



Rights of Mothers who are breastfeeding *

An employee who is breastfeeding and to whom Section 15 (B) of the Maternity Protection Act 1994 applies is entitled, without loss of pay, to take one hour off from her work each working day, as a breastfeeding break, which be taken as;

1. One break of 60 minutes
2. Two breaks of 30 minutes each
3. Three breaks of 20 minutes each, or,
4. In such other manner as to the number and duration of breaks as may be agreed by her and her employer.

The break may be accommodated for by reduced working time which is paid. Where an employer does not provide these entitlements to an employee an employee may bring a claim under the Maternity Protection Act by referring a dispute to a Rights Commissioner or the Employment Appeals Tribunal. Compensation not to exceed 20 weeks remuneration may be awarded.

What is the position where an employer refuses an employee the right to take these breaks?

The first answer which will spring to mind is that the employee brings a claim under the Maternity Protection Act 1994. Is there however a second option?

An employee who is breastfeeding has lactation needs. Lactation is a medical condition. It is a condition which relates to pregnancy. It is possible that an employee in such circumstances where she is not given the appropriate breaks could be deemed to be discriminated against under the Employment Equality legislation. If that is the position then the employee can claim compensation of up to 104 weeks remuneration.

This discussion arises because of the fact that Section 15 (B) of the Maternity Protection Act provides that an employee “shall” which is mandatory, be entitled without loss of pay, at the option of her employer to either;

- a. Time off from her work for the purpose of breastfeeding in accordance with the Regulations as set out above or
- b. A reduction in her working hours in accordance with the Regulations for the purposes of breastfeeding otherwise than in the workplace.



If lactation is a medical condition relating to pregnancy then failing to provide reasonable accommodation to a female worker who is lactating could possibly be deemed to be discrimination.

There would appear to be nothing in the legislation which would preclude an employee bringing a claim under the Maternity Protection Act 1994 and the Employment Equality legislation.

While the employee cannot recover twice this does not mean the employee could not recover under the Maternity Protection Act and still proceed with a claim under the Employment Equality Acts or win any award under the Employment Equality Acts being reduced by the compensation awarded, if any, under the Maternity Protection Acts.

With the current economic situation where employees may for financial reasons not be in a position to take additional maternity leave because of the fact that it is not covered under Social Welfare legislation many female employees may feel obliged to return to work earlier than they could have if additional unpaid maternity leave was taken. Therefore this could become an issue for employers. It will have to be addressed.

*In contentious cases a Solicitor may not charge fees as a percentage or proportion of any award or settlement.