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## Parental Benefit Act

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 RT I 2003, 82, 549  
 Entry into force 01.01.2004

Amended by the following acts

Passed	Published	Entry into force
27.01.2005	RT I 2005, 9, 34	09.02.2005, amendments applied retroactively as of 01.01.2005
15.06.2005	RT I 2005, 37, 285	01.01.2006
15.06.2005	RT I 2005, 39, 308	01.01.2006
20.03.2006	RT III 2006, 10, 89	20.03.2006 Judgment of Constitutional Review Chamber of Supreme Court declares to be in conflict with the Constitution and repeals the second sentence of subsection 3 (7) of the Parental Benefit Act to the extent that it provides that the parental benefit granted to a person shall be decreased by the amount of unreceived wages paid to the person, by the fault of employer, during the month when the parental benefit was payable
17.05.2006	RT I 2006, 26, 191	01.08.2006
16.11.2006	RT I 2006, 55, 409	23.12.2006
15.02.2007	RT I 2007, 24, 127	01.01.2008
22.02.2007	RT I 2007, 25, 132	01.09.2007
14.06.2007	RT I 2007, 44, 317	01.01.2008
22.10.2008	RT I 2008, 48, 264	01.02.2009
17.12.2008	RT I 2009, 5, 35	01.07.2009
22.04.2010	RT I 2010, 22, 108	01.01.2011, enters into force on the date which has been determined in the Decision of the Council of the European Union regarding the abrogation of the derogation established in respect of the Republic of Estonia on the basis provided for in Article 140 (2) of the Treaty on the Functioning of the European Union, Council Decision 2010/416/EU of 13 July 2010 (OJ L 196, 28.07.2010, p. 24–26).
14.11.2012	RT I, 06.12.2012, 1	01.01.2013, partially 01.05.2013; the words "Pension Board" have been replaced with the words "Social Insurance Board" in the text
14.05.2013	RT I, 16.05.2013, 42	14.05.2013 Judgment of Constitutional Review Chamber of Supreme Court declares to be in conflict with the Constitution

and repeals the first sentence of subsection 3 (7) of the Parental Benefit Act in the part under which the parental benefit received by a person shall be decreased such that the total income of the person is less than the parental benefit initially granted to the person.

## **§ 1. Purpose and scope of application of Act**

(1) The purpose of this Act is to retain, by grant of support by the state, the previous income for persons whose income decreases due to the raising of a child, and to support the reconciliation of work and family life. Persons who have not received income shall be ensured with income to the extent of the benefit rate.

[RT I 2007, 25, 132 - entry into force 01.09.2007]

(2) This Act regulates the conditions and procedure for the grant and payment of parental benefit (hereinafter *benefit*).

(3) The provisions of the Administrative Procedure Act apply to the administrative proceedings prescribed in this Act, taking account of the specifications provided for in this Act.

(4) If an international agreement entered into by the Republic of Estonia includes provisions concerning the conditions and procedure for the grant and payment of benefits related to the raising of a child and concerning the challenge proceedings which are different from this Act, the international agreement applies.

## **§ 2. Right to receive benefit**

(1) Permanent residents of Estonia and aliens residing in Estonia on the basis of a temporary residence permit or temporary right of residence (hereinafter *residents of Estonia*) have the right to receive the benefit. A resident of Estonia who has residence in several states has the right to receive the benefit if he or she is a resident within the meaning of subsection 6 (1) of the Income Tax Act or if he or she resides permanently in Estonia within the meaning of the Aliens Act or the Citizen of the European Union Act.

(2) A parent, adoptive parent, step-parent, guardian or caregiver raising a child with respect to whom a written foster care contract has been entered into pursuant to § 15 of the Social Welfare Act has the right to receive benefit. Before the child attains seventy days of age, the mother of the child who is raising the child has the right to receive the benefit except if the mother of the child is dead or fails to perform the obligation to raise and care for the child arising from the Family Law Act or if the adoptive parent, guardian or caregiver has the right to receive the benefit. If one of the parents is on parental leave after the child attains seventy days of age, that parent has the right to receive the benefit.

