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Parental leave

Gives introductory guidance including an infographic on entitlements to parenting leave

The Parental Leave Acts give parents the right to take unpaid leave to take care of their children. The Acts allow the parental leave to be taken as a continuous block of weeks or, with employer agreement, broken up over a period of time.

They also provide for limited paid *force majeure* leave to enable employees to deal with emergencies resulting from the injury or illness of a family member.

The period of unpaid parental leave extended to 26 weeks per parent per child from 1 September 2020.

Introduction

The Parental Leave Acts 1998–2006 have been updated by the Parental Leave (Amendment) Act 2019. The Acts have two main purposes:

1. To give men and women the right to take unpaid leave from employment to allow them to take care of their children. The Acts allow the parental leave to be taken either as a continuous block of weeks or, with the agreement of the employer, broken up over a period of time. The employment rights of the employee are protected while on parental leave, and the employee has the right to return to work after such an absence.
2. To provide for limited paid *force majeure* leave to enable employees to deal with family emergencies resulting from the injury or illness of a family member and where the immediate presence of the employee is indispensable.

From 1 September 2019, the age of a qualifying child increased from reaching 8 years of age to reaching 12 years and the period of unpaid parental leave extended to 22 weeks per parent per child. From 1 September 2020 the period of unpaid parental leave extended further to 26 weeks per parent per child. Employees who availed of a prior entitlement are entitled to apply for any additional weeks.

Entitlement to parental leave

To qualify for parental leave, the employee must be the natural or adopted parent of the child for whom the leave is taken or acting in loco parentis. From 1 September 2019, unpaid parental leave must be taken before the child reaches 12 years of age, except in certain circumstances. (Up to 31 August 2019, this age limit was eight years of age). If the child has a disability, the leave must be taken before the child reaches 16 years of age or ceases to have a disability, whichever occurs first. In the case of an adopted child, if the child is aged between 10 years and 12 years at the time of the adoption order, the leave must be taken within two years of the adoption order.

Generally, the employee must have at least one year's continuous service with the employer to be entitled to take parental leave. However, where the child is nearing 12 (or 16 if the child has a disability) and the employee has more than three months', but less than one year's, service with the employer, the employee will be entitled to pro rata parental leave. This means that the employee will be entitled to one week's leave for every month of continuous employment completed with the employer.

Each parent has a separate entitlement to parental leave. Where both parents are employed by the same employer, either parent is entitled, subject to the consent of the employer concerned, to transfer a certain number of weeks of their parental leave to the other.

An employee who is on parental leave will still be regarded as working by the employer and, apart from the employee's right to remuneration and superannuation benefits, all other employment rights are preserved.

With the extension of parental leave to 26 weeks, parents with qualifying children who have already taken parental leave may earn an entitlement to additional leave.

How parental leave may be taken

The 26 weeks of parental leave can be taken in one continuous block of leave or in blocks of not less than six weeks with a gap of at least 10 weeks between each block. Any other combination such as individual weeks, days or hours requires the agreement of the employer. However, the employee is not entitled to any more than 26 weeks' leave per child.

Where an employee qualifies for parental leave for more than one child, the employee may not take more than 26 weeks of parental leave in any 12 month period, unless the

employer agrees otherwise. However, parents of twins or triplets, or where the child is about to reach the age limit, may take more than 26 weeks of parental leave in a year.

Both parents have an equal and separate entitlement to parental leave. Employees who work for the same employer may, with the employer's consent, transfer up to 14 weeks of their parental leave entitlement to the other parent

Use our CIPD Ireland overview of parenting leave entitlements from 1 September 2020 showing the types of leave, whether paid or unpaid, who's eligible and the duration.

Parenting leave entitlements from 1 September 2020

(49 KB)

Applying, confirming and postponing parental leave

An employee must give written notice that he or she would like to take parental leave, not later than six weeks before the employee plans to take the leave. The notice must include the following details:

- the date on which the employee intends to begin the leave
- the length of time that the employee plans to be on parental leave
- the manner in which the employee proposes to take the leave
- the employee's signature.

