

MATERNITY BENEFITS FOR SURROGACY

For women who are unable to carry their own child, surrogacy can be a suitable alternative to fulfilling the desire for their own offspring. A surrogate mother is a woman who agrees to have an embryo implanted in her uterus with the intention of getting pregnant, carrying and giving birth to a child, but renouncing parental rights to this child and allowing the biological parents to adopt the child. However, it is important to realize that in Czech legislation, surrogacy is not defined in depth, which also impacts labor laws and corresponding sickness and social benefits.

Maternity benefits are one of the six benefit groups of the Czech sickness insurance system (alongside sickness benefits, attendance allowance, long-term attendance allowance, paternity benefits, and compensatory benefits in pregnancy and maternity). Maternity benefits are given in connection with the care of a newborn child to the child's mother or father or to the insured person (man or woman) who has taken the child into care, replacing parental care on the basis of a decision of the competent authority.

Entitlement to maternity benefit arises only if the following two conditions are met:

1. The applicant for maternity benefits must be a sickness insurance participant at the time of taking up the benefit, or he/she must be covered by the protection period after an expired sickness insurance.
2. At the same time, another specific condition must also be met – the applicant's participation in sickness insurance must last at least 270 calendar days in the last two years preceding the date of taking up the benefit (which is roughly 9 months of sickness insurance spread over two years). You can fulfill this condition by working for more than just one employer. Within 2 years, insurance periods from various employers can be added up. You can receive maternity benefits for 28 weeks (or 37 weeks if you give birth to more than one baby at a time), which is roughly 7 months.

Currently, surrogacy is not illegal in the Czech Republic, but it is also not defined in the Czech legislation, which means there are no given rules. Therefore, a woman who gives birth to a child is always considered the child's mother, regardless of whether or not the child is biologically hers. She is also stated as



the mother in the child's birth certificate. The child's biological mother can only adopt the child if his or her legal parents, i.e. his or her father and the surrogate mother, consent to it. The father can do so anytime after the child's birth, the surrogate mother can do so only after the puerperium.

If the surrogate mother is married, her husband is considered the father of the child, and he needs to consent to his wife's IVF. They both subsequently have to consent to the child's adoption. If the surrogate mother is not married, after a successful IVF, she states the child's biological father at the register office, and he is entered in the child's birth certificate. The surrogate mother gives the child up after birth, the child is handed over to their father and then raised by both of his biological parents.

To proceed correctly during surrogacy, it is therefore recommended to contact a legal representative and make sure to have all of the necessary agreements and to educate all who are involved.

From our perspective, the legal rules for surrogacy concern us in connection with the labor law and corresponding sickness and social benefits. The issue is that a biological mother of a child born from surrogacy cannot draw maternity and subsequently parental benefits until the adoption or at least placing the child into her care has been approved. She therefore needs to take unpaid leave to be able to take care of the baby right after the baby is handed over to his/her father in the maternity hospital. However, the mother's employer might not allow her to do so, since the time to care for a newborn is primarily granted to the woman who gave birth to the child. Therefore, the biological mother of the child can only apply for maternity benefits after a court has decided on the adoption, or on placing the child into her care.

After the puerperium, the father of the child can also start drawing maternity benefits based on a written agreement on taking the child into care with the woman who gave birth to the child. In such a case, the father will not be allowed to perform his job while drawing the benefits.

The father of the child can draw parental benefits and does not have to suspend his gainful employment provided that he can arrange daylong care for the child, typically provided by the child's biological mother.



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