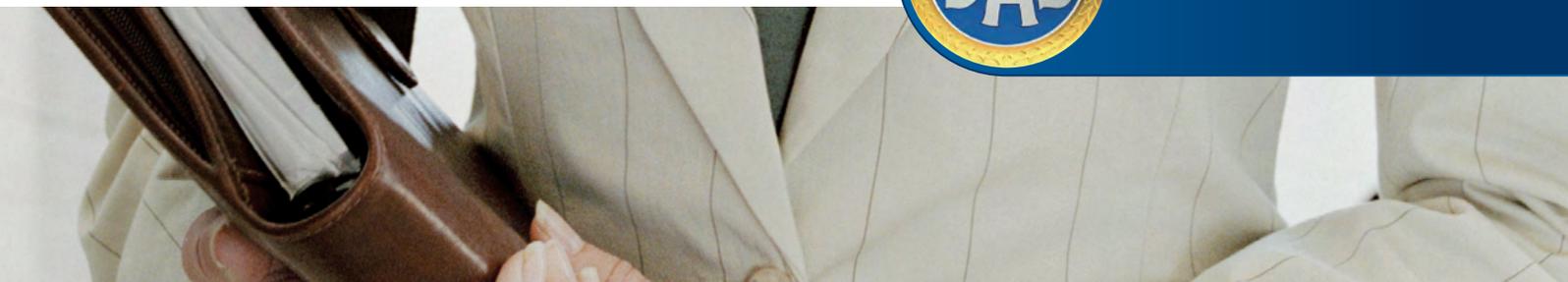




# EMPLOYMENT MANUAL



**FIRST FOR JUSTICE**



## FAMILY PROVISIONS

### 4.1 MATERNITY AND PATERNITY RIGHTS

Employees who satisfy the requirements set out in the Paternity Leave and Benefits Act, 2016 enjoy the benefits set out below at page 74, while female employees who can satisfy the relevant qualifying conditions enjoy the following statutory rights pursuant to **The Maternity Protection Act, 1994** and **The Maternity Protection (Amendment) Act, 2004**:

- (a) Paid time off to receive ante-natal care.
- (b) A minimum of 26 weeks maternity leave with an option to take an additional 16 weeks unpaid leave.
- (c) Protection from dismissal by reason of pregnancy or childbirth.
- (d) Maternity pay.
- (e) Right to return to work after maternity leave.
- (f) Offer of alternative work before being suspended on maternity grounds.
- (g) Remuneration on suspension on maternity grounds.

The rules on pregnancy and maternity are very complex and any query should be raised with the employer who will endeavour to provide further information. See below for the benefits available to qualifying employees under the Paternity Leave and Benefit Act, 2016.

#### **Compulsory maternity leave**

An employee must not be allowed to work for a period of 2 weeks commencing with the day on which childbirth occurs or you will commit an offence and be liable on summary conviction to a fine.

#### **Exercising rights**

The female employee may not exercise her statutory and contractual rights separately.

#### **Employers' obligation to inform women of rights**

There is an implied contractual duty for you to inform employees of their benefits and how to take advantage of them.

#### **Dismissal**

- (a) The dismissal of a female employee is automatically unfair, regardless of her length of service or hours of work, if:
  - i It is on maternity related grounds and takes place during her pregnancy or statutory maternity leave; OR
  - ii During the four weeks following the end of the maternity leave period, she has since then been incapable of work due to a medically certified illness.
  - iii It occurs after the end of her statutory maternity leave period and is on grounds connected with that leave.
  - iv On grounds of Health & Safety considerations which could give rise to maternity suspension.
  - v On grounds of redundancy and you have not offered any suitable alternative vacancy which is available.
  - vi Unfairly selected for redundancy for one of the above reasons.
- (b) The protection applies automatically from the start of the employee's pregnancy. There is an automatic right to receive written reasons for dismissal while pregnant or during the statutory maternity leave period.

## FAMILY PROVISIONS

### 4.1 MATERNITY AND PATERNITY RIGHTS (CONTINUED)

#### **Ante-natal care**

The Employer does not pay your salary during maternity leave or additional maternity leave. You may qualify for Maternity Benefit which is a Department of Social and Family Affairs payment provided you have sufficient PRSI contributions. You should contact the Department of Social and Family Affairs directly in relation to this matter.

