

# FAMILY FRIENDLY RIGHTS

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Germany scores well on family friendliness in the workplace. Statutory maternity and parental leave rights provide for a rather complex structure of maternity leave (*Mutterschutz*), parental leave (*Elternzeit*), parental benefits (*Elterngeld*) and other rights. This Q&A two-page document gives an overview of the most important family friendly rights in Germany.

## 1. What are the rights for pregnant women and women who have recently given birth?

The German Maternity Protection Act (*Mutterschutzgesetz*) serves to protect the health of pregnant women and women who have recently given birth as well as the health of their (unborn) children. Pregnant women in Germany are entitled to maternity leave of six weeks before and eight weeks after childbirth. In cases of multiple or premature births or the birth of a disabled child, the eight-week period is extended to twelve weeks. Maternity leave before childbirth does not apply if the pregnant employee has explicitly expressed that she does not want to use the leave.

## 2. Do mothers receive a salary during their maternity leave?

Yes, during maternity leave employees get paid by their health insurance and are entitled to additional pay from their employer to raise their health insurance allowance up to their base salary, which is calculated from their salary for the last three calendar months. In addition, to ensure a salary for the employee outside the protected periods before and after childbirth, the employer shall pay maternity protection salary in cases where the employee cannot work due to health reasons.

## 3. Who is entitled to parental leave and for how long?

Parents, no matter what gender, are entitled to up to 36 months of statutory parental leave according to the Federal Parental Benefits and Parental Leave Act (*Bundeselterngeld- und Elternzeitgesetz*). Up to 24 months can also be claimed between the child's third and eighth birthday. Under certain conditions, employees may also be entitled to parental leave for children who are not their biological children.

## 4. Must the employer continue paying employee's salary during parental leave?

No. During parental leave, the employment relationship is suspended. The employee does not need to work and the employer does not need to pay the salary. Rather, parental leave is funded by the government. During the child's first twelve months, at least one of the child's parents can generally receive parental benefits by the state authorities in the amount of 67% of the average net income over the previous twelve months and subject to a maximum, which is currently EUR 1,800 per month. If both parents take parental leave for at least two months each, the parental benefits are extended for an additional two months so that parental benefits could be received for 14 months.

## 5. What is Parental Allowance Plus (*ElterngeldPlus*)?

Employees can also choose to receive half of the parental benefits over a longer period of 24 months. Parental Allowance Plus is furthermore supplemented by the *Partnerschaftsbonus*

(Partnership Bonus). If both parents work between 24 and 32 hours a week for a period of four consecutive months, they each receive four additional months of Parental Allowance Plus. Therefore, the so-called *ElterngeldPlus* could be particularly interesting for parents if they want to work part-time during their parental leave.

## 6. Can employees work part-time during parental leave, if so, what are the requirements?

Yes, employees can work part-time during parental leave. It is not required that employees stay at home throughout parental leave. Among other requirements, part-time work during parental leave is possible for employees who have been continuously employed for at least six months if at least 15 employees are employed at the company. In this case, employees are even entitled to request the reduction of their working time and work up to 30 hours per week during their parental leave. Employers can only reject the claim if urgent operational reasons oppose this. Furthermore, employees need to notify the employer of the desired reduction of their working time in writing at least seven weeks before the commencement of the reduced working time. If the working time reduction lies between the third and eighth birthday of the child, the notification is required 13 weeks before its commencement.

## 7. What must be observed when applying for parental leave and can it be rejected by the employer?

Parental leave must be applied for to the employer in writing at least seven weeks before the start date for the period up to the child's third birthday and at the latest 13 weeks before the start date for the period between the child's third and eighth birthday. The employer's consent is not required, this means the employer cannot reject the application for parental leave. The application to the employer merely serves to provide a clear situation for both parties. The start of the parental leave must be specifically stated in the application. Parental leave can only be terminated prematurely with the employer's consent.

## 8. What about dismissal protection during parental leave and maternity leave?

The statutory special dismissal protection applies from the time the employee claims parental leave but not earlier than eight weeks prior to the start of the parental leave. The protection ends with the end of the parental leave. Regardless of parental leave, special dismissal protection also applies during pregnancy and until four months after childbirth if the employer was aware of the pregnancy or childbirth at the time of the termination or is notified within two weeks of receipt of the termination. Special dismissal protection means that employees can only be dismissed with the prior consent of the competent authority. Otherwise, the termination will be considered invalid. In practice, the public authorities only grant such consent under exceptional circumstances.

