



# Employment Rights Act 1996

## 1996 CHAPTER 18

### [<sup>F1</sup>PART VIII]

### [<sup>F1F2</sup>CHAPTER II

### PARENTAL LEAVE

#### Textual Amendments

- F1** Pt. 8 (ss. 71-80) substituted for Pt. 8 (ss. 71-85) (15.12.1999) by 1999 c. 26, s. 7, **Sch. 4 Pt. 1**; S.I. 1999/2830, art. 2(1)(2), **Sch. 1 Pt. 2** (with transitional provisions in Sch. 3 para. 10)
- F2** Pt. VIII (ss. 71-80) substituted for Pt. VIII (ss. 71-85) (15.12.1999) by 1999 c. 26, s. 7, **Sch. 4 Pt. I**; S.I. 1999/2830, art. 2(2), **Sch. 1 Pt. II** (with Sch. 3 para. 10)

#### <sup>F376</sup> Entitlement to parental leave.

- (1) The Secretary of State shall make regulations entitling an employee who satisfies specified conditions—
- (a) as to duration of employment, and
  - (b) as to having, or expecting to have, responsibility for a child,
- to be absent from work on parental leave for the purpose of caring for a child.
- (2) The regulations shall include provision for determining—
- (a) the extent of an employee's entitlement to parental leave in respect of a child;
  - (b) when parental leave may be taken.
- (3) Provision under subsection (2)(a) shall secure that where an employee is entitled to parental leave in respect of a child he is entitled to a period or total period of leave of at least three months; but this subsection is without prejudice to any provision which may be made by the regulations for cases in which—
- (a) a person ceases to satisfy conditions under subsection (1);
  - (b) an entitlement to parental leave is transferred.

*Status: Point in time view as at 11/07/2001.*

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- (4) Provision under subsection (2)(b) may, in particular, refer to—
- (a) a child’s age, or
  - (b) a specified period of time starting from a specified event.
- (5) Regulations under subsection (1) may—
- (a) specify things which are, or are not, to be taken as done for the purpose of caring for a child;
  - (b) require parental leave to be taken as a single period of absence in all cases or in specified cases;
  - (c) require parental leave to be taken as a series of periods of absence in all cases or in specified cases;
  - (d) require all or specified parts of a period of parental leave to be taken at or by specified times;
  - (e) make provision about the postponement by an employer of a period of parental leave which an employee wishes to take;
  - (f) specify a minimum or maximum period of absence which may be taken as part of a period of parental leave.
  - (g) specify a maximum aggregate of periods of parental leave which may be taken during a specified period of time.

#### Textual Amendments

- F3** Pt. VIII (ss. 71-80) substituted for Pt. VIII (ss. 71-85) (15.12.1999) by 1999 c. 26, s. 7, **Sch. 4 Pt. I**; S.I. 1999/2830, art. 2(2), **Sch. 1 Pt. II** (with Sch. 3 para. 10)

#### <sup>F477</sup> **Rights during and after parental leave.**

- (1) Regulations under section 76 shall provide—
- (a) that an employee who is absent on parental leave is entitled, for such purposes and to such extent as may be prescribed, to the benefit of the terms and conditions of employment which would have applied if he had not been absent,
  - (b) that an employee who is absent on parental leave is bound, for such purposes and to such extent as may be prescribed, by any obligations arising under those terms and conditions (except in so far as they are inconsistent with section 76(1)), and
  - (c) that an employee who is absent on parental leave is entitled, subject to section 78(1), to return from leave to a job of such kind as the regulations may specify.
- (2) In subsection (1)(a) “terms and conditions of employment”—
- (a) includes matters connected with an employee’s employment whether or not they arise under a contract of employment, but
  - (b) does not include terms and conditions about remuneration.
- (3) Regulations under section 76 may specify matters which are, or are not, to be treated as remuneration for the purposes of subsection (2)(b) above.
- (4) The regulations may make provision, in relation to the right to return mentioned in subsection (1)(c), about—

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- (a) seniority, pension rights and similar rights;
- (b) terms and conditions of employment on return.

