



# Employment Protection (Consolidation) Act 1978

## 1978 CHAPTER 44

### PART III

#### MATERNITY

##### *Maternity pay*

#### **34 Maternity pay**

- (1) Maternity pay shall be paid in respect of a period not exceeding, or periods not exceeding in the aggregate, six weeks during which the employee is absent from work wholly or partly because of pregnancy or confinement (in this section and sections 35 and 36 referred to as the payment period or payment periods).
- (2) An employee shall not be entitled to maternity pay for any absence before the beginning of the eleventh week before the expected week of confinement, and her payment period or payment periods shall be the first six weeks of absence starting on or falling after the beginning of that eleventh week.
- (3) The Secretary of State may by order vary the periods of six weeks referred to in subsections (1) and (2), or those periods as varied from time to time under this subsection, but no such order shall be made unless a draft of the order has been laid before Parliament and approved by resolution of each House of Parliament.
- (4) Where an employee gives her employer the information required by section 33(3)(c) or produces any certificate requested under section 33(5) after the beginning of the payment period or the first of the payments periods, she shall not be entitled to maternity pay for any part of that period until she gives him that information or certificate, but on giving him the information or, as the case may be, producing the certificate, she shall be entitled to be paid in respect of that part of the period or periods which fell before the giving of the information or the production of the certificate.

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### **35 Calculation of maternity pay**

- (1) The amount of maternity pay to which an employee is entitled as respects any week shall be nine-tenths of a week's pay reduced by the amount of maternity allowance payable for the week under Part I of Schedule 4 to the Social Security Act 1975, whether or not the employee in question is entitled to the whole or any part of that allowance.
- (2) Maternity pay shall accrue due to an employee from day to day and in calculating the amount of maternity pay payable for any day—
  - (a) there shall be disregarded Sunday or such other day in each week as may be prescribed in relation to that employee under section 22(10) of the Social Security Act 1975 for the purpose of calculating the daily rate of maternity allowance under that Act; and
  - (b) the amount payable for any other day shall be taken as one-sixth of the amount of the maternity pay for the week in which the day falls.
- (3) Subject to subsection (4), a right to maternity pay shall not affect any right of an employee in relation to remuneration under any contract of employment (in this section referred to as "contractual remuneration").
- (4) Any contractual remuneration paid to an employee in respect of a day within a payment period shall go towards discharging any liability of the employer to pay maternity pay in respect of that day, and conversely any maternity pay paid in respect of a day shall go towards discharging any liability of the employer to pay contractual remuneration in respect of that day.

### **36 Complaint to industrial tribunal**

- (1) A complaint may be presented to an industrial tribunal by an employee against her employer that he has failed to pay her the whole or any part of the maternity pay to which she is entitled.
- (2) An industrial tribunal shall not entertain a complaint under subsection (1) unless it is presented to the tribunal before the end of the period of three months beginning with the last day of the payment period or, as the case may be, the last of the payment periods, or 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 the period of three months.
- (3) Where an industrial tribunal finds a complaint under subsection (1) well-founded, the tribunal shall order the employer to pay the complainant the amount of maternity pay which it finds is due to her.

### **37 Maternity Pay Fund**

- (1) The secretary of state shall continue to have the control and management of the maternity pay fund established under section 39 of the Employment Protection Act 1975 and payments shall be made out of that fund in accordance with the following provisions of this Part and section 156(1)
- (2) The secretary of state shall prepare accounts of the Maternity pay fund in such form as the Treasury may direct and shall send them to the comptroller and Auditor General not later than the end of the month of November following the end of the financial year

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to which the accounts relate; and the Comptroller and Auditor General shall examine and certify every such account and shall lay copies thereof, together with his report thereon, before Parliament.

- (3) Any money in the Maternity Pay Fund may from time to time be paid over to the National Debt Commissioners and invested by them, in accordance with such directions as may be given by the Treasury, in any such manner as may be specified by an order of the Treasury for the time being in force under section 22(1) of the National Savings Bank Act 1971.

### **38 Advances out of National Loans Fund**

- (1) Subject to the provisions of subsections (2) to (4), the Treasury may from time to time advance out of the National Loans Fund to the Secretary of State for the purposes of the Maternity Pay Fund such sums as the Secretary of State may request ; and any sums advanced to the Secretary of State under this section shall be paid into the Maternity Pay Fund.
- (2) The aggregate amount outstanding by way of principal in respect of sums advanced to the Secretary of State under subsection (1) shall not at any time exceed £4 million, or such larger sum, not exceeding £10 million, as the Secretary of State may by order made with the consent of the Treasury determine.
- (3) No order under subsection (2) shall be made unless a draft of the order has been laid before Parliament and approved by resolution of each House of Parliament.
- (4) Any sums advanced to the Secretary of State under Subsection (1) shall be re-paid by the Secretary of State out of the Maternity Pay Fund into the National Loans Fund in such manner and at such times, and with interest thereon at such rate, as the Treasury may direct.

### **39 Maternity pay rebate**

- (1) Subject to any regulations made under this section, the Secretary of State shall pay out of the Maternity Pay Fund to every employer who makes a claim under this section and who, being liable to pay, has paid maternity pay to an employee, an amount equal to the full amount of maternity pay so paid (in this section and sections 42 and 43 referred to as a " maternity pay rebate ").
- (2) The Secretary of State may if he thinks fit, and if he is satisfied that it would be just and equitable to do so having regard to all the relevant circumstances, pay such a rebate to an employer who makes a claim under this section and who has paid maternity pay to an employee in circumstances in which, by reason of the time limit provided for in section 36(2) a complaint by the employee has been dismissed, or would not be entertained, by an industrial tribunal.
- (3) For the purposes of subsections (1) and 2) a payment of contractual remuneration by an employer shall be treated as a Payment of maternity pay to the extent that, by virtue of section 35(4) —
  - (a) it extinguishes the employer's liability to pay maternity pay; or
  - (b) in a case falling within subsection (2), it would extinguish that liability if a complaint by the employee were not time-barred as described in that subsection.

