

Draft Regulations, laid before Parliament under section 236(3) of the Employment Rights Act 1996 (c. 18), for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2024 No.

TERMS AND CONDITIONS OF EMPLOYMENT

The Carer's Leave Regulations 2024

Made - - - -

Coming into force - - 6th April 2024

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 47C(1), (2) and (4), 80J(1), (3), (4), (5) and (6), 80K(1), (2), (4) and (5), 80L, 80M and 99 of the Employment Rights Act 1996(1).

In accordance with section 236(3) of that Act(2), a draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

Part 1

General

Citation, commencement and extent

- 1.—(1) These Regulations may be cited as the Carer's Leave Regulations 2024.
- (2) The Regulations come into force on 6th April 2024.
- (3) The Regulations extend to England and Wales and Scotland.

Application

- 2.—(1) Subject to paragraphs (2) to (5), these Regulations apply in relation to employees who give notice of an intention to take carer's leave on or after 6th April 2024.
- (2) Regulation 11 (protection from detriment) has effect only in relation to an act or failure to act which takes place on or after 6th April 2024.

(1) 1996 c. 18 ("the 1996 Act"). Section 47C was inserted by the Employment Relations Act 1999 (c. 26) Schedule 4, Part 3, paragraphs 2 and 8 and amended by the Carer's Leave Act 2023 (c. 18) ("the 2023 Act"), Schedule, Part 2, paragraph 5, sections 80J, 80K, 80L and 80M were inserted by the 2023 Act, Schedule, Part 1, paragraphs 1 and 2, section 99 was substituted by the Employment Relations Act 1999 Schedule 4, Part 3, paragraphs 5 and 16 and amended by the 2023 Act, Schedule, Part 2 paragraph 8.

(2) Section 236(3) was amended by the 2023 Act, Schedule, Part 1, paragraph 3.

- (3) For the purposes of paragraph (2)—
- (a) where an act extends over a period, the reference to the date of the act is a reference to the last day of that period, and
 - (b) a failure to act is to be treated as done when it was decided on.
- (4) For the purposes of paragraph (3)(b), in the absence of evidence establishing the contrary an employer shall be taken to decide on a failure to act—
- (a) when they do an act inconsistent with doing the failed act, or
 - (b) if they have done no such inconsistent act when the period expires within which they might reasonably have been expected to do the failed act if it was to be done.
- (5) Regulation 12 (unfair dismissal) has effect only in relation to dismissals where the effective date of termination (within the meaning of section 97 of the 1996 Act) falls on or after 6th April 2024.

Interpretation

3. In these Regulations—

“the 1996 Act” means the Employment Rights Act 1996;

“carer’s leave” means leave under section 80J of the 1996 Act;

“day” means a period of 24 hours beginning at midnight, for the purposes of this regulation and regulations 7 and 8;

“relevant period” means a period of 12 months which ends on the last day of the carer’s leave the employee has requested;

“statutory leave” means leave provided for in Part 8 of the 1996 Act;

“week” means a seven day period starting at midnight between Sunday and Monday.

Part 2

Carer’s Leave

Entitlement to carer’s leave

- 4.—**(1) An employee is entitled to be absent from work to take carer’s leave where they—
- (a) satisfy the conditions in paragraph (2), and
 - (b) comply with the notice requirements in regulation 7.
- (2) The conditions referred to in paragraph (1)(a) are that the employee—
- (a) has a dependant with a long-term care need⁽³⁾,
 - (b) wants to be absent from work to provide or arrange care for that dependant, and
 - (c) has not exceeded their entitlement under regulation 5(1).

Extent of entitlement

- 5.—**(1) An employee who satisfies the conditions in regulation 4 is entitled to one week of carer’s leave during the relevant period.
- (2) The minimum period of carer’s leave an employee may take is half a working day.
 - (3) The maximum period of carer’s leave an employee may take is one continuous week.

(3) See section 80J(2) of the 1996 Act.

(4) Where an employee chooses to take carer's leave it need not be taken on consecutive days.

(5) In this regulation "working day" means the period in which an employee is normally expected or required to work on the day the leave is to be taken.

Calculation of a weeks leave

6.—(1) In respect of regulation 5 a week of carer's leave is a period of absence from work equal in duration to the period the employee is normally expected or required to work in a week at the time of making the request, calculated in accordance with paragraphs (2) to (5).

(2) Where the period for which an employee is normally expected or required, under their contract of employment, to work in the course of a week does not vary, a week's leave for the employee is a period of absence from work which is equal in duration to the period for which the employee is normally required to work during the course of a week in the relevant period.

(3) Where the period for which an employee is normally required, under their contract of employment, to work in the course of a week varies from week to week or over a longer period, or where they are normally required under their contract to work in some weeks but not in others, a week's leave for the employee is a period of absence from work which is equal in duration to the period calculated by dividing the total of the periods for which the employee is normally required to work during the course of a week in the relevant period by 52.

