

Administrative Instruction

Ref. ICC/AI/2024/003

Date: 20 December 2024

PARENTAL LEAVE AND FAMILY LEAVE

The Registrar, with the consent of the President and the Prosecutor, pursuant to sections 3.2 and 3.3 of the Presidential Directive on *Procedures for the Promulgation of Administrative Issuances* (ICC/PRESG/2003/001) and for the purpose of implementing Staff Regulation 6.2 and Staff Rules 105.2(h), 105.3, 105.4, 106.5, 106.6 and 109.2(d), hereby promulgates the following:

Section 1

Purpose and Scope

- 1.1 The purpose of this Administrative Instruction is to implement the parental leave and family leave scheme in accordance with Staff Regulation 6.2, which provides that the Registrar, in consultation with the Prosecutor, shall establish a social security scheme for the staff, including provision for parental leave, in conformity with the UN common system standards.
- 1.2 This Administrative Instruction applies to all staff members holding a fixed-term or a short-term appointment, subject to the conditions below.

Section 2

General Provisions

- 2.1 Parental leave with full pay shall be granted under Staff Rule 106.6, subject to the provisions of the present Administrative Instruction and to section 7.3 of the Administrative Instruction on Tenure Policy (ICC/AI/2024/004).

- 2.2 The present Administrative Instruction governs the administration of parental leave in respect of a child born or adopted on or after 1 January 2023, provided that the staff member was in service at the time of the birth or adoption.
- 2.3 Staff members wishing to take parental leave shall submit a request for parental leave and shall, in addition, inform their supervisors at least one month before the expected commencement of the leave.
- 2.4 If two staff members become parents together, each of them can exercise their own parental leave entitlement under the conditions applicable to their situation, regardless of their marital status.
- 2.5 Family leave may be granted under Staff Rules 105.3 and 106.5, subject to the provisions of the present Administrative Instruction.

Chapter I. Parental Leave

Section 3

Parental leave for staff members who become parents without giving birth

- 3.1 Staff members who become parents without giving birth shall be granted 16 weeks of parental leave with full pay, subject to the provisions of the present Administrative Instruction.
- 3.2 Parental leave under this section may not be granted more than once in any 12-month period from the date of their child's birth or adoption.
- 3.3 Staff members may take parental leave under this section at any time within 12 months from the date of their child's birth or adoption. Any portion of parental leave that is not utilized within that 12-month period shall be forfeited.
- 3.4 Unless otherwise provided in the present Administrative Instruction, parental leave under this section may be taken either continuously or in separate periods, in units of half days or days.

Additional conditions in the case of adoption

- 3.5 Staff members who adopt a child shall be granted 16 weeks of parental leave with full pay under this section subject to the following additional conditions:
- (a) The child is legally adopted or, in the case of customary or *de facto* adoption, may be recognised as a dependant of the staff member under the applicable legal framework and related procedures of the Court;
 - (b) Parental leave shall not be granted when the child is a stepchild of the staff member, or when the child has previously been living with the staff member for an extended period;
 - (c) Normally, the adopted child must be under the age of 18 years.

Additional conditions applicable to staff members holding a short-term appointment

- 3.6 Staff members holding a short-term appointment shall be granted 16 weeks of parental leave with full pay in accordance with the provisions of this section if they have completed six months of continuous service and are expected by the Registrar or the Prosecutor, as appropriate, to continue in service for at least three months upon return from parental leave.
- 3.7 Any portion of parental leave that is not utilized within the duration of the appointment shall be forfeited.

Section 4

Parental leave for staff members who become parents by giving birth

- 4.1 Staff members who become parents by giving birth shall be granted 16 weeks of parental leave with full pay, as well as an additional 10 weeks of combined prenatal and postnatal (hereinafter “pre-delivery” and “post-delivery” respectively) leave with full pay, bringing the total duration of their parental leave to 26 weeks, subject to the provisions of the present Administrative Instruction.

10 weeks of pre- and post-delivery leave

- 4.2 Pre-delivery leave shall not commence earlier than two weeks prior to the expected date of delivery indicated in a certificate from a licensed medical practitioner or midwife, to be provided by the staff member. Any questions or doubts as to the validity of the medical certificate shall be referred to the Court's Medical Officer. Any unused portion of the pre-delivery leave shall be added to the post-delivery leave.
- 4.3 If, during the period preceding the start of the two weeks of pre-delivery leave, the staff member is not fit to continue to work, the matter shall be referred to the Court's Medical Officer by the Human Resources Section ("HRS"). When the Court's Medical Officer determines that the staff member is not fit to continue to work on a full-time or part-time basis, the staff member's absence from work shall be charged to sick leave, in accordance with the applicable legal framework and related procedures of the Court.
- 4.4 Post-delivery leave shall be granted for a continuous period equivalent to the difference between 10 weeks and the actual duration of the pre-delivery leave.

16 weeks of parental leave

- 4.5 Unless otherwise provided in the present Administrative Instruction, the remaining 16 weeks of parental leave may be taken continuously or in separate periods, in units of half days or days, at any time within a 12-month period from the date of the child's birth as indicated in the birth certificate. Any portion of parental leave that is not utilized within that 12-month period shall be forfeited.

