
STATUTORY INSTRUMENTS

1996 No. 1919

The Employment Rights (Northern Ireland) Order 1996

PART VIII

SUSPENSION FROM WORK

Suspension on medical grounds

Right to remuneration on suspension on medical grounds

96.—(1) An employee who is suspended from work by his employer on medical grounds is entitled to be paid by his employer remuneration while he is so suspended for a period not exceeding twenty-six weeks.

(2) For the purposes of this Part an employee is suspended from work on medical grounds if he is suspended from work in consequence of—

- (a) a requirement imposed by or under any statutory provision, or
- (b) a recommendation in a provision of a code of practice issued or approved under Article 18 of the Health and Safety at Work (Northern Ireland) Order 1978,

and the provision is for the time being specified in paragraph (3).

(3) The provisions referred to in paragraph (2) are—

Regulation 2 of the Manufacture and Decoration of Pottery Regulations 1913,

[^{F1}Regulation 25 of the Ionising Radiations Regulations (Northern Ireland) 2017 [[S.R. 2017 No. 229](#)]]

Regulation 16 of the Control of Lead at Work Regulations (Northern Ireland) 1986,

Regulation 11 of the Control of Substances Hazardous to Health Regulations (Northern Ireland) 1995.

(4) The Department may by order add provisions to or remove provisions from the list of provisions specified in paragraph (3).

(5) For the purposes of this Part an employee shall be regarded as suspended from work on medical grounds only if and for so long as he—

- (a) continues to be employed by his employer, but
- (b) is not provided with work or does not perform the work he normally performed before the suspension.

F1 Words in [art. 96\(3\)](#) substituted (1.1.2018) by [The Ionising Radiations Regulations \(Northern Ireland\) 2017 \(S.R. 2017/229\)](#), [reg. 1](#), [Sch. 9 para. 2](#) (with [reg. 41](#), [Sch. 8](#))

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Exclusions from right to remuneration

97.—(1) An employee is not entitled to remuneration under Article 96 unless he has been continuously employed for a period of not less than one month ending with the day before that on which the suspension begins.

Para. (2) rep. by SR 2002/298

(3) An employee is not entitled to remuneration under Article 96 in respect of any period during which he is incapable of work by reason of disease or bodily or mental disablement.

(4) An employee is not entitled to remuneration under Article 96 in respect of any period if—

- (a) his employer has offered to provide him with suitable alternative work during the period (whether or not it is work which the employee is under his contract, or was under the contract in force before the suspension, employed to perform) and the employee has unreasonably refused to perform that work, or
- (b) he does not comply with reasonable requirements imposed by his employer with a view to ensuring that his services are available.

Suspension on maternity grounds

Meaning of suspension on maternity grounds

98.—(1) For the purposes of this Part an employee is suspended from work on maternity grounds if, in consequence of any relevant requirement or relevant recommendation, she is suspended from work by her employer on the ground that she is pregnant, has recently given birth or is breastfeeding a child.

(2) In paragraph (1)—

“relevant requirement” means a requirement imposed by or under a specified statutory provision, and

“relevant recommendation” means a recommendation in a specified provision of a code of practice issued or approved under Article 18 of the Health and Safety at Work (Northern Ireland) Order 1978;

and in this paragraph “specified” means for the time being specified in an order made by the Department under this paragraph.

(3) For the purposes of this Part an employee shall be regarded as suspended from work on maternity grounds only if and for so long as she—

- (a) continues to be employed by her employer, but
- (b) is not provided with work or (disregarding alternative work for the purposes of Article 99) does not perform the work she normally performed before the suspension.

Right to offer of alternative work

99.—(1) Where an employer has available suitable alternative work for an employee, the employee has a right to be offered to be provided with the alternative work before being suspended from work on maternity grounds.

(2) For alternative work to be suitable for an employee for the purposes of this Article—

- (a) the work must be of a kind which is both suitable in relation to her and appropriate for her to do in the circumstances, and
- (b) the terms and conditions applicable to her for performing the work, if they differ from the corresponding terms and conditions applicable to her for performing the work she

normally performs under her contract of employment, must not be substantially less favourable to her than those corresponding terms and conditions.

Right to remuneration

100.—(1) An employee who is suspended from work on maternity grounds is entitled to be paid remuneration by her employer while she is so suspended.

- (2) An employee is not entitled to remuneration under this Article in respect of any period if—
- (a) her employer has offered to provide her during the period with work which is suitable alternative work for her for the purposes of Article 99, and
 - (b) the employee has unreasonably refused to perform that work.

