



# Parental Rights 2020

(Does not apply in cases of IVF  
treatment or fostering)

		<b>28 June 2020</b>
Breastfeeding breaks		<b>Right to request temporary variation to terms and conditions.</b>
Breastfeeding facilities		<b>Employers must take reasonable steps to provide facilities in the workplace.</b>
Paid absence on health and safety grounds		<b>Right to paid absence where a risk assessment prevents a pregnant or breastfeeding woman from carrying out her normal job and she cannot be allocated to other duties.</b>
		<b>5 July 2020</b>
<b>Maternity leave</b>		<b>52 weeks of leave for all parents of which 6 weeks paid at 100% of pay by the employer, with no qualifying period.</b>
<b>Parental leave</b>		<b>Can be taken in up to 3 blocks of leave during a 2 year period.</b>
<b>Adoption leave</b>		
<b>Surrogacy leave</b>		
<b>Surrogate parents - antenatal care</b>		<b>Unlimited attendance at appointments - up to 10 hours paid, the rest unpaid.</b>
<b>Adoptive parents – appointments</b>		<b>Unlimited attendance at appointments - up to 10 hours paid, the rest unpaid.</b>

Breastfeeding breaks are paid if the application for these falls within the period of 52 weeks beginning with the birth of the child.

Right to request a temporary change is solely for the purpose of enable breastfeeding/expressing;

This temporary change does not affect any rights in respect of applying for a change under the legislation for flexible working;

## Family Friendly Employment Rights 2020– At a Glance

28 June 2020 5 July 2020

**Paid Suspension on H&S Grounds:** Following a risk assessment if an Employer is unable to allocate a pregnant/breastfeeding employee other duties she will have the right to paid absence.

**Breastfeeding/Expressing Breaks and facilities:** Employees can request temporary changes to their working conditions for the purpose of breast-feeding/expressing breaks. Employers will also need to take 'reasonable-steps' to provide appropriate facilities in the workplace.

**Ante Natal Appointments:** Unlimited appointments with up to 10 hours paid for attendance by the father/surrogate parents/partner, the rest are unpaid. **NB: For the mother all appointments for ante natal attendance are paid.**

**Adoption Appointments:** Unlimited appointments with up to 10 hours paid for attendance, the rest are unpaid.

**Parental Leave:** 52 weeks for all parents regardless of how long they have been employed, of which 6 weeks are paid in full by the employer. The 52 weeks can be taken in 3 blocks of time over a 2 year period. **NB: These rights extend to adoptive and intended surrogate parents.**

### Existing rights that will continue to apply

**Right to Return to Work:** All employees have the right to return to the same job after any period of parental leave.

**Complaints:** Protection against detriment and dismissal for reasons relating to these rights

**Discrimination:** Protection against discrimination on grounds of sex, pregnancy/maternity

**Flexible Working:** All employees are entitled to make one request for flexible working in a 12 month period, regardless of length of service or the purpose/reason for the request.

### What to do now:

**Staff Handbook/Policies:** Ensure this is updated to reflect these changes;

**Communicate:** To all staff these rights and ensure managers are trained in knowing how to handle temporary changes to terms and conditions;

**Consider:** What 'reasonable steps' can be made regarding the provision of facilities for breast feeding/expressing now in order to be able to respond quickly if an application is made;

**Budget:** Ensure that costs are factored into budgets for the increase in costs for the paid parental leave;

**Recruitment:** Ensure that your advertisements/policies and practices do not inadvertently allow acts of discrimination to take place.

