



Protective Leave Entitlements

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MATERNITY PROTECTION ACT 1994

To encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or who are breast feeding



MATERNITY LEAVE

A pregnant employee has the right to take a period of not less than 26 consecutive weeks' maternity leave. This leave is covered by maternity benefit and sometimes topped up by the employer

An employee who has taken maternity leave shall, if she so wishes, be entitled to additional maternity leave for a maximum period of 16 consecutive weeks. This additional leave is not covered by maternity benefit and is often not topped up by the employer

The pregnant employee must give the employer at least four weeks notice of the pregnancy and the start of the leave period and provide a medical certification of the pregnancy at the time

The start date of maternity leave can be varied with a certification from a registered medical practitioner and in these circumstances, no notice period for the commencement of the leave is required



MATERNITY LEAVE

Maternity Leave must start at least 2 weeks before the due date and must not end until at least 4 weeks post the birth.

The first 26-week period can be extended if the baby is premature (born more than 2 weeks before the due date). The extension will be equal to the length of the premature birth period.

The first 26-week period can be extended if the baby is overdue and the extension will be equal to the length of the delay in the birth period.

A pregnant employee is entitled to maternity leave in the situation of a stillbirth if the baby weighs at least 400grams and / or was born at last 23 weeks gestation.



MATERNITY LEAVE

The last 4 weeks of additional maternity leave (16 weeks) can be terminated due to illness of the mother

After 14 weeks of maternity leave and before 4 weeks before the maternity leave is due to end, a mother can request for her maternity leave to be postponed due to the illness of the baby for which the maternity leave relates

Maternity Leave may be postponed (either before it commences or during it) due to the 'serious health condition' of the pregnant employee / mother.

Where a mother dies during her maternity leave, the remainder of the maternity leave will transfer to the other parent. The other parent is then entitled to everything that the mother would have been entitled to under the Act in relation to the leave.



ANTE - NATAL AND POST NATAL LEAVE

A pregnant employee is entitled to paid leave for ante natal and post natal appointments if they provide two weeks notice and evidence of the appointment.

The other parent is entitled to paid leave for two ante natal classes if they provide two weeks notice and evidence of the appointment.



BREAST FEEDING LEAVE

Within the first 26 weeks of giving birth, a mother is entitled to paid breast feeding leave

The can be 1 hour, two periods of 30 minutes or three periods of 20 minutes.

Employer's determine whether to provide facilities in the workplace to express or feed or whether to reduce the mother's hours without a deduction in their pay

Employer's are not obliged to provide facilities if providing them would give rise to 'cost other than a nominal cost'.

Part – time working mothers are entitled to the same entitlement on a pro rata basis



HEALTH AND SAFETY LEAVE

An employer is under an obligation to carry out a risk assessment on pregnant employees and either move that employee to other suitable work or eliminate any risks to that employee, if risks are identified. If:

it is not technically or objectively feasible for the employer to move the employee

such a move cannot reasonably be required on duly substantiated grounds

the other work to which the employer proposes to move the employee is not suitable

Then the employee shall be granted leave from her employment of which the first 21 days will be at full pay. The remainder of the leave will be eligible for social welfare benefits.



CASE LAW

- **(A female worker v A retail multiple – DEC-E2015-064):** A retail multiple was ordered by the Equality Tribunal to pay €7,500 in compensation to a female employee, arising out of its treatment of her during the course of her pregnancy. The Tribunal concluded that the failure of the respondent to carry out an individual risk assessment amounted to less favourable treatment on the grounds of gender. The respondent submitted that, given the large size of its workforce, it *“would not be feasible to carry out individual assessments on the occasion of every pregnancy of a member of staff”*.
- **(DEC-E2008 –006 - Sweeney v HSE Midlands Area):** The Equality Tribunal dismissed a gender discrimination claim against the HSE by an ambulance service employee, who was sent on paid leave following her disclosure that she was pregnant. She was offered alternative duties at a care centre for the elderly, but her Dr advised her that these duties were also unsuitable on account of her condition. In her view, the respondent could have tried harder to provide suitable alternative duties. In support of this contention, she cited the example of a colleague who was offered a position as an Ambulance Medical Controller. The Equality Officer observed that while it is clear that pregnant employees are given special protection, employers are not required to afford a pregnant employee over and above the statutory obligations.



EMPLOYMENT PROTECTION WHILE ON LEAVE

During a period of absence from work by an employee while on any leave under this Act:

The employee shall be deemed to have been in the employment of the employer as if she had not been so absent.

All rights other than pay and superannuation are protected.

Absence while on protective leave cannot be treated as part of any other leave.

The employee is entitled to accrue annual leave and be compensated for any public holidays that occur during their maternity leave.



EMPLOYMENT PROTECTION WHILE ON LEAVE

Employees have the right to return from leave under the Act to the same employer or if TUPE occurred, to its successor.

They are entitled to return 'in the job which the employee held immediately before the start of that period, under the contract of employment under which the employee was employed immediately before the start of that period and to not less favourable terms and conditions than those that would have been applicable to the employee and to any improvements that have occurred in their absence.'

Where this is not practical, an employer can offer an employee 'suitable alternative work; which *'is appropriate for the employee to do, is not less favourable in relation to place of work, capacity of employment and any other terms and conditions in her contract of employment and includes any improvements that have occurred in her absence'*.



CASE LAW

(ADJ-00023183+22909, AO: Marie Mulcahy): A senior HR manager was awarded over €50,000 for breaches of employment equality and maternity protection law, when she returned to a lesser role at an aviation firm from her maternity leave. The WRC adjudicator (AO) Marie Mulcahy stated that the agency showed “disregard” for the HR manager in how organisational changes it implemented, whilst the complainant was on maternity leave, would affect her role and status.

