

Date last updated: [ ] November 2017

Note: While care has been taken in the production of these materials, no responsibility is taken by the author or the Law Society. Practitioners intending to utilise this template for their clients or in their practices should make themselves fully aware of the legal requirements, the meaning of the clauses, and where necessary take specialist advice.

## SAMPLE MATERNITY PROTECTION POLICY

### Sample Maternity Protection Policy

***Sample contracts, policies and guidelines prepared by the Law Society are as general specimens only. They are information tools only and should not be regarded as legal interpretation. They are not a substitute for professional advice from an appropriately qualified and experienced source.***

***Sample contracts, policies and guidelines will need to be tailored to the needs of individual firms/practitioners, who should in all cases consult the relevant legislation and codes of practice. Employment and Equality Law is the subject of frequent changes, whether by legislation (domestic and European), or as a result of case law.***

---

### Scope

This policy is in line with the Maternity Protection Acts 1994 and 2004 and the Adoptive Leave Acts 1995 and 2005 (the "Acts"), with the principal elements set out below. It informs all employees covered by the Acts of their rights and entitlements whilst in the employment of [*insert name of employer solicitor/firm*] (the "Employer").

The Maternity Protection Acts 1994 and 2004 (as amended) cover all female employees regardless of their length of service or number of hours worked who

- are pregnant;
- have recently given birth (within 14 weeks of the birth);
- are breastfeeding (within 26 weeks of the birth)

and who have informed their employer of their condition.

### Entitlements and conditions

- Pregnant employees are entitled to 26 consecutive weeks' maternity leave of which at least two weeks must be taken before the date of birth and at least four weeks after the date of birth. A longer period of maternity leave may be available in circumstances where the baby was premature and such period will be provided in the manner provided by law.

- The employee must give the Employer at least four weeks' written notice of their intention to take maternity leave and also forward to the Employer a medical certificate confirming pregnancy and specifying the expected week of birth.
- In the case of premature birth, the employee's 26 weeks maternity leave begins immediately and dates from the day of the birth.
- The employee must give the Employer at least four weeks' notice in writing of her intention to return to work.
- An employee is also entitled to take additional unpaid maternity leave of up to 16 weeks' immediately after the end of her maternity leave.
- The employee must inform the Employer in writing of her intention to take the 16 weeks' additional leave not later than four weeks before the end of the 26 week maternity leave period.
- Employees who are breastfeeding and within 26 weeks of the birth of their child may be entitled to limited time off/breaks for breastfeeding purposes.

### **Breastfeeding Arrangements**

#### **OPTION 1 - Reduction of working hours to facilitate breastfeeding**

*(Applicable where facilities for breastfeeding are not provided in the workplace)*

A full time employee who is breastfeeding will be entitled, for the period specified below, to reduce her hours by one (1) hour per day for the purposes of breastfeeding other than in the workplace. For the purposes of the 2004 Act "breastfeeding" means "breastfeeding a child or expressing breast milk and feeding it to a child immediately or storing it for the purposes of feeding it to a child at a later time."

This entitlement may be availed of for up to 26 weeks after the date of birth of the child. Such a reduction of hours may comprise of one 60 minute period, two 30 minute periods, or three 20 minute periods as agreed with the employee's manager. Part-time employees will be entitled to a pro-rata benefit to that provided to full-time employees.

To avail of this benefit, the employee must inform the Employer of the intention to avail of this reduction in hours when advising the Employer that she will be returning to work, i.e. not later than four weeks before the intended return to work date. The employee should include a copy of the child's birth certificate with such an application. The employee will remain on full pay during the period that hours are reduced for the purposes of breastfeeding.

