

Nicholas Lakeland looks at how the Work and Families Act 2006 will affect employers

The two magic words: choice and flexibility

Choice and flexibility: These magic words are the ones used by the Department Trade and Industry to describe the Work and Families Act 2006.

The intention is to help working parents balance the demands of their work with those of family life. But for employers, flexibility for employees often means having to adjust their working practices bringing with it not just additional costs but also yet further administrative burdens.

The Act

The Act, created in 2006, has now become law, although its main provisions will only be coming into force on 1 April 2007. The Act is seen as a further step to helping families balance their work and care commitments. The government has been very focused on offering a greater degree of flexibility to employees, with the aim of helping them to achieve a 'work/life' balance. It is therefore vital that employers and employees alike prepare themselves for further dialogue concerning flexible working. A familiarity with the proposed legislative changes is therefore necessary.

Extension of the right to 'flexible working'

The right to 'flexible working', which encompasses anything from arrival and leaving times through to being entitled to take time off in emergencies, is already a right available to parents of children under six years old, or to parents of children with disabilities. The right is now being extended to anyone who is a carer, which includes those who have to care for adults. Although the 'right to flexible working' is not an automatic right, to have the benefit from flexible working arrangements it is a right to have the procedures for making the request followed. As with all legislation in this area of the law, no doubt it will be a short step in the future for our legislators to decide to change the right to request flexible working into a right to work flexibly.

Carers' rights

These are set out in the draft regulations, which were presented to parliament at the end of December. The right to request flexible working rights also extends to those caring for adults.

The definition of 'carer' will be "an employee who is or expects to be caring for an adult who:

- Is married to, or the partner of the employee;
- Is a 'near relative' of the employee; or
- Falls into neither category but lives at the same address as the employee."

No doubt in the years ahead the issue of who is a carer will make for an interesting debate between employers and employees.

Further maternity provisions

The Act also makes changes to maternity provisions



Lakeland: "Good communication is the key"

for babies due on or after 1st April 2007, which include:

- Increasing the statutory maternity pay from 26 weeks to 39 weeks (the intention is for it to eventually be extended to 52 weeks);
- An entitlement for all women to take the six months ordinary maternity leave;
- A further entitlement for all women to take six months of additional maternity leave.

In essence, all women will be entitled to 12 months of maternity leave, regardless of the period in which they have worked for an employer. The distinction between ordinary and additional maternity pay will only affect an employer's ability to withdraw any contractual entitlements after the end of ordinary maternity pay.

The right to return to work will also vary, as between ordinary and additional maternity leave. In the former case there is a right to return to the same job. In the latter there is a right to return to a similar job.

The notice to be given by employees intending to return to work is to be eight weeks.

Keep in touch days

One of the more radical provisions in the Act relating to maternity leave is that new rights have been introduced for employers and employees to 'keep in touch' during the maternity leave.

An employee on maternity leave is permitted to go into work for up to 10 days during her leave, without losing her right to the statutory maternity pay. These days can be for the purpose of training, update sessions or even the normal job, the aim of which is to help put the employee at ease, keep the employee updated and informed, and make it easier

for the employee to return to work at the end of the maternity period.

It is important that it is agreed that, in the case of keep in touch days, employees can neither be disciplined nor disadvantaged for refusing to take part. Employers will however need to pay in full for these keep in touch days, in order to avoid the possibility of a claim for the difference between statutory maternity pay and an employee's full pay, with employees availing themselves of either the Sex Discrimination or Equal Pay legislation.

Additional paternity rights

Additional paternity leave for fathers will be available, of up to 26 weeks. Fathers will only be entitled to this leave if the mothers have not taken up their entitlement (in part or in full) to additional maternity leave, and returned to work early.

The right extends to fathers who adopt children, as well as those who have their own.

A number of matters are yet to be clarified, such as the entitlement of fathers to be paid for the period of additional paternity leave and the qualifying period which applies before such a period can be taken. The administrative arrangements which would be necessary are also due to be clarified. What is known is that the additional paternity leave can only be taken in a single block. It is also clear that all of these arrangements are going to make life even more complicated than has previously been the case.

Amendments to working time

The legislation enables government to have the power to extend the right to annual leave. This is likely to result in employees being entitled to 20 days paid holiday plus the eight days worth of bank holidays, rather than simply 20 days inclusive of the eight bank holidays.

Conclusion

Good communication is, as always, the best way for employers and employees to have the best possible working relationship.

The commitment by the government to improving the work/life balance is intended to strengthen working relationships and to play an important part in augmenting the performance of the employer's business. Working flexibility is also being promoted as invaluable for the successful recruitment and retention of staff, and as a tool to increase the motivation, loyalty and commitment of employees. Whether these sentiments develop into workplace realities will be something for us all to consider in time to come.

Nicholas Lakeland is head of the Employment Law Unit at Silverman Sherliker LLP solicitors and can be contacted on 020 7749 2700, or on ncjl@silvermansherliker.co.uk