

PARENTAL LEAVE

The employed mother or the employed father of the child should be entitled to parental leave during a period following the expiry of maternity leave. [Recommendation No. 191, Paragraph 10(3)]

Either parent should have the possibility, within a period immediately following maternity leave, of obtaining leave of absence (parental leave), without relinquishing employment and with rights resulting from employment being safeguarded. [Recommendation No. 165, Paragraph 22(1)]

The period during which parental leave might be granted, the length of the leave and other modalities, including the payment of parental benefits and the use and distribution of parental leave between the employed parents, should be determined by national laws or regulations or in any other manner consistent with national practice. [Recommendation No. 191, Paragraph 10(4)]

The length of the period following maternity leave and the duration and conditions of the leave of absence referred to in subparagraph (1) of this Paragraph should be determined in each country. [Recommendation No. 165, Paragraph 22(2)]

While maternity leave aims to protect working women during their pregnancy and recovery from childbirth, parental leave refers to a relatively long-term leave available to either parent, allowing them to take care of an infant or young child over a period of time usually following the maternity or paternity leave period.

Parental leave is not included in any of the ILO Conventions. However, both Recommendation No. 191 (accompanying Convention No. 183 on maternity protection) and Recommendation No. 165 (accompanying the Workers with Family Responsibilities Convention, 1981 (No. 156)) contain provisions on parental leave. Recommendations are non-binding instruments that set out guidelines that can orient national policy and action. According to Recommendations No. 191 and No. 165, a period of parental leave should be available to either parent after maternity leave without relinquishing employment and safeguarding the rights resulting from employment (this point will be discussed in Section 4). The duration of this leave period, as well as payment and other aspects, such as conditions of the leave and the distribution of parental leave between the parents, are not set by the Recommendations, but should be determined at a national level. In Recommendation No. 165, parental leave is regarded as part of an integrated approach to facilitate the reconciliation of work and family responsibilities.

The Workers with Family Responsibilities Recommendation, 1965 (No. 123) and the Maternity Protection Recommendation, 1952 (No. 95), preceding Recommendations No. 191 and No. 165 cited above, only included

provisions on maternity leave and only women's need to reconcile work with family responsibilities was considered. One important change in the policy of the ILO with the adoption of the current Recommendations (and the Convention on Workers with Family Responsibilities, 1981 (No. 156)) was the recognition of fathers' involvement in family responsibilities in general and in this case especially with regard to parental leave. This was an important step towards the creation of effective equality of opportunity and treatment for men and women workers. As discussed below, the way fathers are included in childcare leave policies can have important implications for gender equality as well as for the use of those policies.

The systems of parental leave differ significantly from one country to another. There is considerable variation concerning eligibility, payment, duration, possible flexibility in its use, the age of the child to be cared for and transferability between parents. The provisions reflect wider concerns within society in relation to child development, fertility, labour supply, gender equity and income distribution. In some countries, long parental leave may be seen as a way of supporting parental care of young children and reducing the need for childcare services, particularly for young children for whom services can be relatively expensive. In other countries, parental leave entitlements may be shorter, to prevent long absences from the labour market and the potential deterioration of skills (Hein, 2005).

Duration and payment

Parental leave is common in the European Union and other industrialized economies, and Central and Southern Europe (non-EU) and CIS countries, where almost all countries have some kind of parental or childcare leave provisions, but is rather rare in developing countries and less industrialized parts of the world. The duration and the financial compensation available while on parental leave differ significantly between countries. This is reflected through the examples of different parental leave provisions in the different regions given below. In general, the duration of parental leave is longer than that of maternity leave, but the payment is often lower (or such leave may be unpaid).

