

CBI Northern Ireland submission to the Employment and Learning Committee's Committee Stage consideration of the Work and Families Bill

Introduction

CBI Northern Ireland is an independent, non-party political organisation funded entirely by its members in industry and commerce. Across the UK, the CBI speaks on behalf of 190,000 businesses of all sizes and sectors which together employ nearly 7 million people, about one third of the private sector-employed workforce. Our membership in Northern Ireland includes businesses from all sectors and of all sizes. It includes the majority of the top 100 companies, small and medium-sized enterprises (SMEs), social enterprises, manufacturers and sectoral associations.

CBI Northern Ireland welcomes the opportunity to respond to the Committee's Committee Stage consideration of the Bill.

Our comments below reflect mainly on the administrative and practical implications of the Bill and how these can be managed in the best interests of employers and employees. Indeed, our submission very much mirrors that which we made to the Department's consultation on the matter in 2013 so, therefore, many of our comments are a reiteration of what we believe are the key administrative points towards making the welcome changes a success for all.

Overview comments

The introduction of a shared parental leave system is a real chance to revolutionise the approach to working parents. The current system is antiquated and is based on an assumption of mothers being children's primary care provider. It works for neither families nor employers, who suddenly find knowledge and expertise is lost from the workplace for extended periods of time. The CBI therefore supports reform of the existing system.

However, for reform to have the confidence and backing of the business community it is imperative that, in a time of continuing economic challenge where the burden of red tape must continue to be reduced, the system is simple so as to be truly effective. Too much process, little notice and inflexible demands on companies could undermine the proposals in the Bill. We must also bear in mind the fact that reform will have a more disproportionate impact on smaller businesses – many of whom see only one period of maternity or



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paternity per decade – and that steps must be taken to mitigate against unduly damaging these firms.

The concept of flexible working is one that is strongly supported by the broad membership of the CBI – indeed many members would take the view that they are already well ahead of the legislative game on this. A flexible workforce can lead to better engagement, flexible staffing and more diverse talent pool. It is for these reasons that we, much like compatriots in Great Britain, support reform – albeit with several areas for further clarity and review.

General comments

As we have said, we support reform of the current system. However the proposals detailed in the Bill do have the capability to add additional complexity to the system which would be damaging and highly disruptive for businesses to administer. Avoiding such complexities is vital to retaining business support and it is imperative that government across the UK seeks to create a system which is straightforward and easy to use.

We would therefore look to make three major points in respect of the proposed reforms:

- **The system must ensure employers and employees can work together to pre-plan appropriate patterns of leave – ensuring temporary staff cover for short period of leave with only eight weeks' notice could prove both challenging and costly**

Businesses need to understand their employees' intentions as soon as possible to effectively plan resource in advance and reduce the operational and financial impact of manpower planning, absence cover and training. Ensuring temporary staff cover for short period of leave with only eight weeks' notice could prove both challenging and costly for businesses – particularly smaller enterprises and those whose employees cover niche roles where training is required.

In order to help businesses with this planning, employees should be required to provide an honest and reasonable preliminary plan establishing patterns and periods of leave. The government needs to provide a form which employees can present to employers indicating their intended patterns of shared parental leave with an eight weeks' notice period in advance of the start of the mother's maternity leave.

Government should produce comprehensive guidance stipulating what is and is not appropriate for employers and employees in this situation, and strongly encourage employees to present employers with their plan at the earliest possible opportunity. It is essential, of course, that employers retain the right to say no to requests.

The proposal in respect of taking shared parental leave in a minimum of one week blocks would be very difficult for employers – especially small businesses - to manage. This would make it practically impossible to hire someone on a temporary basis to cover a period of time which is made up of start/stop periods even if the notice given by the employee is sufficient.

The proposed system of allowing a two week discussion period as the initial part of the eight weeks' notice period is sensible. However, there are practical concerns regarding instances when this two week negotiation period might be impossible for certain employers to implement. For example, in cases when an employee's line manager is on annual leave or for employees who work on shift patterns which do not coincide with their manager's, this negotiation period might need to be significantly longer. For smaller businesses in particular, there are likely to be occasions when staffing levels are low and dealing with requests within two weeks will be impossible. The two week negotiation period should therefore be a minimum guideline rather than a requirement.

