

SUBSIDIARY LEGISLATION 452.114

LEAVE FOR MEDICALLY ASSISTED PROCREATION NATIONAL STANDARD ORDER

30th May, 2017

LEGAL NOTICE 156 of 2017, as amended by Act XXIV of 2018 and Legal Notice 263 of 2020.

1. (1) The title of this order is the Leave for Title.
Medically Assisted Procreation National Standard Order.

(2) The purpose of this order is to lay down minimum requirements designed to grant a period of paid leave to employees who undergo the process of medically assisted procreation, whether in Malta or outside Malta.

(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;

Definitions.
Amended by:
XXIV.2018.13;
L.N. 263 of 2020.

"the Act" means the Employment and Industrial Relations Act;

"medically assisted procreation" means all treatments or procedures that include the *in vitro* handling of human oocytes, spermatozoa or embryos for establishing a pregnancy. This includes, but is not limited to, intra-uterine insemination, *in vitro* fertilization, intracytoplasmic sperm injection, embryo transfer, gamete, germinal tissue and embryo cryo-preservation and oocyte and embryo donation;

Cap. 452

"prospective parent" means any person, regardless of gender or sexual orientation, who has attained the age of majority and is a receiver or user of the medically assisted procreation techniques regulated under the Embryo Protection Act;

Cap. 524.

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

3. (1) The prospective parents who undergo the process of medically assisted procreation, whether in or outside Malta, shall be entitled to one hundred hours of leave for medically assisted procreation with full pay between them, which leave shall be paid by the employer.

Leave for
medically assisted
procreation.

(2) Leave for medically assisted procreation shall be utilised at any time during the process of medically assisted procreation:

Provided that the prospective parent acting as the receiving person shall be entitled to sixty hours of leave; whereas the other prospective parent shall be entitled to forty hours of leave:

Provided further that there is nothing precluding the prospective parents from utilising the aforementioned hours of leave in a non-continuous manner:

Provided finally that the entitlement to one hundred hours of leave for medically assisted procreation with full pay shall be granted for every process of medically assisted procreation, up to a maximum of three processes.

(3) Leave for medically assisted procreation granted by this order shall be utilised as follows:

(a) if only one of the prospective parents is in employment during the process of medically assisted procreation:

(i) sixty hours of leave shall be enjoyed by that prospective parent acting as the receiving person;

(ii) forty hours of leave shall be enjoyed by that prospective parent who is not acting as the receiving person;

(b) if both prospective parents are in employment, whether with different employers or with the same employer, during the process of medically assisted procreation, leave may be enjoyed concurrently by both prospective parents.

(4) It shall be the responsibility of the employee who is a prospective parent in terms of this order, who requests leave for medically assisted procreation, to provide proof to the employer that he is the receiving or the non-receiving person, and proof about the employment status of the other prospective parent.

Leave in case of
one (1)
prospective parent.
Added by:
L.N. 263 of 2020.

3A. (1) A single prospective parent, who is in employment and who undergoes the process of medically assisted procreation, provided that the process of the transfer of the embryo is undertaken on the single prospective parent's own body, whether in or outside Malta, shall be entitled to sixty (60) hours of leave for medically assisted procreation with full pay, which leave shall be paid by the employer.

(2) Leave for medically assisted procreation shall be

utilized at any time during the process of medically assisted procreation:

Provided that, there is nothing precluding the prospective parent from utilising the aforementioned hours of leave in a non-continuous manner:

Provided also that, the entitlement to sixty (60) hours of leave for medically assisted procreation with full pay shall be granted for every process of medically assisted procreation, up to a maximum of three (3) processes.

(3) It shall be the responsibility of the employee who is a prospective parent and who requests leave for medically assisted procreation in terms of this article, to provide proof to the employer that the employee is the receiving person.

3B. (1) Where two (2) prospective parents undergo the process of medically assisted procreation, whether in or outside Malta, and one (1) of the prospective parents is a human oocyte donor and the other prospective parent is the receiving person, both (2) prospective parents, who are in employment, shall be entitled to sixty (60) hours of leave for medically assisted procreation with full pay, which leave shall be paid by the employer.

Leave in case of two (2) prospective parents, one (1) being the receiving person and the other being a human oocyte donor.
Added by:
L.N. 263 of 2020.

(2) Leave for medically assisted procreation shall be utilized at any time during the process of medically assisted procreation:

Provided that, there is nothing precluding the prospective parent from utilising the aforementioned hours of leave in a non-continuous manner:

Provided also that, the entitlement to one-hundred and twenty (120) hours of leave for medically assisted procreation with full pay shall be granted one time for the human oocyte process.

(3) It shall be the responsibility of the employee who is a prospective parent and who requests leave for medically assisted procreation in terms of this article, to provide proof to the employer that the employee is the prospective parent undergoing treatment.

3C. (1) A human oocyte donor, who is in employment, and who is not a prospective parent in terms of this Order, shall still be entitled to sixty (60) hours of leave with full pay, which leave shall be paid by the employer.

A human oocyte donor.
Added by:
L.N. 263 of 2020.

(2) Such leave shall be utilized at any time during the process of human oocyte donation:

Provided that, there is nothing precluding the human

oocyte donor from utilising the aforementioned hours of leave in a non-continuous manner:

Provided also that, without prejudice to the rights of the receiving person in accordance with this Order, the entitlement to sixty (60) hours of leave as provided by this article, shall be granted one time for the human oocyte process.

(3) It shall be the responsibility of the employee who requests leave for human oocyte donation in terms of this article, to provide proof to the employer that the employee is undergoing fertility treatment.

Notification.

4. (1) Any employee who is a prospective parent and who intends to avail himself of leave for medically assisted procreation shall notify the employer in writing of the date or dates when he intends to avail himself of such entitlement.

(2) The notification referred to in this article shall include a written certification by the medical practitioner in charge of the procedure of medically assisted procreation.

(3) The notification referred to in this article shall be given to the employer at least two weeks before the utilisation of the leave for medically assisted procreation begins, in so far as is reasonably practicable.

Evidence.

5. In those cases where the prospective parent wishes to avail himself of the leave for medically assisted procreation in a non-continuous manner in terms of the first proviso to article 3(1), he shall present his employer with relevant certification every time he wishes to use part of that leave, and such certification shall be forwarded to the employer at least two working days before each part of the leave commences.

Independent right.

6. The leave for medically assisted procreation is to be granted independently and irrespectively of any other kinds of leave granted by the Act or by any legislation issued thereunder.

Dismissal.

7. An employee who is a prospective parent and who intends to or avails himself of leave in terms of this order shall not be dismissed by the employer by reason of the intention or availing himself of such leave.

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).