None of the countries analysed in the Middle East offered parental leave. Among the African countries analysed, only Burkina Faso and Guinea provide for the kind of long-term parental leave described above.⁸³ In Guinea,

⁸³ In addition, South Africa provides for a paid family responsibility leave of three days that can be used by both parents. Men and women employed for longer than four months and who work at least four days a week are entitled to this leave, for example when the child is born or sick (until the child reaches the age of 18). This is not a traditional form of parental leave, but could rather be called compassionate leave or emergency leave, as the length of parental leave is usually longer than three days. Moreover, the possible usage of the leave provided in South Africa is broader than what is normally defined as parental leave, as it can also be taken in the event of the death of family members (spouse or life partner, child, grandchild or sibling). A number of other countries offer similar provisions. In Azerbaijan, a single parent or another family member who is directly caring for a child until the age of 3, shall be eligible for partially-paid social leave. In Japan, workers are entitled to three months of leave (partially paid by employment insurance) to care for a spouse, child, parent or spouse's parent.

after the expiration of the 14-week maternity leave period, women may take an additional nine months of unpaid leave. In Burkina Faso, male or female employees can request up to six months of unpaid leave (renewable once) to care for their children. In the case of illness, the leave period can be extended to one year (also renewable once).

Among the Asian countries analysed, only a few provide for parental leave. In Mongolia, after expiry of maternity leave and annual leave, mothers and single fathers are entitled to leave with payment of benefits to take care of a child until the age of three. The Republic of Korea also allows child-care leave paid at a fixed monthly rate until a child is 1 year old.

In Latin America and the Caribbean, parental leave provisions seem to be a rather rare phenomenon. In Cuba, after maternity leave, either parent is entitled to unpaid parental leave for up to nine months until the child reaches 1 year of age. In Chile, both parents are entitled to leave, but only when an ill child under 1 year of age requires care in the home as confirmed by a medical certificate.

Contrary to the other regions, nearly all of the Developed Economies and the European Union, Central and Southern Europe (non-EU) and CIS countries analysed provide a period of parental leave to take care of a newborn or young child, even if the length of the leave differs from country to country.⁸⁴ In Estonia, a mother or a father shall be granted parental leave at his or her request to raise a child of up to 3 years of age. In Belgium and the United Kingdom, each parent has an independent right to a period of at least three months of parental leave. This is also the requirement in Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave. According to this Directive, EU Member States should provide parental leave for a period of at least three months, as an individual entitlement until the child reaches the age of 8, with the right to return to the same or an equivalent job. Similarly to the provisions of the Recommendations discussed above, each EU Member State shall define the conditions and forms of the parental leave (European Community, 1996).

Eligibility for parental leave

As for maternity leave, the right to parental leave and the corresponding cash benefits are often linked to different eligibility requirements, to be decided by each member State. These are often similar to the eligibility

⁸⁴ Among the countries in these regions for which full information is available in the database, Switzerland and the United States are among the small number with no federal childcare or parental leave provisions.

requirements discussed in the section on maternity leave.⁸⁵ One frequent condition for parental leave concerns the worker's previous employment. In some countries, where payment is provided during parental leave, the eligibility requirements for cash benefits may be more restrictive than for the leave.⁸⁶ In others, entitlement to leave is automatically associated with benefits.⁸⁷ In addition, as for maternity leave, different categories of workers are implicitly or explicitly excluded by the national legislation that affords parental leave. An interesting approach to respond to this problem can be found in Japan, where government guidelines recommend employers to provide part-time workers with a system of childcare leave.

⁸⁵ In Norway, in order to be entitled to a year of unpaid childcare leave, a parent must qualify for the 46- or 56-week cash benefit, for which the parent must have been employed and earning a pensionable income for at least six of the ten months immediately prior to the commencement of the benefit period. Both parents must fulfil the requirements if the father claims cash benefits. In Iceland, to be entitled to the 13 weeks' unpaid parental leave, an employee shall have six months' employment with the same employer. In addition, the employee shall notify her/his employer of the intention to take parental leave as soon as possible and at the latest six weeks prior to the intended first day of the leave. In Australia, employed parents are entitled to 52 weeks of combined maternity, paternity and childcare/parental leave after the birth of a child. Out of the 52 weeks, the mother may take six weeks' leave before childbirth. Parental leave is unpaid. To take parental leave, the parent must have been employed with the same employer for 12 consecutive months and must give the employer at least six weeks' notice of the expected date of birth, as stated in a medical certificate.

