

June 2010 in this issue

A monthly "best practices" alert for multinationals confronting the challenges of the global workplace.

This Month's Challenge

Recent legislative, judicial and administrative actions make clear that paternity leave rights vary widely from country to country.

Best Practices Tip of the Month

A multinational employer has to pay attention to local variations in mandated benefits and leave policies.

Tip of the Month

Paternity Leave Rights Vary Widely from Country to Country

Parenthood has been much in the news recently. In several countries, the rights and benefits afforded to employees with respect to their parental duties have been the subject of recent rulings and regulations. The recent developments serve as a useful reminder that the multinational employer can never take anything for granted – what is required in one country may be completely foreign in another.

U.S. Adopts Expansive Interpretation of "Son or Daughter" for FMLA Purposes

In the U.S., the Department of Labor recently issued an interpretive guidance on the meaning of "son or daughter" in the Family and Medical Leave Act. The FMLA guarantees covered employees up to twelve weeks of leave to bond with or care for a "son or daughter." The law clearly applies to biological parents, adoptive parents, foster parents and court-appointed legal guardians. The question before the Department of Labor was whether someone who has neither a biological nor a legal relationship to a child may nonetheless be a parent for FMLA purposes.

The guidance points out that the statute also applies to "a person standing in loco parentis" to a child. This relationship, the DOL stated, extends to an employee who "intends to assume the responsibilities of a parent with respect to a child," which could be established by "either day-to-day care or financial support." Thus, a child's grandparent, or the unmarried or same-sex partner of a child's parent, can qualify for FMLA leave.

U.K. Adopts Expanded Paternity Leave Benefits

In the U.K., legislation approved shortly before the recent change in government has dramatically expanded the paternity leave benefit afforded to employees, which had been limited to two weeks' leave with a statutory entitlement to be paid £124.88 a week, or 90% of normal weekly earnings if lower (albeit that many employers pay those taking paternity leave at their full rate of pay even where it exceeds the maximum statutory entitlement).

The key provisions in the new legislation are:

- > Fathers will be entitled to 26 weeks' paternity leave for children whose expected week of birth (or matching for adoption) begins on or after 3 April 2011.
- > The right will only arise where the employee's spouse, civil partner or partner has returned to work with some of her statutory maternity/adoption leave untaken.

- > The paternity leave cannot start until at least 20 weeks after the birth or placement for adoption and must end not later than 12 months after the birth or placement for adoption.
- > Insofar as the paternity leave is taken at a time when mothers would have a right to be paid for taking maternity leave (which is a 39-week period), fathers will have a statutory entitlement to be paid for the period of paternity leave at a rate which is the same as the rate of pay for statutory maternity leave, which currently stands at £124.88 per week.
- > The majority of the amount paid to fathers by way of statutory paternity pay can be claimed back from the government by employers.
- > Parents will be required to “self-certify” for the right by providing details of their eligibility to their employer. Employers and the UK tax authorities both will be able to carry out further checks of entitlement, if necessary.

It is unclear whether the new government will allow these rules to come into force. If it does, the new law will, in addition to creating new free standing rights for fathers, require employers to review their current policies on paternity leave, as well as the need to ensure that all policies comply with statutory minimum requirements. Where employers provide female employees with maternity benefits that are more favorable than the minimum statutory standards, a failure to provide a comparable uplift to paternity benefits will likely be challenged as unlawful sex discrimination against men.

French Supreme Court Rejects Paternity Benefits for Same-Sex Partners

In France, fathers of newborn children are entitled to a paternity leave of eleven days in case of a single birth, and eighteen days in case of multiple births. The paternity leave is granted to the father of a newborn irrespective of the conditions of his employment (indefinite or definite-term employment contract, part-time employment contract, etc.) and of his length of service with the company.

Employees who intend to take their paternity leave must give notice to the employer at least one month before the starting date of the leave. Once this information duty is satisfied, the employer cannot refuse to grant the leave.

During paternity leave, the employment contract is suspended so that the employee does not receive his salary. However, the employee receives a daily allowance from the social security fund, the amount of which is calculated similarly to the allowances paid to pregnant employees. At the end of paternity leave, the employee must be reintegrated in his job position or a similar one with at least an equivalent remuneration.

The benefit of the paternity leave is restricted to the father as defined by law. In a recent decision, the French Supreme Court held that the homosexual companion of the child's mother is not entitled to a paternity leave, even though she has entered into a civil union contract with the mother (*“pacte civil de solidarité”*) and could be considered as the spouse of the mother. In this case, the court decided that paternity leave should exclusively benefit the individual who can establish a legal filiation with the child.

For multinational employers, the moral of this story is: global policies must take into account variations in local legal requirements.

Proskauer Rose LLP's International Labor and Employment Law Practice Group counsels companies doing business globally in connection with the employment issues they face in their workplaces around the world.

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