

# maternity leave



**flac**

promoting access to justice

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**ALL** pregnant employees in Ireland are entitled to maternity leave. It does not matter how long you have been working for the employer or the number of hours worked per week. Fathers however, are only entitled to leave if the mother dies within 24 weeks of the birth.

### Amount of Leave

A basic period of **26 weeks** maternity leave is given if you become pregnant while working. It is important that an expectant mother give 4 weeks notice in writing of her intention to take maternity leave to be able to fully make use of this leave.

If your baby is born 4 or more weeks early, you must inform your employer within 14 days of the occurrence of the birth so as to fulfill your notice requirements.

According to the Maternity Protection Amendment Act 2004, you must take at least 2 of these weeks **before** the end of the week of your baby's expected date of birth. Also, you must take at least 4 of these weeks after your baby's birth. It is then up to you to decide how to divide up your remaining 20 weeks.

You are also entitled to take up to a further 16 weeks maternity leave known as **Additional** or **Unpaid Maternity Leave**.

## Stillbirth and miscarriages

You are entitled to full maternity leave at any time after the **24th week** of pregnancy. This means that a basic period of 26 weeks and also the 16 weeks additional maternity leave may be taken in the event of a stillbirth or miscarriage after the 24th week of pregnancy.

## Maternity Benefit

Your entitlement to payment from your employer during maternity leave depends on the terms of your contract of employment or on the discretion (choice) of your employer. There is no obligation on your employer to pay you during maternity leave.

Payment by the State during maternity leave is normally provided through a tax-free Social Welfare payment called **Maternity Benefit**.

Some employment contracts allow for additional payment rights during the period of leave (for example: an employee might receive full pay minus the amount of Maternity Benefit she receives).

Maternity Benefit is calculated by dividing your gross earnings in the relevant tax year by the number of weeks you worked in that year. You may get 80% of that amount subject to a minimum payment of €230.30 and maximum payment of €280.00 per week.

Given this, it is important for an expectant mother who is in a higher bracket of income to be aware of any possible shortfall in income and to plan around this. It is also important to note that:

- If you are on the following social welfare payments: *One-Parent Family Payment, Widow's (Contributory or Non-Contributory) Pension, Deserted Wife's Benefit, Prisoner's Wife's Allowance, Guardian's Payment (Contributory and non-Contributory)* and *Death Benefit by way of Widow's / Widower's or Dependent Parent(s) Pension (under the Occupational Injuries Scheme)* then you will receive, on top of your payment, a half-rate Maternity Benefit payment.
- The **Additional Maternity Leave** is not covered by Maternity Benefit, nor is your employer obliged, unless otherwise agreed, to make any payment during this period.
- In order to receive maternity benefit you must have paid **PRSI** over a certain time period. You can look at the required periods and rates on the Department of Social and Family Affairs.  
Website: [www.welfare.ie](http://www.welfare.ie).
- Maternity Benefit is paid in advance directly into your bank account on a weekly basis.
- To apply for this benefit and for further information contact the Maternity Benefit Section at:

Maternity Benefit Section  
Social Welfare Services Office  
Oliver Plunkett Road  
Letterkenny, Co. Donegal  
Lo-Call: 1890 690 690

You may also download and complete form **MB10** from [www.welfare.ie](http://www.welfare.ie) and send it to the above address.

**Note:** You need to apply for this **at least six weeks** before you intend to go on maternity leave. In many cases your employer will make the necessary application. If you are self-employed you should apply at least 12 weeks before your intended leave date.

### **Employment Rights During Maternity Leave/Additional Maternity Leave**

During maternity leave and additional maternity leave, an employee is deemed to be in the employment of the employer. This means that all employment rights and benefits that employees might be entitled to by virtue of being in work are preserved **except** for the right to remuneration.

### **Health and Safety Leave**

When informed of your pregnancy your employer should re-examine the pregnancy section in the Safety Statement to ascertain if there are particular risks to your pregnancy at work. If he or she identifies any such risks, then either the risk should be eliminated or you must be moved away from the risk. If neither of these options is available, then you must be given **health and safety leave** from

work which may continue up to the beginning of maternity leave.

In the event of a dispute about whether there is a risk, you can contact the Health and Safety Authority on lo-call: 1890 289 389.

If a doctor certifies that night work would be unsuitable for you, you must be given either alternative work **or** health and safety leave. If there is any risk to you on your return from maternity leave where the birth is recent and you are on night leave or where you are breastfeeding, the employer must also re-examine the safety statement as above.

During health and safety leave, the employer must pay you your normal wage for the first three weeks, after which a social welfare payment, **Health and Safety Benefit**, may be payable. This is a lesser payment than Maternity Benefit.

### **Return to work**

You are entitled to return to work after maternity leave. However, you must give your employer **at least 4 weeks'** written notice of your intention to return to work.

You are entitled to go back into the position you previously held. However, the Maternity Legislation states that when it is not reasonably practicable for your employer to allow you to return to your job, the employer must provide you with suitable alternative work. This new position must not be on terms or conditions less favourable than the terms of your previous job.

If pay or other conditions have improved

while you were on maternity leave, you are entitled to these same benefits when you return to work.

### Medical Visits and Ante-Natal Classes

Once your pregnancy is confirmed you may take reasonable, paid time off for medical visits connected with the pregnancy. You are entitled to be paid for attending medical appointments both before and after the birth (up to 14 weeks after) and you are also entitled to be given paid time off to attend 4 ante-natal classes.

