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Relate
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Work and COVID-19

In this issue

As the COVID-19 restrictions are gradually lifted and many businesses are allowed to reopen, a number of new issues and concerns will arise for both employers and employees.

Employers have long had obligations in relation to providing a safe working environment for their employees. Employees too have responsibilities to one another and to other people present in the workplace. However, those obligations have become significantly more stringent in light of the requirement to maintain social distancing as far as possible.

Detailed guidance has been published that sets out the responsibilities of all involved in providing a workplace which is as safe as possible. In this issue, we discuss the guidance for people who have to return to their workplace.

However, many employees have been working remotely for a number of weeks and may continue to do so. In this issue, we examine the obligations of employers and employees in relation to working from home. We also look at the rights of employees to insist on remote working and the entitlements of employees to annual leave.

It is likely that some employees will be made redundant as a result of the impact of COVID-19 on businesses. This issue covers the statutory rights of people who are made redundant and how certain redundancy rights have been suspended under the COVID-19 emergency legislation.

The information in Relate was correct at the time of publication. Please visit the COVID-19 section of citizensinformation.ie for regular updates.

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Health and safety in work

Health and safety laws apply to all employers and employees in their workplaces. This includes fixed-term employees and temporary employees.

The main legislation covering the health and safety of people in the workplace is the Safety, Health and Welfare at Work Act 2005 (as amended). It sets out the rights and obligations of both employers and employees. It also provides for substantial fines and penalties for breaches of the health and safety legislation. Almost all of the specific health and safety laws that apply to all employment are set out in the Safety, Health and Welfare at Work (General Application) Regulations 2007-2020.

Employers' duties

Employers have a duty to ensure their employees' safety, health and welfare at work, as far as reasonably practicable. To prevent workplace injuries and ill-health, employers must take certain actions. These include:

- Organising work activities in a way that best protects the health and safety of employees
- Preventing any improper conduct or behaviour that is likely to put the safety, health and welfare of employees at risk
- Providing and maintaining a safe workplace which uses safe plant and equipment
- Providing instruction and training to employees on health and safety
- Providing protective clothing and equipment to employees, where necessary
- Appointing a competent person as the organisation's safety officer
- Preparing adequate plans to deal with actual or potential health and safety issues

Any measures taken should not involve a financial cost to employees.

Employees' duties

The duties of employees while at work include:

- Taking reasonable care to protect the health and safety of themselves and of other people in the workplace
- Not engaging in improper behaviour that will endanger themselves or others
- Attending training and co-operating with the health and safety directions of the employer
- Reporting any defects in the place of work or in equipment which might be a danger to health and safety
- Informing the employer of any disease or impairment which is likely to pose a risk to others

Risk assessment and safety statement

The law requires every employer to carry out a risk assessment for the workplace. This risk assessment should:

- Identify any hazards in the workplace
- Assess the risks arising from such hazards
- Identify the steps to be taken to deal with any risks

The employer must also prepare a safety statement, which is based on the risk assessment. The statement should include the details of people in the workforce who are responsible for safety issues. Employees should be able to access this statement and employers should review it regularly.

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Which employees are now required to physically attend the workplace

Following Ireland's entry into Phase 1 of the lifting of restrictions on 18 May 2020, certain workers were allowed to return to the workplace.

Construction workers, gardeners and people who work outdoors were able to return to work, along with retail workers who work in:

- Hardware shops
- Builders' merchants
- Garden centres
- Farmers' markets
- Opticians, optometrists and shops that provide hearing tests and hearing aids
- Car and motorcycle dealers, and related services (repairs and parts)
- Bicycle shops and repairs
- Office suppliers, phone and IT suppliers, and repair and maintenance services for homes (not including homeware stores)

From 18 May, teachers, lecturers and educational administrators were allowed access to buildings for essential administration, organisation and distribution of remote learning services.

From 8 June 2020, workplaces and marts which can maintain social distancing were allowed to reopen. In addition, all shops were permitted to reopen, with shopping centres permitted to reopen from 15 June, with staggered opening hours.

