



SICK LEAVE BILL 2021

DRÉACHT

DRAFT

CONTENTS

PART 1

PRELIMINARY AND GENERAL

Section

1. Short title and commencement
2. Definitions
3. Regulations and orders
4. Expenses

PART 2

STATUTORY SICK LEAVE

5. Employee's entitlement to statutory sick leave
6. Variation of number of statutory sick leave days
7. Statutory sick leave payment
8. More favourable provision in contract of employment
9. Non-application of obligations under Act
10. Exemption from obligation to pay statutory sick leave payment

PART 3

EMPLOYMENT RIGHTS

11. Protection of employment rights
12. Protection of employees from penalisation
13. Records
14. Decision under section 41 or 44 of Act of 2015
15. Amendment of Act of 2015

ACTS REFERRED TO

Adoptive Leave Act 1995 (No. 2)
Civil Service Commissioners Act 1956 (No. 45)
Interpretation Act 2005 (No. 23)
Local Government Act 2001 (No. 37)
Maternity Protection Act 1994 (No. 34)
Medical Practitioners Act 2007 (No. 25)
Minimum Notice and Terms of Employment Act 1973 (No. 4)
Protection of Employees (Temporary Agency Work) Act 2012 (No. 13)
Trade Union Act 1941 (No. 22)
Unfair Dismissals Acts 1977 to 2015
Workplace Relations Act 2015 (No. 16)



SICK LEAVE BILL 2021

DRAFT

entitled

An Act to provide that employees shall, subject to certain conditions, be entitled to up to and including 3 statutory sick leave days; to provide that the Minister may, subject to certain conditions, vary the number of statutory sick leave days; to provide that employees shall be entitled to payment, calculated in the prescribed manner, in respect of statutory sick leave; to make provision for the Labour Court, in certain circumstances, to exempt an employer from the provisions of this Act; to provide for the keeping of records; to amend the [Workplace Relations Act 2015](#); and to provide for related matters. 5 10

Be it enacted by the Oireachtas as follows:

PART 1

PRELIMINARY AND GENERAL

Short title and commencement

1. (1) This Act may be cited as the Sick Leave Act 2021. 15
- (2) This Act shall come into operation on such day or days as the Minister may by order or orders appoint either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

Definitions

2. (1) In this Act— 20
- “Act of 2015” means the [Workplace Relations Act 2015](#);
- “contract of employment” means, subject to *subsection (2)*—
- (a) a contract of service or apprenticeship, or
- (b) any other contract whereby an individual agrees with another person, who is carrying on the business of an employment agency (within the meaning of the [Protection of Employees \(Temporary Agency Work\) Act 2012](#)), and is acting in 25

the course of that business, to do or perform personally any work or service for another person (whether or not that other person is a party to the contract),

whether the contract is express or implied and, if express, whether it is oral or in writing;

“employee” means a person who has entered into or works (or, where the employment has ceased, entered into or worked) under a contract of employment and references, in relation to an employer, to an employee, shall be construed as references to an employee employed by that employer; 5

“employer” means, in relation to an employee, the person with whom the employee has entered into or for whom the employee works under (or, where the employment has ceased, entered into or worked under) a contract of employment subject to the qualification that the person who under a contract of employment referred to in *paragraph (b)* of the definition of “contract of employment” is liable to pay the wages of the individual concerned in respect of the work or service concerned shall be deemed to be the individual's employer and includes, where appropriate, the successor of the employer or an associated employer of the employer; 10 15

“Minister” means the Minister for Enterprise, Trade and Employment;

“prescribed” means prescribed by regulations made by the Minister under this Act;

“statutory sick leave” means the entitlement of an employee to be paid statutory sick leave payment by his or her employer in respect of a statutory sick leave day; 20

“statutory sick leave day” has the meaning given to it by *section 5*;

“statutory sick leave payment” has the meaning given to it by *section 7*.

