



## Maternity Leave

The Maternity and Parental Leave etc and the Paternity and Adoption Leave (Amendment) Regulations 2006 have made significant changes to employees' rights to maternity and adoption leave.

The Regulations came into force on 1 October 2006. However, the amendments will only apply to employees whose expected week of childbirth, or expected date of adoption, is on or after 1 April 2007.

### The Regulations make the following main changes:

1. The qualifying period of 26 weeks' continuous employment, required before an employee is entitled to additional maternity leave, has been removed so that all employees who qualify for ordinary maternity leave will now automatically qualify for additional maternity leave as well.
2. The period of notice required to be given by an employee to his or her employer of his or her intention to return to work earlier than the end of their maternity or adoption leave has been extended from 28 days to 8 weeks. Similarly, the time period during which an employer can

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postpone an employee's return to work, in circumstances where such postponement is due to the employee's failure to give the requisite 8 weeks' notice, has been extended from 28 days to 8 weeks.

3. New notification requirements have been put in place where an employee changes his or her mind more than once as to his or her intended return date. If the employee decides to return on a date earlier than previously notified, he or she must give 8 weeks' notice of the new return date. If the employee decides to return on a date later than previously notified, he or she must give 8 weeks' notice ending on the previously notified return date.
4. "Keeping in Touch days" have been introduced to enable an employee, following agreement with his or her employer, to undertake paid work for his or her employer of up to 10 days during the statutory maternity or adoption leave period. Neither these days, nor other reasonable contact from time to time between the employer and the employee, will have the effect of bringing the maternity or adoption leave period to an end or of extending such period. Any such work must be by agreement and there is no right for an employer to demand that an employee undertake such work, nor for an employee to demand to be offered such work.
5. Small employers (with 5 or less employees) will no longer be exempt from the obligation to provide an employee with the same or a similar job following the employees return from additional maternity leave and may be subject to a case for automatic unfair dismissal should they fail to do so.

In addition, the new Statutory Maternity Pay Regulations extend the period of statutory maternity and statutory adoption pay from 26 to 39 weeks. Entitlement to Statutory Maternity Pay is still conditional upon an employee having 26 weeks' service by the end of the 15th week before the expected week of childbirth. Rates of pay will remain unaltered so that an employee will be entitled to 6 weeks at 90% of his or her average weekly earnings and the prevailing flat rate for the remaining 33 weeks.

### Consultation on Holiday Entitlement

Consultation is ongoing regarding the Government's proposals to increase the current statutory minimum holiday entitlement.

The current statutory minimum, contained in the Working Time Regulations 1998, is set at 4 weeks, which can include statutory bank holidays. The Government's second consultation document, published on 12 January 2007, proposes to amend the Regulations to increase the statutory entitlement to paid holiday from 4 weeks to 4.8 weeks from 1 October 2007 and from 4.8 weeks to 5.6 weeks on 1 October 2008, subject to a maximum statutory entitlement of 28 days.

Raising the holiday entitlement to 5.6 weeks is equivalent to an increase from 20 days to 28 days for an employee working a five-day week. This new minimum would still include bank holidays and thus for employees working a five-day week this would mean a holiday entitlement of 20 days plus bank holidays.

### Agency Workers

There has been much disagreement over recent years as to whether an agency worker can be the employee of an end-user.

A recent Employment Appeal Tribunal case, which found that an agency worker who had been supplied to an end-user for a five year period was not an employee, has tried to offer some guidance. The EAT suggested that where the agency worker and end-user have not worked together before the agency arrangement it will be rare for a contract of employment to be implied.

The mere passage of time does not justify the implication of a contract on the grounds of necessity.

There is more likely to be an implied contract where the agency agreement has been superimposed on a pre-existing employment relationship between the worker and the end-user.

It is likely that the decision will be appealed so watch this space.

### Information and Consultation

From 6 April 2007 the Information and Consultation of Employees Regulations 2004, which require employers to inform and consult employees' representatives on certain major business matters, will be extended to cover employers with 100 or more employees. At present the Regulations only cover employers with 150 or more employees.



Can an agency worker be the employee of the end-user?



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### Increase of Maximum Tribunal Awards

From 1 February 2007 the maximum compensatory award for unfair dismissal claims rose from £58,400 to £60,600 and the maximum basic award from £8,700 to £9,300. The maximum for a week's pay for the purposes of calculating statutory redundancy pay, basic award etc rises from £290 to £310. The new limits will apply to dismissals where the effective date of termination is on or after 1 February 2007.

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