(EDA 1919 – deputy chairman, Louise O’Donnell): Making the maximum award possible in a case involving discriminatory dismissal, the Labour Court has ruled in favour of a former female employee of G4S Secure Solutions (I) Ltd, awarding her €51,168. The worker concerned – Karen Kelly – was not allowed back to work to the same post with a client company that had she held prior to going on maternity leave. Instead, she was offered a three-month contract, later extended to a six-month contract, at the G4S head office in Ballymount. But for the fact that she went on maternity leave “she would have continued to work in her job in Swords where she had worked for the previous three and a half years without difficulty”, the Court was told. Offering a permanent employee a three/six month contract in a location requiring a 4-hour round trip daily couldn’t be considered to comply with the requirements of section 27.



TERMINATION

A termination, suspension, notice of termination or redundancy of an employee while on leave protected by the Act is void

The notice period will automatically be postponed until the employee returns to work

It is an automatic ground under the Unfair Dismissals Act so one year's service is not required

The expiry of a fixed term contract or the non – renewal of fixed term contract is not considered a termination

Periods of probation, apprenticeship or training will be paused during the protected leave period



CLAIMS

Claim can be lodged with the Workplace Relations Commission within 6 months of the date of the contravention / breach

This decision can be appealed to the Labour Court within 42 days

Adjudicator / Court can grant the leave that is being denied and / or award a maximum of 20 weeks compensation

The Employment Equality Acts 1998 also needs to be considered when considering issues for pregnant employees or employees taking protected leave – claim could fall under gender discrimination / family status discrimination / disability discrimination as well.



ADOPTIVE LEAVE ACT 1995

The same protections as the Maternity Protection Act 1994 – however allows for male parents to avail of adoptive leave when in same sex couples or when the sole adopting parent. Dates also centre around the date of placement.



PATERNITY LEAVE AND BENEFIT ACT 2016

The other parent is entitled to two weeks leave within the first 26 weeks of the birth / placement

Must be taken in a two week block

Must give at least 4 weeks notice

This leave is covered by paternity benefit and is sometimes topped up by the employer



PROTECTIONS

All other entitlements set out in the Act are the same as maternity leave except:

- For the entitlement to ante natal, post natal, breast feeding and health and safety leave
- There is no provision to extend paternity leave for a premature birth or an overdue birth
- There is provision to postpone the leave due to the serious ill health of that parent
- Sanctions can be applied if the other parent is considered to have abused the paternity leave
- Provides protection from penalisation for taking paternity leave
- Award of compensation is a maximum of 2 weeks pay



PARENTAL LEAVE ACT 1998

Both parents are entitled to 22 weeks leave per child until they reach the age of 12

If the parent has more than one child, they cannot take more than 18 weeks per year

Parental leave is unpaid – by both state and employer

It must be taken in block or two separate blocks that are a minimum of 6 weeks (unless employer agrees otherwise)

There must be a gap of at least 10 weeks between each period

If parents work for the same employer, they can transfer a maximum of 14 weeks parental leave to the other parent

Must give at least 6 weeks notice

Employer can postpone for a maximum of 6 months, but cannot postpone after this

Employment protections are the same as maternity leave act but includes penalisation, abuse of leave sanctions and a maximum of 20 weeks compensation



FORCE MAJEURE LEAVE

Provided for under the Parental Leave Act 1998

The immediate presence of the employee is indispensable owing to an injury or illness of a close family member.

Maximum amount of leave is 3 days in any 12-month period or 5 days in a 36-month period

Entitled to be paid while you are on force majeure leave



FLEXILE WORKING

Employee must have 6 months service before arrangement can begin

Employee must be a parent or carer

Entitlement is to submit request and employer must respond within 4 week

Employer must consider employers and employees needs

Code of Practice issues by the Workplace Relations Commission on flexible and remote working provides guidance on this

Flexible working is part – time, term – time, remote working, flexi – time, compressed working or job – sharing

Employees are protected against penalisation but Act provides for sanctions for abuse of leave, and ability to alter or termination flexible arrangements if they are not working



PARENTS LEAVE

Each parent is entitled to a maximum of 9 weeks per child within the first two year of the birth / placement

Must give at least 6 weeks notice

Must take in one block of 9 weeks or separate blocks of 1 week

Entitled to Parents Benefit from the state

Leave cannot be transferred but can be left to the other parent on death

Can be postponed by employer once for a maximum of 12 weeks

Employment protections are the same as Maternity Protection Act but includes penalisation and compensation to a maximum of 9 weeks



CARERS LEAVE ACT 2001

Must have 12 months service

Can apply for a minimum block of 13 weeks and a maximum of 104 weeks

If taken in short blocks, must have at least 6 week break between leave

Person being cared for must need 24/7 care and this must be certified by a GP

Employer does not pay Carer's Leave but might be entitled to Carer's Benefit or Allowance

Can apply for two separate individuals (up to 208 weeks leave for both)

Must return to work for at least 6 months before applying for a new individual in the future

Protected from dismissal, penalisation and can accrue annual leave and public holidays for the first 13 weeks



SICK LEAVE ACT 2022

Must have 13 weeks service

Entitled to a maximum of 5 days per year

Must be certified by a GP certificate

Pay is 70% of daily wages up to a maximum of €110

If employer has a wholly more favourable sick pay scheme, they do not need to pay you the statutory sick pay

Part – time employees are also entitled to 5 days

Cannot be penalised for taking the 5 days sick leave (if genuine).



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