

What you need to know about maternity rights in Irish and international sport

Insights - 29/11/2024

In the competitive realm of sports, where the pursuit of excellence is the priority, the journey into motherhood introduces a complex interplay of athletic, health and legal issues for the mother-to-be.

This article by Ogier's sports and employment law experts explores the evolving landscape of maternity rights in sports, highlighting the legal, health and professional considerations that come into play for athletes to navigate the path to motherhood, and the obligations that may arise for organisations that employ or fund athletes.

Maternity rights in Ireland

Maternity rights in Ireland are governed by the Maternity Protection Acts 1994 - 2004 (**the Acts**). Every mother in Ireland is entitled to 42 weeks of maternity leave which is broken down as 26 weeks paid by the Irish State, and 16 weeks unpaid. Expectant mothers are required to take at least two weeks of maternity leave before their baby is due and at least four weeks after the baby is born.

The Acts also cover rights relating to time off for anti-natal and post-natal care and classes, the preservation of certain employment rights (for example, the accrual of annual leave and continuity of service), protection against dismissal, the right to return to work after taking maternity leave and time off from work or reduced working hours to allow for breastfeeding. The Acts do not prohibit an employer from offering enhanced benefits to its pregnant employees. In those instances, the benefits should be clearly set out through the company's maternity leave policy.

Maternity rights in international sports

While maternity rights are prescribed under Irish national law, sport specific transnational

regulations may also be considered by athletes that are employed in different jurisdictions. In some jurisdictions, the sporting regulations may afford greater rights and benefits than the applicable national law.

For example, FIFA has special provisions relating to pregnancy in its Regulations on the Status and Transfer of Players which guarantee a minimum of 14 weeks maternity leave on two-thirds pay for athletes and coaches employed by professional clubs which reflects the minimum requirement for all EU states under the Pregnant Workers Directive. The Regulations also provide that pregnant athletes and coaches can take medical leave if they cannot play or work in an alternative manner for health reasons during their pregnancy and that they should receive full remuneration during that time.

Sara Bjork Gunnarsdottir, an Icelandic footballer who played for the French club Olympique Lyonnais, succeeded in relying on this provision before the FIFA Disputes Chamber in 2022. Gunnarsdottir notified her employer Olympique Lyonnais of her pregnancy and was prescribed medical leave due to her pregnancy shortly afterwards. Olympique Lyonnais failed to pay the athlete full remuneration and instead facilitated French state social security allowance to be paid to Gunnarsdottir, which was much lower than her salary. The FIFA Disputes Chamber found in favour of the player, awarding €82,094.82 plus 5% interest for unpaid salary while on medical leave and two-thirds of her salary during her maternity leave. This case demonstrates the practical application of the protections afforded to athletes under FIFA's pregnancy and maternity provisions, including where FIFA mandatory benefits exceed the provision by the State (for example, in respect of medical leave).

Employees versus contractor / self-employed rights

In Ireland, pregnant employees are entitled to take maternity leave irrespective of whether they are a full-time, part-time or casual employee and regardless of how long they have been working for their employer. However, there are very few female athletes employed in Ireland due to the fact that there are few, if any, female professional teams.

Self-employed individuals (which includes independent contractors) can also take leave when expecting. However, their entitlement to maternity benefit differs slightly in that different PRSI contributions are required for employees and self-employed, as well as different application forms to obtain a medical certificate from the individual's doctor. The thresholds aim to be far reaching in a bid to make maternity benefit available to as many expecting mothers as possible.

In the sporting realm, the question arises as to whether athletes fall within the employment sphere and can avail of protections provided for under the Acts that are afforded to employees specifically (for example, protection against dismissal and the right to return to work), or if they are classified as self-employed / independent contractors.

UK case law supports the position that a distinction can be drawn between state funded athletes who are contracted by a national governing body, as opposed to a team member engaged by a club or other governing body who receives a salary for their time and work. What should be considered in such instances is the degree of control the company has over the athlete's time and duties and whether a mutuality of obligation exists between them.