⁸⁶ In the Republic of Korea, parents are entitled to parental leave until the child is 1 year old. They may receive benefits for leave periods lasting over 30 days if they were insured for employment insurance benefits for a total of at least 180 days prior to taking the leave; if their spouse (if eligible for national employment benefits) is not currently on a leave of absence for child rearing; and if they apply for the cash allowance one month after the commencement date of the leave and within six months of the end of the leave period. In Sweden, workers who have been in the service of an employer, either for the preceding six months or for not less than 12 months in the last two years, are entitled to leave to take care of a child until the child reaches 18 months, irrespective of whether the parent receives parental cash benefits. In addition, workers are entitled to leave for the time during which they are entitled to parental benefits. However, to get the parental cash benefits at a rate of 80 per cent of earnings (flat rate for the last 90 days of a total of 480 days), the parents must have been in insurable employment for at least 240 consecutive days before the birth. If parents do not meet these conditions, they receive a flat-rate benefit during the entire leave period. In Spain, parents are eligible for parental leave without any previous employment requirements. In order to receive cash benefits, parents must meet employment history requirements.

⁸⁷ In Belgium, workers who have been employed for at least 12 months for the same employer within the 15 months preceding the notification of the employee of the intended date of leave are entitled to three months of career interruption for any reason, including the care of a child. Workers who interrupt their careers receive a flat-rate benefit from social security. In Latvia, parent on childcare leave receive 70 per cent of their average insurance contribution wage until their child is 1 year old. Parents can receive a fixed childcare benefit when their child is between 1 and 2 years old if they remain on childcare leave (or if they work fewer than 20 hours per week). In Romania, paid leave (85 per cent of wages) is available to all employed parents or persons who care for the child until the child is 2 years old. Benefits are paid to one parent if he/she has professional income subject to the income tax in the last 12 months preceding the birth of the child.

A major difference between maternity and parental leave is the scope of the provisions. While maternity leave is available only for women, parental leave provisions are normally also available for men. In some countries, it is a shared entitlement, where either the mother or the father has the right to take parental leave. In New Zealand, for example, parents are entitled to 38 weeks of paid leave. In addition, the father can use any period of maternity leave that has not been taken by the mother.

In other countries, such as Belgium, Chile (when the health of a child under 1 year of age requires care in the home, as confirmed by a medical certificate), Cyprus, Denmark and Iceland, each parent has an individual right to parental leave, which cannot be transferred to the other parent.⁹⁰ As mentioned above, according to the EU Directive on parental leave, it should be available to both parents as an individual entitlement. To promote equal opportunities and equal treatment between men and women, parental leave should, in principle, be granted on a non-transferable basis (European Community, 1996).

There are also examples of countries where parental leave can be used by a person other than the parents who takes care of the child. In Lithuania, parental leave can be granted, at the choice of the family, to the mother/adoptive mother, the father/adoptive father, the grandmother, the grandfather or any other relatives who are actually raising the child, or to the employee who has been recognized as the guardian of the child. The leave may be taken as a single period or be distributed in portions, and the employees entitled to this leave may take it in turns.⁹¹

The age of the child when the right to parental leave lapses varies a lot from country to country, from 6 months in Burkina Faso to 1 year in Chile and the Republic of Korea, to 9 years in Denmark.⁹² According to the EU Directive on parental leave, the right to parental leave should be available to parents of children under 8 years of age (European Community, 1996).

⁸⁸ In some countries, such as Guinea, only women are eligible for long-term parental leave.

⁸⁹ This is the case in Albania, Cuba, Estonia, Finland, Malta, New Zealand, Uzbekistan and Viet Nam.

⁹⁰ In Luxembourg, for example, each parent who meets the qualifying conditions has a right to six months of childcare leave paid as a flat monthly rate (or twelve months of half-time leave).

⁹¹ Also in Russia, child-rearing leave may be granted, in full or partially, not only to the mother, but also to the child's father, grandmother, grandfather, other relatives or tutor actually nursing the child. In Estonia, if a mother or father does not use the parental leave, it may instead be granted to the actual caregiver who lawfully resides in the Republic of Estonia. Uzbekistan has similar provisions extending the entitlement to childcare leave to whoever cares for a child.

⁹² Other examples are Belgium (6 years), Cyprus (6 years), Iceland (18 months), Japan (1 year), Lithuania (3 years), Mongolia (3 years), Russia (3 years) and Sweden (8 years).

