



**AN BILLE UM ÍOCAÍOCHTAÍ IOMARCAÍOCHTA (ASLEAGAN,
GEARR-AM AGUS SEIRBHÍS INRÍOFA A RÍOMH), 2021
REDUNDANCY PAYMENTS (LAY-OFF, SHORT TIME AND
CALCULATION OF RECKONABLE SERVICE) BILL 2021**

EXPLANATORY MEMORANDUM

Background

Since the onset of the Covid-19 crisis, a number of issues in relation to how employees who are on lay-off and short time, and in receipt of the Pandemic Unemployment Payment, have been treated, have arisen.

Many employees are unsure of their rights in relation to their redundancy while they are on lay-off or short time. Some employees are unsure as to whether they can undertake employment with a new employer and still retain their redundancy entitlements from their previous employment, to be paid after the emergency period is over; others have outlined how their employer tried to make them declare themselves as having resigned, and thereby involuntarily forgo their redundancy payment; while a significant number are concerned that they have lost up to a year of reckonable service for the calculation of any future redundancy payment due to time spent on the PUP.

Therefore, this Bill seeks to do a number of things to rectify these issues and offer clarity for employees in relation to lay off, short time, and calculation of reckonable service.

This Bill inserts a declaratory provision into the Redundancy Payments Act to remove any doubt that where, during a period of lay-off or short time, an employee of an employer takes up employment with another employer, then the taking up of such employment by the employee shall not affect any right that that employee has to their redundancy payment.

The Bill also seeks to create an offence for an employer to treat an employee as having had resigned, and thereby forego their redundancy entitlement. Many workers in sectors with low levels of Trade Union coverage are at risk from unscrupulous employers creating a situation whereby the worker makes themselves redundant, unbeknownst to them and against their wishes, and as a result lose their redundancy entitlement.

Finally, the Bill seeks to ensure that time spent by employees on lay off and short time, in receipt of the Pandemic Unemployment Payment, is calculated as reckonable service in relation to the calculation of redundancy entitlements. As it currently stands, workers could lose out on significant sums of money because time spent on lay off and short time will not count when calculating entitlements. This Bill seeks to make that time reckonable service, and thereby contribute to a fair redundancy entitlement, if future circumstances deem the worker needs access to a redundancy payment.

Provisions of the Bill

Section 1

The Redundancy Payments Act 1967 is amended by *section 1* of the Bill as follows:

- *Paragraph (a)* inserts a new subsection into section 12A to enable an application for redundancy under section 12(2) of that Act to be made, but not necessarily be paid, at any time during the emergency period (the emergency period being the period provided for by section 12A to prevent, limit, minimise or slow the spread of infection of Covid-19).
- *Paragraph (b)* inserts a new section 12B providing that where—
 - an employer has laid-off or put on short time an employee in circumstances where sections 11 (lay-off and short-time) and 12 (right to redundancy payment by reason of lay-off or short-time) apply,
 - the Revenue Commissioners have issued a revenue payroll notification to the employer in respect of the employee (from 1 January 2019, such a notification has superseded the form known as a P45), and
 - the employer treats the employee as having resigned on the basis of that notification,
- then, a class A offence (an offence involving a fine not exceeding €5,000 – Fines Act 2010) is committed by the employer unless the employer can show that all reasonable steps were taken and all due diligence was exercised by the employer to avoid the commission of the offence.
- *Paragraph (c)* inserts subsection (3) into section 13 as a declaratory provision to remove any doubt that where, during a period of lay-off or short time, an employee of an employer takes up employment with another employer, then the taking up of such employment by the employee shall not be treated for the purposes of the Redundancy Payments Act 1967 as affecting any right that that employee has or may acquire to any redundancy payments to which such period of lay-off or short time relates.
- *Paragraph (d)* inserts a new paragraph (9A) into Schedule 3 requiring the Minister to lay a report before the Dáil concerning the need to add ‘absence by reason of lay-off’ during the ‘emergency period’ to the circumstances where an absence from work allowable as reckonable service to be taken into account in calculating a lump sum on redundancy. No time limit is provided for in respect of the application of this provision and the calculation concerned may arise at some future date in the event of redundancy.

Section 2

This is a standard form provision for the short title and citation.

Louise O'Reilly, TD,

Bealtaine, 2021.