

Update on Work and Families Issues: March 2007

April changes imminent for working parents and carers

Regular readers of our updates will recall that legislative changes introduced by regulations under the Work and Families (Northern Ireland) Order 2006 (and corresponding changes in Great Britain under the Work and Families Act 2006) will take effect in April 2007. Here's a reminder of the key dates:

Changes to **maternity and adoption leave and pay** apply where a child is expected to be born or placed for adoption **on or after 1st April 2007**.

On **6th April 2007**, the **right to request flexible working** will be extended to qualifying employees who have caring responsibilities for an adult spouse, partner, civil partner, near relative or an adult living at the same address.

This bulletin will focus in particular on the right for qualifying employees to request flexible working arrangements from their employer in respect of an adult they look after outside work.

What is flexible working?

Flexible working is a term applied to a wide variety of working arrangements designed to meet the business needs of employers whilst giving employees increased flexibility around the hours they work. This greater flexibility enables employees to better balance the demands of work with priorities at home such as looking after someone for whom the employee has a caring responsibility.

How does the right to request operate and who qualifies?

Employees who've been employed continuously for six months and who have particular caring responsibilities have a right to ask their employer for a flexible working pattern. The employer must consider such a request seriously, and can only turn it down where there are sound business grounds for doing so. Often, even if a request can't be met in the first instance, the employer and the employee will be able to work out a mutually acceptable solution that meets both their needs.

For more information on who qualifies for the right, see the table entry on page 4 and our guidance booklet [ER 36 Flexible working: a guide for employers and employees](#).

How is a request made?

The employee considers what work pattern would best enable him or her better to care for a loved one. He or she then puts the request in writing to the employer, explaining how the request can be accommodated by the employer. The employer considers the request, rejecting it only where there are solid business grounds. If necessary, an employee can appeal the employer's decision.



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Guidance material and forms are available to assist employees and employers with the process; see 'Further information' below.

What sort of flexible working patterns might an employee ask for?

Flexible working arrangements that can be practised are limited only by imagination and, of course, the needs of the business and the employee. A few examples are given below by way of illustration:

Annualised hours: *agreeing the hours worked over a year and organising them to fit in with busier and less busy periods at work.*

Compressed hours: *working normal hours over a shorter period than normal, for example working 10 hours a day over 4 days instead of 8 hours a day over 5.*

Flexi-time: *choice about working hours, usually organised around set core hours.*

Home-working: *working from home, not necessarily on a full-time basis, possibly dividing work between home and the office in a way that best suits both the employee's needs and those of the employer.*

Job-sharing: *sharing a job on a part-time basis with another employee, so that both together cover a full-time post.*

Shift working: *suitable in some lines of work, enabling the employer to operate longer hours and the employee to organise shifts in a way that better meets their caring responsibilities.*

Staggered hours: *allowing the employees to start and finish their day at different times, so more people are there to cover busy periods.*

Term-time working: *allows employees to take unpaid leave of absence during the school holidays.*

Contractual arrangements

The changes in the law discussed in this update set out the legal framework for **statutory minimum** arrangements only. Employers, human resource and personnel managers should by now have considered the implications of the changes for in-house contractual schemes and, in particular, for levels of contractual pay. Employers might also consider flexible working as an option for all of their workforce rather than simply for qualifying employees.

Summary of legislative changes

On pages 3 and 4 you will find an updated version of our summary table setting out the legislative changes being introduced under the Work and Families (Northern Ireland) Order 2006. The updated table takes account of the changes to the law on flexible working due on 6th April 2007.

