

the **HRDIRECTOR**

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Serco



Pictured: Jonathan Croucher
Director of HR, Taylor Wessing

DON'T MISS NEXT MONTH'S ISSUE WHERE WE LOOK AT: FORUM: MERGERS & ACQUISITIONS; EMPLOYING WORKERS FROM OVERSEAS; COMMUNICATION; HEALTHCARE & THE BOTTOM LINE... AND MUCH, MUCH MORE



BALANCING WORK & FAMILY LIFE

THE NEW WORK AND FAMILIES ACT 2006 WILL BE A PREDOMINANT FEATURE ON THE HR LANDSCAPE THIS YEAR. SANDRA WALLACE, PARTNER AND HEAD OF THE EQUALITY AND DIVERSITY GROUP AT DLA PIPER, LOOKS AT WHAT IT WILL REALLY MEAN FOR ORGANISATIONS AND THEIR HR DEPARTMENTS.

In December 2004, the Government set out the key features of its policy in the area of work and families. The aim was to introduce a range of measures to ensure that every child gets the best start in life, to give parents more choice enabling them to balance their work and family responsibilities, and to improve entitlements for employees with caring responsibilities.

Following a consultation exercise asking for views as to how the Government could meet its policy aims, the framework legislation was placed before Parliament and resulted in the Work and Families Act 2006 (the 'WFA'), which received Royal Assent on 21 June 2006.

The WFA contains a number of enhanced and new family-friendly measures, as well as meeting the Government's commitment in its 2005 election manifesto to give all workers the legal right to paid bank holidays in addition to the statutory minimum annual leave entitlement of four weeks.

The WFA will be high on the agenda for HR specialists in 2007, not only to ensure that the new legislation is implemented and

communicated properly, but also in recognition of the fact that to be an employer of choice, organisations which truly embrace diversity need to have a range of policies in place to help staff achieve greater flexibility in managing their commitments, both inside and outside work, while striking a fair balance with the operational needs of the business.

In this article we look at the WFA's key provisions and the challenges that lie ahead for HR functions in making sure that the new legislation is put into operation as part of their work-life balance strategy.

MATERNITY AND ADOPTION

Supplementing Regulations

A number of the changes brought about by the WFA are being implemented by the Maternity and Parental Leave etc and the Paternity and Adoption Leave (Amendment) Regulations 2006, which apply to employees whose: (i) expected week of childbirth (EWC) is on or after 1 April 2007, or, (ii) in the case of adoption, in relation to adopters whose children are expected to be placed with them for adoption on or after that date.

Additional Maternity Leave (AML)

Currently, women who have completed 26 weeks' continuous employment by the beginning of the 14th week before the EWC are entitled to 26 weeks of additional maternity leave (AML), in addition to 26 weeks of ordinary maternity leave (OML). Under the new legislation, a woman whose expected week of confinement (EWC) falls on or after 1 April 2007 will be entitled to a maximum of 52 weeks' maternity leave automatically, regardless of length of service.

Notice of return/postponement extended

Where an employee intends to return earlier than the scheduled end date for maternity or adoption leave, the Regulations increase the amount of notice the employee must give from 28 days to eight weeks, so as to allow the employer more time to plan staffing needs. The length of time by which an employer can postpone an employee's early return to work where he or she has not given the required amount of notice, is also extended to eight weeks.

'Keeping in touch' days

During consultation on the proposed new measures, the Government highlighted that research had shown that while mothers/parents do not want to be contacted unnecessarily when they are on maternity or adoption leave, many do want to be kept in touch with important changes, which may include voluntarily agreeing to undertake training or completing a few days of work.

The Regulations introduce 'keeping in touch' days (see sidebar), which mean an employee can agree with the employer to do up to ten days work, including training, during statutory maternity or adoption leave without losing statutory payments for that week, or bringing the leave to an end. The provisions relating to statutory maternity and adoption pay have been amended accordingly.

Reasonable contact

To improve communication during maternity and adoption leave, the Regulations state that reasonable contact is permitted during the statutory leave period, with the employer or the employee being entitled to make contact from time to time without the leave period being brought to an end. This new provision has been designed to remove the uncertainty felt by some employers, in particular, over whether it was lawful to make contact with an employee on maternity or adoption leave.

39 weeks' maternity and adoption pay

The WFA provides for major changes to the payment of statutory maternity pay (SMP) and statutory adoption pay (SAP). The first change is the extension of the SMP and SAP periods from 26 weeks to a potential maximum of 52 weeks. However, for the moment, an amendment to the enforcing legislation restricts the SMP and SAP payments to a period of 39 weeks. The Government intends to increase the statutory maternity and adoption pay period from 39 weeks to the full 52 weeks by the end of this Parliament, so that periods of maternity leave and maternity pay are harmonised.

OTHER PROVISIONS

Extension of flexible working right to carers

In recognition of the fact that many families are taking on responsibility for caring for an elderly, sick or disabled relative, >

KEEPING IN TOUCH DAYS

LIZ MCCAW OF ICAS, AND ANNA HAYWARD OF MANAGING MATERNITY LTD, SHED SOME LIGHT ON THE NEW 'KIT' DAYS THAT APPLY TO WOMEN WHOSE BABIES ARE DUE (OR ADOPTED) ON OR AFTER 1 APRIL 2007.

