



Time for Change

– A New Approach to Flexible Working

Usdaw
*Union of Shop, Distributive
and Allied Workers*

Time for Change – A New Approach to Flexible Working Time

Usdaw's Supporting Parents and Carers Campaign is continuing to deliver real gains for our members both in terms of improving pay and conditions through collective bargaining and winning improvements to statutory rights through our political campaigning.

This year sees the introduction of a raft of important new statutory rights for parents and carers that will make a real difference to the working lives of thousands of our members, both women and men. We are delighted that the Government has listened to our evidence concerning the fact that the majority of our members cannot afford to take up their entitlement to 12 months' maternity leave because six months of it is unpaid. From April 2007, the period of paid maternity leave is to be extended from six to nine months giving women the option of taking another 13 weeks off work to be with their new babies before returning to work. Furthermore, the Government is committed to extending maternity pay to the full 12 months by the end of this Parliament in April 2009.

We also welcome the announcement to extend the right to request flexible working to carers of adults from April 2007. This represents another important step forward on an issue that we have been campaigning for since the launch of our Supporting Parents and Carers Campaign over two years ago. This will enable thousands of carers to have a say in their hours of work and better balance the demands of work with their caring commitments.

And we've made a number of significant strides forward on the bargaining agenda too - almost half of our members (48%) are now covered by agreements that have been improved as a direct result of the campaign. Over a quarter of all improvements concerned paternity pay and a fifth focused on contractual improvements to maternity pay - putting money in members pockets at a critical time when a new baby is

born. We've also been negotiating on issues of working time - things like paid time off for fertility treatment, the right to use holidays at short notice to cover family emergencies and term time contracts.

But we've still got a long way to go. Usdaw's Supporting Parents and Carers Campaign was never intended to be a time limited campaign. It was always going to be a platform from which we would go forward and Usdaw is committed to ensuring that we continue to deliver on family friendly issues for our members. This paper is very much a part of making sure that happens. It outlines the future direction of our Supporting Parents and Carers Campaign, it flags up some of the bigger issues on the family friendly horizon and it commits us to a programme of campaigning action that will result in even bigger wins for our members.

The first part of the paper examines the right to request flexible working. Section 1 outlines what flexible working means and refers to some of the more common flexible working arrangements available. Section 2 looks at how the right is working in practice and whether or not it has made a difference in terms of making it easier for our members to have a say in their hours of work. Sections 3 and 4 explain how restricting the right to parents inadvertently reinforces inequality between men and women - entrenching the long hours culture and casting men in the role of breadwinner and women in the role of carer. Section 5 makes the business case for extending the right to request flexible working to all parents and ultimately to all workers. Section 6 outlines our recommendations for change.

The second part of the paper examines rights to time off work. The right to paid time off work is important for all employees and crucial for parents and carers. There are times during a

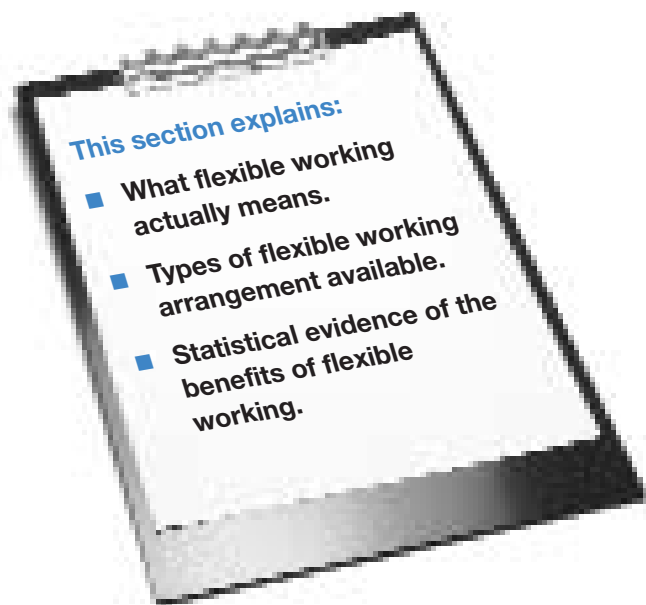
child's life when parents want or need to be away from work – at their baby's birth, during school holidays and when a child is ill. For carers the pressure points are slightly different. Usdaw has its work cut out trying to make sure that all of our members are covered by agreements that give clear rights to paid time off. In Section 7 we provide details of existing statutory rights to time off and give examples of where we have negotiated improvements. Section 8 outlines the business case for improving time off rights and we set out our agenda for change in Section 9. We finish with some frequently asked questions about rights to paid time off work.

Ushaw will continue to campaign not just for better pay for our members, as important as that is, but also for a better quality of working life for our members. That means extending rights to flexible working so that our members are able to make decisions about when they do work and giving genuine options to members about the time they spend away from work by attaching proper pay to 'time off' work rights.

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Section 1 – What does Flexible Working mean?



What is 'Flexible Working?'

Flexible working means different things to different people. In this document we use the term to mean having working hours that enable you to better balance the demands of your job with demands outside of work. It's about having a right to have a say in your hours of work so that you can give your best at work whilst still making sure you have a life outside of it!

Below are examples of some of the most common forms of flexible working time arrangements.

Flexible Working Time Arrangements – The Options

Flexible working time arrangements can take a number of different forms. This section refers to the types of flexible working practices that are most relevant to the sectors in which we organise. The list is split into two – individual and collective options.

Remember, there is no definitive right to work reduced or non-standard hours in order to fit the demands of work with childcare or other responsibilities. Two groups of workers, parents of children aged under six (or in the case of disabled children under age 18) and some carers of adults do have a right to ask for changes in working patterns and hours and there is a duty upon employers to seriously consider such requests. This is known as 'the right to request flexible working.' We examine the impact of the right to request flexible working and its shortcomings in later sections. We also give details of who is entitled to the right to request flexible working in Section 7 – 'Your Rights to Time off Work.'

Individual Options

Part-time work

- Is defined as working fewer than 30 hours a week but can be any number of hours fewer than the standard full-time hours at a workplace.
- Extends employers' ability to cover long opening hours or longer production.
- Enables employees to better manage their caring responsibilities with work.
- Is the most widely used form of flexible working: over 7 million people work part-time (of whom 5.7 million are women)¹.
- Care must be taken to ensure that part-timers are not treated less favourably than full-timers. The part-time workers regulations prevent the less favourable treatment of part-time workers.

Reduced hours

- Voluntary Reduced Work Time Schemes (V-time) allow people to trade income for time off.
- It is most common to give individuals the option of reducing full-time working hours by between 5% and 50%.
- Voluntary time periods vary but six months or a year are most common after which the employee has the right to return full-time.
- It enables employees to better manage their caring commitments, particularly unforeseen situations such as the development of a serious illness within the family. It is also used by employers to enable a phased return for women after maternity leave.
- The organisation retains the employee.

Term-time contracts

- Term-time working allows employees to remain on a permanent contract as either full or part-time employees but gives them the right to unpaid leave during school holidays.
- Annual working hours are divided across school term weeks.
- Average pay can be calculated over a 12 month period.
- It is necessary to know the dates of school terms. A good solution is to agree the dates at the beginning of each school year.
- Service-related benefits continue to accrue.
- Enables employers to retain and attract women with school-age children. Research confirms that a significant percentage of employees are interested in working term-time only (28% of women and 22% of men)².

Job sharing

- Job sharing is where two individuals share the responsibilities of one full-time post.
- Each receives, pro-rata, all the benefits of full-time staff including career progression.
- It allows employers to retain skilled employees in established jobs but with greater flexibility of hours.
- It helps employees to better balance their work with their caring and other commitments.
- Schemes usually allow for some overlap between the job sharers for them to exchange information and plan work.
- It is not uncommon for posts to be deemed 'unsuitable' for job sharing without investigation simply because of the post's salary or status. Employers should be able to offer sound business reasons for refusing.

1. Labour Force Survey: November 2004.

2. Work-Life Balance 2000: Baseline Study.

Compressed working week

- This practice is also sometimes referred to as 'consolidated hours'.
- Weekly hours are compressed into fewer days than normal, for example a four day week or a nine day fortnight, giving employees a longer weekend.
- This form of working involves longer days and so may not be suitable for carers who have responsibility for collecting children from childcare or school. It may suit some carers or parents that have shared care following separation. However, fatigue from a longer working day may affect an employee's performance.

Collective Options

Flexitime

- Flexitime schemes allow employees to vary their working hours within specified limits (core hours) from day to day.
- A certain number of hours (credit or debit) can be carried from one accounting period (typically one month) to the next.
- Flexitime schemes tend to be concentrated in secretarial and clerical occupations. However, there is no reason why flexitime schemes should not be considered viable in other workplaces – eg call centres or larger supermarket stores, although minimum staffing levels would need to be factored in.
- Flexitime is the most commonly used form of flexible working in the UK, after part-time working. One in ten employees currently works flexitime³.
- Employees can fit caring commitments into the start and finish of their day and organise their day to fit their workload.
- Flexitime can eliminate punctuality problems and reduce absence rates (for example 'the alarm didn't go off – it's too late to go in now.')

Shift swapping and self-rostering

- Shift swapping allows employees to rearrange shifts among themselves to suit their needs.
- Self-rostering is very similar to shift swapping. This is where employees schedule their own working day to meet the requirements of service delivery or production. The system is usually based on teams made up of the necessary number of staff and mix of skills to carry out what is required for each day and then individuals propose the times they would like to work. Shift patterns are compiled from this accommodating individual preferences as much as possible.



3. Labour Force Survey: Spring 2001.

■ The advantages of self-rostering are:

- Employees are given greater control over their working hours which gives them greater flexibility to meet their caring commitments.
- It helps to reduce pressure on store/line managers.
- It can help to achieve a better match between staff levels and fluctuations in demand.
- It can help to improve retention.

■ Organising self-rostering requires employees to:

- Individually state their preferred hours.
- Identify hours they specifically do not want to work – ‘veto hours’.
- Review the resulting draft roster to see whether there are mismatches between available staff and hours that must be covered.
- Agree a final roster to cover all required hours.

Staggered hours

- This is where employees have different start, finish and break times.
- It is often used in large workplaces.
- It helps to cover longer working days.
- It helps to accommodate staff with particular needs – ie parents that may need to leave earlier than others to collect children from school.

Evidence from employers and employees about flexible working

It's positive! Employers and employees alike agree, in principle, that flexible working is a good thing! The DTI conducted a survey of employers and employees for their second Work/Life Balance Study. Here are some of the statistics.

Employers

- 81% believe that work/life balance practices have a positive effect on employment relations.
- 75% felt that their staff had become more motivated and committed since the implementation of work/life balance policies.
- 60% reported a better retention of staff.
- Employers also reported that work/life balance had positively contributed to:
 - Increased productivity.
 - Improved recruitment.
 - Reduced rates of absenteeism.
 - Improved the customer experience.
 - Created a motivated and satisfied workforce.

Employees

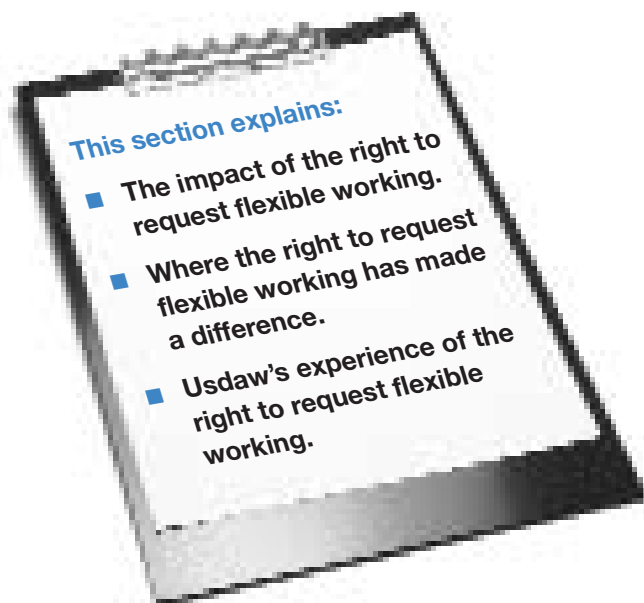
- 70% of employees want to work more flexibly.
- 46% identify flexible working as the most important factor in the choice of their next job.
- One-third would prefer to work flexible hours rather than receive an additional £1000 pay.

However employees also felt that:

- 42% felt that their managers did not understand the work/life balance pressures they were under.
- Many parents felt that their employers did not provide them with enough practical support to enable them to combine work and caring.
- 92% of non-working mothers said that flexible working hours would be essential in returning to work.

But what's actually happening in practice in the UK and has the right to request flexible working made a difference?

Section 2 – The UK Experience – Has the Right to Request Flexible Working made a Difference?



Change hours of work or change jobs

Over a fifth of all employees (who are 'legally' entitled to ask) have asked their employer for a change in their working time arrangements since the right to request flexible working was introduced. But the real question isn't how many employees have requested flexible working but whether it's easier now for employees to change their hours of work? The evidence so far is that it isn't. There's no statistically significant change. This highlights the fact that new legal rights in themselves are unlikely to cause a major change in behaviour unless they are part of a broader cultural change.

Has the right meant that flexible working is more readily available, making it less necessary for employees to change jobs in order to get reduced hours? According to the TUC¹, an analysis of the 420 employment tribunal cases lodged between August 2003 and August 2005 suggests that employers' lack of flexibility continues to force people out of their jobs and the law provides little redress. Four out of every ten flexible working claims include a complaint of unfair or constructive dismissal.

