



# Social Security Contributions and Benefits Act 1992

## 1992 CHAPTER 4

### PART XII

#### STATUTORY MATERNITY PAY

#### **164 Statutory maternity pay - entitlement and liability to pay**

- (1) Where a woman who is or has been an employee satisfies the conditions set out in this section, she shall be entitled, in accordance with the following provisions of this Part of this Act, to payments to be known as “statutory maternity pay”.
- (2) The conditions mentioned in subsection (1) above are—
  - (a) that she has been in employed earner’s employment with an employer for a continuous period of at least 26 weeks ending with the week immediately preceding the 14th week before the expected week of confinement but has ceased to work for him, wholly or partly because of pregnancy or confinement;
  - (b) that her normal weekly earnings for the period of 8 weeks ending with the week immediately preceding the 14th week before the expected week of confinement are not less than the lower earnings limit in force under section 5(1)(a) above immediately before the commencement of the 14th week before the expected week of confinement; and
  - (c) that she has become pregnant and has reached, or been confined before reaching, the commencement of the 11th week before the expected week of confinement.
- (3) The liability to make payments of statutory maternity pay to a woman is a liability of any person of whom she has been an employee as mentioned in subsection (2)(a) above.
- (4) Except in such cases as may be prescribed, a woman shall be entitled to payments of statutory maternity pay only if—

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- (a) she gives the person who will be liable to pay it notice that she is going to be absent from work with him, wholly or partly because of pregnancy or confinement; and
  - (b) the notice is given at least 21 days before her absence from work is due to begin or, if that is not reasonably practicable, as soon as is reasonably practicable.
- (5) The notice shall be in writing if the person who is liable to pay the woman statutory maternity pay so requests.
- (6) Any agreement shall be void to the extent that it purports—
  - (a) to exclude, limit or otherwise modify any provision of this Part of this Act; or
  - (b) to require an employee or former employee to contribute (whether directly or indirectly) towards any costs incurred by her employer or former employer under this Part of this Act.
- (7) For the avoidance of doubt, any agreement between an employer and an employee authorising any deductions from statutory maternity pay which the employer is liable to pay to the employee in respect of any period shall not be void by virtue of subsection (6)(a) above if the employer—
  - (a) is authorised by that or another agreement to make the same deductions from any contractual remuneration which he is liable to pay in respect of the same period, or
  - (b) would be so authorised if he were liable to pay contractual remuneration in respect of that period.
- (8) Regulations shall make provision as to a former employer's liability to pay statutory maternity pay to a woman in any case where the former employer's contract of service with her has been brought to an end by the former employer solely, or mainly, for the purpose of avoiding liability for statutory maternity pay.
- (9) The Secretary of State may by regulations—
  - (a) specify circumstances in which, notwithstanding subsections (1) to (8) above, there is to be no liability to pay statutory maternity pay in respect of a week;
  - (b) specify circumstances in which, notwithstanding subsections (1) to (8) above, the liability to make payments of statutory maternity pay is to be a liability of his;
  - (c) specify in what circumstances employment is to be treated as continuous for the purposes of this Part of this Act;
  - (d) provide that a woman is to be treated as being employed for a continuous period of at least 26 weeks where—
    - (i) she has been employed by the same employer for at least 26 weeks under two or more separate contracts of service; and
    - (ii) those contracts were not continuous;
  - (e) provide that any of the provisions specified in subsection (10) below shall have effect subject to prescribed modifications—
    - (i) where a woman has been dismissed from her employment;
    - (ii) where a woman is confined before the beginning of the 14th week before the expected week of confinement; and
    - (iii) in such other cases as may be prescribed;

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- (f) provide for amounts earned by a woman under separate contracts of service with the same employer to be aggregated for the purposes of this Part of this Act; and
  - (g) provide that—
    - (i) the amount of a woman’s earnings for any period, or
    - (ii) the amount of her earnings to be treated as comprised in any payment made to her or for her benefit,shall be calculated or estimated in such manner and on such basis as may be prescribed and that for that purpose payments of a particular class or description made or falling to be made to or by a woman shall, to such extent as may be prescribed, be disregarded or, as the case may be, be deducted from the amount of her earnings.
- (10) The provisions mentioned in subsection (9)(e) above are—
- (a) subsection (2)(a) and (b) above; and
  - (b) section 166(2), (4) and (5) below.

