

13 October 2006

Ref No: E109/18/06

Circular 31/06: Implementation of the Regulations of the Maternity Protection (Amendment) Act 2004

A Dhuine Uasail,

Maternity Protection

1. I am directed by the Minister for Finance to refer to the Maternity Protection (Amendment) Act 2004 and to say that the arrangements applying to civil servants in relation to maternity leave are, in general, as specified in that Act and the earlier Maternity Protection Act 1994. This Circular provides a summary of the main provisions of the Maternity Protection Act 1994 and the Maternity Protection (Amendment) Act 2004 and the relevant Regulations as they apply to civil servants. It is not intended as a legal interpretation of the various Acts, and Departments should acquaint themselves with the legal provisions of the appropriate legislation.

General

2. The Maternity Protection (Amendment) Act 2004, other than section 24, came into effect on 18 October, 2004. (Section 24 refers to the Redundancy Payments Act).

The Maternity Protection (Amendment) Act 2004 (**the Act**) and its related Statutory Instruments (listed below) amend and extend the Maternity Protection Act 1994 (**the Principal Act**):

S.I. No. 652 of 2004 Maternity Protection (Amendment) Act 2004 (Commencement) Order 2004

S.I. No. 653 of 2004 Maternity Protection (Time off for Ante-Natal Classes) Regulations 2004

S.I. No. 654 of 2004 Maternity Protection (Protection of Mothers who are Breastfeeding) Regulations 2004

S.I. No. 655 of 2004 Maternity Protection (Postponement of Leave) Regulations 2004

S.I. No. 131 of 2005 Maternity Protection (Amendment) Act 2004 (Commencement) Order 2005

The Maternity Protection (Amendment) Act 2004 should be read in conjunction with the Maternity Protection Act 1994 Act (the Principal Act) and its related Statutory Instruments which include:

S.I. No. 16 of 1995 Maternity Protection Act, 1994 (Commencement) Order, 1995

S.I. No. 17 of 1995 Maternity Protection (Disputes and Appeals) Regulations, 1995

S.I. No. 18 of 1995 Maternity Protection (Time off for Ante-Natal and Post-Natal Care) Regulations, 1995

S.I. No 51 of 2006 Maternity Protection Act 1994 (Extension of Periods of Leave) Order 2006

TO/All Departments* etc

[*Department should be read as Department/Office throughout this Circular]

Maternity Leave

3. Subject to the conditions outlined at (a) – (g) below, maternity leave is available to all pregnant civil servants except where the birth occurs before 24 weeks of pregnancy and the child is stillborn.

On the 1st February 2006 the Maternity Protection Acts 1994 and 2004 were amended by Order so as to bring into effect increases in maternity leave as announced in the context of Budget 2006. The new entitlements as they apply to civil servants are as follows:

From **1st March 2006** the period of paid maternity leave has been increased from 18 consecutive weeks to 22 consecutive weeks. The new arrangements apply to employees commencing maternity leave on or after this date. For paid maternity leave commencing on or after **1st March 2007** the new entitlement will be 26 weeks.

Summary of Maternity Leave entitlements

| | |
|------------------------------------------------------------------------------|-----------------|
| Maternity Leave commencing on or before 28th February 2006 | 18 weeks |
| Maternity Leave commencing on or after 1st March 2006 | 22 weeks |
| Maternity Leave commencing on or after 1st March 2007 | 26 weeks |

- (a) The granting of maternity leave is conditional on a woman who intends to go on maternity leave submitting to the Personnel Officer, at least 4 weeks before the date on which she intends to go on maternity leave, a medical certificate confirming pregnancy and stating the expected date of confinement.
- (b) The compulsory pre-confinement period of maternity leave is reduced from 4 weeks to 2 weeks. Accordingly, maternity leave will begin on such day as the woman selects, being not later than 2 weeks before the end of the expected week of confinement (note: for these purposes, Saturday is regarded as the end of a week) and will end on such day as the woman selects, being not earlier than 4 weeks after the end of the expected week of confinement.
- (c) If the date of confinement occurs in a week that is 2 weeks or more before the expected date of confinement and the woman had not yet commenced her maternity leave, the date of confinement will be regarded as the first day of maternity leave.
- (d) If the date of confinement occurs in a week after the expected date of confinement and is such that less than 4 weeks of maternity leave are remaining, then maternity leave will be extended by the number of weeks

between the expected date of confinement and the actual date of confinement, subject to a maximum of 4 weeks, such that at least 4 weeks of maternity leave will have been taken after the confinement.