Part-time pay penalty

Women still experience a problem of reduced pay after a request to change hours of work. Research by the Maternity Alliance² found that one in three women whose requests were agreed had to 'pay' for this either with a demotion, a reduction in hourly wages or increased workloads.

Nor is there any evidence that the right to request flexible working has done anything to narrow the part-time pay gap. If the law was effective in terms of reducing the penalties associated with switching from full-time to part-time work we could either expect a narrowing of the pay gap or an increase in the percentage of higher paid part-time jobs.

Section 4 examines in more detail issues relating to part-time work and in particular the price part-time workers pay for flexible working arrangements.

1. Out of Time: Fagan, Hegewisch, Pillinger.
2. Happy Anniversary: The Maternity Alliance.

The differences between women and men

Whilst men are increasingly making requests for flexible working in the UK (and the Netherlands too) women far outnumber men. In the UK twice as many women make requests than men.

Men are not only less likely to ask but are also more likely to be turned down. More than a quarter of all flexible working tribunal claims came from men and yet almost half were lost. One reason why men are more likely to lose their case might be because they rely solely on the right to request flexible working whereas almost two-thirds of women combine reference to the right to request flexible working with a claim for indirect sex discrimination.

Long working hours in the UK are particularly prevalent in male dominated occupations. This can make it very difficult for men to feel confident to ask for flexible working and for employers to consider it something that men should be encouraged to do.

Women find it easier to have their requests accepted and are more likely to make requests which lead to a reduction in their working hours and therefore their pay. Inevitably this means that in couple households men have to work more hours to make up for the reduction in household income. This in turn entrenches women's role as carer and men's as breadwinner. We examine this in more detail in Section 3 – 'The Long Hours Culture'.

Unsocial hours

Many of our members work unsocial hours. An individual's right to adjust hours can only do so much without a broader framework that either restricts when and for how many hours people work or ensures other services such as childcare and public transport are extended.

In France the deregulation of the standard working day went hand in hand with a significant increase in childcare availability during non-standard hours³. As part of our evidence to the Government to make the case against deregulation of Sunday trading hours we conducted a survey of our members. Over five thousand members replied. They told us in no uncertain terms that working on Sundays causes them two specific problems. The first concerns childcare and the second transport.

Care arrangements and transport problems working unsocial hours – members' voices

Care Arrangements

72% of members with caring responsibilities and 61% of members with children reported that they found it extremely difficult to make suitable alternative care arrangements where they were required to work on Sundays.

Whilst some parents find that Sundays are possible for them to work because their partner is at home, it must be remembered that in an increasing number of families, both partners have to work at weekends:

"The reason I do not work on Sundays is because I have a three year old child and I could not get anyone to look after her. My husband works Sunday so it would be impossible for me to do so."

"Sometimes my husband gets called out so he can't look after our daughter so we have to try and find family to, as the childminder doesn't work weekends, she says that's her family time."

"When both of us work in the same shop, I get asked to work a Sunday for holiday or sickness cover, we have to make sure my husband isn't working because childminders don't work on Sundays and grandparents have their own lives."

3. Fagnani and Letablier 2006

Childcare can also pose particular problems for single parents:

“Being a single mum with a 7 year old child. Increasing the opening hours would put a strain on not only myself but my family for child care.”

Childcare cannot only be very difficult to arrange for Sundays but it is also very expensive as one member points out.

“Additional hours means more money to be paid to a babysitter which is very hard to get on a Sunday. As well as babysitting requires more money because it is a Sunday.”

Transport

Many staff in retail do not have access to cars eg young workers may not yet be able to drive, staff may not be able to afford cars and for workers in town centres driving is sometimes not practical and parking expensive.

Staff are therefore reliant on public transport and favours – both of which are very hard to come by on a Sunday morning:

“It’s hard to get in by public transport at the time I start. In fact public transport is non-existent until 10.00am, which is no good. So I have to rely on a family member to get me there for 7.00am and pick me up at 2.00pm because public transport doesn’t get there until 3.00pm.”

“I rely on public transport and on a Sunday only taxis are available which is very expensive therefore six hours is ok but any beyond that would mean I’d have to pay for premium rate taxis.”

“Cannot always get a lift into work. Public transport does not run until 12 noon.”

“I have to be driven into work as my local bus doesn’t run very often during Sunday which is unfair for that person. I will be looking at opting out of Sunday working.”

“Public transport is appallingly unreliable on a Sunday and doesn’t start running until after I have to be at work, so it is very difficult for me to get to work on time without having to rely on others or get a taxi, which is an extra cost to me!”

See Section 3 – ‘The Long Hours Culture’ for more information and for details of Usdaw’s successful ‘Save our Sunday’s Campaign’.



Workplace culture

Progress in terms of changing workplace culture and in particular of employers opening up flexible working to those employees not necessarily covered by the statutory right is patchy. Progress appears to have come mainly from employers already open to flexible working arrangements. The bigger question is how far the laws have been able to shift employers who are hostile to individual flexibility. There clearly are some cases where individual employees have relied on the right to request flexible working to challenge inflexible employers in employment tribunals but this generally happens only after the employment relationship has ended. For many of our members (and indeed for most employees) a legal challenge is the last option open to them. It usually means that the employment relationship has deteriorated to the point of 'no return'.

In fact research commissioned by the TUC⁴ shows that employees only make a request in the first place either where they have no option or where they are reasonably certain of a sympathetic reception.

In the UK, according to the Labour Force Survey, almost three-quarters of employees who said they would like to reduce their hours didn't tell their employer. And two-thirds of those who are either dissatisfied or very dissatisfied with their current work arrangements stayed silent.

One explanation for this is a lack of understanding of the whole work/life balance agenda by employers and a feeling that it has nothing to do with them, even today in the 21st century.

Surprisingly two-thirds of line managers felt that it was not their responsibility to deal with employees' work/life balance problems (Acas 2005).

Much still remains to be done in the UK in terms of making flexible working arrangements a part of everyday workplace culture. There needs to be a greater understanding at senior management level of the strategic importance of flexible working arrangements and the right needs to be strengthened and ultimately extended to all workers for it to really start to impact on workplace culture.

In Section 6 we examine in some detail the shortcomings of the legislative right to request flexible working and make recommendations for change.

The experience of Usdaw officials, reps and members

In some of the big stores, although managers in general tend to be good at granting requests for flexible working, they tend to refuse requests from section managers and above as there is an expectation that they need to work set hours.

Some employers refuse requests because they fear that if they grant flexible working for one they will be inundated with requests.

Our officials are finding that employers are more likely to grant requests when they are challenged through grievance procedures.

Employers are refusing requests without really looking at the alternatives. It has taken our officials to sit down with employers and look through shift patterns and rotas to try and accommodate employee requests.

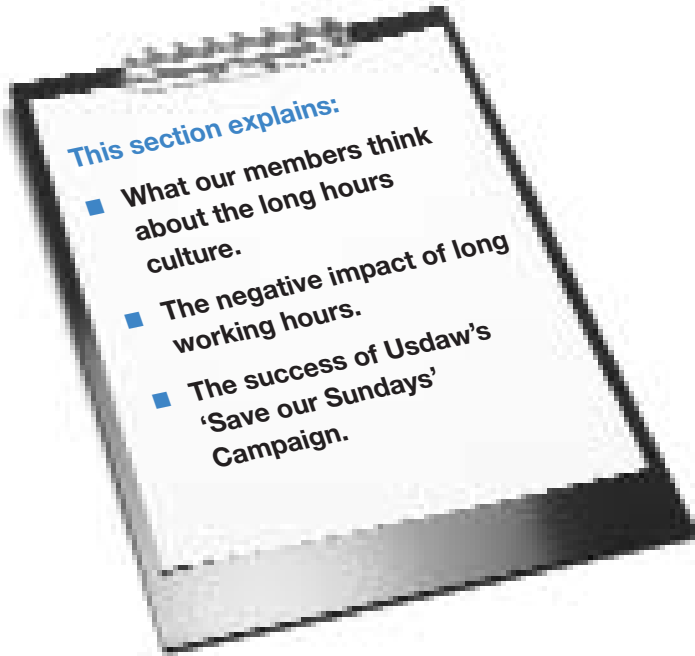
In some companies HR departments are not filtering down the rights of employees therefore managers are refusing requests because they are unaware of the employee's rights. Our officials are finding that this is deliberate in many cases.

They also found that most companies use the legislation to refuse requests for flexible working by making sure they cite a business reason for the refusal even if it is not the genuine reason for the refusal.

Our officials noticed that more and more men seem to be making requests.

4. Out of Time: Fagan, Hegewisch, Pillinger.

Section 3 – The Long Hours Culture



This section explains:

- What our members think about the long hours culture.
- The negative impact of long working hours.
- The success of Usdaw's 'Save our Sundays' Campaign.

The concept of Monday to Friday, nine to five, as the normal working week is unrecognisable to many of our members, the majority of whom work in the 24-hour, 7-day a week retail sector. In fact work outside of these times is normal for hundreds of thousands of workers across the UK. Britain, along with Ireland, now has the longest working hours in the enlarged European Union. Only Poland and Latvia have longer average working hours. According to the Work Foundation there appears to be a growing acceptance of a long hours culture and a culture of presenteeism at work across Europe¹.

We don't believe that most people work long hours out of choice. We believe that most people do so because they have no alternative. Hundreds and thousands of our members do so simply to make ends meet. In our 24/7 society we increasingly have a workforce available any time, any place, anywhere.

Usdaw's Save our Sundays Campaign represents a crucial victory in enabling our members to achieve a better work/life balance.

Most retail staff have to work on Saturdays which is the busiest trading day of the week and stores open for as many hours as possible. They also often work unsociable hours during the week when the busiest shopping times are in the evenings:

Our members say:

"Unfortunately the general public too often view Sunday purely as an extension of the working week. People forget that most retail sector workers rarely, if ever, get two consecutive rest days off. Also the public forget that many retail workers have to work unsocial hours to maintain levels of stock and service."

"Why can't we have one day out of seven where we can have a half-day and actually have a life other than working at (company). Just greed!"

1. Cowling: 2005.

We know that the vast majority of our members are either parents of school age children or have other caring or family commitments. Sunday is usually the only day when they can spend time with partners, family and friends who do not work at weekends, and with children who are at school all week. For parents, Sundays are particularly important for them to ensure that they spend quality time with their children:

Our members say:

“It’s the only day I definitely get with the family and I’m not prepared to give that up.”

“Sunday is the only day I get to spend with my four little children so when I have to work I do not really see them. Working Sundays is not very good for a family unit.”

“Children grow up very quickly and it would be nice to see them grow up and take part in their growing up.”

“It’s one day you could be with the family, going out, talk to the children. ... Working Sundays was a long day wondering how much time I have got left to be with my family after seeing the others with their family.”

Usdaw’s evidence has shown that the extension of Sunday opening would put much greater pressure on parents to work at weekends and therefore reduce the amount of time that children are able to spend with their parents.

It is not just parents who value Sundays as a family day. For many of our members Sunday is the only day that they can spend time with other family members too. With more families living further away from each other, the opportunity for visits is extremely important to many people:

Our members say:

“Now I work every Sunday and Saturday. It is very difficult to see family members who live in Birmingham. It would be nice to have the odd Sunday off.”

“I work full-time and think I work enough hours. I like Sundays to spend time with my husband and although my family are grown up I have a granddaughter I want to spend my time with on Sundays.”

“Sundays are family days for me. The only day that we are all together and also able to visit a disabled relative or take her out for the day.”



Nor are Sundays just days for families, they are also days for friends and socialising. Many of our members feel that weekend working already intrudes too much on their ability to socialise with friends and family, and to attend events such as weddings which occur at weekends:

Our members say:

“It is bad enough having to work until 10.00pm week days, don’t we get a social life?”

“It has a very social strain on meeting up with friends at the weekend, as a lot of people don’t expect you to work on a Sunday and most people organise social events at the weekends.”

And this isn’t just our members’ experience. As we’ve said before, people in the UK work some of the longest hours in Europe.

Let’s look at the statistics:

We know that over four million people in this country work 48 hours or more. And we do the most unpaid overtime. Five million of us put in the equivalent of an extra day of work each week – benefiting employers to the tune of £23 billion a year – more than the gross domestic product of Kenya. Indeed, since the Working Time Directive came into force in 1998, average working hours for both men and women have actually increased.

The number of those working more than the 48 hour threshold has nearly trebled and that’s hardly a surprise given that one in three workers who signed the UK’s unique opt-out were coerced into doing so.

Usdaw is calling for a fundamental re-think on working time – and an end to the individual opt-out used and abused by too many employers. And we want to see not just shorter working weeks but fewer weeks spent working.

In the UK we have an average of 28 days of leave a year – compared to 47 days in France and 44 in Italy. Our level of public holidays is the lowest of any EU state including the 10 accession countries. Overall, taking longer working weeks and shorter holidays into account, the British spend around eight weeks a year more at work than their European counterparts. For all this toil, there’s scant evidence of any productivity pay off but plenty of evidence of stress and strain as people’s personal health and relationships with friends and family suffer.

The impact of the Long Hours Culture

It doesn’t take a rocket scientist to figure out that long working hours have a negative impact on personal, social life and relationships. There’s also evidence that long working hours actually have a detrimental impact on productivity and that they result in a rise in stress-related absence².

Long hours work against ‘smart’ working and modern management practices³. Similarly, it has been found that long working hours undermine good employment relations and team working⁴.

