

ANNUAL LEAVE

Holiday pay is earned against time worked. All employees, full-time, part-time, temporary or casual earn holiday entitlements from the time work is commenced. The Organisation of Working Time Act 1997 provides that most employees are entitled to four weeks annual holidays for each leave year with pro-rata entitlements for periods of employment of less than a year.

The Act sets out 3 mechanisms for **calculating the annual leave entitlements**.

Employees are entitled to whichever of the following is the greater;

- A. 4 working weeks in a leave year in which the employee works at least 1,365 hours (unless it is a leave year in which s/he changes employment)

Or

- B. One third of a working week for each month in the leave year the employee works at least 117 hours

Or

- C. 8% of the hours an employee works in a leave year (but subject to a maximum of 4 working weeks). This is related to part-time employees.

* An employee who has worked for eight or more months must be allowed an unbroken period of two weeks holidays.

Re- Part-time employees

Note 1. Time spent on annual leave is deemed to be time worked for the purposes of the Act.

Note 2. Overtime hours should be included for the purposes of calculating entitlement to annual leave.

Examples for A & B

The annual leave entitlement of an employee who works a 39-hour week is computed as follows:

$$\begin{aligned} 39 \times 1/3^{\text{rd}} \times 12 &= 156 \text{ hours} \\ 156 / 7.8 &= 20 \text{ annual leave days} \end{aligned}$$

The annual leave entitlement of an employee who works a 33-hour week is computed as follows

$$\begin{aligned} 33 \times 1/3^{\text{rd}} \times 12 &= 132 \\ 132 / 6.6 &= 20 \text{ annual leave days} \end{aligned}$$

Note: You should check to see if your company is covered by a Registered Agreement or Joint Labour Committee that may have set additional leave over and above the Organisation of Working Time Act 1997. See section 11 on “Industrial Relations Bodies”.

Employees who Work Irregular Hours

In the case of employees who work irregular hours, their holiday entitlements should be converted in hours. This is calculated by taking the normal weekly working hours divided by 5 and multiplied by the annual leave entitlement for that employee.

Example

If an employee works a 39-hour week he/she is entitled to 156 hours per annum
i.e. 20 (days) x 7.8 hours = 156 hours

Each time an employee takes annual leave the number of hours s/he would have worked on the days taken should be added up to determine the amount of annual leave taken.

Note: In calculating how many days holidays to which an employee may be entitled, employers should include all hours worked including time spent on annual leave, maternity leave, parental leave, force majeure leave, adoptive leave and the first 13 weeks of carer's leave. Employees do **not** accrue annual leave while on sick leave, occupational injury, temporary lay-off or career break. Please note however that if an employee, while on annual leave becomes ill and this illness is covered by a medical certificate it does not count as part of their annual leave.

Timing of Annual Leave

Under the Organisation of Working Time Act 1997, the onus is on the employer to ensure that employees can avail of their annual leave entitlement in the leave year to which it relates.

- The time at which annual leave is taken is at the discretion of the employer, having regard to work requirements and subject to his/her taking into account the employee's needs to reconcile work and family responsibilities, and the opportunities for rest and recreation available to the employee.
- The employer must, if leave dates are being nominated by the Company, consult with the employee or their representative 1 month prior to the commencement of holiday leave.
- Annual leave must be given to the employee within the leave year, or with the employee's consent within 6 months of the following leave year. The employer has the responsibility to ensure that the employee takes his/her full statutory leave within the appropriate period, or with the employee's consent within 6 months of the following leave year.
- Employees may carry leave forward to the following year once the employer gives consent.
- Following 8 months work, the employee is entitled to an unbroken period of 2 weeks, which may include one or more public holidays. This provision may vary in the case of an employment regulation order, registered employment agreement, collective agreement or any other agreement between the employer and employee.

Payment for Annual Leave

Payment for annual leave must be given in advance of the employee taking leave, this would include any regular bonus or allowance, but excludes overtime. Employees are only entitled to be paid for leave /shift premium they have earned at the time of taking leave.

In the case of employees who work irregular/varying weekly working hours, payment in respect of annual leave is calculated by - adding up the employees total weekly working hours in the thirteen weeks ending on the day before annual leave, and dividing by thirteen to establish the employees average weekly earnings during that period. To calculate a day, the normal working week is divided by 5.

NOTE Payment in lieu of annual leave is prohibited unless the employment relationship is terminated. Also employees who are ceasing employment cannot be requested by the employer to use up leave entitlements unless this is organised one month before termination date. However, if both parties agree annual leave can be taken during the notice period.

Leave Year

The statutory leave year is 1st April to 31st March; there is no restriction on employers using different 12-month period provided that the same leave year is consistent.

Disputes

Any dispute arising from the application of the Act concerning annual leave can be dealt with through a Rights Commissioner. The decision can be appealed to the Labour Court where the determination is binding.

Sample Annual Leave Form

Annual Leave

Employee Name: _____ **Employee Number:** _____

Job Title: _____ **Department:** _____

Holiday Entitlements: _____ **Year:** _____

Dates To	Dates From	Amount of Days Taken	Amount of Days Remaining	Approved By	Date Approved	Employee Initial

PUBLIC HOLIDAYS

Under current legislation there are nine public holidays.

1st January (New Year's Day)
St. Patrick's Day
Easter Monday
The First Monday in May
The First Monday in June
The First Monday in August
The Last Monday in October
Christmas Day
St. Stephen's Day

Note: Good Friday and Christmas Eve, although bank holidays are not public holidays. The Act refers to “public holidays” not “bank holidays”.

