

Shared Parental Leave System

New rules allowing parents to share their maternity or paternity leave will come into force next year. What can working mothers and fathers-to-be expect? Stephen Ravenscroft and Sarah Taylor from White & Case LLP look at the UK Government's plans for shared parental leave.

Introduction

The UK Government has announced its plans to let parents share leave for a year after a child is born. The change is designed to challenge the old-fashioned assumption that the mother will always be the parent that stays at home.

The current entitlement to 52 weeks of maternity leave (39 weeks' paid) will remain the default position for all employed women, as will the two-week period of *compulsory maternity leave*. However, if parents wish to move on to the new system of shared parental leave ("SPL"), the Government proposes that qualifying parents will be able to share between them up to 50 weeks of leave and 37 weeks of pay (that is, everything other than the compulsory maternity leave period).

Currently, mothers can hand some of their leave over to fathers but only when the child is 20 weeks old. Under the new rules, a mother can choose to return to work more quickly and hand over her unused allowance to the father. Fathers will still be entitled to their two weeks' paternity leave immediately following a child's birth.

On 29 November 2013, the Government published its response to the consultation on how to administer the new SPL and pay system, which is due to be introduced in **2015**. Employees will be required to give their employers at least eight weeks' notice of their intention to take SPL, and in advance of each block of leave they wish to take. Employees will also be limited to make up to three

requests to take leave or change their leave requests under the scheme, and 20 new "keeping-in-touch" ("KIT") style days will be introduced for each employee taking SPL.

Overview of the system Notice

In order for employers to be given an appropriate period of notice to be able to organise their workforce when employees are absent from work on SPL, a mother will now need to give her employer at least eight weeks' notice of her intention to end maternity leave and pay and begin SPL and claim shared parental pay ("SPP").

This notice is binding and can be given at any stage, including before birth. Both parents will need to give their respective employers at least eight weeks' notice to begin SPL and if they wish to take several blocks of leave. However, mothers may revoke a notice to end maternity leave up to six weeks after birth. This is intended to give mothers the flexibility to revoke a notice given prior to the birth of the child.

Responses to the consultation suggested that six weeks was sufficient time to allow employers to plan their workforce whilst giving mothers time to readjust and cope with any unplanned situations that might only become apparent following childbirth. It is not yet clear whether fathers will be also be allowed to revoke a notice given prior to the birth of the child.

Employees will also be required to provide a non-binding indication of their

expected pattern of leave as part of the mandatory information to be provided to their employer at least eight weeks' prior to their intention to take SPL. Other mandatory information to be provided includes the names and National Insurance numbers of the mother and the father or mother's partner, and the total maternity leave and maternity pay or allowance that the mother has taken.

A non-binding indication of the expected pattern of leave will not constitute formal notice to take that leave and so an employee will need to submit a formal notice with the minimum notice period of eight weeks for any leave they wish to take. This is intended to ensure that parents consider their leave plans from the outset and give an early indication to employers of the leave they wish to take. It is anticipated that this will promote an open culture where honest conversations can take place between employers and employees.

Request to take or change SPL

It was originally proposed that an employee would be able to make an unlimited number of requests to take periods of leave or change a previous request under the scheme. In light of the consultation responses, the Government has decided to apply a cap of three to the number of notifications (excluding the employee's initial notification of intention to take SPL) that an employee can make to an employer to take or change a period of leave. However, a fourth or further notification mutually agreed between the employee and the employer will not count towards this cap.

When can SPL be taken?

After considering responses to the consultation, the Government has decided that parents must opt to take SPL (or adoption leave) within 52 weeks from the birth of the child. Under current legislation, a mother may work for her employer for up to ten KIT days during her maternity leave. Under the new SPL scheme, each parent will be entitled to have 20 KIT-style days in addition to the mother's ten KIT days during maternity leave. It is currently being decided what name to give these SPL days in order to clearly distinguish them from maternity KIT days.