(2) For the purposes of this Act—

(a) a person holding office under, or in the service of, the State (including a member of the Garda Síochána or the Defence Forces) or otherwise as a civil servant, within the meaning of the [Civil Service Commissioners Act 1956](#), shall be deemed to be an employee employed by the State or Government, as the case may be, under a contract of service, and 25

(b) an officer or servant of a local authority for the purposes of the [Local Government Act 2001](#), a harbour authority or the Health Service Executive or a member of staff of an education and training board shall be deemed to be an employee employed by the authority, Executive or board, as the case may be, under a contract of service. 30

(3) For the purposes of this Act, one employer shall be taken to be associated with another employer— 35

(a) if one is a body corporate of which the other (whether directly or indirectly) has control, or

(b) if both are bodies corporate of which a third person (whether directly or indirectly) has control.

Regulations and orders

3. (1) The Minister may by regulations provide for any matter referred to in this Act as prescribed or to be prescribed for the purposes of the regulations.
- (2) Without prejudice to any provision of this Act, a regulation or order under this Act may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient. 5
- (3) Every regulation and order (other than an order under *section 1(2)*) made under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation or order is passed by either such House within the next 21 days on which that House sits after the regulation or order is laid before it, the regulation or order shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder. 10

Expenses

4. The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Public Expenditure and Reform, be paid out of monies provided by the Oireachtas. 15

PART 2

STATUTORY SICK LEAVE

Employee's entitlement to statutory sick leave

5. (1) Subject to this Act, an employee shall, in respect of a day on which he or she would ordinarily work but is incapable of doing so due to illness or injury (in this Act referred to as a "statutory sick leave day"), be entitled to statutory sick leave. 20
- (2) An employee shall be entitled to up to and including 3 statutory sick leave days per annum, or such additional number of statutory sick leave days (if any) as may stand specified from time to time by order of the Minister under *section 6*. 25
- (3) Statutory sick leave days may be consecutive days or non-consecutive days.
- (4) The first day in a year that an employee is incapable of working due to illness or injury shall be the employee's first statutory sick leave day, and any subsequent statutory sick leave days shall be construed accordingly.
- (5) An employee's entitlement to a statutory sick leave day shall not commence before a time when he or she has completed 13 weeks continuous service with his or her employer. 30
- (6) The provisions of the First Schedule to the [Minimum Notice and Terms of Employment Act 1973](#) shall apply for the purposes of ascertaining the period of service of an employee and whether or not that service has been continuous. 35
- (7) Subject to *subsection (8)*, an employee shall be entitled to statutory sick leave payment from his or her employer in accordance with *section 8* in respect of each statutory sick leave day.

- (8) An employee shall, in respect of a statutory sick leave day, provide his or her employer with a medical certificate signed by a registered medical practitioner stating that the employee named in the certificate is unable to work.
- (9) In this section, “registered medical practitioner” has the same meaning as it has in the [Medical Practitioners Act 2007](#).

5

Variation of number of statutory sick leave days

6. (1) Subject to *subsection (2)*, the Minister may, following consultation with the Minister for Social Protection, by order vary the number of statutory sick leave days, to such number of days as he or she considers appropriate having regard to:
- (a) the state of the economy generally, the business environment and national competitiveness; 10
 - (b) the potential impact, including the potential for any disproportionate or other adverse impact, that the making of an order will have on the economy generally, specific sectors of the economy, employers or employees;
 - (c) annual and quarterly data on earnings and labour costs as published by the Central Statistics Office; 15
 - (d) expert opinion, research, national or international reports relating to the matters specified at *paragraphs (a) to (c)* that the Ministers considers relevant;
 - (e) such other matters as the Minister considers relevant.
- (2) (a) The order first made under this section shall not reduce the number of statutory sick leave days. 20
- (b) An order (other than an order to which *paragraph (a)* applies) under this section shall neither—
- (i) reduce the number of statutory sick leave days by such number as would result in the number of statutory sick leave days per annum being less than 3, nor 25
 - (ii) increase by more than 3 the number of statutory sick leave days per annum provided for under this section immediately before the making of the order.
- (c) The Minister shall not make an order—
- (i) to which *paragraph (a)* applies, before the expiration of 12 months after the commencement of *section 5*, or 30
 - (ii) to which *paragraph (b)* applies, before the expiration of 12 months after the commencement of the immediately preceding order under this section.

