

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.

[DPC issues guidance on employee vaccination data](#)

The Data Protection Commission (the “DPC”) has issued a guidance note on [Processing Covid-19 Vaccination Data in the context of Employment](#). According to the DPC, “...in the absence of clear advice from public health authorities that it is necessary for all employers and managers of workplaces to establish vaccination status of employees and workers, the processing of vaccine data is likely to represent unnecessary and excessive data collection for which no clear legal basis exists”. The current version of the [Work Safely Protocol: COVID-19 National Protocol for Employers and Workers](#) suggests that there are a limited set of circumstances in which vaccination should be offered as a workplace health and safety measure (as provided for under the Safety, Health and Welfare at Work (Biological Agents) Regulations 2013 and 2020). There may be further situations, such as in the provision of frontline healthcare services, where vaccination can be considered a necessary safety measure, based on relevant sector specific guidance. The Work Safety Protocol makes it clear that there remains a full suite of measures that employers should use to maintain workplace safety before considering whether knowledge of vaccination status is a necessary measure. In accordance with the principle of data minimisation, employers should implement all such measures that avoid processing the personal data of employees in the first place. Furthermore, the DPC noted the voluntary nature of the vaccine further suggests that COVID-19 vaccination should not, in general, be considered a necessary workplace safety measure and, consequently, the processing of vaccine data is unlikely to be necessary or proportionate in the employment context.



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[Workplace Relations \(Miscellaneous Provisions\) Bill 2021](#)

In response to the recent Supreme Court decision in *Zalewski v. Adjudication Officer and WRC, Ireland and the Attorney General* [2021] IESC 24, discussed in our briefing [here](#), the General Scheme of the Workplace Relations (Miscellaneous Provisions) Bill 2021 (the “**Bill**”) has been published. The purpose of the Bill is to amend the Workplace Relations Act 2015 to allow for public hearings and remove the default anonymization of adjudication cases, as well as making provision for Workplace Relations Commission (“**WRC**”) adjudicators to take evidence on oath or affirmation. The Bill provides that if a person under oath gives a statement in adjudication proceedings he or she knows to be false, they shall be guilty of an offence. The Bill provides for amendments to the Redundancy Payments Act 1967, the Unfair Dismissals Act 1977, the Protection of Employees (Employers’ Insolvency) Act 1984, the Employment Equality Act 1998, and the Equal Status Act 2000 in relation to public hearings and the penalties for giving false evidence. The Bill also introduces more detailed provisions on revoking the appointment of an adjudication officer (“**AO**”) and the ineligibility of someone to be appointed as an AO. The Bill provides for detailed reasons for revoking the appointment of an AO and the process which the Government must follow to inform the AO their appointment is being revoked. The Bill will remove the bar on identifying parties in the publication of cases, but anonymity will be retained in special circumstances.

[WRC issues Postponement Guidelines](#)

The WRC has published new postponement guidelines which will apply to all new applications from 1 July 2021. Applications received by the WRC within 5 working days from the date of the hearing notification letter, accompanied by the written consent of the other party, are automatically granted. Applications made later than 5 working days from the date of the hearing notification letter and/or applications made without the consent of the other party will be considered by the WRC. The reasons behind the application should be submitted to the WRC together with any relevant supporting documentation at the time of the application (for example medical certificates, a death notice, evidence of flight bookings, proof of jury duty, etc.). In all applications under this process, the WRC will consider whether there are “*exceptional circumstances and substantial reasons*” evidenced. In some unusual circumstances such as a compelling application or imminent hearing date, the WRC may not be in position consult all parties.

Where a postponement or adjournment application has been refused, a new application will not be considered unless supported by new relevant facts not previously available to the applicant. Those new facts must be clearly set out in the new application.

Labour Court rejects appeal submitted one day late

The appellant sought to appeal a WRC decision which awarded €35,000 to a former employee for unfair dismissal. The appeal was received by the Court on 18 March 2020, one day after the expiry of the time limit set down. The appeal had been sent by registered post on 16 March 2020 and, as noted by the appellant, would have been received in time but for the fact that 17 March is a public holiday. The appellant's solicitor sought an extension in an email of 20 March 2020 to the Court, stating that he was self-isolating at home with Covid-19 symptoms. He explained that, in the ordinary course of events, he would have emailed the appeal form to the Court from his office, but had omitted to do so. The Court referred to Section 44(3) of the Workplace Relations Act 2015 (the "Act") which sets down a period of 42 *days* in which to lodge an appeal, not 42 *working days*. The Court stated that if the Oireachtas had intended that weekends and public holidays be excluded, then the term "working day" could have been used in the Act. The Court held that in order to grant an extension of time, the circumstances of the case must be exceptional. In dismissing the appeal, the Court stated that the Applicant's solicitor could have emailed the application before he left his office to isolate.

Pensions Authority Report on Defined Benefit Scheme Statistics 2020

The Pensions Authority has issued a report on defined benefit scheme statistics for 2020. In 2020, 11% of defined benefit pension schemes failed to satisfy the Pensions Act minimum funding standard. When the 'funding standard reserve' was included however, this figure increased to 20%. As of 31 March 2021, there were 558 continuing defined benefit pension schemes under the supervision of the Pensions Authority. There was a total of 310,640 members: 136,485 deferred members, 104,196 retired members and 69,959 active members. These figures were set out in the annual actuarial data returns provided to the Pensions Authority. The total funding standard liabilities is €61 billion. Once the funding standard reserve is accounted for, this figure reaches €64.2 billion. The funding standard reserve liabilities varied amongst the schemes from 1% to 15% of funding standard liabilities. Defined benefit scheme assets increased in value from €65.2 billion in 2019 to €70.5 billion in 2020. Out of the 558 'continuing'

schemes, 374 are still accepting contributions from active members. 184 of the schemes are frozen. Of the 570 continuing schemes in the equivalent 2019 returns, 12 more schemes were accepting contributions than the 2020 statistics. While pensioners currently account for 34% of total membership, scheme liabilities for pensions in payment account for 60% of liabilities. The Pensions Authority expressed concern that the risk inherent in defined benefit provision is not borne equally by all members of schemes; the risk is primarily focused on scheme members who have not yet retired and because the group is gradually getting smaller, the risk is becoming more concentrated.

[Revenue eBrief No. 120/21 Updated Share Schemes Manual and New Share Schemes Reporting Return \(Form ESA\)](#)

This eBrief announced the release of the electronic Employer's Share Awards Return (Form ESA) 2020. This form is in line with section 8 of the Finance Act 2020 which provides for electronic mandatory reporting of certain share-based remuneration. The filing deadline for the year 2020 is 31 August 2021. Instructions and explanatory notes for completing the form are included in the form. Chapter 15 of the Share Schemes Manual is being updated to include guidance on the return.

[Revenue eBrief No. 131/21: Growth Shares](#)

Chapter 13: Share Schemes of the Tax and Duty Manual, which deals with Growth Shares, has been updated. The update confirms that the deadline for filing the 2020 return is 31 August 2021. The updated Chapter also reflects the guidance included in the other share schemes manuals regarding the valuation of shares.



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