

Maternity Protection of Employees Act, 1981



Number 2 of 1981

MATERNITY PROTECTION OF EMPLOYEES ACT, 1981

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Acts Referred to

Minimum Notice and Terms of Employment Act, 1973	1973, No. 4
Redundancy Payments Act, 1967	1967, No. 21
Redundancy Payments Act, 1979	1979, No. 7
Redundancy payment Acts, 1967 to 1979	
Social Welfare (Consolidation) Act, 1981	1981, No. 1
Unfair Dismissals Act, 1977	1977, No. 10



Number 2 of 1981

MATERNITY PROTECTION OF EMPLOYEES ACT, 1981

AN ACT TO ENTITLE FEMALE EMPLOYEES TO MATERNITY LEAVE, TO RETURN TO WORK AFTER SUCH LEAVE AND TO TIME OFF FROM WORK FOR ANTENATAL AND POST-NATAL CARE, TO EXTEND AS A CONSEQUENCE OF THE ABOVE-MENTIONED PROVISIONS THE PROTECTION AGAINST UNFAIR DISMISSAL CONFERRED BY THE [UNFAIR DISMISSALS ACT, 1977](#) , AND TO MAKE OTHER PROVISIONS CONNECTED WITH THE ABOVE-MENTIONED MATTERS. [26th March, 1981]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

Part I

Preliminary and General

Short title and commencement. **1.**—This Act may be cited as the Maternity Protection of Employees Act, 1981, and shall come into operation on the 6th day of April, 1981.

Interpretation. **2.**—(1) In this Act—

“*the Act of 1977*” means the [Unfair Dismissals Act, 1977](#) ;

“*additional maternity leave*” has the meaning assigned to it by [section 14](#) ;

“*employee*”, except in [Part IV](#) , means a person who is in an employment for the time being specified in or under Part I (other than paragraph 7) of the First Schedule to the [Social Welfare \(Consolidation\) Act, 1981](#) , not being an employment specified in or under Part II of that Schedule;

“*employer*”, in relation to an employee, does not include an employer who employs that employee—

(a) on a permanent basis for less than 18 hours in each week, or

(b) under a contract of employment, or otherwise, for a fixed term of either less than 26 weeks or of which there are less than 26 weeks still to run;

“*maternity leave*” has the meaning assigned to it by [section 8](#) ;

“*the Minister*” means the Minister for Labour;

“*the successor*” has the meaning assigned to it by [section 20](#) .

(2) In this Act a reference to a Part or section is to a Part or section of this Act, unless it is indicated that reference to some other enactment is intended.

(3) In this Act a reference to a subsection or paragraph is to the subsection or paragraph of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended.

Persons to whom [Parts II](#) and [III](#) apply.

3.—(1) [Parts II](#) and [III](#) apply to female employees.

(2) The Minister may by order, made with the consent of the Minister for Social Welfare, amend *subsection (1)* so as to vary the application of [Part II](#) or [Part III](#) .

Orders and regulations.

4.—(1) The Minister may, in relation to any provision of this Act relating to notification (or confirmation of notification), vary by order any such provision.

(2) An order under this Act may contain such consequential, supplementary and ancillary provisions, including any provisions modifying any provision of this Act, as the Minister considers necessary or expedient.

(3) The Minister may by order amend or revoke an order under this Act, including an order under this subsection.

(4) Where an order is proposed to be made under this Act a draft of the order shall be laid before both Houses of the Oireachtas, and the order shall not be made until a resolution approving of the draft has been passed by each such House.

(5) Before making an order or regulations under this Act the Minister shall consult such organisations or other bodies of persons representative of employers and such organisations or other bodies of persons representative of trade unions or bodies analogous to trade unions as he considers appropriate.

(6) Every regulation made under this Act shall be laid before each House of the Oireachtas as soon as practicable after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done under the regulation.

Voidance or modification of certain provisions in agreements.

5.—(1) A provision in any agreement (whether a contract of employment or not, and whether made before or after the commencement of this Act) shall be void in so far as it purports to exclude or limit the application of any provision of this Act or is inconsistent with any provision of this Act.

(2) A provision in any agreement (whether a contract of employment or not, and whether made before or after the commencement of this Act) which is or becomes less favourable in relation to an employee to whom [Part II](#) or [Part III](#) applies than a similar or corresponding entitlement conferred on her by either of those Parts shall be deemed to be so modified as to be not less favourable to her.

