

## **Rights of parents in the employer employee relationship**

### **A Maternity leave**

1. When shall pregnant employees inform their employer of their condition?

Answer: Pregnant employees shall inform their employer of their condition as soon as they get knowledge of it (see § 5 Mutterschutzgesetz). But it is no duty to inform. That means that they don't lose their rights if they don't inform the employer immediately. There only will be problems with legal bans of employment for pregnant employees because of the employers lack of knowledge. If the employer demands it the pregnant employee has to show him the attestation of the pregnancy.

2. Are pregnant employees und employees who have recently given birth entitled to a continuous period of maternity leave? How long is this leave and when is it allocated before?

Answer: In Germany exists the following regulation on maternity leave: The maternity leave starts 6 weeks before the estimated date of birth (§ 3 II MuSchG) and ends after the 8th week after birth. The maternity leave lasts until the expiration auf the 12th week after the birth of twins or even more children.

During maternity leave the pregnant employee has no obligation to work but she is allowed to work up to the beginning of the 2nd week before the birth, if the doctor's testate doesn't interdict.

3. Do they maintain their pay or are they entitled to allowances? How high are these allowances related to the pay before?

Answer: Pregnant employees that can't work full or part time because of a legal ban off maternal leave get the same salary as the average of the last 13 weeks-salaries before the pregnancy. During the maternal leave (6 weeks before and 8 weeks after the birth) they get a combination of payment and allowance. They get allowance from the health insurance and pay from the employer. All together they get the same payment as the average salary in the last 13 weeks before the maternal leave.

4. What rights are acquired by the worker on the date on which maternity leave starts until the end?

Answer: a) The pregnant employee can demand of the employer that her working place creates no danger for her or the embryo. If there is any danger the employer has to organize the working place of the pregnant employee without such dangerous circumstances (§ 2 MuSchG).

b) There exist several legal bans for pregnant employees. You distinguish between legal bans that the doctor disposes and those who are regulated by law. For example by law it is not allowed to have the pregnant person work at night between 8 o'clock p.m. to 6 o'clock a.m. (§ 8 MuSchG). They allowed to handle heavy loads with more than 5 kg regularly or occasionally with more than 10 kg by human power. After the 5th month it is forbidden to have a pregnant employee work on a working place where she has to be standing and has to work with high physical claim/strain or where she is exposed to chemical or biological substances with danger for the health to herself or the embryo (e.g. poison). They are listed in a special administrative regulation (Mutterschutzverordnung).

c) If the work on the former working place is not admitted any longer because of the legal bans the employer has the right to transfer the employee to another working place.

d) The young mother who nurses her child has the right to get time off for it, at least twice a day for half an hour or once a day for an hour. If she works more than 8 hours continuously the free time gets up to twice 45 minutes or once a day 90 minutes. The free time is paid with the standard amount of salary (§ 7 MuSchG).

5. Is there continuity of the entitlements to social security, in particular regarding health care?

Answer: Yes; because the employment relationship has not ended, all social securities last on. It's the same situation as in holiday.

During the pregnancy and in the maternity leave the pregnant employee has the right to get any medical advice of doctor or midwife, medications, delivery in a hospital, carer at home and help in the household.

6. Do workers at the end of maternity leave have the right to return to the same job or, if that is not possible, to an equivalent or similar job?

Answer: Yes, they have the right to return to the same job and only if this for very good reason or urgent needs of the enterprise is not possible, they have to right to a similar or an equivalent job. .

7. Are employees protected against dismissal?

Answer: Any kind of dismissal is unlawful during pregnancy and 4 months after the birth if the employer had knowledge of the pregnancy or the birth given. The dismissal is also null and void if the employee informs the employer about the pregnancy or the birth at least 2 weeks after receiving the dismissal.

The dismissal is exceptionally allowed if the employer gets the permission of the state to it. This permission will only be given if there is a reason for the dismissal and this reason has nothing to do with the pregnancy or the birth. But the employment ends because of an agreed limitation period also during a pregnancy or a maternal leave.

8. Do exist special provisions to meet the operational and organizational requirements of small undertakings?

Answer: According to the regulations of the “Aufwendungsausgleichsgesetz” all small undertakings with less than 30 employees take part in a special contribution fund at the health insurance. All small undertakings pay a certain amount into this fund, which later pays the maternity benefits and also the grants to maternity benefit to the employee.

