
EMPLOYMENT (MATERNITY) ORDINANCE 2009

An Ordinance to make provision for maternity employment rights

J. H. GORDON
ADMINISTRATOR

1st October 2009.

BE it enacted by the Administrator of the Sovereign Base Areas of Akrotiri and Dhekelia as follows:—

1. Short title

This Ordinance may be cited as the Employment (Maternity) Ordinance 2009.

2. Interpretation

In this Ordinance,

“authorised service organisation” means an authorised service organisation as defined in Annex B to the Treaty of Establishment;

“the Crown” means Her Majesty in right of Her Government in the United Kingdom and in right of Her Administration in the Areas;

“childbirth” means the birth of a living child, or the birth of a dead child following a period of at least 28 weeks gestation;

“employee” has the same meaning as “employed person” under the Social Insurance (Facilitation of Republican Social Insurance Scheme) Ordinance 1980(a); and

“employer” has the same meaning as in the Social Insurance (Facilitation of Republican Social Insurance Scheme) Ordinance 1980.

3. Maternity leave

- (1) An employer of an employee who notifies the employer of her pregnancy by producing a certificate from a medical practitioner that she is expecting a child during a week specified in the certificate must allow the employee 18 consecutive weeks of maternity leave, to commence no earlier than 10 complete weeks before the expected week of childbirth and no later than 2 complete weeks before the expected week of childbirth.
- (2) An employer of a female employee who adopts a child of under 12 years old must allow the employee 16 consecutive weeks of maternity leave beginning in the week she assumes the

care of the child, providing that she has given at least 6 weeks notice of her intention to adopt to (a) her employer and (b) the Ministry of Labour and Social Insurance in the Republic.

- (3) The entitlement to maternity leave under this section does not affect any other entitlements that an employee has under a collective or private agreement.

4. Prohibition on notice of termination

- (1) Subject to subsection (2), an employer must not give notice of termination of employment to an employee—
 - (a) during the period commencing when she notifies her pregnancy in accordance with section 3(1) and ending 3 months after the day she completes her maternity leave; or
 - (b) during the period commencing when she gives notice of her intention to adopt in accordance with section 3(2) and ending 3 months after the day she completes her maternity leave; or
 - (c) which takes effect during a period referred to in paragraph (a) or (b).
- (2) The prohibition in subsection (1) does not apply where—
 - (a) the employee is guilty of serious misconduct which justifies dismissal; or
 - (b) the employer has ceased or intends to cease to carry on the business in which the employee was employed; or
 - (c) the employee is employed under a fixed term contract which is due to expire on the same day that the notice of termination of employment takes effect.
- (3) Where subsection (2) applies and an employer gives notice of termination to an employee during a period referred to at subsection (1)(a) or (b) or that takes effect during the period referred to in subsection (1)(c), the employer must state the reasons for doing so in writing.
- (4) An employer's failure to comply with the requirement at subsection (3) does not alter the effect of the notice of termination of employment.

5. Paid time off work of one hour per day

- (1) Subject to subsection (2), the employer of an employee who returns to work following childbirth must allow the employee, for a period of 9 months commencing with the date of the birth, one of the following (to be chosen by the employee) without loss of pay—
 - (a) a break from work of one hour during every working day; or
 - (b) permission to arrive at her workplace one hour after her usual time of arrival; or
 - (c) permission to leave her workplace one hour before the usual time of departure.
- (2) An employee whose child is given up for adoption loses her entitlement under this section at the time that she gives up the care of the child.
- (3) An employee whose child dies loses her entitlement under this section from the date of the child's death.

6. Ante-natal appointments

An employer who is notified by an employee of her pregnancy in accordance with section 3(1) must allow the employee time off work without loss of pay in order to attend ante-natal appointments, provided—

- (a) the appointments cannot be taken outside the employee's working hours;
- (b) she produces a certificate or other evidence from a medical practitioner that the appointments have been made; and
- (c) she gives reasonable notice to the employer.

7. Seniority and entitlements

An employer must not allow the maternity leave to affect an employee's:—

- (a) seniority;
- (b) entitlement to be considered for promotion; or
- (c) entitlement to do the kind of work she was doing before maternity leave, or to do different work that attracts the same salary.

8. Appointment of Chief Inspector

- (1) The Chief Officer may appoint in writing any person as Chief Inspector, whose function is to ensure that this Ordinance is observed.
- (2) The function assigned to a Chief Inspector under subsection (1) is a general delegated function for the purposes of the Delegation of Functions to the Republic Ordinance 2007**(b)**.
- (3) Without prejudice to subsection (2), the Chief Inspector may authorise any other person to carry out the function referred to in subsection (1) subject to any restrictions or conditions specified by the Chief Inspector.

9. Conditions in termination of employment legislation

Conditions in the Termination of Employment Ordinance 1980**(c)** that limit an employer's duty to pay compensation under that Ordinance for reasons relating to the employees's period of employment or working hours have no effect on an employer's criminal liability under this Ordinance.

