

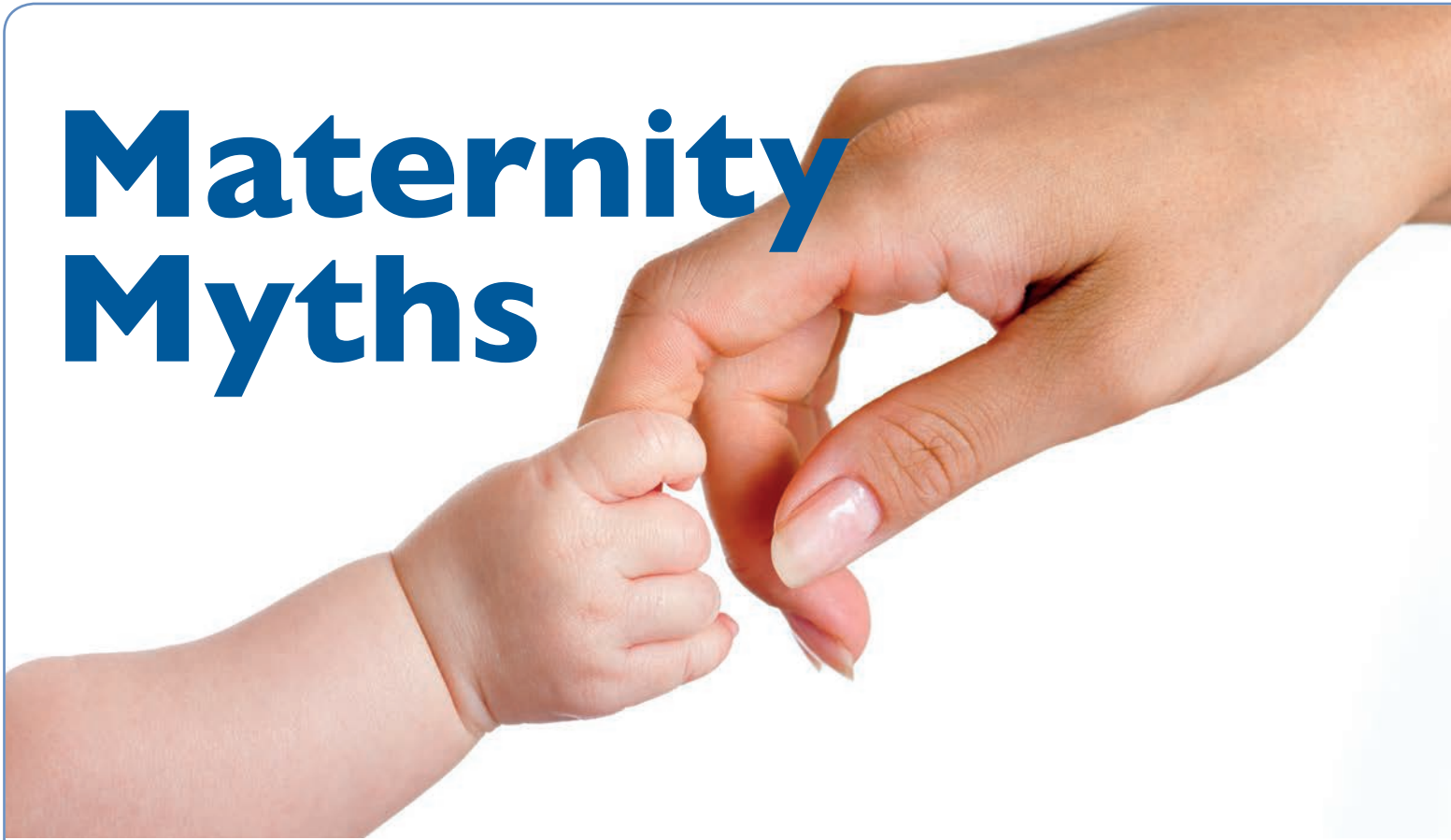


Age Discrimination in recruitment

It is now widely accepted that age discrimination is unlawful in the UK. Many employers however have not considered the fact that discrimination issues can arise before the employment relationship starts. It is a good idea to consider your recruitment process and look at the following issues.

