



CIPD Policies and Procedures for People Managers



Making Sense of 'Family Friendly' Legislation by Peter Winfield

Consultant Editor and contributor to *CIPD Policies and Procedures for People Managers*

The Work and Families Act 2006

The Work and Families Act 2006 introduces a raft of changes in 2007 and beyond which will have a significant impact on employers' policies and procedures. Chief amongst these are the changes to statutory maternity pay (SMP) and statutory maternity leave (SML) together with opportunities for employers and employees to maintain contact during maternity leave. Many of the changes will also apply to adoption pay and leave, requiring careful amendments and dovetailing of rights/duties. The extension to flexible working rules covered in *CIPD Policies and Procedures for People Managers* Newsletter 8 can now be clarified as some of the details were outstanding in January. However, many questions remain unanswered, in particular how the new paternity leave and pay rules will apply following concerns expressed by employers about complexity and costs involved.

As 'family-friendly' as much of the new legislation may be, is it also employer friendly? The CIPD has reported a lack of enthusiasm, if not outright hostility, amongst several employers, with only one in 10 believing the Act will benefit their organisation. This is a likely

response to the potential business costs of additional leave for mothers and fathers, and the burden of re-writing policies and procedures. But, in the longer term, the benefits of the new rights are likely to aid recruitment and retention of valued staff, and bring greater operational flexibility. The introduction of up to 10 'KIT' (keeping-in-touch) days and the opportunities for 'reasonable contact' between employers and new mothers/parents on maternity/adoption leave without compromising statutory pay or leave entitlements are bound to yield mutual advantages.

Employees' rights have been tempered by the changes to the early return from maternity/adoption leave notification – from 1 April 2007 this was extended from 28 days to eight weeks. Furthermore, a new requirement is introduced whereby the employee can delay their return date provided it is within their entitlement, but they must give their employer eight weeks' notice. Another benefit to employers is that the calculation of statutory maternity/adoption pay (SMP/SAP) and maternity allowance (MA) can now start any day of the week to match the commencement of maternity leave.

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The Author

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For the past 10 years Peter has been a freelance consultant/trainer in employment law and HR management. He is currently working as a tutor on a number of CIPD programmes, including as a personal tutor for the CIPD's Advanced Certificate in Employment Law, and is Principal Employee Relations Consultant at Reed Consulting Ltd.

The new pay and leave arrangement

- For employees whose expected week of confinement falls on or after 1 April 2007 the qualifying service for additional maternity leave (AML) is removed, entitling a woman to 52 weeks' leave regardless of length of service. (Note: *the service qualification for adoption leave/pay remains at 26 weeks by the 'matching' week.*)
 - SMP/MA and SAP are extended to 39 weeks, with an extension to 52 weeks before 2009/2010, but not before 2008. Employer's contributions to pensions will be made throughout the whole period.
 - Despite changes to the qualifying period and statutory pay, rights relating to return from maternity/adoption leave are unaltered for the time being. Where the individual has been on ordinary maternity/adoption leave (OML/OAL) (ie after 26 weeks) the employee is entitled to return to the job in which they were employed before their absence, although in some circumstances not necessarily to exactly the same job. On return from additional maternity or adoption leave if it is not reasonably practicable for the employee to return to the job in which they were employed before absence, it will be to another job which is both suitable and appropriate for them to do in the circumstances.
 - KIT days cannot cover the two week compulsory leave period, but will thereafter include part-days. Any pattern of days can be worked, eg for training or staff meetings or home working, the pay for which should be mutually agreed between employer and employee. Further guidance is still awaited on KIT days and reasonable contact.
 - The Government aims to introduce paid additional paternity leave (APL) beyond the current two weeks ordinary paternity leave (OPL) to a total of six months by 2009/2010. Although the new rules are subject to consultation, it seems leave will be available to the father or partner of the mother after six months of maternity leave, but only when she has already returned to work and is not in receipt of statutory payments. It is proposed that it be taken in one block of 2–26 weeks, no earlier than 20 weeks after the birth of the child, but not extended beyond the child's first birthday. APL will also apply to the adoption of children. There are many unanswered questions about this measure, and it seems that it has caused the most concern to employers. The DTI estimates that up to 10,000–16,000 employees may exercise their right to APL in the first full year. Paternity pay for the whole six months' period will be set at the same rate as SMP (see 'Statutory Compensation Payments – The latest' on p.4 for new rates)
- Employers will come under increasing pressure from staff without children or dependants to equalise rights with parents/adopters under flexible working, special and compassionate leave policies. The perceived 'favouritism' shown to 'family friendly' eligible employees is already influencing some employers to take a hard look at such policies and their criteria so that a more balanced approach is taken.

SOURCES:
DEPARTMENT OF TRADE AND INDUSTRY. *Pregnancy & work – What you need to know as an employer.* Available at www.dti.gov.uk/files/file34286.pdf
HILPERN K. (2007) 'Bumpy road ahead', *People Management*. Vol. 13, No 2, January, pp.30-33.
DEPARTMENT OF TRADE AND INDUSTRY. (2006) *Work & Families – Choice & Flexibility: Additional Paternity Leave & Pay*. London, DTI.

Flexible Working – Clarity on who is a 'dependant'

In January 2007 the Government announced that a dependant 'relative' is not only an 'immediate' relative, but also a 'near relative'. The latter includes in-laws, step-relatives and grandparents. The DTI estimates that around 1.5 million extra carers are now covered. The definition of 'carer' remains as set out in the 2002 Flexible Working Regulations.

