

An easy birth...legislatively speaking

Springtime is fast approaching and the sights of frolicking lambs and wobbly calves have many veterinary surgeons thinking of newborns in one form or another. PETER BISHTON, Operations Executive with Veterinary Ireland, takes a look at the employment legislation covering maternity.

Whilst a pregnancy comes with its own set of worries, employment (and its associated rules and regulations) can add a further stressful dimension to an expectant mother's life. The legislation regarding a general maternity case is covered mostly in the Maternity Protection Acts of 1994 and 2004 and, to a lesser extent, the Safety, Health and Welfare at Work (Pregnant Employees) Regulations 2000 and Unfair Dismissals and Equality Legislation. This legislation not only protects the rights of both expectant mother and her employer, but also requires that both parties uphold responsibilities to one another. There is, for example, requirement on the expectant mother to provide her employer with written notifications at several stages of the pregnancy and post-natal leave periods. This will happen at a time when the employee is absent from the workplace and more concerned with the welfare of her newborn child, than composing letters regarding her future work plans.

Employers should formulate, and have available, a clear and concise policy on maternity. This ensures that pregnancy is as stress-free as possible, for employer and employee.

The rights of the employee

Under the Maternity Protection Acts of 1994 and 2004, all female employees who are pregnant, have recently given birth or are breastfeeding within 26 weeks of having given birth and, importantly, have informed their employer of their condition have rights: maternity leave, time off for ante-natal and post-natal care, breastfeeding arrangements and the right to return to employment. While on maternity leave, the expectant mother retains all of her statutory and contractual rights as an employee, with the exception of her right to remuneration. This is covered under maternity benefit. All other rights, including annual leave and public holidays, are preserved.

Notification to the employer

Once the pregnancy has been confirmed, the employee is required to advise her employer of her condition and her intention to take maternity leave in writing. The latest date this written confirmation can be given is four weeks before she intends to take her maternity leave. The written confirmation should include a doctor's certificate stating the expected date of birth and an indication whether or not the employee intends to return to work after maternity leave has been taken. At this stage, employees are not required to inform their employer whether or not they intend to take additional maternity leave.

Maternity Leave entitlements

All employees covered by the Maternity Protection Acts and who commence their maternity leave on, or after, March 1, 2006, are entitled to a minimum period of 22 weeks maternity leave. Of the 22 weeks, two must be taken before the expected date of birth, and four must be taken after the expected date of birth. The balance can be taken at the discretion of the employee, as long as a continuous block of 22 weeks is taken. Any employee beginning maternity leave on or after March 1, 2007 will be entitled to 26 weeks maternity leave.

Maternity Benefit

Depending on PRSI eligibility criteria, any employee on maternity leave is entitled to the payment of a maternity benefit direct from the Department of Social and Family Affairs for the period of 22 weeks. This maternity benefit is calculated by dividing a female's gross income in the relevant tax year by the number of weeks they actually worked in that year (for example the relevant tax year for 2006 is 2004). The maternity benefit is then paid at a rate of 80% of the result of this calculation to a weekly minimum of €182.60 and a weekly maximum of €265.60 (rates effective from January 2, 2006). For specific details contact the new Maternity Benefit LoCall number 1890 690 690 or visit the Department of Social and Family Affairs website at <http://www.welfare.ie/schemes/families/mb.html>

While it is an option for an employer to pay an employee an additional "top-up" salary in order to offset any shortfall in wages between remuneration and maternity benefit, employers are not obliged to provide this facility. It is a matter undertaken entirely at the discretion of the employer.

Additional Maternity Leave

From March 1, 2006, an employee may opt to take an additional period of 12 weeks unpaid leave immediately following the maternity leave period. This leave is referred to as "additional maternity leave". It is important to note that maternity benefit is not payable during this period of additional maternity leave, nor is the employer obliged to pay the employee any wages. From March 1, 2007, any employee beginning additional maternity leave on or after this date will be entitled to 16 weeks additional maternity leave. It is the responsibility

of an employee intending to take additional maternity leave to notify her employer of this intention, in writing, four weeks before the commencement of the additional maternity leave.

