Legal Island

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Comparative Employment Law

Table of Changes

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Great Britain | Northern Ireland | Republic of Ireland

Updated Comparative Table of employment law developments across Great Britain, Northern Ireland and the Republic of Ireland

Do you need to stay up to date with employment law developments across Great Britain, Northern Ireland and the Republic of Ireland? If so, our updated Comparative Table, prepared in conjunction with Legal Island, will be a handy reference guide.

Keeping track of developments across the broad spectrum of employment law can be a challenge, particularly across three jurisdictions. Fear not, however, as we've updated our Comparative Table again, in conjunction with Legal Island, to reflect recent developments over the last six months across Great Britain, Northern Ireland and the Republic of Ireland.

The Northern Ireland Assembly hasn't been restored following the elections in May 2022. We're therefore seeing increasing divergence between employment laws in Great Britain and Northern Ireland, meaning that UK employers with operations in Northern Ireland should be increasingly mindful of the differences.

The Comparative Table is split by subject area, with an index at the front. For ease of comparison, the developments are set out under each subject. The table also includes links to relevant legislation and other documents to help you understand the differences. Important developments from previous versions of the table have been retained.

Key recent employment law developments across Great Britain, Northern Ireland and the Republic of Ireland

Taking a bird's eye view over the Comparative Table, some key developments across Great Britain (GB), Northern Ireland (NI) and the Republic of Ireland (ROI) over the last six months are as follows:

Historic holiday pay claims

- One of the biggest cases of 2023 was the long-awaited Supreme Court decision in the case of Chief Constable of the Police Service of Northern Ireland v Agnew, which hit the headlines in October 2023.

- This decision, which applies across the UK, put holiday pay back in the spotlight and potentially increases the financial exposure for employers who have not calculated holiday pay correctly. It is likely to cost the Police Service of Northern Ireland £30-40 million as back pay for holiday pay claims and is likely to have significant implications for employers in NI and GB.

- Employers in GB are in a better position, however, because there's a two-year limit on how far back holiday pay claims can go. This isn't in place in NI meaning that holiday pay liability can potentially date back to 1998 when the Working Time Regulations were introduced, or back to the date on which employees commenced employment, whichever is later. Planned reforms in GB also clarify aspects of holiday pay and entitlement for GB employers, which are described below.

What's happening with retained EU law in the UK?

Some of the most important developments over the last six months relate to the arrangements that have been made to increase the pace of repealing, restating or replacing EU laws which were retained by the UK when it exited the EU on 31 December 2020.

- The UK government's controversial Retained EU Law (Revocation and Reform) Act finally passed after being watered down in the House of Lords where the 'sunset clause' (which would have automatically deleted EU-based laws) was removed. Effectively, the proposed 'bonfire' of EU laws became a 'campfire' of EU laws.

- As the Act ends the "supremacy" and "general principles" of EU law on 31 December 2023, the government has recently taken steps to write many existing EU laws into new regulations. Otherwise, these EU laws would have disappeared from 1 January 2024 (when supremacy of EU law ends). Specifically, new GB draft regulations are in place relating to what payments

should be included in holiday pay, rules about carrying forward holiday and rules about carrying forward accrued holiday missed due to sickness or maternity leave.

- These holiday changes don't apply in NI. This leaves the position on holiday pay more uncertain in NI from 1 January 2024 as the EU case law in this area will no longer have "supremacy" and general principles of EU law will no longer apply.
- In GB, new draft regulations amending the Equality Act 2010 are also in place to ensure that discrimination protections derived from EU law are preserved after Brexit. Again, these changes don't apply in NI. However, given the special arrangements put in place in NI after Brexit under the Windsor Framework, there should be no diminution of EU equality and anti-discrimination legislation in place in NI and general principles, such as direct effect of EU law, will continue to apply in this area.
- In GB, the government is also starting to use its new powers to reform EU laws. For part-year or irregular hours workers this includes rolled-up holiday pay being allowed and a new holiday accrual system. There are also modest reforms to TUPE consultation obligations and record keeping obligations. These changes do not apply in NI – for example, rolled-up holiday pay remains unlawful in NI.

Diversity, equity and inclusion

- In GB, a new law on sexual harassment has been passed, which is to come into force in October 2024. This sets out a new duty on employers to take "reasonable steps" to prevent sexual harassment of employees in the course of their employment (requiring proactive measures).
- In GB, a series of reforms have also been passed by way of private members bills, including new rights to carer's leave and neonatal leave, the introduction of new flexible working rights and the extension of redundancy protection to pregnant employees and those who have returned from family leave. However, new regulations will need to be introduced before employers know the full details and any of the legislation can take effect from next year.
- The carers and neonatal leave provisions are intended to extend to NI. However, as employment law is devolved to NI, it will be up to the NI Assembly to decide whether similar provisions should apply in NI. The Assembly is not sitting and there are currently no plans for similar provisions.
- In ROI, the entitlement under the Work Life Balance and Miscellaneous Provisions Act 2023 to five days' paid leave for employees who are victims of domestic violence commenced on 27 November 2023.
- The provisions of the Work Life Balance legislation entitling employees in ROI to request flexible and remote working arrangements were expected to be commenced by now, but this and a code of practice outlining practical guidance for employers on how to deal with these requests, is still awaited.
- Turning to pay, the Pay Transparency Directive will create new gender pay gap reporting obligations throughout the EU and influence practice more widely. We've answered the key questions and explained how Irish legislation will need to adapt.

Employment status and predictable terms

Employment status remains a hot topic, particularly for the gig economy.

- After several years of litigation, the UK Supreme Court unanimously ruled that Deliveroo riders are not in an "employment relationship" for the purposes of European human rights law and cannot proceed with an application for recognition of their trade union.
- In contrast, the Supreme Court in ROI, in its decision published on 20 October 2023, overturned the majority decision of the Court of Appeal and found that Domino's delivery drivers were employees, not independent contractors, for tax purposes.

- In GB, the Workers (Predictable Terms and Conditions) Act, received royal assent in September. This new law will give certain workers a new statutory right to request a predictable working pattern and is expected to take effect next year. Similar requirements were set out in the EU Directive on Transparent and Predictable Working Conditions and our interactive map monitors how this has been implemented across the EU.

Strikes and industrial action

Strikes across a variety of industries have continued to dominate headlines and cause disruption.

- In GB the government was successful in passing controversial legislation to introduce minimum service levels in public services, but the consultation process and regulations will take some time to work through, and the legislation is likely to be challenged through the courts.
- There was much less success for the government's efforts to allow agency workers to provide cover during strikes. A High Court challenge saw the new legislation quashed and the previous prohibition on agency workers covering strikes reinstated. The government has now launched a new consultation on the proposal which will be open until January 2024 and can be seen here.
- In NI, there are no plans to reform law on either trade unions or industrial action.

Looking ahead to 2024

- A Labour party general election victory looks like a probability. The party is promising reforms to the employment landscape of a greater magnitude than, arguably, any time in the last 40 years.
- Speaking at the TUC annual conference in September 2023, Angela Rayner, Labour's deputy leader, also promised that Labour would introduce an Employment Bill within the first 100 days. This is part of a promised "New Deal for Working People".
- To keep you ahead of the curve, we've written about Ms Rayner's speech and some of the party's wide-ranging proposed reforms to workplace rights. Headline proposals include single worker status, day one basic rights, a ban on zero hours contracts, strengthened trade union rights including a right of entry to workplaces, further strengthening of harassment laws and introduction of ethnicity and disability pay gap reporting. It's unlikely we'll see any of this happen in 2024, but we are likely to see manifestos.

You can read about these developments and all other key developments across GB, NI and ROI on the "insights and news" page of our website. We aim to cover the practical impact of the developments and what you may need to do differently.

With our team of 180 employment and immigration lawyers across GB, NI and ROI, which is consistently top ranked by independent legal directories, Chambers and Legal 500, we're on hand to assist with any employment queries you have.

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Disclaimer:

The Comparative Table does not contain a full analysis of all legislative and case law developments and differences between the jurisdictions. We intend to update it at intervals and the authors would appreciate any suggestions for omissions or additions in future.

The Comparative Table is for guidance only. We recommend that professional advice is obtained before relying on information supplied anywhere within the table.

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Section 1: Dismissal & Other Individual Rights

Qualification Period for Claiming Unfair Dismissal and Maximum Compensatory Awards

GB	The qualifying period is 2 years' service (save in certain situations where there is no qualifying period) with the maximum basic award limited to **£19,290** (30 weeks' pay at the maximum weekly rate) as at 6 April 2023. The maximum compensatory award from 6 April 2023 is **£105,707**, or 52 weeks' pay, whichever is the lower. A week's pay from 6 April 2023 is **£643**. The Employment Rights (Increase of Limits) Order 2023 The Labour Party has indicated that it will implement major changes to unfair dismissal protection in Great Britain if it wins the next election. This would include a day one right not to be unfairly dismissed and a removal of the limits on the compensatory award for unfair dismissal. Media reports have indicated that employers would still be able to operate probationary periods, but further details on potential changes are awaited.
NI	The qualifying period is 1 year's service (save in certain situations where there is no qualifying period) with the maximum basic award limited to **£20,070** from 6 April 2023 (30 weeks' pay at the maximum weekly rate). The maximum compensatory award from 6 April 2023 is **£105,915.** This is not subject to the 52 weeks' pay limit as in GB. A week's pay from 6 April 2023 is **£669.** **NI Business Info:** https://bit.ly/3Ema9ju The Employment Rights (Increase of Limits) Order (Northern Ireland) 2023
ROI	The qualifying period is 1 year's service (save in certain situations where there is no qualifying period). https://bit.ly/3CaVMg9 The maximum compensatory award is 104 weeks'/2 years' remuneration unless it is a dismissal because of whistleblowing, in which case, the maximum compensation is five years' remuneration. There are currently no plans to review. http://bit.ly/1H1qAjq **Unfair Dismissals (Increased Protections for Workers) (Amendment) Bill 2023** The Unfair Dismissals (Increased Protections for Workers) (Amendment) Bill 2023 proceeded to the second stage in Dáil Éireann in March 2023. The Bill seeks to amend the Unfair Dismissals Act 1977 to broaden the categories of workers included, further protect workers engaged in industrial action and reforming the system of compensation under that Act.

Reform of Written Particulars of Employment and Contract of Employment

GB

The Employment Rights (Miscellaneous Amendments) Regulations 2019

These regulations came into force on 6 April 2020 requiring employers to ensure 'workers' are issued with a written statement of particulars of employment together with associated enforcement provisions (previously this right applied only to employees).

This instrument amends the Employment Rights Act 1996 as follows:

- the written statement is a ‘day 1’ right for all individuals;
- the ‘principal statement’ of the written statement is to be provided no later than the first day of a new job; and
- there is no qualifying period of employment.

The legislation distinguishes between information which must be provided in a single document and information which can be in a supplementary statement (to which the principal statement refers).

The following information must be provided in a single document:

- Names of employer and worker;
- Date employment or engagement begins;
- For employees only: date of continuous employment;
- Rate of pay and frequency (weekly, monthly etc.) of payment;
- Hours of work (including normal working hours, days of week and whether hours/days are variable (and, if so, how they vary);
- Entitlement to holidays (including public holidays) and holiday pay;
- Any other benefits (including non-contractual benefits);
- Length of notice of termination required from employer and worker;
- Job title or brief description of work;
- *If applicable*: Details of non-permanent employment or engagement (e.g. period of fixed-term contract);
- Any probationary period which starts at the beginning of the engagement, including conditions and duration;
- Place of work and address of employer;
- *If the worker is required to work outside the UK for over a month*: arrangements for working outside the UK (including period, currency of pay, additional pay and benefits and return terms);
- Any part of any training entitlement which the employer requires the worker to complete; and
- Any training which the employer requires but does not pay for.

The following information can be provided in a separate document:

- Sick leave and pay.
- Any other paid leave.
- Pensions and pension schemes (this can be provided within 2 months).

	➢ Details of any collective agreements directly affecting terms (this can be provided within 2 months). ➢ Any other training entitlement (this can be provided within 2 months); and ➢ Disciplinary and grievance procedures (this can be provided within 2 months) https://bit.ly/3z51nCW **Regulation of non-compete clauses** In May 2023 the government announced its intention to introduce legislation to limit the length of non-compete clauses to 3 months. This would not affect paid-for notice, garden leave or non-solicitation clauses. The detail for this proposal is set out in the government's response to the 2020/2021 consultation on post termination restrictions. This can be seen here. Note, however, this was not included in the King's Speech in October 2023 so may no longer be going ahead. Lewis Silkin has written about this **HERE**.
NI	The position in relation to the provision of a written statement of employment particulars remains the same as per Article 33 of the Employment Rights NI Order 1996 which applies to employees only and requires that a written statement is given within two months of commencement of employment. https://bit.ly/38SOi4d
ROI	The **European Union (Transparent and Predictable Working Conditions) Regulations 2022** (the Regulations) The regulations became law on 16 December 2022 and transpose the **Transparent and Predictable Working Conditions Directive.** The regulations set out, amongst other changes, a requirement for 'basic' and 'supplemental' information to be provided to employees at different intervals to those set out in the Terms of Employment (Information) Act 1994. While it was previously the case that employees received a written statement of five core terms of employment within five days of starting a job, and a statement of the remaining terms of employment within two months, the regulations now provide for additional information to be furnished within five days and the remainder to be furnished within one month. The "Day 5" statement (introduced by the Employment (Miscellaneous Provisions) Act 2018) previously required employers to set out: 1. The full names of the employer and employee; 2. The address of the employer; 3. The expected duration of the contract (if the contract is temporary or fixed-term); 4. The rate or method of calculating pay, and the 'pay reference period' (i.e. weekly, fortnightly or monthly); 5. What the employer reasonably expected the normal length of an employee's working day; and week to be (for example, 8 hours a day, 5 days a week). This "Day 5" statement must now also include the following: ➢ Where a probationary period applies, its duration and conditions; ➢ The place of work or, where there is no fixed or main place of work, a statement specifying that the employee is employed at various places or is free to determine his or her place of work or to work at various places; ➢ The title, grade, nature or category of work for which the employee is employed or a brief description of the work; ➢ The date of commencement of the contract of employment; ➢ Any terms and conditions relating to hours of work (including overtime).

Employers should note that the last four items on this list were previously required to be provided to employees within two months of commencement of employment. They must now be set out in the "Day 5" statement.

Separately, all other terms of employment required to be given to the employee under the Terms of Employment (Information) Act 1994 must now be provided to the employee within one month (as opposed to two months as was previously the case):

- A reference to any registered employment agreement or order which applies to the employee and where the employee may obtain a copy of such agreement or order;
- Intervals at which remuneration is paid, e.g. weekly or monthly;
- Terms and conditions in relation to paid leave including paid sick leave as well as the terms and conditions relating to incapacity to work due to sickness;
- Terms and conditions relating to pensions and pension schemes;
- The notice period the employee is entitled to give and receive; and
- Collective agreements which directly affect the employee.

Additional terms must also be included as follows:

- Details of the training (if any) provided by the employer;
- In the case of a temporary agency worker, the identity of the end-user;
- If the working pattern of the employee is completely (or mostly) unpredictable, a reference to the work schedule being variable, the number of guaranteed paid hours and the remuneration for any work performed in addition to those guaranteed hours. There also needs to be detail on the reference hours and days within which the employee may be required to work and the minimum notice period the employee is entitled to before the start of a work assignment; and
- The identity of the social security institutions receiving the social insurance contributions paid by the employer.

Where there is any change to an employee's terms, the employer must notify the employee in writing of the change no later than the day on which the change takes effect (as opposed to within one month as was previously the case).

