



EMPLOYMENT, PENSIONS AND EMPLOYEE BENEFITS

Paternity Leave and Benefit Act 2016

by **Aoife Bradley**

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The Paternity Leave and Benefit Act 2016 (the Act) introduces paternity leave in Ireland for new fathers and other "relevant" parents.

Up to now, Ireland was one of only a few European countries that did not provide for paternity leave.

Who does the Act apply to?

The Act applies to a "relevant parent" of a child that is born, or placed for adoption, on or after 1 September 2016.

A "relevant parent" is broadly defined as a person (other than the mother of the child) who is:

- a father of a child;
- a spouse, civil partner, or cohabitant of the mother of the child;
- 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;

and, in the case of an adopted child,

- the spouse, civil partner or cohabitant of the adopting mother or sole male adopter of the child; or
- where the child is adopted jointly by a married couple of the same sex, the spouse chosen by the couple to be the relevant parent for the purpose of the Act.

The benefits and protections

The Act provides for two weeks of paternity leave and an associated social welfare benefit. The two weeks must be taken as one single continuous period within 26 weeks of the date of the birth or adoption of the child.

The Act provides for a new social welfare payment of paternity benefit. If the relevant PRSI contribution requirements are met, the relevant parent is entitled to €230 per week, which is the same rate as maternity benefit. Both employees and self-employed persons who are relevant parents are eligible to receive paternity benefit once they satisfy the prescribed PRSI contribution requirements.

As with maternity leave, employers are not required to pay relevant parents during paternity leave but some employers may exercise their discretion in this regard and choose to pay employees during such leave.

Subject to certain exceptions, the relevant parent must notify their employer in writing of their intention to take paternity leave as soon as practicable but not later than four weeks before the expected date of birth or, in adoption cases, the date of placement.

There are measures in the Act to provide for the protection of employees while on paternity leave which are similar to the protections afforded to employees on maternity and adoptive leave. The employment rights of the relevant parent are preserved while on leave and any purported termination of an employee on paternity leave shall be void. The Act also prohibits penalising an employee for taking paternity leave.

Paternity leave may be postponed in situations where the leave has been applied for but not taken due to sickness of the relevant parent or hospitalisation of the child.

In the event of the death of a relevant parent within 28 weeks following the date of birth of the child or the date of placement of an adopted child, the employed surviving parent will be entitled to avail of transferred paternity leave.

Abuse of leave

The purpose of paternity leave is to enable the relevant parent to provide or assist in the provision of care to the child. Where an employer has reasonable grounds for believing that an employee who is on paternity leave is not using the leave for this specified purpose, this may be considered to be an abuse of paternity leave and the leave may be terminated.

Disputes

Where disputes arise relating to an employee's paternity leave entitlements, the Workplace Relations Commission can grant the employee leave for a specified period or award compensation of up to two weeks of remuneration, or both.

What do employers need to do?

Employers need to familiarise themselves with the definition of "relevant parent" as it extends beyond the biological father of a child.

In order to comply with this new legislation, employers should ensure that relevant parents are granted paternity leave in accordance with the Act. For the sake of clarity, and to minimise disruption to their business, employers should put a paternity leave policy in place setting out the scope of the entitlement.

Employers must keep records of the paternity leave dates and retain such records for a period of 8 years. Failure to do so may result in a fine of €4,000.

Employers should also review their current employee handbook, practices and procedures, including their maternity and adoptive leave policies, to ensure that they are aligned with their new paternity policy. Care should be taken to ensure that the policy is not directly or indirectly discriminatory in its application.

A copy of the Act is available [here](#).

If you would like further information on the Paternity Leave and Benefit Act 2016 and how it may affect your business, please contact Aoife Bradley at abradley@lkshields.ie

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