

Putting the “S” and “G” in ESG: What Employers Need to Know in 2024

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In recent years, environmental, social and governance (**ESG**) standards have been propelled from being voluntary corporate ideals to a strategic necessity, with significant regulatory and reputational implications. Employees, investors and regulators alike are scrutinising how companies align their employment practices with broader ESG goals and new legal obligations, from fostering diversity and inclusion to ensuring fair work practices and corporate accountability.

In this article in our ESG series, we explore the intersection of ESG and employment law, and provide practical guidance for employers navigating emerging legal developments in this space.

Back to basics: What is ESG?

ESG is a framework for ensuring that organisations operate and manage their businesses in a manner that has regard for the environment in which these organisations operate (**E**), the social issues that arise for the organisation and its employees in the context of the workplace (**S**), and as a barometer of measuring how sustainable and accountable the organisation's governance structure is (**G**). In short, it is a tool for organisations to measure sustainability using the ESG factors and is a way in which businesses can demonstrate their values and vision.

How does ESG interact with the workplace and employment law?

ESG has become a key consideration for employees, applicants, customers, stakeholders, regulators and the wider public, who demand greater social action from businesses. ESG efforts are now heavily relied upon to attract and retain key talent. Employees are increasingly seeking to ensure that they are working for companies whose values align with their own and who match the sustainability efforts that they are making in their personal lives. In addition, employees now expect to work for organisations that implement ethical, sustainable and inclusive policies and working practices.

From an employer's perspective, ESG covers a broad range of themes in the workplace, including:

- the promotion of diversity, equity and inclusion;

- employment law compliance;
- employee wellbeing;
- the provision of a healthy and safe place to work;
- the right to disconnect;
- flexibility and work-life balance; and
- the establishment of a transparent and open workplace culture.

Health, safety and welfare at work and the importance of employee wellbeing

Employers are under a statutory obligation to ensure, so far as is reasonably practicable, the safety, health and welfare of their employees and others at work.

Although the health, safety and welfare of employees at work is still integral to every organisation's values, we are now seeing businesses look beyond their "own house" to ensure that the businesses engaged by them and affiliated to them are also compliant with their health and safety obligations. This is key to the broader ESG agenda.

A company's ESG efforts also extends to managing and accounting for employee mental health and wellbeing in the workplace, and the vast majority of organisations have established various workplace wellbeing initiatives including access to an Employee Assistance Programme, tailored corporate wellness programmes, a stipend to cover wellbeing activities, access to exercise and / or nutrition classes, etc. The promotion of a culture committed to workplace wellbeing is a key component of an organisation's ESG agenda.

Psychosocial Hazards and the Right to Disconnect

The Health and Safety Authority (**HSA**) has made clear its intention to increase its focus on psychosocial hazard and risks in the workplace, including workplace bullying and stress. As set out in its Programme for Work 2024, the HSA intends to conduct 10,000 proactive inspections this year alone.

It is therefore vital for employers to take a proactive attitude to managing psychosocial risks and hazards in the workplace by carrying out risk assessments to identify psychosocial hazards, and then seek to mitigate these risks as much as possible, by putting in place control measures and adopting relevant policies and procedures to protect employees' psychological health and wellbeing. For example, organisations must ensure they have a Right to Disconnect Policy in place that aligns with the Workplace Relations Commissions' Code of Practice for Employers and Employees on the Right to Disconnect, and that this policy is adhered to in practice. For further guidance on the right to disconnect in Ireland, please refer to our recent briefing [The Right to Disconnect: Lessons From Ireland](#). In addition, compliance with the Code of Practice for Employers and Employees on the Prevention and Resolution of Bullying at Work and the Code of Practice on Sexual Harassment and Harassment at Work is another illustration of the company's

commitment to establishing a workplace that promotes the safety, health and welfare of its employees which, in turn, promotes its ESG agenda.

Key role of Diversity, Equity and Inclusion (D, E & I)

The promotion of D, E & I in the workplace remains at the core of many legislative developments at both Irish and EU level and is the cornerstone of ESG from an employment law perspective. It falls squarely under both the S and G components.

