
STATUTORY INSTRUMENTS

1996 No. 1919

The Employment Rights (Northern Ireland) Order 1996

PART IX

MATERNITY RIGHTS

General right to maternity leave

General right to maternity leave

103.—(1) An employee who is absent from work at any time during her maternity leave period is (subject to Articles 106 and 107) 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) Paragraph (1) does not confer any entitlement to remuneration.

Commencement of maternity leave period

104.—(1) Subject to paragraph (2), an employee's maternity leave period commences with the earlier of—

- (a) the date which, in accordance with Article 106(1) to (3), she notifies to her employer as the date on which she intends her period of absence from work in exercise of the right conferred by Article 103 to commence, and
- (b) the first day after the beginning of the sixth week before the expected week of childbirth on which she is absent from work wholly or partly because of pregnancy.

(2) Where the employee's maternity leave period has not commenced by virtue of paragraph (1) when childbirth occurs, her maternity leave period commences with the day on which childbirth occurs.

(3) The Department may by order vary paragraphs (1) and (2).

Duration of maternity leave period

105.—(1) Subject to paragraphs (2) and (3), an employee's maternity leave period continues for the period of fourteen weeks from its commencement or until the birth of the child, if later.

(2) Subject to paragraph (3), where any requirement imposed by or under any relevant statutory provision prohibits the employee from working for any period after the end of the period mentioned in paragraph (1) by reason of her having recently given birth, her maternity leave period continues until the end of that later period.

(3) Where the employee is dismissed after the commencement of her maternity leave period but before the time when (apart from this paragraph) that period would end, the period ends at the time of the dismissal.

(4) In paragraph (2) “relevant statutory provision” means a statutory provision other than a provision for the time being specified in an order made under Article 98(2).

(5) The Department may by order vary paragraphs (1) to (4).

Requirement to notify commencement of leave

106.—(1) Subject to paragraphs (4) and (5), an employee does not have the right conferred by Article 103 unless she notifies her employer of the date on which she intends her period of absence from work in exercise of the right to commence.

(2) No date occurring before the beginning of the eleventh week before the expected week of childbirth may be notified under paragraph (1).

(3) Notification under paragraph (1) shall be given by an employee—

- (a) not less than twenty-one days before the date on which she intends her period of absence from work in exercise of the right conferred by Article 103 to commence, or
- (b) if that is not reasonably practicable, as soon as is reasonably practicable.

(4) Where an employee’s maternity leave period commences with the first day after the beginning of the sixth week before the expected week of childbirth on which she is absent from work wholly or partly because of pregnancy—

- (a) paragraph (1) does not require her to notify her employer of the date specified in that paragraph, but
- (b) (whether or not she has notified him of that date) she does not have the right conferred by Article 103 unless she notifies him as soon as is reasonably practicable that she is absent from work wholly or partly because of pregnancy.

(5) Where an employee’s maternity leave period commences with the day on which childbirth occurs—

- (a) paragraph (1) does not require her to notify her employer of the date specified in that paragraph, but
- (b) (whether or not she has notified him of that date) she does not have the right conferred by Article 103 unless she notifies him as soon as is reasonably practicable after the birth that she has given birth.

(6) Any notification required by this Article shall, if the employer so requests, be given in writing.

Requirement to notify pregnancy etc.

107.—(1) An employee does not have the right conferred by Article 103 unless at least twenty-one days before her maternity leave period commences or, if that is not reasonably practicable, as soon as is reasonably practicable, she informs her employer in writing of—

- (a) her pregnancy, and
- (b) the expected week of childbirth,

or, if childbirth has occurred, of the date on which it occurred.

(2) An employee does not have the right conferred by Article 103 unless, if requested to do so by her employer, she produces for his inspection a certificate from—

- (a) a registered medical practitioner, or
- (b) a registered midwife,

stating the expected week of childbirth.

Requirement to notify return during maternity leave period

108.—(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 attempts to return to work earlier than the end of her maternity leave period without complying with paragraph (1), her employer shall be entitled to postpone her return to a date such as will secure, subject to paragraph (3), that he has seven days' notice of her return.

