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Update on changes to the Parental Leave Act and Implications for your Business

The Parental Leave (Amendment) Bill, which has recently been passed, will result in a number of key changes to the current law from **September 2019**.

What does Parental Leave mean for your business in general, and what will the changes in the amendment to the legislation bring about? In this article, we discuss the legal and best practice position, along with some interesting case.

Parental Leave – the Law, Current & Future

The current Parental Leave entitlement is 18 weeks of unpaid leave, which can be applied for to be taken by either female or male employees and used before a child reaches age 8 (or age 16 if the child is disabled). Employees require 1 year of continuous service to apply for/ avail of the leave, however they can receive a pro-rata entitlement to the leave for less than 1 years' service.

The changes to the legislation, which will come into effect in September 2019, will increase the entitlement from 18 weeks to 22 weeks, in addition to allowing the leave to be taken before the child reaches age 12. For parental leave agreements which have already been exhausted, employees will be able to apply to take the additional 4 weeks which the amended legislation provides for. There will also be an additional 4 weeks of parental leave from September 2020.

Currently, all 18 weeks parental leave are unpaid – there is no state/ social welfare benefit nor is the employer obliged to pay their employees for such leave.

The changes to the legislation will result in a social welfare benefit being payable for 2 weeks of the parental leave, from November 2019, subject to the employee's PRSI contributions. The Government also plans to increase the number of payable weeks over the coming years.

Parental Leave - Best Practice

Employers are obliged to give fair and reasonable consideration to any such requests and to respond to same within a reasonable time frame.

Whilst the law stipulates that the leave should be taken in blocks of 6 weeks or more, this is oftentimes not feasible for many employees (primarily from a financial perspective) and, therefore, many requests for parental leave are on the basis of the leave being taken 1-2 days per week.

Employers can refuse/ postpone an application for parental leave *on one occasion*, that refusal/ postponement being for no longer than 6 months, however must provide objective justification for doing so; an example of objective justification would be to refuse an application for parental leave in December within a retail business, as this is the busiest trading month of the year for most retailers.

Policy - In the first instance, companies should have a Parental Leave policy in place within their organisation. Employers should ensure that any such policy addresses the legal requirements but also includes sufficient flexibility for the business.

Practice & Precedent – employers should review and assess applications for parental leave fairly and reasonably, and reply within a reasonable time frame, considering precedent which is established as each case arises. Employers should ensure to maintain clear, open and transparent communication with their employee throughout the process.

Administration – any agreements regarding parental leave, notably those which provide for parental leave being taken on the basis of 1-2 days per week, should be fully documented with sufficient flexibility including, but not limited to, a trial period (to ensure that the employees' productivity and performance is not adversely impacted by the reduced working week) and perhaps the ability for both the employer and employee to adjust the day(s) off contingent on business needs, work deadlines etc.

Employers should also consider the financial implications for the employee – whilst the move by the Government to afford a 2 week state benefit (from November 2019) is a positive one, the fact that the majority of the leave remains unpaid creates a financial burden and affordability issue, almost barrier, for the employee – employers could, for example, offer to spread the unpaid parental leave over the course of a year, in order to ease the financial burden.

Parental Leave – Case Law

In the case of *An Employee V An Employer*, ADJ – 00000473, the Workplace Relations Commission awarded the complainant **€6,800** as a result of the undue delay, and associated distress, caused by her employer's delay in responding to her request for parental leave. Whilst the employer did in fact agree to the granting of the leave, they "dragged their heels" somewhat on the issue and failed to provide clear and formal communication, leading to uncertainty for the employee in making alternative childcare arrangements.

The Future

For the majority of employees, we continue to see a greater strive for work-life balance and mental health and wellbeing issues at the forefront of the employment relationship. Consequently, parental leave will play a big part in that, as well as being a retention factor for employers and employees. Many studies have shown that employees can be more productive and effective by condensing/ adjusting their work and responsibilities into a reduced working week, as can be achieved through a parental leave agreement.

Employers should not dismiss an application for parental leave as a 'nuisance' for their business but rather as an opportunity to review and adjust the employee's work duties and responsibilities whilst balancing the interests of both parties, without productivity or performance being compromised.

Overall, given the enhanced entitlement and move towards part-payment, requests for parental leave are likely to increase and become more prevalent in the future; ***employers would be best placed to be ahead of the curve by being aware of their obligations, being prepared by way of an appropriate policy but, most importantly, being open and willing to give due consideration to requests from their employees upon receipt of parental leave requests.***

Need Assistance or Further Information?

Have you received a parental leave request, and do you want to ensure that you respond to same in a timely manner in accordance with the law and best practice?

Do you need to draft a compliant and robust policy on parental leave?

Please contact me at:

Sinéad Grehan

Principal Consultant

Iridium HR

Mobile – +35386 3822639

Email – sineadgrehan@iridiumhr.com

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