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About the Parental Leave Act 1998

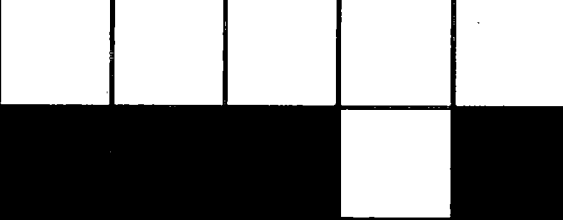
Equality in a Diverse Ireland

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THE EQUALITY AUTHORITY
AN tÚDARÁS COMHIONANNAIS

210033



PARENTAL LEAVE ACT, 1998

Explanatory Booklet

The purpose of this booklet is to provide information for employees and employers concerning their rights and obligations under the Act. It is important to note that this is an information booklet and not an interpretation of the Act.

May, 2000

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(This form is available from the Equality Authority)

Note: Throughout this Booklet, the relevant Sections in the Act are indicated in the margin.

**PARENTAL LEAVE ACT, 1998
(NO. 30 OF 1998)
EXPLANATORY BOOKLET**

1. PURPOSE OF THE ACT

The Parental Leave Act, 1998, gives effect to an EU Directive on parental leave (96/34/EC) and came into operation on 3rd December, 1998. The Act has two main purposes:-

- (a) to provide for a new entitlement for men and women to avail of unpaid leave from employment to enable them to take care of their young children.

The Act provides for the manner in which parental leave may be taken - either as a continuous block of 14 weeks or, with the agreement of the employer, broken up over a period of time. The employment rights of the employee are protected while s/he is on parental leave, and the employee has the rights to return to work after such an absence.

- (b) to provide for limited paid leave (force majeure leave) to enable employees to deal with family emergencies resulting from injury or illness of a family member.

The Act provides that employees are entitled to force majeure leave provided it does not exceed 3 days in any 12 consecutive months, or 5 days in any 36 consecutive months.

2. ENTITLEMENT TO PARENTAL LEAVE

- s.6(2) Parents of children born on or after 3rd June, 1996, or adopted on or after that date, are entitled to parental leave. Each parent is entitled to 14 weeks' parental leave for each child born or adopted on or after that date.
- s.6(3) The leave must be taken before the child reaches 5 years of age, except in certain circumstances in the case of an adopted child. In the case of a child who is under 3 years at the time of the adoption, the leave must be taken before the child reaches 5 years of age. However, if the child is aged between 3 years and 8 years at the time of the adoption, the leave must be taken within 2 years of the adoption order.

Minimum period of employment required

- s.6(4) Generally, the employee must have at least one year's continuous service with the employer before s/he is entitled to take parental leave. However, where the
- s.6(8) child is approaching the age threshold and the employee has more than three months' but less than one year's service with the employer, s/he shall be entitled to *pro rata* parental leave. In such a case the employee will be entitled to one week's leave for every month of continuous employment completed with the employer when the leave begins.

Transfer of Leave

Each parent has a separate entitlement to parental leave from his or her job. The leave may not be transferred between the parents - i.e. the mother cannot take the father's leave, and *vice versa*. s.6(7)

3. MANNER IN WHICH PARENTAL LEAVE MAY BE TAKEN

The leave may be taken as a continuous block of 14 weeks, or, by agreement between the employer and the employee, may be broken up over a period of time. The time may be broken down, for example, into individual days or weeks, or taken in the form of reduced hours of work. In any event, the employee is not entitled to any more than 14 weeks' leave per child. s.7(1)

"Broken" Leave

If the leave is to be broken up, there are two ways of calculating the entitlement-

Where an employer and an employee agree on a reference period

In the case where the employer and the employee agree on a particular period of 14 continuous weeks worked by the employee before the leave commences as a reference period, the total number of hours worked by the employee during that period represents the total number of hours' leave to which the employee is entitled (irrespective of how the leave is spread). s.7(2)(a)(i)

Where an employer and an employee cannot agree on a reference period

- s.7(2)(a)(ii) In the event that the employer and employee are unable to agree on a particular period of 14 continuous weeks to be used as a reference period (e.g. where the employee does not work a fixed number of hours per week), then a different formula should be applied. In such an event, the total number of hours of parental leave to which an employee is entitled is continually re-evaluated to reflect fluctuations in the hours worked. (See Appendix A).
- s.7(2)(b) In determining the 14 week period mentioned above absences as a result of parental leave during those 14 weeks are treated as if the employee was at work. Absences as a result of other types of leave are excluded and the fourteen week period shall be extended by a corresponding number of days immediately prior to the start of the period. Other types of leave include annual leave, public holidays, sick leave, maternity leave, adoptive leave and *force majeure* leave.
- s.7(3) Where an employee qualifies for parental leave in respect of more than one child, the employee may not take more than 14 weeks' parental leave in any 12 month period, unless the employer agrees otherwise. However, this restriction does not apply in the case of children of a multiple birth (i.e. twins, triplets, etc.).

