

Reasonable contact

Dr Anne Sammon considers the level of contact you should have with an employee on maternity, paternity or shared parental leave.

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The legislation on maternity, paternity and shared parental leave refers to an employer being entitled to have “reasonable contact” with an employee who is on such leave; but how much contact can and should you have with an employee in these circumstances?

When you can make contact

There is no definition in the legislation of “reasonable contact”. However the aim of including a reference to this in the legislation was to help to make the employee’s return to work after leave easier by ensuring that the employee continues to feel part of the employer’s workforce. As such, the idea is not that the employer can ask the employee to carry out work during the leave (this is the purpose of Keeping in Touch/Shared Parental Leave in Touch days). Typically contact should be to update the employee on developments in the workplace, such as staff changes.

To avoid any disputes about whether any contact was “reasonable” it is advisable for the employer to have a discussion with the employee about what level of contact the employee wants to have during leave and the best way to contact him/her.

What goes wrong

Litigation and grievances can stem from either too much or too little contact, and often what one employee on leave may feel is an appropriate level of contact will be different from another employee’s view of this. This is why it is important for employers to have discussions with employees about to go on leave to establish what is appropriate for that particular employee.

Compulsory maternity leave: an exception to the rule?

The legislation does not define the term “reasonable contact”, so it does not specify that there can (or cannot) be contact with an employee during the compulsory maternity leave period. However, employers should be very careful about the level of contact that they have during this period and whether, in fact, they are requiring, asking or even just permitting, the employee to work during this period. If an employee is asked to work during this period, not only is there a risk of a claim from the employee (which might be brought as an uncapped discrimination claim) but also the employer

will be guilty of a criminal offence. Employers should be aware that they commit a criminal offence simply by permitting an employee on compulsory maternity leave to work and, as such, it should be made clear to all employees about to commence maternity leave that they are not expected, and should not, work at all during the compulsory maternity leave period.

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