Long working hours also help to fuel women’s decisions to work part-time hours and this affects inequality between men and women. Men in the UK work the longest hours in Europe. Less than one in ten men works part-time compared to almost half of all working women. The propensity of mothers to work depends on the age of their youngest child. Fatherhood has no impact on men’s working patterns. All of this limits men’s participation in family life and reinforces the long hours, short hours working time culture among working families. Part of the problem is that traditional pay structures, based on a full-time work model and a culture of overtime, continue to

2. Burchell and Fagan 2004, CIPD 2004

3. Cowling 2005, DTI 2005b

4. Messenger 2004

reinforce this unequal division between paid and unpaid work. These pay structures and working patterns aren't working for either women or men.

In fact working time schedules associated with different jobs can perpetuate gender segregation. This is particularly apparent in the retail sector – which is the second largest employer of women in the UK, the first being the NHS. Just under two-thirds (63%) of the retail workforce are women⁵. Part-time work has often been created explicitly to recruit or retain women⁶ while the requirement for working long hours, in particular jobs such as management, helps to preserve this area of employment as a largely male enclave⁷. Again this is very true of the retail sector where there are large numbers of part-time positions, filled in the main by women. In fact just under half of all jobs in retail (44%) are filled by women working part-time⁸. A distinct gender bias has historically operated and indeed continues to operate in the retail sector in terms of the jobs men and women do. The majority of male jobs are full-time; the majority of women's jobs are part-time. This has led to the sector being dominated by women and managed by men.

In the UK we continue to associate flexible working time with a caring role. The way in which the right to request flexible working currently operates and the UK's current approach to it is in danger of creating what has been termed the 'mummy track' and it is effectively a dead end. We have a right to request a system which effectively entrenches women's role as carers and men's role as providers. Numerous studies have shown that women in particular pay a high price for flexible working hours precisely because this entire issue tends to be seen as a women's issue and associated in the minds of most employers with women. Women become 'problem employees' in the minds of many employers.

In the next section we examine in more detail the price women (and men too) pay for flexible working hours and how the full-time, part-time work divide is reinforced by the current way in which the right to request flexible working is structured.

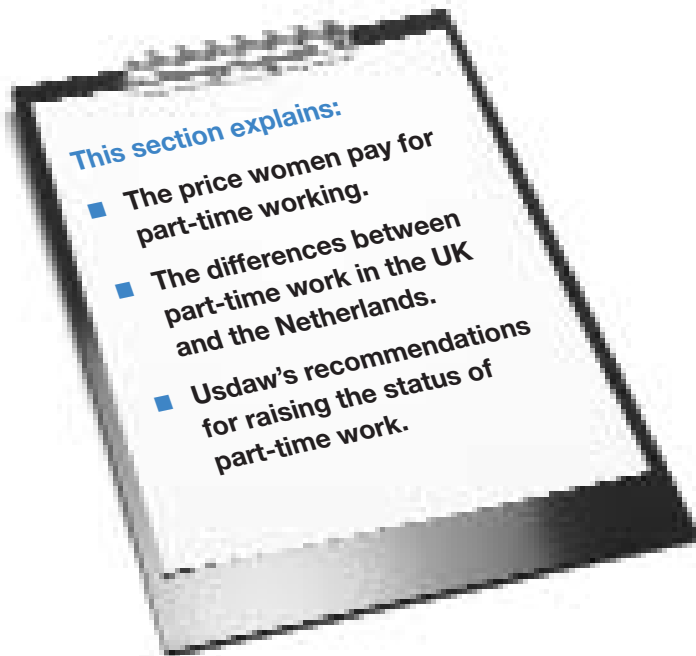
5. Labour Market Trends, published by the Office of National Stats, Jan 2005

6. Beechey and Perkins 1987, Horrell and Rubery 1991

7. Simpson 1998, Wajcman 1998

8. Labour Market Trends, published by the Office of National Stats, Jan 2005

Section 4 – The Price of Part-time Working



When asked by Government, the majority of employees say the most important working condition for them is to have access to genuine flexible working.

But we know that part-time workers and those who work flexibly are still considered second best. Part-time workers are perceived as less committed, less valuable and less important than their full-time colleagues. This is still very much the case despite the introduction of the part-time workers regulations. Our experience is that the part-time workers regulations have failed to root out the deep seated prejudice that women working part-time in low paid industries, like retail, are second rate employees.

Furthermore, working part-time brings a heavy pay and promotion penalty with it and most people, especially men, know this.

Research confirms that most part-time jobs are concentrated in a narrow range of occupations that are typically lower paid and lower status female-dominated service jobs¹. It is still the case that less value is placed upon the work women do than the work men do and they are less likely to be rewarded to the same extent as men.

We also know that between a third and a half of women working part-time work below their potential and are not using their skills, experience and qualifications². The Equal Opportunities Commission reported important new findings in relation to part-time work in their document – 'Working Below Potential'. These are:

- A massive 53% of women working in low paid, part-time jobs were working below their potential, ie they were not using all their skills, or labour market experience, or qualifications in their current job.
- Managers are often unaware of the skills, talents and aspirations of women working in low paid, part-time jobs.
- Women who wanted to continue working part-time often lacked opportunities for progression and promotion in their place of work.

1. OECD 1994, O'Reilly and Fagan 1998

2. Francesconi and Gosling 2005, Grant et al 2005

- Managers were mostly resistant to creating senior level, part-time jobs.
- Once in a low paid, part-time job, women tended to lose their confidence in their abilities and skills and become trapped at the lower level.
- The tendency for part-time jobs to be located within a low waged segment of the economy is partly underpinned by some managers' negative views about the jobs part-time workers do and about part-time workers themselves.

These findings strike a chord with our members' own experiences of working part-time:

- In the majority of workplaces in which we organise there is still an unwritten requirement that middle to senior management jobs must be done on a full-time basis and require long working hours.
- There are too few women in managerial positions in the retail sector to 'kick start' the cultural change in attitude needed to challenge the above belief.
- We have evidence that women seeking support and flexibility from their employer are all too often ignored as they're seen as dispensable and replaceable.

We also know that working part-time not only has a massive impact on women's earning capacity but it also impacts on their ability to learn and develop new skills and therefore keeps women trapped in low paid, low status work.

■ **Restricted access to training and learning for women in our sectors**

- The time and location of learning as well as the type of institution and the style of tuition can all act as barriers to women accessing learning.

- Learning can be expensive – the majority of Usdaw women members are low paid and often do not perceive their own learning needs to be sufficiently important to justify the cost or the loss of pay that taking up learning opportunities might entail.
- Many Usdaw women members lack the confidence to return to learning. The indications are that half of all women in Usdaw left school with few or no qualifications³.
- Women in low skilled, part-time work are less likely to receive training than those in full-time, skilled work as the amount of training required to perform the job effectively is limited. Work-related training often acts as the first rung on the learning ladder and so women in our sectors find it particularly difficult to get a foot on the training and learning ladder.

The cost of part-time working

This gender division and the lack of work/life balance and opportunities for flexible working at the middle to top end of grading structures has costs attached for individuals, families and society.

Despite their increased participation in the labour market and massive changes in their lives, women are still the primary carers of children and dependant adults. Recent research confirms that women still do the majority of the care and domestic work even in couples where both are employed full-time⁴. The fact that women still have primary responsibility for care and domestic work restricts their ability to go out to work, which in turn has a damaging impact on their lifetime earnings and occupational advancement compared to men. It often means that women don't pay National Insurance contributions or have big gaps in their contribution record and this means they are far more likely to retire into poverty than men.

3. Joint evaluation exercise conducted by Littlewoods and Usdaw

4. Harkness 2005, OECD 2001

We know that men find it difficult to ask for flexible working because of the impact that it has on their career prospects, long-term social protection like statutory sick pay entitlement and pension provision and also their financial responsibilities to their families. After all, why would men want to work part-time or work flexibly when they know the price they will have to pay for doing so.

The UK versus the Netherlands

There are some significant differences between the status and pay of part-time workers in the UK and the Netherlands. UK employees face greater penalties and have fewer choices than their colleagues in the Netherlands.

Take a look at the following statistics⁵:

- The part-time gender pay gap in the UK stands at 38% - the same as it was over 30 years ago when Equal Pay legislation came into force. In the Netherlands it is less than 2%.
- Over half of all part-time jobs in the UK are concentrated in low skilled sectors of the economy compared to only 3% in the Netherlands.
- Three-quarters of women part-timers in the Netherlands said that they controlled or could negotiate how many hours they worked compared to less than half of part-time women workers in the UK.
- In the Netherlands a quarter of all couples, both mother and father, now reduce their working hours after the birth of a baby.

Research shows that if women's potential in the labour market is to be realised the division between part-time and full-time work needs to be broken down. We need to develop a positive approach to flexible working, an approach which recognises that part-time working along with other flexible working opportunities should be available in a range of jobs and that a range of people would want to access them.

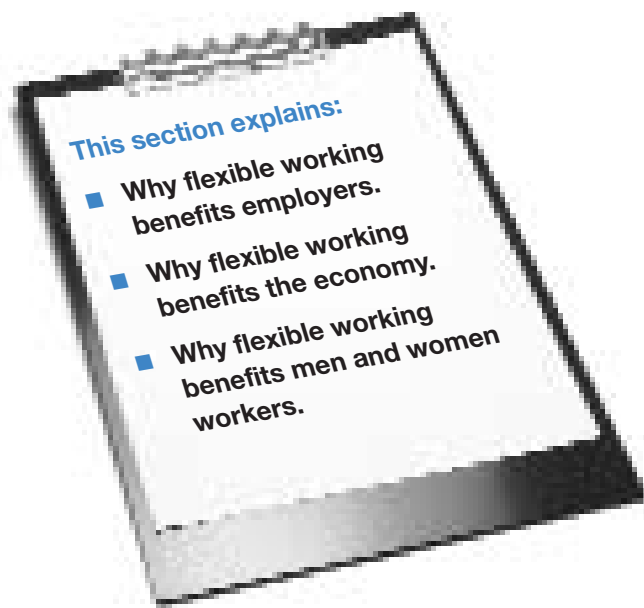
Creating a culture where flexible and part-time working was normal and acceptable allows men and women, young and old to engage with lifelong learning and results in a fairer balance of work and reduced working hours for both. It would enable men to care and participate more fully in the lives of their families and give women the option of taking up more paid work or progressing through the grading structures to section and store manager levels.

To break down the division between full-time and part-time work, to address occupational segregation and the low status of part-time work, we need to ensure that we:

- Encourage the creation of more part-time jobs at every level, in every workplace including at senior and management levels.
- Encourage employers to adopt new and imaginative approaches to job design and job rotas to break down the tendency for employers to routinely replace jobs on a 'like for like' basis, full-time with full-time and part-time with part-time.
- Continue to ensure that women working part-time in the sectors in which we organise are given due recognition, value and reward.
- Open up opportunities for advancement and progression for women working 'on the shopfloor'.
- Tackle the long hours culture which traps men and women into traditional gender roles.
- Negotiate genuine work/life balance policies in every workplace.
- Press the Government to honour its commitment to extend the right to request flexible working to all parents and to implement it as a matter of some urgency.
- Press the Government to extend the right to request flexible working to all.
- Continue to build upon the work already begun by our Supporting Parents and Carers Campaign in persuading employers to extend the right to all employees.

5. Russo and Hassink 2005, Cousins and Tang, 2004

Section 5 – Making the Case for Extending the Right to Request Flexible Working



In the previous sections we've examined in some detail how restricting the right to request flexible working to parents of young children and to carers of adults reinforces gender inequalities and the long hours culture in the UK.

In this section we make the business case for extending the right to request flexible working to all workers.

There are strong practical arguments for extending the right to work flexibly to all employees, as many employers currently do. See Section 7 – 'Your Rights to Time off Work' for examples of employers that have opened up the right to request flexible working to all staff.

It makes good business sense

The right to request flexible working has been popular and has led to no major implementation difficulties. After all it is only a right to ask, employers are not under any obligation to agree requests where it will have a detrimental impact on the needs of the business.

In fact the business case for flexible working is already well established and is referred to in detail in Section 8 – 'The Business Case for Improving Rights to Time off'. There is strong evidence that where employers offer a range of work/life balance benefits they report a positive impact on the following:

- Increased productivity.
- Improved recruitment and retention rates.
- Lower absenteeism and sickness absence levels.
- A more motivated, committed and loyal workforce.
- Improved team working and employee morale.
- Lower levels of stress.
- Better able to utilise the skills and experience of all staff.

Learning and skills

Usdaw has done a great deal of work with employers to agree a range of initiatives to improve training and lifelong learning opportunities in the workplace. We are continually working with employers to try to include time for learning into working life.

Negotiating time for learning is particularly important in our sectors as we know that women in low skilled, part-time work are less likely to receive training than those in full-time, skilled work, as the amount of training required to perform the job effectively is limited.

Work-related training often acts as the first rung on the learning ladder and so women in our sectors find it particularly difficult to get a foot on the training and learning ladder. Usdaw's union learning reps play a vital role encouraging our members, and our women members in particular, to access learning and so improve their skills and confidence. The increase in skills and confidence levels enables women members, often clustered in low paid jobs at the lower end of grading structures, to change direction and progress in their jobs.

As we've said elsewhere in this paper, creating a culture where flexible and part-time working is normal and acceptable allows both men and women, young and old, to engage with lifelong learning and re-training.

Active ageing

The number of older people in the UK is set to rise sharply. It is estimated that the number of people aged over 65 will rise from 25% of the working age population (as it is currently) to 40% in 2030 and to 45% in 2050.

This has resulted in a number of initiatives aimed at increasing the employment of older workers. Many of our members may not choose to work beyond the age of 65 but because of poor pay and pension provision may need to. Allowing older workers to maintain their link with the labour market without being forced to work long hours means employers making flexible working practices available to them.