Ante- and post-natal arrangements

Providing that she has given the employer at least two weeks written notice, where possible, and can provide certification of the visit if required, the employee is entitled to paid leave for all ante-natal care and all post-natal care (up to 18 weeks following the birth). Paid leave is also available for ante-natal classes, with the exception of the last three classes before birth (these are deemed to take place within the specified minimum two week period of maternity leave before birth). The employee must again furnish the employer with written notification two weeks in advance of the class and include a copy of the ante-natal class appointment card.

Returning to work

However the employee takes her maternity leave, or whether she avails of additional maternity leave or not, it remains her responsibility to notify her employer in writing of her intention to return to work. This must be no later than four weeks before the date of return. So far as is reasonably practical, the employee can expect to return to the job in which she was positioned immediately before her maternity leave. If this is not reasonably possible, then it is the duty of the employer to offer the employee a suitable alternative.

Breast-feeding arrangements

There are two options available to an employee who returns to work within 26 weeks of giving birth and who is breastfeeding (i.e., breastfeeding a child or expressing milk). She may either choose to reduce her working time by one hour per day to breastfeed somewhere other than in the workplace, or to take an hour off within the workplace (suitable facilities must be made available). In both instances the hour may be taken in one block of 60 minutes, two blocks of 30 minutes or three blocks of 20 minutes and is paid leave. The employee must, however, advise the employer of her intention to breastfeed at the same time as notifying them of her intention to return to work, i.e., at least four weeks in advance. In the case of breastfeeding, a copy of the child's birth certificate must be included in the written notification.

Health and Safety Leave

Under the the provisions of the Safety, Health and Welfare at Work (Pregnant Employees) Regulations 2000, pregnant employees are entitled to an assessment by the employer of any health and safety risks particular to their condition, including physical, biological and chemical. If any risks are identified, they must be removed. If this is not possible, the employee should be transferred to other work, or directed to take health and safety leave. Health and safety leave should be availed of until such time as: the employee is entitled to maternity allowance while on maternity leave, or 14 weeks after having given birth (having returned to work before this period), or 26 weeks after having given birth (for mothers who are breastfeeding and are 'at risk').

Equality at work

Expectant mothers also have protections under the Unfair Dismissals Acts, the Employment Equality Act and the Equal Status Acts (2000 to 2004), on grounds of pregnancy or related matters (e.g., pregnancy-related illness). It is important to note that in early 2003, the Equality Authority reported that the number of cases brought before the Labour Court on pregnancy-related grounds had doubled in the previous twelve months. Employers should bear these Acts in mind in all aspects of employee, or even potential employee, relations from recruitment through to dismissal.

Veterinary Ireland is a member of the Irish Congress of Trade Unions and is an affiliate of the Small Firms Association, both of whom provide a wealth of information and advice on employment law to members. Veterinary Ireland members with queries on the above article, or any aspect of employment law, should contact Peter Bishton, Operations Executive at Veterinary Ireland. Full copies of the legislation contained in this article are available from the government website at www.irishstatutebook.ie. This article is a general description of some of the provisions of the Acts, Statutory Instruments and Regulations outlined herein, and is not a legal interpretation of those Acts, Statutory Instruments and Regulations. For legal interpretation, professional legal advice must be sought.

This article is copyright. Photocopies are not permitted. For copies of this article, or any other member queries on Employment Law, please contact Peter Bishton, on 01 457 7976.

News in brief

Irish society wealthier but less equal, according to NESF

Irish society has been highlighted as one of the most unequal in the developed world, according to a study carried out by the National Economic and Social Forum (NESF). Although Irish society has become wealthier in recent years, it has also become more unequal, with the richest 20% of the working population earning 12 times more than the poorest 20%. This, according to the report, is one of the highest levels of market income inequality among OECD countries.

Sexual inequality was highlighted as a major issue. Ireland has been ranked 51 out of 56 countries in terms of pay-equality for women, with working mothers being paid less than men or women without children. The report, released in February, said: "Labour force participation rates for women aged 35-59 years still lag well behind many other EU countries. A major barrier is reconciling work and family life, in particular the affordability and availability of childcare."

Following the survey, the Equality Authority has launched 'Embedding Equality', its strategic plan for 2006 to 2008. Speaking at the launch, Equality Authority chief executive Niall Crowley said the plan aimed to address the "significant and persistent inequalities" affecting disadvantaged groups. Further information on the National Economic and Social Forum study can be found at: www.nesf.ie