Ibec submission to the Department of Children, Equality, Disability, Integration and Youth on proposals to introduce domestic violence leave

31 March 2021

Introduction

Ibec welcomes the opportunity afforded by the Department of Children, Equality, Disability, Integration and Youth[1] to participate and respond to the proposed introduction of domestic violence leave.

Arising out of a commitment in the Programme for Government in June 2020, the Government is proposing to bring forward proposals to legislate for 10 days paid statutory leave for victims of domestic violence by the end of 2021. Ibec submits that any introduction of domestic violence leave gives rise to significant concerns given the serious implications such leave would have, not only for employers but those the legislation aims to benefit. Although the cost associated with introducing yet another form of paid leave remains an ongoing concern for employers, particularly in the current economic climate, that concern is somewhat outweighed by the considerable and unreasonable challenges employers will face when criminality is brought into the workplace and becomes a risk they are required to manage.

This proposal comes at a time when the Department of Enterprise, Trade and Employment intends to legislate for a right to request to work remotely. Where an employee's place of work is at home, an employer's obligation to provide a safe place of work extends into an employee's home and where the line between an employee's work life and personal life becomes blurred, significant concerns arise for employers. This concern is only heightened when an employer is on notice of the fact that an employee is a victim of domestic violence in the workplace.

Regulatory Impact Assessment

Importantly, prior to any drafting of legislation to introduce domestic violence leave, it is important that a Regulatory Impact Analysis (RIA) is carried out on the proposed legislation. Ibec submits that a thorough RIA is necessary to clearly understand the impact of the proposed legislation on employers, victims of domestic violence and other employees. This should include a full economic impact analysis. A detailed and systematic appraisal is necessary to determine whether the legislation will have its stated desired objective, or whether the cost to employers will exceed any benefit. It should examine what impact the proposed legislation will have on businesses and, in particular SMEs, from an operational and

[1] hereinafter referred to as "the Department"

business perspective and outline ways of reducing any unnecessary burden on businesses. In relation to labour market reforms, Ibec submits that every effort should be made to ensure that every new piece of employment rights legislation has regard to its effect on the creation and retention of jobs.

Domestic violence

Domestic violence is the physical, emotional, sexual or mental abuse of one person by another within a close, intimate or family relationship affecting a diverse range of victims including spouses, children, parents or partners. Domestic violence is a criminal offence, falling within the remit of the Domestic Violence Act 2018, and outside the scope of employment law. Where employees are the victims of domestic violence, many do not want to admit or refuse to admit that they are victims of domestic violence. For many, doing so will simply aggravate the situation including by inciting further violence. Where the issue of domestic violence arises, employers will apply compassionate reasoning and use their best endeavours to accommodate an employee and, in light of an employee's particular circumstances, grant an alternative form of statutory leave that already exists including force majeure leave or, where appropriate and applicable, compassionate leave.

It may be the case that an employee may feel that the working relationship is such that they cannot approach an employer and request such leave, in the absence of a statutory right to do so. Ibec submits that introducing a statutory right to domestic violence leave will do nothing to improve that situation. In fact, Ibec submits that those the proposed legislation intends to benefit will be the very cohort it could detrimentally impact. Employees will not be incentivised to take the leave, by having to not only admit but prove domestic violence to an employer and potentially the Workplace Relations Commission[2]. Applying for domestic violence leave could have detrimental repercussions for a victim, particularly where the alleged perpetrator discovers that the employee has applied for and been granted the leave.

Any proposal to introduce domestic violence leave will bring criminality into the remit of the employment relationship and employment law, having repercussions which employers and employees are simply not qualified or equipped to deal with. Any actions taken by an employer to assist an employee who is the victim of domestic violence could inadvertently exacerbate the situation for the employee and potentially any children that are victims of domestic violence, whereby once on notice that children are the victims of violence, an employer has an obligation to notify the Gardai. It is the case that once an employee applies for domestic violence leave, an employer will be on notice of a criminal offence in its workplace, and where that place of work is the employee's home, the risk that arises is ultimately outside its control.

