



Season 3

Episode 6 – Neonatal care leave (Part 1): What is the new right, who is eligible, and does the law go far enough? With Joanna Holford and Catriona Ogilvy

Ellie:

Before we start today's episode, we wanted to give our listeners a quick content warning. We will be discussing themes around premature or traumatic births and neonatal care, which some listeners might find distressing. With that in mind, we would advise listener discretion as to whether you feel comfortable listening to this episode.

Hi and welcome to the Work Couch Podcast, your fortnightly deep dive into all things employment. Brought to you by the award-winning employment team at law firm RPC, we discuss the whole spectrum of employment law with the emphasis firmly on people. Every other week we unpack those thorny HR issues that people teams and in-house counsel face today and we discuss the practical ways to tackle them. My name is Ellie Gelder, I'm a Senior Editor in the Employment, Engagement and Equality team here at RPC and I'll be your host as we explore the constantly evolving and consistently challenging world of employment law and all the curveballs that it brings to businesses today. We hope by the end of the podcast that you'll feel better placed to respond to these people challenges in a practical, commercial and inclusive way.

This week, we're talking about the long-awaited new statutory right to neonatal care leave, which is coming into force on the 6th of April. As we'll find out, there is a lot to unpack and we'll also take the time to explore the lived experience of having a baby in neonatal care, which is really key when thinking about how employers can best support their employees at what is often a really difficult and stressful time.

So in the first part of our series on neonatal leave, I'm delighted to be joined by two experts in this field. Firstly, Joanna Holford, senior associate in our employment team, who is frequently advising clients on family-related employment law rights. And secondly, Catriona Ogilvy from The Smallest Things, a fantastic charity which has campaigned tirelessly for better support for employees whose babies require neonatal care.

Hi Jo and Catriona, a very warm welcome to you both. Thank you so much for joining us today.

Catriona:

It's great to be here today.

Jo:

Hi, Ellie.

Ellie:

Jo, as I've just said, neonatal care leave has been one of those rights that's been in the legislative pipeline for a really long time. So can you just briefly set out the background to this brand new employment right?

Jo:

Right Ellie, we actually spoke about this on the Work Couch a few years ago back in 2023 about neonatal leave and I'm sure Catriona will explain exactly how long her work dates back to in campaigning for this right because as you said she's been right at the forefront of the legislative journey. But to give you a brief history way back when Rishi Sunak was Chancellor he announced as part of the Spring 2020 budget that the government would create a new statutory entitlement to neonatal leave and pay for those employees whose babies spend an extended period of time in neonatal care, providing up to 12 weeks paid leave. Then in July 2022, the government announced that it was backing a private members Bill. That Bill received Royal Assent on the 24th of May 2023 and became an Act of parliament. And the Labour government then confirmed that it would proceed to bringing the Act into force on the 6th of April this year. The full name of the act is the Neonatal Care Leave and Pay Act 2023 and that will be introduced by two sets of regulations. Firstly, we've got the Neonatal Care Leave and Miscellaneous Amendments -Regulations 2025. And secondly, the Statutory Neonatal Care Pay (General) Regulations 2025. And given the timing, employers should, if they're not already, be preparing for the changes.

Ellie: Thanks, Jo. That's really helpful for setting the scene. Catriona, can I ask you how you came to be involved in this area and how your own experiences have informed the work that The Smallest Things is doing?

Catriona: Absolutely, Ellie. I'm really pleased to discuss my own experiences, firstly as a parent of two children born prematurely. My background is as a children's occupational therapist. I used to work on neonatal intensive care many moons ago before I had my children and I thought I sort of knew what it was like to be on a neonatal intensive care unit. But then when I was 29 weeks pregnant, my waters broke very, very suddenly and then I rushed to hospital and Samuel, my first baby, was born within an hour. And he was rushed straight away to intensive care. I was able to have a brief look at him. I wasn't able to hold him. And just in that moment, our world sort of fell apart. A few hours later, I was able to go to the neonatal unit to see Samuel.

