University of Leicester

EWL Seminar 2014

UK Report

Reconciling Work and Family Life within Labour Law

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Introduction

As of February 2014, there were 63.7 million people living within the United Kingdom (UK).[1] [2] The UK population has increased by 7.8% since 2001.[3]

In 2013, there were 18.2 million families within the UK. Of the 13.3 million dependent children residing in the UK, 1.9 million were in opposite sex co-habiting couple households (i.e. the parents were not married) and 3 million lived in a lone parent household.[4] Whilst in 2014 the UK employment rate was 72.1% for those aged from 16 to 64, the unemployment rate was 7.2% for those aged 16 and over.[5] In a recent survey,[6] it was reported that working 48 hours per week or more was more common with men, whereas working less than 30 hours per week was more common with women.

In addition, the UK has seen a number of changes in demographics in recent years; the average age of mothers rose to 29.8 years in 2012 (compared with 29.7 years in 2011),[7] a steady increase in life expectancy has been observed, a suggested increase of 31% in the number of people of state pension age[8] between mid-2012 and mid-2037 and the UK state pension age continuing to increase.[9] The reconciliation of work and family is therefore an issue which affects a large percentage of the UK population, either directly or indirectly. To support the reconciliation of work and family life there is an array of labour law in the UK, mainly derived from European Union (EU) Directives, which

[1] Office for National Statistics, Population and Migration. Released 7 February 2014 http://www.ons.gov.uk/ons/guide-method/compendiums/compendium-of-uk-statistics/population-and-migration/index.html

[2] The UK consists of England, Wales, Scotland and Northern Ireland.

[3] Office for National Statistics, Population and Migration. Released 7 February 2014 http://www.ons.gov.uk/ons/guide-method/compendiums/compendium-of-uk-statistics/population-and-migration/index.html

[4] Office for National Statistics, Families and Households 2013. Released 31 October 2013. http://www.ons.gov.uk/ons/rel/family-demography/families-and-households/2013/stb-families.html

[5] Office for National Statistics, Economy. Released 7 February 2014 http://www.ons.gov.uk/ons/guide-method/compendiums/compendium-of-uk-statistics/economy/index.html

[6] Department for Business Innovation and Skills. The Fourth Work-life Balance Survey. July 2012. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/32153/12-p151-fourth-work-life-balance-employee-survey.pdf

[7] Office for National Statistics, Births in England and Wales 2012, released 10 July 2013 http://www.ons.gov.uk/ons/rel/vsob1/birth-summary-tables--england-and-wales/2012/stb-births-in-england-and-wales-2012.html#tab-Live-births-by-age-of-mother

[8] Currently 65 years of age.

[9] Office for National Statistics, Population change between mid-2001 and mid-2012. Released 7 February 2014 http://www.ons.gov.uk/ons/guide-method/compendiums/compendium-of-uk-statistics/population-and-migration/find-out-more/index.html

promote work/life balance. Such labour law encompasses maternity leave, paternity leave, parental leave (including adoption leave), flexible working, leave for carers and emergency leave.

This report details the current and future legislation within the UK (as at the time of writing), the aims and rationale of such legislation, and provides an insight to the work/life balance experienced by employees living in the UK.

1. Reconciling Work and Family Life with Labour Law

(a) Aims and Rationale of UK Legislation

UK equality and family friendly legislation has developed since the 1970s[10] in an attempt to address and tackle workplace gender inequality. In this duration legislation has been enforced in relation to parental choices, flexible working opportunities and equal pay.

The aims and rationale of current work/life labour law within the UK is to allow organisations to 'match their business needs with the way their employees work'.[11] When drafting the most recent work/life legislation, the UK Coalition Government stated 'we want to give families the freedom to manage the care of their children and balance their work and family needs effectively'.[12]

In particular, the aims of recent UK work/life legislation include;

- Promote and establish healthy work life balance
- Remove the long hours culture associated with the UK[13]
- Increase flexibility for businesses and individuals
- Keep up with changes in society and culture e.g. technology, aging population, increase in carers, acceptance of LGBT, increase in single and same-sex parents, etc

(b) Principal Sources of UK Labour Law

The main focus of family friendly labour law within the UK can be categorised as;

- Maternity leave
- Paternity leave
- Parental leave
- Emergency leave
- Adoption leave
- Other relevant categories of leave
- Flexible working

[10] Via the Equal Pay Act 1970 and Sex Discrimination Act 1975.
[11] ACAS. http://www.acas.org.uk/media/pdf/4/n/Flexible-working-and-work-life-balance.pdf
[12] Children and Families Bill 2013 : Contextual Information and Responses to Pre-legislative Scrutiny. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/219658/Children_20and_20Families_20Bill_202013.pdf
[13] TUC. Family-Friendly Rights – Transforming Britain's Workplaces. January 2010. http://www.tuc.org.uk/sites/default/files/extras/familyfriendlyguide.pdf p3.

EU Directives

Such rights derive from, and are affected by, EU Directives. Predominantly;

- Council Directive 1992/85, The Pregnant Workers Directive
- Council Directive 2010/18, The Parental Leave Directive

But, also affected by;

- Council Directive 2003/88, Working Time Directive

UK Legislation

Deriving primarily from EU Directives,[14] the origins of maternity, paternity and flexible working laws in the UK are found predominantly in the Employment Rights Act 1996,[15] Employment Relations Act 1999, the Maternity and Parental Leave Regulations 1999, Employment Act 2002 and Work and Families Act 2006. However, there are numerous amendments to Regulations which add to these main laws, such as The Flexible Working (Eligibility, Complaints and Remedies) (Amendment) Regulations 2009 (SI 2009/595) and The Parental Leave (EU Directive) Regulations 2013 (SI 2013/283).

In addition, the Children and Families Bill 2013 received Royal Assent on 13th March 2014, as such the Children and Families Act 2014 will come into enforce over the next couple of years.

Likewise, national and European case law has had an influence on family friendly legislation.

The below table provides an overview of where, within UK legislation, the various forms of family friendly labour law can be found.

	Adoption Leave	Leave for Caring Responsibilities	Emergency Leave	Flexible Working	Maternity Leave	Parental Leave	Paternity Leave
Employment Rights Act 1996*				Yes	Yes		
Employment Relations Act 1999					Yes		
Employment Act 2002	Yes				Yes		Yes

[14] Such as Council Directive 2010/18/EU implementing the revised framework on Parental Leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC

[15] Employment Rights Act 1996 s47C, 57A, 71-73, 80F, 99

	Adoption Leave	Leave for Caring Responsibilities	Emergency Leave	Flexible Working	Maternity Leave	Parental Leave	Paternity Leave
Work and Families Act 2006					Yes		
Children and Family Act 2014			Yes	Yes	Yes	Yes	Yes

* (as amended by the Employment Act 2002)

(c) National Approach to Childcare Provision

The approach to childcare within the UK relies heavily on parental involvement during a child's early years, before the state system provides formal education from the age of 3. There are regional differences across the UK, however detailed below is a generalised overview of the national approach to childcare provision.

Early years and childcare; pre-school (0-4/5) and Schooling (4+)

The state system is divided into three types of school:

- Nursery school (for children aged between three and five years of age).
- Primary school (for children aged from four/five to 11 years of age).
- Secondary school (for children aged from 11 to 18 years of age).