From 29 June 2020, pubs that serve food, restaurants, cafes and hospitality services can reopen. Beauty, grooming and wellbeing services (such as acupuncturists), as well as all remaining retail services will also be allowed to reopen from 29 June 2020.

However, the general rule remains that those people who can work from home should continue to be permitted to do so.

People using public transport, including for travelling to work are requested to wear face coverings.

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Workplace health and safety and COVID-19

In addition to the duties set out above, the risk of transmission of COVID-19 means employers and employees now have additional health and safety requirements to comply with when reopening workplaces. These are contained in guidance notes prepared by various State agencies, which are outlined below.

Return to Work Safely Protocol

The Government has published a Return to Work Safely Protocol. It sets out the COVID-19 specific requirements which apply before and after the workplace is reopened. The protocol is described as a living document and so it is subject to change.

Before reopening a workplace, employers must:

- Appoint at least one lead worker representative to make sure safety measures are in place and being followed.
- Update business and safety plans, including the business COVID-19 Response Plan (pdf), the occupational health and safety risk assessment and the safety statement. This should also include how to deal with a suspected case of COVID-19.
- Appoint a dedicated manager to be in charge of dealing with suspected cases of COVID-19.
- Develop, consult on, communicate and implement workplace changes or policies.

- Send out a Return to Work form to employees at least three days before their return to work. The form will ask employees to confirm they have not had symptoms of COVID-19 in the past 14 days, have not been diagnosed with or suspected of COVID-19 in the past 14 days, have not been in close contact with someone confirmed or suspected of COVID-19 in the past 14 days, and are not self-isolating or cocooning. A template for the Return to Work form (pdf) is available from the Health and Safety Authority (HSA) website.
- Provide COVID-19 induction training for all staff.
- Put in place temperature testing, in line with public health advice.

Once the workplace reopens, employers must:

- Have appropriate hygiene facilities in place, display posters of good hand washing practices and have proper ventilation.
- Provide paper tissues and bins or bags for their disposal.
- Empty bins regularly and provide advice on good respiratory practice.
- Provide for physical distancing across all work activities of at least 2 metres as much as possible. This may involve adapting sign-in and sign-out systems, staggering break-times, changing arrangements for meetings and canteen facilities, and introducing policies on no-handshaking and no sharing of cups or pens.
- Install physical barriers, such as clear plastic sneeze-guards between workers where 2-metre distancing is not possible.
- Keep a log of any group work, to help with contact tracing.
- Have regular cleaning of the workplace and provide hand sanitisers.
- Provide personal protective equipment (PPE) and protective clothing where there is an identified COVID-19 exposure risk, in line with public health advice.
- Make sure employees look after their mental health and well-being, and are aware of any employee assistance programmes.
- If an employee has symptoms of the virus during work hours, the employer must have a designated isolation area and must follow a specific procedure.

The HSA has a number of COVID-19 checklists and templates to help employers, business owners and managers to get their businesses up and running again. They also inform employees about what they need to do to help prevent the spread of COVID-19 in the workplace.

On their return to work, employees should:

- Follow the public health advice and guidance.
- Work together with their employer and follow any specific procedures and instructions to keep safe.
- Adopt good hygiene practices, such as frequent hand washing, respiratory etiquette and physical distancing.
- Get professional healthcare advice if they are unwell.
- Not go to work if they have any symptoms of COVID-19.
- Let their employer know if they believe it is not safe for them to be at work, or if they are concerned that they could be putting a member of their household at risk.

COVID-19 Workplace Protection and Improvement Guide

The National Standards Authority of Ireland has published a detailed guide, the COVID-19 Workplace Protection and Improvement Guide (pdf), to help businesses to implement the Return to Work Safely Protocol. Like the protocol, it is a living document which may change if the underlying public health guidance changes.

Supports available to businesses adapting the workplace

Businesses whose trading has been severely disrupted by the COVID-19 pandemic can apply to their local authority for funding from the Government's €250m Restart Grant scheme. The aim of the scheme is to help businesses with a turnover of less than €5m and employing 50 people or less, which were closed or impacted by at least a 25% projected reduction in turnover, to the end of June 2020. A grant may be available to meet the costs associated with the reopening of their workplaces and re-hiring staff.

