SUBSIDIARY LEGISLATION 424.11

PROTECTION OF MATERNITY AT WORK PLACES REGULATIONS*

1st January, 2001

LEGAL NOTICE 92 of 2000, as amended by Legal Notices 436 of 2012 and 195 of 2015 and Act XXXIII of 2024.

Citation and scope.

1. (1) The title of these regulations is the Protection of Maternity at Work Places Regulations.

(2) The scope of these regulations is the implementation of Directive 2014/27/EU of the European Parliament and of the Council amending Council Directive 92/85/EC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC).

Interpretation. *Amended by: L.N. 436 of 2012.*

2. In these regulations, unless the context otherwise requires -

"breastfeeding worker" means a breastfeeding employee as defined in the Employment and Industrial Relations Act, or in subsidiary legislation;

Cap. 452.

"child" includes an unborn infant;

"conditions of employment" has the same meaning assigned to it under the Employment and Industrial Relations Act or any other law substituting it;

Cap. 452.

"female" includes a pregnant or breastfeeding worker, and a mother;

"mother" means a worker who has recently given birth to a live or stillborn child, and who informs her employer of such an event by means of a certificate issued by a medical practitioner or by a midwife, and in the case of a worker who gives birth to a live child shall continue to remain considered as such for a period of six months from the birth of the child;

"pregnant worker" means a pregnant worker as defined in the Employment and Industrial Relations Act, or in subsidiary legislation;.

Cap. 452.

Employment of females.

3. (1) A female worker who becomes pregnant shall inform her employer of her condition as soon as she becomes aware of it.

(2) No pregnant worker, mother or breastfeeding worker shall be required by any employer to perform any work which may endanger her health and safety, the safety or viability of her pregnancy or the health of her child, as the case may be.

*These regulations have been transferred to Cap. 646. Vide S.L. 646.05 and Act XXXIII of 2024.

Employer's responsibilities. *Amended by: L.N. 436 of 2012; XXXIII.2024. First Schedule.*

4. (1) Before assigning work to any pregnant or breastfeeding worker or to a mother, an employer shall assess the nature and degree of any hazard present at his workplace, together with the anticipated duration of exposure, as well as the resultant risks to the health and safety of the female concerned, as well as to the safety of her pregnancy or of the child in the case of a breastfeeding worker:

Provided that such an assessment shall also include, but shall not be limited to, an assessment of the hazards and the resultant risks to the physical and mental health of the worker and to the safety of the pregnancy arising from the industrial processes used, and from the presence of any chemical, physical or biological agent used at the employer's place of work:

Provided further that such an assessment shall also include an assessment of the risks which may arise from any particular posture, movement or lifting activity which has to be carried out by any pregnant worker, mother or breastfeeding worker so as to carry out the work or the task assigned to her.

(2) Without prejudice to the generality of subregulation (1) and its provisions, a non-exhaustive list of agents for which an assessment must be carried out, is shown in the First Schedule.

(3) An employer shall under no circumstance require a pregnant worker to perform duties for which the assessment has revealed a risk of exposure to the agents, processes or working conditions listed in Section A of the Second Schedule, or when so directed by the Occupational Health and Safety Authority appointed under the Health and Safety at Work Act in the sole interests of health and safety.

Cap. 646.

(4) An employer shall under no circumstance require a breastfeeding worker to perform duties for which the assessment has revealed a risk of exposure to the agents, processes or working conditions listed in Section B of the Second Schedule, or when so directed by the Occupational Health and Safety Authority appointed under the Health and Safety at Work Act in the sole interests of health and safety.

Cap. 646.

Assessment results.

5. The employer shall inform the female workers referred to in regulation 3(2), or their representatives at the place of work, of the results of the assessments referred to in regulation 4 and of all the measures taken, or that are to be taken concerning health and safety at work.

Remedy to an existing risk. *Amended by: L.N. 436 of 2012.*

6. If the results of the assessment referred to in regulation 4 reveal a risk to health or safety, to the pregnancy, or to the child, the employer shall take the necessary steps to remove the female from such exposures, either by temporarily adjusting the working conditions, and/or the working hours, or by assigning the worker to another job which is both suitable in relation to her and appropriate for her to do in the circumstances, under such terms and conditions of employment which are not less favourable than those stipulated in her contract of employment.

Night work.
Amended by:
L.N. 436 of 2012.

7. No pregnant worker, mother or breastfeeding worker shall be required by any employer to perform any night work if the worker concerned submits to the employer a medical certificate which states that night work can have harmful effects on the pregnancy, or on the mother, or on the child, as the case may be.

Ante-natal examinations.
Re-numbered by:
L.N. 436 of 2012.

