

Parental Leave Entitlement (Lecture B1419 – 23.02 minutes)

Antenatal Appointments

Pregnant mothers have the right to reasonable paid time off work to attend antenatal appointments. This right will be extended to apply to fathers, or the mother's partner, for attendance at two appointments, 6.5hrs each although this time off will be unpaid. Similar provisions will apply for adoptive parents. The adopter will be given paid time off for five appointments and their partner will be able to attend two meetings, but this time off will be unpaid.

Surrogacy

Person carrying the baby - The surrogate is entitled to the full maternity leave, and SMP, as if she were having her own child. However, the partner is not eligible for paternity or parental leave as these are based on the person having caring responsibilities for the child.

Intended parents of baby - Parents who have a child through a surrogacy arrangement will be entitled to take ordinary paternity leave and pay and adoption leave and pay and shared parental leave and pay provided they meet the eligibility criteria. Only one of the parents will be allowed to take time off, unpaid, to attend two ante natal appointments, up to 6.5 hours, with the mother of the child. The employer cannot ask for proof of the appointment but may ask for a written declaration confirming the time is being used for an antenatal appointment.

Keeping in Touch Days (KIT)

Employees on Statutory Maternity Leave or Statutory Adoption Leave can come into work for up to ten KIT days during their leave to retain contact with their workplace and be paid. If on a KIT Day the employee only works for part of the day, it counts as a full KIT Day.

The payment made to the employee for KIT days is not set out in regulations but employers are expected to pay the employee's normal pay rate, based on their contracted remuneration, not the Statutory Maternity Pay (SMP)/Statutory Adoption Pay (SAP) rate. There is no loss of statutory pay and SMP/SAP can be offset against the contractual salary. Whatever amount is paid for the day only the SMP/SAP part can be reclaimed by the employer from HMRC.

The employer can offer KIT days to the employee but does not have to do so. The employee can agree to work the days or refuse to take them. It is a matter for the two parties to agree and if an employee says no the employer cannot penalise them.

Shared Parental Leave in Touch (SPLIT) Days

An employer can offer, and the employee can work up to 20 SPLIT days during SPL without bringing the leave to an end. These days are in addition to the 10 KIT days available to employees on maternity or adoption leave. But as with KIT days the employee can accept or refuse to work the SPLIT days.

Unpaid Parental Leave

All eligible employees can take unpaid parental leave in order to care for a child's welfare, e.g. look at new schools, settle children into new childcare arrangements, spend more time with child. Their employment rights are protected during this parental leave and all contractual terms are unchanged. The employee continues to accrue their annual holiday entitlement.

The rules for unpaid parental leave are as follows:

- employee must have one year's continuous service with the employer;
- the child is under 18;
- parental leave will be unpaid and the employment contract will continue;
- parental leave will apply on the birth or adoption of a child;
- parental leave is 18 weeks in total for each child and adopted child;
- leave must be to care for the child;
- leave can be taken any time up to the child's 18th birthday;
- leave that can be taken each year is 4 weeks per child, unless employer agrees otherwise;
- the leave must be taken in whole weeks, not individual days, unless employer agrees or the child is disabled;
- employer can ask for proof of responsibility – birth or adoption certificate;
- employee must give 21 days' notice of starting a leave period, with start and end date.

Time off for Dependents - emergencies

The rules on an employee taking time off to assist a dependent in an emergency are defined in the Employment Relations Act 1999. Employees are entitled to a "reasonable" amount of unpaid time off work for such emergencies. This would include:

- providing assistance when a dependent falls ill, gives birth or is injured or assaulted;
- to arrange for care for a sick or injured dependent;
- following the death of a dependent;
- because arrangements for the care of a dependent have been disrupted or terminated;
- to deal with an incident involving the care of a child during school hours.

The emergency must involve a dependent, being the employee's spouse, civil partner, partner, their child or parent or any person living in the same household, but not as tenants, lodgers or an employee and a person who relies on them such as elderly neighbour.

The employee is required to give the employer reasons for the absence as soon as reasonably practicable or where this is not possible inform the employer of how long the period of absence is expected to last.

An employer can voluntarily choose to pay the employee when they take time off for this leave but they are not required to do so by law.

Carer's Leave Act 2023 - New Right for Unpaid Leave for Carers

The Carer's Leave Act received Royal assent on 24 May 2023 and is effective from 6 April 2024.

Carers leave will be a right, from day one of employment, for unpaid carers allowing them to take up to one week, 5 working days, unpaid leave each year to look after the person for whom they care.

