



Number 28 of 2004

MATERNITY PROTECTION (AMENDMENT) ACT 2004

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MATERNITY PROTECTION (AMENDMENT) ACT 2004

AN ACT TO AMEND AND EXTEND THE MATERNITY PROTECTION ACT 1994, TO AMEND THE REDUNDANCY PAYMENTS ACT 1967 AND THE UNFAIR DISMISSALS ACT 1977, TO REVOKE IN PART AND ENACT IN RESPECT OF CERTAIN PROCEEDINGS THE EUROPEAN COMMUNITIES (BURDEN OF PROOF IN GENDER DISCRIMINATION CASES) REGULATIONS 2001 WHICH GAVE EFFECT TO COUNCIL DIRECTIVE 97/80/EC OF 15 DECEMBER 1997¹ ON THE BURDEN OF PROOF IN CASES OF DISCRIMINATION BASED ON SEX AND TO PROVIDE FOR RELATED MATTERS. [19th July, 2004]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—(1) In this Act—

Interpretation.

“Minister” means the Minister for Justice, Equality and Law Reform;

“Principal Act” means the Maternity Protection Act 1994.

(2) A reference in this Act to any enactment shall be construed as a reference to that enactment as amended, adapted or extended by or under any other enactment including this Act.

2.—The Principal Act is amended by the substitution of the following section for section 8:

Entitlement to maternity leave.

“8.—(1) Subject to this Part, a pregnant employee shall be entitled to leave, to be known (and referred to in this Act) as ‘maternity leave’, from her employment for a period (in this Part referred to as ‘the minimum period of maternity leave’) of not less than—

(a) 18 consecutive weeks, or

(b) 18 weeks part of which is postponed in accordance with section 14B,

as may be appropriate.

¹OJ No. L14, 20.01.1998, p.6.

[No. 28.] *Maternity Protection (Amendment) Act 2004.* [2004.]

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(2) The Minister may by order, made with the consent of the Minister for Social and Family Affairs and the consent of the Minister for Finance, amend subsection (1) and section 13(2) so as to extend the period mentioned in each of those subsections.”.

Amendment of
section 10(1) of
Principal Act.

3.—Section 10(1) of the Principal Act is amended by the substitution of “not later than two weeks before the end of the expected week of confinement” for “not later than four weeks before the end of the expected week of confinement”.

Amendment of
section 13 of
Principal Act.

4.—Section 13 of the Principal Act is amended by the substitution of the following subsection for subsection (2):

“(2) Notwithstanding section 10(1), but subject to regulations under section 11, the minimum period of maternity leave for an employee referred to in subsection (1) shall be a period of not less than—

(a) 18 consecutive weeks, or

(b) 18 weeks part of which is postponed in accordance with section 14B,

as may be appropriate, commencing on whichever of the following is the earlier—

(i) the first day of maternity leave taken in accordance with section 10, or

(ii) the date of confinement.”.

Amendment of
section 14 of
Principal Act.

5.—Section 14 of the Principal Act is amended—

(a) by the substitution of the following subsection for subsection (1):

“(1) An employee who has taken maternity leave shall, if she so wishes, be entitled in accordance with this section to further leave from her employment, to be known (and referred to in this Act) as ‘additional maternity leave’, for a maximum period of—

(a) 8 consecutive weeks commencing immediately after the end of her maternity leave, or

(b) 8 weeks, all or part of which is postponed in accordance with section 14B, commencing either in accordance with that section or immediately after the end of her maternity leave,

as may be appropriate.”,

(b) in subsection (3), by the substitution of “Subject to section 14B, entitlement to additional maternity leave” for “Entitlement to additional maternity leave”, and

(c) by the substitution of the following subsection for subsection (6):

“(6) The Minister may by order amend subsection (1) so as to extend the period mentioned in that subsection.”.

[2004.] *Maternity Protection (Amendment)* [No. 28.]
Act 2004.

6.—The Principal Act is amended by the insertion of the following section after section 14:

Termination of
additional maternity
leave in event of
sickness of mother.

“Termination of
additional
maternity leave in
event of sickness
of mother.

14A.—(1) If, at any time—

(a) during the last 4 weeks of maternity leave whether or not part of such leave is postponed under section 14B and where, in accordance with section 14(4), an employee has, or is deemed under section 14B(3) to have, notified her employer, or caused her employer to be notified, of her intention to take additional maternity leave, or

(b) during the additional maternity leave whether or not such leave or part of it is postponed under section 14B,

an employee who is sick wishes to terminate the additional maternity leave, she may request in writing (or cause a written request to be submitted to) her employer to terminate the additional maternity leave.

