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Maternity Rules Briefing Sheet

Although these new regulations came into force on 1st October 2006 they only affect those where the expected date of childbirth or adoption is on or after 1st April 2007. Many of my clients are still unaware of these new rules and therefore this briefing sheet aims to provide an overview of the new regulations. Please read on for further information.

Overview of Key Changes

- There is no longer any requirement for woman to have a length of service requirement to be entitled to additional maternity leave
- Statutory maternity pay has now been extended from 26 weeks to 39 weeks
- There has been the introduction of "keeping in touch" days
- Clarification of "reasonable contact" has now been made
- The exemption to unfair dismissal claims for employers with less than 5 employees has been removed
- The length of notice that an employee must give if returning from maternity leave early has been increased

All these changes are discussed in further detail below.

Important note: Although these new regulations come into effect on 1st April 2007 it is irrelevant when the child is born as long as the expected week of confinement was on or after 1st April 2007. Therefore, any employee who gives birth early will still be entitled to benefits of the new regulations.

Length of Service Requirements

Prior to April 1st 2007 an employee was required to have 26 weeks' service by the beginning of the 14th week before the expected week of confinement to be entitled to take the 26 weeks of additional maternity leave. There wasn't any service requirement for the 26 weeks of ordinary maternity leave.

From April 1st 2007 every employee qualifies for ordinary and additional maternity leave regardless of their length of service – a total of 52 weeks leave.

Note: Interestingly, instead of just having the 52 weeks of maternity leave referred to by one all encompassing name the distinctions between ordinary and additional maternity leave in terms of employment rights will remain.

Maternity Pay

From April 1st 2007 statutory maternity pay will be increased from 26 weeks to 39 weeks which will mean that those employees that qualify for it will now receive it for 9 of the 12 months leave they are entitled to.

To be entitled to statutory maternity pay an employee must have been employed with their current employer for at least 6 months by the beginning of the 14th week before the expected week of confinement. This is no change to previous requirements.

Statutory adoption pay: Similar changes as described above will also apply to statutory adoption pay.

Important note: It is the Governments intention to increase statutory maternity and adoption pay to 12 months by the end of this Parliament resulting in the entitlement to pay matching the entitlement to leave.

Keeping in Touch Days

The introduction of “keeping in touch days” allows employees on maternity or adoption leave to do up to 10 days’ work for their employer without causing their leave to end. In addition, this work would not affect their entitlement to statutory maternity or adoption pay or their contractual pay if this was higher.

This work can include training but any part of a day used counts as one of the 10 day allowed for by the regulations. These 10 days continue to form part of the maternity or adoption leave and therefore will not add the “keeping in touch days” to the end of their leave – the 52 weeks includes any of the 10 “keeping in touch days”.

Important note: An employee is still not permitted to work in the 2 weeks following the birth of a child.

Important note: There is no legal right or obligation for the employee to work these 10 days. Therefore an employer cannot insist that an employee comes into work and nor can an employee insist that they are allowed to work. All employees continue to be protected against detriment and dismissal throughout any of these 10 days and can therefore bring a tribunal claim if this occurs.

Reasonable Contact

Whilst this is not a new right the regulations have now made clear that both employer and employee may have reasonable contact with each other during maternity and adoption leave without this contact bringing the leave to an end.

Unfair Dismissal Claims

Previously, employers that employed 5 or less employees could escape an automatic unfair dismissal finding if they failed to keep a post open for an employee returning from additional maternity leave. This exemption is removed from April 1st 2007.

Increased Notice Periods for Return to Work

Prior to April 1st 2007 an employee wishing to return from additional maternity or adoption leave early were required to provide 28 days' notice of their intention to return to work. From April 1st 2007 an employee must give 8 weeks' notice if they wish to return early.

Note: Many unions argued strongly with the Government during consultations to keep the original 28 days notice as this was the same as many other standard notice procedures and allowed for greater flexibility between employers and employees.

Rates of Statutory Pay

From April 1st 2007 the statutory weekly rate for statutory maternity, paternity and adoption pay will increase from £108.85 to £112.75 per week.

Associated Impending Changes

The Government intends to introduce further entitlements under the Work and Families Act. Some of the most important are listed below for your benefit:

- The right to request flexible working will be extended to carers of adults from April 2007
- There is an intention to increase paternity pay and paternity leave. This will entitle fathers and partners to benefit from leave and statutory pay if the mother returns to work after 6 months but before the end of the maternity leave period and the father or partner takes over childcare duties
- Increases to statutory annual leave entitlement are imminent following the closing of consultations. These changes will be implemented under the Working Time Regulations

Action Points Arising from New Maternity Rules

1. **Standard Letters** – Most employers use standard letters to deal with maternity and adoption. Review these to ensure that they are compliant with the new regulations.
2. **Employees Currently Pregnant** – Many employers are still unaware of the new regulations that take effect on 1st April 2007. Review any communication you have had with pregnant employees to ensure that those with expected week of confinements after 1st April 2007 have been given the right information.

3. **Company Policies** – Consider your company policies particularly in relation to how you may choose to utilise the “keeping in touch days”.
4. **Inform** – Ensure all employees are aware of the new regulations. The “keeping in touch days” could prove very useful to both employers and employees so make sure the positive benefits of these are “sold” to staff.
5. **Train** - Anyone responsible for managing the maternity and adoption process in your organisation needs to know these new regulations so they can provide the appropriate advise and ensure you organisation does not break the law.

This briefing sheet is a short summary of all the key areas relevant to the new maternity regulations and was produced to highlight areas for focus.

Please do not hesitate to contact James Turner of Human Performance Limited to discuss any areas of this Maternity Rules Briefing Sheet. If you need help to develop any of your policies or procedures to take into account this new legislation we will be happy to discuss this without cost or obligation.

