



The Maternity Leave Act- Rights And Obligations

By Emile Leiba

This Act deals with the employee's entitlement to maternity leave and pay during maternity leave (maternity pay) in addition to the right of an employer to make the employee's position redundant while the employee is on maternity leave.

GENERAL PROVISIONS

An employer is obligated to grant maternity leave when:

- The employee who has been employed for at least a year
- Employee has expressed an intention to return to work with the employer at the end of maternity leave
- The employee upon request has provided a medical report on her pregnancy

Length of leave

- Minimum 12 weeks
- Employees may elect to return to work after eight weeks.
- May be extended by an additional 14 weeks if employee develops illness as a result of pregnancy or state of child's health
- Employer and employee may agree to a longer period

Maternity Pay

- Employee entitled to maternity pay for the first eight weeks of maternity leave. The last four weeks of that period may be unpaid, at the option of the employer.
- Employer not obligated to provide maternity pay:
 - a. where the employee failed to inform the employer of the expected date of delivery at least two weeks before the date (or as soon as reasonably practicable);
 - b. where employee fails to comply with a request for a medical certificate; or
 - c. if employer has done so on at least three previous occasions in respect of that employee, during the course of her employment.

RIGHT TO RETURN TO WORK AND REDUNDANCY

- An employee is entitled to return to work under the same or similar conditions of employment save for the instance in which the employee's position is made redundant.
- If a redundancy exercise occurs during maternity leave, an employer is obligated to find alternative employment, where available, even with a successor/associated company if necessary, and the terms and conditions of employment must be suitable and not less favourable than those which existed at the time the maternity leave was granted.

Offences

- If an employer fails
 - to grant maternity leave
 - wrongfully prevents an employee from returning to work and/or
 - terminates a contract of employment for reason of pregnancy

the employer is subject to criminal charges and upon conviction is liable to a fine or imprisonment in default of payment

Calculating the sums payable to an employee whose position has been made redundant while on maternity leave:

Under Section 4 (7) of the Maternity Leave Act, a worker on maternity leave whose position has been made redundant is treated for the purposes of the Employment (Termination and Redundancy Payments) Act-

- as having been continuously employed by her employer until the notified day of return; and
- as if her employment had been terminated by her employer by reason of redundancy and without notice on the notified day of return.

Section 4 (7) therefore has the effect of potentially increasing the sum payable to the employee for redundancy and will automatically entitle the employee to pay in lieu of notice.

It should also be noted that, as is now required by law in every redundancy exercise, the employer must notify the Ministry of Labour of the intended redundancy.

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