- **Choice of wording.** What recruitment literature does the employer have? Check brochures for prospective employees, job advertisements, job descriptions and person specifications, specifically for language that could be construed as age-related. For example, avoid specifying a minimum or maximum length of experience. Avoid if possible words like “dynamic”, “lively”, “mature” or “experienced”, that may be misinterpreted as requiring either an older or younger person.
- **Pictures.** Consider whether any pictures used in the literature convey a message that might be considered discriminatory.
- **Instructions to agencies.** Check written communications to recruitment agents and ensure that they do not convey discriminatory instructions.
- **Qualifications.** Check whether qualifications specified in job adverts or person specifications disadvantage any particular age group and, if so, consider alternative ways of asking for experience.
- **Application forms.** Requests for dates of birth or age should be removed from the application form. If the information is needed it should be kept separate for diversity monitoring forms. Requesting details of dates of education or employment may lead to assumptions based on age so should be avoided if possible. Employers Forum on Age (EFA) suggests a three-part application form:
 - **Part one:** personal details including career and educational history. This is detached by HR on receipt and not seen by those who are carrying out the shortlisting, but can be used at interview and in order to verify qualifications/experience.
 - **Part two:** equal opportunities form. This is detached by HR on receipt and plays no further part in recruitment.
 - **Part three:** skills and competencies form. Only this part is available at the shortlisting stage.
- **Interviews.** Is there any written guidance for interviewers or interview panels? If so, check that guidance is provided on age-related questions. If not, consider preparing guidance alongside training for interviewer and interview panels.
- **Offer letters.** Does the company use a standard offer letter? Check for references to contractual terms or other policies that may be discriminatory.

Maternity Myths



One of the most confusing areas of law both for employer and employee are the rights under the maternity legislation. Nothing can beat getting information at the earliest opportunity from a reliable source.

The following however are some of the most common misconceptions.

Can an employer contact an employee whilst she is on maternity leave?

An employer can and indeed should maintain contact with its employees, keeping them up to date about any developments within the business such as pay rises, vacancies, redundancies etc. Failure to do so could be considered sexual discrimination. This must be handled sensitively, an employee on maternity leave certainly doesn't want to get emails every day.

I cannot be made redundant if I am pregnant or on maternity leave?

Many employers believe this to be the case but in fact it is not. If there is a genuine redundancy situation and the employee has been fairly selected using the right sort of criteria then that employment can be terminated. However, any redundancy selection criteria must not take into account reasons connected to pregnancy for instance sick leave due to pregnancy related illness. Those on maternity leave and other types of statutory parental leave must also go to the front of the queue if there are any suitable alternative vacancies being suggested in order to avoid the redundancy.

Employers don't need to pay people on maternity leave holiday pay?

Whilst an employee is on maternity leave they continue to accrue holiday. It is not right that employees can mix this type of leave so it is usually the case that holiday leave is either tacked on to the beginning or end of maternity leave or carried over into a subsequent holiday year.

An employer can require an employee to do a different job when they return from maternity leave having been off for 12 months or more?

Someone on maternity leave has the right to return to the same job. An employer must keep the job open and cannot decide that they like the maternity cover better and don't want their employee to return. There is an exception to this which is where it is not reasonably practicable. For

instance if there has been a reorganisation and the job no longer exists. In those circumstances someone returning from maternity leave must be given another suitable job which is appropriate in terms of pay and seniority.

Does an employer have to pay an employee a bonus whilst they are on maternity leave?

The key to answering this question is how the bonus is structured and/or what it reflects. A woman is entitled to all her contractual benefits (excluding her normal remuneration) whilst on maternity leave. There have been many cases on this and the answer to the question will very much depend on the facts of the case. Employers pay bonuses for all types of reasons to encourage loyalty or reflect company performance. The answer lies in the issue of is the bonus a form of remuneration and whether or not it is contractual.

Is it acceptable for an employer to ask an employee about their family or plans to have a family at interview?

I think most people know that this is not a question that should be asked. The fact is that if you ask everybody you interview on this regardless of sex it is less likely to be supporting evidence of a discriminatory attitude. It is however simplest not to ask the question so the presumption does not have to be rebutted.

Must I tell an employer if I am pregnant when I am applying for the job?

Some employers have tried to argue that failure to disclose at interview a pregnancy suggested a lack of integrity and it was for this reason they were dismissed not the impending pregnancy. The courts have generally not accepted this argument. Dismissal because of pregnancy or any reason connected to it is automatically unfair and such claims can be brought regardless of how long someone has been employed.

Smaller employers are exempt from pregnancy maternity laws?

Not true. There has been discussion about reducing the rules for very small employers but as yet this has not been taken up. All employers regardless of size must comply with the rules.



News in brief

Bereavement Leave

As reported in the last Employment Brief consultation took place on the Parental Bereavement (Pay and Leave) Bill. On 13th September, it was officially enshrined in law and is expected to come into force in 2020.

This will give parents who lose a child under the age of 18 or suffer a stillbirth from 24 weeks of pregnancy two weeks leave.

Subject to meeting eligibility criteria they will be paid for this period, the exact details of which are to be determined.

