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ACTS REFERRED TO

Adoptive Leave Act, 1995	1995, No. 2
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Employment Agency Act, 1971	1971, No. 27
Local Government Act, 1941	1941, No. 23
Maternity Protection Act, 1994	1994, No. 34
Minimum Notice and Terms of Employment Act, 1973	1973, No. 4
National Minimum Wage Act, 2000	2000, No. 5
Organisation of Working Time Act, 1997	1997, No. 20
Parental Leave Act, 1998	1998, No. 30
Petty Sessions (Ireland) Act, 1851	1851, c. 93
Protection of Employees (Employers' Insolvency) Act, 1984	1984, No. 21
Redundancy Payments Act, 1967	1967, No. 21
Redundancy Payments Acts, 1967 to 1991	
Social Welfare Act, 2000	2000, No. 4
Social Welfare (Consolidation) Act, 1993	1993, No. 27
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Number 19 of 2001

CARER'S LEAVE ACT, 2001

AN ACT TO PROVIDE FOR THE TEMPORARY ABSENCE FROM EMPLOYMENT OF EMPLOYEES FOR THE PURPOSE OF THE PROVISION OF FULL-TIME CARE AND ATTENTION TO A PERSON REQUIRING IT, TO PROTECT THE EMPLOYMENT RIGHTS OF THOSE EMPLOYEES DURING SUCH ABSENCE, AND FOR THAT PURPOSE TO AMEND CERTAIN ENACTMENTS AND TO PROVIDE FOR RELATED MATTERS. [2nd July, 2001]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

PRELIMINARY AND GENERAL

1.—This Act may be cited as the Carer's Leave Act, 2001. Short title.

2.—(1) In this Act, unless the context otherwise requires— Interpretation.

“Act of 1967” means the Redundancy Payments Act, 1967;

“Act of 1977” means the Unfair Dismissals Act, 1977;

“Act of 1993” means the Social Welfare (Consolidation) Act, 1993;

“Act of 2000” means the Social Welfare Act, 2000;

“appeals officer” has the meaning assigned to it by the Act of 1993;

“associated employer” shall be construed in accordance with *subsection (2)*;

“carer's leave” shall be construed in accordance with *section 6*;

“confirmation document” has the meaning assigned to it by *section 10*;

“continuous employment” shall be construed in accordance with *section 7(6)*;

“contract of employment” means—

(a) a contract of service or apprenticeship, and

(b) any other contract whereby an individual agrees with another person, who is carrying on the business of an employment agency, within the meaning of the Employment Agency Act, 1971, and is acting in the course of that business, to do or perform personally any work or service for a third person (whether or not that third person is a party to the contract),

whether the contract is express or implied and, if express, whether it is oral or in writing;

“deciding officer” has the meaning assigned to it by the Act of 1993;

“dispute” shall be construed in accordance with *section 17*;

“employee” means a person of any age, who has entered into or works under (or, where the employment has ceased, entered into or worked under) a contract of employment and references, in relation to an employer, to an employee shall be construed as references to an employee employed by that employer; and for the purposes of this Act, a person holding office under, or in the service of, the State (including a civil servant within the meaning of the Civil Service Regulation Act, 1956) shall be deemed to be an employee employed by the State or Government, as the case may be, and an officer or servant of a local authority for the purposes of the Local Government Act, 1941, or of a harbour authority, health board or vocational education committee shall be deemed to be an employee employed by the authority, board or committee, as the case may be;

“employer” means, in relation to an employee—

(a) the person with whom the employee has entered into or for whom the employee works under (or, where the employment has ceased, entered into or worked under) a contract of employment, subject to the qualification that the person who under a contract of employment referred to in *paragraph (b)* of the definition of “contract of employment” is liable to pay the wages of the individual concerned in respect of the work or service concerned shall be deemed to be the individual’s employer, and

(b) includes, where appropriate, the successor of the employer or an associated employer of the employer;

“full-time care and attention” shall be construed in accordance with section 82A (inserted by the Act of 2000) of Chapter 11A of Part II of the Act of 1993;

“Minister” means the Minister for Enterprise, Trade and Employment;

“prescribed” means prescribed by regulations made by the Minister under this Act;

“relevant person” has the meaning assigned to it by section 82A(1) (inserted by the Act of 2000) of Chapter 11A of Part II of the Act of 1993;

“successor” has the meaning assigned to it by *section 14(1)(a)*;

“Tribunal” means the Employment Appeals Tribunal.

(2) For the purposes of this Act, 2 employers shall be taken to be associated if one is a body corporate of which the other (whether directly or indirectly) has control or if both are bodies corporate of which a third person (whether directly or indirectly) has control and "associated employer" shall be construed accordingly. Pr.1 S.2

(3) In this Act—

- (a) a reference to a Part or section is a reference to a Part or section of this Act, unless it is indicated that a reference to some other enactment is intended,
- (b) a reference to a subsection or paragraph is a reference to the subsection or paragraph of the provision in which the reference occurs, unless it is indicated that a reference to some other provision is intended, and
- (c) a reference to any enactment shall, unless the context otherwise requires, be construed as a reference to that enactment as amended or adapted by or under any subsequent enactment.

3.—(1) The Minister may—

Regulations.

- (a) by regulations, provide for any matter referred to in this Act as prescribed or to be prescribed, and
- (b) make regulations generally for the purpose of giving effect to this Act.

