



ANALYSIS

- | | |
|---|---|
| <p>Title</p> <ol style="list-style-type: none"> 1. Short Title and commencement 2. Interpretation 3. Act to bind the Crown 4. Application of this Act to employees <p style="text-align: center;"><i>Maternity Leave</i></p> <ol style="list-style-type: none"> 5. Entitlement of pregnant women to maternity leave 6. Entitlement of adoptive mother to maternity leave 7. Employer not obliged to pay remuneration 8. Duration of maternity leave 9. Date of commencement of maternity leave 10. Power of employee to determine date of commencement 11. Power of employer and employee to determine date of commencement by agreement 12. Power of medical practitioner to determine date of commencement 13. Power of employer to appoint date of commencement 14. Obligation to notify employer 15. Obligation to notify employee 16. Presumption that employee's position can be kept open 17. Employer's notice in relation to return to work and preference for appointment 18. Female employee's notice in relation to return to work 19. Early ending of maternity leave 20. Failure to return to work 21. Failure to accept employment 22. Continuity of employment 23. Contributions to superannuation schemes 24. Ability to perform work 25. Special leave | <ol style="list-style-type: none"> 26. Workers employed to replace female employees on maternity leave <p style="text-align: center;"><i>Protection of Employment</i></p> <ol style="list-style-type: none"> 27. Dismissal by reason of pregnancy or maternity leave prohibited 28. Special defences relating to dismissal 29. Special defence relating to dismissal during maternity leave 30. Special defence relating to dismissal during the 26 weeks following maternity leave 31. Redundancy payments not affected 32. Dismissal for cause not affected <p style="text-align: center;"><i>Remedies Available to Employees</i></p> <ol style="list-style-type: none"> 33. Interim order 34. Maternity leave complaints 35. Procedures for settlement of maternity leave complaints 36. Procedure where representative of union acts 37. Procedure where female employee acts on own behalf 38. Power for Inspector to act on behalf of female employee 39. Decisions 40. Appeals 41. Duty to promote settlement 42. Relief 43. Power to refer complaint to Arbitration Court 44. Non-compliance with formal requirements 45. Penalties 46. Enforcement of judgments 47. Procedures available to State employees <p style="text-align: center;"><i>Miscellaneous Provisions</i></p> <ol style="list-style-type: none"> 48. Regulations 49. Consequential amendment 50. Repeal Schedule |
|---|---|

1980, No. 162

An Act to prescribe minimum requirements with respect to maternity leave and to protect the rights of female employees during both pregnancy and maternity leave

[13 January 1981]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title and commencement—(1) This Act may be cited as the Maternity Leave and Employment Protection Act 1980.

(2) This Act shall come into force on the 1st day of April 1981.

2. Interpretation—(1) In this Act, unless the context otherwise requires,—

“Company” has the same meaning as in the Companies Act 1955; and includes an overseas company within the meaning of that Act:

“Conciliator” means a conciliator appointed under section 63 of the Industrial Relations Act 1973:

“Contract of employment” means a contract of service or apprenticeship:

“Court” or “Arbitration Court” means the Arbitration Court constituted under the Industrial Relations Act 1973:

“Employee”—

(a) Means any person who has entered into or works under a contract of employment, whether by way of manual labour, clerical work, or any other work or effort whatsoever; and

(b) Includes—

(i) Any State employee; and

(ii) Any person who is a worker within the extended meaning given to the term “worker” by subsections (2) and (3) of section 2 of the Industrial Relations Act 1973; but

(c) Does not include an independent contractor:

“Employer” means any person employing an employee or employees; and includes a person who is an employer within the extended meaning given to the term “employer” by subsections (2) and (3) of section 2 of the Industrial Relations Act 1973:

“Inspector” means an Inspector of Awards and Agreements under the Industrial Relations Act 1973:

“Mediator” means a mediator appointed under section 64 of the Industrial Relations Act 1973:

“State employee” means—

(a) Every person whose rate of remuneration is determined by an employing authority or a tribunal under the State Services Conditions of Employment Act 1977:

(b) Every person whose rate of remuneration is determined under section 52 of the Hospitals Act 1957:

(c) Every person whose rate of remuneration is determined under section 6 (3) or section 219 of the Post Office Act 1959:

(d) Every person whose rate of remuneration is determined under any of the provisions of sections 66A to 66G of the Police Act 1968:

(e) Every person whose rate of remuneration is fixed pursuant to regulations made under section 22 or section 60A of the Education Act 1964:

(f) Every person employed in the State services whose rate of salary is determined by the Higher Salaries Commission:

“State services” has the meaning given to it by section 4 of the State Services Conditions of Employment Act 1977:

“Union” means an industrial union registered under the Industrial Relations Act 1973; and includes—

(a) A workers’ organisation registered under the Agricultural Workers Act 1977; and

(b) A society of workers to which Part X of the Industrial Relations Act 1973 applies.

(2) Where it is necessary, for the purpose of applying section 5 (b) or section 6 (b) or section 22 of this Act, to ascertain, in relation to any of the circumstances mentioned in clauses 1 to 5 of the Schedule to this Act,—

- (a) Whether any female employee has remained in the employment of the same employer during any period of time; or
 - (b) Whether any female employee has resumed service with the same employer,—
- the provisions of the Schedule to this Act shall apply.

3. Act to bind the Crown—This Act shall bind the Crown.

4. Application of this Act to employees—Where provision is made by or under any Act other than this Act or by any award, agreement, or contract of employment, for maternity leave, the following provisions shall apply:

- (a) This Act shall not apply to a female employee who is entitled under any such provision—
 - (i) To rights and benefits that, while not the same as the rights and benefits provided for in sections 5 to 25 of this Act, are in their overall effect as favourable to that female employee as the rights and benefits provided for in sections 5 to 25 of this Act; or
 - (ii) To rights and benefits that are more favourable to that female employee in their overall effect than the rights and benefits provided for in sections 5 to 25 of this Act; and
- (b) This Act shall apply to a female employee who is entitled under any such provision—
 - (i) To the rights and benefits provided for in sections 5 to 25 of this Act; or
 - (ii) To rights and benefits that are less favourable to that female employee in their overall effect than the rights and benefits provided for in sections 5 to 25 of this Act.

Maternity Leave

5. Entitlement of pregnant woman to maternity leave—Except as otherwise provided in this Act, every female employee—

- (a) Who becomes pregnant; and
- (b) Who, at the expected date of delivery (as stated in writing by a registered medical practitioner) will

have been, for the immediately preceding 18 months, in the employment of the same employer for at least 15 hours a week,—
shall be entitled to maternity leave in accordance with this Act.

6. Entitlement of adoptive mother to maternity leave—

(1) Except as otherwise provided in this Act, every female employee—

- (a) Who assumes (with a view to adoption by her or by her and her husband jointly) the care of a child who is not more than 5 years of age; and
- (b) Who, at the date on which she, with a view to adoption, first assumes the care of the child, will have been, for the immediately preceding 18 months, in the employment of the same employer for at least 15 hours a week,—

shall be entitled to maternity leave in accordance with this Act.

(2) A female employee shall not be entitled to maternity leave by virtue of subsection (1) (a) of this section if that female employee has already taken maternity leave in respect of that child.

7. Employer not obliged to pay remuneration—The employer of a female employee who is granted maternity leave in accordance with this Act shall not be obliged to pay her any remuneration for—

- (a) The period of her maternity leave; or
- (b) Any period during which she is entitled, following maternity leave, to preference in obtaining employment with her employer.

8. Duration of maternity leave—(1) Subject to subsection (2) of this section and to section 19 of this Act, maternity leave shall be taken in one continuous period of 26 weeks.

(2) If a female employee begins her maternity leave—

- (a) On a date specified, pursuant to section 12 (2) (a) of this Act, in a medical practitioner's certificate; or
- (b) On a date appointed, pursuant to section 13 of this Act, by her employer,—

the female employee shall be entitled to take at least 20 weeks of her maternity leave after the expected date of delivery and, if necessary for that purpose, to extend the duration of her maternity leave.