(3) Nothing in this Act shall be construed as prohibiting any agreement referred to in this section from containing any provision more favourable to an employee to whom [Part II](#) or [Part III](#) applies than any provision in either of those Parts.

(4) References in this section to this Act (other than the references to the commencement of this Act) or to a Part shall be construed as references to this Act or to the Part as amended or extended by or under this Act or any other Act.

Expenses.

6.—Any expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

Part II

Maternity Leave

Definitions for [Part II](#).

7.—In this Part—

“*the expected week of confinement*” and “*confinement*” have the meanings respectively assigned to them by [sections 24](#) and [28](#) of the [Social Welfare \(Consolidation\) Act, 1981](#) ;

“*the minimum period of maternity leave*” has the meaning assigned to it by [section 8](#) .

Entitlement to maternity leave.

8.—(1) Subject to this Part, an employee to whom this Part applies 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 14 consecutive weeks.

(2) The Minister may by order, made with the consent of the Minister for Social Welfare and the consent of the Minister for Finance, amend *subsection (1)* so as to extend the period mentioned in that subsection.

Notification to employer.

9.—(1) Entitlement to the minimum period of maternity leave shall be subject to an employee having—

(a) as soon as reasonably practicable but not later than four weeks before the commencement of maternity leave, notified in writing her employer (or caused him to be so notified) of her intention to take maternity leave, and

(b) at the time of the notification, given to her employer or produced for her employer's inspection a medical or other appropriate certificate confirming the pregnancy and

specifying the expected week of confinement.

(2) A notification under this section may be revoked by a further notification in writing by the employee concerned to her employer.

Allocation of minimum period of maternity leave.

10.—Subject to [sections 11](#) to [13](#), the minimum period of maternity leave shall commence on such day as the employee selects, being not later than four weeks before the end of the expected week of confinement, and shall end on such day as she selects, being not earlier than four weeks after the end of the expected week of confinement.

Variation in allocation of minimum period of maternity leave.

11.—(1) Where it is certified by a registered medical practitioner or otherwise to the satisfaction of the Minister and the Minister for Social Welfare that, for a person specified in the certificate, the minimum period of maternity leave should for a medical reason so specified commence on a date so specified, and the certificate is produced for inspection by the employer concerned within such period as may be prescribed by regulations under this section, the minimum period of maternity leave for that person shall commence on the date so specified.

(2) Where a certificate under this section is issued and the requirement in *subsection (1)* relating to the production of the certificate for the employer's inspection is complied with, the employee specified in the certificate shall be deemed to have complied also with [section 9 \(1\) \(a\)](#).

Extension of maternity leave.

12.—(1) Where the date of confinement of an employee to whom this Part applies occurs in a week after the expected week of confinement, the minimum period of maternity leave shall be extended by such number of consecutive weeks (subject to a maximum of four consecutive weeks) after the week in which the date of confinement occurs as ensures compliance with [section 10](#).

(2) Where the minimum period of maternity leave is proposed to be extended under this section, the employee concerned shall—

(a) as soon as practicable after the proposal for such extension, notify in writing her employer (or cause him to be so notified) of the proposed extension, and

(b) as soon as practicable after the date of confinement, confirm in writing to her employer the notification under *paragraph (a)* and specify the duration of the extension.

Commencement of maternity leave (early confinement).

13.—(1) Where, in relation to an employee to whom this Part applies, the date of confinement occurs in a week that is four weeks or more before the expected week of confinement, the employee shall, where the circumstances so require, be deemed to have complied with [section 9 \(1\) \(a\)](#) if the notification required by that section is given in the period of 14 days commencing on the date of confinement.

(2) Notwithstanding [section 10](#), 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 14 consecutive weeks commencing on whichever of the following is the earlier—

(a) the first day of maternity leave taken in accordance with [section 10](#), or

(b) the date of confinement.

Entitlement to additional maternity leave.

14.—(1) Subject to this section, an employee who has taken maternity leave shall, if she so wishes, be entitled to further leave, to be known (and referred to in this Act) as “*additional maternity leave*”, for a maximum period of four consecutive weeks commencing immediately after the end of

her maternity leave.

