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TO
THE SOVEREIGN BASE AREAS GAZETTE
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LEGISLATION

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EMPLOYMENT (PARENTAL LEAVE AND LEAVE ON GROUNDS OF FORCE MAJEURE) ORDINANCE 2012

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EMPLOYMENT (PARENTAL LEAVE AND LEAVE ON GROUNDS OF FORCE MAJEURE) ORDINANCE 2012

An Ordinance to provide for parental leave and leave on grounds of force majeure

G. E. STACEY
ADMINISTRATOR

23rd July 2012.

BE it enacted by the Administrator of the Sovereign Base Areas of Akrotiri and Dhekelia as follows:—

PART 1

Preliminary

1. Short title and commencement

This Ordinance may be cited as the Employment (Parental Leave and Leave on Grounds of Force Majeure) Ordinance 2012 and comes into force on 1 September 2012.

2. Interpretation

(1) In this Ordinance—

“continuously employed” includes successive fixed-term contracts of employment;

“Crown” means Her Majesty in right of Her Government in the United Kingdom and in right of Her Administration in the Areas;

“dependent family member” means a child, spouse, parent, brother, sister, grandparent;

“disabled” in relation to a person means a physical or mental impairment that has a substantial and long-term effect on the person’s ability to carry out normal day-to-day activities;

“employment” means a contract of employment or a contract of apprenticeship;

“parental leave” is the unpaid period of leave taken for the purpose referred to in section 4(1);

“position” in relation to an employee returning after parental leave means the nature of the work which the employee is employed to do in accordance with the employee’s employment and the capacity and place in which the employee is so employed;

“Tribunal” means the Industrial Disputes Tribunal established under section 16 of the Annual Holidays with Pay Ordinance 1973(a);

“widowed parent” means a parent of a child or children whose other parent has died;

- (2) A reference to an employer of an employee is to be read by reference to the definition of employment.
- (3) A person holding private or public office is an employee for the purpose of this Ordinance and the person responsible for paying that person is an employer.

PART 2

Parental leave

3. Entitlement to parental leave

An employee may take parental leave if the employee—

- (a) has been continuously employed by the same employer for a period of not less than 6 months; and
- (b) is the birth or adoptive parent of 1 or more children.

4. Parental leave: amount and right to transfer

- (1) Subject to subsection (2), an employee may take a total of 18 weeks of unpaid parental leave for each child of the employee in order to take care of or participate in the raising of the child.
- (2) A widowed parent may take a total of 23 weeks of unpaid parental leave.
- (3) If a parent has more than 1 child, the parent may take parental leave for each child irrespective of the number of children born in the same confinement.
- (4) Subject to subsection (5), the entitlement to parental leave is personal and may not be transferred to another person.
- (5) If a parent (A) has taken parental leave of at least 2 weeks in respect of a child, A may transfer to the other parent of the child (B) 2 weeks of A's remaining parental leave for that child which is added to B's parental leave for that child.
- (6) If both parents of a child are employed by the same employer—
 - (a) the parents must take parental leave separately and it is for the parents to decide which parent is to take parental leave for any 1 period; but
 - (b) in the event that the employer and the parents agree, both parents may take parental leave concurrently.

5. When parental leave may be taken

- (1) Subject to subsections (2) and (3), parental leave may be taken—
 - (a) by the birth mother commencing on the day after the expiry of maternity leave relating to that child and ending on the child's 8th birthday;
 - (b) by the birth father commencing on the day of the child's birth and ending on the child's 8th birthday;
 - (c) by the adoptive mother commencing on the day after the expiry of maternity leave relating to that child or by the adoptive father commencing on the day of the child's adoption, and ending on whichever is the earlier of—
 - (i) 8 years from the date of the child's adoption; or
 - (ii) the date of the child's 12th birthday.
- (2) If the child is disabled, the entitlement to parental leave ends on the child's 18th birthday.
- (3) If maternity leave is not taken in relation to a child, a mother may take parental leave from either the day of adoption or the day of the child's birth (as the case may be).
- (4) Subject to subsection (5), in each year at any one time, an employee may take parental leave for a minimum period of 1 week; and—
 - (a) in the case of an employee with 1 or 2 children, for a maximum period of 5 weeks; or
 - (b) in the case of an employee with 3 or more children for a maximum period of 7 weeks.