The academic year for state primary and secondary schools is early September to late July. The academic year is broken up into three terms. Half way through each term there is a holiday of one week, and school summer holidays are typically 6 weeks.

Likewise, the state system does not tend to provide continued childcare outside of term dates.

Childcare out-of-school hours

Within the UK local councils provide some childcare outside of school hours, including breakfast clubs, homework clubs and after-school clubs. Otherwise options include registered child-minders or family/friends.

All these options require additional payment. The below table shows the average childcare costs (per week) in Britain in 2014, however it must be noted that there are regional differences.[16]

Nursery 25 hours Under 2 years old		**Nursery 25 hours** 2 years old and over		**Childminder 25 hours** Under 2 years old		**Childminder 25 hours** 2 years old and over	
£109.89	€130.85	£105.52	€125.65	£97.77	€116.42	£100.52	€119.70

[16] Family and Childcare Trust. Annual Childcare Costs Survey 2014. P4. http://www.familyandchildcaretrust.org/childcare-costs-surveys

Child Benefit

Child Benefit is a payment that all qualifying parents can claim for your child (under the age of 16). It is usually paid every four weeks but can sometimes be paid weekly. There are separate rates payable for each child. These rates are fixed until April 2014.[17]

Who the allowance is for	Rate (weekly)	
Eldest or only child	£20.30	€24.18
Additional children	£13.40 per child	€15.96

Parents with higher salaries (over £50,000 / €59,749) can receive Child Benefit; however the money they receive may be taxed.[18]

Child Tax Credits

Child Tax Credit are for working parents to provide support to families with children, typically under the age of 16, and is claimed from the State.

The payment can be claimed by anyone who qualifies, but the benefit is means tested and is typically not available to those earning £32,200 per annum (€38,478) or more.[19] The amount received is based on the income of the family and the number of children.[20]

Childcare Vouchers

If a parent works and pays for childcare, their employer may offer childcare vouchers to help with childcare costs. Employees would receive the vouchers in return for a reduction in pay - known as a 'salary sacrifice'. Childcare vouchers are voluntary and may affect the amount of Child Tax Credits a parent can get.[21] At the time of writing, 5% of UK employers and 450,000 families are signed up.[22]

[17] HMRC. http://www.hmrc.gov.uk/childbenefit/
[18] HMRC. http://www.hmrc.gov.uk/childbenefit/start/who-qualifies/do-you-qualify.htm#10
[19] HMRC. http://www.hmrc.gov.uk/taxcredits/start/who-qualifies/what-are-taxcredits.htm
[20] HMRC. A Guide to Child Tax Credit and Working Tax Credit. http://www.hmrc.gov.uk/leaflets/wtc2.pdf
[21] HMRC. http://www.hmrc.gov.uk/calcs/ccin.htm
[22] BBC. http://www.bbc.co.uk/news/uk-politics-26618139?ocid=socialflow_facebook

2. Rights

(a) Maternity Leave

Directive 92/85[23] gives women the right to paid maternity leave and requires employers to comply with health and safety measures. In the United Kingdom, sections 71-73 of the Employment Rights Act 1996 establish these maternity rights, but the details of the rights are set out in the Maternity and Parental Leave etc Regulations 1999 (MPLR 1999)[24] as amended. The UK first introduced maternity leave legislation through the Employment Protection Act 1975[25], which was extended through further legislation, such as The Employment Act 1980[26]. However, for the first 15 years, maternity leave was rather ineffective due to the long qualifying periods of employment. In 1993, coverage was extended to all working women, in order to bring Britain into compliance with directive 92/85.

Under the Maternity and Parental Leave etc Regulations 1999 statutory maternity leave includes both, the ordinary maternity and the additional maternity leave. Section 71 of the Employment Rights Act 1996[27] states that the maximum duration for both ordinary and additional maternity leave is 26 weeks each; this provides employees with a maximum statutory maternity leave of 52 weeks. All pregnant workers are entitled to ordinary maternity leave regardless of service period. In order to successfully qualify for maternity leave a pregnant worker must notify their employer. Part II regulation 4[28] sets out the requirements of notice. Under regulation 4 (1) (a), an employee must provide 21 days' notice of the date of which she seeks to take ordinary maternity leave. Notice also includes the actual pregnancy and expected week of childbirth, if this is not practicable, notice must be given as soon as it is practicable to do so. The requirement of notice does not apply when maternity leave is triggered by the birth itself, here notice must be given as soon as it is practicable to do so as stated in regulation 4 (4). On the request of the employer an employee may be required to provide medical evidence of the pregnancy as per regulation 4 (1 (b).

The date on which an employee seeks to start maternity leave can be changed providing they give at least 28 days' notice of that intention prior to the varied date. Additional maternity leave commences immediately after ordinary maternity leave. In order to qualify for additional maternity leave an employee must have worked continuously for 26 weeks before the qualifying week which is

[23] Pregnant Workers Directive 92/85.
[24] Maternity and Parental Leave Regulations 1999.
[25] Employment Protection Act 1975.
[26] Employment Act 1980.
[27] Employment Rights Act 1996.
[28] Maternity and Parental Leave etc Regulations 1999, reg 4.

the end of the 15th week before the expected week of childbirth. Pregnant workers are free to choose the date on which maternity leave begins, although this date cannot be before 11 weeks prior to the expected week of childbirth. Maternity leave is automatically triggered by absence from work wholly or partly due to pregnancy in the four weeks leading to the expected week of childbirth as established in part II regulation 6 of the Maternity and Paternity Leave Regulations 1999.

During Maternity Leave employees are entitled to maintain many terms and conditions of their employment as well as being bound by their contractual obligations other than work. Examples of such include the continuous accruement of holiday leave, the continuous benefit from share schemes, pension schemes, reimbursements for professional subscriptions as well as the use of a company car or phone. During maternity leave if the employer awards a pay rise to the employee's pay grade then depending on her contractual agreement she would be entitled to the improvement in remuneration. Employees are still entitled to an annual performance assessment whilst on maternity leave, as the European Court of Justice held in Case C-136/95[29] that the failure to do amounted to unfavourable treatment. The period of statutory maternity leave counts towards any qualification requirements for other statutory rights. Under section 99 of the Employment Rights Act 1996 dismissal during statutory maternity leave will amount to an automatic unfair dismissal unless the employee can justify a genuine redundancy situation has occurred. Additionally under section 18 of the Equality Act 2010 employers are prohibited from discriminating against employees on the grounds of maternity leave, this will be construed as a direct discrimination.

Statutory Maternity Pay is provided by an employer to the employee during maternity leave; however the employer can recover some or all of the maternity pay paid to an employee. Statutory Maternity Pay is a benefit from the state that is controlled via employers. To be eligible for Statutory Maternity Pay workers must have worked for their employer for at least 26 weeks up to the 15th week before the expected week of childbirth, earn on average at least £107 (€128) a week as well as provide the correct notice and proof that they are pregnant. Providing that the criterion is met, Statutory Maternity Pay is paid for up to 39 weeks. For the first six weeks, the pay is 90% of the employee's average weekly earnings before tax. For the remaining 33 weeks, the employer must pay them either the flat rate of £135.45 (€163) or 90% of their average weekly earnings, depending on which sum is lower. A company may have additional provisions for maternity pay however they must at least provide the statutory minimum. A pregnant worker who does not meet the criteria would be entitled to the state Maternity Allowance from the benefits agency.

