New rights and protections at work for parents of babies requiring neonatal care

The Neonatal Care (Leave and Pay) Bill received Royal Assent on 24 May 2023 becoming the Neonatal Care (Leave and Pay) Act 2023. The Act provides the pathway to new rights and protections at work for employees who are parents of babies requiring neonatal care. In this briefing, we outline where things currently stand and what steps employers should take next.

What is the background?

Currently, parents of a baby requiring neonatal care must use existing statutory leave entitlements to allow them to take time off work while their baby remains in hospital. For mothers, this means using up some of their 52-week maternity leave entitlement (the start of which is triggered on the day of the birth). For fathers, this would usually mean using up their two-week paternity leave entitlement, perhaps in combination with other leave rights such as unpaid parental leave, unpaid dependant emergency leave or annual leave. In some cases, the mother may exchange up to 50 weeks of her maternity leave for shared parental leave to share with the father. Doing this would enable the father to take a longer period of time off work, but would, in turn, reduce the amount of time off work that the mother is able to take.

Over the last ten years there have been calls to create special leave and pay rights for parents of premature babies

in receipt of neonatal care. In 2015, two premature baby charities, Bliss and The Smallest Things, submitted a joint petition to Government on the issue. The aim was to create an entitlement to ringfenced rights which did not exhaust other forms of leave.

Back in 2019, the Government consulted on proposals to introduce new workplace rights to neonatal leave and pay. In March 2020, the Government responded to the consultation and committed to introducing such rights. However, the legislation did not materialise. Instead, the Government opted to back a Private Members' Bill – the Neonatal Care (Leave and Pay) Bill.

What rights and protections will affected employees be given?

The Neonatal Care (Leave and Pay) Bill received Royal Assent on 24 May 2023 and became the Neonatal Care (Leave and Pay) Act 2023. The Act provides for the introduction of rights and protections for employees who are parents of babies up to 28 days old who require neonatal care for at least one week without interruption. The rights and protections include:

- a Day 1 right for employees to take leave where they are the parent of a baby who needs to spend at least one week in neonatal care;

- a right for employees with at least 26 weeks' continuous

service and whose weekly earnings are at or above the "lower earnings limit" (currently £123 per week) to be paid statutory neonatal pay;

- a right to benefit from the existing terms and conditions of employment that would have applied but for the leave (apart from terms and conditions about remuneration);

- a right to return to work to a job of a kind to be prescribed by the regulations; and

- protection from detriment or dismissal as a result of having taken or sought to take neonatal leave.

However, the precise scope and mechanics of the new rights will be set out in separate regulations. For example, the regulations will address:

- the precise meaning of "neonatal care";

- how much leave an employee may take (this will be set at

between one and 12 weeks);

- the period within which the leave may be taken (this will be at least 68 weeks from the child's birth);

- how leave may be taken (e.g. continuously or discontinuously);

- the rate and duration of statutory neonatal pay;

- the amount and form of notice to be given to the employer;

- the evidence of entitlement to be given to the employer;

- what records the employer will need to keep; and

- what will happen is special cases (e.g. where the parent has more than one child receiving neonatal care, or a child receives neonatal care on two or more separate occasions).

In response to written questions on 22 May 2023, Kevin Hollinrake MP stated that the new neonatal leave and pay entitlements are expected to be delivered in April 2025, with regulations to be laid in due course.

What steps should employers take now?

Although employers will need to await the publication of the regulations to understand the finer detail of how the new rights will work, employers should consider the following policy issues now:

- Who will have “ownership” of ensuring compliance with the new rules in your business (including things like preparing a staff policy and updating related policies, training line managers and managing any record-keeping obligations)?

- Will you enhance the amount of neonatal leave available? If so, to what amount?

- Will you enhance the rate of neonatal pay? If so, to what level and for how long?

- Will you extend the rights to non-employees on a voluntary basis (albeit that any individuals benefitting from this would not be entitled to statutory pay and would not be able to bring relevant claims before an Employment Tribunal as they would fall outside the statutory scheme)?

- If the regulations provide that leave may only be taken continuously, will you take a more flexible approach and allow the employee to take it discontinuously (e.g. a day at a time)?

- Will you relax any notice and evidence requirements provided for in the regulations? If so, what would be the minimum notice required? What form must it take (e.g. would verbal notice be sufficient)?

Neonatal Care (Leave and Pay) Act 2023

BDBF is a leading employment law firm based at Bank in the City of London. If you would like to discuss any issues relating to the content of this article, please contact Amanda Steadman (AmandaSteadman@bdbf.co.uk) or your usual BDBF contact.