



ER 10

Suspension from work on medical or maternity grounds



Introduction

This booklet outlines provisions relating to instances where employees are required to be suspended from work on medical or maternity grounds under employment legislation. It also aims to explain the means of redress available to an employee whose employer does not comply with the provisions.

Please note that this booklet gives **general guidance only** and should not be regarded as a complete or authoritative statement of the law. Authoritative interpretations of the law can only be given by the courts. Readers should be alert to the possibility of developments in case law that may affect the rights described.

Further information can be obtained from the Labour Relations Agency (LRA). For the addresses of its two offices see [Appendix 2: Useful addresses](#).

The contents of this booklet apply equally to men and women. For simplicity, however, the masculine pronoun is used throughout.

Any reference throughout this booklet to Jobs and Benefits offices includes JobCentres.

This booklet, [others in the series](#) and [related publications](#) are free to download from the Departmental website at www.delni.gov.uk/erpublications. Alternatively they may be obtained upon request from your local [Jobs and Benefits office](#). For information on [Jobs and Benefits offices](#): FREEPHONE 0800 353530.

Upon request, consideration may be given to making this booklet available in alternative formats and in other languages for people who are not proficient in English.

The Employment Rights ('ER') series of booklets is updated on a regular basis. As part of this updating process the Department would welcome any comment/s from members of the public regarding the content of these booklets.

All comments should be addressed to:

Department for Employment and Learning
Employment Relations Policy and Legislation Branch
Room 203
Adelaide House
39-49 Adelaide Street
Belfast
BT2 8FD

Alternatively, comments may be sent via e-mail to: erbooklets@delni.gov.uk

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Employees not covered by medical and maternity suspension arrangements

The medical and maternity suspension provisions do not cover:

- anyone who is not an employee - for example, an independent contractor or freelance agent;
- anyone during a period when he is unable to work because of illness or physical or mental disability (unconnected with the health and safety risk);
- anyone who unreasonably refuses to do suitable alternative work that his employer offers - this work does not have to be the same as the employee was employed to do under his contract of employment;
- anyone who does not meet any reasonable requirements his employer may impose to ensure that he can be available for work when necessary;
- members of the police force; and
- masters or crew members engaged in share fishing paid solely by a share of the catch.

Seafarers

A different scheme applies to the suspension of pregnant seafarers. The provisions of this scheme are contained in merchant shipping legislation and are not covered in this booklet.

Employees not covered by medical suspension provisions only

The medical suspension provisions also do not cover anyone who has not been continuously employed by his employer for at least one month before the day on which the suspension begins.

Suspension on medical grounds

Some jobs are covered by special health and safety regulations under which employees may be suspended from normal work on medical grounds.

Outline of provisions

The following health and safety regulations currently apply to employees who work with radiation, lead or some other potentially hazardous substance:

- The Control of Lead at Work Regulations (Northern Ireland) 1998
- The Ionising Radiation Regulations (Northern Ireland) 2000
- The Control of Substances Hazardous to Health Regulations (Northern Ireland) 2000

Under these provisions, some employees have to be suspended from work if continued exposure to these hazardous substances might damage their health.

Most employees who are suspended in these circumstances are entitled to receive their normal pay for up to 26 weeks. However, any medical suspension payments an employee receives under his contract of employment can be offset against the employer's statutory liability.

What is a medical suspension?

An employee is regarded as suspended from work only if he continues to be employed by his employer but is not provided with work or does not perform the work normally performed before suspension. Current health and safety regulations under which employees can be suspended on medical grounds are listed at the beginning of this page.

At present these are concerned with jobs involving exposure to ionising radiation, lead and certain other substances which are hazardous to health. If further regulations are made by the appropriate Department, or codes of practice approved by the Health & Safety Executive for Northern Ireland (see [Appendix 2](#)), which contain requirements for suspension of employees on medical grounds, these will be added to the list accordingly.

In the case of work with ionising radiation, an Employment Medical Adviser of the Employment Medical Advisory Service (see [Appendix 2](#)) or another appointed doctor may decide, as a result of routine or special medical surveillance required by the Ionising Radiation Regulations (Northern Ireland) 2000, that a particular employee is not fit to continue this work. (Health surveillance need not include a medical examination unless the employee concerned has received a dose of ionising radiation in excess of twice any dosage limit.)

