



Number 25 of 2005

ADOPTIVE LEAVE ACT 2005

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ACTS REFERRED TO

Adoptive Leave Act 1995	1995, No. 2
Defence Act 1954	1954, No. 18
Defence (Amendment) (No. 2) Act 1960	1960, No. 44
Redundancy Payments Act 1967	1967, No. 21
Redundancy Payments Act 2003	2003, No. 14
Social Welfare Acts	
Unfair Dismissals Act 1977	1977, No. 10



Number 25 of 2005

ADOPTIVE LEAVE ACT 2005

AN ACT TO AMEND THE ADOPTIVE LEAVE ACT 1995 AND
TO PROVIDE FOR CONNECTED MATTERS.

[2nd November, 2005]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—In this Act—

Definitions.

“Act of 1977” means the Unfair Dismissals Act 1977;

“Order of 2001” means the Adoptive Leave Act 1995 (Extension of
Periods of Leave) Order 2001 (S.I. No. 30 of 2001);

“Order of 2004” means the Adoptive Leave Act 1995 (Extension of
Periods of Leave) Order 2004 (S.I. No. 667 of 2004);

“Principal Act” means the Adoptive Leave Act 1995.

2.—Section 2 (interpretation) of the Principal Act is amended—

Amendment of
section 2 of
Principal Act.

(a) in subsection (1)—

- (i) by substituting the following definitions for those of
“additional adoptive leave” and “adoptive leave”:

“‘additional adoptive leave’ has, subject to subsection
(2A), the meaning assigned to it by section 8(1) or, as
the case may be, section 10(1);

‘adoptive leave’ has, subject to subsection (2A), the
meaning assigned to it by section 6(1) or, as the case
may be, section 9(1);”;

- (ii) by substituting “Minister for Justice, Equality and
Law Reform” for “Minister for Equality and Law
Reform” in the definition of “the Minister”, and

- (iii) by inserting the following definition:

“‘postponed leave’ has the meaning assigned to it by
section 11C(2)(c);”;

and

- (b) by inserting the following subsection after subsection (2):

“(2A) In this Act, except where the context otherwise requires, references to a period of adoptive leave or additional adoptive leave are references to—

- (a) in case part of such leave is postponed under section 11C, the part already taken or the part postponed, as appropriate, or
- (b) in any other case, a continuous such period, whether or not so postponed.”.

Amendment of section 6 of Principal Act.

3.—The following section is substituted for section 6 (amended, as to the minimum period of adoptive leave, by Article 4 of the Order of 2004) of the Principal Act:

“Entitlement of employed adopting mother (or sole male adopter) to minimum period of adoptive leave.

6.—(1) Subject to this Part, an employed adopting mother (or sole male adopter) shall be entitled to leave (to be known as ‘adoptive leave’) from the employee’s employment.

(2) Adoptive leave shall begin on the date of placement and be for a minimum period of 16 weeks.

(3) The minimum period may be extended by order made by the Minister with the consent of the Minister for Social and Family Affairs and the Minister for Finance.”.

Amendment of section 8 of Principal Act.

4.—Section 8 (entitlement of employed adopting mother or sole male adopter to additional adoptive leave) (amended, as to the maximum period of additional adoptive leave, by Article 5 of the Order of 2001) of the Principal Act is amended by substituting the following subsection for subsection (1):

“(1) (a) Subject to this Part, an employed adopting mother (or sole male adopter) who is entitled to, or is on, adoptive leave shall, on request, be entitled to further leave (to be known as ‘additional adoptive leave’) from the employee’s employment.

(b) The additional adoptive leave shall commence immediately after the adoptive leave and be for a maximum period of 8 weeks.

(c) The maximum period may be extended by order made by the Minister.”.

Amendment of section 9 of Principal Act.

5.—Section 9 (entitlement of adopting father to adoptive leave in certain circumstances) (amended, as to the period of such adoptive leave, by Article 5 of the Order of 2004) of the Principal Act is amended by substituting the following subsection for subsection (1):

“(1) (a) Where an adopting mother dies, the adopting father shall be entitled to leave (to be known as ‘adoptive leave’) from his employment.

(b) The adoptive leave shall be for a period of—

(i) in case the adopting mother dies on or after the

day of placement, 16 weeks less the period between the date of placement and the date of her death, or

(ii) in any other case, 16 weeks.

(c) The period may be extended by order made by the Minister with the consent of the Minister for Social and Family Affairs and the Minister for Finance.”.

