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# Family Friendly Rights

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# Family Friendly Rights

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Whilst delivering some training on family friendly rights recently, I discovered that there was some confusion among school leaders about what employees are legally entitled to and what they may be entitled to under their contracts of employment or employment policies.

Educational establishments differ in their approach when it comes to taking time off work for family reasons; some are more generous than others. Maintained schools tend to adopt their local authority's policies whereas non-maintained schools, independent schools colleges and universities have more freedom to implement their own rules. However, all of these are subject to the minimum statutory requirements that govern this area.

Given the differences in approach, I thought it might be helpful to provide an overview of some of the commonly misunderstood legal entitlements employees have so that you can decide what approach to take.

## Time off to care for dependants

All employees are entitled to take a “reasonable” amount of unpaid time off to provide assistance in the following circumstances:

- a) If a dependant falls ill, gives birth, is injured or assaulted;
- b) To make care arrangements for the provision of care for a dependant who is ill or injured;
- c) Where a dependant dies;
- d) To deal with the unexpected disruption, termination or breakdown of arrangements for the care of a dependant; or
- e) To deal with an unexpected incident which involves the employee's child during school (or another educational establishment's) hours.

## Who is a dependant?

A “dependant” is defined as 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 (excluding tenants, lodgers, boarders and employees).

Also, for the purposes of time off:

- a) to provide assistance if a dependant falls ill, gives birth, is injured or assaulted; or

b) to arrange for the provision of care for a dependant who is ill or injured the definition of “dependant” includes those who reasonably rely on the employee for such assistance or arrangements.

Finally, for the purposes of time off because of the unexpected disruption or termination of arrangements for the care of a dependant the definition of “dependant” includes those who reasonably rely on the employee to make arrangements for the provision of care.

### **What is a reasonable amount of time?**

There is no specified limit to the amount of time an employee is entitled to take off. However, it may be that, in the vast majority of cases, no more than a few hours or, at most, one or possibly two days would be regarded as reasonable to deal with the particular problem which has arisen.

When considering what is a reasonable amount of time off you should take into account the nature of the incident and the employee’s individual circumstances not the disruption or inconvenience caused to the organisation.

### **Parental leave**

Employees with more than one year’s service are entitled to request unpaid leave for the purpose of caring for a child for which they have (or expect to have) responsibility.

(This is not to be confused with Shared Parental Leave which is the right for parents of children expected to be born or placed for adoption on or after 5 April 2015 to share what would have been the mother’s maternity leave or the primary adopter’s adoption leave)

### **Responsibility for a child**

In practice, those “responsible” for a child will normally include:

- a) Both birth parents (whether or not they are living with the child).
- b) Adoptive parents.
- c) Parents under a surrogacy arrangement who have secured, or expect to secure, legal parental responsibility.
- d) Others who have legal parental responsibility for a child, such as a guardian.

At present, step-parents and foster parents are not normally covered (unless they already have or expect to have parental responsibility by adopting the child).

## Amount of leave

As of 5 April 2015 each employee is entitled to take 18 weeks' parental leave for each child. The right is a personal one; it cannot be transferred from one parent to another. Furthermore, the entitlement is to take 18 weeks' leave in total in relation to each child and not 18 weeks with each separate employer. So an employee who has already taken nine weeks' parental leave and then goes to work for a new employer would only have nine weeks' leave remaining to take with that employer.

Employers can implement their own scheme for parental leave but where they do not a default scheme will apply. It is also possible for employers to refuse to permit the leave in limited circumstances.

## Flexible working

An employee has the right to make a request to work flexibly as long as they meet the following requirements:

- a) They have 26 weeks' continuous employment at the date the request is made; and
- b) They have not made another request under the statutory scheme in the previous 12 months.

There is no longer any requirement for the employee to be making the request in connection with childcare responsibilities.

## What can be requested

Eligible employees are able to request a change to their terms and conditions of employment that involve one or more of the following:

- a) A change to the hours they work;
- b) A change to the times when they are required to work; or
- c) A change to the place of work (as between their home and any of the employer's workplaces).

## Considering a request

The right is a right to request flexible working arrangements, not a right to insist upon them. It is possible for an employer to refuse an employee's request based on one of the following grounds:

- a) the burden of additional costs;
- b) detrimental effect on ability to meet customer demand;

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- c) inability to reorganise work among existing staff;
  - d) inability to recruit additional staff;
  - e) detrimental impact on quality;
  - f) detrimental impact on performance;
  - g) insufficiency of work during the periods the employee proposes to work; or
  - h) planned structural changes.

You should also ensure that the proper procedure for considering a request is followed each time.

There are a number of other family friendly rights that are outside the scope of this article, but I hope, by touching on those that I find are most often misinterpreted by employers and employees alike, you will be better placed to shape your policies and procedures to meet the needs of your particular educational establishment.

If you have any queries about family friendly rights or any other legal issue please do not hesitate to contact a member of the Flint Bishop Education Team.

# Legal Services Overview

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## Commercial Services:

### Commercial Contracts:

- Agency & Distribution
- Bribery Act Compliance
- Data Protection
- IT & e-Commerce
- Intellectual Property
- Outsourcing & Supply Agreements
- Public Procurement
- Terms & Conditions

### Commercial Property:

- Conditional Sale Agreements
- Development Agreements
- Joint Ventures (*as part of a wider team construction & public procurement*)
- Land Acquisition & Disposals (*including options*)
- Leases
- Planning / Section Agreements
- Profit Sharing / Overage Agreements
- Property Acquisition & Disposals
- Property Management

### Construction & Engineering:

- Adjudication
- Alternative Dispute Resolution (ADR)
- Appointment Documents for Professional Consultants
- Arbitration
- Building Contracts
- Dispute Management
- Litigation
- Security Documentation

### Corporate Finance:

- Acquisitions & Disposals
- Acquisitions Finance
- Buy-outs
- Company Secretarial Services
- Corporate Governance
- Joint Ventures
- Loan & Security Arrangements
- Partnerships
- Property Finance
- Reorganisation & Restructuring
- Shareholder Relations

### Dispute Resolution / Debt:

- Commercial Contract Disputes
- Shareholder and Partnership Disputes
- Insurance Disputes
- Injunctions
- Professional Negligence
- Alternative Dispute Resolution
- Property Litigation
- Insolvency
- Debt Recovery

### Licensing & Entertainment:

- Alcohol & Entertainment Licensing
- Betting & Gaming Licensing
- Regulatory Advice & Prosecutions
- Reviews & Enforcement
- Training

## Employment Law & HR:

- Contracts and policies
- Disciplinary matters
- Sickness and absence
- Capability
- Redundancy / restructuring
- Unfair dismissal
- Discrimination
- Restrictive covenants / restraint of trade
- TUPE
- Settlement agreements

## Private Client Services:

## Family & Divorce Law:

- Divorce
- Financial Matters
- Children Issues
- Cohabitation
- Civil Partnerships
- Pre-nuptial Agreements

## Residential Conveyancing:

- Buying / Selling Property
- Re-mortgaging
- Transfer of Equity
- Right to Buy
- Probate Sales

## Wills, Probate, Tax & Trusts:

- Wills
- Probate
- Lasting Powers of Attorney
- Court of Protection
- Inheritance Tax Planning
- Trusts

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