

Employee rights related to parenthood effective from April 26, 2023

On April 26, 2023, a number of amendments to the Labour Code entered into force, concerning employee entitlements related to parenthood in the following areas:

- special protection of the employment relationship in connection with parenthood;
- maternity leave;
- parental leave;
- paternity leave;
- carer's leave;
- leave from work due to force majeure;
- flexible working arrangements related to parenthood.

1. Special protection of the employment relationship in connection with parenthood

Pursuant to the amendment of Article 177 of the Labour Code, during pregnancy and maternity leave, as well as from the date on which the employee submits an application for maternity leave or a part thereof, leave under the conditions of maternity leave or a part thereof, paternity leave or a part thereof, or parental leave or a part thereof – until the end of such leave – the employer is prohibited from:

- 1) undertake preparations to terminate or to dissolve the employment relationship without notice with a female or male employee;
- 2) terminate or dissolve the employment relationship with a female or male employee, unless there are grounds justifying termination without notice due to their fault, and the workplace trade union representing the employee has given its consent to the termination of the contract.

Under the new legal framework, female employees employed under a probationary employment contract are entitled to the special protection provided for in Article 177 § 1 of the Labour Code, regardless of the length of the probationary period.

In addition to the period of pregnancy and maternity leave, protection has been extended to cover the period from the date on which the employee submits an application for: maternity leave or a part thereof, leave under the conditions of maternity leave or a part thereof, parental leave or a part thereof, and paternity leave or a part thereof – until the end of the use of such leave. This follows the model of the regulation already in force in this form with respect to childcare leave.

In the event that a female or male employee submits a relevant leave application earlier than the statutory deadline for submitting such an application, the protection shall commence only from the date specified in the legal provisions, i.e.:

- **14 days before the commencement of the use of a part of maternity leave or a part of leave under the conditions of maternity leave;**
- **21 days before the commencement of the use of parental leave or a part thereof;**

- **7 days before the commencement of the use of paternity leave or a part thereof.**

Example

An employee is employed under an employment contract. Six months ago, he became a father for the first time. He decided to take part of his entitled paternity leave. He submitted the leave application 14 days before the planned start of the leave. The special protection against dismissal will not begin from the actual date of submitting the application, but 7 days before the commencement of the leave.

In addition to the prohibition on terminating or dissolving the employment relationship without notice, the employer is also prohibited from undertaking any preparatory actions aimed at such termination. Preparatory actions for dismissal are understood to include, among others, searching for a new employee and forecasting the permanent replacement of the employee before the end of the protection period.

Example

While an employee is on parental leave, the employer posts a job advertisement on an online portal for the position currently held by that employee, offering the candidate employment under an open-ended employment contract.

An exception to the prohibition on terminating employment contracts during protected periods, as was previously the case, remains the declaration of bankruptcy or liquidation of the employer. However, in the amended wording of Article 177 § 4 of the Labour Code, **the employees to whom this regulation applies are now enumerated explicitly**, while the previously applicable references in this regard have been repealed.

The employer's obligation to agree on the termination date of the employment contract with the workplace trade union representing the employee has also been maintained.

If, during the remaining period of employment, the employer is unable to provide alternative employment to the protected employees, they shall continue to be entitled to benefits specified in separate provisions. The period during which such benefits are received shall be included in the length of service on which employee entitlements depend.

A new provision has been introduced in Article 177 § 4¹ of the Labour Code, under which **the burden of proof for demonstrating the existence of grounds justifying termination of the employment contract without notice due to the employee's fault, as well as the grounds for termination in the event of the employer's bankruptcy or liquidation, rests with the employer**. This provision applies the concept of a reversed burden of proof, similar to that used in cases concerning violations of the principle of equal treatment in employment.

2. Maternity Leave

The amendment of the provisions concerning maternity leave aims to facilitate the submission of applications by female employees to resign from part of their maternity leave under Article 180 §§ 4 and 6 of the Labour Code, as well as to allow the granting of part of the maternity leave to the

employee—father or another close family member in the cases specified in Article 180 § 4 points 1, 5, 6 point 1, 7, 10 point 1, and 11–13 and 15 of the Labour Code. Previously, the applicable legal regulations required that such applications be submitted in writing. The amended provisions now allow applications to be submitted not only in written form but also in documentary form. This includes submission on paper or as an attachment sent via official email (in .jpg or .pdf format), without the need for a qualified electronic signature.

