

Policy on Paternity Leave

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| Document Reference and Version Number | |
| Purpose | To inform staff of their rights under Paternity Leave and Benefit Act & guide them through the process required to avail of this paid leave period. |
| Commencement Date | January 2020 |
| Date of Next Review | January 2021 |
| Who needs to know about this document | All Staff |
| Revision History | |
| Policy Author | Human Resources Department |
| Policy Owner | HR Manager |
| Approved | |

Context

This policy was developed to support staff throughout the process of applying for Paternity Leave and to inform them of their rights under the **Paternity Leave and Benefit Act 2016** which commenced on 1 August 2016.

The Act enables a *relevant parent** to take two weeks paid paternity leave, which must commence within the first 26 weeks of the birth/adoption of a child. Subject to eligibility and notification criteria being met, paternity leave will apply to births/placements that take place on or after the 1 September 2016.

**Relevant parent in relation to a child, as meaning a person (other than the mother of the child) who is;*

(a) In the case of a child who is, or is to be, adopted –

- where the child is, or is to be, adopted jointly by a married couple of the same sex, the spouse chosen by that couple to be the relevant parent for the purposes of this or*
- in any other case, the spouse, civil partner or cohabitant, as the case may be, of the adopting mother or sole male adopter of the child,*

Or

(b) In any other case;

- the father of the child,*
- the spouse, civil partner or cohabitant, as the case may be, of the mother of the child, or*
- a parent of the child under section 5 of the Children and Family Relationships Act 2015 where the child is a donor-conceived child within the meaning of Part 2 of that Act*

The law

The Paternity Leave and Benefit Act 2016 was signed into law on the 27 July and commenced on 1 August 2016 by the **Paternity Leave and Benefit Act 2016 (Commencement) Order 2016**.

The Act entitles certain employees who are relevant parents in relation to a child to a period of paternity leave for the purposes of enabling the employee to provide, or assist in the provision of, care to the child or to provide support to the relevant adopting parent or mother of the child, as the case may be, or both.

A 'relevant parent' in relation to a child shall be entitled to **2 weeks paid paternity leave** to enable him or her to provide, or assist in the provision of, care to the child or to provide support to the relevant adopting parent or mother of the child, as the case may be, or both.

An employee's statutory and contractual rights are protected during any period of paternity leave under the Act, subject to observation of statutory notification procedures.

Paternity leave can be taken by one person only, save in the case of adoption, where the Act allows for circumstances where the father will have taken paternity leave, by ensuring that the adoptive father can subsequently also take paternity leave.

Date of confinement

Under the Social Welfare (Consolidation) Act 2005 "confinement" means labour resulting in the issue of a living child, or labour after 24 weeks of pregnancy resulting in the issue of a child whether alive or dead.

An employee's "date of the confinement" is taken as referring to the date on which the child is born, not the date on which the labour begins.

Entitlements

A relevant parent is entitled to 2 weeks** leave from their employment. The leave must be used to enable them to provide, or assist in the provision of, care to the child or to provide support to the relevant adopting parent or mother of the child, as the case may be, or both.

****Note;**

- i. The entitlement is not retrospective – the entitlement will apply (a) in the case of a child who is, or is to be, adopted where the day of placement in respect of the child falls on or after 1 September 2016, or (b) where the date of confinement in respect of the child falls on or after 1 September 2016.*
- ii. The leave cannot be taken in a fragmented manner, it must be taken as a single period of 2 weeks*

When can paternity leave be taken?

The period of paternity leave shall commence on such day as the relevant parent selects their notification, being not earlier than the date of confinement or day of placement, as the case may be, and not later than 26 weeks after such date or day.

This would mean that a couple could chose to avail of paternity leave at the time of the birth, or, for example, at the end of the period of maternity leave or at any time in between.

Postponement of paternity leave

The Act allows an employee to postpone a period of paternity leave where the day of placement is postponed or the date of confinement occurs after the date selected by a relevant parent in their notification and the relevant parent shall be entitled to select another date on which paternity leave shall commence.

The Act does not allow the Institute to postpone a period of paternity leave.

Postponement of paternity leave in the event of sickness of relevant parent

The Act provides for the postponement of paternity leave that has been applied for, but not yet taken, in the event of the sickness of the relevant parent. Where the relevant parent has given notice of an intention to take paternity leave but becomes sick prior to the commencement of their paternity leave, they may by notice in writing given to the Institute HR Department as soon as reasonably practicable after becoming sick postpone the taking of leave to such time as the relevant parent is no longer sick.

The period of leave can be postponed to a later time but must end not later than 28 weeks after the date of confinement or day of placement. Any request to postpone the leave must be accompanied by a medical certificate.

Where the employee takes the postponed period of leave, they must notify the Institute in writing as soon as reasonably practicable as but no later than the day on which the postponed leave begins of their intention to commence such leave.

Postponement of paternity leave in the event of the hospitalisation of the child

The Institute will agree to a postponement of leave or part of the leave should the child be hospitalised a relevant parent may request in writing to postpone the leave or part of it as may be appropriate.

