

## NEW MATERNITY RULES

New rules on statutory maternity leave and pay, and maternity allowance, come into effect on 1<sup>st</sup> April 2007. The new rules apply to women whose "Expected Week of Childbirth" ("EWC") falls on or after 1<sup>st</sup> April 2007, regardless of when the baby is actually born.

All women who comply with the notice requirements will now qualify for up to 52 weeks maternity leave: 26 weeks Ordinary Maternity Leave, followed by 26 weeks Additional Maternity Leave. The employee must provide a MATB1 certificate and tell the employer no later than the end of the 15<sup>th</sup> week before her expected week of childbirth: i. that she is pregnant, ii. the expected week of childbirth, iii. the date on which she intends to start her Ordinary Maternity Leave.

Women who wish to return to work before the end of their full 52 weeks leave must now give 8 weeks notice before they can do so, as opposed to the 4 weeks notice they were required to give under the previous rules.

An employer can still only insist on 8 weeks notice when he has complied with his obligation to inform the woman of the date on which her leave will end. If the employer

fails to comply with this duty the employee will be entitled to return to work early without giving notice. A woman who wants to return later than planned must now give notice of her intention at least 8 weeks before her original planned return date. If she wants to return earlier than the original planned date she must give notice at least 8 weeks before the new date. If she does not give 8 weeks notice her employer is entitled to postpone her return until 8 weeks notice has been given.

Keeping in touch days ("KIT days") are a new concept in the maternity leave and Statutory Maternity Pay ("SMP") regulations. Women may now do up to 10 days work in any period of statutory leave/ SMP week without affecting their entitlement. However neither the employee nor the employer may insist on working KIT days.

A KIT day will consist of "any work done under the contract of employment and may include training or activity undertaken for the purposes of keeping in touch with the workplace". It can be undertaken at any time during maternity leave (except the two week compulsory period of maternity leave commencing on the date of

birth). It cannot be broken down, e.g. into half days: any work done will count as a full KIT day.

An employer is entitled to offset SMP against any contractual pay owing, providing the minimum the employee receives is the SMP owing for that week. For example, if she works a KIT day and earns £150 she will receive £150 for that week, her SMP being offset against the contractual pay for the same week. If she works a KIT day and earns £50 she will receive £112.75 which is her SMP for that week (April 2007-April 2008), the £50 being offset against the SMP.

There is a further new provision in relation to maternity leave that "reasonable contact from time to time between an employee and her employer which either party is entitled to make during a maternity leave period (for example to discuss an employee's return to work)" will not end the maternity leave period.

Women will now be entitled to a total of 39 weeks Statutory Maternity Pay as opposed to 26 weeks. There is no change to the rates; the first 6 weeks are paid at 90% of the

employee's average weekly wages, followed by a flat rate (£112.75 per week from April 2007 - April 2008) or 90% of average weekly earnings if this is lower than the flat rate. SMP may now begin the day following the day on which a woman ceases work. Women must still have at least 26 weeks service by the end of the 15<sup>th</sup> week before the EWC in order to qualify for SMP and have average earnings of at least the Lower Earnings Limit in the relevant qualifying period.

A woman can claim Maternity Allowance if she has worked for 26 weeks in



the 66 weeks before her baby is due and can find 13 weeks in which she earned at least £30 a week. Maternity Allowance is paid for 39 weeks at the flat rate of £112.75 per week (April 2007— April 2008) or 90% of average earnings if that is less.

## INCREASE IN HOLIDAY RIGHTS

Historically, from Dickens' time to 1871 there were only two days' statutory holidays in a year - Christmas Day and Good Friday. In England, Wales and Northern Ireland, both Christmas Day and Good Friday were traditional days of rest and Christian worship (as were Sundays). Gradually employers realised that there was benefit in allowing their employees more time for rest and recreation and Unions negotiated longer periods of holiday for the workers. Bank holidays were first introduced by the Bank Holidays Act of 1871, which designated four holidays in England,

Wales and Northern Ireland, and five in Scotland. These were Easter Monday, the first Monday in August, the 26th December, and Whit Monday (England, Wales and Northern Ireland) and New Year's Day, Good Friday, the first Monday in May, the first Monday in August, and Christmas Day (Scotland). The 1871 Act was repealed 100 years later and its provisions incorporated into the Banking and Financial Dealings Act 1971, which remains the statutory basis for bank holidays. Bank holidays designated since the 1971 Act are appointed each

year by Royal Proclamation.

Whit Monday in England, Wales and Northern Ireland (which could fall anywhere between 11 May and 14 June) was formally replaced by a fixed spring holiday on the last Monday in May, in 1971. Also in that year the last Monday in August was formally made a bank holiday in place of the first Monday in August in England, Wales and Northern Ireland. In 1974 New Year's Day became an additional bank holiday in England, Wales and Northern Ireland, and Boxing Day became an additional bank holiday in

Scotland.

