
The HR Forum

More Flexible Rights for Parents: Additional Paternity Leave and Pay – 1st October 2009

The proposal to give fathers the right to take some of the mother's unused maternity leave as additional paternity leave has been in circulation since the introduction of the Work and Families Act 2006.

Earlier this month the Government finally ended speculation by announcing its intention to introduce additional paternity leave rights for parents of babies due or children adopted on or after 3 April 2011 by April 2010.

When first announced back in 2006 the Government had indicated an intention to increase statutory maternity pay from 39 to 52 weeks at the same time. No announcement has been made about this and we anticipate that this is firmly on hold in the current economic climate.

This is part of a package of measures introduced over recent years and billed by the Government as giving more choice and flexibility to working parents to help balance work and family life particularly in the first year of the child's life or adoption. This right will give mothers the choice between taking their full maternity leave or returning early and allowing their spouse or partner to take the leave instead.

Current maternity and paternity rights

Currently all pregnant employees are entitled to 52 weeks maternity leave 39 of which are paid (statutory maternity pay or maternity allowance depending on eligibility).

Employed fathers or the spouse or partner of the mother or adopter may be eligible for 2 weeks paternity leave and pay when a child is born or adopted if employed for 26 weeks at the end of the 15th week before the week in which the baby is due or at the end of the week in which matched for adoption.

The reference to fathers below includes spouses or partners including same sex partners.

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What is the new right?

This gives fathers who are (a) already eligible for statutory paternity leave and (b) still employed by the same employer at the point of starting additional paternity leave the right to:

- Take up to 26 weeks additional paternity leave
- Starting at the earliest 20 weeks after the child is born or placed for adoption; and
- Ending no later than the child's first birthday or 1 year anniversary of adoption;
- Provided the mother's maternity leave has ended.

The father will also be entitled to receive statutory paternity pay (if eligible) for any part of the 39 weeks paid maternity leave period not used by the mother.

How will the new right work in practice?

The right has already been the subject of two sets of consultation in recent years. The Government has launched a third and final consultation this month including draft regulations to finalise the detail of how this right will work in practice.

Previous consultation identified concerns amongst employers about striking the right balance between the need to keep administration simple but give employers sufficient powers to manage the right.

Details of how the right will work in practice are still subject to consultation and may therefore change.

How much advance notice will we get from any father taking additional paternity leave?

The draft regulations require fathers to give an employer 8 weeks advance notice.

If the father wants to change the start date he must give 6 weeks advance notice of the change from the earlier of the original intended start date or the new start date.

The employer must within 4 weeks confirm the last date that the father can return to work.

Can he come back early?

Yes but he has to give you 6 weeks advance notice and you can postpone his return until the end of the 6 week period if you are unable to accommodate an earlier return to work but not beyond the last date for his return to work.

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What are his rights on return?

Similar to mothers returning after a period of ordinary maternity leave a father returning after additional paternity leave will be entitled to return to the same job he was employed in before his absence.

How can we check entitlement?

The Government remains committed to a “light touch” in administering the right and to reduce the administrative burden on employers.

The idea of transferring entitlements from one employee employed by company A to another employed by company B is of course alien to us. Apart from checking parental leave entitlement and obtaining references, there are very few occasions where there is a requirement for liaison between different employers.

As per existing paternity leave arrangements, fathers will exercise the right by self certifying entitlement by confirming:

- Father or spouse or partner of mother or adopter
- The purpose of the leave is to look after the child
- When the baby is due/ will be placed for adoption
- Child’s date of birth
- Name and full address of the mother/adopter
- Mother’s national insurance number
- Date the mother intends to return to work
- Date the mother’s statutory maternity pay/maternity allowance began
- When he wishes his additional paternity leave to begin and end
- When he wishes his additional statutory paternity pay to begin and end

Employers are not required to check with the mother’s employer that the mother is eligible for maternity or adoption pay or that she has returned to work.

The draft Regulations have taken on board concerns raised by employers in previous rounds of consultation about being able to check with the mother’s employer. Employers can require the father to produce a copy of the birth certificate and also to produce evidence from the mother’s employer that she is entitled to maternity pay and has returned to work.

What if we pay ASPP where there was no entitlement?

Similar to statutory maternity pay employers will be able to recover most of ASPP paid.

The real concern here is around fraudulent claims by employed fathers and whether employers will be held liable.

Provided the employer made the payment in good faith based on information provided by the father and if father has given false information HMRC will look to penalise the father and not the employer.



If you would like any further information on the topics covered in these notes please contact Andrew Cross, Head of Employment Law, Brabners Chaffe Street, on 0151 600 3062 or andrew.cross@brabnerscs.com

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