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Each Group Director of Nursing & Midwifery
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Each Clinical Director
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From: Anne Marie Hoey, National Director of Human Resources

Date: 12th April 2021

Subject: HR Circular 018/2021: Family Leave and Miscellaneous Provisions Act 2021 – Amendment to Parent’s Leave and Benefit Act 2019, Adoptive Leave Act 1995, Parental Leave Act 1998 and Paternity Leave and Benefit Act 2016
This Circular revokes HR Circular 035/2019: Parent’s Leave and Benefit Act 2019

Dear Colleagues

I wish to advise that the employment leave provisions of the *Family Law and Miscellaneous Provisions Act 2021* (the “2021 Act”) came into operation from 1 April 2021¹. This Act amends the *Parent’s Leave and Benefit Act 2019* (the “2019 Act”) to extend parent’s leave from 2 weeks to **5 weeks** and to allow parent’s leave to be taken **in the first 2 years** after

¹ **S.I. No. 148 of 2021** Family Leave and Miscellaneous Provisions Act 2021 (Commencement) Order 2021 commences the relevant parts of the legislation to which this Circular applies.

the birth or adoptive placement of a child. The additional 3 weeks of parent's leave is available to employees in respect of a child born or adopted on or after 1 November 2019. Employees who had taken two weeks' parent's leave prior to the enactment of the 2021 Act will now have an entitlement to an additional 3 weeks. The entitlement to Parent's Benefit has been extended to 5 weeks and is subject to the eligibility criteria and conditions set down by the Department of Social Protection [here](#). Public health service employees are **not** entitled to payment from their employer during parent's leave. The main provisions of the 2019 Act (as amended) are outlined in **section D** of this Circular.

The 2021 Act also provides, *inter alia*, for amendments to the *Adoptive Leave Act 1995* (Part 2), the *Parental Leave Act 1998* (Part 3) and the *Paternity Leave and Benefit Act 2016* (Part 7). An overview of these amendments is set out in sections A, B and C of this Circular.

This Circular provides a summary of the changes and is not intended as a legal interpretation of any of the Acts.

A Amendment of the Adoptive Leave Act 1995 (the "1995 Act")

The 1995 Act has been amended to enable couples, regardless of gender, who have jointly adopted to choose which parent may avail of adoptive leave and, in doing so, rectifies an anomaly in the previous legislation that precluded male same-sex couples from availing of adoptive leave. The amendments remove the presumption that the adoptive mother is the primary caregiver.

The 1995 Act provides that an employee may not avail of adoptive leave if s/he avails of paternity leave under the *Paternity Leave and Benefit Act 2016*.

The 2021 Act inserts a new definition of "qualifying adopter" in the 1995 Act and deletes a number of previous definitions. The term "qualifying adopter" means-

- (a) where a child is placed, or is to be placed, in the care of a couple² (of whom neither is the mother or father of the child), with a view to the making of an adoption order, or to the effecting of a foreign adoption or following any such adoption, the member of the couple who is-
 - (i) an employee, and
 - (ii) chosen by the couple to be the qualifying adopter for the purposes of this Act,
- (b) in any other case, an employee, who is not a surviving parent in relation to the child, in whose care a child has been placed or is to be placed with a view to the making of an adoption order, or to the effecting of a foreign adoption or following any such adoption.

'surviving parent' means an employee in whose care a child has been placed or is to be placed with a view to the making of an adoption order, or to the effecting of a foreign adoption or following any such adoption, where his or her spouse,

² The term 'couple', in relation to the definition of 'qualifying adopter', means a married couple, a couple who are civil partners of each other or a cohabiting couple.

civil partner or cohabitant, as the case may be, was the qualifying adopter in relation to the child and the qualifying adopter concerned has died.

B Amendment of the Parental Leave Act 1998 (the “1998 Act”)

The 2021 Act amends the 1998 Act by inserting a new definition of “adopting parent”. The term “adopting parent” applies to a “qualifying adopter” or a “surviving parent” in whose care a child has been placed and is consistent with the new definitions in the 1995 Act (see section A of this Circular).

C Amendment of the Paternity Leave and Benefit Act 2016 (the “2016 Act”)

An employee who is an adoptive parent and does not avail of adoptive leave is entitled to take paternity leave.

