

Policy on Parental Leave & Force Majeure Leave

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Purpose	This policy informs all employees covered by the Parental Leave Acts 1998 to 2019 of their rights and entitlements while in this employment. This policy covers all part-time and full-time employees in the organisation, provided that they meet the conditions outlined below. This policy provides parents with a temporary unpaid break from work to take care of young children.
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Who needs to know about this document	All Staff
Revision History	
Policy Author	Human Resources Department
Policy Owner	HR Manager
Approved	

Context

The Parental Leave Acts 1998 to 2019 enable a relevant person to avail of 22 weeks unpaid leave from employment. There is an automatic entitlement to take this leave in a continuous block of 22 weeks or two blocks of a minimum of six weeks each (Leave will increase from 22 weeks to 26 weeks with effect from the 1st September 2020).

The Law

Parental leave is statutory unpaid leave from work, taken by parents to look after their young children. This section outlines the legislation that enables men and women to avail of this leave and the provisions for limited paid leave to enable employees to deal with family emergencies.

The EU Directive (96/34/EC) on parental leave sets minimum standards to be met by Member States. This Directive was enshrined in Irish law in the Parental Leave Act 1998, which was amended in 2006 by the Parental Leave (Amendment) Act 2006. The EU Directive 96/34/EC was repealed by the EU Directive 2010/18/EU which revised the framework agreement on parental leave. The new Directive was transposed in Irish Law through S.I No.81 of 2013 - European Union (Parental Leave) Regulations, 2013. Under parental leave legislation parents may avail of 18 weeks unpaid leave from employment to care for their children, subject to certain conditions. A provision for limited paid leave (force majeure leave) also enables employees to deal with immediate family emergencies.

The statutory instruments that are also applicable and encompassed in this text include: •S.I. No. 454 of 1998 – Parental Leave (Notice of Force Majeure Leave) Regulation;

- S.I. No. 6 of 1999 – Parental Leave (Disputes and Appeals) Regulation;
- S.I. No. 34 of 1999 – Parental Leave (Maximum Compensation) Regulation;
- S.I. No. 231 of 2000 – European Communities (Parental Leave) Regulation;
- Civil Law (Miscellaneous Provisions) Act 2008;
- S.I. No.81 of 2013 - European Union (Parental Leave) Regulations, 2013;
- S.I. No. 356 of 2019 - Parental Leave (Amendment) Act 2019 (Commencement) Order 2019.

Entitlements

You are entitled to 22 weeks unpaid parental leave to enable you to take care of the child concerned.

- The leave must be taken before the child reaches their thirteenth birthday (CL0034/2012). In the case of a child with a disability the leave must be taken before the child reaches 16 years

of age (The disability provision applies only where the child is in receipt of Domiciliary Care Allowance or would be in receipt of it if they satisfied the means test for the Allowance).

- Employees who previously availed of 18 weeks parental leave and whose child is under 13 years of age are entitled to a further 4 weeks leave which can be taken in blocks comprising of no less than one week

- Employees who have an outstanding balance of their 18 weeks leave and whose child is under 12 years of age are entitled to take the balance of the untaken weeks along with the additional 4 weeks, in blocks of no less than one week

- Employees who have not previously availed of parental leave in relation to the child concerned are required to take their parental leave for the child in question in a continuous block of 22 weeks, or two blocks of six or more weeks with a minimum of 10 weeks between each block.

- In the case of an adopted child, who is under 11 years at the time of adoption, the leave must be taken before the child reaches 13 years of age. If the child is aged between 11 and 13 years, at the time of adoption, the leave must be taken within two years of the adoption order.

- Each parent has a separate entitlement to parental leave from his or her job, up to 14 of their 22 weeks of parental leave may be transferred between parents working in the same company with the agreement of the employer.

- Where a parent has more than one child, no more than 22 weeks' parental leave may be taken in any 12-month period, except in the case of multiple births.

- You must have one year's continuous service with the organisation before you are entitled to take parental leave. However, if you have more than three months service, and where your child is approaching the age threshold, you will be entitled to one week's parental leave for every month of continuous employment completed with the organisation.

- Any period of probation, training or apprenticeship will be suspended while you are on parental leave and will be completed on your return.

