
SICK LEAVE AND PARENTAL LEAVE (COVID-19) BILL 2020

EXPLANATORY MEMORANDUM

Purpose of Bill

In many European states, some or all employers are required by law to make provision for sick leave, i.e., paid time off from work for workers when they are ill. In Ireland there are no laws mandating sick leave although some employers, particularly in the public sector, offer it voluntarily or under a collective bargaining agreement.

Generally, therefore, there is in Ireland no legal right to be paid while on sick leave from work. Each employer can decide its own policy on sick leave, but it must provide its employees with written information about its sick leave policy.

An employee can apply for illness benefit from the Department of Social Welfare, payable at a maximum weekly rate of €203. If the employer chooses to provide sick pay at a higher rate, the employee may be asked to sign over any illness benefit payment to the employer for as long as the sick pay continues. The employee will suffer no net loss of income. If the employer does not provide sick pay, then the social welfare payment is all that the employee will receive, at a time when living expenses may well be increased as a result of illness.

The result is that many workers, particularly those in unorganised and precarious employment, are at risk of suffering financially – and in some cases even of losing their job – if they become sick.

At a time when Covid-19 is endemic and when persons who are possible sources of infection are called upon to restrict their movements, the current rules act as a disincentive for workers to comply with public health guidelines.

The purpose of this Bill is set out in its long title as being to provide for an entitlement for employees to paid leave during periods of illness or injury, and to provide for connected matters.

Provisions of Bill

Section 1 is an interpretation section and defines standard terms used in the Bill.

Section 2 provides that, subject to the provisions of the Bill, an employee is entitled to paid leave from his or her employment (“sick leave”), for any day or days, after the expiry of the first 4 weeks of that employment, where the employee is incapable of work as a result of illness or injury.

The section provides that the entitlement of an employee to sick leaves ceases after a continuous period of 6 weeks of sick leave, or days of days of sick leave amounting to 30 days in total in any period of 12 months.

The pay in respect of sick leave is to be at the employee’s normal weekly rate of pay (or at a proportionate rate), as determined in accordance with the regulations that govern entitlement to paid annual leave.

Section 3 deals with *force majeure* leave. This is paid leave available under section 13 of the Parental Leave Act 1998. Normally, *force majeure* leave is available to an employee only in respect of the injury or illness of a close family member. A maximum of 3 days of *force majeure* leave in any 12-month period is provided for.

The section inserts a new provision into the Parental Leave Act which applies where measures are required to be taken in order to comply with, or as a consequence of, Government policy to prevent, limit, minimise or slow the spread of Covid-19.

Where, as a result of those measures, a school or pre-school service is not open to receive some or all of the children enrolled there, or a child enrolled at that school or service is otherwise unable to attend it, then an employee who is the parent or adoptive parent of the child shall be entitled to *force majeure* leave for so long as the child is unable to attend school or pre-school and the presence of the employee is required at his or her home in order to care for the child.

In such a case an employee who is the parent or adoptive parent of a child is entitled to *force majeure* leave where and for so long as the presence of the employee is required at his or her home in order to care for a child who is unable to school or pre-school.

Section 4 provides that a provision in an agreement (whether a contract of employment or not and whether made before or after the coming into operation of this Act) that purports to exclude or limit the application of the Bill is void. A provision in an agreement which is or becomes less favourable in relation to an employee than the entitlement conferred by the Bill is deemed to be modified to become no less favourable.

However, if a collective agreement or a registered employment agreement provides that the Bill shall not apply in relation to the employees covered by the agreement or to a specified class of those employees, then the Bill does not apply in relation to those employees, or to that specified class.

It is stated that nothing in this section prohibits the inclusion in an agreement of a provision more favourable to an employee than the entitlement conferred on the employee by this Act.

Section 5 provides that a complaint or dispute relating to an employee's entitlement to sick leave may be presented or referred under the Workplace Relations Act 2015 in the same way as a complaint or dispute in relation to an employee's entitlement to paid annual leave. For that purpose, section 27 (1) of the Organisation of Working Time Act 1997 is amended by the insertion of a reference to this Bill.

Section 6 provides that nothing in the Bill amends the law relating to the grounds that would justify the dismissal of an employee for the purposes of the Unfair Dismissals Acts 1977 to 2015.

Section 7 provides for the short title of the Bill and provides that it comes into operation three months after its passing.

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