

GENERAL SCHEME

**Maternity Protection (Amendment) and Miscellaneous Provisions Bill
2024**

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Preliminary and General

Head 1 - Short title, collective citation and commencement

Provide along the following lines

- (1) This Act may be may be cited as the Maternity Protection (Amendment) and Miscellaneous Provisions Act 2024.

- (2) The Act shall come into operation on such day or days as the Minister may appoint, by order or orders, either generally or with reference to any particular purpose or provision, and different days may be so appointed for different purposes and different provisions.

Explanatory Note

This Head provides for the short title and citation of the Act. It further provides that the Minister may make an order or orders in relation to the commencement of the provisions of the Act.

Head 2 - Interpretation

Provide along the following lines:

In this Act-

“Act of 1994” means the Maternity Protection Act 1994;

“Act of 1998” means the Employment Equality Act 1998;

“Act of 2007” means the Medical Practitioners Act 2007;

“Act of 2015” means the Workplace Relations Act 2015;

Explanatory Note

This Head defines key words and terms used in the Act.

Head 3 - Expenses

Provide along the following lines-

- (1) The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Public Expenditure, National Development Plan Delivery and Reform, be paid out of monies provided by the Oireachtas.

Explanatory Note

This is a standard provision in regard to the cost of the administration of the Act.

Amendment to the Maternity Protection Act 1994

Head 4 – New section inserted to the Act of 1994 - Postponement of maternity leave

Provide along the following lines-

- (1) The Act of 1994 is amended by the insertion of the following section after *section 14B*:

“14C.—(1) Subject to *subsection (2)*, an employee who is on maternity leave and who requires a necessary intervention to be carried out for a serious physical health condition that carries with it a high risk to the life of the employee may-

- (a) postpone all or part of the maternity leave,
- (b) the maternity leave may not be postponed for a period longer than 52 weeks.

- (2) Where an employee intends to postpone the leave, the employee must notify her employer in writing of her intention to postpone the leave and the date on which the intended postponement will commence. The notification must be provided not later than 2 weeks before the intended date of commencement of the postponement and the notification must be-

- (a) accompanied by a medical certificate, and
- (b) the certificate shall state the nature and extent of the employee’s health condition, and
- (c) the intervention(s) required.

- (3) Certification under subsection (2) will be required from a medical practitioner who is registered in accordance with section 47 of the Act of 2007 and who holds a qualification in a relevant medical speciality recognised by the Medical Council under Section 89 of the Act of 2007.

- (4) Where a notification to postpone the leave concerned is made to an employer-

- (a) the leave concerned shall be postponed with effect from the date indicated in the notification,
- (b) the period of postponement of the leave shall end on a date agreed by her and the employer in accordance with the notification given,

(c) the employee concerned shall be entitled to the part or all of the maternity leave.

(5) Maternity leave not taken by the employee by reason of the postponement (in this section referred to as 'resumed leave') must be taken in one continuous period.

(6) Additional maternity leave may be taken following the resumed leave.

(7) Where an employee's leave is postponed under this section—

(a) subject to *paragraphs (b) and (c)*, the employee shall comply with *subsection (1A)*, in lieu of *subsection (1)*, of *section 28*,

(b) the employee shall not, in relation to returning to work under *subsection (4)(a)*, be required to comply with *section 28*, and

(c) the employee shall, if deemed under *subsection (6)* to be on resumed leave, comply with *subsection (1B)*, in lieu of *subsection (1) or (1A)*, of *section 28*."

Explanatory Note

This Head is to provide for an entitlement for an employee who requires treatment for a serious medical reason to postpone maternity leave for a period of up to 52 weeks.

The Department is also examining whether the provision should extend to very serious mental health issues.

Sections (1), (2) & (3) provides that the employee must provide a written notification to her employer of her intention to postpone the leave. Notification must provide two weeks' notice of intention to postpone. This notification must be accompanied by a medical certificate.

Subsections (4) and (5) provide for the notification of a start and end date of the postponement of the leave and that the resumed leave must be taken in a continuous period.

