Part-time workers

The Part-time Employees (Prevention of Less Favourable Treatment) Regulations 2000 came into force on 1 July 2000 with the object of further extending the rights of part-time workers.

Although the rights of part-time employees have been extended in recent years so that, for example, claims for unfair dismissal can be brought by part-timers with one year's service, their rights are not the same in some remaining areas. The Regulations are intended to put this right. The provisions are set out below:

- ***Pay***. Part-time employees should receive the same hourly rate of pay as comparable full-time workers. A lower rate may be justified on objective grounds as where, e.g., there is performance-related pay.
- ***Overtime***. Part-time employees should receive the same hourly rate of overtime pay as comparable full-time employees once they have worked more than the full-time hours.
- ***Contractual sick pay and maternity pay***. Part-time employees should not be treated less favourably than full-time employees in terms of the rate of contractual sick pay or maternity pay; the length of service required to qualify for payment and the length of time the payment is received. The benefits which a part-timer will receive are to be pro rata which means that where a comparable full-time employee receives or is entitled to receive pay or any other benefit a part-time employee is to receive or be entitled to receive not less than the proportion of that pay or other benefit that the number of his weekly hours bears to the number of weekly hours of the comparable full-time employee.
- ***Occupational pensions***. Employers must not discriminate between full-time and part-time employees over access to pension schemes unless different treatment is justified on objective grounds. Calculation of benefits from the pension scheme for part-time staff should be on a pro rata basis of the calculation for full-time employees.
- ***Access to training***. Employers should not exclude part-time staff from training simply because they work part-time.
- ***Leave/holiday/breaks: annual leave, maternity, adoption and parental leave, career breaks***. The contractual holiday entitlement of part-time staff should be pro rata to that of full-time employees. Contractual maternity leave, adoption leave and parental leave should be available to part-time employees as well as full-time employees. Career break schemes should be available to part-time employees in the same way as for full-time employees, unless their exclusion is objectively justified on grounds other than their part-time status.
- ***Redundancy***. The criteria used to select jobs for redundancy should be objectively justified and part-time employees must not be treated less favourably than comparable full-time workers in regard to selection for redundancy.

The Regulations cover not only workers but extend also to homeworkers and agency workers. In the case of homeworkers, they will have to find a comparator which may not be easy. Full-time workers who switch to part-time work can make a comparison with the benefits provided in their full-time contract. This may assist women wishing to convert to part-time work after maternity leave, though some employers may regard this as a further burden. It may, therefore, be counter-productive. A worker's request to the employer for change must be made in writing and the employer has 21 days to respond before a claim is made to an employment tribunal. This is intended to produce a reconciliation of the position. If not, a claim may be made to an employment tribunal within three months of the act of discrimination. This time scale does not seem to matter since failure to comply with the requirement to up-rate conditions in relation to a full-time comparator is a continuing

source of complaint so time will stop running in regard, e.g., to back pay only when the part-timer's rights are equalised. There is no limit on the money aspect of the award in terms of a back-pay claim.

Qualifying periods

There is no requirement that the claimant should have any minimum period of service. Also, the upper limit of normal retirement age, or if there is none at the workplace 65 years of age, does not apply. This is the first sign of laws prohibiting discrimination on the ground of age.

Effect on employers

Many employers follow the above practices and will not be affected. If not, they will be because there are likely to be comparators who are full-time.

Some small businesses may not be affected at all, either because they do not provide the contractual benefits set out above or because all the staff are part-time and so no pro rata comparison can be made with full-time staff.

Matthews v *Kent and Medway Towns Fire Authority*, 2006 – Part-time firefighters: pensions and sick pay (**253a**)

Workers on fixed-term contracts

The Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2002 apply. The main provisions are set out below.

Definition

A fixed-term contract will generally be a contract of employment that terminates at the end of a specified term fixed in advance or automatically on completion of a particular task.

Comparators

Both individuals must be employed by the same employer and be engaged in the same or broadly similar work having regard to whether they have a similar level of qualifications and skills.

Less favourable treatment

This can be in regard to levels of pay, pension and other benefits such as bonuses. However, admission to a pension scheme may not be viable in the case of a short fixed-term contract.

Written statements

A fixed-term employee who thinks that he/she has been treated less favourably has a right to ask the employer for a written statement of reasons. This must be provided within 21 days.

