



CHAMBRE DES SALAIRES  
LUXEMBOURG

# Parental leave

*Labour Law*

*Current as of 1 January 2019*





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## Impressum

### **Publisher**

### **Chambre des salariés**

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### **Printing**

Weprint

### **Sales**

Librairie « Um Fieldgen Sàrl »  
3, rue Glesener  
L-1631 Luxembourg  
T. +352 48 88 93  
F. +352 40 46 22  
www.libuf.lu • libuf@pt.lu

ISBN : 978-2-919888-27-6

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# PREFACE



*Jean-Claude Reding*  
*President of the Chamber of Employees*

Following the reform of parental leave by the Law of 10 November 2016, the Chamber of Employees has decided to issue this publication in order to inform its members about the amended rules applicable as of 1 December 2016. The new parental leave schemes aim to better meet the needs of parents, with a view to improving the reconciliation of family and professional life. Its main objective is to increase the proportion of fathers who take advantage of it in order to promote equal opportunities, but also to increase the number of people who use it in general.

Since the reform, parental leave is divisible and compensated by real replacement income.

This booklet, published in the CSL Collection series, is intended as a practical guide for parents.

By way of introduction, the historical development of the legal provisions on parental leave is summarised.

The first part describes in detail the implementation of the applicable rules with the conditions for opening, the procedure for granting and the guarantees protecting the receiving parent.

The second part of this booklet contains a sample form to be completed and sent to the Children's Future Fund (Caisse pour l'avenir des enfants - CAE or "Zukunftskess") in order to receive parental leave allowance. It also includes standard letters that the employee may send to their employer, in particular to formulate a request for parental leave or to confirm their intention, where appropriate, to make their working conditions more flexible after their parental leave.

Happy reading.

Luxembourg, March 2019



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INTRODUCTION

THE ORIGIN AND EVOLUTION  
OF PARENTAL LEAVE



As the primary objective of this publication is to familiarise a wide audience with the provisions on parental leave, it seems useful, before getting to the heart of the matter, to briefly trace the origins of this leave.

# 1 ORIGINS AT EUROPEAN LEVEL

The discussions surrounding the introduction of parental leave in the Member States of the European Union date back to the mid-1980s.

It was in November 1983 that the Commission of the European Communities first presented a proposal for a directive establishing such leave at Community level.

It took 12 years before this proposal, amended several times, was submitted to the Council of Ministers. However, due to British opposition, the text could not be adopted.

Following this setback, the Commission decided to submit the case to European social partners. These negotiations, which began in July 1995, ended in December 1995 with the adoption of a proposal for a framework agreement.

This agreement was submitted, in the form of a directive, for approval by the Council of Ministers. At their meeting on 29 March 1996, the Ministers of Social Affairs agreed to the proposed text. Directive 96/34/EC was formally adopted by the Social Affairs Council on 15 December 1997. On the basis of this directive, each Member State was required to provide for parental leave in its national legislation, even if the actual arrangements might vary from one country to another.

In June 2009, the European social partners signed the revision of the European framework agreement on parental leave.

This new agreement invites Member States to review the conditions for access to parental leave and to adapt its implementing rules to the needs of parents of children with disabilities or long-term illnesses.

The agreement further strengthens the protection of workers against dismissal or any "unfavourable treatment" due to the request or taking of parental leave.

The agreement applies to all workers, whatever the form of their contract (fixed-term contract, part-time work, temporary work, etc.), while allowing the right to parental leave to remain subject to a period of work and/or seniority, which may not exceed one year, but the employer must take into account the duration of successive fixed-term contracts concluded with the employee.

The right of the employee to return to their job or, failing that, to an equivalent or similar job in accordance with their contract or employment relationship shall be maintained. In addition, parents returning to work at the end of parental leave can now request that their working conditions be adapted.

The issue of compensation for employees on parental leave, which is not addressed in the agreement, is referred to the Member States and the national social partners.

Council Directive 2010/18/EU of 8 March 2010 is intended to implement this revised framework agreement on parental leave in national legislation and repeals and replaces the 1996 directive with effect from 8 March 2012.

This Directive was transposed into Luxembourg with the Law of 19 June 2013 (see below).

## 2 ORIGINS IN LUXEMBOURG

In its declaration of 22 July 1994, the Government announced its intention to introduce parental and family leave in our country.

Parental leave, as provided for in the action plan of 18 April 1998, primarily pursues the objective of achieving a better reconciliation of private and professional life and promoting equal opportunities for men and women.

The Ministry of Equal Opportunities is trying to encourage fathers to take more advantage of their parental leave, in particular through its positive action programme<sup>1</sup>. (see [www.mega.public.lu](http://www.mega.public.lu))

However, this leave is also more or less directly part of the active employment policy. Indeed, at the Government's request, parental leave should make it possible to free up a certain number of jobs for several months that can be filled by jobseekers.

The legal provisions governing parental leave until 2006 are fully reflected in the law of 12 February 1999 implementing the national action plan for employment, and more specifically in Article XXIV of the Law.

## 3 MODIFICATIONS TO THE 1999 LAW

**The Law of 21 November 2002** 1) Amending the amended law of 19 June 1985 on family allowances and establishing the National Family Benefits Office; 2) amending the law of 14 July 1986 on the creation of a back-to-school allowance; 3) amending the Law of 1 August 1988 creating an education allowance and amending the Law of 14 July 1986 on the creation of a back-to-school allowance; 4) amending the Law of 12 February 1999, creating parental leave and leave for family reasons; 5) amending the amended law of 20 June 1977 aimed at: a) instituting systematic medical examination of pregnant women and young children; b) amending existing legislation on birth allowances; 6) repealing the Law of 8 March 1984 creating a loan for young spouses. (*Mémorial A*, 2002, page 3098)

This law provides a number of clarifications, including that in the case of multiple births or adoption, parental leave is granted in full for each child.

**Law of 18 July 2003** amending the Law of 12 February 1999 on the implementation of the 1998 National Action Plan for Employment. (*Mémorial A*, 2003, page 2246)

The amended Law of 12 February 1999 was evaluated in November 2002, in accordance with the provisions of the original law (Article 19).

In view of the results of this study and taking into account the fact that the majority of social partners and the population voted in favour of maintaining the provisions on parental leave, the Law of 18 July 2003 introduced parental leave for an indefinite period.

**The Law of 27 June 2006** adapting certain detailed rules for the application of the sliding scale of wages and salaries. (*Mémorial A*, 2006, page 2040)

This law de-indexed the benefits paid by the National Family Benefits Office as well as the education package.

They will no longer be adapted via the "index" but on the basis of political decisions resulting in a legislative amendment.

<sup>1</sup> Article L.243-1 of the Labour Code

Before this adjustment, the amounts in question were determined by reference to the consumer price index connected to the 1948 base year. The amounts therefore varied according to this index to the extent and in accordance with the procedures applicable to the salaries of civil servants.

Thus, from June 2006, parental leave entitles the employee to an allowance of € 1,778.31 per month for full-time leave and € 889.15 per month for part-time leave.

*The Law of 31 July 2006 introducing a Labour Code that came into force on 1 September 2006. (Mémorial A, 2006, page 2456)*

Until this law, the structure of Luxembourg labour law was based on a multitude of isolated texts, in the form of grand-ducal enforcement laws and regulations.

However, following the very numerous legislative amendments that have taken place, the texts have largely lost their coherence and readability.

This is why the Government wanted a substantial overhaul of Luxembourg labour law by drafting a generally applicable instrument, the new Labour Code.

This codification does not consist of an amendment to the content of the existing legislation, but was undertaken in accordance with the principle of "constant law": under no circumstances is it a substantive change to the legal provisions in force.

Thus, the rules of Luxembourg labour law have now been brought together in a single legal instrument.

The Law of 12 February 1999 on the creation of parental leave and leave for family reasons was incorporated into the Labour Code in Articles L.234-43 ff. by this Law of 31 July 2006 and into the Social Security Code in Articles 306 to 308 by Law of 13 May 2008 introducing a single status for employees in the private sector.

Since the Labour Code does not apply to State and municipal civil servants, these same provisions had to be incorporated into the amended Law of 16 April 1979 establishing the general status of State civil servants and the amended Law of 24 December 1985 establishing the general status of municipal civil servants.

*The Law of 22 December 2006 amending 1) the amended Law of 12 February 1999 on the creation of parental leave and leave for family reasons; 2) the amended Law of 19 June 1985 on family allowances and the creation of the National Family Benefits Office; 3) the Law of 2 August 2002 on the protection of individuals with regard to the processing of personal data; 4) the Labour Code; 5) the amended Law of 16 April 1979 on the general status of civil servants; 6) the amended Law of 24 December 1985 on the general status of municipal civil servants. (Mémorial A, 2006, page 4838)*

This law made fundamental changes to the parental leave system with the main ones being as follows.

### **Relaxation of the condition of continued employment and membership**

The condition of continuity of employment and membership during the 12 months immediately preceding the beginning of parental leave is reduced in certain situations.

Before the entry into force of the Law of 22 December 2006, a simple interruption of one day caused a parent to lose the right to parental leave.

From now on, one or more interruptions shall not result in the loss of the right to parental leave, provided that such interruption does not exceed a total of seven days in the year preceding the beginning of parental leave.

Similarly, the condition of employment with the same employer is presumed to have been fulfilled if, as a result of a transfer or merger of a company, the employed parent is transferred without interruption to another position.

In addition, the period of employment as a temporary auxiliary <sup>2</sup> immediately preceding a period covered by an employment contract concluded with the same employer shall be taken into account in respect of the required period of employment.

<sup>2</sup> The temporary auxiliary contract has been replaced by the employment support contract and the employment initiation contract. (Articles L.543-1 ff. of the Labour Code)

## Introduction: the origin and evolution of parental leave

In addition, before the new provisions, a person who was required to change employer for economic reasons, which were not attributable to them, could be eligible for parental leave, with the agreement of the new employer. However, they had to be legally employed for 12 months during the 15 months preceding the birth of the child or the initiation of legal proceedings for adoption with a company legally established in Luxembourg. The new provisions modify this derogation: if the parent changes employers during the 12-month period preceding the parental leave, the leave may only be granted with the agreement of the new employer.

Finally, the hypothesis of changing employers during the period of parental leave was not regulated by the old text. This deficiency is remedied and the right to parental leave remains open in the event of a change of employer during the period of parental leave, subject to the agreement of the new employer. Parental leave must then be continued without interruption.

### ***Conditions for granting 2nd parental leave***

The 1999 Law stated that the 2nd parental leave may be taken until the child reaches the age of 5.

This condition has been clarified in that the leave must be taken halfway through the period before the child reaches the age of 5.

### ***New notice periods for requests for parental leave***

#### ***Setting of a deadline for the request for parental leave following maternity leave***

The 1999 Law did not impose a specific time limit on employees who intend to take parental leave following maternity leave or acceptance leave: they had to apply for it before maternity leave or acceptance leave.

The December 2006 Law requires that this request be made 2 months before the start of maternity leave.

In the event of adoption, the situation remains unchanged: the adopting parent who intends to exercise their right to parental leave immediately after the acceptance leave must notify the employer of their request before the start of the acceptance leave, without having to respect a specific deadline.

#### ***Extension of the time limit for requesting parental leave not following maternity leave***

The period of notice of 4 months before the start of parental leave is extended in this case to 6 months.

### ***Parental leave and the apprenticeship contract***

The 2006 Law gives the apprentice the possibility to request the postponement of parental leave following maternity leave, if they prove that as a result of the leave, they would have to repeat the current training year or that they would not be admitted to the examination at the end of the current year.

In this exceptional case, parental leave may be granted to both parents until the child reaches the age of five.

### ***Definition of the reference working time with regard to the right to parental leave***

The employed parent must have an employment contract for a monthly working time of at least half of the normal working time applicable in the company.

The notion of monthly working time is now defined as: "the duration provided for in the employment contract".

However, in the event of a change in the monthly working time applicable during the year preceding the beginning of parental leave, the monthly average calculated for the year in question shall be taken into account.

However, any change made after the date of the request for parental leave shall not be taken into account in determining parental leave, in order to prevent any abuse resulting from collusion between the employer and the employee.

### ***Working time allowed during part-time parental leave***

Even before the Law of December 2006, in the event of part-time parental leave, the employee had to reduce their professional activity by at least half of the company's normal working hours. From now on, overtime hours are taken into account to verify this condition.

### ***Specification of the conditions under which an employment contract may be terminated following parental leave and the related procedure***

The question of the employee who does not wish to return to work at the end of their parental leave frequently arose in practice, without there being any legal answer.

The new provisions fill this gap: the employee is required to inform the employer of their decision not to return to work at the end of parental leave by registered letter with acknowledgement of receipt within a period equal to that which they should respect in the event of resignation.

At the earliest on the first day following the last day of parental leave, the employee must duly notify the employer of the termination of the employment contract and provide the relevant period of notice, unless the employer has granted an exemption from work.

Failure, not justified by a serious and legitimate reason, to resume work on expiry of parental leave in the absence of information to the employer or notification of resignation shall constitute a legitimate reason for terminating the employment contract with immediate effect for serious misconduct.

### ***New hypothesis of refusal of parental leave by the employer***

The fact that the employer is required to grant parental leave when it follows maternity leave or acceptance leave remains unchanged. However, this obligation for the employer shall cease to apply if the relevant request has not been notified in the form and within the time limit prescribed by law.

