

Dear Minister O’Gorman,

Thank you for your invitation to meet regarding the transcription of the EU Work Life Balance Directive into Irish law, and thank you Minister for giving the area of flexible working so much of your attention.

In advance of our meeting on the 18th of May I thought it would be useful to outline Chambers Irelands position, as it relates to the Work Time Directive, and the area of ‘flexible working’ more broadly, so that we could ensure that our meeting would be as productive as possible.

As you know, Chambers Ireland is both deeply interested in, and supportive of, flexible working. We believe that a well implemented flexible working policy can both support the economic wellbeing of the nation and enhance the labour force engagement of many disadvantaged people – particularly carers and disabled people.

The challenge of labour force activation

Given that economic growth is expected to continue into the medium term (despite the Russian invasion of Ukraine, and the associated rise in input costs), we can expect that the Central Bank of Ireland projections - that we will see full employment being reached during 2024 – will remain largely accurate.

Should such growth occur, full employment is likely to result in wage-derived inflation forces becoming more pronounced. The impact of this capacity constraint will be exacerbated by the limited housing opportunities that exist for workers who migrate to Ireland. As a result, many sectors which will then be suffering skills shortages will be less able to attract labour from abroad than in earlier times.

It is therefore vital to our national ambitions that people who are already based in Ireland can engage with the workplace to their greatest capacity.

This is why our network has supported the regularising of the legal status of undocumented workers in Ireland. It is why we collaborated so strongly with the Department of Children in the past, it is why we engage with those operating in the disability sector so frequently, and why we champion older people in our communities (and the people who support them).

Caring duties as a driver of inequality

Caring duties are the single biggest reason why working-age people resident in Ireland leave the workforce. This is particularly marked amongst women. Over 98% of those that are tasked with caring duties in Ireland are women. The impact of motherhood on the career trajectory of women in Ireland is particularly marked. For many women, motherhood is associated with a long-term disengagement with the workforce.

Of course, caring duties are not limited to mothers – but even when a woman does not have a child, caring for parents who become unwell, or siblings with special needs often becomes the responsibility of the women in the family.

Given that:

- Irish women are disproportionately well-educated relative to the male population, and
- that people who are of a family-formation age are educated to a far higher degree than the older community, and
- that disengagement from the labour force presents an enormous loss of income for the families involved,

then the absence of so many highly skilled individuals, who would otherwise work, from the labour force is an enormous loss to our society.

This loss of opportunity for every individual who is constrained by caring duties is not only felt by these individuals and their families. This loss also narrows our potential for growth at the national level given the large number of individuals who find themselves excluded from work. Our concern is that unless the policy which your department implements is not adequately gender-proofed, flexible working as a concept will be married to parenthood, and associated caring duties, and so come to be seen as something which is ‘for women’.

The need to disentangle flexibility from caring

As you know, Chambers Ireland is a strong advocate for the UN’s Sustainable Development Goals and Gender Equality is one of the goals we focus on most closely. Ensuring that flexible working does not become seen to be a thing that women do, and something which is associated with mothers in particular, is extremely important. Should flexible working become seen to be something which is for women, and not for men, it will further entrench biases towards women in the workplace.

Flexible working presents a great opportunity to keep people engaged with the workforce throughout their careers, regardless of the adversity they experience. As the covid crisis demonstrated, continued contact with the workplace, through whatever means, is vital for maintaining skills and greatly facilitates a return to full time work when that is a reasonable possibility.

Chambers Ireland has been arguing for quite a considerable time that flexible working should be integrated throughout the workforce wherever it is feasible. But it should also be available for all workers. There is often considerable stigmatisation of parents within the workforce, and for mothers in particular. There are great dangers in framing flexible working as a way of treating those who happen to be parents, and them alone.

If our aim is to facilitate parents having access to flexible working practices, this means that we should be providing those same rights to all workers, as to give the right to request flexible working exclusively to parents risks making parents (or those who may soon become parents) less attractive employees – relative to other candidates.

While we are as yet waiting for further detail from the department regarding how you are planning to implement the Work Life Balance Directive we have serious concerns that emerge from what has been disseminated to date. The proposal that parents should be able to make a claim for children that are under the age of 12 seems to be an unnecessary pre-condition that will require employers to retain the personal data of the children of their employees. The facility whereby individuals have to take on caring duties and then seek out flexible working accommodations on that basis leaves employers having to monitor the health status of the individual who is being cared for. Should the person being cared for recover sufficiently to no longer need care the employer may find that they are treating similar employees differently. Commensurately, employers will have to retain data which relates to the reason for the flexible working decision in case another employee claims that they have been treated unfairly relative to the individual for whom flexible working is facilitated.

