Compulsory Maternity Leave

- An employee entitled to OML shall not be permitted by her employer to work for a period of 2 weeks commencing with the day on which childbirth occurs (s.72(1) ERA) and Reg 8 MPL Regs).
- This is extended to 4 weeks for factory workers (s.205 Public Health Act 1936). This is described as Compulsory Maternity Leave.
- Failure to comply with this prohibition renders the employer liable on summary conviction to a fine (s.72(5) ERA 1996).

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Additional Maternity Leave (AML)

- AML follows immediately after the end of OML and lasts for up to a further 26 weeks, giving a total entitlement of 52 weeks' SML.
- All employees who qualify for OML automatically qualify for AML, regardless of their length of service (Reg 4 MPL Regs, as amended by Regs 2 and 5 MPL Amendment Regs).

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NOTIFICATION

- The employee can choose to start her maternity leave on any day, provided that it is not before the beginning of the 11th week before her Expected Week of Childbirth (EWC), which is around 29 weeks into the pregnancy.
- Any date thereafter can be chosen for the maternity leave to commence it is even possible to work until the date of birth.
- A pregnant employee must inform her employer of her pregnancy by the 15th week before the EWC.

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NOTIFICATION (CONTINUED)

The employee must notify (preferably in writing) the employer of:

- the fact that she is pregnant;
- the EWC;
- the date when she intends her OML to start, which must be a date no earlier than the beginning of the 11th week before the EWC (Reg 4(1) MPL Regs).
- If requested by the employer, the employee must also produce a certificate from a doctor or midwife (a MAT B1) confirming her EWC (Reg 4(1)(b) MPL Regs).
- This certificate must be given to the employer for the employee to qualify for Statutory Maternity Pay (Reg 22 SMP Regs).

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RIGHTS & OBLIGATIONS DURING MATERNITY LEAVE

The contract of employment continues throughout OML and AML, unless either party expressly ends it or, in the case of a fixed-term contract, it expires without renewal.

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Rights during maternity leave

" During SML, an employee is entitled… to the benefit of the terms and conditions of employment which would have applied if she had not been absent except for the terms as to remuneration (s.71(4)(a) ERA 1996 and Reg 9 MPL Regs).

" Therefore, all her other benefits (such as the accrual of contractual annual leave, health club membership, permanent health insurance or use of a company car) will continue.

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Obligations during maternity leave

During SML, an employee is bound by any express and implied obligations arising under her terms and conditions, except for those which are inconsistent with her right to be absent from work (Reg 9(1)(b) MPL Regs) regardless of whether they are on OML or AML.

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Remuneration

- Remuneration (that is, sums payable to the employee by way of wages or salary) is not payable during OML or AML (Reg 9 MPL Regs).
- The general rule is that a woman on maternity leave is in a unique position and therefore cannot claim equal pay and benefits with a man (or a woman) who is working (Gillespie v Northern Health and Social Services Board [1996] IRLR 214 (ECJ)).
- She will however be entitled to benefit from any pay rise which is awarded between the time for calculating her Statutory Maternity Pay (SMP) and the end of her SML, so that her SMP may need to be recalculated. However, she has no right to receive sick pay during her maternity leave.

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Pensions

- Pension contributions must be made by the employer in full if the employee is receiving maternity pay (whether statutory or contractual) during OML (para 5, Sch 5, Social Security Act 1989).
- The employer may not make any reduction to reflect the fact that a woman is being paid less than her normal pay.
- Any employee contributions will be reduced pro rata to her actual pay.

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REASONABLE CONTACT & KIT DAYS

- Keeping in Contact (KIT) days were introduced in response to concerns that the law did not do enough to encourage effective communication between employer and employee during maternity leave.
- An employer may make reasonable contact from time to time during an employee s maternity leave (Reg 12A(4) MPL Regs).

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Points to note:

- A woman may work during maternity leave for up to ten days for her employer (KIT days) without bringing her OML or AML to an end (Reg 12A(1) MPL Regs).
- During KIT days, employees can carry out work for the employer and may be paid for this.
- Any day on which work is done during the maternity pay or maternity leave period will count as a whole KIT day.
- An employer cannot require an employee to work a KIT day during maternity leave and neither does an employee have the right to work KIT days without her employer's agreement.
- KIT days cannot be taken during the two-week compulsory maternity leave following the birth of the baby (Reg 12A(5) MPL Regulations).

