



FAMILY-FRIENDLY RIGHTS
TRANSFORMING
BRITAIN'S WORKPLACES



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FOREWORD



2

By Brendan Barber TUC General Secretary

“ DELIVERING A POSITIVE MODEL OF FLEXIBILITY, GIVING WORKERS INCREASED AUTONOMY AND CONTROL OVER THEIR TIME, SUPPORTING THOSE WHO ARE UNDER PRESSURE TO BALANCE WORK AND CARE – ALL THIS WILL HELP MAKE A REAL DIFFERENCE TO WORKERS AND THEIR FAMILIES. ”

Unions have led the way in calling for more family-friendly working rights, responding to the needs of their members in workplaces across the UK. A long-hours culture and a labour market that often penalises those who need to balance caring responsibilities with work means that many of our workplaces are not fit for purpose. That is why negotiating and bargaining for family-friendly rights belongs on the mainstream bargaining agenda and is increasingly becoming a high priority for trade unions. The 2009 TUC Equality Audit revealed that guidance about work/life balance was the single biggest equality issue that members took to their union.

The labour market is changing rapidly, with increased demands for flexibility from employers. Without consideration for workers and consultation with trade unions, flexibility can result in casualised or long hours, unpredictable and unsocial hours and exploitative working conditions. But employers can work in partnership with unions to increase choices for workers, promote family-friendly policies, retain employees and increase productivity and morale.

Many women who struggle to find quality, well paid, part-time work are forced to 'downshift' into positions that do not use their skills and experience. They should not have to pay the price by shouldering caring responsibilities, significant part-time pay penalties and a lack of progression in the workplace.

Yet rigid and inflexible working practices affect all families and all workers. Supporting fathers and partners who increasingly want to spend more time with their families and take on a greater share of caring responsibilities is vital to bringing the kind of cultural change to our workplaces and our society that will benefit everyone.

Family-friendly rights do not just benefit parents or carers of new children. They support workers who find themselves, often unexpectedly, having caring responsibility for elderly or disabled relatives. Millions of workers in the UK combine paid work with such caring responsibilities, but are often met with a lack of understanding and inflexible working hours.

Traditional notions of the family have actively excluded many workers, particularly lesbian, gay, bisexual, or transgender (LGBT) people. LGBT people have families and caring responsibilities too and this guide will support the important work being taken forward by unions on advancing their rights as workers.

I hope this guide to family-friendly rights in the workplace will assist trade union negotiators in responding to the needs of their members. It is a practical guide, highlighting best practice on negotiating above the statutory minima, as well as containing in-depth information about the legal framework underpinning this work. Delivering a positive model of flexibility, giving workers increased autonomy and control over their time, supporting those who are under pressure to balance work and care – all this will help make a real difference to workers and their families.

INTRODUCTION



“ THE TRADE UNION MOVEMENT BELIEVES THIS REALLY IS A MUTUAL GAINS AGENDA. NOT ONLY WILL IT DELIVER HIGHER PRODUCTIVITY, IMPROVED RECRUITMENT AND RETENTION, AND BETTER STAFF MORALE, BUT IT WILL ALSO DRAMATICALLY IMPROVE THE QUALITY OF WORKERS’ LIVES AND LEVELS OF JOB SATISFACTION. ”

We live in a time of great change. Computers, mobile phones and the internet have transformed the way most people work. Improved communications mean that many workers are in industries that operate 24 hours a day, seven days a week, with offices, customers and managers around the globe.

Society itself is changing in ways that are just as far-reaching and that will have just as big an effect on the way we work: the population as a whole is getting older; fathers are keen to spend more time with their children; not only are more women and mothers working, and people living for decades longer than their own parents and grandparents, but also occupations traditionally closed to women now actively seek their participation; more people with disabilities that might once have condemned them to lives of inactivity now work in a range of occupations and sectors of the economy

Assumptions made about 'traditional' family structures have never been a reality for many people, including single parents and same-sex couples.

Technology has made it easier to work more flexibly; population change is making more flexible working essential for society; and changes in society itself make it essential for individuals.

Technology

Mobile phones, computers and broadband have transformed many jobs. New technology has also made possible many new ways of working, including working from home.

At Good Hope Hospital in Sutton Coldfield, North Birmingham, a computer-based self-rostering system was adopted in two maternity wards and the delivery suite.

The system takes account of the constraints imposed by the rotation of staff between ante-natal clinic, delivery and ward settings and the agreed staffing levels and skill mix.

The system allows for individual factors, agreed in advance with the ward manager, to be taken into account when planning shifts (for instance, "Can't do earlyies"). Staff enter any special requests for the period ahead, scoring the request with points on a scale from 0 ('if possible') to 3 ('must have'). The computer plans the shifts, granting the requests where possible. If there is a clash, preference is given to the person who has used the fewer number of points in previous periods. Staff learn to use the system in an hour or so. Shift patterns are usually allocated four weeks in advance.

Staff are more likely to have individual requests met and the system saves a considerable amount of time previously spent slaving over off-duty timetables.

During a pilot period, the ward using the self-rostering system saw a drop in staff turnover and sickness absence relative to other wards.

The project was funded by the NHS Modernisation Agency and overseen by a project board of key managers, staff and trade unions who were involved in the specification, procurement, training and evaluation of the project.

SOURCE: *Trade Union and Employee Involvement in Public Service Reform*. Prepared for the Public Services Forum, September 2004, by the Government's Office of Public Services Reform and jointly commissioned with the Work Foundation and the TUC.

Population change

Like other European countries, the UK is getting older. In 2008 there were 3.2 people of working age for every person of state pensionable age. If projections by the Office for National Statistics (ONS) are correct,¹ this proportion will fall to 2.8 by 2033, even taking into account planned future changes to the age from which state pensions are paid.

The fastest population increase has been in the number of those aged 85 and over, described by the ONS as the “oldest old”. In 1983, there were just over 600,000 people in the UK aged 85 and over. In 2008 there were 1.3 million. By 2033 the number is projected to reach 3.2 million – five per cent of the entire population. The rise in life expectancy is happening at the same time as fewer children are being born.

So a declining birthrate and people living longer are together causing a rapid change in the age structure of society. The implications for the world of work are clear; there will be fewer workers as a proportion of the entire population and there is an ever-increasing likelihood that they will need to care for older relatives. There can be few better demonstrations of the need for flexible working for all.

Society

Parents and employment

In 1936 the TUC’s National Women’s Advisory committee noted: “There is still a tendency to regard the wages earned by women at the worst rather in the nature of pin money, and at the best merely as a contribution to the running of the household.”

Attitudes may have changed, but the complex issues of equal pay and childcare are still high on the agenda of all trade unions and the ability of all employees to work flexibly is a key factor in their resolution.

An ONS ‘snapshot’ based on statistics collected in the second quarter of 2008 demonstrates clearly that, while childcare is still overwhelmingly a female task, most mothers are also workers.²

More than two-thirds of working-age women with dependent children (68 per cent) were working, but women without children were slightly more likely to be in employment (73 per cent).

Of working-age women: 57 per cent with children under five were working; 71 per cent whose youngest child was aged five to ten were working; 78 per cent whose youngest child was aged 11 to 15 were working.

Women were more likely than men to work part-time, particularly if they had dependent children. Some 38 per cent of women with dependent children worked part-time compared with 22 per cent of those without. Only 4 per cent of men with dependent children and 7 per cent of men without dependent children worked part-time.

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- 1 Mid-year population estimates, Office for National Statistics, General Register Office for Scotland, Northern Ireland Statistics and Research Agency, 2009
 - 2 Labour Force Survey, Q2 2008, Office for National Statistics, Focus on Gender

More than half (56 per cent) of lone mothers were in employment compared with just under three-quarters (72 per cent) of married or cohabiting women with dependent children. The difference in employment rates between lone mothers and married or cohabiting women narrowed as the age of the youngest child rose, almost disappearing for women with dependent children aged 16 to 18.

Around 30 per cent of women used flexible working, including flexible working hours and term-time working arrangements, compared to around 20 per cent of men. Flexible working arrangements among men and women with dependent children showed a similar pattern. Just under a third of mothers used some form of flexible working compared to around a fifth of fathers.

Between 1996 and 2006 the number of lone-mother families increased by over 11 per cent to 2.3 million, and in 2006 nearly nine out of ten lone parents were lone mothers.³ Most single-parent families are headed by women who often have poor educational and economic prospects. As these women age the single biggest problem they face is financial insecurity.

So it must be a major priority for the sake both of fairness and in the interests of society to make sure that as many women as want to work can work.

Carers

Evidence of just how important our roles as carers are also comes from the ONS. Its *Social Trends* report in 2009 highlighted the vital role of relatives in helping each other and providing informal childcare. Working mothers in Great Britain were more likely to rely on informal childcare than formal childcare. More than a quarter of working mothers used formal childcare and a similar proportion of working mothers used informal care provided by grandparents (31 per cent for lone parents and 32 per cent for couples). Lone-parent working mothers were more likely than those in couples to use other types of informal care such as former partners or non-resident parents and older siblings or other relatives.

The need for carers is also demonstrated by figures produced by the children's charity NSPCC, showing that about 1 in 20 of the total population of children in the UK – about 700,000 – has a disability resulting in significant difficulty with day-to-day activities.

Some organisations have been quick to respond to the clear opportunities and challenges of these changes in society and technology and have become more flexible: other employers, however, are still resistant to change.

Changes in society and employment are seldom simple or easy and rarely come quickly. It took 37 years from the day when the pioneering socialist Robert Owen first advocated the 10-hour day until the 1847 Factory Act made it illegal to make women and children work for longer than that. Even then, opposition came from some employers and cynics who said workers would spend the pitiful amount of leisure they obtained in the pub.

Today the obstacles to ways of working that enable people to balance their lives are many. There is still a long-hours culture in British companies with its accompanying scourge of 'presenteeism' – apparently proving one's commitment to the job by working unnecessarily long hours. And there is still cynicism; if a company agrees that staff can take a day off without giving any notice a certain number of times a year, then those are dubbed 'duvet days' by cynics. "My elderly mother has fallen and broken her hip days" does not have the same

ring, but for many people it represents a far greater reality than the time-worn image of an employee retreating under the bedclothes with a hangover.

Overcoming cynicism and replacing it with trust will be vital in achieving working practices that enable everyone to balance their caring responsibilities with their work.

Other mindsets will need to change too. We've all met the person who thinks everything is awful but that any change will make it even worse. And take the manager or fellow worker who tends to see flexible working as a 'perk'; they are missing the point completely. Then there is the knee-jerk reaction of some employers, journalists and politicians when legislation or other reform to help people balance their work and the rest of their life is suggested. How often do you hear them say "it's too expensive" or "the economy's not right". They also fail to see that changes to the way we work are essential for the future of society and individual employers.

And, though seldom spoken aloud, there are still traces of the old-fashioned attitude that 'a mother's place is in the home'. It's not – and nor is a father's place out of the home and at work for long hours.

Such attitudes are commonplace and can be a big obstacle to change. The unfair distribution of caring and domestic responsibilities affects women's life chances and opportunities in the UK. There is still some way to go in challenging cultural attitudes and obstacles that serve to depress men's take-up of flexible working and paternity and parental leave. But we are all carers or potential carers, so the potential for unity in demanding change is tremendous. There are signs that official attitudes may be shifting. Government support for sharing part of maternity leave between mother and father was announced as this guide was due to go to press. In Europe a framework agreement on parental leave, first negotiated by business and union representatives in 1995, was updated in 2009 to increase leave for both parents.

Trade unions can transform today's working culture by negotiating for improved family-friendly rights in the workplace.

LGBT parents and carers

There are many LGBT parents and carers in the UK.

The days when their needs could be ignored because they did not live in a 'typical' family are long gone and their rights are now established in law. The Employment Equality (Sexual Orientation) Regulations 2003 make it unlawful to discriminate in employment (among other things) on grounds of sexual orientation and the Civil Partnership Act requires employers to treat staff in civil partnerships the same as those who are married.

So, for instance, same-sex parents are entitled to the same statutory pay, leave and time off as any other parents.

Transgender people's rights are protected by the Sex Discrimination Act 1975 as amended by the Sex Discrimination (Gender Reassignment) Regulations 1999. This makes it clear that it is unlawful to discriminate in employment matters on grounds of gender reassignment.

But the existence of legislation does not mean that the role of unions in promoting the rights of all members, whatever their sexual orientation or gender identity, will necessarily get easier.

According to a guide produced by the retail and distribution union USDAW, some parents are still refused paternity leave, adoption leave and time off for dependants on the grounds of

their sexual orientation or gender identity. It says managers sometimes fail to understand that lesbian, gay or bisexual employees can be parents and that they have exactly the same rights to time off and pay as straight couples in these circumstances.

Same-sex parents may have to 'come out' at the workplace in order to access their rights. The Civil Partnership Act of 2005 and the extension of protection against discrimination in the provision of goods and services in 2006 represented, more or less, the completion of the agenda for legal equality for lesbians, gay men and bisexuals in Britain. The achievement of full equality for transgender people remains incomplete because of continued exemptions.

