

Parenthood

What legislation regulates Parenthood?

Articles 33 to 65 of the TC; articles 9, 10, 15, 16, 18 to 21, 29 to 31, 33 and 35 to 37 of Decree-Law no. 91/2009, of 9 April 2009

What is a pregnant worker?

A pregnant worker is considered that who informs her employer of her condition in writing with a medical certificate.

What is a child labourer?

A worker who is pregnant and for a period of 120 days after giving birth informs her employer of her condition in writing with a medical certificate or birth certificate of the child.

What is a breastfeeding worker?

A worker who breastfeeds her child and informs her employer of her condition, in writing, with the presentation of a medical certificate.

Which rights are granted in Parenthood?

1. leaves;
2. Dismissals;
3. Faults;
4. Particularities regarding working time;
5. Safety and health protection;
6. Protection in case of dismissal.

Which are the modalities of parental leave?

The modalities of parental leave are:

- Initial parental leave
- Initial parental leave exclusive to the mother
- Initial parental leave by one parent if the other is not possible
- Father's exclusive parental leave

What is the initial parental leave?

The right of the working mother and father, enduring 120 or 150 consecutive days, by option, which can be shared after the birth.

Leave between 120 and 150 days can be taken simultaneously by both parents.

The enjoyment of initial parental leave simultaneously of mother and father working in the same company, which is a micro-company (up to 9 employees), depends on an agreement with the employer.

The initial parental leave (120 or 150 days) is increased by 30 extra days if each parent exclusively takes a period of 30 consecutive days, or two periods of 15 consecutive days.

(In the case of shared enjoyment of leave, the father and mother must submit to their employers a joint statement, no later than seven days after the birth, indicating the beginning and end of the periods to be taken by each. In the absence of the joint declaration, the leave is taken by the mother).

If it is not shared, the parent taking the leave must inform his/her employer, within seven days after the birth, of the duration of the leave and the beginning of the its period.

In the case of multiple births, to each twin 30 extra days are added to the first.

How much is the initial parental allowance?

a) For the period corresponding to the 120-day leave, the daily amount is equal to 100% of the reference pay;

b) For the 150-day period, the daily amount is equal to 80% of reference pay;

c) in the case of the 150-day leave option in situations where each parent takes at least 30 consecutive days, or two equally consecutive 15-day periods, the daily amount shall be equal to 100% of the reference pay of the beneficiary;

d) in the case of the 180-day leave option, where each parent has at least 30 consecutive days or two equally consecutive periods, the daily amount shall be equal to 83% of the reference salary of the beneficiary.

What does the mother's initial exclusive parental leave consist of?

- The mother can take up to 30 days of initial parental leave before the birth.

- The mother must take six weeks of leave after the birth.

What does initial parental leave by one of the parents consist of, if the other cannot take it up?

The father or mother is entitled to a leave of the legally prescribed duration, or of the remaining period in cases of absence:

- Physical or mental incapacity of the parent taking it;

- Death of the parent taking it.

Into what does the father's exclusive parental leave consist?

- It is compulsory for the father to take parental leave of 15 working days, followed or interpolated, within 30 days after the birth of the child.

- Five of those days must be taken consecutively immediately after the birth of the child.

- The father may also take a further 10 working days of leave, consecutive or interpolated, provided they are taken at the same time as the mother's initial parental leave.
- The employee must give his/her employer as much notice as possible, which may not be less than five days in the case of taking the optional 10 days.
- In the case of multiple births, two days shall be added for each twin in addition to the first.

What is the daily amount of parental allowance exclusive to the father?

It is equal to 100% of reference pay.

What does complementary parental leave consist of?

The father and mother are entitled, for the care of the child, or adopted at the age of not more than six years, to additional parental leave in any of the following ways:

- Extended parental leave, for three months;
- Part-time work for 12 months;
- Intermediate periods of extended parental leave and part-time work;
- Interpolated absences from work of a duration equal to the normal working periods of three months, if they are provided for in a collective working regulation instrument.

How much is the extended parental allowance?

It is granted for a period of up to three months to either or both parents, alternately, and is equal to 25% of the beneficiary's reference pay, provided that the extended leave is taken immediately after the initial parental allowance or extended parental allowance of the other parent is granted.

What is childcare leave?

- Once the right to additional parental leave has been exhausted, the parents are entitled to consecutive or interpolated childcare leave up to a maximum of two years.
- In the case of a third child or more, the leave is limited to three years.
- In the absence of any indication to the contrary from the employee, the leave is for six months.
- In the case of two holders, the leave may be taken by either or both of them in successive periods.
- For the exercise of the right, the employee shall inform the employer in writing, 30 days in advance:
 - a) The beginning and end of the period in which he/she intends to take the leave;
 - b) That the other parent has a professional activity and is not at the same time on leave, or that he/she is prevented or inhibited from exercising parental power;
 - c) That the minor lives with him in communion at table and in housing;
 - d) That the maximum period of leave is not exhausted.

What does the childcare leave consists of?