6.—Section 10 (entitlement of adopting father to additional adoptive leave in certain circumstances) (amended, as to the periods of such leave, by Article 7 of the Order of 2001) of the Principal Act is amended by substituting the following subsection for subsection (1):

Amendment of section 10 of Principal Act.

“(1) (a) An employed adopting father who is entitled to, or is on, adoptive leave on the death of the adopting mother shall, on request, be entitled to further leave (to be known as ‘additional adoptive leave’) from his employment.

(b) The additional adoptive leave shall be for a period of—

(i) in case the adopting mother dies on or after the expiration of 16 weeks from the day of placement, 8 weeks less the period between the date of that expiration and the date of her death, or

(ii) in any other case, 8 weeks.

(c) The period of additional adoptive leave may be extended by order made by the Minister.”.

7.—The following section is inserted in the Principal Act after section 11:

New section 11A to Principal Act.

“Time off to attend certain pre-adoption classes and meetings.

11A.—(1) Subject to subsections (2) and (3), an employee shall be entitled to time off from work, without loss of pay, to attend any pre-adoption classes and meetings which the employee is obliged to attend.

(2) Subsection (1) shall not apply—

(a) to a member of the Defence Forces who is—

(i) on active service within the meaning of section 5 of the Defence Act 1954 or deemed to be on active service within the meaning of section 4(1) of the Defence (Amendment)(No. 2) Act 1960,

(ii) engaged in operational duties at sea,

(iii) engaged in operations in aid of the civil power,

- (iv) engaged in training that is directly associated with any of the activities referred to in subparagraphs (i), (ii) and (iii) of this paragraph, or
 - (v) engaged in any other duty outside the State,
- (b) if the Chief of Staff of the Defence Forces in exceptional circumstances so directs, to a member of the Defence Forces who is required to perform a duty which is, in the opinion of the Chief of Staff of the Defence Forces, of a special or urgent nature for so long as the member is performing the duty,
- (c) to a member of the Garda Síochána who is on the direction, or with the consent, of the Commissioner of the Garda Síochána serving outside the State and performing duties of a police character or advising others on, or monitoring them in, the performance of such duties or any related duties for so long as the member is so serving, and
- (d) if the Commissioner of the Garda Síochána in exceptional circumstances so directs, to a member of the Garda Síochána who is required to perform a duty which is, in the opinion of the Commissioner of the Garda Síochána, of a special or urgent nature for so long as the member is performing the duty.
- (3) (a) In this subsection ‘classes’ refers to the pre-adoption classes and meetings mentioned in subsection (1).
- (b) The entitlement of an employee to time off under subsection (1) is subject to his or her having—
- (i) notified the employer in writing of the dates and times of the classes concerned, or the date and time of each class, as soon as practicable but not later than 2 weeks before the date of the first class, or the class concerned, as the case may be, and
 - (ii) produced to the employer, on request, an appropriate document indicating the dates and times of the classes, or the date and time of the class, concerned.
- (c) Where the circumstances are such that,

in the case of a particular class, non-compliance by the employee with paragraph (b) is not due to any neglect or default by the employee in relation to attendance at the class, the employee is deemed to have complied with the requirements of that paragraph if, not later than one week after the date of the class concerned, he or she provides the employer with evidence of the attendance and an indication of the circumstances which gave rise to the non-compliance.

(4) References in this section to pre-adoption classes and meetings are references to such classes and meetings held within the State.”.

8.—The following section is inserted after section 11A of the Principal Act: New section 11B to Principal Act.

“Termination of additional adoptive leave on sickness of adopting parent.

11B.—(1) An adopting parent (‘the employee’)—

(a) who is sick while on adoptive leave or while entitled to, or on, additional adoptive leave, and

(b) who wishes to terminate the additional adoptive leave,

may request the employer in writing to terminate the additional adoptive leave or cause such a request to be made.

(2) If the employer agrees to terminate the leave, it shall terminate on a date agreed by the employee and the employer that is—

(a) not earlier than the date on which the sickness began, and

(b) not later than the date on which the leave would have ended in accordance with the notification of intention to take it given by the employee to the employer under this Part or section 41, as the case may be.

(3) The employer shall notify the employee of the decision on the request as soon as is reasonably practicable after its receipt.

(4) On the termination of the additional adoptive leave—

(a) the absence from work of the employee owing to sickness after the termination shall be treated in the same way as any other absence from work of the employee owing to sickness, and

- (b) the employee shall cease to be entitled to any leave not by then taken.”.