[29] *Case C-136/95 Caisse Nationale d'Assurance Vieillesse des Travailleurs Salariés v Evelyne Thibault* ECR I-2011

On returning to work employees are not required to provide further notice if they intend to return at the end of their full maternity leave. If an employee intends to return before the end of their full maternity leave then they would have to provide the employer with notice which has recently been extended from 28 days to 8 weeks. If a woman seeks to change her date of return to an earlier date she has to give 8 weeks' notice about the new return date. If she decides to return later, she has to give 8 weeks' notice ending with the original return date. According to reg. 18 of The Maternity and Parental leave Regulations 1999, an employee who returns to work after a period of ordinary maternity leave, as a rule, is entitled to return to the same job in which she was employed before her absence. However with additional maternity leave in principle, an employee is entitled to return to same job. But if this is not reasonably practicable for the employer, she can only return to another job which is suitable and appropriate for her to do in the circumstances. Under Section 99 of the Employment Rights Act, refusal of the right to return to work amounts to an automatic unfair dismissal.

(b) Paternity Leave

In the UK the right to Paternity leave and pay was introduced in the Employment Act 2002, however the details of the rights are within the Paternity and Adoption Leave Regulations 2002. Under the regulation fathers are granted the right to take 1 or 2 weeks paternity leave in order to care for their new born baby and support the mother as well as paternity pay. In order for an employee to be entitled to paternity leave they must be either the biological father or the mother's husband or partner. The right applies equally to same sex relationships. Paternity leave should be taken and completed within 56 days beginning with the day on which the child is born. An employee regardless of how many hours they have worked, must have worked for 26 weeks prior to the 15th week by which the baby is due. The employer must also have been given notice. The requirements of notice demand that an employer is notified of the intention to take paternity leave at least 8 weeks in advance. In addition employees are also entitled to additional paternity leave as established under the Work and Families Act 2006 with the details provided in the Additional Paternity Regulations 2010. Under this provision employees are entitled to additional leave of up to 26 weeks providing they meet the qualification requirements which require that, the mother is entitled but has returned from statutory maternity leave having completed at least 20 weeks. Although additional paternity leave can be up to 26 weeks additional paternity pay cannot exceed the 39 weeks of which the mother is entitled. During paternity leave, employees are entitled to maintain benefits of

employment such as previously mentioned under the maternity leave.

Statutory Paternity Pay is a recent development and has provided fathers with rights in order to care for the child or support the child's mother in the weeks following childbirth. Fathers are entitled to £135.45 (€163) or 90% of average weekly earnings, depending on which is lower. The rate of Additional Statutory Paternity Pay is the same. The employee in question must be earning an average of at least £107 (€128) per week before tax. Those whose earnings are less than this will not qualify for Statutory Paternity Pay but may be able to gain social security whilst taking paternity leave. Statutory Paternity Pay will be paid by the employer in the same way as the payment of wages and tax and national insurance will be deducted from the total amount. The employer will normally be able to recover part or the entire amount of this sum from the State. Upon returning to work employees have the right to return to the same job they had prior to paternity leave and do no not need to supply any notice before doing so.

(c) Adoption Leave

In relation to adoptive parents, their rights are established in the Employment Act 2002 and The Work and Families Act 2006. These rights are similar to those of maternity leave and pay. The maximum period of leave is 52 weeks but can be shortened with at least 8 weeks' notice. To be eligible for the statutory right one must have been an employee for at least 26 weeks prior to the adoption agency's notification of a possible child for adoption. The right does not apply to the adoption of individuals over the age of 18 and step children. The right to take leave is only given to one parent, the primary adoptive parent and begins either when the child begins to live with the employee or up to 14 days before hand. Statutory adoption pay is identical to maternity pay, other than the higher rate for the first 6 weeks is not granted. Adoption leave has the same restrictions in regards to redundancy, discrimination, maintenance of employment rights as maternity pay.

(d) Parental Leave

The Employment Relations Act 1999 implemented the Parental Leave Directive (96/34/EC)[30] into the United Kingdom in December 1999.[31] The statutory framework is provided by the Employment Rights Act 1996 under sections 76-80 and the details of the right can be found within the Maternity and Parental Leave etc Regulations 1999 (MPLR 1999) as amended. The Regulations enable employers and employees to reach a customised parental leave arrangement, via a collective or

[30] The directive was extended to the UK by Directive 97/75/EC and amended by the Directive 2010/18/EU.
[31] D J Lockton, *Employment Law* (8th edn, Palgrave MacMillan 2011) 176.

workforce agreement, which is incorporated into the contracts of employment of individual employees and is deemed to be valid so long as the bespoke provisions do not contradict with the key elements in the Regulations.[32] Failure to reach a valid agreement however automatically triggers the default parental leave provisions found within Regulations 13-16 of the MPLR 1999.[33]

Under the default provisions, an employee who has been continuously employed for a period of not less than a year, and who has, or expects to have, parental responsibility for a child within the meaning of the Children Act 1989 is entitled to take unpaid parental leave for the purpose of caring for that child.[34] The extent of entitlement has recently been extended by the UK government from thirteen to eighteen weeks in respect of any individual child following the revision of the Parental Leave Directive.[35] The leave may be taken up any time up to the child's fifth birthday or, if the child is disabled and entitled to disability living allowance, up to the child's eighteenth birthday.[36] In relation to an adopted child, the leave may be taken up to the fifth anniversary of the date on which the placement of the child began, or the date of the child's eighteenth birthday, whichever is earlier.[37]

Schedule 2 of the MPLR 1999 provides that the leave may be taken in blocks of no less than one week at a time, except in the case of a child in receipt of disability living allowance, and that no more than four weeks may be taken in respect of any individual child during a particular year.[38] The Court of Appeal in *South Central Trains Ltd v Rodway* [2005] IRLR 583 held that there was no right to take parental leave for a period of less than a week rejecting Mr Rodway's argument that a single day's leave (in his full working week) should amount to parental leave.[39] A week is calculated according to the normal working time in the employee's contract so that if, for example, an employee works part-time, the entitlement to leave is proportionate to the time for which s/he normally works and if the employee's working time varies, an annualised average is used.[40] The leave is a non-transferable right available to each parent: the mother and the father. If a parent does not use his/her entitlement, this will be lost as the right cannot be transferred between the parents.

[32] I Smith and A Baker, *Smith & Wood's Employment Law* (11th edn, OUP 2013) 282-83.
[33] ibid 282.
[34] ibid; Maternity and Parental Leave etc Regulations 1999, reg 13.
[35] Maternity and Parental Leave etc Regulations 1999, reg 14(1).
[36] Maternity and Parental Leave etc Regulations 1999, reg 15.
[37] ibid; S Deakin and G S Morris, *Labour Law* (6th edn, Hart Publishing 2012) 744.
[38] Maternity and Parental Leave etc Regulations 1999, sch 2, paras 7 and 8.
[39] S Deakin and G S Morris, *Labour Law* (6th edn, Hart Publishing 2012) 745.
[40] ibid 744; Maternity and Parental Leave etc Regulations 1999, reg 14.