The scheme will allow a grant that is equivalent to the rates bill of the business in 2019, subject to a minimum of €2,000 and a maximum of €10,000. Businesses reopening under the first two phases of the official roadmap and businesses that have remained open throughout the pandemic restrictions are set to be prioritised.

Inspections by the Health and Safety Authority

The HSA has many existing powers under the Safety, Health and Welfare at Work Acts. It is also the lead agency in terms of overseeing compliance with the Return to Work Safely Protocol.

HSA inspectors have the power to visit workplaces, inspect any relevant records held and advise on any shortcomings through an inspection report. This report may also set a timeline for employers on follow-ups needed.

Inspectors also have the power to serve an Improvement Notice, which is a legal instruction requiring that certain improvements are carried out within a specific timeframe. Where inspectors believe that there is a serious risk, they may also serve a Prohibition Notice, which is a legal notice directing that the specified work activities stop.

The 2005 Act allows for on-the spot fines of up to €1,000 for certain offences, with some very serious breaches receiving penalties of up to €3m on conviction. Senior officers and management may face personal criminal liability, with a maximum penalty of two years' imprisonment.

Complaints and refusing to return to the workplace

If an employee is concerned about contracting COVID-19 (or any other health and safety issue) in their workplace, they should raise these concerns with their manager and, if necessary, make a formal complaint. They can also make a complaint to the HSA, if they feel that their workplace is not a safe environment or that the requirements of the protocol have not been met.

If an employee is absent due to a fear of contracting the virus, an employer must consider the risks and consider whether the employee is a vulnerable employee. Where there is no increased risk for the employee, the employer can request them to attend work.

If an at-risk or vulnerable worker cannot work from home, employers must put in place additional distancing measures, over and above the general measures in the protocol, so that a physical distance of 2 metres can be better maintained.

An employee who refuses to go to their workplace because they are dissatisfied with the response of their employer could potentially be demoted, suspended or dismissed. Before an employer does this, an employee is entitled to go through a disciplinary process. What exactly this disciplinary process will involve depends on how long an employee has been in the job and the policies their employer has in place.

If an employee is dismissed, they may choose to take an unfair dismissal case to the Workplace Relations Commission (WRC). An employee may also be able to take a claim of constructive dismissal on the basis that their employer refused to provide a safe environment for them to work in. In this situation, an employee would need to demonstrate that they had fully exhausted all avenues of engagement and relevant grievance procedures with the employer before taking such action.

If an employer refuses to put the necessary health and safety measures in place, they leave themselves at risk of personal injury claims from employees who become ill in the workplace.

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What if someone shows symptoms in the workplace?

If someone becomes unwell in the workplace with symptoms such as cough, fever or difficulty breathing, the COVID-19 manager or response team should:

- Isolate the employee by accompanying them to a designated isolation area, via an isolation route.
- Keep at least 2 metres away from the person (and ensure others do the same).
- Provide the unwell person with a mask, if available, to be worn if they are in a room with other people or while leaving the premises.
- Assess whether the unwell person can be directed to go home immediately, where they can call their GP and continue self-isolation. Where that is not possible, the unwell person should remain in the isolation area and call their GP, outlining their current symptoms.
- Advise the unwell person to:

- Avoid touching people, surfaces and objects.
- Cover their mouth and nose with disposable tissues provided when they cough or sneeze, and dispose of them in the waste bag provided.

Employers should not receive any test results from the HSE directly. The results should be provided to the person who has been tested, who should then inform their employer of the result.

If a case of COVID-19 is confirmed

If a confirmed case of COVID-19 is identified in your workplace, staff who have had close contact should be asked to stay at home for 14 days from the last time they had contact with the confirmed case. They should follow the restricted movements guidance on the HSE website.

Employees who are sick with coronavirus may be entitled to sick pay from their employer. This depends on the contract of employment. An employer does not have to provide sick pay to an employee who cannot come to work because they have COVID-19, unless it is part of their contract of employment.

Employees who are not paid by their employer should apply for COVID-19 enhanced Illness Benefit from the Department of Employment Affairs and Social Protection (DEASP).

