

Legal & Financial Considerations When You Have a Child



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solicitors

Legal and Financial Considerations When You Have a Child

What Are My Employment Rights?

Maternity Rights

Women employees have a number of statutory rights available to them before and after they give birth, including the right to:

- ✓ time off work for ante-natal care;
- ✓ claim automatic unfair dismissal if dismissed for a pregnancy related reason; childbirth, maternity or ante-natal care, or ordinary maternity leave (OML);
- ✓ take ordinary maternity leave and additional maternity leave (AML) (the latter being subject to eligibility);
- ✓ statutory maternity pay (subject to eligibility);
- ✓ return to work on same terms and conditions after ordinary maternity leave;
- ✓ be automatically offered suitable alternative employment above other employees if at risk of redundancy whilst on maternity leave; and
- ✓ not suffer a detriment at work for a reason connected with her pregnancy.

Time off Work for Ante-Natal Care

This right applies to expectant mothers irrespective of their length of service, and must be paid at the employee's normal rate of pay.



Starting Maternity leave

An employee must notify her employer that she is pregnant no later than the 15th week before her Expected Week of Childbirth (EWC). The notification must state when she wants her leave to start. The leave period cannot start prior to the 11th week before the EWC. If the employee is also eligible for SMP, she should notify her employer when she wishes it to start. Her employer must respond to her notification within 28 days stating her expected return to work date. If the employee wishes to change the date her maternity leave starts she can do so by giving her employer 28 days' notice.

If a child is born prematurely, and before the date that the employee intended her maternity leave to start, her leave will automatically start running from the day after the child is born. If an employee is absent due to a pregnancy related reason during the 4th week before the EWC, her maternity leave will start automatically. However, if an employee is off sick for a reason which is not related to her pregnancy, then she can remain on sick leave up to the date of giving birth, or the date notified to her employer for starting her maternity leave, if earlier.

Returning to work

A woman does not have to give her employer any notification of returning to work after OML or AML unless she is returning to work earlier than expected (see table). If a woman decides not to return to work after maternity leave, then she must give her employer the relevant notice period under her contract of employment. If an employer refuses to give an employee her former job back after she returns from maternity leave, she may be able to bring a claim for unfair dismissal and/or sex discrimination.

Statutory Maternity Leave

OML and AML.

Statutory Maternity Pay (SMP)

The employee must be continuously employed for 26 weeks by the end of the 15th week before EWC to qualify for SMP. The first 6 weeks are paid at 90% of earnings and the remaining 33 weeks at the statutory rate (currently £112.75).



Statutory Maternity Allowance

Payable for 39 weeks for those employees who are not eligible for SMP.

Returning to Work

If an employee wishes to return to work earlier/later than originally stated she must give her employer not less than 8 weeks notice of a new return date.

Keeping In Touch Days

An employee can agree with her employer to return to work for up to 10 days during her maternity leave without bringing it to an end.

Paternity Rights

Paternity leave allows an eligible employee to take paid leave to care for the baby, or to support the mother following birth, or to support an adopter after a child has been placed for adoption.

Who is eligible for paternity leave?

An employee is eligible for paternity leave if they are;

- ✓ the biological father of the baby
- ✓ the mother's husband or partner
- ✓ in the case of an adoption, married to or the partner of the adopter

and have been continuously employed for 26 weeks at the end of the 15th week before the EWC or in the case of adoption, the week the adopter was notified of being matched for adoption.

When can an employee start his leave?

Paternity leave cannot start until the birth of the baby. It can start on any day of the week, as long as the employee has given notice to his employer by the end of the 15th week before the EWC. It must be taken:

- ✓ within 56 days of the actual date of birth of the child; or
- ✓ if the baby is premature, between the birth and 56 days after the EWC; the biological father of the baby
- ✓ within 56 days from the date the child is placed for adoption.

How much paternity leave can an employee take?

Only one period of leave can be taken, even if more than one baby is born as the result of the same pregnancy. Paternity leave is limited to two weeks leave and must be taken as two separate weeks or two consecutive weeks. Leave cannot be taken as odd days. An employee is entitled to be paid statutory paternity pay (SPP) during paternity leave. SPP is calculated the same way as the lower rate SMP (currently £108.85), or 90% of normal weekly earnings if lower.

The Future

The government intends to grant fathers the right to a further period of paternity leave and pay, but only if the mother returns to work after her OML ends, but before the end of her AML.

Adoption Rights

An employee is entitled to 52 weeks Adoption Leave and 39 weeks statutory adoption pay (SAP) if they have been newly matched with a child for adoption and have at least 26 weeks continuous service with their employer by the week in which they were notified of being matched for adoption. For joint adoptions, only the adopting parent may take adoption leave; the other parent may take paternity leave if eligible. The right to Keeping In Touch Days also applies.