In order to exercise any entitlement to parental leave, the employee must give notice of at least 21 days before taking leave and specify the dates on which the leave is to start and finish.[41] The employer may request a proof of parental responsibility and the child's date of birth or the date of placement in relation to a child who was placed with the employee for adoption.[42] If an employee wants to exercise the parental leave rights immediately after the birth or adoption of a child, the employee must give notice of at least 21 days before the beginning of the expected week of childbirth or before the expected week of placement for adoption (or as soon as it is reasonable practicable to do so in respect to adoption) and specify the expected week of childbirth or placement and the duration of the period of leave.[43]

The employer may postpone parental leave for up to six months where s/he considers that the operation of the business would be unduly disrupted if the employee took leave during that particular period except for when the request is made to take leave in relation to childbirth or adoption.[44] The employer must give the employee a notice in writing stating the reasons for the postponement within seven days and specifying the dates on which the period of leave the employer agrees to permit the employee to take will begin and end upon offering an alternative leave.[45] The alternative must be within six months or before the child's eighteenth birthday (if the child is disabled or adopted) for the same duration originally requested by the employee.[46]

During the period of parental leave, the employer is under no duty to pay wages but the employee remains in employment.[47] Certain terms and conditions of employment are accordingly deemed to remain in place.[48] If the period of leave is four weeks or less, the employee is entitled to return to the same job in which s/he was employed before the leave.[49] If the leave is longer than four weeks (for example, where the employee takes parental leave following an earlier block of four week's parental leave taken at the end of a year) and it is not reasonably practicable for the employer to permit the employee to return to the same job, then the employee is entitled to return to an

[41] Maternity and Parental Leave etc Regulations 1999, sch 2, para 3.
[42] Maternity and Parental Leave etc Regulations 1999, sch 2, para 2.
[43] Maternity and Parental Leave etc Regulations 1999, sch 2, paras 4 and 5.
[44] Maternity and Parental Leave etc Regulations 1999, sch 2, para 6(a)-(b); H Collins, K D Ewing and A McColgan, *Labour Law* (CUP 2012) 387.
[45] Maternity and Parental Leave etc Regulations 1999, sch 2, para 6(d)-(e).
[46] Maternity and Parental Leave etc Regulations 1999, sch 2, para 6(c).
[47] H Collins, K D Ewing and A McColgan, *Labour Law* (CUP 2012)
[48] Maternity and Parental Leave etc Regulations 1999, reg 17; S Deakin and G S Morris, *Labour Law* (6th edn, Hart Publishing 2012)744-45.
[49] Maternity and Parental Leave etc Regulations 1999, reg 18(1).

alternative suitable and appropriate job.[50] In both the circumstances, the employee has the right to return with seniority, pension and similar rights as well as on terms and conditions not less favourable than those which would have applied if s/he had not been absent.[51]

(e) Emergency Leave / Time off for Dependants

In addition to the right to parental leave, the Employment Relations Act 1999 also introduced a right for employees to take a reasonable amount of unpaid time off during working hours in order to provide urgent assistance to dependants.[52] The statutory framework is provided by the Employment Rights Act 1996 under section 57A. There is no qualifying period of continuous employment for this right even though the right is merely available to employees.[53] A dependant is defined to include a spouse or civil partner, a child, a parent, a person living in the same house as the employee other than an employee, tenant, lodger or broader, or any person who reasonably relies upon the employee for assistance on an occasion when the person falls ill, or is injured or assaulted, or to make arrangements for the provision of care.[54]

An employee is entitled to take time off to provide assistance if a dependant falls ill, gives birth, or is injured or assaulted; to make arrangements for care of a dependant who is ill or injured; in consequence to the death of a dependant; because of an unexpected disruption or termination of arrangements for the care of a dependant; or to deal with an incident which involves a child of the employee and which occurs unexpectedly in a period during which an education establishment which the child attends is responsible for him/her.[55] The employee is permitted a reasonable amount of time off to take an 'action' to deal with an unexpected situation by, for example, making necessary longer-term arrangements for the care of a dependant but not to provide personal care to the dependant.[56] The right is triggered by an 'unexpected' situation which does not necessarily need to be a last-minute emergency. However, the greater the notice available to the employee, the more difficult it will be to establish 'necessity'.[57]

[50] Maternity and Parental Leave etc Regulations 1999, reg 18(2).
[51] Maternity and Parental Leave etc Regulations 1999, reg 18A(1).
[52] I Smith and A Baker, *Smith & Wood's Employment Law* (11th edn, OUP 2013) 285.
[53] H Collins, K D Ewing and A McColgan, *Labour Law* (CUP 2012) 391.
[54] Employment Rights Act 1996, s 57A(3)-(5).
[55] Employment Rights Act 1996, s 57A(1).
[56] *Qua v John Ford Morrison Solicitors* [2003] IRLR 184; S Deakin and G S Morris, *Labour Law* (6th edn, Hart Publishing 2012)750.
[57] *Royal Bank of Scotland v Harrison* [2009] IRLR 28.

Even though there is no absolute limit imposed on the amount of time off permitted, the Employment Appeal Tribunal (EAT) in the leading case of *Qua v John Ford Morrison Solicitors* [2003] IRLR 184 clarified that only a short period of leave will be deemed to be 'reasonable' and longer periods may be taken as parental leave.[58] In determining what is reasonable amount of time off, the EAT considered the operational needs of the employer to be irrelevant.[59] As such, even though the employee must notify the employer the reason for the absence as soon as reasonable practicable and how long s/he expects to be absent from work, there is no duty for the employee to continuously update the employer as to the situation.[60]

[58] H Collins, K D Ewing and A McColgan, *Labour Law* (CUP 2012) 391.
[59] *Qua v John Ford Morrison Solicitors* [2003] IRLR 184; I Smith and A Baker, *Smith & Wood's Employment Law* (11th edn, OUP 2013) 286.
[60] Employment Rights Act 1996, s 57A(2); *Qua v John Ford Morrison Solicitors* [2003] IRLR 184.

(f) Summary of Rights

	Conditions	Length	Pay
Maternity Leave	Pregnant employee No qualification period for ordinary maternity leave Notification of pregnancy, intended date of maternity leave prior to 15th week of pregnancy 26 weeks employment prior to 15th week of pregnancy for maternity pay 26 weeks employment for additional maternity leave	26 weeks ordinary maternity leave 26 weeks additional maternity leave	Maximum pay duration of 39 weeks First 6 weeks 90% of employees average wage Remaining 33 weeks flat rate of £135.45 if lower than average weekly earnings
Paternity Leave	Biological father or the mother's husband or partner 26 weeks employment prior to 15th week of pregnancy 8 weeks notice Additional paternity leave, mother must have returned from maternity leave completing 20 weeks	1-2 weeks ordinary paternity leave 26 weeks additional paternity leave	Flat rate of £135.45 or 90% of average weekly earnings, depending which is lower
Adoption Leave	Must have been an employee for at least 26 weeks prior to the adoption agency's notification of a possible child for adoption Does not apply to children under 18 and step children Primary adoptive parent	Maximum of 52 weeks	Maximum pay duration of 39 weeks Flat rate of £135.45 if lower than 90% of average weekly earnings

	Conditions	Length	Pay
Parental Leave	Employed for a year Parental responsibility for a child 21 days notice	18 weeks per child Up to child's 5th birthday or, 18th birthday (if disabled), or 5th anniversary / 18th birthday (if adopted) 4 weeks per year per child taken in blocks of a week (unless disabled)	Unpaid
Emergency Leave	No qualifying period Deal with 'dependant' ie spouse, partner, child, parent, etc Deal with 'emergency' ie accident, illness, etc To take 'action' not care for dependant Notice: as soon as reasonably possible	Reasonable amount of time off	Unpaid

3. Flexible Working

(a) Definition

There is no legal definition of 'Flexible Working' in UK employment law. The Chartered Institute of Personnel and Development (the CIPD) define flexible working as an arrangement that gives employees flexibility in terms of how, where and when they conduct their work.[61] The flexibility is usually in connection with the working time, location or pattern of work.