4. PROTECTION OF EMPLOYMENT RIGHTS

During an absence on parental leave an employee is regarded as being in the employment of the employer and retains all of his or her employment rights (except the right to remuneration and superannuation benefits). The absence, therefore, will count as reckonable service for the purposes of annual leave, increments, seniority, etc. s.14(1)

However, an employer may require that a period of probation, training or apprenticeship be suspended while the employee is on parental leave. s.14(3)

Parental leave cannot be treated as part of any other leave to which the employee is entitled (e.g. sick leave, adoptive leave, maternity leave, annual leave or *force majeure* leave). s.14(2)

Annual Leave and Public Holidays

Employees retain an entitlement to any public holidays falling during a period of parental leave. The Act provides that a corresponding number of days *in lieu* of public holidays shall be added to the end of the period of leave. s.7(4)

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

Protection against dismissal

- s.25(2) The dismissal of an employee, as a result of the exercise or proposed exercise, of the right to parental leave or *force majeure* leave, will be regarded as an unfair dismissal for the purposes of the Unfair Dismissals Act, 1977 to 1993, unless there are substantial grounds justifying the dismissal.
- s.25(3) In addition, an employee who is entitled to return to work following a period of parental leave and is not permitted to do so by his or her employer, shall be regarded as having been unfairly dismissed for the purposes of the Unfair Dismissals Acts, 1977 to 1993, unless there are substantial grounds justifying the dismissal.

5. NOTIFICATION OF PARENTAL LEAVE

An employee must give written notice to the employer of his or her intention to take parental leave, not later than six weeks before the employee proposes to commence the leave. The notice must include the following details: s.8(1)

- 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.
- s.8(2)

However, the Act provides that an employer may, at his or her discretion, waive all or part of the notification period. s.8(4)

The employer may require the employee to provide evidence of his or her entitlement to parental leave (e.g. the child's date of birth, the date of the adoption order or evidence of parentage). s.8(6)

6 CONFIRMATION OF PARENTAL LEAVE

s.9(1) Once the employee has given notice of his or her intention 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 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 the employee.

Alterations to the Confirmation Document

s.10 Once a confirmation document has been signed by both the employee and the employer, it cannot be altered unless both parties agree.

Revocation of Notice

s.8(3) The employee may revoke his or her notice of intention to take parental leave at any time before the confirmation document is signed. Such revocation must be made in writing to the employer.

7 POSTPONEMENT OF PARENTAL LEAVE BY THE EMPLOYER

The employer may decide to postpone the parental leave if he or she is satisfied that granting the leave would have a substantial adverse effect on the operation of his or her business. The postponement may be for a period not exceeding six months, to a date agreed on by both the employer and the employee. s.11(1)

Notification of Postponement

s.11(1)-(3)

The employer must notify the employee, in writing, of his or her intention to postpone the leave, no later than four weeks before the proposed date of commencement of the leave. Such notice must specify the grounds for the postponement, and the employer must consult the employee before giving such notice.

Limitations on Postponement of Leave

Generally, the employer may postpone the leave only once in respect of any particular child. If, however, the reason for the postponement is seasonal variations in the volume of work, the leave may be postponed twice in respect of the same child. s.11(4)

Parental leave cannot be postponed by the employer once a confirmation document has been signed by both parties. s.11(5)

- s.11(6) 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.

8 ABUSE OF PARENTAL LEAVE

- s.12(1) An employee must use his or her parental leave to take care of the child concerned.

Termination of Parental Leave

- s.12(2) The employer may terminate the leave if s/he has reasonable grounds to believe that it is being used for a purpose other than taking care of the child concerned.
- s.12(6) However, before terminating the leave, the employer must notify the employee, in writing, of his or her intention to do so, and invite the employee to make representations on the matter within 7 days. The employer is obliged to consider the employee's submission before deciding whether to terminate the leave.

If the employer decides to terminate the leave, the employee must be notified, in writing, of such termination. Such notice must specify the grounds and the date of the termination. The date of termination must be no less than 7 days after the date this notice is given.

Alternatively, the employer may permit the employee to complete the period of parental leave before returning to work.

