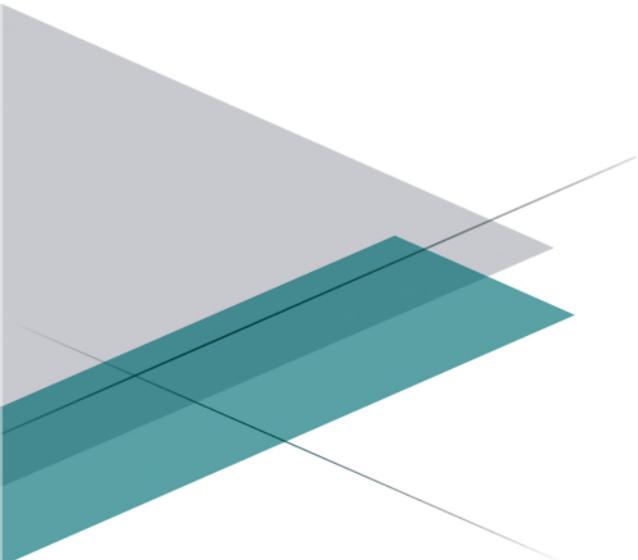




EMPLOYMENT LAW ALLIANCE ASIA PACIFIC FAMILY LEAVE SURVEY 2018



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INTRODUCTION

Prepared by members of the Employment Law Alliance, this publication is designed to provide a handy overview of the family leave provisions across 18 jurisdictions in the Asia Pacific region.

Specifically, each jurisdiction has been asked the same series of questions on the following issues: (A) Maternity Leave; (B) Paternity Leave; (C) Adoption Leave; (D) Childcare Leave Provision; (E) Other relevant issues / trends.

Frequently asked questions such as "how long is the maternity leave provision in your country", "can a pregnant woman / woman on maternity leave be terminated", "can our employees get adoption / childcare leave", "do single parents or same sex parents enjoy family leave" are answered in this publication. Each member firm has also provided some insight into the trends / other issues relevant to the topic give a more holistic view of the legal landscape in each jurisdiction.

We hope you will find this survey helpful and relevant. This information in this publication is meant as an overview and does not constitute legal advice. Please also note that the laws in each jurisdiction may change. Should you have any questions on the law in any of the jurisdictions, please contact the relevant member firm, who can provide the appropriate legal support.

The firms that have participated in this survey are:

1. [Bangladesh](#) Sattar & Co
2. [Cambodia](#) DFDL
3. [China](#) JunHe
4. [Hong Kong](#) Deacons
5. [India](#) Trilegal
6. [Indonesia](#) SSEK Legal Consultants
7. [Japan](#) Ushijima & Partners
8. [Korea](#) Kim & Chang
9. [Laos](#) DFDL
10. [Malaysia](#) Shearn Delamore & Co.
11. [Myanmar](#) DFDL
12. [New Zealand](#) Simpson Grierson
13. [Philippines](#) SyCip Salazar Hernandez & Gatmaitan
14. [Singapore](#) WongPartnership
15. [Sri Lanka](#) John Wilson Partners
16. [Taiwan](#) Lee, Tsai & Partners
17. [Thailand](#) Price Sanond
18. [Vietnam](#) DFDL

BANGLADESH

A. Maternity Leave Provisions

1. What is your responding jurisdiction?

Bangladesh.

2. In the responding jurisdiction, do all expectant women, including surrogate mothers, get maternity leave?

According to Section 46 of the Bangladesh Labour Act, 2006 (the "BLA"), every woman worker shall be entitled to maternity benefit from her employer for a period of eight weeks preceding the expected date of her delivery and eight weeks immediately following the date of her delivery, and her employer shall be bound to give her this benefit. Therefore, all expectant women who are working under an employer must get the benefit.

However, there is no clear indication as to whether surrogate mothers are entitled to get such a benefit. There is a restriction in Section 46(1) of the BLA which provides that a woman shall not be entitled to such leave unless she has worked under her employer for a period of not less than six months immediately preceding the date of her delivery. Therefore, we can state that there is an implied restriction regarding surrogate mothers to get such benefit.

In this regard, it is also to be noted that Section 46(2) of the BLA states that maternity benefit shall not be payable to a woman if at the time of her delivery she has two or more surviving children, but she may enjoy any leave which is due to her. Furthermore, Rule 38 of the Bangladesh Labour Rules, 2015 (the "BLR") states that if the women worker requires more leave after adjusting the above-mentioned due leave, the owner of the establishment may grant additional leave without pay.

3. Must you be employed to get maternity leave? Is there an eligibility period?

Yes. The proviso to Section 46 of the BLA clearly states that a woman shall not be entitled to maternity benefit unless she has worked under her employer for a period of not less than six months immediately preceding the date of her delivery.

4. How many days of maternity leave is given?

Please see above. The total maternity leave entitlement in Bangladesh is 16 weeks.

5. When can the maternity leave be taken?

As mentioned in Section 46 of the BLA, every woman worker shall be entitled to maternity leave from her employer for the period of eight weeks preceding the expected date of her delivery and eight weeks immediately following the date of her delivery.

BANGLADESH

Therefore, maternity leave can be taken for the period of eight weeks preceding the expected date of delivery and eight weeks immediately following the date of delivery.

6. Is the maternity leave paid or unpaid? Please state how many days are paid and how many days are unpaid.

Section 48 of the BLA states that the maternity benefit shall be paid at the rate of daily, weekly or monthly average wages, as the case may be, and such payment shall be made wholly in cash. Thus, we are of the view that the whole period (16 weeks) of maternity leave is paid.

7. Does the government pay for the maternity leave?

No. The government does not pay for the maternity leave. Section 46 clearly states that only the employer will be liable to pay for the maternity benefit.

If the government is the employer, then government shall pay the maternity benefit (if any) according to its service rules. In this regard, please note that Section 1(4) of the BLA states that BLA is not applicable to workers working for the government or any office under the government.

8. Must the mother be married to enjoy maternity leave?

There are no such condition laid down in the BLA regarding maternity leave that the mother has to be married.

9. Please state the statute(s) / legal basis where maternity leave entitlement is found.

The legal basis of the maternity leave entitlement in Bangladesh has been articulated in Chapter IV of the BLA containing Sections 45 to 50.

10. Can a pregnant employee or employee on maternity leave be terminated?

Yes, a pregnant employee or employee on maternity leave can be terminated in Bangladesh.

11. Is an employer bound to offer a returning employee the same job role/profile/wage after maternity leave?

The BLA and BLR are silent in this regard. However, the general market practice is that the returning employee is offered the same role/wages after the maternity leave.

BANGLADESH

B. Paternity Leave Provisions

12. Do fathers get paternity leave?

The BLA and BLR are silent in relation to paternity leave. Since there are no express leave or benefits in this regard, it may be deduced that paternity leave is not available in Bangladesh.

13. Must you be employed to get paternity leave? Is there an eligibility period?

N/A.

14. How many days of paternity leave is given?

N/A.

15. When can the paternity leave be taken?

N/A.

16. Is the paternity leave paid or unpaid? Please state how many days are paid and how many days are unpaid.

N/A.

17. Does the government pay for the paternity leave?

N/A.

18. Must the father be married to enjoy paternity leave?

N/A.

19. Please state the statute(s) / legal basis where paternity leave entitlement is found.

N/A.

20. Can a father on paternity leave be terminated?

N/A.

BANGLADESH

C. Adoption Leave Provisions

21. Do adoptive parents enjoy adoption leave? How many days of adoption leave is given?

The BLA and BLR are silent in relation to adoption leave. Since there are no express leave or benefits in this regard, it may be deduced that adoption leave is not available in Bangladesh.

22. Must you be employed to get adoption leave?

N/A.

23. When can the adoption leave be taken?

N/A.

24. Is the adoption leave paid or unpaid? Please state how many days are paid and how many days are unpaid.

N/A.

25. Does the government pay for the adoption leave?

N/A.

26. Must the mother or father be married to enjoy adoption leave?

N/A.

27. Do you get adoption leave if you are a single parent?

N/A.

28. Would a same sex couple enjoy adoption leave?

N/A.

29. Please state the statute(s) / legal basis where adoption leave entitlement is found.

N/A.

30. Can a parent on adoption leave be terminated?

N/A.

BANGLADESH

D. Childcare Leave Provisions

31. Do parents get childcare leave?

The BLA and BLR are silent in relation to childcare leave. Since there are no express leave or benefits in this regard, it may be deduced that childcare leave is not available in Bangladesh.

32. Must you be employed to get childcare leave?

N/A.

33. How many days of childcare leave is given?

N/A.

34. When can the childcare leave be taken?

N/A.

35. Is the childcare leave paid or unpaid? Please state how many days are paid and how many days are unpaid.

N/A.

36. Does the government pay for the childcare leave?

N/A.

37. Must the mother be married to enjoy childcare leave?

N/A.

38. Would a same sex couple enjoy childcare leave?

N/A.

39. Please state the statute(s) / legal basis where childcare leave entitlement is found.

N/A.

40. Can a parent on childcare leave be terminated?

N/A.

BANGLADESH

E. Other relevant issues / trends

41. Repercussions on the employer if it does not provide the statutory family leave entitlements.

There are no specific provisions found in relation to this under the BLA and BLR. However, Section 213 of the BLA states that any worker may apply to the Labour Court for the enforcement of any of his/her rights guaranteed under the BLA.

42. Will any officers of the employer face personal liability for not ensuring that employees receive the statutory family leave entitlements?

There are no specific provisions found in relation to this under the BLA and BLR.

43. Is the employment law landscape in your country generally pro-family or otherwise?

Unlike other countries, paternity leave, adoption leave, childcare leave etc. are unavailable in Bangladesh. So, it could be said that further reforms could make the employment landscape more family friendly.

44. Do parents face any workplace discrimination for utilizing their family leave entitlements?

No.

45. What is the legal recourse if an employee feels he/she has faced discrimination arising from taking family-related leave?

There are no specific provisions found in relation to discrimination arising from taking family-related leave under the BLA and BLR. However, a worker can go to the Labour Court under Section 213 of the BLA for the enforcement of his/her right under the BLA.

46. What family friendly practices does your country practice? (e.g. flexible working hours, paid benefits not mandated by law)

The working hours provided by BLA and BLR are family friendly. Section 100, 102 and 108 states that a worker shall not be allowed to work more than 10 hours a day (8 hours of ordinary working hour and 2 hours of overtime work). Likewise, a worker shall not be allowed to work more than 60 hours per week (48 hours of ordinary working hours and 12 hours of overtime work). For overtime work, a worker will be entitled to allowance at the rate of twice his ordinary rate of basic wages.

In addition to the above, Section 109 of the BLA provides that, the employer cannot bind a woman worker, without her consent, to work between 10 pm to 6 am.

BANGLADESH

47. Are there other benefits in addition to maternity leave? For e.g. leave entitlements relating to miscarriages, illness associated with the pregnancy or maternity, medical termination of pregnancies, etc.?

There are no leave entitlements relating to miscarriages, illness associated with the pregnancy or maternity, medical termination of pregnancies, etc. under BLA and BLR.

However, Section 116 of the BLA provides, except for a newspaper worker, every worker shall be entitled to sick leave with full wages for fourteen days in a calendar year. Please note that such leave is a general sick leave available for everyone.

48. Do mothers get paid nursing breaks? If so, what conditions apply?

The law does not provide any facilities regarding paid nursing break to mothers. However, Rule 37(e) of the BLR states that the owner and other workers should, after the delivery, provide opportunity for breastfeeding and ensure congenial atmosphere for this.

49. Are employers bound to provide crèche facilities? If so, must these be provided free of cost? Is there an age limit for children using the employer provided crèche facilities?

Section 94 of the BLA requires the employer to provide rooms for children. According to Section 94 of the BLA in every establishment, where forty or more female workers are ordinarily employed, one or more suitable rooms shall be provided.

It is also stated that the room shall be provided with adequate accommodation, light, and ventilation and shall be maintained in clean and sanitary condition, and shall be under the charge of an experienced or trained woman for the care of children.

Section 94(3) of the BLA provides that the rooms shall be easily accessible to the mothers of the children, and, so far as is reasonably practicable, they shall not be situated adjacent to or near any part of the establishment where obnoxious fumes, dust or odours are present, or where excessively noisy works are carried on.

According to section 94(4) of the BLA, rooms shall be strongly constructed, and all walls and roofs thereof shall be of suitable heat-resisting materials, and shall be water-proof and maintained for the use of their children who are under the age of 6 (six) years of age. Suitable and effective provisions shall be made in every part of each such rooms for sufficient light, air and ventilation of fresh air shall be provided in accordance with Section 94(6) of the BLA.

Moreover, the rooms shall be adequately furnished and in particular, one cot or cradle with bed shall be kept there for each child, and there shall be at least one chair or any similar seat for the use of each mother while she is feeding or attending to her child, and adequate and suitable toys shall be supplied for the comparatively older children.

BANGLADESH

A suitably fenced shady open-air play-ground shall also be provided for the comparatively older children.

50. Are there any notable legal developments or upcoming developments to watch out for in the area of family related leave?

No.

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CAMBODIA

A. Maternity Leave Provisions

1. What is your responding jurisdiction?

Cambodia.

2. In the responding jurisdiction, do all expectant women, including surrogate mothers, get maternity leave?

Yes.

3. Must you be employed to get maternity leave? Is there an eligibility period?

Yes. Every female employee is entitled to maternity leave. However, only those who have completed at least one year of uninterrupted service with the enterprise are entitled to half of their regular wages and certain other benefits during the maternity leave.

4. How many days of maternity leave is given?

90 days.

5. When can the maternity leave be taken?

At any time (i.e. before or immediately after the delivery of the baby) as agreed between the female employee and her employer.

6. Is the maternity leave paid or unpaid? Please state how many days are paid and how many days are unpaid.

If an employee has not completed one year of uninterrupted service with the enterprise, the maternity leave will be unpaid. If an employee has completed one year of uninterrupted service with the enterprise, the maternity leave will be paid in an amount equal to half of their regular wages and other benefits.

7. Does the government pay for the maternity leave?

The maternity pay mentioned in question 6 above is paid by the employer. In addition, female employees registered with the National Social Security Fund ("NSSF") who meet the requirements under the health care scheme are also entitled to benefits such as daily allowance of 70% of the daily average wage for 90 days of the maternity leave paid by the NSSF.

CAMBODIA

8. Must the mother be married to enjoy maternity leave?

No.

9. Please state the statute(s) / legal basis where maternity leave entitlement is found.

Please refer to:

- Articles 182 and 183 of the Cambodia Labour Law dated 13 March 1997, as amended on 20 July 2007 and on 26 June 2018 ("Labour Law");
- Prakas 109 on Health Care Benefits dated 17 March 2016 ("Prakas 109");
- Prakas 184 on Amendments to Articles 2, 4, 5, 6, 7, 8 and 10 of Prakas 109, dated 25 April 2018; and
- Notification 014 on Provision of Daily Allowance for Female Employees during Maternity Leave dated 03 February 2017.

10. Can a pregnant employee or employee on maternity leave be terminated?

No. Employers are prohibited from terminating female employees during their maternity leave even by way of notice.

11. Is an employer bound to offer a returning employee the same job role/profile/wage after maternity leave?

Yes. However, during the first two months after returning back to work, female employees are expected to perform light work only.

B. Paternity Leave Provisions

12. Do fathers get paternity leave?

No. Employer may have internal policies on this matter. Please note that an employee may request up to seven days of special leave for personal reasons that affect his immediate family. In practice, male employees use special leave or annual leave for paternity leave.

13. Must you be employed to get paternity leave? Is there an eligibility period?

The Labour Law does not address this matter, but as the leave (if any) will be provided by the employer, the employee must be employed to get paternity leave.

CAMBODIA

14. How many days of paternity leave is given?

The Labour Law does not cover paternity leave. However, employers may have internal policies on this matter. For special leave as mentioned in Question 12, the employee must be employed to get special leave. Special leave can be taken for up to seven days subject to approval by the employer.

15. When can the paternity leave be taken?

The Labour Law does not cover paternity leave. However, employers may have internal policies on this matter.

16. Is the paternity leave paid or unpaid? Please state how many days are paid and how many days are unpaid.

The Labour Law does not cover paternity leave. However, employers may have internal policies on this matter. Special leave as mentioned in Questions 12 and 13 above is paid leave up to seven days. Employers may deduct the special leave from the employee's annual leave. However, if the employee has no accumulated annual leave, the employer cannot deduct the special leave from the employee's annual leave for the following year. In this case, the employer may require the employees to make up work for hours taken for special leave.

17. Does the government pay for the paternity leave?

No.

18. Must the father be married to enjoy paternity leave?

No.

19. Please state the statute(s) / legal basis where paternity leave entitlement is found.

The Labour Law does not cover paternity leave. However, please refer to special leave provision in the relevant regulations below:

- Article 171 of the Labour Law; and
- Prakas 267 on Special Leave dated 11 October 2001.

20. Can a father on paternity leave be terminated?

The Labour Law does not cover paternity leave. However, in general, employers cannot terminate an employment contract of an employee for the reason of leave approved by the employer.

CAMBODIA

C. Adoption Leave Provisions

21. Do adoptive parents enjoy adoption leave? How many days of adoption leave is given?

The Labour Law does not cover adoption leave. However, employers may have internal policies on this matter.

22. Must you be employed to get adoption leave?

As above.

23. When can the adoption leave be taken?

As above.

24. Is the adoption leave paid or unpaid? Please state how many days are paid and how many days are unpaid.

As above.

25. Does the government pay for the adoption leave?

As above. There is no government policy to pay for the adoption leave.

26. Must the mother or father be married to enjoy adoption leave?

As above.

27. Do you get adoption leave if you are a single parent?

As above.

28. Would a same sex couple enjoy adoption leave?

As above.

29. Please state the statute(s) / legal basis where adoption leave entitlement is found.

N/A.

CAMBODIA

30. Can a parent on adoption leave be terminated?

The Labour Law does not cover adoption leave. However, in general, employers cannot terminate an employment contract of an employee for the reason of leave approved by the employer.

D. Childcare Leave Provisions

31. Do parents get childcare leave?

The Labour Law does not cover childcare leave. However, employers may have internal policies on this matter. Further, similar to paternity leave, an employee may request up to seven days of special leave for personal reasons that affect his/her immediate family including when his/her child is sick.

32. Must you be employed to get childcare leave?

The Labour Law does not address this matter, but as the leave (if any) will be provided by the employer, the employee must be employed to get childcare leave.

33. How many days of childcare leave is given?

The Labour Law does not cover childcare leave. However, employers may have internal policies on this matter.

34. When can the childcare leave be taken?

As above.

35. Is the childcare leave paid or unpaid? Please state how many days are paid and how many days are unpaid.

As above.

36. Does the government pay for the childcare leave?

As above. There is no government policy to pay for the childcare leave.

37. Must the mother be married to enjoy childcare leave?

As above.

CAMBODIA

38. Would a same sex couple enjoy childcare leave?

As above.

39. Please state the statute(s) / legal basis where childcare leave entitlement is found.

N/A.

40. Can a parent on childcare leave be terminated?

The Labour Law does not cover childcare leave. However, in general, employers cannot terminate an employment contract of an employee for the reason of leave approved by the employer.

E. Other relevant issues / trends

41. Repercussions on the employer if it does not provide the statutory family leave entitlements.

An employer who fails to provide the statutory maternity leave is subject to a fine of up to KHR 2,400,000 (approximately USD 600). Other forms of leave as mentioned above are not mentioned under the Labour Law.

42. Will any officers of the employer face personal liability for not ensuring that employees receive the statutory family leave entitlements?

The liability is not on the officers, but on the employer as mentioned in Question 41 above.

43. Is the employment law landscape in your country generally pro-family or otherwise?

We do not specifically note that the employment law landscape in Cambodia generally pro-family. However, the Labour Law in general is pro-employees.

44. Do parents face any workplace discrimination for utilizing their family leave entitlements?

No.

45. What is the legal recourse if an employee feels he/she has faced discrimination arising from taking family-related leave?

The employee may send complaints/claims to the labour authorities.

CAMBODIA

46. What family friendly practices does your country practice? (e.g. flexible working hours, paid benefits not mandated by law)

For some companies, it is common that the employers provide maternity payment in full, not in half as required by the Labour Law.

47. Are there other benefits in addition to maternity leave? For e.g. leave entitlements relating to miscarriages, illness associated with the pregnancy or maternity, medical termination of pregnancies, etc.?

As mentioned above, employers may grant employees special leave, not exceeding seven days per year, for use during events directly affecting the employee's immediate family, such as the employee's wedding, wedding of their child, birth of their child, or illness or death of their spouse, children and parents.

Further, the internal work policies may provide for sick leave without requiring the reasons for sickness to be specified.

48. Do mothers get paid nursing breaks? If so, what conditions apply?

Mothers who breast-feed their children are entitled to one hour per day during working hours to breast-feed their children.

This hour may be divided into two periods of 30 minutes each, one during the morning shift and the other during the afternoon shift. The exact time of breastfeeding is to be agreed between female employees and the employer. If there is no agreement, the periods will be at the midpoint of each work shift.

49. Are employers bound to provide crèche facilities? If so, must these be provided free of cost? Is there an age limit for children using the employer provided crèche facilities?

Employers employing 100 or more women are required to set up a nursing room and a day-care centre within or near their establishment.

If an employer does not provide a day-care centre, the employer is required to assist female employees with the fees for outside day-care centres for children aged 18 months or older. The day-care centre established by the employers must be provided free of cost.

