



An Bille um Eagrú Ama Oibre (Saoire Foréigin Baile), 2020
Organisation of Working Time (Domestic Violence Leave) Bill 2020

Mar a tionscnaíodh

As initiated



**AN BILLE UM EAGRÚ AMA OIBRE (SAOIRE FORÉIGIN BAILE), 2020
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ACTS REFERRED TO

Domestic Violence Act 2018 (No. 6)

Minimum Notice and Terms of Employment Act 1973 (No. 4)

Organisation of Working Time Act 1997 (No. 20)

Parental Leave Act 1998 (No. 30)

Redundancy Payments Act 1967 (No. 21)

Redundancy Payments Acts 1967 to 2014

Unfair Dismissals Act 1977 (No. 10)

Unfair Dismissals Acts 1977 to 2015

Workplace Relations Act 2015 (No. 16)



**AN BILLE UM EAGRÚ AMA OIBRE (SAOIRE FORÉIGIN BAILE), 2020
ORGANISATION OF WORKING TIME (DOMESTIC VIOLENCE LEAVE) BILL 2020**

Bill

entitled

An Act to provide for a period of paid leave as a consequence of domestic violence and for that purpose to amend the Organisation of Working Time Act 1997, to extend as a consequence the protection against unfair dismissals conferred by the Unfair Dismissals Acts 1977 to 2015 and to provide for the consequential amendment of certain other enactments, and to provide for related matters. 5

Be it enacted by the Oireachtas as follows: 10

Definition

1. In this Act “Principal Act” means the Organisation of Working Time Act 1997.

Amendment of section 2 (interpretation) of Principal Act

2. Section 2 of the Principal Act is amended in subsection (1) by inserting the following after the definition of “the Council Directive”: 15

“ ‘domestic violence leave’ shall be construed in accordance with section 23B;”.

Amendment of section 15 (weekly working hours) of Principal Act

3. Section 15 of the Principal Act is amended in subsection (4) by inserting the following paragraph after paragraph (aa): 20

“(aaa) any period during which the employee was absent from work while on domestic violence leave,”.

Amendment of section 16 (nightly working hours) of Principal Act

4. Section 16 of the Principal Act is amended in subsection (5) by inserting the following paragraph after paragraph (cc): 25

“(ccc) any period during which the employee was absent from work while on domestic violence leave,”.

Leave on grounds of domestic violence

5. The Principal Act is amended by inserting the following Part after Part III:

“PART IIIA

ADDITIONAL LEAVE ON GROUNDS OF DOMESTIC VIOLENCE

Interpretation (Part IIIA)

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23A. (1) In this Part—

‘Act of 2018’ means the Domestic Violence Act 2018;

‘civil partner’ has the meaning assigned to it by section 2(1) of the Act of 2018;

‘coercive control’ means behaviour of a person, to whom paragraph (a), (b) or (c) of the definition of ‘relevant person’ applies, that— 10

(a) is controlling or coercive,

(b) causes an employee to whom section 23B applies—

(i) serious alarm or distress that has a substantial adverse impact on his or her usual day-to-day activities, or 15

(ii) to fear that violence will be used against him or her,

and, where in those circumstances, a reasonable person would consider that behaviour to be likely to cause the employee concerned serious alarm or distress that has a substantial adverse impact on his or her usual day-to-day activities or to fear that violence will be used against him or her; 20

‘dependent person’, in respect of an employee to whom section 23B applies, means any person living in a domestic relationship with the employee—

(a) where in respect of that person— 25

(i) he or she is the child of either or both the employee and the relevant person, or

(ii) either or both the employee and the relevant person are in *loco parentis* to him or her,

and 30

(b) that person is either—

(i) not of full age, or

(ii) if of full age, is suffering from a mental or physical disability to such an extent that it is not reasonably possible for him or her to live independently of the employee or the relevant person; 35

‘domestic violence’, in relation to the employee to whom section 23B applies or a dependent person, means an act of physical violence,

sexual violence, psychological abuse, emotional abuse or economic abuse committed by a relevant person and includes coercive control;

‘not primarily contractual’, in relation to a relevant person, shall be construed in accordance with subsection (4);

‘relevant person’, in respect of an employee to whom section 23B applies, means a person who— 5

- (a) is a spouse of the employee concerned,
- (b) is a civil partner of the employee concerned,
- (c) is not a spouse or civil partner of the employee concerned and is not related to the employee concerned within a prohibited degree of relationship, but was in an intimate relationship with the employee concerned at the time of or before the domestic violence concerned, 10
- (d) is a child of the employee concerned and the child is not a dependent person of the employee,
- (e) being of full age, resides with the employee concerned in a relationship the basis of which is not primarily contractual, or 15
- (f) is a parent of a child whose other parent is the employee concerned;

‘spouse’ has the meaning assigned to it in the Act of 2018.

