
STATUTORY INSTRUMENTS

1986 No. 1960

The Statutory Maternity Pay (General) Regulations 1986

PART II

ENTITLEMENT

The Maternity Pay Period

2.—(1) Subject to paragraph (3), where a woman gives notice to her employer that she intends to stop work and does in fact stop work because of her pregnancy in a week which is later than the 12th week before the expected week of confinement, then the first week in the maternity pay period shall be the week following the week in which she stopped work, or the 6th week before the expected week of confinement, whichever is the earlier.

(2) The maternity pay period shall end not later than the end of the 11th week immediately following the expected week of confinement and subject thereto shall be for a period of 18 consecutive weeks.

(3) Where—

- (a) a woman is confined before the 11th week before the expected week of confinement, or
- (b) is confined after the 12th week but before the 6th week before the expected week of confinement and the confinement occurs in a week which precedes that mentioned in a notice given to her employer as being the week she intends to give up work,

the first week in the maternity pay period shall be the week after the week in which she is confined.

Contract of service ended for the purpose of avoiding liability for statutory maternity pay

3.—(1) A former employer shall be liable to make payments of statutory maternity pay to any woman who was employed by him for a continuous period of at least 8 weeks and whose contract of service with him was brought to an end by the former employer solely or mainly for the purpose of avoiding liability for statutory maternity pay.

(2) In order to determine the amount payable by the former employer—

- (a) the woman shall be deemed for the purposes of Part V of the 1986 Act to have been employed by him from the date her employment with him ended until the end of the week immediately preceding the 14th week before the expected week of confinement on the same terms and conditions of employment as those subsisting immediately before her employment ended, and
- (b) her normal weekly earnings for the period of 8 weeks immediately preceding the 14th week before the expected week of confinement shall for those purposes be calculated by reference to her normal weekly earnings for the period of 8 weeks ending with the last day in respect of which she was paid under her former contract of service.

Modification of entitlement provisions

4.—(1) In relation to a woman who—

- (a) has been in employed earner's employment with an employer for a continuous period of at least 8 weeks, and
- (b) is dismissed by that employer for a reason mentioned in paragraph (a) or (b) of section 60(1) of the 1978 Act, but
- (c) is not offered a new contract of service which complies with section 60(3) of that Act, or is offered such a contract but declines to accept it,

section 46(2)(a) and (b) of the 1986 Act shall have effect as if for the conditions there set out there were substituted the conditions that—

- (i) she would but for her dismissal have been in employment with the employer who dismissed her for a period of at least 26 weeks ending with the week immediately preceding the 14th week before the expected week of confinement, and
- (ii) her normal weekly earnings from that employment for the period of 8 weeks ending with the last day in respect of which she was paid in accordance with the contract of service with the employer are not less than the lower earnings limit in force under section 4(1)(a) of the 1975 Act in the last of the 8 weeks.

(2) In relation to a woman in employed earner's employment who was confined before the 14th week before the expected week of confinement section 46(2)(a) and (b) of the 1986 Act shall have effect as if for the conditions there set out, there was substituted the conditions that—

- (a) she would but for her confinement have 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, and
- (b) her normal weekly earnings for the period of 8 weeks ending with the week immediately preceding the week of her confinement are not less than the lower earnings limit in force under section 4(1)(a) of the 1975 Act immediately before the commencement of the week of her confinement.

Treatment of more than one contract of service as one

5. Where 2 or more contracts of service exist concurrently between one employer and one employee, they shall be treated as one for the purposes of Part V of the 1986 Act, except where, by virtue of regulation 11 of the Social Security (Contributions) Regulations 1979 the earnings from those contracts of service are not aggregated for the purposes of earnings-related contributions.

Lower rate of statutory maternity pay

6. The lower rate of statutory maternity pay is a weekly rate of £32.85.

Liability of Secretary of State to pay Statutory Maternity Pay

7.—(1) Where—

- (a) an adjudicating authority has determined that an employer is liable to make payments of statutory maternity pay to a woman, and
- (b) the time for appealing against that determination has expired, and
- (c) no appeal against the determination has been lodged or leave to appeal against the determination is required and has been refused,

then for any week in respect of which the employer was liable to make payments of statutory maternity pay but did not do so, and for any subsequent weeks in the maternity pay period the liability to make those payments shall, notwithstanding section 46(3) of the 1986 Act, be that of the Secretary of State and not the employer.

(2) In paragraph (1) adjudicating authority means, as the case may be, the Chief or any other adjudication officer, a Social Security Appeal Tribunal or the Chief or any other Social Security Commissioner.

(3) Liability to make payments of statutory maternity pay shall, notwithstanding section 46(3) of the 1986 Act, be a liability of the Secretary of State and not the employer as from the week in which the employer first becomes insolvent until the end of the maternity pay period.

(4) For the purposes of paragraph (3) an employer shall be taken to be insolvent if, and only if—

(a) in England and Wales—

- (i) he has been adjudged bankrupt or has made a composition or arrangement with his creditors;
- (ii) he has died and his estate falls to be administered in accordance with an order under section 421 of the Insolvency Act 1986; or
- (iii) where an employer is a company, a winding-up order or an administration order is made or a resolution for voluntary winding-up is passed with respect to it, or a receiver or manager of its undertaking is duly appointed, or possession is taken by or on behalf of the holders of any debentures secured by a floating charge, of any property of the company comprised in or subject to the charge or a voluntary arrangement proposed for the purposes of Part I of the Insolvency Act 1986 is approved under that Part;

(b) in Scotland—

- (i) an award of sequestration is made on his estate or he executes a trust deed for his creditors or enters into a composition contract;
- (ii) he has died and a judicial factor appointed under section 11A of the Judicial Factors (Scotland) Act 1889⁽¹⁾ is required by that section to divide his insolvent estate among his creditors; or
- (iii) where the employer is a company, a winding-up order or an administration order is made or a resolution for voluntary winding-up is passed with respect to it or a receiver of its undertaking is duly appointed or a voluntary arrangement proposed for the purposes of Part I of the Insolvency Act 1986 is approved under that Part.

Work after confinement

8.—(1) Where in the week immediately preceding the 14th week before the expected week of confinement a woman had 2 or more employers but one or more of them were not liable to make payments to her of statutory maternity pay (“non-liable employer”), section 47(6) of the 1986 Act shall not apply in respect of any week after the week of confinement but within the maternity pay period in which she works only for a non-liable employer.

(2) Where after her confinement a woman—

- (a) works for an employer who is not liable to pay her statutory maternity pay and is not a non-liable employer, but
- (b) before the end of her maternity pay period ceases to work for that employer,

⁽¹⁾ section 11A was inserted by the Bankruptcy (Scotland) Act 1985 (c. 66), section 75(1), Schedule 7, paragraph 4.

the person who before she commenced work was liable to make payments of statutory maternity pay to her shall, notwithstanding section 46 of the 1986 Act, not be liable to make such payments to her for any weeks in the maternity pay period after she ceases work.

No liability to pay statutory maternity pay

9. Notwithstanding the provisions of section 46(1) of the 1986 Act, no liability to make payments of statutory maternity pay to a woman shall arise in respect of a week within the maternity pay period for any part of which she is detained in legal custody or sentenced to a term of imprisonment (except where the sentence is suspended), or of any subsequent week within that period.

Death of woman

10. An employer shall not be liable to make payments of statutory maternity pay in respect of a woman for any week within the maternity pay period which falls after the week in which she dies.