



## **Consultation on Modern Workplaces**

# **UNITE – the Union Response**

**August 2011**

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### Introduction

This response is submitted by Unite the union, Britain and Ireland's largest and most industrially diverse trade union with 1.5 million women and men members across the private, public and not for profit sectors. The union's members work in a range of industries including food, manufacturing, financial services, health, print, construction, transport, local government, education, health and community sectors, we have extensive experience of representing men and women workers in a wide range of occupations who are faced with discrimination on all grounds.

### Key points

*In this response, in support of the TUC submission, we would like to highlight the following:*

### Flexible Parental leave

1. Unite welcomes the proposal for more flexibility in parental leave. However, we are very troubled about the proposed reduction of maternity leave to 18 weeks. This could lead to many new mothers returning to work too early with possible affect on their health as well as reduction in contractual pay.
2. Unite believes that children of any age need their parents whether they are unwell or healthy and this is also true for other family members. Older children face a series of pressures that need to be recognised, from exams and family bereavement or breakdown, to bullying and negative peer pressure. Parents should not have to put their jobs at risk in order to support their family. The chance for parents and carers to work more flexibly to support their older children at demanding times is vital. Therefore, Unite believes it is important that all parental leave is extended to parents/carers of older children up to 18.
3. Unite believes the government should ensure an entitlement to special extended leave in cases of premature, disabled or multiple-births, partners with postnatal depression, or partners who die or are seriously incapacitated.
4. The government should use this opportunity and enhance the statutory paternity leave to ensure all fathers can take this vital leave and not just those with greater financial means. In our experience one of the main concerns of our members is that they cannot afford to take leave. Increasing the level of pay to at least the maternity pay will ensure all fathers/partners will take this vital leave.
5. In relation to the current default scheme, we believe that the government needs to legislate for:
  - Parental leave to be available in blocks from a minimum of half a day and not one whole week

- It may be taken on a part-time basis, so working hours are reduced for a specific length of time, or start/finish times changed
6. Unite believes that parental leave should be available with no, or minimum notice and employers should only be able to postpone parental leave in exceptional circumstances. If a parent needs the leave for a particular event in their child's life they need to have it at that time and not a different time.
  7. Unite is disappointed that the government is proposing unpaid leave for fathers to attend ante-natal appointments. We continue to call for paid leave for fathers/nominated carers to attend these appointments including for adoptive parents to attend pre-adoption meetings, appointments etc.
  8. Unite believes that the government should extend its proposal making parental leave a right from day one, to paternity leave. Hence removing the qualifying period for the two-week paternity leave period.

### **Flexible Working**

1. Unite welcomes the proposals to extend flexible working to all workers. However, we are concerned that this will be set out in the codes of practice instead of legislation. Hence the giving it less strength. We also believe that the 26-week rule should be removed and continue to call for this right from day one of employment. This change will truly benefit all employees including those who are applying for new jobs.
2. Our experience shows that although some requests for flexible working are granted, far more are refused, including on a blanket basis which tends to underestimate the true number of requests that are not agreed to. We are finding that employers are citing almost any business related grounds for refusal without properly looking into the circumstances. Our members have been forced to lodge a grievance or find other legal remedies to win their case. This of course, puts more pressure and worry onto our members at a time that is already difficult for them, and does not assist the employer or positive industrial relations either. Therefore the government needs to continue to review, improve and further strengthen these rights.
3. Unite believes that the current right would be greatly enhanced through the addition of a requirement on employers to objectively justify any refusal, as without this, flexible working opportunities can be denied on a generalised basis.
4. Our experience of working with employers on flexible working has shown the need for greater awareness raising of the rights, so that their lack of knowledge cannot act as a barrier. In particular, we have been concerned that employers are made aware that the legal right to agree a short-term flexible working arrangement exists. Unite believes that it should be made clear in legislation that when a request is accepted it should not become a permanent change unless it is specifically asked by the employee.

5. We have found that employers who are committed to provide flexibility regularly review and improve their work-life balance arrangements, and provide training for those managers responsible for the operation of these arrangements, and time off for union reps to receive this training, too. In the longer-term therefore we would like to see the importance of regular reviewing and monitoring of the effectiveness of flexible working arrangements built into the procedures for operating these regulations. This would specifically include:
  - a. review data on requests for flexible working to ensure that they are working in practice, or to identify particular needs in a certain occupation or area, or lack of take-up amongst particular groups of workers
  - b. training for all managers operating flexible working systems, and paid release for union representatives to receive such training
6. While recognising that smaller employers often require additional support as they do not have eg Human Resource departments or Equality Officers to assist, our experience with some smaller employers is that they have a positive approach to flexible working, because of greater knowledge and understanding of individual workers' situations. It would be important not to always assume that smaller employers will not provide flexible working.

### **Working Time**

1. Unite does not believe that there should be a limit on leave carried over due to sickness. Mobile workers in Civil Aviation and in the maritime industry have yet to have their holiday entitlements enhanced and hence will be able to carry over their full legal entitlement whilst others cannot.
2. Unite does not agree with any proposal that gives the employer the right to place limitations on leave. To allow such an employer lead right, could result in unscrupulous employers reducing the amount of leave down to the four-weeks and using minor illnesses as an excuse to restrict leave entitlement.
3. Unite does not agree with the proposal as it would always lead to leave entitlement under Regulation 13 to be taken prior to entitlement under Regulation 13A and any additional contractual entitlement. Such a provision has the potential to punish the employee for being ill and restrict the potential for them to take their leave prior to they return to work in order to fully recover.
4. Unite agrees that there should not be an amendment to the Working Time Regulations to limit the accrual rate of holiday entitlement during periods of ill health or at any other time.
5. Unite does not foresee any problems with the proposal to Working Time entitlements to leave under both 13 and 13A to continue to accrue during periods of maternity, paternity or parental leave.
6. Unite believes that in general the provisions of regulation 15 would be sufficient.
7. Unite does not agree that it is reasonable to allow the buy-out of holiday entitlements. Employers should make adequate provision to cater for employee

holiday entitlements to be taken at any time and therefore the entitlement under Regulation 13A should be available at any point during the period when the employee would otherwise be working in the year. The right should only be deferred to the subsequent year if the employee is unable to take it due to ill health.

8. In some working environments it is not uncommon for an employee to be required to condense up to two weeks work into a single week. In such circumstances the employee is entitled to compensatory rest period in order to bring the average hours of work below the working time limitations.
9. Unite believes that given such employees may have provided up to two weeks work in one week, that such compensatory rest periods, should not be viewed as a period when the employee could be required to take their annual leave entitlement under regulation 13 or 13A. Equally if the working practice requires an employee to condense his hours in this way as standard practice, then that the employee should be entitled to take time off equivalent to the amount of time they would have enjoyed had they been providing a normal working time maximum hours. This means that if they work one week's condensed hours followed by a week's compensatory rest that time off during the condensed hours period should count as two days for every one taken off and days taken during the compensatory rest week should not count.

In this way the employer does not get away with providing no annual leave while the employee is not able to extend his minimum entitlement up to twice its statutory period.