8. A pregnant worker shall be entitled to time off, without loss of pay or any other benefit, in order to attend ante-natal examinations, if such examinations have to take place during working hours:

Provided that the employer may request documentation which shows the appointment times for such examinations.

Onus of proof.
Added by:
L.N. 436 of 2012.

9. In any proceedings for an offence under these regulations consisting of a failure to comply with a duty or requirement to do something, or to do something so far as is reasonably practicable, it shall be for the accused to prove (as the case may be) that it was not practicable or not reasonably practicable to do more than was in fact done to satisfy the duty or requirement, or that there was no better practicable means than was in fact used to satisfy the duty or requirement.

Substituted by:
L.N. 195 of 2015.
Amended by:
XXXIII.2024.
First Schedule.

FIRST SCHEDULE

Regulation 4(2)

Non-exhaustive list of agents for which an assessment has to be carried out.

A. Agents

1. *Physical agents* where these are regarded as agents causing foetal lesions and/or likely to disrupt placental attachment, and in particular:

(*a*) shocks, vibration or movement;

(*b*) handling of loads entailing risks, particularly of a dorsolumbar nature;

(*c*) noise;

(*d*) ionizing radiation;

(*e*) non-ionizing radiation;

(*f*) extremes of cold or heat;

(*g*) movements and postures, travelling - either inside or outside the establishment -mental and physical fatigue and other physical burdens connected with the activity of the worker within the meaning of regulation 2.

2. Biological agents

Biological agents of risk groups 2, 3 and 4 within the meaning of paragraphs 2, 3 and 4 of the definition "biological agents" in regulation 2 of the Protection of Workers from Risks related to Exposure to Biological Agents at Work Regulations (S.L. 424.25), in so far as it is known that such agents or the therapeutic measures necessitated by them endanger the health of pregnant women and the unborn child, and in so far as they do not yet appear in the Second Schedule.

3. Chemical agents

The following chemical agents in so far as it is known that they endanger the health of pregnant women and the unborn child and in so far as they do not yet appear in the Second Schedule:

(*a*) substances and mixtures which meet the criteria for classification under Regulation (EC) No 1272/2008 of the European Parliament and of the Council in one or more of the following hazard classes and hazard categories with one or more of the following hazard statements, in so far as they do not yet appear in the Second Schedule:

- germ cell mutagenicity, category 1A, 1B or 2 (H340, H341);
- carcinogenicity, category 1A, 1B or 2 (H350, H350i, H351);
- reproductive toxicity, category 1A, 1B or 2 or the additional category for effects on or via lactation (H360, H360D, H360FD, H360Fd, H360Df, H361, H361d, H361fd, H362);
- specific target organ toxicity after single exposure, category 1 or 2 (H370, H371);

(*b*) chemical agents in Schedule I to the Protection of Workers from Risks related to Exposure to Biological Agents at Work Regulations (S.L. 646.17);

(*c*) mercury and mercury derivatives;

(*d*) antimitotic drugs;

(*e*) carbon monoxide;

(*f*) chemical agents of known and dangerous percutaneous absorption.

B. Processes

Industrial processes listed in Schedule I to the Protection of Workers from the Risks related to Exposures to Carcinogens or Mutagens at Work Regulations (S.L. 646.14).

SECOND SCHEDULE

Regulation 4(3)

Amended by:
L.N. 436 of 2012.
Substituted by:
L.N. 195 of 2015.
Amended by:
XXXIII.2024.
First Schedule.

SECTION A: Non-exhaustive list of agents, processes and working conditions to which a pregnant worker cannot be exposed

A. Pregnant workers within the meaning of the definition "pregnant workers" in regulation 2.

1. Agents

(*a*) Physical agents

Work in hyperbaric atmosphere, e.g. pressurized enclosures and underwater diving.

(*b*) Biological Agents

The following biological agents:

- toxoplasma,
- rubella virus,

unless the pregnant workers are proved to be adequately protected against such agents by immunization.

(*c*) Chemical agents

Lead and lead derivatives in so far as these agents are capable of being absorbed by the human organism.

2. Any other physical, biological or chemical agent regarded by the Occupational Health and Safety Authority appointed under the Health and Safety at Work Act (Cap. 646.), as causing foetal lesions, and/or is likely to disrupt placental attachment, and/or is likely to cause serious disease to a pregnant woman.

SECTION B: Non-exhaustive list of agents, processes and working conditions to which a breastfeeding worker cannot be exposed.

Regulation 4(4)

B. Pregnant workers within the meaning of the definition "breastfeeding worker" in regulation 2.

1. Agents

(*a*) Chemical agents

Lead and lead derivatives in so far as these agents are capable of being absorbed by the human organism.

2. Any other agent.

Process or work activity which can have a harmful effect on the ability of a mother to breastfeed.