

## THE EMPLOYMENT RELATIONS ACT AND PARENTAL RIGHTS

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The Employment Relations Act 1999 ("the Act") was passed on 27 July this year and introduced major changes to Employment Law. The following measures have already received a wide amount of publicity:

- An increase in the limit of compensation for unfair dismissal from £12,000 to £50,000 for dismissals taking effect on or after 25 October 1999;
  - A reduction in the qualifying period of service necessary to bring an unfair dismissal claim from 2 years to 1 year (effective in relation to dismissals occurring after 1 June this year);
  - A prohibition on employees waiving their right to claim unfair dismissal upon the expiry of fixed term employment contracts of a year or more;
  - Reforms to trade union recognition (this will be the subject of a later bulletin).
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The Act has also introduced a number of social reforms designed to help people achieve a better balance between family life and the workplace and the rest of this bulletin is devoted to this issue.

The main changes in this area are the reorganisation of rights to maternity leave, the creation of rights to parental leave and time off to attend to dependants. These changes will all come into force on 15 December 1999.

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The right to maternity leave is to be reorganised in the following ways:

- The extension of statutory maternity leave (re-named 'ordinary maternity leave') from 14 to 18 weeks;
- The right to extended maternity leave (re-named 'additional maternity leave') for those women with one year's service instead of two;
- The entrenchment of the existing rights to two weeks' 'compulsory maternity leave'.
- An employee is entitled to take ordinary maternity leave if she informs her employer at least 21 days before the date the leave begins (or as soon as is reasonably practicable) of her pregnancy and the expected week of childbirth. The employee must also state the date she intends her ordinary maternity leave to start (which cannot be a date more than eleven weeks before the expected week of childbirth). An employee will also qualify for additional maternity leave if she has one year's service. An employee who takes her full additional maternity leave entitlement will benefit from a total of 40 weeks maternity leave.

As is already the case, Statutory Maternity Pay is payable for a period of up to 18 weeks to those employees who are eligible. The Act does not impose an obligation on employers to pay any additional sums to those employees who take maternity leave.

If an employee is made redundant during maternity leave she must be offered alternative employment by the employer if there is a suitable vacancy. Any new contract of employment may not include any terms and conditions that are 'substantially less favourable' than those in the original contract.

Those who take advantage of the entitlement to additional maternity leave have the right to return

to the job they left or, if this is not reasonably practical, another job that is appropriate in the circumstances.

The employee can expect to return to work with her pension, seniority and other rights at the same level as they would have been had additional maternity leave not been taken. The employee can also expect her terms and conditions relating to remuneration to be no less favourable than those accrued to the date the ordinary maternity leave began.

Additionally, the employee is protected against any detriment attributable to the employer following a period of maternity leave. Any employee who is dismissed due to taking maternity leave will automatically be found to have been unfairly dismissed.

### **Parental Leave**

Those with one year's service who have or expect to have 'responsibility for a child' have a right to time off work to look after the child. This right (which extends to parents of adopted children) enables a parent to take up to 13 weeks off to care for a child. However, any such leave will be unpaid.

The right to parental leave can only be exercised in the period from birth to the fifth birthday of the child or for five years following the date of adoption. The right is only available in respect of those children born on or after 15 December 1999 (except for those children who are born before that date but are adopted after 15 December). The right is available to both parents and it is additional to maternity leave.

While absent on parental leave, a parent is entitled to the same protection in respect of seniority, pension and other entitlements as mothers who take maternity leave (described above). This protection also extends to the terms and conditions relating to remuneration, which the parent can expect to be no less favourable than those that had accrued to the point where the parental leave began.

Parents taking parental leave are also protected from any detriment attributable to an employer following a period of parental leave. Any parent dismissed as a result of taking parental leave will be automatically considered to have been unfairly dismissed.

As a further safeguard, the Act allows a parent to bring a complaint before an employment tribunal where an employer has unreasonably postponed a request for parental leave or where an employer has prevented or attempted to prevent a parent taking such leave. The tribunal can award a 'just and equitable' amount of compensation determined by reference to the employer's behaviour and any loss sustained by the employee that is attributable to the employer's refusal.

Since parental leave can be taken at any time during the relevant five year period, employers may in the future wish to contact the former employers of new recruits to ascertain how much parental leave has already been utilised.

More detailed regulations are expected shortly which will deal with the employer's right to postpone a request for parental leave, notification provisions for employees and the amount of leave that can be taken at any one time.

## Time off for Dependants

The Act provides those employees with dependants the right to a 'reasonable' amount of time off work for any of the following reasons:

- To provide assistance when a dependant is ill, injured, assaulted or giving birth;
- To make provision for the care of a dependant who is ill or injured;
- As a consequence of the death of a dependant;
- Due to the unexpected disruption or termination of arrangements for the care of a dependant;
- To deal with an incident involving a child of the employee that occurs unexpectedly during school time.

Dependant is defined as a child, spouse, parent or other person who shares the employee's household (other than tenants, lodgers etc). In certain circumstances a dependant can also be a person for whom the employee has a caring responsibility (for example, an elderly relative). The Act does not state the amount of time off that can be taken, but it is suggested that in most cases one or two days would be an appropriate upper limit.

Employees are also provided with protection from detriment and dismissal as a result of taking time off for dependants. An employee has no right to be paid in respect of any time taken off for dependants.

As with parental leave, an employee who believes an employer has unreasonably refused to permit him or her time off for dependants may bring a claim in the employment tribunal. The tribunal can award a 'just and equitable' sum of compensation having regard to the default by the employer and any loss sustained by the employee attributable to the employer's decision.

## In Conclusion

The social goals of these reforms are to be achieved at the expense of employers. The only direct benefit an employer can hope to derive from the reforms is perhaps an increase in the morale of employees. The DTI has stated that it expects the wider business community to benefit from an increased work force due to more mothers returning to work, and the encouragement of investment in employees in terms of training. However, these words will be of little comfort to small employers who will bear a disproportionate amount of the costs compared to larger employers.

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### further information:

If you would like more information about any of Goodman Derrick's Employment Law services please telephone and ask to speak to a member of the Employment Group.

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