A tribunal claim

A fixed-term employee who thinks that he/she has been treated less favourably may present a claim to an employment tribunal normally after having exhausted all internal procedures.

Vacancies for permanent employment

The Regulations give fixed-term employees a right to be informed of available vacancies for permanent employment.

Transfer to permanent employment

The Regulations provide that where an employee is on a fixed-term contract that has been renewed or where there is a re-engagement on a new fixed-term contract and where the employee has been employed for at least four years (excluding any period before 10 July 2002) the renewal of the contract will take effect as a permanent contract. The period of four years must be an unbroken one as where one fixed-term contract has immediately followed the previous one. The Regulations may not therefore correct the abuse seen in *Booth* v *United States* [1999] IRLR 16 where the US government employed men on fixed-term contracts at its UK base. There were intervals of two weeks between each contract. The claimant was not entitled to a claim for unfair dismissal or redundancy because his service was not continuous for the requisite period, nor would he have had four years of continuous service to trigger the permanent contract arrangements in the regulations. However, the employer's conduct in *Booth* may have been actionable under the Regulations if it had been based on 'detriment'.

In this connection it is worth noting that the first fixed-term workers became eligible to take advantage of the permanent contract provisions on 10 July 2006.

Dismissal and detriment

Dismissal where the Regulations have been infringed is automatically unfair so that there is no service requirement for a claim. This would overcome the major obstacle to a claim that emerged in *Booth* in terms of the claim itself. Fixed-term workers are also protected against a detriment for trying to enforce the Regulations.

Remedies

A tribunal may order compensation or recommend that reasonable action be taken to remove or reduce the effect of an employer's practice where less favourable treatment is found.

Discrimination once in employment

We have already considered the law relating to discrimination in the formation of the contract of employment, i.e. in recruitment and selection. Here we are concerned with discrimination during the course of employment.

As we have seen discrimination on the grounds of sex, marital status, race, disability, sexual orientation, religion and belief, transsexuality and age are unlawful. As regards employees, it is unlawful to discriminate as regards opportunities for promotion, training or transfer to other

positions or in the provision of benefits, facilities or services or by selection for redundancy or dismissal.

The following kinds of discrimination apply:

- direct discrimination;
- indirect discrimination;
- victimisation; and
- harassment.

Direct and indirect discrimination bear the same definitions in the employment context as they do in recruitment. Victimisation and harassment are normally found, if at all, once employment has commenced and require treatment in this section of the text.

In direct and indirect discrimination a genuine occupational qualification or requirement if acceptable to the tribunal can be a defence for the employer. In the case of disability discrimination, however, the employer is required where possible to make reasonable adjustments to overcome individual difficulties with the job.

Some general illustrative case law

The concept of discrimination is wider than the relationship of employer and employee under a contract of service or apprenticeship. It includes employment 'under a contract personally to execute any work or labour' and no period of service is required before a claim can be brought. Rights are also given to partners in all partnerships.

An example of the broad nature of discrimination law is provided by *Harrods Ltd* v *Remick; Harrods Ltd* v *Seely; Elmi* v *Harrods* [1996] ICR 846. In that case the three complainants were dismissed by their employers from 'shops within a shop' at Harrods because Harrods said they were in breach of the Harrods dress code, for example in Mrs Seely's case the wearing of a nose stud. Although their contract of employment was not with Harrods that store was liable for sex discrimination when their employers dismissed them because Harrods threatened to withdraw the 'shop within a shop' concession. They were 'doing work for Harrods' and were ultimately under Harrods' control in view of the power to withdraw the concession.

Nor is discrimination liability confined to the discriminatory acts of the employer or those of his employees. In *Burton* v *De Vere Hotels Ltd* [1997] ICR 1 the EAT ruled that an employer can be regarded as having subjected employees to harassment, in this case racial harassment, by allowing a third party to inflict racial abuse on them in circumstances in which he could have prevented the harassment or reduced the amount of it. The complainants were two black women who were employed as waitresses at a Round Table function at a hotel in Derby and were subjected to racially offensive remarks by Mr Bernard Manning, a guest speaker, for example, about the sexual organs of black men and their sexual abilities. The employer did not withdraw them from the room at once as he should have done and was liable.