The TUC has a comprehensive guide to rights for LGBT people at work called *LGBT Equality in the Workplace* that brings together and explains all the laws that apply. The crucial ones in the workplace are the Employment Equality (Sexual Orientation) Regulations 2003, Sex Discrimination (Gender Reassignment) Regulations 1999 and the Gender Recognition Act 2004. Legal rights differ between LGB and T members, and specific measures are still required to deal separately with many negotiating issues.

The law does not specifically protect lesbians, gay men and bisexuals, but it protects everyone against discrimination on the grounds of their sexual orientation. This also applies to perceived sexual orientation: if someone is discriminated against because they are (wrongly) believed to be lesbian, gay or bisexual – or, in rare circumstances, heterosexual – they can still claim the protection of the regulations.

So in the workplace an employer cannot lawfully refuse access to training – or flexible working – because of sexual orientation. Thus, an LGB employee who requests paternity leave must be treated as a heterosexual father would.

Evidence from TUC surveys carried out during 2004–5 showed that awareness of the law remained patchy among both employers and trade unions. So it is essential that negotiators and workplace representatives are up to date in this area.

The Civil Partnership Act means that civil partners who jointly adopt a child have a legal right for one of them to take adoption leave and receive statutory adoption pay. The other partner will be legally entitled to take paternity leave and pay and/or parental leave.

The right to request flexible working applies in the same way as for heterosexual married couples.

Where a workplace has written agreements or custom and practice arrangements to cope with things like bereavement, emergency situations at a worker's home, illness of children or dependents, the law requires that such arrangements be extended to civil partners where the current entitlement is based on being married.

Negotiators will want to press for the extension of such arrangements to everyone who might have need of them, regardless of marital or civil partnership status. Many employers have already negotiated such policies: Royal Mail, for instance, has explicitly included same-sex partners in its provision of five days' paid leave for bereavement.

The TUC guide looks in detail at how union negotiators can help a member who is going through the process of changing gender. It can be accessed at www.tuc.org.uk/equality/tuc-11663-f0.pdf. It is due to be fully updated in 2010.

1 NEGOTIATING FOR WORKING PARENTS



FLEXIBILITY FOR ALL

“ IN 1983, THERE WERE JUST OVER 600,000 PEOPLE IN THE UK AGED 85 AND OVER. IN 2008 THERE WERE 1.3 MILLION. ”

Why it's right for everybody

Significant cultural change is needed to ensure flexible working becomes a reality for all. But this is not impossible; who now would argue that a woman civil servant or teacher should be sacked if she gets married? But that was what happened in Britain until after the Second World War. Attitudes can and do change.

A survey by the Equality and Human Rights Commission (EHRC) in early 2009 found that:

- Childcare is no longer seen as largely a woman's responsibility. Only 29 per cent of parents agreed that 'childcare is primarily the mother's responsibility' while 42 per cent disagreed.
- Fathers are no longer necessarily assumed to be the 'provider'. 38 per cent of parents agreed that fathers are responsible for providing economically for their family, 27 per cent disagreed and a third (35 per cent) were neutral. Nearly half of the men surveyed, but just under a third of women, agreed that "fathers are responsible for providing".
- Only 39 per cent of parents thought that their current family arrangements reflected how they had been brought up.
- 56 per cent thought they could share work and care equally with their partners.

Everyone needs to be able to work flexibly. This is the simple solution that is both practical and just. That it will require a major shift in the attitudes of many people is clear, but the signs are there that change is already happening.

All the evidence about our changing society shows that all people – men and women, young and old – are likely to have caring responsibilities. But, as things stand, even the right simply to request flexible working is limited to certain groups (see Right to Request Flexible Working in Section Two). The TUC, however, argues that the best approach is to allow all workers to work as flexibly as their jobs allow.

The TUC's 2006 report *Out of Time: Why Britain Needs a New Approach to Flexible Working* pointed out that the reluctance of employers to let more of their male employees work flexibly after they become parents reinforces the idea that it is the working mother who has to reduce her hours and juggle childcare and work when her children are young.

As a result, women pay a part-time pay penalty, will often be in a job well below their skill potential and lose out on their pensions because of the time they have spent out of the labour market. Fathers are forced to work longer hours to compensate for the loss of family income as their partners switch to part-time working. Fathers can also face problems when seeking flexible working because of stereotypical views of the role of fathers.

Imelda Walsh, the human resources director of supermarket chain Sainsbury's, in her 2008 review for the Government of how to extend flexible working, found that fathers are less likely than other employees to know that they have the legal right to request flexible working. The review also pointed out that men are nearly twice as likely to have their requests refused than women (23 per cent compared to 13 per cent).

Non-resident fathers can have special problems. For instance, compulsory weekend shifts may prevent them seeing a child if they have been granted access only at weekends.

That it will not be easy to achieve change was recognised by the European Social Partners – the union-employer forum of the European Union – when in June 2009 it revised its

framework agreement on parental leave. It recommends an increase in parental leave from three to four months. Many member states had encouraged men to take on an equal share of family responsibilities, but this had not led to sufficient results, said the introduction to the agreement. “Therefore, more effective measures should be taken to encourage a more equal sharing of family responsibilities between men and women.”

The TUC report *Out of Time* (see page 11) showed that, in the first two years that there was a right to request to work flexibly for the parents of children under six, around 10 per cent (1,267,000) of male employees requested to change their working hours. In the same period, 19 per cent of women in work (2,375,000) requested flexible working.

According to the report, employers look more favourably on requests submitted by female members of staff. Only 10 per cent of women (235,000) had their flexible working requests rejected out of hand compared to 14 per cent of men (177,000).

Only a handful of disappointed workers who have had their requests rejected take their employer to an employment tribunal and, even then, claims submitted by men are much less likely to be successful. The report said male claimants accounted for just over a quarter (27 per cent) of flexible working tribunal claims but for nearly half (45 per cent) of cases that were lost, ruled out on procedural grounds or dismissed.

The report recommended that:

- The right to request flexible work in the UK should be extended to all workers, including older employees approaching retirement and those wishing to learn new skills.
- Employment tribunals should have more powers to encourage employers to trial new working practices with a greater emphasis on forms of flexible working that do not involve a cut in pay, such as flexitime and working time accounts.
- The UK’s 48-hour opt-out from the European Union’s Working Time Directive should be ended and employers should be encouraged to give staff better notice of shift changes or irregular working.
- Unions and employers should make working time a central concern of their negotiations and look at ways of removing inducements to long hours working and the gender impact of pay structures linked with different working time practices.
- Government, employers and unions should develop training packages for managers to help them better manage workloads and encourage the take-up of flexible working throughout their organisations.

Two recent reports have demonstrated that a universal right to request to work flexibly is an idea whose time has come.

Imelda Walsh (see page 11) looked at the policy of giving parents of older children the right to request flexible working (a policy that is now in operation).

In her response to the Government, she went outside her terms of reference to put on record that many stakeholders she had spoken to – in large, medium and small businesses – had argued that the right to request flexible working was one that should apply to all employees.

They had said it was potentially divisive to employee relations to single out parents and carers over other employees.

She said: “I agree that the management of flexible working requests will work better if the issue is discussed amongst the group of employees affected. I also accept that being able to accommodate requests from employees not covered by the legislation can also be desirable. I have listened to many stories of the positive benefits of ‘open to all’ flexible working policies in both large and small employers. I would encourage all employers, when looking at flexible working arrangements, to consider including all employees.”

In March 2009 the EHRC, established by the Government to promote equality and human rights, published *Working Better*, a major report on the future of work. It said that “the big issue of our time” for parents, carers and people with disabilities was finding new ways of working, particularly flexible options.

Its main recommendation was for a “radical change of policy” to create a “gender-neutral” system of family leave to make leave more equally available to fathers and mothers and to give working parents wider choices about how they organise work and family responsibilities.

The report found that, while today’s parents defy stereotypes and want to share work and family care more equally, their choices are constrained by inflexible and low-paid family leave provisions based on a traditional division of paid work and care. It said that Britain stands out internationally for its long leave reserved for mothers, mostly at a low rate of pay, its relatively weak parental leave and very short paternity leave.

Experience in other countries showed that fathers respond quickly to policy changes on parental leave and that policies that achieve the greatest uptake combine:

- a non-transferable allocation of leave for fathers
- an incentive to take it, such as a ‘use it or lose it’ condition
- at least 60–80 per cent replacement of fathers’ lost income
- fathers’ leave as an add-on to mothers’ leave, rather than using part of the mothers’ entitlement.

The EHRC also called on Government to open flexible options to job applicants by removing the requirement that an employee must have worked 26 weeks in a job before they can apply for flexible working.

This is particularly important as the 26-week rule may force parents to take on a full-time job in the hope of scaling down later, with all the uncertainty and stress this can produce.

While trade unions and many enlightened employers recognise that work is what you do, not where you go, and that the ability of all employees to work flexibly is essential for a stable and motivated workforce, the reality of life as a union rep can often involve trying to help individuals trapped by stereotypical assumptions about the roles and needs of parents and carers and complicated legislation that is little-known or ignored.

Keeping the wider picture to the fore means remaining clear that negotiating better deals for parents, carers and anyone who wants to reorganise the way they work is not about ‘perks’. It is about better ways of working that benefit both employee and employer.

As Sarah Jackson, chief executive of Working Families says: “Flexible working should be seen as a business tool for success, not a concession for parents.”

TUC General Secretary Brendan Barber told a conference of public sector professionals that: “The trade union movement believes this really is a mutual gains agenda. Not only will it deliver higher productivity, improved recruitment and retention, and better staff morale. Not only will it enhance non-financial reward at a time when the public finances are extremely tight. But it will also dramatically improve the quality of workers’ lives and levels of job satisfaction. That’s why we want to work with employers to deliver a positive model of flexibility.”

Why it’s right for employers

For many people the business case for organisations to help people to combine work and caring responsibilities more effectively is an open and shut one.

Study after study has shown that more flexible working has, at the very least, benefits for organisations including:

- **Reduced short-term sickness absence:** Research by *Employee Benefits* magazine found that 62 per cent of employers believe work-life balance policies help to reduce sickness absence, and 59 per cent think flexible working has the same result. The London Borough of Merton – with the union UNISON playing a key role from the start – launched a scheme to improve access to flexible working, and sickness absence was reduced from 12 per cent to 2 per cent.
 - Employees are more able to be honest about absence due to dependants’ illness or have a contract that enables them to take care of such things.
- **Improved retention:** Replacing staff and training new ones can be very expensive and a high turnover of staff adversely affects any business. For BT, the availability of flexible working arrangements resulted in improved retention, with 99 per cent of women returning to the company after maternity leave saving about £5m a year in recruitment and induction costs.
- **Improved productivity:** Employees who work flexible hours have repeatedly been shown to be more productive than those working traditional hours.
- **Improved recruitment:** Firms offering family-friendly practices can attract better recruits: A Policy Studies Institute report⁴ found that “Generation Y” (people born after 1977) is much more likely to choose to work where there is flexibility.
- **Improved morale and commitment:** Most firms believe that morale and commitment among employees with caring responsibilities is enhanced by family-friendly policies. Research by the British Chambers of Commerce found that, of the 62 per cent of small businesses already offering flexible working patterns, 70 per cent had noticed an improvement in employee relations and over half saw improvements in productivity.
- **Organisations that want or need to increase the number of women** they employ for business reasons or to meet legal equality duties find it much easier to recruit them if there is a good system of flexible working.

4 *The Future of Work: Individuals and Workplace Transformation*; Kate Holmes, Claire Ivins, Darren Yaxley, Josephine Hansom, Debbie Smeaton. EOC, 2007

One of the most recent studies of large organisations, including Rolls-Royce and Pfizer, a two-year study by Cranfield School of Management and the charity Working Families,⁵ found:

- There was a positive relationship between flexible working and individual performance.
 - The majority of flexible workers, co-workers of flexible workers and managers of flexible workers reported that there was either a positive impact or no impact on individual performance. This was true for both the quantity and quality of work produced.
- The majority of employees reported that flexible working had a positive effect in reducing and managing stress levels.
- Flexible workers were found to have higher levels of organisational commitment and, in some cases, they also had higher levels of job satisfaction.
- The availability of flexible working was a key competitive strategy within the labour market.

The union UNISON⁶ lists the business benefits as:

- Valued and talented workers are retained, reducing recruitment costs; it can cost up to twice an annual salary to recruit skilled and semi-skilled employees and it takes time for new employees to learn the job so at first they will be less productive.
- Productivity and commitment improves; e.g. BT proved that productivity of flexible workers increased by 30 per cent.
- The talent pool from which organisations recruit becomes larger; e.g. people who can work only part time or non-traditional hours could well be as valuable or talented as the 9 to 5 cohort.
- Flexible working creates a more diverse workforce for employers committed to ensuring that their workforce reflects their service users.
- Sickness absence is reduced; the London Borough of Merton survey showed that sickness reduced from 12 per cent to 2 per cent among those that worked flexibly.
- Organisations are able to offer a wider service to their customers; e.g. it could be better to operate beyond 9 to 5, particularly if some employees prefer to work outside traditional hours.

More examples

Flexible working attracts high-calibre staff and reduces employee turnover. Jaguar Land Rover's scheme has cut staff loss to below two per cent and the company has increased applications for apprenticeships and graduate entry.

Flexible working also helps businesses that have peaks and troughs of activity. Nationwide, the largest UK building society, falls into this category: about a third of its 19,000 employees work less than 35 hours a week; more than 600 employees work on an annualised basis; and nearly 200 work at home.

