



## briefing

Employment, Pensions & Benefits - September 2009

### Additional Paternity Leave Update

**In our July 2009 newsletter we reported on the Government announcement that it intended to delay the introduction of additional paternity leave because of the current economic climate. The Government has now stated that legislation providing for the right to additional paternity leave will be in place by April 2010 but will only have effect for parents of children due on or after 3 April 2011. A consultation paper on the draft regulations will be issued shortly.**

#### The current position

At present, statutory paternity leave is limited to two weeks paid leave of **£123.06 a week** which must be taken within 56 days of the birth. It is available if the individual has or is expected to have responsibility for the baby's upbringing and is the biological father of the baby and/or the mother's husband or partner (including same sex partner or civil partner). Paternity leave is also available when a child is being adopted. The individual must have at least 26 weeks' continuous service by the end of the 15<sup>th</sup> week before the expected week of childbirth. In the case of adoption, 26 weeks service ending with the week of notification of having been matched with an adoptive child.

Paternity leave must be taken as either one week's leave or two consecutive weeks' leave and there is no entitlement to split the leave into individual days or for it to be taken as two separate weeks.

In relation to maternity leave, there are two periods of leave: ordinary maternity leave of 26 weeks followed by additional maternity leave of a further 26 weeks making 52 weeks maternity leave in total. The statutory maternity leave pay period is 39 weeks and it was originally intended that this would increase to 52 weeks at the same time as the right to additional paternity leave.

#### The proposals

To enable parents to have greater flexibility in deciding how to use maternity and paternity leave and to assist fathers in having a bigger role to play in the upbringing of their children it is proposed that:

- there will be an additional period of **six months paternity leave** but this can only be taken once the mother has returned to work
- additional paternity leave will only be available during the second six months of the child's life and in effect means that mothers can transfer up to six months of their maternity leave to fathers
- with the current paid maternity pay period of 39 weeks it means that three months of the additional paternity leave period will be paid at the same rate as statutory maternity pay and the final three months will be unpaid
- the Government defines the mother's return to work for the purposes of additional paternity leave and additional statutory paternity pay as **"she has ended her maternity or adoption leave and has stopped receiving maternity or adoption pay"**
- parents will be required to self-certify by providing details of their eligibility to their employer and employers and the HMRC will both be able to carry out further checks of entitlement if necessary

There are concerns that introducing a right to additional paternity leave is an unnecessary burden during the current economic climate. There are also concerns that the self-certification provision may be open to abuse. However as the right will not be in force until **April 2011** the Government is of the view that organisations will have plenty of time to prepare.

In addition, because the additional paternity leave is only payable at the rate of statutory paternity pay, it is expected that take up of the new right will be low. Indeed, it is estimated that of the 239,000 fathers who will be eligible for the new paternity rights only an estimated 4% to 8% of those will actually take up the opportunity for additional paternity leave. The Government also estimates that the number of businesses affected will be small, less than 1% of small businesses.

Interestingly, the proposal to extend the period of paid maternity leave from 39 weeks to 52 weeks is still on hold. A spokesperson for the Department for Business Innovation and Skills recently stated that "[we are continuing to review the appropriateness of all new regulations due to come into force in the current economic climate](#)".

---

## More information

If you would like further information, or would like to discuss the potential impact of these decisions on your organisation, please call Debra Gers, or your regular Morgan Cole contact.



**Debra Gers, Associate**

T: 02920 385 487

E: [debra.gers@morgan-cole.com](mailto:debra.gers@morgan-cole.com)

---

---

This publication is © Morgan Cole, and may not be reproduced without our express permission. Recipients may forward this publication and view, print and download the contents for personal use only. The contents must not be used for any commercial purposes and the material in this publication or any part of it is not to be incorporated or distributed in any work or in any publication in any form without the prior written consent of Morgan Cole. Professional advice should always be sought where you require assistance in specific areas of the law. No responsibility can be accepted for any action based on these articles.