

Parental Leave Act (1995:584)

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Amendments: up to and including SFS 2006:442

The persons who are subject to the Act

Section 1 An employee has the right, as a parent, to leave from her or his employment in accordance with this Act.

The same right extends to an employee who:

1. although not a parent, is the legal custodian and takes care of a child;
2. has taken a child for permanent care and fosterage into her or his home;
3. is permanently living together with a parent provided that the employee is, or has been, married to, or has, or has had, a child with that parent.

Section 16 contains provisions on the prohibition of disfavourable treatment of job applicants and employees. (SFS 2006:442)

Agreement between employer and employee

Section 2 An agreement which limits an employee's rights under this Act is invalid in that respect.

However, by a collective bargaining agreement that has been entered into or approved on behalf of the employees by a central employees' organisation which is referred to in the Employment (Co-determination in the Workplace) Act (1976:580), deviations from the Act may be made in respect of issues regarding:

- notice regarding leave (Section 13),
- the time for the employee's notification of her or his return to work (Section 15, second paragraph),
- the time that the employer is entitled to postpone the employee's return to work (Section 15, third paragraph).

By a collective bargaining agreement that has been concluded in the manner described in the second paragraph, the detailed application may also be determined regarding issues relating to:

- the distribution of leave (Sections 11 and 12),
- the prohibition of disfavourable treatment (Section 16).

Employers who are bound by collective bargaining agreements according to the second or third paragraph may also apply the agreement to employees who are not members of the contracting employees' organisation if the employees are engaged in the type of work referred to in the agreement and are not covered by any other applicable collective bargaining agreement. (SFS 2006:442)

The right to leave

Overview of the different types of parental leave for employees

Section 3 There are five types of parental leave for care of children, etc., namely:

1. Full leave for a female employee in connection with her child's birth and for breast feeding (maternity leave, Section 4).
2. Full leave for a parent until the child has reached 18 months or, subject to the parent's receipt of full parental benefit, for time thereafter (full leave with or without full parental benefit, Section 5).
3. Leave for a parent in the form of a reduction of normal working hours by three quarters, one half, one quarter or one eighth while the parent has three quarters, one half, one quarter or one eighth parental benefit respectively (partial leave with parental benefit, Section 6).
4. Leave for a parent in the form of a reduction of normal working hours by up to one quarter until, in most cases, the child reaches the age of eight years (partial leave without parental benefit, Section 7).
5. Leave for an employee's temporary care of a child (leave with temporary parental benefit, etc., Section 8).

Sections 18 – 21 contain special provisions concerning leave and transfer of female employees who are expecting children, have recently given birth to children, or who are breast feeding. (SFS 2006:442)

Maternity leave

Section 4 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. Sections 10 - 15 do not apply to leave for breast feeding. (SFS 2000:580)

Full leave with or without parental benefit

Section 5 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. (SFS 2006:442)

Partial leave with parental benefit

Section 6 During the period of time that a parent receives three quarters, one half, one quarter or one eighth parental benefit under Chapter 4 of the National Insurance Act (1962:381), the parent is entitled to a reduction of the normal working hours by three quarters, one half, one quarter or one eighth respectively. (SFS 2006:442)

Partial leave without parental benefit

Section 7 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. (SFS 2006:442)

Leave with temporary parental benefit, etc.

Section 8 An employee is entitled to leave during the period in which the employee receives temporary parental benefit under Chapter 4, Section 10, 10a, 10b, 11 or 11a of the National Insurance Act (1962:381).

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. (SFS 2004:1251)

Distribution of leave

The number of periods of leave

Section 10 Leave may be divided into a maximum of three periods for each calendar year. If a period of leave continues into the following year, it shall be regarded as relating to the calendar year in which the leave was commenced.

Notwithstanding this limitation, leave with temporary parental benefit, etc., under Section 8, or leave for parental education, etc. under Chapter 4, Section 4, second paragraph of the National Insurance Act (1962:381) may be divided into non-consecutive periods.

