Legal Island

Ius Laboris UK & Ireland Global HR Lawyers
LEWIS SILKIN

Comparative Employment Law

Table of Changes

May 2023

Great Britain | Northern Ireland | Republic of Ireland

Comparative Employment Law
Great Britain, Northern Ireland and the Republic of Ireland

Blink and you'll miss it. That's certainly the case with employment law developments across the UK and Ireland and the first half of 2023 has been no exception! Fear not, however, as we've updated our Comparative Table again, in conjunction with Legal Island, to reflect recent developments across Great Britain (GB), Northern Ireland (NI) and the Republic of Ireland (ROI), drawing on the up-to-date articles we publish at Lewis Silkin.

For ease of comparison, the Comparative Table is split by subject area, with an index at the front. It also includes links to relevant legislation and other documents to help you understand the differences. There hasn't been much legislative change in NI as the NI Assembly hasn't been restored following the elections in May 2022.

We'll certainly continue to see interesting developments as we head through the rest of 2023. Looking ahead to 2024, given the recent GB local election results, a Labour party general election victory is possible. To keep you ahead of the curve, we've written about some of the party's proposed reforms to workplace rights, which include some potentially significant changes to unfair dismissal protection.

Taking a bird's eye view over the 2023 changes and forthcoming developments, some key themes and trends emerging for employers and some notable developments are set out below.

Brexit Freedoms Bill

The proposed changes flowing from the government's Retained EU Law Bill (also known as the Brexit Freedoms Bill) are big news in GB, including the scrapping of the controversial sunset clause, which could have seen thousands of EU-based laws disappear at the end of 2023. We wrote about this significant repositioning here. Instead, the sunset clause will be replaced with a list of regulations to be revoked. In addition, some reforms to the Working Time Regulations and TUPE consultation requirements have been announced, which are now subject to consultation. One point attracting significant interest is the proposal that rolled up holiday pay will be allowed for all workers, including those with regular hours. This appears to take reforms to holiday pay further than was proposed in the holiday pay consultation earlier this year which we wrote about here.

Diversity, equity and inclusion

Diversity, equity and inclusion (DEI) remains high on the agenda, with diversity monitoring and positive action being some key topics for many employers.

- ***Pay transparency****:* Hot off the press is the news that the EU Pay Transparency Directive has been finalised and must be implemented by June 2026, making gender pay gap reporting compulsory for many employers across Europe. While ROI recently implemented gender pay reporting, the regime will likely need to change in light of the directive. Additionally, once the directive is adopted, employers will need to publish pay ranges in job vacancies which is not common practice, although, in ROI, two private member bills are making their way through the legislative process dealing with advertising remuneration. GB's gender pay gap reporting regulations are being reviewed, with the government telling us that its response would be published in due course. In NI, the existing legislative provisions relating to gender pay gap reporting have not yet been brought into force (and it's unlikely that there will be any progress until the NI Assembly is restored).

- ***Harassment:*** In GB a bill providing for protection from third party harassment and imposing a duty on employers to prevent sexual harassment is making progress through Parliament, although a wave of amendments from Tory peers may see this to run out of time and therefore fail. In GB and ROI steps are being taken to restrict the use of non-disclosure agreements as they relate to incidents of workplace sexual harassment and discrimination. The upshot could be a step change in how employers are required to manage the risks of harassment in a post #Metoo world, but much turns on the detail.

- ***Monitoring***: In April 2023, the government issued new guidance for voluntary reporting on ethnicity pay gaps in GB – with the option of internal or external reports. The approach largely mirrors the GB gender pay gap regime. To help employers move further and faster to advance their DEI initiatives, we also recently compared diversity monitoring in GB and NI, highlighting some important distinctions in NI.

Family rights:

For many employers, family leave rights can play a pivotal role in attracting and retaining talent, enhancing productivity and promoting gender equality.

- ***Carers and working parents***: By 2 August 2022, EU member states should have implemented the Work-life Balance Directive, which includes new baseline rights for carers and working parents. ROI introduced legislation doing so, albeit late in April 2023, which includes carer's leave and domestic violence leave, although the new rights are not yet in force as commencement orders are awaited (but expected soon). GB doesn't need to implement the directive but has already promised to match the new rights for carers, allowing working carers to take up to 5 days' carers leave each year to help them carry out their caring responsibilities, although this will be unpaid. In GB, proposals for 12 weeks' neonatal leave have also been introduced.

- ***Parental bereavement***: NI's parental bereavement provisions are to be extended to include working parents who suffer the loss of a child through miscarriage by 2026. In ROI paid leave (maternity and paternity) upon stillbirth or miscarriage is only available after the 24th week of pregnancy. However, a bill proposes to make provision for paid leave even if miscarriage or stillbirth occurred before the 24th week. It also provides for paid leave for the purposes of availing of reproductive healthcare such as IVF. This bill is currently in the Seanad Third Stage and may be enacted this year.

New ways of working – and working less?

The Covid-19 pandemic accelerated changes in working practices including an increase in alternative working models and policies that focus on employee wellbeing and flexibility.

- ***Flexible and remote working***: In GB, the existing right to request flexible working is set to change in several ways, including it potentially becoming a day-one right. In ROI, following the implementation of the Work-life Balance Directive, parents and carers will be able to make flexible working requests and employers should also prepare for employees (not limited to those with parental or caring responsibilities) making remote working requests, although commencement orders introducing these rights are awaited.

- ***Working less?*** Our colleague and Employment Partner, James Davies, predicted working less as one of eight future of work predictions in his 2021 report on the 'Eight drivers of change'. One year on, his most recent report Eight Drivers of Change: 2022 and beyond revisited this, concluding that although the drivers behind a reduction in working hours remain, the cost-of-living crisis faced by many will push some to work longer hours to make ends meet. Even so, steps towards a potential four-day working week are gaining momentum across the jurisdictions, and our most recent Future of Work Hub podcast explores key learnings from the recent UK four-day week trial. This follows the Code of Practice on the Right to Disconnect that was introduced in ROI in April 2021, confirming employees' rights not to habitually work outside their normal working hours, and to "switch off" from work.

- ***Future of the office:*** As employers recognise that to attract and retain the best people they have little alternative but to embrace home and hybrid working, our Future of Work Hub continues to explore the future of the office through our insights and podcast series.

Reshaping your workforce:

The lasting effects of the Covid-19 pandemic, the impact of the war in Ukraine, the national cost-of-living crisis and the war for talent are currently major factors driving the need for organisations to change and adapt.

- ***Redundancies:*** Redundancies, including collective redundances, have become more frequent across the UK and ROI and cases are beginning to come through the court systems. In GB, the Employment Appeal Tribunal recently held that a pool of one will only be fair in appropriate circumstances and should generally not be considered without consultation where there is more than one employee in the same role. In ROI, a test case relating to redundancy could have implications for around 750 former Debenhams' workers. In ROI, the government plans to draft legislation to enhance the protection of employees in collective redundancies following insolvency. In GB, redundancy protection that prioritises those on maternity leave looks to be extended by the Protection from Redundancy (Pregnancy and Family Leave) Bill. This would extend protection beyond maternity leave to include pregnancy and a period after maternity leave and would also catch those adopting a child or taking shared parental leave.

Terms of employment

In recent months we've seen some important developments relating to setting and changing terms of employment:

- ***Transparent and predictable terms:*** EU member states had until 1 August 2022 to implement the Transparent and Predictable Working Conditions Directive. ROI introduced regulations on 16 December 2022 doing so, which include a six-month limit on the maximum duration of probationary periods. In GB there are proposals to give workers and agency workers the right to request more predictable terms and conditions of work after a qualifying period of service (likely to be 26 weeks).

- ***Changing terms:*** In GB, the government published a new draft Code of Practice which warns that "fire and rehire" should only be used to change employees' terms and conditions as "a last resort" and urges employers to first engage in thorough and open information and consultation processes. The draft was open for consultation until April 2023. Last summer, we wrote about the GB Court of Appeal overturning an injunction restraining Tesco's fire and rehire exercise.

- ***Non-compete clauses:*** In May 2023 the government announced its intention to introduce GB legislation to limit the length of non-compete clauses to 3 months. This would not affect paid-for notice, garden leave or non-solicitation clauses.

Environmental, social and governance (ESG) issues

ESG issues remain a key focus for many organisations across multiple sectors. Employers looking to stay on top of the ESG agenda should factor in several employment law changes including:

- ***Whistleblowing***: EU member states had until 17 December 2021 to implement the EU Whistleblowing Directive. ROI recently passed legislation to transpose it into Irish law. While it already had existing whistleblower protection, the new law, which is effective from 1 January 2023, expands the protection of the protected disclosures regime. The EU Whistleblowing Directive does not apply to the UK but looks set to influence best practice.

- ***Modern Slavery Act:*** We're expecting reforms in the UK strengthening the Modern Slavery Act. The reforms will implement the plans announced in September 2020. When these are introduced, companies in scope of the current reporting requirements may need to pay even closer attention to their anti-slavery statements as a result. This comes at a time of growing interest in supply chain governance as part of the ESG agenda.

Ways in which we support employers with their ESG agendas are outlined here.

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Disclaimer:

The Comparative Table does not contain a full analysis of all legislative and case law differences between the jurisdictions. We intend to update it at intervals and the authors would appreciate any suggestions for omissions or additions in future.

The Comparative Table is for guidance only. We recommend that professional advice is obtained before relying on information supplied anywhere within the table.

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Section 1: Dismissal & Other Individual Rights

Qualification Period for Claiming Unfair Dismissal and Maximum Compensatory Awards

GB	The qualifying period is 2 years' service (save in certain situations where there is no qualifying period) with the maximum basic award limited to **£19,290** (30 weeks' pay at the maximum weekly rate) as at 6 April 2023. The maximum compensatory award from 6 April 2023 is **£105,707**, or 52 weeks' pay, whichever is the lower. A week's pay from 6 April 2023 is **£643**. The Employment Rights (Increase of Limits) Order 2023
NI	The qualifying period is 1 year's service (save in certain situations where there is no qualifying period) with the maximum basic award limited to **£20,070** from 6 April 2023 (30 weeks' pay at the maximum weekly rate). The maximum compensatory award from 6 April 2023 is **£105,915.** This is not subject to the 52 weeks' pay limit as in GB. A week's pay from 6 April 2023 is **£669.** **NI Business Info:** https://bit.ly/3Ema9ju The Employment Rights (Increase of Limits) Order (Northern Ireland) 2023
ROI	The qualifying period is 1 year's service (save in certain situations where there is no qualifying period). https://bit.ly/3CaVMg9 The maximum compensatory award is 104 weeks'/2 years' remuneration unless it is a dismissal because of whistleblowing, in which case, the maximum compensation is five years' remuneration. There are currently no plans to review. http://bit.ly/1H1qAjq **Unfair Dismissals (Increased Protections for Workers) (Amendment) Bill 2023** The Unfair Dismissals (Increased Protections for Workers) (Amendment) Bill 2023 proceeded to the second stage in Dáil Éireann in March 2023. The Bill seeks to amend the Unfair Dismissals Act 1977 to broaden the categories of workers included, further protect workers engaged in industrial action and reforming the system of compensation under that Act.

Reform of Written Particulars of Employment and Contract of Employment

GB

The Employment Rights (Miscellaneous Amendments) Regulations 2019

These regulations came into force on 6 April 2020 requiring employers to ensure 'workers' are issued with a written statement of particulars of employment together with associated enforcement provisions (previously this right applied only to employees).

This instrument amends the Employment Rights Act 1996 as follows:

- the written statement is a ‘day 1’ right for all individuals;
- the ‘principal statement’ of the written statement is to be provided no later than the first day of a new job; and
- there is no qualifying period of employment.

The legislation distinguishes between information which must be provided in a single document and information which can be in a supplementary statement (to which the principal statement refers).

The following information must be provided in a single document:

- Names of employer and worker;
- Date employment or engagement begins;
- For employees only: date of continuous employment;
- Rate of pay and frequency (weekly, monthly etc.) of payment;
- Hours of work (including normal working hours, days of week and whether hours/days are variable (and, if so, how they vary);
- Entitlement to holidays (including public holidays) and holiday pay;
- Any other benefits (including non-contractual benefits);
- Length of notice of termination required from employer and worker;
- Job title or brief description of work;
- *If applicable*: Details of non-permanent employment or engagement (e.g. period of fixed-term contract);
- Any probationary period which starts at the beginning of the engagement, including conditions and duration;
- Place of work and address of employer;
- *If the worker is required to work outside the UK for over a month*: arrangements for working outside the UK (including period, currency of pay, additional pay and benefits and return terms);
- Any part of any training entitlement which the employer requires the worker to complete; and
- Any training which the employer requires but does not pay for.

The following information can be provided in a separate document:

- Sick leave and pay.
- Any other paid leave.
- Pensions and pension schemes (this can be provided within 2 months).

	◗ Details of any collective agreements directly affecting terms (this can be provided within 2 months). ◗ Any other training entitlement (this can be provided within 2 months); and ◗ Disciplinary and grievance procedures (this can be provided within 2 months) https://bit.ly/3z51nCW **Regulation of non-compete clauses** In May 2023 the government announced its intention to introduce legislation to limit the length of non-compete clauses to 3 months. This would not affect paid-for notice, garden leave or non-solicitation clauses. The detail for this proposal is set out in the government's response to the 2020/2021 consultation on post termination restrictions. This can be seen here. Lewis Silkin has written about this here.
NI	The position in relation to the provision of a written statement of employment particulars remains the same as per Article 33 of the Employment Rights NI Order 1996 which applies to employees only and requires that a written statement is given with two months of commencement of employment. https://bit.ly/38SOi4d
ROI	The **European Union (Transparent and Predictable Working Conditions) Regulations 2022** (the Regulations) The Regulations became law on 16 December 2022 and transpose the **Transparent and Predictable Working Conditions Directive.** The Regulations set out, amongst other changes, a requirement for 'basic' and 'supplemental' information to be provided to employees at different intervals to those set out in the Terms of Employment (Information) Act 1994. While it was previously the case that employees received a written statement of five core terms of employment within five days of starting a job, and a statement of the remaining terms of employment within two months, the Regulations now provide for additional information to be furnished within five days and the remainder to be furnished within one month. The "Day 5" statement (introduced by the Employment (Miscellaneous Provisions) Act 2018) previously required employers to set out: 1. The full names of the employer and employee; 2. The address of the employer; 3. The expected duration of the contract (if the contract is temporary or fixed-term); 4. The rate or method of calculating pay, and the 'pay reference period' (i.e. weekly, fortnightly or monthly); 5. What the employer reasonably expected the normal length of an employee's working day; and week to be (for example, 8 hours a day, 5 days a week). This "Day 5" statement must now also include the following: ◗ Where a probationary period applies, its duration and conditions; ◗ The place of work or, where there is no fixed or main place of work, a statement specifying that the employee is employed at various places or is free to determine his or her place of work or to work at various places; ◗ The title, grade, nature or category of work for which the employee is employed or a brief description of the work; ◗ The date of commencement of the contract of employment; ◗ Any terms and conditions relating to hours of work (including overtime).

Employers should note that the last four items on this list were previously required to be provided to employees within two months of commencement of employment. They must now be set out in the "Day 5" statement.

Separately, all other terms of employment required to be given to the employee under the Terms of Employment (Information) Act 1994 must now be provided to the employee within one month (as opposed to two months as was previously the case):

- A reference to any registered employment agreement or order which applies to the employee and where the employee may obtain a copy of such agreement or order;
- Intervals at which remuneration is paid, e.g. weekly or monthly;
- Terms and conditions in relation to paid leave including paid sick leave as well as the terms and conditions relating to incapacity to work due to sickness;
- Terms and conditions relating to pensions and pension schemes;
- The notice period the employee is entitled to give and receive; and
- Collective agreements which directly affect the employee.

Additional terms must also be included as follows:

- Details of the training (if any) provided by the employer;
- In the case of a temporary agency worker, the identity of the end-user;
- If the working pattern of the employee is completely (or mostly) unpredictable, a reference to the work schedule being variable, the number of guaranteed paid hours and the remuneration for any work performed in addition to those guaranteed hours. There also needs to be detail on the reference hours and days within which the employee may be required to work and the minimum notice period the employee is entitled to before the start of a work assignment; and
- The identity of the social security institutions receiving the social insurance contributions paid by the employer.

Where there is any change to an employee's terms, the employer must notify the employee in writing of the change no later than the day on which the change takes effect (as opposed to within one month as was previously the case).

In addition, the Regulations set out that if an employer is required by law or collective agreement to provide training to employees to enable them to carry out the work they are employed to do, this training must be provided to the employee free of charge, during working hours (if possible) and counted as working time (i.e. paid).

bit.ly/3VLvmfi

Dismissal During Probation

GB	Employees in their probationary period would generally not have acquired the requisite 2 years length of service to bring an ordinary unfair dismissal claim. For this reason, employers may choose to take a more relaxed approach to a formal dismissal procedure in these circumstances. However, the Acas Code of Practice on Disciplinary and Grievance Procedures ("the Code") provides practical guidance to employers for conducting fair disciplinary processes; complying with the Code is recommended good practice in all dismissal situations. This is particularly important because there are a number of claims an employee could bring with no qualifying period, in relation to which following a fair process and compliance with the Code could be relevant considerations for an employment tribunal. Employers must also ensure that they comply with the terms of their own disciplinary procedures. https://bit.ly/31YWK27
NI	While there is no legal requirement to follow any set procedure when dismissing an employee during their probationary period, good practice suggests that employers adhere to the 3-step dismissal and disciplinary process, which involves: • A statement in writing of what the employee is meant to have done wrong (the allegation) and what the employer is considering doing; • A meeting to discuss the situation and a decision; and • Offering the right of appeal. https://bit.ly/32aKvPJ
ROI	In 2021 the Court Of Appeal confirmed in the case of *O'Donovan v Over-C Technology Limited & Over-C Limited* [2021] IECA 37, that dismissal for any or no reason during probationary periods does not require the application of fair procedures to the dismissal, provided the reason for dismissal is not misconduct and contractual procedures do not require specified procedures to be followed in dismissal during probation. As a result of this case employers can feel more comfortable not affording employees on probation the benefit of fair procedures when dismissing them for any or no reason (provided that the reason for the dismissal is not based on allegations of misconduct, and they are not precluded from doing so by contract). Prior to dismissing any employee on probation, employers should review the employee's contract of employment to ensure they are contractually free to terminate for any or no reason (except for misconduct) without following any fair process in doing so. Employees who have less than 12 months' service on probation still have the option to refer the matter to the Labour Court under section 20(1) of the Industrial Relations Act for a non-binding recommendation, regardless of their length of service. It should be noted that the IR approach (although non-binding) to probationary dismissals is different from common law – that fair procedures should still apply – as was demonstrated by a recent Workplace Relations Commission decision in *A Manager v A Health Service Provider* (ADJ-00036339). Despite the position outlined above, proceeding to terminate for any or no reason is not without risk, particularly in relation to very senior employees and employers may wish to seek advice before doing so. **The European Union (Transparent and Predictable Working Conditions) Regulations 2022**. The Regulations place a statutory limit on probationary periods. Probationary periods must now be limited to 6 months. In exceptional circumstances probationary periods can be extended beyond this period up to a maximum of 12 months if it is in the interest of the employee to have a longer probationary period. It is also possible to extend the probationary period beyond 6 months if the

	employee was absent from work on certain grounds (e.g. sick leave, maternity leave etc.) during the probationary period. The Regulations provide that where an employee is currently subject to a probationary period which exceeds 6 months and the employee has completed at least 6 months' service, the probationary period will expire on the earlier of: - 1 February 2023; or - the day on which the probationary period was due to expire. Probationary periods for fixed-term contracts must be commensurate with the length and type of contract. If a fixed-term contract is renewed for the same role, it is not permissible to include probationary periods in the new terms of the contract.

