



Feidhmeannacht na Seirbhíse Sláinte
Health Service Executive

Guide to the salient provisions of Paternity Leave and Benefit Act 2016

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NB: The following is intended as a summary of the salient provisions of the Act for health service employers. It does not purport to be a comprehensive or definitive interpretation of the legislation.

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1. Introduction

The Paternity Leave and Benefit Act 2016 was recently signed into law and will commence on **1st September 2016**. The Act has two main tenets:

- To entitle an employee who is a “relevant parent” to 2 weeks leave from work to enable him or her to provide, or assist in the provision of, care to the child or to provide support to the relevant adopting parent or mother of the child, as the case may be, or both. The Act also entitles a surviving parent to avail of paternity leave on the death of a relevant parent.
- To provide for the granting of State Paternity Benefit to employees who meet the eligibility criteria for payment.

2. Payment while on Paternity Leave

Employees on paternity leave may be eligible for Paternity Benefit paid by the Department of Social Protection (DSP). Paternity Benefit will be paid at the same rate as Maternity Benefit and will be based on the same PRSI contribution requirements. All employees applying for Paternity Benefit must have their paternity leave certified by their employer. A form **PB 2: Employer Certificate** is available for this purpose. Further information on the arrangements relating to Paternity Benefit and frequently asked questions are set on the DSP website -

<https://www.welfare.ie/en/Pages/Paternity-Benefit-FAQ.aspx>

While the legislation does not provide an entitlement to remuneration during paternity leave (apart from the provisions relating to State Paternity Benefit) health service employees who take paternity leave under the 2016 Act are entitled to receive the following from their employer:

- his/her normal basic remuneration plus normal fixed allowances **less** Paternity Benefit to which he/she may be entitled from the Department of Social Protection (subject to PRSI contributions).
- This payment does not include additional amounts due to nightwork, overtime, shiftwork, working unsociable hours, standby or on-call allowances.

The entitlements to paternity leave under the 2016 Act and the payment for such leave will supersede the entitlement under Department of Health Circular 153/2000 which provides for 3 days' special leave with pay to male employees.

3. Implementation Date

The provisions of the Act apply in respect of the birth or adoption of a child on or after **1st September 2016**. The leave can be taken at any time within the first 6 months following the birth of the child or the placement of the child with their adoptive parents.

4. Scope of the Act

The leave entitlement will apply to:

- the father of the child,
- the spouse, civil partner or cohabitant of the mother of the child (regardless of gender),
- a parent of the child under section 5 of the Children and Family Relationships Act 2015 where the child is a donor-conceived child within the meaning of that Act.

In the case of a child who is adopted the leave will apply to:

- a person (other than the mother of the child) who is the spouse, civil partner or cohabitant of the adopting mother or sole male adopter of the child,

- where the child is, or is to be, jointly adopted by a married couple of the same sex, the spouse chosen by that couple to be the relevant parent for the purposes of the Paternity Leave and Benefit Act 2016.

5. Entitlement to Paternity Leave

The Act provides that an employee who is a relevant parent in relation to a child shall be entitled to “2 weeks leave¹ from his or her employment to enable him or her to provide, or assist in the provision of, care to the child or to provide support to the relevant adopting parent or mother of the child, as the case may be, or both”. An employee who is a relevant parent is entitled to paternity leave in respect of a child where the date of confinement falls on or after 1st September 2016. In the case of a child who is, or is to be, adopted, an employee is entitled to paternity leave where the day of placement in respect of the child falls on or after 1st September 2016. The leave can be taken at any time **within the first 6 months** following the birth of the child or the placement of the relevant child with their adoptive parents.

Paternity Leave shall comprise a single period of 2 weeks except in situations where the child is hospitalised (section 12).

Only one person who is a relevant parent in relation to a child shall be entitled to paternity leave in respect of that child².

An employee is only entitled to **one period** of paternity leave in respect of multiple births or where he or she adopts 2 or more children at the same time.

¹ The Act does not define what is meant by “2 weeks leave” but it may be interpreted as a block of 2 continuous calendar weeks from the date chosen by the employee as the commencement date of paternity leave.

