

E-ALERT | International Employment

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U. K. INTRODUCES NEW SHARED PARENTAL LEAVE AND PAY REGIME

Summary

- New U.K. regulations will allow parents of babies born on or after 5 April 2015 to share up to 52 weeks' parental leave.
- Employees taking shared parental leave will be entitled to receive statutory shared parental pay for up to 39 weeks.
- Employers who fail to offer male employees the same enhanced pay as female employees during parental leave risk could face sex discrimination claims.
- Employers should implement amended parental leave policies, reflecting the new regime, from around autumn this year.

Overview of the draft regulations

The U.K. government has published draft regulations relating to shared parental leave ("SPL") and statutory shared parental pay ("SSPP"), following the birth or adoption of a child. The draft regulations are due to be laid before Parliament this summer.

The regulations will introduce a new regime allowing parents to share all but the first two weeks of the maternity leave currently available to new mothers. Where a mother opts to curtail her 52-week entitlement to statutory maternity leave ("SML"), the remaining untaken leave will be available to both parents to be shared in agreed proportions. The current additional paternity leave regime will be abolished and replaced with SPL, but the entitlement to two weeks' ordinary paternity leave will remain unchanged.

It is anticipated that the regulations will apply to the parents of children due to be born, or placed for adoption, on or after 5 April 2015. However, expectant parents could start planning their parental leave from as early as autumn of this year. It is, therefore, important for employers to start thinking about the changes they will need to make to their parental leave policies well in advance of the implementation date. In particular, employers should carefully consider whether to offer male employees the same rights to any enhanced maternity pay that is currently available to female employees. Failure to do so could be grounds for a discrimination claim based on gender.

The European context

The greater flexibility offered by the new regulations brings the U.K. more in line with the Scandinavian model for parental leave. In Finland, Norway and Sweden, both parents can already share parental leave entitlement (Sweden has the longest entitlement - 18 months' leave can be taken by either the child's mother or father). The U.K.'s offering is still less generous than many European countries, such as Germany (14 months' shared leave), but more generous than others, such as Italy (10 months) and Ireland (4 months).

The nuts and bolts of the new regime

■ Eligibility

Under the draft regulations, SPL following birth is available to a mother and either the father of her child, her husband, civil partner or partner. In order to qualify for SPL, an employee must have 26 weeks' continuous employment. Together, the parents must have the main responsibility for the care of the child. The mother must also be entitled to SML in respect of the child and have curtailed that leave.

■ Leave entitlement

An employee must give at least 8 weeks' notice of his/her entitlement and intention to take SPL, including: (i) the dates of any SML taken, or to be taken, in relation to the child, (ii) the total amount of SPL available and how it will be shared, and (iii) an indication of the dates when the employee intends to take SPL ("Entitlement Notice"). The employer will then have the right to request, within 14 days, a copy of the child's birth certificate and the name and address of the employer of the employee's co-parent. The employee can amend the Entitlement Notice an unlimited number of times.

The total amount of SPL to be made available to parents is 52 weeks, less the number of weeks' SML taken by the mother. The first two weeks' leave must be taken by the mother, but the remaining entitlement can be shared between the parents in any proportions, provided the entire entitlement is taken before the child's first birthday.

If an employee requests a single continuous period of SPL, he/she is entitled to take it (the employer cannot refuse to grant a request). However, if an employee requests separate "discontinuous" periods of SPL (either distinct blocks of leave, or by using leave to take fixed days off each week), the employer can, at its discretion:

- agree to the requested pattern of leave,
- refuse the request outright, or
- refuse the request as stated, but propose alternative dates.

If the employer and employee cannot reach agreement within two weeks, the employee can either withdraw his/her request, or take the leave requested as a single continuous period.

The employee must give a separate notice eight weeks prior to the dates of any period of SPL he/she intends to take ("Leave Notice") (this period may run concurrently with his/her Entitlement Notice). In order to provide a degree of certainty for the employer, the Leave Notice can be amended only twice.

■ Pay entitlement

SPL is paid for up to 39 weeks. For the first six weeks, the employee will receive 90% of his/her average weekly earnings; for the remaining 33 weeks, the lower of 90% of his/her average weekly earnings or £136.78. An employee must give 8 weeks' notice to his/her employer of its liability to pay SSPP ("SSPP Notice"), including:

- his/her entitlement to SSPP,
- the number of weeks in respect of which he/she intends to claim SSPP,
- the number of weeks in respect of which his/her co-parent intends to claim SSPP, and
- the dates when he/she intends to claim SSPP.

As with the Entitlement Notice, the SSPP Notice is capable of being amended.

■ Protections

The regulations provide various protections for employees who take SPL, which mirror the protections afforded to employees who take SML. Employees are entitled to return to the same

or a similar role, on the same terms and conditions, when their leave comes to an end. They have the right to be prioritised for, and offered, suitable alternative roles in a redundancy situation. They are not to be subjected to any detriment as a result of their electing to take SPL, and any dismissal relating to such election will be unfair.

■ **Keeping in touch during SPL**

Each employee who takes SPL is entitled to work up to 20 days during their period(s) of leave without bringing that leave to an end. These keeping in touch (“KIT”) days are in addition to the 10 KIT days currently available to employees on maternity leave.

■ **Rights following adoption**

SPL is also available to adopting parents following notification that they have been matched with a child. The above rights apply in the same way to an employee who is entitled to, and has curtailed, statutory adoption leave and his/her co-parent..

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