(3) An employer is not entitled under paragraph (2) to postpone an employee's return to work to a date after the end of her maternity leave period.

(4) If an employee whose return to work has been postponed under paragraph (2) has been notified that she is not to return to work before the date to which her return was postponed, the employer is under no contractual obligation to pay her remuneration until the date to which her return was postponed if she returns to work before that date.

Redundancy during maternity leave period

109.—(1) This Article applies 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.

(2) If there is a suitable available vacancy, the employee is entitled to be offered (before the ending of her employment under her existing contract) alternative employment with her employer or his successor, or an associated employer, under a new contract of employment which complies with paragraph (3) (and takes effect immediately on the ending of her employment under the previous contract).

(3) The new contract of employment must be such that—

- (a) the work to be done under it is of a kind which is both suitable in relation to the employee and appropriate for her to do in the circumstances, and
- (b) its provisions 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.

Contractual rights to maternity leave

110.—(1) An employee who has both the right to maternity leave under Article 103 and another 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 Articles 104 to 109 apply, subject to any modifications necessary to give effect to any more favourable contractual terms, to the exercise of the composite right described in paragraph (1) as they apply to the exercise of the right under Article 103.

Right to return to work

Right to return to work

111.—(1) An employee who—

- (a) has the right conferred by Article 103, and
- (b) has, at the beginning of the eleventh week before the expected week of childbirth, been continuously employed for a period of not less than two years,

also has the right to return to work at any time during the period beginning at the end of her maternity leave period and ending twenty-nine weeks after the beginning of the week in which childbirth occurs.

(2) An employee's right to return to work under this Article is the right to return to work with the person who was her employer before the end of her maternity leave period, or (where appropriate) his successor, in the job in which she was then employed—

- (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 the commencement of her maternity leave period,
- (b) with her seniority, pension rights and similar rights as they would have been if the period or periods of her employment prior to the end of her maternity leave period were continuous with her employment following her return to work (but subject to the requirements of paragraph 5 of Schedule 5 to the Social Security (Northern Ireland) Order 1989 (credit for the period of absence in certain cases)), 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 maternity leave period.

(3) The Department may by order vary the period of two years specified in paragraph (1) or that period as varied by an order under this paragraph.

Requirement to notify return

112.—(1) An employee does not have the right conferred by Article 111 unless she includes with the information required by Article 107(1) the information that she intends to exercise the right.

(2) Where, not earlier than twenty-one days before the end of her maternity leave period, an employee is requested in accordance with paragraph (3) by her employer, or a successor of his, to give him written confirmation that she intends to exercise the right conferred by Article 111, the employee is not entitled to that right unless she gives the requested confirmation—

- (a) within fourteen days of receiving the request, or
 - (b) if that is not reasonably practicable, as soon as is reasonably practicable.
- (3) A request under paragraph (2) shall be—
- (a) made in writing, and
 - (b) accompanied by a written statement of the effect of that paragraph.

Redundancy before return

113.—(1) This Article applies where an employee has the right conferred by Article 111 but it is not practicable by reason of redundancy for the employer to permit her to return in accordance with that right.

(2) Where there is a suitable available vacancy, the employee is entitled to be offered alternative employment with her employer or his successor, or an associated employer, under a new contract of employment which complies with paragraph (3).

- (3) The new contract of employment must be such that—
- (a) the work to be done under it is of a kind which is both suitable in relation to the employee and appropriate for her to do in the circumstances, and
 - (b) its provisions 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 returned to work pursuant to the right conferred by Article 111.

Exercise of right to return

114.—(1) An employee shall exercise the right conferred by Article 111 by giving written notice to the employer (who may be her employer before the end of her maternity leave period or a successor of his) at least twenty-one days before the day on which she proposes to return of her proposal to return on that day (the “notified day of return”).

(2) An employer may postpone an employee’s return to work until a date not more than four weeks after the notified day of return if he notifies her before that day that for specified reasons he is postponing her return until that date; and, accordingly, she will be entitled to return to work with him on that date.

