

Policy on Maternity Leave

Document Reference and Version Number	Version 3 – 26 th August 2019
Purpose	<p>All female employees who are pregnant, who have recently given birth, or who are breastfeeding up to the 26th week after the date of confinement are covered by the Maternity Protection Acts 1994 and 2004. In certain circumstances, male employees are also covered by this piece of legislation.</p> <p>This policy informs all employees covered by the Acts of their rights and entitlements while in the employment of the organisation. All full-time and part-time employees are covered by this policy.</p>
Commencement Date	September 2019
Date of Next Review	August 2021
Who needs to know about this document	All Staff
Revision History	
Policy Author	Human Resources Department
Policy Owner	HR Manager
Approved	

Context

The Maternity Protection Acts, 1994 and 2004 provide a number of basic rights to females in employment in respect of maternity leave and maternity related issues. Such rights include maternity and additional maternity leave, ante-natal classes and natal appointments, breast-feeding break entitlements, and the right to return to the same job or suitable alternative following a period of leave under the Acts. An employee's statutory and contractual rights are protected during any period of leave or time off under the Acts, subject to observation of statutory notification procedures.

In addition to facilitating the employee's rights under the Maternity Protection Acts, the Institute has a duty of care under Chapter 2 of Part 6 and the related Schedule 8 to the Safety, Health and Welfare at Work (General Application) Regulations 2007 (S.I. No. 299 of 2007) relating to pregnant, post natal and breast-feeding employees. A risk assessment must be carried out by each manager with the pregnant employee once notified of the pregnancy. If such a hazard is identified which cannot be removed, the Maternity Protection Acts provide that the employee may be placed on health and safety leave.

The Law

All female employees who are pregnant, who have recently given birth, or who are breastfeeding up to the 26th week after the date of confinement are covered by the Maternity Protection Acts 1994 and 2004.

The Maternity Protection Act 1994 implemented Council Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding. The Maternity Protection (Amendment) Act 2004 extended the provisions of this legislation.

The statutory instruments that are also applicable and are encompassed in this text include:

- S.I. No. 312 of 1994 - European Communities (Social Welfare) Regulations;
- S.I. No. 17 of 1995 - Maternity Protection (Disputes and Appeals) Regulations;
- S.I. No. 18 of 1995 - Maternity Protection (Time off for Ante-Natal and Post-Natal Care) Regulations;
- S.I. No. 19 of 1995 - Maternity Protection (Health and Safety Leave Certification) Regulations;
- S.I. No. 20 of 1995 - Maternity Protection (Health and Safety Leave Remuneration) Regulations;
- S.I. No. 134 of 1999 - Maternity Protection (Maximum Compensation) Regulations;
- S.I. No. 652 of 2004 - Maternity Protection (Amendment) Act 2004 (Commencement) Order;
- S.I. No. 653 of 2004 - Maternity Protection (Time off for Ante-Natal Classes) Regulations;
- S.I. No. 654 of 2004 - Maternity Protection (Protection of Mothers who are Breastfeeding) Regulations;
- S.I. No. 655 of 2004 - Maternity Protection (Postponement of Leave) Regulations;
- S.I. No. 131 of 2005 - Maternity Protection (Amendment) Act 2004 (Commencement) Order;
- S.I. No. 51 of 2006 - Maternity Protection (Extension of Periods of Leave) Order;
- S.I. No. 299 of 2007 - Safety, Health and Welfare at Work (General Application) Regulations.

Entitlements

1. Maternity Leave Entitlements

All women are entitled to 42 week maternity leave.

The 42 week entitlement is divided as follows:

- 26 weeks paid maternity leave
- 16 weeks unpaid maternity leave

Subject to certain qualifying provisions such leave normally attracts a payment either directly from the Institute or from the Department of Social Protection.

A minimum period of maternity leave must be taken beginning not later than 2 weeks before the end of the expected week of confinement and ending not earlier than 4 weeks after the expected week of confinement.

Lecturing staff may consider taking *Additional leave in lieu of unpaid statutory Maternity Leave*. Details of this leave will be given on request directly from the HR Office.