² The only exception is in the case of adoptions where paternity leave was taken prior to the adoption of the child by a person other than the relevant parent (section 6(4))

6. Notification Requirements

The employee is required to give written notification of his or her intention to take paternity leave as soon as reasonably practicable but not later than **4 weeks before the expected week of confinement** of the expectant mother concerned.

In the case of a child who is, or is to be, adopted the employee is required to give written notification as soon as reasonably practicable but not later than **4 weeks before the expected day of placement**.

At the time of the notification or as soon as reasonably practicable afterwards, the employee is required to give his or her employer (or produce for inspection) **a copy of the medical, or other appropriate, certificate** confirming the pregnancy of the expectant mother concerned and specifying the expected week of confinement (in line with the documentation provided to the employer of the expectant mother under the Maternity Protection Act 1994).

In the case of an adoption, other than an intercountry adoption effected or to be effected outside the State, an employee is required to:

- Notify his or her employer as soon as reasonably practicable of the expected day of placement, and
- Submit as soon as reasonably practicable but not later than 4 weeks after the day of placement a copy of the **certificate of placement** that the employed adopting mother or sole male adopter concerned, as the case may be, has provided to her or his employer, as the case may be, under the Adoptive Leave Act 1995.

In the case of an intercountry adoption effected or to be effected outside the State, an employee is required to:

- Notify his or her employer as soon as reasonably practicable of the expected day of placement,
- Submit before the expected day of placement, if not already provided to the employer, a copy of an applicable **declaration of eligibility and suitability** that the employed adopting mother or sole male adopter concerned, as the case may be, has supplied to his or her employer, under the Adoptive Leave Act 1995, and
- Provide as soon as reasonably practicable after the day of placement particulars in writing of the placement.

In the case of an adoption where the adopting mother or sole male adopter of the child, as the case may be, is not an employee, or the relevant parent concerned is a relevant parent in respect of a child who is, or is to be, adopted jointly by a married couple of the same sex and he or she is the spouse chosen by that couple to be the relevant parent, the employee must provide the following to his or her employer:

- Give written notification as soon as reasonably practicable of the expected day of placement,
- Submit before the expected day of placement, if not already supplied, a copy of an applicable declaration of eligibility and suitability, and
- Submit particulars in writing of the placement as soon as reasonably practicable after the day of placement.

In any other case, and *where the expectant mother is not an employee*, the employee who is the relevant parent should, at the time of the notification or as soon as reasonably practicable afterwards, provide his or her employer with a statement signed by a registered medical

practitioner confirming the pregnancy of the expectant mother and specifying the expected week of confinement.