Additional Parental Rights

For rights supplemental to maternity and paternity rights, see below.

After 26 weeks service

The right to request flexible working applies to parents or those with parental responsibility for a child under 6, or 18 if disabled, as well as those caring for adults.

After one year's service

Parents with responsibility for a child may take up to 13 weeks unpaid leave by the child's 5th birthday, or the 5th year following adoption, or 18 weeks unpaid leave by the child's 18th birthday if the child is disabled. This leave can only be taken in weekly blocks, except if the child is disabled.



Do I Have Any New Legal Obligations/ Rights

Registering the birth

You must register the birth within six weeks. It usually requires a personal attendance at your local Register Office and you might need to make an appointment. You can give the child any name of your choice. The child does not have to have the same surname as either or both parents, although this would be usual.

It is not necessary for both parents to attend to register the birth, although if the parents are not married, the father will need to be present if he wants his details to appear on the certificate. (See also 'Parental Responsibility').

Bear in mind that if you later decide to change the child's name, you will not be able to alter the name appearing on his/her birth certificate, except in the following circumstances:

- ✓ If you want to change a child's forenames within 12 months of the registration, you can have the birth certificate amended to include the new forename(s). This must be done by the parent(s) who originally registered the birth. The new full birth certificate will show both the original and the new forename(s), but the short birth certificate will show only the new forename(s).
- ✓ If the parents were not married at the time of registration and the father's details do not appear on the certificate, these details can be added and the child's surname can be changed to that of the father, provided that both parents agree. A new birth certificate will be issued.
- ✓ If the parents have married since the birth was registered, the birth can be re-registered to include the father's details. The child's and the mother's surname can be changed to that of the father as part of this process. A new birth certificate will be issued.

It will generally be difficult to alter the child's surname after registration, unless both parents agree.

Parental Responsibility

Parental responsibility is the legal term given to the rights and duties of a parent in relation to their child. In practical terms it includes:

- ✓ consenting (or not) to a child's medical treatment;
- ✓ the obligation to have a child educated and the right to be kept informed by the child's school;
- ✓ determining the child's religion;
- ✓ appointing a guardian for the child;
- ✓ consenting (or not) to marriage;
- ✓ protecting and maintaining the child.

Married Parents

Where a child's parents are married, both parents automatically have parental responsibility in respect of the child. This cannot be taken away, save in the event of adoption.

Unmarried Couples

Although the mother automatically has parental responsibility, unmarried fathers only have parental responsibility if they register the child's birth jointly with the mother (this only applies to births registered after 1 December 2003).

Otherwise fathers must acquire parental responsibility in one of the following ways:

- ✓ marry the mother of the child;
- ✓ enter into a Parental Responsibility agreement with the mother using the prescribed form and have it registered with the Court;
- ✓ apply to the Court for a Parental Responsibility Order;
- ✓ if the unmarried father's name is not on the birth certificate for births registered on or after 1 December 2003, but the mother gives her consent, the unmarried father can re-register the birth and get full parental rights.

Step-parents

Following a change in the law, a step-parent may now acquire parental responsibility in respect of their spouse's natural child with the agreement of all those with parental responsibility or by Court Order.

Same Sex Couples

The natural mother of any child will automatically have parental responsibility



in respect of the child. The natural father will have parental responsibility if he is named on the birth certificate of a child registered after 1 December 2003, otherwise he must acquire it in one of the ways outlined above. Their partners will not have parental responsibility, but if they have entered into a Civil Partnership with the natural parent, they can acquire parental responsibility in the same way that step-parents can.

What If We Separate?

No-one likes to think that they might separate from their partner, especially when they are expecting a new baby. Sadly though, it does happen and it is important to try and take steps to protect yourself and your child from a financial perspective.

Married couples and civil partners have some protection because they have claims against each other arising out of divorce or dissolution. At present unmarried couples have no automatic rights. There is no such thing as a 'common-law spouse', however long you have been living together (although parents can make some claims on behalf of their children).

Cohabiting couples (including same sex couples) should therefore consider drawing up a legal agreement which regulates the arrangements between them both whilst living together and in the event of separation. If you wish to discuss this further, please contact a member of our Family team.

It is important to note however that it is never possible to make a final, binding agreement about how you would arrange the care of a child following separation. The Court would always be able to overrule such an agreement if asked to intervene, and if the Court considered a different arrangement to be in the best interests of your children.

What Would Happen if I Died?

Making a Will

If you have a child you should seriously consider amending your Will to provide for your child, or making a Will if you don't already have one. A Will is a legal document which states how you wish your estate (belongings, savings, property etc.) to be distributed after your death. Making a Will enables you to:

- ✓ make provision for your wife/husband/partner and children;
- ✓ appoint guardians for your children if both parents were to die;
- ✓ establish trust funds to look after your children's financial future;
- ✓ provide for your specific wishes regarding the bequest of certain personal items or sums of money to children, friends, relatives or charities;
- ✓ plan the distribution of your estate advantageously for tax purposes;
- ✓ state your wishes regarding your funeral arrangements;
- ✓ appoint executors to carry out the terms of your Will, ensuring that you appoint someone whom you trust, and do not leave such a task to a friend or relative who may find the whole matter rather bewildering.

What happens if I don't make a Will?

Strict rules have been laid down by an Act of Parliament stating who inherits your property if you die without making a Will (known as dying "intestate"). This may well turn out to be unfair, illogical and not as you would have wished.

For example, a married partner does not automatically receive the whole of the estate. If your children or parents are still alive, your spouse may only receive a proportion, with the remainder going to your children or even, in certain situations, your parents. Nor are unmarried partners provided for in any way under these rules. This can have the most unfortunate and inconvenient consequences for everyone, often causing serious financial problems and embarrassing family disputes.

Inheritance Tax

If you are leaving assets to an unmarried partner or to your children, there may be Inheritance Tax to pay on your Estate. This can be minimised, or even avoided altogether, with some planned Will drafting and sometimes by other methods.

A tax liability could have a disastrous impact on your beneficiaries' financial stability. If you own assets worth over £325,000, you should seek professional advice.



What Financial Planning Should I Consider?

In financial planning terms there are two main areas to be considered when looking at the welfare of your child (on the assumption you have made a Will and appointed Executors/Guardians).

Protection

If you or your partner were to die before your child reaches maturity, do you have sufficient financial resources not only to continue your normal standard of living but also to ensure your child is financially provided for?

Check to see if:

- ✓ your employer offers any life assurance cover;
- ✓ your and your partner's existing policies are sufficient;
- ✓ any existing policies are in Trust;
- ✓ any liabilities, such as a mortgage, are protected.

What are the financial implications for your family if you or your partner are unable to work through long term illness, disability or injury?

Check:

- ✓ your own financial cushion. How long would it last?
- ✓ your contract of employment. For how long will your employer pay your salary and at what level?
- ✓ your State benefit entitlement. It is medically means tested and depressingly low;
- ✓ any insurance policy (known as Permanent Health Insurance and/or Critical Illness Cover) you may have taken out to make sure it is still adequate

Education provision

If private education is a priority, you will need to decide whether you will “pay as you go” or make financial savings arrangements that, to be successful, must start almost from the birth of your child. At current rates the total cost of private education and university can exceed £100,000 per child!

Plan with the following in mind:

- ✓ How long is it before the first school fees are due?
- ✓ How many children do you plan to educate privately?
- ✓ The level of fees and their likely annual increase.
- ✓ Your income potential, assets and any possible inheritance.
- ✓ The level of risk you are prepared to take with investment.
- ✓ Whether you invest a lump sum or a monthly amount.
- ✓ Your tax status now and when the investments mature and the tax position of your partner.
- ✓ The effect of inflation - low at present, but remember school fees rise faster than inflation.

Check with local schools to see if financial assistance may be available through:

- ✓ scholarships
- ✓ bursaries from the Schools themselves
- ✓ charitable Trusts

If grandparents are able to assist, a lump sum investment within a suitable trust wrapper is not only an effective way of meeting school fee costs but also of providing financial help in many other ways whilst your child is growing up. It can also have tax advantages for the grandparents.

If not, a very early commitment to regular savings is essential. Saving for the long term can be achieved in many ways but tax efficiency is a very important consideration. The following are some of the savings vehicles that can be considered:

- ✓ Individual Savings Account (ISAs)
- ✓ Unit Trusts
- ✓ Share Clubs
- ✓ Building Society Accounts
- ✓ National Savings Certificate
- ✓ Fixed Term Annuities



It is important to note that all of the above have differing levels of investment risks – independent advice is essential.

If you decide that the State system suits your child's needs, then you may still need to consider higher education fees. The funding of higher education is somewhat contentious and the rules can be complex. In essence, however, better off parents are now expected to meet tuition fees and up to 25% of living expenses. Students are expected to borrow the rest.

Blandy & Blandy LLP does not assume legal responsibility for the accuracy of any particular statement contained in this guide. In the case of specific problems we recommend that professional advice be sought.

Contact us

If you would like to speak to someone about our services or discuss your situation, please contact Andrew Don, Head of Family

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More details on our service can be found on our website
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