

**SOUTHWARK DIOCESAN BOARD OF EDUCATION****BRIEFING SHEET**

<b>SUBJECT:</b> The Work and Families Act 2006 Changes to Maternity, Adoption and Paternity Rights and Flexible Working Provisions	
<b>RECIPIENT(S):</b> Headteachers and Chairs of Governors of all C of E Schools	
<b>COPIED TO:</b> Headteacher: Bacon's CTC/St Marks Academy for information	
<b>ACTION REQUIRED BY:</b> <input checked="" type="checkbox"/> Headteacher <input checked="" type="checkbox"/> Governing Body	<b>DEADLINE:</b> By April 2007
<b>SDBE CONTACT:</b> Colin Morton	<b>DATE:</b> 22 <sup>nd</sup> February 2007

**I. BACKGROUND**

- 1.1 The Work and Families Act 2006 is the first step towards delivery of some of the measures set out in the Government response to the consultation, *Work and Families: Choice and Flexibility*, which was published in October 2005. It aims to establish a balanced package of rights and responsibilities for both employers and employees.
- 1.2 As a consequence of the Act, regulations have been amended to bring about enhancement of or extension to existing rights relating to Maternity, Adoption, Paternity and Flexible Working.
- 1.3 The key changes are outlined in this briefing sheet. Changes in relation to Maternity, Adoption and Paternity come into force on 1<sup>st</sup> April 2007 and will affect those whose babies are due on or after that date or who are matched with a child for adoption on or after that date. Additional provision to allow Flexible Working Requests from those caring for adults will apply as from 6<sup>th</sup> April 2007.

**2. MATERNITY****2.1 Maternity Leave and Pay**

All pregnant employees regardless of length of service will be entitled to 52 weeks maternity leave, comprising 26 weeks Ordinary Maternity Leave and 26 weeks Additional maternity Leave.

Employees with 26 weeks' continuous employment with their current employer by the 15th week before the EWC will be entitled to 39 weeks' statutory maternity pay (SMP) and a further 13 weeks' unpaid maternity leave (provided their average weekly earnings in the eight weeks up to and including the qualifying week (or the equivalent period if they are monthly paid) have been at least equal to the lower earnings limit for National Insurance contributions,. The first six weeks SMP are paid at 90% of average earnings with the remaining 33 weeks at Standard Rate (£112.75 per week from April 2007). Anyone earning less than £112.75 per week will receive 90% of average earnings for the whole 39 week period.

Maternity pay for teachers and support staff will vary contractually, depending on length of continuous service and national agreements on conditions of service, but will never be less than these statutory entitlements.

*Teachers*

a) A teacher with one year or more continuous service by 11th week before the EWC will receive:

- four weeks' full pay;
- two weeks' 90% pay;
- 12 weeks' half pay plus SMP or SMA (total not to exceed full pay);
- 21 weeks' SMP;
- 13 weeks' unpaid leave.

b) Teachers with 26 weeks but less than one year's continuous service by 15th week before the EWC will receive the statutory entitlement:

- six weeks' 90% pay;
- 33 weeks' SMP;
- 13 weeks' unpaid leave.

c) Teachers with less than 26 weeks' continuous service by 15th week before the EWC will receive:

- 52 weeks' maternity leave;
- Statutory Maternity Allowance (SMA) will be payable if the teacher has been in employment for at least 26 of the 66 weeks ending with the week before her EWC. SMA is £112.75 per week from April 2007. This will have to be claimed from the local Jobcentre Plus office.

### *Support Staff*

a) Members of staff with at least 1 year's continuous service by 11<sup>th</sup> week before the EWC will receive:

- six weeks' 90% pay;
- 12 weeks' half pay plus SMP or SMA (total not to exceed full pay);
- 21 weeks SMP or SMA;
- 13 weeks unpaid leave.

b) Members of staff with 26 weeks but less than one year's continuous service by 15th week before the EWC will receive the statutory entitlement:

- six weeks' 90% pay;
- 33 weeks' SMP;
- 13 weeks' unpaid leave.

c) Members of staff with less than 26 weeks' continuous service by 15th week before the EWC will receive:

- 52 weeks' maternity leave;
- Statutory maternity allowance (SMA) will be payable if the member of staff has been in employment for at least 26 of the 66 weeks ending with the week before her EWC. SMA is £112.75 per week from April 2007 (or 90% of average earnings where this is less than SMA). This will have to be claimed from the local Jobcentre Plus office.

## **2.2 Contact during maternity leave**

Employers will now be able to make "reasonable contact" with the employee while she is on maternity leave. This might be to keep the employee informed of important developments at the school promotion opportunities or job vacancies that arise during maternity leave or indeed to discuss the arrangements for a return to work. However, the amount and type of contact must not be excessive or intrusive and people must not be asked to do any work at home.

## **2.3 Keeping in touch days**

Women can have up to ten days during their maternity leave when they can go into work without ending their maternity leave or losing maternity pay. These days are intended to be used for "keeping in touch" and could be for training or work. The employer does not have to offer these days and the employee is not obliged to accept them. Women are legally protected against any detrimental action

for refusing the days. A keeping in touch day constitutes a day's work and the member of staff should receive full pay for these days.

## 2.4 **Returning to work**

Employees who wish to return to work either earlier or later than originally agreed with the school should provide eight weeks' notice (previously 28 days), unless the school agrees to less notice being given.