Pricing transparency for solicitors on employment services

The SRA is putting in place a procedure for all solicitors from December 2018 to publish information on pricing to help consumers make informed decisions. Although it does not apply to all areas of the law it will apply to employment tribunals specifically making and defending claims for unfair or wrongful dismissal.

Such information should be clear and accessible and put in a prominent place on the firm's website. As well as pricing firms will be required to supply the experience and qualifications of those carrying out the work and the supervisors and express details of any costs or likely disbursements applicable to the work being done. There are also obliged to provide likely timescales for key stages.

News in Brief

A pilot scheme has been announced concerning seasonal workers for UK farms. This will mean fruit and vegetable farmers are able to employ migrant workers for seasonal work for up to 6 months. 2,500 workers from outside of the EU will be able to come to the UK each year thus dealing with labour shortages during peak production periods.

The Government have however made it clear that they see this to be a short term solution. Mention has been made of farmers having to look at ways that technology can reduce demands for labour.

N D A Non Disclosure Agreement

Non-disclosure agreements

There will be times when a business needs to share commercially sensitive information with third parties outside of it. A non-disclosure agreement (NDA) is useful in this situation as it can limit the disclosure to the minimum necessary.

A well drafted NDA helps to restrict the use of your shared ideas or information to a specific permitted purpose. It will also prevent onward dissemination to third parties not bound by the restrictions. This is particularly important where you are sharing your information with a company who needs to pass it on to its directors and employees. As a company is a separate legal entity, you will need to ensure that individuals receiving the information are personally bound by similar duties of confidentiality.

You should define how long the NDA will last and be aware that after that time, the information may be made public and used for purposes other than that specified. The period chosen should be such that, once expired, the information disclosed will no longer be of value to you.

In addition, you may wish to provide that:

- the copying of information is prohibited;
- on termination of the specified purpose, the information is returned to you or destroyed;
- you are only giving the rights set out in the NDA and no other intellectual property rights in the information are transferred;
- in the event of a breach of the NDA, financial damages are insufficient and accordingly you would be entitled to relief such as an injunction.

An NDA cannot prohibit disclosure of your information where compelled by law. For example, HMRC may legally insist on sight of certain matters. The NDA can however limit the disclosure to the extent required by law and provide that you are informed of it where legally permissible.

It is always worth taking legal advice to ensure your NDA is sufficiently comprehensive and covers all of the points you need. Finally, to be enforceable, it must qualify as a contract by the giving of appropriate consideration, or, alternatively, be signed as a deed.



Shared Parental Leave – Why is it not happening?

The statistics for take up of the not so new, shared parental leave rights, have not improved much. Just 9200 new parents took advantage of it in 2017/2018 only 500 more than the previous year.

There are a number of suggestions as to why this may be, but the most convincing to those in this situation is that generally the husband is a higher earner than his wife is. Until this pay inequality is addressed, the decision for those starting a family is generally driven by the family economics.

Given the low rates of shared parental pay this situation is unlikely to change. In the UK the first 6 weeks are paid at 90% of the normal weekly earnings. Thereafter it reduces to a maximum of £145.18 for the next 39 weeks.

In Sweden parents are entitled to 480 days of paid parental leave when a child is born or adopted. This number is high even by international standards but what makes it more impressive is that for 390 of those days, parents are entitled to nearly 80% of their normal pay.

CONTACT

If you would like any additional information on any of the subjects discussed in this newsletter please do not hesitate to contact us.



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Quick reference section

Statutory minimum notice periods:

An employer must give at least:

- One week's notice to an employee who has been employed for one month or more, but less than two years.
- One week's notice for each **complete** year of service for those employed for more than two years.
- Once an employee has more than 12 year's service, the notice period does not extend beyond 12 weeks.

National Minimum Wage

	April 2017	April 2018
Apprentices	£3.50	£3.70
16-17	£4.05	£4.20
18-20	£5.60	£5.90
21-24	£7.05	£7.38
25+	£7.50	£7.83

Statutory Sick Pay (from April 2018)

Per week £92.05

Statutory Shared Parental/Maternity/Paternity/Adoption Pay

(basic rate) (from April 2018) £145.18

Statutory Holiday

5.6 weeks for a full time employee. This can include bank and public holidays.

Redundancy Calculation

- 0.5 week's pay for each full year of service when age is less than 22.
- 1 week's pay for each full year of service where age during year is 22 or above, but less than 41.
- 1.5 week's pay for each full year of service where age during year is 41 and over.

Calculation is capped at 20 years. Maximum week's pay is capped under the Statutory Scheme for dismissals after 6th April 2018 at £508.00.



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