

## PARENTAL LEAVE

*Last Updated: July 2017*

### LEGISLATION:

The Parental Leave Act 1998, as amended by the Parental Leave (Amendment) Act 2006, allows parents to take parental leave from employment in respect of certain children. A person acting in loco parentis with respect to an eligible child is also eligible.

### PURPOSE:

The Parental Leave Act 1998 and 2006 has two key purposes:

- To entitle an employee who is either a relevant parent or in a position of loco parentis of a child to 18 weeks unpaid leave (parental leave) to enable him or her to take care of the child, and
- To entitle an employee to a number of paid days leave (force majeure) to deal with family emergencies resulting from injury or illness of a family member or of an individual who is in a position of domestic dependency.

### SERVICE REQUIREMENT:

An employee must have at least one year's continuous service with the employer before being entitled to take parental leave.

However, where the employee has more than three months but less than one year's service, and where the child is approaching the age threshold, the employee will be entitled to one week's leave for every month of continuous employment completed with the employer.

If an employee moves jobs from one company to another and has only used part of their parental leave allowance they are entitled to use the remainder of their parental leave entitlement after one year's service with the new company. This is also dependent on whether the child is still under the qualifying age.

### ENTITLEMENT TO LEAVE:

Each parent is entitled to 18 working weeks parental leave for each child.

Where an employee has more than one child, parental leave is limited to 18 weeks in a 12-month period. This can be longer if the employer agrees.

Parents of twins or triplets can take more than 18 weeks of parental leave in a year.

### EXPIRY OF LEAVE:

The leave must be taken before the child reaches eight years of age or 16 years of age in the case of a child with a disability.

### FORMAT OF LEAVE:

The leave may be taken either as:

- A. a continuous block of 18 weeks or
- B. two separate periods of a minimum of six weeks each.
  - If the leave is taken in this way there must be at least ten weeks between each separate period.
  - The leave may also be broken up over a period of time with the employer's consent.
  - Where the employer agrees to allow the parental leave period to be broken up and the employee wishes to take the leave in the form of a number of hours, then the

entitlement is based on the hours the employee worked in the 18 weeks prior to the commencement of the leave.

## **TRANSFER OF LEAVE:**

Each parent has a separate entitlement to parental leave from his or her job. Generally, the leave may not be transferred between the parents; i.e. the mother cannot take the father's leave, and vice versa.

However, where both parents work in the same employment one parent may transfer his or her leave to the other parent.

This entitlement is subject to the consent of the employer.

## **NOTIFICATION & CONFIRMATION OF PARENTAL LEAVE**

Employees must give written notice to the employer of their intention to take parental leave, not later than six weeks before the proposed commencement of the leave.

If parental leave is being taken in separate periods of six weeks or more, when giving the employer notice, the employee may give one notice containing the dates of both periods of parental leave or two separate notices containing the date of the relevant period of parental leave.

A copy of the notice must be retained by both parties.

The notice must include the following details:

- the date on which the employee intends to commence the leave;
- the duration of the leave;
- the manner in which the employee proposes to take the leave;
- the employee's signature.

However, an employer may, at his or her discretion, waive all, or part, of the notification period.

The employer may require the employee to provide evidence of his/her entitlement to parental leave (e.g. the child's date of birth, the date of the adoption order or evidence of parentage).

## **CONFIRMATION OF PARENTAL LEAVE:**

The employee and employer must prepare a confirmation document, once notification of the intention to take parental leave has been made.

This document must be prepared no later than four weeks before the leave is due to begin and must include the following details:

- the date on which the leave will commence;
- the duration of the leave;
- the manner in which the leave will be taken;
- signatures of the employer and employee.

A copy of the signed confirmation document must be retained by both parties.

## **REVOCAION OF NOTICE:**

An employee may revoke, in writing, his/her notice of intention to take parental leave at any time before the confirmation document is signed.

## **REFUSAL TO GRANT PARENTAL LEAVE**

Management may refuse, in writing, to grant parental leave, if they have reasonable grounds to believe that the employee is not entitled.

The employee is permitted to make representations on the matter within seven days of the refusal, and the employer must consider the employee's submission, giving reasons for the refusal.

## POSTPONEMENT

### **POSTPONEMENT OF PARENTAL LEAVE BY THE EMPLOYER:**

Management may decide to postpone the parental leave for up to six months if satisfied that granting the leave would have a substantial adverse effect on the operation of the business, by reason of seasonal variation, if there are difficulties finding a replacement, or if a number of employees are already availing of parental leave.

However, alternative dates when the employee can take the leave should be agreed with the employee in this instance.

### **NOTIFICATION OF POSTPONEMENT:**

Postponement must be in writing, no later than four weeks before the proposed date of commencement of the leave, specifying the grounds for the postponement.

Consultation with the employee must take place before any notification of postponement.

