

Work Life Balance and Miscellaneous Provisions Bill 2022

Bill No. 92 of 2022

Dr Sinéad Ashe, Senior Researcher (Economics)

11 October 2022

Abstract

The *Work Life Balance and Miscellaneous Provisions Bill 2022* proposes to give further effect to Directive (EU) 2019/1158 of the European Parliament and of the Council on work life balance for parents and carers. It proposes to, among other things, amend the *Parental Leave Act 1998* to entitle certain employees to leave for medical care purposes and to request flexible working arrangements for caring purposes. It also proposes an extension to the current entitlement to breastfeeding/lactation breaks from 26 weeks to 104 weeks.



Contents

Introduction	3
Table of provisions.....	4
Background.....	10
Directive (EU) 2019/1158.....	10
(i) Women’s participation in the labour market in Ireland and the EU.....	11
(ii) The take-up of family-related leave and flexible working arrangements.....	13
What Articles of the Directive is this Bill aiming to transpose?	14
Research on flexible working	16
Comparative research on the “right to request” flexible working arrangements.....	16
Comparative research among selected jurisdictions.....	18
Pre-legislative scrutiny of the General Scheme of the Bill	21
Financial implications.....	23
Principal provisions of the Bill.....	24
Section 5: Leave for medical care purposes.....	24
Section 6: Insertion of new Part IIA in the <i>Parental Leave Act 1998</i>	26
Right to request a flexible working arrangement for caring purposes.....	26
Time limit to make a decision	28
Grounds for postponement.....	28
Changes to proposed flexible working arrangements	29
Early return to previous working arrangement	30
Abuse of flexible working arrangement.....	30
Section 15: Amendments of <i>Maternity Protection Act 1994</i>	31
Appendix: Domestic Violence Leave	33
Background.....	33
Literature on the provision of paid domestic violence leave.....	36
International Perspectives	37
Examples of domestic violence leave in the workplace	37
Countries that have legislated for domestic violence leave.....	39

This L&RS Bill Digest may be cited as:

Oireachtas Library & Research Service, 2022, *L&RS Bill Digest: Work Life Balance and Miscellaneous Provisions Bill 2022. Bill No. 92 of 2022.*

Legal Disclaimer

No liability is accepted to any person arising out of any reliance on the contents of this paper. Nothing herein constitutes professional advice of any kind. This document contains a general summary of developments and is not complete or definitive. It has been prepared for distribution to Members to aid them in their parliamentary duties. Some papers, such as a Bill Digest, are prepared at very short notice. They are produced in the time available between the publication of a Bill and its scheduling for second stage debate. Authors are available to discuss the contents of these papers with Members and their staff but not with members of the general public.

© Houses of the Oireachtas 2022

Introduction

The [Work Life Balance and Miscellaneous Provisions Bill 2022](#) (the “Bill”) was published on 05 October 2022 by the Minister for Children, Equality, Disability, Integration and Youth. It comprises 19 sections.

A [General Scheme of the Bill](#) was published in April 2022 and was referred to the Joint Committee on Children, Equality, Disability, Integration and Youth on 25 April 2022, with a request that pre-legislative scrutiny be completed by 21 June 2022 “in order to meet the deadline of 2 August 2022 for transposition”¹. The Joint Committee issued its [Report on Pre-Legislative Scrutiny](#) on 09 June 2022.

The key issues identified in the report on pre-legislative scrutiny related to Head 3 (Right to request flexible working arrangement for caring purposes) and Head 4 (Parental Leave and Force Majeure Leave – leave for medical care purposes). The Joint Committee’s report identified 21 recommendations in total. Please refer to the pre-legislative scrutiny section of this Bill Digest for the list of recommendations.

The purpose of the Bill, as outlined in the accompanying [explanatory and financial memorandum](#), is to:

- Give further effect to [Directive \(EU\) 2019/1158](#) of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing [Council Directive 2010/18/EU](#) and, for that purpose, to amend the [Parental Leave Act 1998](#) to entitle certain employees to leave for medical care purposes and to request flexible working arrangements for caring purposes.
- Amend the [Maternity Protection Act 1994](#) to extend the entitlement to breastfeeding breaks to two years after the birth of the child. It also seeks to ensure that a transgender male who has, in accordance with the [Gender Recognition Act 2015](#), obtained a gender recognition certificate and subsequently becomes pregnant, to fall within the scope of the [Maternity Protection Act 1994](#).
- Amend the [Adoptive Leave Act 1995](#) to correct anomalies arising from amendments made under the [Family Leave and Miscellaneous Provisions Act 2021](#).
- Make necessary consequential amendments to the [Redundancy Payments Act 1967](#), the [Unfair Dismissals Act 1977](#), the [Organisation of Working Time Act 1997](#), and the [Workplace Relations Act 2015](#).

The associated [press release](#) from the Department of Children, Equality, Disability, Integration and Youth (DCEDIY) states that the Bill contains “three key measures to support families and carers,”² including:

¹ Joint Committee on Children, Equality, Disability, Integration and Youth, Report on pre-legislative scrutiny of the General Scheme of a Work Life Balance and Miscellaneous Provisions Bill 2022. June 2022. Available [here](#).

² Department of Children, Equality, Disability, Integration and Youth, Press Release, [Minister O’Gorman announces introduction of paid leave for victims of domestic violence](#), Published 22 September 2022, Last Updated 26 September 2022.

- (i) a right to request flexible working arrangements for caring purposes, for parents and carers
- (ii) a right to leave for medical care purposes, both for employees with children up to age 12 and carers, and
- (iii) extension of the current entitlement to breastfeeding/lactation breaks from six months to two years.

In addition to these measures, Minister O’Gorman also stated that the Bill will see the introduction of paid leave for victims of domestic violence. While there is no provision within the Bill for such measures currently, the [press release](#) states that:

“The Minister intends to introduce legislative provisions providing for a form of domestic violence leave as Committee Stage amendments to the Work Life Balance and Miscellaneous Provisions Bill.”³

The [appendix](#) to this Bill Digest provides the policy background and international perspectives on the introduction of domestic violence (DV) leave. It provides background literature on the rationale for DV leave, examples of DV leave in the workplace, as well as examples of countries that have legislated for DV leave. In addition, it outlines the recommendations identified in the [Domestic Violence Leave Report](#) published by DCEDIY on 22 September 2022.

Table of provisions

A summary of the Bill’s provisions is included in Table 1 below.

Table 1 Table of provisions of the *Work Life Balance and Miscellaneous Provisions Bill 2022*

Section	Title	Effect
1	Definition	Principal Act means the Parental Leave Act 1998 .
2	Amendment of section 2 of Principal Act	<p>Section 2 of the Principal Act relates to ‘Interpretation’.</p> <p>The Bill provides that the Principal Act is amended in section 2</p> <p>(a) in subsection (1)</p> <ul style="list-style-type: none"> (i) by inserting a number of definitions including “adopting parent”, “adoptive parent”, “approved flexible working arrangement”, “civil partner”, “cohabitant”, “continuous employment”, “flexible working arrangement”, “household” and “relevant parent” (ii) by the substitution of the definition of “employee” for a new definition.

³ Department of Children, Equality, Disability, Integration and Youth, Press Release, [Minister O’Gorman announces introduction of paid leave for victims of domestic violence](#), Published 22 September 2022, Last Updated 26 September 2022.

Section	Title	Effect
		<p>(b) by the insertion of a new subsection after subsection (3) that relates to how a person in need of significant care or support shall be considered</p> <p>and</p> <p>(c) by the substitution of a new subsection for subsection (4) that provides “a word or expression used in the Act and also in Directive (EU) 2019/1158 of 20 June 2019 shall have the same meaning in this Act as in the Directive”.</p>
3	Amendment of section 6 of Principal Act	<p>Section 6 of the Principal Act relates to ‘Entitlement to parental leave’.</p> <p>Section 3 of the Bill provides that section 6 of the Principal Act is amended:</p> <p>(a) by inserting a new subsection 3A after subsection 3 that relates to how a continuous period of employment shall be defined.</p> <p>(b) in subsection 9 by deleting definitions of “adopting parent”, “adoptive parent”, “continuous employment” and “relevant parent”.</p>
4	Amendment of section 10 of Principal Act	<p>Section 10 of the Principal Act relates to ‘Postponement, curtailment and variation of parental leave by parties concerned’.</p> <p>Section 4 of the Bill proposes to amend section 10 of the Principal Act by substituting “ill or incapacitated” for “sick” and “illness or incapacity” for “sickness”.</p>
5	Leave for medical care purposes	<p>Section 5 of the Bill inserts a new section 13A into the Principal Act to provide for an entitlement to five days of leave for medical care purposes. The leave without pay must be available for a relative defined as a person of whom the employee is the relevant parent, the spouse or civil partner of the employee, the cohabitant of the employee, a parent or grandparent of the employee, a brother or sister of the employee, or a person, other than specified who resides in the same household as the employee, and is in need of significant care or support for a serious medical reasons. The explanatory memorandum provides that “<i>the leave cannot be taken in periods of less than one day. Neither a period of work qualification nor prior notice of the leave is required. However, an employer can require prior medical certification of the need for significant care or support for a serious medical reason</i>”.</p>

Section	Title	Effect
		<p>More detailed information is provided in the 'Principal provisions' section of this Bill Digest.</p>
6	Insertions of new Part IIA in Principal Act	<p>Section 6 inserts a new Part IIA into the Principal Act which provides new sections:</p> <ul style="list-style-type: none"> • 13B (right to request a flexible working arrangement for caring purposes), • 13C (time limit to make a decision) • 13D (grounds for postponement) • 13E (changes to proposed flexible working arrangements) • 13F (early return to previous working arrangement) and • 13G (abuse of flexible working arrangement). <p>As provided in the explanatory and financial memorandum, “these new sections provide for a right to request flexible working and set out who may make a request, the process for making a request, the time limit for an employer to respond to a request, grounds for postponement, how an approved request could be amended, an early return by the employee to a previous working arrangement and the process should a flexible working arrangement be abused.”</p> <p>More detailed information is provided in the 'Principal provisions' section of this Bill Digest.</p>
7	Amendment of section 14 of Principal Act	<p>Section 14 of the Principal Act relates to 'Protection of employment rights'.</p> <p>Section 7 of the Bill seeks to amend section 14 by making some substitutions, specifically the substitution of “, <i>force majeure</i> leave and leave for medical care purposes” for “<i>force majeure</i> leave”, and “, parental leave and leave for medical care purposes” for “parental leave”.</p> <p>It also seeks to insert some subsections after subsection 5.</p> <p>The first insertion relates to a person who is on probation, training or an apprenticeship taking leave for medical care purposes and that their employer considers that this absence would not be consistent with the continuance of the probation, training or apprenticeship. In this case the employer may require that it be suspended during the period of leave for medical care purposes and that it be completed by the employee at the end of that period.</p>