3. Parental Leave

The amending act introduces significantly more changes to the provisions governing parental leave. Encouraging fathers to take parental leave has become one of the main objectives of Directive 2019/1158. As emphasized therein, most fathers either do not take parental leave at all or transfer a substantial portion of their entitlements to the mothers. The introduction of appropriate legal instruments in this area is intended to facilitate the return of mothers to the labour market after maternity and parental leave.

The implementation of these objectives in the Polish legal system is ensured through amendments to the Labour Code in the following areas:

- decoupling the father’s right to parental leave from the requirement that the child’s mother be employed on the day of childbirth;
- extending the duration of parental leave and granting each working parent a non-transferable portion of the leave;
- changes to the provisions on applying for and granting parental leave;
- changes to the provisions on applying for and using the option to combine parental leave with part-time work;
- changes to the provisions on the use of parental-related leave in cases of adoption or taking a child into care.

3.1. Repeal of Provisions Concerning the Submission of the So-Called Long Application for Parental Leave

In the amended version of the Labour Code, Article 179¹ has been repealed. This provision previously served as the basis for a female employee to submit a so-called long application—i.e., an application for the full duration of parental leave to be taken immediately after maternity leave. The female employee could then share the parental leave or the maternity benefit for the corresponding period with the child’s father—either an employee or an insured person—on the condition that the insured mother had first submitted the application.

This provision therefore made the father’s right to parental leave conditional on the mother being employed on the day of childbirth in a manner that entitled her to social insurance coverage.

As a result, from April 26, 2023, Article 179¹ of the Labour Code has been repealed, as it was necessary to ensure that a working father has an unconditional right to take parental leave.

Accordingly, under the amended Labour Code, the mother's lack of employment or insurance on the day of childbirth no longer constitutes an obstacle to the father exercising his right to parental leave.

Example

The employee's wife, who is neither employed nor covered by social insurance, gave birth to a child. The father, employed under an employment contract, submitted a request to his employer to be granted 12 weeks of parental leave for their 8-month-old child.

The employer approves the employee's request to take part of the parental leave, as the right to parental leave is granted to the employee—father regardless of the mother's employment or insurance status, provided that the employee has not yet used the full entitlement to parental leave and the child has not yet reached the age of 6.

For the above reasons, the wording of Article 182'c of the Labour Code has also been amended. It no longer requires that parental leave or its first part be taken immediately after the use of maternity leave or the receipt of maternity benefit for a period corresponding to maternity leave.

3.2. Extension of the Duration of Parental Leave and Allocation of a Non-Transferable Portion to Each Working Parent

The duration of parental leave has been extended. According to the new wording of Article 182'a § 1 of the Labour Code, it shall now amount to:

- **up to 41 weeks** in the case of the birth of one child in a single birth, or
- **up to 43 weeks** in the case of the birth of two or more children in a single birth.

Furthermore, employees who are parents of a child holding a certificate confirming a severe and irreversible disability or an incurable life-threatening illness that arose during the prenatal stage of development or at birth—pursuant to Article 4(3) of the Act of 4 November 2016 on Support for Pregnant Women and Families "For Life"—shall, due to their special situation and needs, be entitled to an extended parental leave of:

- **up to 65 weeks** in the case of the birth of one child in a single birth, or
- **up to 67 weeks** in the case of the birth of two or more children in a single birth.

As before, parental leave is granted jointly to both employee—parents of the child. A new provision, however, introduces a regulation under which each employee—parent is entitled to an exclusive right to 9 weeks of parental leave.

This means that this entitlement cannot be transferred to the other parent, and any unused 9 weeks of leave will be forfeited. Taking 9 weeks of parental leave is considered the use of the parent's exclusive portion of the leave and proportionally reduces the total leave entitlement.

The maternity benefit for the period of parental leave—including the 9 weeks of parental leave granted exclusively to the other parent—is 70% of the benefit assessment base.

Furthermore, under the amended Article 30a of the Act of 25 June 1999 on Cash Benefits from Social Insurance in the Event of Sickness and Maternity, the insured mother of the child may, within no later than 21 days after childbirth, submit a written application for the payment of maternity benefit for a period corresponding to the full duration of maternity and parental leave, excluding the non-transferable 9 weeks of parental leave granted to the child's father. In such a case, the maternity benefit amounts to 81.5% of the benefit assessment base for the entire period.

