

JAMAICA
THE MATERNITY LEAVE ACT

Act No. 44 of 1979.

[31st December, 1979.]

Short title.

1. This Act may be cited as the Maternity Leave Act.

Interpretation.

2. In this Act—

“confinement” means the birth of a living child or the birth of a child whether living or dead after twenty-eight weeks of pregnancy;

“expected week of confinement” in relation to any worker means the week in which it is expected that her confinement will take place;

“original contract of employment” in relation to any worker who is absent from work wholly or partly because of pregnancy or confinement, means the contract under which she worked immediately before the beginning of her absence;

“registered medical practitioner” means a medical practitioner registered under the Medical Act;

“seasonal employment” means employment provided by an employer during a specific part (commencing at approximately the same time in each year) of each of two or more consecutive years;

“successor” in relation to the employer of a worker means a person who, in consequence of a change occurring (whether by virtue of sale or other disposition or by operation of law) in the ownership of the undertaking or of that part of the undertaking for the purposes of which the worker was employed, has become the owner of that undertaking or of that part of it, as the case may be;

“week” means the period commencing immediately after twelve o’clock midnight on each Saturday and ending at twelve o’clock midnight on the Saturday next following;

“worker” means an individual of the female sex who has entered into, or works under, a contract with an employer, whether the contract is express or implied, and (if it is express) whether it is oral or in writing and whether it is a contract of service or of apprenticeship, and includes any such individual employed in the service of the Government (including service in the Jamaica Defence Force and

the Jamaica Constabulary Force), and “employer” shall be construed accordingly.

Employer’s duty to grant maternity leave.

3. (1) Subject to the provisions of subsection (2), the employer of a worker shall grant her leave, to be known as maternity leave, if that worker -

(a) informs the employer that she is, or wishes to be, absent from work wholly or partly because of her pregnancy or confinement and that she intends to return to work with the employer;

(b) has been continuously employed by the employer for a period of not less than fifty-two weeks at the date on which her absence begins, or, being in seasonal employment, has been engaged by that employer in that employment for periods which amount to not less than fifty-two weeks during the five years immediately preceding that date; and

(c) produces for the inspection of the employer, if the employer so requests, a certificate from a registered medical practitioner stating that it is necessary for the worker to be absent from work wholly or partly because of her pregnancy or confinement.

3. (2) The period (or, if more than one, the aggregate of the periods) for which a worker is entitled under subsection (1) to be granted maternity leave shall be the period or periods during which she is absent from work wholly or partly because of her pregnancy or confinement, but shall not, except in the cases mentioned in subsections (3) and (4), exceed twelve weeks in respect of each pregnancy or confinement.

3. (3) If a worker who has been granted maternity leave for twelve weeks in respect of a pregnancy or confinement furnishes her employer with a certificate from a registered medical practitioner certifying that as a result of her illness arising from that pregnancy or confinement, or as a result of the state of health of the child to whom she has given birth, it is necessary for the worker to be absent from work for an additional period, not exceeding fourteen weeks, which shall be specified in the certificate and shall begin immediately after the end of those twelve weeks, her employer shall grant her extension of her maternity leave for the period so specified.

3. (4) If a worker who has been granted maternity leave for twelve weeks in respect of a pregnancy or confinement wishes to be granted extension of her maternity leave for a period exceeding fourteen weeks for any of the reasons mentioned in subsection (3) -

(a) she shall submit herself or the child, as the case may require, to a

medical examination by a registered medical practitioner chosen and paid by her, if her employer requires her so to do;

(b) her employer may require that the medical examination mentioned in paragraph (a) shall be carried out in the presence of, and in consultation with, a registered medical practitioner chosen and paid by the employer; and

(c) if there is disagreement between the registered medical practitioners mentioned in paragraphs (a) and (b), the matter shall be referred to the Chief Medical Officer, and any decision made by him or a registered medical practitioner nominated by him shall be final,

and if it is necessary for the worker to be absent for an additional period exceeding fourteen weeks, her employer shall, subject to the result of the medical examination, if any, grant her extension of her maternity leave for that additional period.

3. (5) Any period (not exceeding three weeks) required for determination of any medical question pursuant to subsection (4) shall be regarded as leave granted to the employee pursuant to this section.

Worker's right to return to work.

4. (1) Subject to the provisions of subsections (2), (3), (4) and (5), every worker to whom maternity leave is granted shall be entitled to return to work -

(a) with the employer who granted the leave or, where appropriate, his successor;

(b) in the capacity and place in which she was employed under the original contract of employment, to do work of the nature for which she was employed under that contract of employment;

(c) on terms and conditions that, as regards seniority, pension rights and other similar rights, the period of her employment immediately prior to her absence on maternity leave shall be regarded as continuous with her employment following that absence.

4. (2) The Minister may by order provide that subsection (1) shall not apply, or shall apply with such modifications as may be specified in the order, to any worker who immediately prior to her absence on maternity leave was employed, under her contract of employment, to do work of a nature specified in the order.

