

About the
Maternity
Protection Acts
1994 and 2004



Information on
Entitlements
under Maternity
Legislation



THE EQUALITY AUTHORITY
AN tÚDARÁS COMHIONANNAIS

The Equality Authority provides information to the public on the Employment Equality Acts 1998 and 2004 and the Equal Status Acts 2000 to 2004. It has a series of published supports available to potential complainants, including guides to the Acts and training videos. The Equality Authority provides additional information through www.equality.ie and an automated telephone voice message service (LoCall: 1890 245 545) which also refers the caller directly to a Communications Officer who may provide more detailed information on an enquiry.

Other booklets available in this series include:

- About the Adoptive Leave Act 1995
- About the Parental Leave Act 1998
- The Employment Equality Acts 1998 and 2004
- Equal Status Acts 2000 to 2004

One of the functions of the Equality Authority is to provide information to the public on and to keep under review the working of the Maternity Protection Act 1994 (as amended).

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Introduction

The Maternity Protection Act 1981 introduced entitlements to **14 weeks** maternity leave, additional maternity leave, right to time off from work for ante-natal or post-natal care, right to return to work.

The Maternity Protection Act 1994 (MPA 1994) was introduced to seek to give effect to Council Directive 92/85/EEC of 19th October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breast feeding. It extended the scope of the legislation, provided for **health and safety leave** under certain circumstances and contained new provisions regarding time off for natal care visits.

The Maternity Protection Act 1994 was amended with effect from 8th of February 2001 (by way of Statutory Instrument no.29 of 2001) which extended the leave period to **18 weeks**.

The Maternity Protection (Amendment) Act 2004 (MP(A)A 2004) came into effect on the 18th of October 2004. It was introduced to give effect to the outstanding recommendations of the Working Group on the Review and Improvement of the Maternity Protection legislation.

A number of regulations have been made which relate to commencement of the legislation, protection of mothers who are breastfeeding, postponement of leave, time off for ante-natal classes. (See Appendix 1 for list of relevant legislation).

Protection Against Discrimination and Positive Action

The Employment Equality Acts, 1998 and 2004 also provide protection in relation to pregnancy, maternity leave and matters connected therewith. It prohibits discrimination (including indirect discrimination, discrimination by association and imputation) harassment and sexual harassment and victimisation in employment, self-employment, partners (and by vocational bodies and professional or trade organisations and organisations of workers and employers) on nine discriminatory grounds including gender and family status. There has been considerable caselaw from the Court of Justice in relation to pregnancy discrimination.

Section 6(2A) Employment Equality Acts, 1998 and 2004 provides that

“without prejudice to the generality of subsection (1) and (2), discrimination on the gender ground shall be taken to occur where, on a ground related to her pregnancy or maternity leave, a woman employee is treated contrary to any statutory requirement, less favourably than another employee, is, has been or would be treated”.

The other employee may be either a man or a woman (except in relation to pay).

Positive Action

Under the equality legislation employers may maintain or adopt measures with a view to ensuring full equality in practice between men and women in their employments, and

provide for specific advantages so as to make it easier for an underrepresented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers. (Section 24 Employment Equality Acts 1998 and 2004).

Minimum Standards

The Maternity Protection Acts 1994 and 2004 outline the legal minimum entitlements relating to maternity at work. Higher standards may be provided in contracts of employment or may be negotiated with employers. Employers may arrange for or provide treatment which confers benefits on women in connection with pregnancy and maternity (including breastfeeding) or adoption (Section 26 of the Employment Equality Acts, 1998 and 2004).

Maternity Benefits

It should be noted that while the Maternity Protection Act, 1994 as amended, provides details of leave entitlements etc., it does not cover maternity benefit (i.e. the payment a woman may be entitled to from the Department of Social and Family Affairs when she goes on maternity leave).

Should you have any enquiries about benefit, please telephone the Department of Social and Family Affairs at 1890 690 690 and ask for the Maternity Benefit Section or write to:

Maternity Benefit Section
Social Welfare Services Office
Oliver Plunkett Road
Letterkenny
Co. Donegal
LoCall: 1890 690 690
E-mail: maternityben@welfare.ie

Health and Safety

Any queries about particular relevant health and safety risks should be addressed to the Health and Safety Authority at 01-614 7000. The address of the Health and Safety Authority is:

Health and Safety Authority
10 Hogan Place, Grand Canal Street
Dublin 2
Telephone: 01-614 7000
Fax: 01-614 7020 Info-tel: 01-614 7010
Email: info@hsa.ie
Website: www.hsa.ie

This Booklet

The purpose of this booklet is to provide information on the Maternity Protection Acts and their requirements. It is not a legal document. It is important to note that this is an information booklet on the provisions of the Maternity Protection Acts. It is not a legal interpretation of the provisions. You may need to seek legal advice for an interpretation of the provisions.

What do the Maternity Acts 1994 and 2004 Provide for?

The Maternity Protection Acts 1994 and 2004 contain provisions in relation to:

- time off for ante-natal and post-natal care
- time off for ante-natal classes
- health and safety leave
- 18 weeks maternity leave
- 8 weeks additional maternity leave
- *termination of additional maternity leave in the event of sickness of mother
- *postponement of leave in event of hospitalisation of child
- father's leave in the event of the death of mother
- *termination of leave in event of sickness of father
- time off from work or reduction of working hours for breastfeeding
- protection of certain employment rights
- right to return to work after leave
- protection against dismissal
- a mechanism for the resolution of disputes and appeals regarding entitlements under the Act.

Some of these are entitlements of the employee and some are at the discretion of the employer. Those marked with an asterisk are at the discretion of the employer.

Scope: Who do the Maternity Protection Acts 1994 and 2004 Apply to?

