



Feidhmeannacht na Seirbhíse Sláinte
Health Service Executive

3Oifig an Stiúirthóra Náisiúnta, Acmhainní Daonna
Feidhmeannacht na Seirbhísí Sláinte
Ospidéal Dr. Steevens'
Baile Átha Cliath 8
Office of the National Director of Human Resources
Health Service Executive
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To: Each Member of the Directorate and Leadership Team
Each Chief Officer, CHO
Each CEO, Hospital Group
Each CEO, Section 38 Agency
Each Employee Relations Manager
HR Senior Staff

From: Rosarii Mannion, National Director of Human Resources

15th February 2017

Re: HR Circular 003/2017 - Implementation of Department of Health Circular 1/2017 re Paternity Leave - Effective from 1st September 2016.

Dear Colleagues,

I enclose a copy of Department of Health Circular 1/2017 which sets out the paternity leave arrangements for HSE employees and Section 38 bodies as a result of the Paternity Leave and Benefit Act 2016. The entitlements to paternity leave under the 2016 Act and the payment for such leave will supersede the entitlement previously set out under Circular 153/2000.

Further details on the Paternity Leave and Benefit Act 2016 are set out in the explanatory **Guide to the Salient Provisions of Paternity Leave and Benefit Act 2016** which was previously circulated (copy attached).

Please ensure that this Circular is brought to the attention of all relevant staff in your area of responsibility.

Queries:

Queries from individual employees regarding the implementation of this Circular or paternity leave entitlements in general should be addressed by local management or their local HR Department.

Queries from HR Departments on this Circular or the paternity leave legislation may be referred to Anna Killilea, HSE Corporate Employee Relations, HR Directorate, 63-64 Adelaide Road, Dublin 2. Tel: 01 6626966, Email: anna.killilea@hse.ie

Yours sincerely,



Rosarii Mannion
National Director of Human Resources

Circular 1/2017

7 February 2017

To: 1) National Director of Human Resources, HSE, Dr Steeven's Hospital, Dublin 8.
2) CEOs of the Non Commercial Semi State Bodies (NCSSBs)

Paternity Leave, effective from 1st September 2016

Dear Sir/Madam

I am directed by the Minister for Health to convey the following instructions in relation to the revision of paternity leave arrangements as a result of the Paternity Leave and Benefit Act 2016. The entitlements to paternity leave under the 2016 Act and the payment for such leave will supersede the entitlement previously set out under Circular 153/2000.

The arrangements applying to employees of the HSE, agencies funded under Section 38 of the 2004 Health Act by the HSE, and in the NCSSBs (thereafter referred to as employees) in relation to paternity leave are, in general, as specified in that Act and the granting of leave is subject to the employee satisfying the eligibility requirements under the Act. This Circular provides a summary of the main provisions of the Act and is not intended as a legal interpretation of the Act.

Purpose of Paternity Leave

1. The purpose of this leave is to enable employees, who are relevant parents, to provide or assist in the provision of care to a child or to provide support to the relevant adopting parent or mother of the child.

Period of leave

2. Paternity leave shall comprise a single period of 2 weeks leave with pay. Part time workers should have their entitlement calculated on a pro-rata basis.
3. Paternity leave must commence within 26 weeks of the date of birth (or date of placement in the case of an adoption). It must be taken as one continuous period of two weeks, except in the event of the hospitalisation of the child and postponement of the paternity leave.

Entitlement to Paternity Leave

4. In order to be entitled to paternity leave, and subject to compliance with the provisions of Part 2 of the Paternity Leave and Paternity Benefits Act (the Act), an employee must be a "relevant parent" as defined in the Act, namely:
"relevant parent", in relation to a child, means a person (other than the mother of the child) who is—
 - (a) (i) the father of the child,
 - (ii) the spouse, civil partner or cohabitant, as the case may be, of the mother of the child, or

- (iii) 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.

or

- (b) in the case of a child who is, or is to be, adopted—
 - (i) where the child is, or is to be, adopted jointly by a married couple of the same sex, the spouse chosen by that couple to be the relevant parent for the purposes of the Act, or
 - (ii) in any other case, the spouse, civil partner or cohabitant, as the case may be, of the adopting mother or sole male adopter of the child,
- 5. Paternity leave is only applicable in the following circumstances:
 - (a) in the case of a child who is, or is to be, adopted where the day of placement in respect of the child falls on or after 1 September 2016, or
 - (b) in any other case, where the date of birth in respect of the child falls on or after 1 September 2016.
- 6. In the case of a multiple birth or the adoption of more than one child, the entitlement to paternity leave remains at one single period of leave of 2 weeks.
- 7. Paternity leave is available for stillbirths after 24 weeks of pregnancy.
- 8. A person may not avail of paternity leave under the Paternity Leave and Benefit Act 2016 where the person avails of Adoptive Leave under Section 6 of the Adoptive Leave Act of 1995.
- 9. Where an employee who is a relevant parent is employed under a fixed term contract and the fixed term contract will expire before the end of the period of paternity leave then the employee's paternity leave entitlement will cease on the date of expiry of his or her contract of employment and the employee will no longer be covered by the paternity leave legislation. In the case of an employee on a specified purpose contract, the paternity leave entitlement will cease when the contract of employment is terminated (i.e. upon the cessor of the purpose for which he or she was employed).

