New rights for bereaved partners set to come into effect from 6 April 2026

The Paternity Leave (Bereavement) Act 2024 came into force on 29 December 2025, giving the Government power to make regulations about paternity leave entitlements where the primary carer of the child dies within the first 52 weeks following birth.

These regulations have now been made, meaning that these new rights will apply to such bereavements taking place after 6 April 2026.

What is the current position?

Where the primary carer (usually anticipated in law to be the mother or co-adopter) of a child dies within the first year following birth, the bereaved partner may have the right to take leave such as:

- **Paternity leave and pay**: 2 weeks' statutory paternity leave, to be taken either as a single period or two separate weeks, and statutory paternity pay.

- **Shared parental leave and pay:** Ability for parents to share the mother (or primary adopter)'s entitlement to 50 weeks' maternity leave, with statutory shared parental pay.

- **Parental leave:** 18 weeks' unpaid leave to be taken before the child's 18th birthday.

- **Bereavement leave:** 2 weeks' leave following the death of a child or a stillbirth with statutory parental bereavement pay.

- **Dependants Leave:** Right to take 'reasonable' unpaid time off to help a dependant (including a child or partner) with an emergency.

Each of these rights have strict eligibility criteria, and in many cases are unpaid. Crucially, unless the partner is eligible for shared parental leave, none of these options would allow for a prolonged absence from work in an equivalent sense to the primary carer's maternity leave.

What is changing?

Under the Paternity Leave (Bereavement) Act 2024 (the **Act**), employed bereaved partners will now benefit from new rights allowing them to take a single period of leave lasting up to 52 weeks after the birth of the child (or adoption placement). There is no minimum service period required, making this a 'Day One' right.

In order to be eligible, the child's primary carer must have died within 52 weeks of the birth or adoption placement, and the partner must have the necessary relationship to the primary carer. Broadly this means that they must be the father of the child, or the spouse, civil partner or partner of the primary carer. Equivalent provisions apply for parental order cases.

The leave can be started immediately within eight weeks of the bereavement, or with a week's notice at a later date. The partner will also benefit for up to 10 keeping-in-touch (KIT) days, and they and their employer can make reasonable contact with each other during the leave.

There is no statutory right to be paid, but statutory paternity pay is likely to apply for up to two weeks (provided that this has not already been taken). Employees who are eligible for shared parental leave may therefore prefer to take that route, due to the statutory pay potentially on offer.

During the period of leave and on their return, the partner will benefit from protections similar to those applicable on

other types of longer periods of family leave, including:

- preservation of all terms and conditions during the leave (except for pay);
- a right to return to the same job on no less favourable terms and conditions;
- a right to be offered a suitable alternative in redundancy situations for up to 18 months after the birth or adoption placement; and
- protection from detriment and automatic unfair dismissal.

What does this mean for employers?

Employers will need to update their policies to ensure that, from 6 April 2026, their managers and HR teams are prepared to deal with situations of bereaved partners in the workplace. This could either be as a standalone policy or as part of any existing family leave policies. Those dealing with relevant requests should receive training in order to communicate sensitively and with full understanding of the types of leave available.

Employers will also need to consider whether they wish to offer any enhanced packages, such as making the leave paid in a similar way to maternity leave, or otherwise extending pay beyond the other statutory entitlements that may apply.

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 Rose Lim (RoseLim@bdbf.co.uk), Amanda Steadman (AmandaSteadman@bdbf.co.uk) or your us ual BDBF contact

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National Work Life Week: A Closer Look at Family Leave and Protections in the UK

The current framework of family leave and protections is undeniably complex, having grown incrementally over time into a structure that is challenging for many to get to grips with. This is already under consideration by the Government

following a review opened in July 2025.

As recently published by Working Families, coupled with this complexity is a disparity in entitlements and workplace protections, resulting in a system that they feel is "letting down" families. Their research reveals startling statistics about parents' inability to access financial support, with widespread impacts on gender equality, child development and broader economic growth.

For Working Families' National Work Life Week, Rose Lim, Knowledge Lawyer at BDBF, examines the current framework of family rights and entitlements in the UK and the reforms planned under the Employment Rights Bill, and considers the gaps which may be restricting families' ability to thrive both at work and at home.

What is the current framework?

Leave Entitlements

The current legal framework provides, in summary, for the following entitlements relating to pregnancy, childbirth and associated care (including via surrogacy and adoption arrangements):

- **Maternity leave and pay**: 52 weeks' statutory maternity leave (made up of 26 weeks' ordinary maternity leave and

26 weeks' additional maternity leave) and 39 weeks' statutory maternity pay (or maternity allowance).

- **Paternity leave and pay**: 2 weeks' statutory paternity leave, to be taken either as a single period or two separate weeks, and statutory paternity pay.

- **Shared parental leave:** Ability for parents to share the mother (or primary adopter)'s entitlement to 50 weeks' maternity leave, with statutory shared parental pay.

- **Parental leave:** 18 weeks' unpaid leave to be taken before the child's 18th birthday.

- **Bereavement leave:** 2 weeks' leave following the death of a child or a stillbirth with statutory parental bereavement pay.

- **Neonatal care leave:** 12 weeks' leave to accommodate neonatal hospital care with statutory neonatal care pay.

- **Dependant leave:** Right to take 'reasonable' unpaid time off to help a dependant (including a child or partner) with an emergency.

- **Time off for antenatal appointments:** Right to paid time off for the mother (or primary adopter) to attend antenatal care appointments and, on two occasions, right of the partner to unpaid time off to accompany them at such appointments.

Each of the above rights is subject to eligibility criteria and notification requirements.

Many employers will have additional policies that benefit working parents, either by enhancing the statutory entitlement (most commonly with enhanced maternity pay), offering benefits from “Day One” of employment, and/or offering additional paid or unpaid leave.

Employers are also required to assess the health and safety risks posed to those who are pregnant or breastfeeding in the workplace and take any necessary steps to reduce them.

Protections

In addition to the leave entitlements outlined above, the law offers additional workplace protections for expectant and new parents.

Pregnancy / Maternity

Employees who are pregnant or on maternity leave have the protected characteristic of “pregnancy and maternity” under the Equality Act 2010, and are protected from unfavourable treatment due to their pregnancy, pregnancy-related illness or their having taken maternity leave. They are also protected from detriment and/or dismissal related to their pregnancy, maternity leave or giving birth, with dismissal being automatically unfair where it is connected to one of these factors.

