

# Paternity Leave

## Key Points

- Paternity leave has been recognised as Statutory Leave Entitlement from **1st September 2016**.
- Paternity Leave entitles a “relevant parent” to two weeks leave to be taken within 26 weeks of the child’s birth.
- A “relevant parent” is taken to mean the Father of the child, or the spouse, civil partner or cohabitant of the Mother or Relevant Adopting Parent. Where the child is to be adopted jointly by a married couple of the same sex, one spouse may be chosen as a “relevant parent” for the purposes of receiving Paternity Leave.
- There is no obligation on employers to pay for Paternity Leave. A “Paternity Benefit” payment may be claimed from the Department of Social Protection if the employee has sufficient PRSI contributions.

## Entitlement

A relevant parent to a child is entitled to take 2 weeks leave from his/her employment to provide care to the child, or to provide support to the mother or relevant adopting parent. A relevant parent is entitled to take this leave regardless of their length of employment with the company, or regardless of their employment status (i.e. full-time / part-time; fixed term / permanent). Only one person who is a relevant parent to the child will be entitled to take Paternity Leave.

Where multiple births occur, or 2 or more children are adopted at the same time, the relevant parent will be entitled to one period of paternity leave only (i.e. 2 weeks Paternity Leave).

In general, the leave must be taken in a 2-week consecutive block. The only exception to this occurs when the Paternity Leave is postponed owing to the hospitalisation of the child.

## Notification

Employees who intend to avail of Paternity Leave should give notice in writing, as soon as is reasonably practicable, but not less than 4 weeks before the intended commencement date. The employee’s intention to return to work should also be advised within this notice.

Paternity Leave cannot commence before the date of birth, or, in the case of adoption, before the date of placement. The employee must use the leave within 26 weeks of the birth or placement. Should the date of birth be 4 weeks or more earlier than anticipated and no notice has been given by the employee, the proper notification procedure will be considered to have been adhered to if the employee provides notification within 7 days of their intention to take Paternity Leave. 2

Should the date of birth be later than anticipated or should the date of placement be postponed for any reason, the employee may choose another date upon which their paternity leave may commence.

## Payment

There is no obligation on an employer to pay an employee during a period of Paternity Leave.

Employees may qualify for Paternity Benefit which is a Department of Social Protection payment if they have sufficient PRSI contributions. An employee’s contract could provide for additional rights to payment during the leave period. In the event of a multiple birth or more than one child being adopted at any one time, only one paternity benefit may be claimed.

**Public holidays and annual leave**

Apart from pay and superannuation, time spent on paternity leave is treated as though the employee has been in employment, and this time can be used to accumulate annual leave and public holiday entitlement.

**Postponement of Paternity Leave**

Paternity Leave may be postponed should the employee become sick prior to the commencement of the leave, or in the event of the child being hospitalised.

In the event of sickness of the employee, they may provide written notice, as soon as is reasonably practicable but no later than the day on which their leave was intended to commence, of their intention to postpone the leave. Paternity leave must commence within 7 days of the employee no longer being sick or on a date agreed with the company. In addition, the postponed leave must end, not later than 28 weeks after the date of birth, or the date of placement.

In the event of a hospitalisation of the child, the employee may request in writing to postpone the leave, or a part of the leave. If the employer agrees to postpone the leave, the employee will be expected to return to work on a date agreed, or to continue working. The employer must notify the employee of their decision in relation to the requested postponement in writing as soon as is reasonably practicable.

If during the period of postponed leave, the employee is absent from work due to sickness the paternity leave will automatically commence, or recommence, on the first day of absence, unless the employee has notified his/her employer in writing that he/she does not wish to (re)commence paternity leave.

**Refusing a Leave Request**

Where the employer has reasonable grounds for believing that the individual requesting the leave may not be entitled to it, they may refuse the leave by providing a written notice to the employee. The written notice should contain a summary statement of the grounds for refusing the leave request. Where the leave request is refused, the employee will not be entitled to take the paternity leave requested. 3

**Transfer of Leave**

Where the relevant parent, with an entitlement to paternity leave, dies within 28 weeks of the birth of the child, or the placement of the child, the employed surviving parent will be entitled to take the leave, or the remainder of the leave untaken by the relevant parent.

The employee to whom the leave is transferred, must inform their employer in writing of the death of the relevant parent, their intention to take the transferred paternity leave and the length of leave to which he/she believes that he/she is entitled to take.

**Abuse of Paternity Leave**

Paternity Leave must be taken for the sole purpose of providing care to the child or providing support to the Mother or relevant adopting parent of the child. Where an employer has reasonable grounds for believing that the employee is not using the leave for the purpose specified, the employer may terminate the leave. Before terminating the leave, notice should be provided in writing to the employee, providing a summary statement of the grounds for termination, and providing a date upon which the employee will be expected to return to work. The employee should be given 7 days to respond to the notice.

### **Employee Rights**

During the period of paternity leave the employee shall be deemed to have been in employment, and as such, no rights related to the employee's employment should be affected. They will be entitled to return to the same job as they held prior to commencing their paternity leave, or should that not be reasonably practicable, to a job holding terms and conditions no less favourable. Any termination of employment, suspension of employment, or notice of termination of employment issued while the employee is absent from work on paternity leave will automatically be considered void.

The employee is protected against penalisation, or the threat of penalisation relating solely to their intention to take, or having exercised, their entitlement to paternity leave.

### **Maintaining Records**

Paternity Leave records should be retained by the employer for a period of 8 years after the leave is taken.

### **Disputes**

Any disputes that arise relating to Paternity Leave that cannot be solved internally should be referred to the Workplace Relations Commission in the first instance. A decision of the Workplace Relations Commission can be appealed to the Labour Court.