The House of Lords discredited this ruling in *MacDonald* v *Advocate General for Scotland; Pearce* v *Governing Body of Mayfield School* [2004] l All ER 339. In the above cases the claims were brought for discrimination against homosexual people but it is the last part of their Lordships' ruling that has most significance. Although the matter did not arise directly and the decision is technically not binding, the House of Lords stated that an employer would no longer be liable for failing to protect employees from the acts of third parties such as Mr Manning for whose acts the employer is not vicariously liable unless that failure is in itself less favourable treatment on discriminatory grounds.

It appeared that the manager would not have withdrawn white waitresses from a situation involving sex discrimination. In fact, he said in evidence that the matter of withdrawing the waitresses never occurred to him. So the employer is liable only for his or her own discrimination in this situation as where employees are left in a discriminatory situation because the employer, in effect, wishes to see them embarrassed or does not care whether they are.

An employer is also liable for the acts of his employees 'in the course of employment'. Employers have tried to defend themselves by saying that their employees were not employed to discriminate but in *Jones* v *Tower Boot Co Ltd* [1997] NLJR 60 the Court of Appeal rejected this defence saying a purposive interpretation must be put on 'in course of employment' for discrimination purposes. The case involved the harassment of a 16-year-old black youth who was called 'Baboon', 'Chimp' and 'Monkey' and was branded with a hot screwdriver. An employer has a defence where he or she can show that best endeavours were used to prevent the conduct. That was not the case in *Jones*. All reasonable steps to prevent the abuse were not used.

Victimisation in employment

Under discrimination legislation it is unlawful to treat a person less favourably than another because that person asserts rights under anti-discriminatory legislation or is or has helped another to do so. Damages can be awarded where victimisation has occurred. An example is to be found in *Cornelius* v *Manpower Services Commission* (SXD 36117/86) where the Commission refused to consider C for a permanent post for which she had applied because one of the references which she supplied indicated that she was involved in an unresolved sexual harassment case.

Harassment: generally

Most complaints of harassment have involved sexual harassment though *Jones* v *Tower Boot Co Ltd* (1997) provides a particularly bad situation of racial harassment.

There is now a separate head of liability for harassment in regard to sex, race, disability, sexual orientation and religion or belief. It is no longer an aspect of detriment as it has been for many years. The definition which results from the new Regulations in these areas described earlier in this chapter is defined as follows.

'Harassment occurs where on grounds of sex, race or ethnic or national origins or sexual orientation or religion or belief or for a reason which relates to a disabled person's disability – A engages in **unwanted conduct** which has the purpose or effect of (a) **violating B's dignity**; or (b) **creating an intimidating, hostile, degrading, humiliating or offensive environment** for B. The conduct is deemed to have the required effect if having regard to all the circumstances including in particular the **perception of B**, it should reasonably be considered as having that effect (author's emphasis). Obviously tribunals will be concerned to interpret this definition but it is likely that many of the cases on 'detriment' will fit the new definition.

Harassment and case law

There are numerous cases of mainly sexual harassment. Most of these provide different *fact* situations of such harassment and cannot, because of their number, be reproduced here. However, a leading case containing guidance from the EAT that can be applied in other cases

even under the new definition of harassment is *Driskel* v *Peninsular Business Services Ltd* [2000] 636 IRLB 12.

Mrs Driskel was an adviceline consultant with Peninsula. She claimed that she had been sexually harassed by the head of her department. She alleged that she had been subject to sexual banter and comments and that at an interview for promotion he had suggested that she wear a short skirt and a see-through blouse showing plenty of cleavage. This advice was not accepted. She then refused to return to work unless the head of department was moved elsewhere. She was then dismissed and made a claim to an employment tribunal. Her claim was rejected because the incidents looked at *in isolation* were not enough. She appealed and the EAT substituted a finding of sexual harassment and in doing so stated:

- the tribunal should have looked at the *total or overall effect* of the acts complained of;
- a woman's failure to complain at times throughout the conduct should not necessarily be taken as significant;
- sexual 'banter' between heterosexual men cannot be equated with, so as to excuse, similar comments towards a woman.

Harassment: other legislation

When harassment is intended and studied the Criminal Justice and Public Order Act 1994 creates a criminal offence of intentional harassment. It appears as s 4A inserted into the Public Order Act 1986. The penalty on conviction by magistrates is imprisonment for up to six months and/or a fine of up to £5,000.

It is clear from the wording of s 4A that harassment in the workplace is covered. This means that employees who are harassed at work are able to report the matter to the police.

The Protection from Harassment Act 1997 is also relevant. The Act is very wide ranging and covers discriminatory harassment and bullying at work. It is also possible to bring civil proceedings against offenders under the Act.

