

EMPLOYMENT

Employment Law in 2023: *What's on the horizon?*

While there was certainly no shortage of developments on the employment law front in 2022, there is no doubt that 2023 is due to bring further significant reform on the employment law front. Developments include significant new laws in force from 1 January 2023 in areas such as whistleblowing and sick pay, as well as new legislation on the horizon with regard to rights such as requesting remote and flexible working and new statutory leave entitlements.

In this briefing we take a look at the main upcoming employment law developments.

6 MIN READ

Whistleblowing

The Protected Disclosures (Amendment) Act 2022 came into force on 1 January 2023. It transposes the EU Whistleblowing Directive into Irish law and contains several important changes that all employers need to be aware of and comply with.

Key changes include (i) a wider definition of “worker”, which now includes shareholders, job applicants and board members; (ii) a new definition of “penalisation” and (iii) a reversal of the burden of proof in penalisation claims, so that it rests on the employer to show that any alleged penalisation of a worker was not prompted by the making of a report.

As of 1 January 2023, public sector employers, private sector employers with 250+ employees and employers who fall within the scope of certain EU laws in areas such as financial services, must have formal reporting channels and procedures in place for workers to make protected disclosures. From 17 December 2023, the threshold will fall to employers with 50+ employees.

Further information on the new law is available [here](#).

Statutory Sick Pay

For the first time in Ireland, employees are entitled to statutory sick pay (SSP), with effect from 1 January 2023. Employees with 13 weeks' service are entitled to three days SSP in 2023 for certified sick leave, with this entitlement expected to rise gradually to ten days by 2026. The rate of pay is 70% of an employee's usual daily earnings up to a maximum of €110 per day.

Further information is available [here](#).

Work-Life Balance

The Work Life Balance and Miscellaneous Provisions Bill 2022 is currently at an advanced stage of the legislative process. Key aspects of the Bill are:

- A right to request flexible working for employees with children up to the age of 12 and those with caring responsibilities.

Flexible working is defined as an arrangement where an employee's working hours or patterns are adjusted, including through the use of remote working, flexible working schedules or reduced working hours.

- A right to take up to five days' unpaid leave per year, where for serious medical reasons the employee needs to provide personal care or support to a family member or person who lives in their household.
- A right to take up to ten days' paid domestic violence leave per year. The rate of pay will be prescribed by regulations, likely to be a similar rate to SSP.
- A right to request remote working for all employees who have six months' service on commencement of the arrangement. An employer must have regard to its needs, the employee's needs and the requirements of a Code of Practice which is to be developed by the Workplace Relations Commission, in considering a request.



Transparent and predictable working conditions

At the end of 2022, the Irish Government signed the EU (Transparent and Predictable Working Conditions) Regulations 2022. The Regulations transpose the EU Directive on transparent and predictable working conditions into Irish law. Although some provisions of the Directive were already part of Irish law, the Regulations contain important changes, in particular regarding probationary periods, parallel employment and employment outside the State.

We will shortly provide further details on this legislation in a separate briefing.

Gender Pay Gap Reporting

2022 was the first year in which employers with 250+ employees had to report their gender pay gap (GPG) data. This year employers will again need to choose a snapshot date in June 2023 and, if they have 250+ employees on that date, they will need to report their GPG by the same date in December 2023.

GPG reporting is now an annual requirement and the threshold for reporting will drop to employers with 150+ employees in 2024 and subsequently those with 50+ employees in 2025.

While reporting in 2022 was done via the employer's website, it is expected that there will be an online reporting system for 2023, which will consist of a central portal where all employer reports will be uploaded and can be accessed publicly.

Further information is available on our [GPG reporting hub](#).

Minimum Wage and Living Wage

The Irish government has agreed to the introduction of a new national "living wage" to replace the national minimum wage by 2026. It will be set at 60% of hourly median wages.

The first step towards reaching a living wage is an increase of 0.80c to the national minimum wage, bringing it to €11.30 per hour, effective from 1 January 2023. This will be followed by gradual

increases to the national minimum wage until it reaches 60% of hourly median earnings. In 2023, it is estimated that 60% of median earnings would equate to approximately €13.10 per hour.

Individual Accountability Framework

The Central Bank (Individual Accountability Framework) Bill 2022 is currently making its way through the early stages of the legislative process. It proposes to introduce a "Senior Executive Accountability Regime" (SEAR), which will interact with other Central Bank reforms to the current fitness and probity and enforcement processes. These reforms will enhance the regulator's ability to hold individuals to account when regulatory contraventions occur in the business area for which they are responsible. They will also provide additional scrutiny in both the regulator's and firms' assessment of the "fitness and probity" of individuals.

The SEAR will require firms to review and overhaul their senior management arrangements, governance and HR processes. The Bill is expected to be enacted early in 2023.

Cases to Watch

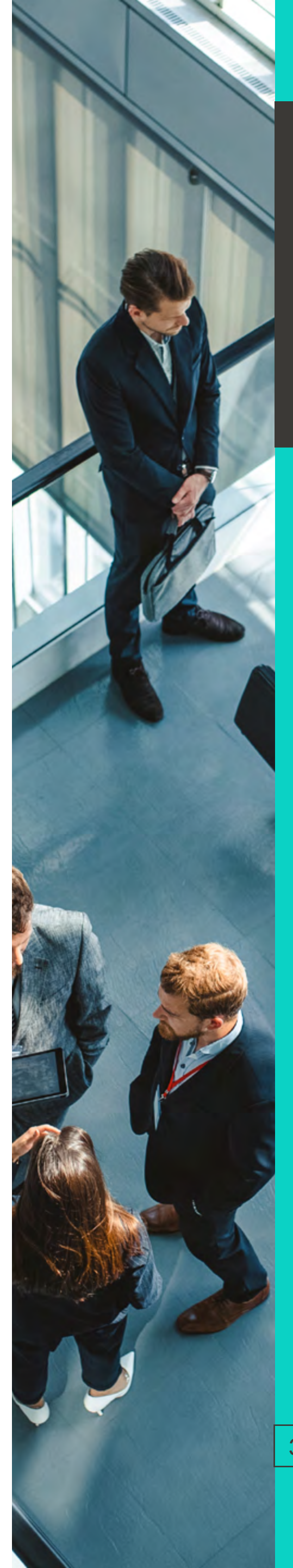
Revenue Commissioners v Karshan

The Supreme Court is due to hear an appeal of the decision of the Court of Appeal concerning the employment status of Domino's pizza delivery drivers. It will be the first time the Irish Supreme Court will rule on the status of workers in a 'gig economy' case. The hearing is due to take place in February.

O'Sullivan v HSE

In November 2022, the Supreme Court heard the appeal of the Court of Appeal's decision in this case, which concerns the lawfulness of precautionary or 'holding' suspensions. The Supreme Court has yet to deliver its judgment which, when delivered, will provide important guidance on this topic.

For further information on any of these topics please contact [Triona Sugrue](#), Knowledge Lawyer, or any member of ALG's [Employment team](#).



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Resources



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