Reasonable time means as much time off as is necessary to attend each medical appointment (including time needed to get there and back) **and** time off to attend one complete set of ante-natal classes (a set usually comprises 7 classes), except for the last 3 classes in a set. That means that you are entitled to **4 classes**.

The father has a right to paid time off for the purposes of attending only the last 2 ante-natal classes in the set.

You will need to provide your employer with medical evidence confirming the pregnancy and give 2 weeks notice of your medical visits. You should show your appointment card if requested by your employer at any time after your first appointment.

### Time off for breastfeeding

Breastfeeding mothers – who gave birth not more than **26 weeks earlier** – are entitled to paid time off for the purpose of breastfeeding. This time off may be given in the actual

workplace if facilities are provided. Alternatively, a reduction in working hours (on full pay) may be given to facilitate breastfeeding where facilities are not provided. You are entitled to one hour off in every working day to breastfeed.

### **Postponement of maternity leave in the event of a child being hospitalised**

After the 14th week of maternity leave, you may ask your employer to postpone some of your maternity leave or your additional maternity leave if your child is in hospital. In this way you may return to work and then use the rest of your leave when your child comes out of the hospital. However as the law stands at present your employer is not obliged to facilitate you in this.

The maximum amount of time for which you can postpone your leave is 6 months.

If you postpone some of your maternity leave and return to employment, you need to inform the Department of Social and Family Affairs, via the Maternity Benefit Section, of this choice. You must notify them in writing of the hospitalisation of your child and confirm you have returned to employment.

Later, you will need a hospital or GP's letter confirming that your child has been discharged from hospital and that your maternity benefit should resume.

### **Ill while on maternity leave**

If you become ill while on the 16 weeks **additional** maternity leave you may ask your employer to end the additional maternity leave

period. Your employer may or may not agree. If the employer does agree, you will not be entitled to the remaining part of the maternity leave but you may be entitled to **sick pay** from your employer and/or **Disability Benefit** from the Department of Social and Family Affairs.

### Public holidays and annual leave

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.

### Important Notifications

- You must give your employer **at least 4 weeks' written notice** of your intention to take maternity leave. If your baby is born 4 or more weeks early, you will be deemed to have fulfilled the notice requirements as long as you inform your employer within 14 days of the birth.
- You must provide your employer with a medical certificate confirming the pregnancy.
- If you intend to take the **Additional Maternity Leave** you must provide your employer with at least 4 weeks' written notice of this intention.
- You must give your employer **at least 4 weeks' written notice** of your intention to return to work.

## Equality Authority

The Equality Authority has responsibility for overseeing the implementation of maternity leave legislation in Ireland. Queries about your entitlement to maternity leave, postponing leave, etc. can be addressed to:

The Equality Authority  
2 Clonmel Street, Dublin 2  
Lo-Call: 1890 245 545  
Tel: 01-417 3333  
Email: [info@equality.ie](mailto:info@equality.ie)  
Website: [www.equality.ie](http://www.equality.ie)

## Enforcing your rights

If you have a dispute with your employer about entitlements you can refer the matter to a Rights Commissioner within 6 months.

Any person requiring the assistance of a **Rights Commissioner** should contact:

The Secretariat  
Rights Commissioner Service  
The Labour Relations Commission  
Tom Johnson House  
Haddington Road, Dublin 4.  
Tel: 613 6700 (01 area)  
1890 220227 (outside 01 area)  
Fax: 01-613 6701  
Email: [rightscomm@lrc.ie](mailto:rightscomm@lrc.ie)  
Website: [www.lrc.ie](http://www.lrc.ie)

There is also an on-line enquiry form.

Alternatively, you may contact:

National Employment Rights Authority (NERA)  
O'Brien Road  
Carlow  
Lo-Call: 1890 80 80 90  
Email: [info@employmentrights.ie](mailto:info@employmentrights.ie)  
Website: [www.employmentrights.ie](http://www.employmentrights.ie)

**Legal Aid:** if you are a person of moderate means legal advice may be available from a Legal Aid Board solicitor on a matter of maternity leave, although the Legal Aid Board cannot provide representation before the Employment Appeals Tribunal (EAT) or a Rights Commissioner. The Board's offices are called Law Centres and are located around the country. For the location of your nearest Law Centre and for further information, call 1890 615 200.

All those who are granted legal advice and/or legal aid must pay a fee, called a contribution to the Board. The minimum contribution is €10 for legal advice and €50 for legal aid. The law centre staff will advise a person of the actual contribution in each individual case.

As of 1 September 2006 the new **disposable income** limit of a person applying for legal aid has been increased from €13,000 up to €18,000 per year.

The **maximum allowance** (this is an expense which the rules allow you to deduct when calculating your disposable income) on childcare facilities if you are working is €6,000 per child per year. The maximum allowance on accommodation costs (e.g. rent) is now €8,000 per year.

The value of an applicant's home and its normal contents are excluded when assessing the value of his/her capital resources (property), as are the value of the tools of an applicant's trade.

For details of other allowances, contact the Legal Aid Board or your local law centre.

## FLAC Mission Statement:

FLAC is an independent human rights organisation dedicated to the realisation of equal access to justice for all. It campaigns through advocacy, strategic litigation and authoritative analysis for the eradication of social and economic exclusion.

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**Free Legal Advice Centres**

13 Lower Dorset Street

Dublin 1

**LoCall:** 1890 350 250

**Tel:** 01 874 5690

**Email:** [info@flac.ie](mailto:info@flac.ie)

**Website:** [www.flac.ie](http://www.flac.ie)