Enforcement

As regards enforcement by employees, those who believe that they have been discriminated against may make a complaint to an employment tribunal within three months of the date of the act complained of. A conciliation officer may be called in to see whether the complaint can be settled without going to a tribunal. If, however, a tribunal hears the complaint, it may make an order declaring the rights of the employee and employer in regard to the complaint, the intention being that both parties will abide by the order for the future. The tribunal may also give the employee money compensation, with no overall limit, and including aggravated damages in severe cases (see *HM Prison Service* v *Johnson* (1997) 567 IRLB 13), and may additionally recommend that the employer take, within a specified period, action appearing to the tribunal to be practicable for the purpose of obviating or reducing discrimination.

Damages can also be awarded for personal injury caused by unlawful discrimination according to the ruling of the Court of Appeal in *Sheriff* v *Klyne Tugs (Lowestoft) Ltd* (1999) 625 IRLB 6 where a ship's engineer suffered racial abuse leading to a nervous breakdown. This power obviates to need to pursue a personal injuries claim in the county court.

Coleman v *Skyrail Oceanic Ltd*, 1981 – A direct discrimination (**254**)
Price v *The Civil Service Commission*, 1977 – An indirect discrimination (**255**)

Discrimination after the end of work relationship

The relevant discrimination Regulations prohibit discrimination after the end of an employment (or partnership) relationship if the act of discrimination is closely connected to the relationship, e.g. unreasonable refusal to give a reference.

Of significance here is the case of *Woodward* v *Abbey National plc* (2006) 790 IRLB 16. In that case the Court of Appeal ruled that the statutory protection under s 47B of the Employment Rights Act 1996 against being subjected to a detriment because of the making of a protected disclosure (or whistleblowing) is not restricted to the duration of the contract of employment but extends to a detriment imposed by an employer on an employee who has left the employment, in this case the failure by Abbey to give Ms Woodward a reference after she disclosed to management that the company was failing to comply with certain legal obligations.

The importance of the ruling is that, as regards whistleblowing, there is no specific legislation giving post-employment rights. This was said by the Court of Appeal to be a purposive interpretation to make the legislation fulfil what must have been its purpose. The ruling may be of wider application because there are no specific post-employment protections in health and safety, maternity, parental or adoption leave working time and flexible working cases. There may well be however if the *Woodward* ruling is followed.

Guarantee payments

Employees with not less than four weeks' continuous service are entitled under Part III of the ERA to a guarantee payment if they are not provided with work on a normal working day, e.g. because of a proposed power cut as in *Miller* v *Harry Thornton* (*Lollies*) *Ltd* [1978] IRLR 430. The amount of the guarantee payment is reviewed from time to time by statutory instrument and is currently £19.60 per day. This guarantee is, under the ERA 1996, limited to five workless days in any three-month period. The provisions do not apply if the failure to provide work is due to a trade dispute, or if the employee has been offered suitable alternative work but has refused it.

An employee may present a complaint to an employment tribunal that his employer has failed to pay the whole or any part of a guarantee payment to which the employee is entitled. The employment tribunal may make an order to pay the employee the amount of guarantee payment which it finds is due to him.

The employee must apply to the tribunal within three months of the workless day for which no payment has been made or within such longer period as the tribunal thinks reasonable if it is satisfied that it was not reasonable or practical for the employee to present the claim within three months.

Suspension from work on medical grounds

An employee with not less than four weeks' continuous service who is suspended from work under the provisions of an Act of Parliament (e.g. the HASAWA) or a code of practice, not because he is ill but because he is exposed to a health hazard at his work and may become ill if he continues at work, is entitled to be paid normal wages while suspended for up to 26 weeks. This could occur, for example, where there was a leak of radioactivity at the workplace.

An employee may present a complaint to an employment tribunal within three months of the day in respect of which the claim is made (ERA, s 70) that his employer has failed to pay the whole or any part of remuneration to which he is entitled on suspension, and the tribunal may order the employer to pay the employee the remuneration due to him.