- Employees who work or who are normally required to work on a public holiday will be entitled to an additional day’s pay for the holiday.
- Employees who are not normally required to work on a public holiday will be entitled to one fifth of the normal weekly rate of remuneration for the public holiday.
- If the employee ceases to be employed during the week ending on the day before the public holiday, having worked at least 40 hours during the five weeks preceding that week, the employee will be entitled to receive payment for the public holiday.

Conditions for qualifying for a Public Holiday benefit

Employees, other than part-time/casual, have an immediate entitlement to public holiday benefits.

Part-time/casual employees must have worked at least 40 hours in the 5 weeks ending on the day before the public holiday to qualify for the public holiday benefits.

In respect of each public holiday, an employee’s entitlement is as follows

- a. A paid day off on the public holiday, or
- b. A paid day off within a month: or
- c. An extra day’s annual leave; or
- d. An extra day’s pay

As the employer may decide.

Note: If a public holiday falls on a Saturday, and the employee does not normally work Saturdays, options **(b)**, **(c)**, or **(d)** apply as the employer decides.

Note: If a Public Holiday falls on a day on which the employee would be off, with pay, e.g. sick pay, then options (b),(c) or (d) will apply.

Note: If the employee ceases to be employed during the week ending on the day before a public holiday, having worked during the 4 weeks preceding that week, he/she is entitled to receive pay for the public holiday.

Employees absent from work prior to a public holiday

An employee is not entitled to a public holiday if s/he is absent from work immediately before the holiday for one of the following reasons:

- Absence in excess of 52 consecutive weeks by reason of an occupational injury.
- An absence in excess of 26 weeks by reason of illness or injury.
- An absence in excess of 13 weeks by reason not referred to above but being an absence authorised by the employer, including lay off.
- An absence by reason of a strike.

Note: Employees on maternity or adoptive leave maintain their public holiday entitlement for the duration of their absence.

Disputes

Any dispute arising from the application of the Act concerning public holidays can be dealt with through a Rights Commissioner. The decision can be appealed to the Labour Court where the determination is binding.

MATERNITY/ADOPTIVE LEAVE

The Maternity Protection Act 1994 & the Maternity Protection (Amendment) Act 2004 entitles expectant working mothers to **Maternity Leave, additional Maternity Leave**, time off for ante-natal and post-natal medical visits, specific leave for fathers, right to return to work, protection of certain employment rights while on leave, protection against dismissal etc.

Summary Points

- The Act covers anybody under a contract of employment. This includes apprentices, employees on probation and employment agency workers. It also includes male employees to a right to leave under specific circumstances.
- The employee is entitled to a minimum of twenty six paid (by Social Welfare) consecutive weeks-maternity leave.
- The employee may, if so desired, take an additional sixteen weeks leave immediately following maternity leave at her own expense.
- If an employee is under a fixed term contract and this contract ends while on maternity leave, the leave ends on the same day.
- The employee is entitled to return to the same job she had prior to her absence on maternity leave or its equivalent.
- Payment during the twenty six weeks maternity leave is made by the Department of Social Welfare.

When Maternity Leave is taken

- The employee may take the twenty six weeks provided she takes no less than two weeks before the due date and at least 4 weeks after the birth.

Notification to the Employer

- The employee must notify the employer in writing stating the date on which the leave is due to commence and give her employer at least four weeks notice.
- A medical certificate confirming the pregnancy and advising of the expected week of confinement must accompany the notification.
- In the case of Additional Maternity Leave, the employer must also be notified in writing by the employee if she intends taking Additional Maternity Leave. This can be given at the same time as the relevant notification or not later than four weeks before the date, which would have been the employees expected date of return to work.

Delayed Births

- If an employee has less than four weeks' maternity leave left when her baby is born, then her maternity leave may be extended so that she still has four weeks' maternity leave after her confinement. The maximum extension is of four weeks.
- The employer must be advised in writing of the likelihood of extended maternity leave due to such an event. This should be given as soon as possible in writing after the birth of the revised return to work date.

Early Births

- In the event of a birth occurring more than four weeks before it is expected and if the employee has not already commenced maternity leave, she is entitled to take twenty six weeks' maternity leave from that point. For example, a woman notifies her employer that she is due to go on maternity leave in six weeks' time. The following week, she gives birth pre-maturely. In this case, she is entitled to take twenty six weeks' maternity leave from this point on.
- If the employee gives birth 4 weeks before the expected due date, she must notify her employer within 14 days of giving birth..

Still Births/Miscarriage and Maternity Leave

- In the event of a stillbirth/miscarriage occurring after the 24th week of pregnancy, the mother is still entitled to 26 weeks maternity leave

Ante Natal & Post Natal Medical Visits

- There is no limit to the number or duration of medical appointments; this does not include voluntary appointments/classes. Employers must also take into consideration the time for travelling to and from appointment.
- The employee is entitled to full pay while attending such appointments as long as they occur during her normal working hours.
- Two weeks notice in writing must be given to the employer in respect of a scheduled medical visit, this notice must state the date and time on which the visit is due to occur.
- If for urgent medical reasons, the employee cannot give two weeks notice, the employee must provide a medical certificate. She must also provide an explanation as to why it was not possible to give the employer two weeks notice of the visit within seven days of the day the visit occurred.

Ante Natal Classes

- An expectant mother is entitled to time-off from her work, without loss of pay, to attend one set of ante natal classes other than the last three classes.
- An expectant father of a child (if he is employed under a contract of employment) is entitled to time-off work, without loss of pay, to attend the last two ante-natal classes in a set before birth.