3.3. Amendments to the Provisions on Applying for and Granting Parental Leave

Parental leave may be used simultaneously by both employee–parents of the child; this aspect remains largely unchanged. In such cases, the total duration of parental leave may not exceed the limits specified in Article 182¹a §§ 1 and 2 of the Labour Code, i.e., 41/43 weeks or 65/67 weeks.

Similarly, during the period in which one parent receives a maternity benefit for a period corresponding to parental leave (i.e., when that parent is covered by sickness insurance under a title other than an employment relationship), the other parent may take parental leave, provided that the combined duration of parental leave and the period of receiving maternity benefit for the corresponding period does not exceed 41/43 weeks or 65/67 weeks, respectively.

Parental leave is granted upon the employee’s request submitted no later than 21 days before the planned start of the leave. This deadline has not changed; however, the request may now be submitted either in written form or in documentary form.

The rules for granting parental leave have also changed. Previously, parental leave could be taken either in one continuous period or in parts (up to a maximum of 4, none of which could be shorter than 8 weeks, except for the first part), and no later than the end of the calendar year in which the child turned 6. Parental leave—or at least its first part, not shorter than 6 weeks (in the case of the birth of one child)—had to be taken immediately after maternity leave. Parental leave of up to 16 weeks could be taken at a time not directly following the previous part of the leave.

The amendment changes the rules for granting parental leave so that it may now be taken either in one continuous period or in no more than 5 parts, no later than the end of the calendar year in which the child turns 6. The new provisions no longer require that parental leave be taken immediately after maternity leave. The regulations also do not specify the duration of each part of the leave, nor do they require that any of the parts be taken consecutively.

3.4. Amendments to the Provisions on Applying for and Using the Option to Combine Parental Leave with Employment

An employee will still be able to combine the use of parental leave with performing work for the employer who granted the leave. In such a case, work may be performed up to a maximum of half of the full-time working hours, and parental leave is granted for the remaining portion of the working time.

Following the amendments, the employee may submit the application in either written or documentary form, which aligns with the general approach adopted in the amending act aimed at simplifying the application procedure.

The employer is required to approve the employee’s application unless it is not possible due to the organization of work or the nature of the work performed by the employee. In such cases, the employer must inform the employee of the reasons for the refusal within 7 days of receiving the application.

The duration of parental leave for an employee who combines the leave with part-time work for the employer who granted the leave shall be extended proportionally to the working time performed by the employee during the period of simultaneous use of the leave, but not beyond:

- **82 weeks** in the case of the birth of one child in a single birth, or
- **84 weeks** in the case of the birth of two or more children in a single birth.

These changes result from the need to align the regulations with the extended duration of parental leave introduced by the amendment.

In the case of parents of a child holding a certificate confirming a severe and irreversible disability or an incurable life-threatening illness that arose during the prenatal stage of development or at birth—pursuant to Article 4(3) of the Act of 4 November 2016 on Support for Pregnant Women and Families 'For Life'—the maximum duration of parental leave, when combined with part-time work for the employer who granted the leave, shall be:

- **up to 130 weeks** in the case of the birth of one child in a single birth, or
- **up to 134 weeks** in the case of the birth of two or more children in a single birth.

3.5. Parental Leave and Leave under the Conditions of Maternity Leave in the Case of Adoption or Taking a Child into Care

The amending act, similarly to the repeal of Article 179¹ of the Labour Code, repeals Article 182⁴, which previously allowed for the submission of an application for the full duration of parental leave to be taken immediately after the use of leave under the conditions of maternity leave.

The duration of parental leave in the case of adoption or taking a child into care has also been changed.

For employees who have taken a child into care as a foster family—excluding professional foster families (Article 183 § 4 of the Labour Code)—the duration of parental leave shall be up to:

- **41 weeks** in the case of adopting one child;
- **43 weeks** in the case of simultaneously adopting two or more children;
- **38 weeks** in the case of adopting an older child (adopting a child up to the age of 7, or up to the age of 10 in the case of deferred school obligation and the right to 9 weeks of leave under the conditions of maternity leave).