The Labour Law does not specify the age limit for children using the employer provided day-care centre. However, based on the interpretation of the Arbitration Council, the children age should be limited to 36 months' old.

CAMBODIA

50. Are there any notable legal developments or upcoming developments to watch out for in the area of family related leave?

We have been aware that the government may decide to provide paid paternity leave in the future.

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CHINA

A. Maternity Leave Provisions

1. What is your responding jurisdiction?

China.

2. In the responding jurisdiction, do all expectant women, including surrogate mothers, get maternity leave?

Yes.

3. Must you be employed to get maternity leave? Is there an eligibility period?

Yes, a woman must be employed to get maternity leave. No, there is no eligibility period.

4. How many days of maternity leave is given?

National regulation grants female employees a maternity leave period of 98 days. Local rules may grant more.

5. When can the maternity leave be taken?

15 days out of the 98 days may be taken before delivery. The rest are usually taken in a block immediately after delivery, although there is no requirement that the period of leave be interrupted or immediately after delivery.

6. Is the maternity leave paid or unpaid? Please state how many days are paid and how many days are unpaid.

Maternity leave is paid, however an employee may not be entitled to payment from the statutory insurance fund if the pregnancy does not comply with statutory family planning requirements.

7. Does the government pay for the maternity leave?

Yes, the social insurance authorities pay childbirth allowance at the amount of the average monthly salary of all employees of the employer in the previous year. In some jurisdictions, the employer may be required to pay the balance if the childbirth allowance is lower than the usual salary of the female employee on maternity leave.

8. Must the mother be married to enjoy maternity leave?

No, she does not have to. But an unmarried mother or one that otherwise does not comply with family planning requirements may not be entitled to salary and benefits provided by maternity insurance.

CHINA

9. Please state the statute(s) / legal basis where maternity leave entitlement is found.

Article 7 of the Special Provisions on Labor Protection for Female Employees, issued by the State Council in 2012, stipulate that female employees giving birth shall be entitled to a maternity leave period of 98 days.

10. Can a pregnant employee or employee on maternity leave be terminated?

Yes, for a serious breach of company rules or other grounds permitting immediate termination.

11. Is an employer bound to offer a returning employee the same job role/profile/wage after maternity leave?

An employer is required to provide a returning employee the same job role or profile after maternity leave, unless the employer can prove it has legitimate basis for unilateral job role/profile adjustment. Any employer may not reduce wages of a female employee due to her pregnancy, childbirth and breastfeeding.

B. Paternity Leave Provisions

12. Do fathers get paternity leave?

Yes.

13. Must you be employed to get paternity leave? Is there an eligibility period?

Yes, a father must be employed to get paternity leave. No, there is no eligibility period.

14. How many days of paternity leave is given?

Local rules vary from 7 days to 1 month.

15. When can the paternity leave be taken?

Local rules vary, but in practice leave is usually taken during the maternity leave of the employee's wife.

16. Is the paternity leave paid or unpaid? Please state how many days are paid and how many days are unpaid.

Paid. All the leave days are paid.

CHINA

17. Does the government pay for the paternity leave?

No.

18. Must the father be married to enjoy paternity leave?

Yes.

19. Please state the statute(s) / legal basis where paternity leave entitlement is found.

National laws and regulations do not grant paternity leave. It is provided in local rules, usually regulations of population and family planning.

20. Can a father on paternity leave be terminated?

Yes.

C. Adoption Leave Provisions

21. Do adoptive parents enjoy adoption leave? How many days of adoption leave is given?

No.

22. Must you be employed to get adoption leave?

N/A.

23. When can the adoption leave be taken?

N/A.

24. Is the adoption leave paid or unpaid? Please state how many days are paid and how many days are unpaid.

N/A.

25. Does the government pay for the adoption leave?

N/A.

26. Must the mother or father be married to enjoy adoption leave?

N/A.

CHINA

27. Do you get adoption leave if you are a single parent?

N/A.

28. Would a same sex couple enjoy adoption leave?

N/A.

29. Please state the statute(s) / legal basis where adoption leave entitlement is found.

N/A.

30. Can a parent on adoption leave be terminated?

N/A.

D. Childcare Leave Provisions

31. Do parents get childcare leave?

No.

32. Must you be employed to get childcare leave?

N/A.

33. How many days of childcare leave is given?

N/A.

34. When can the childcare leave be taken?

N/A.

35. Is the childcare leave paid or unpaid? Please state how many days are paid and how many days are unpaid.

N/A.

36. Does the government pay for the childcare leave?

N/A.

CHINA

37. Must the mother be married to enjoy childcare leave?

N/A.

38. Would a same sex couple enjoy childcare leave?

N/A.

39. Please state the statute(s) / legal basis where childcare leave entitlement is found.

N/A.

40. Can a parent on childcare leave be terminated?

N/A.

E. Other relevant issues / trends

41. Repercussions on the employer if it does not provide the statutory family leave entitlements.

If an employer refuses to give maternity leave to its female employees, it may be ordered by the human resources and social security bureau to make correction within a stipulated period.

Additionally, a fine ranging from RMB 1,000 to RMB 5,000 per aggrieved female employee may be imposed.

42. Will any officers of the employer face personal liability for not ensuring that employees receive the statutory family leave entitlements?

No.

43. Do parents face any workplace discrimination for utilizing their family leave entitlements?

Yes, sometimes.

CHINA

44. What is the legal recourse if an employee feels he/she has faced discrimination arising from taking family-related leave?

The employee may complain to the local human resources and social security bureau, or initiate labor arbitration against the employer. In practice, this would rarely, if ever, happen.

45. Are there other benefits in addition to maternity leave? For e.g. leave entitlements relating to miscarriages, illness associated with the pregnancy or maternity, medical termination of pregnancies, etc.?

A female employee who suffers a miscarriage during the first four months of pregnancy is entitled to 15 days of paid leave.

An employee who suffers a miscarriage after the fourth month of pregnancy is entitled to 42 days of paid leave.

A female employee who has a difficult labor may have another 15 days for maternity leave. In the event of multiple births, the female employee shall be entitled to additional 15 days of maternity leave for each additional baby.

Employees may apply for sick leave due to illness associated with the pregnancy or maternity, and may enjoy a medical treatment period from 3 to 24 months according to their service years.

46. Do mothers get paid nursing breaks? If so, what conditions apply?

Yes. The employer must arrange one hour of breastfeeding time every working day for breastfeeding employees; in the event of multiple child birth, one-hour additional breastfeeding time is granted for each baby.

The breaks apply to female employees breastfeeding their baby aged below one year old.

As a practical matter, given that very few employees would bring babies to work, many employers aggregate the nursing time and give the employees time off.

47. Are employers bound to provide crèche facilities? If so, must these be provided free of cost? Is there an age limit for children using the employer provided crèche facilities?

No, they are not bound to.

CHINA

48. Are there any notable legal developments or upcoming developments to watch out for in the area of family related leave?

More jurisdictions are providing that the employees are entitled to take certain days of paid leaves to look after their aged parents. Some jurisdictions are exploring childcare leave. China recently lifted the one-child policy, and may lift the two-child policy.

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HONG KONG

A. Maternity Leave Provisions

1. What is your responding jurisdiction?

Hong Kong.

2. In the responding jurisdiction, do all expectant women, including surrogate mothers, get maternity leave?

Yes.

3. Must you be employed to get maternity leave? Is there an eligibility period?

The employee must have been employed under a "continuous contract" (continuously employed by the same employer for four weeks or more, with at least 18 hours worked in each week) immediately before the commencement of her maternity leave.

4. How many days of maternity leave is given?

10 weeks of maternity leave is given. An additional period of leave for not more than four weeks may be given on the grounds of illness or disability due to the pregnancy or confinement.

5. When can the maternity leave be taken?

From two to four weeks before the expected date of confinement as agreed by the employer.

6. Is the maternity leave paid or unpaid? Please state how many days are paid and how many days are unpaid.

The entire maternity leave period is paid if the employee has been employed under a continuous contract (as defined in question 3 above) for not less than 40 weeks immediately before the commencement of the scheduled maternity leave.

The daily rate is four-fifths of the average daily wages earned by the employee in the 12-month period preceding the first day of the maternity leave (or the shorter period if the employee has only been employed for a period shorter than 12 months).

If the employee does not satisfy the above requirement, maternity leave is unpaid.

7. Does the government pay for the maternity leave?

No, it is the employer who is responsible for paying the maternity pay.

HONG KONG

8. Must the mother be married to enjoy maternity leave?

No.

9. Please state the statute(s) / legal basis where maternity leave entitlement is found.

Part III (Maternity Protection) of the Employment Ordinance (Cap. 57).

10. Can a pregnant employee or employee on maternity leave be terminated?

No, subject to the following exceptions:

- The employee is summarily dismissed due to her serious misconduct; or
- Where it has been expressly agreed that the employment is on probation, the employee is dismissed for reasons other than pregnancy during the probation period of not more than 12 weeks.

11. Is an employer bound to offer a returning employee the same job role/profile/wage after maternity leave?

Yes.

B. Paternity Leave Provisions

12. Do fathers get paternity leave?

Yes.

13. Must you be employed to get paternity leave? Is there an eligibility period?

The employee must be employed under a continuous contract (as defined in question 3).

14. How many days of paternity leave is given?

3 days.

15. When can the paternity leave be taken?

Any time during the period from 4 weeks before the expected date of delivery of the child to 10 weeks beginning on the actual date of delivery of the child.

HONG KONG

16. Is the paternity leave paid or unpaid? Please state how many days are paid and how many days are unpaid.

Paternity leave is paid if the employee has been employed under a continuous contract (as defined in question 3 above) for not less than 40 weeks immediately before the day of the paternity leave. The daily rate is four-fifths of the average daily wages earned by the employee in the 12-month period preceding the day of the paternity leave (or the shorter period if the employee has only been employed for a period shorter than 12 months).

If the employee does not satisfy the above requirement, paternity leave is unpaid.

17. Does the government pay for the paternity leave?

No, it is the employer who is responsible for paternity pay.

18. Must the father be married to enjoy paternity leave?

No.

19. Please state the statute(s) / legal basis where paternity leave entitlement is found.

Part IIIA (Paternity Leave) of the Employment Ordinance (Cap. 57).

20. Can a father on paternity leave be terminated?

Yes.

C. Adoption Leave Provisions

21. Do adoptive parents enjoy adoption leave? How many days of adoption leave is given?

There is no statutory requirement in relation to the provision of adoption leave. However, employment contracts may provide for adoption leave.

22. Must you be employed to get adoption leave?

N/A.

23. When can the adoption leave be taken?

N/A.

HONG KONG

24. Is the adoption leave paid or unpaid? Please state how many days are paid and how many days are unpaid.

N/A.

25. Does the government pay for the adoption leave?

N/A.

26. Must the mother or father be married to enjoy adoption leave?

N/A.

27. Do you get adoption leave if you are a single parent?

N/A.

28. Would a same sex couple enjoy adoption leave?

N/A.

29. Please state the statute(s) / legal basis where adoption leave entitlement is found.

N/A.

30. Can a parent on adoption leave be terminated?

N/A.

D. Childcare Leave Provisions

31. Do parents get childcare leave?

There is no statutory requirement in relation to the provision of childcare leave. However, employment contracts may provide for childcare leave.

32. Must you be employed to get childcare leave?

N/A.

HONG KONG

33. How many days of childcare leave is given?

N/A.

34. When can the childcare leave be taken?

N/A.

35. Is the childcare leave paid or unpaid? Please state how many days are paid and how many days are unpaid.

N/A.

36. Does the government pay for the childcare leave?

N/A.

37. Must the mother be married to enjoy childcare leave?

N/A.

38. Would a same sex couple enjoy childcare leave?

N/A.

39. Please state the statute(s) / legal basis where childcare leave entitlement is found.

N/A.

40. Can a parent on childcare leave be terminated?

N/A.

E. Other relevant issues / trends

41. Repercussions on the employer if it does not provide the statutory family leave entitlements.

Prosecution and, upon conviction, a fine of HK\$50,000.

42. Will any officers of the employer face personal liability for not ensuring that employees receive the statutory family leave entitlements?

No.

HONG KONG

43. Is the employment law landscape in your country generally pro-family or otherwise?

Generally pro-family.

44. Do parents face any workplace discrimination for utilizing their family leave entitlements?

Generally not.

45. What is the legal recourse if an employee feels he/she has faced discrimination arising from taking family-related leave?

An employee may lodge a complaint with the Equal Opportunities Commission or he/she may take a civil claim against the employer or the relevant staff member.

46. What family friendly practices does your country practice? (e.g. flexible working hours, paid benefits not mandated by law)

They are usually contractual benefits (rather than required by law), and they may include flexible working hours, extended no-pay maternity leave etc.

47. Are there other benefits in addition to maternity leave? For e.g. leave entitlements relating to miscarriages, illness associated with the pregnancy or maternity, medical termination of pregnancies, etc.?

An employee is entitled to an additional period of maternity leave for not more than four weeks on the grounds of illness or disability due to the pregnancy or confinement.

When the employee's absence from work to attend medical examination in relation to her pregnancy, post confinement treatment or miscarriage is supported by an appropriate medical certificate, any such day on which she is absent shall be counted as sick leave.

If a pregnant employee produces a medical certificate with an opinion as to her unfitness to handle heavy materials, work in places where gas injurious to pregnancy is generated, or do other work injurious to pregnancy, the employer may not allocate such work to the employee.

48. Do mothers get paid nursing breaks? If so, what conditions apply?

No.

49. Are employers bound to provide crèche facilities? If so, must these be provided free of cost? Is there an age limit for children using the employer provided crèche facilities?

No.

HONG KONG

50. Are there any notable legal developments or upcoming developments to watch out for in the area of family related leave?

The Hong Kong Government is studying the possibility of extending the statutory maternity leave period from 10 weeks to 14 weeks and has put forward the proposal to extend the statutory paternity leave from three days to five days.

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INDIA

A. Maternity Leave Provisions

1. What is your responding jurisdiction?

India.

2. In the responding jurisdiction, do all expectant women, including surrogate mothers, get maternity leave?

Yes, expectant women and surrogate mothers may avail themselves to maternity leave subject to certain conditions.

3. Must you be employed to get maternity leave? Is there an eligibility period?

Yes, to receive any maternity benefit from an employer a woman should have worked in the establishment for a period of 80 days in the last 12 months immediately preceding her expected delivery date.

4. How many days of maternity leave is given?

Women with less than two surviving children are permitted 26 weeks and those with two children or more are allowed 12 weeks of maternity leave.

5. When can the maternity leave be taken?

Women with less than two surviving children may avail themselves of maternity leave of up to 8 weeks prior to the date of the date of delivery. Whereas women with more than two surviving children may avail themselves of maternity leave up to 6 weeks prior to the expected date of delivery.

6. Is the maternity leave paid or unpaid? Please state how many days are paid and how many days are unpaid.

The maternity leave for a period of 26 weeks for women having less than two surviving children and for a period of 12 weeks in case of women having more than two surviving children are fully funded by the employer.

There is no obligation on an employer under Indian law to provide unpaid leave after the paid maternity leave ends. However post-maternity break, the employer and the employee are free to agree to a 'work from home' arrangement, if the nature of the employee's work so permits.

7. Does the government pay for the maternity leave?

No, the employer covers the costs for maternity leave.

INDIA

8. Must the mother be married to enjoy maternity leave?

No, there is no need for a mother to be married to avail herself to maternity leave.

9. Please state the statute(s) / legal basis where maternity leave entitlement is found.

- The Maternity Benefit Act 1961;
- Employees State Insurance Act, 1948; and
- Certain state-specific statutes such as the Andhra Pradesh Shops and Establishments Act, 1988 also contains provisions on maternity leave entitlements.

10. Can a pregnant employee or employee on maternity leave be terminated?

A pregnant employee can be terminated. If the role has become redundant or if there are other reasons for termination of employment during her pregnancy (excluding defined gross misconduct), an employer will have to ensure that her statutory maternity benefits are added to her severance package.

Women employees who are on maternity leave cannot be terminated from employment on account of their absence, until their maternity leave expires.

11. Is an employer bound to offer a returning employee the same job role/profile/wage after maternity leave?

Employers are not obligated to offer the same job role/profile/wage to a woman returning after maternity leave. However, employers are prohibited from varying the conditions of service to the disadvantage of woman while she is on maternity leave.

B. Paternity Leave Provisions

12. Do fathers get paternity leave?

No, there are no paternity benefits available to men in India. A Paternity Benefit Bill, which was submitted to the Parliament in 2017, remains under discussion.

13. Must you be employed to get paternity leave? Is there an eligibility period?

N/A.

14. How many days of paternity leave is given?

While there is no statutory requirement to offer paternity leave, some organisations voluntarily provide 5-7 days of paternity leave in India.

INDIA

15. When can the paternity leave be taken?

N/A.

16. Is the paternity leave paid or unpaid? Please state how many days are paid and how many days are unpaid.

N/A.

17. Does the government pay for the paternity leave?

N/A.

18. Must the father be married to enjoy paternity leave?

N/A.

19. Please state the statute(s) / legal basis where paternity leave entitlement is found.

N/A.

20. Can a father on paternity leave be terminated?

N/A.

C. Adoption Leave Provisions

21. Do adoptive parents enjoy adoption leave? How many days of adoption leave is given?

A mother who has adopted a child who is less than three months old is allowed 12 weeks of adoption leave from the day the child is handed over.

22. Must you be employed to get adoption leave?

Though there is a minimum eligibility (80 days in past 12 months) applicable to maternity leave, the statute does not clarify whether the 80 day-eligibility requirement applies in cases of adoption/surrogacy leave as well. Based on informal clarifications, it appears that the labour authorities expect a woman should have worked in the establishment for a period of 80 days within the last 12 months to avail herself of adoption or surrogacy leave as well.

23. When can the adoption leave be taken?

As soon as the child is handed over to the mother.

INDIA

24. Is the adoption leave paid or unpaid? Please state how many days are paid and how many days are unpaid.

The entire period of 12 weeks is paid adoption leave. There is no obligation to offer unpaid adoption leave.

25. Does the government pay for the adoption leave?

No. Similar to maternity leave, the employer bears the cost of adoption leave as well.

26. Must the mother or father be married to enjoy adoption leave?

No, there is no such prerequisite as adoption leave is only given to a woman and the law does not state that she must be married, although it can be practically quite difficult in India for single mothers to adopt children.

27. Do you get adoption leave if you are a single parent?

A single mother is entitled to adoption leave. As the statute only provides adoption leave to an adopting mother, a single father will not be entitled to adoption leave.

28. Would a same sex couple enjoy adoption leave?

Same sex marriages are not yet recognised in India. Therefore, law does not offer adoption leave to same sex couples as such. A woman who legally adopts a child below the age of 3 months is entitled to adoption leave.

29. Please state the statute(s) / legal basis where adoption leave entitlement is found.

The Maternity Benefit Act, 1961.

30. Can a parent on adoption leave be terminated?

Women employees who are on adoption leave cannot be terminated from employment on account of their absence, until their adoption leave expires.

D. Childcare Leave Provisions

31. Do parents get childcare leave?

No.

INDIA

32. Must you be employed to get childcare leave?

N/A.

33. How many days of childcare leave is given?

N/A.

34. When can the childcare leave be taken?

N/A.

35. Is the childcare leave paid or unpaid? Please state how many days are paid and how many days are unpaid.

N/A.

36. Does the government pay for the childcare leave?

N/A.

37. Must the mother be married to enjoy childcare leave?

N/A.

38. Would a same sex couple enjoy childcare leave?

N/A.

39. Please state the statute(s) / legal basis where childcare leave entitlement is found.

N/A.

40. Can a parent on childcare leave be terminated?

N/A.

E. Other relevant issues / trends

41. Repercussions on the employer if it does not provide the statutory family leave entitlements.

The employer may be punishable with imprisonment of up to one year with and/or a fine that may extend to INR 5,000 for not providing statutory maternity benefits.

INDIA

42. Will any officers of the employer face personal liability for not ensuring that employees receive the statutory family leave entitlements?

If a manager, managing director, managing agent who has been entrusted with the responsibility of making sure the benefit is given to employees, fails to do so, he may be held liable under the Maternity Benefit Act, 1961.

43. Is the employment law landscape in your country generally pro-family or otherwise?

With the recent amendments to the Maternity Benefit Act, 1961, Indian law can certainly be described as pro-family, although further changes are needed to make the law more inclusive to other genders.

44. Do parents face any workplace discrimination for utilizing their family leave entitlements?

There is a significant concern that the requirement of providing paid leave of 26 weeks to women employees that is fully funded by the employer, is creating a negative impact on diversity ratios at the workplace, especially in the small and medium scale enterprises.

45. What is the legal recourse if an employee feels he/she has faced discrimination arising from taking family-related leave?

A woman employee is entitled to bring a claim under the Equal Remuneration Act, 1976 if she faces discrimination at the time of recruitment, promotions, training or transfer. If an employee is dismissed from service on account of her absence, she is entitled to make a claim under the Maternity Benefit Act, 1961.

46. What family friendly practices does your country practice? (e.g. flexible working hours, paid benefits not mandated by law)

An employee can request for flexible hours of employment once maternity/adoption leave has been exhausted and could come to a mutually agreed set of terms with the employer.

47. Are there other benefits in addition to maternity leave? For e.g. leave entitlements relating to miscarriages, illness associated with the pregnancy or maternity, medical termination of pregnancies, etc.?

