



Relate

Contents

Page No.

1. **Maternity Protection Acts 1994 and 2004**
4. **Employment rights during pregnancy**
5. **Paternity Leave and Benefit Act 2016**

The journal of developments in social services, policy and legislation in Ireland

Maternity Protection Acts 1994 and 2004

The Maternity Protection Acts 1994 and 2004 provide the statutory minimum entitlements in relation to maternity at work, including maternity leave. The legislation is designed to give mothers (and, in some limited cases fathers, see page 3) time away from work prior to and following the birth of their children and to protect the health of mothers and their babies. The beginning of pregnancy, once notified to your employer, until the end of maternity leave is known as a "protected period" and women are entitled to specific consideration during this time.

As regards your employment conditions, generally you are to be treated as if you have been working during your period of maternity leave. You are entitled to annual leave and public holidays, you may not be dismissed and you are protected against being victimised. This means that your employer may not penalise you by dismissal, unfair treatment including selection for redundancy, or an unfavourable change in conditions of employment.

Maternity leave

If you become pregnant while in employment, you are entitled to take maternity leave. The entitlement to a basic period of maternity leave from employment extends to all female employees (including casual workers), regardless of how long you have been working for your employer or the number of hours worked per week. You can also avail of additional unpaid maternity leave (see page 2).

You are entitled to 26 weeks' maternity leave and 16 weeks' additional unpaid maternity leave, which begins immediately after the end of your maternity leave.

INSIDE: Additional maternity leave p2, Postponing your leave p3, Payment during maternity leave p3, Health and safety leave p3, Fathers' entitlement to maternity leave p3, Returning to work after maternity leave p3, Medical visits p4, Breastfeeding p4, Disputes p4, Paternity leave p5, Paternity Benefit p5, Parental leave p6, Employment rights while on parental leave p7, Force majeure leave p8

Under the Maternity Protection (Amendment) Act 2004, at least two weeks' leave must be taken before the end of the week of your baby's expected birth and at least four weeks' leave must be taken afterwards. You can decide how you would like to take the remaining weeks.

Generally, employees take two weeks before the birth and the remaining weeks afterwards. If you qualify for Maternity Benefit (see page 3) at least two and no more than 16 weeks must be taken before the end of the week the baby is due.

If you are a fixed-term worker, your employment finishes on the last day of that fixed term. If you are on maternity leave when that fixed term ends, then your contract of employment still terminates on that date. This does not affect entitlement to the full 26 weeks of Maternity Benefit.

Notice

You must give your employer at least four weeks' written notice of your intention to take maternity leave. You must also provide your employer with a medical certificate confirming your pregnancy. If you intend to take the 16 weeks' additional maternity leave, you must provide your employer with at least 4 weeks' written notice before the end of the 26 weeks of maternity leave.

Early birth

If your baby is born more than four weeks before your due date, you will have fulfilled the notice requirements if you give your employer written notice within 14 days of the birth. Your maternity leave will begin from the date your baby (or the last of the babies if multiple births) is born or your first day of maternity leave, whichever is earlier.

Section 11 of the Maternity Protection Act 1994 provides that, 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 should apply to the Maternity Benefit Section of the Department of Social Protection for Maternity Benefit at least six weeks before your baby's due date.

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

Overdue birth

Where your baby is born in a week after the expected week, the minimum period of maternity leave is extended as necessary so that you will have the statutory required four weeks' leave following the birth. If such a late birth occurs, you must provide notice to your employer of the anticipated extension of your maternity leave as soon as possible. Once the baby is born you must confirm in writing to your employer the exact length of the extension to be taken.

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. 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 (156 days) of the basic maternity leave.

To apply for Maternity Benefit following a stillbirth, your doctor needs to send a letter with the Maternity Benefit application form, confirming the expected date of birth, the date your baby was stillborn and the number of weeks of pregnancy.

Additional maternity leave

If you have taken basic maternity leave, you are entitled to take further leave known as "additional maternity leave". Additional maternity leave begins immediately after the end of your basic maternity leave and runs for up to 16 consecutive weeks. Additional maternity leave is unpaid leave.

You must notify your employer in writing of your intention to take additional maternity leave. This notification can be given at the same time as your notice for maternity leave, or at least four weeks before the date you would have returned to work if you were not taking additional maternity leave.

If you become ill while you are on additional maternity leave, you may ask your employer if you can end the additional maternity leave. If your employer agrees, you will not be entitled to the remainder of the maternity leave but will be treated as being on sick leave and you may be entitled to Illness Benefit. The additional maternity leave will end on a date agreed between you and your employer. This date cannot be earlier than the commencement of your sickness and not later than the date on which your additional maternity leave would have ended. Your employer must write to you giving you notice of their decision as soon as possible.

