

Work-Life Balance for Parents and Carers Regulations

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Before the changes were introduced in S.L.
452.125...

1 day birth leave;

Parental leave of four months was unpaid;

Sick leave can only be used by the employee.

Work-Life Balance Directive

- DIRECTIVE (EU) 2019/1158 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU
- Aim – ensure equality by promoting participation of women in the labour market; equal sharing of caring responsibilities between men and women; closing of gender pay gap.

Paternity Leave

- Fathers or equivalent second parents (not biological father) – 10 days paternity leave – birth or adoption, without loss of wages i.e. paid as other leave.
- Right not subject to a period of work qualification or length of service qualification.
- Right granted irrespective of marital or family status.

Parental Leave

Entitlement is per child;

Also for part-timers and
those on fixed term
contracts;

Need a period of continuous
employment with the same
employer for a period of at
least one year (but period
can be shorter as per
contract or CA).

Fixed term contracts - entitlement

To calculate 12 month qualifying period:

- If there are successive fixed term contracts with the same employer, the sum of the contracts is to be taken into account;
- If fixed term contract is renewed within six months from termination, period between the two contracts is to be taken into account.

Suspension of Parental Leave?

- Without an agreement between the employer and the employee – neither party can suspend the parental leave for employee to return to work before the agreed date of resumption of duties.

Using Parental Leave

- Workers have the right to request to use parental leave in a flexible way.
- Employer – is to provide reasons for any refusal in writing within two weeks from the request.
- Leave may be granted on a full-time or part-time or piecemeal way.
- Worker must give 2 weeks' notice in writing – specify beginning and end of leave.

During Parental Leave

- Employee has the right to apply for promotions at work.
- To facilitate return to work following leave – both employer and employee are bound to maintain contact during leave and may make arrangements for reintegration measures.



Grounds for Parental Leave

- Individual right of each parent to be granted paid parental leave on grounds of birth / adoption / child fostering / legal custody of a child – period of four months until child is 8 years old.
- Only two months are paid AND at the rate set for the sickness benefit entitlement under the social security Act.
- Sickness benefit – married rate (€21.85) or single rate (€14.15).

Staggering of leave and payments

- 0 – 4 years of age – 50% of entitlement will be paid (i.e. you can take 2 months but will be paid for 1 month);
 - 4 – 6 years of age – 25% of entitlement will be paid;
 - 6 – 8 years of age – 25% of entitlement will be paid.
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- Still subject to confirmation of what the official interpretation is going to be.

Foster Parents

- Rate of payment is the same as that for parents;
- Allowance is given per parent applying for parental leave not for each child fostered.

Further provisions...

- Two months of parental leave cannot be transferred – so parents may transfer the remaining two months...
- Parental leave is to be availed of in established periods of at least 2 weeks each (but can reach a different agreement).

Change in employer and Records

- If leave not availed of or if there is a balance – worker is entitled to carry over such leave to the new employer (subject to the one year qualifying period).
- Employer – must keep a record of parental leave for every worker.
- Employee – can demand, even after termination of employment, a written statement from the employer of leave taken, to be delivered within 2 weeks from the date of the request.

Notice and Request

- Employee to give employer 2 weeks' notice in writing – specify the beginning and the end of the parental leave.
- Foster Carers – need to provide proof of placement.
- Adoption – Evidence that legal proceedings for adoption to be completed have been initiated AND written certificate from the competent authority that a positive home study report has been completed AND certified evidence that couple have legal custody of the child.
- Legal custody – certified evidence that couple have legal custody of the child.
- Other – birth certificate.



Postponement of Parental Leave

- Employer may temporarily postpone the granting of parental leave for justifiable reasons related to operations.
- Examples:
 - i. Work is of a seasonable nature;
 - ii. Replacement cannot be found within the notice period given by the employee;
 - iii. Small enterprise with less than 10 employees;
 - iv. Significant amount of employees apply for parental leave at the same time.

Postponement of Parental Leave

- Within 2 weeks – employer to provide reasons for postponement in writing.
- Postponement is not to result in the loss of parental leave before the child attains 8 years of age and if so, employer is to grant equivalent parental leave after.
- Prior to postponing parental leave – employer is to offer flexible ways of taking parental leave.