The facts speak for themselves. Recent research by the National Audit Office found that there are up to one million potential workers above the age of 50 who are partly discouraged from actively seeking employment due to the the lack of flexible working options.

Reinforces inequality between men and women

All of the evidence so far is that the majority of requests are made by women and usually involve a reduction in working hours and pay. Section 4 – 'The Price of Part-time Working' examines in more detail the price women pay for working part-time and flexible hours. In addition to the loss of pay, women also lose out on career and other opportunities to progress at work. Prejudice about the commitment, potential and aspirations of part-time workers and a lack of imaginative thinking on the part of employers about the hours in which jobs can be carried out helps to reinforce the second class citizen status of part-time workers (the vast majority of whom are women) in the UK.

In families with two parents this often means that men end up working longer and longer hours to make up for the loss of women's pay. This does nothing to tackle the long hours culture – see Section 3 for a more detailed explanation.



Limiting flexible working to parents and carers creates a vicious circle in which women are continually cast as 'carers' with few options for increasing their earnings and progressing and men are cast as 'breadwinners', working longer and longer hours and playing less of a role in family life than they would like.

Fairness

As it stands the current system is in danger of creating a culture of resentment towards those workers with caring responsibilities. There are undoubtedly lots of people who want to work flexibly who don't have any caring responsibilities. But the answer isn't to take away rights from parents and carers but to extend the right to all workers.

Not only will this help by removing resentment and division within the workplace and so improve team working, it also puts employers in a better position to agree requests. Why? Because if the right is opened up to all employees it gives employers a bigger pool of people to choose from in terms of coming up with solutions. Different sections of the workforce prefer different working hours. Balancing these different demands for working hours should be easier to achieve if the right to request is made available to all employees.

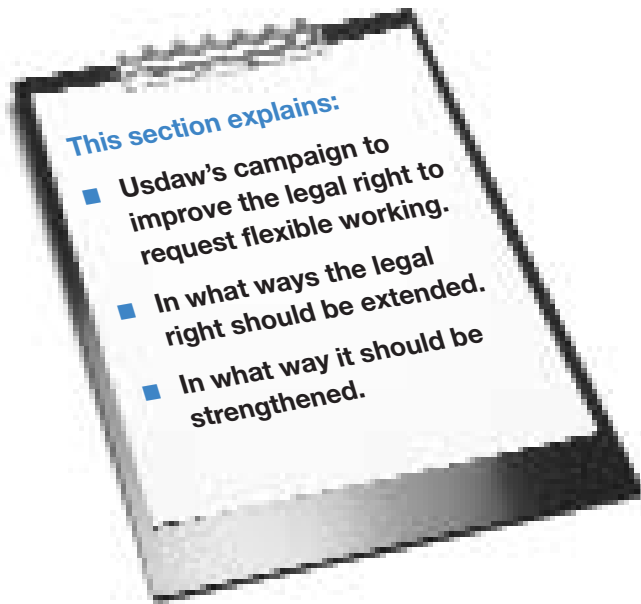
It would also help us to move away from the view that the right to request flexible working is a 'womens' issue. This has led to some employers, particularly smaller employers, viewing women as 'problem' or awkward employees with more rights than anyone else.

Mainstreaming flexible working

Currently, flexible working is seen as a problem or as a penalty that women with caring responsibilities have to pay. By broadening the focus we can link flexible working to all kinds of things like lifelong learning and training or study leave and to all groups of workers. This in turn will help to affect that all important change in workplace culture and make flexible working part of the mainstream, every day work experience.

Spreading flexible working practices throughout grading structures is key to combating the UK's long hours culture as well as raising the status of part-time work - both of which are key Usdaw policy objectives.

Section 6 – Recommendations for Change



As well as working with employers to negotiate agreements that extend the right to request flexible working to all employees we are working with the Government to press for changes in the legislation. We want the legal right to request flexible working strengthened and extended to all workers. As it stands, the legal right is too weak to kick start the change in workplace culture that is needed to spread flexible working throughout grading structures and make flexible working and part-time hours the 'norm' rather than the exception in the UK economy.

In view of this, Usdaw is campaigning for:

- ***The extension of the right to request flexible working to all parents of dependent children and ultimately to all workers.***

Usdaw believes there is a strong case to extend the right to request flexible working to all parents of older children. Parenting is demanding throughout childhood and into adolescence. We believe that limiting the right to parents of very young children (aged under 6 or 18 if disabled) doesn't reflect the varying needs of parents at different stages during their child's life. For some parents the need for flexibility may be when the children are very young, but for others it might be when their child starts secondary school or during their teenage years. It will be different according to individual family circumstances which are unpredictable and can change.

A key element of Usdaw's Supporting Parents and Carers Campaign is to press for the right to request flexible working to be extended to all parents of dependant children aged under 18. Whilst a staged approach may be necessary, we ultimately believe there is a strong case for the right to be extended to all workers. See Section 5 – 'Making the Case for Extending the Right to Request Flexible Working' for more details.

■ ***The regulations governing the right to request flexible working are strengthened and 'collectivised' in the following ways:***

At the moment the onus is on the individual to make a case based on their circumstances and needs. We have anecdotal evidence of real inconsistencies in the way employers treat requests. At best employers all too often require parents and carers to 'justify' why they are making their request. We know that members are frequently asked to explain in detail their personal circumstances in order to 'persuade' their employer to agree their request. In one instance a member was advised by a manager that she should speak to social services about alternative care for her children. At the very least we recommend that guidance on the regulations is published which explicitly indicates that it is inappropriate for managers to make judgements about how much care a child or individual needs, and whether the level of care justifies the working time arrangements.

We also have anecdotal evidence that some managers consider very similar requests differently. We know of instances where managers have agreed requests to 'reward' a member of staff they consider to be a 'deserving employee' and have refused requests because someone has not shown what they consider to be a sufficient level of commitment and loyalty to the company. Again this is inappropriate and indicates that at the moment it is simply too easy for an employer to pick a reason from a menu of options for refusing a request. This leaves the person requesting the change in working hours high and dry.

For many the choice they are left with is to work the hours that don't suit them or not at all. In fact this really leaves them no choice at all.

Usdaw believes that the regulations must be strengthened to make it harder for employers to refuse requests unreasonably. At the moment tribunals cannot examine an employer's reasons for refusing a request. Tribunals can only decide whether or not the statutory procedure has been followed. We recommend that tribunals are not only given the power to scrutinise an employer's reasons for refusing a request but are able to require employers to trial new working patterns.

■ ***Compensation***

At the moment compensation is limited to eight weeks' pay only plus an additional two weeks' pay if the employer either failed to hold a meeting or didn't allow the employee to bring a companion to the meeting. Pay is capped at a maximum, at the time of writing this is £310 a week. Therefore the maximum amount of compensation that can be awarded is £3,100 (in the absence of a reference to sex discrimination). This cap must be removed and the levels of compensation tribunals can award increased, which would act as an incentive to ensure that employers take the process seriously.

■ ***Training for employers***

We are also working with employers to ensure the right to request flexible working is extended to as many employees as possible. As part of this we would specifically like to see managers and supervisors training strengthened in 'managing requests for flexible working'. Government and employers should develop training packages particularly for first line supervisory staff so that they can manage and implement requests more effectively.

Section 7 – Your Rights to Time off Work



One of the biggest headaches for our members is getting urgent time off when a member of their family is ill. Nearly two-thirds of members have told us that family illness causes real problems.

Parents are left feeling guilty about having to go into work when they really need to be with their child or not going into work, staying at home with their poorly child and feeling guilty about letting their colleagues down. It's a 'Catch 22' situation.

Needing time off to take a disabled relative or child to a medical appointment is another significant pressure point – members using up holidays or taking unpaid leave simply turns up the emotional and financial pressure.

And school holidays play havoc with our members 'work/life balance'. We know that many of our members spend hours trying to stitch together a patchwork of childcare provision over the summer months that they are rarely entirely happy with.

These are the issues that matter to our members. The right to paid time off work to meet caring commitments is crucial for parents and carers. Parents often need to be away from work to spend time at home when their child is ill, to take their children to the dentist or the doctor or to attend school sports days.

Prospective adoptive parents may have to attend court proceedings or meetings with social workers at short notice. They may also need to spend periods of time at home with a child prior to formal adoption as part of a bonding or settling in period.

For carers the pressure points come at different times – settling a relative into residential care, hospital visits, meetings with social services or to be there in an emergency such as when the person they care for has tripped or fallen.

This is the reality. Yet for many Usdaw members it is often very difficult to get time away from work to meet their caring commitments. The three main problems parents and carers in Usdaw face are:

- There is often not a clear cut right to leave – it usually relies on management discretion.
- Statutory rights to time off are often unpaid or where it is paid, such as in the case of maternity leave, the pay is nowhere near enough.
- When leave is granted it's often not for long enough.

This section outlines statutory rights to time off as of April 2007 and describes our members' current experience of these rights. Due to Usdaw's lobbying of the Government many of these rights have been significantly improved.

Maternity Leave and Pay – The Statutory Right

Maternity Leave

- All women regardless of their length of service are entitled to 52 weeks' maternity leave. The first 26 weeks of leave is known as Ordinary Maternity Leave and the second 26 weeks' leave is known as Additional Maternity Leave.

Ordinary Maternity Leave (OML)

- Ordinary Maternity Leave (OML) lasts for 26 weeks. The same terms and conditions of employment apply, including the right to return to exactly the same job except for the salary (unless agreed otherwise).

Additional Maternity Leave (AML)

- A further 26 weeks' Additional Maternity Leave (AML) where some terms and conditions apply such as notice and redundancy pay.
- AML follows straight on from the end of the 26 weeks' OML.

Notice of Return to Work

A woman must give eight weeks' notice if she decides to change the date of her return from maternity leave.

Reasonable Contact

An employer may make reasonable contact with the employee to keep in touch during maternity leave.

Keeping in Touch (KIT) days during Maternity Leave

- An employee may work up to 10 Keeping In Touch days (KIT) during OML or AML without bringing her maternity leave to an end. This must be agreed by both the employer and the employee.
- They can be taken at any time during the entire maternity leave period (with the exception of the first two weeks' compulsory maternity leave or four weeks' if a factory worker).



- The KIT days can be taken up separately or as a block.
- Working for part of the day counts as a day's work.
- Any days of work will not extend the maternity leave period.
- An employee is protected from detriment and unfair dismissal for working or refusing to work during maternity leave.
- There are no specific provisions in the regulations in relation to pay for KIT days. These need to be agreed by the employer and the employee.

Statutory Maternity Pay (SMP)

- Statutory Maternity Pay (SMP) is a weekly payment for pregnant employees. Although it is administered by employers they are able to claim most of it back from the Government.
- SMP is payable for 39 weeks.
- To qualify, employees must have worked for the same employer for at least 26 weeks continuing into the 15th week before the Expected Week of Childbirth (EWC) – this is known as the qualifying week.
- Employees must have average weekly earnings of not less than the lower earnings limit for the payment of NI – £87.00 before tax in the eight weeks before the end of the qualifying week.
- For the first six weeks SMP is paid at 90% of average weekly earnings with no upper limit. For the remaining 33 weeks it is paid at a flat rate which increases in April every year and is currently £112.75 or 90% of average earnings if that is lower.

Other changes have been introduced to harmonise the statutory maternity pay and leave regimes.

- SMP (or Maternity Allowance) can start on any day of the week rather than the Sunday following the day the woman stopped work as is currently the case. This allows SMP to

start on the day a woman begins her maternity leave.

- Employers can also pay SMP on a daily basis so as to align it with a woman's normal pay period.

Maternity Allowance

Maternity Allowance is a social security benefit administered and paid by the Department for Work and Pensions and is usually paid to women who don't satisfy the qualifying conditions for SMP. Maternity Allowance is also to be extended from six months to nine months from April 2007, rising to 12 months in April 2009.

Take Up

Nationally

The DTI¹ found that due to the extension of the maternity leave period in 2003 the proportion of mothers taking 18 weeks' leave or less fell from 42% in 2002 to 9% by 2005, while the proportion of mothers taking five to seven months leave rose from a third to a half, and the proportion taking more than nine months increased from 9% to a quarter.

Usdaw Members

Our 2005 Supporting Parents and Carers survey found that 81.4% of Usdaw women members would have liked to have taken more time off. The main reason for going back to work was that they could not afford to take any more time off (44.1%) and only 4.4% had taken the maximum leave entitlement.

Our findings showed that on average women returned to work six weeks before the end of OML as they could not afford to remain at home any longer.

1. DTI – International Review of Leave Policies and Related Research 2006

In December 2006 the following companies were paying above the statutory minimum:

Tesco

Employees with more than two years' service receive the first six weeks at either the normal contractual weekly rate or the average of the last eight weeks' pay before the end of the qualifying week, whichever is the greater. The remaining 20 weeks are paid at the flat rate or 90% of average earnings, whichever is lower.

Everyday Financial Solutions

Everyday Financial Solutions (Littlewoods) pay 100% of normal weekly earnings for the first eight weeks of maternity leave.

Phoenix Healthcare

Phoenix Healthcare pay the first eight weeks of maternity leave at 100% of normal weekly earnings.

Unichem

Unichem pay the first 13 weeks of maternity leave at full pay and the following 13 weeks on two-thirds pay.

Poundland

Poundland pay 100% of pay during the first six weeks of maternity leave.

Morrisons

Morrisons pay 100% of basic pay for the first six weeks of maternity leave.

Palmer and Harvey McLane

Palmer and Harvey McLane pay the first 12 weeks of maternity leave at 90% of normal weekly earnings. Women who return to work after maternity leave receive a lump sum payment equivalent to 10% of 12 weeks' pay.

