

Work-Life Balance and the Economic Crisis

ADAPT LABOUR STUDIES BOOK-SERIES

International School of Higher Education in Labour and Industrial Relations

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Work-Life Balance and the Economic Crisis:

*Some Insights from the Perspective
of Comparative Law
(Volume II:
The International Scenario)*

Edited by

Lourdes Mella Méndez
and Lavinia Serrani

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CHAPTER ONE:
WORK-LIFE BALANCE:
AN OVERVIEW

THE WORK-LIFE BALANCE CONCEPT IN THE UK

JO CARBY-HALL

Introductory Thoughts

Employees and other workers in the United Kingdom work the longest hours in Europe, enjoy fewer public holidays than their European counterparts and have the shortest lunch breaks¹. Research carried out by Emma Innes² shows that half of working adults believe that their stress and anxiety levels have risen considerably in the last year as they struggled to find the right balance between work and family life; many say that their work life has had an effect on their personal relationships and in some cases led to poor health; a third of them are consumed by thoughts of work as soon as they wake up and one in four workers stop thinking about work just before they go to bed; one in five workers are unable to cook their dinner before 21,00 hours³ and 40% of women and a third of men rely on sugar and caffeine to enable them to get through their working day; half of the adult workers in the UK feel that their life is too focused on work with four out of ten workers being unable to describe themselves as happy; long working hours⁴, a poor or unbalanced diet⁵ and lack of sleep⁶ take a toll on workers' wellbeing and result in fatigue.

¹ Source: Trades Union Congress (TUC) December 2013 "Work Life Balance".

² Source: The Daily Mail 27th January, 2014 commissioned by Tilda for purposes of launching its online "Goodness Guide".

³ When they cook their meals it is found that on average 20 minutes is spent in their preparation during week days.

⁴ Because of putting too many hours at work, research has shown that 57% of workers have seen their personal life affected e.g. more arguments with their partner or spending less time playing with their children.

⁵ Not eating well and skipping meals, as is often the case, is a big contributor to feelings of discontent.

⁶ Research has found that on average a person is getting just over six and a half hours sleep during a typical night with having to cope with disturbed sleep at least once a week.

These disturbing facts give a great deal of food for thought and spell an uneven work-life balance! To quote Camilla Sheeley⁷ “To feel happy and content we must take a holistic approach to our lifestyle choices, this includes giving consideration to what we eat, how much we sleep and how we use our leisure time”.

The Raison d’être for Implementing a Work-Life Balance Initiative in the Enterprise

The non-existence of a work-life balance policy in an establishment adversely impacts on employees and reduces their chances of enjoying good health and their ability to balance their workload in the establishment with their other activities such as family life, such interests as reading, listening to music, taking part in sport, pursuing their hobbies and so on. A good work-life balance is an important factor in generating employee effectiveness in the enterprise and employee satisfaction in their work. It is thus in the employer’s best interests to adopt policies which permit employees to increase leisure opportunities and encourage them to balance their working lives with their personal interests and their needs, such as caring responsibilities.

Implementing a work-life balance policy has a beneficial impact on related issues some of which include the reduction of employee stress and consequent sick leave both of which are not beneficial to the establishment; the maintenance of a motivated workforce; the maintenance of high morale within the establishment resulting in a better output; a better system of communication within the workforce; promoting gender equality in jobs where women are disadvantaged in seeking promotion vis à vis men or where they are over represented in part-time work; increased job satisfaction of the workforce; a recognition by the employer that long hours and presenteeism have the effect of reducing workforce effectiveness; a good work-life balance assists in recruiting and retaining a highly skilled workforce; an effective work-life balance scheme recognises that the workforce is valued for its skills, contribution and experience *per se* rather than its working pattern. An effective work-life policy is one which maintains and increases productivity within the enterprise through a healthier, more motivated and more balanced workforce. It is not about performing less work.

⁷ Senior Brand and Innovation Manager of Tilda.

The Plan

Having touched upon some preliminary issues, this work proposes to examine in some depth the work-life balance concept. In the first instance an attempt will be made at defining this concept. There will then follow in the second instance an analysis of some of the British legislation which fosters this concept. Thirdly, there will be a brief discussion on flexible working, a topic which plays an important part in the work-life balance concept. Finally, an epilogue will follow.

1. The Definition of the Work-Life Balance Concept

The work-life balance concept⁸ is difficult to define for it means different things to different people. Work-life balance is about managing effectively the juggling act between work and other activities which people find important to them. The expression “other activities” would normally include family life, as well as hobbies, sports, part-time study and interests such as music, art, gardening, reading, driving, motor-cycling, cinematography and so on.

Thus the concept describes the achievement of an *equilibrium* between an individual’s working life and that individual’s private/personal family life. An acceptable and satisfactory work-life balance is achieved when a person’s desire to a *fulfilled* life has been accepted and respected to the mutual benefit of the worker or employee⁹, the employer and society as a whole. It is therefore the balance between the amount of time and effort which a person grants to work and the amount of time and effort such person grants to other aspects of life.

Although not full-proof, perhaps the best definition has been given by Susan Heathfield¹⁰ who says “Work-life balance is a concept that supports

⁸ Originally invented in the middle of the 19th century and called “work-leisure” the modern terminology of “work-life balance” was first used in the United Kingdom in the late 1970s to describe the balance between an individual’s life at work and his/her personal life.