## **Guidance note 13 to the EMPLOYMENT (JERSEY) LAW 2003 incorporating the Employment (Amendment No. 11 (Jersey) Law 2020**

### **Parental Leave Rights *effective 5 July 2020***

*This short statement is intended to explain to employers and employees the rights which are set out in Part 5A of the Employment Law (along with adoption and parental leave rights see guidance note 14a). It is not intended to cover the requirements of the Law, nor does it represent a statement of the Law. It constitutes a guide only and detailed legal advice should be taken in relation to each individual situation.*

*Guidance note 13a covers rights in respect of Breastfeeding.*

*NB: The legislation does not apply to employees undergoing IVF treatment or to the fostering of children.*

#### **The aim of this part of the Law is:**

1. to set out the rights and responsibilities of employers towards employees who are pregnant or taking part in adoption proceedings and towards second parents. and
2. Provide the statutory entitlement for employees:
  - to take time off for ante-natal care including those employees who qualify\* and
  - to take period(s) of Parental leave;

#### **Right to time off for ante-natal or pre-adoption appointments (Art 55B)**

Any pregnant employee is entitled to:

- take paid time off work to attend an ante-natal care appointment on the advice of a medical professional, during her normal working hours (as stated in her contract of employment);
- Other than her first appointment, the employee must show her employer:-
  1. A certificate from a medical professional stating that she is pregnant; and
  2. Either an appointment card or another document showing the date and time of the appointment.

\* an employee who qualifies as someone entitled to take time off during their normal working hours to accompany a woman for an ante-natal appointment is:

- someone who is married to her, or
- her civil partner, or
- her partner who is the father of the expected child.

#### **Payment for time off to attend ante-natal care/pre-adoption appointments (Art 55C)**

A pregnant employee who is entitled to take off for ante-natal care (as per Art 55B above) (whether permitted by the employer or not) is entitled to be paid at her normal hourly rate (as calculated under Schedule 1).

Any person who has a qualifying relationship with a pregnant woman has the right to paid time off for up to 10 ante-natal appointments (any additional appointments do not have to be paid).

### **Entitlement to Parental leave (Art 55D)**

An employee who qualifies as someone entitled to take time off during their normal working hours to accompany a woman for an ante-natal appointment is:

- someone who is married to her, or
- her civil partner, or
- her partner who is the father of the expected child.

An employer must not require an employee to work during any period in which the employee takes paid parental leave.

Parental leave can commence no earlier than 11 weeks before the effective date of childbirth/adoption placement and ends 2 years from the date of child birth/adoption placement.

For a period of 6 weeks, an employee is:

- Entitled to be paid their normal salary minus any sum received under the Social Security (Jersey) Law 1974 in respect of short-term incapacity benefit (Art15) or maternity allowance (Art 25);
- Entitled to all the other usual benefits as set out in their terms and conditions of employment; and
- Is bound by the provisions and obligations arising from the terms of employment.

**NB:** The rights to paid time off for ante-natal care and parental leave are effective from day 1 of employment, therefore, employees are able to exercise these rights from the first day of employment

### **Paid parental leave (Art 55E)**

During a period of paid parental leave, an employer must not require an employee to work, and the paid parental leave period must start on the day of childbirth. During the period of parental leave, an employee is entitled to 6 weeks' pay.

### **Notification of intention to take parental leave in relation to childbirth (Art 55F) and periods of parental leave (Art 55H)**

All parents are entitled to 52 weeks leave, with only the first six weeks to be paid by the employer (as set out above).

This leave can be taken in up to 3 separate blocks over a 2-year period and each block of parental leave must be of no less than 2 weeks.

Parental leave applications should not specify a date earlier than the beginning of the 11<sup>th</sup> week before the expected date of childbirth.

An employee should advise the employer in writing before the end of the 15<sup>th</sup> week (**this does not apply to adoption**) before the expected date of birth – or as soon as is reasonably practicable - of the following:

- The fact of the pregnancy
- The expected week of childbirth
- The intended start date of parental leave (and if this is not a continuous period, the dates for each period of leave)

An employer can request the employee to provide a certificate from a registered doctor, midwife or nurse, which states the expected week of childbirth.

An employee who has notified the employer of start date for parental leave may vary this original date in writing of a new date by whichever is the earlier of the following:

- 42 days before the original date; or
- 42 days before the new date

Or if neither of the above are reasonably practicable, then as soon as it is reasonably practicable to do so.

