



Oifig an Stiúirthóra Náisiúnta, Acmhainní Daonna

Feidhmeannacht na Seirbhísí Sláinte

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**To: Chief Executive Officer
Each National Director
Each Assistant National Director HR
Each Assistant Chief Finance Officer
Each Hospital Group CEO
Each Hospital Group Director of HR
Each Chief Officer CHOs
Each Head of HR CHOs
Each CEO Section 38 Agencies
Each HR Manager Section 38 Agencies
Each Employee Relations Manager
Each Group Director of Nursing & Midwifery
Each Group Director of Midwifery
Each Clinical Director**

From: Anne Marie Hoey, National Director of Human Resources

Date: 19th December 2019

Subject: HR Circular 035/2019: Parent's Leave and Benefit Act 2019

Dear Colleagues

I wish to advise that the Parent's Leave and Benefit Act 2019 has come into operation with effect from 1 November 2019¹. This Act provides that employees who are "relevant parents" are entitled to leave from work for the purposes of enabling them to provide, or assist in the provision of, care to the child within twelve months of the birth or adoption placement date of the child. This leave is referred to as "parent's leave" and applies to births or adoptions which occur **on or after 1 November 2019**. The current entitlement for parent's leave is **two weeks** and it may be increased in the future (up to a maximum of 9 weeks). The Act also provides for the payment of parent's benefit from the Department of Employment Affairs and Social Protection (DEASP) to eligible employees who satisfy the PRSI contribution conditions.

¹ The Parent's Leave and Benefit Act 2019 (Commencement) Order 2019 S.I. No. 629 of 2019 applies to the sections governing parent's leave.

Parent's leave will be granted to health service employees in accordance with the provisions of the 2019 Act. The following is an overview of the main provisions:-

1. Purpose of Parent's Leave

Parent's leave is a new form of statutory leave which can be taken by both parents in the first year of the child's life provided they meet the eligibility criteria. Parent's leave is granted to employees for the purposes of enabling them to provide, or assist in the provision of, care to the child. This leave is a stand-alone entitlement with no sharing permitted and does not affect any existing entitlements to statutory leave i.e. maternity, adoptive, paternity and parental leave.

2. Entitlement to Parent's Leave

An employee must meet the definition of a "relevant parent" in order to avail of parent's leave.

The definition of "relevant parent" is broad and covers the following-

(a) In the case of an adoption-

- (i) the adopting mother or sole male adopter of the child,
- (ii) the spouse, civil partner or cohabitant of the adopting mother or sole male adopter of the child, or
- (iii) where the child is being adopted jointly by-
 - (I) a married couple of the same sex,
 - (II) a couple that are civil partners of each other, or
 - (III) a cohabiting couple of the same sex,each of the couple referred to in (I), (II) or (III) above.

(b) In any other case-

- (i) a parent of the child,
- (ii) the spouse, civil partner or cohabitant of the parent of the child, or
- (iii) a parent of a donor-conceived child as provided for under section 5 of the Children and Family Relationships Act 2015.²

In addition to being a "relevant parent", an employee's entitlement is conditional on the parent's leave being used to provide, or assist in the provision of, care to the child.

An employee who is a relevant parent in more than one capacity in respect of a child is entitled to two weeks' parent's leave in total. Where the birth of a child is part of a multiple birth or a person adopts two or more children at the same time, the employee is entitled to two weeks' parent's leave in total.

3. Allocation of Parent's Leave

Parent's leave must generally be taken as follows:

- in the case of a child who is, or is to be, adopted, not later than 1 year from the day of placement, or
- in any other case, not later than the day on which the child attains the age of 1 year.

The entitlement to parent's leave is non-transferable and sharing between employees is not permitted.

² Please note that the provision in respect of the relevant parent of a donor-conceived child will be commenced on a future date.

4. Manner in which leave can be taken

The two weeks' leave can be taken as-

- (a) a continuous period of two weeks, or
- (b) separate blocks of one week each.

