



An Bille um Eagrú Ama Oibre (Saoire a Bhaineann le Sláinte Atáirgthe), 2021
Organisation of Working Time (Reproductive Health Related Leave) Bill 2021

Mar a tionscnaíodh

As initiated



**AN BILLE UM EAGRÚ AMA OIBRE (SAOIRE A BHAINNEANN LE SLÁINTE
ATÁIRGTHE), 2021
ORGANISATION OF WORKING TIME (REPRODUCTIVE HEALTH RELATED
LEAVE) BILL 2021**

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ACTS REFERRED TO

Medical Practitioners Act 2007 (No. 25)

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 A BHAINNEANN LE SLÁINTE
ATÁIRGTHE), 2021
ORGANISATION OF WORKING TIME (REPRODUCTIVE HEALTH RELATED
LEAVE) BILL 2021**

Bill

5

entitled

An Act to provide for a period of paid leave consequent upon miscarriage or for the purposes of availing of reproductive healthcare; for that purpose to amend the Organisation of Working Time Act 1997; to extend the protection against unfair dismissals conferred by the Unfair Dismissals Acts 1977 to 2015; to provide for the consequential amendment of certain other Acts; and to provide for related matters.

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Be it enacted by the Oireachtas as follows:

Definition

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

Amendment of section 2 (interpretation) of Principal Act

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2. Section 2 of the Principal Act is amended in subsection (1) by inserting the following after the definition of “registered employment agreement”:

“ ‘reproductive health related leave’ shall be construed in accordance with section 23B;”.

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

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

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

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

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

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

Reproductive health related leave

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

“PART IIIA

ADDITIONAL LEAVE ON REPRODUCTIVE HEALTH RELATED GROUNDS

Interpretation (Part IIIA)	5
23A. In this Part, ‘registered medical practitioner’ means a person who is a registered medical practitioner within the meaning of section 2 of the Medical Practitioners Act 2007.	
Entitlement to reproductive health related leave	
23B. (1) Subject to this Part, an employee is entitled to leave with pay from his or her employment (in this Act referred to as ‘reproductive health related leave’)—	10
(a) where the employee has miscarried a child having a gestational age of 28 weeks or less, or	
(b) in order to receive treatment from a registered medical practitioner in the State in relation to pregnancy, childbirth or assisted human reproduction.	15
(2) In relation to a day or part of a day where an employee avails of <i>force majeure</i> leave under section 13 of the Parental Leave Act 1998, the employee may not avail of reproductive health related leave under this Part.	20
Manner in which reproductive health related leave is taken	
23C. (1) Reproductive health related 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—	25
(a) in a case to which section 23B(1)(a) applies, 20 working days, and	
(b) in a case to which section 23B(1)(b) applies, 10 working days, in any leave year.	
(2) For the purposes of subsection (1), a day on which an employee is absent from work on reproductive health related 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 reproductive health related leave.	30
(3) A day which would be regarded as reproductive health related 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 reproductive health related leave.	35
(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 reproductive health related leave.

Notice of reproductive health related leave

- 23D.** (1) Subject to subsection (2), when an employee intends to take reproductive health related 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 reproductive health related leave. 5
- (2) Where it is not reasonably practicable to notify an employer of an intention to take reproductive health related 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 reproductive health related 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 reproductive health related leave. 20
- (4) An employer—
- (a) shall maintain confidentiality in respect of all matters that come to the employer's knowledge in relation to reproductive health related 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 reproductive health related 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 reproductive health related leave relates.
- (5) A person who contravenes subsection (4) commits an offence.

Pay for reproductive health related leave 35

- 23E.** (1) The pay in respect of an employee's reproductive health related 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 reproductive health related 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 reproductive health related 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 reproductive health related leave. 10

(2) Absence from employment while on reproductive health related 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— 20

(a) on probation in his or her employment,

(b) undergoing training in relation to that employment,

(c) employed under a contract of apprenticeship,

takes reproductive health related 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
30

(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 reproductive health related leave;

(b) any purported suspension from employment of an employee while the employee is absent from work on reproductive health related leave; 35

(c) any notice of termination of the employment of an employee given while the employee is absent from work on reproductive health related leave.