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Current position	Under the new regulations
Paid maternity leave	
All pregnant employees are entitled to 26 weeks' Ordinary Maternity Leave (OML). However, only women who have worked for their employer for long enough can take a further 26 weeks' Additional Maternity Leave (AML).	All pregnant employees with babies expected on or after 1st April 2007 are entitled to a year's maternity leave consisting of 26 weeks' OML and 26 weeks' AML.
Statutory Maternity Pay (SMP) is paid for 26 weeks . Six weeks is paid at 90% of average weekly earnings and 20 weeks at a flat rate (currently £108.85 a week) or 90% of average weekly earnings if that amount is lower.	For pregnant employees whose baby is due on or after 1st April 2007, SMP is paid for 39 weeks . Six weeks is paid at 90% of average weekly earnings and 33 weeks at a flat rate (currently £108.85 a week) or 90% of average weekly earnings if that amount is lower.
Maternity Allowance (MA) is paid by the state to most employed or self-employed women who don't qualify for SMP. It is paid for 26 weeks at a flat rate (currently £108.85 a week) or 90% of the woman's average weekly earnings if that amount is less.	Where a qualifying woman's baby is due on or after 1st April 2007, MA is paid for 39 weeks at a flat rate (currently £108.85 a week) or 90% of the woman's average weekly earnings if that amount is less.
Paid adoption leave	
All employees adopting a child, who have 26 weeks' service with their employer into the week in which they are notified of having been matched with a child for adoption, are entitled to a year's adoption leave. The leave consists of 26 weeks' Ordinary Adoption Leave (OAL) and 26 weeks' Additional Adoption Leave (AAL).	No change has been made to adoption leave arrangements because, unlike the existing maternity arrangements, all employees who qualify for Statutory Adoption Pay are already eligible for a year's adoption leave.
Statutory Adoption Pay (SAP) is available for 26 weeks at a flat rate (currently £108.85 a week) or 90% of the adopter's average weekly earnings if this amount is lower.	SAP is available for 39 weeks where the child's placement for adoption is expected from 1st April 2007. It is paid at a flat rate (currently £108.85 a week) or 90% of the adopter's average weekly earnings if this amount is lower.
Optional 'keeping in touch days'	
A woman or adopter loses one week's SMP, MA or SAP for each week in which she does any work (however little) for her employer under her contract of service, and risks ending her protected period of maternity leave if she does any work during it.	A woman or adopter, where the birth or placement is expected from 1st April 2007, can go into work for up to 10 mutually agreed 'keeping in touch days' during her maternity or adoption leave, without losing SMP, MA or SAP entitlement for those weeks.

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Current position	Under the new regulations
Period of notice required for early or late return to work	
A woman or adopter is required to give at least 4 weeks' notice to her employer of her intention to return to work earlier or later than previously agreed or notified.	Where a birth or adoption is expected on or after 1st April 2007, a woman or adopter is required to give at least 8 weeks' notice to her employer of her intention to return earlier or later than previously agreed or notified.
Administration of statutory payments	
A woman's Maternity Pay Period normally starts on a Sunday , although it may start on any day of the week if triggered because the baby is early or the mother ill.	Women whose babies are due on or after 1st April 2007 can start their Maternity Pay Period on any day of the week so that maternity leave can be aligned with pay.
An adopter's Adoption Pay Period normally begins on the day of, or the day after, the child's placement for adoption, or on a date up to 2 weeks before the expected placement date.	There is no change to the way in which the Adoption Pay Period is started.
SMP, SAP and Statutory Paternity Pay (SPP) are calculated and paid on the basis of a weekly rate. Weekly payments cannot be split .	SMP, SAP and SPP remain weekly entitlements for pregnant employees or adopters where the child's birth or placement is expected on or after 1st April 2007. However, employers can split weekly payments over 2 pay periods if this makes administration easier.
Flexible working	
Parents with children under 6 or disabled children under 18 can make a request to work flexibly , and their employers have a statutory duty to consider their requests seriously.	From 6th April 2007, employees who care for a spouse, partner, civil partner, near relative* or someone living at the same address also have the right to request flexible working and their employers will have the same statutory duty to consider.
Paid paternity leave / Additional Paternity Leave and Pay	
New fathers can take up to two weeks' paternity leave with Statutory Paternity Pay (SPP) paid at 90% of average weekly earnings or the same standard rate as SMP (£108.85 a week), whichever is the lower amount.	No change in April 2007. However, a new right to Additional Paternity Leave and Pay will be introduced at a later date (not before April 2008). This will allow fathers to take up to 26 weeks' leave and to receive pay where the mother has decided to return to work before the end of her leave and pay entitlement.
Parental leave	
Parents are able to take 13 weeks' unpaid parental leave up to child's fifth birthday. Parents of disabled children able to take 18 weeks' unpaid parental leave up to the child's 18th birthday.	There is no change to parental leave.