Take-up rates

The introduction of parental leave provisions available to both fathers and mothers can be an effective tool for promoting gender equality. It recognizes the fact that fathers also have caring responsibilities. But even if parental leave by definition should be available to both mothers and fathers, women are most often the ones who take parental leave after maternity leave.⁹³ Generally, men's take-up rates are very low (International Labour Office, 1997). In Hungary, for example, 98 per cent of those on parental leave were mothers (European Industrial Relations Observatory On-line, 2004). In Austria and Ireland, only 2 and 5 per cent of eligible fathers, respectively, took parental leave, compared with 95 and 40 per cent of mothers, respectively (Drew, 2004). For this reason, some countries have introduced a paternity quota that can only be taken by the father and is lost if he does not use it.

In Norway, for example, parents are entitled to parental leave during the child's first year, provided that the total maternity, paternity and parental leave taken by both parents does not exceed one year. Three weeks before confinement and six weeks after the birth are reserved for the mother. Out of the 46 weeks of parental leave paid at a rate of 100 per cent of wages (or 56 weeks with 80 per cent of wages), ten weeks are reserved for the father. If he does not take these weeks, cash benefits are not payable for this period. The remaining leave, not including paternity leave (two weeks' unpaid leave) can be taken by either parent or shared between them. In Sweden, parental benefits are paid for 480 calendar days as a total for both parents at a rate of 80 per cent of earnings for a total of 390 days, and at a flat rate for the remaining period of 90 days. If the parents have joint custody, each parent is entitled to benefits for half of the leave period. A parent may give up his or her right to parental leave to the other parent, except for a period of 60 calendar days. If he or she does not take these 60 days, they are lost.⁹⁴

Sometimes take-up is low even among women, especially when parental leave is unpaid.⁹⁵ When schemes do not compensate the loss of income while on leave, it is difficult for lower paid workers to take advantage of them. High take-up rates are strongly related to the level of compensation for loss of earnings while on leave. In particular, fathers take parental leave only

⁹³ As noted, in some countries, parental leave is available to women only or to men only in very limited circumstances. In Mongolia, for example, childcare leave is available to men only if they are single fathers. In others, there is an implicit assumption that mothers will care for the child. In Bulgaria, for example, a father can take parental leave only with the mother's permission.

⁹⁴ Similar provisions also exist in Austria and Denmark (Hein, 2005).

⁹⁵ In the United Kingdom, for example, a recent survey of employees found that only 5 per cent of parents with children under age 16 had taken parental leave in the previous year and that a large fraction (41 per cent) of those who had taken leave had used between one and two days (as reported in European Industrial Relations Observatory On-line, 2004).

when a relatively high level of compensation for loss of earnings exists (International Labour Office, 1997). The experience in the Netherlands underscores the importance of compensation for encouraging use of parental leave: take-up rates of parental leave were almost twice as high in the public sector, where parental leave is paid at a higher rate (75 per cent) than other sectors (take-up in all sectors was 25 per cent compared to 49 per cent in the public sector: European Industrial Relations Observatory On-line, 2004).

Flexible arrangements and other innovative policies

Parental leave systems sometimes make it possible for parents to choose how and when to take the leave. In some countries, the parental leave should be taken as a continuous period directly after maternity leave; in others, it can be split over a period when the child is young. This permits the parents to choose to take parental leave as it suits them. In Malta, for example, an eligible employee is entitled to an unpaid leave of up to three months to care for a child until the child reaches 8 years of age. The leave may be shared by both parents in periods of one month each on a full-time or part-time basis; in a piecemeal way; or in the form of a time credit system as agreed upon between the employer and the employee. In Latvia, parental leave may also be granted as a single block or in parts.⁹⁶

In various countries, the parental leave can be taken part time, which gives the parents the possibility of reducing their working hours when their children are small.⁹⁷ An example of this is Norway, where a “time-account” option was made available to biological and adoptive parents in 1994. This system allows people who work at least half time to take partial parental leave combined with reduced working hours for a period of up to two years. However, not less than 12 weeks at a time may be taken under this system. Partial leave may also be taken as a reduction in working hours to 90, 80, 75, 60 or 50 per cent of a full-time post. This corresponds to a partial payment of parental benefit equal to 10, 20, 25, 40 or 50 per cent of the chosen daily rate. The time-account period does not include the last three weeks before delivery or the first six weeks after delivery, which are reserved for the mother, or the four weeks’ paternity quota.