Returning to Work

- The Act does not oblige an employee who has taken Maternity Leave or Additional Maternity Leave to return to work but rather allows her to do so. The employer must receive written notification of at least four weeks of the return to work date after maternity leave or her additional maternity.
Notice of return to work, may be written by another person on behalf of the mother if so desired.

- If the employee does not provide proper notice of her return to work this could affect her right to return to work contained in the Act.
- The employee is entitled to return to work with the same employer or, if the workplace has changed ownership, the new owner. The employee is entitled to return to the same job she had prior to her absence or its equivalent. Her contract must remain unaltered or identical. In other words, she is entitled to return to the same grade, the same conditions, and the same level of remuneration.
- In addition, the employee is entitled to any benefits or improvements which would have been made to her contract had she been continuously at work e.g. pay increases.
- The employee does not lose the right to return to work where the ownership of the firm has changed.

Father's entitlement to leave

Fathers are entitled to maternity leave if the mother dies within 40 weeks of the birth. In these circumstances, the father is entitled to a period of leave, the extent of which depends on the actual date of the mother's death. If the mother dies within 24 weeks of the birth he has an optional right to the additional maternity leave. If the mother's death is over 24 weeks after the birth, the father is entitled to leave until 40 weeks after the birth. The leave starts within 7 days of the mother's death.

Notification: This should be in writing not later than the day on which his leave begins, stating the length of leave to which he believes he is entitled. Employers can request a copy of the death and birth certificates. Leave to which the father is entitled must begin within seven days of the mother's death.

Protection of Employment Rights

An employee on

- maternity leave
- additional maternity leave
- father's leave (in event of mother's death)
- additional father's leave
- health and safety leave
- time off for ante-natal or post-natal care
- time off or reduced hours for breastfeeding
- time off for ante-natal classes

is deemed to be in the employment of the employer while absent. The employee is to be treated as if s/he is not absent. The absence will not affect any rights or obligations related to the employee's employment conferred by legislation, contract or otherwise.

- A period of absence from work for any of the above purpose is not to be treated as part of any other leave (including sick leave or annual leave).
- Similarly maternity leave or ante-natal visits must not be counted as part of the employee's sick record.

- During Maternity Leave, Additional Maternity Leave, Health and Safety Leave, Father's Leave and during natal care absences, employment rights such as annual leave, increments and seniority are preserved and will build up as if the employee was not absent from work.
- During Maternity Leave/Additional Maternity Leave, Father's Leave the employee also retains entitlements to leave in lieu of public holidays occurring during such absences or to one of the alternatives outlined in the Organisation of Working Time Act 1997.
- Employees on Health and Safety Leave retain their entitlement to annual holidays.
- All periods of probation, training or apprenticeships are suspended during protective leave and the employee must complete whatever proportion remains when s/he returns to work.
- An employee cannot be issued with notice of termination of employment or may not be suspended while on Protective Leave. A notice of dismissal, redundancy or suspension given prior to the Protective Leave that is due to take effect during such leave is extended to the end of the relevant period.
- Employees can not be dismissed or discriminated on the grounds of pregnancy etc. or for utilising Protective Leave.

Termination of additional maternity leave due to illness of the Mother

An employee who is sick who wishes to end additional maternity leave may request her employer to terminate the additional maternity leave at any time

- during the last 4 weeks of maternity leave (where the employer has been notified of her intention to take additional maternity leave) or
- during the additional maternity leave.

There is no entitlement to termination of additional maternity leave in the event of sickness of the mother. If the employer agrees, the additional maternity leave will end on a date agreed by the employer and employee. This will not be earlier than the beginning of the employee's sickness and not later than the date when additional maternity leave would have ended.

Where additional maternity leave is terminated on the employee's request

- any absence from work (after the termination of the additional maternity leave) is treated in the same way as any absence from work of the employee due to sickness
- the employee is not entitled to the additional maternity leave or any part of it not taken by her.

Notification requirements

An employee who is sick who wishes to terminate additional maternity leave must

- request in writing (by her or on her behalf) her employer to terminate the additional maternity leave
- An employer must notify the employee concerned in writing of the employer's decision in relation to the request as soon as reasonably practicable.

Postponement of leave due to hospitalisation of a child

An employee on

- Maternity Leave (after 14 weeks with not less than 4 weeks after confinement)
- Additional Maternity Leave
- Father's Leave
- Additional Father's Leave

may request their employer to postpone part of his/her leave or additional leave if the child (in connection with whose birth he/she is entitled to that leave) is hospitalized.

There is no **entitlement** to postponement of leave if the child is hospitalized.

An employer may agree to postpone the leave and the employee will return to work on a date to be agreed and be entitled to take the postponed leave in one continuous period beginning not later than 7 days after the discharge of the child from hospital. If an employee postpones leave and returns to work and during the period of postponement he/she is absent from work due to sickness the employee is deemed to begin the postponed leave unless, the employer is notified that s/he does not wish to begin the postponed leave.

If this notification happens

- the absence from work of the employee due to sickness is to be treated in the same manner as any absence from work of the employee due to sickness and
- the employee forfeits the postponed leave

The Maternity Protection (Postponement of Leave) Regulations provide that the maximum period of postponement of leave is 6 months.

Notification requirements

An employee who wishes to postpone part of his/her leave because of the hospitalisation of the child must notify his/her employer in writing (or have the employer notified) of the request.