An employer upon receipt of a new date notification must take all reasonable steps to accommodate the request intended for the second and third parental leave periods. The consideration in respect of reasonable steps a include:

- The financial, administrative and other resources available to the employer;
- The nature and size of the business;
- The implications in respect to other employees and of the employer; and
- The requirement to ensure that any second/third parental leave period must take place within the 2 year period (starting with the birth/adoption placement of the child)

### **Notification of intention to take parental leave in relation to adoption (Art 55G)**

Notification in respect of parental leave must be given to the employer:

- No later than 7 days after the date on with the employee receives official notification of having been matched with a child for adoption, or in the case of an overseas adoption after the employee receives notice of the date on which the child is to arrive in Jersey.

Notification in writing should include:

- The intended adoption
- The expected week of adoption
- The date on which the employee intends a period of parental leave to begin, and
- The duration of that period of parental leave

If it is not reasonably practical to advise the employer as above then the employee should advise the employer as soon as such date is known.

### **Application of terms and conditions during unpaid parental leave (Art 55I)**

An employer must not require an employee to work during any period of parental leave to which the employee is entitled.

During any period of parental leave an employee:

- Has the right to all the usual benefits as set out in their terms and conditions of employment except remuneration\*; and
- is bound by the provisions and obligations arising from the terms of employment.

*\* other than any salary, wages, commission or bonus for work done prior to commencing ordinary maternity leave. If any sums are payable to the employee during parental leave by way of wages or salary, the employer may deduct any sum that the employee received under the Social Security (Jersey) Law 1974 in respect of short-term incapacity benefit (Art 15) or maternity allowance (Art 25);*

### **Work during parental leave period (Art 55J)**

An employee may agree to work (but cannot be required to work) during any period of parental leave. Work can include any training or activity undertaken as part of the keeping in touch with the workplace. Keeping In Touch (KIT) days:

- do not bring the parental leave to an end;
- are treated as a day's work;
- do not extend the length of the parental leave period.

Reasonable contact between the employee and the employer to enable them to have a discussion about an employee's return to work does not:

- constitute work; or
- end the period of parental leave.

### **Notification of intention to return to work (Art 55K)**

If an employee wishes to return to work from parental leave at an earlier date than was previously notified and agreed with the employer, the employee must give the employer not less than 42 days' notice of the intended date of return in writing

Under the provisions of this part of the Employment Law, the employer is entitled to receive at least 42 days' notice of an intention to return to work earlier than the end of the parental leave period in question, and may postpone the employee's return to such a date as enables 42 days' notice to elapse. What an employer cannot do is postpone the return to work to a date after the end of the parental leave period.

If an employee returns to work despite a postponement by the employer there is no contractual obligation on the part of the employer to make any payment until the postponed date of return.

An employer must take all reasonable steps to accommodate an employee's intended early return to work. In determining what 'reasonable steps' are, the matters to be considered are:

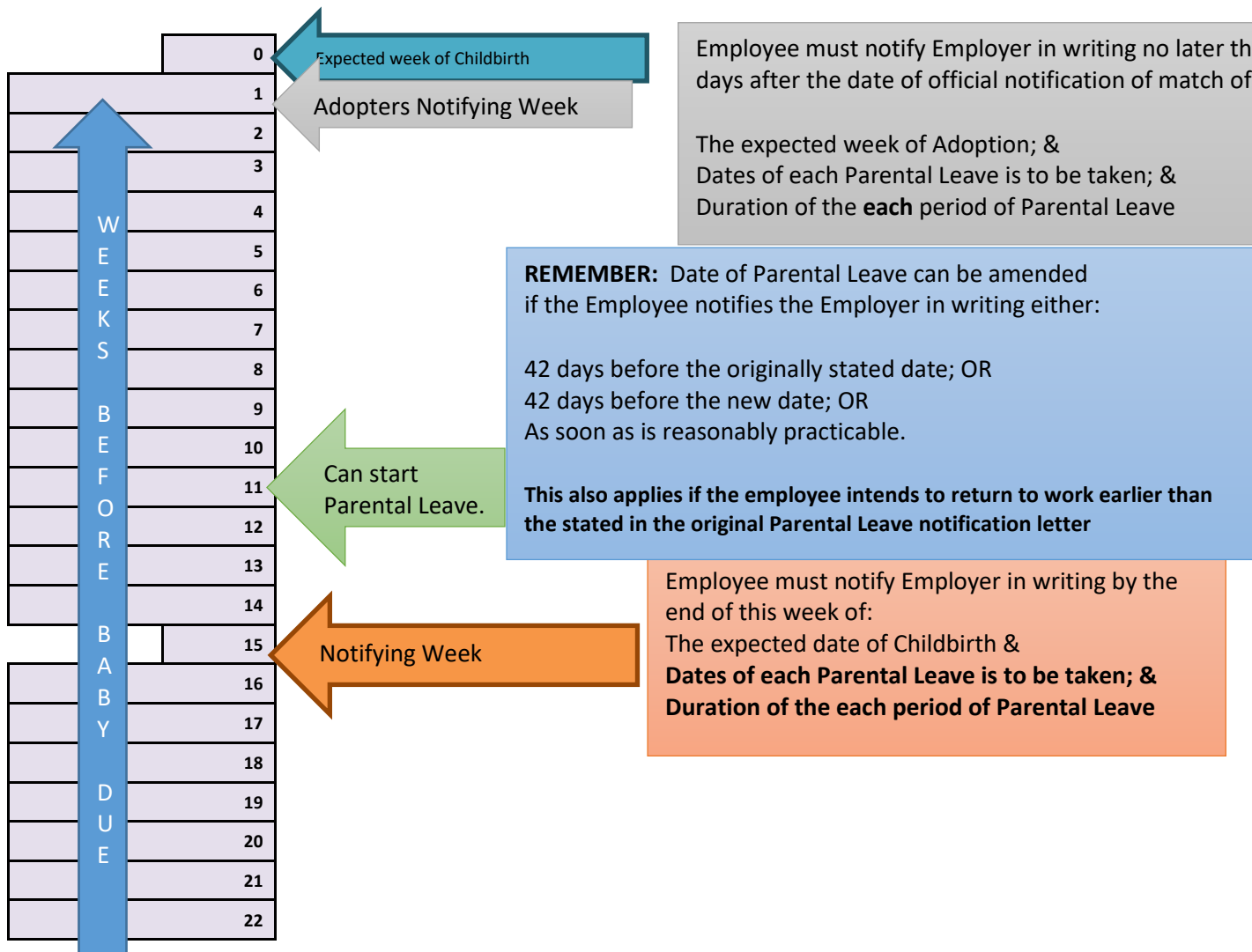
- The financial, administrative and other resources available to the employer;
- The nature and size of the business;

- The requirement to ensure that any second/third parental leave period must take place within the 2 year period (starting with the birth/adoption placement of the child)

**Right to return after parental leave (Art 55L)**

An employee is entitled to return to work after the end of a period of parental leave to the job they were employed in immediately before going on parental leave and this entitlement is to return:

- with seniority, pension and other similar rights as if the employee had not been absent;
- on terms and conditions that are no less favourable than those which would have applied had the employee not been absent.





# STATUTORY PARENTAL LEAVE REQUEST FORM

***In relation to a Pregnancy: Employees must complete this form no later than the end of the 15<sup>th</sup> week before childbirth and provide a copy of the documentation issued by a medical professional.***

***In relation to an Adoption: Employees must complete this form no later than 7 days after being matched with a child or, where relevant, receiving notification of the date the child will arrive in Jersey, and provide a copy of the notifying documentation.***

1. **Employee's Name:** .....

2. **Expected Week of Birth/Placement Date/ Arrival in Jersey Date:**  
.....

3. **You confirm the following:**

I expect to have responsibility for raising the child

**By ticking this box, I confirm that the above is correct:**

- I am the father of the child; or
- I am married to, the civil partner of, or the partner of the child's mother/adopter.