Safety, Health and Welfare at Work Act 2005

The Safety, Health and Welfare at Work Act 2005[3], as amended, and the General Application Regulations, 2007 to 2016 oblige employers to do everything that is "reasonably practicable" to protect the health, safety and welfare at work of all employees. Section 8(1) of the 2005 Act provides that "*every employer shall ensure, so far as is reasonably practicable, the safety, health and welfare at work of his/her employer*". It further provides at section 8(h) that an employer's duty extends to "*determining and implementing the safety, health and welfare measures necessary for the protection of the safety, health and welfare of his or her employees when identifying hazards and carrying out a risk assessment under section 19 or when preparing a safety statement under section 20…"*. It is clear, therefore, that an employer

[2] hereinafter referred to as the "WRC"

[3] hereinafter referred to as the "2005 Act"

must ensure, as reasonably as practicable, the safety of an employee at his/her place of work, including where that place of work is the employee's home.

The Health and Safety Authority states on its website that "*every employer should accept liability for accident or injury of a home worker as for any other employee".* Should that be the case, employers could be liable for any injury that arises in the home including injuries arising from domestic violence, given that it has occurred in the workplace. No distinction is made between those injuries that relate to a work activity compared to those that are unrelated to work activities. Ibec submits that employers should only be liable for injuries that arise from a work activity and extending employer liability to activities unrelated to work, albeit within the workplace and during working time, including injuries resulting from domestic violence, extends an employer's vicarious liability far beyond any reasonable extent.

Although domestic violence may occur in working time, it is not related to a work activity. However, it is the case that an employer has an obligation to ensure an employee's welfare within the workplace. Therefore, where a risk arises in the workplace, namely domestic violence, an employer must do what is reasonably practicable to manage the risk. Although an employer cannot manage, prevent or eliminate the risk, an employer must take reasonable steps if they are made aware of the risk. However, what are reasonable steps when it comes to domestic violence in the workplace, particularly where that workplace is outside of the employer's control? At what point can an employer be satisfied that what they have done is reasonably practicable even though, having exhausted their statutory obligation, they remain aware that domestic violence continues in the workplace? Employers are simply not equipped with how best to deal with domestic violence and what the best course of action may be. By way of example, calling the Gardai may be the very thing that aggravates the situation and incites further violence. It is the case that in trying to assist the victim of violence and adhere to their duty of care to the victim, an employer inadvertently exacerbates the situation.

Ibec refers to the following case study. An employee confides in a number of colleagues that she is the victim of domestic violence at home and has visible evidence of bruising, who report the violence to their employer. The employer reports it to the Gardai who attends the employee's home which incites further violence. In order to manage the risk and adhere to their obligations under the 2005 Act, the employer requests the employee to return to the workplace. On returning to the workplace, the employee's partner waits outside the workplace and threatens various staff members and the company doctor. In this case, the employer was on notice of the violence and attempted to manage that risk by calling the Gardai which simply compounded the situation. In order to further manage the risk, the employer has the employee return to the workplace, where the perpetrator then continues to threaten her and other staff members. An employer can only manage the risk to a reasonable extent, fully aware that the risk cannot be eliminated. This case study highlights the significant difficulties that arise with being on notice of domestic violence and trying to manage that risk, where not only the victim's welfare is at risk but that of other employees who are intimidated or threatened, to whom an employer also owes a duty of care.

Where employees work within the traditional office/workplace and are victims of domestic violence an employer's obligation is much more straightforward in terms of providing a safe place of work. Where that is the case, in order to manage the risk, an employer can take a number of measures including changing the employee's phone number, removing contact details off a website and blocking emails and phone calls from the perpetrator. Where an employee works remotely an employer's obligation to that employee is considerably more extensive and far reaching where employers are attempting to manage a risk that they can neither manage nor eliminate. Due to Covid-19, and in compliance with public health advice, employees are now working remotely and with a right to request remote working to be

legislated for in the near future, employers' obligations to provide a safe place of work within the home will continue to give rise to significant challenges.

Common law

Employers owe employees a common law duty to take reasonable care for their safety, avoid exposing employees to any unnecessary risk and to ensure a safe system of work, a duty which has been given a statutory basis in the 2005 Act. A term to this effect is implied into every individual contract of employment which cannot be overridden by express agreement of the parties to the contrary. Any breach of that duty can result in liability for any losses that were reasonably foreseeable. The duty to provide a reasonably safe workplace and to take reasonable measures to ensure employee safety from any obvious or foreseeable risks arises from that duty of care. It is questionable how far an employer, being faced with a criminal offence in the employee's home, as a place of work, must go in implementing protection measures as a matter of practicality.