On request the employer must be furnished with

- a letter or other appropriate document from the hospital confirming the hospitalisation of the child and
- a letter or other appropriate document from the hospital or the child's doctor confirming that the child has been discharged and the date of discharge.

An employer must notify the employee in writing of the employer's decision as soon as practicable. In order to avail of resumed leave an employee must notify his/her employer

in writing (or have the employer notified) as soon as reasonably practicable but not later than the day on which the leave begins of his/her intention to take the leave. This notification may be revoked by a further notification in writing given by the employee. An employer may waive the right to receive a notification.

Health and Safety Leave

- The Safety Health & Welfare at Work Act, 1989 entitles all pregnant workers, and workers who have recently given birth or are breast-feeding to a safe work environment. The work environment must be free from health risks to either mother or baby.
- Employers must carry out a risk assessment of the company. If a risk has been identified this must be removed. If this is not possible the employer should transfer the employee to suitable alternative work (alternative work must be appropriate to the employee in all circumstances). However, if this is not available the employee should then be placed on Health and Safety Leave.
- The employer must furnish the employee who is placed on Health and Safety Leave with a certificate if she asks for one. This certificate should state the reason for the leave, the commencement date and how long the leave is expected to last. The employee who has been granted leave maybe required to present this certificate to the Department of Social and Family Affairs so that she may receive health and safety benefit.
- The employer must pay the employee her full normal rate of pay for the first 21 days of her leave. After this period the employee may be entitled to a Social Welfare Benefit, subject to her PRSI contributions. The employee claiming this benefit may be requested to present the certificate of Health and Safety Leave to the Department of Social and Family Affairs.

NOTE: The employer must carry out a risk assessment and take the appropriate action once he/she is made aware that the employee is pregnant, recently given birth or breastfeeding. The employee may decide to inform her employer through her supervisor, or by her doctor directly contacting the employer.

Returning to Work after Health and Safety Leave

- This leave ends when there is no longer a risk, suitable work becomes available or with the commencement of Maternity Leave. If the employee is on a fixed term contract, the leave ends on the day the contract expires. The Health and Safety Leave relating to breast-feeding mothers ends if she ceases to breast-feed. If the employee has not ceased breast feeding the leave will automatically cease by the end of the 26th week following the birth of the child.
- If the employee ceases to be pregnant or ceases breast-feeding she must immediately give notice in writing to her employer. The employer must then enable the employee to return to her previously held position as soon as possible. The employer must send

notification of this to the employee in writing, the employer must be satisfied that it is safe for the employee to return before sending this notice. The employee must return to work no later than seven days after receiving this notice. If the employer removes the risk or finds suitable alternative employment for the employee the same procedure applies i.e. send notification in writing to the employee and allow the employee 7 days after receiving the notification to return to work.

Breastfeeding

An employee who is breastfeeding is entitled without loss of pay for **26 weeks** following the birth, at the option of her employer, to

- **time off from her work** to breastfeed in the workplace or
- **a reduction of working hours** for breastfeeding outside work

Breastfeeding is defined to include **expressing breast milk** and feeding it to a child immediately or storing it for the purposes of feeding it to the child at a later time.

An employer is not required to provide facilities for breastfeeding in the workplace where it would cost more than nominal cost.

An employee who is breastfeeding in work is entitled, without loss of pay to take 1 hour from her work each working day as a breastfeeding break which may be taken in the form of:

- **one 60 minute break**
- **two 30 minute breaks**
- **three 20 minute breaks**

or

as agreed by her and her employer.

An employee who is breastfeeding outside work is entitled without loss of pay to have her working hours reduced by 1 hour each working day, which may be reduced in the form of

- **one 60 minutes**
- **two periods of 30 minutes**
- **three periods of 20 minutes**

or

as agreed by her and her employer.

Notification requirements

Where an employee who is breastfeeding proposes to take time off from her work or have reduced working hours she must **notify her employer in writing** of the proposal as soon as reasonably practicable but not later than the latest date for her to notify her employer of her intention to return to work, and of the date on which she expects to return to work and

- furnish on request the birth certificate of the child (or any other document establishing the date of birth of the child).

Disputes

Either the employee or the employer can refer a dispute that relates to rights or entitlements under the Maternity Acts to a Rights Commissioner except

- disputes which relate to dismissal must be referred under the Unfair Dismissals Acts 1977 – 1993 (for more info on this see the subsequent section on Unfair Dismissals)
- disputes which are within the competence of the Health and Safety Authority should be referred to it, such as a dispute as to whether or not a certain substance or work practice amounted to a risk in the workplace.

ADOPTIVE LEAVE

Adoptive leave is covered under the Adoptive Leave Acts 1995 & 2005. An adopting mother or a sole male adopter who is in employment is entitled to:

- a minimum of 24 consecutive weeks of adoptive leave from work beginning on the day of placement of the child.
- up to 16 weeks additional adoptive leave.

The 24 week period of adoptive leave will attract a social welfare benefit in the majority of cases. The minimum of 24 consecutive week's adoptive leave is available at the request of the employee. There are mandatory notification procedures and evidence of placement requirements and these are set out below – (see '**notification**'). Absence from work on adoptive leave will not affect any right of an employee related to the employment, except the right to remuneration.

Additional Adoptive Leave

An employee, who has taken adoptive leave, is entitled to avail of up to 16 weeks additional adoptive leave. The leave is available at the request of the employee and follows immediately on the period of adoptive leave. Entitlement to the leave is subject to notification requirements and these are set out below. During an absence from work on additional adoptive leave, the period of employment before the absence will be regarded as continuous with the period of employment after the absence.

