



The impact of the recession on family friendly rights

Article

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There has been a raft of family friendly legislation in the last few years in recognition of the need for employees to balance their work and home life. To add to this, on 6 April 2009, the right to request flexible working is being extended to all parents/carers of children aged 16 and under. Before this, the right was open to parents/carers of children under 6 or under 18 if disabled and carers of adults. This article looks at the extent of employees' rights in relation to flexible working and parental leave and what impact the current economic climate may have.

Flexible working

Firstly, there is no right to work flexibly; it is a right to make the request (provided the employee has worked for the employer for 26 weeks). That said, employers are under a duty to consider any request seriously and can only reject it for specific business reasons set out in the legislation, such as the burden of additional costs or the detrimental impact on performance or quality. Although the grounds for refusal are subjective and a tribunal will not scrutinise them in detail, the concern for employers is that any refusal could also give rise to a claim of indirect sex discrimination. If successful, there is no limit on compensation and the business reasons for refusal will be examined in detail and will need to be objectively justified.

In general, employers have recognised the positive impact flexible working can have, such as increased motivation, reduction in absence and the retention of high calibre staff, and many large employers have extended the right to all employees. It is, however, much more difficult for smaller businesses to accommodate these requests and it is anticipated that the extension of the right to request will hit smaller employers hardest, particularly in the current economic climate. The extension is expected to lead to an increased number of requests and consequently refusals, and employers will need to show sound business reasons for this in order to defend any claim. However, employers would be well-advised not to rule out the positive side of flexible working, as it can cover a range of different options and can result in reduced costs while retaining valuable staff.

Parental Leave

Broadly, the right to take 13 weeks' unpaid parental leave is open to employees with one year's service and who have responsibility for a child under 5 (or under 18 if disabled) or who have adopted a child within the last 5 years who is under 18. Normally, up to 4 weeks leave can be taken per year. Employers cannot refuse a request, but can postpone leave once for up to 6 months if the operation of its business would be unduly disrupted, for example, during peak periods or where the employee is working on a time critical project. However, as the leave is unpaid, again any request can work to an employer's advantage particularly at a time when the business is quiet.

Conclusion

The recession may result in employees being able to take advantage of family friendly rights which for employers is key to retaining valuable staff and can result in costs savings. However, if an employer is in the position of having to refuse requests or asking

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the employee to postpone leave, they should ensure they have sound business reasons for doing so to minimise any liability.

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