

6 December 2008

Circular 20/2008: Parental Leave in the Civil Service

A Dhuine Uasail,

1. I am directed by the Minister for Finance to refer to the Parental Leave Act 1998 (hereinafter referred to as the Principal Act) and to say that the arrangements applying to civil servants in relation to parental leave are, in general, as specified in that Act. On the 18th May 2006 the Parental Leave (Amendment) Act 2006 (hereinafter referred to as the 2006 Act) amended the Principal Act, to bring into immediate effect a number of improvements to parental leave legislation. This Circular provides a summary of the main provisions of the Principal Act as amended by the 2006 Act, as it applies to civil servants. It updates and takes precedence over Circulars 22/1998 and 22/2000, in respect of parental leave, and is now the authoritative guidance on all aspects of the parental leave scheme as it applies in the Civil Service.

2. Special Leave, including Bereavement Leave and *force majeure*, currently covered by Circular 22/1998, will be dealt with in separate circulars.

Introduction

3. In 1998, the Principal Act, implementing the agreement between the Social Partners at European level under Article 139 of the European Union Treaty as set out in Council Directive 96/34/EC, gave parents of young children the right to take leave for the purpose of looking after their children. The 2006 Act effected a number of improvements in the legislation.

Entitlements

4. An officer who is the parent of a child or the relevant parent of a child as defined under paragraph 6 below is entitled to parental leave for a period of fourteen working weeks. The purpose of this leave is to enable a parent to take care of his or her child.

Age Limits

5. The parental leave must be taken before the child attains the age of eight years. If an adopted child is over six years but less than eight years old at the date of adoption, parental leave may be taken at any stage within two years of the date of the adoption order. In the case of a child with a disability, the 2006 Act increased

the age limit to sixteen years. The leave may only be taken for a child born on or after 3 June 1996 or adopted on or after that date.

Definition of Relevant Parent

6. Section 2(9) (b) of the 2006 Act, states that an officer shall be entitled to parental leave in respect of each child of whom he or she is a relevant parent. A "relevant parent" is a person who is-

- (i) the natural parent, the adoptive parent or the adopting parent in respect of the child, or
- (ii) acting *in loco parentis* to the child.

Natural, Adoptive, or Adopting Parent

7. Whereas natural and adoptive parent are self explanatory, the term adopting parent refers to a person in the process of becoming an adoptive parent, i.e. a person in whose care a child has been placed with a view to the making of an adoption order.

Person acting *in loco parentis*

8. The person applying for parental leave must be either legally *in loco parentis* or fulfil the criterion that he or she is actively parenting the child on an ongoing basis. The revision of the definition of "relevant parent" in the 2006 Act brings a broad range of persons who actively parent within the scope of the legislation. The term now includes long term foster parents, partners to the natural parent of a child where the natural parent may be divorced or separated and has formed a new relationship through remarriage or otherwise and other persons *in loco parentis*.

Decision Maker

9. The appropriate authority for decisions about parental leave, hereinafter referred to as the decision maker, shall be any person designated to make such decisions by the Head of Department or Office. It is envisaged that decisions relating to parental leave shall be made by the officer's manager, a more senior manager or the Personnel Officer as appropriate to the Department/Office.

Transferability of Parental leave.

10. Subject to the consent of the Department/Office in question, either parent may transfer all or part of the period of parental leave to the other parent, where both of the parents of a child are entitled to parental leave in respect of the child and where both parents are employed by the same employer. Persons employed in the Civil

Service are deemed to be employed by the same employer. A decision to grant or refuse the transfer of parental leave should be based on the business needs of the unit concerned.

11. The calculation of transfer of parental leave where one or both parents are availing of worksharing is dealt with in the Annex to this circular.

Eligibility for Parental Leave

12. An officer must have completed one year's continuous service to be eligible for parental leave. However, in circumstances where, on the latest day for commencing a period of parental leave, the officer has more than three months, but less than one year's continuous service, the officer shall be entitled to parental leave at the rate of one week for each month of continuous service which the officer has completed at the time of commencement of the leave.

Period of Parental Leave

13. Parental leave consists of fourteen weeks unpaid leave for each child born on or after 3rd June 1996. Where an officer is entitled to parental leave in respect of more than one child and the children concerned are not children of a multiple birth, the period of parental leave taken by him or her in any period of twelve months shall not, without the consent of the decision maker concerned, exceed fourteen weeks. In the case of multiple births, this restriction does not apply.