Yes, in case of a miscarriage or a medical termination of pregnancy the employee is entitled to 6 weeks following such an event.

If a woman suffers from illness resulting from the pregnancy she is entitled to one additional month of paid leave. Women are also entitled to receive an amount of INR 3,500 from the employer if free of cost pre or post-natal care is not provided by the employer.

INDIA

48. Do mothers get paid nursing breaks? If so, what conditions apply?

Yes. Women are entitled to two breaks of 15 minutes each until the child is 15 months old. The time given can vary (slightly higher) depending on the distance travelled to attend to the baby.

49. Are employers bound to provide crèche facilities? If so, must these be provided free of cost? Is there an age limit for children using the employer provided crèche facilities?

The Maternity Benefit Act, 1961 provides that every establishment with 50 or more employees has to provide crèche facilities. This statute does not explicitly provide that crèche facilities are to be provided free of cost. Other laws like Factories Act, 1948 Kerala Shops and Establishments Act, 1961, etc. also make provisions for provision of crèche facilities and expressly state that these must be provided free of cost.

The Maternity Benefit Act, 1961 does not prescribe an age limit for using the creche, although the draft rules for crèches in some states prescribe a 6 years age limit. The Factories Act, 1948 and the Kerala Shops and Establishments Act, 1961 (applicable only to the state of Kerala) prescribes an age limit of 6 years.

Since multiple laws may potentially apply to an establishment in relation to crèche facilities, a location specific assessment would be necessary before setting up a crèche.

50. Are there any notable legal developments or upcoming developments to watch out for in the area of family related leave?

On 6 September 2018, a constitution bench of the Supreme Court of India unanimously struck down Section 377 of the Indian Penal Code, 1860 as unconstitutional, to the extent that it criminalizes consensual sexual conduct between two adults. In light of this legal development and the international momentum in accepting same sex marriages, one can expect developments in this space in India too over the coming few years.

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INDONESIA

A. Maternity Leave Provisions

1. What is your responding jurisdiction?

Indonesia.

2. In the responding jurisdiction, do all expectant women, including surrogate mothers, get maternity leave?

Under Indonesian laws and regulations, expectant women will get maternity leave. However, the regulations do not differentiate between regular mothers and surrogate mothers. Therefore, it could be interpreted that expectant surrogate mothers will also get maternity leave.

3. Must you be employed to get maternity leave? Is there an eligibility period?

Yes, expectant women must be an employee in the company to get a maternity leave.

4. How many days of maternity leave is given?

One-and-a-half months of maternity leave before giving birth and additional one-and-a-half months after giving birth. Therefore, in total, the worker is entitled to three months of maternity leave.

5. When can the maternity leave be taken?

One-and-a-half months before giving birth. However, in practice, expectant women can actually determine when the leave is taken, for example they may choose to leave 1 month before giving birth and 2 months after giving birth as long as the accumulation of leave remains 3 months. Companies in Indonesia normally give expectant women the freedom to freely choose their maternity leave, provided there is a recommendation from the doctor / midwife.

6. Is the maternity leave paid or unpaid? Please state how many days are paid and how many days are unpaid.

Expectant women will get paid leave for the whole three months.

7. Does the government pay for the maternity leave?

No.

8. Must the mother be married to enjoy maternity leave?

No.

INDONESIA

9. Please state the statute(s) / legal basis where maternity leave entitlement is found.

Article 82 of Law Number 31 of 2003 on Manpower ("Manpower Law").

10. Can a pregnant employee or employee on maternity leave be terminated?

No.

11. Is an employer bound to offer a returning employee the same job role/profile/wage after maternity leave?

Indonesian laws and regulation does not expressly regulate this. However, in general, after maternity leave, the employee will return to the same job role and wages.

B. Paternity Leave Provisions

12. Do fathers get paternity leave?

Yes.

13. Must you be employed to get paternity leave? Is there an eligibility period?

Yes, the expectant father must be employed to get a paternity leave.

14. How many days of paternity leave is given?

2 days.

15. When can the paternity leave be taken?

When the employee's wife is in labour.

16. Is the paternity leave paid or unpaid? Please state how many days are paid and how many days are unpaid.

The employee will get 2 days paid leave.

17. Does the government pay for the paternity leave?

No.

INDONESIA

18. Must the father be married to enjoy paternity leave?

Yes.

19. Please state the statute(s) / legal basis where paternity leave entitlement is found.

Article 93 (4) of Manpower Law.

20. Can a father on paternity leave be terminated?

No.

C. Adoption Leave Provisions

21. Do adoptive parents enjoy adoption leave? How many days of adoption leave is given?

Indonesian laws and regulations do not cover adoption leave. Therefore, expectant parents must use their annual leave.

22. Must you be employed to get adoption leave?

N/A.

23. When can the adoption leave be taken?

N/A.

24. Is the adoption leave paid or unpaid? Please state how many days are paid and how many days are unpaid.

N/A.

25. Does the government pay for the adoption leave?

N/A.

26. Must the mother or father be married to enjoy adoption leave?

N/A.

27. Do you get adoption leave if you are a single parent?

N/A.

INDONESIA

28. Would a same sex couple enjoy adoption leave?

N/A.

29. Please state the statute(s) / legal basis where adoption leave entitlement is found.

N/A.

30. Can a parent on adoption leave be terminated?

N/A.

D. Childcare Leave Provisions

31. Do parents get childcare leave?

The Indonesian laws and regulations do not cover specifically on childcare leave.

However, in relation to their children, parents may receive the following leave:

- Marriage of employee's child;
- Son's circumcision;
- Child's baptism; and
- Death of employee's child or child-in-law.

32. Must you be employed to get childcare leave?

Yes.

33. How many days of childcare leave is given?

Marriage of employee's child: 2 days
Son's circumcision: 2 days
Child's baptism: 2 days
Death of employee's child or child-in-law: 2 days

34. When can the childcare leave be taken?

On the day when the events stated above takes place.

INDONESIA

35. Is the childcare leave paid or unpaid? Please state how many days are paid and how many days are unpaid.

Paid, please see our response on question 33.

36. Does the government pay for the childcare leave?

No.

37. Must the mother be married to enjoy maternity leave?

No.

38. Would a same sex couple enjoy childcare leave?

Same sex relationship is prohibited under Indonesian laws and regulations.

39. Please state the statute(s) / legal basis where childcare leave entitlement is found.

Article 93 of Manpower Law

40. Can a parent on childcare leave be terminated?

No.

E. Other relevant issues / trends

41. Repercussions on the employer if it does not provide the statutory family leave entitlements.

If an employer violates the provisions on maternity leave, they will face the following criminal sanctions:

Imprisonment for a minimum of 1 (one) year and a maximum of 4 (four) years and/or a fine of a minimum of IDR 100,000,000 (one hundred million Rupiah) or equivalent to USD 6,720 and a maximum of IDR 400,000,000 (four hundred million Rupiah) equivalent to USD 26,880.

If an employer violates the provisions on paternity leave and childcare leave, they will face the following criminal sanctions:

Imprisonment for a minimum of 1 (one) year and a maximum of 4 (four) years and/or a fine of a minimum of IDR 10,000,000 (ten million Rupiah) or equivalent to USD 672 and a maximum of IDR 400,000,000 (four hundred million Rupiah) equivalent to USD 26,880.

INDONESIA

42. Will any officers of the employer face personal liability for not ensuring that employees receive the statutory family leave entitlements?

Yes, officers of the employer who are acting on behalf of the employer may face personal liability.

43. Is the employment law landscape in your country generally pro-family or otherwise?

Our manpower law favours the employee, more than the employer. Therefore, we also believe that it is also pro-family.

44. Do parents face any workplace discrimination for utilizing their family leave entitlements?

No, Article 6 of Manpower Law stipulates that every employee has the right to receive equal treatment without discrimination from their employer.

45. What is the legal recourse if an employee feels he/she has faced discrimination arising from taking family-related leave?

The employee can report the incident to the relevant manpower offices.

The manpower office shall impose the following administrative sanctions to employers who discriminated their employees:

- A warning;
- A written warning;
- Restricting / limiting the company's business activities;
- Freezing the business activities;
- Cancellation of approval requested by the company;
- Cancellation of registration made by the company;
- Temporary termination of partial or the whole of production tools/instruments; or
- Revocation of license to operate.

46. What family friendly practices does your country practice? (e.g. flexible working hours, paid benefits not mandated by law)

Special leave (e.g., two days leave for the employees whose child is circumcised or baptized and two days leave for employees whose child or child-in-law passes away) are unique and may not be recognized in other jurisdictions.

INDONESIA

47. Are there other benefits in addition to maternity leave? For e.g. leave entitlements relating to miscarriages, illness associated with the pregnancy or maternity, medical termination of pregnancies, etc.?

Article 82 (2) of Manpower Law stipulates that expectant mothers who experience miscarriage are entitled to a 1.5 month paid leave or in accordance with a certificate from a gynaecologist or a midwife who handles the miscarriage.

Although it is not specifically regulated, we believe this also applies to medical termination of pregnancies.

There is no regulation that governs special leave during illness associated with pregnancy or maternity. However, employers must provide continuous leave to workers who are ill if they provide a written statement from their doctor.

The wage received by the workers should be as the following:

- 100% of wages to be paid: Period of absence is the first 4 months;
- 75% of wages to be paid: Period of absence is the second 4 months;
- 50% of wages to be paid: Period of absence is the third 4 months;
- 25% of wages to be paid: Period of absence is the subsequent months.

Female workers are entitled to paid leave on the 1st and 2nd days of menstruation, if they are ill and they cannot perform their work.

48. Do mothers get paid nursing breaks? If so, what conditions apply?

Article 83 of Manpower Law states that nursing mothers should be given the right to breastfeed their children, even if it must be done during work time.

In the explanation of Article 83, it is further stipulated that the intended purpose of the opportunity is the length of time given to nursing mothers to breastfeed their babies by taking into account the availability of a place that is in accordance with the conditions and capabilities of the company regulated in the company regulations or collective labour agreements.

The provisions of Article 83 can be interpreted as an opportunity for breast pumping for nursing mothers at work.

INDONESIA

49. Are employers bound to provide crèche facilities? If so, must these be provided free of cost? Is there an age limit for children using the employer provided crèche facilities?

No, employers are not bound to provide crèche facilities.

50. Are there any notable legal developments or upcoming developments to watch out for in the area of family related leave?

In Supreme Court Decision Number 551 K/PDT.SUS/2012, a plaintiff took her maternity leave where she was not paid by her employer and her employer also terminated her from the company. The Supreme Court convicted her employer to pay compensation to the plaintiff for the termination of the employment relationship. The compensation consisted of severance pay, term of service and compensation for religious holiday allowance and her wages during her maternity leave.

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JAPAN

A. Maternity Leave Provisions

1. What is your responding jurisdiction?

Japan.

2. In the responding jurisdiction, do all expectant women, including surrogate mothers, get maternity leave?

Employers must grant a female employee leave for a period of 6 weeks preceding the expected date of her delivery and 8 weeks immediately following the date of her delivery if she so requests (please note that, as for the leave after childbirth, employers are obliged to give her maternity leave for a period of 6 weeks even if she does not so request). (Article 65, paragraphs (1) and (2) of the Labor Standards Act).

There is no clear indication as to whether surrogate mothers are entitled to get such benefit. There hasn't been much discussion on this point because surrogate birth virtually does not exist in Japan although it is not legally prohibited.

3. Must you be employed to get maternity leave? Is there an eligibility period?

Yes, and there is no eligibility period.

4. How many days of maternity leave is given?

Total maternity leave before and after childbirth is 14 weeks.

5. When can the maternity leave be taken?

As described above, a female employee is entitled to take maternity leave for a period of 6 weeks preceding the expected date of her delivery and 8 weeks immediately following the date of delivery (as for the leave after childbirth, employers are obliged to grant such employee maternity leave for a period of 6 weeks even if she does not so request). (Article 65, paragraphs (1) and (2) of the Labor Standards Act).

6. Is the maternity leave paid or unpaid? Please state how many days are paid and how many days are unpaid.

From a legal point of view, unpaid leave is permitted.

7. Does the government pay for the maternity leave?

No.

JAPAN

8. Must the mother be married to enjoy maternity leave?

There are no such conditions.

9. Please state the statute(s) / legal basis where maternity leave entitlement is found.

Article 65, paragraphs (1) and (2) of the Labor Standards Act.

10. Can a pregnant employee or employee on maternity leave be terminated?

Employers may not dismiss an employee during maternity leave stipulated in Article 65, paragraphs (1) and (2) of the Labor Standards Act and thirty (30) days thereafter (Article 19, paragraph (1) of the Labor Standards Act).

11. Is an employer bound to offer a returning employee the same job role/profile/wage after maternity leave?

Yes. According to Article 9, paragraph (3) of the Act on Securing, Etc. of Equal Opportunity and Treatment between Men and Women in Employment, employers may not dismiss, demote, reduce wages of or give other disadvantageous treatment to women workers for taking maternity leave or due to other reasons relating to childbirth.

B. Paternity Leave Provisions

12. Do fathers get paternity leave?

Yes, they do. Parents (including fathers) with whom a child has the parent-child relationship are entitled to take childcare leave. Other than childcare leave, there is no short-term leave that can be taken immediately after childbirth, etc.

13. Must you be employed to get paternity leave? Is there an eligibility period?

Yes, you need to be employed to get paternity leave.

Fixed-term employees can also take paternity leave on condition that the following requirements are met: (i) such person is employed by the employer for a continued period of at least 1 year; and (ii) it is not evident that his labour contract will expire by the date his child turns one year and six months of age.

14. How many days of paternity leave is given?

In principle, for a continued period from the date of birth of the child to the day on which the child reaches 1 year of age (the period ends on the day before the child's birthday).

JAPAN

15. When can the paternity leave be taken?

In principle, from the date of birth of the child to the day on which the child reaches 1 year of age (the period ends on the day before the child's birthday).

16. Is the paternity leave paid or unpaid? Please state how many days are paid and how many days are unpaid.

From a legal point of view, unpaid leave is permitted.

17. Does the government pay for the paternity leave?

No.

18. Must the father be married to enjoy paternity leave?

No. However, it should be noted that acknowledgment of parentage of a child is a prerequisite for a father to take paternity leave for the child.

19. Please state the statute(s) / legal basis where paternity leave entitlement is found.

Articles 5 to 9 of the Act on Childcare Leave, Caregiver Leave, and Other Measures for the Welfare of Workers Caring for Children or Other Family Members.

20. Can a father on paternity leave be terminated?

Yes, but not for the reason of taking paternity leave.

C. Adoption Leave Provisions

21. Do adoptive parents enjoy adoption leave? How many days of adoption leave is given?

Adoptive parents are entitled to take the same sort of childcare leave as biological parents. The number of days of the leave is, as stated above, for a continued period from the date of birth of the child to the day on which the child reaches 1 year of age (the period ends on the day before the child's birthday), in principle.

There is no short-term leave that can be taken immediately after childbirth, etc. other than childcare leave.

22. Must you be employed to get adoption leave?

Yes.

JAPAN

23. When can the adoption leave be taken?

In principle, from the date of birth of the child to the day on which the child reaches 1 year of age (the period ends on the day before the child's birthday).

24. Is the adoption leave paid or unpaid? Please state how many days are paid and how many days are unpaid.

From a legal point of view, unpaid leave is permitted.

25. Does the government pay for the adoption leave?

No.

26. Must the mother or father be married to enjoy adoption leave?

There are no such conditions.

27. Do you get adoption leave if you are a single parent?

Yes.

28. Would a same sex couple enjoy adoption leave?

N/A.

29. Please state the statute(s) / legal basis where adoption leave entitlement is found.

Articles 5 to 9 of the Act on Childcare Leave, Caregiver Leave, and Other Measures for the Welfare of Workers Caring for Children or Other Family Members

30. Can a parent on adoption leave be terminated?

Yes.

D. Childcare Leave Provisions

31. Do parents get childcare leave?

Yes.

JAPAN

32. Must you be employed to get childcare leave?

Yes.

33. How many days of childcare leave is given?

In principle, for a continued period from the date of birth of the child to the day on which the child reaches 1 year of age (the period ends on the day before the child's birthday).

34. When can the childcare leave be taken?

In principle, from the date of birth of the child to the day on which the child reaches 1 year of age (the period ends on the day before the child's birthday).

35. Is the childcare leave paid or unpaid? Please state how many days are paid and how many days are unpaid.

From a legal point of view, unpaid leave is permitted.

36. Does the government pay for the childcare leave?

No.

37. Must the mother be married to enjoy childcare leave?

No.

38. Would a same sex couple enjoy childcare leave?

N/A.

39. Please state the statute(s) / legal basis where childcare leave entitlement is found.

Articles 5 to 9 of the Act on Childcare Leave, Caregiver Leave, and Other Measures for the Welfare of Workers Caring for Children or Other Family Members.

40. Can a parent on childcare leave be terminated?

Yes but not for the reason of taking childcare leave.

JAPAN

E. Other relevant issues / trends

41. Repercussions on the employer if it does not provide the statutory family leave entitlements.

An employee can ask labor standard inspectors or the Health, Labour and Welfare minister to request reports from employers, give advice, guidance or recommendation thereto, or take other appropriate action.

(Article 104 of the Labor Standards Act, Article 56 of the Act on Childcare Leave, Caregiver Leave, and Other Measures for the Welfare of Workers Caring for Children or Other Family Members).

42. Will any officers of the employer face personal liability for not ensuring that employees receive the statutory family leave entitlements?

It is possible that they may be liable for damages based in tort.

43. Is the employment law landscape in your country generally pro-family or otherwise?

In this regard, the system itself can be seen as satisfactory to some extent (paternity leave, adoption leave and childcare leave are all available in Japan).

However, it is often pointed out that sometimes the problem lies in the work environment where employees cannot easily use such systems.

(For example, the percentage of paternity leave taken was 5.14% as of October 1, 2017.)

44. Do parents face any workplace discrimination for utilizing their family leave entitlements?

Employers may not dismiss, demote, reduce wages of or give other disadvantageous treatment to workers for taking maternity leave or childcare leave, or due to other reasons relating to childbirth or childcare (Article 9, paragraph (3) of the Act on Securing, Etc. of Equal Opportunity and Treatment between Men and Women in Employment, Articles 10 of the Act on Childcare Leave, Caregiver Leave, and Other Measures for the Welfare of Workers Caring for Children or Other Family Members).

However, in reality, there are cases where workers have received such disadvantageous treatment due to such reasons.

JAPAN

45. What is the legal recourse if an employee feels he/she has faced discrimination arising from taking family-related leave?

Such employee can ask labour standard inspectors or the Health, Labour and Welfare minister to request reports from employers, give advice, guidance or recommendation thereto, or take other appropriate action (Article 104 of the Labour Standards Act, Article 56 of the Act on Childcare Leave, Caregiver Leave, and Other Measures for the Welfare of Workers Caring for Children or Other Family Members).

In addition, it is possible that the employee's claims for damages against the company, superiors or others who gave discriminatory treatment may be granted.

46. What family friendly practices does your country practice? (e.g. flexible working hours, paid benefits not mandated by law)

For example, if a pregnant worker so requests, an employer must not have her work overtime, work on days off or work at night (Article 66, paragraphs (2) and (3) of the Labour Standards Act).

Moreover, when a worker who is taking care of a child prior to the commencement of elementary school so requests, an employee must not extend the working hours beyond the limit on overtime work, which is 24 hours per month and 150 hours per year (Article 17 of the Act on Childcare Leave, Caregiver Leave, and Other Measures for the Welfare of Workers Caring for Children or Other Family Members).

47. Are there other benefits in addition to maternity leave? For e.g. leave entitlements relating to miscarriages, illness associated with the pregnancy or maternity, medical termination of pregnancies, etc.?

Women who had a miscarriage, abortion or stillbirth after the fourth month of pregnancy are eligible for taking maternity leave.

48. Do mothers get paid nursing breaks? If so, what conditions apply?

A woman raising an infant under the age of one year may request time to care for the infant at least 30 minutes twice a day (Article 67 of the Labor Standards Act), though it is not stipulated that they can receive payment for such time.

49. Are employers bound to provide crèche facilities? If so, must these be provided free of cost? Is there an age limit for children using the employer provided crèche facilities?

No.

JAPAN

50. Are there any notable legal developments or upcoming developments to watch out for in the area of family related leave?

None.

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KOREA

A. Maternity Leave Provisions

1. What is your responding jurisdiction?

Republic of Korea.

2. In the responding jurisdiction, do all expectant women, including surrogate mothers, get maternity leave?

Yes, all expectant women can get maternity leave, although please note that surrogacy is illegal under Korean law.

3. Must you be employed to get maternity leave? Is there an eligibility period?

Yes, but there is no eligibility period.

4. How many days of maternity leave is given?

90 days of leave must be given to the pregnant woman. Where a female employee gives birth to two or more children at a time (multiple births) her maternity leave is extended for up to 120 days.

5. When can the maternity leave be taken?

It is available for birth, miscarriage, and stillbirth.

6. Is the maternity leave paid or unpaid? Please state how many days are paid and how many days are unpaid.

It is paid. The first 60 days (75 days in the case of multiple births in the same pregnancy) will be paid by the employer, and the remaining 30 days (45 days in the case of multiple births) by the government. (But, the government may provide support for all 90/120 days depending on a company's size.)

