

August 2016

## Paternity Leave and Benefit Bill 2016

With effect from 1<sup>st</sup> September 2016, the widely discussed Paternity Leave entitlement will come into effect within Ireland.

The Paternity Leave and Benefit Act will enable fathers, who are relevant parents in relation to a child, to avail of leave to assist in the care of the child or provide support to one of the below;

- Mother of the child
- Adopting mother
- Sole Male Adopter

**Leave Entitlement:** Paternity Leave must be used for the care of the child to which the leave relates.

An employee who is a relevant parent in relation to a child shall be entitled to take one continuous period of **2 weeks** paternity leave. A parent may avail of Paternity Leave from the date of confinement or day of placement (in the case of adoption), whichever the case may be, but not later than 26 weeks following such date or day.

In circumstances where the birth is part of a multiple birth or in the case of an adoption, where two or more children are adopted at the same time, the relevant parent will only be entitled to one period of paternity leave.

**Notification:** Where an employee intends to take paternity leave, the employee shall advise their employer, in writing, of their intention to take paternity leave, as soon as possible but not later than **4 weeks** before the proposed date of paternity leave, stating the employee's intention to take paternity leave and expected duration of the leave. This written notice must be accompanied by a certificate of proof of the expected date of confinement of the employee's spouse or partner, or

confirmation of the baby's birth where the leave is being applied for after the birth has occurred.

**Commencement of Leave (Early Confinement):** In circumstances where the birth of a child is early, occurring 4 weeks or more before the expected date of confinement, the parent may still avail of Paternity Leave, provided that notification is received within 7 days commencing on the date of confinement.

**Postponement of Leave:** Where the date of confinement has arisen after that provided for by the parent in the initial notification or the day of placement (in the case of adoption) is postponed, the parent shall be entitled to select an alternative date to avail of leave.

**Sickness during Leave:** Where an employee falls ill prior to the commencement of paternity leave, the parent must write to their employer after becoming ill, providing the appropriate evidence i.e. sick certificate and may postpone the leave to take at such a time when they are no longer sick.

**Maintaining Records:** It is upon the employer to ensure they have a record of Paternity Leave taken for each employee, including the dates of leave. Records should be retained by the employer for a period of 8 years following the period of paternity leave taken.

**Protection/suspension of rights during Leave:** The employee shall be deemed to have been in the employment of the

employer and should be treated as if they had not been absent during Paternity Leave for the purposes of any employment rights i.e. statute or contract rights. However, they do not have any right to remuneration during such absence. Certain conditions of employment such as probation periods or training can be suspended during the Paternity Leave and completed on their return.

**Refusal of Paternity Leave:** Where an employer has reasonable grounds for believing that the employee is not entitled to the Paternity Leave concerned, the employer may, by notice in writing given to the employee, refuse to grant the leave to the employee. If the employer does so, the employee shall not be entitled to take the Paternity Leave concerned. A notice shall contain a statement in summary form of the grounds for refusing to grant the Paternity leave concerned.

**Abuse of Paternity Leave:** Where an employer has reasonable grounds to believe that an employee is not using Paternity Leave for the purpose specified, they may by notice in writing to the employee, terminate the leave and the notice shall contain a statement summarising the grounds for terminating

the leave and shall specify the day by which the employee must return to work.

Where an employer is considering giving notice to the employee to terminate or refuse to grant Paternity Leave, they must, before giving such notice, notify in writing, the proposal to the employee, summarising the grounds for terminating or refusing the leave. They must include a statement that the employee may, within 7 days of the receipt of the notification, make representations to the employer about the proposal. Any such representations made by an employee to an employer within the period, shall be considered by the employer before the final decision is made whether to refuse or terminate the leave.

**Form and Benefit:** Employees must have made the appropriate PRSI contributions as set down by the relevant Department, in order to qualify for Paternity Benefit. Upon receipt of an application and relevant documentation, an employer must complete *Form PB 2 Employer Certificate* to Certify an employee's entitlement to Paternity Leave for the dates requested.

**Disputes:** Where there is a dispute in relation to Paternity Leave the matter may be referred to a Workplace Relations Commission.

***This update is provided by the MSS HR Support Service.***

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