



## 2022 CHAPTER 27

### **Safe leave for victims of domestic abuse**

1.—(1) After Article 112EF of the Employment Rights (Northern Ireland) Order 1996 insert—

#### “CHAPTER 5

#### DOMESTIC ABUSE SAFE LEAVE

##### **Domestic abuse safe leave**

**112EG.**—(1) The Department must make regulations entitling an employee who is a victim of domestic abuse to be absent from work on leave under this Article for the purpose of dealing with issues related to the domestic abuse (referred to in this Chapter as “safe leave”).

(2) For the purposes of this Chapter, an employee is a victim of domestic abuse if—

- (a) the employee is being, or has been, subjected to abusive behaviour by a person to whom the employee is connected, and
- (b) such other conditions as may be specified are satisfied.

(3) The regulations must include provision as to the meaning of being subjected to abusive behaviour, and as to the criteria for being connected to another person, for the purposes of paragraph (2); and the regulations may do so by reference to provisions of the Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021 or by applying other statutory provisions (with or without modifications).

(4) Issues related to domestic abuse for the purposes of paragraph (1) include, but are not limited to—

- (a) obtaining legal advice and pursuing legal proceedings and remedies;

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- (b) finding alternative accommodation;
- (c) taking advantage of healthcare (including mental health care);
- (d) obtaining welfare support;
- (e) protecting family members; and
- (f) such other matters as may be specified in the regulations.

(5) The regulations must, in particular, include provision ensuring that the period of safe leave to which an employee who is a victim of domestic abuse is entitled is at least 10 days in each leave year (whether or not taken as a single continuous period), with “leave year” having the meaning given in, and being calculated in accordance with, the regulations.

(6) The regulations may make provision about how safe leave is to be taken; and, in particular, the regulations may—

- (a) attach conditions, or enable an employer to attach reasonable conditions, in respect of entitlement to safe leave (including as to when it may be taken);
- (b) require an employee to give such notice (if any) as is reasonably practicable before taking safe leave.

(7) The regulations may not impose conditions, or enable an employer to impose conditions, about length of service for eligibility for safe leave.

### **Rights during and after safe leave**

**112EH.**—(1) Regulations under Article 112EG must provide—

- (a) that an employee who is absent on safe leave is entitled, for such purposes and to such extent as may be specified, to the benefit of the terms and conditions of employment which would have applied but for the absence;
- (b) that an employee who is absent on safe leave is bound, for such purposes and to such extent as may be specified, by obligations arising under those terms and conditions (except in so far as they are inconsistent with paragraph (1) of that Article); and
- (c) that an employee who is absent on safe leave is entitled to return from leave to a job of a specified kind (but this is subject to Article 112EI(1)).

(2) In paragraph (1)(a), “terms and conditions of employment” includes—

- (a) terms and conditions about remuneration, and
- (b) any other matters connected with an employee’s employment whether or not they arise under the contract of employment.

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(3) Provision under paragraph (1)(a) must, in particular, provide that it is for the employer of an employee who is absent on safe leave to pay the employee remuneration in respect of the period of safe leave.

(4) The reference in paragraph (1)(c) to absence on safe leave includes, where appropriate, a reference to a continuous period of absence attributable partly to safe leave and partly to any one or more of the following—

- (a) maternity leave;
- (b) paternity leave;
- (c) adoption leave;
- (d) shared parental leave; and
- (e) parental leave.

(5) Regulations under Article 112EG may make provision, in relation to the right to return mentioned in paragraph (1)(c), about—

- (a) seniority, pension rights and similar rights; and
- (b) terms and conditions of employment on return.

### **Special cases**

**112EI.**—(1) Regulations under Article 112EG may make provision about—

- (a) redundancy, or
- (b) dismissal (other than by reason of redundancy),

during a period of safe leave.

(2) Provision by virtue of paragraph (1) may include provision requiring an employer to offer alternative employment.

### **Enforcement**

**112EJ.**—(1) Regulations under Article 112EG may make provision for the consequences of—

- (a) the prevention or attempted prevention by an employer of the exercise by an employee of the entitlement to be absent from work on safe leave;
- (b) a failure by the employer to comply with the requirement to pay remuneration by virtue of Article 112EH(3);
- (c) a failure to comply with any other provision of the regulations.

(2) Provision under paragraph (1) may, in particular—

- (a) enable an employee to present a complaint to an industrial tribunal, and

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(b) include provision as to the remedies available to an industrial tribunal where it finds a complaint presented by virtue of this Article to be well-founded.

(3) Provision under paragraph (1) made in connection with provision under Article 112EI(1) may include provision for a dismissal to be treated as unfair for the purposes of Part 11.

### **Workers**

**112EK.** Regulations under Article 112EG must extend the right to safe leave to workers who are not employees; and for that purpose the regulations—

- (a) may make provision applying, modifying or excluding a provision of the regulations, in such circumstances as may be specified and subject to any conditions specified, in relation to a worker;
- (b) may, so far as is necessary for the purpose of making provision by virtue of sub-paragraph (a), make provision applying, modifying or excluding a provision of this Order; and
- (c) may make provision similar to a provision of or under Article 67K.

### **Chapter 5: supplemental**

**112EL.** Regulations under Article 112EG may—

- (a) make provision about notices to be given and other procedures to be followed by employees and employers;
- (b) make provision requiring employers or employees to keep records;
- (c) make special provision for cases where an employee has a right that corresponds to a right under Article 112EG and that arises under the person's contract of employment or otherwise;
- (d) make provision modifying the effect of Chapter 4 of Part 1 (calculation of a week's pay) in relation to an employee who is or has been absent from work on safe leave;
- (e) make provision applying, modifying or excluding a statutory provision, in such circumstances as may be specified and subject to any conditions which may be specified, in relation to a person entitled to take safe leave;
- (f) make consequential provision."

(2) In Article 251(1A) of that Order (regulations that are subject to approval by the Assembly), after "112BAA," insert "112EG,".