Section	Title	Effect
		<p>The second insertion provides that while an employee is on leave for medical care purposes, that none of their rights relating to the employment shall be affected by the leave.</p> <p>The third insertion provides that leave for medical care purposes shall not be treated as part of any other leave from employment which the employee is entitled to (e.g parental leave, sick leave, annual leave, <i>force majeure</i> leave, etc.).</p>
8	Amendment of section 15 of Principal Act	<p>Section 15 of the Principal Act relates to 'Return to work'.</p> <p>Section 8 of the Bill proposes to amend section 15 to provide that an employee who avails of leave for medical care purposes or <i>force majeure</i> leave shall be entitled to return to work and to the job held immediately before the commencement of leave.</p>
9	Amendment of section 16A of Principal Act	<p>Section 16A of the Principal Act relates to 'Protection of employees from penalisation'.</p> <p>Section 9 proposes to amend section 16A to extend the protection of employees from penalisation under that section to the following:</p> <ul style="list-style-type: none"> • an employee who avails of, or who requests to avail of, leave for medical care purposes, or • an employee who exercises their right to request to avail of a flexible working arrangement for caring purposes.
10	Amendment of section 21 of Principal Act	<p>Section 21 of the Principal Act relates to 'Decision under section 41 or 44 of Workplace Relations Act 2015'.</p> <p>Section 10 of the Bill proposes to amend section 21 to confirm that a decision under section 41 or 44 of the <i>Workplace Relations Act 2015</i> in that section relates to a dispute in relation to an entitlement under the Principal Act, other than in relation to the right to request a flexible working arrangement for caring purposes.</p>
11	Decision under section 41 or 44 of <i>Workplace Relations Act 2015</i> in relation to request under section 13B	<p>Section 41 or 44 of Workplace Relations Act 2015 relates to the 'presentation of complaints and referral of disputes' and 'appeal to the Labour Court from decision of adjudication officer'.</p> <p>Section 11 proposes to insert a new section 21A into the Principal Act which provides that the Adjudication Officer may direct an employer to comply with section 13C(1) by</p>

Section	Title	Effect
		a date specified in the direction, or award compensation in favour of the employee.
12	Amendment of section 27 of Principal Act	<p>Section 27 of the Principal Act relates to 'Records'.</p> <p>Section 12 of the Bill proposes that section 27 is amended to include leave for medical care purposes and an approved flexible working arrangement in the records that the employer must retain. The section also provides that such records must be retained for a period of three years.</p>
13	Amendments of Schedule 3 of <i>Redundancy Payments Act 1967</i>	<p>Schedule 3 of Redundancy Payments Act 1967 relates to the amount of the lump sum provided for by that Act.</p> <p>Section 13 of the Bill proposes to amend Schedule 3 substituting paragraph 5(c)(ii) for the following: "(ii) while on parental leave, force majeure leave, leave for medical care purposes or on a flexible working arrangement under the Parental Leave Act 1998, or", and the substitution of paragraph 8A(b)(ii) for the following: (ii) while on parental leave, force majeure leave, leave for medical care purposes or on a flexible working arrangement under the Parental Leave Act 1998, or".</p> <p>The explanatory and financial memorandum accompanying the Bill states that this is included so that the continuity of employment will not be broken where an employee takes leave for medical care purposes or commences a flexible working arrangement.</p>
14	Amendments of section 6 of <i>Unfair Dismissals Act 1977</i>	<p>Section 6 of Unfair Dismissals Act 1977 relates to 'unfair dismissal'.</p> <p>Section 14 of the Bill provides that section 6 of the <i>Unfair Dismissals Act 1967</i> is amended to include dismissal of an employee resulting wholly or mainly due to their exercising or proposing to exercise their right to leave for medical care purposes or to request a flexible working arrangement for caring purposes, to be an unfair dismissal.</p>
15	Amendments of <i>Maternity Protection Act 1994</i>	<p>Section 15 proposes to amend the Maternity Protection Act 1994 by substituting a new definition for "employee who is breastfeeding" to:</p> <p><i>"'employee who is breastfeeding' means at any time an employee whose date of confinement was not more than one hundred and four weeks earlier, who is breastfeeding and who has informed her employer of her condition;"</i></p> <p>It also proposes the deletion of section 7(2) and the amendment of section 16(1) by substituting "woman or other person" for "woman".</p>

Section	Title	Effect
		This amendment therefore seeks to extend the period of entitlements under the <i>Maternity Protection Act 1994</i> for breastfeeding employees from 26 weeks to 2 years.
16	Amendments of <i>Adoptive Leave Act 1995</i>	Section 16 of the Bill proposes to amend the Adoptive Leave Act 1995 in various sections to provide for situations in which adopters are male as well as female.
17	Amendments of <i>Organisation of Working Time Act 1997</i>	Section 17 of the Bill proposes to amend the Organisation of Working Time Act 1997 in section 15(4)(aa) and 16(5)(cc). These amendments are to provide that a reference period for weekly working hours or for night work shall not include a period of absence while on leave for medical care purposes or a flexible working arrangement for caring purposes.
18	Amendments of <i>Workplace Relations Act 2015</i>	<p>Section 18 of the Bill proposes to amend the Workplace Relations Act 2015 in section 2 and section 41.</p> <p>The explanatory and financial memorandum accompanying the Bill states that this amendment is to amend an anomaly that arose as a result of the Children and Family Relationships Act 2015 being enacted shortly before the Workplace Relations Act 2015 and where provisions of the Workplace Relations Bill were not amended to take account of the provisions of the Children and Family Relationships Bill. They state it is necessary to bring forward amendments to the <i>Workplace Relations Act 2015</i> to reflect the legislative intention behind section 176(f) of the <i>Children and Family Relationships Act 2015</i>.</p> <p>The section also provides for circumstances where the mother of a baby has died and the other parent is not the baby's father. It seeks to allow that other parent to present a complaint under the Maternity Protection Act 1994 to the Director General of the Workplace Relations Commission.</p>
19	Short title, collective citation and commencement	<p>Section 19 of the Bill provides that the Act may be cited as the <i>Work Life Balance and Miscellaneous Provisions Act 2022</i>.</p> <p>It provides that the Parental Leave Acts 1998 to 2019 and sections 2 to 12 may be cited together as the Parental Leave Acts 1998 to 2022.</p> <p>It provides that different parts of the Bill may be commenced at different times through commencement orders.</p>

Source: Derived from the [Work Life Balance and Miscellaneous Provisions Bill 2022](#) and the accompanying [explanatory and financial memorandum](#).

Background

This section provides an overview of the policy context relating to the main aspects of the Bill. It provides information on Directive (EU) 2019/1158 on work-life balance for parents and carers and research on flexible working arrangements across different jurisdictions.

Directive (EU) 2019/1158

[Directive \(EU\) 2019/1158](#) of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing [Council Directive 2010/18/EU](#) was published on 12 July 2019⁴. It entered into force on 01 August 2019 and should have been implemented in national regulation on 02 August 2022 at the latest⁵.

The Directive introduced a new set of legislative actions aimed at achieving better work-life balance for parents and carers. Figure 1 shows the four key themes of the Directive, namely, parental leave, flexible working arrangements, paternity leave and carers' leave⁶.

Figure 1: European Commission, New Work-Life Balance Rights, August 2022



Source: [European Commission, Work-Life Balance Factsheet](#)

⁴ Official Journal of the European Union, Directives. Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU [2019] OJ L 188/79, published 12 July 2019. Available [here](#).

⁵ EU Monitor, Directive 2019/1158 – Work-Life Balance for Parents and Carers. Available [here](#). Please note, according to a March 2022 [PQ to the Minister](#), a two year extension to August 2024 is available.

⁶ European Commission, [Work-Life Balance Factsheet](#).

The European Commission [reported](#) that as of 02 August 2022, all Member States must apply EU-wide rules to improve work-life balance for parents and carers. They state⁷:

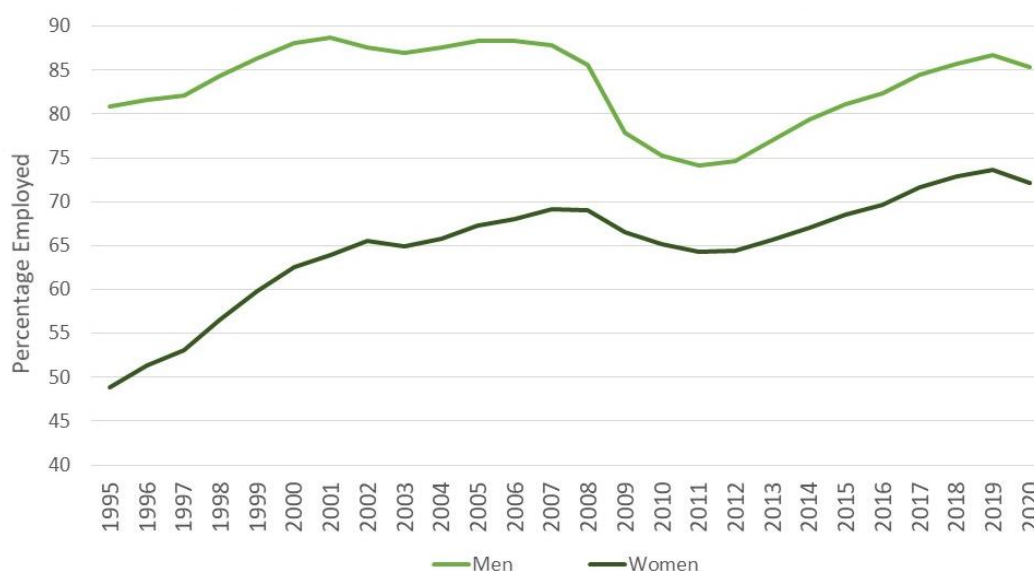
“These rules set out minimum standards for paternity, parental and carers’ leave and establish additional rights, such as the right to request flexible working arrangements, which will help people develop their careers and family life without having to sacrifice either. These rights, which come in addition to existing maternity leave rights, were achieved under the [European Pillar of Social Rights](#) and is a key milestone towards building a Union of Equality.”

In its statement, the European Commission [notes](#) that the aim of the Directive on work-life balance is to both increase (i) the participation of women in the labour market and (ii) the take-up of family-related leave and flexible working arrangements. In the following subsection, we examine both of these factors in Ireland and how they compare with our EU counterparts.