(2) An employer who receives a request under subsection (1) may agree to terminate the additional maternity leave of the employee concerned and, if the employer does so, the additional maternity leave shall terminate on a date agreed by the employee and the employer that is not earlier than the date of the commencement of the employee’s sickness and not later than the date on which the additional maternity leave would have ended in accordance with the notification given by the employee to the employer under section 14(4) or 14B(8), as the case may be.

(3) An employer who receives a request under subsection (1) shall notify the employee concerned in writing of the employer’s decision in relation to the request as soon as reasonably practicable following the receipt of it.

(4) Where the additional maternity leave of an employee is terminated under this section—

(a) the absence from work of the employee due to sickness following such termination shall be treated in the same manner as any absence from work of the employee due to sickness, and

(b) the employee shall not be entitled to the additional maternity leave or the part of it not taken by her at the date of such termination.”.

[No. 28.] *Maternity Protection (Amendment)* [2004.]
Act 2004.

Postponement of
maternity leave or
additional maternity
leave in event of
hospitalisation of
child.

7.—The Principal Act is amended by the insertion of the following section after section 14A (inserted by *section 6* of this Act):

“Postponement of
maternity leave or
additional
maternity leave in
event of
hospitalisation of
child.

14B.—(1) Subject to subsection (2), an employee who is on maternity leave or is entitled to, or is on, additional maternity leave may, if the child in connection with whose birth she is on, or is entitled to, that leave (in this section referred to as ‘the child’) is hospitalised, request in writing (or cause a written request to be submitted to) her employer to postpone—

- (a) part of the maternity leave,
- (b) part of the maternity leave and the additional maternity leave, or
- (c) the additional maternity leave or part of it,

as may be appropriate, in accordance with this section.

(2) An employee may make a request under paragraph (a) or (b) of subsection (1) to postpone part of her maternity leave with effect from a date she selects only if the period of maternity leave taken by her on that date is not less than 14 weeks and not less than 4 of those weeks are after the end of the week of confinement.

(3) Notwithstanding the fact that an employee who is on maternity leave has not in accordance with section 14(4) notified her employer in writing (or caused her employer to be so notified) of her intention to take additional maternity leave, she shall be deemed, for the purposes of making a request under paragraph (b) or (c) of subsection (1), to have complied with section 14(4).

(4) An employer who receives a request under subsection (1) may agree to postpone the leave concerned and, if the employer does so—

- (a) the employee concerned shall return to work on a date agreed by her and the employer that is not later than the date on which the leave concerned is due to end in accordance with the notification given, or deemed under subsection (3) to have been given, by the employee to the employer under section 9 or 14, as the case may be,
- (b) the leave concerned shall be postponed with effect from the date agreed under paragraph (a), and

[2004.] *Maternity Protection (Amendment)* [No. 28.]
Act 2004.

(c) the employee concerned shall be S.7
entitled to—

- (i) the part of the maternity leave,
- (ii) the part of the maternity leave
and the additional maternity
leave, or
- (iii) the additional maternity leave
or the part of it,

as the case may be, not taken by
her by reason of the postponement
(in this section referred to as
'resumed leave') in accordance
with regulations made under this
section by the Minister to be taken
in one continuous period commen-
cing not later than 7 days after the
discharge of the child from
hospital.

(5) An employer who receives a request
under subsection (1) shall notify the employee
concerned in writing of the employer's
decision in relation to the request as soon as
reasonably practicable following the receipt of
it.

(6) Where, following the postponement of
leave under this section, an employee returns
to work in accordance with subsection (4)(a)
and during the period of the postponement she
is absent from work due to sickness, the
employee shall be deemed to commence
resumed leave on the first day of such absence
unless she notifies her employer in writing (or
causes her employer to be so notified) as soon
as reasonably practicable that she does not
wish to commence such leave and, following
such notification—

- (a) the absence from work of the
employee due to sickness shall be
treated in the same manner as any
absence from work of the
employee due to sickness, and
- (b) the employee shall not be entitled to
the resumed leave.

(7) Without prejudice to the generality of
subsection (4), regulations under this section
may make provision in relation to either or
both of the following matters:

- (a) the maximum period of post-
ponement of leave under this
section, and
- (b) the evidence to be furnished by an
employee to her employer of the

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hospitalisation, and the discharge
from hospital, of the child.

(8) Entitlement to resumed leave shall, subject to subsection (10), be subject to an employee having notified her employer in writing (or caused her employer to be so notified) as soon as reasonably practicable but not later than the day on which the leave begins of her intention to commence such leave.

(9) A notification under subsection (8) may be revoked by a further notification in writing given by or on behalf of the employee concerned to her employer within the period specified in that subsection for the giving of the notification concerned.

