

Act on Maternity Equalisation in the Private Labour Market

BE IT KNOWN that the Folketing (Danish Parliament) has enacted and We Margrethe the Second, by the Grace of God, Queen of Denmark, have given Our Royal Assent to the following Act:

Scope

1. - (1) The Act shall apply to the private labour market.
- (2) The Act shall not apply to the part of the private labour market that has concluded an agreement on a decentralised scheme regarding maternity equalisation approved under section 5.

Reimbursement

2. - (1) All employers may receive reimbursement for employees who under the rules governing benefits in the event of illness or childbirth are entitled to benefits during absence in case of pregnancy, childbirth and adoption (maternity benefits), unless the employer is subject to an approved decentralised scheme regarding maternity equalisation and the employee takes part in the scheme.
 - (2) The Minister for Family and Consumer Affairs may lay down rules to the effect that particular groups of employees for whom the employer is exempted from paying contributions under the rules prescribed pursuant to section 4 (1) may effect reimbursement to the employer.
 - (3) Reimbursement shall be granted on the basis of the employer's request to the local authority or other public authority for permission to assume the employee's right to maternity benefits under the rules governing maternity benefits.
 - (4) The Minister may lay down rules governing waiting periods for the maternity equalisation scheme.

3. - (1) The reimbursement shall constitute the difference between maternity benefits and pay during maternity leave within a fixed ceiling of DKK 142 per hour. The amount shall be adjusted on an annual basis by the Minister for Family and Consumer Affairs. The adjustment shall take place subject to recommendation by the board of the Labour Market Supplementary Fund and subject to negotiation with the Minister for Finance.
 - (2) The Minister shall lay down rules governing the duration of the period for which the employer is entitled to receive reimbursement. The period may be adjusted by the Minister subject to recommendation by the board of the Labour Market Supplementary Fund.
 - (3) The Minister shall lay down rules governing the expenditure which the reimbursement is to cover.
 - (4) The reimbursement shall be payable in arrears. The disbursements shall take place under the Act on Public Payments, etc. or under rules prescribed pursuant to the Act.

Contributions

4. - (1) All employers shall pay a contribution to the maternity equalisation scheme for each of their employees. However, the employer shall not pay contributions for employees who take part in an approved decentralised maternity equalisation scheme, cf. section 5. The Minister for Family and Consumer Affairs may lay down rules to the effect that employers are exempted from paying contributions for particular groups of employees.
 - (2) The contribution shall constitute an annual amount per full-time employee. The amount shall be adjusted gradually in relation to the time the employee is employed per week. The Minister for Family and Consumer Affairs shall subject to recommendation by the board of the Labour Market Supplementary Fund adjust the amount on a current basis so that it corresponds to the actual costs of the scheme. The Minister shall lay down specific rules thereon.
 - (3) Subject to recommendation by the board of the Labour Market Supplementary Fund, the Minister shall lay down rules governing the calculation of contributions, the size of the contributions and the collection thereof.

Decentralised maternity equalisation schemes

5. - (1) Employers may be exempted from the Act with respect to the employees who take part in an approved decentralised maternity equalisation scheme that must fulfil the following requirements:
 - (i) the proportion of women in the scheme must total a minimum of 30 per cent,
 - (ii) the scheme must be agreed between an employer organisation and an employee organisation and comprise a minimum of 5,000 employees,
 - (iii) all employers must contribute to the scheme,

- (iv) all employees who during maternity leave obtain pay that exceeds the maternity benefits must effect reimbursement to their employers,
- (v) Expenditure under the scheme must per year correspond to a contribution of a minimum of 0.2 per cent of the undertakings' payroll cost or a minimum of DKK 700 per full-time employee,
- (vi) reimbursement from the scheme must as a minimum constitute the difference between maternity benefits and the pay agreed relating to collective agreements during maternity leave up to an hourly rate of no less than DKK 140, and
- (vii) the reimbursement period of the scheme must be of a duration which up to a minimum of 26 weeks follows the period agreed relating to collective agreements for pay during maternity leave.

(2) On application, the Minister for Family and Consumer shall approve the decentralised scheme. The application must contain information documenting that the decentralised maternity equalisation scheme fulfils the requirements set out in subsection (1) (i)-(vii). The Minister may lay down rules to the effect that the application must be submitted electronically.

(3) Any changes to the decentralised maternity equalisation schemes approved under subsection (1) and (2) must be reported to the Ministry of Family and Consumer Affairs provided the information is of importance to the approval of the scheme.