9. Date of commencement of maternity leave—Maternity leave shall begin—

- (a) On the date of confinement; or
- (b) In the case of adoption, on the date on which the female employee first assumes (with a view to adoption by her or by her and her husband jointly) the care of the child; or
- (c) On such earlier date—
 - (i) As is determined in accordance with section 10 or section 11 or section 12 of this Act; or
 - (ii) As is appointed by the employer pursuant to section 13 of this Act.

10. Power of employee to determine date of commencement—(1) Maternity leave may, at the option of the female employee and subject to compliance with subsection (2) of this section, begin on a date which is earlier, by not more than 6 weeks,—

- (a) Than the expected date of delivery; or
- (b) In the case of adoption, than the date applicable under section 9 (b) of this Act.

(2) Where any female employee wishes to exercise the option conferred by subsection (1) of this section, she shall give to her employer not less than 21 days' notice in writing of the day on which she wishes her maternity leave to begin.

11. Power of employer and employee to determine date of commencement by agreement—Maternity leave may, by agreement between the female employee and her employer, begin on any date before the date of confinement.

12. Power of medical practitioner to determine date of commencement—(1) Where a registered medical practitioner considers that the female employee, being pregnant, should begin her maternity leave before the expected date of delivery, the medical practitioner may give to the female employee a written certificate specifying the date on which, in the medical practitioner's opinion, the female employee should begin her maternity leave.

(2) If the female employee gives the medical practitioner's certificate to her employer, her maternity leave shall, notwithstanding anything in section 9 or in section 11 or in section 13 of this Act, begin on the earlier of—

- (a) The date specified in the medical practitioner's certificate; or
- (b) The date of confinement.

13. Power of employer to appoint date of commencement—Where, by reason of pregnancy, a female employee is unable to perform her work to the safety of herself or others or is incapable of performing her work adequately, her employer, if no other suitable work is available, may, subject to section 8 (2) of this Act, direct her to commence her maternity leave on such date as the employer appoints (including a date that is earlier, by more than 6 weeks, than the expected date of delivery).

14. Obligation to notify employer—(1) A female employee who wishes to take maternity leave shall give written notice to her employer of her wish to take that leave.

(2) Where the female employee is proposing to adopt a child, the notice under subsection (1) of this section shall state the date on which she first intends to assume, with a view to adoption by her or by her and her husband jointly, the care of the child.

(3) Except in the case mentioned in subsection (2) of this section, the notice under subsection (1) of this section shall be given at least 3 months before the expected date of delivery and shall be accompanied by a certificate from a registered medical practitioner—

- (a) Certifying that the female employee is pregnant; and
- (b) Stating the expected date of delivery.

15. Obligation to notify employee—Every employer who receives a notice under section 14 (1) of this Act shall, within 21 days after the date of the receipt of the notice, give to the female employee who gave that notice a written notice in the prescribed form—

- (a) Stating that the female employee is entitled to take maternity leave; and
- (b) Stating that, until the end of the female employee's maternity leave, her position in the employment of the employer—
 - (i) Can be kept open; or
 - (ii) Cannot be kept open; and

- (c) Where the employer states that the female employee's position cannot be kept open, informing her—
 - (i) That she may dispute the employer's statement that her position cannot be kept open; and
 - (ii) That the employer will, for the period of 26 weeks beginning with the day after the date on which her maternity leave ends, give her preference over other applicants for any position which is vacant and which is substantially similar to the position held by her at the beginning of her maternity leave; and
- (d) Informing the female employee of the substance of sections 8 to 13 and of section 19 of this Act, and, in particular, of her rights and obligations under section 10 of this Act.

16. Presumption that employee's position can be kept open—(1) In any proceedings under this Act, the employer shall be presumed to be able to keep open for the female employee, until the end of her maternity leave, her position in the employment of the employer unless the employer proves that the female employee's position cannot be kept open—

- (a) Because a temporary replacement is not reasonably practicable due to the key position occupied within the employer's enterprise by the female employee; or
 - (b) Because of the occurrence of a redundancy situation.
- (2) In determining whether or not a position is a key position for the purposes of subsection (1) (a) of this section, regard may be had, among other things, to—
- (a) The size of the employer's enterprise; and
 - (b) The training period or skills required in the job.