(4) In the case of an employee who has worked for their employer for at least one week but less than 52 weeks during the relevant period, a week's leave is a period of absence from work which is equal in duration to the period calculated by dividing the total of the periods for which the employee is normally required to work during the course of a week by the number of weeks the employee has been employed.

(5) In the case of an employee who has worked for their employer for less than a week, a week's leave is a period of absence from work which is equal in duration to the period for which the employee is expected to work in that week.

Notice requirements for carer's leave

7.—(1) An employee may take carer's leave to which they are entitled on such days as the employee may elect by giving notice of their intention to their employer in accordance with paragraph (2).

(2) A notice—

- (a) may relate to all or part of the carer's leave to which an employee is entitled in the relevant period,
- (b) must specify that the employee is entitled to take carer's leave in accordance with regulation 4(1)(a) and (b),
- (c) must specify the days on which the carer's leave is to be taken and if the leave relates to part of a day, shall specify this, and
- (d) must be given to the employer before the relevant date.

(3) For the purposes of paragraph (2)(d) the relevant date shall be whichever is the earlier of—

- (a) twice as many days in advance of the earliest day specified in the notice as the number of days or part days to which the notice relates, or
- (b) three days in advance of the earliest day or part day specified in the notice.

(4) An employer cannot require an employee to supply evidence in relation to a request for carer's leave before granting the leave.

(5) Where an employee fails to give notice in accordance with paragraph (2)(d), the employer may choose to waive that requirement, and where the other requirements set out in paragraph (2) are complied with, the employee is to be treated as having given notice in accordance with this regulation.

Postponement of carer's leave

8. An employer may postpone carer's leave where—
- (a) an employee has given notice in accordance with regulation 7;
 - (b) the employer reasonably considers that the operation of their business would be unduly disrupted if the employee took carer's leave during the period identified in the notice;
 - (c) the employer agrees to permit the employee to take a period of carer's leave—
 - (i) of the same duration as the period identified in the employee's notice, and
 - (ii) beginning on a date determined by the employer after consulting with the employee, which is no later than one month after the earliest day or part day of the employee's request for carer's leave;
 - (d) the employer gives the employee a notice in writing of the postponement which—
 - (i) states the reason for the postponement, and
 - (ii) sets out the agreed dates the employee can take carer's leave;
 - (e) the notice is given to the employee as soon as reasonably practicable but not later than the earlier of—
 - (i) seven days after the employee's notice was given to the employer, or
 - (ii) before the earliest day or part day requested in the employee's notice.

Part 3

Taking Carer's Leave

Application of terms and conditions during carer's leave

- 9.—(1) An employee who takes carer's leave is, during any period of that leave—
- (a) entitled to the benefit of all the terms and conditions of employment which would have applied if the employee had not been absent, and
 - (b) bound by any obligations arising under those terms and conditions of employment which would have applied, subject to the exception in section 80K(1)(b) of the 1996 Act.
- (2) In paragraph (1)(a) "terms and conditions" has the meaning given to it by section 80K(3) of the 1996 Act and accordingly does not include terms and conditions about remuneration.
- (3) For the purposes of section 80K of the 1996 Act, only sums payable to an employee by way of wages or salary are to be treated as remuneration.

Returning to work after carer's leave

- 10.—(1) An employee who returns to work after an isolated period of carer's leave is entitled to return to the job in which they were employed immediately before the absence.
- (2) Where an employee takes carer's leave and any statutory leave consecutively, carer's leave does not contribute to the continuity of a period of absence in respect of the employee's right to return to the job in which they were previously employed before their absence.

- (3) The right to return in this regulation is a right to return—
- (a) with the employee's seniority, pension and similar rights as they would have been if the employee had not been absent, and
 - (b) on terms and conditions not less favourable than those which would have applied if the employee had not been absent.

Protection from detriment

11.—(1) An employee is entitled under section 47C(2)(bc) of the 1996 Act(4) not to be subjected to any detriment by any act or any deliberate failure to act by an employer because—

- (a) the employee took, sought to take, or made use of the benefits of, carer's leave, or
- (b) the employer believed the employee was likely to take carer's leave.

(2) For the purposes of paragraph (1)(a), an employee makes use of the benefits of carer's leave if, during the period of carer's leave the employee benefits from any of the terms and conditions of employment preserved by regulation 9 during that period.

(3) Paragraph (1) does not apply when the detriment in question amounts to a dismissal within the meaning of Part 10 of the 1996 Act.

Unfair dismissal

12.—(1) An employee who is dismissed is entitled under section 99 of the 1996 Act(5) to be regarded for the purposes of Part 10 of that Act as unfairly dismissed if the reason or principal reason for the dismissal is of a kind specified in paragraph (3).