Additional Adoptive Leave (Foreign Adoption)

In the case of a foreign adoption, some or all of the 16 weeks additional adoptive leave may be taken immediately before the day of placement. The leave is available at the request of the employee and entitlement is subject to the notification and evidence requirements set out below.

The leave is available to:

- An employed adopting mother: that is, any female employee in whose care a child (of whom she is not the natural mother) has been placed or is to be placed with a view to the making of an

adoption order, or to the effecting of a foreign adoption or following any such adoption.

- A sole male adopter: that is, a male employee in whose sole care a child has been placed or is to be placed with a view to the making of an adoption order, or to the effecting of a foreign adoption or following any such adoption.
- An employed adopting father is also entitled to certain leave in circumstances where the adopting mother has died before or during the period of adoptive leave or additional adoptive leave.

There is a right to return to work after a period of adoptive leave or additional adoptive leave. There are mandatory notification requirements and these are set out below.

Notification

An employee must give adequate notice, in writing, to her/his employer of her intention to take adoptive leave. The minimum advance notice of such intention is 4 weeks before the expected placement of the child. The expected day of placement may be given later. An employee must inform her/his employer, in writing, of the expected date of placement of the child as soon as is reasonably practicable.

Additional Adoptive Leave

An employee must inform her/his employer, in writing, at least 4 weeks beforehand of her intention to take additional adoptive leave.

Return to Work

An employee must inform her/his employer, in writing, at least 4 weeks beforehand of the date on which she/he intends to return to work after adoptive leave or additional adoptive leave.

Irish Adoption

An eligible employee who has commenced adoptive leave must furnish her/his employer with a certificate of placement. The certificate must be furnished as soon as is reasonably practicable but no later than 4 weeks after the day of placement. The certificate may be obtained by the employee from the health board or the adoption society which arranged the placement. An Bord Uchtala will issue the certificate of placement in other Irish placement cases.

Foreign Adoption

An eligible employee must give her/his employer a copy of the declaration of eligibility and suitability (issued pursuant to the Adoption Act, 1991) before the commencement of adoptive leave or additional adoptive leave (whichever is the earlier). Particulars of the placement must be furnished as soon as is reasonably practicable thereafter.

Redress

There is provision for recourse to a Rights Commissioner, in the first instance, in the event of a dispute between an employer and an employee as regards entitlements under the legislation. There is a right of appeal to the Employment Appeals Tribunal. A dismissal which results from the exercise or contemplated exercise of the rights to adoptive leave or additional adoptive leave will be regarded as an unfair dismissal, unless there are substantial grounds justifying the dismissal. Redress in this case will be under the Unfair Dismissals Acts, 1977 to 2005.

SAMPLE MATERNITY LEAVE POLICY AND FORM

Maternity Leave

If you are expecting a baby you are entitled to paid Maternity Leave for a minimum period of twenty six weeks. During this period you can claim social welfare from the Department of Social and Family Affair. **(EMPLOYERS See Note at end)**

Of these twenty six weeks, two weeks must be taken before the expected date of delivery and four weeks after. The remaining twenty weeks may be taken as you wish. You may apply to alter the commencement date provided the application is for medical reasons and a certificate is produced from your doctor.

In the event that you give birth later than expected, you are entitled to at least four weeks leave after the birth. In the event that you give birth prematurely you are also entitled to minimum period of 26 weeks.

You are required to advise the Company in writing four weeks before the commencement of your maternity leave. A Doctor's Certificate stating the expected date of delivery and a note regarding your intentions regarding the return to work must also be provided.

You may also take a further sixteen weeks unpaid leave if you wish. Notice of additional leave must be given to the Company at least four weeks before your maternity leave is due to expire. Notification must be given to the Company as soon as possible after the confinement, but not less than four weeks of the planned date of return to work.

Full details of the Maternity Protection Act 1994 & 2004 are available from _____.

NOTE: It is not statutory for employers to pay Maternity Leave. Employees are only entitled to state benefit during Maternity Leave.

Sample Maternity Leave Form

Employee Name: _____

Employee No. _____

Home Address: _____

Department: _____

Employment Start Date: _____

Part- Time ☐ Full-time ☐ Job-Sharer ☐

Personal Details

Home Address: _____

Home Phone Number: _____

Contact Number: _____

Maternity Leave Details

Date of Leave Commencement: _____

No. of Public Holidays while on leave _____

Expected Date of Confinement: _____

(A certificate showing the date of expected confinement must accompany this application form)

Expected Date of Return to Work: _____

Additional Maternity Leave

Please note that you must notify the _____ (Department) 4 weeks prior to the end of your maternity leave if you wish to take the 16 weeks additional leave. This leave is unpaid and you will not be entitled to social welfare payments under the Maternity Act 1994 during these 16 weeks.

Are the 16 weeks additional Leave being taken: Yes ☐ No ☐

Expected Date of Return to Work: _____

Employee Signature _____

Date: _____

Managers Signature _____

Date: _____

----- ✂ ----- ✂ ----- ✂ ----- ✂ ----- ✂

Confirmation of Intent to Return to Work

Name: _____

Employee No. _____

Department: _____

Date of Confinement Was: _____

Maternity Leave Commenced on: _____

Maternity Leave Ends on: _____ (including the 16 weeks additional leave if taken)

Date of Return to work: _____

I confirm that I will/will not be returning to work on the _____

Employee Signature _____

Date: _____

PARENTAL/FORCE MAJEURE LEAVE

The Parental Leave Act 1998 and (amendment) Act 2006 were introduced to allow working parents leave to look after their children. Parental Leave must be used for this purpose only. If it is found through investigation that the leave was not used for this purpose the employee may be subjected to a disciplinary action. The Act enables both parents to avail of 14 weeks unpaid leave from employment. The leave must be taken before the child is eight years of age, or sixteen years of age in the case of a child with a disability.

