LORRAINE RYAN AND CAROLINE MURPHY
Department of Work and Employment Studies, Kemmy Business School, University of Limerick

LEGISLATIVE DEVELOPMENTS IN THE IRISH EMPLOYMENT LANDSCAPE: IMPROVEMENTS FOR LOWER PAID WORKERS

The last few months of 2022 saw several legislative developments in the Irish employment context. The changing landscape of the world of work brought about by technological advancement, and the legacy of issues raised due to the Covid-19 pandemic, continues to shape policy responses to employment issues and legislative developments. Economic developments, particularly increased inflation and a cost of living and housing crisis have put pressure on political parties and representatives to introduce measures to support those on lower incomes. Low paid workers are particularly impacted by rising cost of living pressures and the inflation rate in Ireland in October 2022 ran at 9.2 per cent - its highest level in thirty-eight years[1]. The impetus to address issues associated with low pay comes in the context of the recent pandemic which saw greater public and political awareness of the critical role many frontline/essential workers play in society including retail workers, care workers and others working in service sector roles, many of whom are low paid. Developments outlined below are among a range of recent measures aimed at improving terms and conditions for workers.

I - THE PAYMENT OF WAGES (TIPS AND GRATUITIES) ACT 2022

In the hospitality and personal services sector, the introduction of new legislation regulating tips and gratuities is an important development. Tips, gratuities, and service charges are normally associated with workers for example in tourism, hairdressing, delivery, and taxi services and can form an important source of additional income for such workers. Up to this point however, this area of workers' pay was completely unregulated. The Payment of Wages (Tips and Gratuities) Act 2022 came into effect on December 1st, 2022. The purpose of this legislation is to provide transparency for customers about tips and service charges and to protect workers to ensure fair and transparent distribution of tips and gratuities. The Act specifically includes platform workers who are not direct employees within its remit. Increases in the use of digital payments, arising from recommendations to use cashless payments where possible during the Covid-19 crisis, has been one of the key drivers of the requirement for better regulation in this area.

The Act provides clarity on the meaning of tips, gratuities and service charges and provides increased obligations on employers in relation to the management of these. Within the Act a « tip or gratuity » is a « voluntary payment made by a customer to, or left for, an employee or group of employees which they intended or assumed that the payment

1 R. Shortt, « Inflation hit a 38 year high in 2022 but economy strong », RTÉ, 2022: https://www.rte.ie/news/ business/2023/0105/1345033-cso-review-of-2022/

would be kept by the employee or shared with other employees[2]. A « service charge » is normally a compulsory charge that is included in addition to the cost of the goods or service for customer. Prior to this Act, mandatory service charges typically formed part of business revenue, meaning they could be used to cover any business costs, including paying staff wages[3]. However, the new Act prohibits employers from using the term « service charge » in relation to mandatory service charges applied to customer's bills unless that charge is treated the same way as tips or gratuities. An electronic tip is also defined within the new legislation and includes payments made by methods other than cash such as debit or credit cards, apps, or smart devices. The key elements of the new legislation are that it places tips and gratuities outside of an employee's contractual wage entitlements (i.e. it is illegal for employers to use tips and gratuities to make up an employee's basic wage) and gives employees a legal entitlement to tips and gratuities paid in electronic form. It also aims to provide greater clarity for customers in relation to how their contributions are distributed among employees. There are a number of obligations on employers as a result of the new legislation to help ensure transparency, fairness and equity in relation to tips, gratuities and service charges.

All employers must consult with employees regarding the development of a policy in relation to how tips and gratuities will be distributed. They must also consult employees before any changes to the way tips and gratuities are distributed can be made. However, ultimately it is at the discretion of the employer to decide on the policy as employee consent is not a requirement of the legislation. An employer must include the policy regarding the distribution of tips or gratuities and service charges in the employee's core terms and conditions of employment, to be provided to employees within 5 days of commencing employment. The legislation requires that businesses must clearly display a notice in relation to their policy on how tips (whether by cash or card), gratuities and service charges are distributed. Such notices must clearly state whether or not tips and gratuities are distributed to staff; the manner in which they are distributed, and the amounts distributed. In relation to service charges, the notice must state whether or not service charges (or any portion of them) are distributed to staff and if so the manner and amounts distributed.

The new Act provides guidelines for employers on issues to consider when deciding how to fairly distribute tips and gratuities including: the seniority or experience of employees in delivering the services; the value of sales or revenue generated; the number of hours worked by employees; whether the worker is on a full-time or part-time contract; the worker's role in service delivery. Complaints in relation to breaches of the Act can be made to the Workplace Relations Commission (WRC), the states' dispute resolution body which has powers to order an employer to reimburse any unlawful tip or gratuity deductions. The WRC also has powers to proactively inspect premises to check for compliance with the policy display requirements of the legislation. An employee must have at least one months' continuous service before they can refer a complaint regarding their core terms of employment. The legislation is set to be reviewed after one year to assess its effectiveness and decide if further measures are needed[4].

---

2 https://www.workplacerelations.ie/en/ ; https://www.workplacerelations.ie/en/what_you_should_know/hours-and-wages/tips-and-gratuities/tips-and-gratuities.html

3 G. Steadman, « A tipping point: New law will ensure tips go to staff », RTÉ, 20 February 2022.

4 https://www.citizensinformation.ie/en/employment/employment-rights-and-conditions/pay-and-employment/ tips-gratuities-service-charges/

II - A STEP FURTHER TOWARD A LIVING WAGE

In other developments that seek to benefit lower paid workers, the Irish government agreed in November 2022 to introduce a new national « living wage » to replace the statutory minimum wage by 2026. In principle, a living wage is « intended to establish an hourly wage rate that should provide employees with sufficient income to achieve an agreed acceptable minimum standard of living »[5]. The announcement is part of a range of recent measures to improve terms and conditions of employment for workers including the recently introduced sick pay legislation[6]. The plan is based on the recommendations of the Low Pay Commission (LPC) which is an independent body of employer and employee representative groups and independent experts. The LPC was established under the National Minimum Wage (Low Pay Commission) Act 2015 and makes recommendations to the Minister for Enterprise, Trade and Employment in relation to issues of low pay through its three yearly reviews.