Subsection (6) provides that additional maternity leave may be taken following the period of resumed leave.

Subsection (7) concerns consequential amendments to the Act of 1994.

Head 5 - Maternity Leave for Members of the Oireachtas

Provide along the following lines-

The insertion of a new Part into the Act of 1994 -

*“PART IIA
Maternity Leave for Members of the Oireachtas*

In this Part the Definitions of “confinement” and “the date of confinement” have the meanings respectively assigned to them by section 41 of the Social Welfare (Consolidation) Act, 1993

(1) Subject to this Part, a pregnant member of the Oireachtas shall be entitled to leave, to be known (and referred to in this Act) as "maternity leave for members of the Oireachtas", for a period of—

(a) 26 consecutive weeks, or

(b) 26 weeks, part of which is postponed in accordance with subsection 3 or subsection 4,

as may be appropriate.

(2) Entitlement to maternity leave for members of the Oireachtas shall be subject to a pregnant member of the Oireachtas having, as soon as reasonably practicable but not later than four weeks before the commencement of maternity leave, notified in writing the Clerk or Clerk-Assistant of Dáil Éireann or Seanad Éireann, as appropriate, (or caused to be so notified) of their intention to take maternity leave.

(3) Where the date of confinement occurs in a week that is four weeks or more before the expected week of confinement, the member of the Oireachtas shall, where the circumstances so require, be deemed to have complied with this section.

(4) If a woman or other person who has been delivered of a living child (in this section referred to as "the mother") dies at any time before the expiry of the fortieth week following the week of her confinement, the father or other parent, as the case may be, of the child (if he is a member of the Oireachtas) shall be entitled in accordance with this section to leave for a period ending as follows—

(a) if the mother dies before the expiry of the twenty-fourth week following the week of her confinement, the period ends at the end of that twenty-fourth week, and

(b) if the mother dies at any time after the expiry of that twenty-fourth week, the period ends at the end of the fortieth week following the week of her confinement.

(5) Entitlement to leave under subsection (1) shall be subject to the father or other person notifying in writing the Clerk or Clerk-Assistant of Dáil Éireann or Seanad Éireann, as appropriate, (or caused to be so notified) of their intention to take maternity leave.

(6) Subject to subsection (2), a member of the Oireachtas who is on maternity leave may, if the child in connection with whose birth she is on, or is entitled to, that leave (in this section referred to as "the child") is hospitalised, inform in writing (or cause a written request to be submitted to) the Clerk etc. of her intention to postpone part of the maternity leave, in accordance with this section.

(7) A notification to postpone part of the maternity leave under subsection (1) may take effect from a date he or she selects only if the period of maternity leave taken by he or she on that date is not less than 14 weeks and not less than 4 of those weeks are after the end of the week of confinement.

(8) The member of the Oireachtas concerned shall be entitled to the part of the maternity leave, not taken by he or she by reason of the postponement (in this section referred to as "resumed leave") to be taken in one continuous period commencing not later than 7 days after the discharge of the child from hospital.

(9) Subject to subsection (2), a member of the Oireachtas who is on maternity leave may, if she is [diagnosed with a serious illness under the definition in section XX], inform in writing (or cause a written request to be submitted to) the Clerk etc. of her intention to postpone part of the maternity leave, in accordance with this section.

(10) The member of the Oireachtas concerned shall be entitled to the part of the maternity leave, not taken by her by reason of the postponement (in this section referred to as "resumed leave") to be taken in one continuous period.

Explanatory Notes:

This new Part provides that for the specific purposes of the Maternity Protection Act 1994 (as amended), members of the Oireachtas are granted an entitlement to 26 weeks maternity leave under the Act of 1994.

The Maternity Protection Act 1994 (as amended) requires certain notifications to be provided by the employee to the employer. In the case of a member of the Oireachtas, who are not employees, the Head provides that such notifications shall be made through the Clerk or Clerk-Assistant of Dáil Éireann or Seanad Éireann as the case may be.

The Head includes provisions around pausing maternity leave on the hospitalisation of the child to include the mother and the father or other parent, as the case may be.