⁹⁶ In Finland after maternity leave (105 days), the mother, or the father, is entitled to a total of 158 working days’ paid parental leave (70 per cent up to a ceiling from social security), which may be divided into a maximum of two parts, each part lasting a minimum of 12 working days. After the parental allowance is no longer paid, parents can take a childcare leave to look after a child under the age of 3 years, although both parents cannot be on leave at the same time. The minimum length of childcare leave is one month.

⁹⁷ Other countries that allow one or both parents to work part time if they have young children include Bosnia and Herzegovina, Switzerland and Uzbekistan. In Azerbaijan, mothers can request part-time work if they have children under age 14.

In Belgium, an employee can choose to take leave for a continuous period of three months, or by reducing her/his working time by half during six months, or by one-fifth during 15 months if he/she works full time. In Austria, unpaid parental leave is available full time until the child is 2 years old, or part time until the child is 7, with leave taken in periods of at least three months at a time. Furthermore, in Japan, the employer of a worker who takes care of a child under 1 year of age, but who does not take childcare leave, must, at the worker's request, reduce his or her working hours or take other measures to make childcare easier.⁹⁸

In some countries, the provisions on maternity, paternity and parental leave are integrated in one system. In Norwegian law, maternity, paternity and parental leave are treated as one system of "parental leave".⁹⁹ The case of Australia is similar. In the United States, 12 weeks of unpaid leave are afforded by the Family and Medical Leave Act. No distinction is made between maternity and paternity leave. An employee can, among other reasons, take the leave for the birth and care of a newborn child. This system is interesting as it is completely gender-neutral.

ADOPTION LEAVE

Where national law and practice provide for adoption, adoptive parents should have access to the system of protection offered by the Convention, especially regarding leave, benefits and employment protection. [Recommendation No. 191, Paragraph 10(5)]

As indicated by Recommendation No. 191, maternity leave provisions in accordance with Convention No. 183 shall be available for adoptive parents in member States that provide for adoption. This allows the adoptive parents to adapt to the arrival of the child.

In some countries, adoption leave provisions have been enacted that are similar to, or the same as the provisions for maternity or parental leave.

⁹⁸ Also, in Sweden, workers who have been in the service of an employer, either for the preceding six months or for not less than 12 months in the last two years, are entitled to use their parental benefit days to reduce their working hours by three-quarters, half, one-quarter or one-eighth of the normal working hours. Parents are also entitled to a reduction in the normal work time by up to one-quarter without parental cash benefit, until the child is 8 years old. In Finland, parents can choose to take a partial childcare leave, i.e. to reduce their working hours until the end of the year in which their child starts school, although this reduction is not financially compensated. The minimum length of the part-time childcare leave is six months, the specific arrangements being subject to agreement between the employee and the employer.

⁹⁹ In addition, the Swedish parental leave benefit system covers maternity, parental and paternity leave.

In Senegal and the United Kingdom, for example, the benefits and leave provided for maternity are also available for adoption. In Colombia, all of the benefits available to biological mothers are also available to adoptive mothers of a child under 7 years old. In Uzbekistan, adoptive mothers are eligible for the postnatal portion of the maternity leave available to biological mothers, as well as to parental leave.¹⁰⁰

The day when the child arrives in the home of the adoptive parents may then be counted as the date of birth in legislative terms.¹⁰¹ However, in some countries, parents have the right to start the leave earlier if they have to bring the child from another country. In Iceland, parental leave would start for adoptive parents on the day the child enters the home unless the parents need to leave the country to take custody of the child. In that case, the leave may start when the parents begin their journey.¹⁰²

In other countries, special leave provisions exist in the case of adoption. In Australia, adoptive parents are entitled to two days of unpaid pre-adoption leave, in addition to 52 weeks of unpaid parental leave post-adoption.

