

EMPLOYMENT LAW GUIDE

EMPLOYMENT CONTRACT
SICKNESS ABSENCE
DISCRIMINATION
DISABILITIES
ANNUAL LEAVE
EQUALITY

CONTENTS

SECTION		PAGE
	Introduction	03
1	Terms of Employment / Employment Contract	03
2	Sickness Absence	05
3	Discrimination and Harrassment in Practice	06
4	Flexible Working Arrangements	08
5	Data Protection and Disclosure	09
6	What if you have a complaint?	10
7	Resources	11

INTRODUCTION

Endometriosis is a common, chronic (long-term) inflammatory condition where tissue, similar to the tissue that normally grows inside the uterus, grows outside of the uterus.

IT IS ESTIMATED THAT ENDOMETRIOSIS AFFECTS AROUND 10% OF EVERYONE ASSIGNED FEMALE AT BIRTH.

The effects of endometriosis vary greatly from person to person, but common symptoms that can affect employment include chronic pain, fatigue, and bowel and bladder issues.

This guide provides a practical source of information and guidance for employers and employees to help navigate the law as it may apply to those suffering from endometriosis.

While this document does not constitute legal advice, we hope it will assist employers and employees in navigating how those with endometriosis can be supported in the workplace.

1. TERMS OF EMPLOYMENT/ EMPLOYMENT CONTRACT

All employees in Ireland are entitled to a written statement containing their terms of employment. This is an important document which governs the employment relationship. Many employers provide their employees with a contract of employment, which provides detailed information of the terms and conditions governing the work. Other employers may provide a statement of key terms.

Employers must provide employees with a written statement containing the following information within **five days** of starting work:

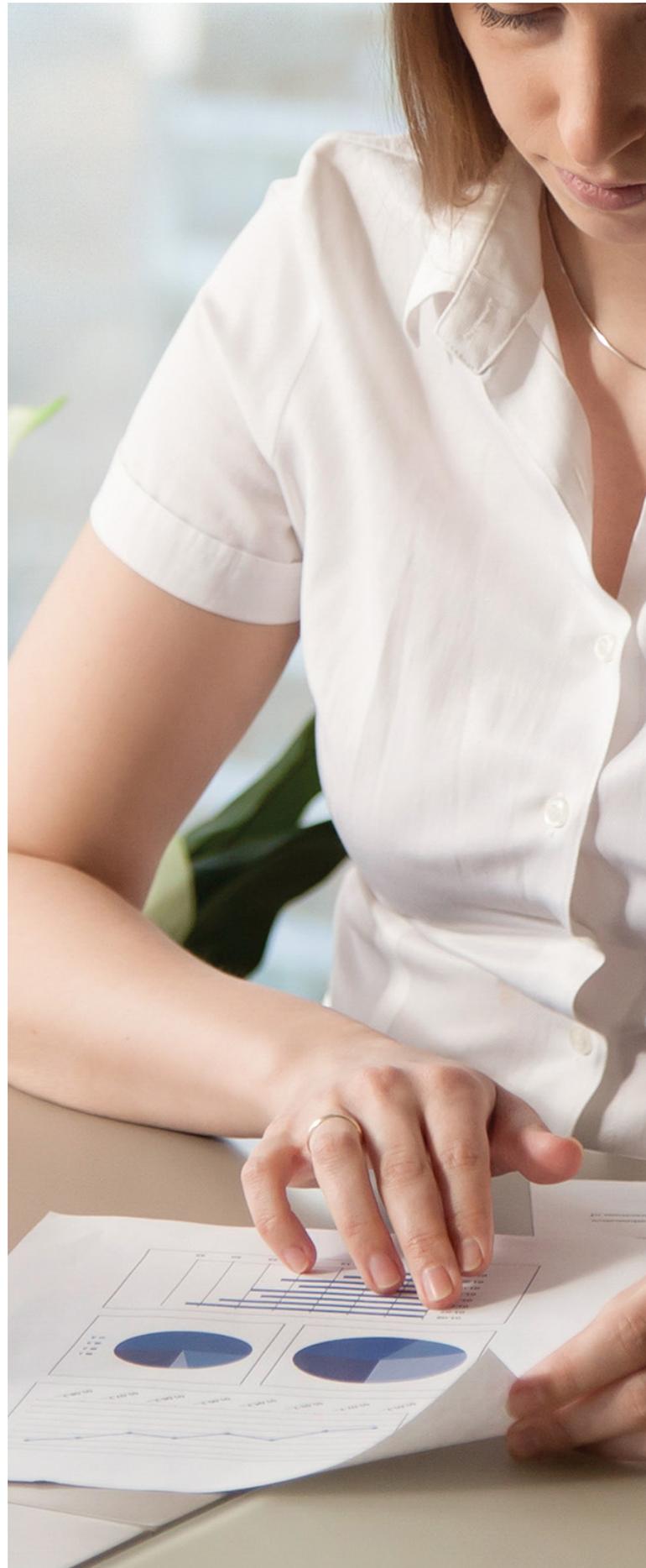
- Full names of employer and employee;
- Address of employer in Ireland;
- Expected duration of the contract where applicable;
- Rate or method of calculating pay and pay reference period for purposes of National Minimum Wage Act 2000; and
- Employer's expectations of normal working hours (per day and per week).

