

EMPLOYMENT

## Work-Life Balance: *New law is wide-ranging*

The eagerly anticipated Work Life Balance and Miscellaneous Provisions Act 2023 (the **Act**) has recently been signed into law. It implements elements of the EU Work-Life Balance Directive (the **Directive**), which were not already in place under Irish employment law.

A key aim of the Directive is to contribute to the achievement of gender equality by promoting the participation of women in the labour market and the equal sharing of caring responsibilities between men and women, which in turn contribute to the closing of the gender pay gap.

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While some of the provisions of the Act are necessary to implement the Directive, the Act also contains further significant new workplace entitlements, such as a right to request remote working and a right to take domestic violence leave.

The core elements of the Act are as follows:

- a right for parents and those with caring responsibilities to request flexible working arrangements
- a right to take up to 5 days unpaid leave per year for medical care purposes
- a right for all employees to request remote working arrangements
- a right to take up to 5 days paid leave per year for victims of domestic violence
- a significant extension to the period in which new mothers are entitled to paid time off work to breastfeed (from 6 months to 2 years) and
- an amendment to existing maternity protection legislation to ensure transgender males who have obtained a gender recognition certificate and subsequently become pregnant fall within its scope.

All of the various provisions of the Act require Ministerial commencement orders before they become effective. It has been indicated that elements such as medical care leave and the extension of the entitlement to take breastfeeding breaks will commence within a matter of weeks, with the remaining provisions expected to be commenced by late summer/early autumn. The remote and flexible working provisions require a WRC Code of Practice which will provide guidance for employers on how best to consider and properly manage remote and flexible working requests. It is expected the Code of Practice will be published within a few months.

In this briefing we take a look at the new entitlements and what they will mean for employers.





## 01 Right to request remote work

A right to request remote working has been on the cards since January 2021, when the Irish government published “Making Remote Work”, its strategy for national remote working. When the general scheme of the Right to Request Remote Working Bill 2022 was published it quickly came under significant criticism in respect of certain aspects, such as the “cumbersome” grounds for refusal of a request. These have since been abandoned and in a surprising move in November 2022, it was announced that the right to request remote working would be fast-tracked by way of integrating it into the Act, which at that time was already making its way through the legislative process.

The core elements of the right are as follows:

- All employees will have a right to request a remote working arrangement.
- There will be a qualification period of six months’ continuous employment before an employee will be entitled to commence the requested remote working arrangement
- The employee must submit the request at least eight weeks before the proposed commencement of the arrangement
- The request must set out certain details of the requested arrangement, such as the proposed date of commencement, and where applicable, the date of expiration of the arrangement.
- The employer must respond to the request no later than four weeks after the request has been made, but this period may be extended by up to eight weeks if the employer is having difficulty in assessing the viability of the request
- The employer must consider the needs of both parties, and the provisions of the Code of Practice when responding to a request
- If the request is approved, the employer and the employee must enter into an agreement setting out the details of the arrangement and the date of commencement and expiration (if applicable) of the arrangement
- If refusing, the employer must provide reasons for refusal
- The Act provides for a process under which an employer may terminate a remote working arrangement if it is having a substantial adverse effect on the operation of the employer’s business or there is abuse of the arrangement
- The WRC may award up to four weeks’ remuneration in respect of a breach of the requirements in respect of managing an employee’s request and/or direct compliance with the requirements of the Act
- The WRC will not be entitled to consider the “merits” of any decision made by the employer to refuse a request, including the reasons for reaching their decision.





