

Fourth Study Commission
of the
International Association of Judges
Questionnaire
for the
2008 meeting.

Answers from ICELAND

Rights of parents in the employer employee
relationship

Introductory remarks:

There are different measures developed enabling men and women to reconcile their occupational and family obligations. New flexible ways of organizing work and time, which are better suited to the changing needs of society may take into account the needs of both undertakings and workers. This is also important to promote equal opportunities and equal treatment between men and women. Flexibility and diversity of child-care services is part of a strategy to meet the different preferences, needs and circumstances of children and their parents.

The three main field of this questionnaire are

- a. maternity leave for women –related to maternity and birth
- b. parental leave (distinct from maternity leave) for men and women related to the upbringing of infants and
- c. time off from work on grounds of other urgent family reasons

A Maternity leave

1. When shall pregnant employees inform their employer of their condition ?

The main Act concerning this field of law is the Act of Maternity/Paternity Leave and Parental Leave No. 95/2000, as amended by Act No. 90/2004 (the Act

can be found here:

http://www.jafnretti.is/D10/_Files/MaternityPaternity%2024.%20maí%202006.pdf).

According to Art 9. of the Act of Maternity/Paternity Leave and Parental Leave, an employee shall notify her/his employer as soon as possible and at least eight weeks prior to the expected birth date of the child, when he/she intends to exercise the right to maternity/paternity leave. Should a woman wish to change a previously-notified starting date of her maternity leave, she shall notify her employer of this three weeks prior to the new intended starting date of her maternity leave.

2. Are pregnant employees and employees who have recently given birth entitled to a continuous period of maternity leave. How long is this leave and when is it allocated before ?

As stated in Art. 8 of the Maternity/Paternity Leave and Parental Leave act, parents have each an independent right to maternity/paternity leave of up to three months due to a birth, primary adoption or permanent foster care of a child. This right shall not be assignable. In addition, parents have a joint right to three additional months, which may either be taken entirely by one of the parents or else divided between them.

3. Do they maintain their pay or are they entitled to allowances. How high are these allowances related to the pay before ?

The general rule is that a parent, acquires the right to payment from the Maternity/Paternity Leave Fund after he/she has been active on the domestic labour market for six consecutive months prior to a birth of a child or the date on which a child enters the home in the case of adoption or permanent foster care, according to Art. 13 of the Maternity/Paternity Leave and Parental Leave act.

The Maternity/Paternity Leave Fund's monthly payment to an employee during maternity/paternity leave shall amount to 80% of her/his average total wages, these being based on the two income years preceding the year of the birth of the child or the year in which a child enters the home in the case of adoption or

permanent foster care. Wages here shall include all forms of wage and other remuneration under the Insurance Levy Act.

4. What rights are acquired by the worker on the date on which maternity leave starts until the end ?

According to Art. 14 of the Maternity/Paternity Leave act, a parent shall pay a minimum of 4% of the maternity/paternity leave payment, during maternity/paternity, into pension fund and the Maternity/Paternity Leave Fund shall pay a minimum of 8%. In addition, the parent shall have the right to pay into a supplementary pension scheme, in which case the Maternity/Paternity Leave Fund shall be obliged to make the statutory complementary contribution. Maternity/Paternity leave shall count as working time for the purpose of assessing work-related rights, such as the right to holiday or the extension of the holiday period under wage agreements, wage increases due to seniority, sickness, rights, a notice period of termination of employment and the right to unemployment benefit.

Art. 28 says that the rights which an employee has gained, or is gaining, at the start of parental leave shall remain unchanged until the end of the leave. At the end of the leave, these rights shall be valid, as shall any changed which may have been made on the basis of the law or wage agreements.

5. Is there continuity of the entitlements to social security, in particular regarding health care ?

Yes, there is full continuance of such rights and allowances during the period of maternity/paternity leave.

6. Do workers at the end of maternity leave have the right to return to the same job or, if that is not possible, to an equivalent or similar job ?

Art. 29 of the Maternity/Paternity Leave act states, that the employment relation between an employee and his/her employer shall remain unchanged during maternity/paternity leave and parental leave. The employee shall be entitled to return to her/his job upon the completion of maternity/paternity leave or parental

leave. Should this not be possible, she/he shall be entitled to a comparable position with the employer according to a contract of employment.

7. Are employees protected against dismissal ?

Art. 30 of the Maternity/Paternity Leave act forbids dismissal of an employee due to the fact that he/she has given notice of intended maternity/paternity leave, without reasonable cause, and in such a case, the dismissal shall be accompanied by written arguments. The same rule shall apply to pregnant women and women who have recently given birth.

8. Do exist special provisions to meet the operational and organizational requirements of small undertakings ?

No such special provisions exist.

9. Are employees entitled to time off in order to attend ante-natal examinations, if such examinations have to take place during working hours ?

Yes they are.

10. What are the most common cases at courts related to this ?

Cases in this field are seldom brought to court. Few cases concerning maternity leave can be found.

