



Irish Congress of Trade Unions

**Congress Submission to Oireachtas Joint Committee on Children,
Equality, Disability, Integration and Youth on the provisions of the
General Scheme of a Work Life Balance and Miscellaneous
Provisions Bill 2022**

May 2022

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Introduction

Congress welcomes this opportunity to submit views on the recently published **General Scheme of the Work Life Balance and Miscellaneous Provisions Bill**, that will provide a floor of rights to working parents and carers as required by the EU Work Life Balance Directive as well as a number of other progressive measures.

There are many welcome additional rights for workers in the general scheme, including:

- The extension of breastfeeding/lactation breaks for employees who are breastfeeding from six months to two years (**Head 10**) – something trade unions have been campaigning on for many years;
- The five days unpaid leave for medical care purposes per calendar year (**Head 4**). We believe such leave should be paid; and
- The inclusive amendments to the Family Leave and Miscellaneous Provisions Act 1995, Maternity Protection Act 1994 and the Adoptive Leave Act 1995 (**Heads 11 – 14 and Head 16**).

Right to request flexible working

While we are particularly pleased that the proposed legislation (Head 3) will provide parents and carers with a right to request flexible working arrangements, it is a disappointment that the Government has not chosen to be more ambitious than what the directive prescribes in this regard and proposed a right for all workers to request flexible working.

Congress has been to the fore in calling for a statutory right to request all types of flexible working arrangements including remote work, flexi-time, part-time, job shares, split shifts, compressed hours etc. This is already an established worker right in the UK and in most other EU countries. The Conservative Government in Great Britain is currently consulting on making flexible working the default unless employers have good reasons not to and has stated that ‘a world class approach to flexible working is a key part of the Government’s ambition to build back better, ensuring that our flexible labour market is primed for the opportunities and challenges of the post Covid-19 economy’.

There is widespread recognition of the role that flexible working can play in ensuring certain groups, including women, disabled workers and older are able to access and stay in work. Making flexible working available in all but the most exceptional of circumstances is essential for promoting greater gender equality. It is our view that limiting this right to these two groups risks the expected shift to more flexible working becoming highly feminised, which would also have negative consequences for women's career progression.

We raised this in our evidence to the Citizen's Assembly and are delighted they made the introduction of a statutory right to reasonable access to flexible working one of their recommendations.

There are also a number of issues in Head 3 which require clarification, including:

Head 3 Sections 6A (1) and (2) refer to the change in working arrangements and or hours and patterns applying "for a set period of time". This term is not defined elsewhere in the scheme or Parental Leave Act. We do note that the Directive states that "the duration of such flexible working arrangements may be subject to a reasonable limitation". However, parents and carers will need reassurance that any working arrangements agreed with an employer will not be subject to onerous time-limits or require renegotiation after short intervals.

Section (9) sets out the grounds for postponing the commencement of a flexible working request, including the highly problematic, catch-all ground of "any other relevant matters". The scheme also provides an employer in Section 6A (6) (c) with a right to refuse a request and an obligation to set out the grounds for refusal. However, the scheme is silent on what the grounds for refusal are. While it is clear that the Directive does not prescribe the listing of such reasons, the Right to Request Remote Working Bill 2022 is currently at pre-legislative scrutiny stage in the Oireachtas and does list reasons an employer can refuse requests for remote working. Congress is seeking reassurance that there will be coherence in the rights for workers provided under the two pieces of legislation.

Section 6 A (4) provides for a service requirement of "six months continuous employment" before an employee can commence a flexible working arrangement under the Act. Congress views this an unnecessary clause and a minimalist interpretation of the Directive. However, if it is to remain it is essential to include provision for Article 9 paragraph 4 of the Directive which states that: "In the case of successive fixed-term contracts within the meaning of Directive 1999/70/EC with the same employer, the sum of those contracts shall be taken into account for the purpose of calculating the qualifying period." Without this provision, hundreds of thousands of workers employed on term-time contracts and in seasonal jobs will be without coverage for 6 months each year. One example to illustrate the importance of this point are early years professionals working in ECCE (pre-school) services on 38-week contracts forced to sign-on social welfare during the summer. We believe this is an oversight and is open to abuse and would an amendment the Bill by deleting 'continuous' from the service qualification under subsection 6 A (4) or alternatively, include-

'in the case of successive fixed-term contracts with the same employer, the sum of those contracts shall be considered for the purpose of calculating the qualifying period.'

This simple fix will go a long way to improve the effectiveness of this landmark legislation.

Paid Leave in Cases of Domestic Violence

We continue to grapple with the shameful reality that far too many people (predominantly women) face violence, harassment and abuse in their lives, something that unfortunately increased during public health restrictions due to the pandemic. Domestic violence has a significant impact – directly and indirectly – on work attendance and productivity. A 2014 Congress survey found that domestic violence doesn't just shatter the home lives of victims and families; it also impacts hugely on the workplace affecting the health, safety and performance of victims and work colleagues.

Women living with or escaping from domestic abuse may have a number of urgent and important matters to attend related to the abuse they experience. These include: medical visits, attending and preparing for a number of criminal and civil legal proceedings, counseling for themselves or their children, looking for a new home, relocating, changing children's school, and visiting specialist domestic violence services.

Workplaces can be an important source of support to a worker who is struggling with a difficult situation. Clear workplace policies and a range of supports, including paid leave and safety planning, can help employers fulfil their workplace safety obligations and manage risk.

We believe this Bill is an opportunity to progress the December 2020 Government agreement to establish a statutory entitlement to paid domestic violence leave here. Minister O'Gorman agreed to the action following a Bill brought forward by Louise O'Reilly T.D., Sinn Féin and it is a concept that has attracted cross party support.

We hope this opportunity is not lost and our proposals around such legislation are available on our website¹.

¹ <https://www.ictu.ie/publications/ictu-submission-paid-leave-cases-domestic-violence-march-2021>