(10) An employer may, at the discretion of the employer, waive the right to receive a notification in accordance with subsection (8).

(11) Where an employee's leave is postponed under this section—

- (a) subject to paragraphs (b) and (c), the employee shall comply with subsection (1A), in lieu of subsection (1), of section 28,
- (b) the employee shall not, in relation to returning to work under subsection (4)(a), be required to comply with section 28, and
- (c) the employee shall, if deemed under subsection (6) to be on resumed leave, comply with subsection (1B), in lieu of subsection (1) or (1A), of section 28.”.

Entitlement to time
off from work to
attend ante-natal
classes.

8.—The Principal Act is amended by the insertion of the following section after section 15:

“Entitlement to
time off from
work to attend
ante-natal classes.

15A.—(1) Subject to subsection (3), a pregnant employee shall be entitled to time off from her work, without loss of pay, in accordance with regulations made under this section by the Minister, for the purpose of attending one set of ante-natal classes (other than the last 3 classes in such a set) and those classes may be attended by her during one or more pregnancies.

(2) Subject to subsection (3), an expectant father of a child (if he is employed under a contract of employment) shall be entitled once only to time off from his work, without loss of pay, in accordance with regulations made under this section by the Minister, for the purpose of attending the last 2 ante-natal classes

[2004.] *Maternity Protection (Amendment) Act 2004.* [No. 28.]

in a set of such classes attended by the expectant mother of their child before the birth of the child. S.8

(3) Subsection (1) or (2) shall not apply—

(a) to a member of the Defence Forces who is—

(i) on active service within the meaning of section 5 of the Defence Act 1954 or deemed to be on active service within the meaning of section 4(1) of the Defence (Amendment) (No. 2) Act 1960,

(ii) engaged in operational duties at sea,

(iii) engaged in operations in aid of the civil power,

(iv) engaged in training that is directly associated with any of the activities referred to in subparagraphs (i), (ii) and (iii) of this paragraph, or

(v) engaged in any other duty outside the State,

(b) if the Chief of Staff of the Defence Forces in exceptional circumstances so directs, to a member of the Defence Forces who is required to perform a duty which is, in the opinion of the Chief of Staff of the Defence Forces, of a special or urgent nature for so long as the member is performing the duty,

(c) to a member of the Garda Síochána who is on the direction, or with the consent, of the Commissioner of the Garda Síochána serving outside the State performing duties of a police character or advising others on, or monitoring them in, the performance of such duties or any related duties for so long as the member is so serving, and

(d) if the Commissioner of the Garda Síochána in exceptional circumstances so directs, to a member of the Garda Síochána who is required to perform a duty which is, in the opinion of the Commissioner of the Garda Síochána, of a special or urgent nature for so long as the member is performing the duty.

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(4) Without prejudice to the generality of subsections (1) and (2), regulations under this section may make provision in relation to all or any of the following matters:

- (a) the amount of time off to be allowed for attendance at ante-natal classes;
- (b) the terms or conditions relating to such time off;
- (c) the notice to be given in advance by a pregnant employee or an expectant father entitled to time off under this section to her or his employer;
- (d) the evidence to be furnished by a pregnant employee or an expectant father so entitled to her or his employer of ante-natal classes that she or he is to attend.”.

Entitlement to time off from work or reduction of working hours for breastfeeding.

9.—The Principal Act is amended by the insertion of the following section after section 15A (inserted by *section 8* of this Act):

“Entitlement to time off from work or reduction of working hours for breastfeeding.

15B.—(1) An employee who is breastfeeding shall be entitled, without loss of pay, at the option of her employer to either—

- (a) time off from her work for the purpose of breastfeeding in the workplace in accordance with regulations made under this section by the Minister where facilities for breastfeeding are provided in the workplace by her employer, or
- (b) a reduction of her working hours in accordance with regulations made under this section by the Minister for the purpose of breastfeeding otherwise than in the workplace.

(2) An employer shall not be required to provide facilities for breastfeeding in the workplace if the provision of such facilities would give rise to a cost, other than a nominal cost, to the employer.

(3) Without prejudice to the generality of subsection (1), regulations under this section may make provision in relation to all or any of the following matters:

- (a) the amount of time off and the number and frequency of breastfeeding breaks to which an employee is entitled under paragraph (a) of that subsection;

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Act 2004.

- (b) the reduction of working hours to S.9 which an employee is entitled under paragraph (b) of that subsection;
- (c) the terms or conditions relating to time off under paragraph (a), or to a reduction of working hours under paragraph (b), of that subsection;
- (d) the notice to be given in advance by an employee to her employer in relation to the proposed exercise by her of her entitlement under this section;
- (e) the evidence to be furnished by such an employee to her employer in relation to the date of confinement.