2. Maternity Pay Entitlements

Employees who pay Class D PRSI will be granted full pay from IADT while on Maternity Leave.

Employees who pay Class A PRSI must fill out an MB1 form (found on www.welfare.ie). You can now fill out this form on line once you have a Public Services Card.

You must download the MB2 form, which will be filled out by the HR Office to verify your entitlement to benefit.

You must also download the MB3 Form and give to your doctor to complete.

Both forms must be posted separately to:
Maternity Benefit Section,
Department of Social Protection,
McCarters Road,
Buncrana,
Co. Donegal

There maybe different rates of pay applicable in certain cases but the standard amount paid is €245.00 per week for 26 weeks.

In the case of salary paid staff this payment will be paid to the Institute by the Department of Employment Affairs and Social Protection directly.

In all other cases the payment will be paid directly to the staff member's bank account by the Department of Employment Affairs and Social Protection.

4. Maternity Leave Provisions

- 4.1 Employees are entitled to paid leave for 26 consecutive weeks, commencing at least 2 weeks before the expected date of confinement and with at least 4 weeks remaining of leave after date of the birth of the child;
- 4.2 Where an employee gives birth prior to their agreed commencement date, they should notify their Head of Function and/or HR Administrator as soon as possible informing the Institute that they have given birth and the date the baby was born. In such circumstances, Maternity leave will begin on the date the baby was born.
- 4.3 Employees will not qualify for sick leave while on Maternity Leave – you can only be on one type of leave at any one time.
- 4.4 Employees are not eligible to work while in receipt of statutory maternity pay.
- 4.5 Premature babies born on or after 1st October 2017 will receive an increase in the duration of their maternity leave and associated maternity benefit to take account of the premature birth of the child. The employee must notify the HR Office in writing of their change in circumstances as soon as it is practically possible but no later than 14 days following the birth of the baby.

5. Your Rights under Maternity Leave Legislation

- 5.1 In order to qualify for Maternity Leave and Maternity Pay, and to safeguard the right to return to work the employee must notify HR by providing them with the following:
 - At least 4 weeks written notice of intention to take Maternity Leave. The HR Department would welcome staff wishing to take Maternity Leave to try and give notice of at least 16 weeks before the proposed commencement date for the leave.

This will allow both the staff member and the Institute support each other to:

 - Assess the PRSI Contribution History, Nature of Contract with IADT and how both will impact on the level of payment that may arise in your particular circumstances.
 - Consult with the staff member and the Line Manager and put in place the appropriate substitution arrangements.
 - Supply a medical certificate confirming your pregnancy which should specify your expected date of confinement.

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- Inform your line manager as early as possible of your pregnancy so that a risk assessment can be undertaken to ensure that your work environment is safe and supportive of all your pregnancy requirements during this time.
- 5.2 An additional period of 16 weeks unpaid leave may be taken immediately following the Maternity leave period and should be applied for, in writing not later than 4 weeks prior to the employee's intention to take Additional Maternity Leave. An employee's absence from work on additional Maternity leave will count for all employment rights associated with the employment such as annual leave and seniority (except remuneration and superannuation benefits). If you terminate Additional Maternity Leave due to illness and transfer to sick leave, you will forfeit your balance of untaken Additional Maternity Leave.
- 5.3 All Pregnant employees irrespective of length of service have a statutory right to reasonable paid time off to keep appointments for antenatal care prescribed by a doctor, midwife or health visitor. Employees are expected to inform their line manager of such appointments as early as possible (at least a week in advance). Evidence of appointments may be requested and where possible such appointments would be scheduled at the beginning or the end of the working day to minimise absences.
- 5.4 Expectant fathers are entitled paid time off to attend the last 2 antenatal classes before the birth of the baby on a once off basis (see also Paternity Leave entitlements for other paid time off for fathers).
- 5.5 If your baby is born late and you have less than 4 weeks remaining of your Maternity Leave you are still obliged to take 4 weeks after the birth. This is called **Extended Maternity Leave** and is governed by the same criteria as Maternity Leave. It does not affect your right to take Additional Maternity Leave.
- 5.6 You may postpone maternity leave and additional maternity leave in the event of the hospitalisation of the adopted child for a maximum of 8 weeks. Leave must be resumed not later than 7 days after the child has been discharged from hospital.
- 5.7 Subject to the employers agreement the employee may terminate unpaid additional Maternity leave in the event of illness thereby allowing the employee to transfer onto paid sick leave, subject to the conditions of the Sick Pay Scheme.
- 5.8 There is no entitlement to statutory maternity leave for a miscarriage occurring up to and including the 24th week of pregnancy. Any confinement occurring after the 24th week, even if it does not result in a live birth, is covered by this Act.
- 5.9 Fathers have no independent right to Maternity leave. However in the event that the mother dies during maternity leave or additional maternity leave the father is entitled to the remainder of the mothers leave.