Watchdog For Labour Rights

GB	In June 2021 the government announced that a "powerful" new workers' rights watchdog will be created to act as a "one-stop shop" for enforcement. This would have combined the roles of the separate bodies that currently enforce the minimum wage, police modern slavery, and protect agency workers. However, in December 2022 the business secretary indicated that this plan was no longer being progressed.
NI	It was unclear if the proposed body would have been UK-wide (some tax and related matters not being devolved to NI) but regardless, as set out in the GB section above, the plan is not being progressed.
ROI	One of the functions of the Workplace Relations Commission (WRC) established under the Workplace Relations Act 2015 is to *'promote and encourage compliance with the relevant laws'* which includes conducting workplace inspections. The Inspection Services monitor employment conditions to ensure employers comply with employment rights legislation. The service is also responsible for enforcement of breaches. The Inspections Services tend to focus on specific sectors of construction, hospitality and Sectoral Employment Order compliance. They might also carry out inspections based on complaints from employees. They also carry out inspections and gather information in relation to other employment laws. For example, employees or interested parties may ask for an inspection in relation to the protection of young people in employment. Find out more about the inspection service here: https://bit.ly/3d2FESD

Changes to Itemised Pay Statements (pay slips)

GB	**The Employment Rights Act 1996 (Itemised Pay Statement) (Amendment) Order 2018** The changes cover payslips for pay periods that begin on or after 6 April 2019. Under the new legislation, payslips must itemise the number of hours paid for where a worker is paid on an hourly rate basis. Different figures must be provided where an employee is paid a different rate of pay for different types of work. In addition, the right to a payslip is now extended to all workers, rather than just employees. The legislation can be found here: https://bit.ly/3mC5Ycb Helpful guidance can be found here: https://bit.ly/2USL7Gn
NI	The position in relation to the provision of an itemised pay statement remains the same as per Article 40 of the Employment Rights NI Order 1996 which provides employees only with a right to receive an itemised pay statement. https://bit.ly/3ngXSpQ
ROI	The right to receive an itemised pay statement is set out in Section 4 of The Payment of Wages Act 1991 which provides an entitlement for employees only to receive a written statement of their pay details. The right is set out here: https://bit.ly/3rhj9lo

Agency Workers

GB	**The Agency Workers (Amendment) Regulations 2019** From 6 April 2020 amendments came into force which meant that all agency workers are entitled to receive equal pay as their permanent equivalents, once a 12-week employment period has passed, whether or not they are paid between assignments. Essentially this abolishes the use of Swedish derogation - the legal loophole which enabled employers to pay agency workers less than permanent staff. https://bit.ly/2W9Pqh3 **Explanatory Memorandum to the Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2019** On or before 30 April 2020, temporary work agencies had to provide agency workers whose existing contracts contain a Swedish derogation provision with a written statement advising that, with effect from 6 April 2020, those provisions no longer applied. https://bit.ly/3mEmUPo **Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2019 (SI 2019/725)** Temporary work agencies must provide agency work-seekers with a Key Information document before agreeing the terms by which the work-seeker will undertake work. This must include information on the type of contract, the minimum expected rate of pay, how they will be paid and by whom. https://bit.ly/3zoCkuH
NI	No corresponding updates for NI similar to that of GB – the Swedish Derogation still applies as set out in Article 10 of the Agency Workers Regulations (Northern Ireland) 2011. It is unclear how much this is still employed throughout NI and there is anecdotal evidence that, in the public sector at least, it is unlikely to be used going forward. NI Direct Guidance: https://bit.ly/3DcfCYb Agency Workers Regulations (Northern Ireland) 2011: https://bit.ly/3hdImau
ROI	The **Protection of Employees (Temporary Agency Work) Act, 2012** defines an "agency worker" as "an individual employed by an employment agency under a contract of employment by virtue of which the individual may be assigned to work for, and under the direction and supervision of, a person other than the employment agency". According to the WRC website "*the Act provides that all temporary agency workers must have equal treatment with workers hired directly by the hirer in respect of pay, working time, rest periods, night work, overtime, holidays, etc*". Equal treatment is a day one right (i.e. there is no 12-week qualifying period) and there is no Swedish derogation loophole. The WRC has more information on the rights of Agency Workers here: https://bit.ly/3EnpiQR The Protection of Employees (Temporary Agency Work) Act, 2012 is available here: https://bit.ly/3d8alpq

Posted Workers Directive

GB	**The Posted Workers (Agency Workers) Regulations 2020 (SI 2020/384)** The revised Posted Workers Directive no longer applies in GB due to the impact of Brexit and the expiry of the transition period. https://bit.ly/38fentN
NI	**The Posted Workers (Agency Workers) Order (Northern Ireland) 2020** This Order came into force on 13 November 2020 by way of Statutory Rule. It modifies the Agency Workers Regulations (Northern Ireland) 2011 (the 2011 Regulations), which gives Agency Workers the right to the same basic employment and working conditions as if they had been recruited directly, if/when they complete a qualifying period of 12 weeks in the same job. The Order requires a hirer (a business supplied with an agency worker by an employment agency), which posts an agency worker to an EU Member State where the agency worker does not normally work, to notify the employment agency of the posting and the date at which the posting will commence. https://bit.ly/3kIIXCb
ROI	**European Union (Posting Of Workers) (Amendment) Regulations 2020** The revised Posted Workers Directive was transposed into Irish Law on 1 October 2020 via the European Union (Posting Of Workers) (Amendment) Regulations 2020. The key changes introduced include: ◗ the introduction of a time limit of 12 months on the period of posting, whereby a posting that goes on beyond that attracts the same rights as locally sourced workers; ◗ an expansion of employment rights protections beyond what was provided in the original Directive, including access to collective agreements, where applicable; ◗ provision that workers posted by “a temporary employment undertaking” or “placement agency” hold the same rights as employees in the undertaking to which they are posted. https://bit.ly/2ZB06qC

Reform Of Family Friendly, Parental & Carers Rights

GB	From 1 April 2023 Statutory Maternity Pay (SMP), Statutory Paternity (SPP), Adoption and Shared Parental Pay is £172.48 per week. Uprating Order **The Parental Bereavement (Leave and Pay) Act 2018** From 6 April 2020 the Act provides at least two weeks' leave for employees following the loss of a child under the age of 18 or a stillbirth after 24 weeks of pregnancy. Employees with 26 weeks' continuous service will be entitled to two weeks of paid leave at the statutory rate and other employees will be entitled to unpaid leave. The Parental Bereavement Leave Regulations 2020 (SI 2020/249) introduced parental bereavement leave: https://bit.ly/3syPdzD Statutory Parental Bereavement Pay (General) Regulations 2020 (SI 2020/233) introduced parental bereavement pay: https://bit.ly/3gjns9D **The Neonatal Care (Leave and Pay) Bill 2022** The Neonatal Care (Leave and Pay) Bill will allow parents in GB to take up to 12 weeks of paid leave, in addition to other leave entitlements such as maternity and paternity leave. It is anticipated that neonatal care leave will be available to employees from their first day in a new job and will apply to parents of babies who are admitted into hospital up to the age of 28 days, and who have a continuous stay in hospital of 7 full days or more. https://bit.ly/3Aex8MV At time of writing, the Bill was at the Committee stage in the House of Lords. Keep up to date with the progress of the Bill here: https://bit.ly/3dd2la4 **Carer's Leave Consultation** The Consultation says that “the GB government response to their consultation on carer's leave confirms their intention to introduce an entitlement to one week’s unpaid carer’s leave as a day 1 right for employees”. At the time of writing, a Private Member’s Bill, the Carer’s Leave Bill, is at its third reading in the House of Lords and is being supported by the government. This would provide for one week’s unpaid leave per year for employees who are providing or arranging care. The progress of the Bill can be seen here. Carer’s Leave Consultation government response: https://bit.ly/3u6KHJH **Extension of Childcare Provision** In March 2023’s Budget it was announced that the 30 hours of free childcare currently available for working parents in England is to be expanded to cover one and two-year-olds. It will be rolled out in stages from April 2024. bit.ly/3LgWteG

NI	From 1 April 2023 Statutory Maternity Pay (SMP), Statutory Paternity (SPP), Adoption and Shared Parental Pay is £172.48 per week. Uprating Order **The Parental Bereavement (Leave and Pay) Act 2022** The Parental Bereavement (Leave and Pay) Act (Northern Ireland) 2022 was enacted in March 2022. The Act has now been supplemented by two sets of regulations which flesh out how the new right will operate - the Parental Bereavement Leave Regulations (Northern Ireland) 2023 and the Statutory Parental Bereavement Pay (General) Regulations (Northern Ireland) 2023. In summary, the legislation provides for: • two weeks' parental bereavement leave ("PBL") for working parents upon the death of a child aged under 18, or a stillbirth (from 24 weeks of pregnancy), irrespective of their length of service; • employees taking PBL being entitled to statutory parental bereavement pay ("SPBP"), paid at the lower of £156.66 per week or 90% of their normal weekly earnings, so long as they meet certain qualifying criteria. Employers will administer SPBP in the same way as existing family-related statutory payments such as maternity, adoption and paternity pay. https://bit.ly/3xAnqmS **Carer's Leave** Rights in relation to being a carer in NI are governed by existing legislation including flexible working, time off for dependents, time off in an emergency and disability discrimination legislation. It remains to be seen if the Protocol on Ireland/Northern Ireland will require the Work-life Balance Directive to be implied into Northern Irish law under the non-diminution of rights principle (see ROI section for further details on this Directive). https://bit.ly/3u9rYgu **Domestic Abuse (Safe Leave) Act** The NI Assembly has passed legislation that will entitle victims of domestic abuse to 10 days' paid leave each leave year. The commencement date of the new right remains to be confirmed. It introduces a right for victims of domestic abuse to have 10 days' paid leave per year off from work to make any necessary arrangements and provides for protection of their employment rights while absent. Domestic Abuse (Safe Leave) Act 2022
ROI	**Parental Leave** The **Parental Leave Act, 1998** (as amended by the Parental Leave (Amendment) Act 2006 and the Parental Leave (Amendment) Act 2019 entitles each parent up to 26 weeks of unpaid parental leave. The leave must be taken before the child is 12 years of age or 16 where the child is disabled. Leave is unpaid. https://bit.ly/3ymmQaf **The Family Leave and Miscellaneous Provisions Act 2021** implemented changes to parents and adoptive leave as follows: • Since July 2022, the **Parent's Leave and Benefit Act 2019** entitles parents of babies born (or adopted) on or after 1 July 2022 to 7 weeks (increased from 5 weeks) leave. The leave

is to be taken within 2 years of the birth (or adoption) of the child. This is paid by the State at the rate of €262 per week, subject to a person having the appropriate PRSI contributions. https://bit.ly/2VsIpam

- **Adoptive Leave Acts 1995 and 2005**
  This Act enables adoptive couples to choose which parent may avail of adoptive leave and, in doing so, rectifies an anomaly in the original legislation that left married male same-sex couples unable to avail of adoptive leave.
  https://bit.ly/3yrE1Hk

Parental Bereavement Leave (Amendment) Bill 2019

Proposals are in place in the form of a Private Members Bill to amend the Parental Leave Acts 1998 and 2006 to make provision for an entitlement to bereavement leave to an employee who is a bereaved parent of a child who has died. The Bill has is currently before Dáil Éireann, Second Stage.

Paid leave upon miscarriage

Currently in Ireland, paid leave (maternity and paternity) upon stillbirth or miscarriage is only available after the 24th week of pregnancy. However, the Organisation of Working Time (Reproductive Health Related Leave) Bill 2021 makes provision for paid leave even if miscarriage or stillbirth occurred before the 24th week. It also provides for paid leave for the purposes of availing of reproductive healthcare such as IVF. The Bill is currently in the Seanad Third Stage and may be enacted this year.

Carer's Leave Act 2001

According to the WRC website "*the Carer's Leave Act 2001 provides for the entitlement of an employee to avail of unpaid leave from his/her employment to enable him/her to personally provide full-time care and attention to a person who needs such care. The minimum statutory entitlement is 13 weeks, and the maximum is 104 weeks in respect of any one care recipient*". More information on the right from the WRC:

https://bit.ly/3d2NXxN

Carers Leave Act 2001:

https://bit.ly/3FUGYmU

The **Work Life Balance and Miscellaneous Provisions Act 2023,** was signed into law on 4 April 2023, thereby transposing into Irish law the **EU Work Life Balance Directive**, the aim of which is to improve families' access to family leave and flexible work arrangements. The key provisions include a right for employees with children up to the age of 12 (or 16 if the child has a disability or long-term illness) and employees with caring responsibilities to request flexible working arrangements for a set period of time for caring purposes, five days' unpaid leave for medical care purposes, an extension of the period during which time can be taken out from work to breastfeed and the extension of maternity leave entitlements to transgender men, the introduction of paid leave for victims of domestic violence and the right to request to work remotely. It is anticipated that the rate of pay victims of domestic violence will receive under the new scheme should be known by the end of the summer or by the new Dáil term in September 2023.

The Act can be found here https://www.oireachtas.ie/en/bills/bill/2022/92/

The WRCs take on the Act can be found here:

bit.ly/414HEjS

Reform Of The Public Interest Disclosure Legislation (Whistleblowing)

GB	A government consultation on the GB whistleblowing framework was launched on 27th March 2023. It is expected to conclude in Autumn 2023. Find the framework for the Review here: bit.ly/3Iln7kH In GB the list of Prescribed Organisations for making external public interest disclosures is set out on the Gov.uk website and is available at the link below. While there is some overlap between GB and NI there are some differences, and it is important to be aware of these. https://bit.ly/3vHlJkL
NI	Rights and responsibilities in relation to public interest disclosures are contained with **The Public Interest Disclosure (Northern Ireland) Order 1998 (PIDO 1998)** and Part VA of the Employment Rights NI Order 1996 (ERO 1996). PIDO 1998: https://bit.ly/3DXiBoM ERO 1996: https://bit.ly/3tq0BON In relation to the additional requirements required by the EU Whistleblowing Directive, as set in the GB section, it is unclear whether due to the NI Protocol that NI will be required to align with the EU in this regard. EU Directive: https://bit.ly/3yRZj07 In NI the list of Prescribed Organisations for making external public interest disclosures is set out in the Public Interest Disclosure (Prescribed Persons) (Amendment) Order (Northern Ireland) 2014 which is available here: https://bit.ly/3vCquw8
ROI	Rights and responsibilities in relation to public interest disclosures are contained within **The Protected Disclosures Act 2014** which aims to protect workers who raise concerns about possible wrongdoing in the workplace. https://bit.ly/3xP3qel **Protected Disclosures (Amendment) Act 2022** **The Protected Disclosures (Amendment) Act 2022 (2022 Act)** was signed into law in July 2022 and came into effect on 1 January 2023. The main changes include: ▸ whistleblowing protections being extended to more categories of workers including shareholders, volunteers and applicants for employment; ▸ the definition and scope of relevant wrongdoings being broadened; ▸ employers not being obliged to follow up on anonymous reporting of wrongdoing; ▸ private sector employers being required to maintain and operate internal reporting channels and procedures; ▸ the list of prohibited penalisation against a whistleblower being broadened; and ▸ the burden of proof being reversed i.e., penalisation will be deemed to have resulted from the worker making a protected disclosure unless the employer can prove that the act or omission was for some other justifiable reason (and not as a result of the protected disclosure).

	The 2022 Act requires private sector employers with more than 50 employees to establish, maintain and operate internal reporting channels and procedures for the making of protected disclosures and in order to follow-up on such complaints. These can be operated internally by a designated person or department or can be provided externally by a third party on behalf of the employer. Employers with between 50-249 employees have an exemption until 17 December 2023 to put such measures in place. Since 1 January 2023, employers with over 250 employees are required to have a whistleblowing procedure in place. Certain employers such as public bodies are already required to have whistleblowing procedures in place regardless of the number of employees. According to gov.ie "*a new Office of the Protected Disclosures Commissioner will be established in the Office of the Ombudsman to support the operation of the new legislation on this same date. The Commissioner will direct protected disclosures to the most appropriate body when it is unclear which body is responsible. The Commissioner will also take on responsibility for transmitting all protected disclosures sent to Ministers of the Government to the most appropriate authority for assessment and thorough follow up*". Guidance has also been published for public sector employees and prescribed persons on the handling of reports made to them. The WRC also published some useful Guidance. Laura Ensor and Síobhra Rush of Lewis Silkin have written an article explaining the changes.