- Parents are entitled to leave of up to six months, extendable to four years, to care for a disabled or chronically ill child.
- If the disabled or chronically ill child is older than 12 years, the need for care is confirmed by a medical certificate.
- The procedures indicated for childcare leave apply.

What is the amount of the allowance for the caring of a disabled or chronically ill child?

You are entitled to an allowance, the daily amount of which is equal to 65% of the reference pay.

Which service waiver is there for caring for a child with a disability or chronic illness?

- Waiver for assessment for adoption
- Waiver for antenatal appointment
- Waiver for breastfeeding or breast-feeding

In which consists the waiver for evaluation for adoption?

Workers have the right to three dismissals so they can address the social security services or to receive the technicians at their home, and must present the justification to the employer.

What is an antenatal appointment waiver?

- Pregnant women workers are entitled to time off from work for prenatal appointments for as long and as many times as necessary.
- Preparing for childbirth is treated in the same way as prenatal care.
- Whenever possible, the consultation should be made outside the normal period of work;
- The employer may require proof that the consultation was not possible outside the normal period of work and that it was not carried out.
- For follow-up antenatal consultations, the father is entitled to three waivers.

The dispensation does not lead to the loss of any rights and is considered as effective work performance.

What is the waiver for breastfeeding or breast-feeding?

- The mother who breastfeeds her child is entitled to time off from work for the duration of the breastfeeding period.
- Until the child is one year old, and provided that both parents are engaged in professional activity, either or both, by joint decision, are entitled to time off from work for breastfeeding.

- The dispensation for breastfeeding or breast-feeding is taken in two distinct periods, each lasting a maximum of one hour, unless agreed with the employer.
- If there are multiple births, the dispensation is increased by 30 minutes for each twin in addition to the first.
- The worker must notify the employer 10 days before the start of the dispensation for breastfeeding, with presentation of a medical certificate if the dispensation extends beyond the child's first year of life.
- For the purpose of dispensation for breastfeeding, the parent:
 - a) Informs the employer that he/she is breastfeeding the child 10 days in advance;
 - b) Submits a document containing the joint decision;
 - c) Declares how long the other person has been exempted, if applicable;
 - d) Provides evidence that the other parent is engaged in professional activity.

The waiver does not cause the loss of any rights and is considered as effective work performance.

Which faults are there regarding the concept of parenthood, as far as children and grandchildren are concerned?

Absence for child care:

- Until 30 days per year, or during the whole period of possible hospitalisation, to provide urgent and essential assistance, in case of illness or accident, to a child under 12 years of age, or regardless of age, to a disabled or chronically ill child.
- Until 15 days a year to provide essential and unavoidable assistance in case of illness or accident to a child who is 12 years of age or older and who is part of the household.
- Each child is given one day in addition to the first.
- The employer may require proof of the unavoidable and indispensable nature of the assistance and a declaration that the other spouse is engaged in professional activity and is not absent for the same reason or is unable to provide the assistance.

The worker is entitled to an allowance, which is equal to 65% of the beneficiary's reference salary.

Grandchild care in lack:

- Up to 30 consecutive days after the birth of a grandchild living with the worker at the table and in the house and being a child of an adolescent under 16 years old.
- When there are two entitled holders, there is only one period of absence, to be taken by one of them, or by both in part-time or in successive periods, according to a joint decision.
- The employee may also be absent, in substitution of the parents, to provide urgent and essential assistance, in case of illness or accident, the grandchild or, regardless of age, with disability or chronic illness.
- For the purpose of absenteeism to assist the grandchild, the employee informs the employer, five days in advance, stating that the grandchild lives with him/her in communion at the table and in the dwelling, that the grandchild is a child of an adolescent under 16 years of age, and that the spouse exercises professional activity or is physically or psychically unable to take care of the grandchild or does not live in communion at the table and in the dwelling with him/her.

Art. 50 of the Labour Code (CD) regulates other situations of absence to assist the grandchild.

For child care, how much is the allowance?

The daily amount of the childcare allowance is, depending on the method, as follows:

- In the case of childbirth care allowance, equal to 100% of the beneficiary's reference pay;
- In the case of a grandchild care allowance, 65% of the reference pay.

Which particularities are there regarding working time?

- Reduction of working time for the care of children with disabilities or chronic illness;
- Part-time work for an employee with family responsibilities;
- Flexible working hours of employees with family responsibilities;
- Exemption from some forms of organisation of working time.

In what way is working time reduced on order to care for a child with a disability or chronic illness?

- Parents of minors with a disability or chronic illness, not older than one year, are entitled to a five-hour reduction in the normal weekly working period.
- When one parent is not employed and is not prevented or inhibited from exercising parental power, there is no place to exercise this right.
- If both parents are entitled to the right, the reduction in working hours may be used by either parent, or by both in successive periods.
- The employee must notify the employer of his/her intention 10 days in advance:
 - a) Present a medical certificate proving the disability or chronic illness;
 - b) Declare that the other parent has professional activity or is prevented or inhibited from exercising parental power and, if applicable, that he/she does not exercise this right at the same time.

What does part-time work of a worker with family responsibilities consist of?