## **165 The maternity pay period**

- (1) Statutory maternity pay shall be payable, subject to the provisions of this Part of this Act, in respect of each week during a prescribed period (“the maternity pay period”) of a duration not exceeding 18 weeks.
- (2) Subject to subsections (3) and (7) below, the first week of the maternity pay period shall be the 11th week before the expected week of confinement.
- (3) Cases may be prescribed in which the first week of the period is to be a prescribed week later than the 11th week before the expected week of confinement, but not later than the 6th week before the expected week of confinement.
- (4) Statutory maternity pay shall not be payable to a woman by a person in respect of any week during any part of which she works under a contract of service with him.
- (5) It is immaterial for the purposes of subsection (4) above whether the work referred to in that subsection is work under a contract of service which existed immediately before the maternity pay period or a contract of service which did not so exist.
- (6) Except in such cases as may be prescribed, statutory maternity pay shall not be payable to a woman in respect of any week after she has been confined and during any part of which she works for any employer who is not liable to pay her statutory maternity pay.
- (7) Regulations may provide that this section shall have effect subject to prescribed modifications in relation—
  - (a) to cases in which a woman has been confined before the 11th week before the expected week of confinement; and
  - (b) to cases in which—
    - (i) a woman is confined during the period beginning with the 11th week, and ending with the 7th week, before the expected week of confinement; and
    - (ii) the maternity pay period has not then commenced for her.

**166 Rates of payment**

- (1) There shall be two rates of statutory maternity pay, in this Act referred to as “the higher rate” and “the lower rate”.
- (2) The higher rate is a weekly rate equivalent to nine-tenths of a woman’s normal weekly earnings for the period of 8 weeks immediately preceding the 14th week before the expected week of confinement or the weekly rate prescribed under subsection (3) below, whichever is the higher.
- (3) The lower rate is such weekly rate as may be prescribed.
- (4) Subject to the following provisions of this section, statutory maternity pay shall be payable at the higher rate to a woman who for a continuous period of at least 2 years ending with the week immediately preceding the 14th week before the expected week of confinement has been an employee in employed earner’s employment of any person liable to pay it to her, and shall be so paid by any such person in respect of the first 6 weeks in respect of which it is payable.
- (5) Statutory maternity pay shall not be payable at the higher rate to a woman whose relations with the person liable to pay it are or were governed by a contract of service which normally involves or involved employment for less than 16 hours weekly unless during a continuous period of at least 5 years ending with the week immediately preceding the 14th week before the expected week of confinement her contract of service normally involved employment for 8 hours or more weekly.
- (6) The Secretary of State may by regulations make provision as to when a contract of service is to be treated for the purposes of subsection (5) above as normally involving or having involved employment—
  - (a) for less than 16 hours weekly; or
  - (b) for 8 hours or more weekly,or as not normally involving or having involved such employment.
- (7) Statutory maternity pay shall be payable to a woman at the lower rate if she is entitled to statutory maternity pay but is not entitled to payment at the higher rate.
- (8) If a woman is entitled to statutory maternity pay at the higher rate, she shall be entitled to it at the lower rate in respect of the portion of the maternity pay period after the end of the 6 week period mentioned in subsection (4) above.

**167 Recovery of amounts paid by way of statutory maternity pay**

- (1) Regulations shall make provision—
  - (a) entitling, except in prescribed circumstances, any person who has made a payment of statutory maternity pay to recover the amount so paid by making one or more deductions from his contributions payments;
  - (b) for the payment, in prescribed circumstances, by the Secretary of State or by the Commissioners of Inland Revenue on behalf of the Secretary of State, of sums to persons who are unable so to recover the whole, or any part, of any payments of statutory maternity pay which they have made;
  - (c) giving any person who has made a payment of statutory maternity pay a right, except in prescribed circumstances, to an amount, determined in such manner as may be prescribed—

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- (i) by reference to secondary Class 1 contributions paid in respect of statutory maternity pay; or
  - (ii) by reference to secondary Class 1 contributions paid in respect of statutory sick pay; or
  - (iii) by reference to the aggregate of secondary Class 1 contributions paid in respect of statutory maternity pay and secondary Class 1 contributions paid in respect of statutory sick pay;
  - (d) providing for the recovery, in prescribed circumstances, of the whole or any part of any such amount from contributions payments;
  - (e) for the payment in prescribed circumstances, by the Secretary of State or by the Commissioners of Inland Revenue on behalf of the Secretary of State, of the whole or any part of any such amount.
- (2) In this section “contributions payments”, in relation to an employer, means any payments which the employer is required, by or under any enactment, to make in discharge of any liability in respect of primary or secondary Class 1 contributions.
- (3) Regulations under subsection (1) above may, in particular, provide for any deduction made in accordance with the regulations to be disregarded for prescribed purposes.
- (4) Where, in accordance with any provision of regulations made under this section, an amount has been deducted from an employer’s contributions payments, the amount so deducted shall (except in such cases as may be prescribed) be treated for the purposes of any provision made by or under any enactment in relation to primary or secondary Class 1 contributions as having been—
- (a) paid (on such date as may be determined in accordance with the regulations); and
  - (b) received by the Secretary of State,
- towards discharging the employer’s liability in respect of such contributions.

