

Collective bargaining consultation

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GUIDANCE DOCUMENT

Collective bargaining is the process by which working people come together and through their trade unions, negotiate contracts with their employers to determine fair conditions of employment. The right to collectively bargain is essential to ensuring that working people have the capacity to improve their living standards, provide for their families and build a strong foundation for our economy.

The Department of Enterprise, Trade and Employment has opened a public consultation on Ireland's action plan to promote collective bargaining. It is important that the trade union movement features significantly in the number of public responses received through the consultation, as employers will also respond to the consultation in high volume.

Under Article 4 of the EU Adequate Minimum Wage Directive, Member States with less than 80% collective bargaining coverage shall provide for a framework of enabling conditions for collective bargaining and establish an action plan to promote collective bargaining.

Ireland's collective bargaining coverage only amounts to around one-third of all employment.

The public consultation is an online Microsoft Form of 14 optional questions. This document acts as a guideline with sample answers to support Fórsa members to participate in the public consultation.

This is your contribution. We ask that you speak about your experiences as a worker and trade union member and highlight where improvements are needed to facilitate trade union membership and collective bargaining. If you do not feel strongly about a question, you can skip the question.

If you have any questions, you can email campaigns@forsa.ie.

Questions 1, 2 and 3 are Name, Organisation (optional), E-mail address.

Question 4: Do you have views in relation to training or other capacity building activities which would assist the social partners to engage in collective bargaining?

- The Government should introduce a right of trade unions to access workplaces and workers. This would support workers to organise, facilitate trade union recruitment, and ensure workers can discuss workplace matters with their representatives.
- The Government should allocate funding under the National Training Fund and the European Social Fund Plus (ESF+), which can be accessed by trade unions, for trade union development and collective bargaining, including campaigns and projects in organising, recruitment, capacity building, training of union staff and members, research, and initiatives to address declining trade union density.
- Reinstatement Tax Relief for trade union subscriptions.
- Introduce a solidarity contribution from non-members who benefit from collective agreements, designed so that it incentivises union membership.
- The Government should work with the social partners to consider approaches to establish sectoral bargaining and extension mechanisms for collective agreements. (e.g. re-instate extension mechanisms for sectoral Registered Employment Agreements (REAs)).
- Fully implement the final report of the LEEF High Level Working Group on collective bargaining.

Question 5: Do you have views in relation to the operation of Joint Labour Committees and how social partners can be incentivised to participate in them?

- The Government should develop additional JLCs in appropriate sectors, in line with the recommendations in the Final Report of the LEEF High Level Working Group and ensure all participants of JLCs undergo appropriate training.
- The Government should remove the employer veto which hinders the proper functioning of JLCs.

Question 6: What are your views on a proposal to have a Good Faith Engagement process at enterprise level which would involve a single mandatory meeting between an employer and a trade union?

- A single mandatory meeting is insufficient to meet the objectives of the EU Directive. There should be a mandatory process for engagement. There is a risk that a single meeting would become a ceiling and not a floor and this could result in a box ticking exercise in some areas rather than a meaningful attempt to negotiate. A good faith process and a single mandatory meeting are contradictory ideas.

Question 7: Do you have other views in relation to how negotiations between social partners on wages could be promoted and facilitated?

- Enshrining in law the right to collective bargain and introducing legislative protections against discrimination related to trade union activity or participation in collective bargaining activity would facilitate negotiations on wages and promote increased collective bargaining coverage. Collective bargaining rights must be for all employees – the employer must not be permitted to exclude or deny any employees from collective bargaining.
- Additionally, negotiations between social partners on wages could be promoted and facilitated by providing funding to trade unions for organising campaigns and other capacity-building initiatives.

Question 8: Do you have views on how the social partners could better access the information required to engage in negotiations?

- Adequate and timely access to information is critical to negotiations and in ensuring trade unions and employers can carry out their functions in respect of collective bargaining. The State should support the provision of information in two ways: by ensuring the provision of reliable data on the economy's performance for all social partners; and by compelling social partners to provide relevant local data in a timely and digestible manner.
- The Government should ensure unions can access company accounts free of charge through the Companies Registration Office (CRO).

Question 9: Are Ireland's protections, including Codes of Practice, adequate to protect members and representatives of trade unions from unfair dismissal? If not, how can these protections be strengthened?

