



Bulletin 204

June 2011

**GOVERNMENT PUBLISHES CONSULTATION ON MODERN WORKPLACES**

The Government published its "Modern Workplaces" consultation paper on 16 May 2011. The consultation paper outlines proposals for a number of legislative changes, which are aimed at encouraging a culture of "flexible, family-friendly employment practices".

The Government plans to introduce changes to key areas of employment law, including parental leave, flexible working, the Working Time Regulations 1998 (with regard to the interaction of annual leave with sick leave and family-friendly leave) and equal pay. We consider these changes in more detail below.

**Parental Leave**

The Government aims to introduce a "system of parental leave which is fit for modern workplaces and which addresses the key challenges of working parents". To achieve this aim, the Government proposes that:

- 18 weeks' maternity leave entitlement be available to be taken in a continuous block around the time of birth
- The remainder of existing maternity leave be reclassified as parental leave. Each parent would have four weeks' paid parental leave to be used exclusively by them and the remaining weeks would be available for either parent to use. Similar provisions will apply to adopters and same-sex couples
- The right to unpaid parental leave be extended beyond the first year of the child's life
- The age limit for taking unpaid parental leave be extended beyond the child's fifth birthday
- Fathers be given the right to unpaid leave to attend antenatal appointments (either as a new entitlement or as part of a father's wider parental leave entitlement).

The proposed changes to parental leave will not be put in place until 2015.

**Flexible Working**

The right to request flexible working is currently only available to parents of children under 17, of disabled children under 18 and to certain carers. The Government plans to extend the right to request flexible working to all employees.

Further, the Government intends to replace the existing statutory process for considering requests with a duty to consider requests "reasonably" and in accordance with a new Code of Practice for employers. The Government states that this will enable employers to use their own management systems to consider requests, so long as the request is considered within a reasonable time, and conducted in a fair and reasonable manner.

For clarification, the Government has confirmed that employees will still be required to have 26 consecutive weeks' service in order to exercise the right to request flexible working and it does not intend to change the current business reasons under which an employer may refuse a request.

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## Working Time Arrangements

In the case of *Stringer and others v HM Revenue & Customs; Schultz-Hoff v Deutsche Rentenversicherung Bund* [2009] IRLR 214, the European Court of Justice (ECJ) confirmed that, in accordance with the Working Time Directive, workers continue to accrue the right to paid annual leave during sick leave. If a worker is prevented from taking paid annual leave due to sickness, the worker must be allowed to take it following their return to work, even if this means carrying it over to the next leave year.

In the consultation paper, the Government confirms that the Working Time Regulations 1998 (WTR) will need to be amended in order to comply with the ECJ's rulings in this area and the Working Time Directive. The Government proposes that:

- Employers be allowed to limit the ability of an employee, who has been on sick leave, to carry over annual leave to the four weeks of leave required under the Working Time Directive
- Employers be able to insist that leave untaken due to sickness absence must be taken in the current leave year (rather than being carried forward) where possible. Employers will also be able to defer that leave until the following year when this can be justified in terms of business need.

The Government makes it clear that it is seeking views on further options for increasing flexibility for employers around the operation of statutory annual leave. Employers could, for example, be allowed to 'buy out' the additional 1.6 weeks of annual leave permitted under the WTR or require employees to defer that leave until the first six months of the following leave year if this can be justified in terms of business need.

## Equal Pay

The Government recognises that, despite equal pay legislation, there is still a significant gender pay gap and continuing evidence of non-compliance with the law. The Government has therefore suggested that a mandatory equal pay audit should be imposed on employers who are found to have discriminated against an employee on the ground of sex, in pay matters, by an Employment Tribunal.

In such circumstances, the Government proposes that an Employment Tribunal will be obliged to order a mandatory equal pay audit of the employer, unless it is satisfied that it would "not be productive to do so". The consultation paper confirms that it may not be productive to order an equal pay audit if, for example, an audit has been conducted in the last 3 years or transparent pay practices are already in place.

The consultation process ends on 8 August 2011. If you would like to contribute to the consultation process, we will be pleased to forward your views on your behalf. Please email your comments to Emma Clarke at: [emma.clarke@brabnerscs.com](mailto:emma.clarke@brabnerscs.com) before 8 August 2011.

If you require any specific advice in connection with the material contained in this bulletin, or on any other Employment Law issues, please contact: Paul Chamberlain in Manchester on 0161 836 8864, Andrew Cross in Liverpool on 0151 600 3062 or Kevin James in Preston on 01772 229847.

If you no longer wish to receive the bulletin please let us know by return e-mail to [Kimberley.malcolm@brabnerscs.com](mailto:Kimberley.malcolm@brabnerscs.com)

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