

Maternity Leave: the rights and rules

By Craig Rothwell

In another article, I described the paid and unpaid leave available to all employees under the law. Arguably the most important one mentioned was maternity leave and, in particular, the right provided for new mothers to be able to return to the same or comparable position after taking maternity leave.

These maternity leave provisions brought in by the Employment Act 2000 not only aim to ensure that time and financial back-up is available for all employed mothers and their new family at the time of the birth. They also safeguard both a mother's career status and financial security for the future in guaranteeing a return to work. Knowing the procedure required under the law to obtain maternity leave and guarantee the right to return to work is therefore important.

First of all, it is worthwhile setting out again that the minimum leave available is 8 weeks paid and 4 weeks unpaid leave for those mothers with over a years service. (The law does not actually specify that the 8 weeks paid leave has to come first, but this would be usual). It is a minimum 8 weeks unpaid leave for those with less than a years service. An employer may of course choose to offer better maternity leave benefits to attract employees and many of the larger companies in Bermuda do this. However, and this is the important point, no company can offer less than the minimum leave set out above.

How to take Maternity Leave

In order to be entitled to this basic maternity leave, an employee first has to obtain a doctor's certificate certifying that she is pregnant. The certificate must also include the estimated date of the birth. This must then be handed to her employer.

She must then notify her employer when she wishes the maternity leave to start. This must be done at least 4 weeks before the proposed start date. Naturally, it is

best not to leave notification to the last possible day from both the employee and employer's perspective. The employee may lose out on the entitlement and the employer, if not being surprised at the pregnancy by then, may nonetheless find itself unprepared for the employee's upcoming absence.

As a general rule of thumb, it is probably best for an employee to provide around 8 weeks' notice and suggest a start date for the leave a week before the estimated date of birth. In practice, it would be hoped any employer would be flexible as to the start date if the birth occurred earlier or later than expected.

That is the basic procedure required by the law. However, if an employer did choose to provide better maternity leave benefits, they could make these improved benefits conditional upon other factors. The procedure outlined above could be adjusted by the contract of employment or handbook to be more precise or flexible according to the employer's preference. For instance, a provision could be included to clarify that if childbirth occurs early, the requested leave starts at once. Alternatively, if the employee is absent from work wholly or partly because of pregnancy within a certain number of days before the estimated date of childbirth, the maternity leave could be agreed as being automatically started by that event.

How to Return to Work

This aspect is vital for the employee to get right as the Employment Act 2000 includes a provision to the effect that if an employee fails to notify her employer properly, she will be assumed to have terminated her employment.

What then does an employee have to do? She simply has to remember to give her employer at least 2 weeks' notice of when she wants to return. Notice should be given then at least 2 weeks before the maternity leave

is due to reach its end. Otherwise an employer might assume that she does not wish to return and the employment could be terminated. In reality most employers and employees would keep in some kind of contact during the maternity leave as a matter of good practice so that no such misunderstandings can occur.

The need to provide 2 weeks' notice (in a roundabout way) also means that even those employees who want to return to work as soon as possible are obliged to take at least 2 weeks maternity leave. Perhaps not entirely coincidentally, this matches the minimum maternity leave which all female employees in the UK have to take on health and safety grounds.

Guaranteed return to the same position?

On her return from maternity leave, an employee must be allowed to carry on in her previous position. Or, only if this position no longer exists, a comparable position with the same (or greater) wages, benefits and seniority should be found. This is potentially one of the biggest 'minefields' for employers to negotiate. Inevitably the workplace may change during the 3 months an employee is away, but an employer must keep the employee's post in mind at all times, particularly during any reorganisation, and any deletion of it must have very good reasons indeed.

Otherwise not only is a complaint to the Employment Inspector for a breach of the Employment Act or unfair dismissal risked but a possible sex discrimination complaint could be made. Why sex discrimination? – because any disadvantage suffered by women at work related to their pregnancy is inevitably discriminatory as men don't get pregnant!

This article contains information of a general nature and should not be relied upon as a substitute for professional legal advice given with respect to a particular factual situation.

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