In the case of exposure to lead or certain other substances which are hazardous to health, examination by an Employment Medical Adviser, or other appointed doctor, may show that an employee's health would be endangered if exposure to the particular substance continued. Where a female employee is exposed to lead, the health of a developing foetus may be at risk rather than the woman herself if exposure is continued. The doctor will inform the employer who must then suspend the employee from working on that job, or any other job where she would continue to be exposed to the substance. The employee should not recommence employment on such a job until the doctor declares it safe for her to do so. An employee subject to medical or health surveillance can apply to the Health & Safety Executive for Northern Ireland (see [Appendix 2](#)) to review a decision by an Employment Medical Adviser or appointed doctor to suspend her.

The right to medical suspension pay

An employee suspended under the regulations listed on page 2 of this booklet should receive from his employer a normal week's pay for every week of suspension (up to a maximum of 26 weeks). An employee who has a right to pay under his contract of employment while suspended should continue to receive that pay. The employer will not have to pay medical suspension pay in addition but, if the actual pay is less than a normal week's pay, the employer must make up the difference. The calculation of a week's pay is based on a specific 'calculation date' which for medical suspension pay purposes is the day before that on which the suspension begins. For an explanation of how to calculate a week's pay see the booklet **Continuous employment and a week's pay (ER8)**.

Suspension on maternity grounds

Outline of provisions

An employee who is pregnant, or who has recently given birth, or who is breast-feeding may have to be suspended from work on maternity grounds if continued attendance might damage her, or her baby's, health. A woman on maternity suspension must be paid her normal wages or salary by her employer for as long as the suspension lasts. (More detailed information about this, and other maternity rights, can be found in the booklet **Maternity rights: a guide for employers and employees (ER16)**).

Risk assessment

All employers are required by the Management of Health and Safety at Work (MHSW) Regulations (Northern Ireland) 1992 (as amended) to assess the risks to health and safety to which their employees and others could be exposed as a result of their undertakings.

Employers of women of childbearing age, whose workplace or work activity could involve a risk to the health or safety of a new or expectant mother or her baby, are specifically required by law to assess those risks. Information concerning agents, processes, and working conditions that could present a risk to the health or safety of new or expectant mothers, with some advice about the nature of the possible risks, can be found in the booklet **Maternity rights: a guide for employers and employees (ER16)**.

If risks are identified by the assessment, information about them should be given to all women of childbearing age in the workplace. Employers should also explain what they will do to make sure that new and expectant mothers are not exposed to the risks that could cause them harm.

If an individual believes there is a risk to her health or safety, or to that of her baby, which her employer has not considered in the risk assessment, she should bring the risk to the attention of her employer or health and safety representative. If the employer discounts the risk, and the individual remains concerned, she may wish to discuss it with her doctor, or get in touch with the Health & Safety Executive for Northern Ireland to ask for advice (see [Appendix 2](#)). Individuals can also get advice from the Health & Safety Executive for Northern Ireland if the risk assessment identifies a risk but the employer will not take the necessary preventative action.

Avoiding the risk

When employers have identified a significant risk that could damage the health or safety of a new or expectant mother, they need to decide what action to take. Some risks, for instance from chemicals, are already covered by specific health and safety regulations. In those cases employers should follow the requirements of those regulations. Generally, employers should try to remove the hazard or prevent exposure to the risk. If that is not possible the

employer should take steps to reduce or remove the effect of the risk, for instance by providing aids to help with manual handling duties.

Removal of employees from risk

If, despite taking all reasonably practical measures, there is still a risk that could jeopardise the health or safety of a new or expectant mother or her baby, employers must follow a sequence of steps to remove any employee who is a new or expectant mother from the risk. The Regulations provide that employers need to do this when they have been told **in writing** that an employee is pregnant. They also provide for employers to request **in writing** a certificate from a registered medical practitioner, or a registered midwife, confirming the pregnancy. Despite the requirement of written notification of pregnancy, more general legal duties require employers to take the action necessary to protect a worker they know to be pregnant or breast-feeding whether or not formal notification has been received. The three steps to remove an employee from a risk are as follows:

- temporarily adjust the employee's working conditions and/or hours of work; or if it is not reasonable to do so, or would not avoid the risk:
- offer her suitable alternative work if any is available; or if that is not feasible;
- suspend her from work for as long as necessary to protect her safety or that of her child.