The Government see flexible working as a positive unified response to inequalities within the workplace that traditionally have detrimentally affected women returning from maternity leave.[62]

Types of flexible working typically include:

- **Part time**: contractual arrangement to work less than full time hours.
- **Flexi time**: employees work core hours enabling variable start, finish and break times during the day.
- **Compressed hours**: condense the number of contracted working hours into fewer days by working longer sessions.
- **Homeworking**: allows an employee to work some or all of their contracted hours from home.
- **Annualised hours**: typically set core hours whereby the remaining hours are used flexibly to suit the peaks and troughs in work load.
- **Term time working**: follows school terms, where the employee usually works during the term and not during school holidays, yet remains employed.
- **Structured time off in lieu**: enables workers to bank time they accrue during busy times who then take the equivalent time off at a less busy time. There may be some limitation on the amount of hours that can be banked.
- **Job sharing**: where duties and responsibilities are shared with at least one other worker. This arrangement could be for part of day, week or year.
- **Varied hours working**: where a worker informs their employer on the hours they are available to work, from time to time, for example covering a telephone helpline.[63]

[61] CIPD. http://www.cipd.co.uk/hr-resources/factsheets/flexible-working.aspx
[62] H Collins, KD Ewing and A McColgan, *Labour Law* (CUP 2012) 393
[63] Department for Business, Innovation and Skills, *Consultation on Modern Workplaces* (May 2011)

(b) Extent of Flexible Working

Flexible working requests are made by around 2/5ths of women returning from maternity leave, typically for part time working arrangements. However, many fathers of young children want to contribute to the physical upbringing of dependents and take advantage of flexibility offered by the employer.[64]

In a survey of 1,872 employees, conducted in January 2012, working in the private, public of voluntary sectors, but not for sole traders , around 75% of employers are deemed to offer some form of flexible working with 20% offering no options. The remaining 5% did not know what their employer offered.[65]

The 2011 Workplace Employment Relations Study (WERS 2011) confirmed that 84% of employers offered some form of flexible working arrangement, with 56% offering reduced hours, 35% flexitime and 30% homeworking. In comparison between the 2004 and 2011 WERS reports reduced hours fell in uptake by 7% whereas homeworking increased by 5%. The provision of compressed hours increased 9% whereas job sharing fell 10% in the same period.[66]

The CIPD 2012 survey reports that 51% of companies provide a form of part time working, with 31% offering flexitime, 24% agree to home or mobile working regularly and 22% openly agree to sabbaticals and career breaks.

Although around 26% of employees questioned advised they have not made use of flexible working options, around 32% opted for part time working. Furthermore around half of those who opted and took part time working, as a flexible employment arrangement, were women[67] despite the career risks that a break or reduction in working patterns is still believed to create.[68]

Men appear to participate more with flexitime option, where in the 25% of companies offering around 30% of men did take up this arrangement, opposed to 21% of women. Equally, around a quarter of men participate more so in home and mobile working where it is made available, opposed to only around 10 and15% of women respectively.[69]

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[64] H Collins, KD Ewing and A McColgan, *Labour Law* (CUP 2012) 393
[65] CIPD, *Flexible working provision and uptake* (2012) 15
[66] The 2011 Workplace Employment Relations Study (2011) 32
[67] SI 2008/1833
[68] H Collins, KD Ewing and A McColgan, *Labour Law* (CUP 2012) 393
[69] CIPD, *Flexible working provision and uptake* (2012) 16

Flexible working arrangements are seen by 54% of those question to offer better work life balance, 35% believe it makes them more productive, 33% say it has been a factor in remaining with their current employer whereas 33% believe flexible working reduces pressure and stress. Commercially employers should consider the economic gains in terms of retention (33%), sickness absence (17%) and productivity along with reduced impact and cost of commuting (24 and 27% respectively).[70]

However, many employers believe operational pressures (52%), customer requirements (40%) and management attitudes (between 24% for line management and 34% for senior management) are perceived barriers that limit the consideration of flexible working arrangements.[71] In WERS 2011 76% of managers believe it is the responsibility of employees to balance work and family responsibilities.[72]

(c) Eligibility to make a Request for Flexible Working

A worker must have 26 weeks of continuous employment to be eligible to make a request for flexible working. As defined in section 80F(b) of the Employment Rights Act 1996, the legislation is for the;

> 'purpose in applying for the change is to enable him to care for someone who, at the time of applying is –
> i. A child who has not yet reached the prescribed age or falls within a prescribed description and in respect of whom (in either case) the employee satisfies prescribed conditions as to relationship, or
> ii. A person aged 18 or over who falls within a prescribed description and in respect of whom the employee satisfies prescribed conditions as to relationship'.

The purpose of the request must be linked to the descriptions and relationships defined in section 80F, above. In the case of child care the employee must be a parent, adopter, guardian, foster parent, a person whom a residence order has been granted or the spouse or partner of such a person. This is defined in the Flexible Working (Eligibility, Complaints and Remedies) Regulations 2002 regulation 3(1)(b).[73] Whereas the employee also has the right to make a flexible working

[70] CIPD, *Flexible working provision and uptake* (2012) 23
[71] CIPD, *Flexible working provision and uptake* (2012) 27
[72] The 2011 Workplace Employment Relations Study (2011) 33
[73] SI 2002/3236

request in relation to the care of an adult who is or expects to be in care of a person who is in need of care who is either;

I. Married to or the partner or civil partner of the employee
II. A relative of the employee
III. Living at the same address as the employee[74]

To clarify, the age of the child is defined at regulation 3A of the Flexible Working (Eligibility, Complaints and Remedies) Regulations as the child concerned who is not 17 years old on the day of the application being made; this is 18 years old for a disabled child.

(d) Making an Application for Flexible Working and on what Grounds may a Request be Refused

The Flexible Working (Procedural Requirements) Regulations 2002[75] define the application and consideration process to be adopted by the employee and employer. An application is deemed to be made on the day the application is received by post or transmitted by electronic communication, unless proven to the contrary, as regulation 2(2), (3) and (4) of the "Procedural Requirements".

The employer must then convene a meeting to discuss the application with the employee not more than 28 days after the application is deemed made, as regulation 3 of the "Procedural Requirements", unless where the application is accepted without the need for a meeting. The employer is then bound by regulation 3(3) thereafter to confirm the variation and date of effectiveness. Where a meeting is held then the employer is bound by regulation 4 of the "Procedural Requirements" to notify the employee of their decision in writing.

