



Trade Union Reform and Employment Rights Act 1993

1993 CHAPTER 19

PART II

EMPLOYMENT RIGHTS

Maternity

23 Right to maternity leave and right to return to work

- (1) In the Employment Protection (Consolidation) Act 1978 (referred to in this Act as “the 1978 Act”), for Part III (maternity: right to return to work) there shall be substituted—
- (a) the sections 33 to 38A set out in subsection (2) below (which provide for a new right to maternity leave), and
 - (b) the sections 39 to 44, together with the heading, set out in Schedule 2 to this Act (which continue in effect the right to return to work with amendments to take account of the new right).
- (2) The provisions referred to in subsection (1)(a) above are—

“PART III

MATERNITY

General right to maternity leave

33 General right to maternity leave

- (1) An employee who is absent from work at any time during her maternity leave period shall, subject to sections 36 and 37, be entitled to the benefit of the

terms and conditions of employment which would have been applicable to her if she had not been absent (and had not been pregnant or given birth to a child).

- (2) Subsection (1) does not confer any entitlement to remuneration.

34 Commencement of maternity leave period

- (1) Subject to subsection (2), an employee's maternity leave period commences with—
- (a) the date which, in accordance with section 36, she notifies to her employer as the date on which she intends her period of absence from work in exercise of her right to maternity leave to commence, or
 - (b) if earlier, the first day on which she is absent from work wholly or partly because of pregnancy or childbirth after the beginning of the sixth week before the expected week of childbirth.
- (2) Where childbirth occurs before the day with which the employee's maternity leave period would otherwise commence, her maternity leave period shall commence with the day on which childbirth occurs.
- (3) The Secretary of State may by order vary either of the provisions of subsections (1) and (2).
- (4) No order shall be made under subsection (3) unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament.

35 Duration of maternity leave period

- (1) Subject to subsections (2) and (3), an employee's maternity leave period shall continue for the period of fourteen weeks from its commencement or until the birth of the child, if later.
- (2) Subject to subsection (3), where any requirement imposed by or under any provision of any enactment or of any instrument made under any enactment, other than a provision for the time being specified in an order made under section 45(3), prohibits her working for any period after the end of the period mentioned in subsection (1) by reason of her having recently given birth, her maternity leave period shall continue until the expiry of that later period.
- (3) Where an employee is dismissed after the commencement of her maternity leave period but before the time when (apart from this subsection) that period would end, the period ends at the time of the dismissal.
- (4) The Secretary of State may by order vary any of the provisions of this section.
- (5) No order shall be made under subsection (4) unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament.

36 Notice of commencement of leave

- (1) An employee shall not have the right conferred by section 33 unless—

Status: This is the original version (as it was originally enacted).

- (a) she notifies her employer of the date (within the restriction imposed by subsection (2)) (“the notified leave date”) on which she intends her period of absence from work in exercise of her right to maternity leave to commence—
 - (i) not less than twenty-one days before that date, or
 - (ii) if that is not reasonably practicable, as soon as is reasonably practicable,
- (b) where she is first absent from work wholly or partly because of pregnancy or childbirth before the notified leave date or before she has notified such a date and after the beginning of the sixth week before the expected week of childbirth, she notifies her employer as soon as is reasonably practicable that she is absent for that reason, or
- (c) where childbirth occurs before the notified leave date or before she has notified such a date, she notifies her employer that she has given birth as soon as is reasonably practicable after the birth,

and any notice she is required to give under paragraphs (a) to (c) shall, if her employer so requests, be given in writing.

- (2) No date may be notified under subsection (1)(a) which occurs before the beginning of the eleventh week before the expected week of childbirth.
- (3) Where, in the case of an employee, either paragraph (b) or (c) of subsection (1) has fallen to be satisfied, and has been so satisfied, nothing in paragraph (a) of that subsection shall impose any requirement on the employee.

37 Requirement to inform employer of pregnancy etc

- (1) An employee shall not have the right conferred by section 33 unless she informs her employer in writing at least twenty-one days before her maternity leave period commences or, if that is not reasonably practicable, as soon as is reasonably practicable—
 - (a) that she is pregnant, and
 - (b) of the expected week of childbirth or, if the childbirth has occurred, the date on which it occurred.
- (2) An employee shall not have the right conferred by section 33 unless, if requested to do so by her employer, she produces for his inspection a certificate from a registered medical practitioner or a registered midwife stating the expected week of childbirth.

37A Requirement to inform employer of return during maternity leave period

- (1) An employee who intends to return to work earlier than the end of her maternity leave period shall give to her employer not less than seven days notice of the date on which she intends to return.
- (2) If an employee returns to work as mentioned in subsection (1) without notifying her employer of her intention to do so or without giving him the notice required by that subsection her employer shall be entitled to postpone her return to a date such as will secure, subject to subsection (3), that he has seven days notice of her return.

- (3) An employer is not entitled under subsection (2) to postpone an employee's return to work to a date after the end of her maternity leave period.
- (4) If an employee who has been notified under subsection (2) that she is not to return to work before the date specified by her employer does return to work before that date the employer shall be under no contractual obligation to pay her remuneration until the date specified by him as the date on which she may return.