In addition, the regulations set out that if an employer is required by law or collective agreement to provide training to employees to enable them to carry out the work they are employed to do, this training must be provided to the employee free of charge, during working hours (if possible) and counted as working time (i.e. paid).

bit.ly/3VLvmfi

Dismissal During Probation

GB	Employees in their probationary period would generally not have acquired the requisite 2 years length of service to bring an ordinary unfair dismissal claim. However, the Acas Code of Practice on Disciplinary and Grievance Procedures ("the Code") provides practical guidance to employers for conducting fair disciplinary processes; complying with the Code is recommended good practice in all dismissal situations. This is particularly important because there are a number of claims an employee could bring with no qualifying period, in relation to which following a fair process and compliance with the Code could be relevant considerations for an employment tribunal. Employers must also ensure that they comply with the terms of their own disciplinary procedures. https://bit.ly/31YWK27
NI	While there is no legal requirement to follow any set procedure when dismissing an employee during their probationary period, good practice suggests that employers adhere to the 3-step dismissal and disciplinary process, which involves: • A statement in writing of what the employee is meant to have done wrong (the allegation) and what the employer is considering doing; • A meeting to discuss the situation and a decision; and • Offering the right of appeal. https://bit.ly/32aKvPJ
ROI	In 2021 the Court Of Appeal confirmed in the case of *O'Donovan v Over-C Technology Limited & Over-C Limited* [2021] IECA 37, that dismissal for any or no reason during probationary periods does not require the application of fair procedures to the dismissal, provided the reason for dismissal is not misconduct and contractual procedures do not require specified procedures to be followed in dismissal during probation. As a result of this case employers can feel more comfortable not affording employees on probation the benefit of fair procedures when dismissing them for any or no reason (provided that the reason for the dismissal is not based on allegations of misconduct, and they are not precluded from doing so by contract). Prior to dismissing any employee on probation, employers should review the employee's contract of employment to ensure they are contractually free to terminate for any or no reason (except for misconduct) without following any fair process in doing so. Employees who have less than 12 months' service on probation still have the option to refer the matter to the Labour Court under section 20(1) of the Industrial Relations Act for a non-binding recommendation, regardless of their length of service. It should be noted that the IR approach (although non-binding) to probationary dismissals is different from common law – that fair procedures should still apply – as was demonstrated by a recent Workplace Relations Commission decision in *A Manager v A Health Service Provider* (ADJ-00036339). Despite the position outlined above, proceeding to terminate for any or no reason is not without risk, particularly in relation to very senior employees and employers may wish to seek advice before doing so. **The European Union (Transparent and Predictable Working Conditions) Regulations 2022**. The regulations place a statutory limit on probationary periods. Probationary periods must now be limited to six months. In exceptional circumstances, probationary periods can be extended beyond this period up to a maximum of 12 months if it is in the interest of the employee to have a longer probationary period. It is also possible to extend the probationary period beyond six months if the

	employee was absent from work on certain grounds (e.g. sick leave, maternity leave etc.) during the probationary period. Probationary periods for fixed-term contracts must be commensurate with the length and type of contract. If a fixed-term contract is renewed for the same role, it is not permissible to include probationary periods in the new terms of the contract.

Watchdog For Labour Rights

GB	In June 2021 the government announced that a "powerful" new workers' rights watchdog will be created to act as a "one-stop shop" for enforcement. This would have combined the roles of the separate bodies that currently enforce the minimum wage, police modern slavery, and protect agency workers. This plan has been paused by the current government, but Labour has indicated that it will press ahead with it if it wins the next election.
NI	It was unclear if the proposed body would have been UK-wide (some tax and related matters not being devolved to NI) but regardless, as set out in the GB section above, the plan is currently not being progressed.
ROI	One of the functions of the Workplace Relations Commission (WRC) established under the Workplace Relations Act 2015 is to *'promote and encourage compliance with the relevant laws'* which includes conducting workplace inspections. The Inspection Services monitor employment conditions to ensure employers comply with employment rights legislation. The service is also responsible for enforcement of breaches. The Inspections Services tend to focus on specific sectors of construction, hospitality and Sectoral Employment Order compliance. They might also carry out inspections based on complaints from employees. They also carry out inspections and gather information in relation to other employment laws. For example, employees or interested parties may ask for an inspection in relation to the protection of young people in employment. Find out more about the inspection service here: https://bit.ly/3d2FESD

Changes to Itemised Pay Statements (pay slips)

GB	**The Employment Rights Act 1996 (Itemised Pay Statement) (Amendment) Order 2018** The changes cover payslips for pay periods that begin on or after 6 April 2019. Under the new legislation, payslips must itemise the number of hours paid for where a worker is paid on an hourly rate basis. Different figures must be provided where an employee is paid a different rate of pay for different types of work. In addition, the right to a payslip is now extended to all workers, rather than just employees. The legislation can be found here: https://bit.ly/3mC5Ycb Helpful guidance can be found here: https://bit.ly/2USL7Gn
NI	The position in relation to the provision of an itemised pay statement remains the same as per Article 40 of the Employment Rights NI Order 1996 which provides employees only with a right to receive an itemised pay statement. https://bit.ly/3ngXSpQ
ROI	The right to receive an itemised pay statement is set out in Section 4 of The Payment of Wages Act 1991 which provides an entitlement for employees only to receive a written statement of their pay details. The right is set out here: https://bit.ly/3rhj9lo

Agency Workers

GB	**The Agency Workers (Amendment) Regulations 2019** From 6 April 2020 amendments came into force which meant that all agency workers are entitled to receive equal pay as their permanent equivalents, once a 12-week employment period has passed, whether or not they are paid between assignments. Essentially this abolishes the use of Swedish derogation - the legal loophole which enabled employers to pay agency workers less than permanent staff. https://bit.ly/2W9Pqh3 **Explanatory Memorandum to the Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2019** On or before 30 April 2020, temporary work agencies had to provide agency workers whose existing contracts contain a Swedish derogation provision with a written statement advising that, with effect from 6 April 2020, those provisions no longer applied. https://bit.ly/3mEmUPo **Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2019 (SI 2019/725)** Temporary work agencies must provide agency work-seekers with a Key Information document before agreeing the terms by which the work-seeker will undertake work. This must include information on the type of contract, the minimum expected rate of pay, how they will be paid and by whom. https://bit.ly/3zoCkuH Regulations were introduced last year to allow agency workers to cover the roles of striking workers. Those regulations have now been quashed by the High Court in the case of *ASLEF v Secretary of State for Business and Trade*.
NI	No corresponding updates for NI similar to that of GB – the Swedish Derogation still applies as set out in Article 10 of the Agency Workers Regulations (Northern Ireland) 2011. NI Direct Guidance: https://bit.ly/3DcfCYb Agency Workers Regulations (Northern Ireland) 2011: https://bit.ly/3hdImau
ROI	The **Protection of Employees (Temporary Agency Work) Act, 2012** defines an "agency worker" as "an individual employed by an employment agency under a contract of employment by virtue of which the individual may be assigned to work for, and under the direction and supervision of, a person other than the employment agency". According to the WRC website "*the Act provides that all temporary agency workers must have equal treatment with workers hired directly by the hirer in respect of pay, working time, rest periods, night work, overtime, holidays, etc*". Equal treatment is a day one right (i.e. there is no 12-week qualifying period) and there is no Swedish derogation loophole. The WRC has more information on the rights of Agency Workers here: https://bit.ly/3EnpiQR The Protection of Employees (Temporary Agency Work) Act, 2012 is available here: https://bit.ly/3d8alpq

Reform Of Family Friendly, Parental & Carers Rights

GB	From 1 April 2023 Statutory Maternity Pay (SMP), Statutory Paternity (SPP), Adoption and Shared Parental Pay is £172.48 per week. Uprating Order **The Parental Bereavement (Leave and Pay) Act 2018** From 6 April 2020 the Act provides at least two weeks' leave for employees following the loss of a child under the age of 18 or a stillbirth after 24 weeks of pregnancy. Employees with 26 weeks' continuous service will be entitled to two weeks of paid leave at the statutory rate and other employees will be entitled to unpaid leave. The Parental Bereavement Leave Regulations 2020 (SI 2020/249) introduced parental bereavement leave. The Statutory Parental Bereavement Pay (General) Regulations 2020 (SI 2020/233) introduced parental bereavement pay. **The Neonatal Care (Leave and Pay) Act 2023** The Neonatal Care (Leave and Pay) Act 2023 became law on 24 May 2023. Rights are expected to come into effect in April 2025. It will allow parents in GB to take up to 12 weeks of paid leave, in addition to other leave entitlements such as maternity and paternity leave. The neonatal care leave will be available to employees from their first day in a new job and will apply to parents of babies who are admitted into hospital up to the age of 28 days, and who have a continuous stay in hospital of 7 full days or more. Lewis Silkin has written about this **HERE**. https://bit.ly/3M5t5rz **Carer's Leave Act** The Carer's Leave Act 2023 became law on 24 May 2023. Its rights are expected to come into force in April 2024 at the earliest. This provides a new right of one week's unpaid leave for providing or arranging care for a dependant with a long-term care need. Lewis Silkin has written about this **HERE**. **Extension of Childcare Provision** In March 2023's Budget it was announced that the 30 hours of free childcare currently available for working parents in England is to be expanded to cover one and two-year-olds. It will be rolled out in stages from April 2024. **Paternity Leave changes** In June 2023 the government published a response to the 'Good Work Plan' which includes some proposed relaxation of the rules around how and when statutory paternity leave can be taken. Under the proposals, fathers/partners will be able to take paternity leave at any point in the first year after birth/adoption and will be able to split it into two blocks of one week. Changes could be introduced in April 2024 but this is not confirmed.

NI	From 1 April 2023 Statutory Maternity Pay (SMP), Statutory Paternity (SPP), Adoption and Shared Parental Pay is £172.48 per week. Uprating Order **The Parental Bereavement (Leave and Pay) Act 2022** The Parental Bereavement (Leave and Pay) Act (Northern Ireland) 2022 was enacted in March 2022. The Act has now been supplemented by regulations which flesh out how the new right will operate. In summary, the legislation provides for: - two weeks' parental bereavement leave ("PBL") for working parents upon the death of a child aged under 18, or a stillbirth (from 24 weeks of pregnancy), irrespective of their length of service; - employees taking PBL being entitled to statutory parental bereavement pay ("SPBP"), paid at the lower of £156.66 per week or 90% of their normal weekly earnings, so long as they meet certain qualifying criteria. Employers will administer SPBP in the same way as existing family-related statutory payments such as maternity, adoption and paternity pay. Lewis Silkin has written about this **HERE**. Following a public consultation and agreement on subsequent regulations, the current parental bereavement rights are to be extended to include working parents who suffer the loss of a child through miscarriage. It is also proposed that working parents will become entitled to all rights from day one of their employment. Currently, parental bereavement pay is only available to employees who have been continuously employed with their employer for 26 weeks prior to the death of the child. The miscarriage and period of eligibility changes must apply no later than 2026. Relevant regulations are as follows: The Parental Bereavement Leave Regulations (Northern Ireland) 2023 (revoked) (legislation.gov.uk) The Parental Bereavement Leave and Pay (Consequential Amendments to Subordinate Legislation) Regulations (Northern Ireland) 2023 (revoked) The Statutory Parental Bereavement Pay (General) Regulations (Northern Ireland) 2023 (revoked) (legislation.gov.uk) **Neonatal and Carer's Leave** The Acts in the GB section above are intended to extend to NI. However, as employment law is devolved to NI, it will be up to the NI Assembly to decide whether similar provisions should apply in NI. The Assembly is not sitting and there are currently no plans for similar provisions. Rights in relation to being a carer in NI are governed by existing legislation including flexible working, time off for dependents, time off in an emergency and disability discrimination legislation. It remains to be seen if the Protocol on Ireland/Northern Ireland/Windsor Framework will require the Work-life Balance Directive to be implied into Northern Irish law under the non-diminution of rights principle (see ROI section for further details on this Directive). https://bit.ly/3u9rYgu **Domestic Abuse (Safe Leave) Act** The NI Assembly has passed legislation that will entitle victims of domestic abuse to 10 days' paid leave each leave year. The commencement date of the new right remains to be confirmed.

	It introduces a right for victims of domestic abuse to have 10 days' paid leave per year off from work to make any necessary arrangements and provides for protection of their employment rights while absent. Domestic Abuse (Safe Leave) Act 2022
ROI	**Parental Leave** The **Parental Leave Act, 1998** (as amended by the Parental Leave (Amendment) Act 2006 and the Parental Leave (Amendment) Act 2019 entitles each parent up to 26 weeks of unpaid parental leave. The leave must be taken before the child is 12 years of age or 16 where the child is disabled. Leave is unpaid. https://bit.ly/3ymmQaf **The Family Leave and Miscellaneous Provisions Act 2021** implemented changes to parents and adoptive leave as follows: • Since July 2022, the **Parent's Leave and Benefit Act 2019** entitles parents of babies born (or adopted) on or after 1 July 2022 to 7 weeks (increased from 5 weeks) leave. The leave is to be taken within 2 years of the birth (or adoption) of the child. This is paid by the State at the rate of €262 per week, subject to a person having the appropriate PRSI contributions. https://bit.ly/2VsIpam • **Adoptive Leave Acts 1995 and 2005** This Act enables adoptive couples to choose which parent may avail of adoptive leave and, in doing so, rectifies an anomaly in the original legislation that left married male same-sex couples unable to avail of adoptive leave. https://bit.ly/3yrE1Hk **Parental Bereavement Leave (Amendment) Bill 2019** Proposals are in place in the form of a Private Members Bill to amend the Parental Leave Acts 1998 and 2006 to make provision for an entitlement to bereavement leave to an employee who is a bereaved parent of a child who has died. The Bill has is currently before Dáil Éireann, Second Stage. **Paid leave upon miscarriage** Currently in Ireland, paid leave (maternity and paternity) upon stillbirth or miscarriage is only available after the 24th week of pregnancy. However, the Organisation of Working Time (Reproductive Health Related Leave) Bill 2021 makes provision for paid leave even if miscarriage or stillbirth occurred before the 24th week. It also provides for paid leave for the purposes of availing of reproductive healthcare such as IVF. The Bill is currently in the Seanad Third Stage and may be enacted this year. **Carer's Leave Act 2001** According to the WRC website "*the Carer's Leave Act 2001 provides for the entitlement of an employee to avail of unpaid leave from his/her employment to enable him/her to personally provide full-time care and attention to a person who needs such care. The minimum statutory entitlement is 13 weeks, and the maximum is 104 weeks in respect of any one care recipient*". More information on the right from the WRC: https://bit.ly/3d2NXxN Carers Leave Act 2001: https://bit.ly/3FUGYmU

	The **Work Life Balance and Miscellaneous Provisions Act 2023 (the Act),** was signed into law on 4 April 2023, thereby transposing into Irish law the **EU Work Life Balance Directive**, the aim of which is to improve families' access to family leave and flexible work arrangements. The key provisions include a right for employees with children up to the age of 12 (or 16 if the child has a disability or long-term illness) and employees with caring responsibilities to request flexible working arrangements for a set period of time for caring purposes, five days' unpaid leave for medical care purposes, an extension of the period during which time can be taken out from work to breastfeed and the extension of maternity leave entitlements to transgender men, the introduction of five days' paid leave for victims of domestic violence and the right to request to work remotely. The sections of the Work Life Balance and Miscellaneous Provisions Act 2023 entitling employees who are carers or parents to five days' unpaid leave for medical care purposes and the extension of breastfeeding breaks (from 26 weeks to 104 weeks) commenced on 3 July 2023. More recently, the entitlement to paid domestic violence leave commenced on 27 November 2023. The Department of Children, Equality, Disability, Integration and Youth, in conjunction with Women's Aid, also published support documentation for employers including a template policy document and guidance note. The guidance note confirms that domestic violence leave will be paid by the employer at the employee's full rate of pay (as had been indicated by the Government earlier this year). The remaining sections of the Act (specifically those relating to remote and flexible work requests) have yet to commence and a Code of Practice is awaited from the WRC. Laura Ensor and Linda Hynes of Lewis Silkin reported on the introduction of the Act and provided some practical advice for employers in the retail sector on the steps they need to take in preparation for the commencement of the Act **HERE**. The Act can be found here https://www.oireachtas.ie/en/bills/bill/2022/92/

Reform Of The Public Interest Disclosure Legislation (Whistleblowing)

GB	A government consultation on the GB whistleblowing framework was launched on 27th March 2023. It is expected to conclude in Autumn 2023. Find the framework for the review **HERE**. In GB the list of Prescribed Organisations for making external public interest disclosures is set out on the Gov.uk website and is available at the link below. While there is some overlap between GB and NI there are some differences, and it is important to be aware of these. https://bit.ly/3vHlJkL Acas have published an updated guide on Whistleblowing in the workplace and it can be accessed **HERE**.
NI	Rights and responsibilities in relation to public interest disclosures are contained with **The Public Interest Disclosure (Northern Ireland) Order 1998 (PIDO 1998)** and Part VA of the Employment Rights NI Order 1996 (ERO 1996). PIDO 1998: https://bit.ly/3DXiBoM ERO 1996: https://bit.ly/3tq0BON In relation to the additional requirements required by the EU Whistleblowing Directive, as set in the GB section, it is unclear whether due to the Protocol on Ireland/Northern Ireland/Windsor Framework that NI will be required to align with the EU in this regard. EU Directive: https://bit.ly/3yRZj07 In NI the list of Prescribed Organisations for making external public interest disclosures is set out in the Public Interest Disclosure (Prescribed Persons) (Amendment) Order (Northern Ireland) 2014 which is available here: https://bit.ly/3vCquw8
ROI	Rights and responsibilities in relation to public interest disclosures are contained within **The Protected Disclosures Act 2014** which aims to protect workers who raise concerns about possible wrongdoing in the workplace. https://bit.ly/3xP3qel **Protected Disclosures (Amendment) Act 2022** **The Protected Disclosures (Amendment) Act 2022 (2022 Act)** was signed into law in July 2022 and came into effect on 1 January 2023. The main changes include: ▸ whistleblowing protections being extended to more categories of workers including shareholders, volunteers and applicants for employment; ▸ the definition and scope of relevant wrongdoings being broadened; ▸ employers not being obliged to follow up on anonymous reporting of wrongdoing; ▸ private sector employers being required to maintain and operate internal reporting channels and procedures; ▸ the list of prohibited penalisation against a whistleblower being broadened; and ▸ the burden of proof being reversed i.e., penalisation will be deemed to have resulted from the worker making a protected disclosure unless the employer can prove that the act or

omission was for some other justifiable reason (and not as a result of the protected disclosure).