⁹ There is an important difference in law between a worker and an employee. All employees are workers but all workers are not employees. For the legal distinction and its reasoning see Jo Carby-Hall 2003 “New Frontiers of Labour Law: Dependent and Autonomous Workers” in *Du Travail Salaré au Travail Indépendant:- Permanences et Mutations* eds. Professors Bruno Veneziani and Umberto Carabelli Volume 4 -European SOCRATES Programme Cacucci Editore pp. 163 – 308 particularly at pp. 246 – 282.

¹⁰ Source: “Work-Life Balance”.

the efforts of employees to split their time and energy between work and other important aspects of their lives. Work-life balance is a daily effort to make time for family, friends, community participation, spirituality, personal growth and other personal activities, in addition to the demands of the workplace. Work-life balance is assisted by employers who institute policies, procedures and expectations which enable employees to easily (*sic*) pursue balanced lives.”

That definition, explanatory and clear as it appears, needs to be qualified. First, the definition depends upon the *sense of values* of each individual who is subject to the work-life balance concept. The needs and priorities of individuals are not identical. The definition may therefore vary in application between individuals. Second, the work-life balance is not *a static one*. It is capable of changes at different times depending on circumstances in life which may change suddenly or gradually from day to day. Examples of circumstances which are capable of changing the work-life balance include caring for elderly parents¹¹, getting married, raising a family during its various stages¹², caring for one’s disabled children, changing jobs, retirement, and so on. Acquiring the right balance thus varies in accordance with changing circumstances. The third qualification is that the work-life balance need not necessarily be *balanced equally*. The number of hours devoted to work and to personal activities need not be equal and may thus change according to circumstances as required. There should be therefore some *flexibility* within the work-life balance concept.

A fourth qualification to the definition is the fact that an individual’s activities are not separate; they are *integrated*. “A true balance between work and life comes with knowing that your life activities are integrated, not separated” said Sunnarborg¹³.

¹¹ There are 5.2 million carers in England and Wales most of whom have paid jobs. Of the 15.2 million workers aged 16 to 74 in full-time work, 1.6 million are providing some unpaid care. Source: Office of National Statistics 2001 Census.

¹² It is shown statistically that in the United Kingdom, 68% of the families with dependent children have two working parents with as much focus on the role of the working father as that of the working mother. There are also some 1.9 million one parent families with dependent children with 53% of these parents at work. Source: “Flexible Working and Work-Life Balance” ACAS, March 2013.

¹³ Source: Michael Thomas Sunnarborg, 29th April 2013, “21 keys to Work/Life Balance: Unlock your full Potential” Published by the author.

2. Legislation which Fosters the Work-Life Balance Concept

There is no British legislation which provides specifically for the work-life balance concept. There exists however a great deal of British legislation which *promotes* the development of the work-life balance concept. This legislation includes, *inter alia*, the Working Time Regulations, 1998; the Work and Families Act 2006; the Equality Act, 2010; the Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations, 2002; the Part Time Workers (Prevention of Less Favourable Treatment) Regulations, 2000; the Employment Rights Act, 1996; the Sunday Trading Act, 1996; and the Minimum Wage Regulations, 1998.

A detailed study of each of this legislation would be irrelevant in the work-life balance context. What is proposed is to highlight and evaluate those statutory provisions which specifically *promote* and *foster* the work-life balance concept.

2.1. The Working Time Regulations, 1998

The 1998 Working Time Regulations¹⁴ govern the number of hours which individuals may work. The *weekly hours of work* are limited to a maximum of 48 hours for each seven day period¹⁵ unless the worker had agreed in writing with the employer that the 48-hour limit should not apply¹⁶. This is known as the famous (or infamous!) British “opt-out clause”¹⁷ which led Jacques Delors to say that Britain wants a “Europe à la

¹⁴ SI 1998/1833. These Regulations came into effect on 1st October, 1998 and enact the Working Time Directive (93/104/EC) and some provisions of the Young Workers Directive (94/33/EC) which treat young persons between 15 and 18 years of age and over school leaving age. Regarding children under that age, the Directive was transposed by the Children. (Protection at Work) Regulations, 1998 SI 1998 No. 276. (To be noted are the Working Time (Amendment) Regulations 2013 which amend the 1998 Regulations in their application to workers employed in England and Wales. These amendments relate to the commencement of the leave year provision in Reg. 13 (4) of the 1998 Regulations and notice of leave year Reg. 15 (6). The Working Time (Amendment) Regulations 2009 relate to doctors in training.

¹⁵ Working Time Regulations, 1998 Reg. 4 (1).

¹⁶ *Ibid.* Reg. 5 (1) – (4).

¹⁷ For an analysis of the “opt out clause” see Jo Carby-Hall 2014 “Opt-Opts and Variations in Working Time - British Style” in *liber amicorum* in honour of

carte.” The employer is required to take all reasonable steps¹⁸ to ensure that workers do not exceed the 48-hour provision limit. Special regulations exist for young workers. Their working hours are restricted to eight hours a day or forty hours a week.