[RT I 2007, 25, 132 - entry into force 01.09.2007]

(3) In the case of a multiple birth, one of the parents has the right to receive the benefit, taking account of the specifications provided for in subsection (2) of this section.

(3<sup>1</sup>) One benefit at the choice of the person shall be paid to a person to whom benefit is paid and for whom the right to receive the benefit arises at the same time due to the raising of another child or other children.

[RT I 2007, 25, 132 - entry into force 01.09.2007]

(4) The right to receive the benefit arises as of the date following the final date of the certificate for maternity leave or a certificate for adoption leave which grants the right to receive maternity benefit or adoption benefit provided for in the Health Insurance Act. If the mother of a child does not have the right to receive maternity benefit, the right to receive parental benefit arises as of the birth of the child.

[RT I 2007, 25, 132 - entry into force 01.09.2007]

(5) A resident of Estonia does not have the right to receive the benefit if he or she receives a similar benefit from another state.

## **§ 3. Calculation of amount of benefit**

(1) The amount of the benefit per calendar month shall be calculated on the basis of the average income of the applicant for the benefit per calendar month. The average income per calendar month is income which is subject to social tax and which is calculated on the basis of data concerning the average amount of individually registered social tax per calendar month entered in the state pension insurance register.

[RT I 2007, 25, 132 - entry into force 01.09.2007]

(2) The average amount of individually registered social tax per calendar month shall be equal to the individually registered social tax of the applicant for benefit for the calendar year prior to the date on which the right to receive benefit arises, except social tax paid on an unemployment insurance benefit provided for in the

Unemployment Insurance Act and social tax paid pursuant to clauses 6 (1) 1–4) and 6)–11) and subsection 6 (1<sup>1</sup>) of the Social Tax Act, divided by the number of calendar months.  
[RT I 2007, 25, 132 - entry into force 01.09.2007]

(2<sup>1</sup>) The number of calendar months specified in subsection (2) of this section shall be the difference between the number of calendar days in the calendar year and the number of days during which the person is temporarily released from work on the basis of a certificate of incapacity for work divided by thirty, however, it shall not exceed twelve. Leave due to impossibility of requesting a position suitable for state of health or refusal to work or temporary easement of the current conditions of employment or service or temporary transfer to another job or position shall not be included in days during which the person is temporarily released from work on the basis of a certificate of incapacity for work. The number of calendar months shall be calculated to the accuracy of two decimal places. If the number of calendar months is zero, but the person has received income subject to social tax, his or her income shall be divided by twelve.  
[RT I 2009, 5, 35 - entry into force 01.07.2009]

(2<sup>2</sup>) Upon employment in a position suitable for state of health, refusal to work, temporary easement of the current conditions of employment or service or temporary transfer to another job or position, or if this is impossible, the benefit for temporary incapacity for work paid on the basis of the Health Insurance Act for the calendar year prior to the date on which the right to receive benefit arises shall be divided by the number of calendar months calculated on the basis of subsection (2<sup>1</sup>) of this section. The result of the division shall be included in the average income per calendar month specified in subsection (1).  
[RT I 2009, 5, 35 - entry into force 01.07.2009]

(3) The amount of the benefit per calendar month shall be 100 per cent of the average income per calendar month calculated on the basis of subsections (1)–(2<sup>2</sup>) of this section. In the month in which the paying of the benefit begins and in the month in which the paying of the benefit ends, the amount of the benefit shall be calculated in proportion to the number of days for which the person has the right to receive benefit.  
[RT I 2007, 25, 132 - entry into force 01.09.2007]

(4) The maximum amount of the benefit per calendar month shall be three times the average income subject to social tax of the year before the previous calendar year prior to the date on which the right to receive the parental benefit arises. The maximum amount of the benefit per calendar month shall be calculated pursuant to the procedure established by a regulation of the Government of the Republic on the basis of the average income subject to social tax in Estonia per calendar month. The Social Insurance Board shall calculate and publish the maximum amount of the benefit per calendar month of the following calendar year on its website not later than by 1 May of the current year.  
[RT I, 06.12.2012, 1 - entry into force 01.01.2013]