In redundancy situations, employees who are pregnant, returning from statutory maternity leave or have otherwise given birth are entitled to be offered a suitable alternative role, essentially giving them priority over other colleagues to avoid redundancy. If such a role exists and is not offered to the employee, their dismissal will be automatically unfair.

On returning to work, employees who have been on ordinary maternity leave are entitled to the same position on the same (or no less favourable) terms. Those who have taken additional maternity leave are also entitled to the same role or a different suitable and appropriate role, again on the same (or no less favourable) terms.

Like all employees, those returning from maternity leave will be able to make a flexible working request. However, case law has established the existence of a 'childcare disparity', meaning that refusal of a flexible working request in these circumstances (or general inflexibility on working hours) can constitute indirect sex discrimination as a result of the increased expectation on new mothers to act as primary carer for children (*Dobson v North Cumbria Integrated Care NHS Foundation Trust (EAT) UKEAT/0220/19/LA*).

Paternity / Other Parental Leave

Employees who are on paternity leave are not specifically protected via the Equality Act 2010, but may in some circumstances be able to claim sex discrimination.

They are protected from detriment and/or dismissal for having taken (or seeking to take) paternity leave, or because their

employer thought they were likely to do so. The dismissal will be automatically unfair if it is connected to these factors. The employee is additionally entitled to return to the same job (i.e. they are treated as if returning from ordinary maternity leave).

Similar protections also extend to those taking parental leave and shared parental leave.

What is on the horizon?

Under the Employment Rights Bill (the **Bill**), which is currently passing through the final hurdles towards Royal Assent, parental leave and paternity leave are due to become "Day One" rights (i.e. there will be no minimum service, as is currently the case). It will also become possible to take paternity leave after shared parental leave (with associated pay entitlements). These updates are expected to come into force on 6 April 2026.

The Bill also provides for regulations to be made expanding protections from dismissal, although the detail of these new protections remains to be seen. Based on the Bill as it stands, the regulations will be able to be made to cover pregnant employees and those returning from maternity, adoption, shared parental, neo-natal and parental bereavement leave. Notably, this expansion of protection does not appear to include paternity leave, except in cases of extended paternity leave for bereaved parents the new Paternity Leave (Bereavement) Act 2024 (which is not yet in force).

In July 2025, the Government also opened a broad review into

all parental leave and pay rights, including a Call for Evidence that ran until 25 August 2025. This will assess all types of family leave and pay and will run for 18 months before any changes are put forward. Please see our recent article here for further detail on this review.

What are the key gaps?

It is clear that there are significant differences in the legal protections and entitlements available to new mothers (or other primary caregivers) compared to their partners, the most notable being:

- Statutory paternity pay is not a “Day One” right, whereas statutory maternity allowance is available to all (if they do not qualify for statutory maternity pay).
- Paternity leave and pay excludes self-employed parents.
- Paternity (or otherwise being a child’s caregiver) is not a protected characteristic under the Equality Act 2010.
- Paternity leave and pay is limited to two weeks and cannot be extended without reducing the mother’s entitlement to maternity leave via shared parental leave.
- Future special protection from dismissal will not apply

to those who have taken paternity leave.

Whilst, to some extent, these differences are a necessary reflection of the impact of pregnancy, childbirth and maternity, commentators have raised concerns that it entrenches the idea of one partner being the 'default' caregiver and the other partner taking a secondary role. This can have a consequential impact upon career progression, recruitment bias and the gender pay gap, referred to by Working Families as the "motherhood penalty". According to recent ONS data, monthly earnings five years after having children were reduced on average by 42% or £1,051 per month, compared with earnings one year before the birth.

In June 2025, the Women and Equalities Committee (**WEC**) published a report noting how the present framework can make it challenging for fathers and partners to take a more active role as co-parent, and proposing that in order to promote equality, maternity and paternity rights should be "as equal as possible, to benefit mothers, fathers and families".

Whilst the shared parental leave regime may have been intended to address the imbalance in available leave from work, it requires the partner who is entitled to maternity leave to 'give up' a portion of their entitlement. This may not be a practicable solution for many families, particularly in light of the fact that most companies enhance maternity offerings beyond the statutory minimum (making it a more attractive prospect than sharing parental leave). Even if it is financially viable, the WEC noted that cultural challenges of such leave being an exception rather than an entitlement can

make it more challenging for partners to take it in practice, and statistics have shown that those taking shared parental leave face increased discrimination in the workplace. This is particularly significant considering the more limited discrimination and dismissal protections available to fathers and partners.

In addition to the direct impact, this reinforcement of parenting roles may additionally affect an employer's perception and treatment of childcare responsibilities, particularly in terms of parents taking 'informal' time off or requesting flexible working.

In their response to the WEC on 19 September 2025, the Government reiterated the importance of their parental leave and pay review, and confirmed that a key aim must be to "incentivise greater gender equality in parenting responsibilities". Whilst some headway has been made towards this in the proposals under the Bill, it is evident from the published debates that Parliament recognises there is still some way to go in ensuring that the UK's framework enables both parents to take a positive and active role.

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 Rose Lim (RoseLim@bdbf.co.uk), Amanda Steadman (AmandaSteadman@bdbf.co.uk) or your usual BDBF contact

Government launches 18-month long review of the UK's parental leave and pay framework

On 1 July 2025, the Government launched a wholesale review of the UK's parental leave framework, covering all existing leave and pay rights. Although the review is expected to run until December 2026, the Call for Evidence from stakeholders closes in August 2025.

Aims of the review

The Government recognises that the existing system of parental leave and pay entitlements have grown incrementally over time. The end result is a complex legislative framework of leave and pay entitlements that were never designed to operate as a single system. This piecemeal approach also means that an overarching set of objectives for the system has not been articulated before. The review is said to be an opportunity to reset the approach.

The Government's Terms of Reference for the review states that its aims are to:

- articulate the objectives for the parental leave and pay system;

- expand the existing evidence base and understanding of the current system;

- consider the options and principles for a system of parental leave and pay that better supports the Government's objectives; and

- develop a roadmap for how to move to a system that better supports those objectives.

In turn, the objectives against which the Government will assess the parental leave system are prioritising maternal health, supporting economic growth through labour market participation (thereby reducing the gender pay gap and the "motherhood penalty"), ensuring children have the best start in life and supporting parents to make balanced childcare choices, including co-parenting.

