

Fourth Study Commission  
of the  
International Association of Judges  
Questionnaire  
for the  
2008 meeting.  
REPORT OF SWEDEN

Rights of parents in the employer employee relationship

**INTRODUCTION**

*Unless otherwise stated, all forms of compensation, benefit and financial support mentioned below are part of the Swedish system for social insurance, which is administered by the Swedish Social Insurance Agency (Försäkringskassan). Social insurance in Sweden is financed through employer and employee contributions as well as through taxes.*

**A Maternity leave**

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

*Swedish law does not require a pregnant employee to inform her employer of the pregnancy at any specific time. However, an employee who wishes to exercise her right to maternity leave or his or her right to parental leave shall give notice of this to her employer not later than two months prior to commencement of the leave or, if this is impracticable, as quickly as practicable. The employee shall, when giving notice, indicate the planned duration of the leave.*

2. Are pregnant employees and 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 ?

*According to sections 18-20 of the Parental Leave Act (1995:584), a female employee who is expecting a child, has recently given birth to a child or is breast feeding is entitled to be transferred to other work while retaining her employment benefits, provided that she has been prohibited from continuing her regular work under a regulation issued under Chapter 4, Section 6 of the Work Environment Act (1977:1160). (SFS 2003:373). A pregnant employee who, due to the pregnancy, cannot carry out physically demanding work duties is entitled to be transferred to other work while retaining her employment benefits. The right to transfer, however, applies only from and including the sixtieth day prior to the estimated date of delivery. Also, the right to transfer applies only to the extent that the employer can be reasonably required to provide the woman with other work within the activity. In the event that the transfer is not practicable, the woman is entitled to **leave**, insofar as it is necessary to protect her health and safety, though without retaining employment benefits during the period to which the leave relates.*

*Furthermore, according to section 4 A of the Parental Leave Act, a female employee is entitled to **full leave** in connection with her child's birth during a continuous period of at least seven weeks prior to the estimated time for delivery and seven weeks after the delivery. If she is not on leave for another reason, two weeks of this maternity leave shall be obligatory during the period prior to or after the delivery. The employee is also entitled to be on leave for breast feeding the child. Maternity leave need not be taken in conjunction with the payment of parental benefit.*

*Additionally, parents of both sexes are entitled to parental leave, see Section B below.*

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

*Women who take pregnancy leave because of a physically demanding job are entitled to **pregnancy benefit**. Pregnancy benefit can be drawn during the last 60 days of pregnancy until the eleventh day before the expected date of birth. During the last ten days before the expected birth the mother to be will not be eligible for pregnancy benefit but is expected to use the parental benefit instead (see below).*

*Women on pregnancy leave who don't fall into the above category are entitled to draw **parental benefit** during the last 60 days before the expected birth. It is possible to use whole days but also  $\frac{3}{4}$ ,  $\frac{1}{2}$ ,  $\frac{1}{4}$  and  $\frac{1}{8}$  days, which makes it possible to either make the working days shorter or to take full leave from the 60<sup>th</sup> day before expected delivery.*

*Women on maternity leave fall under the same category as parents on parental leave with regards to compensation.*

*Regarding the compensation level, please refer to question B 5.*

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

*According to section 16 of the Parental Leave Act, an employer may not disfavour a job applicant or an employee for reasons related to parental leave under this Act, when the employer*

- 1. decides on an employment issue, selects a job applicant for an employment interview or implements other measures during the employment procedure,*
- 2. decides on promotion or selects an employee for training for promotion,*

3. *decides on or implements other measures concerning vocational training,*
4. *decides on or implements other measures concerning other training or vocational counselling,*
5. *applies pay or other terms of employment,*
6. *manages and distributes work, or*
7. *gives notice of termination, summarily dismisses, lays-off or implements other significant measures against an employee.*

*However, this prohibition does not apply if the different terms and conditions or different treatment are a necessary consequence of the leave.*

*In conclusion, the worker on maternity/parental leave is treated as any other employee and may not be discriminated against.*

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

Yes.

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 ?

Yes.

7. Are employees protected against dismissal?

*They have the same protection as other employees and may not be discriminated against because of their leave. It is unlawful to dismiss an employee or to terminate a trial employment on the grounds of pregnancy or maternity/parental leave.*

*If the employment is (lawfully or unlawfully) terminated during the maternal/parental leave, the period of notice does not start until the employee returns to work **or** at such time as the employee has indicated to the employer that he/she will return to work.*

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

No.

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

*Yes, if the parent is not already on maternal/parental leave, it is possible to receive temporary parental benefit for such examinations and other visits to a physician. During such time, the parent is entitled to leave from work.*

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

*There are no available statistics with regards to this. It can be said, however, that cases of this kind are relatively rare. Cases available for study show that disputes sometimes arise concerning alleged discrimination against pregnant employees and employees on maternity/parental leave, for instance with regards to salary and promotion.*

## **B – Parental leave**

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....).