(2) An employee shall be entitled to additional maternity leave, whether or not the minimum period of maternity leave has been extended under [section 12](#) .

(3) Entitlement to additional maternity leave shall be subject to an employee having notified in writing her employer (or caused him to be so notified) in accordance with *subsection (4)* of her intention to take such leave.

(4) Notification under *subsection (3)* shall be given either at the same time as the relevant notification under [section 9](#) or not later than four weeks before the date which would have been the expected date of return to work under [Part III](#) if the employee concerned had not taken the additional maternity leave.

(5) A notification under this section may be revoked by a further notification in writing by the employee concerned to her employer not later than four weeks before the date which would have been the expected date of return to work under [Part III](#) if the employee concerned had not taken the additional maternity leave.

(6) The Minister may by order amend *subsection (1)* so as to extend the period of four consecutive weeks referred to in that subsection.

Preservation or suspension of certain rights, etc. while on maternity or additional maternity leave.

15.—(1) During a period of absence from her work by an employee while she is on maternity leave, such an employee shall be deemed to have been in the employment of her employer and, accordingly, while so absent she shall, subject to [section 19](#) , be treated as if she had not been so absent and such absence shall not affect any right (other than her right to remuneration during such absence), whether conferred on her by statute, contract or otherwise, and related to her employment.

(2) In respect of a period of absence from her work by an employee while she is on additional maternity leave, the period of employment before such absence shall be regarded as continuous with her employment following such absence in respect of any right, whether conferred on her by statute, contract or otherwise, and related to her employment (other than her right to remuneration which, during such absence, shall stand suspended).

(3) Nothing in this section shall affect an employee's right to be offered suitable alternative employment under [section 21](#) .

(4) A period of absence from her work while on maternity leave or additional maternity leave shall not be treated as part of any other leave (including sick leave or annual leave) to which an employee concerned is entitled.

(5) An employee shall be deemed not to be an employed contributor for the purposes of the [Social Welfare \(Consolidation\) Act, 1981](#) , for any contribution week (within the meaning of that Act) in a period of absence from her work on maternity leave or additional maternity leave if she does not receive any reckonable earnings (within the meaning of that Act) in respect of that week.

Right to time off from work for antenatal or post-natal care.

16.—(1) For the purpose of receiving ante-natal or post-natal care (or ante-natal and post-natal care), an employee to whom this Part applies shall be entitled to time off from her work in accordance with regulations made under this section by the Minister.

(2) 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 to which an employee shall be entitled under this section;
- (b) the terms or conditions relating to such time off;
- (c) the notice to be given in advance by an employee so entitled to her employer (including circumstances in which such notice need not be given);
- (d) the evidence to be furnished by an employee so entitled to her employer of any appropriate medical or related appointment.

(3) [Section 15](#) (1) shall apply to an employee entitled to time off in accordance with regulations under this section as if the employee's period of absence from her work under this section were a period of absence from her work while on maternity leave.

Voidance of certain purported terminations of employment, etc.

17.—Each of the following shall be void:

- (a) any purported termination of the employment of an employee to whom this Part applies, while she is absent from her work on maternity leave or additional maternity leave;
- (b) any purported termination of the employment of an employee to whom this Part applies, while she is absent from her work on time off under [section 16](#) ;
- (c) any notice of termination of the employment of an employee to whom this Part applies, given while she is absent from her work on maternity leave or additional maternity leave and expiring subsequent to such absence;
- (d) any notice of termination of the employment of an employee to whom this Part applies, given while she is absent from her work on time off under [section 16](#) and expiring subsequent to such absence;
- (e) any purported suspension from her employment of an employee to whom this Part applies, imposed while she is absent from her work on maternity leave, additional maternity leave or on time off under [section 16](#) .

Extension of certain notices of termination of employment or of certain suspensions.

18.—Any notice of termination of her employment given in respect of an employee to whom this Part applies, or any suspension from her employment imposed on such an employee, before the receipt by her employer of a notification under [section 9](#) , [12](#) , [14](#) , or [16](#) (or, where appropriate, under [section 22](#)), or before the production for the employer's inspection of a certificate under [section 11](#) , and due to expire during her absence from work on maternity leave, additional maternity leave or time off under [section 16](#) , shall be extended by the period of her absence from work on maternity leave, additional maternity leave or such time off.