Postponing your leave

During your basic maternity leave or additional maternity leave, you may wish to postpone your leave entitlements if your baby is hospitalised. You must request the agreement of your employer for this postponement as your employer may refuse this request. If required by your employer, you should give confirmation from the hospital or a doctor that your child is in hospital. It should also include the expected date of your child leaving hospital.

Your employer must write to you giving notice of their decision as soon as possible. If a postponement is agreed, you should give your employer as much notice as possible of when you wish to resume that leave.

An employer may waive their right to receive notification.

Payment during maternity leave

Your entitlement to pay and superannuation during maternity leave depends on the terms of your contract of employment. Employers are not obliged to pay women who are on maternity leave. You may qualify for Maternity Benefit from the Department of Social Protection if you have sufficient PRSI contributions. However, an employee's contract could provide for additional rights to payment during the leave period so that, for example, the employee could receive full pay less the amount of Maternity Benefit payable.

Additional maternity leave is not covered by Maternity Benefit, nor is your employer obliged, unless otherwise agreed, to make any payment during this period.

You can do voluntary work, public representative work, for example, as a councillor or TD, or education courses while you are getting Maternity Benefit. However, your payment will be stopped if you engage in insurable (paid) employment.

Maternity Benefit, Paternity Benefit (see below), and Health and Safety Benefit are taxable. Universal Social Charge and PRSI are not payable from these benefits. The rate of tax you will pay will depend on your personal circumstances and the tax reliefs and tax credits you are claiming.

You will automatically be awarded PRSI credits while you are getting Maternity Benefit, that is, the first 26 weeks. If you avail of unpaid additional maternity leave, you must get your employer to complete an application form for maternity leave credits after you return to work.

Public holidays and annual leave

Apart from pay and superannuation, 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 entitlements.

Health and safety leave

An employer should carry out separate risk assessments in relation to pregnant employees and those who have recently given birth or are breastfeeding. If there are particular risks, these should be either removed from the workplace or the employee moved away from them. If neither of these options is possible, the employee should be given health and safety leave from work, which may continue up to the beginning of maternity leave.

During health and safety leave, employers must pay employees their normal wages for the first 21 days. These 21 days do not need to be consecutive. After this, Health and Safety Benefit may be paid by the Department of Social Protection if you have the necessary PRSI contributions.

Health and safety leave will end on the day immediately before your maternity leave starts if you were put on leave due to your pregnancy. If you are on health and safety leave because you are breastfeeding, your leave will end either once you stop breastfeeding or, where you have not stopped, 26 weeks after the birth. Otherwise, health and safety leave will end when you are no longer at risk.

Fathers' entitlement to maternity leave

Fathers are entitled to maternity leave if the mother dies within 40 weeks of the birth. In these circumstances, the father is entitled to a period of leave, the extent of which depends on the actual date of the mother's death. If the mother dies within 24 weeks of the birth, he may take the remainder of the 24 weeks of maternity leave and has an optional right to take up to a further 16 weeks of additional maternity leave. If the mother's death occurs after 24 weeks following the birth, the father is entitled to leave until 40 weeks after the birth.

The leave must start within seven days of the mother's death. The father must notify his employer in writing of his intention to take his leave not later than the day on which the leave begins. An employer can request a copy of the mother's death certificate as well as a copy of the child's birth certificate.

Returning to work after maternity leave

Generally, you are entitled to be treated as if you had not been absent from work during your maternity leave. You are entitled to return to work with the employer

you had when you began your maternity leave or, if that business has changed hands, you can return to work with the new employer. You are entitled to return to the same job you had and under the same terms and conditions of employment that you had immediately before your maternity leave, including any improvement in pay or other conditions which occurred while you were on maternity leave.

If it is not possible or practical for your employer to allow you to return to the same job, then they must provide you with suitable alternative work. This new position should not be on terms substantially less favourable than those of your previous job. Your continuity of service must also be preserved.

Your employment may not be terminated and any attempt to do so will be void while you are absent from work on maternity leave, during a period of natal care, to attend ante-natal classes, or for breastfeeding.

You must give written notice to your employer of your intention to return to work at least four weeks before the date you intend to return. If you decide not to return to work after your maternity leave, you are required to give your employer notice in the usual manner.

Employment rights during pregnancy

Medical visits

Once your pregnancy is confirmed, you may take reasonable time off for medical visits (ante-natal care) 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. This includes the time required to travel to and from the appointment.

