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6 January 2022

Dear Peter,

### **DOMESTIC ABUSE (SAFE LEAVE) BILL**

Thank you for providing the Labour Relations Agency the opportunity to comment on the Domestic Abuse (Safe leave) Bill (your reference: EC492/21). The Private Member's Bill (PMB) seeks to introduce a statutory provision of at least 10 days of paid leave each leave-year to workers or employees who are victims or survivors of domestic abuse. The PMB makes this a 'Day 1' right, without any qualifying period of employment required.

There is little doubt that, between pending statutory reforms in Great Britain and plans to implement International Labour Organisation (ILO) Conventions regarding harassment and violence, there is now a clear direction of travel regarding legislating on broader societal matters in a variety of contexts, including the workplace.

The Agency is aware of public and private sector organisations that have proactively designed and implemented tailored policies regarding domestic violence. This is often in partnership and co-design with recognised trade unions and specialist stakeholder groups, which we would encourage.

Similarly, organisation-specific rights and services are being put in place by a number of employers to address and support employees on other issues and societal matters. These range from, for example, the impact of menopause in the workplace through to diversity and inclusion initiatives that allow staff to bring their 'whole-selves' to work.

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The Agency encourages this as best practice. We have, for example, published guidance on 'Promoting Equality in Employment for Women Affected by Menopause' (available [here](#)). This was prepared in partnership with the Equality Commission and Northern Ireland Committee of the Irish Congress of Trade Unions (NIC-ICTU). Further partnership work with NIC-ICTU is underway way in respect of domestic violence.

The Domestic Abuse (Safe leave) Bill goes beyond individual employer-led good practice to enshrine a specific right into statute that would apply to all employers. Safe leave would be available to both 'employees' and 'workers', as defined in the Employment Rights NI Order 1996, as an exercisable right from the start of their employment.

From the Agency's perspective, a key aspect of the legislation will be the advice and guidance that accompanies it in terms of clarity and certainty for employers giving paid leave and employees or workers receiving it.

Some of the key issues that will need to be addressed in accompanying advice and guidance should include:

- Clarifying that it is an exercisable right (albeit at times possibly retrospective) as opposed to an automatic entitlement. The issue of the employer attaching "reasonable conditions" will need to be specifically detailed;
- Highlighting that advance notice by the employee or worker is not always going to be possible. As such, there needs to be a retrospective protection highlighted in the guidance/advice when an employee or worker may have seemed to be absent without leave;
- The evidence requirements, if any, an employer may request (e.g. contact with Social Services, Women's Aid, PSNI) to ensure that the abuse suffered is covered under Section 1 of the Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021;
- The mechanics of taking the leave – single days aggregating to 10, or two x five-day week blocks taken in disaggregated weeks? What are the confidentiality protections regarding notification to the employer? Why the right of return to work is not to exactly the same post as prior to the exercising of the right to safe leave? Why is dismissal protection incorporated, but not detriment-related rights? What are the HMRC ramifications for this NI-specific payment attached to the leave?
- Clarifying that the only category of individual in the workplace excluded from the right is a self-employed independent contractor and the issues therein if there is confusion or disagreement about work status/classification; and,

- The mechanics and processes involved in annual monitoring/reporting and compliance requirements imposed on the Department for the Economy (DfE) and employers.

The legislation (and/or guidance) will also need to address specific queries regarding:

- The legal effect and meaning of “at least 10 days”;
- Whether the rate of pay mirror existing statutory payment rates that increase annually; and,
- How employers assess matters that fall outside issues related to domestic abuse such as PTSD, child custody disagreements, workplace location restraining orders; etc.

The Agency recognises that much of the detail around the processes and mechanics of invoking the right to safe leave will be detailed in regulations. However, we wanted at this stage to highlight the level of detail that employers, employees and workers, and their representatives will need beyond the construct and concept of the right itself.

DfE and the Agency work in close partnership when any new employment right is introduced. This normally includes:

- Promotion and communications to raise awareness;
- Developing, publishing, and disseminating guidance; and,
- Developing and delivering seminars/webinars for HR and legal practitioners and representatives to explain and answer questions about the change in legislation.

Thereafter, the Agency’s Workplace Information Service provides telephone advice to employers, employees and workers, and their representatives regarding rights and responsibilities. Furthermore, our Early Conciliation Service is available to resolve disputes that may arise

The above reflect the typical areas of joint working with DfE, which we are planning in other pending areas of reform, such as Parental Bereavement Leave and Pay currently working its way through the Assembly’s legislative process.

The Agency stands similarly ready to assist in the roll-out of this PMB, in the event that it becomes law.

Yours sincerely,

A handwritten signature in cursive script, appearing to read "Don Leeson". The signature is written in a light grey or blue ink and includes a long, sweeping underline that extends to the right.

**Don Leeson**  
**Chief Executive**

Copy: Colin Jack, DfE