### ***The fate of the employment contract during parental leave***

#### ***Protection against dismissal expressly extended to employees on part-time parental leave***

Even if the employee's employment contract is only partially suspended in the case of part-time parental leave, the employee is protected against dismissal with notice. However, dismissal for serious misconduct remains possible.

#### ***Guarantee of reintegration and maintenance of the link with the company during parental leave***

The new law enshrines the generally recognised right of employees to receive continuous vocational training during their parental leave, organised or offered by the employer, to enable them to keep up with developments in technology and production processes.

In addition, the possibility is envisaged for employees to maintain a link with their company, in particular through service or information meetings or continuing training aimed at guaranteeing their employability and promoting their reintegration at the end of the leave.

### ***Postponement of parental leave in the event of interruption by new period of maternity or acceptance leave***

Before the new law, in the event of pregnancy or fostering of a child during parental leave, giving rise to maternity leave or acceptance leave, this replaced the parental leave that was ending.

This provision is amended so that maternity or acceptance leave occurring during parental leave interrupts, as before, parental leave, but that henceforth the portion of parental leave remaining to run is linked to the new maternity or acceptance leave.

Any new parental leave following the maternity or acceptance leave to which one of the parents may be entitled shall be automatically postponed until the end of the portion of the related parental leave.

### ***Inclusion of parental leave allowance in the calculation of the guaranteed minimum income***

From now on, parental leave allowance is taken into account when determining the right to the guaranteed minimum income.

### ***Cessation of parental leave in the event of the child's death or failure of the adoption procedure***

The old text provided that in the event of the child's death or if the court does not approve the adoption application, the beneficiary shall return to employment no later than one month after the death or rejection of the adoption application. They are entitled to half of the monthly lump-sum allowance for each two-week period of parental leave taken.

From now on, the beneficiary is entitled to a pro rata share of the indemnity for the fraction of the month started.

The new provisions specify that, where the employer has replaced the beneficiary during the period of parental leave, the employee is entitled, in the same company, to a re-employment priority for any similar vacant post corresponding to their qualifications and accompanied by at least equivalent remuneration.

If it is impossible to take up such employment, parental leave shall be extended without exceeding its initial term.

### ***Full repayment of the monthly payments already received, which has been established as a sanction for certain violations***

The monthly payments already made in respect of parental leave allowance shall be repaid in full:

- when parental leave is not taken in full and at one time;
- in the event of a violation of the conditions for opening parental leave, and in particular in the event of:
  - » voluntary termination of the employment contract by the parent, where the termination takes effect before the expiry of the parental leave, or
  - » interruption of the leave not due to a cause beyond the control of the beneficiary parent and entirely beyond their control. However, if, in the event of a change of employer during parental leave for reasons of economic necessity, the receiving parent is required to return to work before the leave expires, the benefits paid up to that date shall remain vested in them. The burden of proof of economic necessity rests with the receiving parent.

### ***Parental leave allowance becomes seizable to cover certain expenses incurred in the interest of the family***

Parental leave allowance may be assigned, seized or pledged, within the limits set by the amended Law of 11 November 1970 on the assignment and seizure of work pay and pensions.

Any such seizure, assignment or pledge may only be for:

- advanced expenses for the maintenance or education of the child or children for whom the leave has been requested;
- claims which entitle municipalities and charitable institutions to reimbursement of relief granted to those in need, insofar as such relief concerns the child or children for whom leave has been requested;
- the monthly payments to be paid as a repayment of a loan for the construction, acquisition, equipment or improvement of a family home;
- an advance that has been made to the parent by a social security institution.

In all other cases, the compensation may not be assigned, seized or pledged.



### ***Relaxation of the rules relating to fixed-term employment contracts (fixed-term contracts) concluded to provide for the replacement of an employee on parental leave***

The replacement of an employee absent due to maternity leave, parental leave or leave for family reasons must no longer necessarily concern the same position held by the absent employee, but may concern another position released in the company or establishment concerned as a result of internal reorganisations or transfers that took place following the absence in question.

Cascading replacements are therefore now allowed, provided that the fixed-term contract indicates the name of the employee on leave indirectly replaced.

Finally, the law now allows the contract for the replacement of an employee absent for parental leave to begin three months before the date of the beginning of the parental leave (or three months before the date of the beginning of the maternity leave, if the parental leave is taken following maternity leave) and to end three months after the end of the replaced employee's parental leave.

### ***Introduction of two new types of unpaid parental leave***

*Parental leave granted to a parent who has not taken the 1st parental leave following maternity leave or acceptance leave and who wishes to reserve the 2nd parental leave (before the child reaches the age of 5) for the other parent or who is no longer entitled to this 2nd parental leave because the other parent has already taken it.*

This is 3 months of unpaid parental leave.

The parent must request it at least 6 months before the desired starting date of the parental leave by registered letter with acknowledgement of receipt.

The employer is required to grant the leave thus requested without the possibility of postponement.

### ***Temporary parental leave for children born between 1 January 1994 and 31 December 1998***

Under the 2006 Law, non-remunerated parental leave was temporarily introduced for parents raising children born between 1 January 1994 and 31 December 1998, provided that they had not yet taken parental leave for the same children.

The parent had to request this leave from their employer by registered letter with acknowledgement of receipt no later than 30 June 2007, while giving 6 months' notice before the start date of the parental leave.

This leave must have started before 1 January 2008.

***The Law of 13 May 2008*** introducing a single statute for employees in the private sector and amending 1) the labour Code; 2) the Social Security Code; 3) the amended Law of 8 June 1999 on supplementary pension schemes; 4) the amended Law of 4 April 1924 establishing professional chambers on an elective basis; 5) Chapter VI of Title I of the amended Law of 7 March 1980 on judiciary organisation; 6) the amended Law of 4 December 1967 on income tax; 7) the amended Law of 22 June 1963 laying down the salary system for civil servants.

This law abolished the distinction in the private sector between workers' (blue collars') and employees' (white collars') schemes and introduced a single scheme for employees. Consequently, the provisions relating to the amended Law of 12 February 1999 have been adapted and incorporated into Book IV, entitled "Family Benefits", in Articles 306 to 308 of the Social Security Code.

***The Law of 19 June 2013*** amending the Labour Code, the amended Law of 16 April 1979 establishing the general status of civil servants and the amended Law of 24 December 1985 establishing the general status of municipal civil servants. (*Mémorial A*, June 2013, page 1566)

This law transposed Council Directive 2010/118/EU of 8 March 2010 implementing the revised framework agreement on parental leave and repealing Directive 96/34/EC.

The revised agreement extends the minimum duration of non-remunerated parental leave by one month from 3 months to 4 months.

## Introduction: the origin and evolution of parental leave

In addition, the agreement makes further improvements to facilitate the return to work after parental leave by giving employees the right to request more flexible working conditions.

National legislation has therefore been amended on these two points.

### **Non-remunerated 3-month parental leave period**

As explained above, if the 1st leave is not taken by either the mother or father, it is definitively lost. Parents then have only one paid leave period to take before the child's 5th birthday.

However, unpaid parental leave of 3 months is still granted on request to a parent who has not since the Law of 22 December 2006 taken the 1st parental leave following maternity leave or acceptance leave and who wishes to reserve the 2nd parental leave (before the child reaches the age of 5) to the other parent.

The 3-month period of this parental leave formula no longer complies with the minimum requirements of the new European rules, so this leave has been increased from 3 to 4 months.

### **Possibility for the parent to relax their working conditions on return from parental leave**

Employees now have the right to ask their employer, on their return from parental leave, to adjust their working hours and/or patterns for a specified period of time, which may not exceed one year after the date fixed for their return to the company.

However, this new right does not impose an obligation on the employer to grant the requested flexibility. Nevertheless, the employer has an obligation to take the worker's request into consideration, examine it and respond to it, taking into account its own needs and those of the workers. If the employer rejects the worker's request, they must justify their rejection of the request.

The law specifies that failure by the employer to comply with these new rules entitles the employee to damages, to be determined by the Labour Court.

*The Law of 23 July 2016 amending 1) the Social Security Code; 2) the amended Law of 4 December 1967 on income tax and repealing the amended Law of 21 December 2007 on child bonuses. (Mémorial A, 2016, page 2347)*

This law, which came into force on 1 August 2016, has significantly changed the system of family benefits.

Indeed, this reform covered both the family allowance itself and the birth allowance and the back-to-school allowance. The child bonus has been abolished and incorporated directly into the amount of the family allowance. As a reminder, maternity allowance and education allowance had already been repealed by the Law of 19 December 2014 on the implementation of the savings package ("Zukunftspak").

The key points of this reform are:

- the abolition of the notion of "family group";
- the introduction of a uniform amount of €265 for the family allowance (including child bonus) for each child who enters the system from 1 August 2016 - other beneficiaries not concerned - but limitation of the maximum age for granting to 25 years (instead of 27 years);
- new amounts for the age increase set at €20 (instead of €16.17) and €50 (instead of €48.52) for children between 6 and 11 years old and those aged 12 and over respectively;
- new uniform amounts for the back-to-school allowance set at €115 and €235 for children aged 6 and 11 and 12 years and over respectively - even if born before the entry into force of the reform;
- a new amount for the additional special allowance set at €200 (previously €185.60), but limiting the maximum age for granting to 25 years (instead of 27 years);
- the child no longer needs to reside in the household of the person who qualifies for the allowance;
- the limitation period for the payment of benefit arrears is set at 1 year (instead of 2 years);
- the new name of the National Family Benefits Office (Caisse nationale des prestations familiales), which becomes the Children's Future Fund (Caisse pour l'avenir des enfants - CAE or "Zukunftskeess"<sup>3</sup>). It manages all the benefits provided for in Book IV of the Social Security Code

3 For more information, visit [www.cae.public.lu](http://www.cae.public.lu)

(birth allowance, family allowance in the strict sense, back-to-school allowance and parental leave allowance). All family benefits in cash and in kind are thus brought together in a single entity.

In addition, from now on, all benefits, with the exception of the childbirth allowance, may be assigned, pledged or seized only up to half of the monthly term due, to cover:

- claims on municipalities, social offices, institutions and public administrations for reimbursement of relief granted in so far as such relief concerns beneficiary children or to reimburse advanced costs for the maintenance or education of beneficiary children;
- a debt owed by the beneficiary to a social security institution;
- the monthly payments to be paid as repayment of a loan granted for the construction or acquisition of a family home, provided that the beneficiary children are heirs to the debtor concerned.

Previously, the cap differed for parental leave allowance, which was subject to the same regime as wages. The salaries are divided into 5 tranches, with a different seizability rate set by grand-ducal regulation for each tranche.

**The Law of 3 November 2016** reforming parental leave and amending 1) the Labour Code; 2) the Social Security Code; 3) the amended Law of 4 December 1967 on income tax; 4) the amended Law of 16 April 1979 establishing the general status of civil servants; 5) the amended Law of 24 December 1985 establishing the general status of municipal civil servants; 6) the amended Law of 14 March 1988 on the creation of acceptance leave for employees in the private sector; 7) the amended Law of 12 February 1999 on the creation of parental leave and leave for family reasons; 8) the amended Law of 31 July 2006 on the introduction of a Labour Code. (Mémorial A, 2016, page 4201)

This law has reformed parental leave in order to make it more attractive to parents and to take into account decisions taken at European level.

Its objectives are to better meet the needs of parents, with a view to improving the reconciliation of family and professional life. Its main objective is to increase the proportion of fathers who take advantage of it in order to promote equal opportunities, but also to increase the number of persons who use it in general.

Parental leave therefore becomes divisible and compensated by a real replacement income, which makes it more "tailor-made".<sup>4</sup>

### **Increased age of the child**

The age limit of the child for whom 2nd parental leave can be taken is increased. It increases from 5 years to 6 years in the case of birth and 12 years in the case of adoption.

In the event of adoption, parental leave may be taken within a period of 6 years from the end of the acceptance leave or, if acceptance leave has not been taken, from the date of the adoption judgement until the child reaches the age of 12 at the latest.

### **Raising the child at home during parental leave**

It is no longer required that the child be raised in the family home from the birth or fostering of the child concerned. It will therefore be sufficient if the child is mainly in the home of the parent requesting parental leave for the duration of the leave.

### **Part-time employee: threshold lowered to 10 hours per week**

In order to make parental leave accessible to persons who do not have a full or part-time job, the condition of membership during the 12 months preceding the start of parental leave, which was at least 20 hours, has been reduced to 10 hours per week.

This reduction is intended to compensate for the repeal of the education allowance under the "Zukunftspak". This allowance mainly benefited persons without a professional activity, whereas the granting of parental leave required a professional activity of at least 20 hours per week. Thus, the group of people wishing to interrupt their careers to devote themselves to their child's education, while keeping a link with their professional activity, will be expanded.

4 Source: Report of the Committee on Family and Integration (06/10/2016) Parliamentary Document 6935/9A

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The new parental leave will be available to persons who have several employment contracts with various employers (e.g. domestic workers or dependants in private households). It should be noted that each parent who has an employment contract for less than 20 hours a week or who is employed by more than one employer is entitled to the sole formula of full-time parental leave of 4 months or 6 months per child.

### ***Parents on parental leave at the same time***

From now on, both parents will be able to take parental leave at the same time, whether full-time or part-time.

### ***Shortened period of notice from 6 to 4 months for 2nd parental leave***

The period for notifying the employer has been reduced from 6 to 4 months for the 2nd parental leave to enable a parent who is not on maternity leave to take parental leave at the time of the child's birth.