If the employer is wholly accepting of the request then a meeting is not necessary as long as the acceptance of the application is made in writing, confirming the date of commencement, as regulation 3(3) of the above. If the decision is to refuse the application then the employer must cite there decision in line with section 80G(1)(b) of the Employment Rights Act 1996 in that:

> 'An employer to whom an application is made shall only refuse the application because he considers that one or more of the following applies:
>
> i. The burden of additional costs,

[74] Ibid at regulation 3B
[75] SI 2002/3207

ii. Detrimental effect on the ability to meet customer demands,
iii. Inability to re-organise work amongst existing staff,
iv. Inability to recruit additional staff,
v. Detrimental impact on quality,
vi. Detrimental impact on performance,
vii. Insufficient work during the periods the employee proposes to work,
viii. Planned structural changes, and
ix. Such other grounds as the Secretary of State may specify by regulations', such as the limitation on night working defined in the Working Time Regulations 1998.[76]

Where the application is refused an employee, by virtue of regulation 6 of the "Procedural Requirements", is entitled to appeal against his employer's decisions. The appeal must be made in writing, setting out the grounds of appeal and be dated (regulation 7) and made within 14 days after the date on which the decision to refuse the application was made. Thereafter the employer is bound to respond with a decision to uphold the appeal or define the reasons why the decision to refuse the application is upheld. The employer should present this decision within 14 days of receiving the application, or within 14 days of holding an appeal meeting, all in line with regulations 8, 9, 10 and 11 if the "Procedural Requirements". At regulation 11 the employee has the right to be accompanied to the appeal meeting a person of their choice and is permitted to address the meeting (but not answer questions) and to confer with the employee. The employer and employee must together agree any extensions to these periods, and must consider periods of sickness absence and holiday.

The employee is limited to present only one application per year for flexible working pertinent to a specific circumstance.

An employee has leave to register a complaint to the employment tribunal in respect to any procedural breach by the employer, discussed further below.

(e) Consequences of an Approved Contractual Change

The acceptance of any application for flexible working is seen as a permanent variation to the terms of employment. The uptake of flexible working often concludes in a reduction of working hours, and relevant terms. To protect employees who transit to a more part time working basis the European

[76] SI 2008/1833

Directive, 96/34, on part time workers was instigated to prohibit discrimination against part time workers in comparison with full time workers in respect to employment related matters such as pay and benefits, except where discrimination can be justified[77]. The principles of this Directive were enacted in the UK by way of the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000.[78]

At regulation 5 of the Part-Time Workers Regulations an employee has 'the right not to be treated less favourably than the employer treats a comparable full time worker with regards to the terms of the contract and being subject to any other detriment by any act, or deliberate failure to act, of his employer'.[79]

We have defined that an accepted request for flexible working becomes a permanent changes to the employee's contract that cannot be changed without mutual agreement, unless otherwise stipulated by an expressed variation or trial provision within the contract. Consequently, any specific requests to care for, say, a child or sick relative, are not necessarily limited by the time of 'prescribed care' for the 'prescribed condition' as defined by section 80F(b) of the Employment Rights Act 1996.

The terms of the flexible working arrangement should be written into the contract at the time they are entered into and any further variation, such as a reversion or further change, must be agreed by the parties. If the employer has this contractual right to vary the terms and on doing so the employee refuses to comply with the variation then the employee will be deemed in breach of contract[80]. The apparent lack of an expressed variation clause therefore puts an enforced variation at risk that, despite clear and reasonable consultation, could put the employer at risk of a breach of contract and perhaps an act of discrimination.

[77] H Collins, KD Ewing and A McColgan, *Labour Law* (CUP 2012) 400
[78] SI 2000/1551
[79] Ibid at regulation 5(1)
[80] H Collins, KD Ewing and A McColgan, *Labour Law* (CUP 2012) 172

4. Enforcement and Remedies of the Measures

(a) What Courts / Authorities are Competent?

The United Kingdom's legal system attempts to avoid allocating employment related disputes to the ordinary courts. Instead these disputes are settled in employment tribunals or through alternative dispute resolutions such as: arbitration, conciliation and mediation, often via the Advisory, Conciliation and Arbitration Services (ACAS). ACAS is a non-departmental public body of the government which seeks to prevent and resolve conflicts between employees and employers through the methods of alternative resolutions mentioned above. Most disputes between employers and employees are brought before the Employment Tribunal which has jurisdiction over an employer's breach of statutory rights and standards, most commonly relating to dismissal, discrimination and redundancy. All of the work-life balance rights (discussed under themes 2 and 3) are under the jurisdiction of the Employment Tribunal.

The Employment Tribunal has the jurisdiction in relation to enforcing the rights of parents and carers under the Maternity and Parental Leave Regulations 1999, Paternity and Adoption Leave Regulations 2002 and the Employment Relations Act 1999. Additionally, the tribunal also has competence over flexible working relating to the provisions of both the Flexible Working (Procedural Requirements) Regulations 2002 and Flexible Working (Eligibility, Complaints and Remedy) Regulations 2002.

(b) What Role is played by Anti-Discrimination Law?

Section 18 of the Equality Act 2010 prohibits discrimination on the grounds of pregnancy or maternity leave: this would constitute direct discrimination. In regards to the right to flexible working, the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000 enacted in the UK to comply with Directive 97/81, prohibits employees from being treated less favourably by an employer comparative to the treatment of a full time worker. As the majority of part-time workers are women, there could also be indirect discrimination claims brought against employers. Where an unfair dismissal claim affects women, it is very common for the claim to be brought alongside a discrimination complaint. The primary reason for this concerns the remedies that are available to a successful claimant. Unlike in cases of 'ordinary' unfair dismissal, there is no statutory cap on the amount of compensation that can be awarded upon a finding of discrimination - a claimant can recover the full extent of his or her economic losses. In addition, a claimant who has

been discriminated against can recover damages for 'injury to feelings'.[81]

(c) Protection and Remedies

Right not to suffer Detriment

An employee has the right not to be subjected to any detriment by his employer for taking or seeking to take any of the leave provisions mentioned in theme 2 or requesting or seeking to request flexible working arrangements.[82] Where an employee is subjected to a detriment, s/he may make a complaint to an employment tribunal before the end of the period of three months beginning with the date of the act or the last act (where there are a number of continuous acts).[83] Where the employment tribunal finds the complaint to be well-founded, the tribunal shall make a declaration to that effect and may make an award of compensation to be paid by the employer to the employee.[84] The amount of compensation is one which the tribunal deems as 'just and equitable' in all the necessary circumstances having regard to the infringement to which the complaint relates, and any loss which is attributable to the act, or failure to act, which infringed the claimant's right.[85]

The loss shall be taken account to include: any expenses reasonably incurred by the claimant in consequence of the act, or failure to act, to which the complaint relates, and loss of any benefit which the claimant might reasonably be expected to have had but for the act or failure to act.[86] The tribunal is also able to make an award for injury to feelings caused by the detriment.[87] The potential award for detriment is unlimited as there is currently no limit on the compensatory award but where the award is for the injury to feelings of a dismissed worker this will be capped at the limit of the non-pecuniary award in unfair dismissal.[88] If the tribunal considers that the act or failure to act was caused or contributed to by action of the claimant, it may reduce the award if it thinks that it would be just and equitable to do so.[89] The term 'just and equitable' here also leaves the amount of compensation to be awarded at the discretion of the employment tribunal; however, in *Hollier v Plysu Ltd*[90] the EAT suggested that the contribution should be assessed broadly and should generally

