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NEWS REPORT

Country:	United Kingdom
Title:	<i>Ali v Capita Customer Management Limited</i> Employment Tribunal Decision Case No.1800990/2016 (24/1/17)
Date:	4 July 2017
Expert:	Grace James
<u>Context</u>	
Issue at stake:	Father wins sex discrimination case re: shared parental leave
Ground of discrimination:	Sex
Source:	National tribunal decision
Field:	Parental leave
Applicable law:	The Equality Act 2010 and the Shared Parental Leave Regulations 2014.

Content

The Shared Parental Leave Regulations (2014) allow parents to share leave entitlement following the birth of a child. The mother must take 2 weeks leave immediately after the birth (Employment Rights Act 1996 S.72(1) and Maternity and Parental Leave Regulations 1999 (Reg 8)) in order to recover from childbirth, but the remaining leave entitlement can be shared between parents. In relation to pay: statutory maternity pay is, during the first 6 weeks of leave, paid at 90% of the mother's average weekly earnings (with no upper limit) and, thereafter, paid at a basic rate (£140.98 per week or 90% of salary if that is lower) for the remaining 33 weeks leave entitlement. Shared parental leave (SPL) is paid, from day one, at the statutory rate (£140.98 per week). Employers are able to 'top up' the statutory entitlement to both maternity pay and shared parental leave by paying some or all of it at a higher rate if they wish to do so.

The employers in the present case operated an enhanced maternity leave policy, providing employees with 26 weeks service, 14 weeks enhanced maternity pay (followed by 25 weeks at the statutory rate). They did not however offer enhanced pay in relation to their shared parental leave scheme. This case involved a father who claimed that his employer had directly discriminated against him on the grounds of his sex (contrary to S.13 of the Equality Act 2010) because he, unlike a female comparator claiming maternity leave, was not entitled to enhanced pay if he took SPL. Mr Ali, the claimant, accepted that the two weeks compulsory leave are ring-fenced for women recovering post childbirth, but argued that the remaining 12 weeks of the 'enhanced' scheme ought to apply to him when taking SPL. The employment tribunal upheld his claim for sex discrimination stating that because of the difference in policy he was 'deterred from taking the leave and was less favourably treated as a man' (para 5.38).

The tribunal also warned against 'generalised assumptions' that mothers are always best placed to undertake care-giving post childbirth and 'should get the full pay because of that assumed exclusivity' (para 5.41). In this particular case the father was, the tribunal

found, 'best placed to perform that role' because his wife was diagnosed with post-natal depression and, crucially, 'he was asking for the leave to perform the same role his female comparator would have performed with full pay' (para 5.42).

Key points of analysis: This employment tribunal decision is a first instance decision (and hence not binding) and there is no obligation on employers to offer enhanced shared parental leave pay because they offer enhanced maternity leave pay. In an earlier (unreported) employment tribunal case, *Hextall v Chief Constable of Leicester Police*, a policy similar to the one applied here, offering an enhanced pay scheme in relation to maternity leave only, was not found to be discriminatory. In a different (unreported) employment tribunal case, *Snell v Network Rail*, a policy of giving mothers on shared parental leave full pay, but paying only statutory minimum pay to partners on the same scheme, was found to be indirectly discriminatory.

Further information / links

Ali v Capita Customer Management Limited Employment Tribunal Decision Case No.1800990/2016 (24/1/17) available at <https://www.gov.uk/employment-tribunal-decisions/mr-m-ali-v-capita-customer-management-ltd-1800990-2016>