The average *night workers’ hours* must not exceed eight hours for each 24-hour period¹⁹. Night workers have the opportunity of free health assessments before taking up night work and at regular intervals. Should the medical practitioner inform the employer that workers are suffering from health problems connected with night work, the employer has a duty to transfer the worker to a suitable day job²⁰. Unless there are special circumstances, young workers are not allowed to work between the hours of 10 pm to 6 am or 11 pm to 7 am²¹.

With regard to the *pattern of work*, if such work requires continuous or monotonous activities²² which put the health of the worker at risk, the employer needs to consider regular breaks so as to reduce the risk of, and/or injury to, health.

Adult workers are entitled to a minimum uninterrupted *daily rest* of eleven consecutive hours in each twenty four hours²³. Young workers are entitled to a minimum of twelve hours rest in each twenty four hours²⁴.

However that period may be interrupted in the case of activities involving periods of work which are split up over the day or of short duration²⁵.

As for the *weekly rest*, the adult worker is entitled to an uninterrupted period of not less than 24 hours in each seven days, or two uninterrupted rest periods each of not less than 24 hours in each fourteen days period, or one uninterrupted rest period of no less than forty eight hours in each fourteen day period²⁶.

The young worker is entitled to a weekly rest period of not less than forty eight hours in each seven day period. The young worker’s rest period

Professor Nikitas Aliprantis. Presses Universitaires de Strasbourg, edited by Professor Corinne Sachs-Durand *et al.*

¹⁸ Such steps could include an enquiry as to whether the worker has a second job. Should that be the case the employer is under a duty to adjust the working hours accordingly.

¹⁹ Working Time Regulations, 1998 Reg. 6 (1) – (8).

²⁰ *Ibid.* Reg. 7 (1) (a) (b).

²¹ *Ibid.* Reg. 7 (2) (a) (b).

²² *Ibid.* Reg. 8. For example, a single activity on a production belt.

²³ *Ibid.* Reg. 10 (1).

²⁴ *Ibid.* Reg. 10 (2).

²⁵ *Ibid.* Reg. 10 (3) and (8).

²⁶ *Ibid.* Reg. 11 (1) (2).

may be interrupted if the activities involve periods of work which are split up over the day, are of short duration or are reduced where this is justified by technical or organisational reasons, but not less than thirty six consecutive hours²⁷.

Where the working day is more than six hours an adult worker is entitled to a *rest break*²⁸. Such rest break needs to be agreed through collective bargaining in collective or workforce agreements. Where no collective or workforce agreement is in operation the statute provides that the uninterrupted period should be no less than twenty minutes. The worker need not stay at the workplace during that period; he/she is entitled to leave the workplace and go for a walk, shopping or whatever.

As for young persons²⁹ they are entitled to a rest break of at least thirty minutes where their daily working time is more than four and a half hours.

The worker is recommended to stay away from the workplace if at all possible.

There is a statutory entitlement - for either full-time and part-time employees - for 5.6 week *paid annual leave* calculable as from the first day of employment which is 28 days holiday if one works a five day week³⁰. This is the maximum statutory holiday entitlement unless the contract of employment provides for a longer period of annual leave which may be paid or unpaid. There is no statutory obligation for employers to give employees time off for bank or public holidays³¹ unless the contract of employment or custom and practice in the firm or industry provides for bank or public holidays to be *additional* to statutory annual leave. Bank and public holidays may be paid or unpaid depending upon the terms of the contract of employment³².

Where a period of annual leave is not taken on the date of termination of the contract of employment, the worker is entitled to payment in lieu of holiday³³.

²⁷ *Ibid.* Reg. 11 (3).

²⁸ *Ibid.* Reg. 12 (1) (2) (3).

²⁹ *Ibid.* Reg. 12 (4) (5).

³⁰ *Ibid.* Reg. 13 (1) – (9) and Reg. 16 (1) – (5) See too the Work and Families Act, 2006 s. 13.

³¹ In England and Wales there are eight bank/public holidays, in Scotland there are nine and in Northern Ireland ten.

³² For detailed information see the “Holidays” section of the Department of Business Innovation and Skills (BIS) website <http://www.bis.gov.uk/>. The right to 5.6 weeks or 28 days statutory annual leave entitlement, or annual leave, came into effect since April 2009. Prior to that date statutory annual leave was of four weeks’ duration.

³³ Working Time Regulations, 1998 Reg. 14 (1) – (3).

Each of these statutory provisions fosters and promotes the work-life balance concept. There are however certain exceptions in this legislation which have the reverse effect, namely of not promoting this concept, because the application of certain regulations may be excluded or modified by collective or workforce agreements³⁴. Furthermore, some categories of workers are excluded from all or particular regulations³⁵ which include doctors in training, specific activities of the armed forces³⁶, the police or civil protection services; workers in domestic service³⁷; workers whose activities are distant from their place of residence or whose different places of work are distant from one another; workers on surveillance and security activities which require a 24 hour presence³⁸; where a foreseeable surge of activity³⁹ is expected; or workers affected by an emergency or other occurrence beyond the employer's control and which was unforeseen⁴⁰. All these have an effect of derogating from the work-life balance concept, although in most cases time-off is given in lieu.