Reform Of Statutory Sick Pay Arrangements

GB	As of 1 April 2023 the weekly rate for Statutory Sick Pay (SSP) is £109.40. It is paid by the employer for up to 28 weeks. Uprating Order **The Social Security (Medical Evidence) and Statutory Sick Pay (Medical Evidence) (Amendment) (No. 2) Regulations 2022** came into force on 1st July 2022 and applies to England, Wales and Scotland. Since 1 July 2022 a wider group of healthcare professionals have been able to issue fit notes. Amendments to the relevant regulations on who can issue fit notes substitute references to "doctor" with the more broadly defined term "healthcare professional". This covers a registered medical practitioner, a registered nurse, a registered occupational therapist or physiotherapist and a registered pharmacist. Non statutory guidance has been issued to health professionals on this. https://bit.ly/3HqCWVA
NI	As of 1 April 2023 the weekly rate for Statutory Sick Pay (SSP) is £109.40 It is paid by the employer for up to 28 weeks. Uprating Order The Department for Communities states that the **Social Security (Medical Evidence) and Statutory Sick Pay (Medical Evidence) (Amendment) Regulations (Northern Ireland) 2022 (S.R. 2022 No 120)** "remove the need for a doctor to complete and sign a fit note in ink. Instead, the Regulations require that the name of the doctor is contained within the fit note. The Regulations also set out a new version of the fit note which will over time replace the existing version. However, both versions of the fit notes will be used in tandem for an interim period. This change will facilitate doctors being able to issue fit notes by digital means". https://bit.ly/3N0OhN8 **The Social Security (Medical Evidence) and Statutory Sick Pay (Medical Evidence) (Amendment) (No. 2) Regulations (Northern Ireland) 2022** came into force on 1st July 2022. Since 1 July 2022 a wider group of healthcare professionals have been able to issue fit notes. Amendments to the relevant regulations on who can issue fit notes substitute references to "doctor" with the more broadly defined term "healthcare professional". This covers a registered medical practitioner, a registered nurse, a registered occupational therapist, a registered pharmacist and a registered physiotherapist. https://www.legislation.gov.uk/nisr/2022/182/contents/made
ROI	**Sick Leave Act 2022** The Sick Leave Act 2022 was introduced in 2022 requiring employers, regardless of size, to provide statutory sick pay to qualifying employees. Since 1 January 2023, employees are entitled to three days per year, rising to five days in 2024, seven days in 2025, and ten days in 2026. The rate of payment is 70% of an employee's wage, subject to a daily maximum threshold of €110. The daily earnings threshold of €110 is based on 2019 mean weekly earnings of €786.33 and equates to an annual salary of €40,889.16. It can be revised by ministerial order in line with inflation and changing incomes. The rate of 70% and the daily cap are set to ensure excessive costs are not placed solely on employers, who in certain sectors may also have to deal with the cost of replacing staff who are out

	sick at short notice. The Act is primarily intended to provide a minimum level of protection to low paid employees, who may have no entitlement to a company sick pay scheme. The legislation expressly states that this does not prevent employers offering better terms or unions negotiating for more through a collective agreement.

Discrimination and Equality Amendments

GB

Vento Bands

For claims presented on or after 6 April 2023, the Vento bands

are as follows:

- a lower band of £1,100 to £11,200 (less serious cases);
- a middle band of £11,200 to £33,700 (cases that do not merit an award in the upper band); and
- an upper band of £33,700 to £56,200 (the most serious cases), with the most exceptional cases capable of exceeding £56,200.

bit.ly/3Opw9B8

Extending redundancy protection for pregnancy and maternity

The government has promised to extend priority for alternative employment opportunities on redundancy to all pregnant employees and for up to six months after return from maternity leave with similar protections for parents returning from adoption or shared parental leave. Rather than the long delayed Employment Bill, this reform is now progressing as legislation via the Private Member's Bill, Protection from Redundancy (Pregnancy and Family Leave) Bill, which, at the time of writing, has reached the third reading in the House of Lords.

The progress of this Bill can be seen here.

Gender Pay Gap Reporting

Organisations with 250 or more employees must report on their gender pay gap figures annually. The government has recently announced that as a matter of general policy going forward, businesses with under 500 employees should be exempt from reporting regulations. It is currently unknown if the government intends to amend the gender pay gap reporting regime to increase the threshold in this way, but this is theoretically a possibility.

The legislation for the private and voluntary sector can be found here:

https://bit.ly/3LQrZ1c

The legislation for public bodies can be found here:

https://bit.ly/3BfYRKL

Guidance on ethnicity pay reporting

In April 2023 the government issued new guidance for voluntary reporting on ethnicity pay gaps– with the option of internal or external reports. The approach largely mirrors the gender pay gap regime. It suggests basing categories on the 2021 census questions, and minimum category sizes – 5-20 for internal reports, 50 for external reports. The difficulty in gathering accurate data, the varying demographics around the UK and the data protection concerns may mean there will be limited participation.

Lewis Silkin has written about this here.

Guidance on positive action

In April 2023 the government published new positive action guidance. Employers in Great Britain can opt to use the positive action measures in the Equality Act 2010 to help employees improve representation, with the new guidance providing information on how to do this lawfully.

Lewis Silkin has written about this here.

ACAS Guidance on mental health and reasonable adjustments

Acas has published new guidance for employers around making reasonable adjustments in the workplace for those with mental health conditions, including practical suggestions on collaboration, preparing for meetings, and the importance of managers.

Lewis Silkin has written about this here.

ACAS Guidance on Non-Disclosure Agreements (NDAs)

Arbitration service ACAS has published advice for firms and workers about NDAs, including how to avoid misuse.

https://bit.ly/3yqBwEi

Consultation On Sexual Harassment In The Workplace: Government Response

The consultation response was published in July 2021 and the main findings of the consultation were:

- Governmental support for a new proactive duty to prevent sexual harassment and third-party harassment in the work place;
- That the government will look closely at extending the time limit for all claims under the Equality Act 2010; and
- That the government will support the EHRC to develop a new statutory code of practice, which will complement the technical guidance produced by the EHRC in January 2020.

https://bit.ly/3jn1XGG

EHRC technical guidance: here

A Private Member's Bill - Worker Protection (Amendment of Equality Act 2010) Bill - which provides for protection from third party harassment and would impose a duty on employers to prevent sexual harassment is now making progress through Parliament. At the timing of writing this Bill is due to be scheduled for the committee state in the House of Lords. A notable exception has been proposed for overheard expressions of opinion on a political, moral, religious or social matter. However, at the time of writing, the future of the Bill could be in jeopardy due to the volume of proposed amendments causing time to run out.

The progress of the Bill can be seen here.

Forstater v CGD Europe [2021]

A woman who lost her job after saying that people cannot change their biological sex has won an appeal against an employment tribunal decision. Maya Forstater, 47, did not have her contract renewed after posting tweets on gender recognition. She lost her original case in 2019, with the judge finding that her beliefs were "not worthy of respect in a democratic society", and therefore not protected by discrimination law. However, on appeal it was determined that gender critical beliefs (which many trans people and others find offensive) did meet the legal test for a philosophical belief to earn legal protection under the Equality Act 2010.

https://bit.ly/3jnqI5O

Following this EAT decision, the case returned to the Employment Tribunal to consider whether the Claimant had been discriminated against because of her gender critical beliefs. The Employment Tribunal found that she had been. Her tweet about her gender critical beliefs was not objectively inappropriate or offensive, and her employer's actions could not be justified as a proportionate restriction on manifesting those views inappropriately. The ET judgment indicates that the right to hold a belief includes a limited right to assert that belief, and that taking detrimental action over

	statements of belief can therefore, in some circumstances, be regarded as unlawful direct discrimination. Maya Forstater v CGD Europe and others (judiciary.uk)
NI	In NI anti-discrimination legislation is comprised of a number of separate pieces of legislation, unlike GB where equality rights are enshrined in the Equality Act 2010. While there have been discussions that NI should also create a similar act there are currently no plans to do so. Current anti-discrimination legislation in NI is as follows: › Equal Pay Act (NI) 1970); › Sex Discrimination (NI) Order 1976; › Race Relations (NI) Order 1997; › Disability Discrimination Act 1995; › Fair Employment and Treatment (NI) Order 1998; › Section 75 Northern Ireland Act 1998; › Employment Equality (Sexual Orientation) Regulations (NI) 2003; › Equality Act (Sexual Orientation) Regulations (NI) 2006; and › Employment Equality (Age) Regulations (NI) 2006. **Vento Bands** There is no equivalent to the Guidance from the President of Employment Tribunals updating the Vento bands in NI. In practice Employment Judges will often use the Vento bands as a starting point, although they are not required to do so. For claims presented on or after 6 April 2023, the Vento bands are as follows: › a lower band of £1,100 to £11,200 (less serious cases); › a middle band of £11,200 to £33,700 (cases that do not merit an award in the upper band); and › an upper band of £33,700 to £56,200 (the most serious cases), with the most exceptional cases capable of exceeding £56,200. bit.ly/3Opw9B8 **Gender Pay Gap Reporting** The **Employment Act (Northern Ireland) 2016** contains provisions relating to gender pay gap reporting in NI. However, the relevant provisions have not yet been brought into force. It is likely that implementation will be taken forward in the context of the development of the new Gender Equality Strategy. However, given that there has been no consultation, or anything brought before the Assembly to date, it is not expected that any steps will be taken until Assembly business resumes. https://bit.ly/3moKNca **Promoting Equality in Employment for Women Affected by Menopause** Useful guidance from the Equality Commission, Labour Relations Agency and NICICTU was published in 2021. https://bit.ly/2XRcpOj

	The Department of Economy launched a consultation on Equality Scheme, Audit of Inequalities and Disability Action Plan 2022-2027 in April 2023 which is to continue until June 2023. The relevant documents can be found here: bit.ly/41NueK4 There is also a consultation on the Race Relations (NI) Order 1997 which opened on 27 March and is due to close on 18 June 2023. For more information see: bit.ly/3GXUIQL
ROI	**The Employment Equality Acts 1998-2015** prohibit discrimination under the nine grounds in employment, including vocational training and work experience. A helpful summary of the legislation is available here: https://bit.ly/3267eMT A public consultation on a review of the **Equality Acts 1998-2015** was held from 6 July to 29 October 2021 to examine the function, effectiveness, awareness of and potential obstacles to take action, scope of current definitions of the nine equality grounds, issues of intersectionality and to consider whether any exemptions should be modified. https://bit.ly/3lsEvt4 The **Gender Pay Gap Information Act 2021** was signed into law in July 2021 and regulations setting out the detail of the reporting obligations were published on 3 June 2022. The Act requires organisations with over 250 employees to report on their gender pay gap since December 2022. Employers must choose a 'snapshot' date of their employees in June of every year and report on the hourly gender pay gap for those employees on the same date in December of that year (using 12 months' data up to June for the given year). Employers will have to report: ➢ mean and median pay gaps; ➢ mean and median bonus gaps; ➢ the proportion of men and women that received bonuses; ➢ the proportion of men and women that received benefits in kind; and ➢ the proportion of men and women in each of four equally sized quartiles. Employers are also required to publish a written statement setting out, in the employers' opinion, the reasons for the gender pay gap in their company and what measures are being taken or proposed to be taken by the employer to eliminate or reduce that pay gap. The reporting requirement currently applies to organisations with 250 or more employees but will extend over time to organisations with 50 or more employees as follows: • 150+ employees: 2024 • 50+ employees: 2025 https://bit.ly/3ikTcwp The Irish government has published guidance on how to calculate the gender pay gap metrics: https://bit.ly/3NwLI60 There are also frequently asked questions for employers, which was updated in October 2022:

https://bit.ly/3LOJzRW

Síobhra Rush, Partner, Lewis Silkin has written this article for Legal Island and another article on these developments.

At EU level, the EU Pay Transparency Directive has been finalised and must be implemented by Member States within three years (by June 2026), making gender pay gap compulsory for many employers across Europe. The Directive seeks to provide more transparency in pay across the EU to uncover unjustified gender-based pay differences for equal work of equal value and help victims of pay discrimination to seek redress. It requires employers to publish pay gaps for the workforce as a whole, and also report internally on pay gaps within categories of workers doing the same work, or work of equal value. Significant pay gaps in any category of worker will mean that the employer must carry out a detailed equal pay assessment and develop an action plan.

It also includes other measures to target pay discrimination including a ban on asking job applicants about their salary history, an obligation on employers to publish information about pay ranges on job adverts, and a right for workers to know the average pay for workers doing the same job or jobs of equal value.

Siobhra Rush, Partner, Lewis Silkin and Tom Heys, Legal Analyst, Lewis Silkin wrote this article on the Directive.

Two Private Members' Bills have been put forward by Sinn Fein and Fianna Fail which also deal with advertising remuneration (the Employment Equality (Pay Transparency) Bill 2022 and the Remuneration Information and Pay Transparency Bill 2023). Both Bills are at very early stages and will likely undergo a number of amendments to fully align with the provisions of the directive. Member States will have three years to transpose the directive into national law.

A new Private Members Bill, the **Irish Corporate Governance (Gender Balance) Bill 2021** was introduced in 2021 by TD Emer Higgins to make provision for the regulation of gender balance on the boards and governing councils of corporate bodies and related matters. The Bill is currently before Dáil Éireann, Second Stage.

https://bit.ly/3mmCtdD

The **Employment Equality (Amendment) (Non-Disclosure Agreements) Bill 2021** introduced on 1 June 2021 would create a law to restrict the use of non-disclosure agreements as they relate to incidents of workplace sexual harassment and discrimination. The Bill was debated in July 2022 and Senators indicated that they were keen to maintain momentum. Follow the Bill's progress here: https://bit.ly/37msSeM

Lewis Silkin wrote about this here.

Code of Practice on Harassment and Sexual Harassment

To mark International Women's Day in March 2022 a new Code of Practice on Sexual Harassment and Harassment at Work was published.

The Code highlights that people in precarious work and new workers, including immigrant workers, are particularly vulnerable to sexual harassment and harassment. It sets out procedures that establish work environments which are free of harassment and respect everyone's dignity.

https://bit.ly/3GiXbE9

Code of Practice on Equal Pay

Also announced to mark International Women's Day 2022, a further Code of Practice on equal pay was published. The Code provides guidance to help employers identify pay inequality and to eliminate it, including how to conduct a pay review which incorporates a rational and objective job evaluation model. The Code sets out how someone who considers that they are not being paid

	equal pay for their like work, should raise this internally at first before then proceeding, if necessary, to the Workplace Relations Commission or the Courts. https://bit.ly/3asLcYR In the case of **Nano Nagle School v Daly [2019] IESC 63** the Supreme Court ruled that reasonable accommodation is a specific duty that must be considered by an employer when dealing with a disabled employee and appropriate measures must be implemented by an employer, subject to it being a disproportionate burden. https://bit.ly/3mhELeQ **The Gender Recognition (Amendment) Bill 2017** will amend the Gender Recognition Act 2015 to provide a right to self-determination for persons who have reached the age of 16 years; to introduce a right to legal gender recognition for persons under the age of 16 years; and to ensure consideration of the status of non-binary persons in Irish law. The Bill is currently before Seanad Éireann, Third Stage. https://bit.ly/386uV7m Unlike in GB and NI there is no equivalent to the Vento Bands. The 2021 decision from the WRC in the case of **Barbara Geraghty v The Office of the Revenue Commissioners [2021] ADJ-000000312021**, was the first instance of the WRC disapplying national law for conflicting with EU law. In this age discrimination (mandatory retirement dismissal case), the WRC disapplied the Civil Service Regulations Act 1956 on the basis that it conflicted with EU-derived employment equality matters. https://bit.ly/3E2ppzZ

Work of Equal Value

GB	**Asda Stores Ltd (Appellant) v Brierley and others (Respondents) UKSC 2019/0039** The Supreme Court dismissed the appeal by Asda (from the Court of Appeal) confirming the finding of earlier courts that the Claimants, mostly females employed in the retail part of the business, can compare themselves to the predominately male workforce employed at the distribution depots. Asda appealed on the basis that this was not a valid comparison and the essential question on this appeal was whether common terms apply between the claimants' and comparator's establishments, thereby satisfying the common terms requirement in the equal pay legislation. The Supreme Court's dismissal of the appeal does not mean that the claimants' claims for equal pay will succeed. At this stage all that has been determined is that the Claimants (in the retail part of the business) can use terms and conditions of employment enjoyed by the distribution employees as a valid comparison, and can therefore pursue this matter to an Employment Tribunal. Supreme Court judgment: https://bit.ly/3h0wKaB Case review: https://bit.ly/2YqSFl2 **K & Ors v Tesco Stores Ltd [2021]** The European Court of Justice has confirmed that Tesco shop workers can rely directly on European law to compare themselves to distribution centre workers for the purposes of an equal pay claim. Unlike the Brierley decision, the claimants wanted to rely directly on EU law. Article 157 of the Treaty on the Functioning of the European Union (TFEU) allows a comparison to be made between employees if there is a "single source" that is responsible for setting their pay. This approach means that it doesn't matter if the employees do different jobs in different places, so long as a single employer is responsible for ensuring equal pay. The Equality Act does not contain the single source test. The ECJ ruled that the TFEU imposes obligations on employers to ensure both equal work and work of equal value, and this is one of the foundations of the EU. The wording is clear and precise, which means that these provisions can be relied on directly by individuals in equal value claims in the national courts. Although this is only the first stage of the equal pay claims in this case, this decision potentially makes it much easier for equal pay claimants to compare themselves with employees working in different jobs in different locations. ECJ Judgment: https://bit.ly/3QyRaXy Case Review: https://bit.ly/3QACgQI
NI	Decisions of the Supreme Court and ECJ also apply in NI and the above cases are therefore also important for employers in NI. No equivalent legislation to the GB **Equality Act 2010 (Equal Pay Audits) Regulations 2014** applies in NI.