Employees who have taken a child into care and have submitted an application to the family court to initiate adoption proceedings are entitled to parental leave for up to:

- **41 weeks** in the case of adopting one child;
- **43 weeks** in the case of simultaneously adopting two or more children, but no longer than until the child reaches the age of 14;
- **38 weeks** in the case of adopting an older child (adopting a child up to the age of 14 and having the right to 9 weeks of leave under the conditions of maternity leave).

The duration of parental leave is extended for employees who have taken a child into care as a **foster family**, excluding **professional foster families**, and who have a certificate confirming **severe and irreversible disability or an incurable life-threatening illness** that occurred during the **prenatal development or at birth**, in accordance with **Article 4(3) of the Act of 4 November 2016 on Support for Pregnant Women and Families – “For Life”**.

The duration of parental leave in such cases is:

- **up to 65 weeks** – in the case of adopting one child;
- **up to 67 weeks** – in the case of adopting two or more children simultaneously;
- **up to 62 weeks** – in the case of adopting an older child.

For employees who have taken a child into care and submitted an application to the family court to initiate adoption proceedings **with the above-mentioned certificate**, the duration of parental leave is also:

- up to 65/67/62 weeks, respectively.

Parental leave may be granted **once or in no more than 5 parts**, according to the rules set out in **Article 182¹a § 3–7 and Articles 182¹c–182¹g of the Labour Code**.

Additionally, the procedure for submitting applications for leave under the conditions of maternity leave has been simplified. Applications can now be submitted **in paper or electronic form**, within **7 days** of taking a child into care as a foster family or submitting an application to the family court for adoption proceedings.

The leave begins on the date specified in the application, but **no later than 21 days** from the date the child was taken into care.

4. Paternity Leave

Paternity leave is granted **exclusively to employees who are fathers raising a child**, regardless of their overall length of service or duration of employment with a specific employer. The duration of paternity leave remains **up to 2 weeks**, and the amended legislation does **not introduce any changes** in this regard. As before, the employee may take the entire leave **at once or in two parts**, with **each part being no shorter than one week**. However, the **deadline for using paternity leave has changed**. Currently, an employee is entitled to paternity leave **until the child reaches 24 months of age**, or **within 24 months from the date the adoption decision becomes final**, and **no later than until the child reaches 14 years of age**.

The **amendment to the Labour Code** shortens this period. Under the new rules, the employee – father of the child – may use paternity leave **until the child reaches 12 months of age**, or **within 12 months from the date the adoption decision becomes final**, and **no later than until the child reaches 14 years of age** [1]. The employee may submit a request for paternity leave **in writing or in electronic form** (Article 182³ § 2 of the Labour Code).

5. Parental Leave and Reduced Working Hours

The changes to the regulations concerning parental leave are limited to allowing employees to **submit and withdraw applications** for parental leave **in written or electronic form**.

The same changes apply to applications for **working reduced hours**.

Additionally, the amendment to the Labour Code introduces **§ 3 and § 4 to Article 186⁷**, confirming that:

- an employee may work reduced hours **for a period corresponding to the remaining duration of their parental leave**,
- but **no longer than until the end of the calendar year in which the child turns 6**.

Importantly, **working reduced hours does not reduce the total duration of parental leave**.

6. Care Leave

The amended provisions of the Labour Code introduce a new type of employee leave – **care leave**. According to Article 173¹ § 1 of the Labour Code, this leave is granted to an employee for **5 days per calendar year** to provide **personal care or support** to a **family member** or a person **living in the same household**, who requires such care or support due to **serious medical reasons**.

Care leave may be taken **in one block or in parts**. It is granted on **days that are working days** for the employee according to their work schedule.

The group of people for whom the employee may use care leave includes **family members or cohabitants**. A family member is defined as the employee's **son, daughter, mother, father, or spouse**.

The employee may also use care leave for another person who requires care or support, even if that person is **not listed above or not related** to the employee at all, provided they **live together in the same household**.

The application for care leave may be submitted **in writing or electronically, no later than one day before** the start of the leave.

Care leave is **unpaid**, meaning the employee **will not receive remuneration** for the leave period (as per Article 80 of the Labour Code). However, the leave **counts toward the length of employment**, which affects employee entitlements.