5 *Flexible Working and Performance*, 2008

6 *Flexible Working – Making it Work*. June 2008. Toolkit produced by UNISON in collaboration with Working Families.

It is also important to remember that employers may respond personally to arguments for flexible working from the standpoint of being a parent or carer themselves.

Employers are also aware that issues that do not immediately affect their day-to-day business but that are crucial for the wider community – response to climate change and corporate and social responsibility (CSR), for instance – are increasingly relevant to the way their organisations are seen and valued.

There can also be benefits in other areas of the business. BT employees save on average 12 million litres of car fuel a year by working flexibly. When large sections of business closed down during heavy snowfall in 2009, businesses that had enabled their staff to work at home enjoyed a massive advantage over those that had not.

Arguing the case

The TUC has a wide range of resources to help trade unionists argue the business case for reorganising the way people work so that parents, carers and all employees can better balance their work and their lives.

Research and campaign materials as well as practical guidance can be accessed on the TUC website at www.tuc.org.uk/work_life. This includes the publication *Changing Times*,⁷ a step-by-step guide to achieving change.

Common objections to allowing flexible working include:

- “It’s not fair on others.”
- “It will cause discord as some will have to work harder to accommodate those with caring responsibilities.”
- “I don’t have children but I’ve got just as good reason for working flexibly – I’d like to study or do voluntary work to help others.”

Seeking a universal right to request flexible working removes, at a stroke, many of these objections from both employees and employers to improving the working lives of parents and carers.

Other objections can include:

“Why do we need to change? We’re already flexible on an ad hoc basis.” While ad hoc flexibility in itself is an excellent way of approaching things, especially in small organisations, the consequences need to be thought through. If it leads to responses based purely on the needs of one individual without considering the needs of others in the team it can often lead to resentment.



7 *Changing Times* ISBN 1 85006 609 4. Available from TUC Publications. £5 for union members.

“People will simply not do the work if they are not in the office or on the shopfloor.” Proper management and a committed workforce are the best defence against this problem. And both stem from building a culture of trust. Depriving a company and the vast majority of its employees of improved performance and flexibility because of fears of what a few might do is illogical.

“It will add to management and equipment costs.” Formal schemes sometimes do, but there may be balancing savings in areas like office space and car fuel. There is also overwhelming evidence that productivity increases markedly and staff turnover and sickness absence improve when people have more control over their working lives.

“I will need to employ more staff.” This is not necessarily the case. Until an employer finds out from an entire staff for how long and when they would like to work, there is no way of forecasting the hours that will be available. And many people want to work flexibly, but not necessarily by reducing their hours. And, if some individuals want to start earlier or finish later than the established opening hours, the business could benefit from greater coverage by accommodating this.

Objectives

Negotiating a flexible working policy that applies to the entire workforce is more likely to lead to the culture change and investment in equipment that will make it a more realistic option, and will therefore benefit those who need it most too. Argue for:

- adequate technological support, ranging from computers at home to software and communications that enable staff to access their work and stay in contact
- training for line managers – without proper training and support for managers an organisation’s policies will never become widespread practice
- adequate and continuing publicity for the full range of flexible working that is available (and role models at all levels) and clear and unequivocal support from senior managers
- continued monitoring of the flexible working scheme so that the company can see if there is good take up, address any difficulties that may become apparent, and build on and publicise any benefits from it
- employment monitoring by flexible working status (e.g. whether flexible workers have equal access to training and promotion opportunities) to make sure people do not suffer any detriment as a result of working flexibly.

Bargaining points

- Shift systems and other apparently rigid ways of working do not rule out flexibility. For instance, Ford has 49 part-time workers on its production lines⁸ and at Every Day Financial Solutions, part of Littlewoods Shop Direct Group, staff can take five non-consecutive single shifts as holiday, at short notice, to be used for family and other caring emergencies.
- Suggest the policy allows for trial periods for flexible working to overcome reluctance from line managers or others. This also has the benefit that the worker can see if the proposed pattern works for them too before committing to a change in their contract.

- Remember that some workers may just want a temporary change in hours to accommodate short-term alterations in their domestic situation. Therefore, ensure that any policy will accommodate such short-term changes rather than always leading to a permanent change in a worker's contract as under the statutory right to request procedure.
- Flexible working is not new and untried. It is now commonplace in many companies as surveys suggest that most requests are granted. Industrial Relations Services (IRS) in their *Employment Review* conducted a survey⁹ of 111 employers in 2009. It covered 1,454 formal flexible working requests made at 80 organisations with a combined workforce of more than 72,000 staff and showed that at least one request was made in the past 12 months at 72 per cent of the organisations surveyed. According to the employers surveyed, more than three-quarters of flexible working requests were granted at 75 per cent of organisations. Employment Relations Minister Pat McFadden said in April 2009 that, according to employers, "more than 95 per cent of all requests for flexible working from working parents and carers are now accepted".

The TUC's website sets out an eight-point process for achieving change. The eight stages are:

1. Developing joint working: management and unions working together is the key to success.
2. Teambuilding and project planning: a joint management-union group oversees the process.
3. Involving staff: the widest possible involvement of staff, including managers.
4. Involving customers: this is not an optional extra because it is integral to quality services and jobs.
5. Trying out ideas: using focus groups.
6. Widening horizons: learning from other people.
7. Developing solutions: delivering results.
8. Practical results and evaluation.

It says the process of achieving agreement on work-life balance and the re-organisation of work requires:

COMMITMENT to improving the organisation of work by each level of management, from supervisor to chief executive, union representatives and all grades of staff.

UNDERSTANDING what it means for management, unions and workforce: productivity and profitability, job security, job satisfaction and working time.

TRUST which is built by working in partnership to identify and solve problems jointly.

REPRESENTATION from all groups of staff who will be affected.

INVOLVEMENT through the widest possible consultation so that staff have the opportunity to contribute to solutions.

LISTENING to aspirations and expectations.

SERIOUS consideration of ideas – the recognition that every idea, including ones people may not like, needs to be examined.

TRANSPARENCY by keeping staff fully informed.

TESTING SOLUTIONS – it is usually best to test new practices through a voluntary pilot study where staff are able to revert to existing terms and conditions if they wish.

ACTION on possible solutions rather than shelving the issue until it is too late.

CONFIDENCE in a positive outcome.

CASE STUDY

The Public and Commercial Services (PCS) union and Inland Revenue¹⁰

An early attempt to change working patterns to create a win-win formula for employer and worker alike, the Our Time project was monitored and recorded by the TUC and so gives a detailed insight into problems, pitfalls and best practice in negotiating around this area. It was also consciously planned as a way of learning lessons that could benefit all public sector workers in large organisations.

Launched in 2001–2, the plan was to benefit the employer by having a service for the public that was available outside as well as in normal office hours and to benefit staff by enabling them to better balance their work and personal lives.

It was based in a single region, Sussex.

The scheme was the result of a ‘modernisation agreement’ and depended on partnership, so the first hurdle was to overcome what had been an ‘adversarial culture’ with wariness and suspicion on both sides. It was also implemented at a time of big changes in the region.

LESSON ONE trust

Trust is crucial. And not just between workers and managers at a local level, but also between the local, regional and national levels of the union and, as it turned out, the Revenue.

LESSON TWO be innovative

Even if there is no active opposition, plans for change can get bogged down. You must encourage innovative thinking. Input from outside your own department or organisation is important.

Project director Jo Morris: “One of the biggest challenges was to be innovative and creative within the rules of a large organisation.”

10 For the OurTime project PCS and the Inland Revenue worked together, with TUC involvement, to develop and promote an innovative work/life balance project.

LESSON THREE funding is crucial

Funding, for things like new computer systems, is crucial. PCS guidance: “Get any promises of funding in writing and keep records.”

LESSON FOUR listen to people

Don't make assumptions. Only through a survey of existing working patterns and what staff thought would be ideal ones can workers' needs and hopes be established. Although, in this case, the survey was professionally conducted by independent academics, it was found that face-to-face meetings gave a better indication of how flexible people were prepared to be. Some people thought “if management are in favour, then there must be a catch”.

PCS guidance: “Don't start with preconceived notions. Publish survey results and address concerns quickly.”

LESSON FIVE communicate

An email to staff likely to be affected had a disappointing response. Face-to-face informal talks took a lot of time but achieved much better results. The same applied to keeping managers and union reps up to date and engaged with the project. PCS found that, once again, the essence of good communication is repetition.

LESSON SIX (managers) don't panic

The scheme was piloted by volunteers and PCS found that it was crucial to talk to managers at an early stage to convince them to publicise the benefits of the scheme to staff. One manager commented: “Your initial reaction may be that everyone is just going to go off and do their own thing ... remember you are accommodating them to help you deliver the business. If you have got happy staff when they are at work, they are going to do a much better job than if they are miserable.”

LESSON SEVEN train

Training for managers on how to manage staff with more flexible ways of working is critical. It is vital to have a team-based approach.

LESSON EIGHT be positive

The project took place at a time of industrial action in the Revenue and some union members wanted to withdraw from it as a protest.

PCS guidance: “Build trust and a team spirit. Be enthusiastic. Foster a ‘can-do’ approach.”

UNISON has an agreement with the Shropshire and Telford Hospital NHS Trust on flexible working that is open to any member of staff, not just those covered by the right to request legislation. While the policy does not give an automatic right to work flexibly it states that, “wherever possible, requests for flexible working patterns will be accommodated”.

USDAW's agreed policy with Unilever also goes beyond the legal minimum. All employees have the right to request flexible working and to have their request considered seriously. The agreement does not lay down what an individual's reasons for working flexibly should be. The company says it will adopt a ‘reason neutral’ position and will not rank reasons for flexible working in any order of acceptability.

Types of flexible working

Part-time working	Workers are contracted to work less than standard, basic, full-time hours.
Flexi-time	Workers have the freedom to work in any way they choose outside a set core of hours determined by the employer.
Staggered hours	Workers have different start, finish and break times, allowing a business to open longer hours.
Compressed working hours	Workers can cover their total number of hours in fewer working days, for instance a four-day week or a nine-day fortnight.
Job-sharing	One full-time job is split between two workers who agree the hours between them.
Shift swapping	Workers arrange shifts among themselves, provided all required shifts are covered.
Self rostering	Workers get together to compile shift patterns, matching their individual preferences while covering all required shifts.
Time off in lieu (TOIL)	Workers take time off to compensate for extra hours worked.
Term-time working	A worker remains on a permanent contract but works only during school term-time.
Annual hours	A workers' contracted hours are calculated over a year. While the majority of shifts are allocated, the remaining hours are kept in reserve so that workers can be called in at short notice as required (to cope with peaks and troughs).
V-time working	Workers agree to reduce their hours for a fixed period with a guarantee of full-time work when this period ends.
Home-working/teleworking	Workers spend all or part of their week working from home or somewhere else away from the employer's premises. Ad hoc or permanent arrangements.
Sabbatical/career break	Workers are allowed to take an extended period of time off, either paid or unpaid. Sabbaticals tend to guarantee the same job on return. Career breaks do not.



RIGHTS FOR MOTHERS

“ENSURING THAT ALL WOMEN WORKERS HAVE ACCESS TO DECENT LEVELS OF MATERNITY LEAVE AND PAY AND THAT THEY ARE WELL PLACED TO MAKE A PERMANENT RETURN TO WORK WHEN THEY WISH TO IS A KEY TRADE UNION OBJECTIVE.”

Maternity rights are based on several different laws that are summarised in Section Two. The basic statutory entitlement for qualifying employees is for a year's maternity leave, six weeks of which is paid at 90 per cent of earnings and 33 weeks of which is paid at Statutory Maternity Pay (SMP) (£123.06 a week at April 2009). Some employees have much better contractual provision than the statutory minimum because their employers have understood the strong economic case for encouraging and making it possible for mothers to return to work.

Employees can work 10 'keeping in touch' (KiT) days during maternity leave, without bringing their maternity leave to an end.

Despite significant improvements in statutory and contractual maternity rights in the past decade, many women workers, often those who are low paid or who lack 'employee' status (such as agency workers), still face a period of either unpaid or very low paid leave that they simply cannot afford to take. Ensuring that all women workers have access to decent levels of maternity leave and pay and that they are well placed to make a permanent return to work when they wish to is a key trade union objective.

The business case

- When Sainsbury's introduced better maternity and family policies for its 130,000 workers, the percentage of women returning to work after giving birth jumped from 42 per cent to 84 per cent. There were also improvements in levels of customer service, reduced staff turnover and absenteeism and increased loyalty and commitment from staff.
- Rank Xerox improved maternity benefits and enabled new mothers to work part-time. This increased the numbers of skilled and experienced women returning to work from less than 20 per cent to more than 80 per cent. Over five years the company was £1m better off through savings on recruitment, training and improved productivity.

Objectives

- To negotiate better provision than the statutory minimum, especially improvements in the level of maternity pay. Ford maternity provision is 100 per cent pay for a full year.
- To remove the 26-week qualifying period that applies to statutory maternity pay. ASDA staff get 26 weeks' maternity leave on full pay with no qualifying period.

The 2009 TUC Equality Audit lists several agreements that give a better deal than the statutory leave and pay.