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- (4) The Secretary of State shall make provision by regulations as to the making of claims for maternity pay rebates under this section and such regulations may in particular—
- (a) require a claim to be made within such time limit as may be prescribed ; and
  - (b) require a claim to be supported by such evidence as may be prescribed.

#### **40 Payments to employees out of Maternity Pay Fund**

- (1) Where an employee claims that her employer is liable to pay her maternity pay and—
- (a) that she has taken all reasonable steps (other than proceedings to enforce a tribunal award) to recover payment from the employer ; or
  - (b) that her employer is insolvent (as defined in section 127 for the purposes of sections 122 to 126);
- and that the whole or part of the maternity pay remains unpaid, the employee may apply to the Secretary of State under this section.
- (2) If the Secretary of State is satisfied that the claim is well-founded the Secretary of State shall pay the employee out of the Maternity Pay Fund the amount of the maternity pay which appears to the Secretary of State to be unpaid.
- (3) A payment made by the Secretary of State to an employee under this section shall, for the purpose of discharging any liability of the employer to the employee, be treated as if it had been made by the employer.

#### **41 Unreasonable default by employer**

- (1) Where the Secretary of State makes a payment to an employee in respect of unpaid maternity pay in a case falling within section 40(1)(a) and it appears to the Secretary of State that the employer's default in payment was without reasonable excuse, the Secretary of State may recover from the employer such amount as the Secretary of State considers appropriate, not exceeding the amount of maternity pay which the employer failed to pay.
- (2) Where a sum is recovered by the Secretary of State by virtue of this section that sum shall be paid into the Maternity Pay Fund.

#### **42 Supplementary provisions relating to employer's insolvency**

- (1) Where the Secretary of State makes a payment to an employee under section 122 (which provides for payments out of the Redundancy Fund in respect of certain debts where an employer is insolvent) and that payment, in whole or in part, represents arrears of pay, then, in ascertaining for the purpose of section 40 the amount of any unpaid maternity pay, section 35(4) shall apply as if the arrears of pay in question had been duly paid by the employer to the employee in accordance with the contract of employment.
- (2) Where the Secretary of State makes a payment to an employee out of the Redundancy Fund under section 122 which, if it had been made by the employer to the employee, would have attracted a maternity pay rebate from the Maternity Pay Fund in accordance with section 39, then, the Secretary of State shall make a payment out of the Maternity Pay Fund into the Redundancy Fund of an amount corresponding to the amount of rebate which would have been so payable.

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#### **43 Complaints and appeals to industrial tribunal**

- (1) A person who has—
  - (a) made a claim for a maternity pay rebate under section 39, in a case to which subsection (1) of that section applies; or
  - (b) applied for a payment under section 40,may, subject to subsection (5), present a complaint to an industrial tribunal that—
  - (i) the Secretary of State has failed to make any such payment; or
  - (ii) any such payment made by the Secretary of State is less than the amount which should have been paid.
- (2) Where an industrial tribunal finds that the Secretary of State ought to make any such payment or further payment, it shall make a declaration to that effect and shall also declare the amount of any such payment which it finds the Secretary of State ought to make.
- (3) An employer who has made a claim for a maternity pay rebate under section 39, in a case to which subsection (2) of that section applies, may, subject to subsection (5), appeal to an industrial tribunal on the ground that—
  - (a) the Secretary of State has refused to pay a maternity pay rebate; or
  - (b) any rebate paid by the Secretary of State is less than the amount which should have been paid,and if on any such appeal the tribunal is satisfied that it is just and equitable having regard to all the relevant circumstances that a maternity pay rebate should be paid or, as the case may be, finds that a further payment by way of rebate should be made, the tribunal shall determine accordingly, and the Secretary of State shall comply with the determination.
- (4) Where the Secretary of State determines that an amount is recoverable from an employer under section 41, the employer may, subject to subsection (5), appeal to an industrial tribunal; and if on any such appeal the tribunal is satisfied that no amount should be recovered from the employer, or that a lesser or greater amount should be recovered (but in any case not exceeding the amount of maternity pay which the employer failed to pay) the tribunal shall determine accordingly and the amount, if any, so determined shall be the amount recoverable from the employer by the Secretary of State.
- (5) An industrial tribunal shall not entertain a complaint or appeal under this section unless it is presented to the tribunal within the period of three months beginning with the date on which the relevant decision of the Secretary of State was communicated to the complainant or appellant or 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 or appeal to be presented within the period of three months.

#### **44 Provisions as to information**

- (1) Where an application is made to the Secretary of State by an employee under section 40, the Secretary of State may require—
  - (a) the employer to provide him with such information as the Secretary of State may reasonably require for the purpose of determining whether the employee's application is well-founded; and

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- (b) any person having the custody or control of any relevant records or other documents to produce for examination on behalf of the Secretary of State any such document in that person's custody or under his control which is of such a description as the Secretary of State may require.
- (2) Any such requirement shall be made by a notice in writing given to the person on whom the requirement is imposed and may be varied or revoked by a subsequent notice so given.
  - (3) If a person refuses or wilfully neglects to furnish any information or produce any document which he has been required to furnish or produce by a notice under this section he shall be liable on summary conviction to a fine not exceeding £100.
  - (4) If any person in making a claim under section 39 or an application under section 40 or in purporting to comply with a requirement of a notice under this section knowingly or recklessly makes any false statement he shall be liable on summary conviction to a fine not exceeding £400.