Flexible working is role-appropriate, not person-appropriate

Ultimately, and even for those that this proposed legislation seeks to help, the decision regarding whether a role is suitable for flexible working will be determined by the practicalities of instituting flexible work practices for that role. The decision to facilitate flexible working arrangements is contingent upon “**the employers’ resources and the operational capacity to offer such arrangements**”. It is, and ought to be, inevitable that the capacity of an employer to agree to a flexible working request is contingent upon flexible working being appropriate to the workplace in question. There are many forms of workplaces where such requests cannot be granted for practical reasons that relate to the role of the individual involved.

Reifying flexible working as a thing which is associated with parenthood will further undermine parents within the workforce, and this linkage also undermines the concept of flexible working more broadly. If an individual is working for a business and chooses to request a reduction in their hours so that they can start up their own side business, or they want to pursue further education, or they want to take up a new hobby, they should be as entitled to request this as anyone else. And whether their employer agrees to this will inevitably depend on whether the role can support a reduction in hours, or a scheduling of hours.

For a large business such a reduction or rescheduling may not be a problem, whereas for a smaller business it may be unfeasible because filling the associated gap may require employing another worker. That new worker’s employment may not be able to continue upon the return of the flexible worker to a full-time role, as the directive notes: “**Workers should therefore have the right not only to return to their original working**

pattern at the end of a mutually agreed period, but should also be able to request to do so earlier where required on the basis of a change in the underlying circumstances.”

How can an employer reasonably take on a new worker if their job may be redundant at any moment?

Determining whether flexible working is something that a business can agree to is and ought to be a function of the particular role, in a particular business, itself. It is not contingent upon the health status, or age, of people who are not party to the contract between the employer and the employee.

Integrating Work/Life balance bill within the wider employment law context

We are also concerned about how this legislation is implemented and integrated into Irish employment law. As you will know there is a considerable number of employment related laws which are on the pathway to enactment right now (and we are aware that as there is a requirement that it be transposed into Irish law within three years of the adoption of the directive, the department is now under considerable pressure to move on this quickly) however the manner that they are being implemented is far from appropriate to the SME test/ ‘think small first principle’.

Several independent, but interacting, pieces of primary and secondary Employment Law legislation have been recently introduced or enacted, including:

- Last year’s extension to parents leave extension in the “Family Leave and Miscellaneous Provisions Bill 2021” which amended the “Parent’s Leave and Benefit Act 2019” (that created confusion for many regarding the “Parental Leave Act 1998”, a bill which was recently amended in the “Parental Leave (Amendment) Act 2019”)
- The 2021 Code of Practice on the Right to Disconnect
- This year’s “Right to Request Remote Work Bill 2022”
- This year’s “Sick Leave Bill 2022”

All of which sitting within a context of an outdated Organisation of Work Time Act, the inadequate Protection of Employees (Part-Time Work) Act 2001, and myriad other pieces of legislation.

Ideally, these laws would have been integrated into a reformed consolidated act which would simplify the burden on employers when it comes to informing themselves about the relevant legislation. Failing that, it would have been good if the new legislation that was being proposed had been grouped together to ensure that its roll out could have been coordinated so that it would result in as little disruption to workplaces as possible.

The role of LEEF in maintaining policy coherency

Finally, Chambers Ireland would like to highlight the success of the existing Labour/Employer Economic Forum (LEEF) structure in areas such as facilitating the implementation of the Early Years programme and other complicated areas of policy (such as pension autoenrollment).

The engagements which we have had with many departments over the years while this was established have often been useful in accelerating the implementation of policy. This is because that forum can ensure that the practical issues that are inevitable within draft policy proposals can be resolved in advance of the legislation getting a more public viewing. The LEEF structure is also useful for ensuring that policy efforts in one area of government are not inadvertently undermining policy efforts in other areas.

Chambers Ireland is seriously concerned that the narrow focus of the Work Life Balance Bill (as it has been outlined) will counteract the broader government aims around Gender Equality by tightly linking flexible working to parenthood and caring. Such an approach risks making flexible working a gendered issue (just as caring and parenthood are gendered issues). This constraining of flexible working also neglects the many other diverse groups within society who may also benefit from flexible working opportunities.

Thank you kindly for your efforts,

Shane Conneely
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Chambers Ireland