The measures taken to avoid the risk must continue for as long as the risk exists.

Night work

Employers need to consider risks to new and expectant mothers who work at night. If an employee who is a new or expectant mother works at night, and has a medical certificate stating that night work could affect her health or safety, the employer must either:

- offer her suitable alternative daytime work; or if that is not reasonable:
- suspend her from work for as long as necessary to protect her health or safety.

Offers of suitable alternative work

Where an employee is offered suitable alternative work, the work must be:

- both suitable and appropriate for her to do in the circumstances; and
- on terms and conditions no less favourable than her normal terms and conditions.

The right to maternity suspension pay

A woman who is suspended on maternity grounds must be paid her normal wages or salary by her employer for as long as the suspension lasts. However, if a woman has unreasonably refused suitable alternative work, she is not entitled to maternity suspension pay.

If an employee has both a statutory right and a contractual right to remuneration during maternity suspension, these entitlements can be offset against each other.

Continuity of employment and contractual benefits

The employee continues to be employed during the period of maternity suspension, which therefore counts towards her period of continuous employment for the purposes of assessing seniority, pension rights and other personal length of service payments, such as pay increments. Contractual benefits are also likely to continue as normal during the maternity suspension unless the employer and employee have mutually agreed to vary them. Employers must also ensure they are acting lawfully under the Equal Pay Act (Northern Ireland) 1970 and the Sex Discrimination (Northern Ireland) Order 1976, and where pension entitlement is concerned under Schedule 5 to the Social Security (Northern Ireland) Order 1989.

Remedies

Failure to offer suitable alternative work

An employee is entitled to make a complaint to an industrial tribunal if there is suitable alternative work available which her employer has failed to offer her before suspending her from work on maternity grounds.

Pay during suspension

Employees who do not get medical or maternity suspension pay to which they consider they are entitled, or who think they have been underpaid, can complain to an industrial tribunal. If the tribunal finds the complaint justified, it will order the employer to pay the amount it thinks is due.

The right to complain of unfair dismissal

Generally, an employee who believes he has been unfairly dismissed can complain to an industrial tribunal if he has been continuously employed by his employer for one year. However, an employee may complain to an industrial tribunal after only one month's continuous service if he believes that the dismissal resulted from a legal requirement or a recommendation in a code of practice that could otherwise have led to medical suspension and pay.

It is also unlawful to dismiss an employee, or select her for redundancy in preference to other comparable employees, solely or mainly because of a health and safety regulation which could give rise to maternity suspension. In these circumstances a woman may complain of unfair dismissal regardless of length of service.

Complaints of unfair dismissal should be made within three months of the effective date of dismissal. For further information on this subject see booklet **Unfairly dismissed? (ER13)** and **Dismissal - fair and unfair: a guide for employers (ER18)**.

Temporary replacements

An employer who takes on a temporary replacement for an employee suspended on medical or maternity grounds should inform the replacement **in writing** when he makes the appointment that the employment will only last until the suspended employee returns to the job. If the employer then dismisses the replacement to enable the suspended employee to return, this will not normally be unfair dismissal.

Settling a dispute

An employee who believes that he is entitled to make a complaint to an industrial tribunal should first seek to resolve the dispute by mutual agreement with his employer - perhaps through the business's own grievance or appeals

procedure where one exists. If an employee does not try to resolve the problem in this way, any compensation awarded by an industrial tribunal at a later stage may be reduced. The employee and employer may also seek advice from a conciliation officer of the Labour Relation Agency (LRA) (see [Annex 1](#) and [Appendix 2](#)). However, it should be noted that the time limit for making a complaint to an industrial tribunal will still apply and will not normally be extended to allow for the fact that attempts have been made to settle the dispute in advance.

Complaints to industrial tribunals

Complaints about payment for any day for which payment is claimed should be made within three months of that day. This three month period for complaints can be extended by the tribunal only if it is satisfied that it was not reasonably practicable for the time limit to be met.