In addition, employers must provide employees with a written statement of the remaining terms of their employment within **two months** of starting work. These are:

- Job title or nature of work;
- Date of commencement of employment;
- References to any registered employment agreements or employment regulation orders or collective agreements that apply to the employment;
- Confirmation that an employee may request a written statement of hourly rates of pay under the National Minimum Wage Act 2000;
- Confirmation of pay frequency (i.e. whether pay is monthly, fortnightly etc);
- Terms and conditions relating to hours of work (including overtime);
- Terms and conditions relating to paid leave (other than paid sick leave);
- Terms and conditions relating to incapacity for work due to sickness/injury and paid sick leave;
- Terms and conditions relating to pensions/pension schemes;
- The period of notice applicable to employees and employers when terminating the contract.
- Expected duration of the contract where applicable;
- Rate or method of calculating pay and pay reference period for purposes of National Minimum Wage Act 2000; and
- Employer's expectations of normal working hours (per day and per week).

Notes for Employees and Employers:

- It is important at the outset to review your contract of employment, together with any accompanying documentation (such as an employee handbook). Terms that can be particularly important for persons with endometriosis are those relating to sick pay, work location and working hours.
- An employer and employee may agree to change the terms of an employment contract. It is not permissible for an employer to unilaterally change terms and conditions of employment but work practices (such as certain flexible working arrangements) can be changed without consent.
- If you do not have a written statement of employment, you can ask your employer to provide you with one.
- Part-time and fixed-term workers cannot generally be treated less favourably than their full-time counterparts with regard to their terms and conditions of employment. However, there are some exceptions to this rule, such as in respect of pension treatment for those working significantly less hours than their full-time comparators or where a difference in treatment is objectively justified.
- By providing clear documentation in the employment contract and employee handbook, employers can help those with endometriosis understand how they will be supported and how any absences will be managed
- The law sets out what an employer must provide at a minimum – there is nothing preventing employers from providing more information. What is appropriate may depend on the needs of a business.



2.1 SICK LEAVE AND SICK PAY

Many employers set out their policies and procedures pertaining to sick leave and sick pay in either a contract of employment or an employee handbook.

Entitlement to sick leave and sick pay are currently at the discretion of individual employers – there is no current legal right to be paid while absent from work due to illness.

This is set to change in the near future, as the Government have proposed to introduce legislation to provide for statutory sick leave.

2.2 TIME OFF FOR MEDICAL APPOINTMENTS

An employer must allow an individual to attend a medical appointment during working hours, but there is no right to be paid for time spent attending such appointments.

2.3 ILLNESS AND ANNUAL LEAVE / PUBLIC HOLIDAYS

If an employee becomes ill during annual leave and can provide medical certification to support this, an employer should treat the period of absence as sick leave. Employees continue to accumulate statutory annual leave entitlement during a period of certified sick leave.