4. (3) A worker shall not be entitled under subsection (1) to return to work-

- (a) if an order made under subsection (2) so provides; or
- (b) unless she serves on her employer or, where appropriate, his successor, at least three weeks before the day on which she proposes to return to work, a notice that she proposes to return to work on that day (hereafter in this Act referred to as the “notified day of return”).

4. (4) If a worker who is entitled to return to work in accordance with subsection (1) has notified a day of return but there is an interruption of work (whether due to industrial action or some other reason) which renders it unreasonable to expect the worker to return to work on that day, she may instead return to work when work resumes after the interruption or as soon as is reasonably practicable thereafter.

4. (5) If a worker is entitled to return to work in accordance with subsection (1), but it is not practicable by reason of redundancy for the employer to permit her so to return to work, she shall be entitled, where there is a suitable available vacancy, to be offered alternative employment with her employer, or his successor, or an associated employer, under a new contract of employment complying with subsection (6).

4. (6) The new contract of employment referred to in subsection (5) shall be such that-

- (a) the work to be done under the new contract is of a kind which is both suitable in relation to the worker and appropriate for her to do in the circumstances;
- (b) the provisions of the, new contract as to the capacity and place in which she is to be employed are not less favourable to her than if she had returned to work in accordance with subsection (1); and
- (c) paragraph (c) of subsection (1) shall apply in relation thereto as if she had returned to work in accordance with subsection (1).

4. (7) Where a worker who is entitled to return to work in accordance with subsection (1) has complied with this section but is unable to return to work by reason of redundancy, she shall be treated for the purposes of the Employment (Termination and Redundancy Payments) Act -

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

(8) For the purposes of this section and of the **Schedule** -.

(a) any two employers are to be treated as associated if one of them controls, or is controlled by, or is under common control with, the other; and “associated employer” shall be construed accordingly;

(b) “control” has the meaning assigned to that expression by section 2 of the Income Tax Act.

Qualified workers right to maternity pay.

5. (1) Subject to the provisions of subsection (2), the employer of a qualified worker who has been granted maternity leave shall pay to that worker sums, to be known as maternity pay, in respect of the first eight weeks of her maternity leave beginning on, or falling after, the relevant day.

5. (2) A qualified worker shall not be entitled to be paid maternity pay -

(a) unless she informs her employer (in writing if her employer so requests) not less than two weeks before the relevant day or, if that is not reasonably practicable, as soon thereafter as is reasonably practicable of the expected week of her confinement;

(b) unless she produces for the inspection of her employer, if her employer so requests, a certificate from a registered medical practitioner or a midwife registered under the Nurses and Midwives Act stating the expected week of her confinement; and

(c) if that employer had granted her maternity leave with pay under this Act in respect of three or more pregnancies before the relevant day.

5. (3) The provisions of the **Schedule** shall have effect in relation to the determination of a period of continuous employment and the computation and payment of maternity pay.

5. (4) The Minister may by order, which shall be subject to affirmative resolution, amend the Schedule.

5. (5) In this section and in section 8 and the Schedule –

“qualified worker” means a worker who -

(a) on the relevant day is not less than eighteen years of age;

(b) on the relevant day is not employed as a domestic worker, as defined in the National Insurance Act;

“the relevant day” in relation to any worker means the first day of the eleventh week of the expected week of her confinement.

Employer to keep records.

6. Every employer shall keep, in relation to each worker employed by him, a record containing the particulars specified in the **Schedule**.

Offences.

7. (1) Any employer who contravenes the provisions of section 3 or section 5 shall be guilty of an offence and shall be liable on summary conviction before a Resident Magistrate to a fine not exceeding five hundred dollars and in default of payment to imprisonment for a term not exceeding four months.

7. (2) Any employer who without reasonable cause terminates the employment of a worker wholly or partly because of her pregnancy or confinement shall be guilty of an offence and shall be liable on summary conviction before a Resident Magistrate to a fine not exceeding one thousand dollars and in default of payment to imprisonment for a term not exceeding six months.

7. (3) Where a worker who is entitled to return to work in accordance with section 4 has complied with that section but is not permitted by her employer to return to work, her employer shall be treated for the purposes of subsection (2) as having terminated her employment without reasonable cause wholly or partly because of her pregnancy or confinement.

7. (4) Any employer who fails to comply with the provisions of section 6 shall be guilty of an offence and shall be liable on summary conviction before a Resident Magistrate to a fine not exceeding three hundred dollars and in default of payment to imprisonment for a term not exceeding three months.

7. (5) The Resident Magistrate before whom any employer is convicted for a contravention of the provisions of section 5 shall at the time of the conviction, in addition to imposing on the employer a penalty for the contravention, order him to pay to the worker in relation to whom the offence was committed the amount of maternity pay which the Resident Magistrate is satisfied that the employer owes to the worker.