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RIGHT TO RETURN TO WORK AFTER MATERNITY LEAVE

- If the employee returns after OML or AML, she will be entitled to return to the same job in which she was employed before her absence (Reg 18(1) and (2) MPL Regs).
- Her terms of employment must be the same as, or not less favourable than, they would have been had she not been absent (Reg 18A(1)(b)).
- She will be entitled to benefit from any improvements as if she had not been away, such as a pay rise or any other changes to her terms and conditions for her grade or level.

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RIGHT TO RETURN (CONTINUED)

- The employer may be able to show that for some reason (other than redundancy) that it is not reasonably practicable to permit the employee to return to the same job (for example, if there has been a re-organisation).
- See Raithatha v Addleshaw Goddard (ET/2406019/05).
- By contrast, permanently hiring a temporary maternity leave replacement before the claimant returns to work, and then offering the returning employee another job at the same rate of pay, is unlikely to be justified (Stelfox v Westco Building Components Ltd (ET/15083/95)).

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REDUNDANCY & DISMISSAL

All employees, regardless of how long they have worked for their employer, are entitled not to be dismissed simply because they are pregnant, or have given birth.

If an employee is dismissed (which includes non-renewal of a fixed-term contract) or selected for redundancy, where the only (or principal) reason for her dismissal or selection is related to pregnancy, birth or maternity leave, the dismissal will be automatically unfair under s.99 of the ERA 1996.

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REDUNDANCY & DISMISSAL (CONTINUED)

It could also constitute pregnancy and maternity discrimination if:

- There is no genuine redundancy situation. For example, in Rees v Apollo Watch Repairs [1996] ICR 466, a woman was found to be have been discriminated against when she was dismissed, ostensibly for redundancy, but where the real reason was that her employer found that the person who covered her maternity leave was more efficient.
- There is a genuine redundancy, but the fact that the employee has given birth or is on maternity leave has been a factor in her selection.
- She is not consulted or adequately consulted because she is on maternity leave.

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Discrimination

Any other form of discrimination against a female employee for the sole reason of being pregnant or taking maternity leave is also unlawful. This might be:

- changing her contract without her consent (i.e. reducing working hours)
- giving her unsuitable work
- writing unfavourable staff reports
- treating time off for pregnancy as a disciplinary issue

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Redundancy and dismissal during maternity leave

- If an employee is dismissed during her maternity leave, the leave will come to an end. However, if she is entitled to Statutory Maternity Pay (SMP) she will continue to receive it for the remainder of the SMP period as SMP is not dependent on remaining an employee (s.164 SSCBA 1992).
- An employee who is made redundant during OML or AML is entitled to redundancy pay as if she were not on maternity leave because statutory redundancy payment is calculated with reference to a week's pay (ss.221 and 224 ERA 1996).

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PAY – STATUTORY MATERNITY PAY (SMP)

An employee will be entitled to SMP if:

- She has been continuously employed for at least 26 weeks ending with the 15th week before the expected date of birth.
- Her normal weekly earnings are not less than the Lower Earnings Limit for National Insurance purposes.
- She has reached the 11th week before the expected week of birth, or have recently given birth.
- She gives the employer at least 28 days notice (or, if that is not reasonably practicable, as much notice as is reasonably practicable) of the date she intends SMP to start.

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PAY – STATUTORY MATERNITY PAY (SMP) – (CONTINUED)

- She supplies a MAT B1 from a midwife or doctor, confirming the date of her EWC. This must be given to the employer either before the birth, no more than 3 weeks after the birth or, if she has good cause for delay, as soon as reasonably practicable.
- She has ceased work.

(S.164, SSCBA 1992 and Reg 22 SMP Regs)

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Employee?

An employee for SMP purposes is wider than the standard definition in the ERA 1996 and includes office-holders (such as a company director) whose earnings are taxed in the same way as employees (s.171(1) SSCBA 1992) and Crown servants (s.169, SSCBA 1992).

