

Reference No: E109/294/73; **Date:** 31/12/95

Circular 35/1995:- Maternity Leave

A Dhuine Uasail

1. I am directed by the Minister for Finance to refer to the Maternity Protection Act, 1994 and to say that the arrangements applying to civil servants in relation to maternity leave are, in general, as specified in that Act. This Circular provides a summary of the main provisions of the Maternity Protection Act, 1994 and the relevant Statutory Instruments as they apply to civil servants. Issues relating to the application in the Civil Service of the health and safety provisions of the Maternity Protection Act, 1994 and the relevant Statutory Instruments are covered in Circular 34/95. Circular 27/81 is hereby revoked.

General

2. The Maternity Protection Act, 1994 came into effect on 30 January 1995. It should be read in conjunction with its related Statutory Instruments which currently include:

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| S.I. No. 16 of 1995 | Maternity Protection Act, 1994
(Commencement) Order, 1995 |
| S.I. No. 17 of 1995 | Maternity Protection (Disputes and Appeals) Regulations, 1995 |
| S.I. No. 18 of 1995 | Maternity Protection (Time off for Ante-Natal and Post-Natal Care) Regulations, 1995 |

3. Subject to the conditions outlined in (a) - (g) below, maternity leave is available to all pregnant civil servants excepting where the birth occurs before 24 weeks of pregnancy and the child is stillborn.

- (a) Maternity leave will consist of 14 consecutive weeks provided that, notwithstanding any other provision in this Circular, where a woman has been appointed for a fixed term and her employment would have terminated on the expiry of that term had she not been on maternity leave, the period of maternity leave shall not extend beyond the day on which the term expires.

TO/
All Departments* etc

[*Department should be read as Department/Office throughout this
Circular]

- (b) The granting of maternity leave is conditional on a woman who intends to go on maternity leave submitting to the Personnel Officer, at least four weeks before the date on which she intends to go on maternity leave, a medical certificate confirming pregnancy and stating the expected week of confinement.
- (c) Maternity leave will begin on such day as the woman selects, being not later than four weeks before the end of the expected week of confinement and will end on such day as the woman selects, being not earlier than four weeks after the end of the expected week of confinement. [Note: for these purposes, Saturday is regarded as the end of a week.] Apart from a compulsory period of two weeks to be taken before or after the expected date of confinement, the taking of maternity leave is at the discretion of the woman concerned. It should be noted that, except as provided in paragraphs 3(d) and 3(e) below, ten weeks is the maximum permissible period of maternity leave before the expected date of confinement; likewise, ten weeks is the maximum permissible period of maternity leave after the expected date of confinement.
- (d) If the date of confinement occurs in a week that is four weeks or more before the expected date of confinement and the woman had not yet commenced her maternity leave, the date of confinement will be regarded as the first day of maternity leave.
- (e) If the date of confinement occurs in a week after the expected date of confinement and is such that less than four weeks of maternity leave are remaining, then maternity leave will be extended by the number of weeks between the expected date of confinement and the actual date of confinement, subject to a maximum of four weeks, such that at least four weeks of maternity leave will have been taken after the confinement.
- (f) Subject to subparagraph (g) below, while on maternity leave, a woman must be deemed for all purposes (other than remuneration) to have been in employment. Maternity leave is, therefore, fully reckonable for service, seniority and annual leave entitlement. A woman on maternity leave should be given the benefit of any public holiday or privilege day falling within the period of maternity leave

by having it granted immediately after maternity leave or, in the case of someone who is taking additional maternity leave (see paragraph 8 below), by having it granted immediately after additional maternity leave.

- (g) In the case of a woman who is on probation at the commencement of maternity leave, the period of probation will stand suspended during maternity leave (and during additional maternity leave where applicable) and will be completed by the woman on her return to work.

Attendance at ante-natal and post-natal clinics and ante-natal classes

4. Pregnant staff are entitled to such paid time off from duty as is necessary for attendance at ante-natal and post-natal clinics. Evidence of appointment or attendance at the clinic will be required. Attendance at post-natal clinic is covered only during the fourteen weeks immediately following confinement. The conditions governing such absence are laid down by regulation issued by the Minister for Equality and Law Reform (S.I. No. 18 of 1995). In addition, paid time off from duty may be allowed for verified attendance at ante-natal classes.

Payment while on Maternity Leave

5. Subject to paragraph 6 below, a woman on maternity leave is entitled to full pay, except where she has been appointed for a fixed term of less than 26 weeks. A woman who has been appointed for a fixed term of less than 26 weeks is entitled to the same rate of pay that she would receive if she were absent on sick leave; as the entitlement to payment (if any) may vary according to the length of continuous service given, it would be advisable to check with the Personnel Section with regard to entitlements.

6. A woman who is (or was) fully insured under the Social Welfare Acts and who fulfils certain contribution conditions may be entitled to maternity benefit from the Department of Social Welfare. Information about this allowance is available from Personnel Units in Departments/Offices. A woman on maternity leave who is entitled to maternity benefit from the Department of Social Welfare, is entitled to payment by her Department on the basis provided for in paragraph 5 above or of an amount equivalent to the full rate of benefit to which she is entitled, whichever is the greater, provided she

- (i) signs a mandate authorising the Department of Social Welfare to pay any benefit due to her under the social insurance system directly to her employing Department;
- (ii) makes the necessary claims for social insurance benefit to the Department of Social Welfare within the required time limits and complies with whatever requirements are laid down by that Department as a condition of claiming benefit.

7. Maternity leave must not be treated as part of any other leave (including sick leave or annual leave) to which the employee concerned is entitled. Therefore, a woman who has gone onto sick leave at half pay or unpaid sick leave immediately prior to going on maternity leave will resume full pay upon commencement of maternity leave subject to the terms of paragraphs 5 - 6 above.

Additional maternity leave

8. At the end of maternity leave a woman is entitled to take further leave, known as "additional maternity leave" of up to four consecutive weeks immediately following maternity leave provided that, where a woman has been appointed for a fixed term and her employment would have terminated on the expiry of that term had she not been on additional maternity leave, the period of additional maternity leave shall not extend beyond the day on which the term expires. The granting of additional maternity leave is conditional on a woman who intends to avail of such leave notifying the Personnel Officer at least four weeks before the date on which the maternity leave is due to end.

9. Absence while on additional maternity leave does not reckon for any purpose. A woman on additional maternity leave is not given the benefit of any public holiday or privilege day falling within the period of additional maternity leave unless it falls on the first or last day of her leave. No payment will be made in respect of an absence on additional maternity leave.

Leave for fathers after the birth of a child

10 Under certain circumstances, if the mother of the child dies within fourteen weeks of her confinement, the father of the child may be entitled to leave of up to fourteen weeks. Details of the conditions governing such leave are available from Personnel Section.

Resolution of disputes

11. Any dispute in relation to entitlements under the Act may be referred to the parent Department in the first instance, who may in turn refer the matter to this Department. In addition, the Act provides for referral of a dispute in relation to entitlements under the Act to a Rights Commissioner (Sections 30 - 37 of the Act refer). Where appropriate, however, the grievance procedure may also be used for the resolution of such disputes.

Confidentiality

12. Departments are asked to ensure that all matters relating to maternity leave are treated in strict confidence and that, as far as possible, routine aspects of these matters are handled by only one officer.

Queries

13. Queries in relation to this Circular should be addressed to the Personnel Section of your Department. Personnel Officers should read this Circular in conjunction with Confidential Circular 11/95 (Maternity Leave - Information for Personnel Officers).

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J McGovern

Assistant Secretary