Family-friendly provisions

Suspension on maternity grounds

The ERA provides for suspension on maternity grounds. Formerly, a pregnant woman could be fairly dismissed if because of her condition she could not do her work, e.g. because of health and safety hazards, and either there was no suitable alternative work or she had refused it. The ERA substitutes suspension on grounds of pregnancy, recent childbirth or breastfeeding, while the health and safety hazards continue. There is no 26-week limit. The employee may complain to a tribunal if she is not offered available and suitable alternative work. Suspension continues even if such an offer is refused but pay ceases. For those who have not refused an offer, e.g. because it was not possible for the employer to make one, normal pay continues during the suspension. Those who are not paid, though entitled, can claim compensation before a tribunal.

If an employer dismisses an employee who tries to assert her rights in the two above suspension matters, the dismissal is automatically unfair whatever the employee's length of service.

Ante-natal care

Under the ERA, refusal of this right by the employer gives rise to a claim. A pregnant employee who has, on the advice of her doctor or midwife or health visitor, made an appointment to get ante-natal care must have time off to keep it and she must also be paid. Except for the first appointment, the employer can ask for proof of the appointment in the form, for example, of an appointment card. An employer who does not give the employee these rights can be taken to a tribunal by the employee, but this must normally be during the three months after the date of the appointment. Compensation may be given to the employee, both where the employer has failed to give time off and also where he has given time off but has failed to pay the employee. In either case the compensation will be the amount of pay to which she would have been entitled if time off with pay had been given as the law requires. The right to time off for ante-natal care is enjoyed by *all* female employees, except any who ordinarily work outside Great Britain. There is no service requirement.

Maternity leave and pay

This rather complex area of employment law can perhaps be best set out in table form.

The table takes into account the major changes made by the Maternity and Parental Leave etc. and the Paternity and Adoption Leave (Amendment) Regulations 2006 (SI 2006/2014), which are sanctioned by the Work and Families Act 2006.

The provision	The law
Ordinary Maternity Leave (OML)[1]	From 1 April 2007 an entitlement to 26 weeks Ordinary Maternity Leave
Additional Maternity Leave (AML)[1]	From 1 April 2007 an entitlement to a further period of 26 weeks end on to OML
Availability (OML)	Available to all female workers regardless of service
Availability (AML)	Available to female workers regardless of service
Statutory Maternity Pay	Available to female workers with 26 weeks' continuous service immediately preceding the 14th week before EWC
Notice required for entitlement	Notification to the employer in or before the 14th week before the EWC
Notice of what?	The pregnancy: the EWC and the date of starting OML
Employer's response to notice	The employer must write to the worker within 28 days of her notice stating the date of her return. *This fixes that date*
Notification of return	No notice is required but if the worker wants to return early she must give eight weeks' notice to the employer
Statutory Maternity Pay period[2]	39 weeks
Rate of SMP	90% of average earnings for the first eight weeks of leave and for the remaining weeks the *lesser* of £108.85 or 90% of average weekly earnings

Notes
(1) An employee can carry out a maximum of 10 days' work to 'keep in touch' during this period without bringing the leave to an end.
(2) The Work and Families Act 2006 allows the government to extend this period to 52 weeks.

SMP administration

Employers can recover 92 per cent of the amount paid out by way of SMP and small employers (broadly those whose National Insurance contributions payments for the qualifying tax year do not exceed £40,000) can recover 100 per cent plus an additional 4.5 per cent of each payment of SMP which is designed to recoup the NI contributions payable on such payments. All employers can recover SMP from tax and other payments due to the Revenue and not just NI contributions as before. Furthermore, under s 21 of the Employment Act 2002 advanced payments can be requested from the Revenue.

Section 21 is not yet in force.

Compulsory maternity leave

This leave is provided for by s 72 of the ERA 1996. The employer of a woman is prohibited from allowing her to return to work during the two weeks from the day on which the child is born. An employer who contravenes this requirement commits a criminal offence and is liable to a fine currently not exceeding £500. It is accepted that the woman will be most unlikely to want to return to work. The provision is basically designed to prevent the employer from pressurising her to do so.

Paternity leave

Male and female employees have a right to be away from work on paid paternity leave.

The qualifying conditions are set out below:

- the right is available to employees who:
  - have continuous service with the employer of 26 weeks by the end of the fifteenth week before the EWC;
  - have or expect to have responsibility for bringing up the child;
  - are either the biological father of the child or are married to or are the partner of the child's mother;
- leave is for two weeks and whether taken in single weeks or a block of two consecutive weeks it must be taken within a period of 56 days from the child's birth or the first day of the EWC. The second alternative is to deal with a very premature birth where the child might be kept in hospital for more than 56 days after the birth. The EWC will of course have been set to fit a normal term pregnancy and will obviously be later than in fact the birth was giving the opportunity to take leave after the child comes home;
- statutory paternity pay is at the weekly rate of the lesser of £108.85 or 90 per cent of normal earnings;
- as in the case of SMP employers can recover 92 per cent of the total payments from sums due to the Revenue and may ask for an advance payment. The small employers' provision is as for SMP;
- employees can take paternity leave in addition to unpaid parental leave of 13 weeks.