An employer's common law duty is not absolute, what is required is what a reasonable and prudent employer would have done in the circumstances[4]. An employer will not be liable if the injury which the employee sustained is not a reasonably foreseeable result of the employer's negligent conduct[5]. Where an employee applies for domestic violence leave, is it not reasonably foreseeable to an employer that if the employee remains in the situation that gave rise to the violence that the employee would be at a materially higher risk of that violence occurring again? Once an employer is on notice, then it ought to be reasonably foreseeable that if preventative measures are not taken within the workplace/home that an employee may suffer further injury. However, having established that it may be reasonably foreseeable that further violence may occur, if the risk cannot be prevented, to what extent must an employer go to manage the risk and what constitutes "reasonable" when you are trying to manage a risk which is a criminal offence particularly where any steps taken may inadvertently aggravate the situation?

Should an employee apply for domestic violence leave, an employer is on notice of that employee's particular circumstances. Is an employer's duty of care therefore greater in light of that information? In the case of *Kieran Fagan v Dunnes Stores [2017] IEHC 430*, Barton J stated that "*put at its simplest the duty which an employer owes is to take reasonable care for the employee's safety in all the circumstances of the case*". In relying on the Supreme Court case of *McSweeney v McCarty*[6], Barton J stated that the duty of care is that "*as between the particular employer and particular employee. By way of example, age, knowledge, experience, expertise, physical or mental disability, training, information and instructions are all factors which may be taken into consideration in the determination of the duty of care owed in the particulars circumstances of any given case"*. It would appear therefore, that where an employer is on notice of an employee's "particular" circumstances, including being a victim of domestic violence, that duty could, depending on the circumstances, be materially greater for an employer.

In establishing a negligence claim, it will not be sufficient for an employee to show that it was reasonably foreseeable that the risk would arise again. In order to establish liability an employee must not only prove breach of the duty of care but also that the breach made a material contribution to the injury sustained. The major difficulty that arises for employers is where they are on notice of domestic violence in an employee's home which is also the

[4] Keane v Dermot McGann Groundworks Ltd [2018] IEHC 747

[5] Fagan v Dunnes Stores [2017] IEHC 430

[6] 18th January 2000

employee's place of work. The Covid-19 pandemic has seen employees working from home, which will continue post pandemic due to the Government's proposal to legislate for a right to work remotely. This significantly blurs the line between what occurs in the course of an employee's employment and their personal life, and the extent of an employer's liability when an employee's workplace is within their home.

A recent Australian case, also a common law jurisdiction, of *Workers Compensation Nominal Insurer v Hill [2020*] explores employee safety when working from home and where that line is to be drawn. Michel Carroll and Steven Hill were partners with two young children, employed by the same company, who both worked from home. Mr Hill suffered from paranoid delusions that Ms Carroll was conspiring to steal his clients and ruin him. On 16 June 2010, Mr Hill killed Ms Carroll during the working day at a time when she was performing work related duties. Ms Carroll's dependent children made claims for death benefits, under the Workers' Compensation Act 1987, against the insurance company. At first instance, the Workers Compensation Commission determined that she had died as a result of an injury arising in the course of her employment. The matter was appealed by the insurance company to the Court of Appeal which agreed, and in awarding $450,000 in death benefits to the dependent children, found that Ms Carroll's death occurred in the course of her employment, arose out of her employment and that her employment was a substantial contributing factor to her death, and that her employer was liable. Although the facts of this case are unique, the decision, at the very least, highlights that domestic violence within the workplace is a fundamental risk that employers, when on notice, must manage as reasonably as practicable and any failure to do so could have detrimental consequences. Although there can be significant difficulty proving a causal connection between an injury caused by domestic violence and employment, this case nevertheless clearly demonstrates the novel situations that can arise when workers are allowed to work in an environment where the employer has less control.