- No, protections for trade union members and representatives are not adequate. New legislation is needed to protect trade union members and facilitate the exercise of the right to collective bargaining. The compensation employers must pay for unfair dismissal is not strong enough to act as a deterrent. Stronger and more burdensome penalties for employers that unfairly dismiss their employees for engaging in union activity are needed.

Question 10: Are Ireland's protections, including Codes of Practice, adequate to protect members and representatives of trade unions from discrimination due to their membership, or activities on behalf of, a trade union? If not, how can these protections be strengthened?

- There is no legislation that protects workers and trade union representatives against acts of discrimination on the grounds that they participate or wish to participate in collective bargaining.
- Many workers experience victimisation by employers and there is a real fear of employer reprisal which acts as a barrier to union organising and bargaining. Examples include unfair dismissals in cases where the employer is willing to pay the WRC compensation; sham redundancy processes; isolation of trade union activists; poor performance reviews; control over leave arrangements, control over remote and flexible work; the use of NDAs; use of bogus self-employment; and exploitation of migrant workers regarding work visas and the provision of company accommodation.
- The Government should introduce legislation to protect workers and trade union representatives against acts of discrimination on the grounds that they participate or wish to participate in collective bargaining.
- The Employment Equality Acts should be amended to include membership of a trade union, or engaging in trade union activity, as an additional discriminatory ground, so as to render unlawful any form of adverse treatment in employment, including dismissal, grounded on a worker's membership of a trade union or engaging in trade union activity, including seeking to engage in collective bargaining.
- Protection against acts of anti-union discrimination should cover not only hiring and dismissal, but also any discriminatory measures during employment, in particular transfers, downgrading and other acts that are prejudicial to the worker.
- There needs to be harsher punishments for employers found to have discriminated against a worker based on their trade union activity.

Question 11: Do you have views as to whether workers are sufficiently protected by law, including Codes of Practice, from acts of discrimination if they wish to organise or join a trade union?

- The International Labour Organisation (ILO)'s IRLEX legal database of industrial relations identifies no legal arrangements in Ireland concerning the right to 'establish or join a trade union'. Therefore, the Government must introduce legislation giving workers the right to establish and join trade unions.

Question 12: Do you have views as to whether employers are sufficiently protected in Irish legislation against acts of interference where they wish to participate in collective bargaining?

- Yes. I am not aware of any acts of interference to prevent employers from engaging in collective bargaining. Barriers to collective bargaining occur when employers choose to not engage with trade unions and prevent unions from accessing workers and union members in the workplace.

Question 13: Do you have views as to whether a statutory entitlement should be introduced to allow for trade union access to the workplace, or activities within the workplace, for the purposes of the promotion of collective bargaining even in the case that an employer has not given permission for such activities in the workplace?

- Yes, trade union access to the workplace is integral to the work of trade unions and their proper functioning, including recruitment, bargaining activities, organising, and communicating with union members and potential members about the benefits of union membership, as well as discussing workplace matters.
- The Government must introduce legislation allowing trade union representatives access to the workplace for activities related: representing union members, collective bargaining activities, health and safety matters, recruitment of new members, and providing information about the union to any employee. Access should be for all workplace locations, rosters and shifts, and suitable facilities should be provided. Access must be both physical and digital facilitating electronic communication to employees, including remote workers.
- The legislation should also remove the employer veto on union organisation and collective bargaining recognition. Employers must also not be allowed to exclude or deny individuals or groups of employees from collective bargaining.

Question 14: Do you have views on what measures could be introduced which would promote employer engagement in collective bargaining?

- Measures to promote employer participation are welcome. However, employers have, in general, not demonstrated an enthusiasm for engaging in collective bargaining arrangements. In this context incentive measures should be balanced with measures aimed at obliging employer participation.
- The Government should fund campaigns promoting trade union membership, develop collective bargaining awareness campaigns, introduce tax incentives, introduce collective bargaining conditionality on public procurement contracts.
- The Government should introduce a conditionality requirement that any organisation being awarded a public contract or state funds must have a collective agreement in place.
- The Government should make work permits conditional on collective agreements. For example, to be eligible as an employer of a migrant worker, the wages paid must be similar to the level of collective agreements.
- Provide adequate resources to the WRC conciliation service in anticipation of an increased level of collective bargaining activity.

