

## **Public Consultation on Flexible Working**

The Government is seeking your views on the policy that it is planning on flexible working.

An open written consultation process opens on December 11, 2019. You can give your views or make a submission to:

[flexibleworkingconsultation@justice.ie](mailto:flexibleworkingconsultation@justice.ie)

The submission process is open to employers, employees, trades unions and the general public.

The closing date for receipt of submissions is 31 January 2020. You can make a submission either on behalf of an organisation, an employer, a trade union or as an individual.

Submissions received will be uploaded on the Department of Justice and Equality's website with a report on the consultation process.

You can also give your views by completing the questionnaire that is on the Flexible Working consultation pages of the on Departments website.

## **Purpose of the Consultation**

This consultation is being undertaken:

- to seek views from employers, employees, trades unions and the wider public on:
  - the issues that are most important for them in terms of flexible working, the types of flexible working arrangements currently in place and the changes that they wish to see;
  - the potential impact of changes in technology, the workplace, the family and society on the types of flexible working arrangements available to, or sought by, employees.
  - the potential obstacles that may exist for small, medium and large employers when facilitating flexible working arrangements for employees as well as the potential administrative impact;
  - the success factors that will help the Government and businesses to develop flexible working options that suit employees and employers.

## **What is the background to this consultation?**

The Government has made a commitment in the First Five Strategy and the Future Jobs Ireland to undertake a public consultation which will inform its policy on flexible working. The Government seeks to develop a policy that takes account of the needs of families, particularly those with young children, of individuals, including those with disabilities, of employers and of the broader economy. Flexible working arrangements can support parents to balance caring and work responsibilities. They can also be crucial for those caring for older people or those with disabilities as well as for employees who themselves have disabilities. The distance that individuals have to travel to their workplaces, the availability and cost of housing, transport, childcare and eldercare all influence the kind of arrangements sought by employees.

Flexible working options may include the possibility of starting or finishing work at differing times, of doing compressed hours, of having access to flexi-time, of being able to work remotely or having the right to disconnect outside work hours. It also includes access to part-time or shared working options.

The flexible working policy is being developed against a background of change that will have an impact on the type of arrangements offered by an employer and on the decisions taken by a worker. Technology will enable more people to work differently. The nature of the workplace is also changing, enabling greater flexibility both in terms of where and when the employee works.

Demographic changes will also influence caring responsibilities and individuals' decisions with regard to where and when they work. Availability of work-life balance arrangements may also influence which companies attract and retain the best talent.

The Government has put in place a number of strategies which are aimed at enabling more people to enter and remain in employment. The National Strategy for Women and Girls promotes greater labour force participation by women and seeks to facilitate men to undertake a greater share of caring responsibilities for children and older dependants. The Comprehensive Employment Strategy for People with Disabilities sets the objective to promote the recruitment and retention of people with disabilities in the labour market. Future Jobs Ireland has targeted a substantial increase in the overall labour market participation rate, with a particular focus on groups currently underrepresented.

Workers seeking to balance family and work responsibilities now have access to a range of statutory family leave entitlements. Two new entitlements – paternity leave and parent’s leave have been put in place by the Government in 2016 and 2019. These statutory entitlements are:

- parental leave which is available for the parents of children under 12 (or 16 if the children have disabilities);
- maternity leave for a mother at the time of her child’s birth;
- paternity leave for a father before a child is 6 months;
- parent’s leave for a parent within the first 52 weeks of a child’s life;
- adoptive leave for a parent when adopting a child;
- carer’s leave for those undertaking caring responsibilities for older people or those with disabilities.

## **What does the Government wish to know?**

Your views are sought on the following questions:

### Employees:

- Does your employer offer flexible working arrangements? Which arrangements are available?
- As an employee, what sort of flexible working arrangements do you need or would you like to see in your workplace?
- In your opinion, which flexible working arrangements should be prioritised?
- Which actions do you think could be undertaken by the Government to enable you to have access to flexible working options?
- Which actions do you think should be introduced by employers?

### Employers:

- As an employer, what sort of flexible working arrangements work best for you?
- Do you offer flexible working arrangements to your employees? Which options do you offer?
- Are there actions that can be taken by Government that can reduce any negative impact of flexible working arrangements for you as an employer?
- Are there new and emerging technological supports or solutions that you would like to see explored or introduced? How would these directly impact on your business?

