

LA BAJA POR PATERNIDAD SE AMPLÍA A CINCO SEMANAS DESDE EL 5 DE JULIO DE 2018

Una de las principales novedades que incorpora la Ley de Presupuestos Generales del Estado para 2018 es la ampliación de la baja de paternidad hasta 5 semanas (hasta el momento el permiso tenía una duración de 4 semanas), que será aplicable para los progenitores cuyos hijos nazcan o sean adoptados a partir del 5 de julio de 2018 (inclusive) .

A partir del 5 de julio de 2018, la baja por paternidad se regula del siguiente modo:

- El período de baja paternal es independiente y acumulable con el permiso retribuido de dos días por nacimiento de hijo previsto en el art. 37.3.b del Estatuto de los Trabajadores (cuatro días si el trabajador necesitase realizar un desplazamiento). El inicio del permiso debe coincidir con la fecha del nacimiento del hijo, siempre y cuando se produzca en día laborable. En caso contrario, el permiso no se inicia hasta el primer día laborable que le siga (STS 13-2-2018, Rº 266/2016).
- Las cinco semanas de duración de la baja por paternidad son ampliables en dos días más por cada hijo a partir del segundo en los supuestos de nacimiento múltiple.
- La baja por paternidad es independiente del disfrute compartido de los períodos de descanso por maternidad.
- En el supuesto de nacimiento biológico, la baja por paternidad corresponde en exclusiva al otro progenitor, que podrá disfrutarla durante el período comprendido desde la finalización del permiso por nacimiento de hijo hasta que termina la baja por maternidad (cuya duración general es de 16 semanas) o inmediatamente después de la baja por maternidad.
- La baja por paternidad debe disfrutarse de forma ininterrumpida. No obstante, ahora se permite que la última semana se disfrute de forma independiente en otro momento, dentro de los nueve meses siguientes a la fecha de nacimiento del hijo, o de la resolución judicial o de la decisión administrativa por la que se constituya la adopción. Esta posible interrupción exige la concurrencia de los siguientes requisitos: a) que haya acuerdo entre la empresa y el trabajador; y b) que dicho acuerdo se adopte al inicio del período de suspensión. En el supuesto de que la baja por paternidad se disfrute de forma ininterrumpida, la prestación de la Seguridad Social no se recalculará, sino que se seguirá percibiendo en la cuantía que hubiera correspondido durante la primera fracción del descanso (art. 185 LGSS).
- La baja por paternidad podrá disfrutarse en régimen de jornada completa o jornada parcial de un mínimo del 50 por ciento.

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PATERNITY LEAVE HAS BEEN INCREASED TO FIVE WEEKS, AS OF 5 JULY 2018

One of the main changes included in the National Budget Act for 2018 is the increase in paternity leave (from 4 to 5 weeks). It will be applicable to parents whose children are born or are adopted after 5 July 2018 (inclusive).

As of 5 July 2018, paternity leave is regulated as follows:

- Paternity leave is independent and can be taken in addition to the two-day paid leave of absence for childbirth that is established under art. 37.3.b of the Labour Act (four days if the employee must travel). The leave must start on the date the child was born, provided that the birth takes place on a business day. If it does not, the leave will begin on the next business day thereafter (Supreme Court Judgment dated 13 February 2018, no. 266/2016).
- In cases of multiple births, the five-week paternity leave can be increased by two days per child, as from the second child.
- Paternity leave is counted separately from the periods of shared maternity leave.
- In the case of biological births, paternity leave may only be enjoyed by the other parent, who may take it from the end of the leave of absence for childbirth to the end of the mother's maternity leave (which is normally 16 weeks), or it may be taken immediately after the mother's maternity is over.
- Paternity leave should be taken in a continuous, uninterrupted manner. However, it is now allowed to take the last week of the leave separately, at a different time, within the first nine months after the child is born (or after the relevant court or administrative decision is issued for the adoption). To take this week of leave later, two requirements must be met: a) that the company and the employee reach an agreement; and b) that said agreement is established at the beginning of the initial period for taking the leave. In cases where paternity leave is taken in two parts, the employee's Social Security benefits will not be recalculated and they will continue to receive the amount they were entitled to during the first part of the leave (art. 185 Social Security Act).
- Paternity leave may be taken on a full-time basis or on a part-time basis equivalent to at least 50% of full-time hours.

The content of this alert is intended for information purpose only. All decisions or acts based on the above should be subject to appropriate professional advice.

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