A- Maternity leave

1. When shall pregnant employees inform their employer of their condition?
   It is employees’ right to inform their employer of their pregnancy, not their obligation. The pregnant employees can decide not to inform their employer if they do feel like to, and if they decide to inform their employer, there is no legal time limit.

   However, according to Article 50 of the Labor Standards Act and Article 15 of the Gender Equality in Employment Act, female employees shall be granted maternity leave before and after childbirth for a combined period of 8 weeks. In the case of public servants, according to Article 4 of the Regulations of Leave-Taking of Public Servants, public servants are entitled to take antenatal leave for a combined period of 8 days, and 42 days maternity leave after childbirth. Therefore, pregnant employees normally inform their employer of their condition in order to enjoy the above-mentioned legal rights.

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?
   According to Article 50 of the Labor Standards Act and Article 15 of the Gender Equality in Employment Act, female employees shall be granted maternity leave before and after childbirth for a combined period of 8 weeks. In the case of a miscarriage after the first 3 months of pregnancy, female employees shall be permitted to discontinue work and shall be granted maternity leave for a period of 4 weeks. In the case of a miscarriage after being pregnant for over 2 months and less than 3 months, the female employee shall be permitted to discontinue work and shall be granted a maternity leave for 1 week. In the case of a miscarriage after being pregnant for less than 2 months, the female employee shall be permitted to discontinue work and shall be granted a maternity leave for 5 days.

   For public servants, according to Article 4 of the Regulations of Leave-Taking of Public Servants, public servants are entitled to take antenatal leave for a combined period of 8 days and 42 days maternity leave after childbirth. In the case of a miscarriage after being pregnant for over 5 months, a 42 days maternity leave is granted. In the case of a miscarriage after being pregnant for over 3 months and less than 5 months, a 21 days maternity leave is granted. In the case of a miscarriage less than 3 months, a 14 days maternity leave is granted.

3. Do they maintain their pay or are they entitled to allowances. How high are these allowances related to the pay before?
According to Article 50 of the Labor Standards Act, if the female worker has been employed for more than 6 months, she shall be paid regular wages during the maternity leave; if her period of service is less than 6 months, she shall be paid wages at half of the regular payment.

4. What rights are acquired by the worker on the date on which maternity leave starts until the end?
All rights are the same as regular employees, except for the wage issue mentioned in question 3.

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

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?
Yes.

7. Are employees protected against dismissal?
Yes. According to Article 11 of the Gender Equality in Employment Act, employees shall not be treated discriminatorily because of their sex in the case of retirement, severance, job leaving and termination. Work rules, labour contracts or collective bargaining agreements shall not stipulate or arrange in advance that when employees marry, become pregnant, engages in child-birth or child-raising activities, they have to leave their jobs or apply for leave without payment. Employers also shall not use the above-mentioned factors as reasons for termination. Any prescription or arrangement that contravenes the stipulations shall be deemed as null and void. The termination of the labour contract shall also be deemed as null and void.

According to Article 26 of the Act, when the employers violate the stipulations of the Article 11, they shall be liable for any damage arising thereafter, and according to Article of 38-1, employers shall be punished by administrative fines up to 500,000 NTD and not less than 100,000 NTD (1 EUR=47 NTD).

8. Do exist special provisions to meet the operational and organizational requirements of small undertakings?
For maternity leave, there is no special provision for small undertakings, but for parental leave, the answer is yes. See below.

9. Are employees entitled to time off in order to attend ante-natal examinations, if such examinations have to take place during working hours?
As mentioned above, public servants are entitled to take antenatal leave for a combined period of 8 days, but other employees in private sectors can only use maternity leave before and after childbirth for a combined period of 8 weeks.
1O. What are the most common cases at courts related to this?

B – Parental leave

1. What are the conditions of access and rules for applying for parental leave?
   According to Article 16 of the Gender Equality in Employment Act, after being in service for 1 year, employees hired by employers with more than 30 employees may apply for parental leave without payment before any of their children reach the age of 3 years old. The period of this leave is until their children reach the age of 3 years old but cannot exceed 2 years. When employees are raising over 2 children at the same time, the period of their parental leave shall be computed aggregate, provided that, the maximum period shall be limited to 2 years the youngest one has received raising. During the period of parental leave without payment, employees may participate in the original social insurance programs continuously. Premiums originally paid by the employers shall be exempted and premiums originally paid by the employees may be postponed consecutively for 3 years.

   Furthermore, Article 19 of the Act states that, for the purpose of raising children of less than 3 years of age, employees hired by employers with more than 30 employees may request one of the following from their employers: (1) to reduce working time 1 hour per day; and for the reduced working time, no remuneration shall be paid. (2) To adjust working time.

   In the case of spouses of employees who are not engaged in any gainful employment, the above articles shall not apply, provided that, the employees have justifiable reasons.

   As to breasts feeding right, article 52 of the Labor Standards Act and article 18 of the Gender Equality in Employment Act state that where employees are required to feed his or her baby of less than 1 year of age in person, in addition to the rest period stipulated, their employers shall permit them to do so twice a day, each for 30 minutes. The feeding time shall be deemed as working time.