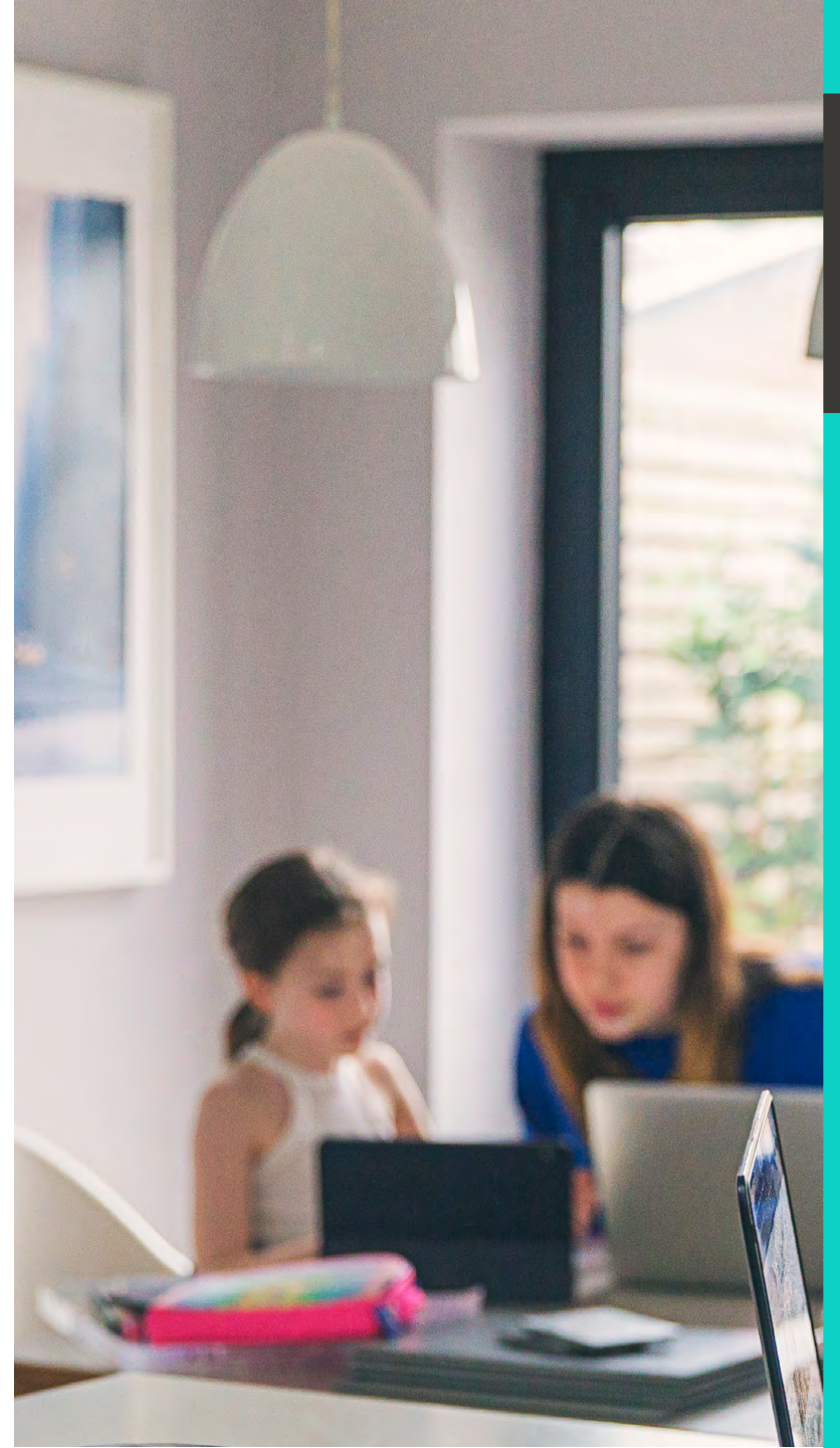
## 02 Right to request a flexible working arrangement (for caring purposes)

- 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.
- Employees who have a child up to the age of 12 (or 16 if the child has a disability or long-term illness) and employees who are caring for a relative<sup>1</sup> or someone they live with and who is in need of significant care or support for a serious medical reason will have the right to request flexible working arrangements for a particular period.
- There will be a qualification period of six months' continuous employment before an employee will be entitled to commence the requested arrangement
- The approval and termination process is similar to the process in respect of a request for remote work.
- The WRC may award up to 20 weeks' remuneration in respect of a breach of the requirements in respect of managing an employee's request and/or direct compliance with the requirements of the Act
- The WRC will not be entitled to consider the "merits" of any decision made by the employer to refuse a request, including the reasons for reaching their decision

## 03 Leave for medical care purposes

- All employees will have an entitlement to 5 days of unpaid leave per year where, for serious medical reasons, the employee needs to provide personal care or support to a family member, or person they live with, and who is in need of significant care or support for a serious medical reason.
- There is no minimum service requirement.
- The leave may not be taken in periods of less than one day.
- Employees must, as soon as is reasonably practicable, confirm to their employer in writing that they have taken or intend to take this leave, the date of commencement, duration and a statement of the facts entitling the employee to the leave.

<sup>1</sup>Prescribed in the Act





### 03 Domestic Violence Leave

- All employees will have a right to take up to 5 days' paid domestic violence leave per year.
- The purpose of the leave is to enable the employee, on their own behalf or in respect of a relevant person<sup>2</sup> to, for example, seek medical attention or legal assistance, obtain victim services, counselling or relocate.
- The rate of pay will be prescribed by regulations.
- If an employee has taken domestic violence leave they must, as soon as reasonably practicable, send a notice to their employer confirming they have taken this leave, and specifying the dates on which it was taken.

<sup>2</sup>as specified in the Act



### Next Steps

As outlined above, the provisions of the Act require commencement orders before becoming effective. Some are due to be in place within weeks, but others, such as the right to request remote and flexible working and to take domestic violence leave, require a Code of Practice and/or Regulations before they can commence.

Employers should take steps now to ensure they are ready to comply with the requirements in respect of medical care leave and time off for breastfeeding.

Many employers have already rolled out remote and flexible working arrangements in response to their needs, employees' needs and labour market pressure and the WRC Code of Practice is now awaited in order to provide the further detail to ensure compliance with the Act.

In respect of domestic violence leave, it is noteworthy that some large employers have in fact already made the move to introduce this leave. Whether employers decide to introduce the leave ahead of the statutory requirement or to wait, they should in either case give consideration to their approach.

For further information relating to this topic please contact [Triona Sugrue](#), Knowledge Consultant, [Matthew McGrogan](#), Solicitor, or any member of the ALG Employment Law team.



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