He was very small. He was in an incubator and he was on a ventilator helping him to breathe. Of course, as parents, we were absolutely terrified. We didn't know what the outcomes were going to be or how he was going to go over the next few hours or days. But a consultant came to speak to us and reassured us that actually everything was going to be OK, but we would have a lengthy stay in hospital up until about his due date, which was two months away.

And then the next thing that happened was a family support worker came to speak to me to ask how we were doing. Did we have any other children at home that we needed to think about childcare arrangements? Lastly, had I been in contact with my work because I needed to let them know because my maternity leave had started. And in that moment, I just couldn't comprehend how the consultant had talked to us about Samuel being in hospital for two months at the same time as then later being told that two months of my maternity leave was going to be spent visiting Samuel in hospital. It was a really tricky time, but I think as most parents will say when you're in neonatal intensive care, there's lots of support around you. High levels of adrenaline, there's that anxiety and worry kick in and you often take two steps forward, one step back. But for us, we were very lucky. We brought Samuel home after he'd been in hospital about seven weeks.

We weren't really aware as parents though what the lasting impact of having a premature baby in time in neonatal intensive care would be. And it was in sort of the months and indeed years after we came home from hospital that it was really difficult for us as a family. So Samuel had lots of re-admissions to hospital. I was struggling with my own mental health, having for example flashbacks to our time in intensive care. And just generally feeling quite alone and as if nobody understood the journey we went through. And I thought to myself, know, what can I do to help raise awareness? And I started just writing a blog called The Smallest Things and I had a Facebook page and very quickly I was inundated from parents getting in touch to say, I thought it was just me. I didn't realise that other parents felt like this. And there really was a groundswell of parents saying, "Our journey carries on".

So The Smallest Things really was set up and quite quickly we realised that the one thing that could really help families in that time would have to have extended neonatal leave so that parents could be with their babies in hospital so that mums and dads aren't having to choose between work and pay and visiting a very small and very sick baby in hospital. yeah, more than a decade ago now, we started the campaign for parents to have extended time for babies who have been admitted prematurely to neonatal intensive care. It's been a long journey, it's been a long campaign but I'm delighted that we are very close to that becoming a right for families whose babies are born poorly or sick.

Ellie: Thank you so much for sharing your story, Catriona. It sounds like an incredibly difficult experience and importantly really brings home why we're talking about this new right, why it needed to be introduced. And given the numbers of babies requiring neonatal care in the UK every year, it's actually more common than some people might first think, isn't it? So what sort of care are we talking about here?

Catriona: So it's, when you look at the statistics in terms of the number of babies admitted to neonatal intensive care, I think the first instinct is that's a lot of families admitted to neonatal intensive care. So about 90,000 babies may be admitted to intensive care each year, but for the majority of many of those babies actually only spend a few days in the unit. It's babies who are born very prematurely or babies who are born very poorly that spend much more time neonatal intensive care. I think that's one of the things when we first started campaigning we didn't really want to frighten employers with large numbers but actually the numbers of families who will have access to the new entitlements is smaller so it's around probably up to 60,000 families but again a big chunk of those families it will only be for sort of one or two weeks rather than up to the cap and that will be 12 weeks that will be a very small number for families.

Ellie: And can we talk about what the legislation actually says about neonatal care? So regulation 4(1) of the Regulations defines neonatal care as either medical care received in a hospital or medical care received in any other place, which meets the following criteria. So first of all, the child was an inpatient in hospital and the care is received upon that child leaving hospital. Secondly, the care is under the direction of a consultant. And thirdly, the care includes ongoing monitoring by and visits to the child from healthcare professionals arranged by the hospital. And finally, it includes palliative or end of life care. And we were talking a bit before this recording actually about your thoughts on that and how that might apply in reality.

Catriona: Absolutely. So it was one thing that when the draft regulations were being drawn up that we were keen to emphasise that it isn't just about the time that a baby spends in hospital. We know that there are some babies who aren't admitted straight away to neonatal intensive care. There are some children who may come home from hospital after birth, but then find that actually there is a condition that requires a re-admission to another children's ward, not necessarily neonatal care.