- (5) The maximum period of parental leave taken in a calendar year may exceed the limits set in subsection (4) if the employer consents.

6. Notification for taking parental leave

- (1) Subject to subsection (2), an employee (A) who intends to take parental leave must notify A's employer in writing of the date of commencement and expiry of the parental leave not less than 3 weeks before the date of its commencement.
- (2) If the child, in relation to whom the employee intends to take parental leave, suffers from a disease listed in the Schedule, the notice period is reduced to 1 week.

7. Refusal to grant parental leave

- (1) An employer (C) may refuse to grant parental leave only if C reasonably believes that the employee (A) is not entitled to take the leave.
- (2) Before refusing to grant parental leave, C must inform A in writing that C intends to refuse to grant the leave and request A to make written representations within 7 days of receiving the written notification of C's intention.
- (3) C must consider any written representations made by A before C makes a final decision on whether to grant or refuse parental leave.
- (4) C must make a decision within a reasonable period of time after receiving A's representations.
- (5) If C refuses parental leave, C must provide A in writing with C's reasons for the refusal within a reasonable period of time after making the decision.
- (6) An employer who contravenes section 7(1) commits an offence.

8. Postponement of parental leave

- (1) If notice is given under section 6(1), an employer may postpone a period of parental leave if the employer—
 - (a) has previously consulted with the employee applying for leave; and
 - (b) considers that the operation of the business would be unduly disrupted if the employee took the leave during the requested period; for example; because—
 - (i) the work is seasonal;
 - (ii) no replacement for the employee can be found during the period specified in the notice;
 - (iii) a substantial number of the employer's workforce request to take parental leave during the same period of time; or
 - (iv) where strategic importance is attached to the work undertaken by the employee.
- (2) If the employer wishes to postpone a period of parental leave, within 2 weeks of receiving the notice referred to in section 6(1) or before the leave commences in relation to a child suffering a disease listed in the Schedule, the employer must—
 - (a) provide the employee with written reasons for postponing the leave;
 - (b) not postpone the leave for a period of more than 6 months from the commencement of the date of notifying the postponement; and
 - (c) grant leave of at least the same duration as the requested period.
- (3) An employer who contravenes section 8(1) commits an offence.

9. Termination of parental leave

- (1) An employer may terminate parental leave only if the employer reasonably believes that a period of parental leave is not being used for the purpose specified in section 4(1).
- (2) Before doing so, the employer must inform the employee in writing of the intention to terminate the leave and request the employee to make written representations within 7 days.
- (3) The employer must consider any written representations before making a decision on terminating the leave.

- (4) If an employer decides to terminate the leave, the employer must notify the employee in writing of the decision.
- (5) The notice referred to in subsection (4) must—
 - (a) state the reasons for the decision; and
 - (b) the date of termination which must not be less than 7 days after the date of the notice.
- (6) If parental leave is terminated, the employee must return to work.
- (7) Any period between the date of returning to work and the date that the parental leave would have ended had the employee continued taking parental leave, is not considered to be parental leave.
- (8) An employer who contravenes section 9(1) commits an offence.