(i) Women’s participation in the labour market in Ireland and the EU

We first consider the percentage of women and men, aged 25-54, in employment in Ireland. This data is obtained from Eurostat’s employment rate which is captured from the [European Union Labour Force Survey \(EU-LFS\)](#). This employment rate uses the [ILO definition of employment](#), that is “a person who during the reference week worked for at least one hour of pay or profit or family gain, unless they have a job from which they were temporarily absent”. Figure 2 illustrates this data for the period 1995 to 2020. As of 2020, Irish women’s employment is 72.2%, compared to Irish men’s employment of 85.3%. Thus, there is a gap of approximately 13%.

Figure 2: Percentage of women and men employed in Ireland, aged 25-54, 1995 to 2020



Source: [Eurostat, European Union Labour Force Survey](#)

⁷ European Commission, Press Release, [New rights to improve work-life balance in the EU enter into application today](#). Brussels. 02 August 2022.

What about the trend in gender inequality in employment in Ireland?

As noted by [England et al. \(2020\)](#)⁸, Figure 3 shows that the ratio of the percentage of women to the percentage of men employed climbed steadily from 1995 to 2010, but thereafter it has been flat or slightly declining. Women were gaining on men before the Great Recession (2008/2009 period). As men's employment fell more steeply than women's during the recession, the ratio rose. But since 2010 men's and women's employment have risen in parallel, so the ratio has been flat. As a result, progress in closing the gender gap in employment in Ireland for the last 10 years appears to have stalled.

Figure 3: Ratio of percentage of women to men employed in Ireland, aged 25-54, 1995 to 2020



Source: [Eurostat, European Union Labour Force Survey](#)

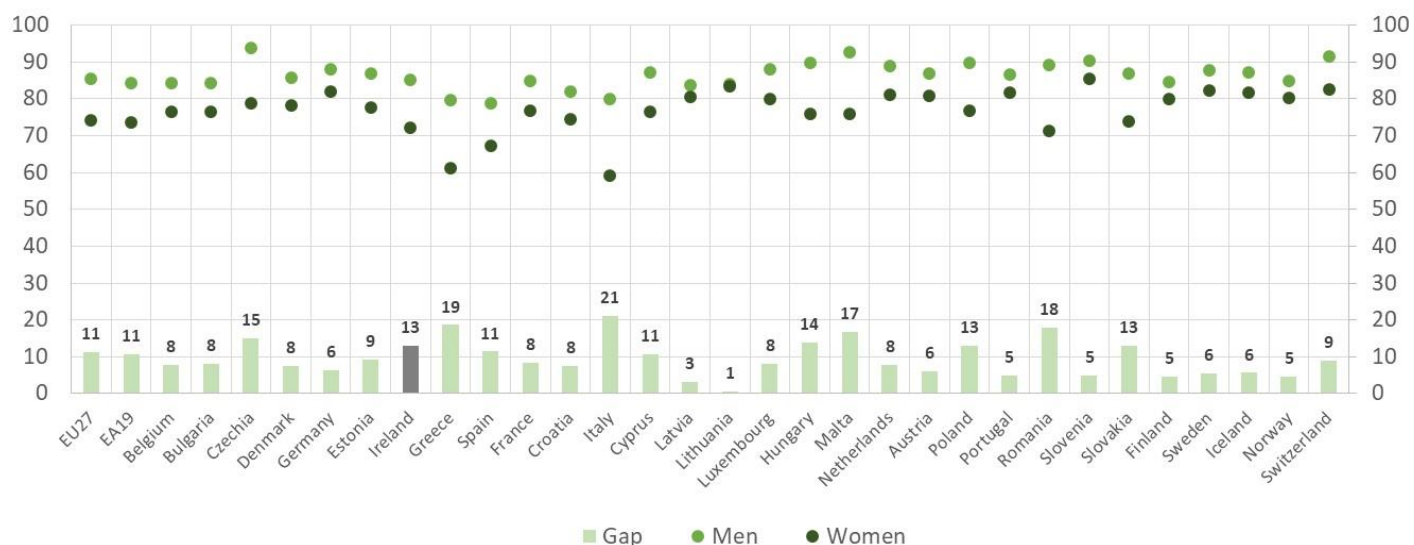
How does Ireland compare with its European counterparts?

Figure 4 shows how Ireland compares with its European counterparts with respect to rates of employment amongst men and women aged 25-54 in 2020. It also illustrates the gap between the two rates (percentage of men employed minus the percentage of women employed). In 2020, the gap in Ireland is 13% which is higher than the EU-27 gap of 11%. Countries with the lowest differences between employment rates are Lithuania (1%), Latvia (3%), Norway, Finland, Slovenia, and Portugal (5%). Countries with the largest differences are Italy (21%), Greece (19%), Romania (18%), Malta (17%) and Czechia (15%)⁹.

⁸ England, Privalko, and Levine (2020), Has the Gender Revolution Stalled? The Economic and Social Review. Vol. 51, No. 4, Winter 2020, pp. 463 – 488. Available [here](#).

⁹ Interestingly, an [Irish Times article](#) published in October 2022 reported that “Ireland ranks second last of 38 developed countries when it comes to parental leave entitlements” based on a survey carried out by confused.com. The article reports that the survey was based on figures from the OECD family database.

Figure 4: Percentage of women and men employed aged 24-54 across European countries for the 2020 period. The gap is estimated as the difference between the two values.



Source: [Eurostat, European Union Labour Force Survey](#)

(ii) The take-up of family-related leave and flexible working arrangements.

[Data from Eurostat](#) published in April 2022 provides information on the impact of caring responsibilities on women's participation in work. They report that caring responsibilities were the main reason why women in the EU aged 20-64 were not part of the labour force in 2021. 30.2% of women outside the labour force reported this as the main cause. For men, 8.5% were reportedly outside the labour force for this reason. Since 2016, this share has been increasing for men (up 1.3%) and decreasing for women (down 1.1%)¹⁰.

For Ireland, a [2019 ESRI and Irish Human Rights and Equality Commission research paper](#)¹¹ found that 45% of women and 29% of men provided care for others on a daily basis (either childcare and/or adult care). Overall, they found that 55% of those providing regular care are in employment (45% for women and 72% for men).

Statistical models were used to analyse how care time is influenced by factors such as hours of work, age, education, and partner's employment. They found that, holding all these factors constant, women perform an average of 7.2 more hours per week than men. Men's care hours did not differ by employment status and were less strongly linked to children's age than women's care hours. In all, the paper reports that when comparing levels of unpaid work across the (then) EU28 holding a variety of factors constant, Ireland had the third highest weekly hours of unpaid work for both men and women. They state "*this is likely to reflect high demand for caring in Ireland, with relatively low State involvement in support for caring*"¹².

¹⁰ Eurostat, Statistics Explained, SDG 5 – Gender equality: Achieve gender equality and empower all women and girls. Data extracted in April 2022. Available [here](#).

¹¹ ESRI and Irish Human Rights and Equality Commission (2019), [Caring and Unpaid Work in Ireland](#).

¹² Ibid, p.xii

What Articles of the Directive is this Bill aiming to transpose?

The *Work Life Balance and Miscellaneous Provisions Bill 2022* aims to transpose two articles of the Directive: Article 6 which relates to carers' leave (see Box 1) and Article 9 which relates to flexible working arrangements (see Box 2).

Box 1: Article 6 of the Directive on Carers' Leave

Article 6: Carers' Leave

- 1) Member States shall take the necessary measures to ensure that each worker has the right to carers' leave of five working days per year. Member States may determine additional details regarding the scope and conditions of carers' leave in accordance with national law or practice. The use of that right may be subject to appropriate substantiation, in accordance with national law or practice.
- 2) Member States may allocate carers' leave on the basis of a reference period other than a year, per person in need of care or support, or per case.

Source: [Directive \(EU\) 2019/1158](#)

Box 2: Article 9 of the Directive on Flexible Working Arrangements

Article 9: Flexible Working Arrangements

- 1) Member States shall take the necessary measures to ensure that workers with children up to a specified age, which shall be at least eight years, and carers, have the right to request flexible working arrangements for caring purposes. The duration of such flexible working arrangements may be subject to a reasonable limitation.
- 2) Employers shall consider and respond to requests for flexible working arrangements as referred to in paragraph 1 within a reasonable period of time, taking into account the needs of both the employer and the worker. Employers shall provide reasons for any refusal of such a request or for any postponement of such arrangements.
- 3) When flexible working arrangements as referred to in paragraph 1 are limited in duration, the worker shall have the right to return to the original working pattern at the end of the agreed period. The worker shall also have the right to request to return to the original working pattern before the end of the agreed period where justified on the basis of a change of circumstances. The employer shall consider and respond to a request for an early return to the original working pattern, taking into account the needs of both the employer and the worker.
- 4) Member States may make the right to request flexible working arrangements subject to a period of work qualification or to a length of service qualification, which shall not exceed six months. In the case of successive fixed-term contracts within the meaning of Directive 1999/70/EC with the same employer, the sum of those contracts shall be taken into account for the purpose of calculating the qualifying period.

Source: [Directive \(EU\) 2019/1158](#)

Accordingly, Minister O’Gorman’s [Press Release](#) in respect of this Bill provides further details on the key amendments that relate to the transposition of this Directive. It states¹³:

“The amendments to transpose these Articles will be done by way of amendment to the *Parental Leave Act 1998*:

1. A new section 13B “Right to request a flexible working arrangement for caring purposes” will be inserted into the Act, to provide for the right for employees with children up to age 12, and carers as defined under the Directive, with the right to request flexible working arrangements for caring purposes.

- The right to request flexible working arrangements will be limited to a period of work qualification of 6 months.
- An employee will be required to submit a request for flexible working arrangements in writing at least 8 weeks prior to the proposed start date.
- An employer will be required to consider and respond to a request for flexible working for care purposes no later than 4 weeks after receiving the request. Provision is made to extend this period where the employer is experiencing difficulties carrying out the necessary assessments.
- An employer will be required to provide reasons for refusing or postponing a request for flexible working arrangements for caring purposes.
- An employer will be required to consult with an employee prior to postponing a request.
- An employee will be provided with an opportunity to revoke a request prior to the proposed start date and both parties once agreeable can amend or vary the arrangement at any time.
- The Bill provides for circumstances where an employee becomes sick prior to the proposed start date.
- The Bill also provides for circumstances where there is abuse of the flexible arrangement.

2. A new section 13A “Leave for medical care purposes” will be inserted into the Act, to provide for 5 days of Carers’ Leave (unpaid) per 12 consecutive months, per employee, as set out in the Directive.

- In line with the Directive, there will be no notice period required to take Carers’ Leave.

