

Third Session Fifth Parliament Republic of Trinidad
and Tobago



REPUBLIC OF TRINIDAD AND TOBAGO

Act No. 4 of 1998

[L.S.]

AN ACT to provide a minimum level of maternity
leave benefits and protection

[Assented to March 11, 1998]

WHEREAS it is enacted *inter alia* by subsection (1) of ^{Preamble} section 13 of the Constitution that an Act of Parliament to which that section applies may expressly declare that it shall have effect even though inconsistent with sections 4 and 5 of the Constitution and, if any Act does so declare, it shall have effect accordingly:

And whereas it is provided by subsection (2) of the said section 13 of the Constitution that an Act of Parliament to which that section applies is one the Bill for which has been passed by both Houses of Parliament and at the final vote thereon in each house has been supported by the votes of not less than three-fifths of all the members of that House.

And whereas it is necessary and expedient that the provisions of this Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution.

Enactment

Enacted by the Parliament of Trinidad and Tobago as follows:—

PART I

PRELIMINARY

Short title

1. This Act may be cited as the Maternity Protection Act, 1998.

Commencement

2. This Act shall come into operation on such date as the President may appoint by Proclamation.

Act inconsistent with the Constitution

3. This Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution.

Interpretation

4. In this Act—

“agricultural employee” means a person who habitually engages in agricultural employment on the land of another, where that employment is based on a contract to employ that person;

“confinement” means, in relation to a female employee who has become pregnant, labour resulting in the issue of a child or labour after twenty-six weeks of pregnancy resulting in the issue of a child whether alive or dead;

“domestic employee” means a person employed otherwise than for the purpose of a trade or business, in any capacity of a domestic nature as may be prescribed, for the comfort or convenience of a member of a household or in or about a dwelling-house or such other premises as may be prescribed and paid by the householder;

“employee” includes a public officer and any person who has entered into or works under a contract with an employer to carry out any trade, business, office, vocation, apprenticeship, or other work and whether the work is skilled, unskilled, manual, technical, clerical, or otherwise for hire or reward, whether the contract is expressed or implied, oral or in writing, whether the remuneration is calculated by time or by work done, and whether by the day, week, month, or with reference to any other period, and includes an agricultural employee, a domestic employee, or a household assistant;

“employer” includes any person, whether incorporated or not, who employs an employee for the purpose of carrying out any trade, business, profession, office, vocation, apprenticeship, or other work and whether the work is skilled, unskilled, manual, technical, clerical, or otherwise, and includes an itinerant employer, a successor in title or the personal representative of a deceased employer;

“household assistant” means a person to whom the Minimum Wages (Household Assistants) Order, 1991, applies; L.N. No. 160 of 1991

“itinerant employer” means a person who employs an employee for a minimum period of ten hours in a forty-hour period;

“maternity leave” means the thirteen weeks leave entitlement referred to in section 8(1);

“Minister” means the Minister to whom responsibility for labour is assigned;

“pay” means salary or wages;

“qualified person” means a registered medical practitioner or a person registered under Part III of the Nurses and Midwives Registration Act.

Chap. 29:53

Application of Act

5. This Act shall not apply where any written law, industrial award or collective agreement prescribes conditions more favourable than those specified in this Act.

Act to bind State

6. This Act binds the State.

PART II

PROTECTION FOR PREGNANT EMPLOYEES

Entitlement of pregnant employee

7. (1) Subject to this Act, an employee is entitled to—
- (a) leave of absence for the purpose of maternity leave;
 - (b) pay while on maternity leave;
 - (c) resume work after such leave on terms no less favourable than were enjoyed by her immediately prior to her leave.

(2) Where an employee has proceeded on maternity leave and the child of the employee dies at birth or within the period of the maternity leave, the employee shall be entitled to the remaining period of maternity leave with pay.

(3) Where an employee has not proceeded on maternity leave and—

(a) a premature birth occurs and the child lives, the employee is entitled to the full period of maternity leave with pay; or

(b) a premature birth occurs and the child dies at birth or at any time within thirteen weeks thereafter, the employee is entitled to the full or remaining period of maternity leave with pay, as the case may be.

(4) An employee who is pregnant and who has, on the written advice of a qualified person, made an appointment to attend at any place for the purpose of receiving prenatal medical care shall, subject to this Act, have the right not to be unreasonably refused time off during her working hours to enable her to keep the appointment.

(5) An employee who is permitted to take time off during her working hours, in accordance with subsection (4), shall be entitled to receive pay from her employer for the period of absence.

