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HR Network

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McCann FitzGerald LLP





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The Growing Importance of ‘S’ in ESG



What is the 'S' in ESG?



Social - issues of inequality, inclusiveness, labour relations, investment in human capital and communities, as well as human rights issues

- 'S' in ESG relates to an organisation's 'Social' rating
- ESG rating agency, S&P, defines the 'S' in ESG in terms of the social factors that pose a risk to an organisation's financial performance
 - how it treats and interacts with its own employees and how it treats people in wider society
- 'S' in ESG looks at an organisation's workforce composition, working conditions and its working environment
- Supply chain management - implementing codes of conduct within the supply chain which set out minimum standards in respect of employment rights, working conditions as well as commitment to human rights (anti-slavery and human trafficking)

What is Social Taxonomy?



- Growing momentum at European level for the development of a Social Taxonomy which would facilitate the assessment of an organisation's social performance using an agreed set of measures
- Final Report on Social Taxonomy was published in February 2022
- Social Taxonomy Report proposes a system to classify decent work, adequate living standards, wellbeing and inclusive sustainable communities
- 'Decent work' objectives include pay transparency, paying the living wage, decent working hours, formal working relationships, equal opportunities, reduction of pay gaps and job creation for young people

ESG Strategy



- Organisations can address the 'S' in ESG by putting in place a comprehensive ESG strategy:
 - Assess policies and procedures (bullying and harassment, health and safety, whistleblowing, diversity, equity and inclusion)
 - Identify areas for improvement
 - While Irish employment legislation sets minimum standards, the 'S' in ESG involves going beyond minimum legal compliance to implementing policies and practices that promote a more diverse, inclusive, equitable and sustainable workplace with a transparent reporting system

Business Case for 'S' in ESG



- 'S' in ESG is becoming increasingly important for companies striving to meet the expectations of employees, investors and consumers
- Higher ESG rating = higher employee engagement and retention rates, lower sick leave, greater profits
- Marsh and McLennan study - most attractive employers have ESG ratings 25% higher than the global average
- Graduates are now choosing companies that have (i) ethical standards, (ii) that give employees a clear connection to a corporate purpose, (iii) that are diverse and have an inclusive culture and (iv) that promote a flexible working environment

ESG and Work Life Balance



- **Work Life Balance and Miscellaneous Provisions Act 2023**
 - statutory right to request remote working
 - statutory right to request flexible working for caring purposes
 - unpaid leave for medical care purposes (5 days)
 - paid domestic violence leave (5 days)
 - extension of the current entitlement to breastfeeding breaks
- **Code of Practice on the Right to Disconnect**
 - right not to routinely work outside normal working hours
 - right to not be penalised

ESG and Working Conditions



- **Transparent and Predictable Working Conditions Regulations 2022**
 - Additional written terms of employment that employers must give to employees on commencement of employment and a new timeframe for providing them
 - Maximum probationary period: 6 months (12 months for public servants)
 - Employers will no longer be able to require exclusive service from their employees without justification
 - Mandatory training must be at the employer's cost and take place during working time where possible
 - Employees who have completed their probationary periods may request 'more predictable and secure working conditions'

ESG and Gender Pay Gap Reporting



- **Gender Pay Gap Information Act 2021 and Regulations**

- GPG reporting began in December 2022 for companies with 250 or more employees, reducing to 150 or more in 2024 and 50 or more in 2025
- In scope employers are required to select a 'snapshot date' in June each year on which they will report GPG information relating to the preceding 12-month period. They are required to publish their GPG data within 6 months from that date.
- In scope employers must publish a statement outlining the reasons for the GPG and the measures they will take to eliminate or narrow the GPG

ESG and Pay Transparency



- **The EU Pay Transparency Directive**
 - Lack of pay transparency identified as one of the key obstacles to achieving equal pay
 - Mandatory gender pay gap reporting in all EU member states
 - Additional gender pay gap reporting requirements in respect of ‘category of employees’
 - Joint pay assessment (equal pay audit) if gender pay gap of 5%+ cannot be justified on objective or gender-neutral factors
 - Pay transparency for job applicants and prohibition on employers asking job applicants about their pay history
 - Employees right to information on individual pay level and the average pay levels broken down by gender
 - Prohibition of pay secrecy clauses

European Sustainability Reporting Standards



- **Corporate Sustainability Reporting Directive**
 - Requirement for all large companies and listed companies to adopt and report on European Sustainability Reporting Standards
 - Directive came into force in January 2023 and, over the next five years, the requirements of the Directive will be introduced on phased approach
 - In scope employers are required to publish information in their management reports on:
 - equal opportunities (including gender equality, equal pay, training and development and employment of people with disabilities)
 - working conditions (to include secure and adaptable employment, wages, involvement of the worker, work-life balance and working environment)

What steps can employers take to improve the 'S' in ESG ?



- Promote diversity, equity and inclusion in the workplace
 - Implement inclusive hiring practices to attract a diverse talent pool
 - Unconscious bias training
 - Workplace accommodations for employees with disabilities
- Support work-life balance by offering flexible work arrangements
- Implement employee assistance, return to work and wellness programmes
- Ensure that transparent and equitable reward and incentive schemes are in place
- Assess and monitor supply chain risks related to employment rights, working conditions and human rights practices
- Support community initiatives that align with the organisation's values and address social issues

Questions?



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Early resolution of workplace disputes using informal procedures and mediation



Dispute Resolution and Mediation



- 30 years of disputes and litigation
- Collective v Individual
- Internal Process
- External Process



Mediation

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- Mediation Policy
 - Mediation Training
 - Workplace Relations Act, 2015
 - Mediation Acts, 2017
 - Zalewski case
 - Circular 17/2017 - use of mediation as an alternative dispute resolution mechanism in the resolution of workplace, contract and other disputes.

Mediator

- Mediator's Role
- Facilitate the parties
- Options - what does life without this dispute look like?
- Settlement Terms

Mediator



- Mediation Agreement
- Confidentiality
- “Without Prejudice”
- Pre-Mediation position paper/summary
- Costs



Factors

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- Advisers; HR and Legal
 - Authority to settle
 - Insurers
 - Non-Disclosure Agreements (NDA's)
 - Emotions and personalities

Questions?



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