



# Employment Rights Act 1996

## 1996 CHAPTER 18

### [<sup>F1</sup>PART VIII

### [<sup>F1F2</sup>CHAPTER I

### MATERNITY LEAVE

#### Textual Amendments

- F1** Pt. 8 (ss. 71-80) substituted for Pt. 8 (ss. 71-85) (15.12.1999) by 1999 c. 26, s. 7, **Sch. 4 Pt. 1**; S.I. 1999/2830, art. 2(1)(2), **Sch. 1 Pt. 2** (with transitional provisions in Sch. 3 para. 10)
- F2** Pt. VIII (ss. 71-80) substituted for Pt. VIII (ss. 71-85) (15.12.1999) by 1999 c. 26, s. 7, **Sch. 4 Pt. I**; S.I. 1999/2830, art. 2(2), **Sch. 1 Pt. II** (with Sch. 3 para. 10)

<sup>F3</sup>71

- (1) An employee may, provided that she satisfies any conditions which may be prescribed, be absent from work at any time during an ordinary maternity leave period.
- (2) An ordinary maternity leave period is a period calculated in accordance with regulations made by the Secretary of State.
- [<sup>F4</sup>(3) Regulations under subsection (2)—
  - (a) shall secure that, where an employee has a right to leave under this section, she is entitled to an ordinary maternity leave period of at least 26 weeks;
  - (b) may allow an employee to choose, subject to prescribed restrictions, the date on which an ordinary maternity leave period starts;
  - (c) may specify circumstances in which an employee may work for her employer during an ordinary maternity leave period without bringing the period to an end.]
- (4) Subject to section 74, an employee who exercises her right under subsection (1)—

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- (a) is entitled [<sup>F5</sup>, for such purposes and to such extent as may be prescribed,] to the benefit of the terms and conditions of employment which would have applied if she had not been absent,
  - (b) is bound [<sup>F6</sup>, for such purposes and to such extent as may be prescribed] by any obligations arising under those terms and conditions (except in so far as they are inconsistent with subsection (1)), and
  - [<sup>F7</sup>(c) is entitled to return from leave to a job of a prescribed kind.]
- (5) In subsection (4)(a) “terms and conditions of employment”—
- (a) includes matters connected with an employee’s employment whether or not they arise under her contract of employment, but
  - (b) does not include terms and conditions about remuneration.
- (6) The Secretary of State may make regulations specifying matters which are, or are not, to be treated as remuneration for the purposes of this section.
- [<sup>F8</sup>(7) The Secretary of State may make regulations making provision, in relation to the right to return under subsection (4)(c) above, about—
- (a) seniority, pension rights and similar rights;
  - (b) terms and conditions of employment on return.]

#### Textual Amendments

- F3** Pt. VIII (ss. 71-80) substituted for Pt. VIII (ss. 71-85) (15.12.1999) by [1999 c. 26, s. 7, Sch. 4 Pt. I](#); [S.I. 1999/2830, art. 2\(2\), Sch. 1 Pt. II](#) (with [Sch. 3 para. 10](#))
- F4** S. 71(3) substituted (27.6.2006 for certain purposes, otherwise 1.10.2006) by [Work and Families Act 2006 \(c. 18\), ss. 11, 19, Sch. 1 para. 31](#); [S.I. 2006/1682, art. 2\(c\), 3\(c\)\(d\)](#)
- F5** Words in s. 71(4)(a) inserted (24.11.2002) by [Employment Act 2002 \(c. 22\), s. 17\(2\)\(a\)](#); [S.I. 2002/2866, arts. 2\(1\), 3, Sch. 1 Pt. 1](#) (with [Sch. 3 para. 3](#))
- F6** Words in s. 71(4)(b) inserted (24.11.2002) by [Employment Act 2002 \(c. 22\), s. 17\(2\)\(b\)](#); [S.I. 2002/2866, arts. 2\(1\), 3, Sch. 1 Pt. 1](#) (with [Sch. 3 para. 3](#))
- F7** S. 71(4)(c) substituted (24.11.2002) by [Employment Act 2002 \(c. 22\), s. 17\(2\)\(c\)](#); [S.I. 2002/2866, arts. 2\(1\), 3, Sch. 1 Pt. 1](#) (with [Sch. 3 para. 3](#))
- F8** S. 71(7) substituted (24.11.2002) by [Employment Act 2002 \(c. 22\), s. 17\(3\)](#); [S.I. 2002/2866, arts. 2\(1\), 3, Sch. 1 Pt. 1](#) (with [Sch. 3 para. 3](#))

