



The Work Couch

NAVIGATING TODAY'S TRICKY PEOPLE CHALLENGES TO
CREATE TOMORROW'S SUSTAINABLE WORKPLACES

Episode 13 – Reforms to employment rights for parents and carers: Where are we now? with Joanna Holford

Ellie: Hi and welcome to the Work Couch podcast, your fortnightly deep dive into all things employment. Brought to you by the award-winning employment team at law firm RPC, we discuss the whole spectrum of employment law, with the emphasis firmly on people. Every other week we explore those thorny HR issues that people teams and in-house counsel are facing right now and we discuss the practical ways to tackle them. My name's Ellie Gelder. I'm a senior editor in the Employment Equality and Engagement team here at RPC, and I'll be your host as we explore the constantly evolving and consistently challenging world of employment law and all the curveballs that it brings to businesses today. Before we kick off today's episode, we would be super grateful if you could spare a moment to rate, review and subscribe to make sure you don't miss any of our fortnightly episodes. And please spread the word by telling a colleague about us.

OK, so today we're going to be highlighting some important proposals to change a number of family-related employment law rights in the UK. And they all have one thing in common. They were all first proposed by the UK government way back in 2019. And after lengthy delays caused in no small part by the pandemic and just a few changes in the Conservative Party leadership, these proposals are finally progressing. Now, the issue of working parents and those with family and caring responsibilities has been mentioned on countless occasions in the world of politics. And there's no question that the pandemic prompted a real drive to improve the support on offer to those employees who are having to balance work with caring commitments. And joining me on the Work Couch today to explain exactly what might be changing and why, I'm delighted to be joined by Joanna Holford, Senior Associate here at RPC. Hi, Jo, thanks so much for being here today.

Joanna: Hi Ellie, thanks for having me, it's great to be here.

Ellie: Okay. So, Jo, you're going to explain changes to five key areas. And we will also look at why those changes will benefit employers as well as employees. So, can we kick off with our first big change? And that relates to reforms to family-related leave and pay. So, just to give us some context, can you set out, first of all, the reasons why this area of law needed reviewing?

Joanna: Yes, Ellie, so I'm going to take you back to 2019. And this was when the government published the [Good Work Plan: Proposals to Support Families](#). And this document set out three separate consultations to seek views on measures to support parents enter, remain, and return to the workforce. One of those consultations was on reforming the parental leave and pay system. So, the government wanted to evaluate various possibilities, things like increasing paternity leave or pay and reforming the shared parental leave system. So, they opened a consultation to discuss that, and this consultation closed on the 29 November 2019.

Ellie: Okay, and shared parental leave, which you mentioned, that was introduced a while ago now in 2015, but that didn't prove to be the ground-breaking solution that people hoped it might be, did it?

Joanna: No, it didn't, unfortunately. So, family-related leave is a topic really close to my own heart. I have two young children myself and I, like a lot of people, were really excited to see what impact the introduction of shared parental leave would have when it was implemented way back in 2015. I can't believe it was 2015 that came to pass.

Ellie: I know

Joanna: However, very quickly when we saw it in reality, it became so complicated. Even for us employment lawyers, I don't think we could quite get our heads around all the requirements.

Ellie: Yeah.