7. Does the government pay for the maternity leave?

Yes, but there is a limit (KRW 1.6 million per month).

8. Must the mother be married to enjoy maternity leave?

No.

KOREA

9. Please state the statute(s) / legal basis where maternity leave entitlement is found.

Labour Standards Act ("LSA") Article 74 (Protection of Pregnant Women and Nursing Mothers) (1) An employer shall grant a pregnant woman a total of 90 days of maternity leave (or a 120-day maternity leave, if she is pregnant with at least two children at a time) before and after childbirth. In such cases, at least 45 days (60 days, if she is pregnant with two or more children at a time) of the leave period should take place after childbirth.

Gender Equality Employment and Work-Family Balance Support Act ("GEEA") Article 18 (Support for Maternity Leave) (1) The State may pay an amount of money equivalent to the ordinary wages for the period of the relevant leave (hereinafter referred to as "maternity leave benefits, etc.") to persons meeting specific requirements among workers who have taken maternity leave, or miscarriage and stillbirth leave, pursuant to Article 74 of the Labour Standards Act.

10. Can a pregnant employee or employee on maternity leave be terminated?

The employee cannot be terminated during maternity leave and for 30 days after returning from maternity leave. However, a pregnant employee (who has yet to leave for maternity leave) could and can be fired if there is "just cause" under the Labour Standards Act (this standard is applicable to employers with five or more employees).

11. Is an employer bound to offer a returning employee the same job role/profile/wage after maternity leave?

Yes. An employer must reinstate a returning employee to the same work, or to work paying the same level of wages as before the leave, after the end of maternity leave.

B. Paternity Leave Provisions

12. Do fathers get paternity leave?

Yes.

13. Must you be employed to get paternity leave? Is there an eligibility period?

Yes, but there is no eligibility period.

14. How many days of paternity leave is given?

3 ~ 5days (Minimum of 3 to maximum of 5 days)

KOREA

15. When can the paternity leave be taken?

It can be used when a spouse has given birth.

16. Is the paternity leave paid or unpaid? Please state how many days are paid and how many days are unpaid.

An employer is required to provide at least 3 days of paid paternity leave for fathers and may provide them with up to an additional 2 days of unpaid paternity leave.

17. Does the government pay for the paternity leave?

No.

18. Must the father be married to enjoy paternity leave?

Yes. (However, it is also considered for common-law marriages.)

19. Please state the statute(s) / legal basis where paternity leave entitlement is found.

GEEA Article 18-2 (Paternity Leave) (1) Where a male worker requests leave on the grounds of his spouse's childbirth, the employer must grant leave for at least three and up to five days. In such cases, he shall be paid for the first three days out of the period of leave used.

20. Can a father on paternity leave be terminated?

Yes.

C. Adoption Leave Provisions

21. Do adoptive parents enjoy adoption leave? How many days of adoption leave is given?

Under the laws of the Republic of Korea, there is no adoption leave.

22. Must you be employed to get adoption leave?

N/A.

23. When can the adoption leave be taken?

N/A.

KOREA

24. Is the adoption leave paid or unpaid? Please state how many days are paid and how many days are unpaid.

N/A.

25. Does the government pay for the adoption leave?

N/A.

26. Must the mother or father be married to enjoy adoption leave?

N/A.

27. Do you get adoption leave if you are a single parent?

N/A.

28. Would a same sex couple enjoy adoption leave?

N/A.

29. Please state the statute(s) / legal basis where adoption leave entitlement is found.

N/A.

30. Can a parent on adoption leave be terminated?

N/A.

D. Childcare Leave Provisions

31. Do parents get childcare leave?

Yes, an employee who has worked for an employer for more than six consecutive months can use childcare leave.

32. Must you be employed to get childcare leave?

Yes.

33. How many days of childcare leave is given?

Up to one year per eligible child.

KOREA

34. When can the childcare leave be taken?

When parents want to use leave to care for a child under 8 years of age or in the second grade or lower in elementary school (including an adopted child).

35. Is the childcare leave paid or unpaid? Please state how many days are paid and how many days are unpaid.

Unpaid.

36. Does the government pay for the childcare leave?

Yes, but there is a limit.

37. Must the mother be married to enjoy childcare leave?

No.

38. Would a same sex couple enjoy childcare leave?

No, it would only apply to the birth parent. The Republic of Korea does not allow or recognize same-sex marriages.

39. Please state the statute(s) / legal basis where childcare leave entitlement is found.

GEEA Article 19 (Childcare Leave)

(1) Where a worker parenting his/her children (including adopted children) younger than eight years old or in the second grade of elementary school applies for temporary retirement (hereinafter referred to as "childcare leave"), the employer shall grant permission therefor: Provided, that the same shall not apply to cases prescribed by Presidential Decree.

40. Can a parent on childcare leave be terminated?

No, a parent cannot be terminated during childcare leave.

E. Other relevant issues / trends

41. Repercussions on the employer if it does not provide the statutory family leave entitlements.

There is a penalty provision.

KOREA

42. Will any officers of the employer face personal liability for not ensuring that employees receive the statutory family leave entitlements?

An officer could be face personal liability if judged that he/she is the doer, and a business owner could be punished because there is a joint penalty provision.

43. Is the employment law landscape in your country generally pro-family or otherwise?

Yes.

44. Do parents face any workplace discrimination for utilizing their family leave entitlements?

No, discrimination is prohibited by law.

45. What is the legal recourse if an employee feels he/she has faced discrimination arising from taking family-related leave?

A petition for violations of the LSA or GEEA can be filed at the Ministry of Employment and Labor, or a civil action can be taken.

46. What family friendly practices does your country practice? (e.g. flexible working hours, paid benefits not mandated by law)

Flexible working hours, family-care leave, reduction of working hours for pregnant employees or periods of childcare, etc. are protected by law.

47. Are there other benefits in addition to maternity leave? For e.g. leave entitlements relating to miscarriages, illness associated with the pregnancy or maternity, medical termination of pregnancies, etc.?

Where a pregnant woman has a miscarriage or a stillbirth, she can take a miscarriage/stillbirth leave ranging between 5 to 90 days from the date of the miscarriage or stillbirth.

48. Do mothers get paid nursing breaks? If so, what conditions apply?

Yes. An employer shall grant a thirty-minute or longer paid nursing time twice a day to those female workers who have infants under the age of one, upon request.

KOREA

49. Are employers bound to provide crèche facilities? If so, must these be provided free of cost? Is there an age limit for children using the employer provided crèche facilities?

Yes, employers employing more than 300 female employees or more than 500 employees must set up workplace childcare centres. While there is no legal obligation to provide this for free, almost every company provides it free of charge (as a welfare benefit). These are generally for children under 6 years old, but if necessary, principals of childcare centres can extend their infant care for children up to 12 years old.

50. Are there any notable legal developments or upcoming developments to watch out for in the area of family related leave?

Recently, pregnancy treatment leave has been newly established.

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LAOS

A. Maternity Leave Provisions

1. What is your responding jurisdiction?

Lao PDR.

2. In the responding jurisdiction, do all expectant women, including surrogate mothers, get maternity leave?

Pursuant to Article 98 of the Law on Labor (No. 43/NA, 24 December 2013) ("Labor Law") female employees are entitled to at least 105 days' maternity leave (or 120 days' maternity leave in the event of multiple births) on full pay, at least 42 days of which must be taken after the birth of the child. These benefits would cover any employee who is physically giving birth to a child (whether or not the employee will keep the child); however in our reading of the law, the benefits do not clearly extend to mothers who adopt, use a surrogate mother or otherwise do not physically give birth to their child. However, the employer has the discretion to offer the employee benefits akin to maternity benefits if she will have a new-born child to physically and emotionally look after even if she did not physically give birth to the child.

3. Must you be employed to get maternity leave? Is there an eligibility period?

In order for the leave benefits provided under the Labor Law to be applicable, the employee must be employed. However, an expectant mother may also be entitled to a maternity or child-birth allowance under the Social Security Law (No. 34/NA, 26 July 2013) ("Social Security Law") and the Instruction regarding the Implementation of Law on Social Security (No. 2751/MLSW, 24 July 2015) ("Social Security Instruction") even if she is not currently employed.

With respect to the leave benefits, there is no eligibility period provided by law. Therefore, any employee who becomes pregnant while working for the employer (regardless of the time of service) must receive these leave benefits.

4. How many days of maternity leave is given?

Pregnant employees must be provided at least 105 days' maternity leave (or 120 days' maternity leave in the event of multiple births) on full pay, at least 42 days of which must be taken after the birth of the child. In addition, for a period of one year after giving birth, female workers are entitled to rest for one hour per day to feed and take care of her child or have the right to take her child for regulatory vaccinations.

5. When can the maternity leave be taken?

See our response above - at least 42 of the days must be taken after the birth of the child.

LAOS

6. Is the maternity leave paid or unpaid? Please state how many days are paid and how many days are unpaid.

The 105 day leave period is paid. There is no obligation on the employer to provide unpaid leave.

7. Does the government pay for the maternity leave?

The employer is expected to continue to pay the employee her full salary during the period of maternity leave.

Depending on the father or mother's social security status, the family of the child may be entitled to receive a one-time child-birth allowance and the mother may be entitled to receive a one-time maternity allowance paid by the government.

8. Must the mother be married to enjoy maternity leave?

No.

9. Please state the statute(s) / legal basis where maternity leave entitlement is found.

Article 98 of the Labor Law.

10. Can a pregnant employee or employee on maternity leave be terminated?

A pregnant employee could be terminated but not for the reason of her pregnancy, pursuant to Article 100 of the Labor Law. If a pregnant employee or employee on maternity leave is terminated during her pregnancy or maternity leave (as the case may be), the employee may bring a claim of "unjustified termination" pursuant to Article 87 of the Labor Law, which provides that employment contracts may not be terminated in the following relevant cases:

- Women who are pregnant or have a child aged less than one year; or
- Workers on annual leave or on leave with the permission of the employer.

11. Is an employer bound to offer a returning employee the same job role/profile/wage after maternity leave?

While not required by law, we understand this is the intention.

LAOS

B. Paternity Leave Provisions

12. Do fathers get paternity leave?

Yes, pursuant to Article 58 of the Labor Law, employees are entitled to take personal leave of at least three (3) days with full payment of salary in the event that the employee's wife gives birth or miscarries.

13. Must you be employed to get paternity leave? Is there an eligibility period?

Yes, in order to receive the paid leave benefits under the Labour Law, the employee must be employed. No eligibility period is provided by law.

14. How many days of paternity leave is given?

3 paid days, the employer can, at its discretion, choose to offer more paid or unpaid days.

15. When can the paternity leave be taken?

This is not specified by law.

16. Is the paternity leave paid or unpaid? Please state how many days are paid and how many days are unpaid.

3 paid days, the employer can, at its discretion, choose to offer more paid or unpaid days.

17. Does the government pay for the paternity leave?

No, the employer is expected to pay the father's salary during the 3 day period of paternity leave. Depending on the father or mother's social security status, the family of the child may be entitled to receive a one-time child-birth allowance from the government.

18. Must the father be married to enjoy paternity leave?

Article 58 provides that the father is entitled to take the paternity leave as 'personal leave' in the event the employee's wife gives birth or miscarries. It is not clear whether this provision is intended to cover a situation where the employee is not married to the person who gives birth to his child. Under a strict reading of the law, this scenario is not covered but the employer may, at its discretion, choose to provide the employee personal leave during this time.

19. Please state the statute(s) / legal basis where paternity leave entitlement is found.

Article 58 of the Labour Law.

LAOS

20. Can a father on paternity leave be terminated?

A father on paternity leave is not of a special class; however pursuant to Article 87, if the father was terminated while on paternity/personal leave approved by the employer, the father could bring a claim of 'unjustified termination' against the employer.

C. Adoption Leave Provisions

21. Do adoptive parents enjoy adoption leave? How many days of adoption leave is given?

The maternity leave benefits would cover any employee who physically gives birth to a child (whether or not the employee will keep the child); however in our reading of the law, the benefits do not clearly extend to mothers who adopt, use a surrogate mother or otherwise do not physically give birth to their child. Indeed, Article 2.2.2 of the Social Security Instruction specifically provides, in the context of a maternity allowance, that an insured individual who adopts a child will not be entitled to maternity or miscarriage benefits.

The employer may, at its discretion, offer the employee benefits akin to maternity benefits if she will have a new-born child to physically and emotionally look after even if she did not physically give birth to the child.

22. Must you be employed to get adoption leave?

N/A.

23. When can the adoption leave be taken?

N/A.

24. Is the adoption leave paid or unpaid? Please state how many days are paid and how many days are unpaid.

N/A.

25. Does the government pay for the adoption leave?

No.

26. Must the mother or father be married to enjoy adoption leave?

N/A.

LAOS

27. Do you get adoption leave if you are a single parent?

N/A.

28. Would a same sex couple enjoy adoption leave?

N/A.

29. Please state the statute(s) / legal basis where adoption leave entitlement is found.

N/A, under a strict reading Article 98 of the Labor Law, the maternity leave entitlements apply only to those employees who undergo the physical act of birthing a child.

30. Can a parent on adoption leave be terminated?

A parent on paternity leave is not of a special class (unlike pregnant mothers or mothers with a child of less than 1 year); however pursuant to Article 87, if the parent is terminated while on leave approved by the employer (regardless of whether the employee is statutorily entitled to such leave), the parent could bring a claim of 'unjustified termination' against the employer.

D. Childcare Leave Provisions

31. Do parents get childcare leave?

Pursuant to Article 58 of the Labor Law, employees are entitled to take 3 days' of personal leave (with full pay) in order to take care of the employee's immediate family member (including: parents, spouse, or children) if the family member is ill, injured and/or hospitalized and nobody else is available to provide care to the individual. In addition, under Article 98, for a period of one year after giving birth, female workers are entitled to rest for one hour per day to feed and take care of the child and have the right to take the child for regulatory vaccinations (during work hours, where necessary).

32. Must you be employed to get childcare leave?

Yes, in order to obtain the leave benefits as provided above, the parent must be employed. Depending on the individual's social security status, the individual may also be entitled to receive a sickness benefit from the social security office.

33. How many days of childcare leave is given?

3 days' personal leave. In addition, new mothers may take an additional hour break each day (in addition to her lunch period) to feed/look after her child.

LAOS

34. When can the childcare leave be taken?

This is not specified by law but the personal leave may only be taken if the child is sick/injured and there is no one else to take care of him/her.

35. Is the childcare leave paid or unpaid? Please state how many days are paid and how many days are unpaid.

The 3 days' leave is paid as is the extra hour of break for new mothers. The employer may provide additional paid or unpaid leave at its discretion.

36. Does the government pay for the childcare leave?

This is paid directly by the employer – the employee may be entitled to additional allowances under the Social Security Law depending on the employee's social security status and the relevant circumstances.

37. Must the mother be married to enjoy childcare leave?

Neither parent would need to demonstrate marriage in order to take personal leave to take care of his/her child; however, in order to take personal leave to take care of his or her spouse, marriage may be required – the plain language of the statute indicates that it is not clearly required for the employer to provide personal leave to take care of anyone who is not the employee's "spouse", mother, father, son or daughter.

38. Would a same sex couple enjoy childcare leave?

While this question is not expressly addressed by law, with respect to personal leave, we understand that a same sex couple would be able to take leave to take care of their children under Article 58 of the Labor Law, so long as the relevant employee is the legal guardian of the child.

With respect to taking an additional hour break for child care after birth under Article 98, this specifically only applies to female workers who have given birth – no other parent (including adoptive mothers or mothers who used a surrogate) are legally entitled to this benefit.

However, the employer may, at its discretion, extend these benefits to other employees not statutorily required to be covered.

39. Please state the statute(s) / legal basis where childcare leave entitlement is found.

Article 58 of the Labor Law (personal leave); and Article 98 of the Labor Law (extra hour for newborns).

LAOS

40. Can a parent on childcare leave be terminated?

Pursuant to Article 87, if the parent is terminated while on leave approved by the employer (regardless of whether the employee is statutorily entitled to such leave), the parent could bring a claim of 'unjustified termination' against the employer.

E. Other relevant issues / trends

41. Repercussions on the employer if it does not provide the statutory family leave entitlements.

Article 179 of the Labor Law provides very broad remedies for violations of the Labor Law, as follows:

"Any individual, legal entity and organizations that violates this Law shall be re-educated, warned, fined, subject to temporary suspension of business, subject to withdrawal of business license or brought to court proceedings based on the nature of the offence, including having to compensate for the civil damage caused".

42. Will any officers of the employer face personal liability for not ensuring that employees receive the statutory family leave entitlements?

Potentially, pursuant to Article 126 of the Enterprise Law (No. 46/NA, 26 December 2013), directors may be held civilly liable towards third parties if their actions contravene the laws of the Lao PDR.

43. Is the employment law landscape in your country generally pro-family or otherwise?

The employment law landscape in the Lao PDR is generally "pro-employee" so in our view, the statutory family leave entitlements will be enforced by the relevant labor authorities.

However, with respect to extending any leave entitlements to individuals not specifically cited by law (e.g. adoptive parents, parents that use surrogates), the labor authorities will likely allow the employer to make these determinations at its own discretion.

44. Do parents face any workplace discrimination for utilizing their family leave entitlements?

In our view, employees in the Lao PDR regularly use their allocated entitlements in full and are not discriminated against for doing so.

LAOS

45. What is the legal recourse if an employee feels he/she has faced discrimination arising from taking family-related leave?

The employee may file a claim with the Office of Labor and Social Welfare at the District, Provincial or Ministry level (depending on the number of employees working for the employer).

46. What family friendly practices does your country practice? (e.g. flexible working hours, paid benefits not mandated by law)

Flexible working hours are not expressly provided for by law – the employer can elect to adopt such a policy on its own accord.

The employer's rules for employment (including work hours and benefits to be provided) must be set out in the employer's internal regulations.

These must then be approved by the majority of the workers or the workers' representative, and the labor authority. This is to ensure that employees are aware of the rules that apply and that the rules are in compliance with Lao law.

47. Are there other benefits in addition to maternity leave? For e.g. leave entitlements relating to miscarriages, illness associated with the pregnancy or maternity, medical termination of pregnancies, etc.?

Yes, pursuant to Article 98 of the Labor Law, female workers who miscarry are entitled to take paid leave for the time period instructed by a physician.

Female workers may also be entitled to a monetary allowance for a miscarriage or still-birth as provided in the Social Security Law (Article 99).

Pursuant to Article 110, in the event that a worker gives birth, miscarries or suffers a still-birth and requests advance payment of salary or wages, the employer must consider providing advance payment, as appropriate.

Pursuant to Article 58, in the event that a worker's wife miscarries, the employee may take 3 days of paid personal leave.

48. Do mothers get paid nursing breaks? If so, what conditions apply?

Yes, pursuant to Article 98 of the Labor Law, for a period of one year after giving birth, female workers are entitled to rest for one hour per day to feed and take care of her child or have the right to take her child for regulatory vaccinations. No other conditions apply.

LAOS

49. Are employers bound to provide crèche facilities? If so, must these be provided free of cost? Is there an age limit for children using the employer provided crèche facilities?

N/A.

50. Are there any notable legal developments or upcoming developments to watch out for in the area of family related leave?

Not that we are aware of with respect to family leave. There is however, a draft law to amend the Social Security Law which may impact the social security allowances provided to families with respect to pregnancy, childcare and miscarriages. This draft law is still being considered by the National Assembly – we expect it to be promulgated by the end of this year.

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MALAYSIA

A. Maternity Leave Provisions

1. What is your responding jurisdiction?

Malaysia.

2. In the responding jurisdiction, do all expectant women, including surrogate mothers, get maternity leave?

Yes.

3. Must you be employed to get maternity leave? Is there an eligibility period?

A female employee is entitled to maternity as long as she satisfies the following eligibility requirements:

- The employee is employed at any time in the 4 months immediately before her confinement; and
- The employee is employed by the employer for a period(s) amounting in the aggregate to, not less than 90 days during the 9 months immediately before her confinement.

4. How many days of maternity leave is given?

60 days of paid maternity, up to 5 surviving children.

5. When can the maternity leave be taken?

It can be taken during her confinement, which is defined to cover a period of at least 22 weeks of pregnancy.

6. Is the maternity leave paid or unpaid? Please state how many days are paid and how many days are unpaid.

60 days of paid leave.

7. Does the government pay for the maternity leave?

No. It is paid by the employer.

8. Must the mother be married to enjoy maternity leave?

No.

9. Please state the statute(s) / legal basis where maternity leave entitlement is found.

Employment Act 1955.

MALAYSIA

10. Can a pregnant employee or employee on maternity leave be terminated?

It is an offence under the Employment Act 1955 to terminate a pregnant employee or employee on maternity leave for any reason, other than for reason due to business closure.

11. Is an employer bound to offer a returning employee the same job role/profile/wage after maternity leave?

No. However, if the returning employee is given a different role, it must be compatible with her existing terms of employment and must not entail a job demotion.

B. Paternity Leave Provisions

12. Do fathers get paternity leave?

No.

13. Must you be employed to get paternity leave? Is there an eligibility period?

N/A.

14. How many days of paternity leave is given?

N/A.

15. When can the paternity leave be taken?

N/A.

16. Is the paternity leave paid or unpaid? Please state how many days are paid and how many days are unpaid.

N/A.

17. Does the government pay for the paternity leave?

N/A.

18. Must the father be married to enjoy paternity leave?

N/A.

