



Statutory Document No. 97/07

THE EMPLOYMENT ACT 2006

THE PARENTAL LEAVE (DISABLED CHILD) REGULATIONS 2007

Approved by Tynwald

21st March 2007

Coming into operation

30th September 2007

In exercise of the powers conferred on the Department of Trade and Industry by sections 65, 84(1), 86, 87, 88 and 174 of the Employment Act 2006¹, and of all other enabling powers, the following Regulations are hereby made:—

Preliminary

1. Citation and commencement

These Regulations may be cited as the Parental Leave (Disabled Child) Regulations 2007 and, subject to section 175(1) of the Act, shall come into operation on the 30th September 2007.

2. Interpretation

(1) In these Regulations —

"the Act" means the Employment Act 2006;

"additional adoption leave" means leave under section 96 of the Act;

"additional maternity leave" means leave under section 81 of the Act;

"child" means a person under the age of 18;

"disability living allowance" means the disability living allowance provided for in Part III of the Social Security Contributions and Benefits Act 1992 (an Act of Parliament)², as it has effect in the Island³;

"job", in relation to an employee returning after or parental leave, means the nature of the work which he is employed to do in accordance with his contract and the capacity and place in which he is so employed;

"ordinary maternity leave" means leave under section 79 of the Act;

¹ 2006 c.21

² 1992 c.4

³ SD 505/94

Price £1.50

"parental leave" means leave under regulation 3(1);

"statutory leave" means leave provided for in Part VII of the Act.

(2) A reference in any provision of these Regulations to a period of continuous employment is to a period computed in accordance with Schedule 5 to the Act, as if that provision were a provision of the Act.

Entitlement to parental leave

3. Entitlement to parental leave

- (1) An employee who —
- (a) has been continuously employed for a period of not less than a year; and
 - (b) has, or expects to have, responsibility for a child who is entitled to a disability living allowance,

is entitled, in accordance with these Regulations, to be absent from work on parental leave for the purpose of caring for that child.

(2) An employee has responsibility for a child, for the purposes of paragraph (1)(b), if —

- (a) he has parental responsibility for the child; or
- (b) he has been registered as the child's father under section 12(1) or 13(1) of the Civil Registration Act 1984⁴.

4. Extent of entitlement

(1) An employee is entitled to 18 weeks' leave in respect of any individual child.

(2) Where the period for which an employee is normally required, under his contract of employment, to work in the course of a week does not vary, a week's leave for the employee is a period of absence from work which is equal in duration to the period for which he is normally required to work.

(3) Where the period for which an employee is normally required, under his contract of employment, to work in the course of a week varies from week to week or over a longer period, or where he is normally required under his contract to work in some weeks but not in others, a week's leave for the employee is a period of absence from work which is equal in duration to the period calculated by dividing the total of the periods for which he is normally required to work in a year by 52.

(4) Where an employee takes leave in periods shorter than the period which constitutes, for him, a week's leave under whichever of paragraphs (2) and (3) is applicable in his case, he completes a week's leave when the aggregate of the periods of leave he has taken equals the period constituting a week's leave for him under the applicable paragraph.

⁴ 1984 c.12

5. Conditions of entitlement

(1) Any entitlement to parental leave may not be exercised on or after the date of the child's 18th birthday.

(2) An employee may not exercise any entitlement to parental leave unless —

- (a) he has complied with any request made by his employer to produce for the employer's inspection evidence of his entitlement, of the kind described in paragraph (3);
- (b) he has given his employer notice in accordance with paragraph (4) of the period of leave he proposes to take, and
- (c) in a case where regulation 6 applies, his employer has not postponed the period of leave in accordance with that paragraph.

(3) The evidence to be produced for the purpose of paragraph (2)(a) is such evidence as may reasonably be required of —

- (a) the employee's responsibility for the child in respect of whom the employee proposes to take parental leave;
- (b) the child's date of birth and, in the case of a child who was placed with the employee for adoption, the date on which the placement began, and
- (c) the child's entitlement to a disability living allowance.

(4) The notice required for the purpose of paragraph (2)(b) is notice which —

- (a) specifies the dates on which the period of leave is to begin and end, and
- (b) is given to the employer at least 21 days before the date on which that period is to begin.

6. Postponement of leave

An employer may postpone a period of parental leave where —

- (a) the employee has given the employer notice in accordance with regulation 5(4);
- (b) the employer considers that the operation of his business would be unduly disrupted if the employee took leave during the period identified in his notice;
- (c) the employer agrees to permit the employee to take a period of leave —
 - (i) of the same duration as the period identified in the employee's notice,
 - (ii) beginning on a date determined by the employer after consulting the employee, which is no later than 6 months after the commencement of that period; and

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- (iii) ending before the date of the child's 18th birthday.
- (d) the employer gives the employee notice in writing of the postponement which —
 - (i) states the reason for it, and
 - (ii) specifies the dates on which the period of leave the employer agrees to permit the employee to take will begin and end, and
- (e) that notice is given to the employee not more than 7 days after the employee's notice was given to the employer.

7. Maximum annual leave allowance

(1) An employee may not take more than 4 weeks' leave in respect of any individual child during a particular year.