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- Joanna:** So, this has meant in practice that uptake's been really low, much lower than expected. And figures released this year suggest that only 1% of eligible mothers and just 5% of eligible fathers are taking shared parental leave. So, it's really not being used as we hoped it would.
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- Ellie:** Not at all. So, despite that consultation and calls for change, nothing really happened. And obviously, as we've mentioned, there was then a global pandemic. And actually, since the pandemic, it's resulting lockdowns, the fact that it massively changed how we work, that's actually really focused everyone's minds increasingly on the need to reform the family related leave system.
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- Joanna:** Yeah, absolutely. It's completely changed our ways of working and sort of attitudes to those sort of stereotypical roles that we may have used to think about. So, if we take paternity leave, for example, most recently in June this year, the Centre for Progressive Policy, Pregnant and Screwed and Women in Data published their report. And this is called [Leave in the Lurch, Paternity Leave, Gender Equality and the UK Economy](#). Now, this is a really interesting read and I'd recommend that people read it because it explores the potential economic and health impacts of extending the statutory entitlements of maternity leave and pay. So, what they've put forward is a suggestion that maternity leave be increased to a minimum of six weeks. So, we take it from the current two weeks to have a further four weeks and this should be paid at 90% of income, which is in line with the current statutory maternity pay entitlement.
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- Ellie:** Yeah, we'll actually include a link to that report as well - as Jo says, it does make for a really interesting read. But as the law currently stands, statutory paternity leave is for two weeks only. Let's take a step back from the law then and just consider what that actually means in reality for new parents because from what I can remember when my children were born, those early weeks with a newborn just completely go by in a total blur.
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- Joanna:** Yes, a sleepless total blur, isn't it?
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- Ellie:** Yes,
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- Ellie:** exactly! Sleep deprived.
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- Joanna:** Yeah, so I remember that day and I was genuinely terrified that when my husband returned to work after I had my first child. So, he'd been at home with us for two weeks paternity leave and then he'd had an additional week of annual leave as well. But speaking to all my friends, they had the same sort of experience and they all would have liked a longer paternity leave for their partners. So, this was for a range of reasons, including support while recovering from a C-section and more time for their partner to bond with the baby. The Guardian newspaper recently reported, and they called it "measly" paternity rights that we've got here in the UK. It means that almost a third of fathers, I can't quite believe that statistic, a third take no paternity leave at all. And interestingly, [new data from the CIPD](#) shows that almost half of organisations also support extending statutory paternity or partner leave and pay. So, it's not just the employees that are wanting this. It's the employers as well.
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- Ellie:** I think that's really interesting that it's employers as well calling for this change. And as you say, really shocking that almost a third of fathers take no paternity leave at all. So, what changes do the government intend to make here?
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- Joanna:** Yes, so in June this year, the government finally published its [response](#) to the Good Work Plan proposals to support families consultation. The response essentially outlines the government's intention to make paternity leave and pay legislation more flexible. So, what it suggested is taking the current entitlement of up to two weeks statutory paternity leave in two separate blocks of one week, if that's the preferred option. The ability to take statutory paternity leave at any time within the first year, rather than the current position, which is that you have to take it within the first eight weeks after birth or adoption. And thirdly, changes to the notice requirements. The idea is to make these more proportionate to the amount of time taken off. So, at the moment you have just two weeks leave, but you have to put in your notice 15 weeks before you want to take it. So, it's proposed that fathers will need to give just 28 days' notice before each period of leave they intend to take. Although the notice of entitlement itself will still need to be given 15 weeks before birth.
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- Ellie:** Okay, so quite a few changes, but no moves as yet to extend that two-week period of statutory paternity leave. And that's been met by huge criticism with some people describing it as "a missed opportunity". What about shared parental leave?

Joanna: No, sadly, unfortunately nothing. I think this was an obvious one to change really. But when it comes to shared parental leave, the government's not proposing any changes. So, I think as part of the consultation, they did sort of point to this [new eligibility tool](#) [pls add this link to yellow highlighted wording:] that they released in 2021 on the gov.uk website. So, they said this was to help people understand more about shared parental leave. And they pointed to sort of three main functions. So, it enables perspective and new parents to check if they are eligible for shared parental leave and shared parental leave pay. It helps parents plan how they will share the leave and the pay that is available between them as a couple and it allows them to help plan when they will take shared parental leave. But there's nothing new planned beyond this.

Ellie: Okay, disappointing. Can we move on to the second item then? So, that relates to reforms to surrogacy laws. And just to put this into context, court statistics show that the number of parents using surrogates in England and Wales quadrupled in 10 years between 2011 and 2021. So, the law really needs to keep up with this and look at how the new parents and the surrogate themselves are protected at work. So, Jo, what's the position at the moment with parents using surrogates and surrogates themselves and the leave that they can take?

Joanna: Okay, so I'll deal with the simple one first. So, the surrogate mother, she's entitled to statutory maternity leave in the same way as any other pregnant employee. But it's a bit different for the intended mother. So, they don't get statutory maternity leave once the child has been born. This is because of European case law. And this case law said that the primary aim of maternity leave is to protect the health of a mother in the especially vulnerable situation arriving from pregnancy. So, what options do they have? So, either of the intended parents can elect to take adoption leave, either on their own or with the other partner taking paternity leave. And one or both of them may also qualify for the famous shared parental leave, provided that they fulfil the eligibility requirements in each case of course.

Ellie: Okay, so quite a stark difference then between surrogacy and maternity and paternity. So, what might change now?

