



# Employment Act 2002

## 2002 CHAPTER 22

### PART 1

#### STATUTORY LEAVE AND PAY

#### CHAPTER 1

#### PATERNITY AND ADOPTION

#### *Rights to leave and pay*

### 1 Paternity leave

In Part 8 of the Employment Rights Act 1996 (c. 18) (which makes provision for maternity and parental leave), after Chapter 2 there is inserted—

#### “CHAPTER 3

#### PATERNITY LEAVE

#### 80A Entitlement to paternity leave: birth

- (1) The Secretary of State shall make regulations entitling an employee who satisfies specified conditions—
  - (a) as to duration of employment,
  - (b) as to relationship with a newborn, or expected, child, and
  - (c) as to relationship with the child’s mother,to be absent from work on leave under this section for the purpose of caring for the child or supporting the mother.
- (2) The regulations shall include provision for determining—

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- (a) the extent of an employee’s entitlement to leave under this section in respect of a child;
  - (b) when leave under this section may be taken.
- (3) Provision under subsection (2)(a) shall secure that where an employee is entitled to leave under this section in respect of a child he is entitled to at least two weeks’ leave.
- (4) Provision under subsection (2)(b) shall secure that leave under this section must be taken before the end of a period of at least 56 days beginning with the date of the child’s birth.
- (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 or supporting the child’s mother;
  - (b) make provision excluding the right to be absent on leave under this section in respect of a child where more than one child is born as a result of the same pregnancy;
  - (c) make provision about how leave under this section may be taken.
- (6) Where more than one child is born as a result of the same pregnancy, the reference in subsection (4) to the date of the child’s birth shall be read as a reference to the date of birth of the first child born as a result of the pregnancy.
- (7) In this section—
- “newborn child” includes a child stillborn after twenty-four weeks of pregnancy;
  - “week” means any period of seven days.

#### **80B Entitlement to paternity leave: adoption**

- (1) The Secretary of State shall make regulations entitling an employee who satisfies specified conditions—
- (a) as to duration of employment,
  - (b) as to relationship with a child placed, or expected to be placed, for adoption under the law of any part of the United Kingdom, and
  - (c) as to relationship with a person with whom the child is, or is expected to be, so placed for adoption,
- to be absent from work on leave under this section for the purpose of caring for the child or supporting the person by reference to whom he satisfies the condition under paragraph (c).
- (2) The regulations shall include provision for determining—
- (a) the extent of an employee’s entitlement to leave under this section in respect of a child;
  - (b) when leave under this section may be taken.
- (3) Provision under subsection (2)(a) shall secure that where an employee is entitled to leave under this section in respect of a child he is entitled to at least two weeks’ leave.

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- (4) Provision under subsection (2)(b) shall secure that leave under this section must be taken before the end of a period of at least 56 days beginning with the date of the child's placement for adoption.
- (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 or supporting a person with whom a child is placed for adoption;
  - (b) make provision excluding the right to be absent on leave under this section in the case of an employee who exercises a right to be absent from work on adoption leave;
  - (c) make provision excluding the right to be absent on leave under this section in respect of a child where more than one child is placed for adoption as part of the same arrangement;
  - (d) make provision about how leave under this section may be taken.
- (6) Where more than one child is placed for adoption as part of the same arrangement, the reference in subsection (4) to the date of the child's placement shall be read as a reference to the date of placement of the first child to be placed as part of the arrangement.
- (7) In this section, "week" means any period of seven days.
- (8) The Secretary of State may by regulations provide for this section to have effect in relation to cases which involve adoption, but not the placement of a child for adoption under the law of any part of the United Kingdom, with such modifications as the regulations may prescribe.

## **80C Rights during and after paternity leave**

- (1) Regulations under section 80A shall provide—
  - (a) that an employee who is absent on leave under that section is entitled, for such purposes and to such extent as the regulations may prescribe, 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 leave under that section is bound, for such purposes and to such extent as the regulations may prescribe, by obligations arising under those terms and conditions (except in so far as they are inconsistent with subsection (1) of that section), and
  - (c) that an employee who is absent on leave under that section is entitled to return from leave to a job of a kind prescribed by regulations, subject to section 80D(1).
- (2) The reference in subsection (1)(c) to absence on leave under section 80A includes, where appropriate, a reference to a continuous period of absence attributable partly to leave under that section and partly to any one or more of the following—
  - (a) maternity leave,
  - (b) adoption leave, and
  - (c) parental leave.

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- (3) Subsection (1) shall apply to regulations under section 80B as it applies to regulations under section 80A.
- (4) In the application of subsection (1)(c) to regulations under section 80B, the reference to absence on leave under that section includes, where appropriate, a reference to a continuous period of absence attributable partly to leave under that section and partly to any one or more of the following—
  - (a) maternity leave,
  - (b) adoption leave,
  - (c) parental leave, and
  - (d) leave under section 80A.
- (5) In subsection (1)(a), “terms and conditions of employment”—
  - (a) includes matters connected with an employee’s employment whether or not they arise under his contract of employment, but
  - (b) does not include terms and conditions about remuneration.
- (6) Regulations under section 80A or 80B may specify matters which are, or are not, to be treated as remuneration for the purposes of this section.
- (7) Regulations under section 80A or 80B may make provision, in relation to the right to return mentioned in subsection (1)(c), about—
  - (a) seniority, pension rights and similar rights;
  - (b) terms and conditions of employment on return.

#### 80D Special cases

- (1) Regulations under section 80A or 80B may make provision about—
  - (a) redundancy, or
  - (b) dismissal (other than by reason of redundancy),
 during a period of leave under that section.
- (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 10).

#### 80E Chapter 3: supplemental

Regulations under section 80A or 80B may—

- (a) make provision about notices to be given, evidence to be produced and other procedures to be followed by employees and employers;
- (b) make provision requiring employers or employees to keep records;
- (c) make provision for the consequences of failure to give notices, to produce evidence, to keep records or to comply with other procedural requirements;
- (d) make provision for the consequences of failure to act in accordance with a notice given by virtue of paragraph (a);

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- (e) make special provision for cases where an employee has a right which corresponds to a right under section 80A or 80B and which arises under his contract of employment or otherwise;
- (f) make provision modifying the effect of Chapter 2 of Part 14 (calculation of a week's pay) in relation to an employee who is or has been absent from work on leave under section 80A or 80B;
- (g) make provision applying, modifying or excluding an enactment, in such circumstances as may be specified and subject to any conditions which may be specified, in relation to a person entitled to take leave under section 80A or 80B;
- (h) make different provision for different cases or circumstances.”

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