

TRANSFER OF MATERNITY LEAVE

The Government yesterday announced that it will be consulting upon the proposed transfer of up to 6 months' maternity leave to fathers.

Currently, new mothers are entitled to 52 weeks off work as maternity leave. They are also entitled to receive Statutory Maternity Pay for 39 weeks, which is presently set at £123.06 a week. New fathers are entitled to 2 weeks fully paid paternity leave.

The new proposals seek to allow mothers to transfer up to 6 months of their maternity leave to the child's father once they have returned back to work. The transferred leave may only be taken in the second six months of the child's life, however if part of the leave is taken within the 39 weeks of which Statutory Maternity Pay is provided then the father will also be entitled to this payment. The remaining time must be taken unpaid.

It is intended that new parents will self-certify their eligibility for the transferred leave to their employer, however the employer and HMRC will be able to carry out further checks if necessary. It is unclear as yet how these further checks will be undertaken.

The aim of the scheme is to increase the flexibility of child care arrangements within the family and to allow fathers to spend more time with their new child. The Government expects that only 1 in every 137 small businesses will be affected by the proposals, but even with such a low take-up rate, the Director General of the British Chambers of Commerce is apprehensive of the proposal. His reservations lie in the timing of implementation which he believes will put additional stress on businesses already struggling to cope with the recession. The Government has however said that it will work with businesses to ensure that any changes introduced are done so in a way which minimises burdens and gives predictability in the provision of leave.

The Government hopes for the new regulations to be in force by April 2010 and to be implemented for parents of children due on or after 3 April 2011. They will not affect parents' current entitlement of up to 13 weeks unpaid parental leave until the child's 5th birthday, nor the ability to request flexible working arrangements until the child is 16 years old.

We draw your attention to the fact that, at this stage, the Government is simply consulting on these proposals. There is no doubt however that the proposals will increase the administrative and managerial burdens upon businesses. It also raises questions concerning whether sex/pregnancy discrimination claims will be more difficult to prove if men too are able to take 6 months off for new child care. There are a multitude of issues which need to be considered, including:

1. How employers will check the eligibility of their employees for the transferable leave;
2. Whether parents who have split up will also be able to transfer their maternity leave;
3. Whether there will be checks in place to ensure that the father is in fact caring for the child;
4. How employers will be able to 'predict' the provision of leave; and
5. How much notice fathers will have to give their employer when taking leave.

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Employment Bulletin

We will be monitoring the consultation process and provide further updates once the results are produced.

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 helen.calvert@brabnerscs.com

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