SUBSIDIARY LEGISLATION 452.78

PARENTAL LEAVE ENTITLEMENT REGULATIONS

2nd September, 2003

LEGAL NOTICE 225 of 2003, as amended by Legal Notices 427 and 430 of 2007, 175 of 2010 and 204 of 2011.

Title and scope. *Amended by: L.N. 204 of 2011.*

1. (1) The title of these regulations is the Parental Leave Entitlement Regulations.

(2) These regulations lay down minimum requirements designed to facilitate the reconciliation of parental and professional responsibilities for working parents and foster carers.

Interpretation. *Amended by: L.N. 204 of 2011.* Cap. 452.

2. (1) In these regulations:

"Act" means the Employment and Industrial Relations Act;

"foster care" means a service for a determinate period whereby a child is placed in the continuous care of a foster carer, and through which the child is brought up in a family environment according to his best interests;

''foster carer'' means one or more persons, approved by the Fostering Board, to foster a child in terms of the Foster Care Act; Cap. 419.

"*pro rata*" shall have the meaning assigned to it by article 2 of the Act:

Provided that:

(*a*) when the employee is in part-time employment on a variable time schedule, the number of hours of work per week shall be the average number of hours of work per week spread over successive thirteen week periods commencing on the first of January of each calendar year; and

(*b*) when the employee has not been in part-time employment for a period of thirteen weeks the average number of hours of work per week shall be calculated over the number of weeks in employment.

(2) Subject to the provisions of subregulation (1), terms and expressions used in these regulations shall, unless the context otherwise requires, have the meaning assigned to them in the Act.

Applicability. *Amended by: L.N. 204 of 2011.*

3. (1) These regulations shall apply to all employees, whether whole-time or part-time, and whether they are employed on an indefinite or a fixed term contract:

Provided that in all cases the employee has been in the employment of the same employer for a continuous period of at least twelve months:

Provided further that for the purpose of calculating the

twelve month qualifying period in case of employees with a fixed term contract:

(*a*) when there are successive fixed term contracts with the same employer, the sum of these contracts shall be taken into account, and

(*b*) when there is a fixed term contract which is renewed within a six month period from its termination, the said period between the two contracts shall also be taken into account.

(2) The minimum periods of entitlement mentioned in the preceding subregulation shall be applicable unless a shorter period of entitlement has been established in the contract of service of the employee or in a collective agreement applicable to the employee.

(3) These regulations shall be applicable without prejudice to the introduction and implementation of more favourable provisions in collective agreements or other agreements entered into between the employer and the employee.

PARENTAL LEAVE

Parental leave. *Amended by: L.N. 204 of 2011.*

4. (1) It shall be the individual right of both male and female workers to be granted unpaid parental leave on the grounds of birth, adoption, fostering or legal custody of a child to enable them to take care of that child for a period of four months until the child has attained the age of eight years:

Provided that this right shall be granted on a non-transferable basis:

Provided further that parental leave shall be availed of in established periods of one month each.

(2) Unless otherwise prescribed in a collective agreement applicable to the employee, the employer together with the employee may decide whether to grant the parental leave on a full-time or a part-time basis, in a piecemeal way or in the form of a time credit system.

(3) In the event that the parental leave was not availed of or there is still an existing balance of parental leave, an employee shall remain entitled to such leave even if there is a change in the employer or in the employment of the employee, as long as the employee qualifies in accordance with regulation 3.

Adoptive parents. *Amended by: L.N. 430 of 2007.*

5. Entitlement to parental leave by employees, shall commence from the date when the employee provides the employer with -

(*a*) evidence that the legal proceedings necessary for the adoption to be completed in accordance with the law have been initiated, and

(*b*) (i) a written certificate from the competent authority, designated for this purpose by the Minister responsible for social policy, certifying that a positive home study report has been completed; or

(ii) certified evidence that the couple have legal custody of the child.

Foster carers. *Added by: L.N. 204 of 2011.*

5A. The entitlement to parental leave by employees who are foster carers shall commence from the date when the employee provides the employer with either official documentation provided by the Fostering Board or by the central authority, as the case may be, that the employee has been accepted as a foster carer, or with official documentation provided by the Fostering Board that the review report drawn up by an accredited agency has been accepted by the Fostering Board in terms of the Foster Care Act, according to whichever bears the most recent date.

Cap. 491.

Notice and request.

6. (1) An employee applying for parental leave from the employer shall be bound to give a minimum of three weeks notice in writing, specifying the beginning and the end of the parental leave, prior to taking such leave.