10. Returning to work and safeguarding employment rights

- (1) An employee (A) who returns to work after a period of parental leave is entitled to—
 - (a) return to the position in which A was employed before A's absence; or
 - (b) another position on terms and conditions no less favourable than those which applied to A's position before taking parental leave.
- (2) On returning to work after a period of parental leave, A may request a change to A's working arrangements (including hours of work) for a specified period of time.
- (3) If a request is made in accordance with subsection (2), A's employer must —
 - (a) consider the request taking account of both the needs of the business and those of A; and
 - (b) respond to A within a reasonable period of time after the request is made.
- (4) A and A's employer may keep in contact throughout the period of parental leave and may, having agreed them, take appropriate measures for A's reintegration into the workplace.
- (5) All A's employment rights acquired by the date that parental leave begins are maintained during A's absence from work on parental leave and any additional rights arising from legislation, collective agreement or work practices which have arisen during this period must accrue to A if A returns to work in accordance with subsection (1).
- (6) During A's absence from work on parental leave, A must be credited with insurable earnings provided for in the Social Insurance (Facilitation of Republican Insurance Scheme) Ordinance 1980**(b)**.
- (7) The period of A's absence from work on parental leave and on leave on grounds of force majeure must be treated as a period of work—
 - (a) for the purposes of determining A's annual leave and entitlements under the Annual Holidays with Pay Ordinance 1973**(c)**; and
 - (b) under the Employment (Termination) Ordinance 2010**(d)**.
- (8) An employer who contravenes this section commits an offence.

11. Employee required to inform Chief Officer

- (1) Subject to subsection (2), an employee who takes parental leave must provide the Chief Officer with information in such manner as the Chief Officer directs within 3 months of the expiry of the period of parental leave.
- (2) If an employee provides a justifiable reason for not providing the Chief Officer with the required information within the 3 month period, the Chief Officer may extend the time limit for as long as the Chief Officer considers necessary taking account of the employee's reason, but the extension must not exceed a period of 12 months.
- (3) The functions of the Chief Officer under this section are general delegated functions for the purposes of the Delegation of Functions to the Republic Ordinance 2007**(e)**.

PART 3

Leave on grounds of force majeure

12. Leave on grounds of force majeure

- (1) If an employee (A) notifies A's employer, A is entitled to unpaid leave for a period not exceeding 7 days in each year on grounds of force majeure due to family emergencies and related to an illness of or an accident to a dependent family member of A which requires A's immediate presence.
- (2) Leave on grounds of force majeure may be taken as a single period or as 2 or more periods of leave.
- (3) Employed spouses are each entitled to the full period of leave on grounds of force majeure.

PART 4

General provisions

13. Equality of treatment between men and women

Men and women must be treated equally and any discrimination based on sex is unlawful as regards the rights arising under this Ordinance.

14. Burden of proof for sex discrimination

If a person provides evidence that the person is affected detrimentally as a result of sex discrimination in civil proceedings before a court or other competent authority (except in connection with an out of court settlement), the onus of proof that the principle of equal treatment has not been contravened is placed on the respondent.

15. More favourable terms

The provisions of this Ordinance do not prevent more favourable terms being given to an employee under a collective agreement or any other agreement made between the employer and the employee.

16. Prohibition on terminating employment

- (1) An application to take or the taking of parental leave or leave on grounds of force majeure must not constitute a reason for less favourable treatment or termination of employment and does not interrupt the continuity of employment.
- (2) Subject to subsection (3), an employer must not terminate employment or give to an employee notice of termination of employment during the period beginning with the employee submitting to the employer an application to take parental leave or leave on grounds of force majeure and ending on the expiry of the leave period.
- (3) Subsection (2) does not apply if—
 - (a) an employee is guilty of serious misconduct which justifies dismissal;
 - (b) the employer has ceased to carry on the business—
 - (i) in which the employee was employed; or
 - (ii) in the place in which the employee was employed; or
 - (c) the employee's fixed-term employment has expired.
- (4) If the employment terminates under subsection (3), the employer must give the employee a written statement of the reasons for the termination of employment.
- (5) An employer who contravenes this section commits an offence.

17. Appointment of inspectors

- (1) By way of notice in the Gazette, the Chief Officer may appoint inspectors or other officers as the Chief Officer considers necessary for the better application of this Ordinance.

- (2) The functions of the Chief Officer under this section are general delegated functions for the purposes of the Delegation of Functions to the Republic Ordinance 2007.

