

SUBSIDIARY LEGISLATION 452.91**PROTECTION OF MATERNITY (EMPLOYMENT)
REGULATIONS**

5th January, 2004

LEGAL NOTICE 439 of 2003, as amended by Legal Notices 3 of 2004, 427 and 431 of 2007, 130 and 503 of 2011, 258 of 2012 and 415 of 2014.

1. (1) The title of these regulations is the Protection of Maternity (Employment) Regulations.

Title and scope.
Amended by:
L.N. 415 of 2014.

(2) The purpose of these regulations is to lay down minimum requirements designed to safeguard the employment rights of pregnant employees, employees who have recently given birth and breastfeeding employees, thus facilitating improvements in the safety and health of these employees and to give effect to the relevant provisions of Council Directive 92/85/EEC.

(3) These regulations shall be applicable without prejudice to the introduction and implementation of more favourable provisions in collective agreements or other agreements entered into between the employer and the employee.

(4) These regulations shall apply to all employees who are pregnant, have recently given birth or who are breastfeeding.

2. (1) In these regulations -

"the Act" means the Employment and Industrial Relations Act;

"breastfeeding employee" means an employee who is breastfeeding during a period of up to twenty-six weeks after her date of confinement and who has informed her employer of her condition by means of a certificate issued by a registered medical practitioner or midwife;

Interpretation.
Amended by:
L.N. 130 of 2011;
L.N. 258 of 2012.
Cap. 452.

"date of confinement" means the date of the delivery of the child;

"employee who has recently given birth" means an employee who has formally informed her employer of her condition by means of a certificate issued by a registered medical practitioner or midwife, and whose date of confinement was:

- (a) not more than fourteen weeks before in the case of a stillborn child, and
- (b) not more than twenty-six weeks before in the case of a live birth;

"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;

S.L. 424.18 "risk assessment" means the assessment carried out by the employer in terms of the General Provisions for Health and Safety at Work Places Regulations, or other relevant legislation in terms of
Cap. 424. the Occupational Health and Safety Authority Act;

"special maternity leave" means leave of absence from work granted by the employer to an employee who is pregnant, breastfeeding or has recently given birth, when, despite the employer taking the steps referred to in regulation 3, there exists or would still exist, a risk that could jeopardise the health or safety of the employee; such leave is to be granted for as long as the risk exists and on terms referred to in these regulations;

"working environment" means the interaction between the nature of the work, and the physical situation and general environment in which the worker carries out her work.

(2) Subject to the provisions of subregulation (1), terms and expressions used in these regulations shall, unless the context otherwise requires, have the meaning assigned to them in the Act.

Employment rights
and special
maternity leave.
Amended by:
L.N. 3 of 2004;
L.N. 130 of 2011;
L.N. 258 of 2012.

3. (1) In this regulation, employee includes "pregnant employee", "employee who has recently given birth" and "breastfeeding employee".

(2) The employee's employment shall be ensured and her wages shall not be less favourable than those stipulated in her contract of employment when an employer takes measures to protect the health and safety of an employee, after a risk assessment has revealed a risk to the safety or health or an effect on the pregnancy or breastfeeding of the employee.

(3) The measures referred to in the preceding subregulation include:

- (a) the temporary adjustment of the working environment and, or the hours of work of the employee concerned;
- (b) the assignment of the employee to suitable alternative work which is appropriate for her to do in the circumstances, in the event that the adjustment of her working conditions and, or hours of work is not technically and, or objectively feasible, or cannot reasonably be required on duly substantiated grounds:

Provided that an employee who, without justification, refuses to perform suitable alternative work provided by her employer which is considered acceptable in the circumstances by the Occupational Health and Safety Authority, shall not be entitled to any remuneration referred to in subregulation (5) during her special maternity leave:

Provided further that when the reason for the measures taken in terms of subregulation (3) no longer remain valid, the employer shall endeavour to reassign the employee to the same job or when this is no longer possible for a valid reason, to equivalent or similar work which is consistent with her original contract of employment.

(4) If the employer acts in accordance with the General Provisions for Health and Safety at Workplaces Regulations but is still unable to comply with the provisions in subregulation (3), the employee concerned shall be given special maternity leave by the employer for the whole of the period necessary to protect her safety or health, without prejudice to her other entitlement by virtue of regulation 6 and regulation 7. S.L. 424.18

(5) During the special maternity leave referred to in subregulation (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.

