
STATUTORY INSTRUMENTS

2002 No. 2788

The Paternity and Adoption Leave Regulations 2002

PART 2

PATERNITY LEAVE

Entitlement to paternity leave: birth

4.—(1) An employee is entitled to be absent from work for the purpose of caring for a child or supporting the child's mother if he—

- (a) satisfies the conditions specified in paragraph (2), and
- (b) has complied with the notice requirements in regulation 6 and, where applicable, the evidential requirements in that regulation.

(2) The conditions referred to in paragraph (1) are that the employee—

- (a) has been continuously employed for a period of not less than 26 weeks ending with the week immediately preceding the 14th week before the expected week of the child's birth;
- (b) is either—
 - (i) the father of the child or;
 - (ii) married to or the partner of the child's mother, but not the child's father;
- (c) has, or expects to have—
 - (i) if he is the child's father, responsibility for the upbringing of the child;
 - (ii) if he is the mother's husband or partner but not the child's father, the main responsibility (apart from any responsibility of the mother) for the upbringing of the child.

(3) An employee shall be treated as having satisfied the condition in paragraph (2)(a) on the date of the child's birth notwithstanding the fact that he has not then been continuously employed for a period of not less than 26 weeks, where—

- (a) the date on which the child is born is earlier than the 14th week before the week in which its birth is expected, and
- (b) the employee would have been continuously employed for such a period if his employment had continued until that 14th week.

(4) An employee shall be treated as having satisfied the condition in paragraph (2)(b)(ii) if he would have satisfied it but for the fact that the child's mother has died.

(5) An employee shall be treated as having satisfied the condition in paragraph (2)(c) if he would have satisfied it but for the fact that the child was stillborn after 24 weeks of pregnancy or has died.

(6) An employee's entitlement to leave under this regulation shall not be affected by the birth, or expected birth, of more than one child as a result of the same pregnancy.

Options in respect of leave under regulation 4

5.—(1) An employee may choose to take either one week's leave or two consecutive weeks' leave in respect of a child under regulation 4.

(2) The leave may only be taken during the period which begins with the date on which the child is born and ends—

- (a) except in the case referred to in sub-paragraph (b), 56 days after that date;
- (b) in a case where the child is born before the first day of the expected week of its birth, 56 days after that day.

(3) Subject to paragraph (2) and, where applicable, paragraph (4), an employee may choose to begin his period of leave on—

- (a) the date on which the child is born;
- (b) the date falling such number of days after the date on which the child is born as the employee may specify in a notice under regulation 6, or
- (c) a predetermined date, specified in a notice under that regulation, which is later than the first day of the expected week of the child's birth.

(4) In a case where the leave is in respect of a child whose expected week of birth begins before 6th April 2003, an employee may choose to begin a period of leave only on a predetermined date, specified in a notice under regulation 6, which is at least 28 days after the date on which that notice is given.

Notice and evidential requirements for leave under regulation 4

6.—(1) An employee must give his employer notice of his intention to take leave in respect of a child under regulation 4, specifying—

- (a) the expected week of the child's birth;
- (b) the length of the period of leave that, in accordance with regulation 5(1), the employee has chosen to take, and
- (c) the date on which, in accordance with regulation 5(3) or (4), the employee has chosen that his period of leave should begin.

(2) The notice provided for in paragraph (1) must be given to the employer—

- (a) in or before the 15th week before the expected week of the child's birth, or
- (b) in a case where it was not reasonably practicable for the employee to give the notice in accordance with sub-paragraph (a), as soon as is reasonably practicable.

(3) Where the employer requests it, an employee must also give his employer a declaration, signed by the employee, to the effect that the purpose of his absence from work will be that specified in regulation 4(1) and that he satisfies the conditions of entitlement in regulation 4(2)(b) and (c).

(4) An employee who has given notice under paragraph (1) may vary the date he has chosen as the date on which his period of leave will begin, subject to paragraph (5) and provided that he gives his employer notice of the variation—

- (a) where the variation is to provide for the employee's period of leave to begin on the date on which the child is born, at least 28 days before the first day of the expected week of the child's birth;
- (b) where the variation is to provide for the employee's period of leave to begin on a date that is a specified number of days (or a different specified number of days) after the date on which the child is born, at least 28 days before the date falling that number of days after the first day of the expected week of the child's birth;

(c) where the variation is to provide for the employee's period of leave to begin on a predetermined date (or a different predetermined date), at least 28 days before that date, or, if it is not reasonably practicable to give the notice at least 28 days before whichever day or date is relevant, as soon as is reasonably practicable.