(2) Before making regulations under this Act, the Minister shall consult with the Minister for Social, Community and Family Affairs, any other Minister of the Government with whom, in his or her opinion, it is appropriate to consult and persons whom the Minister considers to be representative of employers and employees having regard to the regulations so made.

(3) Regulations under this Act may contain such consequential, supplementary and ancillary provisions as the Minister considers necessary or expedient.

(4) Every regulation under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which the House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

4.—(1) A provision in any agreement shall be void in so far as it purports to exclude or limit the application of any provision of this Act or is inconsistent with any provision of this Act.

Voidance or modification of certain provisions in agreements.

(2) A provision in any agreement which is or becomes less favourable in relation to an employee than a similar or corresponding entitlement conferred on the employee by this Act shall be deemed to be so modified as to be not less favourable.

(3) Nothing in this Act shall be construed as prohibiting the inclusion in an agreement of a provision more favourable to an employee than any provision in *Parts 2 to 5*.

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(4) References in this section to an agreement are to any agreement, whether a contract of employment or not and whether made before or after the passing of this Act.

Expenses.

5.—Any expenses incurred by the Minister in the administration of this Act, shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of monies provided by the Oireachtas.

PART 2

CARER'S LEAVE

Entitlement to carer's leave.

6.—(1) Subject to this Act, an employee who has been employed for a period of 12 months continuous employment by the employer from whose employment the carer's leave is proposed to be taken shall be entitled to leave from the employment concerned (to be known and referred to in this Act as "carer's leave") for the purpose of providing full-time care and attention to a relevant person for a period not exceeding 65 weeks for each relevant person if—

- (a) the person in respect of whom the employee proposes to provide full-time care and attention is a relevant person,
- (b) the employee provides the employer concerned with a decision referred to in *subsection (5)*, or, where appropriate, *subsection (6)*,
- (c) during the period of carer's leave the employee provides full-time care and attention to the relevant person, and
- (d) during the period of carer's leave the employee does not engage in employment or self-employment other than employment or self-employment prescribed under section 82B(3) (inserted by the Act of 2000) of Chapter 11A of Part II of the Act of 1993.

(2) An employee shall give the employer a copy of the decision referred to in *subsection (1)(b)* as soon as he or she receives it and the employee shall not be entitled to carer's leave until the employer has been given the copy.

(3) An employee shall not be entitled to carer's leave for the purpose of providing full-time care and attention to a relevant person during the same period in which another employee is absent from employment on carer's leave for the purpose of providing full-time care and attention to the same relevant person.

(4) An employee shall, subject to *section 7(2)*, be entitled to a period of carer's leave for one relevant person at any one time.

(5) An employee who proposes to avail of carer's leave shall apply to the Minister for Social, Community and Family Affairs for a decision by a deciding officer under the Act of 1993 that the person in respect of whom the employee proposes to avail of carer's leave in order to provide full-time care and attention is a relevant person for the purposes of Chapter 11A (inserted by the Act of 2000) of Part II of the Act of 1993.

(6) A decision of a deciding officer under *subsection (5)* may be appealed under section 257 of the Act of 1993.

(7) For the avoidance of doubt it is declared that entitlement to carer's benefit under Chapter 11A (inserted by the Act of 2000) of Part II of the Act of 1993 is not a condition for entitlement to carer's leave. Pr.2 S.6

7.—(1) An employee shall, as soon as is practicable, notify his or her employer of any change in circumstances which affect the entitlement to carer's leave. Supplemental provisions to section 6.

(2) Notwithstanding *sections 6(4), 8(4) and 9(1)* and subject to *subsections (4) and (5)*, an employee may, while on carer's leave in respect of a relevant person, apply for carer's leave for another person if that person resides with the relevant person.

(3) An employee who wishes to apply for carer's leave for another person in the circumstances referred to in *subsection (2)* shall apply for carer's leave under *section 6*.

(4) Where an application referred to in *subsection (3)* is made and an employee who is on carer's leave in respect of a relevant person takes carer's leave in respect of a second relevant person—

(a) the period of carer's leave for the first-mentioned relevant person shall not exceed 65 weeks from its commencement, and

(b) the period of carer's leave for the second-mentioned relevant person shall commence on the date of the decision under *section 6(5)* or *section 6(6)* and shall not exceed 65 weeks from its commencement,

and the total amount of weeks for such carer's leave shall not exceed 130 weeks.

(5) An employee who is on carer's leave in respect of a relevant person and who takes carer's leave in respect of a second relevant person shall not make another application for carer's leave in the circumstances referred to in *subsection (2)*.

(6) The First Schedule to the Minimum Notice and Terms of Employment Act, 1973, shall apply for the purpose of ascertaining the period of service of an employee and whether that service has been continuous.

(7) Regulations made under *section 82B(3)* (inserted by the Act of 2000) of Chapter 11A of Part II of the Act of 1993 shall apply to this Act with any necessary modifications.

8.—(1) The period of carer's leave from employment to which an employee is entitled shall not exceed 65 weeks for each relevant person and may, subject to *subsections (2) and (3)* and any regulations made under *subsection (6)*, be taken in the form of— Manner in which carer's leave may be taken.