2.2. The Work and Families Act, 2006. The Employment Rights Act, 1996, The Maternity and Parental Leave, etc. Regulations 1999 et al.

The Work and Families Act, 2006⁴¹ has been enacted (i) to *extend* the maximum period for which statutory maternity pay, maternity allowance and statutory adoption pay is paid (from what was originally 26 weeks) to *52 weeks*; (ii) to provide a new power to *increase* on one occasion only the maximum amount of a week's pay which may be taken into account in the calculation of redundancy payments; (iii) to introduce a scheme which provides employees (generally fathers) with an entitlement to take *leave* to

³⁴ *Ibid.* Reg. 23 (a) (b).

³⁵ *Ibid.* Reg. 18 (a) (b) (c).

³⁶ Namely the Royal Navy, the army and the Royal Air Force.

³⁷ Working Time Regulations, 1998 Reg. 19.

³⁸ For example security guards.

³⁹ For example a surge of letters and/or parcels in the post office during the Christmas season, tourist summer trade workers; pickers in agriculture in the summer season and so on.

⁴⁰ For example a bomb threat; an imminent danger to health or safety; an accident; a fire or chemical explosion and so on.

⁴¹ Ch. 18. See too the government report entitled "*Choice for Parents, the Best Start for Children: A Ten Year Strategy for Children*" and "*Work for Families: Choice and Flexibility*" (December 2004) which form the background to the 2006 Act.

care for a child and an entitlement to receive pay during leave if the prescribed conditions are met; (iv) to widen the scope of *flexible working* to enable more people with caring responsibilities to request to work flexibly; and (v) to provide a new power to make provisions regarding *annual leave*⁴².

It is readily noticeable that (iii), (iv) and (v) above are directly relevant to fostering the work-life balance concept, whereas (i) and (ii) above have a bearing, albeit peripheral, to fostering this concept.

The 2006 legislation which thus grants rights to working parents and carers made several changes to the previous employment rights which affect parents⁴³, most of which have the effect of promoting the work-life balance concept.

Ante-Natal Care

Pregnant employees⁴⁴ are allowed a reasonable amount of paid time off at normal rate for ante-natal care regardless of how long they have been employed. The amount of time off depends on the type and time of the ante-natal medical appointment. Time off can include relaxation and parent craft classes where these types of activities are advised or recommended by a medical practitioner⁴⁵. The employer cannot pressurise the employee to cancel ante-natal appointments and replace these on days the employee is off work, or if a part-time employee, during the time when she is not working. The employer is entitled to expect the employee to attend work either before or after the appointment if - and that is to be noted in the context of the work-life balance concept - that is *possible* and *reasonable*.

Although there is no legal obligation to do so, in order to avoid disruption at the workplace it would be advisable for pregnant employees to try to make their ante-natal appointments outside working hours whenever possible. From the second appointment onwards, the employer

⁴² For the background to the 2006 legislation see pp. 8 and 9 *ante*.

⁴³ For example the 2006 Act provides for statutory rights to leave and pay in connection with the birth and adoption of children and amends s. 80F of the Employment Rights Act, 1996, *inter alia*, to make provision for employees' entitlement to annual leave.

⁴⁴ It should be carefully noted that only employees are entitled to maternity leave. Workers working under a contract for services which include the self-employed or the independent contractor are not entitled to such leave. See too the Pregnant Workers Directive EC Directive 92/85.

⁴⁵ A medical practitioner may be a doctor, a midwife or a health visitor.

is entitled to require the employee to produce written evidence of the fact that she is pregnant as well as written proof of appointments. These antenatal provisions foster the work-life balance concept.

Maternity

Eligible employees, whether full-time, temporary or part-time, and regardless of hours worked or length of service, can take up to fifty two weeks maternity leave⁴⁶. The first twenty six weeks are known as Ordinary Maternity Leave (OML) whereas the last twenty six weeks are known as Additional Maternity Leave (AML)⁴⁷ for women who gave birth to their offspring born on or after 1st April 2007. The earliest leave which can be taken is eleven weeks *before* the expected week of childbirth. Employees must take at least two weeks *after* the birth (or four weeks if the employee is a factory worker). Statutory maternity leave is the *minimum minimorum* allowed under British law. An entitlement for a longer maternity period may exist in the contract of employment or a collective agreement term on maternity leave may be incorporated into the contract of employment⁴⁸.

Statutory maternity pay for eligible employees can be paid for up to thirty nine weeks⁴⁹ at 90% of average weekly earnings for the first six weeks and £167.78 or 90% of their average weekly earnings, whichever is the lower, for the remaining thirty three weeks.

Women are required to give eight weeks' notice before returning early from ordinary or additional maternity leave⁵⁰. The changing of an early return date requires eight weeks' notice before the new date.

During the 52 week maternity leave period there is no break in the employee's continuity of employment which remains intact throughout

⁴⁶ Work and Families Act 2006 s. 1.

⁴⁷ Ibid. Schedule 4 Part VIII para. 7 (2) and para. 73 (1) (2). There is no qualifying period for Ordinary Maternity Leave but for Additional Maternity Leave there is a qualifying period of twenty six weeks' work in the establishment at the beginning of the fourteenth week before the expected date of childbirth.

