



GUIDE TO MATERNITY LEAVE

Maternity Leave is an area of Law which is often misunderstood. When it comes to Maternity Leave there are rights and obligations for both the employer and the employee. We have found, in a number of cases which we have been involved in, that both employers and employees sometimes do not fully understand the effect of this legislation. This GUIDE TO MATERNITY LEAVE is intended to give a short overview of the law and practice in this important area.

While there are rights for employees there are also obligations. Equally where there are obligations for employers there are also rights.

It is important that both employers and employees understand the legislation and how it applies in practice.

Overview of an Employees Rights.

1. An employee is entitled to 26 weeks Maternity Leave.
2. The employee can elect to take an addition 16 weeks Maternity Leave. This is known as Additional Maternity Leave.
3. An employee on Maternity Leave is entitled to claim Social Welfare. There is no Social Welfare for an employee on Additional Maternity Leave.
4. While an employee can decide when to take to take Maternity Leave. There are certain rules. The employee must take at least two weeks before the due date and four weeks after the birth of the child. Other than that the choice of the period of Maternity Leave is a matter for the employee.
5. If the baby's late birth means that the employee has less than four weeks' leave remaining after in the week in which her baby is born the employee may extend her Maternity Leave to ensure she has a full four weeks off following the birth of the child.
6. If an employees' baby is born four weeks or more earlier than expected and before she is gone on Maternity Leave, her employer must be notified in writing within fourteen days of the birth. The employee will then be entitled to the full period of Maternity Leave from the date of the birth.



7. There are specific provisions relating to the termination of Additional Maternity Leave in the event of the sickness of a mother or the postponement of Maternity Leave or Additional Maternity Leave in the event of hospitalisation of a child. The most usual one is the hospitalisation of a child. In the event of hospitalisation of a child the employer may agree to postpone the Maternity Leave or Additional Maternity Leave to allow the employee to return to work on an agreed date. It is only possible to postpone Maternity Leave where the employee has taken at least fourteen weeks Maternity Leave four of which are after the end of the week of the birth. Where the employer agrees to a postponement and where the employee has complied with certain notification

requirements the employee will be entitled to take the postponed leave in one continuous block known as resumed leave. There are two documents which will always be required. Namely:-

- (a) A letter or other appropriate document from the hospital in which the child concerned is hospitalised confirming the hospitalisation and,
- (b) A letter or other appropriate document from a hospital concerned or the medical practitioner confirming that the child has been discharged from hospital and the date of that discharge.

It should be noted that this is not an automatic right and the employer may object.

8. Employees are entitled to time off work for antenatal and post-natal care. It is necessary for the employee to send the notification as set out in S.I 18 of 1995.
9. An employee who has a medical or related appointment is entitled without loss of pay to take time off work during her normal working time as is necessary to enable her to keep an appointment with a doctor. A pregnant employee is entitled to time off work without loss of pay for the purposes of attending one set of antenatal classes. This does not include the last three classes in a set. The last three classes ordinarily are attended in the final weeks of pregnancy while the employee is on Maternity Leave. It should be noted that a father is entitled to attend two antenatal classes without loss of pay.



10. Employees who are breast feeding are entitled to time off work or a reduction in working hours for breast feeding. Once the employee who is breast feeding informs her employer that she is so doing she is entitled without loss of pay to either breast feeding breaks or to a reduction in her working hours. Of the break it would be in the form of one break of 60 minutes or two breaks of 30 minutes or three breaks of 20 minutes each that are agreed by the employer and the employee. This entitlement only applies for the first six months following confinement. The employer has to pay for the time off.

Protection of Employment

There is a right not to be dismissed for any pregnancy related reason.

What must an Employee do.

Employees should advise their employer as soon as possible that they are pregnant and the expected date of confinement. The notification must not be later than four weeks before the commencement of Maternity Leave.

The employee must give to her employer or produce to her employer for inspection a medical or other appropriate certificate confirming the pregnancy and specifying the expected week of confinement.

Where an employee does not comply with these conditions, the employee is not able to avail of statutory Maternity Leave. This has been held by both the Employment Appeals Tribunal and by the Labour Court. Strict compliance with this requirement must be met by the employee.