(a) one continuous period of 65 weeks for each relevant person, or

(b) a number of periods, the aggregate duration of which does not exceed a total of 65 weeks from the date of the commencement of the carer's leave.

(2) An employer may refuse, on reasonable grounds, to permit an employee to take a period of carer's leave which is less than 13 weeks duration and where the employer so refuses he or she shall specify in writing to the employee the grounds for such refusal.

(3) An employee who has taken a period of carer's leave in accordance with *subsection (1)(b)* in respect of a relevant person, shall not be entitled to commence a further period of carer's leave in respect of the same relevant person, until a period of 6 weeks has elapsed since the termination of the previous period of carer's leave.

(4) Where an employee has taken carer's leave in respect of a relevant person and that period of carer's leave has terminated the employee shall not commence carer's leave in respect of another relevant person until a period of 6 months has elapsed since the termination of the previous period of carer's leave.

(5) Nothing in this Act shall be construed as prohibiting an agreement between an employer and employee in respect of carer's leave on terms which are more favourable to the employee than the entitlements of the employee under this Act.

(6) The Minister may make regulations in respect of the form in which carer's leave may be taken by any specified class or classes of employees in circumstances where carer's leave is to be taken in the form referred to in *subsection (1)(b)*.

Notice of carer's leave.

9.—(1) When an employee proposes to take carer's leave, the employee shall, not later than 6 weeks before the proposed commencement of the carer's leave, provide the employer with a notice in writing stating—

- (a) the proposal to take the carer's leave,
- (b) that an application referred to in *section 6(5)* or, where appropriate, *section 6(6)*, has been made, and
- (c) the proposed date of commencement of the carer's leave and the form in which it is proposed to be taken.

(2) Where, in exceptional or emergency circumstances, it is not reasonably practicable to give notice in accordance with the period specified in *subsection (1)* the employee shall give that notice as soon as is reasonably practicable.

(3) An employee may revoke a notice of the proposal to take carer's leave given to the employer in accordance with *subsection (1)* or, where appropriate, *subsection (2)*, by notice in writing given to the employer before the date of the confirmation document and where the notice of the proposal to take carer's leave is so revoked the employee shall not be entitled to take carer's leave at the time specified in the notice given in accordance with *subsection (1)* or, where appropriate, *subsection (2)*.

(4) Notwithstanding *subsection (1)* where leave, purporting to be carer's leave, is taken by an employee who is entitled to carer's leave but who has not complied with *subsection (1)* or (2), the employer may, at his or her discretion and subject to *subsection (8)*, treat that leave as carer's leave and this Act shall apply to that leave accordingly.

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(5) An employer shall retain the documents given to him or her in accordance with *subsection (1)*. Pr.2 S.9

(6) An employee who is on carer's leave shall, not less than 4 weeks before the date on which that employee is due to return to his or her employment, give notice in writing to the employer of the intention to return to work.

(7) *Subsection (6)* shall not apply if the period of carer's leave is terminated in accordance with *section 11(2)*.

(8) An employer may, when exercising his or her discretion under *subsection (4)*, refuse to treat leave as carer's leave on reasonable grounds and where the employer so refuses he or she shall specify in writing the grounds for such refusal.

10.—(1) Where an employee has given his or her employer the decision referred to in *section 6(1)(b)*, the employee and the employer shall, on a date that is not less than 2 weeks before the proposed commencement of the carer's leave concerned, prepare and sign a document (referred to in this Act as a "confirmation document") specifying the date of the commencement of the carer's leave, its duration and the form in which it will be taken. Confirmation of carer's leave.

(2) *Subsection (1)* shall apply to the taking of carer's leave in accordance with *section 9(4)* and the employee and the employer shall prepare and sign the confirmation document as soon as may be.

(3) An employer shall retain a confirmation document signed by him or her and shall give a copy of it to the employee concerned who shall retain it.

(4) A confirmation document, including any amendments to it made under *section 12(1)*, shall be a notice for the purposes of *section 31*.

11.—(1) The period of carer's leave shall terminate— Termination of carer's leave.

- (a) on the date of termination of the period of carer's leave specified in the confirmation document,
- (b) on a date agreed between the employee and employer concerned,
- (c) where the person in respect of whom the employee has taken carer's leave ceases to satisfy the conditions for a relevant person for the purposes of the Act,
- (d) where the employee ceases to satisfy the conditions for the provision of full-time care and attention for the purposes of the Act,
- (e) where a decision under *subsection (2)* is made, on the date specified in *subsection (3)*, and
- (f) where the relevant person dies during a period of carer's leave on the date earliest of the following dates—
 - (i) the date that is 6 weeks after the date of death, or

(ii) the date of termination of the period specified in the confirmation document.

(2) Where a deciding officer or an appeals officer makes a decision under *section 18(4)* or *section 18(5)* that—

- (a) the person in respect of whom an employee proposed to take or has taken carer's leave did not or does not satisfy or no longer satisfies the requirements for a relevant person,
- (b) the employee does not satisfy the conditions for providing full-time care and attention, or
- (c) the employee is engaging or has engaged in employment or self-employment other than as prescribed under *section 82B(3)* (inserted by the Act of 2000) of Chapter 11A of Part II of the Act of 1993,

the period of carer's leave shall terminate and the deciding officer or the appeals officer shall, as soon as practicable, notify the employer and the employee of that decision.

