

A consultation on flexible parental leave

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The 52 weeks of maternity leave will remain in place as the default position for all employed women. Women who are currently eligible to receive statutory maternity pay ('SMP') (or maternity allowance) will still be able to do so for 39 weeks.

Sharing leave flexibly

Women with partners where both meet the qualifying conditions for the flexible parental system (including a 26 week service requirement) will be able to end the mother's maternity leave and pay, or commit to ending it at a future date, and share the untaken balance of maternity leave and pay as flexible parental leave and pay. ___ The length of flexible parental leave will not exceed the balance of untaken maternity leave, and the amount of statutory flexible parental pay will not exceed the balance of untaken statutory maternity pay or maternity allowance. Each parent will qualify in their own right for leave and pay.

Each parent will need in his or her own right to meet certain earnings or length of service qualifying criteria to use the new flexible parental system. Where possible, these criteria will mirror the criteria for existing entitlements such as maternity pay and allowance and paternity pay and leave.

Who can take the leave?

Flexible parental leave can be taken by the biological father or the mother's partner (husband, civil partner or partner, including same sex) consecutively with the mother on maternity leave, or both parents can be on leave concurrently, so long as the total amount of leave does not exceed what is jointly available to the couple.

Flexible parental leave must be taken in a minimum of one-week blocks. The amount available to each parent will firstly be agreed by the parents, and each will subsequently need to agree their individual pattern of leave with their employer. In the event that the pattern cannot be agreed, the leave defaults to a single block to commence on a date specified by the employee.

The Government does not propose to dedicate any parental leave exclusively to fathers but will be giving parents flexibility in choosing how to divide leave and pay between them.

Will paternity leave and pay change?

It proposes to keep paternity leave and pay at the current level of two weeks. There will, however, be powers to extend paid paternity leave and make it more flexible so that this extension can follow at a later date when Government and business finances permit.

Fathers/partners will have the right to take unpaid time off to attend two antenatal appointments with their pregnant partner.

New rules on parental leave

From March 2013, unpaid parental leave will increase from 13 to 18 weeks in order to comply with the revised EU Parental Leave Directive. In 2015, the age limit on parental leave will increase from the current five years to 18 years, providing each parent the right to up to 18 weeks' unpaid parental leave for each child under 18.

Changes to adoption leave and pay

There will be changes to the leave and pay available to adoptive parents to bring it more closely into line with the leave and pay rights available to birth parents. Statutory adoption leave will become a "day one" right with no qualifying conditions for eligible adopters who are matched with a child for adoption. Statutory adoption pay will be enhanced to 90% of the primary adopter's salary for the first six weeks, which mirrors the arrangement for statutory maternity pay. Working couples who adopt will also be able to use the flexible parental system if they meet the qualifying conditions in the same way as birth parents.

New rights in surrogacy cases

Intended parents of a child born through a surrogacy arrangement who meet the criteria to apply for a Parental Order will be eligible for statutory adoption leave and pay if they meet the qualifying criteria; and for flexible parental leave and pay if they meet the qualifying criteria. They will also be eligible for unpaid time off to attend two ante-natal appointments.

Flexible working

The right to request flexible working will be extended to all employees with at least 26 weeks' continuous employment. The requirement to be a parent or carer will be removed.

The statutory procedure for considering requests will change. This will be replaced with a new duty on employers to consider requests in a reasonable manner, within a reasonable period of time. Employees will still be limited to one request in any 12-month period. A statutory code of practice, and a best practice guide, setting out what a reasonable process requires, will be the subject of a future ACAS consultation. Guidance will also be provided to employers on how to handle simultaneous requests from different employees. Tribunals will be required to take the code into account when considering complaints.

Micro-businesses will not be exempt. The consultation sought views on whether businesses with fewer than 10 employees should be exempt from the extension to the right to request flexible working. This was rejected, primarily because the EU Parental Leave Directive (2010/18/EU) requires all businesses, regardless of size, to give parents returning from a period of parental leave the right to request flexible working.

The government is aiming to implement the extension to the flexible working system by 2014, in the Children and Families Bill, which is expected to be introduced by April 2013. The ACAS consultation on the proposed code of practice will be issued during 2013.

Comment

With both of the new proposals the devil will be in the detail. Plainly the coalition government is intending to generate cultural change with regard to the responsibility for caring for young children in working families. Whether the new proposals will be enough to achieve this is debatable, as is the extent to which the expected administrative complexities of the new rules will act as an obstacle to real change.


And whilst a request for flexible working will in future be a right enjoyed by all employees, it is not clear how the enforcement regime will work in practice, nor how the new rules will interact with protection from indirect discrimination under the Equality Act.


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