

# IN FOCUS

## EMPLOYMENT NEWS

### Trading places

The Government has begun consultation on new regulations that will allow a mother to transfer the last six months of her maternity leave to the father so that she can return to work and he may look after their baby.

The Government proposes to introduce this as additional paternity leave (APL) and additional statutory paternity pay (ASPP). The Government estimates that 10,000 to 20,000 fathers will take up the right each year about (4-8% of eligible fathers).

Although the term father is used throughout the consultation papers, the definition of father mirrors that for the current two weeks' paternity leave arrangements. This means that APL would also be available to partners, civil partners of mothers and adopters (i.e. the adopter who chooses not to receive Statutory Adoption Pay).

#### The right to APL

- The maximum duration of APL would be 26 weeks.
- The minimum duration of APL would be two consecutive weeks.
- APL would be taken in periods of complete weeks and be in a continuous block.
- The child's mother would have to return to work before the father can begin his period of APL.

The notification and return to work provisions would be similar to those that apply now to maternity leave. Fathers would be able to self-certify their entitlement and provide a declaration signed by the mother confirming certain information. HM Customs and Revenue would carry out compliance checks.



#### The right to ASPP

ASPP would be paid at the lesser of the standard SMP rate (currently £123.06 per week), or 90% of the father's average earnings.

ASPP would only be payable during the mother's statutory maternity pay period. Leave taken after this period has ended would be unpaid.

#### When?

The Government intends that the law will be in force by April 2010 and will have effect for parents of children due on or after 3 April 2011. The consultation paper is available from [www.berr.gov.uk/files/file52940.pdf](http://www.berr.gov.uk/files/file52940.pdf). The closing date of the consultation is 20 November 2009.

### Yes Chef! to no chef

Anyone involved in a service provision change, such as outsourcing a cleaning or catering contract or changing service provider, should be aware of the EAT decision in *OCS Group UK Ltd v Jones*.

In this case a change in service provider meant hot food was no longer served and there was a change from a full canteen service where staff were chefs to them becoming

sales assistants in kiosks. As the pre-transfer and post-transfer activities were "wholly different", the tribunal held that there was no TUPE transfer.

This case shows there is sometimes scope to argue that TUPE will not apply where there is a major change in the nature of the activities.

## Welcome

Welcome to the autumn edition of **In Focus**, our quarterly update keeping you informed of the latest developments in employment law.

For further information on employment issues, please email [chris.seaton@burges-salmon.com](mailto:chris.seaton@burges-salmon.com)

## Green issue

In future we intend to distribute our publications by email to reduce our environmental impact. This also has the advantage of eliminating the delay in printing and posting.

For some of you this will be the first time that you have received one of our publications by email. If it is, we hope you agree with our policy.

If you have received this newsletter by post, please let us have an email address for future mailings.

To contact us with your email address or if you have a particular need to continue to receive a copy by post, please email [marketing@burges-salmon.com](mailto:marketing@burges-salmon.com) or write to Paul Kitson at our Bristol address over the page.



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# Money, money, money

Data controllers should note that a new fee structure was introduced on 1 October 2009 for notifications to the Information Commissioner's office by data controllers under the Data Protection Act 1998. The flat fee of £35 has been replaced with a two tiered structure as follows:

- for a data controller in tier 1 the fee is £35.
- for a data controller in tier 2 the fee is £500.

Any data controller with an annual turnover of £25.9 million or more, and 250 or more members of staff, and public authorities with 250 or more members of staff, fall within tier 2. These larger organisations falling within tier 2 will now have to pay the higher fee of £500 on initial notification and on annual renewal. There is an exemption for charities and small occupational pension schemes. All other data controllers will continue to pay a £35 fee.

## Tip top service

On 1 October new rules came into force to make it illegal for businesses to use tips to "top up" wages to meet the national minimum wage requirement.

Previously, any tips, services charges, gratuities and cover charges paid by an employer to a worker via the payroll could count towards the national minimum wage (but not tips given directly to workers by customers). However, a change to the legislation now means that employers can no longer do this. The new law will be enforced by HM Revenue and Customs.

### Code of Practice

The Government has published a Code of Practice on Service Charges, Tips, Gratuities and Cover Charges, giving guidance to businesses in the hospitality, leisure and service sectors on compliance with the new rules. The Code



contains additional voluntary measures to improve the information available to customers and workers about the treatment of tips, including sample wording to display to customers before they make the decision to make any discretionary additional payments. The Code is available from [www.berr.gov.uk/files/file52948.pdf](http://www.berr.gov.uk/files/file52948.pdf).

## News in brief

- The Government has announced that tax relief on childcare vouchers will be removed by April 2015. Employees who currently use an employer-supported voucher scheme will not be affected until April 2015, when the tax relief will be withdrawn completely. Any employees who join an employer-supported voucher scheme after April 2011 will not get the current tax exemptions. The changes do not affect the long-standing exemptions for workplace nurseries.
- The national minimum wage rates increased on 1 October. For workers aged 22 and over the rate increased from £5.73 to £5.80.
- The Department for Children, Schools and Family has produced a guide on employing children:

[www.dcsf.gov.uk/everychildmatters/ete/employmentofchildrenyoungpeople/employmentchildrenyoungpeople/](http://www.dcsf.gov.uk/everychildmatters/ete/employmentofchildrenyoungpeople/employmentchildrenyoungpeople/)

- On 1 October 2009 the Supreme Court replaced the House of Lords as the highest appeal court in the UK.
- The news of the Attorney General, the Rt Hon Baroness Scotland QC, being fined £5,000 for unknowingly employing a migrant who was not legally permitted to work in the UK, will serve as a reminder for employers to ensure that the proper checks are completed to confirm workers have the right to work in the UK. It is important that documents are not only checked but photocopies of the documents kept on file.

## Seminar programme released

Our employment and pensions seminar programme is about to begin. The first seminar, Effective Performance Management, is on 12 November in Bristol and 19 November in London. The popular Hot Topics is in January and in spring we will be performing a mock employment

tribunal. For details please go to [www.burges-salmon.com/seminars](http://www.burges-salmon.com/seminars) or email [seminars@burges-salmon.com](mailto:seminars@burges-salmon.com). These seminars are very popular so please remember to book your place early to avoid disappointment.

## Email alerts

To access recent Burges Salmon email alerts please visit [www.burges-salmon.co.uk/practices/employment/news/](http://www.burges-salmon.co.uk/practices/employment/news/)

## In the office

We are pleased to welcome **James Green** to the Employment Team. He is a solicitor who joins us from City firm Lawrence Graham.

We are delighted that **Nick Pritchett** and **Amy Tudor** are joining the team following their qualification as solicitors in September. They trained with the firm.

Congratulations to **David Stott** and his wife Margaret on the birth of their first child, a baby girl.

Congratulations to **Catharine Vinson** on her marriage to George. She will now be known as Catharine Cooksley.

Best wishes go to **Ben Loxton** who left us in August to go travelling with his wife.

Narrow Quay House  
Narrow Quay  
Bristol BS1 4AH  
Tel: +44 (0) 117 939 2000  
Fax: +44 (0) 117 902 4400

Chancery Exchange  
10 Furnival Street  
London EC4A 1AB  
Tel: +44 (0)20 7685 1200  
Fax: +44 (0)20 7685 1266

[www.burges-salmon.com](http://www.burges-salmon.com)

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A list of members, all of whom are solicitors, may be inspected at our registered office: Narrow Quay House, Narrow Quay, Bristol BS1 4AH.