The trade union Prospect and the Forensic Science Service have negotiated an agreement that sees maternity leave and adoption leave run at nine months on full pay.

An agreement negotiated by the National Union of Journalists at Penguin Books gives women with one year's service 25 weeks on full pay and 14 weeks on SMP.

The union Unite has improved the maternity pay at Peugeot from 26 weeks at 100 per cent and 14 weeks at 90 per cent pay to give a further 12 weeks paid at £200 a week.

The Rail, Maritime and Transport Workers union negotiated with First TransPennine Express to achieve 39 weeks' maternity leave at basic pay or 90 per cent of average earnings, whichever is greater, and with Northern Rail to win 39 weeks on full pay.

- Some employers require women who do not return from maternity leave to repay any (contractual) maternity pay they have received in excess of the statutory minimum. Aim to ensure that this is not the case and seek to amend such policies. Rather than this 'stick' approach, some employers use the 'carrot' of a return-to-work bonus. Employees in research and development for Glaxo SmithKline receive a return bonus of 12 weeks' full pay after a minimum of 18 weeks' maternity absence (pro-rata for less than 18 weeks). This is repayable if an employee leaves within six months.¹¹
- The statutory requirement to give eight weeks' notice of early return from maternity leave may be unnecessarily long. Seek to get a shorter period. Local government workers in England and Wales need only give seven days' notice.¹²
- Full payment and/or time off in lieu for the 10 statutory 'keeping in touch' days if they are worked.
- Agreed and monitored systems to ensure that women on maternity leave get all the information they need about work, especially promotion and training opportunities, at the same time as other staff. Accenture has a 'buddy system' for staff on maternity leave.
- A phased return to work after pregnancy for those intending to eventually return full-time. This can be particularly beneficial for new mothers as it allows them time to adapt to a return to work and for childcare arrangements to bed in. At the London Borough of Hounslow staff can return and work only 16 hours a week, building up to full-time work over six months. They can also return to work as a job-share or change to job-sharing at the end of their phased return to work.
- If women do not feel able to return to work straight after maternity leave, try to negotiate ways in which they could return at a later date or extend their time off work by using other forms of leave. Women working for the College of North East London who do not return to work following the birth of a child have preferential status when applying for a vacancy at the college for up to five years after the birth.¹³ National Grid offers a phased return to work and says taking excess holiday built up for the first few months on return can mean up to an additional 33 days.¹⁴
- Employers are legally obliged to carry out a risk assessment to identify risks to a breastfeeding mother or to the baby and do all that is reasonable to remove any risks or make alternative arrangements. The employer must also provide suitable facilities. Seek agreed paid time off for breastfeeding and the provision of special facilities. Edinburgh Council, where practicable, gives mothers with children up to 12 months old paid time off and access to a private room and fridge and/or unpaid time off to visit a workplace nursery or other nearby place to breastfeed. Jaguar Land Rover provides private facilities for expressing and storing breast milk.

11 *Top Employers For Working Families*. Working Families, 2009

12 Local Government National Agreement (England and Wales) quoted in *Bargaining for Maternity Rights*, UNISON, 2007

13 UNISON, *Bargaining for Maternity Rights*, April 2007

14 *Top Employers For Working Families*. Working Families, 2009

- Employers must carry out an assessment of the risks to new or expectant mothers as soon as they employ a woman of childbearing age, whether or not they have a pregnant employee,¹⁵ and remove any risk. If risk cannot be removed, the women's working conditions must be altered, or they must be offered suitable alternative work (on the same or better terms and conditions) or suspended on full pay. Negotiators should seek a second risk assessment when a woman returns from maternity leave as well as implementation of any resulting changes to work patterns and rest facilities. The TUC book *Hazards at Work: Organising for Safe and Healthy Workplaces*¹⁶ has checklists, case studies and references to web resources on such issues.
- Seek special arrangements for any woman who gives birth prematurely. Mothers whose babies are premature or stillborn after the 24th week qualify for full maternity rights, but premature babies take longer to develop and may still need their mother's full-time attention when maternity leave is used up. An alternative would be to seek an extra week of maternity leave for every week that a baby is premature. Unite (TGWU) and Associated British Ports negotiated to ensure stillbirth and miscarriage before 24 weeks is not included in sickness absence monitoring.
- Aim to negotiate a flexible package of childcare benefits, because every family is different and its needs will change over time, sometimes suddenly. Childcare is vital for all parents, and especially for single parents. There are many ways in which employers can help the parents they employ with childcare, ranging from workplace nurseries and deals with companies providing emergency childcare to vouchers and salary sacrifice schemes. The TUC guide *Who's Looking After The Children?* has full details of such negotiations.¹⁷ The Metropolitan Police Service has a package including vouchers, discounts at nurseries and emergency back-up. Its experience highlights another aspect of childcare provision that it is important to monitor. Many schemes have a low take-up because they are complex, people are unsure of the tax implications and they are not promoted. In 2009 the MPS recognised the need both for a 'big push' to promote its scheme and to promote it continually.
- When a car and mobile are included as part of a total remuneration package and this is spelled out in the contract of employment, the mother gets to keep them during her leave. If they are provided for business use only, union negotiators should seek deals to allow mothers to continue to use car and phone while on maternity leave.
- Seek to have the employer monitor maternity policies so that any problem areas or lack of take-up can be highlighted.

15 Management of Health and Safety at Work Regulations 1999, Reg 16

16 Available from TUC Publications. £18 for members (discounts for bulk)

17 The guide is available from TUC Publications for £7. Salary sacrifice schemes have become popular in recent years. They enable employers to take advantage of the tax and National Insurance savings they can generate by providing benefits like childcare vouchers to employees in return for reduced cash payments. Such schemes can have complex administration and need to be checked carefully by experts. They can also affect other benefits like tax credits, so each individual also needs to check their circumstances carefully. The HMRC website has extensive advice www.hmrc.gov.uk/specialist/salary_sacrifice.htm

Bargaining points

- If a company maternity policy has been in place for some time, it might have started out better than statutory provision but may not have kept pace with improvements in recent years.
- Remember that for statutory maternity provision, the cost to employers is relatively low. They are reimbursed for statutory maternity pay and small employers can actually get back from Government 104.5 per cent of what they pay in maternity pay. The union USDAW has created a calculator that enables negotiators to demonstrate this to recalcitrant bosses. It is available on its website, www.usdaw.org.uk, in the equality resources library section.
- Watch out for people who work only or mainly in school term times. Statutory maternity pay is based on average earnings over the eight weeks before the fifteenth week before the baby is expected. All or some of the eight weeks might coincide with a holiday period when the worker is not being paid. Seek to base maternity pay on the best-paid eight weeks over, say, the last 12 months.
- Check with a union pensions adviser or your employer's pension section the effect on pensions of unpaid maternity leave, especially in money purchase schemes. For instance, York University counts any period of maternity leave for which pay is received as pensionable service. Employees' pensionable salaries are calculated as if they had not been on maternity leave and pay rises are included if they would have been received.



Fire Brigades' Union (FBU)

Government equality targets mean that fire and rescue services are under strong pressure to recruit more women firefighters, but that does not necessarily mean that they are all going about it in the right way. As is so often the case, some employers needed a union to show them the way forward.

In summer 2008, the best maternity pay deal for female firefighters in any brigade was in London, with 15 weeks' full pay (including SMP) followed by 11 weeks at half pay topped up by SMP, with the remaining 13 weeks at just SMP.

But now women working as firefighters on the Isle of Wight and in Staffordshire enjoy nine months' leave on full pay and three months on half pay – much better than the standard terms for firefighters.

They are benefiting from an initiative by the women's committee of the FBU, which drew up 'best practice' guidelines for maternity pay and leave and then saw them endorsed by the Government minister in charge of the fire and rescue service.

Services have been told by the Government that by 2013 fifteen per cent of new firefighter recruits should be women – an example of the importance of Government equality duties and targets in helping employers to see the need for good maternity provision.

The first fire service to adopt a maternity policy based on the FBU's recommendations was also the smallest – the Isle of Wight. But union publicity meant that firefighters in Staffordshire were able to show their own management what another had agreed and they soon followed suit.

Looking for a 'domino effect' of other brigades – Shropshire fire service agreed 26 weeks' full maternity pay – the women's committee planned a league table to put more pressure on services that fail to recognise the need for improved maternity provision.

And the moral of this story? Publicity for any sort of deal that is better than statutory provision can encourage employees and employers to ask for it on the one side and concede it on the other.



RIGHTS FOR FATHERS

“ FOR AN INDIVIDUAL FATHER, THE DESIRE TO SPEND MORE TIME WITH HIS CHILDREN IS AN IMMEDIATE AND PRESSING ISSUE, YET THE NEED FOR BETTER RIGHTS FOR FATHERS IS JUST ONE EXAMPLE OF THE NEED FOR A MAJOR CHANGE IN THE WAY IN WHICH WORK IN THE UK IS STRUCTURED. ”

While mothers in the UK now have some of the longest maternity leave provision in Europe, UK fathers do not have access to paid parental leave, as do many in other European countries. As explained in the Flexibility for All section, the ultimate goal is for parents to be able to share childcare because they work for an organisation that recognises the need that all of its employees should be able to work flexibly.

While this section refers to fathers, this term covers all partners, including same-sex partners of mothers.

There are two types of statutory provision that apply to fathers: paternity leave and pay; and parental leave.

Paternity leave and pay

Similar eligibility conditions to maternity leave, including earnings levels and length of service, apply to paternity leave and pay.

Someone who is the father of a child or the mother's husband, civil partner, or partner of either sex qualifies for one or two weeks of paternity leave.

Parental leave

Parents who meet the requirements can take unpaid time off to look after a child. Both parents have the right to parental leave.

Full details are set out in Section Two.

In its study of working life in the UK – published in March 2009 and based on extensive research – the Equality and Human Rights Commission (EHRC) found that there is extensive unmet demand from fathers for more leave with their children.

The EHRC said that, while parents want to share work and family care more equally, their choices are constrained by inflexible and low-paid family leave provision based on a traditional division of paid work and care.

Britain stands out internationally for its long leave reserved for mothers, mostly at a low rate of pay, and its relatively weak parental leave legislation. It also has very short paternity leave that is so badly paid that it is often not taken.

Unlike Britain, other countries offer flexible parental leave alongside flexible work. As long ago as 1974, Sweden moved from a system based on maternity leave to one based on parental leave.

Experience in other countries shows that fathers respond quickly to policy changes on parental leave. Policies that achieve the greatest uptake combine a non-transferable allocation of leave for fathers; an incentive to take it, such as a 'use it or lose it' condition; at least 60–80 per cent replacement of the father's lost income; and fathers' leave as an add-on to mothers' leave, rather than being part of the mothers' entitlement.

For an individual father, the desire to spend more time with his children is an immediate and pressing issue, yet the need for better rights for fathers is just one example of the need for a major change in the way in which work in the UK is structured.

A survey of parents by the EHRC found that childcare is no longer seen as largely a woman's responsibility. Only 29 per cent of parents agreed that childcare is the mother's primary responsibility, while 42 per cent disagreed.

The survey also found that fathers are no longer necessarily assumed to be the 'providers'. Thirty-eight per cent of parents agreed that fathers are responsible for providing economically for their family, and 27 per cent disagreed, with a third (35 per cent) neutral.

A TUC research paper found that long hours for men help to fuel women's decisions to work part-time and that this reinforces inequality between men and women.

Some fathers of young children, attempting to supplement the lost income of the mother, often work the longest hours in the UK. A third of fathers work more than 48 hours a week, compared with only five per cent of working mothers. This limits their participation in family life and reinforces the long-hours working-time culture among working families. Part of the problem is that traditional pay structures, based on a full-time work model and a culture of overtime, continue to reinforce an unequal division between paid and unpaid work. These pay structures and working patterns are detrimental to both women and men.

A woman whose request to work flexibly is refused can look to established case law on indirect sex discrimination to challenge her employer's refusal to allow a change in working hours. Women can use the argument that, because they are more likely than men to have child-caring responsibilities, a failure to allow a woman to work flexibly may be indirectly discriminatory. Where these arguments are used successfully, they may allow a real challenge to employer practices, including a requirement to redesign work practices and considerable damages.

In the absence of a recourse to indirect sex discrimination, men have less opportunity to challenge refusals to work flexibly (though they may claim direct sex discrimination if they are refused when women in their workplace are granted flexible patterns). The right to request flexible working offers at most marginal redress and no real challenge to entrenched working practices.

As with maternity leave, it is people's levels of pay that often determine how much leave they can take to be with a new child. Government figures released in 2004 showed that only one in five fathers were using paid paternity leave entitlement. Research by the polling organisation Yougov for EHRC in 2008, based on a sample of 4,500 parents of children under 16, found that over half of the fathers (53 per cent) with a child born since paternity leave was introduced reported that they had taken the two weeks statutory leave.¹⁹ A third of fathers (34 per cent) did not take statutory paternity leave despite being eligible to do so. The most commonly cited reason was that they could not afford to take the time off (47 per cent).

The TUC and other commentators point to the low level of paternity pay as a major disincentive to take the leave.

The statutory provision of paternity leave is a maximum of two weeks paid at Statutory Paternity Pay rates that are just over £123.06 a week (April 2009 figure). However, some employers may have better contractual provision.