(3) The employer, following a notification referred to in *subsection (2)*, shall, as soon as practicable, give the employee a notice in writing specifying the date on which the employee is to return to his or her employment and that date shall be a date that is reasonable and practicable having regard to all the circumstances.

(4) Where carer's leave is terminated under *subsection (2)*, the employee concerned shall return to his or her employment on the day specified in the notice under *subsection (3)* and any period between the date of the return to the employment and the date of the end of the period of the carer's leave that is specified in the confirmation document concerned, shall be deemed not to be carer's leave.

(5) An employer shall, when the employee returns to his or her employment, give a notice in writing to the Minister for Social, Community and Family Affairs that the period of carer's leave has terminated, the employee has returned to work and the date of the return to employment.

(6) A person shall retain a notice under this section given to him or her and a copy of a notice under this section given by him or her.

(7) Notwithstanding *section 24*, the giving of a notice to an employee under this section shall be effected by delivering it to the employee or by sending a copy of it by prepaid registered letter in an envelope addressed to the employee at the last known residence of the employee or, where appropriate, the residence of the relevant person.

12.—(1) If, after the date of the confirmation document (whether or not the period of carer's leave to which it relates has commenced) the employer and the employee so agree—

- (a) the carer's leave or part of it may be postponed to such time as may be so agreed between the parties,
- (b) the period of carer's leave may be curtailed in a manner and to an extent as may be so agreed between the parties, or

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(c) the form of the carer's leave may be varied in a manner as Pr.2 S.12 may be so agreed between the parties,

and the confirmation document shall be amended in accordance with such agreement.

(2) Where carer's leave is postponed, curtailed or varied the period of carer's leave that is not taken by reason of such postponement, curtailment or variation may, subject to *section 6*, be taken at another time.

PART 3

EMPLOYMENT RIGHTS

13.—(1) An employee who is absent from work on carer's leave shall be regarded as still working in the employment for all purposes relating to his or her employment and none of his or her rights or obligations related to the employment shall be affected by availing of carer's leave other than—

(a) the right to—

(i) remuneration,

(ii) annual leave, except as provided for in *subsection (2)*,

(iii) public holidays, except as provided for in *subsection (3)*, and

(iv) superannuation benefits,

and

(b) any obligation to pay contributions in, or in respect of, the employment.

(2) Section 19 of the Organisation of Working Time Act, 1997, shall apply to the first 13 weeks of absence from work on carer's leave for each relevant person.

(3) Section 21(1) of the Organisation of Working Time Act, 1997, shall apply to the first 13 weeks of absence from work on carer's leave for each relevant person and shall not apply to public holidays that occur after such period of absence from work.

(4) Absence from employment while on carer's leave shall not be treated as part of any other leave from the employment (including sick leave, annual leave, adoptive leave, maternity leave, parental leave and *force majeure* leave) to which the employee concerned is entitled.

(5) Where—

(a) an employee who is on probation in his or her employment or is undergoing training in relation to that employment or is employed under a contract of apprenticeship takes carer's leave, and

(b) his or her employer considers that the employee's absence from employment while on carer's leave would not be consistent with the continuance of the probation, training or apprenticeship,

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the employer may require that the probation, training or apprenticeship be suspended during the period of the carer's leave and be completed by the employee at the end of that period.

Return to work.

14.—(1) On the termination of carer's leave in accordance with this Act, the employee concerned shall be entitled to return to work—

- (a) with the employer with whom he or she was working immediately before the start of the period or, where during the employee's absence from work there was or were a change or changes of ownership of the undertaking in which the employee was employed immediately before the absence, the owner on the expiration of the period ("the successor"),
- (b) in the job that the employee held immediately before the commencement of the period, and
- (c) under the contract of employment in respect of which the employee was employed immediately before the commencement of the period or, where a change of ownership such as is referred to in *paragraph (a)* has occurred, under a contract of employment with the successor, that is identical to the contract under which the employee was employed immediately before such commencement, and (in either case) under terms or conditions not less favourable to the employee than those that would have been applicable to him or her if he or she had not been so absent from work.

(2) For the purposes of *subsection (1)(b)*, where the job held by an employee immediately before the commencement of a period of carer's leave to which he or she is entitled was not the employee's normal or usual job, the employee shall be entitled to return to work, either in that job or in his or her normal or usual job as soon as is practicable without contravention by the employee or the employer of any provision of a statute or provision made under statute.

(3) Where, because of an interruption or cessation of work at an employee's place of employment that exists at the time of the expiration of a period of carer's leave taken by the employee, it is unreasonable to expect the employee to return to work on such expiration, the employee may return to work instead when work resumes at the place of employment after the interruption or cessation, or as soon as reasonably practicable after such resumption.

Right to alternative employment.

15.—(1) Where an employee is entitled to return to work pursuant to *section 14* but it is not reasonably practicable for the employer to permit the employee to return to work in accordance with that section, the employee shall be entitled to be offered by his or her employer suitable alternative employment under a new contract of employment.

(2) Work under a new contract of employment constitutes suitable alternative work for the purposes of this Act if—

- (a) it is of a kind that is suitable in relation to the employee concerned and appropriate for the employee to do in the circumstances,

- (b) the terms or conditions of the contract relating to the place Pr.3 S.15
where the work under it is required to be done, the
capacity in which the employee concerned is to be
employed and any other terms or conditions of employ-
ment are not substantially less favourable to the
employee than those of his or her contract of employ-
ment immediately before the commencement of the per-
iod of absence from work while on carer's leave, and
- (c) the continuity of service is preserved.