(4) If an employee who has exercised her entitlement under subsection (1) ceases to breastfeed, she shall, at the earliest practical time, notify her employer in writing that she has so ceased.

(5) In this section ‘breastfeeding’ means breastfeeding a child or expressing breast milk and feeding it to a child immediately or storing it for the purpose of feeding it to the child at a later time.”.

10.—Section 16 of the Principal Act is amended—

Amendment of
section 16 of
Principal Act.

- (a) by the substitution of the following subsection for subsection (1):

“(1) If a woman who has been delivered of a living child (in this section referred to as ‘the mother’) dies at any time before the expiry of the twenty-fourth week following the week of her confinement, the father of the child (if he is employed under a contract of employment) shall be entitled in accordance with this section to leave from his employment for a period ending as follows—

- (a) if the mother dies before the expiry of the sixteenth week following the week of her confinement, the period ends, subject to section 16B, at the end of that sixteenth week, and
- (b) if the mother dies at any time after the expiry of that sixteenth week, the period ends, subject to sections 16A and 16B, at the end of the twenty-fourth week following the week of her confinement.”,

- (b) by the substitution of the following subsections for subsections (3) and (4):

“(3) Subject to section 16B, the period of leave under subsection (1) shall commence within 7 days of the

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mother's death; and in this section and sections 16A and 16B—

(a) a period of leave which ends as mentioned in paragraph (a) of subsection (1) is referred to as 'subsection (1)(a) leave', and

(b) a period of leave which ends as mentioned in paragraph (b) of that subsection is referred to as 'subsection (1)(b) leave'.

(4) A father who has taken subsection (1)(a) leave shall, if he so wishes, be entitled to further leave from his employment for a maximum period of—

(a) 8 consecutive weeks commencing immediately after the end of his subsection (1)(a) leave, or

(b) 8 weeks, all or part of which is postponed in accordance with section 16B, commencing either in accordance with that section or immediately after the end of his subsection (1)(a) leave,

as may be appropriate.”,

and

(c) in subsection (5), by the substitution of “Subject to section 16B, entitlement to further leave under subsection (4)” for “Entitlement to further leave under subsection (4)”.

Termination of leave in event of sickness of father.

11.—The Principal Act is amended by the insertion of the following section after section 16:

“Termination of leave in event of sickness of father.

16A.—(1) If, at any time—

(a) during the last 4 weeks of subsection (1)(a) leave, whether or not such leave or part of it is postponed under section 16B and where, in accordance with section 16(6), a father has, or is deemed under section 16B(2) to have, notified his employer, or caused his employer to be notified, of his intention to take further leave under section 16(4), or

(b) during subsection (1)(b) leave or a period of further leave under section 16(4), whether or not such leave or a part of it is postponed under section 16B,

a father who is sick wishes to terminate his subsection (1)(b) leave or a period of further leave under section 16(4), as the case may be, he may request in writing (or cause a written request to be submitted to) his employer to terminate that leave.

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Act 2004.

(2) An employer who receives a request S.11 under subsection (1) may agree to terminate the leave concerned of the father concerned and, if the employer does so, the leave concerned shall terminate on a date agreed by the father and the employer that is not earlier than the date of the commencement of the father's sickness and not later than the date on which the leave concerned would have ended in accordance with the notification given by the father to the employer under subsection (2)(a) or (6) of section 16 or section 16B(7), as the case may be.

(3) An employer who receives a request under subsection (1) shall notify the father concerned in writing of the employer's decision in relation to the request as soon as reasonably practicable following the receipt of it.

(4) Where the leave of a father is terminated under this section—

(a) the absence from work of the father due to sickness following such termination shall be treated in the same manner as any absence from work of the father due to sickness, and

(b) the father shall not be entitled to the subsection (1)(b) leave or further leave under section 16(4), as the case may be, or the part of such leave not taken by him at the date of such termination.”.

12.—The Principal Act is amended by the insertion of the following section after section 16A (inserted by *section 11* of this Act):

“Postponement of leave under section 16 in event of hospitalisation of child.

16B.—(1) A father who is entitled to, or is on, leave under section 16 may, if the child in connection with whose birth he is entitled to, or is on, that leave (in this section referred to as ‘the child’) is hospitalised, request in writing (or cause a written request to be submitted to) his employer to postpone—

Postponement of leave under section 16 of Principal Act in event of hospitalisation of child.

(a) his subsection (1)(a) leave or part of such leave,

(b) his subsection (1)(a) leave or part of such leave and a period of further leave under section 16(4),

(c) his subsection (1)(b) leave or a period of further leave under section 16(4), as the case may be, or part of such leave,

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as may be appropriate, in accordance with this section.