In a case where the leave is terminated, the employee shall return to work. Any 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. s.12(3)

Refusal to Grant Parental Leave

The employer may refuse, in writing, to grant parental leave if s/he has 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, of his or her intention to do so, and invite the employee to make representations on the matter within 7 days. The employer is obliged to consider the employee's submission before deciding whether to refuse the leave. The reasons for such refusal must be specified. s.12(4)-(6)

9 RETURN TO WORK

- s.15(1) An employee is entitled to return to work at the end of a period of parental leave with the employer with whom s/he was working immediately before the absence, or with his or her successor, in the job held immediately prior to the leave and under the same contract, terms and conditions of employment. If the business has changed ownership during the employee's absence on the leave, s/he is entitled to work under a contract of employment identical to the contract that existed with the original employer.
- s.15(2) 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, following a period of parental leave, to return to that job, or to his or her normal or usual job, as soon as is practicable.
- s.15(3) If an interruption or cessation of work at an employee's place of employment on the date of the intended return to work makes it unreasonable to expect the employee to return to work on that date, the employee may return to work as soon as it is practicable after the interruption or cessation ends.

Alternative Employment

- s.16 If it is not reasonably practicable for an employer, or his or her successor, to allow an employee to return to the job held immediately prior to the leave, the employer, or his or her successor, must offer the employee suitable

alternative employment under a new contract of employment. The terms of the alternative employment (e.g. the place of work, the capacity in which the employee is employed) must not be substantially less favourable to the employee than the terms of his or her original job.

10. ***FORCE MAJEURE LEAVE***

An employee is entitled to leave with pay from his or her employment for urgent family reasons, owing to the injury or illness of any of the persons listed below. Entitlement to *force majeure* leave is limited to circumstances where the immediate presence of the employee, at the place where the ill or injured person is situated, is indispensable. s.13(1)

During an absence on *force majeure* leave an employee is regarded as being in the employment of the employer, and retains all of his or her employment rights. s.14(4)

- s.13(2) The persons referred to above are:
- 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*;
 - a brother or sister of the employee;
 - a parent or grandparent of the employee.

- s.14(4) *Force majeure* leave is paid leave. It cannot be treated as
s.14(5) part of any other leave (e.g. sick leave, adoptive leave, maternity leave, annual leave or parental leave) to which the employee is entitled.

Notification of *Force Majeure* Leave

- s.13(3) As soon as reasonably practicable after his or her return to work after an absence on *force majeure* leave, an employee must confirm to his or her employer that he or she has taken the leave. The notice must specify the information contained in the Form at Appendix B.

Maximum Entitlement

- s.13(4) An employee may not be absent on *force majeure* leave
s.13(5) for more than 3 days in any 12 consecutive months, or 5 days in any 36 consecutive months. Absence for part of a day is counted as one day of *force majeure* leave.

11. DISPUTES

The provisions in the Parental Leave Act, 1998 regarding the resolution of disputes do not apply to members of the Defence Forces. s.18(1)

Reference of Disputes to Rights Commissioner

Employees and employers are entitled to refer a dispute in relation to an entitlement under the Act to a rights commissioner. Disputes concerning the dismissal of an employee are dealt with under the provisions of the Unfair Dismissals Acts, 1977 to 1993. s.18(2)

A reference to the rights commissioner concerning a dispute under the Act must be made in writing within 6 months of the occurrence of the dispute. Regulations made under the Act set out the details to be provided in such a reference. s.18(5)
s.18(4)

Appeal from Decision of Rights Commissioner

Either party may appeal a decision of the rights commissioner to the Employment Appeals Tribunal. An appeal is made by giving written notice to the Tribunal within 4 weeks of the date on which the rights commissioner's decision is given. Regulations made under the Act set out the details to be provided in such an appeal. s.19

Redress

- s.21 The rights commissioner and the Employment Appeals Tribunal may order redress, as they consider appropriate, comprising either or both of the following:
- the grant of parental leave for a specified period to be taken at such time or times and in such manner as may be specified;
 - the payment to the employee by the employer of compensation not exceeding 20 weeks' remuneration.

The rights commissioner or the Employment Appeals Tribunal may direct either party to the dispute to do such things as are considered necessary or expedient for the resolution of the dispute.

Enforcement by the Circuit Court

- s.22 If a person fails or refuses to comply with a decision of the rights commissioner or a determination of the Tribunal, the other party, or the Minister for Justice, Equality and Law Reform, if he or she considers it appropriate having regard to all of the circumstances, may apply to the Circuit Court for an order directing compliance.

Appeals to the High Court

- s.20 Either party to proceedings in the Employment Appeals Tribunal may appeal to the High Court from a determination of the Tribunal on a point of law.

12. RECORDS

An employer must keep a record of parental leave and *force majeure* leave taken by his or her employees, specifying the period of employment of each employee and the dates and times of the leave taken. Such records must be retained for 8 years. An employer who fails to keep such records may be liable, on summary conviction, to a fine of up to £1,500.

s.27

Copies of all notices and documents required under the Act must be retained by the employee and the employer for one year (Section 8(1), 8(3), 9(1), 11(1), 12(2), 12(4), 12(6), 13(3) refer).

s.27(3)

13. PRESERVATION OF SOCIAL INSURANCE BENEFITS

The Minister for Social, Community and Family Affairs has introduced Regulations to ensure preservation of social insurance records for employees who avail of parental leave. In such circumstances, employees should only contact the Department when their employer has not paid a contribution for the week/weeks of parental leave taken.