Former British cyclist Jess Varnish issued an unfair dismissal and sex discrimination case against British Cycling after she was not selected by Team GB for the Rio Olympics in 2016. However, her claim failed before the UK Employment Appeals Tribunal which found that the nature of the funding and supports provided by British Cycling to Varnish did not constitute an employment relationship but were instead benefits aimed at achieving a common goal of winning medals. It was also held that no mutuality of obligation or control required for an employment contract existed, emphasising that Varnish's training and efforts were not considered work provided by British Cycling, but a personal commitment to training and performance.

While the Jess Varnish decision is not directly applicable in Ireland, it would be persuasive and, on that basis, Irish athletes in receipt of Sport Ireland High Performance funding would be treated as self-employed contractors under Irish law. They could therefore avail of Maternity Benefit provided they have paid enough PRSI contributions required for those who are self-employed.

In addition, Sport Ireland afford a 12-month guarantee of funding to a "carded" high performance athlete who becomes pregnant while in receipt of funding. That commitment is provided on the basis that the athlete intends to return to competition after birth. This provision acts over and above national law benefits which does not provide for a benefit for the six months prior to birth and in addition to state paid Maternity Benefit for the six months after birth.

We advise that all sports organisations today should produce detailed maternity policies which clearly outline the rights and benefits that are available to athletes.

Return to work / training and competition

Under the Acts, employees are entitled to return to work in the same role they held prior to taking maternity leave and under no less favourable terms. For those who are self-employed / contractors, this will be a matter of contract between them and their clients. For athletes, case law and policies are showing increased support to facilitate the return of both athletes and coaches to sport after giving birth.

FIFA regulations mandate full salary is provided to players/coaches once they return to football activity. The regulations go further in stating that clubs must help the player get back into football and work with them on a postpartum plan, provide medical support and allow for breastfeeding as required without a reduction in salary.

The Rugby Football Union (RFU) in England have also recognised the need and importance of facilitating the return to sports for mothers by guaranteeing a 12-month extension of players' contracts if they are renegotiated when the player is pregnant or on maternity leave. The RFU also permit players to travel with their infant and a support person within 12 months of giving birth, The associated travel costs will be covered by the RFU.

The Olympic Games Paris 2024 sought to ease the challenges posed to athlete parents by providing an on-site nursery, which was the first of its kind. The "Olympic Village Nursery" provided diapers and wipes for athlete parents as well as a safe and secure place to feed their babies. The nursery alleviated some of the pressures that comes with being a parent and meant that athletes could spend more time with their children during the Olympics whilst still being able to perform at the Games.

Conclusion

It is clear that there is no one-size-fits-all approach that can be taken when considering pregnancy in sport. It is key to recognise that while national law rights are paramount, each sport may have different policies and each individual athlete has different circumstances. However, updating rules and regulations based on consultation and collaboration, as well as dignity and respect, will assist in supporting motherhood in professional sport.

How Ogier can help

Ogier is the leading sports law firm in Ireland. We also provide advice on all employment law matters related to contracts and policies. For more information, please contact our team or visit [Sports | Ogier](#).

This article was originally published in conjunction with [Her Sport](#) on 17 October 2024.

About Ogier

Ogier is a professional services firm with the knowledge and expertise to handle the most demanding and complex transactions and provide expert, efficient and cost-effective services to all our clients. We regularly win awards for the quality of our client service, our work and our people.

Disclaimer

This client briefing has been prepared for clients and professional associates of Ogier. The information and expressions of opinion which it contains are not intended to be a comprehensive study or to provide legal advice and should not be treated as a substitute for specific advice concerning individual situations.

Regulatory information can be found under [Legal Notice](#)

Key Contacts



[Paddy Murphy](#)

Managing Associate

[Ireland](#)

E: paddy.murphy@ogier.com

T: [+353 1 584 6311](tel:+35315846311)



[Marianne Norton](#)

Associate

[Ireland](#)

E: marianne.norton@ogier.com

Related Services

[Employment law](#)

[Dispute Resolution](#)

Related Sectors

[Sports](#)