Further implications of domestic violence leave for employers

i. Duty of care to other employees

It is clear that employers owe a duty of care to employees to provide them with a safe place of work, under statute and at common law. It is also the case that an employer owes a duty of care not just to the victim of the domestic violence but to other employees within the organisation including those who are aware of the violence and may be using their best endeavours to manage that risk. Should an employee apply for domestic violence leave, employees, including those within the HR Department, will be on notice of the fact that the employee is the victim of domestic violence. The introduction of domestic violence leave into the workplace brings with it those serious issues, questions, dilemmas that will normally be addressed by the relevant professions including the Garda National Protection Services Bureau and social workers, to the door of HR advisors who are not appropriately qualified to deal with criminal and child protection matters, nor should it fall within their role.

Although an employer must manage the risk as reasonably as practicable, employees are simply not qualified to deal with domestic violence and it is very difficult for someone, who is trying to meet an employer's statutory obligations, to know what steps to take that will not put the employee, or his/her children, at further risk. It is also the case that knowing that a colleague, or their children, are victims of violence and will remain so, despite any efforts by an employer to manage that risk, will have a serious impact on an employee's mental health. The impact on the mental health and well-being of those employees cannot be underestimated and could lead to an employee, in attempting to deal with the situation, suffering from stress which, in itself, could give rise to a personal injury. In such a case an employer will be liable should he/she not take the necessary steps to remove the cause of the stress and any failure

to do so could give rise to a personal injury claim for a breach of the employer's common law duty of care to that employee.

In cases of domestic violence, the perpetrator of the violence can intimidate colleagues of the victim being aware that they either know of the violence and/or are assisting them in the situation, by giving them domestic violence leave. Employers not only owe a duty of care to the victim of the violence but also to other employees who may inadvertently become entangled in the situation where the perpetrator intimates them and could use violence against them. It is entirely unreasonable that employers and employees would be put in this situation.

Any proposal to legislate for domestic violence leave must be very cognisant of the fact that it will bring criminality into the workplace, a risk that an employer will be legally required to manage, yet is wholly unqualified to do so. It is the case that where domestic violence arises, there is a lack of appropriate organisations to support an employer as to the best course of action, or to whom an employer could delegate those issues that fall entirely outside the employment relationship. Should domestic violence leave be introduced, Ibec respectfully submits that the Department should consider placing resources into supporting employers who find themselves entangled in a criminal matter that could have detrimental consequences.

ii. Proof of domestic violence

The issue arises as to what form of proof will be required in applying for a period of domestic violence leave. It is the case that where employees avail of a particular leave whether it be maternity, adoptive, paternity, parental or parent's leave, the employee must provide evidence to support their application. Where an employee applies for force majeure leave, although an employer may not request evidence to support the application, employers reserve the right to do so in line with the Parental Leave Act 1998, as amended. What proof will be required in a case where the employee alleges that they are the victim of domestic violence? In New Zealand, the Victims' Protection Act 2018, gives employees affected by domestic violence the right to 10 days paid leave. Employers have the right to ask for proof that the employee is affected by domestic violence. However, the legislation does not state what kind of proof an employer can accept. Where an employer asks for proof but does not get it, there is no requirement to pay the employee unless the employee has a "reasonable excuse". What amounts to a reasonable excuse when the employee is in a vulnerable and precarious situation and is the reasonableness of the excuse to be determined objectively or subjectively to the victim of the violence?

S39 of the Domestic Violence Act 2018 introduced the offence of "coercive control" into Irish law. This offence is defined as "*knowingly and persistently engaging in coercive or controlling behaviour that has a serious effect on the victim and is deemed to have a serious effect if it gives cause to the victim to fear that violence will be used or serious alarm or distress"*. How does an employee prove that he/she is in fear of violence rather than being the victim of violence itself, particularly where the employee is too afraid to report that fear to the Gardai?

In order to avoid any potential abuse of domestic violence leave, an employer must have the right to ask for proof, and in order to be compliant with the GDPR and the Data Protection Act 2018, an employer must have a statutory basis to request same. It is the case that any proof required will include sensitive personal data of the victim, which is a special category of data under the Data Protection Act 2018, which gives effect to Article 9 of the GDPR. Essentially, in order to lawfully process sensitive personal data, employers require a legal basis. S46 of the Data Protection Act 2018 sets out a legal basis as being, that the processing is necessary for the purposes of exercising or performing any right or obligation which is conferred or imposed by law on the employer in connection with employment or social welfare legislation.

