

COVID-19 and Labour Law: Ireland

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Abstract

Similar to many other European countries, Ireland faced the pandemic by prohibiting travel, and recommending remote working if workplace were not shut temporarily (with the exception of food stores and pharmacies). The government instituted a plan for businesses and workers (including the self-employed) centring on income support. Questions remain to be openly discussed such as how re-opening workplace may safely remain so; not to mention the longer term impact.

Keywords: Covid-19; Labour Law; Remote work; Income support; Health and Safety.

1. Overview.

On 28 February 2020, Ireland reported its first case of Covid-19,¹ with the first death reported on 11 March 2020.² The Irish Government moved to a 'delay' phase on 12 March 2020 with social distancing and self-isolation for those with symptoms.³ To further the goal of decreased gatherings, the closure of all public places such as museums as well as in-person tuition at schools, universities, and childcare facilities was ordered; initially until 29 March 2020, in order to support efforts to contain the spread of Covid-19.⁴ School closures were part of a larger effort to put in place social distancing amongst the population (a recommended distance of six feet with a minimum of three feet separation). In addition to school closures, Taoiseach Leo Varadkar also recommended the cancellation of indoor

* Maynooth University (Ireland). This article is a shorter version of David Mangan, 'Covid-19 and Labour Law in Ireland' (2020) 11 *European Labour Law Journal* (forthcoming).

¹ Raidió Teilifís Éireann (RTE), 'All those in close contact with Covid-19 patient 'notified' (28 February 2020) www.rte.ie/news/ireland/2020/0228/1118104-coronavirus-ireland/. RTE is the national broadcaster for Ireland.

² Fergal Bowers, 'First death of patient in Ireland with Covid-19' RTE (11 March 2020) www.rte.ie/news/2020/0311/1121526-harris-Covid-19

³ Department of Health, 'Statement from the National Public Health Emergency Team - Thursday 12 March' www.gov.ie/en/press-release/96eb4c-statement-from-the-national-public-health-emergency-team (12 March 2020).

⁴ Department of Education & Skills, 'Covid-19 - Statement from the Department of Education and Skills' (12 March 2020) www.education.ie/en/Press-Events/Press-Releases/2020-press-releases/12-march-2020-statement-from-the-department-of-education-and-skills.html

gatherings of 100 or more and outdoor gatherings of 500 or more. Education and childcare closures were extended to 19 April 2020 on 24 March 2020.⁵ Soon after school closures, the government asked bars to shut down (15 March 2020),⁶ and by 28 March 2020 a ‘lockdown’ was in place affecting all but essential businesses and movement for food and medical appointments where working from home was advocated by the government.⁷ As of 18 May, the lockdown began to ease and a plan of several phases was instituted for a wider re-opening of the country.

As part of a €7.2 billion package, which amounted to approximately 2% of the country’s GDP had been allocated),⁸ the Irish Government announced a National Covid-19 Income Support Scheme on 24 March 2020. With an initial estimated cost of €3.7 billion over a 12-week period, the Irish Government took this action ‘to ensure social solidarity with workers and their families affected by the crisis.’⁹ Touching on social security, the government also announced enhanced protections for people facing difficulties with their mortgages, rents, and utility bills.¹⁰ The next section outlines some of the key points.

The following detail is important to note. Ireland has a two-tier healthcare system. A medical card is available for those who qualify (low income earners, retirees) and it entitles the holder to a range of free medical services. The majority of the population does not qualify and private health insurance has been a widely purchased commodity.

2. Income Support

Income support arrangements to assist businesses and workers largely consisted of a temporary wage subsidy, an unemployment allowance, and sick pay. Drawing from Central Statistics Office (CSO)¹¹ data published 13 May 2020, employment of 47% of the country’s working residents had been impacted by Covid-19, including 34% working from home, and

⁵ Department of Education & Skills, ‘Covid-19 - Statement from the Department of Education and Skills’ (24 March 2020) www.education.ie/en/Press-Events/Press-Releases/2020-press-releases/PR20-03-24.html

⁶ RTE, ‘40 new cases of Covid-19 confirmed, pubs asked to close’ (15 March 2020) www.rte.ie/news/coronavirus/2020/0315/1123356-coronavirus-ireland

⁷ Rory Carroll, ‘Stay home’: Varadkar announces sweeping two-week lockdown’ *The Guardian* (27 March 2020) www.theguardian.com/world/2020/mar/27/stay-home-varadkar-urges-irish-in-drastic-lockdown

⁸ The financial challenges faced by Ireland (necessitating a restructuring of Irish banking) coming as a result of the Great Recession must be kept in mind when assessing the more tentative steps taken by the Irish Government regarding the Covid-19 pandemic. These challenges precipitated a financial rescue plan agreed to between the Irish Government, the EU and the IMF. See further, *BBC News*, ‘Republic of Ireland confirms EU financial rescue deal’ (22 November 2010) www.bbc.com/news/business-11807730; Michael Doherty, ‘Can the Patient Survive the Cure? Irish Labour Law in the Austerity Era’ (2014) 5 *Eur. Lab. L. J.* 81.

