

# **EMPLOYMENT ACT 2002**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part One: Statutory Leave and Pay**

##### *Chapter One: Paternity and adoption leave and pay*

#### **Paternity leave and Statutory Paternity Pay**

9. Since 1999 fathers have been entitled to unpaid parental leave but they have not until now had a statutory right to paid leave to care for a child. Paid paternity leave in some form is offered by many employers - either on an ad hoc basis (as in many small firms) or as a formalised policy for all staff.
10. After the consultation process ended in 2001, the Government announced it was introducing a right to two weeks' paid paternity leave from 2003. The new right to paternity leave is in addition to the right to 13 parental leave weeks' (18 weeks' for parents of disabled children) provided for in regulations made under the Employment Rights Act 1996. Statutory Paternity Pay will be financed by the state, with employers able to recover most or all of the amount of Statutory Paternity Pay they pay out.

#### *Section 1: Paternity leave*

11. This section makes provision for the introduction of a new statutory right to two weeks' paternity leave. Regulations will provide for this to be taken in a single block of either one week or two weeks at the choice of the father. The intention is to make paternity leave available to fathers following the birth of a child or the placement of a child for adoption.
12. The provisions set out in the section are similar in construction to the provisions in the Employment Rights Act 1996 (ERA) in relation to parental leave, and this section inserts them into the ERA.
13. Regulations will be made making paternity leave available to an employee:
  - who has a relationship (to be specified in regulations) with a newborn child, or a child newly placed for adoption, and has a relationship (to be specified in regulations) with the mother or adoptive parent. It is intended that paternity leave will be available to an employee who expects to be parenting the newborn child or the child placed for adoption;
  - who gives appropriate notification;
  - who gives his employer a self-certificate to support his entitlement to leave, if requested to do so by his employer.
14. As it is intended that adoption leave will only be available to one spouse in cases where a married couple adopts a child, paternity leave will be available to the other spouse. For practical reasons there will be slight differences in how paternity leave operates

as between those adopting within the UK and those adopting overseas. Provisions for overseas adoptions will be made in regulations.

15. Paternity leave will be available to an employee who has completed a period of qualifying service. It is intended that the requirement will be continuous service with the same employer for at least 26 weeks by the fifteenth week before the child is expected to be born, or by the week in which an approved match with the child is made. (A match occurs when an approved adoption agency matches an adopter with a child.)
16. An employee will have the right to return to a job following a period of paternity leave. It is intended that regulations will provide for:
  - the right to return to the same job following absence of one week's or two weeks' paternity leave in most cases, and
  - protection for employees from detriment and unfair dismissal in connection with paternity leave.

### ***Section 2: Statutory Paternity Pay***

17. This section incorporates provisions into the Social Security Contributions and Benefits Act 1992 conferring a new statutory right to Statutory Paternity Pay for fathers following the birth of a child or the placement of a child for adoption. Statutory Paternity Pay is to be paid for a period of two weeks, or if regulations so provide, a period of a week or two periods of a week. Regulations will provide for the father to choose to be paid for a single period of one week or two weeks. Statutory Paternity Pay will generally be payable for paternity leave taken within 56 days of the date on which the child is born or placed for adoption.
18. The rate of Statutory Paternity Pay will be set in regulations. From April 2003 it will be the lesser of £100 per week or 90% of the employee's average weekly earnings.
19. Statutory Paternity Pay will be available to an employee who has met the service qualification (continuous service with the same employer for at least 26 weeks by the fifteenth week before the child is expected to be born or by the week in which an approved match is made with the child; and continuous service from that week up to the child's date of birth or placement), has a relationship (to be specified in regulations) with the child and the mother or adoptive parent, gives appropriate notification, and whose average weekly earnings are equal to or above the Lower Earnings Limit applying to National Insurance Contributions (NICs) (£75 per week from April 2002). For practical reasons there will be slight differences in how paternity leave operates between those adopting within the UK and those adopting overseas. Provisions for overseas adoptions will be made in regulations. It is planned that employees who are entitled to Statutory Paternity Pay will have an obligation to give their employer a self-certificate to support their entitlement to pay (the same self-certificate as for paternity leave).
20. Statutory Paternity Pay will be administered by employers in the same way as Statutory Maternity Pay. Employers will be able to recover a percentage of the amount of Statutory Paternity Pay they pay out (limited in most cases to 92%), with small employers who are entitled to Small Employers' Relief (in 2002/3, those with NICs due in a year of £40,000 or less) able to claim 100% and an added payment (in 2002/3 of 4.5% for Statutory Maternity Pay) to compensate for employers' share of National Insurance Contributions payable in respect of Statutory Paternity Pay. Section 7 of the Act provides for a power to make regulations to enable employers to ask for funding, if necessary in advance, from the Inland Revenue where the amount of Statutory Paternity Pay they have to pay their employees exceeds the amount of tax and NICs or Student Loan deductions that they are due to pay to the Inland Revenue. In certain circumstances where an employer fails to pay Statutory Paternity Pay, the Inland Revenue will become responsible for the payment. Liability will also fall on the Inland Revenue from the first week in which an employer becomes insolvent.

*These notes refer to the Employment Act 2002  
(c.22) which received Royal Assent on 8 July 2002*

21. The framework for Statutory Paternity Pay is similar to that already in place for Statutory Maternity Pay and Working Families' Tax Credit . The distribution of rights and obligations as between primary and secondary legislation follows the model of the Social Security Contributions and Benefits Act 1992 and Tax Credits Act 1999. As under those Acts, administrative and enforcement powers are conferred on the Inland Revenue. Sections 13 - 15 also provide for the exchange of information about Statutory Paternity Pay between the Inland Revenue, the DTI and other relevant departments.
22. To ensure compliance the sections provide for:
  - Employers to keep appropriate records and to make periodic returns to the Inland Revenue
  - Employers to produce those records for inspection by the Inland Revenue
  - Employers to provide information about entitlement to their employees
  - The Inland Revenue to be able to obtain information from both employers and applicants for Statutory Paternity Pay
  - The Inland Revenue to impose penalties where there is refusal or repeated failure to comply
  - The Inland Revenue to make decisions on entitlement in the event of dispute
  - Appeals against decisions made and penalties awarded to be heard by the Independent Tax Commissioners.