¹³ Department of Children, Equality, Disability, Integration and Youth, Press Release, [Minister O’Gorman announces introduction of paid leave for victims of domestic violence](#), Published 22 September 2022, Last Updated 26 September 2022.

- Provision is made for an employer to request evidence of the medical need for the Leave.
- The Leave cannot be taken in periods of less than one day.

The Bill also provides for amendments to various employment rights and protections directly associated with the amendments introduced by Articles 6 and 9 of the Directive.”

The ‘Principal provisions’ section of this Bill Digest provides more detailed information on each section of the Bill relating to these two amendments.

Research on flexible working

This section draws primarily on an L&RS Note “[Flexible Working arrangements: Overview and comparative research](#)” published in May 2022.¹⁴ It provides comparative research on the “right to request” flexible working arrangements and comparative research among selected jurisdictions.

Comparative research on the “right to request” flexible working arrangements

In a few countries, parents have a legal right to request flexible working from their employer (see for example, Australia, Italy and Lithuania). In these cases, [Koslowski et al. \(2022\)](#) report that employers must consider their request and may only refuse it if there is a business case for doing so¹⁵. Table 2 below shows the right to request flexible working arrangements across a range of countries as at the end of August 2022¹⁶.

Table 2: Statutory leave entitlement on flexible working arrangements across a range of countries (August 2022)

Country	Right to request flexible work
Australia	Yes, until the child is 18 and with caring responsibilities.
Austria	X
Belgium	X
Bulgaria ¹⁷	Right to work from home (in principle) for mothers of children under 6.
Canada	Federal workers only (1 of 14 labour law jurisdictions). Not permitted in Québec.

¹⁴ Oireachtas Library & Research Service (2021), *L&RS Note: Flexible Working Arrangements: Overview & comparative research*. Published 10 May 2022. Available [here](#).

¹⁵ Koslowski et al. (2022), 18th International Review of Leave Policies and Related Research 2022. Published August 2022. Available [here](#).

¹⁶ Research compiled by Koslowski et al. (2022) is for the 18th International Review of Leave Policies and Related Research 2022. The International Network on Leave Policies and Research has been providing an annual review of leave policies since 2005. The 2022 review covers 49 countries (including Ireland). More information is available [here](#).

¹⁷ Koslowski et al. (2022) reports “*although there is this statutory right of remote working for mothers with children under the age of six, in practice this is non-applicable. This is because employers in the private sector refuse flexible or remote working, based on the argument that private sector jobs require strict working hours and physical presence. This affects the majority of young Bulgarian women who primarily work in this sector.*” See p. 40 of this [paper](#).

Croatia	X
Cyprus	X
Czech Republic	X
Denmark ¹⁸	X
Estonia	X
Finland	X
France	X
Germany	X
Greece	Yes, in both the public and private sector.
Hungary	X
Iceland	Yes. Employers required to support family/work balance.
Ireland	Yes. On return from parental leave.
Italy	Yes. Until child is 6 years old or, if child has disabilities, until age 18.
Latvia	Yes. Pregnant women, women in postpartum period, breastfeeding mothers, and workers with a child up to 14 (or 18 if the child has a disability).
Lithuania	Yes. All employees.
Luxembourg	X
Malta	Public sector: Yes. Teleworking for 12 months (renewable yearly). Private sector: X
Netherlands	Yes. Flexible hours and working from home for all employees if employer has 10+ employees.
New Zealand	Yes. Any worker.
Norway	X
Poland	Yes. In certain circumstances (e.g. a disabled or seriously ill child).
Portugal	Yes. Entitlement to work flexible hours until child is 12 years old.
Romania	X
Slovakia	Yes. Pregnant work and women and men taking care of children under 15 may ask for shorter working hours. Employers may decline the request due to serious operational reasons.
Slovenia	X
Spain	X

¹⁸ Koslowski et al. (2022) notes that in Denmark there is “no statutory entitlement to childcare leave or career breaks, dependent of collective agreement of individual contract”. See p. 41 of this [paper](#).

Sweden	X
Switzerland	X
UK	Yes. For all employees.

Source: Adapted by the L&RS from Koslowski et al. (2022)¹⁹. Please note, X means there is no statutory entitlement.

Comparative research among selected jurisdictions

Table 3 below provides an overview of the operation of flexible working arrangements in countries where such arrangements have been the subject of legislation in recent years. Specifically, it focuses for the most part on the findings in Table 2 above and focuses on those countries with a right to request flexible working arrangements in place²⁰.

It ought to be noted that the comparison between countries is partial given we are not able to compare like with like due to different legal, policy, administrative, cultural and historical contexts from which these specific arrangements emerged.

Table 3: Comparative research among selected jurisdictions

Country	Legal framework	Right to request flexible work arrangements	Employer's duties
Australia	Fair Work Act 2009 provides 10 National Employment Standards setting out the minimum set of entitlements for employees. One of these relates to the right to request flexible working arrangements ²¹ .	Any employee can request flexibility, but certain employees have a statutory legal entitlement including: parent; carer; have a disability; are 55+; experiencing family or domestic violence.	Employer must respond within 21 days and may refuse the request only on "reasonable business grounds". These can include ²² : the requested arrangements are too costly; significant loss of productivity, or negative impact on customer service; other employees' working arrangements can't be changed to

¹⁹ Koslowski et al. (2022), 18th International Review of Leave Policies and Related Research 2022. Published August 2022. Available [here](#).

²⁰ Please refer to the L&RS Note (2021), [Flexible Working Arrangements: Overview and comparative research for more detailed information](#) for more detailed information.

²¹ Australian Public Service Commission (2021), [Flexible working arrangements](#).

²² Fair Work Ombudsman, [Flexible working arrangements](#).

			accommodate the request.
Netherlands	<p>Flexible Working Act (2016) provides for flexible working. All employees with at least 6 months continuous employment with the current employer, where there are at least 10 employees, are entitled to request a change in their working hours and the right to work from home²³.</p>	<p>Employees can request flexible working arrangements at least 2 months before the proposed start date.</p> <p>Employees can request a change in the amount of hours, timing of the hours, and a change of location at which they work.</p>	<p>Employer must inform employee of decision no later than one month before the proposed start date of flexible working. Failure to respond automatically leads to a granting of requests for flexible working.</p> <p>Employer is required to honour such requests unless there is a significant business or service interest.</p> <p>A request may be rejected on a number of grounds, for example²⁴: causes difficulty for the business; safety problems; roster problems; financial or organisation problems.</p>
New Zealand	<p>Employment Relations Amendment Act (2014). All employees can ask at any time for a change to the following²⁵:</p> <ul style="list-style-type: none"> • Hours of work • Days of work • Place of work 	<p>All employees have the right to request flexible working arrangements, not just those with caring responsibilities.</p> <p>All employees can request flexible working from the start of their employment. There is no requirement on employee to inform employer of reason for the request.</p>	<p>Employer has one month to respond to request for flexible working.</p> <p>The employer can decline but must clearly state the reasons and relate these to “good” business reasons. For example: employer can’t reorganise work among existing staff; cannot recruit additional staff; negative impact on</p>

²³ Koslowski et al. (2022), 18th International Review of Leave Policies and Related Research 2022. Published August 2022. Available [here](#).

²⁴ Eurofound (2021), [Netherlands: Working Time Flexibility](#), Dublin: European Foundation for the Improvement in Living and Working Conditions.

²⁵ Employment New Zealand, [Flexible working arrangements](#).

			<p>quality of employer's business; burden of additional costs of employer.</p> <p>Employee can make a formal complaint in the event of refusal.</p>
UK	<p>Under Part 8A of the Employment Rights Act 1996, subsequent to its amendment in 2014, all employees have the right to request flexible work arrangements after 26 weeks employment²⁶. They may make such a request once in each 12-month period.</p>	<p>Request must be in writing and include: (i) date of application, changes to working conditions sought, and date on which such a change is sought. (ii) the likely effect of the change on the employer and potential remedies to offset such requests. (iii) a statement that the request is a statutory request and if/when a previous application for FWA was last made.</p>	<p>Employers are required to consider requests and ensure no discrimination takes place.</p> <p>Employees should be informed of the decision in writing, promptly.</p> <p>Business reasons must be cited for rejection. These may include for example: burden of additional costs; inability to reorganise work among existing staff; detrimental impact on quality, performance, or customer demand.</p> <p>Where requests are rejected, employees have the right to appeal²⁷.</p>

Source: Adapted from [L&RS Note \(2021\): Flexible Working Arrangements: Overview and Comparative Research](#)

²⁶ Acas (2014), Code of Practice on handling in a reasonable manner requests to work flexibly. Available [here](#).

²⁷ *Ibid*.

Pre-legislative scrutiny of the General Scheme of the Bill

The Joint Committee on Children, Equality, Disability, Integration and Youth undertook pre-legislative scrutiny of the [General Scheme of the Work-Life Balance and Miscellaneous Provisions Bill 2022](#). The General Scheme was referred to the Committee on 25 April 2022, with a request that pre-legislative scrutiny be completed by 21 June 2022 in order to meet the deadline of 02 August 2022 for transposition.²⁸ The [Report on pre-legislative scrutiny \(PLS\)](#) of the Committee on the General Scheme was published on 09 June 2022.

As part of its PLS of the General Scheme, the Joint Committee issued requests for written submissions to 22 stakeholders. It received the following seven submissions:

- [National Women's Council](#)
- [Dr Stephen Köppe, UCD](#)
- [One Family](#)
- [ICE Group](#)
- [ICTU](#)
- [Employment Bar Association](#)
- [Ibec](#)

The Committee's PLS report identified 21 key issues around a number of areas including:

- The need to ensure that flexible working is open to all workers (six recommendations identified relating to this).
- Eligibility and the requirement for six months continuous employment before flexible working can be requested (three recommendations identified relating to this).
- The *in loco parentis* role (two recommendations identified relating to this).
- The concept of a shorter working week (one recommendation relating to this).
- Parental Leave and Force Majeure Leave, leave for medical purposes (three recommendations relating to this).
- Monitoring and transparency (two recommendations relating to this).
- Supports for business (one recommendation relating to this).
- Outstanding technical and linguistic issues (one recommendation relating to this).
- Lone parents (two recommendations relating to this).

Table 4 below presents the Committee's recommendations as outlined in its PLS report on the General Scheme.

²⁸ Report on pre-legislative scrutiny of the General Scheme of a Work Life Balance and Miscellaneous Provisions Bill 2022. Published June 2022. See p. 7 of 24. Available [here](#).

