



“An increasing amount of employment legislation is dedicated to ensuring work-life balance - but consideration must be given to the burden that new laws and regulations place on business”

## Summary

**Recent changes, such as the extension of the right to request flexible working and certain provisions in the Equality Bill, aim to increase the compatibility of working and having a family. Politicians now place growing emphasis on the quality as well as the availability of flexible and part-time jobs.**

**Three new pieces of legislation are in the pipeline: Additional Paternity Leave and Pay (APLP), the Parental Leave Directive, and the Pregnant Workers Directive, all of which will affect employers across the UK.**

## Background

The recession has shone the spotlight on the idea of work-life balance. The Government, the opposition and the European Commission have argued that the downturn presents an opportunity to restructure the labour market by increasing the number of quality part time jobs available, reducing the gender pay gap, and increasing the opportunity for fathers to play a more active role in family life.

BCC believe that a more holistic approach needs to be taken to all these pieces of 'family friendly' legislation. It is currently unclear how they all fit together and what the landscape for both employers and parents will look like once new European requirements have been transposed into UK law. As well as the EU, many Government departments<sup>1</sup> have an interest in this area, and we must guard against this resulting in disjointed and complex policies that have negative consequences for business.

## Issues for Business

### Pregnant Workers Directive


In October 2008 the Commission published proposals to update current EU legislation on maternity leave. The key changes are:

- An extension of the duration of maternity leave from 14 to 18 weeks;
- The introduction of the principle of full pay during those 18 weeks, although member states remain free to apply their own rates as long as these do not amount to less than sick pay;
- The introduction of the right to request flexible working on return from maternity leave. The employer has a duty to consider the request based on the employee and employers' needs, but is under no obligation to grant it;
- Six weeks' compulsory maternity leave after the birth of the child, but more flexibility in choosing whether to take the other 12 weeks before or after the birth.

Only the last two proposals would require a change in UK law.

The European Parliament's Women's Rights Committee proposed amendments to the Commission proposal that would have increased maternity leave to 20 weeks, and introduced paid paternity leave at EU level. However, these were not accepted by the Parliament as a whole; instead, MEPs agreed to go back to the drawing board.

<sup>1</sup> BIS leads on employment law but Government Equalities Office has responsibility for Equality legislation and the rights of women. DWP take an interest, particularly in flexible working, and DCSF look at these issues from the perspective of family life and the welfare of the child.



This was due to widely divergent views on the extension of maternity leave and on the introduction of paternity leave. The EP's Women Rights Committee has since published new amendments to be voted on by the Committee in February 2010. These retain increased maternity leave at 20 weeks; introduce six weeks' compulsory leave after the birth of the child with a further optional six weeks before birth; and require full pay for the first six weeks and 85% thereafter. The amendments also include the introduction of two weeks' paid paternity leave as well as extra requirements for businesses considering requests for flexible working. If adopted, the proposals relating to compulsory leave, paid leave and flexible working would require changes to UK law leading to more costs and complexity for business.

### EU decision-making process

This proposal follows the co-decision procedure, which means that it can have up to three readings by the EP. It is currently undergoing its first reading. Once the Commission has published a proposal, it goes to the relevant European Parliament (EP) committee, which agrees amendments to the proposal that are then voted on by the EP as a whole. It is then up to the Council of Ministers (member states' representatives) to agree or reject the amendments. If the amendments are accepted, the proposal is made law. If they are rejected, a second and possibly third reading is required so that the EP and the Council can reach a compromise on the final text.

### Government Position

The UK Government is supportive of the BCC position.

### BCC Position

The British Chambers of Commerce supports efforts to improve the health and safety of pregnant workers where these have been compromised and where these will not polarise the status of pregnant workers. Indeed, health and safety is the legal basis for this Directive and the Commission should do more to emphasise this.

There is a real concern that employment legislation in this area is increasingly risking the position of women in the workplace. We fully support efforts to reconcile work and family life, but do not believe that codifying rights for pregnant workers in isolation – rather than asserting a general right for all workers in comparable circumstances – will achieve the desired outcomes. At worst these proposals could deepen economic exclusion and cement women's role as the carer.

In particular we believe that proposals relating to the right to request flexible working should not be included in this directive.