### Trade unions:

- What is the current position on flexible working arrangements for your members?
- Which actions would you like to see introduced by Government to improve the range of flexible working arrangements available to your members?
- Which actions would you like to see introduced by employers to enable your members to have access to flexible working arrangements?
- Are there penalties for employees who access flexible working arrangements?

### **What will the Government do with your responses?**

The Government will use the answers that you give to these questions to develop a policy on flexible working in 2020. It will prepare a report that will summarise the findings from this consultation. The Government will draw on the findings of this consultation to consider whether or not new legislation is needed. It will also consider whether existing supports meet the needs of businesses and employees and if additional supports are required. It will look at how technology and working methods can help employers and employees to have flexible working arrangements that meet the needs of employee and business alike.

## **Appendix: Some further information on flexible working and on what is happening in the EU**

### **Why flexible working and work-life balance are important**

Work-life balance strongly benefit individuals, companies and wider society. Employers offering greater flexibility in terms of work patterns, in support of an appropriate level of work life balance, are more likely to attract workers with caring or other responsibilities in a highly competitive labour market. Increasing female employment results in higher earnings and contributes to career progression that positively impact on families' economic prosperity, social inclusion and health. Providing parents and carers with greater choice in organising their work and caring responsibilities also reduces the risk that they will leave the labour market altogether. Employee responses to surveys on working conditions have frequently displayed that the employee is less likely to leave a position where flexibility is offered, even where doing so is more financially advantageous.<sup>1</sup>

The availability of leave and flexible working arrangements has been shown strongly to mitigate the effect of caring responsibilities on women's employment outcomes. A rise in female employment would help to address the longer term challenge of the ageing demographic which may limit the potential future labour force available to enable Ireland's economy to expand to its greatest potential in the decades ahead. Companies would benefit from the ability to access a wider talent pool, a more motivated and productive labour force as well as less absenteeism.<sup>2</sup> Increased flexibility has been

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<sup>1</sup> [https://www.eurofound.europa.eu/sites/default/files/ef\\_publication/field\\_ef\\_document/ef18065en.pdf](https://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef18065en.pdf)

<sup>2</sup> [https://www.eurofound.europa.eu/sites/default/files/ef\\_publication/field\\_ef\\_document/ef1733en.pdf](https://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef1733en.pdf)

showing to have a positive effect on the reduction of unpaid household and family work undertaken by women and an increase in their involvement in paid employment outside the home.<sup>3</sup>

Given the increasing demographics of the European workforce, retaining older staff will allow companies to continue to use the skills of experienced employees . Enabling older workers to remain in the workforce, if they so choose, may also help to ensure financial stability in later life for individuals with fragmented employment histories.

Greater flexibility and better work-life balance also facilitates more people with disabilities to access and remain in employment. The extent to which people with disabilities feel left out of society varies considerably depending on whether they are employed or not. Those who have a job are less likely to report feeling isolated in society than long-term unemployed disabled respondents or those who are unable to work because of their disability.<sup>4</sup>

### **Potential Issues for Employers**

Some business representative groups such as BusinessEurope (which includes IBEC), UEAPME (which includes ISME), and Eurocommerce have expressed concern about the impact of increased employee leave on small businesses.<sup>5</sup> Potential costs involved include lost productivity, administration costs, and short term recruitment/cover costs.

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<sup>3</sup> [https://www.eurofound.europa.eu/sites/default/files/ef\\_publication/field\\_ef\\_document/ef18065en.pdf](https://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef18065en.pdf)

<sup>4</sup> Eurofound (2018), The social and employment situation of people with disabilities, Publications Office of the European Union, Luxembourg;

[https://www.eurofound.europa.eu/sites/default/files/ef\\_publication/field\\_ef\\_document/ef18023en.pdf](https://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef18023en.pdf)

<sup>5</sup> [https://www.tasc.ie/download/pdf/forthcoming\\_eu\\_worklife\\_balance\\_package.pdf](https://www.tasc.ie/download/pdf/forthcoming_eu_worklife_balance_package.pdf)



Business networks argue that in order to be effective, organised flexibility in working arrangements needs to take into consideration the needs of both companies and workers.