Rights on returning to work

The Government intends for the new SPL system to provide suitable protection for parents whilst maintaining flexibility for employers. Bearing this in mind, it has been decided that employees returning from any period of leave that includes maternity, paternity, adoption and SPL should have the right to return to the same job, as long as they have taken an aggregate of 26 or fewer weeks' leave in total. If 26 weeks' leave has been exceeded, employees will only have the right to return to the same or a similar job.

Changes to paternity leave and adoption leave

Paternity leave and pay

The consultation also considered whether changes to the notice requirements of paternity leave and adoption leave were required. The majority of responses to the consultation suggested that currently employers face administrative difficulties from the different notice periods for paternity leave and pay. The Government has therefore taken the positive step to align the notification periods for paternity leave and pay in order to streamline the process for requesting paternity leave and pay and reduce burdensome administration.

Currently, an employee must notify his employer that he wishes to take paternity leave by the 15th week before the expected week of childbirth ("EWC"). However, to be eligible for paternity pay, an employee need only notify his employer 28 days before he intends to take such paternity pay. The Government has aligned the notification periods to the 15th week before the EWC (or within seven days of being matched with a child for adopters) or as soon as reasonably practicable (for example, where a pregnancy is not identified until a later stage).

The decision to align the notice periods was supported by the majority of the respondents to the consultation who agreed that this would simplify the process for employers and employees. It provides certainty for employers in having sufficient notice of their employees' paternity leave and pay plans, whilst maintaining minimum protections for those employees who might not be in a

position to provide notice by the 15th week prior to the EWC.

Adoption leave

The consultation sought views on how realistic notification of an employee's need to take adoption leave could be given to employers where a prospective adoptive parent had little or no notice of any placement of a child with the family. Given that such circumstances are likely to be rare (and less frequent than situations where an employee has an accident or becomes ill and goes on long-term sick leave without notice), no changes will be made to the current notification arrangements for adoption leave and pay.

Comment

The new SPL system will allow eligible working families to have more choice about how they balance their work and childcare commitments and will ensure that career options remain open to women after pregnancy. The Government has recognised that there is no "one-size-fits-all-approach" to childcare as that is not how families in the UK are set up. Parents will now be able to choose to be at home together or to work at different times and share the care of their child.

For working families that decide to end maternity leave early, SPL will give parents more choice and flexibility in how they

share the care of their child following birth or adoption. The new SPL system aims to encourage the full involvement of both parents from the earliest stages of pregnancy whilst allowing businesses to have productive and motivated employees who are given the freedom and flexibility to balance work and childcare commitments. It is anticipated that SPL will be a welcome new step that should encourage more fathers to get involved in childcare from the very beginning.

It is still unclear once a mother elects to end her statutory maternity leave and begin SPL whether her entitlement to statutory maternity pay will be retained.

It also remains to be seen how SPL will impact on fathers who take prolonged periods of leave and whether employers will be obliged to offer fathers a rate of SPP which is similar to the enhanced maternity pay that a mother would receive.

Maternity and paternity leave legislation is currently complex and this is likely to continue to be the case with SPL, particularly around agreeing patterns of leave. Hopefully, the necessary regulations will provide clarity on the proposals.

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Since April 2010 the Information Commissioner has had the power to impose a monetary penalty up to £500,000. Recent fines have exceeded £250,000 demonstrating that the Commissioner is prepared to use this power. Those fined include local authorities, charities, commercial organisations and the NHS, which shows that exceptions are not being made for any particular sector.

DPA 1998 provides for the Commissioner to use a variety of "Notices" to require controllers to provide information, cease specified processing or take particular actions to safeguard personal data and ensure that it is processed lawfully in future. Enforcement notices were used extensively prior to the introduction of monetary penalty, and required the controller's senior manager,

Chief Executive or Managing Director to sign a notice promising future compliance with DPA 1998 which was then published to the Commissioner's website.

The future for data protection

Data protection law is currently being revised by the European Commission. The new law will set higher standards requiring controllers who process significant amounts of personal data to nominate a data protection officer, increase the level of monetary penalties and give the Information Commissioner greater powers of access and audit. The new law is likely to be in force some time in 2016.

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