

Mr Leo Varadkar TD,
Tánaiste and Minister for Enterprise, Trade and Employment,
Department of Business, Enterprise and Innovation
23 Kildare Street,
Dublin 2.

Dear Mr Varadkar,

We noted with interest your comments on 30th June before the Select Committee on Enterprise, Trade and Employment regarding ISME inclusion on LEEF. While we recognise and accept that LEEF cannot expand indefinitely to accommodate any and all in its number, we do need to understand how issues such as the establishment of Joint Labour Committee for the Early Learning and Care (ELC) and School-Age Childcare (SAC) sector¹ will be managed in the absence of valid representation from the employers in the sector.

This issue would not be manifest were it clear that the employer representatives managing the sectoral liaison on behalf of the employers were acting under the direction and guidance of the majority of employers in the sector. This is not apparent, and furthermore the representative of the largest employer grouping in the sector has been excluded from participation in meetings concerning the JLC.

In these circumstances, should the JLC result in an ERO, the legal ramifications for the validity of this ERO are obvious. Not alone would our members (who represent the substantial majority of sectoral employers) have an issue with it, we believe the Labour Court itself would have a difficulty, as would the courts of law, should the validity of that ERO be challenged.

In this regard I would refer you to the matters that any JLC must take account of when proposing an Employment Regulation Order to the Labour Court as per Section 42A. (6) Industrial Relations Act 1946:-

When formulating proposals to submit to the Court under subsection (1), a joint labour committee shall have regard to the following matters:

(a) the legitimate interests of employers and workers likely to be affected by the proposals, including—

(i) the legitimate financial and commercial interests of the employers in the sector in question,

(ii) the desirability of agreeing and maintaining efficient and sustainable work practices appropriate to the sector in question,

(iii) the desirability of agreeing and maintaining fair and sustainable minimum rates of remuneration appropriate to the sector in question,

¹ [Press Release 12th March 2021](#)

- (iv) the desirability of maintaining harmonious industrial relations in the sector in question,*
- (v) the desirability of maintaining competitiveness in the sector in question,*
- and*
- (vi) the levels of employment and unemployment in the sector in question;*

Clearly this cannot be achieved if the representatives of the largest employer grouping in the sector are actually excluded from participation in meetings concerning the JLC.

We maintain it is not possible to address this issue as the current representative arrangements stand. If the current JLC process is to have validity and legal legitimacy, then the voice of the majority of employers must be heard at the table. This is perfectly possible to achieve where the employer representative(s), from wherever they originate, act under the clear authority, direction and control of the employers. We would suggest a situation where a minority of employers purport to act for the majority, and represent their own views rather than those of the sector as a whole, would obviously be as intolerable for your Department as it would be for the majority of employers.

Yours sincerely,



Neil McDonnell
Chief Executive

CC Minister Roderic O’Gorman TD, DCEDIY
Minister of State Damien English TD, DETE
Dr Fergal Lynch, Secretary General, DCEDIY
Dr Orlaigh Quinn, Secretary General, DETE
Clare Dunne, Assistant Secretary General, DETE
Mr Declan Hughes, Assistant Secretary General, DETE
Liam Kelly, Director General, Workplace Relations Commission
Elaine Dunne, Chairperson, Federation of Early Childhood Providers