



**SUPPLEMENT No. 2**  
**TO**  
**THE SOVEREIGN BASE AREAS GAZETTE**  
**No. 1629 of 10th October 2011**  
**LEGISLATION**

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**EMPLOYMENT (MATERNITY) (AMENDMENT) ORDINANCE 2011**

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An Ordinance to amend the Employment (Maternity) Ordinance 2009

**G. E. STACEY**  
**ADMINISTRATOR**

*3rd October 2011.*

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

**1. Short title and commencement**

This Ordinance may be cited as the Employment (Maternity) (Amendment) Ordinance 2011 and comes into force on 17 October 2011.

**2. Interpretation**

In this Ordinance “the principal Ordinance” means the Employment (Maternity) Ordinance 2009(a).

**3. Section 3 (Maternity leave) amended**

(1) Section 3 of the principal Ordinance is amended by inserting after subsection (2) the following subsection—

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

(2) Section 3 of the principal Ordinance is amended by adding after subsection (3) the following subsections—

- “(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.”.

#### **4. Section 4 replaced**

Section 4 of the principal Ordinance is repealed and replaced by the following sections—

##### **“4. Prohibition on terminating the employment of the birth mother**

- (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.

##### **4A. Prohibition on terminating the employment of the adoptive mother**

- (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.

#### **4.B Exceptions**

- (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.”.

#### **5. Section 6 (Ante-natal appointments) amended**

Section 6 of the principal Ordinance is amended by repealing paragraph (a).

#### **6. Section 7 repealed and replaced**

Section 7 of the principal Ordinance is repealed and replaced by the following section—

##### **“7. Seniority and entitlements**

- (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.”.

#### **7. Section 9 (Conditions in termination of employment legislation) repealed**

Section 9 is repealed.

#### **8. Section 11 (Offences) amended**

Section 11 is amended by inserting “4A, 4B” after “4.”.

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#### **Notes**

- (a) Ordinance 20/09.

## EXPLANATORY NOTE

**(This note does not form part of the Ordinance)**

### Introduction

1. This note relates to the Employment (Maternity) (Amendment) Ordinance 2011 (“the Ordinance”). The note has been prepared by the office of the Attorney General and Legal Adviser in order to assist the reader of the Ordinance. It does not form part of the Ordinance.
2. The note should be read in conjunction with the Ordinance. It is not, and is not meant to be, a comprehensive description of the Ordinance. So when a section or part of a section does not seem to require any explanation or comment, none is given.

### The Ordinance

3. The Ordinance amends the Employment (Maternity) Ordinance 2009 (“the principal Ordinance”) by broadly replicating the effect of the Republican Protection of Maternity (Amendment) Law 2011 (Law 70(1)/2011).
4. Section 3 of the Ordinance inserts into section 3 of the principal Ordinance subsections (2A) and (4) to (8). Subsection (2A) provides for the circumstances when, after adopting a child, an employee is entitled to maternity leave where she has not given the employer sufficient notice. If the baby remains in hospital after the birth due to health reasons, subsections (4) to (8) provide for the circumstances when additional maternity leave is to be granted to the employee up to a maximum period of 6 weeks.
5. Section 4 of the Ordinance replaces section 4 of the principal Ordinance with sections 4, 4A and 4B. For both birth mothers and adoptive mothers, these sections provide a protected period during which employers must not dismiss them, give the employees notice of dismissal or take any action to replace the employee. Section 4B sets out the limited circumstances during the protected period when an employee can dismiss the employee.
6. Section 5 of the Ordinance amends section 6 of the principal Ordinance by removing the proviso that pregnant employees are only permitted to attend ante-natal appointments during working hours if it is not possible to attend the appointment outside working hours.
7. Section 6 of the Ordinance replaces section 7 of the principal Ordinance. The new section improves the protection extended to an employee on her return to work after maternity leave with regards her position and terms of employment, in particular pay.

(SBA/AG/2/EM/191)