Summary Points

- Both parents are entitled to the leave. This leave is non-transferable between the parents, except where both parents work for the same employer. However, this depends on the agreement of the employer.
- In general, employees must be in one years-continuous service to be entitled to take parental leave, with limited exceptions. However, where the child is approaching the age threshold and the employee has more than three months' but less than one year's service with the employer, s/he shall be entitled to pro rata parental leave. In such a case the employee will be entitled to one week's leave for every month of continuous employment completed with the employer when the leave begins.
- Each parent is entitled to 14 weeks leave for each child up to 8 years of age or 16 in the case of a child with a disability.
- This leave may be taken for a continuous period of 14 weeks or in separate blocks of 6 continuous weeks, or more favourable terms with the agreement of the employer. Employers should consider these requests and take into consideration the company's needs and if the employer is unable to meet the employee's request for leave, the employer may then decide to grant the leave in broken periods.
- This leave is unpaid but other employee rights remain (except the right to remuneration and superannuation benefits).
- Employers may postpone the leave if it would adversely affect his/her business. However the leave must not be postponed more than 6 months from the original date.
- Should an employee qualify for Parental Leave in respect of more than one child, the employee may not take more than 14 weeks Parental Leave in any 12-month period (unless the employer agrees to it). This restriction does not apply to multiple births e.g. twins.
- An employee who falls ill while on parental leave and as a result is unable to care for the child may suspend the parental leave for the duration of the illness following which period the parental leave recommences.

Notice

- Six weeks notice must be given of intention to take Parental Leave.
- The notice must specify the date the employee intends to commence the leave, duration and manner.

- Four weeks before the start of the parental leave, the employer must prepare a “confirmation document” which both employer and employee must sign.

Return to Work

The employee has the right to return to the same job held before the leave and under the same contract, terms and conditions. If this is not reasonably practicable, the employer has to provide suitable alternative employment.

FORCE MAJEURE LEAVE

The Parental Leave Act also provides that an employee is entitled to leave with pay from his or her employment for urgent family reasons, owing to the injury or illness of any of the persons listed below: -

- a child or adoptive child of the employee;
- the spouse of the employee, or a 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;
- persons in a relationship of domestic dependency , including same-sex partners.

And that the immediate presence of the employee is indispensable.

The employee shall therefore be entitled to “Force Majeure” leave. This is paid leave, with a maximum of 3 days leave in 12 months or 5 days in a 36-month period.

Notice

- Employees are required to submit a request to the employer as soon, as is reasonable and practicable, stating their relationship to the relative and the nature of the illness/injury. (Forms may include employee’s name, RSI No., employers name and address and also the name and address of the person to whom the leave relates.)
- The notice must state the dates on which the leave was taken.
- The employee must confirm that the emergency leave was taken due to urgent family reasons arising from the illness or injury and rendering the presence of the employee indispensable.
- The employee must sign a declaration that the information is true and complete.

Records

- An employer must keep records of Parental leave and Force Majeure Leave taken by employees for 8 years.

Disputes

Employees and employers are entitled to refer a dispute in relation to an entitlement under the Act to a Rights Commissioner. Disputes concerning the dismissal of an employee are dealt with under the provisions of the Unfair Dismissals Acts, 1977 to 2005.

A reference to the Rights Commissioner concerning a dispute under the Act must be made in writing within 6 months of the occurrence of the dispute. Regulations made under the Act set out the details to be provided in such a reference.

Appeal from Decision of Rights Commissioner

Either party may appeal a decision of the Rights Commissioner to the Employment Appeals Tribunal. An appeal is made by giving written notice to the Tribunal within 4 weeks of the date on which the rights commissioner's decision is given. Regulations made under the Act set out the details to be provided in such an appeal.

Redress

The Rights Commissioner and the Employment Appeals Tribunal may order redress, as they consider appropriate, comprising either or both of the following:

- the granting of parental leave for a specified period to be taken at such time or times and in such manner as may be specified;
- the payment to the employee by the employer of compensation not exceeding 20 weeks' remuneration.

The Rights Commissioner or the Employment Appeals Tribunal may direct either party to the dispute to do such things as are considered necessary or expedient for the resolution of the dispute.

Enforcement by the Circuit Court

If a person fails or refuses to comply with a decision of the Rights Commissioner or a determination of the Tribunal, the other party, or the Minister for Justice, Equality and Law Reform, if he or she considers it appropriate having regard to all of the circumstances, may apply to the Circuit Court for an order directing compliance.

Appeals to the High Court

Either party to proceedings in the Employment Appeals Tribunal may appeal to the High Court from a determination of the Tribunal on a point of law.

SAMPLE DOCUMENT - PARENTAL LEAVE

Parental Leave is covered by the Parental Leave Act 1998 (amendment) 2006. Each parent who qualifies for Statutory Parental Leave has a once off entitlement to 14 weeks unpaid leave for each child covered by the Act.

Qualifying Conditions are that you must have one year's continuous service. Parental leave may only be taken up to the time the child attains 8 years of age or 16 years of age in the case of a child with a disability. The parental leave entitlement is not transferable between parents. But for parents who are both working within the company it is transferable on the agreement of the Company.