19 *Work and Care: A Study of Modern Parents*, Gavin Ellison, Andy Barker and Tia Kulasuriya, EHRC, Spring 2009

One of them, appropriately, is the Government's own Department for Children, Schools and Families (DCSF).

As a result of trade union campaigns and negotiation, DCSF and other civil service departments offer fathers three weeks' paternity leave on full pay, with the ability to take the third week flexibly with the agreement of the line manager.

The Department's Secretary of State, Ed Balls, summed up why working practices that enable fathers to spend more time with their children are crucial for society as a whole:

"I know how important it is to take an active role in my children's lives. Research has shown that children with highly involved fathers at age seven do better at school, have higher self-esteem and are less likely to get into trouble in adolescence. We need to get rid of the outdated assumption that dads are the invisible parent. Now is precisely the time we must support families because economic instability can put a huge strain on relationships."

The business case

The simplest way of expressing research on the effect of paternity leave on business is that happy workers are productive workers. Research in the UK, Europe and the USA shows a link between companies that help parents with childcare and their bottom line.

Research also shows that today's fathers feel a strong need to be involved with their newborns. The EHRC report *Working Better* found "extensive unmet demand from fathers for more leave with their children". Being unable to be involved will increase stress and decrease efficiency.



Objectives

- It should be better than statutory provision of pay. The 2009 TUC Equality Audit says the Communication Workers' Union (CWU) has negotiated three weeks on full pay at People Organisational Development Services. The union has also negotiated two weeks' leave on full pay at a number of other employers, as has the BSU at the Britannia Building Society.
- Vary the way and when the leave can be taken. Royal Mail and Eli Lilly allow staff to take the leave in blocks of one day rather than the statutory blocks of one week and Royal Mail allows leave to be taken at any point up to three months after the child's birth. The Forensic Science Service provides 15 days' paid paternity/maternity support leave. USDAW has negotiated an increase in paternity leave to 11 days for members on '6-to-5' shifts at Parcelnet and Allied Bakeries, enabling those workers to have a clear two weeks' leave. Jarvis Rail provides 26 weeks' paternity leave. One week is paid at full pay, one at half pay and one week at statutory paternity pay, with the remaining 23 weeks available as unpaid leave.
- Provide paid time off to attend ante-natal and medical appointments with partner.
- Ensure paternity leave and parental leave are available to all with no qualifying period.
- Reduce the notice requirements needed for paternity leave under any company scheme. Many fathers miss out on their right to take it under the statutory scheme as they are unaware that they have to notify their employer of the need to take it at least 15 weeks before the baby is due to be born.
- Allow paternity and parental leave to be taken more flexibly than the statutory scheme permits.

Bargaining points

- Remind employers that the whole company is not going to suddenly take paternity leave.
- The ability to work flexibly should apply to all staff, not only or mainly women with young children.
- There is a growing consensus that there must be action to tackle the problems for business and society caused by the different employment rights of mothers and fathers. While not inevitable, change is clearly coming, so organisations that sort out policies and procedures for better leave arrangements for fathers at an early date will have a clear advantage over those with their heads stuck in the sand.
- Some of the country's most successful companies are taking the lead in this area. Tesco, for instance, gives fathers and partners who qualify for paternity leave normal pay for the first two weeks.
- The EHRC survey found that childcare is no longer seen as largely a woman's responsibility. Only 29 per cent of parents agree that childcare is the mother's primary responsibility, while 42 per cent disagree. Fathers are no longer necessarily assumed to be the 'providers'. Thirty-eight per cent of parents agreed that fathers are responsible for providing economically for their family, and 27 per cent disagreed, with a third (35 per cent) neutral.

- Research demonstrates that fathers who are able to take paternity leave are less stressed at work and more creative.²⁰ There are also positive links between provision of paternity leave and a company's bottom line.
- Where a good deal is obtained, it is important for it to be promoted so that staff know it is available and line managers know it is company policy.

20 *From Here to Paternity: Personal Experiences of Paternity Leave*, Samantha Quail, Glasgow Caledonian University, 2006





RIGHTS FOR CARERS

“ WORKING CARERS PAY A HEAVY PENALTY IN TERMS OF THEIR OWN HEALTH. THOSE WITH HEAVY CARING RESPONSIBILITIES ARE TWO TO THREE TIMES MORE LIKELY THAN WORKERS WITHOUT CARING RESPONSIBILITIES TO BE IN POOR HEALTH. ”

In addition to the rights of carers of relatives, union negotiators in several organisations have managed to win better provision for people who care for others but do not necessarily have the statutory right to request flexible working (see Section Two for details). These include carers who look after an elderly neighbour or close friend.

There is a good business case for helping carers. For example, the Working Families charity says that employers who recognise the unpredictability of caring for someone at the end of their life and who accept that some flexibility is needed in their working arrangements at this time also find that:

- the impact of unexpected absences can be managed
- the needs of customers are met more effectively
- the carer is better able to cope with their dual role
- co-operation between work colleagues helps to foster team spirit
- post-bereavement recovery may be quicker
- a culture of give and take is encouraged
- the caring values of the organisation as a whole are reinforced.²¹

THE CARERS' CASE

The 2001 census was the first to include a question about unpaid care of people other than children (“Do you look after or give any help or support to family members, friends or neighbours or others because of: long-term physical or mental ill-health or disability or problems related to old age?”). The responses have been analysed by the carers’ organisation Carers UK and an updated analysis prepared with the help of Leeds University was published in September 2007. It shows that:

- 2.5 million people in England and Wales combine caring with paid work.
- 1.5 million carers work full-time and, of those, 140,000 care for 50 or more hours a week. 58 per cent of working carers are men.
 - Although most carers in employment care for less than 20 hours each week, 143,000 men and 177,000 women balanced paid work of some kind with over 50 hours of caring each week.
 - 125,000 men and 75,000 women worked full-time while caring for 50 hours or more each week.
- 90 per cent of working carers are aged 30 and above – their prime employment years.
- Working carers pay a heavy penalty in terms of their own health. Those with heavy caring responsibilities are two to three times more likely than workers without caring responsibilities to be in poor health.

21 *Carers, Employment and Services: Time for a New Social Contract?* Sue Yeandle and Lisa Buckner, University of Leeds, 2007

- Men and women who care for 20 or more hours a week are much less likely to be in higher-level jobs.
 - The analysis also showed that, while carers work in all industries and in jobs at all levels, men and women who provide 20 or more hours of unpaid care a week are clustered in low-level, low-paid jobs.
 - Almost 45 per cent of men and 55 per cent of women who are in paid work and caring for 20 or more hours a week are in elementary occupations, process plant and machine operative jobs or in sales, customer services or personal services.
- People with very demanding caring roles are also more concentrated in certain industrial sectors.
 - More men with heavy caring roles are found in the manufacturing, construction, wholesale, retail and transport sectors, and far fewer work in the finance and real estate sectors. Compared with other older men, older male workers with heavy caring roles are much less likely to be in managerial and professional jobs.
 - Women with extensive caring responsibilities are more concentrated in the wholesale/retail, hotels and restaurants and manufacturing sectors than other women workers. Compared with other older women, older female workers with heavy caring roles are much less likely to be in professional and technical jobs.

Carers UK also points out that every year caring responsibilities are thrust on thousands of people without notice. The organisation highlights the fact that:

Every year in the UK:

- 10,000 people have a stroke.
- 36,000 people are seriously injured in a road accident.
- 27,000 children are born or diagnosed with a serious disability or rare syndrome.

Parents of children with disabilities

Research in 2006 for Carers UK and Contact a Family by the Centre for Social Inclusion at Sheffield Hallam University found that problems with childcare, having to take time off (to care or to attend hospital appointments) and a lack of understanding and flexibility at work are three key problems faced by parents of sick or disabled children who combine paid work and unpaid caring.

It also found that most parent carers find caring has an adverse impact on their own employment; that can include a negative impact on relationships with colleagues and a feeling that opportunities to develop or progress are denied parents in their situation. Although some succeeded in reducing their hours or changing their working patterns to suit their needs as carers of sick or disabled children, many felt forced to look for a different type of work or to change their jobs.

Because of the additional demands of caring for a sick or disabled child, tiredness and stress were especially difficult aspects of their situation.

At work some have been met with ignorance, disrespect or hostility because of their need to work flexibly to meet the needs of their sick or disabled child.

A London legal secretary's long and successful fight for justice for herself and her disabled son highlights the complexity of the law surrounding the rights of parents and carers.

Sharon Coleman's son Oliver had several serious disabilities when he was born in 2002, but she was determined to return to work. She says her requests for flexible working were denied, yet colleagues who did not have disabled children were allowed much more flexibility. She also says that she and her son were abused and insulted. Eventually she resigned, but began a long legal fight to establish that laws to prevent discrimination against people with disabilities should also apply to able-bodied people who look after them.

Her fight, backed by the Equality and Human Rights Commission, went all the way to the European Court of Justice in Luxembourg, which found in her favour. It was subsequently decided by a tribunal that the 1995 Disability Discrimination Act can be interpreted to protect people associated with a disabled person.

TUC general secretary Brendan Barber said employers should now tighten up their discrimination and flexible working policies to make it clear that any behaviour, comments or jokes that anybody might find offensive are captured within the policy. "Employers need to look at their recruitment and other workplace policies to make sure they are not discriminating against staff who have disabled family members or friends," he said.

Foster carers

Foster parents do not qualify for parental leave, but a groundbreaking agreement negotiated by USDAW with Tesco in 2007 allows employees up to five days' paid leave for training to become foster carers. This includes the detailed application process, foster-care-related meetings or complete specialised training. The initiative is part of an ongoing commitment by USDAW and Tesco to work together to deliver family-friendly policies for the Tesco workforce.

The Labour Research Department booklet *Carers in the Workplace: A Guide to Negotiating Flexible Working and Leave* (2007) gives examples of what unions have achieved.

The energy company Centrica formally recognises that some staff have long-term or permanent caring responsibilities and that "other employees may have these responsibilities in the future" and encourages employees to inform their line manager if they are carers. It says that issues raised will be dealt with confidentially and that there will be consistency of treatment for all employees with caring responsibilities, though individual needs and circumstances will be taken into account.

Depending on the circumstances, various types of leave are available.

- Planned carer's leave lasts for a defined period and must be agreed in advance. It covers:
 - the provision of nursing care following a serious illness or discharge from hospital
 - removal situations (to or from the carer's home or into residential care, for example)
 - attendance at benefit or legal hearings
 - arrangement of transport for hospital appointments, doctor appointments or mandatory meetings (with banks or solicitors, for example) and attendance at those events.

The amount of planned leave is 'matched' by the employee from their annual holiday entitlement. If five days' leave is required, 2.5 days will be taken as planned carer's leave and the other 2.5 as holiday. If the employee does not have enough holiday entitlement remaining, they can discuss additional time off with their line manager.

The Centrica policy recognises that notice may not always be possible and emergency leave may be authorised by the employee's line manager. This leave is paid and expected to be short-term; if the carer is absent for more than a week, the emergency leave becomes planned leave and is treated accordingly.

If the above forms of paid leave have been exhausted, a carer may apply for a period of unpaid absence, to be granted at their line manager's discretion.

Employees with long-term caring responsibilities are eligible to take a carer's career break of between three months and two years. They resign from the company at the start of their career break and should give three months' notice of their intention to return.

At the Department for Constitutional Affairs (DCA), now part of the Ministry of Justice, flexible working options may be taken up temporarily or permanently. Carers are allowed to work from home on an ad hoc basis or to change their days worked to accommodate appointments.

Training courses are tailored where possible to ensure that carers have the same access to training as their colleagues.

The DCA set up a Network for Caring, including members from the PCS civil service union, to raise awareness of carers' issues with all staff at all levels, provide mutual support for carers and ensure that they are represented and catered for.

The policy at the Scottish Court Service goes well beyond the statutory minimum after negotiations with PCS. The first step was the establishment, suggested by the local PCS branch, of a carers' group. Since then, the union has negotiated improvements including:

- a respite care voucher scheme
- interest-free loans to buy specialised equipment and relocation support to meet the cost of home adaptations
- a pager or mobile phone to keep in contact with the person they care for

- if carers apply for special leave, their annual leave will be unaffected; they have up to six months' paid leave to care for terminally ill relatives
- if they are being considered for a compulsory transfer, this may be put off if it would have a negative impact on their caring role
- a carer contact team is available to offer staff support and advice.





FERTILITY TREATMENT

“ AS MANY AS ONE IN SIX COUPLES CAN HAVE DIFFICULTY CONCEIVING AND REQUIRE FERTILITY TREATMENT. THIS AFFECTS BOTH THE POTENTIAL MOTHER AND FATHER AND CAN BE STRESSFUL AND TIME-CONSUMING. THE PROCESS CAN TAKE SEVERAL YEARS. ”

As many as one in six couples can have difficulty conceiving and require fertility treatment. This affects both the potential mother and father and can be stressful and time-consuming. The process can take several years.

Negotiators should ask for reasonable time off for fertility treatment – and paid if this is achievable.

East Hertfordshire Council allows employees reasonable time off to undertake fertility treatment.

Glaxo SmithKline Research and Development considers applications for discretionary leave for employees undergoing fertility treatment.