[^{F2}Ending the supply of an agency worker on maternity grounds

F2 Arts. 100A-100D and preceding cross-heading inserted (5.12.2011) by [Agency Workers Regulations \(Northern Ireland\) 2011 \(S.R. 2011/350\)](#), [Sch. 2 para. 11](#)

Meaning of ending the supply of an agency worker on maternity grounds

100A.—(1) For the purposes of this Part the supply of an agency worker to a hirer is ended on maternity grounds if, in consequence of action taken pursuant to a provision listed in paragraph (2), the supply of the agency worker to the hirer is ended on the grounds that she is pregnant, has recently given birth or is breastfeeding a child.

- (2) The provisions are—
- (a) regulation 8(3) or 9(2) of the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997,
 - (b) regulation 16A(2) or 17A of the Management of Health and Safety at Work Regulations (Northern Ireland) 2000, or
 - (c) regulation 20 of the Conduct of Employment Agencies and Employment Businesses Regulations (Northern Ireland) 2005.

Right to offer of alternative work

100B.—(1) Where the supply of an agency worker to a hirer is ended on maternity grounds and the temporary work agency has available suitable alternative work, the agency worker has a right to be offered to be proposed for such alternative work.

- (2) For alternative work to be suitable for an agency worker for the purposes of this Article—
- (a) the work must be of a kind which is both suitable in relation to her and appropriate for her to do in the circumstances, and
 - (b) the terms and conditions applicable to her whilst performing the work, if they differ from the corresponding terms and conditions which would have applied to her but for the fact that the supply of the agency worker to the hirer was ended on maternity grounds, must not be substantially less favourable to her than those corresponding terms and conditions.
- (3) Paragraph (1) does not apply—
- (a) where the agency worker has confirmed in writing that she no longer requires the work-finding services of the temporary work agency, or

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- (b) beyond the original intended duration, or likely duration, whichever is the longer, of the assignment which ended when the supply of the agency worker to the hirer was ended on maternity grounds.

Right to remuneration

100C.—(1) Where the supply of an agency worker to a hirer is ended on maternity grounds, that agency worker is entitled to be paid remuneration by the temporary work agency.

(2) An agency worker is not entitled to remuneration under this Article in respect of any period if—

- (a) the temporary work agency has—
 - (i) offered to propose the agency worker to a hirer that has alternative work available which is suitable alternative work for her for the purposes of Article 100B, or
 - (ii) proposed the agency worker to a hirer that has such suitable alternative work available, and that hirer has agreed to the supply of that agency worker; and
- (b) the agency worker has unreasonably refused that offer or to perform that work.

(3) Nothing in this Article imposes a duty on the temporary work agency to pay remuneration beyond the original intended duration, or likely duration, whichever is the longer, of the assignment which ended when the supply of the agency worker to the hirer was ended on maternity grounds.

Agency workers: supplementary

100D.—(1) Without prejudice to any other duties of the hirer or temporary work agency under any statutory provision or rule of law Articles 100A, 100B and 100C do not apply where the agency worker—

- (a) has not completed the qualifying period, or
- (b) is no longer entitled to the rights conferred by regulation 5 of the Agency Workers Regulations (Northern Ireland) 2011 pursuant to regulation 8(a) or (b) of those Regulations.

(2) Nothing in those Articles imposes a duty on the hirer or temporary work agency beyond the original intended duration, or likely duration of the assignment, whichever is the longer.

(3) Those Articles do not apply where Articles 98 to 100 apply.

(4) In this Article and Articles 100A to 100C the following have the same meaning as in the Agency Workers Regulations (Northern Ireland) 2011—

- ““agency worker””;
- ““assignment””;
- ““hirer””;
- ““qualifying period””;
- ““temporary work agency””.]

General

Calculation of remuneration

101.—(1) The amount of remuneration payable by an employer to an employee under Article 96 or 100 is a week's pay in respect of each week of the period of suspension; and if in any week

remuneration is payable in respect of only part of that week the amount of a week's pay shall be reduced proportionately.

(2) A right to remuneration under Article 96 or 100 does not affect any right of an employee in relation to remuneration under the employee's contract of employment (“contractual remuneration”).

(3) Any contractual remuneration paid by an employer to an employee in respect of any period goes towards discharging the employer's liability under Article 96 or 100 in respect of that period; and, conversely, any payment of remuneration in discharge of an employer's liability under Article 96 or 100 in respect of any period goes towards discharging any obligation of the employer to pay contractual remuneration in respect of that period.

[^{F3}Calculation of remuneration (agency workers)]

101A.—(1) The amount of remuneration payable by a temporary work agency to an agency worker under Article 100C is a week's pay in respect of each week for which remuneration is payable in accordance with Article 100C; and if in any week remuneration is payable in respect of only part of that week the amount of a week's pay shall be reduced proportionately.

(2) A right to remuneration under Article 100C does not affect any right of the agency worker in relation to remuneration under the contract with the temporary work agency (“contractual remuneration”).

