
STATUTORY INSTRUMENTS

2010 No. 1055

The Additional Paternity Leave Regulations 2010

PART 4

**PROVISIONS APPLICABLE TO BOTH TYPES
OF ADDITIONAL PATERNITY LEAVE**

Unfair dismissal

34.—(1) In a case where P is dismissed, P is entitled under section 99 of the 1996 Act⁽¹⁾ to be regarded for the purpose of Part 10 of that Act as unfairly dismissed if—

- (a) the reason or principal reason for the dismissal is of a kind specified in paragraph (3), or
- (b) the reason or principal reason for the dismissal is that P is redundant and regulation 28 has not been complied with.

(2) In a case where P is dismissed, P shall also be regarded for the purposes of Part 10 of the 1996 Act as unfairly dismissed if—

- (a) the reason (or, if more than one, the principal reason) for the dismissal is that P was redundant,
- (b) it is shown that the circumstances constituting the redundancy applied equally to one or more employees in the same undertaking who had positions similar to that held by P and who have not been dismissed by E, and
- (c) it is shown that the reason (or if more than one, the principal reason) for which P was selected for dismissal was a reason of a kind specified in paragraph (3).

(3) The kinds of reason referred to in paragraph (1) and (2) are reasons connected with any of the following facts—

- (a) that P took, sought to take or made use of the benefits of, additional paternity leave;
- (b) that E believed that P was likely to take additional paternity leave;
- (c) that P failed to return after a period of additional paternity leave in a case where—
 - (i) E did not notify P, in accordance with regulations 8, 8 as modified by regulation 10, 18, 18 as modified by regulation 20, or otherwise, of the date on which that period ended, and P reasonably believed that the period had not ended, or
 - (ii) that E gave P less than 28 days' notice of the date on which the period would end, and it was not reasonably practicable for P to return on that date; or
- (d) that P undertook, considered undertaking or refused to undertake work in accordance with regulation 26.

⁽¹⁾ Section 99 was substituted by the Employment Relations Act 1999, Schedule 4, Part 3, paragraphs 5 and 16, and amended by the Employment Act 2002, Schedule 7, paragraphs 24 and 33 and by the Work and Families Act 2006, Schedule 1, paragraph 41.

(4) For the purposes of paragraph (3)(a), P makes use of the benefits of additional paternity leave if, during P's additional paternity leave period, P benefits from any of the terms and conditions of P's employment preserved by section 80C of the 1996 Act and regulation 27 during that period.

(5) Paragraph (1) does not apply in relation to P if—

- (a) it is not reasonably practicable for a reason other than redundancy for E (who may be E or a successor of E) to permit P to return to a job which is both suitable for P and appropriate for P to do in the circumstances,
- (b) an associated employer offers P a job of that kind, and
- (c) P accepts or unreasonably refuses that offer.

(6) Where, on a complaint of unfair dismissal, any question arises as to whether the operation of paragraph (1) is excluded by the provisions of paragraph (5), it is for E to show that the provision in question was satisfied in relation to the complainant.