MALAYSIA

19. Please state the statute(s) / legal basis where paternity leave entitlement is found.

N/A.

20. Can a father on paternity leave be terminated?

N/A.

C. Adoption Leave Provisions

21. Do adoptive parents enjoy adoption leave? How many days of adoption leave is given?

No

22. Must you be employed to get adoption leave?

N/A.

23. When can the adoption leave be taken?

N/A.

24. Is the adoption leave paid or unpaid? Please state how many days are paid and how many days are unpaid.

N/A.

25. Does the government pay for the adoption leave?

N/A.

26. Must the mother or father be married to enjoy adoption leave?

N/A.

27. Do you get adoption leave if you are a single parent?

N/A.

28. Would a same sex couple enjoy adoption leave?

N/A.

MALAYSIA

29. Please state the statute(s) / legal basis where adoption leave entitlement is found.

N/A.

30. Can a parent on adoption leave be terminated?

N/A.

D. Childcare Leave Provisions

31. Do parents get childcare leave?

No

32. Must you be employed to get childcare leave?

N/A.

33. How many days of childcare leave is given?

N/A.

34. When can the childcare leave be taken?

N/A.

35. Is the childcare leave paid or unpaid? Please state how many days are paid and how many days are unpaid.

N/A.

36. Does the government pay for the childcare leave?

N/A.

37. Must the mother be married to enjoy childcare leave?

N/A.

38. Would a same sex couple enjoy childcare leave?

N/A.

MALAYSIA

39. Please state the statute(s) / legal basis where childcare leave entitlement is found.

N/A.

40. Can a parent on childcare leave be terminated?

N/A.

E. Other relevant issues / trends

41. Repercussions on the employer if it does not provide the statutory family leave entitlements.

Please see response for question 42 below.

42. Will any officers of the employer face personal liability for not ensuring that employees receive the statutory family leave entitlements?

Yes. It is an offence under the Employment Act not provide maternity benefits and directors or managers may be charged jointly and severally in the same proceedings as the employer.

43. Is the employment law landscape in your country generally pro-family or otherwise?

Only maternity leave is granted. There are plans to increase the number from 60 to 90 days.

44. Do parents face any workplace discrimination for utilizing their family leave entitlements?

No.

45. What is the legal recourse if an employee feels he/she has faced discrimination arising from taking family-related leave?

- To commence legal action for unfair discrimination; or
- To file a complaint at the Labour and Manpower department.

46. What family friendly practices does your country practice? (e.g. flexible working hours, paid benefits not mandated by law)

- Flexi working hours; and
- Many private sector employers provide generous maternity and paternity leave benefits.

MALAYSIA

47. Are there other benefits in addition to maternity leave? For e.g. leave entitlements relating to miscarriages, illness associated with the pregnancy or maternity, medical termination of pregnancies, etc.?

The maternity leave provisions cover miscarriages as long as the female employee is at least 22 weeks pregnant.

48. Do mothers get paid nursing breaks? If so, what conditions apply?

No.

49. Are employers bound to provide crèche facilities? If so, must these be provided free of cost? Is there an age limit for children using the employer provided crèche facilities?

No.

50. Are there any notable legal developments or upcoming developments to watch out for in the area of family related leave?

Maternity leave will likely be increased from 60 to 90 days within the next 2 years.

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MYANMAR

A. Maternity Leave Provisions

1. What is your responding jurisdiction?

Myanmar.

2. In the responding jurisdiction, do all expectant women, including surrogate mothers, get maternity leave?

All pregnant women are entitled to maternity leave in accordance with Law. Local law does not specifically regulate for surrogate mothers.

3. Must you be employed to get maternity leave? Is there an eligibility period?

Female employee must be employed for 6 months for maternity leave entitlement.

4. How many days of maternity leave is given?

Employee will be entitled to 6 weeks before and 8 weeks of paid maternity leave after child birth, or as otherwise agreed.

5. When can the maternity leave be taken?

Employee can take maternity leave 6 weeks before and 8 weeks after child birth.

6. Is the maternity leave paid or unpaid? Please state how many days are paid and how many days are unpaid.

The maternity leave is paid. 6 weeks before and 8 weeks after birth are paid. The maternity leave can be combined with 30 days paid medical leave.

7. Does the government pay for the maternity leave?

If employee is covered with Social Security Law, she can claim the maternity benefit at the relevant township Social Security Board.

8. Must the mother be married to enjoy maternity leave?

Local Law does not have such a restriction.

MYANMAR

9. Please state the statute(s) / legal basis where maternity leave entitlement is found.

Leave and Holidays Act 1951, as amended 2014 and Social Security Law 2012.

10. Can a pregnant employee or employee on maternity leave be terminated?

No. A pregnant employee or employee on maternity leave cannot be terminated.

11. Is an employer bound to offer a returning employee the same job role/profile/wage after maternity leave?

Local law does not contain provisions regarding an employer's obligation to offer the same job role/profile/wage after maternity leave.

B. Paternity Leave Provisions

12. Do fathers get paternity leave?

If the male employee is insured under the Social Security system, he is entitled to 15 days' paternity leave.

13. Must you be employed to get paternity leave? Is there an eligibility period?

Paternity leave is only available by law to a male employee who is ensured under the Social Security system, which would most likely be a working individual.

The father must have at least six months of contributions in the 12 months before the date of childbirth.

14. How many days of paternity leave is given?

15 days.

15. When can the paternity leave be taken?

An insured man is entitled to paternity leave after confinement of his spouse.

MYANMAR

16. Is the paternity leave paid or unpaid? Please state how many days are paid and how many days are unpaid.

15 days of paternity leave is paid at 70% of the average wage.

17. Does the government pay for the paternity leave?

He can claim the paternity benefit at the relevant township Social Security Board.

18. Must the father be married to enjoy paternity leave?

Local Law does not have such a restriction. However, if he claim the social security benefits, he must file valid documents such as a household list and evidence of spouse's confinement etc.

19. Please state the statute(s) / legal basis where paternity leave entitlement is found.

The Social Security Law 2012.

20. Can a father on paternity leave be terminated?

No. A male employee on paternity leave cannot be terminated.

C. Adoption Leave Provisions

21. Do adoptive parents enjoy adoption leave? How many days of adoption leave is given?

An insured female employee has the right to enjoy leave not exceeding eight weeks for child care for one adopted child only, until that child had attained the age of one year if a child under the age of one is adopted in accordance with existing law.

22. Must you be employed to get adoption leave?

Yes.

23. When can the adoption leave be taken?

At the start of the adoption of a child under the age of one year.

MYANMAR

24. Is the adoption leave paid or unpaid? Please state how many days are paid and how many days are unpaid.

8 weeks of adoption paid leave for an insured employee.

25. Does the government pay for the adoption leave?

An insured employee can claim the adoption benefit at the relevant township Social Security Board.

26. Must the mother or father be married to enjoy adoption leave?

Local Law does not have such a restriction.

27. Do you get adoption leave if you are a single parent?

Local Law is silent on this.

28. Would a same sex couple enjoy adoption leave?

Local Law is silent on this. At the present, same sex relationships are illegal in Myanmar.

29. Please state the statute(s) / legal basis where adoption leave entitlement is found.

The Social Security Law 2012.

30. Can a parent on adoption leave be terminated?

No. An insured employee on adoption leave cannot be terminated.

D. Childcare Leave Provisions

31. Do parents get childcare leave?

An insured employee under the Social Security Law has the right to enjoy an additional four weeks after enjoying maternity leave for child care if it is a twin delivery.

Otherwise, local law does not provide for childcare leave.

32. Must you be employed to get childcare leave?

A female employee must be employed 6 months for the maternity leave entitlement which would include additional child care in the case of twins.

MYANMAR

33. How many days of childcare leave is given?

N/A, other than as above.

34. When can the childcare leave be taken?

N/A.

35. Is the childcare leave paid or unpaid? Please state how many days are paid and how many days are unpaid.

Four weeks of childcare leave for a twin delivery is paid.

36. Does the government pay for the childcare leave?

Yes, an insured employee can claim the benefit at the relevant township Social Security Board.

37. Must the mother be married to enjoy maternity leave?

Local Law does not have such a restriction.

38. Would a same sex couple enjoy childcare leave?

At present, same sex relationships are illegal in Myanmar.

39. Please state the statute(s) / legal basis where childcare leave entitlement is found.

The Social Security Law 2012.

40. Can a parent on childcare leave be terminated?

No. An insured employee on childcare leave for twin delivery cannot be terminated.

E. Other relevant issues / trends

41. Repercussions on the employer if it does not provide the statutory family leave entitlements.

If an employer has not provided the statutory leave, he/she shall be liable to a fine or imprisonment or both.

MYANMAR

42. Will any officers of the employer face personal liability for not ensuring that employees receive the statutory family leave entitlements?

Manager may face personal liability for not ensuring that employees receive the statutory leave.

43. Is the employment law landscape in your country generally pro-family or otherwise?

The landscape is generally pro-employee, but it is difficult to assess as whether it is 'pro-family'.

44. Do parents face any workplace discrimination for utilizing their family leave entitlements?

Not to our knowledge.

45. What is the legal recourse if an employee feels he/she has faced discrimination arising from taking family-related leave?

There are no specific law or rule addressing discrimination in Myanmar.

If the discrimination occurred in the workplace, it can be settled in accordance with the company's anti-discrimination policy and the Settlement of Labour Dispute Law.

46. What family friendly practices does your country practice? (e.g. flexible working hours, paid benefits not mandated by law)

Nothing statutory; it depends on the type of job and the employer.

47. Are there other benefits in addition to maternity leave? For e.g. leave entitlements relating to miscarriages, illness associated with the pregnancy or maternity, medical termination of pregnancies, etc.?

Yes, an insured employee under the Social Security Law is entitled 6 weeks of miscarriage leave being not a criminal abortion.

48. Do mothers get paid nursing breaks? If so, what conditions apply?

No. Every employee is entitled 30 minutes break for working 4 hours continuously in shops and establishments.

Every employee is entitled 30 minutes break for working 5 hours continuously in a factory.

MYANMAR

49. Are employers bound to provide crèche facilities? If so, must these be provided free of cost? Is there an age limit for children using the employer provided crèche facilities?

In a factory which has more than 100 maternal workers, the employer shall arrange a nursery for the children under five years old of such maternal workers. In a factory which does not have 100 maternal workers, the employer shall appropriately arrange a child care room for the children under five years old.

50. Are there any notable legal developments or upcoming developments to watch out for in the area of family related leave?

A number of amendments and drafts to the labour legislation are being considered. Draft rules for Leave and Holidays are currently under review by the government and will be development to watch in the area of family related leave.

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NEW ZEALAND

A. Maternity Leave Provisions

1. What is your responding jurisdiction?

New Zealand.

2. In the responding jurisdiction, do all expectant women, including surrogate mothers, get maternity leave?

Leave is available for the primary carer.

3. Must you be employed to get maternity leave? Is there an eligibility period?

Yes, to be eligible for primary carer leave an individual must either meet the 12 month or 6 month employment test. If the individual has been working for their employer for less than 6 months then they can apply for negotiated carer leave. An employer is able to deny this leave but must have valid reasons for their decision.

4. How many days of maternity leave is given?

If the requirements are met, the mother can get 22 weeks of parental leave payment. If the mother only meets the 6 month employment test for primary carer leave, then they can take up to a total of 26 weeks of extended leave. If the mother meets the 12 month employment eligibility test then the maximum duration of extended leave is 52 weeks. Both of the entitlements are inclusive of the 22 weeks primary carer leave.

5. When can the maternity leave be taken?

Female employees who are having a baby can take parental leave. Also covered are employees who are going to have the primary responsibility for the care, development and upbringing of a child under six years on a permanent basis; this may be through adoption (but it doesn't include on a foster care or other temporary care basis).

6. Is the maternity leave paid or unpaid? Please state how many days are paid and how many days are unpaid.

22 weeks of primary care leave can be taken, that is paid by the government.

Employees who meet the 12 month criteria may take up to 52 weeks extended leave (less the number of weeks primary carer leave taken, up to 22 weeks) which becomes unpaid after the 22 weeks of paid leave.

Employees who meet the six month criteria may take up to 26 weeks in total (less the number of weeks primary carer leave taken, up to 22 weeks).

NEW ZEALAND

7. Does the government pay for the maternity leave?

Yes, if the eligibility requirements are met the government will pay for 22 weeks of parental leave.

8. Must the mother be married to enjoy maternity leave?

No.

9. Please state the statute(s) / legal basis where maternity leave entitlement is found.

Parental Leave and Employment Protection Act 1987.

10. Can a pregnant employee or employee on maternity leave be terminated?

Yes but only if the employer can prove that the employee's position cannot be kept open:

- Because a temporary replacement is not reasonably practicable due to the key position occupied within the employer's enterprise by the employee; or
- Because of the occurrence of a redundancy situation.

If the parental leave is for a period not exceeding 4 weeks, the employer is presumed to be able to keep open for the employee, until the end of that period of parental leave, the employee's position in the employment of the employer unless the employer proves that the employee's position cannot be kept open because of the occurrence of a redundancy situation.

The Act further states that dismissal because of pregnancy or parental leave is prohibited.

11. Is an employer bound to offer a returning employee the same job role/profile/wage after maternity leave?

Yes, unless the situation above is met where the position cannot be kept open. In this situation if an employer decides that an employee's job is a key position, or there is a redundancy situation, then an employee will go into a 26 week 'period of preference' at the end of their parental leave.

This means that at any time during this 26 week period, if their employer has a job that is really similar to your job, they must offered it first before anyone else.

B. Paternity Leave Provisions

12. Do fathers get paternity leave?

Yes.

NEW ZEALAND

13. Must you be employed to get paternity leave? Is there an eligibility period?

Yes, to be eligible for leave must either meet the 12 month employment test or 6 month employment for parental leave.

14. How many days of paternity leave is given?

It depends upon the situation. A partner is entitled to 2 weeks unpaid partner's leave if they meet the 12-month employment test and 1 week if the employee meets the 6-month employment test. The mother can transfer up to 22 weeks parental leave payment to the partner if the partner is the primary carer for this time.

There is also the option of sharing extended leave between an employee and the employee's spouse or partner in a manner that is agreed on by the employee and the employee's spouse or partner and their respective employers, provided that:

- Neither the employee nor the employee's spouse or partner takes a period of extended leave that exceeds, or periods of extended leave that in total exceed, the amount of extended leave to which that person is individually entitled; or
- The total period formed by adding together all periods of extended leave taken by the employee and the employee's spouse or partner does not exceed the maximum combined period of extended leave provided by section 26(2).

The maximum combined period of extended leave can be shared between an employee and that employee's spouse or partner:

- The employee or the employee's spouse or partner may take the full maximum combined period of extended leave, and the other not take any period of primary carer or extended leave under this Act;
- The employee and the employee's spouse or partner may each take a period or periods of extended leave, and neither of them take any period of primary carer leave; or
- Either the employee or the employee's spouse or partner (or both, in the case of a transfer of entitlements) may take a period of primary carer leave, and each of the employee and the employee's spouse or partner may take 1 or more periods of extended leave.

15. When can the paternity leave be taken?

An employee may take partner's leave if the employee is the spouse or partner of the primary carer in respect of a child and assumes or intends to assume responsibility for the care of that child and meets the 6-month employment test or the 12-month employment test.

NEW ZEALAND

16. Is the paternity leave paid or unpaid? Please state how many days are paid and how many days are unpaid.

If an eligible employee transfers all of her entitlement to a parental leave payment to his or her spouse or partner, who will be the primary carer for this time then then the parental leave will be paid for 22 weeks.

The partner may share or take all of the remaining extended leave up to a total of 52 weeks if the 12 month criteria for parental leave is met or share or take all of the remaining extended leave up to a total of 26 weeks if the 6 month criteria for parental leave is met.

This extended leave is not paid after the 22 weeks of primary carer leave.

A partner is entitled to take 2 weeks unpaid partner's leave if they meet the 12-month employment test and 1 week unpaid partner's leave if the employee meets the 6-month employment test.

17. Does the government pay for the paternity leave?

The government only pays for the 22 weeks of primary carer leave if it is transferred to the spouse or partner. The leave is unpaid if it is extended leave or partner leave.

18. Must the father be married to enjoy paternity leave?

No.

19. Please state the statute(s) / legal basis where paternity leave entitlement is found.

Parental Leave and Employment Protection Act 1987.

20. Can a father on paternity leave be terminated?

As is the case for mothers on parental leave, where an employee takes a period of parental leave the employer shall be presumed in any proceedings under this Act, to be able to keep open for the employee, until the end of the employee's parental leave, the employee's position in the employment of the employer unless the employer proves that the employee's position cannot be kept open

- Because a temporary replacement is not reasonably practicable due to the key position occupied within the employer's enterprise by the employee; or
- Because of the occurrence of a redundancy situation.

If the parental leave is for a period not exceeding 4 weeks, the employer is presumed to be able to keep open for the employee, until the end of that period of parental leave, the employee's position in the employment of the employer unless the employer proves that the employee's position cannot be kept open because of the occurrence of a redundancy situation.

NEW ZEALAND

No employer is able to terminate the employment of an employee who indicates that they wish to take parental leave or if they become the primary carer in respect of a child.

C. Adoption Leave Provisions

21. Do adoptive parents enjoy adoption leave? How many days of adoption leave is given?

Yes. Same entitlement to parental leave as outlined above, if the child is under 6 years of age.

22. Must you be employed to get adoption leave?

Yes, same 12 month and 6 month eligibility employment test apply.

23. When can the adoption leave be taken?

Employees who are going to have the primary responsibility for the care, development and upbringing of a child under six years on a permanent basis.

24. Is the adoption leave paid or unpaid? Please state how many days are paid and how many days are unpaid.

Same requirements as parental leave. Employees can get 22 weeks of parental leave payment and if they only meet the 6 month criteria for parental leave, up to a total of 26 weeks. If they meet the 12 month eligibility criteria then up 52 weeks can be taken. Both of this include the 22 weeks primary carer leave.

25. Does the government pay for the adoption leave?

Yes, for 22 weeks. The extended leave is unpaid.

26. Must the mother or father be married to enjoy adoption leave?

No.

27. Do you get adoption leave if you are a single parent?

Yes, as long as the eligibility requirements are met.

28. Would a same sex couple enjoy adoption leave?

Yes, as long as the eligibility requirements are met.

NEW ZEALAND

29. Please state the statute(s) / legal basis where adoption leave entitlement is found.

Parental Leave and Employment Protection Act 1987.

30. Can a parent on adoption leave be terminated?

Yes but only if the employer can prove that the employee's position cannot be kept open:

- Because a temporary replacement is not reasonably practicable due to the key position occupied within the employer's enterprise by the employee; or
- Because of the occurrence of a redundancy situation.

D. Childcare Leave Provisions

31. Do parents get childcare leave?

There is no concept of childcare leave in New Zealand. Parents are able to take sick leave if a dependent is sick or injured. Eligibility is set out under the Holidays Act 2003 which sets out that following six months' continuous employment an employee will have a right to five days sick leave when a dependant is sick or injured. Up to 15 days' sick leave may be carried over from one year to the next up to a maximum of 20 days in total.

32. Must you be employed to get childcare leave?

Not available in New Zealand.

33. How many days of childcare leave is given?

Not available in New Zealand.

34. When can the childcare leave be taken?

Not available in New Zealand.

35. Is the childcare leave paid or unpaid? Please state how many days are paid and how many days are unpaid.

Not available in New Zealand.

36. Does the government pay for the childcare leave?

N/A.

NEW ZEALAND

37. Must the mother be married to enjoy childcare leave?

No.

38. Would a same sex couple enjoy childcare leave?

Not available in New Zealand.

39. Please state the statute(s) / legal basis where childcare leave entitlement is found.

No childcare leave entitlement in New Zealand.

40. Can a parent on childcare leave be terminated?

No concept of childcare leave. Only parental leave as outlined above.

E. Other relevant issues / trends

41. Repercussions on the employer if it does not provide the statutory family leave entitlements.

Employees may raise personal grievance claims and/or commence proceedings in the Employment Relations Authority.

42. Will any officers of the employer face personal liability for not ensuring that employees receive the statutory family leave entitlements?

No, liability is restricted to the employing entity.

43. Is the employment law landscape in your country generally pro-family or otherwise?

Yes, generally pro-family.

44. Do parents face any workplace discrimination for utilizing their family leave entitlements?

No, this is typically not an issue that we are aware of in New Zealand workplaces.

45. What is the legal recourse if an employee feels he/she has faced discrimination arising from taking family-related leave?

Human Rights Act 1993 and Employment Relations Act 2000 both set out that an employee cannot be discriminated against on the ground of sex, which includes pregnancy and childbirth.

NEW ZEALAND

Also, under both of these Acts, discrimination is prohibited on the ground of family status, which includes, having the responsibility for part-time care or full-time care of children or other dependants.

If an employee feels that have been discriminated against they can either pursue a claim under the Human Rights Act 1993 or the Employment Relations Act 2000 (they cannot do both).

46. What family friendly practices does your country practice? (e.g. flexible working hours, paid benefits not mandated by law)

A lot of workplaces are trending towards flexible working for its employees.

This includes around hours and also where an employee is working (eg. working from home).

Flexible working is also provided for under the Employment Relations Act 2000. Part 6AA of the Act deals with flexible works and provides employees with a statutory right to request a variation of their working arrangements.

An employer must deal with a request not later than 1 month after receiving it and provides that an employer may refuse a request only if it cannot be accommodated on certain grounds.