(2) Notwithstanding the fact that a father who is on subsection (1)(a) leave has not in accordance with section 16(6) notified his employer in writing (or caused his employer to be so notified) of his intention to take further leave under section 16(4), he shall be deemed, for the purposes of making a request under paragraph (b) or (c) of subsection (1), to have complied with section 16(6).

(3) An employer who receives a request under subsection (1) may agree to postpone the leave concerned and, if the employer does so—

(a) the father concerned shall continue to work, or return to work on a date agreed by him and the employer that is not later than the date on which the leave concerned is due to end in accordance with the notification given, or deemed under subsection (2) to have been given, by the father to the employer under section 16, as may be appropriate,

(b) the leave concerned shall be postponed or postponed with effect from the date agreed under paragraph (a), as may be appropriate, and

(c) the father concerned shall be entitled to—

(i) the subsection (1)(a) leave or the part of such leave,

(ii) the subsection (1)(a) leave or the part of such leave and the period of further leave under section 16(4),

(iii) the subsection (1)(b) leave or the period of further leave under section 16(4), as the case may be, or the part of such leave,

as the case may be, not taken by him by reason of the postponement (in this section referred to as ‘resumed leave’) in accordance with regulations made under this section by the Minister to be taken in one continuous period commencing not later than 7 days after the discharge of the child from hospital.

[2004.] *Maternity Protection (Amendment)* [No. 28.]
Act 2004.

(4) An employer who receives a request S.12 under subsection (1) shall notify the father concerned in writing of the employer's decision in relation to the request as soon as reasonably practicable following the receipt of it.

(5) Where, following the postponement of leave under this section, a father returns to work in accordance with subsection (3)(a) and during the period of the postponement he is absent from work due to sickness, the father shall be deemed to commence resumed leave on the first day of such absence unless he notifies his employer in writing (or causes his employer to be so notified) as soon as reasonably practicable that he does not wish to commence such leave and, following such notification—

(a) the absence from work of the father due to sickness shall be treated in the same manner as any absence from work of the father due to sickness, and

(b) the father shall not be entitled to the resumed leave.

(6) Without prejudice to the generality of subsection (3), regulations under this section may make provision in relation to either or both of the following matters:

(a) the maximum period of postponement of leave under this section, and

(b) the evidence to be furnished by a father to his employer of the hospitalisation, and the discharge from hospital, of the child.

(7) Entitlement to resumed leave shall, subject to subsection (9), be subject to a father having notified his employer in writing (or causing his employer to be so notified) as soon as reasonably practicable but not later than the day on which the leave begins of his intention to commence such leave.

(8) A notification under subsection (7) may be revoked by a further notification in writing given by or on behalf of the father concerned to his employer within the period specified in that subsection for the giving of the notification concerned.

(9) An employer may, at the discretion of the employer, waive the right to receive a notification in accordance with subsection (7).

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(10) Where a father's leave is postponed under this section—

- (a) subject to paragraphs (b) and (c), the father shall comply with subsection (1A), in lieu of subsection (1), of section 28,
- (b) the father shall not, in relation to returning to work under subsection (3)(a), be required to comply with section 28, and
- (c) the father shall, if deemed under subsection (5) to be on resumed leave, comply with subsection (1B), in lieu of subsection (1) or (1A), of section 28.”.

Amendment of section 21 of Principal Act.

13.—Section 21 of the Principal Act is amended by the addition of the following subsection:

“(3) Where—

- (a) maternity leave,
- (b) additional maternity leave, or
- (c) leave to which a father is entitled under subsection (1) or (4) of section 16,

or part of such leave is postponed in accordance with section 14B or 16B, as may be appropriate, the time (if any) on leave before such postponement and the time on leave after such postponement shall be treated for the purposes of this Part as separate periods of protective leave.”.

Amendment of section 22 of Principal Act.

14.—Section 22 of the Principal Act is amended—

- (a) in subsection (1), by the substitution of “be treated as if she or he had not been so absent” for “be treated as if she had not been so absent”, and
- (b) by the substitution of the following subsections for subsection (2):

“(2) In respect of a period of absence from work by an employee while on—

- (a) additional maternity leave,
- (b) subsection (1)(b) leave within the meaning of section 16, or
- (c) further leave under section 16(4),

the employee shall be deemed to have been in the employment of the employer and accordingly, while so absent the employee shall, subject to section 24, be treated as if she or he had not been so absent; and such absence shall not affect any right or obligation (other

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than the employee's right to remuneration or superannuation benefits or any obligation to pay contributions in or in respect of the employment during such absence), whether conferred or imposed by statute, contract or otherwise, and related to the employee's employment. S.14

(2A) In respect of a period of absence from work by an employee while—

(a) attending ante-natal classes in accordance with section 15A, or

(b) breastfeeding in accordance with section 15B,

the employee shall be deemed to have been in the employment of the employer and accordingly, while so absent the employee shall, subject to section 24, be treated as if she or he had not been so absent; and such absence shall not affect any right, whether conferred by statute, contract or otherwise, and related to the employee's employment.”.