All current and upcoming parental leave and pay entitlements will be in the scope of the review, including maternity, paternity, adoption, shared parental, parental bereavement and neonatal care leave and pay. It will also cover unpaid parental leave, maternity allowance and the forthcoming right to bereaved partner's paternity leave. The review will also consider the needs of those who do not qualify for existing leave and pay entitlements, such as "kinship" carers and the self-employed.

The Call for Evidence

To inform the work of the review, the Government has published a Call for Evidence to receive information and evidence from a variety of stakeholders including businesses and parents. Specifically, the Call for Evidence is seeking views on the Government's objectives (as outlined in the Terms of Reference) and whether the existing parental leave framework meets these objectives. It also asks whether further objectives should be added, and which objectives are the most important.

There is a particular focus on receiving new information and evidence which has not previously been shared with the Government. To this end, a summary of existing evidence has also been published alongside the Call for Evidence. Amongst other things, this reveals that 83% of mothers took maternity leave, with the average length of leave being 44 weeks. 70% of mothers received statutory maternity pay and just 13% received enhanced maternity pay from their employer. In contrast, 59% of fathers took paternity leave, with the average length of leave being 1.7 weeks. Over half of those who took paternity leave received full pay from their employer (which is perhaps unsurprising given its short length). A further 4% of fathers took shared parental leave for an average of 14 weeks. Financial constraints were reported as the biggest barrier to taking leave.

Although the review is open for 18 months, the Call for Evidence itself is only open for just under two months, closing on 26 August 2025.

Next steps?

The review is expected to run for 18 months until 31 December

2026. The Government then plans to release a set of findings, together with a roadmap of future reforms. Accordingly, the earliest that we can expect to see any changes to the current system would be mid to late 2027.

Employers (and other stakeholders) are encouraged to participate in the review. It is said that *"Government convened round tables"* will be held, providing the opportunity to contribute views and expertise. Employers may also submit written responses to the Call for Evidence – this can be done online or by email before 26 August 2025.

Parental leave and pay review – 1 July 2025

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New rights to neonatal care leave and pay due to come into force on 6 April 2025

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 (which may start no later than the day of the birth itself). For fathers, this will usually mean using up the 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.

The Neonatal Care (Leave and Pay) Act 2023 received Royal Assent on 24 May 2023. The Act provided 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. However, the precise scope and mechanics of the new rights was deferred to regulations. On 20 January 2025, the Neonatal Care Leave and Miscellaneous Amendments Regulations 2025 and the Statutory Neonatal Care Pay (General) Regulations 2025 were published, providing these further details. The new framework is due to come into force on 6 April 2025 and the Government anticipates that it will benefit around 60,000 new parents.

Who is eligible to take neonatal care leave?

Employees will have a Day 1 right to take neonatal care leave for babies born on or after 6 April 2025. The employee must also:

- be the parent of the child;
- be the intended parent of the child (meaning someone who will become a parent through a surrogacy arrangement);
- be the child's adopter or prospective adopter; or
- be the partner of the child's mother, adopter or prospective adopter.

In all cases, the employee must have, or expect to have, responsibility for the upbringing of the child (apart from the

baby’s mother or adopter).

The right is not available to other workers, contractors or agency workers.

When is the right to take neonatal care leave triggered?

The leave may be taken in respect of a baby who begins “neonatal care” within 28 days of their birth, provided that the care continues for at least seven consecutive days. Confusingly, this period is counted from the day *after* the first day that the child enters neonatal care, meaning that, in fact, the child must spend *eight* days in neonatal care before the employee becomes entitled to leave. Where the employee has adopted the child, the entitlement to leave will only arise where the neonatal care is needed *after* the adoption placement has begun.

In this context, “neonatal care” means:

- medical care received in a hospital;
- medical care received following discharge after inpatient treatment in a hospital (where that care is under the directions of a consultant and includes ongoing monitoring and visits arranged by the hospital); and
- palliative or end of life care.

How much neonatal care leave is available?

Employees are entitled to one week's leave for each complete and uninterrupted week that the child spends in neonatal care, up to a maximum of 12 weeks' leave (and the weeks spent in neonatal care are known as "qualifying periods").

In multiple birth cases, leave will accrue in respect of each child requiring neonatal care leave, but where the babies are receiving neonatal care at the same time then the entitlement for that period only accrues once. For example, if twin babies received neonatal care for four weeks at the same time, the employee would be entitled to four weeks' leave, not eight weeks. However, if one twin received neonatal care in weeks one to four, and the other twin received neonatal care in weeks five to eight, the employee would be entitled to eight weeks' leave.

When may neonatal care leave be taken?

Leave may only be taken *after* the completion of the first "qualifying period" (which, as above, requires the child to have actually spent eight days in neonatal care). In other words, the *earliest* that the employee may start the leave is on the ninth day after the neonatal care began.

Alternatively, the leave can be taken at a later date, although it must be taken within 68 weeks of the child's birth.

How may neonatal care leave be taken?

The leave must be taken in blocks of at least a week.

Where the leave is to be taken *during* the time that the child is actually receiving neonatal care or within seven days of it ending (known as a "tier 1 period"), there is greater flexibility about how the leave may be taken. In these circumstances, the leave may be taken in either continuous or discontinuous blocks of at least a week. In practice, leave will usually only be taken in a tier 1 period by the child's father or mother's partner, since the mother is highly likely to already be on maternity leave.

Where the leave is to be taken more than seven days *after* the neonatal care has ended (known as a "tier 2 period"), the leave may only be taken in a single continuous block. This is most likely to arise when the employee is *already* taking another form of family leave when the baby receives neonatal care, for example, a mother on maternity leave. In such circumstances, the other form of family leave will continue, and the neonatal leave is added on at the end so that it does not interrupt the other leave.

How should an employee give notice of an intention to take neonatal care leave?

The employee must give the employer notice of a wish to take leave and provide specified information.

Where the employee wishes to take leave during a tier 1

period, notice must be given for each week of leave before the employee is due to start work on the first day of absence in that week (or, if this is not possible, as soon as reasonably practicable). The notice does not need to be in writing, although employers may request that written notice is provided (and, indeed, it will need to be in writing to claim statutory neonatal care pay).

Where the employee wishes to take leave during a tier 2 period, the notice must be given in writing. Where one week's leave is to be taken, at least 15 days' notice must be given. Where two or more weeks is to be taken, at least 28 days' notice must be given. A notice of leave in a tier 2 period may be withdrawn and replaced with a notice setting out new dates.

The leave will usually start on the date specified in the notice. The parties may agree to waive the notice requirements and, if they do so, the leave will begin on a mutually agreed date.