### ***Three forms of parental leave***

The principle that parental leave must be taken in its entirety at once is replaced by a three-pronged system designed to give more flexibility when taking parental leave:

- full-time parental leave of 4 or 6 months: the employee stops working completely.
- parental leave of 8 to 12 months on a part-time basis: an employee whose working time is at least half of the company's normal working time is entitled to choose this half parental leave, which will effectively correspond to a 50% reduction in the working time of the employee concerned and no longer to a reduction of 20 hours per week.
- new formula for splitting parental leave: an employee working 40 hours a week with the same employer will have the possibility, with the employer's agreement, to reduce their professional activity by 20% per week or to reduce their professional activity over a period of 4 distinct months within a period of 20 months.

The 1st parental leave must always be taken following maternity, breastfeeding or acceptance leave.

The employer is required to accept full-time parental leave. They may refuse part-time parental leave or split leave, but in the latter case they will be required to submit an alternative proposal.

The terms and conditions of the split parental leave shall be agreed between the employer and the parent in a parental leave plan to be submitted with the application to the Children's Future Fund (Caisse pour l'avenir des enfants - CAE or "Zukunftskeess"). This agreement extends over the entire period of the parental leave granted. Any changes, to be approved by mutual agreement between the parent and the employer, are only possible for adjustments to schedules or calendar months.

If the employer refuses to grant parental leave in this form, they must inform the beneficiary parent by registered letter with acknowledgement of receipt at the latest within 2 weeks of the request and invite the parent to an interview within 2 weeks of this notification. During this interview, the employer must give reasons for their decision and propose to the parent in writing an alternative form of parental leave or a different parental leave plan than that requested by the parent. If, 2 weeks after this interview, both parties do not stop and sign any parental leave plans, the parent is entitled to parental leave at their choice of 6 months or 4 months full-time.

### ***Apprentice***

A person with an apprenticeship contract may only use full-time parental leave of 4 or 6 months.

### ***Employee on probation***

The new law specifies that in the case of an employee bound by an open-ended contract with a trial clause, the right to parental leave cannot take effect and the leave may only be requested after the expiry of the trial period.

### ***Parental leave compensation***

The current lump-sum allowance of € 1,778.31 per month for full-time leave and € 889.15 per month for part-time leave will be replaced by a real replacement income paid on a continuous basis and in proportion to the remuneration lost by the beneficiary parent, taking as a reference the contributory pension insurance income over the 12 months preceding the beginning of parental leave.

This replacement income will have a lower limit of € 2,071.10 gross per month (= the unqualified minimum social wage on 1 January 2019 indexed from 814.14) and an upper limit equal to the amount of the unqualified minimum social wage increased by 2/3, i.e. € 3,451.83 gross per month.

These amounts always correspond to full-time employment contracts.

The allowance will be subject to the social security and tax charges applicable to salaries, the employer's share of social security contributions is borne by the Children's Future Fund (CAE) and the parent's dependent share of salaries.

With regard to the seizable nature of the allowance, the previous system has been reintroduced: parental leave allowance may be assigned, pledged or seized within the limits set by the amended Law of 11 November 1970 on the transfer and seizure of work pay and pensions.

Such seizure, assignment or pledge may only be intended to cover:

- claims on municipalities, social offices, institutions and public administrations for reimbursement of relief granted in so far as such relief concerns beneficiary children or to reimburse advanced costs for the maintenance or education of beneficiary children;
- a debt owed by the beneficiary to a social security institution;
- the monthly payments to be paid as repayment of a loan granted for the construction or acquisition of a family home, provided that the beneficiary children are heirs to the debtor concerned.

In all other cases, the compensation may not be assigned, seized or pledged.

### ***Transitional provisions***

The new provisions will apply to applications submitted to the Children's Future Fund (CAE) after 1 December 2016.

However, if the request for parental leave was submitted before 1 December 2016 and that parental leave must begin after 1 December, the receiving parent has several choices:

- they may not take any action and remain under the old regime;
- they want to maintain the form of their parental leave (6 months full-time, 12 months half-time), but benefit from the new allowance: they must send a registered letter to the CAE;
- if they want a completely new model of parental leave (e.g. 4 months), they must submit a new request requiring a new agreement from their employer.

On the other hand, if parental leave began before 1 December 2016, the receiving parent must remain under the old regime.





# PARENTAL LEAVE

1. Purpose of parental leave
2. Characteristic features of parental leave
3. Conditions for obtaining parental leave
4. Duration of parental leave
5. Application for parental leave
6. The employer's attitude to a request for parental leave
7. Employee protection during parental leave
8. Interruption of parental leave by a new maternity leave or acceptance leave
9. Termination of parental leave
10. Remuneration due during parental leave





# PARENTAL LEAVE

Articles L.234-43 - L.234-49 of the Labour Code

Articles L.122-1 - L.122-3 of the Labour Code

Articles 306 - 315 of the Social Security Code

## 1 PURPOSE OF PARENTAL LEAVE

Parental leave allows parents, following the birth or adoption of one or more children, to interrupt their professional careers to ensure a presence with the child(ren) at important times for his/their development, while having the certainty of finding their job at the end of the leave.

The statutory provisions governing parental leave are found partly in the Labour Code in Articles L.234-43 ff. and partly in the Social Security Code in Articles 306 ff.

## 2 CHARACTERISTIC FEATURES OF PARENTAL LEAVE

### 2.1. EACH PARENT IS INDIVIDUALLY ENTITLED TO PARENTAL LEAVE

Parental leave is an individual right for both parents. This means that both mother and father can get parental leave if a child is born or adopted.

If the parents are both entitled to parental leave, one of them must take it as a result of the maternity leave or the acceptance leave (1st parental leave). Otherwise, the right is forfeit.

The other parent may take his or her own until the child is 6 years old or 12 years old if adopted (2nd parental leave)<sup>5</sup>.

The beginning of this parental leave, called "2nd parental leave" must be before the date of the 6th, or the 12th birthday of the child.

If both parents meet the conditions and apply for parental leave at the same time, they indicate in their respective applications which of the two takes the 1st parental leave and which takes the 2nd parental leave. In the absence of any agreement, the 1st parental leave belongs to the parent whose surname is first in alphabetical order.

<sup>5</sup> In the case of adoption, parental leave must nevertheless be started within 6 years after the end of the acceptance leave or, in the absence of a acceptance leave, within 6 years following the date of the adoption judgement.

**1st parental leave**

This is the leave taken directly at the end of the maternity leave or the acceptance leave either by the mother or by the father.

**2nd parental leave**

This is the leave taken by the other parent until the child is 6 years old/until the child is 12 years old.<sup>6</sup>

The rule requiring parents to take one of the two leaves immediately after maternity leave or acceptance leave, on pain of losing it, has 2 exceptions:

- the first concerns the mother or father, living alone with his child, who are entitled to only one parental leave. They do not have to take it directly after the maternity leave/acceptance leave. They may, if they wish, take their leave later, but in any case before the 6th birthday of the child/12th birthday in the event of adoption<sup>7</sup>;
- if only one parent is entitled to parental leave, in particular because the other parent does not work, he can choose between the 1st and the 2nd leave. In the event that a maternity or acceptance leave is not due or has not been taken, the beginning of the 1st parental leave must be the first day of the third week following the birth, or in the event of adoption, from the adoption judgement.

## 2.2. PARENTAL LEAVE IS ONLY GRANTED ON REQUEST

While it is an individual right for the father and mother of a young child, parental leave is not an automatic right. Those who want to take advantage of it will apply to their employer. The formalities surrounding this process are explained below.

## 2.3. THE EMPLOYER IS IN PRINCIPLE REQUIRED TO GRANT PARENTAL LEAVE

If the employer receives an application for parental leave following maternity leave or acceptance leave, the employer is required to grant such leave.

He may, however, refuse the leave if the application has not been notified in the prescribed form and time.

Non-observance of these forms and time limits does not, however, affect a request following the death of the mother before the expiry of the maternity or parental leave following the maternity leave. The same provision applies to the mother in the event of the death of the father before the expiry of his parental leave. In these cases, a simple notification of the employer will be sufficient, so that the surviving parent can then take parental leave following the death.

Regarding the 2nd leave, the employer has the opportunity not to refuse, but to postpone the start of the leave to a later date (see below).

<sup>6</sup> In the case of adoption, parental leave must nevertheless be started within 6 years after the end of the acceptance leave or, in the absence of a acceptance leave, within 6 years following the date of the adoption judgement.

<sup>7</sup> In the case of adoption, parental leave must nevertheless be started within 6 years after the end of the acceptance leave or, in the absence of a acceptance leave, within 6 years following the date of the adoption judgement.

In 4 cases however, he has the opportunity to refuse parental leave:

- the person requests part-time parental leave of 8 or 12 months or a split leave. The employer may refuse to grant these leave formulas. The parent must either take a full-time leave of 4 or 6 months or waive the request;
- the request is made by a person who has changed employers in the year preceding the beginning of the leave. This person can benefit from parental leave if the new employer agrees. The latter can refuse;
- in the case of hiring an employee who is already on parental leave, the new employer is not required to accept the continuation of the parental leave. However, if the new employer agrees, the parental leave must be continued without interruption;
- as long as the employee is on probation, parental leave cannot be requested.

## 2.4. THREE POSSIBLE FORMULAS FOR PARENTAL LEAVE

The principle that parental leave must be taken in full at one time is replaced by a system with three formulas:

- full-time parental leave of 4 or 6 months: the employee stops working altogether. In this formula, parental leave must be taken in full and at one time;
- part-time parental leave of 8 to 12 months: an employee whose working time is at least half of the normal working time of the company has the right to choose that half-parental leave which will effectively correspond to a reduction of the employee's working time of 50%. In this formula, parental leave must be taken in full and at one time;
- new formula of split parental leave: an employee working 40 hours a week with the same employer, has the possibility, with the agreement of the employer, to reduce his professional activity by 20% per week or to reduce his professional activity over a duration of 4 distinct months during a period of 20 months.

## 2.5. PARENTAL LEAVE MUST BE TAKEN BY BOTH PARENTS AT THE SAME TIME

Since 1 December 2016, both parents may be in the same period on parental leave, whether full-time or part-time.

## 2.6. PARENTAL LEAVE IS NOT TRANSFERABLE FROM ONE PARENT TO THE OTHER

Parental leave cannot be transferred from one parent to another. One parent cannot give up leave for the other parent. If he does not take it himself, the leave is forfeit.

**NOTE:** One of the parents must take parental leave just after maternity or acceptance leave. Otherwise, the right to the 1st parental leave is forfeit.

## 2.7. PARENTAL LEAVE IS COMPENSATED BY A CAPPED REPLACEMENT INCOME

The parental leave allowance becomes a real replacement income, calculated on the basis of the average monthly professional income earned in the 12 months preceding the beginning of the parental leave, with a lower limit of € 2,071.10 gross per month (= salary non-qualifying social minimum at 1 January 2019 at 814.40) and an upper limit of € 3,451.83 gross per month (= unqualified minimum social wage at 1 January 2019 to index 814.40 plus 2/3).

These amounts correspond to full-time employment contracts.

Parental leave is compensated in proportion to the earnings forfeit by the beneficiary parent and hours actually worked on average over the 12 months preceding the start of parental leave.

Like other remuneration, the allowance is subject to the social and fiscal charges applicable to wages, the employer's share of social contributions is met by the Children's Future Fund (Caisse pour l'avenir des enfants - CAE or "Zukunftскеess"<sup>8</sup>) and the employee's share by the parent.

A calculator is available on the CAE website<sup>9</sup>.

### ABSTRACT

#### Characteristic features of parental leave

- Each parent is individually entitled to parental leave.
- Parental leave is only granted on request.
- The employer is in principle required to grant a requested parental leave in accordance with the statutory formalities and deadlines.
- Three possible formulas for parental leave.
- Parental leave can be taken simultaneously by both parents.
- Parental leave is not transferable from one parent to another.
- Parental leave is compensated by a capped replacement income.

<sup>8</sup> The National Fund for Family Benefits was renamed "Children's Future Fund" (CAE) or "Zukunftскеess" by the law of 23 July 2016.

<sup>9</sup> [www.cae.public.lu](http://www.cae.public.lu)

## 3 CONDITIONS FOR OBTAINING PARENTAL LEAVE

To qualify for parental leave, several conditions must be met cumulatively.

These are, on the one hand, conditions relating to the applicant's family situation, and, on the other hand, conditions relating to the applicant's employment situation.

Parental leave remains valid only as long as all these conditions are met.

### 3.1. THE FAMILY SITUATION OF THE APPLICANT

#### 3.1.1. *Being a parent of a child under 6 if born/12 years in the case of adoption*

The first condition is that the applicant is a parent of a child under 6 years of age/12 years of age in the case of adoption.<sup>10</sup>

#### 3.1.2. *Devoting oneself to the education of the child*

The second condition is that the applicant is primarily occupied in the upbringing of the child and does not engage in any professional activity during full-time parental leave.

He must bring up this child in his home and give himself mainly to his education during the period of parental leave.

However, in the case of part-time parental leave, it is possible to combine part-time parental leave with the exercise of a part-time employment with the same employer, provided that the total monthly period of work actually worked does not exceed half of the working time worked before the parental leave.

In the case of split parental leave, the employee continues the exercise of his professional activity by reducing his working time either by 20% per week or over 4 periods of 1 month for a maximum period of 20 months.