The 2022 Act requires private sector employers with more than 50 employees to establish, maintain and operate internal reporting channels and procedures for the making of protected disclosures and in order to follow-up on such complaints. These can be operated internally by a designated person or department or can be provided externally by a third party on behalf of the employer. Since 1 January 2023, employers with over 250 employees have been required to have a whistleblowing procedure in place. From 17 December 2023, the 2022 Act will apply to employers with 50 or more employees. So those employers who will be in scope after 17 December 2023 will need to ensure they update their policies and procedures in line with the legislation to effectively deal with whistleblowing claims and ensure their managers and other relevant staff are trained on the changes. Certain employers such as public bodies are already required to have whistleblowing procedures in place regardless of the number of employees.

According to gov.ie "*a new Office of the Protected Disclosures Commissioner will be established in the Office of the Ombudsman to support the operation of the new legislation on this same date. The Commissioner will direct protected disclosures to the most appropriate body when it is unclear which body is responsible. The Commissioner will also take on responsibility for transmitting all protected disclosures sent to Ministers of the Government to the most appropriate authority for assessment and thorough follow up*".

New statutory Guidance on protected disclosures was published on 20 November 2023. While the Guidance is targeted at the public sector, much of the content is also applicable to the private sector and those employers in the private sector should find the Guidance useful in respect of those provisions of the Protected Disclosures Act (as amended) that apply to them.

The purpose of the Guidance is to assist employers in understanding their obligations under the protected disclosures legislation, and give practical advice as regards best practice in setting up and operating reporting channels for workers to raise concerns about wrongdoing in the workplace. The new Guidance builds on the Interim Guidance published last year and includes template policies for organisations to adapt and use in developing their internal reporting procedures and for prescribed persons to use in developing their external reporting procedures.

The WRC also published some useful Guidance.

Laura Ensor and Síobhra Rush of Lewis Silkin have written about the changes **HERE**.

Reform Of Statutory Sick Pay Arrangements

GB	As of 1 April 2023 the weekly rate for Statutory Sick Pay (SSP) is £109.40. It is paid by the employer for up to 28 weeks. Uprating Order **The Social Security (Medical Evidence) and Statutory Sick Pay (Medical Evidence) (Amendment) (No. 2) Regulations 2022** came into force on 1st July 2022 and applies to England, Wales and Scotland. Since 1 July 2022 a wider group of healthcare professionals have been able to issue fit notes. Amendments to the relevant regulations on who can issue fit notes substitute references to "doctor" with the more broadly defined term "healthcare professional". This covers a registered medical practitioner, a registered nurse, a registered occupational therapist or physiotherapist and a registered pharmacist. Non statutory guidance has been issued to health professionals on this. https://bit.ly/3HqCWVA In October 2023 the government updated its guidance to assist employers in understanding fit notes. It can be found here: https://bit.ly/3LZiKh8 Lewis Silkin provide some useful commentary **HERE.**
NI	As of 1 April 2023 the weekly rate for Statutory Sick Pay (SSP) is £109.40 It is paid by the employer for up to 28 weeks. Uprating Order The Department for Communities states that the **Social Security (Medical Evidence) and Statutory Sick Pay (Medical Evidence) (Amendment) Regulations (Northern Ireland) 2022 (S.R. 2022 No 120)** "remove the need for a doctor to complete and sign a fit note in ink. Instead, the Regulations require that the name of the doctor is contained within the fit note. The Regulations also set out a new version of the fit note which will over time replace the existing version. However, both versions of the fit notes will be used in tandem for an interim period. This change will facilitate doctors being able to issue fit notes by digital means". https://bit.ly/3N0OhN8 **The Social Security (Medical Evidence) and Statutory Sick Pay (Medical Evidence) (Amendment) (No. 2) Regulations (Northern Ireland) 2022** came into force on 1st July 2022. Since 1 July 2022 a wider group of healthcare professionals have been able to issue fit notes. Amendments to the relevant regulations on who can issue fit notes substitute references to "doctor" with the more broadly defined term "healthcare professional". This covers a registered medical practitioner, a registered nurse, a registered occupational therapist or physiotherapist and a registered pharmacist. https://www.legislation.gov.uk/nisr/2022/182/contents/made
ROI	**Sick Leave Act 2022** The Sick Leave Act 2022 was introduced in 2022 requiring employers, regardless of size, to provide statutory sick pay to qualifying employees. Since 1 January 2023, employees have been entitled to three days per year. This will rise to five days from 1 January 2024, and incrementally thereafter to seven days in 2025 and ten days in 2026.

The rate of payment is 70% of an employee's wage, subject to a daily maximum threshold of €110. The daily earnings threshold of €110 is based on 2019 mean weekly earnings of €786.33 and equates to an annual salary of €40,889.16. It can be revised by ministerial order in line with inflation and changing incomes.

The rate of 70% and the daily cap are set to ensure excessive costs are not placed solely on employers, who in certain sectors may also have to deal with the cost of replacing staff who are out sick at short notice. The Act is primarily intended to provide a minimum level of protection to low paid employees, who may have no entitlement to a company sick pay scheme. The legislation expressly states that this does not prevent employers offering better terms or unions negotiating for more through a collective agreement.

The WRC has published the first decision under the new legislation which, helpfully for employers, states that the intention of the legislation is to confer a benefit on employees with no contractual entitlement to paid sick leave and confirms a number of key points:

1. The Act in its entirety does not apply to employers who operate a sick leave scheme that confers benefits which are, as a whole, more favourable to the employee than statutory sick leave;
2. Contractual sick leave benefits, which are either as favourable or more favourable than statutory sick leave, will operate as a substitute for statutory sick leave;
3. In determining whether a company sick leave scheme is "as a whole" more favourable than statutory sick leave, regard must be given to all of the criteria set out at section 9 of the Act. Where certain elements of the company scheme are less favourable than the statutory sick leave, this will not disentitle an employer to rely on section 9 where the overall benefit granted by the employer's scheme is more favourable.

Discrimination and Equality Amendments

GB

Vento Bands

For claims presented on or after 6 April 2023, the Vento bands

are as follows:

- a lower band of £1,100 to £11,200 (less serious cases);
- a middle band of £11,200 to £33,700 (cases that do not merit an award in the upper band); and
- an upper band of £33,700 to £56,200 (the most serious cases), with the most exceptional cases capable of exceeding £56,200.

Changes to the Equality Act

Various changes to the Equality Act are due to be implemented by the Equality Act 2010 (Amendment) Regulations 2023. These have been implemented to plug perceived gaps caused by the Retained EU Law Act (REUL) which removes the supremacy of EU law and the requirement for higher domestic courts to follow EU-based caselaw. This is due to apply **from 1 January 2024**.

The changes are:

- An expanded definition of indirect discrimination meaning there is no need for the claimant to share the same protected characteristic as the group placed at a particular disadvantage.
- Adding the "single source" comparison for equal pay claims, which can apply if the claimant and comparator work at different employers.
- Expanding the definition of day-to-day activities to include a person's ability to "participate fully and effectively in work life" on an equal basis with others.
- Clarification that special treatment in connection with "maternity" is not direct sex discrimination (in addition to pregnancy and childbirth).
- Removing the workplace exclusion in relation to breastfeeding, meaning it is direct sex discrimination to treat an employee less favourably because she is breastfeeding.
- Expressly extending protection from unfavourable treatment for pregnancy/maternity beyond the "protected period" to the period after return from maternity leave, if the treatment relates to pregnancy or pregnancy-related illness during the protected period.
- Extending protection from pregnancy/maternity discrimination beyond those entitled to statutory maternity leave, to cover individuals with maternity rights under a different statutory or contractual scheme.
- Extended liability for discriminatory statements in connection with recruitment, to statements made outside a recruitment process where there is no identifiable victim. The changes also make the employer vicariously liable for statements made by somebody who is not an employee or agent, if there are reasonable grounds for the public to believe that they are capable of influencing the making of a recruitment decision by the employer.

Lewis Silkin has written about this **HERE**.

Protection from Redundancy (Pregnancy and Family Leave) Act 2023

The Protection from Redundancy (Pregnancy and Family Leave) Act 2023 became law on 24 July 2023. The rights are expected to come into effect in April 2024 at the earliest.

The new law will give those who are pregnant, or a recent returner from family leave, priority status for redeployment opportunities in a redundancy situation, extending the protection that currently applies to those on maternity leave.

Lewis Silkin has written about this **HERE**.

Gender Pay Gap Reporting

Organisations with 250 or more employees must report on their gender pay gap figures annually. The government has recently announced that as a matter of general policy going forward, businesses with under 500 employees should be exempt from reporting regulations. It is currently unknown if the government intends to amend the gender pay gap reporting regime to increase the threshold in this way, but this is theoretically a possibility.

The legislation for the private and voluntary sector can be found here:

https://bit.ly/3LQrZ1c

The legislation for public bodies can be found here:

https://bit.ly/3BfYRKL

Although not bound by the EU Pay Transparency Directive, its implementation may bring about changes in practice in the UK too. For example, we may see more employers adopting recruitment practices such as advertising roles with salary ranges.

Guidance on ethnicity pay reporting

In April 2023 the government issued new guidance for voluntary reporting on ethnicity pay gaps– with the option of internal or external reports. The approach largely mirrors the gender pay gap regime. It suggests basing categories on the 2021 census questions, and minimum category sizes – 5-20 for internal reports, 50 for external reports. The difficulty in gathering accurate data, the varying demographics around the UK and the data protection concerns may mean there will be limited participation.

Lewis Silkin has written about this **HERE**.

Guidance on positive action

In April 2023 the government published new positive action guidance. Employers in Great Britain can opt to use the positive action measures in the Equality Act 2010 to help employees improve representation, with the new guidance providing information on how to do this lawfully.

Lewis Silkin has written about this **HERE**.

ACAS Guidance on mental health and reasonable adjustments

Acas has published new guidance for employers around making reasonable adjustments in the workplace for those with mental health conditions, including practical suggestions on collaboration, preparing for meetings, and the importance of managers.

Lewis Silkin has written about this **HERE**.

ACAS Guidance on Non-Disclosure Agreements (NDAs)

Arbitration service ACAS has published advice for firms and workers about NDAs, including how to avoid misuse.

https://bit.ly/3yqBwEi

	Worker Protection (Amendment of Equality Act 2010) Act This Act introduces a new proactive duty on employers to take reasonable steps to prevent sexual harassment of employees / workers. Failure to do this could lead to an uplift in compensation if a claimant succeeds in a harassment claim. The original proposal to introduce employer liability for harassment of employees by third parties, and for the new proactive duty to require "all" reasonable steps to be taken, did not survive the passage through Parliament. This will come into force in October 2024. The Equality and Human Rights Commission is planning to update its technical guidance on sexual harassment and harassment at work to cover the new duty. Lewis Silkin has written about this **HERE**. **Forstater v CGD Europe [2021]** A woman who lost her job after saying that people cannot change their biological sex has won an appeal against an employment tribunal decision. Maya Forstater, 47, did not have her contract renewed after posting tweets on gender recognition. She lost her original case in 2019, with the judge finding that her beliefs were "not worthy of respect in a democratic society", and therefore not protected by discrimination law. However, on appeal it was determined that gender critical beliefs (which many trans people and others find offensive) did meet the legal test for a philosophical belief to earn legal protection under the Equality Act 2010. https://bit.ly/3jnqI5O Following this EAT decision, the case returned to the Employment Tribunal to consider whether the Claimant had been discriminated against because of her gender critical beliefs. The Employment Tribunal found that she had been. Her tweet about her gender critical beliefs was not objectively inappropriate or offensive, and her employer's actions could not be justified as a proportionate restriction on manifesting those views inappropriately. The ET judgment indicates that the right to hold a belief includes a limited right to assert that belief, and that taking detrimental action over statements of belief can therefore, in some circumstances, be regarded as unlawful direct discrimination. Lewis Silkin has written about this **HERE**. **Higgs v. Farmor's School and another [2023]** In this case the EAT again considered the question of clashing views in the workplace, and specifically gender critical/religious beliefs and LGBT+ rights. The EAT held that the Employment Tribunal had failed to properly consider whether, in dismissing the Claimant for gender critical facebook posts, it had properly considered whether the school's actions were because of, or related to, Mrs Higgs manifesting her beliefs. In considering this point, the EAT also provided useful guidance on what factors will be taken in account in assessing the proportionality of any interference with the right to freedom of belief and expression. Lewis Silkin has written about this **HERE**.
NI	In NI anti-discrimination legislation is comprised of a number of separate pieces of legislation, unlike GB where equality rights are enshrined in the Equality Act 2010. While there have been discussions that NI should also create a similar act there are currently no plans to do so. Current anti-discrimination legislation in NI is as follows: - Equal Pay Act (NI) 1970); - Sex Discrimination (NI) Order 1976;

	❯ Race Relations (NI) Order 1997; ❯ Disability Discrimination Act 1995; ❯ Fair Employment and Treatment (NI) Order 1998; ❯ Section 75 Northern Ireland Act 1998; ❯ Employment Equality (Sexual Orientation) Regulations (NI) 2003; ❯ Equality Act (Sexual Orientation) Regulations (NI) 2006; and ❯ Employment Equality (Age) Regulations (NI) 2006. **Vento Bands** There is no equivalent to the Guidance from the President of Employment Tribunals updating the Vento bands in NI. In practice Employment Judges will often use the Vento bands as a starting point, although they are not required to do so. For claims presented on or after 6 April 2023, the Vento bands are as follows: ❯ a lower band of £1,100 to £11,200 (less serious cases); ❯ a middle band of £11,200 to £33,700 (cases that do not merit an award in the upper band); and ❯ an upper band of £33,700 to £56,200 (the most serious cases), with the most exceptional cases capable of exceeding £56,200. **Gender Pay Gap Reporting** The **Employment Act (Northern Ireland) 2016** contains provisions relating to gender pay gap reporting in NI. However, the relevant provisions have not yet been brought into force. It is likely that implementation will be taken forward in the context of the development of the new Gender Equality Strategy. However, given that there has been no consultation, or anything brought before the Assembly to date, it is not expected that any steps will be taken until Assembly business resumes. https://bit.ly/3moKNca **Promoting Equality in Employment for Women Affected by Menopause** Useful guidance from the Equality Commission, Labour Relations Agency and NICICTU was published in 2021. https://bit.ly/2XRcpOj The Department of Economy launched a consultation on Equality Scheme, Audit of Inequalities and Disability Action Plan 2022-2027 in April 2023 which continued until June 2023. The relevant documents can be found here: bit.ly/41NueK4 There is also a consultation on the Race Relations (NI) Order 1997 which opened on 27 March and closed on 18 June 2023. For more information see: bit.ly/3GXUIQL
ROI	**The Employment Equality Acts 1998-2015** prohibit discrimination under the nine grounds in employment, including vocational training and work experience. A helpful summary of the legislation is available here: https://bit.ly/3267eMT

A public consultation on a review of the **Equality Acts 1998-2015** was held from 6 July to 29 December 2021 to examine the function, effectiveness, awareness of and potential obstacles to take action, scope of current definitions of the nine equality grounds, issues of intersectionality and to consider whether any exemptions should be modified. Some notable changes which may derive from the review include:

- consideration of the gender ground and whether new grounds should be added, such as the ground of socio-economic discrimination;
- changes to current definitions, including in relation to disability;
- amendments or removal of certain exemptions; and
- changes to the redress mechanisms.