Sainsbury's

Sainsbury's pay the first six weeks of maternity leave at 90% of average earnings and the following eight weeks at 90% of average earnings for women with one year's service.

Paternity Leave and Pay – The Statutory Right

Paternity Leave

- Paternity leave is there to enable fathers and partners (including same sex parents) to take time off after the baby is born.
- Statutory Paternity Leave is available to fathers and partners who have been continuously employed for at least 26 weeks by the 15th week before the EWC.
- Paternity leave lasts for two weeks and can be taken as one or two weeks consecutive leave within 56 days of the baby's date of birth.

Statutory Paternity Pay (SPP)

- To qualify for Statutory Paternity Pay (SPP) employees have to have worked for the same employer for at least 26 weeks continuing into the 15th week before the week in which the baby is due. This is called the qualifying week. The employee must remain continuously employed until the day the baby is born.
- Have average earnings of at least the lower earnings limit of £87.00 per week in the eight weeks if paid weekly, or two months if paid monthly, before the end of the 15th week before the EWC.
- SPP is paid at a basic rate of £112.75 per week or 90% of average earnings if that is less. Although employers administer it they are able to claim most of it back from the Government.

Take up

Nationally

A 2005 survey reported by the DTI² found:

- Increased leave taken by fathers since the introduction of Statutory Paternity Leave.
- Four-fifths of fathers who took time off used their new entitlement to paternity leave.
- The remaining fifth did not use parental leave but relied on other forms of leave such as annual leave. We believe this is because SPP is so low that most fathers would rather take annual leave as they would receive a full week's pay rather than the flat rate of SPP of £112.75.
- Nearly half used paternity leave exclusively while the remaining 30% used a combination of paternity and other forms of leave.

Usdaw Members

This is confirmed by the results of our Parents and Carers survey which found:

- 65.9% of men took some paternity leave.
- 75% would have liked more time off and this is reflected by 34.1% of fathers taking some holidays at the time of their baby's birth.

In December 2006 the following companies were paying above the statutory minimum:

Two weeks on full pay

Tesco

Everyday Financial Solutions (Littlewoods)

Hitchens

Sainsbury's

McVitie's

KP Foods

Simmers of Edinburgh

The two weeks statutory period of paternity leave is paid at 80% of average earnings.

Morrison's

Staff with one year's service or more are paid at basic contractual pay for the first five days. The second week of leave is paid at the statutory minimum of £108.85.

Additional Paternity Leave – The Statutory Right

A new statutory right to Additional Paternity Leave (APL) and Additional Paternity Pay (APP) during the second six months of the 12 month maternity leave period has been introduced and is expected to come into effect by April 2009. This is at the same time that maternity pay is to be extended from 39 to 52 weeks and is in addition to the current Ordinary Paternity Leave period of two weeks that fathers or partners tend to take immediately after the baby's birth.

This will allow a father or partner to be absent from work on leave for the purpose of caring for the child when the child's mother has returned to work from maternity leave.

This means that (depending on when a mother began her maternity leave), a mother and father could each take six months paid leave to care for their child in its first year of life, if the parents choose to do so. Or the mother could choose to stay on maternity leave for nine months and the father or her partner could take the remainder of the leave – three months.

We are still waiting for the publication of draft regulations, however, the intention is that where a father or partner wants to take APL they will have to take a **minimum** of two weeks and the Government has indicated that APL will 'have to be taken in one continuous block'. There will be a **maximum** entitlement of 26 weeks' leave. All paternity leave must be taken before the end of the period of 12 months beginning with the baby's birth.

Fathers or partners will be entitled to the benefit of their terms and conditions equivalent to a mother on Ordinary Maternity Leave and will have the right to return to exactly the same job.

In order to qualify for APL fathers or partners must have been eligible to take Ordinary Paternity Leave and to have continued in employment with the same employer up to the intended date of taking APL.

Details of how APL and APP will work in practice will be clarified with the publication of the regulations. Further guidance will be issued at that time.

Adoption Leave and Pay – The Statutory Right

Adoption Leave

- Adoption leave is available to one adoptive parent (spouse, civil partner or partner can take paternity leave and pay) of a child who is newly matched and placed for adoption by an approved UK adoption agency.

Ordinary Adoption Leave (OAL)

- An employee is entitled to 26 weeks' Ordinary Adoption Leave (OAL).
- An employee must have been continuously employed for at least 26 weeks by the week in which the employee was notified of having been matched with the child (notification week).
- An employee taking OAL is entitled to her/his normal terms and conditions except salary, including the right to return to exactly the same job.

Additional Adoption Leave (AAL)

- Anyone who qualifies for OAL will also qualify for Additional Adoption Leave (AAL).
- AAL is for 26 weeks.
- It must continue straight after OAL.
- It is unpaid.
- An employee is entitled to only some of her/his terms and conditions of employment during AAL such as statutory holidays, redundancy pay and disciplinary or grievance procedures.



KIT Days during Adoption Leave

- An employee may work up to 10 KIT days during OAL or AAL without bringing adoption leave to an end. This must be agreed by both the employer and the employee.
- There are no specific provisions in the regulations in relation to pay for KIT days. These need to be agreed by the employer and the employee.

Statutory Adoption Pay (SAP)

- Statutory Adoption Pay (SAP) is payable for 39 weeks.
- To qualify for pay employees have to have worked for the same employer for at least 26 weeks ending with the week in which the employee was notified of having been matched with a child for adoption.
- Have average earnings of not less than the lower earnings limit of £87.00.
- SAP is paid at a basic rate of £112.75 per week or 90% of average earnings if less than £112.70. It differs from Statutory Maternity Pay as it is paid at the basic rate and has no earnings related period.

Notice of Return to Work

Eight weeks' notice must be given to the employer if changing the date of return to work from adoption leave.

Take up

Nationally

Figures on adoption orders apply to adoptions by relatives and step-parents as well as adoptions from care.

- 5,680 adoption orders were made in England and Wales during 2002.
- 5,354 adoption orders were made in England and Wales during 2003.
- 3,700 children were adopted from care during the year ending 31st March 2006³.

Usdaw Members

We have no figures on the take up of adoption leave by Usdaw members. However, we believe the take up of this right will be relatively low due to the low number of adoptions that take place in a year.

In December 2006 the following companies were paying above the Statutory Minimum:

Everyday Financial Services

EFS were paying 8 weeks on full pay and the remaining 18 weeks were paid at the flat rate of £108.85.

Tesco

Tesco were paying 6 weeks on full contractual pay and 20 weeks at the flat rate of £108.85 or 90% of average earnings if lower.

Phoenix Healthcare

Phoenix Healthcare pay SAP at 100% of normal weekly earnings for the first 8 weeks of leave.

Parental Leave – The Statutory Right

- Parental leave gives some parents time off work to spend with their child or children.
- Parental leave is unpaid.
- Only employees who have been employed for one year can take parental leave.
- Parents are entitled to a total of 13 weeks' unpaid parental leave for each child under five.
- If the child is disabled, parents are entitled to 18 weeks for each disabled child under 18.
- Parental leave must be taken before the child is five or within five years of when he/she is placed for adoption or if the child is disabled before the child is 18.
- Parental leave can only be taken one week at a time unless the child is disabled where leave can be taken a day at a time or in multiples of less than a week.

3. Figures from the British Association for Adoption and Fostering.

- A maximum of four weeks' leave can be taken for each child during a particular year.
- Parents must give their employers 21 days' notice that they want to take parental leave.

Take up

Nationally

The DTI⁴ found:

- Parental leave is not widely used at least in the first 17 months of a child's life and if used it is only taken for short periods.
- In 2005 only 11% of mothers had taken some parental leave since the end of maternity leave (up from 8% in 2002). Two-thirds had taken a week or less.
- 8% of fathers had taken some parental leave within 17 months of their child's birth, three-quarters for less than a week.

Usdaw Members

The vast majority of our members do not take up their entitlement as the leave is unpaid and they simply cannot afford to. For further shortcomings of Parental Leave please see the Section 9 – 'Our Agenda for Change – Working with Government.'

Time Off for Dependants – The Statutory Right

- An employee can take time off to care or arrange care for a dependant where the dependant is ill, injured, assaulted, gives birth or dies, or where arrangements for the care of a dependant break down or there is an unexpected incident involving a child at school.
- There is no qualifying period.
- An employee is allowed 'a reasonable amount of time during the employee's working hours in order to take action which is necessary'.

- A dependant is a spouse, civil partner, a child, a parent or a person living in the same household as the employee other than an employee, tenant, lodger or boarder.
- Time off is unpaid.

Take up

Nationally

There is no recent information on overall take up of this entitlement. A 2002 survey by the DTI⁵ found:

- 60% of mothers and 52% of fathers knew about this right but only 10% reported using this entitlement.

This low figure suggests that due to this right being unpaid it deters many parents from actually using it.

Usdaw Members

Our Parents and Carers survey 2005 found that 50.3% of members believed they had no right to time off for family emergencies.

Even those who knew about the right found that trying to exercise this right caused real problems with their employers, for example:

Melissa, an Usdaw rep from Mid Glamorgan, told us:

"I have two young children aged 10 and 7. If I need to take time off, even as little as 15 minutes, I am made to feel extremely guilty. I am cross-questioned on every aspect of my request which makes me feel bad when I need to ask for something. If the time is granted I am made to feel as if I owe the company a favour...we all have personal lives outside work but we are made to feel as if we shouldn't."

4. DTI- International Review of Leave Policies and Related Research 2006

5. International Review of Leave Policies and Related Research 2006

Linda, a rep working for a large retailer in Leeds, said:

“I have recently separated from my husband and have at times wanted to take leave to be with my daughter who is finding it hard to adjust to her father leaving, but I can’t afford to take unpaid time off and I feel guilty letting my workmates down. My daughter is 11 and she can’t be left alone when ill or during school holidays. I also feel pressurised into working overtime when I really want to be at home with my daughter.”

The Right to Request Flexible Working for Parents and Carers – The Statutory Right

The Government has extended the right to request flexible working to carers.

- Flexible working allows both men and women to combine work and family/caring commitments.
- It is a right to request flexible working not an entitlement to flexible hours.
- Eligible parents have the right to ask for changes in the hours they work, the times when they are required to work and to work from home.

To qualify the following conditions must be met:

- An employee must have 26 weeks’ continuous service with the employer at the date of the application.
- They must have responsibility for the upbringing of a child who is under 6 or if disabled under 18 (a disabled child will only be considered disabled for the purposes of the statutory right if they are entitled to Disability Living Allowance) or be caring for a person who is 18 or over.
- The application must be for the purpose of caring for the child or adult.

- The application must be made before the day on which the child reaches the age of 6 or 18 (if disabled). A carer can make the application at any time.
- To care for a child the employee must be the mother, father, adopter, guardian or foster parent of the child or married to or the civil partner or a partner (including same sex partner) of one of the above.
- Foster and adoptive parents and parents in same sex relationships can use this right.
- To qualify as a carer the person to be cared for must either be married to, be the partner or civil partner of the employee, is a near relative of the employee or falls in neither category but lives at the same address as the employee. Near relative includes parents, parent-in-laws, adult child, adopted adult child, siblings (including those who are in-laws) uncles, aunts, grandparents and step relatives.
- The employee can only make one application in a 12 month period.
- A tribunal can only scrutinise whether the right to request procedure has been followed not the decision itself.
- If a woman’s request for flexible working is refused without objective justification she may be able to claim indirect sex discrimination under the Sex Discrimination Act.
- If a man is refused flexible working hours where a woman would have been allowed then he may be able to claim direct sex discrimination under the Sex Discrimination Act.

Take up

Nationally

- The TUC⁶ found that in the UK only 14% of all employees have requested some changes. Of these 25% were for part-time work and 22% for flexitime. 69% of requests were fully accepted.
- The TUC also found little evidence that the introduction of the new rights had led to a significant increase in requests for new working patterns in the UK.
- Since the right to request came into force employers are more likely to accept the requests than before. In the UK the number of refusals has halved.
- Evidence suggests men are starting to make demands for changed working patterns. Men are between a third and a quarter of those asking for new working patterns although they still find it hard to have their requests accepted.

Usdaw Members

Our Parents and Carers survey 2005 showed that:

- Just under 25% of our members requested flexible working, 80% of whom were women. Of these 60.5% were granted, 12.4% were refused, and 25.4% were agreed in part.
- 60.8% had needed to ask for a change in their hours/pattern of work because of their caring commitments. Of these over half (55.6%) were granted, 8.7% were refused, and 33.9% were agreed in part.
- Only 18.9% made a reference to the legal right to request – possibly indicating that the practice of requesting changes to working hours is well established and the legal right has made little difference to this.

Progress Made

A 2005 survey of maternity and paternity rights and benefits⁷ found that:

- 47% of mothers work flexitime compared to just 17% in 2002.
- The number of new fathers working flexibly has tripled since 2002.
- The proportion of mothers who have changed their employer when returning to work was halved from 41% in 2002 to 20%.

In December 2006 the following companies were offering the right to request flexible working to all employees:

- Shoefayre.
- Lever Faberge (Unilever).
- British Telecom.
- HSBC Bank.
- The Alliance and Leicester Bank.
- Newcastle Building Society.
- Freemans Mail Order.
- University Hospitals Coventry and Warwickshire NHS Trust.
- Hertfordshire County Council.
- Loreburn Housing Association.
- Scottish Legal Aid Board.
- South Lanarkshire Council.

Foster Parents

Foster parents have no specific rights. However, they can make use of rights such as the right to request flexible working and time off for dependants.