⁴⁸ For an analysis and evaluation as to how a collective agreement term may be incorporated into the individual contract of employment under British law see Jo Carby-Hall (1994) "The Concept of Direct Incorporation in Great Britain" in *Estudios de Historia del Derecho Europeo* Volumen 1 Homenaje al Profesor G. Martínez Díez ed. Professor Pérez Rogelio Bustamante Editorial Complutense Madrid pp.173 – 227.

⁴⁹ Work and Families Act, 2006 Schedule 1 para. 86.

⁵⁰ Although notice need not be given to the employer in the case of AML as employers would assume an automatic return to work after the 52 week period.

that period. On her return to work, the employee who returns from her 26 week Ordinary Maternity Leave is entitled to be reinstated to her former position in the establishment. Her terms and conditions of employment will therefore remain the same. The situation is however not entirely the same in respect of employees who return to work from their 52 week Additional Maternity Leave. There is no automatic reinstatement in the same job in these circumstances. The employer will need to prove that the changes to the employee's terms and conditions of employment were reasonable taking into account developments which took place in the establishment during the employee's absence. Nevertheless, the employer has the obligation to find alternative work with terms and conditions of employment which are similar to those which the employee enjoyed prior to her taking maternity leave⁵¹.

There is a legal obligation on the employer to protect the health of women who are breast-feeding or who have given birth during the last six months. This includes women who suffered a miscarriage after twenty four weeks of pregnancy.

An employee is enabled to perform up to ten days' "work" during her maternity leave without losing her statutory maternity pay⁵². Payment for time worked needs to be agreed between the employer and the employee.

The purpose of this provision is to keep in touch with developments at work. Although this does not constitute work *per se*, the employer and the employee are allowed reasonable contact during maternity leave to inform the employee of workplace issues, to study progress reports, to undertake some training, to communicate generally and to ease her eventual return to work⁵³.

⁵¹ It should be borne in mind that a female employee is protected against dismissal by reason of pregnancy or childbirth. Such dismissal is automatically unfair irrespective of how many years she has been employed by her employer. Also unfair is demotivating the employee on her return to work, unilaterally changing the terms and conditions of her employment contract without her consent, disciplining a pregnant employee for taking time off work for purposes of ante-natal care and providing her with unsuitable work.

⁵² Work and Families Act 2006 Schedule 1 para. 6 (which amends s.35 (3) (a) of the Social Security Contributions and Benefits Act, 1992).

⁵³ As for example job vacancies, new appointments, progress reports, new developments in the firm, *etc.*

Statutory Adoption Pay and Adoption Leave

With regard to statutory *adoption pay* and *adoption leave*, parents may receive thirty nine weeks of Statutory Adoption Pay (SAP) for persons adopting and whose child was placed with them for adoption on or after 1st April, 2007. The rights which apply to maternity leave regarding notice of return to work early, keep in touch days, and reasonable contact, apply equally to adoption leave⁵⁴.

Flexible Working

Another employment right for parents and carers which fosters the work-life balance concept is *flexible working*. Parents of children aged sixteen and under and parents of disabled children under the age of eighteen, as well as carers who look after adults, are entitled to flexible working hours⁵⁵. Requests for flexible working need to be considered seriously by employers.

Paternity leave, Additional Paternity leave and Parental leave also play an important role in fostering the work-life balance concept.

Paternity Leave and Additional Paternity Leave

The right to take *paternity leave* for the purposes of caring for a child or supporting the mother is provided for by the Employment Rights Act, 2006⁵⁶. Under the provisions of that Act an employee is eligible for paternity leave if he has, or expects to have, responsibility for the child's

⁵⁴ Work and Families Act, 2006 s. 2.

⁵⁵ *Ibid.* s. 12. The Employment Act 2002 introduced new rights for working parents and amended the Employment Rights Act, 1996 by inserting s. 80F in that Act. That section grants a right to a qualifying employee to apply for a change in terms and conditions of employment to facilitate child care. Appropriate Regulations deal with the conditions necessary to qualify for that right. These Regulations provide that the employees must have been continuously employed for a minimum of 26 weeks and must be the father, mother, adopter, guardian, foster parent (or the partner of, or married to, one of those persons) of the child concerned. Section 12 of the 2006 Act widens the scope of the existing law by allowing applicants to include persons who have *caring responsibilities for adults*. Thus applications for flexible working may be made for the purpose of caring for a child or a person aged 18 year and over.

⁵⁶ Employment Rights Act, 2006 s. 80A.

upbringing and is either the father of the baby or, if he is not the father, he is the mother's husband or partner.

The Work and Families Act 2006 introduced into the 1996 Act a new statutory right to *additional paternity leave* for employees following the birth of a child⁵⁷ empowering the Secretary of State to make Regulations entitling employees to be absent from work by taking leave for the purposes of caring for the child.

There is an entitlement to paid⁵⁸ *additional paternity leave* for a period of either one week or two consecutive weeks for fathers and partners of mothers with children due on or after 3rd April, 2011⁵⁹. Consecutive weeks⁶⁰ paid leave has to be taken within a fifty six day period after the birth of the child. Paternity leave cannot be taken before the birth of the baby⁶¹. Paternity leave starts either from the date of the child's birth (whether this is earlier or later than expected), or from a chosen number of days or weeks after the date of the child's birth (whether earlier or later than expected) or from a chosen date. There is also an identical entitlement for parents who adopt a child and who have been notified of having been matched with a child on or after 3rd April, 2011.

