

## FAMILY FRIENDLY RIGHTS - THE NEW REGULATIONS



**This Update focuses primarily on the Maternity and Parental Leave etc. and the Paternity and Adoption Leave (Amendment) Regulations 2006 which came into force on 1 October.**

### Overview of the Regulations

These Regulations represent the outcome of a governmental review of existing rights for parents and extend the current statutory support for working parents. However, they apply solely to employees whose expected week of childbirth (EWC) is on or after 1 April 2007 and those who expect to have a child placed for adoption on or after 1 April 2007 regardless of when the child is born or placed. This means that an employee who has an EWC of 18th or 25th March but whose child is actually born on 1st April or later will not benefit from the new regime.

The key changes are as follows:-

### Maternity Leave

The service requirement for Additional Maternity Leave (AML) has been removed. This means that all pregnant employees who are entitled to Ordinary Maternity Leave (OML) are automatically entitled to AML, giving them an entitlement to a total of 52 weeks leave.

### Statutory Maternity Pay (SMP) and Statutory Adoption Pay (SAP)

The period in which SMP and SAP is payable is extended to 39 weeks which essentially means that of a potential period of leave of 52 weeks only the final thirteen will be unpaid.

### 'Keeping In Touch' (KIT) Days and Reasonable Contact

Employees are now able, with their employer's agreement, to work for up to 10 days whilst on maternity or adoption leave without that leave coming to an end. These KIT days are not a right on either the part of the employer or the employee and an employee must not be subjected to detriment simply because they have declined to take up an invitation by the employer to undertake KIT days. 'Work' in this context does not have to be the employee's regular activity but could include training or other activity which assists them in keeping in touch with the workplace. Pay in respect of KIT days is a matter for agreement between the employer and employee but does not affect SMP or SAP. The Regulations also clarify that employers and employees may have 'reasonable contact' with each other during these period of leave without risk that such contact brings the leave to an end.

### Early Return from Maternity or Adoption Leave

The current period of 28 days notice of early return from maternity or adoption leave is extended to 8 weeks. If an employee gives insufficient notice the employer may postpone the return for the full notice period but cannot postpone it beyond the end of the leave period.

### Removal of Small Employer Exemption

Employers with five or fewer employees will no longer be exempt from automatically unfair dismissal claims where they refuse to allow an employee returning from AML or Additional Adoption Leave (AAL) to return to the same job or a suitable alternative job, regardless of the size of the employing entity.

### The way Forward

Some Employers may take a view regarding extension of these new rights to employees who are not automatically entitled to benefit from these new Regulations. However, that will be a contractual matter between the employer and the employee. SMP paid to 39 weeks for an unentitled employee will not be able to be recovered by the employer.

Further changes are expected to be introduced later this year with regard to rights of carers to ask for flexible working arrangements. It is also likely that SMP and SAP will, by 2009, be extended to the entire 52 week periods of leave. We will circulate further updates on these matters as they develop.

If you require any assistance in reviewing your current policies, procedures or practices in light of the above changes please do not hesitate to contact any member of our Employment Law Division whose details are:-

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