If an employee is on maternity leave, the employer has a legal reason to engage another employee for a certain limited period of time. So it is possible to meet organizational requirements.

9. Are employees entitled to time off in order to attend ante-natal examinations, if such examinations have to take place during working hours?

Answer: Yes, the employer has to give the pregnant employee the time off she needs for ante-natal examinations. This working-time is paid, if the

examination is necessary and it was not possible for the employee to date the examination in her free time without any problems. This right is limited to the necessary time for the examination itself and the journey there and back.

10. What are the most common cases at courts related to this?

Answer: The most common cases at court concern

- a) dismissals with or without state permission because the employer did not know about the pregnancy or the need to get a permission.
- b) payment.

## **B – Parental leave**

**Parental leave is regulated in the Law on Parental Allowance and Parental Leave “Gesetz zum Elterngeld und zur Elternzeit” (BEEG)**

1. What are the conditions of access and rules for applying for parental leave? Describe Your system (full-time or part-time basis, time-credit system ...).

Answer: The conditions to access and application for parental leave are according to § 15 BEEG:

- a) the applying parent has to live together with the child
- b) his has to take care of and raise the child himself
- c) an application in writing latest seven weeks before the beginning of the desired parental leave.

The right to parental leave exists until the child completes his third year, the parental leave period can be transferred to a later period of time, parents have the right to split the time so that every parent has some parental leave.

Parental leave can be taken either full-time or part-time. Employees are allowed to work up to 30 hours per week during parental leave without losing the benefits of parental leave.

A parent has a right to parental leave if:

- a) the employer regularly has employed 15 or more employees
- b) the employment lasts at least six months
- c) the regular working time is to be reduced to 15 to 30 hours per week for at least two months
- d) there are no obstaining needs of the undertaking
- e) the application has been brought to the knowledge of the employer in writing minimum seven weeks before the beginning of the parental leave.

Then the employer has to opportunity to deny parental leave within four weeks. Against this decision a claim may be filed to the labour court.

2. Is the entitlement to parental leave subject to a period of work qualification and/or a length of service qualification and which period?

Answer: The entitlement to parental leave itself does not depend on a special length of employment time or qualification. Only the right for part-time working under the period of parental leave is – as described above - dependent on a period of employment of at least 6 months.

3. Which notice periods do exist for the worker when exercising the right to parental leave, specifying the beginning and the end of the period of leave?

Answer: Parental leave has to be applied for the latest seven weeks before it begins. In the written application the parent also has to declare for what

period of time within two years parental leave is to be taken and whether some leave is to be transferred to a later period of time.

Parental leave may be shortened or prolonged if the employer agrees, e.g. when another child is born. If the child dies parental leave ends three weeks after death.

4. Is an employer allowed to postpone the granting of parental leave for reasons related to the operation of the undertaking (e.g. where a replacement cannot be found within the notice period?)

Answer: If parental leave has been granted it can not be renounced for reasons of the undertaking.

5. Do employees maintain their pay or are they entitled to allowances? How high are these allowances related tot the pay before?

Answer: During parental leave employees get no wages from their employer.

According to § 1 BEEG they get a state allowance during the first year, if

- a) the employee lives in Germany
- b) shares his household with the child
- c) takes care of and raises the child himself
- d) does not work full-time.

The amount of the allowance is 67 percent of the average income of the last 12 months before the birth of the child up to a maximum of 1800,00 € per month if the parent does not have any income. In cases when the average monthly income before birth was less than 1000,00 €the percentage is raised by 0,1 percent per 2 € that the relevant income remained under 1000,00 €.

6. What rights are acquired by the employees on the date on which parental leave starts until the end of parental leave?

Answer: They may work part-time as employees as well as on their own without losing the special legal protection against dismissal.

7. Is there a continuity of the entitlements to social security, in particular regarding health care?

Answer: As long as parental leave allowance is paid the membership in the health insurance remains without paying fees. Otherwise the membership in the health insurance remains, if there is the possibility to join the health insurance of the spouse/husband without paying fees this possibility has to be taken, if not, contributions to the health insurance have to be paid. In the retirement insurance as well as in the unemployment insurance the time of parental leave is counted as membership period without having to pay contributions.