#### **Public holidays and annual leave**

You are entitled to leave for any public holidays that occur during your maternity leave (including additional maternity leave). Time spent on maternity leave (including additional maternity leave) is treated as though you have been in employment, and this time can be used to accumulate annual leave and public holiday entitlement.

#### **Stillbirths and miscarriages**

If you have a stillbirth or miscarriage any time after the 24th week of pregnancy, you are entitled to full maternity leave. At the present time this means a basic period of 26 weeks and 16 weeks of additional maternity leave. If you have satisfied the PRSI requirements, Maternity Benefit is payable for the 26 weeks of the basic maternity leave.

#### **Father's entitlement to maternity leave**

Fathers are only entitled to maternity leave if the mother dies within 24 weeks of the birth. In these circumstances, the father may be entitled to a period of leave, the extent of which depends on the actual date of the mother's death. Where a father qualifies for leave under these circumstances, he also has an optional right to the additional maternity leave. From 1st September 2016, fathers and other qualifying persons enjoy certain rights under the Paternity Leave and Benefit Act, 2016. These benefits are set out below.

#### **Postponing maternity leave**

Section 7 of **The Maternity Protection (Amendment) Act, 2004** provides for postponement of maternity leave in strict circumstances, that is, if your baby is hospitalised. This right to postpone leave applies whether you are on maternity leave, or on additional unpaid maternity leave. However, please note that the Employer has the right to refuse your application to postpone your maternity leave.

#### **Returning to work**

You are entitled to return to work to the same job with the same contract of employment. However, if it is not reasonably practicable for the Employer to allow you to return to your job, then you will be provided with suitable alternative work. This new position will not be on terms substantially less favourable than those of your previous job.

If you are breastfeeding you may be entitled to some time off or a reduction in hours without loss of pay for up to 26 weeks after the birth.

If you decide not to return to work after your period of maternity leave, you are obliged required to give your employer notice in the usual manner.

## FAMILY PROVISIONS

### 4.1 MATERNITY AND PATERNITY RIGHTS (CONTINUED)

#### **Time off for medical visits**

Once your pregnancy is confirmed you may take reasonable time off for medical visits connected with the pregnancy. There is no maximum or minimum amount of time off specified for these visits. Rather, you are entitled to as much time off as is necessary to attend each visit. You are required to provide the Employer with medical evidence confirming the pregnancy, giving 2 weeks' notice of your medical visits. You should show your appointment card when requested by the Employer at any time after your first appointment. You may also take time off for medical visits after the birth for up to 14 weeks following the birth including any time taken on maternity leave after the birth. You are entitled to be paid while keeping these medical appointments both before and after the birth.

#### **Ante-natal classes**

You are entitled to take paid time off work to attend one set of ante-natal classes over all pregnancies (but not the last three of the series of classes as these would normally occur after maternity leave has started). Similarly, expectant fathers are entitled to a once-off right to paid time off work to attend the two ante-natal classes immediately prior to the birth.

#### **Rules**

You must give the Employer at least 4 weeks' written notice of your intention to take maternity leave and you must also provide the Employer with a medical certificate confirming the pregnancy. If you intend to take the additional 16 weeks' maternity leave you must provide the Employer with at least 4 weeks' written notice. Both these notices can be given to the Employer at the same time.

If you are certified by your doctor as needing to start maternity leave for medical reasons, your maternity leave will start on the earlier date as specified on the medical certificate. In this case you are considered to have complied with the notice requirements.

You must give your employer at least 4 weeks' written notice of your intention to return to work.

It is important to comply with these notice requirements, as failure to do so may cause loss of rights.

You must notify your employer as soon as possible if you wish to postpone your maternity leave, however the Employer may refuse to allow you to do so.

## FAMILY PROVISIONS

### 4.1 MATERNITY AND PATERNITY RIGHTS (CONTINUED)

#### Health & Safety Provisions

- (a)
  - i You, as employers, are under a general duty to take reasonable care for the health and safety of employees.
  - ii You may need to take specific measures to address the particular hazards posed to new mothers and pregnant employees.
  - iii If your work force includes women of child bearing age, you are under an obligation to carry out risk assessments in relation to the risk group.
  - iv You must take preventative or protective measures regarding any identified risks.
    - If the risk is not avoided by this then you must alter the woman's working conditions or hours of work.
    - If this is not reasonable or would not avoid the risk then you must offer the woman any suitable available work.
  - v A woman must be moved off night work if necessary for health and safety reasons.
  - vi An employee suspended from work by virtue of certain specified Health and Safety provisions due to pregnancy, birth or breast feeding is entitled to:
    - Be offered suitable alternative work, where available before suspension.
    - While suspended, to be paid normal remuneration except in respect of any period during which you have offered her suitable work which was unreasonably refused.
  - vii It is automatically unfair to dismiss a woman because of a requirement to suspend her on health and safety grounds.
  - viii It is not unlawful for you to discriminate against a woman in the risk group on the ground of her sex if it is necessary in order to comply with its health and safety obligations in relation to the specific risks she faces.