(5) In a case where regulation 5(4) applies, an employee may only vary the date which he has chosen as the date on which his period of leave will begin by substituting a different predetermined date.

(6) In a case where—

- (a) the employee has chosen to begin his period of leave on a particular predetermined date, and
- (b) the child is not born on or before that date,

the employee must vary his choice of date, by substituting a later predetermined date or (except in a case where regulation 5(4) applies) exercising an alternative option under regulation 5(3), and give his employer notice of the variation as soon as is reasonably practicable.

(7) An employee must give his employer a further notice, as soon as is reasonably practicable after the child's birth, of the date on which the child was born.

(8) Notice under paragraph (1), (4), (6) or (7) shall be given in writing, if the employer so requests.

Commencement of leave under regulation 4

7.—(1) Except in the case referred to in paragraph (2), an employee's period of paternity leave under regulation 4 begins on the date specified in his notice under regulation 6(1), or, where he has varied his choice of date under regulation 6(4) or (6), on the date specified in his notice under that provision (or the last such notice if he has varied his choice more than once).

(2) In a case where—

- (a) the employee has chosen to begin his period of leave on the date on which the child is born, and
- (b) he is at work on that date,

the employee's period of leave begins on the day after that date.

Entitlement to paternity leave: adoption

8.—(1) An employee is entitled to be absent from work for the purpose of caring for a child or supporting the child's adopter if he—

- (a) satisfies the conditions specified in paragraph (2), and
- (b) has complied with the notice requirements in regulation 10 and, where applicable, the evidential requirements in that regulation.

(2) The conditions referred to in paragraph (1) are that the employee—

- (a) has been continuously employed for a period of not less than 26 weeks ending with the week in which the child's adopter is notified of having been matched with the child;
- (b) is either married to or the partner of the child's adopter, and
- (c) has, or expects to have, the main responsibility (apart from the responsibility of the adopter) for the upbringing of the child.

(3) In paragraph (2)(a), "week" means the period of seven days beginning with Sunday.

(4) An employee shall be treated as having satisfied the condition in paragraph (2)(b) if he would have satisfied it but for the fact that the child's adopter died during the child's placement.

(5) An employee shall be treated as having satisfied the condition in paragraph (2)(c) if he would have satisfied it but for the fact that the child's placement with the adopter has ended.

(6) An employee's entitlement to leave under this regulation shall not be affected by the placement for adoption of more than one child as part of the same arrangement.

Options in respect of leave under regulation 8

9.—(1) An employee may choose to take either one week's leave or two consecutive weeks' leave in respect of a child under regulation 8.

(2) The leave may only be taken during the period of 56 days beginning with the date on which the child is placed with the adopter.

(3) Subject to paragraph (2) and, where applicable, paragraph (4), an employee may choose to begin a period of leave under regulation 8 on—

- (a) the date on which the child is placed with the adopter;
- (b) the date falling such number of days after the date on which the child is placed with the adopter as the employee may specify in a notice under regulation 10, or
- (c) a predetermined date, specified in a notice under that regulation, which is later than the date on which the child is expected to be placed with the adopter.

(4) In a case where the adopter was notified of having been matched with the child before 6th April 2003, the employee may choose to begin a period of leave only on a predetermined date, specified in a notice under regulation 10, which is at least 28 days after the date on which that notice is given.

Notice and evidential requirements for leave under regulation 8

10.—(1) An employee must give his employer notice of his intention to take leave in respect of a child under regulation 8, specifying—

- (a) the date on which the adopter was notified of having been matched with the child;
- (b) the date on which the child is expected to be placed with the adopter;
- (c) the length of the period of leave that, in accordance with regulation 9(1), the employee has chosen to take, and
- (d) the date on which, in accordance with regulation 9(3) or (4), the employee has chosen that his period of leave should begin.

(2) The notice provided for in paragraph (1) must be given to the employer—

- (a) no more than seven days after the date on which the adopter is notified of having been matched with the child, or
- (b) in a case where it was not reasonably practicable for the employee to give notice in accordance with sub-paragraph (a), as soon as is reasonably practicable.

(3) Where the employer requests it, an employee must also give his employer a declaration, signed by the employee, to the effect that the purpose of his absence from work will be that specified in regulation 8(1) and that he satisfies the conditions of entitlement in regulation 8(2)(b) and (c).

