

2006 No. 372

EMPLOYMENT

WORK AND FAMILIES

**The Maternity and Parental Leave etc. (Amendment)
Regulations (Northern Ireland) 2006**

Made - - - - - *15th September 2006*

Coming into operation - - - - - *1st October 2006*

The Department for Employment and Learning(a), in exercise of the powers conferred by Articles 70C(2)(b), 103(3), 105(2) and (3), 106(2), (3) and (4), 107(c), 131(1)(d) and 251(6)(e) of the Employment Rights (Northern Ireland) Order 1996(f), and now vested in it(g), makes the following Regulations:

Citation, commencement and interpretation

1. These Regulations may be cited as the Maternity and Parental Leave etc. (Amendment) Regulations (Northern Ireland) 2006 and shall come into operation on 1st October 2006.

2. In these Regulations “the principal Regulations” means the Maternity and Parental Leave etc. Regulations (Northern Ireland) 1999(h).

Application

3. The amendments to the principal Regulations provided for in these Regulations have effect only in relation to employees whose expected week of childbirth begins on or after 1st April 2007.

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- (a) Formerly the Department of Higher and Further Education, Training and Employment; *See* 2001 c.15 (N.I.)
- (b) Article 70C was inserted by paragraph 3 of Part III of Schedule 4 to the Employment Relations (Northern Ireland) Order 1999 (S.I. 1999/2790 (N.I. 9)) (“the 1999 Order”) and paragraph (2) was amended by Article 17 and sub-paragraphs (6) and (7) of paragraph 4 of Schedule 2 to the Employment (Northern Ireland) Order 2002 (S.I. 2002/2836 (N.I. 2)) (“the 2002 Order”). Further amendments which are not relevant to these Regulations have been made to Article 70C by paragraph 29 of Schedule 1 to the Work and Families (Northern Ireland) Order 2006 (S.I. 2006/1947 (N.I. 16)) (“the 2006 Order”). The word “prescribed” in Article 70C is defined in paragraph (2) of that Article
- (c) Articles 103 to 112 were substituted by Article 9 and Part I of Schedule 4 to the 1999 Order. Paragraph (3) of Article 103 was substituted by paragraph 30 of Schedule 1 to the 2006 Order. Paragraph (3) of Article 105 was substituted by paragraph 31 of Schedule 1 to the 2006 Order. The word “prescribed” in Articles 103 and 105 of the 1996 Order is defined in Article 107(2) of that Order. Paragraph (4) of Article 106 was amended by Article 14(5) of the 2002 Order
- (d) Article 131 was substituted by paragraph 8 of Part III of Schedule 4 to the 1999 Order
- (e) Article 251 was amended by paragraph 16 of Part III of Schedule 4 to the 1999 Order, sub-paragraph (19) of paragraph 4 of Schedule 2 to the 2002 Order and sub-paragraph (10) of paragraph 2 of Schedule 5 to the Employment (Northern Ireland) Order 2003 (S.I. 2003/2902 (N.I. 15))
- (f) S.I. 1996/1919 (N.I. 16)
- (g) *See* S.R. 1999 No. 481 Departments (Transfer and Assignment of Functions) Order (Northern Ireland) 1999
- (h) S.R. 1999 No. 471 as amended by the Maternity and Parental Leave etc. (Amendment) Regulations (Northern Ireland) 2002 (S.R. 2002 No. 110), the Maternity and Parental Leave etc. (Amendment No. 2) Regulations (Northern Ireland) 2002 (S.R. 2002 No. 135) and the Maternity and Parental Leave etc. (Amendment No. 3) Regulations (Northern Ireland) 2002 (S.R. 2002 No. 355)

Amendments to the principal Regulations

4. The principal Regulations shall be amended as follows.

5. In regulation 2(1) (interpretation) after the definition of “statutory leave” there shall be inserted the following definitions—

““statutory maternity leave” means ordinary maternity leave and additional maternity leave;

“statutory maternity leave period” means the period during which the employee is on statutory maternity leave;”.

6. In regulation 4 (entitlement to ordinary maternity leave)—

(1) in the heading, after “Entitlement to ordinary maternity leave”, insert “and to additional maternity leave”;

(2) in paragraph (1), after “An employee is entitled to ordinary maternity leave” insert “and to additional maternity leave”;

(3) in paragraph (3)(b), after “she is not entitled to ordinary maternity leave” insert “or to additional maternity leave”;

(4) in paragraph (4), for “Where, by virtue of regulation 5(2),” substitute “Where, by virtue of regulation 6(2),”;

(5) in paragraph (4)(b), after “she is not entitled to ordinary maternity leave” insert “or to additional maternity leave”.

7. Omit regulation 5 (entitlement to additional maternity leave).

8. In regulation 7(6) (duration of maternity leave periods)(a)—

(1) omit sub-paragraphs (a) and (b); and

(2) after “shall notify the employee of the date on which” insert “her additional maternity leave period shall end.”.

9. In regulation 11 (requirement to notify intention to return during a maternity leave period)—

(1) for paragraph (1) substitute—

“(1) An employee who intends to return to work earlier than the end of her additional maternity leave period, shall give to her employer not less than 8 weeks’ notice of the date on which she intends to return.”;

(2) in paragraph (2)—

(a) for “a maternity leave period” substitute “her additional maternity leave period”;

(b) for “28 days” substitute “8 weeks”;

(3) after paragraph (2) insert—

“(2A) An employee who complies with her obligations in paragraph (1) or whose employer has postponed her return in the circumstances described in paragraph (2), and who then decides to return to work—

(a) earlier than the original return date, must give her employer not less than 8 weeks’ notice of the date on which she now intends to return;

(b) later than the original return date, must give her employer not less than 8 weeks’ notice ending with the original return date.