B – Parental leave

1. What are the conditions of access and rules for applying for parental leave? Describe Your system (full-time or part-time basis, time-credit system....).

According to Art. 1 of the Maternity/Paternity Leave and Parental Leave Act No. 95/2000, as amended by Act No. 90/2004, the Act applies to the rights of parents working in the domestic labour market to be granted maternity/paternity leave and parental leave. It applies to parents who are employed by others or are self-employed. As already mentioned, see answer to question A 2, Art. 8 of the

Maternity/Paternity Leave and Parental Leave Act states that parents have each an independent right to maternity/paternity leave of up to three months due to a birth, primary adoption or permanent foster care of a child. This right shall not be assignable. In addition, parents have a joint right to three additional months, which may either be taken entirely by one of the parents or else divided between them.

2. Is the entitlement to parental leave subject to a period of work qualification and/or a length of service qualification and which period ?

According to Art. 26, paragraph 1., of the Maternity/Paternity Leave and Parental Leave Act, an employee shall acquire the right to parental leave when he/she has been employed for six consecutive months by the same employer.

3. Which notice periods do exist for the worker when exercising the right to parental leave, specifying the beginning and the end of the period of leave ?

As stated in the answer to question B 1 each parent has independent, unassignable, right to maternity/paternity leave of up to three months. In addition parents have a joint right to three additional months.

4. Is an employer allowed to postpone the granting of parental leave for reasons related to the operation of the undertaking (e.g. where a replacement cannot be found within the notice period ?

According to Art 10. an employee shall be permitted to make arrangements with her/his employer for the maternity/paternity leave to be divided into a number of periods and/or that it will be taken concurrently with a reduced worktime ratio. However, maternity/paternity leave may never be taken in periods of less than two weeks at a time. The employer shall make efforts to meet the wishes of the employee regarding the structure of maternity/paternity leave under this provision.

5. Do employees maintain their pay or are they entitled to allowances. How high are these allowances related to the pay before ?

See answer to question A 3 (maternity leave) – the same applies here.

6. What rights are acquired by the employees on the date on which parental leave starts until the end of parental leave?

See answer to question A 4 (maternity leave) – the same applies here.

7. Is there a continuity of the entitlements to social security, in particular regarding health care ?

Yes there is.

8. Do employees at the end of parental leave have the right to return to the same job or, if that is not possible, to an equivalent or similar job ?

See answer to question A 6 (maternity leave) – the same applies here.

9. Are employees protected against dismissal on the grounds of an application for, or the taking of, parental leave ?

See answer to question 7. A (maternity leave) – the same applies here.

10. Do exist special provisions to meet the operational and organizational requirements of small undertakings ?

No.

11. Does Your system also grant access to parental leave for adoption cases and are there specific rules for applying parental leave to the special circumstances of adoption .

The Act on Maternity/Paternity Leave and Parental Leave both grants maternity and paternity leave in case of adoption. According to Art 8., the time-reference shall be based on the date when the child enters the home, providing this is confirmed by the relevant child welfare committee, or other competent bodies, in the case of adoption of a child, or the taking of a child into permanent foster care.

12. What are the most common cases at courts related to this ?

Cases in this field are seldom brought to court. Few cases concerning maternity leave can be found.

C. Time off from work on grounds of urgent family reasons

1. Are employed parents with responsibility for the care and upbringing of children entitled to time off from work on grounds of urgent family reasons in cases (sickness or other reasons related to family members making the immediate presence of the worker indispensable) ?

Yes they are.

2. What are the conditions of access for applying for this kind of time off ?

Collective agreements provide parents that have worked for one month, with a total of 7 workdays out of every 12 months to attend to their sick children under 13 years of age, provided that sufficient attendance cannot be arranged in another way. After a year of service with the same employer, parents are likewise permitted to devote a total of 10 days to attend to their children under 13 years of age.

3. Is this time off limited to a certain amount of time per year or per case ?

See answer to question 2.

4. Do employees maintain their pay or are they entitled to allowances. How high are these allowances related to the pay before ?

During this time the parent has the right to full wages for day time work, including shift premiums when applicable. The Union Sickness Funds guarantee in addition the right to 3 months or 90 days (counting 7 days a week), paid by 80% of the workers normal wages during the past 6 months in employment because of the workers children who suffer grave and lasting sickness or are invalid. The same applies if the workers spouse falls seriously sick or has a serious accident.

Workers are entitled to a leave from work due to unforeseen and grave reasons (force major) or when it concerns very serious sickness or accident in his

family that requires his immediate presence. Workers do not have the right to payment of wages in this case.

5. Is there a continuity of the entitlements to social security, in particular regarding health care ?

Yes there is.

6. Are these employees protected against dismissal ?

Yes they are.

7. Do there exist special provisions to meet the operational and organizational requirements of small undertakings ?

No.

8. What are the most common cases at courts related to this ?

Cases in this field are seldom brought to court. Few cases concerning maternity leave can be found.