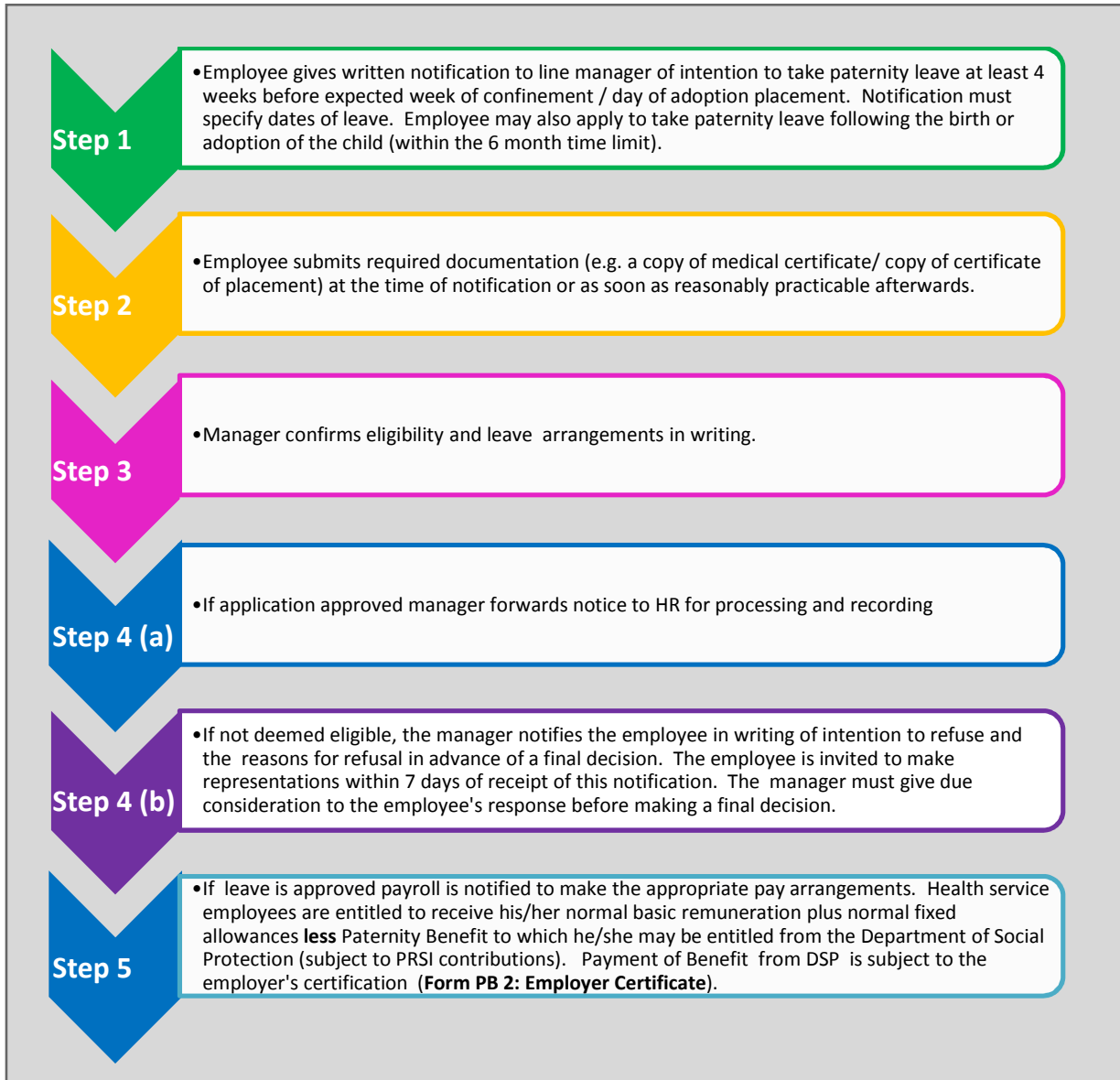
An employee who has not given a notification of his or her intention to take paternity leave, in accordance with the above arrangements, may notify his or her employer of his or her intention to take paternity leave not later than 4 weeks before the commencement of such leave³. At the time of the notification or as soon as reasonably practicable afterwards, the employee must provide the relevant documentation as follows:

- A copy of the birth certificate issued in respect of the child.
- In the case of an adoption, the employee must provide
 - ✓ A copy of the certificate of placement
 - ✓ In the case of intercountry adoptions - particulars in writing of the placement
 - ✓ In the case of an adoption where the adopting mother or sole male adopter, as the case may be, is not an employee or the relevant parent concerned is a relevant parent in respect of a child who is, or is to be, adopted jointly by a married couple of the same sex and he or she is chosen by that couple to be the relevant parent for the parental leave entitlement – particulars in writing of the placement.

An employee may revoke his or her intention to take paternity leave by submitting a further notification in writing to his or her employer that he or she will not be taking the leave.

³ This may arise for example in situations where an employee only decides to avail of paternity leave following the birth / placement of the child.

A sample flow chart setting out the main steps in the notification process is set out below:



7. Allocation of Paternity Leave

The employee may decide on the commencement date for his or her paternity leave and this date should be specified in the employee's written notification of intention to take leave. The period of paternity leave will commence on the date the employee has set out in his or her written notice but it cannot commence earlier than the date of confinement of the expectant mother, or day of placement for adoption, and cannot be later than 26 weeks after that date or day.

8. Commencement of Paternity Leave (Early Confinement)

In the case of early births where the date of confinement occurs in a week that is 4 weeks or more before the expected date of confinement, the employee shall be deemed to have complied with the notification requirements if he or she gives the notification required within 7 days of the date of confinement.

9. Employees on Fixed Term or Specified Purpose Contracts

Where an employee who is a relevant parent is employed under a fixed term contract and the fixed term contract will expire before the end of the period of paternity leave then the employee's paternity leave entitlement will cease on the date of expiry of his or her contract of employment and the employee will no longer be covered by the paternity leave legislation. In the case of an employee on a specified purpose contract, the paternity leave entitlement will cease when the contract of employment is terminated (i.e. upon the cessor of the purpose for which he or she was employed).

