

EMPLOYMENT – PARENTAL AND MATERNITY RIGHTS

- *Relatively recent legislation
- *Dealing with statutory minimums
- *Statutory rights only apply to “employees

*Development: Employment Relations Act 1999; Employment Act 2002; Work and Families Act 2006.

ANTE-NATAL CARE

*Sections 55-57 ERA 1996: the right not to be unreasonably refused time off to attend ante-natal care appointments during working hours; and the right to be paid for this period of absence.

*Conditions: the woman must be pregnant; the appointment must have been made on the advice of a registered doctor, midwife or health visitor; and if she is asked for it, the employee must be able to produce evidence of the appointment by means of a letter or appointment card.

*What is ante-natal care? *Gregory v Tudsbury Ltd* – included relaxation classes. *Guidance from the Department for Business, Innovation and Skills.

*An employer may refuse to give time off work if reasonable

*If unreasonable, the woman will have the right to claim for any unpaid hours

*It is automatically unfair to dismiss someone for a reason connected with pregnancy, irrespective of length of service.

MATERNITY LEAVE

Three types of Maternity Leave: 1. CML: Compulsory Maternity Leave. 2. OML: Ordinary Maternity Leave. 3. AML: Additional Maternity Leave

*Maternity and Parental Leave etc Regulations 1999 (as amended), ERA 1996 and Work and Families Act 2006

***CML:** 2 weeks (4 weeks for factory workers – Public Health Act 1936). Obligation on the employer to ensure no work is completed during this time. CML usually forms part of OML

***OML:** 26 weeks (MPA Regs 1999, Reg 7). Starts on the day the employee wishes it to begin. OML may be triggered by illness or early delivery.

*Reg 4(1)(a): The employer must be informed no later than the 15th week before the week the baby is due to arrive: The fact that the woman is pregnant; The expected week of childbirth (EWC); The date on which the OML is due to start (this can be any time after the 11th week prior to the expected week of childbirth). (Reg 4(2)(b)).

*The Employer must notify the woman when the OML will end within 28 days of being given notice (Reg 4(2))

*The woman can change the date OML will start provided 28 days notice is given to the Employer (Reg 4(1A))

*Can return on a part-time basis. Employees can however, stipulate how PT work is done.

*Can return before 26wks, but there is an obligation to give notice of your intention to return - *Nu-Swift International Ltd v Mallison*

***AML:** Since April 2007 – an additional 26 wks of maternity leave is available to all employees

*The right to return is not the same as under OML: “reasonably practicable”

*Up to 10 days work can be carried out (Reg 12A)

*The date of return can be changed by the employee giving 8 wks notice (Reg 11)

*Where the employee decides not to return – normal contractual notice applies.

*Returning to work: *The Home Office v Holmes*; *Greater Glasgow Health Board v Carey* – cases in the 80s showing difficulties pre-regulations.

MATERNITY PAY

*To be eligible (SSCBA 92 s.164): employed for at least 26 weeks (ending with the 15th week before EWC); earns more than £107 p/w

*Entitled to SMP for the first 39 weeks at 2 different rates: first 6 wks: Higher Rate (90% of woman’s salary); thereafter: Lower Rate (£135.45 p/w) or 90% if lower.

PATERNITY RIGHTS

*Conditions for eligibility (PAL Regs 2002 Regs 4-6): 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 his employer for 26 weeks or more ending with the 15th week before the baby is due; inform his employer of his intentions by the end of the 15th week prior to the EWC; state whether 1 or the full 2 weeks are to be claimed; complete a self-certification form if requested to by the employer confirming that he meets the eligibility criteria; if the child is born early or late, the employee must give notice of the variation as soon as is reasonably practicable.

*1 – 2 weeks paternity leave available

*Leave can start: from the date of the child’s birth (whether this is earlier or later than expected); or from a chosen number of days or weeks after the date of the child’s birth; or from a chosen date later than the first date of the week in which the baby is expected to be born.

***Eligibility for APL (Work and Families Act 2006 ss.6-10):** you are the father of a child due on or after 3 April 2011; your wife, partner or civil partner is pregnant and due to give birth to a child on or after 3 April 2011 - Available for a maximum of 26 wks.

***Eligibility for Additional SPP:** you must be an employee and been with your employer for at least 26 weeks’ by the qualifying week; you must also still be employed with that employer the week, which runs Sunday to Saturday, before you want to start your leave; the child’s mother must have been entitled to Statutory Maternity Leave, Statutory Maternity Pay or Maternity Allowance and have returned to work and ceased claiming any relevant pay

PARENTAL LEAVE

*Unpaid *Child under 5 years old Must be taken for the purpose of caring for children *Legitimate reasons include: spending more time with children in the early years; accompanying child during a stay in hospital; to look at new schools; to settle a child into new arrangements; to take children to stay with grandparents

*Default Provisions (MPA Regs 1999 Sch 2): must occur in first 5 yrs; up to 13 wks for each child; employees remain employed; leave must be taken in chunks of 1 wk or multiples; up to 4 wks leave per child per year; 21 days notice.

***Time off for Dependents:** *Unpaid; unexpected or sudden events; available for men and women, FT and PT, irrespective of their hours of work, permanent or temp contracts; section 57A Employment Rights Act 1996: to provide assistance when a dependent falls ill or is injured; to make arrangements for the provision of care for a dependent who is ill or injured; can include time to make arrangements for a funeral; where there is an unexpected disruption or termination of arrangements for care (i.e. closure of a nursery); to deal with an incident which involves the child during school.

**Qua v John Ford Morrison Solicitors* – was dismissed as ‘unnecessary time-of’, but did amount to unfair dismissal.

***Adoption leave:** since April 2003; “newly placed Adoption” only; at least 26 weeks continuous service; leave mirrors maternity leave (OAL an AAL available); only available for one parent

FLEXIBLE WORKING

*The right is to request flexible working. The legislation allows employees to ask for a one-off variation in the contract of employment if they: have been continuously employed for at least 26 wks; are either the mother, father, adopter, guardian or foster parent of a child under the age of 16 or are married to, or are the partner of a such a person who has or expects to have responsibility for the upbringing of a child.

*Changes can be requested to hours of work, location etc and applications must specify: the change requested; the date it is proposed to become effective; what effect, if any, the employee thinks that making the change would have on the employer and how it might be dealt with, and how the employee meets the conditions as to the relationship with the child.

*There are 8 grounds for refusing the request: burden of additional costs to the business which clearly outweighs the gains; detrimental effect on ability to meet customer demand; inability to reorganise work among existing staff; inability to recruit additional staff; detrimental impact on quality; detrimental impact on the performance of the business; insufficiency of work during the periods the employee proposes to work; if the change is incompatible with planned structural changes.

*Quite often employers do refuse flexible working requests. Cts do not like employer’s finding reasons to refuse as it should facilitate a dialog between employer/employee. Nothing in flexible working request regarding part-time workers social issue. Law does not seem to facilitate the circumstances.