

Death in service

CORPORATE

No one pays much attention to death in service cover as the premiums are relatively low as a percentage of payroll and, with luck, claims are few and far between.

However, insurance companies can reject claims and this is what recently happened to one of our clients. The cost can be great. With cover typically being a multiple of three or four times annual salary the effect could be very damaging to a small business – or indeed a not so small business.

What issues should you be concerned about?

First, take the renewal seriously. Whether or not the insurance company asks specific questions it is the duty of the insured to identify issues which could be material to the assessment of the risk. So even if the insurance company does not ask think about providing information about individuals working in dangerous environments, overseas or travelling by non-scheduled air flights. Identify individuals who have been off sick for more than a given period of time. Disclose this information and then ask the insurer if it can identify any other factors which it might regard as relevant. This will make it harder for the insurer to refuse to pay by reason of non-disclosure.

Second, look at the exclusions. A typical company trust deed does not provide for any exclusions once someone has become a member. In particular, check whether the policy covers suicide. If there are exclusions such as suicide or terrorist acts, ensure that these are passed on to members.

Third, typically, company documentation assumes that, once admitted, a member is covered for as long as he or she remains an employee. In fact life cover policies are renewable annually and this means that the insurer has a right to refuse to provide cover after the renewal date. In reality the insurer would be very unlikely to do this but if for example, it was known that a group of individuals or even one individual were not going to survive much beyond the renewal date there might be a strong temptation for the insurer to withdraw. This would leave the dependants of the individuals concerned without the security of a death in service payment and might leave the trustees of the scheme liable to discharge the claim from other trust resources.

And finally do remember to structure life cover through a trust deed to help ensure that the sums involved do not become subject to Inheritance Tax.

Robert O'Donovan

New family-friendly rights

From mid to late November 2006, the Maternity and Paternity Leave (Amendment) Regulations 2006 will begin to affect both employers and employees.

The new regulations:-

- (i) extend the Maternity Pay Period from a maximum of 26 weeks to a maximum of 39 weeks;
- (ii) enable the Maternity Pay Period to start on any day of the week in accordance with the date the woman gives notice to her employer of the day on which she wants her Statutory Maternity Pay to start;
- (iii) enable the employer to split Maternity Pay so that payments can be aligned with the particular pay practice of the business;
- (iv) introduce "Keeping in Touch" days ("KITs") which will enable a woman to work for an employer paying her Statutory Maternity Pay for up to ten days in her Maternity Pay Period without losing her entitlement to Statutory Maternity Pay for that week; and
- (v) extend the amount of notice required by the employer from four to eight weeks for women wanting to alter their date of return from maternity leave.

All of the changes apply to women expecting babies due on or after 1 April 2007. However, it does not matter when the baby is actually born, the important date is when the baby is due.

The Maternity Pay Period

Length of the Maternity Pay Period

Women expecting babies up to and including 31 March 2007 will continue to qualify for 26 weeks' maternity leave under the current regulations.

However, women expecting babies on or after 1 April 2007 will qualify for a 39 week Maternity Pay Period and be governed by the

new regulations. Line managers should be made aware of this change as it means that women are likely to be away for the whole 39 weeks rather than six months.

Start of the Maternity Pay Period

In contrast to the current rules, the new regulations will allow the Maternity Pay Period to start on any day of the week in accordance with the date the woman says she wants her Statutory Maternity Pay to start. This allows the Statutory Maternity Pay to align with the start of a woman's maternity leave provided that the woman has served notice on her employer and stopped work in accordance with that notice.

The rules in the case of an early birth or absence because of a pregnancy-related illness in the last 4 weeks of pregnancy are not changing as, in these cases, the Maternity Pay Period can already start on any day of the week.

Split Week Payments of Statutory Maternity Pay

Statutory Maternity Pay is calculated and due for whole weeks. In the Maternity Pay Period, a "week" is any period of 7 days.

The new regulations allow a particular week's Statutory Maternity Pay to be split over two payment periods so that payments can be aligned with a business' particular pay practices. To achieve this, the regulations allow the weekly payment to be divided by 7 therefore giving a daily amount so that the relevant number of days can be paid with each salary payment.

Where the weekly payment of Statutory Maternity Pay does not divide exactly by 7, the new regulations provide that the figure can be rounded up to the nearest penny.

Keeping in Touch Days

Under the current rules, a woman will lose a week's Statutory Maternity Pay if she works in a maternity pay week under her contract of service for the employer paying her Statutory Maternity Pay.

The new regulations introduce 10 "Keeping in Touch" days, which allow a woman to do a limited amount of work under her contract during the Maternity Pay Period for the employer paying her Statutory Maternity Pay and retain her entitlement to Statutory Maternity Pay for that week. The KITs only apply to women whose babies are due on or after 1 April 2007. How the KITs are used is a matter for agreement between employer and employee. They could be used for training or advice on a particular project.