Carer's Leave

- Entitlement to 5 days of carer's leave which are UNPAID.
- Carer – worker providing personal care or support to a relative OR to a person living in the same household as the worker and who is in need of care for serious medical reasons.
- Proof – worker needs to be provide medical proof that the relative or person living in the same household is suffering from an illness and is in need of care and support.



Urgent Family Leave Entitlement

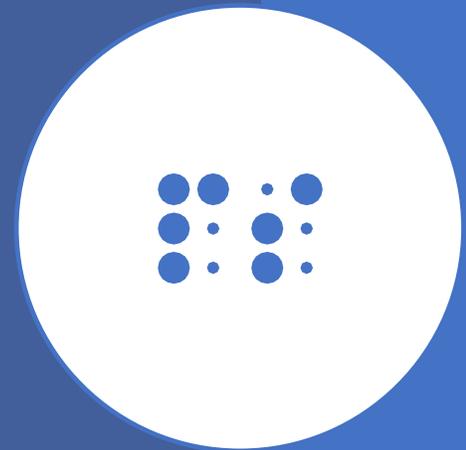
- Employees entitled to time off on grounds of *force majeure* for urgent family reasons in cases of sickness or accident making immediate presence of employee indispensable.
- Ex. Accidents to members of the immediate family of the employee / sudden illness of immediate family requiring assistance or presence of employee / presence during birth and deaths of members of the immediate family of the employee.
- No advance notification is required except in cases where this is possible to be given at least 24 hours before.

Urgent Family Leave Entitlement

- Entitlement is 15 hours – deducted from annual leave;
- Employer can demand evidence as may be necessary to confirm the request for urgent family leave.

Flexible Working Arrangements

- Employees with children up to 8 years of age and carers – right to request flexible working arrangements for caring purposes.
- Arrangement can be limited in duration – employee can request to return to original working pattern before expiration of arrangement and employer is to consider this request.
- May include – remote working / reduced hours / flexi time.
- Employer is reply within 2 weeks from request AND is to give reasons for any refusal or postponement.



Other Ancillary Rights

- At the end of paternal/ parental/ carer's leave – entitled to return to their jobs or equivalent posts on no less favourable terms;
- No discrimination on grounds of taking leave;
- Cannot suffer adverse treatment or consequences for making a complaint to enforce compliance with the Regulations;
- Cannot dismiss on grounds that worker has taken leave;
- Notice of termination can be given during parental leave – automatic suspension of parental leave from date that notice is given.

Cont.

- If employee considers they have been dismissed on the grounds that they have applied for or have taken leave or availed themselves of flexible work arrangements – can request employer to provide duly substantiated reasons for the dismissal.
- Reasons – to be provided within 15 days from request.
- If employee establishes facts giving rise to a presumption that he has been dismissed for these reasons – burden on the employer to prove dismissal was based on other grounds.

Dispute Resolution

- Dispute between employer and employee regarding entitlements governed by the regulations – matter can be referred to the Director of the DEIR who shall mediate between the parties.

Offences

- Contravene or fail to comply with the regulations – guilty of an offence and liable to a fine of not more than €2,000.

Employer's Right to Request Certification

- In the case of carers leave and urgent family leave, the worker must present proof and/or the employer shall have the right to demand evidence as may be necessary to verify and confirm the leave requested by the employee.
- Such proof will contain personal data, pertaining to not just the employee, but also other third parties, such as the employee's relatives. These personal data may nonetheless be processed on the legal basis of Article 6(1)(c), GDPR: *"processing is necessary for compliance with a legal obligation to which the controller is subject."*
- Such proof will also likely contain health data which constitutes special categories of personal data (or 'sensitive' personal data) as understood by the GDPR.
- Such sensitive personal data may be processed by the employer on the basis of Article 9(2)(b), GDPR: *"processing is necessary for the purposes of carrying out the obligations and exercising specific rights of the controller or of the data subject in the field of employment..."*

Record-Keeping Obligations

- Every employer shall be bound to keep a record of the parental leave for every worker and shall, on the demand of the worker, which demand may be made **even after termination of employment**, deliver to the worker a written statement of the leave to the worker, within 2 weeks of such request.
- This means that the employer must retain a record of such leave post-termination, which should be kept in the ex-employee's file, just like all other data pertaining to ex-employees.
- For how long? Check with legal counsel on case-by-case basis. Law is silent but keep in mind the principle of data minimisation.