- A worker with a child under 12 years of age or, regardless of age, with a disability or chronic illness living with him or her, is entitled to work part-time.
- The right may be exercised by either or both parents in successive periods after the complementary parental leave.
- An employee who wishes to work part-time must apply in writing to his employer 30 days in advance.
- Employees who choose to work part-time may not be penalised in terms of evaluation and career progression.

In to what does the flexible working hours of a worker with family responsibilities consist?

- An employee with a child under 12 years of age or, regardless of age, with a disability or chronic illness living with him or her, has the right to work flexible hours, which can be exercised by either or both parents.
- Flexible working hours are defined as those in which the worker can choose, within certain limits, the hours at which the normal daily work period begins and ends.
- The employee who wishes to work flexitime must ask the employer in writing 30 days in advance.
- An employee who chooses to work flexitime cannot be penalised in terms of evaluation and career progression.

What does the waiver of some forms of organisation of working time consists of?

- A pregnant worker, worker who has recently given birth or who is breastfeeding is entitled to be exempted from working hours organised on an adaptable basis, on a bank of hours or on a concentrated basis.
- Pregnant workers as well as workers having children under 12 months of age are not obliged to work overtime.
- The worker is not obliged to work overtime for the duration of breastfeeding if this is necessary for her or the child's health.
- The worker has the right to be excused from work between 20 hours one day and 7 hours the next:
 - a) For a period of 112 days before and after the birth, at least half of which is before the expected date of birth;
 - b) During the remainder of the pregnancy, if this is necessary for your health or that of the unborn child;
 - c) During the period of breastfeeding if it is necessary for your health or that of the child.

What protection is there regarding security and health?

- No specific risks;
- Leave at clinical risk during pregnancy;
- Leave for termination of pregnancy.

What is the waiver for specific risks?

- A pregnant worker, worker who has recently given birth or who is breastfeeding is entitled to special safety and health conditions in the workplace in order to avoid exposure to risks to her safety and health.

- Labour legislation protects pregnant workers, workers who have recently given birth or workers who are breastfeeding by conditioning or prohibiting their activity with certain physical agents (shock, mechanical vibration, noise, extreme temperatures of cold or heat, ionising or non-ionising radiation, atmospheres with high overpressure, etc.), biological agents (rubella virus, toxoplasma transmission) and chemical agents (exposure to mercury, carbon monoxide, hazardous chemical agents, lead, etc.), and it is also forbidden for pregnant or breastfeeding women to work underground in mines.

- The activities provided for in Articles 57 to 60 of Law no. 102/2009, of 10 September, are also subject to the pregnant worker, who has recently given birth or is breastfeeding.

- In activities likely to present a specific risk of exposure to agents, processes or working conditions, the employer shall assess the nature, degree and duration of exposure of a pregnant worker, worker who has recently given birth or worker who is breastfeeding, in order to determine any risk to her safety and health and the repercussions on pregnancy or breastfeeding, as well as the measures to be adopted.

- The employer shall take the necessary measures to prevent the worker from being exposed to such risks, in particular:

a) Adapt working conditions;

b) If the adaptation is impossible, excessively long or too costly, the employer must assign the worker other tasks compatible with her condition and occupational category;

c) If the measures referred to in (a) or (b) are not feasible, the employer must give the worker time off work.

If the employer does not comply with his obligations in terms of safety and health, the pregnant worker, worker who has recently given birth or who is breastfeeding, or their representatives, have the right to request an inspection by the Authority for Working Conditions, to be carried out with priority and urgency.

What is the amount of the specific risk allowance?

During the period of the leave, the woman is entitled to social security allowance, the daily amount of which is 65% of the reference pay.

What is the clinical license at risk during pregnancy?

- In a situation of clinical risk for the pregnant worker or the unborn child, regardless of the reason that determines this impediment and whether or not it is related to the working conditions, if the employer does not provide the worker with an activity compatible with her condition and professional category, the worker is entitled to leave, for as long as it is considered necessary by medical prescription.

- The worker informs the employer 10 days in advance or, in case of urgency proven by the doctor, as soon as possible.

How much is the allowance amount per clinical risk?

During the period of leave, the woman is entitled to a social security allowance, the daily amount of which is 100% of the reference salary.

Which protection is there in case of dismissal of a pregnant worker?

- The dismissal of a pregnant worker, a worker who has recently given birth or is breastfeeding, or a worker on parental leave requires a prior opinion from the competent authority for equal opportunities between men and women (ISCED).

- Dismissal of a pregnant worker, worker who has recently given birth or is breastfeeding, or a worker on parental leave, is presumed to have taken place without just cause.

- If the opinion of CITE is unfavourable to the dismissal, the employer may only do so after a court decision recognising the existence of the justifiable reason, with the employer having 30 days to file the respective legal action.

- If the dismissal is declared illegal, the employer may not oppose the worker's reintegration, and the worker is entitled, as an alternative to the reintegration, to compensation, determined by the court between 30 and 60 days of basic pay and duttonites for each full year or fraction of seniority.

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