



# Employment Rights Act 1996

## 1996 CHAPTER 18

### PART VII

#### SUSPENSION FROM WORK

##### *Suspension on medical grounds*

#### **64 Right to remuneration on suspension on medical grounds.**

- (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 a provision of an enactment or of an instrument made under an enactment, or
  - (b) a recommendation in a provision of a code of practice issued or approved under section 16 of the <sup>M1</sup>Health and Safety at Work etc. Act 1974,and the provision is for the time being specified in subsection (3).
- (3) The provisions referred to in subsection (2) are—
  - Regulation 16 of the <sup>M2</sup>Control of Lead at Work Regulations 1980,
  - [<sup>F1</sup>Regulation 24 of the Ionising Radiations Regulations 1999 [S.I. 1999/xxxx]],
  - and
  - Regulation 11 of the <sup>M3</sup>Control of Substances Hazardous to Health Regulations 1988.
- (4) The Secretary of State may by order add provisions to or remove provisions from the list of provisions specified in subsection (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

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- (b) is not provided with work or does not perform the work he normally performed before the suspension.

#### Textual Amendments

**F1** Words in s. 64(3) substituted (1.1.2000) by S.I. 1999/3232, reg. 41(1), **Sch. 9 para. 2**

#### Marginal Citations

**M1** 1974 c. 37.

**M2** S.I. 1980/1248.

**M3** S.I. 1988/1657.

### 65 Exclusions from right to remuneration.

- (1) An employee is not entitled to remuneration under section 64 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.
- (2) <sup>F2</sup> .....
- (3) An employee is not entitled to remuneration under section 64 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 section 64 in respect of any period if—
- 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
  - he does not comply with reasonable requirements imposed by his employer with a view to ensuring that his services are available.

#### Textual Amendments

**F2** S. 65(2) omitted (1.10.2002) by virtue of The Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (S.I. 2002/2034), reg. 11, **Sch. 2 Pt. 1 para. 3(3)** (with regs. 13-20 and subject to transitional provisions in Sch. 2 Pt. 2)

### *Suspension on maternity grounds*

### 66 Meaning of suspension on maternity grounds.

- (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 subsection (1)—

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“relevant requirement” means a requirement imposed by or under a specified provision of an enactment or of an instrument made under an enactment, and

“relevant recommendation” means a recommendation in a specified provision of a code of practice issued or approved under section 16 of the <sup>M4</sup>Health and Safety at Work etc. Act 1974;

and in this subsection “specified provision” means a provision for the time being specified in an order made by the Secretary of State under this subsection.

- (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 section 67) does not perform the work she normally performed before the suspension.

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

- C1** Ss. 66-68, 70-71, 92-93, Pt. X (ss. 94-134) modified (E.W.) (2.3.1998) by S.I. 1998/218, art. 3, **Sch.** (which S.I. was revoked (1.9.1999) by S.I. 1999/2256, art. 1(2))
- C2** Ss. 66-68 modified (E.W.) (1.9.1999) by S.I. 1999/2256, art. 3, **Sch.**
- C3** Ss. 66-68 modified (E.) (1.9.2003) by [The Education \(Modification of Enactments Relating to Employment\) \(England\) Order 2003 \(S.I. 2003/1964\)](#), art. 3, **Sch.**
- C4** Ss. 66-68 modified (W.) (12.5.2006) by [The Education \(Modification of Enactments Relating to Employment\) \(Wales\) Order 2006 \(S.I. 2006/1073\)](#), arts. 1(1), 3, {Sch. }

**Marginal Citations**

- M4** 1974 c. 37.

**67 Right to offer of alternative work.**

- (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 section—
- (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.

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

- C5** Ss. 66-68, 70-71, 92-93, Pt. X (ss. 94-134) modified (E.W.) (2.3.1998) by S.I. 1998/218, art. 3, **Sch.** (which S.I. was revoked (1.9.1999) by S.I. 1999/2256, art. 1(2))
- C6** Ss. 66-68 modified (E.W.) (1.9.1999) by S.I. 1999/2256, art. 3, **Sch.**
- C7** Ss. 66-68 modified (E.) (1.9.2003) by [The Education \(Modification of Enactments Relating to Employment\) \(England\) Order 2003 \(S.I. 2003/1964\)](#), art. 3, **Sch.**

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**C8** Ss. 66-68 modified (W.) (12.5.2006) by [The Education \(Modification of Enactments Relating to Employment\) \(Wales\) Order 2006 \(S.I. 2006/1073\)](#), **arts. 1(1), 3**, {Sch. }

## 68 Right to remuneration.

- (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 section 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 section 67, and
  - (b) the employee has unreasonably refused to perform that work.

### Modifications etc. (not altering text)

- C9** Ss. 66-68, 70-71, 92-93, Pt. X (ss. 94-134) modified (E.W.) (2.3.1998) by [S.I. 1998/218](#), art. 3, **Sch.** (which S.I. was revoked (1.9.1999) by [S.I. 1999/2256](#), art. 1(2))
- C10** Ss. 66-68 modified (E.W.) (1.9.1999) by [S.I. 1999/2256](#), art. 3, **Sch.**
- C11** Ss. 66-68 modified (E.) (1.9.2003) by [The Education \(Modification of Enactments Relating to Employment\) \(England\) Order 2003 \(S.I. 2003/1964\)](#), art. 3, **Sch.**
- C12** Ss. 66-68 modified (W.) (12.5.2006) by [The Education \(Modification of Enactments Relating to Employment\) \(Wales\) Order 2006 \(S.I. 2006/1073\)](#), **arts. 1(1), 3**, {Sch. }

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### *[F3] Ending the supply of an agency worker on maternity grounds*

#### Textual Amendments

- F3** Ss. 68A-68D and heading inserted (1.10.2011) by [The Agency Workers Regulations 2010 \(S.I. 2010/93\)](#), reg. 25, **Sch. 2 para. 12**

## 68A Meaning of ending the supply of an agency worker on maternity grounds

- (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 subsection (2), the supply of the agency worker to the hirer is ended on the ground that she is pregnant, has recently given birth or is breastfeeding a child.
- (2) The provisions are—
  - (a) regulations 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 1999; or
  - (c) regulation 20 of the Conduct of Employment Agencies and Employment Businesses Regulations 2003.

