
HEALTH AND SAFETY (MATERNITY) REGULATIONS 2009

The Administrator makes the following Regulations in exercise of the powers under section 38 of the Health and Safety at Work Ordinance 1999(a).

Citation and commencement

1. These Regulations may be cited as the Health and Safety (Maternity) Regulations 2009 and come into force on the day they are published in the Gazette.

Interpretation

2. In these Regulations—

“biological agent” has the same meaning as in the Health and Safety at Work (Biological Agents) Regulations 2002(b);

“new or expectant mother” means an employee who is pregnant, has recently given birth or is breastfeeding a child;

“the Ordinance” means the Health and Safety at Work Ordinance 1999;

“preventive measures” means all the steps taken or planned in relation to every aspect of the employee’s work for the purpose of avoiding risk or reducing it to an acceptable level;

“recently given birth” means an employee who has undergone childbirth, as defined in the Employment (Maternity) Ordinance 2009(c), within the preceding 2 months.

Risk assessment and preventive measures

3. (1) Where an employer carries out a risk assessment and—

(a) their employees include one or more women of child-bearing age, and

(b) the work is of a kind which could involve risk to the health and safety of a new or expectant mother, or to that of her child, from any processes or working conditions, or any physical, biological, chemical or ergonomic agents (including, but not limited to, those specified in Schedules 1 and 2),

the employer must include an assessment of such risks and determine any preventive measures to be taken.

(2) If, in the case of an individual employee, the taking of any other preventive measures required under the Ordinance would not avoid the risk referred to in paragraph (1), the employer must alter the employee’s working conditions or hours of work as necessary to avoid such risk.

(3) If the preventive measures required by paragraph (2) are not reasonably practicable, the employer must relieve the employee of her usual work and provide her with suitable alternative work (which does not involve such risk) for as long as is necessary to avoid such risk and without affecting any of her other rights.

(4) If it is not possible to provide suitable alternative work as required by paragraph (3), or if it is not reasonable to require the employee to perform such work, the employer must relieve the employee of work for as long as is necessary to avoid the risk referred to in paragraph (1) and without affecting any of her other rights. In particular, the employer must continue to pay the employee her usual remuneration for the whole period of her absence from work.

(5) The references to risk in paragraphs (1) to (4), in relation to risk from any infectious or contagious disease, are references to a level of risk at work which is in addition to the level to which a new or expectant mother may be expected to be exposed outside the workplace.

(6) If there is reason to suspect that a risk assessment carried out pursuant to this regulation is no longer valid, or if there has been a significant change in the issues to which it relates, the employer must review that assessment and must make any changes to the assessment required as a result of such a review.

(7) If an employer carries out, or makes any changes to, a risk assessment pursuant to this regulation, they must inform all female employees (or their representatives) of the outcome of that assessment and of the preventive measures being taken for their health and safety.

Night work

4. (1) Where—

- (a) a new or expectant mother works at night, and
- (b) a certificate from a medical practitioner shows that it is necessary for her health and safety that she should avoid such work as identified in the certificate,

the employer must relieve the employee of such work and provide her with suitable alternative work for as long as is necessary for her health and safety and without affecting any of her other rights.

(2) If it is not possible to provide suitable alternative work as required by paragraph (1), or if it is not reasonable to require the employee to perform such work, the employer must relieve the employee of work for as long as is necessary for her health and safety and without affecting any of her other rights. In particular, the employer must continue to pay the employee her usual remuneration for the whole period of her absence from work.

Exposure to dangerous substances

5. (1) An employer must not require a pregnant woman to carry out an activity for which the risk assessment has revealed a risk of exposure, involving a risk to her health and safety, to the agents or working conditions in Part A of Schedule 2.

(2) An employer must not require a breastfeeding woman to carry out any activity for which the risk assessment has revealed a risk of exposure, involving a risk to her health and safety, to the agents or working conditions in Part B of Schedule 2.

(3) Where an employer is prohibited by this regulation from requiring a pregnant woman or a breastfeeding woman to carry out an activity, regulation 3 applies to that woman (subject to any modification necessary to such a case).

Notification by new or expectant mothers

6. (1) Nothing in regulation 3(2) to (4) or regulation 5 requires an employer to—

- (a) take any action in relation to an employee until she has notified them in writing that she is pregnant, has recently given birth or is breastfeeding a child; or
- (b) maintain action taken in relation to an employee who has notified them that she is pregnant if the employee has failed, within a reasonable time of being requested to do so in writing by her employer, to produce a certificate from a medical practitioner or midwife showing that she is pregnant.

(2) Nothing in regulations 3(2) to (4), 4 or 5 requires an employer to maintain action taken in relation to an employee if the employer—

- (a) knows that she is no longer a new or expectant mother; or
- (b) cannot establish whether she remains a new or expectant mother.

SCHEDULES/...

SCHEDULE 1

(Regulation 3(1)(b))

Agents, processes and working conditions

PART A - AGENTS

1. Physical or ergonomic agents

Any physical or ergonomic agent which is generally regarded as causing foetal lesions and/or likely to disrupt placental attachment, and in particular:

- (a) shock, vibration or movement;
- (b) manual handling of heavy loads involving risk, particularly of a dorsolumbar nature;
- (c) noise;
- (d) ionizing radiation;
- (e) non-ionizing radiation;
- (f) extremes of cold or heat; and
- (g) movements and postures, travelling (either inside or outside the employer's establishment), mental and physical fatigue, and other physical burdens connected with the employee's activity.