## FAMILY PROVISIONS

### 4.1 MATERNITY AND PATERNITY RIGHTS (CONTINUED)

#### **Risk Management**

**The Safety, Health and Welfare at Work Act, 1989** and **The Safety, Health and Welfare at Work (Pregnant Employees) Regulations, 2000 (S.I. 218/2000)** require employers to carry out risk assessments in respect of their employees. The Pregnant Workers Directive requires specific risk assessment for pregnant employees.

In Ireland, because of the broad framework of the health and safety legislation, such risk assessment was required in any event, although not specifically provided for in respect of pregnant workers as a separate group of workers. The 1994 Regulations require employers to carry out a specific risk assessment for pregnant women even if there are no pregnant employees in the firm. As soon as an employer is on notice of an employee's pregnancy or the fact that she has just given birth to a child or is breastfeeding, the employer, must reassess the risk in the workplace for that employee without delay. Until the risks are at an acceptable level pregnant workers and new mothers must not be exposed to these risks. The employer must move the employee to alternative work if a risk assessment shows unacceptable risks or if the employee cannot be required to perform night work.

If this is not technically or objectively feasible or if the other work is not suitable or a move cannot reasonably be required on duly substantial grounds, the employee must be granted health and safety leave and receive payment for the first three weeks of that leave. The entitlement to leave on health and safety grounds is provided for in the 1994 Act, s 18. The employee is entitled to receive for any period after the first twenty-one days, the employee will be entitled to social welfare benefits.

The health and safety leave can end when the risk no longer exists, as provided for in the 1994 Act, s 20. Employers are not entitled to dismiss employees if they are unable to work during pregnancy, just after giving birth or while breastfeeding, if that inability to work arises for health and safety reasons.

#### **Paternity Rights**

Under the Paternity Leave and Benefit Act, 2016 from the 1st September 2016, an employee who is a 'relevant parent' of a child is entitled to two weeks leave to assist following the birth or adoption of their child.

This period of leave is available to the father of the child, as well as the spouse, civil partner, or cohabitant of the mother of the child, if the child is a donor received child, the spouse, civil partner or cohabitant of the mother are entitled to the benefit under the act. If the child is adopted, the spouse, civil partner or cohabitant of the mother adopting the child may benefit under the act. In the case of a same sex couple adopting a child, the parent nominated to be the 'relevant parent' is entitled to the benefit under the act.

An employee who meets the criteria is entitled to a payment from the Department of Social Protection if they have the required PRSI contributions. Similarly to maternity leave, the employer is not obliged to pay the employee during this period of leave, but is not precluded from doing so. That said, a similar policy should be adopted to both maternity leave and paternity leave to avoid a potential claim under The Employment Equality Acts.

The employee must notify the employer in writing as soon as reasonably practicable but in any event at least 4 weeks in advance of their intention to take the leave. The notification should include a statement from a registered medical practitioner confirming the pregnancy and detailing the expected week of confinement. The employee should also inform the employer of the duration of the leave they intend to take. If the date of confinement is earlier than expected 7 days notice is sufficient. In the case of adoption, the employer should be informed as soon as possible, and a copy of the certificate of placement must be provided to the employer no later than four weeks prior to the date of placement.

## FAMILY PROVISIONS

### 4.1 MATERNITY AND PATERNITY RIGHTS (CONTINUED)

#### **Paternity Rights (continued)**

The leave must not be taken prior to the date of confinement (or placement), and must be taken not later than 26 weeks following that date.

The date of the commencement of the leave can be delayed if the confinement date is later than expected or if the placement date is postponed. It is also permissible to postpone the leave if the relevant parent is ill, or in the event of hospitalisation of the child.

The employer should keep a record of paternity leave taken, including the dates and times of the leave taken and the period of employment concerned. These records must be retained for a period of 8 years. It is an offence to fail to maintain such records.