(5) If the average income of an applicant for benefit per calendar month calculated on the basis of subsections (1)–(2<sup>2</sup>) of this section is less than the minimum monthly wage established by the Government of the Republic, the amount of the benefit per calendar month shall be equal to the minimum monthly wage.  
[RT I 2007, 25, 132 - entry into force 01.09.2007]

(5<sup>1</sup>) If a mother who has right to pregnancy and maternity leave or maternity benefit does not exercise the right to pregnancy and maternity leave or maternity benefit, the amount of the benefit shall be calculated for the first 70 days on the basis of subsections (1)–(2<sup>2</sup>) of this section, however, benefit shall not be paid more than in an amount equal to the minimum monthly wage in one calendar month.  
[RT I 2007, 25, 132 - entry into force 01.09.2007]

(6) If an applicant for the benefit does not receive income subject to social tax during the period provided for in subsection (2) of this section, the amount of the benefit per calendar month shall be equal to the benefit rate. The benefit rate shall be established by the state budget for each budgetary year. The benefit rate shall not be smaller than the rate in force or the minimum monthly wage which was in force in the previous calendar year, or greater than the minimum monthly wage in force.  
[RT I 2007, 25, 132 - entry into force 01.09.2007]

(7) If the recipient of benefit receives income subject to social tax (including from another Contracting Party to the EEA Agreement or from the Swiss Confederation), except the income from self-employment (hereinafter *income*), which exceeds the benefit rate, during the calendar month of payment of the benefit, the amount of the benefit shall be equal to the sum of the benefit and the amount of income exceeding the rate of the benefit and the quotient of number 1.2 from which the amount of income exceeding the rate of the benefit is deducted. The benefit shall not be paid if income received during the calendar month of payment of the benefit exceeds five times the benefit rate. If the amount of the benefit is less than the amount of the child care allowance paid on the basis of the State Family Benefits Act, then benefit shall be paid in the amount of the child care allowance provided for in the State Family Benefits Act, taking account of the number of the children in connection with whom the benefit is paid.

[RT I 2007, 25, 132 - entry into force 01.09.2007]

[RT I, 16.05.2013, 42 - entry into force 14.05.2013 Judgment of Constitutional Review Chamber of Supreme Court declares to be in conflict with the Constitution and repeals the first sentence of subsection 3 (7) of the Parental Benefit Act in the part under which the parental benefit received by a person shall be decreased such that the total income of the person is less than the parental benefit initially granted to the person.]

(7<sup>1</sup>) The reduction of the amount of benefit provided for in subsection (7) of this section shall not apply in the following cases:

- 1) during the first calendar month of payment of the benefit, with regard to income received for previous calendar months;
- 2) with regard to income received after termination of the right to the benefit if, during the calendar month of payment of the benefit, income is received for the period which follows the termination of the right to the benefit;
- 3) with regard to the benefit paid upon insolvency of the employer on the basis of the Unemployment Insurance Act if it is paid during the calendar month of payment of the parental benefit;
- 4) with regard to loss of income before the right to the parental benefit arises which is paid during the calendar month of payment of the parental benefit if later payment was the fault of the payer of social tax.

[RT I 2007, 25, 132 - entry into force 01.09.2007]

(8) If the average income per calendar month calculated pursuant to subsections (1)–(2<sup>2</sup>) of this section and received by an applicant for the benefit who has more children under the age of two years and six months at the time of birth of the child is smaller than or equal to the income which was the basis for the calculation of the benefit granted to him or her previously, the amount of the benefit shall be calculated on the basis of the previous income. The difference between parental benefit and maternity benefit shall be compensated to the person who has the right to receive maternity benefit as of the birth of the child pursuant to the procedure established by the Government of the Republic..

