

flexible WORKING

means getting the work-life balance right for you...



Working mums up and down the country will have, no doubt, breathed a sigh of relief as the Government extended its family friendly policies even further with last year's arrival of the snappily titled "Flexible Working (Eligibility, Complaints and Remedies) Amendment Regulations 2009 SI 2009/595".

These new Regulations essentially extend the right to request flexible working to those of us with children under the age of 17, or if disabled, 18. This means that a whopping 4.5 million employees will now have this new right available to them and given that 68% of mothers work, this is likely to mean that more of us will be able to get our work-life balance right.

For those of you currently enjoying your maternity leave, the thought of your impending return to work may be something that is pushed to the back of your mind, and who could blame you? The thought of returning to work on a full time basis and leaving your precious little darling with a third party may fill you with dread. But the reality is that you probably haven't even had time to think about it...in between the treadmill that is feeds, nappy changes, play groups, school runs and "C Beebies"!

Hopefully, by the fact that you are reading this, you have managed to find a precious five minutes to yourself, so let me take this opportunity to provide you with a brief overview of how to go about making a request to work flexibly.

The onus is on you to start the procedure by making the request to your employer in writing; you must specifically state:

- That it is an application for flexible working under the flexible working provisions contained in the Employment Rights Act ("ERA")
- The change requested eg reduction in hours, job share, compressed hours etc
- The date on which you would like the proposed change to take effect
- The effect, if any, the proposed change will have on your employer and how this might be dealt with; and
- How you satisfy the eligibility criteria i.e. the age of the children within your care

Having received your request, your employer can either agree to it or if not, must hold a meeting with you within 28 days, to which you can take a companion. Within 14 days of the meeting, the employer must notify you of his decision. If he refuses your request, he must confirm the grounds of his refusal and explain why he considers this applies to your situation. The specific grounds for refusal are:

- Burden of additional costs
- Detrimental effect on ability to meet customer demand
- Inability to reallocate work to existing staff
- Inability to recruit additional staff
- Detrimental impact on quality
- Detrimental impact on performance
- Insufficiency of work during the periods the employee proposes to work
- Planned structural changes

You can then appeal against the employer's decision in writing within 14 days. An appeal hearing must then take place again within 14 days of your request. The statutory procedure comes to an end when you receive notification from the employer that your request has been rejected on appeal. At this point your only recourse would be to an employment tribunal.

Although the laws are there to try to ensure that we can have the best of both worlds by successfully juggling our careers and our children, you do not actually have the right to work flexibly, it is simply the right to request the ability to work flexibly. Furthermore, the grounds upon which an employer can refuse such a request are extremely wide, so provided the employer complies with the statutory procedure, it is not difficult for him to avoid having to implement flexible working. How far this legislation actually goes in terms of securing a better work life balance for us all is, therefore, questionable.

However on a more positive note, the trend seems to be that more and more employers are open to and embracing the idea of flexible working, because they have realised the financial benefits that flexible working arrangements have been found to have. Hopefully as we move more into these family friendly times, a better work like balance will be available for all working parents looking to enforce their rights.

If you would like more information on this subject or any other employment law matter, please contact Lisa Campbell of Campbell Solicitors on 0121 270 6343 or visit: www.campbell-solicitors.com



Left holding the baby?



PATERNITY RIGHTS – ARE FATHERS MAKING FULL USE OF THEIR ENTITLEMENT TO PAID LEAVE FOLLOWING THE BIRTH OF THEIR BABY?

This issue is particularly topical at the moment, because following recent government proposals to extend family friendly rights, parents will have more choice as to how they use maternity and paternity leave.

The current law relating to paternity leave is enshrined in S80 of the Employment Rights Act 1996. Fathers who qualify can currently claim 2 weeks statutory paternity leave at a rate of £123.06 per week or 90% of earnings (whichever is the lesser). This leave can be taken in blocks of either a week or two weeks consecutively up to 8 weeks after the birth of the baby. To qualify, fathers must have worked for 26 weeks by the 15th week before the baby is due and must earn more than £84 per week.

However, the law in relation to paternity leave has been extended further with the arrival of the Work & Families Act 2006. This Act contains a raft of family friendly measures designed to encourage a better work life balance.

Perhaps one of the most controversial is the proposal of new regulations to introduce Additional Paternity Leave which means that fathers will be able to play a greater role in the care of their

children during the first year of their lives. Therefore, if a mother decides to cut short her maternity leave and return to work early, she will be able to transfer up to the last 6 months of her maternity leave to the father, with up to 3 months of the remaining leave to be paid to the father. The new regulations will therefore mean the following:

- On top of the current two weeks paternity leave, fathers will be able to take up to 6 months Additional Paternity leave, which can be taken once the mother has returned to work.
- This right is available during the second 6 months of the child's life, which gives parents the option of sharing the leave between them.
- Up to 3 months of the leave may be paid to the father at the same statutory rate as maternity pay (currently £123.06), provided it is taken during the 39 week maternity pay period.
- Parents will have to self certify to their employers that they are eligible to take additional paternity leave and may be subject to further checks by the Inland Revenue.

Subject to parliamentary approval, the government intends that these regulations

become law in April 2010, and will come into effect in April 2011.

How workable these new rights are in practice is however a different story, particularly, considering the fact that according to research carried out less than half of fathers take their current entitlement to paternity leave because they simply cannot afford to.

Bearing in mind that many fathers remain the breadwinner of the family, how realistic is it to think that they could afford to take up to a further 6 months off with such a significant drop in pay? Furthermore, what would be the repercussions for example, in terms of career progression for a father choosing to invoke these new rights?

These are the sorts of concerns that are likely to deter fathers from enforcing their right to take this additional leave, and so although the government's attempts to grant us all a better work life balance are admirable, this particular family friendly measure looks set to fall at the first hurdle.

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