(6) If an employee to whom leave has been given under subregulation (4) as being an employee who is breastfeeding ceases breastfeeding, she shall, at the earliest practical time, notify her employer in writing that she has so ceased.

(7) Without prejudice to subregulation (6), if, during a period of special maternity leave given to an employee, the employee becomes aware that her condition is no longer such that she is vulnerable to the risk by virtue of which she was given the special maternity leave, she shall at the earliest practical time notify her employer in writing that she is no longer at risk.

(8) Where an employer receives notification from an employee under subregulation (6) or (7) and has no reason to believe that, if the employee returned to work, she would be vulnerable to risk as an employee to whom these regulations apply:

- (a) the employer shall take all reasonable measures to enable the employee to return to work in the job which she held immediately before the start of her leave and shall then notify her in writing that she can resume work in that job; and
- (b) the special maternity leave given to the employee shall end seven days after the notification under paragraph (a) is received by her or, if it is earlier, on the day she returns to work.

(9) If, during a period of special maternity leave, her employer -

- (a) either takes whatever measures which are necessary in terms of the General Provisions for Health and Safety at Workplaces Regulations to ensure that she will no longer be exposed to any risk by virtue of which she was given the special maternity leave or becomes able to move the employee referred to in subregulation (2), and
- (b) notifies the employee in writing that she can return to work without exposure to that risk or, as the case may S.L. 424.18

be, that other work is available to her which is suitable for her as mentioned in subregulation (3)(b),

the special maternity leave shall end seven days after the notification under paragraph (b) is received by her or, if it is earlier, on the day she returns to work or, as the case may be, takes up the other work.

Prohibition of exposure to certain agents or working conditions.
Amended by:
L.N. 258 of 2012.
S.L. 424.18

4. The provisions of regulation 3 shall apply *mutatis mutandis*, when an employer takes measures to protect the health and safety of an employee who becomes pregnant or starts breastfeeding, in terms of the General Provisions for Health and Safety at Workplaces Regulations, to prevent the risk of exposure which could jeopardise the health or safety of such an employee, to agents, processes or working conditions to which exposure is prohibited in terms of specific provisions made under the Occupational Health and Safety Authority Act:

Cap. 424.

Provided that the employee has duly informed her employer that she is pregnant or breastfeeding.

Night work.
Amended by:
L.N. 258 of 2012.

5. (1) The employee's employment rights shall be ensured and her wages shall not be less favourable than those stipulated in her contract of employment when an employer, who has received notification by means of a medical certificate that an employee should not perform night work during her pregnancy and during breastfeeding for reasons relating to her health and safety, transfers her to daytime work to comply with his obligations as an employer in terms of the Occupational Health and Safety Authority Act, or of subsidiary legislation issued thereunder.

Cap. 424.

S.L. 424.18

(2) If the employer acts in accordance with the General Provisions for Health and Safety at Workplaces Regulations but is still unable to comply with the requirement to transfer the employee to daytime work as referred to in subregulation (1) as this is not technically and, or objectively feasible or cannot be required on duly substantiated grounds, the employee shall be given special maternity leave as referred to in regulation 3.

Entitlement to maternity leave.
Amended by:
L.N. 503 of 2011.

6. (1) A pregnant employee may apply for maternity leave for an uninterrupted period of fourteen weeks if she notifies her employer in accordance with regulation 8 and this uninterrupted period shall increase to sixteen weeks as from 1st January 2012 and to eighteen weeks as from 1st January 2013 onwards:

Provided that employees who shall be on maternity leave on 1st January 2012 shall be automatically entitled to enjoy maternity leave for an uninterrupted period of sixteen weeks, even where such maternity leave commenced before 1st January 2012:

Provided further that employees who shall be on maternity leave on 1st January 2013 shall be automatically entitled to enjoy maternity leave for an uninterrupted period of eighteen weeks, even where such maternity leave commenced before 1st January 2013.

(2) Maternity leave shall be availed of as follows:

(a) six weeks of the maternity leave entitlement to be taken compulsorily immediately after the date of

confinement;

- (b) four weeks of maternity leave to be availed of immediately before the expected date of confinement, unless agreed otherwise between the employer and the employee;
- (c) the remaining balance of entitlement to be availed of, in whole or in part, either immediately before or immediately after the above periods, as the employee may request:

Provided that if she is unable to avail herself of the maternity leave entitlement before the date of confinement, such remaining balance of entitlement may be availed of after confinement.