Documentation Required

- 10. Claimants for paternity leave will, in the case of a birth of a child, have to provide evidence from a registered medical practitioner which shows the expected date of birth. The birth certificate can be provided where the child is born before the expected date. In the case of an adoption, claimants will have to provide the certificate of placement. In the case of an inter country adoption, claimants will need to supply the declaration of eligibility and suitability followed by the certificate of placement as soon as it becomes available.

Applications

- 11. Applications for paternity leave must be made at least 4 weeks in advance of the expected day of placement in the case of adoptions and at least 4 weeks in advance of the expected date of birth of a child. In the case where the leave is not being taken at the time of birth or placement, applications must be made at least 4 weeks in advance of the planned leave.
- 12. In the event of an earlier than expected birth, applications can be made outside of the 4 week period.
- 13. Each employer is responsible for putting in place arrangements for the approval and processing of paternity leave applications from employees within their organisation.

Postponement of Paternity Leave

14. In the event of the day of placement being postponed or the date of birth occurring after the date indicated by a relevant parent, the relevant parent is entitled to indicate another date for the commencement of the paternity leave. In such circumstances, the line manager should be notified as soon as possible.
15. In the event of sickness of the relevant parent immediately prior to the commencement of his/her paternity leave, the paternity leave may be postponed. Such postponed leave can be taken on a date which is agreeable to the relevant parent and the employer, but end no later than 28 weeks after the date of birth or date of placement (Section 11 of Act).
16. In the event of the hospitalisation of the child, the paternity leave may be postponed subject to the employer's agreement. Such postponed leave is to be taken in one continuous period commencing no later than 7 days after the discharge of the child from hospital or such other date which is agreeable to the relevant parent and the employer (Section 12 of the Act).

Payment while on Paternity Leave

17. Subject to paragraph 18 below, a person on paternity leave is entitled to normal pay and any appropriate fixed allowances. This payment does not include additional amounts due to night work, overtime, shift work, working unsociable hours, standby or on-call allowances.
18. The procedure for granting paternity leave payment by the employer where the employee has an entitlement to paternity benefit shall be the same as the procedure for granting maternity leave payment where there is an entitlement to maternity benefit.

Where an employee, who is a 'relevant parent' under the Act, does not meet the eligibility requirements for claiming paternity benefit from the Department of Social Protection, he or she may receive full payment from his or her employer during the period of paternity leave. This provision does not apply, however, to any employee who satisfies the eligibility criteria for paternity benefit but fails to comply with any of the conditions laid down by the Department of Social Protection for payment of the benefit to which he or she would otherwise be entitled.

Further information on the arrangements relating to Paternity Benefit and frequently asked questions are set on the DSP website - <https://www.welfare.ie/en/Pages/Paternity-Benefit-FAQ.aspx>

19. The Department of Social Protection has advised that:
 - a) individuals can only apply for Paternity Benefit online at mywelfare.ie. The individual must upload his/her supporting documentation and submit it online with his/her application, and
 - b) individuals must have a Public Services Card to apply for Paternity Benefit¹.

¹ If an individual does not already have a Public Services Card, he/she can make an appointment to get one at mywelfare.ie. Individuals will first need to register with the site. To do this, an individual will need a mobile phone number and two e-mail addresses (a main address and an alternate address). When the appointment has been made, individuals must print the notification and bring it to his/her appointment along with the required documents (listed in the notification). Information on the payment of Paternity Benefit is available on the Department of Social Protection website www.welfare.ie. The following link is useful: <https://www.welfare.ie/en/Pages/Paternity-Benefit.aspx>

20. Paternity leave must not be treated as part of any other leave (including sick or annual leave) to which the employee is entitled. An employee who is on sick leave prior to commencement of paternity leave will cease to be recorded as being on sick leave during the period of paternity leave. If, following the period of paternity leave, the employee is still unfit for work due to illness or injury, he or she will be treated as being on sick leave from the date the paternity leave expires and his or her sick pay entitlements will be reactivated.