Tesco offers time off with contractual pay to employees undergoing treatment up to a maximum of one working week (pro-rata for part-time staff). This time can be granted for one working week per treatment cycle up to a maximum of three times in an individual's employment with Tesco. There is no limit on how close together the three periods of time off can be. The company also offers support to employees who are partners of someone undergoing treatment: paid time off for a maximum of two days per treatment cycle if their attendance at the clinic or hospital is required, with a maximum of six days allowed. Partners who are not required as part of the process but who would like to accompany their partner can take unpaid compassionate leave.²²

22 Source: USDAW website campaigns section: Supporting parents and carers



2 LEGAL RIGHTS FOR WORKING PARENTS AND CARERS



THERE ARE SEVERAL PIECES OF LEGISLATION REGARDING PARENTAL RIGHTS AND FLEXIBLE WORKING AND YOU SHOULD ALWAYS SEEK ADVICE FROM A QUALIFIED ADVISER IN YOUR UNION BEFORE TAKING ACTION BASED ON THE INFORMATION HERE.

Right to request flexible working

In April 2003 the Employment Rights Act 1996 was amended to introduce the right for parents of young and disabled children to apply to work flexibly. In April 2007 this right was extended to cover carers of adults. From April 2009 the right to apply to work flexibly was extended to parents and carers of children up to the age of 16.

Set out below are the basics concerning flexible working. For further advice and information and in situations where legislation has not been adhered to, please contact your trade union.

An application to work flexibly can cover:

- hours of work
- times of work
- place of work (as between home and place of business only).

An application must be seriously considered by the employer.

Eligibility

The person who applies must be an employee with a contract of employment; agency workers and members of the armed forces are not eligible.

The applicant must:

- have a child aged 16 and under or a disabled child (one who receives Disability Living Allowance (DLA)) under 18
- be the carer for an adult as defined by the Department for Business, Information and Skills (BIS)
- have worked for their employer for 26 weeks continuously at the date that the application is made
- not have made another formal application to work flexibly under the statutory scheme during the previous 12 months.

Parents

To qualify, the employee must be the parent, adopter, guardian, special guardian, foster parent, private foster carer or the holder of a residence order, or the spouse, partner or civil partner of one of these and be applying to care for the child.

Carers

To qualify the employee must be or expect to be the carer of an adult who:

- is married to, or is the partner or civil partner of, the employee; or
- is a near relative* of the employee; or

- falls into neither category but lives at the same address as the employee.

*The definition of 'near relative' covers parents, parents-in-law, adult children, adopted adult children, siblings (including those who are in-laws), uncles, aunts, grandparents or step-relatives.

Application process for employees

The application must comply with the following requirements:

- It must be made in writing, stating that it is being made under the statutory right to apply for flexible working.
- It must confirm the employee's relationship to the child or adult.
- It must set out the proposal and explain what effect the applicant thinks it will have on the employer's business and how this could be dealt with.
- It must specify a start date for the proposed change, giving the employer reasonable time (defined as 12 to 14 weeks) to consider the proposal and to implement it.
- It must state whether a previous application has been made and, if so, when.
- It must be dated.

One crucial consideration is that agreement by the employer will:

- lead to a permanent variation in the applicant's contract of employment
- not give the applicant an automatic right to change back to their previous pattern of work unless they seek the variation to their contract for a specified time only; a trial period may be agreed.

The statutory process can take up to 14 weeks – or longer should a problem arise.

Applicants do NOT have to:

- provide evidence of a parental or caring responsibility
- demonstrate that the care cannot be provided by someone else.

Process for the employer

To comply with the law, employers must:

- arrange a meeting with the applicant to discuss the request within 28 days of receiving the application (this meeting is not required if the employer agrees to the application and notifies the employee of this within 28 days of receiving it). Applicants have the right to be accompanied at meetings or appeal meetings to discuss their request. The companion they choose must be a fellow worker employed by the same employer. The companion can address the meeting, but cannot answer questions on the applicant's behalf. Employers

must allow workers time off during work hours to act as a companion and pay them for this time.

- notify the employee of their decision in writing within 14 days of the meeting. This notification will either:
 - accept the request and establish a start date and any other action; or
 - confirm a compromise agreed at the meeting; or
 - reject the request and set out clear business reasons for the rejection together with a notification of the appeals process. The employer must give a ground for refusal permitted under the legislation (see below) and must explain why that ground applies.

Refusal of a request

If a request is refused, please contact your trade union for advice.

Applications for flexible working arrangements can be refused by the employer for only the following reasons:

- the burden of additional costs
- a detrimental effect on ability to meet customer demand
- the inability to reorganise work among existing staff
- the inability to recruit additional staff
- a detrimental impact on quality
- a detrimental impact on performance
- insufficiency of work during the periods the employee proposes to work
- planned structural changes.

As well as stating one of the permitted reasons, the employer should explain how they think the reason applies to the employee's circumstances. So, they cannot just say "I reject your request because of the burden of additional costs" but must follow that up with further detail on how it applies to the particular request.

An employee may appeal the refusal of the request within 14 days. An appeal may be made on any ground but it must be made in writing. If the employee appeals, the employer must:

- arrange to hear the applicant's appeal within 14 days of being informed of a decision to appeal. The employee must be allowed to be accompanied on the same basis as above
- notify the employee of the decision on the appeal within 14 days after the date of the meeting. This notification will either:
 - uphold the appeal, specify the agreed variation and start date; or
 - dismiss the appeal, state the grounds for the decision and contain a sufficient explanation of the refusal.

The employer and the applicant can agree to extend any of these time limits. The employer must record this agreement in writing, specifying the period to which the extension relates and the date on which the extension is to end. A copy of this record must be sent to the employee.

An employee can take their appeal to a tribunal but can mainly challenge procedural errors of fact not the substance of the employer's refusal, and can only claim a maximum of eight weeks' pay in compensation if the complaint is upheld. For this reason, it may be that a claim of indirect sex discrimination may have more impact in a case of a woman being refused flexible working.

Indirect sex discrimination can sometimes be established by women, in particular where they can show that an employer's refusal to allow child-friendly hours is not justified. In addition, a refusal to permit a man to work child-friendly hours, when a woman would be allowed to, is likely to be direct sex discrimination.

If you feel that a case for indirect sex discrimination should be considered, please contact your union for further legal advice.

Maternity

Maternity leave

Statutory Maternity Leave is for 52 weeks. Mothers may be entitled to receive Statutory Maternity Pay (SMP) for up to 39 weeks of the leave.

To qualify for maternity leave someone must be an 'employee' and not, for instance, self-employed or an agency worker.

Qualifying for Statutory Maternity Leave

A mother who is an employee has the right to 26 weeks of 'ordinary maternity leave' and 26 weeks of 'additional maternity leave' – a total of 52 weeks. Provided certain notification requirements are met, this leave can be taken no matter how long someone has been with an employer, how many hours they work or how much they are paid. Someone taking ordinary and additional maternity leave continues to be an employee throughout.

Surrogate parents

Someone having a child through surrogacy will not normally be eligible for Maternity or Adoption Leave (as it is the birth mother who is entitled to the maternity leave). They will be eligible for unpaid parental leave once they have a parental order.

Taking maternity leave

A woman who is entitled to take maternity leave must tell her employer that she wants to take it. There are also rules about when she can start her leave and how long she must take.

The employer should be told at least 15 weeks before the beginning of the week the baby is due. If this is not possible, they must be told as soon as possible. The employer needs to know

- that the employee is pregnant
- when the baby is due
- when the mother wants to start her maternity leave – the date can be changed later provided 28 days' notice is given.

An employer may ask for notice in writing and, if the employee is claiming SMP, may also ask for Form MAT B1 (the maternity certificate), which says when the baby is due. A doctor can provide the MAT B1 form after someone has been pregnant for 21 weeks. It cannot be given earlier.

The employer should write to the employee within 28 days giving the date when the leave will end. If the employee subsequently decides to change the date she wants her leave to start (ideally giving 28 days' notice if reasonably practicable), then the employer has to again give notice of the date when it will end.

When leave can start

Maternity leave can start any time from 11 weeks before the beginning of the week when the baby is due. If a woman is off work because of her pregnancy in the four weeks before the expected birth date the employer can make her start her maternity leave.

Length of leave

Mothers do not have to take all the maternity leave they are entitled to, but they must take two weeks, or four if they work in a factory, of 'compulsory maternity leave' after the baby is born.

If the baby is lost

Provided all other conditions are met, a mother can still take maternity leave and pay if her child is:

- stillborn after 24 weeks of pregnancy
- born alive at any point of the pregnancy.

During maternity leave

The employment terms of a woman on maternity leave are protected. This includes in most cases pension contributions and holiday entitlement, along with extra rights if they are made redundant. The employer is also entitled to make reasonable contact with a woman on maternity leave about specific work issues. The law stated below refers to the rights of a woman whose baby was due on or after 5 October 2008; women whose babies were due before that date have slightly different rights.

Employment terms and conditions

Mothers on maternity leave are entitled to their normal employment rights and benefits, apart from wages, throughout their ordinary and additional maternity leave. This might include access to a company car or mobile phone provided as part of an employment contract. Some contractual benefits that are provided for business use only can be suspended during ordinary and additional maternity leave. Examples could, again, be a mobile phone or access to a pool car.

Pension contributions

If an employer contributes to an occupational pension scheme, they must carry on making their usual contributions:

- for the whole time the employee is on ordinary maternity leave
- for any time the employee is receiving any Statutory Maternity Pay or contractual maternity pay, and possibly also during the time she is receiving Maternity Allowance.

Holiday entitlement

All entitlements to paid holiday continue to build throughout ordinary and additional maternity leave – even if the woman taking the leave is entitled under her contract to more than the statutory minimum.

Holiday under the Working Time Regulations cannot be carried over to a new leave year, and employers must allow employees to take holiday in the leave year that it accrues, so if an employee starts maternity leave partway through the year she must be allowed to take all her remaining holiday for that leave year before her maternity leave.

With her employer's agreement she may wish to take all of her holiday for the leave year in which her maternity leave ends at the end of her maternity leave. Where a woman's maternity leave coincides exactly with her leave year, according to a number of cases decided at European level, employers would be well advised to allow employees to take their full annual leave entitlement before and/or after maternity leave.

Subject to the employer's agreement, holiday can be added to the beginning or end of maternity leave. However, this creates an anomaly in that the Working Time Regulations do not allow annual leave to be carried over from one leave year to the next. That means that, if a woman takes her full 52 weeks' maternity leave, then she would automatically lose her annual leave. According to a number of cases decided at European level, employers would be well advised to allow employees to take their full annual leave entitlement before and/or after maternity leave, regardless of the leave year in which it accrued.

Redundancy

It is unfair and, in most cases, sex discrimination, for an employer to select anyone for redundancy for a reason connected with:

- maternity leave
- birth or pregnancy
- paternity leave
- parental or dependants' leave.

An employer may be able to make a woman redundant while she is on maternity leave if they can fairly justify the choice and there is no suitable alternative vacancy, for example, if an employer is closing the section of their business that the woman on maternity leave normally works in and making all employees in that section redundant.

A woman made redundant while on maternity leave, however, has special rights. Irrespective of the length of time she has worked for her employer, she has the right to be offered any suitable alternative vacancy in the company. This is even if there are other employees not on maternity leave who might be more suitable for the job. A woman who is offered a new job is still entitled to a four-week trial period, which should start when she returns from maternity leave.

Working and keeping in touch during the leave

An employer is entitled to make reasonable contact with someone on maternity leave.

A woman on maternity leave may also work for up to 10 days during the leave without losing Statutory Maternity Pay (or Maternity Allowance if she is getting this instead) or bringing the leave to an end.

These 'keeping in touch (KiT) days' may be worked only if both the employee and the employer agree. Women cannot work during compulsory maternity leave (the two weeks immediately after the child is born, or four weeks for factory workers). KiT days may be used for any form of work.

Anything done on any day will count as working a full day, even if someone went into work for only two hours.

The employee and employer need to agree what work is to be done on KiT days and how much the employee will be paid. SMP may be offset against any contractual pay agreed.

KiT days cannot be used to extend a maternity leave period.

Becoming pregnant during maternity leave

If a woman becomes pregnant again during maternity leave she has the right to further ordinary and additional maternity leave. She may also have the right to maternity pay although, given that SMP is calculated using average

earnings for the two months or eight weeks before the fifteenth week that the baby is due, it may be advisable for the woman to plan her return to work to increase the amount of SMP she may be eligible to receive. If she will not receive SMP she may be entitled to Maternity Allowance.

Returning to work

A woman returning to work after ordinary maternity leave has a right to the same job and the same terms and conditions as if she had not been away.

This also applies when a woman comes back after additional maternity leave, unless her employer can show that it is not reasonably practicable to take the returner back in her original job (for instance, if the job no longer exists). In that case, the returner must be offered suitable alternative work with terms and conditions as if she had not been away.

Giving notice of return to work

A woman who takes her full leave does not need to give notice that she is coming back, but it is sensible to do so.

A woman who decides not to return to work at all must give her employer notice of resignation in the normal way.

Notice from the employer of the date maternity leave ends

If an employer fails to comply with the 28-day notice period (see above), and an employee returns to work on the day that she thought she was supposed to return (a day that she reasonably thought to be the day after the last day of her maternity leave), the employer cannot turn the employee away nor refuse to pay her for any work that she does.