This leave may be taken for a continuous period of 14 weeks or in separate blocks of 6 continuous weeks, or more favourable terms with the agreement of the employer. If you are a parent with two children of qualifying ages you can only have a 14 weeks leave in any 12 months period. The only exception to this rule is for parents of multiple births; you can use all the Parental Leave entitlement in one year. You are requested to give notification as early as possible but not less than six weeks in advance, to _____ of your intention to take Parental Leave. You will be requested to furnish a copy of the child's birth certificate along with your application form for Parental Leave. And as far as reasonably practical set out the duration and the manner in which it is proposed to take the leave. You will, not less than 4 weeks prior to your commencement date, be given confirmation of the leave by _____.

If you have less than one year's continuous employment and the child will be above the age by which leave must be used, then provided that you have three months continuous employment, you will be entitled to one week for each month of continuous employment.

You may also withdraw your notice to take parental leave prior to the "Confirmation Document" being signed.

Prior to signing the Confirmation Document the company has the right to postpone the granting of parental leave in the following circumstances:

- If the granting of it at a certain time would have a substantial adverse effect on the operation of the business because of seasonal variations in the volume of work,
- The unavailability of a person to carry out the duties of an employee
- The nature of employees in the employment,
- The number of employees already availing of Parental Leave that falls within the period specified in the application,
- Any other relevant matters.

You will be consulted prior to the postponing of Parental Leave. The Parental Leave can be postponed for at most 6 months. At least 4 weeks before the intended commencement date, you will be informed in writing of the postponement.

Leave will not be postponed once the "Confirmation Document" has been signed unless both you and _____(employer) are in agreement with the postponement.

Termination of the leave will occur, if the leave is not used for the sole purpose of taking care of the child concerned. If it is established that parental leave is being abused, it will be withdrawn by notice in writing setting out the reasons why the leave is being terminated. You may also be subjected to a disciplinary process. If it is established that you are not entitled to Parental Leave, it will be refused by means of a statement in writing setting out the grounds for refusing to grant the leave.

If you are ill while on parental leave and as a result are unable to care for the child, you may with the prior agreement of the company and on forwarding the relevant medical certificates, suspend the parental leave for the duration of the illness following which period the parental leave recommences.

While you are on Parental Leave, you shall retain all employment rights other than the right to remuneration and pension benefits. Annual leave entitlement will not be adjusted in respect of parental leave, and you will retain the entitlement to Public Holidays which fall during a period of the Parental Leave, such holidays can be added on to the period of Parental Leave or take payment in lieu.

You shall also retain the right to return to work to the same position as previously held. Where it is not reasonably practical to return to the job held prior to the commencement of Parental Leave you will be offered suitable alternative employment which will not be less favourable than your current contract of employment.

CARER'S LEAVE

The Carer's Leave Act, 2001 came into operation on July 2001. The main purpose of the Act is to provide for a new entitlement for employees to avail of up to 104 weeks temporary unpaid carer's leave to enable them to personally provide full-time care for persons who are in need of such care (hereafter referred to as a "relevant person").

During an absence on Carer's Leave, an employee shall be regarded as still working in the employment for all purposes relating to his or her employment and none of his or her rights or obligations relating to the employment shall be affected by taking the leave with the following exceptions:

- **There is no right to remuneration or superannuation benefits and any obligation to pay superannuation contributions in, or in respect of employment.**
- **The right to annual leave is restricted to the period comprising the first 13 weeks only of Carers Leave entitlement in respect of any one relevant person.**
- **The right to public holidays is likewise restricted to the period comprising the first 13 weeks only of Carer's Leave entitlement in respect of any one relevant person.**

Absence from employment while on Carer's Leave shall not be treated as part of any other leave to which the employee is entitled (e.g. sick leave, annual leave, adoptive leave, maternity leave, parental leave or force majeure leave).

The period of leave to which an employee is entitled is subject to a maximum of 104 weeks in respect of any once care recipient. The minimum statutory entitlement is 13 weeks.

The employee must have been in the continuous employment with their employer for at least 12 months before he/she can commence the leave.

The leave is for the purpose of personally providing full-time care to a person who is objectively assessed by the Department of Social, Community and Family Affairs as being in need of full-time care and attention. This decision will be based on information provided by the relevant person's general medical practitioner and assessed by the Department's medical advisor. However, under Regulations made by the Minister an employee may work or attend an educational or training course or take up voluntary or community work for up to 10 hours per week or engage in limited self-employment in his/her own home while on carer's leave.

Before an employee can commence Carer's Leave, he/she must provide the employer with a copy of the decision of a deciding officer (or appeals officer) of the Department of Social, Community and Family Affairs, that the relevant person has been medically certified as being in need of full-time care and attention.

The act provides that the leave shall be taken in one of the following ways:

- **One continuous period of 104 weeks, or**
- **One or more periods, the total duration of which amounts to not more than 104 weeks.**

The minimum statutory entitlement that may be taken in one period at the discretion of the employee is 13 weeks.

An employer may refuse, on reasonable grounds, given in writing, to permit an employee to take carer's leave for a period of less than 13 weeks.

An employer and employee may, however, agree arrangements for Carer's Leave on terms more favourable to the employee.

The leave terminates when the employee ceases to personally provide the full-time care and attention to the relevant person, for example, when another person/institution assumes the care of the relevant person concerned. The employee must notify his/her employer of any change of circumstances, which affects his or her entitlement to carer's leave.

Only one employee may be on carer's leave in respect of any one person, at any one time.