*A parent is entitled to full leave for the care of a child until the child reaches 18 months, irrespective of whether the parent receives parental benefit.*

*In addition, a parent is entitled to full leave during the period when the parent receives full parental benefit under Chapter 4 of the National Insurance Act (1962:381).*

*With respect to an employee who has adopted a child or received a child with the intention of adopting it, the eighteen month period shall instead be counted from the time when the employee received the child into her or his care. If the matter involves the adoption of the employee's spouse's child or of her or his own child, the employee is not entitled to a period of leave that is greater than that which would apply if the adoption had not taken place. The right to leave for adoptive parents terminates when the child reaches the age of eight years or, when the child concludes its first year of school, whichever occurs later.*

*As explained in question B 5 below, a parent is entitled to draw – instead of full parental benefit - three quarters, one half, one quarter or one eighth parental benefit under Chapter 4 of the National Insurance Act. During such time, the parent is entitled to a reduction of the normal working hours by three quarters, one half, one quarter or one eighth respectively.*

*Additionally, a parent is entitled to a reduction of the normal working hours by up to one quarter for the care of a child which has not yet reached the age of eight years or which is older but has not yet concluded its first year of school. Such reduction will not be compensated with parental benefit or similar.*

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

*No, there are no such requirements. However, there are some restrictions with regard to previous income in order to receive parental benefit in relation to your income (as described below). Those who do not meet those requirements receive only the lowest benefit level during part of their parental leave.*

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?

*An employee who wishes to exercise her or his right to parental leave shall give notice of this to her or his employer not later than two months prior to commencement of the leave or, if this is impracticable, as quickly as practicable. The employee shall, when giving notice, indicate the planned duration of the leave.*

*An employee may discontinue her or his leave which has already been commenced and resume her or his work to the same extent as before the leave.*

*If the employee wishes to exercise her or his right to resume work, the employee shall give notice to the employer to that effect as soon as practicable. In the event the leave was intended to continue for one month or more, the employer may postpone the resumption by no more than one month after the employer has received notice.*

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 ?

*The employee is entitled to take **full leave** on the day or days the employee requests (section 11 of the Parental Leave Act). When leave is taken in the form of **reduced working hours**, the leave may be distributed over all days of the working week or distributed to a certain day or certain days of the working week (section 12 of the Parental Leave Act).*

*The employee shall discuss the distribution of the leave and any other issues concerning the leave with her or his employer. Where it is not inconvenient for the employee, the employee shall take leave as contemplated in Section 11 in such a manner that the employer's activity may continue without substantial disturbance.*

*In cases of reduced working hours, if an agreement cannot be reached regarding how the leave shall be taken, the employer shall distribute the leave according to the wishes of the employee, if such distribution does not cause substantial disturbance to the employer's activity. The employer may not without the employee's consent, distribute the leave in any manner other than spreading it over all days of the working week, dividing the leave during the working day or distribute it to any other time other than the beginning or end of the working day.*

*If a decision relating to an issue referred to in the second paragraph has been made in any manner other than according to the wishes of the employee, the employer shall inform the employee and the employee's local employees' organisation regarding the decision. This shall, if practicable, be done not later than two weeks prior to the commencement of the leave.*



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

*Parents on parental leave are entitled to a total of 480 days of parental benefit. In case of multiple child birth, parents receive an additional 180 benefit days for each child after the first. It is not necessary to use all parental benefit days consecutively. It is also possible to be on parental leave when the child is little but only use part of the benefit, thus making it possible to make the leave last longer. In fact, it's possible to 'save' parental benefit days and use them until the child has turned eight or has finished first grade, whichever comes first. Parents who share custody are entitled to half of the 480 days each, but they can choose to sign over all except 60 days to the other parent.*

*As stated above, parental benefit is payable for a total of 480 days. For 390 days the benefit paid is equivalent to the parent's income qualifying for sickness benefits (80 per cent of income up to a specified income ceiling). For the remaining 90 days parental benefit will go down to the lowest benefit level, where the payment is SEK 180 per day (the same level for everyone). Parents with low income or no income at all receive benefit for 390 days at a basic level of SEK 180 per day.*

*Some employers chose to fill out part of or all of the income loss of employees on parental leave. Such terms also exist in some collective agreements.*

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

*Please refer to question A 4 above.*

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

Yes.

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

Yes.

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

Please refer to question A 7 above.

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

No.

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 .

*Yes. Adoptive parents have basically the same rights and benefits as biological parents. In addition, they are entitled to a total of 10 extra days of paid leave in conjunction with the arrival of the child, to share between them.*

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

*Please refer to question A 10 above.*

### **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) ?

*If the child is under 12 years of age (or in some cases 16), parents can receive **temporary parental benefit** for tending to a sick child. If the child suffers from a life threatening condition, parents can receive temporary parental benefit for an unlimited number of days, until the child has turned 18. According to the Parental Leave Act, parents are entitled to full leave when they receive temporary parental benefit. If the reason for the leave is illness, there is no notice period.*

*Furthermore, a parent is entitled to leave to care for her or his child in circumstances where the ordinary care provider has become sick or contagious, notwithstanding that the parent is not entitled to temporary parental leave because the child is younger than 240 days.*

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

Please refer to question C 1 above.

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

No.

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

Please refer to question B 5 above. The parental benefit will be on the highest level.

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

Yes.

6. Are these employees protected against dismissal ?

Yes.

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

No.

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

*There are no available statistics. Labour disputes related to these issues are rare. Criminal cases of benefit fraud, where parents have been simultaneously working and drawing temporary parental benefit under the pretence of tending to a sick child, are not uncommon.*