18. Jurisdiction of the Tribunal

- (1) Subject to the provisions of this section, the Tribunal has exclusive jurisdiction to determine any dispute of a civil nature (including any ancillary or incidental matter relating to such a dispute) arising from the provisions of this Ordinance.
- (2) Part 3 of the Citizens of the Republic (Jurisdiction of Courts) Ordinance 1960(f) applies to disputes of a civil nature arising from the provisions of this Ordinance, and for this purpose—
 - (a) proceedings in connection with such a dispute are to be treated as civil proceedings and, as appropriate, as an action or an appeal;
 - (b) the Tribunal is to be treated as a Court of the Areas, and the Industrial Disputes Court of the Republic is to be treated as a District Court of the Republic; and
 - (c) any corporation, company or other body corporate established in the Republic under the provisions of any Law of the Republic is treated as a Cypriot.

19. Bringing a claim to the Tribunal

- (1) A claim in contravention of any provision of this Ordinance may be brought to the Tribunal.
- (2) Proceedings on a claim to the Tribunal may not be brought after the end of the period of 12 months starting with the date of the act to which the claim relates.

20. Powers of the Tribunal

- (1) Where the Tribunal upholds a claim, the Tribunal must make such of the following orders as it considers just and equitable—
 - (a) an order declaring the rights of the claimant in relation to the act to which the claim relates;
 - (b) an order requiring the employer to pay compensation to the claimant of such amount as the Tribunal consider just and equitable in the circumstances having regard to—
 - (i) the act complained of; and
 - (ii) any loss sustained by the claimant which is attributable to that act.
- (2) Interest determined in accordance with section 16A of the Annual Holidays with Pay Ordinance 1973(g) is payable by the respondent on any compensation awarded by the Tribunal under subsection (1)(b).
- (3) An award made by the Tribunal or by the Industrial Disputes Court of the Republic under the provisions of this Ordinance is recoverable as a civil debt.

21. Application to the Crown

- (1) Subject to the provisions of this section, this Ordinance applies to the Crown.
- (2) This Ordinance does not apply to the Crown in relation to—
 - (a) service of a member of Her Majesty's Forces;
 - (b) its employment of a member of a Civilian Component as defined in paragraph 1(b) of section 1 of Annex C of the Treaty of Establishment; or
 - (c) a person enjoying the rights and facilities of members of Her Majesty's Forces by virtue of paragraph 3 of section 9 of Part 2 of Annex B of the Treaty of Establishment, other than as a dependent.
- (3) Proceedings for a criminal offence may not be brought against—
 - (a) the Crown;
 - (b) an employee of the Crown acting in the course of employment for the Crown; or
 - (c) a member of Her Majesty's Forces acting in the course of service to the Crown.

22. Application to Authorised Service Organisations

- (1) This Ordinance does not apply to Authorised Service Organisations in relation to their employment of a member of the Civilian Component.
- (2) In this section Civilian Component has the same meaning given in section 21(2)(b).

23. Offences

An employer who commits an offence under this Ordinance is liable, on conviction, to a fine not exceeding €7,500.

24. Repeal

The following Ordinances are repealed—

- (a) Parental Leave and Leave on Grounds of Force Majeure Ordinance 2002(h);
- (b) Parental Leave and Leave on Grounds of Force Majeure (Amendment) Ordinance 2008(i); and
- (c) Parental Leave and Leave on Grounds of Force Majeure (Amendment) Ordinance 2010(j).

Schedule

(Section 6(2))

	<i>Type of disease</i>
1	oncological disease
2	congenital cardiopathy
3	serious cerebral injuries and bone fractures
4	congenital and metabolic syndromes
5	serious neurological disorders
6	Mediterranean anaemia, sickle cell anaemia, idiopathic thrombopenic purpura, haemophilia and similar diseases
7	septicaemia, meningitis and other serious micro-bacterial infections
8	encephalitis
9	chronic respiratory diseases
10	chronic renal failure
11	chronic immunological insufficiency
12	hypophyseal insufficiency or lack of growth hormone
13	diabetes mellitus
14	cystic fibrosis
15	disease or illness due to premature birth (this applies only to men entitled to parental leave where the parental leave period is the period prior to the expiry of maternity leave)