- Full-time and part-time staff (pro rata) can avail of the entitlement once they fulfil the above criteria.

- Right to request a change to working hours or working patterns on return from parental leave.

Taking of parental leave

Employees who have not previously availed of parental leave in relation to the child concerned., as of the 19th July 2019 / the commencement of the Act, may take the parental leave as a continuous block of 22 weeks, or two blocks of six or more weeks with a minimum of 10 weeks between each block.

Employees in scope for the additional 4 weeks may take the leave in blocks comprising of no less than one week.

The Institute will where possible facilitate leave being broken up into days but this is at the discretion of management and the needs of the Institute.

Fragmentation is based on the following calculation of a day:

Staff Contract Type	Contracted Hours per week	Hours per day	Parental leave Day
Professional	37	7.4	7.4
Professional	35	7	7
Professional	32	6.4	6.4
Technical and Maintenance	39	7.8	7.8
Academic: Assistant Lecturer	18 class contact hours	3.6	3.6
Academic: Lecturer	16 class contact	3.2	3.2

Please note that the Institute will give due consideration to all applications on their individual merits but will reserve the right under the Act to determine how the leave can be broken up in accordance with what best suits the business needs.

Employment protection

Employees' statutory and contractual rights, with the exception of remuneration, are protected under the Parental Leave Acts 1998 to 2019. During any period of parental leave or *force majeure* leave under the Acts, an employee remains in the employment of the Institute, and as such, they retain all employment rights (except the right to remuneration and superannuation benefits). The absence counts as *reckonable service* for the purposes of annual leave, increments, seniority and redundancy.

If an employee

- a. exercises, or proposes to exercise his or her right to parental/*force majeure* leave and is dismissed, or
- b. is not permitted by the employer to return to work, and is entitled to do so, following a period of parental leave,

then he or she will be regarded as having been unfairly dismissed for the purposes of the Unfair Dismissals Acts 1977 to 2015, unless there are substantial grounds justifying the dismissal.

Employees also continue to accrue both annual leave and public holiday entitlements during parental leave.

Probation, training and apprenticeship

Any period of probation, training or apprenticeship is suspended by the employer for the duration of the parental leave period and will be completed when the employee returns to work.

Suspension due to sickness of parent

If a relevant parent becomes sick and is unable to care for the child, he or she may suspend the commencement, or suspend taking the balance, of the leave until he or she recovers. If solely as a result of the postponement or suspension of the taking of parental leave, the employee's child reaches the age threshold, the employee will be entitled to avail of the remainder of his or her parental leave, which he or she would have been entitled to had the leave not been suspended or postponed.

An employer may request the employee to furnish "relevant evidence" of his or her sickness. This would consist of a medical certificate signed by a medical practitioner, stating that the employee is, by reason of the sickness specified in the certificate, unable to care for the child.

Postponement by the employer

Management may decide to postpone the parental leave, for up to six months, if satisfied that granting the leave would have a substantial adverse effect on the operation of the business. This could be due to seasonal variations in the volume of work or the unavailability of staff to carry out the duties of the employee.

Postponement must be in writing, no later than four weeks before the proposed date of commencement of the leave, specifying the grounds for the postponement. Consultation with the employee must take place before any notification of postponement (see sample form in *Sample documents*).

Limitations on postponement of leave

The Institute may postpone the leave only once in respect of each particular child. However, if the reason for the postponement is based on seasonal variations in the volume of work, the leave may be postponed for not more than two periods of six months, in respect of the same child.

Parental leave cannot be postponed by the Institute once both parties have signed a confirmation document. If solely as a result of postponement, the child concerned will reach the age threshold before the end of the leave, the employee retains the entitlement to take the parental leave.

Abuse of parental leave

An employee must use their parental leave for the specific purpose to take care of the child 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 of the child concerned.

However, before terminating the leave, the employer must notify the employee, in writing, of its intention to do so, and invite the employee to make representations on the matter within seven days. The employer is obliged to consider the employee's submission before deciding whether to terminate the leave.