[81] Under the guidelines established by the Court of Appeal in *Vento v Chief Constable of West Yorkshire Police* [2003] ICR 318, and since updated by the Employment Appeal Tribunal (EAT) in *Da'Bell v NSPCC* [2010] IRLR 19, such awards should range from £500 ((€598) in the least serious cases to £30,000 (€35,917) in the most serious. IDS Employment Handbooks, Maternity and Parental Rights, chap 13.
[82] Employment Rights Act 1996, ss 47C and 47E.
[83] Employment Rights Act 1996, s 48(3) and (4).
[84] Employment Rights Act 1996, s 49(1).
[85] Employment Rights Act 1996, s 49(2).
[86] Employment Rights Act 1996, s 49(3).
[87] *Cleveland Ambulance NHS Trust v Blane* [1997] IRLR 332.
[88] Employment Rights Act 1996, s 49(6).
[89] Employment Rights Act 1996, s 49(5).
[90] *Hollier v Plysu Ltd* [1983] IRLR 260, EAT

fall within the following categories: wholly to blame (100 per cent); largely to blame (75 per cent); employer and employee equally to blame (50 per cent); slightly to blame (25 per cent).[91]

Similarly, an employee whose employer unreasonably postpones or prevents the rightful exercise of a leave provision may make a claim to an employment tribunal within three months of the matter. Where the claim is well-founded, the tribunal shall make a declaration and may make an award of compensation to be paid by the employer to the employee. In relation to a flexible working request application, an employee whose employer unreasonably rejects such an application contrary to the Act or based on incorrect facts may also make a claim to an employment tribunal under section 80H within three months of the relevant date (of refusal).[92] Where the claim is well-founded, the tribunal shall make a declaration and may make an order for reconsideration of the application, and make an award of compensation to be paid by the employer to the employee.[93] The maximum amount of compensation that may be awarded by the employment tribunal where the complaint is well-founded under section 80H is equivalent to 8 weeks' pay.[94] The employee also has the right not to be subjected to any detriment for bringing proceedings against the employer under section 80H.[95]

Unfair Dismissal

An employee who is dismissed for taking or seeking to take any of the leave provisions mentioned in theme 2 or requesting or seeking to request flexible working arrangements is automatically regarded as unfairly dismissed.[96] A complaint may be presented to an employment tribunal against the employer before the end of the period of three months beginning with the effective date of termination.[97] Where the employment tribunal finds the complaint to be well founded, the tribunal shall explain to the complainant what orders may be made and in what circumstances they may be made.[98] The tribunal shall then ask the complainant whether he wishes such an order to be made.[99] If the complainant expresses such a wish, the tribunal may make one of the two orders: an order for reinstatement or an order for re-engagement.[100] If reinstated to the job, the employee is treated as though s/he had never been dismissed (including payment of backdated salary and preserving the employee's service with the employer). If re-engaged to the job, the employee is engaged by the

[91] IDS Employment Handbooks, Unfair Dismissal, chap 10.
[92] Employment Rights Act 1996, s 80H(1) and (5).
[93] Employment Rights Act 1996, s 80I(1).
[94] The Flexible Working (Eligibility, Complaints and Remedies) Regulations 2002, reg 7.
[95] Employment Rights Act 1996, s 47E(1)(c).
[96] Employment Rights Act 1996, s 99.
[97] Employment Rights Act 1996, s 111(1) and (2).
[98] Employment Rights Act 1996, s 112(2)(a).
[99] Employment Rights Act 1996, s 112(2)(b).
[100] Employment Rights Act 1996, ss 112(3), 113-115.

employer in employment comparable to that from which s/he was dismissed or other suitable employment on terms which are, so far as reasonably practicable, as favourable as reinstatement.

When deciding whether or not to make an order for reinstatement or re-engagement, a tribunal will consider relevant factors, such as: the wishes of the employee, whether it is reasonably practicable for the employer to comply, and whether the claimant employee contributed to the dismissal. Despite the availability of these remedies, only 5 cases saw re-instatement or re-engagement out of the 11200 unfair dismissal cases in 2011-2012. Consequently, in the majority of the cases, the tribunal makes an award of compensation for unfair dismissal to be paid by the employer to the employee as required by section 112(4) where no order is made.[101] The statutory limitation on the employment tribunal currently stands at a maximum basic award of £13,500 (€16,162) and a compensatory award of £74,200 (€88,835) or 12 months gross pay (whichever is lower) for unfair dismissal.

In July 2013, fees were introduced to employment tribunals requiring an employee to pay in order to make a claim. It now costs an employee at least £160 (€191) to proceed with a claim; in claims of unfair dismissal or discrimination, the cost will be £250 (€299). Recent statistics have revealed that there has been a significant reduction in claims brought before the employment tribunal as a result. In the last quarter of 2013 (October-December) the number of claims has reduced by 79% compared with the previous year. Additionally the monthly average of claims has reduced from between 4,000-5,000 to around 1,700. The introduction of fees has undoubtedly been a financial barrier to employees proceeding with claims.

[101] Employment Rights Act 1996, s 112(4).

5. Current Developments and Reforms

Work life balance was the single biggest equality issue in 2009 (TUC Equality Audit)[102] and has remained at the forefront of discussions in recent years.

(a) Current Debates and Legislative Proposals

The Coalition Government's manifesto promise to create 'intelligent ways to encourage, support and enable people to make better choices for themselves'[103] was inserted in the employment arena via the 2011 'Modern Workplaces' consultation[104], and later by the 'Think, Act, Report' framework[105]. The 'Modern Workplaces' consultation reviewed flexible parental leave, flexible working, working time regulation and equal pay with an aim of consulting on 'plans for a culture of flexible, family-friendly employment practices'.[106] The 'Think, Act, Report' framework addresses gender equality reporting.

Following the 'Modern Workplaces' consultation,[107] the UK Government proposed equality legislation changes in 2014 and 2015, with the aim of improving flexibility for families. Proposed changes include Shared Parental Leave, partner's access to antenatal appointments and flexible working rights for all employees.

The Children and Families Bill 2013 received Royal Ascent on 13th March 2014. As such, the Children and Families Act 2014 defines a shift from the current gender bias legislation, which provides limited rights for the partner of the mother, to 'a system based on continuity, flexibility and choice [that]

[102] TUC. Family-Friendly Rights – Transforming Britain's Workplace (January 2010) http://www.tuc.org.uk/sites/default/files/extras/familyfriendlyguide.pdf p3.
[103] HM Government, The Coalition: Our Programme for Government (May 2010, London) https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/78977/coalition_programme_for_government.pdf
[104] HM Government, Consultation on Modern Workplaces (May 2011) https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/31549/11-699-consultation-modern-workplaces.pdf
[105] Government Equalities Office, Think, Act, Report (14 September 2011, London) https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/85569/think-act-report-framework.pdf accessed 30 June 2013
[106] HM Government, Consultation on Modern Workplaces (May 2011) https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/31549/11-699-consultation-modern-workplaces.pdf p2.
[107] HM Government, 'Consultation on Modern Workplaces: flexible parental leave, flexible working, Working Time Regulations, equal pay' Consultation on Modern Workplaces https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/31549/11-699-consultation-modern-workplaces.pdf

offers better outcomes and enables a cultural change in the way men and women are viewed in the workplace.'[108]

