

Maternity Rights for Partners - Key Issues for Firms to Consider

Female partners who go on maternity leave are covered by different statutory protections to those which apply to employees.

A female partner (for the purposes of this article we will refer to 'partner' to include a partner in a general partnership and an LLP) will not qualify for employee status and, in accordance with the relevant statutory provisions under the Equality Act 2010, will only be protected against discrimination on the grounds of pregnancy for the duration of their pregnancy and for a two week period following birth, the so-called 'protected period'.

Once this protected period comes to an end, a female partner will benefit from the sex discrimination protections under the Equality Act (but not the maternity protections available to employees) which will include so-called direct and indirect discrimination complaints.

In relation to a direct discrimination complaint, the female partner would need to provide evidence of a comparator and would most likely seek to compare her treatment to that afforded to a male employee on sick leave, by way of example.

An indirect discrimination claim could arise if the partner in question asserts that a provision, criterion or practice is being applied by the firm which has a greater detrimental impact on female partners and which cannot be justified by the firm. This typically arises in the context of a request for part time or flexible working with female partners arguing that statistically women still take on the majority of childcare responsibilities.

Despite the absence of a statutory right to maternity leave for partners, many firms do in fact offer an entitlement to maternity leave to partners of often up to one year to mirror the maternity leave entitlement of employees. This will usually be included in the partnership or LLP deed and any related policy documentation. Ideally, these entitlements should be reviewed to ensure consistency with any partner sick leave entitlements.

Many firms offer an enhanced maternity pay entitlement for female partners, either by paying usual profit share or a proportion of usual profit share for a period, sometimes subject to meeting a prior length of service threshold. Others offer a return to work bonus in addition to or as an alternative to continued profit share. As set out above, this entitlement should be broadly consistent with any sick pay entitlements to address the potential sex discrimination risk. For completeness, a female partner will not be entitled to statutory maternity pay, as they are not an employee, but they will most likely be able to claim the (broadly equivalent) statutory maternity allowance.

In practical terms, even if a firm offers enhanced maternity leave and pay there can be difficulties in reintegrating a female partner following a period of maternity leave and there can be inherent risks with the return to work process.

The risk to a firm in not adhering to certain core principles is a possible pregnancy or sex discrimination complaint by the affected partner. However, and perhaps more crucially, there will also be a related risk that some of its key talent

are lost to the firm, possibly simply due to a lack of engagement and this, ultimately, can have a much longer term and damaging impact on the firm, partner retention and staff morale generally.

Based on our experience, there are certain recommended practical steps a firm can take both during a period of maternity leave and on return to work, which will go some way towards mitigating any potential risks:-

- Maintain an effective line of communication; minutes of partner meetings should be copied to the partner on maternity leave and they should be separately notified of any key firm departures, new joiners, strategic plans or changes.
- Appraisal and profit share/lockstep reviews; the absent partner should receive an annual appraisal and any increase in profit share/points in line with other partners. The timing to this can be approached with some limited flexibility but it is essential to not simply 'skip' a year because the partner is on maternity leave.
- Consistency of training; any ongoing training opportunities should be offered to the absent partner.
- Participation in BD events/marketing; ongoing access to client business development events and opportunities should be offered.
- Consideration should be given to appointing a specific mentor or executive coach to prepare for and support the period of return to work and reintegration.
- A full list of clients which have been passed to colleagues should be compiled with a specific action plan and time line to reintroduce these clients to the returning partner. Any exceptions need to be specifically and objectively addressed with appropriate remedial steps (e.g. allocating or introducing a replacement client).

- Objectively consider any request for flexible or part-time working. Partners do not benefit from the statutory flexible working rules but, as set out above, a female partner could claim indirect sex discrimination if a request for part-time of home working is rejected without an underlying objective business case.

For further information, please contact:



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