

Adoption and Maternity Leave changes (and what happens about pensions?)

Under new regulations, employees on Additional Adoption Leave (AAL) will be entitled to the same contractual benefits as those on Ordinary Adoption Leave (OAL) where the child is expected to be placed for adoption on or after 5 October. The changes correspond to amendments to the Sex Discrimination Act 1975 where employees whose babies are due on or after 5 October 2008 will also be entitled to the same contractual benefits (such as gym membership, use of a company car or mobile telephone, or contractual holiday entitlement) during Additional Maternity Leave (AML) as during Ordinary Maternity Leave (OML).

The changes mean that throughout the whole of statutory maternity or adoption leave all rights and benefits continue except those which relate directly to the pay ("wages or salary") elements of employment. Car allowances and bonuses may be different depending on the terms, since they may count as "wages or salary". It should be noted that bonuses relating to a time when a woman is on "compulsory maternity leave" (the two weeks starting with the day of the baby's birth, four weeks for factory workers) must be paid (pro rata) whatever the nature of the bonus.

Those taking Additional Maternity Leave or Additional Adoption Leave will also be entitled to return from that leave with the same seniority, pension rights and similar rights as they would have been had they not been absent. Any benefits based on length of service will have to include the period of absence in the service calculation (previously a period of AML, for example, could be discounted).

What happens about pensions?

The position in relation to what pension contributions should be made during leave has not been entirely clear. The basic position is that an employee continues to be entitled to pension contributions made by the employer as if he or she were receiving full pay during the entire period he or she is on **paid** leave (whether statutory or contractual). Due to the extension of Statutory Maternity Pay and Statutory Adoption Pay to 39 weeks this will often run into the period of AML or AAL and may stop before AML or AAL has ended. An employee's contributions to a pension are normally reduced pro-rata corresponding to her reduced pay.

Whether the employer must continue paying pension contributions during unpaid AML or AAL for those whose EWC begins on or after 5 October 2008 will depend in the first instance on the rules of the pension scheme which must be checked. Where the scheme requires the employer to make contributions it must do so. If neither the pension scheme nor the contract of employment require employer's pension contributions during unpaid AML or AAL, the new regulations specifically state that the changes do not impose any additional obligations to change this basic position.

The position on pension contributions for women not entitled to SMP at all (for example, if they do not have the requisite length of service) is still not clear. The first question is whether the rules of the pension scheme

specify that employer's contributions must be made in such a case. Our Pensions team will be able to assist in cases where it is not clear. If it is not specified it is likely that for women whose EWC begins on or after 5 October 2008, employer's pension contributions should be made even where they are not entitled to SMP, as failure to do so could arguably now be sex discrimination. Employers will have to balance the risk of a potential claim against the costs of paying pension contributions during maternity leave.

Practical points

- Update your policies
- Ensure you are aware what contractual (non-cash) benefits employees on Maternity Leave or Adoption Leave will be entitled to after 5 October.
- Make sure you are complying properly with your obligations about pension contributions during leave (including checking the rules of the scheme in question).

Contact

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