

Employment Law Guide

Parental Leave and Leave on Grounds of Force Majeure Pekris & Theodorou LLC

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This guide sets out the main elements of the Parental Leave and Leave on Grounds of Force Majeure Law of 2012 (the “Law”).

It is important to note that this is a guide on the provisions of the Law. It is not a legal interpretation of the provisions of the Law. You may need to seek legal advice for an interpretation of the provisions.

The guide is intended for information purposes only. This is not a legal document.

1. History & Objectives of the Law

The “Parental Leave and Leave on Grounds of Force Majeure Law”, Law 47(I)/2012, came into force on the 18.05.2012.

It was enacted for the purposes of harmonising Cyprus law with Council Directive 2010/18/EC on the revised framework agreement on parental leave and Council Directive 97/80/EC.

Law 47(I)/2012 repealed and replaced the previous legislation regarding parental leave and force majeure.

As with the previous legislation, the Law has two main purposes:

(a) to give men and women the right to take unpaid leave from employment to allow them to take care of their young children and

(b) to provide for a limited leave (force majeure leave) to enable employees to deal with family emergencies resulting from the injury or illness of a family member.

2. Parental Leave

2.1 Entitlement & Minimum period of employment required

The Law applies equally to male and female employees. Employees must have at least six months continuous service with the same employer before they are entitled to take parental leave.

Part time workers, employees on fixed period contract and temporary workers are also entitled to parental leave provided they meet the minimum period of employment requirements.

2.1 Duration

Each parent is entitled to 18 weeks’ parental leave for each child born or adopted.

If more than one child is born on the same day the entitlement to parental leave is 18 weeks per child.

In the event of a widow/er this period is increased to 23 weeks.

In the case that both parents are employed by the same employer, they are entitled to decide between themselves who will take parental leave, on any particular occasion, and for how long. With the employers consent parents employed by the same employer can, if they wish, take parental leave simultaneously.

2.2 Transfer of Leave

The right to parental leave is generally non-transferable. However, where one parent has taken at least 2 weeks parental leave they are entitled to transfer 2 weeks from the remaining parental leave period to the other parent.

2.3 Time conditions for exercising the right to parental leave

In the case of natural parents, parental leave for mothers is taken during the period between the expiration of the maternity leave and the child's 8th birthday. For fathers parental leave is taken from the period of the birth of child until the child reaches the age of 8.

In case of adoption, for mothers the parental leave is taken following the expiration of the maternity leave and within a period of 8 years, commencing on the date of the adoption, provided that the child will not be over 12 years old.

If the child concerned has a disability, the leave must be taken before the child reaches 18 years of age.

There are no provisions provided for other persons acting in place of the parents - such as guardians.

An employee who has 1 - 2 children may take parental leave for a minimum period of 1 week and a maximum period of 5 weeks for each calendar year.

An employee with 3 or more children may take parental leave for a minimum period of 1 week and a maximum period of 7 weeks for each calendar year.

2.4 Notification to the employer

The employee is obliged to notify their employer in writing of the commencement and termination dates of the parental leave, at least 3 weeks before the parental leave commences.

In the event of serious idleness/conditions detailed in the Law this period of notification can be reduced to 1 week.

2.5 Refusal of the granting of parental leave

The employer has the right to refuse the granting of parental leave if he/she has reasonable cause to believe that the employee is not entitled to such leave. However, before refusing, the employer must:

- inform the employee in writing of their intention to refuse the granting of parental leave. and
- request that the employee within 7 days presents the reasons why they believe that they are entitled to parental leave.

The employer is obliged to take into consideration the reasons which, in the employee's opinion, make them eligible to parental leave, before deciding on the granting of such leave. In the case of refusal, the employer has to specify the reasons of their decision.

2.6 Postponing the granting of parental leave

The employer is allowed, following consultation with the employee, to postpone the granting of parental leave for justifiable reasons related to the operation of the business. Such cases include where:

- the business is of a seasonal nature;
- it is not possible to find a replacement for the period stated in the notice period;
- a significant proportion of the workforce applies for parental leave at the same time, and where
- the specific duties of the employee are of strategic importance to the business.

