

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.

[Return to workplaces from 20 September 2021](#)

On 31 August 2021 the Government set out new public health measures which will remove many of the Covid-19 restrictions currently in place and which will be implemented throughout September and October 2021. From 20 September 2021, the government guidance states that *'attendance at work for specific business requirements may commence on a phased and staggered basis'*. The guidance also states that *'employers should develop or finalise their long-term blended working and return to work policy and plans having regard to their operational requirements in line with the public health advice'* and has promised that the Return to Work Safely Protocol, most recently updated in May 2021, will be further updated to support this transition back to the workplace in advance of 20 September 2021. We await publication of same.

[Report on the submissions received from the Consultation on Right to Request Remote Working](#)

The Tánaiste and Minister for Enterprise, Trade and Employment, Leo Varadkar TD, published views from members of the public and stakeholder groups on the right to request remote work on 20 August 2021. A total of 175 submissions were received, most of which came from individual workers. The report summarises the key points of the views received. The questions asked covered topics such as: timeframes for replying to requests to work remotely; the length of service, if any, an employee should have before being entitled to work remotely; health and safety and equipment required for remote working; reasonable grounds of refusal of a request to work remotely;

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and how to manage changes in any arrangement agreed between workers and employers. The Tánaiste has stated that the “...the intention is to introduce a mechanism for employees to request remote working that is fair to workers but does not place an undue burden on employers. This new legislation will be a priority in the new Dáil term. We will also continue to provide up to date advice, guidance and information on all aspects of remote working for workers and employers”.

[Gender Pay Gap Information Act 2021 has been Signed into Law](#)

The [Gender Pay Gap Information Act 2021](#) (the “Act”) was signed into law on 13 July 2021. The Act, once commenced by ministerial order, will amend the Employment Equality Act 1998, requiring the Minister for Children, Equality, Disability, Integration and Youth (the “Minister”) to make regulations requiring private and public sector employers (subject to employment thresholds) to report and publish information relating to their gender pay gap, and, where there is a gap, to explain why there is a gap and what measures are being taken to reduce it. Minister O’Gorman stated “Reporting of the gender pay gap by employers will provide accountability and transparency, helping to ensure that employers address the gender pay disparity between men and women.” For a detailed analysis of the Act, please see our recent briefing ([here](#)).

[Employee wins Labour Court appeal over ‘cloak’ of redundancy dismissal](#)

In *Tanneron Limited v Gerard Conolin* (UDD2151), the Complainant was employed as a principal consultant in the pharmaceutical industry. He was made redundant by the Respondent and claimed he was unfairly dismissed before the Workplace Relations Commission (the “WRC”). The WRC found in favour of the Respondent, that a genuine redundancy had taken place on the basis that the Respondent’s submissions that the redundancy arose due to heavy financial losses accrued in recent years. The Complainant submitted that the criteria of the redundancy were designed to disadvantage him and that no alternatives to redundancy were considered. The Labour Court overturned the WRC’s decision and found that the Complainant had been unfairly dismissed by a redundancy that failed to meet the ‘impersonal test’. The Labour Court highlighted that redundancy cannot be used as a “cloak to weed out underperformers”. While the Labour Court dismissed some of the Complainant’s arguments around payments made to senior managers (which

would suggest the Respondent was not in dire financial straits), the Labour Court noted that it had to be “*extra vigilant*” to ensure that an employer could not use a redundancy situation to deal with a perceived performance issue while circumventing the Unfair Dismissals Acts. The Respondent, in the view of the Labour Court, was more than aware of the likely outcome of the redundancy exercise and the “*more credible explanation is that the Complainant was identified as a poor performer and the criteria were chosen, in part at least, with a view to ceasing his employment*”. Taking account of the fact that money was paid to the Complainant at the time of this purported redundancy and that the Complainant did mitigate his losses, the Labour Court awarded the Complainant €23,000 in compensation, in addition to what was paid to him when he was dismissed.

[Revenue eBrief No. 163/21: Share Schemes filing obligation \(Form ESA\) - extension of filing deadline](#)

The filing deadline for companies filing the new Employer’s Share Awards (ESA) electronic return of information has been extended to 14 September 2021. An electronic Employer’s Share Awards return (Form ESA) must be filed if during the tax year 2020 employees were awarded certain types of share-based remuneration, such as restricted shares, convertible shares, forfeitable shares, discounted shares, Restricted Stock Units (RSUs) or any other award with cash-equivalent of shares.

[The Pensions Authority publishes its Annual Report and Accounts 2020](#)

On Wednesday 25 August 2021, the Pensions Authority (the “**Authority**”) published its Annual Report and Accounts which sets out in detail the activities of the organisation in 2020:

- The Authority concluded 6 prosecutions, opened 35 new investigations into various alleged breaches of the Pensions Act, and finalised and closed 42 investigations during the year. On-site inspections were carried out at two PRSA providers and 66 engagement meetings were held with regulated entities. Five desk-based audits were finalised in 2020 which related to assessing compliance with disclosure regulations for occupational pension schemes and PRSAs.
- Six funding proposals from DB schemes were approved, and 491 of 566 DB schemes subject to the funding standard were in compliance with the standard as at 31 December 2020. All but 12 of the remaining 75 schemes have funding proposals in place, or are in the process of submitting funding proposals.

- The report outlines that: (i) nine FOI requests were completed in 2020; (ii) 11,595 general pension and data processing queries were received and dealt with; (iii) and 250,000 data submissions from regulated entities were processed through the Authority's Pension Data Register.
- Overall survey findings indicated that there is a high level of awareness of IORP II among trustees, but there has been a reluctance to do any substantive work to meet the requirements until after transposition.

In a statement accompanying the report, Pensions Regulator, Brendan Kennedy, states that, in future, the supervision by the Authority will be more intrusive, more qualitative and more demanding as a result of the new IORP II directive. Mr Kennedy said "few if any" occupational pension schemes were compliant with the directive when it came into force in Ireland last April and for the great majority of schemes, compliance will involve very significant changes. According to Mr Kennedy, the immediate priority for all pension schemes and for the Authority is putting in place the additional structures and processes required by the transposition of IORP II. For many schemes, this will not be practical or cost efficient, and the sponsoring employer and the trustees will be considering future provision through PRSAs or via a master trust.



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