An employer who receives a request may agree to postpone the leave and if the employer does so the relevant parent shall continue to work or shall return to work on a date agreed by the parties that is not later than the date on which the leave is due to end in accordance with the notification given to the employer and the leave shall be postponed with effect from the date agreed by the parties. The relevant parent will be entitled to the postponed leave to be taken in one continuous period commencing not later than 7 days after the discharge of the child from hospital or such other date as may be agreed upon between the parties.

Entitlement to postponed leave shall be subject to a relevant parent having notified the Institute in writing as soon as reasonably practicable as but not later than the day on which the leave begins of their intention to commence such leave.

The Institute following a request to postpone shall notify the relevant parent in writing of the its decision in relation to the request as soon as reasonably practicable following the receipt of it.

Miscarriage

There is no entitlement to statutory paternity leave for a miscarriage occurring up to and including the 24th week of pregnancy. The Acts cover any confinement occurring after the 24th week even if it does not result in a live birth, and the employee retains their entitlement of paternity leave.

Multiple Births

Only one 2-week paternity leave applies in the case of multiple births or where 2 or more children are adopted.

Public Holidays & Annual Leave

PMASS Staff

Where a public holiday falls during paternity leave the day will be tagged on to the end of the paternity leave period. Annual leave accrues in the normal way during a period of paid paternity leave and can be taken in the normal way.

Academic Staff

In the case of Academic Staff, public holidays and annual leave will be comprehended during Christmas, Easter and Summer periods.

Fixed term employee

Where a fixed term contract is due to expire during the paternity leave period, the protection under the Act and entitlement to paternity leave will also expire on that date.

Abuse of paternity leave

Where an employer has reasonable grounds for believing that an employee who is on paternity leave is not using the leave for the purpose for which it is intended, the employer may, by notice in writing given to the employee, terminate the leave and the notice shall contain a statement in summary form of the grounds for terminating the leave and shall specify the day by which the employee must return to work.

Voidance of certain purported terminations of employment

The Act states that any notice of termination, purported termination or suspension of employment of an employee while the employee is absent from work on paternity leave shall be void. Furthermore, the Act provides for an extension of certain notices of termination of employment or of certain suspensions. Should the Institute issue notice of dismissal, and subsequently receives notice of an intention to avail of paternity leave, where that notice is due to expire during the period of paternity leave, the notice must be suspended and extended by that period of absence.

Protection of employees from penalisation

The Institute will not penalise an employee for proposing to exercise or having exercised his or her entitlement to paternity leave. Where penalisation constitutes a dismissal, an employee can bring a claim under the Unfair Dismissals Acts 1977-2015, as section 33 of the Act amends section 6 of the Unfair Dismissals Act 1977, to provide that the dismissal of an employee will be unfair where it results wholly or mainly from the employee exercising or proposing to exercise a right under the Paternity Leave and Benefit Act 2016 to paternity leave or transferred paternity leave within the meaning of the Act.

Procedure for Notification

Entitlement to paternity leave shall be subject to a relevant parent having notified the Institute in writing of their intention to take paternity leave, as soon as reasonably practicable but not later than 4 weeks before the expected day of placement, or not later than 4 weeks before the expected week of confinement of the expectant mother. The Act contains exceptions to the 4 weeks notice requirement in limited circumstances.

In the first instance, the employee should notify their Department Head/Manager in writing of their intention to take paternity leave. Notice should be a minimum of 4 weeks so that appropriate arrangements can be made for the 2-week period of leave. Please note that there will be no replacement of staff for this period of leave.

The employee then must fill out the *Notification of Intention to take Paternity Leave* to for the HR department confirming their dates for leave and the agreement to furnish HR with a copy of the child's birth certificate and/or placement notice. Documentation should be submitted prior to leave where possible. In the event that the baby is not yet born, confirmation of the confinement date will suffice.

Payment Information

Continuation of salary is not a statutory entitlement and is dependent on the employees compliance with the terms and conditions of this policy.

The Institute will continue to pay the employee normal pay and the social welfare allowance will be paid directly to the Institute. All staff who qualify for paid paternity leave and are paying Class A PRSI, and hold a Public Services Card can apply on line for Paternity leave.

The applicant must download the PB2 form from www.welfare.ie The PB2 form will be completed by the Institute in order to certify that you are entitled to Paternity leave. The PB3 needs to be completed by the doctor.

In order to apply for Paternity Benefit an employee must have a Public Services Card
If you are not eligible for paid paternity leave and are paying PRSI contributions Class A, you should apply for Paternity Benefit directly to the Department of Employment Affairs & Social Protection (Form PB 2).

Under Department of Employment Affairs & Social Protection regulations, PRSI contributors at the modified rate (Class D) have no entitlement to paternity benefit. Paternity benefit payment is a taxable income.

Further details regarding paternity benefit are available from the Department of Employment Affairs & Social Protection:

Paternity Benefit Section

Department of Employment Affairs & Social Protection McCarter's Road
Buncrana Donegal Ireland
Tel: (01) 471 5898/ 1890 690 690
<http://www.welfare.ie>

Return to work

Employees returning from paternity leave have a right to return to work in the same job, under the same contract of employment. They are also entitled to work under terms and conditions no less favorable than if they had not been absent from work.

The Institute will not accept any resignation or issue any notice of dismissal (to include redundancy notice) during the period of paternity leave and protective leave.

Contact Details

For Queries within the HR Office:

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