2. Is the entitlement to parental leave subject to a period of work qualification and/or a length of service qualification and which period?
   As stating above, only employees being in service for more than 1 year can apply for parental leave.

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 mentioned above, the period of parental leave is 2 years, for each child, until the child reaches the age of 3 years old. In the case of employees have more than one child under 3 years old, the period of parental leave shall be aggregated, but no longer than the youngest one has been raised for 2 years.
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)?

No. According to Article 21 of the Gender Equality in Employment Act, when employees make the above request, employers may not reject, and employers may not treat it as a non-attendance and affect adversely the employees’ full-attendance bonus payments, personal evaluation or take any disciplinary action that is adverse to the employees. When employees find out that employer contravene the above mentioned articles, they may appeal to the local competent authorities. And according to Article of 38, employers shall be punished by administrative fines up to 100,000 NTD and not less than 10,000 NTD (1 EUR=47 NTD).

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

As mentioned above, there is no payment during the period of parental leave. However, the authority is currently drafting a new regulation, and there might be a 60% percent allowance during the parental leave in the future.

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

According to the Regulations for Implementing Unpaid Parental Leave for Raising Children, employer shall contact with employees on leave and inform them about the information of educational training programs.

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

According to Article 16 of the Gender Equality in Employment Act, during the period of parental leave without payment, employees may participate in the original social insurance programs continuously. Premiums originally paid by the employers shall be exempted and premiums originally paid by the employees may be postponed consecutively for 3 years.

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?

According to Article 17 of the Gender Equality in Employment Act, after the expiration of the parental leave, employees may apply for reinstatement. Unless one of the following conditions exists and after receiving permission from a competent authority, employers may not reject such application: (1) Where the employers' businesses are suspended, or there are operating losses, or business contractions. (2) Where the employers change the organization of their businesses, disband or transfer their ownership to others pursuant to other statutes. (3) Where force majeure necessitates the suspension of business for more than one month. (4) Where the change of the nature of business necessitates the reduction of workforce and the terminated employees cannot be reassigned to other suitable positions. In the case of employers cannot reinstate employees due to the above reasons, they
shall give notice to the affected employees thirty days in advance and offer severance or retirement payments in accordance with legal standards.

9. Are employees protected against dismissal on the grounds of an application for, or the taking of, parental leave?
Yes. According to Article 11 of the Gender Equality in Employment Act, employees shall not be treated discriminatorily because of their sex in the case of retirement, severance, job leaving and termination. Work rules, labour contracts or collective bargaining agreements shall not stipulate or arrange in advance that when employees marry, become pregnant, engages in child-birth or child-raising activities, they have to leave their jobs or apply for leave without payment. Employers also shall not use the above-mentioned factors as reasons for termination. Any prescription or arrangement that contravenes the stipulations shall be deemed as null and void. The termination of the labour contract shall also be deemed as null and void.

According to Article 26 of the Act, when the employers violate the stipulations of the Article 11, they shall be liable for any damage arising thereafter, and according to Article of 38-1, employers shall be punished by administrative fines up to 500,000 NTD and not less than 100,000 NTD (1 EUR=47 NTD).

10. Do exist special provisions to meet the operational and organizational requirements of small undertakings?
As mentioned above, the parental leave program only applies to enterprises with more than 30 employees.

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.
In the circumstances of adoption, the above mentioned parental leave system is also applied.

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

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)?
In accordance to Article 20 of the Gender Equality in Employment Act, for the purpose of taking personal care for family members who need inoculation, who suffer serious illness or who must handle other major events, employees hired by employers with more than 30 employees may request a family leave. The number of this leave shall be incorporated into normal leave and not exceed 7 days in 1 year. The computation of wage during family leave period shall be made pursuant to the related statutes and administrative regulations governing normal leave. In the case
of spouses of employees who are not engaged in any gainful employment, the above article shall not apply, provided that, the employees have justifiable reasons.

2. What are the conditions of access for applying for this kind of time off? 
As mentioned above, the conditions of family leave are taking personal care for family members who need inoculation, who suffer serious illness or who must handle other major events.

3. Is this time off limited to a certain amount of time per year or per case? 
As mentioned above, the maximum period of family leave is 7 days in a year.

4. Do employees maintain their pay or are they entitled to allowances. How high are these allowances related to the pay before? 
In accordance to Article 20 of the Gender Equality in Employment Act, the computation of wage during family leave period shall be made pursuant to the related statutes and administrative regulations governing normal leave. And according to Article 7 of the Regulations of Leave-Taking of Workers, In the event of matters which workers must personally deal with, they shall be entitled to normal leave without pay not exceeding 14 days in 1 year.

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

6. Are these employees protected against dismissal? 
Yes. As long as it is within the limited period of time.

7. Do there exist special provisions to meet the operational and organizational requirements of small undertakings? 
As mentioned above, the parental leave program only applies to enterprises with more than 30 employees.

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

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