(2) For the purposes of paragraph (1), a year is the period of 12 months beginning —

- (a) except where sub-paragraph (b) applies, on the date on which the employee first became entitled to take parental leave in respect of the child in question, or
- (b) in a case where the employee's entitlement has been interrupted at the end of a period of continuous employment, on the date on which the employee most recently became entitled to take parental leave in respect of that child,

and each successive period of 12 months beginning on the anniversary of that date.

8. Contractual rights to parental leave

(1) This regulation applies where an employee is entitled to parental leave (in paragraph (2) referred to as a "statutory right"), and also to a right which corresponds to that right and which arises under the employee's contract of employment or otherwise.

(2) In a case where this regulation applies —

- (a) the employee may not exercise the statutory right and the corresponding right separately but may, in taking the leave for which the 2 rights provide, take advantage of whichever right is, in any particular respect, the more favourable, and
- (b) the provisions of the Act and of these Regulations relating to the statutory right apply, subject to any modifications necessary to give effect to any more favourable contractual terms, to the exercise of the composite right described in sub-paragraph (a) as they apply to the exercise of the statutory right.

Application of terms and conditions during parental leave

9. Application of terms and conditions during parental leave

An employee who takes parental 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 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;
- (b) is bound, during that period, by his implied obligation to his employer of good faith and 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
 - (iv) the employee's participation in any other business.

Return to work

10. Right to return after parental leave

(1) An employee who returns to work after a period of parental leave of 4 weeks or less, which was —

- (a) an isolated period of leave, or
- (b) the last of 2 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 4 weeks,

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

(2) An employee who returns to work after —

- (a) a period of parental leave of more than 4 weeks, whether or not preceded by another period of statutory leave, or
- (b) a period of parental leave of 4 weeks or less, not falling within the description in paragraph (1)(a) or (b),

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 paragraph (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 statutory leave, immediately before that period began;
- (b) if his return is from consecutive periods of statutory leave, immediately before the first such period.

11. Incidents of the right to return

(1) An employee's right to return under regulation 10(1) or (2) is a right to return —

- (a) with his seniority, pension rights and similar rights as they would have been if he had not been absent, and
- (b) on terms and conditions not less favourable than those which would have applied if he had not been absent.

(3) The provisions in paragraph (1)(a) 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 statutory 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.

Employment protection

12. Protection from detriment

(1) An employee is entitled under section 65 of the Act not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done for the reason that the employee took or sought to take parental leave.

(2) Paragraph (1) does not apply in a case where the detriment in question amounts to dismissal within the meaning of Part X of the Act.

13. Unfair dismissal

(1) An employee who is dismissed is entitled under section 114 of the Act to be regarded for the purposes of Part X of the Act as unfairly dismissed if the reason or principal reason for the dismissal is a reason connected with the fact that he took or sought to take parental leave.

(2) An employee who is dismissed shall also be regarded for the purposes of Part X of the Act as unfairly dismissed if —

- (a) the reason (or, if more than one, the principal reason) for the dismissal is that the employee was redundant;
- (b) it is shown that the circumstances constituting the redundancy applied equally to one or more employees in the same undertaking who held positions similar to that held by the employee and who have not been dismissed by the employer, and

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- (c) it is shown that the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was a reason of a kind specified in paragraph (1).
- (3) Paragraph (1) does not apply in relation to an employee if —
 - (a) it is not reasonably practicable for a reason other than redundancy for the employer (who may be the same employer or a successor of his) to permit him to return to a job which is both suitable for him and appropriate for him to do in the circumstances;
 - (b) an associated employer offers him a job of that kind, and
 - (c) he accepts or unreasonably refuses that offer.
- (4) Where on a complaint of unfair dismissal any question arises as to whether the operation of paragraph (1) is excluded by the provisions of paragraph (3), it is for the employer to show that those provisions were satisfied in relation to the complainant.

14. Calculation of a week's pay

Where —

- (a) under Schedule 6 to the Act, the amount of a week's pay of an employee falls to be calculated by reference to the average rate of remuneration, or the average amount of remuneration, payable to the employee in respect of a period of 12 weeks ending on a particular date (referred to as "the calculation date");
- (b) during a week in that period, the employee was absent from work on parental leave, and
- (c) remuneration is payable to the employee in respect of that week under his contract of employment, but the amount payable is less than the amount that would be payable if he were working,

that week shall be disregarded for the purpose of the calculation and account shall be taken of remuneration in earlier weeks so as to bring up to 12 the number of weeks of which account is taken.

MADE

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Dacretney MHH

Minister for Trade and Industry

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations, made under the Employment Act 2006, make provision for an employee's right to take unpaid leave for the purpose of caring for a child with a disability.

Regulations 3 to 7 confer the right to take periods of "parental leave", up to 4 weeks in any year and up to 18 weeks in total, on an employee with one year's qualifying service who has responsibility for a child entitled to a disability living allowance. Regulation 8 entitles an employee who has contractual rights to leave to claim whichever of those rights and the statutory rights is more advantageous. Regulation 9 provides that an employee is entitled during his absence on leave to the benefit of all of his terms and conditions of employment (apart from the right to remuneration, which is excluded by section 86(2)(b) of the Act), and is subject to all of the obligations under those terms and conditions except where inconsistent with the right to leave. Regulations 10 and 11 provide for an employee's right to return to work after taking leave.

Under regulations 12 and 13 an employee entitled to parental leave is protected against detriment or dismissal attributable to the fact that he took or sought to take such leave. Regulation 14 makes special provision for the calculation of a week's pay while an employee is on parental leave.