

Agenda item: **Title of meeting: Employment Committee****Date of meeting: 4 November 2014****Subject: Shared Parental Leave and Pay****Report by: Head of HR, Legal and Performance****Wards affected: N/A****Key decision:** No**Full Council decision:** No

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**1. Purpose of report**

The purpose of the report is to appraise members of statutory changes affecting leave entitlements for parents, and establish a rate of pay for shared parental leave.

**2. Recommendations**

It is recommended that the Employment Committee;

- i. Notes statutory changes to leave entitlements for parents.
- ii. Pays the statutory rate of pay during shared parental leave.
- iii. Requests the Head of HR, Legal and Performance to actively review the policy in light of demand for leave and emerging employment practice and report back to members if changes are required in light of experience.

**3. Background**

- 3.1. Shared parental leave is new legislation effective from 1 December 2014, the legislation will apply to eligible employees with babies with an expected due date on or after 5 April 2015 or an adopter with a child placement on or after 5 April 2015. A Shared Parental Leave policy should be in place by 1 December 2014.
- 3.2. The Shared Parental Leave policy will replace the current Additional Paternity Leave policy. Additional paternity leave is not paid at an enhanced rate. Ordinary paternity leave of two weeks (one week paid at full pay and one week paid at the statutory rate where eligible) will continue to be available to fathers or partners (as long as they have not already taken a period of shared parental leave).

- 3.3. The new legislation is designed to give parents more flexibility in how to share the care of their child in the first year following birth or adoption.

The birth mother must have 2 weeks compulsory maternity leave following childbirth. The mother/adopter will continue to be entitled to 52 weeks of maternity/adoption leave and 39 weeks of statutory maternity/adoption pay or maternity allowance (where eligible) if they wish.

Alternatively, an eligible mother/adopter can choose to end maternity/adoption leave early and, with the child's father or the partner, will be able to opt to move to shared parental leave instead of maternity/adoption leave. If they both meet the qualifying requirements, they will need to decide how they divide the remaining shared parental leave and pay entitlement between them. Shared parental leave can be taken by either parent in a continuous period or in a discontinuous period. Parents may choose to take time off together.

- 3.4. When the mother/adopter moves into shared parental leave, they will end maternity/adoption leave and pay. Alternatively, they may choose instead to give binding written notice to stop the maternity/adoption leave at a future date (which then allows the partner to be off at the same time) but not actually start their own shared parental leave until after the end of the occupational maternity/adoption pay period. The mother/adopter could therefore continue on the enhanced occupational rate of pay.

### **3.5. Rate of pay**

- 3.5.1. At present, the mother/adopter has an entitlement (where eligible) to enhanced occupational maternity/adoption pay which is 6 weeks at 9/10<sup>th</sup> and 12 weeks half pay and the father/partner is entitled (where eligible) to nil pay or statutory additional paternity pay (which can be taken 20 weeks after the birth/placement of the child). This payment is not enhanced.
- 3.5.2. In relation to the new shared parental leave and pay legislation, there is no statutory provision that requires the employer to pay an enhanced occupational shared parental leave rate.
- 3.5.3. The Local Government Association (LGA) has advised that there are no plans to introduce a national occupational shared parental pay scheme. The LGA has advised that individual authorities will need to consider the approach they wish to take locally.

## **4. Reasons for recommendation**

- 4.1. It is recommended that the statutory rate of pay (£138.18 per week) is paid during shared parental leave. This is for a total period of 39 weeks, shared between the 2 parties, minus any weeks previously taken as maternity or adoption pay.

4.2. Reasons for the recommendation:

- 4.2.1. The Equality Act s13(6) - states in a case of sex discrimination, “...*no account is to be taken of special treatment afforded to a woman in connection with pregnancy or childbirth*”. Therefore, paying an enhanced occupational maternity rate but not enhancing the rate of pay for shared parental leave, could be judged as a proportionate response to protect those in this situation due to the biological condition of pregnancy and childbirth.
- 4.2.2. There are recent cases that support the view of not paying an enhanced rate during shared parental leave, although the cases do not relate specifically to shared parental leave as the law is not yet in place.
- 4.2.3. At this stage, most Local Authorities have not given a definite answer as to which approach they are going to take, although, at a recent South East Employers meeting all representatives attending indicated they would not be paying an enhanced rate.
- 4.2.4. If a decision is made to pay the statutory rate of pay during shared parental leave, the situation will be kept under review and changes can be made to the policy if case law emerges and advice changes.
- 4.3. The Local Government Association (LGA) have provided in their monthly bulletin to Local Authorities information that could be used to support paying the statutory rate only for shared parental leave. They have also provided a recommendation that a collection of evidence is made once shared parental leave is in place that can be used to support the decision to pay the statutory rate only for shared parental leave.

An extract from the LGA bulletin detailing the advice is shown at Appendix 1.

- 4.4. An alternative option is to pay an enhanced rate for shared parental leave instead of paying the statutory rate, but the complexity of the issue and the complex nature of administering the scheme means that the recommendations support paying the statutory rate.

It is difficult to establish the cost of paying at an enhanced rate. Reports suggest that take up of shared parental leave will be low but these reports are based on statutory payments only which could deter large numbers of people from taking it. If an enhanced rate is paid, it may greatly increase the numbers taking it.

If an enhanced rate is introduced, it would be more difficult to revert to statutory payments at a later stage.

- 4.5. All policy decisions will also need to be reflected in the policies for school staff.

## **5. Equality impact assessment (EIA)**

A preliminary EIA has been completed and a full EIA is not required.

## **6. Legal implications**

The report and the Appendix 1 from the LGA (No 617) does outline the position as to implementation of the right to initiate Shared Parental Leave, effective from April 2015, in addition, the current recommendation does attempt to avoid potential risk associated with:

- i. Direct discrimination claims.
- ii. Indirect discrimination claims.

By recommending a payment of shared benefits at the current statutory rate the aim would be to mitigate as against claims being raised. This said it is the position that the law is still evolving and there will be a need to keep development of this situation under review.

## **7. Finance comments**

The financial impact based on the recommendations of this report is minimal. For each employee that takes shared parental leave there is a cost of £11.05 per week (based on the 8% irrecoverable amount of the statutory payment). This increases by a further £18.10 per week if they are a member of the pension scheme. These figures are based on the assumption that the position of any employee who takes shared parental leave is backfilled at nil additional cost.

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Signed by:

**Appendices: App 1 - Extract from LGA Advisory Bulletin No 617**

**Background list of documents: Section 100D of the Local Government Act 1972**

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

Title of document	Location