

## BE AWARE! Changes to maternity pay calculation mean employees on maternity leave may receive pay rise

New Regulations from the Department for Work and Pensions which came into force *yesterday* mean that statutory maternity pay will have to be recalculated if an employee receives a pay rise whilst on maternity leave.

Before today, an employee on maternity leave would receive Statutory Maternity Pay based on her earnings in a set period before that leave commenced. That meant that a pay rise would only be relevant to the calculation of statutory maternity pay where it was backdated to include the set period.

However, under the new Statutory Maternity Pay (General) (Amendment) Regulations 2005, statutory maternity pay will have to be recalculated if an employee receives a pay rise, or would have received a pay rise had she not been on maternity leave, at any time during the set period or during the maternity leave itself. It is the date the pay rise becomes effective which is the key date and not the date when the pay rise is awarded. The recalculations will have to be done whether the employee receives a pay rise during ordinary *or* additional maternity leave.

The regulations have been brought in as a consequence of the European Court of Justice's ruling in *Alabaster v Woolwich plc*. The case, decided in March 2004, was the culmination of much debate and held that European legislation, which provides for a principle of non-discrimination, "...requires that where statutory maternity benefit is calculated on the basis of the worker's average earnings during a specified period, that benefit must include any pay rises awarded before or during the worker's period of maternity leave".

The effect will be a greater cost to employers both in terms of those employees whose existing entitlement will increase and in terms of those employees who originally fell beneath the lower earnings qualifying limit but whose pay rise means that they now are entitled to statutory maternity pay. Unfortunately for employers, that is not where the story ends. The case of *Alabaster* has been remitted to the English Court of Appeal where, later this year, it will be decided whether or not the ECJ's ruling is to have retrospective effect. If it is to have retrospective effect, employers could be faced with multiple claims from their previous employees. Employers should not despair, however, as most of the extra money paid will be recoverable.

The full text of the regulations is available at:

<http://www.legislation.hmso.gov.uk/si/si2005/20050729.htm>

Further guidance from the Department of Work and Pensions is available at:

[http://www.dwp.gov.uk/lifeevent/benefits/ecj\\_judgement.asp](http://www.dwp.gov.uk/lifeevent/benefits/ecj_judgement.asp)

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Readers are advised to take specific advice before acting in reliance on the matters set out in this briefing.

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