

**SECOND SUPPLEMENT TO THE GIBRALTAR  
GAZETTE**

**No. 3,244 of 13 September, 2001**

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LEGAL NOTICE NO.112 OF 2001.

**EMPLOYMENT ORDINANCE**

**EMPLOYMENT (MATERNITY AND PARENTAL LEAVE, AND  
HEALTH AND SAFETY REGULATIONS) (AMENDMENT)  
REGULATIONS 2001**

In exercise of the powers conferred on him by section 86 of the Employment Ordinance, and all other enabling powers, and for the purpose of implementing Council Directive 96/34/EC and 97/75/EC in the law of Gibraltar, the Minister has made the following regulations-

**Title and commencement.**

1. These regulations may be cited as the Employment (Maternity and Parental Leave, and Health and Safety) Regulations (Amendment) Regulations 2001 and come into operation on the day appointed by the Minister with responsibility for employment by notice in the Gazette.

**Amendments to the Employment (Maternity and Health and Safety Regulations) Regulations 1996.**

2. The Employment (Maternity and Health and Safety) Regulations 1996 are amended as follows-

- (a) In the title of the Employment (Maternity and Health and Safety) Regulations 1996, "and Parental Leave," is added after "Maternity";
- (b) The following is added as Part V of the Employment (Maternity and Parental Leave, and Health and Safety) Regulations 1996-

**"Part V**

**PARENTAL LEAVE**

**Entitlement to parental leave.**

25. An employee who-

- (a) has been continuously employed for a period of at least a year; and
- (b) has, or expects to have, responsibility for a child,

is entitled, in accordance with this Part of these regulations, to be absent from work on unpaid parental leave for the purpose of caring for that child.

**Extent of entitlement.**

- 26.(1) An employee is entitled to 13 weeks' unpaid parental leave in respect of a child.
- (2) An employee may not take more than four weeks' unpaid parental leave in any one year from the date of the child's birth, or adoption.
  - (3) In subregulation (1), a week's leave means seven days' absence from work, including weekends.

**When parental leave may be taken.**

27. An employee may not exercise any entitlement to parental leave in respect of a child-
- (a) except in the cases referred to in paragraphs (b) and (c), after the date of the child's fifth birthday;
  - (b) in a case where the child was adopted by the employee, after the fifth anniversary of the date when the child was adopted;
  - (c) in a case where the employee would have taken the leave before the date specified in paragraph (a) or (b) but for the fact that the employer postponed it, after the end of the period to which the leave was postponed.

**Default provisions in respect of parental leave.**

28. The provisions set out in Schedule 1 have effect in relation to parental leave in the case of an employee whose contract of employment does not include a provision which-
- (a) confers an entitlement to parental leave of at least thirteen weeks for the purpose of caring for a child; and
  - (b) incorporates or operates by reference to a general agreement between all the employees of an employer on the methods by which parental leave may be taken.

**Time off work for urgent family reasons.**

- 29.(1) An employee may take up to five working days in each year as special unpaid leave for urgent family reasons such as sickness or accident affecting a member of the employee's immediate family which makes the immediate presence of the employee indispensable.
- (2) In subregulation (1) "immediate family" means child under the age of eighteen, parent or spouse, and also includes a dependant of the employee who has no other means of support or assistance.
- (3) An employee who takes special unpaid leave as described in subregulation (1) shall provide the employer with such proofs as the employer may reasonably require of the necessity for the leave.

**Retention of employment rights.**

30. An employee who takes parental leave under regulation 25 or special unpaid leave under regulation 29 shall retain the employment rights to which the employee is entitled as they would have been if the leave had not been taken and regulations 11, 13, and 17 shall apply mutatis mutandis.

**SCHEDULE 1**

Regulation 28.

**DEFAULT PROVISIONS IN RESPECT  
OF PARENTAL LEAVE**

1. An employee may not exercise any entitlement to parental leave unless—
  - (a) he has complied with any request made by his employer to produce for the employer's inspection evidence of the entitlement, of the kind described in paragraph 2;
  - (b) he has given his employer notice, in accordance with whichever of paragraphs 3-5 is applicable, of the period of leave he proposes to take, and
  - (c) his employer has not postponed the period of leave in accordance with paragraph 6 below.
  
2. The evidence to be produced for the purpose of paragraph 1(a) is such evidence as may reasonably be required of—
  - (a) an employee's responsibility or expected responsibility for the child in respect of whom the employee purposes to take parental leave, and
  - (b) the age of that child.
  
3. Except in the cases referred to in paragraphs 4 and 5, the notice required for the purpose of paragraph 1(b) is notice which—
  - (a) specifies the dates on which the period of leave is to begin and end, and
  - (b) is given to the employer—
    - (i) where the period of leave is two weeks or less, at least four weeks before the date on which the period is to begin;
    - (ii) where the period of leave is more than two weeks, at least twice as many weeks before the date on which the period is to begin

as there are weeks in the period, treating any fraction of a week as a whole week.

4. Where the employee is the father of the child in respect of whom the leave is to be taken, and the period of leave is to begin on the date on which the child is born, the notice required for the purpose of paragraph 1(b) is notice which—
  - (a) specifies the expected week of childbirth and the duration of the period of leave, and
  - (b) is given to the employer at least thirteen weeks before the beginning of the expected week of childbirth.
5. Where the child in respect of whom the leave is to be taken is adopted by the employee and the leave is to begin on the date of the adoption, the notice required for the purpose of paragraph 1(b) is notice which—
  - (a) specifies the week in which the adoption is expected to occur and the duration of the period of leave, and
  - (b) is given to the employer at least thirteen weeks before the beginning of that week, or, if that is not reasonably practicable, as soon as is reasonably practicable.
6. An employer may postpone a period of parental leave where—
  - (a) paragraph 3 applies and the employee has given the employer the notice provided for in that paragraph;
  - (b) the operation of the employer's business would be substantially prejudiced if the employee took leave during the period identified in his notice;
  - (c) the employer agrees to permit the employee to take a period of leave—
    - (i) of the same length as the period identified in the employee's notice, and

- (ii) beginning no later than six months after the date on which that period is to begin;
  - (d) the employer gives the employee notice in writing of the postponement which–
    - (i) states the reason for it, and
    - (ii) specifies the dates on which the period of leave the employer agrees to permit the employee to take will begin and end; and
  - (e) the notice is given to the employee–
    - (i) where the period of leave to which the employee's notice relates is two weeks or less, at least two weeks before the date specified in that notice as the date on which the period is to begin,
    - (ii) where the period of leave to which the employee's notice relates is more than two weeks, at least as many weeks before the date specified in that notice as the date on which the period is to begin as there are weeks in the period, treating any fraction of a week as a whole week.
7. An employee may take parental leave in periods of less than a week, but each period of less than a week taken shall count as a week.”.

Dated the 12th day of September, 2001.

H. CORBY,

Minister for Employment.

**SECOND SUPPLEMENT TO THE GIBRALTAR  
GAZETTE**

**No. 0000 of 00 January, 2000**

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**EXPLANATORY NOTE**

These regulations implement Council Directive 96/34/EC on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC. The regulations provide that a parent (or adoptive parent) is entitled to up to thirteen weeks parental leave in order to care for a child aged up to five years (or up to five years after the adoption). In addition, an employee is entitled to up to five days a year special unpaid leave for urgent family reasons. The mechanisms by which the leave is taken may be spelt out in a general agreement between the workforce and the employer and which forms part of the employee's contract, or in the absence of such an agreement, in accordance with the terms set out in Schedule 1.