⁵⁷ Work and Families Act, 2006 s. 3 inserting s.80AA in the Employment Rights Act, 1996.

⁵⁸ Statutory paternity pay is payable for a maximum of two weeks with the amount paid being whichever is the lower of 90% of the employee's average weekly earnings and the standard rate of £136.78.

⁵⁹ The legislation providing for statutory paternity leave and pay is contained in the Employment Act, 2002. Details of the leave and pay schemes are included in a number of Regulations some of which are the Paternity and Adoption Leave Regulations 2002, SI 2002/2788 and the Statutory Paternity Pay and Statutory Adoption Pay (general) Regulations 2002 SI 2002/2822. Section 2 of the Employment Act 2002 inserted a new part 12ZA into the Social Security Contributions and Benefits Act 1992 which sets out the rights to statutory paternity pay. For the avid reader of debates on the 2002 Act in Parliament see SC Deb (F) cc 253-394; HL Deb 13th March 2002 CWH 1-25 and HL Deb 30 May 2002 cc 1491 – 1498.

⁶⁰ Paternity leave cannot be taken on odd days.

⁶¹ Unlike pregnant mothers, fathers-to-be do not have a right to paid time off for ante natal care. The coalition government however is encouraging employers to allow fathers-to-be, unpaid time off work whenever practical to the firm. In practice many employers allow fathers-to-be to take either paid or unpaid time off or to make up the time at a later date. The Children and Families Bill (currently being debated in Parliament) proposes to allow employees who are fathers-to-be unpaid time off to accompany their wife/partner to two ante natal medical appointments up to a generous maximum of six and a half hours for each of these two appointments.

To qualify for paternity leave, the following conditions need to be fulfilled. First, the father (who must be an employee⁶²) would have, or expected to have, responsibility for the child's upbringing; second, he must be the biological father of the child and the mother's husband or partner (including same sex partners) and, thirdly, he must have worked continuously for twenty six weeks leading into the fifteenth week before the baby is due. Only one period of leave is available irrespective of whether or not more than one child is born from the same pregnancy. An employee who has taken paternity leave is entitled to return to his identical post following paternity leave; he is entitled to the same terms and conditions of employment, he is entitled not to be subjected to a disadvantage⁶³ and to having a request for flexible work⁶⁴ considered by his employer.

There are similar provisions in the Work and Families Act, 2006 with regard to additional paternity leave by reason of *adoption*⁶⁵.

Parental Leave

Another good example where a statute fosters the work-life balance concept is *parental leave*. By reason of the provisions of the Employment Relations Act, 1999⁶⁶ and the Maternity and Parental Leave, *etc* Regulations 1999⁶⁷, employees, whether male or female, with a minimum of one year's continuous service with their employer⁶⁸ are entitled to thirteen weeks' parental leave for each⁶⁹ child born on or after 15th December, 1999, up to the child's fifth birthday⁷⁰. In the case of an adopted child, parental leave

⁶² The distinction between and employee working under a contract of employment or a contract of service and a worker working under a contract for services is of great importance in this context. See footnote 9 *supra*.

⁶³ For example unfair treatment or dismissal.

⁶⁴ As for example a request for part time work, job sharing, reduced working hours, and so on.

⁶⁵ Work and Families Act, 2006 s. 4. See too s. 6 (entitlement to additional statutory paternity pay: birth); s. 7 (Entitlement to additional statutory paternity pay; adoption); s. 8 (Entitlement to additional statutory paternity pay: general); s.10 (Additional statutory paternity : rate and period of pay).

⁶⁶ 1999 Ch. 26. This Act implements the Parental Leave Directive EC Directive 96/34. The Directive was extended to the UK by Directive 97/75.

⁶⁷ (SI 1999 No 3312).

⁶⁸ *Ibid.* Reg 13 (1)(a).

⁶⁹ *Ibid.* Reg 14 (1). Thus if twins, triplets or quadruplets are born the employee is entitled to thirteen weeks' leave for each child.

⁷⁰ *Ibid.* Reg. 15 (1) (a).

may be taken up to the fifth anniversary of the date when the child was placed for adoption or the child's eighteenth birthday whichever is the earlier⁷¹. A parent of a child who is entitled to a disability allowance is allowed to take parental leave until the date of the child's eighteenth birthday⁷².

If the employee works on a part-time basis, leave will be proportionate to the time for which the employee normally works⁷³ and if leave is taken in shorter periods than the employee's normal working week, the individual periods of leave are aggregated⁷⁴.

Employees who take or seek to take parental leave have a right not to be dismissed⁷⁵ or be subjected to any detriment⁷⁶ by their employer.

It should be noted that such leave is unpaid unless the employer agrees to award the employee paid parental leave.

During the parental leave period the employee remains in employment but, in the absence of an agreement to the contrary, he is in the same position as an employee on additional maternity leave, namely the employee is entitled only to the benefit of the employer's obligation of trust and confidence and any conditions of employment pertaining to notice of termination by the employer, redundancy payments or disciplinary or grievance procedures⁷⁷.