Additional paternity leave

There is now provision for up to 26 weeks of additional paternity leave (APL). The intention is for APL to apply in the second six months of the child's birth and for the father to start APL only when the mother returns to work before all her SMP entitlement expires. In practice, this means that APL cannot be taken if:

- in relation to births occurring on and after 1 April 2007 the mother has already exhausted her 39 weeks of SMP; or
- when the SMP has been increased to 52 weeks, the mother has also exhausted her full SMP or AML.

The government was not in favour of allowing APL to be taken during the first six months after the child's birth because the mother may feel pressurised to return to work. Therefore, APL will apply only where the mother has returned to work before all her SMP entitlement expires.

Adoption leave

Male and female employees are entitled to take adoption leave. There is provision for ordinary adoption leave (OAL) and additional adoption leave (AAL). Where there is a joint adoption by married couples they will be able to choose who takes the adoption leave. Where the adoption is by one of them only then that person will be entitled to the adoption leave though the other spouse will be entitled to paternity leave if the criteria are met. It should be noted that in current law couples in a long-term relationship but who are not married cannot adopt. Only married couples or one person in an unmarried relationship can adopt. As we have seen a married couple who adopt can choose which of them takes adoption leave and which takes paternity leave. The partner of a single person who adopts can take only paternity leave.

The following general points should be noted:

- an employee is entitled to OAL or AAL in regard to a child when he or she has been notified that he or she has been matched with a child by an adoption agency and he or she has been employed for 26 continuous weeks ending with the matching week;
- OAL is for 26 weeks of leave commencing either on the date the child is placed with the adopter or a date that is no more than 14 days before the expected date of placement, i.e. when the child comes to live permanently with the adopter;
- AAL is for a further period of 26 weeks end on to the OAL. No further service qualification is required;
- OAL is paid for by statutory adoption pay at the lesser of £108.85 or 90 per cent of normal earnings for 39 weeks;
- the provisions for employer recovery are the same as for SMP and SPP.

Notice provisions

Notice to the employer of 21 days is required of the intention to take leave. The employer must respond within 28 days stating when the leave ends under the employee's entitlement. This fixes the return date. The employee must give eight weeks' notice to the employer to change the intended start date and this is also the notice period for early return from leave.

Additional adoption leave

Provision is now made for an additional period of adoption leave of 26 weeks. This cannot be taken by the person who has taken adoption leave. Once again, this leave is intended to be taken by the partner who has not taken adoption leave and can commence only when the person taking the adoption leave has returned to work before exhausting that leave.

Unpaid parental leave

The new ss 76–78 of the ERA 1996 apply. These sections together with the Regulations provide for collective agreements to be made with trade unions and workforce agreements to be made with employees in regard to parental leave. Nevertheless, employees retain their rights under what is called the statutory fallback scheme unless the collective or workforce scheme is more generous, in which case such schemes can replace the fallback scheme. This book considers only the fallback scheme as follows.

The fallback scheme

An employee who has been continuously employed for a period of not less than one year has a right to 13 weeks of parental leave in respect of each child born on or after 15 December 1999 and each child under 18 who is adopted by the employee on or after that date (but see below). Women who qualify for parental leave can take it immediately after taking maternity leave. A week means seven days' absence from work, even though the employee would not have been required to work on every one of the working days. Leave must be taken in seven-day blocks up to maximum of four weeks' leave in respect of an individual child during a particular year calculated from the first time the employee became entitled to take parental leave. This was affirmed as a correct interpretation of the law in *Rodway* v *New Southern Railways Ltd* [2005] IRLR 583, where Mr Rodway, a train guard conductor, asked for a day off to look after his two-year-old son while the mother was away for the day. He was refused the time off but took it anyway, as he could not get anyone else. His employer later put him through a disciplinary procedure but his claim for detriment because he was trying to use the parental leave provisions was turned down by the Court of Appeal. Leave of one day was not