2. Biological agents

Any biological agent classified as a Group 2, Group 3 or Group 4 biological agent within the meaning of regulation 3 of the Health and Safety at Work (Biological Agents) Regulations 2002 in so far as it is generally known that such an agent endangers the health of pregnant women or unborn children and in so far as it is not listed in Schedule 2.

3. Chemical agents

The following chemical agents in so far as it is generally known that they endanger the health of pregnant women or unborn children and in so far as they are not listed in Schedule 2:

- (a) substances labelled to the following effect:
 - possible risk of irreversible effects,
 - may cause cancer,
 - may cause hereditary genetic disease,
 - may cause birth defects;
- (b) chemical agents mentioned in Schedule 3;
- (c) mercury and mercury derivatives;
- (d) antimetabolic drugs;
- (e) carbon monoxide;
- (f) chemical agents known to be dangerous when absorbed through the skin.

PART B – PROCESSES

Any industrial process listed in Schedule 3.

PART C – WORKING CONDITIONS

Underground mining work.

SCHEDULE 2

(Regulations 3(1)(b) and 5)
Agents and working conditions

PART A – PREGNANT EMPLOYEES

1. Agents

(a) Physical agents

Work in a hyperbaric atmosphere (eg. pressurised enclosures or underwater diving).

(b) Biological agents

The following biological agents, unless a woman is adequately protected by immunisation:

- toxoplasma;
- rubella virus.

(c) Chemical agents

Lead and lead derivatives in so far as these agents are capable of being absorbed by the human organism.

2. Working conditions

Underground mining work.

PART B – BREASTFEEDING EMPLOYEES

1. Agents

Chemical agents

Lead and lead derivatives in so far as these agents are capable of being absorbed by the human organism.

2. Working conditions

Underground mining work.

SCHEDULE 3

(Schedule 1 Part A paragraph 3(b) and Schedule 1 Part B)
Chemical agents and industrial processes

1. Manufacture of auramine.
2. Work involving exposure to polycyclic aromatic hydrocarbons present in coal soot, tar, pitch, fumes or dust.
3. Work involving exposure to dust, fumes or sprays produced during the roasting and electro-refining of cupro-nickel alloys.
4. Strong acid process in the manufacture of isopropyl alcohol.

Dated this 15th day of December 2009.

By the Administrator's Command,

J. D. Wilson,
Chief Officer,
Sovereign Base Areas.

(SBA/AG/2/EM/201/1)

Notes

- (a) Ordinance 6/99.
- (b) Public Instrument 66/02.
- (c) Ordinance 20/09.

EXPLANATORY NOTE

(This note does not form part of the Regulations)

Introduction

1. This explanatory note relates to the Health and Safety (Maternity) Regulations 2009 (“the Regulations”). It has been prepared by the Office of the Attorney General and Legal Adviser in order to assist the reader of the Regulations. It does not form part of the Regulations.
2. The note should be read in conjunction with the Regulations. It is not, and is not meant to be, a comprehensive description of the Regulations. So when a regulation or part of a regulation does not seem to require any explanation or comment, none is given.

Particular points

3. The Regulations place duties on employers with regard to the health and safety at work of women who are pregnant, have recently given birth or are breastfeeding (“new or expectant mothers”). They are intended broadly to replicate the effect of equivalent legislation in the Republic (the Protection of Maternity (Health and Safety at Work) Regulations 2002(PI 255/2002)).
4. “Recently given birth” is defined to mean that the woman has undergone childbirth as defined in the Employment (Maternity) Ordinance 2009 (ie. the birth of a living child, or the birth of a dead child following a period of at least 28 weeks gestation) within the preceding 2 months. There are no time limits on the protection which the Regulations give to a breastfeeding woman.
5. Where an employer employs women of child-bearing age, regulation 3(1) requires any risk assessment which they carry out (as required under the Management of Health and Safety at Work Regulations 2003) to include an assessment of any particular risks to new or expectant mothers. Certain agents, processes or working conditions which may give rise to such risks are specified in Schedules 1 and 2, but these lists are not exhaustive.
6. If the risks to such employees cannot be avoided by other preventive measures, the employer must alter their working conditions or hours; or offer them suitable alternative work; or relieve them of work entirely (regulation 3(2) to (4)). Such steps must not affect the employee’s other rights and the employer must continue to pay her during any absence from work.
7. Regulation 4 makes similar provision for such employees to be relieved of any requirement to work at night.
8. Regulation 5 is an absolute prohibition on employers requiring pregnant or breastfeeding employees to carry out certain activities specified in Schedule 2. If such an employee is relieved of her duties pursuant to this regulation, regulation 3 will apply to her.
9. Regulation 6 limits the employer’s obligations with reference to their knowledge of whether the employee is a new or expectant mother. Regulation 6(1) relieves the employer of any obligation under regulation 3(2), (3), (4) or regulation 5 unless the employee has provided written notification and, in the case of pregnancy, followed this up with a medical certificate within a reasonable time. Regulation 6(1) does not apply to the regulation 4 duties concerning nightwork, which already depend on the production of a medical certificate, or to the regulation 3(1) duty to conduct a risk assessment. Regulation 6(2) relieves the employer of any continuing obligation under regulation 3(2), (3), (4) or regulation 5 if they either know that the employee is no longer a new or expectant mother or cannot establish whether she remains one.