15.—Section 23 of the Principal Act is amended by—

Amendment of
section 23 of
Principal Act.

(a) the insertion of the following paragraphs after paragraph (b):

“(bb) any purported termination of an employee's employment during a period of absence from work to attend ante-natal classes in accordance with section 15A;

(bbb) any purported termination of an employee's employment during a period of absence from work for breastfeeding in accordance with section 15B;”,

(b) the insertion of the following paragraphs after paragraph (d):

“(dd) any notice of termination of an employee's employment given during a period of absence from work to attend ante-natal classes in accordance with section 15A and expiring subsequent to such a period;

(ddd) any notice of termination of an employee's employment given during a period of absence from work for breastfeeding in accordance with section 15B and expiring subsequent to such a period;”,

and

(c) the substitution of the following paragraph for paragraph (e):

“(e) any purported suspension from an employee's employment imposed while the employee is absent from work on protective leave, during a period of natal care absence or during a period of absence

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from work to attend ante-natal classes in accordance with section 15A or for breastfeeding in accordance with section 15B.”.

Amendment of
section 24 of
Principal Act.

16.—Section 24 of the Principal Act is amended by—

- (a) the substitution of “section 9, 12, 14, 14B, 15, 15A, 15B, 16 or 16B” for “section 9, 12, 14, 15 or 16”, and
- (b) the substitution of “and due to expire during the employee’s absence from work on protective leave, during a period of natal care absence or during a period of absence from work to attend ante-natal classes in accordance with section 15A or for breastfeeding in accordance with section 15B shall be extended by the period of such absence” for “and due to expire during the employee’s absence from work on protective leave or (as the case may require) during a period of natal care absence shall be extended by the period of absence from work on protective leave or, as the case may be, the period of natal care absence”.

Amendment of
section 25(1) of
Principal Act.

17.—Section 25(1) of the Principal Act is amended by—

- (a) the substitution of “the commencement of her or his employment with the employer” for “the commencement of her employment with the employer”, and
- (b) the substitution of “on her or his return to work after such absence” for “on her return to work after such absence”.

Amendment of
section 26 of
Principal Act.

18.—Section 26 of the Principal Act is amended—

- (a) in subsection (1)(a), by the substitution of “with the employer with whom she or he was working immediately before the start of that period or, where during the employee’s absence from work there was a change of ownership of the undertaking in which she or he was employed immediately before her or his absence” for “with the employer with whom she was working immediately before the start of that period or, where during the employee’s absence from work there was a change of ownership of the undertaking in which she was employed immediately before her absence”,
- (b) in subsection (1)(c), by the substitution of “and (in either case) under terms or conditions—
- (i) not less favourable than those that would have been applicable to the employee, and
 - (ii) that incorporate any improvement to the terms or conditions of employment to which the employee would have been entitled.

if she or he had not been so absent from work” for “and (in either case) under terms or conditions not less favourable than those that would have been applicable to the employee if she had not been so absent from work”,

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Act 2004.

- (c) in subsection (2), by the substitution of “her or his absence on protective leave” for “her absence on protective leave” and the substitution of “her or his normal or usual job” for “her normal or usual job”, and
- (d) in subsection (3), by the substitution of “the work which she or he is employed to do in accordance with her or his contract of employment and the capacity and place in which she or he is so employed” for “the work which she is employed to do in accordance with her contract of employment and the capacity and place in which she is so employed”.

19.—Section 27(2) of the Principal Act is amended by the substitution of the following paragraph for paragraph (b):

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Amendment of
section 27(2) of
Principal Act.

“(b) the terms or conditions of the contract—

- (i) relating to the place where the work under it is required to be done, the capacity in which the employee concerned is to be employed and any other terms or conditions of employment are not less favourable to the employee than those of her or his contract of employment immediately before the start of the period of absence from work while on protective leave, and
- (ii) incorporate any improvement to the terms or conditions of employment to which the employee would have been entitled if she or he had not been so absent from work during that period.”.

20.—Section 28 of the Principal Act is amended—

Amendment of
section 28 of
Principal Act.