ROI	The Employment Equality Acts 1998-2015 (the 'EEA') deals with equality in the workplace and governs the law in relation to equal pay in the workplace. An employee's right to equal pay for like work applies to all nine protected characteristics, including gender, provided for in the EEA. The definition of 'like work' is provided for in Section 7 of the EEA. Like work is work that: › is performed in the same or similar conditions as another employee; or › is interchangeable with the work of another employee; or › is of a similar nature to that performed by another employee and any differences between the work performed by another employee are of small importance in relation to the work as a whole; or › is of equal value to the work performed by another employee, having regard to such matters as skill, physical or mental requirements, responsibility and working conditions https://bit.ly/3e276As

Reform Of Rehabilitation of Offenders

GB	**The Police Act 1997 (Criminal Record Certificates: Relevant Matters) (Amendment) (England and Wales) Order 2020** This was brought about following the Supreme Court ruling in the 2019 Supreme Court case ***R (on the application of P, G and W) (Respondents) v Secretary of State for the Home Department and another (Appellants)*** https://bit.ly/3gDm69M This Order came into force on 28 November 2020, implementing important changes to the criminal records disclosure rules in England and Wales. The Order narrows the definition of "relevant matter" for the purposes of the Act, and has the following effects: - No Youth Cautions, Youth Conditional Cautions, Reprimands or Warnings received in childhood will be automatically disclosed on standard or enhanced DBS checks. This will be the case regardless of the offence. - The 'multiple conviction rule' no longer has effect. That rule previously required the automatic disclosure of all convictions where a person had more than one conviction, regardless of the nature of their offence or sentence. Under the new regime, convictions can be filtered from standard and enhanced DBS checks after the relevant time period has passed, even if there is more than one conviction or offence on record. This remains subject to the proviso that the offence is eligible (and not within the list of certain more serious offences) and that it did not lead to a suspended or actual prison sentence. https://bit.ly/2Wngd9W The time periods after which a spent conviction will no longer be disclosed have not changed (11 years unless under 18 when convicted, then it is 5 and a half years).
NI	On 26 March 2020 the Department of Justice in NI implemented changes to the AccessNI checks in light of the Supreme Court ruling in January 2019. https://bit.ly/3gDm69M According to the Department of Justice "they removed a restriction in the AccessNI scheme whereby if a person had more than a single conviction on their criminal record, all convictions held on their criminal record were disclosed on a standard or enhanced AccessNI check. In addition, any information about offences committed by persons under 18 which were adjudicated outside a court process (non-court disposals), such as informed warnings, cautions or youth conference plans will be scrutinised by the Department's Independent Reviewer of criminal record certificates and will only be disclosed where she determines that the offence could undermine the safeguarding or protection of children and vulnerable adults or the protection of the public. All serious and recent offending will continue to be disclosed on AccessNI checks to ensure that employers have the information they require to make safe recruitment decisions". https://bit.ly/3sSSOIU The changes were brought in on an administrative basis to ensure compliance with the Supreme Court ruling, enacting legislation has yet to be brought. But a consultation on proposals to reform rehabilitation periods in NI has been undertaken, closing in March 2021.

	Link to latest primary legislation Bills: https://bit.ly/2YsIhtz Outcome of Consultation: https://bit.ly/38is2jU
ROI	In ROI the **Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016** sets out the law in relation to the disclosure of convictions to employers. In general, employees do not have to disclose a spent conviction when they are looking for employment. However, they do have to disclose any spent convictions if they are applying to work for certain bodies, such as, the Garda Síochána, the Courts Service and some government departments. The list of bodies that they must disclose spent convictions to is given in Schedule 2 of the Act. The non-disclosure regime under the Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016 does not apply to employment relating to children or vulnerable adults. However, applicants for these roles must be Garda vetted and Garda vetting has its own non-disclosure regime. https://bit.ly/3yBw17r A review of the **Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016** was carried out in November 2020. The Criminal Justice (Rehabilitative Periods) Bill 2018 proposed amendments to the 2016 Act. The matter is ongoing, and you can find out more about the proposed amendments here: https://bit.ly/3GPKHmn

Employment Vetting Arrangements

GB	**England & Wales** Vetting for criminal convictions in England and Wales (and Northern Ireland) is covered by Part 5 of the **Protection of Freedoms Act 2012** and Sections 113A and 113B of the **Police Act 1997.** The Disclosure and Barring Service (DBS) helps employers in England, Wales and NI make safer recruitment decisions and prevent unsuitable people from working with vulnerable groups, including children. The DBS decides whether it is suitable for a person to be placed on or removed from a barred list. There are different levels of DBS check - basic, standard and enhanced – with different eligibility requirements for each. A standard DBS check can be requested for someone applying for certain roles (listed in the Exception Order), which include some positions of trust and / or those requiring the highest standards of professional performance. Roles which constitute "Regulated Activities" under safeguarding legislation are eligible for a more detailed check – an enhanced check with barred list check - for example in healthcare or childcare. According to the guidance on gov.uk "there is no official expiry date for a criminal record check issued by the DBS. Any information revealed on a DBS certificate will be accurate at the time the certificate was issued. The employer should check the 'date of issue' on a certificate to decide whether to request a newer one. In certain employment sectors, a new criminal record check may be required periodically". An employer may also be required by law to carry out a fresh check of the DBS children's and/or adults' barring lists in accordance with sector-specific guidance. A useful link to determine which DBS check you can get for an employee in England and Wales can be found here and more detailed guidance here. **Scotland** In Scotland the governing legislation is the **Disclosure (Scotland) Act 2020**. There are different rules in relation to spent convictions in Scotland, and so a Disclosure Scotland check may reveal information that an employer in England, Wales or NI is not entitled to. An application should be made to Disclosure Scotland.
NI	The law in NI in relation to DBS checks is the same as in England and Wales. It is governed by the **Protection of Freedoms Act 2012** generally, with NI specific provisions covered by Schedule 7. Checks are carried out via Access NI. Useful guidance can be found here.
ROI	It's very difficult to vet employees or conduct background checks, as official vetting is only allowable in very limited circumstances. Minister for Justice, Helen McEntee announced in April 2021 that an interdepartmental group would be established with the aim of examining and making recommendations on changes to the current garda vetting system and legislation governing the process. No changes have been implemented on this to date. The Garda vetting procedure is set out in the **National Vetting Bureau (Children and Vulnerable Persons) Acts 2012 to 2016** ('the Acts') and is operated by The National Vetting Bureau of An Garda Síochána.

	Under the Acts, anyone who works with or undertakes an activity, of which a necessary and regular part of it consists of having access to or contact with children or vulnerable adults, is required to be vetted. This includes staff, volunteers, and students on work placement with a relevant organisation. As it stands, once a person is Garda vetted, they are not required to be re-vetted unless they take up a new job or position within a relevant organisation, as well as in certain other limited circumstances. One of the primary focuses of the interdepartmental group will be the introduction of a mandatory re-vetting of employees, contractors and volunteers every three years. It will also be possible for a person's vetting certificate to be withdrawn before the expiry of the 36 months if deemed necessary, for instance if information emerged about a worker which gave reason to believe that a substantive and immediate risk was posed to children or vulnerable adults.

Aggravated Breach of Employment Rights

GB	**Section 12A of the Employment Tribunals Act 1996** Where a tribunal finds that an employer has breached a worker's rights, and that the breach has aggravating features, it may decide to order a financial penalty against a respondent. Relevant factors might include the size of the employer, the duration of the breach, and the behaviour of the employer and employee. This penalty is payable to the State. This legislative change increased the maximum penalty for an aggravated breach from £5000 to £20,000, and came into force on 6 April 2019. The financial penalties regime, originally introduced in April 2014, has been of limited success. The intent, however, is that alongside illustrative guidance on its use, the increase in the maximum fine will act as a stronger deterrent and sanction against aggravated breaches of employment law. https://bit.ly/3q5RGkm
NI	No corresponding financial penalties provisions currently exist within the Industrial Tribunal (Northern Ireland) Order 1996. A consultation took place in 2015 regarding reform of the tribunal rules including provision for financial penalties for aggravated breaches as described above, however no subsequent legislative reform followed. Industrial Tribunal Order: https://bit.ly/3mD1VLa 2015 Consultation: https://www.economy-ni.gov.uk/consultations/employment-tribunals-consultation
ROI	There is no equivalent to the aggravated breaches penalty in Ireland.

Reform of Working Time Legislation

GB	The **Supreme Court case of Royal Mencap Society v Tomlinson-Blake; Shannon v Rampersad [2021]** has settled the issue of minimum wage for 'sleep-in shifts', saying that workers should only be paid when they are awake and assisting, not for periods when they are sleeping. Legal Island case review: https://bit.ly/3ABiNYf Supreme Court decision: https://bit.ly/37DoyrR **The Working Time Regulations 1998** is the key legislation governing matters such as rest breaks, maximum working week, minimum holiday entitlement, etc in GB. https://bit.ly/3EVx98V The government has **launched consultation on amending record keeping requirements** under the Working Time Regulations to remove the obligation for businesses to keep a daily record of working hours of their workers. This consultation closes on 7 July 2023. For further information see here.
NI	Decisions of the Supreme Court also apply in NI and the Mencap case is therefore also important for employers in NI. The **Working Time Regulations (Northern Ireland) 2016** consolidate and replace the provisions of the **Working Time Regulations (Northern Ireland) 1998** and the ten Statutory Rules which amended it from 1998 to 2009. They do not change the substance of the legislation which remains very similar to GB. https://bit.ly/3CWYw0a
ROI	**The Work Life Balance and Miscellaneous Provisions Act 2023** provides for a period of 5 days' paid leave for victims of domestic violence**.** The WRC published a **Code of Practice for Employers and Employees on the Right to Disconnect** in 2021. The Code provides that employees have the right to switch off from work outside of normal working hours, including the right not to be required to respond immediately to emails, telephone calls or other messages unless specific circumstances arise which warrant it. The Code, which took effect from 1 April 2021, is designed to complement and support employers' and employees' rights and obligations under the Organisation of Working Time Act and other legislation. https://bit.ly/3yqQScV Since 2023, ROI now has an **extra public holiday** at the start of February to mark Imbolc/St Brigid's day. It will be observed on the first Monday of February except where 1 February falls on a Friday in which case it will be observed on that day. Press release

Reform of Holiday Pay Calculation

GB

Section 10 Employment Rights (Employment Particulars and Paid Annual Leave) (Amendment) Regulations 2018

As of 6 April 2020, the reference period for calculating an average week's pay (for the purposes of calculating statutory holiday pay) was extended from 12 to 52 weeks (or the number of complete weeks for which the worker has been employed if less than this). This calculation method applies to workers with no normal working hours, and workers with normal working hours but whose pay varies with the amount of work done (piece workers) or according to the time / days on which it is done (shift workers).

https://bit.ly/2WpW3vG

The Harpur Trust v Brazel [2022] UKSC 21

The Supreme Court has ruled that paid holiday entitlement of part-year workers should not be pro-rated for the weeks they do not usually work. This means that the 12.07% method for calculating the holiday pay hours of casual workers on permanent contracts is no longer a valid approach.

The main thrust of the argument by the Trust was that the use of the 12-week average (now 52 week) gave the claimant a more favourable position than what full-time members of staff would receive. In some instances, it would lead to approximately 17% of her earnings being holiday pay.

However, the judgment held the Working Time Directive and its transposition was clear when it came to workers with no normal hours in that the statutory formula should be used as the basis to determine the rate of holiday pay. On the argument that it led to absurd results; it was held that whilst the result may not have been intended by Parliament it was not such that some 'slight favouring of workers with a highly atypical work pattern' should not be deemed to be so absurd that it requires a revision of the statutory scheme. The Supreme Court did acknowledge that such a right was not required under the Working Time Directive but that there was nothing to prohibit more generous provisions for workers within domestic law (which is the case under the Working Time Regulations).

Full Supreme Court Judgment: https://bit.ly/3vZiRRP

Case Review: https://bit.ly/3SDKKIC

Holiday entitlement for part-year or irregular workers

The government has consulted on a new approach to calculating holiday entitlement for part-year workers or those with irregular working patterns which, contrary to the Harper v. Brazel case, would ensure that holiday entitlement is proportionate to hours worked. The proposal is that holiday would calculated at the start of the holiday year by looking back at hours worked in the last complete holiday year. Last year's hours would then be multiplied by 12.07% to give the next year's holiday entitlement. Also, the number of hours needed for a day of holiday would be based on the average working day. Agency workers accrue holiday at 12.07% each month.

Lewis Silkin has written about this here.

Rolled up holiday pay and amalgamation of leave entitlements

Since the consultation detailed above on holiday entitlement, the government has also launched consultation on reforming Retained EU Employment Law**.** As part of this, it is proposed that rolled up holiday pay is permitted and that EU and UK statutory leave entitlements (4 weeks and an additional 1.6 weeks respectively) should be merged into one pot.

Lewis Silkin has written about this here.

	Smith v Pimlico Plumbers Ltd [2022] The Court of Appeal has ruled that workers who were incorrectly classified as independent contractors and were not paid for holiday can claim compensation for the whole period of their engagement. The Court of Appeal disagreed with earlier decisions, and ruled that Mr Smith was able to claim compensation for all the unpaid leave that he took throughout his engagement. This applies for up to four weeks per year, which is the Working Time Directive basic "euro-leave" amount of holiday. In contrast to the EAT decision, the Court of Appeal found that the European Court of Justice's ruling in *King v Sash Window Workshop (C-214/16) [2018] ICR 693* (which held that a worker is entitled to carry over annual leave which is untaken because the employer refuses to remunerate it) **did** have wider application to this scenario, i.e. when leave was taken but unpaid. The court also cast doubt on the EAT decision **in** *Bear Scotland Ltd and Others v Mr David Fulton and Others: UKEATS/0047/13/BI* that a series of deductions from wages is broken (and therefore not actionable) by a gap of 3 months or more between deductions. In this case the unpaid holiday was found to carry over until the end of the engagement. The worker only needs to bring their claim within three months of the end of the engagement and can then claim for the full amount of carried-over "euro-leave" holiday, even if this covers many years. The Court of Appeal judgment is here. Since 1 July 2015 there has been a two-year "backstop" limiting the amounts that can be recovered in holiday pay claims.
NI	**Chief Constable of PSNI v Agnew & Others [2021]** The Court of Appeal's (CA) judgment in this claim, is contrary to the principle established by the EAT in Bear Scotland - that a series of unlawful deductions will be broken by a gap of three months or more. The CA in Agnew concluded that this principle does not correlate with Northern Irish legislation and a series of deductions is not necessarily brought to an end by a gap of three months or more between unlawful deductions. The case also addresses whether leave can be disaggregated as Working Time Directive, Working Time Regulations and contractual leave or whether all leave is a combination of different types of leave. The PSNI appealed to the Supreme Court. The appeal was heard in December 2022 and a decision is awaited. As this is a judgment from the Supreme Court it will have an impact on the whole of the UK not just Northern Ireland. There is a 12-week reference period for calculating holiday pay entitlement in NI, but the Agnew case confirmed that a 12-month period was acceptable. There is no two-year "backstop" for backdated holiday pay claims in NI. The NI Court of Appeal decision: https://bit.ly/38hRRk1 Case Review of NI Court of Appeal: https://bit.ly/3mD33QP Case Review of Industrial Tribunal decision: https://bit.ly/2UQ6YxY
ROI	The above cases do not apply in the Republic of Ireland. Guidance from the WRC states the following: Calculation of holiday pay in ROI is based on an employee's normal weekly rate and holiday entitlement is based on one of the following calculations:

	➢ 4 working weeks in a leave year in which the employee works at least 1,365 hours (unless it is a leave year in which he or she changes employment); ➢ 1/3 of a working week per calendar month that the employee works at least 117 hours; or ➢ 8% of the hours an employee works in a leave year (but subject to a maximum of 4 working weeks). https://bit.ly/3eoXoZn

GB	**Dobson v North Cumbria Integrated Care NHS Foundation Trust [2021]** This case stated that in certain circumstances a provision, criterion or practice (PCP) that requires all workers to be 'flexible' and work weekend shifts, may be indirect discrimination. The EAT, in examining the PCP (the need to work flexibly) stated that the practice did disadvantage women on the basis of their childcare responsibilities. The EAT found that the tribunal should in fact have taken "judicial notice" (meaning no evidence was required on this point) of the fact that women, because of their childcare responsibilities, were less likely to be able to accommodate certain working patterns than men. Accordingly, the appeal was allowed, and indirect discrimination was found. Case review: https://bit.ly/3zml21l Full case: https://bit.ly/2UXq6dG **Flexible working reform** In December 2021 the government consulted on reforming the right to request flexible working and the response was published in December 2022. It can be summarised as follows: - the right to request flexible working will become a day one right (it is currently only available to employees with 26 weeks' continuity). - employees will be allowed to make two requests (previously one request) within a 12-month period, and the response time for employers will reduce to two months (previously three months). - there will be a new duty to discuss alternatives to the request (so that if the employer intends to reject the request, it must discuss whether there are alternative forms of flexible working available). It is not clear whether this will be a statutory requirement giving rise to a cause of action, or just soft guidance. - the procedure for requesting flexible working will be simplified by removing the requirement for employees to set out how the effects of their flexible working request might impact upon the employer. - there will be no change to the list of eight reasons the employer has to refuse a request for flexible working. This will be implemented through a Private Members' Bill – the Employment Relations (Flexible Working) Bill (with day one right possibly in separate regulations). This Bill is currently at its 2nd reading in the House of Lords. bit.ly/3IpGr0c **Four-day week campaign** An MP has tabled a Parliamentary bill to reduce the maximum working week to four days. The bill had its first reading in the House of Commons on 18 October and must proceed successfully through several stages before it can become law. Follow its progress here: https://bit.ly/3sVKZU1 And to find out more about the Four-day Week campaign and the pilot scheme: https://bit.ly/3sEfUDU Scotland has announced that it is to carry out a four-day week trial. A paper has been written showing support for the movement:

	https://bit.ly/3AeBlhj
NI	There are no legislative developments in this area in NI, nor do there appear to be any proposals to amend existing laws. The Labour Relations Agency has produced helpful guidance on hybrid working which includes a sample hybrid working policy. The guidance entitled, 'A Practical Guide to Hybrid Working' is available here: https://bit.ly/2WTqx9H Employers in NI can participate in the four-day week pilot scheme.
ROI	The **Work Life Balance and Miscellaneous Provisions Act 2023**, which was signed into law on 4 April 2023, contains provisions in respect of employees' right to request flexible and remote working arrangements. The key provisions in this regard include a right for employees with children up to the age of 12 (or 16 if the child has a disability or long-term illness) and employees with caring responsibilities to request flexible working arrangements for a set period of time for caring purposes, five days' unpaid leave for medical care purposes and the right to request remote work (see below). The Act can be found here https://www.oireachtas.ie/en/bills/bill/2022/92/. ***Right to request flexible work*** This right will apply to employees who are parents (biological, adoptive or having parental responsibility) or caregivers for the purposes of providing care or support. Employees can request a flexible working arrangement in order to provide care or support to certain individuals including the employee's child, partner or parent where that person is in need of significant care or support for a serious medical reason. The legislation provides that a flexible working arrangement will not commence until the employee has six months' continuous employment with their employer. However, this does not prevent the employee from making a request before this time or, indeed, the employer from agreeing to a request with a commencement date prior to this time. ***Right to request remote work*** In January 2021 the Government published its **Making Remote Work: National Remote Work Strategy** the objective of which is to ensure that remote working is a permanent feature in the Irish workplace in a way that maximises economic, social and environmental benefits. https://bit.ly/3mqbZZu In July 2022 the Joint Committee on Enterprise, Trade and Employment published its report on the Pre-Legislative Scrutiny of the General Scheme of the Right to Request Remote Working Bill 2022. The committee made 20 recommendations, which Lewis Silkin covered here. https://bit.ly/3AjFsuV The right to request remote work has since been integrated into the **Work Life Balance and Miscellaneous Provisions Act 2023** and a Code of Practice is to be developed by the WRC. A commencement order will be required for these provisions to become operable. Key provisions include: - employees making a request for a remote working arrangement must do so in writing at least 8 weeks before the proposed commencement date; - as with flexible working requests, there is no minimum service requirement for making a remote working request but the Act again provides that such an arrangement will not

commence until the employee has six months' continuous employment, unless it is agreed by the employer that such an arrangement can commence earlier;

- employers will have 4 weeks (this may be extended to 8 weeks in certain circumstances) to respond to requests;
- employers will have to consider both parties' needs and the provisions of the anticipated Code of Practice (to be drafted by the Workplace Relations Commission) when responding to a request, and to provide grounds for refusal; and
- employees will have the right to appeal refusals internally and can also make a complaint to the WRC for technical breaches where the employer has failed to respond or given adequate reasoning when refusing. However, there is no scope for an employee to challenge an employer's reasons for a refusal to grant a remote working arrangement or a decision to terminate the arrangement.