#### **OPTION 2 - Provision of breastfeeding breaks**

*(Applicable where facilities for breastfeeding are provided in the workplace)*

A full-time employee who is breastfeeding will be entitled, for the period specified below, to work breaks equivalent to one (1) hour per day for the purposes of breast feeding in the workplace. For the purposes of the 2004 Act "breastfeeding" means breastfeeding a child or expressing breast milk and feeding it to a child immediately or storing it for the purposes of feeding it to a child at a later time. This entitlement may be availed of for up to 26 weeks after the date of birth of the child. Breastfeeding breaks may be taken as one 60 minute break, two 30 minute breaks, or three 20

minute breaks per day as agreed with your manager. Part-time employees will be entitled to a pro-rata benefit to that provided to full-time employees.

To avail of this benefit, the employee must inform the Employer of the intention to avail of work breaks when advising the Employer that she will be returning to work, i.e. not later than four weeks before the intended return to work date. The employee should include a copy of the child's birth certificate with such an application. Availing of such breaks will not result in any reduction of pay for the employee.

### **Father's leave**

The policy also provides time off for male employees in the event of the death of the mother of a new born child within 40 weeks following the date of birth. If the mother dies within 24 weeks of the birth then a father who is employed under a contract of employment will be entitled to avail of the remainder of the 24 weeks leave as well as additional leave.

If the mother's death is over 24 weeks after the birth, the father is entitled to leave until 40 weeks after the birth.

### **Ante/post natal medical care**

All employees will be entitled to paid leave for ante-natal and post-natal care. An employee will receive paid leave for ante-natal medical appointments before the birth and post-natal medical appointments.

An employee must give the Employer [or insert relevant person within the Employer, for instance the employee's Manager] two weeks' written notice of any appointment and must be able to produce a certificate that the visit took place and at what time and date.

If an employee requires, due to urgent medical reasons, an unscheduled ante-natal or post-natal examination, the employee must explain to the Employer [or insert relevant person within the Employer, for instance the employee's Manager], no later than one week after the appointment, why the required notice was not given and also must prove that the appointment was kept.

### **Ante-natal classes**

An employee is also entitled to paid leave to attend one set of ante-natal classes, except for the last three classes in a set. This is a once-off entitlement. Expectant fathers are entitled to paid time off to attend the last two ante-natal classes in a set of classes that the expectant mother is attending. This is a once-off entitlement for fathers in relation to one birth only. Two weeks' notice in writing must be given to the Employer [or insert relevant person within the Employer, for instance the employee's Manager], of the times and location of classes accompanied by an appointment card from the relevant body running the classes.

### **Miscarriage**

There is no entitlement to statutory maternity leave for a miscarriage occurring up to and including the 24<sup>th</sup> week of pregnancy. Any confinement occurring after the 24<sup>th</sup> week, even if it does not result in a live birth, is covered.

## **Social welfare maternity benefit**

During maternity leave, employees who have the necessary PRSI contributions are entitled to maternity benefit from the Department of Social Protection are recommended to be made at least 6 weeks before the start date of maternity leave. Claims should be made on an MB10 form (maternity benefit form), which must be completed, signed and stamped by the employee, the employee's doctor (not earlier than 16 weeks before the baby is due) and by the Employer and returned to the address on the form.

During the 16-week period of additional maternity leave no payment is made by the Employer but an employee may be entitled to a credited social insurance contribution for each week of unpaid leave they take (up to the maximum of 16).

## **Payment by the employer during maternity leave**

An employee who is on maternity leave is normally entitled to payments from the Department of Social Protection for 26 weeks maternity leave depending on meeting certain PRSI eligibility criteria.

Under the Maternity Protection Acts, 1994 and 2004 and the Adoptive Leave Acts, 1995 and 2005 an employer is not legally obliged to pay employees while they are on maternity leave.

[However, [insert any pre-conditions such as length of service], the Employer will make up the short-fall between the Social Welfare maternity benefit and the employee's salary for the first 26 weeks of Maternity Leave. The Employer will not pay the employee during any period of additional maternity leave. The employee will sign a letter to confirm that she will return to work for the Employer after maternity leave.]

Or

[Therefore, the Employer will make no salary/wages payment during Maternity Leave.]

