L.N. 92 of 2000

OCCUPATIONAL HEALTH AND SAFETY (PROMOTION) ACT, 1994 (ACT NO. VII OF 1994)

Protection of Maternity at Work Places Regulations, 2000.

IN exercise of the powers conferred by articles 6 and 16 of the Occupational Health and Safety (Promotion) Act, 1994, the Deputy Prime Minister and Minister for Social Policy, in consultation with the Commission for the Promotion of Occupational Health and Safety, has made the following regulations:-

Citation and commencement.

1. (1) The title of these regulations is Protection of Maternity at Work Places Regulations, 2000.

(2) These regulations shall come into force on the 1st January, 2001.

Interpretation.

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

"breastfeeding worker" means a worker who is breastfeeding a child, and who informs her employer of her condition by means of a certificate issued by a medical practitioner or midwife;

"child" includes an unborn infant, and any child under three years of age;

"conditions of employment" has the same meaning assigned to it under the Conditions of Employment (Regulation) Act or any other law substituting it;

Cap. 135.

"Director" means the Director responsible for Industrial and Employment Relations;

"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 who informs her employer of her condition by means of a certificate issued by a medical practitioner or midwife.

(2) In these regulations, words and expressions shall have the same meaning as defined in article 2 of the Occupational Health and Safety (Promotion) Act, 1994, hereinafter in these regulations called "the Act", and the terms "breastfeeding worker", "female", "mother", and "pregnant worker" in these regulations shall be interpreted in the same manner as the term "worker" in the Act.

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.

Employer's responsibilities.

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 paragraph (1) and its provisions, a non-exhaustive list of agents for which an assessment must be carried out, is shown in the First Schedule to these regulations.

(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 to these regulations, or when so directed by the Director in the sole interests of health and safety.

(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 to these regulations, or when so directed by the Director in the sole interests of health and safety.

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.

6. (1) 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.

(2) If the employer is unable to comply with the provisions of paragraph (1), the employer shall grant the worker an extension of her maternity leave for the whole of the period necessary to protect her safety or health, or that of her pregnancy, or of her child.

(3) An employer shall not terminate the employment of a female on the grounds that the employer is unable to comply with the provisions of paragraph (1).

(4) The provisions of this regulation shall apply *mutatis mutandis* to the case where a worker pursuing an activity which is forbidden in terms of regulations 4(3) and 4(4), becomes pregnant or starts breastfeeding, as the case may be, and informs her employer thereof.

(5) A worker who without due reason refuses to perform the alternative work provided by her employer in terms of paragraph (1) shall not be entitled to an extension to her maternity leave.

7. (1) 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. Night work.

(2) An employer shall transfer a female referred to in paragraph (1) to another daytime 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:

Provided that if the employer is unable to comply with the provisions of this paragraph, the employer shall grant the worker an extension of her maternity leave for the whole of the period necessary to protect her safety or health, or that of her pregnancy or of her child.

(3) An employer shall under no circumstance require a female to perform night work during a period commencing on the eighth week immediately preceding the expected date of delivery, and terminating not earlier than the end of the twenty-first week after such commencement.

(4) An employer shall not terminate the employment of a female on the grounds that the employer is unable to comply with the provisions of this regulation.

(5) A worker who without due reason refuses to perform the alternative work provided by her employer in terms of paragraph (2) shall not be entitled to an extension of her maternity leave.

8. (1) A pregnant worker shall be entitled to one week's special leave which shall be utilised immediately preceding or immediately following the maternity leave to which she is otherwise entitled by virtue of article 18 of the Conditions of Employment (Regulation) Act: Special leave. Cap. 135.

Provided that the conditions applicable for the utilisation by a female of such special leave shall be the same as those applicable to maternity leave as stipulated in the Conditions of Employment (Regulation) Act.

(2) For the purposes of this regulation, the financial benefits to which a pregnant worker is entitled by virtue of this regulation in combination with the benefits arising out of the provisions of article 18 of the Conditions of Employment (Regulation) Act, shall be deemed sufficient if, in their totality, they are not less than those accruing solely by virtue of article 18 of the aforementioned Act for

the thirteen week period.

(3) This regulation shall immediately cease to have effect when the duration of the maternity leave established by virtue of the Conditions of Employment (Regulation) Act, or of any other Act which replaces it, becomes of fourteen weeks.

Compulsory maternity leave.

9. It shall be the duty of an employer to grant a female two weeks of compulsory maternity leave which shall be utilised immediately before or immediately after confinement, and such compulsory leave shall be deducted from the normal maternity and special leave entitlement of the female.

Ante-natal examinations.

10. 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.

Prohibition of dismissal.

11. It shall be unlawful for an employer to dismiss a worker during the period from the beginning of her pregnancy to the end of her maternity leave, or during her special leave.

Repeal of L.N. 72 of 1996.

12. The Work Place (Protection of Maternity) Regulations, 1996, are hereby repealed.

FIRST SCHEDULE

Regulation 4(2)

A non-exhaustive list of agents for which an assessment has to be carried out

1. Physical agents regarded as causing foetal lesions, and/or are likely to disrupt placental attachment, including:

   (i) shocks, vibrations or movement;

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

   (iii) noise;

   (iv) extremes of cold or heat;

   (v) movements and postures, travelling inside or outside the establishment, mental and physical fatigue;

   (vi) ionizing and non-ionizing radiation.

2. Biological agents.

   All biological agents endangering the health of pregnant workers and/or of a child, or which would require therapeutic measures which similarly endanger the health of a pregnant women and/or of a child.

3. Chemical agents.

   Work with all chemical agents.

SECOND SCHEDULE

SECTION A: Agents to which a pregnant worker cannot be exposed

Regulation 4(3)

1. (a) Physical agents.

Work in hyperbaric atmosphere, including pressurised enclosures and underwater diving.

(b) Biological agents.

Toxoplasma and Rubella virus, unless the workers are proved to be adequately protected against such agents by immunization.

(c) Chemical agents.

Lead and compounds of lead.

2. Any other physical, biological or chemical agent regarded by the Director, acting on the advice of the Commission for the Promotion of Occupational Health and Safety, 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: Agents, processes or work activities to which a breastfeeding worker cannot be exposed

Regulation 4(4)

1. Chemical agents.

Any chemical agent capable of being absorbed by the human organism which can also pass to a child through breastmilk, and which can have deleterious effect on the child.

2. Any other agent, process or work activity which can have a harmful effect on the ability of a mother to breastfeed.