

MATERNITY, PATERNITY AND ADOPTION

General

Employees have rights in the area of maternity, paternity and adoption similar to those which apply in Ireland. It is unlawful discrimination to treat a woman less favourably on the grounds of pregnancy or maternity leave.

Maternity

All pregnant employees and new mothers (regardless of length of service and hours worked) are entitled to paid time off for anti-natal care, normal sick rights for pregnancy related sickness and 52 weeks maternity leave. General health and safety laws have implications in relation to women who are or have been pregnant, within the last six months. Rest facilities, non smoking zone etc. will be required.

Maternity leave is made up of 26 weeks ordinary maternity leave (OML) and 26 weeks additional maternity leave (AML) with no gap between. Women on OML are entitled to normal contractual benefits (e.g. accrual of holidays) and are entitled to return to their job. Women on AML are entitled to benefit from the general rights in relation to notice, redundancy, disciplinary and grievance procedures. They have a right to return to the same job or if this is not practically possible, to a similar job on terms that are no less favourable.

Employees with 26 weeks' either full or part time, continuous service are entitled to statutory maternity pay (SMP). Women who do not qualify may be entitled to maternity allowance. SMP is paid during maternity leave. It is payable at the rate of 90% of the woman's average weekly earnings in the first 6 weeks. A further 33 weeks are paid at the standard rate set by the Government which is £117.18 per week or 90% of average weekly earnings whichever is the lower. Employers can generally recover 92% of SMP

payments or more. The SMP can be recovered by deduction from PAYE and National Insurance Payments.

There are certain formalities in connection with return to work. The employee does not have to give notice if she intends to return to work at the end of leave. If she wants to return before the expiry of her leave or change any previous notification, she must give eight weeks' notice. The employee may not work for the first two weeks after the baby is born (four weeks in the case of a factory). If the employee does not wish to return on the expiry of maternity leave she must give notice required by the contract.

Paternity, Adoption etc.

Fathers who have 26 weeks' service by the 15th week before the expected date of childbirth are entitled to 2 weeks paternity leave in or around the date the child is born. This also applies to the mother's partner who is expected to have responsibility for the upbringing of the child. Most employees will be entitled to statutory paternity pay provided they have qualifying National Insurance payments. 28 days' notice is generally required. SPP is at the rate of £117.18 per week or 90% of earnings, whichever is lower. Employers can recover 92% of the payments but if total NI payments are less than £45,000 per year the employer can recover 104.5% of the payments and costs.

There are similar rights in connection with adoption leave. A couple can decide which partner takes the adoption leave. Most employees who qualify for adoption leave would also be entitled to statutory adoption pay. SAP is paid for 39 weeks at £117.18 per week or 90% of average earnings whichever is the less. Employer's can recover 92% of the payments and in certain circumstances 104.5% of the payments.

Parental Leave

Employees with more than one year's service are entitled to up to 13 weeks unpaid parental leave for each child. This can be taken before the child is five. This can be added to normal maternity, paternity or adoption leave. It must be taken in blocks or multiples of one week. Parents of disabled children are entitled to 18 weeks unpaid

leave until the child's 18 birthday. The days can be taken as single days. Parents of adopted children can take 15 weeks of unpaid parental leave provided they have one year's service, up to five years following the placement or up to 18 birthday whichever is sooner.

There is a fall back scheme for parental leave, if alternative formal agreements with employees cannot be reached. Under the Scheme employees can take a maximum of 4 weeks leave in each year in respect of any individual child; parents must give 21 day's notice and employers can postpone the leave for up to 6 months for business reasons.

Employees taking parental leave have the right to return to the same job. If this is not possible, a job on similar or better terms may be offered. Employees must not be dismissed while taking parental leave.

Employees have a right to reasonable unpaid time off to deal with an emergency involving a dependent. A dependent may be a spouse, partner, child or parent who lives with the employee. Leave can be taken when a dependent falls ill, is injured or assaulted, suffers from mental illness or injury or goes into labour. It may also be taken when they need to:-

- make longer term care arrangements for a dependent;
- arrange to attend a dependent's funeral;
- deal with unexpected problem in care arrangement;
- deal with an incident involving a child during school hours.

The right to reasonable time off; the length of time is not fixed. Employees who think they have been unreasonably refused time off or have suffered for taking time off may claim to an Employment Tribunal.

This Guide is intended as an overview and broad outline of the matters covered in it. Its purpose is to inform and raise awareness. We are happy to offer specific legal advice on particular circumstances.

This Guide should not be relied on as a substitute for comprehensive legal advice with reference to the particular circumstances.

While we have taken due care in the preparation of this publication, we do not accept legal liability as a result of any reliance placed on anything in this Guide. The reader should rely only on specific legal or taxation advice.

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