

Family Friendly Rights – An overview

An extremely fast paced area of law, family friendly policies and legislation are changing all of the time. Detailed below are a series of facts and details which relate to employees whose children were born after 6th April 2003.

Because of the volume of changes affecting family friendly rights we would ask you to take the information below as a guide only and if you need any further information, please feel free to contact us direct.

Paternity Leave

Employees must satisfy the following conditions in order to qualify for paternity leave. They must:

- Have or expect to have responsibility for the child's upbringing
- Be the biological father of the child or the mother's husband or partner
- Have worked continuously for 26 weeks leading into the 15th week before the baby is due

Employers can ask their employees to provide a self-certificate as evidence that they meet the above criteria.

Fathers will be entitled to choose to take either one week or two consecutive weeks' paternity leave, but not odd days. Leave can start on any day of the week:

- From the date of the child's birth;
- From a chosen number of days or weeks after the date of birth; or
- From a chosen date later than the first day of the week in which the baby is expected to be born.

Parental leave must be completed within 56 days of the actual date of birth or if the child is born early, within the period from the actual date of birth up to 56 days after the first date of the expected week of birth.

Only one period of leave is available irrespective of whether more than one child is born as a result of the same pregnancy.

It should be noted that paternity leave is in addition to the existing right to take parental leave of 13 weeks.

Statutory Paternity Pay (SPP)

Most employees are entitled to SPP from their employers during their paternity leave. The rate of SPP is at the same rate as the standard rate of Statutory Maternity Pay (SMP). This is, at present, £117.80 a week or 90% of average weekly earnings if this is less than £117.80.

Employees earning less than the lower earnings limit for National Insurance (currently £87 per week) will not qualify for statutory maternity pay.

Employees who do not qualify for SPP may be able to get Income Support whilst on paternity leave.

Notice of Intention to Take Paternity Leave

Employees must inform their employers of their intention to take paternity leave by the end of the 15th week before the baby is due, unless this is not reasonably practicable. They are obliged to provide their employers with the following information:

- The week the baby is due
- Whether they intend to take one or two weeks leave
- When they intend to take their leave, although this can be changed provided at least 28 days notice is given to the employer (unless this is not reasonably practicable)
- The dates they expect SPP payments with at least 28 days notice unless this is not reasonably practicable.

Employers can recover the payments in advance as with statutory maternity pay.

Contractual Benefits

If an employee has a contractual right to paternity leave as well as the statutory right, he may take advantage of whichever is the more favourable. The amount of paternity pay he receives under a contractual right will reduce the amount of SPP he is entitled to.

Employees are entitled to return to the same job following paternity leave.

Employees are protected from suffering unfair treatment or dismissal for taking paternity leave and can complain to an employment tribunal if they believe they have been unfairly treated.

Maternity Leave

The length of ordinary maternity leave is increased to 26 weeks Irrespective of their length of service with their employer. Ordinary maternity leave is normally paid leave.

Women who have completed 26 weeks' continuous service by the 15th week before their expected week of confinement will be able to take an additional 26 weeks' maternity leave, which can start immediately after ordinary maternity leave.

The earliest date a woman is able to start her maternity leave is the beginning of the 11th week before the baby is due.

Maternity leave will start automatically if the employee is absent from work for a pregnancy related illness four weeks before the start of her expected week of childbirth.

The provision for notification of intention to take maternity leave has been simplified, as has the procedure for returning to work after maternity leave.

Notice of Intention to Take Maternity Leave

A pregnant employee must notify her employer of her intention to take maternity leave by the end of the 15th week before her expected week of childbirth, unless this is not reasonably practicable. She must provide her employer with the following information:

- That she is pregnant;
- The week her baby is due;
- When she wants to start her maternity leave, although this can be changed provided at least 28 days notice is given to the employer.

Employers must respond to the above notification within 28 days unless the leave date has been varied, in which case it must be within 28 days of the start of maternity leave. The response must set out the date on which she is expected to return to work if she takes her full entitlement.

Returning to Work After Maternity Leave

An employer is no longer required to write to the employee before the end of her ordinary maternity leave period to ask the date of the child's birth and her intention of returning to work after the additional maternity leave. Subsequently, an employee, at the end of her full maternity leave, is not obliged to provide her employer with further notification of her intention to return to work.