Provisions regarding periods of

19.—(1) During her absence from her work while on maternity leave or additional maternity leave by an employee to whom this Part applies and who, starting with the commencement of her employment with her employer, is on probation in her employment, is undergoing training in

probation,
training and
apprenticeship.

relation to her employment or is employed under a contract of apprenticeship, her probation, training or apprenticeship shall stand suspended during such absence and shall be completed by her on her return to work after such absence.

(2) The Minister may by regulations prescribe a period or periods of training in relation to which *subsection (1)* shall not apply.

Part III

Right to Return to Work

General right to
return to work
on expiry of
maternity leave,
etc.

20.—(1) Subject to this Part, on the expiry of a period during which an employee to whom this Part applies was absent from work while on maternity leave or additional maternity leave, she shall be entitled to return to work—

- (a) with the employer with whom she was working immediately before the start of that period or, where during her absence from work there was a change of ownership of the undertaking in which she was employed immediately before her absence, with the owner (in this Act referred to as “*the successor*”) of the undertaking at the expiry of her period of absence,
- (b) in the job which she held immediately before the start of that period, and
- (c) under the contract of employment under which she was employed immediately before the start of that period, or, where a change of ownership such as is referred to in *paragraph (a)* has occurred, under a contract of employment with the successor which is identical to the contract under which she was employed immediately before the start of that period, and (in either case) under terms or conditions not less favourable than those that would have been applicable to her if she had not been so absent from work.

(2) For the purpose of *subsection (1) (b)*, where the job held by an employee immediately before the start of the period of her absence on maternity leave or additional maternity leave was not her normal or usual job, she shall be entitled to return to work, either in her normal or usual job or in that job as soon as is practicable without contravention by her or her employer of a provision of a statute or instrument made under statute.

(3) In this section “*job*”, in relation to an employee, means the nature of 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.

Right to
suitable
alternative
employment in
certain
circumstances
on return to
work.

21.—(1) Where an employee is entitled to return to work in accordance with [section 20](#) but it is not reasonably practicable for her employer or the successor to permit her to return to work in accordance with that section, she shall, subject to this Part, be entitled to be offered by her employer, the successor or an associated employer suitable alternative employment under a new contract of employment.

(2) The following provisions shall apply to a new contract of employment under this section:

- (a) the work required to be done under it shall be of a kind which is suitable in relation to the

employee concerned and appropriate for her to do in the circumstances;

- (b) its terms or conditions 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 substantially less favourable to her than those of her contract of employment immediately before the start of her period of absence from work while on maternity leave or additional maternity leave.

Notification of intention to return to work.

22.—(1) Entitlement to return to work in accordance with [section 20](#) or to be offered suitable alternative employment under [section 21](#) shall be subject to an employee who has been absent from work while on maternity leave or additional maternity leave in accordance with this Act having, not later than four weeks before the date on which she expects to return to work, notified in writing (or caused to be so notified) her employer or, where she is aware of a change of ownership of the undertaking concerned, the successor, of her intention to return to work and of the date on which she expects to return to work.

(2) A notification under *subsection (1)* shall subsequently be confirmed in writing not earlier than four weeks and not later than two weeks before the date on which the employee concerned expects to return to work.

Postponement of return to work.

23.—Where, because of an interruption or cessation of work at her place of employment, existing on the date specified in a notification under [section 22](#) given by her, it is unreasonable to expect an employee to return to work on the date specified in the notification, she may return to work instead when work resumes at the place of employment after the interruption or cessation, or as soon as reasonably practicable after such resumption.

Part IV

Amendment or Application of Other Enactments

Amendment of section 2 (2) of Act of 1977.

24.—Section 2 (2) of the Act of 1977 (which specifies dismissals in relation to which that Act does not apply) is hereby amended by the insertion of the following after paragraph (b):

“, or

- (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 her work while on maternity leave or additional maternity leave or time off under the *Maternity Protection of Employees Act, 1981*, and the dismissal of the first-mentioned employee duly occurs for the purpose of facilitating the return to work of that other employee.”.

Amendment of section 6 (2) of Act of 1977.