16.—(1) An employer shall not penalise an employee for pro- Protection of
employees from
penalisation.
posing to exercise or having exercised his or her entitlement to car-
er's leave.

- (2) Penalisation of an employee includes—
- (a) dismissal of the employee,
- (b) unfair treatment of the employee, including selection for
redundancy, and
- (c) an unfavourable change in the conditions of employment of
the employee.

(3) If a penalisation of an employee, in contravention of *subsec-
tion (1)*, constitutes a dismissal of the employee, as referred to in
subsection (2)(a) the employee may institute proceedings under the
Unfair Dismissals Acts, 1977 to 1993, in respect of that dismissal and
such dismissal may not be referred to a rights commissioner under
Part 4.

(4) An employee who is entitled to return to work in the employ-
ment concerned in accordance with *section 14* but is not permitted
by his or her employer to do so—

- (a) shall be deemed to have been dismissed on the date on
which he or she was entitled to so return to work and the
dismissal shall be deemed, for the purposes of the Unfair
Dismissals Acts, 1977 to 1993, to have been an unfair
dismissal unless, having regard to all the circumstances,
there were substantial grounds justifying the dismissal,
and
- (b) shall be deemed for the purposes of the Redundancy Pay-
ments Acts, 1967 to 1991, to have had his or her contract
of employment with his or her employer terminated on
the date aforesaid.

PART 4

RESOLUTION OF DISPUTES

17.—(1) This Part applies to any dispute between an employee Disputes.
and the employer relating to any entitlement of the employee under
this Act (or any matter arising out of or related to such an
entitlement) but does not apply to a dispute relating to—

- (a) any matter arising out of *sections 6(5)* and *6(6)*,

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(b) any matter arising out of paragraphs (a), (c) and (d) of section 6(1), and

(c) any matter arising out of section 18.

(2) Where, in a dispute, there is a decision of a deciding officer or an appeals officer that concerns a matter specified in paragraph (a), (b) or (c) of subsection (1), the rights commissioner shall accept that decision as a final determination of that matter.

(3) A document purporting to be a decision of a deciding officer or an appeals officer and signed by that officer shall be sufficient evidence of the making of the decision and of its terms, without proof of the signature of that officer or of the official capacity of that officer.

(4) This Part does not apply to a member of the Defence Forces.

Reference by employer to Minister for Social, Community and Family Affairs on certain issues.

18.—(1) An employer who is of the opinion that—

(a) the person in respect of whom the employee proposes to take carer's leave is not or is no longer a relevant person, or

(b) the person in respect of whom carer's leave has been granted, and in respect of whom the employee is on carer's leave, is not or is no longer a relevant person,

shall notify the Minister for Social, Community and Family Affairs of his or her opinion and the grounds for that opinion.

(2) An employer who is of the opinion that an employee who proposes to take, or is on, carer's leave does not satisfy the conditions for providing full-time care and attention to the relevant person shall notify the Minister for Social, Community and Family Affairs of his or her opinion and the grounds for such opinion.

(3) An employer who is of the opinion that an employee who proposes to take, or is on, carer's leave is engaging or has engaged in employment or self-employment other than as prescribed under section 82B(3) (inserted by the Act of 2000) of Chapter 11A of Part II of the Act of 1993 shall notify the Minister for Social, Community and Family Affairs of his or her opinion and the grounds for such opinion.

(4) On receipt of a notification under subsection (1), (2) or (3), the notification shall be referred to a deciding officer for a decision under the Act of 1993 as to whether—

(a) the person referred to in subsection (1) is a relevant person,

(b) the employee satisfies the conditions for providing full-time care and attention to the relevant person, or

(c) the employee is engaging or has engaged in employment or self-employment other than as prescribed under section 82B(3) (inserted by the Act of 2000) of Chapter 11A of Part II of the Act of 1993,

for the purposes of Chapter 11A (inserted by the Act of 2000) of Part II of the Act of 1993.

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(5) A decision of a deciding officer under *subsection (4)* may be appealed under section 257 of the Act of 1993. Pr.4 S.18

19.—(1) An employee may refer a dispute to a rights commissioner that the employee's employer has contravened a provision of this Act in relation to the employee. Reference of disputes to rights commissioner.

(2) A rights commissioner—

(a) shall hear the parties to a dispute and receive any relevant evidence tendered by either of them,

(b) shall give a decision on the dispute in writing, and may, in accordance with *section 21*, make provision for redress, and

(c) shall communicate the decision to the parties.

(3) An employee making a reference under *subsection (1)* shall give a notice in writing containing such particulars (if any) as may be prescribed to a rights commissioner within 6 months of the date of the contravention giving rise to the dispute.

(4) The rights commissioner shall give a copy of the notice referred to in *subsection (3)* to the employer.

(5) Proceedings before a rights commissioner under this section shall be conducted otherwise than in public.

(6) A rights commissioner shall furnish a copy of each decision made by him or her under this Part to the Tribunal.

(7) The Minister may by regulations provide for any matters relating to the proceedings under this section that the Minister considers appropriate.