Who is entitled to be paid statutory neonatal care pay?

Employees will be entitled to be paid statutory neonatal care pay where they:

- have accrued at least 26 weeks' continuous service with the employer by 15th week before the expected week of childbirth (or the week in which the adopter is notified of a match or, in other cases, the week before the week that the neonatal care starts); and

- receive weekly earnings at or above the “lower earnings limit” (which will be set at £125 per week from April 2025).

The statutory pay will be available for each complete and uninterrupted week that a child is in neonatal care, up to a maximum of 12 weeks. The rate of pay will be the same as other statutory family leave payments, namely £187.18 per week from April 2025.

The employee must give written notice to the employer of the week or weeks for which a claim is made and provide certain evidence of their entitlement to statutory pay.

Will employees taking neonatal care leave have any other rights and protections?

Employees will also have:

- 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, in most cases to the job they performed before the leave (however, in certain circumstances the right is modified to the right to return to the same job or one that is suitable and

appropriate for them to do);

- priority rights in a redundancy situation for any suitable alternative vacancy where the redundancy situation arises either during the neonatal care leave, or within 18 months of the child's birth or adoption (in circumstances where the employee took at least six consecutive weeks of neonatal care leave);

- protection from detriment as a result of having taken or sought to take or make use of the benefits of neonatal care leave, or because the employer believed that there were likely to do so; and

- protection from dismissal or selection for redundancy for having taken or sought to take or make use of the benefits of neonatal care leave, or because the employer believed that there were likely to do so – any such dismissal will be "automatically" unfair.

Further, the Government intends to introduce enhanced protection from dismissal following the return from certain types of family leave, including neonatal care leave. This proposal is set out in the Employment Rights Bill, which is currently on its passage through Parliament. You can read more about this proposal here.

What steps should employers consider taking now?

The Government will publish guidance for employers before 6

April 2025. Acas also plans to publish guidance once the new rights are in force.

Employers should consider the following policy issues now:

- Who will have “ownership” of ensuring compliance with the new rules within 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 care leave available? If so, to what amount?
- Will you enhance the rate of neonatal care 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)?
- Will you relax the notice requirements? 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

Neonatal Care Leave and Miscellaneous Amendments Regulations 2025

Statutory Neonatal Care Pay (General) Regulations 2025

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The Employment Rights Bill: a closer look at the dismissal-related provisions

On 10 October 2024, the Government published the Employment Rights Bill, which will take forward many of its proposals for workplace reform. In the second article in our series analysing the Bill, we consider the proposals for dismissal-related reform.

Running to more than 150 pages, the **Employment Rights Bill** (**the Bill**) puts forward a vast array of reforms affecting the workplace, including family-friendly rights, dismissals, equality law, contracts and pay, trade unions and industrial action and labour market enforcement. In the second in our series of articles explaining the Bill, we consider all the

proposals in the dismissal sphere.

Unfair dismissal

Abolition of the two-year qualifying service requirement

Currently, an employee must have two years' continuous service with their employer in order to bring a claim of ordinary unfair dismissal in an Employment Tribunal. There is a limited exception to this rule, where it is shown that the dismissal was for an "automatically unfair" reason, such as for having made a protected disclosure. In such cases, the employee is able to claim automatic unfair dismissal from Day 1 of their employment. However, where there are no such aggravating factors, an employer is able to dismiss an employee with under two years' service relatively easily. There is no need to identify a fair reason for the dismissal and nor does the employer need to show it acted reasonably.

The Bill proposes to remove the two-year qualifying period for ordinary unfair dismissal claims, converting it to a Day 1 employment right. To complement the abolition of the qualifying period, a new provision will be introduced preventing employees who have not yet started work from claiming unfair dismissal. However, if the reason for dismissal is automatically unfair, relates to the employee's political opinions or affiliations, or is connected to their membership of a reserve force, then an employee who *has not even started work* will be able to claim unfair dismissal.

Special rules for new employees

There has been much speculation in the press about whether the Bill will make it simpler to dismiss employees during a probationary period. Importantly, the Bill provides that regulations may be introduced which will "modify" the standard of reasonableness that must be met to dismiss fairly during the "initial period of employment". The initial period of employment is not specified in the Bill (this will be dealt with in the regulations) however, the Government has signalled its preference for this period to be set at nine months. In practice, this will be longer than most contractual probationary periods operated by employers, which generally sit at between three to six months.

Exactly how the test will be modified remains to be seen. Currently, employers must show that they have acted reasonably in treating the reason as sufficient to dismiss, viewed in light of the size and resources of the employer. In many cases, this requires the employer to comply with the steps set out in the statutory Acas Code of Practice on Disciplinary and Grievance procedures. In the separately-published Next Steps to Make Work Pay it is suggested that, at the very least, the modified test will require employers to meet with employees to discuss proposed dismissals during an initial period of employment.

All of which will provide some reassurance for employers, however, there are some important limitations to note.

First, the modified test will *only* apply where the reason for dismissal is capability, conduct, illegality or some other substantial reason (**SOSR**) *"relating to the employee"*. It will *not* apply to redundancy dismissals during the probationary period, and nor does it seem to apply to SOSR dismissals which do *not* relate the employee. Where the dismissal is by reason

of redundancy (or SOSR which does not relate to the employee), the existing reasonableness test will apply i.e. that the employer has acted reasonably in treating the reason as sufficient to dismiss, viewed in light of the size and resources of the employer.

Second, the modified test will *only* apply where the dismissal takes effect on or before the last day of the initial period of employment, or where the employer gives notice to terminate before the end of the initial period of employment and the dismissal takes effect within three months of the end of that period.

What will these changes mean for employers in practice?

- The abolition of the qualifying period is certain to generate more grievances and Employment Tribunal claims, some of which will be justified and some not. But all of them will take time and money to deal with. Certainly, employers will wish to be more cautious when it comes to recruitment so as to limit the risk of a bad hire. And after recruitment, line managers will need to actively manage probationary periods to ensure that any performance or conduct issues are identified and dealt with at an early stage.

- Making it simpler to dismiss new employees takes some of the sting out of this reform for employers. However, care must be taken to diarise the relevant dates and

ensure that notice to terminate is given before the end of the initial period of employment (which is expected to be nine months). And in cases where the employee has a notice period in excess of three months, that notice must be given earlier so as to ensure that the termination date falls within three months of the end of the initial period. A failure to do so may mean that the employer inadvertently falls outside the modified test, making a finding of unfair dismissal more likely.