Right to Request Remote Work for all workers

A Remote Working Checklist for Employers was developed by DETE to provide employers with a quick way to navigate the adoption of remote working arrangements:

https://bit.ly/3y58lq5

The Health and Safety Authority (HSA) also produced a checklist for employers and employees on home working:

https://bit.ly/3j6EIk8

A **four day week** pilot was launched in June 2021 for employers to trial the effectiveness of a four-day week for their organisation.

Under the pilot programme, employers introduced a four-day week for their employees over a six-month period from 2022, with the support of Four Day Week Ireland. Most companies who took part in the trial reported it to be successful, with many committing to continue it after the trial concluded.

https://bit.ly/3gn7k6I

Amendments to Bullying and Harassment Guidance/Law

GB	Harassment related to a protected characteristic is unlawful under the Equality Act 2010. Bullying is not a legally defined term in GB. Guidance on how to handle a bullying, harassment or discrimination complaint at work is available from Acas: https://bit.ly/32k0AlW See "Discrimination and Equality Amendments" for information regarding the government consultation on sexual harassment in the workplace and the Worker Protection Bill.
NI	In NI, harassment is unlawful under the various anti-discrimination laws and like GB there is no agreed legal definition of bullying. Joint publications from the Labour Relations Agency and Equality Commission on dealing with harassment and bullying in the workplace are available here: https://bit.ly/32jxmDQ Harassment and bullying at work
ROI	The **Code of Practice for Employers and Employees on the Prevention and Resolution of Bullying at Work** was issued by the WRC in conjunction with the has in 2020. The Code of Practice came into effect on 23 December 2020 and applies to all employments in Ireland irrespective of whether employees work at a fixed location, at home or are mobile, provides practical guidance on the management of workplace bullying complaints and on the prevention of workplace bullying, in line with the requirements of the Safety, Health and Welfare at Work Act 2005. https://bit.ly/3yKr5wc In 2022, a new **Code of Practice on Sexual Harassment and Harassment at Work** was issued by the Irish Human Rights and Equality Commission and provides practical guidance for employers and employees on how to prevent harassment and sexual harassment at work, and how to put procedures in place to deal with it. The Code is legally admissible in evidence in proceedings before the courts, the WRC and the Labour Court. Code of Practice on Sexual Harassment and Harassment at Work (ihrec.ie)

Health & Safety Developments for Workers

GB	**The Employment Rights Act 1996 (Protection from Detriment in Health and Safety Cases) (Amendment) Order 2021** This Order extends protections against detriment in health and safety cases to workers (previously, these protections covered only employees). It came into operation on 31 May 2021. https://bit.ly/355UFCX This change was consistent with the High Court decision in the November 2020 *IWGB* case, which directed that the Health and Safety Framework Directive and the Personal Protection Equipment (PPE) Directive should apply to a wider group of workers, not just employees.
NI	**The Employment Rights (Northern Ireland) Order 1996 (Protection from Detriment in Health and Safety Cases) (Amendment) Order (Northern Ireland) 2021** This Order mirrors the position in GB as set out above. It came into operation on 31 May 2021 and was approved by the Assembly in June 2021. https://bit.ly/3yMhDYu **Pregnant Women and New Mothers** HSENI has updated its guidance for pregnant women and new mothers requiring employers to carry out an individual risk assessment for any worker who notifies their employer in writing that they are pregnant, breastfeeding or have given birth in the last six months. The guidance applies to gig economy, agency or temporary workers and will also apply to some transgender men, non-binary people and people with variations in sex characteristics, or who are intersex. The full guidance is available here: https://bit.ly/3BZ3BIo
ROI	While Irish law does not recognise the hybrid status of a 'worker' as in GB/NI, the health and safety responsibilities of employers do extend beyond their own employees. You can find out more about this on the HSA's site here: https://www.hsa.ie/eng/supports_for_business/

Right to Work Checks

GB	**End of Covid-19 Right to Work Check Concessions** Due to logistical issues arising due to the Covid-19 pandemic, between 30 March 2020 and 30 September 2022 the UK government instituted adjusted measures for manual right to work checks. For further information, see https://bit.ly/2XWktxf. Since 1 October 2022, employers must check original hard-copy documents in the way set out in an employer's guide to right to work checks. Individuals with limited immigration permission or who are settled in the UK should use the Home Office online right to work service. Since 6 April 2022, employers of those who hold a Biometric Residence Permit, Biometric Residence Card and Frontier Worker Permit must use the online service in all cases. Since 6 April 2022, digital identity document validation technology (IDVT) has been made available to check the right to work of those who hold a valid British or Irish passport (including an Irish passport card). The first certified provider of this service was approved on 6 June 2022. On 28 February 2023 the Home Office published an updated version of its right to work guidance for employers. This includes important information on the limits of using Identity Document Validation Technology (IDVT) for compliant right to work checks, as well as other significant information. Lewis Silkin wrote about this here.
NI	**Covid-19 Right to Work Check Concessions** Immigration is not a devolved matter and so NI mirrors the rules in GB in this regard.
ROI	It is a criminal offence in Ireland to (i) employ someone who doesn't have permission to work in the State and (ii) enter employment in the State without permission to work. Irish legislation is not prescriptive about what specific right to work checks need to be undertaken. Employers just have to take "*reasonable steps*" to ensure employees are not working illegally. This is advisable as penalties for breaching this Irish legislation are potentially severe. **Employment Permits** In general, in order to work in Ireland a non-EEA national, unless they are exempted, must hold a valid employment permit. The employment permits scheme is administered by the Department of Enterprise, Trade and Employment. All occupations are considered eligible for an employment permit in Ireland unless specifically excluded under the Ineligible List of Occupations for Employment Permits. Occupations listed on the Critical Skills Occupations List are eligible for a Critical Skills Employment Permit. These lists are amended regularly and the **Employment Permits (Amendment) Regulations 2022**, Statutory Instrument 2, introduced the latest changes to these lists. The Irish government has published the **Employment Permits Bill 2022** which has been drafted to streamline, improve and modernise the employment permit system and increase its responsiveness to Ireland's evolving labour market. The impact of this new legislation won't be clear until it is enacted but, as drafted, the Bill proposes to: • introduce a new type of employment permit for seasonal workers, known as a "Seasonal Employment Permit"; • allow subcontractors to make use of the employment permit system; and • introduce automatic indexation of salary thresholds; and

- allow the Minister to specify additional eligibility conditions for certain employment permits. For example, training and upskilling may be become a requirement for some employment permits including the provision of accommodation support.

Interestingly, the Bill also specifies that the Minister can make regulations and measures to be taken by the employer of a foreign national to whom a permit is granted to "*increase the skills, knowledge, qualifications, or experience of employees (other than the foreign national) in respect of the employment concern, including the employment of new trainees or apprentices in that employment, or reduce reliance on the employment of foreign nationals including by way of technical changes to work processes*." In effect, the Bill proposes to move operational details to regulations, allowing for ease of update as recruitment practices and labour market needs evolve.

Lewis Silkin recently wrote about this here.

Other permission to work

Depending on an individual's personal circumstances, a non-EEA national may be granted permission to work in Ireland without requiring an employment permit. An individual's Irish Residence Permit card, which confirms their immigration permission has been registered with the Department of Justice's Immigration Service Delivery, will evidence what immigration permission an individual has been granted.

Additionally, an individual may have been granted permission to work in Ireland on a temporary short-term basis and will have received a Stamp on their passport which evidences their permission to work in Ireland.

Employment Status/Gig Zero Hours Contracts

GB	**Employment Status Guidance** In July 2022 the government in Westminster published guidance on employment status and associated rights. According to the gov.uk website the guidance "provides practical advice and examples for HR professionals on: • employment status and how it determines the employment rights individuals are entitled to and for which employers are responsible • factors determining an individual's employment status • special circumstances and recent developments in the labour market • how employment status should be determined for different sectors • where to go for further information There are 2 additional pieces of guidance for: • individuals, to help them understand their employment status so that they know their rights, can have informed discussions with their employer about them, and can take steps to claim them and have them enforced where necessary • employers or engagers, to help them understand individuals' employment status so they comply with the law, helping ensure individuals receive the rights they are entitled to, and to avoid unnecessary disputes and associated costs" Guidance for HR professionals, legal professionals and other groups: https://bit.ly/3SIYG41 For individuals: https://bit.ly/3QAlMrJ Checklist for employers and other engagers: https://bit.ly/3vYpDaa **Uber v Aslam & others [2021] UKSC 5** This long-running case is relevant to many workers in the gig economy and not just taxi drivers. The Supreme Court held that Uber drivers are workers, due to the degree of subordination and control to which they are subjected. The Supreme Court thought that businesses should not be able to use their written contracts to determine who qualifies for statutory protections and that the question must be one of 'statutory interpretation, not contractual interpretation'. The Supreme Court considered the fact that the drivers were tightly controlled by Uber: they had little or no ability to improve their economic position through professional or entrepreneurial skill. In practice the only way in which drivers could increase their earnings was by working longer hours while constantly meeting Uber's measures of performance. Full Supreme Court judgment: https://bit.ly/3gBoQV0 A review of the Court of Appeal Decision is available here: https://bit.ly/38jQpxK Employment Appeal Tribunal Decision is available here: https://bit.ly/38fxRyw Employment Tribunal Decision is available here: https://bit.ly/3gDaeEH **Addison Lee Ltd v Lange [2021]** This is a very similar case to ***Uber*** above with the exception that there was a contractual clause which mitigated against the recognition of worker status. However, the Court of Appeal made it

clear that it was the interpretation of statute to the factual situation that the court was concerned with rather than the terms of any contract between the two parties. As a result, it reinforces the extent to which the classification of employment is one that rests on the reality of the situation rather than any contractual term that was agreed between the parties.

Full Court of Appeal judgment: https://bit.ly/3jrYI0V

Case Review: https://bit.ly/3zmMa0h

Independent Workers Union of Great Britain v Central Arbitration Committee & Roofoods Ltd t/a Deliveroo [2021] EWCA Civ 952

This case demonstrates the inter-relationship between employment status and the protection that is afforded by virtue of Trade Union protection within Article 11 of the ECHR. To this end, the Court of Appeal has made it clear that the rights are not available to "absolutely everyone", but rather they are constrained to those who are in employment relationships. On this point, the court reiterated the importance of personal service when considering the question of worker status. Helpfully, the case demonstrated that domestic law aligns with the international definitions that have arisen for worker status. On a practical point, it does lead to some curtailment of where Trade Union rights can arise. It will be interesting to see how this develops and whether a distinction continues between Uber drivers and Deliveroo riders.

Full Court of Appeal judgment: https://bit.ly/3olHxke

Case Review: https://bit.ly/3CUijxj

National Union of Professional Foster Carers v The Certification Officer [2021] EWCA Civ 548

This appeal arose from the respondent's refusal to register the appellant Trade Union as an organisation on the list of Trade Unions. The reason for the refusal was that the members of the Trade Union, namely foster carers, were not wholly or mainly workers within the meaning of Section 1 of the **Trade Union and Labour Relations (Consolidation) Act 1992**.

The Court of Appeal went through the features of interference into Article 11 but the important feature from a strictly employment perspective was that the Court of Appeal declared that, for the purpose of Section 1 of the 1992 Act, the definition of worker was to be extended to those provider services under a foster care agreement. This would have the effect that the respondent would be 'very likely' to be obliged to enter the Union onto the maintained list.

This follows the Scottish case of **Glasgow City Council v Johnstone** in demonstrating greater recognition for foster carers in an employment sense. The difficulty that does arise with foster carers which may come down the line is the nature of the work; it is generally seen as a vocation which applies 24/7 and the fee is payable as a result of the commitment that has to be made. It must be asked how far the rights then apply and whether there needs to be minimum wage on a 24/7 basis as well as other rights that may then apply. The decision to find worker status may in fact lead to more questions than answers.

Full Court of Appeal judgment: https://bit.ly/3yGaYPx

Case review: https://bit.ly/3kRvhoj

Exclusivity clauses

The Exclusivity Terms for Zero Hours Workers (Unenforceability and Redress) Regulations 2022

On 5 December 2022, the Exclusivity Terms for Zero Hours Workers (Unenforceability and Redress) Regulations 2022 came into force. These prohibit exclusivity clauses in the employment contracts of workers whose earnings are on, or less than, the lower earnings limit (currently £123 a week) . Exclusivity terms are already unenforceable in zero hours contracts, and this extends the

	protection to workers working under contracts where they are guaranteed a net average weekly wage that does not exceed the Lower Earnings Limit, to ensure that they are also not restricted by exclusivity terms. Eligible individuals can bring proceedings in employment tribunals and may be awarded compensation. The regulations are available here: https://www.legislation.gov.uk/ukdsi/2022/9780348237160/contents **The Workers (Predictable Terms and Conditions) Bill** The Workers (Predictable Terms and Conditions) Bill proposes new provisions in the Employment Rights Act 1996 which would give certain workers, agency workers and employees a new statutory right to request a predictable working pattern. This would apply after 26 weeks of employment. This Private Member's Bill passed its second reading in the House of Lords on 27 March and is being supported by the government. Lewis Silkin has written about this here. https://bills.parliament.uk/bills/3237/stages
NI	Decisions of the Supreme Court also apply in NI and the Uber case is therefore also important for employers in NI, however the other cases mentioned above are not binding. There is no corresponding Employment Bill in NI at present. The **Employment Act (Northern Ireland) 2016** makes provisions for regulations to be enacted to prevent abuses arising out of or in connection with the use of zero hours contracts. https://bit.ly/3uOIKll The **Employment (Zero Hours Workers and Banded Weekly Working Hours) Bill** makes provision in respect of zero hours workers and banded weekly working hours. At the time of writing it is at the Committee Stage in the NI Assembly. Lewis Silkin has written an article about this here.
ROI	**The Employment (Miscellaneous Provisions) Act 2018,** which came into force on 4 March 2019, amended the Terms of Employment (Information) Act 1994, so that employers were required to provide certain core information to employees within five days of starting employment and provides employees with a right to minimum payment where an employee is obliged to be available for work but is not asked to come in to work. In addition, the Act prohibits the use of zero-hour contracts, save in limited circumstances (where either the work involved is casual in nature, the employee is essential for providing coverage in emergency situations or for short-term absences), and introduces banded working hours on a statutory basis. https://bit.ly/2WaDHye Attempts to improve the correct classification of employees as self-employed or independent contractors have resulted in 3 Private Members Bills: • The Protection of Employment (Measures to Counter False Self-Employment) Bill 2018 • The Prohibition of Bogus Self Employment Bill 2019 • The Organisation of Working Time (Workers Rights and Bogus Self-Employment) (Amendment) Bill 2019 These Bills have lapsed or been withdrawn. However, the **Code of Practice on Determining Employment Status** was updated in July 2021 to take account of newer business models and forms of work, e.g. gig economy. The Code however retains the historic distinction between 'employed' and 'self employed' without catering for contractual arrangements on either side of this distinction.

https://bit.ly/3D3WNXV

The European Union (Transparent and Predictable Working Conditions) Regulations 2022 came into effect on 16 December 2022, transposing the Transparent and Predictable Working Conditions Directive.

The Directive provides minimum rights for workers with on-demand, voucher-based or platform jobs, like Uber or Deliveroo. The Directive proposes more predictable hours and compensation for cancelled work, and an end to "abusive practices" around casual contracts and a reduction in lengthy probationary periods.

According to the Regulations, employers are not allowed to prevent their employees from pursuing other employment opportunities outside of their current job. Furthermore, employees are now safeguarded from experiencing any negative consequences as a result of engaging in such additional employment.

An employer can restrict an employee from taking up additional employment if the restriction is proportionate and based on objective grounds. The Regulations contain a non-exhaustive list of objective grounds which include:

- Health and safety;
- Protection of business confidentiality;
- Avoidance of conflicts of interest; and
- Compliance with applicable statutory or regulatory obligations and professional standards.

Where an employer does seek to restrict an employee from taking up additional employment, then one of the following requirements must be met:

- details of the restriction (including details of the objective grounds being relied upon) must be included in the contract, or
- a statement in writing setting out the restriction (including details of the objective grounds being relied upon) must be furnished to the employee.

bit.ly/3VLvmfi

https://bit.ly/2UKxQ2A

In **Karshan (Midlands Limited) trading as Domino's Pizza v the Revenue Commissioners** the Court of Appeal overturned a decision by the Revenue Commissioners and the High Court that pizza delivery drivers were employees (holding that they should be treated as self-employed). Two out of the three Court of Appeal judges reached the conclusion that there was no mutuality of obligation in the contractual arrangements between Karshan and the drivers.

Platform Workers Directive

The EU Commission has published a draft directive specifically on improving working conditions for platform workers, although the definition of a "platform" is so broad it will potentially also catch many more traditional employers that would not typically be considered as such.

The aim of the proposed directive is to regulate how to determine the employment status of platform workers and how digital labour platforms should use algorithms and artificial intelligence to monitor and evaluate workers.

