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Briefing note on Paternity Leave Legislation

Background

The previous Government announced in Budget 2016 to provide for 2 weeks paternity leave and an associated social welfare benefit.

The Programme for Partnership Government reiterated this commitment and to draft legislation for 2 weeks paternity leave to be introduced from September 2016

The legislation has now passed through the Oireachtas and will be enacted so that Paternity Leave payments will commence for those eligible from 1st September 2016.

What employers need to know about Paternity Legislation

Under this legislation, Fathers will be entitled to get two weeks leave with a Social Protection Benefit of €230 a week (this is the same level as standard state maternity leave).

Employees must give a notice period as soon as reasonably practicable or not later than 4 weeks before week the baby is due. There is a relaxation of the notification period in cases where the baby is born more than 4 weeks before the due date.

Leave can be taken at any time from the date of birth or placement in the case of adoption (but not before) until 26 weeks thereafter.

Employers will be obliged to maintain paternity leave records. Employment protection aspects of this legislation are in line with existing legislation relating to maternity and adoptive leave.

The self-employed will be eligible for the benefit on the same basis as for maternity leave, 52 weeks PRSI contributions in the relevant tax year.

Employers will be under no statutory obligation to continue to pay the normal salary during paternity leave. Employers will have the option to provide a top-up to the benefit payment to the father's regular salary. However, it should be noted that if an employer currently tops up maternity leave benefit such that the mother receives her full weekly pay, the employer could potentially be at risk of a gender discrimination claim if they do not do so for paternity leave. This issue remains unclear and will likely be tested when legislation is in effect.

Employers that currently provide contractual entitlement to paternity leave may wish to review and update contractual provision to take into account statutory provision.

Under this legislation employees cannot be penalised or threatened with penalisation as a consequence of taking or intending to take paternity leave. This is in line with up-to-date industrial relations legislation.

What next?

The Programme for a Partnership Government commits to significantly increase parental leave in the first year of a child's life over the next five years. Current proposals suggest that Government will provide for one full year of paid parental leave which could be taken by either parent.