⁹ Department of Business, Innovation and Enterprise, ‘Government announces National Covid-19 Income Support Scheme’ (24 March 2020) <https://dbei.gov.ie/en/News-And-Events/Department-News/2020/March/24032020.html>

¹⁰ *Ibid.*

¹¹ ‘The Central Statistics Office (CSO) is Ireland’s national statistical office and our purpose is to impartially collect, analyse and make available statistics about Ireland’s people, society and economy’: www.cso.ie/en/aboutus/howweare

23% reporting a change in their working hours.¹² And yet, optimism remained high amongst those who lost their jobs in some manner (dismissed, temporarily laid off, or on paid/unpaid leave) as 94% expected to return to their jobs.

a) Temporary Wage Subsidy

The temporary wage subsidy scheme evolved since it was first announced. From the start, eligible employers were supported through a temporary wage subsidy of up to 70% of an employee's take home pay,¹³ regardless of the employee's income. The scheme was set up to last 12 weeks from 26 March 2020. Employers were to meet three criteria, including having the 'firm intention of continuing to employ the specified employee'.¹⁴ To qualify, employers (without restriction to any industries) must have 'experienced significant negative economic disruption due to Covid-19, with a minimum of 25% decline in turnover, and an inability to pay normal wages and other outgoings'¹⁵ for the period 14 March 2020 to 30 June 2020.¹⁶ Employees must have been on the payroll as of 28 February 2020. The Government envisioned the subsidy being topped up by employers to 100% of employees' pay, but this was not mandatory.¹⁷ The number of individuals in receipt of temporary wage subsidies was 436,925 in April 2020 and 436,344 in May 2020.¹⁸

Initially, the scheme covered incomes up to €76,000 with a maximum weekly tax-free amount of €410 per week to help affected companies keep paying their employees.

The Government amended the scheme on 15 April 2020 to address those earning at the lower end.¹⁹ These changes came into effect for payroll submitted on or after 4 May 2020. For employees annually earning about €24,400 (approximately €412 per week), the

¹² Central Statistics Office, 'Employment and Life Effects of COVID-19 - April 2020' (13 May 2020) <https://www.cso.ie/en/releasesandpublications/er/elec19/employmentandlifeeffectsofcovid-19/>

¹³ Section 28 of the Emergency Measures in the Public Interest (Covid-19) Act 2020 outlined the wage subsidy.

¹⁴ Section 28(2) states: 'a) the business of an employer has been adversely affected by Covid-19 to a significant extent with the result that the employer is unable to pay to a specified employee the emoluments the employer would otherwise have normally paid to him or her, (b) notwithstanding the existence of the circumstances referred to in paragraph (a), the employer has the firm intention of continuing to employ the specified employee (and to pay to him or her emoluments accordingly) and is making best efforts to pay to the employee some of the emoluments referred to in paragraph (a) during the applicable period, and (c) the employer has satisfied the conditions specified in subsection (4).'

¹⁵ Department of Business, Innovation and Enterprise, 'Government announces National Covid-19 Income Support Scheme' (24 March 2020) <https://dbei.gov.ie/en/News-And-Events/Department-News/2020/March/24032020.html>

¹⁶ Section 28(3) of the Emergency Measures in the Public Interest (Covid-19) Act 2020

¹⁷ 'The employer is expected to make best efforts to maintain as close to 100% of normal income as possible for the subsidised period': Department of Business, Innovation and Enterprise, 'Government announces National Covid-19 Income Support Scheme' (24 March 2020) <https://dbei.gov.ie/en/News-And-Events/Department-News/2020/March/24032020.html>

¹⁸ <https://www.cso.ie/en/releasesandpublications/er/lr/liveregistermay2020/>.

¹⁹ <https://www.revenue.ie/en/corporate/communications/covid19/temporary-covid-19-wage-subsidy-scheme.aspx>

Government increased the wage subsidy by 15% (from 70% to 85% of regular wages).²⁰ The subsidy for those annually earning between €24,400 and €31,000 (€412 to €500 per week) was up to €350 per week. Employees earning in excess of approximately €38,000 (over €586 per week) were subject to a ‘tiered approach’ where the maximum subsidy of €350 per week applied in fewer cases than originally noted.²¹

While subsidies had been given regardless of the employee’s income, this ended as of 4 May 2020. From this date, subsidy payments were based upon employees’ previous net weekly income as set out by the Irish Revenue Commissioners.²² Where gross pay paid by employers plus the subsidy exceeded the previous average net weekly pay, the subsidy was accordingly diminished.

