

Changes to Paternity Leave Entitlement

25 March 2010

Introduction

The House of Lords has recently approved legislation which will allow new parents to share childcare responsibilities.

Assuming the relevant eligibility requirements are satisfied, the current statutory position is as follows:

- New mothers are entitled to take up to 52 weeks' maternity leave (39 weeks of which are paid by employers (with the ability to recoup most of this from the UK government) at the statutory prescribed rate—currently £123.06).
- New fathers are entitled to take two weeks' statutory paternity leave—also paid at the statutory prescribed rate.

Some employers may also choose to offer enhanced maternity and paternity pay.

How Are the New Regulations Going to Work?

Under the new proposals, after their return to work mothers may transfer the remainder of their statutory maternity leave—up to six months' worth—to the father. This period of leave can be taken by the father at any time from 20 weeks after the child is born, notwithstanding the fact that the mother and father work for different employers.

If this leave is taken during the mother's statutory paid maternity period (that is, during the first 39 weeks) and the mother has returned to work, then the father will be entitled to receive statutory paternity pay at the same rate as the paid maternity leave for the remainder of the mother's 39-week paid leave entitlement, whilst the remainder of any additional leave taken by him (up to six months in total) will be unpaid.

Similar rules have also been introduced for adoptive parents.

The Government has announced that it is going to adopt a "light touch" approach to the question of how entitlement to leave and pay will be verified by the employer. Rather than involving HMRC or the mother's employer in the verification process, the Government has chosen a system that relies on self-certification, requiring the employee and the mother to complete a declaration certificate.

Although employers may carry out additional checks to verify the accuracy of information provided if

they wish, there is potential for employees to abuse the system by claiming paternity pay when the mother has not really returned to work as employers are not able to confirm this with the mother's employer directly.

The new legislation is due to come into force on **6 April 2010** and will affect parents of children due on or after **3 April 2011** to give employers time to prepare in advance.

How Should Employers Prepare?

Businesses will need to ensure that relevant policies (such as maternity, paternity and parental leave policies) are updated during 2010 to reflect the changes.

Guidance on the new rights will now be prepared by the government so that both employers and employees are aware of the changes and have sufficient information about them.

HMRC will also provide guidance and an electronic calculator in addition to a helpline calculation and advice centre because commercially produced payroll software is not likely to be available until some time during 2011.

If you have any questions or would like more information on any of the issues discussed in this LawFlash, please contact any of the following Morgan Lewis attorneys:

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