(3) Any contractual remuneration paid by the temporary work agency to an agency worker in respect of any period goes towards discharging the temporary work agency's liability under Article 100C in respect of that period; and, conversely, any payment of remuneration in discharge of a temporary work agency's liability under Article 100C in respect of any period goes towards discharging any obligation of the temporary work agency to pay contractual remuneration in respect of that period.

(4) For the purposes of paragraph (1), a week's pay is the weekly amount that would have been payable to the agency worker for performing the work, according to the terms of the contract with the temporary work agency, but for the fact that the supply of the agency worker to the hirer was ended on maternity grounds.

(5) Expressions used in this Article and Articles 100A to 100C have the same meaning as in those Articles (see Article 100D).]

F3 [Art. 101A](#) inserted (5.12.2011) by [Agency Workers Regulations \(Northern Ireland\) 2011 \(S.R. 2011/350\)](#), [Sch. 2 para. 12](#)

Complaints to industrial tribunals

102.—(1) An employee may present a complaint to an industrial tribunal that his or her employer has failed to pay the whole or any part of remuneration to which the employee is entitled under Article 96 or 100.

(2) An industrial tribunal shall not consider a complaint under paragraph (1) relating to remuneration in respect of any day unless it is presented—

- (a) before the end of the period of three months beginning with that day, or
- (b) 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 that period of three months.

[^{F4}(2A) Article 249B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of paragraph (2)(a).]

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(3) Where an industrial tribunal finds a complaint under paragraph (1) well-founded, the tribunal shall order the employer to pay the employee the amount of remuneration which it finds is due to him or her.

(4) An employee may present a complaint to an industrial tribunal that in contravention of Article 99 her employer has failed to offer to provide her with work.

(5) An industrial tribunal shall not consider a complaint under paragraph (4) unless it is presented—

- (a) before the end of the period of three months beginning with the first day of the suspension, or
- (b) 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 that period of three months.

(6) Where an industrial tribunal finds a complaint under paragraph (4) well-founded, the tribunal may make an award of compensation to be paid by the employer to the employee.

(7) The amount of the compensation shall be such as the tribunal considers just and equitable in all the circumstances having regard

- (a) the infringement of the employee's right under Article 99 by the failure on the part of the employer to which the complaint relates, and
- (b) any loss sustained by the employee which is attributable to that failure.

F4 [Art. 102\(2A\)](#) inserted (27.1.2020) by [Employment Act \(Northern Ireland\) 2016 \(c. 15\)](#), s. 29(2), [Sch. 2 para. 33](#); S.R. 2020/1, art. 2(n)

[^{F5}Complaints to industrial tribunals: agency workers

102A.—(1) An agency worker may present a complaint to an industrial tribunal that the temporary work agency has failed to pay the whole or any part of remuneration to which the agency worker is entitled under Article 100C.

(2) An industrial tribunal shall not consider a complaint under paragraph (1) relating to remuneration in respect of any day unless it is presented—

- (a) before the end of the period of three months beginning with the day on which the supply of the agency worker to a hirer was ended on maternity grounds, or
- (b) 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 that period of three months.

[^{F6}(2A) Article 249B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of paragraph (2)(a).]

(3) Where an industrial tribunal finds a complaint under paragraph (1) well-founded, the tribunal shall order the temporary work agency to pay the agency worker the amount of remuneration which it finds is due to her.

(4) An agency worker may present a complaint to an industrial tribunal that in contravention of Article 100B the temporary work agency has failed to offer to propose the agency worker to a hirer that has suitable alternative work available.

(5) An industrial tribunal shall not consider a complaint under paragraph (4) unless it is presented—

- (a) before the end of the period of three months beginning with the day on which the supply of the agency worker to a hirer was ended on maternity grounds, or
 - (b) 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 that period of three months.
- (6) Where an industrial tribunal finds a complaint under paragraph (4) well-founded, the tribunal shall order the temporary work agency to pay the agency worker the amount of compensation which it finds is due to her.
- (7) The amount of the compensation shall be such as the tribunal considers just and equitable in all the circumstances having regard to—
- (a) the infringement of the agency worker's right under Article 100B by the failure on the part of the temporary work agency to which the complaint relates, and
 - (b) any loss sustained by the agency worker which is attributable to that failure.
- (8) Expressions used in this Article and Articles 100A to 100C have the same meaning as in those Articles (see Article 100D).]

F5 Art. 102A inserted (5.12.2011) by [Agency Workers Regulations \(Northern Ireland\) 2011 \(S.R. 2011/350\)](#), **Sch. 2 para. 13**

F6 Art. 102A(2A) inserted (27.1.2020) by [Employment Act \(Northern Ireland\) 2016 \(c. 15\)](#), s. 29(2), **Sch. 2 para. 34**; S.R. 2020/1, art. 2(n)

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