There are no restrictions on when the "Keeping in Touch" days can be used, although the maternity leave regulations prohibit a woman from working for two weeks after childbirth. Neither side can insist on a KIT day being used.

If a woman does some work under her contract of service for the employer paying her Statutory Maternity Pay, it follows that the woman will be entitled to contractual pay for the work done. The amount of pay is a matter for agreement between the employer and employee, but the minimum that must be paid for the week in which the

"Keeping in Touch" day falls is the Statutory Maternity Pay rate which the woman is entitled to for the Statutory Maternity Pay week.

Once the "Keeping in Touch" days have been used up, the woman will once again lose a week's Statutory Maternity Pay for any time in which she does any work under her contract of service for the employer paying her Statutory Maternity Pay. You should note that any part of a day which is a KIT day counts as a whole day so use the time fully!

The Present

In practice, as with earlier changes to the regulations, the old and the new Statutory Maternity Pay schemes will run in parallel for a time as different rules will apply depending on when the woman in each individual case expects the baby to be born.

The Future

The new regulations set out above are the latest measured forming part of the package being introduced under the Work and Families Act. Other significant elements still to be introduced include a further extension of paid maternity leave to 52 weeks and a new right to an additional period of up to 26 weeks paternity leave for fathers.

Rebecca Gowling

Changes in our team

The employment team at RLB is a close knit group. Over the four years to August this year, none of our permanent staff had left us.

From our point of view we are therefore sad to report that Kerry Scott-Patel left us at the end of August. Her husband, Hin, had been offered an exciting job opportunity in Dubai and given the choice between us and her husband, Kerry (quite properly) chose her husband and by the time you will be reading this will, we hope, be relaxing in the Dubai sun.

Kerry joined RLB in 1999 and was one of the original members of the employment department. As well as providing an

outstanding service to clients she has been a regular contributor to our workshop and seminar programme and this update.

The good news, however, is that Kerry is working with us with a view to seeing whether, via computer link-up, she will be able to continue to provide us with support services from Dubai. So let us hope it is a case of goodbye but not really goodbye.

At the same time we would like to record our thanks to Rebecca Watson who joined the department on a temporary basis and provided valuable support when Sejal Raja was on maternity leave.

For details of our first new arrival please see page 4.



Meet the team

Claire Say has just finished her 2 year training contract with RadcliffesLeBrasseur and joined the Employment Department as a fully qualified solicitor on 2 October 2006. She now answers a few questions put by Robert O'Donovan.

- R: Having now just finished your two year traineeship, how do you rate training at RadcliffesLeBrasseur?
- C: During my two years, I spent six month periods in the Health, Commercial Property and Tax & Private Client Departments, and six months in the Commercial Litigation and Employment Departments combined. The great advantage of RadcliffesLeBrasseur is that it offers you real diversity before you choose which area of specialisation suits you best. There can't be many firms which offer you this sort of range. The nature of the work also lends itself to a greater level of responsibility – in comparison some of my friends at larger firms have been doing work which is almost secretarial. [Editor's Note : no ...we didn't actually pay Claire anything to say all this!]

- R: So out of all this diversity, why did you choose employment?
- C: I felt it would be an area which would be challenging over the long term. There has been a wealth of change in recent years and I wanted to go into an area which I thought would continue to develop in the long-term and where there would always be something new to learn.
- R: As you now begin your career as a Solicitor, what is the best piece of advice anyone has ever given you?
- C: I remember when I was going to University, my Grandfather said to me:

“This above all: to thine own self be true. And it must follow, as the night the day, Thou canst not then be false to any man”

I think Shakespeare's words are just as relevant today as they were when they were written 400 years ago. It is important to always be true to

who you are and honest about the ideals by which you try to live your life.

- R: What is your greatest sporting achievement?
- C: Well you could try this. I had the honour of being the captain of the ladies first 11 cricket team at University. I am not sure that this is quite as impressive as it may sound, as I think we were probably good contenders for the worst ladies' cricket team in the history of British cricket! Having said that, it was enormous fun and I still enjoy watching cricket today.
- R: What attracted you to the law?
- C: I had thought about law as a career at school, but opted to study French and Politics at University – the major attraction of which being the opportunity to spend a year abroad! In my third year at University I taught primary and secondary school pupils in the tough northern suburbs of Paris, whilst also studying translation at the British Institute. Teaching was tough and my pupils were often very difficult but, once one communicated with them, they were brilliant and it was a very rewarding experience. Although I thoroughly enjoyed the year, I did not see teaching as a long-term career. In my final year at University, I studied European Union politics and law and from this I returned to my interest in UK law.

Workshop/Seminar News

We are delighted to report that 2006 was probably our best ever year for attendances at workshops and, at the time of going to press, we have had 72 bookings for our annual seminar – again a record.

The programme for 2007 will be announced shortly

If you require any further information regarding the issues mentioned in this bulletin please contact Robert O'Donovan or Sejal Raja.

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REG is on holiday this issue, but plans to be back next time.