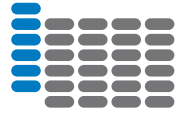


Rights for working parents and carers



Berg Kaprow Lewis

Given the number of changes to parental rights in recent years, employers could be forgiven for not knowing where they stand when one of their employees is pregnant or becomes responsible for a child. But with employment tribunals making large awards against employers who ignore the rules, you simply cannot afford to stick your head in the sand.

You need to be clear about the rights of the employee and your responsibilities as an employer if you are going to minimise disruption to your business and prevent disputes arising.

Working parents or carers can often take different types of time off for the care of their children. This briefing sets out your employees' rights and your duties towards them. It covers:

- Ordinary maternity leave and additional maternity leave.
- Paternity leave and adoption leave.
- Leave for parents.
- Time off for dependants.
- How to avoid the legal pitfalls.

1 Rights of the employee

Every female employee has the right to ordinary maternity leave and, for all babies due on or after 1 April 2007, the right to additional maternity leave (see **2** and **3**). The employee has:

1.1 The right **not to be dismissed** because of pregnancy, maternity leave or childbirth.

1.2 The **right to return** to work.

- You must consider any request to return to work part time. If it is not possible, you need to explain why, with business or economic reasons.
- Refusal to offer a part-time option may amount to indirect sex discrimination, as family responsibilities can make it harder for women to work full time than men. It may also fall foul of flexible working regulations (see **The law and flexible working**).
- There are few jobs that really cannot be done on a part-time or job-share basis, including senior management roles.
- Refusal to allow a woman to return to work after maternity or parental leave will be automatically unfair.

1.3 The right to paid time off for **ante-natal** care and training, including clinic visits and relaxation and parentcraft classes.

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- You can ask to see an appointment card or similar evidence.

1.4 The right to all her **normal terms and conditions** of employment, except wages or salary, while on ordinary maternity leave — though not while on additional maternity leave (see **3**).

- Ensure that employees on maternity or parental leave are kept informed of opportunities for promotion and training or they may have a complaint of discrimination.

1.5 The right to be offered suitable alternative work, or normal pay for not working, if she has to be **suspended** because of health and safety considerations.

- If your health and safety assessment shows risks which might affect a pregnant woman or her baby, and they cannot be removed, you must take action to ensure your employee is not exposed to them. You must carry out this risk assessment if you employ any women of childbearing age, whether they are pregnant or not. See **Health and safety risk assessment**.

2 Ordinary maternity leave

2.1 Every employee who becomes pregnant is entitled to **26 weeks** of ordinary maternity leave.

- Part-time employees have the same right to maternity leave as full-timers.

2.2 The employee must **notify** you, in writing if requested, that she is pregnant, and give notice of several key dates.

She must:

- Tell you her expected week of childbirth (the EWC). You can reasonably ask your employee to provide confirmation of the EWC from her GP or midwife.
- Choose when to start her maternity leave, any time from the 11th week before the EWC, and inform you of the start date by the 15th week before the EWC or at least 28 days before her leave is due to begin. Depending on the circumstances, leave may even start on the day of the birth.
- Tell you when she has had the baby.
- Give 28 days' notice if she wants to return to work before her maternity leave period is up. This has been increased to eight weeks' notice for women whose babies are expected on or after 1 April 2007.

2.3 You must **write to her** within 28 days of being told when she intends to start maternity leave, setting out the date on which her maternity leave will end.

- If this is the date on which she intends to return to work, she need do nothing more.

2.4 The law lays down **time limits** affecting a woman's return to work after childbirth.

- It is illegal for a woman to return to work within two weeks of giving birth (four weeks for factory workers). If a woman's baby is born right at the end of the maternity leave period (for example, if the due date was miscalculated), ordinary maternity leave is extended for two weeks.

2.5 It is automatically **discrimination** if you dismiss an employee during her maternity leave period, or select her for redundancy, wholly or mainly because she is pregnant, has taken maternity leave or has given birth (see **8.1**).

2.6 If an employee is ill during her pregnancy, she is entitled to take **sick leave**, just as she would if she was not pregnant.