New section 11C to
Principal Act.

9.—The following section is inserted after section 11B of the Principal Act:

“Postponement
of leave on
hospitalisation
of child.

11C.—(1) If—

- (a) an adopted child is in hospital, and
- (b) the child’s adopting parent (‘the employee’) is entitled to, or is on, adoptive leave or additional adoptive leave,

the employee may request the employer in writing (or cause such a request to be made) to postpone in accordance with this section—

- (i) the whole of the adoptive leave and any additional adoptive leave,
- (ii) the part of the adoptive leave not by then taken and any additional adoptive leave, or
- (iii) the whole of the additional adoptive leave or any part not by then taken,

as appropriate.

(2) If the employer agrees to the request—

- (a) the employee shall continue to work or, as the case may be, shall return to work on a date agreed by the employee and employer that is not later than the date on which the leave concerned is due to end in accordance with the notification given under section 7 or (as the case may be) given, or deemed under subsection (5) to have been given, under section 8(3),
- (b) the leave concerned shall be postponed or, as the case may be, postponed with effect from the date agreed under paragraph (a),
- (c) the employee shall be entitled in accordance with this section to the leave or the part of the leave not taken by reason of the postponement (in this Act referred to as ‘postponed leave’), and
- (d) the postponed leave shall be taken as a continuous period beginning not later than 7 days after the child is discharged from hospital or such other date as may be agreed between the employer and the employee.

(3) The employer shall notify the employee concerned in writing of the decision on the request as soon as is reasonably practicable after its receipt.

(4) (a) Subject to subsection (6), entitlement to postponed leave shall be subject to the employee having notified the employer in writing (or having caused the employer to be so notified) of the employee's intention to take the leave.

(b) The notification shall be given by the employee as soon as is reasonably practicable after the employee becomes aware of the date of the child's discharge from hospital.

(c) The notification may be revoked by a further notification in writing given by or on behalf of the employee to the employer.

(5) Notwithstanding that an employee who is on adoptive leave has not caused the employer to be notified in accordance with section 8(3) of his or her intention to take additional adoptive leave, the employee shall be deemed, for the purposes of paragraph (ii) or (iii) of subsection (1), to have done so.

(6) An employer may waive the right to receive a notification in accordance with subsection (4).

(7) The employer may require the employee to supply evidence of the child's hospitalisation and discharge from hospital."

10.—The following section is inserted after section 11C of the Principal Act:

New section 11D to Principal Act.

"Absence from work owing to sickness while leave postponed.

11D.—(1) Where—

(a) an employee whose request to postpone leave has been agreed by the employer continues to work or, as the case may be, returns to work in accordance with section 11C(2)(a), and

(b) is absent from work owing to sickness while the leave is postponed,

the employee shall be deemed to begin the postponed leave on the first day of the absence unless the employee notifies the employer in writing (or causes the employer to be so notified) as soon as is reasonably practicable that the employee does not wish to begin the postponed leave.

(2) On any such notification—

(a) the absence from work of the employee

owing to sickness shall be treated in the same way as any other absence from work of the employee owing to sickness, and

(b) the employee shall cease to be entitled to the postponed leave.”.

Amendment of section 12 of Principal Act.

11.—Section 12 (placements of less than 14 weeks’ duration) (amended, as to the periods of placement, by Article 6 of the Order of 2004) of the Principal Act is amended by substituting the following subsection for subsection (1):

“(1) Where the placement of a child with an adopting parent terminates before the expiration of the period of leave from the employment to which the adopting parent is entitled under this Part (other than as a result of the death of the child), the adopting parent shall notify the employer in writing (or cause the employer to be so notified) of the date of termination as soon as reasonably practicable but not later than 7 days after that date.”.

Substitution of section 15 of Principal Act.

12.—The following section is substituted for section 15 of the Principal Act:

“Preservation or suspension of certain rights, etc., while on adoptive leave.

15.—(1) While absent from work on adoptive leave, an employee—

(a) shall be deemed to have been in the employment of the employer, and

(b) shall, subject to subsection (6) and section 17, be treated as if the employee had not been so absent,

and the absence shall not affect any right of the employee related to the employment (other than the right to remuneration during the absence), whether conferred by statute, contract or otherwise.

(2) While absent from work on additional adoptive leave an employee—

(a) shall be deemed to have been in the employment of the employer, and

(b) shall, subject to subsection (6) and section 17, be treated as if the employee had not been so absent,

and the absence shall not affect any right or obligation related to the employee’s employment (other than the employee’s right to remuneration or superannuation benefits or any obligation to pay contributions in or in respect of the employment during the absence), whether conferred or imposed by statute, contract or otherwise.