Informing staff of a suspected or confirmed COVID-19 case

The data protection requirements in the General Data Protection Regulation (GDPR) and the Data Protection Acts continue to apply. When an employer becomes aware that an employee may have COVID-19, they have responsibilities to both the unwell person and to other staff members who may have been infected.

As a result, an employer is allowed to share information, provided the information shared is proportionate and maintains the privacy of the affected person as far as possible.

The general guidance issued by the Data Protection Commission (DPC) states that an employer would be justified in informing staff that there has been a case, or suspected case, of COVID-19 in the organisation. However, the DPC is clear that the employer should not generally name the affected person to other employees. However, it might be necessary and proportionate to disclose the name of an employee who had contracted COVID-19 if they have worked in close proximity to other employees.

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COVID-19 Pandemic Unemployment Payment and returning to work

Employees who were claiming the COVID-19 Pandemic Unemployment Payment (PUP) from the DEASP must remember to close their claim when they return to work. It should be closed on the actual date that they start back at work. The easiest way to close a claim is online at MyWelfare.ie.

Two levels of payment will be introduced from 29 June:

- For people whose previous employment earnings were €200 a week or higher, the PUP rate will remain at €350 per week
- For people whose previous employment earnings were up to €199.99 per week, the PUP rate will be €203 a week (which is the basic rate of Jobseeker's Benefit)

No person on the lower rate of payment will receive less on PUP than they were previously paid by their employer.

Amounts received as Pandemic Unemployment Payments are included in the calculation of an employee's total annual income and may affect their total income tax liability for the year.

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Temporary Wage Subsidy Scheme

The Government's Temporary Wage Subsidy Scheme (TWSS), which refunds employers who are adversely affected by the COVID-19 pandemic, who continue to pay their employees, is likely to continue. The scheme is scheduled to continue at least until the end of August.

Since 4 May 2020, the subsidy payment has moved to a system that is based on the previous weekly average take-home pay for each employee. The previous weekly average take-home pay is based on an employee's pay in January and February 2020.

Income thresholds	Level of subsidy payment
Previous average take-home pay below €412 a week	85% of the weekly average take-home pay
Previous average take-home pay between €412 and €500 a week	Flat-rate subsidy of €350 per week*
Previous average take-home pay between €500 and €586 a week	70% of the weekly average take-home pay, up to a maximum of €410*

Previous average take-home pay between €586 and €960 a week	• Flat rate subsidy of €350 a week, where the employer pays a top-up payment up to 60% of the employee's previous weekly take-home pay • Flat rate subsidy of €205 a week, where the employer pays a top-up payment between 60% and 80% of the employee's previous weekly take-home pay • No subsidy is payable, where the employer pays a top-up payment above 80% of the employee's previous weekly take-home pay*
Previous average take-home pay above €960 a week	Employees whose average take-home pay has fallen below €960 can now avail of the scheme* No subsidy applies for employees whose current pay is more than €960 (regardless of the level of any reduction in pay)

* Where an employee's previous average weekly pay was above €412, and the total amount the employee receives due to the subsidy and the amount being paid by the employer would be above their previous average weekly pay, the subsidy provided under the scheme will be reduced accordingly.

Issues surrounding the entitlements of employers to claim the subsidy for employees who were on maternity and adoptive leave on 29 February were resolved by the Department of Finance and Revenue. Employers are now entitled to the subsidy for those employees and payments will be backdated to 26 March 2020. The necessary legislative basis for this change will be contained in the Finance Act later this year. This also applies to workers who were on the following types of leave from employment on 29 February 2020:

- Paternity leave
- Parental leave
- Related unpaid leave
- Or were in receipt of Health and Safety Benefit, Parent's Benefit or Illness Benefit for the month of February

Like the Pandemic Unemployment Payment, income tax, USC and PRSI are not deducted from the TWSS subsidy in an employee's pay. However, TWSS payments are included in the calculation of a worker's total annual income and this may affect their total income tax liability for the year.

Apprentices who were not on the payroll in January/February 2020 because they were on a SOLAS education and training programme are now eligible for the TWSS.