On 12 July 2023, the Minister for Children, Equality, Disability, Integration and Youth published a summary of the submissions received in response to the public consultation and, on 20 July 2023, a second set of recommendations from the Irish Human Rights and Equality Commission was published as part of its ongoing engagement with the review.

The Government has included a new bill, the Equality Acts Amendment Bill, (the purpose of which is to provide for legislative amendments arising from the review of the Equality Acts), in its legislative programme for the Autumn 2023 session, but it is at very early stages (Heads of Bill still in preparation).

https://bit.ly/3lsEvt4

The **Gender Pay Gap Information Act 2021** was signed into law in July 2021 and regulations setting out the detail of the reporting obligations were published on 3 June 2022.

The Act requires organisations with over 250 employees to report on their gender pay gap since December 2022.

Employers must choose a 'snapshot' date of their employees in June of every year and report on the hourly gender pay gap for those employees on the same date in December of that year (using 12 months' data up to June for the given year).

Employers will have to report:

- mean and median pay gaps;
- mean and median bonus gaps;
- the proportion of men and women that received bonuses;
- the proportion of men and women that received benefits in kind; and
- the proportion of men and women in each of four equally sized quartiles.

Employers are also required to publish a written statement setting out, in the employers' opinion, the reasons for the gender pay gap in their company and what measures are being taken or proposed to be taken by the employer to eliminate or reduce that pay gap.

The reporting requirement currently applies to organisations with 250 or more employees but will extend over time to organisations with 50 or more employees as follows:

- 150+ employees: 2024
- 50+ employees: 2025

It was intended that an online reporting system would be in effect from 2023 but this has yet to be put in place.

https://bit.ly/3ikTcwp

The Irish government has published guidance on how to calculate the gender pay gap metrics:

https://bit.ly/3NwLI60

There are also frequently asked questions for employers, which was updated in October 2022:

https://bit.ly/3LOJzRW

Síobhra Rush, Partner, Lewis Silkin has written this article for Legal Island and another article on these developments.

At EU level, the EU Pay Transparency Directive came into effect on 6 June 2023 and must be implemented by Member States within three years (by 7 June 2026), making gender pay gap compulsory for many employers across Europe. The Directive seeks to provide more transparency in pay across the EU to uncover unjustified gender-based pay differences for equal work of equal value and help victims of pay discrimination to seek redress. It requires employers to publish pay gaps for the workforce as a whole, and also report internally on pay gaps within categories of workers doing the same work, or work of equal value. Significant pay gaps in any category of worker will mean that the employer must carry out a detailed equal pay assessment and develop an action plan.

It also includes other measures to target pay discrimination including a ban on asking job applicants about their salary history, an obligation on employers to publish information about pay ranges on job adverts, and a right for workers to know the average pay for workers doing the same job or jobs of equal value.

Siobhra Rush, Partner, Lewis Silkin and Tom Heys, Legal Analyst, Lewis Silkin wrote this article on the Directive.

While Ireland's gender pay gap legislation seems to align with many aspects of the Directive, it is likely that Irish legislation will need to change to ensure Ireland meets all the Directive's requirements. Siobhra Rush also wrote this article on how gender pay gap reporting in Ireland will need to change to fully meet the requirements of the Directive.

Two Private Members' Bills have been put forward by Sinn Fein and Fianna Fail which also deal with advertising remuneration (the Employment Equality (Pay Transparency) Bill 2022 and the Remuneration Information and Pay Transparency Bill 2023). Both Bills are at very early stages.

A new Private Members Bill, the **Irish Corporate Governance (Gender Balance) Bill 2021** was introduced in 2021 by TD Emer Higgins to make provision for the regulation of gender balance on the boards and governing councils of corporate bodies and related matters. The Bill is currently before Dáil Éireann, Second Stage.

https://bit.ly/3mmCtdD

The **Employment Equality (Amendment) (Non-Disclosure Agreements) Bill 2021** introduced on 1 June 2021 would create a law to restrict the use of non-disclosure agreements as they relate to incidents of workplace sexual harassment and discrimination. The Bill was debated in July 2022 and Senators indicated that they were keen to maintain momentum. Follow the Bill's progress here: https://bit.ly/37msSeM

Lewis Silkin wrote about this **HERE**.

Code of Practice on Harassment and Sexual Harassment

A new Code of Practice on Sexual Harassment and Harassment at Work was published in 2022.

	The Code highlights that people in precarious work and new workers, including immigrant workers, are particularly vulnerable to sexual harassment and harassment. It sets out procedures that establish work environments which are free of harassment and respect everyone's dignity. **Code of Practice on Equal Pay** A further Code of Practice on equal pay was published in 2022. The Code provides guidance to help employers identify pay inequality and to eliminate it, including how to conduct a pay review which incorporates a rational and objective job evaluation model. The Code sets out how someone who considers that they are not being paid equal pay for their like work, should raise this internally at first before then proceeding, if necessary, to the Workplace Relations Commission or the Courts. In the case of **Nano Nagle School v Daly [2019] IESC 63** the Supreme Court ruled that reasonable accommodation is a specific duty that must be considered by an employer when dealing with a disabled employee and appropriate measures must be implemented by an employer, subject to it being a disproportionate burden. https://bit.ly/3mhELeQ **The Gender Recognition (Amendment) Bill 2017** will amend the Gender Recognition Act 2015 to provide a right to self-determination for persons who have reached the age of 16 years; to introduce a right to legal gender recognition for persons under the age of 16 years; and to ensure consideration of the status of non-binary persons in Irish law. The Bill is currently before Seanad Éireann, Third Stage. https://bit.ly/386uV7m Unlike in GB and NI there is no equivalent to the Vento Bands. The 2021 decision from the WRC in the case of **Barbara Geraghty v The Office of the Revenue Commissioners [2021] ADJ-000000312021**, was the first instance of the WRC disapplying national law for conflicting with EU law. In this age discrimination (mandatory retirement dismissal case), the WRC disapplied the Civil Service Regulations Act 1956 on the basis that it conflicted with EU-derived employment equality matters. https://bit.ly/3E2ppzZ

Work of Equal Value

GB	**Asda Stores Ltd (Appellant) v Brierley and others (Respondents) UKSC 2019/0039** The Supreme Court dismissed the appeal by Asda (from the Court of Appeal) confirming the finding of earlier courts that the Claimants, mostly females employed in the retail part of the business, can compare themselves to the predominately male workforce employed at the distribution depots. Asda appealed on the basis that this was not a valid comparison and the essential question on this appeal was whether common terms apply between the claimants' and comparator's establishments, thereby satisfying the common terms requirement in the equal pay legislation. The Supreme Court's dismissal of the appeal does not mean that the claimants' claims for equal pay will succeed. At this stage all that has been determined is that the Claimants (in the retail part of the business) can use terms and conditions of employment enjoyed by the distribution employees as a valid comparison and can therefore pursue this matter to an Employment Tribunal. Supreme Court judgment: https://bit.ly/3h0wKaB Case review: https://bit.ly/2YqSFl2 **K & Ors v Tesco Stores Ltd [2021]** The European Court of Justice has confirmed that Tesco shop workers can rely directly on European law to compare themselves to distribution centre workers for the purposes of an equal pay claim. Unlike the Brierley decision, the claimants wanted to rely directly on EU law. Article 157 of the Treaty on the Functioning of the European Union (TFEU) allows a comparison to be made between employees if there is a "single source" that is responsible for setting their pay. This approach means that it doesn't matter if the employees do different jobs in different places, so long as a single employer is responsible for ensuring equal pay. The Equality Act does not contain the single source test. The ECJ ruled that the TFEU imposes obligations on employers to ensure both equal work and work of equal value, and this is one of the foundations of the EU. The wording is clear and precise, which means that these provisions can be relied on directly by individuals in equal value claims in the national courts. Although this is only the first stage of the equal pay claims in this case, this decision potentially makes it much easier for equal pay claimants to compare themselves with employees working in different jobs in different locations. ECJ judgment: https://bit.ly/3QyRaXy Case review: https://bit.ly/3QACgQI
NI	Decisions of the Supreme Court and ECJ also apply in NI and the above cases are therefore also important for employers in NI. No equivalent legislation to the GB **Equality Act 2010 (Equal Pay Audits) Regulations 2014** applies in NI.

ROI	The Employment Equality Acts 1998-2015 (the 'EEA') deals with equality in the workplace and governs the law in relation to equal pay in the workplace. An employee's right to equal pay for like work applies to all nine protected characteristics, including gender, provided for in the EEA. The definition of 'like work' is provided for in Section 7 of the EEA. Like work is work that: › is performed in the same or similar conditions as another employee; or › is interchangeable with the work of another employee; or › is of a similar nature to that performed by another employee and any differences between the work performed by another employee are of small importance in relation to the work as a whole; or › is of equal value to the work performed by another employee, having regard to such matters as skill, physical or mental requirements, responsibility and working conditions https://bit.ly/3e276As

Aggravated Breach of Employment Rights

GB	**Section 12A of the Employment Tribunals Act 1996** Where a tribunal finds that an employer has breached a worker's rights, and that the breach has aggravating features, it may decide to order a financial penalty against a respondent. Relevant factors might include the size of the employer, the duration of the breach, and the behaviour of the employer and employee. This penalty is payable to the State. This legislative change increased the maximum penalty for an aggravated breach from £5000 to £20,000 and came into force on 6 April 2019. The financial penalties regime, originally introduced in April 2014, has been of limited success. The intent, however, is that alongside illustrative guidance on its use, the increase in the maximum fine will act as a stronger deterrent and sanction against aggravated breaches of employment law. https://bit.ly/3q5RGkm
NI	No corresponding financial penalties provisions currently exist within the Industrial Tribunal (Northern Ireland) Order 1996. A consultation took place in 2015 regarding reform of the tribunal rules including provision for financial penalties for aggravated breaches as described above, however no subsequent legislative reform followed. Industrial Tribunal Order: https://bit.ly/3mD1VLa 2015 Consultation: https://www.economy-ni.gov.uk/consultations/employment-tribunals-consultation
ROI	There is no equivalent to the aggravated breaches penalty in Ireland.

Reform of Working Time Legislation

GB	The **Supreme Court case of Royal Mencap Society v Tomlinson-Blake; Shannon v Rampersad [2021]** has settled the issue of minimum wage for 'sleep-in shifts', saying that workers should only be paid when they are awake and assisting, not for periods when they are sleeping. Legal Island case review: https://bit.ly/3ABiNYf Supreme Court decision: https://bit.ly/37DoyrR **The Working Time Regulations 1998** is the key legislation governing matters such as rest breaks, maximum working week, minimum holiday entitlement, etc in GB. https://bit.ly/3EVx98V **Changes to recording of working hours** From 1 January 2024, the Working Time Regulations will be amended to clarify that employers do not have to record the daily working hours of their workers (removing uncertainty about the legal position in the UK following the European Court of Justice ruling in CCOO v Deutsche Bank SAE (C-55/18), which required employers to record actual time worked each day by their workers). The obligation remains to keep "adequate" records.
NI	Decisions of the Supreme Court also apply in NI and the Mencap case is therefore also important for employers in NI. The **Working Time Regulations (Northern Ireland) 2016** consolidate and replace the provisions of the **Working Time Regulations (Northern Ireland) 1998** and the ten Statutory Rules which amended it from 1998 to 2009. They do not change the substance of the legislation which remains very similar to GB. https://bit.ly/3CWYw0a **Changes to recording of working hours** The changes in the GB section above do not apply in NI.
ROI	The WRC published a **Code of Practice for Employers and Employees on the Right to Disconnect** in 2021. The Code provides that employees have the right to switch off from work outside of normal working hours, including the right not to be required to respond immediately to emails, telephone calls or other messages unless specific circumstances arise which warrant it. The Code, which took effect from 1 April 2021, is designed to complement and support employers' and employees' rights and obligations under the Organisation of Working Time Act and other legislation. https://bit.ly/3yqQScV Since 2023, ROI now has an **extra public holiday** at the start of February to mark Imbolc/St Brigid's day. It will be observed on the first Monday of February except where 1 February falls on a Friday in which case it will be observed on that day. Press release

Reform of Holiday Pay Calculation

GB

Section 10 Employment Rights (Employment Particulars and Paid Annual Leave) (Amendment) Regulations 2018

As of 6 April 2020, the reference period for calculating an average week's pay (for the purposes of calculating statutory holiday pay) was extended from 12 to 52 weeks (or the number of complete weeks for which the worker has been employed if less than this). This calculation method applies to workers with no normal working hours, and workers with normal working hours but whose pay varies with the amount of work done (piece workers) or according to the time / days on which it is done (shift workers).

https://bit.ly/2WpW3vG

Changes to holiday pay, leave entitlement and accrual

The government has now responded to two recent consultations on holiday pay: one for holiday entitlement for part-year or irregular workers, and another on changes in this area linked to the Retained EU Law Act.

The consultation response, accompanied by draft regulations, makes some of the changes proposed in the consultations. The changes will be implemented by amendments to the Working Time Regulations that will come into force on 1 January 2024. The key changes are summarised below:

- Holiday pay for the four weeks of EU-based leave must include:
    - payments, including commission payments, which are intrinsically linked to the performance of tasks which the worker is obliged to carry out under the terms of their contract;
    - payments for professional or personal status relating to length of service, seniority or professional qualifications;
    - other payments, such as overtime payments, which have been regularly paid to the worker in the last 52 weeks.
- "Rolled up" holiday pay is allowed for holiday years from 1 April 2024, so long as:
    - the worker counts as an irregular hours or part-year worker;
    - holiday pay is calculated at 12.07% of all pay for work done;
    - the extra 12.07% is paid at the same time as pay for the work done; and
    - the holiday pay is itemised separately on the payslip.
- A new accrual system for irregular hours and part-year workers - for holiday years from 1 April 2024, they will accrue annual leave entitlement on the last day of each pay period at the rate of 12.07% of the number of hours that they have worked during that pay period. This is subject to a maximum of 28 days per year.
- New rules on carrying forward untaken holiday which apply to the four weeks of EU-based leave – workers can carry this forward if employers don't:
    - recognise their right to paid annual leave (because, for example, they are wrongly classed as a self-employed independent contractor);

- give them a reasonable opportunity to take leave or encourage them to do so; or
- warn them of the risks of losing their annual leave entitlement at the end of the holiday year.