Table 4 Report on pre-legislative scrutiny: List of recommendations

Recommendations	
1.	10 days domestic violence leave must be provided for.
2.	There should be a statutory right to reasonable access to flexible working for all.
3.	The initiatives proposed under this Bill must be met with improvements in the provision of accessible and affordable childcare and other care services.
4.	Consideration should be given to removing catch-all ground of “any other relevant matters” as grounds for an employer to postpone a flexible working arrangement.
5.	Consideration should be given to varying the extent of flexible arrangements a company must legally accommodate according to company size.
6.	The Bill must define how personal/medical information concerning a third party is understood and to be used in the application for leave relating to the care of that third party, including, what the employer can reasonably request; a provision for when the third party does not consent to the sharing of the information; and the obligations of the employer regarding the processing, storing, and destruction of that information.
7.	Consideration should be given to reducing the length of service an employee must have acquired and the requirement for such service to be continuous before they can make an application for flexible working arrangements.
8.	The Bill must incorporate the parts of the Directive dealing with fixed terms contracts, which reads: “In the case of successive fixed-term contracts within the meaning of Directive 1999/70/EC with the same employer, the sum of those contracts shall be taken into account for the purpose of calculating the qualifying period.”
9.	Where possible, and if appropriate, consideration should be given to aligning the eligibility criteria for remote working arrangements, provided for in the Right to Request Remote Working Bill, with the grounds for refusal of a flexible working arrangement provided for in this Bill.
10.	There needs to be a significant campaign of awareness raising among employees and employers about the variety of new arrangements or entitlements that may be relevant to them under the Bill.
11.	In loco parentis should be further explained and defined in the Bill and should allow for the wide range of individuals who assume that role in different cases, including aunts, uncles, step-parents and grandparents.
12.	The Bill should recognise and allow for applicants for a wide variety of work arrangements, including, but not limited to, remote working and compressed hours.
13.	A payment or allowance should be provided for leave for medical purposes.
14.	Remove the entitlement of employers to request a medical certificate for persons being cared for by a worker under this type of leave.
15.	An additional form of paid leave for parents called ‘sick child leave’ should be introduced.

Recommendations	
16.	The Department of Children, Equality, Disability, Integration and Youth should collect disaggregated data on flexible working arrangements for caring purposes to: <ul style="list-style-type: none"> (a) ensure the legislation is effectively and equitably implemented and to assess its impact in terms of achieving equality and wellbeing objectives. (b) assess the impact of the measures on businesses and provide them with targeted supports. (c) enable cooperation at EU level in assessing and developing the Directive's measures going forward.
17.	Consideration should be given to obliging companies, potentially over a certain size, to publish data on requests for flexible working arrangements. Supports should be provided to businesses to enable them to do this effectively.
18.	A campaign of communications with, and support for, businesses should be developed by the relevant Departments as a priority, utilising established forums where possible to support the implementation of this and other similar future Directives.
19.	The relevant Departments and those involved in progressing the Bill should take account of the linguistic, technical and theoretical observations in the Employment Bar Association's submission and make corresponding amendments as necessary.
20.	Lone parents should be entitled to double the amount of leave for medical care purposes to account for the absent parent, i.e., 10 days, with a payment or allowance being provided for medical care purposes in all cases.
21	The relevant Departments, working with lone parents, should develop other enhanced and targeted supports for single parent families.

Source: The [Report on pre-legislative scrutiny \(PLS\)](#) of the Committee on the General Scheme

Financial implications

The [explanatory and financial memorandum](#) accompanying the Bill states that²⁹:

“The amendments to the Parental Leave Act 1998 will result in replacement costs in the civil and public service the staff availing of the entitlement to leave for medical care purposes. There are no costs arising from the amendments to the Maternity Protection Act 1994 or to the Adoptive Leave Act 1995.”

²⁹ Work Life Balance and Miscellaneous Provisions Bill 2022, Explanatory and Financial Memorandum. See p. 1. Available [here](#).

Principal provisions of the Bill

This section of the Bill Digest provides further information on some of the main provisions of the Bill, specifically Section 5 (leave for medical care purposes), Section 6 (insertion of new Part IIA in the *Parental Leave Act 1998*), and Section 15 (Amendments of *Maternity Protection Act 1994*). A short synopsis of each section is given in Table 1 (Table of Provisions) at the beginning of this Digest.

Section 5: Leave for medical care purposes

Section 5 of the Bill inserts a new section 13A into the Principal Act to provide for an entitlement to five days of leave for medical care purposes. The leave without pay must be available for a relative defined as a person of whom the employee is the relevant parent, the spouse or civil partner of the employee, the cohabitant of the employee, a parent or grandparent of the employee, a brother or sister of the employee, or a person, other than specified who resides in the same household as the employee, and is in need of significant care or support for a serious medical reasons. The [explanatory memorandum](#) provides that

“the leave cannot be taken in periods of less than one day. Neither a period of work qualification nor prior notice of the leave is required. However, an employer can require prior medical certification of the need for significant care or support for a serious medical reason”³⁰.

Leave without pay

Section 13A(1) provides that an employee shall be entitled to leave without pay from his or her employment for medical care purposes, for the purposes of providing personal care of support to a person to whom this subsection applies.

Who it applies to

Section 13A(2) provides that subsection (1) applies to a person who is one of the following: (i) a person of whom the employee is the relevant parent; (ii) the spouse or civil partner of the employee; (iii) the cohabitant of the employee; (iv) a parent or grandparent of the employee; (v) a brother or sister of the employee; or (vi) a person, other than one specified in any of subparagraphs (i) to (v), who resides in the same household as the employee, **and**, (b) is in need of significant care or support for a serious medical reason.

Number of days that may be taken

Section 13A(3) provides for the number of days over which the leave may be taken. It states that it shall consist of one or more days on which, but for the leave, the employee would be working in the employment concerned but shall not exceed 5 days in any period of 12 consecutive months and shall not be taken in a period of less than one day.

³⁰ [Explanatory and financial memorandum](#) to the Work Life Balance and Miscellaneous Provisions Bill 2022.

Section 13A(4) provides for an employee being absent for work on leave for medical care purposes for only part the day. It provides that this is to be considered one day of leave for medical care purposes.

Written confirmation

Section 13A(5) provides that the employee shall confirm in the prescribed form given to their employers that they intend to take, or has taken, such leave.

Section 13A(6) relates to confirmation of said form. It provides that it should specify the date of the commencement of the leave and its duration, contain a statement of the facts entitling the employee to the leave, and be signed by the employee concerned.

Section 13A(7) provides that on receipt of this confirmation, the employer will retain the confirmation and provide the employee with a written acknowledgement which shall be retained by the employee.

Information that may be requested

Section 13A(8) provides that an employee who has given confirmation, may be required by the employer, if requested, to provide information in relation to (a) the employee's relationship with the person for whom they are taking leave, (b) the nature of the personal care or support required, and (c) relevant evidence relating to the need of the person for the significant care of support concerned.

Relevant evidence

Section 13A(9) relates to 'relevant evidence' as in subsection (8)(c). This means (a) a medical certificate (i) stating that the person named in the certificate was in need of significant care or support for a serious medical reason, and (ii) signed by a registered medical practitioner within the meaning of section 2 of the [Medical Practitioners Act 2007](#) or (b) if the employee does not have a medical certificate referred to in paragraph (a), evidence that the employer may reasonably require in order to show that the person concerned is or was in need of significant care or support for a serious medical reason.

Box 3: Report on PLS relating to leave for medical purposes

Head 4 of the General Scheme relates to parental leave and *force majeure* leave - leave for medical care purposes. It raised several issues primarily around (i) payment, (ii) medical certificate requirement (iii) a request for the introduction of sick child leave in addition to the leave being introduced by the Directive.

The report on PLS notes that while the Directive does not legally oblige Member States to provide payment for the types of leave provided, it does encourage a payment or allowance to be introduced in order to guarantee the effective take-up by men in particular.

Many submissions received by the Committee recommended that leave for medical care purposes should be paid. In its absence, men, lone parents and those on lower incomes are less likely to benefit from the five days leave. The report on PLS states that the amount of payment suggested by stakeholders varied. Some called for full wages, some for 70% of wages, and some called for it at the level of illness benefit.

Additional issues raised were in relation to the entitlement of employers to request a medical certificate for persons being cared for, and concerns around how such requests operated in relation to GDPR. One stakeholder called for the introduction of sick child leave in addition to the leave proposed by the Directive.

[Ibec's submission](#) raised several concerns: firstly, that Carer's Leave, in their view, "*already meets the objectives of the Directive*". Secondly, they suggest that "*at least 4 weeks' notice should be required before the leave can be taken*", and thirdly, that "*at least 6 months continuous service*" be required before the leave can be taken.

Source: Joint Committee on Children, Equality, Disability, Integration and Youth. [Report on pre-legislative scrutiny of the General Scheme of a Work Life Balance and Miscellaneous Provisions Bill 2022](#).

Section 6: Insertion of new Part IIA in the *Parental Leave Act 1998*

As outlined in the [explanatory and financial memorandum](#) accompanying the Bill, section 6 proposes to insert a new Part IIA into the *Parental Leave Act 1998* which provides new sections 13B, 13C, 13D, 13E, 13F, and 13G that relate to the right to request flexible working. It states:

"These new sections provide for a right to request flexible working and set out who may make a request, the process for making a request, the time limit for an employer to respond to a request, grounds for postponement, how an approved request could be amended, an early return by the employee to a previous working arrangement and the process should a flexible working arrangement be abused."³¹

Right to request a flexible working arrangement for caring purposes

Section 13B (1) to (9) relates to the right to request a flexible working arrangement for caring purposes.

³¹ [Explanatory and financial memorandum](#) to the Work Life Balance and Miscellaneous Provisions Bill 2022.

Who may request a flexible working arrangement?

Section 13B(1) outlines who may request a flexible working arrangement. It provides that (a) an employee who is a relevant parent of a child and who is or will be providing care to that child for the purposes of providing care to that child; (b) an employee who is or will be providing personal care of support to a person to whom this paragraph applies.

Section 13B(2) provides additional information on subsection (1)(b). It states that subsection (1)(b) applies to a person who (a) is one of the following: (i) a person to whom the employee is the relevant parent; (ii) the spouse or civil partner of the employee; (iii) the cohabitant of the employee; (iv) a parent or grandparent of the employee; (v) a brother or sister of the employee; or (vi) a person, other than one specified in any subparagraphs (i) to (v) who resides in the same household as the employee, **and**, (b) is in need of significant care of support for a serious medical reason.

When shall the flexible working arrangement end?

