

New entitlement to postpone Maternity Leave in case of serious illness

**Brian Sheehan**

**A new right to postpone maternity leave “in cases of serious illness”, formally came into effect last November, which allows women to postpone all or part of their maternity leave for a period of between 5 and 52 weeks.**

What is a general employment-wide entitlement came into effect when Roderic O’Gorman, Minister for Children, Equality, Disability, Integration and Youth, issued Statutory Instrument (S.I. No. 630/2024) on November 19, 2024. This gave effect to changes in the Maternity Protection, Employment Equality Act and Preservation of Certain Records Act 2024.

As a new HSE circular for its staff explains, a serious health condition is defined under the Act as one that (a) entails a serious risk to the life or health, including the mental health, of an employee and (b) in order to address the risk, requires medical intervention that is ongoing for a period of time to be carried out in respect of the employee.

A ‘necessary medical intervention’, in relation to mental health, means inpatient hospital treatment, the circular says.

The Minister said the final legislation also took into account a concern expressed by Ibec that someone with a “less serious illness”, who didn’t get the leave, could have a discrimination claim. However, Mr O’Gorman said the final legislation ensures there can be no doubt about the granting of a pause to someone with a “serious illness”.

“As we know”, the Minister explained, “disability has a very wide interpretation in the Employment Equality Act. This clarification is being added to ensure this pause can be provided for that cohort of women who are suffering from a very serious illness”.

## **MEDICAL CERTS**

As HSE Chief People Officer, Anne Marie Hoey, notes in her communication (HSE Circular 028/2024) to her own management staff, the measure is conditional on an employee providing medical certification and complying with certain notification requirements.

“Postponing maternity leave will not affect an employee’s entitlement to other forms of statutory leave, such as unpaid maternity leave, parental leave and parent’s leave”, she explains.

An employee will be entitled to avail of the postponed period of maternity leave in one continuous period on the day immediately after the end date set out in their medical certificate. Where an employee has already postponed all part of their maternity leave, they may – once only – notify their employer of their intention to further postpone the commencement of the leave.

For public service employees whose postponement of maternity leave is approved, they will be subject to the terms and conditions of the public service sick pay scheme “and their absence during that period should be recorded as sick leave”.