An employee taking care leave is subject to **special protection of employment** under Article 177 § 1 of the Labour Code, starting from the moment the leave application is submitted within the legally required timeframe (i.e., at least one day before the leave begins). This means the employer **cannot terminate or dissolve the employment contract** (except in cases of bankruptcy or liquidation of the employer), unless there are grounds for termination without notice due to the employee's fault, and the **trade union representing the employee consents** to the termination. The employer is also **prohibited from preparing to terminate or dissolve the employment contract** during the protection period.

7. Leave from Work Due to Force Majeure

A new entitlement granted to employees under the amended Labour Code is **leave from work due to force majeure** in urgent family matters caused by **illness or accident**, where the **employee's immediate presence is necessary** (Article 148¹ § 1 of the Labour Code).

The Labour Code does not define the term *force majeure*, so its interpretation relies on legal doctrine and case law. According to the accepted legal definition, force majeure is an **external, extraordinary, and unavoidable event**, impossible to foresee within a given context.

This leave is granted in the amount of **2 days or 16 hours per calendar year**.

The **form of use** (days or hours) is determined by the **first application** submitted by the employee in a given calendar year. If the leave is taken in hours by an employee working part-time, the amount of leave is **proportional to their working hours**. Any **fractional hour is rounded up** to a full hour.

During this leave, the employee retains the right to **50% of their regular salary**.

Days Off for Childcare (Article 188 of the Labour Code)

The provisions regarding leave from work granted to an employee raising at least one child under the age of 14 (in the amount of **16 hours or 2 days**) have been supplemented with a regulation stating that the **application for such leave may be submitted in paper or electronic form** (Article 188 § 2 of the Labour Code). The provisions concerning the granting of this leave in **hourly form** apply accordingly to employees whose **daily working time norm is less than 8 hours**.

9. Flexible Work Arrangements

Flexible work arrangements are one of the legal instruments introduced in line with Directive 2019/1158, aimed at encouraging working parents to remain in the labour market by allowing them to adapt their work schedules to personal needs and preferences.

This regulation has been implemented into Polish law through **Article 188¹ of the Labour Code**, which states that an **employee raising a child under the age of 8** may submit a request for flexible work arrangements.

Forms of flexible work arrangements include remote work; split working time system (Article 139); shortened workweek system (Article 143); weekend work system (Article 144); flexible working hours (Article 140¹); individual working time schedule (Article 142); reduction of working hours.

The request must be submitted **in paper or electronic form, no later than 21 days before** the planned start of the flexible work arrangement. The request must include the child's full name and date of birth; the reason for needing flexible work arrangements; the start and end dates of the requested arrangement; the type of flexible work arrangement the employee wishes to use.

When reviewing the request, the employer must consider both the employee's needs, including the timing and reason for the request, the employer's operational needs and possibilities, including maintaining workflow, work organization, and the nature of the employee's duties.

The employee may **request to return to the previous work arrangement at any time**, before the originally planned end date, if circumstances change. The employer must again consider both parties' needs and respond within **7 days**, either approving the request, proposing a new date, or providing a reason for refusal.

The Labour Code also includes a **protective provision**: submitting a request for flexible work arrangements **cannot be used as grounds for termination of employment**, whether with or without notice, nor can it justify **preparations for such termination** (Article 188¹ § 7). The **burden of proof** lies with the employer to demonstrate that any termination was based on other reasons.

10. Employment in Overtime, Night Shifts, Split Working Time System, and Assignment Outside the Regular Workplace

According to the new wording of **Article 178 § 2 of the Labour Code**, an employee **raising a child under the age of 8** may **not be employed without their consent in overtime work, night shifts, split working time system** (as defined in Article 139), or **assigned to work outside their regular workplace**[1].

11. Return to Work After Parental Leave

The amendment introduces a **guarantee provision** in the Labour Code for employees returning to work after taking parental-related leave.

According to **Article 186⁴ of the Labour Code**, the employer is obliged to **reinstate the employee** after maternity leave, leave under the conditions of maternity leave, parental leave, paternity leave, and childcare leave to their **previous position**.

If this is **not possible** (e.g., due to organizational changes), the employer must assign the employee to a **comparable position with no less favourable conditions** than those that would have applied had the employee not taken leave[2].

This rule also applies to employees returning from leave due to **force majeure** and **care leave**.