Gender Pay Gap ("GPG") reporting

The introduction of mandatory GPG reporting in Ireland in 2022 was one of the most significant pieces of D, E & I legislation the Irish Government has enacted to date. The legislation aims to address gender representation within organisations and requires employers (currently those with 150 employees or more and reducing to 50 employees or more in 2025) to publish the GPG that exists within their organisation and provide an explanatory statement (narrative) outlining the reasons for such a gap and the measures being taken, or proposed to be taken, to reduce it. GPG reporting seeks to uncover where women are represented across the various levels in an organisation, including senior positions. GPG reporting does not address equal pay and having a gender pay gap does not mean there is an equal pay issue in the organisation.

Based on a June 2024 snapshot date, in-scope employers are required to publish their data and narrative in December 2024. In 2025, this reporting deadline will move to November, which will give employers a shorter window of five months (from June to November) to report on their gender pay gap.

We have considered the key components of the GPG obligations in our earlier publication: [Gender Pay Gap Reporting – Top 10 FAQs](#), and offer our practical advice on the key issues and challenges arising for in-scope employers in our Countdown Series:

For further information on GPG reporting, and how we can assist, please refer to our recent publication - [Matheson Gender Pay Gap Offering 2024](#).

New family leave entitlements for employees

The Work Life Balance and Miscellaneous Provisions Act 2023 (**Work Life Balance Act**) introduced the below listed family-related entitlements (which we have considered in an earlier publication: [Striking the Balance? Significant Step for Work Life Balance](#)).

The Act introduced an extended entitlement to breastfeeding breaks (from 26 weeks to 104 weeks following the child's date of birth) and five days' unpaid leave for medical care purposes came into effect. Many employers updated their staff policies accordingly.

The right to five days' paid domestic violence leave, to be paid at an employee's full rate of pay, came into effect on 27 November 2023. A new website (www.DVatWork.ie[Opens in new window](#))

has been launched which provides information to support employers in implementing the domestic violence leave and, helpfully, provides a template policy and a very useful guidance note.

The Workplace Relations Commission's Code of Practice for Employers and Employees Right to Request Flexible Working and Right to Request Remote Working (**Code of Practice**) was published in March 2024. It provides detailed guidance as to how the right to request remote working, and the right to request flexible working for caring purposes, operate in practice. We have considered this in more detail below.

These are all in addition to the statutory leave entitlements that have been introduced over the last number of years including two weeks' paternity leave and nine weeks' parent's leave, both of which include eligibility for a State Benefit.

Hybrid and flexible working arrangements – facilitating access to the workplace

In the wake of the pandemic, the vast majority of employers established remote and, in some organisations, flexible working policies, that worked for both the organisation and its workforce. This is against the backdrop of emerging new rights in Ireland in respect of the right to request remote and flexible working under the Work Life Balance Act. With many organisations seeking to mandate a return to the physical office, we are seeing employers in Ireland review and update their agile work arrangements and policies.

The Work Life Balance Act provides employees with a right to request remote or, in certain instances, flexible working, and the Code of Practice provides detailed guidance for employers on the steps to follow upon receiving such a request. The first WRC decision dealing with the right to request remote working was published in August and it has reinforced the position that the Work Life Balance Act does not provide a blanket right to remote and flexible working, but a right to request these arrangements. It also confirmed that the WRC does not have the power to investigate the merits of a decision made by an employer. However, it is important for employers to consider these requests in a meaningful way that aligns with the requirements of the Work Life Balance Act and the Code of Practice, including having the correct processes in place to review and respond to these requests. For a more in-depth review of this decision, please refer to our recent publication: [How to Handle Remote Working Requests? First WRC Decision Lands](#).

Looking at this through the ESG lens, the facilitation of hybrid, remote and general flexible working arrangements promotes and provides access to the workplace for certain cohorts of individuals who may otherwise not have access to, or only have limited access to, paid work. For example, many individuals with caring responsibilities or disabilities credit flexible and remote working arrangements with providing them with the opportunity to enter or remain in the workplace. This is a further example of how the “S” component of ESG is so relevant to the employee experience, in addition to being a key aspect of an organisation's D, E & I efforts.

Equal pay and pay transparency – new EU Directive will impose significant obligations on employers

The Pay Transparency Directive (**Pay Transparency Directive**) is the EU's latest step in seeking to address and promote D, E & I in the workplace. It came into effect on 7 June 2023 and will need to be transposed into Irish law by 2026.