A woman on maternity leave is protected under the law if:

- an employer fails to give notice of the return date and then attempts to dismiss or discipline an employee when she fails to return on that date if it was reasonable for her to believe her leave had not ended
- an employer gives less than 28 days' notice of the date that the maternity leave period would end and it was not reasonably practicable for the employee to return to work on that date.

Taking leave short of the full amount

An employer must assume that an employee will take all her maternity leave, including additional maternity leave. If the employee does not want to take all of her leave, she must give at least eight weeks' notice that she is returning to work early or that she wants to change the date of her return. The employer can insist that she does not return until the eight weeks have passed.

Illness

If a woman cannot return to work at the end of her maternity leave because of illness, she must tell the employer in the normal way.

Breastfeeding

A mother who is planning to breastfeed when she returns to work should let her employer know in writing. She may wish to do this in advance.

The employer must carry out a risk assessment to identify risks to a breastfeeding mother or to the baby. If there are risks the employer must do all that is reasonable to remove the risks or make alternative arrangements. The employer must also provide suitable rest facilities.

Taking parental leave after maternity leave

It is possible for qualifying employees to take up to four weeks' parental leave at the end of ordinary maternity leave without affecting the right to return to work.

Someone who takes more than four weeks will be able to return to the same job unless this is not reasonably practicable, in which case the employer must offer alternative work that is suitable with terms and conditions as if the employee had not been absent.

Problems

Women who take ordinary or additional maternity leave have the right not to be dismissed (including being made redundant) or treated unfairly for any reason connected with pregnancy, childbirth or maternity leave.

A woman may not be dismissed or treated less favourably because she is absent from work due to pregnancy-related sickness, even if the employer would normally dismiss/discipline someone similarly absent from work with sickness unrelated to pregnancy.

If a woman is dismissed while she is pregnant or during maternity leave, the employer must provide a written statement of the reasons for the dismissal. If the woman is unhappy with these reasons and wants to make a claim against the employer, or if she thinks she has experienced unfavourable or detrimental treatment because of pregnancy or maternity – such as being harassed, having to do inconvenient shifts or having her job downgraded – she should get advice immediately from her union as there are strict time limits involved in bringing cases.

Health and safety

Risk assessment

Every employer must assess health and safety risks for their staff. If any staff are women of child-bearing age, employers have to include an assessment of any particular risks they may face, whether they are pregnant or not. Once a woman has told her employer that she is pregnant,

the employer must do another assessment to consider any risks that she might face.

A woman who is affected by an identified risk and has informed her employer in writing that she is pregnant/breastfeeding/within six months of birth has these further rights:

- If there is a risk that cannot be avoided by compliance with appropriate preventative or protective action, then the employer must, if it is reasonable to do so, alter her working conditions or hours of work to avoid the risk.
- If this would not be reasonable, or would not avoid the risk, then the employer must offer any suitable alternative work that is available. This must not be on terms less favourable than the employee's normal terms and conditions.
- If this is still not sufficient to avoid the risk, the employee has the right to be suspended from work on normal pay.

There are also a number of health and safety regulations to protect pregnant and breastfeeding women exposed to particular job-specific risks such as lead or radiation.

For further details on health and safety, contact your union.

Night work

A doctor may give a pregnant woman or a new mother a certificate saying that night work could affect her health and safety. On receiving this an employer must either offer suitable alternative daytime work or, if that is not reasonable, suspend the woman from work on full pay for as long as is necessary to protect her health and safety.

Maternity pay

Maternity pay and benefits vary depending on circumstances. Usually women will claim either statutory or contractual maternity pay from an employer or Maternity Allowance through a Jobcentre Plus. There are also a number of other benefits they may be entitled to.

Contractual (company) maternity pay

Many employers have their own maternity pay scheme. Some company schemes require repayment if a mother does not come back to work. However, eligible mothers must be paid at least as much as Statutory Maternity Pay, which does not have to be repaid.

Statutory Maternity Pay (SMP)

To qualify for Statutory Maternity Pay (which lasts for 39 weeks), an employee must have been:

- employed by the same employer continuously (some breaks do not interrupt continuous employment) for at least 26 weeks into the 15th week before the week the baby is due (known as the 'qualifying week')

- earning an average of at least £95 a week before tax (this is the Lower Earning Limit (LEL) set by Her Majesty's Revenue and Customs for the financial year 2009-10) during the calculation period for SMP.

To claim SMP an employee must have:

- told her employer at least 28 days before the date she wanted to start her SMP; she may be required to do this in writing
- produced a medical certificate from a doctor or midwife
- stopped working for her employer.

A woman who has the right to receive SMP will get it even if she decides to leave the job or is made redundant before she starts receiving SMP, as long as it is not before the qualifying week. Once an employee has started to get it, her employer must continue to pay SMP, even if she leaves her job or is made redundant. A woman who decides not to go back to work or to leave her job while getting SMP does not have to repay it.

Mothers getting SMP can in most cases choose when they want it to start. Unless the baby is born sooner, the earliest SMP can start is 11 weeks before the week the baby is due.

SMP amounts

The employer will pay someone who gets SMP 90 per cent of her average weekly earnings for the first six weeks, then up to £123.06 (April 2009 figure) for the remaining 33 weeks. If 90 per cent of the average weekly wage is not more than £123.06, the employee gets the lower rate for the whole 39 weeks. The employee pays Income Tax and National Insurance in the same way as on regular wages.

Maternity Allowance

If a woman does not qualify for SMP, she may be entitled to Maternity Allowance. A woman might get Maternity Allowance (MA) if she gave up work or changed jobs before the qualifying week or if she is self-employed.

The conditions are that the woman:

- has been employed or self-employed for at least 26 of the 66 weeks before the week her baby was due
- earned an average of £30 over any 13 of those 66 weeks.

The standard rate of MA is £123.06 (April 2009 figure) or 90 per cent of average weekly earnings, whichever is less. MA is paid for up to 39 weeks; it is not liable to Income Tax or National Insurance contributions. Unless the baby is born sooner, the earliest MA can start is 11 weeks before the week the baby is due.

Other family benefits

There are a number of additional benefits available to expectant and new mothers. These include the Health in Pregnancy Grant, Healthy Start vouchers, Child Benefit, Tax Credits, Child Trust Funds, Sure Start Maternity Grants

and free prescriptions and dental treatment. Whether a woman qualifies for certain of these benefits depends on her personal situation.

If an employer refuses to pay maternity pay to a woman who qualifies for it, this will be treated as an unlawful deduction from her wages. It may also count as unlawful sex discrimination. HMRC will take responsibility for paying it.

Paternity

A person may be entitled to statutory paternity leave and pay, both at the birth of a child and on an adoption. They may also have a contractual right to paternity leave and pay.

Paternity leave at birth

An employee qualifies for statutory paternity leave if:

- they have been continuously employed by their current employer for 26 weeks or more by the fifteenth week before the baby is due and
- they are either the father of the child, or the mother's husband, civil partner or partner (of either sex)
- they have or expect to have responsibility for the child's upbringing
- the purpose of the leave is the care for the baby or to support the mother.

Either one week or two consecutive weeks' paternity leave may be taken. Paternity leave must be taken within 56 days of the birth.

If the baby is born prematurely, the fact that the employee has less than 26 weeks' continuous employment is disregarded if they would have satisfied the service condition had the birth occurred on the due date.

Notice

Anyone intending to take paternity leave has to give their employer notice that specifies:

- the week their baby is due to be born in; and
- the length of leave that they plan to take – either one week or two consecutive weeks; and
- the date they will begin the leave.

This notice must be given in or before the fifteenth week before the week the baby is due. Should this not be possible, or reasonably practicable – if the baby is born prematurely or the pregnancy is discovered very late, for example – then notice must be given as soon as reasonably possible.

An employer is entitled to ask an employee who is claiming paternity leave for a signed declaration of entitlement. Usually this is provided in Form SC3 (available from HMRC). Applicants should keep a copy of it as well as give a copy

to the employer. If an employee is entitled to paternity pay, they need to fill in the self-certificate to claim it, but they only need to submit the self-certificate to the employer once to confirm eligibility for both leave and pay.

Once the child has been born and, as soon as is reasonably practicable, their employer must be told the date the child was born.

Applicants can choose when the leave period will begin, but it must start either:

- the day the child is born
- a day that falls a certain number of days or weeks after the child is born
- a pre-determined date that falls after the first day of the week that the child is due.

Varying the date

The applicant for paternity leave can change the date they plan to start the leave by giving 28 days' notice either before the expected week of birth or before the date given in the notice of paternity leave. If this is not possible, this notice must be given as soon as is reasonably practicable.

If the applicant has chosen the leave period to begin on the day the baby is born and they are at work on that day, the paternity leave period begins the next day.

Terms and conditions while on leave and returning to work

Someone on paternity leave is entitled to their normal terms and conditions, apart from pay.

People coming back to work after paternity leave are entitled to return to the same job that they had before they went on leave and to benefit from the same conditions as if they had never been on leave. This is the case whether they took the paternity leave on its own or linked it with other statutory leave such as annual leave or less than four weeks of parental leave.

A paternity leave period can be linked with, for example, a period of parental leave of more than four weeks. If this is the case then the returner is entitled to go back to the job they were employed in before taking the leave or, if that is not reasonably practicable, another job that is suitable and appropriate and which has similar – and not less favourable – terms and conditions.

Statutory Paternity Pay (SPP) where a partner is giving birth

An 'employed earner' is entitled to SPP if they:

- have been continuously employed by the current employer for 26 weeks or more by the 15th week before the baby is due; and
- are either the father of the child, or the mother's husband, civil partner or partner (of either sex)

- have or expect to have responsibility for the child's upbringing
- continue to be employed by the current employer until the day the baby is born
- have been earning at or above the Lower Earnings Limit (LEL) before tax on average over the eight weeks up to the end of the qualifying week. For the tax year 09/10, the LEL is £95 a week.

The same principles apply in relation to the start date of SSP as for statutory paternity leave. SPP is currently paid at £123.06 a week (April 2009 figure) or 90 per cent of average weekly earnings in the calculation period if this is less.

People claiming SPP must submit evidence of their entitlement to their employer. Normally this is done using SC3, a self-certificate form confirming that they are entitled to paternity pay. This must be given to the employer at least 28 days before the date the pay is due to start, or as soon as reasonably practicable if this is not possible.

They must provide:

- their name
- the date the child is expected to be born
- the date from when liability to pay SPP will start
- the length of paternity leave chosen (one week or two)
- a written declaration that they are the father of the child, or the husband or partner of the child's mother (or is the husband or partner of the child's adopter) and expect to have responsibility for the child's upbringing.

Providing notice once the child has been born

The employer must be told of the date the child is born as soon as reasonably practicable. But if it was specified that SSP would start on a pre-determined date, and the child has not been born by then, the claimant must give notice as soon as reasonably practicable of the new start date.

Parental leave

Parental leave gives parents who qualify the right to take unpaid time off work to look after a child or to make arrangements for their welfare.

Parental leave is unpaid so although some employers may pay employees taking parental leave they do not have to. People who do not get paid parental leave and are not paid may be entitled to extra social security benefits while taking parental leave.

Entitlement

An employee has the right to unpaid parental leave if they:

- have been employed by the same employer for a year or more
- are an 'employee'; most agency and casual staff are not entitled to parental leave; and
- have parental responsibility for the child; or
- are the father named on the child's birth certificate.

Mothers automatically have parental responsibility, as do fathers married to the mother or the mother's civil partner. Unmarried fathers automatically have parental responsibility if they are on the birth certificate of a child born on or after 1 December 2003. They may also acquire parental responsibility by agreement with the mother or court order. Adopters have parental responsibility.

Either parent has the right to parental leave, including a parent who meets the above conditions but who does not live with the child. Foster parents have no right to parental leave.

Leave available

Each parent can take a total of up to 13 weeks of parental leave for each of their eligible children.

An eligible child is a child under five years old, or a child who has been placed for adoption in the last five years but who is under 18 years old.

A disabled child (defined as having entitlement to Disability Living Allowance) under 18 years old is also an eligible child. For a disabled child the entitlement is to a total of up to 18 weeks of parental leave, until the child's 18th birthday.

Parental leave is an individual right and cannot be transferred between parents. For example, a father cannot decide to take only 10 weeks and the mother 16 weeks. However, the entitlement to the number of weeks of parental leave is transferable to another employer. So, if a parent has taken four weeks' parental leave and then moves jobs, they will be entitled to take only a further nine weeks' leave in respect of that child.

Employees can take parental leave immediately after maternity, paternity or adoption leave providing they give the correct notice.

Parental leave schemes

If employers and employees have not been able to agree how a parental leave scheme should work, a 'fallback scheme' applies automatically. The terms of any workplace agreement on parental leave cannot be less favourable than the fallback scheme.