17. Employer's notice in relation to return to work and preference for appointment—Within 21 days after the beginning of a female employee's maternity leave, the employer of the female employee shall give to her written notice stating—

- (a) The date on which her maternity leave will end; and
- (b) Either—
 - (i) Where the employer is able to keep the female employee's position open until the end of her maternity leave, the date on which, if she decides to

return to work at the end of her maternity leave, she will be required to return to work, being the date of the next working day after the date on which her maternity leave ends; or

(ii) In any other case, the period of 26 weeks during which the employer will give the female employee preference over other applicants for any position which is vacant and which is substantially similar to the position held by her at the beginning of her maternity leave; and

- (c) Where paragraph (b) (i) of this section applies, her obligations under section 18 of this Act; and
- (d) Her rights under section 19 of this Act.

18. Female employee's notice in relation to return to work—Every female employee who is on maternity leave and whose position is being kept open by her employer, shall, not later than 21 days before the date on which her maternity leave ends, give to her employer written notice stating whether or not she will be returning to work at the end of her maternity leave.

19. Early ending of maternity leave—(1) A female employee who is on maternity leave may—

- (a) If she suffers a miscarriage; or
- (b) If her child or the child she intended to adopt is still-born or dies; or
- (c) If she has consented to the adoption of her child and some other person has the custody of her child with a view to its adoption; or
- (d) If her employer consents,—
choose—
- (e) Where her position is being kept open by her employer, to end her maternity leave by returning to work before the date on which she is required to return to work at the end of her maternity leave; or
- (f) In any other case, to end her maternity leave and begin her period of preference by giving her employer written notice stating that she wishes to return to work.

(2) Where a female employee is on maternity leave under section 5 of this Act, an employer may, in giving consent under subsection (1) (d) of this section, make it conditional on the female employee giving to the employer before the female employee ends her maternity leave under subsection (1) (e) or (f) of this section, a certificate from a registered medical practitioner to the effect that the female employee is fit to return to work.

20. Failure to return to work—If a female employee who takes up maternity leave and whose position is kept open by her employer—

- (a) Fails, without good cause, to return to work at the end of her maternity leave; or
- (b) Informs her employer, before the end of her maternity leave, that she has decided not to return to work at the end of her maternity leave,—

her employment shall, subject to any agreement between the employer and the female employee, be deemed to have been at an end as from the day on which her maternity leave began.

21. Failure to accept employment—If a female employee, who has taken maternity leave, fails, without reasonable excuse, to take up, on the date specified by her employer or within 7 days thereafter, any position that is offered to her by her employer (in accordance with her employer's obligation to give her preference over other applicants) during the period of 26 weeks beginning with the day after the date on which her maternity leave ends, her employment shall be deemed to be at an end as from the day on which her maternity leave began.

22. Continuity of employment—Where a female employee resumes service with the same employer at the end of a period of maternity leave or while she is entitled, following maternity leave, to preference in obtaining employment with her employer—

- (a) Her service, for the purpose of any rights and benefits that are conditional on unbroken service, shall not be broken—
 - (i) By the taking of the maternity leave; or

- (ii) By her being without a position in the employer's service during part of the period of preference; or
- (iii) By both; and
- (b) The period during which she was on maternity leave and any period during which she was entitled, following maternity leave, to preference in obtaining employment with her employer shall count—
 - (i) Subject to section 7 of this Act, as time served under her contract of employment (not being a contract of apprenticeship or a contract within the meaning of the Technicians Training Act 1967); and
 - (ii) Subject to section 23 of this Act, as service for the purpose of any superannuation scheme to which she belongs in her capacity as an employee of the employer.

23. Contributions to superannuation schemes—Nothing in section 22 (b) (ii) of this Act shall—

- (a) Entitle a female employee to have any period counted as service for the purposes of a superannuation scheme if she is required to pay contributions in respect of that period and has not done so; or
- (b) Relieve a female employee from any obligation under a superannuation scheme to pay contributions in respect of any period during which she is on maternity leave or during which she is entitled, following maternity leave, to preference in obtaining employment with her employer.

24. Ability to perform work—Where, by reason of pregnancy, a female employee is unable to perform her work to the safety of herself or others or is incapable of performing her work adequately, her employer may temporarily transfer her from one job to another.