Working time update

Daily & weekly 'rest' breaks

In 2006 the European Court of Justice (ECJ) ruled that the Working Time Regulations were inadequate because DTI guidance merely stated that workers should have the *opportunity* to take proper breaks. However, the court acknowledged that employers do not have to force workers to take these breaks, and so the DTI has amended its guidance to add the words 'employers must make sure that workers can take their rest', but have removed that part of the guidance which stated that employers 'are not required to ensure that they do take their rest'.

Holiday entitlement for employees on long-term sick leave

When an employee is absent for the whole leave year can they take their paid leave whilst on sick leave? According to the Court of Appeal in 2005 the answer was 'no' (see: *HM Revenue & Customs v Stringer* (formerly *Ainsworth*)), but the matter is to be considered by the ECJ in a similar German case later this year.

Changes to 'Conflict at Work' procedures now a certainty

The DTI has announced a consultation about the abolition of the statutory disciplinary, dismissal and grievance procedures introduced by the Employment Act 2002 (Dispute Resolution) Regulations 2004. This follows the review carried out by Michael Gibbons as part of the DTI's *Better Regulation Simplification Plan* (available at www.dti.gov.uk/bbfi/better-regulation/index.html) which has recommended the repeal of the procedures, abolition of fixed conciliation periods, simpler tribunal applications and a free mediation service. The procedures are unpopular with employers and employees, and

are estimated to be costing employers nearly £290m a year, of which £172m is spent responding to claims. After a dip, tribunal claims are now reaching record highs.

Gibbons' review is hard on the heels of the CIPD's survey: *Managing Conflict at Work* (available at www.cipd.co.uk/surveys) which reports that of the 798 respondents (employing more than 2.2 million employees):

- 28% believe the statutory procedures have led to an increase in the number of grievance cases, with 18% believing the same of disciplinary cases.

- Only 1% and 3% respectively believe there has been a consequential drop in grievance and disciplinary cases.
- Only 9% believe the statutory procedures have led to a drop in tribunal claims, compared to 8% who hold the opposite view.
- 59% said they had made changes to their own dispute resolution policies and procedures.
- 79% provided some training in the procedures, with 72% specifically training line managers in conflict management skills.
- Respondents spend more than 350 days a year on average in managing disciplinary/grievance cases and preparing for tribunal hearings.

Future Legislative Changes – What to look out for

Topic	Proposed Date	Key Policies & Procedures
Smoking Ban – Health Act 2006	1 July 2007	Health & Safety Occupational Health Recruitment Selection Employee Handbook
Corporate Manslaughter	Summer 2007	Health & Safety
Statutory leave entitlement, ie first phase increase in entitlement to 24 days per annum to ensure workers are paid for public/bank holidays. Second phase to 28 days on 1 October 2008	1 October 2007	Reward Health & Safety Atypical Working Time Off Employee Handbook
Commission for Equality & Human Rights introduced – Equality Act 2006	1 October 2007	Recruitment Selection Equal Opportunities Atypical Working
Data Protection Act comes fully into force covering manual filing systems in existence before 24 October 1998	24 October 2007	Recruitment Selection Contract of Employment Discipline Capability Grievance Data Protection
Information & Consultation Regulations (roll out of provisions to employers of 50–99 employees)	6 April 2007	Employee Information & Consultation

Statutory Compensation/Payments

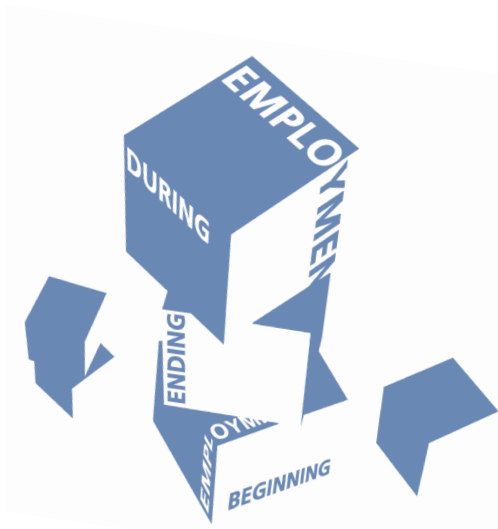
– The latest

Upper limits increased annually from February each year

Topic	Amount	Key Policies & Procedures
A week's pay	£310	Dismissal Redundancy
Unfair dismissal	Basic award and Redundancy Pay = £9,300 Compensatory award = £60,600 Additional award = £8,060–£16,120 (ie 26–52 weeks' pay) There is no compensatory award limit for health & safety or protected disclosure reasons	Dismissal Redundancy
Guarantee payment	£98 (£19.60 a day for five days in any three month period)	Dismissal Redundancy
National Minimum Wage	Workers aged 22+ = £5.35 per hour (wef October 2006, likely to rise to £5.60 wef October 2007) Workers aged 18–21 = £4.45 Workers aged 16–17 = £3.30	Contract of Employment Reward Employee Handbook

Upper limits increased annually from April each year (rates from April 2007 shown)

Topic	Amount	Key Policies & Procedures
Statutory sick pay	£72.55 a week (for 28 weeks in any three years)	Contract of Employment Time Off Capability Data Protection Employee Handbook
Statutory maternity pay	90% of normal weekly earnings (six weeks), and £112.75 a week or 90% of normal weekly earnings if lower for 33 weeks (same rate applies to maternity allowance and statutory adoption pay for 39 weeks, and statutory paternity pay for two weeks)	Contract of Employment Time Off Capability Data Protection Employee Handbook



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