Moreover we believe that there is no room in European directives for proposals relating to pay and social security entitlements as these remain the sole responsibility of the member states.





## Parental Leave

### Background

The European Social Partners (the association of European CBIs, the European trade unions, and the European public sector employers) have produced a framework agreement on Parental Leave. The agreement extends parental leave by one month, making the full duration four months. The European Commission published legislation to enact the agreement in July 2009. Key points include:

- parental leave is extended to four months with at least one month non transferable. It is up to member states to determine how that will work in practice, taking into account national law and/or collective agreements. This applies until the child reaches the age of eight;
- the agreed terms apply to full-time and part-time workers, fixed-term workers and persons with a contract of employment or employment relationship with a temporary agency;
- when exercising the right to parental leave, it will fall on the worker to specify the beginning and the end of the period of leave. The member states will establish the required notice periods;
- decisions over pay or social security entitlements during maternity leave will remain national competence;
- member states must impose penalties for the infringement of the directive's provisions; these may include compensation that cannot be capped.

### EU decision-making process

Social partner agreements (made under the so-called Social Dialogue) are enacted by Commission directives, which are then approved by the relevant ministers from member states. The European Parliament does not have the right to amend these directives.

The parental leave directive in question is expected to be agreed politically by member state employment ministers in late 2009 (formal agreement being the next step). Member states will then have two years to implement its provisions (or three years in special circumstances).

### Government Position

The UK Government position is similar to that of the BCC although it believes that the request for flexible working is consistent with UK law.

### BCC Position

The BCC supports this agreement. It proposes a reasonable minimum period of parental leave, but lets member states determine how leave will work in practice, thus respecting the often complex arrangements in force in member states. In particular it specifically states that all decisions on pay and social security entitlements must be left to member states, in direct contrast to the European Parliament's proposals on Pregnant Workers.

However it does include the right to request flexible working which the employer must consider and respond to taking into account the needs of employers and employees. Currently in the UK an employer is not legally required to take into account employee needs. We believe that this is impossible for an employer to make an objective judgement regarding the personal circumstances of an employee. While this directive is a more logical place for flexible working requirements than the pregnant workers directive, we would like to see the wording changed to reflect more closely the current situation in the UK.





## Additional Paternity Leave and Pay (APLP)

### Background

- In September 2009, the Government launched the third consultation on APLP since March 2006 and announced their intention to lay these regulations before the end of this parliamentary session. This would see the law implemented in April 2011;
- The proposed regulations are relatively light-touch. Employees will self certify their eligibility to take the leave and provide details of their eligibility to their employer;
- The employer will not be held liable by HMRC if this information is incorrect;
- Fathers must request the leave 8 weeks in advance and employers have 4 weeks to confirm the entitlement.

### Conservative Position

The Conservatives also support the principles behind this legislation. It is very similar to their own policy proposal in this area. They have not, as yet, commented on the specifics of the draft regulations.

### BCC Position

Whilst we support the idea of Additional Paternity Leave and Pay (APLP) in principle, we do not believe that the Government should be piling more regulation and costs on business at this time. The Government should be supporting businesses and encouraging job creation, not creating more complexity in the employment law system.

A lot of employment legislation has been delayed until 2011, which means there will be many changes and additional costs that year for employers to contend with. Agency Workers Directive, Time to Train (for SMEs) and some provisions in the Equality Bill will all commence in 2011. Additional Paternity Leave legislation will add to this ever-growing burden. These are only the changes announced in 2009; any legislation consulted on during 2010 could also be implemented in 2011.

We believe there needs to be a more holistic approach when looking at employment legislation and how it affects businesses in the UK. It is still unclear how both the aforementioned Directives will work alongside domestic proposals on APLP. Other employment processes, such as recruitment, are often tinkered with by many different Departments, often unaware what other departments are doing. The Better Regulation Executive (BRE) needs to do more to encourage all departments to consider what other pieces of employment legislation are being proposed before deciding to legislate. This should also help to create a more staggered parliamentary timetable.

There are some specific concerns we have with the APLP regulations themselves, mainly regarding the proof that employees have to provide to show that they are entitled to the leave. For example, an employer may request a birth certificate, but a father is not always registered in this way. This is confusing for an employer as if they then reject a request for APL, they could be liable at tribunal. Their other option is to seek more proof, but this is an added burden and creates more expense for the employees.

