

**SECOND SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 4226 of 21st December, 2015

LEGAL NOTICE NO. 234 OF 2015.

EMPLOYMENT ACT

**EMPLOYMENT (MATERNITY AND PARENTAL LEAVE, AND
HEALTH AND SAFETY) (AMENDMENT) REGULATIONS 2015**

In exercise of the powers conferred on him by section 86 of the Employment Act, and in order to further transpose into the law of Gibraltar Council Directive 2010/18/EU of 8 March 2010 implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC, the Minister has made the following Regulations –

Title.

1. These Regulations may be cited as the Employment (Maternity and Parental Leave, and Health and Safety) (Amendment) Regulations 2015.

Commencement.

2. These Regulations come into operation on the day of publication.

Amendment of the Employment (Maternity and Parental Leave, and Health and Safety) Regulations, 1996.

3. The Employment (Maternity and Parental Leave, and Health and Safety) Regulations, 1996 are amended in accordance with the provisions of these Regulations.

New regulations 31, 32 and 33.

4. After regulation 30, insert –

“Variation of working hours on return from parental leave.

31.(1) Subject to subregulation (2), where an employee has returned to work from parental leave he may in writing request from his employer changes to –

(a) the hours he is required to work; or

(b) the times he is required to work.

(2). The changes referred to in subregulation (1), if granted by the employer, shall be for a specified period only.

(3). An employer must consider all requests under this regulation taking into consideration both his own needs and that of the employee making the request and must respond in writing to the employee with the reasons for granting or refusing such request within 1 month from when the request was made.

(4) A request under this regulation must –

(a) state it is such a request;

(b) specify the change requested and the date on which it is proposed the change should become effective; and

(c) explain what effect, if any, the employee thinks making the change requested would have on his employer and how, in his opinion, any such effect might be dealt with.

(5) If an employee has made a request under this regulation, he may not make a further request under this regulation to the same employer before the end of the period of twelve months beginning with the date on which the previous request was made.

Employer's duties in relation to a request under regulation 31.

32. An employer to whom a request under regulation 31 is made shall only refuse the request if he considers that –

(a) allowing such a request would result in –

(i) a burden of additional costs on the employer;

(ii) a detrimental effect on the employer's ability to meet customer demand;

- (iii) an inability to re-organise work among existing staff;
 - (iv) an inability to recruit additional staff;
 - (v) a detrimental impact on quality;
 - (vi) a detrimental impact on performance, or
- (b) the request cannot be granted due to –
- (i) insufficiency of work during the periods the employee proposes to work;
 - (ii) planned structural changes.

Complaints to the Industrial Tribunal.

33.(1) An employee may present a complaint to the Industrial Tribunal on the grounds that –

- (a) his employer has unreasonably postponed a period of parental leave requested by him;
- (b) his employer has prevented or attempted to prevent him from taking parental leave;
- (c) his employer has failed in relation to a request made under regulation 31 to comply with regulation 32;
- (d) a decision by his employer to reject a request under regulation 31 was based on incorrect facts.

(2) The Industrial Tribunal shall not entertain a complaint under subregulation (1) unless it is presented to the tribunal before the end of the period of three months beginning with the date (or late date) of the matters complained of, or within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

(3) Where the Industrial Tribunal finds a complaint under this regulation well-founded it may make an award of compensation to be paid by the employer to the employee.

(4) The amount of compensation shall be such as the tribunal considers just and equitable in all the circumstances having regard to the employer's behaviour and any loss sustained by the employee which is attributable to the matters complained of.

(5) No complaint under this regulation may be made in respect of a request which has been disposed of by agreement or withdrawn.”.

Amendment of Schedule 1.

5. In Schedule 1 –

(a) in paragraph 4(b), for the word “thirteen” substitute “seven”;

(b) for paragraph 5(b) substitute –

“(b) is given to the employer at least 7 weeks before the beginning of that week.”

Dated 21st December, 2015.

N F COSTA,
Minister with responsibility for Employment.

EXPLANATORY MEMORANDUM

These Regulations amend the Employment (Maternity and Parental Leave, and Health and Safety) Regulations, 1996 in order to further transpose into the law of Gibraltar Council Directive 2010/18/EU.

Printed by the Gibraltar Chronicle Limited

GIBRALTAR GAZETTE, No 4226, Monday 21st December, 2015

**Printing Office: Unit 3, The New Harbours
Government Printers for Gibraltar,
Copies may be purchased at 6, Convent Place, Price £0.60p**