- (2) For the purposes of this Part, 2 people are related to each other within a prohibited degree of relationship if they would be prohibited from marrying each other in the State by reason of that relationship. 20
- (3) For the avoidance of doubt, a relationship does not cease to be an intimate relationship for the purposes of this Part by reason only that it is no longer sexual in nature. 25
- (4) For the purpose of paragraph (e) of the definition of ‘relevant person’, in deciding whether or not a person is residing with another person in a relationship the basis of which is not primarily contractual, regard shall be had to—
 - (a) the length of time those persons are residing together, 30
 - (b) the nature of any duties performed by either person for the other person or any kindred person of that other person,
 - (c) the absence of any profit or of any significant profit made by either person from any monetary or other consideration given by the other person in respect of residing at the place concerned, and 35
 - (d) any other matter that the person making the decision can objectively consider is appropriate in the circumstances.

Entitlement to domestic violence leave

- 23B.** (1) Subject to this Part, an employee shall be entitled to leave with pay from his or her employment (in this Act referred to as ‘domestic 40

violence leave’).

- (2) Subject to subsections (3) and (4), an employee shall be entitled to domestic violence leave where the employee is—
 - (a) a person against whom a relevant person inflicts, or has inflicted, domestic violence, or 5
 - (b) a person with whom there ordinarily resides a child who is a dependent person of the employee and against whom it is alleged that a relevant person inflicts, or has inflicted, domestic violence.
- (3) An employee to whom subsection (2) applies shall be entitled to domestic violence leave for any of the following purposes: 10
 - (a) to seek medical attention for himself or herself or for a dependent person of the employee in respect of a physical or psychological injury or disability resulting from domestic violence;
 - (b) to obtain services from an organisation providing support services for victims of domestic violence; 15
 - (c) to obtain psychological or other professional counselling for the employee or for a dependent person of that employee as a consequence of domestic violence;
 - (d) to relocate his or her place of residence, either temporarily or permanently, as a consequence of domestic violence; 20
 - (e) to seek or receive legal or law enforcement assistance, including preparing for or participating in any civil or criminal proceedings related to or resulting from domestic violence;
 - (f) such other purposes as may be prescribed.
- (4) In relation to a day or part of a day where an employee avails of force majeure leave under section 13 of the Parental Leave Act 1998 the employee may not avail of domestic violence leave under this Part. 25

Manner in which domestic violence leave is taken

- 23C. (1) Domestic violence leave shall consist of one or more working days on which, but for the leave, the employee would be working in the employment concerned but such leave shall not exceed 10 working days in any leave year. 30
- (2) For the purposes of subsection (1), a day on which an employee is absent from work on domestic violence leave for part only of the period during which he or she is required to work in the employment on that day shall be deemed to be half a working day of domestic violence leave. 35
- (3) A day which would be regarded as domestic violence leave shall, if the employee concerned is ill on that day and furnishes to his or her employer a certificate of a registered medical practitioner in respect of his or her illness, not be regarded, for the purposes of this Act, as domestic violence leave. 40

- (4) Nothing in this Part shall prevent an employer and employee from entering into arrangements that are more favourable to an employee with regard to the employee's entitlement to domestic violence leave.

Notice of domestic violence leave

- 23D.** (1) Subject to subsection (2), when an employee intends to take domestic violence leave he or she shall notify the employer of that intention as soon as is reasonably practicable before the employee is due to start work on the day that is intended to be taken as domestic violence leave. 5
- (2) Where it is not reasonably practicable to notify an employer of an intention to take domestic violence leave before the start of the working day of the employee concerned, the employee shall notify the employer as soon as reasonably practicable after the start of that working day. 10
- (3) For the purposes of subsections (1) and (2), a notification shall— 15
- (a) be given in the prescribed form,
 - (b) specify the dates on which the employee intends to take domestic violence leave or the dates on which such leave was taken, as the case may be, and
 - (c) contain a statement of the facts entitling the employee to domestic violence leave. 20
- (4) An employer—
- (a) shall maintain confidentiality in respect of all matters that come to the employer's knowledge in relation to domestic violence leave taken by the employee concerned, and 25
 - (b) shall not disclose personal information, or information that may otherwise identify the person, relating to the domestic violence leave taken by the employee concerned except—
 - (i) to employees or agents of the employer who require the information to carry out their duties, 30
 - (ii) as required by law, or
 - (iii) with the consent of the employee to whom the domestic violence leave relates.
- (5) A person who fails to comply with subsection (4) commits an offence.

