

Understanding Employment Law

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LO4: Know how to manage issues relating to pay and working time lawfully



Working Time - who is a worker?

- A worker includes anyone who has entered into or works under (or where the employment has ceased, worked under):
 - A contract of employment;
 - Any other contract, whether express or implied and (if it is express, whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party
- Who is not included?



Working Time

- 48 hours' work per week (17 week reference period) subject to opt-out
- 5.6 weeks - 28 days' paid annual leave each year
- 20 minutes' rest in any period of work lasting six hours or more
- 11 hours' rest in any one 24-hour period
- 24 hours' rest in any seven-day period (or averaged over 14 days)
- night workers
- young workers



Payment of wages

- Right to an itemised pay statement (section 8 ERA 1996)
- Lawful deductions from wages
 - where it is authorised by legislation
 - where it is authorised by contract
 - where there is an agreement in writing
- Guarantee payments
- National Minimum Wage and National Living Wage

<https://www.gov.uk/government/news/nearly-200-employers-named-and-shamed-for-underpaying-thousands-of-minimum-wage-workers>



Payment and sickness

- Statutory Sick Pay (SSP)
- First 3 days are waiting days
- Continuously sick for 4 days or more calendar days
- Average earnings of at least equal to the lower earnings limit
- Paid on days on which employee would normally work
- Paid for maximum 28 weeks in any 12 month period
- Linked periods of incapacity
- Medical suspension pay



Equal Pay - What is equal pay?

- The law gives a woman the right to be paid the same as a man (and vice-versa) for
 - like work- two employees who are doing the same or broadly similar roles, or
 - work rated as equivalent by analytical job evaluation study - could be totally different jobs which have been given the same rating as the result of an analytical job evaluation, or
 - work of equal value - when there are two jobs that are very different, but the employee claims that they require a similar level of skill and ability.



Equal Pay - Claims

- To bring an equal pay claim, the person bringing the claim must point to a 'comparator'. A comparator is a person of the opposite gender, working for the same employer, doing like work (or work rated as equivalent, or work of equal value) who is paid more, or has more beneficial terms and conditions of employment, than the claimant.
- The comparator can be someone working for the employer at the same time or in the past (a predecessor) but not someone employed afterwards (a successor).
- The law doesn't allow consideration of the equality of a contract of employment as a whole.



Equal Pay – Employers Defence

- To defend a claim, an employer must be able to show that:
 - the person bringing the claim and the comparator are not engaged in 'like work', or
 - a bona fide and non-discriminatory job evaluation scheme has been conducted and the work is not 'rated as equivalent', or
 - the work is not of 'equal value', or
 - any difference in pay is due to a material factor, or difference other than the difference of gender.



Family friendly rights

- Maternity and antenatal
- Paternity
- Adoption
- Shared parental leave
- Parental leave
- Time off for dependants
- Parental bereavement leave



Group Exercise

Maternity leave and pay definitions



What do these terms mean?

- Maternity leave
- EWC
- MATB1
- Qualifying week
- Childbirth
- Compulsory maternity leave
- OML
- AML
- SMP
- KIT days



Maternity leave – antenatal appointments

- All pregnant employees have a statutory right to paid time off during working hours "for the purpose of receiving antenatal care", regardless of hours worked or length of service (sections 55 and 56, ERA 1996).



Maternity leave – Rights during OML and AML

- The contract of employment continues throughout OML and AML, unless either party expressly ends it.
- During statutory maternity leave, an employee "is entitled... to the benefit of the terms and conditions of employment which would have applied if she had not been absent", except for the terms as to remuneration (section 71(4)(a), ERA 1996 and regulation 9, MPL Regulations).
- Since the contract of employment is not broken, continuous employment will continue to accrue during OML and AML.



Maternity leave – Right to return to the same job

- If the employee takes only OML, returns before the end of OML, or combines maternity leave with a period of shared parental leave where the total leave is 26 weeks or less, she is entitled to return to the "same job in which she was employed before her absence" (regulation 18(1), MPL Regulations).
- Her terms of employment must be the same as, or not less favourable than, they would have been had she not been absent (regulation 18A(1)(b)). She will be entitled to benefit from any improvements as if she had not been away, such as a pay rise or any other changes to her terms and conditions for her grade or level.



Maternity leave – Right to return to a suitable alternative job

- Where the employee has taken any period of AML, has taken shared parental leave which when combined with maternity leave amounts to total leave of more than 26 weeks or has taken a period of at least four weeks' parental leave on top of her OML, and there is some reason why it is not reasonably practicable for the employer to permit her to return to the same job:
- The employee is entitled to return to a different job which is both suitable for her and appropriate in the circumstances (regulation 18(2), MPL Regulations).
- The terms and conditions must not be less favourable than they would have been had she not been absent (regulation 18A(1)(b)).