(2) An employee shall have the right to request parental leave during the period specified in article 36(20) of the Act:

Provided that when parental leave is granted during the period specified in this subregulation, said period shall be considered to have been automatically suspended on the commencement of, and during the parental leave, and shall only resume when the employee returns to work from the parental leave.

Postponement. *Amended by: L.N. 430 of 2007; L.N. 175 of 2010.*

7. (1) An employer who receives notice for parental leave as prescribed in regulation 6, may temporarily postpone the granting of parental leave for justifiable reasons related to the operation of the place of work.

(2) For the purposes of this regulation, the term "justifiable reasons" includes:

(*a*) where the work carried out at the place of business is of a seasonal nature;

(*b*) where a replacement cannot be found within the notice period given by the employee;

(*c*) where the specific employment of the employee who requests parental leave is of strategic importance to the undertaking or place of business;

(*d*) where the place of business is a small enterprise employing not more than ten people, provided that the employer consults with the employee in order to establish alternative dates when such leave may be availed of, in such a way to avoid indefinite postponement of the requested parental leave;

(*e*) where a significant proportion of the workforce applies for parental leave at the same time:

Provided that an employer who decides to postpone the granting of parental leave shall inform the employee in writing of the reasons for the postponement within two weeks of receipt of the employee's notice in cases provided for in regulation 6(1):

Provided further that the postponement by the employer of

the taking of parental leave is without prejudice to the employee's right to take the parental leave entitlement at the latest before the child reaches eight years of age and if such postponement may result in the loss of the parental leave entitlement or part thereof, it shall be the duty of the employer to immediately grant parental leave for a period equivalent to the leave still unavailed of, or for such other lesser period as may be requested by the employee.

Right to return to same job.

8. The employee who exercises the right to make use of parental leave shall be entitled to return to the same job that the employee occupied prior to the granting of parental leave, or, where this is no longer possible for any valid reason, to an equivalent or similar job consistent with the original contract of employment of the employee.

Entitlement of employees during parental leave.

9. (1) The employee who is on parental leave shall, during the period of parental leave, be still entitled to all rights and benefits which may accrue to other employees of the same class or category of employment at that same place of work:

Provided that during the period of parental leave, the employee shall still have the right to apply for promotion opportunities arising within the place of work.

(2) During the period of parental leave, an employee shall not, upon the resumption of duties at the workplace, be entitled to any other leave, bonuses or allowances and shall not avail himself of such entitlement which might have accrued during such period.

(3) Unless the employer and the employee agree otherwise, the employer shall not, during the period of parental leave, have the right to suspend the parental leave and to request the employee to return to work before the agreed date of resumption of duties, and the employee shall have no right to return to work prior to the agreed date of resumption of duties.

Rights and obligations. *Added by: L.N. 204 of 2011.*

9A. (1) Upon an employee's return from parental leave, such employee may request changes to his working hours and patterns for a specific period of time. Every employer shall consider and respond to such requests, taking into account both his and the employee's needs.

(2) In order to facilitate the return to work following parental leave, both the employer and the employee concerned are obliged to maintain contact during the period of leave and may make arrangements for any appropriate reintegration measures, which are to be decided between the parties themselves.

Unfair dismissal.

10. It shall not be lawful for the employer to dismiss an employee solely because an employee takes or applies to take parental leave in accordance with these regulations, and any such dismissal shall not constitute a valid reason for termination of employment, without prejudice to any justified termination of employment as prescribed by the Act:

Provided that notice of termination of employment, as provided for in the Act may be given during the period of parental leave:

Provided further that, in the case of issuing a notice of termination by either the employer or the employee during the parental leave, this shall result in the automatic suspension of the parental leave from the third working day following the date of issue of such notice.

Right of employee to demand a statement of parental leave taken.

11. Every employer shall be bound to keep a record of the parental leave granted to every employee and shall, on the demand of the employee which may be made even after termination of employment, deliver to the employee a written statement of the details of the leave granted to the employee.

MISCELLANEOUS

Disputes.

12. Should a dispute arise between an employer and an employee regarding the entitlements covered by these regulations or any related matter, then either the employer or the employee may refer the matter to the Director of Employment and Industrial Relations who shall mediate between the parties.

Offences.
Amended by:
L.N. 427 of 2007.

13. Any person contravening the provisions of these regulations shall be guilty of an offence and shall be liable, on conviction, to a fine of not less than one hundred and sixteen euro and forty-seven cents (116.47) and not more than one thousand and one hundred and sixty- four euro and sixty-nine cents (1,164.69).