The changes apply from 26 March 2020, the date of return to employment or the date the employer was registered for the scheme, whichever is the latest.

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Remote working

Government guidance remains that anyone who can work from home should continue to do so. Remote working may continue or now become an on-going option for some employees.

Some employers may have well-established policies on remote working which may need very little tweaking due to the issues caused by COVID-19. However, for many employers and employees, remote working has been a very recent development. In all cases, employers and employees must ensure that all relevant requirements and duties are complied with.

Employers' duties

An employer's duty to ensure the safety, health and welfare at work of all their employees extends to those working remotely. An employer should check with a remote employee to ensure:

- They are aware of any specific risks when working from home.
- The work activity and the temporary workspace are suitable.
- They have suitable equipment to do their work. For example, employers should make sure that the required applications and systems are installed on an employee's computer.
- There is a pre-arranged method of contact.

Equipment and a workspace at home

If an employer provides equipment, it must be in good condition and suitable for the activity. If employees already have suitable equipment at home, it can be used temporarily.

Employers must check that the temporary home workspace is suitable for the work. This includes checking the workspace has safe access; essential equipment is available; the workspace space is big enough and free of clutter; lighting, ventilation and heat are adequate; and electrical sockets, plugs and cords are in good condition.

If the workspace is permanent, all the normal health and safety obligations of an employer should apply, although a little leeway may be given to the employer as its statutory obligation applies 'so far as is reasonably practicable'. When the workspace is temporary, a little more leeway should be given.

If the workspace is not suitable, the employer runs the risk of being liable for any accidents or injuries at that workspace. This is particularly the case if they force an employee to work from a workplace which is unsuitable or if their role is inherently risky.

In those cases, an employee could insist on being given a suitable workplace. This might mean that an employee is brought back into the main workplace or an alternative workplace is found. On the other hand, if no suitable accommodation could be found for the employee, there may be a risk of redeployment or redundancy. In limited cases, where there is a strong contractual right to work from home, it could be argued that there would be an onus on the employer to make alterations or improvements to an employee's home.

Employers also need to communicate regularly with employees while they are working from home and ensure that employees are taking adequate breaks.

Employee responsibilities

Employees working from home have a responsibility to take reasonable care of themselves and other people who may be affected by the work they are doing. Employees must:

- Cooperate with their employer and follow their instructions.
- Protect themselves and others from harm during the course of their work. For example, an employee must take care of their equipment and report any problems to their employer immediately.
- Report injuries to the employer immediately.
- Follow any procedures put in place by the employer, such as getting in contact regularly.

Data protection and remote working

Remote working also introduces new data protection issues as the personal data of other people is being dealt with in new environments, using different equipment and software. Guidance on managing these data protection issues has been published by the Data Protection Commission (DPC). To reduce the risks of a data breach occurring, both employers and employees should ensure:

- Any device used has the necessary updates, such as operating systems and software/antivirus updates
- Any device used is used in a safe location (for example, where the employee can keep sight of it and minimise who else can view the screen, particularly if working with sensitive personal data)
- Devices are locked if they are left unattended and stored carefully when not in use
- Effective access controls (such as strong passwords, and where available, encryption) are used, to restrict access to the device and to reduce the risk if a device is stolen or misplaced
- Work email accounts rather than personal ones are used for work-related emails involving personal data (if personal email has to be used, any contents and

attachments should be encrypted and personal or confidential data should be avoided in subject lines)
- Where possible, only the organisation's trusted networks or cloud services are used
- Steps are taken to ensure the security and confidentiality of paper records (such as keeping them locked in a filing cabinet or drawer when not in use, and not leaving them where they could be stolen or read by others)

Tax relief for e-working

Employees working from home may be eligible for tax relief on expenses such as light, heat, phone and Internet usage.

An employer can pay an allowance towards these expenses of up to €3.20 a day without the employee paying any tax, PRSI or USC on it. If an employer pays more than €3.20 a day to cover expenses, an employee pays tax, PRSI and USC as normal on the amount above €3.20.

If an employer does not pay an allowance, an employee can make a claim for tax relief at the end of the year. Employees will get money back from taxes paid.

