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MATERIALS PROTECTION BILL

AN BILLE UM CHOSAINT MHÁITHREACHAIS, 1994
MATERNITY PROTECTION BILL, 1994

EXPLANATORY AND FINANCIAL MEMORANDUM*Introduction*

This Bill provides for the implementation of the employment rights provisions in the EU Pregnant Workers Directive 92/85/EEC and repeals and re-enacts with amendments the Maternity Protection of Employees Act, 1981 as amended by the Worker Protection (Regular Part-Time Employees) Act, 1991.

The existing minimum period of maternity leave of fourteen weeks, with an optional four weeks (unpaid) additional maternity leave and safeguards for employment rights during such leave are preserved. The Bill also provides for leave on health and safety grounds where, a risk to health and safety exists and no suitable other work is available for an employee who is pregnant, breastfeeding or has recently given birth. Such leave also applies where it is medically certified that an employee must not be obliged to perform night work and where no suitable day work is available.

Payment by employers of three weeks remuneration (the amount to be determined by Regulation) to employees on leave on health and safety grounds, protection of employment rights during periods of such leave and the grant of time off without loss of pay for ante and post-natal medical visits are also provided for in the Bill.

PART I**PRELIMINARY AND GENERAL**

Sections 1 to 3 are standard provisions dealing with the short title, commencement, interpretation and the making of orders and regulations.

Section 4 takes account of agreements relating to maternity protection (whether made before or after enactment and enforcement of the Bill) by providing for their voidance where they seek to circumvent the provisions of the Bill and for their modification where they are less favourable to employees.

Section 5 provides that the cost of administering the Bill will be paid out of moneys voted by the Oireachtas and *section 6* repeals the Maternity Protection of Employees Act, 1981 as amended.

PART II

MATERNITY PROTECTION

Section 7 provides interpretation for this Part while *section 8* re-enacts the employees' existing statutory entitlement to 14 weeks' maternity leave, and provides that the Minister may, by order made with the consent of both the Minister for Finance and the Minister for Social Welfare, extend the period of leave. *Section 9* provides that an employee gives prior written notice of her intention to take maternity leave and produces appropriate certification confirming the pregnancy.

Section 10 sets out the apportionment of the 14 weeks' maternity leave, at least four weeks to be taken before and after the birth of her baby. Fixed term contract workers are afforded protection until such a contract expires. *Section 11* recognises that medical reasons could prevent an employee from taking four weeks' leave before the birth of the baby and makes provision for this.

Section 12 permits an employee to extend her maternity leave, if necessary, so that she still has four weeks' leave after the birth should her baby be born later than expected. Where premature births are concerned, *section 13* varies the requirements of certain provisions of the Bill in order to safeguard the employee's entitlement to 14 weeks' maternity leave.

Section 14 gives the employee the option of taking four weeks' additional unpaid maternity leave, subject to prior written notification being furnished to the employer. Time off from work without loss of pay for the purposes of ante- and post-natal medical visits is provided for in *section 15*, in accordance with regulations made by the Minister for Equality and Law Reform.

Section 16 provides that where a mother dies within 14 weeks of the child's birth the father of the child shall be entitled to special leave. Entitlement to such leave will be subject to the father providing written notification to his employer and, if requested, furnishing evidence of the mother's death and a birth certificate in respect of the child. Such fathers are also entitled to four consecutive additional weeks' leave commencing immediately after the special leave. Notification procedures must be adhered to.

PART III

LEAVE TO PROTECT HEALTH AND SAFETY OF PREGNANT EMPLOYEES, ETC.

Section 17 defines to whom this part applies. Where an employer is required by regulations under the Safety, Health and Welfare at Work Act, 1989 to move an employee to suitable other work but, either it is not feasible to do so, or could not reasonably be required, *section 18* provides that the employee be granted leave to protect her health and safety, whether because of risk or arising from night work. For the first three weeks of such leave employees shall be entitled to receive from their employers remuneration to be determined by regulation. From the fourth week onwards a Social Welfare payment will be available to eligible employees.

Section 19 provides that health and safety leave will end immediately before maternity leave begins or whenever the employee ceases

to be covered by the Act. In addition it allows a fixed term contract of an employee on such leave to expire on the due date if it falls while on that leave.

Section 20 obliges mothers who are on leave on health and safety grounds to notify their employer of material changes in their circumstances. In response, employers shall take all reasonable measures to enable the employee to return to work and shall notify her in writing to resume work. Health and safety leave shall end not later than one week after the notification to return to work is received by the employee.

PART IV

EMPLOYMENT PROTECTION

In *section 21* "protective leave" is defined to encompass maternity leave, additional maternity leave, leave to which a father is entitled under *section 16* and leave granted under *section 18* i.e. in respect of health and safety considerations and night work. Natal care absence is defined as an employee's entitlement in accordance with regulations under *section 15*.