- **The administrative procedure needs to be as straightforward as possible for both employers and employees, with a clear form, well-established timescales and sufficient supporting guidance**

Minimising the administrative burden on businesses must be at the heart of the government's aims. This will allow parties to focus discussions on issues of substance, and will minimise the opportunity for disputes based on process.

The CBI agrees with the system of self-declaration from parents as it reduces the administrative burden on employers, and our members believe that being able to request a birth certificate/matching certificate is sufficient evidence.

However, there are worries that the employee might complete the form inaccurately due to both lack of clarity in the current draft form and their own lack of understanding of their entitlements. The form needs to be more precise, with supporting information and guidance for both employers and employees. Exhibit 1 sets out some key changes required in the form.

Exhibit 1: Recommendations for the shared parental leave form (ShPL1)

On the form itself, there needs to be:

- a clear place for biographical information, including National Insurance Number
- a reminder of what the qualifying conditions are for the scheme

Particular phrases are vague and need to be edited as follows:

- the reference to the date maternity leave ended should say 'date maternity leave ended *or will end*' and the same for paternity pay dates.
- 'Balance of leave/pay remaining' should read 'Balance of *statutory* leave/pay remaining.
- the second half of the form where partners indicate how they intend to divide the remaining leave could be clearer. An explanation at the beginning of this section would be useful. For example, '*We request that the remaining balance of leave and pay will be shared in the following way.*'

More background information is absolutely essential to the functioning of the shared parental leave system. The CBI would therefore recommend that the form also comes with the following:

- a summary sheet detailing all relevant information. This information should include for example the difference between maternity leave and pay entitlements and an explanation that the 'balance of pay remaining' should be indicated as the number of weeks' pay remaining rather than a numerical calculation of the remaining pay.
- a template of a complete form and a template letter for the employer to confirm the request for parental leave has been accepted or declined.

To simplify the procedure further, it would be appropriate to align paternity pay and notice period at the end of the 15th week before the expected week of child birth as there is no obvious reason to retain differential notice periods and the risk of confusion such a system brings. The current required notice periods have led to uncertainty and employee queries. A simple, clear system would avoid unnecessary hassle and make it easier for employees to fill out their self-declaration form.

Similarly, it is essential that the cut-off point for parents taking shared parental leave should be 52 weeks from the start of maternity leave rather than from the birth of the child so that the exact start date and other cut-off dates in the system can be known from the outset and communicated in advance without problem.

- **Employees should retain the right to return to the same or a similar job when returning from periods of leave after the 26 week mark**

Most employers strive to guarantee that an employee will return to the same role after taking a period of time off on parental leave.

However, in instances where there is the potential for an employee to take significant periods of parental leave spanning across 12 months, this can be impossible. A company might require the need for restructuring in order to remain competitive and successful during the considerable period in which an employee is on leave. This may be the case in particular for businesses which are expanding or businesses which are facing financial difficulties.

We would therefore suggest that employees should retain the right to return to the same or a similar job when returning from periods of leave after the 26 week mark to the benefit of both parties. This will give employers the flexibility necessary to adapt to changes in the economic and structural landscape of their business and this is at no detriment to employees who will still return to a similar position at the company.

Separate to the above points, we support the proposal in respect of the Keeping in Touch days. If mothers and fathers are sharing their parental leave, it is only appropriate that they share their 10 KIT days rather than being given ten each. This is proportionate to the scale of days required to effectively keep in touch. Any more than ten days in total is unnecessary, especially in the case of micro businesses where businesses would be absorbing the additional cost of paying for an employee to be present in the workplace during their leave, whilst also potentially financing the cost of a replacement.

We also strongly take the view that, while employment law is devolved to Northern Ireland, in this particular aspect it remains wise to follow whatever lead Great Britain takes on the issue – notably in respect of the amount of subsidiary companies that operate in Northern Ireland whose parent company is based in GB.

For the changes in the Bill to succeed, we also believe it imperative that detailed, practical and understandable guidance for both employers and employees is published well in advance of April 2015 so that all involved can familiarise themselves with the new

processes. That will require the legislation to be kept as clear and practicable as is feasible so that effective, user friendly and timely guidance can be published.

CBI Northern Ireland

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