

### Consultations on flexible working code and shared parental leave

The Government announced last November that the right to request flexible working will be extended to all employees and the current statutory procedure for handling flexible working requests will be repealed in April 2014 (at the earliest), and also that a new system of shared parental leave and pay would be introduced during 2015. Acas and the Government are now consulting on these changes.

#### Flexible working

The Children and Families Bill provides for the right to request flexible working to be extended to all employees who have worked for their employer for 26 weeks or more. There will be no need to have children first. The rigid statutory procedure will be replaced with a duty to consider requests for flexible working 'in a reasonable manner'. Acas is now [consulting](#) on a short (and very basic) Code of Practice intended to help businesses manage the new extended right and which will also be taken into account by Employment Tribunals when considering relevant cases. Acas will also publish a non-statutory 'good practice' guide with practical examples of managing requests in the workplace. It remains to be seen whether this will result in legislation which is more flexible for employers or simply more vulnerable to satellite litigation about what is "reasonable" which would not have arisen under the old regime.

The consultation closes on **20 May 2013**.

#### Shared Parental Leave and Pay

The Government [consultation](#) is seeking views on the detailed administration of the shared parental leave and pay scheme (so-called to distinguish it from the EU-derived unpaid parental leave entitlement). The key points covered by the consultation are:

**Ante-natal appointments** - There will be a new statutory "day-one" right for fathers, partners of pregnant women and certain intended parents of children born through surrogacy to unpaid time off work to attend up to two ante-natal appointments capped at 6.5 hours (travelling and attendance) per appointment. There will be no requirement to provide evidence of the pregnancy to qualify for the time off, nor will there will a statutory process for making requests.

**Paternity leave and pay notice requirements** - The baby's father, mother's partner or a "secondary adopter" (the individual in a couple who has not been designated as the "primary adopter") will continue to be entitled to up to 2 continuous weeks' paid paternity leave. At present, to be eligible for leave, individuals must provide notice by the 15th week before the week the baby is due (or within 7 days of being matched with a child, for adopters); to be eligible for pay the individual must provide 28 days' notice of their intention to take pay. The Government intends to align the notice periods for paternity leave and pay to require fathers (or a mother's partner) or a secondary adopter to give their employer notice at least 15 weeks before the expected week of confinement (or within 7 days of being matched with a child, for adopters) for paternity leave and pay.

**Eligibility for shared parental leave** - To qualify for shared parental leave and pay both parents (birth or adoptive or intended parents in surrogacy agreements) will be required to follow a two-stage process. The first stage "joint test" is an "economic activity" test requiring an individual's partner to have worked for any 26 out of the 66 weeks preceding the baby's due date, or the adoption matching date (or date of the child's entry into the UK for overseas adopters) and have earned at least £30 gross salary per week for any 13 of those 66 weeks.

The second stage 'individual test' considers whether each parent/carer is eligible for statutory parental leave and/or pay. To qualify for leave, the parent/carer must have at least 26 weeks' continuous service with the same employer at the 15th week before the baby's due date and still be working for the same employer when they intend to take the leave. To qualify for statutory pay, it is envisaged that the parent/carer must have earned an average salary equivalent to at least the Lower Earnings Limit (currently £107 per week) for 8 weeks prior to the 15th week before the baby's due date.

**Giving notice to an employer** - At present, a woman can end her maternity leave at any time following the compulsory maternity leave period by returning to work (subject to providing her employer with the correct 8 week period of advance notice). The new scheme will allow a woman on maternity leave to commit to ending the leave at some future date. The untaken weeks of her overall leave and pay entitlement as of the date of the intended end of maternity leave can then become available for her partner to take as shared parental leave and/or pay.

A woman will need to give at least 8 weeks' notice of her intention to end her maternity leave and she and her partner will have to give 8 weeks' notice of their intention to take shared parental leave or pay. The notice to end maternity leave and to opt into the shared parental leave system will be binding unless:

- the parents (or the mother and her partner) discover during the 8-week notice period that they do not meet the economic activity test qualifying conditions; or
- where the notice has been given before the birth, it is revoked within a specified period from birth (4 or 6 weeks are under consideration). If a mother revokes her notice in this way she will be able to opt into the shared parental system at a later date.

**Agreeing patterns of leave** - Once an employee has given notice, there will be a two-week discussion period to allow employers and employees to discuss patterns of leave, followed by an employee sign-off. Where it is not possible to agree a pattern of leave, the Government is proposing that the default position will be for the employee to take the total amount of leave they have requested as one block, to begin on a date of their choosing, but no earlier than 8 weeks from the date of submission of the notice proposing their original pattern of leave.

The minimum notice period to change an existing leave pattern will be 8 weeks. There will be no limit on the number of times that parents can transfer leave and pay entitlements between them. The Government will (thankfully) provide extensive guidance for employees on how to use the shared parental leave system and will encourage employees to set out their full plans for leave for their employer as soon as they know them.

**Time limit in which to use the shared parental system** - There will be a cut-off point after which parents will no longer be able to use any outstanding shared parental leave or pay entitlement. The Government is considering 52 weeks from the start of the woman's maternity leave or up until the child's first birthday (this would potentially extend the maximum period to take leave by around 13 weeks) as potential cut-off points.

**Keep in Touch (KIT) days** - The Government is proposing to allow up to 10 KIT days per parent for use whilst on shared parental leave. This will be in addition to the current entitlement of 10 KIT days for mothers on maternity leave.

**Right to return to the same job** - The Government is consulting on two approaches to the right to return to the same job:

Option a): The right to return to the same job would be maintained for employees returning from the first continuous block of leave of 26 weeks or less. Employees returning from subsequent periods of shared parental leave would have the right to return to the same or similar job.

Option b): The right to return to the same job would be maintained for employees returning from leave that totals 26 weeks or less in aggregate; even if the leave is taken in discontinuous blocks. This would include periods of maternity, adoption, paternity and shared parental leave. This would operate in the same way for adoptive parents.

The right to return to the same job for EU-derived unpaid parental leave will remain unchanged.

**Adoption** - Adoption leave will become a "day-one" right for employed adopters and statutory adoption pay will be enhanced to 90% of salary for the first 6 weeks for the "primary adopter", in line with statutory maternity pay. The "primary adopter" will be entitled to time off to attend up to 5 paid pre-adoption appointments and the "secondary adopter" will be entitled to time off to attend up to 2 unpaid pre-adoption appointments. The total amount of time off per appointment will be capped at 6.5 hours.

The consultation closes on **17 May 2013**. The Government will publish its response during late Summer.

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