The preservation of employment rights during a period of protective leave, natal care leave and leave under *section 16* (apart from the right to remuneration during protective leave) is provided for in *section 22*. Job security is strengthened under *section 23* which renders void any purported termination or suspension from employment during protective leave or natal care absence or any notice of termination or notice of suspension due to terminate during such leave or absence.

Section 24 provides for the extension of any notice of termination of employment or suspension beyond the last day of protective leave or natal care absence by the duration of such leave or absence, while under *section 25* the period of absence of an employee on protective leave will not be reckonable against any period of her probation, training or apprenticeship which she has not completed before taking such leave.

Section 26 provides entitlement to return to work on the expiration of all periods of protective leave and after natal care absences. It also deals with arrangements for return where there has been a change of ownership of the enterprise concerned. The right to return to work is a key provision in the Bill.

Since resumption of the same work might not, however, be practicable in every case, provision is made in *section 27* for suitable alternative work. It builds in safeguards to prevent an unacceptable dilution of the employee's entitlement to return to work. New contracts must offer work which is suitable to the employee concerned and must not contain terms less favourable than the old contract.

Employees who wish to resume work will have to comply beforehand with the written notification procedures laid down in *section 28* but the rights commissioner or the Employment Appeals Tribunal will have discretion to extend the time for giving notification in certain circumstances. *Section 29* is designed to ensure that where employees comply with notification requirements under *section 28*, they will not lose their entitlements to resume work if, on the date specified for their return, they are precluded from doing so because, for example, there is a strike at the place of work or production has temporarily ceased.

PART V

RESOLUTION OF DISPUTES

Sections 30 to 34 establish redress procedures in the event of a dispute relating to entitlement under the Bill (other than a dispute relating to dismissal or a dispute on health and safety within the competence of the NAOSH) between the employee and the employer. The main features of the redress procedures are—

- * a right to redress in the first instance through a rights commissioner,
- * a right of appeal to the Employment Appeals Tribunal on the facts and to the High Court on a point of law, and
- * compensation of up to 20 weeks' remuneration.

Section 35 deals with the service of documents for the purpose of, or in relation to proceedings under this Part of the Bill. Section 36 provides that compensation due to an employee under this Bill shall be among the debts having priority in the distribution of assets of a company being wound up or of a bankrupt or arranging debtor. Formal proof of these debts will not be required except where otherwise provided by general orders under the relevant Act.

In proceedings under this Bill section 37 requires that the decision of a rights commissioner or determination of the Tribunal shall be carried out within four weeks of being communicated to the parties unless a specified date has been set. If a party fails to carry out the terms of such a decision or determination within the specified period, the Circuit Court may, on the application of the other party or the Minister, make an order directing that it be carried out. In making an order under this section the Circuit Court may direct the employer to pay interest on the compensation in accordance with provisions of the Courts Act, 1981.

PART VI

AMENDMENT OR APPLICATION OF OTHER ENACTMENTS

Unfair Dismissals Act, 1977

Section 38 amends the Unfair Dismissals Act, 1977 to ensure that the redress provisions comply with the requirements of the Pregnant Workers Directive. Groups excluded from the redress provisions of the Unfair Dismissals Act that do not have access to adequate redress are brought within the scope of section 38. The failure by an employer to allow an employee, who is otherwise entitled to do so, to resume work after protective leave or natal care absence will be deemed to be an unfair dismissal except in exceptional cases not connected with pregnancy.

Redundancy Payments Act, 1967

Section 39 ensures the continuity of employment of an employee who has taken protective leave or natal care absence for the purposes of redundancy payments legislation. The maintenance of such continuity is important for the calculation of redundancy lump sums.

Minimum Notice and Terms of Employment Act, 1973

Section 40 sets the date of termination of employment, in the case of employees whose employment has ceased during a period of protective leave or natal care absence, as the date on which the employee would have resumed work had the employment not ceased before the due date of resumption.

In the event of insolvency of an employer section 41 allows compensatory awards by the rights commissioner or the Tribunal to be paid out of the employers insolvency fund.

Financial implications

No major financial implications are envisaged in connection with this legislation in relation to its administration. However, resource requirements for the Rights Commissioner Service of the Labour Relations Commission, the Employment Appeals Tribunal, the National Authority for Occupational Safety and Health and the Employment Equality Agency are being reviewed. In addition to the existing Maternity Benefit provision by the Minister for Social Welfare, a new health and safety benefit is to be provided for employees on health and safety leave from the fourth week onwards. The Minister for Social Welfare will bring forward legislation on this separately.

The implementation of the Bill will involve compliance costs for employers in relation to leave on health and safety grounds and risk assessment.

*An Roinn Comhionannais agus Athchóirithe Dlí,
Deireadh Fómhair, 1994.*

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