

## SECTION 4. LABOR LAW AND SOCIAL WELFARE LAW

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### CERTAIN ASPECTS OF APPLYING FOR LEAVE DUE TO PREGNANCY AND CHILDBIRTH

### ОКРЕМІ АСПЕКТИ ОФОРМЛЕННЯ ВІДПУСТКИ У ЗВ'ЯЗКУ ІЗ ВАГІТНІСТЮ ТА ПОЛОГАМИ

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The Law of Ukraine “On Leave” dated November 15, 1996, No. 504/96-VR provides for several types of social leave, one of which is leave in connection with pregnancy and childbirth (Article 17) [1], and the right to receive pregnancy and childbirth benefits is enshrined in the Law of Ukraine “On Compulsory State Social Insurance” dated September 23, 1999, No. 1105-XIV (Articles 18–19) [2].

The basis for granting such leave is a sick leave certificate. Currently, all sick leave certificates are issued in electronic form, and the employer immediately sees the newly generated sick leave certificate. However, during martial law, paper sick leave certificates remain valid.

It should also be noted that during martial law, women are not required to visit a doctor in person to obtain a certificate of incapacity for work due to pregnancy and childbirth. Thus, paragraph 2 of section 1 of chapter IV of the Procedure for the formation of medical conclusions on temporary incapacity for work in the Register of Medical Conclusions in the electronic health care system, approved by order of the Ministry of Health of Ukraine dated June 1, 2021 No. 1066, it is stipulated that: “the formation of medical conclusions under the category ”Pregnancy and childbirth“ for women (except for the cases provided for in paragraph 10 of Section IV of this Procedure), for the period of martial law, may be carried out by the attending physician” [3].

As a general rule, a sick leave certificate is issued by a medical institution after 30 weeks of pregnancy, but at the request of the pregnant woman (and in the absence of medical indications), it is possible to transfer, use partially or completely after childbirth, part of the leave granted before childbirth, starting from the day of childbirth.

In this case, the patient (pregnant woman) must write a standard application [3] (such an application is submitted to the doctor, not the employer). In the event of such a transfer, the total duration of the leave may not exceed a total of 126 calendar days (140 calendar days in the case of the birth of two or more children and in the case of complicated childbirth).

A pregnant woman must also submit a request to her employer for maternity leave. The request should indicate the desired start date of the leave, which must coincide with the date specified in the sick leave certificate.

The next step in the leave application process is the issuance of an order. In this regard, the Ministry of Social Policy of Ukraine (now the Ministry of Social Policy, Family, and Unity of Ukraine) in its letter dated February 28, 2019, No. 228/0/206-19, emphasized that the issuance of an order granting leave for pregnancy and childbirth is mandatory, as it allows for the correct recording of working hours and avoids errors in the calculation of wages and maternity benefits [4]. At the same time, the Ministry of Economy of Ukraine, in its letter dated May 21, 2025, No. 4701-05/38100-09, states that the issuance of an order is not mandatory, and that the main and sufficient basis for granting such leave is a temporary disability certificate [5].

Another point to note is that during the period of leave due to pregnancy and childbirth, which coincides with leave to care for a child until they reach the age of three, pregnancy and childbirth benefits are paid regardless of childbirth benefits.

In a letter dated July 1, 2021 No. 4712-06/34400-07, the Ministry of Economy noted that the law does not provide for the interruption of childcare leave until the child reaches the age of three on the grounds of granting a woman a sick leave certificate in connection with pregnancy and childbirth at the initiative of the employer.

At the same time, a woman may, at her request, interrupt her childcare leave until the child reaches the age of three and take leave due to pregnancy and childbirth, and after its expiration, again exercise her right to childcare leave until the child reaches the age of three. The law does not provide for the possibility of granting an employee two types of leave at the same time [6].

As for pregnancy and childbirth benefits, they are paid in a lump sum for the entire period of leave. You can apply for benefits no later than six months after the end of your pregnancy and childbirth leave.

Article 19 of the Law of Ukraine “On Compulsory State Social Insurance” stipulates that pregnancy and childbirth benefits are provided to the insured person in the amount of 100% of the average salary (income), calculated in accordance with the procedure established by the Cabinet of Ministers of Ukraine, and does not depend on the length of insurance coverage [2]. The procedure for calculating the average salary (income, monetary allowance) for the calculation of payments under compulsory state social insurance was approved by Resolution of the Cabinet of Ministers of Ukraine No. 1266 of September 26, 2001. The entire amount of the benefit is paid from the funds of the Pension Fund of Ukraine.

The Law of Ukraine “On the State Budget of Ukraine for 2025” dated November 19, 2024, No. 4059-IX does not provide for an increase in the subsistence minimum and minimum wage. However, the maximum base for calculating the unified social tax (UST) has been increased to 20 minimum wages, and from January 1, 2025, it will be UAH 160,000 [7]. Therefore, based on this, the minimum amount of maternity and childbirth benefits per calendar day in 2025 is UAH 262.81, and the maximum amount of benefits per calendar day is UAH 5,256.24. (The maximum amount of benefits per calendar day for insured persons who have acquired less than 6 months of insurance experience during the 12 months prior to the insured event is UAH 525.62).

Despite the fact that maternity leave is one of the most common types of social leave, its formalization in practice can raise many questions, especially in the context of martial law, changes in legislation, and the digitization of processes.

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