14. An officer may take the parental leave as follows:

- (a) one continuous period of fourteen weeks, or two separate periods each consisting of not less than six weeks and not exceeding fourteen weeks in total. The officer will not be entitled to take the second of these two separate periods until not less than ten weeks have elapsed since the end of the first period, unless the Department/Office consents; or
- (b) subject to the agreement of the decision maker concerned,
 - (i) one or more days on which, but for the leave, the officer would be working in the Department/Office concerned;
 - (ii) one or more hours during which, but for the leave, the officer would be working in the Department/Office concerned; or
 - (iii) any combination of periods referred to in subparagraphs (b) (i) and (ii) above e.g. weekly blocks, monthly blocks, etc.

15. While an officer has an entitlement as defined under 14(a) or (b) above, he/she is not obliged to take the full entitlement. Where parental leave is availed of under 14(b), the entitlement will be calculated on the basis of the number of hours worked during a reference period of fourteen weeks calculated in accordance with

Section 7 (2) of the Principal Act. An example of the parental leave entitlements of an officer who is worksharing is given at paragraph (2) of the Annex to this circular.

16. Where public holidays (including privilege days and Good Friday) fall during the period of parental leave they are added on to the end of parental leave.

Notification Required to Avail of Parental Leave

17. The granting of parental leave is conditional on an officer notifying his/her Personnel Officer in writing as soon as is reasonably practicable but not later than six weeks prior to the proposed commencement date of parental leave. The notification should be accompanied by evidence of the date of birth or date of the adoption order of the child.

18. The notice must specify the date the officer intends to commence parental leave, the duration of the leave, the manner in which the officer proposes to take the leave and must be signed by the officer applying and approved by the decision maker, if not the Personnel Officer (see paragraph nine). The Department/Office must retain the original signed copy of the notice seeking parental leave in the personnel file and give a copy of it to the officer. An officer may revoke this notice at any point before the confirmation document (referred to at paragraph 20 below) is signed.

19. While the six weeks notification period for availing of parental leave applies to all parental leave entitlements, it should be noted that Personnel Officers may exercise their discretion in relation to applications which do not comply with the notification period.

Confirmation Document Where Decision Maker Consents to Parental Leave

20. Not later than four weeks before the commencement of the parental leave, the Personnel Officer must prepare what is called a "confirmation document" specifying the date of commencement of the leave, its duration and the manner in which it will be taken.

21. The Personnel Officer and the officer must both sign the "confirmation document" and a copy must be given to the officer. Once signed, no amendment can be made to this document without the agreement of both parties. The completed document should be placed on the officer's personnel file.

Postponement of Parental Leave

22. While staff will be facilitated as far as possible, the decision maker may postpone parental leave if such leave would have a substantial adverse effect on the operation of the business needs in the unit concerned, in accordance with Section 11 of the Principal Act. Before making a decision to postpone, the decision maker must consult with the officer in relation to the proposed postponement.

23. If the postponement of parental leave is being considered, a notice in writing shall issue to the officer not later than four weeks before the intended date of commencement of the leave. This notice must contain a statement in summary form of the grounds for the postponement of parental leave (Section 11(3) of the Principal Act). The Department/Office and the officer must retain a copy of the notice.

24. The postponement may be to an agreed date, not later than six months from the date on which the officer had intended that the parental leave was to start. A second postponement, in respect of a particular child, is not permitted unless the ground for postponement is seasonal variation in the volume of work concerned. Parental leave will not be lost if, solely as a result of postponement, the child reaches the age thresholds set out in paragraph five.

Maintenance of Employment Rights during Parental Leave

25. An officer is not entitled to payment whilst absent on parental leave. However, an officer on parental 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 for increment purposes and for qualifying service for annual leave and promotion.

26. With regard to the taking of parental leave while on probation, the probationary period is designed to assist both the Department/Office in making an assessment and the officer in familiarising themselves with the job and proving their worth to the organisation. A probationary period interrupted by parental leave could work to the disadvantage of either party in the employment relationship. Where an officer is absent on parental leave, the Department/Office may require probation to be suspended if the absence is not considered to be consistent with the probation.

27. Absence on parental leave cannot be treated as part of any other form of leave, including sick leave, annual leave, adoptive leave, maternity leave and *force majeure* leave to which the officer is entitled.

Illness while on Parental Leave

28. Section 6 of the 2006 Act amends Section 10 of the Principal Act to provide that, when a confirmation document has been prepared and signed in accordance with Section 9 of the Principal Act, and the officer concerned becomes sick so that the officer is unable to care for the child who is the subject of the confirmation document to which the parental leave relates, then the officer may, by notice in writing given to the Department/Office concerned, as soon as is reasonably practicable after becoming sick, and accompanied by the relevant evidence in respect of the sickness-

(a) if the period of parental leave has not commenced, postpone the taking of the leave to such time as the officer is no longer sick, or

(b) if the period of parental leave has commenced, suspend the taking of the balance of the leave to such time as the officer is no longer sick.