(3) While absent from work attending pre-adoption classes or meetings in accordance with section 11A, an employee—

- (a) shall be deemed to be in the employment of the employer, and
- (b) shall, subject to subsection (6) and section 17, be treated as if the employee had not been so absent,

and the absence shall not affect any right related to the employee's employment, whether conferred by statute, contract or otherwise.

(4) Nothing in this section shall affect the right of an employee to be offered suitable alternative employment under section 19.

(5) A period of absence from work in accordance with this Act shall not be treated as part of any other leave (including sick leave or annual leave) to which an employee is entitled.

(6) Where, on starting employment, an employee is on probation, is undergoing training in relation to it or is an apprentice, the probation, training or apprenticeship shall stand suspended during any absence from work in accordance with this Act and shall be completed by the employee on returning to work after the absence.

(7) An employee shall be deemed not to be an employed contributor for the purposes of the Social Welfare Acts for any contribution week (within the meaning of those Acts) while absent from work on adoptive leave or additional adoptive leave if the employee does not receive any reckonable earnings (within that meaning) in respect of that week.

(8) The Minister may by regulations prescribe a period or periods of training in relation to which subsection (6) shall not apply.”.

13.—The following section is substituted for section 16 of the Principal Act:

Substitution of section 16 of Principal Act.

“Voidance of certain purported terminations of employment, etc.

16.—Each of the following shall be void:

- (a) any purported termination of or suspension from employment of an adopting parent while absent from work—
 - (i) on adoptive leave or additional adoptive leave, or
 - (ii) attending pre-adoption classes or meetings in accordance with section 11A;
- (b) any notice of termination of the employment of an adopting parent given during the parent's absence from work—

- (i) on adoptive leave or additional adoptive leave, or
- (ii) while attending pre-adoption classes or meetings in accordance with that section,

and expiring after the absence.”.

Substitution of section 17 of Principal Act.

14.—The following section is substituted for section 17 of the Principal Act:

“Extension of certain notices of termination of employment and certain suspensions.

17.—(1) This section applies to—

- (a) a notice of termination of employment, or
- (b) a suspension from employment,

which is given to or imposed on an adopting parent before the adopting parent begins a period of leave under this Act and which is due to expire during the adopting parent’s absence from work on that leave.

(2) Any notice of termination or any suspension to which this section applies shall be extended by the period of the absence concerned.

(3) References in subsection (1) to a period of leave under this Act include references to a period of time off from work while attending pre-adoption classes or meetings in accordance with section 11A.”.

Substitution of section 18 of Principal Act.

15.—The following section is substituted for section 18 of the Principal Act:

“General right to return to work after adoptive leave or additional adoptive leave.

18.—(1) An adopting parent (‘the employee’) who is absent from work while on adoptive leave or additional adoptive leave shall be entitled to return to work—

- (a) either—
 - (i) with the employer with whom the employee was working immediately before the absence, or
 - (ii) if during the absence there was a change of ownership of the undertaking in which the employee was employed immediately before the absence, with the owner (in this Act referred to as ‘the successor’) of the undertaking when the absence ended,
- (b) in the job which the employee held immediately before the absence began, and

(c) under the contract of employment under which the employee was employed immediately before the absence began, or (as the case may be) under a contract of employment with the successor, which is identical to the contract under which the employee was employed immediately before the absence and (in either case) under terms or conditions—

- (i) that are not less favourable than those that would have been applicable, and
- (ii) that incorporate any improvements in the terms and conditions of employment to which the employee would have been entitled,

if the employee had not been so absent from work.

(2) For the purposes of subsection (1)(b), where the job held by the employee immediately before the absence was not the employee's normal or usual job, the employee shall be entitled to return to work, either in the normal or usual job or in the job so held, as soon as is practicable.

(3) In this section, 'job' means the nature of the work which the employee is employed to do in accordance with the employee's contract of employment and the capacity and place in which the employee is so employed."

16.—Section 19 (right to suitable alternative employment in certain circumstances on return to work) of the Principal Act is amended by substituting the following paragraph for paragraph (b) of subsection (2):

Amendment of section 19 of Principal Act.