In the case of Additional Maternity Leave the employee may take up to sixteen weeks immediately at the end of her Maternity Leave. Notification to take Additional Maternity Leave can be given at the time of notifying of the Maternity Leave or not later than four weeks before the expected date of return.

An employee must notify her employer in writing of her intention to return to work not later than four weeks before the date she expects to return. Provided the employee does this she is entitled to the same position she occupied before she took her Maternity Leave. This means that the same Terms and Conditions as to pay and her job.



Must the Employee Always return to the Same Position?

If it is not practical for the employee to return to the same position, there is a right to a suitable alternative position. This must satisfy two conditions.

- (A) The work being done is of the same kind that she did before her leave and it is appropriate for her to do it in all the circumstances.
- (B) The terms and conditions regarding where the work is being done and the capacity in which the employee is being employed are no less favourable than her job prior to her leave.

Are there any Other Leave Provisions?

In certain circumstances the employee may be entitled to leave on Health and Safety grounds. This would apply where as a result of a risk assessment or because the employee cannot be required to perform night work but it is not possible for the employer to move the employee or such a move cannot reasonably be required or the other work that which the employer proposes to move the employee is not suitable then the employee will be entitled to Health and Safety Leave.

During the first 21 days of the leave granted to the employee the employee is entitled to receive the normal pay which she would have otherwise received.

During additional periods of Health and Safety Leave the employee will be entitled to Social Welfare.

Payment During Maternity Leave and Additional Maternity Leave

There is no obligation on an employer to pay an employee on Maternity Leave or Additional Maternity Leave. Some contracts will provide for payment while during Maternity Leave. If the Contract of Employment so provides then the employee is entitled to pay during the period covered by the terms of the contract.

Employees on Maternity Leave are entitled to Social Welfare benefits. This is provided they have the necessary contributions. You will get information of this from www.welfare.ie/ien/pages/maternity-benefits. Social Welfare benefits while on Maternity Leave are now taxable

Employees on Additional Maternity Leave are not entitled to Social Welfare benefits.



What Should Employers do?

The first thing that an employer should have is a Maternity Leave Policy which sets out the method of an employee obtaining Maternity Leave and Additional Maternity Leave.

The advantage of this is that it sets out in plain English the steps which the employee must take. Where an employer sets out a Maternity Leave Policy it helps make sure that the employees notify the employer as soon as possible. This means that the employer will be able to plan for the employee's absence from work. It provides for certainty. Where an employer becomes aware that an employee is pregnant, the employer should undertake a health and safety review to see if there are any inherent risks in the work place or the job is such that the employee may require Health and Safety Leave.

Employers should make sure that they understand their legal obligations but also their legal rights. Employers should be aware that when an employee returns to work the Social Welfare she received while on Maternity Leave will be taxable.

What Should Employees do?

The most important thing for employees is to make sure that they comply with the legislation governing the notification to their employer. Failure to do so may result in the employee losing her entitlement to Statutory Maternity Leave. It may mean that she is not entitled to Additional Maternity Leave. Employees should notify their employer as soon as possible of the fact that they are pregnant and their expected date of confinement. This allows for planned leave.

What should Employers and Employees do?

It is important that employers and employees talk to each other. It is important that the leave is planned. For employers it will be important to note when the employee intends to leave for her Maternity Leave and whether the employee will be looking to claim Additional Maternity Leave or not. What this allows for is planning to cover the employee's absence. For employees it is equally important to talk to the employer so that the Maternity Leave and Additional Maternity Leave, if appropriate, can be properly structured. It is also important that the employee checks her entitlement to Social Welfare.



Conclusion

Maternity Leave and all the associated issues related to an employee's pregnancy should be straight forward and simple. Unfortunately the law in this area is anything but straight forward and simple. In this Guide to Maternity Leave we in Richard Grogan & Associates have tried to set out in plain English the main provisions of the legislation as it applies to pregnant employees.

If you require assistance on this or any other area of employment law the firm of Richard Grogan & Associates would be pleased to assist.

We can be contacted at (01) 6177856 or info@grogansolicitors.ie

The firm of Richard Grogan & Associates is pleased to advise in all areas of Employment Law as it affects both employers and employees.

Before acting or refraining from acting on anything in this guide legal and social security advice should be obtained. This is a Guide only. It does not purport to give legal advice.