- (e) Subject to paragraph (g) below, while on maternity leave, a woman shall be deemed for all purposes (other than remuneration and superannuation) to have been in employment. Maternity leave and additional maternity leave (which was increased from 4 consecutive weeks to 8 consecutive weeks in Circular 09/01) is fully reckonable for service, seniority and annual leave entitlement. See paragraph 4 below.
- (f) A woman on maternity leave and additional maternity leave should be given the benefit of any public holiday or privilege day falling within the period of maternity leave or additional maternity leave by having it granted immediately after maternity leave or additional maternity leave.
- (g) In the case of a woman who is on probation at the commencement of maternity leave, the period of probation will stand suspended during maternity leave (and during additional maternity leave) and will be completed by the woman on her return to work.

Additional maternity leave

4. At the end of maternity leave, a woman is entitled to take further leave, known as “additional maternity leave” (unpaid maternity leave) immediately following maternity leave. The granting of additional maternity leave is conditional on a woman who intends to avail of such leave notifying the Personnel Officer at least 4 weeks before the date on which maternity leave is due to end.

With effect from 1st March 2006 the period of additional maternity leave has been increased from 8 consecutive weeks to 12 consecutive weeks. The new arrangements only apply to employees whose additional maternity leave is commencing on or after 1 March, 2006. For additional maternity leave commencing on or after 1st March 2007 the new entitlement will be 16 weeks unpaid maternity leave.

Summary of Additional Maternity Leave entitlements

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|-----------------------------------------------------------------------------------------|-----------------|
| Additional Maternity Leave commencing on or before 28th February 2006 | 8 weeks |
| Additional Maternity Leave commencing on or after 1st March 2006 | 12 weeks |
| Additional Maternity Leave commencing on or after 1st March 2007 | 16 weeks |

Additional Maternity Leave and service for promotion and increment purposes

Following agreement at the Equality sub-committee of General Council it was decided that with effect from 1st January 2000 additional maternity leave as provided for under Circular 35/95 was counted as service for promotion and increment purposes. In addition an Order dated 8th February 2001 extended the period of additional maternity leave to 8 weeks and it has been agreed that the extra 4 weeks are

also covered by the agreement made at the Equality sub-committee of General Council.

Protection of employment rights on additional maternity leave

The Maternity Protection (Amendment) Act 2004 extended further the protection of employment rights while on additional maternity leave with the effect that additional maternity leave counted for all employment rights associated with the employment (with the exception of remuneration and superannuation benefits) such as seniority, annual leave and public holidays. This change came into effect in respect of additional maternity leave commencing on or after 18th October 2004 as well as to staff already on additional maternity leave on that date.

Employees may seek to have additional maternity leave terminated in the event of illness (and go on to sick leave) provided that the employer agrees to such an arrangement. It should be noted that, where an employee applies to terminate the additional maternity leave and go on to sick leave with the employer's agreement, the balance of untaken additional maternity leave is forfeit.

Postponement of maternity leave

5. Employees may postpone the period of maternity leave/additional maternity leave (subject to the agreement of the employer) in the event of the hospitalisation of the child. Such leave may only be postponed after 14 weeks maternity leave has been taken and the maximum period of postponement of such leave is 6 months. If so requested by the employer, the employee must furnish a document from the hospital in which the child is hospitalised confirming the hospitalisation and a letter must issue from the hospital confirming the date of the child's discharge from hospital.

Attendance at ante-natal and post-natal clinics and ante-natal classes

6. Section 8 of the Maternity Protection (Amendment) Act provides for an amendment to Section 15 of the Maternity Protection Act regarding the entitlement to time off from work to attend ante-natal classes. Pregnant employees shall be entitled to such time off from work, without loss of pay, as is necessary for the purpose of attending one set of ante-natal classes (other than the last three in such a set) and those classes may be attended by her during one or more pregnancy. Entitlement to time off from work shall be subject to the woman notifying her employer of the dates and times of such classes. Documentary evidence should be provided of the dates and times of classes if requested by the woman's employer.