The Acts provide that an employer may, at his or her discretion, waive all or part of the notification period. The employer may require the employee to give proof that he or she is entitled to parental leave (eg the child's date of birth, the date of the adoption order or evidence of parentage) and if relevant, the disability of the child.

Postponement of parental leave

The employer may decide to postpone the parental leave if satisfied that granting the leave would have a substantial adverse effect on the operation of the business. The postponement may be for a period not exceeding six months, to a date agreed by both parties.

Generally, the employer may postpone the leave only once in respect of any particular child. If the reason for the postponement is seasonal variation in the volume of work, the

leave may be postponed twice in respect of the same child. 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.

Confirmation of parental leave

Once the employee has notified her or his employer that she or he wants to take parental leave, the employee and the employer must prepare a 'confirmation document'. This document must be prepared no later than four weeks before the leave is due to begin. The document must include the following details:

- the date on which the leave will begin
- the length of time that the employee will be on parental leave
- the manner in which the leave will be taken
- signatures of the employer and the employee.

Once a confirmation document has been signed by both the employee and the employer, it cannot be altered unless both parties agree.

Illness and credits

An employee who falls ill while on parental leave and, as a result, is unable to care for the child may suspend the parental leave while ill and begin the parental leave again once she or he is no longer ill.

When commencing a period of parental leave, an employee should contact the Department of Employment Affairs and Social Affairs to preserve their social insurance record and have his or her social insurance credits kept up to date.

Returning to work

An employee is entitled to return to work at the end of a period of parental leave to the job held immediately prior to the leave under the same contract, terms and conditions of employment. If the business has changed ownership during the employee's absence on the leave, he or she is entitled to work under a contract of employment identical to the contract that existed with the original employer. An employee is entitled to work under terms or conditions not less favourable and including any improvements to the terms or conditions of employment, to which the employee would have been entitled, if not absent from work.

If the job held by the employee before commencing parental leave was not his or her normal or usual job, the employee shall be entitled to return to that job, or to his or her normal or usual job, as soon as practicable.

If it is not reasonably practicable for an employer, or successor, to allow an employee to return to the job held immediately prior to the leave, the employer, or successor, must offer the employee suitable alternative employment under a new contract of employment. The terms of the alternative employment (eg the place of work or the capacity in which the employee is employed) must not be less favourable to the employee than the terms of his or her original job.

Under the [EU \(Parental Leave\) Regulations \(2013\)](#) employees returning to work have the right to request changes to their working hours or patterns for a set period on their return. An employer must consider this request but does not have to grant it.

Protection of employment rights

An employee on parental leave retains all his or her employment rights (except the right to remuneration and superannuation benefits). The absence counts as reckonable service for the purposes of annual leave, increments, etc. However, an employer may require that a period of probation, training or apprenticeship be suspended while the employee is on parental leave and be completed by the employee on his or her return to work.

Employees benefit from any public holidays that occur during their parental leave. These may be added to the end of the parental leave. Annual leave continues to accrue while on parental leave and should be granted by the employer in accordance with Section 20 of the [Organisation of Working Time Acts, 1997](#). Parental leave cannot be treated as part of any other leave to which the employee is entitled (eg sick leave, adoptive leave, maternity leave, annual leave or *force majeure* leave).

Abuse of parental leave

An employee must use his or her parental leave to take care of the child concerned. The employer may end the leave if there are reasonable grounds to believe that it is being used for a purpose other than taking care of the child concerned. However, before ending the leave, the employer must notify the employee, in writing, of his or her intention to do

so, and invite the employee to give an explanation within seven days. The employer is obliged to consider the employee's explanation before deciding whether to end the leave.

The employer may refuse, in writing, to grant parental leave if there are reasonable grounds to believe that the employee is not entitled to such leave. Before refusing to grant the leave, however, the employer must notify the employee, in writing, and invite the employee to reply within seven days. The employer is obliged to consider the employee's reply before deciding whether to refuse the leave. The reasons for such refusal must be given.

Force majeure leave

The Parental Leave Acts 1998–2006 provide for limited paid *force majeure* leave to enable employees to deal with family emergencies resulting from the injury or illness of a family member, and where the immediate presence of the employee is indispensable. *Force majeure* leave is an entitlement to paid time off up to a maximum of three days in any period of 12 consecutive months, or five days in any period of 36 consecutive months.