Therefore, employers would require a legal basis to require proof of domestic violence leave in order to be compliant with the Data Protection Act 2018.

It must be the case that any domestic violence leave taken by an employee is for a specific purpose that no other existing statutory form of leave can meet, for example the purpose of attending an emergency court hearing or finding emergency accommodation. Ibec notes that in the Organisation of Working Time (Domestic Violence Leave) Bill 2020, as proposed by Sinn Fein, one of the grounds for which the leave can be utilised is for the victim or his/her dependent to seek medical attention. Ibec submits that leave already exists to meet those requirements. Where an employee is injured arising from domestic violence, an employee can take sick leave and where a dependent of an employee, including a child, requires urgent medical attention, there is already a provision for employees to take paid force majeure leave in accordance with section 13 of the Parental Leave Act 1998, as amended.

iii. GDPR

It is expected that should domestic violence leave be introduced that it will be subject to a social welfare payment. Like any statutory leave entitlement, an employer will be obliged to maintain records of the fact that the employee has taken the leave, and the dates and time on which the leave was taken. Under the Parental Leave Act 1998, as amended, section 27 requires an employer to retain for a period of 8 years a record of the period of the parental and force majeure leave taken by an employee. In particular, S27(3) requires that any "notices" required by this Act shall be retained for a period of one year. S13(3) requires that when an employee takes force majeure leave he/she shall as soon as reasonably practicable thereafter by notice in writing confirm the dates on which the leave was taken and "*contain a statement of the facts entitling the employee to force majeure leave*". Failure to maintain records, including notices, which are available for inspection by the WRC inspectorate, is a criminal offence, liable on summary conviction to a fine not exceeding €2,500. Where an employee avails of domestic violence leave, not only will an employer be required to maintain records of the dates of leave taken but a notice containing a statement of the facts entitling an employee to domestic violence leave. Where that notice contains confidential personal data of the perpetrator and sensitive personal data of the victim, it raises serious concerns not just as to how an employer processes that personal data but who has access to that confidential information. Essentially, an employer will be legally obliged to retain a statement containing what is confidential information pertaining to an alleged criminal offence and any failure by an employer to retain that notice is, in itself, a criminal offence.

Should an employee apply for domestic violence leave, in most cases the perpetrator of the violence will, at that stage, be an alleged perpetrator. Domestic violence is a criminal matter, and he/she is innocent until proven guilty, beyond a reasonable doubt. Yet, employees will be disclosing the personal data of that person to an employer, and potentially to the WRC, and an employer will be required to retain and process that person's personal data in accordance with the Data Protection Act 2018. Whilst those records are being retained, it is the case that other employees within the organisation and other parties, including the WRC inspectorate, could have access to and sight of those records. This concern also arises in relation to any statutory records held by the Department of Social Protection, on foot of a domestic leave benefit being paid, where those records may be accessible by a number of individuals. It is important that the rights of an alleged perpetrator are not infringed in introducing this form of leave, or employers don't find themselves falling foul of the Data Protection Act 2018, in processing his/her confidential personal data.

iv. Rights of the alleged perpetrator

Where an employee applies for domestic violence leave, it is anticipated that an employee would be required to give a notice containing a statement of the facts giving rise to the entitlement. Even if the employee does not name the alleged perpetrator, there will surely be sufficient data from which the person is identifiable, given the nature of "domestic" violence. Should an employee, in applying for domestic violence, be unable to prove domestic violence, an employer may use its discretion to not require proof and grant the leave, similar to force majeure leave. What if the employee is not a victim of domestic violence? What if the employee is in a particularly acrimonious relationship and intentionally seeks to defame her/his partner by claiming she/he is the victim of violence and applies for domestic violence leave on that basis? An employer will grant that leave and process the personal data of someone who may not even know his/her personal data is being processed, for the purpose of domestic violence leave, and an employer will retain that data in breach of the Data Protection Act 2018.