- New rules on carrying forward accrued holiday missed due to sickness or maternity leave:
  - Workers will be able to carry forward their whole 5.6 weeks' statutory annual leave entitlement into the next holiday year if they can't take it due to family leave.
  - Workers will be able to carry forward their four weeks' EU-based annual leave entitlement if they can't take it because of sick leave, but this must be used up within 18 months of the end of the holiday year in which the entitlement originally arose.

The definition of an irregular hours worker applies if the number of paid hours that they will work in each pay period is, under the terms of their contract, "wholly or mostly variable". (Note those whose hours are fixed but whose working **pattern** is irregular are not included.)

The definition of a part-year worker applies if they are required to work only part of the year, with periods of at least a week which they are not required to work and for which they are not paid.

Lewis Silkin have written about this **HERE.**

The Harpur Trust v Brazel [2022] UKSC 21

The Supreme Court has ruled that paid holiday entitlement of part-year workers should not be pro-rated for the weeks they do not usually work. This means that the 12.07% method for calculating the holiday pay hours of casual workers on permanent contracts is no longer a valid approach.

The main thrust of the argument by the Trust was that the use of the 12-week average (now 52 week) gave the claimant a more favourable position than what full-time members of staff would receive. In some instances, it would lead to approximately 17% of her earnings being holiday pay.

However, the judgment held the Working Time Directive, and its transposition was clear when it came to workers with no normal hours in that the statutory formula should be used as the basis to determine the rate of holiday pay. On the argument that it led to absurd results; it was held that whilst the result may not have been intended by Parliament it was not such that some 'slight favouring of workers with a highly atypical work pattern' should not be deemed to be so absurd that it requires a revision of the statutory scheme. The Supreme Court did acknowledge that such a right was not required under the Working Time Directive but that there was nothing to prohibit more generous provisions for workers within domestic law (which is the case under the Working Time Regulations).

The effect of this judgment will now be overridden by the proposed changes to the Working Times Regulations, set to come into on 1 January 2024.

Full Supreme Court Judgment: https://bit.ly/3vZiRRP

Case review: https://bit.ly/3SDKKIC

Chief Constable of PSNI v Agnew & Others [2021]

As *Agnew* (see below) is a Supreme Court case the judgment applies across the UK. However in GB, the Deduction from Wages (Limitation) Regulations 2014 (2014 Regulations) impose a two-year limit on unlawful deductions claims brought after 1 July 2015. These regulations were not introduced in NI. The regulations have already been the subject of challenges (and may continue to come under attack), but they remain in place in GB, limiting employer exposure to back pay claims.

NI	**Chief Constable of PSNI v Agnew & Others [2021]** On 4 October 2023 the Supreme Court released its long-anticipated decision in the case of *Chief Constable of the Police Service of Northern Ireland v Agnew*. It is now clear that a gap of three months between underpayments of holiday pay does not automatically break the chain of a series of deductions. If these are factually linked, the net can be cast much further back with holiday pay liability in NI potentially dating back to 1998 when the Working Time Regulations were introduced, or back to the date on which employees commenced employment, whichever is later. The Supreme Court has also held that holiday is not necessarily disaggregated into Working Time Directive leave, UK statutory leave and contractual leave. The default position is that each day's leave is a composite of all three. This adds complexity because different rules about carry forward and pay apply to the different types of leave. Lewis Silkin set out the implications for employers **HERE**. The Supreme Court decision: here The NI Court of Appeal decision: https://bit.ly/38hRRk1 Case Review of NI Court of Appeal: https://bit.ly/3mD33QP Case Review of Industrial Tribunal decision: https://bit.ly/2UQ6YxY **Changes to holiday pay, leave entitlement and accrual** The changes in the GB section above do not apply in NI.
ROI	The above cases do not apply in the Republic of Ireland. Guidance from the WRC states the following: Calculation of holiday pay in ROI is based on an employee's normal weekly rate and holiday entitlement is based on one of the following calculations: - 4 working weeks in a leave year in which the employee works at least 1,365 hours (unless it is a leave year in which he or she changes employment); - 1/3 of a working week per calendar month that the employee works at least 117 hours; or - 8% of the hours an employee works in a leave year (but subject to a maximum of 4 working weeks). https://bit.ly/3eoXoZn

GB	**Dobson v North Cumbria Integrated Care NHS Foundation Trust [2021]** This case stated that in certain circumstances a provision, criterion or practice (PCP) that requires all workers to be 'flexible' and work weekend shifts, may be indirect discrimination. The EAT, in examining the PCP (the need to work flexibly) stated that the practice did disadvantage women on the basis of their childcare responsibilities. The EAT found that the tribunal should in fact have taken "judicial notice" (meaning no evidence was required on this point) of the fact that women, because of their childcare responsibilities, were less likely to be able to accommodate certain working patterns than men. Accordingly, the appeal was allowed, and indirect discrimination was found. Case review: https://bit.ly/3zml21l Full case: https://bit.ly/2UXq6dG **Flexible working reform** The Employment Relations (Flexible Working) Bill received its Royal Assent on 20 July 2023. April 2024 is the earliest point at which the rights will come into effect, but this is not yet confirmed. Changes can be summarised as follows: - employees will be allowed to make two requests (previously one request) within a 12-month period, and the response time for employers will reduce to two months (previously three months). - employers will have two months to respond to the employee's request (previously they had three months). - Employers must consult with the employee on the request before it is rejected. employees are no longer required to explain the effect (if any) that their flexible working request may have on the employer and how that might be dealt with. - there will be no change to the list of eight reasons the employer has to refuse a request for flexible working. Shortly before the Bill passed, Acas launched a consultation prior to updating their statutory Code of Practice on handling requests for flexible working. The consultation is closed and Acas are reviewing the responses. The promised change to a 'day one right' was not included in this legislation, although the government has confirmed that it intends to pass secondary legislation to implement this. Employment Relations (Flexible Working) Act 2023 **Four-day week campaign** An MP has tabled a Parliamentary bill to reduce the maximum working week to four days. The bill had its first reading in the House of Commons on 18 October 2022 and must proceed successfully through several stages before it can become law. Follow its progress here: https://bit.ly/3sVKZU1 And to find out more about the Four-day Week campaign and the pilot scheme: https://bit.ly/3sEfUDU Scotland has announced that it is to carry out a four-day week trial. A paper has been written showing support for the movement:

	https://bit.ly/3AeBlhj
NI	There are no legislative developments in this area in NI, nor do there appear to be any proposals to amend existing laws. The Labour Relations Agency has produced helpful guidance on hybrid working which includes a sample hybrid working policy. The guidance entitled, 'A Practical Guide to Hybrid Working' is available here: https://bit.ly/2WTqx9H Employers in NI can participate in the four-day week pilot scheme.
ROI	The **Work Life Balance and Miscellaneous Provisions Act 2023**, which was signed into law on 4 April 2023, contains provisions in respect of employees' right to request flexible and remote working arrangements. The key provisions in this regard include a right for employees with children up to the age of 12 (or 16 if the child has a disability or long-term illness) and employees with caring responsibilities to request flexible working arrangements for a set period of time for caring purposes, five days' unpaid leave for medical care purposes and the right to request remote work (see below). ***Right to request flexible work*** This right (which is subject to a commencement order before it becomes operable) applies to employees who are parents (biological, adoptive or having parental responsibility) or caregivers for the purposes of providing care or support. Employees can request a flexible working arrangement in order to provide care or support to certain individuals including the employee's child, partner or parent where that person is in need of significant care or support for a serious medical reason. The legislation provides that a flexible working arrangement will not commence until the employee has six months' continuous employment with their employer. However, this does not prevent the employee from making a request before this time or, indeed, the employer from agreeing to a request with a commencement date prior to this time. ***Right to request remote work*** The right to request remote work is also provided for under the **Work Life Balance and Miscellaneous Provisions Act 2023** and a Code of Practice is to be developed by the WRC. A commencement order is also awaited before these provisions become operable. Key provisions include: • employees making a request for a remote working arrangement must do so in writing at least eight weeks before the proposed commencement date; • as with flexible working requests, there is no minimum service requirement for making a remote working request but the Act again provides that such an arrangement will not commence until the employee has six months' continuous employment, unless it is agreed by the employer that such an arrangement can commence earlier; • employers will have four weeks (this may be extended to eight weeks in certain circumstances) to respond to requests; • employers will have to consider both parties' needs and the provisions of the anticipated Code of Practice (to be drafted by the Workplace Relations Commission) when responding to a request, and to provide grounds for refusal; and • employees will have the right to appeal refusals internally and can also make a complaint to the WRC for technical breaches where the employer has failed to respond or given adequate reasoning when refusing. However, there is no scope for an employee to challenge an employer's reasons for a refusal to grant a remote working arrangement or a decision to terminate the arrangement.

	Right to Request Remote Work for all workers A Remote Working Checklist for Employers was developed by DETE to provide employers with a quick way to navigate the adoption of remote working arrangements: https://bit.ly/3y58lq5 The Health and Safety Authority (HSA) also produced a checklist for employers and employees on home working: Remote Working - Health and Safety Authority (hsa.ie) A **four-day week** pilot was launched in June 2021 for employers to trial the effectiveness of a four-day week for their organisation. Under the pilot programme, employers introduced a four-day week for their employees over a six-month period from 2022, with the support of Four Day Week Ireland. Most companies who took part in the trial reported it to be successful, with many committing to continue it after the trial concluded. https://bit.ly/3gn7k6I

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Amendments to Bullying and Harassment Guidance/Law

GB	Harassment related to a protected characteristic is unlawful under the Equality Act 2010. Bullying is not a legally defined term in GB. Guidance on how to handle a bullying, harassment or discrimination complaint at work is available from Acas: https://bit.ly/32k0AlW See "Discrimination and Equality Amendments" for information regarding the government consultation on sexual harassment in the workplace and the Worker Protection Bill.
NI	In NI, harassment is unlawful under the various anti-discrimination laws and like GB there is no legal definition of bullying. Joint publications from the Labour Relations Agency and Equality Commission on dealing with harassment and bullying in the workplace are available here: https://bit.ly/32jxmDQ Harassment and bullying at work
ROI	The **Code of Practice for Employers and Employees on the Prevention and Resolution of Bullying at Work** was issued by the WRC in conjunction with the HSA in 2020. The Code of Practice came into effect on 23 December 2020 and applies to all employments in Ireland irrespective of whether employees work at a fixed location, at home or are mobile, provides practical guidance on the management of workplace bullying complaints and on the prevention of workplace bullying, in line with the requirements of the Safety, Health and Welfare at Work Act 2005. https://bit.ly/3yKr5wc In 2022, a new **Code of Practice on Sexual Harassment and Harassment at Work** was issued by the Irish Human Rights and Equality Commission and provides practical guidance for employers and employees on how to prevent harassment and sexual harassment at work, and how to put procedures in place to deal with it. Code of Practice on Sexual Harassment and Harassment at Work (ihrec.ie) The two Codes of Practice are not legally binding but are admissible in evidence in proceedings before the courts, the WRC and the Labour Court and are used as a benchmark against which employers will be judged.

Health & Safety Developments for Workers

GB	**The Employment Rights Act 1996 (Protection from Detriment in Health and Safety Cases) (Amendment) Order 2021** This Order extends protections against detriment in health and safety cases to workers (previously, these protections covered only employees). It came into operation on 31 May 2021. https://bit.ly/355UFCX This change was consistent with the High Court decision in the November 2020 *IWGB* case, which directed that the Health and Safety Framework Directive and the Personal Protection Equipment (PPE) Directive should apply to a wider group of workers, not just employees.
NI	**The Employment Rights (Northern Ireland) Order 1996 (Protection from Detriment in Health and Safety Cases) (Amendment) Order (Northern Ireland) 2021** This Order mirrors the position in GB as set out above. It came into operation on 31 May 2021 and was approved by the Assembly in June 2021. https://bit.ly/3yMhDYu **Pregnant Women and New Mothers** HSENI has updated its guidance for pregnant women and new mothers requiring employers to carry out an individual risk assessment for any worker who notifies their employer in writing that they are pregnant, breastfeeding or have given birth in the last six months. The guidance applies to gig economy, agency or temporary workers and will also apply to some transgender men, non-binary people and people with variations in sex characteristics, or who are intersex. The full guidance is available here.
ROI	While Irish law does not recognise the hybrid status of a 'worker' as in GB/NI, the health and safety responsibilities of employers do extend beyond their own employees. You can find out more about this on the HSA's site here.

Right to Work Checks

GB	Since Covid-19 related concessions ended on 1 October 2022, employers must check original hard-copy documents in the way set out in an employer's guide to right to work checks. Individuals with limited immigration permission or who are settled in the UK should use the Home Office online right to work service. Since 6 April 2022, employers of those who hold a Biometric Residence Permit, Biometric Residence Card and Frontier Worker Permit must use the online service in all cases. Since 6 April 2022, digital identity document validation technology (IDVT) has been made available to check the right to work of those who hold a valid British or Irish passport (including an Irish passport card). The first certified provider of this service was approved on 6 June 2022. On 28 February 2023 the Home Office published an updated version of its right to work guidance for employers. This includes important information on the limits of using Identity Document Validation Technology (IDVT) for compliant right to work checks, as well as other significant information. Lewis Silkin wrote about this **HERE**. On 18 October 2023 a further update was published to the right to work guidance, noting that from September 2023 individuals with pre-settled status under the EU Settlement scheme will have this automatically extended unless the person no longer meets the requirements for it. Employers are therefore advised to carry out repeat right to work checks for this group within a month of the date their existing pre-settled status is due to expire. From January 2024, the maximum civil penalty for employing an illegal worker is due to be raised from £20,000 to £60,000.
NI	**Covid-19 Right to Work Check Concessions** Immigration is not a devolved matter and so NI mirrors the rules in GB in this regard.
ROI	It is a criminal offence in Ireland to (i) employ someone who doesn't have permission to work in the State and (ii) enter employment in the State without permission to work. Irish legislation is not prescriptive about what specific right to work checks need to be undertaken. Employers just have to take "*reasonable steps*" to ensure employees are not working illegally. This is advisable as penalties for breaching this Irish legislation are potentially severe. **Employment Permits** In general, in order to work in Ireland a non-EEA national, unless they are exempted, must hold a valid employment permit. The employment permits scheme is administered by the Department of Enterprise, Trade and Employment. All occupations are considered eligible for an employment permit in Ireland unless specifically excluded under the Ineligible List of Occupations for Employment Permits. Occupations listed on the Critical Skills Occupations List are eligible for a Critical Skills Employment Permit. These lists are amended regularly. The Irish government has published the **Employment Permits Bill 2022** which has been drafted to streamline, improve and modernise the employment permit system and increase its responsiveness to Ireland's evolving labour market. The impact of this new legislation won't be clear until it is enacted but, as drafted, the Bill proposes to: • introduce a new type of employment permit for seasonal workers, known as a "Seasonal Employment Permit";

- allow subcontractors to make use of the employment permit system; and
- introduce automatic indexation of salary thresholds; and
- allow the Minister to specify additional eligibility conditions for certain employment permits. For example, training and upskilling may be become a requirement for some employment permits including the provision of accommodation support.

Interestingly, the Bill also specifies that the Minister can make regulations and measures to be taken by the employer of a foreign national to whom a permit is granted to "*increase the skills, knowledge, qualifications, or experience of employees (other than the foreign national) in respect of the employment concern, including the employment of new trainees or apprentices in that employment, or reduce reliance on the employment of foreign nationals including by way of technical changes to work processes*." In effect, the Bill proposes to move operational details to regulations, allowing for ease of update as recruitment practices and labour market needs evolve.

Lewis Silkin recently wrote about this **HERE**.

Other permission to work

Depending on an individual's personal circumstances, a non-EEA national may be granted permission to work in Ireland without requiring an employment permit. An individual's Irish Residence Permit card, which confirms their immigration permission has been registered with the Department of Justice's Immigration Service Delivery, will evidence what immigration permission an individual has been granted.

Additionally, an individual may have been granted permission to work in Ireland on a temporary short-term basis and will have received a Stamp on their passport which evidences their permission to work in Ireland.

