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STATUTORY INSTRUMENTS

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**1996 No. 1919**

**The Employment Rights (Northern Ireland) Order 1996**

**PART VIII**

**SUSPENSION FROM WORK**

*Suspension on medical grounds*

**Right to remuneration on suspension on medical grounds**

**96.**—(1) An employee who is suspended from work by his employer on medical grounds is entitled to be paid by his employer remuneration while he is so suspended for a period not exceeding twenty-six weeks.

(2) For the purposes of this Part an employee is suspended from work on medical grounds if he is suspended from work in consequence of—

- (a) a requirement imposed by or under any statutory provision, or
- (b) a recommendation in a provision of a code of practice issued or approved under Article 18 of the Health and Safety at Work (Northern Ireland) Order 1978,

and the provision is for the time being specified in paragraph (3).

(3) The provisions referred to in paragraph (2) are—

- Regulation 2 of the Manufacture and Decoration of Pottery Regulations 1913,
- Regulation 16 of the Ionising Radiations Regulations (Northern Ireland) 1985,
- Regulation 16 of the Control of Lead at Work Regulations (Northern Ireland) 1986,
- Regulation 11 of the Control of Substances Hazardous to Health Regulations (Northern Ireland) 1995.

(4) The Department may by order add provisions to or remove provisions from the list of provisions specified in paragraph (3).

(5) For the purposes of this Part an employee shall be regarded as suspended from work on medical grounds only if and for so long as he—

- (a) continues to be employed by his employer, but
- (b) is not provided with work or does not perform the work he normally performed before the suspension.

**Exclusions from right to remuneration**

**97.**—(1) An employee is not entitled to remuneration under Article 96 unless he has been continuously employed for a period of not less than one month ending with the day before that on which the suspension begins.

(2) An employee who is employed—

- (a) under a contract for a fixed term of three months or less, or
- (b) under a contract made in contemplation of the performance of a specific task which is not expected to last for more than three months,

is not entitled to remuneration under Article 96 unless he has been continuously employed for a period of more than three months ending with the day before that on which the suspension begins.

(3) An employee is not entitled to remuneration under Article 96 in respect of any period during which he is incapable of work by reason of disease or bodily or mental disablement.

- (4) An employee is not entitled to remuneration under Article 96 in respect of any period if—
  - (a) his employer has offered to provide him with suitable alternative work during the period (whether or not it is work which the employee is under his contract, or was under the contract in force before the suspension, employed to perform) and the employee has unreasonably refused to perform that work, or
  - (b) he does not comply with reasonable requirements imposed by his employer with a view to ensuring that his services are available.

#### *Suspension on maternity grounds*

#### **Meaning of suspension on maternity grounds**

**98.**—(1) For the purposes of this Part an employee is suspended from work on maternity grounds if, in consequence of any relevant requirement or relevant recommendation, she is suspended from work by her employer on the ground that she is pregnant, has recently given birth or is breastfeeding a child.

- (2) In paragraph (1)—
  - “relevant requirement” means a requirement imposed by or under a specified statutory provision, and
  - “relevant recommendation” means a recommendation in a specified provision of a code of practice issued or approved under Article 18 of the Health and Safety at Work (Northern Ireland) Order 1978;

and in this paragraph “specified” means for the time being specified in an order made by the Department under this paragraph.

- (3) For the purposes of this Part an employee shall be regarded as suspended from work on maternity grounds only if and for so long as she—
  - (a) continues to be employed by her employer, but
  - (b) is not provided with work or (disregarding alternative work for the purposes of Article 99) does not perform the work she normally performed before the suspension.

#### **Right to offer of alternative work**

**99.**—(1) Where an employer has available suitable alternative work for an employee, the employee has a right to be offered to be provided with the alternative work before being suspended from work on maternity grounds.

- (2) For alternative work to be suitable for an employee for the purposes of this Article—
  - (a) the work must be of a kind which is both suitable in relation to her and appropriate for her to do in the circumstances, and
  - (b) the terms and conditions applicable to her for performing the work, if they differ from the corresponding terms and conditions applicable to her for performing the work she

normally performs under her contract of employment, must not be substantially less favourable to her than those corresponding terms and conditions.

### **Right to remuneration**

**100.**—(1) An employee who is suspended from work on maternity grounds is entitled to be paid remuneration by her employer while she is so suspended.

- (2) An employee is not entitled to remuneration under this Article in respect of any period if—
- (a) her employer has offered to provide her during the period with work which is suitable alternative work for her for the purposes of Article 99, and
  - (b) the employee has unreasonably refused to perform that work.

### *General*

### **Calculation of remuneration**

**101.**—(1) The amount of remuneration payable by an employer to an employee under Article 96 or 100 is a week's pay in respect of each week of the period of suspension; and if in any week remuneration is payable in respect of only part of that week the amount of a week's pay shall be reduced proportionately.

(2) A right to remuneration under Article 96 or 100 does not affect any right of an employee in relation to remuneration under the employee's contract of employment ("contractual remuneration").

(3) Any contractual remuneration paid by an employer to an employee in respect of any period goes towards discharging the employer's liability under Article 96 or 100 in respect of that period; and, conversely, any payment of remuneration in discharge of an employer's liability under Article 96 or 100 in respect of any period goes towards discharging any obligation of the employer to pay contractual remuneration in respect of that period.

### **Complaints to industrial tribunals**

**102.**—(1) An employee may present a complaint to an industrial tribunal that his or her employer has failed to pay the whole or any part of remuneration to which the employee is entitled under Article 96 or 100.

(2) An industrial tribunal shall not consider a complaint under paragraph (1) relating to remuneration in respect of any day unless it is presented—

- (a) before the end of the period of three months beginning with that day, or
- (b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented within that period of three months.

(3) Where an industrial tribunal finds a complaint under paragraph (1) well-founded, the tribunal shall order the employer to pay the employee the amount of remuneration which it finds is due to him or her.

(4) An employee may present a complaint to an industrial tribunal that in contravention of Article 99 her employer has failed to offer to provide her with work.

(5) An industrial tribunal shall not consider a complaint under paragraph (4) unless it is presented—

- (a) before the end of the period of three months beginning with the first day of the suspension, or

- (b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented within that period of three months.
- (6) Where an industrial tribunal finds a complaint under paragraph (4) well-founded, the tribunal may make an award of compensation to be paid by the employer to the employee.
- (7) The amount of the compensation shall be such as the tribunal considers just and equitable in all the circumstances having regard
  - (a) the infringement of the employee's right under Article 99 by the failure on the part of the employer to which the complaint relates, and
  - (b) any loss sustained by the employee which is attributable to that failure.