If an employee intends to return to work before the end of her maternity leave, she must give her employer 28 days notice of the date she wants to return.

Maternity Pay & Allowance

From 6th April 2008 the standard rates of Statutory Maternity Pay (SMP) increased to £117.18 per week or 90% of the woman's average weekly earnings if this is less than £117.18 per week.

There is no change to the current earnings related rate of SMP, i.e. 90% of the woman's average weekly earnings), which applies for the first 6 weeks of the pay period.

The new standard rates apply from 6th April 2008 to 5th April 2009 to all women getting SMP at that point regardless of when they expect their baby or whether they qualify for the extended pay period.

Employers are able to claim back 92% of the payments they make. Employers eligible for small employers' relief can claim 100% plus an additional amount for the National Insurance contributions paid on SMP. Employers are also now able to get funding in advance for payments of SMP from the Inland Revenue.

Adoptive Parents - New Rights to Leave & Pay

Employees whose children are placed with them on or after 6 April 2003 will benefit from these rights. These will be available to individuals who adopt or one member of a couple where the couple adopt jointly.

To qualify for adoption leave the employee must have worked continuously for their employer for 26 weeks. The entitlement is similar to maternity leave, namely 26 weeks ordinary adoption leave followed immediately by up to 26 weeks additional adoption leave. From 1st April 2007 employees will be entitled for Statutory Adoption pay for 39 weeks if they qualify. Additional adoption leave will be unpaid save unless there are any contractual entitlements.

Statutory adoption pay will be at the same rate as statutory maternity pay. There are provisions for notice of intention to take adoption leave, certification, and contractual benefits during leave and return to work after adoption leave. There is the same protection from detriment and dismissal and the employer has the same facility to recover payments.

Flexible Working

Parents of children will have the right to apply to request to work flexibly if they have the qualifying length of service. Employers have a statutory duty to consider their applications seriously.

In order to make a request the employee must:

- Have a child under 6 or under 18 if the child is disabled;
- Be either the child's mother, father, adopter, guardian or foster parent or the spouse of any if these;
- Have worked with their employer continuously for at least 26 weeks at the date of application;
- Make the application no later than 2 weeks before the child's 6th birthday or 18th birthday if the child is disabled;
- Have or expect to have responsibility for the child's upbringing;
- Make the application to enable them to care for the child;
- Not be an agency worker or member of the armed forces; and
- Not have made another previous application to work flexibly during the past 12 months.

Eligible employees will have the right to request:

- Change the hours they work
- Change to the times they work
- To work from home.

The Employer must arrange to meet employee within 28 days of receiving the request. Within 14 days after the meeting the employer must write to employee either agreeing the new work arrangements and a start date or to provide clear reasons why the application cannot be accepted.

There is an appeal procedure within 14 days of being notified of the decision.

This is a provision to allow employees the right to request flexible working hours. It does not enforce an obligation on the employer to grant such a request. The legislation does not give Tribunals the

power to question the commercial validity of the employer's decision provided it is based on one of the specified grounds and is not rejected on incorrect facts, and as such there will be no penalty

If the procedure has not been complied with, the maximum amount of compensation available is 8 weeks' pay at a maximum of £330 per week.

Employers should note that, irrespective of the new right, a refusal to allow flexible working could constitute indirect sex discrimination, marital discrimination and possibly constructive dismissal. Therefore the request must be carefully considered.

Many employers are putting on their Intranet a specific form, which assists the employee in putting together a business case for the request for flexible working. Whilst this goes further than what is required for employees' rights, it may be considered sound HR practice.

Dispute Resolution

The Government has changed the proposed implementation dates for the introduction of statutory dismissal, disciplinary and grievance procedures from autumn 2003 to April 2004.

Parental Leave and Time off for Dependents

Parents who have completed one year's continuous employment with their employers are entitled to 13 weeks unpaid parental leave to care for their child. This can be taken until the child's 5th birthday.

In the case of adoption this can be taken, 5 years from the date of placement, or the child's 18th birthday, if that is sooner.

Parents of disabled children are entitled to 18 weeks parental leave up to the child's 18th birthday.

All employees are entitled to take a reasonable amount of unpaid leave to deal with an emergency or unexpected situation involving a dependant.

For further details please contact Kaslers Solicitors on 0845 270 2511.