### **EU Directive on Work-Life Balance for Parents and Carers<sup>6</sup>**

The Directive on Work-Life Balance for Parents and Carers aims to increase the participation of women in the labour market and the take-up of family-related leave and flexible working arrangements. It also provides opportunities for workers to be granted leave to care for relatives who need support. By modernising the existing EU legal framework in the area of family-related leaves and flexible working arrangements it is envisaged that parents and carers will be better able to reconcile their professional and private lives, and companies will benefit from more motivated workers.

The Directive came into force in June 2019. Member States have three years to adopt laws, regulations and administrative provisions necessary to comply with the Directive. The implementation of the Directive will contribute to achieving the Government's commitment to enhance work-life balance.

### **Outline of family and caring leave currently available in Ireland**

Ireland currently provides female employees with 26 weeks' maternity leave with 16 weeks' additional unpaid maternity leave, which begins immediately after the end of maternity leave. In the event of the mother's death within 40 weeks of giving birth, that father may be eligible for any remaining maternity

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<sup>6</sup> [https://eur-lex.europa.eu/resource.html?uri=cellar:84205176-2b39-11e7-9412-01aa75ed71a1.0001.02/DOC\\_1&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:84205176-2b39-11e7-9412-01aa75ed71a1.0001.02/DOC_1&format=PDF)

leave.<sup>7</sup> Two weeks of paid paternity leave is available for fathers for the first year of their child's life. The Government has just introduced two weeks of paid parent's leave for the parents of a child under 52 weeks.

Parental leave for parents of eligible children increased from 18 weeks to 22 weeks from 1 September 2019 and from 22 to 26 weeks from 1 September 2020. Parental leave is unpaid, and may be taken until the child is 12 years of age (16 in the case of children with disabilities). Leave may be taken in flexible blocks of one week, or more favourable conditions where employer agrees. Parental leave is available to all employees who have completed 12 months continuous employment with that employer.<sup>8</sup>

The Carers Leave Act 2001 allows employees to leave their employment temporarily to provide full-time care for someone in need of full-time care and attention. This consists of at least 13 weeks up to a maximum of 104 weeks. Such leave is unpaid. However the leave taker is protected from unfair dismissal and can return to their position without penalty.

### **How does Ireland compare with other EU countries?**

The latest European Quality of Life Surveys (EQLS) from 2016 shows the percentage of respondents in 28 Member States who frequently care for children, grandchildren, people with disabilities, or who are responsible for housework.<sup>9</sup> Ireland ranked above the EU average across the board, with males at 30% (EU28 average of 22%) and females at 36% (EU28 average of 27%). In

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<sup>7</sup>[https://www.citizensinformation.ie/en/employment/employment\\_rights\\_and\\_conditions/leave\\_and\\_holidays/maternity\\_leave.html](https://www.citizensinformation.ie/en/employment/employment_rights_and_conditions/leave_and_holidays/maternity_leave.html)

<sup>8</sup> <http://www.justice.ie/en/JELR/Pages/PR19000203>

<sup>9</sup> European Quality of Life Survey 2016: <https://www.eurofound.europa.eu/surveys/european-quality-of-life-surveys/european-quality-of-life-survey-2016>

terms of those with caring responsibilities that were employed, Ireland stood at 43% against the EU28 average of 36%.<sup>10</sup>

Half of people with disabilities in the EU are in employment. The proportion of men is greater than that of women (55% versus 47%, respectively, in 2016), as is the proportion of younger people compared to older people (56% of 18–34-year-olds versus 49% of 35–64-year-olds).<sup>11</sup> In 2016, fewer working-age people with disabilities reported that they were retired than was the case in 2011 (13% versus 18%, respectively).

