

Circular Title: **Paternity Leave in the Civil Service**

I am directed by the Minister for Public Expenditure and Reform to say that the following revised arrangements will apply in relation to Paternity Leave in the Civil Service.

Circular Number: **18/2016**

Purpose: **To set out the revised Paternity Leave Scheme in the Civil Service.**

Status: **This Circular revokes Circular 32/1999 – *Paternity Leave***

Circular Application: **To all civil servants.**

Relevant Employment Law: **Paternity Leave and Benefits Act 2016**

Effective Date: **1 September, 2016**

Responsibility for Implementation: **HR Units/Heads of Department**

Introduction

1. This Circular is issued pursuant to the power contained in section 17 of the Civil Service Regulation Act 1956 (as amended).

2. The Paternity Leave and Benefit Act 2016 has resulted in changes to the paternity leave arrangements currently in place for the Civil Service. The arrangements applying to civil servants in relation to paternity leave are, in general, as specified in that Act. This Circular provides a summary of the main provisions of the Act as they apply to civil servants. It is not intended as a legal interpretation of the Act.

Purpose of Paternity Leave

3. The purpose of this leave is to enable civil servants, who are relevant parents, to provide or assist in the provision of care to a child or to provide support to the relevant adopting parent or mother of the child.

Period of leave

4. Paternity leave shall comprise a single period of 2 weeks leave with pay.¹

5. Paternity leave must commence within 26 weeks of the date of birth (or placement in the case of an adoption). It must be taken as one continuous period of two weeks, except in the event of the hospitalisation of the child and postponement of the paternity leave.

Eligibility to apply for Paternity Leave

6. In order to apply for paternity leave, a civil servant must be a “relevant parent” as defined in the Paternity Leave and Paternity Benefits Act (the Act), namely:

“relevant parent”, in relation to a child, means a person (other than the mother of the child) who is—

(a) in the case of a child who is, or is to be, adopted—

(i) where the child is, or is to be, adopted jointly by a married couple of the same sex, the spouse chosen by that couple to be the relevant parent for the purposes of the Act, or

¹ Work-sharers should be treated on a pro-rata basis.

(ii) in any other case, the spouse, civil partner or cohabitant, as the case may be, of the adopting mother or sole male adopter of the child,
or

(b) in any other case—

(i) the father of the child,

(ii) the spouse, civil partner or cohabitant, as the case may be, of the mother of the child, or

(iii) a parent of the child under Section 5 of the Children and Family Relationships Act 2015 where the child is a donor-conceived child within the meaning of Part 2 of that Act.

7. Paternity leave is only applicable in the following circumstances:

(a) in the case of a child who is, or is to be, adopted where the day of placement in respect of the child falls on or after 1 September 2016, or

(b) in any other case, where the date of birth in respect of the child falls on or after 1 September 2016.

8. In the case of a multiple birth or the adoption of more than one child, the entitlement to paternity leave remains at one single period of leave.

9. Paternity leave is available for stillbirths after 24 weeks of pregnancy.

10. A person may not avail of paternity leave under the Paternity Leave and Benefit Act 2016 where the person avails of Adoptive Leave under Section 6 of the Adoptive Leave Act of 1995.

Documentation Required

11. Claimants for paternity leave will, in the case of a birth of a child, have to provide evidence from a registered medical practitioner which shows the expected date of birth. The birth certificate can be provided where the child is born before the expected date. In the case of an adoption, claimants will have to provide the certificate of placement. In the case of an inter country adoption, claimants will need to supply the declaration of eligibility and suitability followed by the certificate of placement as soon as it becomes available.

Applications

12. Applications for paternity leave must be made at least 4 weeks in advance of the expected day of placement in the case of adoptions and at least 4 weeks in advance of the expected date of birth of a child. In the case where the leave is not being taken at the time of birth or placement, applications must be made at least 4 weeks in advance of the planned leave.

13. In the event of an earlier than expected birth, applications can be made outside of the 4 week period.

14. For those organisations in PeoplePoint, all applications for paternity leave will be processed by PeoplePoint following approval of the application by the line manager. Applications will be processed by HR Units in those organisations outside PeoplePoint.

Postponement of Paternity Leave

15. In the event of the day of placement being postponed or the date of birth occurring after the date selected by a relevant parent, the relevant parent is entitled to select another date for the commencement of the paternity leave. In such circumstances, the line manager/PeoplePoint should be notified as soon as possible.

16. In the event of sickness of the relevant parent immediately prior to the commencement of his/her paternity leave, the paternity leave may be postponed. Such postponed leave can be resumed on a date which is agreeable to the relevant parent and the employer, but end no later than 28 weeks after the date of birth or day of placement (Section 11 of Act).

