

# **Protection of Pregnant, Post-Natal and Breastfeeding Employees – Health and Safety Regulations**

The Health & Safety Authority in order to provide guidance on the Safety, Health and Welfare at Work (General Application) Regulations 2007 has issued a comprehensive guide on Chapter 2 of Part 6 of the regulations relating to the Protection of Pregnant, Post-Natal and Breastfeeding Employees.

We have outlined below some of the relevant pieces of Chapter 2 of Part 6 which are not intended to be a legal interpretation of the legislation.

## **General**

The objective of Chapter 2 of Part 6 of the General Application Regulations 2007 is to give general guidance aimed at the prevention of occupational accidents or ill health.

Pregnancy is a part of normal everyday life; it is not an illness. Many women work during pregnancy and many return to work while they are breastfeeding. Because there are some hazards in the workplace which may affect either the health of the woman or her developing child an employer has specific responsibilities as set out in Chapter 2 of Part 6 of the Safety, Health and Welfare at Work (General Application) Regulations 2007.

In addition, Regulation 24 (Chapter 1 of Part 2 relating to the workplace) of the regulations requires an employer to ensure that pregnant, post-natal and breastfeeding employees are able to lie down to rest in appropriate conditions. The facility for pregnant women and nursing mothers should, when possible, be situated near the welfare facilities (i.e. toilet and washing facilities) and be equipped to allow persons to lie down. Adequate space, heating and lighting are required.

## **Application of Regulations**

The regulations apply when an employee informs her employer that she is pregnant and provides an appropriate medical certificate of her condition. She may choose to inform her employer through her supervisor or by having her doctor directly contact the employer. As the earliest stages of pregnancy are the most critical ones for the developing child it is in the employee's interest to let her employer know she is pregnant as soon as possible.

## **Risk Assessment**

Under Regulation 149 once an employer is advised by an employee that she is pregnant the employer must assess the specific risks to that employee and take action to ensure that she is not exposed to anything in the workplace that will damage either her safety or

health, or that of her developing child. To do this assessment the employer must identify the type, quantity and duration of exposure to any agent, process or working condition.

In taking the necessary protective and preventive measures, the employer needs to comply with Section 18 of the 2005 Act, in relation to the appointment of a competent person, preferably in the employer's employment, to carry out these measures.

The employer is also required to assess exposure to particular agents and working conditions. If the risk assessment identifies exposure to these specified risks, then the employer must ensure that these employees do not carry out duties which would result in such exposure.

### **Protective or Preventative Measures**

Where the risk assessment identifies a risk to the safety or health of the pregnant employee, the pregnancy or the breastfeeding employee, the employer must assess if there are any practical ways the risk can be avoided by following the three steps set out below:

- Step 1** Adjust the working conditions and/or hours of work;
- Step 2** Provide suitable alternative work and, if that is not possible;
- Step 3** The employer should assist the employee in receiving health & safety leave under Section 18 of the Maternity Protection Act 1994.

The employer is required to give the employee and/or the Safety Representative information about the outcome of the risk assessment and any measures to be taken.

### **Health & Safety Leave**

Health & Safety Leave may be provided to women who are pregnant, have recently given birth and/or who are breastfeeding, and who have recently given birth and are on night work. To be involved in night work a woman must spend at least three hours or 50% of her working time between 11pm and 6am.

Regulations require that an employer must assess the workplace for risks to pregnant workers and those who have recently given birth, or who are breastfeeding. If a risk is established, the employer must put in place measures to remove the risk. If it is not possible for the employer to do this, the employee must be granted suitable alternative work. If the employee cannot be granted suitable alternative work then she must be granted Health & Safety Leave. "Suitable alternative work" is defined as being 'appropriate to the employee in all circumstances'.

The employer must certify the leave stating the reason she has been granted it. It must also state when the leave commences and how long the leave is expected to last. This

certificate can be presented to the Department of Social, Community & Family Affairs so that she may receive Health & Safety Benefit.

An employee granted Health & Safety Leave must be paid her usual wage by her employer for the first twenty-one (21) days of her leave. A woman who's Health & Safety Leave extends beyond twenty-one (21) days may be entitled to a Social Welfare Benefit subject to her PRSI contributions.

### **Night Work**

If an employee has a medical certificate stating that for health and safety reasons she is not required to perform night work during the pregnancy or for 14 weeks afterwards, the employer must remove her from night work by either transferring her to day time duties or, if this is not feasible, granting the employee leave. The employee concerned may have an entitlement to Health & Safety Leave under the Maternity Protection Legislation in these circumstances.

Night work means working between 11pm and 6am the next day, where an employee works at least 3 hours (not necessarily consecutive) in that period or where a minimum of 25% of the employee's working hours in a month are worked between those times.

### **Summary of Hazards**

(These lists are not exhaustive)

#### **1. General hazards**

- Physical shocks – including direct blows to the abdomen
- Vibration – of whole body
- Handling a load
- Noise
- Excessive heat and cold
- Movement and postures which are abrupt or severe or give rise to excessive fatigue
- Ionising radiation
- Non-ionising radiation
- Biological agents – including viruses, bacteria etc
- Chemicals – including substances which cause cancer, mercury, anti-cancer drugs and carbon monoxide
- Underground mine work

## **2. Hazards specific to pregnancy**

Unless the risk assessment indicates that there will be no risk to the safety or health of the employee or the developing child, pregnant employees must not work with:

- Pressurisation chambers
- Rubella
- Toxoplasma
- Lead and lead substances
- Underground mine work

## **3. Hazards specific to breast-feeding**

Unless the risk assessment indicates that there will be no risk to the safety or health of the employee or the developing child, employees who are breast-feeding must not work with:

- Lead and lead substances
- Underground mine work