(8) A rights commissioner may, if he or she considers it reasonable to do so having regard to all the circumstances, extend by a specified period (not exceeding a further period of 6 months) the period of time within which a notice under *subsection (3)* is required to be given.

20.—(1) A party concerned may appeal to the Tribunal from a decision of a rights commissioner under *section 19* and the Tribunal shall give the parties an opportunity to be heard by it and to present to it any evidence relevant to the appeal, and— Appeal from decision of rights commissioner.

(a) shall make a determination in writing in relation to the appeal, affirming, varying or setting aside the decision,

(b) may, in accordance with *section 21*, make provision for redress, and

(c) shall communicate the determination to the parties.

(2) An appeal under this section shall be initiated by the party concerned giving, within 4 weeks of the date on which the decision to which it relates was communicated to the party, a notice in writing to the Tribunal containing such particulars (if any) as may be prescribed and stating the intention of the party concerned to appeal against the decision.

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(3) A copy of a notice under *subsection (2)* shall be given by the Tribunal to the other party concerned as soon as may be after the receipt of the notice by the Tribunal.

(4) A person whose evidence has been, is being, or is to be given before the Tribunal, or who produces or sends a document to the Tribunal pursuant to a notice under *subsection (5)* or who is required by such a notice to give evidence or produce a document to the Tribunal or to attend before the Tribunal and there to give evidence or produce a document, shall be entitled to the same privileges and immunities as if the person were a witness before the High Court.

(5) The Tribunal may, by giving notice in that behalf in writing, require any person to attend before the Tribunal on a date and at a time and place specified in the notice and to give evidence and to produce any document specified in the notice in his or her possession or power or to send to the Tribunal any document specified in the notice in his or her possession or power or require a person in attendance before the Tribunal to produce to the Tribunal any document in his or her possession or power specified in that requirement.

(6) Paragraphs (a) and (e) of section 39(17) of the Act of 1967 shall apply for the purposes of this section as they apply for the purposes of section 39 with the modification that “€3,000 (£2,362.69)” shall be substituted for “£150” and with any other necessary modifications.

(7) Proceedings for an offence under section 39(17) of the Act of 1967, as applied by this section, may be brought and prosecuted by the Minister.

(8) If a person gives false evidence before the Tribunal in proceedings under this section in such circumstances that, if the person had given the evidence before a court, the person would be guilty of perjury, the person shall be guilty of an offence and shall be liable on conviction on indictment to the penalties applying to perjury.

(9) The Tribunal may, if it considers it reasonable to do so having regard to all the circumstances, extend by a specified period (not exceeding a further period of 6 weeks) the period of time within which a notice under *subsection (2)* is required to be given.

Redress.

21.—(1) The rights commissioner or the Tribunal may order such redress for the party concerned as the rights commissioner or the Tribunal considers appropriate, having regard to all the circumstances and to the provisions of this Act, and accordingly may specify—

- (a) the grant of carer's leave of such length to be taken at such time or times and in such manner as may be so specified,
- (b) an award of compensation in favour of the employee concerned to be paid by the employer concerned, or
- (c) a grant referred to in *paragraph (a)* and an award referred to in *paragraph (b)*.

(2) Compensation under *subsection (1)(b)* shall be of such amount as the rights commissioner or the Tribunal deems just and equitable having regard to all the circumstances but shall not exceed 26 weeks

remuneration in respect of the employee's employment calculated in such manner as may be prescribed. Pr.4 S.21

(3) The decision of a rights commissioner or the determination of the Tribunal shall be in writing and shall be communicated to the parties by the rights commissioner or the Tribunal, as the case may be.

(4) Where appropriate, the confirmation document concerned shall be amended by the parties so as to accord with a decision, determination or direction under this section.

(5) In this section "remuneration" includes allowances in the nature of pay and benefits in lieu of or in addition to pay.

22.—(1) If a person fails or refuses to comply with a decision of a rights commissioner under *section 19* or a determination of the Tribunal referred to in *section 20* and in respect of which, at the expiration of the time for bringing an appeal against it, no such appeal has been brought, or if such an appeal has been brought, it has been abandoned—

Enforcement of decisions and determinations.

(a) the other party to the dispute, or

(b) the Minister, if he or she is of the opinion that it is appropriate to do so having regard to all the circumstances,

may apply to the Circuit Court for an order directing that party to carry out the terms of the decision or determination.

(2) Where, in proceedings under *subsection (1)*, the Circuit Court is satisfied that, owing to lapse of time, it would not be possible for one party to comply with an order under that subsection, the Circuit Court shall make an order providing for such redress as it considers appropriate having regard to the provisions of this Act and all the circumstances.

(3) In an order under this section providing for the payment of compensation, the Circuit Court may, if in all the circumstances it considers it appropriate to do so, direct the employer concerned to pay to the employee concerned interest on the compensation at the rate referred to in *section 22* of the Courts Act, 1981, in respect of the whole or any part of the period beginning 4 weeks after the date on which the decision or determination concerned is communicated to the parties and ending on the date of the order.

(4) Proceedings under this section shall be heard in the county in which the relevant employer ordinarily resides or carries on any profession, business or occupation.

23.—(1) The Tribunal may refer a question of law arising in proceedings before it under this Part to the High Court for determination by it.

Appeal to High Court on point of law.