The proposed directive sought to introduce criteria to assess if a platform exerts sufficient control to be classed as an employer; and if two of the five criteria were met, there would be a rebuttable legal presumption that the platform is an employer. A version of the directive produced by the EU Parliament went even further and said that "any" control exercised by the platform will make someone an employee.

	However, further to an EU Parliament vote in early February 2023, the criteria initially proposed by the Commission in order to establish the presumption that the platform is an employer are no longer required to be met, and are instead only relevant in any argument by the platform that the worker is in fact 'genuinely' self-employed. This point has been the subject of much debate and further strides are being made at EU level in recent weeks towards reaching a compromise on the issue of legal presumption of employment proposed by the EU Parliament in February. We await developments in this regard.

Off-payroll working rules / IR35 Reforms for Private Sector

GB	IR35 is a tax-avoidance rule designed to combat "disguised employment" in situations where an individual contractor is providing their labour to an end user via their own intermediary (often their own company, known as a personal services company). From 6 April 2021, medium and large private organisations, and public sector organisations, must decide whether the IR35 tax rules apply to an engagement with individuals who work through their own company. These organisations, referred to here as the "end user", must assess whether the contractor is employed or self employed for tax purposes by undertaking a Status Determination Assessment ("SDS"). The SDS must be provided to the contractor before the first payment to them. If there is an agency in the chain, it must also be provided to the agency. Where the SDS indicates that that IR35 rules do apply, the organisation, agency, or other third party paying the worker's company will need to deduct income tax and employee NICs and pay employer NICs. The end user must provide the SDS to the contractor regardless of whether the determination shows that IR35 will apply or not. The end user must also provide reasons for its determination. A status determination statement issued before 6 April 2021 is valid under the new rules. If the working practices of the engagement change or the end user negotiates a new contract with the worker, the end user must re-check the rules to see if they still apply. A worker or the agency paying the worker's intermediary may disagree with the employment status determination reached by the end user, and the end user must have a dispute resolution procedure to enable this challenge. In this scenario, the end user must: • consider the reasons for disagreeing given by the worker or agency paying their intermediary; • decide whether to maintain the determination and give reasons why, or withdraw the determination because it is accepted that was wrong; and • keep a record of the determinations and the reasons for it. The end user must provide a response within 45 days of receiving the representations from the contractor or fee payer. During this time the end user should continue to apply the rules in line with its original determination. If the end user does respond within 45 days, the responsibility for paying tax and National Insurance contributions will become its responsibility. Helpful guidance is provided here: https://bit.ly/3mDyzhy And here: https://bit.ly/3ynswj6 Plans to repeal IR35 announced by Liz Truss were scrapped as part of the major reversal of proposed tax cuts.
NI	The IR35 rules apply in NI as well as GB.
ROI	There is no equivalent to the IR35 regime in the Republic of Ireland.

Termination Payments - Tax and National Insurance Contributions (NIC)

GB	The measure had effect from 6 April 2018. A policy paper from gov.uk says “An employer is required to pay NICs on any part of a termination payment that exceeds the £30,000 threshold. In addition, all payments in lieu of notice (PILONs) will be both taxable and subject to Class 1 NICs. The legislation requires the employer to identify the amount of basic pay that the employee would have received if they had worked their notice period, even if the employee leaves the employment part way through their notice period. The amount will be treated as earnings and will not be subject to the £30,000 income tax exemption. All other termination payments will be included within the scope of the £30,000 termination payments exemption”. https://bit.ly/3mAqM43
NI	This rule also applies in NI as well as GB.
ROI	Payments on termination of an office or employment or removal from an office or employment are dealt with under section 123 **Taxes Consolidation Act 1997 (TCA 1997).** Certain exemptions are available, but the basic position is that an employee is entitled to tax relief for €10,160 plus €765 for each complete year your employee has worked for you of any lump sum payment. Employees who have not received a termination payment in the previous ten years may be entitled to the Increased Basic Exemption (€10k). However, there are alternative calculations such as the SCSB (Standard Capital Superannuation Benefit) which is more beneficial for some longer serving and higher level employees who receive termination payments. See the following Revenue guidance for more detail on how lump sum payments are taxed: https://bit.ly/3Ebdtw8

Section 2: Collective and Industrial Issues

Reform of Registered Employment Agreements/Registered Employment Orders/Industrial Action Ballots

GB

The Trade Union Act received Royal Assent in May 2016 in GB. The Act introduces:

- A 50% threshold for ballot turn-out;
- An additional threshold of 40% of support to take industrial action from all members eligible to vote in the key health, education, fire, transport, border security and energy sectors – including the Border Force and nuclear decommissioning;
- A six-month time limit for industrial action;
- A requirement for a clear description of the trade dispute and the planned industrial action on the ballot paper; and
- Strict rules on 'check-off' arrangements for collecting union dues in public sector:

http://bit.ly/1Pcb0Hg

Six Statutory Instruments are in place.

Amendment to cap on Union fines for Industrial Action

Trade unions enjoy special protection to call on their members to perform certain unlawful acts. In particular, section 219 of the Trade Union and Labour Relations (Consolidation) Act 1992 allows them to induce workers to break their contracts of employment by taking industrial action, such as by going on strike. However, for this special protection to apply, a trade union must be acting in contemplation or furtherance of a trade dispute, such as a pay dispute. It must also ensure that it only acts after securing its members' support through a properly conducted ballot.

If a trade union were to call on its members to take industrial action without enjoying the protection provided by section 219, it faces potential legal claims for any loss that it causes, such as to the employer(s) affected by any strike. However, since 1982, its liability has been capped at a maximum of £250,000 (for trade unions with 100,000 or more members).

With effect from 21 July 2022, the government has moved to quadruple this cap to £1,000,000, with matching increases in the caps for smaller unions of £40,000 for unions with up to 5,000 members, £200,000 for those with between 5,000 and 25,000 members, and £500,000 for those with between 25,000 and 100,000 members.

The Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2022

All staffing suppliers (including recruitment agencies and other providers of contingent workers) are subject to a statutory compliance regime that is primarily set out in the **Conduct of Employment Agencies and Employment Businesses Regulations 2003.** These regulations are designed to protect both agency workers and the businesses seeking to engage them (i.e. employers).

According to the explanatory note "[the 2022 Regulations] will remove the prohibition set out at regulation 7 of the Conduct Regulations, preventing employment businesses from introducing or supplying agency workers to hirers to replace individuals taking part in official strike or official industrial action or to replace individuals who have themselves been transferred by the hirer to perform the duties of the person on strike or taking industrial action. A breach of regulation 7 is a

	criminal offence punishable by a fine further to section 5(2) of the Employment Agencies Act 1973. Such breach may also trigger civil liability under regulation 30 of the Conduct Regulations. Regulation 2(a) revokes regulation 7 (restriction on providing work-seekers in industrial disputes) of the Conduct Regulations thus enabling employment businesses to provide agency workers to hirers during official strike or industrial action, removing the prohibition and potential breach of the Conduct Regulations thereunder". The Regulations came into force on 21 July 2022. A useful Lewis Silkin article can be found here. The Central Arbitration Committee (CAC) helps to resolve collective disputes in England, Scotland and Wales, where such disputes cannot be agreed voluntarily. The CAC is a tribunal for the Department for Business, Energy & Industrial Strategy. **Strikes (Minimum Service Levels) Bill** This Bill makes provision about minimum service levels in connection with the taking by trade unions of strike action relating to certain services such as health, fire and rescue, education and transport. This has proven controversial among trade unions. It has reached the third stage in the House of Lords at time of writing. The Bill's progress can be followed here.
NI	There is no equivalent to the Trade Union Act in NI, no reform of industrial action ballots and no replication of the Minimum Service Levels Bill in GB. The threshold for ballots remains a simple majority of those voting, as per The Trade Union and Labour Relations (Northern Ireland) Order 1995. In NI, a ballot ceases to be effective and action needs to begin within 4 weeks of the outcome of a ballot, or no longer than 8 weeks if agreed between the union and the member's employer. The limit for a union's potential liability in NI also remains at £250,000 and the ban on using agency workers during legal strike action still applies. The Industrial Court is the equivalent of the CAC in NI. It assists with applications about legal recognition and derecognition of trade unions for collective bargaining purposes, where such recognition cannot be agreed voluntarily.
ROI	In July 2021 the Supreme Court upheld a High Court decision that the Sectoral Employment Order for the electrical industry was unlawful but overturned a finding by the High Court that the power to make Sectoral Employment Orders was unconstitutional as set out in **Part 3 of the Industrial Relations Act 2015.** In Náisiunta Leictreacht (NECI) -v- Labour Court & ors the Supreme Court confirmed that the Oireachtas does have the power to require all employers in a sector to apply a Sectoral Employment Order to their employees. https://bit.ly/3jpGYln The Industrial Relations (Sectoral Employment Orders Confirmation) Bill 2020 was drafted to give statutory effect to recommendations of the Labour Court in relation to certain sectors of the economy in light of the above case. The Bill is currently before Dáil Éireann, Second Stage. https://bit.ly/3CPy2i1 New Pay Rates in the Electrical Contracting Sector - The Minister of State for Business, Employment and Retail Damien English TD, signed a Statutory Instrument giving legal effect to a recommendation from the Labour Court for new minimum pay rates to workers in the electrical contracting sector. This recommendation was approved by both Houses of the Oireachtas on 7 December and became effective on 1 February 2022 - see Electrical Contracting Sector. However,

	according to a RTE news report, the High Court has recently agreed to set aside the Sectoral Employment Order.

Collective Bargaining Rights

GB	Employers are prohibited from inducing workers to opt out of collective bargaining arrangements under **s145B of the Trade Union and Labour Relations (Consolidation) Act 1992**. In October 2021 the Supreme Court ruled in **Kostal UK Ltd v Dunkley & ors**, that Kostal had breached s145B of the Trade Union and Labour Relations (Consolidation) Act 1992, which prohibits employers from inducing workers to opt out of collective bargaining, when it made a one-off pay offer to employees while the collective bargaining process was still ongoing. However, the Supreme Court in this case confirmed that trade unions do not have a veto over employers making direct offers to members to change their terms and conditions of employment. Employers must, however, follow and exhaust the collective bargaining process with their recognised union **before** making a direct offer with a view to resolving an impasse. Supreme Court Judgement: https://bit.ly/3Fh0kmk **INEOS Infrastructure Grangemouth Limited v Jones & Others and INEOS Chemicals Grangemouth Limited v Arnott & Others [2022] EAT 82** In the first reported application of the Supreme Court's landmark *Kostal* decision, the Employment Appeal Tribunal has ruled that an employer could not unilaterally declare that its negotiations with its recognised trade union had finished. As unionised employers may only make direct offers to employees after exhausting their collective bargaining procedure, the employer now faces punitive fines. While the Supreme Court decision in *Kostal* remains an extremely welcome one for employers, this case is a cautionary reminder of the significant risk involved in making direct offers to employees before industrial negotiations have clearly been exhausted. Employers should carefully consider how events would be understood by an independent observer, and ensure that, before making any direct offers, they have a robust, contemporaneous paper trail unambiguously demonstrating that bargaining has been exhausted. EAT judgment
NI	While collective bargaining arrangements are dealt with under a different legislative regime in NI than in GB the Supreme Court Judgement in Kostal UK Ltd v Dunkley & ors will also apply in NI. The Labour Relations Agency has a Code of Practice for Disclosure of information to trade unions for collective bargaining purposes which is available here: https://bit.ly/3EeAnmi
ROI	A high-level working group, the Labour Employer Economic Forum (LEEF), was set up in March 2021 to review collective bargaining and industrial relations landscape in Ireland. https://bit.ly/3jthhAi The report which was published in October 2022 and essentially provides that there should be an obligation on employers to engage "in good faith" with trade unions, even where employers do not typically recognise trade unions. The report provides that the minimum threshold for collective bargaining is 10% of the workforce with no minimum limit on the number of employees. Key recommendations to improve the adequacy of the industrial relations framework include: • Improving the existing Joint Labour Committee (JLC) system; • Improving the process for referring disputes to the Labour Court under Part 3 of the Industrial Relations (Amendment) Act 2015;

	• Setting out a proposed process for good faith engagement by employers; and • Improving collective bargaining at enterprise level generally with the proposed allocation of funding for relevant training for employers and trade unions, and the introduction of a proposed Code of Practice on collective bargaining at enterprise level. It also covered as follows: Labour Employer Economic Forum updates This followed a public consultation on collective bargaining held from 26 May – 16 June 2022 seeking views on the proposals being considered by the group. Collective bargaining consultation It was initially suggested that the provisions of the report could become law this year, although 2024 may be more likely.

Collective Redundancy and Insolvency

GB	Under s.188 of the **Trade Union and Labour Relations (Consolidation) Act 1992** an employer is obliged to consult with employee representatives in advance of any collective redundancy situation for a minimum of **30** days (before any termination takes effective) where 20 to 99 redundancies are contemplated and the consultation must start at least **45** days before any dismissals take effect where 100 plus redundancies are contemplated. s.188(7) provides for an exemption to the above consultation requirements where there are special circumstances which render it not reasonably practicable for the employer to comply. Insolvency might come under the definition of such special circumstances, however in **Carillion Services Ltd (in Liquidation) v Benson [2021]** the EAT held that an insolvency that arose after a steady decline for a series of months as a result of mismanagement and the company holding out for a government bailout, which had never been promised and was never delivered – did not constitute a 'special circumstance'. https://bit.ly/3ebrM9s
NI	In NI, collective redundancy consultation is set out in article 216 of the Employment Rights (Northern Ireland) Order 1996 and employers are required to consult with employee representatives in advance of any collective redundancy situation for a minimum of **30 days** (before any termination takes effective) where 20 to 99 redundancies are contemplated and the consultation must start at least **90** days before any dismissals take effect where 100 plus redundancies are contemplated. Article 216(9) of the Employment Rights NI Order 1996 provides for a 'special circumstances' defence where an employer was unable to comply with these consultation requirements.
ROI	Collective redundancies are governed by the Protection of Employment Act 1977, together with a number of statutory instruments. The legislation requires consultation to be "*initiated at the earliest opportunity and in any event at least **30** days before the first notice of dismissal is given*". The Department of Enterprise, Trade and Employment has proposed a new Action Plan to boost the rights of employees faced with redundancy caused by insolvency and to ensure transparency for employees in insolvency situations. As it stands, if the number of redundancies in any 30-day period exceeds the thresholds in the Act, then collective consultation must be initiated, and notice of dismissal cannot be given within the statutory 30-day period. Statutory notices must also be provided to various parties. This notice period does not however apply where collective redundancies are triggered by insolvency due to an exemption in Section 14 (3) of the Protection of Employment Act 1977. The Government has announced plans to remove that exemption. According to the Action Plan, the new procedure will mean that where a redundancy arises due to a company's insolvency, an employee may be placed on temporary lay-off by the company liquidator for the duration of the 30-day notification period, the employment termination date to coincide with the expiry of the statutory 30-day period. In that event, an employee would be eligible to claim a Jobseeker's Payment during that period due to their being placed on temporary lay-off. https://bit.ly/3mjMg4g Further information is available here. In advance of the Action Plan, an information handbook entitled - *Rights and Remedies available to Employees Facing a Collective Redundancy Situation* has been published. Publication of this information handbook fulfils one of the key commitments in the Plan of Action on Collective

	Redundancies following Insolvency, which sets out Government's work to enhance protections and ensure greater transparency for employees in insolvency situations. https://bit.ly/3mmDfYh **Redundancy Payments (Lay off, Short Time and Calculation of Reckonable Service) Bill 2021** This Bill proposes to amend the Redundancy Payments Act 1967 in respect of periods of lay off and short time and the calculation of reckonable service. It is currently before Dáil Éireann, Second Stage.

Low Pay Commission and National Minimum Wage

GB

Rates

	The rates from 1 April 2022 are:	The rates from 1 April 2023 are:
National Living Wage age 23+	**£9.50**	**£10.42**
National Minimum Wage age 21-22	**£9.18**	**£10.18**
National Minimum Wage age 18-20	**£6.83**	**£7.49**
National Minimum Wage under 18	**£4.81**	**£5.28**
Apprentice Rate (for apprentices under 19 or 19 or over who are in the first year of apprenticeship)	**£4.81**	**£5.28**

The 23-24 age category for the National Minimum Wage has been abolished, following the lowering of the age of the eligibility for the National Living Wage to 23 years old. https://bit.ly/3t0Rvs9

The government issued guidance on the treatment of salaried hours work for NMW purposes, "noting that the effect of the amendments to the **National Minimum Wage Regulations 2015 (SI 2015/621)** is to widen the range of pay arrangements that are compatible with workers being treated as performing salaried hours work under the NMW rules (such as being paid every two or four weeks). The instrument also enables employers to specify the 'calculation year' (for calculation of minimum wage) for their salaried workers (the reference point to identify when in a year a worker's basic annual hours, for which they receive their salary, are exceeded)".

https://bit.ly/3gwyAjm

Seafarer Minimum Wage Consultation

The Government is consulting on introducing pay protection reforms so that seafarers regularly entering UK ports are paid at least the equivalent of the UK national minimum wage. The Harbours (Seafarers' Remuneration) Bill would empower ports to surcharge or refuse access to ferry services that do not pay an equivalent to the national minimum wage to seafarers while in UK waters.

The consultation period began on 10 May 2022 and ran until 7 June 2022.

https://bit.ly/3ahARyx

NI

The National Minimum Wage regulations apply across the whole of the UK and in this respect the position in NI remains the same as the rest of the UK.

ROI

The rates of National Minimum Wage in ROI from 1 January 2023 (and from 1 January 2022 in brackets and italics) are:

Age	**Amount**
Under 18	**€7.91**
18 years old	**€9.04**
19 years old	**€10.17**

	NMW (20+)	**€10.50** ***(€11.30)***

https://bit.ly/3yLaQQg

Living Wage **€12.90** ***(€13.85 in 2022/23)***

https://www.livingwage.ie/

Living Wage Bill 2022

This bill is intended to amend the law relating to the determination, declaration and review of a national minimum hourly rate of pay for employees so as to arrive at and thereafter preserve an hourly rate that represents a living income. It is currently before Dáil Éireann, Third Stage. The Low Pay Commission published the Living Wage Report in March 2022.

