

**SIPTU Submission
on Regulations on
Domestic Violence
Leave – Work Life
Balance and
Miscellaneous
Provisions Act 2023**

May 2023

**Organising
for Fairness
at Work and
Justice in
Society**

Introduction

This submission is made in response to an invitation of by Roderic O’Gorman T.D., Minister for Children, Equality, Disability, Integration and Youth for stakeholders to express views on Regulations on Domestic Violence Leave - Work Life Balance and Miscellaneous Provisions Act 2023.

SIPTU welcomes the opportunity to make this submission on the Regulations on Domestic Violence Leave and we would welcome an opportunity to elaborate on any aspect of our position as outlined.

This submission follows previous written submissions on domestic violence leave made by SIPTU in April 2021 and March 2023.

SIPTU welcomes that Ireland is taking a lead on the introduction of paid domestic violence leave. However, we are most anxious that Government gets the provisions of the legislation right so that workers are in a position to actually avail of the new statutory entitlement.

Fundamentally, the objective of the legislation and regulations should be to put an employee who avails of domestic violence leave back on the same financial footing as if they were at work.

Section 7 of the Work Life Balance and Miscellaneous Provisions Act 2023 provides for the introduction of domestic violence leave through the insertion of a new Section 13AA into the Parental Leave Act, albeit that the entitlement is not restricted to parents.

In relation to the rate of pay for domestic violence leave, the Act provides:

s.13AA (5) An employer shall pay an employee a prescribed daily rate of pay (in this section referred to as ‘domestic violence leave pay’) for each day on which the employee is absent from work on domestic violence leave.

and

s.13AA (6) Subject to subsection (7), the Minister may make regulations for the purpose of prescribing the daily rate of domestic violence leave pay which may —

- (a) specify the percentage rate of an employee’s pay, up to a maximum daily amount, at which domestic violence leave pay will be paid,
- (b) subject to the maximum daily amount specified in accordance with paragraph (a), specify an allowance in respect of board and lodgings, board only or lodgings only in a case in which such board or lodgings constitute part of the employee’s remuneration calculated at the prescribed rate, or
- (c) subject to the maximum daily amount specified in accordance with paragraph (a), specify basic pay and any pay in excess of basic pay in respect of shift work, piece work, unsocial hours worked or hours worked on a Sunday, allowances, emoluments, premium pay (or its equivalent), or any other payment as the Minister considers appropriate, that are to be taken into account in the calculation of domestic violence leave pay.

It is our understanding that the Minister intends to prepare regulations setting out the rate of pay for domestic violence leave which will be finalised by Autumn 2023.

Work Life Balance and Miscellaneous Provision Act 2023, section 7 (6) – Domestic Violence Leave

Amending the Parental Leave Acts 1998 to 2023 by the insertion of a new section 13AA:

Daily Rate of Domestic Violence Leave Pay

(6) Subject to subsection (7), the Minister may make regulations for the purpose of prescribing the **daily rate** of domestic violence leave pay which may

SIPTU Recommendation

- The **daily rate** of pay should be determined in line with the *Organisation of Working Time (Determination of Pay Regulations) 1997*. However, the exclusion of overtime from the regulations should be omitted for the purpose of the regulations for domestic violence leave.

Percentage rate of pay

(a) specify the **percentage rate** of an employee's **pay**, up to a maximum daily amount, at which domestic violence leave pay will be paid

SIPTU Recommendation

- The **percentage rate of pay** should be 100%.

Board and Lodgings

(b) subject to the maximum daily amount specified in accordance with paragraph (a), **specify an allowance in respect of board and lodgings, board only or lodgings only in a case in which such board or lodgings constitute part of the employee's remuneration calculated at the prescribed rate, or**

SIPTU Recommendation

- The **allowance** in respect of the above should be 100% of the value of the board and lodgings that would be provided by the employer to the employee if they were not on domestic violence leave.
- **Remuneration** should be defined as: any consideration, whether in cash or in kind, which the employee receives, directly or indirectly, from the employer in respect of the employment. This definition is taken from the *Employment Equality Acts 1998 to 2023*. However, the exclusion of pension rights has been omitted.