Resolving disputes in the workplace

Where there is a dispute about a workplace issue involving rights and responsibilities those involved should try to sort out the matter between themselves. Whether the employee is complaining (raising a grievance) about something the employer has done or the employer has concerns about the employee's work or behaviour (a disciplinary matter) it is generally a good idea to talk the matter over informally and try to get it resolved as soon as possible. If this approach fails it is normal to involve line management and a union representative (where there is one) to explore potential solutions.

If the dispute goes beyond this point without being resolved, employers and employees are generally required to follow a minimum formal process to ensure that workplace disputes are properly discussed. Even at this stage it can be useful to seek outside assistance or advice from the Labour Relations Agency (LRA). The LRA may be able to help resolve the dispute.

If the dispute continues and the employee or the employer fails to follow the process this could influence the outcome of a subsequent claim to an Industrial Tribunal. Tribunals have power in most situations to take action where the procedures have not been followed. For example - depending on the circumstances they can reduce or increase an award, rule automatically against the employer, or refuse to accept the claim.

Detailed guidance about the procedures including when they do not apply and when they are treated as having been followed is available on the Departmental website: www.delni.gov.uk/index/er/resolvingdisputes.htm. Further advice including advice on employment rights and responsibilities generally, can be obtained from the LRA by contacting their helpline: 028 9032 1442.

Making a claim to an industrial tribunal

A claim to an industrial tribunal should be in writing and should state:

- the name and address of the applicant;
- the name(s) and address(es) of the respondent(s) (i.e. the party whose action or decision is disputed); and
- sufficient detail of the complaint(s) which you are making to inform the person or body complained against of the case which has to be met.

If you name more than one respondent please say why you are doing so.

Claim form IT1 (NI) may be obtained from any JobCentre or downloaded from the website of the Office of the Industrial Tribunals and the Fair Employment Tribunal (OITFET), www.industrialfairemploymenttribunalsni.gov.uk/

You are asked to give certain other information, which will be helpful to the industrial tribunal, so complete the form as fully as possible and keep a copy of what you write. You should read the notes on the form before completing it and remember to sign the claim form.

Further information is available in the booklet **Industrial Tribunals Procedures: for those concerned in Industrial Tribunal Proceedings** available from Jobs and Benefits offices and OITFET (see [Appendix 2](#)).

Annex 1: The Labour Relations Agency (LRA)

The LRA has the general duty of promoting the improvement of industrial relations. Employers may seek from the LRA information on a wide range of industrial relations and employment matters. They may request the assistance of its officers in helping to settle disputes. In most cases where employees or trade unions may complain to an industrial tribunal, employers may seek the assistance of a conciliation officer of the LRA, who will try to settle the case by agreement between the parties, without the need for a tribunal hearing. Employees similarly may obtain assistance from the LRA.

LRA conciliation, in cases which are or could be the subject of complaints to industrial tribunals alleging infringement of individual employment rights, is explained in LRA leaflet: Individual Employment Rights: Conciliation Explained.

Appendix 1: Booklets in this series

Booklets in this series are available online from www.delni.gov.uk/erbooklets or can be obtained by contacting the Department.

ER 1	<i>Individual rights and responsibilities of employees</i>
ER 2	<i>Written statement of employment particulars</i>
ER 3	<i>Redundancy entitlement statutory rights</i>
ER 4	<i>Redundancy consultation and notification</i>
ER 5	<i>Your rights if your employer is insolvent</i>
ER 6	<i>Unjustifiable discipline by a trade union</i>
ER 7	<i>Time off for public duties</i>
ER 8	<i>Continuous employment and a week's pay</i>
ER 10	<i>Suspension from work on medical or maternity grounds</i>
ER 12	<i>Pay statements: what they must itemise</i>
ER 13	<i>Unfairly dismissed?</i>
ER 14	<i>Guarantee payments</i>
ER 15	<i>Rights to notice and reasons for dismissal</i>
ER 16	<i>Maternity rights: a guide for employers and employees</i>
ER 17	<i>Help with meeting redundancy costs for employers in financial difficulty</i>
ER 18	<i>Dismissal: fair and unfair - a guide for employers</i>
ER 19	<i>Limits on payments and awards</i>
ER 21	<i>Contracts of employment: changes, breach of contract and deductions from wages</i>
ER 22	<i>Criminal records and employment</i>
ER 23	<i>Payment of union subscriptions through "check off"</i>
ER 24	<i>Time off for dependants</i>
ER 25	<i>Parental leave: a guide for employers and employees</i>
ER 26	<i>Time off for study or training</i>