Employees who cannot take annual leave due to the fact that they are on long-term sick leave can carry over their leave entitlements for up to 15 months after the end of the leave year in which it is accrued. A leave year within the meaning of the legislation runs from **1 April to 31 March** – if an employer uses a different leave year in the contract of employment, this does not impact your statutory entitlements.

If an employee is on certified sick leave during a public holiday, they may be entitled to the benefit of that holiday depending on their working patterns before the public holiday and whether they work on a full or part-time basis.

Notes for Employees and Employers:

- It is important to become familiar with your employer's sickness absence policy, particularly if your endometriosis manifests in a manner that requires you to take significant amounts of time off work.
- Make sure that you obtain medical certification for any workplace absences and that your employer is aware of the nature of your condition and how it manifests.
- If your employer doesn't offer paid sick leave, you may be entitled to Illness Benefit if you have enough PRSI contributions.
- Employers should carefully consider business needs when drafting an absence management policy. For some businesses, short but consistent absences can be as, or more, disruptive than long term absences. If this is the case, you should make this clear in your sickness absence policy so that employees can comply with any requirements that you wish to put in place.
- Keep up to date on developments in governmental policy and the law relating to sick pay.
- Employers should ensure that appropriate medical advice is obtained. Don't assume that endometriosis will manifest in a particular way – the effects of endometriosis vary. It may be necessary to refer the employee to a doctor nominated by the company.
- For prolonged absences, reasonable accommodation may need to be made to provide access to the workplace, which is addressed in more detail below.

The Employment Equality Acts 1998 – 2015 (the “Employment Equality Acts”) provide that:

Discrimination occurs where a person is treated less favourably than another is, has been or would be treated, on the protected grounds of gender, civil status, family status, sexual orientation, religion, age, disability, race or membership of the Travelling community (the “**Discriminatory Grounds**”);

Harassment is any form of unwanted conduct related to any of the Discriminatory Grounds, which has the purpose, or effect of violating a person’s dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person.

The Workplace Relations Commission has considered whether endometriosis falls within the Discriminatory Grounds. While every case will turn on its facts, there is a precedent to suggest that endometriosis is capable in principle of being a protected ground under the grounds of gender (as it is a condition unique to women for which there is no cure) and disability (depending on how endometriosis manifests).

3.1 DISCRIMINATION AND HARASSMENT IN PRACTICE

Employers cannot discriminate against an employee or prospective employee in relation to:

- (a) Access to employment;
- (b) Conditions of employment;
- (c) Training or experience for or in relation to employment;
- (d) Promotion or re-grading; or
- (e) Classification of posts.

Discrimination may be direct or indirect, and may also occur by association or imputation. Examples of types of discrimination are as follows:

- **Direct Discrimination:** a woman with endometriosis that manifests in a particular way is treated less favourably than a person without endometriosis in the same or similar circumstances;
- **Indirect Discrimination:** the same rule applies to all workers, but it places women with endometriosis that manifests in a particular way at a particular disadvantage.
- **Discrimination by association:** if someone is harassed because one of their family members has endometriosis that manifests in a particular way;
- **Discrimination by imputation:** if someone is treated less favourably because they are assumed to have endometriosis that manifests in a particular way (even if this is not the case).

3.2 RIGHT TO 'REASONABLE ACCOMMODATION' FOR INDIVIDUALS WITH DISABILITIES

If an individual's endometriosis manifests in a way that constitutes a 'disability' within the meaning of the Employment Equality Acts, employers must make 'reasonable accommodation' for that individual.

This places an obligation on employers to take steps to ensure individuals with disabilities can access and participate in employment unless such measures would impose a disproportionate burden on the employer. These can include but are not limited to the adaptation of premises and equipment, offering flexible working times, adjusting attendance hours or allowing people to work remotely, providing training or other supports and assigning an employee certain tasks, and substituting others for equivalent duties, in consultation with the employee.

Employers should consult with individuals to gain a better understanding of their specific needs and discuss whether there are appropriate measures they could implement to better support them and enable them to carry out their responsibilities. In assessing what constitutes a disproportionate burden for employers, the following will be considered:

- (a) the financial impact of the measures;
- (b) the scale of the business;
- (c) the resources of the business; and
- (d) the possibility of obtaining public funding or assistance.