#### EXAMPLE

*Company A's employees normally work 40 hours a week. If the applicant wants to cumulate part-time parental leave with a professional activity, he can work at most 20 hours a week.*

### 3.2. THE PROFESSIONAL SITUATION OF THE APPLICANT

In addition to the family conditions described above, the parent who wishes to obtain parental leave must have one of the following qualities:

- to be an employee;
- to be an apprentice;

<sup>10</sup> In the case of adoption, parental leave must nevertheless be started within 6 years after the end of the acceptance leave or, in the absence of an acceptance leave, within 6 years following the date of the adoption judgement.

- to practice an independent or liberal profession;
- to be an official, employee or employee of the State, of a municipality, of a public establishment or agent of the national railway company.

This condition must be met:

- at the time of the birth of the child or the reception of the child to be adopted;
- when applying for parental leave;
- at the beginning of the parental leave;
- in principle without interruption for at least 12 continuous months immediately preceding the start of parental leave;
- throughout the period of parental leave.

### **3.2.1. The conditions to be met if the applicant is an employee or an apprentice**

The employee or apprentice is entitled to parental leave under the following conditions:

- He is compulsorily affiliated to the Luxembourg social security at the moment of the birth of the child or the reception of the child to be adopted.
- This affiliation must have lasted for at least 12 continuous months before the start of the parental leave.

However, one or more interruptions will not result in the loss of the parental leave entitlement, where such interruption (s) does not exceed 7 days in total, during the year preceding the beginning of the parental leave.

Similarly, the condition of affiliation with the same employer is presumed to be met if, as a result of an assignment, merger or transfer of business, the employee parent is transferred without interruption to another workplace.

In the event of a change of employer during the 12-month period preceding parental leave or during the period of parental leave, leave may be granted only on condition that the new employer agrees.

In addition, the period of affiliation under a measure for employment organised by the Agency for the Development of Employment and a professional integration activity organised by the National Service for Social Action immediately preceding a period covered by an employment contract concluded with the same employer or, as the case may be, with the sponsor of the measure or the posting body must be taken into consideration for the required period of membership of 12 months.

- This employment, in the event of a salaried activity, under one or more employment contracts or an apprenticeship contract, must continue for the duration of the parental leave.
- The employee's working time is at least 10 working hours per week.

The working time of the employed parent is considered to be the duration provided for in the employment contract. In the event of a change in this period during the year preceding the beginning of the parental leave, the average calculated for the year in question must be taken into account.

To qualify for part-time parental leave, the working time applicable to the parent must be at least half of the normal working time applicable in the establishment/company, in principle at least 20 hours per week.

In order to be entitled to a split parental leave, the parent's working time must be equal to the normal working time applicable in the establishment/company.

The working time applicable to the beneficiary parent is taken into account on the date of notification of the application to the employer. However, the parent is only entitled to full-time parental leave, if, between the time of notification of the application for parental leave and the start of parental leave, the required period of time is no longer met.

Note that the apprentice is only entitled to full-time parental leave of 4 or 6 months.

### Parental leave and the employee on probation

An employee with an indefinite employment contract and a probation clause is not entitled to parental leave during the probation period. He must wait until the end of this period to apply.

### Parental leave and the end of a fixed-term employment contract (CDD)

The law requires, as a condition for granting parental leave, the existence of an employment contract throughout the period of parental leave.

Consequently, an employee with a fixed-term contract whose term is not later than the end date of the parental leave cannot be granted parental leave.

The fact that a person is on parental leave does not prevent the fixed-term contract which he holds from ending on the expiry date originally scheduled.

Indeed, parental leave does not suspend the fixed-term contract.

### Parental leave and apprentices

The parent holding an apprenticeship contract can only claim the formula of full-time parental leave of 4 or 6 months per child.

During the apprenticeship contract, the duration of basic vocational training as well as that of initial vocational training is extended by parental leave.

#### **3.2.2. The conditions to be met by the member of a liberal or independent profession**

The member of a liberal profession or independent must be affiliated obligatorily with the Luxembourg social security. This condition must be met at the time of the child's birth or reception, as well as during the 12 months immediately preceding the beginning of the parental leave.

## 4 DURATION OF PARENTAL LEAVE

### 4.1. FULL-TIME, PART-TIME OR SPLIT PARENTAL LEAVE

If the parent suspends his work entirely, he is entitled to a full-time leave of 4 or 6 months, even if he worked only part-time before the parental leave. This leave is automatic and the employer cannot refuse it if the request has been notified in due form.

If the parent does not want to suspend work altogether, he can take part-time parental leave for 8 or 12 months. In this case, he must reduce his professional activity by at least half of the working time before the parental leave. To qualify for part-time parental leave, the working time applicable to the parent must be at least half of the normal working time applicable in the establishment/company, in principle at least 20 hours per week.

## EXAMPLE

1. *The statutory working time of 40 hours per week is applicable in the company. If an employee working 40 hours a week wants to take part-time parental leave, he must reduce his  $40 - 20 = 20$  hours a week.*
2. *In the case where the employee works for example only 32 hours per week, he must reduce his professional activity by half, i.e.  $32 : 2 = 16$  hours per week.*
3. *An employee working only 20 hours a week may choose between a full-time leave of 4 or 6 months or a part-time leave of 8 or 12 months:*
  - *he opts for full-time parental leave and suspends his activity entirely;*
  - *he opts for a part-time parental leave of 12 months. He will continue to work 10 hours a week.*

The parent can also opt for a split parental leave: he can then reduce his professional activity either by 20% per week or totally during 4 distinct months over a period of 20 months. In order to be entitled to a split parental leave, the parent's working time must be equal to the normal working time applicable in the establishment/company.

The arrangements for the split parental leave are to be agreed in a parental leave plan by mutual agreement between the employer and the parent within 4 weeks of the date of the parent's application. This plan covers the entire period of parental leave and must be sent to the Children's Future Fund (Caisse pour l'avenir des enfants - CAE) together with the application itself. Possible changes, to be approved by mutual agreement between the parent and the employer, are only allowed for adjustments of schedules or calendar months.

If the employer refuses to grant parental leave in this form, he must inform the beneficiary parent by registered letter with acknowledgment of receipt at the latest within 2 weeks of the request and invite the parent to an interview within a period of 2 weeks from this notification.

In the context of this interview, the employer must justify the decision and offer the parent in writing an alternative form of parental leave or a parental leave plan different from that requested by the parent. If 2 weeks after this interview both parties stop and do not sign any parental leave plan, the parent is entitled to parental leave following his choice of 6 months or 4 months full time.



Employee activities before parental leave	Parental leave formula	Working time during parental leave	
<b>Several employment contracts/professional activities of at least 10 hours per week</b>	Full-time parental leave <ul style="list-style-type: none"> <li>• 4 months</li> <li>• 6 months</li> </ul>	Full suspension of activity	
<b>One employment contract between 10 hours per week and half-time</b>	Full-time parental leave <ul style="list-style-type: none"> <li>• 4 months</li> <li>• 6 months</li> </ul>	Full suspension of activity	
<b>One contract between half-time and full-time</b>	Full-time parental leave <ul style="list-style-type: none"> <li>• 4 months</li> <li>• 6 months</li> </ul>	Full suspension of activity	
	Parental leave on a part-time basis <ul style="list-style-type: none"> <li>• 8 months</li> <li>• 12 months</li> </ul>	50% reduction in activity during parental leave	
<b>One full-time employment contract</b>	Full-time parental leave <ul style="list-style-type: none"> <li>• 4 months</li> <li>• 6 months</li> </ul>	Full suspension of activity	
	Parental leave on a part-time basis <ul style="list-style-type: none"> <li>• 8 months</li> <li>• 12 months</li> </ul>	50% reduction in activity during parental leave	
	Parental leave fractionated	8 hours a week over a period of 20 months	20% reduction in activity per week during parental leave
		4 periods of 1 month over a maximum period of 20 months	Full suspension of activity during 4 periods of parental leave
<b>Apprenticeship contract</b>	Full-time parental leave <ul style="list-style-type: none"> <li>• 4 months</li> <li>• 6 months</li> </ul>	Full suspension of activity	

If full-time leave is a right for the beneficiary, it is different from part-time or split leave which is subject to the agreement of the employer. The latter may refuse to grant part-time or split leave, in which case the applicant must either take a full-time leave of 4 or 6 months or abandon his request.

## 4.2. PARENTAL LEAVE IN THE EVENT OF MULTIPLE BIRTH OR MULTIPLE ADOPTION

In the event of birth or multiple adoption, the right to parental leave is open for each child of the same birth or adoption.

Since this is an individual right in relation to each child, the applicant parent must be able to choose to take the leave for only one of the children or for each of the children.

For further clarification, please contact the CAE Parental Leave Department directly.

### The duration according to the number of children

#### 1. Childbirth or adoption of a child

- 4 or 6 months full time leave
- 8 or 12 months part-time leave
- fractional parental leave: - 8 hours a week for 20 months  
- 4 periods of 1 month over a maximum period of 20 months

#### 2. Childbirth or multiple adoption

- 4 or 6 months full time leave for each child
- 8 or 12 months part-time leave for each child
- fractional parental leave: - 8 hours a week for 20 months for each child  
- 4 periods of 1 month over a maximum period of 20 months for each child

## 5 APPLICATION FOR PARENTAL LEAVE

As mentioned above, parental leave is not an automatic right for parents. On the contrary, it is only granted on request to the employer.

This request must take the form of a registered letter with acknowledgment of receipt and must be made within a certain time.

### 5.1. FORMALITIES TO BE COMPLETED BY EMPLOYEES, APPRENTICES AND NOTICE PERIODS

#### 5.1.1. *The request for parental leave to be sent to the employer*

The deadlines to be respected when submitting an application for parental leave are not the same depending on whether it is the 1st or the 2nd leave:

- For parental leave following maternity leave (1st leave), the application must reach the employer no later than 2 months before the start of maternity leave.  
In the case of adoption, the application must reach the employer at the latest before the start of the acceptance leave.
- For the 2nd leave (that is to say, that which can be taken up to 6 years of age of the child), the application must reach the employer with 4 months preceding the start of parental leave.  
In other words, the parental leave can start at the earliest 4 months after the day of the request.

It is important to emphasise that the 2nd parental leave must be started before the child has reached the age of 6 years/12 years in the event of adoption. It is therefore appropriate to submit the application in due time, taking into account the possibility for the employer to postpone the leave.

### EXAMPLE

1. The employee works in a company with less than 15 employees. The employer can therefore request a postponement of the leave by 6 months.

If the employee wants to be sure to start his parental leave before the 6th birthday of the child, it is prudent to apply at least 10 months before the 6th birthday of the child, while ensuring that the parental leave is started before this anniversary date.

2. The employee holds a senior management position and in this capacity participates in the effective management of the company, which has more than 15 employees.

In case he requests parental leave, the employer may delay the start of this leave by 2 months. If the employee wants to be sure that he has started his parental leave before the child's 6th birthday, it is prudent to submit the application at least 6 months before the child's 6th birthday, while making sure that the child parental leave is started before this anniversary date.

#### 5.1.2. *The administrative procedures to be accomplished*

In order to receive the parental leave allowance, a written application must be made to the Children's Future Fund (Caisse pour l'avenir des enfants - CAE), which is the competent authority for parental leave. This request corresponds in fact to a pre-established form to be obtained from the CAE or downloaded on its website [www.cae.public.lu](http://www.cae.public.lu).

This form, duly completed and certified by the employer, must be returned to the CAE, accompanied, if applicable, by the parental leave plan:

- concerning the 1st parental leave, within 15 days of the notification of the application for parental leave to the employer;
- for the 2nd parental leave, within 15 days of the notification of the employer's response or, if there is no response, within 2 weeks after the expiry of the four-week period granted to the employer to postpone the leave.

After receipt of the request, the CAE contacts the applicant for the production of the supporting documents which must, if necessary, still be submitted.

For good measure, it should be noted that various other information must also be reported to the CAE:

- the birth of the child must be declared within 15 days of the declaration to the civil status;
- if the mother decides to breastfeed her child, the extension of the maternity leave resulting therefrom must be communicated to the Fund before the 7th week following the delivery;
- if the mother is not breastfeeding, she must inform the CAE in writing within the same period, that is, before the 7th week following delivery;
- in the case of the adoption of a child, the request to receive the parental leave allowance must be accompanied by a certificate from the Court certifying that the adoption procedure has been started.

The allowance must be paid at the end of each month for which it is due, provided that the application and other supporting documents have been submitted within the prescribed period. In the event of late submission of the application or other required supporting documents, it is paid as soon as the examination of the file by the Fund is completed.

The parents are required to provide all the information and data deemed necessary to be able to ascertain the fulfilment of the conditions laid down for the award of remuneration. They are also required to notify within one month any fact that may give rise to reduction or extinction of their rights.

Public administrations and establishments, including social security organisations, as well as the employers concerned, are required to provide the CAE with all the information it requires to verify the conditions for obtaining parental leave and calculating the remuneration.

## **5.2. THE FORMALITIES TO BE PERFORMED BY THE MEMBER OF A LIBERAL OR INDEPENDENT PROFESSION**

If the applicant is a self-employed or independent, the application has to be submitted directly to the CAE.

He must certify the beginning of his parental leave by an affidavit attached to his application, which must be notified to the Fund 2 months before the beginning of the period qualifying for the maternity benefit in respect of the 1st parental leave and at least 4 months before the start of the 2nd parental leave.

# **6 THE EMPLOYER'S ATTITUDE TO A REQUEST FOR PARENTAL LEAVE**

When a parent submits an application to his employer to obtain parental leave, the attitude that the employer can or must adopt regarding this request is not the same depending on whether it is the 1st or 2nd leave.

