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STATUTORY INSTRUMENTS

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**2002 No. 2788**

**The Paternity and Adoption Leave Regulations 2002**

**PART 3**

**ADOPTION LEAVE**

**Entitlement to ordinary adoption leave**

- 15.**—(1) An employee is entitled to ordinary adoption leave in respect of a child if he—
- (a) satisfies the conditions specified in paragraph (2), and
  - (b) has complied with the notice requirements in regulation 17 and, where applicable, the evidential requirements in that regulation.
- (2) The conditions referred to in paragraph (1) are that the employee—
- (a) is the child’s adopter;
  - (b) has been continuously employed for a period of not less than 26 weeks ending with the week in which he was notified of having been matched with the child, and
  - (c) has notified the agency that he agrees that the child should be placed with him and on the date of placement.
- (3) In paragraph (2)(b), “week” means the period of seven days beginning with Sunday.
- (4) An employee’s entitlement to leave under this regulation shall not be affected by the placement for adoption of more than one child as part of the same arrangement.

**Options in respect of ordinary adoption leave**

- 16.**—(1) Except in the case referred to in paragraph (2), an employee may choose to begin a period of ordinary adoption leave on—
- (a) the date on which the child is placed with him for adoption, or
  - (b) a predetermined date, specified in a notice under regulation 17, which is no more than 14 days before the date on which the child is expected to be placed with the employee and no later than that date.
- (2) In a case where the employee was notified of having been matched with the child before 6th April 2003, the employee may choose to begin a period of leave only on a predetermined date, specified in a notice under regulation 17, which is after 6th April 2003 and at least 28 days after the date on which that notice is given.

**Notice and evidential requirements for ordinary adoption leave**

- 17.**—(1) An employee must give his employer notice of his intention to take ordinary adoption leave in respect of a child, specifying—
- (a) the date on which the child is expected to be placed with him for adoption, and

- (b) the date on which, in accordance with regulation 16(1) or (2), the employee has chosen that his period of leave should begin.
- (2) The notice provided for in paragraph (1) must be given to the employer—
  - (a) no more than seven days after the date on which the employee is notified of having been matched with the child for the purposes of adoption, or
  - (b) in a case where it was not reasonably practicable for the employee to give notice in accordance with sub-paragraph (a), as soon as is reasonably practicable.
- (3) Where the employer requests it, an employee must also provide his employer with evidence, in the form of one or more documents issued by the adoption agency that matched the employee with the child, of—
  - (a) the name and address of the agency;
  - (b) the name and date of birth of the child;
  - (c) the date on which the employee was notified that he had been matched with the child, and
  - (d) the date on which the agency expects to place the child with the employee.
- (4) An employee who has given notice under paragraph (1) may vary the date he has chosen as the date on which his period of leave will begin, subject to paragraph (5) and provided that he gives his employer notice of the variation—
  - (a) where the variation is to provide for the employee's period of leave to begin on the date on which the child is placed with him for adoption, at least 28 days before the date specified in his notice under paragraph (1) as the date on which the child is expected to be placed with him;
  - (b) where the variation is to provide for the employee's period of leave to begin on a predetermined date (or a different predetermined date), at least 28 days before that date,or, if it is not reasonably practicable to give the notice 28 days before whichever date is relevant, as soon as is reasonably practicable.
- (5) In a case where regulation 16(2) applies, an employee may only vary the date which he has chosen as the date on which his period of leave will begin by substituting a different predetermined date.
- (6) Notice under paragraph (1) or (4) shall be given in writing, if the employer so requests.
- (7) An employer who is given notice under paragraph (1) or (4) of the date on which an employee has chosen that his period of ordinary adoption leave should begin shall notify the employee, within 28 days of his receipt of the notice, of the date on which the period of additional adoption leave to which the employee will be entitled (if he satisfies the conditions in regulation 20(1)) after his period of ordinary adoption leave ends.
- (8) The notification provided for in paragraph (7) shall be given to the employee—
  - (a) where the employer is given notice under paragraph (1), within 28 days of the date on which he received that notice;
  - (b) where the employer is given notice under paragraph (4), within 28 days of the date on which the employee's ordinary adoption leave period began.

### **Duration and commencement of ordinary adoption leave**

**18.**—(1) Subject to regulations 22 and 24, an employee's ordinary adoption leave period is a period of 26 weeks.

(2) Except in the case referred to in paragraph (3), an employee's ordinary adoption leave period begins on the date specified in his notice under regulation 17(1), or, where he has varied his choice

of date under regulation 17(4), on the date specified in his notice under that provision (or the last such date if he has varied his choice more than once).