Employment Status/Gig Economy/Zero Hours Contracts

GB	**Employment Status Guidance** In July 2022 the government in Westminster published guidance on employment status and associated rights. According to the gov.uk website the guidance "provides practical advice and examples for HR professionals on: • employment status and how it determines the employment rights individuals are entitled to and for which employers are responsible • factors determining an individual's employment status • special circumstances and recent developments in the labour market • how employment status should be determined for different sectors • where to go for further information There are 2 additional pieces of guidance for: • individuals, to help them understand their employment status so that they know their rights, can have informed discussions with their employer about them, and can take steps to claim them and have them enforced where necessary; and • employers or engagers, to help them understand individuals' employment status so they comply with the law, helping ensure individuals receive the rights they are entitled to, and to avoid unnecessary disputes and associated costs". Guidance for HR professionals, legal professionals and other groups: https://bit.ly/3SIYG41 For individuals: https://bit.ly/3QAlMrJ Checklist for employers and other engagers: https://bit.ly/3vYpDaa **Uber v Aslam & others [2021] UKSC 5** This long-running case is relevant to many workers in the gig economy and not just taxi drivers. The Supreme Court held that Uber drivers are workers, due to the degree of subordination and control to which they are subjected. The Supreme Court thought that businesses should not be able to use their written contracts to determine who qualifies for statutory protections and that the question must be one of 'statutory interpretation, not contractual interpretation'. The Supreme Court considered the fact that the drivers were tightly controlled by Uber: they had little or no ability to improve their economic position through professional or entrepreneurial skill. In practice the only way in which drivers could increase their earnings was by working longer hours while constantly meeting Uber's measures of performance. Full Supreme Court judgment: https://bit.ly/3gBoQV0 A review of the Court of Appeal Decision is available here: https://bit.ly/38jQpxK Employment Appeal Tribunal Decision is available here: https://bit.ly/38fxRyw Employment Tribunal Decision is available here: https://bit.ly/3gDaeEH **Addison Lee Ltd v Lange [2021]** This is a very similar case to ***Uber*** above with the exception that there was a contractual clause which mitigated against the recognition of worker status. However, the Court of Appeal made it

clear that it was the interpretation of statute to the factual situation that the court was concerned with rather than the terms of any contract between the two parties. As a result, it reinforces the extent to which the classification of employment is one that rests on the reality of the situation rather than any contractual term that was agreed between the parties.

Full Court of Appeal judgment: https://bit.ly/3jrYI0V

Case Review: https://bit.ly/3zmMa0h

Independent Workers Union of Great Britain v Central Arbitration Committee & another (2023)

This recent Supreme Court decision saw an end to the appeal against the CAC's decision that Deliveroo riders are not "workers" for trade union recognition purposes.

The Supreme Court decided riders were not in an "employment relationship":

- There was a genuine, virtually unfettered and broad power of substitution
- This was inconsistent with the obligation to provide personal service – which is essential to an employment relationship
- They provided a list of 12 other features of the way riders work in practice that are also inconsistent with an employment relationship

This decision confirms that a genuine right of substitution can be the sole test for deciding worker status. Other factors are only needed if there is a limited or no right of substitution.

It also provides further important guidance on who exactly has trade union rights under Article 11 and what amounts to an "employment relationship" providing a right to seek recognition; as far as the highest UK court is concerned, Article 11 does not create any right to compulsory collective bargaining, rowing back from a position that had been hinted at in a series of recent cases decided by the Court of Appeal.

Lewis Silkin has written about this **HERE**.

National Union of Professional Foster Carers v The Certification Officer [2021] EWCA Civ 548

This appeal arose from the respondent's refusal to register the appellant Trade Union as an organisation on the list of Trade Unions. The reason for the refusal was that the members of the Trade Union, namely foster carers, were not wholly or mainly workers within the meaning of Section 1 of the **Trade Union and Labour Relations (Consolidation) Act 1992**.

The Court of Appeal went through the features of interference into Article 11 but the important feature from a strictly employment perspective was that the Court of Appeal declared that, for the purpose of Section 1 of the 1992 Act, the definition of worker was to be extended to those provider services under a foster care agreement. This would have the effect that the respondent would be 'very likely' to be obliged to enter the Union onto the maintained list.

This follows the Scottish case of **Glasgow City Council v Johnstone** in demonstrating greater recognition for foster carers in an employment sense. The difficulty that does arise with foster carers which may come down the line is the nature of the work; it is generally seen as a vocation which applies 24/7 and the fee is payable as a result of the commitment that has to be made. It must be asked how far the rights then apply and whether there needs to be minimum wage on a 24/7 basis as well as other rights that may then apply. The decision to find worker status may in fact lead to more questions than answers.

Full Court of Appeal judgment: https://bit.ly/3yGaYPx

	Case review: https://bit.ly/3kRvhoj **Exclusivity clauses** **The Exclusivity Terms for Zero Hours Workers (Unenforceability and Redress) Regulations 2022** On 5 December 2022, the Exclusivity Terms for Zero Hours Workers (Unenforceability and Redress) Regulations 2022 came into force. These prohibit exclusivity clauses in the employment contracts of workers whose earnings are on, or less than, the lower earnings limit (currently £123 a week). Exclusivity terms are already unenforceable in zero hours contracts, and this extends the protection to workers working under contracts where they are guaranteed a net average weekly wage that does not exceed the Lower Earnings Limit, to ensure that they are also not restricted by exclusivity terms. Eligible individuals can bring proceedings in employment tribunals and may be awarded compensation. The regulations are available here: https://www.legislation.gov.uk/ukdsi/2022/9780348237160/contents **The Workers (Predictable Terms and Conditions) Act** The Workers (Predictable Terms and Conditions) Act will give certain workers, agency workers and employees a new statutory right to request a predictable working pattern. This is expected to apply after 26 weeks of employment, although this will be confirmed in supporting regulations. This Private Member's Bill received Royal Assent in September 2023 and the rights are expected to take effect a year after that. The definition of "lack of predictability" is wide and it will be important for all employers to have procedures in place to deal with these requests reasonably and within the prescribed timeframe. Millions get more power over working hours thanks to new law - GOV.UK (www.gov.uk) Lewis Silkin has written about this **HERE.** https://bills.parliament.uk/bills/3237/stages
NI	Decisions of the Supreme Court also apply in NI and the Uber/Independent Workers Union of Great Britain cases are therefore also important for employers in NI, however the other cases mentioned above are not binding. The **Employment Act (Northern Ireland) 2016** makes provisions for regulations to be enacted to prevent abuses arising out of or in connection with the use of zero hours contracts. https://bit.ly/3uOIKll The **Employment (Zero Hours Workers and Banded Weekly Working Hours) Bill** makes provision in respect of zero hours workers and banded weekly working hours. It reached the Committee Stage in the NI Assembly. Lewis Silkin has written about this **HERE**.
ROI	**The Employment (Miscellaneous Provisions) Act 2018,** which came into force on 4 March 2019, amended the Terms of Employment (Information) Act 1994, so that employers were required to provide certain core information to employees within five days of starting employment and provides employees with a right to minimum payment where an employee is obliged to be available for work but is not asked to come in to work. In addition, the Act prohibits the use of zero-hour contracts, save in limited circumstances (where either the work involved is casual in nature, the employee is essential for providing coverage in emergency situations or for short-term absences), and introduces banded working hours on a statutory basis.

https://bit.ly/2WaDHye

Attempts to improve the correct classification of employees as self-employed or independent contractors have resulted in 3 Private Members Bills:

- The Protection of Employment (Measures to Counter False Self-Employment) Bill 2018
- The Prohibition of Bogus Self Employment Bill 2019
- The Organisation of Working Time (Workers Rights and Bogus Self-Employment) (Amendment) Bill 2019

These Bills have lapsed or been withdrawn. However, the **Code of Practice on Determining Employment Status** was updated in July 2021 to take account of newer business models and forms of work, e.g. gig economy (see developments below arising from the recent Supreme Court decision in Revenue Commissioners v Karshan (t/a Dominos Pizza). The Code, however, retains the historic distinction between 'employed' and 'self employed' without catering for contractual arrangements on either side of this distinction.

https://bit.ly/3D3WNXV

The European Union (Transparent and Predictable Working Conditions) Regulations 2022 came into effect on 16 December 2022, transposing the Transparent and Predictable Working Conditions Directive.

The Directive provides minimum rights for workers with on-demand, voucher-based or platform jobs, like Uber or Deliveroo. The Directive proposes more predictable hours and compensation for cancelled work, and an end to "abusive practices" around casual contracts and a reduction in lengthy probationary periods.

According to the Regulations, employers are not allowed to prevent their employees from pursuing other employment opportunities outside of their current job. Furthermore, employees are now safeguarded from experiencing any negative consequences as a result of engaging in such additional employment.

An employer can restrict an employee from taking up additional employment if the restriction is proportionate and based on objective grounds. The Regulations contain a non-exhaustive list of objective grounds which include:

- Health and safety;
- Protection of business confidentiality;
- Avoidance of conflicts of interest; and
- Compliance with applicable statutory or regulatory obligations and professional standards.

Where an employer does seek to restrict an employee from taking up additional employment, then one of the following requirements must be met:

- details of the restriction (including details of the objective grounds being relied upon) must be included in the contract, or
- a statement in writing setting out the restriction (including details of the objective grounds being relied upon) must be furnished to the employee.

The regulations are here.

https://bit.ly/2UKxQ2A

A long-awaited decision of the Supreme Court in *The Revenue Commissioners v Karshan Midlands Limited t/a Domino's Pizza* was published on 20 October 2023 and will have important implications for workers in the gig economy in Ireland. In its ruling, which overturned the decision of the Court of

Appeal, the Supreme Court found that Domino's Pizza delivery drivers are employees, not independent contractors, for tax purposes.

For employers who operate in this sphere, it brings some important clarification. The Supreme Court essentially reframed the tests (including the much relied upon "mutuality of obligation" test) that should be applied to determine whether or not a working arrangement constitutes a contract of employment. The Court opted for a more simplified approach to this concept, and effectively dilutes what it referred to as the over-development of this concept that had developed over the years.

It confirms that the key analysis is whether there is an obligation for the individual to work in return for an entitlement to receive pay. If the answer is yes, then the Court confirmed this makes a contract "capable" of being a contract of employment, but it is not determinative of such status. Importantly, the Court confirmed that the "mutuality of obligation" does not have to extend into the future beyond the single assignment that the worker is engaged on and the obligation on the employer is not necessarily to provide or to commit to provide future work or for the worker to reciprocate with a commitment to agree to work. The Court helpfully outlined a five-stage analysis that should be applied to determine whether the relationship is one of a contract for services or a contract of service.

Platform Workers Directive

This directive aims to improve the working conditions of platform workers, support the sustainable growth of digital labour platforms in the EU, and provide legal certainty.

It focuses on the employment status of platform workers and proposes new rights for individuals whose work involves the use of algorithmic technology.

The latest draft of the directive provides for a rebuttable legal presumption of employment status when the platform "exerts control and direction" over the performance of work (to be judged by whether three out of seven criteria are met).

The timeframe for the directive to be finalised remains unclear but it is currently expected to be concluded before the terms of the current Commission and Parliament end in spring 2024. If a two-year implementation applied, this would give Member States until spring 2026 to make the necessary changes to domestic law.

Lewis Silkin has written about this **HERE**.

Off-payroll working rules / IR35 Reforms for Private Sector

GB	IR35 is a tax-avoidance rule designed to combat "disguised employment" in situations where an individual contractor is providing their labour to an end user via their own intermediary (often their own company, known as a personal services company). From 6 April 2021, medium and large private organisations, and public sector organisations, must decide whether the IR35 tax rules apply to an engagement with individuals who work through their own company. These organisations, referred to here as the "end user", must assess whether the contractor is employed, or self-employed for tax purposes by undertaking a Status Determination Assessment ("SDS"). The SDS must be provided to the contractor before the first payment to them. If there is an agency in the chain, it must also be provided to the agency. Where the SDS indicates that that IR35 rules do apply, the organisation, agency, or other third party paying the worker's company will need to deduct income tax and employee NICs and pay employer NICs. The end user must provide the SDS to the contractor regardless of whether the determination shows that IR35 will apply or not. The end user must also provide reasons for its determination. A status determination statement issued before 6 April 2021 is valid under the new rules. If the working practices of the engagement change or the end user negotiates a new contract with the worker, the end user must re-check the rules to see if they still apply. A worker or the agency paying the worker's intermediary may disagree with the employment status determination reached by the end user, and the end user must have a dispute resolution procedure to enable this challenge. In this scenario, the end user must: • consider the reasons for disagreeing given by the worker or agency paying their intermediary; • decide whether to maintain the determination and give reasons why, or withdraw the determination because it is accepted that was wrong; and • keep a record of the determinations and the reasons for it. The end user must provide a response within 45 days of receiving the representations from the contractor or fee payer. During this time the end user should continue to apply the rules in line with its original determination. If the end user does respond within 45 days, the responsibility for paying tax and National Insurance contributions will become its responsibility. Helpful guidance is provided here: https://bit.ly/3mDyzhy And here: https://bit.ly/3ynswj6 Plans to repeal IR35 announced by Liz Truss were scrapped as part of the major reversal of proposed tax cuts.
NI	The IR35 rules apply in NI as well as GB.
ROI	There is no equivalent to the IR35 regime in the Republic of Ireland.

Section 2: Collective and Industrial Issues

Reform of Registered Employment Agreements/Registered Employment Orders/Industrial Action Ballots

GB

The Trade Union Act received Royal Assent in May 2016 in GB. The Act introduces:

- A 50% threshold for ballot turn-out;
- An additional threshold of 40% of support to take industrial action from all members eligible to vote in the key health, education, fire, transport, border security and energy sectors – including the Border Force and nuclear decommissioning;
- A six-month time limit for industrial action;
- A requirement for a clear description of the trade dispute and the planned industrial action on the ballot paper; and
- Strict rules on 'check-off' arrangements for collecting union dues in public sector:

http://bit.ly/1Pcb0Hg

Six Statutory Instruments are in place.

Amendment to cap on Union fines for Industrial Action

Trade unions enjoy special protection to call on their members to perform certain unlawful acts. In particular, section 219 of the Trade Union and Labour Relations (Consolidation) Act 1992 allows them to induce workers to break their contracts of employment by taking industrial action, such as by going on strike. However, for this special protection to apply, a trade union must be acting in contemplation or furtherance of a trade dispute, such as a pay dispute. It must also ensure that it only acts after securing its members' support through a properly conducted ballot.

If a trade union were to call on its members to take industrial action without enjoying the protection provided by section 219, it faces potential legal claims for any loss that it causes, such as to the employer(s) affected by any strike. However, since 1982, its liability has been capped at a maximum of £250,000 (for trade unions with 100,000 or more members).

With effect from 21 July 2022, the government has moved to quadruple this cap to £1,000,000, with matching increases in the caps for smaller unions of £40,000 for unions with up to 5,000 members, £200,000 for those with between 5,000 and 25,000 members, and £500,000 for those with between 25,000 and 100,000 members.

The Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2022

All staffing suppliers (including recruitment agencies and other providers of contingent workers) are subject to a statutory compliance regime that is primarily set out in the Conduct of Employment Agencies and Employment Businesses Regulations 2003. These regulations are designed to protect both agency workers and the businesses seeking to engage them (i.e. employers).

