

PARENTAL LEAVE FOR PARENTS OF DISABLED CHILDREN - A GUIDE

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Isle of Man
Government

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Introduction

This is a guide to the parental leave to which employees may be entitled if they are parents of disabled children. It sets out the minimum leave to which an employee is entitled, and also explains what an employee can do if he is denied his rights.

The right is conferred by the Employment Act 2006 and the Parental Leave (Disabled Child) Regulations 2006 made under the Act.

Copies of this Guide can be downloaded from

www.gov.im/categories/working-in-the-isle-of-man/employment-rights/guides-to-employment-rights/

The Guide is written in general terms and is not intended to be a complete or authoritative statement of the law. It is impossible to provide a definitive statement of the law, which in any case is the function of the Employment and Equality Tribunal and the High Court. Only the official wording of Acts, Regulations and Orders, and the interpretation given by the Courts, is authoritative.

No responsibility can be accepted for errors or omissions, or their consequences.

1. Who is eligible for parental leave?

1.1 Who qualifies for these rights?

To qualify for parental leave, an employee must have, or expect to have, responsibility for a disabled child, that is, either—

- have parental responsibility for the child, or
- be registered as the child's father in the register of births.

The term 'parental responsibility' is defined in the Children and Young Persons Act 2001. The following persons have parental responsibility for a child:

- the mother;
- the father, if he is or was married to the mother, or if parental responsibility is given to him by a court order or a formal agreement with the mother;
- a guardian appointed by the court, or by a deceased parent;
- a person in favour of whom a residence order is made

If the child is adopted, the adoptive parents have parental responsibility (and not the natural parents), with effect from the date of the adoption order. An employee who expects to have responsibility for a disabled child is qualified. This includes, for example, a prospective adopter of the child, once the child has been placed with him or her for adoption.

The disabled child does not need to be living with the employee for the employee to be entitled to parental leave (but see 2.5 below).

Employees

To qualify for parental leave, a person must be an employee, that is, he or she must work under a contract of employment. Workers other than employees do not qualify. In particular, the following do not qualify: self-employed persons, members of the Isle of Man Constabulary, members of the armed forces, masters or crew members engaged in share fishing paid solely by a share of the catch. There may be other contractual arrangements in place for some of these groups.

1.2 Who is a disabled child?

For the purposes of parental leave, a disabled child is one in respect of whom Disability Living Allowance ("DLA") is payable.

DLA is a benefit payable by the Social Security Division of the Treasury in accordance with Part III of the Social Security Contributions and Benefits Act 1992 (an Act of Parliament) as it has effect in the Island. The Treasury *Benefits and Contributions Guide* gives more details of this allowance.

1.3 Does the employee need to have worked for the employer for a certain time?

Before an employee can be entitled to parental leave, he or she must have been continuously employed for at least one year.

Continuous employment generally means working for the same employer without a break, but this is not always the case. An employee's continuity of employment for the purposes of qualifying for parental leave will not be regarded as broken in certain circumstances, even on a change of employer.

If the employee changes jobs, he or she may carry forward any unused entitlement to leave from the previous employment, but must work for the new employer for at least one year before any further leave can be taken.

1.4 Does the right apply in relation to all disabled children?

The right applies in relation to any disabled child under the age of 18, whenever the child was born.

1.5 What happens if the employer considers that the employee does not qualify for parental leave?

The employer or employee (or both) may consult the Manx Industrial Relations Service for advice. Ultimately a dispute may need to be taken to the Employment and Equality Tribunal if it cannot be resolved.

2. The period of leave

2.1 How much parental leave can an employee take in all?

An employee may take up to 18 weeks' parental leave in all in respect of a disabled child.

If an employee has responsibility for more than one disabled child, he or she can take up to 18 weeks' leave in all in respect of each child.

