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STATUTORY INSTRUMENTS

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**1999 No. 3312**

**The Maternity and Parental Leave etc. Regulations 1999**

**PART IV**

**PROVISIONS APPLICABLE IN RELATION  
TO MORE THAN ONE KIND OF ABSENCE**

**Application of terms and conditions during periods of leave**

- 17.** An employee who takes additional maternity leave or parental leave—
- (a) is entitled, during the period of leave, to the benefit of her employer's implied obligation to her of trust and confidence and any terms and conditions of her employment relating to—
    - (i) notice of the termination of the employment contract by her employer;
    - (ii) compensation in the event of redundancy, or
    - (iii) disciplinary or grievance procedures;
  - (b) is bound, during that period, by her implied obligation to her employer of good faith and any terms and conditions of her employment relating to—
    - (i) notice of the termination of the employment contract by her;
    - (ii) the disclosure of confidential information;
    - (iii) the acceptance of gifts or other benefits, or
    - (iv) the employee's participation in any other business.

**Right to return after additional maternity leave or parental leave**

**18.—(1)** An employee who takes parental leave for a period of four weeks or less, other than immediately after taking additional maternity leave, is entitled to return from leave to the job in which she was employed before her absence.

(2) An employee who takes additional maternity leave, or parental leave for a period of more than four weeks, is entitled to return from leave to the job in which she was employed before her absence, or, if it is not reasonably practicable for the employer to permit her to return to that job, to another job which is both suitable for her and appropriate for her to do in the circumstances.

(3) An employee who takes parental leave for a period of four weeks or less immediately after additional maternity leave is entitled to return from leave to the job in which she was employed before her absence unless—

- (a) it would not have been reasonably practicable for her to return to that job if she had returned at the end of her additional maternity leave period, and
- (b) it is not reasonably practicable for the employer to permit her to return to that job at the end of her period of parental leave;

otherwise, she is entitled to return to another job which is both suitable for her and appropriate for her to do in the circumstances.

- (4) Paragraphs (2) and (3) do not apply where regulation 10 applies.
- (5) An employee's right to return under paragraph (1), (2) or (3) is to return—
- (a) on terms and conditions as to remuneration not less favourable than those which would have been applicable to her had she not been absent from work at any time since—
    - (i) in the case of an employee returning from additional maternity leave (or parental leave taken immediately after additional maternity leave), the commencement of the ordinary maternity leave period which preceded her additional maternity leave period, or
    - (ii) in the case of an employee returning from parental leave (other than parental leave taken immediately after additional maternity leave), the commencement of the period of parental leave;
  - (b) with her seniority, pension rights and similar rights as they would have been if the period or periods of her employment prior to her additional maternity leave period, or (as the case may be) her period of parental leave, were continuous with her employment following her return to work (but subject, in the case of an employee returning from additional maternity leave, to the requirements of paragraph 5 of Schedule 5 to the Social Security Act 1989<sup>(1)</sup> (equal treatment under pension schemes: maternity)), and
  - (c) otherwise on terms and conditions not less favourable than those which would have been applicable to her had she not been absent from work after the end of her ordinary maternity leave period or (as the case may be) during her period of parental leave.

### **Protection from detriment**

**19.**—(1) An employee is entitled under section 47C of the 1996 Act not to be subjected to any detriment by any act, or any deliberate failure to act, by her employer done for any of the reasons specified in paragraph (2).

- (2) The reasons referred to in paragraph (1) are that the employee—
- (a) is pregnant;
  - (b) has given birth to a child;
  - (c) is the subject of a relevant requirement, or a relevant recommendation, as defined by section 66(2) of the 1996 Act;
  - (d) took, sought to take or availed herself of the benefits of, ordinary maternity leave;
  - (e) took or sought to take—
    - (i) additional maternity leave;
    - (ii) parental leave, or
    - (iii) time off under section 57A of the 1996 Act;
  - (f) declined to sign a workforce agreement for the purpose of these Regulations, or
  - (g) being—
    - (i) a representative of members of the workforce for the purposes of Schedule 1, or
    - (ii) a candidate in an election in which any person elected will, on being elected, become such a representative,
 performed (or proposed to perform) any functions or activities as such a representative or candidate.

(1) 1989 c. 24.

(3) For the purposes of paragraph (2)(d), a woman avails herself of the benefits of ordinary maternity leave if, during her ordinary maternity leave period, she avails herself of the benefit of any of the terms and conditions of her employment preserved by section 71 of the 1996 Act during that period.

(4) Paragraph (1) does not apply in a case where the detriment in question amounts to dismissal within the meaning of Part X of the 1996 Act.

(5) Paragraph (2)(b) only applies where the act or failure to act takes place during the employee's ordinary or additional maternity leave period.

(6) For the purposes of paragraph (5)—

- (a) where an act extends over a period, the reference to the date of the act is a reference to the last day of that period, and
- (b) a failure to act is to be treated as done when it was decided on.