- If she is absent from work with a pregnancy-related illness in the four weeks ahead of the EWC, her maternity leave will start automatically, regardless of when she said she wanted it to start.
- If she is too ill to return to work at the end of her maternity leave, you must treat it as a sickness absence.
- If the absence persists, you may eventually need to follow your dismissal procedure. You must only consider absence following her return from maternity leave. To consider any absence during the pregnancy or sickness during maternity leave could be discriminatory and you could also be sued for unfair dismissal.

2.7 If she meets the qualifying conditions, a woman whose baby **dies**, or is stillborn, after the 24th week of pregnancy, is still entitled to ordinary maternity leave, additional maternity leave and statutory maternity pay.

2.8 Many pregnant women on ordinary maternity leave are entitled to **statutory maternity pay** (SMP) of £108.85 (£112.75 from 6 April 2007) or 90 per cent of average pay if lower (see **Minimum wage and statutory pay obligations**).

► Employment law is complex and is changing rapidly. This briefing reflects our understanding of the basic legal position as known at the last update. Obtain legal advice on your own specific circumstances and check whether any relevant rules have changed.

“Following the introduction of the Civil Partnership Act in December 2005, civil partners are now classed as 'dependants' under emergency leave arrangements.”
Jim Givens,
HR Management Solutions

“The streamlining and simplification of maternity rights has been long overdue and the new provisions welcomed. The challenge for employers will be managing up to 52 weeks' maternity leave, alongside the other new family rights which have been introduced, including the right to flexible working.”
Audrey Williams,
Eversheds

3 Additional maternity leave

3.1 Every pregnant woman with **26 weeks'** full or part-time service (up to the end of the 15th week before the EWC) also has the right to additional maternity leave.

- If the baby is due on or after 1 April 2007, a pregnant woman has the right to additional maternity leave regardless of length of service.
- Additional maternity leave starts at the end of ordinary maternity leave and runs out 26 weeks later.
- Women on additional maternity leave are guaranteed that certain of their normal terms and conditions will continue to apply.
- Contractual matters may be negotiated and agreed between you and the employee. However, the employee remains entitled to accrue the statutory entitlement of four weeks' paid annual leave.

3.2 After her additional maternity leave, the employee is entitled to come back to the **same kind of job**, or to a suitable alternative, where this is not possible.

- A suitable alternative must give her equivalent pay and conditions, be suitable for her and be appropriate in the circumstances.

3.3 If the employee is **unfit** to return, she will be regarded as off sick and may receive sick pay, if she qualifies.

- If the sickness absence continues and you eventually wish to dismiss the employee, you must implement your full dismissal procedure, right from the very beginning (see **Dismissing employees**). You must ignore the additional maternity leave and only take account of subsequent absences, or the dismissal will probably be seen as unfair and as sex discrimination.

4 Paternity leave

4.1 Fathers (or those with responsibility for bringing up children) are entitled to take **paid time off** at or around the time of the child's birth.

- They can take either one full week, or two continuous full weeks.
- This leave must be taken within 56 days of the birth (or the EWC if the birth is early).
- They are entitled to statutory paternity pay of £108.85 (£112.75 from 6 April 2007) a week or 90 per cent of average pay if

lower. The employer can set this off against NI contributions.

4.2 Employees must fulfil certain **criteria**.

- They must have worked for you continuously for 26 weeks by the end of the 15th week before the EWC.
- They must have (or expect to have) responsibility for bringing up the child.
- They must give you adequate notice (at least 28 days).

5 Adoption leave

5.1 An employee who adopts a child from a UK adoption agency is entitled to time off to **settle the child** in its new home.

- They can take up to 26 weeks of ordinary adoption leave if they have worked for you continuously for at least 26 weeks by the time they are matched with a child.
- They can also take up to 26 weeks of additional adoption leave.
- They are entitled to statutory adoption pay of £108.85 (£112.75 from 6 April 2007) per week or 90 per cent of average pay if lower for up to 26 weeks of adoption leave. For adoption placements due on or after 1 April 2007, this increases to 39 weeks.
- Where the child has been adopted by a couple, the other partner may be entitled to paternity leave (see **4**).