The 2021 Act amends the definition of “relevant parent” in the 2016 Act as follows:

- (a) in the case of a child who is, or is to be adopted, the spouse, civil partner or cohabitant, as the case may be, of the qualifying adopter of the child”.

The 2021 Act inserts a new definition of “qualifying adopter” and deletes a number of previous definitions. The term “qualifying adopter”, in relation to a child who is, or is to be adopted, means the qualifying adopter, within the meaning of the 1995 Act (see section A of this Circular), of the child and includes, for the purposes of the 2016 Act, a person who would be a qualifying adopter but for the fact that he or she is not an employee³.

D Amendment of Parent’s Leave and Benefit Act 2019 (the “2019 Act”)

The following sections set out the main provisions of the 2019 Act (as amended by the 2021 Act)⁴. The updated provisions reflect the increase in the parent’s leave entitlement from 2 to 5 weeks and the extension of the period in which parent’s leave may be taken to 2 years after the birth or adoptive placement of the child. The 2019 Act also contains new definitions to reflect the amended definitions in the 1995 Act.

Parent’s leave is granted to public health service employees in accordance with the provisions of the 2019 Act. Public health service employees are **not** entitled to payment from their employer during parent’s leave.

1. Purpose of Parent’s Leave

Parent’s leave is granted to employees for the purposes of enabling them to provide, or assist in the provision of, care to the child. This leave is a stand-alone entitlement with no sharing permitted and does not affect any existing entitlements to statutory leave i.e. maternity, adoptive, paternity and parental leave.

³ This is relevant where one member of an adoptive couple is not an employee and the member of the couple who is an employee does not avail of adoptive leave.

⁴ This Circular provides a summary of the main provisions of the 2019 Act (as amended) and is not intended as a legal interpretation of the Act.

With effect from 1 April 2021, employees who are “relevant parents” are entitled to leave from work for the purposes of enabling them to provide, or assist in the provision of, care to the child within two years following the birth or adoption placement of the child. This leave is referred to as “parent’s leave” and applies to births or adoptions which occur on or after 1 November 2019. The current entitlement for parent’s leave is now **five weeks** and it may be increased in the future (up to a maximum of 9 weeks). Employees who had taken their entitlement to 2 weeks’ parent’s leave under the previous legislation will be entitled to avail of the additional 3 weeks’ parent’s leave in accordance with the new provisions. The Act also provides for the payment of Parent’s Benefit from the Department of Social Protection (DSP) to eligible employees who satisfy the PRSI contribution conditions. Further information on Parent’s Benefit is available [at this link](#)

2. Entitlement to Parent’s Leave

An employee must meet the definition of a “relevant parent” in order to avail of parent’s leave.

The definition of “relevant parent” is broad and covers the following-

- (a) *In the case of an adoption-*
- (i) the qualifying adopter of the child, and
 - (ii) the spouse, civil partner or cohabitant, as the case may be, of the qualifying adopter of the child

The term “qualifying adopter”, in relation to a child who is, or is to be adopted, means the qualifying adopter, within the meaning of the 1995 Act (see section A of this Circular), of the child and includes, for the purposes of the 2019 Act, a person who would be a qualifying adopter but for the fact that he or she is not an employee⁵.

- (b) *In any other case-*
- (i) a parent of the child,
 - (ii) the spouse, civil partner or cohabitant of the parent of the child, or
 - (iii) a parent of a donor-conceived child as provided for under section 5 of the Children and Family Relationships Act 2015.⁶

In addition to being a ‘relevant parent’, as outlined above, an employee’s entitlement is conditional on the parent’s leave being used to provide, or assist in the provision of, care to the child.

An employee who is a relevant parent in more than one capacity in respect of a child is entitled to five weeks’ parent’s leave in total. Where the birth of a child is part of a multiple birth or a person adopts two or more children at the same time, the employee is entitled to five weeks’ parent’s leave in total.

⁵ This is relevant where one member of an adoptive couple is not an employee and the member of the couple who is an employee does not avail of adoptive leave.

⁶ The provision in respect of the relevant parent of a donor-conceived child will be commenced on a future date.