Joanna: So, in March this year, we got a joint report from the Law Commission, which was called [Building families through surrogacy: a new law](#), outlining recommendations to reform surrogacy. And that came out together with a draft bill to implement the recommendations. So, the proposed employment law reforms would ensure that a surrogate is treated in exactly the same way as any other woman who is pregnant and that the intended parents are treated in the same way as any other people with a newborn child. The report also recommends that one of the intended parents should have the right to receive a benefit equivalent to a maternity allowance if they fulfil the requirements for that benefit. It's also going to give them improved rights to take time off to attend the antenatal appointments with the surrogate mother as well.

Ellie: Okay, so what are the next steps for those reforms then? When can we expect to see them come into effect?

Joanna: So, it's now over to the government. So, it's up to them to decide on next steps, including what legislation's needed to implement those changes. We're hoping that we're gonna get a response by October and then a full response by at least next March. So, watch this space.

Ellie: Okay, so number three on our list now, this is a really important change. This relates to extending redundancy protection for pregnant employees and new mothers. So, just tell us, Jo, what does the existing law say about this?

Joanna: Yes, so the current legislation gives employees enhanced protection from redundancy when they're on maternity leave. So, it's actually a rare example of positive discrimination in our law, where employees on maternity leave take priority over other employees who are also at risk of redundancy. But what's key is, it only applies to those on maternity leave. We don't think about that wider to pregnant mothers that are at risk, those that have recently returned from maternity leave. So, the employees on maternity leave are entitled to be offered a suitable alternative vacancy if one exists, you don't have to create a job for them, to start immediately after their existing contract ends. But as I said, this protection does not apply where employees are pregnant or when they return to work after maternity leave, when they could also be at risk of redundancy. So, I had a look at the stats and the Equality and Human Rights Commission in 2016 found [statistics](#) that showed that 6% of mothers were made redundant and that was at any point, either when they were pregnant, on maternity leave or after their return to work.

Ellie: Wow. So, I think a lot of people find that quite surprising that that's the current protection. So, what is the government proposing to change?

Joanna: Yeah, again, way back in 2019, the government confirmed that certain policy intentions would be brought in, but only "when parliamentary time allowed". So, what they're looking at doing is increasing that existing redundancy protection. So, it's going to apply from the point the employee tells her employer she's pregnant. That might be

them telling her manager verbally or putting it in writing, and it will be extended for six months after she's returned to work. The same protection is going to also be extended for six months after the end of adoption leave. So, for parents that adopt, that right will be there. And protection will also be extended after the end of shared parental leave, but we're not sure yet how long that protection. So, we've got six months after return from maternity leave, but they're yet to determine how long the protection will apply after the return from shared parental leave. But protection's not gonna be extended to those taking paternity leave.

Ellie: Okay, and when might these changes come into effect then?

Joanna: Yeah, so in October last year, the government announced it was backing a private members bill to implement the changes that we need. So, the bill received Royal Assent in May, becoming the [Protection from Redundancy, Pregnancy and Family Leave Act 2023](#). And it came into force on the 24 July 2023. So, so far, we've got no date for implementation of the necessary regulations. All we know from the government is this is going to happen in due course.

Ellie: Okay, next on our list is neonatal leave and pay. And it seems a long time ago now, when Rishi Sunak was chancellor, but he announced as part of the spring 2020 budget, that the government would create a new statutory entitlement to neonatal leave and pay for those employees whose babies spend an extended period of time in neonatal care, providing up to 12 weeks paid leave.

Joanna: Yes, that's right. And it's really welcome news from lots of parents. So, at the moment, if a child is born prematurely, the mother's maternity leave automatically kicks in at that point. And those first few weeks or in some cases months, might be spent with the baby in the neonatal unit, which leaves a lot less of the maternity leave to spend at home with baby when they do return home.

Ellie: Yeah, absolutely. But there was, as with all these proposals we're discussing today, there was a long delay. So, what's the latest with this one?

Joanna: Yeah, it's a bit of a common theme, unfortunately, with all these rights. So, yes, that's right. But then in July 2022, the government announced that it was backing again, a private members bill. So, this bill is going to allow parents to take up to 12 weeks of paid leave, in addition to the other usual family related leave, maternity leave, paternity pay, and this will give them more time to spend with their baby, who unfortunately being born prematurely or sick is receiving neonatal care in a hospital or other agreed care setting. Neonatal care leave will be available to employees from their first day at work, so it's a day one right, and it will apply to parents of babies who are admitted into hospital up to the age of 28 days and who have a continuous stay in hospital of seven full days or more. This bill received royal assent on the 24 May 2023 and became an act of parliament. However, we have some time to wait, unfortunately, before we see these benefits as the new neonatal leave and pay entitlements are not expected to be actually delivered until April 2025.