Section 13B(3) provides that a flexible working arrangement for the care of a child referred to in subsection (1)(a) shall end

- a) subject to paragraphs (b) and (c), not later than the day on which the child concerned has attained the **age of 12 years**,
- b) subject to paragraph (c), in the case of a child who (i) is the subject of an adoption order, and (ii) has, on or before the date of the making of that order, attained the age of 10 years but not 12 years, not later than the expiration of the period of 2 years beginning on that date, or
- c) if the child concerned has a disability or long-term illness, as defined in section 6(9), not later than the date the child (i) attains the age of 16 years, or (ii) ceases to have that disability or long-term illness or any other disability or long-term illness, whichever occurs first.

Commencement depends on the completion of 6 months continuous employment

Section 13B(4) provides that an employee's approved flexible working arrangement shall not commence before a time when the employee concerned has completed 6 months continuous employment with the employer concerned.

Section 13B(5) provides for circumstances in which the employee ceases to be the employee of an employer and, not more than 26 weeks after the date of cesser, the employee becomes the employee of the employer again. In this instance, the period of service of that employee with the employer before the date of cesser shall be deemed to be continuous with the period of service of that employee with that employer after again becoming such employee.

What information is required to apply for a flexible working arrangement?

Section 13B(6) provides that a request for a flexible working arrangement referred to in subsection (1) shall (a) be in writing and signed by the employee, (b) specify the form of the flexible working arrangement requested and the date of commencement and duration of the flexible working arrangement, and (c) be submitted to his or her employer as soon as reasonably practicable but not later than 8 weeks before the proposed commencement of the flexible working arrangement.

Information the employer may request

Section 13B(7) relates to the information the employer may request with respect to an application for flexible working arrangement. This may include (a) in the case of a child referred to in subsection (1)(a), a copy of the child's birth certificate or a certificate of placement within the meaning of the [Adoptive Leave Act 1995](#), or, in the case of a person referred to in subsection (1)(b): (i) the employee's relationship with the person in respect of whom the request is made, (ii) the nature of the significant care or support which the person concerned is in need of, and (iii) relevant evidence relating to the need of the person for the significant care or support concerned.

Withdrawing a request

Section 13B(8) provides that before the date on which agreement referred to in section 13C.(1)(a) is signed, the employee may, by notice in writing signed by him or her and given to the employer, withdraw a request for a flexible working arrangement submitted in accordance with subsection (6).

Time limit to make a decision

Section 13C (1) to (4) relates to the time limit to make a decision

Employer receiving a request for flexible working must respond within 4 weeks

Section 13C(1) provides that an employer who receives a request for a flexible working arrangement shall consider the request and as soon as reasonably practicable, but not later than 4 weeks after receipt shall:

- (a) approve the request, which approval shall include an agreement prepared and signed by the employer and employee setting out (i) the details of the flexible working arrangement, and (ii) subject to subsection (2), the date of the commencement of the proposed flexible working arrangement.
- (b) provide a notice in writing informing the employee that the request has been refused and the reasons for the refusal, or
- (c) where subsection (3) applies, provide a notice in writing to the employee that the employer has extended the 4-week period under this subsection for a further period specified in the notice.

Postponement of a flexible working arrangement

Section 13C(2) provides that where the commencement of a flexible working arrangement is postponed in accordance with section 13D, the agreement referred to in paragraph (1)(a) shall set out the commencement date agreed to under section 13D(1).

Extension of the employer's time frame to make a decision to 8 weeks

Section 13C(3) provides that where an employer is having difficulty assessing the viability of a request for flexible working, the employer may extend the 4-week period by a further period not exceeding 8 weeks.

Grounds for postponement

Sections 13D(1) to (6) relate to the grounds for postponement of a flexible working arrangement.

Reasons for postponement

Section 13D(1) provides that, subject to this section, where an employer is satisfied that the commencement of a proposed flexible working arrangement would have a substantial adverse effect on the operation of his or her business, profession or occupation by reason of:

- Seasonal variations in the volume of the work concerned
- The unavailability of a person to carry out the duties of the employee in employment
- The nature of those duties
- The number of employees in the employment, or
- The number thereof whose periods, or parts of whose periods, of an approved flexible working arrangement will fall within the period specified in the employee's approved flexible working arrangement, or
- Any other relevant matters

The employer may, by notice in writing, postpone the commencement of the flexible working arrangement to such time not later than 6 months after the date of commencement specified in the request for a flexible working arrangement as may be agreed upon by the employer and the employee.

Section 13D(2) provides that a notice under subsection (1) shall contain a statement in summary form of the grounds for the postponement of the commencement of the flexible working arrangement.

Section 13D(3) provides that the employer must consult with the employee in relation to the postponement before informing them of a postponement of the commencement of their approved flexible working arrangement.

Section 13D(5) provides that this section does not apply if an agreement in respect of a request for a flexible working arrangement under section 13C(1)(a) has already been signed by the parties concerned.

Postponement more than once

Section 13D(4) provides that the commencement of a flexible working arrangement may not be postponed more than once under this section unless a ground for the postponement is a seasonal variation in the volume of the work concerned, and, where that is a ground for the postponement, such commencement may not be postponed more than twice.

Changes to proposed flexible working arrangements

Sections 13E(1) to (3) relate to changes to proposed flexible working arrangements.

Section 13E(1) provides that if after the date on which an agreement to flexible working is signed (regardless of whether or not it has commenced), and the employer and the employee so agree, in writing (a) the flexible working arrangement or part of it may be postponed to an agreed time, (b) the period of the flexible working arrangement may be curtailed, (c) the form of the flexible working arrangement may be varied, then it shall be deemed that the agreement referred to in section 13C(1)(a) is amended accordingly.

Employee becomes ill or incapacitated

Section 13E(2) provides that if after the date the flexible working arrangement is signed and has not commenced, the employee becomes ill or incapacitated such that they are unable to care for

the person who is the subject of the approved flexible working arrangement, the employee may postpone the commencement of the flexible working arrangement to such a time as they are no longer ill or incapacitated. This must be accompanied by a written notice by the employee as soon as practicable and accompanied by the relevant evidence.

Early return to previous working arrangement

Sections 13F(1) to (5) relate to early return to previous working arrangement.

Section 13F(1) provides that the employee may by notice in writing request an early return to the original working arrangements that they held immediately before the commencement of the flexible working arrangements. **Section 13F(2)** provides that the notice shall set out the reasons for the early return and the proposed date.

Section 13F(3) provides that an employer who receives such a request shall respond to the employee in writing no later than 4 weeks after receipt of the request. **Section 13F(4)** provides that if the employer refuses to agree to an early return, they shall provide reasons for doing so.

Section 13F(5) provides that on the expiration of the employee's flexible working arrangement, they shall be entitled to return to the original working arrangement that they held immediately before the commencement of the flexible working arrangement.

Abuse of flexible working arrangement

Section 13G (1) to (5) relates to the abuse of a flexible working arrangement.

Section 13 G(1) provides that an approved flexible working arrangement is subject to the condition that it is used for the purpose for which it was approved. **Section 13G(2)** provides that where an employer has reasonable grounds for believing the arrangement is not being used in this way, they may, by notice in writing given to the employee, terminate the arrangement and the notice shall contain a statement in summary form of the grounds for termination and shall specify the day.

Section 13G(3) provides that where an arrangement is terminated, the employee shall return to their original working arrangement on the day specified in the notice.

Section 13G(4) provides that the employer shall, before giving a notice, give notice in writing of the proposal and a statement in summary form of the grounds for terminating the arrangement. It should also include a statement that the employee may within 7 days of the receipt of said notice make representation to the employer in relation to the proposal. Any such representations within the period stated shall be considered by the employer before they give notice under subsection (2) to the employee.

Box 4: Report on PLS relating to flexible working arrangements

Head 3 of the General Scheme related to the right to request flexible working arrangements for caring purposes. A number of key issues were identified by the Committee with respect to stakeholder submissions. For a full discussion on each, please refer to the full Report on PLS. This Box focuses on two of the issues identified:

(1) The need to ensure that flexible working is open to all workers

The report on PLS states that “*multiple submissions highlighted the importance of ensuring that flexible working is open to all workers, in order to best address existing gender inequality in caring and parenting*”. In addition, it notes that one of the citizen’s assembly recommendations was that there should be “*a statutory right to reasonable access to flexible working, not limited to those with caring roles.*”

The Committee note in the report that there are many legitimate reasons why many employers cannot provide such a right. They report that the General Scheme of the Bill gave employers “*ample scope to reject an employee’s request for flexible working*” and that the majority of submissions “*argued in favour of broadening the eligibility for same*”.

Other concerns raised related to the need for employers to remain competitive and sustain employment after Brexit and the Covid-19 pandemic. However, one submission by [Dr. Köppe](#) advised there was a risk of staff leaving Ireland in the absence of flexible provisions. [ICTU](#) provided that in the UK, flexible working is a key part of their strategy to “*excel in the post-Covid-19 economy*”.

(2) Eligibility – the requirement for 6 months continuous employment before flexible working can be requested

The report on PLS stated that several stakeholders called for the removal of the required six months service as it is optional under the Directive (see Article 9(4) of the Directive in Box 2 of this Digest). They report that it “*will disproportionately affect certain groups such as lone parents and workers on temporary contracts*”.

Source: Joint Committee on Children, Equality, Disability, Integration and Youth. [Report on pre-legislative scrutiny of the General Scheme of a Work Life Balance and Miscellaneous Provisions Bill 2022](#).

Section 15: Amendments of *Maternity Protection Act 1994*

Section 15 of the Bill relates to employees who are breastfeeding. It proposes to amend the [Maternity Protection Act 1994](#):

(a) in subsection 2(1), by the substitution of the following definition for the definition of “employee who is breastfeeding”:

“ ‘employee who is breastfeeding’ means at any time an employee whose date of confinement was not more than one hundred and four weeks earlier, who is breastfeeding and who has informed her employer of her condition;”,

(b) by the deletion of section 7(2) which states that: “references in this Part to an employee are references to a female employee only.”

(c) in section 16(1), by the substitution of “woman or other person” for “woman”.

Box 5: Report on PLS relating to breastfeeding breaks

The Report on PLS provides that, with the exception of Ibec, the provision around breastfeeding breaks were widely welcomed in submissions received by the Committee. In their submission, [Ibec](#) reported that the extension of a paid entitlement to breastfeeding breaks from 26 weeks to 104 weeks “not only represents a significant unprecedented increase but will give rise to significant cost burden and operational challenges for employers”. In their view, increasing the paid entitlements to 52 weeks in the first instance is “a more reasonable and balanced approach” with any extension beyond 52 weeks being unpaid.

It is reported that the Committee welcomes the Bills provisions in relation to breastfeeding breaks.