The Act applies to a broad range of public and private sector employees. This includes members of the Garda Síochána, civil servants, local authorities and health board employees.

Anyone employed under a “contract” of employment is entitled to protection under the Act. This is defined to include anyone employed under a contract of service, apprentices and employment agency workers.

Employees on probation, temporary employees and part-time employees are included.

There are a number of exceptions in relation to the Defence Forces and the Garda Síochána in terms of ante-natal and post-natal classes.

Time off Without Loss of Pay for Ante-natal or Post-natal Care

Section 15(1) MPA 1994

Pregnant employees and employees who have recently given birth are entitled to time off from work, without loss of pay for the purposes of receiving ante-natal or post-natal care.

An employee who is pregnant or who has given birth in the last 14 weeks, and who has a medical or related appointment is entitled, without loss of pay, to take such time off from her work during her normal working time as is necessary to enable her to keep the appointment.

Regulations

Regulations (S.I. 18 of 1995) have been made establishing the notification procedures required so that a woman may take time off work for such visits.

Notification Requirements

S.I. 18 of 1995 (4)(1)(a) and (6)(1)(a)

The employee must notify her employer in writing of the date and time of the appointment as soon as practicable and in any event not later than two weeks before the date of the appointment.

S.I. 18 of 1995 (4)(1)(b) and (6)(1)(b)

An employer can ask her to produce an appointment card or other appropriate

document indicating the date and time of the appointment and confirming the pregnancy, specifying the expected week of confinement or specifying the actual date of confinement. However, this requirement does not apply with regard to a first appointment.

**S.I. 18 of
1995 (4)(3)
and (6)(2)**

In the event that an employee has to undertake an unscheduled ante-natal visit or post-natal visit and cannot comply with (a) and (b) above the employee should, not later than one week after the date of the appointment, provide her employer with evidence of having kept the appointment and indicate the circumstances which caused her not to be able to comply with the requisite notification.

Time off for Pregnant Employees and Expectant Fathers to Attend Ante-natal Classes

S 15(A)(1)
as inserted by
S 8 of the
MP(A) A2004

A **pregnant employee** is entitled to time off from her work, without loss of pay to attend **one set of ante-natal classes** (other than the last 3 classes).

S 15(A)(2) as
inserted by
S 8 of the
MP(A)A 2004

An **expectant father** of a child (if he is employed under a contract of employment) is entitled to time off from work, without loss of pay to attend the **last 2 ante-natal classes** in a set before the birth.

S 15(A)(3)
as inserted by
S 8 of the
MP(A)A 2004

Members of the Defence Forces and the Garda Síochána in certain circumstances are exempted from the provisions of this section.

Regulations

Regulations (S.I. No.653 of 2004) have been made establishing the requirements to be followed so that a pregnant employee or expectant father may take time off for such visits.

Notification Requirements

S.I.No.653 of
2004 (4)(1)

A pregnant employee or an expectant father must

- a) **notify** his or her employer **in writing** of the date and times of each class as soon as practicable and in any event not later than **2 weeks** before the date of the relevant class.

- b) Produce on request an appropriate document indicating the **dates** and **time** of the classes or the date and time of the relevant class.

S.I.No.653 of 2004 (4)(2)

If the employee through no fault of his/her own did not comply with (a) and (b) above, he/she must, not later than 1 week after the date of the class concerned provide the employer with evidence of him/her having attended the class and indicate the circumstances which caused him/her not to be able to comply with the requisite notification.

Unable to attend

S.I.No.653 of 2004 (5)

If a pregnant employee is unable to attend one full set of classes (other than the last 3) during a pregnancy due to

- circumstances beyond her control,
- including miscarriage,
- the premature birth of the baby concerned or
- the illness of the employee,

she is entitled during a subsequent pregnancy to such time off from her work without loss of pay, as is necessary for her to attend the class.

Health and Safety Leave

Pregnant employees, employees who have recently given birth and employees who are breastfeeding may be entitled to health and safety leave in certain situations.

Assessment

The Safety, Health and Welfare at Work (Pregnant Employees etc.) Regulations 2000 (S.I.No.218 of 2000) require an employer to assess any risk to the safety or health of any pregnant employees, an employee who is breastfeeding or an employee who has recently given birth resulting from any activity at that employer's place of work likely to involve a risk of exposure to certain agents, processes or working conditions including but not limited to those specified in the Regulations.

Employers must take preventative and protective measures necessary to ensure the safety and health of such employees. If it is not possible for the employer to do this the employee must be provided with other work.

Night Work

Employers may not require employees to perform nightwork if a doctor certifies that it is necessary for the safety or health of an employee that she should not be required to

perform nightwork during pregnancy or for 14 weeks following childbirth.

Health and Safety Leave

**S 18(1)MPA
1994**

If it is not technically or objectively feasible for the employer to move the employee to other work, or such a move cannot reasonably be required on duly substantiated grounds, or the other proposed work is not suitable for the employee, then the employee is entitled to be granted leave.

**S 18(3)MPA
1994**

Other work is suitable if it is of a kind which is suitable in relation to the employee concerned, and appropriate for the employee to do in all the circumstances.

Certificate

**S 18(2)MPA
1994**

An employee who is granted health and safety leave is entitled to receive on request a certificate stating the reasons why she has been granted leave. It must also state the date on which the leave began and how long the leave is expected to last.

**S 18(4)MPA
1994**

**Payment to women on health and
safety leave**

An employee who is granted health and safety leave must be paid her usual wage by her employer for the first 21 days of her leave.

The leave period can be for a number of shorter periods and need not be one consecutive period.

A woman whose health and safety leave extends beyond 21 days may be entitled to a social welfare benefit, subject to her P.S.R.I. contributions.