Furthermore, concerns also arise where the alleged perpetrator is also an employee of the company, which raises significant concerns for employers when they are on notice that one employee has applied for domestic violence leave on foot of violence being allegedly perpetrated by another employee. It may be the case that the alleged perpetrator may not even know that the leave has been applied for and/or granted. An employer owes a duty of care to both employees. How does being on notice that an employee may be perpetrating domestic violence against another employee impact on that employee's employment including career progression. How does an employer disconnect the type of behaviour that they have been put on notice of, where unconscious bias may arise detrimentally impacting the alleged perpetrator?

Implications of domestic violence leave for the victims of domestic violence

Ibec recognises the motivation behind introducing domestic violence leave and the challenges faced by its victims. However, introducing a leave whereby employees must declare and prove they are victims of domestic violence will surely disincentivise a significant cohort of victims in applying for the leave. Currently, where domestic violence arises employers will use their best endeavours to accommodate employees whether through granting statutory forms of leave, that already exist and that are appropriate in light of the employee's circumstances or, where appropriate, compassionate leave.

In many cases, particularly where coercive control arises, the perpetrator's level of control will be such that he/she will access the employee's payslips where it will be clear that a statutory leave and benefit has been availed of. Introducing domestic violence leave puts a considerable onus on employers to take measures to protect the employee's welfare. Should an employer not specify domestic violence leave on the payslip, in order to protect and safeguard the employee's safety and welfare, it is the case that the perpetrator will still be aware that leave has been taken, in excess of any annual leave entitlement, and that could suffice in exacerbating the violence. Likewise, in many cases, given the nature of domestic violence, the violence occurs between a married couple who may, for tax purposes, be jointly assessed whereby the employee will be chargeable to tax on his/her combined total income with the alleged perpetrator. In that case, where tax credits are affected arising from statutory leave being taken, the perpetrator will be aware of that fact. It will be clear from any record held by the employer or the Department of Social Protection, that the employee has availed of a statutory leave. Becoming aware of such a fact is the very thing that may incite further violence putting the employee or indeed a child at further risk.

Should an employer become aware that an employee is the victim of domestic violence in his/her place of work, arising from the employee applying for domestic violence leave, an employer has a statutory and common law duty to that employee. Despite having an obligation to manage that risk, as reasonably as practicable, an employer is simply not qualified to know what to do or how best to approach the situation and may inadvertently make the matter worse. Therefore, being put on notice of domestic violence, will not necessarily be within the employee's best interests and Ibec submits that there are alternative ways of supporting victims of domestic violence including by putting resources into organisations that are qualified and equipped to support victims.

Role of the WRC

Should an employee apply for domestic violence leave and be refused, it is anticipated that the employee, analogous to other forms of employment legislation, would have a right of redress before the WRC who would either find that the complaint is not well founded or order that the leave be granted and/or grant the employee compensation. However, in order to determine whether an employee is entitled to domestic violence leave, an Adjudication Officer would need to determine, in the first instance, whether the employee is a victim of domestic violence. As a criminal offence, with an entirely different burden of proof, domestic violence and in particular the Domestic Violence Act 2018 fall outside the remit of the WRC and the Workplace Relations Act 2015. If the WRC has no jurisdiction to determine whether the conduct complained of amounts to domestic violence, how could it determine whether the employee is entitled to domestic violence leave?

In bringing a complaint to the WRC, an employee would need to provide evidence that he/she is the subject of domestic violence and that will include disclosing personal data of the alleged perpetrator. The WRC and/or the Labour Court would potentially have access to police reports, criminal records, and other highly sensitive information if it were to determine whether an employee was entitled to avail of such leave. It is particularly concerning that any proposed legislation would allow the WRC and/or the Labour Court to grant leave to employees based on potential criminal allegations towards another individual given that criminal matters are not within the remit of either the WRC or the Labour Court. Furthermore, family law proceedings including applications for Barring Orders or Protection Orders are held in private so that the parties' identities and confidentiality are maintained, and there are significant concerns with admitting such documents into evidence particularly before the public forum of the Labour Court. Ibec submits that the WRC and/or the Labour Court are not the appropriate fora to determine whether an employee has been a victim of domestic violence.

