

Employment Act 2002 - The Main Changes

It is the Government's stated aim to "create highly productive, modern and successful workplaces through fairness and partnership at work" and to "help parents devote more time to their children in early life". The new Employment Act is a significant step towards the achievement of these aims.

The Employment Bill 2001 was first introduced in the House of Commons on 8 November 2001 by the Secretary of State for Trade and Industry. The Bill received Royal Assent on 9 July 2002 and the provisions will come into effect in April 2003.

In many areas the Act amends current legislation, in particular the Employment Rights Act 1996, the Social Security Contribution Benefits Act 1992, the Employment Tribunals Act 1996, and the Equal Pay Act 1970. However, the Act also introduces certain new provisions and the main areas of reform are:

- New provisions for working parents
- Dispute resolution in the workplace

Maternity Rights

The following new rights will come into force for mothers giving birth in April 2003:

- Extension of ordinary maternity leave to 26 weeks with a further 26 weeks of additional maternity leave. The result is to give mothers who qualify for additional maternity leave up to one year of maternity leave, where currently they can take up to 40 weeks (of which 18 are paid).
- Extension of the payment period for statutory maternity pay (SMP) and Maternity Allowance from 18 weeks to 26 weeks, covering the period of ordinary maternity leave.
- From April 2003 an increase in the standard rate of SMP and Maternity Allowance to £100 per week or 90% of weekly earnings if this is less than £100. The standard rate of SMP is currently £75 per week.
- The qualifying period for additional maternity leave will be reduced to include all those women who have worked 26 weeks at the 15th week before the expected date of childbirth.
- Employers will benefit from:
 - increased notification periods for a woman's start and early return date from maternity leave from 21 days to 28 days.
 - Advance recovery of SMP from the Inland Revenue.
 - Reimbursement of maternity payments made by employers, with a full 100% recoverable by small employers and a further compensation payment on top.

Adoption Leave Rights

Since 1999 adoptive parents have been entitled to unpaid parental leave. The Act will give such parents the following additional rights:

- 26 weeks' adoption leave which is paid at the same rate as the new maternity pay regime. Adoption leave is in addition to the right to 13 weeks' parental leave.
- Additional adoption leave provisions which are similar to the additional maternity leave provisions i.e. a further 6 months' leave.
To benefit from these rights, an employee must have at least 26 weeks' continuous service with the same employer by the week in which an approved match with the child is made.
Adoption leave will be available:

- To an adoptive parent who is matched with a child by an approved adoption agency.
- To employees who give their employer a matching certificate from an approved adoption agency to support their entitlement to leave.
- To both married couples and individuals who adopt.
- For placements of children up to the age of 18.
- To newly placed adoptions only.

In the case of a married couple, only 1 spouse will be entitled to the leave. The other may qualify for 2 weeks' paternity leave.

An employee will have the right to return to a job following a period of adoption leave and it is intended that this will provide the right to:

- return to the same job following absence on ordinary adoption leave in most cases, and
- protection for employees from detriment and unfair dismissal in connection with adoption leave.

As with the new SMP rules, the employer will benefit from advance recovery of Adoption Pay from the Inland Revenue.

Paternity Rights

For the first time, fathers will be entitled to a paid period of leave as follows:

- Working fathers may receive 2 weeks' paid paternity leave at the rate of £100 per week. At present fathers only have the right to take up to 13 week's unpaid paternity leave.
- Fathers can request such leave within 8 weeks of the birth or of the placing of a child for adoption.
- To qualify, the father must have been employed for 26 weeks by the 15th week prior to the expected date of childbirth or the placing of the child for adoption by an adoption agency. The father must be the carer of the child and a supporting influence for the mother. The father's average weekly earnings must be equal to or above the Lower Earnings Limit applying to National Insurance Contributions which is currently £72 per week.
- As with SMP and Adoption Pay, the employer will benefit from advance recovery of Paternity Pay from the Inland Revenue.
- An employee will have the right to return to a job following a period of paternity leave and it is intended that this will provide the right to:
 - return to the same job following absence of one or two weeks' paternity leave in most cases, and
 - protection for employees from detriment and unfair dismissal in connection with paternity leave.

Flexible Working

The Act places a duty on employers to give serious consideration to requests from parents of young children to be able to work flexibly. Such parents will have a right to ask for a flexible working arrangement.

The employer must demonstrate a clear business reason for any refusal of such a request. The grounds for refusal can include the following:

- The burden of additional costs to the business

- An inability to meet customer demands
- An inability to organise work within available staffing
- The detrimental impact on performance

An inability to find extra staff

The Government has stated that this list will be kept under review. The Act also sets out a detailed procedure with time limits for dealing with requests for flexible working.

Dispute Resolution

Another aim of the Act is to improve conciliation and avoid litigation through better communication in the workplace and the creation of a modern user-focussed tribunal system.

This is to be achieved through the following:

1. Encouraging internal resolution of workplace disputes:

- Introducing a minimum standard of disciplinary and grievance procedures to form part of the employee's contract of employment. Failure to abide by these statutory procedures, which results in a dismissal, will render the dismissal unfair.
- Providing extensions to time limits for lodging a tribunal complaint to allow internal procedures to complete prior to the issue of a claim.
- Employees will be barred from bringing specified claims if they have failed to use the statutory grievance procedure first to resolve the dispute.
- Allowing variation of tribunal awards to support the use of the procedures with reductions of between 10 and 50% for failure by an employee to use the appeal procedure or comply with any requirement of the procedures, and similar increases in respect of an employer's failure.

2. Facilitating better understanding of the employment relationship:

- The 20-employee threshold on provision of information on disciplinary and grievance procedures is to be removed.
- Compensation is proposed where employers fail to meet their existing obligation to provide a written statement of terms and conditions no later than 2 months after an employee starts work to support the use of the statutory procedures.

3. Altering the way unfair dismissals are judged:

- Provided the minimum standards set out in the Act are met and the dismissal is otherwise fair, procedural shortcomings can be disregarded.
- It is important to note that employers will always have to follow the basic procedures, but will no longer be penalised for irrelevant mistakes beyond that, provided the dismissal would otherwise be fair.
- The dismissal must have been for a fair reason and the employer must have acted reasonably in treating it as a reason for dismissing the employee.
- Where the statutory minimum procedures are not met as a result of a failure by the employer, the tribunal will award the employee 4 weeks' pay in respect of that failure.

Conclusion

With regard to workplace disputes, employers should welcome the changes as the introduction of statutory disciplinary procedures and a new way of judging dismissals may make it easier for an employer to avoid unfair dismissal claims, particularly where the complaint relates to procedural matters.

In relation to the changes in parental rights, these are more favourable to employees. Employees will, as the rights become better paid, exercise these rights more frequently than at present.

Employers therefore need to recognise and prepare for the introduction of these rights and make consequent adaptations to their working practices.

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