**By ticking this box, I confirm that at least 1 of the above 2 bullet points is correct:**

If the child is not born/adopted by your first date, you must substitute a different start date.

4. **Statutory Entitlement is for 52 weeks to be taken in a 2 year period in up to 3 blocks of leave and not less than 2 weeks at a time. Intended dates for ALL parental leave periods must be set out below:**

**Start Date of Parental Leave:** .....

**End Date of Parental Leave:** .....

4a If you are taking Parental Leave in more than one block please set out all additional start and end dates below:

**2. Start Date of Parental Leave:** .....

**End Date of Parental Leave:** .....

**3. Start Date of Parental Leave:** .....

**End Date of Parental Leave:** .....

I understand that if I wish to change this date I must give 42 days' notice.

**Employee:**

**Signed:** ..... **Date:** .....

**Employer:**

**Signed:** ..... **Date:** .....

## Social Security Parental Allowance

**1 January 2021**

The States Assembly approved the new scheme (from 1 January 2021) in respect of Parental Leave Benefits which also applies to parents adopting a child. The main provisions are set out below, however further details are available on the link:

<https://www.gov.je/benefits/maternityfamilysupport/pages/parentalallowance.aspx>

### Parental Allowance based on Social Security contributions

- Paid weekly in arrears for a maximum of 6 weeks per parent and paid (see below) directly into their bank account. NB: for the birth mother (including a mother whose child is going to be placed with surrogate parents) the 6 weeks commences immediately following the birth, for the other parent their 6 weeks can be claimed at any time in the two years following the birth/adoption.
- A further 20 weeks is available to take by one parent or shared between the two parents – this is not available to the birth ('host mother under the legislation) mother whose child is going to be placed with surrogate parents
- The 32 week's allocation can be taken in no more than three blocks (per person) in a two year period following the birth/adoption. Such blocks should not be less than 14 days.
- Can be claimed any time from 11 weeks prior to the due date (until the due date) but must have finished working.
- Claims are submitted after the 28th week midwife appointment online with the midwife/social worker completing the first part of the form before emailing to the parent for their completion;

**NB: Parents cannot claim Parental Allowance whilst working. This however does not affect Keeping in Touch Days.**

## **Guidance note 13a to the EMPLOYMENT (JERSEY) LAW 2003 incorporating Employment (Amendment No. 11 (Jersey) Law 2020**

**Effective 28 June 2020**

### **Breastfeeding/Expressing**

*This short statement is intended to explain to employers and employees their rights in respect of Pregnancy and Breastfeeding rights which are set out in Part 3B of the Employment Law. It is not intended to cover the requirements of the Law, nor does it represent a statement of the Law. It constitutes a guide only and detailed legal advice should be taken in relation to each individual situation.*

*Guidance note 13 covers rights in respect of Parental Leave*

#### **The aim of the Law is to:**

Provide the statutory entitlement for employees:

3. to take leave for periods where issues around Health and Safety arise;
4. to request a temporary variation of terms of employment for the purpose of breastfeeding

#### **Entitlement to leave during pregnancy or breastfeeding (Art 15G)**

Applies to any employee who has notified her employer in writing that she is pregnant, given birth within the last 6 months or is breastfeeding.

An employee that falls into any of the above categories is entitled to any period of leave during which it is not reasonably practicable for:

- the employee (following a Health and Safety risk assessment) to fulfil her normal duties of her employment; and
- the employer to allocate the employee to other duties, alter her duties or make the appropriate changes to the work environment to enable the employee to continue working.

Such a period of leave shall be paid at the rate set out in Schedule 1 of the legislation and does not affect the right of the employee to payment under her employment contract.