(2B) In paragraph (2A) the “original return date” means the date which the employee notified to her employer as the date of her return to work under paragraph (1), or the date to which her return was postponed by her employer under paragraph (2).”;

(a) Regulation 7(6) was inserted by regulation 8(c) of S.R. 2002 No. 355

(4) in paragraphs (3) and (5), for “the relevant maternity leave period” substitute “her additional maternity leave period”.

10. After regulation 11(a) insert—

“Work during maternity leave period

12A.—(1) Subject to paragraph (5), an employee may carry out up to 10 days’ work for her employer during her statutory maternity leave period without bringing her maternity leave to an end.

(2) For the purposes of this regulation, any work carried out on any day shall constitute a day’s work.

(3) Subject to paragraph (4), for the purposes of this regulation, work means any work done under the contract of employment and may include training or any activity undertaken for the purposes of keeping in touch with the workplace.

(4) Reasonable contact from time to time between an employee and her employer which either party is entitled to make during a statutory maternity leave period (for example to discuss an employee’s return to work) shall not bring that period to an end.

(5) Paragraph (1) shall not apply in relation to any work carried out by the employee at any time from childbirth to the end of the period of two weeks which commences with the day on which childbirth occurs.

(6) This regulation does not confer any right on an employer to require that any work be carried out during the statutory maternity leave period, nor any right on an employee to work during the statutory maternity leave period.

(7) Any days’ work carried out under this regulation shall not have the effect of extending the total duration of the statutory maternity leave period.”.

11. In regulation 19 (protection from detriment), after paragraph (2)(ee)(b) insert—

“(eee) undertook, considered undertaking or refused to undertake work in accordance with regulation 12A;”.

12. In regulation 20 (unfair dismissal)—

(1) after paragraph (3)(ee)(c) insert—

“(eee) the fact that she undertook, considered undertaking or refused to undertake work in accordance with regulation 12A;”;

(2) omit paragraph (6);

(3) in paragraph (8) omit “(6) or”.

Sealed with the Official Seal of the Department for Employment and Learning on 15th September 2006.



D. S. S. McAuley
A senior officer of the
Department for Employment and Learning

(a) Regulation 12 was omitted by regulation 11 of S.R. 2002 No. 355
(b) Paragraph 2(ee) was inserted by regulation 13(a) of S.R. 2002 No. 355
(c) Paragraph 3(ee) was inserted by regulation 14 of S.R. 2002 No. 355

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend provisions relating to maternity leave in the Maternity and Parental Leave etc. Regulations (Northern Ireland) 1999 (S.R. 1999 No. 471).

The amendments have effect in relation to an employee whose expected week of childbirth is on or after 1st April 2007.

Regulation 5 inserts the definitions of “statutory maternity leave” and “statutory maternity leave period”.

Regulations 6 to 8 remove the additional length of service qualifying condition for additional maternity leave. An employee who qualifies for ordinary maternity leave will now also qualify for additional maternity leave.

Regulation 9 extends the period of notice which the employee is required to give to the employer of her intention to return to work earlier than the end of her additional maternity leave from 28 days to 8 weeks. The time period is similarly extended from 28 days to 8 weeks in circumstances where the employer delays the employee’s return due to the employee’s failure to comply with the notification requirements in regulation 11(1).

Regulation 9 also sets out notification requirements where the employee changes her mind as to her intended return date. If, after notifying the employer that she intends to return before the end of her additional maternity leave period on return date X, she then decides to return on an earlier date, she is required to give 8 weeks’ notice of the new return date. If she intends to return later than date X, she will be required to give 8 weeks’ notice ending with date X.

Regulation 10 inserts a new regulation 12A which enables an employee on maternity leave to agree with her employer to work for up to 10 days during the statutory maternity leave period without bringing that period to an end as a result of carrying out the work. For the purposes of that new provision, “work” may include training or any other activity undertaken to assist the employee in keeping in touch with the workplace. The new provision also sets out that reasonable contact which employers and employees are entitled to have with each other during the maternity leave period does not bring that period to an end.

Any work carried out under the new provision must be by agreement between the parties and there is no right for an employer to demand that an employee undertake any such work, nor for an employee to do such work. The regulation also provides that any such days’ work shall not have the effect of extending the maternity leave period.

Regulation 11 adds undertaking, considering undertaking or refusing to undertake any such work to the list of reasons for which an employee is entitled to protection from detriment under Article 70C of the Employment Rights (Northern Ireland) Order 1996.

Regulation 12 similarly adds undertaking, considering undertaking or refusing to undertake any such work to the list of reasons for which an employee, if dismissed for such a reason, is unfairly dismissed under Article 131 of the Employment Rights (Northern Ireland) Order 1996. The regulation also removes the small employers’ exemption in order to clarify that the employee has a right to return to the same or a similar job regardless of the size of the organisation for which the employee works. If the employee is prevented from so doing in these circumstances the dismissal will be automatically unfair under Article 131 of the Employment Rights (Northern Ireland) Order 1996.

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