The other thing is that there can be quite a post-code lottery in terms of what medical support you might have in the community. So we know in some areas babies born particularly prematurely may go home from hospital on oxygen or with a feeding tube and we envisage that those families would be still classed as receiving care, hospital care in the community. Whereas some other families might actually still continue to receive that care in the hospital and our concerns the charity initially was that actually it would discourage perhaps parents from wanting to take their baby home requiring a higher level of medical care if that meant that their time with their baby to bond or before they had to return back to work was cut short. In terms of how that will happen in practice, I think there's still some ambiguity over what sort of consultant-led care actually means and I think know we'll probably find out a little bit more about that in the weeks and months to come.

Ellie: And I think you have also alluded to why the law had to change, but just summarise for us then why this is being brought in, the purpose of your campaign to date.

Catriona: So The Smallest Things absolutely recognise is that it's it really is impossible to know what it's like to be a parent in an intensive care unit. It very much is a hidden world unless you work on a unit or unless you've had a baby admitted to an intensive care unit. It's not somewhere that you might just happen across. So to really put that into perspective early, if you walk into a neonatal intensive care unit, you're surrounded by incubators and machines and buzzing alarms as parents worry that their baby saturations or heart levels are dropping. You will see sort of rows of parents sitting next to incubators, some who haven't been able to hold their baby for the first time. The first time I held Samuel, he was six days old. And if you think about that sort of that magical first hold with your baby.

Actually, for parents like me, that first hold can be terrifying. When I held Samuel for the first time, he was still on a ventilator. All the lights on the machinery were flashing, the alarms were buzzing. And you're worried about hurting your baby. You're worried about doing some damage. You're worried about whether they are strong enough to be held. I remember...and this is going back nearly 14 years ago, but I still remember so vividly wanting to be able to lean forward and kiss Samuel, to kiss him on the forehead and to hold him close. But there was a ventilator attached to his face and a feeding tube on his nose and I couldn't get him close to me. And those are the sort of things that families carry with them. It's very difficult to bond with the baby in neonatal intensive care. And so it's so important that parents have the time and the financial support to be able to be with their baby while their baby is in the hospital and the neonatal unit so that they can support them so they can care for them so they can be mums and dads to their babies in hospital. But really importantly, so that they have the time when they come home.

We know that there is a cost, not just emotional, but a financial cost of having a baby in hospital. If you consider parking charges or additional childcare costs or the costs of eating in the hospital canteen. And often parents will say to us that in those last couple of months of work before they had their baby, they were planning on saving up some more money and preparing for the arrival of their new baby, but actually that time is just often really suddenly taken away from you. So families haven't had that time to prepare. It's so important that families will now have that additional time that they need. It covers both parents as well, which is hugely important that both parents are able to be with their baby or babies in hospital.

Ellie: Okay, so Jo, we've mentioned in very broad terms then that this is a new right to neonatal care leave for up to 12 weeks. So let's look at the detail now. First of all, can you tell us who is going to be eligible for this?

Jo: Yes, absolutely. So the first thing to point out, it's employees only. It's going to be a day one right to leave, but that's not pay and we'll talk about that a bit later. And in terms of that employee, they have to be either the child's parent or the intended parent, where this is a surrogacy arrangement, or the child's adopter or prospective adopter, or the partner of either the adopter or the prospective adopter. And they must be taking the leave to care for the child.

And it's important to highlight that, unfortunately, parents whose babies are born before the 6th of April this year won't be eligible. Finally, the neonatal care must have started within 28 days of the baby's birth. The care must last at least seven days or more, and the leave can be taken up to 68 weeks from the birth of the child.

Ellie: And Jo, explain the timing and length of leave because that sounds really rather complicated.

Jo: Yes, you're absolutely right. There's quite a bit of confusion on this as there are different rules depending on when the employee is taking the neonatal care leave. Essentially, the legislation divides neonatal care leave into two tiers, tier one and tier two. The tier one period starts when the employee's baby starts to receive neonatal care and it ends on the seventh day after the baby stops receiving neonatal care. During tier one, eligible employees can take one week's neonatal care leave for every uninterrupted week that their baby receives neonatal care up to a maximum of 12 weeks. It can be taken in non-continuous blocks of one week minimum. Tier two is any other period of time after tier one has ended during which the employee is entitled to take neonatal care leave.