Notes

- (a) Ordinance 10/73 to which there are amendments but they are not relevant to the definition of Tribunal.
- (b) Ordinance 16/80, section 4 sets out provisions relating to contributions for employed persons to which relevant amendments were made by Ordinances 1/84 and 17/85.
- (c) Ordinance 10/73, the relevant sections were replaced or amended by Ordinance 3/12.
- (d) Ordinance 3/10 to which there are amendments but they are not relevant.
- (e) Ordinance 17/07.
- (f) Ordinance 6/60.
- (g) Ordinance 10/73, section 16A was inserted by section 2 of Ordinance 40/02.
- (h) Ordinance 39/02.
- (i) Ordinance 3/08.
- (j) Ordinance 14/10.

EXPLANATORY NOTE

(This note is not part of the Ordinance)

Introduction

1. This explanatory note relates to the Employment (Parental Leave and Leave on Grounds of Force Majeure) Ordinance 2012. It has been prepared by the Office of the Attorney General and Legal Adviser in order to assist the reader of the Ordinance. It does not form part of the Ordinance.
2. The note should be read in conjunction with the Ordinance. It is not, and is not meant to be, a comprehensive description of the Ordinance. So when a section or part of a section does not seem to require any explanation or comment, none is given.
3. The Ordinance confers rights to parental leave and leave on grounds of force majeure. It broadly replicates Republican Law 47(I)2012 which in turn implements Council Directive 2010/18/EC on the revised framework agreement on parental leave. It replaces the Parental Leave and Leave on Grounds of Force Majeure Ordinance 2002 (39/02).

Particular points

4. Sections 3 and 4 provide that the right to unpaid parental leave is available to parents who have been continuously employed for 6 months and who use the leave for the purpose of caring for or helping to care for their child. In most cases the period of leave is 18 weeks (a widowed parent is entitled to 23 weeks) and can only be transferred in the prescribed circumstances to the other parent of the child. Both employed parents are entitled to the leave but if the parents work for the same employer, they may only take parental leave at the same time if the employer consents. The number of days in a week's leave depends on the number of days in the employee's working week.
5. In accordance with section 5, in most cases (there being an exception for disabled children and a limited exception for adopted children) parental leave must be taken before a child's 8th birthday and, unless the employer agrees otherwise, in a year, a parent with 1 or 2 children may take a maximum of 5 weeks and a parent with 3 or more children a maximum of 7 weeks.
6. Sections 6 to 8 set out provisions requiring the employee to notify the employer of any proposal to take parental leave and the circumstances in which the employer may refuse leave or postpone the taking of leave for up to 6 months.
7. Section 9 provides that the employer may terminate parental leave if the employer reasonably believes that the employee is not using the leave to look after the child. This can only be done if the employer gives the employee the opportunity to provide an explanation and the employer must give 7 days' notice before the leave is terminated.
8. Section 10 provides that those employment rights which had accrued beforehand (but not the right to receive pay during the leave period) to be maintained during the period of absence and for any new rights arising during the leave period to apply. Also, the employee may return to the same or approximately the same position after that period. On returning to work the employee may request a change to working arrangements for a specified period.
9. In accordance with section 11, the employee must notify the Chief Officer of taking parental leave within 3 months of its expiry. As this is a general delegated function, employees working for private employers must notify the Republican official undertaking this function in the Republic.
10. In accordance with section 12, an employee has the right to unpaid time off to deal with illness or accidents affecting dependants. This provision allows an employee a maximum of 7 days each year.
11. Sections 13 to 16 make provision for protection against detriment or dismissal and also clarify that a collective or other agreement may make more favourable provision than the Ordinance.
12. Sections 18 and 19 provide that the SBA's Industrial Disputes Tribunal has the jurisdiction to hear a claim and that the claim must be started within 12 months of the act to which the person believes caused the contravention of the Ordinance.
13. Section 21 provides that the Ordinance applies to Crown employment but excludes certain groups from its effect, in particular Armed Forces personnel and UK civil servants. In relation to Authorised Service Organisations, section 22 provides that employees in a similar position as UK civil servants are excluded.

(SBA/AG/2/EM/192)