Notification of Intention to take Carer's Leave

The employee must give the employer in writing at least 6 weeks notice of their intention to take carer's leave, except where in exceptional or emergency circumstances, it is not reasonably practicable, in which case, notice must be given as soon as it reasonably practicable. The statement of notice must contain 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
- a statement that an application for a decision in the first instance or on appeal that the person to be cared for is a relevant person for the purposes of Carer's Leave, has been made to the Department of Social and Family Affairs.
- The employee's signature and date.

(See sample "Notice of Intention to Take Carer's Leave" Page: 27)

Confirmation of Carer's Leave

Once an employee has given notice of his or her intention to take Carer's Leave:-

- The employee must give the employer a copy of the decision from the deciding officer (or appeals officer) of the Department of Social and Family Affairs that the person in respect of whom the employee proposes to avail of Carer's Leave is a relevant person.
- The employee and the employer must prepare a confirmation document. This document must be prepared and signed no later than two weeks before the leave is due to begin and must include: date of which the leave period will commence, the duration of the period of leave and the signatures of the employer and employee.

(See sample: "Confirmation Document", Page: 28)

Once a Confirmation Document has been signed by both the employer and the employee, it cannot be altered unless both parties agree.

The leave shall also terminate when a deciding officer or an appeals officer of the Department of Social and Family Affairs, makes a decision, on reference by an employer, that either the employee or the person in respect of whose care the leave is taken, does not satisfy the conditions applicable to him/her.

Carer's leave shall continue for up to six weeks after the death of the relevant person, subject to the period of carer's leave in the Confirmation Document not having expired.

The employee on carer's leave will be treated as if he or she has not been absent so that all his/her employment rights (except the right to remuneration, certain annual leave, certain public holidays, superannuation benefit, etc) will be unaffected during the leave.

Probation period or apprenticeship may be suspended during carer's leave, if the employer considers that continuance would be consistent with the carer's leave.

Return to Work

The employee on Carer's Leave must give the employer written notice of his/her intention to return to work not less than 4 weeks before the date on which the employee is due to return to work.

An employee is entitled to return to work at the end of a period of Carer's Leave to the employer with whom they were working immediately before the absence, or with his or her successor, in the job held immediately prior to the leave and under the same contract and terms and conditions of employment. If the business has changed ownership during the period of absence they are entitled to work with the new owner under a contract of employment identical to the contract that existed with the original employer.

Records

An employer must make a record of the Carer's Leave taken by his/her employees, specifying the period of employment of each employee and the dates and times of the leave taken. Such Records must be retained for 8 years.

Protection against Penalisation including Dismissal

The Carer's Leave Act, 2001 prohibits an employer from penalising an employee on grounds that he/she has exercised or proposes to exercise his/her rights to Carer's Leave.

Disputes

A claim for redress can be made by an employee to a Rights Commissioner in the first instance with a right of appeal to the Employment Appeals Tribunal.

SAMPLE

NOTICE OF INTENTION TO TAKE CARER'S LEAVE

I _____ hereby notify my employer _____

that I propose to take Carer's Leave in accordance with the provisions of the

Carer's Leave Act, 2001, with effect from _____ to _____

To provide full-time care and attention to _____.

I propose to take the Carer's Leave in the following manner:

- a) one continuous period of 104 weeks _____
- b) in periods of _____ weeks/months (each of which must be of a least 13 weeks (unless otherwise agreed with employer) duration – the aggregate of which does not exceed 104 weeks).

I wish to confirm that I have made an application to the Department of Social

and Family Affairs for a decision of a deciding officer of the that

Department that _____ in respect of whom I propose to take

Carer's Leave, is a relevant person (i.e. is in need of full-time care and

attention) for the purposes of Social Welfare (Consolidation) Act, 1993.

Signature: _____

Date: _____

SAMPLE

CONFIRMATION DOCUMENT

Name of Employee:_____

Name of Employer:_____

Commencement date of Period(s) of Carer's Leave:_____

Duration of Period(s) of Carer's Leave:_____

SIGNATURES:

Employee:_____ **Date:**_____

Employer:_____ **Date:**_____

ABSENTEEISM

Attendance at work is an essential condition of an employee's contract. Therefore, whilst some absence, other than statutory entitlements, may arise, where a clear pattern develops, casual or long term, certified or uncertified, an employer is entitled to review that person's ability to commit themselves to attending work regularly. Where it is reasonable to show that the employee is unable to make such a commitment, then the employee may be entitled to terminate the employment. When applying such sanctions it is important that the same standards are applied to all employees and that the employer is being consistent.

Casual Absenteeism / Short term

If an employee has an unacceptable level of casual absenteeism, it is important, in order to justify a dismissal that the employer will be expected to show that the employee had: -

- A continuing pattern of absences over a protracted period,
- That it was reasonable to conclude that the position would not improve substantially or at all,
- The continuation of that level of absenteeism was unacceptable and
- A number of warnings had been given to the employee on the consequences of continuation.

Long Term Absenteeism

Where an employee is absent from employment for a prolonged period, an employer may be justified in terminating the contract of employment. The considerations, which apply in such cases, include the following:

- The continuing absence poses actual or potential problems for the employer
- There is no reasonable prospect of an early return to work

Note – If there is a conflict of medical evidence, the employer will generally be expected to seek the opinion of a medical specialist.

In examining the medical evidence, the employer will be expected to have regard to the ability of the employee to return to perform the work that he/she is employed to do. If the employee will not be able to do such work, the employer will not be expected to create work for the benefit of the employee.