

Leave Entitlements

Briefing Note

The entitlement to time off work has become increasingly more difficult to deal with as differing criteria apply depending on whether it falls within the “family friendly” legislation or other employment legislation.

An employer can give what ever leave entitlement they like to employees by making it a benefit under the employment contract. What an employer cannot do is require an employee to contract out of their statutory entitlement or purport to give them less than their statutory entitlement.

1. **Annual holiday** – All employees are eligible. Full time employees are entitled to 20 days annual paid holiday a year (this includes the 8 Bank Holidays). There is no statutory entitlement to carry holiday over to the next year. It was introduced as a Health & Safety measure and we have finally had clarification via the Courts that employees on long term sick leave are not also entitled to 20 days holiday pay. Part timers get the entitlement pro rata. There has been talk about an amendment to exclude the 8 Bank holidays from the 20-day calculation but that amendment has not (or at least not yet) been agreed.
2. **Ordinary Maternity Leave** – All female employees are eligible to up to 26 weeks OML which can start no earlier than the 11th week before the week the baby is due to be born. There is no minimum period of service required to qualify for OML. During OML the employee gets all their contractual benefits except salary. Subject to certain eligibility criteria SMP is payable for a maximum of 26 weeks.
3. **Time off for Ante-Natal Care** – A pregnant employee who has been advised by their medical specialist (GP registered midwife or registered health visitor) to make an appointment to receive ante-natal care is entitled to take paid time off to attend that appointment
4. **Additional Maternity Leave** – All female employees who have completed 26 weeks continuous service with their employer by the 14th week before the week the baby is due are eligible for AML. ALM is 26 weeks leave starting immediately after the OML ends. Employees taking AML are not entitled to salary or SMP but may be entitled to other benefits. Employers need to be careful here to avoid inadvertent sex discrimination when it comes to payments of bonuses etc.

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5. **Adoption Leave** – An employee adopting a child is entitled to take time off over the period the child is placed with them. The leave period is the same as for OML and there are no service qualifications. Again the employee is entitled to all contractual benefits except salary. The point here, which can be difficult to monitor, is that where a couple are adopting, only **one** is entitled to take Adoption Leave. If both work for the same employer it is straightforward. If that is not the case it can be difficult to check that only one is taking the leave although there will not be many couples that have the resources to enable both to take unpaid leave at the same time.
6. **Paternity Leave** – Fathers can take paternity leave if they are the biological father or are responsible for a child (so this covers an adopting father if the adopting mother is taking adoptive leave) and they have 26 weeks continuous service by the 11th week before the week the child is due to be born (or adopted). They can take either two consecutive weeks or one week. They cannot elect to take odd days amounting to a total of 14 days. They are not entitled to their salary but subject to certain eligibility criteria (the same as apply for SMP) will be entitled to paternity pay.
7. **Parental Leave** – This often gets confused with Paternity Leave. Parental Leave is available to any employee who has at least one years service and are parents of or responsible for a child under the age of 5 (or a child adopted less than 5 years before the request for leave). If the child is disabled the right to leave continues until the child is 18. Each parent can take up to 13 weeks leave (18 weeks for a disabled child) during the period between birth (or adoption) and the child's fifth birthday (fifth year of adoption or child's 18th birthday if disabled). A parent taking Parental leave is not entitled to salary or any statutory payment, i.e. there is no paternity pay provision. The right is for each child, so if the employee has twins they have 26 weeks to play with.
8. **Dependent Leave** – This is a right to take time off to deal with unexpected problems that crop up with a dependent. All employees have the entitlement. A dependent is a spouse, child or parent of the employee as well as someone who lives in the same house as the employee and who is cared for by the employee. It would not cover a tenant, lodger, housekeeper but it would cover the aged Aunt or long time family friend that the employee has taken in and is caring for. The unexpected or sudden problem that it is designed to cater for includes, the dependent who suddenly falls ill or is injured; sudden illness during

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the wife's/dependents pregnancy, the need to make long term care arrangements for an ill or injured dependent; making funeral arrangements and/or attending a funeral; child care arrangements being disrupted and unexpected incidents involving a child at school.

The right to time off however is limited to sorting out the immediate emergency. It does not mean an employee is entitled to say they now have to continue to care for e.g. the sick child and will be off all week. Employees who take Dependent Leave are not entitled to salary and there is no statutory payment they can claim.

The above are the more common leave entitlements but don't forget –

1. Paid leave to carry out duties or undergo training as a TU Official of a recognised Trade Union.
2. Paid leave to perform duties or undergo training as a Health & Safety Rep.
3. Paid leave to perform duties or undergo training as a trustee of an occupational pension scheme.
4. Unpaid leave to carry out activities as a member of a recognised Trade Union.
5. Unpaid leave to carry out public duties – e.g. jury service, acting as a JP etc.
6. If the employee has two years service and been given notice of termination by reason of redundancy, they are entitled to up to 40% of a weeks pay whilst on leave looking for work or making arrangements for training.

This is not an exhaustive list either, so if someone asserts an entitlement to leave in circumstances you don't recognise, check before dismissing (or indeed permitting) it.

Also be aware the Civil Partnership Act 2004 came into force on Dec 05 and you will now need to view same sex partners who have formally registered the relationship as a "marriage" in the same way as the conventional spouse.

If you wish to discuss the issues above further in relation to your particular circumstances please contact Frankie Tierney on 01276-686222.