Where a contribution has not been made employees should forward a letter from their employer to the Department of Social Community and Family Affairs giving the dates of parental leave in order to have credits updated.

Department of Social, Community and Family Affairs,
Records Section,
Gandon House,
Amiens Street,
Dublin 1.
Telephone: 01-7043364/7043234

APPENDIX A

Calculation of “broken” leave in accordance with section 7(2)(a)(ii) of the Act, in circumstances where the employer and employee are unable to agree on a period of 14 continuous weeks to be used as a reference period

The following is an example of how parental leave should be calculated in the circumstances outlined above -

- (a) Calculate the total number of hours worked by the employee in the 14 weeks ending immediately before the week in which the employee proposes to commence the first period of leave. This figure represents the total number of hours' leave to which the employee is initially entitled.
- (b) On the second and subsequent occasions on which the employee wishes to take part of his or her parental leave, calculate the total number of hours worked by the employee in the 14 weeks ending immediately before the week in which the employee proposes to commence the new period of leave. Add this to the totals calculated on each of the previous occasions the employee took part of his or her parental leave, and calculate the average of these figures. This new total represents the average hours worked by the employee over a number of 14 week periods and represents the employee's revised entitlement to parental leave.

- (c) Calculate the total number of hours of parental leave already taken by the employee and subtract this figure from the total reached in (b). The outcome represents the balance of parental leave to which the employee is entitled.

Example

The employee wishes to take short periods of leave over a long time scale. On the first occasion, the employee has worked 500 hours in the 14 weeks immediately prior to the week of commencement of the leave. The employee takes 20 hours' leave.

The next time the employee wishes to take leave, s/he has worked 450 hours in the 14 weeks immediately prior to the week of commencement of the leave. The revised entitlement is calculated as follows:

$$450 + 500 = 950, \quad 950/2 = 475.$$

The employee has already taken 20 hours' leave, so s/he has 455 hours remaining. On this occasion the employee takes 25 hours.

On the third occasion, the employee has worked 480 hours in the 14 weeks immediately prior to the week of commencement of the leave. The revised entitlement is calculated as follows:

$$480 + 450 + 500 = 1,430, \quad 1,430/3 = 477$$

The employee has already taken 45 hours' leave, so s/he has 432 hours remaining. On this occasion the employee takes 20 hours.

On the fourth occasion, the employee has worked 500 hours in the 14 weeks immediately prior to the week of the commencement of the leave. The revised entitlement is calculated as follows:

$$500 + 480 + 450 + 500 = 1,930, \quad 1,930/4 = 483$$

S/he has already taken 65 hours' leave, so s/he has 418 hours remaining. The employee takes another 30 hours' leave...

This calculation is carried out every time the employee wishes to take part of his or her parental leave. When the figure in bold reaches zero, the leave entitlement has been exhausted.

NB. In determining the 14 week period mentioned above, absences as a result of parental leave during those 13 weeks are treated as if the employee was at work. Absences as a result of other types of leave are excluded, and the fourteen week period shall be extended by a corresponding number of days immediately prior to the start of the period. Other types of leave include annual leave, public holidays, sick leave, maternity leave, adoptive leave and *force majeure* leave.

APPENDIX B

Notice to Employer of *Force Majeure* Leave

This form, or a form to the like effect containing the information and declaration referred to in this form, must be completed by an employee who takes *force majeure* leave as soon as reasonably practicable after the leave is taken.

An employee is entitled to *force majeure* leave where for urgent family reasons, owing to an injury to or the illness of a person referred to in section 13(2) of the Act, the employee's immediate presence is indispensable at the place where the person is.

The persons referred to in section 13(2) of the Act are: child, adopted child or a person in relation to whom the employee is in *loco parentis*; spouse or person with whom the employee is living as husband or wife; brother or sister; parent or grandparent.

Force majeure leave must not exceed 3 working days in any period of 12 consecutive months or 5 working days in any period of 36 consecutive months.

In the event of any dispute or difference between an employer and employee in relation to *force majeure* leave the issue may be referred by either party to a rights commissioner.

I confirm that I have taken *force majeure* leave on the above mentioned dates because for urgent family reasons, owing to the injury to*/illness of* the person specified above, my immediate presence at that person's address was indispensable.

Declaration

I declare that the information given above is true and complete.

Signature of Employee

Date _____

** Delete as appropriate*

The Equality Authority
Clonmel Street
Dublin 2
Ireland

Lo Call: 1890 245545
Telephone: + 353 1 4173333
Text phone: +353 1 4173385
Facsimile: + 353 1 4173366
Email: info@equality.ie
Website: www.equality.ie