10. Postponement of paternity leave

Where the day of placement is postponed or the date of confinement occurs after the date selected by the employee in his or her written notification, the employee shall be entitled to select another commencement date for the paternity leave.

11. Postponement of Paternity Leave in event of sickness of the relevant parent

Where an employee becomes sick prior to the commencement of his or her paternity leave and wishes to postpone the paternity leave, he or she may do so by giving notice in writing as soon as reasonably practicable after becoming sick and providing the relevant evidence in respect of the sickness (i.e. medical certificate). The employee may postpone the taking of paternity leave to such time as he or she is no longer sick. The entitlement to avail of postponed leave is subject to the employee giving written notification as soon as reasonably practicable but not later than the day on which the postponed leave begins of his or her intention to commence such leave.

Where an employee is absent from work due to the postponement of paternity leave, such absence shall be treated in the same manner as any absence from work of the employee due to sickness.

A period of postponed leave shall normally end not later than 28 weeks after the date of confinement or day of placement for adoption.

The Act contains provisions in respect of employees who are also entitled to leave under *Section 16(1) of the Maternity Protection Act 1994 or Section 9(1)(a) of the Adoptive Leave Act 1995* (which provide for leave in the event of the death of the mother/adopting mother).

Where these provisions apply, the period of postponed leave shall commence not later than 7 days after the employee is no longer sick or on such other date as may be agreed between the employee and the employer.

The employee may revoke his or her intention to take postponed leave by giving further notification in writing. This written notice must be submitted as soon as reasonably practicable prior to the day on which the postponed leave is due to commence.

12. Postponement of Paternity Leave in event of hospitalisation of child

An employee who is entitled to, or is on, paternity leave may, if the child concerned is hospitalised, request his or her employer to postpone the leave or part of it as may be appropriate. The employee must submit this request in writing. The postponement of leave is subject to the employer's agreement. The employer shall notify the employee in writing of the decision in relation to the request to postpone leave as soon as reasonably practicable following receipt of it.

If the employer agrees to grant the request to postpone paternity leave, the employee shall continue to work or, as the case may be, shall return to work on a date agreed with the employer that is not later than the date on which the leave is due to end in accordance with the written notification previously submitted by the employee.

The postponed leave is to be taken in one continuous period commencing not later than 7 days after the discharge of the child from hospital or such other date as may be agreed between the employee and the employer.

Where, following the postponement of leave, an employee returns to work and during the period of the postponement he or she is absent from work due to sickness, the employee shall be deemed to commence postponed leave on the first day of sickness absence unless he or she notifies the employer in writing as soon as reasonably practicable that he or she does not wish to commence the paternity leave. Following receipt of the employee's written notification –

- a) The employee's absence shall be treated in the same manner as any absence from work of the employee due to sickness, and
- b) The employee shall not be entitled to the postponed paternity leave.

Entitlement to postponed leave is subject to the employee having notified the employer in writing as soon as reasonably practicable but not later than the day on which the leave begins of his or her intention to commence such leave. An employer may waive the right to receive this written notification from the employee.

The employee may revoke this notification by a further notification in writing given by or on behalf of the employee as soon as reasonably practicable but not later than the day on which the postponed leave is due to commence.

13. Relevant Parent who becomes entitled to leave under the Maternity Protection Act 1994

Section 16 of the Maternity Protection Act 1994 provides for the entitlement of the father of the child to leave from his employment on the death of the mother.

An employee who

- a) is entitled to paternity leave and has not taken such leave, and
- b) becomes entitled to leave under section 16(1) of the 1994 Act

may take paternity leave immediately after the end of the leave or, where that leave is postponed, the resumed leave taken by the employee.

Entitlement to paternity leave is subject to the employee having notified the employer not later than the day on which such leave begins of his or her intention to take the paternity leave.

A notification to take paternity leave may be revoked by a further notification in writing given by or on behalf of the employee prior to the commencement date of the leave.

14. Relevant Parent to whom section 9 of the Adoptive Leave Act 1995 applies

Section 9 of the Adoptive Leave Act 1995 provides an entitlement to an adopting father to adoptive leave in the event of the death of the adopting mother.