## **6.1. NO REFUSAL CAN BE GIVEN TO AN APPLICATION CONCERNING THE 1ST PARENTAL LEAVE**

When a parent applies to obtain parental leave directly at the end of the maternity leave or the acceptance leave, the employer must accept it if it has been notified in the form and within the time subject to a period of limitation of law.

The right to the 1st parental leave is therefore absolute when the request has been made in the form and time required.

Let's just remember that the employer can demand that this 1st leave be taken full-time and not on a part-time or split basis.

## **6.2. A POSTPONEMENT IS POSSIBLE WHEN IT IS THE 2ND PARENTAL LEAVE**

The employer may, under certain conditions, request the postponement of the date of the beginning of the 2nd parental leave, when the date indicated by the employee poses a problem.

The employer must then send its decision of postponement by registered letter with acknowledgment of receipt at the latest within 4 weeks of the request.

Cases in which the employer may request a postponement of parental leave, of 2 months maximum, are the following:

- when a significant proportion of a company or department requests parental leave at the same time and the organisation within the company would be seriously disrupted;
- the replacement of the person on leave cannot be organised during the 4-month period of notice because of the specific nature of the work that he does or because of a shortage of manpower in the branch of activity in question;
- the applicant is a senior executive who participates in the effective management of the company.

When the work is seasonal in nature and the leave is in a seasonal period. The leave can then be postponed to the end of the seasonal period.

The fact that a company employs less than 15 employees is also considered by itself as a valid reason for postponement. In this case, the employer even has the right to request a postponement of the leave of up to 6 months.

The employer must propose to the employee within the period of 1 month a new date for the leave, which cannot be more than 2 months (6 months for companies with less than 15 employees) after the start date of the requested leave, unless express request of the employee. In this case, the employee's request can no longer be refused.

In addition, the employer must inform the employee delegation in companies with at least 15 employees.

If the parent considers that the employer's reason for delay is not justified, he may apply to the Inspectorate of Labour and Mines. The same right belongs to the employee delegation (including the equality delegate), as well as to representative national or sectoral unions present in the employee delegation and bound by the collective agreement applicable to the business.

If no agreement is found within 8 days, one of the parties can refer the matter to the President of the Labour Court ruling on injunction measures.

Note that no postponement is possible:

- once the employer has agreed to parental leave;
- if the employer has not responded to the parent's request within 4 weeks;
- when the parent works on behalf of more than one employer and they disagree with the postponement;
- in the case of the occurrence of a serious event in relation to the child.

These include cases where the child is the victim of an illness or accident requiring the presence of a parent. This need must be documented with a medical certificate. Another case is that of school problems or behavioural disorders of the child. These problems or disorders must be documented by a certificate issued by the competent school authority.

## Postponement of parental leave

### 1. Duration of the report

- In companies of 15 employees and more: 2 months maximum.
- In companies with under 15 employees: 6 months maximum.
- Seasonal work (irrespective of the size of the company): until the end of the seasonal period.

### 2. Reasons for postponement

- Disruption of the organisation in the event of simultaneous requests.
- Impossibility of organising the replacement of the parent during the notice of a month because of the specificity of his work or a shortage of manpower in the branch of activity in question.
- The employee who is a senior executive and participates in the effective management of the company.
- Request made during a period of seasonal nature.
- Request submitted in a company with fewer than 15 employees.

### 3. Cases in which postponement is excluded

- Agreement given by the employer.
- No response from the employer within 4 weeks.
- Disagreement between the different employers of the parent.
- Occurrence of a serious event related to the child.

## Fixed-term contract (CDD) to replace an employee on parental leave

### Cascading replacements allowed

The replacement of an employee absent due to parental leave, maternity leave or family leave does not have to be made in the same position as that occupied by the absent employee. It may be in another vacant position in the company or institution concerned as a result of reorganisations or internal changes that took place following the absence in question.

### The CDD must report the name of the employee on parental leave replaced

The fixed-term contract concluded to replace an absent employee must specify the name of that employee.

In the event of a cascade replacement, the fixed-term contract will indicate the name of the employee on parental leave indirectly

### Start and end date of the CDD

The contract for the replacement of an employee absent for parental leave may begin 3 months before the date of the beginning of the parental leave or 3 months before the date of the beginning of the maternity leave, if the parental leave is taken following maternity leave.

Similarly, it may cease 3 months after the end of the parental leave of the employee replaced.

# 7 EMPLOYEE PROTECTION DURING PARENTAL LEAVE

During the period of parental leave, the employment relationship between the employer and the beneficiary is maintained, even if it is temporarily suspended.

In fact, during the period of full-time parental leave, the employment contract is suspended in full, while during the period of part-time parental leave or periods of split parental leave, the employment contract is suspended partially or in proportion.

This entails that on the expiry of the parental leave the employee is entitled to return to his job.

## 7.1. THE GUARANTEE OF REEMPLOYMENT AND ITS EXTENT

The employer is not only required to take back the beneficiary at the end of the parental leave, but also to let him keep his previous job as far as possible.

It is only in an exceptional and objectively justified way that the employer can offer him a similar job, corresponding to his qualifications and with an equivalent remuneration.

The bottom line is that employment conditions after parental leave are not reduced. It is of course open to the employer to grant a better job to the beneficiary after returning from parental leave.

## 7.2. PROTECTION AGAINST DISMISSAL

In order to guarantee the employee the full exercise of his right to parental leave, it is prohibited for the employer to dismiss him during the parental leave, as also to summon him to an interview prior to dismissal with notice.

However, this protection is not absolute. It only applies for dismissal with notice and does not apply in the event of dismissal based on a serious misconduct committed by the employee.

This protection applies both during full-time parental leave and during part-time or split parental leave. Even if the employee's employment contract is only partially/proportionally suspended in the case of part-time or split parental leave, the employer may not dismiss that employee for acts that occurred during his work time, except in the case of serious misconduct.

### 7.2.1. Dismissal with notice

The prohibition against the employer dismissing the beneficiary with notice (or summoning him to an interview prior to dismissal with notice) will apply from the last day of the period of notice for the notification of the request for parental leave.

Accordingly, in respect of the 1st parental leave, the protection takes effect from the day before the beginning of the period of notice of 2 months preceding the beginning of the maternity leave/from the day before the beginning of the acceptance leave in the event of adoption.

For the 2nd leave, it will apply from the day before the beginning of the period of notice of 4 months preceding the beginning of the parental leave.

From these dates and during the whole period of the parental leave, the beneficiary cannot be the subject of a dismissal with notice or of a call to an interview prior to a dismissal with notice.

Any breach of contract pronounced despite this prohibition is considered null and void. However, to claim this invalidity, the employee must apply to the President of the Labour Court. The latter will ascertain the invalidity of the dismissal and order the maintenance of his employment contract. For this purpose, the employee has 15 days after the dismissal.

### 7.2.2. Dismissal for serious misconduct

The beneficiary of parental leave has no protection when he has been guilty of serious misconduct. In this case, the employer retains his right to terminate the employment contract with immediate effect.

The end of the employment contract entails the end of the parental leave and the employee must return the parental leave benefits already received.

#### Examples of serious misconduct

In general, the labour courts classify the following facts as serious misconduct:

- unjustified absence;
- insulting the employer;
- the refusal of an order;
- theft;
- the systematic refusal to respect the safety instructions that exist in the company;
- the performance of clandestine work for a customer of the employer;
- directly or indirectly competing with the employer;
- threats and physical violence against the employer or a supervisor.

This list is not restrictive.

## 7.3. MAINTAINING RIGHTS DURING PARENTAL LEAVE

Since parental leave must not have a negative impact on the beneficiary's rights, they must be guaranteed.

It is with this in mind that the parental leave period is taken into account to calculate the length of service of the beneficiary. Similarly, he does not lose any of the benefits he has acquired before the start of parental leave (bonuses, gratuities, etc.).

The period of parental leave is taken into account as a qualifying period for the maternity cash benefit, the unemployment benefit and a new parental leave.

Some measures have been introduced to facilitate the return to the parent absent due to parental leave.

Thus, employees enjoying parental leave have the right to access continuing training measures organised or offered by the employer, in order to follow the evolution of the technology and production processes.

In addition, the employer and the employee benefiting from the parental leave may arrange by mutual agreement, by amendment to the employment contract, to be signed at the latest one month before the beginning of the parental leave, that the employee will attend events organised by or at the request of the employer. These include service meetings, meetings or information sessions (e.g. on the evolution of the company, the evolution of the procedures or techniques, the operation of the service or the company, the introduction of innovations) as well as continuous training likely to guarantee or improve the employability of the employee prior to the resumption of his work.

The addendum sets the number, schedules and other practicalities of these events.

Such measures may not, however, have as their purpose or effect the participation of the employee in the normal and ongoing work of the company or in the performance of overtime. Violation of this provision gives the right to damages for the benefit of the employee.

The employee may unilaterally terminate this side agreement, either by registered letter or by hand delivery of the employer or his representative, or by email, all with acknowledgment of receipt. The termination thus made must not give rise to any penalty and must not be grounds for dismissal.



The period of parental leave does not confer an entitlement to paid annual leave. Leave accumulated and not yet taken before the start of parental leave can, in principle, be postponed to the period after parental leave but within the statutory deadlines (i.e. 31 December of the current year or 31 March of the following year, following the employee's return to work date after parental leave).

## 7.4. FAILURE BY THE EMPLOYEE TO RETURN TO WORK AT THE END OF PARENTAL LEAVE

At the end of the parental leave, the beneficiary of the parental leave is in principle required to resume his job immediately. He may nevertheless resign afterwards by respecting the statutory rules regarding resignation.

However, the employee who does not wish to resume his job at the end of the parental leave is required to inform the employer during the parental leave, by registered letter with acknowledgment of receipt, within a period equal to the one he must respect in the event of resignation with notice, the notice being dependent on his seniority of service.

However, this obligation of information does not exempt the employee from notifying his resignation in due form to the employer, but this notification cannot take place until the earliest day of the statutory notice.

**WE NOTE:** Failure to demonstrate a serious and legitimate reason for resuming work on the expiry of parental leave in the absence of information or notification of resignation as explained above constitutes a legitimate ground for termination of the contract immediate effect for serious misconduct by the employer.

Seniority of service	Notice to be respected
less than 5 years	1 month
between 5 and less than 10 years	2 month
10 years and over 3 months	3 month

## 7.5. RELAXATION OF EMPLOYMENT CONDITIONS ON RETURN FROM PARENTAL LEAVE

An employee who resumes his initial activity at the end of the parental leave has the right to request an interview with his employer whose purpose is to adjust his schedule and/or his pace of work for a specified period that may not exceed duration of one year from the date fixed for the return to work.

The employer examines his request and responds to it taking into account his own needs and those of the employee. In the event of rejection of the request made by the employee, the employer is required to justify its rejection.

The violation of the obligations imposed by the previous paragraph gives a right to damages for the employee, to be fixed by the Labour Court.

## 8 INTERRUPTION OF PARENTAL LEAVE BY A NEW MATERNITY LEAVE OR ACCEPTANCE LEAVE

The occurrence of a new maternity or parental leave during parental leave interrupts the current parental leave.

In this case, the maternity leave or the acceptance leave replaces the parental leave. The parental leave allowance ceases to be paid and is replaced by the maternity allowance.

The remaining fraction of parental leave is linked to the new maternity leave.

If one of the parents decides to take a parental leave for the new child, following the maternity or acceptance leave, this new parental leave is then automatically postponed until the end of the fraction of the parental leave related to the maternity or acceptance leave and must be taken consecutively thereto.

## 9 TERMINATION OF PARENTAL LEAVE

There are several cases in which an initiated parental leave ends. The Children's Future Fund (Caisse pour l'avenir des enfants - CAE or "Zukunftskeess") will then in principle stop paying the parental leave allowance.

In certain cases specifically provided for by law, the beneficiary of the parental leave will keep the monthly payments of the leave payment already received. In other cases, he will be required to repay them.

### 9.1. THE DEATH OF THE BENEFICIARY PARENT

In the event of the death of the beneficiary parent, his parental leave ceases. This termination of parental leave does not entail the restitution of the benefits already received.

The other parent may, if appropriate, take his parental leave following the death, after duly informing his employer.

### 9.2. THE DEATH OF THE CHILD OR THE REJECTION OF THE APPLICATION FOR ADOPTION

If the child dies during the parental leave or when the adoption procedure does not succeed, the parental leave started must end.

The beneficiary is then required to return to work no later than 1 month after the death of the child or the rejection of the application for adoption.

If the employer has replaced the beneficiary during the period of parental leave, the latter must be entitled, in the same company, to a priority of assignment to any similar vacant post corresponding to his qualifications and accompanied by at least equivalent remuneration. If it is impossible to hold such a job, the parental leave is extended without being able to exceed its initial term.

In the event of the death of a child of one birth or multiple adoption before the extended period of parental leave, the duration of the leave must be reduced accordingly.

For any started month of parental leave, the beneficiary receives a pro rata of the parental leave allowance.

The monthly payments received until then remain with him.

### 9.3. VIOLATION OF THE CONDITIONS FOR OBTAINING PARENTAL LEAVE

Parental leave ceases when the conditions of obtaining are no longer met, and in particular in the following cases:

#### **9.3.1. Voluntary termination of the employment contract by the beneficiary parent**

When voluntary termination takes effect before the expiry of parental leave (resignation, termination by mutual agreement), it entails the termination of parental leave.

