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I - PROPOSED LEGISLATION ON THE GENDER PAY GAP

The issue of a gender pay gap has also received increasing attention. Figures released by the Central Statistics Office indicate that women are paid on average 14 per cent less than men. While the Irish gender pay gap is lower than the average for the EU28 (16.7%), the gap has increased since 2011, up from 12.7 per cent¹. There are a number of public policy initiatives launched in recent months. In late August 2017, the government announced a public consultation to inform the development of the package of measures to tackle the gender pay gap. This was followed by a government symposium on the gender pay gap in January 2018 involving trade unions, employer organisations and academics and also coincides with the centenary of womens' voting rights. The government noted that the most frequently suggested actions arising from the public consultation process related to the non-transparency of pay structures in organisations and occupational segregation with women occupying most low-paid jobs. The Labour Party, as an opposition party, introduced a bill on the gender pay reporting in 2017. The Irish Human Rights and Equality Commission (Gender Pay Gap) Bill 2017 aims to require employers with 50 or more employees to publish information on employee pay to identify a gender pay gap. The Irish Human Rights and Equality Commission (IHREC) is the public body for human rights and equality and the Bill extends IHREC's existing powers under equality legislation to require employers to undertake equality reviews. Specifically, the Bill provides that the IHREC can require employers to publish information on the gender gaps in hourly rates of pay and bonuses, on the proportion of male and female employees who are paid bonuses, on the proportion of male and female employees in different pay bands as well as information on the full-time and part-time status of employees. Employers who contravene the provisions of the Bill will be liable to fines.

Due to the nature of the current government standing, whereby the government requires the support of opposition to remain in place, opposition Bills are now common and if generally supported by the government, proceed under a government-proposed Bill. This appears to be the situation with the gender pay gap bill. The Bill has progressed to date through the legislative process with government support but, in January 2018, the government announced it will introduce its own legislation, the Gender Pay Gap (Wage Transparency) Bill 2018. This Bill has not been published yet but will establish a mandatory reporting obligation on companies to report on gender pay differences and therefore it will retain much of spirit and content of the Labour Party Bill. The largest employers organisation, the Irish Business and Employers Confederation (IBEC), has argued that the requirement for pay surveys would place an administrative burden on employers and could unfairly

1 Central Statistics Office (2017) Women and Men in Ireland 2016. Available www.cso.ie

negatively impact a company's reputation but noted that "if implemented appropriately, and in conjunction with other appropriate measures, gender pay gap reporting may yield business benefits and encourage movement in the achievement of gender balance in the workplace"². IBEC and the trade union confederation, the Irish Congress of Trade Unions, are in joint discussions about developing a proposal on the methodology of gender pay gap reporting.

II - PROPOSED LEGISLATION ON MINIMUM WORKING HOURS

Zero hour contracts, also known as or 'on call' or 'on demand' contracts, have been very topical in a number of countries including the UK, Finland and New Zealand in recent years. In Ireland too, there has been considerable attention paid by the media and public policy makers on working hours, particularly on situations where workers have highly variable working hours because they are on contracts with no guaranteed hours or a low number of guaranteed hours. Trade unions have campaigned for 'decent work' and there have been some high profile disputes, most notably in retail, over the issue of minimum working hours. In response, the previous government commissioned a study on zero hours contracts – contracts where there are no guaranteed hours. The study published in 2015 found that the most common type of zero hours work in Ireland are through so-called 'if and when' contracts, where an employer calls individuals on demand and they can legally accept or reject work offered³. A similar related type of contract found was referred to as a 'hybrid if and when' contract, whereby workers are given some guaranteed hours, for example, 5 or 15 hours per week and remaining hours they work are provided on an 'if and when' basis. Both these types of contracts were found to be prevalent in accommodation and food, education and community care⁴. The key issues for people undertaking zero hours work is that their hours can be highly variable from week to week, they have low income security and they face challenges managing family commitments. In addition, they can have difficulties accessing social welfare benefits to augment incomes because the variable nature of their working hours can preclude them from satisfying criteria for benefits. The study also raised serious concerns over the employment status of people on 'if and when' contracts, in particular there is an argument that legally they are not classified as employees and therefore are not entitled to many employment rights such as in regards to dismissals and redundancy⁵. The reason why people on 'if and when' contracts are not

² IBEC (2017) *Measures to Address the Gender Pay Gap in Ireland*. Available www.ibec.ie.