Attendance at post-natal classes is covered only during the fourteen weeks immediately following confinement. The conditions governing such absence are laid down by regulation issued by the Minister for Equality and Law Reform (S.I. No. 18 of 1995).

Section 8 of the Maternity Protection (Amendment) Act 2004 provides for a once-off right for fathers to paid time off from duty to attend the two ante-natal classes immediately prior to the birth. An expectant father shall be entitled once only to time off from his work, without loss of pay, for the purpose of attending the last two ante-natal classes in a set of such classes attended by the expectant mother before the birth

of the child. Evidence of attendance will be required, as is currently required for mothers.

Payment while on Maternity Leave

7. Subject to paragraph 8 below, a woman on maternity leave is entitled to full pay, except where she has been appointed for a fixed term of less than 26 weeks. A woman who has been appointed for a fixed term of less than 26 weeks is entitled to the same rate of pay that she would receive if she were absent on sick leave; as the entitlement to payment (if any) may vary according to the length of continuous service given, it would be advisable to check with the Personnel Section with regard to entitlements.

8. A woman who is (or was) fully insured under the Social Welfare Acts and who fulfils certain contribution conditions may be entitled to maternity benefit from the Department of Social and Family Affairs. Information about this allowance is available from Personnel Units in Departments/Offices. A woman on maternity leave who is entitled to maternity benefit from the Department of Social and Family Affairs, is entitled to payment by her Department on the basis provided for in paragraph 7 above or of an amount equivalent to the full rate of benefit to which she is entitled, whichever is the greater, provided she:

- a) signs a mandate authorising the Department of Social and Family Affairs to pay any benefit due to her under the social insurance system directly to her employing Department;
- b) makes the necessary claims for social insurance benefit to the Department of Social and Family Affairs within the required time limits and complies with whatever requirements are laid down by that Department as a condition of claiming benefit.

Maternity leave must not be treated as part of any other leave (including sick or annual leave) to which the employee is entitled. Therefore, a woman who has gone onto sick leave at half pay or unpaid sick leave immediately prior to going on maternity leave will resume full pay upon commencement of maternity leave subject to the terms of paragraphs 7-8 above.

Similarly, a woman working full-time but taking parental leave who subsequently goes on maternity leave will be paid at a full-time rate while on maternity leave.

Breastfeeding Breaks

9. Recommendations contained in the Government's policy statement on breastfeeding, 'Breastfeeding in Ireland' A Five-Year Strategic Action Plan, published in October 2005 by the Department of Health and Children state that mothers should continue to breastfeed their children up to the age of two years, to maximise the potential health benefits for themselves and their children. This is in accordance with the guidelines issued by the World Health Organisation.

In line with Government policy on this issue it is proposed that entitlement to breastfeeding or 'lactation' breaks for Civil Servants be extended to when the child who is being breastfed reaches the age of 2. Therefore a mother who is breastfeeding

her child/children is entitled to, without loss of pay until the child is 2 years of age, either an adjustment of working hours or where breastfeeding facilities are provided by the employer, breastfeeding breaks. Where such facilities are provided, breaks may be taken in the form of one break of 60 minutes, two breaks of 30 minutes each, three breaks of 20 minutes each, or in such other manner as to number and duration of breaks as may be agreed by her and her employer.

An employee who is breastfeeding is entitled, if preferred, to the option outlined above and without loss of pay, to have her working hours reduced by 1 hour each day. That reduction may comprise one period of 60 minutes, two periods of 30 minutes, 3 periods of 20 minutes each or such other periods as may be agreed by her and her employer.

Time off from work or a reduction in working hours should be calculated on a *pro rata* basis for worksharing staff. Employees who wish to exercise this entitlement in either the form of breastfeeding breaks or reduced hours must notify her employer in writing of her intention to do so and should furnish, if so requested by her employer, the birth certificate of the child concerned.