7. (6) This section does not apply to the Government.

Regulations.

8. (1) The Minister may make such regulations as he thinks necessary or desirable for the better carrying out of the purposes of this Act, and without prejudice to the generality of the foregoing, those regulations may prescribe circumstances in which, having regard to the nature of the work performed by

any worker who is pregnant, the employer may require her to take maternity leave at a prescribed state of the pregnancy.

8. (2) Where, pursuant to regulations made under subsection (1), an employer requires a qualified worker to take maternity leave at a prescribed stage of the pregnancy, the period in respect of which her employer shall pay her maternity pay shall begin at the prescribed stage of the pregnancy, and paragraphs (a) and (b) of section 5 (2) shall not apply to that worker.

Saving.

9. Nothing in this Act shall be construed as preventing any worker from being granted maternity leave for any period in excess of the period specified in this Act or from being paid, in respect of any period of maternity leave, any amount in excess of the maternity pay specified by this Act.

SCHEDULE

(Sections 4, 5. 6)

1. In this Schedule -

“normal wages” means, in relation to any worker, the remuneration regularly paid to her by her employer as wages, commission, or a combination of a flat rate and task or piece rate, and includes any amounts regularly paid by way of bonus as part of such remuneration but does not include—

- (a) any overtime wages; or
- (b) any premium paid in consideration of any inconvenience suffered or likely to be suffered by her in the course of the performance of her duties;

“normal working week” means the number of days in a week on which the worker in relation to whom that expression is used is normally required to work for her employer.

2. (1) The weekly maternity pay which is payable to a qualified worker employed at time rates shall be the normal wages earned in respect of the last normal working week during which she worked prior to the period specified in section 5(1) of this Act.

2. (2) The weekly maternity pay which is payable to a qualified worker employed at piece or task rates or on a commission basis shall be 1 / 13 of the aggregate normal wages earned by her in respect of the last 13 normal working weeks during which she worked for her employer prior to the period specified in section 5(1) of this Act.

3. (1) Any week in which a worker works for eighteen hours or more shall count as one week in computing that worker's period of employment.

3. (2) If in any week a worker is for the whole or part of the week -

- (a) incapable of working in consequence of sickness or injury; or
- (b) absent from work on account of a temporary cessation of work; or
- (c) absent from work in circumstances such that, by arrangement or custom she is regarded as continuing in the employment of her employer for all or any purposes.

that week shall, notwithstanding that it does not fall under subparagraph (1). count as one week in computing that worker's period of employment.

3. (3) If a business is transferred from one person to another, the period of employment of a worker in the business at the time of the transfer shall count as a period of employment with the transferee unless redundancy payment was paid to the worker as a result of the transfer.

3. (4) If a deceased employer's personal representative or trustee carries on the business of the deceased employer and employs in that business any worker who was employed in it at the time of the death of the deceased employer, the worker's period of employment with the deceased employer shall count as a period of employment with that personal representative or trustee.

3. (5) If there is a change in the partners, personal representatives or trustees who employ any worker, that worker's period of employment at the time of the change shall count as a period of employment with the partners, personal representatives or trustees (as the case may be) after the change.

3. (6) Where a worker is transferred from her employer to an associated employer, her period of employment with the first-mentioned employer shall count as a period of employment with the associated employer.

4. (1) The continuity of a worker's period of employment is not broken -

- (a) by the transfer referred to in sub-paragraph (3) of paragraph 3;
- (b) by the death of her employer if she is employed by a personal representative or trustee of the deceased in the circumstances mentioned in sub-paragraph (4) of paragraph 3;
- (c) by the change referred to in sub-paragraph (5) of paragraph 3;

(d) by the change of employment in the circumstances mentioned in sub-paragraph (6) of paragraph 3;

(e) by any period during which the worker is absent from work on maternity leave:

(f) by any period during which the worker is absent from work because of a lock-out by her employer; or

(g) by any period during which she is absent from work for the purpose of carrying out any duty imposed on her by the Government or any work which she carries out at the request of the Government with the permission of her employer.

4. (2) In this paragraph "lock-out" means action which in contemplation or furtherance of an industrial dispute, is taken by one or more employers, whether parties to the dispute or not, and which consists of the exclusion of employees from one or more places of employment or of the suspension of work in one or more of such places or of the collective, simultaneous or otherwise connected termination or suspension of employment of a group of employees.

5. (1) Subject to sub-paragraph (2) the record which this Act requires an employer to keep shall show -

(a) the name and address of the employer;

(b) the name and address of the worker;

(c) the date of commencement of the worker's employment;

(d) the normal wages and normal working week of the worker;

(e) the duration (with dates) of periods of maternity leave granted to the worker;

(f) the maternity pay which was paid to the worker.

5. (2) A record which is kept under the Employment (Termination and Redundancy Payments) Act shall be deemed to be kept for the purposes of this Act if it includes the particulars specified in subparagraph (1) (e) and (f).