

Opening Statement by the Irish Congress of Trade Unions

Joint Committee on Enterprise, Trade and Employment

General Scheme of the Safety, Health and Welfare at Work (Amendment) Bill , 30 March 2021

A Chathaoirleach,

Congress welcomes the opportunity to have made a submission on this matter, and we are pleased to accept the invitation to join you this morning in your discussions.

As the representative body for unions and their members, Congress has always taken the lead in seeking to create safer workplaces and we see Occupational Safety & Health as a key concern of unions.

We know that wherever people congregate there is a risk of catching or spreading Covid-19. Workplaces, regardless of sector, are potential vector points and this is explicitly recognised in public health advice that as many people as possible work from home. It is in the interests of workers and society as a whole that all cases and clusters in workplaces are reported. Workers must be protected, and reporting is a small but important part of our legislation which trigger the protections provided in law to mitigate the risks and protect us from workplace hazards. The current Covid-19 pandemic is such a hazard, and infections must be considered as a reportable workplace incident.

The EU has recognised this by expediting the revised Biological Agents' directive and amending to include Sars-Cov-2 within its ambit. They recognised it from June last year and set a deadline for states to enact on or before 24 November 2020. Ireland enacted it on that day and now must explicitly extend the reporting it provides for to encompass all workplaces.

The amendment under discussion is to the Safety, Health and Welfare at Work Act 2005, and we think it is useful to reflect on some aspects of the current legislation which help to inform our perspective, and which we detailed in our submission

The Act defines the term "accident" in section 2 as follows: -

"accident" means an accident arising out of or in the course of employment which, in the case of a person carrying out work, results in personal injury;"

The term "personal injury" is in turn then defined by the same section as including: -

"(a) any injury, disease, disability, occupational illness or any impairment of physical or mental condition, or (b) any death, that is attributable to work;"

Our primary legislation therefore would seem to be clear that an occupational illness is covered by the Act and it therefore reportable to the Health & Safety Authority (HSA), which has statutory responsibility "to promote, encourage and foster the prevention of accidents, dangerous occurrences and personal injury at work in accordance with the relevant statutory provisions", as per S34.1 of the Act.

A report entitled "A Review of the Occupational Diseases Reporting System in the Republic of Ireland" was prepared for the HSA by Prof Anne Drummond of UCD, and published in November 2007. Recommendation 6 is as follows: -

“Review the requirements of the Notification of Accidents Regulations to require that employers report accidents resulting in personal injury (including disease and illness) or death, and record occupational diseases and work- related illnesses contracted as a result of an exposure over a period of time to risk factors arising from work activity, and report to the HSA when requested”

Notwithstanding this, a position was adopted regarding the reporting of accidents contained in the Safety Health and Welfare at Work (General Application) (Amendment) (no.3) Regulations 2016 (S.I. 370 of 2016). These Regulations were made pursuant to section 58 of the Act and impose an obligation on employers to report accidents and dangerous occurrences in the workplace. However, unlike the Act, the Regulations, at Regulation 224, define the term ‘personal injury’ as not including *“any disease, occupational illness or any impairment of mental condition”*.

It is not entirely clear why this view was adopted, but the effect of this provision is that employers are not obliged to report occurrences of occupational disease or illness. This is in contrast to “accidents” where the employer is obliged to report to the HSA and accidents resulting in excess of three days absence from work.

This amendment seeks to address this deficiency in relation to workplaces incidences of Covid-19, and would assist in protecting all workers by requiring all workplaces to comply with the minimum requirements of the biological agent’s directive. While some might contend that this Directive applies only to a restricted range of workers, such as those in laboratories, there is no such stipulation in the legislation. We would maintain that the legislation clearly covers all contexts in which workers might be exposed to SARS-Cov-2 and thus at risk of infection and Covid-19 disease. There is no justification for making distinction between workplaces in a pandemic of this nature.

The suggestion that reporting would expose employers to litigation has been advanced by some in government as a concern. Such a concern is misplaced and is a conflation of two entirely different legal consequences. The HSA inspects, advises, recommends, issues advisory notices and only in cases of absolute non-compliance, prosecutes. Litigation is reliant on proof of negligence. The requirement to report is a long way short of admission of negligence in a pandemic. The argument is a diversion from the absolute responsibility of the legislature to protect workers in their workplace.

We believe it is important therefore that there be a direct reporting requirement to the national authority charged with responsibility for health and safety in our workplaces.

Frank Vaughan
Congress Health & Safety

David Hughes,
Deputy General Secretary, INMO
Congress Health & Safety Committee