

#96 HR Newsletter

Nov 2016: Shared Parental Leave and Direct Sex Discrimination

Discrimination of men under Shared Parental Leave and Pay Policy

A Scottish employment tribunal has determined the compensation arising out of a discriminatory shared parental pay policy.

Mr Snell (an employee of Network Rail), a father, argued that Network Rail's policy on shared parental leave and pay directly discriminated against men on the basis that mothers were entitled to enhanced shared parental pay while fathers were entitled only to the statutory level of pay.

The tribunal awarded the Mr Snell approximately £23,000 including £6,000 injury to feelings and £16,129 for future loss, being the difference between statutory shared parental pay and what the claimant would have received had he been entitled to the enhanced level of pay.

Network Rail attempted to justify the difference because it considered the policy to be a proportionate means of achieving its aim of recruiting and retaining women in a male dominated workforce, which is an argument that has been used by employers wanting to offer employees enhanced maternity pay while only providing statutory shared parental pay.

However, it appears from the tribunal decision that Network Rail has already changed its policy to remove enhanced pay so that all employees who take shared parental leave were only entitled to statutory shared parental pay*.

What does it mean in practice?

In simple terms, it only affects companies who have enhanced maternity pay policies for women that are also use for shared parental pay and leave (i.e. they pay more than the statutory minimum SMP).

If you do pay enhanced maternity pay – then you should consider either:

- make the enhanced pay applicable to Shared parental leave also or
- remove the enhanced Maternity pay to eliminate this discrepancy.

* Taken from Practical Law