- It is also important to remember that it is not the case that new employees can *never* bring an unfair dismissal claim. Although the modified test will make it easier to dismiss them, employers will still be required to do something. Short circuiting those modified requirements could open the door to an unfair dismissal claim. When it comes to redundancy dismissals, employers must remember that the current test of reasonableness will apply. This means that in *all* redundancy dismissals employers will need to warn and consult with employees, adopt a fair basis on which to select employees for redundancy and consider suitable alternative vacancies (and, if applicable, collectively consult). Further, the reforms do not affect an employee's right to claim automatic unfair dismissal from Day 1 of their employment.

- The interplay between an employer's probationary period and the initial period of employment will need to be

considered. Employers do not necessarily need to increase their contractual probationary periods in line with the initial period. On the face of it, there is nothing to prevent an employer dismissing an employee who has already passed their probationary period during the initial period of employment and relying on the modified test. For example, an employee could pass a probationary period of three months, after which time their conduct or performance declined, or a one-off serious act of misconduct or negligence occurred. In those circumstances, the fact that the employee has passed their probationary period should not make any difference. That said, some employers may wish to consider aligning probationary periods with the initial period of employment.

- Is there any upside for employers in making ordinary unfair dismissal a Day 1 employment right? Conceivably, it could lead to some reduction in claims for automatic unfair dismissal (such as whistleblowing claims) and discriminatory dismissal claims, which are currently the only statutory claims that employees with under two years' service can bring about their dismissal. A decline in those types of claims could be a good thing for employers, not least from a reputational perspective and because the cost and complexity of defending those types of claims is higher. However, compensation is uncapped for certain automatic unfair dismissal claims and for discriminatory dismissal claims, meaning there is still an incentive for claimants to bring such claims. Therefore, in terms of impact on claims, the most likely outcome is that claimants with automatic unfair dismissal or discriminatory dismissal claims

(especially if higher paid) will continue to bring those claims but will plead ordinary unfair dismissal as an alternative claim.

Dismissal during pregnancy and following a period of statutory family leave

The Bill provides that regulations may be introduced which will provide enhanced protection from dismissal during pregnancy and following return from maternity leave, adoption leave or shared parental leave (it will also apply to return from certain other forms of leave which are not yet in force and so are not discussed in this briefing). It is not known how long the protection will apply following the return from family leave, however, the Government has previously suggested it will be six months. No further details of this proposal are given in the Bill or the Explanatory Notes to the Bill.

What will these changes mean for employers in practice?

- We must await the publication of the related regulations to understand the full extent of this proposal. However, it seems likely that the intention is to restrict the circumstances in which an employer may dismiss a pregnant employee or family leave returner fairly.

- It is *already* unlawful to dismiss an employee because of her pregnancy or maternity leave (or for a reason related to it), by reason of redundancy during pregnancy or following the return from maternity leave, adoption leave or shared parental leave where there was a suitable alternative vacancy available. Therefore, this proposal appears to go further and suggests that even if there is a non-discriminatory and fair reason for dismissal, the dismissal would be unlawful, subject to some exceptions. Common sense would suggest that the exceptions must, at least, permit dismissal for gross misconduct, gross negligence or illegality or also where there is a large-scale redundancy such as where the whole business is closing down.

Dismissal for failing to agree a variation to a contract

"Fire and rehire" is a shorthand used to describe the practice of dismissing an employee then offering to re-engage them on inferior terms and conditions. Before the election, the Labour Party had talked about wanting to end fire and rehire practices altogether. This was slightly watered down during the General Election, with a promise to end the practice, save in exceptional circumstances.

The Bill delivers on that promise and proposes that it will be automatically unfair to dismiss an employee:

- for failing to agree to a change to their terms and

conditions of employment; or

- in order to re-engage them (or someone else) under varied terms and conditions of employment, but where the role is otherwise substantially the same.

The sole exception will be where the reason for the variation was to eliminate, prevent or significantly reduce or mitigate the effect of any financial difficulties which, at the time of the dismissal, were affecting, or were likely in the *immediate future* to affect, the employer's ability to carry on its business, and there was no way the need to make the variation could reasonably have been avoided.

However, even where the exception does apply, the dismissal could still be *ordinarily* unfair, even if not automatically unfair. The Bill provides that in such cases various matters must be taken into account by an Employment Tribunal when determining whether the dismissal is fair or not, including any consultation with the employee and any trade union or employee representatives about the proposed variation and anything offered to the employee in exchange for agreeing to the variation.

What will these changes mean for employers in practice?

- It will be much riskier for employers to impose contract variations on employees by way of fire and rehire practices. Nor can employers escape the risk of

automatic unfair dismissal by simply “firing” in these circumstances and not offering to rehire. This is not to say that it will never be right to deploy fire and rehire practices – the practice may still be used but it carries a high risk of Tribunal claims. However, it is possible that the employee may relent and agree to be rehired on the varied terms. If the employee does not go on to bring a claim in time, the employer will have achieved its aim.

- Once this change comes into force, the current statutory Code of Practice on dismissal and re-engagement (which came into force on 18 July 2024) will need to be replaced. As it stands, that Code prescribes the process to be followed by employers before dismissing and offering to re-engage in any circumstances. A breach of that process does not give rise to a legal claim in itself but may lead to an uplift of 25% to any compensation awarded in related claims.

Collective redundancies

Currently, collective redundancy consultation is triggered where there is a proposal to dismiss as redundant 20 or more employees assigned to one “establishment” within a 90-day period. The question of what an “establishment” has been ventilated in litigation – with employees arguing it should mean the business as a whole rather than the local place of

work. This would mean that collective consultation would be triggered more frequently as redundancy numbers would have to be counted across the whole business. After some to-ing and fro-ing the senior courts concluded that “establishment” meant the local unit where the employee works, *not* the business as a whole.

The Bill proposes to reverse this, so that collective consultation is triggered where there are 20 proposed redundancies within 90 days *across the business* rather than in just one workplace.

What will this change mean for employers in practice?

- Collective consultation will be triggered more frequently and multi-site employers will need to have a system in place to ensure that they keep track of proposed redundancies across the whole business.

- The process will be administratively more burdensome as employers will need to have appropriate representatives in place for all affected employees no matter where they are based.

- The consultation itself will potentially be cumbersome

and disjointed as employers may be consulting about several small pockets of unrelated redundancies.

