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Department for Business, Energy and Industrial Strategy

Family-related Leave and Pay Team
1st Floor Spur, Victoria Street
London SE24 0DN

Sent via email: supportingfamiliesconsultation@beis.gov.uk

11 October 2019

Dear Sir/Madam

Neonatal Leave and Pay

The BMA is a professional association and trade union representing and negotiating on behalf of all doctors and medical students in the UK. It is a leading voice advocating for outstanding health care and a healthy population. It is an association providing members with excellent individual services and support throughout their lives.

The Association welcomes the opportunity to respond to the Department for Business, Energy and Industrial Strategy neonatal leave and pay consultation. Please find enclosed our submission.

We hope that our submission is useful – please do not hesitate to contact us for more information if required.

Yours sincerely



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Listed as a Trade Union under the Trade Union and Labour Relations Act 1974.



The BMA welcomes the Government's recognition of the need to provide better employment rights for the parents of babies who are born prematurely and/or require specialist neonatal care.

As the consultation document notes, the current statutory maternity, paternity and shared parental leave entitlements fail to make adequate provision for families where babies are born pre-term. The current situation also makes it difficult for employers to know how best to support their employees and maximise their chances of successfully returning to work long-term. This is an important opportunity to ensure that these families receive the practical, financial and emotional support they need at a crucial and often difficult time in their lives

Question 1:

Do you agree with the principle that entitlement to Neonatal Leave and Pay should be restricted to the individuals who would have had the main responsibility for caring for the child following birth, had it not been admitted to neonatal care (i.e. those listed above)?

Agree.

Question 2:

Do you agree that parents of babies who need to spend time in neonatal care should have access to additional pay and leave?

Strongly agree.

We recognise that any period of time spent in hospital following birth can be stressful and cause practical difficulties for families, particularly those with other children to care for at home. We strongly support the provision of a model of paid neonatal leave which extends leave by the number of days a baby was born prior to their due date. This model is supported by specialist neonatal support organisations and has already been adopted by a number of national organisations, as well as by the Swedish and Irish governments.

Question 3:

Do you agree that access to Neonatal Leave and Pay should be restricted to parents whose children have spent a minimum of two weeks in neonatal care, i.e. are seriously ill or likely to be in hospital for an extended period of time?

Agree.

We recognise that the proposals are designed to support those families most in need and that there may be administrative complexity in managing leave entitlements for short periods. Therefore, we support the proposal for this entitlement to come into effect after a period of two weeks.

The consultation states that the majority (54%) of babies admitted to neonatal care spend one week or less in hospital before being discharged home, and a smaller proportion (19%) of babies spend between one and two weeks. The proposals as set out would benefit only 27% of those parents whose children are admitted into neonatal care. We hope that, notwithstanding any statutory obligations, the government would urge employers to exercise compassion and

flexibility in allowing time off for shorter periods too, especially for fathers and partners who only have a two-week entitlement to paternity leave around the time of the birth.

Question 4:

If you agree that access to Neonatal Leave and Pay should be restricted to parents whose babies are most seriously ill, after what length of time in neonatal care should the parents' entitlement to Neonatal Leave and Pay crystallise?

See response to question 3 – after a period of two weeks.

Question 5:

Are there other circumstances that you think should be considered for inclusion within the scope of Neonatal Leave and Pay? What are they?

In many trusts there is an increasing push to provide babies born prematurely or unwell with the care they need closer to home. This has led to the development of neonatal outreach teams who can support babies to go home earlier with daily visits from a healthcare professional to facilitate treatments such as home oxygen and nasogastric feeds. These babies have no less requirement for care and the presence of their parents than babies who remain in hospital environments to receive such treatments and therefore these families should also be considered for inclusion within the scope of neonatal pay and leave.

Question 6:

Do you agree that Neonatal Leave should be a 'day one right' in line with Maternity Leave, Adoption Leave and Parental Bereavement Leave?

Strongly agree.

There is a clear moral case for parents of premature babies to have day one rights to additional leave, given the difficult circumstances they face.

Question 7:

Do you agree that the qualifying period of service for Statutory Neonatal Pay should mirror the qualifying period of Statutory Paternity and Shared Parental Pay?

Agree.

As far as possible, the processes for neonatal leave and pay should be simple and mirror existing family rights policy.

Question 8:

Do you agree that the entitlement to Neonatal Leave should be capped?

Disagree.

The length of time babies spend in neonatal care varies according to their condition and individual factors. We do not believe it would be appropriate to set an arbitrary upper limit on this entitlement. The small number of parents of the most severely ill babies will continue to need

support throughout the duration of their child's stay in hospital and should not be placed under further pressure to return to work before they are ready to do so.

Question 9:

Do you agree that the maximum number of weeks of Neonatal Leave should be the same as the maximum number of Neonatal Pay in order to ensure eligible parents can receive pay throughout their leave period?

As set out in response to question 8, we do not believe that there should be a maximum number of weeks of leave. However, should a cap be implemented, we would strongly agree that neonatal pay should be available for the full duration of the leave entitlement.

Question 10:

If you agree that the number of weeks of Statutory Neonatal Pay that is available to parents should be capped, what is the optimal maximum number of weeks of Pay?

N/A

Question 11:

Do you agree that Neonatal Leave and Pay should be taken in a continuous period at the end of existing entitlements to family-related leave and pay, e.g. Maternity or Paternity Leave?

Neither agree or disagree.

In most instances, it is likely that both parents will wish to take leave as a continuous period to extend their maternity or paternity leave and we recognise the simplicity of this approach. However, there may be instances when a parent, especially a father or partner, may wish to return to work for a short period before resuming leave. It may be worth considering whether neo-natal leave could run on after a period of Shared Parental Leave to enable this more flexible approach.

