



## Human Resources & Health and Safety



Do you employ staff?

### Snell vs Network Rail (2016)

Our Employment Law Updates usually inform our readers of upcoming employment law changes, but as there are no employment law changes to be implemented in November, we have instead decided to focus on the outcome of a recent employment tribunal: Snell vs Network Rail.

David Snell, a new father, chose to raise a claim against his employer, Network Rail, when he realised that he would not receive pay in the same way his partner would during Shared Parental Leave. Both Mr Snell and his wife are employees of Network Rail, and with a baby on the way they decided they would utilise Shared Parental Leave. However, when they discovered that Mr Snell was only entitled to statutory shared parental pay, despite Mrs Snell being entitled to 26 weeks of full pay and 13 weeks of statutory shared parental pay, they began to worry that utilising Shared Parental Leave would not be possible. The couple felt that this differentiation of pay between a mother and a father could only be the result of discrimination on the grounds of sex, a protected characteristic under the Equality Act 2010, and therefore Mr Snell raised a grievance.

Network Rail rejected Mr Snell's grievance. The Company believed it did not matter that they treated different gender employees differently because they were upholding their statutory obligations. They also informed Mr Snell that for this to be a case of sex discrimination he needed to compare himself to the female partner of a mother, not to his wife (this would be the case if Mr Snell was complaining of direct discrimination, but he was actually arguing that he was a victim of indirect discrimination). Mr Snell appealed this decision, but his grievance was once again rejected. During this period of time, Mr Snell's wife became ill and was hospitalised, and Mr Snell also became ill with anxiety and high blood pressure due to his wife's illness and the stress of his unsuccessful grievance.

Mr Snell subsequently raised a claim for Indirect Sex Discrimination with his local Employment Tribunal and during the tribunal proceedings Network Rail conceded that their interpretation of the Shared Parental Leave

legislation was discriminatory. Due to Network Rail not conceding to this before, and due to illness suffered by Mr Snell as a result, the tribunal ordered Network Rail to pay Mr Snell a sum of £28,321.03 for the discrimination and hurt feelings. The Employment Tribunal felt that the situation caused Mr Snell to be distracted and unable to be fully supportive of his wife who was ill during pregnancy, and this was something that should never have happened.

Network Rail have since changed their policy in order to “enhance fairness”, choosing to pay both men and women statutory payments only whilst on adoption, maternity, paternity or shared parental leave.

Why is this case important? Many employers offer some form of enhanced maternity pay, but few offer enhanced paternity pay. This is because many employers are slow to update their policies and historically women have been the ones to take time away from work to care for the children. Statutory paternity leave was only introduced in 2003, and at the time many employers thought men would not use it. However, since the introduction of statutory paternity leave it has been very popular, in 2010 additional paternity leave was introduced to allow men to take more leave if their partner returned to work, and in 2014 shared parental leave was introduced to allow parents more freedom of how their parental leave should be allocated, again allowing more leave for men if their partner returned to work. Unfortunately, in the two years since the introduction of shared parental leave there has been little uptake from new fathers, and the Government believes this could be the result of low pay.

The important thing to be aware of is that a lot of employment law is decided over precedent, and a precedent has now been set that when men are not offered the same parental rights by their employer as their female colleagues are, this could now be considered indirect sex discrimination. In light of this, it is important to review what you offer your employees. If there are differences in what you offer male and female employees, is there a legitimate business reason for you doing so? If not, you may want to consider a change. Network Rail took quite drastic measures in removing all enhanced payments and this may have resulted in unhappy and disengaged employees, therefore this is not an approach we would recommend, but we would recommend ensuring all employees are treated equally.

### How Can We Help?

If you have any queries relating to the subject of this e-newsletter or any other HR related issue, then please don't hesitate to contact us at [hradvice@hasslefreehr.co.uk](mailto:hradvice@hasslefreehr.co.uk) or on our office number 02476 992869.