

Parental leave, paternity leave and time off for dependants

Under the Employment Relations Act 1999, employees were given new rights to parental leave and to take urgent time off in order to look after dependants.

Parental Leave

Employees must have been continuously employed for at least one year to qualify for parental leave.

If an employee has parental responsibility for any child born after 15th December 1999, he or she has a new right to be absent for work to care for the child. Adoptive parents also have this right if the child was placed with them for adoption on or after 15th December 1999.

The basic right is to 13 weeks' unpaid leave per child, to be taken before the child's fifth birthday (except in the case of disabled children or, in certain cases, adopted children).

Employers can enter into a collective agreement (i.e. with a recognised Union) or work-force agreement (a special non-Union collective agreement) to decide the ground rules for how the parental leave is to be taken. If employers decide to enter into such an agreement, there is a wide discretion.

If employers do not enter into a collective or work-force agreement on parental leave, default provisions will apply. The default provisions are broadly as follows.

- The leave can be taken in minimum blocks of one week or multiples of one week
- A maximum of 4 weeks' leave can be taken each year, in respect of each child

- The employer can require evidence from the employee of the employee's parental responsibility for the child and the date of the child's birth
- The employee must give notice of the leave which he or she intends to take at least 21 days before the date the leave begins, except in the case of a father taking leave when the child is born
- The employer can postpone the parental leave because it would be unduly disruptive, as long as, after consulting the employee, it proposes another period of leave within the next six months and informs the employee of it within seven days of receiving the employee's notice that he or she wishes to take leave.

The Employees' Rights while on Parental Leave

The contracts of employees continue during parental leave. However, the only provisions applying during that period are the following:

- The employer's duty of trust and confidence to the employee and the employee's obligation of good faith to the employer
- Contractual notice of termination
- Compensation in the event of redundancy
- Disciplinary or grievance procedures
- Terms preventing the employee from disclosing confidential information
- Terms about the acceptance of gifts by the employee

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- Terms about the employee's entitlement to participate in any other business.

There is no entitlement to pay or other benefits during parental leave.

The Employee's Return to Work

An employee who takes up to four weeks' parental leave, (except immediately after additional maternity leave) is entitled to return to the job in which he or she was employed before his or her absence.

An employee who takes up to 4 weeks' immediately after additional maternity leave is entitled to return to her previous job unless it would not have been reasonably practicable for her to return to that job if she had returned at the end of her additional maternity leave and it is not reasonably practicable for her employer to admit her return now.

An employee who takes more than 4 weeks' parental leave has the same entitlement to return to work as an employee returning from additional maternity leave. Please see our information sheet, 'The New Maternity Maze'.

Time Off for Dependants

In December 1999, employees gained for the first time a statutory right to take time off work in the case of an emergency, to make the necessary arrangements to care for a dependant. Every employee has this right, regardless of length of service. However, the right is to unpaid time off work, unless the employer should commit itself to give paid time off, in the employment contract.

The right is to take a reasonable amount of unpaid time off to take action which is necessary

- To help when a dependant falls ill, gives birth or is injured or assaulted
- To make arrangements to provide care for a dependant who is ill or injured
- As a result of the death of a dependant
- To cope when the arrangements for caring for a dependant unexpectedly broke down
- To deal with an unexpected incident involving a dependant child during school hours.

For most of these, a 'dependant' means the husband or wife, child or parent of an employee or anyone else who is a member of the employee's household, but is not a lodger.

To have the right to time off, the employee must tell the employer the reason for the absence as soon as reasonably practicable.

Employees must not be victimised because they have exercised this new right. If they are dismissed for exercising it, the dismissal will be automatically unfair.

Paternity Leave

A new right to paternity leave was introduced as of April 2003.

To qualify for paternity leave an employee must have been employed for 26 weeks ending with the 15th week before the expected week of childbirth ("EWC"). He (or she) must also have or expect to take responsibility for the child's upbringing and be either:-

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- The child's biological father; or
- Husband of the mother (or adopter)
- Partner of the mother (or adopter)

A "partner" is defined as a person (whether or a different sex or the same sex) who lives with the mother (or adopter) in an enduring family relationship but is not a blood relative. This definition therefore specifically allows partners in same sex relationships to take paternity leave.

An employee who qualifies will be entitled to take either one or two consecutive weeks paternity leave. The employee may not take two weeks at separate times and if he/she does not take a whole week, paternity pay will not be payable in that week.

The leave must generally be taken within 56 days of birth or placement for adoption.

In order to take paternity leave, in respect of a birth notice must be given in or before the 15th week before EWC. For adoption, notice must be given no more than 7 days after the adopter was notified of having been matched with a child for adoption.

As with maternity leave, the date for the start of the leave may be varied on 28 days notice of the new date or as soon as reasonably practicable. The notice to be given to the employer is of:

- The EWC (or date on which the child is expected to be placed with the adopter)
- Whether the employee wants to take one or two weeks
- The start date of the leave.

Employees must also provide evidence of this to the employer if so requested by the employer.

The Employees' Rights while on Paternity Leave

Whilst on paternity leave employees are entitled to the benefit of their normal terms and conditions (except for remuneration) and are bound by their normal obligations arising under those terms.

The Employees' Return to Work

Following paternity leave, employees are entitled to return to the job in which he or she was employed before his or her absence. Employees must not be victimised for exercising their right to take paternity leave and any dismissal as a result will be automatically unfair.

Paternity Pay

Paternity leave is paid at the same rate as Statutory Maternity Pay i.e currently £106.00 per week (or 90% of average pay whichever is lower) provided they qualify.

To qualify for paternity pay the employees' earnings must average at least the lower earnings limit for National Insurance which is currently £79 per week.

Update on Parents Rights

In April 2003 parents were given additional rights (as well as paternity leave) including:

- Ordinary maternity leave extended to adoptive parents
- Enhanced maternity rights

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- The right to request flexible working arrangements

Although this information sheet highlights the key issues relating to parental leave and paternity leave and time off for family emergencies, it should not be considered comprehensive and is not a substitute for seeking professional advice on specific issues.

For further information, please contact Nick Hoden on 01892 510000 or by e-mail at nick.hobden@ts-p.co.uk.

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