

What's New

The McCann FitzGerald **Employment, Pensions & Incentives Group** Update

Key Contacts



Terence McCrann

Partner

+353 1 607 1336

[terence.mccrann@](mailto:terence.mccrann@mccannfitzgerald.com)

mccannfitzgerald.com



Mary Brassil

Partner

+353 1 607 1279

[mary.brassil@](mailto:mary.brassil@mccannfitzgerald.com)

mccannfitzgerald.com



Eleanor Cunningham

Partner

+353 1 607 1723

[eleanor.cunningham@](mailto:eleanor.cunningham@mccannfitzgerald.com)

mccannfitzgerald.com

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Welcome to the McCann FitzGerald Employment, Pensions & Incentives update. Below is an update on some of the latest developments.

[Updated Government Guidance on the Return to the Workplace](#)

20 September 2021 marked the beginning of the return to the office for many employees, coinciding with the most recent stage in the government's easing of pandemic-related restrictions. In planning for and implementing a return to the workplace, employers should pay close attention to the guidance note published by the Labour Employer Economic Forum Consultative Group ("LEEF"), entitled "[Returning Safely to the Workplace from 20 September](#)" (the "LEEF guidance"), as well as to the updated [Work Safely Protocol](#). In our recent [briefing](#), we consider the key takeaways for employers as they begin to reintroduce employees to the physical workplace.

[Tánaiste seeks views on new rights for better working conditions](#)

The Tánaiste and Minister for Enterprise Trade and Employment, Leo Varadkar TD, is seeking views on new rights to improve terms and conditions for workers. EU Directive 2019/1152 on Transparent and Predictable Working Conditions (the "**Transparency Directive**") will be transposed into Irish law by August 2022. The Transparency Directive will require Member States to ensure better conditions of employment in general, including a six-month limit on probationary periods; a ban on exclusivity clauses and limits on incompatibility clauses; a requirement on employers to grant a right to request to be transferred to a form of employment with more predictable and secure working conditions; and an employee right to receive any mandatory training, cost-free to the worker. The Transparency Directive covers all workers in all forms of work, including those in the most flexible non-standard and new forms of work such as, casual work, domestic work,

Key Contacts

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Stephen Holst

Partner

+353 1 511 1517
stephen.holst@mccannfitzgerald.com



Catherine Austin

Consultant

+353 1 607 1492
catherine.austin@mccannfitzgerald.com



Roisin Finn

Associate

+353 1 511 1663
roisin.finn@mccannfitzgerald.com

voucher-based work or platform work. The Transparency Directive also contains targeted provisions on enforcement, to make sure that workers effectively benefit from these rights. The Tánaiste, opening the consultation on how Ireland will transpose the Transparency Directive, said he wants “one of the legacies of the pandemic to be better terms and conditions for workers.” The deadline for submissions is 3pm on Monday, 25 October 2021.

[EWSS will remain in place and unchanged for the month of October 2021](#)

Minister for Finance, Paschal Donohoe, has announced that there will be no change to the Employment Wage Subsidy Scheme (“EWSS”) for the month of October 2021. The EWSS will continue to operate in its current form during October 2021, so that the main eligibility requirement is a 30% decrease in turnover or customer orders in the full year 2021 compared to the full year 2019. The enhanced rates of support and the reduced rate of Employers’ PRSI will continue to apply for the month of October 2021. No decisions have yet been taken as to the appropriate operational parameters for EWSS for the remainder of Quarter 4 2021 and its possible extension beyond end-2021. The Minister is considering a range of possible options for the future of EWSS and such arrangements will be outlined on Budget Day, 12 October 2021.

[Redundancy ruled unfair, influenced by “fraught relationship”](#)

In *Emma Ward v Kerona Scientific Limited* ([ADJ-00025625](#)) the Complainant was employed as an office manager and personal assistant to the managing director (“MD”) and was made redundant by the Respondent on 31 July 2019. The Respondent submitted that they identified that part of the Complainant’s duties became obsolete and others were carried out by the Chief Operating Officer (“COO”) and that she had not been replaced. The Respondent further submitted that it explored possibilities for alternatives to redundancy, but that no such alternatives existed. The Complainant submitted that her job was made redundant because she highlighted and resolved some incorrect accounting procedures that occurred under the MD’s stewardship before the COO took on his role. She submitted that her implementation of the new accounting system caused a further deterioration in her relationship with the MD. The Complainant believes that she was unfairly selected for redundancy and that no consideration was given to any alternative options.

The Adjudicating Officer (“AO”) noted that it was not clear whether the tense working relationship was the reason that the Complainant’s job was made redundant, but it seemed “*that it contributed to the decision not to consider an option other than redundancy*”. The AO was of the view that when the Complainant’s employment was terminated, a redundancy situation did not exist and that the Complainant could have been offered a part-time job, carrying out office administration and some financial tasks, but there was no discussion with the Complainant regarding this option, or any other alternative to redundancy. The AO concluded that the Complainant’s dismissal was unfair and noted that the Complainant was unable to act to mitigate her situation due to illness and that eight months passed before she was able to take up employment and she was awarded €8,750, equivalent to three months’ pay.

[Revenue eBrief No. 172/21: Pensions - notification of absences or secondments](#)

Chapter 2 of the Revenue Pensions Tax and Duty Manual, which deals with Membership of Occupational Pension Schemes, has been amended at paragraph 4. The update states that pension administrators should notify Revenue via MyEnquiries (or by e-mail, for Transport Layer Security (TLS) enabled administrators) where an employee who is temporarily absent or is seconded for a period exceeding five years remains as a member of an occupational pension scheme.



Principal Office

Riverside One, Sir John Rogerson's Quay
Dublin 2 D02 X576
+353 1 829 0000

London

Tower 42, Level 38C, 25 Old Broad Street
London EC2N 1HQ
+44 20 7621 1000

New York

One Rockefeller Plaza, 30th Floor
New York, NY 10020
+1 646 952 6001

Brussels

40 Square de Meeûs, 1000 Brussels
+32 2 740 0370

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