For further details regarding payment of Health and Safety benefit, please contact the Department of Social and Family Affairs, Health and Safety Benefit Section.

**Health and Safety Benefit Section
Social Welfare Services Office
St. Oliver Plunkett Road
Letterkenny
Co. Donegal.
Telephone: Locall 1890 690 690
www.welfare.ie**

Ending Health and Safety Leave

Health and safety leave can end in a number of ways

- S 19(1) – On the commencement of maternity leave
- S 19(1) – If a breastfeeding mother stops breastfeeding
- S 19(1) – If she has not stopped breastfeeding then 26 weeks after the birth of the child
- S 20(4)(a) – If the employer takes whatever steps are necessary to ensure that the employee will no longer be exposed to any risk
- S 20(4)(a) – If the employer becomes able to move the employee to suitable appropriate employment
- S 19(2) – On the expiry of the term in a fixed term contract

Notices Required from Employee

If an employee

- S 20(1) and (2) – stops breastfeeding or
- becomes aware that her condition is no longer such that she is vulnerable to risk

She must at the earliest practical time, notify her employer in writing that she is no longer breastfeeding or at risk.

Notices Required from an Employer

- S 20(3) Where an employer receives such a written notification and has no reason to believe that the employee would be vulnerable to risk, the employer must take all reasonable steps to enable the employee to work in the job which she held immediately before the start of the leave. The employer shall then **notify her in writing** that she can resume work in that job.
- S 20(3)(a)
- S 20(4)(a) If the employer
- takes whatever steps are necessary to ensure that the employee will no longer be exposed to risk or
 - becomes able to move the employee to suitable appropriate work,
- the employer must **notify the employee in writing** that she can return to work.
- S 20(3)(b) and S (20)(4) The leave granted ends seven days after the requisite notification is received by the employee or, if it is earlier, on the day she returns to work.

Maternity Leave and Additional Maternity Leave

S 8MPA1994 as amended by S 2MP(A) A 2004 A pregnant employee is entitled to

- 18 consecutive weeks of **maternity leave** or
- 18 weeks part of which is postponed because of hospitalisation of child

S 14(1) MPA as amended by S 5MP(A) Act 2004

- 8 consecutive weeks **additional** maternity leave beginning immediately after the end of her maternity leave or 8 weeks all or part of which is postponed because of hospitalisation of child.

S 10(1) MPA as amended by S 3MP(A) Act 2004 A pregnant employee can begin and end her maternity leave on any day she selects but **must**

- take a minimum of **two** weeks leave before the end of the expected week of confinement
- take **4 weeks** leave after the end of the expected week of confinement

Notification Requirements

S 9MPA 1994 A woman who wishes to avail of her entitlement to maternity leave must notify her employer

- **in writing**
- as soon as **reasonably practicable** but
- not later than **4 weeks** before the beginning of maternity leave
- of the employee's **intention** to take maternity leave

- providing a medical certificate confirming the **pregnancy** and specifying the expected week of **confinement**.

An application for maternity leave may be revoked by a further notification in writing.

**S 14(3) and
(4) MPA**

A woman who wishes to avail of her entitlement to additional maternity leave must

- notify the employer **in writing** by or on behalf of the employee of her intention to take additional maternity leave
- not later than **4 weeks** before the day on which her additional maternity leave is due to commence.

The requisite written notification for additional maternity leave may be given at the same time as the notification for maternity leave.

S 14(5) MPA

An application for additional maternity leave may be revoked by a further written notification given by or on behalf of the employee concerned. This must be given to the employer not later than four weeks before the date which would have been her expected return date if she had not applied to take additional maternity leave.

Early Births

S 13MPA
1994
as amended
by S 4MP(A)
A 2004
S 11(1)MPA
1994

A pregnant employee is entitled to a minimum period of 18 weeks leave beginning on whichever is earlier.

The first day of maternity leave or

- the date of confinement
- or
- specified date (for certified medical reasons)

Notification requirements – early births

S 13(1)MPA
1994

Where the date of confinement occurs four weeks or more before the expected week of confinement, the employee will be deemed to have complied with the written notification requirement if the notification is given within 14 days of the date of confinement.

Late Births

S 12(1)MPA
1994

If an employee has less than 4 weeks maternity leave left when her baby is born, then she is entitled to have her maternity leave extended up to a maximum of 4 consecutive weeks.

S 14(2)MPA
1994

If an employee has had her maternity leave extended because of a late birth, she is still entitled to take additional maternity leave.

S 12(2)MPA

Notification requirements – late births

If an employee has less than 4 weeks of maternity leave left when her baby is born, in order to avail of her entitlement to an extension of up to 4 weeks maternity leave, she must

- as soon as practicable notify her employer in writing (or have the employer notified) of the proposed extension and
- as soon as practicable after the date of the confinement confirm in writing to the employer the notification and
- specify the duration of the extension.

Still Births

In the event of a stillbirth occurring after the 24th week, the woman is still entitled to 18 weeks maternity leave.

Termination of Additional Maternity Leave in the Event of Sickness of Mother

S 14A MPA 1994 as amended by S 6MP(A)A 2004

An employee who is sick who wishes to end additional maternity leave may request her employer to terminate the additional maternity leave at any time

- during the last 4 weeks of maternity leave (where the employer has been notified of her intention to take additional maternity leave) or
- during the additional maternity leave.

There is no entitlement to termination of additional maternity leave in the event of sickness of mother.

S 14(A)(2) 1994 as inserted by S 6MP(A)A 2004

If the employer agrees, the additional maternity leave will end on a date agreed by the employer and employee. This will not be earlier than the beginning of the employee's sickness and not later than the date when additional maternity leave would have ended.

