

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

EMPLOYER -**appellant**

PL2/2010

against the recommendation of the Rights Commissioner **R087892-PL-09/RG**
in the case of:

EMPLOYEE - **respondent**

under

PARENTAL LEAVE ACT, 1998 AND 2006

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms K.T. O'Mahony BL

Members: Ms M. Sweeney
Ms P. Doyle

heard this appeal at Cork on 9 February 2012

Representation:

Appellant:

Mr Peter O'Shaughnessy, IBEC,
Knockree House, Douglas Road, Cork

Respondent:

In person

The decision of the Tribunal was as follows:-

This case before the Tribunal as a result of an appeal by an employer (the appellant) against a decision of a Rights Commissioner **R087892-PL-09/RG** under the Parental Leave Acts, 1998 and 2006 in a case involving an employee (the respondent). The appellant will be referred to as the employer and the respondent as the employee herein.

The employee's partner became ill on Thursday 5 November 2009 and visited her doctor on that date. The employee applied for and was granted a half-day's annual leave on 5 November 2009. On Friday 6 November 2009, his partner had to again visit her doctor, whose diagnosis was that she had the swine flu. The employee took three hours' unpaid leave on 6 November, which was also applied for and granted on the same day.

Subsequently the employee sought and was refused force majeure leave for his absence on

Monday 9 and Tuesday 10 November 2009. It was the employer's position that, as such, the employee had ample time and ability to make alternative arrangements to arrange for care (if necessary) or to request an alternative form of leave from the employer. The employer believed that it was unreasonable to suggest that the employee was not aware of his partner's illness well in advance of his subsequent absence on 9 & 10 November. It was contended that the illness was not unforeseen or sudden and that, as such, it did not constitute "urgent family reasons" such as to render the employee's "immediate presence indispensable.

The employee's case was that over the weekend of 7 and 8 November 2009, his partner's condition deteriorated to the point where she was very sick, vomiting a lot, had to be helped to take drinks and go to the bathroom. Her doctor had advised against hospitalisation. The employee's position was that, being without family in Ireland, he had no alternative but to remain at home with his partner on 9 and 10 November. There was very serious concern in Ireland about swine flu at the time.

Determination:

Section 13 (1) of the Parental Leave Act provides:

An employee shall be entitled to leave with pay from his or her employment, to be known and referred to in this Act as "*force majeure leave*", where, for urgent family reasons, owing to an injury to or the illness of a person specified in subsection (2), the immediate presence of the employee at the place where the person is, whether at his or her home or elsewhere, is indispensable.

The employee's partner had been diagnosed with swine flu before the weekend, the Tribunal, having considered the evidence of both sides in this appeal, is satisfied that the employee's partner's condition deteriorated to the extent that it constituted 'urgent family reasons' rendering the employee's 'immediate presence' at the place where she was 'indispensable'. In the circumstances the employee was entitled to force majeure leave on 9 and 10 November 2009.

Accordingly, the Tribunal upholds the decision of Rights Commissioner whereby the employee was granted two days' force majeure leave and the employer's appeal under the Parental Leave Acts, 1998 and 2006 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)