Pay for domestic violence leave 35

- 23E.** (1) The pay in respect of an employee's domestic violence leave shall—
- (a) where applicable, be paid to the employee in advance of his or her taking the leave,
 - (b) be at the normal weekly rate, or as the case may be, at a rate which is proportionate to the normal weekly rate, and 40

(c) in a case in which board or lodging or, as the case may be, both board and lodging constitute part of the employee's remuneration, include compensation, calculated at the prescribed rate, for any such board or lodging as will not be received by the employee whilst on domestic violence leave. 5

(2) In this section 'normal weekly rate' means the normal weekly rate of the pay of the employee concerned determined in accordance with regulations made by the Minister for the purposes of this section.

Protection of employment rights

23F. (1) An employee shall, while on domestic violence leave be regarded for all purposes relating to his or her employment as still working in the employment concerned and none of his or her rights relating to the employment shall be affected by availing of domestic violence leave. 10

(2) Absence from employment while on domestic violence leave shall not be treated as part of any other leave (including sick leave, annual leave, adoptive leave, maternity leave, paternity leave, parental leave and force majeure leave) to which the employee concerned is entitled. 15

(3) Where an employee who is—

(a) on probation in his or her employment,

(b) undergoing training in relation to that employment, 20

(c) employed under a contract of apprenticeship,

takes domestic violence leave, and his or her employer considers that the employee's absence from his or her employment while on such leave would not be consistent with the continuance of probation, training or apprenticeship, the employer may require that the probation, training or apprenticeship shall stand suspended during the period of leave concerned and be completed by the employee at the end of that period. 25

(4) Each of the following shall be void:

(a) any purported termination of employment of an employee while the employee is absent from work on domestic violence leave; 30

(b) any purported suspension from employment of an employee while the employee is absent from work on domestic violence leave;

(c) any notice of termination of the employment of an employee given while the employee is absent from work on domestic violence leave. 35

(5) A notice of termination of employment given in respect of an employee or a suspension from employment imposed on an employee—

(a) before the employee commences a period of domestic violence leave, or 40

- (b) before the receipt by the employee’s employer of a notification for the purposes of section 23C,
and due to expire during the employee’s absence from work on the leave concerned shall be extended by the period of such absence.
- (6) An employee who is absent from work while on domestic violence leave shall be entitled to return to work— 5
- (a) with the employer with whom the employee was working immediately before the commencement of the period of absence, or where during the employee’s absence from work there was a change of ownership of the undertaking in which the employee was employed immediately before the absence, with the owner (in this section referred to as the ‘successor’) of the undertaking at the expiry of the period of absence, 10
- (b) in the job which the employee held immediately before the commencement of that period, 15
- (c) under the contract of employment under which the employee was employed immediately before the commencement of that period or, where a change of ownership such as is referred to in paragraph (a) has occurred, under a contract of employment with the successor which is identical to the contract under which the employee was employed immediately before the commencement of that period, and (in either case) under terms or conditions— 20
- (i) not less favourable than those that would have been applicable to the employee, and
- (ii) that incorporate any improvement to the terms or conditions of employment to which the employee would have been entitled, 25
if he or she had not been so absent from work, and
- (d) on the first working day following the date or period of dates notified for the purposes of section 23D(3)(b).
- (7) For the purposes of subsection (6)(b), where the job held by an employee immediately before the commencement of the period of absence concerned was not the employee’s normal or usual job, the employee shall be entitled to return to work, either in his or her normal or usual job or in the job so held as soon as practicable without contravention by the employee or the employer of any provision of a statute or instrument made under statute. 30 35
- (8) (a) In this subsection—
- ‘expected date of return’, in relation to a relevant employee, means the first working day following the date or period of dates notified for the purposes of section 23D(3)(b); 40
- ‘relevant employee’ means an employee who, having duly complied with section 23D, is entitled under this section to return to work but

is not permitted to do so by the employer concerned.