25.—Section 6 (2) of the Act of 1977 (which specifies the matters which cause a dismissal resulting from any of those matters to be deemed to be an unfair dismissal) is hereby amended by the insertion of the following paragraph after paragraph (f):

- “(g) the exercise by an employee to whom [Part II](#) of the *Maternity Protection of Employees Act, 1981*, applies (other than a person specified in [section 2](#) (1) of this Act) of her right under the *Maternity Protection of Employees Act, 1981*, to maternity leave, additional maternity leave or time off under that Act; provided that—

(i) the requirement of one year's continuous service with the employer who dismissed her does not apply to a case falling within this paragraph, and

(ii) [sections 3](#) and [4](#) of this Act do not apply to such a case.”.

Provisions applying where employee not permitted to return to work.

26.—(1) This section applies to an employee who, having duly complied with [section 22](#), is entitled under [Part III](#) to return to work but is not permitted to do so by her employer, the successor or an associated employer, and who is an employee to whom an Act referred to in the relevant subsection of this section applies.

(2) For the purposes of the Redundancy Payments Acts, 1967 to 1979, an employee to whom this section applies shall be deemed to have been dismissed by reason of redundancy, the date of dismissal being deemed to be the date specified in the relevant notification under [section 22 \(1\)](#).

(3) For the purposes of the [Minimum Notice and Terms of Employment Act, 1973](#), the contract of employment of an employee to whom this section applies shall be deemed to have been terminated on the date specified in the relevant notification under [section 22 \(1\)](#).

(4) For the purposes of the Act of 1977, an employee to whom this section applies shall be deemed to have been dismissed on the date specified in the relevant notification under [section 22 \(1\)](#), and the dismissal shall be deemed to be an unfair dismissal unless, having regard to all the circumstances, there were substantial grounds justifying the dismissal.

Disputes regarding entitlement under this Act.

27.—(1) Any dispute (other than a claim under section 8 of the Act of 1977, as extended by [section 26](#)) between an employee to whom the Act of 1977 applies and to whom [Part II](#) or [Part III](#) applies and her employer, the successor or an associated employer, relating to the employee's entitlement under this Act (or to any matter arising out of or related to such an entitlement) may be referred by either party to the dispute to a rights commissioner or to the Tribunal.

(2) A rights commissioner or the Tribunal shall hear the parties to a dispute under this section and any evidence relevant to the dispute tendered by them and, in the case of a rights commissioner, shall make a recommendation in relation to the dispute and, in the case of the Tribunal, shall make a determination in relation to the dispute.

(3) Sections 8 (3), 8 (4) (a), 8 (5) to 8 (10), 9 (1), 10 and 11 of the Act of 1977 shall apply in relation to a dispute under this section, subject to the following modifications:

(a) references in those sections to a claim for redress under that Act shall be construed as references to a dispute under this section;

(b) section 8 (4) (a) shall be construed as if “refer the claim to” were substituted for “bring the claim before”;

(c) the reference in section 8 (8) (a) to the bringing of claims under that section shall be construed as a reference to the referral of a dispute under this section, and sections 8 (8) (d) and 8 (8) (g) shall be construed accordingly;

(d) section 8 (10) shall be construed as if “under this section” were substituted for “in relation to a dismissal that is an unfair dismissal for the purposes of this Act”;

(e) section 10 shall be construed as if “for an order directing the employer to carry out in

accordance with its terms the determination” were substituted for “for redress under this Act” in subsection (1), and as if the following subsection were substituted for subsection (2):

“(2) Where, in proceedings under this section, the Circuit Court finds that an employee is entitled to an order under subsection (1) of this section, it shall make such an order.”;

(f) section 11 shall be construed as if “under this section” were substituted for “under this Act”.

(4) The Minister may make regulations for the purpose of giving effect to this section and may by such regulations make any further modifications of the Act of 1977, or any modifications of regulations under that Act, as he thinks necessary.

(5) In this section “*the Tribunal*” means the Employment Appeals Tribunal.

Amendment of Schedule 3 to Redundancy Payments Act, 1967. **28.**— Schedule 3 to the [Redundancy Payments Act, 1967](#) , is hereby amended by the substitution of the following for paragraph 5 (1) (d) (inserted by the [Redundancy Payments Act, 1979](#)):

“(d) a period during which an employee was absent from her work while on maternity leave, additional maternity leave or time off under the *Maternity Protection of Employees Act, 1981*.”.

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