S 14(A)(4) MPA as inserted by S 6MP(A)A 2004

Where additional maternity leave is terminated on the employee's request

- any absence from work (after the termination of the additional maternity leave) is treated in the same way as any absence from work of the employee due to sickness
- the employee is not entitled to the additional maternity leave or any part of it not taken by her.

Notification requirements

- S 14(A)(1)(b)** An employee who is sick who wishes to terminate additional maternity leave must
- request in writing (by her or on her behalf) her employer to terminate the additional maternity leave
- S 14(A)(3)** An employer must notify the employee concerned in writing of the employer's decision in relation to the request as soon as reasonably practicable.



Postponement of Leave Due to Hospitalisation of Child

**S 14(B)MPA
1994 as
inserted
by S 7MP(A)A
2004**

An employee on

- maternity leave (after 14 weeks maternity leave with not less than 4 weeks being after the date of confinement), additional maternity leave

**S 16(B)MPA
1994 as
inserted by
S 12MP(A)A
2004**

- father's leave, additional father's leave

may request his/her employer to postpone part of the leave and/or additional leave (or part of it) if the child (in connection with whose birth he/she is on, or is entitled to that leave) is hospitalised.

There is no entitlement to postponement of leave/additional leave if the child is hospitalised.

**S 14(B)(4) and
S 16(B)(3)MPA
1994 as
inserted by
S 7MP(A)
Act 2004**

An employer may agree to postpone the leave and the employee will return to work on a date to be agreed and be entitled to take the postponed leave in one continuous period beginning not later than 7 days after the discharge of the child from hospital.

**S 14(B)(6) and
S 16(B)(5)MPA
1994 as
inserted
by S 7 and
S12MP(A)
Act 2004**

If an employee postpones leave and returns to work and during the period of postponement he/she is absent from work due to sickness the employee is deemed to begin the postponed leave unless, the employer is notified that s/he does not wish

to begin the postponed leave.

If this notification happens

- the absence from work of the employee due to sickness is to be treated in the same manner as any absence from work of the employee due to sickness and
- the employee forfeits the postponed leave

S.I.655/2004 The Maternity Protection (Postponement of Leave) Regulations provide that the maximum period of postponement of leave is 6 months.

Notification requirements

An employee who wishes to postpone part of his/her leave because of the hospitalisation of the child must notify his/her employer in writing (or have the employer notified) of the request.

S.I.655/2004 On request the employer must be furnished with

- a letter or other appropriate document from the hospital confirming the hospitalisation of the child and
- a letter or other appropriate document from the hospital or the child's doctor confirming that the child has been discharged and the date of discharge.

**S 14(B)(5) and
S 16(B)(4)MPA
1994 as
inserted by S 7
and S 12 of
MP(A)A2004**

An employer must notify the employee in writing of the employer's decision as soon as practicable.

**S 14(B)(8) &
16(B)(7)MPA
1994 as
inserted by
S 7 & S 12 of
MP(A)A2004**

In order to avail of resumed leave an employee must notify his/her employer in writing (or have the employer notified) as soon as reasonably practicable but not later than the day on which the leave begins of his/her intention to take the leave. This notification may be revoked by a further notification in writing given by the employee.

**S 14(B)(10)
and S
16(B)(9)**

An employer may waive the right to receive a notification.

Leave to Which a Father is Entitled in the Event of the Death of the Mother

**S 16(1)MPA
1994 as
amended by
S 10MP(A)A
2004**

There is no entitlement under this legislation to paternity leave except in the event of the death of the mother within 24 weeks of the birth.

If the mother's death occurs within **16 weeks** following the birth, then a father who is employed under a contract of employment is entitled to

- leave up until the end of the 16th week and if he so wishes
- further leave of 8 consecutive weeks (additional leave) or
- all or part of the additional 8 weeks can be postponed in event of hospitalisation of child.

If the mother's death occurs after 16 weeks following the birth, then the father is entitled to

- leave up until the end of the 24th week

The leave will commence within 7 days of the mother's death.

A father may be entitled to a social welfare benefit from the Department of Social and Family Affairs.

**S 16(2)(a) and
(b)MPA 1994**

Notification requirements

If a father wishes to avail of his entitlement to leave in the event of the death of the mother, he must

- notify his employer in writing (or have the employer notified) not later than the day on which leave begins of
 - the death of the mother
 - his intention to take leave and
 - the length of leave to which he believes he is entitled to
- furnish his employer on request
 - as soon as is reasonably practicable
 - a copy of the death certificate of the mother
 - birth certificate of the child.

**S 16(5) and
16(6)MPA
1994**

If a father wishes to avail of his entitlement to further leave, (where the mother has died within 16 weeks of confinement) he must

- notify his employer in writing (or have his employer notified) of his intention to take further leave, either:-
- at the same time as the original application for leave is made, or
- if later, not later than 4 weeks before the date which would have been the father's expected date of return if he had not applied for further leave.

S 16(7)a
MPA 1994

An application for father's leave may be revoked by a further notification in writing given by, or on behalf of the father, to his employer not later than the day on which the leave is due to begin.

S 16(7)(b)
MPA 1994

An application for further father's leave may be revoked by a further notification in writing given by, or on behalf of the father, to his employer not later than the latest date on which notification could have been given i.e:- the date of the original application for leave, or 4 weeks before the father's expected date of return had he not applied for further leave.

Termination of Leave in event of Sickness of Father

S 16(A)MPA
1994 as
inserted by
S 11 MP
(A)Act 2004

A father who is sick who wishes at any time to terminate

- leave during the last four weeks (where the mother dies before the end of the 16th week)
- additional leave (where the mother dies before the end of the 16th week) whether or not such leave or part of it is postponed because of the hospitalisation of the child, or
- leave which begins after the end of the 16th week of the birth of the child

may request his employer **in writing** to terminate that leave.