2.2 How much parental leave can an employee take in a year?

The maximum amount of leave that can be taken in any one year is 4 weeks for each disabled child. 'Year', for this purpose, means 12 months from the date when the employee first became entitled to take parental leave.

2.3 What is 'a week's leave'?

For this purpose, one week's leave is equal to the length of time that an employee is normally required to work in a week.

For example, if an employee usually works from Monday to Friday, a week's leave is 5 working days. If an employee usually works Mondays and Tuesdays only, a week's leave is 2 working days.

If an employee's working pattern varies from week to week, an average working week needs to be calculated, as a fraction of the period for which he or she is required to work in a year.

Example:

An employee is contracted to work 3 days a week for 30 weeks, 4 days a week for 18 weeks, and 2 days a week for 4 weeks. The average working week is:

$$\frac{(30 \times 3) + (18 \times 4) + (4 \times 2)}{52} = 3.27 \text{ days}$$

Where the leave is taken in blocks of less than one week, a week is deducted from an employee's overall entitlement to 18 weeks only when the short periods of leave add up to what would be a normal or average working week.

A week when an employee would normally be working, but is absent because he or she is taking holiday entitlement or is on sick leave, counts as a week when the employee is at work for this purpose.

2.4 When may parental leave be taken?

Subject to the maximum periods of leave (see 2.1 and 2.2 above), parental leave can be taken at any time before the child's 18th birthday, provided that the employer has been given the appropriate notice and has not exercised his right to postpone the leave (see 3).

2.5 For what purpose can leave be taken?

The purpose of parental leave is to care for a disabled child. This means looking after the welfare of the child, and can include making arrangements for the child's welfare. The leave may be taken simply to enable a parent to spend more time with a young child. It may also be used, for example —

- to accompany the child during a stay in hospital;
- to take the child to see a specialist;
- to inspect a new school;
- to settle the child into new childcare arrangements; and
- to enable a family to spend more time together, e.g. taking the child to stay with grandparents.

If the employee uses the leave for some other purpose, then he or she is acting dishonestly, and the employer can deal with this situation according to the business's usual disciplinary procedures.

2.6 Can parental leave be taken if the child is sick or for other emergencies?

Parental leave is not intended to be used as short-term emergency leave. At least 21 days' notice has to be given before leave can be taken (see 3). However, many employers will allow time off at short notice to deal with family emergencies, and may have policies for such circumstances.

2.7 Can parental leave be taken with another kind of statutory leave?

Parental leave can be taken immediately before or after a period of maternity leave, parental leave or adoption leave, provided that any requirements as to notice, and other conditions such as a qualifying period or employment, are met.

However, this may affect the employee's right to return to the same job at the end of leave (see 4).

3. How to claim parental leave

3.1 Notice to be given by employee

Before taking any parental leave, an employee must give at least 21 days' notice to the employer, giving the dates when the leave is to start and finish. The notice does not have to be in writing. However, employers, as good practice, should keep a note of the request for their own records.

3.2 Evidence of entitlement to leave

The employer is entitled to ask for evidence —

- that the employee is responsible for the child (e.g. the child's birth or adoption certificate, or a court order);
- of the child's date of birth;
- in the case of an adopted child, of the date of placement or adoption (e.g. relevant adoption papers);
- that disability living allowance (DLA) is payable in respect of the child (e.g. a letter or record of payments by the Social Security Division of the Treasury).

The employer is not entitled to ask more than once for this evidence (except where there is a question whether DLA is still payable in respect of the child).

The employer is not entitled to demand evidence of leave taken while employed by a previous employer, but may ask a previous employer for details.

3.3 When the employer can postpone the employee's leave

If an employer considers that an employee's absence would unduly disrupt the business, then the employer can postpone the leave for up to 6 months after the date when the employee wants to start the leave. The employer must discuss the postponement with the employee.