During the period of parental leave, the employee is bound by the implied obligation towards the employer of good faith to any terms and conditions of employment relating to notice by the employee, disclosure of confidential information, the acceptance of gifts or other benefits or the participation by the employee in any other business⁷⁸. As in the case of additional maternity leave an employee who takes parental leave is entitled to return to work, after completing parental leave, to the job the employee was employed prior to taking leave on terms and conditions not less favourable than those which would have been applicable to the employee prior to his/her absence⁷⁹. Where the period of leave is more than four weeks, or if leave is taken immediately after additional maternity leave, the employee is entitled either to return to his/her previous job or if it is

⁷¹ Ibid. Reg. 15 (1).

⁷² Ibid. Reg. 15 (3).

⁷³ Ibid. Reg. 14 (2).

⁷⁴ Ibid. Reg. 14 (4).

⁷⁵ Ibid. Reg. 20.

⁷⁶ Ibid. Reg. 19.

⁷⁷ Ibid. Reg. 17 (a) (i) – (iii).

⁷⁸ Ibid. Reg. 17 (b) (i – (iv)).

⁷⁹ Ibid. Reg. 18 (1).

not reasonably practicable, to another suitable and appropriate job in respect of the employee⁸⁰.

The 1999 Regulations enable the social partners to enter into an agreement for a detailed parental leave scheme set up by a collective or workforce agreement which is incorporated into the contract of employment of employees⁸¹. Such a scheme may make more beneficial provisions than those contained in the Regulations⁸² though it cannot contradict or decrease the benefits provided by the key elements of the Regulations⁸³.

The Regulations provide a model scheme which automatically comes into effect if the social partners cannot agree on their own scheme. The key elements of the parental model scheme⁸⁴ which cannot be excluded or derogated from by the collective or workforce agreement terms are firstly that parental leave can only be taken in blocks of at least one week or multiples of a week⁸⁵, unless the child is disabled and entitled to disability living allowance. Secondly, the employee cannot take more than four weeks' parental leave in respect of an individual child during a particular year. In the third instance, the employee must give the employer twenty one days' notice of his/her intention to take parental leave. The employee must also give the duration of that parental leave. Fourthly, fathers who wish to take parental leave immediately after child birth, have to give at least twenty one days' notice before the commencement of the expected week of childbirth. Fifthly, employees wishing to take parental leave immediately after the placement date of an adopted child have to give the employer at least twenty one days' notice before the beginning of the week in which the placement is expected to take place or as soon as is reasonable thereafter. In the sixth instance, the employer is entitled to ask for written proof of the employee's entitlement to parental leave⁸⁶.

⁸⁰ Ibid. Reg. 18 (2).

⁸¹ Ibid. Reg. 16.

⁸² For example by permitting parental leave after the child's fifth birthday or for children born or adopted before 15th December, 1999.

⁸³ By providing for lower age limits or a later birth or adoption date.

⁸⁴ Maternity and Parental Leave, etc. Regulations, 1999 Schedule 2 (Default provisions in respect of parental leave).

⁸⁵ This means that for the employee who takes any period of parental leave which is less than one week, that lesser period counts as one whole week out of the employee's thirteen week entitlement.

⁸⁶ For example, proof of birth or a birth certificate and in the case of adoption the date of placement for adoption.

Seventhly, the employer has the prerogative of postponing a period of paternal leave on birth or adoption of a child, if he considers that the business would be disrupted were the employee to take leave during the period identified in the notice⁸⁷. Finally, parental leave cannot be postponed by the employer for more than six months. The employer has an obligation to notify the employee in writing within seven days of receiving the employee's notice giving the reason for that postponement and specifying the dates when parental leave will begin and end⁸⁸. Should the postponement take place past the child's fifth birthday or fifth anniversary of adoption, the employee is still entitled to take postponed parental leave as soon after the birthday or anniversary as possible.

Employees with disabled children are entitled to take eighteen weeks unpaid leave up to the child's eighteenth birthday⁸⁹. Parental leave is aimed at looking after, and caring for, the child and making arrangements for the child's welfare⁹⁰. Furthermore, if the employee is the father of the child born on or after 3rd April 2011 or the husband or civil partner of a child's adopter the employee is enabled to take up to a maximum of twenty six weeks of the mother's maternity or adoption leave entitlement.

There is thus an important element of statutes fostering the work-life balance concept in the sphere of parental leave.

Time off to Care for Dependants

A right to time off to care for dependants is another example of legislation which fosters the work-life balance. This right is regardless of the employee's length of service with the employer. Under the provisions of the Employment Rights Act, 1996⁹¹ an employee is entitled to a reasonable period of unpaid⁹² time off from work to provide assistance to a dependant who falls ill, gives birth, or is injured or assaulted; to make arrangements for the provision of care to a dependant who is ill or injured; in consequence of the death of a dependant; because of an unexpected

⁸⁷ Maternity and Parental Leave, etc. Regulations, 1999 Schedule 2 para (6) (a) – (c).

⁸⁸ Ibid. Schedule 2 para. (d) and (e).

⁸⁹ Ibid. Reg. 15 (b) (c) (ii).