3. Allocation of Parent's Leave

Parent's leave must generally be taken as follows:

- in the case of a child who is, or is to be, adopted, not later than 2 years from the date of adoption placement, or
- in any other case, not later than the date on which the child attains the age of 2 years.

The entitlement to parent's leave is non-transferable and sharing between employees is not permitted.

4. Manner in which leave can be taken

The five weeks' leave can be taken as-

- (a) one continuous period of five weeks, or
- (b) separate periods of not less than one week.

Employees who are/will be availing of maternity leave/adoptive leave are required to take this leave before taking parent's leave. Employees who are entitled to paternity leave and parent's leave can take these leave entitlements in whichever order they wish (subject to the statutory time limits).

5. Application / Notification Requirements

The entitlement to parent's leave is subject to an employee having notified his or her employer in writing of his or her intention to take parent's leave and, where applicable, supplying a copy of relevant documentation in relation to the child⁷. An employee is required to give written notification not later than 6 weeks before the intended commencement of the parent's leave and specify the expected date of commencement and duration of the parent's leave. The notification should indicate the manner in which the employee wishes to take parent's leave i.e. 5 consecutive weeks or separate blocks of a minimum of one week.

HSE employees should complete the Parent's Leave Application Form which is available [at this link](#).

6. Documentation Required

The documents that may be required to support an application for parent's leave are as follows:

In the case of a birth:

- a copy of the medical certification as provided by the mother to her employer or other appropriate certificate from a registered medical practitioner confirming the pregnancy and specifying the expected date of birth of the child concerned, or
- a copy of the birth certificate where notification is given after the birth.

In the case of an adoption:

- a copy of the placement certificate where notification is given after the day of placement,

⁷ The documentation is subject to GDPR provisions.

- in the case of an intercountry / foreign adoption, a declaration of suitability and eligibility prior to the day of placement followed by written confirmation of the placement.

7. Parent's Benefit

The 2019 Act also provides for the payment of parent's benefit from the Department of Social Protection (DSP) to employees who have made the requisite PRSI contributions and satisfy the eligibility criteria for payment [click here](#). Employees may qualify for parent's leave and not qualify for parent's benefit, for example, if they do not satisfy the PRSI contribution conditions.

Managers are required to review all written notifications from employees who wish to avail of parent's leave in a timely manner and establish the employee's eligibility to take parent's leave in accordance with the legislation. An employee who is also applying for parent's benefit from DSP must declare that their parent's leave dates have been approved by their employer. The DSP may contact the person's employer asking them to confirm the dates of the parent's leave for which benefit is being claimed. Managers must therefore be in a position to respond to such requests from DSP.

Public health service employees are **not** entitled to payment from their employer during parent's leave.

8. Employees on fixed term or specified purpose contracts

Where a relevant parent is employed under a contract of employment for a fixed-term or specified purpose, the contract of employment will terminate in the normal manner and the entitlement to parent's leave will cease to apply with effect from the date of termination of the contract of employment.

9. Commencement of parent's leave (early confinement)

Where the date of confinement occurs in a week that is 4 weeks or more before the expected date of confinement, the relevant parent shall be deemed to have complied with the notification requirements if the notification is submitted within 7 days commencing on the date of confinement.

10. Commencement of parent's leave (change in day of placement or date of confinement)

Where the day of placement is postponed or the date of confinement occurs after the date selected by a relevant parent in his or her notification, the relevant parent is entitled to select another date of commencement within the timeframes specified in the Act-

- in the case of a child who is, or is to be, adopted, not later than 2 years from the day of placement, or
- in any other case, not later than the day on which the child attains the age of 2 years.

11. Postponement of Parent's Leave by Employer

Parent's leave may be postponed once by an employer where the granting of the leave would have a substantial adverse effect on the operation of his or her business, profession or occupation by reason of-

- seasonal variations in the volume of work concerned,
- the unavailability of a person to carry out the duties of the employee in the employment during the period of the leave,
- the nature of the employee's duties,
- the number of employees in the employment or the number of such employees whose parent's leave will fall within the period specified in the employee's notification, or
- any other relevant matters.

An employer must consult with the employee in advance and provide the reason for the postponement.

An employer is required to give written notice of postponement to the employee not later than 4 weeks before the requested date for beginning the period of parent's leave. The postponement cannot go beyond 12 weeks after the date of commencement specified in the employee's notification and the new date should be agreed between the employer and the employee.

