

FORCE MAJEURE LEAVE

LEGISLATION

Section 13 of the Parental Leave Act 1998 and 2006.

WHAT IS FORCE MAJEURE?

It is paid leave for leave taken by an Employee due to urgent family reasons.

If the Employee has a family crisis the above legislation gives an employee a limited right to leave from work.

It arises where, for urgent family reasons, the immediate presence of the employee is indispensable owing to an injury or illness of a close family member.

It cannot be treated as part of any other leave (e.g. sick leave, adoptive leave, maternity leave, annual leave or parental leave) to which the employee is entitled.

WHAT IS A FAMILY MEMBER?

A family member, as defined in the Act, includes:

- A child or adopted child of the employee
- The husband, wife or partner of the employee
- Parent or grandparent of the employee
- Brother or sister of the employee
- Person to whom the employee has a duty of care (that is, he/she is acting in loco parentis)
- A person in a relationship of domestic dependency with the employee, including a same-sex partner (since 18 May 2006)
- Persons of any other class (if any) as may be prescribed

WHAT IS NOT FORCE MAJEURE?

The definition of Force Majeure is clear in that it is an unprecedented leave but it cannot be foreseen. This can refer to many examples on a case by case basis. For example a prebooked operation for a child or something the Employee knows in advance, is not classed as Force Majeure Leave. It is important that any application for the leave is decided on a case by case basis taking into consideration the facts outlined in the application form.

POLICY

It is advised that all Companies ensure that there is a policy in place for all Employees to follow should the need for Force Majeure Leave arise. This policy should detail the entitlement, how to claim the payment and another other Company rules regarding the leave.

MAXIMUM ENTITLEMENT

An employee may not be absent on Force Majeure Leave for more

More than 3 days	12 consecutive months
5 days	36 consecutive months

Absence for part of a day is counted as one day of Force Majeure Leave.

A subjective test has generally been applied by the tribunals and courts in relation to employee's perception of need for leave rather than the ultimate outcome of the illness.

In general, in order for a day leave under force majeure to be granted three criteria need to be adhered to. These being, the urgency, immediacy and indispensability of the person involved being absent from work.

NOTIFICATION OF FORCE MAJEURE LEAVE

The Employee cannot pre-book Force Majeure Leave.

The normal occurrence is that the Employee is called out of work as their attendance is necessary.

This amount of time away from the workplace is deemed as one full day of Force Majeure Leave.

As soon as reasonably practicable after his/her return to work after an absence on Force Majeure Leave, the employee must confirm to his/her Employer that he/she has taken the leave.

MAKING AN APPLICATION

Immediately on the Employees return to work, the employee must make their application in writing [letter /email] to the Employer.

The application in writing should include the Employee full name, PPS number, name and address of the Employer, date(s) on which the Employee took the Force Majeure Leave and reasons why. The application should also state what the Employees relationship is to the person who was injured or ill.

PAYMENT

Employees are entitled to be paid by the Employer while they are on Force Majeure Leave.

STATURTORY RIGHTS

During an absence On Force Majeure Leave an Employee is regarded as being in the employment of the Employer, and retains all of his or her employment rights. An Employee is protected against unfair dismissal for taking Force Majeure Leave.

RECORDS

As with all types of leave the Employer must keep records of all Force Majeure Leave taken by any Employee.

CASE LAW

<http://www.lrc.ie/en/Cases/2017/May/PLD171.html>

In the case of Thermo King Europe and Brian Nolan PLD171 the Labour Court had to deal with an issue in relation to the Statutory Entitlement to leave on grounds of Force Majeure. The Court helpfully set out the provisions of Section 13 of the Act.

In this case a family member was injured on 24 May 2015 and was medically treated on 25 May 2015. Force Majeure Leave was given to the employee on 25 and 26 May 2015. Those issues were not before the Court.

The issue related to the refusal to grant further leave on 27 May 2015. The Court concluded that the complainant had not established that for urgent family reasons arising from an injury to a family member the presence of the complainant at the place where the family member was on 27 May 2015, was indispensable.

The Court helpfully set out that the Act can only have application on a day when all of the circumstances set out in Section 13(1) are present. The Court stated they were not satisfied that those circumstances can reasonably be taken to have been present more than three days after the occurrence of the injury which occurred to the family member on 24 May 2015.

Section 13 is very clear. There must be an urgent family reason owing to the injury to or the illness of a person specified in subsection 2, being an immediate family member, the immediate presence of the employee at the place where the person is, must be indispensable.

CONTACT THE HR SUITE:

If you have any queries please do not hesitate to contact our office on 066-7102887 and we would be happy to deal with your query.

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