Ellie: Okay, so a fair bit of time to wait there. But last and certainly not least, can we talk about leave for carers? Because I think they're often underrepresented when we talk about flexibility at work, time off, because we often discuss those issues in relation to employees with children.

Joanna: Yeah, absolutely. They're often forgotten. And what we have to remember is we're getting an increasingly aging population and a lot more people have caring responsibility that didn't necessarily 10, 20 years ago. You know, we think of, like you say, people with children, but actually you might have caring responsibility for your parents or even your partner. So, millions of people across the country provide unpaid care, which is really important. And they're balancing work with providing that care. I think it's important that they are supported in the workplace as well but at the moment there's no right to statutory leave for informal carers.

Ellie: So, what's the government proposing for these kinds of employees?

Joanna: So, in September 2021, the government confirmed it would introduce a new statutory right of up to one week of unpaid leave for carers in England, Scotland and Wales, but no time scale has been given. A year later in 2022, they announced that they were backing the Carers Leave Bill, another private members' bill, and that bill received royal assent on the 24 May this year, and it became the Carers Leave Act. But again, we've got no date for implementation yet, but we're thinking it might be around April 2024.

Ellie: Okay, but when it is implemented, what's this gonna mean in practice for carers?

Joanna: Okay, so employees are going to be entitled to one week of unpaid leave per year for providing or arranging care for a dependant with a long-term care need. So, when we break that down, we have to think about who are the dependants that might cover. And it's going to be a spouse, a civil partner, a child or a parent of the

employee, someone who lives in the same household, although there's going to be some exceptions there, for example, a lodger, or it might be someone who reasonably relies on the employee to provide or arrange care. And as I say, to meet the statutory requirements, a dependant's also got to have a long-term care need. I think that's going to be defined as an illness or injury that requires or is likely to require care for more than three months, a disability or someone who requires care connected with old age.

Ellie: Okay, and that's going to be a day one right then. So, that'll start from the start of somebody's employment.

Joanna: Yep, absolutely, day one. So, importantly, these employees will then have the same protections associated with other forms of family-related leave, meaning they'll be protected from dismissal or any other detriment from exercising their right to take carers' leave. So, what this means is they'll be able to bring a claim in the employment tribunal if the employer has unreasonably postponed a period of their requested carers' leave or prevented or attempted to prevent them from taking that leave. So, that gives them a little bit more protection.

Ellie: So, we've discussed a number of proposals to extend and strengthen the rights of employees. Although as we've discussed, some changes might not go far enough, they're undoubtedly going to help employees. But what about employers? Because I can hear those listeners who are employers asking, well, what's in it for businesses? How is this going to help them?

Joanna: Yeah, well people are key to every business. They're at the heart of it. And I say, if they're happy and supported, a business is gonna run better. It's gonna be more efficient and it's gonna increase productivity. In particular, for those with caring responsibilities, the right to leave could prevent burnout. I also think the changes are gonna hopefully lead to less staff turnover. You know, I talked about people leaving the workforce because of their caring responsibilities. If that happens less and they stay in the workplace, employers will retain important skills. and that will lead to more consistency and reduced costs of recruiting and training new staff. And Ellie, I'm going to leave you with this final statistic. It's been estimated that closing the gender employment gap, which all of these changes we've been talking about today can assist with, would increase economic output by £23 billion.

Ellie: Wow, that is quite an incredible statistic to leave us with Jo, and perfectly highlights the extent to which better support for working parents and carers can help provide that much-needed boost to our economy. Thank you so much, Jo, for taking us through the proposed changes and explaining their effects.

Joanna: It's been a pleasure, thanks Ellie.

Ellie: If you would like to revisit anything we discussed today, you can access transcripts of every episode of The Work Couch podcast by going to our website www.rpc.co.uk/theworkcouch or if you have questions for me or Jo or perhaps you've got suggestions of topics you'd like us to cover on a future episode, please do get in touch. You can email us at: theworkcouch@rpc.co.uk. We'd love to hear from you.

Thank you for listening and we hope you'll join us again in two weeks.



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