5.2 There are **conditions** to this entitlement.

- There must be an agreement to adopt. You are entitled to ask for evidence of it.
- The employee must have been newly matched with the child by an adoption agency. Adopting within the family, or an existing foster child, does not count.

5.3 The employee must give reasonable **notice**.

- This must be at least 28 days before the date the agency expects to place the child.
- The start date can be changed but the employee must give you 28 days' notice.

6 Parental leave

Both mothers and fathers are entitled to time off to look after their children.

6.1 They are entitled to **13 weeks' unpaid** parental leave per child.

- This entitlement must normally be taken

“Remember that paternity leave can apply to one member of a couple who adopt a child as well as natural fathers.”
Audrey Williams,
Eversheds

“While there is no limit to the number of times an employee can ask for time off to care for dependants, case law shows that an employee is not entitled to use the right on an unlimited basis.”
Archin Talpade,
Fox Williams solicitors

before the child's fifth birthday.

- Parents of adopted children may take it at any time up to five years after the placement (or until the child's 18th birthday, if sooner).
- Parents of children with disabilities are entitled to 18 weeks per child, and may take it at any time up to the child's 18th birthday.
- Leave must be taken in agreement with you, the employer. If it is impossible to reach agreement, there is a fallback position under which not more than four weeks' leave may be taken per child per year, unless you agree to vary this.
- Unless immediately following birth or adoption, you can ask that the leave be postponed for up to six months if it would seriously disrupt the business.
- If the employee disagrees, he or she has the right to go to an employment tribunal.

6.2 Only parents who have **one year's continuous service** with you qualify.

6.3 Parents must give you **reasonable notice** that they intend to take parental leave. Under normal circumstances, this means at least 21 days.

7 Time off for dependants

In an emergency, employees are entitled to ask for 'reasonable' time off to care for dependants. You do not have to pay for this time unless your employment contracts state otherwise.

7.1 This is for **short-term problem solving** rather than continuing care.

- The problem must be unforeseen. Where problems are foreseen, other arrangements should be made.
- The time must be 'reasonable' — one or two days, rather than one or two weeks. In determining what is reasonable, each case must be decided on its own merits.

7.2 The problem must involve **dependants**.

- This normally means employees' children, parents or other close family members.
- But it might also mean a frail neighbour who is looked after by your employee.

7.3 If you think an employee is **abusing the system**, you can demand evidence.

- You can refuse permission for time off. Or you can institute disciplinary proceedings. But the employee will then have the right to complain to an employment tribunal.

8 Employment and dismissal

8.1 **Dismissing** somebody is automatically unfair, and almost certainly discriminatory if the dismissal is due to pregnancy, or any reason connected with pregnancy.

- The employee has the right to be given written reasons, without having to ask, if she is dismissed at any time during pregnancy or statutory maternity leave.
- If a tribunal finds you have dismissed your employee unfairly, the basic award can be up to £9,300. But a tribunal also has the powers to award compensation for financial loss up to a maximum of £66,600.
- If a tribunal finds your action amounted to sex discrimination, it can make an unlimited compensation award, including an award for injury to feelings.

8.2 If you are making someone **redundant** during pregnancy or maternity leave, you must be able to show that your selection criteria are absolutely objective and fair and in no way affected by the pregnancy or maternity leave.

- This is so hard to prove that you should avoid making anyone in this situation redundant, unless the reason is very clear. A woman on maternity leave has the right to be offered a suitable job on her return, or the right to a redundancy payment.

8.3 Deciding not to **employ or promote** a woman because she is pregnant — or because she may become pregnant — is sex discrimination. (See **Discrimination**.)

9 Getting help

9.1 The best **up-to-date information** is often available from Acas on 08457 47 47 47 or at www.acas.org.uk and the Department for Work and Pensions on 020 7712 2171 or at www.dwp.gov.uk.

9.2 For information on statutory maternity **pay**, sickness pay and other aspects of National Insurance and PAYE, contact the employers' helpline on 08457 143 143.

9.3 For **interactive tools** giving guidance on employment rights, visit www.direct.gov.uk/Diol1/EmploymentDecisionTrees/fs/en.

Expert contributors

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Further help

There are other Directors' Briefing titles that can help you. These briefings are referred to in the text by name, such as **Health and safety risk assessment**.

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