WHAT ARE THEY?

- Subject to agreement between employer and employee, Keeping in Touch Days (KIT days) are up to 10 days when women can carry out work for the employer during the maternity leave period and be paid, under their contract of employment. Previously, any work undertaken during maternity leave brought maternity leave to an end.
- The type of work is agreed between the two parties. It can be any activity that would normally be classed as work under the woman's contract. KIT days can be useful in planning and phasing a successful return to work and enhancing good communication, allowing opportunities for training, team meetings and conferences.

IMPORTANT POINTS

- An employer can not require an employee to work during maternity leave if she does not want to. Women do not have the right to work KIT days if the employer does not agree to them.
- KIT days are different to the reasonable contact that employers and employees may make with one another during maternity leave, as during KIT days employees can carry out actual work for the employer, for which they will be paid.

BENEFITS FOR THE EMPLOYER AND EMPLOYEE

"Employers are seeing the benefits of KIT days as an excellent way of meeting business needs by establishing a firm foundation for a smooth return to work," says Anna Hayward, director at Managing Maternity Ltd.

"We're helping organisations plan days which combine communication and training needs. Women have the opportunity to update their knowledge and skills, re-establish contacts and keep pace with developments. They gain some really useful skills to manage the balance between new motherhood and work successfully, whilst establishing supportive internal networks."



Anna Hayward
Managing Maternity
www.managingmaternity.co.uk



Liz McCaw
ICAS
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> the WFA provides support by allowing employees to ask to be considered for differing working hours, working days, or work location, to match their caring responsibilities for sick or vulnerable adults. From 6 April 2007, the Flexible Working (Eligibility, Complaints and Remedies) (Amendment) Regulations 2006 will provide the right to request flexible working to an employee who has 26 weeks qualifying service and who is, or expects to be, caring for a person aged 18 or over who:

- is married to, or the partner or civil partner of the employee; or
- is a near relative of the employee; or
- falls into neither category but lives at the same address as the employee.

Additional paternity leave and pay

The WFA provides a new right for fathers or partners of a mother or a co-adopter to be absent from work for a maximum of 26 weeks to care for a child so that fathers can play a greater role in the care of their children during the first year. Additional

paternity leave (APL) will be in addition to the current 'ordinary' paternity leave (OPL). APL will be conditional upon the mother or adopter having been deemed to have 'returned to work', i.e. where the mother or adopter has ended her maternity or adoption leave and has stopped receiving maternity or adoption pay. As long as all the eligibility conditions are met, a father or partner will be entitled to additional paternity pay (APP), which will be paid at the same rate as Ordinary Statutory Paternity Pay.

Bank holidays

Currently there are eight permanent bank and public holidays in Great Britain, but an employer can incorporate these eight days as part of the minimum four weeks of statutory holiday under the Working Time Regulations. Under new provisions in the WFA, all workers will have the legal right to paid bank holidays in addition to the statutory minimum annual leave entitlement of four weeks. The Government has committed to a further consultation on

the changes, but the current position is that the statutory holiday entitlement would increase in two stages, with the first being in October 2007 and the remainder by October 2009 at the latest.

Challenges Ahead

Statutory family friendly rights have increased considerably over the last few years, but it is not just the social responsibility or compliance with legislation aspects that are seen as the primary drivers. Through staff surveys, recruitment exercises and exit interviews, organisations are becoming more and more aware that embracing diversity – respecting and valuing individuals – includes actively seeking to accommodate different lifestyles. And life is not just about what we do at work, but also the responsibilities we have outside work.

Although the social, legal and business drivers are fairly obvious, it is still sometimes the case, as evidenced by tribunal claims, that some line managers view such rights as being a burden on the business and enhancing them even further could lead to even more entrenched views.

What is often forgotten is that a tremendous amount of investment will have already gone into training and developing employees who subsequently exercise their rights. So the primary

objective should be to maximise that investment by making sure people are made aware of their rights, they exercise them with no hindrance and they are positively encouraged and welcomed back to work.

In preparing for these new rules, it will be critical for HR specialists to:

- audit existing policies to accommodate the new legislation, ensuring that employment practices comply;
- update managers to give them an understanding of the new law and how this fits in the organisation's diversity values so they can carry out their roles and responsibilities effectively;
- communicate the new rules to all staff, particularly taking into account that pregnancy, adoption and needing to care for a relative are sensitive and sometimes stressful issues, which perhaps need a bit more time and understanding;
- put monitoring mechanisms in place to ensure the new rules are understood and are being applied.

The new 'keeping in touch' days for those on statutory leave need to be given a great deal of thought. In becoming an integral part of the maternity, adoption and paternity leave process, they could be a valuable tool in ensuring those who are temporarily away from the organisation still feel valued. Getting the communication aspect right can also greatly ease the return to work process for both the employee and the employer, particularly if the employee wants to consider different working arrangements. The earlier the dialogue starts, the more likely it is that individual needs can be accommodated without any disruption to the business. Increasing certainty for employers and helping them to better manage family friendly leave may also help avoid discrimination and other problems.



Sandra Wallace
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