

WORK AND FAMILIES ACT 2006 - CHANGES TO “FAMILY FRIENDLY” RIGHTS

The Work and Families Act 2006 (“the Act”) has been on the statute books since July of last year. With the implementation date of many of the amended rights approaching, is your business ready for the impact of the new family friendly provisions?

Many of the provisions of the Act come into force on 1 April 2007. As expected, the new rights give more choice to families in how they balance work and caring responsibilities, which will in turn increase the burden on employers. However, it is not all bad news for employers. The Act contains some provisions which are designed to iron out some issues with the previous system.

The key changes introduced by the Act can be summarised as follows:

- removal of the qualifying period for additional maternity leave (AML)
- an increase to the duration of statutory maternity pay, adoption pay and maternity allowance
- a right to request flexible working for employees who care for adults at home
- a right for fathers in certain circumstances to take additional paternity leave and claim paternity pay
- an increase in the period of notice required from a woman returning from AML
- the introduction of ‘keeping in touch days’

PLEASE NOTE - all references to maternity/paternity throughout this article include references to adoption. This is because the amended provisions for adopters mirror the maternity and paternity entitlements, with one adopter taking the “mother” role, and one the “father”.

MATERNITY & PATERNITY RIGHTS

The most major change to the current position (as far as mothers are concerned) is that as of 1 April 2007, all women will have the right to both six months’ ordinary maternity leave and six months’ additional maternity leave (so 12 months in total), regardless of their length of service. It is estimated that approximately 400,000 mothers a year will benefit from the changes.

Whilst these mothers are enjoying their newly extended leave, a proportion of Statutory Maternity Pay (“SMP”) will still be recoverable from the Government, as is the current position. The period for which SMP itself is payable will increase from six to nine months. You should note that the Government proposes to extend this to twelve months’ paid leave by approximately 2009/2010.

The Act also introduces some other provisions intended to make the longer maternity leave absence easier to administer and plan for. Those returning early from maternity leave will have to give eight weeks’ rather than 28 days’ notice to their employers of

their intention to return to work. This will make it easier for employers to effectively plan cover for those on maternity leave and to plan for their return to work.

The Act also encourages better communication in other ways between the employer and the employee, which will allow the employer to better deal with the maternity absence.

Employers will be able to make “reasonable” contact with employees at any stage during their maternity leave. This is a helpful provision for employers, as the extent to which an employer could make contact with an employee whilst she was on maternity leave had previously been in doubt. The Act even goes one further than this, and allows for “keeping in touch days”. These will be introduced as an option to enable women to work for a limited number of days during their maternity leave period. These provisions will allow the women to come into work without losing their entitlement to SMP for that week or triggering the end of their maternity leave. This too will help employers in planning, as those returning from maternity leave will be able to undertake training or familiarise themselves with new equipment or procedures, without ending their maternity leave period. This will allow them to “hit the ground running” when they return to work for good.

The Act is not all centred on mothers, however. The most talked about change to the current position concerns the provision of additional paternity leave. As it stands, a father is only permitted two weeks paid leave on the birth of his child. The new legislation extends this. In addition to the current entitlement, fathers will be entitled to up to six months’ additional paternity leave. This right to 6 months’ additional paternity leave isn’t however being introduced at the same time as the majority of the other provisions in April 2007, but instead will be introduced at some time in the future, probably in 2009/2010, at the same time as maternity pay increases to 12 months.

The intention broadly is that *either* mother or father will be able to be off work during the first year after the birth of the child. The father will now have a right to take up to six months’ paternity leave, but the right to take this paternity leave is linked to the mother’s maternity leave, in that it can’t be taken until the mother has been off on maternity leave for six months, and secondly even then can’t be taken until the mother has returned to work.

Fathers should also note that the additional paternity leave will be unpaid unless the mother returns to work before exhausting her full entitlement to SMP. In other words, if the mother returns to work having exhausted her nine months SMP, the father will receive nothing. However, if she returns to work after six months then the father will be entitled to six months leave and three months SMP (increasing to six months SMP when the right to maternity pay increases to 12 months’ maternity pay). Of course, for him it will be called Statutory Paternity Pay (“SPP”).

It is not certain yet how this will be administered. The new right to additional paternity leave and pay will be dealt with in separate regulations. Employers have expressed concern about the right to additional paternity leave, and pay, and in particular have expressed concern about the difficulty that there will be in keeping track of the payments of SMP and SPP, and who has had what time off on leave and how much is left. In the majority of cases the mother and father will work for different employers, and the

employer for the father will need to know that the mother has returned to work, before knowing that the father is able to take additional paternity leave.

FLEXIBLE WORKING FOR CARERS

The right to request flexible working, which is currently limited to those with parental responsibility for children under 6 (or under 18 where the child is disabled), will be extended to cover those with the responsibility for caring for adults. This right will come into effect on 1 April 2007.

The changes will cover those who have responsibility for caring for a person aged 18 or over who is either married to or the civil partner of the employee, is their relative, or is living at the same address as the employee. Relative is defined as including parents, parents-in-law, adult children, adopted adult children, siblings (including in laws), uncles, aunts, grandparents and step-relatives. However, care is not defined, although the DTI give some guidance as to what type of tasks will be considered as care on their website. Go to :-

<http://www.dti.gov.uk/employment/employment-legislation/employment-guidance/page35663.html>

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The information contained on these web pages is for general guidance only and is in no way a substitute for seeking professional advice on your specific circumstances.