

Paternity Leave

This note summarises the changes to paternity leave which came into force in April 2011.

The basics

- Since 6th April 2003, eligible employees have been able to take two weeks paternity leave within 56 days of the birth of their child. This was a limited right, in that payment was limited to the statutory minimum during this period, but did allow for the employee to join the mother in caring for their child at a very important time.
- In April 2011, the idea of paternity leave was extended to allow working parents of a newborn child to share responsibility for its upbringing during the first year, and allowing a mother to return to work. This is not a stand alone right but tags onto the maternity rights that a mother already has i.e. the leave is split between the two parents rather than taken simultaneously.
- Again this is relatively badly rewarded because although paternity leave will be paid at the same rate as maternity pay, the right to take paternity leave commences when the mother is receiving basic level pay (i.e. £128.73 as of 1st April 2011). It is therefore likely that this type of paternity leave will only be used where a mother is earning more than the other parent, and it is not anticipated that the take up rate will be very high.
- As with maternity leave and pay, the arrangements are clearly laid out but are involved and careful thought as to timings will have to be given should a parent ask for paternity leave. Thought must also be given to paternity leave policies and we recommend that business's should start reviewing their family policies to accommodate the rights enjoyed by both parents.

Additional paternity leave and pay - the detail

- New parents employed by your business for six months or more, have the right to take two weeks' paternity leave (ordinary paternity leave (OPL) with statutory paternity pay (OSPP).
- New additional rights are now in force for employees whose child is due (or adoptive parents who are notified of a match) on or after 3 April 2011. Where both parents are working, once the mother or adopter goes back to work, the other parent can take up to six months' additional paternity leave (APL).
- The right to APL can only be requested if the primary carer returns to work without exercising their full entitlement to leave.
- To take APL, an employee needs to have qualified for ordinary paternity leave (OPL) and have continued to work with the business up to the date that they intend to take APL.
- An eligible employee can only take APL within a window that starts 20 weeks after, and ends 12 months after, their child is born or placed with them on adoption.

- The minimum period of APL that can be taken is two consecutive weeks and the maximum period is 26 weeks. APL must be taken in multiples of complete weeks and as one period.
- An employee will be required to give a minimum of eight weeks' notice of their intention to take APL.
- Employees may be entitled to additional statutory paternity pay (ASPP) if they meet certain eligibility requirements. The number of weeks of ASPP they will be entitled to be paid for depends on how early their partner returned to work from maternity or adoption leave.

Points to consider

- As with maternity leave, when an employee takes paternity leave their terms and conditions (except those relating to pay) remain in force during OPL and APL, in particular, benefits in kind such as medical insurance and use of a company vehicle shall continue and their annual leave entitlement will continue to accrue.
- The employee's pension benefits will also continue. During periods of paid paternity leave a business's pension contributions to a money purchase scheme should be calculated as if the employee is working normally and receiving their normal salary. If the rules require the employee to contribute to the scheme, their contributions need only be calculated on the money they are actually receiving and therefore their contributions are likely to be less than normal. In a money purchase scheme there is no obligation to make good the shortfall but it would be advisable to draw this to the employee's attention. Please note that the rules may differ if the business has a final salary or salary-related scheme.
- It is not unusual for companies to enhance maternity pay schemes and therefore you may consider this for paternity leave as well. Examples of possible enhancements to the OPL scheme include:
 - Allowing all employees to take two weeks' OPL regardless of their length of service.
 - Allowing two weeks' OPL to be taken on full pay or to pay a better rate than the statutory rate of ordinary statutory paternity pay.

Although many businesses may already do this it may be on a discretionary basis rather than a contractual entitlement offered to all.

- Even if a business enhances the paternity pay there may still be an issue with different treatment if the enhancement is less favourable than that offered to those on maternity leave. Currently there is some uncertainty as to whether a business is at risk of a sex discrimination claim if they do not treat those who take maternity leave and those who take paternity leave in the same way. We anticipate that as society becomes more used to the concept of parents sharing their parental leave entitlements it will become clearer as to whether any disparity of treatment between those who take maternity leave and those who take paternity leave is going to be a problem area.

What is the Government thinking of doing next?

This week the Government published a consultation on modern workplaces which focuses on sharing responsibility for the upbringing of children between the parents. It introduces the concept of *flexible parental leave*. This might, for example, result in the mother retaining the current right to 18 weeks maternity leave and the remainder being reclassified parental leave which can be taken by either parent or both. The consultation closes on 8th August 2011.

Next steps

Review and update your family policies to take into account the latest changes.

If you are in doubt as to whether your existing policies work or would like help formulating an appropriate policy, please contact Caroline Leaver on 020 3159 5172 or c.leaver@goldenleaver.co.uk