You will need to provide your employer with medical evidence confirming your pregnancy, giving at least two weeks' notice of your medical visits. You should show your appointment card if requested by your employer at any time after your first appointment. You may also take time off for medical visits for up to 14 weeks after the birth (post-natal care). You are entitled to be paid while attending these medical appointments.

You are also entitled to take time off work to attend ante-natal classes without loss of pay. Your entitlement is for one set of ante-natal classes over all of your pregnancies (except for the last three classes of the set, as these would normally occur after maternity leave has started). If you

are unable to attend some classes due to reasons beyond your control (that is, premature birth, illness, miscarriage or stillbirth) you can carry over your entitlement to paid time off work to attend any untaken classes to your subsequent pregnancies (except the last three in a set).

Fathers are entitled to paid time off (in respect of one pregnancy only) to attend the last two classes in the set of ante-natal classes. There are certain exceptions to this right, such as those serving in the Defence Forces.

Breastfeeding

Your rights in relation to breastfeeding are effective until you cease breastfeeding or, where you have not ceased breastfeeding, up to 26 weeks after the birth. Once you cease to breastfeed, you should notify your employer as soon as possible.

You are entitled to take one hour off from work each day as a "breastfeeding break" without loss of pay. This hour can be divided into smaller periods of time throughout the day as agreed with your employer. You may take a breastfeeding break in the workplace where facilities are provided, or away from the workplace otherwise. Your employer is not obliged to provide such facilities unless it can be done for a nominal cost.

Disputes

If you have a dispute with your employer about maternity leave, or if you have been dismissed due to a matter connected with your pregnancy or for claiming your rights under maternity leave legislation, there are a number of options open to you.

Discrimination

If you think that you have been treated less favourably than others or have been indirectly discriminated against by your employer because of your pregnancy, you can make a complaint under the Employment Equality Acts 1998 to 2015.

Complaints of discrimination in relation to employment must be referred to the Workplace Relations Commission within six months. A complaint may be made by completing the Workplace Relations online complaint form.

The time limit may be extended for up to a further six months, but only where there are exceptional circumstances which prevented the complaint being brought within the normal time limit.

Unfair dismissal

If you have been dismissed from your employment or you were forced to resign due to the conditions or treatment within your workplace (known as constructive dismissal) due to a matter connected with your pregnancy, you can make a complaint under the Unfair Dismissals Acts 1977 to 2015.

Often an unfair dismissal claim will not be distinguishable from some form of discriminatory treatment. However, you cannot make a complaint under the Employment Equality Acts while also making a separate claim under the Unfair Dismissals Acts for the same incident. You will have to decide which forum is most appropriate for you.

Complaints of unfair dismissal must be referred to the Workplace Relations Commission within six months of the end of your employment. The time limit may be extended for up to a further six months, but only where there are exceptional circumstances which prevented the complaint being brought within the normal time limit.

A complaint may be made by completing the Workplace Relations Commission's online complaint form available on www.workplacerelations.ie.

These claims are often complex and you should obtain legal advice before making such a complaint.

Paternity Leave and Benefit Act 2016

The Paternity Leave and Benefit Act 2016 introduces protected paternity leave and benefits for the first time in Ireland. With effect from 1 September 2016, parents of children (other than the mother of the child) are entitled to paternity leave from employment or self-employment following the birth or adoption of a child.

Paternity leave

Under the Act, a "relevant parent" for the purposes of paternity leave entitlement includes:

- The father of the child
- The spouse, civil partner or cohabitant of the mother of the child
- The parent of a donor-conceived child

In the case of an adopted child, the relevant parent includes:

- The nominated parent in the case of a married same-sex couple or
- The spouse, civil partner or cohabitant of the adopting mother, or sole male adopter

The Act entitles relevant parents to statutory paternity leave of two weeks. The entitlement applies regardless of how long you have worked for the employer or how many hours per week you work. Any term of your contract of employment which purports to limit or exclude paternity leave is void.

You can start paternity leave at any time within the first six months following the birth or adoption placement. You are only entitled to one period of paternity leave regardless of multiple births or adoptions, for example, twins, triplets. You must choose either paternity leave or adoptive leave if you are entitled to both. You must take paternity leave over one period only, that is, you cannot take several small periods of leave on separate occasions.

Your entitlement to two weeks' pay and superannuation during paternity leave depends on the terms of your contract of employment. Employers are not obliged to pay employees who are on paternity leave.

Apart from pay and superannuation, time spent on paternity leave is treated as though you have been in normal employment, and this time can be used to accumulate annual leave and public holiday entitlements.

Paternity Benefit

You may qualify for Paternity Benefit from the Department of Social Protection if you have sufficient PRSI contributions (see page 7). However, an employee's contract could provide for additional rights of payment during the leave period, so that, for example, the employee could receive full pay from their employer less the amount of Paternity Benefit payable.