7. An employee on maternity leave shall be entitled to the first fourteen weeks of maternity leave with full wages but if the employee chooses to avail herself of any additional maternity leave beyond the fourteen weeks in terms of regulation 6(1), the employer shall not be obliged to pay any wages for those weeks of maternity leave which go beyond the aforementioned fourteen weeks, without prejudice to any relevant benefit in respect of any period of maternity leave which goes beyond fourteen weeks in terms of the Social Security Act to which the employee may be entitled if she chooses to avail herself of maternity leave beyond the paid fourteen weeks.

Benefits.
Amended by:
L.N. 431 of 2007.
Substituted by:
L.N. 503 of 2011.

Cap. 318.

8. (1) A pregnant employee who intends to avail herself of her maternity leave entitlement, shall notify the employer in writing of the date when she intends to avail herself of such entitlement.

Notification to employer.

(2) The notification referred to in the previous subregulation shall be given to the employer at least four weeks before the maternity leave begins, in so far as is reasonably practicable.

9. (1) A pregnant employee 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 her hours of work.

Ante-natal examinations.

(2) The employer may request documentation to show the appointment times or attesting to actual attendance for such examinations.

9A. Notwithstanding anything stated to the contrary in any other law, regulation, order, collective agreement or in any contract of service, employees shall not be obliged to work overtime:

Overtime.
Added by:
L.N. 503 of 2011.

- (a) during pregnancy;
- (b) for a period of twelve months from either the birth of his or her child or from the effective date of the adoption of a child:

Provided that the right granted in this regulation shall be a non transferable right.

Taking of leave during fixed-term contracts.

10. An employee on a fixed-term contract shall, for the duration of that contract have the same rights conferred by these regulations, but shall not be liable to pay the employer a sum equivalent to the wages she received during maternity leave if her contract of employment is not extended at the employer's discretion for up to a period of time which is sufficient for her to fulfil the obligations pursuant to article 36(20) of the Act.

Rights during maternity and special maternity leave.

11. (1) When an employee is on maternity leave or special maternity leave, the employee shall be deemed to have been in the employment of the employer and during any such absence she shall be entitled to all rights and benefits which may accrue to other employees of the same class or category of employment at the same place of work, including the right to apply for promotion opportunities at her place of work, and on return to work, she shall be entitled to return to the same job or when this is no longer possible for a valid reason, to equivalent or similar work which is consistent with her original contract of employment.

(2) During the leave referred to in the previous subregulation the employee shall have no right to any bonus or allowance related to performance or production.

Dismissal.
Amended by:
L.N. 130 of 2011.

12. (1) Subject to subregulation (2), it shall not be lawful for the employer to dismiss a pregnant employee, an employee who has recently given birth or a breastfeeding employee, from the date in which such employee informs her employer, by means of a certificate issued by a registered medical practitioner or midwife, of her pregnancy to the end of her maternity leave, or during any period of special maternity leave, because of her condition or because she avails herself or seeks to avail herself of any rights in accordance with these regulations.

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

(3) In cases where there is good and sufficient cause to dismiss the employee, the employer shall:

- (a) cite duly substantiated grounds for her dismissal in writing in her notice of termination;
- (b) send a copy of such notice to the Director.

Dismissal during probation.
Added by:
L.N. 130 of 2011.

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 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.

13. (1) An employee who is dismissed shall be regarded for the purposes of these regulations as having been unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee -

- (a) refused (or proposed to refuse) to comply with a requirement which the employer imposed (or proposed to impose) in contravention of these regulations,
- (b) refused (or proposed to refuse) to forgo a right conferred on her by these regulations.

(2) In cases referred to in subregulation (1), an employee may present a complaint to the Industrial Tribunal set up in terms of Part III of Title II of the Act, that her employer has refused to permit her to exercise any right she has under these regulations.

Offences.
Amended by:
L.N. 427 of 2007.

14. Any person contravening the provisions of these regulations shall be guilty of an offence and shall be liable, on conviction, to a fine (*multa*) of not less than four hundred and sixty-five euro and eighty-seven cents (465.87).
