

Breakfast briefing Changes to Employment Law

February 2025

Agenda



- Neonatal leave
- National minimum wage update
- Parental bereavement leave for miscarriage

Neonatal Care (Leave & Pay) Act 2023



- Enacted in 2023 as framework, enabling legislation
- Up to 7 sets of Regulations with the details expected
- On 17 January 2025 regulations were laid before Parliament which will bring the Act into force on 6 April 2025
- Further regulations to come!

Neonatal Care Leave - Eligibility



- Leave will be a day 1 employment right
 - Employee must have a parental or other personal relationship with a child (to be further defined)
 - Who is receiving or has received neonatal care
- 'Neonatal care'
 - Care of a medical or palliative nature (to be further defined)
 - Which starts within 28 days of the day after the birth
 - Which continues for a period of 7 days or more starting the day after the care begins

Additional issues



- Regulations might also cover
 - Where a child receives neonatal care on more than one occasion
- If there is a multiple birth where more than one child requires neonatal care, the maximum amount of leave that may be taken (12 weeks) remains

Duration & Timing of Leave



- Neonatal care leave must last at least a week
- Eligible employees can take at least 12 weeks neonatal care leave in addition to any other statutory family leave eg maternity/paternity leave
- It can be taken at the time the child is receiving neonatal care or later
 - This is so it can be added to the end of other periods of family leave which would be lost if the neonatal care leave had to be taken earlier

Notice to take Leave

What is required?



- Employee must give notice of intention to take SCPL specifying:
 - The child's date of birth; date the child started receiving neonatal care; date the care ended if applicable; the date on which the employee chooses the period of SCNL to begin the number of weeks notice is being given for; confirmation that they meet the eligibility requirements.
- If care is ongoing, employee must notify the employer of the date the care ends as soon as is reasonably practicable
- If the child needs further neonatal care, employee must notify again as soon as reasonably practicable

Notice to take Leave

Immediate leave (Tier 1)



- Notice must be given in respect of each week of leave before the employee is due to start work on the first day of absence in that week, or as soon as reasonably practicable
- No need to be in writing
- In practice, thought most likely to be used by child's father/mother's partner as mother likely to be on maternity leave

Notice to take Leave

Leave taken later (Tier 2)



- Notice must be given in writing:
 - For a single week, no later than 15 days before first day of intended leave
 - For two or more consecutive weeks, no later than 28 days before the first day of intended leave
- Regulations provide that employer and employee may mutually agree to waive the notice requirements

Employment Rights and Return to Work



- Likely to be dealt with in a similar way to other periods of family leave
- Contractual terms will all be maintained with the exception of remuneration
- Right to return to work after the leave to the same job, or depending on the length of leave overall if added to other periods of family leave, if not possible to return to the same job right to return to a suitable alternative role on no less favourable terms
- Regulations may deal with dismissal during neonatal care leave and also with redundancy during or after the leave

Statutory Neonatal Care Pay - Entitlement



- Same qualifying requirements as for leave (relationship to a child receiving neonatal care) but also
 - Employee must have at least 26 weeks service with the employer ending with the relevant week (which is the week before the neonatal care begins)
 - At the end of the relevant week must be entitled to be in that employment
 - Earnings in the 8 weeks ending with the relevant week must be not less than the lower earnings limit, currently £123 per week (likely to rise in April)

Who Pays?



- Normally the employer will be liable to pay the Neonatal Care Pay
- Regulations may create liability for an employer who ends employment to avoid paying SNCP deliberately
- Rate is liable to be the same as for other family leave – currently £184.03 per week, increases in April 2025 to £187.13 per week
- Paid in periods of weeks (not days)
- Regulations are likely to provide for payment in non consecutive weeks

Interaction with contractual schemes



- Some employers may already make provision for neonatal leave or may choose to offer more favourable terms than the statutory scheme in terms of both leave and/or pay
- Regulations are likely to allow employees to pick and choose the more favourable terms

What to do now?



- Implement a neonatal leave policy or update existing family leave policy
- Train HR or relevant staff on the new leave
- Keep up to date on any further Regulations

National Minimum Wage

New NMW rates



- National Living Wage (NLW) (21 and over): £12.21 (6.7% increase).
- 18-20 year olds: £10.00 (16.3% increase).
- 16-17 year olds: £7.55 (18% increase).
- Apprentice rate: £7.55 (18% increase).
- Accommodation offset: £10.66 (6.7% increase).

New NMW rates



- Low Pay Commission reported signs of employers finding it harder to adapt to these increases
- LPC anticipate consultation over the next year on government goal of reducing the NLW rate from 21 to 18

New NMW rates

Common errors when calculating



- Check salary sacrifice schemes in place
 - Are employees sacrificing enough salary to sit underneath the new NMW rate?
- Employee savings schemes
 - These types of schemes can mean an employee's salary is under the NMW rate, although they have access to the funds at a later date
- Deductions from wages
 - Some training cost deductions can take an employee below NMW if the training was not voluntary and/or there was no prior agreement to deduct
 - Take legal advice if this arises

Statutory parental bereavement leave for miscarriage

Statutory parental bereavement leave



- Since April 2020, employees have been eligible for statutory parental bereavement leave and pay if they lose a child under the age of 18 or experience a stillbirth after 24 weeks of pregnancy. This entitlement includes:
 - Two weeks of leave, which can be taken as a single block or in two separate weeks.
 - Statutory bereavement pay of £184.03 per week or 90% of average weekly earnings, whichever is lower.

Statutory parental bereavement leave



- MPs are set to propose an amendment to the Employment Rights Bill which would extend the right to statutory bereavement leave for employees who experience a miscarriage
- This will align pregnancy loss before 24 weeks with the provisions in place for pregnancy loss after 24 weeks
- Proposed changes would apply to those who experience:
 - Miscarriage
 - Ectopic pregnancy
 - Molar pregnancy
 - IVF embryo transfer loss
 - Terminations for medical reasons

Statutory parental bereavement leave



- Legal & HR team will keep members up to date on how this proposal progresses