- (b) For the purposes of the Redundancy Payments Acts 1967 to 2014, a relevant employee to whom those Acts apply shall be deemed to have been dismissed by reason of redundancy, the date of dismissal being deemed to be the expected date of return. 5
- (c) For the purposes of the Minimum Notice and Terms of Employment Act 1973, the contract of employment of a relevant employee to whom that Act applies shall be deemed to have been terminated on the expected date of return.
- (d) For the purposes of the Unfair Dismissals Act 1977— 10
 - (i) a relevant employee to whom that Act applies shall be deemed to have been dismissed on the expected date of return, and
 - (ii) the dismissal shall be deemed to be an unfair dismissal unless, having regard to all the circumstances, there were substantial grounds justifying the dismissal. 15

Termination or refusal of domestic violence leave

- 23G.** (1) Where an employer has reasonable grounds for believing that an employee who is on domestic violence leave is not using the leave for a purpose specified in section 23B(3), the employer may, by notice in writing given to the employee, terminate the leave and the notice shall contain a statement in summary form of the grounds for terminating the leave and shall specify the day (being a day not later than the date of the end of the leave specified in the notification given for the purposes of section 23D(3)(b) nor, subject to the foregoing requirement, earlier than 5 days after the date of the receipt by the employee concerned of the notice). 20 25
- (2) Where domestic violence leave is terminated under subsection (1), the employee concerned shall return to his or her employment on the day specified in the notice under that subsection concerned and any period between the date of such return and the date of the end of the period of the leave specified for the purposes of section 23D shall be deemed not to be domestic violence leave. 30
- (3) Where an employee gives his or her employer a notice under section 23D and the employer has reasonable grounds for believing that the employee is not entitled to the domestic violence leave concerned, the employer may, by notice in writing given to the employee, refuse to grant the leave to the employee and, if the employer does so, the employee shall not be entitled to take the domestic violence leave concerned. 35
- (4) A notice under subsection (3) shall contain a statement in summary form of the grounds for refusing to grant the domestic violence leave concerned. 40
- (5) Where an employer proposes to give a notice under subsection (1) or (3) to an employee of his or hers, the employer shall, before giving the

notice, give notice in writing of the proposal to the employee and the notice shall contain a statement in summary form of the grounds for terminating, or, as the case may be, refusing to grant, the domestic violence leave concerned and a statement that the employee may within 5 days of the receipt of the notice make representation to the employer in relation to the proposal; and any such representations made by an employee to an employer within the period aforesaid shall be considered by the employer before he or she decides whether to give a notice under subsection (1) or (3), as the case may be, to the employee.

- (6) A person shall retain a notice given to him or her under this section for 8 years or such other period of time as may be prescribed.
- (7) A person who gives a notice under this section shall retain a copy of the notice.

Decision under section 41 or 44 of Workplace Relations Act 2015

- 23H.** (1) A decision of an adjudication officer under section 41 of the Workplace Relations Act 2015 in relation to a dispute between an employee and his or her employer relating to the entitlements of the employee under this Part (or any matter arising out of or related to those entitlements or otherwise arising under this Part) or a decision of the Labour Court under section 44 of the said Workplace Relations Act 2015 on appeal from the first-mentioned decision, may contain such directions to the parties concerned as the adjudication officer or the Labour Court, as the case may be, considers necessary or expedient for the resolution of the dispute or matter and such other redress as appropriate having regard to all of the circumstances and the provisions of this Part, and accordingly may specify—
- (a) the grant to the employee of domestic violence leave of such length to be taken at such time or times and in such manner as may be so specified,
 - (b) an award of compensation in favour of the employee concerned to be paid by the employer concerned, or
 - (c) both a grant referred to in paragraph (a) and an award referred to in paragraph (b).
- (2) An award of compensation referred to in subsection (1)(b) shall be of such amount as the adjudication officer or the Labour Court, as the case may be, considers just and equitable having regard to all the circumstances but shall not exceed 2 weeks' remuneration in respect of the employee's employment calculated in such manner as may be prescribed.
- (3) In this section 'remuneration' includes allowances in the nature of pay and benefits in lieu of or in addition to pay."