You should apply for Paternity Benefit at least four weeks before the date you intend to start your paternity leave. If you are self-employed you should apply 12 weeks before. You may apply for Paternity Benefit online at mywelfare.ie. You must have a Public Services Card to apply for Paternity Benefit. Paternity Benefit is payable at the same rate as Maternity Benefit and it is taxable for all claimants. Universal Social Charge and PRSI are not payable.

Applying for paternity leave

You may take paternity leave at any time within the first 26 weeks following the birth or adoption placement. You must notify your employer in writing that you intend to take paternity leave and provide your intended dates no later than four weeks before your leave.

You will be required to provide a certificate from your spouse or partner's doctor confirming when your baby is due, or confirmation of the baby's actual date of birth if you apply for leave after the birth has occurred. In the case of adoption, you must produce a certificate of placement in relation to the child.

Postponing paternity leave

The 2016 Act allows you to postpone your paternity leave. The grounds for postponement include:

- If the birth is later than expected or if the date of placement of an adopted child is postponed
- If you are sick before your paternity leave starts, you may postpone the paternity leave until you recover. You should notify your employer in writing and provide evidence of your illness.
- If your child is hospitalised, you can ask your employer in writing if you can postpone all or part of your paternity leave

Disputes

Paternity leave is the newest form of protective leave available to workers in Ireland. As an employee you are protected against penalisation and unfair dismissal for validly claiming your rights under any protective leave legislation.

You are entitled to return to work to the same job with the same contract and conditions of employment that you had before you took paternity leave. Section 23 of the Act states that, if it is not reasonably practicable for your employer to allow you to return to your job, then they must provide you with suitable alternative work. This new position should not be on terms substantially less favourable than those of your previous job.

If you have a dispute with your employer about paternity leave, or if you have been dismissed for validly claiming your rights under paternity leave legislation, you may make a complaint to the Workplace Relations Commission within six months of the dispute. The time limit may be extended for up to a further six months, but only where there is a reasonable cause which prevented the complaint being brought within the normal time limit.

Parental leave

The Parental Leave Acts 1998 and 2006 set out your entitlements to parental leave and force majeure leave. A parent is entitled to 18 working weeks of unpaid leave to enable them to take care of their child. A person acting *in*

loco parentis with respect to an eligible child is also eligible.

You must have completed at least 12 months of continuous employment with the employer before commencing parental leave with that employer. Where you have completed less than 12 months of continuous employment but have completed at least three months of continuous employment, you will be entitled to parental leave of one week for each month you have worked up to the time you commence the parental leave.

Age of child

In general, parental leave can be taken in respect of a child no later than the child's eighth birthday. If a child was adopted between the age of six and eight, leave in respect of that child may be taken up to two years after the date of the adoption order. In the case of a child with a disability or a long-term illness, parental leave may be taken up to 16 years of age. In addition, an extension may also be allowed where illness or other incapacity prevented the employee taking the leave within the normal period.

Amount of parental leave

You are entitled to a total of 18 working weeks of parental leave per child. If you have more than one child, parental leave is limited to 18 weeks in a 12-month period. This can be longer if your employer agrees. Parents of twins or triplets can take more than 18 weeks of parental leave in a year.

The 18 weeks per child may be taken in one continuous period or in two separate blocks of a minimum of six weeks. There must be a gap of at least ten weeks between the two periods of parental leave. However, if your employer agrees, you can separate your leave into periods of days or even hours.

Both parents have an equal separate entitlement to parental leave. Unless you and your partner work for the same employer, you can only claim your own parental leave entitlement (18 weeks per child). If you both work for the same employer and your employer agrees, you may transfer up to 14 weeks of your parental leave entitlement to each other.

Notice

You must give written notice to your employer of your intention to take parental leave. You should inform your employer in writing at least six weeks before the leave is due to start. The notice should state the starting date and how long the leave will last. After this, but not less

than four weeks before the leave is due to start, you will need to sign a confirmation document with your employer recording the details of the leave.

Refusal

Parental leave is to be used only to take care of the child concerned. If an employer reasonably believes that an employee has taken and used parental leave for another purpose, the employer is entitled to cancel the leave.

Illness of parent

If you become ill while on parental leave and are unable to care for the child, the leave can be suspended for the duration of the illness. In order to suspend the parental leave you must give written notice and relevant evidence of the illness to your employer as soon as is reasonably practicable. Your parental leave will resume after the illness. During the illness you are treated as an employee who is sick.

