

# Failure to pay male employee enhanced additional paternity pay was not discriminatory

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# Failure to pay male employee enhanced additional paternity pay was not discriminatory

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A male employee who argued that his employer's failure to pay him enhanced additional paternity pay was directly and

indirectly discriminatory was unsuccessful in his claim. The Tribunal held that the appropriate comparator for direct discrimination is a female applicant for additional paternity leave who is the female spouse or civil partner of someone on maternity leave and, therefore, the claimant could not establish that he had been treated less favourably because he was a man. In any event, it held that the disparity in treatment was a proportionate means of keeping more women at Ford.

The claimant, Mr Shuter, worked for Ford. His wife gave birth on 25 December 2012 and returned to work from maternity leave on 15 July 2013. Mr Shuter took additional paternity leave in respect of his wife's unclaimed maternity leave. While Ford paid female employees taking maternity leave up to 52 weeks full basic pay, it paid those taking additional paternity leave the statutory minimum pay.

Mr Shuter claimed that the failure of his employers to pay APL at the same rate that it did for maternity pay was both directly and indirectly discriminatory. Mr Shuter claimed that Ford's policy was directly discriminatory because he was put at a disadvantage because of his gender and that he should be compared with a woman taking maternity leave after 20 weeks of giving birth for the purposes of his claim. He also argued that Ford's policy was indirectly discriminatory because men were more likely to claim additional parental leave and, therefore, as a group were likely to be disadvantaged by the difference in treatment.

The Tribunal dismissed both of Mr Shuter's claims. When considering Mr Shuter's direct discrimination claim, it rejected his proposed comparator and held that the correct comparator for Mr Shuter would be a women applying for additional paternity leave i.e. the female spouse or civil partner of a women claiming maternity leave. Therefore, he was not being directly discriminated against because of his gender.

The Tribunal also considered Mr Shuter's indirect discrimination claim. While Ford accepted that men were likely to be disadvantaged as a group in comparison to women because applicants for additional paternity leave were more likely to be men than women, it argued that it was a proportionate means of achieving a legitimate aim. The Tribunal held that Ford could justify its practice of paying women basic pay when on leave beyond 20 weeks because it was aiming to recruit and retain women in its workforce.

This decision is just a first instance decision and is therefore not binding but it does demonstrate the issues in balance with parental leave policies.

*Shuter v Ford Motor Company Ltd ET/3203504/13*

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