If the employer insists on postponing the employee's leave, the employee must be given notice of the postponement. The notice must —

- be in writing;
- be given not later than 7 days after the employee's notice to take leave was given to the employer;
- state the reason for the postponement;
- set out the new dates of parental leave (which must be the same length as that proposed by the employee, begin not more than 6 months after the start date proposed by the employee, and finish before the child's 18th birthday).

Leave may be postponed only where the employer considers that the business would be unduly disrupted if the employee took leave at the time he or she has chosen. An employer may be justified in postponing leave where, for example —

- the work is at a seasonal peak;
- a significant proportion of the workforce apply for leave at the same time;
- the employee's role is such that his or her absence at the particular time would unduly harm the business.

3.4 Disputes about postponement

If the employee considers that the employer is unreasonably seeking to postpone the employee's parental leave (e.g. because he or she thinks the business would not be unduly disrupted as claimed by the employer), the question can be referred to the Employment and Equality Tribunal for a decision (See 6).

3.5 Record-keeping

Employers are not required to keep records of parental leave taken, although most will want to do so for their own purposes.

4. Terms and conditions during leave and on return

4.1 Does an employee continue to benefit from his or her contractual terms and conditions while on parental leave?

The contract of employment continues throughout parental leave, unless either the employer or the employee expressly ends it or it expires.

This means that while they are on parental leave, employees are entitled to benefit from all the normal terms and conditions of employment, except for terms relating to wages or salary (unless their contract of employment provides otherwise), which would have applied if they were not on parental leave. If the employee has a contractual right to parental leave as well as the statutory right, he or she may take advantage of whichever is more favourable.

Terms and conditions from which an employee should continue to benefit include participation in share schemes, reimbursement of professional subscriptions, use of a company car or mobile phone (unless it is provided for business use only) and health club membership.

4.2 Does parental leave affect entitlement to holiday?

Periods of parental leave do not affect entitlement to holiday. Even if an employee has no right to annual leave under his contract of employment, he or she will be entitled to the equivalent of 4 weeks' paid statutory annual leave under the Annual Leave Regulations 2006. Guidance on calculating the statutory entitlement to annual leave can be found in the DfE guide *Holidays and Holiday Pay*.

An employee is not entitled to take annual leave during parental leave but, subject to the usual arrangements with his employer, there is no reason why he or she cannot take a period of annual leave immediately before or after parental leave.

4.3 Does a period of parental leave count as continuous service for the purposes of employment rights requiring qualifying service, and for calculating redundancy payments?

A period of parental leave counts towards a period of continuous employment for the purposes of statutory employment rights, including calculating a redundancy payment. Parental leave also counts for the purpose of any contractual entitlement based on length of service, such as pay increments and seniority.

4.4 Are pension contributions continued during parental leave?

Employers' contributions should be worked out as if the employee were working normally and being paid as usual for doing so. If the scheme requires the employee to make contributions, and he or she is receiving some form of contractual pay during leave, the contributions should be based on the amount of pay the employee receives.

4.5 What can an employee do if his employer does not comply with the terms and conditions in his employment contract during his parental leave?

An employee on parental leave who is denied benefits he or she is entitled to under his or her contract may seek redress, just as if he or she were at work, by claiming damages for breach of contract in the High Court or, if the breach is an unlawful deduction from wages, he may make a claim to the Employment and Equality Tribunal – see 6.

If the breach of contract is so serious that the employee is obliged to resign, this may be treated as 'constructive dismissal', and he or she may be entitled to make a complaint of unfair dismissal to the Tribunal. Before taking any such action, however, an employee should take legal advice or consult the Manx Industrial Relations Service.

An employee may also make a complaint to the Tribunal that he or she has been dismissed or subjected to a detriment by the employer for taking or seeking to take parental leave (see 5).

4.6 Can an employee return to his or her job after taking parental leave?

An employee's right to return to the same job at the end of parental leave depends on the length of leave taken, and whether it was combined with any other statutory leave (see 2).