Statutory sick leave payment

7. (1) An employer shall pay an employee a prescribed daily rate of payment (in this Act referred to as “statutory sick leave payment”) in respect of each statutory sick leave day. 35

- (2) The Minister may make regulations, having regard to the matters specified in *paragraphs (a) to (e) of section 6(1)*, for the purpose of prescribing the daily rate of statutory sick leave payment under *subsection (1)* which may—
- (a) specify the percentage rate of an employee’s pay, up to a maximum daily amount, at which statutory sick leave payment will be paid, 5
 - (b) subject to the maximum daily amount specified in accordance with *paragraph (a)*, specify an allowance in respect of board and lodgings, board only or lodgings only in a case in which such board or lodgings constitute part of the employee’s remuneration calculated at the prescribed rate, or
 - (c) subject to the maximum daily amount specified in accordance with *paragraph (a)*, specify basic pay and any pay in excess of basic pay in respect of shift work, piece work, overtime, unsocial hours worked or hours worked on a Sunday, allowances, emoluments, premium pay (or its equivalent), or any other payment as the Minister considers appropriate, that are to be taken in to account in the calculation of statutory sick leave payment. 10 15

More favourable provision in contract of employment

8. (1) Nothing in this Act shall prevent the inclusion in a contract of employment of a provision that is—
- (a) as favourable to an employee as, or
 - (b) more favourable to an employee than, 20
- an entitlement to statutory sick leave in accordance with this Act, and any such provision shall be in substitution for, and not in addition to, that entitlement.
- (2) Without prejudice to *section 9*, a provision in a contract of employment that is or becomes less favourable to an employee than a similar or corresponding entitlement of the employee under this Act shall be deemed to be so modified so as to be not less 25 favourable.

Non-application of obligations under Act

9. (1) The obligations under this Act shall not apply to an employer who provides his or her employees a sick leave scheme where the terms of the scheme confer, over the course of a reference period set out in the scheme, benefits that are, as a whole, more 30 favourable to the employee than statutory sick leave.
- (2) In determining, for the purposes of *subsection (1)*, whether a sick leave scheme confers benefits that are, as a whole, more favourable than statutory sick leave, the following matters shall be taken into consideration:
- (a) the period of service of an employee that is required before sick leave is payable; 35
 - (b) the number of days that an employee is absent before sick leave is payable;
 - (c) the period for which sick leave is payable;
 - (d) the amount of sick leave that is payable;
 - (e) the reference period of the sick leave scheme.

(3) In this section—

“enactment” has the same meaning as it has in the [Interpretation Act 2005](#);

“collective agreement” means an agreement by or on behalf of an employer on the one hand, and by or on behalf of a body or bodies representative of the employees to whom the agreement relates on the other hand; 5

“recognised trade union or staff association” means a body which is a holder of a negotiation licence under the [Trade Union Act 1941](#), or is an excepted body within the meaning of that Act which is sufficiently representative of the employees concerned;

“sick leave scheme” means a scheme that provides for the payment of remuneration that an employee will be entitled to receive during a period of illness or injury according to the circumstances and subject to the conditions of the scheme under— 10

(a) a contract of employment,

(b) an enactment,

(c) a collective agreement negotiated with a recognised trade union or staff association, or 15

(d) any individual or other group arrangement.

