

EMPLOYMENT

Employer Alert: Statutory Sick Pay on the Horizon?

November 2020

Earlier this year, following clusters of outbreaks of COVID-19 in meat plants and nursing homes, much was made of the fact that there is no statutory entitlement to sick pay in Ireland. However the recent launch of a public consultation process by the Department of Enterprise, Trade and Employment could mean that statutory sick pay is on the horizon for Irish employees.



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CURRENT POSITION

There is no statutory entitlement to sick pay in Ireland. An employee who is unable to work due to illness or injury will be entitled to receive State paid Illness Benefit, after six days of absence, if they have made sufficient PRSI contributions. Illness Benefit rates are graduated according to an employee's average weekly earnings in the relevant tax year. It was announced in Budget 2021, that the waiting period for the benefit will be reduced to three days from February 2021.

In March 2020, in response to the COVID-19 pandemic, the Government introduced the COVID-19 Enhanced Illness Benefit at a rate of €350 per week for any worker who is advised to self-isolate by a medical doctor or who has tested positive for COVID-19. From August 2020, this benefit has been available to the self-employed and workers living in direct provision who are required to self-isolate or who have COVID-19. The COVID-19 Enhanced Illness Benefit is available from the first day of an employee's illness or self-isolation and is due to operate until 31 March 2021.

While there is no statutory obligation to pay sick pay, many employers across all sectors pay employees sick pay, either on a discretionary or contractual basis. Sick pay entitlements may also be set out in collective agreements. The duration of any such sick pay can vary significantly

between organisations from a few days to a number of months and will usually involve an employer "topping-up" any State paid Illness Benefit.

There are no statutory rules in relation to operating a company sick pay scheme. The recent WRC decision in [User Interface Designer v Engineering Company](#) is however a useful reminder to employers to ensure that any sick pay scheme is operated fairly and does not breach the Employment Equality Acts 1998-2015. In this case, a former employee of an Engineering Company was awarded €20,000 after an Adjudication Officer found that her employer's failure to pay her sick pay under its discretionary sick pay scheme was discriminatory on the grounds of race. The complainant, who was Croatian, was able to point to an Irish comparator who had previously been paid during her period of sick leave.

CALLS FOR CHANGE

In September 2020, the Labour Party published the [Sick Leave and Parental Leave \(COVID-19\) Bill 2020](#), which proposed that after four weeks service, employees would be entitled to up to a maximum of 30 days of paid sick leave in any 12 month period where the employee is incapable of working due to illness or injury.

Further, on 8 October 2020, the Oireachtas Special Committee on

COVID-19 Response issued a report (available [here](#)) recommending the establishment of a statutory sick pay requirement for low-paid workers, such as those working in nursing homes and meat plants. The Government voted to postpone debate on the Bill for six months pending a consultation, indicating that it planned to introduce its own bill on the matter, arguing that the Labour Party's proposals placed an undue burden on employers.

LAUNCH OF PUBLIC CONSULTATION

On 11 November 2020, the Department of Enterprise, Trade and Employment launched a public consultation process on the introduction of a statutory right to paid sick leave for all employees. The Department is encouraging all employees and employers to engage with the consultation and to complete questionnaires (available [here](#)) by 18 December 2020. In circumstances where the Tánaiste and Minister for Enterprise,

Trade and Employment, Leo Varadkar TD, has made a commitment to bring Ireland in line with other [OECD countries](#) by providing for a statutory entitlement to sick pay, it would appear that change is imminent.

Employers are advised to continue to monitor developments in this area and to contact a member of the Arthur Cox Employment Group with any queries they may have on this topic or any other employment law queries.