* 'Near relative' includes a parent, adopter, guardian, special guardian, step-parent, parent-in-law, child, step-child, son- or daughter-in-law, brother, sister, step-brother or -sister, brother- or sister-in-law, uncle, aunt or grandparent. It also includes relationships of the half-blood.

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Further information, help and advice for employees and their employers

The Department for Employment and Learning has prepared a range of materials to help raise awareness of the new rights. These include:

- Further information on the new rights and responsibilities, available online at www.delni.gov.uk/workandfamilies.
- Leaflets summarising the changes:



- [Maternity leaflet](#)
- [Adoption leaflet](#)
- [Carers' leaflet](#)
- [Employers' leaflet](#).
- Details of existing rights for working parents, together with some very useful links: see [Summary of working parents' rights](#).
- Revised versions of three of our Employment Rights booklets:
 - [ER 16 Maternity Rights – a guide for employers and employees](#)
 - [ER 35 Adoptive Parents – a guide for employers and employees](#)
 - [ER 36 Flexible working: a guide for employers and employees and associated forms](#) which can be used by employees and employers to deal with a request.

Other useful websites and online tools

- The directgov website contains information relevant to employees in Great Britain; however, since the new rights will be essentially the same in both Great Britain and Northern Ireland, employees may benefit from a look at www.directgov.gov.uk/Employment/Employees/fs/en.
- The same site also provides
 - an interactive tool¹ for employees to [work out their maternity leave and pay entitlements](#);
 - a similar tool for employers to [work out the entitlements of a new or expectant mother on their staff](#).

¹ Although this tool is located within the direct.gov website, and is based on provision in Great Britain, corresponding legislation also applies within Northern Ireland

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- Online calculators for Statutory Paternity Pay and Statutory Adoption Pay are available for employers on the HMRC website:
 - Statutory Paternity Pay (birth): www.hmrc.gov.uk/calcs/sppb.htm
 - Statutory Paternity Pay (adoption): www.hmrc.gov.uk/calcs/sppa.htm
 - Statutory Adoption Pay: www.hmrc.gov.uk/calcs/sap.htm.
- More information for employers about record keeping and impending changes to the way statutory payments operate can be viewed on HMRC's website at: www.hmrc.gov.uk/ebu/statutory-payments-changes.htm.
- HMRC will publish any additional information as it becomes available on these pages and will use the 'What's New' and 'Stop Press' pages to let visitors know about any amendments that have been made to the pages' content: www.hmrc.gov.uk/employers/stoppress.htm.
- The Labour Relations Agency (www.lra.org.uk) provides advice and information for both employers and employees on a wide range of employment-related matters through their Enquiry Point – telephone 028 9032 1442 or 028 7126 9639.

Text of the regulations

For those of you interested in the wording of the regulations setting in place the new provisions, relevant links follow:

- The Maternity and Parental Leave etc. (Amendment) Regulations (Northern Ireland) 2006 ([S.R. 2006 No. 372](#))
- The Statutory Maternity Pay, Social Security (Maternity Allowance) and Social Security (Overlapping Benefits) (Amendment) Regulations (Northern Ireland) 2006 ([S.R. 2006 No. 361](#))
- The Paternity and Adoption Leave (Amendment) Regulations (Northern Ireland) 2006 ([S.R. 2006 No. 373](#))
- The Statutory Paternity Pay and Statutory Adoption Pay (Amendment) Regulations (Northern Ireland) 2006 ([S.R. 2006 No. 374](#))
- The Flexible Working (Eligibility, Complaints and Remedies) (Amendment) Regulations (Northern Ireland) 2007 ([S.R. 2007 No. 53](#))