Council of Europe finds Ireland in Breach of Labour Rights Obligations

The Irish Human Rights and Equality Commission has noted with concern the Council of Europe findings that Ireland continues to be breach of its Labour Rights Obligations under the Revised European Social Charter ('the Charter'). The Charter is a binding human rights treaty that Ireland ratified in 2000. Ireland has been judged as non-compliant with the Charter in areas that include: failure to ensure a "*decent standard of living*" for young workers on minimum wage; excessive restrictions on the right to strike, including that denied to the Gardaí and; for "*manifestly unreasonable*" notice periods for workers and civil servants.

More from the Irish Human Rights and Equality Commission here:

bit.ly/44teRsc

Tips and Gratuities

GB	The **Employment (Allocation of Tips) Act** received Royal Assent on 2 May 2023. This aims to ensure that tips are distributed fairly amongst staff and paid without deductions. Its main provisions are expected to come into force in 2024. In summary the Act includes: ▸ a requirement for employers to pass on 100% of tips to staff with no deductions, other than those required by tax law; ▸ a statutory Code of Practice on Tipping setting out the principles of fairness and transparency that employers must have regard to. Where a tronc system is in place, this will be viewed as compliant with the Bill provided it is being run as the Bill intends; ▸ requirements for employers to have a written policy on tips, to distribute tips in a way that is fair, transparent and consistent and to keep a record of how tips have been dealt with for three years from the date received; ▸ a right for workers to request information relating to their employer's tipping record over a specified period during which they had worked for the employer, within the last three years. Employers will have flexibility on how to design and communicate a tipping record, but will need to respond to a request for information within four weeks; ▸ a requirement for tips that are distributed via a tronc to be paid no later than the end of the month following the month in which they were paid by the customer; and ▸ a right for agency workers to benefit from the Bill in the same way as workers.
NI	The above Act does not extend to NI and it is unlikely there will be any progress with similar legislation until the NI legislature is restored.
ROI	**Payment of Wages (Amendment) (Tips and Gratuities) Act 2022** The Payment of Wages (Amendment) (Tips and Gratuities) Act 2022 was signed into Irish law by the President in July 2022, and came into effect on 1 December 2022. The Act principally makes amendments to the Payments of Wages Act 1991. Tips which are given by electronic means should be distributed fairly to the employees. Importantly, it will also be Illegal to use tips or gratuities to make up the basic wage. The employer will need to provide a tips and gratuities notice which explains whether or not tips are distributed amongst employees, the way in which tips are distributed and whether any mandatory charges are also distributed to employees, and if so in which way. Employees should also be consulted where employers propose to change the way in which tips and gratuities are distributed. Employers will have to provide a statement to employees within 10 days from the distribution of the tips which outlines the total amount of tips distributed and the amount distributed to the individual employee. This information and further information is set out in this article: https://bit.ly/3pcslVS

Reform of Public Sector Pay and Pensions

GB	The government has scrapped a cap of £95,000 on GB public sector redundancy payments, after court action by trade unions. https://bit.ly/3iI693B
NI	The GB cap had a very limited application to some civil servants in NI. **The Pensions Increase (Review) Order (Northern Ireland) 2021** This Order may be cited as the Pensions Increase (Review) Order (Northern Ireland) 2021 and came into operation on 12 April 2021. Under section 69 of the Social Security Pensions (Northern Ireland) Order 1975 (c.15), the Department of Finance has to provide, by Order, for the increase in the rates of public service pensions. The Pensions (Increase) Act (Northern Ireland) 1971 (c.35) defines certain terms and sets out when the pension "begins" (the day after the last day of service in respect of which the pension is payable) and how the increase applies to lump sums. The increase to be made in the rates of such pensions is the percentage (or in some circumstances a fraction of the percentage) by which the Department for Communities has, by direction under section 132 of the Social Security Administration (Northern Ireland) Act 1992 (c.8), increased the sums which are the additional pensions in long-term benefits, namely the additional pension entitlements accruing to employees in respect of their earnings after 5 April 1978. For pensions which began before 6 April 2020 the increase is 0.5 per cent. For pensions which began on or after 6 April 2020 the increases vary and are set out in the legislation. https://bit.ly/3DIx2wB
ROI	**Public Service Superannuation (Age of Retirement) Act 2018** The Act came into effect on 26 December 2018 and provides for an increase in the compulsory retirement age of most standard public servants recruited prior to 1 April 2004 to age 70. https://bit.ly/3y5JOBn The **Public Service Pay Act 2021** which came into effect on 5 July 2021 provides for the adjustment of the restrictions, contained in the Financial Emergency Measures in the Public Interest (No. 2) Act 2009, on increasing the remuneration payable to public servants and for that purpose to amend that Act, the Ministers and Secretaries (Amendment) Act 2011 and the Public Service Pay and Pensions Act 2017; and to provide for related matters. https://bit.ly/3xGRyJN

Reform of Occupational Pensions – General[1]

GB	**Government to legislate in 2022 to Increase Normal Minimum Pension Age** Following the recent consultation on its plans to implement the new normal minimum pension age (the age at which most pension savers can access their pensions without incurring an unauthorised payments tax charge) and the proposed protection regime, the government has confirmed that the draft legislation will include: › measures to enable an individual to retain a protected pension age following an individual transfer (as well as following a block transfer, as originally proposed); › a joining window to enable individuals who join a pension scheme with a protected pension age before 5 April 2023 to be able to benefit from the protection; and › transitional measures for members who will not benefit from a protected pension age and who will be between age 55 and age 57 on 6 April 2028. https://bit.ly/3BiSiqU **The Pension Schemes Act 2021** received Royal Assent in February 2021 and brings in new powers for the Pensions Regulator and creates legislative frameworks for dashboards and collective money purchase schemes. Among the changes include the potential for criminal sanctions for actions which put scheme benefits at risk or appear to be avoidance. https://bit.ly/2YyIGKn **Plans to Lower Pensions Auto-Enrolment Age** In March 2023 the Department for Work and Pensions confirmed it will support a Private Members' Bill which proposes to expand Automatic Enrolment. If enacted the Pensions (Extension of Automatic Enrolment) (No. 2) Bill will see the lowering the age at which eligible workers must be automatically enrolled into a pension scheme by their employers from 22 to 18.
NI	**The Pension Schemes (2021 Act) (Commencement No. 1 and Transitional Provisions) Order (Northern Ireland) 2021** This is the first commencement and transitional provisions Order made in respect of Part 1 of the Pension Schemes Act (Northern Ireland) 2021 ("the 2021 Act"), similar to the provisions of the Pensions Schemes Act 2021 in GB. Article 2 provides for the coming into operation of paragraph 15 of Schedule 3 to the 2021 Act on 13 September 2021 to enable the Pensions Regulator to issue practical guidance about the exercise of functions under the 2021 Act and the standards of conduct and practice expected from those who exercise those functions. The amendments also require the Pensions Regulator to issue a code of practice in relation to: › the process for applying for authorisation of a Master Trust scheme under Part 1 of the 2021 Act; and › the matters that the Pensions Regulator expects to consider in deciding whether it is satisfied that a Master Trust scheme meets the authorisation criteria under that Part. Article 3 makes transitional provision in relation to the coming into operation of Schedule 2 to the 2021 Act (Master Trusts operating before the commencement date). It provides that the commencement of provisions relating to Schedule 2 does not apply in relation to an existing Master

[1] Note: amendments pending to this section

Trust scheme which has been authorised by the Pensions Regulator under Part 1 of the Pension Schemes Act 2017.

https://bit.ly/3BkA2gy

The Automatic Enrolment (Earnings Trigger and Qualifying Earnings Band) Order (Northern Ireland) 2021

This Order, which corresponds to an Order (S.I. 2021/314) made by the Secretary of State for Work and Pensions under sections 14(2) and 15A(1) of the Pensions Act 2008, substitutes the amounts of the automatic enrolment and re-enrolment qualifying earnings band and specifies rounded figures for certain pay reference periods.

For the purposes of the Pensions (No. 2) Act (Northern Ireland) 2008 ("the Act"), a jobholder who earns qualifying earnings of a specified amount is automatically enrolled or, as the case may be, re-enrolled into a pension scheme. The figures which "trigger" automatic enrolment or re-enrolment for pay reference periods other than 12 months can be found in Article 3 of this Order. Once in the scheme, the pension contributions of such a jobholder are calculated by reference to qualifying earnings.

Section 13 of the Act provides that a person's qualifying earnings are earnings of more than the amount specified in subsection (1)(a) of that section, but not more than the amount specified in subsection (1)(b) of that section. Article 2 of this Order increases the amount referred to in section 13(1)(b).

The amounts specified in sections 3(1)(c), 5(1)(c) and 13(1) of the Act are in relation to a pay reference period of 12 months. Sections 3(6B), 5(7B) and 13(2) of the Act provide respectively that where a pay reference period is less or more than 12 months, the amounts specified in sections 3(1)(c), 5(1)(c) and 13(1) apply as if they were proportionately less or more. Article 3 of this Order provides rounded figures in respect of specified pay reference periods other than 12 months for the purposes of sections 3(6B), 5(7B) and 13(2). Rounding caters for different types of workers and for pay periods other than 12 months used by employers and enables the pay reference period to be tailored to their specific circumstances.

https://bit.ly/3zKLp10

The Occupational and Personal Pension Schemes (General Levy) (Amendment) Regulations (Northern Ireland) 2021

These Regulations give effect to a new structure, and to new rates, that will be used to calculate the general levy payable by occupational pension schemes and personal pension schemes. The general levy is payable by eligible pension schemes and the amount payable is calculated on a sliding scale depending on the numbers of scheme members. It is collected annually by the Pensions Regulator on behalf of the Department and the Department for Work and Pensions. It recovers the core running costs of the Pensions Regulator, the Pensions Ombudsman and, for example, the pensions guidance function of the Money and Pensions Service. The general levy rates were last increased in 2008-2009. The rates were then reduced by 13% in 2012-2013 and have remained at the same level for most pension schemes since then.

The general levy rates have not been increased in line with movements in inflation, but are reviewed annually to ensure that an appropriate amount is being raised by the levy to meet the costs that are being incurred.

These Regulations help to achieve this by introducing changes to the structure and rates of the general levy on occupational and personal pension schemes from April 2021, 2022 and 2023.

https://bit.ly/3yFdky5

	If enacted, we understand the **Pensions (Extension of Automatic Enrolment) (No. 2) Bill** will also apply in Northern Ireland.
ROI	The qualification age for drawing a State pension increased from 65 to 66 years of age in January 2014. It was set to be further increased to 67 years of age in January 2021, but the Irish Government has deferred such increase and the Pensions Commission was established to consider changes to the State pension age, among other issues. In September 2022 it was confirmed that the State pension age will remain 66. https://bit.ly/3rRQG3L Minister Humphreys announces landmark reform of State Pension System The **Roadmap for Pensions Reform 2018-2023** included plans to bring in an automatic enrolment savings scheme by 2022. In April 2022 the details of the 'design principles' for the Automatic Enrolment Retirement Savings System for Ireland were announced. Under Auto Enrolment employees will have access to a workplace pension savings scheme which is co-funded by their employer and the State. A key feature of the system is that although participation is voluntary, so that people don't have to participate, it operates on an 'opt-out' rather than an 'opt-in' basis. In order to encourage workers to participate, those people who choose to remain in the system will have their pension savings matched on a one-for-one basis by the employer. The State will also provide a top-up of €1 for every €3 saved by the worker. This means that for every €3 saved by the employee, a further €4 will be invested by the employer and the State combined. All employees not already in an occupational pension scheme, aged between 23 and 60 and earning over €20,000 across all of their employments, will be automatically enrolled with the system set up by 2023 for employee enrolments in 2024, the introduction of Auto Enrolment will be very gradually phased in over a decade, with both employer and employee contributions starting at 1.5%, and increasing every three years by 1.5% until they eventually reach 6% by Year 10 (2034). This steady phasing allows time for both employers and employees to adjust to the new system. Further details to follow. https://bit.ly/3wImKKk **Automatic Enrolment Retirement Saving System Bill** The General Scheme of the Automatic Enrolment (AE) Retirement Savings System Bill has been approved. The Heads of Bill were agreed in April 2022 and at time of writing the Bill was still at the Pre-Legislative Scrutiny stage in the legislative process. The final wording of the Bill is expected to be published this year with the scheme up and running in 2024. https://bit.ly/3gTJ8Mk

Reform of the Law on Transfers of Undertakings (TUPE)

GB	The 2006 TUPE Regulations were amended by the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014, which came into force on 31 January 2014. The 2014 Regulations introduced: • A clarification on the face of the Regulations regarding the test for service provision changes: the activities carried out after the change in provider must be fundamentally the same as those carried out by the person who has ceased to carry them out before it; • Amendments to the provisions which give protection against dismissal and restrict changes to contracts: these protections will apply where the sole or principal reason for the dismissal or variation of employment contract is the transfer. Those protections will not apply in certain circumstances where the sole or principal reason for the dismissal or variation is a economic, technical or organisational reason entailing changes in the workforce; • Amendments so that a change to the place where employees are employed can be within 'changes in the workforce'. This is relevant to the dismissal protection and the protection against variations of contracts; • Exceptions to the general restriction on varying contracts of employment: terms incorporated from collective agreements can be varied when more than a year has passed since the transfer, provided that overall, the contract is no less favourable to the employee; and employers can make changes permitted by the terms of the contract. In both cases, this is subject to the general rules regarding effective variation of a contract; • A provision so that in some circumstances, rights to terms and conditions provided for in collective agreements entered into after the date of the transfer are not transferred; • A provision allowing micro businesses to inform and consult employees directly when there are no existing appropriate representatives; • The deadline by which the transferor must supply the employee liability information to the transferee increased from not less than 14 days before the transfer to not less than 28 days before the transfer; and • An amendment to the Trade Union and Labour Relations (Consolidation) Act 1992 so that a transferee may elect to consult (or start to consult) representatives of transferring staff about proposed collective redundancies prior to the transfer (to meet the requirements for such consultation under that Act). The transferor must agree to such consultation. https://bit.ly/3Dgs8Gm Guidance on the changes is available here: https://bit.ly/3Fg29R0. **Retained EU Law Consultation Amendments to TUPE** The government published a consultation paper in May 2023 that proposes changes to the TUPE consultation requirements. The government is proposing that it will remove the obligation to elect employee representative for businesses with fewer than 50 employees and for any transfer affecting less than 10 employees. In these circumstances businesses would be allowed to consult directly with the affected employees. This consultation is open until 7 July 2023.
NI	In NI the **Transfer of Undertakings (Protection of Employment) Regulations 2006** apply UK wide with the exception of the part dealing with Service Provision Changes. In NI separate

	regulations, the **Service Provision Change (Protection of Employment) Regulations (NI) 2006** deal with such matters. The amendments to the 2006 TUPE regulations apply only to GB and do not extend to NI. Since employment law is devolved to Northern Ireland the plans outlined in the Retailed EU Law consultation (covered above) apply to England, Wales and Scotland only. The position in NI will remain unchanged unless, once the NI legislature is restored, the NI Assembly chooses to follow suit with similar proposals. Transfer of Undertakings (Protection of Employment) Regulations 2006: https://bit.ly/3l9wgSb Service Provision Change Regulations: https://bit.ly/3muJNTX
ROI	There are no corresponding amendments to the TUPE regime in the Republic of Ireland. The legislation governing this complex area is known as the **European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003.** The TUPE Regulations in ROI do not automatically apply on a service provision change. Whether TUPE applies in this type of a situation is a matter for interpretation by the WRC and is very fact/situation specific. https://bit.ly/3EhOQ0G.

Reform of Information & Consultation of Employees (ICE) Regulations

GB	As of 6 April 2020, the threshold to request an information and consultation agreement under the ICE Regulations was lowered by the **Employment Rights (Miscellaneous Amendments) Regulations 2019 (SI 2019/731)** to **2%** down from 10%. https://bit.ly/3sPsI9J.
NI	No corresponding updates in NI – the position regarding information and consultation remains the same as per Article 7 of the **Information and Consultation of Employees Regulations (Northern Ireland) 2005.** https://bit.ly/3tlydgQ.
ROI	The relevant legislation in ROI, the **Employees (Provision of Information and Consultation) Act 2006** has not been amended and the threshold to request an information and consultation agreement remains at the lesser of 10% of employees, or 100 employees. https://bit.ly/3qeTxmW.

Section 3: Tribunal & Other Legal & Dispute Resolution Processes

Tribunal and Dispute Resolution Reform

GB	**Tribunal Reform 2020** The Employment Tribunals (Constitution and Rules of Procedure) (Early Conciliation: Exemptions and Rules of Procedure) (Amendment) Regulations 2020 SI 2020/1003 (the 2020 Rules) were laid before Parliament on 17 September 2020 and amend the ET Regulations, ET Rules and also the Early Conciliation (EC) rules set out in Schedule 1 to the Employment Tribunals (Early Conciliation: Exemptions and Rules of Procedure) Regulations 2014 SI 2014/254. The majority of the changes came into force on 8 October 2020 and include: › The deployment of non-employment judges into employment tribunals if certain criteria on suitability are met; › The employment of legal officers to carry out some tasks currently performed by employment judges, i.e. uncontentious case management decisions such as considering acceptance or rejection of claim forms and giving permission to amend claims and responses when both parties consent; and › Increase of the timescale for early conciliation to allow a standard six-week early conciliation process in all cases, rather than a default one month with a possible extension of a further two weeks. https://bit.ly/3iTt6jW **Road Map for Tribunal Reform** A new 'road map' for employment tribunal proceedings in 2021 and 2022 has been published by the Presidents of the Employment Tribunals in England, Wales and Scotland. Reforms include, for example, the use of video hearings in certain preliminary, interim and short track claims being the default position and the recruitment of additional Legal Officers who will become more involved in case progression work. https://bit.ly/3sbHhEu **New Guidance Issued on Taking Evidence from Persons Located Abroad** The Presidents of the Employment Tribunals in England and Wales and in Scotland have issued Presidential Guidance on taking evidence from persons located abroad. From 27 April 2022, any party wishing to call a witness to give remote evidence by telephone or video from a foreign jurisdiction must notify the employment tribunal so that steps can be taken to obtain permission from the country in question (via the Foreign, Commonwealth and Development Office's Taking of Evidence Unit). This guidance was updated in July 2022 and can be found here: https://bit.ly/3C2LIIz
NI	**The Industrial Tribunals and Fair Employment Tribunal (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2020 (the 2020 Regulations)** These Regulations and Rules of Procedure establish requirements in relation to proceedings before Industrial Tribunals (ITs) and the Fair Employment Tribunal (FET).