“(b) the terms or conditions of the contract—

- (i) relating to the place where the work under it is required to be done, the capacity in which the employee concerned is to be employed and any other terms or conditions of employment are not less favourable to the employee than those of the employee's contract of employment immediately before the absence from work on adoptive leave or additional adoptive leave, and
- (ii) incorporate any improvement in the terms or conditions of employment to which the employee would have been entitled if the employee had not been so absent from work during that period.”.

17.—Section 20 (notification of intention to return to work) of the Principal Act is amended—

Amendment of section 20 of Principal Act.

(a) by substituting the following subsection for subsection (1):

“(1) An employee who is entitled to, or is on, adoptive leave or additional adoptive leave shall cause the employer (or, if aware of a change of ownership of the undertaking concerned, the successor) to be notified in writing of the employee’s intention to return to work and of the date on which the employee expects to do so—

- (a) where the leave is for a period of 4 weeks or less, at the same time as the employee notifies the employer of intention to take the leave,
- (b) where the leave is for a period of more than 4 weeks—
 - (i) subject to subparagraph (ii), in case the leave is postponed leave, either—
 - (I) at the same time as the employee notifies the employer under section 11C(4) of intention to take the leave, or
 - (II) at least 4 weeks before the date of the expected return to work,
 whichever is the later,
 - (ii) in case the employee is deemed under section 11D(1) to be on postponed leave, as soon as is reasonably practicable after the beginning of the absence from work of the employee owing to sickness but not later than the date on which the employee expects to return to work,
 - (iii) in any other case, not later than 4 weeks before the date on which the employee expects to return to work.”,

and

- (b) by deleting subsection (4).

Amendment of section 23 of Principal Act.

18.—Section 23 of the Principal Act is amended by substituting the following paragraph for paragraph (d) of section 2(2) of the Act of 1977, as inserted by the said section 23:

“(d) dismissal where—

- (i) the employee’s employer at the commencement of the employment informs the employee in writing that the employment will terminate on the return to work with that employer of an adopting parent who is absent from work in accordance with the *Adoptive Leave Acts 1995 and 2005* during a period of adoptive leave or additional adoptive leave or a period of time off from work while attending certain pre-adoption classes or meetings, and
- (ii) the dismissal of the employee duly occurs for the

purpose of facilitating the return to work of the adopting parent.”.

19.—Section 24 of the Principal Act is amended by substituting the following paragraph for paragraph (h) of section 6(2) of the Act of 1977, as inserted by the said section 24:

Amendment of section 24 of Principal Act.

“(h) the exercise or contemplated exercise by an adoptive parent of the parent’s right under the *Adoptive Leave Acts 1995* and *2005* to adoptive leave or additional adoptive leave or a period of time off to attend certain pre-adoption classes or meetings.”.

20.—The following section is substituted for section 28 of the Principal Act:

Substitution of section 28 of Principal Act.

“Amendment of Schedule 3 to Redundancy Payments Act 1967. 28.—Schedule 3 to the Redundancy Payments Act 1967 is amended—

(a) in paragraph 5 (absences from work which do not breach continuity of employment) (substituted by section 12(a) of the Redundancy Payments Act 2003), by substituting the following subparagraph for subparagraph (b):

‘(b) a period during which, in accordance with the *Adoptive Leave Acts 1995* and *2005*, an adopting parent was absent from work while on adoptive leave or additional adoptive leave or while attending certain pre-adoption classes or meetings,’

and

(b) in paragraph 8A (absences allowable as reckonable service) (inserted by section 12(b) of the said Act of 2003), by substituting the following subparagraph for subparagraph (a):

‘(a) a period during which, in accordance with the *Adoptive Leave Acts 1995* and *2005*, an adopting parent was absent from work while on adoptive leave or additional adoptive leave or while attending certain pre-adoption classes or meetings.’”.

21.—The following section is inserted after section 44 of the Principal Act:

New section 45 to Principal Act.

“Revocation. 45.—The Adoptive Leave Act 1995 (Extension of Periods of Leave) Order 2001 (S.I. No. 30 of 2001), so far as unrevoked, and the Adoptive Leave Act 1995 (Extension of Periods of Leave) Order 2004 (S.I. No. 667 of 2004) are revoked.”.

[No. 25.] *Adoptive Leave Act* 2005. [2005.]

Short title,
collective citation
and
commencement.

22.—(1) This Act may be cited as the Adoptive Leave Act 2004.

(2) The Principal Act and this Act may be cited together as the Adoptive Leave Acts 1995 and 2005.

(3) This Act comes into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision, and different days may be so appointed for different purposes or provisions.