25. Special leave—A female employee who is pregnant is entitled, before taking maternity leave, to take a total of up to 10 days special leave without pay for reasons connected with her pregnancy.

26. Workers employed to replace female employees on maternity leave—Where a temporary employee is employed

to replace a female employee who is on maternity leave, the employer shall, before employing the temporary employee, inform the temporary employee in writing—

- (a) That the temporary employee is being employed on a temporary basis in the place of a female employee who is on maternity leave; and
- (b) That the female employee may return to work, in accordance with section 19 of this Act, before the date on which she is required to return to work at the end of her maternity leave.

Protection of Employment

27. Dismissal by reason of pregnancy or maternity leave prohibited—(1) No employer shall terminate the employment of any female employee—

(a) By reason of—

- (i) Her pregnancy; or
- (ii) Her state of health during her pregnancy, unless her state of health during her pregnancy is materially affected by causes not related to her pregnancy; or
- (iii) Her indicating, by giving notice under section 14 (1) of this Act or otherwise, that she wishes to take maternity leave; or
- (iv) Her assuming, with a view to adoption by her or by her and her husband jointly, the care of a child; or

(b) During her absence on maternity leave or during the period of 26 weeks beginning with the day after the date on which her maternity leave ends.

(2) It shall not be a contravention of subsection (1) of this section for an employer to terminate the employment of a female employee—

(a) With her consent; or

(b) Where solely on account of her pregnancy, or of her assuming, with a view to adoption, the care of a child, she absents herself from work (other than with the agreement of her employer or in accordance with section 12 or section 13 of this Act) more than 6 weeks before—

- (i) The expected date of delivery; or
- (ii) In the case of adoption, the date applicable under section 9 (b) of this Act.

28. Special defences relating to dismissal—Where—

- (a) It is alleged in any proceedings under this Act that an employer has, in contravention of section 27 (1) of this Act, terminated the employment of a female employee; and
- (b) It is proved in those proceedings that the employer terminated the female employee's employment either—
 - (i) During the female employee's absence on maternity leave; or
 - (ii) During the period of 26 weeks beginning with the day after the date on which the female employee's maternity leave ended,—the defences set out in sections 29 and 30 of this Act shall be available to the employer.

29. Special defence relating to dismissal during maternity leave—Where the termination is proved to have taken place during the female employee's absence on maternity leave, it shall be a defence for the employer to prove—

- (a) That, on the ground of circumstances (of the type referred to in section 16 of this Act) that occurred in the employer's business after the employer gave the female employee notice in terms of section 15 (b) (i) of this Act, the employer was unable to keep her position open; and
- (b) That the employer terminated the female employee's employment on account of a redundancy situation of such nature that there was no prospect of the employer being able to appoint her to a position which was vacant and which was substantially similar to the position held by her at the beginning of her maternity leave; and
- (c) That the employer had not, in the period commencing with the beginning of the female employee's maternity leave and ending with the termination of her employment, prejudicially affected either her seniority or her superannuation rights.

30. Special defence relating to dismissal during the 26 weeks following maternity leave—Where the termination of employment is proved to have taken place during the period

of 26 weeks beginning with the day after the date on which the female employee's maternity leave ended, it shall be a defence for the employer to prove—

- (a) The matters set out in paragraphs (b) and (c) of section 29 of this Act; and
- (b) That, during the period between the end of the female employee's maternity leave and the termination of her employment, the employer had (despite being prepared to accord her preference over other applicants) been unable to appoint her to a position which was vacant and which was substantially similar to the position held by her at the beginning of her maternity leave.

31. Redundancy payments not affected—Nothing in this Act shall affect any redundancy payment payable pursuant to the provisions of any Act or of any order, award, agreement, or contract of employment.

32. Dismissal for cause not affected—Nothing in this Act shall affect any right of an employer to dismiss a female employee for a substantial reason not related to—

- (a) Her pregnancy; or
- (b) Her assuming, with a view to adoption by her or by her and her husband jointly, the care of a child; or
- (c) Her rights under this Act.