Amendment of Schedule 3 to Redundancy Payments Act 1967

6. Schedule 3 to the Redundancy Payments Act 1967 is amended in paragraph 5 by inserting the following subparagraph after subparagraph (c):

“(ca) a period during which the employee is absent from work while on domestic violence leave within the meaning of the Organisation of Working Time Act 1997,”. 5

Amendment of section 6 (unfair dismissal) of Unfair Dismissals Act 1977

7. Section 6 of the Unfair Dismissals Act 1977 is amended—

- (a) in subsection (2) by inserting the following paragraph after paragraph (dd):

“(ddd) the exercise or proposed exercise by the employee of the right to domestic violence leave under and in accordance with Part IIIA of the Organisation of Working Time Act 1997,”. 10

and

- (b) by inserting the following subsection after subsection (2D):

“(2E) Sections 3 and 4 do not apply to a case falling within paragraph (ddd) of subsection (2) and, for the purpose of that paragraph, ‘employee’ includes a person who would otherwise be excluded from this Act by paragraph (a), (c), (f) or (g) of section 2(1).” 15

Amendment of Workplace Relations Act 2015

8. The Workplace Relations Act 2015 is amended— 20

- (a) in section 41(7)—

(i) in paragraph (e) by deleting “and”,

(ii) in paragraph (f)(iii) by substituting “has died,” for “has died.”, and

(iii) by inserting the following after paragraph (f):

“and 25

(g) in the case of a dispute relating to the entitlement of an employee under Part IIIA of the Organisation of Working Time Act 1997, it has been referred to the Director General after the expiration of the period of 6 months beginning on—

(i) the date on which the employer is notified for the purposes of section 23D of that Act of the employee’s intention to take domestic violence leave within the meaning of that Act, or 30

(ii) the day immediately following the date or period of dates notified for the purposes of section 23D(3)(b) of that Act,

whichever is earlier.”. 35

- (b) in Part 3 of Schedule 5 by inserting the following paragraph after paragraph 6:

“7. Part IIIA of the Organisation of Working Time Act 1997”,

(c) in Part 1 of Schedule 6 by inserting the following paragraph after paragraph 9:

“9A. Section 23H(1) of the Organisation of Working Time Act 1997”,

and

(d) in Part 2 of Schedule 6 by inserting the following paragraph after paragraph 9:

“9A. Section 23H(1) of the Organisation of Working Time Act 1997”.

5

Short title, collective citation, construction and commencement

9. (1) This Act may be cited as the Organisation of Working Time (Domestic Violence Leave) Act 2020.

(2) This subsection, *section 6* and the Redundancy Payments Acts 1967 to 2014 may be cited together as the Redundancy Payments Acts 1967 to 2020 and shall be construed together as one. 10

(3) This subsection, *section 7* and the Unfair Dismissals Acts 1977 to 2015 may be cited together as the Unfair Dismissals Acts 1977 to 2020 and shall be construed together as one.

(4) Notwithstanding any provision to the contrary contained in any other enactment this Act comes into operation 6 months after the date of its passing. 15

An Bille um Eagrú Ama Oibre (Saoire
Foréigin Baile), 2020

BILLE

(mar a tionscnaíodh)

dá ngairtear

Acht do dhéanamh socrú maidir le tréimhse saoire le pá de dhroim foréigean baile agus, chun na críche sin, do leasú an Achta um Eagrú Ama Oibre, 1997, do leathnú na cosanta, dá dhroim sin, ar dhífhostú éagórach a thugtar leis na hAchtanna um Dhífhostú Éagórach, 1977 go 2015 agus do dhéanamh socrú maidir le leasú iarmhartach a dhéanamh ar achtacháin áirithe eile, agus do dhéanamh socrú i dtaobh nithe gaolmhara.

*Na Teachtaí Laoise Uí Raghallaigh agus Máire
Laoise Mhic Dhomhnaill a thug isteach,*

17 Samhain, 2020

Organisation of Working Time (Domestic
Violence Leave) Bill 2020

BILL

(as initiated)

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An Act to provide for a period of paid leave as a consequence of domestic violence and for that purpose to amend the Organisation of Working Time Act 1997, to extend as a consequence the protection against unfair dismissals conferred by the Unfair Dismissals Acts 1977 to 2015 and to provide for the consequential amendment of certain other enactments, and to provide for related matters.

*Introduced by Deputies Louise O'Reilly and Mary
Lou McDonald,*

17th November, 2020

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(Tel: 01 - 6476834 nó 1890 213434; Fax: 01 - 6476843)
nó trí aon díoltóir leabhar.

DUBLIN
PUBLISHED BY THE STATIONERY OFFICE
To be purchased from
GOVERNMENT PUBLICATIONS,
52 ST. STEPHEN'S GREEN, DUBLIN 2.
(Tel: 01 - 6476834 or 1890 213434; Fax: 01 - 6476843)
or through any bookseller.

€2.54

ISBN 978-1-4468-6814-0



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