

# Carers Week Employers Event: Carers Leave, Legislation & Flexible Working



Donna Reynolds  
Partner, Employment

## A personal view

- Many employers don't know how to support carers in the workplace, while others don't wish to.
- 14.1 million disabled people in the UK
- 9.4 million people in employment over the age of 50 in the UK
- 5 million people in the UK are juggling caring responsibilities with work
- Employment Tribunal decisions relating to flexible working have increased by 52 %
- Discrimination cases are more likely to progress in Employment Tribunal than others

## Carer's Leave

- On 23 September 2021, UK Government published response to carer's leave consultation
- Noted a clear backing for the introduction of some form of carer's leave
- As a result, UK Government will introduce legislation to provide for carer's leave

## Carer's Leave - eligibility

- A 'day one' right – no required length of service
- For those who are caring for a dependant such as a spouse, partner, child, parent, person in the same household or anyone else reliant on the employee for care
- The care must be required by the dependant in relation to a long term (physical or mental) illness, a disability or as a result of issues related to old age

## Carer's Leave

### What should the leave be used for?

- Providing care or making arrangements for the provision of care for the dependant of the employee who requires long-term care

### How can the leave be taken?

- Flexibly, up to one week (5 days). The employee can take the leave in half day blocks up to one week.

### Does the employee have to give notice?

- Yes. Similar to statutory holiday pay, the employee must give double the amount of notice plus one day of the amount of leave they want. So if one day, they would need to give 3 days' notice to the employer.

## Carer's Leave

### **Does the employee need to evidence their care provision?**

- No. The employee will be able to self-certify and there will be no need to provide evidence to the employer. If the employer suspects that the employee is utilising the leave without cause that would obviously be a disciplinary matter.

### **Right not to suffer detriment**

- An employee must not suffer detriment as a result of using carer's leave and if they are dismissed for doing so, that would be automatically unfair dismissal.

### **When will this begin?**

- Not sure. The government will introduce "when parliamentary time allows" and we will have to wait for the specific regulations until then.

## Flexible Working

The UK Government launched a consultation, which closed on 1 December 2021, in relation to flexible working

### 1. A "day one" right.

- Currently an employee has to have 26 weeks' continuous service to make a flexible working request. Proposal to remove that to make flexible working almost the default

### 2. Are the 8 business reasons still relevant?

- Currently an employer can only refuse a flexible working request on one of the 8 business reasons:
  - the burden of additional costs;
  - detrimental effect on ability to meet customer demand;
  - inability to reorganise work among existing staff;
  - inability to recruit additional staff;
  - detrimental impact on quality;
  - detrimental impact on performance;
  - insufficiency of work during the periods the employee proposes to work; or
  - planned structural changes.
- Unlikely to see a great deal of change here

## Flexible Working

### 3. Employer should suggest alternatives

- Should the employer have to consider and suggest alternative arrangements rather than simply refusing. Arguably already happens.

### 4. Administrative processes

- Should the one year time limit on further applications be changed? Currently employees can only request flexible working once per year.
- Should the three month limit to respond be changed? Arguably employers do respond quicker than this, particularly where they have their own policy.

### 5. Encouraging greater use of temporary measures

- Government feels this is under utilised.



## Time off for dependants

- **A right to a “reasonable” amount of time off work to:**
  - Provide assistance when a dependant falls ill, gives birth or is injured or assaulted;
  - Make arrangements for the provision of care for a dependant who is ill or injured;
  - Deal with the death of a dependant;
  - Deal with the unexpected disruption or termination of the dependant’s care arrangements; and
  - Deal with an unexpected incident which involves the employee’s child while that are at school.
- **“Reasonable” depends on the circumstances – but not the employer’s circumstances**
- **Unexpected does not mean sudden.**
- **Notification must include: reason; how long; and prompt update of any change in circumstances.**
- **Unpaid**

## Time off for dependants

- May complain to the Employment Tribunal for refused permission to take time off or for being subjected to a detriment for taking it (or seeking to take it).
- Automatically unfair dismissal

## Parental Leave

- **A right to care for a child where the employee:**
  - Has been continuously employed for at least 1 year (unless the child is entitled to disability living allowance);
  - has, or expects to have, responsibility for a child;
  - Is taking the leave to care for a child; and
  - Is taking the leave before the child is 18.
- **18 weeks per child, 4 weeks per year.**
- **Blocks of a week or a whole number of weeks. Parents of a child entitled to disability living allowance, an armed forces independent payment or a personal independent payment may take leave in days or period of less than 1 week.**
- **21 days' notice of the beginning and ends dates of the requested leave. Evidence of entitlement may be required.**
- **Unpaid**

## Parental Leave

- May complain to the Employment Tribunal if prevented or there are attempts to prevent the taking of parental leave, “unreasonably” postpones a requested period of leave or dismissed the employee or subjects the employee to a detriment.

## Disability Discrimination

- Misconduct
- Disabled for the purposes of the Equality Act 2010?
- Direct discrimination
- Indirect discrimination
- Discrimination arising from disability
- Reasonable adjustments
- Associative discrimination

# Any Questions?



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