There is a high level of protection afforded to employees who avail of this form of leave. Employees must not be dismissed or suspended during this period of leave, nor should the employee be penalised or threatened with penalisation for exercising their rights under this act.

An employee on paternity leave should have their employment rights maintained as if there were not absent. They continue to accrue annual leave and any other benefit, other than remuneration (unless they are so entitled by custom and practice or contractual obligation of the employer), during their absence. The employee must be allowed to return to their position following the period of leave. If they are not so permitted, they will be deemed to have been unfairly dismissed, unless a there is a genuine redundancy situation in being.

## FAMILY PROVISIONS

### 4.2 PARENTAL LEAVE

**The Parental Leave Act, 1998 and The Parental Leave (Amendment) Act, 2006 as amended by European Union (Parental Leave) Regulations 2013** provides that employees with one year's service are entitled to take parental leave of up to 18 weeks in respect of each child not later than the day on which the child concerned attains the age of 8 years. In respect of a child who has a disability or long term illness leave may be taken not later than the day on which the child attains the age of 16 years.

A period of parental leave shall not commence before a time when the employee concerned has completed one year's continuous employment with the employer from whose employment the leave is taken. However, where an employee will not have completed one year's continuous employment with his or her employer on the latest day for commencing a period of parental leave, but has completed three months of such employment on the latest day for commencing a period of parental leave, the employee shall be entitled to parental leave for a period of one week for each month of continuous employment that he or she has completed with the employer at the time of commencement of the leave.

Where a person entitled to parental leave has changed jobs within the 12 months before 19th July 2000 and the period of parental leave that they are entitled to in their new job would have been longer if they had not changed jobs, time spent working for their new employer and previous employers will be counted for the purposes of calculating their entitlement to parental leave.

The relevant parent in relation to a child means a person who is the natural parent, the adoptive parent or the adopting parent in respect of the child or acting in loco parentis to the child.

Parent leave can be taken in a block of 18 weeks or two separate periods each consisting of not less than 6 weeks. There must be a gap of 10 weeks between the two periods of parental leave per child.

An employee must give written notice to your employer of your intention to take parental leave. Employees should inform their employer in writing at least 6 weeks before the leave is due to start. The notice should state the starting date and how long the leave will last. After this not less than 4 weeks before the leave is due to start, an employee will need to sign a document and the employer must confirm the details of the leave. An employer may request the employee to furnish him or her such evidence as to the date of birth of the child, the employee being a relevant parent and if relevant the disability or illness of the child.

Employers must keep records of all parental leave taken by their employees. These records must include the period of employment of each employee and the dates and times of the leave taken. Employers must keep these records for 8 years. If an employer fails to keep records they may be liable to a fine of up to €2,000.

Apart from a refusal on the grounds of non-entitlement, an employer may also postpone the leave for up to 6 months. This must be done before the confirmation document is signed.

Grounds for such a postponement include:

- lack of cover
- the fact that other employees are already on parental leave.

Normally only one postponement is allowed. An employee is entitled to return to their job following parental leave unless it is not reasonably practicable for the employer to allow the employee to return to their old job. If this is the case an employee must be offered a suitable alternative on terms not substantially less favourable compared with the previous job.

When an employee is returning to work after taking parental leave, the employee is entitled to ask for a change in their work pattern or working hours for a set period. The employer must consider the request being mindful of the Labour Relation Commission Code of Practice on Access to Part-Time Working, however the employer is not obliged to grant the request.

## FAMILY PROVISIONS

### 4.3 ADOPTIVE LEAVE

**The Adoptive Leave Act, 1995** (as amended by **The Adoptive Leave Act, 2005**)

An employed adopting mother or sole male adopter is entitled to 24 weeks adoptive leave, attracting a payment and 16 weeks unpaid adoptive leave. In general, the leave commences on the day of placement, but, in the case of foreign adoption, some or all of the leave may be taken immediately before the day of placement.

Where an adoptive mother dies, the adopting father is entitled to a period of leave equivalent to the outstanding balance of the adopting mother's leave. Employees must give at least four weeks written notice of:

- taking adoptive leave
- taking additional adoptive leave
- returning to work

An employer is also entitled to be notified of the date of placement and given a certificate of placement as soon as is practicable.

Social welfare benefit, if applicable, is available during adoptive leave.