The situation for workers experiencing a reduction in working hours was not as clear. Two schemes applied to this circumstance. First, an employee may have accessed short time work support which has been a form of jobseeker’s benefit.²³ This was available for those who worked no more than 3 days per week during the lockdown period and were employed previously on a full-time basis. Further criteria included satisfying the pay-related social insurance (PRSI) conditions. An individual may have received the benefit for up to 234 days, but entitlement depended upon the number of PRSI contributions made.²⁴ Second, where a worker was unemployed for four or more days out of every seven, the Jobseeker’s Benefit may have been available.²⁵ The PRSI conditions must also be met. A qualified adult could receive the increased rate of €147 (up from €134.70) for a twelve-week period. The increased rates were set to expire the week of 15 June 2020.

b) Unemployment Payment

The National Scheme of 24 March 2020 also enhanced the Covid-19 Pandemic Unemployment Payment for workers who lost their jobs due to the crisis. These individuals received €350 per week, increased from €203 (for a period of 12 weeks from 24 March 2020).²⁶ Self-employed individuals were also eligible for the Covid-19 Pandemic

²⁰ Department of Finance, ‘Minister Donohoe announces update to the Temporary Wage Subsidy Scheme to ensure greater staff retention and links between employer and employee’ (15 April 2020) <https://www.revenue.ie/en/corporate/press-office/letters/minister-of-finance-signed-letter-to-chairman-revenue-160420.pdf>

²¹ Department of Finance, ‘Minister Donohoe announces update to the Temporary Wage Subsidy Scheme to ensure greater staff retention and links between employer and employee’ (15 April 2020).

²² ‘Revenue has calculated each employee’s Maximum Weekly Wage Subsidy (MWWS) based on the employee’s Average Revenue Net Weekly Pay (ARNWP) and is providing this, along with other necessary information, to each employer (who is operating the scheme) in respect of each active employee’: <https://www.revenue.ie/en/corporate/communications/covid19/temporary-covid-19-wage-subsidy-scheme.aspx>

²³ www.gov.ie/en/service/c20e1b-short-time-work-support/

²⁴ The sum paid was additionally contingent upon the average amount of weekly earnings in the year in which an application was made and the nature of the change in the work pattern.

²⁵ www.gov.ie/en/service/1221b0-jobseekers-benefit

²⁶ Department of Employment Affairs and Social Protection, www.gov.ie/en/service/be74d3-covid-19-pandemic-unemployment-payment

Unemployment Payment of €350. While these plans were in place with an initial timeline of 12 weeks, they will likely 'be in place for the duration of the crisis.'²⁷

By end of April 2020, unemployment reached 28.2%.²⁸ The data for April 2020 also indicated phenomenal increases in unemployment payments (602,107).²⁹ Unemployment reached 26.1% for May 2020.³⁰ May saw a reduction in the number of individuals receiving the unemployment payment (543,164).³¹

c) Sick Pay

The National Scheme of 24 March 2020 also increased the Covid-19 illness payment to €350 per week. The usual six-day wait period has been waived for those with Covid-19 or those required to self-isolate.³² The illness payment required a medical diagnosis and qualifying documentation is sent directly from a family doctor to the relevant government department.

3. Health & Safety at Work.

The National Standards Authority of Ireland (NSAI) published, on 27 March 2020, a COVID-19 Guide which 'specifies requirements to implement, maintain and improve an organisation's ability to protect against, prepare for, respond to and recover from COVID-19 related disruptions when they arise'³³. €2500 consultancy vouchers are also available for workplace improvement measures³⁴. The combination is intended to assist employers in identifying and implementing the measures 'needed to ensure they can continue to operate safely to provide necessary and essential goods and services for all'.

²⁷ *Ibid.*

²⁸ Central Statistics Office, 'Labour Force Survey Quarter 1 2020' (21 May 2020)

<https://www.cso.ie/en/releasesandpublications/er/lfs/labourforcesurveyq12020/>

²⁹ Central Statistics Office, 'Live Register – April 2020'

<https://www.cso.ie/en/statistics/labourmarket/liveregister/>

³⁰ CSO, 'Monthly Unemployment – May 2020' (3 June 2020)

[https://www.cso.ie/en/releasesandpublications/er/mue/monthlyunemploymentmay2020/.](https://www.cso.ie/en/releasesandpublications/er/mue/monthlyunemploymentmay2020/)

³¹ Central Statistics Office, 'Live Register – May 2020'.

