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STATUTORY RULES OF NORTHERN IRELAND

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**2022 No. 237**

**The Parental Bereavement Leave (No. 2)  
Regulations (Northern Ireland) 2022**

**PART 3**

**TAKING PARENTAL BEREAVEMENT LEAVE**

**Application of terms and conditions during parental bereavement leave**

- 9.**—(1) An employee who takes parental bereavement leave, is, during any period of leave—
- (a) entitled to the benefit of all of 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, subject only to the exception in Article 112EB(1)(b) of the 1996 Order<sup>(1)</sup>.

(2) In paragraph (1)(a), “terms and conditions of employment” has the meaning given by Article 112EB(2) of the 1996 Order, and accordingly does not include terms and conditions about remuneration.

(3) For the purposes of Article 112EB of the 1996 Order, only sums payable to an employee by way of wages or salary are to be treated as remuneration.

(4) In the case of accrual of rights under an employment-related benefit scheme within the meaning given by paragraph 7 of Schedule 5 to the Social Security (Northern Ireland) Order 1989<sup>(2)</sup>, nothing in paragraph (1)(a) imposes a requirement which exceeds the requirements of paragraph 5D<sup>(3)</sup> of that Schedule.

**Right to return after parental bereavement leave**

**10.**—(1) An employee who returns to work after a period of parental bereavement leave which was—

- (a) an isolated period of parental bereavement leave; or
- (b) the last of two or more consecutive periods of statutory leave which did not include any—
  - (i) period of parental leave of more than four weeks; or
  - (ii) period of statutory leave which when added to any other periods of statutory leave (excluding parental leave) taken in relation to the same child as the period of parental bereavement leave the employee is returning from means that the total amount of statutory leave taken in relation to that child totals more than 26 weeks;

is entitled to return from leave to the job in which the employee was employed before the absence.

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(1) Article 112EB was inserted by section 1 of the Parental Bereavement (Leave and Pay) Act (Northern Ireland) 2022 (c. 5).

(2) S.I. 1989 No. 1342 (N.I. 13).

(3) Paragraph 5D was inserted by section 4 and Schedule 1, paragraph 1 of the Parental Bereavement (Leave and Pay) Act (Northern Ireland) 2022 (c. 5).

(2) An employee who returns to work after a period of parental bereavement leave not falling within the description within paragraph (1)(a) or (b) is entitled to return from leave to the job in which he or she was employed before the absence, or, if it is not reasonably practicable for the employer to permit the employee to return to that job, to another job which is both suitable and appropriate for the employee to do in the circumstances.

(3) The reference in paragraphs (1) and (2) to the job in which the employee was employed before the absence are references to the job in which the employee was employed—

- (a) if the return is from an isolated period of parental bereavement leave, immediately before that period;
- (b) if the return is from consecutive periods of statutory leave, immediately before the first such period.

(4) In this regulation, “parental leave” means leave under regulation 13(1) of the Maternity and Parental Leave etc. Regulations (Northern Ireland) 1999<sup>(4)</sup>.

#### **Right to return after parental bereavement leave: supplementary**

**11.**—(1) The right to return under regulation 10 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.

(2) In the case of accrual of rights under an employment-related benefit scheme within the meaning given by paragraph 7 of Schedule 5 to the Social Security (Northern Ireland) Order 1989<sup>(5)</sup>, nothing in paragraph (1)(a) above imposes a requirement which exceeds the requirements of paragraphs 5A to 6 of that Schedule<sup>(6)</sup>.

#### **Protection from detriment**

**12.**—(1) An employee is entitled under Article 70C<sup>(7)</sup> of the 1996 Order 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, parental bereavement leave; or
- (b) the employer believed that the employee was likely to take parental bereavement leave.

(2) For the purposes of paragraph (1)(a), an employee makes use of the benefits of parental bereavement leave if, during a period of parental bereavement 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 where the detriment in question amounts to a dismissal within the meaning of Part 11 of the 1996 Order.

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(4) [S.R. 1999 No. 471](#); regulation 13 was amended by [S.R. 2002 No. 135](#).

(5) [S.R. 1989 No. 1342 \(N.I. 13\)](#).

(6) Paragraph 5A was inserted by the Pensions (Northern Ireland) Order 2005 ([S.I. 2005/255 \(N.I. 1\)](#)), Article 242(1), and amended by [S.I.2006/1947 \(N.I. 16\)](#).

(7) Article 70C was inserted by [S.I. 1999/2790 \(N.I. 9\)](#), Article 11 and Schedule 4, Part 3, paragraph 3, and amended for relevant purposes by [2015 c. 1 \(N.I.\)](#), section 14(1) and [Schedule 1](#), paragraph 4(5).

## **Unfair Dismissal**

**13.**—(1) An employee who is dismissed is entitled under Article 131 of the 1996 Order<sup>(8)</sup> to be regarded for the purposes of Part 11 of that Order 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 purposes of Part 11 of the 1996 Order 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 equally 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 parental bereavement leave;
- (b) that the employer believed that the employee was likely to take parental bereavement leave.

(4) For the purposes of paragraph (3)(a), an employee makes use of the benefits of parental bereavement leave if, during a period of parental bereavement 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 for the purposes of Chapter 4 of Part 1 of the 1996 Order**

**14.** Where—

- (a) under Chapter 4 of Part 1 of the 1996 Order, the amount of a week's pay of an employee falls to be calculated by reference to the average rate of remuneration, or the average amount of remuneration, payable 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 in that period, the employee was absent from work on parental bereavement 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 he or she were 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.

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<sup>(8)</sup> Article 131 was substituted by S.I. 1999/2790 (N.I. 9), Article 11 and Schedule 4, Part 3, paragraph 8, and amended for relevant purposes by 2015 c. 1 (N.I.), section 14(1) and Schedule 1, paragraph 4(16).