

# Domestic Violence Leave Submission:

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Migrant Integration Strategy  
Monitoring and Coordination  
Committee

APRIL 9

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## **Submission by Nasc, Migrant and Refugee Rights Centre to the Migrant Integration Strategy Committee Consultation on Domestic Violence Leave**

09<sup>th</sup> April 2021

### **Introduction:**

1. Nasc, Migrant and Refugee Rights Centre is a non-governmental organisation based in Cork City, Ireland. Nasc, the Irish word for 'link', empowers migrants to realise and fulfil their rights. Nasc works with migrants and refugees to advocate and lead for change within Ireland's immigration and protection systems, to ensure fairness, access to justice and the protection of human rights.

2. Nasc has over two decades of experience supporting refugees, asylum seekers and ethnic minority communities in Ireland. Through our various projects including our free legal service, our migrant youth project and our education and employment project for migrant, asylum-seeking and refugee women, Nasc provides information, advice and support to over 1,200 people annually. Nasc also provides support in the form of referrals and training to mainstream services, including domestic violence services, working with migrant and ethnic minority communities.

3. This submission is directly informed by our day-to-day experiences working with migrants, refugees, asylum seekers and ethnic minorities living in Ireland. This submission aims to identify issues disproportionately impacting Ireland's migrant, asylum seeking and ethnic minority communities.

### **Scope of the Bill**

#### **Limitations**

4. Nasc welcomes the proposals to introduce paid domestic violence leave. Migrants and people from ethnic minority backgrounds often face additional barriers in accessing domestic violence supports. These barriers include access to refuges, the habitual residence condition, quality and availability of interpretation, lack of family support, isolation, the reluctance of migrant communities to report crimes, lack of immigration firewall when An Garda Síochána are investigating crimes and the risk of becoming undocumented. The Irish immigration system itself is complex and migrants who hold their immigration permission on the basis of their relationship with an abusive partner or family member can struggle to navigate how to retain their permission and not become undocumented when leaving an abusive family situation. Preparing an application to retain an immigration status can be a time-consuming and difficult process akin to another court proceeding.

5. It is also important to acknowledge that many migrants, predominantly women, who are resident in the State on a 'Stamp 3' basis do not have access to the labour market. In Nasc's experience, their financial circumstances, whereby they are entirely financially reliant on a spouse or partner, often means that this cohort of migrants are more significantly at risk of financial abuse and are likely to stay in abusive relationships for longer as they lack any financial independence.

6. These larger structural issues will not be addressed by these paid domestic violence leave proposals however, we recognise that paid domestic violence leave may be of assistance in mitigating the additional time that a migrant must spend to resolve the additional hurdle of their immigration status.

7. Although it is outside the immediate scope of this consultation, Nasc strongly urges the government to review its Victims of Domestic Violence Immigration Guidelines<sup>1</sup> which were published in DATE and predate the Domestic Violence Act, 2018. We also urge the Department of Justice to consider granting migrants who secure residence on the basis of a family relationship, an independent immigration permission after two years in the State. This would help to address, often unhealthy, power imbalances in relationships and would improve access to domestic violence supports for migrants in abusive family relationships.

#### **How could paid leave operate to best address the needs of victims?**

8. Nasc do not propose to address whether the State pays for or subsidises employers to meet the costs of paid domestic violence leave. However, we advocate that the administration of payment during the period of leave should be as simple as possible to the employee and not involve any undue or burdensome form filling by people accessing leave. If the State proposes to subsidise the leave, then Nasc would advocate for the employer to pay the employee directly for leave taken with any reimbursement organised directly between the employer and the State afterwards.