(7) For the purposes of paragraph (6), in the absence of evidence establishing the contrary an employer shall be taken to decide on a failure to act—

- (a) when he does an act inconsistent with doing the failed act, or
- (b) if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the failed act if it were to be done.

### **Unfair dismissal**

**20.**—(1) An employee who is dismissed is entitled under section 99 of the 1996 Act to be regarded for the purposes of Part X of that Act as unfairly dismissed if—

- (a) the reason or principal reason for the dismissal is of a kind specified in paragraph (3), or
- (b) the reason or principal reason for the dismissal is that the employee is redundant, and regulation 10 has not been complied with.

(2) An employee who is dismissed shall also be regarded for the purposes of Part X of the 1996 Act as unfairly dismissed if—

- (a) the reason (or, if more than one, the principal reason) for the dismissal is that the employee was redundant;
- (b) it is shown that the circumstances constituting the redundancy applied equally to one or more employees in the same undertaking who held positions similar to that held by the employee and who have not been dismissed by the employer, and
- (c) it is shown that the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was a reason of a kind specified in paragraph (3).

(3) The kinds of reason referred to in paragraphs (1) and (2) are reasons connected with—

- (a) the pregnancy of the employee;
- (b) the fact that the employee has given birth to a child;
- (c) the application of a relevant requirement, or a relevant recommendation, as defined by section 66(2) of the 1996 Act;
- (d) the fact that she took, sought to take or availed herself of the benefits of, ordinary maternity leave;
- (e) the fact that she took or sought to take—
  - (i) additional maternity leave;
  - (ii) parental leave, or
  - (iii) time off under section 57A of the 1996 Act;

- (f) the fact that she declined to sign a workforce agreement for the purposes of these Regulations, or
- (g) the fact that the employee, being—
  - (i) a representative of members of the workforce for the purposes of Schedule 1, or
  - (ii) a candidate in an election in which any person elected will, on being elected, become such a representative,
 performed (or proposed to perform) any functions or activities as such a representative or candidate.

(4) Paragraphs (1)(b) and (3)(b) only apply where the dismissal ends the employee's ordinary or additional maternity leave period.

(5) Paragraph (3) of regulation 19 applies for the purposes of paragraph (3)(d) as it applies for the purpose of paragraph (2)(d) of that regulation.

(6) Paragraph (1) does not apply in relation to an employee if—

  - (a) immediately before the end of her additional maternity leave period (or, if it ends by reason of dismissal, immediately before the dismissal) the number of employees employed by her employer, added to the number employed by any associated employer of his, did not exceed five, and
  - (b) it is not reasonably practicable for the employer (who may be the same employer or a successor of his) to permit her to return to a job which is both suitable for her and appropriate for her to do in the circumstances or for an associated employer to offer her a job of that kind.

(7) Paragraph (1) does not apply in relation to an employee if—

  - (a) it is not reasonably practicable for a reason other than redundancy for the employer (who may be the same employer or a successor of his) to permit her to return to a job which is both suitable for her and appropriate for her to do in the circumstances;
  - (b) an associated employer offers her a job of that kind, and
  - (c) she accepts or unreasonably refuses that offer.

(8) Where on a complaint of unfair dismissal any question arises as to whether the operation of paragraph (1) is excluded by the provisions of paragraph (6) or (7), it is for the employer to show that the provisions in question were satisfied in relation to the complainant.

### **Contractual rights to maternity or parental leave**

- 21.**—(1) This regulation applies where an employee is entitled to—
- (a) ordinary maternity leave;
  - (b) additional maternity leave, or
  - (c) parental leave,
- (referred to in paragraph (2) as a “statutory right”) and also to a right which corresponds to that right and which arises under the employee's contract of employment or otherwise.
- (2) In a case where this regulation applies—
- (a) the employee may not exercise the statutory right and the corresponding right separately but may, in taking the leave for which the two rights provide, take advantage of whichever right is, in any particular respect, the more favourable, and
  - (b) the provisions of the 1996 Act and of these Regulations relating to the statutory right apply, subject to any modifications necessary to give effect to any more favourable contractual

terms, to the exercise of the composite right described in sub-paragraph (a) as they apply to the exercise of the statutory right.

### **Calculation of a week's pay**

#### **22. Where—**

- (a) under Chapter II of part XIV of the 1996 Act, the amount of a week's pay of an employee falls to be calculated by reference to the average rate of remuneration, or the average amount of remuneration, payable to the employee in respect of a period of twelve weeks ending on a particular date (referred to as "the calculation date");
- (b) during a week in that period, the employee was absent from work on ordinary or additional maternity leave or parental leave, and
- (c) remuneration is payable to the employee in respect of that week under her contract of employment, but the amount payable is less than the amount that would be payable if she were working,

that week shall be disregarded for the purpose of the calculation and account shall be taken of remuneration in earlier weeks so as to bring up to twelve the number of weeks of which account is taken.