

L.N. 130 of 2011**EMPLOYMENT AND INDUSTRIAL RELATIONS ACT
(CAP. 452)****Protection of Maternity (Employment) (Amendment)
Regulations, 2011**

IN exercise of the powers conferred by articles 10 and 48(2) of the Employment and Industrial Relations Act, the Prime Minister has made the following regulations –

Title.

1. The title of these regulations is the Protection of Maternity (Employment) (Amendment) Regulations, 2011 and they shall be read and construed as one with the Protection of Maternity (Employment) Regulations, 2003, hereinafter referred to as “the principal regulations”.

L.N. 439 of 2003.

Amends regulation 2 of the principal regulations.

2. In sub-regulation (1) of regulation 2 of the principal regulations, for the definition “pregnant employee” there shall be substituted the following:

“ “pregnant employee” means an employee who informs her employer in writing of her pregnancy and who subsequently, within fifteen days, formally informs her employer of her pregnancy and of the expected date of confinement by means of a certificate issued by a registered medical practitioner or midwife;”.

Amends regulation 3 of the principal regulations.

3. For sub-regulation (5) of regulation 3 of the principal regulations, there shall be substituted the following:

“(5) During the special maternity leave referred to in sub-regulation (4), the employer shall pay the employee, for the whole of the period necessary to protect the employee’s safety or health, a special allowance equivalent to the rate of sickness benefit payable in terms of the Social Security Act:

Cap. 318.

Provided that the employee shall remain entitled on termination of the special maternity leave, to all benefits which may accrue to other employees of the same class or category of employment at that place of work.”.

Amends regulation 12 of the principal regulations.

4. Regulation 12 of the principal regulations shall be amended as follows:

(a) in sub-regulation (1) thereof, for the words “such employee formally notifies the employer”, there shall be substituted the words “such employee informs her employer”; and

(b) for sub-regulation (2) thereof, there shall be substituted the following:

“(2) The provisions of sub-regulation (1) are without prejudice and shall not apply to cases falling under article 36(4) and (14) of the Act.”.

5. Immediately after regulation 12 of the principal regulations, there shall be inserted the following new regulation;

Adds new regulation 12A to the principal regulations.

“Dismissal during probation.

12A. In the case that an employee who is pregnant or has recently given birth or who is breastfeeding is in her probationary period, the following provisions shall have effect and shall prevail in case of conflict with any specific requirement regulating the probationary period in the Act:

(a) in the case of a pregnant employee who is in her probationary period, if the probationary period has not been exhausted on the date when the pregnant employee is to start her maternity leave, the probationary period shall be deemed to have been automatically suspended on the commencement of the maternity leave for the whole period of maternity leave and of any period of incapacity for work owing to a pathological condition arising out of confinement in the five weeks following the end of maternity leave as referred to in article 36(17) of the Act, and any remaining probationary period shall thereafter continue to run upon her return to work following the end of the maternity leave or from a period of incapacity for work following the end of such leave, as the case may be;

(b) in the case that a pregnant employee or an employee who has recently given birth or who is breastfeeding is granted special maternity leave before the probationary period has been exhausted, the probationary period shall be considered to have

been automatically suspended for the duration of the special maternity leave and shall, subject to the preceding paragraph (a), only start to run again upon her return to work;

(c) notwithstanding article 36(2) of the Act, in the case of a pregnant employee on probation, if the employer decides to dismiss a pregnant employee during the probationary period, the employer shall be bound to give the reason or reasons for the employee's dismissal in writing at the time of dismissal to justify that the dismissal is unrelated to the employee's condition. If the employer fails to give written reasons for dismissal at the time of dismissal or if the employee considers that any reason given by the employer is unjustified, and that she considers that the dismissal was unfair, the employee may present a complaint of alleged unfair dismissal before the Industrial Tribunal within four months from the date of the dismissal. In any proceedings, where the employee establishes before the Tribunal, facts from which it may be presumed that there has been direct or indirect discrimination related to her condition, it shall be for the defendant to prove that the dismissal was based on a good and sufficient cause and in the absence of such proof on the defendant's part, the Industrial Tribunal shall uphold the complaint. Furthermore, if the employer fails to give the reason or reasons for the employee's dismissal in writing at the time of the dismissal, this failure shall be considered by the Tribunal as an inference that the dismissal was indeed related to the employee's condition."

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