The employee must be notified, in writing, specifying the grounds and the date of the termination, which must be no earlier than seven days after the date when notification of termination is given. In a case where the leave is terminated and the employee returns to work, the period between the date of the employee's return to work and the date on which the leave would have ended if the employee had completed the leave, does not count as parental leave.

Refusal to grant parental leave

Management may refuse, in writing, to grant parental leave, if it has reasonable grounds to believe that the employee is not entitled under the Acts. 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.

Right to request change to working hours or pattern of work

An employee who is returning from parental leave may request a change in their working hours or pattern of work, for a set period of time. Importantly, the Institute must consider (having regard to his or her needs and the employee's needs) and respond to the request but has no obligation to grant same. Furthermore, the Institute has no obligation to furnish the employee with reasons as to why the request has been refused.

An employee must provide the Institute's HR Office with a request to change working hours and/or patterns no later than six weeks before the proposed commencement of the set period concerned and a response from HR to the employee must be sent not later than four weeks after the receipt of the request which must either inform the employee that the request has been refused or granted.

Where the request is granted an agreement must be signed by both parties setting out the changes to the employee's working hours and/or patterns and the date of commencement and duration of the set period as may be agreed between them.

Right to return to work

There is a right to return to work for employees who have been on parental leave in the same job, under the same contract of employment, or under terms or conditions not less favourable than those that would have been applicable if there had been no absence from work.

If there is an interruption or cessation of work in the employment (e.g., an industrial dispute or a lay-off) that makes it unreasonable to expect the employee to return to work on the day specified, he or she may return when, or as soon as reasonably practicable after, work resumes.

Alternative work

The right to return to work is qualified. If it is not reasonably practicable for the Institute to

permit an employee to return to the same job, under the same or a similar contract, suitable alternative work under a new contract may be offered. However, the terms and conditions of the new contract must not be substantially less favourable than those previously in place and the work must be “appropriate” for the employee. This clause will only be used in very specific situations such as but no limited to Redundancy and/or a reorganisation amounting to redundancy.

Notification and confirmation procedures

Employees must give written notice to the Institute of their intention to take parental leave, not later than six weeks before the proposed commencement of the leave.

If the parental leave is taken in separate periods of six weeks or more, employees may give one notice containing the dates of both periods of parental leave, or two separate notices containing the date of the relevant period of parental leave. Both parties must retain a copy of the notice.

The notice must include the following details:

the date on which the employee intends to commence the leave;
the duration of the leave;
the manner in which the employee proposes to take the leave;
the employee’s signature.

The Institute will require an employee to provide evidence of his or her entitlement to parental leave (eg, the child’s date of birth, the date of the adoption order, or evidence of parentage).

Once notification of the intention to take parental leave has been made, the employee and Institute must prepare a confirmation document. This document must be prepared no later than four weeks before the leave is due to begin and must include the following details:

- the date on which the leave will commence;
- the duration of the leave;
- the manner in which the leave will be taken;
- Signatures of the employer and employee.

Once both parties have signed a confirmation document, it cannot be altered unless both parties agree to the change. An employee may revoke, in writing, his or her notice of intention to take parental leave at any time before the confirmation document is signed.

Once the confirmation form is signed the HR Department will inform payroll.

Records

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

Force majeure leave

Force majeure leave is short-term paid leave that employees can avail of to enable them to deal with family emergencies, resulting from the sudden injury or illness of a family member, once certain conditions have been met.

Entitlement

An employee is entitled to paid leave owing to the urgent illness or injury of:

- a child (natural or adopted);
- a spouse/partner;
- a person to whom he or she is in loco parentis;
- a brother/sister;
- a parent/grandparent;
- a domestic dependent.

This entitlement applies only when the immediate presence of an employee is indispensable, at the place where the ill/injured person is located.

Your entitlement to force majeure leave is limited to three days in any 12 consecutive months or five days in any 36 consecutive months. There is no service requirement for an employee to avail of force majeure leave.

Applying for the leave

Due to the nature of force majeure leave, prior notice cannot be given. However, you are required to inform the organisation 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 the a force majeure notice document on return to work. Evidence of the emergency will be required e.g. Hospital confirmation of the emergency.

Your manager will conduct a review of the application and will confirm whether or not the leave will be treated as 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.

Contact Details

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