Monthly payments already paid must be repaid in full.

#### **9.3.2. Interruption of leave not motivated by a cause external to the beneficiary parent and entirely beyond his control**

In this case, the monthly payments already paid also give rise to a full refund.

This exceptional case is taken into consideration only if the interruption of the leave and the cause of the interruption have been previously notified to the Fund by the beneficiary parent. If the cause of the interruption is external to the beneficiary, the notification must be supplemented by a certificate from the employer if the cause is inherent in the company, if not of the competent authority to ascertain the cause in question.

However, in the case of a change of employer during the parental leave, the beneficiary parent may return to work before the end of the leave, and the benefits paid up to that date remain vested.

#### **Cessation of employer's business by bankruptcy, death or incapacity for work**

In the event of termination of the employer's business, for example because of bankruptcy, death or physical disability, the law provides for the automatic termination of the employment contract, unless the curator continues the business (in the event of bankruptcy) or the successor of the employer (in the event of death or physical disability).

The end of the employment contract entails, in these cases, also the end of the parental leave, but without the employee having to return the parental leave benefits already received, as the cause is external to him.

# 10 REMUNERATION DUE DURING PARENTAL LEAVE

During the period of parental leave, the loss of professional income is offset by a replacement income, hereinafter "allowance", which is paid monthly by the Children's Future Fund (Caisse pour l'avenir des enfants - CAE or "Zukunftskess").

A calculator is available on the site [www.cae.public.lu](http://www.cae.public.lu).

## **Calculation methods**

The allowance is calculated by taking as reference the pensionable income of the beneficiary of parental leave under the pension insurance relating to the current affiliation at the beginning of the parental leave.

The amount of the allowance corresponds to the average monthly professional income earned during the 12 calendar months preceding the start of the parental leave.

Income changes occurring after the start of parental leave will involve the recalculation of the allowance.

The amounts of the professional income included in the calculation of the indemnity are reduced to the index number of one hundred of the cost of living and adapted to the evolution of this index according to the terms applicable to the salaries and pensions of the civil servants of the State.

## **Minimum and maximum indemnity**

This allowance is nevertheless capped:

- lower limit of € 2,071.10 gross per month (= unqualified minimum social wage as at index 814.40)
- upper limit of € 3,451.83 gross per month (= unqualified minimum social wage as at index 814.40 plus 2/3).

**NOTE:** Remuneration limits vary according to the number of hours worked. These amounts correspond to full-time employment contracts for full-time parental leave.

## **Taxable and Contributory Allowance**

This allowance is subject to the applicable tax and social charges in respect of wages, but exempts contributions for sickness benefit as well as contributions for accident insurance and family allowances. The employers' share of social contributions is met by the CAE.

To determine the tax payable, it must be distinguished according to whether the employee holds a main form or an additional form.

The withholding tax at the source of a primary withholding tax slip, established for the gross remuneration that is expected to be the gross amount, is calculated using the corresponding scale. The additional record includes a fixed retention rate of 15% (Class 2), 21% (Class 1A) or 33% (Class 1).

If the employee takes a full-time parental leave, a new or additional main form (as the case may be) will be issued listing the CAE as the employer. The tax slip will be updated by the Direct Tax Administration without any intervention or request from the taxpayer, in an average interval of 30 working days. If the employee takes part-time parental leave, the employer keeps the old form and the employee gets a new form listing the CAE as employer.

The sum of the deductions made for a year N can be too high or too low. The difference can be refunded or recovered, during the year N+1, during the regularisation by way of base (model 100 N) or by annual count (model 163 N)<sup>11</sup>.

<sup>11</sup> Source: [www.cae.public.lu](http://www.cae.public.lu), section FAQ > congé parental

**Payment**

The allowance must be paid at the end of each month for which it is due, provided that the application and other supporting documents have been submitted within the prescribed period. In the event of late submission of the application or other required supporting documents, it is paid as soon as the examination of the file by the Fund is completed.

If the period of indemnification is less than one month, the beneficiary parent is entitled to a pro rata of the indemnity for the fraction of the month started.

**Occurrence of incapacity for work during parental leave**

During the period of full-time parental leave, the payment of remuneration is continued in the event of the occurrence of an illness provided that the other conditions remain met. The right to sickness benefit and, for the employees, also the right to the continuation of the remuneration is suspended.

For the parent receiving part-time parental leave, entitlement to cash sickness benefit or continuation of earnings must be maintained for the remaining period of work.

This will also apply for split parental leave.

**Pregnancy occurring during parental leave**

The allowance is suspended during the period of entitlement to the maternity cash benefit.

**Allowance and RMG**

The allowance must not be taken into account up to thirty per cent of its gross amount for the purpose of determining the benefits payable under the guaranteed minimum income.

**Possibility of garnishment of the allowance**

The parental leave allowance may be assigned, pledged or garnished within the limits set by the amended Law of 11 November 1970 on the transfer and garnishment of employment remuneration, as well as pensions and annuities.

This garnishment, assignment or pledging may only be intended to cover:

- the receivables which accrue to the municipalities, the social offices, the institutions and the public administrations in reimbursement of relief granted to the extent that these relief concerns the children beneficiaries or to refund expenses advanced for the maintenance or the education of the beneficiary children;
- a debt of the beneficiary towards a social security institution;
- monthly repayments of a loan for the construction or acquisition of a family home, provided that the beneficiary children are the heirs of the debtor concerned.

In all other cases, the allowance may not be assigned, garnished or pledged.

**Transitional provisions**

The new provisions apply to applications filed with the CAE after 1 December 2016.

However, if the application for parental leave was made before 1 December 2016 and the parental leave is to begin after 1 December, the beneficiary parent has several choices:

- he does not take any steps and he remains under the old arrangement;
- he wants to maintain the form of his parental leave (6 months full-time, 12 months part-time), but to benefit from the new allowance: he must send a registered letter to the CAE.

- he wants a brand-new model of parental leave (for example 4 months), it is necessary to submit a new request which requires a new agreement of his employer.

However, if the parental leave started before 1 December 2016, the beneficiary parent must remain under the old plan.

### EXAMPLE

*Mrs Schneider works 20h per week and earns € 3,000 gross per month. In May 2013, she gives birth to Louis and takes parental leave following her maternity leave. She chooses parental leave at half-time. Since the legislation provides for a 20-hour reduction in working time for half-time, she takes parental leave for 12 months and does not work at all. During this year, she receives a parental leave allowance of € 855. She resumes her work of 20 hours a week after 12 months of parental leave.*

*In November 2016, Ms. Schneider gives birth to Manon and decides again to take parental leave as a result of maternity leave. Under the new law, she has the choice between a full-time leave of 1 or 6 months or a half-time leave of 8 or 12 months:*

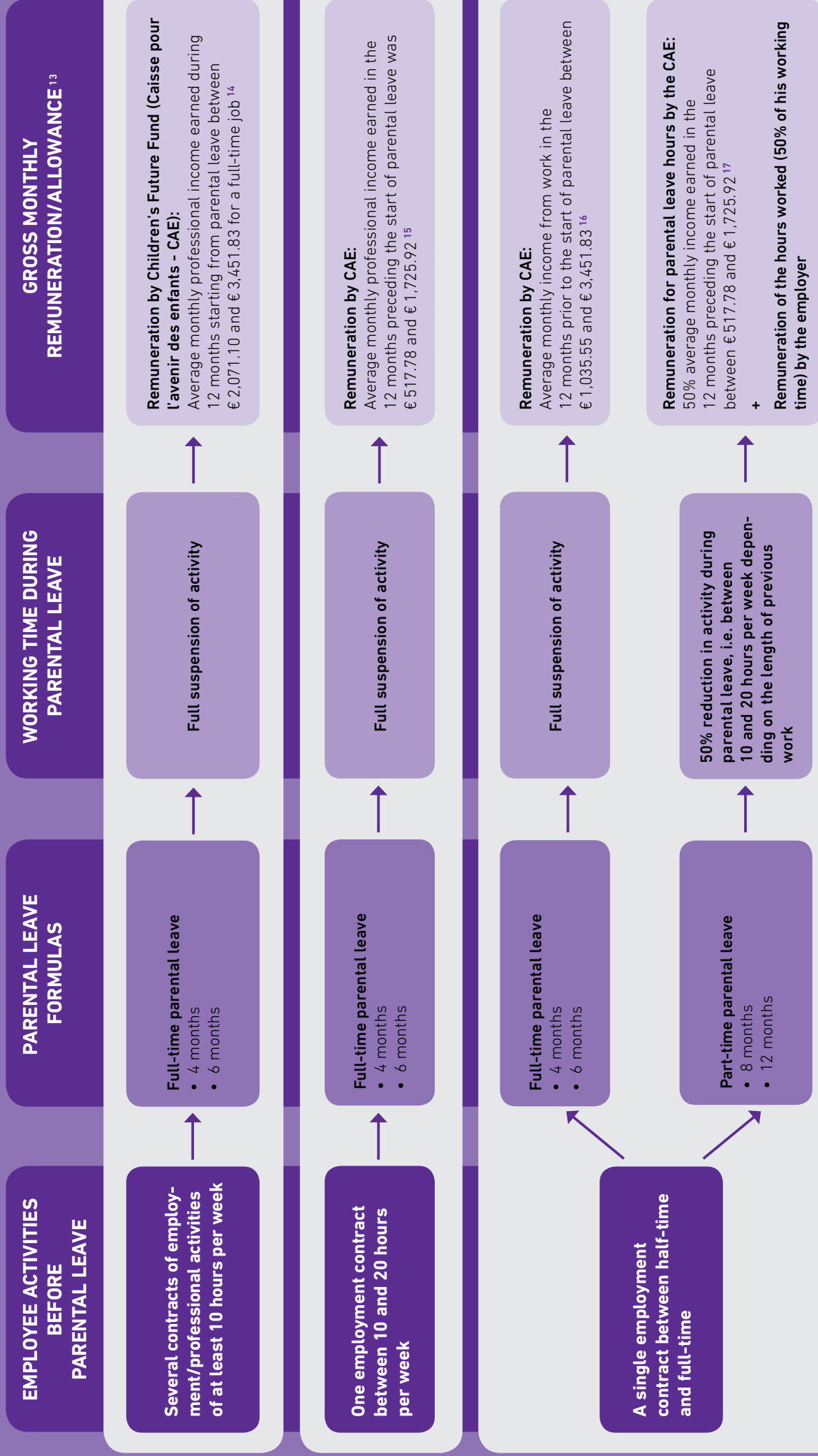
- *either she opts for a full-time parental leave and receives a replacement income of € 1,665.49 gross;*
- *or she opts for half-time parental leave of 12 months: as the parental leave corresponds under the new system to a real half-time (i.e. to half) and no longer to a reduction of her work at the rate of 20 hours, she will continue to work 10 hours per week. For these 10 hours, she will receive half of her gross salary, so € 1,500. The 10 hours of parental leave will be remunerated at a rate of € 832.74. In total she will receive for these 12 months a gross income of € 2,312.44.*

