

Ireland Update: The Protected Disclosures (Amendment) Bill 2021

The General Scheme of the Protected Disclosures (Amendment) Bill 2021 (the "Bill") was published during the summer in advance of the 17 December 2021 deadline for implementation of Directive (EU) 2019/1937 of the European Parliament and of the Council (the "Whistleblowing Directive") into Irish law.

The legislation will further extend the scope and breadth of the protections afforded to individuals who make a protected disclosures in Ireland. Employers with an existing protected disclosures policy should examine their procedures to ensure compliance with the proposed changes. A wider list of employers will be within the scope of the new legislation and impacted employers should prepare a protected disclosure policy ahead of the legislation coming into force.

Applicability

Under the current regime, the requirement that employers have reporting procedures in place in respect of protected disclosures is only mandatory for public bodies.

The Bill extends this requirement to include private entities with over 50 employees from 17 December 2021. The new laws will not come into effect for most private sector employers with between 50 and 249 employees until December 2023.

Private employers with under 50 employees may come within scope if they are involved in certain activities such as regulated financial services, prevention of money laundering or protection of the environment.

The Key Changes to the Protected Disclosures Framework

- The Bill expands the definition of 'worker' to include shareholders, members and non-executive members of the administrative, management or supervisory bodies of an undertaking, volunteers, unpaid trainees, suppliers, and those who acquire information on a relevant wrongdoing during recruitment processes.
- Employers will not be required to process disclosures made anonymously, however, workers who make anonymous disclosures whose identity is subsequently revealed will be entitled to protection under the Act.
- The Bill adds new types of wrongdoings to the definition of 'relevant wrongdoing,' including breaches of EU law in areas of public procurement, financial services, environmental protection, public health, privacy, personal data and consumer protection.
- Clear timeframes have been introduced for acknowledgement and follow-up in respect of disclosures. Employers must acknowledge a report made by a worker within seven days and provide the worker with follow-up or a report from an impartial person within three months after acknowledgement of the report.
- Feedback on actions taken or proposed must also be communicated to the worker within three or six months.

- Interpersonal grievances are explicitly excluded as relevant wrongdoings, and the Bill notes that such disclosures should be dealt with using alternative internal procedures. Employers should ensure that their protected disclosures policy expressly acknowledges that such grievances will be dealt with under the business' grievance procedures.
- Penalisation under the Bill is extended beyond an act or omission which affects a worker to their detriment, to now include negative performance assessments, refusal to provide references, and medical referrals.

Redress

In terms of additional and new redress, the Bill allows the WRC or Labour Court to award compensation of up to €13,000 for individuals not directly employed or in receipt of remuneration, including, for example, job applicants and volunteers.

The Bill proposes that interim relief can be obtained before the Circuit Court in all cases where a worker alleges penalisation, not just in circumstances where the worker has been dismissed.

Protected Disclosures Office

The Bill proposes that an independent Protected Disclosures Office will be established within the Office of the Ombudsman. This office will transmit any disclosures received to a suitable authority, provide support in receipt and follow-up procedures and provide administration services to disclosure recipients as required.

Burden of Proof

At present, the burden of proof in cases of penalisation under the Act rests with the person alleging wrongdoing.

The Minister for Public Expenditure and Reform previously indicated plans to reverse this burden of proof, meaning that penalisation would be presumed to have occurred upon the making of a protected disclosure, unless the employer could prove otherwise. Interestingly, the Bill made no provision for this expected change.

It is worth noting that legislation is required to transpose the Whistleblowing Directive into Irish law as it will not have direct effect and the draft text of the Bill is expected to be published in the coming weeks.

How the Maples Group can Help

We can assist by providing up-to-date guidance in respect of protected disclosures compliance and updating workplace risk assessments.

For further information, please reach out to your usual Maples Group contact or any of the persons listed below.

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