

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

Tomorrow, on Saturday 29 October 2022, March of the Mummies will take place at various cities across the UK. As demonstrators take to the streets to raise awareness of parental rights, we consider how employers might take stock of their own internal policies.

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# **Pregnant at work? Your top ten questions on workplace rights answered**

Pregnant at work? What are your rights? When should you tell your employer about your pregnancy? Specialist employment lawyers Paula Chan and Emily Plosker answer the top ten questions pregnant women ask about pregnancy and the workplace.

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# **Is it discriminatory to pay a man on shared parental leave less than a woman on adoption leave?**

In *Price v Powys County Council*, the Employment Appeal Tribunal (EAT) has determined that it was not directly discriminatory to enhance pay to a female employee on adoption leave and not to enhance statutory pay for a male employee on shared parental leave.

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# **A closer look at the new right to parental bereavement leave**

From 6 April 2020 a new law, known as “Jack’s Law”, was introduced which gives parents the right to take 2 weeks’ bereavement leave following the death of a child.

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**Government will not be**

# improving rights for fathers any time soon

The Government has published its response to the Women and Equalities Committee recent report.

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## Celebrate Global Day of Parents 2018

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1 June 2018 marks **Global Day of Parents** – a day declared by the UN General Assembly in 2012 which aims to honour parents and their commitment to nurturing and raising children throughout the world.

In my field as an employment lawyer acting for individuals, I have often had to explain to clients that being a parent is not itself a “protected characteristic” to claim discrimination. As such, whilst many employees may feel that their parenting responsibilities puts them at a disadvantage in the workplace (being side-lined for promotions, or viewed as being uncommitted and uninterested in their careers), their only course of action usually turns on establishing sex discrimination. This means that it is not always the easiest case to put forward, and for men, it can be tortuous.

**So what is the UK doing to help and protect families in an employment law context? What (if anything) is likely to change?**

- The introduction of Shared Parental Leave allows both men and women to tag out of a woman’s right to maternity leave and share the childcare responsibilities for the first 50 weeks (either separately or concurrently) after the mother has taken the compulsory period of 2 weeks’ maternity leave. Whilst I know a few friends who have taken up this right (usually at the end of maternity leave when baby becomes more fun), shared parental leave take-up may be as low as 2%. Until uptake increases, stereotypical childcare perceptions of women bringing up the family are unlikely to change in the workplace.
- Since 30 June 2014, all employees with at least 26 weeks’ of continuous service can make a flexible working request. This is a useful tool for working parents who may need a flexible working arrangement in order to

balance work and family life. Employers have a wide scope to reject such requests and the penalties for an employer's failure to agree to a flexible working request are limited.

- Parental leave is available to some working parents and allows for up to 13 weeks unpaid leave for each child up to the age of 18 years old (although only a maximum of 4 weeks can be taken each year).

### **What more could the UK do to improve family rights?**

- Consider introducing "parenthood" as a protected characteristic under the Equality Act.
- Extend the time limit for submitting claims for maternity and/or pregnancy discrimination from three months to six months. Evidence shows that the current time limit has a deterrent effect on the ability of pregnant women and new mums to access justice. This is unsurprising given that the focus is on the health and welfare of the mother and new baby, and not on litigation at this time.
- Dispense with maternity and paternity leave and have one "family" leave right so that both men and women can choose who looks after the baby.
- An alternative to a general "family leave" is to increase the duration and pay of paternity leave so that the options for childcare are more evenly distributed between parents (not just women). The present maximum of two weeks' paternity leave is inadequate.
- A small step that everyone can do today is to recognise the importance of parents, whether biological, non-biological, grandparents, foster parents, adoptive parents, step parents or anyone else who plays a role in shaping children's lives.

Given that the UN's Sustainable Development Agenda aims to end poverty, promote equal economic prosperity, social development, wellbeing and protect the environment, it is

clear that the importance of the 'family' is key to the UN's ambitions.

Creating a more supportive atmosphere for parents and carers can only lead to a more cohesive, happier and productive workforce, and society.

[Emily Plosker](#) is a Senior Associate at leading employment law firm [BDBF](#)

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# The importance of risk assessments for breastfeeding workers

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In order to comply with EU law and avoid a finding of direct sex discrimination, employers should conduct individual risk assessments with breastfeeding workers in order to identify the risks that are posed in each worker's particular circumstances.

Ms Ramos was a nurse in the accident and emergency department of a Spanish hospital. On return from maternity leave, she informed her employer that she was breastfeeding. She stated her belief that her job posed risks to her lactation. In particular, she was concerned about the effects of the shift system; the potential exposure to radiation and infections; and the stress caused by the job itself. In accordance with Spanish law, Ms Ramos asked that her working conditions be adjusted to minimise those risks.

Ms Ramos' employer refused. It stated that her job was not of a category it considered to carry risks to breastfeeding mothers because it was not on the list of risk-based jobs

agreed with workers' representatives. On the same grounds, Ms Ramos was refused a financial assistance grant available to at-risk breastfeeding mothers under Spanish law. Ms Ramos' legal challenge of that decision was referred on appeal to the European Court of Justice.

The European Court of Justice held that the failure to assess the risks posed to a breastfeeding worker by reference to that worker's particular circumstances is less favourable treatment on grounds of pregnancy or maternity and constitutes direct sex discrimination. A breastfeeding worker must present evidence capable of showing that such a risk assessment was not carried out. Ms Ramos had evidence from her line manager, who agreed that her job posed risks which the employer had not taken into consideration. It is then for the employer to prove that there has been no discrimination, and Ms Ramos' employer could not do so.

On the basis of this case, employers may want to take a belt-and-braces approach by conducting individual risk assessments for breastfeeding mothers returning to the workplace. However, there is no legal requirement to do so, as UK law prevents women from bringing direct sex discrimination claims on the basis of treatment relating to breastfeeding. Employers who choose to wait it out should watch this space, as UK law could be found to be incompatible with EU law on this point.

Ramos v Servicio Galego de Saude (C-531/15)

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# What can employers do to support women returning to work?

Emily Plosker discusses BDBF's support of Smart Works for City Giving Day and how employers can support women returning to work after maternity leave.

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# Parentlife to Citylife: how to manage the transition

BDBF Partner Ruth Gamble gives advice to new parents on how to manage the transition back to work after a period of parental leave and highlights the mistakes employers can make during this time.

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# What to expect in equality law

BDBF considers some of the bigger changes expected in the coming months and years to equality law.

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# **Employers aren't obliged to carry on childcare vouchers under a salary sacrifice during maternity leave**

An employer which offered childcare vouchers by way of salary sacrifice was not obliged to continue to pay them to an employee on maternity leave.

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# **Employer's duty to offer a suitable alternative vacancy to a woman on maternity leave arises when it becomes aware of potential redundancy**

The EAT has held that an employer's duty under the Maternity Leave Regulations to offer a woman on maternity leave a suitable alternative vacancy arises when the employer becomes aware that her role is redundant or potentially redundant. The failure to make such an offer renders the woman's dismissal automatically unfair.