

12. Maternity leave

INTRODUCTION

Since April 29, 1999 pregnant female employees are, according to article 1614ca of the Civil Code, entitled to a leave of work with pay; the so-called maternity leave (pregnancy and maternity).

The purpose of this maternity leave is: to protect and guarantee the safety, the health and the well-being of the female employee and the (unborn) child.

With this regulation in the Civil Code, St Maarten has introduced a minimum legal maternity leave for all female employees, irrespective of the height of their income.

Furthermore, the present regulation in the Sickness Insurance Ordinance supplements the one in the Civil Code. If an employee is insured through the S.Z.V. 80% of the wage will be paid to the employer by the S.Z.V. during the leave.

DURATION OF THE LEAVE

The employees are entitled to a full paid leave of a minimum of 4 and a maximum of 6 weeks before the estimated delivery date ('pregnancy leave') and to a minimal of 6 and a maximum of 8 weeks after the birth ('maternity leave').

The moment the 'pregnancy leave' begins - the beginning of the leave is to be chosen by the employee - one takes into account how many weeks are before the estimated delivery date (this date must be ascertained by the doctor, obstetrician or specialist): if this is 6 weeks then the employee is entitled to 6 weeks of 'maternity leave', if it is 5 weeks then the employee is entitled to 7 weeks of 'maternity leave' and in case of 4 weeks then she is entitled to 8 weeks. The employee cannot take less than 4 weeks of 'pregnancy leave', meaning that the 'maternity leave' has a duration of not more than 8 weeks.

Too early or too late childbirth:

If the actual duration of the 'pregnancy leave' is less than or more than the planned leave, because the actual childbirth occurs before or after the estimated delivery date, this will have influence on the duration of the 'maternity leave'. This means that because of the actual moment of the

childbirth the final duration of the 'pregnancy leave' and 'maternity leave' calculated together can be more or less than 12 weeks.

EXAMPLE 1 (premature childbirth – less than 12 weeks leave)

- Estimated delivery date: 16th February
- Choice made by female employee for pregnancy leave four weeks prior to estimated date: 19th January
- Actual date of birth: 8th February
- Entitled to eight weeks maternity leave from 8th February until 5th April

Explanation: the female employee has decided to take four weeks of pregnancy leave (before childbirth), and in consequence the maximum eight weeks of maternity leave (after birth). The actual childbirth takes place one week early. The mother is entitled to eight weeks maternity leave (after birth). In this case the week or days of pregnancy leave that have not been used as such cannot be transferred to maternity leave (after birth) since maternity leave cannot be longer than eight weeks. As a result the total period in this example is eleven weeks.

EXAMPLE 2 (premature childbirth and still 12 weeks leave)

- Estimated delivery date: 1st July
- Choice of female employee for pregnancy leave of five weeks before: 27th May
- Actual date of birth: 24th June
- Entitled to eight weeks maternity leave from 24th June until 19th August

Explanation: the female employee has decided to take five weeks of pregnancy leave; in this case maternity leave will be seven weeks. However the actual birth takes place one week early. The mother in this case is entitled to eight weeks maternity leave because pregnancy and maternity leave may have a total duration of a maximum of 12 weeks.

EXAMPLE 3 (late childbirth – more than 12 weeks leave)

- Estimated delivery date: 19th October
- Choice of female employee for pregnancy leave of six weeks before: 7th September
- Actual date of birth: 27th October
- Entitled to six weeks maternity leave from 27th October until 8th December

Explanation: the female employee has decided for six weeks of pregnancy leave, resulting in the minimum of six weeks of maternity leave. The actual childbirth takes place one week later than the estimated date of delivery. As a result the mother is still entitled to the minimum period of six weeks maternity leave after childbirth, notwithstanding the real period of pregnancy leave (of seven weeks). The total period of combined leave comes to 13 weeks.

The minimal duration of 'pregnancy leave' and 'maternity leave' prescribed by the law is compulsory law meaning that no deviation at the expense of the female employee is allowed. The employer and the employee can by mutual agreement agree upon longer periods.

DISMISSAL DURING MATERNITY LEAVE

The employer **cannot dismiss** an employee who is on maternity leave (see folder "employer and dismissal" and "employee and dismissal").