

L.N. 336 of 2016

**EMPLOYMENT AND INDUSTRIAL RELATIONS ACT
(CAP. 452)**

Adoption Leave National Standard Order, 2016

IN exercise of the powers conferred by article 4 of the Employment and Industrial Relations Act, the Minister for Social Dialogue, Consumer affairs and Civil Liberties has made the following order:

1. (1) The title of this order is the Adoption Leave National Standard Order, 2016. Citation and scope.

(2) The purpose of this order is to lay down minimum requirements designed to safeguard the employment rights of employees who have adopted a child:

Provided that this Order shall not apply in the case of adoptions where the person adopted is the natural offspring of either of the parents.

(3) This order shall be applicable without prejudice to the introduction and implementation of more favourable provisions in collective agreements or other agreements entered into between the employer and the employee.

2. (1) In this order, unless the context otherwise requires:- Interpretation.

"the Act" means the Employment and Industrial Relations Act; Cap. 452.

"adoption" means a local or an intercountry adoption made in accordance with the provisions of the Civil Code, the provisions of the Adoption Administration Act and any regulations made thereunder; Cap. 16. Cap. 495.

"child" means a person under eighteen years of age.

(2) Subject to the provisions of sub-article (1), terms and expressions used in this order shall, unless the context otherwise requires, have the same meaning assigned to them by the Act.

3. (1) An employee who is the parent of an adopted child shall be entitled to an uninterrupted period of eighteen weeks adoption leave whenever a child is adopted and such leave shall commence on the date when the child passes into the care and custody of the adoptive parent or parents by means of a judgment of a court of law in the country of origin: Adoption leave.

Provided that if the employee is on any other leave contemplated in the Act or in the orders or regulations issued thereunder, adoption leave shall be postponed until that other leave expires.

Cap. 318.

(2) Subject to sub-article (3), an employee on adoption leave shall be entitled to the first fourteen weeks of adoption leave with full wages but if the employee chooses to avail himself of any additional adoption leave beyond the fourteen weeks, the employer shall not be obliged to pay any wages for those weeks of adoption leave which go beyond the aforementioned fourteen weeks, without prejudice to any relevant benefit in respect of any period of adoption leave which goes beyond fourteen weeks in terms of the Social Security Act to which the employee may be entitled if he chooses to avail himself of adoption leave beyond the paid fourteen weeks.

(3) Adoption leave shall:

(a) in the case of a single parent, be enjoyed by that parent;

(b) in the case of more than one parent:

(i) if only one parent is in employment on the date of adoption of the child, be enjoyed by that parent;

(ii) if both parents are in employment, whether with different employers or with the same employer, on the date of adoption of the child, each parent shall be entitled to such part of the adoption leave as referred to in sub-article (2) as they may agree in writing.

(4) It shall be the responsibility of the employee requesting adoption leave, where there is more than one adoptive parent, to provide proof to the employer that:

(a) the other parent of the adoptive child is not in employment; or

(b) there is an agreement between the parents which stipulates what part of the adoption leave is to be enjoyed by one parent and what part of the adoption leave is to be enjoyed by the other parent.

Notification.

4. (1) Any employee who intends to avail himself of the adoption leave shall notify the employer in writing of the date when he intends to avail himself of such entitlement.

(2) The notification referred to in this article shall:

(a) include a written statement by the employee's accredited adoption agency in terms of the provisions of the Civil Code and, or the provisions of the Adoption Administration Act certifying that a court date has been set for the hearing of the adoption case in the country of origin.

Cap. 16.
Cap. 495.

(b) be given to the employer at least two weeks before the adoption leave begins, in so far as is reasonably practicable.

5. An employee on a fixed-term contract shall, for the duration of that contract have the same rights conferred by this order, but shall not be liable to pay the employer a sum equivalent to the wages he received during adoption leave if his contract of employment is not extended at the employer's discretion for up to a period of time which is sufficient for him to fulfil the obligations pursuant to article 7.

Adoption leave
during fixed
term contracts.

6. (1) When an employee is on adoption leave, the employee shall be deemed to have been in the employment of the employer and during any such absence he shall be entitled to all rights and benefits which may accrue to other employees of the same class or category of employment at the same place of work, including the right to apply for promotion opportunities at his place of work.

Rights.

(2) During the leave referred to in the previous sub-article, the employee shall have no right to any bonus or allowance related to performance or production.

(3) The employee shall, on the termination of the adoption leave to which he is entitled under the provisions of this order, be entitled to resume work in the post he occupied on the commencement of the adoption leave, or in an analogous post if at the time when he becomes so entitled the post he formerly occupied is no longer available.

(4) An employee who intends to or avails himself of adoption leave in terms of this order shall not be dismissed by the employer by reason of the intention or availing himself of such adoption leave.

(5) When an employee intends to avail himself of adoption leave in terms of this order during his probationary period, the probationary period shall be suspended on the day of the start of the adoption leave and shall resume when the employee returns to work after the adoption leave.

Resumption of
duties.

7. Where an employee avails himself of adoption leave and does not resume work as provided in the preceding article, or, after having so resumed work, abandons the service of his employer without good and sufficient cause within two calendar months from the date of such resumption, he shall be liable, without prejudice to any other liability under the Act, to pay the employer a sum equivalent to the basic wages he received during the adoption leave. If only part of the two calendar month period is worked by the employee, such equivalent sum shall be reduced by a proportionate amount, taking into account the period worked.

Offences.

8. Any person contravening the provisions of this order shall be guilty of an offence and shall be liable, on conviction, to a fine (*multa*) of not less than five hundred euro (€500).