[RT I 2007, 25, 132 - entry into force 01.09.2007]

(8<sup>1</sup>) If a person specified in subsection (8) of this section is paid the parental benefit for the previous child, the person shall have the right to compensation for the difference between the benefit and the maternity benefit specified in subsection (8) of this section from the day following the day of termination of payment of the parental benefit paid for the previous child until the final date of the period for payment of the maternity benefit.

[RT I, 06.12.2012, 1 - entry into force 01.01.2013]

(9) If an applicant for the benefit has worked outside Estonia in another Contracting Party to the EEA Agreement or the Swiss Confederation during the calendar year prior to the date on which the right to receive benefit arises and he or she did not receive income which is subject to social tax in Estonia during the specified period and from the end of that period until the beginning of the pregnancy and maternity leave or she did not have the right to pregnancy and maternity leave, the amount of the benefit per calendar month shall be equal to the minimum monthly wage.

[RT I 2007, 25, 132 - entry into force 01.09.2007]

#### **§ 4. Application for, grant and payment of benefit**

(1) The benefit shall be applied for, granted and paid under the conditions and pursuant to the procedure provided for in the State Family Benefits Act taking account of the specifications provided for in this Act.

(2) The following basic documents shall be submitted upon application for the benefit:

- 1) an application;
- 2) a document specified in subsection 2 (2) of the Identity Documents Act.

(3) The Minister of Social Affairs shall establish the format of the application and the list of additional documents.

(4) The benefit shall be granted for the period of 435 days as of the date on which the right to receive the benefit arises. If the mother of the child does not have the right to receive maternity benefit, parental benefit shall be granted until the day the child attains eighteen months of age.

[RT I 2009, 5, 35 - entry into force 01.07.2009]

(5) If persons specified in subsection 2 (2) of this Act wish to exercise the right to receive the benefit in turn, a new applicant for the benefit shall submit an application which includes the consent of the person who received the benefit previously. The amount of benefit for the new applicant for the benefit shall be calculated on the basis of the same period as in the case of the person who received the benefit previously. If an application is submitted before the fifteenth day of the given calendar month, the benefit shall be granted to the person who submitted the application as of the following calendar month and if the application is submitted later, the benefit shall be granted as of the second calendar month following the submission of the application.

(6) The calendar month of payment of the benefit is the month for which the benefit is paid. The benefit shall be paid monthly for the previous calendar month. Upon payment of the benefit and calculation of the amount withheld from the benefit, amounts shall be rounded to the accuracy of one cent.

[RT I 2010, 22, 108 - entry into force 01.01.2011]

(7) If a judgment by which a person is sentenced to imprisonment has entered into force and the sentence of imprisonment is enforced, payment of the parental benefit shall be suspended for the time of the serving of the punishment.

[RT I, 06.12.2012, 1 - entry into force 01.05.2013]

## **§ 5. Notification obligation**

(1) If a recipient of the benefit receives income subject to social tax which is greater than the benefit rate during the calendar month of payment of the benefit (except the income from self-employment) or other circumstances which affect the amount of the benefit or the right to receive the benefit become evident, the recipient of the benefit is required to notify the Social Insurance Board thereof immediately in writing.

[RT I, 06.12.2012, 1 - entry into force 01.01.2013]

(2) If a recipient of the benefit receives income subject to social tax which is higher than the benefit rate in the cases specified in subsection 3 (7<sup>1</sup>) of this Act, the recipient of the benefit shall submit the certificate of the payer of social tax concerning receipt of income, a court judgment or ruling which has entered into force, the decision of a labour dispute committee or other relevant documents to the Social Insurance Board.

[RT I, 06.12.2012, 1 - entry into force 01.01.2013]

(3) The payer of social tax is required to issue, at the request of the recipient of the benefit, a certificate concerning payment of income subject to social tax for the periods specified in clauses 3 (7<sup>1</sup>) 1)–3) of this Act to him or her.

[RT I 2007, 25, 132 - entry into force 01.09.2007]

(4) The format of the certificate of the payer of social tax provided for in subsection (3) of this section shall be established by a regulation of the Minister of Social Affairs.

