



# Employment Protection (Consolidation) Act 1978

1978 CHAPTER 44

[<sup>F1</sup>PART III

MATERNITY]

VALID FROM 10/06/1994

[<sup>F2</sup>Right to return to work

## Textual Amendments

- F2** Pt. III (ss. 33-38A, 39-44 and cross heading) substituted for Pt. III (ss. 33-48) and ss. 45-47 added as provisions of Pt. III (10.6.1994) by 1993 c. 19, ss. 23, 25, Schs.2, 3; S.I. 1994/1365, art. 2, Sch.

VALID FROM 22/08/1996

**F3**39] .....

## Textual Amendments

- F3** S. 39 repealed (22.8.1996) by 1996 c. 18, ss. 242, 243, Sch. 3 Pt. I (with ss. 191-195, 202)

**F9**39 **Right to return to work.** **E+W+S**

- (1) An employee who—  
(a) has the right conferred by section 33, and

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(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,

shall also have 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 section 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 <sup>M1</sup>Social Security Act 1989 (credit for the period of absence in certain cases)), and
  - (c) otherwise on terms and conditions no 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 Secretary of State may by order vary the period of two years specified in subsection (1) or that period as so varied.
- (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.

#### Textual Amendments

**F9** Pt. III (ss. 33-38A, 39-44) substituted for Pt. III (ss. 33-48) and ss. 45-47 added as provisions of Pt. III (10.6.1994) by 1993 c. 19, ss. 23, 25, Schs.2, 3; S.I. 1994/1365, art. 2, Sch.

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

**C1** S. 39(1) modified (1.4.1996) by S.I. 1996/1023, arts. 3, 4

#### Marginal Citations

**M1** 1989 c. 24.

#### <sup>F4</sup>40 Requirement to give notice of return to employer.

- (1) An employee shall not have the right to return to work under section 39 unless she includes with the information required by section 37(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 subsection (3) by her employer, or a successor of his, to give him written confirmation that she intends to exercise the right to return to work under section 39, the employee shall not be entitled to that right unless she gives the requested confirmation within fourteen days of receiving the request or, if that is not reasonably practicable, as soon as is reasonably practicable.

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- (3) A request under subsection (2) shall be—
- (a) made in writing, and
  - (b) accompanied by a written statement of the effect of that subsection.

#### Textual Amendments

**F4** Pt. III (ss. 33-38A, 39-44) substituted for Pt. III (ss. 33-48) and ss. 45-47 added as provisions of Pt. III (10.6.1994) by 1993 c. 19, ss. 23, 25, Schs.2, 3; S.I. 1994/1365, art. 2, Sch

#### <sup>F5</sup>41 Special provision where redundancies occur before return to work.

- (1) Where an employee has the right to return to work under section 39, but it is not practicable by reason of redundancy for the employer to permit her to return in accordance with that right, she shall be entitled, where there is a suitable available vacancy, to be offered alternative employment with her employer (or his successor), or an associated employer, under a new contract of employment complying with subsection (2).
- (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 returned to work pursuant to her right to return.

#### Textual Amendments

**F5** Pt. III (ss. 33-38A, 39-44) substituted for Pt. III (ss. 33-48) and ss. 45-47 added as provisions of Pt. III (10.6.1994) by 1993 c. 19, ss. 23, 25, Schs.2, 3; S.I. 1994/1365, art. 2, Sch.

#### <sup>F6</sup>42 Exercise of right to return to work.

- (1) An employee shall exercise the right to return to work under section 39 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) Subject to subsection (4), an employee may—
- (a) postpone her return to work until a date not exceeding four weeks from the notified day of return, notwithstanding that that date falls after the end of the period of twenty-nine weeks beginning with the week in which childbirth occurred; and

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- (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 subsection (1), so that she returns to work not later than four weeks from the end of that period of twenty-nine weeks;
- if, before the notified day of return (or the end of the period of twenty-nine weeks), she gives the employer 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 the end of that period).
- (4) Where an employee has once exercised a right of postponement or extension under subsection (3)(a) or (b), she shall not again be entitled to exercise a right of postponement or extension under that subsection in connection with the same return to work.
- (5) 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.
- (6) If—
- (a) no day of return has been notified,
  - (b) 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
  - (c) in consequence, the employee does not notify a day of return,
- the employee may exercise her right to return in accordance with subsection (1) so that she returns to work at any time before the end of the period of twenty-eight days from the end of the interruption notwithstanding that she returns to work outside the period of twenty-nine weeks.
- (7) Where the employee has either—
- (a) exercised the right under subsection (3)(b) to extend the period during which she may exercise her right to return; or
  - (b) refrained from notifying the day of return in the circumstances described in subsection (6),
- the other of those subsections shall apply 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 or, as the case may be, of the period of twenty-eight days from the end of the interruption of work.

#### Textual Amendments

- F6** Pt. III (ss. 33-38A, 39-44) substituted for Pt. III (ss. 33-48) and ss. 45-47 added as provisions of Pt. III (10.6.1994) by 1993 c. 19, ss. 23, 25, Schs.2, 3; S.I. 1994/1365, art. 2, Sch.

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#### <sup>F7</sup>43 **Supplementary.**

- (1) Schedule 2 shall have effect for the purpose of supplementing the preceding sections in relation to an employee's right to return to work under section 39.
- (2) Sections 56 and 86 also have effect for that purpose.
- (3) Subject to subsection (4), in sections 56 and 86 and Schedule 2 "notified day of return" has the same meaning as in section 42.
- (4) Where—
  - (a) an employee's return is postponed under subsection (2) or (3)(a) of section 42, or
  - (b) the employee returns to work on a day later than the notified day of return in the circumstances described in subsection (5) of that section,then, subject to subsection (4) of that section, references in those subsections and in sections 56 and 86 and Schedule 2 to the notified day of return shall be construed as references to the day to which the return is postponed or that later day.

#### **Textual Amendments**

- F7** Pt. III (ss. 33-38A, 39-44) substituted for Pt. III (ss. 33-48) and ss. 45-47 added as provisions of Pt. III (10.6.1994) by 1993 c. 19, ss. 23, 25, Schs.2, 3; S.I. 1994/1365, art. 2, **Sch.**

#### <sup>F8</sup>44 **Contractual rights.**

- (1) An employee who has the right to return to work under section 39 and a 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) The provisions of sections 39, 41 to 43, 56 and 86 and paragraphs 1 to 4 and 6 of Schedule 2 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 to return to work under section 39.]

#### **Textual Amendments**

- F8** Pt. III (ss. 33-38A, 39-44) substituted for Pt. III (ss. 33-48) and ss. 45-47 added as provisions of Pt. III (10.6.1994) by 1993 c. 19, ss. 23, 25, Schs.2, 3; S.I. 1994/1365, art. 2, **Sch.**

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