Remedies Available to Employees

33. Interim order—(1) Where any female employee (not being a State employee) alleges that her employer has, within the preceding 2 months and in contravention of section 27 (1) of this Act, terminated her employment or given her notice terminating her employment, she may apply ex parte to the Court for an interim order reinstating her in her position or cancelling the notice terminating her employment.

(2) Every application under subsection (1) of this section shall be heard by a Judge alone.

(3) Subject to subsection (4) of this section, every interim order made under subsection (1) of this section shall expire on a date to be specified in the order, being the later of—

- (a) A date not later than 26 weeks after the date on which the order is made; or

- (b) A date not later than 20 weeks after—
 - (i) The expected date of delivery; or
 - (ii) In the case of adoption, the date on which, with a view to adoption, the female employee first assumes or expects to first assume the care of the child.

(4) An interim order made under subsection (1) of this section may be renewed by a Judge from time to time on the ex parte application of the female employee in whose favour it was made if the Court is satisfied that she is taking reasonable steps to use the procedures available to her under sections 35 to 43 of this Act.

(5) The Registrar of the Court shall send a copy of the interim order and of every decision renewing the interim order to the employer by registered letter.

34. Maternity leave complaints—(1) Where any female employee (not being a State employee) alleges that her employer—

- (a) Is not justified in stating, in the notice given to the female employee under section 15 of this Act, that her position cannot be kept open; or
- (b) Has, in contravention of section 27 (1) of this Act, terminated her employment or given her notice terminating her employment; or
- (c) Has taken other action that affects, to her disadvantage, her rights and benefits in respect of maternity leave; or
- (d) Has exercised, without reasonable justification, the powers conferred on the employer by section 13 or section 24 of this Act,—

that allegation shall be a maternity leave complaint to which this section applies, and the female employee may use, in respect of that maternity leave complaint, the procedures provided in sections 35 to 43 of this Act.

(2) A maternity leave complaint to which this section applies shall not be made—

- (a) After the expiration of 26 weeks from the date on which the subject-matter of the complaint arose; or
- (b) After the expiration of 20 weeks from—
 - (i) The expected date of delivery; or

(ii) In the case of adoption, the date on which the female employee, with a view to adoption, first assumed the care of the child,—

whichever is the later.

(3) The procedures provided in sections 35 to 43 of this Act may be used before or after the making of an interim order under section 33 of this Act.

(4) A maternity leave complaint to which this section applies is not a personal grievance within the meaning of section 117 of the Industrial Relations Act 1973 and the procedure required by that section to be included in every award or collective agreement or agreement filed pursuant to section 141 (1) of the Industrial Relations Act 1973 shall not be used for dealing with a maternity leave complaint to which this section applies.

35. Procedures for settlement of maternity leave complaints—(1) The procedures for the settlement of a maternity leave complaint shall be in accordance with this section and sections 36 to 43 of this Act.

(2) As soon as practicable after a maternity leave complaint arises, the female employee shall submit the complaint to her immediate supervisor, affording the immediate supervisor an opportunity to remedy the cause of the complaint, the intent being that it is desirable, if the circumstances permit it, to settle the complaint rapidly and as near as possible to the point of origin.

(3) Where any such attempt at settlement has failed, or where the complaint is of such a nature that a direct discussion between the female employee and her immediate supervisor would be inappropriate, the female employee, unless she elects to act on her own behalf, shall notify—

(a) The branch secretary or secretary or a duly authorised representative of any union to which the female employee belongs or could belong; or

(b) Where there is no such union, an Inspector; or

(c) Any agent or barrister or solicitor whom she wishes to act on her behalf.

(4) Where the person so notified considers that there is some substance in the maternity leave complaint, that person or the female employee, if she is acting on her own behalf, shall forthwith take the matter up with the employer or the representative of the employer.

(5) If the matter is not disposed of in discussion with the employer or the representative of the employer, the complaint shall be reduced to writing in a statement setting out all the facts relied on. The statement shall establish the nature of the female employee's complaint, and of the issues, for all subsequent consideration of the case.

36. Procedure where representative of union acts—

(1) Where a representative of the union acts for the female employee, the written statement shall be referred to a complaint committee consisting of—

- (a) An equal number of representatives (not exceeding 3) nominated respectively by the union and the employer; and
- (b) A chairman, who shall be—
 - (i) Mutually agreed upon by the parties; or
 - (ii) If there is no such agreement, either a conciliator or mediator or a person appointed by a conciliator or mediator.