Where the employee has taken not more than 4 consecutive weeks' leave, and

- it was an isolated period of leave, or
- it was preceded by another period or periods of statutory leave, other than a period of additional maternity leave or additional adoption leave,

he or she is entitled to return to the same job on the same terms and conditions of employment as if he or she had not been absent, unless a redundancy situation has arisen (see 4.8 below).

In any other case, the employee is entitled to return from leave to the job in which he or she was employed before his or her absence or, if it is not reasonably practicable for the employer to permit him or her to return to that job, to another job which is both suitable for the employee and appropriate for him or her to do in the circumstances.

In either case, the employee is entitled to benefit from any general improvements to the rate of pay or other terms and conditions which may have been introduced during the leave. If an employee is not given his or her job back at the end of parental leave, he or she may make a complaint of unfair dismissal to the Employment and Equality Tribunal (see 6).

4.7 What should an employee do if he or she is ill at the end of his parental leave?

If an employee cannot go back to work at the end of his or her parental leave because of illness, he or she should follow the normal procedures for sickness absence, such as notifying the employer.

4.8 What happens if a redundancy situation arises while the employee is on parental leave?

An employee taking parental leave should be treated in the same way as any other employee when a redundancy situation arises. This includes treatment relating to consultation about the redundancy and consideration for any other job vacancies. The Manx Industrial Relations Service's *Guide to Redundancies* gives general information about statutory redundancy rights.

5. Protection from detriment and dismissal

Employees are protected from suffering a detriment or dismissal for taking, or seeking to take, parental leave. An employee who believes he or she has been treated unfairly for these reasons can complain to the Employment and Equality Tribunal, regardless of his or her length of service. (see 6).

An employee who is not given his or her job back at the end of parental leave is entitled to make a complaint of unfair dismissal to the Tribunal regardless of length of service.

5.1 What protection is there against detriment for taking parental leave?

An employee is protected against being subjected to detriment by any act or deliberate failure to act by the employer because he or she:

- took parental leave; or
- sought to take parental leave.

Detriment can cover a wide range of forms of unfair treatment, including denial of promotion, facilities or training opportunities which the employer would otherwise have offered or made available.

Employees who suffer detrimental treatment at work for the above reasons may make a complaint to the Employment and Equality Tribunal.

5.2 In what circumstances is an employee protected from dismissal under the rights?

Dismissal means the termination of employment by the employer, with or without notice. It can also include resignation by the employee because the employer has made a substantial breach of the contract of employment indicating an intention no longer to be bound by it (known as 'constructive dismissal'). It can also include the expiry of a limited-term contract without its renewal. For further information as to the meaning of unfair dismissal, see the DfE guide *'Isle of Man Employment Rights and Responsibilities – a Guide for Employers, Employees and Workers'* (see Annex 5).

It is unlawful for an employer to dismiss an employee because he or she:

- took parental leave; or
- sought to take parental leave.

This protection against dismissal also applies if an employee is selected for redundancy on these grounds.

6. Enforcement through the Employment and Equality Tribunal

6.1 What should an employer or employee do if they disagree about entitlement to parental leave?

They should first seek to resolve the matter by mutual agreement – perhaps through the employer's own grievance or appeals procedure, where one exists. If the dispute cannot be resolved, either the employer or the employee, or both, should consult the Manx Industrial Relations Service. The time limits in 6.3 apply even though an internal procedure is being used.

6.2 Under what circumstances can an employee complain to the Employment and Equality Tribunal?

If the matter cannot be settled between employer and employee, the employee may want to bring a case to the Employment and Equality Tribunal if he or she has grounds for doing so.

He or she will have grounds for making a complaint to the Tribunal —

- if the employer has unreasonably postponed a period of parental leave requested by the employee (see 3);
- if the employer has prevented or attempted to prevent the employee from taking parental leave; or
- if the employer has subjected the employee to detriment, or dismissed him or her, because he or she took or sought to take parental leave (see 5).