Source: Joint Committee on Children, Equality, Disability, Integration and Youth. [Report on pre-legislative scrutiny of the General Scheme of a Work Life Balance and Miscellaneous Provisions Bill 2022](#).

Appendix: Domestic Violence Leave

Background

On 22 September 2022, Minister O’Gorman T.D., in announcing [approval](#) of the publication of the *Work Life Balance and Miscellaneous Provisions Bill 2022*, stated that³²:

“The Bill will see the introduction of paid leave for victims of domestic violence. Once enacted, those who are suffering or at risk of domestic violence will be entitled to five days of paid leave per year. The Government will also put in place supports for employers to assist them in developing domestic violence workplace policies and to better support employees experiencing domestic violence.”

While there is no provision within the Bill for such measures currently, the [press release](#) states that:

“The Minister intends to introduce legislative provisions providing for a form of domestic violence leave as Committee Stage amendments to the *Work Life Balance and Miscellaneous Provisions Bill*.”³³

In addition, it was announced that the Government had approved the publication of the [Domestic Violence Leave Report and Recommendations](#)³⁴. This report follows on from the [Organisation of Working Time \(Domestic Violence Leave\) Bill 2020](#), a Private Members Bill, which progressed through Second Stage in Dáil Éireann in December 2020. In response to this Bill, the Government agreed to

“...examine the feasibility of establishing a statutory entitlement to paid domestic violence leave and to provide a report within six months, with legislative proposals to follow within 4 months”³⁵.

DCEDIY undertook a consultation process with stakeholders and social partners on the subject of domestic violence leave and social welfare payments between February 2021 and May 2021. The list of stakeholder groups consulted included:

- Monitoring Committee of the Second National Strategy on Domestic, Sexual and Gender Based Violence
- Irish Congress of Trade Unions
- The Irish Small & Medium Enterprises Association (ISME)
- Chambers Ireland

³² Department of Children, Equality, Disability, Integration and Youth, Press Release, Minister O’Gorman announces introduction of paid leave for victims of domestic violence. Published 22 September 2022. Updated 26 September 2022. Available [here](#).

³³ Department of Children, Equality, Disability, Integration and Youth, Press Release, [Minister O’Gorman announces introduction of paid leave for victims of domestic violence](#), Published 22 September 2022, Last Updated 26 September 2022.

³⁴ Department of Children, Equality, Disability, Integration and Youth, Domestic Violence Leave Report and Recommendations. Published 26 September 2022. Available [here](#).

³⁵ Ibid, p. 3 of 26.

- Ibec
- Communication Workers Union
- Financial Services Union
- Irish Congress of Trade Unions.

The report notes that further follow-up consultations were conducted in 2022 on the recommendations in this report. In addition, written submissions were sought, and received from the following organisations:

- Health Service Executive
- Department of Agriculture, Food and the Marine
- Department of Social Protection
- Chambers Ireland
- Cairde, Acts of Compassion and Balbriggan Women's Development Group (joint submission)
- Gay Health Network
- Ibec
- ICTU and letter of support for this submission from SIPTU
- Nasc
- Safe Ireland
- Women's Aid.

In total, six recommendations were put forward. A summary of these recommendations is provided in Table 5 below.

Table 5: Summary of the Recommendations from the Domestic Violence Leave Report and Recommendations.

Recommendation 1	<p>There is a need for domestic violence leave to be integrated into wider Domestic Violence Employer Policy (DVEP). Government should support employers in developing DVEPs by developing:</p> <ul style="list-style-type: none"> • National templates, guidelines and policies to support the implementation of domestic violence leave. • Resources for employers regarding the treatment of employees affected by domestic violence informed by best practice in workplace policies. <p>Specialist training to assist employers in responding to employees who have been affected by domestic violence.</p>
Recommendation 2	<p>Government should legislate for employees affected by domestic violence to obtain a statutory entitlement of 5 days' leave in any period of 12 consecutive months. This leave will be a form of paid leave and will be distinct from other leave entitlements.</p> <p>No notice period should apply when availing of this leave in emergency situations, but notice should be provided where possible. They recommend that:</p> <ul style="list-style-type: none"> • The leave should be available to be taken as a block of days or as individual days, with employers retaining the right to increase this leave or to offer additional flexibility.

	<ul style="list-style-type: none"> • Legislation should be reviewed within two years to examine its effectiveness. • As part of this review, consideration ought to be given to increasing the entitlement to 10 days' leave in any period of 12 consecutive months. <p>On the form of pay, the report recommends that the payment be made by the employer on a similar basis to <i>force majeure</i> leave so as to protect the incomes of those using the leave.</p> <p>In addition, the report notes that the proposal is for the “daily payment from the employer would be 70% of daily salary rate, capped at €110 per day”.</p> <p>To ensure all workers receive a reasonable level of compensation, a minimum rate entitlement will be also set. This proposal is modelled on the Sick Leave Act 2022.</p>
Recommendation 3	<p>Employees should qualify for domestic violence leave if they have been subject to an act of domestic violence and require leave to attend to ongoing matters as a result of domestic violence.</p> <p>This should enable employees affected by domestic violence to avail of leave to deal with issues that are not covered by alternative forms of leave (e.g. time to relocate, or seek legal assistance).</p>
Recommendation 4	<p>Employers should retain the right to request reasonable proof (e.g. a letter from a GP, counselling service, or proof of court proceedings). The report notes that this is in line with some international examples (e.g. New Zealand).</p>
Recommendation 5	<p>Employment protections will be provided for under any legislation and employees will have recourse to the Workplace Relations Commission.</p> <p>The report recommends that management of disputes should reflect the arrangements in place for <i>force majeure</i> and should be referred to the Workplace Relations Commission to adjudicate workplace issues.</p>
Recommendation 6	<p>Provision of leave should be reviewed after two years to assess uptake issues.</p>

Source: Department of Children, Equality, Disability, Integration and Youth, (2022), [Domestic Violence Leave Report and Recommendations](#)

Literature on the provision of paid domestic violence leave

As noted in research by the [L&RS \(2021\)](#)³⁶, research shows that those experiencing violence have increased employment instability ([Borchers et al., 2016](#)³⁷; [Showalter, 2016](#)³⁸; [MacGregor et al., 2019](#)³⁹). Gender Based Violence (GBV) is associated with increased absenteeism in the long run, presenteeism (e.g., use of sick days, concentration issues, job performance, etc.) in the short run and reduced productivity ([Duvvury et al., 2013](#))⁴⁰.

A systematic review of the evidence on employment and domestic violence found that domestic violence survivors experience high rates of job loss and turnover and in some instances are forced to quit or are let go ([Showalter, 2016](#)).

In addition, evidence shows that the impact of violence on survivors' wages is significant: for example, in the US, survivors of sexual violence lose over \$52,000 in wages over their lifetime ([Institute for Women's Policy Research, 2017](#))⁴¹.

In June 2019, the new [International Labour Organisation \(ILO\) Convention on eliminating violence and harassment in the work of work \(C.190\)](#), to which Ireland is a signatory, was adopted alongside the accompanying [Recommendation \(R.206\)](#) which places responsibilities on government and employers to implement and address domestic violence when it affects the workplace.

Some countries have state-level legislation in place. As reported by [The Kering Foundation \(2020\)](#)⁴², these measures include:

- 1) Paid (Canada, New Zealand, Italy) and unpaid (Australia) leave
- 2) Flexible working arrangements for workers experiencing domestic and family violence (Canada, New Zealand)
- 3) Ensuring employees who have experienced domestic violence are protected against discrimination (New Zealand), and
- 4) Obligation on employers to take reasonable precautions to protect employees from physical and mental harm (Canada).

³⁶ Oireachtas Library & Research Service, 2021, L&RS Spotlight: Addressing Gender-Based Violence. Part Two: Interventions. No. 5 of 2021. Available [here](#).

³⁷ Borchers A, Lee R.C., Martsof, D.S., and Maler J. (2016). Employment Maintenance and Intimate Partner Violence. *Workplace Health & Safety*. 64(10):469-478. doi:10.1177/2165079916644008

³⁸ Showalter, K. (2016). Women's employment and domestic violence: A review of the literature, *Aggression and Violent Behaviour*, Vol. 31, Pages 37-47 <https://doi.org/10.1016/j.avb.2016.06.017>

³⁹ MacGregor, J.C.D., Oliver, C.L., MacQuarrie, B.J., and Wathen, C.N. (2021). Intimate Partner Violence and Work: A Scoping Review of Published Research. *Trauma, Violence, & Abuse*. 22(4):717-727.

⁴⁰ Duvvury, N., Callan, A., Carney, P., and Raghavendra, S. (2013). Intimate Partner Violence: Economic Costs and Implications for Growth and Development. *Women's voice, agency, and participation research series;no. 3*. World Bank, Washington, DC. © World Bank. <https://openknowledge.worldbank.org/handle/10986/16697> License: CC BY 3.0 IGO

⁴¹ Institute for Women's Policy Research (2017). The Economic Cost of Intimate Partner Violence, Sexual Assault, and Stalking. Fact Sheet. Available [here](#).

⁴² Kering Foundation (2020). Comparative research on workplace laws to combat domestic violence. Available [here](#).

The following sub-section provides information on international perspectives with respect to paid and unpaid domestic violence leave.

International Perspectives

This subsection discusses examples of domestic violence leave in the workplace, and a discussion on countries that have legislated for domestic violence leave.

Examples of domestic violence leave in the workplace

There are various examples of domestic violence leave policies in the workplace. In this section, we provide an overview of three workplaces⁴³ that have implemented domestic violence leave policies. There are some common features to these policies:

- 10 days paid leave
- Training provided to line managers
- Access to other forms of leave policy
- Emergency financial assistance
- Access available for all employees
- Flexible working arrangements available

NUI Galway (now University of Galway)

On 20 April 2021, [NUI Galway](#)⁴⁴ (now University of Galway) introduced their domestic violence leave policy to provide for a period of paid time away from work for all staff who have experienced, or are experiencing, domestic violence or abuse.

Paid domestic violence leave will be provided for up to 10 working days on a rolling basis. This leave may be taken either in whole, or broken into separate days, as required. If further time away from work is required, the staff member may access one of the University's other leave schemes (e.g. sick leave, personal unpaid leave).

Paid domestic violence leave is provided for up to 10 working days on a rolling basis.

All staff members are eligible and there is no minimum service period required to qualify for this leave. The staff member is not required to provide proof of their abuse or documentary evidence for the leave required. However, in certain circumstances, proof may be required.

Training is provided for line managers and other relevant staff on domestic violence issues. When a staff member discloses that they are experiencing domestic violence, the manager must discuss domestic violence leave and other supports available with the affected staff member. They must also alert HR.