(2) The employer shall have the right to be assisted or represented before a complaint committee by an employer's organisation or an agent or a barrister or solicitor.

37. Procedure where female employee acts on own behalf—(1) Where a female employee elects to act on her own behalf, the matter shall be referred to a complaint committee consisting of—

- (a) Herself and the employer; and
- (b) A chairman who shall be—
 - (i) Mutually agreed upon by the parties; or
 - (ii) If there is no such agreement, either a conciliator or mediator or a person appointed by a conciliator or mediator.

(2) The female employee and the employer may each be represented on the committee or before the committee by—

- (a) An agent; or
- (b) A barrister or solicitor.

38. Power for Inspector to act on behalf of female employee—In any case where there is no union to which the female employee could have belonged, an Inspector may act as the agent of the female employee.

39. Decisions—(1) A decision reached by a majority of a complaint committee constituted pursuant to section 36 or section 37 of this Act shall be the decision of the committee; but if the members of the committee (other than the chairman) are equally divided in opinion, the chairman may either—

- (a) Make a decision, which shall then be the decision of the committee; or
- (b) Refer the complaint forthwith to the Arbitration Court for settlement.

(2) Subject to the right of appeal conferred by section 40 of this Act, the decision of a complaint committee shall be binding on the parties to the complaint.

40. Appeals—(1) Any party may appeal to the Arbitration Court against a decision of a complaint committee, or any part of that decision.

(2) The appellant shall—

- (a) Within 14 days after the date on which the decision of the committee has been made known to the appellant, give to every other party written notice of the appellant's intention to appeal; and
- (b) Within 7 days after the date on which that notice has been given, lodge with the Registrar of the Arbitration Court a written notice of appeal; and
- (c) Specify in each such notice the decision or the part of the decision to which the appeal relates.

(3) The Arbitration Court, after inquiring fully into the matter and considering all representations made by or on behalf of the parties, may make a decision by way of a final settlement which shall be binding on the parties.

41. Duty to promote settlement—It shall be the duty of every party to a maternity leave complaint—

- (a) To promote the settlement of the complaint under the procedures provided in sections 35 to 43 of this Act; and
- (b) To abstain from any action that might impede the effective functioning of the procedures.

42. Relief—In the case of any alleged breach of any of the provisions of this Act, any decision made under section

39 or section 40 (3) of this Act may, if it includes a finding that any of the provisions of this Act have been breached by the employer, provide for any one or more of the following:

- (a) The reimbursement to the female employee of a sum equal to the whole or any part of any wages lost by her:
- (b) The reinstatement of the female employee in her former position or in a position not less advantageous to her:
- (c) The payment to the female employee of compensation by her employer.

43. Power to refer complaint to Arbitration Court—

Where a female employee is unable to get her maternity leave complaint dealt with or dealt with promptly because of a failure on the part of any other person to act or to act promptly in accordance with the procedure applicable under any of the provisions of sections 35 to 37 of this Act, she may, with the leave of the Arbitration Court, refer the complaint to that Court for settlement under section 40 (3) of this Act and that section shall apply accordingly.

44. Non-compliance with formal requirements—Where anything is omitted to be done or cannot be done at the time required by or under this Act, or is done before or after that time, or is otherwise irregularly done in matter of form, the irregularity shall not render void the proceeding or document in which or in respect of which the irregularity occurred; but the proceeding or the document may be set aside, either wholly or in part, as irregular, or amended, or otherwise dealt with in such manner or on such terms (if any) as the Arbitration Court or a complaint committee thinks just.

45. Penalties—(1) In any proceedings under section 39 (1) (b) or section 43 of this Act, the Arbitration Court may, whether or not it grants relief under section 42 of this Act, impose on the employer a penalty not exceeding \$500.

(2) Subject to any order made under subsection (3) of this section, every penalty imposed under subsection (1) of this section shall be paid into Court and not to the female employee and shall then be paid by the Registrar of the Court into the Consolidated Account.

