



# Employment Protection (Consolidation) Act 1978

## 1978 CHAPTER 44

### [<sup>F1</sup>PART III

#### MATERNITY]

##### *General provisions*

### **33 Rights of employee in connection with pregnancy and confinement.**

- (1) An employee who is absent from work wholly or partly because of pregnancy or confinement shall, subject to the following provisions of this Act,—
  - (a) .....<sup>F1</sup>
  - (b) be entitled to return to work.
- (2) Schedule 2 shall have effect for the purpose of supplementing the following provisions of this Act in relation to an employee's right to return to work.
- (3) An employee shall be entitled to the [<sup>F2</sup>right ]referred to in subsection (1) whether or not a contract of employment subsists during the period of her absence but, subject to subsection (4), she shall not be so entitled unless—
  - (a) she continues to be employed by her employer (whether or not she is at work) until immediately before the beginning of the eleventh week before the expected week of confinement;
  - (b) she has at the beginning of that eleventh week been continuously employed for a period of not less than two years; . . .<sup>F3</sup>
  - (c) .....<sup>F5</sup>
  - [<sup>F4</sup>(d) .....<sup>F5</sup>
    - (iii) of the expected week of confinement or, if the confinement has occurred, the date of confinement.]

*Status: Point in time view as at 01/04/1991.*

*Changes to legislation: There are currently no known outstanding effects for the Employment Protection (Consolidation) Act 1978, Cross Heading: General provisions. (See end of Document for details)*

- [<sup>F6</sup>(3A) Where not earlier than forty-nine days after the beginning of the expected week of confinement (or the date of confinement) notified under subsection (3)(d) an employee is requested in accordance with subsection (3B) by her employer or a successor of his to give him written confirmation that she intends to return to work, she shall not be entitled to the right to return unless she gives that confirmation within fourteen days of receiving the request or, if that is not reasonably practicable, as soon as reasonably practicable.
- (3B) A request under subsection (3A) shall be made in writing and shall be accompanied by a written statement of the effect of that subsection.]
- (4) An employee who has been dismissed by her employer for a reason falling within section 60(1)(a) or (b) and has not been re-engaged in accordance with that section, shall be entitled to the [<sup>F7</sup>right] referred to in subsection (1) of this section notwithstanding that she has thereby ceased to be employed before the beginning of the eleventh week before the expected week of confinement if, but for that dismissal, she would at the beginning of that eleventh week have been continuously employed for a period of not less than two years, but she shall not be entitled to the right. . . <sup>F8</sup> unless she informs her employer (in writing if he so requests), before or as soon as reasonably practicable after the dismissal takes effect, that she intends to return to work with him.
- In this subsection “dismiss” and “dismissal” have the same meaning as they have for the purposes of Part V.
- (5) An employee shall not be entitled to the [<sup>F9</sup>right] referred to in subsection (1) unless, if requested to do so by her employer, she produces for his inspection a certificate from a registered medical practitioner or a [<sup>F10</sup>registered midwife] stating the expected week of her confinement.
- (6) The Secretary of State may by order vary the periods of two years referred to in subsections (3) and (4), or those periods as varied from time to time under this subsection, but no such order shall be made unless a draft of the order has been laid before Parliament and approved by resolution of each House of Parliament.

#### Textual Amendments

- F1** S. 33(1)(a) and the word "and" immediately following it repealed by [Social Security Act 1986 \(c. 50, SIF 113:1\)](#), s. 86(2), [Sch. 11](#)
- F2** Word substituted by [Social Security Act 1986 \(c. 50, SIF 113:1\)](#), s. 86(1), [Sch. 10 para. 75](#)
- F3** S. 33(3)(c) repealed by [Social Security Act 1986 \(c. 50, SIF 113:1\)](#), s. 86(2), [Sch. 11](#)
- F4** S. 33(3)(d) substituted with saving for s. 33(3)(c) by [Employment Act 1980 \(c. 42, SIF 43:5\)](#), s. [11\(1\)](#) and S.I. 1980/1170, art. 4, [Sch. 3](#)
- F5** Words repealed by [Social Security Act 1986 \(c. 50, SIF 113:1\)](#), s. 86(2), [Sch. 11](#)
- F6** S. 33(3A)(3B) inserted with saving by [Employment Act 1980 \(c. 42, SIF 43:5\)](#), s. [11\(2\)](#) and S.I. 1980/1170, art. 4, [Sch. 3](#)
- F7** Word substituted by [Social Security Act 1986 \(c. 50, SIF 113:1\)](#), s. 86(1), [Sch. 10 para. 75](#)
- F8** Words repealed by [Social Security Act 1986 \(c. 50, SIF 113:1\)](#), s. 86(2), [Sch. 11](#)
- F9** Words substituted by [Social Security Act 1986 \(c. 50, SIF 113:1\)](#), s. 86(1), [Sch. 10 para. 75](#)
- F10** Words substituted by [Nurses, Midwives and Health Visitors Act 1979 \(c. 36, SIF 83:1\)](#), s. 24(2), [Sch. 7 para. 31](#)