As I said earlier, the entitlement to neonatal care leave ends 68 weeks after the baby's date of birth. This is to reflect the fact that many mothers will take up to 52 weeks of maternity leave before taking neonatal leave and is intended to resolve that situation that Catriona mentioned, where maternity leave is effectively cut short by the fact that the mother has already spent a big chunk of maternity leave in neonatal care. Unlike tier 1 leave, in tier 2, the neonatal care leave has to be taken in continuous blocks.

Ellie: So does that mean that mothers and primary adopters are in practice more likely to take neonatal care leave in tier two?

Jo: That's certainly the expectation, yes, because in many cases they'll take their maternity or adoption leave first and then they can tack on neonatal care leave at the end. It's also worth bearing in mind that premature births, which often involve some kind of neonatal care, automatically trigger the maternity leave for that employee anyway.

Ellie: And tell us briefly about the right to pay then during neonatal care leave. So that's going to be a slightly different eligibility requirement, isn't it?

Jo: Yes, that's right. So from the 6th of April, 2025, statutory neonatal care leave pay is set at £187.18 per week. Or if the employee earns less than that, it will be 90% of the employee's average weekly earnings. Much like the other statutory family-friendly payments, say maternity or paternity leave, this rate will increase in April. The maximum pay an employee will get is capped at 12 weeks, because that's the maximum period that the entitlement to neonatal care leave applies. But and this is a big but, the right to pay during neonatal care leave is not a day one right, unlike the right to leave itself. To be eligible for neonatal care leave pay, the employee must have 26 weeks continuous service with the employer and the employee's normal weekly earnings must be at least equal to the lower earnings limit for national insurance purposes, which is £125 per week from the 6th of April 2025.

Ellie: I wanted to ask you about, Catriona, the partner perspective, which I think does sometimes get overlooked when we have these conversations about pregnancy and childbirth, but it's so important, isn't it?

Catriona: Absolutely. Looking back at my own experience, I find it incredible. My husband had two weeks paternity leave, which he split. So he took one week off after Samuel was born and then saved the second week for when Samuel came home from hospital. So that meant sort of six or seven weeks where he would get up and go to work in the morning and then he would come to the neonatal unit to see Samuel. So you know, he would come in his suit after having done a day at work to sit beside his son. And that just seems now extraordinary. That that was, Samuel was our first child. It seems extraordinary that, A, my own journey of becoming a mum was was traumatic and difficult, but it seems extraordinary that that was my husband's experience of becoming a dad, where for a good proportion of two months, he was a dad sitting next to an incubator for sort of half an hour to an hour every evening after work. It's really important. It's important for mums that they have their partners there as well. Often mums have been through a traumatic birth and they need that support.

So being able to have both sets of parents, you know, we give the buds all the time that they have to go back to work when their baby is still in intensive care and that's unthinkable. And it's quite frankly for the birds that any parent would be productive at work during that time anyway.

Ellie: Absolutely. It goes back to the impacts on mental health, doesn't it? And, thinking about the practicalities as well. If a mother has had a C-section and she can't drive and then how does she get to the hospital each day and having your partner to support you, I imagine just so vital in so many different ways. But thank you for giving us that insight into your own experience.

So if we go back to the legislation, Jo, how are we expecting partners to use this new right to leave?

Jo: I think because of the nature of neonatal care being so unpredictable, it's going to potentially be an emergency situation which parents don't get any warning of. In practice, fathers are more likely to take neonatal care leave in the tier one period I mentioned. So that's the period that starts with the employee's baby starts to receive neonatal care and it ends on the seventh day after the baby ceases to receive neonatal care. So thinking about this in practice, it's not possible to take neonatal care leave during the first week the baby is receiving care because the right only applies once the baby has been receiving care for seven days. So for those first seven days, the father is most likely to be taking paternity leave.