(3) The Court may order that the whole or any part of any penalty recovered shall be paid to the female employee.

46. Enforcement of judgments—(1) A certificate under the hand of the Registrar of the Court, specifying the amount payable under any order for the payment of money made under this Act by the Court, and the persons by whom and to whom it is payable, may be filed in any District Court, and, subject to subsection (2) of this section, shall then be enforceable in the same manner as a judgment given by a District Court in an action for the recovery of a debt.

(2) No proceedings shall be taken under the Imprisonment for Debt Limitation Act 1908 against any person for failing or refusing to pay any penalty imposed on that person under this Act.

47. Procedures available to State employees—Nothing in this Act shall limit the procedures by which State employees may enforce their conditions of employment and those procedures may be used, where appropriate, to enforce the rights conferred on State employees by this Act.

Miscellaneous Provisions

48. Regulations—The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

- (a) Prescribing forms for the purposes of this Act:
- (b) Prescribing procedures and practices for the implementation of this Act:
- (c) Providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for the due administration thereof.

49. Consequential amendment—The First Schedule of the Labour Department Act 1954 is hereby amended by inserting, in its appropriate alphabetical order, the following item:
“The Maternity Leave and Employment Protection Act 1980.”

50. Repeal—Section 38 (1) of the Factories Act 1946 is hereby repealed.

SCHEDULE

Section 2 (2)

CHANGE OF EMPLOYER

1. If a trade or business or an undertaking (whether or not it is an undertaking established by or under an Act) is transferred from one person to another (whether before or after the date of the commencement of this Act),—

- (a) The period of employment of a female employee in the trade or business or undertaking at the time of the transfer shall count as a period of employment with the transferee; and
- (b) The transfer shall not break the continuity of the period of employment of any female employee in the trade or business or undertaking; and
- (c) Any employer who employed any female employee in the trade or business or undertaking at any time before the transfer and the transferee shall be deemed, in relation to the female employee, to be the same employer.

2. If by or under an Act, whether passed before or after the date of the commencement of this Act, a contract of employment between any body corporate and a female employee is modified and some other body corporate is substituted as the employer,—

- (a) The female employee's period of employment at the time when the substitution takes effect shall count as a period of employment with the second-mentioned body corporate; and
- (b) The substitution shall not break the continuity of the period of employment of the female employee; and
- (c) The first-mentioned body corporate and the second-mentioned body corporate shall be deemed, in relation to the female employee, to be the same employer.

3. If on the death of an employer a female employee is taken into the employment of the personal representatives or trustees of the deceased (whether before or after the commencement of this Act),—

- (a) The female employee's period of employment at the time of the death shall count as a period of employment with the employer's personal representatives or trustees; and
- (b) The death shall not break the continuity of the period of employment of the female employee; and
- (c) The employer and the employer's personal representatives or trustees shall be deemed, in relation to the female employee, to be the same employer.

4. If there is a change (whether before or after the commencement of this Act) in the partners, personal representatives, or trustees who employ any female employee,—

- (a) The female employee's period of employment at the time of the change shall count as a period of employment with the partners, personal representatives, or trustees after the change; and
- (b) The change shall not break the continuity of the period of employment of the female employee; and
- (c) The partners, personal representatives, or trustees who employed the female employee before the change and the partners,

SCHEDULE—*continued*

personal representatives, or trustees who employ the female employee after the change shall be deemed, in relation to the female employee, to be the same employers.

5. If (whether before or after the commencement of this Act) a female employee of an employer is taken into the employment of another employer who, at the time when the female employee enters his employment is an associated employer of the first-mentioned employer,—

- (a) The female employee's period of employment at that time shall count as a period of employment with the associated employer; and
- (b) The taking of the female employee into the employment of the associated employer shall not break the continuity of the period of employment; and
- (c) The first-mentioned employer and the associated employer shall be deemed, in relation to the female employee, to be the same employer.

6. For the purposes of clause 5 of this Schedule, any two employers are to be treated as associated if one is a company of which the other (directly or indirectly) has control, or if both are companies of which a third person (directly or indirectly) has control; and the expression "associated employer" shall be construed accordingly.

This Act is administered in the Department of Labour.