Other forms of leave

Ibec and its members recognise the motivation behind the proposal to legislate for domestic violence leave given the significant challenges faced by its victims. Ibec submits that, although domestic violence is of increasing concern to all, introducing another form of paid leave will have significant adverse implications for businesses, in particular SMEs, at a time where we have seen unprecedented increases in family leave in the last 12 months. As of 1 September 2020, parental leave was increased to 26 weeks, parents leave has been increased to 5 weeks, to be incrementally increased to 9 weeks over the coming years and we await the transposition of the Work Life Balance Directive and the introduction of paid statutory sick pay. Ibec submits that the introduction of domestic violence leave must not be looked at in isolation of the number of other legislative measures which cumulatively have a significant cost burden on employers, not least the cost impact the administration of such leave will have on businesses. The disproportionate burden is only heightened by the piecemeal manner in which

the legislative framework relating to work life balance initiatives are being legislated for and a more coherent and coordinated approach must be applied to this important policy issue.

Sinn Fein Private Member's Bill

Ibec notes that Sinn Féin introduced the Organisation of Working Time (Domestic Violence Leave) Bill 2020 in November 2020, to provide for a period of 10 days paid leave for victims of domestic violence to be paid by an employer at the employee's normal weekly wage. In the first instance, Ibec submits that legislating for an employer to pay for this new form of leave is wholly disproportionate and unsustainable in the current climate. Many of the fundamental concerns arising from this Private Member's Bill have already been addressed in this submission including concerns as to the role of the WRC in determining an employee's entitlement to domestic violence leave, employers retaining sensitive personal data pertaining to a criminal offence and the practical implications of proving an entitlement to the leave.

Ibec further notes that ICTU has called upon the Government to ratify ILO Convention 190 on Violence and Harassment in the Workplace, having previously ratified the Istanbul Convention. The Convention obliges signatory states to protect women against all forms of violence and design a comprehensive framework, policies, and measures for the protection of and assistance to all victims of violence against women and domestic violence. In the first instance, Ibec submits that Ireland has sufficient legislation within the field of employment law and health and safety legislation to meet and indeed exceed the requirements of the ILO Convention. It is important to note that none of these instruments take account of the fact that the "workplace" has rapidly changed in the last 12 months with the emergence of remote working and the significant implications that arise for employers when their obligations extend into the employee's home. Ibec respectfully submits that any proposal to legislate for the introduction of domestic violence leave must now be looked at in the context of the fact that remote working will be part of the future workplace, where employers' obligations and potential liability are complex and wide reaching. Any proposals that fail to take account of this new world of work could have significant and unintended consequences for both employers and victims of domestic violence, with potentially grave consequences.

Domestic violence and other jurisdictions

Ibec submits that it is worth noting that no other EU member states who are signatories to the Convention have introduced domestic violence leave to date. The response of other EU countries has included the Spanish government adopting a contingency plan against gender-based violence and declaring all support services essential ensuring they remain open. Similarly, in France, there is no right to domestic violence leave but measures include using code words to indicate that an employee is a victim of domestic violence.

To date, domestic violence leave has only been introduced in New Zealand, Australia, New South Wales and Canada (Ontario and Manitoba). The legislation, given that it is at its infancy within those jurisdictions, has not yet determined whether the legislation has the desired effect and outweighs any potential implications for employers.

Conclusion

Similar to measures taken in other European countries, Ibec submits that a focus should be placed on resources that are available to support victims of domestic violence and any Government resources, Ibec respectfully submits, should be utilised to expand on those services that are equipped to deal with the implications of domestic violence. Although employers will continue to adhere to their statutory and common law obligations, significant concerns arise for employers where they are put on notice of domestic violence particularly

within the employee's home, as a place of work. Where domestic violence arises, Ibec submits that it should be dealt with on a case by case basis at enterprise level, whereby, in light of the employee's particular circumstances, it may be more appropriate for an employee to avail of another form of statutory leave including force majeure leave or, where appropriate and applicable, compassionate leave.

Ibec submits that the Department must be cognisant of the significant legal and practical implications for employers and victims of domestic violence that will arise should a statutory right to domestic violence leave be introduced. Domestic violence is a criminal offence and Ibec respectfully submits that it is simply not appropriate to bring criminality into the employment relationship. Ibec would welcome the opportunity to engage with the Department further as this matter progresses.

END