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## **68B Right to offer of alternative work**

(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 section—

- (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) Subsection (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
- (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.

## **68C Right to remuneration**

(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 section 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 section 68B, 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 section 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.

## **68D Agency workers: supplementary**

(1) Without prejudice to any other duties of the hirer or temporary work agency under any enactment or rule of law sections 68A, 68B and 68C 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 2010 pursuant to regulation 8(a) or (b) of those Regulations.

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(2) Nothing in those sections 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 sections do not apply where sections 66 to 68 apply. (4) In this section and sections 68A to 68C the following have the same meaning as in the Agency Workers Regulations 2010—

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

### General

#### 69 Calculation of remuneration.

- (1) The amount of remuneration payable by an employer to an employee under section 64 or 68 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 section 64 or 68 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 section 64 or 68 in respect of that period; and, conversely, any payment of remuneration in discharge of an employer’s liability under section 64 or 68 in respect of any period goes towards discharging any obligation of the employer to pay contractual remuneration in respect of that period.

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#### [<sup>F4</sup>69A Calculation of remuneration (agency workers)

- ( ) The amount of remuneration payable by a temporary work agency to an agency worker under section 68C is a week's pay in respect of each week for which remuneration is payable in accordance with section 68C; 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.
- ( ) A right to remuneration under section 68C does not affect any right of the agency worker in relation to remuneration under the contract with the temporary work agency (“contractual remuneration”).
- ( ) 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 section 68C in respect of that period; and, conversely, any payment of remuneration in discharge of a temporary work agency's liability under section 68C in respect of any period goes towards discharging any obligation of the temporary work agency to pay contractual remuneration in respect of that period.

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- ( ) For the purposes of subsection (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.
- ( ) Expressions used in this section and sections 68A to 68C have the same meaning as in those sections (see section 68D).]

#### Textual Amendments

- F4** S. 69A inserted (1.10.2011) by [The Agency Workers Regulations 2010 \(S.I. 2010/93\)](#), Reg. 25, Sch. 2 para. 13

### 70 Complaints to [<sup>F5</sup>employment tribunals].

- (1) An employee may present a complaint to an [<sup>F5</sup>employment tribunal] that his or her employer has failed to pay the whole or any part of remuneration to which the employee is entitled under section 64 or 68.
- (2) An [<sup>F5</sup>employment tribunal] shall not consider a complaint under subsection (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.
- (3) Where an [<sup>F5</sup>employment tribunal] finds a complaint under subsection (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 [<sup>F5</sup>employment tribunal] that in contravention of section 67 her employer has failed to offer to provide her with work.
- (5) An [<sup>F5</sup>employment tribunal] shall not consider a complaint under subsection (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 [<sup>F5</sup>employment tribunal] finds a complaint under subsection (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 to—
  - (a) the infringement of the employee's right under section 67 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.



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### Textual Amendments

- F5** Words in s. 70(1)-(6) and sidenote to s. 70 substituted (1.8.1998) by 1998 c. 8, s. 1(2)(a)(b) (with s. 16(2)); S.I. 1998/1658, art. 2(1), Sch. 1

### Modifications etc. (not altering text)

- C13** Ss. 66-68, 70-71, 92-93, Pt. X (ss. 94-134) modified (E.W.) (2.3.1998) by S.I. 1998/218, art. 3, Sch. (which S.I. was revoked (1.9.1999) by S.I. 1999/2256, art. 1(2))
- C14** S. 70 modified (E.W.) (1.9.1999) by S.I. 1999/2256, art. 3, Sch.
- C15** S. 70 modified (E.) (1.9.2003) by The Education (Modification of Enactments Relating to Employment) (England) Order 2003 (S.I. 2003/1964), art. 3, Sch.
- C16** Ss. 70, 71 modified (W.) (12.5.2006) by The Education (Modification of Enactments Relating to Employment) (Wales) Order 2006 (S.I. 2006/1073), arts. 1(1), 3, {Sch. }

VALID FROM 01/10/2011

### [<sup>F6</sup>70A Complaints to employment tribunals: agency workers

- ( ) An agency worker may present a complaint to an employment 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 section 68C.
- ( ) An employment tribunal shall not consider a complaint under subsection (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.
- ( ) Where an employment tribunal finds a complaint under subsection (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.
- ( ) An agency worker may present a complaint to an employment tribunal that in contravention of section 68B the temporary work agency has failed to offer to propose the agency worker to a hirer that has suitable alternative work available.
- ( ) An employment tribunal shall not consider a complaint under subsection (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.
- ( ) Where an employment tribunal finds a complaint under subsection (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.



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- ( ) 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 section 68B 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.
- ( ) Expressions used in this section and sections 68A to 68C have the same meaning as in those sections (see section 68D).]

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#### Textual Amendments

- F6** S. 70A inserted (1.10.2011) by [The Agency Workers Regulations 2010 \(S.I. 2010/93\)](#), reg. 25, [Sch. 2 para. 14](#)

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