Employees, where eligible, will be able to take the leave either as individual day or half days up to a block of one week.

The employee will be required to give notice of the leave the same as for annual leave being twice the length of the leave required plus one day.

It is likely the employer will have limited scope for rejecting requests for the leave.

The entitlement to statutory carer's leave will:

- Be available to employees regardless of length of service so from day one;
- Depend on the carer's relationship with the person being cared for:
 - spouse, civil partner, child or parent of employee
 - living in the same household of the employee but not as lodger/tenant
 - relies on employee to provide or arrange care
- Depend on the person being cared for having a long-term care need:
 - long term illness or injury (mental or physical) needing care for > 3 months
 - a disability as defined by Equality Act 2010 or
 - issues related to old age.

Neonatal Care (Leave and Pay) Act 2023

The Neonatal Care (Leave and Pay) Act 2023 received Royal assent on 24 May 2023. It is anticipated it will be effective from April 2025.

This Act will allow parents, from day one of employment, to take up to 12 weeks of paid leave in addition to the usual statutory maternity and statutory paternity leave and pay periods. This will be an employment right from day one of employment.

The criteria are:

- the admission to hospital lasts for a continuous period of 7 days or more;
- the baby is neonate - aged 28 days or less.

Flexible Working Requests

Under the current regulations all employees, including parents, carers and someone returning from maternity/adoption leave, can make a "flexible working" request so as to:

- Reduce hours;
- Change start and finish times;
- Work same hours but over fewer days;

- Work from home on some days and the office on others;
- Job share with another employee.

An employee who is disabled can also make a reasonable adjustment request, relating to their disability.

In order to be eligible to make a flexible working request the employee must have at least 26 weeks continuous service with the employer and have not made a previous flexible working request in the last 12 months. The request must be made in writing – a letter or an e-mail – stating it is a “statutory flexible working request”. The request must include:

- Date it is being sent;
- The change the employee would like to make;
- The date from when the employee would like the change to start;
- How the employee, or the employer, might deal with any effects of the change could have on their work or the organisation;
- Date of previous flexible working requests.

The employee could also explain to their employer how the proposed change may benefit the employer and/or other employees.

On receipt of the request the employer must consider it fairly and make a decision within a maximum of 3 months. The employer should meet with the employee, within 28 days, to discuss the request. The employee could take a colleague or trade union rep to that meeting if the employer agrees.

Within 14 days of the meeting the employer must give a written decision either agreeing to the change or giving reasons as to why the change is not accepted.

The employer may refuse the change of contractual terms based on business grounds, such as additional costs, not meeting customers needs, detrimental effect on quality or performance.

The employee can appeal against the decision, in writing, within 14 days.

The employer must again give a final written decision within 14 days of any further meeting.

The employee can take a complaint to an Employment Tribunal if the employer does not follow the procedure correctly.

They cannot challenge through the tribunal the employer’s business case for refusing the change of contract unless it is based on inaccurate facts.

Where the flexible working request is agreed there will be a change to the terms of the employee’s contract. So, the employer must state, in writing, the agreed change, the date when the change will take place, how long the change will last, if not permanent and a review date if agreed by both parties to see how the change is working.

Update – Employment Relations (Flexible Working) Act 2023

ACAS guidance will be updated in 2024 when this act into force. The Act makes changes to the Employment Rights Act 1996 to give the employee more flexibility over where and when they work:

- Employer must consult with the employee before rejecting the request;
- Employee can make two applications during any 12 months, rather than the current one request;
- Employer will have 2 months in which to respond - currently they have 3 months;
- Employee does not have to explain the effect, if any, their request would have on the employer.

The government announced this would be a right from day one of a new job. However, the day one right was not stated in the Act so further legislation is expected to implement that right.

Miscarriage Leave Bill - amendment of Employment Rights Act 1996

This bill proposes to make provision for not less than 3 days leave for people who have experienced a miscarriage, molar pregnancy or ectopic pregnancy prior to 24 weeks. T

his may be paid as statutory bereavement pay to parents.

This bill is with the House of Commons and was due for the 2nd reading in November 2023.

The Fertility Treatment (Employment Rights) Bill

This bill proposes to give employees, who are receiving fertility treatment, the right to paid time off from work to attend fertility treatment appointments.

Partners would have a similar right to unpaid time off to go along to the appointments.

This bill is with the House of Commons and was due for the 2nd reading in November 2023.

Contributed by Alexandra Durrant