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labour and employment lawflash

17 March 2014

UK Children and Families Act Gains Royal Assent

UK employers need to be aware of several key dates for the act's proposed changes.

On 13 March, the Children and Families Act 2014 received Royal Assent. This act will bring a number of changes for employers and working parents, and its Royal Assent now provides a timetable for employers regarding the following planned changes.

Extension of the Right to Request Flexible Working

The first date to note is **30 June 2014,** which is when all employees with 26 weeks of continuous service (as of the date they submit their application) will have the right to request flexible working. Employees will still only be able to make one statutory request in any 12-month period.

Currently, the right to request flexible working is limited to employees with a caretaker responsibility, although some employers have already extended their policies to consider wider requests in anticipation of this new legislation. The existing statutory procedure will be abolished, and employers will simply have a duty to consider requests in a reasonable manner. The Advisory, Conciliation and Arbitration Service has also published a statutory code of practice to provide guidance for employers in this regard.

However, the eight grounds on which a business may reasonably refuse a request for flexible working remain unchanged. They are as follows:

1. The burden of any additional costs is unacceptable to the organisation
2. An inability to reorganise work among existing staff
3. An inability to recruit additional staff
4. The employer considers the change to have a detrimental impact on quality
5. The employer considers the change to have a detrimental effect on the business's ability to meet customer demand
6. A detrimental impact on performance
7. There is insufficient work during the periods the employee proposes to work
8. Planned structural changes, for example, where the employer intends to reorganise or change the business and considers the flexible working changes may not fit with these plans

In addition, an employer has the right to agree to trial periods or temporary changes to see how a change works in practice and what impact it has on the business before confirming that it will become permanent. Whilst it is important that a business is consistent in its approach to flexible working requests in order to minimise any risk of discrimination, it is also accepted that business needs change over time, and each request should be carefully considered before reaching a decision to accept or decline it.

Finally, although the planned introduction of shared parental leave from 5 April 2015 (see below) has provoked some debate about whether it will trigger a rise in the number of requests to work flexibly from fathers/partners/secondary adopters who have taken shared parental leave, in our view, unless the uptake of

shared parental leave is significant, requests are more likely to come from other employees. For example, employers may now start to see requests from employees who wish to work flexibly to enable them to participate in further studies or from other family members, such as aunts, uncles, or grandparents, who may wish to work flexibly to allow them to assist in caring for their nieces, nephews, or grandchildren (where previously this right was limited to parents, adopters, guardians, or foster parents).

Fathers/Partners—Right to Attend Antenatal Appointments

Starting **1 October 2014**, fathers and partners will be able to attend up to two antenatal appointments. These appointments will likely be the two main antenatal scans. This time will be unpaid leave, although it will remain open to employers to continue to provide normal pay. Fathers/partners should be able to provide reasonable notice of these appointments; however, there is no provision that fathers/partners provide supporting evidence for these appointments.

Shared Parental Leave

Starting **5 April 2015**, mothers, fathers, and adopters may opt to take shared parental leave within the first year after their child's birth or adoption placement. This right will apply to parents of babies due or children pending adoption on or after this date. As a consequence, additional paternity leave and pay will be abolished.

The introduction of shared parental leave and pay will provide parents and adopters with more flexibility and choice for how they structure care arrangements during this time. In addition, parents and adopters will be able to take leave at the same time or in alternate blocks of leave if their employers agree. Employees must provide eight weeks' notice of their intent to take shared parental leave and will be able to make up to three notification requests. However, employers will have the right to determine the final leave pattern the employee takes and will not be bound to discuss the shared leave proposals with the other employer.

Employers will need to prepare shared parental leave policies and amend their existing maternity, paternity, and adoption policies to account for this new legislation. In addition, where employers currently provide enhanced maternity or adoption pay benefits, they will need to carefully consider how they propose to structure any enhanced shared parental pay benefits.

We anticipate that there will be a greater administrative burden for employers managing shared parental leave requests. Although take up of this right is likely to be low initially, employers will need to be aware of the risk of less favourable treatments and/or discrimination for fathers, partners, or secondary adopters who choose to take this option. In addition, employers will need to be wary of the potential for fraudulent requests.

Draft shared parental leave and pay regulations were published on 5 March 2014, and the government is currently consulting on these. The government will also publish good practice guides and further guidance in late summer 2014.

Adoption Leave and Pay

Starting **5 April 2015**, adoption leave and pay entitlements will mirror those available to birth parents as follows:

- "Day one" right to take adoption leave (i.e., no qualifying period of service is required).
- Enhanced statutory pay to 90% of salary for the first six weeks and, thereafter, 33 weeks of normal statutory pay.
- Primary adopters will be able to take paid time off to attend five preadoption appointments (of up to 6.5 hours for each appointment).
- Secondary adopters will be able to take unpaid time off to attend two preadoption appointments (of up to 6.5 hours for each appointment).
- Intended parents in surrogacy and "foster to adopt" arrangements will also qualify for adoption leave and pay.

As set out above, employers will need to consider revising their adoption policies and consider any related changes with the introduction of a shared parental leave policy.

Contacts

If you have any questions or would like more information on the issues discussed in this LawFlash, please contact any of the following Morgan Lewis lawyers:

London

Sarah Ash	+44 (0)20 3201 5626	sarah.ash@morganlewis.com
Matthew Howse	+44 (0)20 3201 5670	mhowse@morganlewis.com
Nick Thomas	+44 (0)20 3201 5561	nthomas@morganlewis.com

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