

SUBSIDIARY LEGISLATION 331.07

**TRUST AND TRUSTEES (MATERNITY AND
ADOPTION LEAVE TRUST) REGULATIONS**

1st July, 2015*

LEGAL NOTICE 257 of 2015, as amended by Legal Notice 338 of 2016.

- 1.** The title of these regulations is the Trusts and Trustees (Maternity and Adoption Leave Trust) Regulations. Citation.
Amended by:
L.N. 338 of 2016.
- 2.** In these regulations, unless the context otherwise requires - Interpretation.
- "employee" shall have the same meaning assigned to it by the Social Security Act: Cap. 318.
- Provided that for the purposes of these regulations, the term "employee" shall exclusively refer to an employee not engaged in the General Government Sector, Authorities, Agencies or Public Corporations;
- "employer" shall have the same meaning assigned to it by the Social Security Act: Cap. 318.
- Provided that for the purposes of these regulations, the term "employer" shall exclusively refer to an employer not in the General Government Sector, Authorities, Agencies or Public Corporations.
- 3.** These regulations shall provide for the establishment of a Trust, to be known as the Maternity and Adoption Leave Trust (hereinafter referred to as "the Trust"): Maternity and
Adoption Leave
Trust.
Amended by:
L.N. 338 of 2016.
- (a) which shall be established in writing and by means of a unilateral declaration of trust in terms of article 7 of the Trust and Trustees Act; Cap. 331.
- (b) which shall be established for the purposes of receiving maternity and adoption leave contributions from employers as provided for in terms of the Tenth Schedule to the Social Security Act; Cap. 318.
- (c) in relation to which, the employers which contribute to this Trust shall, subject to the terms of the Trust, be entitled to reimbursement from this Trust, for any maternity and adoption leave payment paid to their employees;
- (d) to which, subject to the provisions of regulation 7(2) of these regulations, the provisions of the Trusts and Trustees Act shall apply. Cap. 331.

* see regulation 1(2) of these Regulations, as originally promulgated.

Contributions.
Amended by:
L.N. 338 of 2016.
Cap. 318.

4. The Trust Fund shall receive the contributions specifically payable by the employers in terms of the Tenth Schedule to the Social Security Act to fulfil the obligations set out in the terms of these regulations and the Maternity and Adoption Leave Trust.

Failure to pay
contributions.
Amended by:
L.N. 338 of 2016.
Cap. 318

5. (1) Any employer who is required to pay contributions in terms of the Tenth Schedule to the Social Security Act, and who fails to pay such contribution, shall be liable to fines and penalties as indicated by Part X of the Social Security Act.

(2) Subject to the terms of the Trust, an employer as is referred to in sub-article (1) shall, while still being responsible to pay the full salary to the employee, lose his entitlement for any reimbursement for maternity and adoption leave thus paid.

Trustees.

6. The Trustees composed as set out in regulation 7, hereinafter referred to as "the Trustees".

Composition of
Trustees.

7. (1) The Trustees shall be composed of the following:

- (a) the Permanent Secretary of the Ministry responsible for Industrial Relations, *ex officio*;
- (b) the Permanent Secretary of the Ministry for Finance, *ex officio*;
- (c) three members, representing the employer constituted bodies, appointed by the Minister responsible for Industrial Relations from amongst the members of the Malta Council for Economic and Social Development;
- (d) one member representing trade unions appointed by the Minister responsible for Industrial Relations from amongst the members of the Malta Council for Economic and Social Development.

(2) The term of office of the representatives of the constituted bodies shall be for a period of two years and such members may be re-appointed as Trustees.

Cap. 331.

(3) The Trustees shall be exempt from the requirements of articles 43 and 43A of the Trusts and Trustees Act in accordance with article 57(1)(g) of the said Act:

Provided that none of the Trustees shall:

- (a) receive or be entitled to remuneration for so acting, whether directly or indirectly; or
- (b) receive property upon trusts or accept to act as a trustees or co-trustees of a trust on a regular and habitual basis; or
- (c) hold themselves out as trustees.

Bank accounts.

8. Any bank account in which any of the funds of the Trust are deposited shall be held in the name of the Trustees.

Revenues from
contributions.
Amended by:
L.N. 338 of 2016.

9. The Trustees shall be responsible to ensure that, in any financial year, revenues from the contributions specifically paid by employers for this Trust shall be sufficient to provide for:

- (a) the payment of the maternity and of the adoption leave

incurred by the employers; and

- (b) meeting any other disbursements authorised by the Trustees.

10. The Trustees shall be responsible to recommend adjustments in the rate of the contribution payable specifically by the employer to fulfil the obligations pursuant of the Maternity and Adoption Leave Trust in terms of the Tenth Schedule of the Social Security Act, after consultation with the Minister for Finance.

Adjustments.
Amended by:
L.N. 338 of 2016.
Cap. 318.

11. In accordance with the provisions of the Protection of Maternity (Employment) Regulations, an employee on maternity leave shall be entitled to the first fourteen weeks of maternity leave with full wages but if the employee chooses to avail herself of any additional maternity leave beyond the fourteen weeks in terms of regulation 6(1) of the above-mentioned regulations, the employer shall not be obliged to pay any wages for those weeks of maternity leave which go beyond the afore-mentioned fourteen weeks, without prejudice to any relevant benefit in respect of any period of maternity leave which goes beyond fourteen weeks in terms of the Social Security Act to which the employee may be entitled if she chooses to avail herself of maternity leave beyond the paid fourteen weeks.

Applicability of the
Protection of
Maternity
(Employment)
Regulations.
S.L.452.91

Cap. 318.

11A. In accordance with the provisions of the Adoption Leave National Standard Order, 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.

Entitlement.
Added by:
L.N. 338 of 2016.
S.L. 452.111

Cap. 318.

12. Without prejudice to the provisions of article 29 of the Trust and Trustees Act, and to anything to the contrary which may be provided by the terms of the Trust, the Trustees shall, by not later than four weeks after the end of each financial year, make and transmit to the Malta Council for Economic and Social Development a report on the financial state of the Maternity and Adoption Leave Trust.

Annual report.
Amended by:
L.N. 338 of 2016.
Cap. 331.