

Draft Scheme of the Sick Leave Bill 2021

Part I

Preliminary and General

Long Title

1. Short title, citation and commencement.
2. Definitions
3. Regulations
4. Expenses
5. Voidance of modification of certain provisions in agreements

Part II

Sick Pay

6. Entitlement to sick leave
7. Rate of payment in respect of sick leave
8. Minister may set rate and coverage of sick leave

Part III

Employment Rights

9. Protection of Employment Rights
10. Protection of employees from penalisation

Part IV

Disputes

11. Decision under Section 41 or 44 of the Workplace Relations Act 2015

Part V

Miscellaneous

12. Amendment of the Act of 2015

Part I: Preliminary and General

LONG TITLE

An Act to provide for an entitlement to a minimum period of paid leave for employees in the event of illness or injury that prevents them from being able to attend work.

Explanatory Note

The Long Title of the Bill will be considered further on consultation with the Office of Parliamentary Counsel.

Head 1 provides for the short title, citation and commencement.

Provide for a short title:

(i) This Act may be cited as the Sick Leave Bill 2021

(ii) This Act shall come into operation on such day as may be fixed by order made by the Minister.

Explanatory Note

This Head gives the short title of the Bill and provides for the Bill to come into operation on such day or days as may be fixed by the Minister after it is signed into law by the President.

Short title and commencement date will be further considered in consultation with the Office of Parliamentary Counsel.

Head 2 – Definitions

In this Act -

“*contract of employment*” means –

(a) a contract of service or apprenticeship, and

(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 Employment Agency Act, 1971, and is acting in the course of that business, to do or perform personally any work or service for a third person (whether or not that third 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 of any age, who has entered into or works under (or, where the employment has ceased, entered into or worked under) a contract of employment and references to an employee employed by that employer; and for the purposes of this Act, a person holding office under, or in 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 Regulation Act, 1956 shall be deemed to be an employee employed by the State or Government, as the case may be, and an officer or servant of a local authority for the purposes of the Local Government Act 2001 (as amended by the Local Government Reform Act 2014), or of a harbour authority (or health board, or a member of staff of an education and training board shall be deemed to be an employee employed by the authority or board as the case may be:

“*Employer*” means, in relation to an employee-

(a) the person with whom the employee has entered into or 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 an individual’s employer, and

(b) includes, where appropriate, the successor of the employer or an associated employer of the employer;

“*Medical Practitioner*” has the same meaning as it has in section 2 of the Medical Practitioners Act 2007 (No. 25 of 2007);

“*The Minister*” – means the Minister for Enterprise, Trade and Employment

“*Statutory Sick leave*” – Shall be construed in accordance with section 6 of this Act.

Explanatory Note

The definitions are based on standard definitions drawn from Irish legislation.

“*Contract of Employment*” – is taken from the Terms of Employment Information Act 1994

“*employee*” and “*employer*” are standard definitions contained within the Terms of Employment Information Act 1994, however these definitions will be further considered with the Office of Parliamentary Counsel in light of the existing Public Service Management (Sick Leave) Regulations 2014.

“*Statutory Sick Leave*” – Is intended to differentiate paid sick leave provided for under this Act from references to sick leave (that may cover uncertified or unpaid sick leave) elsewhere in legislation.

Head 3 – Regulations

(1) The Minister may –

- (a) by regulations, provide for any matter referred to in this Act as prescribed or to be prescribed, and
- (b) make regulations generally for the purpose of giving effect to this Act.

Explanatory Note

This is a standard provision.

Head 4 – Expenses

4. – Any expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

Explanatory Note

This is a standard feature of Acts and makes provision for the funding of the Minister’s administration costs.

Head 5 – Voidance or modification of certain provisions in Agreements

5. (1) A provision in any agreement shall be void in so far as it purports to exclude or limit the application of any provision of this Act or is inconsistent with any provision of this Act.

(2) A provision in any agreement which is or becomes less favourable in relation to an employee than a similar or corresponding entitlement conferred on the employee by this Act shall be deemed to be so modified as to be not less favourable.

(3) Nothing in this Act shall be construed as prohibiting the inclusion in an agreement of a provision more favourable to an employee than any provision in Parts II to V.

(4) References in this section to an agreement are to any agreement, whether a contract of employment or not and whether made before or after the passing of this Act.

Explanatory Note

This is a standard provision in Irish legislation contained within the Parental Leave Act and the Carers Leave Act amongst others. The intention is that the Sick Leave Act will provide a floor level of protection to all employees and that existing less favourable sick pay arrangements will be rendered null and void. However, it is not intended that existing more favourable sick pay arrangements will be undermined by this legislation.