Employees who are/will be availing of maternity leave/adoptive leave are required to take this leave before taking parent's leave. Employees who are entitled to paternity leave and parent's leave can take these leave entitlements in whichever order they wish (subject to the statutory time limits).

5. Application

The entitlement to parent's leave is subject to an employee having notified his or her employer in writing of his or her intention to take parent's leave and, where applicable, supplying a copy of relevant documentation in relation to the child. An employee is required to give written notification not later than 6 weeks before the intended commencement of the parent's leave and specify the expected date of commencement and duration of the parent's leave. The notification should indicate the manner in which the employee wishes to take parent's leave i.e. 2 consecutive weeks or 2 separate weeks.

6. Documentation Required

The documents that may be required to support an application for parent's leave are as follows:

In the case of a birth:

- a copy of the medical certification as provided by the mother to her employer or other appropriate certificate from a registered medical practitioner confirming the pregnancy and specifying the expected date of birth of the child concerned, or
- a copy of the birth certificate where notification is given after the birth.

In the case of an adoption:

- a copy of the placement certificate where notification is given after the day of placement,
- in the case of an intercountry / foreign adoption, a declaration of suitability and eligibility prior to the day of placement followed by written confirmation of the placement.

7. Parent's Benefit

The 2019 Act also provides for the payment of parent's benefit from the Department of Employment Affairs and Social Protection (DEASP) to employees who have made the requisite PRSI contributions and satisfy the eligibility criteria for payment. Further information on parent's benefit is available from the DEASP website [click here](#). Employees may qualify for parent's leave and not qualify for parent's benefit, for example, if they do not satisfy the PRSI contribution conditions.

Managers are required to review all written notifications from employees who wish to avail of parent's leave in a timely manner and establish the employee's eligibility to take parent's leave in accordance with the legislation. An employee who is also applying for parent's benefit from DEASP must declare that their parent's leave dates have been approved by their employer. The DEASP may contact the person's employer asking them to confirm the dates of the parent's leave for which benefit is being claimed. Managers must therefore be in a position to respond to such requests from DEASP.

Health service employees are **not** entitled to payment from their employer during parent's leave.

8. Employees on fixed term or specified purpose contracts

Where a relevant parent is employed under a contract of employment for a fixed-term or specified purpose, the contract of employment will terminate in the normal manner and the entitlement to parent's leave will cease to apply with effect from the date of termination of the contract of employment.

9. Commencement of parent's leave (early confinement)

Where the date of confinement occurs in a week that is 4 weeks or more before the expected date of confinement, the relevant parent shall be deemed to have complied with the notification requirements if the notification is submitted within 7 days commencing on the date of confinement.

10. Commencement of parent's leave (change in day of placement or date of confinement)

Where the day of placement is postponed or the date of confinement occurs after the date selected by a relevant parent in his or her notification, the relevant parent is entitled to select another date of commencement within the timeframes specified in the Act-

- in the case of a child who is, or is to be, adopted, not later than 1 year from the day of placement, or
- in any other case, not later than the day on which the child attains the age of 1 year.

11. Postponement of Parent's Leave by Employer

Parent's leave may be postponed once by an employer where the granting of the leave would have a substantial adverse effect on the operation of his or her business, profession or occupation by reason of-

- seasonal variations in the volume of work concerned,
- the unavailability of a person to carry out the duties of the employee in the employment during the period of the leave,
- the nature of the employee's duties,
- the number of employees in the employment or the number of such employees whose parent's leave will fall within the period specified in the employee's notification, or
- any other relevant matters,

An employer must consult with the employee in advance and provide the reason for the postponement.

An employer is required to give written notice of postponement to the employee not later than 4 weeks before the requested date for beginning the period of parent's leave. The postponement cannot go beyond 12 weeks after the date of commencement specified in the employee's notification and the new date should be agreed between the employer and the employee.

