



ByrneWallace LLP, one of Ireland's leading law firms with unrivalled experience advising the retail sector, highlights key legal issues which retailers should be aware of during 2024.

## Must Know Legal Facts for Retailers

There have been a number of changes to Employment Law in recent months, and further changes are expected in the coming year.

### Changes introduced:

#### 1. Work Life Balance

The **Work Life Balance and Miscellaneous Provisions Act 2023** (the "Act") has now been fully commenced. The Act introduces a number of new statutory entitlements for employees.

Employees who are breastfeeding are now entitled to take time off work each day without loss of pay to breastfeed or express breast milk for up to 2 years after the birth of the child (previously this was up to 26 weeks after birth).

Employees are now entitled to leave in the following circumstances:

- five days unpaid leave in any 12 consecutive months to provide significant care or support for a serious medical reason to a child or other relevant person. There is no minimum service requirement for this leave.
- five days paid domestic violence leave in

any 12 consecutive months if the employee is experiencing domestic violence and abuse. There is no minimum service requirement. The leave can be taken if the employee is directly experiencing domestic violence and abuse, or if the employee is supporting a 'relevant person' who is experiencing domestic violence and abuse. Payment by the employer is at the normal rate of pay.

The Act also introduces the right to request flexible working and remote working, and to have this request considered by the employer.

All employees have the right to request remote working.

Employees have the right to request flexible working if:

- the employee is a parent of a child under 12 (or under 16 if the child has a disability), in order to provide care to the child; or
- the employee is a carer providing personal care or support to a specified person living in the same household who needs significant care for a serious medical reason.

Employees have the right to request remote working and flexible working from the first day in a job, however, employees must have 6 months of continuous service before the arrangement can start.

Employers are required to consider and respond to requests for flexible working and remote working in the manner set out in the Act. The WRC has published a Code of Practice on the Right to Request Remote Working and Flexible Working, and employers should have regard to this when responding to requests.

Employers should put in place policies to address requests for remote working and flexible working.

#### 2. Whistleblowing

The **Protected Disclosures Act 2014** was amended in January 2023, and among other changes requires private employers to establish formal channels and procedures to allow employees to make protected disclosures. As of 17 December 2023, this requirement applies to all employers with 50 or more employees. Employers to whom this applies must put in place these procedures.

#### 3. Sick Leave

Entitlement to paid leave under the **Sick Leave Act 2022** has been increased to 5 days per calendar year from 1 January 2024. Payment remains at the rate of 70% of the employee's wage, subject to a daily maximum sum of €110.

### Upcoming changes

#### 1. Pensions Auto-Enrolment

The **Automatic Enrolment Retirement Savings Bill 2024** (the "Bill") has recently been published and it is expected it will be enacted this year, and come into effect in January 2025. The Bill will require employers to automatically enrol employees who meet certain criteria into a workplace pension scheme. Employees and employers will be required to contribute to the pension scheme, with both contributions starting at 1.5%, and increasing every three years by 1.5 percentage points until they eventually reach 6% by Year 10 (2034). The State will also top up contributions by €1 for every €3 saved by the employee.

#### 2. Retirement Age

The Government is expected to publish a Bill this year which will prevent an employer setting a compulsory retirement age below the State Pension age (currently 66) if the employee does not consent to retire. This will apply to current as well as future employees.

### Reform of Commercial Rates

Significant changes to the operation of the commercial rates regime came into force on 1 January 2024. The key changes are:

- Rates are levied on the occupier of the property or the person entitled to occupy an unoccupied property (the liable person) on the date the rate is struck (currently 1 January). The option for payment in two moieties has been removed, but if the liable person changes during the year before the rates have been paid in full, the local authority will apportion the rates between the outgoing and incoming liable person.
- Liable persons must notify the local authority where there is a change in the information recorded by the local authority in a rates database, or where there is a change in the liable person. Failure to notify the local authority is a criminal offence.
- A liable person who wishes to sell their property must pay any outstanding rates and interest due by them since 1 January 2024 before completing the sale of the property. Failure to do so is an offence, with a penalty of a fine and/or up to 6 months' imprisonment.
- Unpaid rates and interest due by the owner will be charged on the property until paid in full. The charge will cease following a sale of the property where the owner pursues the previous owner for payment.
- Interest on overdue rates will be charged from 1 January 2025.
- Local authorities may make schemes for abatement of rates for vacant properties, but the Minister for Housing, Local Government and Heritage is expected to make regulations later this year limiting the maximum relief that may be granted.



### Exclusivity Clauses

Anchor tenants and other retailers often seek to restrict competition within shopping centres and retail parks by negotiating an exclusivity clause when taking a lease. In two recent cases the Irish courts considered the interpretation of exclusivity clauses, and in each case enforced the clause.

In *Rexbay Ltd v McCann*, the High Court determined that there was a breach of the exclusivity clause granted to *Rexbay Limited t/a Starbucks* that prohibited the landlord from granting a lease to another coffee chain in the Point Village Shopping Centre. The unit next to Starbucks was let to a tenant operating two separate franchises, including a Handprint coffee outlet selling speciality coffees. The tenant had entered into a franchise with Handprint, but Ms Justice Stack said that the letting did not have to be directly with the coffee brand. She determined that as the exclusivity clause referred to a new lease of "any part of the Centre", the coffee chain did not need to occupy the entire of the unit to be prohibited.

In the Barrow Valley Retail Park in Carlow, Dunnes Stores was granted an exclusivity clause that prohibited other unit holders from selling "any food, food products or groceries". When a discount retailer trading as "Mr Price" opened a unit in the retail park, Dunnes obtained an injunction restraining it from selling "any food, food products or groceries". The main legal argument was how to interpret the term "groceries". The High Court decided that "groceries" extends beyond food or food products and includes "non-durable consumable household items which are purchased frequently". Mr Price appealed the High Court decision. In *Dunnes Stores Unlimited Company & Anor v Dafora Unlimited & Ors*, the Court of Appeal upheld the High Court decision with just one clarification to the Court orders.

While each exclusivity clause must be considered on its own merits, these cases will be of interest to retail tenants and landlords.

### ABOUT THE FIRM

ByrneWallace LLP is one of Ireland's largest full service law firms. A forward thinking firm, they focus on securing the best possible outcome for their clients and are dedicated to the provision of expert legal services. Offering a diverse range of expertise covering all areas of Irish law, they advise a range of businesses and industry sectors including retail. Legal service specific to the retail sector include advising on:

- Advertising, branding and promotional requirements
- Handling official customer complaints
- Defamation
- Online retailing
- Consumer law
- Licensing law
- Health and safety
- Property issues (commercial lease negotiation, landlord and tenant issues)
- Employment
- IP (trademarks and copyrights)
- Data protection
- Crisis management
- Sustainable finance
- Corporate compliance and commercial contracts

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