How leave may be taken out as full leave

Section 11 The employee is entitled to take full leave on the day or days the employee requests.

How leave may be taken out as reduced working hours

Section 12 When the working hours are reduced, 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. (SFS 2001:143)

Notice and decisions regarding leave

Section 13 An employee who wishes to exercise her or his right to leave under Section 4, 5, 6 or 7 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 who wishes to exercise her or his right to leave with temporary parental benefit under Section 8, shall give notice regarding the leave to her or his employer not later than one week prior to the commencement of the leave. However, if the reason for the leave is, however, illness or contagion, no period of notice is required.

Section 14 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. (SFS 2001:143)

Resumption of work

Section 15 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.

Prohibition of disfavourable treatment

Section 16 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. (SFS 2006:442)

Section 17 If an employee is given notice of termination or is summarily dismissed solely for reasons related to parental leave under this Act, the notice of termination or summarily dismissal shall be declared invalid, if the employee so requests. (SFS 2006:442)

Specific conditions relating to an employee who is expecting a child, has recently given birth to a child or is breast feeding

Section 18 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)

Section 19 A female employee who is expecting a child and, as a result, 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.

Section 20 The right to transfer under Sections 18 and 19 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, under the provisions of Sections 18 and 19, insofar as it is necessary to protect her health and safety, though without retaining employment benefits during the period to which the leave relates.

If an opportunity for transfer arises which is estimated to last a minimum of one month, the employer shall offer the position to the woman.

Section 21 Any person who wishes to exercise her or his right to transfer under Section 18 or 19 shall give notice thereof to the employer. In the event that the need for transfer is necessitated by the fact that the woman, due to pregnancy, cannot perform physically demanding work tasks, notice shall be given not later than one month in advance. In other cases, notice shall be given as soon as is practicable. Following notice, the employer shall provide information regarding the possibility of transfer as soon as is practicable. If a transfer cannot be made, the employer shall periodically review the possibility of a transfer.

Damages

Section 22 An employer who violates this Act shall pay damages for any losses suffered and for any infringement that occurred.

Where reasonable, the damages may be reduced, in whole or in part.

Procedure

Section 23 Proceedings regarding the application of this Act shall be dealt with in accordance with the Proceedings in Labour Disputes (Judicial Procedure) Act (1974:371). In the event a claim is pursued by reason of notice of termination or summary dismissal, Sections 34 and 35, Section 37, Section 38, second paragraph, second sentence, Sections 39 - 42 and Section 43, first paragraph, second sentence and second paragraph of the Employment Protection Act (1982:80) shall apply in relevant parts. As regards other actions, Sections 64 - 66 and Section 68 of the Employment (Co-determination in the Workplace) Act (1976:580) shall apply *mutatis mutandis*.

Burden of proof

Section 24 If a job applicant or an employee proves circumstances that give cause to assume that he or she has been disfavoured for reasons related to parental leave, it is the employer who shall prove that no such disfavour has occurred or that the disfavour is a necessary consequence of the parental leave. (SFS 2006:442)

Right to bring an action

Section 25 In a dispute under Section 16 or 17, the Equal Opportunities Ombudsman may bring an action on behalf of an individual employee or job applicant. The action shall be brought in the Labour Court. When an employee's organisation is entitled to bring an action on behalf of the individual under Chapter 4, Section 5 of the Labour Disputes (Judicial Procedure) Act (1974:371), the Equal Opportunities Ombudsman may only bring an action if the organisation does not do so.

Actions that are brought by the Equal Opportunities Ombudsman shall be dealt with as if the action had been brought by the employee or job applicant on their own behalf. The provisions of the Labour Disputes (Judicial Procedure) Act governing matters relating to the standing of an individual in the litigation shall also apply when actions are brought by the Ombudsman. (SFS 2006:442)