We believe this legislation should be delayed until the economic outlook is more certain and also wait until the 2 aforementioned EU directives have passed into EU law. Constant tinkering with the system creates extra cost for employers and should be avoided.





## Child Care Vouchers

### Background

This scheme began in 2005 to help working parents' better fund childcare arrangements for their children. The scheme allows parents to use up to £243 of their monthly salary to purchase vouchers before tax deductions are made. These vouchers are quite flexible and can be used to fund a variety of arrangements, including nurseries, childminders and more controversially boarding school fees. Vouchers are administered by private providers. As well as employees getting the tax benefit, businesses also gain a small amount through the tax system.

However, changes to the Sex Discrimination Act (SDA) in October 2008 threw the childcare voucher scheme into disarray. It became unclear whether businesses would have to fund childcare vouchers if the woman went on maternity leave for a second time and had no salary to sacrifice. This change in legislation seemed to suggest that to deny the woman vouchers would be sex discrimination. This is yet to be tested in courts, but certainly meant that for an employer to provide childcare vouchers 'risk free', they had to commit to paying the vouchers themselves in certain situations.

### Government Position

Gordon Brown announced at the Labour Party Conference that the tax relief on Childcare Vouchers would end, and that the money saved would be redirected towards the provision of ten free hours of childcare for two-year-olds from low-income families. This policy position is now thought to be under review in this face of opposition from backbench MPs, voucher providers and employees. There has been some indication that childcare vouchers would be retained for basic rate taxpayers.

### Opposition Position

On the 19th November, David Cameron told an e-audience on Mumsnet that a Conservative Government would retain the vouchers in their current form.

The Liberal Democrats have argued that the scrapping of the scheme would have a devastating effect on providers, but have not committed to keep the vouchers if elected.

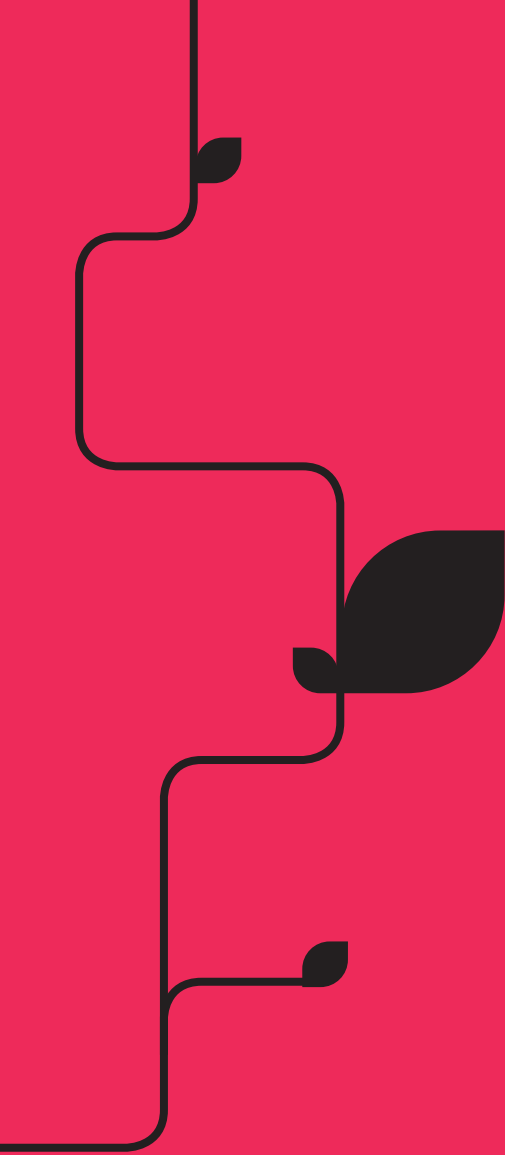
### BCC Position

Childcare vouchers have offered an excellent route for helping parents, particularly women, stay in work in recent years when otherwise they would have had to stay at home.

As long as the scheme remains affordable, given the pressure on the public finances, vouchers should be maintained in their current form.

Additionally, the tax and legal situation should be regularised to ensure that businesses are not adversely affected by the application of the SDA.





## Contacts

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