It also includes those non-employees who are employed earners for National Insurance purposes, such as agency workers other than models and homeworkers (see the Social Security (Categorisation of Earners) Regulations 1978 (SI 1978/1689)).

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Calculation of Earnings

- Normal weekly earnings are calculated as a weekly average of the employee s total gross earnings from the employer and any associated employers during a reference period.
- This relevant period ends with the last normal pay day on or before the end of the Qualifying Week and begins after the last normal pay day at least 8 weeks earlier (Reg 21(3) SMP Regs).
- Earnings are calculated gross and include anything that is treated as earnings for national insurance purposes - that is, any remuneration or profit derived from employment (Reg 20(2) SMP Regs).
- This will include any bonus, commission and overtime payments, whether contractual or not. A woman's SMP entitlement can be significantly increased if an annual bonus is paid during the relevant period for assessing normal weekly earnings.

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PAYMENT OF SMP

SMP is payable at two different rates:

- First 6 weeks: the earnings-related rate (90% of the employee's normal weekly earnings)
- Remaining 33 weeks: the prescribed rate or the earnings-related rate, whichever is lower (s.166 SSCBA 1992)

The prescribed rate is set by the Government for each tax year. For the years 2012-13 it is £135.45.

Employers are entitled to recover all or most of payable (or paid) SMP from HMRC (see the Statutory Maternity Pay (Compensation of Employers) and Miscellaneous Amendment Regulations 1994 (SI 1994/1882), as amended).

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HEALTH & SAFETY

- Employers have special duties in respect of new or expectant mothers in the workplace. In summary, the law requires employers:
- To assess the workplace risks posed to new or expectant mothers or their babies. This often arises with breastfeeding where Regs 25(4) and (5) of the Workplace (Health, Safety and Welfare) Regs 1992 (SI 1992/3004) (MHSW Regs) requires employers to provide suitable facilities for breastfeeding mothers to rest (including facilities to lie down) and to provide adequate rest and meal breaks. The toilets are not "suitable facilities".
- To alter the employee's working conditions or hours of work to avoid any significant risk (Reg 16(2) MHSW Regs)
- Where it is not reasonable to alter working conditions or hours, or would not avoid the risk, to offer suitable alternative work on terms that are not "substantially less favourable" (Reg 16(3) MHSW Regs and s.67 ERA 1996).
- Where suitable alternative work is not available, or the employee reasonably refuses it, to suspend the employee on full pay (Reg 16(3) MHSW Regs and s.67 ERA 1996).

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PATERNITY

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KEY LEGISLATION

- The Employment Rights Act 1996 (ERA 1996)
- The Maternity and Parental Leave etc Regulations 1999 (SI 1999/3312) (MPL Regulations)
- Paternity and Adoption Leave Regulations 2002 (SI 2002/2788) (PAL Regulations)
- Additional Paternity Leave Regulations 2010 (SI 2010/1055) (APL Regulations)
- Equality Act 2010 (EqA 2010)

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OVERVIEW

There are 4 basic rights relating to paternity:

- Right to paternity leave
- Right to return to work after paternity leave
- Protection from detriment and dismissal
- Right to paternity pay

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ORDINARY PATERNITY LEAVE

OPL is governed by the Paternity and Adoption Leave Regulations 2002 (SI 2002/2788) (PAL Regs).

Purpose

Eligible employees are entitled to take OPL for the purpose of caring for the child or supporting the mother (s.80A(1) ERA 1996 and Reg 4(1) PAL Reg) or for the purpose of caring for the child or supporting the child's adopter (s.80B(1) ERA 1996 and Reg 8(1) PAL Regs).

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The eligibility criteria

OPL is available only to eligible employees not to other types of workers or the self-employed. To be eligible to take OPL, an employee must have:

Sufficient service with their employer The employee must have been continuously employed by their employer for a period of not less than 26 weeks ending with the week immediately prior to the 14th week before the child s expected week of childbirth.

Specified relationship with child or child s mother - The employee must either be the child s father or be the spouse, mother s civil partner or partner (Reg 4(2)(b) PAL Regs).