The Pay Transparency Directive focuses on pay differences between men and women. While equal pay for equal work has been a legal requirement for many years, the EU Commission is of the view that a lack of pay transparency has been a key obstacle to enforcing equal pay. The aim of the Pay Transparency Directive is therefore to eliminate unequal pay for equal work and to enable workers to have balanced and fair negotiations regarding salaries. This is to be achieved through pay transparency measures such as information rights for employees, pay transparency for jobseekers, and stronger enforcement provisions.

The Pay Transparency Directive introduces mandatory GPG reporting for in-scope employers across EU member states. It goes further than the existing reporting requirements in Ireland and will require changes to our existing regime, including the reporting of pay gaps by “categories of workers” i.e., workers doing the same or similar work.

The Pay Transparency Directive will also introduce significant and very extensive pay transparency obligations on all employers (irrespective of headcount) which will strengthen the application of the principle of equal pay and promote equality in respect of remuneration for employees and applicants. The requirements coming down the tracks will form the bedrock of an organisation's ESG commitment to equal pay.

We have considered the key provisions of the Pay Transparency Directive here: [New Law on the Way – Bringing Pay Transparency into Sharp Focus](#).

The recent introduction of Statutory Sick Leave

The Sick Leave Act 2022 (**2022 Act**) established a statutory sick pay scheme for all employees for the first time in Ireland. As of January 2024, employees who have 13 weeks' continuous service with the employer are entitled to be paid five days' sick leave (at a rate of 70% of the employee's usual daily earnings, up to a maximum €110 a day) for certified days. This will increase to seven days' sick leave from January 2025, and ten days in 2026.

In practice, many large organisations offer company sick pay schemes that are more generous than the statutory sick pay entitlement and, importantly, the 2022 Act provides that the statutory sick pay scheme will not apply to an employer who provides a company sick pay scheme which is, as a whole, more favourable than the statutory entitlement.

Whistleblowing and creating a safe “speak up” culture

Managing whistleblowing complaints in compliance with the extensive legal obligations arising under the Protected Disclosures (Amendment) Act 2022 is a very important component of the S and G aspects of an organisation's ESG strategy.

Fostering an open and transparent workplace culture where employees feel safe and secure reporting wrongdoings in the knowledge that any such wrongdoings will be managed through the appropriate internal channels by the organisation is a key feature of a company's ESG efforts. It is also a very effective tool for managing the risk of reputational damage arising from an employee blowing the whistle externally first.

The impact of CSRD – is your organisation ready?

In July 2024, new Irish Regulations came into force to give effect to the EU's Corporate Sustainability Reporting Directive (CSRD), which introduces mandatory ESG reporting requirements, on a phased basis. This means that many organisations will soon need to provide specific and wide-ranging sustainability information in their directors' reports. The first cohort of in-scope companies will need to report in respect of their financial year 2024.

The CSRD is aimed at bringing sustainability reporting up to the same standard as financial reporting, thereby increasing corporate accountability. In-scope employers will be required to make a broad array of employment-related disclosures in their annual reports, which we anticipate will also lead to increased focus on a company's employment practices and policies. CSRD reporting will also provide a lens through which employees will be able to evaluate how their employers and prospective employers are performing in respect of ESG.

EU legislators also published the new Corporate Sustainability Due Diligence Directive (**CSDDD**) on 5 July 2024, which will place a substantive duty on in-scope companies to identify and address adverse human rights (including human rights under various labour conventions) and environmental impacts on their operations, subsidiaries and value chains. Member States must transpose the directive into national law by 26 July 2026. The Directive also requires in-scope companies to adopt plans to combat climate change, which should be a cornerstone of any company's ESG strategy.

Conclusion

The legislation and trends discussed in this article clearly highlight that an organisation's ESG strategy is no longer a "nice to have", but is now a legislative and reputational necessity. In the context of employees and the workplace, ESG is relevant to most aspects of employment law and the employee experience, and it is imperative that employers consider their employment law compliance, and employment policies, through the lens of ESG.

Matheson's [Employment, Pensions and Benefits Group](#) is available to guide you through the complexities of navigating the new trends and legal developments in this area, please do reach out or to your usual contact at Matheson.

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