#### Modifications etc. (not altering text)

- C1** S. 71 restricted (15.12.1999) by [S.I. 1999/3312, reg. 9](#)
- C2** S. 71 modified (E.) (1.9.2003) by [The Education \(Modification of Enactments Relating to Employment\) \(England\) Order 2003 \(S.I. 2003/1964\), art. 3, Sch.](#)
- C3** Ss. 70, 71 modified (W.) (12.5.2006) by [The Education \(Modification of Enactments Relating to Employment\) \(Wales\) Order 2006 \(S.I. 2006/1073\), arts. 1\(1\), 3, {Sch. }](#)

#### <sup>F9</sup>72 **Compulsory maternity leave.**

- (1) An employer shall not permit an employee who satisfies prescribed conditions to work during a compulsory maternity leave period.
- (2) A compulsory maternity leave period is a period calculated in accordance with regulations made by the Secretary of State.
- (3) Regulations under subsection (2) shall secure—

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- (a) that no compulsory leave period is less than two weeks, and
  - (b) that every compulsory maternity leave period falls within an ordinary maternity leave period.
- (4) Subject to subsection (5), any provision of or made under the <sup>M1</sup>Health and Safety at Work etc. Act 1974 shall apply in relation to the prohibition under subsection (1) as if it were imposed by regulations under section 15 of that Act.
- (5) Section 33(1)(c) of the 1974 Act shall not apply in relation to the prohibition under subsection (1); and an employer who contravenes that subsection shall be—
- (a) guilty of an offence, and
  - (b) liable on summary conviction to a fine not exceeding level 2 on the standard scale.

#### Textual Amendments

**F9** Pt. VIII (ss. 71-80) substituted for Pt. VIII (ss. 71-85) (15.12.1999) by 1999 c. 26, s. 7, **Sch. 4 Pt. I**; S.I. 1999/2830, art. 2(2), **Sch. 1 Pt. II** (with **Sch. 3 para. 10**)

#### Marginal Citations

**M1** 1974 c. 37.

### <sup>F10</sup>73 Additional maternity leave.

- (1) An employee who satisfies prescribed conditions may be absent from work at any time during an additional maternity leave period.
- (2) An additional maternity leave period is a period calculated in accordance with regulations made by the Secretary of State.

[<sup>F11</sup>(3) Regulations under subsection (2)—

- (a) may allow an employee to choose, subject to prescribed restrictions, the date on which an additional maternity leave period ends;
  - (b) may specify circumstances in which an employee may work for her employer during an additional maternity leave period without bringing the period to an end.]
- (4) Subject to section 74, an employee who exercises her right under subsection (1)—
- (a) is entitled, for such purposes and to such extent as may be prescribed, to the benefit of the terms and conditions of employment which would have applied if she had not been absent,
  - (b) is bound, for such purposes and to such extent as may be prescribed, by obligations arising under those terms and conditions (except in so far as they are inconsistent with subsection (1)), and
  - (c) is entitled to return from leave to a job of a prescribed kind.
- (5) In subsection (4)(a) “terms and conditions of employment”—
- (a) includes matters connected with an employee’s employment whether or not they arise under her contract of employment, but
  - (b) does not include terms and conditions about remuneration.

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[ In subsection (4)(c), the reference to return from leave includes, where appropriate, a <sup>F12</sup>(5A) reference to a continuous period of absence attributable partly to additional maternity leave and partly to ordinary maternity leave.]

- (6) The Secretary of State may make regulations specifying matters which are, or are not, to be treated as remuneration for the purposes of this section.
- (7) The Secretary of State may make regulations making provision, in relation to the right to return under subsection (4)(c), about—
  - (a) seniority, pension rights and similar rights;
  - (b) terms and conditions of employment on return.