(3) An employee to whom paragraph (4) applies may—

- (a) postpone her return to work until a date not more than four weeks after the notified day of return (even if that date falls after the end of the period of twenty-nine weeks beginning with the week in which childbirth occurred), and
- (b) where no day of return has been notified to the employer, extend the time during which she may exercise her right to return in accordance with paragraph (1), so that she returns to work not more than four weeks after the end of that period of twenty-nine weeks.

(4) This paragraph applies to an employee if she gives to her employer, before the notified day of return (or the end of the period of twenty-nine weeks), a certificate from a registered medical practitioner stating that by reason of disease or bodily or mental disablement she will be incapable of work on the notified day of return (or at the end of that period).

(5) Where an employee has once exercised a right of postponement or extension under paragraph (3), she is not entitled again to exercise a right of postponement or extension under that paragraph in connection with the same return to work.

(6) If an employee has notified a day of return but there is an interruption of work (whether due to industrial action or some other reason) which renders it unreasonable to expect the employee to return to work on the notified day of return, she may instead return to work when work resumes after the interruption or as soon as reasonably practicable afterwards.

(7) Where in the case of an employee who has not already notified a day of return—

- (a) there is an interruption of work (whether due to industrial action or some other reason) which renders it unreasonable to expect the employee to return to work before the end of the period of twenty-nine weeks beginning with the week in which childbirth occurred, or which appears likely to have that effect, and
- (b) in consequence, the employee does not notify a day of return,

the employee may exercise her right to return in accordance with paragraph (1) so that she returns to work at any time before the end of the period of twenty-eight days after the end of the interruption even though that means that she returns to work outside the period of twenty-nine weeks.

(8) Where an employee has exercised the right under paragraph (3)(b) to extend the period during which she may exercise her right to return, paragraph (7) applies as if for the reference to the end of the period of twenty-nine weeks there were substituted a reference to the end of the further period of four weeks after the end of that period.

(9) Where in the case of an interruption of work an employee has refrained from notifying the day of return in the circumstances described in paragraph (7), paragraph (3)(b) applies as if for the reference to the end of the period of twenty-nine weeks there were substituted a reference to the end of the period of twenty-eight days after the end of the interruption of work.

Notified day of return

115.—(1) Subject to paragraph (2), in this Order “notified day of return” shall be construed in accordance with Article 114(1).

(2) Where—

- (a) an employee’s return is postponed under paragraph (2) or (3)(a) of Article 114, or
- (b) the employee returns to work on a day later than the notified day of return in the circumstances described in paragraph (6) of that Article,

then, subject to paragraph (5) of that Article, references in paragraphs (2), (3)(a) and (6) of that Article and the following provisions of this Order to the notified day of return shall be construed as references to the day to which the return is postponed or that later day.

Employee dismissed at or after end of maternity leave period

116.—(1) This Article applies where an employee has the right to return to work conferred by Article 111 and either—

- (a) her maternity leave period ends by reason of dismissal, or
- (b) she is dismissed after the end of her maternity leave period, otherwise than in the course of attempting to return to work in accordance with her contract in circumstances in which Article 117 applies.

(2) Where this Article applies, the right conferred by Article 111 is exercisable only on the employee repaying any compensation for unfair dismissal, or redundancy payment, paid in respect of the dismissal if the employer requests repayment.

Contractual rights to return

117.—(1) An employee who has both the right to return to work conferred by Article 111 and another right to return to work after absence because of pregnancy or childbirth (under a contract of employment or otherwise) may not exercise the two rights separately but may, in returning to work, take advantage of whichever right is, in any particular respect, the more favourable.

(2) Articles 111 and 113 to 116, and the provisions of the following Parts of this Order relating to the right conferred by Article 111 (other than Article 172(2)), apply, subject to any modifications necessary to give effect to any more favourable contractual terms, to the exercise of the composite right described in paragraph (1) as they apply to the exercise of the right conferred by Article 111.