9. We have a number of practical concerns that inform this preference. Firstly, migrants and people from ethnic minority backgrounds are more likely to struggle with completing forms especially given potential language barriers. Secondly, certain categories of non-EEA immigrants in Ireland will find themselves in breach of their immigration residence conditions if they access State supports eg international students resident in Ireland on a Stamp 2 permission are explicitly precluded from accessing social welfare supports during their time in Ireland. Finally, paid domestic violence leave is likely to be taken on an emergency basis at a time when a person affected is less likely to have access to identity documents, proofs of address or details of their immigration status. It is unfortunately common in our experience for an abusive spouse, partner or family member to take passports, Immigration Residence Permits and other immigration documents. The direct payment from the employer to the employee obviates these risks.

#### **What would be your concerns around introducing paid leave for domestic violence?**

10. Nasc's primary concern is that information around access to paid leave for domestic violence is widely available and widely translated. The practice of asking for paid leave for domestic violence must be normalised. Employees must be made aware that any such request to their employer is confidential and will not result in the employee being penalised. There must be clear recourse for an employee who is denied paid leave for domestic violence. The process for requesting and obtaining leave must be transparent and should not be burdensome either in terms of requiring lengthy application forms or in providing 'evidence' of domestic violence.

#### **How could the leave be utilised to best support victims and what economic activities should be covered by the leave?**

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<sup>1</sup> Department of Justice, Victims of Domestic Violence Immigration Guidelines, (<http://www.inis.gov.ie/en/INIS/Victims%20Of%20Domestic%20Violence%20-%20Note%20for%20Web.pdf/Files/Victims%20Of%20Domestic%20Violence%20-%20Note%20for%20Web.pdf>)

11. Economic activity should be construed as broadly as possible and leave should be provided in a flexible manner. Employees utilising leave should have the opportunity to take the period of leave available in one block or to do so in increments. In our experience, a person leaving an abusive relationship and looking for a safety, protection or barring order through the courts will need to be present in court on multiple occasions over several months. Some employees may choose to use their leave to support their immediate and urgent needs when leaving an abusive relationship however, for others, it may be important to reserve leave for court dates, counselling, and legal advice both on family law matters and matters relating to their immigration status.

## **Terms of Leave**

### **What would be an appropriate number of paid days' leave?**

12. Nasc supports the New Zealand model of paid domestic violence leave which provides for up to ten days of paid leave. We believe that this provides for a fair and reasonable balance between the needs of the employee and those of the employer. Given that requests by employees for paid domestic violence leave are likely to be exceptional, this does not represent an overly onerous burden on employers.

### **Should provisions be made to allow for additional unpaid leave?**

13. Nasc would support the right of an employee to ask for additional unpaid leave. This could be done in a manner similar to the recently announced plans to introduce a right for employees to ask to work remotely. Employees who ask for additional paid leave will be able to do so without fear of negative repercussions.

### **How could proof/evidence requirements to an employer be satisfied? What would be considered appropriate and accessible 'proof'?**

14. Nasc is in favour of the New Zealand model with regard to the provision of 'evidence'. The law permits rather than requires the employer to ask for evidence and is silent on type of documentation that may be considered evidence. The New Zealand government provides further guidance online<sup>2</sup> with a non-exhaustive list of examples of documentation. The guidance requires both the employer and the employee to act in good faith but also acknowledges that "[g]etting proof may not be simple, given the nature of domestic violence."

15. Nasc would caution against any approach that either required the employer to request evidence or limited the type of evidence that is acceptable. The point that "[g]etting proof may not be simple, given the nature of domestic violence" bears repeating and is something that Nasc has repeatedly seen in its work with migrant victims of domestic violence. Our experience has been that coercive control, threats of deportation and separation from children and financial abuse are almost always present in abusive relationships however these are extremely difficult to document.

16. Migrant victims of domestic violence are less likely to be aware of or engage with domestic violence services or with state bodies. In our experience it is reasonably rare for a migrant victim of domestic violence to report the abuse to the Gardai. Our service has not encountered a single instance where a migrant victim of domestic violence reported the abuse to the Gardai where there had not been physical abuse or a perceived immediate threat to life.