From 1st January 2023, the national minimum wage stands at €11.30 per hour for all workers aged 20 years and over. This represents the largest single increase in the national minimum wage approved by the Irish cabinet to date - an 80c increase from the €10.50 rate in 2022[7]. The current inflationary pressures and cost of living crisis in Ireland including increased energy costs, transport costs and a housing crisis have added impetus to the push to increase rates of pay, particularly for lower paid workers such as those on the minimum wage[8]. A study for Eurofound suggests the inflationary pressures to raise national minimum wages levels are not unique to Ireland and are common across the European Union[9]. While Irelands' minimum wage is comparatively high in monetary terms in Europe, its purchasing power is relatively weak compared to other European countries. The increase in the national minimum wage was welcomed by trade unions and other representative groups, however, it still falls short of the national *living* wage which is calculated at 60 per cent of the hourly median wage, currently €13.10 per hour in Ireland. In fact, trade unions groups had called for the rate to increase to €12 per hour in a bid to bring the statutory minimum wage closer to the living wage rate. While some employers for example IKEA, Lidl, Aldi and SSE Airtricity voluntarily commit to paying living wage rates of pay, currently legislation only mandates that employers pay the national minimum wage[10]. Some employer groups such as the Irish Small and Medium Enterprises Association (ISME) were opposed to the increase in the minimum wage albeit the LPC recommendations seek to balance the costs for employers providing exemptions for employers unable to pay the rate and other measures to mitigate the effects of increased costs such as adjustments to social insurance contributions[11]. It is proposed that the new living wage will replace the statutory national

---

5 www.livingwage.ie

6 C. Murphy and L. Ryan, « Legislation providing for a new Statutory Sick Pay Scheme in Ireland », *Revue de droit comparé du travail et de la sécurité sociale*, no. 2022-4, p. 194.

7 A. Prendergast, « Record increase to the minimum wage tracks path to living wage », *Industrial Relations News,* no. 33, 15 September 2022.

8 J. Lavelle and T. Dobbins, « Is the living wage an answer to increased costs of living? » , RTÉ Brainstorm, 7 February 2022.

9 C. Aumayr-Pintar and C. Vacas-Soriano, « Minimum wage hikes struggle to offset inflation », Eurofound, 23 January 2023.

10 J. Lavelle and T. Dobbins, « Is the living wage an answer to increased costs of living? », *op. cit*.

11 A. Prendergast, « Ambitions for a new living wage platform set down », *Industrial Relations News,* no. 2A3, 16 June 2022.

minimum wage legislation and will be phased in over a four-year period[12]. It will be set at 60 % of the hourly median wage in any given year[13] a reference value used in Europe and recommended in the EU Directive on adequate minimum wages.

Research by Dobbins and Prowse[14] suggests that the idea of a living wage is more prominent in liberal market economies such as Ireland where collective bargaining coverage and trade unionism are in decline. In this regard, the European Directive on adequate minimum wages is critical in shaping developments in this area, as is a report recently produced by the Labour Employer Economic Forum (LEEF) group. LEEF is a high-level working group set up by the Minister for Enterprise, Trade and Employment to review collective bargaining and the industrial relations landscape in Ireland in March 2021. Its report and recommendations were presented to the Minister in late 2022[15]. Ireland has a complex legal history of wage setting through collective agreements owing to its traditionally voluntarist approach to industrial relations, whereby collective agreements are not normally legally binding[16]. An exception to this is Joint Labour Committees (JLCs). JLCs are bodies established under the Industrial Relations Acts 1946-2012 that comprise employer and worker representatives. They traditionally set sectoral level pay in low paid sectors with low collective bargaining coverage. Pay rates are enforceable through legally binding sectoral Employment Regulation Orders (EROs). The JLC system has met with a series of legal challenges in recent years[17] given the anomalies between a voluntarist system of industrial relations and the legally binding nature of EROs even for employers not engaging with a JLC. Thus, the LEEF committee report acknowledged that the system was not now « functioning optimally » in its capacity as a mechanism for sectoral level pay bargaining.

However, as Prendergast[18] notes, one of the key motivations of the European directive is to increase wages in low paid sectors, which, for Ireland, points to reform of the JLC system. One of the recommendations of the LEEF group is to examine such reform with particular focus on employer participation in sectoral collective bargaining. It is thought that the move toward a statutory living wage may provide an impetus for such employer engagement. Whether by statutory instrument or collective bargaining, the move toward securing a living wage for low paid workers is one that has gained much traction in recent months. Developments in this area of regulation of employment conditions will be followed closely by social partners throughout 2023 and beyond.

12 *Ibid*.

13 Low Pay Commission (2022) Living Wage Report, LPC.

14 T. Dobbins and P. Prowse (ed.), *The Living Wage: Advancing a Global Movement*, Routledge, 2021.

15 Reports of the LEEF High Level Group on Collective Bargaining - DETE (enterprise.gov.ie).

16 J. Wallace, P. Gunnigle, G. McMahon and M. O'Sullivan, *Industrial Relations in Ireland*, Dublin, Gill & Macmillan, 5th edition, 2020.

17 A. Prendergast, « Sectoral bargaining may be key to EU Directive on wages », *Industrial Relations News*, no. 27, 14 July 2022.

18 *Ibid*.