

**Reference No:** E107/1/94;    **Date:** 08/12/95

**Circular 34/1995:- Measures to Protect the Health and Safety of Pregnant Employees**  
a Dhuine Uasail,

I am directed by the Minister for Finance to refer to the Maternity Protection Act, 1994 (referred to below as "the Act") and to the Safety, Health and Welfare at Work (Pregnant Workers, etc.) Regulations, 1994 (S.I. No. 446 of 1994, referred to below as "the Regulations"). The Regulations give effect to the safety and health aspects of Council Directive 92/85/EEC; the aspects of that Directive which relate to maternity leave are the subject of a separate circular (Circular 35/95).

2. The purpose of this circular is to provide general advice on the obligations imposed on Departments by the legislative provisions and to make special provision for the civil service in certain respects. It is not intended to reproduce the legislative provisions in detail and, accordingly, Departments should familiarise themselves thoroughly with those provisions.

Application

3. The purpose of the provisions is to protect the health and safety of workers who

- are pregnant, or
- have given birth not more than 14 weeks previously, or
- are breastfeeding, having given birth not more than 26 weeks previously.

General duties of employers

4. In addition to the duties imposed by the Safety, Health and Welfare at Work Act, 1989 and under the Safety, Health and Welfare at Work (General Application) Regulations, 1993, the legislative provisions to which this circular relates place the following obligations on employers:

To/ All Departments, etc.

- to carry out an assessment of risks in the workplace to employees to whom the provisions apply;
- to take protective and preventive measures to safeguard the health of any employee to whom the provisions apply where the assessment reveals a risk to such employees or, where a risk cannot be removed by such measures, to take such other measures as are necessary to avoid exposure of that employee to the risk (see paragraph 7 below);
- to inform the employees and/or their safety representatives of the results of the assessment and the measures to be taken concerning the health and safety of such employees.

#### Risk assessment

5. The Regulations contain two Schedules which list agents, processes and working conditions exposure to which may entail a risk to employees to whom the provisions apply. Those listed in the First Schedule are of a type which may be rendered harmless by preventive or protective measures (for example, the handling of loads of noise). The Second Schedule contains a list of agents and working conditions to which employees who are pregnant or are breastfeeding may not be obliged to expose themselves in any circumstances; Part A of the Schedule relates to employees while they are pregnant and Part B to employees who are breastfeeding.

6. Accordingly, Departments should carry out assessments of the extent to which the agents, processes and working conditions listed in the Schedules are present in the workplace. (It should be noted that, while the Schedules may form the basis for the assessment, the lists contained in the Directive, on which the Schedules were based, were stated to be non-exclusive.) Should any factors of the type listed in the First Schedule be identified, consideration should be given to protective and preventive measures which may be taken to ensure the health and safety of employees to whom the provisions apply who are working in those environments. The staff and/or their safety representatives should be informed of the outcome of the risk assessment and of any measures which it is proposed to take to safeguard the health and safety of such employees.

#### Protection of the health and safety of pregnant employees

7. Where a risk to the health and safety of an employee to whom the provisions apply has been identified and it is not possible

to remove that risk by preventive or protective measures, the employing Department shall

- temporarily adjust the working conditions or hours (or both) of the employee concerned so that exposure to the risk is avoided, or
  
- in the event that such adjustment is not possible, move the employee to suitable alternative work which does not entail the risk, or
  
- in the event that such alternative work is not available, grant health and safety leave.

#### Night work

8. Where a registered medical practitioner certifies that it is necessary for the safety or health of an employee that she should not be required to perform night work during pregnancy or for 14 weeks following childbirth, the employing Department shall

- transfer the employee in question to day work during that period, or
  
- if such transfer is not feasible, grant health and safety leave for the period.

#### Payment while on Health and safety leave

9. Subject to paragraph 10 below, a woman on health and safety leave is entitled to full pay, except where she has been appointed for a fixed term of less than 26 weeks. A woman who has been appointed for a fixed term of less than 26 weeks is entitled to full pay for the first 21 days of health and safety leave. After the initial 21 day period, she is entitled to the same rate of pay that she would receive if she were absent on sick leave; as the entitlement to payment (if any) may vary according to the length of continuous service given, it would be advisable to check with the Personnel Section with regard to entitlements.

10. A woman who is (or was) fully insured under the Social Welfare Acts and who fulfils certain contribution conditions may be entitled to an allowance from the Department of Social Welfare while on health and safety leave. Information about this allowance is available from Personnel Units in

Departments/Offices. A woman on health and safety leave who is entitled to health and safety benefit from the Department of Social Welfare, is entitled to payment by her Department on the basis provided for in paragraph 9 above or of an amount equivalent to the full rate of benefit to which she is entitled, whichever is the greater, provided she

- (i) signs a mandate authorising the Department of Social Welfare to pay any benefit due to her under the social insurance system directly to her employing Department;
- (ii) makes the necessary claims for social insurance benefit to the Department of Social Welfare within the required time limits and complies with whatever requirements are laid down by that Department as a condition of claiming benefit.

11. Health and safety leave does not reckon as part of any other leave (including sick leave or annual leave) to which the employee concerned is entitled. Therefore, a woman who has gone onto sick leave at half pay or unpaid sick leave immediately prior to going on health and safety leave will resume full pay upon commencement of health and safety leave subject to the terms of paragraphs 9 and 10 above.

General conditions applying to health and safety leave

12. Subject to paragraph 13 below, while on health and safety leave, a woman must be deemed for all purposes (other than remuneration or entitlement to public holidays or privilege days) to have been in employment. Health and safety leave is, therefore, fully reckonable for service, seniority and annual leave entitlement.

13. In the case of a woman who is on probation at the commencement of health and safety leave, the period of probation will stand suspended during health and safety leave and will be completed by the woman on her return to work.

14. Health and safety leave will cease when any one of the following occurs:

- the risk ceases,
- suitable alternative work becomes available,

- the employee concerned commences maternity leave or not later than four weeks before the end of the expected week of confinement, whichever is the sooner,
- the employee concerned no longer comes within the definition in paragraph 3 above,
- the term of a fixed-term appointment expires and the employment of the employee concerned would have terminated had she not been on health and safety leave.

#### Resolution of disputes

15. Any dispute in relation to entitlements under the Act may be referred to the parent Department in the first instance, who may in turn refer the matter to this Department. In addition, the Act provides for referral of a dispute in relation to entitlements under the Act to a Rights Commissioner (Sections 30 - 37 of the Act refer). Where appropriate, however, the grievance procedure may also be used for the resolution of such disputes.

#### Confidentiality

16. Departments are asked to ensure that all matters relating to pregnancy are treated in confidence as far as possible and that, where feasible, routine aspects of these matters are handled by only one officer.

17. Please bring this circular to the attention of all officers in your Department. Any enquiries from Departments about this circular should be made to the Department of Finance, Agriculture House, Dublin 2 (Telephone GTN 7109-5344 or 6767571 ext. 5344). Personal enquiries should be made to the Personnel Unit of the employing Department.

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J McGovern  
Assistant Secretary