Usdaw tries to negotiate better terms and conditions than the statutory minimum for its members with employers and we have had some real success. For example, see the Tesco case study opposite.

6. Challenging Times Innovative ways of organising working time: the role of trade unions

7. Smeaton and Marsh 2006 in the DTI International Review of Leave Policies and Related Research 2006

Tesco Case Study

Foster Care Policy

Usdaw is in negotiations with Tesco to implement a Foster Care Policy.

Tesco had provisionally agreed to the following:

- 5 days' paid leave (pro-rata for part-time staff) for the purpose of applying to become a carer or attending foster care-related meetings or trainings.
- To qualify employees must have 26 weeks' continuous service.
- Leave can be taken by both prospective carers if they both work for Tesco.
- The leave must be taken in blocks of days.
- The leave is a one-off to be used when an employee first applies/becomes a foster carer and is to support their training/induction into foster care rather than the fostering itself.
- 28 days' notice must be given.

Tesco offer a number of other Work/Life Balance Incentives to attract and retain staff.

Career Breaks

Members of staff can request a career break for various reasons including bringing up a family, caring for a sick relative, furthering their education and travelling abroad. Breaks can last from three months to five years. Requests can be made by any member of staff with:

- Two years' service.
- Acceptable performance for those two years.
- At least five years' potential service prior to retirement age on return from their career break.
- Career Breaks are unpaid.

Lifestyle Breaks

Tesco provide Lifestyle Breaks for staff who want to take a break to fulfil a dream, go on a once in a lifetime holiday or just to recharge their batteries.

A Lifestyle Break can last from 5 to 12 weeks. However, a week's holiday entitlement must be used at the beginning or end of the break. Requests can be made by any member of staff who fulfil the following criteria:

- Two years' service.
- Not over the review level calculation for attendance.
- Have a good performance record.
- Are not subject to disciplinary procedures.
- Lifestyle Breaks are unpaid.

Study Time

Tesco provides employees with four weeks' unpaid study time to study for recognised qualifications such as a degree or 'A' Levels.

Tesco recognises that policies that attempt to balance work and life benefit the company by reducing recruitment and training costs and help to retain experienced members of staff.

Our only concern is that our members will find it difficult to make the most of these policies as they are unpaid.



Ante-Natal Appointments – Paid Time Off for Fathers-To-Be

Fathers do not have the right to legal time off to accompany their partners to ante-natal appointments. However, many men will want to be at some of the ante-natal appointments to support their partner and to find out what is happening with their baby.

Ante-natal appointments may include tests or scans and the scan is the chance to see the baby before it is born. Some tests check for the likelihood of genetic conditions and abnormalities. This can be a difficult time and most mothers will want their partners there for support.

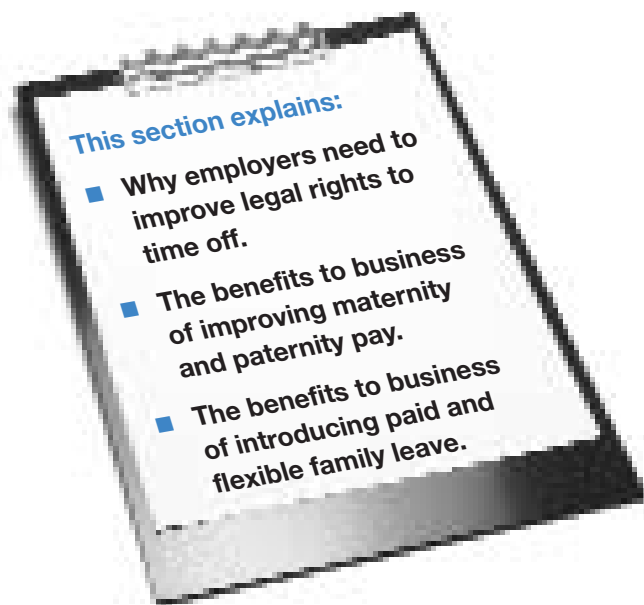
Most appointments are held from Monday to Friday between 9.00am and 5.00pm.

Employers such as Asda offer paid time off if employees cannot attend outside working hours.

Comparisons with other countries in Europe:

Country	Paid Maternity Leave	Paid Paternity Leave
Austria	16 weeks 100%	
Belarus	126 days 100%	
Belgium	15 weeks – 82% for 30 days, 75% thereafter	
Bulgaria	120-180 days 100%	
Cyprus	16 weeks 75%	
Denmark	18 weeks 100% (32 more weeks may be taken by either parent)	14 days' paid paternity leave
Estonia	455 calendar days 100%	14 calendar days
Finland	105 days 80%, followed by share of 158 days with father	18 days, can share 158 days with mother after maternity leave
France	16 weeks 100% rising to 26 weeks 100% for third child	2 weeks
Germany	14 weeks 100%, 6 before birth	
Greece	16 weeks 75%	
Hungary	24 weeks 100%	5 days
Ireland	34 weeks – 22 weeks at 70% remaining 12 weeks unpaid	
Italy	22 weeks (5 months) 80%, 2 before birth	13 weeks (3 months) 80%
Luxembourg	16 weeks 100%	
Malta	13 weeks 100%	
Netherlands	16 weeks 100%	
Norway	52 weeks (12 months) 80%, or 44 weeks (10 months) 100% <small>Mother must take first 6 weeks after the birth – the rest can be shared with the father.</small>	46 weeks (10.5 months) 80% or 37 weeks (8.5 months) 100% shared with mother – father must take a minimum of 4 weeks
Poland	16-18 weeks 100%	
Portugal	98 days 100%	5 days
Russia	140 days 100%	
Spain	16 weeks 100%	
Sweden	480 days (16 months) (80% up to a ceiling the first 390 days, 90 days at flat rate) shared with the father (minimum 60 days)	480 days (16 months) (80% up to a ceiling the first 390 days, 90 days at flat rate) – shared with mother (minimum 60 days)
Switzerland	16 weeks 100%, 8 weeks mandatory	
Ukraine	126 days 100%	
United Kingdom	6 weeks 90%, 20 weeks at fixed amount (as of March 2006 = £108.85)	2 weeks at a fixed amount (as of March 2006 = £108.85)

Section 8 – The Business Case for Improving Rights to Time off



There is a really strong business case as to why employers should support parents and carers.

This section sets out the main benefits for employers of helping staff who are parents and carers.

Clearly employers will want to know what they are going to get out of improving rights for parents and carers.

There is strong evidence that where employers offer a range of work/life balance benefits, they report a positive impact on the following:

- Recruitment and retention.
- Lower absenteeism.
- A more motivated workforce.

The following is a list of our main negotiating priorities for parents and carers together with the business benefits they bring.

Paying Contractual Maternity Pay over and above SMP

Official projections estimate that women will account for three quarters of the 1.7 million rise expected in the UK labour force by 2011. Given that women still carry the main responsibility for caring in our society, employers need to have something to offer women workers otherwise they will choose to work for someone else.

Paying contractual maternity pay over and above Government funded SMP is a cost effective way for employers to attract and hold on to women staff.

At BT, 98% of women now come back after maternity leave as a result of them introducing enhanced maternity pay and other family-friendly benefits.

Abbey National introduced enhanced maternity pay to cut the costs associated with high staff turnover. They offer 40 weeks' maternity leave (check pay) and their return rate after maternity leave has risen from 55% to 78% in four years.

Women are twice as likely to return to work after maternity leave to employers who offer contractual maternity pay. The reasons for this are as follows:

- SMP is not enough to live on. The majority of our members have to claim means tested benefits whilst they are on maternity leave to survive.
- This means that when their maternity leave comes to an end, many women have very little incentive to go back to work.
- Research by the Joseph Rowntree Foundation shows that the longer a person spends claiming benefit the more likely they are to experience social exclusion and to find it difficult to go back to work.

Staff turnover in many of our sectors is very high and part of the reason for this is that very few women go back to work after maternity leave. Replacing staff that leave is expensive - there are the costs of advertising, interviewing, selecting and training.

HSBC Bank estimate that it costs them around £750 for every member of staff they have to replace.

Tesco say it costs them £3,000 to replace a member of staff.

Sainsbury's say that replacing a fully trained first line supervisor costs around £10,000.

Paying contractual maternity pay means women are more likely to come back after maternity leave, saving the employer significant sums of money.

Paying Contractual Paternity Pay

Two fifths of working men now have dependant children.

Paying contractual paternity pay over and above SPP helps an employer to compete for staff.

Employers have to compete for staff at present because:

- Unemployment is the lowest it has been for almost 20 years.
- The NMW has raised rates of pay in many of our agreements so pay has ceased to be something that differentiates employers.
- Newer industries such as call centres are competing for staff.

Employers have to give potential recruits good reasons to come and work for them.

Those with family-friendly working practices are likely to be able to attract good workers who are parents and carers.

Surveys show that people want to work for companies with sound work/life balance policies.

A recent DTI poll of 4,000 jobseekers showed that 33% would rather work flexibly than get paid an extra £1,000 a year.

There is a high degree of labour market mobility in some parts of the UK and some sectors. Potential employees increasingly want to work for employers who are going to help them combine work and family life.

This trend is growing. There are now more UK employees with caring commitments than ever before. It is simply not an option for employers to seek out staff who do not have caring commitments - there aren't enough of them to go around.

Government research done in 2003 asked employers who had introduced work/life balance policies to identify the benefits they got from doing so. 47% said such policies, including enhanced paternity pay, had had a positive effect on recruitment.

Paid Family Leave

It is not an option for employers to recruit or seek out staff who don't have any caring commitments – there simply aren't enough of them to go round.

A growing number of UK workers have caring commitments at home. 301,000 workers take on a new caring responsibility every year. One in eight working adults provide regular care to a sick or elderly person. This means that employers have to find ways to support staff with caring commitments.

Marks and Spencer have introduced a range of family-friendly benefits including paid leave to care for sick relatives and say this has helped them to widen their recruitment pool.

72% of employers who took part in the DTI research said that introducing work/life balance measures had led to more effective retention of women staff and lower levels of staff turnover.

Many employers see reducing sickness absence as a priority.

Paid family leave agreements can help them do this.

Absenteeism rates are high across many UK industries. Each employee in the UK loses an average of 8.5 days per year through sickness.

The CBI believes that absenteeism levels are the main reason why UK productivity is behind that of the US and parts of Europe.

Absenteeism costs the UK £11.6bn a year.

Paid family leave agreements help reduce sickness absence in two ways:

First, a key reason for staff being absent from work is when dependant relatives are ill. At these times, many of our members tell us that they pretend to be ill themselves as they cannot afford to take unpaid time off for dependants.

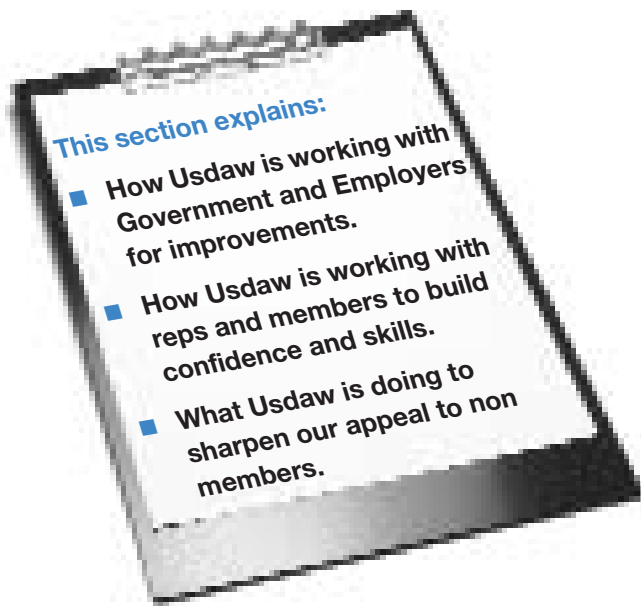
Second, home and family commitments and childhood illnesses are a major source of stress. Better family-friendly policies such as paid family leave make people happier and healthier at work and so less likely to take time off work.

BT cut their absenteeism rate to 3.1% compared to a UK average of 8.5% as a result of introducing support for parents and carers.

Royal Bank of Scotland have cut their sickness absence by introducing flexible working options and time away from work options including paid special leave and term-time working.

A survey by the Work Foundation of employers' attitudes to work/life balance found that paid emergency leave was the second most common family-friendly benefit employers had introduced (second only to part-time working). 29% of employers who offer this provision said they had introduced it to reduce sickness absence.

Section 9 – Our Agenda for Change



In this section we set out Usdaw's agenda in terms of working with the Government to make changes to statutory rights, working with employers to negotiate improvements to our agreements and working with reps and members to make sure they know about and get the most out of the new family-friendly rights introduced by the Work and Families Act 2006.

Working with Government

Maternity Leave and Pay

We welcome the extension of the SMP period from 26 weeks to 39 weeks and the removal of the service qualification of 26 weeks to qualify for AML.

However we will continue to lobby the Government to link the flat rate payments of SMP to average earnings throughout the entire leave period. In our 2005 Supporting Parents and Carers survey we found that 81.4% of women would have liked to have more time off. The main reason for going back to work was that they could not afford to take any more time off (44.1%) and only 4.4% had taken the maximum leave entitlement (the full 52 weeks).

Our findings showed that on average women returned to work six weeks before the end of OML as they could not afford to remain at home any longer.

However, now that SMP will be paid for 39 weeks instead of 26 weeks we are expecting more women to take a longer period of maternity leave.

The rate of SMP currently is of major concern to our members. The first six weeks is paid at 90% per cent of average weekly earnings with no upper limit. For the remaining 33 weeks it is paid at a flat rate of £112.75 or 90% of average earnings if that is lower.