An employee is entitled to leave with pay from his or her employment for urgent family reasons, if any of the following people become sick or are injured:

- a child or adoptive child of the employee
- the spouse of the employee, or a person with whom the employee is living as husband or wife
- a person to whom the employee is in loco parentis (acting as a parent)
- a brother or sister
- a parent or grandparent
- a person in a relationship of domestic dependency.

The sexual orientation of the persons concerned is immaterial. The employee is entitled to *force majeure* leave only if his or her presence with the ill or injured person is indispensable. During an absence on *force majeure* leave, an employee is regarded as being employed and keeps all employment rights.

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

By its very nature, notice cannot be given of *force majeure* leave but the employee is

obliged, as soon as reasonably practicable, to give written notice to the employer of the date on which the leave was taken and give a statement of facts as to why it was taken. Normal notification procedures for absence from work should apply.

Force majeure leave may consist of one or more days but shall not exceed three days in any period of 12 consecutive months or five days in any period of 36 consecutive months. Where an employee is absent on *force majeure* leave for part of a day, it is deemed to be a full day of *force majeure* leave.

Records

An employer must keep a record of parental leave and *force majeure* leave taken by employees, specifying the period of employment of each employee and the dates and times of the leave taken. Up to 31 August 2019, employers had to retain records of parental leave for eight years, and from 1 September 2019, they must retain such records for 12 years.

Employers must retain records of *force majeure* leave for eight years. Copies of all notices and documents required under the Acts must be retained by both the employee and the employer for one year. An employer who fails to keep such records may be liable, on summary conviction, to a fine.

Disputes

Employees and employers are entitled to refer a dispute about an entitlement under the Acts to the Workplace Relations Commission (WRC). Disputes concerning the dismissal of an employee are dealt with under the provisions of the Unfair Dismissals Acts, 1977 to 1993. A dispute about parental leave must be referred within six months of the dispute.

The forms of redress available to an WRC Adjudication Officer or on appeal to the Labour Court may be an order that parental leave is to be given and the way in which it is to be taken and/or a payment to the employee by the employer of compensation not exceeding 20 weeks' pay.

Tips for employers

Employers should understand the implications of the parental leave changes, both paid and unpaid, for their workforce. Policies should be reviewed or put in place setting out the internal procedures which employees must comply with in order to take the leave.

We encourage members to draw up separate parental leave and *force majeure* leave policies, which clearly outline the key pieces of information from the legislation and the process for applying for the leave. Here are some suggestions for inclusion in your policy:

- The policy should clarify that parental leave is granted to employees to allow them to care for his or her child
- The policy should specify how the leave can be taken, whether it can be broken down into individual weeks, days or hours, and if so, how this will be managed. We encourage flexibility in how this leave can be taken
- The policy should include clear requirements around notification, postponement and confirmation
- Parental leave is available to fathers and as an equality measure, this should be clear and encouraged in the policy and avoid a risk of gender bias
- The unpaid nature of parental leave should be clear, and that the employee shall be considered to be in employment and be treated as if they had not been absent. Parental leave does not affect rights related to the employee's employment other than the right to remuneration and superannuation
- With the lengthening of parental leave and increasing change in the workplace, additional attention needs to go on the return to work process and a form on induction training is often required
- A *force majeure* leave policy should state how the leave will be managed and monitored in the organisation. It should clearly state which relations are covered by the entitlement, the circumstances when such leave can be taken and the notification procedure
- The policy should cover internal avenues for dispute resolution.

Further developments

Under the **Parent's Leave and Benefit Bill 2019** published in **October 2019**, the government plans to introduce two weeks paid leave on **1 November 2019** for new parents.

Each parent of a child born or adopted on or after 1 November 2019 will be entitled to two weeks paid parent's leave that must be taken within 52 weeks of the birth of the child, or in the case of adoption, the date of placement of the child. The leave must be taken in periods of not less than one week in duration. A mother must take the leave after

maternity leave and a father may take the leave before or after paternity leave.

The Department of Employment Affairs and Social Protection will make an accompanying Parent's Benefit payment of €245 per week.