

# What's New

## The McCann FitzGerald **Employment, Pensions & Incentives Group** Update

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Welcome to the McCann FitzGerald Employment, Pensions & Incentives update. Below is an update on some of the latest developments.

### [General Scheme of the Protected Disclosures \(Amendment\) Bill 2021](#)

As discussed in our recent [briefing](#), the [General Scheme of the Protected Disclosures \(Amendment\) Bill](#) (the “**Bill**”) has been published. The Protected Disclosures Act 2014 (the “**Act**”) will be amended to give effect to the European Union Whistleblowing Directive 2019/1937 (the “**Directive**”). The Bill provides that volunteers, unpaid trainees, board members, shareholders and job applicants will now fall within the scope of the Act. Like the public sector, private sector organisations with 50 or more employees will be required to establish formal channels and procedures for their employees to make protected disclosures. A derogation until 17 December 2023 will be put in place for organisations with between 50 and 249 employees. All public sector organisations, regardless of size, are already required to have formal protected disclosures procedures in place under the Act.



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Employers and prescribed persons who receive protected disclosures will be required to acknowledge them; follow-up on the allegations made and give feedback to the reporting person within three months. Where a person takes a case to the Workplace Relations Commission (the “**WRC**”) or the courts concerning penalisation for having made a protected disclosure, the burden of proof will be reversed – it will be assumed that the alleged act of penalisation occurred because the worker made a protected disclosure unless their employer can prove otherwise. A Protected Disclosures Office will be established in the Office of the Ombudsman to support the operation of the Act in relation to reporting to prescribed persons and Government Ministers. The general scheme of the Bill also envisages measures to ensure that whistleblowers have access to support, including free, independent information on their rights and the procedures and remedies available, as required by the Directive.



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### [Employers encouraged to use antigen testing as updated Work Safely Protocol is launched](#)

Tánaiste Leo Varadkar [encouraged employers to use antigen testing](#) at the launch of the revised [Work Safely Protocol](#) (the “**Protocol**”), which has been updated to include guidance on ventilation, vaccinations and antigen testing in the workplace. The Protocol is a revision of the ‘Return to Work Safely Protocol’, first published in May 2020. This revised Protocol incorporates the current advice on the public health measures needed to reduce the spread of COVID-19 in the community and workplaces as issued by the National Public Health Emergency Team and the Department of Health. The updated public health advice includes information on wearing masks; ventilation of workplaces; antigen testing; how a testing regime might be introduced; and what both employers and employees should do, if such testing is deemed necessary. The Protocol contains links directing employers and employees to a range of government departments and agencies where additional and more detailed information and guidance can be sourced.

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### [Changes to priority/emergency visa applications](#)

On Thursday 20 May 2021, Minister for Justice, Heather Humphreys TD, and the Minister of State for Law Reform, Youth Justice and Immigration, James Browne TD, announced that two new categories have been added to the priority/emergency list of visas being processed at this time. Visa applications will now be accepted from people who are seeking to join their family members in Ireland, and from those who are travelling for essential business or employment purposes and have been issued with an employment permit by the Department of Enterprise, Trade and Employment. All Long Stay ‘D’ Visa join family applications and preclearance applications, including for de facto partners of Irish nationals, and Critical Skills Employment Permit Holders will resume processing.

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### Labour Court rejects pay differential claim

In a recent judgment in [Henry Denny & Sons LTD v 100 General Operatives \(LCR22402\)](#), the Labour Court has rejected a claim by 100 general operatives at Henry Denny (a subsidiary of Kerry Group) for restoration of a pay differential with team leaders. The 100 workers (represented by SIPTU) had a 61cent per hour difference with team leaders at the time the team leader role was created in 2012. In November 2019 the team leader group received an increase of €1.20 in their hourly rate, which widened the pay differential between that group and the workers. Henry Denny maintained the position that there was never a pay link between the grades and that the original team leader rate had been agreed upon in 2012 following an examination of similar roles in other companies within Kerry Group. The Labour Court said that “the fact of a difference in pay between the grades is not in and of itself sufficient to demonstrate that a pay link existed”. It added that it was not disputed that at the time the team leader posts were introduced, there had been no negotiation or agreement with SIPTU on pay for the team leader role or how it would relate to the workers grade. Furthermore, no documents were provided to the Court to demonstrate that a pay link existed or had evolved over time. On that basis, the Labour Court rejected the claim.

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### Revenue eBrief No. 103/21 New Share Schemes Reporting Return 17 May 2021

Mandatory electronic reporting of certain share-based remuneration is provided for in section 8 of the Finance Act 2020. A recently published Revenue eBrief explains that restricted stock units convertible shares, discounted shares, restricted shares, forfeitable shares and any other award with cash-equivalent of shares must be included in the reporting returns. The ‘Employer’s Share Awards’, a new electronic form for mandatory share reporting, will be available from June 2021 on the Revenue website for completion and will be due 31 August 2021 for the tax year 2020. The reporting date for subsequent years will be 31 March.

### [Pensions Authority Information Note for Trustees on EU \(Occupational Pension Schemes\) Regulations 2021](#)

On Thursday 13 May 2021, the Pensions Authority published an information note for trustees on the EU (Occupational Pension Schemes) Regulations 2021 (the “**Regulations**”). The note aims to give trustees an overview of the key aspects of the recently transposed Institutions for Occupational Retirement Provision II Directive (“**IORP II**”), and details how the Pensions Authority will supervise compliance with the Regulations. The note discusses the impact of certain derogations between the IORP II Directive and the Regulations, and gives some information in relation to transitional periods. The Pensions Authority have also set out a timeline for publication of guidance information notes that the Authority will issue over the course of the year.

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### [Pensions \(Amendment\) \(Transparency in Charges\) Bill 2021](#)

The recently published [Pensions \(Amendment\) \(Transparency in Charges\) Bill 2021](#) (the “**Bill**”) is currently before the Dáil and aims to establish increased transparency regarding charges imposed in relation to the administration of pension schemes. The Bill, if passed into law, will amend the Pensions Act 1990 by inserting section 59I titled ‘Information to Scheme Members.’ Information is to be provided to members by way of a ‘statement of the impact of charges.’ Trustees will have to provide details about the charges under the scheme for the 12 months ahead in (i) cash terms, (ii) as a percentage of the contribution to be paid by the member in the following 12 months, and (iii) as a percentage of the value of the assets held on behalf of the member at the date of the statement, as well as the anticipated reduction in yield, being the difference between the level of benefit referred to above, and the level of benefit if no charges were made in relation to the administration of the scheme. Trustees of a scheme will have to furnish to scheme members a statement of the impact of charges on the entry into the scheme and annually thereafter. The statement must be in printed form. This section also requires the Pensions Authority to oversee and report annually on the charges and for the Pensions Council to report recommendations and opinions on the charges. The Minister for Social Welfare will be empowered to make regulations relating to circumstances in which a statement of the impact of charges may be provided.



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