The refund of tax is based on:

- How many days the employee worked from home
- The cost of the expenses
- Revenue's agreed rate for calculating the cost of running a home office

Revenue's rate for the cost of running a home office allows an employee to claim 10% of the total amount of allowable utility bills against their taxes. This is only available for the days that an employee works from home. It does not include times where an employee has brought work home to do outside of normal working hours.

If an employer pays an allowance towards expenses, the amount paid is deducted from the amount that can be claimed back from Revenue.

Can an employee who has been working remotely insist on remote working when the current public health requirements come to an end?

The rights of an employee are governed primarily by their contract of employment and legislation. Outside of the current, temporary COVID-19 regulations, there is no statutory obligation on employers to facilitate remote working.

Some employees have an express entitlement to work from home for a specified number of days or hours a week. Those entitlements will remain.

Most contracts of employment contain a requirement that the employee must attend at a designated place of work. It is also common for employers to have a right to change the designated place of work. In those circumstances, employers can insist on those employees returning to the workplace.

However, many employers may be amenable to continuing remote working in some form. This should be discussed either individually between an employer and an employee or preferably collectively between worker representatives and an employer.

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Annual leave

When working remotely, employees continue to build up their annual leave entitlement. However, many may not want to use their annual leave in circumstances where their travel options are severely limited. This potentially presents an issue for employers later in the year, as many employees may wish to take their annual leave at a time when the employer is getting busier.

As a result, many employers may ask their staff to take a certain proportion of their annual leave before a specified date. Under the Organisation of Working Time Act 1997, an employer can require employees to take annual leave by a specific date, provided they consult with the employee or their trade union at least one month before the annual leave is due to begin. This one-month period can be waived by employees or their trade union.

If an employer requires staff to take annual leave by a certain date, a sufficient amount of leave should remain available later in the year for employees to meet family responsibilities and allow for opportunities for rest and recreation.

Employers are entitled to refuse to allow employees to cancel annual leave which has already been booked.

Employers can allow employees to carry over a greater amount of annual leave to the next annual leave year. They can also allow any annual leave which is carried over to be taken outside of the normal time period.

Employees do not build up annual leave during a period of lay-off but are entitled to take any annual leave that was built up before they were laid off.

Other leave

The rights of employees to other statutory leave such as maternity leave, paternity leave, adoptive leave, parental leave and parent's leave remain unaffected by COVID-19 restrictions.

If statutory leave is not available, some employees may have difficulties returning to work due to childcare or other care responsibilities. The Government has asked

employers to be as flexible as possible in allowing staff time off to look after their children or other members of their families. This could include:

- Offering paid compassionate leave
- Altering shifts, so that an employee can better co-ordinate caring
- Allowing an employee to rearrange holidays
- Allowing an employee to take paid time off that can be worked back at a later time

All of these options remain at the employer's discretion.

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Redundancy

Work may not be available for some employees when businesses reopen. Some employees may be requested to reduce either their working hours or salary. Where this is not feasible or cannot be agreed, employees are likely to be made redundant.

The Redundancy Payments Acts 1967-2014 provide a minimum entitlement to a redundancy payment for employees who have a set period of service with the employer. Employers are free to make more favourable payments than those provided for in the legislation and may make payments to people who do not have a statutory entitlement.

Qualifying for statutory redundancy

Not all employees are entitled to a statutory redundancy payment. To be eligible for a redundancy payment, an employee must meet the following requirements:

- Be aged 16 or over
- Be in employment that is insurable under the Social Welfare Acts
- Have worked continuously for the employer for at least 104 weeks since the age of 16
- Have been made redundant

Employees must be in employment that is insurable under the Social Welfare Acts. Full-time employees under the age of 66 must be paying Class A PRSI. (This insurability requirement does not apply to part-time workers.)

Continuous employment includes any period of maternity leave, paternity leave, adoptive leave, parental leave, parent's leave, carer's leave or time off due to illness, agreed absence, holidays or lay-off.