12. Postponement of parent's leave in event of hospitalisation of child

Where the child is hospitalised, an employee may submit a request in writing to his or her employer to postpone the leave or part of it as may be appropriate. An employer may agree to the request to postpone the parent's leave and, if the employer does so-

- the relevant parent must continue to work or, as the case may be, return to work on a date agreed by him or her and the employer that is not later than the date on which the parent's leave is due to end in accordance with the written notification,

- the parent's leave will be postponed with effect from the agreed date,
- the postponed leave is to be taken not later than 7 days after the discharge of the child from hospital or such other date as may be agreed between the employee and the employer.

Where, following the postponement of parent's leave, an employee returns to work and during the period of the postponement goes absent from work due to sickness, the employee will be deemed to have commenced postponed leave on the first day of the absence unless he or she notifies the employer in writing as soon as reasonably practicable that he or she does not wish to be on parent's leave. Following receipt of this notification, the employee's absence should be treated as sick leave in the normal manner and the employee forfeits the entitlement to the postponed parent's leave.

Entitlement to postponed parent's leave is subject to the employee having notified his or her employer in writing as soon as reasonably practicable but not later than the day on which the leave begins of his or her intention to commence such leave and the duration of such leave. An employer may waive the right to receive such notification. A notification may be revoked by a further notification in writing given by or on behalf of the employee within the specified period.

13. Entitlement to parent's leave on death of child

Where a child in relation to whom a relevant parent is entitled to, or is on, parent's leave dies on or before the expiration of the leave entitlement, the child's death will not affect the entitlement of the employee to take the leave.

This also applies to an employee who would be entitled to parent's leave but for the fact that he or she had not given the written notification to his or her employer at the time of the child's death.

14. Entitlement of employed surviving parent to leave on death of relevant parent

Where a relevant parent who was an employee entitled to parent's leave in relation to a child dies on or before the expiration of the leave entitlement, an employee who is a surviving parent of the child shall be entitled to leave (referred to as "transferred leave") to enable him or her to provide, or assist in the provision of, care to the child. The transferred leave may be for a period of 2 weeks or, if applicable, such shorter period of parent's leave that remained to be taken by the relevant parent at the time of his or her death.

A surviving parent who is entitled to parent's leave and has not taken such leave, and becomes entitled to transferred parent's leave, may take transferred parent's leave after the end of the period of parent's leave.

Entitlement to transferred parent's leave is conditional on the employee who is the surviving parent notifying the employer in writing not later than 6 weeks before the intended commencement of the transferred parent's leave of-

- the death of the relevant parent,
- his or her intention to take transferred parent's leave,
- the length of leave to which he or she believes he or she is entitled, and
- the employer may request the employee to provide a copy of the death certificate made in respect of the relevant parent as soon as reasonably practicable prior to the granting of the transferred parent's leave.

15. Protection of Employment Rights while on Parent's Leave

During the period of parent's leave, the employee's employment rights are protected (except for the employee's right to remuneration).

Employees continue to accrue an entitlement to annual leave and public holidays while on parent's leave.

A period of absence on parent's leave cannot be treated as part of any other leave to which the employee is entitled such as sick leave and annual leave.

Employees are entitled to return to work in their normal job and under terms and conditions not less favourable.

An employer is prohibited from penalising, or threatening penalisation of, an employee for proposing to exercise or having exercised his or her entitlement to parent's leave.

16. Employees on probation

Where an employee who is on probation takes parent's leave, an employer may suspend the probation during the parent's leave until the employee returns to work.

Please ensure that this Circular is brought to the attention of all relevant managers in your area of responsibility.

17. Queries

Queries from individual employees or managers in relation to parent's leave entitlements should be referred to local HR Departments/Employee Relations Departments.

Queries from HR Departments in relation to the Parent's Leave and Benefit Act 2019 and this Circular may be referred to Anna Killilea, HSE Corporate Employee Relations, HR Directorate, 63-64 Adelaide Road, Dublin 2. Tel: 01 6626966, Email: anna.killilea@hse.ie

Please note that the National HR Help Desk is also available to take queries on 1850 444 925 or email: ask.hr@hse.ie.

Yours sincerely



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