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legal Q & A Paternity and adoption rights

By Alison Wetherfield, partner, McDermott Will & Emery

Patricia Hewitt, secretary of state for trade and industry, has outlined proposals for further developing Labour's 'family-friendly' policies, which also took centre-stage at last week's Labour Conference in Brighton.

If implemented, the proposals – which the Government says represent her views rather than being concrete policy – will significantly extend the paternity and adoption rights of workers.

Q What are the main proposals for partners of pregnant women and adoptive parents?

A The main proposals include:

- Increasing statutory minimum paternity pay. It currently stands at £102.80 per week – or 90 per cent of average weekly earnings if this is less than £102.80 – and is paid for two weeks. This would be increased to 90 per cent of average weekly earnings for those earning more than £102.80.

- Extending the period during which one adoptive parent is entitled to paid leave of up to 12 months, along with the option of transferring some of their paid adoption leave to their adoptive parent partners.

- Extending flexible working rights to staff who care for elderly or disabled relatives, making such rights comparable with those currently enjoyed by parents.

Q When would the proposals be introduced?

A The proposals, if adopted by the Government, would not be introduced until after 2006, following consultation with unions, employers and other affected parties.

Q How would the proposals impact paternity leave and pay?

A At present, partners (of either sex) of pregnant women have the right to take up to two weeks' paid paternity leave if they have completed 26 weeks' continuous service ending the 15th week before the mothers' expected



week of childbirth (EWC). An adoptive parent who is not taking adoption leave and has 26 weeks' continuous service by the week in which an adoption match is made also has this right. Leave must be taken within 56 days of the child's birth or placement for adoption.

Under the proposals, those on statutory maternity leave would also be able to transfer some of their paid maternity leave to their partner. This would be a significant extension of paternity rights.

Statutory paternity pay entitlement is currently the same as lower-level statutory maternity pay – £102.80 per week (or 90 per cent of average weekly earnings if this is less than £102.80 per week). Only 20 per cent of those eligible take paternity leave, as the pay is relatively low. But under the proposals, partners will be paid 90 per cent of their normal working salary. This will probably increase the take-up of paternity leave.

Q How would the proposals impact adoption leave and pay?

A Currently, individuals (or one partner of a couple where the couple adopt jointly) have the right to take paid adoption leave. Staff with 26 weeks' continuous service by the week they are notified of the match have the right to take 26 weeks' ordinary adoption leave, plus a further 26 weeks' additional adoption leave.

Statutory adoption pay, like lower level statutory maternity pay,

is £102.80 per week (or 90 per cent of average weekly earnings if this is less than £102.80 per week) for the period of ordinary adoption leave. The first six weeks of adoption leave are not paid at the higher rate applicable to maternity pay.

Although not explicitly stated, if adoption leave is to mirror the proposed changes to maternity leave, paid adoption leave would be increased from six months to up to 12 months.

Q What are the current notification requirements?

A The notification requirements for employees to tell their employer that they plan to take maternity, paternity or adoption leave have been harmonised. They must do so in the 15th week before the EWC or, for adopted children, the week in which the adopter is notified of a match.

The employee must give 28 days' notice to their employer to change their intended leaving date, or if notifying their employer of an early return to work.

Q What should employment documents say about the rights?

A There is no statutory requirement for paternity, adoption or even maternity rights to be set out in contracts and handbooks, but it is best practice to do so. Employers and employees will find the DTI website, www.tiger.gov.uk, a helpful source of advice.



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employment law timetable 2005

1 January 2005

Freedom of Information Act 2000 comes fully into force

This allows requests for the disclosure of information held by public bodies

23 March 2005

Working time limits for transport workers come into force

These control the number of hours that drivers are allowed to work

6 April 2005

Information and consultation laws come into force

These establish a general framework for informing and consulting employees

6 April 2005

New tribunal claims and response forms become mandatory

The use of the new forms, introduced on 1 October, becomes mandatory

See the full timetable @

Data is based on the latest information from official sources, but may be subject to change

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