## **168 Relationship with benefits and other payments etc**

Schedule 13 to this Act has effect with respect to the relationship between statutory maternity pay and certain benefits and payments.

## **169 Crown employment - Part XII**

The provisions of this Part of this Act apply in relation to women employed by or under the Crown as they apply in relation to women employed otherwise than by or under the Crown.

## **170 Special classes of persons**

- (1) The Secretary of State may make regulations modifying this Part of this Act in such manner as he thinks proper in their application to any person who is, has been or is to be—
- (a) employed on board any ship, vessel, hovercraft or aircraft;
  - (b) outside Great Britain at any prescribed time or in any prescribed circumstances; or
  - (c) in prescribed employment in connection with continental shelf operations, as defined in section 120(2) above.

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- (2) Regulations under subsection (1) above may in particular provide—
- (a) for any provision of this Part of this Act to apply to any such person, notwithstanding that it would not otherwise apply;
  - (b) for any such provision not to apply to any such person, notwithstanding that it would otherwise apply;
  - (c) for excepting any such person from the application of any such provision where he neither is domiciled nor has a place of residence in any part of Great Britain;
  - (d) for the taking of evidence, for the purposes of the determination of any question arising under any such provision, in a country or territory outside Great Britain, by a British consular official or such other person as may be determined in accordance with the regulations.

## **171 Interpretation of Part XII and supplementary provisions**

- (1) In this Part of this Act—

“confinement” means—

- (a) labour resulting in the issue of a living child, or
- (b) labour after 28 weeks of pregnancy resulting in the issue of a child whether alive or dead,

and “confined” shall be construed accordingly; and where a woman’s labour begun on one day results in the issue of a child on another day she shall be taken to be confined on the day of the issue of the child or, if labour results in the issue of twins or a greater number of children, she shall be taken to be confined on the day of the issue of the last of them;

“dismissed” is to be construed in accordance with section 55(2) to (7) of the Employment Protection (Consolidation) Act 1978;

“employee” means a woman who is—

- (a) gainfully employed in Great Britain either under a contract of service or in an office (including elective office) with emoluments chargeable to income tax under Schedule E; and
- (b) over the age of 16;

but subject to regulations which may provide for cases where any such woman is not to be treated as an employee for the purposes of this Part of this Act and for cases where a woman who would not otherwise be an employee for those purposes is to be treated as an employee for those purposes;

“employer”, in relation to a woman who is an employee, means a person who under section 6 above is, or but for subsection (1)(b) of that section would be, liable to pay secondary Class 1 contributions in relation to any of her earnings;

“maternity pay period” has the meaning assigned to it by section 165(1) above;

“modifications” includes additions, omissions and amendments, and related expressions shall be construed accordingly;

“prescribed” means specified in or determined in accordance with regulations;

“week” means a period of 7 days beginning with Sunday or such other period as may be prescribed in relation to any particular case or class of cases.

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- (2) Without prejudice to any other power to make regulations under this Part of this Act, regulations may specify cases in which, for the purposes of this Part of this Act or of such provisions of this Part of this Act as may be prescribed—
- (a) two or more employers are to be treated as one;
  - (b) two or more contracts of service in respect of which the same woman is an employee are to be treated as one.
- (3) Where, in consequence of the establishment of one or more National Health Service trusts under Part I of the National Health Service and Community Care Act 1990 or the National Health Service (Scotland) Act 1978, a woman’s contract of employment is treated by a scheme under that Part or Act as divided so as to constitute two or more contracts, regulations may make provision enabling her to elect for all of those contracts to be treated as one contract for the purposes of this Part of this Act or of such provisions of this Part of this Act as may be prescribed; and any such regulations may prescribe—
- (a) the conditions that must be satisfied if a woman is to be entitled to make such an election;
  - (b) the manner in which, and the time within which, such an election is to be made;
  - (c) the persons to whom, and the manner in which, notice of such an election is to be given;
  - (d) the information which a woman who makes such an election is to provide, and the persons to whom, and the time within which, she is to provide it;
  - (e) the time for which such an election is to have effect;
  - (f) which one of the woman’s employers under the two or more contracts is to be regarded for the purposes of statutory maternity pay as her employer under the one contract;
- and the powers conferred by this subsection are without prejudice to any other power to make regulations under this Part of this Act.
- (4) For the purposes of this Part of this Act a woman’s normal weekly earnings shall, subject to subsection (6) below, be taken to be the average weekly earnings which in the relevant period have been paid to her or paid for her benefit under the contract of service with the employer in question.
- (5) For the purposes of subsection (4) above “earnings” and “relevant period” shall have the meanings given to them by regulations.
- (6) In such cases as may be prescribed a woman’s normal weekly earnings shall be calculated in accordance with regulations.