Some holidays were a matter of 'custom and practice' such as Wakes Week in parts of the North, the regular August shutdown in many factories and certain industries still having a fixed two weeks closure at some date during the summer. The length and time of holidays was a contractual arrangement which varied from employment to employment but gradually the period of holiday allowed by employers was extended still for the most part a 'contractual'

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agreement forming one of the items in the Terms & Conditions of Employment until the Working Time Regulations 1998 when the law changed, and a period of statutory holiday was introduced for all workers.

As the law stands now :

Every employee has a statutory entitlement to 20 days paid holiday per year.

-An employer can include the eight Statutory Holidays within those 20 days

-Or, they may be extra to the basic 20 days making the whole entitlement 28 days per year

-An employer may decide to give their employees more than the basic entitlement,

-They may increase the entitlement with longer service, but thought has to be given to the possibility of age discrimination

-Holiday entitlement accrues during long-term sickness or



maternity leave and must be paid during these periods

-Holidays must be taken in the employer's current 'holiday year' unless there are specific arrangements for carrying over to the next holiday year

-An employer still has the option of giving their employees more than the statutory requirement by inclusion in the contract

The Government now proposes to increase the minimum statutory holiday

from 1 October 2007 from 20 days to 24 days for a worker who works 5 days a week), and by a further four days from 1 October 2008. Any time off for bank and public holidays will be included in the additional entitlement. So if a worker already gets 4 weeks' leave plus time off for bank holidays, the holiday entitlement will not increase. The holiday will be calculated on a pro-rata basis for part-time workers (4.8 then 5.6 times their usual working week), regardless of whether or not they usually work on bank holidays.

## Our People

### Employment Law

Whether acting for a large international firm or a local sole trader, you can be assured that we offer unrivalled expertise and comprehensive services. From simple contractual advice to TUPE guidance and from preliminary contentious action to representation before the Employment Appeal Tribunal, we are proud to say that we can be there to address all your Employment needs. All the lawyers in the team are specialists in their field and full members of the Employment Lawyers Association.

#### Richard Cassel



Head of Employment Department. Richard specialises in all aspects of employment and discrimination law and has wide experience of advocacy and Tribunal practice and procedure. Part-Time Chairman of the Employment Tribunals since 1993.

Contact Tel: 01603 214205

#### Sally Davenport

Sally previously worked as a commercial litigation specialist with City firm Theodore Goddard before moving abroad with her family. Sally is fluent in Spanish, German and French. Since returning to the UK she has completed an LLM in Employment law, with distinction, at the University of East Anglia. She is also a Fellow of the Chartered Institute of Arbitrators and is an adviser at a local Citizens Advice Bureau.

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#### Jo Chimes

Jo joined Hatch Brenner in June 2002, having been admitted as a solicitor in 1989. She is highly active within the profession as a member of the Employment Law

Association, and a contributing member of the employment team of the Adviser editorial board. Jo also works as a freelance trainer – designing and delivering specialist employment training. She sits on the Law Society employment law committee. Her current practice focuses on complex discrimination matters in employment. Jo has extensive peer review experience, most recently for the Carter Review.

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#### Takis Vachaviolos

Takis joined Hatch Brenner in April 2003, and has specialised in employment law since he was admitted as a solicitor in 2001. Takis has acted for both claimants and respondents in the employment tribunals and the employment appeals tribunal in London, and has received instructions from unions and national charities. He has achieved a very high success rate when carrying out his own representation before the employment tribunals. He writes articles for various publications and magazines.

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### Civil Litigation and Personal Injury

We have a well established Civil Litigation department at Hatch Brenner which is headed by Rosemary Escott, partner. For Personal Injury cases we can offer a free initial consultation when we can advise on a range of funding options (including no win — no fee) ensuring each individual client's circumstances are taken into account. We also have specialist legal advisers dedicated to providing an efficient and comprehensive service covering a wide range of commercial disputes including arbitration/mediation/ADR, County and High Court litigation.

#### Rosemary Escott



Head of Civil Litigation Department. Rosemary is a Personal Injury specialist in fatal and serious injury claims, arising out of road traffic accidents, accidents at work, clinical negligence and sexual abuse. Member of the Law Society's Specialist Personal Injury Panel since 1995.

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#### Mark Fitch



Experienced in a wide range of disputes; enjoys particularly professional negligence claims, contested probate matters and claims against the police. He qualified as a mediator in 2005 becoming one of the youngest members of the Mediators in East Anglia Group.

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#### Colin Cook

Colin was previously a partner at a firm in Chancery Lane in London where he dealt with a wide

range of personal injury claims for both Claimants and Defendants.



He deals with all aspects of personal injury including road traffic accidents, accidents at work, criminal injuries, trips and slips. He is an Accredited Senior Litigator of the Association of Personal Injury Lawyers.

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#### John Cushing



John is well-placed to assess landlord and tenant claims from both perspectives, having acted for either side in a vast number of possession actions, rent collection matters and damages claims. He also deals with other property-related matters including boundary and neighbour disputes, building disputes, and professional negligence claims. He is highly experienced in debt collection, and regularly appears before the district judges in the local county courts.

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