If you become ill after giving notice of your intention to take parental leave, but before actually commencing that leave, you may be able to postpone the leave date until after your illness.

Employment rights while on parental leave

You are not entitled to pay from your employer while you are on parental leave, nor are you entitled to any social welfare payment.

However, taking parental leave does not affect any of your other employment rights and, apart from the loss of pay and pension contributions, your position remains as if no parental leave had been taken. This means that time spent on parental leave can be used to accumulate your annual leave and public holiday entitlements. Your annual leave and public holiday entitlements can be added to the end of your parental leave or taken at a later date.

If you were working on probation, or on a training or apprenticeship arrangement, your employer may require you to return to work and complete the balance of that probation, training or apprenticeship when you return from parental leave.

PRSI contributions

You are entitled to have credited PRSI contributions while on parental leave. Your employer must write to the Records Update Section of Department of Social Protection

detailing the weeks you have not worked so that you can be credited.

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 eight years.

Returning to work

Generally, you are entitled to be treated as if you had not been absent from work during your parental leave. At the end of your parental leave, you are entitled to return to work with the employer you had when you began your parental leave or, if that business has changed hands, you can return to work with the new employer. You are entitled to return to the same job you had and under the same terms and conditions of employment that you had immediately before your parental leave, including any improvement in pay or other conditions which occurred while you were on parental leave.

You may request certain changes to your working hours or working patterns (or both) to apply for a set period after you return to work from parental leave. You must make your request in writing to your employer at least six weeks before the set period is to begin. The request should specify the nature of the changes requested and the date of commencement and duration of the set period. Your employer is not obliged to agree to your request. Your employer should write to you within four weeks of your request informing you of their decision. If your employer agrees to your request, you must both sign an agreement containing the terms of the changes you have agreed.

If it is not reasonably practicable for your employer to allow you to return to the same job, then they must provide you with suitable alternative work. This new position should not be on terms substantially less favourable than those of your previous job. Your continuity of service must also be preserved.

Disputes

An employer must not penalise you for exercising your entitlement to parental leave. Penalisation includes any form of less favourable treatment, such as being dismissed from your job, suffering unfavourable conditions of employment, or being refused your right to return to work following parental leave.

Your employer may postpone your requested parental leave for up to six months if they believe that an employee taking parental leave would have a substantial adverse effect on

The Citizens Information Board provides independent information, advice and advocacy on public and social services through citizensinformation.ie, the Citizens Information Phone Service and the network of Citizens Information Services. It is responsible for the Money Advice and Budgeting Service and provides advocacy services for people with disabilities.

Head office t 0761 07 9000
Ground Floor f 01 605 9099
George's Quay House e info@ciboard.ie
43 Townsend Street w citizensinformationboard.ie
Dublin 2
D02 VK65

the business, for example, if there was a seasonal increase in work volume or the nature of the duties of the employee were specific. This must be done before the confirmation document is signed. After that, the leave cannot be postponed without further written agreement. Normally, only one postponement is allowed, but it may be postponed twice if the reason is seasonal variations in the volume of work.

If you have a dispute with your employer about parental leave, you may make a complaint to the Workplace Relations Commission within six months of the dispute. The time limit may be extended for up to a further six months, but only where there is a substantial cause which prevented the complaint being brought within the normal time limit.

The Workplace Relations Commission has powers to grant, postpone or curtail an employee's parental leave on terms that it deems appropriate, or to award compensation, or both.

Force majeure leave

Force majeure leave is paid leave granted to an employee and 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. An employee should not generally be in a position to plan the leave. You can obtain force majeure leave in relation to the illness or injury of:

- Your natural or adopted child (or a child whom you are acting *in loco parentis*)
- Your spouse or partner (provided you are living together)
- Your brother or sister
- Your parent or grandparent
- A person who otherwise resides with you in a relationship of domestic dependency

You are entitled to up to three days of force majeure leave in any 12-month period or five days in any 36-month period. If you are absent for only part of a day on grounds of force majeure, that may still be counted as a full day of force majeure leave.

If you are taking force majeure leave, you must give written notice to your employer as soon as possible after taking the leave. That notice must include the date(s) on which the leave was taken and the reasons why the leave was necessary. The notice must also be signed by you as the employee.

If you have a dispute regarding force majeure leave, you should make a complaint to the Workplace Relations Commission within six months of the dispute. The time limit may be extended for up to a further six months, but only where there is a substantial cause which prevented the complaint being brought within the normal time limit.

The information in *Relate* is intended as a general guide only and is not a legal interpretation

Citizens Information

LOG ON

citizensinformation.ie

CALL

0761 07 4000 Mon to Fri, 9am to 8pm

DROP IN

260 locations nationwide