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<sup>2</sup> Employment New Zealand, Proof of Domestic Violence available at <https://www.employment.govt.nz/leave-and-holidays/domestic-violence-leave/proof-domestic-violence/>

17. There are similar limitations with support letters from GPs. Again, our experience has been that migrant victims of domestic violence are unlikely to disclose domestic violence to a GP where there has not been physical violence. In some instances, unless the migrant victim of domestic violence has access to a Medical Card they cannot afford the consultation fee to visit a GP. In other instances, where the patient does not speak English, a family member – potentially even the abusive family member – is present and interpreting during the GP appointment. Conversely Nasc has seen a greater number of referrals to our service for assistance or advice on assisting migrant women who have experienced domestic abuse from social workers alerted during maternity care. This may be as there is a widely researched correlation between pregnancy and a rise in domestic violence in the home but we also believe that, potentially for the first time, women are regularly engaging with medical professionals who are particularly aware of the risks of domestic violence.

18. Nasc would be strongly against any proposals which limited acceptable evidence to GP letters, Garda reports or court orders. For the reasons given above, we believe that these do not reflect the lived experiences of migrant victims of domestic violence. As noted in paragraph 14, we believe that there should be an open-ended approach to what constitutes appropriate evidence with any guidance providing a wide but non-exhaustive list of examples. Some of these examples should include letters from support organisations, social workers, public health nurses, teachers, counsellors, solicitors and sworn self-declaration.

**Should the evidence requirement for paid leave be the same as for unpaid leave for domestic violence?**

19. Yes, the requirement to provide evidence for paid leave should not be onerous and should have the principle of accessibility at its heart. The standard should be one that is easily satisfied. Nasc would be concerned about a situation arising where there are different ‘tiers’ of evidence for paid leave versus unpaid leave. We believe that risks a situation where victims of domestic violence might be pushed into taking unpaid leave rather than paid leave.

**What other arrangements could employers implement to support employees (e.g. short-term flexible working arrangements, workplace safety policy) & other elements to be considered when examining domestic violence leave (e.g. safeguards, workplace safety)?**

20. While the proposals for paid domestic violence leave are very welcome, they must go hand in hand with a publicity and multi lingual information campaign to make employers and employees aware of their rights and obligations. We would also support flexible working arrangements and training for employers.

*Training*

21. In small to medium organisations that do not have a dedicated HR department or staff, an employer or manager may not know how to respond appropriately and may also be unaware of recent legislative changes around coercive control. There should be freely available resources for employers which provide information on what domestic violence is and how to respond when an employee discloses to them that they are requesting paid domestic violence leave. Unfortunately myths that domestic violence cannot affect men, or that it may be ‘culturally appropriate’ behaviour in some contexts or that only physical violence counts as domestic violence are still relatively prevalent. An excellent free training model to consider is the free online training provided by Tusla –

the Children First E-Learning Programme<sup>3</sup> which provides a short but thorough overview of the practical implications of the Children First: National Guidance for the Protection and Welfare of Children and the Children First Act 2015. Additionally such trainings could include information on best practice when it comes to including protections for employees who are victims of domestic violence in Workplace Safety policies.

#### *Flexible and Remote Working*

22. Nasc would strongly support arrangements which would allow for flexible and/or remote working. As outlined in paragraph 11, court dates, appointments with solicitors and legal advisors as well as counselling may take place over the course of many months. Additionally, a victim of domestic violence who is also a parent might find that they have additional childcare responsibilities. We would also support the facilitation of remote working where possible. Victims of domestic violence who find that they are in grave or immediate danger and need to go to a refuge-provided safe house or move out of their local area, may find that they increase their danger of exposing their location if their abusive family member can stalk them once they know the location of their employer.

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<sup>3</sup> For more information about the Children First E-Learning Programme please see <https://www.tusla.ie/children-first/children-first-e-learning-programme/>