6.3 What is the procedure for making a complaint to the Employment and Equality Tribunal?

The complaint should normally be made within 3 months of the detriment or the effective date of dismissal. Where the detriment suffered is due to the employer's failure to act or to provide a benefit, the complaint should be made within 3 months of the failure to act.

An extension to the time limit can be granted only in exceptional circumstances, where the Tribunal is satisfied that it was not reasonably practicable for the complaint to have been made in time.

An employee who wishes to make a complaint to the Tribunal should contact the Clerk to the Tribunal. When the Tribunal office receives the completed form, it will send a copy to the Manx Industrial Relations Service and an Industrial Relations Officer will try to help the two sides to reach a settlement of the complaint.

If conciliation is not possible or fails, the Tribunal will hear the case, and both parties should attend the hearing. Hearings are conducted informally and in a way which makes it easy for the parties to present their own case if they wish to do so. However, if either party wants to be represented, whether by an advocate

or by someone else - such as an official of a trade union or employers' association, a relative or a friend - this is permitted.

6.4 What remedies can the Tribunal give?

Where an employee complains that —

- that the employer has unreasonably postponed a period of parental leave;
- the employer has prevented or attempted to prevent the employee from taking parental leave; or
- that the employee has been subjected to a detriment,

and the Tribunal finds the complaint well-founded, it will make a declaration to that effect and may order the payment of compensation. It is for the Tribunal to decide the appropriate award, taking account of the employer's conduct and the loss suffered by the employee.

Where an employee complains that he or she was unfairly dismissed (or selected for redundancy) and the Tribunal finds the complaint well-founded, it will order payment of compensation, and may also order that the employee be reinstated or re-employed. For further details of remedies in cases of unfair dismissal, see the DfE guide *'Isle of Man Employment Rights and Responsibilities – a Guide for Employers, Employees and Workers'*.

Feedback

How helpful was this booklet to you? Did it answer your questions? Was it detailed enough? Was it clear? Does it contain any typographical errors? Do you have any comments or suggestions as to how the Department might further improve future editions? Please e mail your feedback to emplaw@gov.im

Appendix 1: Where to find further information

<i>Body</i>	<i>Function</i>
<p>The Manx Industrial Relations Service (MIRS)</p> <p>Ground Floor Imperial Buildings Bath Place Douglas Isle of Man IM1 2BY</p> <p>Tel.: 672942</p> <p>E-mail: iro@mirs.org.im</p> <p>Web: www.mirs.org.im</p>	<p>Industrial Relations Officers (IROs) provide advice and guidance about employment rights and help to settle disputes between employers and workers.</p> <p>IROs will also attempt to promote a settlement where a complaint has been made or could be made to the Employment and Equality Tribunal.</p>
<p>Department for Enterprise website</p> <p>www.emplaw.gov.im</p>	<p>For more detailed information on employment rights, including various guides and Codes of Practice.</p>
<p>The Clerk to the Employment and Equality Tribunal</p> <p>Tribunals' Centralised Administration Isle of Man Courts of Justice Deemsters Walk Bucks Road Douglas Isle of Man IM1 3AR</p> <p>Tel.: 685941 (Mon - Fri 9 a.m. to 5 p.m.) Fax: 685573 Email: tribunals@gov.im Web: www.courts.im/court-procedures/tribunals-service/tribunals/</p>	<p>This is the appropriate contact point where a claim to the Employment and Equality Tribunal has been made.</p> <p>(It is recommended that MIRS should be contacted where a claim has not been made or is being considered). (See above).</p>
<p>Social Security Division of the Treasury</p> <p>Markwell House Market Street Douglas IM1 2RZ</p> <p>Tel.: 685106</p> <p>E-mail: generalbenefits@gov.im</p> <p>Web: www.gov.im/categories/benefits-and-financial-support/</p>	<p>For information on family benefits.</p>

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