Question 12:

Do you agree that a father/partner should be required to give notice in advance of the end of their other statutory leave entitlement to Paternity Leave in order to take Neonatal Leave?

Neither agree or disagree.

In principle, we recognise the desirability of notice being given before the end of paternity leave. However, paternity leave is only 2 weeks' long and so soon after a premature birth there may be pressures on the family that make it hard for them to communicate with the employer their plans for further leave. In addition, if neonatal leave only applies to situations where the baby is in neonatal care for more than two weeks, there may be uncertainty as to whether the father/partner will qualify in some cases at the point at which his paternity leave is coming to an end. Notice requirements must be simple and there should be provision to allow for parents to give notice at the earliest available opportunity if circumstances make it difficult for them to give notice within a certain time limit.

Question 13:

Do you agree that a mother should be required to give notice in advance of the end of her other statutory leave entitlement to Maternity Leave in order to take Neonatal Leave?

Neither agree or disagree.

In principle, we recognise the desirability of notice being given before the end of maternity leave. As recommended above though, we believe there should be provision to allow for parents to give notice at the earliest available opportunity if circumstances make it difficult for them to give notice within a certain time limit.

Question 14:

What would be a reasonable notice period for Neonatal Leave:

A. For fathers/partners taking Neonatal Leave at the end of Paternity Leave?

2 weeks	<input type="checkbox"/>
1 week	<input type="checkbox"/>
Less than 1 week	<input checked="" type="checkbox"/>
Other	<input type="checkbox"/>

B. For mothers taking Neonatal Leave at the end of Maternity Leave?

Less than 4 weeks	<input type="checkbox"/>
4-8 Weeks	<input checked="" type="checkbox"/>
More than 8 weeks	<input type="checkbox"/>
Notice that should be given as soon as baby discharged from neonatal care	<input type="checkbox"/>
Notice should be given at point baby admitted to neonatal care	<input type="checkbox"/>

Question 15:

What level of communication could be expected between a father/partner wishing to take Neonatal Leave at the end of Paternity Leave on a week-to-week basis while the baby is in hospital and their employer?

We recognise that employers may need to be in contact with partners to effectively manage their resources. Communication should be light touch where possible, mirroring the existing practices for staying in touch with employees on other types of family leave, while recognising the additional sensitivity around circumstances of a premature birth.

Question 16:

Do you agree that employers should be allowed to ask for evidence of entitlement to Neonatal Leave and Pay:

- A. From fathers and partners taking Neonatal Leave and Pay at the end of Paternity Leave?*
- B. From mothers taking Neonatal Leave and Pay at the end of Maternity Leave?*

- C. *If you agree or strongly agree, what evidence would it be reasonable for an employer to request?*

Neither agree not disagree.

We acknowledge concerns that in rare cases family rights policies can potentially be open to abuse. However, this concern should be balanced against the need to not create disproportionate administrative burdens for employers and employees. We would urge the government to ensure that the process for application for neonatal leave and pay is made as simple and straightforward as possible so that a policy designed to provide support does not have barriers to access.

Question 17:

Do you agree that parents on Neonatal Leave should have the same protections as employees on parental leave in respect of older children?

Strongly agree.

There should be equivalent protections as for any other parent under current rights to maternity, adoption, paternity or shared parental leave, including the right not to be treated unfavourably, subjected to a detriment or to be dismissed because they are taking or seeking to take leave.

Question 18:

Do you agree that parents on Neonatal Leave should have the same right to return to work as employees on parental leave in respect of older children?

Strongly agree.

Parents taking neonatal leave should have the same rights to return to work as employees on other forms of parental leave. In addition, employers should recognise that the plans the parents had made prior to the birth with regard to returning to work may now have changed and they should try to balance the needs of the business with understanding the pressures facing parents when a baby is born prematurely.

Equalities impact

As noted in the consultation, around 100,000 babies a year are born pre-term. However, there are particular groups who share protected characteristics who have a greater risk of having a pre-term birth (PTB). For example:

- Studies examining associations between ethnicity and PTB have shown that women from ethnic minority groups are at higher risk of PTB compared with the white population. In a recent analysis of nationally representative data in the UK, the highest percentage of PTB was found among black Caribbean mothers with 10.4% of births being classed as preterm. The same analysis reported higher prevalence of PTB among Bangladeshi, Pakistani and Indian mothers compared with white British mothers.^{1[1]}
- A study on the use of maternity services by disabled women concluded they were at higher risk for adverse pregnancy outcomes including pre-term birth and having low-birth-weight babies.² Long-term health conditions such as diabetes and obesity, including those which meet the definition of disability under the Equality Act, can also increase the

risk of pre-term birth. Prevalence is increasing across the population and particularly among some ethnic minority communities.

- Babies in a multiple pregnancy are more likely to experience some level of additional care in hospital after birth. The most recent (2017) ONS figures show that although the overall number of multiple births has decreased slightly year on year for the last three years, the birth rate for multiples is still historically high. Older mothers and mothers who undergo fertility treatment, including LGBT+ women, are more likely to have a multiple pregnancy.³

The government should therefore ensure that a comprehensive equalities impact assessment of any proposed changes to entitlements is carried out and made public in advance of any changes to legislation.

References

¹ Puthussery S, Li L, Tseng P, et al (2018). [Ethnic variations in risk of preterm birth in an ethnically dense socially disadvantaged area in the UK : a retrospective cross-sectional study](#) *BMJ Open* **9(3)**.

² Redshaw M, Malouf R , Gao H , et al (2013). Women with disability: the experience of maternity care during pregnancy, labour and birth and the postnatal period. *BMC Pregnancy Childbirth* **13:174**.

³ TAMBA(2019) [Statistics show twin and triplet births are historically high](#). United Kingdom: TAMBA.