

# What's New

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

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

### [Gender Pay Gap information Bill 2019 signed into law](#)

The [Gender Pay Gap Information Bill 2019](#) (the “**Bill**”) was signed into law by the President on 13 July 2021. The Bill was originally published in April 2019, lapsing with the dissolution of the Dáil in 2020, before being restored to the Order Paper later that year. The Bill (once commenced by ministerial order) will amend the Employment Equality Act 1998, requiring the Minister for Children, Equality, Disability, Integration and Youth to make regulations requiring private and public sector employers (subject to employment thresholds) to report and publish information relating to their gender pay gap, and, where there is a gap, to explain why there is a gap and what measures are being taken to reduce it. Minister O’Gorman stated “*With the passage of the Gender Pay Gap Information Bill, pay transparency is now one step closer. Reporting of the gender pay gap by employers will provide accountability and transparency, helping to ensure that employers address the gender pay disparity between men and women.*” We analyse the details of the Bill in our recent briefing, available [here](#).



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### [New Code of Practice on Determining Employment Status](#)

The Minister for Social Protection, Heather Humphries, published an updated [Code of Practice on Determining Employment Status](#) (the “**Code**”) on 21 July 2021, the third version since 2001. The Code was updated by an interdepartmental working group comprising the Department of Social Protection, the Office of the Revenue Commissioners and the Workplace

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Relations Commission. It is intended to be a 'living document', which will continue to be updated to reflect future, relevant changes in the labour market, relevant legislation and case-law. The Code identifies the 'key factors' in making a decision on employment status as mutuality of obligation; substitution; the enterprise test; integration; and control. However, the Code emphasises that none of these factors is determinative on its own. It is necessary to take them all into account and to weigh them up in a rounded manner when making a determination as to the correct employment status of a worker. Every case is examined on the basis of the facts that pertain to that case and determinations made accordingly.



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### [CJEU ruling on banning religious symbols in the workplace](#)

The Court of Justice of the European Union (the "CJEU") has delivered joined rulings in the cases of [IX v WABE \(C-804/18\)](#) and [MH v MJ \(C-341/19\)](#) in which German employers suspended female employees for wearing Islamic headscarves in breach of the employer's 'religious neutrality' policy. In its judgment, the CJEU stated that "*an employer's wish to project an image of neutrality towards customers relates to the freedom to conduct a business that is recognised in Article 16 of the Charter and is, in principle, legitimate, in particular where the employer involves in its pursuit of that aim only those workers who are required to come into contact with the employer's customers*". However, the Court also stated that the mere desire of an employer to pursue a policy of neutrality is not sufficient, as such, to justify objectively a difference of treatment indirectly based on religion or belief. This neutrality policy must meet a genuine need on the part of that employer. Factors to be considered in determining a genuine need include: the legitimate wishes of the customers and the adverse consequences the employer would suffer in the absence of this policy; the nature of its activities and the context in which they are carried out; and whether the difference in treatment is appropriate for the purpose of ensuring the employer's policy of neutrality is properly applied. This means that the policy is pursued in a consistent and systematic manner and that the prohibition in question is limited to what is strictly necessary, having regard to the actual scale and severity of the adverse consequences that the employer is seeking to avoid by adopting the prohibition.



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### [Revenue eBrief No. 140/21 – PAYE Exclusion Orders](#)

Revenue have clarified the rules around the taxation of bonus payments to employees of Irish companies who work under a “PAYE exclusion order”. Employees who work remotely from abroad may now have to pay Irish tax on their bonuses even if they aren’t liable for PAYE on their salary. This will most likely affect workers who have secured formal arrangements to work abroad e.g. foreign nationals who have returned to their home countries during the pandemic.

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### [Revenue eBrief No. 128/21: Pensions Manual Updated](#)

Chapter 23 of the Pensions Manual has been updated with new guidance for non-resident owners of Approved Retirement Funds (“ARF”), Approved Minimum Retirement Funds or vested Personal Retirement Savings Accounts. This includes a link to the Refund of Taxes paid on ARF Distributions Claim form to be filled out by non-resident claimants looking for a repayment of Irish tax on an Irish Pension. The updated document also contains more information for refund claims made by non-resident claimants with unit linked ARF funds.

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### [Pensions Authority draft code of practice for trustees of occupational pension schemes and trust RACs](#)

On 22 July 2021 the Pensions Authority published a draft code of practice for trustees of occupational pension schemes and trust retirement annuity contracts. The draft code of practice sets out what the Pensions Authority expects from regulated entities to meet their obligations under the European Union (Occupational Pension Schemes) Regulations 2021. A final code of practice on what the Pensions Authority expects from regulated entities to meet their obligations under the Pensions Act, 1990, as amended, will be published in the week commencing 15 November 2021. The Pensions Authority welcomes views on the draft code of practice. The closing date for the receipt of submissions is 5pm Thursday 16 September 2021.



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