Our calculations show that a woman who is on the National Minimum Wage (NMW) of £5.35 per hour and usually works for 35 hours per week will lose a total of £2,570.85 if she takes the 39 weeks she is entitled to. This figure rises to £5,005.10 if she takes her full entitlement of 52 weeks. It is the low rate of SMP that deters mothers from taking their full entitlement to maternity leave.

At the least, flat rate payments should not be less than the NMW. Based on a working week of 35 hours the current flat rate payment of £112.75 translates into £3.22 per hour. The guiding principle should be that a woman should be no worse off on maternity leave than when she is in work.

Ultimately we would like to see a situation where flat rate payments of SMP are linked to average earnings throughout the entire leave period.

Distinction Between OML and AML Retained

The Government has failed to take up the opportunity to abolish the distinction between OML and AML. Therefore, different rights apply during OML and AML and a woman has a less robust right of return to the same job when she returns to work after her additional maternity leave has begun. This in effect penalises women for taking AML.

After OML a woman has the right to return to exactly the same job on the same terms and conditions of employment as if she had not been absent.

However, after AML a woman has the right to the same job but if this is not 'reasonably practicable', she is entitled to return to an equivalent job which has the same or better status and terms and conditions as the old job.

Our members tell us of being moved miles to different stores, of being given totally different shifts to work, of having their hours slashed and responsibility taken away from them.

The Equal Opportunities Commission's general formal investigation into pregnancy discrimination in the workplace found that 20%, that's one fifth of women, who returned to the same employer after taking maternity leave moved to a lower grade or level of job.

KIT days

The new legislation allows women to work 10 days without bringing their maternity leave to an end or losing their SMP. However, we are concerned that there are no specific provisions in the regulations in relation to payment for KIT days except that it must not be less than the rate of SMP due for the week and any SMP due can be offset against contractual pay.

For example, an employee on maternity leave earning £50 for a KIT day will be able to retain her SMP. The £50 earned can be offset against her SMP meaning that she will still only receive £112.75 for the week.

If she works for three KIT days in the same week she will receive £150, her SMP being offset against contractual pay, paid for the same week.

Therefore, there is no real financial benefit for a woman to participate in KIT days unless her employer agrees to pay for the day's work on top of her SMP.

Reasonable Contact

In 2004 Usdaw conducted research into the experiences of pregnant women and published the results in our report '*Delivering for Pregnant Women*'. The Usdaw survey was initiated to support the ongoing Equal Opportunities Commission's (EOC) inquiry into pregnancy discrimination at work '*Pregnant and Productive*'. With nearly 200,000 women members Usdaw had an important contribution to make to this investigation.

Employers already have the right to reasonable contact. At the time of writing we were waiting to be consulted as to what constitutes reasonable contact as the Government has agreed to consult trade unions before a definition is decided.

We believe it is crucial that a dialogue takes place before a woman goes on maternity leave. Our report, *'Delivering for Pregnant Women'*, found that where employers initiate a dialogue with women before the start of their maternity leave this has a positive effect on the following:

- How women felt about coming back to work.
- Women's enjoyment of their maternity leave.
- The attitude to their employer.

However, the overall picture painted by our research and the findings of the EOC found that:

- Dialogue between employers and expectant mothers is problematic.
- Over 40% of women told us that they felt their employer's attitude changed for the worse once it was known they were pregnant.
- Women described being ignored, undermined, and even humiliated.

Therefore, employers having the right to make 'reasonable contact' during maternity leave may leave women feeling vulnerable and under pressure to return early or to take part in certain events as part of KIT days.

Notice Periods

Due to the new regulations a woman has to give at least eight weeks' notice if she wishes to return before the end of AML. If she returns to work without giving the correct notice her employer is entitled to postpone her return until the end of AML.

Since all women are now entitled to AML, employers know that the employee will be returning after 52 weeks. Previously if a woman wanted to return early she would have to give 28 days' notice and this notice should be enough. There is no evidence from employers our members work for, that the 28 days' notice was not sufficient and was causing employers problems.

We believe that it is unrealistic to require women to confirm their return date two months in advance. A huge range of factors will affect a woman's decision about returning to work such as childcare, breakdown of a relationship, ill health, etc. We are therefore, disappointed that the Government has extended the notice period from 28 days to eight weeks.

Paternity Leave and Pay

In our survey, 36.4% of men said they could not afford to take time off as SPP is only paid for two weeks at a flat rate of only £112.75 per week.

We calculate a driver working in distribution for a major supermarket will be earning around £10 per hour for a 36 hour week. If he took his two weeks entitlement to SPP he would lose around £495.50 for taking two weeks. In reality this figure would be much higher as many of our drivers work overtime at weekends which is paid at premium rates.

Our Parents and Carers survey found that although 65.9% of men took some paternity leave, 75% would have liked more time off and this is reflected by 34.1% of fathers taking some holidays at the time of their baby's birth. Therefore we would urge the Government to extend the length of paternity leave whilst retaining a separate right.

A survey¹ found that four fifths of fathers would take up their paternity entitlement if SPP increased to 90% of full pay. At full pay the figure increased to 87% of fathers.

We will also continue to lobby the Government to link the flat rate payments of SPP to average earnings throughout the entire leave period. At the least, flat rate payments should not be less than the NMW.

1. Carried out by the Chartered Institute of Personnel and Development

Adoption Leave and Pay

The pay for adoption leave is even less than maternity leave, although in both cases a parent is taking time off to care for a child. Whether the parent has given birth or adopted should be irrelevant to the amount they are paid when they are off.

SAP is paid at a flat rate of £112.75 for 39 weeks. It should firstly be brought into line with SMP ie the first 6 weeks of leave should be paid at 90% of average earnings and the remaining 33 weeks paid at the flat rate of £112.75 or 90% of average earnings if less than £112.75.

Our calculations show that a woman who is on the NMW of £5.35 per hour and who usually works for 35 hours per week will lose a total of £2905.50 if she takes the 39 weeks she is entitled to. This figure rises to £5339.75 if she takes her full entitlement of 52 weeks.

At the least, flat rate payments should not be less than the NMW. Based on a working week of 35 hours the current flat rate payment of £112.75 translates into £3.22 per hour. The guiding principle should be that a parent should be no worse off on adoption leave than when they are in work.

We would urge the Government to link the flat rate payments of SAP to average earnings throughout the entire leave period.

The same shortcomings outlined with maternity leave apply here such as adoptive parents will experience the same problems as women on maternity leave with KIT days, notice periods and the distinction between OAL and AAL.

Parental Leave

There are many problems with the parental leave provisions as they stand.

The major problem with this provision is that the leave is unpaid. Very few parents, especially in the retail sector, would have the means of taking up their full entitlement.

This is confirmed by the DTI's findings that only 11% of mothers and 8% of fathers had taken this entitlement and in most cases for less than a week.

The second problem is that leave can only be taken up in weekly blocks unless the child is disabled. This criterion should apply to parents of all children and the scheme needs to be more flexible.

The inflexibility of only being allowed to take weekly blocks has a negative impact on parents as they are unable to access this right to say, take half a day off to see a school play or attend a sports day. No parent will take unpaid leave for a week to see their child in a play. This inflexibility also has a negative effect on employers, as it is a lot easier to cover half a day's leave or a day's leave rather than trying to find cover for a whole week.

Time Off for Dependants

The right to time off for dependants is an unpaid right and would therefore deter many parents from actually using this right. This is confirmed by the DTI who found only 10% of parents actually used this right.

Our Parents and Carers survey 2005 found that a shocking 50.3% of members believed they had no right to time off for family emergencies.

Even where members know about this right they are experiencing problems when they try to use it. Members often find that they fall foul of sickness absence procedures. This then triggers disciplinary proceedings because employers count the emergency time off as sick leave. Our reps and members have to make the point every time (and time after time) that time off for dependants is a statutory right and so cannot and should not be counted as sickness absence but should be counted separately.

We will continue to lobby the Government for this right to be paid.

Arguments in favour of paid time off for dependants:

- When members children are sick they will put their families first. It is not a question of whether they will come to work when their children are ill but on what basis they will take the time off. If there is not an option to take paid time off to deal with an emergency, members might phone in sick. Employers are trying to reduce sickness absence levels, paid time off for emergencies can help to do this.
- Paid time off for dependants allows employers to manage absence in a planned way. The Government's own research shows that where there is some form of paid leave there is less unauthorised absence and unplanned lateness.
- There are costs to giving staff paid time off for emergencies but there are costs in not doing so. Paid time off for dependants can help an employer recruit and retain staff.

Research by Industrial Relations Services has found that two thirds of employers said that recruitment, retention, employee commitment and motivation had all improved following the introduction of family-friendly working practices such as paid time off for dependants.

- Women are the majority of the workforce and still do most of the caring in our society. Employers have to be able to attract women and hang onto them. The biggest single determinant of whether women can work is the care of their children – employers who make it hard for women to juggle home and work life will pay the high price in high labour turnover.
- Some employers argue that staff will see five days' family leave as five days more annual holiday. However, the Government estimates that the average time taken by an employee to deal with a family emergency is two days.



- Government research also shows that in most cases where an employee has taken time off to deal with a family illness, the immediate cost to the employer is 'zero to small' as short notice absences tend to be covered by existing colleagues.

Usdaw has negotiated the following:

- Littlewoods – one week of paid family leave to be used to cover family illness, medical appointments, giving blood and going to the dentist.
- Woolworths – provide Critical Family Illness leave of up to five days a year which reduces to three days a year where the person in need of care is not a member of the immediate family.
- Unichem – staff can take paid time off to take a child to a hospital appointment.

Working with Employers

The Work and Families Act – implemented on 1 October 2006:

- Extends the period of paid maternity and adoption leave.
- Extends the right to request flexible working to those who have caring responsibilities for adults.
- Enables the introduction of additional paternity leave from April 2009.

This part of Section 9 aims to help negotiators assess what changes need to be made to agreements to bring company terms and conditions into line with the regulations and suggests ways in which we might build upon the statutory minimum. Supporting our negotiators is an important element of Usdaw's national Supporting Parents and Carers Campaign and helps to deliver real gains for members via the bargaining agenda.

Please note that all of the statutory changes discussed in this paper apply to adoption in the same way as they do to maternity. For more details about the statutory rights see Section 7 – 'Your Rights to Time off Work.'

The distinction between OML and AML has been retained. During the six month OML period, terms and conditions (other than those relating to pay) continue to apply, whereas only residual contractual rights continue to apply during the six month AML period. The distinction in respect of the less robust right to return at the end of AML is also maintained.

Impact

The Union believes employers should make no distinction between the two forms of leave – giving women the right to the same terms and conditions during AML as OML and the right to return to exactly the same job (without exception) after their OML period has ended.

Notice of Early Return to Work

Changes have been made to notice periods for women who return to work early. The period of notice for early return doubled from four to eight weeks. The two months notice period will be calculated from the new date of return.

There is an explicit right for employees to change their minds about the return date providing they give at least eight weeks' notice before the old or new date, whichever is earliest.

Example

Jennifer is entitled to 52 weeks maternity leave from 1 April 2007 to 1 April 2008. She is worried that if she takes more than six months leave her employer will say that it isn't reasonably practicable to allow her to return to exactly the same job and she therefore, tells her employer that she intends to return immediately after her OML period comes to an end on the 1 October 2007.

Her childcare arrangements however fall through and make it impossible for her to return after six months. She wants to take the rest of her period of paid maternity leave ie nine months leave in total.

Therefore, she must give notice to her employer by 1 August 2007 (eight weeks before the date she said she was to return – 1 October 2007) that she will now be returning during her AML on the 1 January 2008.

Impact

We know from previous research that the vast majority of Usdaw members return to work after the period of paid leave comes to an end. As all women with a baby due on or after the 1 April 2007 are entitled to 52 weeks' maternity leave, only 39 weeks of which will be paid, we estimate that the vast majority of our women members will in fact return to work early and so will be required to give at least two months' notice.

Whilst the statutory fallback position is for two months' notice, employers are at liberty to agree a shorter notice period. Many of our agreements currently require 28 days' notice and there is a strong case to be made for the notice period to remain at 28 days. Small professional firms lobbied for the extension of notice. Many of the larger employers with whom we have agreements manage maternity cover without serious problems and have no need to require women to give notice at an earlier point.

Maternity Pay

SMP has been extended to 39 weeks as has Maternity Allowance.

SMP is paid at 90% of average earnings for the first six weeks and then at a flat rate of £112.75 for the remaining 33 weeks. Maternity Allowance and SMP is paid at a flat rate of £112.75 for the entire 39 weeks.

Impact

Staff turnover in many of the sectors in which we organise is particularly high. Paying contractual maternity pay over and above SMP is a cost effective way for employers to attract and hold on to women staff. Where employers offer contractual maternity pay women are twice as likely to return to work after maternity leave.

Given the extension of the maternity leave period we might want to push employers for a longer earnings related period of pay than the first six weeks. There is no earnings related period of SAP. We should push employers to ensure that at least the first six weeks of SAL is earnings related and where possible argue for adoption pay to mirror maternity pay.

All employers can recover all, or nearly all, of the SMP they pay from the state. Small employers receive a reimbursement of 104.5% while large employers receive 92%.

KIT days

The regulations introduce the concept of KIT days. This allows an employee on maternity or adoption leave to work for their employer without that work bringing the period of leave to an end or without losing a week's SMP or SAP.

Impact

Whilst the Union acknowledges that for some women KIT days may be helpful, early soundings we've taken suggest the demand will be low from our women members who are in the main concentrated in low paid jobs with little opportunity or necessity for updating skills.