Social Welfare Arrangements

29. Officers on parental leave, who are covered by social insurance, will be entitled to credited PRSI contributions from the Department of Social and Family Affairs. This will preserve their record for social insurance purposes. Staff should contact the Department of Social and Family Affairs directly (☎: 01-7043000) to ensure that the appropriate credits are made.

Resolution of Disputes

30. Any dispute in relation to entitlements under the parental leave scheme may be referred by an officer, or their representative, to the parent Departments /Offices in the first instance, who may in turn refer the matter to this Department. In addition, the Principal Act provides for referral of a dispute by either party in relation to entitlements under the Principal Act to a Rights Commissioner (Sections 17 - 22 of the Principal Act refer). Such a reference should be made as soon as is possible but in any event not later than six months after the occurrence of the dispute. Where appropriate and where requested by the officer concerned, the grievance procedure may also be used for the resolution of such disputes.

Abuse

31. Parental leave is granted to enable working parents, both men and women, to take care of their young children, or in the case of a child with a disability, a child up to the age of sixteen years. If the decision maker has reasonable grounds for believing that an officer is not using the leave for this purpose, the leave may be terminated. If termination is being considered, the officer concerned must be provided with a written notice containing a summary of the proposed grounds for termination accompanied by a letter informing the officer of his or her right to make representations within seven days. The Personnel Officer must consider these representations. If there is a final decision to terminate, the officer must be notified in writing and the notification should contain a summary of the grounds. The notification should inform the officer of his or her obligation to return to work after the expiry of seven days from receipt of the notice.

Refusal

32. An application for parental leave may be refused where the decision maker has reasonable grounds for believing that the officer does not have a legitimate entitlement under the terms of the Principal Act. The officer must be furnished with a written notice containing a summary for the proposed grounds for the refusal and informing the officer of his or her right to make representation within

seven days of receipt of the notice. If after consultation with the officer there is a final decision to refuse parental leave, the officer must be notified in writing with a summary of the grounds.

Replacement

33. Departments/Offices may, if they wish, replace staff on parental leave on a temporary basis.

Queries

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

Mise le meas

Patricia Coleman

Director

Personnel & Remuneration Division

Annex

(1) The parental leave entitlements of two parents, A and B, working for the same Department/Office - A working full-time and B working 50% - one of whom wishes to transfer his or her entitlement to the other parent.

A, working full-time, is entitled to fourteen weeks parental leave (i.e. seventy days), whereas B, who is working 50%, is entitled on a pro-rata basis to seven weeks (or thirty five days).

Under the 1998 Principal Act as amended by Section 3 of the 2006 Act, where the parents are working for the same Department/Office, either can, subject to the Department/Office's agreement, transfer "... any part of the period of his or her parental leave to the other parent....".

Therefore in the example given, A can transfer the seventy days allowed to him/her, either in its entirety or in part, to B.

Where B transfers his/her entitlement to A, as B is only entitled to thirty five days him/herself (on a pro-rata basis), that is therefore all that he/she can transfer to A. B cannot use thirty five days and transfer a further thirty five days to A, as B is only entitled to thirty five days altogether. If B uses thirty five days, B will have no parental leave remaining to transfer to A.

(2) The parental leave entitlements of a parent, who changes his/her worksharing/part-time pattern from 50% for the first two years after the child's birth, to 80% until the child's fifth birthday, and to 100% thereafter.

Under Section 7(2) (a) of the Principal Act, parental leave entitlements are calculated on the basis of the previous fourteen weeks worked.

Therefore, a parent who changes his/her work pattern will get a leave entitlement based on the prior fourteen weeks, up to a maximum of seventy days.

In the example given, the parent working 50% can take thirty five days up to the point that they increase their hours to 80%. After working for fourteen weeks at the 80% level, he/she then gains an extra entitlement of twenty one days.

When he/she increases the hours worked to full-time (i.e. 100%), and has worked at that level for fourteen weeks, he/she then increases his/her overall entitlement to seventy days, and can take the remainder of the seventy days that is left, i.e. fourteen days.

While the entitlement increases with the increase in hours worked, the maximum entitlement remains at seventy days. This must all be taken before the relevant child reaches the age limits set out in paragraph five of this circular.