



Shared Parental Leave – An Employment Lawyer’s Personal Perspective

I have recently joined GQ from another City firm and, before leaving, was lucky enough to be one of the first fathers to be able to take advantage of the new shared parental leave scheme. Our son, baby Harry, arrived prematurely before the main implementation date but was still covered by the new rules because his birth was expected after 5 April 2015. The experience was both personally rewarding and, as a senior employment lawyer in the City, professionally fascinating.

The idea of shared parental leave is simple: mothers can give up to 50 weeks of their 52 week maternity leave to the father*, for him to take as shared parental leave. However the execution is lamentable. There is an extraordinarily complex set of rules which are laid on top of the existing maternity leave scheme.

It sounded like a great idea but the big question for us as new parents was a financial one. With the imminent expenses of parenthood, would one or both of us be paid? Of course, mothers who take statutory maternity leave are entitled to statutory maternity pay, which is 90% pay for the first six weeks with the remaining 33 weeks’ at just under £140 a week. By contrast, statutory shared parental leave pay is just paid at £140 odd per week.

Fortunately, in common with most of the big City firms, my employers generously agreed to match its enhanced maternity leave policy offered to its female lawyers and so I was lucky enough to be paid in full whilst off. I was not privy to the discussions that took place behind the scenes but, as I mainly act for employers, I can just imagine what was said. The legal issue in the background is whether a firm risks a discrimination claim as a result of not offering the same enhancement for those on shared parental leave (more likely to be men) than those on maternity leave (only women). This is unresolved by the courts but will ultimately depend upon whether the differential treatment can be justified. The main consideration for most employers will be the very real costs involved. With parents having children ever later, employees with children will tend to be at the more senior end of the spectrum and so disproportionately expensive. As mothers receive 90% of their pay from the national insurance fund during the first 6 weeks’ it is also considerably more expensive to top up the fathers’ pay during those early weeks.

The other major stumbling block we faced was whether we could both be off at the same time and whether we could do so without my



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wife losing her maternity benefits. Although the Government's intent seems clear, the legislation is not and it was only after considerable head scratching that we were able to satisfy ourselves that we could.

In the end, we both had an amazing experience. I found myself completely comfortable with bottles and nappies to the extent that my wife became concerned that our son was suffering from "mommy confusion". There was no control group and so that might have still happened after the basic 2 week paternity period. However I can wholeheartedly recommend the experience to fathers.

On return to the office, I was viewed as a rather unlikely equality trailblazer and started to muse on the wider implications for a City concerned about gender equality and the gender pay gap. In my late 30s, I am one of Thatcher's children and am in one of the first generations where the boys grew up as true equals to our female classmates. It has always puzzled me why the inequality of earlier generations has persisted quite so doggedly.

I have always assumed that there are two reasons for this. Firstly, by taking time out to have children, women damage their careers by breaking their careers. Secondly, whether by choice or not, women tend to bear a disproportionate responsibility for subsequently looking after those children.

If fathers can be persuaded to take advantage of shared parental leave they will suffer the same career disadvantage which will start to create a level playing field for both genders. It is also hoped that having a closer relationship to their children will make them more likely to be more involved in childcare and sympathetic to the needs of working parents.

If I am right, over time the gender equality debate will move on and give way to a debate about the degree to which work is compatible with parenthood and a happy home life. That is a debate in which the law does not currently engage in any meaningful way -- the UK maintains its opt-out from the Working Time Directive and whilst discrimination law protects women it does not currently protect parents.

*Or the mother's partner of either sex who shares responsibility for the child