[RT I 2007, 25, 132 - entry into force 01.09.2007]

## **§ 6. Recalculation of benefit**

(1) The benefit granted pursuant to subsection 3 (3) of this Act shall be recalculated on 1 January of each calendar year if the amount of the benefit is less than the minimum monthly wage established by the Government of the Republic. The benefit shall be paid in an amount equal to the minimum monthly wage.

[RT I 2007, 25, 132 - entry into force 01.09.2007]

(1<sup>1</sup>) The benefit granted pursuant to subsections 3 (5) and (9) and subsection 11 (3) of this Act shall be recalculated on 1 January of each calendar year, taking account of the minimum monthly wage established by the Government of the Republic.

[RT I 2007, 25, 132 - entry into force 01.09.2007]

(2) The benefit of a person to whom the benefit is granted in the maximum amount or at the maximum benefit rate shall not be recalculated at the turn of the calendar year.

## **§ 7. Reclamation of benefit**

(1) Overpaid amounts of the benefit shall be reclaimed. The following cases are also deemed to be overpayment of the benefit:

1) if, upon submission of an income tax return from self-employment, it becomes evident that his or her actual business income after deductions relating to enterprise and permitted in the Income Tax Act have been made is smaller than the income which was the basis for the calculation of the benefit for him or her;

2) if a person receives child care allowance for the child in connection with whose birth the benefit is granted at the same time with the benefit;

3) if a recipient of benefit fails to notify the Social Insurance Board of circumstances which affect the amount of the benefit or the right to receive the benefit.

[RT I, 06.12.2012, 1 - entry into force 01.01.2013]

(1<sup>1</sup>) The Social Insurance Board shall check the data concerning the individually registered social tax for the calendar months of payment of the benefit during the period of payment of the benefit and after four calendar months have passed from termination of the right to the benefit.

[RT I, 06.12.2012, 1 - entry into force 01.01.2013]

(2) Upon agreement with the Social Insurance Board, a recipient of the benefit shall repay the requested amount at once or it shall be withheld from the benefit paid for the following calendar months. If a written agreement is not reached, the Social Insurance Board has the right to withhold the overpaid amount from the benefit. At least 50 per cent of the benefit rate shall be retained for the recipient of the benefit. If, due to circumstances specified in subsection 3 (7) of this Act, the amount of the benefit payable to a person is smaller than the benefit rate, at least 50 per cent of the amount payable shall be retained.

[RT I, 06.12.2012, 1 - entry into force 01.01.2013]

(3) If the payment of the benefit is terminated before repayment of the overpaid amount, a precept together with a warning shall be issued to the recipient of the benefit for reclamation of the overpaid amount. Upon failure to comply with the precept within a term set out in the warning, the Social Insurance Board has the right to issue a precept for compulsory execution pursuant to the procedure provided in the Code of Enforcement Procedure.  
[RT I, 06.12.2012, 1 - entry into force 01.01.2013]

(4) A precept together with a warning shall be sent to a recipient of the benefit within seven days as of the date of issue of the precept and the warning.

(5) If there is no information concerning the address of a person or if a person does not live at the address known and if the actual location of the person is unknown and the precept cannot be delivered in any other manner, the resolution contained in the precept shall be published in the official publication *Ametlikud Teadaanded*.

[RT I, 06.12.2012, 1 - entry into force 01.01.2013]

## **§ 8. Entry of data concerning benefit in register**

(1) Data concerning the grant, bases for grant and payment of the benefit shall be entered in the state pension insurance register.

(2) Personal data relating to an applicant for the benefit and the child and the other data necessary for the grant of the benefit shall be entered in the state pension insurance register from the population register.

(3) Data concerning the period during which an applicant for benefit is incapacitated for work on the basis of a certificate of incapacity for work and other data necessary for the grant of the benefit shall be entered in the state pension insurance register from the health insurance database.

[RT I 2007, 25, 132 - entry into force 01.09.2007]

(4) Data shall be entered in and received from the register pursuant to the Personal Data Protection Act and the Public Information Act.