This leave will commence 7 days after the death of the mother and is conditional to giving the employer written notification no later than the day he wishes to take the leave and providing the employer with a copy of the mother's death certificate if requested.

- 5.10 A Breastfeeding mother is entitled up to the 26th week after the date of confinement, Staff have the option to either breastfeeding breaks in the Wellbeing Room in the Backlot Building which has suitable facilities including a fridge or a reduction in working hours of 1 hour per day, without loss of pay. Breaks may be taken in the form of one 60-minute break, two 30 minute breaks, three 20 minute breaks or as agreed between employer and employee.

6. Annual Leave, Public Holidays and Institute Closure Days

Employees will continue to accrue annual leave during paid and unpaid maternity leave. They will also accrue any Institute Closure Days that occur during maternity leave. The way in which staff take this leave is different depending on whether you work in a Support Role or and Academic Role.

Professional, Management and Support Staff:

It is not possible to take annual leave whilst on maternity leave. This means that any annual leave accrued by support staff during this period must be taken at any alternative date as detailed below:

The Institute Closure Days at Christmas will be included in the maternity leave dates if the maternity leave spans over this time period.

The Institute's annual leave year runs from 1 September to 31st August.

Any annual leave accrued before maternity leave starts should tagged on to the end of the Paid and unpaid maternity leave period.

Any annual leave or Institute Closure Days that will accrue whilst on maternity leave *during the annual leave year in which maternity leave begins* should be taken:

either before maternity leave starts (ie it is taken in the same annual leave year);

or immediately on return from maternity leave, thereby effectively extending the employee's actual physical return to work.

Any annual leave accrued whilst on maternity leave *during the annual leave year in which the employee returns* may be taken:

either immediately on return from maternity leave, thereby effectively extending the employee's actual physical return to work (even if this crosses into a new annual leave year);

or at some other mutually agreed time during the annual leave year in which the employee returns.

Any public holidays that fall during the twenty six (26)-week period of paid maternity leave will be added to the end of the period of maternity leave. Holiday entitlements will be calculated as if the employee was at work. Employees availing of additional unpaid maternity leave will be entitled to any additional annual leave and payment of public holidays which fall within the period of unpaid maternity leave.

Academic Staff:

In accordance with Circular Letter 0022/2013 states that statutory annual leave occurring while on maternity leave or adoptive leave will be comprehended through days at Easter, Summer and Christmas when there are no lectures/ teaching/ assessments as per Institutes' Academic Calendars (i.e. outside of term time). This will not affect the statutory entitlement to 42 weeks Maternity Leave (26 weeks Paid and 16 weeks unpaid)

7. Protective Leave & your Contract of Employment

7.1 The contract of employment continues throughout maternity leave. Continuity of service will not have been broken by an unpaid period of absence under the maternity provision, therefore entitlement to periods of notice, holidays and sick leave which accrued at the beginning of maternity leave will not be lost.

7.2 An employee who is absent on maternity leave will be treated as if she has not been absent. At the end of the Maternity Leave, she will be entitled to return to her original job under terms and conditions no less favourable than those that would have applied if she were not absent. However, the employee is obliged to give 4 weeks' notice of her return to duty to her line manager.

All permanent and CID contract holders have the right to return to work to the same or similar role and under the same employment contact as held previous to their taking Maternity Leave. If alternative employment is offered, it cannot be less favourable than a previously held contract.