- ER 27** *Industrial action and the law: a guide for employees*
- ER 28** *Trade union executive elections*
- ER 29** *Industrial action and the law: a guide for employers*
- ER 30** *Industrial action and the law: a guide for individuals whose supply of goods or services is affected by unlawful industrial action*
- ER 31** *Union membership: rights of members and non-members*
- ER 33** *Trade union political funds*
- ER 34** *Rights to paternity leave and pay*
- ER 35** *Adoptive parents: a guide for employers and employees*
- ER 36** *Flexible working: a guide for employers and employees*

Additional employment rights publications, covering a range of other issues, can be found online at www.delni.gov.uk/erpublications or can be obtained from the Department.

Appendix 2: Useful addresses

Certification Officer for Northern Ireland

10-12 Gordon Street
Belfast
BT1 2LG

Tel: 028 9023 7773
Fax: 028 9023 2271
Textphone: 028 9023 8411
Website: www.nicertoffice.com
Email: info@nicertoffice.com

Department for Employment and Learning

Redundancy Payments Service
Room 203
Adelaide House
39-49 Adelaide Street
Belfast
BT2 8FD

Tel: 028 9025 7956
Freephone: 080 0585 811
Fax: 028 9025 7555
Website: www.redundancyni.gov.uk
E-mail: rpsquery@delni.gov.uk

The Health & Safety Executive for Northern Ireland

83 Ladas Drive
Belfast
BT6 9FR

Tel: 028 9024 3249
Fax: 028 9023 5383
Textphone: 028 9054 6896
Freephone Helpline: 080 0032 0121
Website: www.hseni.gov.uk

Department for Employment and Learning

Employment Relations Policy and
Legislation Branch
Room 203
Adelaide House
39-49 Adelaide Street
Belfast
BT2 8FD

Tel: 028 9025 7580
Website: www.delni.gov.uk/er
E-mail: erbooklets@delni.gov.uk

The Equality Commission for Northern Ireland

Equality House
7-9 Shaftesbury Square
Belfast
BT2 7DP

Tel: 028 9050 0600
Fax: 028 9033 1544
Textphone: 028 9050 0589
Website: www.equalityni.org
E-mail: information@equalityni.org

Industrial Court

Room 203
Adelaide House
39-49 Adelaide Street
Belfast
BT2 8FD

Tel: 028 9025 7599
Fax: 028 9025 7555
Website: www.industrialcourt.gov.uk
E-mail: enquiries@industrialcourt.gov.uk

Labour Relations Agency

Head Office
2-8 Gordon Street
Belfast
BT1 2LG

Tel: 028 9032 1442

Fax: 028 9033 0827

Textphone: 028 9023 8411

Website: www.lra.org.uk

E-mail: info@lra.org.uk

NI Business Info

(website giving information on a wide range of issues for employers)

Website: www.nibusinessinfo.co.uk

Labour Relations Agency

Regional Office
1-3 Guildhall Street
Londonderry
BT48 6BJ

Tel: 028 7126 9639

Fax: 028 7126 7729

Textphone: 028 9023 8411

Website: www.lra.org.uk

E-mail: info@lra.org.uk

**Office of the Industrial Tribunals
and the Fair Employment Tribunal**

Killymeal House
2 Cromac Quay
Ormeau Road
Belfast
BT7 2JD

Tel: 028 9032 7666

Fax: 028 9023 0184

Website: www.employmenttribunalsni.org

people:skills:jobs:



Department for
**Employment
and Learning**
www.delni.gov.uk



INVESTOR IN PEOPLE

THE DEPARTMENT:

Our aim is to promote learning and skills,
to prepare people for work and to support
the economy.

This document is available in other for-
mats upon request.

Further information:

telephone: 028 9025 7580

e-mail: employment.rights@delni.gov.uk

website: www.delni.gov.uk