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The eligibility criteria (Continued)

- Responsibility for the child s upbringing If the employee is the child s biological father, he must have, or expect to have, responsibility for the child s upbringing (Reg 4(2)(c)(i) PAL Regs). If the employee is not the child s biological father but is married to, the civil partner of or the partner of the child's mother, the employee must have or expect to have the main responsibility (other than that of the child s mother) for the child s upbringing (Reg 4(2)(c)(ii) PAL Regs).

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The length of OPL and when it can be taken

The statutory entitlement to OPL is to one period of leave and the employee is entitled to choose between taking that period as either 1 week or 2 continuous weeks leave (Reg 5(1) PAL Regs).

In South Central Trains Limited v Rodway [2005] EWCA Civ 443, the Court of Appeal confirmed this must be taken in a whole week not single days.

While an employee s entitlement applies to each child in respect of which the employee qualifies as an eligible employee, Reg 4(6) PAL Regs provides that an employees entitlement to leave ... shall not be affected by the birth, or expected birth, of more than one child as a result of the same pregnancy

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Notice and evidential requirements

An employee must give their employer written notice of their intention to take OPL, by giving details of:

The EWC (Reg 6(1)(a)).

The length of OPL they intend to take (that is, either 1 week or 2 consecutive weeks) (Reg 6(1)(b)).

The date on which they want their OPL to start, in accordance with the options set out in the Regulations (see above) (Reg 6(1)(c)).

In order to ensure that the employer has sufficient time to accommodate the employee s leave, these details have to be provided to the employer no later than the 15th week prior to the EWC (Reg 6(2)(a)).

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The effect of OPL

During OPL, whether taken on the birth of a child, employees are entitled to benefit from their usual contractual terms (Reg 12(1)(a) PAL Regs and s.80C(1) ERA 1996) except for those terms relating to remuneration (Reg 12(2) PAL Regs and s.80C(5)(b) ERA 1996).

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Remuneration

Remuneration is defined as only sums payable to an employee by way of wages or salary (Reg 12(3) PAL Regs). Therefore, the employee's contract of employment continues during the period of OPL (unless, of course, it is expressly terminated by either employee or employer).

The employee must be treated by the employer as if they were not absent (Reg 12(1)(a) PAL Regs). In practice, this obligation is mutual: with the exception of their attendance at work, the employee's obligations to their employer continue in the same way as the employer's obligations to the employee (for example, the duty of fidelity).

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The right to return from OPL

- An employee who has exercised their right to take OPL usually has the right to return to the same job that they were employed to do immediately prior to taking the leave (Reg 13(1) PAL Regulations).
- This right depends on the OPL having been either an isolated period of leave (Reg 13(1)(a)) or the last of two or more consecutive periods of statutory leave (not including additional maternity or a period of parental leave exceeding four weeks) (Reg 13(1)(b)).
- If neither Reg 13(1)(a) nor (b) applies, and it is not reasonably practicable for the employer to return the employee to the job they were doing before their OPL, the employer is entitled to propose an alternative job for the employee to return to which is suitable and appropriate in the circumstances (Reg 13(2)).
- An employee has the right to return on terms and conditions not less favourable than those which would have applied had they not taken OPL.

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ADDITIONAL PATERNITY LEAVE (APL)

- From 6 April 2010 eligible employees have the right to take Additional Paternity Leave (APL). This is governed by the Additional Paternity Leave Regulations 2010 (SI 2010/1055) (APL Regulations).
- The purpose of APL is to enable the employee to care for the child (Reg 4(1) APL Regs).

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Eligibility Criteria

The eligibility requirements for APL under Reg 4(2) mirror those for OPL.

The employee must:

- Have been continuously employed for at least 26 weeks ending with the relevant week (the week immediately preceding the 14th week before the child's expected week of birth).
- Remain in continuous employment with that employer until the week before the first week of their APL.
- Be the child s father, or married to, the partner or civil partner of the child s mother.
- Have, or expect to have, the main responsibility (apart from the child s mother) for bringing up the child (Reg 4(2) APL Regs.)

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Eligibility Criteria (Continued)

In addition, for the employee to be eligible to take APL, the child s mother must under APL Reg 4(5):

- As a result of having become pregnant with the child, have been entitled to one or more of: (i) maternity leave; (ii) statutory maternity pay; or (iii) maternity allowance; and
- Have returned to work (or be treated as having done so).