According to the explanatory note "[the 2022 Regulations] will remove the prohibition set out at regulation 7 of the Conduct Regulations, preventing employment businesses from introducing or supplying agency workers to hirers to replace individuals taking part in official strike or official industrial action or to replace individuals who have themselves been transferred by the hirer to perform the duties of the person on strike or taking industrial action. A breach of regulation 7 is a

	criminal offence punishable by a fine further to section 5(2) of the Employment Agencies Act 1973. Such breach may also trigger civil liability under regulation 30 of the Conduct Regulations. Regulation 2(a) revokes regulation 7 (restriction on providing work-seekers in industrial disputes) of the Conduct Regulations thus enabling employment businesses to provide agency workers to hirers during official strike or industrial action, removing the prohibition and potential breach of the Conduct Regulations thereunder". The Regulations came into force on 21 July 2022 however, a judicial review of the regulations (heard in May 2023) resulted in the regulations being quashed by the High Court in July 2023. The government has now launched a new consultation on the proposal to repeal regulation 7. This will be open until January 2024 and can be seen here. A useful Lewis Silkin article can be found **HERE**. The Central Arbitration Committee (CAC) helps to resolve collective disputes in England, Scotland and Wales, where such disputes cannot be agreed voluntarily. The CAC is a tribunal for the Department for Business, Energy & Industrial Strategy. **Strikes (Minimum Service Levels) Act 2023** The Strikes (Minimum Service Levels) Act, which gained Royal Assent in July and gives ministers the power to impose minimum levels of staffing during industrial action in key services, covers ambulance staff but not doctors and nurses in hospitals. Employers can serve a "work notice" requiring identified persons to do specific work on a strike day. Unions must take "reasonable steps" to ensure their named members do not strike, and named individuals lose automatic protection from unfair dismissal if they strike. It does not cover action short of striking (such as overtime bans). Further regulations are required before the regime takes effect as the government can only set minimum service levels in regulations after public consultation and approval by both Houses of Parliament. After consultation the government has now published a revised Code of Practice on reasonable steps unions must take to comply with a work notice. In terms of specific sectors, a consultation was undertaken by the Department of Health and Social Care in September/October 2023 on introducing a minimum service level in urgent, emergency and time-critical hospital services, to ensure they continue to operate a "safe service" during strikes. And on 20 October 2023, the government announced plans to introduce minimum service levels in schools and colleges and is seeking to reach voluntary agreement with the unions on this. Strikes (Minimum Service Levels) Act 2023 (legislation.gov.uk) The TUC are set to report the government to the United Nations watchdog on workers' rights regarding this Act. So, watch this space for further updates.
NI	There is no equivalent to the Trade Union Act in NI, no reform of industrial action ballots and no replication of the Minimum Service Levels Bill in GB. The threshold for ballots remains a simple majority of those voting, as per the Trade Union and Labour Relations (Northern Ireland) Order 1995. In NI, a ballot ceases to be effective, and action needs to begin within 4 weeks of the outcome of a ballot, or no longer than 8 weeks if agreed between the union and the member's employer. The limit for a union's potential liability in NI also remains at £250,000 and the ban on using agency workers during legal strike action still applies. The Industrial Court is the equivalent of the CAC in NI. It assists with applications about legal recognition and derecognition of trade unions for collective bargaining purposes, where such recognition cannot be agreed voluntarily.

ROI	In July 2021 the Supreme Court upheld a High Court decision that the Sectoral Employment Order for the electrical industry was unlawful but overturned a finding by the High Court that the power to make Sectoral Employment Orders (SEO) was unconstitutional as set out in Part 3 of the Industrial Relations Act 2015. In Náisiunta Leictreacht (NECI) -v- Labour Court & ors the Supreme Court confirmed that the Oireachtas does have the power to require all employers in a sector to apply a SEO to their employees. https://bit.ly/3jpGYln The Industrial Relations (Sectoral Employment Orders Confirmation) Bill 2020 was drafted to give statutory effect to recommendations of the Labour Court in relation to certain sectors of the economy in light of the above case. The Bill is currently before Dáil Éireann, Second Stage. https://bit.ly/3CPy2i1 There is currently only one SEO in effect, relating to the construction sector, and so employers in that sector will have greater regulations over rates of pay, sick pay and pensions. SEOs that were in place for the electrical contracting sector (referred to above) and, more recently (on 10 October 2023), for the mechanical engineering sector, have been struck down and so no longer apply to employees in those sectors.

Collective Bargaining Rights

GB	Employers are prohibited from inducing workers to opt out of collective bargaining arrangements under s145B of the Trade Union and Labour Relations (Consolidation) Act 1992. In October 2021 the Supreme Court ruled in **Kostal UK Ltd v Dunkley & ors**, that Kostal had breached s145B of the Trade Union and Labour Relations (Consolidation) Act 1992, which prohibits employers from inducing workers to opt out of collective bargaining, when it made a one-off pay offer to employees while the collective bargaining process was still ongoing. However, the Supreme Court in this case confirmed that trade unions do not have a veto over employers making direct offers to members to change their terms and conditions of employment. Employers must, however, follow and exhaust the collective bargaining process with their recognised union **before** making a direct offer with a view to resolving an impasse. Supreme Court Judgment: https://bit.ly/3Fh0kmk **INEOS Infrastructure Grangemouth Limited v Jones & Others and INEOS Chemicals Grangemouth Limited v Arnott & Others [2022] EAT 82** In the first reported application of the Supreme Court's landmark *Kostal* decision, the Employment Appeal Tribunal has ruled that an employer could not unilaterally declare that its negotiations with its recognised trade union had finished. As unionised employers may only make direct offers to employees after exhausting their collective bargaining procedure, the employer now faces punitive fines. While the Supreme Court decision in *Kostal* remains an extremely welcome one for employers, this case is a cautionary reminder of the significant risk involved in making direct offers to employees before industrial negotiations have clearly been exhausted. Employers should carefully consider how events would be understood by an independent observer, and ensure that, before making any direct offers, they have a robust, contemporaneous paper trail unambiguously demonstrating that bargaining has been exhausted. EAT judgment **Independent Workers Union of Great Britain v Central Arbitration Committee & another (2023)** This recent Supreme Court decision saw an end to the appeal against the CAC's decision that Deliveroo riders are not "workers" for trade union recognition purposes. The Supreme Court decided riders were not in an "employment relationship": • There was a genuine, virtually unfettered and broad power of substitution • This was inconsistent with the obligation to provide personal service – which is essential to an employment relationship • They provided a list of 12 other features of the way riders work in practice that are also inconsistent with an employment relationship This decision confirms that a genuine right of substitution can be the sole test for deciding worker status. Other factors are only needed if there is a limited or no right of substitution. It also provides further important guidance on who exactly has trade union rights under Article 11 and what amounts to an "employment relationship" providing a right to seek recognition; as far as the highest UK court is concerned, Article 11 does not create any right to compulsory collective

	bargaining, rowing back from a position that had been hinted at in a series of recent cases decided by the Court of Appeal. Lewis Silkin has written about this here. ***easyJet PLC v easyJet European Works Council [2023] EWCA Civ 756*** In its first ever decision on European Works Councils, the Court of Appeal has confirmed that the EWCs of certain UK-based businesses continue to exist under UK law after the end of the Brexit transition period. easyJet plc's central management is situated in the United Kingdom. Prior to the end of the Brexit transition period, it had operated an EWC under the default legal rules contained in TICER, known as the 'subsidiary requirements'. In anticipation of the end of the Brexit transition period and TICER amendments, and in accordance with guidance issued by the European Commission, it appointed a German representative agent to assume its EWC responsibilities. This was to take effect from the end of the Brexit transition period. In early 2021, easyJet's EWC made a complaint to the Central Arbitration Committee (CAC) in respect of alleged failures by easyJet plc properly to inform and consult. easyJet submitted that the CAC did not have jurisdiction to hear them because the amended TICER meant that it was not obliged to continue to operate its UK EWC alongside its German representative agent operating an EWC under German law. The Court of Appeal held that the CAC did have jurisdiction to hear the EWC's complaints and that the EWCs of UK-based businesses which were established before the end of the Brexit transition period continue to exist – using a different interpretation of TICER than the CAC and EAT. This was despite recognising it was not a well thought through piece of legislation and the practical difficulties this would cause. Lewis Silkin has written about this **HERE**.
NI	While collective bargaining arrangements are dealt with under a different legislative regime in NI than in GB the Supreme Court Judgement in Kostal UK Ltd v Dunkley & ors will also apply in NI. The Labour Relations Agency has a Code of Practice for Disclosure of information to trade unions for collective bargaining purposes which is available here: https://bit.ly/3EeAnmi
ROI	A high-level working group, the Labour Employer Economic Forum (LEEF), was set up in March 2021 to review collective bargaining and industrial relations landscape in Ireland. https://bit.ly/3jthhAi The report which was published in October 2022 and essentially provides that there should be an obligation on employers to engage "in good faith" with trade unions, even where employers do not typically recognise trade unions. The report provides that the minimum threshold for collective bargaining is 10% of the workforce with no minimum limit on the number of employees. Key recommendations to improve the adequacy of the industrial relations framework include: • Improving the existing Joint Labour Committee (JLC) system; • Improving the process for referring disputes to the Labour Court under Part 3 of the Industrial Relations (Amendment) Act 2015; • Setting out a proposed process for good faith engagement by employers; and

	• Improving collective bargaining at enterprise level generally with the proposed allocation of funding for relevant training for employers and trade unions, and the introduction of a proposed Code of Practice on collective bargaining at enterprise level. It also covered as follows: Labour Employer Economic Forum updates This followed a public consultation on collective bargaining held from 26 May – 16 June 2022 seeking views on the proposals being considered by the group. Collective bargaining consultation It was initially suggested that the provisions of the report could become law this year, although 2024 is more likely.

Collective Redundancy and Insolvency

GB	Under s.188 of the Trade Union and Labour Relations (Consolidation) Act 1992 an employer is obliged to consult with employee representatives in advance of any collective redundancy situation for a minimum of **30** days (before any termination takes effective) where 20 to 99 redundancies are contemplated and the consultation must start at least **45** days before any dismissals take effect where 100 plus redundancies are contemplated. s.188(7) provides for an exemption to the above consultation requirements where there are special circumstances which render it not reasonably practicable for the employer to comply. Insolvency might come under the definition of such special circumstances, however in **Carillion Services Ltd (in Liquidation) v Benson [2021]** the EAT held that an insolvency that arose after a steady decline for a series of months as a result of mismanagement and the company holding out for a government bailout, which had never been promised and was never delivered – did not constitute a 'special circumstance'. https://bit.ly/3ebrM9s
NI	In NI, collective redundancy consultation is set out in article 216 of the Employment Rights (Northern Ireland) Order 1996 and employers are required to consult with employee representatives in advance of any collective redundancy situation for a minimum of **30 days** (before any termination takes effective) where 20 to 99 redundancies are contemplated and the consultation must start at least **90** days before any dismissals take effect where 100 plus redundancies are contemplated. Article 216(9) of the Employment Rights NI Order 1996 provides for a 'special circumstances' defence where an employer was unable to comply with these consultation requirements.
ROI	Collective redundancies are governed by the Protection of Employment Act 1977, together with a number of statutory instruments. The legislation requires consultation to be "*initiated at the earliest opportunity and in any event at least **30** days before the first notice of dismissal is given*". The Department of Enterprise, Trade and Employment has proposed a new Action Plan to boost the rights of employees faced with redundancy caused by insolvency and to ensure transparency for employees in insolvency situations. As it stands, if the number of redundancies in any 30-day period exceeds the thresholds in the Act, then collective consultation must be initiated, and notice of dismissal cannot be given within the statutory 30-day period. Statutory notices must also be provided to various parties. This notice period does not however apply where collective redundancies are triggered by insolvency due to an exemption in Section 14 (3) of the Protection of Employment Act 1977. The Government has announced plans to remove that exemption. According to the Action Plan, the new procedure will mean that where a redundancy arises due to a company's insolvency, an employee may be placed on temporary lay-off by the company liquidator for the duration of the 30-day notification period, the employment termination date to coincide with the expiry of the statutory 30-day period. In that event, an employee would be eligible to claim a Jobseeker's Payment during that period due to their being placed on temporary lay-off. https://bit.ly/3mjMg4g Further information is available here. In advance of the Action Plan, an information handbook entitled - *Rights and Remedies available to Employees Facing a Collective Redundancy Situation* has been published. Publication of this information handbook fulfils one of the key commitments in the Plan of Action on Collective

	Redundancies following Insolvency, which sets out Government's work to enhance protections and ensure greater transparency for employees in insolvency situations. https://bit.ly/3mmDfYh **Redundancy Payments (Lay off, Short Time and Calculation of Reckonable Service) Bill 2021** This Bill proposes to amend the Redundancy Payments Act 1967 in respect of periods of lay off and short time and the calculation of reckonable service. It is currently before Dáil Éireann, Second Stage.

Low Pay Commission and National Minimum Wage

GB

Rates

	The rates from 1 April 2022 are:	The rates from 1 April 2023 are:	The rates from 1 April 2024 are
National Living Wage (from April 2024 age 21+ previously 23+)	**£9.50**	**£10.42**	**£11.44**
National Minimum Wage age 21-22	**£9.18**	**£10.18**	**£11.44**
National Minimum Wage age 18-20	**£6.83**	**£7.49**	**£8.60**
National Minimum Wage under 18	**£4.81**	**£5.28**	**£6.40**
Apprentice Rate (for apprentices under 19 or 19 or over who are in the first year of apprenticeship)	**£4.81**	**£5.28**	**£6.40**

The government announced increases to the National Living Wage in October 2023:

Chancellor announces major increase to National Living Wage - GOV.UK (www.gov.uk)

National Minimum Wage and National Living Wage rates - GOV.UK (www.gov.uk)

Seafarer Minimum Wage Consultation

The Government is consulting on introducing pay protection reforms so that seafarers regularly entering UK ports are paid at least the equivalent of the UK national minimum wage. The Harbours (Seafarers' Remuneration) Bill would empower ports to surcharge or refuse access to ferry services that do not pay an equivalent to the national minimum wage to seafarers while in UK waters.

The consultation period began on 10 May 2022 and ran until 7 June 2022.

https://bit.ly/3ahARyx

NI

The National Minimum Wage regulations apply across the whole of the UK and in this respect the position in NI remains the same as the rest of the UK.

ROI

The rates of National Minimum Wage in ROI from 1 January 2024 (and from 1 January 2023 in brackets and italics) are:

Age	**Amount**
Under 18	**€8.89** ***(€7.91)***
18 years old	**€10.16** ***(€9.04)***
19 years old	**€11.43** ***(€10.17)***
NMW (20+)	**€12.70** ***(€11.30)***

https://bit.ly/3yLaQQg

Living Wage **€14.80** ***(€13.85 in 2022/23)***

https://www.livingwage.ie/

Living Wage Bill 2022

This bill is intended to amend the law relating to the determination, declaration and review of a national minimum hourly rate of pay for employees so as to arrive at and thereafter preserve an hourly rate that represents a living income. It is currently before Dáil Éireann, Third Stage. The Low Pay Commission published the Living Wage Report in March 2022.

Council of Europe finds Ireland in Breach of Labour Rights Obligations

The Irish Human Rights and Equality Commission has noted with concern the Council of Europe findings that Ireland continues to be breach of its Labour Rights Obligations under the Revised European Social Charter ('the Charter'). The Charter is a binding human rights treaty that Ireland ratified in 2000. Ireland has been judged as non-compliant with the Charter in areas that include: failure to ensure a "*decent standard of living*" for young workers on minimum wage; excessive restrictions on the right to strike, including that denied to the Gardaí and; for "*manifestly unreasonable*" notice periods for workers and civil servants.

