

# 2021 Amendments to the Childcare and Family Care Act

In June of 2021, the Act on Childcare Leave, Caregiver Leave, and Other Measures for the Welfare of Workers Caring for Children or Other Family Members (the “Act”) was amended to help support employees and prevent men and women from leaving the workplace. This guide outlines these revisions.

## Major Changes Due to the Amendments

The major revisions due to the 2021 amendments to the Act are as follows:

1. *Added Childcare Leave After Birth*: Established a framework for flexible childcare leave immediately following the birth of a child.
2. *Amendments to Standard Childcare Leave*: Revised standard childcare leave to allow standard childcare leave to be taken in installments and revised standard childcare leave after the age of one to be more flexible.
3. *Amendments Affecting Fixed-Term Employees*: Revised standard childcare leave and family care leave to relax requirements for taking these types of leave for fixed-term employees.
4. *Imposing Obligations on Employers*: Imposing obligations on employers to improve the employment working environment as well as create an obligation that employers disclose to employees the statistics on employees within the company utilizing childcare leave.

## Childcare Leave After Birth and Standard Childcare Leave

The biggest change to the Act was the establishment of a new type of childcare leave known as Childcare Leave After Birth. This leave is a type of leave that is being established in addition to the Standard Childcare Leave that is already in effect. In addition, to the establishment of this new type of childcare leave, several amendments were made to the Standard Childcare Leave available to employees.

### *Childcare Leave After Birth: Paid Leave?*

The Act does not require that Childcare Leave After Birth be paid. Thus, a company can, at its discretion, choose whether or not Childcare Leave After Birth will be paid.

## Summary of Changes to Childcare Leave

	Childcare Leave After Birth <i>Added after Amendment Separate from Standard Childcare Leave</i>	Standard Childcare Leave <i>After Amendment</i>	Standard Childcare Leave <i>Current</i>
Number of Days Available during Target Period	4 standard weeks taken within the first 8 weeks after birth or adoption of a child.	In principle, up to 1 year of age (Extendable up to age 2) <i>(No change)</i>	In principle, up to 1 year of age (Extendable up to age 2)
Application Deadline	Application to be submitted up to 2 weeks before taking the leave.  (With a labor management agreement this period can be extended up to 1 month before)	In principle, up to 1 month before taking the leave. <i>(No change)</i>	In principle, up to 1 month before taking the leave.
Ability to Take in Installments	May be taken in 2 installments (Request for both installments must be made at the same time before the leave begins)	May be taken in 2 installments	In principle, taking the leave in installments not allowed
Ability to Work During the Leave	May work during the leave to the extent agreed upon but <b>only if a labor management agreement exists</b>	In principle, not allowed	In principle, not allowed
Extendable Beyond 1 Year of Age	Not available	Start date for extension is flexible	Start date for extension must be from the day the child turns 1 year of age up to 1.5 years of age.
Reacquired Beyond 1 Year of Age	Not available	Can be reacquired in special circumstances	Not allowed

### Working during Childcare Leave after Birth

An employee may offer to do work during Childcare Leave after Birth, and the employer and employee can agree to the conditions of the work done during Childcare Leave after Birth. The general process for arranging the working conditions during Childcare Leave after Birth is as follows:

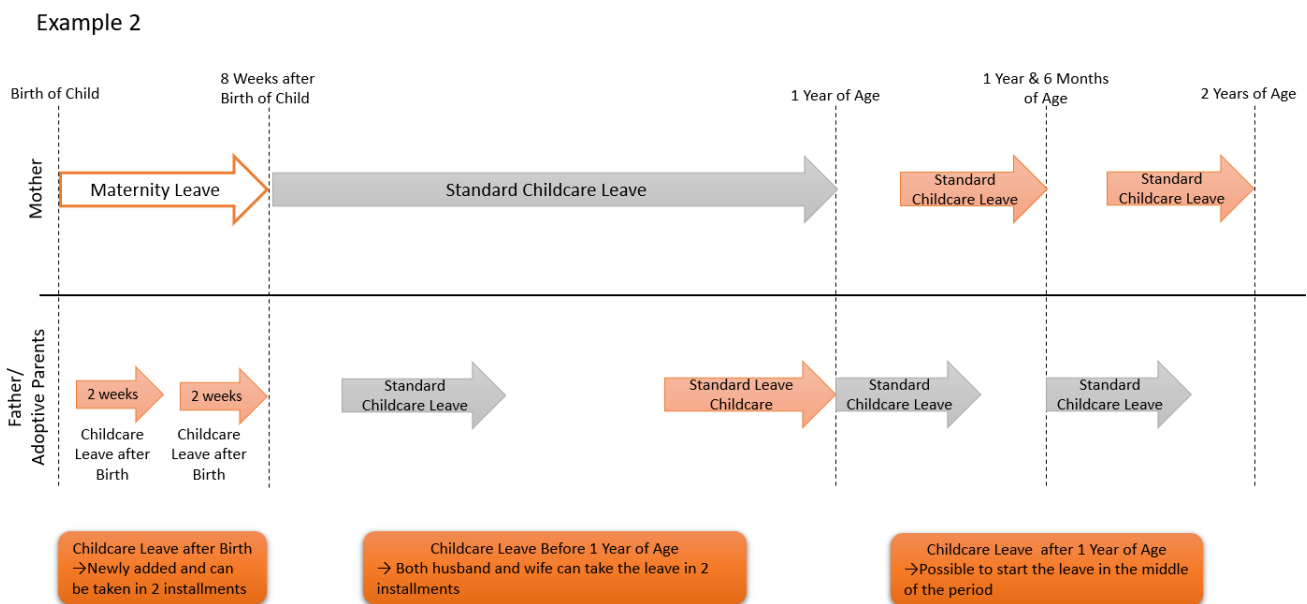
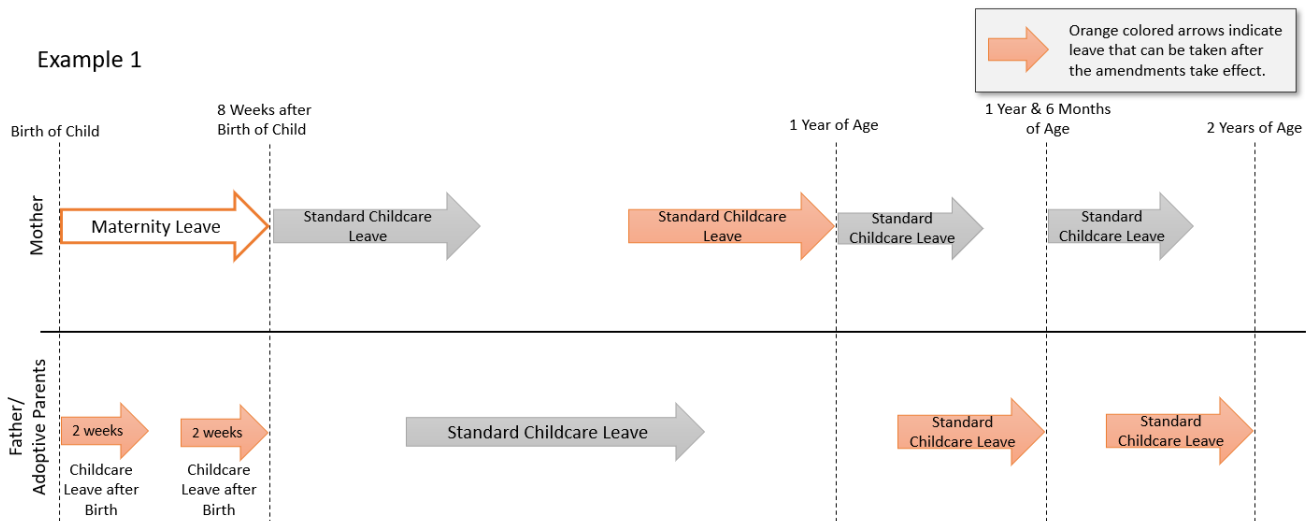
1. Employee offers to work during the leave period(s) and proposes the dates and times when the employee is available to work.
2. Employer presents dates and times within the dates and times proposed by the employee. If none of the dates and times proposed by the employee work for the employer, then the employer needs to notify the employee of that fact.

3. The employee agrees to the employer's proposed dates and times.
4. The employer notifies the employee of the fixed dates and times.

Note that there is an upper limit to how much an employee can work during the Childcare Leave after Birth.

- An employee cannot work more than half of the days of the leave period.
- If a working day falls on the start date or end date of the Childcare Leave after Birth, the employee must work fewer working hours than the prescribed number of working hours on that day.