S 16(A)(2)

If the employer agrees, the leave will end on a date agreed by the employer and employee (but not earlier than the beginning of the employee's sickness and not later than the leave would have ended).

S 16(A)(4)

Where the leave is terminated on the employee's request

- the absence from work due to the sickness following such termination will be treated in the same manner as any absence from work due to sickness and

- the employee is not entitled to any of the leave or part of the leave not taken by him.

S 16(A)(3)

An employer must notify the employee in writing of the employer's decision as soon as practicable.



Time off From Work or Reduction of Hours for Breastfeeding

- S (15)(B)
(as inserted
by S 9 of
MP(A)A 2004)
- An employee who is breastfeeding is entitled without loss of pay for **26 weeks** following the birth at the option of her employer, to
- **time off from her work** to breastfeed in the workplace or
 - **a reduction of working hours** for breastfeeding outside work
- S 15(B)(5)
- Breastfeeding is defined to include **expressing breast milk** and feeding it to a child immediately or storing it for the purposes of feeding it to the child at a later time.
- S 15(B)(2)
- An employer is not required to provide facilities for breastfeeding in the workplace where it would cost more than nominal cost.
- Regulations (S.I. No. 654 of 2004) have been made setting out the following:–
- S.I.No.654 of
2004 (3)(1)
- An employee who is breastfeeding in work is entitled, without loss of pay to take 1 hour from her work each working day as a breastfeeding break which may be taken in the form of

- one 60 minute break
 - two 30 minute breaks
 - three 20 minute breaks
- or
as agreed by her and her employer.

**S.I. No. 654
of 2004 (3)(2)**

An employee who is breastfeeding outside work is entitled without loss of pay to have her working hours reduced by 1 hour each working day, which may be reduced in the form of

- one 60 minutes
 - two periods of 30 minutes
 - three periods of 20 minutes
- or
as agreed by her and her employer.

Notification requirements

**S.I.No.654 of
2004(5)(a)
and (b)**

Where an employee who is breastfeeding proposes to take time off from her work or have reduced working hours she must

- **notify her employer in writing** of the proposal as soon as reasonably practicable but not later than the latest date for her to notify her employer of her intention to return to work, and of the date on which she expects to return to work and
- furnish on request the birth certificate of the child (or any other document establishing the date of birth of the child).

Protection of Certain Employment Rights

S 22 as
inserted by
S 14 of the
MP(A)A 2004

- An employee on
- maternity leave
 - additional maternity leave
 - father's leave (in event of mother's death)
 - additional father's leave
 - health and safety leave
 - time off for ante-natal or post-natal care
 - time off or reduced hours for breastfeeding
 - time off for ante-natal classes

is deemed to be in the employment of the employer while absent. The employee is to be treated as if s/he is not absent. The absence will not affect any rights or obligations related to the employee's employment conferred by legislation, contract or otherwise.

- A period of absence from work for any of the above purpose is not to be treated as part of any other leave (including sick leave or annual leave).
- An employer cannot say that an employee must take a day's holidays to go on an ante-natal appointment.
- Similarly maternity leave or ante-natal visits must not be counted as part of the employee's sick record.

Pay

An employer is not obliged to pay an employee except while on

- ante-natal care
- post-natal care
- ante-natal classes
- time off / reduced hours for breastfeeding
- first 21 days of health and safety leave

Superannuation benefits and contributions

These do not have to be made while an employee is on

- additional maternity leave
- father's leave (if mother dies after 16 weeks after confinement)
- additional father's leave

Social Welfare Contributions

If an employee is not being paid while on leave s/he is not regarded as contributing to the social welfare funds. This is the case as long as the Acts allow that s/he does not have to be paid by the employer. (This provision does not apply in relation to ante-natal and post-natal care, ante-natal classes, time off/reduced hours for breastfeeding, first 21 days of health and safety leave).

**S 25(1)MPA
1994 as
amended by
S 17 MP(A)A
2004**

Probation, Training and Apprenticeships

All periods of probation, training and apprenticeship are suspended during absence on leave under the maternity legislation and will have to be completed on his/her return to work.

Public Holidays

Employees on protective leave are entitled to be credited for any public holiday that occurs during their leave. They must receive the benefit of such leave. What this means in practice is that they must be given either an extra day's pay, or a set paid day off within a month, or an extra day's annual leave per public holiday that occurred during their leave. This also applies if the employer continues to provide full pay to the employee who is on such leave.

Right to Return to Work After Leave

**S 26 MPA
1994 as
amended by
S 18 MP(A)
A2004**

An employee is entitled after maternity leave, additional maternity leave, father's leave, additional father's leave and health and safety leave: –

- to return to work
- with the same employer, or the new owner (if there was a change of owner)
- to the same job
- under the same contract and
- under terms and conditions that are
 - i) not less favourable than those that would have applied to the employee and
 - ii) incorporate any improvement to the terms and conditions to which the employee would have been entitled if s/he had not been absent.

Usual / Normal Work

**S 26(2) MPA
1994 as
amended
by S 18(c)
MP(A)A 2004**

If an employee was not doing his/her normal or usual job before the leave, s/he is entitled to return to work, either in his or her normal or usual job or in that job as soon as practicable without the employer or employee breaching statutory provisions.

Suitable Alternative Employment

**S 27(1)MPA
1994**

Where it is not reasonably practicable for the employer (or the employer's successor) to

allow the employee to return to their old job, the employee is entitled to be offered suitable alternative employment under a new contract by the employer (or the employer's successor or an associated employer).

**S 27(2)MPA
1994 as
amended by
S 19MPA(A)
2004**

Suitable alternative work is work which is

- suitable and appropriate for the employee to do in the circumstances and
- the terms and conditions of the new contract are not less favourable than the original contract and
- incorporate any improvement to the terms and conditions which the employee would have been entitled to if s/he had not been absent.