More from the Irish Human Rights and Equality Commission here:

bit.ly/44teRsc

In response to this the Oireachtas introduced the **National Minimum Wage (Equal Pay for Young Workers) Bill 2022** to remove the lower minimum wage rates imposed on those employed between the ages of 16 and 20. This bill is currently at Dáil Éireann, Third Stage. Follow its progress:

https://bit.ly/3QhXkhz

Tips and Gratuities

GB	The **Employment (Allocation of Tips) Act** received Royal Assent on 2 May 2023 and is expected to come into force in 2024. This aims to ensure that tips are distributed fairly amongst staff and paid without deductions. Its main provisions are expected to come into force in 2024. In summary the Act includes: • a requirement for employers to pass on 100% of tips to staff with no deductions, other than those required by tax law; • a statutory Code of Practice on Tipping setting out the principles of fairness and transparency that employers must have regard to. Where a tronc system is in place, this will be viewed as compliant with the Bill provided it is being run as the Bill intends; • requirements for employers to have a written policy on tips, to distribute tips in a way that is fair, transparent and consistent and to keep a record of how tips have been dealt with for three years from the date received; • a right for workers to request information relating to their employer's tipping record over a specified period during which they had worked for the employer, within the last three years. Employers will have flexibility on how to design and communicate a tipping record, but will need to respond to a request for information within four weeks; • a requirement for tips that are distributed via a tronc to be paid no later than the end of the month following the month in which they were paid by the customer; and • a right for agency workers to benefit from the Bill in the same way as workers.
NI	The above Act does not extend to NI and it is unlikely there will be any progress with similar legislation until the NI legislature is restored.
ROI	**Payment of Wages (Amendment) (Tips and Gratuities) Act 2022** The Payment of Wages (Amendment) (Tips and Gratuities) Act 2022 was signed into Irish law by the President in July 2022, and came into effect on 1 December 2022. The Act principally makes amendments to the Payments of Wages Act 1991. Tips which are given by electronic means should be distributed fairly to the employees. Importantly, it will also be Illegal to use tips or gratuities to make up the basic wage. The employer will need to provide a tips and gratuities notice which explains whether or not tips are distributed amongst employees, the way in which tips are distributed and whether any mandatory charges are also distributed to employees, and if so in which way. Employees should also be consulted where employers propose to change the way in which tips and gratuities are distributed. Employers will have to provide a statement to employees within 10 days from the distribution of the tips which outlines the total amount of tips distributed and the amount distributed to the individual employee. This information and further information is set out in this article: https://bit.ly/3pcslVS

Reform of the Law on Transfers of Undertakings (TUPE)

GB	**Retained EU Law Consultation Amendments to TUPE** The government published a consultation paper in May 2023 that proposed changes to the TUPE consultation requirements. The government has now announced that it will implement these changes by way of draft regulations due to come into force on 1 January 2024. These changes will extend the circumstances when employers can consult with employee directly (provided there are no existing employee representatives in place): • Where the business has fewer than 50 employees, irrespective of the size of the transfer; or • Where the proposed transfer involves fewer than 10 employees, irrespective of the size of the business Lewis Silkin has written about this **HERE**.
NI	In NI the Transfer of Undertakings (Protection of Employment) Regulations 2006 apply with the exception of the part dealing with Service Provision Changes. In NI separate regulations, the Service Provision Change (Protection of Employment) Regulations (NI) 2006 deal with such matters. The GB 2014 and 2023 amendments that were made to the Transfer of Undertakings (Protection of Employment) Regulations 2006 do not extend to NI. Transfer of Undertakings (Protection of Employment) Regulations 2006: https://bit.ly/3l9wgSb Service Provision Change Regulations: https://bit.ly/3muJNTX
ROI	There are no corresponding amendments to the TUPE regime in the Republic of Ireland. The legislation governing this complex area is known as the **European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003.** The TUPE Regulations in ROI do not automatically apply on a service provision change. Whether TUPE applies in this type of a situation is a matter for interpretation by the WRC and is very fact/situation specific. https://bit.ly/3EhOQ0G.

Section 3: Tribunal & Other Legal & Dispute Resolution Processes

Tribunal and Dispute Resolution Reform

GB

Tribunal Reform 2020

The Employment Tribunals (Constitution and Rules of Procedure) (Early Conciliation: Exemptions and Rules of Procedure) (Amendment) Regulations 2020 SI 2020/1003 (the 2020 Rules) were laid before Parliament on 17 September 2020 and amend the ET Regulations, ET Rules and also the Early Conciliation (EC) rules set out in Schedule 1 to the Employment Tribunals (Early Conciliation: Exemptions and Rules of Procedure) Regulations 2014 SI 2014/254. The majority of the changes came into force on 8 October 2020 and include:

- The deployment of non-employment judges into employment tribunals if certain criteria on suitability are met;
- The employment of legal officers to carry out some tasks currently performed by employment judges, i.e. uncontentious case management decisions such as considering acceptance or rejection of claim forms and giving permission to amend claims and responses when both parties consent; and
- Increase of the timescale for early conciliation to allow a standard six-week early conciliation process in all cases, rather than a default one month with a possible extension of a further two weeks.

https://bit.ly/3iTt6jW

Road Map for Tribunal Reform

A new 'road map' for employment tribunal proceedings in 2021 and 2022 has been published by the Presidents of the Employment Tribunals in England, Wales and Scotland. Reforms include, for example, the use of video hearings in certain preliminary, interim and short track claims being the default position and the recruitment of additional Legal Officers who will become more involved in case progression work.

https://bit.ly/3sbHhEu

New Guidance Issued on Taking Evidence from Persons Located Abroad

The Presidents of the Employment Tribunals in England and Wales and in Scotland have issued Presidential Guidance on taking evidence from persons located abroad. From 27 April 2022, any party wishing to call a witness to give remote evidence by telephone or video from a foreign jurisdiction must notify the employment tribunal so that steps can be taken to obtain permission from the country in question (via the Foreign, Commonwealth and Development Office's Taking of Evidence Unit).

This guidance was updated in July 2022 and can be found here.

HMCTS Portal

In June 2023 additional functionality was introduced into those regions trialling the MyHMCTS portal. This now allows the portal to be used for the submission of ET3s and will be extended to allow the submission of applications and correspondence with the tribunal. This system is gradually being rolled out to more regions across GB.

NI	**The Industrial Tribunals and Fair Employment Tribunal (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2020 (the 2020 Regulations)** These Regulations and Rules of Procedure establish requirements in relation to proceedings before Industrial Tribunals (ITs) and the Fair Employment Tribunal (FET). They revoke and replace earlier regulations and rules which separately dealt with these tribunals. The 2020 Regulations provide a revised and consolidated text for the rules and procedures of the industrial tribunals and the Fair Employment Tribunal while simplifying language and structure, being consistent with better regulation principles. The 2020 Regulations also take account of the introduction of early conciliation; in particular setting out the implications arising from the adherence, or non-adherence, to the requirements of early conciliation. https://bit.ly/3sMPdfu During the pandemic OITFET employed the use of video hearings to enable hearings to take place remotely. However, there is no equivalent in NI to the GB Roadmap for tribunal reform as described above. In addition, the role of the Legal Officer has not been employed by OITFET in NI. The position on remote and hybrid hearings in NI was updated in March 2023 and can be found here. **Judicial Assessment and Mediation Launched in Northern Ireland** Judicial assessment and mediation were launched in the Industrial and Fair Employment Tribunals from 31 March 2023. This brings Northern Ireland into line with the rest of the UK. Lewis Silkin has written about this **HERE**.
ROI	**Labour Court Rules 2020** On 30 March 2020, the Labour Court revoked the Labour Court Rules 2019 and replaced them with the Labour Court Rules 2020. The new rules simplify the process of appealing a decision and, in particular, facilitate the electronic submission of appeal forms to appeals@labourcourt.ie. The Labour Court also has also introduced a new Employment Rights Appeal Form and a S13(9) Appeal Form. https://bit.ly/3svLToT **Workplace Relations (Miscellaneous Provisions) Act 2021** Came into effect on 29 July 2021. The Act amends aspects of WRC procedures arising from concerns identified by the Supreme Court in Zalewski -v- Adjudication Officer & Ors. It amends the Workplace Relations Act 2015 to allow for public hearings, publication of the names of parties in its determinations, as well as a provision for evidence to be taken on oath or affirmation. https://bit.ly/3fxZHdx **WRC Postponement Process Guidelines – July 2021** On 1 July 2021 the WRC issued new postponement guidelines to update and replace the previous version. Applications for postponements, together with supporting documentation, should be sent to: postponements@workplacerelations.ie Postponement policy: https://bit.ly/3ASHlfo **The Industrial Relations (Amendment) Act 2019**

	This act effective from 7 July 2019 facilitates access to the WRC and the Labour Court by members of the garda force to assist in the resolution of industrial disputes. https://bit.ly/3sFmaun In the case of **Minister for Justice and Equality and The Commissioner of the Garda Síochána v Workplace Relations Commission Case C-378/1** (the 'Boyle' Case) the CJEU determined (4 December 2018) that the WRC Adjudication Service can disapply a rule of national law that is contrary to EU law. https://bit.ly/3AX7j1n The primacy of EU derived rights was reaffirmed in the case of **Barbara Geraghty v The Office of the Revenue Commissioners [2021]** in which an Adjudication Officer disapplied the Civil Service Regulations Act 1956 in favour of the EU equality rights. https://bit.ly/3qfqQ9q The Workplace Relations Commission published a revised remedies table in May 2023. The table sets out the remedies that may be granted by a WRC Adjudication Officer in the different areas of employment and equality legislation which come under the WRC's jurisdiction. Access it in full here.

Early Conciliation – Referral To ACAS/LRA For Conciliation Before Claim Can Be Made to Tribunal Or Other Forum

GB	Early Conciliation has been provided by ACAS in GB since 2014 and was introduced via an amendment to the **Employment Tribunals Act 1996.** The relevant section is **Section 18A**. https://bit.ly/3umUtqW
NI	From 27 January 2020 anyone who wishes to lodge a claim with the Industrial or Fair Employment Tribunal must first notify the Labour Relations Agency (LRA) and discuss the option of early conciliation. Most potential claimants will not be able to proceed to tribunal without at least considering this option. This brings NI into line with GB who have had a similar system, operated by ACAS, since 2014. **The Employment Act (Northern Ireland) 2016 (Commencement No. 3) Order (Northern Ireland) 2020** This Order brought into operation certain provisions of the **Employment Act (Northern Ireland) 2016** on 27th January 2020: › Article 2(a) to (e) commence provisions on early conciliation of employment disputes; › Article 2(f) commences the provision which places an obligation on the Department to review early conciliation; › Article 2(g) and (h) commences the provisions that permits the Department to make regulations which provide that the members of the panel of chairmen of industrial tribunals and Fair Employment Tribunal may be referred to as employment judges; › Article 2(i) commences the provision which prohibits the Labour Relations Agency, or persons appointed by the Agency, from releasing information relating to a worker, employer of a worker, or a trade union, that they hold in the course of performing their functions; › Article 2(j) corrects a small number of references in the Social Security Contributions and Benefits (Northern Ireland) Act 1992, dealing with statutory shared parental pay, which were introduced by the Work and Families Act (Northern Ireland) 2015; › Article 2(k) updates legislative references in Schedules 2 and 4 to the Employment (Northern Ireland) Order 2003; › Article 2(l) and (o) gives effect to the dispute resolution repeals in Schedule 3 of the Act; and › Article 2(m) and (n) gives effect to Schedules 1 and 2, which respectively, make minor and consequential amendments to existing legislation, and set out how the relevant time limits for bringing a claim will be extended where necessary to provide sufficient time for early conciliation to take place and to ensure that the claimant is not disadvantaged. Link to legislation: https://bit.ly/3Bi0abU Link to LRA: https://bit.ly/3ABvjqH **The Industrial Tribunals (1996 Order) (Application of Conciliation Provisions) Order (Northern Ireland) 2020**

	This Order amended Article 20(1) of the **Industrial Tribunals (Northern Ireland) Order 1996.** Article 20(1) lists the proceedings which are "relevant proceedings" for the purposes of Early Conciliation and other conciliation services provided by the Labour Relations Agency. The amendments made by this Order update the list of jurisdictions in Article 20(1). The **Employment Act (Northern Ireland) 2016 amended the Industrial Tribunals (Northern Ireland) Order 1996** and the **Fair Employment and Treatment (Northern Ireland) Order 1998** to introduce a requirement for prospective claimants to contact the Labour Relations Agency before they are able to present a claim to an Industrial Tribunal or the Fair Employment Tribunal. This requirement applies to claims which are relevant proceedings under Article 20(1) of the **Industrial Tribunals Order** or Article 38 of the **Fair Employment and Treatment Order**. Regulation 3 sets out the circumstances in which a claimant may present a claim dealing with relevant proceedings without complying with the requirement for early conciliation as follows: › regulation 3(1)(a) relates to claimants who are presenting a claim on the same claim form as other claimants or joining a claim which has already been presented to an industrial tribunal or the Fair Employment Tribunal by another claimant (so called 'multiples'); in such circumstances, a claimant may rely upon the fact that another claimant has complied with the requirement for early conciliation and has a certificate from the Agency; and › regulation 3(1)(b) means that if a claim for relevant proceedings appears on the same claim form as proceedings which are not relevant proceedings, there is no need for a claimant to satisfy the early conciliation requirement in relation to those relevant proceedings. The Industrial Tribunals and Fair Employment Tribunal (Early Conciliation: Exemptions and Rules of Procedure) Regulations (Northern Ireland) 2020
ROI	Early conciliation does not apply in the Republic of Ireland. The WRC provides a mediation service in complaints to the Adjudication Service. https://bit.ly/3ecjXjL The WRC also provides a conciliation service to assist parties to resolve employment disputes. Typical examples of the types of issue dealt with in the conciliation process include claims for improvements in pay or conditions of employment, disciplinary cases, grading issues, disputes arising from proposed changes to the way work is done, company restructuring etc. https://bit.ly/3FdzQCn

Retained EU Law (Revocation and Reform) Act 2023

GB

The Retained EU Law (Revocation and Reform) Act became law on 29 June 2023. The proposed "sunset" clause, which would have deleted EU-based laws automatically, was removed from the final version of the Act.

In summary, the new Act, in its amended form, does the following key things:

- Gives government ministers new powers to reform EU-based laws. This applies to any EU-based law introduced into UK law by a statutory instrument (e.g. the Working Time Regulations 1998) but not apply to EU-based laws that have been signed into law by an act of Parliament (e.g. the Equality Act 2010).
- Ends the supremacy of EU law on 31 December 2023, and removes all directly effective EU rights on that date too.
- Encourages the Court of Appeal and Supreme Court to make more use of their existing powers to overturn EU-based caselaw.
- Introduces a new reference process, enabling a lower court which is bound by EU-based caselaw to refer a point of law to the Court of Appeal or Supreme Court so they can decide if it should be overruled.
- Gives the Attorney General the power to intervene in cases where the courts are considering overruling EU-based caselaw.
- Gives a new label of "assimilated laws" to the EU-based laws being retained.
- Requires the government to update its Retained EU law dashboard and report to Parliament on its progress with revoking and reforming retained EU law and future plans.
- Deletes the EU-based laws listed in a schedule. Apart from some minor/obsolete regulations, there are no employment laws in the list.

Lewis Silkin explores the practical impact on employers **HERE**.

As covered in this article and elsewhere in this table, the government has started to use its new powers to reform EU laws. Planned employment law reforms include changes to holiday pay, leave entitlement, rolled up holiday pay, holiday accrual, record keeping and modest reforms to TUPE.

NI

The position outlined above applies in NI.

However, the planned employment reforms in GB do not apply in NI.

Article 2 of the Northern Ireland Protocol/Windsor Framework provides that there should be no diminution of the rights, safeguards and equality of opportunity provisions set out in the Good Friday Agreement as a result of the UK leaving the EU. This provides important equality and anti-discrimination protection for individuals in NI, including the Good Friday Agreement rights to freedom and expression of religion and the right to equal opportunity in all social and economic activity, regardless of class, creed, disability, gender or ethnicity.

As certain EU Directives underpin the Good Friday Agreement rights, these are also protected by Article 2. The 6 anti-discrimination directives in Annex 1 of Article 2 are set out below.

	[1]	Directive 2004/113 implementing the principle of equal treatment between men and women in the access to and supply of goods and services

	[2]	Directive 2006/54 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation
	[3]	Directive 2000/43 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin
	[4]	Directive 2000/78 establishing a general framework for equal treatment in employment and occupation
	[5]	Directive 2010/41 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity
	[6]	Directive 79/7 on the progressive implementation of principle of equal treatment for men and women in matters of Social Security
		Further, as employment law is devolved for the Northern Ireland Assembly to legislate on, the governments proposed employment law reforms in Great Britain (as mentioned above) do not currently extend to Northern Ireland. The current lack of a functioning Assembly and Government in Northern Ireland also makes it impossible to predict with confidence what may happen in Northern Ireland regarding these proposals.
ROI	EU derived employment rights continue to apply in the Republic of Ireland.	

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