

Terms and Conditions During Maternity Leave: the Law is Changing

Earlier this year, the Government published the Sex Discrimination Act 1975 (Amendment) Regulations 2008. One change, coming into force on 5th October 2008, will require you to change the way you treat benefits given to employees during their maternity leave.

Currently, there is a difference between an employee's contractual rights while on Ordinary Maternity Leave (the first 26 weeks of maternity leave) and those she enjoys on Additional Maternity Leave (the second 26 weeks). As of 5th October 2008, this difference will be abolished for women whose expected week of childbirth falls on or after that date.

The Old Regime

Currently, a woman on Ordinary Maternity Leave (OML) is entitled to the benefit of all the terms and conditions of employment that would have applied if she had not been absent. The only exception to this is that she is not entitled to receive wages or salary. This means that an employee on OML would have a right to continue to receive benefits such as contractual annual leave, life insurance, health insurance, pension contributions, mortgage subsidies, lunch vouchers, personal use of a car, mobile phone etc.

While on Additional Maternity Leave (AML), the terms and conditions applying to the employee are much reduced. During the AML, the employee has the right only to notice of termination of employment, compensation in the event of a redundancy and the application of disciplinary and grievance procedures. The employee would also accrue the right to statutory annual leave, but not the contractual leave. All other benefits cease.

The New Regime

The Regulations will do away with the distinction regarding benefits between the OML and the AML. This means that any benefits provided during the OML should be provided during the AML for all women whose expected week of childbirth is 5th October onwards. If you continue to withdraw benefits after the end of the OML, you will risk facing complaints of sex discrimination. As you will appreciate, this change will significantly increase the cost of maternity leave overall.

For more specific information or to discuss your requirements please call either Amanda Galashan or Julie Calleux at EmployEase on 0845 12 33741, or email us at info@employease.co.uk

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