An employee who

- c) is entitled to paternity leave and has not taken such leave, and
- d) becomes entitled to leave under section 9(1)(a) of the 1995 Act

may take paternity leave immediately after the end of the adoptive leave or, where the adoptive leave is postponed, the resumed leave taken by the employee.

Entitlement to paternity leave is subject to the employee having notified the employer not later than the day on which such leave begins of his or her intention to take the paternity leave.

A notification to take paternity leave may be revoked by a further notification in writing given by or on behalf of the employee prior to the commencement date of the leave.

15. Entitlement of employed surviving parent to leave on death of relevant parent – Transferred Paternity Leave

Where the employee who is a relevant parent dies before the expiry of the 28th week following the date of confinement or day of placement for adoption, the employed surviving parent of

the child shall be entitled to leave to enable him or her to provide, or assist in the provision of, care to the child, for –

- a) where the relevant parent was an employee, a period of 2 weeks or, if applicable, such shorter period of paternity leave that remained to be taken by the relevant parent at the time of his or her death, and
- b) in all other cases, a period of 2 weeks.

A period of transferred paternity leave shall commence-

- a) In the case of a surviving parent entitled to maternity leave under the 1994 Act, immediately after the end of the maternity leave,
- b) In the case of a surviving parent entitled to adoptive leave under the 1995 Act, immediately after the end of the adoptive leave, or
- c) In any other case, within 7 days of the death of the relevant parent or, where applicable, on the day of placement, whichever is the later.

The entitlement to transferred paternity leave is subject to the surviving parent

(a) Notifying the employer in writing not later than the day on which the transferred paternity leave begins of-

- i. The death of the relevant parent,
- ii. His or her intention to take transferred paternity leave, and
- iii. The length of the leave to which he or she believes he or she is so entitled under this Act,

and

(b) if requested by his or her employer, providing as soon as reasonably practicable a copy of the death certificate made in respect of the relevant parent.

A notification may be revoked by a further notification in writing given by or on behalf of the surviving parent to the employer prior to the date the paternity leave is due to begin.

The provisions governing postponement of paternity leave in the event of the sickness of the relevant parent (Section 11) and the postponement of paternity leave in the event of hospitalisation of the child (Section 12) are also applicable to the surviving parent to whom the paternity leave entitlement is transferred.

Where section 11(1) applies to a surviving parent who is on transferred paternity leave, then the period of postponed leave shall commence not later than 7 days after the surviving parent is no longer sick or on such other date as may be agreed between the surviving parent and the employer.

16. Stillbirths

In the event of a stillbirth occurring after the 24th week of pregnancy, an employee is entitled to 2 weeks paternity leave.

17. Abuse of paternity leave

A key requirement of the Act is that paternity leave must be used for the care of the child to which the leave relates. Where an employer has reasonable grounds to believe that an employee who is on paternity leave is not using the leave for that purpose the employer may, by notice in writing, terminate the leave. The notice shall contain a summary of the grounds for terminating the leave and shall specify the date by which the employee must return to work.

Where an employee has given notice of his /her intention to avail of paternity leave and the employer has reasonable grounds to believe that the employee is not entitled to the leave the employer may, by notice in writing, refuse to grant the leave to the employee. The written notice to the employee must set out the reason for refusing to grant the paternity leave.

Before making a decision to terminate or refuse paternity leave, the employer is required to notify the employee in writing of the proposal to terminate / refuse paternity leave and a summary of the reason(s) and invite the employee to make representations within 7 days. The employer should consider any such representations by the employee before coming to a final decision.

18. Maintenance of records

Employers are required to maintain a record of the paternity leave of all employees indicating the period of employment for each employee and the dates and times in respect of which each employee was on paternity leave. Employers are required to keep such records for a period of 8 years after the paternity leave is taken. Failure to maintain the appropriate records may result in prosecution by the Workplace Relations Commission. Employers found guilty of such an offence shall be liable to a class B fine⁴ as well as liability for costs and expenses.

19. Employment protection

While an employee is on paternity leave the employee shall be considered to be in the employment of the employer and shall be treated as if he/she had not been absent. Paternity leave will not affect any rights related to the employee's employment other than his/her right to remuneration during paternity leave⁵.

