

WEST DUNBARTONSHIRE COUNCIL

Report by the Head of Human Resources and Organisational Development

Corporate and Efficient Governance Committee: 22 June 2011

Subject: Additional Paternity Leave Regulations 2010.

1. Purpose

- 1.1** To update CECG on the Additional Paternity Leave Regulations 2010 which came into effect for employees with babies due or matched for adoption on or after 3 April 2011.
- 1.2** The report advises Committee of the impact of the legislative change which gives parents greater flexibility in child care responsibilities particularly in relation to the facility for both parents to share the leave entitlements.

2. Background

- 2.1** From 6 April 2010 new regulations give parents of children due, or matched for adoption, on or after 3 April 2011 greater flexibility in how they use maternity and paternity provisions through the introduction of Additional Paternity Leave.
- 2.2** The Regulations enable parents to share a period of leave between them following the birth or adoption placement of a child, by giving mothers the right to transfer the second 6 months of their 12 months maternity leave entitlement to the father/partner which gives families greater flexibility in how they choose to look after their children
- 2.3** Under the Regulations “partner” is defined as the person who lives with the mother and the baby in an enduring family relationship but is not a relative of the mother. This includes: biological father; mother’s spouse; civil partner (of either gender) of the mother or primary adopter

Current Paternity Rights

- 2.4** Additional Paternity Leave will enable eligible partners to take up to 26 weeks additional paternity leave and is in addition to the existing 2 week paid paternity leave entitlement. However, the partner will only be able to take additional leave if the mother has returned to work, and even then not before the baby is 20 weeks old. The purpose of additional paternity leave must be to genuinely care for the child.

3. Main Issues

Additional Paternity Leave & Pay

- 3.1** These regulations are in addition to the existing statutory entitlement for new fathers/partners to take 2 weeks of leave around the time of the birth (or

placement in the case of adoption). This 2 week period will now be known as Ordinary Paternity Leave, and this remains paid at the statutory rate of pay, which the Council has enhanced to actual pay.

- 3.2** To be eligible for Additional Paternity Leave the employee must still meet established qualifying criteria. Fathers/partners can choose to take between 2 and 26 weeks additional paternity leave, which must be taken in multiples of complete weeks and as one continuous period with 2 weeks being the minimum leave. Leave must be taken after the mother's first 26 weeks of maternity leave when the child is over 20 weeks or has been with its adoptive parents for over 20 weeks, and can only be taken when the mother/primary adopter has ceased maternity leave. Leave must also be completed by the child's first birthday or the 52nd week after the child's placement for adoption as the aim is to enable share care of their child in the first year.

Rate of Pay

- 3.3** Eligibility for additional paternity leave is largely the same as eligibility for ordinary paternity leave. In addition, an employee who requests additional paternity leave must still be in employment at the time the leave begins. Some of the leave may be paid to the father/partner if the mother/primary adopter has returned to work before the statutory maternity pay; maternity allowance, or statutory adoption pay, period of 39 weeks is completed. For example, if the mother returns to work having taken only 20 weeks leave then a further 19 weeks additional statutory paternity pay can be claimed by the father/partner, if eligible.
- 3.4** An employee who is eligible for additional statutory paternity pay will receive whichever is the lesser of the weekly rate, which from April 2011 is £128.73, or the earnings related rate, which is 90% of the employee's average weekly earnings. The Council can claim back 92% of this statutory payment.

4. People Implications

- 4.1** This new provision will provide parents with more choice and flexibility in child care responsibilities and a more equitable sharing of leave entitlements by allowing fathers a greater opportunity to be involved in raising their child. Mothers will have the choice between taking their full maternity leave and returning to work early, allowing their partner to take leave instead. As the father/partner and the mother do not need to work for the same employer, a system requires to be put in place to enable us to manage the sharing of leave. This will include the employee following notification and declaration procedures.
- 4.2** To ensure compliance with the new regulations HR&OD will update our key maternity/paternity/adoption policies and ensure the changes are communicated to employees, through Core Brief and HR&OD Knowledge Portal. There will also be a requirement for a process to be established to manage requests.

5. Financial Implications

- 5.1** There is a minimal financial implication to the Council. Additional statutory paternity pay is paid by the State and employees are only entitled to this if the mother/primary adopter has not exhausted their entitlement. The Council can claim back 92% of any statutory payment.

6. Risk Analysis

- 6.1** If the Council does not put a procedure in place to allow eligible employees to request, and be granted, additional paternity leave the Council would breach legislation by discriminating on the grounds of gender.

7. Equalities, Health & Human Rights Impact Assessment (EIA)

- 7.1** No significant issues were identified in a screening for potential equality impact on this measure. The new provision adds to gender equality and links to sexual orientation equality and civil partnership/marriage equality. A full Equality Impact Assessment (EIA) is attached at Appendix 1.

8. Conclusions and Recommendations

- 8.1** From 6 April 2010 new regulations give parents of children due, or matched for adoption, on or after 3 April 2011 greater flexibility in how they use maternity and paternity provisions through the introduction of additional paternity leave. Additional paternity leave may or may not be paid dependent on the time the mother returns to work and ceases to be in receipt of some form of maternity or adoption allowance. Any payment will be based on the statutory paternity payment, and the leave must be taken to genuinely care for the child and both employees do not need to work for the same employer.
- 8.2** Committee is asked to note the contents of the report and the actions being taken to ensure compliance with legislation.
- 8.3** Committee is asked to approve action taken to update HR policies in line with legislation.

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Appendices: Appendix 1 - EHHR - Impact Assessment

Background Papers: Additional Paternity Leave Regulations 2010

Wards Affected: N/A