In many countries, the leave entitlement for adoptive parents is shorter than for biological ones, because the prenatal leave often available to natural mothers is eliminated. In Tajikistan, for example, adoptive mothers are entitled to 70 days of paid maternity leave for adopting a newborn, which corresponds to the postnatal leave period available to biological mothers. In Mongolia, women and single fathers adopting an infant are entitled to the same leave and benefits as women on maternity leave until the child reaches the age of 60 days, while biological mothers are entitled to 120 days of maternity leave.¹⁰³

¹⁰⁰ Similar provisions providing maternity leave benefits to parents who adopt young children also exist in Colombia (up to 7 years old), Iceland (up to 8 years old for unpaid leave) and South Africa (up to 2 years old), among others. In Israel, paid adoption leave is available for the normal paid maternity leave period (14 weeks) for parents who adopt a child under 10 years of age if at least one of the adopting parents has ten months of coverage in the last 14 months or 15 in the last 22 months. Couples may choose which one of them is eligible for payment for the entire period of the adoption leave or they can split it up between them, as long as each of their leave periods is no less than 21 days. In Sweden, the provisions on parental leave and benefits also apply to parents on adoption leave.

¹⁰¹ In Sweden, the date the parents receive the child in the household is considered to be the date of birth. Parental benefits are not paid for the adoption of a child above the age of 10 years. In Costa Rica the adoptive mother's right to adoption/maternity leave begins when she gets custody of the child. In Belarus, the right to maternity leave begins from the day of adoption or the day the child is placed under the care of the adoptive parent (if the child is under 3 months old). After the end of maternity leave, adoptive parents are also eligible for parental leave until the child is 3 years old.

¹⁰² In Canada (Quebec), adoptive parents are entitled to 52 weeks of parental leave starting the day the child is entrusted to the adoptive parent or on the day the parent leaves work to go to a place outside Quebec in order to have the child entrusted to him or her.

¹⁰³ In Norway, parental leave provisions also cover adoptive parents, but the adoption benefit period is three weeks shorter than for natural parents.

According to the EU Directive on parental leave, the individual right for men and women workers to parental leave for at least three months should also apply in the case of adoption of a child.

In the case of adoption, obviously no recovery from childbirth is needed for the woman. Nevertheless, when adoption leave provisions are available, only women workers have access to such leave in several countries. In Peru, for example, a worker applying to adopt is entitled to leave for 30 calendar days, provided that the child is under 12 months of age. But if the workers applying to adopt are married, the leave must be taken by the woman. Adoption leave is also limited to women workers in Albania, Costa Rica, Cyprus, Guatemala, South Africa and Venezuela. In other countries, adoptive fathers are only eligible for adoption leave in limited circumstances, such as when they are single parents or an adoptive mother does not take the available leave.¹⁰⁴

Adoptive fathers often qualify when the adoption leave is provided within parental leave schemes.¹⁰⁵ According to Recommendation No. 191 though, leave should be available to both parents adopting a child, which is the case in various countries. For example, in Iceland, each parent has an independent, non-transferable right to maternity/paternity leave of up to three months upon the adoption of a child, as well as a joint right to three additional months, which can be taken by one of the parents or split between them. In New Zealand, adoptive parents have the rights to both maternity and paternity leave.¹⁰⁶

In some countries, the age of the child affects the duration of the leave. In Brazil, the leave period is 120 days for adopting a child up to the age of 1 year. However, the period drops to 60 days for those who adopt children of 1 to 4 years of age, while mothers of children of 4 to 8 years have the right to 30 days of leave. In Slovenia, adoptive parents are entitled to 150 days of paid leave for adopting a child under 4, and to 120 days for adopting a child between 4 and 10 years old. In Italy, paid adoption leave is only available if the child is 6 or younger (or 18 in the case of an international adoption).¹⁰⁷

¹⁰⁴ In Colombia and Mongolia, leave for adoptive fathers is only available if the father does not have a permanent partner. In Macedonia, a woman who adopts a child is entitled to paid maternity leave until the child reaches 9 months of age; adoptive fathers may take the paid leave period only if the adoptive mother does not take it.

¹⁰⁵ In Russia, when a married couple adopts, the couple can choose to have the father take the leave period of up to 70 days after the child's birth and the parental leave period that may follow. In Finland, adoption leave benefits are granted to both adoptive parents (with the length depending on the age of the child).

¹⁰⁶ Adoptive parents who take custody of a child under age 5 are also eligible for an extended unpaid parental leave period for a year from the date at which they took custody of the child, which may be shared between them, if desired, or used by one parent.

¹⁰⁷ In Latvia, for a family which has adopted a child up to 3 years of age, one of the adopters shall be granted 10 calendar days of leave. Leave shall be granted for a period not exceeding one and a half years up to the day the child reaches the age of eight years (in a single period or in parts).