Payment while on paternity leave (specific to NCHD grades only)

21. While on statutory paternity leave under the Paternity Leave and Benefit Act 2016, an NCHD will receive his or her normal basic pay and any appropriate fixed allowance, less any amount attributable to overtime, night work or shift work, unsocial hours payments, or on call fees. NCHDs are entitled to paternity pay from their existing employer (less the full amount of Paternity Benefit payable) for the full 2 week period, including in circumstances where the contract expires prior to the end of their paternity leave. This payment is not conditional on continued employment within the Irish public health service.

Employment Rights

22. Subject to paragraph 23 below, while on paternity leave, a relevant parent must be deemed for all purposes to have been in employment. Paternity leave is, therefore, fully reckonable for service, seniority and annual leave entitlement. A relevant parent on paternity leave should be given the benefit of any public holiday and Good Friday falling within the period of paternity leave by having it granted immediately after paternity leave.
23. In the case of a relevant parent who is on probation at the commencement of paternity leave, the period of probation may stand suspended during paternity leave and will be completed by the relevant parent on his/her return to work.
24. An employee absent from work on paternity leave cannot have his/her employment terminated, be suspended or be given notice of termination of employment while on such leave. Notice of termination of employment or suspension from employment imposed on an employee either:
- a) before the employee commences a period of paternity leave or
 - b) before receipt of notification to commence paternity leave
- and due to expire during the employee's absence from work on paternity leave shall be extended by the period of such absence.
25. Employees cannot be penalised or threatened with penalisation as a consequence of taking or intending to take paternity leave.
26. Subject to paragraph 24 above, an employee is entitled to return work at the expiry of the period of parental leave:
- with the employer with whom the employee was working immediately before the commencement of the period of absence (where there was a change of ownership during the employee's absence the employee is entitled to resume employment with the new owner of the undertaking),
 - to the same job as previously held,
 - under the same contract of employment,
 - on the date specified in the written notice of application for leave.

Transfer of Paternity Leave

27. The Act makes provision for the transfer of paternity leave in a number of situations where one of the relevant parents dies. Details of the conditions governing such leave are available from HR Units. (Sections 13 - 15 of Act).

Decision Maker

28. Decisions relating to paternity leave will be made by the employee's manager and/or the Head of HR as appropriate to each employer.

Abuse of Paternity Leave

29. Where a decision maker has reasonable grounds for believing that an employee on paternity leave is not using the leave for the purpose specified in paragraph 1, he/she can terminate the leave by notice in writing to the employee. The written notice should outline the grounds for terminating the leave and specify the date by which the employee must return to work.

Refusal to Grant Paternity Leave

30. Where a decision maker has reasonable grounds for believing that the employee is not entitled to the paternity leave, he/she can refuse to grant the leave by notice in writing to the employee. The written notice should contain a statement in summary form of the grounds for refusing to grant the paternity leave.

Right of an Employee to Make Representation

31. Where a decision maker proposes to give a notice under paragraphs 29 and/or 30 to an employee, the decision maker should, before giving the notice, inform the employee in writing of his or her intention to refuse/terminate the paternity leave. This written notification should outline the grounds for terminating, or, as the case may be, refusing to grant, the paternity leave concerned. It should also state that the employee may make representations to the decision maker in relation to the proposal to refuse/terminate the leave as soon as possible but not later than 10 days of the receipt of the notification. Any such representations made by an employee to a decision maker within that period should be considered by the decision maker before he or she decides whether to give a notice under paragraphs 29 and/or 30, as the case may be, to the employee.

Fraudulent Claim

32. A fraudulent claim for paternity leave made by any employee will be treated as a disciplinary matter.

Maintenance of records

33. Employers are required to maintain a record of the paternity leave of all employees indicating the period of employment for each employee and the dates and times in respect of which each employee

was on paternity leave. Employers are required to keep such records for a period of 8 years after the paternity leave is taken. Failure to maintain the appropriate records may result in prosecution by the Workplace Relations Commission. Employers found guilty of such an offence shall be liable to a class B fine as well as liability for costs and expenses.

Circulation and implementation

34. The contents of this circular should be brought to the attention of all employees, including the HSE, Section 38 agencies and the NCSSBs.

Queries

35. *HSE and Section 38 agencies*

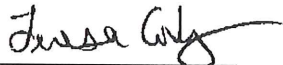
Queries from individual employees regarding the implementation of this Circular or paternity leave entitlements in general should be addressed by local management / HR Department in accordance with the employer's normal arrangements.

36. HSE and Section 38 HR Departments may seek advice on this Circular or the paternity leave legislation from HSE Corporate Employee Relations Advisory Services (CERS), HSE HR Directorate, 63-64 Adelaide Road, Dublin 2. Tel: 01 6626966; Email: info.t@hse.ie

37. *NCSSBS*

Requests for clarification from payroll and HR managers in NCSSBs should be directed to the relevant employer in the first instance. If required, queries can be directed to national_hr_unit@health.gov.ie.

Yours sincerely



Teresa Cody
Assistant Secretary