A mother is treated as having returned to work where the SML has been brought to an end and any entitlement to statutory maternity has ceased by reason of the mother having returned to work for their existing or a new employer (Reg 25 APL Regs).

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Notice and evidential requirements

Under Reg 6(1) APL Regs, an employee must comply with notice and evidential requirements at least 8 weeks before the date on which they wish their APL to start.

The employee must give their employer:

- A written leave notice specifying: the week which was the child s EWC; the child s date of birth; and the employee s chosen start and finish dates for their period of APL.

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Notice and evidential requirements (Continued)

- A signed employee declaration stating that: the purpose of their APL will be to care for the child; they are either the child s father or married to, the partner or civil partner of the child s mother; and that they have, or expect to have, the main responsibility (apart from that of the child s mother) for bringing up the child.
- A written mother declaration from the child s mother stating: the mother s name, address and national insurance number; the date on which she intends to return to work; that the employee is either the child s father or is their spouse, partner or civil partner; that to her knowledge the employee is the only person exercising the entitlement to APL in respect of the child; and that she consents to the employer processing the information that she has provided in the declaration.

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Provisions applicable during APL

During APL an employee is:

- Entitled to the benefit of all their employment terms, except those about remuneration, which would have applied had the employee not been absent; and
- Bound by any obligations arising under their employment terms with the exception only of those which are inconsistent with the employee caring for the child (s.80C(1)(b) ERA 1996 and Reg 27(1) APL Regs). Remuneration is limited to sums payable by way of wages or salary (Reg 27(3) APL Regs).

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Working during APL: KIT days

- These are similar to the provisions that apply to women during maternity leave.
- Employees may work during APL for up to 10 KIT days for their employer without bringing the APL to an end (Reg 26(1) APL Regs).
- Work means any work done under the employee s contract and may include training or any activity undertaken for the purposes of keeping in touch with the workplace (Reg 26(3) APL Regs). Any work carried out on any day equates to a day s work (Reg 26(2), APL Regs).
- The Regulations do not give employers the right to require the employee to carry out work and do not give the employees the right to work during their APL (Reg 26(5) APL Regs).

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Redundancy and dismissal during APL

If an employer proposes terminating an employee s employment by reason of redundancy during APL but there is a suitable alternative vacancy for the employee with either the employer or a successor or associated employer, the employee is entitled to be offered that alternative employment before the end of their employment under their existing contract.

The new contract must take effect immediately on the end of the employee's existing contract and must be such that:

- The work to be done under it is of a kind which is both suitable for the employee and appropriate for the employee to do in the circumstances; and

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Redundancy and dismissal during APL (Continued)

- The provisions as to capacity and place in which the employee is to be employed and as to the other terms and conditions are not substantially less favourable to the employee than if they had continued to be employed under their previous contract (Reg 28(3) APL Regs).
- Failure to offer the alternative employment to the employee will result in their dismissal being automatically unfair. These provisions effectively give the employee priority over other employees in the redundancy exercise.

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The right to return after APL

An employee is entitled to return from APL to the job in which they were employed before their leave as long as their period of APL lasted no longer than 26 weeks and was either an isolated period of leave or the last of 2 or more consecutive periods of statutory leave, which did not include any period of AML or a period of parental leave of more than 4 weeks (Reg 31(1) APL Regs).

Otherwise the employee is entitled to return to the job in which they were employed before their leave unless it is not reasonably practicable for the employer to enable them to do so. If that is the case, the employee is entitled to return to another job which is both suitable for them and appropriate for them to do in the circumstances (Reg 31(2) APL Regs).

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The right to return after APL (continued)

The employee s right to return under Reg 31 is a right to return:

- With their seniority, pension rights and similar rights as they would have been had the employee not been absent; and
- On terms and conditions no less favourable than those which would have applied had the employee not been absent. (Regulation 32(1), APL Regulations.)

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PROTECTION FROM DETRIMENT AND DISMISSAL

Employees are protected from detrimental treatment and dismissal for reasons connected with their rights to OPL and APL.