When it's clear that the right to neonatal leave applies, it will be a decision for the family based on their own individual circumstances as to whether to switch to neonatal leave at that point. And then depending on the length of the period of care, switching back to paternity leave at a later point, because we have to remember that paternity leave itself has to be taken within the first 56 days of the baby's birth. Or alternatively, they could take that first two weeks as paternity leave and then switch to neonatal care leave.

Ellie: So given the potential different options there that you've just mentioned for partners, how can employers effectively manage that in practice?

Jo: Yeah, I think this is going to be tricky and cause administrative problems. So it'll be crucial to have a really robust procedure in place to track and monitor how much leave employees have taken and record in which tier the leave is taken.

There are also different lengths of notice required depending on which tier the employee is taking the neonatal care leave in, which we'll look at in more detail in part two as they're quite technical. So again, having a system to coordinate and manage this would be essential.

Ellie: And on that point about notice, are there any evidential requirements for the employee to show that their baby is actually receiving neonatal care?

Jo: No, I think parents will welcome the news that they won't have to show that kind of evidence, which as you can imagine being on a neonatal care ward is the last thing that parents will want to be asking for. However, when they notify their employer that they wish to take neonatal care leave, there are certain bits of information that they will need to provide. And this includes the baby's date of birth or date of placement for adoption or entry into Great Britain if it's an adoption from overseas, the date on which the baby started to receive neonatal care and if relevant the date on which the baby stopped receiving such care, the date on which the employee wishes to start neonatal care leave and the number of weeks of leave and pay, and confirmation that the neonatal care leave is being taken to care for the child.

Ellie: Catriona, we'll look at the practicalities of actually how employers implement neonatal care leave and pay in part two of this podcast. But I'd be interested in your views on the new legislation. Do you think it goes far enough or are there limitations?

Catriona: It doesn't go far enough. We always wanted this to go further, but saying that, we're really happy in terms of there is statutory leave pay and leave coming in, which wasn't there for families before. At The Smallest Things, while we've been campaigning for neonatal leave and statutory rights for family, we've also been asking employers for a long time now to make these changes. Anyway, so as a charity, we have what's called our employer with heart which does go over and above the new legislation. There are some difficulties with the new legislation. So firstly, that 12-week cap. We said earlier on in the podcast that actually the majority of babies admitted to neonatal intensive care may only have a stay of a few days or a week or so. But there are some babies born really incredibly poorly and those born very early.

Catriona: It can be as early as 23 weeks. And in those situations, the baby is likely to be in hospital for longer than 12 weeks. And it really is those families that have a prolonged stay in neonatal intensive care that need that additional time. At the small things, we also really understand what's called the difference between a corrected age versus the actual age of a baby. So take Samuel, my baby born at 29 weeks, for example, he went home after seven weeks in hospital, which meant that by the time he went home, he still hadn't reached his due date. And he, like other babies born prematurely, continued to develop according to his sort of corrected age. So as a charity, we're asking for us to really recognise that that children born prematurely actually need more time to develop and to get to the same stages that other children born at term would be.

Ellie: Well, thank you both for explaining the new right and the broader context so eloquently and insightfully. I'm really looking forward to picking up the conversation again in part two, when, as I said, we'll look at the practicalities of implementing neonatal care leave. But for now, thank you so much for joining us.

Jo: Thanks for having us Ellie.

Catriona: Thanks, Ellie.

Ellie: And for anyone who is listening, who needs some advice or support, [Working Families](#), which is the UK's national charity for working parents and carers has in-depth information and support for parents on their website.

And obviously the [Smallest Things](#) charity as well can offer support.

If you would like to revisit anything we discussed today, you can access transcripts of every episode of The Work Couch podcast by going to our website: www.rpclegal.com/theworkcouch. Or, if you have questions for me or any of our speakers, or perhaps suggestions of topics you would like us to cover on a future episode of The Work Couch, please get in touch by emailing us at theworkcouch@rpclegal.com – we would love to hear from you.

Thank you all for listening and we hope you'll join us again in two weeks.



RPC is a modern, progressive and commercially focused City law firm. We are based in London, Hong Kong, Singapore and Bristol. We put our clients and our people at the heart of what we do.