

EDUCATION

COVID-19 Practical Considerations: Employment, Child Protection and Health and Safety in the Education Sector

15 June 2020

AWARDS

Ireland Law Firm of the Year 2020
Chambers Europe Awards

Ireland Law Firm of the Year 2020
IFLR Europe Awards

Structured Finance & Securitisation Deal of the Year 2020 (Stenn trade receivables securitisation) IFLR Europe Awards

Ireland M&A Legal Adviser of the Year 2019
Mergermarket European M&A Awards

Best Firm in Ireland 2019
Europe Women in Business Law Awards

Best National Firm for Women in Business Law 2019
Europe Women in Business Law Awards

Best National Firm Mentoring Programme 2019
Europe Women in Business Law Awards

Best National Firm for Minority Women Lawyers 2019
Europe Women in Business Law Awards

Ireland Law Firm of the Year 2019
Who's Who Legal

European Finance Deal of the Year 2019 (NTMA Green Bond Transaction)
The Lawyer European Awards

Most Inclusive Law Firm 2019
Managing Partners' Forum Awards

THE FUTURE – CHANGES FOR SCHOOLS

The Government's roadmap indicates that schools will re-open in September 2020 in line with the easing of public health restrictions. The National Return to Work Safely Protocol will inform discussions with all education partners so that appropriate guidance for schools is developed and arrangements put in place. The following memo covers unique issues for the re-opening of schools, including issues relating to the Leaving Certificate, protecting the physical welfare of children and employment law obligations, with an emphasis on the particular circumstances which exist in schools.

Leaving Certificate

Circular 0037/2020 appends Guidance for Schools on Providing Estimated Percentage Marks and Class Rank Orderings (the "Guidance"). The Guidance requires Principals and leaders of centres for education to oversee the in-school alignment process to assist with ensuring that different teachers of the same subject are applying consistent and appropriate standards. The cornerstone of the process is reliance on the professional judgment of all parties involved. The State has provided an indemnity to teachers and the Board of Management of schools in relation to the process.

A key part of the oversight role for principals will be to ensure that procedures are in place within each

school to deal with certain challenges that may arise out of the process and to ensure fairness. These procedures should ensure that grades are arrived at in an independent, fair and impartial manner, which include taking into account relevant factors and ignoring factors which are irrelevant or giving less weight to factors that are less relevant. The weight to place on particular factors is in part identified by the Guidance, but will also be impacted by particular challenges faced by the school (e.g. where evidence of prior achievement may not be as plentiful for some students).

Addressing such challenges at an early stage will help protect staff and ensure confidence in the process for all involved. Whilst following the Guidance will address many issues, schools should be proactive in identifying issues that may be unique to their school and ensuring these challenges are addressed at an early stage.

A specific consideration is record keeping. Good record keeping is an important element of good governance, but schools should be aware that the Guidance treats different records in different ways. For example, whilst the Guidance directs teachers to "securely destroy" copies of relevant forms and draft documents generated in the course of completion of the grade calculation process, principals are directed to retain copies of relevant forms until the appeals process has been completed. Specific instructions are

also provided in relation to dealing with sharing documentation in the context of data access requests, and the generation of records in relation to attempts by parents to make contact with teachers. Schools should ensure they treat records in accordance with the instructions in the Guidance, and in accordance with normal practices regarding record retention and destruction.

Safety of Children

Section 10 of the Children First Act 2015 states that *"a provider of a relevant service shall ensure, as far as practicable, that each child availing of the service from the provider is safe from harm while availing of that service"*. 'Relevant service' includes any work or activity which is carried out by a person, a necessary and regular part of which consists mainly of the person having access to, or contact with, children in a school or centre of education. The 2015 Act defines 'harm' broadly and it includes assault, ill-treatment or neglect of the child in a manner that seriously affects or is likely to seriously affect the child's health, development or welfare and the definition of "welfare" includes the *"moral, intellectual, physical, emotional and social welfare of the child"*.

All educational institutions which provide services to children are required under the Children First Act 2015 to have a Child Safeguarding Statement in place and should also have a Child Protection Policy. Providers of relevant services must *"undertake an assessment of any potential for harm to a child while availing of the service..."* and prepare a written child safeguarding statement. The COVID 19 pandemic, and the measures which may be taken by educational institutions to facilitate the return of children to school, will give rise to new risks which current Child Safeguarding Statements and Child Protection Policies may not take into account. In light of this, all education institutions providing services to children will need to carry out a review and amend their Child Safeguarding Statement, Child Protection Policy and Disciplinary Policies accordingly. Relevant stakeholders such as teachers, students and parents will also need to be updated.

For example, most Child Safeguarding Statements and Child Protection Policies should cover the risks associated with internet usage and online communications between teachers and children attending the school/education centre. Schools may now be providing online classes and online teaching facilities which would not have been used prior to the COVID 19 pandemic. Increased internet usage and increased online communications between teachers and their students gives rise to a new risk in some cases and the relevant policies will need to be updated to address that.

Schools may also increase the use of one-to-one teaching to deal with scenarios where children have been or are unable to attend physical classes due to either themselves or a family member in their home testing positive for the coronavirus or for other good reasons. Again the relevant policies and Child Safeguarding Statements will need to be reviewed and amended to consider and address these new ways of teaching and communicating with children.

