



MAPLES
GROUP

IMPLEMENTATION OF THE EU DIRECTIVE ON TRANSPARENT AND PREDICTABLE WORKING CONDITIONS

UPDATE FOR EMPLOYERS IN IRELAND

BACKGROUND

- The Directive (EU) 2019/1152 on Transparency and Predictability of Working Conditions (the “Directive”) is due to be transposed into Irish law on 2 August 2022.
- The Directive prescribes what terms and conditions of employment must be set out in writing for all types of employees and the timings for doing so.
- Existing Irish legislation, most notably the Terms of Employment Information Act 1994 (the “1994 Act”) and the Employment (Miscellaneous) Provisions Act 2018 (the “2018 Act”) have already implemented many aspects of the Directive but other changes are required to be implemented. The key changes relate to the timing of the requirements to notify employees of their written terms of employment, probationary periods and exclusive service arrangements.
- The draft legislation to implement the Directive is not yet finalised and as such the deadline of 2 August 2022 may not be feasible for the implementation of the Directive.
- Employers should plan to review their template contracts of employment to ensure consistency with the Directive.

WHAT IS CHANGING AND WHEN?

Both the 1994 Act and the 2018 Act have mandatory terms of employment that need to be provided to the employee by the employer within a certain timeframe from commencement. The Directive expands on these notification obligations. For ease of reference, we have compiled a table highlighting the key new notification timeframes:

Section 7 of the 2018 Act

Existing Obligation

Five days after start date provide the following in writing:

- Names of the employer and the employee.
- Address of the employer.
- Duration of the contract
- The rate or method of calculation of pay.
- Working hours per normal working day and per normal working week.

Section 3 of the 1994 Act

Existing Obligation

Two months after start date provide the following in writing:

- Frequency of pay and pay reference period for the purposes of the National Minimum Wage Act, 2000.
- Terms relating to sickness absence.
- Terms relating to pensions.
- Notice periods.

Seven days after start date provide the following in writing:

Article 5 of the Directive

New Obligation

- Start date (not just the duration of the contract).
- Place of work, or where there is no main place of work, a statement indicating that an employee is required or permitted to work at various places.
- Details and duration of probationary periods.
- Title, grade, nature or category of the work or a brief description of the work.
- Pay frequency and calculations.
- For predictable working patterns:
 - The length of the standard working day or week
 - Overtime and shift changes.
- For unpredictable working patterns:
 - The number of guaranteed paid hours per week
 - The remuneration for hours worked in excess of the guaranteed hours
 - The hours / days within which the worker may be required to work
 - The minimum amount of advance notice provided to employees about working hours.

One month after start date provide the following in writing:

Article 5 of the Directive

New Obligation

- Training entitlements.
- Paid leave.
- Procedures to be observed on termination.
- Applicable collective agreements.
- Identification of social security institutions receiving contributions and protection relating to that social security.

EMPLOYEES POSTED OVERSEAS

The 1994 Act already required employers to notify employees who are posted to work outside of Ireland for more than one month with certain information before departure.

The Directive expands on this under Article 7 and includes the requirement that employers must notify the employee of the remuneration to which the employee would be entitled to in accordance with the applicable law of the host Member State and, where applicable, any specific allowances to the posting or reimbursement measures for travel, board and lodging.

PROBATIONARY PERIODS

Article 8 of the Directive limits probationary periods to six months, except where a longer period is justified such as in cases of more senior level roles or in the interests of the employee. Previously, there was no restriction on the length of probationary periods for more junior roles.

Furthermore, the Directive stipulates that the duration of probationary periods in a fixed term contract should be proportionate to the length of the contract and the nature of the work. Probationary periods will be prohibited in the event of a fixed term contract renewal.

LIFTING THE BAN ON EXCLUSIVE SERVICE CONTRACTS OF EMPLOYMENT

Article 9 of the Directive seeks to prohibit employers from restricting employees from taking up second or parallel employment and prohibits the penalisation of employees for doing so.

Many contracts of employment will include a clause that restricts the employee from taking up parallel employment, especially where employees have access to confidential information and are mostly engaged full time. As such, it would not be in the employer's interest if employees were to be engaged in parallel employment. The Directive does allow for restrictions based on incompatibility reasons such as health and safety, including working hours, business confidentiality and conflicts of interest.

We await Irish legislation on this to be able to better assess when such an "incompatibility reason" will be deemed to arise and allow for an exclusion clause in the employment contract.

UNPREDICTABLE WORK PATTERNS

The Directive seeks to provide employees with unpredictable work patterns with more security and limit on-demand working contracts. In Ireland the 2018 Act already introduced a prohibition of zero hour contracts. Article 11 of the Directive further limits the use of on-demand employment contracts.

Employees on unpredictable work patterns must be informed by their employer about the hours and days when they may be required to work and given sufficient advance notice of same. Under Article 10 of the Directive these employees have an express right to refuse to work without adverse consequences if the notice given is inadequate.

Furthermore, employers will be required to pay compensation to employees in cases where an agreed assignment has been cancelled by the employer after a specified reasonable deadline. Zero hours workers already have an entitlement to guaranteed pay of a portion of their contracted weekly hours where not called upon to work.

Employees will now also have a right to request a form of employment with more predictable and secure working conditions, where available, following the completion of six months' service under Article 12 of the Directive.

WORK-RELATED TRAINING

Training that is required for an employee to carry out their duties (or as may be required by law and / or union or collective agreement) must be provided free of charge.

The time spent while training will count as working time, and ideally will take place during normal working hours.

WHAT IS THE STATUS OF IMPLEMENTATION IN IRELAND?

A public consultation on the implementation of the Directive was held in 2021 and closed in October of that year. There has not been any significant engagement on this since. The provisions of the Directive do not have direct effect without legislation and will therefore necessitate legislative transposition. However, given the fact that many of the obligations contained in the Directive already exist under current Irish legislation, albeit with different timeframes, a major legislative implementation is not needed and the changes could be introduced swiftly. Based on this, we would advise reviewing template contracts for their compliance with the Directive obligations in advance of the transposition deadline of 1 August 2022.

Please liaise with your usual Maples Group Employment Team contact for further advice and assistance on implementing the EU Directive on the Transparency and Predictability of Working Conditions.

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