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MATERNITY LEAVE POLICY IN MULTINATIONAL COMPANIES: LEGAL POINT OF VIEW

Most multinational companies have a number of HR policies, which regulates different spheres of companies life, such as: Equal Employment Opportunity, Diversity and Inclusion Policy, Policy Against Harassment, Whistleblower Policy, Anti-Nepotism Policy, Document Retention and Destruction Policy, Electronic Information and Communications Policy, Health and Safety and Drug Testing, Security, Workplace Violence, Employee Benefits, Vacation Days, Holidays, Sick Days, Family, Medical, and Military Leaves of Absence etc.

Some of the most common challenges multinational companies are facing in terms of creating work rules and personnel policies include [1]: “1. **HR disconnect** - Multinational companies need to implement the same policies and procedures on recruiting, hiring, benefits and compensation in all of their branches and business units across the globe. 2. **Cultural divide** - Main goal of HR management in multinational companies is to build global employee community with unique company culture and values. This can be tricky because diverse languages, cultures and customs can hinder the alignment of HR policies in different company branches. 3. **Legal compliance** - Every country has its own labor law and HR department of each foreign subsidiary needs to fully align company policies with it.”

In this study we would like to focus on the legal compliance challenge in the preparing maternity leave policy based on the multinational company with employees in UK and Ukraine the example.

We conducted comparison on main conditions of maternity leave, such as duration, eligible payments, conditions of eligibility, terms etc. Results of this research are below:

1. Criteria – Leave duration

UK – 52 weeks (1 year): 26 ordinary leave and 26 additional leave [2]

Ukraine - 126 days (18 weeks) + 14 days in case of obstetric complications – maternity leave vacation; 3 years - vacation for taking care for the baby [3]

2. Criteria –When maternity leave starts

UK –11 weeks before the expected week of childbirth

Leave will also start: the day after the birth if the baby is early; automatically if you're off work for a pregnancy-related illness in the 4 weeks before the week (Sunday to Saturday) that your baby is due [2]

Ukraine – 70 days before the expected day of childbirth and 56 days after the birth

3. Criteria - Is the leave obligatory or it is a choice?

UK – 2 weeks' leave after the baby is born is a must (or 4 weeks if women work in a factory) [2]

Ukraine – No, the woman can stay at work and receive her regular salary instead of maternity pay or receive the maternity pay in less amount depending on the duration of her maternity leave

4. Criteria - Statutory Maternity Pay

UK – Statutory Maternity Pay (SMP) is paid for up to 39 weeks.

Employee get: 90% of employee's average weekly earnings (before tax) for the first 6 weeks; £151.20 or 90% of your average weekly earnings (whichever is lower) for the next 33 weeks [2]

Ukraine – Statutory Maternity Pay is paid for 126 days (18 weeks)

Employee get: 100% of employee's average monthly earnings but not more than the amount of the maximum value of the single contribution base (15*minimum salary). In 2020 this amount is 70 845 UAH (£1 949.5) [4]

5. Criteria - Schedule of payment

UK - SMP is paid in the same way as your wages (for example monthly or weekly). Tax and National Insurance will be deducted [2].

Ukraine - SMP is paid as one-off payment on the day set for the payment of wages nearest after the appointment of benefits.

6. Criteria – Eligibility

UK - you're an employee not a 'worker' and you give your employer the correct notice [2].

Ukraine - you are an employee (not a contractor)

7. Criteria - Additional conditions for payments

UK - To qualify for SMP you must: earn on average at least £120 a week; give the correct notice; give proof you're pregnant; have worked for your employer continuously for at least 26 weeks continuing into the 'qualifying week' - the 15th week before the expected week of childbirth [2].

Ukraine - there are no additional conditions for payments, but for women who has contribution period less than 12 months before insured event (starting of the leave) [3].

8. Criteria - Notification of the employer

UK - 15 weeks before due date the employee has to inform when the baby is due and when the employee wants to start the maternity leave.

Also, the employee has to inform the employer that employee want to stop work to have a baby and the day employee want her SMP to start at least 28 days' notice and proof the pregnancy [2].

Ukraine - There is no official term of the notification of the employer.

9. Criteria – additional payment

UK - The employee could get a one-off payment of **£500** to help towards the costs of having a child. This is known as a Sure Start Maternity Grant.

Employee usually qualify for the grant if both of the following apply:

- employee is expecting her first child, or a multiple birth (such as twins) and have children already;
- employee or her partner already get certain benefits;

Employee must claim the grant within 11 weeks of the baby's due date or within 6 months after the baby's birth [2].

Ukraine - Each woman (not only employee) has a right to receive the financial support in connection with childbirth in the amount **41280 UAH (£ 1 135.93)** - one-off payment in the amount of 10320 UAH and equal payments during 36 months.

10. Criteria - Company maternity schemes

UK - Employee might get more than the statutory amount of leave and pay if the employer has a company maternity scheme. Employer cannot offer less than the statutory amount [2].

Ukraine - Employee might get more amount or days of vacation if the employer has collective agreement with additional benefits for the employees or appropriate internal documents and policies. Employer cannot offer less than the statutory amount.

11. Criteria - Leave for fathers

UK - Men can choose to take either 1 or 2 weeks paternity leave.

Leave cannot start before the birth. It must end within 56 days of the birth (or due date if the baby is early). The statutory weekly rate of Paternity Pay is £151.20, or 90% of your average weekly earnings (whichever is lower). Any money you get is paid in the same way as your wages, for example monthly or weekly. Tax and National Insurance will be deducted [2].

Ukraine - Maternity leave – only for women

Vacation for taking care for the baby – can be taken by father or relatives [3]

12. Criteria - Annual vacation days

UK - Employee continue to accrue annual leave during her maternity leave [2].

Ukraine - Annual leave will not accrue during maternity leave and vacation for taking care of the baby.

Summarizing the above mentioned, it is feasible to make the following conclusions:

1. UK and Ukraine legislation that regulates maternity leave is different in all of that 12 criteria.

2. In some cases, UK law is more attractive for employees (leave for fathers, annual vacation days, leave duration), but in other cases, Ukraine law has much more benefits for employees (amount of SMP, schedule of payment (one-off payment, a higher amount of additional payments, absence of strict terms of informing the employer etc.).

3. Both legislations allow the companies to get more than the statutory amount of leave and pay and prohibit to offer less than the statutory amount.

4. In such particular example, when the company has employees in UK and Ukraine, the employer has two options for being compliant: 1 – the simplest one – to have separate policies for each category of employees; 2 – to have one general global maternity leave policy but with a disclaimer that in cases when this policy conflicts with local law, local law shall prevail; 3 – to have one general global maternity leave policy with standards and benefits on the higher level available by applicable law.

«References:»

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3) Кодекс законів про працю України // URL: <https://zakon.rada.gov.ua/laws/show/322-08#Text> (дата звернення 20.09.2020)

4) Закон України «Про державну допомогу сім'ям з дітьми» // URL: <https://zakon.rada.gov.ua/laws/show/2811-12#Text> (дата звернення 20.09.2020)