## Parental leave at a glance...

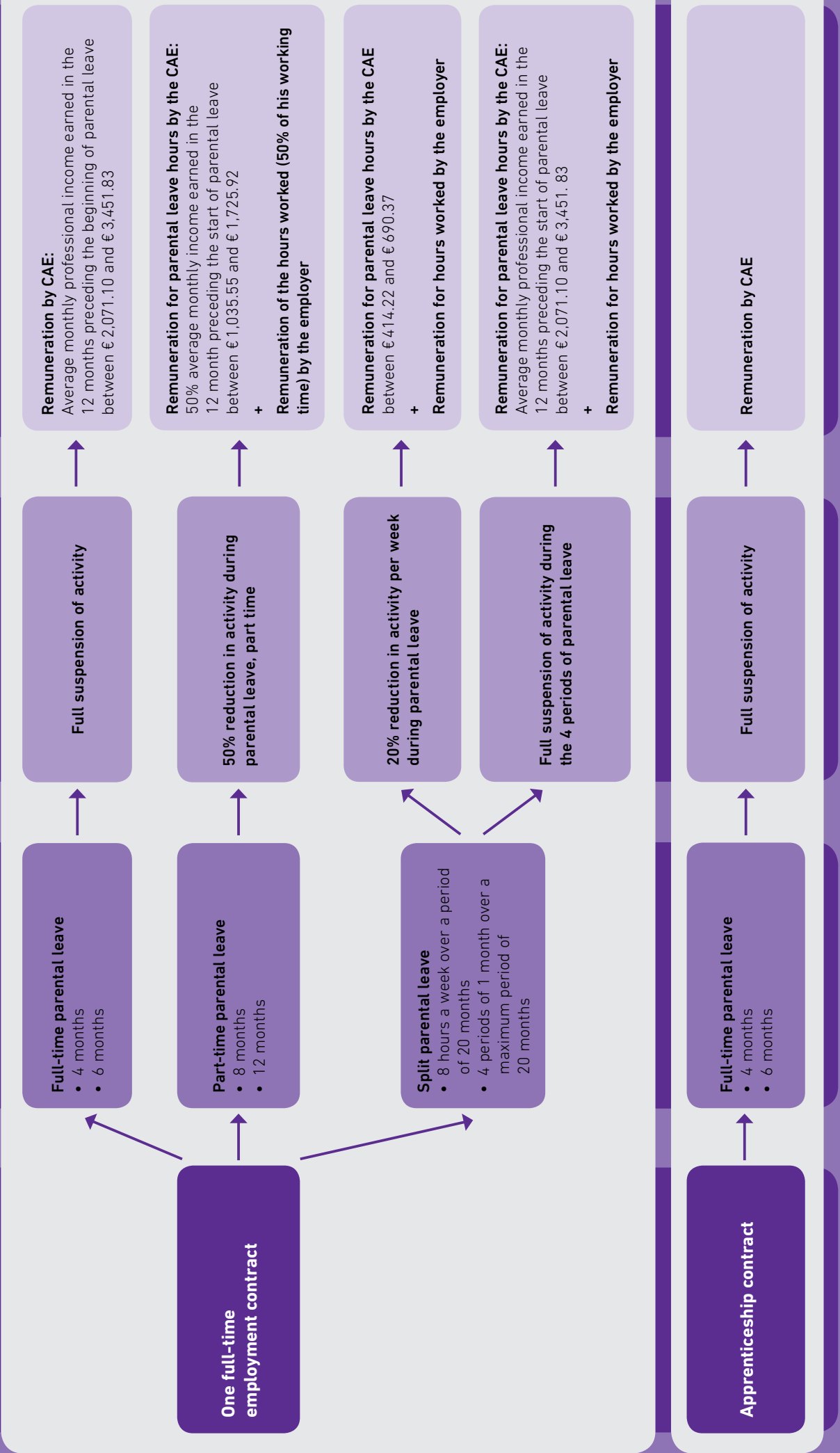
<b>Beneficiaries</b>	Parents of a child under 6 years old/under 12 years old in the case of adoption <sup>12</sup>
<b>Duration of parental leave and remuneration</b>	<ul style="list-style-type: none"> <li>• 4 or 6 months if full-time leave</li> <li>• 8 or 12 months if part-time leave</li> <li>• fractional parental leave             <ul style="list-style-type: none"> <li>» 8 hours a week out of 20 months</li> <li>» 4 periods of 1 month over a maximum period of 20 months</li> </ul> </li> </ul>
<b>Amount of gross monthly allowance</b>	<p>Average monthly professional income earned in the 12 months prior to the start of parental leave:</p> <ul style="list-style-type: none"> <li>• minimum = € 2,071.10 gross per month (MSW not qualified at the index 814.40);</li> <li>• maximum = € 3,451.83 gross per month (MSW not qualified at the index 814.40 plus 2/3);</li> <li>• ceilings valid for full-time work;</li> <li>• taxable and contributory (with the exception of contributions for sickness benefit as well as contributions for accident insurance and family allowances). Employers' share of the social contributions paid by the CAE.</li> </ul>
<b>Source of remuneration</b>	Children's Future Fund (Caisse pour l'avenir des enfants - CAE)

<sup>12</sup> In the case of adoption, the parental leave must nevertheless be started within 6 years after the end of the acceptance leave or, in the absence of an acceptance leave, within 6 years following the date of the adoption judgement.

# Possible formulas for parental leave and corresponding remuneration limits







13 Ceilings according to amounts of the minimum social wage at the index 814.40

14 The insemination ceilings are to be adjusted to the weekly working time of the employee.

15 For example: 20 hours/week: between € 1,035.55 and € 1,725.92; 10 hours/week: between € 517.78 and € 862.96

16 For example: 40 hours/week: between € 2,071.10 and € 3,451.83; 30h/week: between € 1,553.33 and € 2,588.89; 20 hours/week: between € 1,035.55 and € 1,725.92

17 For example: 20 hours/week: between € 1,035.55 and € 1,725.92; 10 hours/week: between € 517.78 and € 862.96





# STANDARD LETTERS AND FORMS

1. Request for new parental leave allowance
2. Request to obtain 1st parental leave
3. Request to obtain 2nd parental leave
4. Amendment to an employment contract
5. Application for invalidation of the dismissal of an employee on parental leave
6. Request for relaxation of working conditions on return from parental leave
7. Form to request parental leave allowance





## 1. Request for new parental leave allowance

(for parental leave requested before 1.12.2016 but starting after 1.12.2016)

(name and address of employee)

Children's Future Fund - CAE  
Parental Leave Department  
B.P. 384  
L-2013 Luxembourg

(place and date)

Registered letter

**Concerns: request for the new parental leave allowance for parental leave starting after 1 December 2016**

I, the undersigned

Surname, first name \_\_\_\_\_

ID number \_\_\_\_\_

resident at No. \_\_\_\_\_ Street \_\_\_\_\_

Postcode \_\_\_\_\_ City \_\_\_\_\_

wish to maintain the form of parental leave granted in the context of my parental leave and **hereby request that the new parental leave allowance be made available to me.**

I declare that I have read the legal provisions and agree to inform the Children's Future Fund as soon as possible of any change in the situation.

Place \_\_\_\_\_ Date \_\_\_\_\_

\_\_\_\_\_  
(signature)

## 2. Request to obtain 1st parental leave

(name and address of employee)

(name and address of employer)

(place and date)

Registered letter with acknowledgement of receipt

**Concerns: request for parental leave**

Mr./Ms.<sup>1</sup>,

I hereby notify you of my request to obtain:

*Choose the desired parental leave formula:*

- *parental leave of 4/6<sup>1</sup> months full-time;*
- *parental leave of 8/12<sup>1</sup> months part-time;*
- *split parental leave as follows:*

*For split parental leave, choose one of the following 2 options:*

- » *split parental leave with a reduction in my working hours of 20% per week for a period of 20 months, or*
- » *split parental leave over 4 one-month periods for a maximum period of 20 months.*

I wish to take this parental leave directly at the end of the *maternity leave/acceptance leave*.<sup>1</sup>

This request is based on Articles L.234-43 ff. of the Labour Code.

Yours sincerely,

\_\_\_\_\_  
(signature)

<sup>1</sup> The unnecessary entry should be deleted.

**Explanations:** This request must be sent to the employer no later than 2 months before the start of the maternity leave. In the event of an adoption, this request must be received by the employer before the beginning of the acceptance leave. A request for full-time parental leave may not be refused by the employer if it meets the formal and time requirements required by law. However, the latter may object to part-time or split leave in which case the applicant must either take their full-time leave or abandon their request.

### 3. Request to obtain 2nd parental leave

(name and address of employee)

(name and address of employer)

(place and date)

Registered letter with acknowledgement of receipt

**Concerns: request for parental leave**

Mr./Ms. <sup>1</sup>,

I hereby notify you of my request to obtain:

*Choose the desired parental leave formula:*

- parental leave of 4/6 <sup>1</sup> months full-time;
- parental leave of 8/12 <sup>1</sup> months part-time;
- split parental leave as follows:

*For split parental leave, choose one of the following 2 options:*

- » split parental leave with a reduction in my working hours of 20% per week for a period of 20 months, or
- » split parental leave over 4 one-month periods for a maximum period of 20 months.

In accordance with the legal period of notice of 4 months, I wish to take this parental leave as from \_\_\_\_\_ <sup>2</sup>.

This request is based on Articles L.234-43 ff. of the Labour Code.

Yours sincerely,

\_\_\_\_\_  
(signature)

<sup>1</sup> The unnecessary entry should be deleted.

<sup>2</sup> Parental leave may begin no earlier than 4 months after the day of the request.  
NOTE: the employee is only protected against dismissal during the legal period of notice.

**Explanations:** It should be noted that the 4 or 6 months respectively 8 or 12 months of parental leave must be started before the child's 6th birthday/12th birthday in the event of adoption.

Given that an employer may request postponement of the starting date of parental leave, it is therefore advisable to submit the request at least 6 months before the child's 6th/12th birthday. In companies with fewer than 15 employees, it is prudent to submit the application at least 10 months before the child's 6th/12th birthday. It should be recalled that in the event of adoption, parental leave must nevertheless be taken within 6 years following the end of the acceptance leave or, if there is no acceptance leave, within 6 years of the date of the adoption decision.

## 4. Amendment to an employment contract

Between the undersigned:

1. The company \_\_\_\_\_<sup>1</sup> having its registered office in \_\_\_\_\_<sup>2</sup> represented by \_\_\_\_\_<sup>3</sup>, hereinafter "the Employer"; and
2. Mr./Ms.<sup>4</sup> \_\_\_\_\_<sup>5</sup>, resident at \_\_\_\_\_, hereinafter "the Employee",

this amendment to the employee's employment contract is concluded on \_\_\_\_\_<sup>6</sup>.

### Entry into force and duration of the amendment:

This amendment shall take effect on the first day of the employee's parental leave that they will take directly *at the end of their maternity leave*/from \_\_\_\_\_<sup>4</sup> and will end on the last day of parental leave, from \_\_\_\_\_ to \_\_\_\_\_<sup>7</sup>.

### Parental leave formula chosen:

*Choose one of the following 2 options:*

- *parental leave part-time for 8 months/12 months;*
- *parental leave split into 8 hours per week over a 20-month period.*

This amendment modifies the employment contract concluded on \_\_\_\_\_<sup>7</sup> on the following point: \_\_\_\_\_.

### Working hours:

By mutual agreement of the parties, it is decided that the employee's working time which during parental leave is \_\_\_\_\_<sup>8</sup> per week, is distributed as follows over the different days of the week:

- » Monday:
- » Tuesday:
- » Wednesday:
- » Thursday:
- » Friday:

In duplicate and signed in \_\_\_\_\_ on \_\_\_\_\_.

\_\_\_\_\_  
Employee

\_\_\_\_\_  
Employer





- 1 *Indicate the employer.*
- 2 *Indicate the registered office.*
- 3 *Indicate the name of the legal representative.*
- 4 *Delete as applicable.*
- 5 *Indicate the surname and given name(s).*
- 6 *Indicate the date of entry into the company.*
- 7 *Indicate the period covered by parental leave.*
- 8 *Indicate the number of hours.*

## 5. APPLICATION FOR INVALIDATION OF THE DISMISSAL OF AN EMPLOYEE ON PARENTAL LEAVE

An employee on parental leave shall be protected against dismissal from the last day of the period of notice of the request for parental leave and for the duration of the leave.

During this period, the employer is prohibited from notifying the employee of the termination of the employment relationship and of a summons to a preliminary interview. Any dismissal and any invitation to a preliminary interview, notified in violation of the above prohibition, shall be null and void.

Within fifteen days following the dismissal, the employee may request, by simple request, the president of the Labour Court to declare the dismissal null and void in order to order their continuation or even their reintegration into the company.

The order to be made may be appealed, by simple request, within fifteen days of its notification through the registry office, to the judge presiding over the chamber of the Court of Appeal to which labour law appeals are referred.

## Application for invalidation of the dismissal of an employee on parental leave

To the President of the Labour Court  
of \_\_\_\_\_<sup>1</sup>  
sitting in summary proceedings.

Very respectfully indicating that

Mr./Ms.<sup>2</sup> \_\_\_\_\_<sup>3</sup>, \_\_\_\_\_<sup>4</sup> resident at \_\_\_\_\_  
\_\_\_\_\_;

that *he/she*<sup>2</sup> is, since \_\_\_\_\_<sup>5</sup> to the services of \_\_\_\_\_  
\_\_\_\_\_<sup>6</sup> established in \_\_\_\_\_<sup>7</sup>  
registered in the Trade and Companies Register under number \_\_\_\_\_<sup>8</sup>;

that *he/she*<sup>2</sup> received a termination letter dated \_\_\_\_\_;

that such dismissal is, however, null and void because they *requested parental leave on* \_\_\_\_\_/  
*that they are on parental leave from* \_\_\_\_\_ *to* \_\_\_\_\_<sup>2</sup>;

that such dismissal is null and void under the protection of employees who have *requested/obtained*<sup>2</sup>  
parental leave;

that the defendant refuses to reinstate the claimant to date;

that there is therefore reason for judicial compulsion;

that this request is based on Article L.234-47 (8) of the Labour Code;

For these reasons:  
the claimant asks you,  
Madam, Mr President of the Labour Court of \_\_\_\_\_<sup>1</sup>  
to convene the parties before you;

with express reference to Article 80 of the New Code of Civil Procedure and stipulating that if service of the document instituting the proceedings is made to the defendant in person and if he or she does not appear, the judgement to be entered is deemed to be contradictory, and is not subject to opposition;

and as far as necessary with reference to Article 101 in fine of the New Code of Civil Procedure, referring to Article 106(2) of the same Code and stipulating that:

"The parties may be assisted or represented by:

- a lawyer;
- their spouse or partner within the meaning of the Law of 9 July 2004 on the legal effects of certain partnerships;
- their relatives or direct associates;
- their relatives or collateral associates up to 3rd degree inclusive;
- persons exclusively attached to their personal service or company;

The representative when he is not a lawyer must justify a special power of attorney";

in order to reconcile them, if possible, otherwise, to declare the nullity of the dismissal/call for the interview prior to the dismissal against the claimant, order their continuation or, if necessary, their reinstatement in accordance with the provisions of Article L.124-12 paragraph (4), with immediate effect, and on pain of a penalty payment of \_\_\_\_\_<sup>9</sup> euros per day of delay;

the pre-qualified employer to be ordered to pay the claimant a procedural indemnity of \_\_\_\_\_<sup>10</sup> on the basis of Article 240 of the New Code of Civil Procedure, whereas it would be unfair to leave them to pay the costs incurred by the present proceedings;

the pre-qualified employer is ordered to pay all the costs and expenses of the proceedings;

declare that the order to be made will be enforceable by way of provision notwithstanding an appeal or opposition, before registration and without security, under Article L.234-47(8) of the Labour Code;

reserving for the claimant all other rights, pleas in law and actions.