	They revoke and replace earlier regulations and rules which separately dealt with these tribunals. The 2020 Regulations provide a revised and consolidated text for the rules and procedures of the industrial tribunals and the Fair Employment Tribunal while simplifying language and structure, being consistent with better regulation principles. The 2020 Regulations also take account of the introduction of early conciliation; in particular setting out the implications arising from the adherence, or non-adherence, to the requirements of early conciliation. https://bit.ly/3sMPdfu During the pandemic OITFET employed the use of video hearings to enable hearings to take place remotely. However, there is no equivalent in NI to the GB Roadmap for tribunal reform as described above. In addition, the role of the Legal Officer has not been employed by OITFET in NI. The position on remote and hybrid hearings in NI was updated in March 2023 and can be found here: bit.ly/3ovQcCW **Judicial Assessment and Mediation Launched in Northern Ireland** Judicial assessment and mediation were launched in the Industrial and Fair Employment Tribunals from 31 March 2023. This brings Northern Ireland into line with the rest of the UK. Lewis Silkin has written about this here. bit.ly/3KS4oO9
ROI	**Labour Court Rules 2020** On 30 March 2020, the Labour Court revoked the Labour Court Rules 2019 and replaced them with the Labour Court Rules 2020. The new rules simplify the process of appealing a decision and in particular facilitate the electronic submission of appeal forms to appeals@labourcourt.ie. The Labour Court also has also introduced a new Employment Rights Appeal Form and a S13(9) Appeal Form. https://bit.ly/3svLToT **Workplace Relations (Miscellaneous Provisions) Act 2021** Came into effect on 29 July 2021. The Act amends aspects of WRC procedures arising from concerns identified by the Supreme Court in Zalewski -v- Adjudication Officer & Ors. It amends the Workplace Relations Act 2015 to allow for public hearings, publication of the names of parties in its determinations, as well as a provision for evidence to be taken on oath or affirmation. https://bit.ly/3fxZHdx **WRC Postponement Process Guidelines – July 2021** On 1 July 2021 the WRC issued new postponement guidelines to update and replace the previous version. Applications for postponements, together with supporting documentation, should be sent to: postponements@workplacerelations.ie Postponement policy: https://bit.ly/3ASHlfo **The Industrial Relations (Amendment) Act 2019** This act effective from 7 July 2019 facilitates access to the WRC and the Labour Court by members of the garda force to assist in the resolution of industrial disputes. https://bit.ly/3sFmaun

	In the case of **Minister for Justice and Equality and The Commissioner of the Garda Síochána v Workplace Relations Commission Case C-378/1** (the 'Boyle' Case) the CJEU determined (4 December 2018) that the WRC Adjudication Service can disapply a rule of national law that is contrary to EU law. https://bit.ly/3AX7j1n The primacy of EU derived rights was reaffirmed in the case of **Barbara Geraghty v The Office of the Revenue Commissioners [2021]** in which an Adjudication Officer disapplied the Civil Service Regulations Act 1956 in favour of the EU equality rights. https://bit.ly/3qfqQ9q

Early Conciliation – Referral To ACAS/LRA For Conciliation Before Claim Can Be Made to Tribunal Or Other Forum

GB	Early Conciliation has been provided by ACAS in GB since 2014 and was introduced via an amendment to the **Employment Tribunals Act 1996.** The relevant section is **Section 18A**. https://bit.ly/3umUtqW
NI	From 27 January 2020 anyone who wishes to lodge a claim with the Industrial or Fair Employment Tribunal must first notify the Labour Relations Agency (LRA) and discuss the option of early conciliation. Most potential claimants will not be able to proceed to tribunal without at least considering this option. This brings NI into line with GB who have had a similar system, operated by ACAS, since 2014. **The Employment Act (Northern Ireland) 2016 (Commencement No. 3) Order (Northern Ireland) 2020** This Order brought into operation certain provisions of the **Employment Act (Northern Ireland) 2016** on 27th January 2020: › Article 2(a) to (e) commence provisions on early conciliation of employment disputes; › Article 2(f) commences the provision which places an obligation on the Department to review early conciliation; › Article 2(g) and (h) commences the provisions that permits the Department to make regulations which provide that the members of the panel of chairmen of industrial tribunals and Fair Employment Tribunal may be referred to as employment judges; › Article 2(i) commences the provision which prohibits the Labour Relations Agency, or persons appointed by the Agency, from releasing information relating to a worker, employer of a worker, or a trade union, that they hold in the course of performing their functions; › Article 2(j) corrects a small number of references in the Social Security Contributions and Benefits (Northern Ireland) Act 1992, dealing with statutory shared parental pay, which were introduced by the Work and Families Act (Northern Ireland) 2015; › Article 2(k) updates legislative references in Schedules 2 and 4 to the Employment (Northern Ireland) Order 2003; › Article 2(l) and (o) gives effect to the dispute resolution repeals in Schedule 3 of the Act; and › Article 2(m) and (n) gives effect to Schedules 1 and 2, which respectively, make minor and consequential amendments to existing legislation, and set out how the relevant time limits for bringing a claim will be extended where necessary to provide sufficient time for early conciliation to take place and to ensure that the claimant is not disadvantaged. Link to legislation: https://bit.ly/3Bi0abU Link to LRA: https://bit.ly/3ABvjqH **The Industrial Tribunals (1996 Order) (Application of Conciliation Provisions) Order (Northern Ireland) 2020**

	This Order amended Article 20(1) of the **Industrial Tribunals (Northern Ireland) Order 1996.** Article 20(1) lists the proceedings which are "relevant proceedings" for the purposes of Early Conciliation and other conciliation services provided by the Labour Relations Agency. The amendments made by this Order update the list of jurisdictions in Article 20(1). https://bit.ly/3sT1FdJ **The Industrial Tribunals and Fair Employment Tribunal (Early Conciliation: Exemptions and Rules of Procedure) Regulations (Northern Ireland) 2020** The **Employment Act (Northern Ireland) 2016 amended the Industrial Tribunals (Northern Ireland) Order 1996** and the **Fair Employment and Treatment (Northern Ireland) Order 1998** to introduce a requirement for prospective claimants to contact the Labour Relations Agency before they are able to present a claim to an Industrial Tribunal or the Fair Employment Tribunal. This requirement applies to claims which are relevant proceedings under Article 20(1) of the **Industrial Tribunals Order** or Article 38 of the **Fair Employment and Treatment Order**. Regulation 3 sets out the circumstances in which a claimant may present a claim dealing with relevant proceedings without complying with the requirement for early conciliation as follows: • regulation 3(1)(a) relates to claimants who are presenting a claim on the same claim form as other claimants or joining a claim which has already been presented to an industrial tribunal or the Fair Employment Tribunal by another claimant (so called 'multiples'); in such circumstances, a claimant may rely upon the fact that another claimant has complied with the requirement for early conciliation and has a certificate from the Agency; and • regulation 3(1)(b) means that if a claim for relevant proceedings appears on the same claim form as proceedings which are not relevant proceedings, there is no need for a claimant to satisfy the early conciliation requirement in relation to those relevant proceedings. https://bit.ly/3gAA105
ROI	Early conciliation does not apply in the Republic of Ireland. The WRC provides a mediation service in complaints to the Adjudication Service. https://bit.ly/3ecjXjL The WRC also provides a conciliation service to assist parties to resolve employment disputes. Typical examples of the types of issue dealt with in the conciliation process include claims for improvements in pay or conditions of employment, disciplinary cases, grading issues, disputes arising from proposed changes to the way work is done, company restructuring etc. https://bit.ly/3FdzQCn

SECTION 4: BREXIT AND THE NORTHERN IRELAND PROTOCOL

Immigration

GB

Reformed immigration system

Free movement with the European Economic Area EA and Switzerland (EEA) ended on 31 December 2020. EEA citizens and their family members who are not eligible to obtain Settled or Pre-Settled Status under the EU Settlement Scheme must obtain the right to live and work in the UK under the UK's domestic immigration system. Irish citizens can continue to freely enter, live and work in the UK.

Changes to economic migration routes under the domestic immigration system include:

- Expansion of the occupations and eligibility criteria covered under Skilled Worker route, which is the main immigration route for workers who have a job offer from an approved employer sponsor.

Skilled Worker Visa Overview

- Introduction of the Global Business Mobility routes for Senior or Specialist Workers or Graduate Trainees, which replaced previous arrangements for Intra-Company Transferees.

Senior or Specialist Worker Visa Overview

Graduate Trainee visa (Global Business Mobility): Overview - GOV.UK (www.gov.uk)

- Reformed provisions, also under the Global Business Mobility routes, for UK Expansion Workers, Service Suppliers under international trade agreements and Secondment Workers being transferred to the UK due to a high value contract or investment.

UK Expansion Worker visa overview

Service Supplier visa overview

Secondment Worker visa overview

- A new single route for International Sportspersons, replacing separate settlement and temporary work routes.

International Sportsperson visa overview

- A new settlement route for British Nationals (Overseas).

British Nationals (overseas) visa overview

- A new Graduate route for international students graduating from UK universities.

Graduate visa overview

- A new High Potential Individual route for recent graduates of recognised top international universities.

High Potential Individual (HPI) visa overview

- A new Scale-up visa for workers joining an eligible scale-up business in the UK.

Scale-up Worker visa: Overview - GOV.UK (www.gov.uk)Statement of changes to the Immigration Rules: HC 1118, 15 March 2022 - GOV.UK (www.gov.uk)

	➢ A reformed Innovator Founder route for individuals intending to establish an innovative, viable and scaleable business in the UK, and closure of the Start-up route due to redundancy. Innovator Founder visa: Overview - GOV.UK (www.gov.uk)
NI	Given NI's unique position, it is likely that equally unique issues will arise. Organisations based in the Republic of Ireland with specialist EEA workers historically could simply drive across the border and carry out work in NI. Now however businesses need to think of the immigration and right to work implications of this cross-border work for non-Irish EEA nationals. As there is no regional salary, the Global Business Mobility route for Senior or Specialist Workers can be prohibitive as there is a minimum salary level of £42,400. The Skilled Worker route, while more flexible in terms of salary and skill level, requires the candidate to meet an English language requirement which may be either too difficult or too time-consuming to complete if timings are tight. Without a physical border force to check documents, businesses may be tempted to take a risk, or some may not even consider the requirements. However, the penalties for illegal working in the UK are quite severe. Some options exist under the Frontier Worker Scheme, the EU Settlement Scheme (including late applications) and certain business activities are permitted under the Standard Visitor or Permitted Paid Engagement Visitor routes.
ROI	There is agreement under Article 3 of the Protocol on Northern Ireland and Ireland that the UK and Ireland '*may continue to make arrangements between themselves relating to the movement of persons between their territories*'. Accordingly, various arrangements have been implemented in relation to the free movement of individuals between Ireland and the UK which are summarised below. Further detail can be found here. **Common Travel Area** In response to Brexit, the Government of Ireland and the UK signed a Memorandum of Understanding, reaffirming their commitment to maintaining the Common Travel Area in all circumstances. Accordingly, the Irish legislature enacted the Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2020 (the Act). There is provision within the Act to maintain the integrity and operation of the CTA and to ensure that the rights associated with the CTA continue. Therefore, after 1 January 2021 Irish citizens and British citizens will continue to have the same reciprocal rights associated with the CTA. These include the right to work, study and vote, and access to social welfare benefits and health services. Irish and British citizens will be able to continue to travel freely within the CTA without seeking immigration permission from the authorities. There is agreement under Article 3 of the Protocol on Northern Ireland and Ireland that the UK and Ireland '*may continue to make arrangements between themselves relating to the movement of persons between their territories*'. It further states that the UK shall ensure that the CTA and the rights and privileges associated with it can continue to apply without affecting the obligations of Ireland under Union law. **British citizens sponsoring non-EEA national family member(s)** British citizens no longer have an automatic entitlement to have their non-EEA family member or dependent reside with them in Ireland. However, the Department of Justice has published the *Scheme in relation to Non-EEA Family Members of UK Citizens intending to reside in the State* (the Scheme). Under the Scheme a British citizen will be permitted to sponsor an application

	for permission for a specified non-EEA national family member(s) or dependent to reside with them in Ireland. Under the Scheme, arrangements have been put in place by the Irish Government for non-EEA nationals who are a family member or dependent of a British citizen who as of 31 December 2020 hold a valid Irish Residence Permit (IRP) Card. These individuals will continue to hold the same residence rights to live, work or study in Ireland. They will simply be required to exchange their current valid IRP Card for a new one. This card exchange programme is administered by the Immigration Service Delivery of the Department of Justice and was open until 30 June 2022.

EU-UK Trade and Cooperation Agreement (TCA)

GB	Under the **EU–UK Trade and Cooperation Agreement (TCA)**, there is a general UK-wide commitment to keep up with EU levels of employment protection in broad terms as part of the provisions relating to a Level Playing Field for Open and Fair Competition. The TCA allows one party to impose trade sanctions against the other if there has been 'significant divergence' in levels of labour protection that has caused a 'material impact' on trade. https://bit.ly/3vc6mR5	
NI	Article 2 of the Northern Ireland Protocol provides that there should be no diminution of the rights, safeguards and equality of opportunity provisions set out in the Good Friday Agreement as a result of the UK leaving the EU. This provides important equality and anti-discrimination protection for individuals in NI, including the Good Friday Agreement rights to freedom and expression of religion and the right to equal opportunity in all social and economic activity, regardless of class, creed, disability, gender or ethnicity. As certain EU Directives underpin the Good Friday Agreement rights, these are also protected by Article 2. The 6 anti-discrimination directives in Annex 1 of Article 2 are set out below.	
	[1]	Directive 2004/113 implementing the principle of equal treatment between men and women in the access to and supply of goods and services
	[2]	Directive 2006/54 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation
	[3]	Directive 2000/43 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin
	[4]	Directive 2000/78 establishing a general framework for equal treatment in employment and occupation
	[5]	Directive 2010/41 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity
	[6]	Directive 79/7 on the progressive implementation of principle of equal treatment for men and women in matters of Social Security
ROI	EU derived employment rights continue to apply in the Republic of Ireland.	

Retained EU Law (Revocation and Reform) Bill

GB	On 22 September 2022 the Department for Business, Energy & Industrial Strategy announced that it was introducing the Retained EU Law (Revocation and Reform) Bill, also known as the Brexit Freedoms Bill in order to "end the special status of all retained EU law by 31 December 2023". The Bill includes provisions enabling certain retained EU law to be saved, replaced or scrapped by new regulations. The basic options are: ➢ Restatement. This would seem to turn the law into a purely UK law, stripped of the interpretative effect of EU law. When restating law, there is a limited power to change the wording to resolve ambiguity or doubts. It remains to be seen how much flexibility this affords. ➢ Replacement. This allows for complete replacement with a new UK version (which would not need to be interpreted in line with EU law). Crucially, the Bill says that replacements cannot "increase the regulatory burden". ➢ Revocation. This means the law is scrapped without a UK equivalent being put in its place. These new powers do not apply to all EU retained law. They do apply, however, to: ➢ Secondary legislation (i.e. regulations) implementing EU law (such as the Working Time regulations), plus ➢ EU-derived employment laws which are contained in Acts but put there by regulations (such as some of the collective redundancy consultation requirements in section 188 Trade Union & Labour Relations (Consolidation) Act 1992). Originally the Bill included a "sunset clause" meaning that, at the end of 2023, what's left of some retained EU law will simply vanish). However, the government has recently announced that it will scrap the controversial sunset clause in the Bill, which could have seen thousands of EU-based laws disappear at the end of 2023. We wrote about this significant repositioning here. Instead, the sunset clause will be replaced with a list of regulations to be revoked. For further information, see this article by Lewis Silkin. The Bill is currently at report stage in the House of Lords. A cross-party group of Lords and MPs oppose key parts of the Bill and therefore it remains to be seen whether it will progress.
NI	The same position outlined above applies in NI. Lewis Silkin wrote an article about the Bill and its implications in NI here. It is currently unclear if the recent changes announced by the government will extend to Northern Ireland and/or if the Northern Ireland Assembly will follow suit when it is restored.
ROI	EU derived employment rights continue to apply in the Republic of Ireland.

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Ciara Fulton, Partner at Lewis Silkin (NI) LLP. Ciara is dual-qualified and practices law throughout the island of Ireland. Ciara trained and qualified into the employment team of a leading Dublin Law firm in 2002 where she worked until returning home in 2007. Before joining Lewis Silkin (NI) LLP (formerly Jones Cassidy Brett), Ciara was a Partner in the employment team of two large commercial law firms in Belfast.

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Síobhra Rush, Partner at Lewis Silkin Ireland LLP in the Employment, Immigration and Reward division based in the Dublin office. Having spent many years on the employment team of one of Dublin's leading law firms, Síobhra has over sixteen years' expertise in a wide range of employment law issues, both contentious and non-contentious. Síobhra also advises international clients establishing in Ireland – including contracts of employment, handbooks policies and procedures.

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For many years Adam jointly headed the litigation department of a major Belfast Commercial Practice, and for the last 20 years he has concentrated on employment and discrimination matters. Adam advises clients on disciplinary and grievance matters. He advises on discrimination law, including the statutory monitoring requirements in N.I. which are probably the most stringent in Europe as well as claims, for example in relation to religious belief/political opinion. Adam advises on disability or other discrimination concerns, making reasonable adjustments and dealing with mental health issues.

Rolanda Markey
Former Knowledge Partner, Legal-Island

Rolanda joined the Learning and Development team at Legal Island in March 2019. Prior to that she worked for the Labour Relations Agency in Belfast for 17 years as an Employment Relations Officer working in both Advisory (good practice) Services and Dispute Resolution. Before joining the Labour Relations Agency, she worked in Human Resources in a range of public and private sector organisations. She is a Chartered Member of the CIPD and has an MSc in Occupational Psychology.

Christine Quinn
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Christine joined Legal Island in June 2021. She is an employment solicitor with 18 years' experience in the legal and voluntary sectors, as a solicitor and paralegal, in both London and Belfast. She trained at a leading London human rights firm and qualified into their employment and discrimination department, before joining the BBC's in-house employment law team. Christine subsequently advised members of the Federation of Small Businesses (FSB) before taking a career break to run her own small business. Her return to law saw her join the Law Centre (NI) as interim Head of Employment law.