

B2B: Work During Childcare Leave

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In today's society the birth of a child is no longer a reason to stay at home and forget about your career. Families often need another source of income, and young mothers wish to avoid staying at home and losing their qualifications. What should be done in this situation? The law allows mothers and other persons eligible for childcare leave to work at home or part-time. However, workers exercising this right can create problems for the employer — what should be done if the mother has a job that is difficult or impossible to do from home (for example, if she is a flight attendant or cashier)?

By law, during child-care leave women or other eligible caregivers can apply to their employer to work part time, or work at home while retaining the right to their state social child-care allowance. Thus, if the employee works during childcare leave (whether part-time or at home), the employee will receive child-care allowance and salary. At the same time, the employee will still be considered to be on childcare leave.

Interestingly, applicable law does not expressly specify whether the employer is obliged to provide the employee with the opportunity to work part-time or at home, or whether it is a matter for agreement between the employee and employer. In other words, the law is unclear as to whether the employer can refuse to allow the employee to work while on childcare leave. However, the position currently prevailing among practitioners is that the employer is obliged to grant the employee's request and allow the employee to work part-time or at home.

Another problem often encountered by employers is that employees ask to be allowed to work at home during childcare leave, but their functions are not amenable to doing so. Sometimes it is possible to grant the employee's request, but doing so involves additional expenses and/or inconvenience for the employer (for example, the need to equip a work place at home, i.e. provide a computer, remote access to the employer's systems, provide for data security, etc.),

and in other cases it is not possible for the employee to perform her job at home at all for objective reasons (for example, if the mother is a tram driver or conductor for an orchestra). It is hard to imagine a conductor rehearsing an orchestra by Skype, while a child cries in the background. At the same time, employers need to consider that applicable law does not provide any grounds for refusing to allow an employee on childcare leave to work at home or part-time. This means that employers may be disappointed to discover that the state labor inspectorate or prosecution service have no interest in their explanations as to why they are unable to comply with the law and allow employees to work at home for entirely objective reasons (or because of the expense or because it is not effective for the employer).

Finally, there is one more situation that often arises in practice and leaves employers at a loss — employees asking to be allowed to work part-time and at home at the same time. The difficulty for employers in this situation is that the applicable law provides for only two forms of employment for employees during childcare leave: either at home, or part-time, but it does not mention whether an employee has the right to combine the two, working part-time at home. In this case, it is not clear whether the employer is required to grant the employee's request to work part-time at home. Given that the employer is paying the employee social allowance because the employee is on childcare leave, it will be counting on subsequent reimbursement of the cost of the allowance. However, if the employer grants the employee's request to work part-time at home, the Social Security Fund may deny the employer reimbursement of the benefit, on the basis that the law does not expressly provide for working in this manner while on childcare leave.

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