

## *This Week in Employment Law*

### Enhancing Maternity Pay but Not Shared Parental Pay – Is This Discrimination?

**The Court of Appeal (CoA) has dismissed two cases, declaring that it is not discriminatory to offer enhanced maternity pay to mothers but only statutory shared parental pay to fathers. Join us as we take a closer look at the facts below:**

- The male claimants in two separate cases argued that the practice of paying enhanced maternity pay, but only statutory shared parental pay was discrimination on the grounds of sex, as it meant men would get less pay on childcare leave.
- *Ali v Capita Customer Management Ltd* focused on direct discrimination whilst *Hextall v Chief Constable of Leicestershire Police* involved a claim of indirect discrimination.
- Both claimants felt they were treated less favourably than a female comparator on maternity leave.
- However, *Ali's* claim for direct discrimination was dismissed as the CoA decided the circumstances of a female on maternity leave were 'materially different' and did not make for a suitable comparator.
- *Hextall's* indirect discrimination claim was reclassified as an equal pay claim and dismissed because the law allows certain favourable contractual terms for women in connection with pregnancy or childbirth.
- These rulings mean employers may continue to pay enhanced maternity pay but only statutory shared parental pay, however, it will be interesting to see if the claimants choose to appeal this further with the Supreme Court.

#### One in three BAME staff told to adopt a 'western' name

A study has shown over 34% of Black, Asian and Minority Ethnic (BAME) employees have directly or indirectly been told to use more 'western' sounding names at work. The study also revealed that 28% of employees felt they were offered more jobs when changing their name on their CV.

##### Did you know?

Employers have a duty to ensure the workplace is a non-discriminatory environment and asking employees to change their name, or referring to them by a different name, could qualify as less favourable treatment and ultimately lead to claims of race discrimination.

#### Study shows increase in number of workers over 70

A study by Rest Less has revealed more people in the UK are working in to their 70s, with one out of every 12 currently in work, compared with one in 22 a decade ago. This trend suggests more firms are valuing the contributions of older staff, possibly as a result of the ongoing skills shortage.

##### Did you know?

It is unlawful to treat staff less favourably due to their age. Some employers may wish to introduce a mandatory retirement age to promote diversity and innovation. However, this must be objectively justified which can be a difficult test to pass.

#### Over 500 firms register to offer work to prisoners

Over 500 employers have responded to the government's calls to register to provide better work opportunities to prisoners according to the Ministry of Justice. The new rules will see more inmates temporarily released to participate in paid work with registered employers.

##### Did you know?

There are rules around the employment of those with criminal convictions. Dismissal for a 'spent' conviction – when the individual is considered as rehabilitated because a certain period of time has passed – can be unfair so employers should tread carefully.

Employers will welcome the news that they may continue to offer enhanced maternity pay to mothers but only statutory shared parental pay to fathers and mothers' partners. Workplace disputes can often arise around both direct and indirect sex discrimination, therefore if you require any assistance make sure you call our 24 Hour Advisory Service.

Please contact the 24 Hour Advice Service for advice on your specific situation before acting on the information in this publication.