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Detriment

- An employee has the right not to be subjected to any detriment by their employer for a prescribed reason related to paternity leave (s.47C(1) and (2)(ca) ERA 1996).
- The prescribed reasons are set out in relation to OPL in Reg 28 PAL Regs and in relation to APL in Reg 33 APL Regs.
- In summary, protection is triggered if an employee suffers detrimental treatment because they took or sought to take OPL or APL, because their employer thought they were likely to do so, or because they either wished or refused to undertake KIT days while on APL.

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Dismissal

Under s.99 of the ERA 1996 a dismissal is automatically unfair where the reason (or principal reason) for it is a prescribed reason relating to OPL (Reg 29 PAL Regs) or APL (Reg 34 APL Regs).

The prescribed reasons are where the dismissal is connected with the fact that the employee took, or sought to take, OPL or APL, or because their employer thought they were likely to do so, or because they wished or refused to undertake KIT days while on APL. Since a dismissal in those circumstances is automatically unfair, the employer will be deemed to have unfairly dismissed the employee unless it can prove that the reason for dismissal was not the exercise of paternity leave rights.

It is important to note that an employee claiming unfair dismissal under s.99 of ERA 1996 does not need 1 year's continuous service to be eligible to bring their claim (s.108(3)(b) ERA 1996).

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Non-applicability?

S.99 of the ERA 1996 will not apply in the limited circumstances where:

- It is not reasonably practicable (for a reason other than redundancy) for the employer to permit the employee to return to a job which is suitable for the employee and appropriate for the employee to do in the circumstances (Reg 29(5)(a) (OPL); Reg 34(5)(a) (APL)).
- An associated employer offers the employee a suitable and appropriate job (Reg 29(5)(b) (OPL); Reg 34(5)(b) (APL)).
- The employee accepts or unreasonably refuses the offer (Reg 29(5)(c) (OPL); Reg 34(5)(c) (APL)).

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Remedies

An employee who considers that they have suffered detrimental treatment under s.47C of ERA 1996 can make a claim in an Employment Tribunal (s. 48 ERA 1996). The remedies for such a claim are:

- A declaration that the claim is well founded (s.49(1)(a) ERA 1996).
- An award of compensation (s.49(1)(b) ERA 1996) of such amount as the Employment Tribunal considers just and equitable in all the circumstances (s.49(2) ERA 1996).
- If an employee claims unfair dismissal under s.99 ERA 1996, the remedies available are those set out in ss. 111 to 132 ERA 1996.

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PAY

Ordinary Statutory Paternity Pay (OSPP)

In addition to the eligibility criteria already outlined, for OSPP, the employee must have received normal weekly earnings for the period of 8 weeks ending with the relevant week (week immediate before 14th week before the EWC s.171ZA(3) SSCBA 1992) that are not less than the lower earnings limit in force at the end of the relevant week.

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Period

OSPP is payable for a period of 1 or 2 consecutive weeks within the qualifying period .

- The qualifying period is 56 days beginning with the date of the child s birth (s.171ZE(3) SSCBA 1992) and, to receive OSPP, the employee must be taking OPL to care for the child or support the child s mother.
- The employee will not receive OSPP for a statutory pay week if, at the beginning of the week, that was not the purpose for which they were taking OPL (s.171ZE(4) SSCBA 1992).
- Further - an employee entitled to OSPP on birth may choose to begin the statutory pay period on any one of:
- The date on which the child is born or, where the employee is at work on that date, the following day.
- A date falling a particular number of days after the date on which the child is born, as the employee may specify.
- A predetermined date, as specified by the employee, which is later than the first day of the EWC.

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Weekly rate of OSPP

OSPP is payable at either a fixed rate or earnings-related weekly rate set out in the Weekly Rates Regulations, which may apply different rates to different cases (s.171ZE(1) SSCBA 1992).

The weekly rate of OSPP is the lesser of:

- The prescribed rate set by the government each tax year (£135.45 for the years 2012-13).
- 90% of the employee's normal weekly earnings (Reg 3 Weekly Rates Regulations)

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Additional Statutory Paternity Pay (ASPP)

The eligibility requirements are as for OSPP, plus:

- The employee must be taking APL in order to care for the child during the ASPP period (s.171ZEA(2) SSCBA 1992).
- The child s mother must also have been entitled to SMP as a result of the child s birth and must be treated as having returned to work on a date which falls after the end of a prescribed period beginning with the birth of the child but at least 2 weeks before the end of their SMP period.

