



**April 2020**

## **Covid-19: Emergency Employment Supports**

(Updated to reflect changes announced to the Temporary Wage Subsidy Scheme on 15 April 2020)

The unprecedented circumstances surrounding the COVID-19 pandemic have given rise to multiple concerns for businesses, including how they should deal with their employees during a time when they may not be in a position to continue to trade.

The [Emergency Measures in the Public Interest \(COVID-19\) Act 2020](#) (the “Emergency Act”) was signed into law by the President on 27 March 2020. The Emergency Act enables the government to implement and enforce restrictions on the freedom of individuals in order to contain the spread of COVID-19. At the time of writing, significant restrictions remain in place which have resulted in the closure of many “non-essential” businesses and the mass movement to employees working from home, where possible.

This briefing will highlight the main provisions of the Emergency Act and other government supports which have been put in place from an employment perspective, to assist businesses to navigate the uncharted waters we all find ourselves in.

### **Temporary Wage Subsidy Scheme**

This scheme has been implemented by the government in recognition of the unique challenges that the current public health

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advice presents for businesses. The aim of the scheme is to facilitate employers experiencing significant economic disruption as a result of COVID-19 to maintain their relationship with their employees so that they are in a position to get up and running again as soon as the crisis passes. Significant disruption is regarded as a minimum 25% decline in expected turnover or customer orders, or other reasonable basis, in Q2 2020.

Under the scheme, such employers may continue to pay their employees via their usual payroll system, up to a certain limit, for a period of 12 weeks, from 26 March 2020. (The Minister has the power under the Emergency Act to extend this period of time as necessary.) Those payments will be reimbursed to the employer by the State within two working days.

The scheme applies equally to employees who are not working at all and those who are on temporarily reduced hours. Payments made to employees cannot be higher than the employees' usual net pay, and are currently, in phase 1 of the scheme, capped at 70% of their normal salary up to the following limits:

- €410 per week where the average net weekly pay is up to €586 (c. €38,000 p.a.); and
- €350 per week where the average net weekly pay is between €586 and €960 (c. €38,000 - €76,000).

The payment is not currently available to employees earning in excess of €960 net per week.

Employers are expected to "make their best efforts" to maintain wages at 100% by providing top-up payments where possible, but they are not obliged to. If the employer makes additional payments which bring the total above 100%, the amount of the subsidy may be reduced or discontinued entirely. Pension contributions may not be deducted from the wage subsidy but insurable weeks will still accrue for the purposes of PRSI.

On 15 April 2020, the Minister for Finance, Public Expenditure and Reform announced further changes to the scheme to rectify certain anomalies, including the fact that lower paid workers could potentially receive a higher amount if they were laid-off and received the COVID-19 pandemic unemployment payment (see below) and the fact that individuals earning over €76,000 have been excluded from the scheme. Accordingly, phase 2 of the scheme, which will take effect from 4 May 2020, will reflect the following:

- Employees earning less than €412 net per week (c. €24,400 p.a.) will have their subsidy increased from 70% to 85% of their net weekly pay.

- The employer top-up for such lower paid workers may be in excess of 15% to allow them to earn up to €350 per week.
- The subsidy for employees earning between €412 and €500 net per week (c. €24,400 - €31,000 p.a.) will be up to €350 per week.
- There will be no change for employees earning between €500 and €586 net per week (c. €31,000 - €38,000 p.a.) who will continue to receive 70% up to a limit of €410 a week.
- A tiered approach will apply to those earning over €586 net per week (c. €38,000 p.a.) up to a maximum of €350 per week. This category now includes employees previously earning in excess of €960 net per week (c. €76,000 p.a.) whose post COVID-19 pay is reduced below €960 net per week. The tapering applied to this category will be as follows:

Gross Amount paid by employer	Subsidy
Up to 60% of employee's previous average net weekly pay	Up to €350 per week
Between 60% and 80% of employee's previous average net weekly pay	Up to €205 per week
Over 80% of employee's previous average net weekly pay	No subsidy

- A register of employers who avail of the scheme will be maintained and published on the Revenue website after the scheme is finished in line with normal practice in relation to government grants.

Concerns have been expressed by some commentators and employers that taking up this scheme could be viewed as tantamount to companies admitting that they cannot pay their employees and must, therefore, declare insolvency. Revenue has, however, issued specific guidance confirming that this is not the case and that businesses are, in effect, merely declaring that as a result of business disruption caused by COVID-19 they cannot fully pay normal wages and outgoings. It would be prudent for employers to avail of all relevant government supports for which they qualify. It is notable in this regard that employees who may have already been laid off as a result of COVID-19 can be taken back onto payroll so that employers can avail of the scheme instead.

### Lay-Offs and Short Time

In normal circumstances, employees who are laid off or placed on short time for a period of more than four or more consecutive weeks, or six weeks within a thirteen week period, are entitled to claim a redundancy payment under section 12 of the Redundancy Payments Act 1967. Employers can defend such a claim by demonstrating that they reasonably expect to be in a position to return the employee to their usual working hours within four weeks, for a period of at least thirteen

consecutive weeks. However, in the current circumstances employers are unlikely to be in a position to do that.

On that basis, Part 8 of the Emergency Act provides that from 13 March 2020 to 31 May 2020, such employees will not be entitled to claim a redundancy payment if they are laid off or placed on short time as a consequence of government policy to limit the spread of COVID-19. This will be welcome news to many businesses which have found themselves with no option but to lay off employees or significantly curtail their hours to cope with the crisis.

It is possible that an employee who is laid off, even temporarily, could dispute the decision and take a claim for constructive dismissal or for payment of wages due. It is difficult to say with any certainty how the Workplace Relations Commission (“WRC”) might view such claims in light of the peculiar circumstances of the pandemic, but it is entirely possible that more latitude will be extended to employers who can demonstrate that they acted reasonably. Part of the WRC’s consideration would be the level of communication with employees

## COVID-19 Pandemic Unemployment Payment

This is a payment of €350 per week which is available to employees who have either lost their job entirely or who have been temporarily laid off as a result of the pandemic. The payment was originally made available at a rate of €205 per week from 13 March 2020, but was increased to €350 on 24 March 2020. The payment is also available to self-employed individuals whose trading income has ceased due to COVID-19.

As mentioned above, the Minister for Finance, Public Expenditure and Reform has acknowledged that for some lower-paid workers, the pandemic unemployment payment may be providing a higher income than the temporary wage subsidy scheme. However, this anomaly has been addressed as part of the changes to the scheme which were announced on 15 April 2020.

The pandemic unemployment payment does not appear to take account of an individuals’ dependents and the government has advised that for affected households where there are dependent adults or children, a higher benefit may be obtained via the jobseekers system.

## Illness Benefit

Employees who are required to claim illness benefit as a result of contracting COVID-19, or being medically required to self-isolate, will not have to wait the usual 6 days to apply for illness benefit

and may begin to claim it immediately. The rate of illness benefit applicable to absences resulting from COVID-19 has increased to €350 per week.

## Commentary

Employers and individuals alike are mandated to comply with the current public health measures, which will be amended and varied by the government as the pandemic progresses. To the extent that government has introduced additional laws and supports to assist businesses and employees through these difficult times, it would certainly be wise to avail of them.

These are unprecedented times and there is no body of established case law dealing with a situation such as this to provide employers and their employees with a tried-and-tested course of action. In such circumstances, it is incumbent on all parties to above all else, behave reasonably toward each other.

Our [Employment Team](#) would be happy to assist with any queries you may have in relation to the emergency measures and any other employment concerns you may have at this difficult time.

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