The Head also includes provisions around postponement of maternity leave for serious illness of the mother.

The Head includes a provision which would allow a member of the Oireachtas to whom the definition of 'father or other person' to avail of maternity leave where the mother of the child has died.

Oireachtas members, as officeholders, are automatically entitled to a salary as a matter of law, with limited exceptions, from the period they take office until they are no longer a member of either House of the Oireachtas, regardless of attendance. As such, it is not appropriate that section 14 of the Act 'Entitlement to additional maternity leave' which provides for 16 weeks unpaid leave to commence immediately after the end of maternity leave would apply to members of the Oireachtas.

It is not deemed necessary to include provisions relating to entitlements to time off for ante natal classes, or post or ante natal care, or breastfeeding breaks, as these would be an internal matter for the Oireachtas.

It is not be appropriate to include provisions relating to employment protections under Part IV of the Act or Resolution of Disputes under Part V of the Act as Members of the Oireachtas are officeholders and not employees.

Head 6 – Consequential amendments to the Act of 1994

Provide along the following lines-

- (1) Section 28 of the Maternity Protection Act 1994 is amended in subsection 1A by the substitution of “section 14B or 14C or 16B” for “section 14B or 16B”

Explanatory Note

Head 28 provides for a consequential amendment to Section 28 of the Maternity Protection Act 1994.

Amendment to the Workplace Relations Act 2015

Head 7 – Amendment of section 41 of the Act of 2015

Provide along the following lines-

- (1) Section 41 of the Act of 2015 is amended in subsection (3) by the replacement of the existing text in subsection (7) (c) with:

“in the case of a dispute relating to the entitlement of an employee under the Act of 1994, it has been referred to the Director General after the expiration of the period of 6 months beginning on the day immediately following the date of the occurrence of the dispute.”

Explanatory note

Under Section 41(7) (c) of the Workplace Relations Act 20, an adjudication officer shall not entertain a dispute referred to him under the Maternity Protection Act after the expiration of a six month period from the date on which the employer is informed that the employee is pregnant, has recently given birth or is breastfeeding. A further six months may be provided from the initial six month period for reasonable cause.

It has recently been raised in a WRC case that under this section that the time limit for a case under S26 of the Maternity Protection Act 1994, which provides protections related to the returning to work after maternity leave, may already have expired before an employee returns to work. This amendment proposes to rectify this situation and ensure compliance with Article 11 of Directive 92/85/EC, under which the rights connected to employment must be maintained during a period of maternity leave.

Amendments to the Employment Equality Act 1998

Head 8 – New Section 14A of the Act of 1998– Non-Disclosure Agreements

Provide along the following lines-

(1) The Act of 1998 is amended by the insertion of the following section after section 14 “14A (1) in this section-

“non-disclosure agreement”, means a provision in writing in a contract or an agreement, however described, between an employer and a [current, former or prospective] employee whereby the latter agrees not to disclose any material information about the circumstances of an allegation of discrimination, harassment, sexual harassment, or victimisation in accordance with Part VII of the Act of 1998;

“relevant employee” means an employee who has experienced or made an allegation about discrimination, harassment, sexual harassment, or victimisation;

(2) Other than in accordance with *subsection (3)*, an employer shall not enter into a non-disclosure agreement with a relevant employee where that employee has experienced or made an allegation of discrimination, harassment, sexual harassment, or victimisation in accordance with Part VII of the Act of 1998, and the non-disclosure agreement has the purpose or effect of concealing the details of that discrimination, harassment, sexual harassment or victimisation.

(3) An employer may enter into a non-disclosure agreement with a relevant employee in accordance with this section if such an agreement has been requested by a relevant employee.

(4) Where a non-disclosure agreement is made under subsection (3), the non-disclosure agreement shall only be enforceable where—

(a) the relevant employee has been provided, in writing, with independent legal advice on the implications of entering into that non-disclosure agreement, at the expense of the employer,

(b) the scope (or terms) of the non-disclosure agreement is set out clearly in writing,

(c) the agreement shall be for a specified period of a limited duration,

(d) a period of [14] days after signing the agreement has lapsed during which time the employee can withdraw from the agreement.