The Union is also concerned that our women members may feel pressured to take up an employer's offer of KIT days. During maternity leave women manage big changes in their lives and may be feeling vulnerable. They may fear the consequences of refusing to take up a KIT day. Managers may see KIT days as an opportunity to call women into work at short notice to cover particularly busy periods or to cover for colleagues who are absent.

The regulations protect women who choose not to take up KIT days, however, the voluntary nature of KIT days and the protection afforded to women should be emphasised in all agreements.

It would be useful for officers to begin to monitor the use and effectiveness of KIT days so that we can press for changes if evidence emerges of inappropriate use.

Payment for Working KIT days

There are no specific provisions in the regulations in relation to pay. The Government's response to the consultation states that this is "a matter for agreement between employer and employee."

Impact

Where it is agreed that an employer will work a KIT day, both parties need to agree in advance:

- How much contractual pay she will receive for working that day.
- How contractual pay will work alongside any SMP due.
- How contractual pay will take account of any additional expenses as a result of attending work, including for example travel and childcare costs.

The regulations allow for employers to offset the contractual payment for a KIT day against the weekly payment of SMP (flat rate from April 2007 is £112.75 per week).

Example

For example, an employee who earns £42 for a KIT day will only receive SMP of £112.75 for the week as the £42 is offset against her SMP. However, if she works 3 KIT days at £42 for each day she will receive £126.

We would want negotiators to push employers to pay for KIT days in addition to SMP. In effect, she will receive £112.75 SMP plus one day's £42 contractual pay.

We should be looking to negotiate contractual pay for KIT days in addition to SMP. We should also be aware of any childcare costs she might incur by taking up a KIT day as well as other work-related expenses such as travel.

The Union believes that women should receive a full day's pay for any KIT days worked and that this should be in addition to (and not offset against) her payment of SMP for that week. This will help to ensure employers are acting in accordance with pay legislation such as equal pay and NMW legislation and also provides women with a financial incentive to take up a KIT day where offered.



Flexible Working

The Work and Families Act extended the right to request flexible working to employees who have caring responsibilities for adults.

Impact

Modern family life is very diverse and some carers may miss out on the new right. The definition is likely to exclude especially vulnerable groups, including migrant workers who may have no relatives in the UK and the growing number of men estranged from their families after divorce. Gay and lesbian carers may also lose out, as they are more likely than other communities to rely upon ‘families of choice’, rather than blood relatives for mutual support and care.

Wherever possible, a person who defines themselves as a ‘carer’ should be believed and be able to request flexible working. We are pressing for the extension of the right to request flexible working to parents of older children and ultimately to all adult workers.

Usdaw would like to see employers give all employees the right to request flexible working. After all it is only a right to ask and employers are not under any obligation to agree requests.

Research confirms the business benefits to employers of giving all staff the right to request flexible working – reduction of stress, consequent sick leave losses and an increase in productivity, improved service delivery and cost savings. In an increasingly competitive global climate, giving all workers the right to request flexible working positively encourages companies to think more creatively about flexible working as one aspect of the drive towards increasing productivity.

Working with Members

Listening to members

It is essential that we speak with authority about our members’ experience of maternity, paternity and parental rights and in particular the new raft of rights introduced by the Work and Families Act 2006, available to parents of children due on or after 1 April 2007.

We need to know whether or not the new rights like KIT days or extended entitlement to maternity leave are being taken up by our members and if not why not. We will also continue to press the Government to stand by its stated intention to review the raft of rights introduced in 2003, including the right to request flexible working, so that we can press for improvements.

But in order to make the case to the Government and to employers for improved rights we need hard evidence from our members. Anecdotal evidence alone isn’t enough to persuade employers and the Government to change things for the better. This means developing our dialogue with members by:

- Asking for members’ views and experiences at conferences, get-togethers, union events, on the web site and via targeted surveys.
- Dedicating our established structures such as the equalities forums, political committees, youth committees, divisional and trade conferences, to examining parental rights and devising appropriate initiatives and campaigns.
- Working hard to make sure that members and their employers know where we stand on maternity, paternity and parental rights issues.

Building the confidence and skills of reps

In 2007 we aim to hold two Supporting Parents and Carers Campaign Spotlight days. The first was held on 27 March 2007. It was a national event in Westminster where we made the case to MPs to extend the right to request flexible working to parents of older children. We also encouraged our reps and members in the divisions to take part in street stalls across the country. The aim was to raise awareness amongst members of the new raft of rights introduced by the Work and Families Act 2006 (outlined in Section 7 – ‘Your Rights to Time off Work.’)

The second spotlight day is to be held on 13 June 2007 to coincide with National Carers’ Week. Again we intend to hold a national event in Westminster at which we will make the case to the Government to extend entitlement to Carers’ Allowance to working carers. We will also be encouraging our reps and members in the divisions to take part in street stalls across the country. The aim of the day is to raise awareness amongst the general public of the financial pressures carers are under as well as making sure all carers know about their new right to request flexible working.

As part of the National Equalities Advisory Group’s programme of work for 2007 we plan to pilot in two of the Union’s divisions a new course for reps on how to get the most out of the right to request flexible working.

Spreading the word and celebrating success

We need to make sure that the new maternity, paternity and parental rights at work are understood and make a difference in our workplaces. Our members and reps need to be aware of these rights and have the confidence and knowledge to exercise them. Employers need to know that our reps and members are ‘on the ball’ as far as the new regulations are concerned.

We should also be proud of and publish any successes we have – political and industrial. For example, in 2006, Usdaw’s Supporting Parents and Carers Campaign won the prestigious TUC Equality Award. We dealt a major blow to the long hours culture with our successful campaign ‘Save our Sundays’.

We can begin to do this in a number of ways by:

- Publishing articles in the Union’s magazines and posting these on the web site.
- Circulate press releases.
- Print and circulate leaflets highlighting Usdaw’s status as the campaigning union.
- Run specific training events for reps and members.
- Schedule workshops dealing with the Union’s campaigns into divisional and other trade conferences.



Sharpening our appeal

We need to let our members and non-members know that we are relevant and campaigning on issues that matter to them. The maternity and new parental rights have a specific and immediate impact on women workers but also affect many men too. By campaigning on issues of parental and family-friendly rights we can offer and deliver real gains for all of our members.

We need to let people know that we're not just there for them when things go wrong but that we're campaigning to make a positive difference. We need to let people know that we've made real gains for our members in terms of making sure they have a real say in their hours and patterns of work and that they receive pay for time off work enabling them to actually take up their entitlement to things like paternity and maternity leave.



Section 10 – Frequently Asked Questions



Q If I take 39 weeks' maternity leave can I go back to exactly the same job?

A Unfortunately the Government has kept the distinction between OML and AML. Therefore different benefits and rights to return apply during OML and AML.

The first 26 weeks of your leave will be under OML and the remaining 13 weeks will be under AML. Therefore, returning to work after 39 weeks you have the right to the same job. However, if this is not 'reasonably practicable' you are entitled to return to an equivalent job which has the same or better status and terms and conditions as the old job.

Q I am on maternity leave, my employer says I need to come in for a training day to get to grips with a new till system. Do I have to go in?

A The legislation allows women to work 10 KIT days without bringing their maternity leave to an end or losing their SMP. However, this must be agreed by both the employer and the employee. You are under no obligation to go in to work or for training if you do not want to. We would also advise that payment for the KIT days be agreed in advance, as the regulations are silent on the issue of payment for KIT days.

Q My ex-partner has currently been diagnosed with MS. Although we are no longer together I still care for her. She currently lives alone and I intend to take up a caring role for her. Will I have the right to request flexible working?

A Unfortunately you are excluded from the Government's definition of carer because you will be caring for an ex-partner who is not living with you.

To qualify as a carer the person to be cared for must either be married to, be the partner or civil partner of the employee, is a near relative of the employee, or falls in neither category but lives at the same address as the employee.

(Near relative includes parents, parent-in-laws, adult child, adopted adult child, siblings (including those who are in-laws), uncles, aunts, grandparents and step relatives).

We will be lobbying the Government to extend this definition as we believe the Government's definition of a carer is too narrow and will exclude many carers especially from the Lesbian, Gay, Bisexual and Transgender community who tend to rely on families of choice rather than blood relatives and members from Black Minority Ethnic communities who have extended families.

Q What can I do if my employer refuses my request for flexible working?

A If your employer refuses your request they must provide you with a written notice of grounds for refusal, a sufficient explanation as to why those grounds apply in relation to the application and the appeal procedure.

Your employer can refuse on the following grounds:

- The burden of additional costs.
- Detrimental effect on ability to meet customer demand.
- Inability to reorganise work among existing staff.
- Detrimental impact on quality.
- Detrimental impact on performance.
- Insufficiency of work during periods the employee proposes to work.
- Planned structural changes.

You have the right to appeal within 14 days after the date on which the notice of the decision is given. We suggest you contact your rep or Area Organiser for advice and support.

If your appeal is dismissed you may be able to make a claim to the Employment Tribunal.

Employment Tribunals have limited powers; they can scrutinise the employer to make sure the correct procedure has been followed and to make sure the employee did not suffer detriment or was discriminated against on the grounds of sex, marital status or civil partnership. However, they cannot scrutinise the employer's decision nor does the employer have to justify the decision objectively.

Usdaw is campaigning for changes so that Employment Tribunals will be able to examine and criticise an employers reasons for refusing.

Q My employer says that I need to make up the time I take for attending ante-natal classes. Are they right?

A No, your employer is not right. All pregnant employees irrespective of length of service or hours of work, whether permanent or temporary, are entitled to paid time off during working hours for ante-natal care.

However, it seems we have found that this is a common problem for our women members who do not get paid time off or are being asked to make up the time to attend ante-natal classes.

Our report '*Delivering for Pregnant Women*' found that:

- Almost a quarter of women (22.8%) are not getting paid time off to attend ante-natal care.
- At least one in ten women (12.7%) are losing earnings by being asked to make up time spent attending ante-natal classes.

The law states that there is an entitlement to time off during working hours and there is nothing to state that this is subject to the woman not being able to attend outside working hours. Therefore, there is no obligation on the woman to arrange ante-natal care outside working hours or to make up the time.

Q I want to attend ante-natal classes with my partner. Do I have the right to paid time off?

A Fathers and partners do not have a legal right to time off to accompany their partners to ante-natal classes. However, many employers realise this is an important time for fathers and partners and let their employees take paid time off or make up the time later. If your employer does not provide paid time off you should ask if you can attend the ante-natal class and make up the time later.

Q I am due to go on paternity leave on the date my baby is due. However, my employer has informed me that if my wife goes into labour during my shift I will have to complete my shift before I leave. What can I do?

A You are entitled to take your paternity leave on the day the baby is born or within 56 days of the birth.

Your employer cannot compel you to complete your shift because you are entitled to time off for dependants. This right allows you to take reasonable time off to deal with an emergency such as to care or arrange care for a dependant where the dependant is ill, injured, assaulted, gives birth or dies.

This leave is unpaid and all employees are entitled to it.

Q I am in a same sex relationship, although we have not registered our partnership we are adopting a child. Are we both entitled to adoption leave?

A Adoption leave is available to only one adoptive parent, the other parent is entitled to take paternity leave. Paternity leave can be taken by the partner in the relationship who is not taking maternity leave or adoption leave. Therefore, it is available to both men and women.

You are entitled to 26 weeks of OAL and 26 weeks of AAL. To qualify for adoption leave you must have been continuously employed for at least 26 weeks by the week in which you were notified of having been matched with the child (notification week).

SAP is payable for 39 weeks and is paid at a basic rate of £112.75 per week or 90% of average earnings (if less than £112.75).

To qualify for pay employees have to have:

- Worked for the same employer for at least 26 weeks ending with the week in which the employee was notified of having been matched with a child for adoption.
- Have average earnings of not less than the lower earnings limit of £87 per week.

Statutory Paternity Leave is available to fathers and partners who have been continuously employed for at least 26 weeks by the 15th week before the EWC.

Paternity leave lasts for two weeks and can be taken as one or two weeks consecutive leave within 56 days of the baby's date of birth.

SPP is paid at a basic rate of £112.75 per week or 90% of average earnings (if less than £112.75).

To qualify for pay employees have to have:

- Been continuously employed for at least 26 weeks by the 15th week before the EWC.
- Average earnings of at least the lower earnings limit of £87 per week.

Q My child is having a hard time at school. She is 11 years old and has dyslexia and asthma. I want to take a few weeks off to spend time with her. Can I do this?

A Yes, you can if you receive a benefit called Disability Living Allowance for your daughter. You have a statutory right to take parental leave if you have been employed for one year.

You can take 13 weeks unpaid leave for each child under 5 or 18 (if disabled). You can take a maximum of four weeks in one year and leave must be taken in weekly blocks. However, the downside is that parental leave is unpaid.

Q I work 16 hours part-time so that I can care for my partner. I earn £90 per week. Can I claim Carer's Allowance?

Carer's Allowance is the main state benefit for carers. To qualify you must look after someone in receipt of the middle or higher rate of Disability Living Allowance or any rate of Attendance Allowance for at least 35 hours a week. Unfortunately, if you earn more than £87 a week you cannot claim the allowance – this is known as the Gainfully Employed rule.

Usdaw recognises the huge contribution carers make not only to the lives of the people they care for but also to the economy by saving billions of pounds in caring costs.

That is why Usdaw wants the Government to abolish the Gainfully Employed rule because it not only puts carers in a position where they cannot earn too much for fear of losing their Carer's Allowance. It also excludes them from other benefits such as SSP, SMP, SAP and Pension Contributions. We will continue to lobby the Government to abolish this rule.

Usdaw
*Union of Shop, Distributive
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