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LP 01/06/2006 Amendments to Parental Leave Legislation:- Amendments to Parental Leave Legislation

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To all Personnel Officers

Amendments to Parental Leave Legislation

1. Introduction

On the 18th May 2006 Mr. Michael McDowell, T.D., Minister for Justice, Equality and Law Reform announced the enactment of the Parental Leave (Amendment) Act 2006 amending the Parental Leave Act 1998 (the Principal Act) to bring into immediate effect a number of improvements to parental leave legislation. The main provisions of the Act and the entitlements as they apply to civil servants are as outlined below.

2. Raising the maximum age of the eligible child from 5 to 8 years

The Parental Leave (Amendment) Act 2006 raises the maximum age of the eligible child from 5 to 8 years and makes provision in relation to adopted children.

In advance of the introduction of the legislation Circular 25/2003 revised the maximum age limit to 8 years with effect from 1st December 2003. The Circular also provided that in the case of an adopted child, where the adopted child was three or more years but less than eight years at the time of the adoption, the parental leave had to be taken within two years of the date of the adoption order. In the case of an adopted child under three at the time of the adoption, the parental leave had to be taken before the child reached eight years.

3. An increase in the maximum age of the eligible child to 16 years in the case of a child with a disability

The Parental Leave (Amendment) Act 2006 increases the age limit to 16 years in the case of a child with a disability.

In advance of the introduction of the legislation Circular 39/2002 revised the age limit to 16 years for a child with a disability with effect from 1st January 2003.

4. Extension of parental leave entitlements to persons acting in *loco parentis* in respect of an eligible child

Section 2(9)(b) of the Parental Leave (Amendment) Act 2006, states that an employee shall be entitled to parental leave in respect of each child of whom he or she is a relevant parent. A “relevant parent” is a person who is (a) the natural parent, the adoptive parent or the adopting parent in respect of the child or (b) acting *in loco parentis* to the child.

The person applying for parental leave must be either legally *in loco parentis* or fulfil the criterion that he or she is actively parenting the child on an ongoing basis. The revision of the definition of “relevant parent” in the Parental Leave (Amendment) Act 2006 brings a broad range of persons who actively parent within the scope of the legislation. The term now includes long term foster parents, partners to the natural parent of a child where the natural parent may be divorced or separated and has formed a new relationship through remarriage or otherwise and other persons *in loco parentis*.

5. A statutory entitlement to take the 14 weeks parental leave in separate blocks of a minimum of 6 continuous weeks, or more favourable terms with the agreement of the employer

The manner in which employees could take parental leave as specified in Circular 22/1998 has allowed for separate blocks of 6 continuous weeks and indeed more favourable terms with the agreement of the employer, since the Parental Leave Act, 1998 became effective on 3 December, 1998. Circular 22/1998 specified that an officer could take parental leave as follows:

(a) one continuous period of 14 weeks, or

(b) subject to the agreement of the Head of the Department or Office concerned-

(i) one or more days on which, but for the leave, the officer would be working in the Department concerned

(ii) one or more hours during which but for the leave, the officer would be working in the Department concerned

(iii) any combination of periods referred to in subparagraphs (i) and (ii) above e.g. weekly blocks, monthly blocks etc.

While an officer has an entitlement as defined under (a) and (b) above, he/she is not obliged to take the full entitlement. Where parental leave is availed of under 5(b) above, the entitlement will be calculated on the basis of the number of hours worked during a

reference period of 14 weeks calculated in accordance with section 7(2) of the Parental Leave Act 1998.

6. Transfer of parental leave entitlements from one parent to another if both parents are employed by the same employer, subject to the employer's agreement

Subject to the agreement of the employer, Section 3 of the Parental Leave (Amendment) Act 2006 allows either parent to transfer all or part of the period of parental leave to the other parent, where both of the parents of a child are entitled to parental leave in respect of the child and where both parents are employed by the same employer.¹ While the Parental Leave (Amendment) Act 2006 does not explicitly state that the transfer of parental leave entitlements is subject to the employer's agreement, that was the intention of the provision and this is stated on the record of the Houses during Dáil Report stage and on report back to the Seanad.

7. An employee who falls ill while on parental leave and as a result is unable to care for the child, may suspend the parental leave for the duration of the illness following which period the parental leave recommences

Section 6 of the Parental Leave (Amendment) Act 2006 amends section 10 of the Principal Act. The section provides that when a confirmation document has been prepared and signed in accordance with Section 9 of the Parental Leave Act, 1998 and the employee concerned becomes sick such that the employee is unable to care for the child the subject of the parental leave to which the confirmation document relates, then the employee may, by notice in writing given to the employer concerned or his or her successor, as soon as is reasonably practicable after becoming sick, and accompanied by the relevant evidence in respect of the sickness -

(a) if the period of parental leave has not commenced, postpone the taking of the leave to such time as the employee is no longer sick, or

(b) if the period of parental leave has commenced, suspend the taking of the balance of the leave to such time as the employee is no longer sick.

8. Extension of the *force majeure* provisions to include persons in a relationship of domestic dependency, including same-sex partners

¹ Persons employed in the Civil Service are deemed to be employed by the same employer

Section 8 of the Parental Leave (Amendment) Act 2006 amends Section 13.(2)(f) of the Principal Act. This section provides for the extension of *force majeure* leave provisions to include persons in a relationship of domestic dependency. The section also provides that for the purposes of the section (a) a person who resides with an employee is taken to be in a relationship of domestic dependency with the employee if, in the event of injury or illness, one reasonably relies on the other to make arrangements for the provision of care, and (b) the sexual orientation of the persons concerned is immaterial.

9. Circular

A new Circular covering all the changes to the parental and *force majeure* leave arrangements for civil servants is currently being drafted. In advance of the issue of this circular, Departments and Offices are requested to bring these changes to the attention of all staff applying for parental leave and those already on parental leave.

10. Queries

If you have any queries please contact the Equality Unit, Department of Finance at email equalityunit4@finance.gov.ie

Yours sincerely,

Marie McLaughlin
Principal

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