Notes for Employees and Employers:

- If you think that you are being bullied, harassed or discriminated against at work due to your endometriosis, you should consult your employee handbook. This will often contain policies – such as dignity at work or grievance policies – that will allow you to address the issue.
- Indirect discrimination is permissible if it is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary, whereas direct discrimination is never permissible.
- Employers can be liable for the acts of their employees if harassment or discrimination occurs. It is important to have policies in place to deal with these issues. Training of line managers is often an important step for to prevent issues occurring, or if they do occur, to reverse their effect.
- The definition of 'disability' in the Employment Equality Acts is wide ranging, and can potentially include endometriosis, depending on how the condition manifests. Whether it does or not will depend on all the circumstances.
- A 'comparator' must be identified in the context of a claim that discrimination has occurred – i.e. a person against who the question of "less favourable treatment" is assessed.
- In making a 'reasonable accommodation' assessment, it is good practice to engage with the employee throughout the process. Employers must explore the possibility of obtaining public funding to deal with any costs concerns. Up to date medical advice will generally be required.
- Under the Safety, Health and Welfare at Work Act 2005 employers must ensure the safety, health and welfare of all employees in their workplace. In addition, the Safety, Health and Welfare at Work (General Application) Regulations 2007 makes special mention of employees with disabilities, with employers being directed to take their needs into account, particularly with regard to doors, passageways, staircases, showers, washbasins, lavatories and workstations.

Flexible work arrangements can support employees with endometriosis in accessing and remaining in the workplace. Common flexible arrangements include:

FLEXI-TIME WORKING;

REMOTE WORKING;

JOB SHARING;

COMPRESSED WORK WEEK; OR

TIME IN LIEU, BANKED HOURS

The right to work from home (or remotely) and the right to request flexible working arrangements is currently at the discretion of an employer. Having a condition such as endometriosis does not confer a specific right to be afforded flexible working arrangements, but depending on how the condition manifests, offering a flexible working arrangement could be considered to be a 'reasonable accommodation'.

Notes for Employees and Employers:

- Flexible working arrangements must work for both the employee and the employer. An open conversation about how the arrangement will work in practice can be helpful to make sure all issues are addressed and set out both parties expectations.
- Employers may wish to put in place a flexible working policy to highlight to employees how such requests could be made and what the needs of the business are.

An employee is under no obligation to disclose information about their health to their employer. However, employees who do not disclose their health information to their employer may not be able to avail of benefits such as sick pay. It is also necessary for employers to know about health information to be able to assist an individual – for example, by making reasonable accommodation.

Where information about endometriosis is disclosed, this will generally constitute a ‘special category’ of personal data within the meaning of the General Data Protection Regulation (GDPR), which increases the obligations of employers.