Section 5

Relationship of parental leave to sick leave and annual leave

- 5.1 Annual leave shall accrue during parental leave except as provided in sections 6.4 and 6.7 below. Annual leave may be combined with parental leave, except during the 10-week pre- and post-delivery period mentioned in sections 4.2 to 4.4 above.

- 5.2 Except as provided in section 5.3 below, sick leave may be granted during parental leave.
- 5.3 No sick leave shall be granted during the 10-week pre- and post-delivery portions of the parental leave mentioned in sections 4.2 to 4.4 above, except where the Court's Medical Officer determines that serious illness incapacitates the staff member from providing reasonable basic care for the newborn.

Section 6

Extension of appointments for utilization of parental leave

- 6.1 The fact that staff members are or will be on parental leave shall not be a factor when considering extension of appointment. Such staff members shall be considered for an extension of appointment or the granting of another type of appointment under the same criteria as other staff members.

Extension of fixed-term appointments

- 6.2 In the case of staff members who become parents without giving birth, if the staff member's fixed-term appointment is not extended on the basis of considerations unrelated to the staff member's possible entitlement to parental leave, and the current appointment is due to expire during the first eight weeks following the birth or adoption of the child, the appointment will be extended to cover a maximum period of eight weeks of parental leave to be taken in one continuous period from the date of the child's birth or adoption.
- 6.3 In the case of a staff member who becomes a parent by giving birth, if the staff member's fixed-term appointment is not extended on the basis of considerations unrelated to the staff member's pregnancy, and when parental leave has started prior to the expiration of the fixed-term appointment but has not been completed during the appointment, the appointment shall be extended to cover the full duration of the 26-week parental leave entitlement to be taken in one continuous period.
- 6.4 When a fixed-term appointment is extended solely to enable staff members to utilize their parental leave entitlement under sections 6.2 and 6.3 above, such extension shall not give rise to any further entitlement to salary increment, annual leave, sick leave, home leave or parental leave, but credit towards

repatriation grant may continue to accrue if the staff member has not returned to the home country, where applicable. In the event of the staff member's death during the period of the extension, the period prior to the death may be taken into consideration in the determination of the death grant provided under Staff Rule 109.5.

Extension of short-term appointments

- 6.5 In the case of staff members who become parents without giving birth, the short-term appointment shall not be extended solely for the purpose of taking parental leave.
- 6.6 In the case of a staff member who becomes a parent by giving birth, when parental leave has started prior to the expiration of the short-term appointment but has not been completed during the short-term appointment, the appointment of the staff member shall be extended, on an exceptional basis, to cover the full duration of the 26-week parental leave entitlement to be taken in one continuous period.
- 6.7 When a short-term appointment is extended solely to enable staff members to utilize their parental leave entitlement under section 6.6 above, such extension shall not give rise to any further entitlement to salary increment, annual leave, sick leave, home leave or parental leave. In the event of the staff member's death during the period of the extension, the period prior to the death may be taken into consideration in the determination of the death grant provided under Staff Rule 109.5.

Section 7

Leave in case of fetal death or death of a newborn or adopted child

Non-childbearing staff members

- 7.1 In the event of a fetal death prior to the completion of 24 full weeks of pregnancy, parental leave shall not be granted. A staff member may request sick leave in accordance with the applicable legal framework and related procedures of the Court.

- 7.2 In the event of fetal death after the completion of 24 full weeks of pregnancy, and upon submission a medical certificate attesting to the fetal death, the staff member may be granted two weeks of special leave with pay under Staff Rule 105.4 to be taken within a 12-month period from the date of death and completed within the duration of the appointment.
- 7.3 In the event of the death of a child after live birth or after adoption within 12 months from the date of the child's birth or adoption as specified in section 3.3 above, the staff member shall be granted 16 weeks of parental leave in accordance with the provisions of the present Administrative Instruction governing parental leave for staff members who become parents without giving birth. However, section 6.2 shall not apply, and the staff member's fixed-term appointment shall not be extended solely for the purpose of taking parental leave.
- 7.4 Staff members on short-term appointments who do not have any entitlement to parental leave under section 3.6 above shall not be entitled to the leave referred to in sections 7.2 and 7.3 above.

Childbearing staff members

- 7.5 In the event of a fetal death prior to the completion of 24 full weeks of the staff member's pregnancy, parental leave shall not be granted. The staff member may request sick leave in accordance with the applicable legal framework and related procedures of the Court.
- 7.6 In the event of a fetal death after the completion of 24 full weeks of the staff member's pregnancy, and upon submission of a medical certificate attesting to the fetal death, the staff member may be granted 12 weeks of special leave with pay under Staff Rule 105.4, to be taken within a 12-month period from the date of the death. The staff member may also request sick leave in accordance with the applicable legal framework and related procedures of the Court.
- 7.7 If a staff member's appointment is due to expire during the period of special leave with pay referred to in section 7.6 above, the appointment of the staff member shall be extended, on an exceptional basis, to cover the unused portion of the leave to be taken in one continuous period. Such extension shall not give rise to any further entitlement to salary increment, annual leave, sick leave, home leave or parental leave. In the event of the staff member's death during

the period of the extension, the period prior to the death may be taken into consideration in the determination of the death grant provided under Staff Rule 109.5.