Leave for father after the birth of a child

10. Section 10 of the Maternity Protection (Amendment) Act 2004 amends Section 16 of the Principal Act by the substitution of a new subsection for subsection (1). This section deals with the entitlement of an employed father to leave on the death of the mother. Under certain circumstances, if the mother of the child dies during a specific period of time following of her confinement, the father of the child may be entitled to leave. The conditions governing such leave with effect from 1st March 2006 and 1st March 2007 are as outlined below:

With effect from **1st March 2006** if a woman who has been delivered of a living child (in this section referred to as ‘the mother’) dies at any time before the expiry of the thirty-second week following the week of her confinement, the father of the child (if he is employed under a contract of employment) shall be entitled to paid leave from his employment for a period ending as follows—

(a) if the mother dies before the expiry of the twentieth week following the week of her confinement, the period ends, subject to section 16B of the Principal Act, which deals with the postponement of leave in the event of hospitalisation of the child, at the end of that twentieth week, and

(b) if the mother dies at any time after the expiry of that twentieth week, the period ends, subject to section 16A of the Principal Act, which deals with the termination of leave in the event of the sickness of the father and 16B, which deals with the postponement of leave in the event of hospitalisation of the child, at the end of the thirty-second week following the week of her confinement.

Additionally a father who has taken leave as outlined above shall, if he so wishes be entitled to further unpaid leave from his employment for a maximum period of –

- a) 12 consecutive weeks commencing immediately after the end of the leave, or

- b) 12 weeks, all or part of which is postponed in accordance with section 16B, commencing either in accordance with that section or immediately after the above leave,

as may be appropriate.

With effect from **1st March 2007** if a woman who has been delivered of a living child (in this section referred to as 'the mother') dies at any time before the expiry of the fortieth week following the week of her confinement, the father of the child (if he is employed under a contract of employment) shall be entitled to paid leave from his employment for a period ending as follows—

(a) if the mother dies before the expiry of the twenty-fourth week following the week of her confinement, the period ends, subject to section 16B, which deals with the postponement of leave in the event of hospitalisation of the child, at the end of that twenty-fourth week, and

(b) if the mother dies at any time after the expiry of that twenty-fourth week, the period ends, subject to sections 16A, which deals with the termination of leave in the event of the sickness of the father and 16B, which deals with the postponement of leave in the event of hospitalisation of the child, at the end of the fortieth week following the week of her confinement.

Additionally a father who has taken leave as outlined above shall, if he so wishes be entitled to further unpaid leave from his employment for a maximum period of –

- c) 16 consecutive weeks commencing immediately after the end of the leave, or
- d) 16 weeks, all or part of which is postponed in accordance with section 16B, commencing either in accordance with that section or immediately after the above leave,

as may be appropriate.

Leave for fathers upon the birth of a child (provisions outside of Maternity Protection Acts)

It should also be noted that, in accordance with Circular 32/99 (Paternity Leave), fathers employed in the Civil Service are entitled to 3 days paid paternity leave in respect of each child (i.e. 3 days for a single birth, 6 days for twins etc.). This entitlement comes into effect from the end of the 24th week of pregnancy, and applies whether the child is live born or stillborn. This leave must be availed of within 4 weeks after the birth of the child(ren). Furthermore, in order to ensure consistency with maternity provisions, Agreed General Council Report Number 1423 allows bereavement leave of 5 days to fathers in the event of a stillborn or pre-natal death of a child after 24 weeks of pregnancy. Finally, should either parent require additional time off from work in order to cope with difficulties arising from the death of the child, special leave without pay for up to six months may also be granted under Annex 1 of Department of Finance Circular 22/98 – Parental Leave.

Summary of Main Provisions

In summary the following are the main changes that impact on maternity leave arrangements for civil servants, together with their application in the civil service.

(A) Compulsory pre-confinement period reduced to 2 weeks

The compulsory pre-confinement period of maternity leave is reduced from four weeks to two weeks. There is no change to the 4 week notification requirement.

