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<b>Legislation incorporated in this Consolidation</b>	<b>Ordinance</b>	<b>Date in Force</b>
Employment (Maternity) Ordinance 2009	20/09	13/10/2009
Employment (Maternity)(Amendment) Ordinance 2011	17/11	17/10/2011

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## E M P L O Y M E N T ( M A T E R N I T Y ) O R D I N A N C E 2 0 0 9

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# EMPLOYMENT (MATERNITY) ORDINANCE 2009

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An Ordinance to make provision for maternity employment rights

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

## PART 1

### Preliminary provisions

#### Short title

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

#### Interpretation

2. 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.

#### Maternity leave

3.—(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.

*(2A) The employee is entitled to maternity leave in accordance with subsection (2), even if she has not given the requisite notice, if the employee—*

*(a) informs her employer as soon as possible; and*

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(a) Ordinance 16/1980

*(b) provides her employer with a certificate from the Social Welfare Services confirming that the notice period could not be given earlier. (a)*

(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) On providing the documents set out in subsection (8), the employee is entitled to 1 week of additional maternity leave if, immediately after the employee gives birth, the child remains in hospital for a period of at least 21 days because the child—*

*(a) is in an incubator due to a premature birth; or*

*(b) suffers from any other health problems.*

*(5) Subject to subsections (6) and (7), on providing the documents set out in subsection (8), for every additional 21 day period the child is in hospital, the employee is entitled to a further 1 week of additional maternity leave.*

*(6) For the purposes of subsection (5), a child that is in hospital for a period of more than 10.5 days but fewer than 21 days is to be treated as being in hospital for an additional 21 day period.*

*(7) Additional maternity leave under subsections (4) and (5) may only be granted for a maximum period of 6 weeks.*

*(8) The employee must provide the employer with—*

*(a) a certificate issued by a registered medical practitioner of the appropriate speciality confirming that the child is receiving treatment for a reason specified in subsection (4); and*

*(b) a certificate issued by the hospital confirming the period of time that the child is in hospital.(b)*

#### **Prohibition on notice of termination (c)**

~~4.—(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.—~~

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(a) Section (2A) inserted by Ordinance 17/2011 – came into force on 17 October 2011

(b) Subsections (4) to (8) inserted by Ordinance 17/2011 – came into force on 17 October 2011

(c) Section 4 repealed and replaced by Ordinance 17/2011 – came into force on 17 October 2011

***Prohibition on terminating the employment of the birth mother***

**4.**—(1) *Subject to section 4B, where an employee notifies her employer in writing of her pregnancy, the employer must not, during the period beginning with the date the employee becomes pregnant and finishing 3 months after her maternity leave (including any additional maternity leave under sections 3(4) and 3(5)) ends,—*

- (a) dismiss the employee;*
- (b) give the employee notice of dismissal; or*
- (c) take any action aimed at replacing the employee.*

*(2) If requested by the employer, the employee must provide the employer with a certificate, issued by a medical practitioner of a relevant speciality, setting out the employee's expected date of childbirth.*

*(3) Any dismissal, notice of dismissal or action aimed at replacing the employee under subsection (1) is invalid.*

*(4) A dismissal or notice of dismissal under subsection (1) is also invalid if, within 5 days after being informed of her dismissal or given a notice of dismissal, the employee provides the employer with a certificate issued by a medical practitioner confirming that she is pregnant even if—*

- (a) the employee has not notified her employer of her pregnancy in accordance with subsection (1); and*
- (b) at the date of notifying the employee of her dismissal or giving notice of dismissal the employer did not know that the employee was pregnant.*

***Prohibition on terminating the employment of the adoptive mother (a)***

**4A.**—(1) *Subject to section 4B, if a female employee presents the employer with a certificate from the Social Welfare Services confirming that the employee intends to assume the care of a child for the purposes of adoption, the employer must not, during the period beginning with the date the employee presents the employer with the certificate from the Social Welfare Services and finishing 3 months after the end of her maternity leave,—*

- (a) dismiss the employee;*
- (b) give the employee notice of dismissal; or*
- (c) take any action aimed at replacing the employee.*

*(2) Any dismissal, notice of dismissal or action aimed at replacing the employee under subsection (1) is invalid.*

***Exceptions***

**4B.**—(1) *Sections 4 and 4A do not apply if—*

- (a) the employee is guilty of a serious offence or misconduct which justifies dismissal;*
- (b) the employer's business ceases to exist; or*
- (c) the employee's contract is of a fixed-term and expires in circumstances where the expiry is not connected with the employee's pregnancy, childbirth, breast feeding or maternity leave.*

*(2) If subsection (1) applies, the employer must, in writing, notify the employee of the reason or reasons for her dismissal and provide justification.*

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(a) Sections 4A and 4B inserted by Ordinance 17/2011 – came into force on 17 October 2011

### **Paid time off work of one hour per day**

5.—(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.

### **Ante-natal appointments**

6. 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;~~ (a)
- (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.

### **Seniority and entitlements (b)**

~~7. 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.~~

### **Seniority and entitlements**

7.—(1) Subject to subsection (2), an employer must not allow the employee's maternity leave to affect an employee's—

- (a) seniority;
- (b) entitlement to be considered for promotion; or
- (c) entitlement to return after maternity leave to—
  - (i) the same work that she carried out prior to taking maternity leave with not less than the same pay and benefits as the employee received before her maternity leave; or
  - (ii) carry out work of a similar nature with not less than the same pay and benefits as the employee received before her maternity leave.

(2) In this section "pay and benefits" do not include commission which is exclusively calculated on the amount or the value of the work produced.

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(a) Paragraph (a) repealed by Ordinance 17/2011 – came into force on 17 October 2011

(b) Section 7 repealed and replaced by Ordinance 17/2011 – came into force on 17 October 2011

## **Appointment of Chief Inspector**

**8.**—(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(a).

(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.

## **Conditions in termination of employment legislation (b)**

~~**9.** Conditions in the Termination of Employment Ordinance 1980(e) 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.~~

## **Resolution of Disputes under this Ordinance**

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

## **Offences**

**11.** An employer who fails to comply with sections 3, 4, ~~4A, 4B~~(e) 5, 6 or 7 commits an offence, and is liable to a penalty of €6,834.

## **Application to the Crown and authorised service organisations**

**12.**—(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.

## **Repeal**

**13.** The Protection of Maternity Ordinance 1999(a) is repealed along with all amendments made to that Ordinance(b).

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(a) Ordinance 17/2007

(b) Section 9 repealed by Ordinance 17/2011 – came into force on 17 October 2011

(c) Ordinance 5/1980

(d) Ordinance 10/1973

(e) Text inserted by Ordinance 17/2011 – came into force on 17 October 2011

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- (a) Ordinance 21/1999
  - (b) Ordinance 7/2000, 26/2002 and 4/2008