47. Are there other benefits in addition to maternity leave? For e.g. leave entitlements relating to miscarriages, illness associated with the pregnancy or maternity, medical termination of pregnancies, etc.?

No, however a new Bill is being proposed where a women and their partners would be entitled to three days of bereavement leave if they miscarry.

48. Do mothers get paid nursing breaks? If so, what conditions apply?

Employers are required to provide appropriate facilities and breaks for employees who wish to breastfeed in the workplace.

The breaks are unpaid unless the employee and employer agree otherwise.

The breastfeeding breaks are to be provided in addition to the standard paid rest breaks and unpaid meal breaks. The rest and meal breaks can also be used as breastfeeding breaks if this is agreed to by both employer and employee.

NEW ZEALAND

49. Are employers bound to provide crèche facilities? If so, must these be provided free of cost? Is there an age limit for children using the employer provided crèche facilities?

No requirement for employers to provide crèche facilities.

50. Are there any notable legal developments or upcoming developments to watch out for in the area of family related leave?

A further increase of parental leave payments from 22 weeks to 26 weeks will be implemented from 1 July 2020. Keeping in Touch days will also be extended from 52 hours to 64 hours from 1 July 2020.

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PHILIPPINES

A. Maternity Leave Provisions

1. What is your responding jurisdiction?

The Philippines.

2. In the responding jurisdiction, do all expectant women, including surrogate mothers, get maternity leave?

All expectant women are entitled to maternity leave, as long as they are covered by the Social Security System ("SSS") and they meet the qualifying conditions. There are no laws or regulations on surrogacy in the Philippines.

3. Must you be employed to get maternity leave? Is there an eligibility period?

One need not be an employee to avail herself of the SSS maternity benefits as long as she is an SSS member and meets the qualifying conditions.

To qualify for maternity benefits, the female SSS member should have: (i) paid at least three monthly contributions within the 12-month period immediately preceding the semester of her childbirth or miscarriage; and (ii) given the required notification of her pregnancy to the SSS through her employer if employed, or submitted the maternity notification directly to the SSS if separated from employment, a voluntary or self-employed member. The maternity benefit shall be paid only for the first 4 deliveries or miscarriages

4. How many days of maternity leave is given?

Maternity leave is 60 days in case of normal delivery or miscarriage, and 78 days in case of caesarean delivery.

5. When can the maternity leave be taken?

Maternity leave may be taken prior to the expected date of delivery.

6. Is the maternity leave paid or unpaid? Please state how many days are paid and how many days are unpaid.

The maternity leave benefit is paid by the SSS. The maternity benefit is in the form of a daily cash allowance granted to a female member who was unable to work due to childbirth or miscarriage.

Subject to the qualifying conditions, a female member is entitled to a daily maternity benefit equivalent to 100% of her average daily salary credit (which is based not on the actual salary but on the SSS graduated scale with a maximum monthly salary credit of PhP 16,000) for the duration of the maternity leave, which is 60 days for normal delivery or miscarriage, and 78 days for caesarean delivery.

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7. Does the government pay for the maternity leave?

Yes. The maternity benefits are paid by the SSS, which is a government owned and controlled corporation. However, payment to the employee is advanced by the employer. The SSS reimburses the employer the amount of maternity benefits advanced to the employee upon receipt of satisfactory proof of such payment and legality thereof.

8. Must the mother be married to enjoy maternity leave?

No. The mother may be married or unmarried provided she meets the qualifying conditions.

9. Please state the statute(s) / legal basis where maternity leave entitlement is found.

Labor Code of the Philippines ("Labor Code")
Republic Act ("R.A.") No. 1161, as amended by R.A. No. 7322 and R.A. No. 8282

10. Can a pregnant employee or employee on maternity leave be terminated?

Article 135(2) of the Labor Code provides that it is unlawful for an employer "[t]o discharge [any woman employee] on account of her pregnancy, or while on leave or in confinement due to her pregnancy".

The foregoing may be construed to mean that an employee may not be dismissed by the mere fact that she is on maternity leave. However, it is arguable that an employee on maternity leave may be dismissed from employment provided the termination is for just or authorized cause under law, and the dismissal is not motivated by the fact that the employee is pregnant.

11. Is an employer bound to offer a returning employee the same job role/profile/wage after maternity leave?

Yes, otherwise, the employer may be liable for demotion, diminution of benefits and/or constructive dismissal.

Moreover, Article 135 of the Labor Code provides that it shall be prohibited and unlawful for any employer: (i) to deny any woman employee the benefits provided for in Chapter I, Title III, Book Three of the Labor Code; (ii) to discharge any woman employed for the purpose of preventing her from enjoying any of the benefits provided under the Labor Code; (iii) to discharge such woman on account of her pregnancy, or while on leave or in confinement due to her pregnancy; or (iv) to discharge or refuse the admission of such woman upon returning to her work for fear that she may again be pregnant. An employer may be meted with penal sanction (which may include imprisonment) for violating Article 135 of the Labor Code.

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B. Paternity Leave Provisions

12. Do fathers get paternity leave?

Yes, fathers are entitled to paternity leave.

13. Must you be employed to get paternity leave? Is there an eligibility period?

Yes, the father must be employed to get paternity leave.

The law does not provide an eligibility period or minimum length of service for an employee to avail himself of paternity leave.

14. How many days of paternity leave is given?

The male employee is entitled to seven days of paternity leave for each delivery, but only for the first four deliveries. The term "delivery" includes childbirth or any miscarriage. The male employee must be legally married to, and is cohabiting with, the woman who delivers the child.

15. When can the paternity leave be taken?

The paternity leave benefit may be enjoyed before, during, or after the delivery, provided that it shall be availed of not later than 60 days after the date of delivery.

The employee must notify the employer of the pregnancy of his spouse and the expected date of such delivery.

16. Is the paternity leave paid or unpaid? Please state how many days are paid and how many days are unpaid.

Paternity leave is paid up to seven days for every delivery, but only for the first four deliveries.

17. Does the government pay for the paternity leave?

No. Paternity leave benefits are paid by the employer.

18. Must the father be married to enjoy paternity leave?

Yes, the father must be legally married to, and is cohabiting with, the woman who delivers the child.

19. Please state the statute(s) / legal basis where paternity leave entitlement is found.

Paternity Leave Act of 1996 (R.A. No. 8187) and its implementing rules and regulations

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20. Can a father on paternity leave be terminated?

An employee on paternity leave may be dismissed from employment provided the termination is for just or authorized cause under the law.

C. Adoption Leave Provisions

21. Do adoptive parents enjoy adoption leave? How many days of adoption leave is given?

The adoptive parents shall, with respect to the adopted child, enjoy all the benefits to which biological parents are entitled.

Maternity and paternity benefits and other benefits given to biological parents upon the birth of a child shall be enjoyed by the adoptive parents if the adoptee is below seven (7) years of age as of the date the child is placed with the adoptive parents through the Pre-Adoptive Placement Authority issued by the Department of Social Welfare and Development.

22. Must you be employed to get adoption leave?

The same terms and conditions for the eligibility of maternity and paternity leave benefits shall apply. (See discussion in Section A and Section B above.)

23. When can the adoption leave be taken?

The same terms and conditions for the eligibility of maternity and paternity leave benefits shall apply. (See discussion in Section A and Section B above.)

24. Is the adoption leave paid or unpaid? Please state how many days are paid and how many days are unpaid.

The same terms and conditions for the eligibility of maternity and paternity leave benefits shall apply. (See discussion in Section A and Section B above.)

25. Does the government pay for the adoption leave?

The same terms and conditions for the eligibility of maternity and paternity leave benefits shall apply. (See discussion in Section A and Section B above.)

26. Must the mother or father be married to enjoy adoption leave?

The same terms and conditions for the eligibility of maternity and paternity leave benefits shall apply. (See discussion in Section A and Section B above.)

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27. Do you get adoption leave if you are a single parent?

The same terms and conditions for the eligibility of maternity and paternity leave benefits shall apply. (See discussion in Section A and Section B above.)

Unmarried individuals may become adoptive parents in the Philippines. A single adoptive mother of an adoptee below seven years old is entitled to maternity benefits subject to the qualifying conditions.

Since the Paternity Leave Act requires that that father should be married and cohabiting with his lawful spouse to avail himself of the paternity leave, a single adoptive father would not be entitled to such leave.

28. Would a same sex couple enjoy adoption leave?

Same sex marriage is not recognized in the Philippines.

Only lawful spouses (man and woman) are allowed to adopt jointly. Accordingly, same sex couples, not being lawful spouses, may not adopt jointly, and therefore cannot avail themselves of maternity or paternity leave benefits.

29. Please state the statute(s) / legal basis where adoption leave entitlement is found.

Domestic Adoption Act of 1998 (R.A. No. 8552) and its implementing rules and regulations.

30. Can a parent on adoption leave be terminated?

A parent on adoption leave (either maternity or paternity leave) may be dismissed from employment provided the termination is for just or authorized cause under the law.

D. Children Leave Provisions

31. Do parents get childcare leave?

There is no childcare leave that is generally applicable to all employees.

However, under the Solo Parents' Welfare Act of 2000 (R.A. No. 8972), a solo parent is granted "parental leave" to enable him/her to perform parental duties and responsibilities where physical presence is required.

A "solo parent" is any individual who falls under any of the following categories:

- A woman who gives birth as a result of rape and other crimes against chastity even without a final conviction of the offender: Provided, That the mother keeps and raises the child;

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- Parent left solo or alone with the responsibility of parenthood due to death of spouse;
- Parent left solo or alone with the responsibility of parenthood while the spouse is detained or is serving sentence for a criminal conviction for at least one (1) year;
- Parent left solo or alone with the responsibility of parenthood due to physical and/or mental incapacity of spouse as certified by a public medical practitioner;
- Parent left solo or alone with the responsibility of parenthood due to legal separation or de facto separation from spouse for at least one (1) year, as long as he/she is entrusted with the custody of the children;
- Parent left solo or alone with the responsibility of parenthood due to declaration of nullity or annulment of marriage as decreed by a court or by a church as long as he/she is entrusted with the custody of the children;
- Parent left solo or alone with the responsibility of parenthood due to abandonment of spouse for at least one (1) year;
- Unmarried mother/father who has preferred to keep and rear her/his child/children instead of having others care for them or give them up to a welfare institution;
- Any other person who solely provides parental care and support to a child or children;
- Any family member who assumes the responsibility of head of family as a result of the death, abandonment, disappearance or prolonged absence of the parents or solo parent.

For the succeeding questions under this Section D, our response shall refer to the parental leave for solo parents.

32. Must you be employed to get childcare leave?

The parental leave applies only to solo parents who are employed. The solo parent employee must have rendered service of at least one year.

33. How many days of childcare leave is given?

A solo parent employee is entitled to parental leave of seven working days every year.

34. When can the childcare leave be taken?

To qualify for the parental leave, the solo parent employee: (i) must have rendered at least one year of service, whether continuous or broken; (ii) must notify the employer of the eligibility thereof within a reasonable period of time; and (iii) must present his/her Solo Parent Identification Card to the employer.

35. Is the childcare leave paid or unpaid? Please state how many days are paid and how many days are unpaid.

The solo parental leave is paid for seven working days.

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36. Does the government pay for the childcare leave?

No. The solo parental leave is paid by the employer.

37. Must the mother be married to enjoy childcare leave?

With regard to the parental leave, the mother may be married or unmarried provided she falls within the definition of "solo parent".

38. Would a same sex couple enjoy childcare leave?

Same sex marriage is not recognized in the Philippines. Moreover, only solo parents may avail themselves of parental leave.

39. Please state the statute(s) / legal basis where childcare leave entitlement is found.

Solo Parents' Welfare Act of 2000 (R.A. No. 8972)

40. Can a parent on childcare leave be terminated?

A solo parent on parental leave may be dismissed from employment provided the termination is for just or authorized cause under the law.

E. Other relevant issues / trends

41. Repercussions on the employer if it does not provide the statutory family leave entitlements.

An employer who does not provide the statutory family leave entitlements may be subject to civil, administrative and/or criminal liability in accordance with the pertinent law.

42. Will any officers of the employer face personal liability for not ensuring that employees receive the statutory family leave entitlements?

In general, an officer may be personally liable if they are directly responsible for the non-compliance.

Under the Corporation Code, directors who wilfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation shall be liable jointly and severally for damages suffered by the corporation, its stockholders and other persons.

PHILIPPINES

43. Is the employment law landscape in your country generally pro-family or otherwise?

Philippine employment law is generally pro-family.

44. Do parents face any workplace discrimination for utilizing their family leave entitlements?

Generally, no.

45. What is the legal recourse if an employee feels he/she has faced discrimination arising from taking family-related leave?

In general, the employee may file an action for constructive dismissal and/or discrimination and claim damages against the employer.

Where the law imposes criminal liability, the employee may file a criminal action against the employer.

46. What family friendly practices does your country practice? (e.g. flexible working hours, paid benefits not mandated by law)

R.A. 8972, in addition to granting parental leave, provides that the employer shall allow a solo parent employee to avail himself/herself of flexible work schedule by varying his/her arrival and departure time without affecting the core work hours as defined by the employer, provided the same shall not affect individual and company productivity.

Flexible work arrangements (such as compressed work week, flexi-time schedules and flexi-holiday schedules) may be agreed upon between the employer and employees.

While these arrangements are generally prompted by economic or operational necessity, they may have indirect positive impact in making the workplace more family-friendly.

Others include employer-sponsored family-oriented events and family bereavement leave.

47. Are there other benefits in addition to maternity leave? For e.g. leave entitlements relating to miscarriages, illness associated with the pregnancy or maternity, medical termination of pregnancies, etc.?

A female employee who is a victim of physical, physical or psychological abuse as defined under the Anti-Violence Against Women and Their Children Act of 2004 (R.A. No. 9262) is entitled to a paid leave of up to 10 days in addition to other paid leave under the Labor Code, other related laws and company policies.

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The leave is extendible when the necessity arises as specified in the protection order issued either by the barangay or the proper court.

Usage of the 10-day leave is at the option of the female employee. It shall cover the day or days when she will have to attend to medical and legal concerns.

Leave not availed of is non-cumulative and not convertible to cash.

Under The Magna Carta of Women (R.A. No. 9710), a female employee who had surgery because of gynaecological disorders is entitled to a special leave benefit of up to two months with full pay, provided she has rendered continuous aggregate service of at least six months for the last 12 months prior to the surgery.

48. Do mothers get paid nursing breaks? If so, what conditions apply?

The Expanded Breastfeeding Promotion Act of 2009 (R.A. No. 10028) provides that nursing employees shall be granted break intervals in addition to the regular time-off for meals to breastfeed or express milk.

These intervals, which shall include the time it takes an employee to get to and from the workplace lactation station, shall be counted as compensable hours worked.

Such intervals shall not be less than a total of 40 minutes for every eight-hour working period. Duration and frequency of breaks may be agreed upon by employees and employers with the minimum being 40 minutes.

Usually, there could be 2-3 breastmilk expressions lasting to 15-30 minutes each within a workday.

The employee shall notify her immediate supervisor before leaving her station.

49. Are employers bound to provide crèche facilities? If so, must these be provided free of cost? Is there an age limit for children using the employer provided crèche facilities?

There is no law obligating employers to provide crèche facilities.

PHILIPPINES

50. Are there any notable legal developments or upcoming developments to watch out for in the area of family related leave?

Senate Bill No. 1305 seeks to introduce The Expanded Maternity Law of 2017. It is currently pending in the House of Representatives. It provides, among others, the following provisions: (i) increasing paid maternity leave up to 120 days with an option to extend for additional 30 days without pay; (ii) granting 150 days maternity leave with pay for solo parents; and (iii) granting additional 30 days of parental leave for adoptive parents.

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SINGAPORE

A. Maternity Leave Provisions

1. What is your responding jurisdiction?

Singapore

2. In the responding jurisdiction, do all expectant women, including surrogate mothers, get maternity leave?

Yes, provided they meet the eligibility criteria under Part IX of the Employment Act and/or s9A of the Child Development Co-Savings Act.

However, in the case of surrogate mothers, the position is unclear as commercial surrogacy is not explicitly legalised in Singapore.

3. Must you be employed to get maternity leave? Is there an eligibility period?

No, the mother could either be employed under a contract of service or be self-employed to enjoy maternity benefits.

To be eligible, the mother must have worked for the employer for at least 3 continuous months (or have been self-employed for at least 3 continuous months) before delivery of the child.

4. How many days of maternity leave is given?

The number of days depends on a few factors, including whether the child is a Singapore citizen and whether the mother is protected by the Employment Act.

Generally, if the child is born as a Singapore citizen, the mother will be entitled to 16 weeks of maternity leave under the Child Development Co-Savings Act.

On the other hand, if the child is not born as a Singapore citizen, the mother will usually be entitled to 12 weeks of maternity leave, provided that she is an eligible employee under the Employment Act.

5. When can the maternity leave be taken?

Eligible mothers have the option of taking their maternity leave either continuously or spread out over 12 months. By default, the entitlement would be in one block, starting 4 weeks before delivery.

However, this may be altered via an agreement with the employer, subject to statutory limits.

SINGAPORE

6. Is the maternity leave paid or unpaid? Please state how many days are paid and how many days are unpaid.

Fully paid for 16 weeks, pursuant to the Child Development Co-Savings Act, if the child is born a Singapore citizen. Partially paid, if the child is not born a Singapore citizen, and the mother is an eligible employee under the Employment Act.

In the latter case, the number of days of paid leave depends on several factors as stipulated for under the Child Development Co-Savings Act and the Employment Act, including if and when the child becomes a Singapore citizen.

While there may be no statutory entitlement to paid leave in certain situations, more favourable terms may be provided for under the mother's employment contract.

7. Does the government pay for the maternity leave?

Where the child is born a Singapore citizen, an eligible mother will be paid first by her employer, who will then be able to claim reimbursement from the Government in accordance with the Government-Paid Maternity Leave Scheme.

The Child Development Co-Savings Act stipulates the proportion and maximum amount of salary that an employer may seek reimbursement from the Government.

This amount reimbursed varies depending on whether the relevant delivery is a first / second delivery or third and subsequent delivery of the female employee.

Where the child is not born a Singapore citizen, the Government does not pay for the female employee's maternity leave.

Typically, the first 8 weeks will be borne by the employer, and the last 4 weeks will be unpaid.

An eligible self-employed female employee will be entitled to receive payments from the Government, pursuant to the Child Development Co-Savings Act.

8. Must the mother be married to enjoy maternity leave?

No.

SINGAPORE

9. Please state the statute(s) / legal basis where maternity leave entitlement is found.

Child Development Co-Savings Act, Employment Act

10. Can a pregnant employee or employee on maternity leave be terminated?

If an employer terminates an eligible pregnant female employee without sufficient cause at any time during her pregnancy, the Minister may either direct the employer to reinstate the employee in her formal employment or direct the employer to pay such amount of wages as compensation.

Similarly, dismissal on grounds of redundancy or by reason of re-organisation of the employer's business cannot have the effect of depriving the pregnant employee of payments that she would otherwise receive as maternity benefits.

When an eligible female employee absents herself from work in accordance with the Employment Act, it shall not be lawful for her employer to give her notice of dismissal during her absence or on such a day that the notice will expire during her absence.

11. Is an employer bound to offer a returning employee the same job role/profile/wage after maternity leave?

The legislation does not provide for such obligation but for employees who are protected under the Employment Act, employers who unfairly dismiss their employees, including those who have just returned from maternity leave, may be ordered by the Ministry of Manpower to reinstate or compensate the employee.

B. Paternity Leave Provisions

12. Do fathers get paternity leave?

Fathers are entitled to paternity leave if they satisfy the eligibility criteria under the Child Development Co-Savings Act. To enjoy paternity leave, the child must be a Singapore citizen.

13. Must you be employed to get paternity leave? Is there an eligibility period?

No, eligible self-employed fathers are also entitled to paternity leave.

A father who is employed under a contract of service for a period of at least 3 months preceding the date of the birth of the child can be entitled to paternity leave.

In the case of a self-employed man, the father must have been self-employed for at least 3 months preceding the date of the birth of the child.

SINGAPORE

14. How many days of paternity leave is given?

2 weeks.

15. When can the paternity leave be taken?

It can be taken either as a continuous block or flexibly, by mutual agreement with the employer.

Statutory limits as to the latest by which the leave must be consumed apply.

16. Is the paternity leave paid or unpaid? Please state how many days are paid and how many days are unpaid.

Paid. 2 weeks of Government-Paid Paternity Leave.

17. Does the government pay for the paternity leave?

Yes, subject to statutorily defined limits as to quantum.

18. Must the father be married to enjoy paternity leave?

A natural father of the child must be lawfully married to the child's natural mother at a relevant time for the father to be eligible for paternity leave.

An adoptive father (whose formal intent to adopt is on or after 1 January 2017) need not be married to enjoy paternity leave.

19. Please state the statute(s) / legal basis where paternity leave entitlement is found.

Child Development Co-Savings Act.

20. Can a father on paternity leave be terminated?

A parent terminated while on adoption leave may have a cause of action against the employer for unfair dismissal.

SINGAPORE

C. Adoption Leave Provisions

21. Do adoptive parents enjoy adoption leave? How many days of adoption leave is given?

Eligible adoptive mothers are entitled to 12 weeks of paid adoption leave.

Eligible adoptive fathers (whose formal intent to adopt is on or after 1 January 2017) are entitled to paid paternity leave of 2 weeks. Please refer to Section B above for information on paternity leave.

