

CONSULTATION ON MODERN WORKPLACES

Executive Summary :

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MAY 2011

1. Executive summary

1. This consultation seeks views on proposals to make employment practices in the UK more flexible and family-friendly. The proposals will implement Coalition Agreement commitments on flexible parental leave and on the extension to all employees of the right to request flexible working; amend the Working Time Regulations affecting the interaction of annual leave with sick leave and family-friendly leave in the light of EU court judgments; and take further steps to tackle the gender pay gap, consistent with the Coalition Agreement commitment to promote equal pay. The proposals in this consultation apply to Great Britain only, since employment is a transferred matter in Northern Ireland.
2. Our proposals in these areas are consistent with the Government's growth strategy, as set out in the 2011 Budget, including the ongoing review of employment laws. The proposals in this document will bring benefits for employers as well as employees, by increasing participation in the labour market while also helping people to balance work with their family and personal responsibilities.

Flexible parental leave

3. The Government is committed to delivering a system of parental leave which is fit for modern workplaces and which addresses the key challenges of working parents – both for families and employers. This consultation seeks views on our proposals for a system of genuinely flexible parental leave that will give parents choice and facilitate truly shared parenting, helping both parents to retain their attachment to the workplace.
4. We recognise the particular requirements of women who are pregnant or who have recently given birth. We will therefore retain 18 weeks' maternity leave. This will be reserved exclusively for mothers, and will continue to be taken in a continuous block around the time of the baby's birth. We will also retain the current statutory maternity pay and maternity allowance arrangements during this period, as well as existing arrangements for two weeks' (ordinary) paternity leave and pay. Existing employment protections concerning maternity leave will be maintained.
5. That aside we propose that the remainder of existing maternity leave should be reclassified as parental leave, and that this should be available to either parent on an equal basis (similar provisions will apply for adopters and same-sex couples). We propose that each parent should have exclusive use of four paid weeks' leave, which will incentivise greater involvement by fathers in the early stages of a child's life. The remaining weeks would be available for either parent. Parents would be able to take this leave concurrently. In order that mothers could – if the parents so choose – take the same amount of leave as is currently possible, we will extend the number of paid weeks of leave by the four that will be reserved for the father. This policy will have expenditure implications. We aim, as a priority, to introduce the new system in April 2015, although this timescale is subject to affordability.
6. The new parental leave provisions will also incorporate the existing right to unpaid parental leave beyond the first year of the child's life, so parents will have a single right to parental leave which they can use from the end of maternity leave through their child's early years.

This will simplify the system for employers and employees, and mean that qualifying conditions will be the same for all parental leave. The new provisions will also supersede those for additional paternity leave and pay.

7. In addition to allowing parents the possibility of taking leave at the same time (thereby, for example, allowing fathers to take a longer period when their child is born), we are also seeking views on the desirability of allowing employers and employees to agree greater flexibility in when leave may be taken, such as allowing parents to take leave on a ‘part-time’ basis or allowing them to break leave into two or more periods. Alongside the proposed changes to leave, we are keen to seek views on the key challenges for employers in the proposals for a flexible system of parental leave and how the process can be improved.
8. Other issues considered in this consultation are extending the age limit for taking unpaid parental leave beyond the existing limit of the child’s fifth birthday; and giving fathers the right to unpaid leave to attend antenatal appointments: either as a new entitlement or as part of a father’s wider parental leave entitlement.

Flexible working

9. The right to request flexible working gives employees the statutory right to request a contract variation, generally for a more flexible working arrangement, and places an obligation on employers to consider requests seriously. The right to request currently applies to parents of children under 17, of disabled children under 18, and to certain carers.
10. This consultation sets out the Government’s proposals for extending the right to request flexible working to all employees. This will help employees to better balance their work, family and wider responsibilities; and help employers to retain experienced and skilled staff.
11. We want employers to be able to adopt flexible working, in their workplace, as easily as possible. To do this we propose to replace the existing statutory process for considering requests with a duty to consider requests ‘reasonably’ alongside a new Code of Practice to guide employers in considering requests. This will enable employers to use their own management systems to consider requests, so long as the request is considered within reasonable amounts of time, and conducted in a fair and reasonable manner. We do not intend to change the existing business reasons under which an employer may refuse a request.
12. We recognise that some employees may have a greater need for flexible working due to their own personal circumstances. However, we believe that formally prioritising certain groups would only reinforce the idea that flexible working is primarily for parents and carers when we aim to promote a culture where flexible working is a legitimate ambition for all employees. We propose instead to *allow* but not *require* employers to prioritise competing requests to take account of the employees’ personal circumstances. Employers would nevertheless still have to show that all the competing requests could not be accommodated, in their entirety, on business grounds.
13. Employees must currently have been employed for 26 consecutive weeks to exercise the right to request. There have been calls to remove this condition on the basis that it fails to support people who would benefit from flexibility to help their entry into the labour market.

However, we recognise that employers need to have confidence in the conditions of appointment for a new employee. Removing the qualifying period for flexible working would reduce this confidence so we plan instead to work with employers to encourage them to consider flexible working before appointing staff, and discuss flexibility at interview.

14. The Government is also keen to provide some support to individuals who have a temporary need for flexibility, such as employees who are caring for someone with a short term but serious illness, or those who are adjusting to new caring responsibilities. Existing rules restrict employees to only one request for flexible working in any 12-month period. We are seeking views on whether amending this restriction would help to support those employees who need a temporary change to their working arrangements. We are considering amending the rules so that employees could make an additional request within the 12-month period if they state in their original request that they expect it only to be temporary.
15. In the context of the announcement in the 2011 Budget, we are also consulting on whether the extension to the right to request should apply to those employees working in a micro-business or start-up for the period of the moratorium.
16. We appreciate that stimulating culture change on flexible working across the labour market will require more than just regulatory change. We will therefore work with business leaders and employers to promote the business case for flexible working. We are also interested in the potential for varied-hours working to allow those with significant or irregular family and personal commitments to participate in the labour market. We recognise that Government needs to lead by example as a large employer. We also see scope to use Jobcentre Plus services to help influence the recruitment process. The Government's response to this consultation will provide more detail on the progress of these non-legislative approaches.

Working Time Regulations

17. There have been a number of judgments in the Court of Justice of the EU (previously the European Court of Justice) relating to the interaction of annual leave with sick leave, maternity leave and parental leave in the context of the European Working Time Directive (WTD). The judgments established the principle that workers who have not had the opportunity to take their annual leave because of sickness absence, maternity or parental leave in the current leave year, must be able to carry it forward into the following leave year.
18. We need to amend the UK's Working Time Regulations (WTR) in order to ensure compliance with these rulings. The changes are consistent with our overall approach on parental leave, since they will ensure that parents do not lose out on annual leave entitlement as a consequence of exercising family-related leave rights. Where someone has been on sick leave, we propose to allow employers to limit the ability to carry over annual leave to the four weeks of leave required under the WTD (*i.e.* excluding the additional 1.6 weeks required by the WTR and any further contractual leave).
19. Our proposals will also mean that employers can if they wish insist that leave untaken due to sickness absence must be taken in the current leave year, where possible, rather than being carried forward. We also propose to provide additional flexibility to allow employers to defer that leave until the following year when this can be justified in terms of business need.

20. In the context of the Employment Law Review, we are also seeking views on further options for increasing the flexibility for employers around the operation of statutory annual leave. Employers could, for instance, be allowed to ‘buy out’ the additional 1.6 weeks or could be allowed to require employees to defer that leave until the first six months of the following leave year if this can be justified in terms of business need.

Equal pay

21. Despite the legal framework around equal pay being in force since 1975, there is still a significant gender pay gap, and continuing evidence of non-compliance with the law. The gender pay gap has multiple and complex causes, and the Government is committed to working with business to address these, in particular through improving flexibility at work, encouraging greater transparency and ensuring effective enforcement of equal pay law.
22. As part of this approach, we are seeking views on a legislative proposal which aims to ensure that employers who have breached the law take appropriate action to rectify the problem. We propose to require employment tribunals which have found an employer to have discriminated in contractual or non-contractual pay matters to make that employer conduct a pay audit, unless the tribunal is satisfied it would not be productive to do so.
23. By focussing on employers who have been found to have failed to comply with the law, this proposal will not add burdens for good employers who have taken steps to ensure they do not discriminate against women.

Next steps

24. This consultation aims to inform the development and implementation of these policies. We aim to legislate on flexible parental leave, flexible working and equal pay as soon as possible in this Parliament. We intend to introduce secondary legislation to amend the Working Time Regulations, with implementation likely to be in 2012.

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