(4) An employee who has given notice under paragraph (1) may vary the date he has chosen as the date on which his period of leave will begin, subject to paragraph (5) and provided that he gives his employer notice of the variation—

- (a) where the variation is to provide for the employee's period of leave to begin on the date on which the child is placed with the adopter, at least 28 days before the date specified in the employee's notice under paragraph (1) as the date on which the child is expected to be placed with the adopter;

- (b) where the variation is to provide for the employee's period of leave to begin on a date that is a specified number of days (or a different specified number of days) after the date on which the child is placed with the adopter, at least 28 days before the date falling that number of days after the date specified in the employee's notice under paragraph (1) as the date on which the child is expected to be placed with the adopter;
- (c) where the variation is to provide for the employee's period of leave to begin on a predetermined date, at least 28 days before that date,

or, if it is not reasonably practicable to give the notice at least 28 days before whichever date is relevant, as soon as is reasonably practicable.

(5) In a case where regulation 9(4) applies, an employee may only vary the date which he has chosen as the date on which his period of leave will begin by substituting a different predetermined date.

(6) In a case where—

- (a) the employee has chosen to begin his period of leave on a particular predetermined date, and
- (b) the child is not placed with the adopter on or before that date,

the employee must vary his choice of date, by substituting a later predetermined date or (except in a case where regulation 9(4) applies) exercising an alternative option under regulation 9(3), and give his employer notice of the variation as soon as is reasonably practicable.

(7) An employee must give his employer a further notice, as soon as is reasonably practicable after the child's placement, of the date on which the child was placed.

(8) Notice under paragraph (1), (4), (6) or (7) shall be given in writing, if the employer so requests.

Commencement of leave under regulation 8

11.—(1) Except in the case referred to in paragraph (2), an employee's period of paternity leave under regulation 8 begins on the date specified in his notice under regulation 10(1), or, where he has varied his choice of date under regulation 10(4) or (6), on the date specified in his notice under that provision (or the last such date if he has varied his choice more than once).

(2) In a case where—

- (a) the employee has chosen to begin his period of leave on the date on which the child is placed with the adopter, and
- (b) he is at work on that date,

the employee's period of leave begins on the day after that date.

Application of terms and conditions during paternity leave

12.—(1) An employee who takes paternity leave—

- (a) is entitled, during the period of leave, to the benefit of all of the terms and conditions of employment which would have applied if he had not been absent, and
- (b) is bound, during that period, by any obligations arising under those terms and conditions, subject only to the exception in section 80C(1)(b) of the 1996 Act(1).

(2) In paragraph (1)(a), "terms and conditions of employment" has the meaning given by section 80C(5) of the 1996 Act, and accordingly does not include terms and conditions about remuneration.

(1) Section 80C was inserted by section 1 of the Employment Act 2002.

(3) For the purposes of section 80C of the 1996 Act, only sums payable to an employee by way of wages or salary are to be treated as remuneration.

Right to return after paternity leave

13.—(1) An employee who returns to work after a period of paternity leave which was—

- (a) an isolated period of leave, or
- (b) the last of two or more consecutive periods of statutory leave, which did not include any period of additional maternity leave or additional adoption leave or a period of parental leave of more than four weeks,

is entitled to return from leave to the job in which he was employed before his absence.

(2) An employee who returns to work after a period of paternity leave not falling within the description in paragraph (1)(a) or (b) above is entitled to return from leave to the job in which he was employed before his absence, or, if it is not reasonably practicable for the employer to permit him to return to that job, to another job which is both suitable for him and appropriate for him to do in the circumstances.

(3) The reference in paragraphs (1) and (2) to the job in which an employee was employed before his absence is a reference to the job in which he was employed—

- (a) if his return is from an isolated period of paternity leave, immediately before that period began;
- (b) if his return is from consecutive periods of statutory leave, immediately before the first such period.

Incidents of the right to return after paternity leave

14.—(1) An employee's right to return under regulation 13 is a right to return—

- (a) with his seniority, pension rights and similar rights—
 - (i) in a case where the employee is returning from consecutive periods of statutory leave which included a period of additional adoption leave or additional maternity leave, as they would have been if the period or periods of his employment prior to the additional adoption leave or (as the case may be) additional maternity leave were continuous with the period of employment following it;
 - (ii) in any other case, as they would have been if he had not been absent, and
- (b) on terms and conditions not less favourable than those which would have applied if he had not been absent.

(2) The provision in paragraph (1)(a)(i) concerning the treatment of periods of additional maternity leave or additional adoption leave is subject to the requirements of paragraphs 5 and 6 of Schedule 5 to the Social Security Act 1989⁽²⁾ (equal treatment under pension schemes: maternity absence and family leave).

(3) The provisions in paragraph (1)(a)(ii) and (b) for an employee to be treated as if he had not been absent refer to his absence—

- (a) if his return is from an isolated period of paternity leave, since the beginning of that period;
- (b) if his return is from consecutive periods of statutory leave, since the beginning of the first such period.

(2) 1989 c. 24.