Exemption from obligation to pay statutory sick leave payment

10. (1) The Labour Court may, in accordance with this section, exempt an employer from the obligation to pay an employee or number of employees statutory sick leave payment otherwise payable to them in accordance with this Act. 20

(2) An exemption under *subsection (1)* shall be for a period not exceeding one year and not less than 3 months, and while it remains in force the employer accordingly need not so comply.

(3) An employer or employer's representative with the employer's consent may, in the manner and form approved by the Labour Court, apply to the Labour Court for an exemption under *subsection (1)*. 25

(4) On receiving an application under *subsection (3)*, the Labour Court shall convene a hearing of parties to the application and shall give its decision on the application in writing to the parties.

(5) Subject to *subsection (6)*, the Labour Court shall not grant an exemption under *subsection (1)* unless it is satisfied that— 30

(a) where the employer makes an application under *subsection (3)*, and that employer employs more than one employee, he or she has entered into an agreement with—

(i) the majority of the employees,

(ii) the representative of the majority of the employees, or 35

(iii) a trade union representing the majority of the employees,

in respect of whom the exemption is sought, whereby the employees, the representative of the employees or the trade union, consents to the employer

making the application, and to abide by any decision on the application that the Court may make, and

- (b) the employer's business is experiencing severe financial difficulties.
- (6) Notwithstanding *subsection (5)*, where the Labour Court is not satisfied that the majority of the employees or their representative consents to an application under *paragraph (a)* of that subsection, the Labour Court may grant an exemption under *subsection (1)*, provided the Labour Court is satisfied that—
 - (a) the employer has informed the employees concerned of the financial difficulties of the business and has attempted to come to an agreement with the employees, their representative or trade union in relation to a proposed exemption from payment of statutory sick leave payment, and
 - (b) the employer is unable to pay or statutory sick leave payment to the employees, due to the employer not having the ability to pay or being unlikely to be able to pay, to the extent that, if the employer were compelled to pay there would be a substantial risk—
 - (i) having regard to the number of employees employed by the employer, that a material number of those employees would be likely to be laid-off employment with the employer, or made redundant, or
 - (ii) that the sustainability of the employer's business would be significantly adversely affected.
- (7) The Labour Court shall establish its own procedures for the hearing of applications, and in relation to incidental matters to be dealt with, under this section.
- (8) The Labour Court shall maintain a register of all decisions under this section and shall make the register available for examination by members of the public at such place and reasonable times as it thinks fit.
- (9) No appeal shall lie from a decision of the Labour Court under this section except to the High Court on a question of law.

PART 3

EMPLOYMENT RIGHTS

Protection of employment rights

- 11. (1) Without prejudice to any contractual or other right that an employee may, apart from this provision, otherwise enjoy, an employee shall, during a period of absence from work by the employee while on statutory sick leave, be treated as if he or she had not been so absent and such absence shall not affect any right related to the employee's employment whether conferred by statute, contract or otherwise.
- (2) Absence from employment while on statutory sick leave shall not be treated as part of any other leave from employment (including annual leave, maternity leave, additional maternity leave, leave under section 16(1) and (4) of the [Maternity Protection Act 1994](#), adoptive leave within the meaning of the [Adoptive Leave Act 1995](#), additional

adoptive leave within the meaning of the [Adoptive Leave Act 1995](#), paternity leave, transferred paternity leave and parent's leave) to which the employee concerned is entitled.

(3) Where—

(a) an employee who is on probation in his or her employment or is undergoing training in relation to that employment or is employed under a contract of apprenticeship takes statutory sick leave, and 5

(b) his or her employer considers that the employee's absence from employment while on statutory sick leave would not be consistent with the continuance of the probation, training or apprenticeship, 10

the employer may require that the probation, training or apprenticeship be suspended during the period of statutory sick leave and be completed by the employee at the end of that period.