## 3. **ADOPTION**

### 3.1 **Adoption Leave and Pay**

Adopters who meet the qualifying conditions have the right to 52 weeks Adoption Leave (26 weeks Ordinary and 26 weeks Additional). To qualify they must:

- be newly matched with a child for adoption by an approved adoption agency (i.e. the agency gives the employee details of a child they think is suitable for them to adopt). NB: Adoption leave and pay is not available however where the child is not *newly* matched e.g. where a step-parent adopts a partner's children; and
- have 26 weeks continuous service leading into the week in which they are notified of being matched with a child for adoption.

Where two people adopt, only one may take Adoption Leave. The other person may instead apply for Paternity Leave (see 2.3)

Statutory Adoption Pay is given for the first 39 weeks of Adoption Leave provided the employee meets the length of service requirement and earns more than the lower earnings limit for National Insurance contributions. Staff who do not qualify for SAP can take the Adoption Leave unpaid and may be eligible for Income Support.

### 3.2 **Contact during Adoption Leave and Keeping in Touch**

The same rules apply to Adopters as to those on Maternity leave.

### 3.3 **Returning to Work**

As with Maternity Leave, 8 weeks notice is now required if the employee wishes to change the date of their return from that originally notified.

## 4. **PATERNITY LEAVE**

The Government are planning to extend paternity leave provision (see para. 5 - Future Developments).

Existing Paternity rights are set out below.

### 4.1 **Paternity Leave and Pay**

Subject to eligibility and notification requirements, Paternity Leave may be granted following the birth of a child or the matching or placing of a child for adoption. The right is to one or two week's leave, which may be paid.

The right to Paternity Leave and Pay applies to employees who:

- have or expect to have responsibility for the child's upbringing
- are the biological father of the child or the mother's husband or partner and

- have worked continuously for their employer for 26 weeks ending with the 15th week before the baby is due or the end of the week in which the child's adopter is notified of being matched with the child

Individuals who meet the criteria can choose to take either one week or two consecutive weeks' paid paternity leave (not odd days).

Leave can start:

- from the date of the child's birth or the date of the child's placement (whether earlier or later than expected);
- from a chosen number of days or weeks after the date of the child's birth or date of placement; or
- from a chosen date.

Leave may start on any day of the week on or after the child's birth or placement but must be completed:

- within 56 days of the actual date of birth or date of placement ; or
- if the child is born early, within the period from the actual birth up to 56 days after the expected week of birth.

Only one period of leave will be available irrespective of the number of children placed at the same time.

In both Birth and Adoption cases it will be possible to change the date when the leave is to start but at least 28 days advance notice must be given in order to do so (unless this is not reasonably practicable). The school must also be told at least 28 days in advance of the date when the employee expects Statutory Paternity Pay to start (unless it is not reasonably practicable to do so).

#### 4.2 **Statutory Paternity Pay**

Unless average weekly earnings are below the Lower Earnings Limit for National Insurance purposes staff will qualify for Statutory Paternity Pay. If they do not qualify they may be able to get Income Support while on paternity leave or other financial support through the local Jobcentre Plus or Social Security office.

Statutory Paternity Pay is paid at the same rate as for Standard Maternity Pay i.e. £112.75 per week or 90% of earnings where this is less than £112.75 per week.

#### 4.3 **Contractual benefits**

Staff are entitled to the benefit of their normal terms and conditions of employment, except those terms relating to wages or salary, during the period of paternity leave.

#### 4.4 **Returning to work after paternity leave**

Staff are entitled to return to the same job following paternity leave.

### 5. **FLEXIBLE WORKING**

Parents of children under the age of six or disabled children under the age of eighteen already have the right to apply to their employer to work more flexibly. The request can cover hours of work, times of work and place of work and may include requests for different patterns of work.

The Work and Families Act introduces a new right for carers of adults to request to work flexibly. This is effective from **6 April 2007**. The definition of carer is an employee who is or expects to be caring for an adult who:

- is married to, or the partner or civil partner of the employee; or
- is a near relative of the employee; or
- falls into neither category but lives at the same address as the employee.

The "near relative" definition includes parents, parents-in-law, adult child, adopted adult child, siblings (including those who are in-laws), uncles, aunts or grandparents and step-relatives.

Any request must be made in writing and the employer has a statutory duty to consider the request seriously and to refuse it only if there are clear business grounds for doing so. Employees making applications for flexible working have the right to be accompanied at meeting by a fellow employee.

## **6. FUTURE DEVELOPMENTS**

At some stage during the lifetime of this Parliament, the Government intends to further enhance maternity, adoption and paternity entitlements. Changes proposed include:

- extending maternity and adoption pay to a year's paid leave by the end of the Parliament.
- giving employed fathers a new right to up to 26 weeks Additional Paternity Leave some of which could be paid, if the mother returns to work. This will be introduced alongside the extension of maternity pay to 12 months.

## **7. ACTION REQUIRED**

- 7.1 Existing policy and procedural documents should be updated to reflect these new entitlements.
- 7.2 Check that local discretions on pay and other benefits are not at variance with the new regulations and revise as necessary. Any contractual benefits must be at least equal to those offered by statute.
- 7.3 Ensure that staff have access to information on the new entitlements and how to apply for them.

## **8. FURTHER READING AND INFORMATION SOURCES**

- 8.1 The DTI have produced a number of guidance documents which can be downloaded from <http://www.dti.gov.uk/employment/workandfamilies/index.html>