

#80 HR Newsletter

April 2016:

Childcare Vouchers

Childcare Vouchers can be paused during maternity leave.

Childcare Vouchers are a scheme that allows employees to reduce their salary (via a salary sacrifice arrangement) and in return receive a voucher for the amount of salary given up to pay for childcare.

The benefit is that this voucher becomes a "pre-tax" deduction and both employer and employee pay less Income tax and NI contributions.

The problem arises when a member of staff is on maternity leave and has no salary to reduce in order to receive the voucher. Some companies carried on paying the vouchers, other companies have suspended the whole scheme.

In a recent Tribunal Case Peninsula (the employer) made staff agree to pause their vouchers during maternity leave and one of their employees took them to Tribunal claiming it was discriminatory to do so. The Appeal tribunal declared that it was not discriminatory and the employer was entitled to do so as this voucher was in fact normal remuneration (by another name) and so should cease during maternity.

Court Extract:

Overtaking the employment tribunal's original decision in the case, the EAT ruled that the vouchers were "properly to be regarded as part of remuneration", meaning that an employee could not be entitled to them when she was not entitled to her monthly salary. The position would be different if the vouchers were provided as a benefit "additional to salary", the judge said.

"Though the phrase [salary sacrifice] is in common use, and is referred to by that colloquial description in the legislation ... it is something of a misnomer," said Mr. Justice Langstaff. "It is in reality not a sacrifice but a diversion of salary, which the employee has earned but which is redirected prior to it being placed within the employee's pay packet, in order to purchase vouchers to the value of the salary utilised."

"The continued provision of vouchers during maternity leave both produces a windfall benefit for [an employee] who is in such a scheme but also - more importantly - imposes a cost upon the employer ... If entering such a scheme had the consequence that once employees became pregnant the employer would face a cost beyond that it would already face by provision of statutory maternity pay, it would have the effect of discouraging employers from offering such a scheme ... We do not think that parliament can have intended this consequence," he said.

So you are permitted to pause childcare vouchers during maternity – however the childcare voucher scheme will be phased out next year....