10. Resolution of Disputes under this Ordinance

The Industrial Disputes Tribunal established under the Annual Holidays with Pay Ordinance 1973**(d)** has jurisdiction to resolve any dispute arising under this Ordinance.

11. Offences

An employer who fails to comply with sections 3, 4, 5, 6 or 7 commits an offence, and is liable to a penalty of €6,834.

12. Application to the Crown and authorised service organisations

- (1) Subject to subsections (2) and (3), this Ordinance binds the Crown and authorised service organisations and applies to employees of the Crown and authorised service organisations.
- (2) This Ordinance does not bind the Crown or authorised service organisations in relation to their employment of—
 - (a) a member of Her Majesty's Forces,
 - (b) a member of a civilian component as defined in paragraph 1(b) of section 1 of Annex C of the Treaty of Establishment,
 - (c) a person enjoying the rights and facilities of members of Her Majesty's Forces by virtue of paragraph 3 of section 9 of Part II of Annex B of the Treaty of Establishment, other than as a dependant, or
 - (d) any other group of persons that the Chief Officer might specify by Order published in the Gazette.
- (3) Section 11 does not bind the Crown.

13. Repeal

The Protection of Maternity Ordinance 1999**(e)** is repealed along with all amendments made to that Ordinance**(f)**.

14. Commencement

This Ordinance comes into force on the day it is published in the Gazette.

Notes

- (a)** Ordinance 16/80.
- (b)** Ordinance 17/07.
- (c)** Ordinance 5/80.
- (d)** Ordinance 10/73.
- (e)** Ordinance 21/99.
- (f)** Ordinances 7/00, 26/02 and 4/08.

EXPLANATORY NOTE

(This note does not form part of the Ordinance)

Introduction

1. This note relates to the Employment (Maternity) Ordinance 2009 (“the Ordinance”). The note has been prepared by the office of the Attorney General and Legal Adviser in order to assist the reader of the Ordinance. It does not form part of the Ordinance.

2. The note should be read in conjunction with the Ordinance. It is not, and is not meant to be, a comprehensive description of the Ordinance. So when a section or part of a section does not seem to require any explanation or comment, none is given.

The Ordinance

3. The Ordinance broadly replicates the effect of the Republican Protection of Maternity Law as amended. It is a consolidation of the Protection of Maternity Ordinance 1999 and three amendments made to it, and also replicates the effect of two amendments to the Republican law made in 2008, which increased maternity leave on adoption to 16 weeks, and prevent an employee from starting maternity leave earlier than 10 weeks before the expected week of childbirth.

4. Section 3(1) entitles a pregnant employee to 18 consecutive weeks of maternity leave. The employee can choose when to take that leave, provided that it begins no later than 2 weeks and no earlier than 10 weeks before the expected week of childbirth. Section 3(2) applies when a female employee adopts a child who is under 12 years of age. She is entitled to 16 consecutive weeks of maternity leave, beginning in the week that adoption takes place, provided she has given at least 6 weeks notice of her intention to adopt to the Ministry of Labour and Social Insurance in the Republic and to her employer. This Ordinance does not make provision regarding payment to employees during their maternity leave. The Social Insurance Fund in the Republic does, however, make payments to such employees, the amount of which is determined by Republican social insurance legislation.

5. Section 4 prohibits an employer from dismissing an employee who is pregnant or who has notified of her intention to adopt or who is on maternity leave, except in certain specified circumstances. Section 7 protects an employee from loss of seniority or pay or entitlement to promotion for reasons related to the maternity leave.

6. Section 5 entitles an employee who returns to work after the birth of her child to an hour’s paid leave each working day for 9 months beginning on the day of childbirth. This replicates a provision in the Republican law giving working mothers time to breast-feed and care for their babies in their first months of life. Section 6 entitles an employee to paid time off work before the birth to attend ante-natal appointments.

7. Section 8 allows the Chief Officer to appoint a Chief Inspector. The Chief Inspector’s function, to ensure that this Ordinance is observed, is delegated to the Republic under the Delegation of Functions to the Republic Ordinance (Ordinance 17/07). This means that an official from the Republic can exercise the powers and duties of a Chief Inspector within the constraints of the 2007 Ordinance.

8. Section 9 provides that no condition in the Termination of Employment Ordinance 1980 limiting an employer’s liability to pay compensation under that Ordinance (for example, a condition that the employee must have worked a certain number of years) limits the employer’s criminal liability under the Employment (Maternity) Ordinance. The Republican law also makes provision relating to compensation payable under the Republican Termination of Employment Law, arising out of breaches of the Protection of Maternity Law. This Ordinance does not make similar provision. Instead, such provision is expected to be made in the forthcoming Employment (Termination) Ordinance.

9. The Ordinance binds the Crown BFC, the Crown SBAA and authorised service organisations, except in relation to their employment of UK-based civilians and service personnel. In addition, the Crown is not bound by the provision that creates offences, at section 11. This means that the Crown cannot be prosecuted for offences under this Ordinance.

(SBA/AG/2/EM/191)