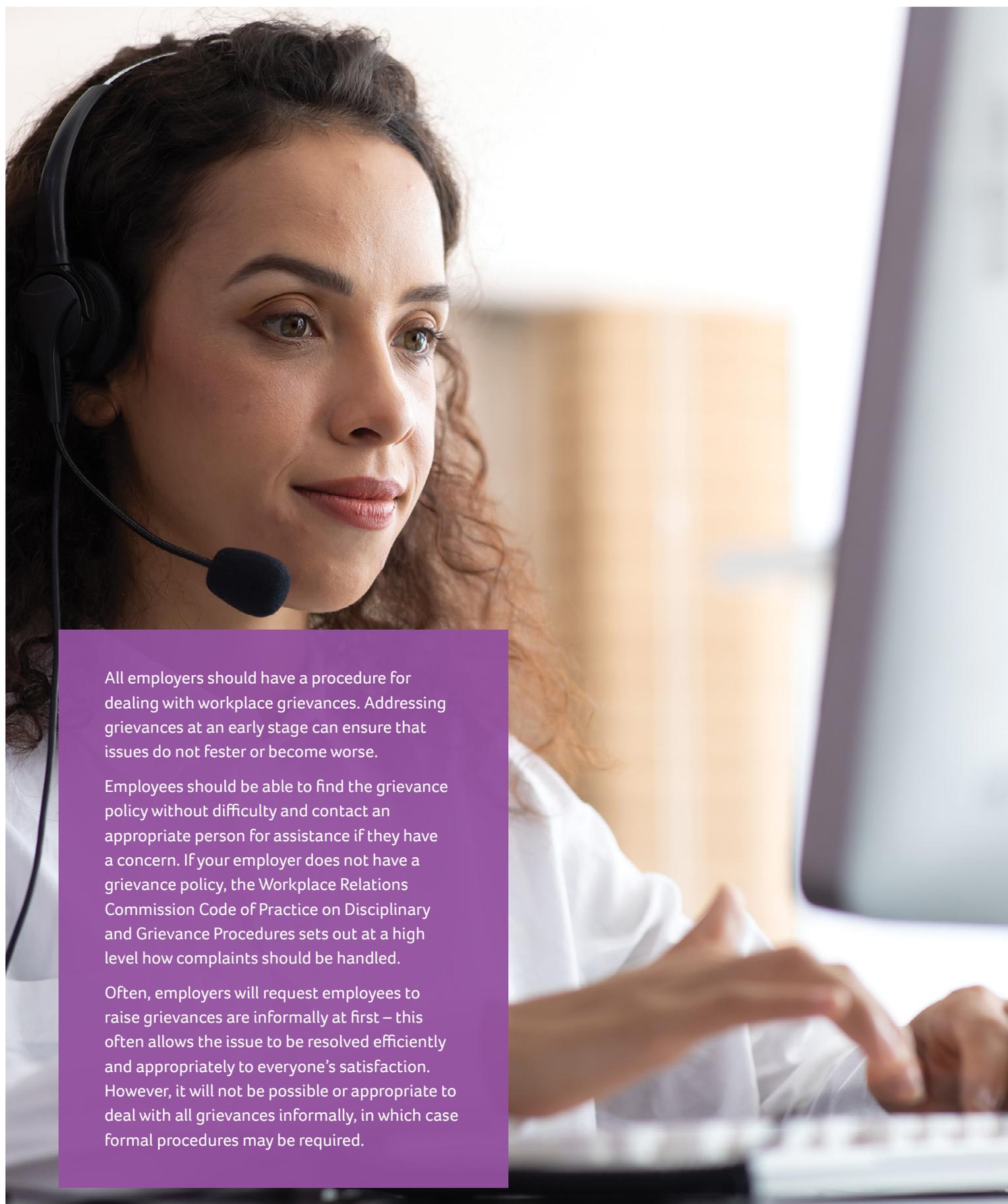
EMPLOYERS SHOULD ENSURE THAT DATA RELATING TO ENDOMETRIOSIS IS:

- Processed lawfully, fairly and in a transparent manner;
- Collected for specific purposes and not used in a manner that is incompatible for those purposes;
- Adequate, relevant and limited to what is necessary for the purposes for which it is processed;

- Accurate and kept up to date;
- Retained for no longer than is necessary having regard to the purposes for which it is processed; and
- Processed in a secure manner which ensures appropriate security against unauthorised or accidental processing (such as loss, destruction, unauthorised access).

Notes for Employees and Employers:

- Many employers will have a data privacy notice which explains how an employer will process data in accordance with the data protection acts.



All employers should have a procedure for dealing with workplace grievances. Addressing grievances at an early stage can ensure that issues do not fester or become worse.

Employees should be able to find the grievance policy without difficulty and contact an appropriate person for assistance if they have a concern. If your employer does not have a grievance policy, the Workplace Relations Commission Code of Practice on Disciplinary and Grievance Procedures sets out at a high level how complaints should be handled.

Often, employers will request employees to raise grievances informally at first – this often allows the issue to be resolved efficiently and appropriately to everyone's satisfaction. However, it will not be possible or appropriate to deal with all grievances informally, in which case formal procedures may be required.

