

# THE INTRODUCTION OF PATERNITY LEAVE IN IRELAND

CIARA O'LEARY\*

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During September 2016, the Irish government plans to introduce legislation that will give fathers the option to avail of two weeks paid leave after the birth of their child. The proposed legislation has been met with much support as it not only recognises the important role of fathers in raising their children, but it also promises to help reduce the cost of childcare and encourage mothers to return to the workplace more quickly than usual. However, the new allowances for fathers are pale in comparison to those already in place in many other European countries and critics question if two weeks' leave is either sufficient or principally fair in comparison to the twenty-six weeks which mothers are entitled to.

Fathers in Ireland are currently not entitled to any paid leave, and any time off work is given solely at the discretion of the employer. This is starkly contrasted by the majority of other European countries, which typically allow for parental leave to be accessed by either the father or the mother, and reserve a certain portion of the time off for fathers only.<sup>1</sup> For example, Spain permits three hundred weeks of parental leave to be shared by parents until the child is three years old, while Slovenia mandates fifteen days of paid paternity leave and seventy-five days of unpaid paternity leave along with the option to split the two hundred and sixty day parental leave allotment. Most impressively, Sweden grants fathers ten days' paid leave and sixty of the three hundred and ninety parental leave days and thus it is often hailed as one of the most father-friendly countries in Europe.<sup>2</sup> These countries have high levels of paternity leave participation and low costs of child

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\* Junior Freshman LLB (Law and Politics) Candidate, Trinity College Dublin. Junior Editor of the Trinity College Law Review.

<sup>1</sup> Terry Gorry, New Parental Leave Law in Ireland- Family Leave Changes <[www.employmentrightsireland.com/new-parental-leave-law-in-ireland-family-leave-changes/](http://www.employmentrightsireland.com/new-parental-leave-law-in-ireland-family-leave-changes/)> (visited 20 January 2016).

<sup>2</sup> Megan Hickey, Two Weeks, Too Little: Statutory Paternity Leave in Ireland <[www.universityobserver.ie/comment/two-weeks-too-little-statutory-paternity-leave-in-ireland/](http://www.universityobserver.ie/comment/two-weeks-too-little-statutory-paternity-leave-in-ireland/)> (visited 23 January 2016).

care minding.<sup>3</sup> Principally, equal access to parental leave promotes gender equality by giving everyone the right to balance career and family life.

Prior to this change, parental leave was most recently affected by the 2013 EU Parental Leave Directive.<sup>4</sup> Parental leave had been an ongoing concern of the European Union's social policy agenda and was addressed in numerous charters and bills beforehand, but the EU never successfully imposed strict standards on member states. The Directive, which prompted the drafting of the Family Leave Bill, transposed into Irish law new guidelines for the length of parental leave as well as outlining the gender neutral nature of parental leave.<sup>5</sup> The Directive states that the minimum eighteen weeks leave will apply to both men and women regardless of their current employment arrangements. The taking of leave may only be postponed by an employer should it have a considerable negative impact on their business. Furthermore, the Directive outlines workers' rights to return to work and seeks to prevent discrimination against those who return to the workplace after taking parental leave.<sup>6</sup>

Promoting equality of opportunity for both men and women through parental leave has been an active interest of the European Union from as early as 1983, when proposals for a parental leave directive were first drafted.<sup>7</sup> However, member states were unable to reach a unanimous decision, and it was not until 1993 that a compromise was reached. By 1995, a collective agreement was reached at a European level which guaranteed a minimum of three months unpaid parental leave available to either sex. Both Ireland and the UK ratified the agreement but neither country made any adjustments to their current parental leave policies.<sup>8</sup>

For the majority of EU member states, this directive is unlikely to generate major legislative changes as their policies regarding parental leave are fairly comprehensive. Amendments to existing legislation in these countries is most likely to address time off of work on the grounds of force majeure for unforeseeable family circumstances.<sup>9</sup> Ireland, along with Luxembourg and the UK,

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<sup>3</sup> Philip Ryan, Paternity leave mandatory for employers <[www.independent.ie/business/budget/news/paternity-leave-mandatory-for-employers-34111391.html](http://www.independent.ie/business/budget/news/paternity-leave-mandatory-for-employers-34111391.html)> (visited 20 January 2016).

<sup>4</sup> European (Parental Leave) Regulations Act, 2013.

<sup>5</sup> Sean McHugh, Key changes to Parental Leave imminent following EU Directive <[www.brightcontracts.ie/blog/2013/01/key-changes-to-parental-leave-imminent-following-eu-directive/](http://www.brightcontracts.ie/blog/2013/01/key-changes-to-parental-leave-imminent-following-eu-directive/)> (visited 19 January 2016).

<sup>6</sup> Council Directive 2010/18/EU of March 2010 implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC, OJ L 45, 19.2.1975, p. 19–20, 8 March 2010.

<sup>7</sup> Gorry, note 1.