8. Do employees at the end of the parental leave have the right to return to the same job or, if that is not possible, to an equivalent or similar job?

Answer: There is no right to return to the same job, but a right to an equivalent job.

9. Are employees protected against dismissal on the grounds of an application for, or the taking of, parental leave?

Answer: According to § 18 BEEG there is legal protection against dismissal beginning the day the employee applied for parental leave, but not earlier



than eight weeks before the beginning of parental leave and no longer than the period of parental leave. In exceptional cases the superior authority of labour administration may permit a dismissal. The employee is free to quit his employment by the end of parental leave.

10. Do exist special provisions to meet the operational and organizational requirements of small undertakings?

Answer: As the employer does not have to pay any wages during parental leave there are no specific regulations for smaller undertakings. The employer may employ somebody else for a limited period of time.

11. Does your system also grant access to parental leave for adoption cases and are there specific rules for applying parental leave to the special circumstances of adoption?

Answer: Yes, the right to parental leave begins the very moment the adopted child is integrated in the household.

12. What are the most common cases at courts related to this?

Answer: Most cases concern dismissals during parental leave.

### **C Time off from work on grounds of urgent family reasons**

1. Are employed parents with responsibility for the care and upbringing of children entitled to time off from work on grounds of urgent family reasons in cases (sickness or other reasons related to family members making the immediate presence of the worker indispensable)?

Answer: Since July 1st, 2008 the law on time for care (Pflegezeitgesetz = PflegeZG) is binding law. This law regulates short-time periods off from work on grounds of urgent family care as well as time off for care of disabled or elder people. A short-time working interruption due to urgent family reasons is given according to § 2 PflegeZG if there is an urgent need to organise care for a needy relative. Time off for care of a relative is to be granted if the employed takes care for the relative himself in his home environment. Both also apply for parents who have to take care for a child in need of special care.

2. What are the conditions of access for applying for this kind of time off?

Answer: In case of short-time off as well as time for care the care for a close relative must be executed in the own home environment.

The employer must be informed about the prospected period of short-time off as soon as possible. On demand a medical testate has to be handed over to the employer.

Time off for care purposes may only be applied for in undertakings with more than 15 employees. The written application has to be filed to the employer at least 10 days ahead of the time period asked for time off. The application has to describe the period of time as well as the amount of time off, e.g. part-time or full-time.

3. Is this time off limited to a certain amount of time per year or per case?

Answer: Short time off is limited to 10 days per relative or case. Time off for care is limited to a maximum of six months per relative or case.

4. Do employees maintain their pay or are they entitled to allowances? How high are these allowances related to the pay before?

Answer: During short time off wages will be paid for five days if the relative needing care is a child up to the age of 12 years. After this time there is a right to unpaid time off, then the health insurance will pay an allowance of 70% of the average income for a period of ten days per child and year, maximum 25 working days per year; if the employee is raising the children alone the time limit is 20 working days per child and maximum 50 working days per year. All rights in the social security remain.

When taking care of a close relative in the home environment since July 1<sup>st</sup> there is a right to take off six months and to return on the same job.

5. Is there a continuity of the entitlements to social security, in particular regarding health care?

Answer: While taking short time off (see above question 4) social security rights remain unchanged, if the employee takes a longer period off there are no social security rights. But if the employee gets allowances from the health or the care insurance this grants social security rights as well.

6. Are these employees protected against dismissal?

Answer: Yes, according to § 5 PflegeZG the employment may not be dismissed since the announcement of the time off for care purposes until the end of the period of care. In exceptional cases the higher labour authority may allow exceptions.

7. Do there exist special provisions to meet the operational and organizational requirements of small undertakings?

Answer: A right to time off for care does not exist when the undertaking has less than 15 employees.

According to § 6 PflegeZG the employer has the right to employ a third person for a limited period of time.

8. What are the most common cases at courts related to this?

Answer: None so far, the law is too new to have significant court experiences.

Berlin, August 3<sup>rd</sup> 2008

On behalf of the German Judges Association (DRB)

Carla Evers-Vosgerau, Judge at the Labour Court  
Dr. Steffen Roller, Judge at the Social Court of Appeals  
Members of the Presidency of DRB