Promises of flexibility, childcare reform and better parental leave – trick or treat?

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The pandemic has prompted greater focus on, and demand for, flexibility for workers and better rights for working families. Sadly, statistics show that the number of childcare providers is diminishing, the gender pay gap increased in 2021, and with the cost-of-living crisis, more parents (usually women) are making the difficult decision to sacrifice career and leave work because of exorbitant childcare costs or inflexible employers.

In response to these issues, on 29 October 2022, Pregnant then Screwed’s the ‘March of Mummies’ will take place at various cities across the UK. The primary purpose of the march is to raise awareness of parental rights.

March of the Mummies

The first March of Mummies took place in 2017, across 6 cities in the UK and in California. At that time, the march focused on demanding recognition and action for working mums and dads.

This year the demonstration is aimed at raising awareness and asking the government to prioritise flexible working, childcare and parental leave.

What are the statistics?

Pregnant then Screwed highlight worrying statistics which have become more concerning during the pandemic. They are that:

- the UK has the second most expensive childcare in the world;
- statutory maternity pay is the third worst in Europe;
- statutory paternity leave is the least generous in

Europe;

- 3 out of 4 job advertisements fail to mention flexible working when 82% of British workers want flexible working; and
- mothers face a 45% pay penalty in the 6 years after they have given birth.

What types of leave are available to parents?

The UK offers maternity and paternity leave as well as shared parental leave. There are equivalent rights (in respect of maternity, paternity and shared parental leave) for those adopting. We have summarised the types of leave below.

Statutory maternity leave

Statutory maternity leave is comprised of 26 weeks' of ordinary maternity leave, and 26 weeks of additional maternity leave.

Only employees who have 26 weeks' continuous service and earn on average at least £123 per week, are entitled to be paid over this period under the statutory scheme.

Under the UK scheme, qualifying employees are entitled to 90% of their average weekly earnings (before tax) for the first 6 weeks and then either the statutory minimum (currently £156.66) or 90% of their average weekly earnings (whichever is lower) for the next 33 weeks. Some employers pay enhanced maternity pay.

In comparison, other European and Scandinavian countries such as Bulgaria and Norway are more generous. For example, mothers in Bulgaria receive 90% of their salary (subject to a social security cap) for up to 58 weeks.

Paternity leave

Statutory paternity leave is comprised of either 1 or 2 weeks which must be taken by the employee in one block usually

between the date on which the child is born and 56 days after that date. Statutory paternity pay is equal to either the statutory minimum (currently £156.66 per week) or 90% of the employees' average weekly earnings (whichever is lower). Some employers pay enhanced paternity pay, but these are few and far between. Other countries offer far more favourable paternity leave, such as Lithuania where fathers are entitled to 30 days of paid paternity leave at a rate of approximately 77.5% of their pay (subject to a cap).

Shared parental leave

Shared parental leave is available to parents to share a total amount of 50 weeks leave and up to 37 weeks pay, but this type of leave can only be taken in the first year following the birth of the child. Those eligible may claim share parental pay of up to 39 weeks, less any weeks of statutory maternity pay claimed by their partner. The current weekly rate for shared parental pay is £156.66 or 90% of one's average weekly earnings (whichever is the lower).

Whilst some companies offer their employees enhanced packages, that is not always the case. Some employers have punitive payback clauses or additional eligibility criteria that put enhanced entitlement out of reach. Again, the UK falls behind other countries who offer significantly more attractive policies, including Norway who offer a shared parental benefit of either 49 weeks at full pay or 59 weeks at 80% pay.

Flexibility

Employees who have at least 26 weeks' continuous employment may make a request to work flexibly. It remains within the employer's gift to decide whether to approve the request for flexible working, and they may reject the request based on one or more of the following eight reasons:

- The burden of additional costs.
- Detrimental effect on ability to meet customer demand.

- Inability to reorganise work among existing staff.
- Inability to recruit additional staff.
- Detrimental impact on quality.
- Detrimental impact on performance.
- Insufficiency of work during the periods the employee proposes to work.
- Planned structural changes.

Despite the effects of the pandemic which have led many employers to allow flexible and hybrid working for a period of time, it seems that there is a push for employees to return to the office, and/or to maintain 'normal' 9-5 working hours.

Proposals for reform

The harsh reality is that many are struggling to deal with balancing work and family life after having children. Whether it be the lack of flexibility or the financial pressures as a result of childcare, many (mostly women) are either not returning to work or are quitting their jobs to stay home to care for their children. For that reason, it is not surprising that many have called on the government to address the inadequacies in the current policies, and as a result there have been certain proposals for change or government consultations on some of these issues.

Flexible working – a day-one right

In September 2021, a government **consultation** was launched proposing making flexible working the default position and a day-one right. The day-one right being the right to request flexibility, not the right to flexible working itself. This consultation closed in December 2021 and we are yet to receive the outcome from the government. If any changes are going to be made it is more likely that we will see this in the forthcoming Employment Bill (which also appears to have taken a backseat).

Hybrid working

Following the effects of the pandemic and the sudden change for many employers to switch to hybrid and remote working, in November 2021, the House of Commons Library published the **Flexible working; Remote and Hybrid Work** briefing paper. This paper considered the legal position and guidance as regards flexible working and highlighted some of the trends observed during periods of lockdown, and what these trends could mean for the future of working. Guidance has also been published regarding hybrid working, which supplements the ACAS guidance on the same topic which you can read **here**.

A four-day working week

Campaigners are also pushing for a four-day working week for employees, instead of five, saying it increases productivity and morale. This is being trialled across the UK from June this year, as part of a **program** run collaboratively between the UK 4 Day Week Campaign, thinktank Autonomy and researchers from Boston College, and Oxford and Cambridge universities. This remains an initiative driven by select individual employers only who have agreed to participate and it is yet to be seen whether there will be movement towards a wider policy decision on the matter.

Equalising shared parental leave and maternity leave

Some believe shared parental leave and maternity leave should be equalised, recognising that supporting both parents equally is more likely to lead to true equality when it comes to childcare. This would require employers to offer the same level of enhanced pay to those on maternity leave and shared parental leave. All too often we women stay at home for longer periods as their partner taking shared parental leave receives only the statutory amount for shared parental pay. If the default position was more favourable, we may see more employers offering enhanced pay to parents.

How can you get involved?

If you would like to lend support with your feet, the details of the marches which will take place nationwide are on the Pregnant then Screwed **website**.

For employers, this is a great opportunity for you to reflect, take stock of your internal policies and think about whether there is room to improve what you offer to your workforce in terms of improved parental rights, enhanced pay and flexibility.

Brahams Dutt Badrick French LLP is a leading law firm based at Bank in the City of London specialising in employment law. If you would like to discuss any issues relating to the content of this article, please contact Blair Wassman (blairwassman@bdbf.co.uk) or your usual BDBF contact.

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