- 7.8 In the event of the death of a child after live birth or within 12 months from the date of the child's birth as specified in section 4.5, the staff member shall continue to be granted the parental leave entitlement upon submission of a birth certificate, in accordance with the provisions of the present Administrative Instruction governing parental leave for staff members who become parents by giving birth.

Chapter II. Family Leave

Section 8

Family leave under the emergency leave entitlement

- 8.1 In those cases where the entitlement to emergency leave under Staff Rule 106.5 may be used, staff members shall make every effort to inform their supervisors in advance of the proposed leave and of its duration; if this is not possible, they shall inform their supervisors on the first day taken as emergency leave. Staff members shall not be required to share details of their personal or family emergency with their supervisors.

Section 9

Special leave without pay

Special leave without pay under Staff Rule 105.3 for a newborn or adopted child

- 9.1 Special leave without pay for a continuous period of up to two years may be granted under Staff Rule 105.3(c)(i) to a staff member who is the parent of a newborn or adopted child, provided that the staff member has a fixed-term appointment and is expected by the Registrar or the Prosecutor, as appropriate, to continue in service for at least six months beyond the date of return from the proposed special leave without pay.

- 9.2 In exceptional circumstances, such as serious disability, injury or illness of the child, an additional period of special leave without pay of up to a maximum of two years may be granted under Staff Rule 105.3(c)(i). The staff member's request should be accompanied by a medical certificate attesting to the child's disability or illness. The medical certificate shall be submitted to the Court's Medical Officer for validation.
- 9.3 When both parents are staff members, each of them may request special leave without pay under this section, regardless of their marital status.
- 9.4 Requests for special leave without pay should normally be submitted to the HRS, through the relevant section chief with the support of the staff member's immediate supervisor, for approval by the Registrar or the Prosecutor, as appropriate, at least one month before the commencement of the proposed leave.
- 9.5 The right of a staff member to be reabsorbed after the end of such special leave without pay shall be fully protected. The staff member may be required to undertake training in order to facilitate reabsorption.

Special leave without pay in cases of death or emergency

- 9.6 In accordance with Staff Rule 105.3(c)(ii), staff members may request special leave without pay upon the death of a member of the immediate family of the staff member, which includes a spouse, child, parent, brother or sister, or in case of serious family emergency. Such leave shall normally be granted for a period of up to two calendar weeks, plus necessary travel time, if applicable; although a reasonable extension may be considered on a case by case basis by the Registrar or the Prosecutor, as appropriate.

Section 10
Final Provisions

- 10.1 This Administrative Instruction shall enter into force on 1 January 2023.
- 10.2 The Administrative Instruction on Other Parent Leave (ICC/AI/2006/003) shall be abolished as of 31 December 2022.

- 10.3 All references to ‘maternity leave’, ‘other parent leave’ or ‘adoption leave’ in the following Administrative Instructions shall be replaced by ‘parental leave’, as applicable:
- section 3.2(c) of the Administrative Instruction on *Short Term Appointments* (ICC/AI/2016/001) and its Annex;
 - section 5.18 of the Administrative Instruction on *Certified Sick Leave and Emergency Leave* (ICC/AI/2011/005);
 - section 4.11(b) of the Administrative Instruction on *Rest and Recuperation* (ICC/AI/2017/002);
 - sections 7.2 and 13 of the Administrative Instruction on *Part-Time Employment of Staff Members* (ICC/AI/2008/006); and
 - section 3.2(d) of the Administrative Instruction on *Consultants and Individual Contractors* (ICC/AI/2016/002/Cor. 1).
- 10.4 The provisions in the following Administrative Instructions relating to ‘maternity leave’ shall be superseded by the relevant provisions of this Administrative Instruction:
- section 10.5 of the Administrative Instruction on *Short Term Appointments* (ICC/AI/2016/001) and the specific row in its Annex related to ‘maternity leave’; and
 - sections 5.14 and 5.15 of the Administrative Instruction on *Certified Sick Leave and Emergency Leave* (ICC/AI/2011/005).
- 10.5 The provisions in the following Administrative Instructions relating to ‘other parent leave’ shall be superseded by the relevant provisions of this Administrative Instruction:
- sections 10.6, 10.7, and 10.8 of the Administrative Instruction on *Short Term Appointments* (ICC/AI/2016/001) and the specific row in its Annex related to ‘other parent leave’.
- 10.6 The provisions in the following Administrative Instructions relating to ‘adoption leave’ shall be superseded by the relevant provisions of this Administrative Instruction:
- section 10.9 of the Administrative Instruction on *Short Term Appointments* (ICC/AI/2016/001) and the specific row in its Annex related to ‘adoption leave’.

A handwritten signature in dark ink, appearing to read 'Osvaldo', followed by a period.

Osvaldo Zavala Giler
Registrar