22. Must you be employed to get adoption leave?

No. Both female employees under a contract of service and self-employed women are entitled to adoption leave.

The adoptive mother must be employed / self-employed for a continuous period of at least 3 months before the point of her formal intent to adopt.

23. When can the adoption leave be taken?

Adoption leave can be taken, by default, as a continuous stretch from the date of the female employee's formal intent to adopt, or flexibly (subject to statutory restrictions as to the start and end of the window of entitlement) by mutual agreement between the eligible female employee and the employer.

24. Is the adoption leave paid or unpaid? Please state how many days are paid and how many days are unpaid.

Eligible adoptive mothers enjoy 12 weeks of paid adoption leave, subject to statutory limits as to the quantum.

25. Does the government pay for the adoption leave?

Yes. The amount that an employer is entitled to be reimbursed by the Government depends on whether the child is the first / second or third and subsequent child of the eligible female employee.

26. Must the mother or father be married to enjoy adoption leave?

Where the mother's formal intent to adopt is on or after 1 January 2017, the mother need not be married to enjoy adoption leave.

27. Do you get adoption leave if you are a single parent?

An unwed adoptive mother is entitled to adoption leave if her formal intent to adopt is on or after 1 January 2017.

SINGAPORE

28. Would a same sex couple enjoy adoption leave?

No, as same sex couples are not allowed to legally adopt children under Singapore law.

29. Please state the statute(s) / legal basis where adoption leave entitlement is found.

Child Development Co-Savings Act.

30. Can a parent on adoption leave be terminated?

A parent terminated while on adoption leave may have a cause of action against the employer for unfair dismissal.

D. Childcare Leave Provisions

31. Do parents get childcare leave?

Yes, parents with a child below the age of 7, who have worked for his/her employer or has been self-employed for at least 3 continuous months may be entitled to childcare leave under the Child Development Co-Savings Act and/or the Employment Act.

Extended childcare leave may be available for parents with children between the ages of 7 and 12 (inclusive).

32. Must you be employed to get childcare leave?

No, self-employed parents may also be eligible for childcare leave.

33. How many days of childcare leave is given?

The number of days of childcare leave depends on factors such as whether the child is a Singapore citizen and the age of the child, and the period for which the parents have served the employer within a relevant period. Childcare leave entitlement may range from 2 to 42 days.

34. When can the childcare leave be taken?

It can be taken any time in the year, subject to limits under the Child Development Co-Savings Act and/or the Employment Act.

SINGAPORE

35. Is the childcare leave paid or unpaid? Please state how many days are paid and how many days are unpaid.

Paid. Please refer to Question 33 above.

36. Does the government pay for the childcare leave?

Yes, if the parent is entitled to childcare leave under the Child Development Co-Savings Act.

37. Must the mother be married to enjoy childcare leave?

No.

38. Would a same sex couple enjoy childcare leave?

No, as same sex couples are not allowed to legally adopt children under Singapore law.

39. Please state the statute(s) / legal basis where childcare leave entitlement is found.

Child Development Co-Savings Act, Employment Act.

40. Can a parent on childcare leave be terminated?

A parent terminated while on adoption leave may have a cause of action against the employer for unfair dismissal.

E. Other relevant issues / trends

41. Repercussions on the employer if it does not provide the statutory family leave entitlements.

The employer may be guilty of a criminal offence punishable by fines, imprisonment, or both, under the Employment Act and/or the Child Development Co-Savings Act.

42. Will any officers of the employer face personal liability for not ensuring that employees receive the statutory family leave entitlements?

Yes, both the Employment Act and the Child Development Co-Savings Act contain offence creating provisions for officers of a corporate employer found guilty of an offence under the two Acts.

43. Is the employment law landscape in your country generally pro-family or otherwise?

Yes, it is generally pro-family.

SINGAPORE

44. Do parents face any workplace discrimination for utilizing their family leave entitlements?

Studies show that female employees experience discrimination because of pregnancy and motherhood. A 2016 survey found that 66% of the women reported experiencing unfair treatment because of their gender¹.

45. What is the legal recourse if an employee feels he/she has faced discrimination arising from taking family-related leave?

There is no specific legislation on workplace discrimination in Singapore.

However, the Tripartite Alliance for Progressive Employment Practices adopts a promotional and educational approach to tackle the issues².

46. What family friendly practices does your country practice? (e.g. flexible working hours, paid benefits not mandated by law)

- Shared parental leave (under the Child Development Co-Savings Act);
- Unpaid infant care leave (under the Child Development Co-Savings Act);
- Flexible work arrangements, providing for opportunities to work from home;
- Eldercare sick leave;
- Bereavement leave;
- Compassionate leave; and
- Family care leave for older children.

47. Are there other benefits in addition to maternity leave? For e.g. leave entitlements relating to miscarriages, illness associated with the pregnancy or maternity, medical termination of pregnancies, etc.?

No.

48. Do mothers get paid nursing breaks? If so, what conditions apply?

No.

49. Are employers bound to provide crèche facilities? If so, must these be provided free of cost? Is there an age limit for children using the employer provided crèche facilities?

No, employers are not bound to provide crèche facilities.

SINGAPORE

50. Are there any notable legal developments or upcoming developments to watch out for in the area of family related leave?

On 18 January 2018, the Ministry of Manpower announced that it is conducting a month-long public consultation exercise on the Employment Act, Singapore's main labour legislation.

It has been proposed that the provisions regarding maternity protection and benefits and childcare leave for parents be expanded to cover all employees. At present, these provisions are only applicable to employees who are not professionals, managers and executives earning more than S\$4,500 per month.

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SRI LANKA

A. Maternity Leave Provisions

1. What is your responding jurisdiction?

Sri Lanka.

2. In the responding jurisdiction, do all expectant women, including surrogate mothers, get maternity leave?

Yes, if employed.

3. Must you be employed to get maternity leave? Is there an eligibility period?

Yes, the mother must be employed. No, there is no eligibility period.

4. How many days of maternity leave is given?

Where confinement results in the birth of a live child, eighty four working days for those employed "in or about the business of a shop or office". For others – except those whose employment is of a casual nature - twelve weeks – in addition to any [other] holidays to which the employee is entitled. Where confinement does not result in the birth of a live child, forty two days and/or six weeks respectively.

5. When can the maternity leave be taken?

For those employed "in or about the business of a shop or office, fourteen days pre-confinement and, where confinement results in the birth of a live child, seventy days post confinement. Fourteen days pre-confinement and twenty-eight days post confinement where confinement does not result in the birth of a live child.

For others, two weeks and ten or four weeks respectively – depending on whether there was a live birth.

6. Is the maternity leave paid or unpaid? Please state how many days are paid and how many days are unpaid.

The full period prescribed will be fully paid. However, if an employee who is employed "in or about the business of a shop or office" has been on leave for more than fourteen days pre-confinement, the excess will be without pay but the amount of post confinement leave will not be reduced.

7. Does the government pay for the maternity leave?

No [except for its own employees].

SRI LANKA

8. Must the mother be married to enjoy maternity leave?

No.

9. Please state the statute(s) / legal basis where maternity leave entitlement is found.

Shop and Office Employees (Regulation of Employment and Remuneration) Act No. 19 of 1954 [S&OE A] as last amended by Act no. 14 of 2018 - Section 18 A to 18 I. Maternity Benefits Ordinance 32 of 1939 as last amended by Act no. 15 of 2018 – Sections 3, 5 and 7.

10. Can a pregnant employee or employee on maternity leave be terminated?

No.

11. Is an employer bound to offer a returning employee the same job role/profile/wage after maternity leave?

Yes, unless there is mutual agreement to the contrary. [N.B. - this is not expressly stated but is necessarily implied by the fact that the employee has been on "leave" from employment in a particular post and/or the fact that a contract cannot be unilaterally altered].

B. Paternity Leave Provisions

12. Do fathers get paternity leave?

No.

13. Must you be employed to get paternity leave? Is there an eligibility period?

N/A.

14. How many days of paternity leave is given?

N/A.

15. When can the paternity leave be taken?

N/A.

16. Is the paternity leave paid or unpaid? Please state how many days are paid and how many days are unpaid.

N/A.

SRI LANKA

17. Does the government pay for the paternity leave?

N/A.

18. Must the father be married to enjoy paternity leave?

N/A.

19. Please state the statute(s) / legal basis where paternity leave entitlement is found.

N/A.

20. Can a father on paternity leave be terminated?

N/A.

C. Adoption Leave Provisions

21. Do adoptive parents enjoy adoption leave? How many days of adoption leave is given?

No. N/A.

22. Must you be employed to get adoption leave?

N/A.

23. When can the adoption leave be taken?

N/A.

24. Is the adoption leave paid or unpaid? Please state how many days are paid and how many days are unpaid.

N/A.

25. Does the government pay for the adoption leave?

N/A.

26. Must the mother or father be married to enjoy adoption leave?

N/A.

SRI LANKA

27. Do you get adoption leave if you are a single parent?

N/A.

28. Would a same sex couple enjoy adoption leave?

N/A.

29. Please state the statute(s) / legal basis where adoption leave entitlement is found.

N/A.

30. Can a parent on adoption leave be terminated?

N/A.

D. Childcare Leave Provisions

31. Do parents get childcare leave?

No.

32. Must you be employed to get childcare leave?

N/A.

33. How many days of childcare leave is given?

N/A.

34. When can the childcare leave be taken?

N/A.

35. Is the childcare leave paid or unpaid? Please state how many days are paid and how many days are unpaid.

N/A.

36. Does the government pay for the childcare leave?

N/A.

SRI LANKA

37. Must the mother be married to enjoy childcare leave?

N/A.

38. Would a same sex couple enjoy childcare leave?

N/A.

39. Please state the statute(s) / legal basis where childcare leave entitlement is found.

N/A.

40. Can a parent on childcare leave be terminated?

N/A.

E. Other relevant issues / trends

41. Repercussions on the employer if it does not provide the statutory family leave entitlements.

As stated above, the only statutory "family" leave provided for is maternity leave. In terms of the MBO any employer who does not grant maternity benefits provided for would be guilty of an offence and, on conviction after summary trial before a Magistrate, would be liable to a fine not exceeding five hundred rupees. On conviction, the court may, in addition, order the employer to pay such sum as may be found to be due to the worker concerned, [section 16(1) (a) read with 16 (2)].

The S&OE A provides for a fine of the same amount or to imprisonment of either description for a period not exceeding six months or to both such fine and imprisonment, [Section 51 (1) - which applies generally to contraventions of the provisions of the Act, (barring three sections which have no relevance to maternity leave)].

42. Will any officers of the employer face personal liability for not ensuring that employees receive the statutory family leave entitlements?

There is no provision for this in the MBO. The S&OE A defines "employer" as meaning – in the case of a shop – its owner and including any person having the charge or the general management and control of it. In the case of an office, "employer" means the person carrying on, or for the time being responsible for the management of the business for the purposes of which the office is maintained.

43. Is the employment law landscape in your country generally pro-family or otherwise?

It is as pro-family as circumstances permit.

SRI LANKA

44. Do parents face any workplace discrimination for utilizing their family leave entitlements?

We are not aware of any such (generalised) discrimination and have no reason to believe that such occurs.

45. What is the legal recourse if an employee feels he/she has faced discrimination arising from taking family-related leave?

She could complain to the Commissioner of Labour, who in turn could endeavour to settle the matter [which would be an "industrial dispute"] by conciliation him/herself or refer it for such settlement by an authorised officer or – if both parties consent - refer the matter for settlement by [voluntary] arbitration to an arbitrator or body of arbitrators or to a labour tribunal. In the alternative, the Minister could refer the dispute for settlement by compulsory arbitration to an arbitrator or labour tribunal or to an industrial court. Any such arbitrator/body of arbitrators/labour tribunal/industrial court is required to make any order "award" that appears to him/her/it to be just and equitable.

46. What family friendly practices does your country practice? (e.g. flexible working hours, paid benefits not mandated by law).

Maternity leave, nursing intervals and not employing pregnant women for work which may be injurious to the mother or child [see next response].

47. Are there other benefits in addition to maternity leave? For e.g. leave entitlements relating to miscarriages, illness associated with the pregnancy or maternity, medical termination of pregnancies, etc.?

The services of an employee cannot be terminated by reason of her pregnancy or confinement or of any illness consequent on pregnancy or confinement.

An employee who gives notice that she expects to be confined within such period – not exceeding three months – from the date specified in the notice cannot be employed during that period on any work which may be injurious to her or the child.

48. Do mothers get paid nursing breaks? If so, what conditions apply?

Yes. If she is nursing a child of under one year of age, she would get two nursing intervals during a period of nine hours employment.

These must be of at least half an hour each where a creche or other suitable place is provided by the employer and of at least one hour where such place is not provided.

SRI LANKA

49. Are employers bound to provide crèche facilities? If so, must these be provided free of cost? Is there an age limit for children using the employer provided crèche facilities?

Generally, no. However, the MBO, [section 12A], read with the relevant regulation [8A] requires that any establishment not being a factory in which five or more "persons", [which should, in the light of section 12A, refer to women workers], are employed and which is engaged wholly or mainly in the engineering or building trade must establish and maintain a creche for children under five years of age and must allow a woman worker who has in her care one or more of such children, to leave such child or children in the creche during the time when she is required to work for her employer.

50. Are there any notable legal developments or upcoming developments to watch out for in the area of family related leave?

We are not aware of any.

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TAIWAN

A. Maternity Leave Provisions

1. What is your responding jurisdiction?

Taiwan (R.O.C.)

2. In the responding jurisdiction, do all expectant women, including surrogate mothers, get maternity leave?

Yes.

3. Must you be employed to get maternity leave? Is there an eligibility period?

Yes, you must be employed to get maternity leave. No, there is no eligibility period for maternity leave.

4. How many days of maternity leave is given?

- Before and after childbirth: For a combined period of eight weeks. ("type (1)")
- A miscarriage after being pregnant for three or more months: a maternity leave (miscarriage leave) for four weeks ("type (2)")
- A miscarriage after being pregnant for two or more months and less than three months: a maternity leave (miscarriage leave) for one week.
- A miscarriage after being pregnant for less than two months: a maternity leave (miscarriage leave) for five days.

5. When can the maternity leave be taken?

The employee is permitted to start her 8 weeks' maternity leave "4 weeks before the expected date of delivery at the earliest" and "the actual day of delivery at the latest".

6. Is the maternity leave paid or unpaid? Please state how many days are paid and how many days are unpaid.

Only type (1) maternity leave and type (2) maternity leave (miscarriage leave) under Question 4 above are paid.

The salary entitlements for the above two types of maternity leave are as follows:

- Employee who has been employed for six months or more: regular payment;
- Employee who has been employed for less than six months: half of the regular payment.

TAIWAN

7. Does the government pay for the maternity leave?

Yes, the government, in addition to a lump sum payment of "delivery expenses" according to the Labor Insurance System, will make a lump sum payment of "maternity benefit" equivalent to 60 days' salaries computed on the basis of the employee's average monthly insurance salary according to the Labor Insurance System.

In case of twins or more, delivery expenses and maternity benefit will be increased proportionately.

8. Must the mother be married to enjoy maternity leave?

No.

9. Please state the statute(s) / legal basis where maternity leave entitlement is found.

Article 15 of the Act of Gender Equality in Employment, Article 50 of the Labor Standards Act, and Article 37 of the Factory Act.

10. Can a pregnant employee or employee on maternity leave be terminated?

An employer shall not terminate the contract with an employee who has taken type (1) maternity leave or type (2) maternity leave (miscarriage leave) under Question 4 above, unless the employer cannot continue operating the business due to an act of God, catastrophe or other force majeure and a prior approval has been obtained from the competent authorities.

11. Is an employer bound to offer a returning employee the same job role/profile/wage after maternity leave?

Yes. In principle, the employer should offer the employee the same position and salary according to the employment agreement. If it is to be adjusted, as it is related to the amendment of the contract, consent must be given by the employee or a legal ground must be applicable to such amendment.

B. Paternity Leave Provisions

12. Do fathers get paternity leave?

Yes.

TAIWAN

13. Must you be employed to get paternity leave? Is there an eligibility period?

Yes. After being in service for six months, an employee may apply for paternity leave without pay before any of his/her children reach the age of three years old. The period of this leave may not exceed two years. When employee is raising two or more children at the same time, the period of his/her parental leave shall be computed aggregately and the maximum period shall be limited to two years received by the youngest child.

14. How many days of paternity leave is given?

Please refer to our response of Question 13.

15. When can the paternity leave be taken?

Please refer to our response of Question 13.

16. Is the paternity leave paid or unpaid? Please state how many days are paid and how many days are unpaid.

It is unpaid.

17. Does the government pay for the paternity leave?

Yes. The government will pay the "Parental Leave allowance" according to the Employment Insurance Act: The allowance is counted as 60% of the average monthly insurance salary for the 6 months period before the month the employee (insured person) starts taking the paternity leave.

During the employee's paternity leave, the allowance is granted every month and the maximum allowance period for each child is 6 months.

18. Must the father be married to enjoy paternity leave?

No.

19. Please state the statute(s) / legal basis where paternity leave entitlement is found.

Article 16 of the Act of Gender Equality in Employment, Article 19-2 of the Employment Insurance Act, and Regulations for Implementing Unpaid Parental Leave for Raising Children.

20. Can a father on paternity leave be terminated?

If the termination is in compliance with one of the statutory grounds stipulated in the Act of Gender Equality in Employment, and such termination neither involves gender discrimination, nor does it stipulate in the work rules or the employment agreement that parenting is a reason for dismissal, and

TAIWAN

with the consent of the competent authority, the employer may terminate the employment agreement. When an employment agreement is to be so terminated, the employer shall give a thirty day notice before dismissal in accordance with Article 17, Para. 2 of the Act of Gender Equality in Employment, and shall pay the severance payment or pension according to the statutory standard.

C. Adoption Leave Provisions

21. Do adoptive parents enjoy adoption leave? How many days of adoption leave is given?

Yes. After being in service for six months, the employee may apply for adoption leave without pay under the following conditions:

- Adopting children before the children reach the age of three years old: the employee may apply for adoption leave which may not exceed two years until his/her children reach the age of three years old; or
- An employee who has lived with adopted children prior to the adoption may apply for adoption leave without pay for "the period to be lived together before adoption".

The period of the type (1) adoption leave and type (2) adoption leave shall be computed aggregately and the maximum period shall be limited to two years.

22. Must you be employed to get adoption leave?

Yes.

23. When can the adoption leave be taken?

Please refer to our response of Question 21.

24. Is the adoption leave paid or unpaid? Please state how many days are paid and how many days are unpaid.

It is unpaid.

25. Does the government pay for the adoption leave?

The government will pay the "Parental Leave allowance" according to the Employment Insurance Act: The allowance is counted as 60% of the average monthly insurance salary for the 6 months period before the month the employee (insured person) starts the adoption leave. During the adoption leave period, the allowance is granted every month and the maximum allowance period for each child is 6 months.

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26. Must the mother or father be married to enjoy adoption leave?

No.

27. Do you get adoption leave if you are a single parent?

Yes.

28. Would a same sex couple enjoy adoption leave?

Yes. While the same-sex marriage has not been officially legalized in Taiwan, the right to apply for adoption leave for children including children born within wedlock, illegitimate children and adopted children, is protected under the laws and regulations regardless of the marriage status or sexual orientation of the adopted parents.

29. Please state the statute(s) / legal basis where adoption leave entitlement is found.

Article 16(3) of the Act of Gender Equality in Employment, and Article 12 of the Enforcement Rules for Act of Gender Equality in Employment.

30. Can a parent on adoption leave be terminated?

If the termination is in compliance with one of the statutory grounds stipulated in the Act of Gender Equality in Employment, and such termination does not involve gender discrimination or stipulation in the work rules or the employment agreement that parenting is a reason for dismissal and is granted approval from the competent authority, the employer may terminate the employment agreement.

When an employment agreement is to be so terminated, the employer shall give a thirty day notice before dismissal in accordance with Article 17, Para. 2 of the Act of Gender Equality in Employment, and shall pay the severance payment or pension according to the statutory to the standard.

D. Childcare Leave Provisions

31. Do parents get childcare leave?

Yes. For the purpose of taking care for family members who need inoculation, suffer serious illness or other major events that need to be handled in person, the employee may request childcare leave.

32. Must you be employed to get childcare leave?

Yes.

TAIWAN

33. How many days of childcare leave is given?

The number of this leave shall be incorporated into leave with personal cause (not exceeding fourteen days within a year) and shall not exceed seven days in one year.

34. When can the childcare leave be taken?

Please refer to our response of Question 31.

35. Is the childcare leave paid or unpaid? Please state how many days are paid and how many days are unpaid.

It is unpaid.

36. Does the government pay for the childcare leave?

No.

37. Must the mother be married to enjoy childcare leave?

No.

38. Would a same sex couple enjoy childcare leave?

Yes.

39. Please state the statute(s) / legal basis where childcare leave entitlement is found.

Article 20 of the Act of Gender Equality in Employment.

40. Can a parent on childcare leave be terminated?

The law does not prohibit or ban the Employer from terminating the employment agreement when the employee is on childcare leave.

In other words, if a situation indicated in the Labor Standards Act that allows the employer to terminate the contract occurs, the employer may terminate the employment even though the employee is on childcare leave.

