
DRAFT STATUTORY INSTRUMENTS

2024 No.

The Carer's Leave Regulations 2024

Part 3

Taking Carer's Leave

Application of terms and conditions during carer's leave

- 9.**—(1) An employee who takes carer's leave is, during any period of that leave—
- (a) entitled to the benefit of all the terms and conditions of employment which would have applied if the employee had not been absent, and
 - (b) bound by any obligations arising under those terms and conditions of employment which would have applied, subject to the exception in section 80K(1)(b) of the 1996 Act.
- (2) In paragraph (1)(a) “terms and conditions” has the meaning given to it by section 80K(3) of the 1996 Act and accordingly does not include terms and conditions about remuneration.
- (3) For the purposes of section 80K of the 1996 Act, only sums payable to an employee by way of wages or salary are to be treated as remuneration.

Returning to work after carer's leave

- 10.**—(1) An employee who returns to work after an isolated period of carer's leave is entitled to return to the job in which they were employed immediately before the absence.
- (2) Where an employee takes carer's leave and any statutory leave consecutively, carer's leave does not contribute to the continuity of a period of absence in respect of the employee's right to return to the job in which they were previously employed before their absence.
- (3) The right to return in this regulation is a right to return—
- (a) with the employee's seniority, pension and similar rights as they would have been if the employee had not been absent, and
 - (b) on terms and conditions not less favourable than those which would have applied if the employee had not been absent.

Protection from detriment

- 11.**—(1) An employee is entitled under section 47C(2)(bc) of the 1996 Act⁽¹⁾ not to be subjected to any detriment by any act or any deliberate failure to act by an employer because—
- (a) the employee took, sought to take, or made use of the benefits of, carer's leave, or
 - (b) the employer believed the employee was likely to take carer's leave.

(1) Section 47C was inserted by the Employment Relations Act 1999, Schedule 4, Part 3, paragraphs 5 and 8 and was amended by the 2023 Act, Schedule, Part 2, paragraph 5.

(2) For the purposes of paragraph (1)(a), an employee makes use of the benefits of carer's leave if, during the period of carer's leave the employee benefits from any of the terms and conditions of employment preserved by regulation 9 during that period.

(3) Paragraph (1) does not apply when the detriment in question amounts to a dismissal within the meaning of Part 10 of the 1996 Act.

Unfair dismissal

12.—(1) An employee who is dismissed is entitled under section 99 of the 1996 Act⁽²⁾ to be regarded for the purposes of Part 10 of that Act as unfairly dismissed if the reason or principal reason for the dismissal is of a kind specified in paragraph (3).

(2) An employee who is dismissed is also to be regarded for the purpose of Part 10 of the 1996 Act as unfairly dismissed if—

- (a) the reason or principal reason for the dismissal is that the employee was redundant,
- (b) it is shown that the circumstances constituting the redundancy applied to one or more employees in the same undertaking who had 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 principal reason for which the employee was selected for dismissal was a reason of a kind specified in paragraph (3).

(3) The reasons referred to in paragraphs (1) and (2) are reasons connected with any of the following facts—

- (a) that the employee took, sought to take, or made use of the benefits of carer's leave, or
- (b) that the employer believed that the employee was likely to take carer's leave.

(4) For the purposes of paragraph (3)(a), an employee makes use of the benefits of carer's leave if, during the period of carer's leave the employee benefits from any of the terms and conditions of employment preserved by regulation 9 during that period.

Calculation of a week's pay

13. Where—

- (a) under Chapter 2 Part 14 of the 1996 Act, the amount of a week's pay in respect of an employee falls to be calculated by reference to the average rate of remuneration, payable to the employee in respect of a period of 12 weeks ending on a particular date (referred to as the "calculation date"),
- (b) during a week or part of a week in that period, the employee was absent from work on carer's leave, and
- (c) remuneration is payable to the employee in respect of that week under their contract of employment, but the amount payable is less than the amount that would be payable, if the employee was working,

that week must be disregarded for the purpose of the calculation and account must be taken of remuneration in earlier weeks so as to bring up to 12 the number of weeks of which account is taken.

(2) Section 99 was substituted by the Employment Relations Act 1999, Schedule 4, Part 3, paragraphs 5 and 16, and was amended by the 2023 Act, Schedule, Part 2, paragraph 8.