If an employee is on probation, undergoing training or employed under a contract of apprenticeship and takes paternity leave the employer may require that probation, training or apprenticeship is suspended during the period of leave and shall be completed by the employee at the end of that period.

⁴ Maximum fine of up to €4,000.

⁵ Health service employees who take paternity leave under the 2016 Act are entitled to his/her normal basic remuneration plus normal fixed allowances less Paternity Benefit to which he/she may be entitled from the Department of Social Protection (subject to PRSI contributions).

An employee absent from work on paternity leave cannot have his/her employment terminated, be suspended or be given notice of termination of employment while on such leave. Notice of termination of employment or suspension from employment imposed on an employee either:

- a) before the employee commences a period of paternity leave or
- b) before receipt of notification to commence paternity leave

and due to expire during the employee's absence from work on paternity leave shall be extended by the period of such absence.

Employees cannot be penalised or threatened with penalisation as a consequence of taking or intending to take paternity leave. Examples of penalisation include dismissal, unfair treatment including selection for redundancy and unfavourable changes in the employee's terms and conditions of employment.

20. Return to Work

An employee is entitled to return work at the expiry of the period of parental leave:

- with the employer with whom the employee was working immediately before the commencement of the period of absence (where there was a change of ownership during the employee's absence the employee is entitled to resume employment with the new owner of the undertaking),
- to the same job as previously held,
- under the same contract of employment,
- on the date specified in the written notice of application for leave.

Where the job held by an employee immediately before the commencement of a period of leave was not the employee's normal or usual job the employee shall be entitled to return

either to his or her normal or usual job or in the job so held as soon as practicable without contravention of existing employment legislation.

Where an employee avails of “postponed leave” either due to sickness or the hospitalisation of the child, the employee shall notify the employer of his/her intention to return to work and the date on which he or she intends to resume work at the same time as notification is given to take the postponed leave.

Where there is an interruption or cessation of work at an employee’s place of work which means that it is not possible for him/her to return to work at the expiration of a period of paternity leave then the employee may return to work instead when work resumes at the place of employment after the interruption or cessation or as soon as reasonably practicable afterwards.

21. Anti-avoidance measures

Section 4 of the Act prohibits anti-avoidance / modification measures. Any provisions in agreements which exclude or limit the application of the Paternity Leave and Benefit 2016 Act or are inconsistent with the provisions of the Act are void. Therefore any employers with pre-existing paternity leave arrangements which are less favourable or inconsistent with the provisions of the Act need to revise their arrangements to bring them in line with the provisions of the Act⁶.

The Act does not prevent the introduction of more favourable arrangements (e.g. payment for paternity leave).

⁶ The entitlements to paternity leave under the 2016 Act and the payment for such leave will supersede the entitlement under Department of Health Circular 153/2000 which provides for 3 days’ special leave with pay to male employees

22. Resolution of Disputes

Complaints in relation to alleged contraventions of, and disputes as to entitlements under, the Act may be referred to the Workplace Relations Commission (WRC) in accordance with the Workplace Relations Act 2015. A complaint or dispute must be referred within **six months** of the alleged contravention of the Act. The date on which a complaint or dispute is received by the WRC is deemed to be the referral date. If a complaint is not submitted within the time limit an extension may be granted by an Adjudication Officer up to a maximum time limit of 12 months where, in the opinion of the Adjudication Officer, the complainant has demonstrated reasonable cause for the delay

Disputes involving dismissals are excluded under the redress mechanisms set out in the Act and complaints must be referred under the Unfair Dismissals Acts 1977 to 2015.

Section 27 relates to decisions made under section 41 or 44 of the Workplace Relations Act 2015 and the remedies that an adjudication officer or the Labour Court, as applicable, may order if the decision is in favour of the employee. Remedies can include:

- the grant of leave to the employee for such period as may be so specified,
- an award of compensation of an amount not exceeding 2 weeks' remuneration⁷,
- both such grant and such award.

Section 28 is a required feature of gender equality legislation. In essence, it provides that, in any proceedings where the established facts carry a presumption of discrimination, it is for the respondent to prove the contrary.

⁷ Remuneration includes allowances in the nature of pay and benefits in lieu of or in addition to pay