³² Department of Business, Innovation and Enterprise, 'Illness Benefit for COVID-19 absences'

www.gov.ie/en/service/df55ae-how-to-apply-for-illness-benefit-for-covid-19-absences

³³ NSAI, *COVID-19 Workplace Protection and Improvement Guide* (27 March 2020):

https://www.n sai.ie/images/uploads/general/Covid-19_Workplace_Protection_and_Improvement_Guide.pdf

³⁴ Department of Business, Innovation and Enterprise, 'New 'Workplace Protection and Improvement Guide' launched by Minister Humphreys' (27 March 2020) <https://dbei.gov.ie/en/News-And-Events/Department-News/2020/March/27032020.html>.

4. A phased-in reopening

On 3 May 2020, the Irish Government produced its ‘Roadmap for Reopening Society & Business’.³⁵ The Government identified several guiding principles in the document as shaping its response. These involve an approach to reopening society and business in a manner that is: safe, rational, evidence-informed, fair, open and transparent, and is premised upon a benefit for the whole of society.³⁶ There were five phases commencing with Phase One on 18 May separated by three weeks with the final phase starting on 10 August. Though conspicuous, a qualification to this plan remains: ‘[There is] [n]o assurance that it is safe to reduce social distancing measures and stricter measures will have to be reintroduced if there is strong upsurge of infection’.³⁷ During Phase Two (commencing 8 June 2020), the government revised this initial plan on 12 June 2020 by excluding the fifth phase; though the dates for the remaining four phases remain as initially stated.³⁸ To maintain health and safety the government has promoted “micro-communities” [which] will allow for work to be conducted and for social interaction to promote wellbeing, while still limiting the spread of infection.’³⁹ A challenge will be how to maintain these micro-communities over the course of the different phases and over a longer period of time until (if) a vaccine is developed and made widely available.

5. Next Steps

It may have been easily overlooked, but the Irish general election of 8 February 2020 did not produce a clear majority for any one party. For the first time in almost a century neither of the two main parties, Fianna Fáil and Fine Gael, was in a position to form a government, without support from the other.⁴⁰ Assessment regarding why this result arose speculated that social issues, such as rising rents, a shortage of housing and homelessness, were on voters’ minds; areas in which both parties have been seen as weak.⁴¹ Fianna Fáil and Fine Gael engaged in discussions on a joint government policy document.⁴² Later, the Green Party

³⁵ Department of Taoiseach and Department of Health, ‘Roadmap for Reopening Society & Business’ (3 May 2020) <https://www.gov.ie/en/news/58bc8b-taoiseach-announces-roadmap-for-reopening-society-and-business-and-u/>

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ Department of Taoiseach and Department of Health, ‘Roadmap for Reopening Society & Business’ (12 June 2020) <https://www.gov.ie/en/news/58bc8b-taoiseach-announces-roadmap-for-reopening-society-and-business-and-u/>

³⁹ Department of Taoiseach and Department of Health, ‘Roadmap for Reopening Society & Business’ (3 May 2020) <https://www.gov.ie/en/news/58bc8b-taoiseach-announces-roadmap-for-reopening-society-and-business-and-u/>

⁴⁰ This result may be largely attributed to the rise in votes (and seats) for Sinn Féin (a party that has historical ties with the Irish Republican Army).

⁴¹ *BBC News*, ‘Irish general election: Sinn Féin celebrate historic result’ (11 February 2020) www.bbc.com/news/world-europe-51441410

⁴² See, Mícheál Lehane, ‘Government policy could be agreed this week’ *RTE* (1 April 2020) www.rte.ie/news/politics/2020/0331/1127700-fine-gael-fianna-fail-talks; and Paul Cunningham, ‘Meeting with Martin has ‘cleared the air’, says Varadkar’ *RTE* (18 May 2020)

entered into these negotiations so that a majority coalition may be reached. On 15 June 2020, the leaders of these three political parties reached an agreement on a draft ‘Programme for Government’.⁴³ The role of the Taoiseach (leader of the government) will rotate. The election result will bear on the next steps for the Irish Government as it navigates the challenges of the pandemic (itself) as well as the economic implications.

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<https://www.rte.ie/news/2020/0517/1138977-government-formation-talks-politics/>

⁴³ RTE, ‘Agreement reached on draft programme for government’ (15 June 2020)

<https://www.rte.ie/news/politics/2020/0615/1147519-government-formation/>