

Case Update



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Shared parental leave – what is the cost?

Should employers match what they pay for shared parental leave with any enhanced maternity pay they offer? A recent Court of Appeal ruling suggests that employers do not have to do so, as it is not discriminatory to enhance pay for women on maternity leave where the employer pays the statutory rate only for employees on shared parental leave.

The Court of Appeal ruling was made in two cases which were heard together:

CASE 1:

The first case involved a business customer adviser who had taken two weeks of paid paternity leave and two weeks of paid holiday when his daughter was born prematurely. He wanted to take more time off and was told that he could take shared parental leave but that this would be at the statutory rate only, so he decided not to apply. An Employment Tribunal ruled that this amounted to direct sex discrimination because the employer's policy offered 14 weeks' full pay for women on maternity leave. The decision was overturned by the Employment Appeal Tribunal and the employee appealed further to the Court of Appeal.

CASE 2:

The second case involved a police officer who brought a claim of indirect sex discrimination on the basis that shared parental leave for police officers was paid at the statutory rate but mothers on maternity leave received full pay for 18 weeks. An Employment Tribunal initially ruled that there was no direct or indirect sex discrimination. On appeal, the Employment Appeal Tribunal ruled that such a policy could potentially give rise to indirect sex discrimination on the basis that fathers in the police force only have the option of taking shared parental leave (at statutory pay), whereas mothers have the additional option of taking maternity leave (at full pay for 18 weeks). The case was also appealed to the Court of Appeal.

The Court of Appeal has now ruled that there was no sex discrimination in either case. The Court ruled that the purpose of maternity leave is different to shared parental leave. Maternity leave is designed to protect the mother in connection with the effects of pregnancy and motherhood whereas shared parental leave is all about facilitating childcare. A man on shared parental leave is therefore not comparable to a woman on maternity leave. In addition, UK law expressly allows employers to provide special treatment to women in connection with pregnancy or childbirth without this constituting unlawful discrimination. Accordingly, employees taking shared parental leave cannot claim sex discrimination in relation to more favourable enhanced pay offered to mothers taking maternity leave.

This ruling provides some welcome clarity for employers and suggests that employers can safely pay employees on shared parental leave less than mothers on maternity leave. However, the ruling is likely to be appealed to the Supreme Court and this may not be the last word on the issue. In addition, in practice many employers align their policies on enhanced pay for maternity and shared parental leave, given the aim of shared parental leave is to promote greater equality and give parents more choice as to how to share parental responsibilities.