⁴³ There are many more workplaces that have introduced both paid and unpaid domestic violence leave policies not listed in detail here. These include:

- [University of Pennsylvania](#) and [Cornell Law School](#)
- [Facebook](#), [EY](#), [Kering Group](#) and some NHS Health Services (e.g., [Fife](#), [Tayside](#))

⁴⁴ NUI Galway Policies and Procedures, [Domestic Violence Leave Policy](#). Published 20 April 2021.

Vodafone

In July 2019, [Vodafone Foundation](#)⁴⁵ implemented their global domestic violence and abuse policy. Their businesses in New Zealand and Australia were the first to introduce local policies, and from their evaluation, they developed best practice guidance for all Vodafone markets.

Their policy is to support employees to remain in work through flexible work and leave. Employees can avail of up to a maximum of 10 days paid leave and may also take unpaid leave. Vodafone also have a policy in place to provide emergency financial assistance where needed (e.g., advance salary payment, access to low-cost loans, etc.).

The policy is available for full and part-time employees on Vodafone contracts engaged by the company or in any workplace location.

Both managers and employees are provided with training on the policy itself, its implementation, and the different ways managers, supervisors and colleagues can play a role. Training is also provided for managers and employees on how to communicate with and support a person who discloses domestic violence. Finally, training on how to prevent violence in the workplace, and build understanding of its links to gender inequality, social and cultural norms is provided.

Training is provided for managers and employees on how to communicate with and support a person who discloses domestic violence.

If a person discloses that they are experiencing domestic violence, then immediate assistance and support must be provided (e.g. an up-to-date list of community and domestic violence support services), address temporary adjustments regarding work tasks, provide safety planning, and put in place procedures to enable managers and employees to respond to any potential breach of a protection order in the workplace.

Unilever

[Unilever](#)⁴⁶ introduced a global domestic violence and abuse policy in 2021. Employees who are victims of domestic violence and have disclosed their circumstances in confidence to Unilever may be eligible for Safe Leave. This is additional paid leave for up to 10 days per calendar year. An additional five days paid special leave may also be provided. The leave may be taken as needed (e.g. hour, single days, multiple days). An employee may also request flexible working arrangements to support their personal circumstances and may also request to move to an alternative Unilever location or site (on a case-by-case basis).

In addition to paid leave, an employee may request flexible working arrangements to support their personal circumstances.

Unilever provides various forms of additional support: financial support in the form of a change in their pay cycle, or a one-off payment of £75 to an employee; legal support whereby Unilever will pay for the first hour of legal support; counselling support services; safety planning; and internal support.

⁴⁵ Vodafone Foundation, [Vodafone's Domestic Violence and Abuse Policy Guide: A Briefing for Business](#). Published July 2019.

⁴⁶ Unilever (2021), [Global Domestic Violence & Abuse Policy](#).

Domestic violence training is provided to line managers. Their role is varied but they are required to, amongst other things, protect victims' confidentiality, refer them to internal or external sources of help and support, enable them to access their special leave policies.

Countries that have legislated for domestic violence leave

In this section, we provide an overview of domestic violence leave provisions across various jurisdictions, specifically, Australia, Canada, and New Zealand.

Australia

The [National Employment Standards](#)⁴⁷ (NES) provides that all employees (including part-time and casual employees) are entitled to 5 days unpaid family and domestic violence leave each year. Some businesses may provide paid leave, but this depends on the individual businesses' contract or policy⁴⁸.

In August 2022, it was [announced](#) that the Australian government would introduce legislation to see workers entitled to 10 days paid family and domestic violence leave as part of national employment standards. This new Bill, the [Fair Work Amendment \(Paid Family and Domestic Violence Leave\) Bill 2022](#) seeks to:

“Amend the *Fair Work Act 2009* to replace the current entitlement in the National Employment Standards to five days of unpaid family and domestic violence leave in a 12-month period with an entitlement to ten days of paid leave for full-time, part-time and casual employees; extend the definition of family and domestic violence to include conduct of a current or former intimate partner of an employee, or a member of an employee's household; and extend the entitlement to paid family and domestic violence leave to non-national system employees once the International Labour Organization *Convention on Violence and Harassment* (No. 190) comes into force for Australia”

This Bill is currently making its way through Parliament⁴⁹. It ought to be noted that additional provisions are available at state level for certain sectors in Australia. The [State of New South Wales Government](#) provides that⁵⁰:

“Government sector employees are to have access to 10 days paid domestic and family violence leave per calendar year (non-cumulative and able to be taken in part-days, single days, or consecutive days), effective from 1 January 2019.”

⁴⁷ The National Employment Standards consists of 11 minimum employment entitlements that have to be provided to all employees. Unpaid family and domestic violence leave is one of the 11 minimum employment entitlements. More information is available [here](#).

⁴⁸ Fair Work Ombudsman. Available [here](#).

⁴⁹ A copy of the Bill is available [here](#). A copy of the explanatory memorandum accompanying the Bill is available [here](#). A copy of the Bill Digest is available [here](#).

⁵⁰ NSW Government, M2018-03-Support for Employees Experiencing Domestic and Family Violence. Available [here](#).

The [Government of the State of Western Australia](#) provides that full and part-time public sector employees experiencing family and domestic violence can access up to 10 days paid leave in a calendar year. This leave is also in addition to other leave entitlements⁵¹.

The State of [Queensland Government](#)⁵² employees affected by domestic and family violence are provided with a minimum of 10 days paid leave per year. This leave may be taken as a single day, consecutive days or part of a day. These employees are provided with workplace support through the [Domestic and Family Violence Directive](#), and [Section 7 of the Industrial Relations Act 2016](#).

The [Government of the State of South Australia](#)⁵³ provides that paid and unpaid leave is available for any employee experiencing or escaping domestic and family violence. This includes 15 days special leave with pay in addition to existing leave entitlements within a 12-month period. A casual employee is not entitled to paid leave.⁵⁴

[Clause 52 of the Victorian Public Service Enterprise Agreement 2020](#)⁵⁵ provides for a range of supports available to employees who are experiencing family violence. This includes up to 20 days per calendar year of paid special leave per year (unpaid for casual employees), and meaningful workplace supports (e.g. flexible working arrangements, changes to an employee's ordinary hours of work, location, or duties, etc.).

New Zealand

Under the [Domestic Violence – Victims' Protection Act 2019](#), a person had the right to protection against domestic and family violence. As an employee, the Act gives a person the right to take 10 days of paid family violence leave per year and allows for a person to ask for a short-term flexible working arrangement for up to two months. An employer can also offer more than the minimum 10 days of paid family violence leave at their discretion, and family violence leave in advance, annual leave, unpaid leave or sick leave.

A person is entitled to this paid family violence leave if they're an employee and have been employed continuously for 6 months with the same employer, or, working for their employer for 6 months for an average of 10 hours per week, and at least 1 hour in every week or 40 hours in every month⁵⁶.

Canada

The [Canada Labour Code](#) (the Code) provides federally regulated employees with up to 10 days of leave per calendar year if they are (i) the victim of family violence, or (ii) the parent of a child who is

⁵¹ Government of Western Australia, Department of Mines, Industry Regulation and Safety, Labour Relations. [Implementation Guidelines](#). Premier's Circular 2017/07. Published 29 September 2017.

⁵² Queensland Government, Domestic and family violence support.

⁵³ Government of South Australia, Domestic & Family Violence Support. Available [here](#).

⁵⁴ Government of South Australia, [Guideline of the Commissioner for Public Sector Employment. Domestic and Family Violence](#). 19 November 2021.

⁵⁵ Clause 52 of the Victorian Public Service Enterprise Agreement 2020. [Family Violence Leave Policy](#). Last updated 09 June 2022.

⁵⁶ Further information is available from New Zealand Government, [Family Leave Policy](#).

a victim of family violence. This leave may be taken in more than one period; however, the employer may require that each period be at least one day. In order to avail of this leave, the employee must provide the employer with written notice indicating the duration of their leave

Regarding payment, the Code provides that if a person has three consecutive months of continuous employment with the same employer, they will receive payment for the first five days of leave.

There are variations in access to paid family violence leave across Canadian provinces. For example, in Ontario, the [Employment Standards Act](#) provides that domestic or sexual violence leave is a “job-protected leave of absence”⁵⁷. It provides up to 10 days and 15 weeks in a calendar year of time off for employees or an employee’s child who has experienced or been threatened with domestic or sexual violence. The first five days of leave in a calendar year are paid. To be eligible, employees must have been employed by their employer for at least 13 consecutive weeks. In terms of payment, an employee is “generally entitled to be paid what they would have earned had they been at work and not taken leave”⁵⁸.

There is variation in access to *paid* family violence leave across Canadian provinces. Some provinces provide five days paid leave, some offer three days, while some offer unpaid leave only.

In Prince Edward Island, the [Employment Standards Act](#) provides for domestic violence, intimate partner violence and sexual violence leave regulations. This leave provides for up to three days of paid leave and an additional seven days of unpaid leave in a 12-month period. In order to avail of the leave, an employee needs three months continuous employment with their employer. An employer cannot dismiss, suspend or layoff an employee who has been granted this leave⁵⁹. Employers are permitted to request written evidence on the employees need to use the leave⁶⁰.

In Alberta, the [Employment Standards Code](#) provides the rules around domestic violence leave. The legislation entitles eligible employees, defined as those who have been employed for at least 90 days with the same employer⁶¹, to a period of up to 10 days unpaid leave each calendar year. An employee is obliged to give their employer notice as soon as is reasonable before taking the leave. The legislation provides that an employer may not terminate the employment of an employee for requesting or availing of domestic violence leave⁶².

⁵⁷ Ontario, Jobs and Employment. [Domestic or sexual violence leave](#).

⁵⁸ Ibid.

⁵⁹ Prince Edward Island, [Domestic Violence Employer Information](#). 10 October 2019.

⁶⁰ Written evidence can be provided by anyone the employer deems acceptable, or any of the following: social worker, psychologist, medical practitioner, registered nurse, police officer, a person who provides victim services pursuant to the *Victims of Crime Act*, a person providing culturally specific services to the victim. More information available [here](#).

⁶¹ Employees with less than 90 days of employment may still be granted leave, however, their employers aren’t required under employment standards legislation to grant them leave. See [here](#) for more information.

⁶² Alberta, Job-protected leaves. [Domestic violence leave](#).

Contact:

Houses of the Oireachtas
Leinster House
Kildare Street
Dublin 2
D02 XR20

www.oireachtas.ie

Tel: +353 (0)1 6183000

Twitter: @OireachtasNews

Library & Research Service

Tel: +353 (0)1 6184701

Email: library.and.research@oireachtas.ie