[RT I 2007, 24, 127 - entry into force 01.01.2008]

## **§ 9. Resolution of disputes**

(1) If an applicant for the benefit does not agree with a decision on the grant of the benefit or with reclamation of the benefit, he or she has the right to file a challenge with the Social Insurance Board within thirty days after receipt of the decision.

(2) A challenge shall be resolved within thirty days after registration of the challenge by the Social Insurance Board.

(3) If an applicant for the benefit does not agree with a decision on the challenge, he or she has the right of recourse to an administrative court within thirty days after the date of notification of the decision on the challenge.

[RT I, 06.12.2012, 1 - entry into force 01.01.2013]

## **§ 10. Financing of benefit**

Payment of the benefit shall be financed from the state budget.

## **§ 10<sup>1</sup>. Payment of earlier granted parental benefit**

The parental benefits granted before 1 February 2009 shall be paid pursuant to the procedure provided for in § 24 of the State Family Benefits Act as of 1 February 2009.

[RT I 2008, 48, 264 - entry into force 01.02.2009]

## **§ 11. Implementing provisions**

(1) Child care allowance shall be paid to persons who, before the entry into force of this Act, were granted child care allowance pursuant to clause 6 (1) 1) and subsection 6 (1<sup>1</sup>) of the State Family Benefits Act until the grant of the benefit for the child in connection with whose birth the right to receive the benefit arises. The payment of child care allowance for the child in connection with whose birth the right to receive the benefit arises shall be suspended for the period of payment of the benefit.

(2) If the child of an applicant for the benefit was born in 2003, the number of calendar months in 2003, which is calculated by dividing the difference between the number of calendar days in the calendar year and the number of days during which the person is temporarily released from work on the basis of a certificate of incapacity for work and the number of days during which the person is on parental leave for the same child by thirty, shall be taken into account upon calculation of the average individually registered social tax per calendar month.

[RT I 2007, 25, 132 - entry into force 01.09.2007]

(3) If an applicant for the benefit who has more children under the age of two years and six months and who was not granted the benefit earlier receives income subject to social tax before a parental leave but does not receive income subject to social tax during the period provided for in subsection 3 (2) of this Act, the amount of the benefit per calendar month shall be equal to the minimum monthly wage established by the Government of the Republic.

(4) The Government of the Republic shall approve the average income subject to social tax in Estonia per calendar month which is provided for in subsection 3 (4) of this Act for the year 2004 not later than by 20 December 2003.

(5) If, by 1 January 2006, less time than the period specified in subsection 4 (4) of this Act has passed since the grant of maternity benefit or benefit to a person, payment of the benefit shall continue until the time provided for in subsection 4 (4) of this Act. If a person's right to receive benefit has terminated as at 31 December 2005, payment of the benefit granted earlier than 1 January 2006 shall continue until the time provided for in subsection 4 (4) of this Act.

(6) The previous income specified in subsection 3 (8) of this Act shall be recalculated pursuant to subsections (1)–(2<sup>2</sup>) of the same section, taking account of the specifications of subsection 11 (2) of this Act, for persons to whom the previous benefit had been granted before 1 September 2007.

[RT I 2007, 25, 132 - entry into force 01.09.2007]

(7) If, by 1 January 2008, less time than the period specified in subsection 4 (4) of this Act has passed since the grant of maternity benefit or benefit to a person, payment of the benefit shall continue until the time provided for in subsection 4 (4) of this Act. If a person's right to receive benefit has terminated as at 31 December 2007, the benefit granted earlier than 1 January 2008 shall be paid upon submission of an application until the time provided for in subsection 4 (4) of this Act.

[RT I 2007, 44, 317 - entry into force 01.01.2008]

(8) The maximum amount of the parental benefit per calendar month of the year 2013 shall be calculated on the basis of the average income subject to social tax in Estonia per calendar month for the year 2013 approved by the Government of the Republic on the basis of subsection 3 (4) of this Act.

[RT I, 06.12.2012, 1 - entry into force 01.01.2013]

§ 12.–§ 17.[Omitted from this text]

## § 18. Entry into force of Act

This Act enters into force on 1 January 2004.