⁹⁰ Ibid. Reg. 13 (1) (b).

⁹¹ (1996 Ch. 18) ss. 57A (and 57B which treats complaints to an Employment Tribunal and which is thus irrelevant to discuss in this context) added by the Employment Relations Act, 1999.

⁹² Of course, although the employee has no legal right to be paid for time-off, the employer has the discretion to decide otherwise.

disruption or termination of arrangements for the care of the dependant; or to deal with an incident which involves a child of the employee which occurs unexpectedly during the time when the child attends an educational establishment⁹³.

A “dependant” is defined as a spouse, a child, a step-child, a parent, a step-parent, a person who lives in the same household otherwise than as an employee, a tenant, a lodger or a boarder⁹⁴. For the purposes of subsections 1 (a) and (b), (namely providing assistance when a dependant falls ill, gives birth or is injured or assaulted or to make arrangements for care of a dependant who is ill or injured respectively), “dependant” includes any person who reasonably relies on the employee for assistance when that person falls ill or is injured or assaulted or to make arrangements for the provision of care in the event of illness or injury⁹⁵.

For the purposes of s 1(d) (namely unexpected disruption or termination of arrangements for the care of a dependant), “dependant” includes, in addition to a spouse, child, parent or person who lives in the household other than an employee, tenant, lodger or boarder, any person who reasonably relies on the employee to arrange the provision of care⁹⁶.

What is truly interesting is the fact that the words “illness or injury” are defined as meaning not only physical but also mental illnesses or injuries⁹⁷.

⁹³ Employment Rights Act, 1996 57A (1) (a) – (e).

⁹⁴ Ibid. s. 57A (3).

⁹⁵ Ibid. s. 57A (4) (a) and (b).

⁹⁶ Ibid. s. 57A (5).

⁹⁷ Ibid. s. 57A (6). The development from physical to mental injury is a relatively new phenomenon. See an analysis in Jo Carby-Hall 2011 “Mental Illnesses: The British Labour Law Experience” in *Prawo Pracy w Świetle Procesów Integracji Europejskiej Księga Jubileuszowa Profesor Marii Matej-Tyrowicz* ed. Professors Jerzy Wrątny and Magdalena B. Rycak LEX Wolters Kluwer at pp. 322 – 363 and Jo Carby-Hall 2012 “Employers’ Liability: From Physical to Psychiatric illnesses” in *LIBER AMICORUM Spunti di Diritto del Lavoro in Dialogo con Bruno Veneziani* ed. Professors Lauralba Bellardi, Umberto Carabelli and Vito Leccese Cacucci Editore pp. 85 – 90.

2.3. The Equality Act 2010⁹⁸

Under the provisions of the Equality Act 2010 it is unlawful to discriminate against an individual on grounds of age⁹⁹, disability¹⁰⁰, gender reassignment¹⁰¹, marriage and civil partnership, pregnancy and maternity, race¹⁰², religion or belief¹⁰³, sexual orientation and sex¹⁰⁴. These are known as “protected characteristics”.

Under this legislation employees have a right to receive the same contractual pay and benefits as a person of the opposite sex, *etc* in the same employment where the man and the woman are performing like work, equivalent work or work of equal value.

The main form of prohibited conduct is discrimination which covers (i) Treating a person in a worse manner than another because of a “protected characteristic.” This is known as direct discrimination. In the case of maternity and pregnancy these can constitute direct discrimination if they are a “protected characteristic” without the need to compare treatment with

⁹⁸ C. 15. This Act consolidates previous discrimination legislation by repealing the Equal Pay Act, 1970; the Sex Discrimination Act, 1975; the Race Relations Act, 1976; the Sex Discrimination Act, 1986; and the Disability Discrimination Act, 1995. This Act also revoked a number of Regulations relating to equal treatment, religion and belief, sexual orientation, age and sex. Some sections have been repealed in some of the existing Acts; for example ss. 1 – 7 of the Employment Act 1999 and s. 25 of the Equality Act 2006.

⁹⁹ For a fuller discussion on age discrimination, see Jo Carby-Hall 2009 “Discriminación por edad a la inglesa: un reto en un área innovadora pero gris” in *La Relevancia de la Edad en la Relación Laboral y de Seguridad Social* ed. Professors Jaime Cabeza Pereiro, María Amparo Ballester Pastor, Marta Fernández Prieto. Thomson Reuters pp.43 – 55.

¹⁰⁰ For a more detailed discussion see Jo Carby-Hall 2014 “The Employment of Disabled Persons and Disability Discrimination” to be published in *Derecho Social y Empresa* in 2015.

¹⁰¹ Namely, a person changing sex. A transgender person (a person who identifies to be someone with a different gender from the gender in which they were born) does not need to be under medical care to be protected from discrimination. Thus a man who decides to live as a woman, has protection under the 2010 Act in spite of the fact that he (she) is not undergoing medical treatment of any kind.

¹⁰² Which includes ethnic origin, colour, nationality, and national origin. See too Council Directive implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

¹⁰³ Which also includes a philosophical belief.

¹⁰⁴ See too Council Directive No. 76/207 (O.J.1976, L39/40) on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training, and promotion and working conditions.