#### Textual Amendments

**F4** Pt. VIII (ss. 71-80) substituted for Pt. VIII (ss. 71-85) (15.12.1999) by 1999 c. 26, s. 7, **Sch. 4 Pt. I**; S.I. 1999/2830, art. 2(2), **Sch. 1 Pt. II** (with Sch. 3 para. 10)

#### **F578** Special cases.

- (1) Regulations under section 76 may make provision—
  - (a) about redundancy during a period of parental leave;
  - (b) about dismissal (other than by reason of redundancy) during a period of parental leave.
- (2) Provision by virtue of subsection (1) may include—
  - (a) provision requiring an employer to offer alternative employment;
  - (b) provision for the consequences of failure to comply with the regulations (which may include provision for a dismissal to be treated as unfair for the purposes of Part X).
- (3) Regulations under section 76 may provide for an employee to be entitled to choose to exercise all or part of his entitlement to parental leave—
  - (a) by varying the terms of his contract of employment as to hours of work, or
  - (b) by varying his normal working practice as to hours of work,in a way specified in or permitted by the regulations for a period specified in the regulations.
- (4) Provision by virtue of subsection (3)—
  - (a) may restrict an entitlement to specified circumstances;
  - (b) may make an entitlement subject to specified conditions (which may include conditions relating to obtaining the employer's consent);
  - (c) may include consequential and incidental provision.
- (5) Regulations under section 76 may make provision permitting all or part of an employee's entitlement to parental leave in respect of a child to be transferred to another employee in specified circumstances.
- (6) The reference in section 77(1)(c) to absence on parental leave includes, where appropriate, a reference to a continuous period of absence attributable partly to maternity leave and partly to parental leave.
- (7) Regulations under section 76 may provide for specified provisions of the regulations not to apply in relation to an employee if any provision of his contract of employment—
  - (a) confers an entitlement to absence from work for the purpose of caring for a child, and
  - (b) incorporates or operates by reference to all or part of a collective agreement, or workforce agreement, of a kind specified in the regulations.

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#### Textual Amendments

- F5** Pt. VIII (ss. 71-80) substituted for Pt. VIII (ss. 71-85) (15.12.1999) by 1999 c. 26, s. 7, **Sch. 4 Pt. I**; S.I. 1999/2830, art. 2(2), **Sch. 1 Pt. II** (with **Sch. 3 para. 10**)

#### **F679** Supplemental.

- (1) Regulations under section 76 may, in particular—
- (a) make provision about notices to be given and evidence to be produced by employees to employers, by employers to employees, and by employers to other employers;
  - (b) make provision requiring employers or employees to keep records;
  - (c) make provision about other procedures to be followed by employees and employers;
  - (d) make provision (including provision creating criminal offences) specifying the consequences of failure to give notices, to produce evidence, to keep records or to comply with other procedural requirements;
  - (e) make provision specifying the consequences of failure to act in accordance with a notice given by virtue of paragraph (a);
  - (f) make special provision for cases where an employee has a right which corresponds to a right conferred by the regulations and which arises under his contract of employment or otherwise;
  - (g) make provision applying, modifying or excluding an enactment, in such circumstances as may be specified and subject to any conditions specified, in relation to a person entitled to parental leave;
  - (h) make different provision for different cases or circumstances.
- (2) The regulations may make provision modifying the effect of Chapter II of Part XIV (calculation of a week's pay) in relation to an employee who is or has been absent from work on parental leave.
- (3) Without prejudice to the generality of section 76, the regulations may make any provision which appears to the Secretary of State to be necessary or expedient—
- (a) for the purpose of implementing Council Directive 96/34/EC on the framework agreement on parental leave, or
  - (b) for the purpose of dealing with any matter arising out of or related to the United Kingdom's obligations under that Directive.]

#### Textual Amendments

- F6** Pt. VIII (ss. 71-80) substituted for Pt. VIII (ss. 71-85) (15.12.1999) by 1999 c. 26, s. 7, **Sch. 4 Pt. I**; S.I. 1999/2830, art. 2(2), **Sch. 1 Pt. II** (with **Sch. 3 para. 10**)

#### **F780** Complaint to employment tribunal.

- (1) An employee may present a complaint to an employment tribunal that his employer—
- (a) has unreasonably postponed a period of parental leave requested by the employee, or

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- (b) has prevented or attempted to prevent the employee from taking parental leave.
- (2) An employment tribunal shall not consider a complaint under this section unless it is presented—
- (a) before the end of the period of three months beginning with the date (or last date) of the matters complained of, 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 before the end of that period of three months.
- (3) Where an employment tribunal finds a complaint under this section well-founded it—
- (a) shall make a declaration to that effect, and
  - (b) may make an award of compensation to be paid by the employer to the employee.
- (4) The amount of compensation shall be such as the tribunal considers just and equitable in all the circumstances having regard to—
- (a) the employer's behaviour, and
  - (b) any loss sustained by the employee which is attributable to the matters complained of.

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**Textual Amendments**

- F7** Pt. VIII (ss. 71-80) substituted for Pt. VIII (ss. 71-85) (15.12.1999) by 1999 c. 26, s. 7, **Sch. 4 Pt. I**; S.I. 1999/2830, art. 2(2), **Sch. 1 Pt. II** (with Sch. 3 para. 10)

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