Part III

Head 6 – Entitlement to Statutory Sick Leave

6. (1) Subject to this Act, an employee shall be entitled to paid sick leave from his or her employment, to be known and referred to in this Act as ‘statutory sick leave’ on any day on which the employee would ordinarily work but is incapable of doing so as a result of illness or injury equal to-

(a) A maximum of 3 working days per annum, or such number of days as may be prescribed by the Minister under this Act.

(2) For the purpose of section 6 (1),

(a) a period of eligible statutory sick leave shall not commence before a time when the employee concerned has completed 6 months continuous service with the employer from whose employment the statutory sick leave is taken.

(b) a period of eligible statutory sick leave must be certified in writing by a medical practitioner that the person is unable to attend his or her duties due to illness or injury.

(3) References in this section to a working day shall be construed as references to a day that the employee concerned would usually work.

Explanatory Note

It is the intention of the scheme that a new employment right will be created providing all employees, covered by the Act, with a minimum entitlement to 3 paid sick leave days per year from their employer. As referenced in the explanatory note for Head 2, the description of statutory sick leave is intended to differentiate the paid leave entitlement provided for under this Act from references to sick leave contained in other legislation (that are not statutory entitlements and may be unpaid or uncertified). The wording used in this regard will be discussed further with the Office of Parliamentary Counsel.

Section (2) sets out the eligibility criteria an employee must meet to avail of statutory sick pay, including that an employee will only become eligible for statutory sick pay once they have worked for their employer for a period of six months. Furthermore, an employee will need to be certified as unfit to work due to illness or injury by a medical practitioner in order to be eligible for statutory sick leave.

Section (3) is designed to ensure that part-time or irregular hours workers will receive statutory sick leave for days they would ordinarily work. The wording around this section will need to be considered further in consultation with the Office of Parliamentary Counsel.

Head 7 – Rate of payment in respect of statutory sick leave

7. (1) The pay in respect of an employee's statutory sick leave shall be paid at 70% of the employees' normal rate, subject to a maximum of €110 per day, or such percentage or maximum rate as may be prescribed by the Minister under this Act.

(2) The normal weekly rate of an employee's pay for the purposes of this Act shall be calculated in accordance with the following provisions,

(a) If the employee concerned's pay is calculated wholly by reference to a time rate or a fixed rate of salary or any other rate that does not vary in relation to the work done by him or her, the normal weekly rate of his or her pay, for the purposes of this Act, shall be the sum (including any regular bonus or allowance the amount of which does not vary in relation to the work done by the employee but excluding any pay for overtime) that is paid in respect of the normal weekly working hours last worked by the employee before the sick leave (or the portion thereof concerned) commences,

(b) If the employee concerned's pay is not calculated wholly by reference to any of the matters referred to in paragraph (3) of this section, the normal weekly rate of his or her pay, for the purposes of the relevant sections, shall be the sum that is equal to the average weekly pay (excluding any pay for overtime) of the employee calculated over-

(i) the period of 4 weeks ending immediately before the sick leave (or the portion thereof concerned) commences, or

(ii) if no time was worked by the employee during that period, over the period of 4 weeks ending on the day on which time was last worked by the employee before the sick leave (or the portion thereof concerned) commences.

Explanatory Note

The intention is that an employee will be entitled to 70% of their gross normal earnings in respect of their sick leave entitlement up to a maximum of €110 per day. The upper earnings threshold is designed to prevent excessive costs being imposed on businesses and reflects Quarter 4 2019 National mean weekly earnings from the Central Statistics Office (CSO).

(2) - The method of calculation is taken from S.I. 475/1997 Organisation of Working Time (Determination of Pay for Holidays) Regulations, 1997 and is intended to ensure that part-time employees or those who work irregular shift patterns will receive an appropriate rate of compensation when absent through illness or injury. The wording around this section will be further explored in consultation with the Office of Parliamentary Counsel.

Head 8 – Minister may set rate and coverage of Statutory Sick Leave

8. (1) The Minister, may, by order, amend the number of statutory sick leave days an employee is entitled to under Section 6 after taking into account;

- i. the economic situation and
- ii. the likely impact such a change will have on employers and employees:

(2) The Minister, may, by order, amend the percentage rate of payment or the upper earnings maximum in respect of statutory sick leave provided for under Section 7 after taking into account;

- i. the economic situation,
- ii. the CSO annual and quarterly data on earnings and labour costs and
- iii. the likely impact such a change will have on employers and employees:

Explanatory Note

This Head is intended to provide the Minister with the power to amend the number of paid sick leave days an employee will be entitled to under this Act.

The initial entitlement of three days is modest to provide employers with an opportunity to adjust to costs and the administrative burden, however it is intended that over time the level of coverage will increase incrementally. Amendments to the number of sick leave days provided for under this Act will be brought forward by the Minister following consideration of;

- a. the economic climate,
- b. the possible impacts an amendment will have on both employers and employees.