38 Special provision where redundancy during maternity leave period

- (1) Where during an employee's maternity leave period it is not practicable by reason of redundancy for the employer to continue to employ her under her existing contract of employment, she shall be entitled, where there is a suitable available vacancy, to be offered (before the ending of her employment under that contract) alternative employment with her employer or his successor, or an associated employer, under a new contract of employment which complies with subsection (2) (and takes effect immediately on the ending of her employment under the previous contract).
- (2) The new contract of employment must be such that—
 - (a) the work to be done under the contract is of a kind which is both suitable in relation to the employee and appropriate for her to do in the circumstances; and
 - (b) the provisions of the new contract as to the capacity and place in which she is to be employed and as to the other terms and conditions of her employment are not substantially less favourable to her than if she had continued to be employed under the previous contract.

38A Contractual right to maternity leave

- (1) An employee who has the right to maternity leave under section 33 and a right to maternity leave under a contract of employment or otherwise may not exercise the two rights separately but may, in taking maternity leave, take advantage of whichever right is, in any particular respect, the more favourable.
- (2) The provisions of sections 34 to 38 shall apply, subject to any modifications necessary to give effect to any more favourable contractual terms, to the exercise of the composite right described in subsection (1) as they apply to the exercise of the right under section 33.”

24 Dismissal rights

- (1) For section 60 of the 1978 Act (dismissal on ground of pregnancy) there shall be substituted—

“60 Dismissal on ground of pregnancy or childbirth

An employee shall be treated for the purposes of this Part as unfairly dismissed if—

Status: This is the original version (as it was originally enacted).

- (a) the reason (or, if there is more than one, the principal reason) for her dismissal is that she is pregnant or any other reason connected with her pregnancy,
- (b) her maternity leave period is ended by the dismissal and the reason (or, if there is more than one, the principal reason) for her dismissal is that she has given birth to a child or any other reason connected with her having given birth to a child,
- (c) the reason (or, if there is more than one, the principal reason) for her dismissal, where her contract of employment was terminated after the end of her maternity leave period, is that she took, or availed herself of the benefits of, maternity leave,
- (d) the reason (or, if there is more than one, the principal reason) for her dismissal, where—
 - (i) before the end of her maternity leave period, she gave to her employer a certificate from a registered medical practitioner stating that by reason of disease or bodily or mental disablement she would be incapable of work after the end of that period, and
 - (ii) her contract of employment was terminated within the four week period following the end of her maternity leave period in circumstances where she continued to be incapable of work and the certificate relating to her incapacity remained current, is that she has given birth to a child or any other reason connected with her having given birth to a child,
- (e) the reason (or, if there is more than one, the principal reason) for her dismissal is a requirement or recommendation such as is referred to in section 45(1), or
- (f) her maternity leave period is ended by the dismissal, and the reason (or, if there is more than one, the principal reason) for her dismissal is that she is redundant and section 38 has not been complied with.

For the purposes of paragraph (c) above a woman “takes maternity leave” if she is absent from work during her maternity leave period and a woman “avails herself of the benefits of maternity leave” if, during her maternity leave period, she avails herself of the benefit of any of the terms and conditions of her employment preserved by section 33 during that period.”.

- (2) In section 59 of the 1978 Act (dismissal on ground of redundancy),—
 - (a) for the words “employer, and” there shall be substituted the words “employer, and either—
 - (a) that the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was an inadmissible reason; or”; and
 - (b) there shall be inserted at the end, as subsection (2), the following—

“(2) For the purposes of this section “inadmissible”, in relation to a reason, means that it is one of those specified in section 60(a) to (e)”;

and the words preceding that subsection (2) shall become subsection (1).
- (3) In section 64 of the 1978 Act (qualifying period for right not to be unfairly dismissed), after subsection (2) there shall be inserted—

Status: This is the original version (as it was originally enacted).

- “(3) Subsection (1) shall not apply to the dismissal of an employee if it is shown that the reason (or, if more than one, the principal reason) for the dismissal or, in a redundancy case, for selecting the employee for dismissal, was an inadmissible reason.
- (4) For the purposes of subsection (3) “inadmissible”, in relation to a reason, means that it is one of those specified in section 60(a) to (e).
- (5) Subsection (1) shall not apply to a case falling within section 60(f).”.
- (4) In section 53 of that Act (written statement of reasons for dismissal), after subsection (2) there shall be inserted—
- “(2A) An employee shall be entitled (without making any request and irrespective of whether or not she has been continuously employed for any period) to be provided by her employer with a written statement giving particulars of the reasons for her dismissal if she is dismissed—
- (a) at any time while she is pregnant, or
 - (b) after childbirth in circumstances in which her maternity leave period ends by reason of the dismissal.”.

25 Rights on suspension on maternity grounds

After section 44 of the 1978 Act (set out in Schedule 2 to this Act) there shall be inserted as provisions of Part III the sections 45 to 47, together with the heading, set out in Schedule 3 to this Act (which makes provision conferring rights on employees suspended from work on grounds of maternity).