8. (1) An employee is not entitled to the rights referred to in section 7 unless: Eligibility for maternity leave

(a) as of the expected date of confinement as certified by a qualified person, she has been continuously employed by that employer for a period of not less than twelve months;

(b) she informs her employer, in writing, no later than eight weeks before the expected date of her confinement that she will require leave of absence due to pregnancy;

(c) she submits to her employer a medical certificate from a qualified person stating the probable date of confinement; and

(d) she informs her employer in writing of her intention to return to work at the expiry of her maternity leave.

(2) For the purpose of subsection (1) "continuously employed" in relation to a daily rated employee means employment for an aggregate of one hundred and fifty working days in a period of twelve months.

Date of maternity
leave

9. (1) An employee is entitled to thirteen weeks maternity leave and may proceed on such leave six weeks prior to the probable date of confinement as stated in the medical certificate submitted under section 8(1)(c) or at a subsequent date at the employee's discretion, and is required to return to work, subject to section 10, no later than thirteen weeks from the date she proceeded on leave.

(2) During the period of maternity leave, an employee is entitled to receive pay from her employer to an amount equivalent to one month's leave with full pay and two months' leave with half pay.

(3) Where the sum of the amount paid to the employee under subclause (2) and the maternity benefits payable to her under the National Insurance Act is less than her full pay during the period, the employer shall pay the difference to the employee.

Chap. 32:01

(4) Subject to the National Insurance Act, where an employer has failed to pay contributions under that Act on behalf of any of his registered employees and no maternity benefits are payable by the National Insurance Board, the employer shall pay to the employee the total sum she would have been entitled to under subsection (2).

Right to return to
work

10. (1) Where an employee is unable to return to work on the required date, she shall submit to her employer a certificate from a registered medical practitioner stating that by reason of disease or bodily or mental disablement, whether to herself or her baby, she will be incapable of returning to work on the required date and stating her intended date of return.

(2) An employee who extends her absence from work for medical reasons under subsection (1) may do so for a period not exceeding 12 weeks after the required date of return and shall inform her employer in writing of her intended date of return.

(3) Subject to an employee's right to sick or vacation leave with pay under any other written law, industrial award or collective agreement, an employee under subsection (2) shall be paid half pay for the first six weeks and no pay for the next six weeks.

(4) An employee may postpone her return to work for non-medical reasons until a date not exceeding four weeks after the required date of return if, within ten working days, before the required date, she gives the employer written notice, stating the reason why she is unable to return to work and stating an intended date of return.

(5) Subject to an employee's right to sick or vacation leave with pay under any other written law, industrial award, or collective agreement, an employer is not liable to pay an employee in respect of leave for the period between the required date of return to work under section 9(1) and the intended date of return under subsection (4).

11. Notwithstanding the Income Tax Act, an employer—

Tax deduction
Chap. 75:01

- (a) is entitled to claim as a tax deduction the full amount paid by the employer to an employee for maternity leave; or
- (b) who pays an employee full pay for maternity leave, in the instance where benefits are not payable under the National Insurance Act, is entitled to claim that amount as a tax deduction.

Redress of aggrieved
employee or
employer

12. (1) Where an employee or employer alleges non compliance with the provisions of this Act, or an employee's employment is terminated on the ground of pregnancy or on any ground relating to pregnancy, or there is a difference of opinion as to the reasonableness or otherwise of any action taken or not taken by an employer or employee, the employee, trade union or the employer may report the matter to the Minister and the matter shall be deemed to be a trade dispute and shall be dealt with as such under the Industrial Relations Act.

Chap. 88:01

(2) Where any action under this Act has been taken by a company, any person who at the time of the taking of the action was a director, general manager, secretary or any other person responsible for management or administration or was purporting to act in such capacity, shall be deemed to have taken the action, unless he proves that the action was taken without his consent or connivance and that he exercised all such diligence to prevent the taking of the action as he ought to have exercised having regard to the nature of his functions in that capacity and to all circumstances.

(3) Nothing in this section shall preclude the Minister from recommending to the employee, trade union or employer a reconciliation of their differences through conciliation or mediation.

(4) An agreement reached as a consequence of conciliation or mediation shall be registered by the Industrial Court and shall be valid for all intents and purposes as if it were an agreement to which Part IV of the Industrial Relations Act applies.

Employer to keep
records

13. The employer of every employee to whom this Act applies shall keep and maintain such records in respect of that employee as may be necessary to show whether the provisions of this Act are being complied with in

respect of that employee and, unless seized and taken away by an authorised officer under section 14, such records shall be retained by the employer for a period of five years.

14. The Minister may authorise in writing any officer in his Ministry (referred to below as an "authorised officer") to require an employer or any other person authorised by an employer, except a person engaged in a confidential, professional relationship with such employer—

Authorised officer
powers of inspection

(a) to give him information with respect to remuneration paid to, and terms and conditions of service enjoyed by, an employee in the service of that employer; and

(b) to permit him to inspect any records or pay sheets relating to that employee.