The Head is also intended to provide the Minister with the power to amend by Order;

- the percentage rate at section 7. (1) that shall be paid,
- the upper earnings maximum cap provided for under Section 7 (1).

Amendments to section 7.(1) will be made following consideration and due regard by the Minister to;

- a. the economic climate
- b. the CSO annual and quarterly data on earnings and labour costs,
- c. the possible impacts an amendment will have on both employers and employees.

Part IV

Head 9 – Protection of Employment Rights

9. (1) An employee shall, while on statutory sick leave, be regarded for all purposes relating to his or her employment as still working in the employment and none of his or her rights relating to the employment shall be affected by the leave.

(2) Absence from employment while on statutory sick leave shall not be treated as part of any other leave from employment (including parental leave, annual leave, adoptive leave, maternity leave and force majeure 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

(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,

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.

Explanatory Note

9.(1) This section is intended to ensure that an employee's entitlement to existing employment rights is not negatively impacted in any way by exercising their right to statutory sick leave under this Act.

(2) – The intention is to prevent an employer from recording sick leave to which an employee is entitled under this Act as any other form of leave.

(3) – The intention is that an absence related to sick leave under this Act need not be counted towards the time required to complete a period of probation, training or apprenticeship.

The language used is similar to Section 13 of the Carers Leave Act and Section 14 of the Parental Leave Act.

Head 10 – Protection of employees from penalisation

(1) An employer shall not penalise an employer for proposing to exercise or having exercised his or her entitlement to statutory sick leave,

(2) Penalisation of an employee includes -

(a) dismissal of the employee,

(b) unfair treatment of the employee, including selection for redundancy, and

(c) an unfavourable change in conditions of employment of the employee

Explanatory Note

This section is intended to ensure that an employee cannot be penalised for availing of sick leave as provided for under this Act in line with similar provisions in existing legislation, see section 14 of the Parental Leave Act and Section 13 of the Carers Leave Act.

10 (1) – An employer cannot penalise an employee for availing of sick leave under this Act.

(2) (a) – The intention is that availing of sick leave will not be considered as appropriate grounds for dismissal.

(b) – The intention is that availing of sick leave will not be considered as appropriate grounds for selection for redundancy.

(c) – The intention is that availing of sick leave cannot result in an unfavourable change in employment conditions upon the employees return.

Part IV

Head 11 – Decision under Section 41 or 44 of the Workplace Relations Act 2015

11. (1) A decision of an adjudication officer under section 41 of the Workplace Relations Act 2015 in relation to a dispute to which this Act applies between an employee and an employer concerning the employee’s entitlements under this Act may include –

(a) an award of compensation (in favour of the employee concerned to be paid by the employer concerned) of such amount, not exceeding the level of remuneration an employee was entitled to and denied under this Act in respect of the employee’s employment calculated in such manner as may be prescribed, as the adjudication officer considers just and equitable having regard to all of the circumstances,

(2) A decision of the Labour Court under section 44 of the Workplace Relations Act 2015 on appeal from a decision of an adjudication officer referred to in subsection (1) may include -

(a) an award of compensation (in favour of the employee concerned to be paid by the employer concerned) of such amount, not exceeding the level of remuneration an employee was entitled to and denied under this Act in respect of the employee’s employment calculated in such manner as may be prescribed, as the Labour Court considers just and equitable having regard to all circumstances,

(3) In this section ‘remuneration’ includes allowances in the nature of pay and benefits in lieu of or in addition to pay.

Explanatory Note

The intention of this Head is to bring this Act within scope of the Workplace Relations Act 2015, disputes arising in relation to entitlements under the Act would be subject to investigation by the Workplace Relations Commission and rulings of the Labour Court. The level of compensation an employee is entitled to under (1)(a) and (2)(a) is intended to take account of the fact that the number of days an employee is entitled to under the Act is likely to be amended over time.

Part V

Head 12 – Amendment of the Workplace Relations Act 2015

(1) Schedule 5 part (3) of the Act of 2015 is amended by the insertion of –

“6. Sick Leave Act”, and

(2) Section 41 (7) of the Act of 2015 is amended by the insertion of –

“(F) 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, and

(3) Schedule (1) part (1) of the Act of 2015 is amended by the insertion of the following –

“21. Sick Leave Act 2021, and

(4) Schedule (6) Part (1) of the Act of 2015 is amended by the insertion of the following –

“35. Section 11 of the Sick Leave Act 2021, and

(5) Section 6 Part (2) of the Act of 2015 is amended by the insertion of the following –

“35. Section 11 of the Sick Leave Act 2021”

Explanatory Note

This Head is intended to amend the Workplace Relations Act 2015 to bring the Sick Leave Act fully within scope of its provisions.