However, please note that according to Article 21 of the Act of Gender Equality in Employment, the employer may not treat "employee's taking childcare leave" as a non-attendance and affect adversely the employee's full-attendance bonus payments, evaluation or take any action (due to the employee's taking childcare leave) that is adverse to the employee.

TAIWAN

E. Other relevant issues / trends

41. Repercussions on the employer if it does not provide the statutory family leave entitlements.:

Civil liability: The employer shall compensate the employee for damages; if employee's reputation has been damaged, the employee may claim for the restoration of reputations by proper measures.

Administrative Punishment: The labour authority will punish the employer (company) who doesn't provide the statutory family leave. The name of the employer (company) and the persons-in-charge will be put on public notice, and the employer will be ordered to rectify within a specified period of time.

For the employer who doesn't rectify within the specified period of time, it will be fined and punished consecutively for each violation after the aforementioned period expires.

42. Will any officers of the employer face personal liability for not ensuring that employees receive the statutory family leave entitlements?

No.

43. Is the employment law landscape in your country generally pro-family or otherwise?

The employment law landscape in our country is generally pro-family.

44. Do parents face any workplace discrimination for utilizing their family leave entitlements?

No, generally speaking.

45. What is the legal recourse if an employee feels he/she has faced discrimination arising from taking family-related leave?

The Ministry of Labor and the department of labor of local government have free labor law advisory hotlines and a counter for free labor legal service consultation.

The employee may file a complaint with the Gender Work Equality Commission of the local competent authority according to the law; if the employee is dissatisfied with the results, he/she may proceed to file an administrative remedy request.

When an employee files a lawsuit against the employer in violation of the Act of Gender Equality in Employment, the employee may apply for subsidy for relevant costs from the local competent authority.

TAIWAN

46. What family friendly practices does your country practice? (e.g. flexible working hours, paid benefits not mandated by law)

The Ministry of Labor provides "cross-border employment grants" for transportation and relocation, temporary work allowances, training and living allowances and related incentives for employment.

The Employment website of the Ministry of Labor has a women's section.

Local governments have different incentives for corporate pro-family measures to encourage enterprises to set up crèche facilities and geriatric caring services; the local governments expect enterprises to provide those facilities and services not only to employees but also to the surrounding citizens so that such facilities and services could become available public resources.

Each local government provides services such as childbirth allowances, childcare allowances, and geriatric caring services that are better than those provided by the central government.

There are also childcare services and geriatric caring services for women during secondary vocational training period.

The purpose of local government policies is to reduce the burden of the women who take on the role of family caregivers so that they can devote themselves to their careers.

47. Are there other benefits in addition to maternity leave? For e.g. leave entitlements relating to miscarriages, illness associated with the pregnancy or maternity, medical termination of pregnancies, etc.?

Leave for recuperating during pregnancy:

When a pregnant employee is diagnosed by a physician as pregnancy with threatened abortion and needs recuperation, she may take leave for recuperation.

Such leave shall be included to the hospitalized sick leave.

Where accounted ordinary sick leave does not exceed thirty days in one year, fifty percent of salary shall be paid; the employer has no duty to pay with regard to the sick leave exceeding thirty days in one year.

Leave for pregnancy check-ups:

During an employee's term of pregnancy, she is entitled to five days of leave for pregnancy check-ups. Regular wages shall be paid for pregnancy check-ups.

TAIWAN

Paternity leave:

When an employee's spouse is about to deliver a child/children, the employer shall grant the employee five days off as paternity leave. Regular wages shall be paid for paternity leave.

Miscarriage leave:

Please refer to our response of Question 4.

In addition to the statutory pay by the employer, the employee or his spouse has a miscarriage can apply for relevant payments in accordance with the Labor Insurance Act.

48. Do mothers get paid nursing breaks? If so, what conditions apply?

Yes. For an employee who needs to personally feed her babies who are less than two years old or need to collect breast milk, the employer shall provide her with the time for feeding or breast milk collection sixty minutes a day.

This is in addition to the regular rest period(s).

For an employee who works overtime for one 1 hour or more, the employer shall provide her an additional thirty minutes for feeding or breast milk collection.

The above time for feeding or breast milk collection shall be deemed as working time.

49. Are employers bound to provide crèche facilities? If so, must these be provided free of cost? Is there an age limit for children using the employer provided crèche facilities?

The employer having one hundred employees or more shall provide the following facilities and measures: breastfeeding (breast milk collection) rooms and childcare facilities or suitable childcare measures.

This includes co-organizing childcare measures or childcare services with other employers.

The employer can ask the employees to take on the cost of above mentioned services.

Yes. The employees' children who are less than twelve years old may use the childcare facilities and measures.

TAIWAN

50. Are there any notable legal developments or upcoming developments to watch out for in the area of family related leave?

In practice, because "family care leave" is unpaid leave, when an employee has the need of "family care", they will most likely ask for "paid" special leave instead of "unpaid" family care leave.

Therefore, the Department of Labor of the Taipei City Government has recommended that the Ministry of Labor should amend the law so that family care leave will become a paid leave or a leave paid by the "Employment Insurance Fund" to allow the employees to take care of the family and ensure economic security at the same time. However, at present, the relevant laws and regulations are not amended.

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THAILAND

A. Maternity Leave Provisions

1. What is your responding jurisdiction?

Thailand.

2. In the responding jurisdiction, do all expectant women, including surrogate mothers, get maternity leave?

Yes.

3. Must you be employed to get maternity leave? Is there an eligibility period?

Yes, you must be employed to get maternity leave, and all female employees are eligible upon commencing employment.

4. How many days of maternity leave is given?

Ninety days, with the first forty-five days paid by the employer.

5. When can the maternity leave be taken?

During and after pregnancy.

6. Is the maternity leave paid or unpaid? Please state how many days are paid and how many days are unpaid.

Forty-five days is paid leave by the employer and the remaining forty-five days are unpaid.

7. Does the government pay for the maternity leave?

No, although pregnant women are entitled to separate benefits from the government under the Thai social security system.

8. Must the mother be married to enjoy maternity leave?

No.

9. Please state the statute(s) / legal basis where maternity leave entitlement is found.

Sections 41 and 59 of the Labour Protection Act B.E. 2541 (1998).

THAILAND

10. Can a pregnant employee or employee on maternity leave be terminated?

No, under Section 43 of the Labour Protection Act an employer is prohibited from terminating a female employee because of her pregnancy.

11. Is an employer bound to offer a returning employee the same job role/profile/wage after maternity leave?

The employer is not bound to offer the same job role or profile to the returning employee, but may not reduce her wages or other benefits without the employee's consent.

B. Paternity Leave Provisions

12. Do fathers get paternity leave?

No.

13. Must you be employed to get paternity leave? Is there an eligibility period?

N/A.

14. How many days of paternity leave is given?

N/A.

15. When can the paternity leave be taken?

N/A.

16. Is the paternity leave paid or unpaid? Please state how many days are paid and how many days are unpaid.

N/A.

17. Does the government pay for the paternity leave?

N/A.

18. Must the father be married to enjoy paternity leave?

N/A.

THAILAND

19. Please state the statute(s) / legal basis where paternity leave entitlement is found.

N/A.

20. Can a father on paternity leave be terminated?

N/A.

C. Adoption Leave Provisions

21. Do adoptive parents enjoy adoption leave? How many days of adoption leave is given?

Thailand does not provide adoption leave to adoptive parents.

22. Must you be employed to get adoption leave?

N/A.

23. When can the adoption leave be taken?

N/A.

24. Is the adoption leave paid or unpaid? Please state how many days are paid and how many days are unpaid.

N/A.

25. Does the government pay for the adoption leave?

N/A.

26. Must the mother or father be married to enjoy adoption leave?

N/A.

27. Do you get adoption leave if you are a single parent?

N/A.

28. Would a same sex couple enjoy adoption leave?

N/A.

THAILAND

29. Please state the statute(s) / legal basis where adoption leave entitlement is found.

N/A.

30. Can a parent on adoption leave be terminated?

N/A.

D. Childcare Leave Provisions

31. Do parents get childcare leave?

No.

32. Must you be employed to get childcare leave?

N/A.

33. How many days of childcare leave is given?

N/A.

34. When can the childcare leave be taken?

N/A.

35. Is the childcare leave paid or unpaid? Please state how many days are paid and how many days are unpaid.

N/A.

36. Does the government pay for the childcare leave?

N/A.

37. Must the mother be married to enjoy childcare leave?

N/A.

38. Would a same sex couple enjoy childcare leave?

N/A.

THAILAND

39. Please state the statute(s) / legal basis where childcare leave entitlement is found.

N/A.

40. Can a parent on childcare leave be terminated?

N/A.

E. Other relevant issues / trends

41. Repercussions on the employer if it does not provide the statutory family leave entitlements.

An employer which terminates a female employee because of her pregnancy may be subject to a fine of up to 100,000 Thai Baht.

An employer which fails to provide a pregnant female employee with 45 days' paid leave may be subject to a fine of up to 20,000 Thai Baht.

42. Will any officers of the employer face personal liability for not ensuring that employees receive the statutory family leave entitlements?

The directors of an employer which terminates a female employee because of her pregnancy may be subject to imprisonment of up to six months.

43. Is the employment law landscape in your country generally pro-family or otherwise?

The landscape is generally pro-family with respect to maternity leave but not with respect to the other types of family leave mentioned in this survey.

44. Do parents face any workplace discrimination for utilizing their family leave entitlements?

As maternity leave is the only type of family leave available under Thai law, a female employee may face diminished prospects for promotion and may be given a lower position or profile with the employer

However, the employer may not reduce her wages or other benefits without the employee's consent.

THAILAND

45. What is the legal recourse if an employee feels he/she has faced discrimination arising from taking family-related leave?

The employee may submit a complaint to the labour inspector for the locality in which the employee works or in which the employer is domiciled, in which case the inspector is required to carry out an investigation and issue an order within 60 days.

If either party is not satisfied with the order, the matter may be brought before a Thai labour court specializing in employment matters.

Alternatively, an employee may submit a claim directly with a Thai labour court.

46. What family friendly practices does your country practice? (e.g. flexible working hours, paid benefits not mandated by law)

Employers are granted wide latitude in providing employees with flexible work hours and additional paid benefits not required under Thai labour law.

In many cases, an employer with operations in Thailand will offer the same benefits as provided to employees in the home jurisdiction, and there is a move towards implementing family friendly policies beyond those mandated under Thai law, especially among multinationals with operations in Thailand.

47. Are there other benefits in addition to maternity leave? For e.g. leave entitlements relating to miscarriages, illness associated with the pregnancy or maternity, medical termination of pregnancies, etc.?

Employees are granted up to 30 days' paid leave for illness provided that the employer may request a medical certificate from a medical practitioner or from a government clinic for any absence consisting of three or more consecutive days.

48. Do mothers get paid nursing breaks? If so, what conditions apply?

No, although mothers may nurse during the breaks normally provided to employees in general during the working day.

49. Are employers bound to provide crèche facilities? If so, must these be provided free of cost? Is there an age limit for children using the employer provided crèche facilities?

There is no requirement for employers to provide crèche facilities for employees.

THAILAND

50. Are there any notable legal developments or upcoming developments to watch out for in the area of family related leave?

In 2012, the Thai cabinet approved a 15-day paid paternity leave period for state officials and employees taken within the first 30 days after the birth of a child, however the cabinet approval has not yet become law.

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VIETNAM

A. Maternity Leave Provisions

1. What is your responding jurisdiction?

Vietnam.

2. In the responding jurisdiction, do all expectant women, including surrogate mothers, get maternity leave?

Yes, pregnant woman, including surrogate mothers, are female employees who can get maternity leave.

3. Must you be employed to get maternity leave? Is there an eligibility period?

Yes, in order to get maternity leave, Vietnamese women must be employed in Vietnam on the basis of an indefinite-term contract, a definite-term contract, a seasonal contract or a contract for a specific job (which is for less than 12 months) or female employees must be working under an employment contract with a term of between one and three months. Also, female employees must have paid social insurance premiums for at least 6 full months within 12 months before childbirth.

4. How many days of maternity leave is given?

The regulatory period of maternity leave is 6 months, equivalent to 180 days.

5. When can the maternity leave be taken?

Maternity leave can start at a maximum of two (2) months prenatal leave.

6. Is the maternity leave paid or unpaid? Please state how many days are paid and how many days are unpaid.

In Vietnam, the entire period of maternity leave is paid. The monthly allowance must equal 100% of the average of salaries of 6 months preceding the leave on which social insurance premiums are based.

7. Does the government pay for the maternity leave?

Yes, Vietnam Social Security, directly under the government of Vietnam, uses the social insurance fund to pay for maternity leave.

8. Must the mother be married to enjoy maternity leave?

No, marriage is not one of the conditions for the mother to enjoy the maternity leave regime.

VIETNAM

9. Please state the statute(s) / legal basis where maternity leave entitlement is found.

Law on social insurance No. 58/2014/QH13 dated 20 November 2014 issued by the National Assembly of Vietnam ("Law on social insurance"); Labour code No. 10/2012/QH13 dated 18 June 2012 issued by the National Assembly of Vietnam ("Labour Code") and their amendments and instructions.

10. Can a pregnant employee or employee on maternity leave be terminated?

No, an employer is not permitted to unilaterally terminate the labour contract of a female employee due to her pregnancy or her being on maternity leave.

11. Is an employer bound to offer a returning employee the same job role/profile/wage after maternity leave?

Yes, a female employee shall be guaranteed their old job on returning to work on expiry of the maternity leave period.

If a female employee's old job is no longer available, the employer must arrange another job for the female employee with a wage rate not lower than the wage rate prior to the female employee taking maternity leave.

B. Paternity Leave Provisions

12. Do fathers get paternity leave?

Yes, but only male employees can get paternity leave.

13. Must you be employed to get paternity leave? Is there an eligibility period?

Yes, Vietnamese men must be employed in Vietnam on the basis of an indefinite-term contract, a definite-term contract, a seasonal contract or a contract for a specific job (which is for less than 12 months) or male employees working under employment contracts with a term of between one and three months.

Also, male employees must have paid social insurance premiums for at least 6 full months within 12 months before childbirth.

14. How many days of paternity leave is given?

Male employees currently paying a social insurance premium, whose wives give birth to children, are entitled to paternity leave of:

- 5 working days;

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- 7 working days, in case their wives undergo a surgical birth or give birth to children before 32 weeks of pregnancy;
- 10 working days, in case their wives give birth to twins; or additional 3 working days for each infant from the second; or
- 14 working days, in case their wives give birth to twins or more infants and undergo childbirth operation.

15. When can the paternity leave be taken?

Paternity leave must be within the first 30 days after the date of childbirth.

16. Is the paternity leave paid or unpaid? Please state how many days are paid and how many days are unpaid.

In Vietnam, the entire period of paternity leave is paid. The per-diem allowance for paternity leave must equal the monthly maternity allowance divided by 24 days whereas the monthly allowance must equal 100% of the average of salaries of 6 months preceding the leave on which social insurance premiums are based.

17. Does the government pay for the paternity leave?

Yes, Vietnam Social Security directly under the government of Vietnam uses the social insurance fund to pay for the paternity leave.

18. Must the father be married to enjoy paternity leave?

Yes, marriage is required for a father to enjoy paternity leave. This requires a man and woman establishing that they are husband and wife according to Vietnamese law.

19. Please state the statute(s) / legal basis where paternity leave entitlement is found.

Law on social insurance; Labour Code; Law on marriage and family and their amendments and instructions.

20. Can a father on paternity leave be terminated?

No, an employer is not permitted to unilaterally terminate a labour contract in the case that a male employee is on leave pursuant to the regime on paternity leave prescribed in the Law on social insurance.

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C. Adoption Leave Provisions

21. Do adoptive parents enjoy adoption leave? How many days of adoption leave is given?

Yes, but only parents adopting children younger than 6-months old may enjoy adoption leave, if such parents have paid social insurance premiums for at least 6 full months within 12 months before child adoption.

22. Must you be employed to get adoption leave?

Yes, in order to get adoption leave, parents must be employed in Vietnam on the basis of an indefinite-term contract, a definite-term contract, a seasonal contract or a contract for a specific job (which is for less than 12 months) or employees working under employment contracts with a term of between one and three months.

23. When can the adoption leave be taken?

Employees adopting an under-6-month child are entitled to adoption leave until the child reaches 6-months old. If both parents are covered by social insurance and fully satisfy the conditions for enjoying the adoption leave regime, either only the father or only the mother is entitled to adoption leave.

24. Is the adoption leave paid or unpaid? Please state how many days are paid and how many days are unpaid.

Yes, the entire period of adoption leave is paid. The allowance level after child adoption shall be calculated based on the monthly allowance equal to 100% of the average of salaries of 6 months preceding the leave on which social insurance premiums are based; in case of odd days, the per-diem allowance must equal the monthly allowance divided by 30 days.

25. Does the government pay for the adoption leave?

Yes, Vietnam Social Security directly under the government of Vietnam uses the social insurance fund to pay for the adoption leave.

26. Must the mother or father be married to enjoy adoption leave?

No, marriage is not one of the conditions for the mother or the father to enjoy adoption leave.

27. Do you get adoption leave if you are a single parent?

Yes, but only female employees can get adoption leave if they are a single mother.

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28. Would a same sex couple enjoy adoption leave?

No, it has yet to be regulated under Vietnamese law.

29. Please state the statute(s) / legal basis where adoption leave entitlement is found.

Law on social insurance; Labour Code; Law on marriage and family and their amendments and instructions.

30. Can a parent on adoption leave be terminated?

No, an employer is not permitted to unilaterally terminate a labour contract in the case that the employee is on leave pursuant to the regime on parental leave prescribed in the Law on social insurance.

D. Childcare Leave Provisions

31. Do parents get childcare leave?

Yes, parents can get childcare leave to care for a sick child under the Law on social insurance.

32. Must you be employed to get childcare leave?

Yes, in order to qualify for childcare leave parents must be employed in Vietnam on the basis of an indefinite-term contract, a definite-term contract, a seasonal contract or a contract for a specific job (which is for less than 12 months) or employees working under employment contracts with a term of between one and three months.

33. How many days of childcare leave is given?

The amount of days of childcare leave available in a year shall be calculated based upon the number of days required to care for the sick child, which must not exceed 20 working days, if the child is under 3 years old, or must not exceed 15 working days, if the child is between 3 years and under 7 years old. Childcare leave is not available for parents who have children over 7 years old.

If both parents are covered by social insurance, either the father or the mother only is entitled to childcare leave.

34. When can the childcare leave be taken?

The period of leave depends on the sickness of the child and will be counted in working days, excluding public holidays, New Year holidays and weekends. This period of time is calculated from 01/01 to 31/12 of the calendar year, regardless of the time that the employee started contributing to social insurance.

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35. Is the childcare leave paid or unpaid? Please state how many days are paid and how many days are unpaid.

Childcare leave is partly paid. 75% of the monthly salary for the duration of the childcare leave is paid, and it is calculated as follows:

- Rate of entitlement to sickness benefits = Monthly salary paid for the social insurance of the preceding month before leave x 75 (%) x Number of days of leave entitled to sickness benefits;
- 24 days.

36. Does the government pay for the childcare leave?

Yes, Vietnam Social Security directly under the government of Vietnam uses the social insurance fund to pay for childcare leave.

37. Must the mother be married to enjoy childcare leave?

No, it is not required under Vietnamese law.

38. Would a same sex couple enjoy childcare leave?

No, it has yet to be regulated under Vietnamese law.

39. Please state the statute(s) / legal basis where childcare leave entitlement is found.

Law on social insurance; Labour Code and their amendments and instructions.

40. Can a parent on childcare leave be terminated?

No, an employer is not permitted to unilaterally terminate a labour contract in the case that the employee is on leave pursuant to the regime on parental leave prescribed in the Law on social insurance.

E. Other relevant issues / trends

41. Repercussions on the employer if it does not provide the statutory family leave entitlements.

If the employer does not provide the statutory family leave entitlements, it would be subject to an administrative fine under Vietnamese law and the employees could take legal action against the employer.

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42. Will any officers of the employer face personal liability for not ensuring that employees receive the statutory family leave entitlements?

No, they will not.

43. Is the employment law landscape in your country generally pro-family or otherwise?

No, it is not pro-family.

44. Do parents face any workplace discrimination for utilizing their family leave entitlements?

No, they do not.

45. What is the legal recourse if an employee feels he/she has faced discrimination arising from taking family-related leave?

Law on social insurance; Labour Code; Law on marriage and family and their amendments and instructions.

46. What family friendly practices does your country practice? (e.g. flexible working hours, paid benefits not mandated by law)

It depends on the internal policies of each company.

47. Are there other benefits in addition to maternity leave? For e.g. leave entitlements relating to miscarriages, illness associated with the pregnancy or maternity, medical termination of pregnancies, etc.?

Yes. There are leave entitlements for female employees who attend a pregnancy examination; undergo an abortion including suction and curettage, have medical treatment for a miscarriage, or for various family planning purposes, etc.

48. Do mothers get paid nursing breaks? If so, what conditions apply?

Yes. A female employee is entitled to a break of sixty (60) minutes per day, during the period of nursing a child under twelve (12) months old), and shall still receive the same wage pursuant to her labour contract.

49. Are employers bound to provide crèche facilities? If so, must these be provided free of cost? Is there an age limit for children using the employer provided crèche facilities?

No, employers are not required to provide crèche facilities.

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50. Are there any notable legal developments or upcoming developments to watch out for in the area of family related leave?

No, there are not.

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