#### Modifications etc. (not altering text)

- C1** S. 33 modified by [S.I. 1989/901](#), art. 3, [Sch.](#)

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**C2** Word repealed with saving by [Employment Act 1980 \(c. 42, SIF 43:5\)](#), [Sch. 2](#) and [S.I. 1980/1170, art. 4, Sch. 3](#)

**34—** <sup>F11</sup> .....  
**44.**

**Textual Amendments**

**F11** [Ss. 34-44](#) repealed by [Social Security Act 1986 \(c. 50, SIF 113:1\)](#), [ss. 49, 86\(2\)](#), [Sch. 4 paras. 15, 16](#), [Sch. 11](#)

**45 Right to return to work.**

- (1) The right to return to work of an employee who has been absent from work wholly or partly because of pregnancy or confinement is, subject to the following provisions of this Act, a right to return to work with her original employer, or, where appropriate, his successor, at any time before the end of the period of twenty-nine weeks beginning with the week in which the date of confinement falls, in the job in which she was employed under the original contract of employment and on terms and conditions not less favourable than those which would have been applicable to her if she had not been so absent.
- (2) In subsection (1) terms and conditions not less favourable than those which would have been applicable to her if she had not been so absent means, as regards seniority, pension rights and other similar rights, that the period or periods of employment prior to the employee's absence shall be regarded as continuous with her employment following that absence [<sup>F12</sup>but subject to the requirements of paragraph 5 of Schedule 5 to the Social Security Act 1989 (credit for the period of absence in certain cases)].
- (3) If an employee is entitled to return to work in accordance with subsection (1), but it is not practicable by reason of redundancy for the employer to permit her so to return to work she shall be entitled, where there is a suitable available vacancy, to be offered alternative employment with her employer (or his successor), or an associated employer, under a new contract of employment complying with subsection (4).
- (4) The new contract of employment must be such that—
  - (a) the work to be done under the contract is of a kind which is both suitable in relation to the employee and appropriate for her to do in the circumstances; and
  - (a) the provisions of the new contract as to the capacity and place in which she is to be employed and as to the other terms and conditions of her employment are not substantially less favourable to her than if she had returned to work in accordance with subsection (1).

**Textual Amendments**

**F12** Words added (prosp.) by [Social Security Act 1989 \(c. 24, SIF 113:1\)](#), [ss. 23, 33\(2\)](#), [Sch. 5 Pt. II para. 15](#)

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**Modifications etc. (not altering text)**

C3 S. 45 modified by S.I. 1985/1846, reg. 5(9) and S.I. 1989/901, art. 3, Sch.

**46 Enforcement of rights under s. 45.**

he remedies of an employee for infringement of either of the rights mentioned in section 45 are those conferred by or by virtue of the provisions of sections 47, 56 and 86 and Schedule 2.

**Modifications etc. (not altering text)**

C4 Ss. 46-48 modified by S.I. 1989/901, art. 3, Sch.

