

This article recently appeared on the website [HR Review](#).

Additional Paternity Leave: How will you manage the Change?

February 2011

From April 2011, fathers will have the right to take up to 26 weeks' additional paternity leave ("APL"), if their partners decide to return to work early. These new rights for fathers are likely to increase costs and levels of administration for employers so what steps should you be taking now to manage the change? Luke Bowery from law firm Burges Salmon outlines key issues to help employers prepare for and manage the change.

The new rights

Eligible fathers with a child due on or after 3 April 2011 will:

- have the right to take between 2 and 26 weeks' APL, if the mother has returned to work. This is in addition to 2 weeks' ordinary paternity leave. APL can only start 20 weeks after the child is born; and
- be entitled to receive additional statutory paternity pay if the mother has not exhausted her statutory maternity pay when she returns to work. He also has the right to maintain the same terms and conditions (other than pay) as if he had been at work;
- have the right to return to work in the same job and on the same conditions.

Adapt and amend your existing "family friendly" policies and procedures

Employers should have existing policies in place to manage maternity, paternity and adoption leave and, in many respects, these can be adjusted or extended to make provision for APL. Consider whether your existing HR procedures are adequate to deal with any requests for APL. If this is not the case, think about areas of policy that would benefit from extension or clarification. For example, your company may need to produce specific APL forms, prepare for hand-overs in advance and consider how it will implement and organise a father's entitlement to 10 'keeping in touch' days. Don't forget that the new rights apply to partners including civil partners as well as adopters adopting within the UK (as long as they are entitled to statutory adoption leave).

Consider how you will manage self-certification

In order to be eligible for APL, the father must 'self-certify' that he is going to be taking time off to care for his child and that the mother is returning to work by providing a notification to his employer signed by both the father and mother. Whilst there is no obligation to check the information provided with the mother's employer, the father's employer can request a copy of the child's birth certificate and the name and address of the mother's employer. There is no obligation on the mother's employer to provide information nor any sanction if the father does not provide the requested information.

Employers, therefore, need to consider whether disciplinary sanctions would be appropriate for fathers who refuse to provide the information or who provide false information and/or whether or not they will have a blanket or selective approach for requesting such information from fathers applying for APL.

Ensure adequate training and communication to employees

Ensure line managers are briefed and trained on the new employee rights to reduce the risk of discrimination against employees who are eligible for APL. Consider issuing a Q&A on the qualification and notification requirements for APL.

Consider equality of enhanced benefits

Consider whether any enhanced benefits offered to mothers on additional maternity leave (such as enhanced maternity pay) should be offered to fathers on APL. Whilst the Government does not believe that a failure to replicate such benefits will give men grounds for a claim, it is certainly arguable that treating men and women differently through this period could give rise to discrimination. Employers may decide to see how the law develops in this area or reconsider how they provide both maternity and paternity benefits to employees as a whole.

Update your redundancy policies

Like mothers returning from ordinary maternity leave, in most cases a father has the right to return from APL to the same job and on no less favourable terms and conditions. Fathers are also protected from detriment or dismissal for taking APL.

In addition, employers will have to update redundancy policies and guidelines to ensure they record that fathers on APL, like mothers on ordinary maternity leave, are entitled to be offered any suitable alternative vacancies, if their role is made redundant.