(B) Protection of employment rights on additional maternity leave

An officer on additional maternity leave is deemed for all purposes (other than the right to remuneration and superannuation benefits) to be in employment. The absence will therefore count as service and will reckon as qualifying service for annual leave, seniority, public holidays and privilege days. This change came into effect on 18 October 2004 and applies to additional maternity leave commencing on or after 18 October 2004, as well as to staff already on additional maternity leave on that date. This change gave the same protection of employment rights to staff on additional maternity leave as applies currently to parental leave.

(C) Time off for fathers for ante-natal classes

There is a 'once only' right for fathers to paid time off from duty to attend the last two ante-natal classes before the birth. Evidence of attendance will be required, as currently required for mothers.

(D) Termination of additional maternity leave in the event of illness of mother

Employees may seek to have additional maternity leave terminated in the event of illness, subject to the agreement of the employer. The balance of untaken additional maternity leave is forfeit if this entitlement is exercised.

Requests to terminate the leave and move to sick leave must be made in writing and be accompanied by medical evidence supporting the request, and should be dealt with in the same way as other applications for sick leave. This sick leave is treated in the same way as any other sick leave.

(E) Postponement of leave due to hospitalisation of the child

Employees may postpone the period of maternity leave/additional maternity leave in the event of hospitalisation of the child, subject to the agreement of the employer. Leave may only be postponed after 14 weeks maternity leave has been taken. Leave may be postponed for a maximum of 6 months.

Requests to postpone the leave must be made in writing and be accompanied by evidence from the hospital of the child's hospitalisation. The leave may be resumed not later than 7 days after the discharge of the child from hospital – evidence of the discharge will also be required.

(F) Breastfeeding breaks

A mother who is breastfeeding her child is entitled, without loss of pay, to either:

- 1) one hour off from work each day as a breastfeeding break, where breastfeeding facilities are provided by the employer, or
- 2) a reduction of her working hours of one hour each day,

until that child is 2 years old. Time off from work or a reduction in working hours should be calculated on a *pro rata* basis for worksharing staff.

Requests to avail of breastfeeding breaks or a reduction of hours must be notified in writing at the time of the notification of the date of return to work and should be accompanied by the birth certificate of the child concerned.

Employers are not required to provide facilities for breastfeeding in the workplace, if the provision of such facilities would give rise to a cost, other than a nominal cost, to the employer.

Pending a decision on the provision of such facilities generally, Departments and Offices are requested to offer a reduction of working hours, where breastfeeding facilities are not already available. Where staff have already returned to work, requests should also be accommodated.

(G) Leave Entitlements

Maternity Leave

| | |
|------------------------------------------------------------------------------|-----------------|
| Maternity Leave commencing on or before 28th February 2006 | 18 weeks |
| Maternity Leave commencing on or after 1st March 2006 | 22 weeks |
| Maternity Leave commencing on or after 1st March 2007 | 26 weeks |

Additional Maternity Leave

| | |
|-----------------------------------------------------------------------------------------|-----------------|
| Additional Maternity Leave commencing on or before 28th February 2006 | 8 weeks |
| Additional Maternity Leave commencing on or after 1st March 2006 | 12 weeks |
| Additional Maternity Leave commencing on or after 1st March 2007 | 16 weeks |

Resolution of disputes

Any dispute in relation to entitlements under the Act may be referred to the parent Department in the first instance, who may in turn refer the matter to this Department. In addition, the Act provides for referral of a dispute in relation to entitlements under

the Act to a Rights Commissioner (Sections 30 - 37 of the Principal Act refer). Where appropriate, however, the grievance procedure may also be used for the resolution of such disputes.

Confidentiality

Departments are asked to ensure that all matters relating to maternity leave are treated in strict confidence and that, as far as possible, routine aspects of these matters are handled by only one officer.

Information whilst on Maternity / Additional Maternity Leave

Personnel Officers should ensure that Office Notices and general Circulars are brought to the attention of all officers on Maternity Leave, and that notices of Open and/or Confined Competitions are brought to the attention of officers on Maternity Leave who may be eligible for these competitions.

Queries

Queries in relation to this Circular should be addressed to the Personnel Section of your Department.

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Michael Errity
Assistant Secretary