Statutory Maternity Pay

- An employee will be entitled to SMP where she has both:
 - 26 weeks' continuous employment with the employer up to and including the 15th week before the EWC.
 - Average earnings of at least the lower earnings limit for National Insurance during the eight-week period ending with the 15th week before EWC.
- SMP is payable for 39 weeks at the following rates:
 - The "earnings-related rate" (90% of average earnings) for the first six weeks.
 - The "prescribed rate" (or earnings-related rate if lower) for the remainder of the period.
- A woman who does not qualify for SMP may qualify for maternity allowance or other social security payments.

Statutory Paternity Leave - Eligibility

- OPL is available only to eligible employees, not to other types of worker or the self-employed.
- To be eligible to take OPL, an employee must:
 - have been continuously employed by their employer for a period of not less than 26 weeks ending with the Qualifying Week. (regulation 4(2)(a), PAL Regulations).
 - be either the child's father or be the spouse, civil partner or partner of the child's mother. (Regulation 4(2)(b), PAL Regulations.)
 - have responsibility for the child's upbringing (or an expectation that they will do so).
 - not have already taken shared parental leave in respect of the same child.
 - give the employer the required notice and (where requested) the necessary evidence of entitlement. (regulation 4, PAL Regulations.)



Statutory Paternity Leave – taking the leave

- **The amount of OPL**

The statutory entitlement to OPL is to one period of leave and the employee is entitled to choose between taking that period as **either** one week **or** two continuous weeks' leave (regulation 5(1), PAL Regulations)

- **When OPL can be taken**

The employee's one or two-week period of OPL must normally be taken between the date on which the child is born and 56 days after that date (regulation 5(2)(a), PAL Regulations).

Within the applicable 56-day period, it is for the employee to choose when they wish to take their OPL.



Statutory Paternity Leave – the right to return

- An employee who has exercised their right to take OPL usually has the right to return to the same job that they were employed to do immediately prior to taking the leave (regulation 13(1), PAL Regulations).
- Where the OPL is used alongside parental leave or other statutory leave of more than four weeks **and** it is not reasonably practicable for the employer to return the employee to the job they were doing before their OPL, the employer is entitled to propose an alternative job for the employee to return to which is both suitable for them and appropriate for them to do in the circumstances (regulation 13(2)).



Statutory Adoption Leave – the key rights

- Up to 52 weeks' statutory adoption leave (SAL), split into 26 weeks' ordinary adoption leave (OAL) and 26 weeks' additional adoption leave (AAL).
- Statutory adoption pay (SAP) for up to 39 weeks (the adoption pay period or APP).
- The right to return to the same job (or, in certain circumstances, to return to a suitable and appropriate alternative job).
- The statutory framework for adoption leave and pay is similar to that for maternity leave and pay. However, the key trigger points for eligibility for SAL and SAP (other than in surrogacy cases) do not relate to an expected or actual date of childbirth, but to stages of the process by which a child is matched and placed with an adopter.
- The rights and obligations during OAL and AAL and the right to return to work are the same as with maternity leave.



Statutory Parental Leave

- Parental leave is a form of statutory unpaid leave available to some working parents.
- The total amount of unpaid leave that can be taken per child is 18 weeks in blocks of weeks and no more than four weeks per year.
- Parental leave may be taken for children up until their 18th birthday.
- The employee must have been continuously employed for a period of not less than one year and have, or expect to have, responsibility for a child (Regulation 13, MPL Regulations.)
- Parental leave can be flexible in terms of the time at which it is taken and the way in which the total leave entitlement may be split up into a number of shorter periods.

Shared Parental Leave

- Shared Parental Leave (SPL) enables eligible mothers, fathers, partners and adopters to choose how to share time off work after their child is born or placed for adoption.
- Parents can share up to 50 weeks of leave and up to 37 weeks of pay and choose to take the leave and pay in a more flexible way (each parent can take up to 3 blocks of leave, interspersed with periods of work) during the child's first year.
- Eligible parents can be off work together for up to 6 months or alternatively stagger their leave and pay so that one of them is always at home with their baby in the first year.



Shared Parental Leave Pay

- If the mother curtails their entitlement to maternity pay or maternity allowance before they have used their full entitlement, then Statutory Shared Parental Pay can be claimed for any remaining weeks.
- To qualify for Statutory Shared Parental Pay in addition to the continuity and earnings test the partner must have earned an average salary of the lower earnings limit of £116 for the 8 weeks' prior to the EWC.



Flexible Working – what is a request?

- A flexible working request may be a request to:
 - (a) reduce or vary your working hours;
 - (b) reduce or vary the days you work;
 - (c) work from a different location (for example, from home).



Flexible Working – Eligibility

- To be eligible to make a flexible working request, the person must be:
 - (a) an employee;
 - (b) have worked for us continuously for at least 26 weeks; and
 - (c) not have made a flexible working request during the last 12 months.



Flexible Working – Decision

- Accept
- Trial period
- Rejection:
 - (a) the burden of additional costs;
 - (b) detrimental effect on ability to meet customer demand;
 - (c) inability to reorganise work among existing staff;
 - (d) inability to recruit additional staff;
 - (e) detrimental impact on quality;
 - (f) detrimental impact on performance;
 - (g) insufficiency of work during the periods that you propose to work; or
 - (h) planned changes.



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