- Getting it wrong will be costly: employees may claim a "protective award" capped at 90 days' gross actual pay. The Government has also committed to consult on lifting this cap.

What are the next steps?

The Bill has just started its passage through Parliament, which will take time. Even when passed, the various dismissal provisions will not come in straight away. Indeed, in the context of dismissals alone, the Government has said it will consult on:

- the length of the initial period of employment for the purposes of unfair dismissal;
- how the initial period of employment interacts with the Acas Code of Practice on Disciplinary and Grievance procedures;
- the appropriate compensation regime for dismissal during the initial period of employment;

- lifting the cap on protective awards where an employer is found to not have properly followed a collective redundancy process; and

- what role interim relief could play in protecting workers in fire and rehire situations.

Regulations will also be needed in relation to the modified unfair dismissal test and the restriction of dismissals during pregnancy and following the return from family leave.

Next Steps to Make Work Pay states that the majority of the reforms will not come into force until 2026, with the unfair dismissal reforms taking effect *"no sooner than Autumn 2026"*.

Stay tuned for our third article in the series, where we will consider the provisions of the Bill affecting equality law.

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The Employment Rights Bill: a closer look at the family-friendly provisions

On 10 October 2024, the Government published the Employment Rights Bill, which will take forward many of its proposals for workplace reform. In the first in a series of articles analysing the Bill, we consider the proposals for family-friendly reform.

Running to more than 150 pages, the Employment Rights Bill (**the Bill**) puts forward a vast array of reforms affecting the workplace, including family-friendly rights, dismissals, equality law, contracts and pay, trade unions and industrial action and labour market enforcement. In the first in a series of articles explaining the Bill, we consider all the proposals in the family-friendly sphere.

Flexible working

Currently, employers may refuse flexible working requests where they consider that at least one of eight grounds specified in the Employment Rights Act 1996 (the **ERA**) applies. This includes things like the burden of additional costs, an inability to reorganise work among existing staff or detrimental impact on quality or performance. Importantly, this is a *subjective* test. In other words, as long as an employer considers that one of the eight grounds applies, and that view is based on correct facts, that is a sound basis upon which to reject a request. Employees are unable to challenge the decision on the basis that they feel the decision was an unreasonable one (albeit they may be able raise other claims such as automatic unfair dismissal or indirect sex discrimination).

The Bill proposes that the law is changed to require an

employer's refusal of a request to be based on one of the existing eight grounds and be an *objectively reasonable* one. Further, when refusing a request, the employer must notify the employee of the ground for refusing the request and explain why it considers that it is reasonable to refuse the application on that ground. Where an employer's decision is not reasonable, or where it fails to explain this to the employee, the employee will be able to complain to an Employment Tribunal.

There is one further small change. From 6 April 2024, employers have been required to consult with employees before refusing a request. The Bill provides that, in future, regulations may be issued setting out the precise steps that an employer must take in order to comply with this consultation requirement.

What will these changes mean for employers in practice?

- We think that employers are going to have to go further to be able to justify the ground or grounds for refusal. For example, if a request is refused on the basis of an inability to reorganise work among existing staff or recruit additional staff, and the employer has not consulted with existing staff about the possibility of doing so or attempted to recruit additional staff, it is likely that a refusal on such grounds would be unreasonable. Or where a request was to be refused on the basis of detrimental impact on quality or performance, again, the question will be: what is the evidence for this view? Unless there is some historical evidence (e.g. if an employee has worked the same or similar pattern in the past and it was unsuccessful), it is likely that an employer would need to allow a trial period of the proposed working pattern for a reasonable period of time in order to assess whether there was, in fact, such a detrimental impact. The end result is that more requests are likely to be accepted.

- Where an employer breaches the rules governing flexible working requests, an employee may complain to an Employment Tribunal. The Tribunal may order the employer to pay compensation of up to eight weeks' pay (currently capped at £700 per week) and require the employer to reconsider the application. Where an employer's refusal is found to have been unreasonable, we can expect Tribunals to more readily order employers to reconsider requests.
- Further, if a refusal is unreasonable, this could assist the employee in other potential claims. For example, if an employer has adopted an unreasonable position this may be sufficient to amount to a repudiatory breach of contract, justifying constructive dismissal. Indeed, in the recent case of Johnson v Bronzeshield Lifting Ltd, a Tribunal held that an employer's failure to take into account relevant information before refusing a flexible working request was a repudiatory breach. This was on the basis that the hours that an employee works has a major impact on their lives, and it also matters how flexible working applications are dealt with – the outcome is not the only thing of importance. It is not a stretch to see that a Tribunal could reach a similar decision where a request has been refused unreasonably.
- It looks like specific rules are on the way governing the form of consultation needed before refusing a request. The existing statutory Acas Code of Practice on requests for flexible working sets out recommendations on the scope of such consultation. The Code suggests gathering all relevant information, holding a meeting with the employee to discuss the request and considering alternatives if needed. A written record of the meeting should be kept, and a right of appeal is also recommended. A failure to follow the Code does not give rise to a claim but Tribunals will take it into account when considering relevant cases. Therefore, we think it is likely that the Code's provisions on

consultation will be elevated into law.

- In due course, employers will need to update policies and practices to reflect the new rules on refusing requests.

Family leave rights

There are three proposed areas of change in the field of family leave rights.

Unpaid parental leave

Currently, employees with one year's service have a right to take up to four weeks' unpaid parental leave per year in respect of children under the age of 18 (up to a maximum of 18 weeks' leave in total).

The Bill proposes to remove the service requirement and make unpaid parental leave a Day 1 employment right.

Paternity leave

Currently, employees with 26 weeks' service ending with the week immediately before the 14th week before the expected week of childbirth (or the week in which an adopter is notified of a match) have a right to take up to two weeks' paternity leave. The same service requirement applies in respect of eligibility for statutory paternity pay.

The Bill proposes to remove the service requirement for paternity leave, making it a Day 1 employment right. However, the Bill is silent on whether the service requirement will be lifted for statutory paternity pay, which suggests that it will remain.

Further, currently, where an employee is entitled to paternity leave and pay and shared parental leave and pay, the paternity leave and pay must be taken *before* the shared parental leave

and pay. If the employee takes the shared parental leave and pay first, they lose their entitlement to paternity leave and pay. The Bill proposes to remove this restriction, meaning that employees may take shared parental leave and pay first if they wish and retain their entitlement to paternity leave and pay.