(4) In special cases, the Minister may decide that a decentralised maternity equalisation scheme which after approval has been granted fails to fulfil one or more of the requirements set out in subsection (1) (i)-(vii) may continue to be exempted from the Act.

Administration and delegation

6. - (1) The Minister for Family and Consumer Affairs may delegate his/her powers under the Act to an authority under the Ministry. In that connection, the Minister may lay down rules to the effect that complaints about decisions taken by the authority may not be filed with another administrative authority.

(2) The Minister shall delegate his/her powers regarding the management of the maternity equalisation scheme to the Labour Market Supplementary Fund. In that connection, the Minister may lay down rules to the effect that complaints about decisions taken by the Labour Market Supplementary Fund regarding the management of the maternity equalisation scheme may not be filed with another administrative authority.

7. - (1) The Minister for Family and Consumer Affairs shall lay down rules to the effect that employers, decentralised maternity equalisation schemes, the Labour Market Supplementary Fund, local authorities, the Employers' Reimbursement Scheme and other public registers, etc., at the request of the Minister or the administrative authority to which the Minister has delegated powers under section 6, must supply all information that is of relevance to the administration of the maternity equalisation scheme.

(2) The Minister or the administrative authority to which the Minister has delegated powers under section 6 shall collect relevant information from employers, decentralised maternity equalisation schemes, the Labour Market Supplementary Fund, local authorities, the Employers' Reimbursement Scheme and other public registers, etc. for the purpose of the administration of the scheme, including delimitation of the group of employers under an obligation to contribute, calculation of the size of contributions and reimbursement, establishment of the duration of the period of reimbursement, collection of contributions and payment of reimbursement. The Minister shall lay down specific rules thereon.

(3) The Minister shall lay down rules to the effect that employers, the Labour Market Supplementary Fund, the Employers' Reimbursement Scheme, local authorities and other public registers, at the request of the managers of decentralised maternity equalisation schemes, must supply information that is of relevance to the administration of the maternity equalisation scheme concerned.

8. The board of the Labour Market Supplementary Fund shall decide on recommendation under section 3 (1) and (2), and section 4 (3) by simple majority, always provided that the majority of the representatives of the employers as well as the majority of the representatives of the employees must vote in favour of the decision.

Supervision and control

9. The Minister for Family and Consumer Affairs shall lay down rules governing control over the administration of the scheme, including control over payments into and disbursements from the scheme.

10. - (1) In case the employer has given false information or failed to supply information of importance to the payment of reimbursement, the reimbursement shall lapse wholly or partly and the wrongfully paid reimbursement must be paid back. In case the information given is of importance to the calculation of the size of the contribution, the amount not paid or not paid in full may be required to be paid back.

(2) There shall be a lien for the amounts, including interest, referred to in subsection (1) and section 4.

(3) Extension of payment and a waiver of the amount, including interest, referred to in section 4 may be granted.

(4) If contributions are not paid punctually, the employer must pay interest at the rate of 1½ per cent for every month or part of a month from the end of the quarter.

11. The Minister shall lay down rules governing the preparation of the annual accounts for payments into and disbursements from the maternity equalisation scheme and to the effect that the annual accounts are open to the general public.

Penal sanctions

12. - (1) Unless a more severe punishment is provided for by other law, any person who gives false or misleading information or fails to give information that is of importance to the payment of reimbursement, cf. section 2, the payment of contributions, cf. section 4, or in connection with approval of a decentralised maternity equalisation scheme, cf. section 5 (2) and (3) shall be liable to a fine

(2) Penalty in the form of a fine may be laid down in rules that are issued under the Act for violation of the rules.

(3) Penal sanctions under the rules laid down in Part 5 of the Danish Criminal Code may be imposed on companies, etc. (legal persons).

Commencement and transitional provision

13. - (1) The Act shall come into effect on 1 October 2006.

(2) The Act shall not extend to the Faroe Islands and Greenland.

(3) The Minister shall submit a proposal for revision of the Act to the Folketing in the sessional year of the Danish Parliament 2009-2010.

14. Decentralised schemes regarding maternity equalisation agreed in a context relating to collective agreements that are entered into prior to 1 June 2005, and which may not be approved under section 5 (2), may on application to the Minister for Family and Consumer Affairs be exempted from the Act until the next new pay settlement period. On the date of the application, the agreed scheme must fulfil section 5 (1) (i) and (ii). The Minister may lay down rules to the effect that the application must be submitted electronically.

Given at Christiansborg Palace, 8 May 2006

Under Our Royal Hand and Seal

Margrethe R.

/Lars Barfoed