

## Policy on Force Majeure Leave

<b>Document Reference and Version Number</b>	
<b>Purpose</b>	<p>This policy informs all employees covered by the Parental Leave Acts 1998, 2016 and Parental Leave (Amendment) Act 2019 of their Force Majeure Leave entitlement under the act.</p> <p>This policy covers all part-time and full-time employees in the organisation, provided that they meet the conditions outlined below. This policy provides employees with entitlement to limited time off for family emergencies.</p>
<b>Commencement Date</b>	<b>January 2020</b>
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<b>Who needs to know about this document</b>	All Staff
<b>Revision History</b>	
<b>Policy Author</b>	Human Resources Department
<b>Policy Owner</b>	HR Manager
<b>Approved</b>	

## Context

Force Majeure Leave is provided for in Section 13 of the Parental Leave Act 1998. This section of the Act entitles an employee to paid time off, where for urgent family reasons, owing to the injury or illness of an immediate family member, the immediate presence of an employee at the place where the person is, is indispensable. Under these circumstances, the employee is entitled to paid leave of up to three days in any 12 consecutive months, or five days in any 36 consecutive months. Part days shall be regarded as full days for the purposes of the maximum number of days one can take.

## Scope

The Parental Leave Act provides staff with an entitlement to limited time off for family emergencies caused by accident or illness. Employees are entitled to paid leave in the case of illness or injury to an *immediate family member*\* where the presence of the employee is indispensable.

The immediate family members covered by the Act include:

- a child/adoptive child of the employee;
- a spouse or 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;
- a person who resides with the employee in a relationship of domestic dependency.

### ***“Domestic dependency”***

*A person who resides with an employee is taken to be in a position of domestic dependency with the employee if, in the event of injury or illness, one reasonably relies on the other to make arrangements for the provision of care. The sexual orientation of the persons concerned is immaterial.*

## Entitlements

**An employee may not take more than 3 days of force majeure leave in any consecutive 3 months, or no more than 5 days in any 36 consecutive months.**

*Service requirement:* There is no service requirement for an employee to take Force Majeure Leave.

The nature of force majeure leave appears to mean that for urgent family reasons due to injury or illness of an immediate family member, which justifies it, cannot, by definition, be forecast or predicted in advance. Therefore, it must relate to the injury or illness of an immediate family member that is not foreseeable or otherwise generally predictable.

Injury in general terms speaks for itself but, having regard to the definition of force majeure leave, it must be of a substantial nature to require the immediate and indispensable presence of the employee concerned so that routine minor "injuries" are clearly not covered by force majeure leave.

Absence for part of a day is counted as one day of force majeure leave.

- The 'injury' must be of a substantial nature as to require the immediate and indispensable presence of the employee concerned.
- The 'illness' must be so significant as to need the immediate presence of a staff member concerned. Routine 'illnesses' which invariably occur are not covered.
- The injury or illness must be unforeseen and sudden in nature.
- The 1<sup>st</sup> day is only considered as Force Majeure and any subsequent days will normally require the staff member to use other forms of leave. In exceptional circumstances subsequent days may be considered as Force Majeure Leave provided that the staff member can demonstrate that the illness/injury has worsened.
- Your employment rights are unaffected during the period of force majeure leave.
- Medical appointments for which your presence is necessary and for which you have prior knowledge will not be deemed eligible for force majeure leave.
- Human Resources will have the final decision on any Force Majeure Leave application

The term "illness" is not qualified in any way in the legislation but it must be an illness that is so significant that it requires the immediate and indispensable presence of the employee concerned. Therefore, routine and predictable illnesses will not be covered by force majeure leave.

In addition, neither the magnitude nor severity of an illness in itself warrants force majeure leave. Ultimately, the unforeseen and sudden nature of the illness or condition will dictate the right to take force majeure leave.

## **Protection of employment rights**

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.

Force majeure leave cannot be treated as part of any other leave (eg, sick leave, adoptive leave, maternity leave, annual leave or parental leave) to which the employee is entitled.

## Notice

By definition, prior notice does not arise in the case of force majeure leave. However, an employee who has availed of the entitlement must as soon as is reasonably practicable thereafter, give written notice to his or her employer stating that he or she has taken such leave and the date on which it was taken. The employee must also include a statement of the facts entitling them to the leave.

The statutory regulations referred to above prescribe a formal Notice to Employer of Force Majeure Leave to be completed by an employee immediately following their having availed of the entitlement.

The statutory form of notice, which must be submitted, does not, in itself, absolve the employee of the obligation to inform the company of his or her absence as soon as possible in accordance with the normal company rules. It must be borne in mind however that the type of circumstances which might reasonably justify the taking of force majeure leave might also be expected to mitigate against the strict adherence to normal company policy in this regard.

## Applying for the leave

Due to the nature of force majeure leave, prior notice cannot be given.

However, you are required to inform IADT as soon as possible on the first day of absence. On return to work, you will need to discuss the reasons for taking the leave. You must also complete a **Force Majeure Leave Application Form** on return to work.

## Evidence

Evidence of the emergency will be required e.g. Hospital confirmation of the emergency.

## Abuse of Force Majeure leave

An employee must use their Force Majeure leave for the specific purpose to take care of the family member concerned. The Institute may terminate the leave if it has reasonable grounds to believe that it is being used for a purpose other than taking care the immediate family member concerned.

## Refusal to grant parental leave

Management may refuse, in writing, to grant force majeure leave, if it has reasonable grounds to believe that the employee is not entitled under the Act. The employee is permitted to make representations on the matter within seven days of the refusal, and the employer must consider the employee's submission, giving reasons for the refusal.

## Records

The Institute keep a record of *force majeure* leave taken by employees, specifying the period of employment of each employee and the dates and times of the leave taken.

## Contact Details

**For Queries within the HR Office:**

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