Protection of employees from penalisation

12. (1) An employer shall not penalise or threaten penalisation of an employee for proposing to exercise or having exercised his or her entitlement to statutory sick leave. 15

(2) If a penalisation of an employee, in contravention of *subsection (1)*, constitutes a dismissal of the employee within the meaning of the Unfair Dismissals Acts 1977 to 2015, relief may not be granted to the employee in respect of that penalisation both under this Act and under those Acts. 20

(3) In this section "penalisation" means any act or omission by an employer or a person acting on behalf of an employer that affects an employee to his or her detriment with respect to any term or condition of his or her employment, and, without prejudice to the generality of the foregoing, includes—

(a) suspension, lay-off or dismissal (including a dismissal within the meaning of the Unfair Dismissals Acts 1977 to 2015), or the threat of suspension, lay-off or dismissal, 25

(b) demotion or loss of opportunity for promotion,

(c) transfer of duties, change of location of place of work, reduction in wages or change in working hours, 30

(d) imposition or the administering of any discipline, reprimand or other penalty (including a financial penalty), and

(e) coercion or intimidation.

Records

13. (1) Subject to *subsection (2)*, an employer shall make a record of the statutory sick leave taken by each of his or her employees. 35

(2) A record under this section shall include—

(a) the period of employment of each employee who availed of statutory sick leave,

- (b) the dates and times of statutory sick leave in respect of each employee who availed of such leave,
 - (c) the rate of statutory sick leave payment in relation to each employee who availed of statutory sick leave.
- (3) A record under this section shall be retained by the employer concerned for a period of 4 years. 5
- (4) An employer who, without reasonable cause, fails to comply with *subsection (1)* or *subsection (3)*, shall be guilty of an offence.
- (5) A person guilty of an offence under *subsection (4)* shall be liable on summary conviction to a class C fine. 10

Decision under section 41 or 44 of Act of 2015

14. (1) Where an employee believes that his or her employer has failed to comply with the provisions of this Act, the employee may make a complaint in accordance with Part 4 of the Act of 2015.
- (2) A decision of an adjudication officer under section 41 of the Act of 2015 in relation to a complaint or dispute between an employee and an employer concerning the employee’s entitlement under this Act may include an award of compensation (in favour of the employee concerned to be paid by the employer concerned) of such amount, as the adjudication officer considers just and equitable having regard to all the circumstances but shall not exceed 20 weeks’ remuneration in respect of the employee’s employment calculated in such manner as may be prescribed. 15 20
- (3) A decision of the Labour Court under section 44 of the Act of 2015 on appeal from a decision of an adjudication officer referred to in *subsection (2)* may include an award of compensation (in favour of the employee concerned to be paid by the employer concerned) of such amount, as the Labour Court considers just and equitable having regard to all the circumstances but shall not exceed 20 weeks’ remuneration in respect of the employee’s employment calculated in such manner as may be prescribed. 25

Amendment of Act of 2015

15. The Act of 2015 is amended—
- (a) in section 41(7)— 30
 - (i) in paragraph (f), by the substitution in subparagraph (iii), of “has died,” for “has died, and”,
 - (ii) in paragraph (g), by the substitution of “the occurrence of the dispute, and” for “the occurrence of the dispute.”, and
 - (iii) by the insertion of the following paragraph after paragraph (g): 35
 - “(h) in the case of a dispute relating to the entitlement of an employee under the *Sick Leave Act 2021*, it has been referred to the Director General after the expiration of the period of 6 months beginning on the day immediately following the date of the occurrence of the dispute.”, 40

(b) in Schedule 1, by the insertion in Part 1 of the following paragraph after paragraph 22:

“23. *Sick Leave Act 2021*”,

(c) in Schedule 5, by the insertion in Part 3 of the following paragraph after paragraph 7: 5

“8. *Sick Leave Act 2021*”, and

(d) in Schedule 6—

(i) by the insertion, in Part 1 of the following paragraph after paragraph 37:

“38. *Section 12 of the Sick Leave Act 2021*”, and

(ii) in Part 2, by the insertion of the following paragraph after paragraph 37: 10

“38. *Section 12 of the Sick Leave Act 2021*”.