(a) in subsection (1), by—

- (i) the substitution of “Subject to sections 14B(11) and 16B(10), entitlement to return to work” for “Entitlement to return to work”,
- (ii) the substitution of “the date on which she or he expects to return to work” for “the date on which she expects to return to work” in both places where it occurs, and
- (iii) the substitution of “her or his intention to return to work” for “her intention to return to work”,

(b) by the insertion of the following subsections after subsection (1):

“(1A) Entitlement to return to work in accordance with section 26 or to be offered suitable alternative work under section 27 shall be subject to an employee who has been absent from work on resumed leave within the meaning of section 14B or 16B, as the case may be, having notified in writing (or caused to be so notified) the employer or, where the employee is aware of a change of ownership of the undertaking concerned, the successor, of her or his intention to return to work and of the date on which she or he expects to return to work—

[No. 28.] *Maternity Protection (Amendment)* [2004.]
Act 2004.

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(a) if the period of resumed leave concerned is 4 weeks or less—

(i) at the same time as the relevant notification is given by the employee under section 14B(8) or 16B(7), as the case may be, or

(ii) if the employer waives the right to receive such notification, not later than the day on which the employee expects to return to work,

or

(b) if the period of resumed leave concerned is more than 4 weeks, not later than 4 weeks before the date on which the employee expects to return to work.

(1B) Entitlement to return to work in accordance with section 26 or to be offered suitable alternative work under section 27 shall be subject to an employee who has been absent from work and been deemed under subsection (6) of section 14B or subsection (5) of section 16B, as the case may be, to be on resumed leave within the meaning of whichever of those sections is appropriate having, not later than the date on which she or he expects to return to work, notified in writing (or caused to be so notified) the employer or, where the employee is aware of a change of ownership of the undertaking concerned, the successor, of her or his intention to return to work and of the date on which she or he expects to return to work.”,

(c) in subsection (2), by the substitution of the following paragraph for paragraph (a):

“(a) for an employee’s failure to give notification under subsection (1), (1A) or (1B), as may be appropriate, or”,

and

(d) in subsection (3), by the substitution of the following paragraph for paragraph (a):

“(a) failure to give notification under subsection (1), (1A) or (1B), as may be appropriate, or”.

Amendment of
section 31(1) of
Principal Act.

21.—Section 31(1) of the Principal Act is amended by the substitution of the following paragraph for paragraph (a):

“(a) within the period of 6 months from the date on which the employer is informed of the initial circumstances relevant to the dispute, that is to say—

(i) that the employee is pregnant, has recently given birth or is breastfeeding,

[2004.] *Maternity Protection (Amendment) Act 2004.* [No. 28.]

- (ii) in the case of an employee who is the expectant father of a child, that the expectant mother of the child is pregnant, or
- (iii) in the case of an employee who is the father of a child, that the child's mother has died, or".

22.—The Principal Act is amended by the insertion of the following section after section 33: S.21
Burden of proof.

“Burden of proof. 33A.—(1) In this section—

‘discrimination’ means—

- (a) a failure, which gives rise to a dispute, to comply with a provision of Parts II to IV, or
- (b) an unfair dismissal (within the meaning of the 1977 Act) of an employee resulting wholly or mainly from—
 - (i) the employee's pregnancy, attendance at ante-natal classes, giving birth or breastfeeding or any matters connected therewith, or
 - (ii) the exercise or proposed exercise by the employee of the right under this Act to any form of protective leave or natal care absence, within the meaning of Part IV, or to time off from work to attend ante-natal classes in accordance with section 15A (inserted by *section 8* of the *Maternity Protection (Amendment) Act 2004*), or to time off from work or a reduction of working hours for breastfeeding in accordance with section 15B (inserted by *section 9* of the *Maternity Protection (Amendment) Act 2004*);

‘employee’, in relation to proceedings under the 1977 Act, has the meaning assigned to it by that Act;

‘indirect discrimination’ shall be construed in accordance with section 22 (as amended by Regulation 4(b) of the European Communities (Burden of Proof in Gender Discrimination Cases) Regulations 2001 (S.I. No. 337 of 2001)) of the Employment Equality Act 1998 insofar as that section relates to discrimination on the gender ground within the meaning of that Act;

‘proceedings’ means—

- (a) any proceedings under this Part before—
 - (i) a rights commissioner dealing with a dispute referred to the rights commissioner by an employee, or

or

- (ii) the exercise or proposed exercise by the employee of the right under this Act to any form of protective leave or natal care absence, within the meaning of Part IV, or to time off from work to attend ante-natal classes in accordance with section 15A (inserted by *section 8 of the Maternity Protection (Amendment) Act 2004*), or to time off from work or a reduction of working hours for breastfeeding in accordance with section 15B (inserted by *section 9 of the Maternity Protection (Amendment) Act 2004*),

(2) Where in any proceedings facts are established by an employee from which it may be presumed that there has been discrimination or indirect discrimination in relation to him or her, it shall be for the respondent to prove the contrary.