The fallback scheme

- Parental leave must be taken in blocks of full weeks. A week is based on an employee's usual working pattern. So for someone who works Mondays and Tuesdays only, a week would be two days. For someone who works Monday to Friday, a week would be five days. Parents whose child has a disability can take time off in days instead of weeks.
- Parents cannot take more than four weeks' leave for any one child in a year. The year is defined as starting when someone becomes eligible for parental leave (either when the child is born or when they have worked for an employer continuously for one year, whichever comes later).
- People taking parental leave must give 21 days' notice and must specify the dates that it will start and finish.
- Someone taking four weeks or less of parental leave has the right to return to the same job they had before the leave. This is the case if they took parental leave following a different form of statutory leave such as paternity leave, ordinary maternity leave or ordinary adoption leave.
- Someone who takes more than four weeks' parental leave on its own, or combined with additional maternity leave or additional adoption leave, has the right to return to the same job unless their employer can demonstrate that this is not reasonably practicable. If this is the case, they are entitled to another job that is both suitable and appropriate.
- People on parental leave are entitled to return on terms and conditions no less favourable than those that would have applied had they not been absent. That means they do not lose seniority or pension rights and any pay rises would apply on their return.

Employer's right to postpone parental leave

If an employer considers that the taking of parental leave would unduly disrupt their business they can postpone it (except for where leave is to be taken straight after a birth or adoption placement) for no longer than six months after the date the applicant originally wanted it to start.

The employer should discuss this with the applicant and must confirm the postponement in writing no later than seven days after receiving the employee's notice of parental leave. The employer should explain why they are postponing the leave and set out new dates for it. The employer cannot postpone leave entitlement a second time under the fallback scheme. The employer cannot postpone parental leave to beyond the child's 18th birthday.

Employees have a right not to be dismissed or subjected to any other unfavourable treatment (such as downgrading their job or a pay cut) because they have taken parental leave or time off for dependants or have tried to do so.

Time off for dependants

All employees have the right to 'reasonable' unpaid time off work to help people such as family members or friends who depend on them for assistance in an emergency. There is no set limit on how much time off can be taken, but only the time necessary to sort out an 'immediate problem' can be taken. There is no qualifying period of service required.

Definition of a dependant

A 'dependant' means a parent, spouse/civil partner, child or someone who lives in the same household as the employee. It does not include someone in a commercial relationship, such as a live-in lodger or a tenant.

A dependant can also be someone who 'reasonably' relies on the employee taking time off to help them if they are ill or have an accident or when their normal care arrangements have broken down (for example, if they are a neighbour or friend with a disability).

What time off can be taken

An employee has the right to 'reasonable' time off:

- to help when a dependant falls ill, gives birth, is injured or assaulted
- when a dependant dies
- to cope when the arrangements for caring for a dependant unexpectedly break down
- to cope with an unexpected incident involving a dependant child during school hours, or on a school trip or in other circumstances when the school has responsibility for the child.

Employees relying on this right must tell their employer, as soon as reasonably practicable, why they are absent and (unless they are already back at work), for how long the absence is likely to last. The nature of this right means it is for times of emergency, or unexpected incidents, rather than events that the employee knew would happen, like a dentist's appointment for a check-up.

The right to time off for dependants depends, to a large extent, on what is 'reasonable' and this is not defined in law. These leave rights do not apply to other domestic emergencies such as break-ins, fire or floods.

Employees have the right to complain to an Employment Tribunal if their employer has unreasonably refused time off for dependants; unreasonably postponed parental leave; or has prevented or tried to prevent the employee from taking parental leave.

Adoption

Statutory adoption leave

Qualifying for statutory adoption leave

To qualify for statutory adoption leave an employee must:

- be the child's adopter
- be newly matched with a child by an adoption agency ('matched' means that the adoption agency has provided details of the child it thinks is suitable for adoption). The adopter must also have agreed that the child should be placed with them and the date of placement.
- have worked continuously for their current employer for at least 26 weeks ending with the week in which they were notified of the match.

Someone becoming a special guardian, adopting a stepchild or having a child through surrogacy or a private adoption agreement will not normally be eligible for statutory adoption leave or pay. Only one parent can take statutory adoption leave. Different rules apply for adoptions from overseas.

Length of leave

Statutory adoption leave lasts 52 weeks – 26 weeks of Ordinary Adoption Leave, followed by 26 weeks of Additional Adoption Leave.

The adopter can start the leave:

- from the date the child is placed for adoption, or
- on an earlier date up to 14 days before the expected placement date.

Giving notice

Someone who wants to take adoption leave must tell their employer within seven days after the date they were told that they have been matched with a child for adoption. If this is not possible, the employer must be told as soon as reasonably possible.

The employer must be told:

- when the child is expected to be placed
- when the adopter wants the leave to start. The start date can be changed provided 28 days' notice is given.

An employer must give the adopter written notice of the date the adoption leave will end within 28 days of receiving their notice. This will usually be 52 weeks after it starts. An adopter can return earlier than this as long as they give their employer eight weeks' notice of return.

Terms and conditions during adoption leave

Someone on adoption leave keeps all their normal employment rights and benefits apart from the right to receive wages.

Keeping in touch

An employer is entitled to make reasonable contact with an employee during adoption leave. People on adoption leave may also do up to 10 days' work during the leave without losing adoption pay or bringing their leave to an end.

These 'keeping in touch' (KIT) days may be worked only if both the employee and employer agree. Although useful for training or team events, they may be used for any form of work. The employee and employer must agree what work is to be done and how much will be paid for it. KIT days cannot be used to extend the adoption leave period.

Returning to work

People returning from ordinary adoption leave have the right to return to the same job. This also applies when someone comes back after additional adoption leave unless the employer can demonstrate that it is not reasonably practicable to take the employee back into their original job. In that case, the employee must be offered alternative suitable work with terms and conditions that are no less favourable.

Employers should assume that people taking adoption leave are going to take the full 52 weeks unless they are told otherwise. If someone wishes to change the date they are going to return to work, they must give at least eight weeks' notice. The employer can insist that they do not return until the eight weeks have passed.

Someone who decides not to return to work at all must give their employer notice of resignation in the normal way.

Dismissal/detrimental treatment on grounds of adoption leave

It is unlawful to dismiss or treat anyone unfavourably on the grounds that they took adoption leave or that they benefited from any of their statutory rights during adoption leave.

Statutory Adoption Pay (SAP)

An 'employed earner' is entitled to SAP if they:

- are someone with whom a child is expected to be placed for adoption with them and has stopped working
- has worked continuously for their employer for at least 26 weeks ending with the week in which notification of the match took place
- has been earning at or above the Lower Earnings Limit (LEL) before tax on average over the eight weeks up to

the end of the notification week. For the tax year 09/10, the LEL is £95 a week (April 2009 figure).

- has chosen to receive SAP, not Statutory Paternity Pay
- has given their employer evidence of the adoption. This may be a 'matching certificate' that the adoption agency provides.

The adopter has to give the employer at least 28 days' notice of the date on which SAP is likely to start or, if that is not practical, then as soon as possible.

In addition, the adopter has to tell the employer when the child is expected to be placed. If this is the same as the date for the start of SAP, then the employee also has to tell the employer, as soon as is reasonably practicable, of the actual date of placement.

Statutory Adoption Pay (SAP) begins at the same time as adoption leave and, unless the leave finishes sooner, runs for 39 weeks. SAP is £123.06 (April 2009 figure) or 90 per cent of average weekly earnings, whichever is less. SAP is paid by the employer in the same way as normal wages. Recipients will pay Income Tax and National Insurance contributions in the normal way.

People who meet the other conditions but who earn less than the LEL for National Insurance contributions can still take unpaid adoption leave. It is possible that they could get certain state benefits while on leave.

Someone entitled to receive SAP can choose when it will start from these options:

- the day the child is placed for adoption, or the following day if they are at work that day; or
- a pre-determined date that they have chosen and which falls no more than 14 days before the child's placement is expected to take place and which starts no later than the date that the child is placed.

Paternity leave on adoption

Paternity leave can be taken where an individual or couple is adopting a child. If a couple is adopting, only one parent may take adoption leave: the other parent may be entitled to paternity leave on adoption.

An employee qualifies for statutory paternity leave if they:

- they have been continuously employed by their current employer for 26 weeks or more by the week notification of a match for adoption is received
- they are the spouse, civil partner or partner (of either sex) of the adopter
- they have or expect to have responsibility for the child's upbringing
- the purpose of the leave is the care for a child under 18 just placed for adoption.

Either one week or two consecutive weeks' paternity leave may be taken. The leave must be taken within 56 days of the placement.

The leave period can start on:

- the day the placement is made; or
- a day that falls a certain number of days after the placement is made; or
- a pre-determined date that is later than the expected date of placement.

Giving notice

Notice must be given to the employer seven days after notification of the match was given, or as soon as reasonably practicable of

- the date of notification of the match
- the expected date of placement
- the length of leave that the employer plans to take
- the date that they want paternity leave to begin.

An employer is entitled to ask an employee who is claiming paternity leave for a signed declaration of entitlement. Usually this is provided in Form SC4. Applicants should keep a copy of it so both they and the employer are clear of the dates and information. If someone is entitled to paternity pay they will need to fill in the self-certificate in order to claim it, but they need to submit the self-certificate to the employer only once to confirm eligibility for both leave and pay.

Varying the date

The applicant for paternity leave can change the date they plan to start the leave by giving 28 days' notice either before the expected placement date or before the date given in the notice of paternity leave. If this is not possible this notice must be given as soon as is reasonably practicable.

If the applicant has chosen the leave period to begin on the day of placement and they are at work on that day, the paternity leave period begins the next day.

Once the adopted child has been placed, the employer must be told the date this happened as soon as is reasonably practicable.

Terms and conditions while on leave and returning to work

Someone on paternity leave is entitled to their normal terms and conditions, apart from pay.

People coming back to work after paternity leave are entitled to return to the same job that they had before they went on leave and to benefit from the same conditions as if they had never been on leave.

A paternity leave period can be linked with, for example, a period of parental leave of more than four weeks. If this is the case then the returner is entitled to go back to the job they were employed in before taking the leave or, if that is not reasonably practicable, another job that is suitable and

appropriate and which has similar – and not less favourable – terms and conditions.

Statutory Paternity Pay (SPP) on adoption

An 'employed earner' is entitled to SPP if they:

- have been continuously employed by the current employer for 26 weeks or more by the end of the week in which notification of the match for adoption is given
- is the spouse, civil partner or partner (of either sex) of the adopter
- have or expect to have responsibility for the child's upbringing
- continue to be employed by the current employer until the day of placement
- have been earning at or above the Lower Earnings Limit (LEL) before tax on average over the eight weeks up to the end of the notification week. For the tax year 09/10, the LEL is £95 per week.
- have chosen to claim SPP, not Statutory Adoption Pay (SAP).

The same principles apply in relation to the start date of SPP as for statutory paternity leave. Like paternity leave, SPP can be claimed in blocks of one or two weeks and must be taken within 56 days of placement.

SPP is paid at £123.06 a week (April 2009 figure) or 90 per cent of average weekly earnings in the calculation period if this is less.

People qualifying for paternity pay must submit to their employer evidence of their entitlement, normally on the self-certificate form SC4. This must be given to the employer at least 28 days before the date the pay is due to start, or as soon as reasonably practicable if this is not possible.

If requested, the claimant must tell the employer the placement date within 28 days or as soon as reasonably practicable.



FURTHER HELP AND INFORMATION



The TUC and many unions provide detailed guidance on employment issues affecting parents and carers. The TUC website (www.tuc.org.uk) has a large section called Changing Times that covers many of the issues raised in this guide. The TUC also runs WorkSmart. Its website has advice on all areas of work with a large section on family-friendly work.

Working Families (www.workingfamilies.org.uk) also produces a great deal of guidance. This charity works with working parents and carers and their employers to find a better balance between responsibilities at home and work. The Working Families' website has an extensive policy and research section.

The Work Foundation (www.theworkfoundation.com) provides information, research and case studies on work-life balance including the report commissioned by UNISON *Work-life Balance: Rhetoric Versus Reality?*

Carers UK (www.carersuk.org, 020 7378 4999; Carersline: 0808 808 7777) has practical information for carers and those supporting them.

The Daycare Trust (www.daycaretrust.org.uk, 020 7840 3350) is a national childcare charity promoting affordable childcare.

The Labour Research Department (www.lrd.org.uk, 020 7928 3649) publishes a wide range of information useful to trade union negotiators in print and online. Its Payline online database gives details of 2,300 collective agreements and includes information on working hours and family-friendly policies. Reps and members of the unions listed can access it without charge: Community; GMB; PCS; RMT; TSSA; UCU; UNISON; Unite.

Support for employees

Working Families (www.workingfamilies.org.uk, helpline 0800 013 0313) offers free legal advice and information for parents on flexible working, parental leave and benefits. It runs Waving Not Drowning – a network and information resource for parents of disabled children and for professionals who work with them.

Gingerbread (www.gingerbread.org.uk; helpline 0800 018 5026) is the registered charity for the support of lone parents in Britain.

Maternity Action (www.maternityaction.org.uk, 020 7281 7816) works to end inequality and promote the health and well-being of all pregnant women, their partners and children.

The Fatherhood Institute (www.fatherhoodinstitute.org, 0845 634 1328) – 'The UK's fatherhood think-tank'.

Employers for Carers (www.employersforcarers.org, 020 7378 4956) produces a guide (*Carers and Employment: a guide to the right to request flexible working*) to the process of applying for flexible working. It includes a sample application form and a summary of rights and responsibilities.

For more copies of this title contact our ordering point on 020 7467 1294 or smills@tuc.org.uk.

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