



Employment Act 1980

1980 CHAPTER 42

Maternity

11 Notices to employer

(1) In subsection (3) of section 33 of the 1978 Act (which specifies conditions to which the rights to maternity pay and to return to work are subject) for paragraph (c) (information to employer) there shall be substituted—

“(c) in the case of the right to maternity pay, she informs her employer, in writing if he so requests, at least twenty-one days before her absence begins or, if that is not reasonably practicable, as soon as reasonably practicable, that she will be (or is) absent from work wholly or partly because of pregnancy or confinement; and

(d) in the case of the right to return, she informs her employer in writing at least twenty-one days before her absence begins or, if that is not reasonably practicable, as soon as reasonably practicable,—

(i) that she will be (or is) absent from work wholly or partly because of pregnancy or confinement,

(ii) that she intends to return to work with her employer, and

(iii) of the expected week of confinement or, if the confinement has occurred, the date of confinement.”

(2) After that subsection there shall be inserted—

“(3A) Where not earlier than forty-nine days after the beginning of the expected week of confinement (or the date of confinement) notified under subsection (3)W) an employee is requested in accordance with subsection (3B) by her employer or a successor of his to give him written confirmation that she intends to return to work, she shall not be entitled to the right to return unless she gives that confirmation within fourteen days of receiving the request or, if that is not reasonably practicable, as soon as reasonably practicable.

(3B) A request under subsection (3A) shall be made in writing and shall be accompanied by a written statement of the effect of that subsection.”

- (3) In section 47 of the 1978 Act, in subsection (1) (employee to exercise her right to return to work by notifying the employer at least seven days in advance)—
- (a) for the word " notifying " there shall be substituted the words " giving written notice to " , and
 - (b) for the word " seven " there shall be substituted the word " twenty-one " ;
- and in subsections (6) and (7) for the word " fourteen " there shall be substituted the word " twenty-eight " .

12 Right to return

After section 56 of the 1978 Act there shall be inserted—

“56A Exclusion of s.56 in certain cases.

- (1) Section 56 shall not apply in relation to an employee if—
 - (a) immediately before her absence began the number of employees employed by her employer, added to the number employed by any associated employer of his, did not exceed five, and
 - (b) it is not reasonably practicable for the employer (who may be the same employer or a successor of his) to permit her to return to work in accordance with section 45(1), or for him or an associated employer to offer her employment under a contract of employment satisfying the conditions specified in subsection (3).
- (2) Section 56 shall not apply in relation to an employee if—
 - (a) it is not reasonably practicable for a reason other than redundancy for the employer (who may be the same employer or a successor of his) to permit her to return to work in accordance with section 45(1), and
 - (b) he or an associated employer offers her employment under a contract of employment satisfying the conditions specified in subsection (3), and
 - (c) she accepts or unreasonably refuses that offer.
- (3) The conditions referred to in subsections (1) and (2) are—
 - (a) that 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) that the provisions of the 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 in accordance with section 45(1).
- (4) Where on a complaint of unfair dismissal any question arises as to whether the operation of section 56 is excluded by subsection (1) or (2), it shall be for the employer to show that the provisions of that subsection were satisfied in relation to the complainant.”

13 Time off for ante-natal care

After section 31 of the 1978 Act there shall be inserted—

“31A Time off for ante-natal care.

- (1) An employee who is pregnant and who has, on the advice of a registered medical practitioner, registered midwife or registered health visitor, made an appointment to attend at any place for the purpose of receiving ante-natal care shall, subject to the following provisions of this section, have the right not to be unreasonably refused time off during her working hours to enable her to keep the appointment.
- (2) Subject to subsection (3), an employer shall not be required by virtue of this section to permit an employee to take time off to keep an appointment unless, if he requests her to do so, she produces for his inspection—
 - (a) a certificate from a registered medical practitioner, registered midwife or registered health visitor stating that the employee is pregnant, and
 - (b) an appointment card or some other document showing that the appointment has been made.
- (3) Subsection (2) shall not apply where the employee's appointment is the first appointment during her pregnancy for which she seeks permission to take time off in accordance with subsection (1).
- (4) An employee who is permitted to take time off during her working hours in accordance with subsection (1) shall be entitled to be paid remuneration by her employer for the period of absence at the appropriate hourly rate.
- (5) The appropriate hourly rate in relation to an employee shall be the amount of one week's pay divided by—
 - (a) the number of normal working hours in a week for that employee when employed under the contract of employment in force on the day when the time off is taken; or
 - (b) where the number of such normal working hours differs from week to week or over a longer period, the average number of such hours calculated by dividing by twelve the total number of the employee's normal working hours during the period of twelve weeks ending with the last complete week before the day on which the time off is taken; or
 - (c) in a case falling within paragraph (b) but where the employee has not been employed for a sufficient period to enable the calculation to be made under that paragraph, a number which fairly represents the number of normal working hours in a week having regard to such of the following considerations as are appropriate in the circumstances, that is to say.—
 - (i) the average number of normal working hours in a week which the employee could expect in accordance with the terms of her contract;
 - (ii) the average number of such hours of other employees engaged in relevant comparable employment with the same employer.
- (6) An employee may present a complaint to an industrial tribunal that her employer has unreasonably refused her time off as required by this section or that he has failed to pay her the whole or part of any amount to which she is entitled under subsection (4).

Status: This is the original version (as it was originally enacted).

- (7) An industrial tribunal shall not entertain a complaint under subsection (6) unless it is presented within the period of three months beginning with the day of the appointment concerned, 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.
- (8) Where on a complaint under subsection (6) the tribunal finds the complaint well-founded it shall make a declaration to that effect; and—
- (a) if the complaint is that the employer has unreasonably refused the employee time off, the tribunal shall order the employer to pay to the employee an amount equal to the remuneration to which she would have been entitled under subsection (4) if the time off had not been refused ; and
 - (b) if the complaint is that the employer has failed to pay the employee the whole or part of any amount to which she is entitled under subsection (4), the tribunal shall order the employer to pay to the employee the amount which it finds due to her.
- (9) Subject to subsection (10), a right to any amount under subsection (4) shall not affect any right of an employee in relation to remuneration under her contract of employment (in this section referred to as " contractual remuneration ").
- (10) Any contractual remuneration paid to an employee in respect of a period of time off under this section shall go towards discharging any liability of the employer to pay remuneration under subsection (4) in respect of that period, and conversely any payment of remuneration under subsection (4) in respect of a period shall go towards discharging any liability of the employer to pay contractual remuneration in respect of that period.
- (11) Until the coming into operation of section 10 of the Nurses, Midwives and Health Visitors Act 1979, this section shall have effect as if for any reference to a registered midwife or registered health visitor there were substituted a reference to a certified midwife.”