

SHARED PARENTAL PAY – OUR CLIENT SURVEY RESULTS¹

47% of those surveyed pay enhanced **maternity pay**. Of that 47%...



29% offer enhanced benefits for long service

77% offer a period of **full pay** and the remaining

23% offer a period of **90% pay**



96% of those surveyed **do not** enhance **shared parental pay**

30% of those surveyed **pay enhanced paternity pay**.

Of that 30%...

17% offer a period of half pay.

83% of those who enhance paternity pay offer a period of **full pay**

33% offer enhanced benefits for long service



40% offer **two weeks** of full pay

40% offer **one week** of full pay

20% offer **less than a week** of full pay

Shuter v Ford Motor Company (2013): the employer was able to justify its policy of enhancing maternity pay but not additional paternity pay as it had clear evidence that the aim of the policy was to attract and retain female employees, and that female representation in the workplace had improved. That related to additional paternity pay and not shared parental pay but the same principles apply.

Hextall v The CC of Leicestershire Police (2015): found that there was no direct discrimination against a man on shared parental leave who received only statutory shared parental pay, where the employer paid enhanced maternity pay, because a woman on shared parental leave who was the same-sex partner of a woman who had just given birth would be treated exactly the same way. The case has been appealed to the EAT.

Ali v Capita (2016): upheld the claimant's direct sex discrimination claim, finding that a policy of paying 14 weeks' full pay to women on maternity leave but only 2 weeks' full pay to men taking paternity leave and shared parental leave, amounted to less favourable treatment of men taking leave for the purpose of caring for their child, compared with women taking leave for the same purpose. The employer has appealed.

The Law...

If you are in the 47% of businesses surveyed that enhance pay to female employees on maternity leave, but not to male employees on shared parental leave, you are at risk, following the recent **Ali v Capita** case, of receiving **direct** sex discrimination claims from male employees who take shared parental leave and who consider that they are being treated less favourably than female employees on maternity leave.

The Capita case is, however, a first instance case at the Employment Tribunal and, therefore, not binding on other Tribunals. There have not yet been any appeal decisions that set a precedent for other Tribunals, although the Ali v Capita and Hextall v CC Leics Police cases have both been appealed to the Employment Appeal Tribunal, with decisions expected in early 2018.

If you seek to defend an **indirect** sex discrimination claim justifying a policy of enhancing maternity pay but not shared parental pay, you will need evidence to show that the policy is a "*proportionate means of achieving a legitimate aim*", for example a policy of retaining and attracting females in the workplace.

One final thought: If you are considering enhancing pay to employees on shared parental leave, you will need to take into account that shared parental leave can be taken in discontinuous periods. As such, will you enhance pay for all periods of shared parental leave, for only the first period taken by an employee or for only a certain number of weeks?

If you would like to discuss any of the above or would like us to review any of your policies and procedures, please feel free to contact Sally Hulston or any other member of the Employment Group:



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¹ From a survey sample of 30 employers between August-November 2017