**47 Exercise of right to return to work.**

- (1) An employee shall exercise her right to return to work by <sup>F13</sup>giving written notice to] the employer (who may be her original employer or a successor of that employer) at least <sup>F14</sup>twenty-one ]days before the day on which she proposes to return of her proposal to return on that day (in this section referred to as the notified day of return).
- (2) An employer may postpone an employee's return to work until a date not more than four weeks after the notified day of return if he notifies her before that day that for specified reasons he is postponing her return until that date, and accordingly she will be entitled to return to work with him on that date.
- (3) Subject to subsection (4), an employee may—
  - (a) postpone her return to work until a date not exceeding four weeks from the notified day of return, notwithstanding that that date falls after the end of the period of twenty-nine weeks mentioned in section 45(1); and
  - (b) where no day of return has been notified to the employer, extend the time during which she may exercise her right to return in accordance with subsection (1), so that she returns to work not later than four weeks from the expiration of the said period of twenty-nine weeks;

if before the notified day of return or, as the case may be, the expiration of the period of twenty-nine weeks she gives the employer a certificate from a registered medical practitioner stating that by reason of disease or bodily or mental disablement she will be incapable of work on the notified day of return or the expiration of that period, as the case may be.
- (4) Where an employee has once exercised a right of postponement or extension under subsection (3)(a) or (b), she shall not again be entitled to exercise a right of postponement or extension under that subsection in connection with the same return to work.
- (5) If an employee has notified a day of return but there is an interruption of work (whether due to industrial action or some other reason) which renders it unreasonable to expect the employee to return to work on the notified day of return, she may instead return to work when work resumes after the interruption or as soon as reasonably practicable thereafter.
- (6) If no day of return has been notified and there is an interruption of work (whether due to industrial action or some other reason) which renders it unreasonable to expect

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the employee to return to work before the expiration of the period of twenty-nine weeks referred to in section 45(1), or which appears likely to have that effect and in consequence the employee does not notify a day of return, the employee may exercise her right to return in accordance with subsection (1) so that she returns to work at any time before the end of the period of [<sup>F15</sup>twenty-eight days ]from the end of the interruption notwithstanding that she returns to work outside the said period of twenty-nine weeks.

- (7) Where the employee has either—
- (a) exercised the right under subsection (3)(b) to extend the period during which she may exercise her right to return; or
  - (b) refrained from notifying the day of return in the circumstances described in subsection (6),

the other of those subsections shall apply as if for the reference to the expiration of the period of twenty-nine weeks there were substituted a reference to the expiration of the further period of four weeks or, as the case may be, of the period of <sup>F16</sup>twenty-eight days from the end of the interruption of work.

- (8) Where—
- (a) an employee's return is postponed under subsection (2) or (3)(a), or
  - (b) the employee returns to work on a day later than the notified day of return in the circumstances described in subsection (5),

then, subject to subsection (4), references in those subsections and in sections 56 and 86 and Schedule 2 to the notified day of return shall be construed as references to the day to which the return is postponed or, as the case may be, that later day.

#### Textual Amendments

**F13** Words substituted with saving by [Employment Act 1980 \(c. 42, SIF 43:5\), s. 11\(3\)](#) and S.I. 1980/1170, art. 4, [Sch. 3](#)

**F14** Words substituted with saving by [Employment Act 1980 \(c. 42, SIF 43:5\), s. 11\(3\)](#) and S.I. 1980/1170, art. 4, [Sch. 3](#)

**F15** Words substituted by [Employment Act 1980 \(c. 42, SIF 43:5\), s. 11\(3\)](#)

**F16** Words substituted by [Employment Act 1980 \(c. 42, SIF 43:5\), s. 11\(3\)](#)

#### Modifications etc. (not altering text)

**C5** [Ss. 46-48](#) modified by S.I. 1989/901, art. 3, [Sch.](#)

## 48 Contractual right to return to work.

- (1) An employee who has a right both under this Act and under a contract of employment, or otherwise, to return to work, may not exercise the two rights separately but may in returning to work take advantage of whichever right is, in any particular respect, the more favourable.
- (2) The provisions of sections 45, 46, 47, 56 and 86 and paragraphs 1 to 4 and 6 of Schedule 2 shall apply, subject to any modifications necessary to give effect to any more favourable contractual terms, to the exercise of the composite right described in subsection (1) as they apply to the exercise of the right to return conferred solely by this Part.

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**Modifications etc. (not altering text)**

**C6** Ss. 46–48 modified by S.I. 1989/901, art. 3, **Sch.**

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**Changes to legislation:**

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