(5) A notice of termination of employment given in respect of an employee or a suspension from employment imposed on an employee— 40

- (a) before the employee commences a period of reproductive health related leave, or
- (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. 5
- (6) An employee who is absent from work while on reproductive health related leave shall be entitled to return to work—
 - (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 15
 - (b) in the job which the employee held immediately before the commencement of that period,
 - (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 25
 - (ii) that incorporate any improvement to the terms or conditions of employment to which the employee would have been entitled, if he or she had not been so absent from work,
 - and 30
 - (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. 35
- (8) (a) In this subsection— 40
 - ‘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);

‘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. 10
- (d) For the purposes of the Unfair Dismissals Act 1977—
 - (i) a relevant employee to whom that Act applies shall be deemed to have been dismissed on the expected date of return, and 15
 - (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.

Termination or refusal of reproductive health related leave

- 23G.** (1) Where an employer has reasonable grounds for believing that an employee who is on reproductive health related 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 reproductive health related 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 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 reproductive health related leave. 30 35
- (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 reproductive health related 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 reproductive health related leave concerned. 40
- (4) A notice under subsection (3) shall contain a statement in summary form of the grounds for refusing to grant reproductive health related

leave.

- (5) Where an employer proposes to give a notice under subsection (1) or (3) to an employee, 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, 5
or, as the case may be, refusing to grant, reproductive health related leave and a statement that the employee may within five 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 10
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. 15

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 20
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 Act on appeal from the first-mentioned decision, may contain such directions to the parties concerned as the adjudication officer or the Labour Court considers 25
necessary or expedient for the resolution of the dispute or matter and such other redress as the adjudication officer or the Labour Court considers 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 reproductive health related leave of such length to be taken at such time or times and in such manner as may be so specified, 30
- (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). 35
- (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 40
circumstances but shall not exceed two 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 reproductive health related 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 reproductive health related 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 (f)(iii) by the substitution of “has died” for “has died, and”,

(ii) in paragraph (g) by the substitution of “the dispute, and” for “the dispute.”, and

- (iii) by inserting the following after paragraph (g): 25

“(h) 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 reproductive health related 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, 35
whichever is earlier.”,

- (b) in Part 3 of Schedule 5 by inserting the following paragraph after paragraph 7:

- “8. Part IIIA of the Organisation of Working Time Act 1997”,
- (c) in Part 1 of Schedule 6 by inserting the following paragraph after paragraph 37:
“38. 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 37: 5
“38. Section 23H(1) of the Organisation of Working Time Act 1997”.

Short title, collective citation, construction and commencement

9. (1) This Act may be cited as the Organisation of Working Time (Reproductive Health Related Leave) Act 2021.
- (2) *Section 6* and the Redundancy Payments Acts 1967 to 2014 may be cited together as the Redundancy Payments Acts 1967 to 2021 and shall be construed together as one Act. 10
- (3) *Section 7* and the Unfair Dismissals Acts 1977 to 2015 may be cited together as the Unfair Dismissals Acts 1977 to 2021 and shall be construed together as one Act.
- (4) This Act comes into operation six months after its passing. 15

An Bille um Eagrú Ama Oibre (Saoire a
Bhaineann le Sláinte Atáirgthe), 2021

BILLE

(mar a tionscnaíodh)

dá ngairtear

Acht do dhéanamh socrú maidir le tréimhse saoire le pá de dhroim breith anabái nó chun leas a bhaint as cúram sláinte atáirgthe; chun na críche sin, do leasú an Achta um Eagrú Ama Oibre, 1997; do leathnú na cosanta ar dhífhostú éagórach a thugtar leis na hAchtanna um Dhífhostú Éagórach, 1977 go 2015; do dhéanamh socrú maidir le leasú iarmhartach a dhéanamh ar Achtanna áirithe eile; agus do dhéanamh socrú i dtaobh nithe gaolmhara.

Na Seanadóirí Ivana Bacik, Annie Hoey, Rebecca Moynihan, Marie Sherlock agus Mark Wall a thug isteach,

22 Márta, 2021

Organisation of Working Time
(Reproductive Health Related Leave) Bill
2021

BILL

(as initiated)

entitled

An Act to provide for a period of paid leave consequent upon miscarriage or for the purposes of availing of reproductive healthcare; for that purpose to amend the Organisation of Working Time Act 1997; to extend the protection against unfair dismissals conferred by the Unfair Dismissals Acts 1977 to 2015; to provide for the consequential amendment of certain other Acts; and to provide for related matters.

Introduced by Senators Ivana Bacik, Annie Hoey, Rebecca Moynihan, Marie Sherlock and Mark Wall,

22nd March, 2021

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