
STATUTORY INSTRUMENTS

1986 No. 1960

The Statutory Maternity Pay (General) Regulations 1986

PART III

CONTINUOUS EMPLOYMENT AND NORMAL WORKING HOURS

Continuous employment

11.—(1) Subject to the following provisions of this regulation, where in any week a woman is, for the whole or part of the week,—

- (a) incapable of work in consequence of sickness or injury, or
- (b) absent from work on account of a temporary cessation of work, or
- (c) absent from work in circumstances such that, by arrangement or custom, she is regarded as continuing in the employment of her employer for all or any purpose, or
- (d) absent from work wholly or partly because of pregnancy or confinement,

and returns to work for her employer after the incapacity for or absence from work, that week shall be treated for the purposes of Part V of the 1986 Act as part of a continuous period of employment with that employer, notwithstanding that no contract of service exists with that employer in respect of that week.

(2) Incapacity for work which lasts for more than 26 consecutive weeks shall not count for the purposes of paragraph (1)(a).

(3) Paragraph (1)(d) shall only apply to a woman who—

- (a) has a contract of service with the same employer both before and after her confinement but not during any period of absence from work due to her confinement and the period between those contracts does not exceed 26 weeks, or
- (b) returns to work in accordance with section 45(1) of the 1978 Act or in pursuance of an offer made in circumstances described in section 56A(2) of that Act after a period of absence from work wholly or partly occasioned by pregnancy or confinement.

(4) where a woman is employed under a contract of service for part only of the week immediately preceding the 14th week before the expected week of confinement, the whole of that week shall count in computing any period of continuous employment for the purposes of Part V of the 1986 Act.

Continuous employment and unfair dismissal

12.—(1) This regulation applies to a woman in relation to whose dismissal an action is commenced which consists—

- (a) of the presentation by her of a complaint under section 67(1) of the 1978 Act; or
- (b) of her making a claim in accordance with a dismissals procedure agreement designated by an order under section 65 of that Act; or
- (c) of any action taken by a conciliation officer under section 134(3) of that Act.

(2) If in consequence of an action of the kind specified in paragraph (1) a woman is reinstated or re-engaged by her employer or by a successor or associated employer of that employer the continuity of her employment shall be preserved for the purposes of Part V of the 1986 Act and any week which falls within the interval beginning with the effective date of termination and ending with the date of reinstatement or re-engagement, as the case may be, shall count in the computation of her period of continuous employment.

(3) In this regulation—

“successor” and “dismissals procedure agreement” have the same meanings as in section 30(3) and (4) of the Trade Union and Labour Relations Act 1974, and

“associated employer” shall be construed in accordance with section 153(4) of the 1978 Act.

Continuous employment and stoppages of work

13.—(1) Where for any week or part of a week a woman does no work because there is, within the meaning of section 19 of the 1975 Act a stoppage of work due to a trade dispute at her place of employment the continuity of her employment shall, subject to paragraph (2), be treated as continuing throughout the stoppage but, subject to paragraph (3), no such week shall count in the computation of her period of employment.

(2) Subject to paragraph (3), where during the stoppage of work a woman is dismissed from her employment, the continuity of her employment shall not be treated in accordance with paragraph (1) as continuing beyond the commencement of the day she stopped work.

(3) The provisions of paragraph (1) to the extent that they provide that a week in which a stoppage of work occurred shall not count in the computation of a period of employment, and paragraph (2) shall not apply to a woman who proves that at no time did she have a direct interest in the trade dispute in question.

Change of employer

14. A woman's employment shall, notwithstanding the change of employer, be treated as continuous employment with the second employer where—

- (a) the employer's trade or business or an undertaking (whether or not it is an undertaking established by or under an Act of Parliament) is transferred from one person to another;
- (b) by or under an Act of Parliament, whether public or local and whenever passed, a contract of employment between any body corporate and the woman is modified and some other body corporate is substituted as her employer;
- (c) on the death of her employer, the woman is taken into the employment of the personal representatives or trustees of the deceased;
- (d) the woman is employed by partners, personal representatives or trustees and there is a change in the partners, or, as the case may be, personal representatives or trustees;
- (e) the woman is taken into the employment of an employer who is, at the time she entered his employment, an associated employer of her previous employer, and for this purpose “associated employer” shall be construed in accordance with section 153(4) of the 1978 Act;
- (f) on the termination of her employment with an employer she is taken into the employment of another employer and the employers are the governors of a school maintained by a local education authority or that authority.

Reinstatement after service with the armed forces etc

15. If a woman who is entitled to apply to her former employer under the Reserve Forces (Safeguard of Employment) Act 1985 enters the employment of that employer not later than the 6 month period mentioned in section 1(4)(b) of that Act, her previous period of employment with that employer (or if there was more than one such period, the last of those periods) and the period of employment beginning in the said period of 6 months shall be treated as continuous.

Normal working weeks

16.—(1) For the purposes of section 48(5) of the 1986 Act, a woman's contract of service shall be treated as not normally involving or having involved employment for less than 16 hours weekly where she is normally employed for 16 hours or more weekly.

(2) Where a woman's relations with her employer were governed for a continuous period of at least 2 years by a contract of service which normally involved employment for not less than 16 hours weekly and this period was followed by a further period, ending with the week immediately preceding the 14th week before the expected week of confinement, in which her relations with that employer were governed by a contract of service which normally involved employment for less than 16 hours, but not less than 8 hours weekly, then her contract of service shall be treated for the purpose of section 48(5) of the 1986 Act as not normally involving or having involved employment for less than 16 hours weekly.

(3) Where a woman's relations with her employer are or were governed for a continuous period of at least 2 years by a contract of service which involved

(a) for not more than 26 weeks in that period, employment for 8 hours or more but less than 16 hours weekly, and

(b) for the whole of the remainder of that period employment for not less than 16 hours weekly, the contract of service shall be treated for the purposes of section 48(5) of the 1986 Act as not normally involving or having involved employment for less than 16 hours weekly.