Collective redundancies and employer engagement

Depending on the number of employees and the number of proposed redundancies, an employer may be required to engage with worker representatives or trade unions before implementing redundancies. These are known as collective redundancy situations. Collective redundancies arise where, during any period of 30 consecutive days, at least:

- 5 employees are being made redundant, where 21-49 people are employed
- 10 employees are being made redundant, where 50-99 people are employed
- 10% of the employees are being made redundant, where 100-299 people are employed
- 30 employees are being made redundant, where 300 or more people are employed

Consultations must take place at the earliest opportunity and at least 30 days before the notice of redundancy is given. The aim of the consultation is to consider whether there are any alternatives to the redundancies.
An employer must provide the following information in writing to employee representatives:

- The reasons for the redundancy
- The number and descriptions of the employees affected
- The number and descriptions of employees normally employed
- The period in which the redundancies will happen
- The criteria for selection of employees for redundancy
- The method of calculating any redundancy payment

The employer must also inform the Minister for Employment Affairs and Social Protection in writing of the proposed redundancies, at least 30 days before the first redundancy will take place.

Redundancy selection

When selecting a particular employee for redundancy, an employer should apply selection criteria that are reasonable and should apply them in a fair manner. If an employee feels they were unfairly selected for redundancy or consider that a genuine redundancy situation did not exist, they are entitled to bring a claim for unfair dismissal to the WRC.

Examples of these situations might include where the custom and practice in the workplace has been last in, first out, and an employee's selection did not follow this procedure. Another example is where a contract of employment sets out criteria for selection, which were not followed.

Many employers offer enhanced voluntary redundancy packages to reduce the numbers to be selected for compulsory redundancy.

Alternative work

As with any dismissal, an employer must act reasonably when dismissing an employee in a redundancy situation. This means that an employer must consult with

an employee before a decision is made. In addition, an employer should consider all options, including possible alternatives to redundancy.

If an employer makes a reasonable offer of alternative work, and the employee refuses it, the employee may lose their entitlement to a redundancy payment. Generally, alternatives which involve a loss of status or worsening of the terms and conditions of the employment would not be considered reasonable. Similarly, an employee may be justified in refusing an offer that involves them travelling an unreasonable distance to work.

An employee may take up an alternative on trial for up to four weeks. If the alternative involves a reduction of 50% or more in hours or pay, working under the new arrangements for up to 52 weeks will not count as an acceptance.

An employee will not be entitled to claim redundancy if they:

- Accept a new contract or re-engagement with immediate effect and the terms are not different from those of the previous contract
- Accept an offer in writing from their employer for a new and different contract which will start within four weeks of their previous contract ending
- Refuse either of the offers above unreasonably

A justifiable refusal of an offer of alternative work, followed by dismissal, may entitle an employee to look for statutory redundancy or make a claim for unfair dismissal.

Notice from the employer

An employee is entitled to a minimum of two weeks' written notice of redundancy. This notice period increases depending on the period of service.

Period of service	Notice required
Between 2 and 5 years	2 weeks
Between 5 and 10 years	4 weeks
Between 10 and 15 years	6 weeks
Over 15 years	8 weeks

People who have been laid off are still entitled to the full notice period and the rights attached to that period, such as the salary they would be receiving over the notice period.

If an employee is made redundant and is not required to work out their notice, they are entitled to payment in lieu of notice (which is the normal pay for that notice period if they were working). The payment in lieu of notice for people on short-time work who are then made redundant is based on the hours of work in their contract of employment, not on the short-time hours of work.

An employee who is being made redundant is entitled to reasonable paid time off work in order to look for a new job.

Statutory redundancy payments

The statutory redundancy payment is a lump-sum payment based on the pay of an employee. All eligible employees are entitled to:

- Two weeks' pay for every year of service
- One additional week's pay

The amount of statutory redundancy is subject to a maximum earnings limit of €600 per week (€31,200 per year).

Pay refers to an employee's *gross pay.* This is the normal weekly pay including average regular overtime and benefits-in-kind, but before tax and PRSI deductions.

The statutory redundancy payment is tax-free.