The employer does not have to grant leave under this Article if:

- the employee has notified the employer she is pregnant but within a reasonable time failed to produce a certificate of her pregnancy from:
  - (i) a registered medical practitioner,
  - (ii) a registered midwife, or
  - (iii) a registered nurse.
- where the employer knows (or cannot establish) that the employee is not, or is no longer, a new or expectant mother.
- the employee has unreasonably refused to accept suitable alternative employment at the same rate of pay as her existing employment.
- When the employee's employment ends as per the terms of employment.

## **Entitlement to request temporary variation to terms of employment for the purpose of breastfeeding (Art 15H).**

An employee who is breastfeeding is entitled to request a temporary variation to her terms of employment for the sole purpose of enabling her to breast feed, if the variation relates to:

- The hours during which the employee is required to work;
- The times the employee is required to work;
- The place where the employee is required to work.

When making the request the employee must state:

- The purpose of the variation; and
- what the variation being requested is and the period of time it would be in place for.

Any request made under this Article does not affect an employee's right to request flexible working as set out in Article 15A (see Guidance Note 12).

## **Employer's duties and employee's rights in relation to variation under Art 15H and Art 15J (Art 15I)**

See the JACS flowchart in respect of this Article.

## **Employer's duty to provide facilities for breastfeeding (Art 15K)**

This Article applies to any employee who:

- continues to breastfeed, following her return to work; and
- gives notice to her employer that she requires facilities to be provided in the workplace for that purpose.

The employer must take all reasonable steps to provide facilities within the workplace for breastfeeding, such reasonable steps to be considered are:

- the extent to which any steps are, or would be if taken effective to provide suitable facilities;
- the extent to which any steps are, or would be if taken practical;
- the cost of any steps which could be taken;
- the financial, administrative and other resources available to the employer.

See JACS guide to Breastfeeding in the Workplace.

## **Temporary Variation For Breastfeeding/Expressing Purposes**

### **Temporary Variation maybe:**

Change to working hours;  
Change to work times;  
Change of work place.

### **Employer will need to:**

Take all reasonable steps to provide facilities for breastfeeding/storage;  
Pay for any breaks in relation to breastfeed.

Temporary Variation to Work  
Application Received

Within 7Days

Meet with Employee

Within 14 days of Application

Application Agreed

Application Refused

Within 7 days

Appeal Lodged

Within 7 days

Meet with Employee

Appeal Upheld

Within 7 days

Appeal Declined

## **Guide for Breastfeeding in the Workplace**

Changes to the legislation effective from 28 June 2020 makes provision for an employee who is breastfeeding to request her employer provides facilities for breastfeeding/expressing milk. Discuss with the employee her return to work following a period of parental leave to understand what may be done to assist their return that is both proportionate and reasonable in the provision of facilities, and whether a temporary variation to terms of employment allowing for flexible working or additional paid breaks may be made available.

The legislation sets out that an employer must take all reasonable steps to provide facilities within the workplace for breastfeeding, such reasonable steps to be considered are:

- the extent to which any steps are, or would be if taken effective to provide suitable facilities;
- the extent to which any steps are, or would be if taken practical;
- the cost of any steps which could be taken;
- the financial, administrative and other resources available to the employer.

The following is a list of things for an employer may wish to consider:

- **Flexibility** – to allow the employee to go home or attend the day care facility if either are close to the workplace, in order to breastfeed the child which may mean allowing some extended breaks under a temporary change to working hours or temporary flexible working. There is **no** entitlement for the employee to be paid for any additional time.
- **Facilities** – private and hygienic space which is safe and secure – the ladies/disabled toilet is not an appropriate space for breastfeeding or expressing milk, but think about a meeting room or a quiet area that can be screened off.
- **Fridges** – many businesses already have fridges in staff refreshment areas, so consideration as to whether expressed milk could be stored securely and hygienically there should be given. If a fridge is not available then the employee may wish to use vacuum flasks to safely store any expressed milk.
- **For how long?** – the employee must advise the employer how long this temporary arrangement will be in place for.

Please bear in mind the list above does not imply that a baby can be brought into the workplace.

As a matter of good employment practice a note should be kept of any discussions and decisions made in respect of the temporary arrangement entered into.

January 2021