S 29MPA1994

Where there is an interruption or stoppage of work at the workplace and it is unreasonable to expect the employee to return to work on the specified date, the employee may return to work instead when work resumes at the employment, or as soon as reasonably practicable after the resumption.

Written notification of intention to return to work

S 28(1)MPA
1994

An employee must notify his/her employer (or the new owner) or make sure that the employer is notified

- **in writing**
- not later than **4 weeks** before expected return date of his/her **intention to return to work** and
- of expected **date** of return
except

S 28(1A)MPA
1994 as
inserted by
S 20 MP(A)A
2004

in relation to employees who are absent on resumed leave i.e. where maternity leave, additional maternity leave, father's leave has been postponed because of the hospitalisation of a child.

If the period of resumed leave is 4 weeks or less then the employee should give the requisite notice of return at the same time as notifying his/her employer of his/her intention to begin such leave

unless

the employer waives the right to receive such notification in which case notification should be given not later than the day on which the employee expects to return to work.

Where the period of resumed leave is more than 4 weeks, notification of the return to

work should still be given not later than 4 weeks before the date on which the employee expects to return.

**S 28(1B)MPA
1994 as
amended by
S 20MP(A)A
2004**

An employee who is deemed to have commenced resumed leave (i.e. where the employee postponed leave due to the hospitalisation of a child but then was absent from work due to sickness), must notify the employer (or the new owner) in writing of his/her intention to return to work and the expected date on which he or she expects to return to work.

Extension of time for notification

**S 28(2)MPA
1994 as
amended by
S 20(C)
MP(A)A
2004**

A Rights Commissioner or the Tribunal will extend the time for giving the notification where there are reasonable grounds for an employee's failure to give the notification or failing to give the written notification within the requisite time.

**S 28(3)MPA
1994 as
amended by
S 20(D)
MP(A)A
2004**

A Rights Commissioner, Tribunal or Circuit Court in considering what remedy to order in terms of reinstatement, reengagement or compensation may have regard to the failure of the employee to give notice or sufficient notice.

Protection Against Dismissal

- S 23MPA1994** Any purported dismissal, notice of termination or suspension is void while the employee is absent from work
as amended
by S 15
MP(A)A
2004
- on maternity leave or additional maternity leave
 - on father's leave or additional father's leave
 - on health and safety leave
 - to attend ante-natal classes
 - to obtain ante-natal or post-natal care
 - for breastfeeding
- S 24MPA1994** Any notice of termination or suspension of employment (given before the employer receives the requisite relevant notification, or certification) which is due to expire during the employee's absence on the various types of leave is extended by the relevant period of absence from work.
as amended
by S 16
MP(A)
A 2004

Unfair Dismissals

- S 38MPA1994** A dismissal of an employee is unfair if it is as a result of
S 23MP(A)A
2004
amending
S 2(2)&6(2)
of the Unfair Dismissals Act 1977 as amended
- the employee's pregnancy, attendance at ante-natal classes, giving birth or breastfeeding (or any connected matters)
 - the employee exercising or seeking to exercise rights provided in the Maternity Protection Acts 1994 – 2004

Discriminatory Dismissal

A claim under the Employment Equality Acts 1998 and 2004 in relation to discriminatory dismissal on grounds of gender in relation to pregnancy or maternity leave may be referred to the Equality Tribunal or to the Circuit Court (for further information see Equality Authority information booklet on Employment Equality Acts 1998 and 2004).

Contractual terms less favourable

**S 4(3)MPA
1994**

A contract of employment or other agreement may contain terms which are more favourable to an employee than those required by the Act.

**S 4(1) and (2)
MPA 1994**

Provisions in a contract of employment or other agreements which provide for less favourable provisions than those provided by the Acts are void and deemed to be modified so as to be not less favourable.

Disputes and Appeals Relating to Rights Under the Maternity Protection Acts 1994 – 2004

S 30(1)MPA 1994

Either the employee or the employer can refer a dispute that relates to rights or entitlements under the Act to a **Rights Commissioner** except

- disputes which relate to dismissal must be referred under the Unfair Dismissals Acts 1977 – 1993 (for more info on this see the subsequent section on Unfair Dismissals)
- disputes which are within the competence of the Health and Safety Authority should be referred to it, such as a dispute as to whether or not a certain substance or work practice amounted to a risk in the workplace
- disputes which involve employees in the Defence Forces

S 30(2)MPA 1994

Regulations

(S.I. No. 17 of 1995) establish the procedures to be followed in relation to the hearing of disputes by a Rights Commissioner and the hearing of appeals by the Employment Appeals Tribunal. The regulations also set out the requirements with respect to the contents of notices of dispute and appeal, notifications of decisions and determinations, the fixing of hearings and procedures at hearings and the awarding of costs and expenses.

S 31
MPA1994 as
amended by
S 21 MP(A)A
2004 and
Regulation
3(1) of
S.I.No.17
of 1995

Disputes must be initiated by the employer/employee giving a notice to the Rights Commissioner

- in writing
- within 6 months from the date on which the employer is informed of the initial circumstances relevant to the dispute (for e.g. that the employee is pregnant or that the child's mother has died) or within such period as the Rights Commissioner considers reasonable (but not exceeding 12 months) if the Rights Commissioner is satisfied that **exceptional circumstances prevented** the giving of the notice within the 6 months.
- containing the following prescribed particulars:-
 - name and address of the party referring the dispute
 - name and address of the other party to the dispute; and
 - particulars of the facts or contentions which the party referring the dispute will put forward at the hearing.