Inventory of documents submitted in support of the request (subject to other documents to be submitted during the proceedings):

- copy of the dismissal letter;
- copy of the letter of request for parental leave;
- document attesting to parental leave.

\_\_\_\_\_ <sup>11</sup> on \_\_\_\_\_.

Yours sincerely,

\_\_\_\_\_  
(signature)



- 1 The employee's place of work determines the territorial jurisdiction of the Labour Court (Luxembourg, Diekirch or Esch-sur-Alzette). More information is available at [www.justice.public.lu](http://www.justice.public.lu).
- 2 Delete as applicable.
- 3 Indicate the surname and given name(s).
- 4 Indicate the profession.
- 5 Indicate the date of entry into the company.
- 6 Indicate the employer as follows:
  - Limited liability company (SARL)  
the limited liability company \_\_\_\_\_ (indicate the company name), represented by its manager(s) currently in office.
  - Public limited company (SA)  
the public limited company \_\_\_\_\_ (indicate the company name), represented by its board of directors/executive board currently in office.
  - Trader, operator in their own name  
Dear Sir/Madam \_\_\_\_\_ (indicate surname and first name(s)), trading as \_\_\_\_\_ (indicate name).
  - Non-merchant  
\_\_\_\_\_ (indicate surname and forename(s)/name of the organisation), represented by \_\_\_\_\_ (indicate the legal representative).
- 7 Indicate the employer's registered office.
- 8 Only applies to commercial companies and personal traders: indicate the number in the commercial register.  
The number in the commercial register should preferably be verified with the competent Trade and Companies Register (Luxembourg or Diekirch, depending on the operating address).
- 9 Indicate an amount or ask the President of the Labour Court to fix it ex aequo et bono (= in equity).
- 10 At the hearing, it will be necessary to detail and justify the costs incurred, such as the fact that you had to take a day off for the hearing.
- 11 Indicate your place of residence.



## 6. Request for relaxation of working conditions on return from parental leave

(Name and address of employee)

(Name and address of employer)

(place and date)

Registered letter

**Subject: request for an interview to change my working conditions when I return from parental leave**

Mr./Ms. <sup>1</sup>,

I hereby notify you of my request to make my working conditions more flexible, as permitted by Article L.234-47 (11) of the Labour Code.

I would like to see my work *duration/schedule* <sup>1</sup> change as follows:

- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_ <sup>2</sup>

This, for the period from \_\_\_\_\_ to \_\_\_\_\_ <sup>3</sup>.

Please allow me to attend an interview to discuss this.

Yours sincerely,

\_\_\_\_\_  
(signature)

<sup>1</sup> Delete as applicable.

<sup>2</sup> Completed as you wish.

<sup>3</sup> A fixed period not exceeding one year from the date set for the return to work.







Informations relatives au congé parental demandé									
<b>Forme souhaitée du congé parental*</b>									
<b>A. Vous exercez une seule activité professionnelle à plein temps</b> <span style="float: right;"><input type="checkbox"/> Oui <input type="checkbox"/> Non (passer à B)</span>									
<input type="checkbox"/> Congé parental à <u>plein temps</u>	<input type="checkbox"/> de 4 mois <input type="checkbox"/> de 6 mois <span style="font-size: small;">&gt; Suspension intégrale de l'activité durant le congé parental</span>								
<input type="checkbox"/> Congé parental à <u>mi-temps</u>	<input type="checkbox"/> de 8 mois <input type="checkbox"/> de 12 mois <span style="font-size: small;">&gt; Réduction de 50% de l'activité durant le congé parental</span>								
<input type="checkbox"/> Congé parental fractionné en 8 heures par semaine sur une période de 20 mois	<span style="font-size: small;">&gt; Réduction de 20% de l'activité par semaine durant le congé parental</span>								
<input type="checkbox"/> Congé parental fractionné en 4 périodes d'un mois sur une période maximale de 20 mois	<span style="font-size: small;">&gt; Suspension intégrale de l'activité durant les 4 périodes de congé parental</span>								
Période 1: du ___/___/___ à ___/___/___	Période 2: du ___/___/___ à ___/___/___								
Période 3: du ___/___/___ à ___/___/___	Période 4: du ___/___/___ à ___/___/___								
<b>B. Vous exercez une seule activité professionnelle à temps partiel entre 20 et 40 h/sem</b> <span style="float: right;"><input type="checkbox"/> Oui <input type="checkbox"/> Non (passer à C)</span>									
<input type="checkbox"/> Congé parental à <u>plein temps</u>	<input type="checkbox"/> de 4 mois <input type="checkbox"/> de 6 mois <span style="font-size: small;">&gt; Suspension intégrale de l'activité durant le congé parental</span>								
<input type="checkbox"/> Congé parental à <u>mi-temps</u>	<input type="checkbox"/> de 8 mois <input type="checkbox"/> de 12 mois <span style="font-size: small;">&gt; Réduction de 50% de l'activité durant le congé parental</span>								
<b>C. Vous exercez une seule activité professionnelle à temps partiel entre 10 et 20 h/sem</b> <span style="float: right;"><input type="checkbox"/> Oui <input type="checkbox"/> Non (passer à D)</span>									
<input type="checkbox"/> Congé parental à <u>plein temps</u>	<input type="checkbox"/> de 4 mois <input type="checkbox"/> de 6 mois <span style="font-size: small;">&gt; Suspension intégrale de l'activité durant le congé parental</span>								
<b>D. Vous exercez plusieurs activités professionnelles ou vous êtes en apprentissage</b> <span style="float: right;"><input type="checkbox"/> Oui <input type="checkbox"/> Non</span>									
<input type="checkbox"/> Congé parental à <u>plein temps</u>	<input type="checkbox"/> de 4 mois <input type="checkbox"/> de 6 mois <span style="font-size: small;">&gt; Suspension intégrale de l'activité durant le congé parental</span>								
<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="background-color: #333; color: white; padding: 5px;">Employeur</th> </tr> </thead> <tbody> <tr> <td style="padding: 5px; font-size: small;">               Je soussigné(e) déclare avoir pris connaissance de la présente demande de congé parental selon les indications figurant sur le présent formulaire et avoir marqué mon accord concernant la période et la forme du congé choisis.             </td> </tr> <tr> <td style="padding: 5px;">               Fait à _____, le ___/___/___             </td> </tr> <tr> <td style="padding: 5px; text-align: center;">               _____                Cachet et signature de l'employeur             </td> </tr> </tbody> </table>	Employeur	Je soussigné(e) déclare avoir pris connaissance de la présente demande de congé parental selon les indications figurant sur le présent formulaire et avoir marqué mon accord concernant la période et la forme du congé choisis.	Fait à _____, le ___/___/___	_____ Cachet et signature de l'employeur	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="background-color: #333; color: white; padding: 5px;">Demandeur salarié</th> </tr> </thead> <tbody> <tr> <td style="padding: 5px; font-size: small;">               Je déclare avoir pris connaissance des dispositions légales et j'affirme que la présente demande est sincère et complète, sachant que toute déclaration inexacte de ma part ou l'absence de déclaration de tout changement m'exposerait au remboursement des sommes indûment perçues, sans préjudice des sanctions prévues par la loi.             </td> </tr> <tr> <td style="padding: 5px;">               Fait à _____, le ___/___/___             </td> </tr> <tr> <td style="padding: 5px; text-align: center;">               _____                Signature du demandeur salarié             </td> </tr> </tbody> </table>	Demandeur salarié	Je déclare avoir pris connaissance des dispositions légales et j'affirme que la présente demande est sincère et complète, sachant que toute déclaration inexacte de ma part ou l'absence de déclaration de tout changement m'exposerait au remboursement des sommes indûment perçues, sans préjudice des sanctions prévues par la loi.	Fait à _____, le ___/___/___	_____ Signature du demandeur salarié
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Fait à _____, le ___/___/___									
_____ Signature du demandeur non-salarié									

\* Cacher ce qui convient



### Dispositions légales

#### 1. Qui peut bénéficier d'un congé parental et à quel moment?

les parents qui élèvent leur enfant dans leur foyer ont chacun un droit individuel au congé parental.

- L'un d'eux doit prendre son congé consécutivement au congé de maternité ou au congé d'accueil. Ce 1<sup>er</sup> congé parental ne peut pas être reporté.
- L'autre parent peut prendre le 2<sup>e</sup> congé parental jusqu'à ce que l'enfant ait atteint l'âge de 6 ans accomplis ou 12 ans accomplis en cas d'adoption (maximum 6 ans après la date du jugement d'adoption). Le 2<sup>e</sup> congé parental peut exceptionnellement être reporté par l'employeur dans les conditions précisées dans l'article 234-46 [3] et [4] du Code du travail.

Le 1<sup>er</sup> et le 2<sup>e</sup> congé parental peuvent être pris simultanément par les deux parents pour un même enfant.

Le parent qui élève son enfant seul peut prendre le congé à sa convenance jusqu'à ce que l'enfant ait atteint l'âge de 6 ans accomplis ou 12 ans accomplis en cas d'adoption (maximum 6 ans après la date du jugement d'adoption).

#### 2. Quels sont les délais à respecter?

- le parent salarié doit demander le 1<sup>er</sup> congé parental au moins 2 mois avant le début du congé de maternité ou le début du congé d'accueil, et le 2<sup>e</sup> congé parental au moins 4 mois avant le début du congé parental. Cette demande doit être notifiée à l'employeur par lettre recommandée avec avis de réception.
- les indépendants doivent faire leur demande à la CAE dans le même délai que celui prévu pour la demande des salariés à l'employeur.

#### 3. Quelles sont les conditions générales à remplir?

Le parent qui demande le congé parental:

- doit être affilié obligatoirement à la sécurité sociale luxembourgeoise au moment de la naissance ou de l'accueil de l'enfant;
- doit être affilié sans interruption pendant au moins 12 mois continus précédant le début du congé parental (maximum 7 jours d'interruption);
- doit être détenteur d'un ou de plusieurs contrats de travail totalisant au moins 10 heures de travail par semaine;
- doit être détenteur de ce(s) contrat(s) pendant toute la durée du congé parental;
- élève dans son foyer le ou les enfants et s'adonne principalement à leur éducation pendant la durée du congé parental.

Le congé ne reste valable qu'aussi longtemps que toutes les conditions d'octroi sont remplies.

#### 4. Traitement des données à caractère personnel

Les informations vous concernant recueillies sur ce formulaire sont traitées sur base de la loi portant sur les prestations familiales et du code de la sécurité sociale. Vous pouvez obtenir des informations complémentaires quant aux droits dont vous bénéficiez dans le cadre de la collecte de vos données personnelles selon les articles 13 et 14 du Règlement général pour la protection des données sur le site Internet de la CAE ([www.cae.lu](http://www.cae.lu)) - rubrique «Protection des données» - dans laquelle vous trouverez également les coordonnées du délégué à la protection des données.

### Pièces justificatives à joindre

Afin de garantir un traitement rapide et efficace des demandes, les documents cités ci-dessous sont à envoyer à la CAE dans les plus brefs délais possibles. Le moment de l'envoi varie selon le type de congé parental (1<sup>er</sup> ou 2<sup>e</sup>):

#### 1<sup>er</sup> Congé parental

(consécutif au congé de maternité ou d'accueil)

##### à joindre avec la demande:

- Relevé d'identité bancaire
- Pour les non-résidents, un certificat de résidence de date récente en reprenant tous les membres de la famille

##### à envoyer à la CAE après la naissance:

- Acte de naissance
- Pour les non-résidents au Luxembourg, un certificat de résidence de date récente en reprenant tous les membres de la famille

##### à envoyer ultérieurement à la CAE en cas d'adoption:

- Copie de la requête en adoption avec la date de dépôt au tribunal (resp. jugement d'adoption si disponible)
- Pour les non-résidents, un certificat de résidence de date récente en reprenant tous les membres de la famille

#### 2<sup>e</sup> Congé parental

(jusqu'à l'âge de 6 ans de l'enfant resp. 12 en cas d'adoption)

##### à joindre avec la demande en cas de naissance:

- Acte de naissance
- Relevé d'identité bancaire
- Pour les non-résidents, un certificat de résidence de date récente en reprenant tous les membres de la famille

##### à joindre avec la demande en cas d'adoption:

- Copie de la requête en adoption avec la date de dépôt au tribunal (resp. jugement d'adoption si disponible)
- Relevé d'identité bancaire
- Pour les non-résidents, un certificat de résidence de date récente en reprenant tous les membres de la famille













# Parental leave

This booklet is being issued to explain the amended rules for parental leave since their reform in December 2016.

Since then, parental leave is divisible and compensated by real replacement income.

This booklet, published in the CSL Collection series, is intended as a practical guide for parents.

By way of introduction, the historical development of the legal provisions on parental leave have been summarised.

The first part describes the different types and conditions for parental leave, the procedure for granting and the guarantees protecting parents.

The second part of this booklet contains sample letters from applicants. It also includes an example of the form sent to the Children's Future Fund by those requesting a parental leave allowance.



## Sales:

Librairie Um Fieldgen | 3, rue Glesener | L-1631 Luxembourg | [www.libuf.lu](http://www.libuf.lu) | [libuf@pt.lu](mailto:libuf@pt.lu)

## Publisher:

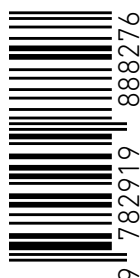


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Price: 5 €

ISBN : 978-2-919888-27-6



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