



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 2023.

Must Know Legal Facts for Retailers

Some very important changes in Employment Law have been introduced this year, with additional changes expected.

Changes introduced:

1. Working Conditions

The European Union (Transparent and Predictable Working Conditions) Regulations 2022 (the "Regulations") became law on 16 December 2022. The Regulations aim to enhance working conditions by introducing obligations which promote predictable and transparent employment, including:

- A maximum probationary period of six months. This can be extended to 12 months on an exceptional basis but only if deemed to be in the interests of the employee.
- Employees must be provided with written notification of particular terms after five days of employment and other information within one month of commencement of employment. This obligation now applies to contractors as well as to employees.

- Employees are entitled to request more secure and predictable working conditions after six months' service.
- Employees are entitled to mandatory training free of cost.
- Employees cannot be prevented from being employed by another employer, or be subjected to adverse treatment for being employed with another employer, unless that is proportionate and based on objective grounds.

2. Whistleblowing

The Protected Disclosures (Amendment) Act 2022 commenced on 1 January 2023. It made significant changes to the Protected Disclosures Act 2014, including:

- Extending the definition of "workers" to include shareholders, board members, applicants and volunteers;
- Reversing the burden of proof onto the employer in protected disclosure claims;
- Extending the interim relief measures to include acts of penalisation other than dismissal; and

- Introducing significant sanctions and penalties (including criminal sanctions and fines) for non-compliance.

In addition, from 1 January 2023, private organisations with over 250 employees are obliged to establish formal channels and procedures for protected disclosures.

Employers with between 50-249 employees are not required to implement these measures until 17 December 2023. Policies and procedures should be reviewed to prepare for this.

3. Statutory Sick Pay

The Sick Leave Act 2022 (the "Act") commenced on 1 January 2023. Employees who are incapable of working due to illness or injury and who have satisfied certain criteria under the Act are now entitled to statutory sick pay of 70% of their wage, subject to a daily maximum sum of €110.

The entitlement in 2023 is three days' paid sick leave. It will rise in stages - five days in 2024, seven days in 2025 and 10 days in 2026.

4. Gender Pay Gap

In December 2022, as required by the Gender Pay Gap Information Act 2021, organisations with over 250 employees published their reports on their gender pay gap for the first time.

The obligation to report will extend to employers with between 150 and 249 employees in 2024, and to employers with between 50 and 149 employees in 2025. Employers due to report in 2024 will need to review their internal systems in 2023 to collate this data.

Upcoming changes:

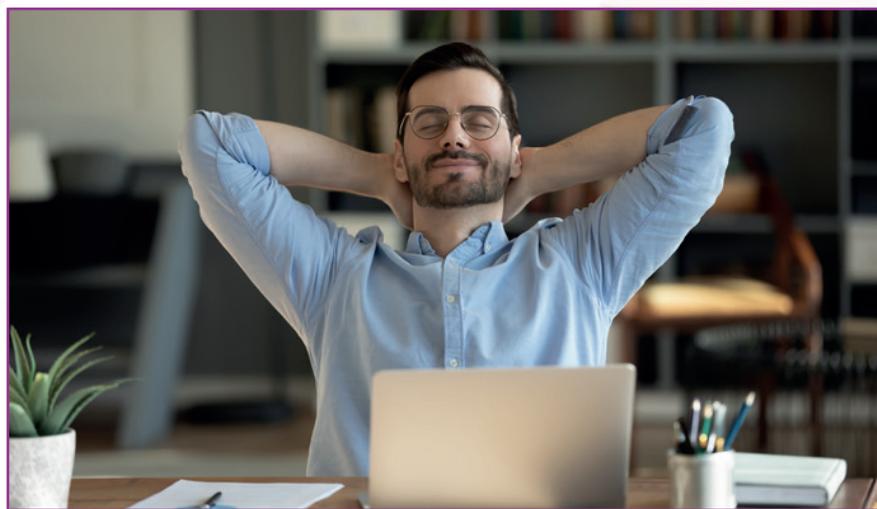
1. Pensions Auto-enrolment Scheme

The General Scheme of the Automatic Enrolment Retirement Savings Bill 2022 published on 10 October 2022, requires employers to automatically enrol employees who meet certain criteria into a workplace pension scheme.

This legislation is expected to commence in 2024.

2. Work Life Balance

An updated draft of the Work Life Balance and Miscellaneous Provisions Bill 2022 (the "Bill") was published on 7 December 2022. The 2022 Bill integrates two separate legislative frameworks, the right to request remote work and new entitlements for parents and carers. Under the Bill, employees will have a right to request





remote working from their employer, subject to certain criteria. The Bill also proposes five days' unpaid leave per year to provide care or support, a right for parents/carers to request flexible working arrangements, an extension of the current entitlement to breastfeeding breaks and up to 10 days' paid leave for employees experiencing domestic violence.

Reform of Licensing Laws

Ireland's antiquated laws governing the sale of alcohol are due to be significantly reformed in 2023. The General Scheme of the Sale of Alcohol Bill was published in October 2022, after almost two decades in which calls for reform and codification of Ireland's liquor licensing laws have been made. The Sale of Alcohol Bill, if enacted, will replace close to 100 separate laws, some of which date back over 200 years.

Recent media focus has been on the proposed reforms to the night-time economy. Key proposals affecting off licences include:

- Licences shall continue to be issued by Revenue, with responsibility for court certificates and declaratory orders moving from the Circuit Court to the District Court. Where there are no objections to renewal of licences, online renewal will be possible. These changes are intended to reduce costs.
- Restricted Sunday opening hours will no longer apply to off licences. When the Bill is enacted, off licences may open from 10.30am to 10pm every day of the year, save for Christmas Day.
- A retailer applying for a new off licence will still be required to extinguish an existing public house licence or off licence. This requirement (i.e. the extinguishment of one licence for the grant of a new licence) will no longer apply to applications for pub licences after a transition period of three years from enactment, removing a significant cost barrier for new publicans. Following

the transition period, only public house licences granted prior to the new legislation will be capable of extinguishment and thus hold their value for this purpose.

Further consultation is due to take place in the coming months, so these proposals are still subject to change. The legislation is likely to be enacted this year.

Planning and Development Bill

Following a 15-month review of Irish planning legislation led by the Office of the Attorney General, the Government plans to reform and consolidate the planning code in 2023.

The draft Planning and Development Bill, published in January 2023, sets out the processes of plan-making, consents, enforcement and the roles of various planning bodies, including An Bord Pleanála and the Office of the Planning Regulator. Key reforms proposed include:

- Ministerial guidelines and policy directives will be upgraded to 'National Planning Policy Statements' and 'National Planning Policy Guidance', which will be approved by Government.
- Local Development Plans will be extended from six years to ten years, with a review after year five. Plans will be more strategic in nature, to help ensure that public engagement and major local debate is focused on the plan-making rather than planning application stage, and to facilitate greater clarity and long-term visibility of planning outcomes.
- Mandatory statutory timelines will apply to all consent processes and appeals, including An Bord Pleanála decisions, with penalties for failure to meet the timelines.
- As reported extensively in media coverage, there are a number of changes proposed to judicial reviews of planning decisions, including introduction of costs protection.
- An Bord Pleanála will be restructured and re-named An Coimisiún Pleanála (The Planning Commission). Following concerns regarding governance, it will be separated into the decision making body (the Planning Commissioners) and a new Governing Executive (led by a Chief Executive).

It will likely be several months before the Bill is enacted. Planning regulations and guidance will also need to be updated, to reflect the changes to the planning code.

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. These services 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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