What precise rights do associates have with maternity leave?

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The source of associate rights relating to dentists who undertake NHS work lies in their associate contract, the General Dental Services Statement of Financial Entitlements 2013, Personal Dental Services Statement of Financial Entitlements 2013 and Prototype Agreement Scheme Statement of Financial Entitlements.

Eligibility

Eligibility for maternity leave payments is the key issue. The directions provide that a practice owner ('contractor') receives a maternity payment for an associate ('performer') it engages if:

1. The associate has been on the Dental List for at least two years; the last 26 weeks of that period are continuous and require the performance of NHS services; further, the period immediately precedes the 15th week before the expected week of childbirth
2. The associate becomes pregnant and reaches, or gives birth before reaching, the commencement of the 11th week before the expected week of childbirth
3. The associate ceases to perform NHS dental services at the practice to take maternity leave (which for these purposes includes leave for ante-natal care). This excludes any optional keeping in touch days on which it has been agreed between the contractor and the Dentist Performer that the Dentist Performer will work
4. The payment relates to a Parental Leave Pay Period and not to a period of sickness absence.

A 'Parental Leave Pay Period' means, in the case of a maternity leave payment, a period of no more than 6 months. The associate may choose to start her maternity leave at any time between the 11th week before the expected week of childbirth and the expected

week of childbirth. If childbirth occurs prior to the 11th week before the expected week of childbirth, on the Monday immediately before the actual date of childbirth.

Payments and evidence

A practice owner has to claim the payments, and is required to pass those payments onto the associate. The payments, assessed as a weekly amount, are calculated on the basis of the associate's estimated monthly Pensionable Earnings (which should usually be the amount that features in respect of that associate on the practice owner's Monthly Payment standard form. The application must include the intended dates of the associate's Parental Leave Pay Period (i.e. the Parental Leave Pay Period in respect of which the application is being made) and details of the associate's estimated net monthly Pensionable Earnings (NPE).

An application for maternity leave payments must include a maternity certificate or other statement completed by a relevant medical professional, which states the expected week of childbirth and a prescribed declaration in writing from the practice owner that, with regard to the period to which the claim relates, no claim for sickness leave payments has been made. This monthly amount is to be multiplied by 12 and then divided by 52 to produce the weekly amount of the parental leave payments.

'Conditions' of parental leave payments

Maternity leave payments are due only if:

- The associate does not perform any NHS dental services during the Parental Leave Pay Period (other than any optional keeping in touch days on which it has been agreed between the contractor and the associate that they will work), except with the written approval of the Board
- The associate relating to whom the payments are made continues to be an associate engaged by the contractor (if the performer does die, parental leave payments may continue to be paid to the contractor for the balance of the Parental Leave Pay

Period, provided these are forwarded by the contractor to the performer's estate)

- The practice passes on the maternity leave payments to the associate.

The contractual position

Two issues frequently feature in associate/practice owner disputes relating to maternity. One relates to the need to provide 'cover' when an associate takes maternity leave. Most associate agreements have a locum clause that require the associate to provide a locum. That said, most practices will offer to find a locum for the associate. In any event, the parties should discuss locum cover and who is responsible at an early stage.

Another relates to circumstances when an associate considers that the practice owner is not fulfilling its duties under an associate agreement to facilitate a maternity leave/pay application; potentially this may be the pretext for a breach of contract claim in respect of parental leave payments that an associate might otherwise receive.

The impact of the Equality Act 2010 on workplace rights of associates

It is rare that dentists are found by Employment Tribunals to have sufficient employment status for them to bring a claim of sex or maternity discrimination when they are engaged, apparently, as self-employed contractors. However, it is not impossible for this to occur.

Practice owners should be aware that Employment Tribunals increasingly are prepared to 'look behind' written associate agreements in order to determine whether an associate is in reality an 'employee' or 'worker'. In one or two cases, employment tribunals have ordered practice owners to compensate associates who have been dismissed in relation to maternity leave. Some of these cases could have easily been prevented with good communication. We urge both parties to discuss arrangements for maternity leave and to reach sensible agreements that meet both their interests. ♦

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