(2) A party to proceedings before the Tribunal under this Part may appeal to the High Court from a determination of the Tribunal on a point of law.

PART 5

MISCELLANEOUS

Service of notices.

24.—(1) A notice or other document under *Part 4* shall be, subject to *subsection (2)*, addressed to the person concerned by name, and may be served on or given to the person in one of the following ways—

- (a) by delivering it to the person,
- (b) by leaving it at the address at which the person ordinarily resides or, in a case in which an address for service has been furnished, at that address,
- (c) by sending it by post in a prepaid registered letter to the address at which the person ordinarily resides, or in a case in which an address for service has been furnished, to that address.

(2) For the purposes of this section, a company, within the meaning of the Companies Acts, 1963 to 1999, shall be deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body shall be deemed to be ordinarily resident at its principal office or place of business.

Winding up and bankruptcy.

25.—(1) There shall be included among the debts that, under section 285 of the Companies Act, 1963, are in the distribution of the assets of a company being wound up, to be paid in priority to all other debts, any compensation payable under this Act by the company to an employee, and that Act shall have effect accordingly, and formal proof of the debts to which priority is given under this subsection shall not be required except in cases where it may otherwise be provided by rules of court.

(2) There shall be included among the debts that, under section 81 of the Bankruptcy Act, 1988, are in the distribution of the property of a bankrupt or arranging debtor, to be paid in priority to all other debts, any compensation payable under this Act by the bankrupt or arranging debtor, as the case may be, to an employee, and that Act shall have effect accordingly, and formal proof of the debts to which priority is given under this subsection shall not be required except in cases where it may otherwise be provided by rules of court.

Amendment of Act of 1967.

26.—The Act of 1967 is amended in Schedule 3 by the substitution in paragraph 5(1) for clause (d) (inserted by the Parental Leave Act, 1998) of the following clause:

- “(d) a period during which the employee is absent from work while on protective leave, natal care absence within the meaning of Part IV of the Maternity Protection Act, 1994, parental leave, *force majeure* leave or carer's leave under the *Carer's Leave Act, 2001*.”

Amendment of Act of 1977.

27.—(1) Section 2(2) of the Act of 1977 is amended by the insertion in paragraph (d) (inserted by the Adoptive Leave Act, 1995) after “the adopting parent” of:

- (e) dismissal where the employer at the commencement of the employment informs the employee in writing that the employment will terminate on the return to work with that employer of an employee who is absent from work while on carer's leave under the *Carer's Leave Act, 2001*, and the dismissal of the employee duly occurs for the purpose of facilitating the return to work of the employee who has been on carer's leave.”.

(2) Section 6 of the Act of 1977 is amended—

- (a) by the substitution in subsection (2) for paragraph (dd) (inserted by the Parental Leave Act, 1998) of the following paragraph:

“(dd) the exercise or proposed exercise by the employee of the right to parental leave, *force majeure* leave under and in accordance with the Parental Leave Act, 1998, or carer's leave under and in accordance with the *Carer's Leave Act, 2001*,”

and

- (b) by the insertion, after subsection (2B) (inserted by the Parental Leave Act, 1998), of the following subsection:

“(2C) Sections 3 and 4 do not apply to a case falling within subsection (2)(dd) and, for the purpose of that paragraph, ‘employee’ includes a person who would otherwise be excluded from this Act by paragraph (a), (b), (c), (e), (f), (g), (h), (i) or (j) of section 2(1).”.

28.—The Organisation of Working Time Act, 1997, is amended— Amendment of Organisation of Working Time Act, 1997.

- (a) in section 15, by the substitution in subsection (4), for paragraph (aa) (inserted by the Parental Leave Act, 1998) of the following paragraph:

“(aa) any period during which the employee was absent from work while on parental leave, *force majeure* leave or carer's leave within the meaning of the *Carer's Leave Act, 2001*,”

and

- (b) in section 16, by the substitution in subsection (5), for paragraph (cc) (inserted by the Parental Leave Act, 1998) of the following paragraph:

“(cc) any period during which the employee was absent from work while on parental leave, *force majeure* leave or carer's leave within the meaning of the *Carer's Leave Act, 2001*.”.

29.—The National Minimum Wage Act, 2000, is amended in section 8(2) by the substitution for subparagraph (ii) of the following subparagraph: Amendment of National Minimum Wage Act, 2000.

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“(ii) time spent absent from work on annual leave, sick leave, protective leave, adoptive leave, parental leave, carer’s leave under the *Carer’s Leave Act, 2001*, while laid-off, on strike or on ‘lock-out’, or time for which the employee is paid in lieu of notice, or”.

Extension of Protection of Employees (Employers’ Insolvency) Act, 1984.

30.—Section 6 of the Protection of Employees (Employers’ Insolvency) Act, 1984, is amended—

(a) in subsection (2)(a)(v) (as amended by the Parental Leave Act, 1998) by the substitution for clause (II) of the following clause:

“(II) a decision, determination or order under Part V of the Maternity Protection Act, 1994, Part IV of the Parental Leave Act, 1998, or Part 4 of the *Carer’s Leave Act, 2001*,”,

and

(b) in subsection (4)(c) by—

(i) the substitution for subparagraph (iv) (other than clauses (I) and (II)) (as amended by the Parental Leave Act, 1998) of the following subparagraph:

“(iv) a payment shall not be made under this section in respect of an amount to which a decision under Part V of the Maternity Protection Act, 1994, Part IV of the Parental Leave Act, 1998, or Part 4 of the *Carer’s Leave Act, 2001*, relates unless—”,

and

(ii) the substitution for subparagraph (v) (other than clauses (I) and (II)) (as amended by the Parental Leave Act, 1998) of the following subparagraph:

“(v) a payment shall not be made under this section in respect of an amount to which a determination under Part V of the Maternity Protection Act, 1994, Part IV of the Parental Leave Act, 1998, or Part 4 of the *Carer’s Leave Act, 2001*, relates unless—”.