- (5) A non-disclosure agreement made in accordance with subsection (3) shall not apply to —
- (a) any disclosure of information under the Protected Disclosures Act 2014, or
 - (b) any communication relating to the discrimination or harassment or sexual harassment or victimisation between the relevant employee and:
 - (i) An Garda Síochána
 - (ii) a legal professional
 - (iii) a medical professional
 - (iv) a mental health professional
 - (v) the Office of the Revenue Commissioners;
 - (vi) the Office of an Ombudsman;
 - (vii) a friend, a family member or personal supporter as specified or approved in the non-disclosure agreement.
- (6) A non-disclosure agreement made in accordance with subsection (3) shall specify that it does not apply to 5(a) and 5(b).
- (7) A non-disclosure agreement made under subsection (3) shall-
- (a) insofar as is possible, be written in plain English and an accessible format and a copy of the signed agreement shall be provided to the employee by the employer, and
 - (b) the agreement shall be made in the form and manner as may be prescribed.
- (8) The Minister shall, not later than 5 years after the date on which this section comes into operation, conduct a review of the operation and effectiveness of the section, and shall, not later than 6 months after the end of that period of 5 years, or on the completion of the review, whichever is the earlier, prepare a report, in writing, of the findings of the review and of the conclusions drawn from those findings and cause copies of the report to be laid before each House of the Oireachtas.

Explanatory Note:

This Head is intended to regulate the use of Non-Disclosure Agreements (NDAs) related to allegations of discrimination, harassment, sexual harassment, or victimisation.

It provides for an amendment to section 14 of the Employment Equality Act 1998 by inserting a new section 15A in order to introduce measures to limit the use of NDAs in these circumstances. The Department is to consider in drafting how to regulate employment contracts which contain NDAs but where the act of discrimination, harassment, sexual harassment or victimisation happens after the legislation is enacted.

14 A (1) provides for the interpretation of certain terms used in this section. The intention is that the definition of NDA should include, relevant provisions in employment contracts, severance agreements, settlement agreements, non-disparagement agreements where the

provision has the effect or purpose of concealing details relating to an alleged incident of discrimination, harassment, sexual harassment, or victimisation.

The purpose of subhead (2) is to provide that an employer shall not enter into a NDA with an employee where the employee has made allegations of discrimination, harassment, sexual harassment or victimisation, other than in accordance with subhead (3), and the purpose of the NDA would be to conceal or hide information regarding that experience or allegation.

Subhead (3) provides that notwithstanding subhead (2) a NDA agreement may be entered into if it has been requested in the first instance by the relevant employee. This subhead aims to address the power imbalance that often occurs between employee and employer with regards to NDAs used to conceal information about discrimination, harassment, sexual harassment and victimisation where employees may feel pressured to enter into such an agreement.

Subhead (4) sets out conditions that must be met in order for a NDA, entered into under subhead (3), to be enforceable. The conditions include that the employee must be provided with independent legal advice, funded by the employer, before entering into an NDA. This is to ensure the employee understands the implications of signing an NDA and therefore can give informed consent. The terms of the NDA must be set out in writing, be for a limited duration and have a 14-day waiting period after the NDA is signed to allow the employee to withdraw from the agreement (if they wish) before it come into force.

Subhead (5) provides that a NDA entered into under subhead (3) does not apply to communications under subhead 5(a) and 5(b) between the relevant employee and the categories of organisations or persons as set out in (i-vi), about the alleged incident of discrimination, harassment, sexual harassment or victimisation.

Subhead (6) provides that a NDA entered into under subhead (3) shall specify that it does not apply to 5(a) and 5(b) so that the relevant employee is made aware of who they can communicate with, in accordance with the terms of the NDA.

Subhead (7) sets out that any NDA entered into along the lines of subhead (3) must be written in plain English and made available in an accessible format and the Minister will provide the form and manner of the NDA in regulations.

Subhead (8) provides for a review not later than 5 years following commencement of the section.