### **LIMITATIONS ON POSTPONEMENT OF LEAVE:**

Generally, the employer may postpone the leave only once in respect of any particular child.

However, if the reason for the postponement is seasonal variations in the volume of work, the leave may be postponed for two periods of six months, in respect of the same child.

Parental leave cannot be postponed by the employer once a confirmation document has been signed by both parties.

If, solely as a result of postponement, the child concerned will reach the age threshold before the end of the leave, the employee retains the entitlement to take the parental leave.

## SICK LEAVE DURING PARENTAL LEAVE

If a relevant parent becomes sick and is unable to care for the child, they may suspend the commencement of the leave until they are no longer sick or, if the parental leave has commenced, suspend the taking of the balance of the leave until such time as they are no longer sick.

An employer may request an employee to furnish "relevant evidence" of their sickness. This would consist of a medical certificate, signed by a medical practitioner, stating that the employee is, by reason of the sickness specified in the certificate, unable to care for the child.

The Employer is advised to ensure there is documentation of the suspension request by the Employee and it is confirmed via letter from the Employer.

## ABUSE OF PARENTAL LEAVE

An employee must use his/her parental leave to take care of the child concerned.

The employer may terminate the leave if s/he has reasonable grounds to believe that it is not being used for this purpose.

If following an investigation [following correct internal procedures] an employee is found abusing this leave, they may be subject to disciplinary action.

Employers are advised to include a clause on abuse of parental leave in the company's policy/procedure on parental leave.

#### **TERMINATION OF LEAVE:**

However, before terminating the leave, the employer must notify the employee, in writing, of his or her intention to do so, specify the grounds for terminating the leave and invite the employee to make representations on the matter within seven days. The employer is obliged to consider the employee's submission before deciding whether to terminate the leave.

#### **NOTIFICATION OF TERMINATION OF LEAVE:**

The employee must be notified, in writing, specifying the grounds and the date of the termination, which must be no earlier than seven days after the date notification of termination is given.

In a case where the leave is terminated and the employee returns to work, the period between the date of the employee's return to work and the date on which the leave would have ended if the employee had completed the leave, does not count as parental leave.

### **RETURN TO WORK**

An employee is entitled to return to work at the end of a period of parental leave, with the employer with whom he/she was working immediately before the absence, or with his or her successor, in the job held immediately prior to the leave and under terms and conditions of employment not less favourable than those that would have been applicable to the employee and that incorporate any improvement to the terms or conditions of employment to which the employee would have been entitled, if he or she had not been so absent from work.

Regulation which came into effect on 8th March 2013 also allow parents returning back to work from parental leave to request a change in their working hours or pattern.

Employers must consider such a request but are not required to grant it.

It is advised that all requests are put in writing, the Employer will review in line with business requirements and all granting/refusals are placed in writing by the Employer so that a paper trail exists.

### **OTHER ISSUES**

#### **ANNUAL LEAVE & PUBLIC HOLIDAYS ENTITLEMENTS:**

Any public holidays that fall during a period of parental leave will be added to the end of the period of parental leave.

An employee who agrees with their employer to avail of their parental leave entitlement by working e.g. a three day week instead of a five day week will still receive their full public holiday entitlement (based on their normal full time hours).

Annual leave which accrues during an absence on parental leave will be granted by the employer in accordance with Section 20 of the Organisation of Working Time Act 1997.

#### **PARENTAL LEAVE & MATERNITY LEAVE:**

Parental leave can be taken immediately following maternity leave provided the employee has complied with the service and notification procedures of the Acts and provided the employer does not postpone the leave (see note on postponement above).

**PROBATION:**

A period of probation, training or apprenticeship may be suspended, by the employer, while the employee is on parental leave.

**EMPLOYEES ON FIXED-TERM CONTRACT:**

Employees on fixed-term contracts are entitled to parental leave (subject to satisfying the service and notification requirements of the Act).

However, if the contract is due to expire during a period of parental leave, the leave and any entitlements to benefit expire on the same day. There is no entitlement to return to work.

**PROTECTION OF EMPLOYMENT RIGHTS:**

An employee is regarded as remaining in employment during an absence on parental leave, and retains all employment rights.

The absence counts as reckonable service for the purposes of annual leave, increments, seniority etc. Parental leave cannot be treated as sick leave, adoptive leave, maternity leave, annual leave or force majeure leave, to which an employee is entitled.

**ENTITLEMENT TO SOCIAL WELFARE BENEFIT WHILE ON PARENTAL LEAVE:**

There is no entitlement to social welfare benefit while on parental leave.

Employees may receive credited social welfare contributions following a period of parental leave. Employees are advised to contact Social Welfare Services directly.

**CHANGE OF OWNERSHIP:**

If the business has changed ownership during the employee's absence on the leave, he/she is entitled to work under a contract of employment identical to the contract that existed with the original employer.

**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.