

Sharing the load

Shared Parental Leave



Continuing with our focus on the new rules regarding shared parental leave, *Lawyer Monthly* chats to Matthew Howse & Sarah Ash of Morgan Lewis about the new rules and how they will affect UK business and the economy in general.



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How well do you think the new rules will be received by employers?

Many employers are approaching the new rules with mixed feelings and with a certain amount of trepidation. On a practical level the complex requirements for administering multiple leave requests from a wider workforce population, with potentially only eight weeks' notice of a request for leave is concerning for employers. In addition, employers now realise that their employees could ask for up to three separate periods of leave guaranteeing them a discontinuous leave pattern. This will result in employers having to undertake more detailed business planning to cover these discontinuous absences. Further, employers may incur additional costs to cover these absences to avoid disruption to their business and/or client/customer service. These additional logistical burdens and costs, which will be unavoidable and which are a direct result of the new rules, have not been welcomed by employers.

That said, some employers view the introduction of the new rules as an opportunity to improve employee relations, increase motivation and promote diversity and cultural change within their organisation. They see the new rules as an opportunity to improve their reputations as "employers of choice", to retain talented staff and attract new talent.

It has been reported that only a small percentage of men asked about the new rules, responded positively to them; why do you think the reception from fathers/fathers to be has been less favourable than expected?

There are likely to be two main reasons why the reaction to the new rules has had a less favourable reception from fathers than expected. The first reason is that for many families the financial impact of both parents electing to take Shared Parental Leave (SPL) will be prohibitive and consequently in many cases, even if there is a desire from fathers to play a greater role in the early stages of their child's life, this may not be feasible. In contrast to Statutory Maternity Pay (SMP),

where eligible mothers receive an "earnings related rate" of 90% of average earnings for the first six weeks of their Statutory Maternity Leave (SML), followed by the "prescribed rate" set by the government for the relevant tax year (or the earnings-related rate if lower), for fathers who qualify for Shared Parental Pay (ShPP) there is no provision for any payment at the higher rate and there are currently no plans to introduce this. The Government has also clearly stated that SML and SPL can be distinguished, thereby reducing the risk of an employer facing a sex discrimination claim. As such, there is no requirement for employers to mirror any enhanced maternity pay provisions it currently offers for ShPP and so many employers will only offer the statutory rate for ShPP. Consequently, unless an employer elects to offer an enhanced policy (which fathers that have been questioned may not yet know) it is unsurprising that many working fathers feel that taking this leave will be a luxury they cannot afford.

The second reason is that very few fathers have taken advantage of their existing right to take Additional Paternity Leave (APL). Although this could partly be due to the inflexibility of APL and the fact that APL was even less financially viable for most families, it is also likely that those fathers questioned have been influenced by the existing culture and expectations of their workplace. As the most common position is for mothers' to take maternity leave it will take some time for these perceptions to shift within organisations and for the necessary cultural changes to occur before fathers feel more comfortable in requesting SPL and this stereotype shifts.

How much of a financial impact will the rules have on UK businesses?

In March 2014 the Government produced a Shared Parental Leave Impact Assessment estimating that the annual net cost to business of the introduction of the new rules would be £17.1 million in the first year. It is also expected that as many as 285,000 working couples will be eligible to share leave from April 2015.

However, prior to this new right being introduced it is very difficult to assess whether

this is an accurate estimate. As SPL provides families with increased flexibility with regards to the timing and structure of the leave patterns it seems likely that the number of employees electing to take SPL will increase beyond those that took APL, which would impact the cost estimate. In addition, as the Government has based this figure on all employers offering only statutory ShPP and not offering any enhancement, the costs to UK businesses could in fact be higher.

In addition the Government's assumption that the cost for many employers would be neutral on the basis that the number of women returning early would balance out the number of partners taking leave may not be so for all businesses particularly in a largely male dominated workforce. The make-up of a business' workforce in terms of its age demographics could also impact on the cost for an organisation.

There may well be other related costs for employers associated with managing the administration of taking SPL and ShPP and also in providing cover whilst employees are on SPL leave, which have not been included in this estimate.

The change is being billed by the Government as another way by which to help the economy on its recovery – how much do you agree, if at all, with this prediction?

It is difficult to see how the introduction of SPL will have an immediate and substantial impact in helping the economy recover in the short term. As set out above there are a number of additional costs and concerns that employers legitimately hold with how this new legislation will impact their businesses. Further initial reaction to this new right has also seen mixed responses from employees suggesting that take up levels may well not see the dramatic increase that the Government is hoping for.

What other effects will the new rules have?

If there is a positive response to the new legislation and employers see an increased number of fathers requesting SPL, employers

will hopefully be able to better support and retain successful women and they will be able to return to the workplace at an earlier stage. The new rules should have a positive impact on recruitment decisions as in theory eligible men and women will both have the same opportunities to take SPL. If the take up of this new right proves to be popular employers are likely to see increased levels of flexible working requests. One negative impact of the new rules could be that employers are at risk of increased sex discrimination claims from male employees, although hopefully the number of sex and pregnancy related discrimination claims should reduce.

What challenges will the new rules bring to employment lawyers?

Employment lawyers will need to be prepared to assist clients with the introduction of new policies and to advise them on whether there are benefits for their business in offering enhanced shared parental pay. Given the potential disruption and uncertainty of an employee requesting up to three separate periods of SPL it may be in an employer's interests to offer an enhanced ShPP policy to employees subject to them meeting certain conditions such as taking SPL immediately after OPL and in one continuous block.

It is also possible that employment lawyers will be dealing with an increased number of sex discrimination claims and assisting clients with responses to requests for flexible working.

Is there anything else you would like to add?

With the Government's agenda firmly focused on reducing gender bias in women's careers, and with other policies already in place such as the extension of flexible working to all employees with 26 weeks continuous service, gender pay reporting requirements being introduced and a push for more women to be promoted to FTSE 100 Boards, it seems likely that these new rules are the first but not the last change in this area. With that in mind all employers need to be prepared for further change but the extent to which they embrace it will remain to be seen. **LM**