<sup>8</sup> European Commission Press Release Database <[www.europa.eu/rapid/press-release\\_MEMO-95-171\\_en.htm](http://www.europa.eu/rapid/press-release_MEMO-95-171_en.htm)> (visited 20 January 2016).

<sup>9</sup> Ryan, note 3.

has some of the most underdeveloped parental leave policies and thus the directive will play a major role in reshaping the legislation that governs parental leave. Female employees in Luxembourg, for example, are entitled up to twelve weeks paid leave and up to one year of additional unpaid leave. However, their return to work is not guaranteed and is dependent upon a vacancy arising.<sup>10</sup> Furthermore, there is no provision for taking time off work on the grounds of force majeure. The UK has even less statutory provisions for parental leave, and leaves it to organisations to decide on parental leave arrangements above and beyond the partially paid thirty-nine weeks of maternity leave.<sup>11</sup>

Pregnancy discrimination has become a common issue faced by the Irish courts system as many small businesses feel threatened by the instability that comes with employing or promoting women in the midst of their child-bearing years. In 2013, the Irish Labour Courts awarded numerous employees compensation on the grounds of unfair pregnancy discriminatory dismissal.<sup>12</sup> The Family Law Bill seeks to decrease the prevalence of pregnancy discrimination due to the fact as women will be more able to return to the workforce if their partners take on a portion of the burden of minding and raising children during working hours.<sup>13</sup> Furthermore, with fathers also entitled to time off after the birth of their child, employers are less able to discriminate against mothers with regards to hiring or promoting them as a father will have the same potential to take time off work after a pregnancy.

Still, maternity leave will be vastly disproportionate to this proposed paternity leave and Ireland does not plan to introduce shared parental leave, which has proven to be quite successful elsewhere. In countries such as Norway and Sweden, fathers take between thirty and eighty percent of shared parental leave because it is heavily encouraged and facilitated through their parental leave schemes.<sup>14</sup> High income levels for women are guaranteed by these governments and parents are less likely to be influenced by the common perception that men have a higher earning power. Parliamentarians argue that introducing shared parental leave would be counter-productive to the idea of gender equal access to parental leave as the stereotypical role of women as child-minders would discourage fathers from taking time from the shared leave. This is evident in countries such as Austria and Denmark, where fathers choose to access merely

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<sup>10</sup> Labour Code, 2006, s 195.

<sup>11</sup> Maternity and Parental Leave, etc Regulations 1999, s 7.

<sup>12</sup> *Kelly v University College Dublin* (Equality Tribunal, DEC-E2013-106, 10 September, 2013); *Shine v Harmony Community Development Limited And Westmeath Community Development Limited* (Equality Tribunal, DEC-E-2013-100, 23 August, 2013)

<sup>13</sup> Hickey, note 2.

<sup>14</sup> Hall, note 4.

between one and three percent of shared parental leave.<sup>15</sup> However, this seems somewhat irrelevant since under the proposed bill fathers would only receive ten working days of parental leave compared to the twenty-eight weeks entitled to mothers.

Many critics argue that the new Irish legislation would be far more effective if it included shared parental leave because the ten-day paternal leave would still encourage pregnancy discrimination. Furthermore, workplace culture would force mothers to take on the burden of child minding and thus be absent from work. For those mothers who choose to not to take all twenty-eight weeks of maternity leave in the interest of returning back to work, childminding costs become a huge obstacle and this often ends up discouraging them from doing so.<sup>16</sup> Although the presumption that mothers will take the majority of shared leave is accurate in the majority of countries that currently use it,<sup>17</sup> it is arguably a result of existing social attitudes that can be challenged by introducing far more drastic policies such as the ones in place in Scandinavian countries.

Moreover, the proposed legislation does not take into account fathers in same-sex relationships with a new-born child. With only two weeks of paid paternity leave, they are forced to take time off of work to raise their child or spend large amounts of their income on childminding.

In conclusion, the proposed Family Leave Bill is a step forward for for parental leave in Ireland. As a country with one of the most underdeveloped systems of parental leave in Europe, the introduction of paternity leave and consideration for mothers accessing further leave on the grounds of force majeure promotes a non-gender discriminatory ability to balance career and family life. However, these proposed changes do not come close to the policies in place in countries such as Sweden and Norway and it is submitted that much more drastic policies must be implemented if Ireland is to become one of the more father-friendly nations of Europe.

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<sup>15</sup> McHugh, note 3.

<sup>16</sup> Darragh McManus, Paid paternity leave: Will it spell good news for Irish fathers? <[www.independent.ie/life/family/parenting/paid-paternity-leave-will-it-spell-good-news-for-irish-fathers-31034724.html](http://www.independent.ie/life/family/parenting/paid-paternity-leave-will-it-spell-good-news-for-irish-fathers-31034724.html)> (visited 21 December 2015).

<sup>17</sup> Campbell, note 8.