Forms are available from The Labour Relations Commission, Tom Johnson House, Haddington Road, Dublin 4, Tel: 01-6136700. Website address: www.lrc.ie

- S 31(2)MPA** The Rights Commissioner will give a copy of a notice to the other party as soon as the Rights Commissioner has received the notice.
- S 31(4)MPA** The Rights Commissioner will hear both parties to the dispute and any evidence provided by them.
- S 31(3)MPA 1994** The proceedings before the Rights Commissioner are conducted in private.
- S 32MPA 1994** The decision is in writing and is communicated to both parties. The Rights Commissioner (or the Tribunal on appeal) may
- give **directions** to resolve the dispute
 - order **leave** for a specified period
 - order compensation as is just and equitable in the circumstances up to a maximum of **20 weeks** remuneration
- S 33 MPA1994 and Regulation 3(1) of S.I.No. 17 of 1995** Either party may appeal the decision of the Rights Commissioner to the Employment and Appeals Tribunal by giving notice
- in writing to the Tribunal
 - within 4 weeks of the decision being given to the parties
 - containing the following prescribed particulars:-
 - name and address of the party referring the dispute

- name and address of the other party to the dispute; and
- particulars of the facts or contentions which the party referring the dispute will put forward at the hearing.

**Regulation
5(2) of S.I.
No.17
of 1995**

The hearing of an appeal by the Tribunal shall be in public unless the Tribunal decides in its discretion otherwise.

Appeal forms are available from the Secretary of the Employment Appeals Tribunal, 65 A Adelaide Road, Dublin 2, Tel 01 631 2121.

S 34MPA1994

Either party may appeal to the High Court on a point of law.
The Tribunal may refer a question of law to the High Court.

Enforcement

S 37MPA1994

A decision of the Rights Commissioner or the Tribunal may be enforced through the Circuit Court.

Dismissals

Under the Unfair Dismissals Act, it is unfair to dismiss an employee on the grounds of the employee's pregnancy, attendance at

ante-natal classes, giving birth or breastfeeding or any connected matters.

It is also unfair to dismiss an employee for the exercise or proposed exercise of entitlements granted under the Maternity Protection Act 1994 and the Maternity Protection (Amendment) Act 2004.

Disputes relating to dismissal must be referred under the Unfair Dismissals Act 1977 to 1993 (UDA 1977 as amended).¹

The following employees are excluded from the application of the provisions of this Act:

- Members of the Defence Forces.
- Members of An Garda Síochána.
- Persons employed by the State.
- Managers of local authorities.
- Officers of vocational education committees or of health boards.

¹ Alternatively a claim under the Employment Equality Acts 1998 and 2004 in relation to discriminatory dismissal on grounds of gender in relation to pregnancy or maternity leave may be referred to the Equality Tribunal or to the Circuit Court.

S 8(1)UDA
1977 as
amended

An employee who is unfairly dismissed may seek redress from the:-

- Rights Commissioner
- Employment Appeals Tribunal
- Circuit Court

S 8(2)UDA
1977 as
amended

Where a claim is brought before the Rights Commissioner or the Tribunal, it must be initiated by the employee giving notice to the Rights Commissioner or the Tribunal:-

- in writing
- within 6 months from the date of the dismissal, or
- within such period as the Rights Commissioner or the Tribunal considers reasonable in the circumstances (but not exceeding 12 months) if the Rights Commissioner or the Tribunal is satisfied that exceptional circumstances prevented the giving of notice within the 6 months.

S 8(3)UDA
1997 as
amended

Either party may object to the proceedings being heard by the Rights Commissioner in which case it will be heard by the Tribunal.

Forms for the Rights Commissioner are available from the Labour Relations Commission, Tom Johnson House, Haddington Road, Dublin 4, Tel 01 613 6700. Website address www.lrc.ie.

Forms for the Tribunal are available from the Secretary of the Employment Appeals Tribunal, 65 A Adelaide Road, Dublin 2, Tel 01 631 2121.

S 8(2)UDA
1977 as
amended

The Rights Commissioner or the Tribunal will give a copy of a notice to the employer as soon as either has received the notice.

S 8(1)UDA
1997 as
amended

The Rights Commissioner or the Tribunal shall hear both parties to the dispute and any evidence provided by them.

The proceedings before the Rights Commissioner are conducted in private whereas the proceedings before the Tribunal are conducted in public. The decision is in writing and communicated to both parties.

The forms of redress that may be ordered by the Rights Commissioner, the Tribunal or the Circuit Court are the following:-

- re-instatement – the employee is awarded his/her old position as if never dismissed
- re-engagement – the employee is awarded his/her old position or a suitable alternative position on terms and conditions that are reasonable
- compensation for financial loss attributable to the dismissal as is just and equitable in all the circumstances but not to exceed 104 weeks remuneration

- where there is no financial loss, compensation as is just and equitable but not to exceed 4 weeks remuneration.

In all cases of unfair dismissal, there is a duty on the employee to mitigate his or her loss.

Appeals

S 9 UDA 1977 as amended

Either party may appeal the decision of the Rights Commissioner to the Tribunal by giving a notice:-

- in writing to the Tribunal
- within 6 weeks of the decision being given to the parties
- containing the prescribed particulars:

Regulation (3) of S.I.No.286 of 1977

Notices given under this Act should contain the following:-

- names and addresses of the person bringing the claim or appeal and of the other party
- date of commencement of employment
- date of dismissal, and
- weekly remuneration.

Either party may appeal the decision of the Tribunal to the Circuit Court within 6 weeks from the date on which the decision is communicated to the parties.

Enforcement

A decision of the Rights Commissioner may be enforced through the Tribunal. A decision of the Tribunal may be enforced through the Circuit Court.



