



SEANAD ÉIREANN

AN BILLE UM CHAOMHNÚ FOSTAÍOCHTA (BEARTA CHUN CUR I gCOINNE BRÉAG-FHÉINFHOSTAÍOCHTA), 2018 PROTECTION OF EMPLOYMENT (MEASURES TO COUNTER FALSE SELF-EMPLOYMENT) BILL 2018

LEASUITHE COISTE COMMITTEE AMENDMENTS

SEANAD ÉIREANN

AN BILLE UM CHAOMHNÚ FOSTAÍOCHTA (BEARTA CHUN CUR I gCOINNE BRÉAG-FHÉINFHOSTAÍOCHTA), 2018 —AN COISTE

PROTECTION OF EMPLOYMENT (MEASURES TO COUNTER FALSE SELF- EMPLOYMENT) BILL 2018 —COMMITTEE STAGE

Leasuithe Amendments

**Government amendments are denoted by an asterisk*

SECTION 4

1. In page 5, lines 4 to 22, to delete all words from and including “an individual who—” in line 4 down to and including line 22 and substitute the following:

“regard may be had to the following:

- (a) the degree of autonomy and control that the person performing the work has over the tasks to be performed and how they are to be performed;
- (b) the degree of supervision over the person performing the work and his or her working methods;
- (c) the degree to which the person performing the work is integrated with others in a relevant workplace or undertaking;
- (d) whether the person performing the work supplies his or her own tools, equipment or other capital items for the performance of the work;
- (e) the extent, if any, to which the person performing the work has invested capital or other items related to the work performed;
- (f) any previous contract of employment between the parties;
- (g) whether the person performing the work is free during the engagement to perform work for, to, any person other than a person alleged to be a party to the bogus contract for services;
- (h) the extent, if any, to which the person performing the work does perform work for, to, any person other than a person alleged to be a party to the bogus contract for services;
- (i) the economic dependency of the person performing the work on the relation in question;
- (j) whether the person performing the work advertises his or her availability for performance of that or other work or the provision of those or other services, to any person other than a person alleged to be a party to the bogus contract for services;

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- (k) whether the person performing the work has had to tender or take other similar steps to secure participation in the relation in question;
- (l) whether the worker employs other persons;
- (m) the extent, if any, to which the person performing the work carries a risk of financial loss in relation to that performance or provision, and the nature of that risk;
- (n) the extent, if any, to which the person performing the work enjoys the opportunity of profit in relation to that performance or provision, and the nature of that opportunity;
- (o) the relative strength of the bargaining positions of the parties to the relation and, if applicable, any persons acting on behalf of the parties;
- (p) whether any undue influence or pressure was exerted on, or any unfair tactics were used against, a party to the relation;
- (q) the extent to which any contract between the parties to the relation provides for remuneration by reference to the completion of a particular task, rather than for the payment of, or in the nature of, wages based on time worked;
- (r) the extent to which any contract between the parties to the relation provides total remuneration that is, or is likely to be, less than that of an employee performing similar work or providing similar services;
- (s) the extent to which the contract is designed to, or would, apart from this Act, relieve the employer from paying the employee the national minimum hourly rate of pay.”.

—*Senators Paul Gavan, Rose Conway-Walsh, Máire Devine, Pádraig MacLochlainn, Niall Ó Donnghaile, Fintan Warfield.*

SECTION 7

2. In page 6, to delete lines 22 to 28 and substitute the following:

- “(b) re-instatement by the employer of the employee in the position which he or she held immediately before the contract for services on the terms and conditions on which he or she was employed immediately before the contract for services, together with a term that the re-instatement shall be deemed to have commenced on the day of the contract for services or such as is reasonable having regard to all the circumstances,
- (c) re-engagement by the employer of the employee either in the position which he or she held immediately before his contract for services or in a different position which would be reasonably suitable on such terms and conditions as are reasonable having regard to all the circumstances,
- (d) direct the employer to pay all contributions under the Act of 2005, in respect of any period of the bogus contract for services concerned, which would have been required to be paid if the worker had a contract of employment,
- (e) direct the employer to pay all payments, taxes, charges and penalties under the

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Tax Acts in respect of any period of the bogus contract for services concerned, which would have been required to be paid if the worker had a contract of employment,

- (f) direct the employer to pay all payments, taxes, charges and penalties under the Tax Acts due by the worker resulting from or arising out of any period of the bogus contract for services concerned including any failure by the worker to pay such taxes, charges or penalties,
- (g) (i) if the employee incurred any financial loss attributable to the contract for services, payment to him by the employer of such compensation in respect of the loss as is just and equitable having regard to all the circumstances, or
(ii) if the employee incurred no such financial loss, payment to the employee by the employer of such compensation as is just and equitable having regard to all the circumstances,

and the references in the foregoing paragraphs to an employer shall be construed, in a case where the ownership of the business of the employer changes after the contract for services, as references to the person who, by virtue of the change, becomes entitled to such ownership.

- (4) Without prejudice to the generality of *subsection (1)* of this section, in determining the amount of compensation payable under that subsection regard shall be had to—
 - (a) the extent (if any) to which the financial loss referred to in that subsection was attributable to an act, omission or conduct by or on behalf of the employer,
 - (b) the extent (if any) to which the said financial loss was attributable to an action, omission or conduct by or on behalf of the employee, and
 - (c) the measures (if any) adopted by the employee or, as the case may be, his failure to adopt measures, to mitigate the loss aforesaid.
- (5) In calculating financial loss for the purposes of *subsection (1)*, payments to the employee—
 - (a) under the Social Welfare Acts 1981 to 1993, in respect of any period following the contract for services concerned, or
 - (b) under the Tax Acts arising by reason of the contract for services,shall be disregarded.
- (6) In this section—

“financial loss” includes any actual loss and any estimated prospective loss of income attributable to the bogus contract for services and the value of any loss or diminution, attributable to the bogus contract for services, of the rights of the employee under any enactment;

“remuneration” includes allowances in the nature of pay and benefits in lieu of or in addition to pay.
- (7) Where a term or condition of the bogus contract for services contravened any

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provision of or made under the Tax Acts or the Social Welfare Acts 1981 to 1993, the employee shall, notwithstanding the contravention, be entitled to redress under this Act.

- (8) The Revenue Commissioners may view the use of a bogus contract of service as a tax avoidance transaction under the Taxes Consolidation Act 1997.”.

—*Senators Paul Gavan, Rose Conway-Walsh, Máire Devine, Pádraig MacLochlainn, Niall Ó Donnghaile, Fintan Warfield.*

SECTION 8

3. In page 6, between lines 30 and 31, to insert the following:

- “8. Where, in proceedings under this Act, it is shown that a term or condition of a bogus contract for services contravened this Act the adjudication officer or the Labour Court, as may be appropriate, shall notify the Revenue Commissioners or the Minister, as may be appropriate, of the matter.”.

—*Senators Paul Gavan, Rose Conway-Walsh, Máire Devine, Pádraig MacLochlainn, Niall Ó Donnghaile, Fintan Warfield.*