The employer must, within two weeks of the submission of the employee's application for parental leave, inform the employee in writing, of the reasons for postponing the leave. The period of postponement must not exceed a period of six months, from the date that the postponement is notified to the employee.

2.7 Termination of parental leave and notification of the termination

An employer may terminate the parental leave if they have reasonable grounds to believe that it is being used for a purpose other than that of taking care of and participating in the raising of a child.

The employer is obliged prior to terminating the parental leave to inform the employee concerned in writing, of his intention to do so, and request that the employee presents their arguments within 7 days.

The employer must take into consideration the arguments of the employee before deciding whether or not to terminate the parental leave.

In the case that the employer decides to terminate the parental leave they must accordingly notify the employee in writing. The notification must include the reasons for and the date of termination. The termination date of the parental leave should be at least 7 days following the date of the notification.

The employee in such a case is obliged to return to work. The period that follows the employee's return to work should not be considered as parental leave.

2.8 Rights and obligations of employees after the expiration of the period of parental leave

An employee on parental leave is viewed as being employed and keeps all of his or her employment rights (except the right to remuneration and superannuation benefits).

The absence, therefore, will count as reckonable service for the purposes of annual leave, increments, seniority, etc.

During the absence of the employee from his work, they will be credited with the insurable earnings provided for by the Social Insurance Laws.

The period of absence of the employee from work is therefore considered to be a period of employment, for the purpose of determining their entitlement to annual leave with pay.

The period of absence of the employee from work is also considered to be a period of employment, for the purpose of the Termination of Employment Laws.

Following the expiration of the period of parental leave, the employee has the right to return to the same job or, to an equivalent or similar job, which is must not under any circumstances be inferior to the position held prior to taking parental leave.

Rights acquired or in the process of being acquired by the employee on the date, on which parental leave starts, will be maintained as they stand until the end of parental leave. At the end of parental leave, these rights, including any changes arising from national law, collective agreements or practice, will apply.

2.9 Duty to notify the Director of the Social Insurance Department

An employee who has taken any period of parental leave should, within 3 months of the expiration of such period, notify the Director of the Social Insurance Department, by completing the relevant form.

Where an employee proves that they have a reasonable reason for not notifying the Director within the period mentioned above, the period can be extended by a decision of the Director for as long as that reasonable cause stands, but such extension cannot exceed a period of twelve months.

3. Leave On Grounds Of Force Majeure

Any employee is entitled to unpaid leave of up to 7 days each year, on grounds of force majeure for urgent family reasons in cases of sickness of or accident to any dependant of the employee making the immediate presence of the employee indispensable.

A "dependent" is defined as a child, husband, wife, parent, brother, sister, grandfather, grandmother of the employee.

3.1 Conditions of granting the leave

Such leave may be granted as a single period of leave or in separate periods. In cases of a husband and wife, each of them is individually entitled to such leave.

3.2 Obligation of the employee

Any employee, who takes or intends to make use of the leave on grounds of force majeure, should notify his employer accordingly the soonest possible.

4. General Provisions

4.1 More favourable terms

The Law does not restrict more favourable terms than those provided being applied under any collective agreement or agreement between the employer and the employee.

4.2 Prevention of termination or discontinuity of employment

Applying for or exercising the right to parental leave or leave on grounds of force majeure, does not under any circumstances provide a reason for terminating an employee's employment and does not give rise to any interruption in the continuity of employment.

An employer cannot terminate an employee's employment, or give notice of termination, during the period commencing on the date of application for parental leave and ending upon the expiration of the leave.

Additionally an employer cannot give notice of termination of employment that expires during the above mentioned period, or notice of termination during absence on grounds of force majeure.

4.3 Fines/ Penalties

An employer, who contravenes any of the provisions of the Law, is guilty of an offence and will be liable, upon conviction, to a fine not exceeding the amount of €7.500.

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