(5) The European Communities (Burden of Proof in Gender Discrimination Cases) Regulations 2001 (S.I. No. 337 of 2001) are revoked insofar as they apply to proceedings (within the meaning of this section).”.

[2004.] *Maternity Protection (Amendment) Act 2004.* [No. 28.]

23.—The Unfair Dismissals Act 1977 is amended—

Amendments
relating to unfair
dismissal.

- (a) in section 2(2) (which specifies dismissals in relation to which that Act does not apply), by the substitution of the following paragraph for paragraph (c) (inserted by section 38(2) of the Principal Act):

“(c) dismissal where the employee’s employer at the commencement of the employment informs the employee in writing that the employment will terminate on the return to work with that employer of another employee who is absent from work while on protective leave or natal care absence, within the meaning of Part IV of the Maternity Protection Act 1994, or is absent from work attending ante-natal classes in accordance with section 15A (inserted by *section 8* of the *Maternity Protection (Amendment) Act 2004*), or for breastfeeding in accordance with section 15B (inserted by *section 9* of the *Maternity Protection (Amendment) Act 2004*), of the first-mentioned Act, and the dismissal of the first-mentioned employee duly occurs for the purpose of facilitating the return to work of that other employee.”,

and

- (b) in section 6(2) (which specifies the matters which cause a dismissal resulting from any of those matters to be deemed to be an unfair dismissal), by the substitution of the following paragraphs for paragraphs (f) and (g) (inserted by section 38(4) of the Principal Act):

“(f) the employee’s pregnancy, attendance at ante-natal classes, giving birth or breastfeeding or any matters connected therewith,

- (g) the exercise or proposed exercise by the employee of the right under the Maternity Protection Act 1994 to any form of protective leave or natal care absence, within the meaning of Part IV of that Act, or to time off from work to attend ante-natal classes in accordance with section 15A (inserted by *section 8* of the *Maternity Protection (Amendment) Act 2004*), or to time off from work or a reduction of working hours for breastfeeding in accordance with section 15B (inserted by *section 9* of the *Maternity Protection (Amendment) Act 2004*), of the first-mentioned Act,”.

24.—Schedule 3 to the Redundancy Payments Act 1967 is amended—

Amendment of
Schedule 3 to
Redundancy
Payments Act 1967.

- (a) in paragraph 5 (which specifies periods which do not breach continuity of employment) (inserted by section 12(a) of the Redundancy Payments Act 2003) by the substitution of the following subparagraph for subparagraph (c):

“(c) a period during which an employee was absent from work—

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- (i) while on protective leave or natal care absence, within the meaning of Part IV of the Maternity Protection Act 1994 or to attend ante-natal classes in accordance with section 15A (inserted by *section 8* of the *Maternity Protection (Amendment) Act 2004*), or for breastfeeding in accordance with section 15B (inserted by *section 9* of the *Maternity Protection (Amendment) Act 2004*), of the first-mentioned Act,
- (ii) while on parental leave or *force majeure* leave, or
- (iii) while on carer’s leave under the Carer’s Leave Act 2001,”

and

(b) in paragraph 8A (which specifies absences allowable as reckonable service) (inserted by section 12(b) of the Redundancy Payments Act 2003) by the substitution of the following subparagraph for subparagraph (b):

“(b) a period during which an employee was absent from work—

- (i) while on protective leave or natal care absence, within the meaning of Part IV of the Maternity Protection Act 1994 or to attend ante-natal classes in accordance with section 15A (inserted by *section 8* of the *Maternity Protection (Amendment) Act 2004*), or for breastfeeding in accordance with section 15B (inserted by *section 9* of the *Maternity Protection (Amendment) Act 2004*), of the first-mentioned Act,
- (ii) while on parental leave or *force majeure* leave, or
- (iii) while on carer’s leave under the Carer’s Leave Act 2001,”.

Amendment of section 40(1) of Principal Act.

25.—Section 40(1) of the Principal Act is amended by the substitution of “the date notified under subsection (1), (1A) or (1B), as may be appropriate, of section 28” for “the date notified under section 28(1)”.

Revocation of Maternity Protection Act 1994 (Extension of Periods of Leave) Order 2001.

26.—The Maternity Protection Act 1994 (Extension of Periods of Leave) Order 2001 (S.I. No. 29 of 2001) is revoked.

27.—(1) This Act may be cited as the Maternity Protection (Amendment) Act 2004.

(2) The Principal Act and this Act may be cited together as the Maternity Protection Acts 1994 and 2004.

(3) This Act shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

Short title,
collective citation
and
commencement.

commencement.

(3) This Act shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.