Disciplinary procedures currently in place in schools and education centres will also need to be updated. It may be appropriate to consider imposing stronger sanctions for certain incidents, such as children sneezing or coughing on each other or their teachers on purpose. Schools may need to be stricter with students with regard to these types of behaviours given the increased risk of passing the coronavirus to other students and teachers.

Employees returning to school

Like all employers, schools are obliged, as far as is reasonably practicable, to protect the safety, health and welfare of employees. The COVID 19 pandemic has changed the steps an employer will reasonably be required to take to discharge this statutory duty.

Schools should ensure that they carefully consider the requirements set out in the Government's Return to Work Safety Protocol (the "Protocol") and the associated templates and checklists published by the Health and Safety Authority ("HSA"). Our earlier briefings on the Protocol (available [here](#)) and the associated templates and checklists (available [here](#)) set out the key points that all employers (including schools) should consider. Schools are advised to update their risk assessments (templates available [here](#)) and safety statements (checklists available [here](#)) to ensure that employees are protected as far as is reasonably practicable during the COVID 19 pandemic. This will include significant operational changes such as effective and child-friendly social distancing, strong hygiene routines and ongoing risk assessments to monitor operations.

The Irish National Teachers Organisation (INTO) has sought agreement on a number of key principles governing the operation of schools and education in its recent submission to the Department Education and Skills. This includes priority being given to the safety and physical/mental health and wellbeing of staff, pupils and parents in schools. According to the INTO, this must be supported by the schools and relevant support services such as NEPS and CAMHS whose capacity must be increased in order to cope with the current and future needs of school communities.

In preparing their COVID 19 Response Plans, schools should also have regard for a number of specific issues that are particularly relevant to the primary and secondary education systems:

Collaboration is key

The Protocol stresses the importance of employer-worker engagement, communication and training and it is advised that employers are flexible in relation to supporting employees in their return to work. Schools should ensure they harness teachers' unique insight into particular challenges that they and their students may face. Parental buy-in to a school's safety measures will also be essential to protect teachers and students. Communicating with all stakeholders at an early stage will be critical. Schools will need adequate resources to allow these comprehensive health and safety measures to operate safely.

Teaching needs

It is permissible to have an approach that takes account of different needs, for example to treat sixth class students differently to junior infants students. The challenge for schools who take this approach will be to protect different groups within the same physical space, with a limited number of staff. Whilst reviews of approaches across different jurisdictions to these challenges will be invaluable, schools should recognise that Ireland's unique approach to the lifting of restrictions will affect the extent to which such approaches will be successful in this jurisdiction. Each individual school will have their own issues to address, and the Minister for Education has acknowledged this point. Whilst further guidance on this is expected, schools that consider these issues at an earlier stage will generally be in a better position to implement guidance more quickly.

Employee concerns

Employers should listen to concerns of employees and explore all reasonable and practical solutions, ideally at an early stage. All concerns should be considered and assessed in light of the most up-to-date health advice available. Whether an employee has valid reasons for such concerns will depend on the employee's personal circumstances, their role within the school and Government guidelines in place at the time. Such reasons could range from childcare issues to health concerns to anxiety about returning to work – planning for these "what-if" scenarios at an early stage and engaging in relation to same will either resolve concerns or alert a school to additional matters they should consider in preparing their COVID 19 response plan.

Employers should be mindful of potential claims under the Protected Disclosures Act 2015, Employment Equality Acts 1998 – 2015, Payment of Wages Acts 1991, the

Safety, Health and Welfare at Work Act 2005 and other relevant legislation before taking punitive action against teachers who refuse to return to work. The aim should be to achieve a solution where all teachers can be reassured that it is safe to return to the workplace.

Access to schools during the interim period

The Government have set out guidance for staff during the interim period. Staff will be able to access school buildings in limited circumstances before the start of the school year. Any access to a school must, however, be approved by the school Principal or a person designated by the Principal. For example, the guidance advises that any person in the higher risk demographic should not be entering the premises. Also, any staff

member who feels unwell or develops symptoms should not enter the school.

Before entry into the premises, schools are advised to observe the following guidelines to ensure the health and safety of staff is maintained: there should be one point of entry/ exit provided with available hand sanitisers and directions for staff to wash their hands after entering the building; guidance on performing good hygiene practises should also be provided; and schools must ensure that appropriate social distancing is maintained by all staff and that areas of common touch, such as handles, are minimized and cleaned regularly.

The Government advise that schools designate a contact person for staff to check in and out with; as well as keep

sign in sheets and records. A suitable means of communication with staff members working in the school should be established so that any incidents or injury sustained on the premises can easily be reported to this designated person.

Caretakers or contractors must only undertake approved/risk-assessed activities and keep the designated contact informed of their location and tasks. They must comply with the Guidelines on Managing Safety, Health and Welfare in schools at all times.

Insurance Cover

Educational institutions should liaise with their insurers and notify them of any changes being made to the services provided or policies in place which may affect the relevant insurance policy.

KEY CONTACTS



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