(2) An employee who is dismissed is also to be regarded for the purpose of Part 10 of the 1996 Act as unfairly dismissed if—

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

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

- (a) that the employee took, sought to take, or made use of the benefits of carer's leave, or
- (b) that the employer believed that the employee was likely to take carer's leave.

(4) For the purposes of paragraph (3)(a), an employee makes use of the benefits of carer's leave if, during the period of carer's leave the employee benefits from any of the terms and conditions of employment preserved by regulation 9 during that period.

Calculation of a week's pay

13. Where—

- (a) under Chapter 2 Part 14 of the 1996 Act, the amount of a week's pay in respect of an employee falls to be calculated by reference to the average rate of remuneration, payable

(4) Section 47C was inserted by the Employment Relations Act 1999, Schedule 4, Part 3, paragraphs 5 and 8 and was amended by the 2023 Act, Schedule, Part 2, paragraph 5.

(5) Section 99 was substituted by the Employment Relations Act 1999, Schedule 4, Part 3, paragraphs 5 and 16, and was amended by the 2023 Act, Schedule, Part 2, paragraph 8.

to the employee in respect of a period of 12 weeks ending on a particular date (referred to as the “calculation date”),

- (b) during a week or part of a week in that period, the employee was absent from work on carer’s leave, and
- (c) remuneration is payable to the employee in respect of that week under their contract of employment, but the amount payable is less than the amount that would be payable, if the employee was working,

that week must be disregarded for the purpose of the calculation and account must be taken of remuneration in earlier weeks so as to bring up to 12 the number of weeks of which account is taken.

Part 4

Contractual Rights

Contractual rights to carer’s leave

14. Where an employee is entitled to carer’s leave (referred to in this regulation as “the statutory right”) and also to a right which corresponds to that right and which arises under the employee’s contract of employment or otherwise—

- (a) the employee may not exercise the statutory right and the corresponding right separately but may, in taking the leave for which the two rights provide, take advantage of whichever right is, in any particular respect, the more favourable, and
- (b) the provisions of the 1996 Act and of these Regulations relating to the statutory right apply, subject to any modifications necessary to give effect to any more favourable contractual terms, to the exercise of the composite right described in paragraph (a) as they apply to the exercise of the statutory right.

Name
Title

Department for Business and Trade

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for employees with a caring responsibility for a dependant to take carer's leave. The Regulations are made in exercise of the powers inserted into the Employment Rights Act 1996 (c. 18) (the "1996 Act") by the Carer's Leave Act 2023 (c. 18).

Part 2 relates to entitlement to carer's leave. The entitlement to carer's leave is provided for in regulation 4 which sets out the conditions for entitlement which must be satisfied by the employee in order to take carer's leave and which includes substantive requirements for the entitlements such as falling within the definitions of a dependant with a long term care need (set out at 80J(2)(a) and 80J(2)(b) of the 1996 Act, respectively). Regulation 7 sets out procedural requirements to be satisfied by the employee, such as appropriate notice to the employer before taking leave. The required notice period is twice as many days as the period of leave required, in advance of the earliest day of the leave and does not need to be in writing.

Regulation 5 sets out that the right is to one week of carer's leave and provides that this is to be taken within a 12 month rolling period. Employees are also given the option to take the leave as half or full days, up to and including taking a block of a whole week of leave at once.

Regulation 6 sets out how to calculate a week's leave for the purposes of regulation 5.

Regulation 8 sets out the process by which an employer can postpone a period of carer's leave where this would unduly disrupt the operation of their business. Employers must give notice as soon as is reasonably practicable and following consultation with the employee, confirm a new date on which they can take the leave within a month of the original date(s) requested.

Part 3 contains provisions applicable to the taking of carer's leave. Regulation 9 elaborates on section 80K of the 1996 Act by providing that an employee is entitled during his or her absence on leave to the benefit of all of his or her terms and conditions of employment apart from the right to remuneration (excluded by 80K(3)(b) of the Act); the employee is also subject to all of the obligations under those terms and conditions except in so far as they are inconsistent with the right to take carer's leave (this exception is at section 80L(1)(b) of the 1996 Act). Regulation 10 provides employees with the right to return to the job in which they were employed before taking a period of carer's leave. Regulations 11 and 12 provide that an employee entitled to carer's leave is protected from detriment and dismissal attributable to the fact that they took or sought to take carers leave.

Part 4 contains provisions applicable where an employee has a contractual right to carer's leave, in addition to the statutory right contained within these Regulations (regulation 14).

A full impact assessment of the effect that this instrument will have on the costs to business and the voluntary sector/civil society organisations is available from The Department for Business and Trade, Old Admiralty Building, Admiralty Place, London, SW1A 2DY and is published with an Explanatory Memorandum alongside the instrument on www.legislation.gov.uk.