Maintenance of records.

31.—(1) An employer shall make a record of the carer’s leave taken by his or her employees indicating the period of employment for each employee and the dates and times in respect of which each employee was on carer’s leave.

(2) A record made under this section shall be retained by the employer concerned for a period of 8 years and, if the Minister prescribes the form of such records, the records shall be kept in the prescribed form.

(3) Notices, or copies of notices, required to be retained under this Act by a person shall be retained by that person for a period of 3 years.

(4) An employer who contravenes *subsection (1)* or *(2)* shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding €3,000 (£2,362.69).

32.—(1) In this section “inspector” means a person appointed under *subsection (2)*. Pr.5
Inspectors.

(2) The Minister may appoint in writing such and so many persons as the Minister sees fit to be inspectors for the purposes of this Act.

(3) An inspector may for the purposes of this Act do all or any of the following things—

(a) subject to the provisions of this section, enter at all reasonable times any premises or place where he or she has reasonable grounds for supposing that any employee is employed in work or from which he or she has reasonable grounds for supposing the activities that an employee is employed to carry on are directed or controlled (whether generally or as respect particular matters),

(b) make such examination or enquiry as may be necessary for ascertaining whether the provisions of this Act are complied with in respect of any employee employed in any such premises or place or any employee the activities aforesaid of whom are directed or controlled from any such premises or place,

(c) require the employer of any employee or the representative of such employer to produce to him or her any records which such employer is required to keep under *section 31* and inspect and take copies of entries in such records (including in the case of information in a non-legible form a copy of or an extract from such information in a permanent legible form),

(d) require any person whom he or she has reasonable cause to believe to be or to have been an employee or the employer of any employee to furnish such information as the inspector may reasonably request,

(e) examine, with regard to any matters under this Act, any person whom he or she has reasonable cause to believe to be or to have been an employer or employee and require him or her to answer such questions (other than questions tending to incriminate him or her) as the inspector may put relative to those matters and to sign a declaration of the truth of the answers.

(4) An inspector shall not, other than with the consent of the occupier, enter a private dwelling (other than a part of the dwelling used as a place of work) unless he or she has obtained a warrant from the District Court under *subsection (7)* authorising such entry.

(5) Where an inspector in the exercise of his or her powers under this section is prevented from entering any premises an application may be made under *subsection (7)* authorising such entry.

(6) An inspector, where he or she considers it necessary to be so accompanied, may be accompanied by a member of the Garda Síochána when exercising any powers conferred on an inspector by this section.

(7) If a judge of the District Court is satisfied on the sworn information of an inspector that there are reasonable grounds for suspecting that information required by an inspector under this section is held on any premises or any part of any premises, the judge may

issue a warrant authorising an inspector accompanied by other inspectors or a member of the Garda Síochána, at any time or times within one month from the date of issue of the warrant, on production, if so requested, of the warrant, to enter the premises (if need be by reasonable force) and exercise all or any of the powers conferred on an inspector under *subsection (3)*.

(8) A person who—

- (a) obstructs or impedes an inspector in the exercise of any of the powers conferred on an inspector under this section,
- (b) refuses to produce any record which an inspector lawfully requires him or her to produce,
- (c) produces or causes to be produced or knowingly allows to be produced, to an inspector, any record which is false or misleading in any material respect knowing it to be so false or misleading,
- (d) gives to an inspector any information which is false or misleading in any material respect knowing it to be so false or misleading,
- (e) fails or refuses to comply with any lawful requirement of an inspector under *subsection (3)*,

shall be guilty of an offence.

(9) Every inspector shall be furnished by the Minister with a certificate of his or her appointment and, on applying for admission to any premises or place for the purposes of this Act, shall, if requested by a person affected, produce the certificate or a copy of it to that person.

33.—(1) A person guilty of an offence under this Act shall be liable on summary conviction to a fine not exceeding €3,000 (£2,362.69).

(2) Where an offence under this Act is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a person being a director, manager, secretary or other officer of that body corporate, or a person who was purporting to act in that capacity, that person shall also be guilty of an offence and be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

(3) Proceedings for an offence under *sections 31* and *32* may be brought and prosecuted by the Minister.

(4) Notwithstanding section 10(4) of the Petty Sessions (Ireland) Act, 1851, proceedings for an offence under this Act may be instituted within 12 months from the date of the offence.

34.—The Minister shall, not earlier than 2 years and not later than 3 years after the commencement of this Act, after consultation with persons whom he or she considers to be representative of employers

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generally and persons whom he or she considers to be representative of employees generally, conduct a review of the operation of this Act and shall prepare a report in writing of the findings of the review and shall cause copies of the report to be laid before each House of the Oireachtas. Pr.5 S.34