Reckonable and non-reckonable service

All redundancies take account of absences from work over the last three years of service. Any absences outside of this three-year period, which ends on the date of termination of employment, are disregarded. When calculating the actual length of service for redundancy payment purposes, the following are regarded as reckonable service:

- The period an employee was actually in work
- Any absence from work due to holidays
- Any absence from work due to illness (see below for non-reckonable periods of illness)
- Any period of absence from work by agreement with the employer
- Any period of basic and additional maternity leave that is allowed under legislation
- Any period of basic adoptive, paternity, parental, parent's or carer's leave
- Any period of lock-out from employment
- Any period where the continuity of employment is preserved under the Unfair Dismissals Acts

However, in making the calculation of the length of service, the following periods over the last three years are not taken into account as service (these are called non-reckonable absences):

- Any period over 52 consecutive weeks where an employee was off work due to an injury at work
- Any period over 26 consecutive weeks where an employee was off work due to illness or injury other than a work-related injury
- Any period on strike
- Any period of lay-off from work

On the date of the termination of employment, an employer should pay the redundancy lump sum due.

Where an employer is insolvent and cannot afford to make the statutory redundancy payment, an employee can make a claim to the state Social Insurance Fund.

Temporary changes to redundancy entitlements due to COVID-19 for people laid-off or on short-time work

The law on claiming redundancy from an employer for people who have been temporarily laid off, or temporarily put on short-time work, has changed during the COVID-19 emergency period.

Normally, if an employee is laid off or put on short-time hours, they can claim redundancy from their employer after four weeks or more, or six weeks in the last 13 weeks. Under the Emergency Measures in the Public Interest (COVID-19) Bill, an employee cannot claim redundancy during the emergency period if they were laid off or put on short-time work as a result of the COVID-19 pandemic. The emergency period set out in legislation has been extended to 10 August.

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Changes to workplace dispute resolution

Most workplace-related disputes between an individual employee and their employer can be referred to the Workplace Relations Commission (WRC). Ordinarily, complaints and disputes referred to the WRC are mainly dealt with by face-to-face mediation and adjudication. Face-to-face mediation and adjudication hearings were postponed from 13 March 2020. COVID-19 restrictions make them very difficult for the near future. As a result, the WRC has set out guidelines for delivering its services (pdf) while those restrictions are in place.

Mediation by phone

The WRC's Mediation Service is offering mediation by phone in suitable cases, including:

- Complaints that have been received since the COVID-19 restrictions were put in place
- Parties whose hearings have been postponed as a result of COVID-19 or other reasons and are awaiting an alternative hearing date
- Parties that previously declined the offer of mediation

Although the mediation service is currently being offered by phone only, the WRC is considering virtual solutions.

Written adjudication procedure

The WRC is currently reviewing existing complaints and identifying those that are suitable for resolution solely by written submissions. In these cases, there will be no hearing where the parties are present, either physically or remotely. The normal requirements of fair procedures will continue to apply.

Suitable complaint types are expected to include:

- Complaints about pay and hours of work
- Complaints about terms and conditions
- Complaints about notice periods
- Complaints which raise issues of a preliminary nature

Resolution solely by written submission cannot take place without the parties' consent. They can object within 42 days of being informed.

Virtual hearings

The WRC is offering virtual hearings - remote, online hearings where each party logs-in to a shared portal - for cases which are deemed suitable and where the parties consent. Initially, the following complaints will be targeted:

- Organisation of Working Time complaints, which include disputes about pay for annual leave, public holidays, breaks and rest periods
- Disputes about pay
- Industrial relations issues

Where someone requires assistance (such as people who need translation services or people who have a disability), this will be facilitated as far as possible.

Face-to-face hearings will be re-introduced in large meeting rooms when it is deemed safe in accordance with public health advice.

The WRC has recently published updated details of changes to WRC protocols for making and dealing with complaints during COVID-19.

The Labour Court

The Labour Court, which hears appeals from decisions of the WRC, began hearing appeals virtually, from 2 June. Hearings in physical rooms will resume once the social distancing requirements are relaxed or when suitable accommodation becomes available.

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Phone Service and the network of Citizens Information Services. It is responsible for the Money Advice and Budgeting Service and provides advocacy services for people with disabilities.

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