

Submission to Joint Committee of Department of Children, Equality, Disability, Integration and Youth

Sub: Domestic Violence Leave Bill 2020

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1. The proposed bill is a significant milestone in the advancement of gender equality in the Republic of Ireland. It is evidence-based legislation grounded in the undeniable scientific evidence of the enormous human and financial costs of domestic violence/coercive control to individuals, families, employers, communities and the state. A recent [Safe Ireland and University of Galway](#) study estimated that the annual indicative cost of domestic violence for survivors in terms of lost wages, productivity loss and out of pocket expenditures amounts to about €56 billion over a period of 20 years or about €2.7 billion annually. . This level of loss is not surprising given that a [2019 KPMG global survey of Vodafone employees](#) found that 151,000 employed women in Ireland (or about 6% of the total workforce) had a lifetime experience of domestic violence, with 65% saying that DV seriously or moderately affected their career progression. These social and economic losses have significant macroeconomic implications which could potentially affect overall economic growth and sustainability of the Irish economy. In the context of the current housing and cost of living crises, the repercussions take on an even greater salience. Moreover, though substantial, the costs reported are only a portion of the overall cost. For example, they do not include the costs incurred by the government and other stakeholders for the provision of services

2 The proposed bill is ground-breaking in its clear recognition that domestic violence is not a private family matter, but rather a public concern, whose effects have serious consequences across society, including in the workplace. Recognition of the collective effort needed – by all stakeholders (including employers) - by to prevent DV, as well as to mitigate its consequences is salient. It is also particularly important that the Act is being introduced as part of the organisation of working time legislation, thus placing Domestic Violence as a central economic issue, as well as a human rights violation. In fact, the proposed bill marks a critical juncture in its recognition of the workplace as an important site of safety for many women.

3. If the legislation is passed in Ireland, the Republic would join a handful of pioneering countries across the globe in advancing the rights of survivors in the form of paid leave, flexible working arrangements and protection from adverse treatment (discrimination) from employers. Accordingly, it is important that the proposed legislation learn from the lacunas in existing laws that have created a number of issues in terms of enforcement, confidentiality and narrow scope of protection that limit their effectiveness.

#### **4. Key issues to consider to improve effectiveness of the proposed bill**

4.1. **Assessing the universality of the application of the law** – while it is noted that there is no reference to the size of the enterprise, there is concern about the extent this law would

apply to small entrepreneurs hiring only one or two employees or employees without contracts, such as volunteers or other informal workers. When considering domestic violence, it is important to understand that those in domestic employment or a family enterprise (farm or household) are at an enhanced risk of domestic violence. However, such employees are outside the ambit of the 1997 Organisation of Working Time Act. It is not clear from the Bill that this group of workers come under the remit of the current proposed Bill. Secondly, those who are identified as self-employed are not covered by the Bill, yet there are workers who could be mischaracterised as independent contractors (ie gig economy workers) but those in domestic violence situations are less likely to have the capacity to challenge. Given the growing expansion of the gig economy, the Bill should explicitly discuss the implications for gig workers.

**4.2. Effectiveness of the law can be limited by the lack of pro-active will of employers.** The Canada law explicitly outlines employers' positive obligation to take steps to prevent domestic violence from occurring in the workplace and to raise awareness of the warning signs concerning the risks associated with domestic violence. Also, the New Zealand law requires that employers understand their obligation to create a work environment that is supportive for victims of domestic violence and explicitly states the financial penalty for employers who do not have a workplace DV policy. In fact, [A study on workplace interventions in the US](#) indicated that the effectiveness of state regulations on domestic leave were ultimately ineffective, as the majority of the workers had no knowledge such leave was available and stigma continued to be a major barrier to seeking leave. Ensuring that employers actively disseminate information on leave policies, specifically address the stigma DV survivors face and promote a culture of zero tolerance is critical for the success of the proposed legislation.

**4.3. Clear limitations on employers' right to refuse domestic violence leave.** A significant issue highlighted in the literature reviewing legislation in other jurisdictions is the deference given to an employer's right to refuse leave. The New Zealand law outlines eight grounds ranging from the inability to reorganise work to the burden of additional costs, effectively undermining the purpose of the leave in the first place. The proposed Bill does not detail such grounds but gives a broad right to refuse (subsection 3 in section 23G), with a summary of the grounds for refusal provided. There needs to be greater clarity on the acceptable grounds for refusal. Otherwise, a potential pitfall exists that would undermine the effectiveness of the policy, as survivors of domestic violence are often unable to effectively resist an assertion of power due to the trauma they experience.

**4.4. 'Other Reasonable Accommodations' is key to comprehensive domestic violence leave legislation.** Legislation in other jurisdictions explicitly consider other reasonable accommodations including: 1) flexible working, 2) financial support, 3) supervisory support to manage work performance, 4) support to seek protection orders, and 5) clear safety measures to maintain confidentiality and privacy. The proposed Bill addresses the issue of leave but does not explicitly discuss these other elements which are critical for comprehensive protection of domestic violence survivors in the world of work.

**4.5. Terminology needs to be clear.** Given the recent enactment of the Domestic Violence Act 2018, it is important to foreground coercive control in the Bill more clearly. This will

enable a better understanding of coercive control as being synonymous with domestic violence, rather than being an aspect of it.

**4.6. Lack of definition for 'serious alarm or distress' should be provided.**

A definition for 'serious alarm or distress' is not provided, which is problematic given that [minimisation is a common coping mechanism](#) employed by survivors of domestic violence. This terminology would need to be amended to enhance clarity and allow for the fact that most survivors will not recognise the 'serious alarm or distress' they face. Recommended wording: concern, fear, serious alarm or distress.

**4.7. Focus on the Perpetrator/Abuse is key.** A significant absence in most DV leave policies is explicit attention to the abuser. Not addressing the perpetrator can lead to reification of the misconception that it is the victim's (women's) responsibility to stop the violence by taking action rather than the responsibility of the abuser or institutions ([Weatherall et al., 2021](#)).