

Factsheet for Working Carers

This factsheet is intended to be a basic summary of the rights applicable to carers who are working. If you require further information or have a particular query then feel free to contact Michael Bauer on 016974 78222. He will be happy to give you some free initial guidance.

Protection from Discrimination – Equality Act 2010 (“EQA”)

Whilst the ERA does not provide specific protection to carers as a defined group, there may be some protection provided indirectly as a result of a carer’s association with the potentially disabled person for whom they are caring in that it is unlawful for an employer:

- to treat an employee less favourably because of the disability of another person (i.e. the person for whom the carer is caring).

So if a carer is treated negatively because of the disability of the person for whom they are caring (e.g. for taking more time off) then this could amount to direct disability discrimination. Such claims are not straightforward and careful handling of the situation would be required. In particular if you have concerns that you are being treated in such a way then keep a detailed diary of all issues arising.

There may also be scope for women who are carers (particularly of their own children) to allege indirect sex discrimination in relation to the refusal of a flexible working request or requirement to work full time or not to take time off for caring responsibilities.

Time Off to Care for Dependents

Employees have the right to take a “reasonable” amount of unpaid time off work to take “necessary” action to deal with particular unplanned situations affecting their dependents as follows:

- providing assistance if a dependent falls ill or is injured or assaulted;
- to make care arrangements for the provision of care for a dependent who is ill or injured;
- in consequence of the death of a dependent;
- to deal with the unexpected disruption, termination or breakdown of care arrangements;
- to deal with an unexpected incident during school or another educational establishment’s hours.

A dependant is a spouse, civil partner, child or parent (but not grandparent) of the employee or a person who lives in the same household as the employee (not tenants etc). Dependant can include those who “reasonably rely on the employee for such assistance or arrangements” in certain circumstances.

A “reasonable” amount of time off will depend upon the specific circumstances. Usually, the time is intended to address the crisis and will usually be 1-2 days although no limit is set and what is reasonable will depend upon the particular circumstances.

For the rights and associated protections to apply the employee must, as soon as reasonably practicable, tell their employer the reason for their absence and how long they expect to be away.

If you are refused permission or subject to negative treatment for taking the time off then you may complain to an Employment Tribunal. Dismissal for taking or requesting time off in accordance with their rights will amount to an automatically unfair dismissal and the usual two year qualifying period does not apply.

Cumbria Employment Solicitors

Address: Leavy Holme, Millhouse, Hesket Newmarket, CA7 8HS **Telephone:** 016974 78222 **Fax:** 016974 78222 **Email:** office@empsols.co.uk **Website:** www.cumbriaemploymentsolicitors.co.uk
Principal Michael Bauer **VAT Registration No - 108 8102 35**

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Parental Leave

Parental leave is a form of statutory unpaid leave available to some working parents in addition to statutory maternity, paternity and adoption leave. Up to 18 weeks can be taken for each child and that leave can be taken up until a child's 18th birthday. The employee must have been employed for 12 months at the time the leave is to be taken.

There is significant flexibility as to when the leave can be taken and the duration of any absence. The leave must be used only for the purpose of caring for a child. There are certain notice requirements for taking leave.

The right is available to birth and adoptive parents and to anyone who has, or expects to have, parental responsibility for a child. The employee benefits from certain contractual rights and obligations during the parental leave and (almost always) has the right to return to the same job.

Flexible Working

An employee with at least 26 weeks' service can request flexible working for any reason. Only one request can be made in any twelve month period. The request can relate to hours, times required to work and changes to the place of work (including working at home). The basic procedure is as follows:

- The employee triggers the procedure by making a written request and the employer then has a three month decision period to determine the request including any meeting with the employee;
- The employer must deal with the application in a reasonable manner and can only refuse the request on specified grounds;

In reality, there is significant scope for an employer to refuse such a request and limited grounds for it to be challenged. For example, a Tribunal cannot require an employer for the leave to be granted and can only order the reconsideration of the request and make an award of compensation up to eight weeks' pay.

There are certain statutory requirements for the application. The employee can complain to an Employment Tribunal if the employer behaves unreasonably, fails to respond in the 3 month period or refuses the request on non-statutory grounds/incorrect facts. There is also protection against negative treatment and dismissal

Protection and Time Limits

Generally, employees are entitled to bring a claim to an Employment Tribunal if they are subjected to detriment or are dismissed for exercising the above rights. There are strict time limits that apply to the bringing of Employment Tribunal claims. Usually, the time limits are set at 3 months from the alleged event but the law in this area is complex and specialist advice should be sought.

Practical Tips

Keep copies of all relevant written evidence.

Keep a diary.

If possible try and get a witness to any negative treatment or tell someone independent you trust immediately after.

Ask your employer for any applicable policies on the relevant issues.

Seek advice/assistance at an early stage as this can often result in a better outcome and a lot less heartache.

Further Information

Michael Bauer at Cumbria Employment Solicitors – 016974 78222

Time Off for Dependents - www.webarchive.nationalarchives.gov.uk/+http://www.berr.gov.uk/files/file41731.pdf

Parental Leave – www.gov.uk/parental-leave

ACAS – www.acas.org.uk

Tribunal Service – www.justice.gov.uk/tribunals/employment

Flexible Working – <http://www.acas.org.uk/media/pdf/f/e/Code-of-Practice-on-handling-in-a-reasonable-manner-requests-to-work-flexibly.pdf>