Appendix I

Relevant Legislation and Statutory Instruments

There relevant legislation and Statutory Instruments are:

1. Council Directive 92/85/EEC of 19th October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breast feeding
2. Maternity Protection Act, 1994
3. Maternity Protection (Amendment) Act, 2004
4. Employment Equality Acts 1998 and 2004
5. S.I. 286 of 1977 Unfair Dismissals (Claims and Appeals) Regulations 1977
6. Statutory Instrument No. 417 of 1994 Social Welfare (Consolidated Payments Provisions) Regulations as amended
7. Statutory Instrument No. 17 of 1995 Maternity Protection (Disputes and Appeals) Regulations 1995
8. Statutory Instrument No. 18 of 1995 Maternity Protection (Time off for Ante-Natal and Post-Natal Care) Regulations 1995
9. Statutory Instrument No. 19 of 1995 Maternity Protection (Health and Safety Leave Certification) Regulations 1995
10. Statutory Instrument No. 20 of 1995 Maternity Protection (Health and Safety Leave Remuneration) Regulations 1995
11. Statutory Instrument No. 134 of 1999 Maternity Protection (Maximum Compensation) Regulations 1999
12. Statutory Instrument No. 218 of 2000 Safety, Health and Welfare at Work (Pregnant Employees etc) Regulations 2000

13. Statutory Instrument No. 29 of 2001 Maternity Protection Act 1994 (Extension of Periods of Leave) Order 2001
14. Statutory Instrument No. 652 of 2004 Maternity Protection (Amendment) Act 2004 (Commencement) Order 2004
15. Statutory Instrument No. 653 of 2004 Maternity Protection (Time off for Ante-Natal Classes) Regulations 2004
16. Statutory Instrument No. 654 of 2004 Maternity Protection (Protection of Mothers who are Breastfeeding) Regulations 2004
17. Statutory Instrument No. 655 of 2004 Maternity Protection (Postponement of Leave) Regulations 2004
18. Maternity Protection (Amendment) Act 2004, (Commencement) Order 2005 (S.I. No. 131 of 2005)



Appendix 2

Equality Authority

The Equality Authority has a broad mandate under the Employment Equality Acts 1998 and 2004 and Equal Status Acts 2000 to 2004 to:-

- a) combat discrimination in the areas covered by the Acts
- b) promote equality of opportunity in the areas covered by the Acts
- c) provide information on the Acts to the general public
- d) keep the operation of the Acts under review and make recommendations to the Minister for Justice, Equality and Law Reform as appropriate.

The Equality Authority provides information to the public on the Employment Equality Acts 1998 and 2004 and the Equal Status Acts 2000 to 2004. It has a series of published supports available to potential complainants, including guides to the Acts and training videos. The Equality Authority provides additional information through www.equality.ie and an automated telephone voice message service which also refers the caller directly to a Communications Officer who may provide more detailed information on your enquiry.

The Equality Authority also provides information to the public on the relevant Parental Leave and Adoptive Leave Acts.

The Equality Authority may at its discretion, where the case has strategic importance, provide legal assistance to people who wish to bring claims, subject to the criteria set out by the Board of the Equality Authority. If the Equality Authority does not grant/or is unable to offer legal assistance, this does

not disqualify the person from taking a case on their own behalf, directly to the Equality Tribunal. A complainant may represent themselves or be represented by a lawyer, trade union or other representative.

Further information, publications and training videos on aspects of the legislation are available from:

The Equality Authority
2 Clonmel Street
Dublin 2
Ireland

Monday to Thursday	9.15 – 5.30
Friday	9.15 – 5.15
LoCall:	1890 245545
Telephone:	+ 353 1 417 3333
Facsimile:	+ 353 1 417 3331
Text phone:	+ 353 1 417 3385
Email:	info@equality.ie
Website:	www.equality.ie

Other booklets available in this series include:

About the Adoptive Leave Act 1995
About the Parental Leave Act 1998
The Employment Equality Acts 1998 and 2004
Equal Status Acts 2000 to 2004

Appendix 3

Other Useful Contacts and Addresses

Equality Tribunal

3 Clonmel Street

Dublin 2

Telephone: 01-477 4100

Fax: 01-477 4141

LoCall: 1890 344 424

Website: www.equalitytribunal.ie

Email: info@equalitytribunal.ie

The Health and Safety Authority

10 Hogan Place

Dublin 2

Telephone: 01-614 7000

Fax: 01-614 7020

Website: www.hsa.ie

Maternity Benefit Section

Department of Social and Family Affairs

Social Welfare Services Office

Oliver Plunkett Road

Letterkenny

Co. Donegal

LoCall: 1890 690 690

E-mail: maternityben@welfare.ie

Employment Rights Information Unit
Department of Enterprise, Trade and Employment
Davitt House
65a Adelaide Road
Dublin 2
Telephone: 01-631 3131
LoCall: 1890 220 222
Website: www.entemp.ie

Rights Commissioners
Tom Johnson House
Haddington Road
Dublin 4
Telephone: 01-613 6700
Fax: 01-613 6701
LoCall: 1890 220 227
Website: www.irc.ie

Department of Justice, Equality & Law Reform
94 St. Stephen's Green
Dublin 2
Telephone: 01-602 8202
LoCall: 1890 221 227
Website: www.justice.ie



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Other booklets available in this series include:

About the Adoptive Leave Act 1995

About the Parental Leave Act 1998

The Employment Equality Acts 1998 and 2004

Equal Status Acts 2000 to 2004

The Equality Authority
2 Clonmel Street
Dublin 2

Public Information Centre
Lo Call: 1890 245 545

Tel: (01) 417 3333
Business queries: (01) 417 3336
Text phone: (01) 417 3385
Fax: (01) 417 3331
Email: info@equality.ie
www.equality.ie



THE EQUALITY AUTHORITY
AN tÚDARÁS COMHIONANNAIS