(3) In a case where—

- (a) the employee has chosen to begin his period of leave on the date on which the child is placed with him, and
- (b) he is at work on that date,

the employee's period of leave begins on the day after that date.

### **Application of terms and conditions during ordinary adoption leave**

**19.**—(1) An employee who takes ordinary adoption leave—

- (a) is entitled, during the period of leave, to the benefit of all of the terms and conditions of employment which would have applied if he had not been absent, and
- (b) is bound, during that period, by any obligations arising under those terms and conditions, subject only to the exception in section 75A(3)(b) of the 1996 Act<sup>(1)</sup>.

(2) In paragraph (1)(a), “terms and conditions of employment” has the meaning given by section 75A(4) of the 1996 Act, and accordingly does not include terms and conditions about remuneration.

(3) For the purposes of section 75A of the 1996 Act, only sums payable to an employee by way of wages or salary are to be treated as remuneration.

### **Additional adoption leave: entitlement, duration and commencement**

**20.**—(1) An employee is entitled to additional adoption leave in respect of a child if—

- (a) the child was placed with him for adoption,
- (b) he took ordinary adoption leave in respect of the child, and
- (c) his ordinary adoption leave period did not end prematurely under regulation 22(2)(a) or 24.

(2) Subject to regulations 22 and 24, an employee's additional adoption leave period is a period of 26 weeks beginning on the day after the last day of his ordinary adoption leave period.

### **Application of terms and conditions during additional adoption leave**

**21.** An employee who takes additional adoption leave—

- (a) is entitled, during the period of leave, to the benefit of his employer's implied obligation to him of trust and confidence and of any terms and conditions of his employment relating to—
  - (i) notice of the termination of the employment contract by his employer;
  - (ii) compensation in the event of redundancy, or
  - (iii) disciplinary or grievance procedures; and
- (b) is bound, during that period, by his implied obligation to his employer of good faith and of any terms and conditions of his employment relating to—
  - (i) notice of the termination of the employment contract by him,
  - (ii) the disclosure of confidential information;
  - (iii) the acceptance of gifts or other benefits, or

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(1) Section 75A was inserted by section 3 of the Employment Act 2002.

- (iv) the employee's participation in any other business.

### **Disrupted placement in the course of adoption leave**

**22.**—(1) This regulation applies where—

- (a) an employee has begun a period of adoption leave in respect of a child before the placement of the child with him, and the employee is subsequently notified that the placement will not be made, or
  - (b) during an employee's period of adoption leave in respect of a child placed with him—
    - (i) the child dies, or
    - (ii) the child is returned to the adoption agency under section 30(3) of the Adoption Act 1976 or section 30(3) of the Adoption (Scotland) Act 1978.
- (2) Subject to regulation 24, in a case where this regulation applies—
- (a) except in the circumstances referred to in sub-paragraphs (b) and (c), the employee's adoption leave period ends eight weeks after the end of the relevant week specified in paragraph (3);
  - (b) where the employee is taking ordinary adoption leave and the period of 26 weeks provided for in regulation 18 ends within eight weeks of the end of the relevant week—
    - (i) the employee's ordinary adoption leave period ends on the expiry of the 26-week period;
    - (ii) the employee is entitled to additional adoption leave, and
    - (iii) the employee's additional adoption leave period ends eight weeks after the end of the relevant week;
  - (c) where the employee is taking additional adoption leave and the period of 26 weeks provided for in regulation 20 ends within eight weeks of the end of the relevant week, the employee's additional adoption leave period ends on the expiry of the 26-week period.
- (3) The relevant week referred to in paragraph (2) is—
- (a) in a case falling within paragraph (1)(a), the week during which the person with whom the child was to be placed for adoption is notified that the placement will not be made;
  - (b) in a case falling within paragraph (1)(b)(i), the week during which the child dies;
  - (c) in a case falling within paragraph (1)(b)(ii), the week during which the child is returned.
- (4) In paragraph (3), "week" means the period of seven days beginning with Sunday.

### **Redundancy during adoption leave**

**23.**—(1) This regulation applies where, during an employee's ordinary or additional adoption leave period, it is not practicable by reason of redundancy for his employer to continue to employ him under his existing contract of employment.

