

Employment E-Brief No 68

MATERNITY PAY - SIGNIFICANT DEVELOPMENT

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The European Court of Justice has this month ruled that any pay rises received by women on maternity leave before the end of that leave must be reflected in the earnings related part of their maternity pay.

By reference to the earnings related part of maternity pay, we mean the first six weeks of leave, for which a woman can receive 90% of her salary. After that she receives a maximum of £102.80 per week.

This effectively reverses the current UK position, which says that the earnings related maternity pay is to be calculated by reference to the woman's salary in the fifth and sixth months of pregnancy.

The ECJ's reasoning was simply that if the woman on maternity leave does not have the increase reflected in her earnings related maternity pay, she has been discriminated against because the only reason she has not actually received it is because she is on maternity leave.

Employers who offer enhanced maternity leave packages ought to consider how pay rises received during the enhanced pay period are treated. Good practice will be to ensure they are reflected in the amount the woman actually receives.

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