



FAMILY FRIENDLY WORKING MATERNITY, PATERNITY AND PARENTAL LEAVE

- The Government has recently published draft regulations to further extend the rights of working parents. They include extended maternity leave, new rights for working fathers and carers.
- These proposed changes are still subject to Parliamentary approval and some of the detail as to how they are to be applied has yet to be confirmed. However, the new rules will apply to staff whose babies are born after 1 April 2007, and therefore could apply to workers employed on or after July 2006. Operators therefore need to start updating company policies and planning how to implement the new rights now.

Paid Maternity Leave

- Currently all employees are entitled to paid maternity level of 26 weeks with a further 26 weeks unpaid leave for workers with 6 months service.
- The Government is proposing to extend this to 39 weeks (9 months) from April 2006, with a view to increasing it to a year's paid leave by 2010. In addition, the entitlement to additional unpaid leave will be extended to all workers regardless of service.
- In order to make this extended leave more manageable, the new laws will allow employers to make "reasonable contact" with their staff whilst on maternity leave. In addition, women will be allowed to work for a limited number of days during the leave without forfeiting their maternity rights. Currently any contact or discussion of work brings the maternity leave period to an end.
- The number of days and the nature of the reasonable contact have yet to be determined and guidance on how this is to be managed is expected. Employers and employees are likely to be allowed to manage the contact between themselves. However, an employer cannot require an employee to stay in touch in this way during her leave.
- The Government has also announced an increase in the statutory notice periods from 28 days to 8 weeks. This would mean a woman would need to give at least 8 weeks notice of her intention to return to work and an employer would be able to delay the return date by up to 8 weeks if proper notice was not given.

Paternity Leave

- Currently all fathers with 26 weeks service are entitled to up to 2 weeks paid paternity leave to be taken within the first 2 months of a child's birth.
- The Government is proposing to extend this in certain circumstances by allowing couples to share maternity leave between them and for working fathers to take over their partner's entitlement to leave should she return to work early.
- The proposals are not an automatic right and the entitlement is wholly dependent upon the return to work of the mother. Moreover, there is no obligation for fathers to take up this opportunity. For example, if a mother takes her full leave entitlement, then her partner is only eligible for the current 2 weeks leave. However, if the mother returns to work after 4 months, then it would be open to the father to take 2 months paid and 6 months unpaid



leave. The leave must be taken in 1 block and be concluded before the child's first birthday.

- The father would be required to provide documentary evidence of both paternity and his partners return to work at least 8 weeks before he intends to commence his leave. The Government is considering whether employers could refuse the request if this requirement is not met, but it is more likely that the leave would be delayed by up to 8 weeks.
- The Government has yet to decide whether there should be a minimum length of service before fathers would be entitled to the right to extended leave. However, it should be borne in mind that service requirements are being abandoned for working women and this may form a precedent for paternity leave in the future.
- It is also unclear whether a father taking on his partner's entitlement to leave would have the same employment rights and crucially the right to return to the same of similar job as would a woman on maternity leave.

Flexible Working

- Currently, parents with children aged 6 or under have the right to request a move to flexible working. Employers are not obliged to grant the request but they must give it careful consideration and be able to demonstrate that they have taken it seriously.
- The Government is proposing to extend this right to workers who care for adult relatives. The definition of 'relative' has yet to be defined but is likely to be tightly drawn in the first instance. This right is likely to apply only to workers with 26 weeks service.

Implications for Licensed Retailers

- The extension of unpaid leave to all workers regardless of length of service is likely to have major implications in a sector characterised by a high turnover of temporary staff. It would mean that from day 1, a woman would have a right to up to a year's leave and employers would be obliged to hold a job open for her on return.
- The introduction of new rights for working fathers will add administrative burdens with employers of women being required to check and certify return to work statements. It will also make staffing decisions more difficult as there is no certainty about whether this new right will be used. There are clear implications for management couples.
- It is a moot point, however, as to how much this entitlement will be used by workers in lower paid sectors. It is more likely to affect managers or head office staff who can afford to take extended unpaid leave.
- The extension of the right to make a request for flexible working will also add to administrative burdens as all requests will need to be logged and due diligence in considering them demonstrated if employers are not to fall foul of the law.

**KN
Ealing
18 May 2006**