*Post-Amendment Childcare Leave Examples:*



### *Restricting Eligibility with regard to Childcare Leave After Birth*

If a labor-management agreement has been concluded, some employees can be restricted from eligibility for Childcare Leave After Birth. The following employees may be excluded by a labor-management agreement:

1. Employees who have worked continuously for the company for less than 1 year.
2. Employees whose prescribed working days per week are 2 days or fewer.
3. Employees whose employment relationship will certainly terminate within 8 weeks from the date of the application for the leave.

### *Reacquiring Standard Childcare Leave after 1 Year of Age*

If Standard Childcare Leave after the child's first birthday has been terminated due to the start of maternity leave, postnatal leave, family care leave, or new childcare leave for another child, and the child/person who was the subject of the new leave dies but the child between the ages of 1 and 2 still needs childcare, Standard Childcare Leave can be reacquired. In the past, an employee who had already taken Standard Childcare Leave to care for a child over the age of 1 and then returned to work from Standard Childcare Leave would not have been able to reapply for and reacquire Standard Childcare Leave; however, with the latest revisions to the law, the law now permits reacquiring Standard Childcare Leave after the age of 1 in special circumstances.

### *Prohibition against Harassment*

Employers are prohibited for treating an employee disadvantageously because the employee made a request to take or actually took Standard Childcare Leave. The recent amendments also extended that protection to employees who request to take or actually take Childcare Leave after Birth. Note also that dismissing an employee, pressuring an employee to resign, changing an employee's contract from full-time to part-time, and trying to dissuade an employee for taking the leave are all examples of disadvantageous treatment.

## **Amendments Affecting Fixed-Term Employees**

In order for fixed term employees to be eligible for Standard Childcare Leave and Family Care Leave, there are certain requirements that needed to be met. The 2021 amendments have revised the Act and removed the requirement that fixed-term employees needed to be continuously employed for a year or more in order to make it easier for fixed-term employees to take these types of leave.

## Standard Child Care Leave Requirements

### Before Amendments

- The employee has been continuously employed by the current employer for one year or more; and
- The employment contract is not set to expire before the child reaches one year and six months old.

## Family Care Leave Requirements

### Before Amendments

- The employee has been continuously employed by the current employer for one year or more; and
- The employment contract is not set to expire within six months from the day on which 93 days have elapsed after the scheduled commencement day of Family Care leave.

## Standard Child Care Leave Requirements

### After Amendments

- The employment contract is not set to expire before the child reaches one year and six months old.

## Family Care Leave Requirements

### After Amendments

- The employment contract is not set to expire within six months from the day on which 93 days have elapsed after the scheduled commencement day of Family Care leave.

\*Note that if a labor-management agreement is in place, employers may exclude employees who have been continuously employed by that employer for less than one year from being eligible for Standard Childcare Leave or Family Care Leave.

## Obligations on Employers

Revisions to the Act are also imposing an obligation to improve the employment environment in order to make employees feel more comfortable to take leave under the Act and an obligation to take individual measures to inform employees and confirm employees of the Act. For large companies a mandatory reporting obligation will also be applied.

### *Facilitating the Taking of Childcare Leave*

Employers must take **at least one** of the following measures:

- Hold a training session regarding employee rights on Standard Childcare Leave and Childcare Leave at Birth
- Set up a consultation system whereby employees are able to learn about their rights on Standard Childcare Leave and Childcare Leave at Birth

- Collect and provide information to employees providing examples of Standard Childcare Leave and Childcare Leave at Birth taken by its employees
- Notify employees of the company's system and policies in place for taking Standard Childcare Leave and Childcare Leave at Birth

### *Individual Measures that Need to be Taken to Inform and Confirm Employee Intentions*

Employers are required to inform employees of the following matters when the employee reports a pregnancy (personally pregnant or spouse is pregnant) or the birth of a child:

- The company's system for taking Standard Childcare Leave and Childcare Leave at Birth.
- The manner for submitting applications or requests for Standard Childcare Leave and Childcare Leave at Birth
- All childcare leave benefits (Maternity Leave, Standard Childcare Leave, Childcare Leave at Birth, etc.) to which the employee is entitled.
- How the employee's premium contribution for social insurances will be treated during childcare leave in general.

Employers are required to also confirm whether employees would like to take Standard Childcare Leave and Childcare Leave at Birth by having a meeting with an employee (web meetings are permissible), by providing documents, by sending an email or sending a fax.

### *Mandatory Disclosures for Large Companies*

Companies with more than 1,000 employees will be required to disclose the statistics of male employees within the company utilizing childcare leave systems from April 1, 2023.

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