the work. Furthermore, where an employer proposes to renew a fixed-term contract for the same work, this renewed contract must not be subject to a new probationary period.

Transitional Arrangements in Relation to Probationary Periods

Where an employee is subject to a probationary period in excess of six months on the commencement date of the Regulations (16 December 2022), and the employee has completed at least six months of this probationary period, the probationary period will expire on the earlier of:

- The date that the probationary period was due to expire; or
- 1 February 2023.

5. ***No Prohibition on Dual Employment***

Employers cannot prohibit employees from taking up additional employment outside of their work schedules and employees are protected from penalisation for doing so.

An employer can only restrict an employee from taking up additional employment where the restriction is (i) proportionate and (ii) based on

objective grounds. These objective grounds include:

- Health and safety;
- Protection of business confidentiality;
- Avoidance of conflicts of interest;
- Safeguarding productive and safe working conditions; and
- Compliance with applicable statutory or regulatory obligations and professional standards.

Where an employer imposes such a restriction, they must either:

- Include details of the restriction, including on the objective grounds, with the contract of employment; or
- Provide the employee with a written statement detailing the restriction, including the objective grounds.

6. *What happens if an employee is posted to work outside of Ireland?*

Before departure, the employer must specify in writing:

- The country or countries that the work is to be performed;
- The duration of the posting;
- Pay and benefits in accordance with the law of the host EU Member State and currency of pay;
- The terms and conditions governing the employee's repatriation as well as travel, board and lodging expenses; and
- The link to the official national website developed by the host EU Member State relating to the posting of workers in

accordance with EU Directive 2014/67 on the posting of workers.

7. *The Right to Request Transfer to Employment with More Predictable and Secure Working Conditions*

An employee who (i) has been in the continuous service of the employer for not less than six months and (ii) has completed their probationary period, the employee may request a form of employment with more predictable and secure working conditions.

An employee can only submit one request in any 12-month period.

An employer must provide a reasoned written reply to the employee within one month of the request.

An oral reply may be made by an employer only where a subsequent similar request is submitted by the same worker and the situation of the worker remains unchanged.

8. *Employees Must be Paid for Time Spent on Mandatory Work-Related Training*

Training must be provided free-of-charge. Furthermore, the time spent on training will count as working time and, where possible, take place during working hours.

9. *Collective Agreements*

Where an employee is party to either (i) a collective agreement approved of by the Labour Court or (ii) a registered employment agreement, the provisions on probationary periods, the right to seek additional employment, the right to request transfer to employment with more predictable and secure working conditions and work-related training will not apply.

10. *The Right of an Employee to Refuse to Work Expected Working Hours*

If an employer fails to meet the requirement to notify the employee of their working hours a minimum of 24 hours before their first day, or where applicable, the proposed day in each week that the employee is required to work, an employee has the right to refuse to work during these working hours. The employee is protected from penalisation for a refusal to work.

Action Points

Employers should:

- Review their employment template contracts to ensure that they comply with all of these new requirements;
- Review their use of probationary periods and ensure that there are adequate controls in place to monitor and assess performance during a six-month probationary period;
- Review workplace training requirements and arrangements to ensure that the cost of training is not passed on to the employee and the training takes place during working hours;
- Ensure employees are provided with the necessary notice of their working hours; and
- Be prepared to provide existing employees with a written statement containing the new terms where requested.

How the Maples Group Can Help

Please reach out to your usual Maples Group Employment Team contact for further advice and assistance on implementing the Directive and the Regulations.

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