Census data from 2016 indicates that there was 643,131 people who stated they had a disability, accounting for 13.5 per cent of the population. This represented an increase of 47,796 persons (8%) on the 2011 figure of 595,335. 311,580 (48.4%) persons with a disability were male while 331,551 (51.6%) were female.<sup>12</sup>

Of those with a disability, 36.5% of people of working age are employed, with a further 13.2% unemployed/searching for work. This can be compared to 72% of able-bodied people in employment, and a further 9.3% unemployed / searching for work.<sup>13</sup>

## **What happens in other countries: some case studies**

### **The United Kingdom**

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<sup>10</sup> <https://www.eurofound.europa.eu/data/care-responsibilities?group=4>

<sup>11</sup> Eurofound (2018), The social and employment situation of people with disabilities, Publications Office of the European Union, Luxembourg;  
[https://www.eurofound.europa.eu/sites/default/files/ef\\_publication/field\\_ef\\_document/ef18023en.pdf](https://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef18023en.pdf)

<sup>12</sup> <https://www.cso.ie/en/releasesandpublications/ep/p-cp9hdc/p8hdc/p9d/>

<sup>13</sup> <http://nda.ie/Resources/Factsheets/NDA-Factsheet-2-Employment/NDA-Factsheet-2-Employment.html>

The United Kingdom provides a right for to request flexible working practices. This right was first introduced in 2002, initially only to parents and later caregivers but the *Children and Family Relationships Act 2014* extended this to all employees with 26 weeks of continuous employment.<sup>14</sup> Employees can make a request in writing to their employer requesting a change in hours, time or location or work and setting out what they think can be done to mitigate any negative effects to their employer. An employer is required to deal with a request in a reasonable manner and can only refuse if the change would fall under number of set business related grounds, for example the burden of additional costs or a detrimental effect on ability to meet customer demands. If the employer fails to meet their obligations under the law an employment tribunal can order them to reconsider their decision and award compensation to the employee.

As of 2017 27% of employees were in some variant of these arrangements.<sup>15</sup> The most popular types of arrangements were flexi time with 10.7% of all workers, annualised hours contracts with 5.3% of all workers and term time working with 5% of all workers.

## **Austria**

In Austria working hours and practices area largely governed by collective agreements agreed between representative of employers and employees in particular industrial sectors. These agreements typically regulate minimum wages, wage increases, notice periods, holidays, special payments and working time. From 2013 collective agreements in some sectors have included a “Free

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<sup>14</sup> [House of Commons Briefing Paper – Flexible Working \(House of Commons Library, 2018\)](#)

<sup>15</sup> [Megatrends – Flexible working \(CIPD, 2019\)](#)

time option” whereby workers can chose to receive additional time off work in lieu of an annual pay increase.<sup>16</sup> This time can be used to reduce the length of the work week or saved to take off longer periods.

Additionally parents of children younger than seven are entitled to transfer to part time work if they have been employed in a business with at least 20 employees for at least 3 years.<sup>17</sup> Employees with children under 4 who avail of this right are protected from dismissal by their employers. Caregivers are entitled to agree to a part time arrangement with their employers. Caregivers availing of such an arrangement are paid proportionally to the hours worked with a minimum income threshold. Austria also allows workers approaching retirement to apply for reduced working hours. The employee agrees to a reduction of their workload by 40% - 60% but their pay only drops by half, with the state paying some of the difference.<sup>18</sup>

## **France**

France has introduced a number of pieces of legislation designed to allow employees to have more flexible working arrangements. Full time employees receive priority when for applying for part time roles in their area of work with the same employer and the employer may only refuse for reasons set out in the applicable collective agreement. Employees may also request a reduction in their working hours for family related reasons and employers can only refuse such a request for objective reasons related to the operational requirements of the company. Employees who are required to work on Sundays have priority

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<sup>16</sup> [Working time Patterns for Sustainable Work \(Eurofound, 2017\)](#)

<sup>17</sup> [15th International Review of Leave Policies and Related Research 2019 \(INTERNATIONAL NETWORK ON LEAVE POLICIES AND RESEARCH, 2019\)](#)

<sup>18</sup> [Working time Patterns for Sustainable Work \(Eurofound, 2017\)](#)

when applying for similar roles which do not require Sunday work and are also entitled to request that they no longer work on Sundays, such change being effective 3 months following the notification of the request to the employer.

French law also anticipates the difficulties that some jobs present with regard to calculating working hours. This “day allowance” limits the total number of days per year such employees can work and specifies required periods of daily and weekly rest.<sup>19</sup> Employers are required to consider the reasonableness of the employee’s workload and their obligations of health and safety at work, as well as the need to respect a balance between family life and work.

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<sup>19</sup> [Working time Patterns for Sustainable Work \(Eurofound, 2017\)](#)