

## **Nursing Leave Act**

### **Art. 1 Purpose of the Act**

The purpose of the act is to enable employees to provide care to close relatives in need of nursing in a domestic environment thus improving the compatibility of work and home care.

### **Art. 2 Short-term Absence from Work**

- (1) Employees are entitled to be absent from work for up to ten workdays if it is required to arrange for adequate nursing of a close relative in need of nursing in an acute care situation or to ensure the provision of nursing for this period.
- (2) Employees are obligated to immediately report their absence from work and its anticipated duration to their employers. Upon request, the employer shall be provided a medical certificate on the requirement for nursing of the close relative and the requirement for the measures quoted in para.1.
- (3) The employer is only obligated to continue the remuneration if such an obligation arises from different legal provisions or on the basis of an agreement.

### **Art. 3 Nursing Leave**

- (1) Employees are to be partially or completely released from work if they provide care for a close relative in a domestic environment (Nursing Leave). The entitlement pursuant para.1 is not applicable opposite employers who usually employ 15 or less employees.
- (2) Employees have to document the requirement for nursing of a close relative by providing a certificate by the long-time care insurance carrier or by the medical service of the health insurance carrier. For individuals requiring nursing who are insured with a private, mandatory long-time care insurance a corresponding proof must be provided.
- (3) Employees wishing to take nursing leave have announce it in writing to the employer no later than ten workdays before the start and at the same time state for which period of time and to what extent the release from work is to be used. If only a partial release from work is required, the preferred distribution of the work time has to be specified as well.
- (4) If only a partial release is used the employer and the employee have to enter into a written agreement on the reduction and distribution of the work time. In doing so, the employer has to accommodate the employees' requests unless compelling operational reasons preclude it.

**Art. 4 Duration of Nursing Leave**

(1) Pursuant Art.3, the maximum period of nursing leave for each close relative requiring nursing is six months (maximum duration). Nursing leave taken for a shorter period may be extended to the maximum provided the employer concurs. An extension up to the maximum can be demanded if an intended change of the care provider can't be done for a cogent reason. Nursing leave will not be counted towards periods of vocational training.

(2) If the close relative no longer requires nursing or if nursing of the close relative at home is not feasible or unreasonable the nursing leave will end four weeks after the occurrence of the changed circumstances. The employer has to be notified of the changed circumstances immediately. Furthermore, nursing leave can only be terminated prematurely if the employer concurs.

**Art. 5 Protection from Dismissal**

(1) The employer may not terminate the employment from the time of announcement until the end of the short-term absence in accordance with Art.2 or the nursing leave in accordance with Art.3.

(2) In special cases a termination may by way of exception be authorized by the supreme state authority responsible for employment protection or by the office designated by it. In this regard, with the concurrence of the Federal Council, the Federal Government may issue general administrative provisions.

**Art. 6 Temporary Employment Contracts**

(1) The appointment of an employee as a substitute for an employee for the duration of a short-term absence in accordance with Art.2. or the nursing leave in accordance with Art.3 constitutes a factual reason for limiting the employment relation. An extension of the limitation of the duration of substitution pursuant para.1 is admissible for required periods of training.

(2) The duration of the limitation of the employment contract has to be defined or be definable by calendar date or to be concluded from the purposes specified in para.1.

(3) The employer may terminate the temporary employment contract with a notice period of two weeks if the nursing leave ends prematurely in accordance with Art.4, para.2.(1). In these cases, the Protection from Dismissal Act is not applicable. Clause (1) does not apply if its application is precluded by means of contract.

(4) If the number of employees is to be established in the context of labor laws or ordinances, employees on short-term absence from work in accordance with Art.2 or released in accordance with Art.3 shall not be considered in the determination of this number provided that a substitute was appointed for them on the basis of para.1. This does not apply when the substitute is not to be counted. Clauses (1) and (2) apply correspondingly if the number of positions is to be established in the context of labor laws or ordinances.

**§ 7 Definitions**

(1) Employees in the meaning of this Act are

1. Employees,
2. Persons employed for purposes of vocational training,
3. Persons who have to be considered to have an employee-like status due to their economic dependence; among them persons performing work at home and persons of equal status.

(2) Employers in the meaning of this Act are natural and legal persons as well as corporations with legal capacity which employ persons in accordance with para.1. For persons with an employee-like status, particularly those performing work at home and those of equal status, the employer will be replaced by the contracting party or the intermediary.

(3) Close relatives in the meaning of this Act are:

1. Grand Parents, parents, parents-in-law,
2. Spouses, civil union partners, partners in cohabitation, brothers and sisters,
3. Children, adopted or foster children, the children, adopted and foster children of the spouse or civil union partner, children-in-law, and grandchildren.

(4) Persons in need of nursing in the meaning of this Act are persons who meet the prerequisites of Arts. 14 and 15 of the 11<sup>th</sup> Book, Code of Social Law. Likewise, persons are considered in need of nursing in the meaning of Art. 2. if they are expected to meet the prerequisites of Arts. 14 and 15 of the 11<sup>th</sup> Book, Code of Social Law.

**Art. 8 Prohibition of Change**

Deviations from the provisions of this Act that are to the disadvantage of the employees are not authorized.

## TRANSLATION / ÜBERSETZUNG

### Results of the Employers' Meeting on the Nursing Leave Act on 26 Aug 08 at Bonn:

The contents of the Nursing Leave Act (NLA) and the consequences for its implementation were discussed.

The Sending States Forces agreed to apply the following principles for the implementation of the Nursing Leave Act:

1. Art.28, CTA II precludes pay claims under the terms of Art.616, Civil Code, even in case of a short-term absence from work in accordance with Art.2, NLA.
2. For a short-term absence in accordance with Art.2, NLA, a certificate pursuant Art.2, para.2, (2), NLA, is indispensable.  
The fee for the medical certificate will be borne by the employer (Art.4, (4b), CTA II).
3. In the interest of employees and for reasons of feasibility, claims for a paid release from work in accordance with Art. 28, CTA II, will not be credited to the period of the short-term absence in accordance with Art.2, NLA.
4. If nursing leave is taken in accordance with Art.3, NLA, there is no pay entitlement.
5. The leave entitlement of employees on nursing leave in pursuant Art.3, NLA, will be modified under the terms of Art.33, CTA II (principle of the twelfth part).
6. Nursing leave is countable for service computation purposes in the meaning of Art.55, CTA II.
7. Upon announcing that nursing leave will be taken (Art.3, para.3, NLA) employees shall be asked to provide the certificate of requirement of care related to the nursing leave in accordance with Art.3, para.2, NLA, without further delay.
8. Regardless of the legally required minimum announcement period of 10 work days (Art.3, para.3, NLA), the Sending States Forces consider an announcement of the start of the nursing leave four to eight weeks in advance as sufficient and recommendable for organizational and personnel administration purposes.