³ M. O'Sullivan, T. Turner, J. McMahon, L. Ryan, J. Lavelle, C. Murphy, M. O'Brien, and P. Gunnigle, (2015) *A Study of the Prevalence of Zero Hours Contracts among Irish Employers and its Impact on Employees*. Dublin: Department of Jobs, Enterprise and Innovation.

⁴ *Idem*

⁵ *Idem*

employees is because there is an absence of mutuality of obligation meaning an employer is not required to offer work and the individual is not required to perform work. Mutuality of obligation is a central tenet of employment contracts in many countries. Trade unions and civil society organisations representing women, young people, migrants and the unemployed have called on the Irish government to address these issues. Three pieces of legislation have been proposed by the government and opposition parties to address non-guaranteed hours. The governments' Employment (Miscellaneous Provisions) Bill 2017 is mostly likely the one that will be passed into law.

The government has stated that the objective of the Bill is to improve the security and predictability of working hours for employees on insecure contracts and with variable hours⁶. The purpose of the Bill is to (i) ensure that employees are better informed about the nature of their employment arrangements, (ii) to prohibit zero hours contracts in most circumstances, (iii) to regulate minimum payments to employees who may be called in to work but not provided with work, (iv) to introduce a provision for "banded hours" contracts and to introduce anti-victimisation measures. In relation to (i) regarding information, currently employees are entitled to a statement of terms and conditions within 2 months of starting a job. The Bill proposes that employers will be required to inform employees of 5 'core' terms within 5 days of starting a job, one of which includes what the employer expects will be the length of the normal working day and the normal working week. In relation to (ii), the Bill provides that if an employer is engaging an employee on a contract 'for a certain number of hours of work', the number of hours concerned shall be greater than zero. However, there are exemptions to provide minimum hours for casual work, short-term relief work and emergencies. In regard to (iii), the Bill provides that if an individual is called to work but not provided with work they would be paid either three times the national minimum wage or three times the minimum hourly rate provided in other statutory orders in specific employments. In regard to (iv), the Bill introduces a right whereby employees, whose contract of employment does not reflect the number of hours habitually worked per week, may be placed on a band of working hours that is a more accurate reflection of hours worked. The Bill proposes four bands: 1-10 hours; 11- 24 hours; 25-34 hours; and 35 hours and over. This means, for example, if an employee is placed in the first band, they will be entitled to at least one hour per week but may be called to work up to ten hours. If, over a reference period of 18 months, an employee believes that their contract does not accurately reflect the hours worked, they can request to be placed on the band of weekly working hours. The employer will have two months to consider the request and to place the employee in the relevant band of hours and the Bill specifies circumstances in which an employer can refuse a request.

While the employers body, IBEC, criticised the Bill for being excessive, others argue it has not gone far enough. The Bill has been criticised by the Irish Human Rights and Equality Commission (IHREC), which argues in essence that the provisions do not provide enough protection to vulnerable workers, that penalties for breaches are not large enough to be dissuasive, and that zero hour contracts may actually continue to exist in practice⁷. Trade unions have also criticised the Bill. The largest trade union, SIPTU, argues that the bands

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- 6 Department of Employment Affairs and Social Protection (2018) 'Minister Doherty brings legislation that will improve the security and predictability of working hours for employees to Second Stage in the Dáil'. Available <http://www.welfare.ie/en/pressoffice/Pages/pr150218.aspx>
 - 7 IHREC (2018) *Observations on the Employment (Miscellaneous Provisions) Bill 2017*. Dublin: IHREC

provided in the Bill are too wide, that the reference period of 18 months is too long, and that the minimum pay to employees who are called into work but not provided work is too low⁸. Some of the Bill's key provisions exclude casual work and, as there is little existing direction in legislation on the definition of casual work, the courts and state dispute resolution bodies will be required to provide direction in this regard. By allowing for casual work, unions argue that precarious work will continue. It also means the Bill does not directly address situations where people are on 'if and when' contracts so they will continue to exist. Alternative Bills which have been proposed by left-leaning opposition parties went further than the government's Bill in addressing 'if and when' contracts and placed greater obligations on employers to provide increased hours to workers. The government is centre-right and therefore it is unsurprising that its Bill does not go as far.

8 SIPTU (2018) 'Changes needed to precarious work Bill', *Liberty*, 17(1): 1-2.