## 9. Is it possible to grant employees additional company-funded parental leave?

Yes, voluntary granting of additional parental benefits could, however, lead to financial disadvantages for the employee with regard to the state benefits as any such payments by the employer would have to be set off. Multinationals should review such additional benefits and consider alternative structures to make sure the employees receive these benefits in full.

## 10. What happens to the vacation entitlement during parental leave?

For each full calendar month of parental leave, the employer has the right to reduce the employee's annual vacation entitlement by one-twelfth. If the parental leave is only for a part of a calendar month, then the annual vacation entitlement cannot be reduced. It should be noted that there is no automatic reduction of vacation. Rather, the employer must express to the employee that the vacation will be reduced. This can be done by an informal declaration.

## 11. What options does an employee have who has family members in need of care?

In cases where the employee must organize care for a close relative or must provide care independently in the home environment, caregiver leaves may be considered. German law provides for several leave entitlements if an employee must provide care to a close relative. The Nursing Care Leave Act (*Pflegezeitgesetz*) and the Family Nursing Care Leave Act (*Familienpflegezeitgesetz*) provide a legal framework for balancing family care and employment.

A person is in need of care if they have health-related issues that impede their ability to independently care for themselves. In order to be entitled to take advantage of the caregiver leave, the employee applying for the leave must provide a medical certificate that verifies that the person in question is actually in need of care.

## 12. For how long can an employee take caregiver leaves?

According to the Nursing Care Leave Act (*Pflegezeitgesetz*), employees may request a short-term leave for up to ten days from work in order to organize or assure required nursing care for a close relative who is in urgent need of care. This leave entitlement is not primarily aimed to provide care but rather to create the framework for the care that will be provided (or is expected to be provided) on a permanent basis.

Furthermore, in companies with more than 15 employees, employees are entitled to long-term leave of up to six months to provide nursing care to close relatives. An employee who wants to claim the leave must notify the employer in writing no later than ten working days before the start date and at the same time declare for what period and to what extent the leave is to be taken.

In companies with more than 25 employees, reduction of working time for up to 24 months is possible according to the Family Nursing Care Leave Act (*Familienpflegezeitgesetz*). The reduced working time must be at least 15 hours per week.

## 13. Are employees protected against dismissal during caregiver leaves?

Yes, employees enjoy special dismissal protection beginning from the announcement of the caregiver leave, but no more than twelve weeks before the announced start date, until the end of the caregiver leave. In special cases, a dismissal may be permissible with the prior consent of the competent authority.

## 14. Must the employer continue remuneration during the caregiver leave?

Employers are not obliged to continue remuneration during the caregiver leave. The short-term leave (up to ten days) is paid upon application by the statutory nursing care insurance (*Pflegeversicherung*) in the amount of 90% of the lost net salary. The daily allowance may not exceed the daily income threshold applicable for the statutory health insurance (for 2021 EUR 161.25 per day). In cases of long-term leave, an interest-free loan can be applied for from the Federal Office for Family and Civil Society Tasks (*Bundesamt für Familie und zivilgesellschaftliche Aufgaben*).



## 15. Do employees have to show up at work if their child is sick?

Parents shall not lose out financially if they have to take time off work when their kids fall ill. All parents in Germany are legally entitled to take time off work to take care of their sick child at home. If the time off is for a non-significant period of time, the employer must generally continue paying the salary because the illness of the child constitutes a valid personal reason for not being at work.

If the employer does not continue paying the salary, the statutory health insurance company will pay out a child sickness benefit. According to social regulations, each parent of a child up to twelve years old with statutory health insurance has the right to stay home for ten days per year to take care of their sick child while being entitled to a compensation by the statutory health insurance (additional days off are possible in 2021 due to updated COVID-19 regulations). The days can be transferred to their partner but cannot exceed 20 days in total per year. For two children each parent gets 20 days. For three or more children each parent gets 25 days while single parents have a limit of 50 days total.

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