ASPP is payable for a period of up to 26 weeks. It begins on the date notified by the employee, as long as by that date the child is at least 20 weeks old; and the child s mother has returned to work. It ends on the date notified by the employee, or, if earlier: the end of the mother s maternity allowance or statutory maternity pay period; or the child s first birthday.

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PART II – THE PROPOSED CHANGES

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CONSULTATION ON MODERN WORKPLACES

On 16 May 2011, the Government published its Consultation on Modern Workplaces which proposed a new system of shared flexible parental leave. Subject to affordability the new system will be introduced in April 2015.

The Government has stated that it is committed to delivering a system of parental leave which is fit for modern workplaces and which addresses the key challenges of working parents both for families and employers.

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CRITIQUE OF THE CURRENT SYSTEM

Aspects of the current system that work well

- Women have a long period of maternity leave
- Strong legal protection against unfavourable treatment

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Perceived problems with system

- The difference between 52 weeks maternity leave and 2 weeks paternity leave entrenches the assumption that the mother is the child s primary carer, which is not always the case.
- Also a woman taking 52 weeks maternity leave runs risk of being forgotten by her employer.

  For example, she is more likely to be made redundant and more likely to miss out on promotion or pay rises (even though this would be discrimination).

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PROPOSED SYSTEM OF PARENTAL LEAVE

The key proposals are as follows:

- Instead of women being entitled to 52 weeks maternity leave themselves they will be entitled to 18 weeks paid maternity leave to be taken around the time of the birth (first 6 weeks at 90% of pay thereafter standard rate).
- The remaining 34 weeks and additional paternity leave would be reclassified as Parental Leave - the really big difference is that this Parental Leave can be shared between the parents as they choose.
- Additional 4 weeks Parental Leave provided for the exclusive use of each parent although if the parent fails to use it, they will lose it.
- Provisions for employers/employees to agree that Parental Leave can be taken part-time / concurrently / in blocks of leave, to suit the individual needs of the parent.
- Fathers will also be entitled to unpaid leave for some antenatal appointments.

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RATIONALE

Whole emphasis is on parents being able to agree between themselves who takes the leave after the first period reserved for the woman after the child s birth.

The proposals also encourage fathers to take time off.

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Additional paternity leave under the new system

- This will be replaced by Parental Leave. At present a father can only take leave once the mother has returned to work and that is only 20 weeks after the birth. The proposals are that both parents can take leave at the same time and earlier than 20 weeks after the birth.
- Additional paternity leave will be replaced by 34 weeks Parental Leave to be shared and to be shared with greater degree of flexibility, as at present additional paternity leave cannot be taken part-time or in chunks.
- This will be extended to all working fathers including self-employed and those that change jobs during the pregnancy.

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Profile

Tom Poole was called to the Bar in 2001, having gained a First Class Honours Degree in Law from St Catharine s College, Cambridge. Tom s practice covers all areas of general commercial and business law, including agency, contractual disputes of all types, insolvency and asset recovery. He also has experience of domestic and international arbitration.

A significant part of Tom s practice is employment law and he regularly appears in employment tribunals, the EAT and the High Court representing both employers and employees. He has experience in all the main areas of dispute and has a particular interest in the law relating to dismissal and discrimination.

Tom s practice is increasingly focused on Public Law work, having been appointed to the Attorney General s B Panel of Junior Counsel to the Crown in February 2010 (previously on the C Panel since February 2006). He is regularly involved in cases involving constitutional and human rights, particularly in the Privy Council.

Tom has considerable experience of personal injury law (both claimant and defendant), including claims arising from accidents abroad.

Tom contributes to the Solicitors Journal and the New Law Journal. He edits the Public Law bulletin produced by Chambers and contributes to bulletins in personal injury, travel, commercial and employment. He leads advocacy training skills seminars run by chambers for firms of solicitors.

For further information please contact James Donovan at 3 Hare Court 020 7415 7800.

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END

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