(2) Where there is a suitable available vacancy, the employee is entitled to be offered (before the end of his employment under his existing contract) alternative employment with his employer or his employer's successor, or an associated employer, under a new contract of employment which complies with paragraph (3) and takes effect immediately on the ending of his employment under the previous contract.

(3) The new contract of employment must be such that—

- (a) the work to be done under it is of a kind which is both suitable in relation to the employee and appropriate for him to do in the circumstances, and

- (b) its provisions as to the capacity and place in which he is to be employed, and as to the other terms and conditions of his employment, are not substantially less favourable to him than if he had continued to be employed under the previous contract.

### **Dismissal during adoption leave**

**24.** Where an employee is dismissed after an ordinary or additional adoption leave period has begun but before the time when (apart from this regulation) that period would end, the period ends at the time of the dismissal.

### **Requirement to notify intention to return during adoption leave period**

**25.**—(1) An employee who intends to return to work earlier than the end of his additional adoption leave period must give his employer at least 28 days' notice of the date on which he intends to return.

(2) If an employee attempts to return to work earlier than the end of his additional adoption leave period without complying with paragraph (1), his employer is entitled to postpone his return to a date such as will secure, subject to paragraph (3), that he has at least 28 days' notice of the employee's return.

(3) An employer is not entitled under paragraph (2) to postpone an employee's return to work to a date after the end of the employee's additional adoption leave period.

(4) If an employee whose return has been postponed under paragraph (2) has been notified that he is not to return to work before the date to which his return was postponed, the employer is under no contractual obligation to pay him remuneration until the date to which his return was postponed if he returns to work before that date.

(5) This regulation does not apply in a case where the employer did not notify the employee in accordance with regulation 17(7) and (8) of the date on which the employee's additional adoption leave period would end.

(6) In a case where an employee's adoption leave is curtailed because regulation 22 applies, the references in this regulation to the end of an employee's additional adoption leave period are references to the date on which that period would have ended had that regulation not applied, irrespective of whether it was the employee's ordinary adoption leave period or his additional adoption leave period that was curtailed.

### **Right to return after adoption leave**

**26.**—(1) An employee who returns to work after a period of ordinary adoption leave which was—

- (a) an isolated period of leave, or
- (b) the last of two or more consecutive periods of statutory leave, which did not include any period of additional maternity leave or additional adoption leave or a period of parental leave of more than four weeks,

is entitled to return from leave to the job in which he was employed before his absence.

(2) An employee who returns to work after—

- (a) a period of additional adoption leave, whether or not preceded by another period of statutory leave, or
- (b) a period of ordinary adoption leave not falling within the description in paragraph (1)(a) or (b) above,

is entitled to return from leave to the job in which he was employed before his absence, or, if it is not reasonably practicable for the employer to permit him to return to that job, to another job which is both suitable for him and appropriate for him to do in the circumstances.

- (3) The reference in paragraphs (1) and (2) to the job in which an employee was employed before his absence is a reference to the job in which he was employed—
- (a) if his return is from an isolated period of adoption leave, immediately before that period began;
  - (b) if his return is from consecutive periods of statutory leave, immediately before the first such period.
- (4) This regulation does not apply where regulation 23 applies.

### **Incidents of the right to return from adoption leave**

**27.—**(1) An employee's right to return under regulation 26 is to return—

- (a) with his seniority, pension rights and similar rights—
  - (i) in a case where the employee is returning from additional adoption leave, or consecutive periods of statutory leave which included a period of additional adoption leave or additional maternity leave, as they would have been if the period or periods of his employment prior to his additional adoption leave or (as the case may be) additional maternity leave were continuous with the period of employment following it;
  - (ii) in any other case, as they would have been if he had not been absent, and
- (b) on terms and conditions as to remuneration not less favourable than those which would have been applied to him if he had not been absent.

(2) The provision in paragraph (1)(a)(i) concerning the treatment of periods of additional adoption leave or additional maternity leave is subject to the requirements of paragraphs 5 and 6 of Schedule 5 to the Social Security Act 1989<sup>(2)</sup> (equal treatment under pension schemes: maternity absence and family leave).

(3) The provisions in paragraph (1)(a)(ii) and (b) for an employee to be treated as if he had not been absent refer to his absence—

- (a) if his return is from an isolated period of ordinary adoption leave, since the beginning of that period;
- (b) if his return is from consecutive periods of statutory leave, since the beginning of the first such period.

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(2) 1989 c. 24.