## **Postponement of Leave in the Event of the Hospitalisation of the Child**

If the child falls ill and is hospitalised, and the employee has availed of at least 14 weeks maternity leave, with not less than 4 of those weeks being after the week of the birth, then she may make a request to have the remaining maternity leave, and additional maternity leave, postponed until the child is released from hospital. The decision to offer this postponement lies entirely at the discretion of the employer.

The employee should request this postponement in writing directly to the Employer as soon as possible, with a letter confirming the hospitalisation of the child. The Employer will respond in writing to requests as soon as is reasonably practicable.

Where the postponement is granted, the employee will return to work on an agreed date. The maximum period of postponement of leave is six months from the return to work date. The employee must provide a letter or appropriate document from the hospital or the child's GP confirming the date that the child was discharged from hospital, before resuming leave. Resumed leave must be taken in one continuous block and must commence within seven days of the child's discharge from hospital.

## **Employee absence due to sickness during period of postponement**

If the employee should fall ill during a period of postponement, and subsequently is absent from work, she will be deemed to have resumed maternity leave from the first day of absence. If the employee prefers to avail of sick leave, she must write to the Employer and confirm this. If an employee opts to transfer to sick leave, she forfeits her right to any remaining leave entitlements.

#### Termination of Additional Maternity Leave

Should the employee fall ill and wish to terminate additional maternity leave she may request the Employer in writing to terminate such leave. This request may be made during the last 4 weeks of maternity leave or during additional maternity leave. If the Employer agrees to terminate such additional leave, the leave shall end on the date agreed and the employee shall commence sick leave.

**IMPORTANT:** When this kind of request is made, and granted, the employee forfeits her right to the remaining additional leave. In such circumstances, the sick leave will be treated in the same manner as any other absence on sick leave, and normal sick leave reporting arrangements will apply. The decision to offer this termination of maternity leave lies entirely at the discretion of the Employer.

#### **Employment protection**

During maternity leave and additional maternity leave, an employee will be deemed to be in employment and her employment rights, with the exception of remuneration, are preserved as if she were present at work. An employee who is absent on maternity leave will be treated as if she had not been absent.

At the end of maternity leave, an employee will be entitled to return to work in the job which the employee held immediately before the start of that period, so far as it is reasonably practicable. However, if this is not reasonably practicable, the employee will be offered suitable alternative work under a new contract of employment with terms and conditions no less favourable than those she had in her original job.

#### **Paternity leave**

The following individuals are eligible for paternity leave of 2 weeks:

- The father of the child
- The spouse, civil partner or cohabitant of the mother of the child
- The parent of a donor-conceived child

If the child in question has been adopted, individuals are eligible for paternity leave if they are:

- The nominated parent in the case of a married same-sex couple or
- The spouse, civil partner or cohabitant of the adopting mother or sole male adopter

The 2 weeks must be taken consecutively. This leave can start anytime within the first 26 weeks following birth or adoption.

#### **Payment by the employer during paternity leave**

An employee who is on paternity leave may qualify for Paternity Benefit from the Department of Social Protection if they have sufficient PRSI contributions..

Under the Paternity Leave and Benefit Act 2016 and the Adoptive Leave Acts, 1995 and 2005 an employer is not legally obliged to pay employees while they are on paternity leave.

[However, [insert any pre-conditions such as length of service], the Employer will make up the short-fall between the Social Welfare maternity benefit and the employee's salary for the first 26 weeks of Maternity Leave. The Employer will not pay the employee during any period of additional maternity leave. The employee will sign a letter to confirm that she will return to work for the Employer after maternity leave.]

Or

[Therefore, the Employer will make no salary/wages payment during Maternity Leave.]

An employee may be entitled to 2 weeks' Paternity Benefit, which is payable by the State to employees who have the requisite PRSI contributions. You should contact the Department of Social Protection to arrange to apply for Paternity Benefit.

### **Adoptive leave**

In the case of adoption, the adopting mothers and sole male adopters are entitled to 24 weeks' adoptive leave from the date of placement and an additional 16 weeks' leave at the end of this 24-week period. Notification and payment are in line with Maternity Leave above.