15. (1) An authorised officer may at a reasonable time and with the permission of the owner or occupier of any premises, enter the premises where an employee under this Act is employed or where there are any books, records or other documents relating to that employee which may afford evidence as to the contravention of any provision of this Act and—

Powers of entry

(a) if necessary, with the assistance of any person, search the premises for any such books, records or other documents; and

(b) examine such books, records or other documents.

(2) Where during the course of the examination under subsection (1) it appears to the authorised officer that there has been a contravention of this Act, he may—

(a) require the employer or any other person in the service of that employer to give him all reasonable assistance with, and to answer all questions relating to the examination; or

(b) seize and take away any of the books, records or other documents relating to an employee and retain them until they are required to be produced in any proceedings; but where such books, records or other documents are necessary for the continued operations of the business, an employer shall be allowed reasonable access to them.

(3) An authorised officer shall not demand entry to any premises under subsection (1) except on the warrant of a judge.

(4) Where it is shown to the satisfaction of a judge, on sworn information in writing, that admission to premises has been refused or that refusal is apprehended and that there is reasonable ground for entry into the premises for any purpose stated in subsection (1), the judge may, subject to subsection (5), by warrant under his hand, authorise entry on the premises.

(5) A judge shall not issue a warrant under subsection (4) unless he is satisfied either that written notice of the intention to apply for a warrant has been given to the occupier, or that the giving of such notice would defeat the object of the entry.

(6) Where an authorised officer enters any premises by virtue of this section he may take with him any other person as may be necessary to effect the purpose of his entry.

(7) A warrant issued under this section shall continue in force for such reasonable time as may be necessary to effect the purpose for which it was issued.

(8) A person who obstructs any person doing anything that he is authorised under this section to do or any person who, unless he is unable to do so, fails or refuses to do anything which he is required under this section to do, commits a contempt of the Industrial Court, and shall be dealt with as such by that Court as provided under the Industrial Relations Act.

(9) In this section, "judge" means the President or Vice-President of the Industrial Court.

16. Any person who in furnishing any particulars for the purpose of this Act makes any statement which he knows to be misleading, false or deceptive, or by any dishonest concealment of material facts or by the reckless making of any statement, dishonest or otherwise, misleads or attempts to mislead any other person, commits an offence and is liable on summary conviction to a fine of twenty-five thousand dollars and to imprisonment for two years. False information—penalty

17. All proceedings for the obtaining of an Order against an employer or other person in respect of any action taken under this Act shall be instituted by an application to the Industrial Court by the recognised majority union or, where there is no such union, by any union of which the employee is a member, or by the employee. Applications

18. (1) Subject to subsection (2), there is no limit to an employee's right to maternity leave under section 7(1)(a) and her right to return to work under section 7(1)(c). Limits on maternity leave with pay

(2) An employee's right to pay for maternity leave under section 7(1)(b) is limited to one payment during each period of twenty-four months commencing at the beginning of such leave.

19. Where an employee is entitled to maternity leave as referred to under section 9 of this Act, that leave shall be in addition to any vacation leave and sick leave to which that employee is eligible. Maternity leave in addition to vacation leave

20. An employee on maternity leave shall not be deprived of an opportunity to be considered for promotion for which she is eligible and which may arise during her period of leave. Eligibility for promotion

21. Notwithstanding any other written law to the contrary, the period of maternity leave shall be included in the computation of pensions and gratuity. Computation of pensions and gratuity

in the computation of an employee's pension or other terminal benefits.

Power to make regulations

22. The Minister may make Regulations for the purpose of giving effect to the provisions of this Act.

Passed in the Senate this 3rd day of February, 1998.

D. DOLLY

Acting Clerk of the Senate

IT IS HEREBY CERTIFIED that this Act is one the Bill for which has been passed by the Senate and at the final vote thereon in the Senate has been supported by the votes of not less than three-fifths of all the members of the Senate that is to say by the votes of 28 members of the Senate.

D. DOLLY

Acting Clerk of the Senate

Passed in the House of Representatives this 20th day of February, 1998.

J. SAMPSON

Clerk of the House

IT IS HEREBY CERTIFIED that this Act is one the Bill for which has been passed by the House of Representatives and at the final vote thereon in the House has been supported by the votes of not less than three-fifths of all the members of the House that is to say by the votes of 27 members of the House.

J. SAMPSON

Clerk of the House

House of Representatives amendment agreed to by the Senate this 3rd day of March, 1998.

D. DOLLY

Acting Clerk of the Senate