Bereavement leave

Currently, employees have a Day 1 employment right to take two weeks bereavement leave if a child under the age of 18 dies (and those with 26 weeks' service ending with the week before the child died are also entitled to receive statutory parental bereavement pay). Employees taking parental bereavement leave are also protected from detriment and dismissal. However, there is no general right to take bereavement leave outside of this, for example when a spouse, parent or sibling dies. Of course, many employers do permit compassionate leave in such circumstances, but there is no legal requirement to do so.

The Bill proposes amending the parental bereavement leave rules (which are set out in the ERA) to turn "parental bereavement leave" into "bereavement leave", although some special rules will still apply where a child dies. Regulations will specify the relationships which will entitle an employee to take bereavement leave, however, we can expect it to cover most close relationships such as a spouse, civil partner, other life partner, grandchild, parent, sibling or grandparent. The Bill says that the bereavement leave entitlement must be not less than one week, however, the leave entitlement will stay at two weeks' where a child has died. It appears from the drafting of the Bill that the leave will be unpaid, save that statutory pay will remain available where a child dies.

What will these changes mean for employers in practice?

- The removal of the service requirements for unpaid

parental leave and paternity leave will mean that a larger cohort of employees will become eligible to take these forms of leave. The result is that employers will have to manage a higher number of these types absences than is currently the case. In due course, employers will need to adjust relevant policies to reflect the wider scope.

- Many employers already offer paid bereavement leave but the new statutory right will introduce rules around how such leave is managed and provide protections for those taking the leave. Employers will need to revise their bereavement leave policy in due course and will also need to consider whether to enhance the right and offer paid leave.

What are the next steps?

The Bill has just started its passage through Parliament, which will take time. Even when passed, the family-friendly provisions will not come in straight away; regulations will be needed to bring them into force. Regulations may also bring different parts of the Bill into force at different times. The Government may also consult on certain aspects of the proposals. Indeed, it has said that in relation to the flexible working reforms it is important to take into account a range of views and it will develop the detail of the approach *"…in consultation and partnership with business, trade unions and third sector bodies".*

It is also worth noting that at the same time as publishing the Bill, the Government published a document entitled Next Steps to Make Work Pay setting out its plans for further workplace reform outside the Bill. It acknowledges that some reforms will take longer to implement, including a full review of the entire parental leave framework and a review of the benefits of introducing paid carer's leave. No specific time frame for these reviews is given.

It also states that the Government will deliver some reforms through means other than legislation, such as taking forward a "right to switch off" through a statutory Code of Practice. This suggests that there will be no statutory right to switch off – rather statutory best practice guidance which may be taken into account by an Employment Tribunal in relevant claims. This appears to be a watering down of the pre-election promise that a *right* to switch off would be introduced. Although not stated, it is likely that there will be a public consultation upon any such Code of Practice before it comes into force. However, as legislation would not be required, this could be introduced relatively quickly.

Stay tuned for our second article in the series, where we will consider the provisions of the Bill affecting dismissals.

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Two new pieces of guidance for employers on the new right to carer's leave

From 6 April 2024, employees acquired a new Day 1 right to take at least one week's unpaid carer's leave per year to provide or arrange care for a dependant who has a long-term care need. To accompany this change, two new pieces of guidance for employers have been published.

A new statutory right to carer's leave came into force on 6 April 2024. You can read more about the new right in our detailed briefing here. We also discussed carer's leave in our recent webinar here.

To coincide with the introduction of the new right, both the Government and Acas have published new guidance for employers.

The Government's guidance provides a basic introduction to how carer's leave works. It covers:

- who is entitled to take carer's leave;
- how much carer's leave employees may take;
- how much notice must be given before taking carer's leave; and
- when employer's may delay a period of carer's leave.

The Acas guidance covers the same matters, in some cases in a little more depth. For example, when discussing entitlement to carer's leave, the guidance explains who counts as a "dependant" for the purposes of the new right. It also provides some examples of what carer's leave may be used for. This is helpful as the law simply states that the leave may be taken in order to give or arrange care for a dependant

but is silent on what this means in practice. Acas suggests that this may include things like:

- taking a disabled child to a hospital appointment;
- moving a parent who has dementia into a care home;
- accompanying a housebound dependant on a day trip; or
- providing meals and company for an elderly neighbour while their main carer is away.

It is important to remember that this list is not exhaustive, and other activities may qualify, for example, taking a dependant to rehabilitation or counselling sessions, or attending relevant meetings with Social Services.

The Acas guidance also addresses the question of pay for carer's leave. Although the right is to unpaid leave, the guidance highlights that some employers may elect to offer paid leave. For example, the law firm Kingsley Napley has[recently announced](#) that it would offer staff one week's fully paid carer's leave. Employees are advised to check their employment contracts or their employer's policy (where there is one) to find out what is offered in this respect. Alternatively, they should speak to their employer.

In terms of giving notice to take carer's leave, the Acas

guidance encourages employers to be as flexible as possible, noting that employees might need to take time at short notice on occasion. It should also be remembered that employees who qualify for carer's leave may also qualify for emergency time off for dependants, which may be taken without advance notice in appropriate cases.

The Acas guidance also sets out employees' rights when taking carer's leave, namely the right to return to the same job on the same terms and conditions, and protection from detriment or dismissal because of something related to carer's leave. For example, if an employee had their hours reduced, or if they were overlooked for training, promotions or development opportunities because of something related to carer's leave, this would amount to an unlawful detriment.

What are the next steps for employers?

With carer's leave now in force, employers should ensure that they have considered their position on carer's leave (e.g. will the amount of leave be enhanced, and will it be paid?) and have a staff-facing policy in place. Further, line managers should be educated about the new right. A good starting point would be to ask them to read the Acas guidance, as well as any staff-facing policy. Consideration should also be given to addressing carer's leave rights in training for new line managers. As well as understanding the framework for taking the leave, it is important for managers to be aware of the protections against detriment and dismissal, and guard against any treatment which could give rise to legal claims.

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any issues relating to the content of this article, please contact Principal Knowledge Lawyer Amanda Steadman (amandasteadman@bdbf.co.uk) or your usual BDBF contact.

New EHRC guidance for employers on pregnancy and family leave and pay

On 6 April 2024, changes were made to the family-friendly legal framework to offer better protection for certain employees in redundancy situations, and to relax the rules surrounding the taking of paternity leave and requesting flexible working. To accompany these reforms, the EHRC has updated its guidance in this area.