17. In the event of the hospitalisation of the child, the paternity leave may be postponed. Such postponed leave is to be taken in one continuous period commencing not later than 7 days after the discharge of the child from hospital or such other date which is agreeable to the relevant parent and the employer (Section 12 of the Act).

Payment while on Paternity Leave

18. Subject to paragraphs 19 and 20 below, a person on paternity leave is entitled to normal pay.

19. A person who is (or was) fully insured under the Social Welfare Acts and who fulfils certain contribution conditions may be entitled to paternity benefit from the Department of Social Protection. Information about this benefit is available from the Department of Social Protection.

Such persons on paternity leave are entitled to payment by his/her Department on the basis provided for in paragraph 18 above or of an amount equivalent to the full rate of benefit to which he/she is entitled, whichever is the greater, provided he/she:

- a) authorises the Department of Social Protection to pay any benefit due to him/her under the social insurance system directly to his/her employing Department/Office, and
- b) makes the necessary claims for social insurance benefit to the Department of Social Protection within the required time limits and complies with whatever requirements are laid down by that Department as a condition of claiming benefit.

20. The Department of Social Protection has advised that:

- a) individuals can only apply for Paternity Benefit online at mywelfare.ie. The individual must upload his/her supporting documentation and submit it online with his/her application, and
- b) individuals must have a Public Services Card to apply for Paternity Benefit.²

21. Paternity leave must not be treated as part of any other leave (including sick or annual leave) to which the civil servant is entitled. Therefore, a person who has gone onto sick leave, at a pay rate other than full pay, immediately prior to going on

² If an individual does not already have a Public Services Card, he/she can make an appointment to get one at mywelfare.ie. Individuals will first need to register with the site. To do this, an individual will need a mobile phone number and two e-mail addresses (a main address and an alternate address). When the appointment has been made, individuals must print the notification and bring it to his/her appointment along with the required documents (listed in the notification). Information on the payment of Paternity Benefit is available on the Department of Social Protection website www.welfare.ie. The following links are useful:

<https://www.welfare.ie/en/Pages/Paternity-Benefit.aspx>

<https://www.welfare.ie/en/Pages/Paternity-Benefit-FAQ.aspx>

<https://www.welfare.ie/en/pdf/PB2.pdf>

paternity leave, will resume normal pay upon commencement of paternity leave subject to the terms of paragraphs 18 and 19 above.

Employment Rights

22. Subject to paragraph 23 below, while on paternity leave, a relevant parent must be deemed for all purposes to have been in employment. Paternity leave is, therefore, fully reckonable for service, seniority and annual leave entitlement. A relevant parent on paternity leave should be given the benefit of any public holiday and Good Friday falling within the period of paternity leave by having it granted immediately after paternity leave.

23. In the case of a relevant parent who is on probation at the commencement of paternity leave, the period of probation may stand suspended during paternity leave and will be completed by the relevant parent on his/her return to work.

Transfer of Paternity Leave

24. The Act makes provision for the transfer of paternity leave in a number of situations where one of the relevant parents dies. Details of the conditions governing such leave are available from HR Units/PeoplePoint. (Sections 13 – 15 of Act).

Decision Maker

25. It is envisaged that decisions relating to paternity leave will be made by the civil servant's manager and/or the Head of HR as appropriate to the Department/Office.

Abuse of Paternity Leave

26. Where a decision maker has reasonable grounds for believing that a civil servant on paternity leave is not using the leave for the purpose specified in paragraph 3, he/she can terminate the leave by notice in writing to the civil servant. The written notice should outline the grounds for terminating the leave and specify the date by which the employee must return to work.

Refusal to Grant Paternity Leave

27. Where a decision maker has reasonable grounds for believing that the civil servant is not entitled to the paternity leave, he/she can refuse to grant the leave by notice in

writing to the civil servant. The written notice should contain a statement in summary form of the grounds for refusing to grant the paternity leave.

Right of Civil Servant to Make Representation

28. Where a decision maker proposes to give a notice under paragraphs 26 and/or 27 to a civil servant, the decision maker should, before giving the notice, notify in writing the proposal to the civil servant. The notification should contain a statement in summary form of the grounds for terminating, or, as the case may be, refusing to grant, the paternity leave concerned. It should also state that the civil servant may make representations to the decision maker in relation to the proposal as soon as possible but not later than 10 days of the receipt of the notification. Any such representations made by a civil servant to a decision maker within that period should be considered by the decision maker before he or she decides whether to give a notice under paragraphs 26 and/or 27, as the case may be, to the civil servant.

Fraudulent Claim

29. A fraudulent claim for paternity leave made by any civil servant will be treated as a disciplinary matter.

Implementation

30. HR Units should communicate this policy to all staff in their Department. This policy is also available at www.circulars.gov.ie and will also be available on request from your HR Unit/PeoplePoint.

Queries

31. Queries in relation to this Circular should be addressed to the HR Unit of your Department/Office.

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12 October 2016