



Social Security Contributions and Benefits Act 1992

1992 CHAPTER 4

PART XII

STATUTORY MATERNITY PAY

164 Statutory maternity pay - entitlement and liability to pay.

- (1) Where a woman who is or has been an employee satisfies the conditions set out in this section, she shall be entitled, in accordance with the following provisions of this Part of this Act, to payments to be known as “statutory maternity pay”.
- (2) The conditions mentioned in subsection (1) above are—
 - (a) that she has been in employed earner’s employment with an employer for a continuous period of at least 26 weeks ending with the week immediately preceding the 14th week before the expected week of confinement but has ceased to work for him ^{F1}... ;
 - (b) that her normal weekly earnings for the period of 8 weeks ending with the week immediately preceding the 14th week before the expected week of confinement are not less than the lower earnings limit in force under section 5(1)(a) above immediately before the commencement of the 14th week before the expected week of confinement; and
 - (c) that she has become pregnant and has reached, or been confined before reaching, the commencement of the 11th week before the expected week of confinement.
- (3) The liability to make payments of statutory maternity pay to a woman is a liability of any person of whom she has been an employee as mentioned in subsection (2)(a) above.
- ^{F2}(4) A woman shall be entitled to payments of statutory maternity pay only if—
 - (a) she gives the person who will be liable to pay it notice of the date from which she expects his liability to pay her statutory maternity pay to begin; and

Status: Point in time view as at 06/04/2024.

Changes to legislation: *Social Security Contributions and Benefits Act 1992, Section 164 is up to date with all changes known to be in force on or before 17 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (b) the notice is given at least 28 days before that date or, if that is not reasonably practicable, as soon as is reasonably practicable.]
- (5) The notice shall be in writing if the person who is liable to pay the woman statutory maternity pay so requests.
- (6) Any agreement shall be void to the extent that it purports—
 - (a) to exclude, limit or otherwise modify any provision of this Part of this Act; or
 - (b) to require an employee or former employee to contribute (whether directly or indirectly) towards any costs incurred by her employer or former employer under this Part of this Act.
- (7) For the avoidance of doubt, any agreement between an employer and an employee authorising any deductions from statutory maternity pay which the employer is liable to pay to the employee in respect of any period shall not be void by virtue of subsection (6)(a) above if the employer—
 - (a) is authorised by that or another agreement to make the same deductions from any contractual remuneration which he is liable to pay in respect of the same period, or
 - (b) would be so authorised if he were liable to pay contractual remuneration in respect of that period.
- (8) Regulations shall make provision as to a former employer’s liability to pay statutory maternity pay to a woman in any case where the former employer’s contract of service with her has been brought to an end by the former employer solely, or mainly, for the purpose of avoiding liability for statutory maternity pay.
- (9) The Secretary of State may by regulations—
 - (a) specify circumstances in which, notwithstanding subsections (1) to (8) above, there is to be no liability to pay statutory maternity pay in respect of a week;
 - (b) specify circumstances in which, notwithstanding subsections (1) to (8) above, the liability to make payments of statutory maternity pay is to be a liability [^{F3}of the Commissioners of Inland Revenue];
 - (c) specify in what circumstances employment is to be treated as continuous for the purposes of this Part of this Act;
 - (d) provide that a woman is to be treated as being employed for a continuous period of at least 26 weeks where—
 - (i) she has been employed by the same employer for at least 26 weeks under two or more separate contracts of service; and
 - (ii) those contracts were not continuous;
 - (e) provide that any of the provisions specified in subsection (10) below shall have effect subject to prescribed modifications [^{F4}in such cases as may be prescribed];
 - [^{F5}(ea) provide that subsection (4) above shall not have effect, or shall have effect subject to prescribed modifications, in such cases as may be prescribed;]
 - (f) provide for amounts earned by a woman under separate contracts of service with the same employer to be aggregated for the purposes of this Part of this Act; and
 - (g) provide that—
 - (i) the amount of a woman’s earnings for any period, or
 - (ii) the amount of her earnings to be treated as comprised in any payment made to her or for her benefit,

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shall be calculated or estimated in such manner and on such basis as may be prescribed and that for that purpose payments of a particular class or description made or falling to be made to or by a woman shall, to such extent as may be prescribed, be disregarded or, as the case may be, be deducted from the amount of her earnings.

(10) The provisions mentioned in subsection (9)(e) above are—

- (a) subsection (2)(a) and (b) above; and
- (b) [^{F6}section 166(1) and (2)], ^{F7}... below.

[^{F8}(11) Any regulations under subsection (9) above which are made by virtue of paragraph (b) of that subsection must be made with the concurrence of the Commissioners of Inland Revenue.]

Textual Amendments

- F1** Words in s. 164(2)(a) repealed (24.11.2002) by [Employment Act 2002 \(c. 22\)](#), ss. 20(a), 55(2), **Sch. 8(1)**; S.I. 2002/2866, art. 2(1)(4)(5), Sch. 1 Pt. 1, Sch. 2 Pt. 1
- F2** S. 164(4) substituted (24.11.2002) by [Employment Act 2002 \(c. 22\)](#), **ss. 20(b)**, 55(2); S.I. 2002/2866, art. 2(1), Sch. 1 Pt. 1
- F3** Words in s. 164(9)(b) substituted (25.2.1999 for specified purposes, 1.4.1999 in so far as not already in force) by [Social Security Contributions \(Transfer of Functions, etc.\) Act 1999 \(c. 2\)](#), s. 28(2)(a), **Sch. 1 para. 12(2)**; S.I. 1999/527, art. 2(b), Sch. 2 (with arts. 3-6)
- F4** Words in s. 164(9)(e) substituted (24.11.2002) by [Employment Act 2002 \(c. 22\)](#), **ss. 20(c)**, 55(2); S.I. 2002/2866, art. 2(1), Sch. 1 Pt. 1
- F5** S. 164(9)(ea) inserted (24.11.2002) by [Employment Act 2002 \(c. 22\)](#), **ss. 20(d)**, 55(2); S.I. 2002/2866, art. 2(1), Sch. 1 Pt. 1
- F6** Words in s. 164(10)(b) substituted (6.4.2003) by [Employment Act 2002 \(c. 22\)](#), s. 55(2), **Sch. 7 para. 6**; S.I. 2002/2866, art. 2(3), Sch. 1 Pt. 3
- F7** Words in s. 164(10)(b) omitted (with effect in accordance with reg. 1(2) of the amending S.I.) by virtue of [The Maternity Allowance and Statutory Maternity Pay Regulations 1994 \(S.I. 1994/1230\)](#), **reg. 6(1)**
- F8** S. 164(11) inserted (25.2.1999 for specified purposes, 1.4.1999 in so far as not already in force) by [Social Security Contributions \(Transfer of Functions, etc.\) Act 1999 \(c. 2\)](#), s. 28(2)(a), **Sch. 1 para. 12(3)**; S.I. 1999/527, art. 2(b), Sch. 2 (with arts. 3-6)

Modifications etc. (not altering text)

- C1** S. 164(2)(a) modified (17.11.2000) by [The Statutory Maternity Pay \(General\) \(Modification and Amendment\) Regulations 2000 \(S.I. 2000/2883\)](#), regs. 1(1), 2 (with reg. 4)

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