The following changes were recently made to the family-friendly legal framework:

- **Redundancies:** in a redundancy situation, pregnant employees who notify their employer of their pregnancy on or after 6 April 2024 have priority for any suitable alternative vacancy that is available. Further, employees returning to work on or after 6 April 2024 from a period of maternity or adoption leave, or a period of shared parental leave lasting at least six consecutive weeks, have priority for any suitable

alternative vacancy that is available. This protection will usually end 18 months after the date of the child's birth or the day the child is placed with the employee for adoption. You can read our detailed briefing on this reform here.

- **Paternity leave:** eligible employees may take statutory paternity leave as two separate blocks of one whole week if they wish. The period within which statutory paternity leave must be taken increased from 56 days to 52 weeks from the birth or adoption placement. The notification requirements were also relaxed, so that employees only need give four weeks' notice of a proposed period of leave. These new rules apply where the expected week of childbirth or adoption placement falls on or after 6 April 2024. You can read our detailed briefing on this reform here.

- **Flexible working:** the right to make a flexible working request became a Day 1 employment right. Various changes were also made to the flexible working request process, which make the process less onerous for employees. You can read our detailed briefing on this reform here.

The Equality and Human Rights Commission has updated its guidance for employers and employers to reflect these reforms. The updated guidance also provides worked examples of typical scenarios and highlights good practice. The three

pieces of updated guidance are as follows:

Pregnancy and maternity: pregnancy

The guidance covers a wide range issues, from an employer's key obligations towards a pregnant employee, to pregnancy discrimination and dismissal and detrimental treatment during pregnancy. It also covers a variety of day-to-day HR issues including recruitment, performance management, health and safety matters and sickness absence.

As far the legal reforms affecting pregnant employees are concerned, the guidance keeps it simple. It states that pregnant employees must not be selected for redundancy based on criteria relating to their pregnancy and that pregnant employees should be treated the same as other employees being considered for redundancy, save that they now have a right to preferential treatment when it comes to suitable alternative vacancies.

Pregnancy, adoption and maternity: return to work

The guidance covers an employer's legal obligations to new parents returning to work after taking leave due to pregnancy, adoption or maternity. It covers matters such as sickness at the end of a period of leave, breastfeeding and health and safety upon returning to work, rights upon return, flexible working, redundancy and much more.

As far as the recent legal reforms are concerned, the guidance highlights that all employees have a legal right to request

flexible working from Day 1 of their employment. This guidance does not cover the flexible working process itself but, instead, links to the new non-statutory Acas guidance on flexible working (discussed in our briefing here).

On redundancy, the guidance underlines that employers are able to lawfully make employees redundant following their return from maternity, adoption or shared parental leave, provided there is a genuine redundancy situation, and a fair and non-discriminatory process is followed. Reflecting the new rules, the guidance provides that employees who are pregnant or returning from maternity, adoption or shared parental leave (in addition to those who are on maternity, adoption or shared parental leave who already had this protection) have a right to preferential treatment when it comes to suitable alternative vacancies.

Unhelpfully, the guidance does not provide any worked examples on what employers should do in situations where multiple employees entitled to preferential treatment are vying for the same alternative role. In practice, we think that in this situation, employers will need to go through another scoring exercise to decide which employee should be offered the alternative role.

Maternity, paternity, adoption or shared parental leave and pay

This guidance summarises the key obligations for employers and considers the different types of leave and pay entitlements, miscarriage, stillbirth and death, premature birth, sickness, KIT days and more.

On redundancy, the guidance reminds employers that employees who are pregnant or on maternity, adoption or shared parental leave have priority for suitable alterative vacancies. It states that if an employer fails to offer such a vacancy to such an employee, any subsequent redundancy dismissal may be automatically unfair. The guidance highlights that in this situation the employee does not have to attend interviews or selection procedures for the vacant post – this is because the employee may be disadvantaged in a competitive process due to their circumstances . However, as noted above, the guidance does not address the scenario where an employer has multiple protected employees vying for the same alternative role.

On paternity leave, the guidance summarises the right to leave as it now stands following the 6 April reforms, save that at the time of writing this article the guidance still referred to the need for the leave to be taken within 56 days of the birth or adoption. This is an error; as stated above, the leave may be taken within 52 weeks of the birth or adoption.

EHRC Guidance – Pregnancy and maternity: pregnancy

EHRC Guidance – Pregnancy, adoption and maternity: return to work

EHRC Guidance – Maternity, paternity, adoption or shared parental leave and pay

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Steadman (amandasteadman@bdbf.co.uk) or your usual BDBF contact.

Government announces plans to relax paternity leave rules

The Government has announced that it intends to introduce legislation to make it easier for fathers to take paternity leave. It is not yet known when these changes will come into force.

Last month, the Government published its response to a 2019 consultation on reforming parental leave and pay entitlements. In its response, the Government announced plans to make the following changes to the paternity leave framework:

- **Allowing discontinuous blocks of leave:** eligible employees will be able to take the two weeks' statutory paternity leave in two separate blocks of one week of leave (currently, only one week or a single block of two weeks may be taken).

- **Providing a longer window within which to take the**

leave: eligible employees will be able to take their statutory paternity leave within 52 weeks of birth or placement for adoption (currently, it must be taken in the first eight weeks after birth or placement for adoption).

- **Simplifying notice requirements:** the notice requirements will be changed to make them more proportionate to the amount of time the father or partner plans to take off work. It is proposed that fathers will need to give 28 days' notice before each period of leave they intend to take, although the notice of entitlement will still need to be given 15 weeks before birth.

At the same time, the Government confirmed that it does not intend to reform either the shared parental leave or unpaid parental leave frameworks.

The Government has said secondary legislation will be needed to effect these changes and will be introduced in due course.

We will provide a further update on these reforms once the draft legislation has been published.

Parental Leave and Pay: Government response, June 2023

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Right to request flexible working to become a Day 1 employment right

Last month, we reported on proposals to make a number of reforms to the flexible working regime by way of a Private Members' Bill. Since then, the Government has announced it will make the right to request flexible working a Day 1 employment right.

Pregnant employees and those returning from family leave to receive special protection in redundancy situations

The Government has backed a Private Members' Bill which plans to expand special protection in redundancy situations to pregnant employees and those returning from maternity,

adoption and shared parental leave.

More employment law reforms ahead

With no sign of the Employment Bill promised in 2019, the Government has decided to pursue its reforms of the employment law landscape by way of support for a series of Private Members' Bills covering flexible working, carer's leave, neonatal leave and tipping practices