Pay in excess of basic pay in respect of shift work, piece work, unsocial hours worked or hours worked on a Sunday, allowances, emoluments, premium pay (or its equivalent), or any other payment

(c) subject to the maximum daily amount specified in accordance with paragraph (a), specify **basic pay and any pay in excess of basic pay in respect of shift work, piece work, unsocial hours worked or hours worked on a Sunday, allowances, emoluments, premium pay (or its equivalent), or any other payment** as the Minister considers appropriate, that are to be taken into account in the calculation of domestic violence leave pay.

SIPTU Recommendation

- *Basic pay and pay in excess of basic pay should be defined as the reckonable components and the non-reckonable components of pay components as defined in Schedule 1 of the National Minimum Wage Act 2000. However, the exclusion of board and lodgings or board only or lodgings only should be omitted.*

Endnotes

Sources

- S.I. No. 475/1997 - Organisation of Working Time (Determination of Pay For Holidays) Regulations, 1997
<https://www.irishstatutebook.ie/eli/1997/si/475/made/en/print>
- Section 2, Employment Equality Act 1998 to 2023
“remuneration”, in relation to an employee, does not include pension rights but, subject to that, includes any consideration, whether in cash or in kind, which the employee receives, directly or indirectly, from the employer in respect of the employment;
- National Minimum Wage Act 2000 – Schedule 1
<https://revisedacts.lawreform.ie/eli/2000/act/5/front/revised/en/html>

Part 1 — reckonable components

1. Basic salary.
2. Shift premium.
3. Piece and incentive rates, commission and bonuses, which are productivity related.
4. The monetary value of board with lodgings or board only or lodgings only, not exceeding the amount, if any, prescribed for the purposes of this item.
5. The amount of any service charge distributed to the employee through the payroll.
6. Any payments under section 18 of the Organisation of Working Time Act, 1997 (zero hour protection).
7. Any amount in respect of any of the above items advanced in a previous pay reference period that relates to the specific pay reference period.
8. Any amount in respect of any of the above items earned in the specific pay reference period and paid in the next pay reference period or, where section 9(1)(b) applies, paid in the pay reference period in which the record of working hours is received or due to be received by the employer or the pay reference period immediately after that.

Part 2 — Non-reckonable components

1. Overtime premium.
2. Call-out premium.
3. Service pay.
4. Unsocial hours premium.
5. Any amount distributed to the employee of tips or gratuities paid into a central fund managed by the employer and paid through the payroll.
6. Public holiday premium, Saturday premium and Sunday premium, where any such holidays or days are worked.
7. Allowances for special or additional duties including those of a post of responsibility.
8. Any payment of expenses incurred by the employee in carrying out his or her employment, including travel allowance, subsistence allowance, tool allowance and clothing allowance.
9. On-call or standby allowance.
10. Any payments for or in relation to a period of absence of the employee from the workplace, such as sick pay, holiday pay, payment for health and safety leave under the Maternity Protection Act, 1994, or pay in lieu of notice, but not including a payment under section 18 of the Organisation of Working Time Act, 1997 (zero hour protection).
11. Any payment by way of an allowance or gratuity in connection with the retirement or resignation of the employee or as compensation for loss of office.
12. Pension contributions paid by the employer on behalf of the employee.
13. Any payment referable to the employee’s redundancy.
14. Any advance of a payment referred to in Part 1 of this Schedule in the specific pay reference period relating to a subsequent pay reference period.
15. Any payment-in-kind or benefit-in-kind, except board with lodgings, lodgings only or board only.
16. Any payment to the employee otherwise than in his or her capacity as an employee.
17. Any payment representing compensation for the employee, such as for injury or loss of tools and equipment.
18. An amount of any award under a staff suggestion scheme.
19. Any loan by the employer to the employee, other than an advance payment referred to in paragraph 7 in Part 1 of this Schedule.

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