The contracts of fixed term and Temporary staff will cease with the expiry date of their contract of employment at IADT, however such staff maybe eligible to continue to claim benefit from the Department of Social Welfare.

7.3 Any period of probation, training or apprenticeship will be suspended for the duration of the adoptive leave to be completed when the employee returns to work.

8. Pension

While on maternity leave, employees will continue to be a member of the relevant pension scheme. During the paid maternity leave, an employee's service continues to be reckonable. If an employee avails of the additional unpaid maternity leave this will not be reckonable for superannuation purposes. Therefore, this unpaid absence will not count as service.

9. Health and Safety

In the workplace there may be risks that may affect a pregnant employees health and safety and that of the unborn child. There are specific regulations that require the Institute as an employer to protect the health and safety of new and expectant mothers.

Under Safety, Health and Welfare at Work Act 2005 Pregnant Employees Regulations, a risk assessment/job assessment must be conducted at departmental/functional level in relation to the impact of work on the person/unborn child and retained on Departmental Records.

Upon confirmation of pregnancy, HR will then issue the employee with a copy of IADT's Pregnancy Job Risk Assessment Form. This risk assessment must be completed in conjunction with the line manager and submit to the HR Office.

The HR Office will submit the completed form keep this form on record, however if any issues are identified HR will send the employee to the Institute's Occupational Health Physician who will advise if any modifications are required to the work activities during pregnancy or whilst nursing a new born child.

Employees may also be entitled to Health & Safety Leave if they are exposed to certain risks in the workplace during pregnancy or while breastfeeding. During this leave the employee may be entitled to Health & Safety Benefit which is a weekly payment for women who are granted Health & Safety Leave under the Maternity Protection Act, 1994.

10. Communications

It is recommended that employees and line managers make arrangements to maintain reasonable contact during maternity leave in order to keep the employee informed of important developments at work, discuss plans for returning to work, etc. Individuals should also ensure that they keep themselves informed as appropriate (e.g. by regularly reviewing IADT's Current Vacancies web page).

Where staff wish to be included in additional communications for events on campus and other opportunities to pop in for coffee then they can email HR with their request.

10. Returning to Work

- Employees may exercise the right to return to work at any time during the period of leave, except that they may not return within two weeks of the birth of the child. They will have the right to return to the job or comparable job to that which they were employed with the same terms and conditions as if they had not been absent. If they return prior to the end of the maternity period they should give at least 4 weeks notice, in writing, of their intended date of return.
- Where staff request returning to work on the basis of an alternative working pattern or a request to adjust hours of work, the Institute will give appropriate consideration to such requests, on either a temporary or permanent basis. Staff should submit a request in writing as early as possible, but not later than 8 weeks before the notified date of return to work. Any change must be discussed and agreed with their manager. The possibility of flexible working arrangements, which may include arrangements for establishing a job share or taking parental leave, may be discussed with their manager in conjunction with Human Resources.
- When an employee is on protective leave, such as maternity leave or additional unpaid maternity leave, the Unfair Dismissals Acts 1977 to 2015 provide that a specified purpose contract may be given to replacement staff. In such situations, the unfair dismissals legislation will not apply to a termination of the contract of the temporary employee when the permanent employee returns.

11. DISPUTE PROCEDURES

A staff member or the employer can refer a dispute about rights or entitlements under the Maternity Protection Acts to The Workplace Relations at www.workplacereleations.ie
Tel: 1890 808090

A staff member may bring a claim under the Employment Equality Acts 1998- 2011 for discriminatory dismissal on the grounds of gender or in relation to pregnancy or maternity leave to the Workplace Relations (which covers The Rights Commission and the Equality Tribunal) or to the Circuit Court.

For further information please see the Equality Authority information booklet on Employment Equality Acts 1998 -2011, visit www.equality.ie or www.workplacereleations.ie

Records

The Institute keep a record of Maternity leave by employees, specifying the period of employment of each employee and the dates and times of the leave taken. Unpaid Maternity leave records must be maintained until the person is due to retire as unpaid leave periods are not pensionable.

Contact Details

For Queries within the HR Office:

Ms Rebecca Downes,
HR Office,
IADT

Rebecca.downes@iadt.ie

Phone: 01 2394618