## FAMILY PROVISIONS

### 4.4 CARER'S LEAVE

**The Carer's Leave Act, 2001** allows employees in Ireland to leave their employment temporarily to provide full-time care for someone in need of full-time care and attention. The minimum period of leave is 13 weeks and the maximum period is 104 weeks. The person whom will be cared for does not need to be a family member or spouse, they could be a friend, colleague, etc.

Carer's leave from employment is unpaid but the Carer's Leave Act ensures that those who propose to avail of carer's leave will have their jobs kept open for them for the duration of the leave. (Eligibility for Carer's Benefit will not be a prerequisite for carer's leave entitlement but employees who meet the Department of Social and Family Affairs criteria will also be able to apply for Carer's Benefit). The person you are proposing to care for, must be deemed to be in need of full-time care and attention by a deciding officer of the Department of Social and Family Affairs. (The decision by the Department is reached on the basis of information provided by the family doctor (GP) of the person whom you will be caring for). The person you propose to care for must be so disabled as to require:

- continuous supervision and frequent assistance throughout the day in connection with their normal personal needs. (For example, help to walk and get about, eat or drink, wash, bathe, dress, etc.). Or,
- continuous supervision in order to avoid danger to themselves.

The main provisions of the Carer's Leave Act are:

- There is a minimum service requirement, that is, an employee is required to have 12 months' continuous service with his/her employer in order to be eligible to apply for carer's leave.
- Not more than one employee may be on carer's leave, in respect of any one relevant person, at any one time.
- An employee may not be on carer's leave in respect of two or more relevant persons at any one time. (An exception is where the two relevant persons live together). This exception can only be exercised once.
- Employees may not be dismissed because they exercise their right to carer's leave.
- In general, carer's leave may be taken as a block or in discontinuous periods, subject to a minimum number of 13 weeks and a maximum of 104 weeks.
- An employee must give written notice to his/her employer of the intention to take Carer's Leave, not later than 6 weeks before the employee proposes to commence the leave.

## FAMILY PROVISIONS

### 4.4 CARER'S LEAVE (CONTINUED)

A person can apply for carer's leave for one continuous period of 104 weeks for each relevant person or, for a number of periods, the combined duration of which does not exceed a total of 104 weeks from the date when you commenced carer's leave.

An employer may refuse (on reasonable grounds) to permit you take a period of carer's leave which is less than 13 weeks duration. Where such a refusal takes place, it must be specified in writing to the employee setting out the grounds for refusing this leave.

Where carer's leave is not taken by an employee in one continuous period of 104 weeks, there must be a gap of at least six weeks between periods of carer's leave taken in respect of the *same* relevant person.

If the carer's leave has terminated, you cannot commence another period of carer's leave to care for a different person until a six-month period has elapsed since the termination of the previous period of carer's leave.

No less than two weeks before the commencement of carers leave, the employer and employee must prepare and sign a document specifying or confirming the arrangement. The document must include some important information, for example, the date when the employee wishes to commence carer's leave, the duration of the carer's leave, and the form in which the leave will be taken.

The employer than retains this document that has been signed by them and the employer must give a copy of the document to the employee.

## FAMILY PROVISIONS

### 4.5 FORCE MAJEURE LEAVE

Force Majeure is governed by **The Parental Leave Act, 1998** and **The Parental Leave (Amendment) Act, 2006** and relates to the occurrence of a critical event and it entitles an employee to a number of paid days leave, in order to deal with a family emergency arising from an unforeseen injury to or illness of an immediate family member, which requires the employee's immediate presence at their side.

The person to whom the unforeseen injury to or illness of relates to:

- (a) a person of whom the employee is the parent or adoptive parent,
- (b) the spouse of the employee or a person with whom the employee is living as husband or wife,
- (c) a person to whom the employee is in loco parentis,
- (d) a brother or sister of the employee,
- (e) a parent or grandparent of the employee, and
- (f) a person who resides with the employee in a relationship of domestic dependency.

Under Force Majeure leave, the employee is entitled to paid leave for up to three days in any 12 month period or five days in any period of 36 consecutive months.

**It is to be noted that a person who resides with an employee is taken to be in a relationship of domestic dependency with the employee if, in the event of injury or illness, one reasonably relies on the other to make arrangements for the provision of care and the sexual orientation of the persons concerned is immaterial.**

Force Majeure leave specifically excludes bereavements - currently there is no statutory entitlement to paid time off resulting from a family bereavement. (However many companies would have a policy granting some leave in this regard.)

There is no service requirement for an employee to take Force Majeure leave.