

## Maternity Leave

### 1. Definition

This is the period of time that a pregnant female employee can take off from work before and after the birth of her child. In order to prepare for the childbirth and to recover health after the childbirth, a total 90 days (if she has at least two children at the same time, this will extend to 120 days) of time off is guaranteed. In such case, at least 45 days (60 days if she has at least two children at the same time) must be used after the childbirth. (Article 74 (1) of Labor Standards Act)

### 2. Users

Not only the full-time employees, but also any pregnant female employees including the part-time and short-hours employee can use this benefit regardless of the employment period. However, if an employment contract is terminated for the reasons such as the expiration of the employment contract during the maternity leave, the maternity leave is also terminated.

### 3. Use of the maternity leave during the early stage of pregnancy

Since August 2, 2012, anyone with the risk of a miscarriage or a stillbirth may split the time off of 44 days that are allowed to use before the childbirth. In such cases, the period of leave after the childbirth shall be at least 45 days (60 days, if she is pregnant with at least two children at a time) consecutively. (Article 74 (2) of Labor Standards Act)

\* The one of the following events is required for the use the maternity leave during the early stage of pregnancy (Article 43 of Enforcement Decree of the Labor Standards Act).

- ① In the event of a history of a miscarriage or stillbirth,
- ② In the event the applicant for the maternity leave is 40 years or older person,
- ③ In the event that the applicant for the maternity leave submitted a doctor's diagnostic note that the person has a risk of a miscarriage or a stillbirth.

### 4. Penalties

For the employer who refused the employee's maternity leave is subject to an imprisonment of 2 years or less, or fine of 20 million KRW or less. (Article 110 of Labor Standards Act)

### 5. Wage during the maternity leave

The employer should pay the wage for the first 60 days (75 days if she has more than two children at the same time) during the maternity leave. And the Employment Center under the Ministry of Employment and Labor shall pay the wage for the last 30 days of the maternity leave. In case of the Priority Support Enterprise<sup>1</sup>, the Employment Center supports the parts of the wage up to 2.1 million KRW per month (60 days wage). Provided, if the employee's standard wage is more than 2.1 million KRW, the difference should be paid by the employer.

### 6. Wage paid by the employment center for the maternity leave

All the female employee may take the maternity leave, but only the employees whose insurance coverage unit term is greater than 180 days prior to the final day of the maternity leave may be paid by the Employment Center. The insurance coverage unit term is calculated by adding all the prior business history as well as the current business experience. In the event that an employee has received a job seeking benefit, the time is calculated after that time period. In the event the employee of the Priority Support Enterprise does not receive the wage for the maternity leave from the Employment Center, the employer shall pay such amount. In the event the employee does not receive the wage from the Employment Center (in the event the insurance coverage unit term is less than 180 days), the wage for the first 60 days should be paid by the employer. However, the employer is not responsible for the wage for the final 30 days.

### 7. An employment termination/unfair personnel actions during the maternity leave

An employer shall not ask a pregnant female employee for an overtime work, and if there exists a request from such employee, the employer should transfer her to an easy type of work. (Article 74(5) of the Labor Standards Act) At the end of the maternity leave, the

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<sup>1</sup> The Enterprises of the Priority Support (Article 12-1 Enforcement Decree of the Employment Insurance Act)

1. Manufacturing business: 500 employees or less
2. Mining, Construction, Transportation, Publication, Imaging, Broadcasting and Communication, and Information Service, Business facility management and Business supporting service, Professional, science and technology service, health and social welfare service industry: 300 employees or less
3. Wholesales and retail sales, Lodging and Food, banking and Insurance, Art, Sports, and leisure related service business: 200 employee or less
4. Other industry sectors: 100 employees or less

employer shall return the worker to the equal task or job duty that pays the equal level of wage. (Article 74 (6) of the Labor Standards Act) Any employer who violates this shall be fined 5 million KRW. (Article 114 of the Labor Standards Act)

#### **8. Working hour reduction due to pregnancy**

Where a female employee who has been pregnant for not more than 12 weeks or for not less than 36 weeks requests the reduction of her work hours by two hours a day, the employer shall permit it. Provided, if the employee works less than 8 hours a day, The employer may allow her work hours to be reduced to six hours. (Article 74(7) of the Labor Standards Act) An employer must not reduce her wage due to the above working hour reduction. (Article 74(8) of the Labor Standards Act)

#### **9. Maternity leave for the spouse**

This is a time off for all the male employee that can be utilized when the spouse had a childbirth. This is a system to protect the health of female workers and the newborn children, and at the same time, to expand males' participation in childcare. An employer should grant leave for 10 days. In such cases, he shall be paid for the period of leave used (Article 18-2 (1) of the An Equal Employment Opportunity and Support for Work and Family Act) No paternity leave may be requested after 90 days have elapsed from the date the spouse of the relevant employee gave birth. (Article 18-2 (3) of the An Equal Employment Opportunity and Support for Work and Family Act) For an employer who refused to grant the maternity leave for the spouse, a 5 million KRW fine will be imposed. (Article 39 (3) of the An Equal Employment Opportunity and Support for Work and Family Act)

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