



## Public Consultation on the Transposition of EU Directive 2019/115 Transparent and Predictable Working Conditions

The purpose of this consultation is to seek your views on the transposition of the EU Directive 2019/115 on Transparent and Predictable Working Conditions. The background to this initiative is set out in the attached consultation paper, which also provides you with an opportunity to provide your views on important relevant issues including: probationary periods at the beginning of a job; the right to predictable working hours; the right to redress; and the right to protection against adverse treatment.

The document provides space for your responses to the questions set out.

Your Name: Liam Berney  
Organisation (if applicable): Irish Congress of Trade Unions  
Telephone Number: 087 2266173  
E-mail: liam.berney@ictu.ie

Please indicate if this submission is made in a personal/employee capacity, an employer capacity or on behalf of your institution, organisation or group.

Organisation

Name of company, institution, organisation or group covered by this submission:

Irish Congress of Trade Unions

Respondents are requested to make their submissions by email to:

[TAPW@enterprise.gov.ie](mailto:TAPW@enterprise.gov.ie).

**The closing date for submissions is Monday 25<sup>th</sup> October at 3pm.**

**For telephone queries please contact Mark Doheny on 087 3967374.**

## Question 1: Probationary Period

There is currently no statutory provision covering the maximum probationary period at the beginning of a job under Irish Employment Law.

If Ireland were to introduce a maximum probation period in Irish law, provision could also be made for employers to, on an exceptional basis, provide for longer probationary periods where this is justified by the nature of the employment, or in the interest of the worker. Where the worker has been absent from work during the probationary period, employers could provide that the probationary period be extended correspondingly, in relation to the duration of the absence.

Having regard to the above, what would be the benefits in establishing a maximum probation period of six months in line with the Directive?

In trasposing the Directive provision should be made for a maximum probationary period of no longer than 6 months. Probationary periods should only be allowed in open ended contraxcts and we do not believe that is appropriate that probationary periods would be appropriate or justified in the case of fixed term contracts.

If an employer decides to terminate a contract of employment before or at the end of a probationary period the termination of employment must be justified and the purpose of the probationalry period taken into account. Where a contract of employment is terminated before or at the end of a probationalry period the employee concerned should be provided with a written statement confirming why the contract of employment has been terminated.

## Question 2: Minimum Predictability of Work

Where a worker's work pattern is entirely or mostly unpredictable, the worker shall not be required to work by the employer unless the work takes place within predetermined reference hours / days and the worker is informed by his or her employer of a work assignment within a reasonable notice period.

Where a worker is entitled to be informed within a reasonable notice period by his or her employer of an unpredictable work assignment, what form should this notice take?

it is imperative that a worker is given as much certainty as possible about the requirements for them to available for work for an employer. The Employment (Miscellaneous Provisions) Act 2018 requires that an employer is required to give advance notice of the number of hours an employee is expected to work in any given day or in any given week. A worker should be free to take up work with another employer without adverse consequences where the work falls outside the hours specified in a Statement of Conditions of Employment.

### Question 3: Right to redress

Where a worker has not received in due time all or part of the documents required under the Directive, one or both of the following shall apply: the worker shall benefit from favourable presumptions which employers shall have the possibility to rebut and the worker shall have the possibility to submit a complaint to a competent authority or body and to receive adequate redress in a timely and effective manner.

The WRC is a competent authority within the meaning of the Directive which provides adequate redress in a timely and effective manner. To provide the best protection to workers, should Ireland also introduce provisions that a worker shall benefit from favourable presumptions where a worker has not received in due time all or part of the documents required under the Directive?

In legal instrument transposing the directive should provide the strongest possible protection for workers. Therefore it is entirely appropriate that a worker should benefit from favourable presumptions where that worker has not received in due time all or part of the documents required under the Directive.

## Question 4: Protection against adverse treatment

Workers, including those who are workers' representatives, will be protected from any adverse treatment by the employer and from any adverse consequences, including dismissal, resulting from a complaint lodged with the employer or resulting from any proceedings initiated with the aim of enforcing compliance with the rights provided for in this Directive.

There are existing anti penalisation provisions in section 6 C of the Terms of Employment (Information) Act 1994.

In your view does the existing legislation provide sufficient protection against penalisation or threat of penalisation from an employer i.e. where an employee invokes any rights under that Act which cover the written statement and other key employment information for employees?

Section 6 of the Terms of Employment (Information) Act 1994 should be amended to include a reference to employee representative. Section 6C. (1) should be amended as follows 'An employer shall not penalise or threaten penalisation of an employee or his or her representative.

Any other comments:

