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## **RIGHT TO PARENTAL LEAVE**

Information, Guidance and Advice for Divisions and Associations

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The parental leave provisions of the Employment Relations Act 1999 and the Maternity and Parental Leave Regulations give men and women employees with one year's service a right to take unpaid leave to care for their children.

The Regulations contain provisions which give minimum entitlements to employees. The Regulations also allow employees and their representatives to agree improvements to this 'default scheme' with the employer by means of a workforce agreement at local or national level. The Union is considering this issue at national level.

Colleagues seeking to advise members as to their parental leave claim should seek any necessary further advice from the relevant regional office, or, in Wales, from the NUT Wales Office, NUT Cymru.

### **Who is entitled to take parental leave?**

Employees who have at least one year's continuous service with their current employers at the time they intend to take the leave are entitled to take parental leave to care for children for whom they have parental responsibility (see below).

Changes from 10 January 2002 extended eligibility for the leave and the previous requirement for the child to be born after 15 December 1999 no longer applies.

### **When can the leave be taken?**

The leave can be taken

- Σ at any time up to and including the child's fifth birthday;
- Σ if a child is entitled to disability living allowance, at any time up to and including the child's 18<sup>th</sup> birthday;
- Σ where the child has been adopted, at any time up to and including the fifth anniversary of the adoption, or the child's eighteenth birthday, whichever is earlier.

Women taking maternity leave can therefore choose whether to take some parental leave immediately following maternity leave or to elect to take all such leave later.

Parents of children born or adopted between 15 December 1994 and 15 December 1999, who were not eligible for parental leave until the law changed from 10 January 2002, may take the leave at any time up to and including 31 March 2005.

## **How much leave can be taken?**

The statutory right is to take a total of 13 weeks' leave for each child during the relevant period. This is pro-rata for part time workers. Where the hours of work vary from week to week, an average is taken over the period of a year.

The Regulations provide for an employee to take a maximum of four weeks' leave per child in any year of entitlement (starting from the first date of entitlement). This can be improved, however, through local agreements with employers.

The Regulations allow leave to be taken as of right only in blocks or multiples of a week, except for parents of disabled children who can take the leave a day at a time or in longer blocks if they wish. Any employee can, however, seek some other arrangement with the employers as to the blocks of time that can be taken, for example, in days, weeks or reduced working hours.

## **How should a teacher make the request?**

There are no specific provisions set down in the Regulations as to how teachers should request parental leave. The arrangements under which local education authorities and schools will make for administering parental leave were not known at the time of writing. The NUT's view is that teachers should ask for parental leave in accordance with local arrangements for maternity or paternity leave.

## **What conditions does an employee have to meet?**

The Regulations provide that the employee must give notice of taking leave and must comply with any reasonable request to show evidence of parental responsibility, unless a more generous scheme has been agreed with the employer.

## **What evidence might be reasonably required?**

An employer can request to see evidence of parental responsibility for the child, the date of birth or adoption, or entitlement to disability living allowance.

## **What notice must be given?**

If the leave is to be taken by a father starting on the day of his child's birth, the notice must be given at least 21 days before the expected week of childbirth. It must specify the expected week of childbirth and the length of leave which is to be taken.

If the leave is to be taken from the date of adoption, the notice must be given at least 21 days before the week in which the adoption placement is to occur, or as soon as reasonably practicable. It must specify the week in which the placement is expected and the duration of leave to be taken.

In other cases, at least 21 days' notice must be given. Again, it must specify the dates on which the leave is to begin and end.

Therefore, if a woman wishes to take parental leave immediately following maternity leave, she should ensure compliance with the 21 days' notice. The provisions for postponement of leave by the employer should also be noted.

## **When can an employer postpone leave?**

An employer cannot postpone leave where the employee's leave is to commence on the date of adoption or (if the father) on the date of childbirth.

The employer can postpone parental leave at other times where the employer considers that the operation of business would be unduly disrupted if the employee took the leave as requested.

If the employer wishes to postpone leave the employer must:

- X allow the same length of period of leave to be taken not more than six months later than requested;
- X give the employee notice of postponement, in writing, at least seven days after the employee's notice of leave was given; and
- X in the notice, state the reasons for the postponement and the dates when it can be taken.

In the NUT's view, postponement of parental leave requested by a teacher should be fully and objectively justified by the employer. The Union is keen to challenge any postponements which appear to be unfair or unnecessary, particularly any attempt to postpone leave to school closure periods.

### **Which terms of the employment apply while the parent is taking leave?**

An employee taking parental leave is entitled only to the benefit of:

- Σ the implied term that the employer will behave in accordance with a relationship of trust and confidence;
- Σ any terms relating to notice of dismissal
- Σ any terms relating to redundancy compensation
- Σ disciplinary and grievance procedures.

The employer is bound also by any terms of the contract which related to notice of resignation, acceptance of gifts, taking on of other work or disclosure of confidential information.

### **Can the employee be moved to a different job on return from leave?**

An employee who takes parental leave for four weeks or less is entitled to return to her job, unless she takes it immediately after additional maternity leave.

An employee who takes parental leave for four weeks or less, immediately after additional maternity leave, is entitled to return to her previous job unless it is not now reasonably practicable for her to do so, and was not at the time that her additional maternity leave ended. If so, the employee must return to another job which is suitable and appropriate in the circumstances. If her post is redundant, suitable alternative posts must be offered if any are available.

## **Can the employee's contractual terms be changed?**

An employee taking parental leave is entitled to receive the same or better terms relating to pay the same as or better than those which would have been applicable had the employee not been absent from work since the beginning of the period of parental leave. Entitlement to accrue rights in relation to pay therefore continue during the parental leave. Any pay increases will be applicable on return from parental leave and the period of parental leave will count for incremental purposes.

This applies also where the parental leave has been taken immediately after additional maternity leave. The employee is to be treated in relation to pay as if she has not been absent since the beginning of her maternity leave and to receive the appropriate increases to pay on her return.

Other terms and conditions must be not less favourable than those which would have been applicable had the employee not been absent. Again, these terms and conditions do accrue during the period of leave. For example, periods of parental leave will count towards entitlement of sick leave.

Pension and similar rights are treated differently. The employee is to be treated as if the period of work prior to taking parental leave was continuous with service following return. These rights, therefore, are suspended during that period, and do not continue to accrue during the period of leave.

## **How is the entitlement enforced?**

An employee can take a claim to the employment tribunal if the employer prevents or attempts to prevent the employee from taking parental leave or unreasonably postpones the parental leave period.

Complaints to the employment tribunal must be presented within 3 months. The tribunal can make a declaration and award compensation "as the tribunal considers just and equitable in all the circumstances". When NUT members indicate a desire to make such complaints reference should be made to the NUT regional office or, in Wales to the NUT Wales Office, NUT Cymru.

## **Victimisation relating to parental leave**

An employee who takes, or seeks to take parental leave will also be protected from disadvantage or dismissal. The Regulations provide that an employee who is subjected to detriment on the grounds of taking or seeking to take parental leave; or refusing to sign a workforce agreement relating to parental leave, can present a claim to the employment tribunal. Such a claim must be presented within 3 months. The tribunal can make a declaration and award compensation. An employee who is dismissed on such grounds will have been unfairly dismissed.

There is also specific protection for staff representatives performing representative functions in relation to these rights such as when conducting negotiations on a contractual parental leave scheme.

Advice on the new rights to protection from victimisation is available from regional offices or in Wales, from the NUT Wales Office, NUT Cymru.

### **What is the effect of the new entitlement on existing local paternity arrangements?**

A number of local education authorities already operate paternity arrangements. In some respects, they are more generous in their provisions than the statutory parental leave provisions, for example, in relation to pay. They generally provide, however, for a shorter period of time than the 13 weeks over five years. These local arrangements usually apply to fathers only and do not always apply to adoption.

The Regulations provide that parents will have a 'composite' entitlement, made up by putting together the statutory rights with any more favourable contractual provisions, where the rights are 'corresponding'. Once a contractual right to parental leave has been agreed with an employer, therefore, the employee can choose whether to take advantage of any part of the statutory scheme or to exercise contractual rights only. This is similar to the provisions allowing women to choose between elements of contractual and statutory maternity schemes.

The NUT's view is that paternity and parental rights will generally be sufficiently different to allow teachers with existing contractual paternity rights to exercise both rights.

In this way, a teacher entitled to 5 days' paid paternity leave under a local agreement, would be entitled both to leave and the full statutory parental leave.

Should the assertion of this dual entitlement be resisted by a local education authority, further advice can be sought through the relevant regional office or in Wales, the NUT Wales Office, NUT Cymru.