

EMPLOYMENT | JUNE 2023

FAMILY FRIENDLY WORKPLACES – WHAT EMPLOYERS NEED TO KNOW ABOUT THREE NEW EMPLOYEE RIGHTS.

Three bills that strengthen the rights and protections for parents and carers at work have received Royal Assent. We set out what employers need to know and how to prepare below.

The Protection from Redundancy (Pregnancy and Family Leave) Act 2023

Currently, when a redundancy situation arises, employees on maternity, adoption or shared parental leave are entitled to be offered any suitable alternative vacancy in priority to other employees whose roles are provisionally selected for redundancy.

The Protection from Redundancy (Pregnancy and Family Leave) Act 2023 will extend this protection to cover pregnant women (which has been an unfair gap in the existing legislation) from the period from when they first notify their employer of their pregnancy up until the end of a period after they return to work from maternity leave (expected to be 6 months). For those on adoption or shared parental leave the protected period will also cover the specified period after they return to work. This will dramatically improve the lives of working parents, as in our experience women in particular are often earmarked for redundancy after returning to work from a second period of maternity leave, especially if they request flexible working arrangements to accommodate their childcare responsibilities.

Provision will also be made to allow the specified protected period to begin after the end of a pregnancy if a miscarriage or stillbirth is sadly suffered before the employer is notified of pregnancy.

The new entitlement will come into force on 25 July 2023 before which time the Secretary of State will pass regulations to implement the new protections.

Employers should update any maternity, adoption, shared parental leave or redundancy policy which refers to the outgoing position and should train their staff so that line managers and employees alike are aware of the new rights and protections.

In any event, employers should always proceed with caution where a role is at risk of redundancy and the employee is pregnant or on maternity leave, adoption leave or shared parental leave as a dismissal for reason of being pregnant or on family leave will be automatically unfair. Employers should therefore ensure there is a genuine redundancy situation, that a fair selection process is conducted which checks for any unconscious bias by decisionmakers against those taking time out for family leave or childcare commitments, that fair and objective redundancy selection criteria are applied to all affected employees which do not disadvantage employees who are pregnant and will have had some time out to attend ante-natal appointments or are on family leave, and that a fair consultation process is carried out (including ensuring that they are given priority for any suitable alternative vacancy, even if they are not the most suitably qualified candidate for the role).

An employee who is dismissed whilst pregnant or on maternity leave may additionally have a claim for pregnancy and maternity discrimination.

The Neonatal Care (Leave and Pay) Act 2023

Parents whose babies require specialist neonatal care will be entitled to neonatal care leave and, in some cases, neonatal care pay. This is a really important new right which recognises how stressful and distressing a situation this can be for new parents and how much time and attention is involved in caring for a new born baby who is premature or who has medical conditions (whether expected or unexpected).

The entitlement to leave and pay, which is expected to begin from April 2025, will be as follows:

Up to 12 weeks' neonatal care leave will be available to employees from their first day of employment where neonatal care:

- starts before the end of a period of 28 days beginning with the day after the child's birth; and
- continues uninterrupted for a period of at least seven days beginning with the day after the day on which the care started.

Importantly, employees will be able to take leave either when the child is receiving neonatal care or after that period. In effect, this means that an employee could take their neonatal care leave *after* another form of parental leave such as maternity or paternity leave.

Employees who have at least 26 weeks' continuous service will also be entitled to statutory neonatal care pay.

Further details such as conditions for entitlement (including when an employee qualifies as having a parental or other personal relationship with the child), the rates of neonatal care pay, and employees' rights on their return to work will be set out in due course via secondary legislation.

Employers who already have a policy which provides support for parents whose baby requires neonatal care should ensure that what is offered is at least as generous as the requirements of the new legislation once the details are known.

Carer's Leave Act 2023

This new right recognises the responsibilities of the sandwich generation, who often have both childcare and elder care responsibilities and also recognises the carer role that parents of disabled children undertake. The Carer's Leave Act 2023 will provide one week's unpaid leave per year for employees who are providing or arranging care for a dependant with a long-term care need.

A person will be considered a dependent of the employee if they are a spouse, civil partner, child or parent of the employee, if they live in the same household, or if they reasonably rely on the employee to provide or arrange care.

There will be no minimum length of service requirement and employees will be protected from suffering a detriment for having taken carers' leave and any dismissal for reason of taking such leave will be automatically unfair.

It is expected that the entitlement will come into force after April 2024.

Employers should consider setting out this entitlement in a written policy, so employees understand the support available and training should be provided for all staff regarding this new right and its consequent protection. Whilst the statutory right will be to unpaid leave only, employers could choose to enhance pay during carer's leave and/or to increase the period of carer's leave, as a week is a short period.

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