#### Textual Amendments

- F10** Pt. VIII (ss. 71-80) substituted for Pt. VIII (ss. 71-85) (15.12.1999) by 1999 c. 26, s. 7, **Sch. 4 Pt. I**; S.I. 1999/2830, art. 2(2), **Sch. 1 Pt. II** (with Sch. 3 para. 10)
- F11** S. 73(3) substituted (27.6.2006 for certain purposes, otherwise 1.10.2006) by Work and Families Act 2006 (c. 18), ss. 11, 19, **Sch. 1 para. 32**; S.I. 2006/1682, art. 2(c), 3(c)(d)
- F12** S. 73(5A) inserted (24.11.2002) by Employment Act 2002 (c. 22), s. 17(4); S.I. 2002/2866, arts. 2(1), 3, Sch. 1 Pt. 1 (with Sch. 3 para. 3)

#### <sup>F13</sup>74 Redundancy and dismissal.

- (1) Regulations under section 71 or 73 may make provision about redundancy during an ordinary or additional maternity leave period.
- (2) Regulations under section 71 or 73 may make provision about dismissal (other than by reason of redundancy) during an ordinary or additional maternity leave period.
- (3) Regulations made by virtue of subsection (1) or (2) may include—
  - (a) provision requiring an employer to offer alternative employment;
  - (b) provision for the consequences of failure to comply with the regulations (which may include provision for a dismissal to be treated as unfair for the purposes of Part X).
- (4) Regulations under section [<sup>F14</sup>71 or] 73 may make provision—
  - (a) for section [<sup>F15</sup>71(4)(c) or] 73(4)(c) not to apply in specified cases, and
  - (b) about dismissal at the conclusion of an [<sup>F16</sup>ordinary or] additional maternity leave period.

#### Textual Amendments

- F13** Pt. VIII (ss. 71-80) substituted for Pt. VIII (ss. 71-85) (15.12.1999) by 1999 c. 26, s. 7, **Sch. 4 Pt. I**; S.I. 1999/2830, art. 2(2), **Sch. 1 Pt. II** (with Sch. 3 para. 10)
- F14** Words in s. 74(4) inserted (24.11.2002) by Employment Act 2002 (c. 22), s. 17(5)(a); S.I. 2002/2866, arts. 2(1), 3, Sch. 1 Pt. 1 (with Sch. 3 para. 3)
- F15** Words in s. 74(4)(a) inserted (24.11.2002) by Employment Act 2002 (c. 22), s. 17(5)(b); S.I. 2002/2866, arts. 2(1), 3, Sch. 1 Pt. 1 (with Sch. 3 para. 3)
- F16** Words in s. 74(4)(b) inserted (24.11.2002) by Employment Act 2002 (c. 22), s. 17(5)(c); S.I. 2002/2866, arts. 2(1), 3, Sch. 1 Pt. 1 (with Sch. 3 para. 3)

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**F17 75 Sections 71 to 73: supplemental.**

- (1) Regulations under section 71, 72 or 73 may—
- (a) make provision about notices to be given, evidence to be produced and other procedures to be followed by employees and employers;
  - (b) make provision for the consequences of failure to give notices, to produce evidence or to comply with other procedural requirements;
  - (c) make provision for the consequences of failure to act in accordance with a notice given by virtue of paragraph (a);
  - (d) make special provision for cases where an employee has a right which corresponds to a right under this Chapter and which arises under her contract of employment or otherwise;
  - (e) make provision modifying the effect of Chapter II of Part XIV (calculation of a week's pay) in relation to an employee who is or has been absent from work on ordinary or additional maternity leave;
  - (f) make provision applying, modifying or excluding an enactment, in such circumstances as may be specified and subject to any conditions specified, in relation to a person entitled to ordinary, compulsory or additional maternity leave;
  - (g) make different provision for different cases or circumstances.
- (2) In sections 71 to 73 “prescribed” means prescribed by regulations made by the Secretary of State.]

**Textual Amendments**

**F17** Pt. VIII (ss. 71-80) substituted for Pt. VIII (ss. 71-85) (15.12.1999) by 1999 c. 26, s. 7, **Sch. 4 Pt. I**; S.I. 1999/2830, art. 2(2), **Sch. 1 Pt. II** (with Sch. 3 para. 10)

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