

NEWS FROM THE HR TEAM









Shared parental leave and pay

New regulations giving new parents rights to decide how to share time off work is set to come into force on 1 December 2014. This right will enable mothers or adoptive parents whose babies are due to be born on or after 5 April 2015, or in case of adoption when children are placed for adoption on or after that date, to share some of the leave with their partners. This means that employers could start receiving the intention to take leave by January 2015.

Additional statutory paternity leave will be replaced by shared parental leave. While fathers will still be entitled to two weeks' statutory paternity pay and mothers who are employed will still be entitled to 52 weeks of maternity leave, they will now be able to share the untaken balance of maternity leave and pay as shared parental leave and pay. Parents will also be able to take the shared parental leave concurrently or consecutively. The shared parental leave must however be taken in a minimum of one-week blocks.

With effect from 1 October 2014 fathers and partners (including same sex partners) now have the right to take unpaid time off work to attend two antenatal appointments with their pregnant partner (please also see Antenatal appointment below).



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Small Business, Enterprise and Employment Bill

One of the most significant proposals under the small business, enterprise and employment bill published in June 2014 is to make exclusivity clauses in zero hours contracts unenforceable.

Along with that, the bill also presents reforms to whistleblowing procedures intended to provide greater reassurance to the whistleblower by requiring prescribed persons to publish details of disclosures in an annual report. Some of the other reforms intended under the bill are as follows;

- Increase the penalties imposed on employers who are in breach of the National Minimum Wage legislation on a per worker basis as against the current per notice basis.
- Financial penalty on employers for non-payment of an employment tribunal award, with the penalty sum being 50% of the outstanding amount, subject to a maximum of £5000.

- Make provisions under the employment tribunal procedures for a limit to be placed on the number of successful applications for the postponement of a tribunal hearing that can be granted to a claimant or respondent.





National Minimum Wage

From 1 October 2014, the following NMW rates will apply;

- For those aged 21 and over, the rate increases from £6.31 to £6.50 per hour.
- For 18-20 year olds, the rate increases from £5.03 to £5.13 per hour.
- For 16-17 year olds, the rate increases from £3.72 to £3.79 per hour.
- The apprentice rate (for those aged 16 to 18 years and those aged 19 and over but in their first year of apprenticeship only) increases from £2.68 to £2.73 per hour

Antenatal appointments

New rights under The Children and Families Act 2014 will allow expectant fathers or partners (including same sex) to take unpaid time off to accompany the expectant mother to up to two of her antenatal appointments. There is a cap of six and a half hours on the time allowed for each appointment and there is no qualifying period for the accompanying employee. The right also extends to agency workers who have been doing the same kind of job for the same employer for at least 12 continuous weeks.

The employment tribunal may impose a financial penalty for employers refusing such requests which would be calculated as twice the hourly rate of pay for each of the hours that the person would have taken off had he / she attended the antenatal appointment. Under the new rights, employees are also protected from any detriment that may arise as a result of their exercising the right.



Reserve Forces (Payments to Employers and Partners) Regulations 2014

Currently employers are entitled to claim an award of up to £110 a day in respect of replacement costs incurred as a result of a reservist's absence. From 1 October 2014, small

and medium companies carrying on business in partnership with reservists can claim up to £500 per month for each full month a reservist is absent from work (pro-rata for part-time employees).





CASE LAW



CD v ST 2014

The above case was referred to the European Court of Justice (ECJ) by the employment tribunal to rule on surrogacy rights for commissioning mothers. In this case, CD had a baby through a surrogate and was refused maternity and adoption leave by the employer as she failed the eligibility criteria. CD claimed discrimination on the ground of sex and/or pregnancy and maternity under the Equality Act 2010 and that the maternity leave provisions of the Employment Rights Act 1996 and the Maternity and Parental Leave etc Regulations 1999 had been infringed. The tribunal referred the case to the ECJ on whether an employer has breached the EU Pregnant Workers Directive by refusing to provide maternity leave to a commissioning mother who has a baby through surrogacy or in fact if the employer's actions could be seen as sex discrimination.

The ECJ held that EU law does not require that the commissioning mother in a surrogacy agreement be entitled to maternity leave. The ECJ accepted that while the objective of maternity leave is to protect the development of a bond between mother and child, this objective concerns only the period after pregnancy and childbirth and, as such, presupposes that the employee has been pregnant and given birth. CD was not pregnant herself and as such the surrogacy arrangement does not fall under Article 8 of the Directive.

The ECJ also held that there was no sex discrimination in this case, direct or indirect as under UK law, a commissioning father would be treated the same way as a commissioning mother. There was also no evidence to suggest that CD was subject to less favourable

treatment or that she was put at a particular disadvantage due to the employer's refusal to grant such leave.

The above case confirms that current legislation does not entitle commissioning mothers to maternity leave and pay. However, this is expected to change in April 2015 when the new rights under Children and Families Act 2015 will allow commissioning parents to adoption leave and pay.

Over the last couple of years the number of cases reaching Tribunal has hugely increased, it is thought to be by more than 50%. Many of you may have experienced this for yourselves, the increases being driven by disputes about equal pay, unfair dismissal, age, sex, race and disability discrimination.

With this being high on the agenda, we are able to offer our clients with not only hands on consultancy but also, an insured/legal expenses cover of up to £75,000 per claim.

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