12. Postponement of parent's leave in event of hospitalisation of child

Where the child is hospitalised, an employee may submit a request in writing to his or her employer to postpone the leave or part of it as may be appropriate. An employer may agree to the request to postpone the parent's leave and, if the employer does so-

- the relevant parent must continue to work or, as the case may be, return to work on a date agreed by him or her and the employer that is not later than the date on which the parent's leave is due to end in accordance with the written notification,
- the parent's leave will be postponed with effect from the agreed date,
- the postponed leave is to be taken not later than 7 days after the discharge of the child from hospital or such other date as may be agreed between the employee and the employer.

Where, following the postponement of parent's leave, an employee returns to work and during the period of the postponement goes absent from work due to sickness, the employee will be deemed to have commenced postponed leave on the first day of the absence unless he or she notifies the employer in writing as soon as reasonably practicable that he or she does not wish to be on parent's leave. Following receipt of this notification, the employee's absence should be treated as sick leave in the normal manner and the employee forfeits the entitlement to the postponed parent's leave.

Entitlement to postponed parent's leave is subject to the employee having notified his or her employer in writing as soon as reasonably practicable but not later than the day on which the leave begins of his or her intention to commence such leave and the duration of such leave. An employer may waive the right to receive such notification. A notification may be revoked

by a further notification in writing given by or on behalf of the employee within the specified period.

13. Entitlement to parent's leave on death of child

Where a child in relation to whom a relevant parent is entitled to, or is on, parent's leave dies on or before the expiration of the leave entitlement, the child's death will not affect the entitlement of the employee to take the leave.

This also applies to an employee who would be entitled to parent's leave but for the fact that he or she had not given the written notification to his or her employer at the time of the child's death.

14. Entitlement of employed surviving parent to leave on death of relevant parent

Where a relevant parent who was an employee entitled to parent's leave in relation to a child dies on or before the expiration of the leave entitlement, an employee who is a surviving parent⁸ of the child shall be entitled to leave (referred to as "transferred leave") to enable him or her to provide, or assist in the provision of, care to the child.

The transferred leave may be for a period of 5 weeks or, if applicable, such shorter period of parent's leave that remained to be taken by the relevant parent at the time of his or her death.

A surviving parent who is entitled to parent's leave and has not taken such leave, and becomes entitled to transferred parent's leave, may take transferred parent's leave after the end of the period of parent's leave.

Entitlement to transferred parent's leave is conditional on the employee who is the surviving parent notifying the employer in writing not later than 6 weeks before the intended commencement of the transferred parent's leave of-

- the death of the relevant parent,
- his or her intention to take transferred parent's leave,
- the length of leave to which he or she believes he or she is entitled, and
- the employer may request the employee to provide a copy of the death certificate made in respect of the relevant parent as soon as reasonably practicable prior to the granting of the transferred parent's leave.

15. Protection of Employment Rights while on Parent's Leave

During the period of parent's leave, the employee's employment rights are protected (except for the employee's right to remuneration).

Employees continue to accrue an entitlement to annual leave and public holidays while on parent's leave.

A period of absence on parent's leave cannot be treated as part of any other leave to which the employee is entitled such as sick leave and annual leave.

⁸ The 2021 Act amends the definition of "surviving parent" to reflect the changes in the Adoptive Leave Act 1995.

Employees are entitled to return to work in their normal job and under terms and conditions not less favourable.

An employer is prohibited from penalising, or threatening penalisation of, an employee for proposing to exercise or having exercised his or her entitlement to parent's leave.

16. Employees on probation

Where an employee who is on probation takes parent's leave, an employer may suspend the probation during the parent's leave until the employee returns to work.

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

Queries

Queries from individual employees or managers should be referred to local HR Departments/Employee Relations Departments. Please note that the National HR Help Desk is also available to take queries on 1850 444 925 or email: ask.hr@hse.ie.

Queries from HR Departments in relation to this Circular may be referred to Anna Killilea, HSE Corporate Employee Relations, HR Directorate, 63-64 Adelaide Road, Dublin 2. Tel: 01 6626966, E: anna.killilea@hse.ie

Yours sincerely



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