Children and Families Act 2014

The Labour Law related legislative changes introduced via the Children and Families Act 2104 lie predominantly in Parental Leave and Flexible Working choices; however there are a number of other worthwhile proposals and discussions to be aware of, including:

- Statutory paternity rights to leave and pay (part 7)
    - Introduction of shared parental leave, around the time of childbirth, for eligible parents from April 2015 (s117)
    - Shared parental pay details (s119)
    - Eligible working parents will be entitled to share up to a total of 50 weeks of leave and 37 weeks of pay
    - These are commitments made by Government following the Modern Workplaces Consultation[109]
- Time off for ante-natal care, etc (part 8)
    - Increase the rights for partners (employees and qualifying agency workers) so they can attend two ante-natal classes, albeit unpaid, from 1st October 2014 (s127)
- Right to request flexible working (part 9)
    - Extends the right to request flexible working to all employees from 30th June 2014
    - Replace the current statutory procedure used by employers when considering flexible working requests, with a duty placed on employers to consider in a reasonable manner

The Government aims that the changes within the Act will 'help people to better balance their work and home life'.[110] This statement is supported by the introduction of flexible working rights to all employees, therefore providing those without childcare responsibilities equal rights. However, the Trade Union Congress stated that shared parental leave 'will not lead to a substantial change in the

[108] HM Government, 'Government Responses on Flexible Parental Leave' Consultation on Modern Workplaces http://www.bis.gov.uk/assets/biscore/employment-matters/docs/m/12-1267-modern-workplaces-response-flexible-parental-leave.pdf
[109] HM Government. https://www.gov.uk/government/consultations/consultation-on-modern-workplaces
[110] HM Government. https://www.gov.uk/government/news/landmark-children-and-families-act-2014-gains-royal-assent

number of fathers/partners taking time off work to care for children because it lacks sufficient incentive'.[111] Whilst the Government predict that only 4 – 8% of eligible people will take the leave.[112] The reasons behind this figure can be attributed to cultural, societal and financial elements. In support of the required changes it has been said that 'if workplace (and societal) attitudes are to change then this right [day one entitlement] should also be extended to fathers as well, and with shared parental leave underpinned by adequate statutory pay.'[113]

Childcare and Child Tax Relief

In March 2014, the Coalition Government announced that tax free childcare will be introduced from 2015. The rationale behind this is to encourage more parents to return to work or too work longer hours, therefore boosting the economy.

In addition, and following consultation, the Government proposed the annual cap for childcare vouchers (which is currently £1,200 per child) will be increased to £2,000 and that tax free childcare will be introduced for children under 12. It is predicted that the proposed changes will mean that twice as many parents are eligible for support, including the self-employed.[114]

As general elections are due to be held in May 2015 these changes are planned for the next Parliament.

(b) EU Law Influence

Directives

In the UK, national law complies with the EU requirements, however in some areas it goes beyond the minimum.

For example, recital (16) of Council Directive 2010/18 (The Parental Leave Directive) states;

> *Whereas the right of parental leave in this agreement is an individual right and in principle non-transferable, and Member States are allowed to make it transferable. Experience shows that making the leave non-transferable can act as a positive incentive for the take up by*

[111] TUC. TUC Response to Children and Families Bill (9 April 2013) http://www.tuc.org.uk/tucfiles/568/TUC%20response%20on%20children%20and%20families%20bill%20April2013.pdf Page 2

[112] http://www.personneltoday.com/hr/will-shared-parental-leave-see-men-taking-time/

[113] R Beresford and Dr S Manfredi. *An IER Brief: The Children and Families Bill* (May 2013) The Institute of Employment Rights. Liverpool. Page 3.

[114] BBC. http://www.bbc.co.uk/news/uk-politics-26618139?ocid=socialflow_facebook

fathers, the European social partners therefore agree to make a part of the leave non-transferable.

The wording of this paragraph allows EU Member States to decide whether, or not, parental leave is transferrable. However, it also advises of best and recommended practice.

In this instance, the UK has provided for 50 / 52 weeks parental leave to be transferrable between partners.

In contrast, Clause 5(1) states;

At the end of parental leave, workers shall have the right to return to the same job or, if that is not possible, to an equivalent or similar job consistent with their employment contract or employment relationship.

The UK has interpreted Clause 5(1) it in a literal sense (i.e. as it is read) and has provided provisions for individuals who return to work at different times during parental leave.

CJEU Decisions

In addition, over the last couple of decades, there have been a variety of cases from the Court of Justice of the European Union (CJEU)[115] which have shaped both national and EU law.

A couple of examples have been chosen to demonstrate the impact on national law;

Case C303/06 Coleman v Attridge Law

Ms Coleman had a disabled son and as such she utilised her rights under UK legislation to request Flexible Working, for which she was later dismissed. Although Ms Coleman was not disabled herself she was able to bring an Employment Tribunal (ET) claim for unfair dismissal and indirect disability discrimination.

The Employment Appeal Tribunal (EAT) referred the case to the European Court of Justice who provided their judgement in 2008. They confirmed that Ms Coleman had succeeded in her case and held that associative discrimination was covered by the Equal Treatment Directive (2000/78). As a

[115] Previously the European Court of Justice (ECJ)

result of *Coleman v Attridge Law* the Equality Act 2010 was amended to include associative discrimination.

The impact of this case may not seem directly relative to work life balance; however the UK has about 6 million carers and an aging population, which can only increase the number of carers in the longer-term.

Case C-104/09 Roca Alvarez v Sesa Start Espana ETT SA

Mr Alvarez challenged Spanish law with regards to time off to feed his child.[116] He lost his case as his wife was self-employed and the law clearly stated that both mother and father needed to be employed to exercise this right.

The case was taken to the ECJ with reference to the Equal Treatment Directive (2000/78). The ECJ commented that current Spanish law created a difference in treatment on the ground of sex. The law had originally intended to promote breast-feeding since it extended to include bottle-feeding; this therefore included both partners. As such, they could not justify the discrimination and the ECJ held that the restrictions on partners were discriminatory.

The impact of this case is, potentially, wide spread within family-friendly legislation; it challenges every practice which promotes discrimination or reliance on traditional, gender-bias roles. To provide an example of how UK legislation could be impacted; the comparison between the rights of the mother and father with regards to their attendance at ante-natal classes differs by law. Part 8 of the Children and Families Act 2014 provides for fathers to attend 2 ante-natal classes, however this is considered as unpaid time away from the workplace. In comparison, s.55 of the Employment Rights Act 1996 provides for mothers to take reasonable paid time off work to attend ante-natal classes.

[116] Spanish law states that women employees are entitled to time off during the working day to breastfeed a child up to the age of nine months.

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Council Directive 1992/85, The Pregnant Workers Directive

Council Directive 1992/34, The Parental Leave Directive

Council Directive 1997/81, The Part-Time Workers Directive

Council Directive 2010/18, The Parental Leave Directive

Legislation - UK

Equal Pay Act 1970

Sex Discrimination Act 1975

Children Act 1989

Employment Rights Act 1996 s47C, 57A, 71-73, 80F, 99

Employment Relations Act 1999

The Maternity and Parental Leave etc Regulations 1999 (SI 1999/3312)

The Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000

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The Maternity and Parental Leave (Amendment) Regulations 2002 (SI 2002/2789)

The Paternity and Adoption Leave Regulations 2002

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