If you have any queries about the issues addressed in this guide, the following resources may be of assistance:

Endometriosis Association of Ireland:

WWW.ENDOMETRIOSIS.IE

Citizens Information

WWW.CITIZENSINFORMATION.IE

Free Legal Advice Centre

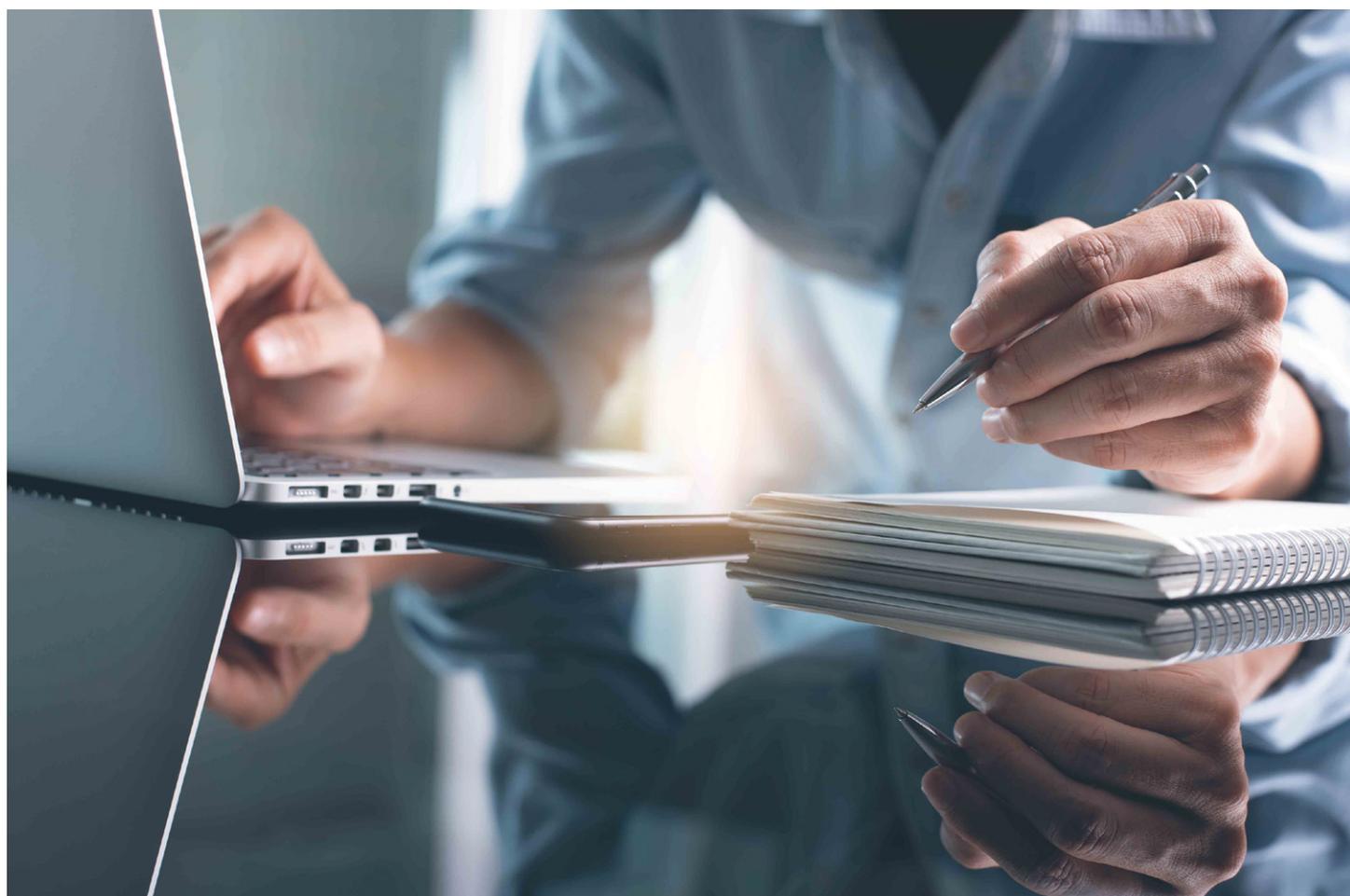
WWW.FLAC.IE

Workplace Relations Commission

WWW.WORKPLACERELATIONS.IE

Irish Human Rights & Equality Commission

WWW.IHREC.IE





Carmichael House

North Brunswick Street,
Dublin 7
Registered Charity CRN: 20021672

info@endo.ie

www.endometriosis.ie