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MONEY BOX LIVE

Presenter: PAUL LEWIS

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LEWIS: Over the last few years, there's been a steady increase in the rights given to people expecting to become parents. More changes are planned this October. But with every change comes a new layer of complexity and new rules to understand and remember. So today Money Box Live looks at maternity, paternity and adoption rights for parents and those about to become parents. Nowadays the rights go beyond the first few months after birth: there's flexible working, parental leave, additional maternity leave, and on the horizon the possibility of additional paternity leave and pay and a full year's maternity pay. Some of these rights also extend to adoptive parents. Not much point in having all these rights if you don't understand them and ask for them and, judging by your calls and e-mails already, there's a lot of confusion out there. What are your rights to return to work and for the hours that suit you? Who can apply for flexible working? How much maternity pay are you entitled to and for how long? Who can apply for parental leave? And what about childcare vouchers? Of course more rights for parents can mean more headaches for employers. Certainly a lot to understand and implement, and that can be particularly difficult for small employers who don't have HR departments and lawyers on hand. Well we have lawyers and benefit experts on hand here. So whatever your question on parental rights at work, why not call now? 08700 100 444. With me today to answer your questions - first our lawyers: Siân Keall who's a partner with Travers Smith; and Joanna Wade, a partner at Palmer Wade. And Rachel Hadwen is here as a rights adviser from the charity Working Families. Now the first question is from Sandra who's calling from London. Sandra, your question?

SANDRA: Hi, I was wondering - I'm actually self-employed. I was employed when I had my first child; I'm now self-employed - whether there's any sort of government benefit or tax concession for the self-employed who are pregnant or have had a baby other than child benefit.

LEWIS: Okay. Let me bring Toby in too because he's also self-employed. Toby?

TOBY: Hi, yeah.

LEWIS: What's your question?

TOBY: Well I'm a self-employed father, a father of a little girl who's nearly two, and we've got another one coming in December. And I was just wondering if there was any benefits available for me.

LEWIS: Right, so self-employed mothers and fathers. Rachel, shall we start with you?

HADWEN: Well the first question is to try and establish what the status of your self-employment is. Some self-employed people employ themselves, so they still have a Pay As You Earn system and national insurance is deducted before they receive their pay.

LEWIS: So these are the ones who form a company and then employ themselves in that company?

HADWEN: That's right - yeah, yeah. And in that position, if you met the conditions and you'd worked for long enough, you would be able to claim statutory maternity pay or statutory paternity pay. But other ways of being self-employed, you pay a specific kind of class 2 national insurance, which is for self-employed people. Now if you do that - and that would maybe apply to you, Sandra - and you reach 11 weeks before the due date, you could be on maternity allowance, which is the equivalent of

statutory maternity pay for people who don't qualify for it for whatever reason, including because they're self-employed. Unfortunately, for dads there isn't an equivalent. So if someone is a self-employed dad paying class 2 national insurance, unfortunately there isn't anything. There is also a position you might be in where you don't earn enough to pay national insurance and you have a certificate of small earnings which explains that you don't make enough to pay.

LEWIS: That's below about what, £4,800 or something?

HADWEN: That's right, I think. I can't remember, to be honest, but it is quite low. And if you have one of those certificates, then you can still get maternity allowance, but it will be paid at £30 a week.

LEWIS: Right, so rather than the, what is it, £100 and ...?

HADWEN: £117.18 is the maximum which you would get automatically if you do pay your class 2.

LEWIS: That's the standard one. So some rights for self-employed people and depending really whether you're self-employed or not. Siân Keall?

KEALL: The thing to bear in mind if you're self-employed is that if you spend all of your time working for a number of main clients, it is always worth trying to discuss with them whether they as a matter of discretion - they've got no obligation to do so - might be prepared to offer you maternity or paternity pay. They wouldn't want to label it like that because they wouldn't want it to look as though you were becoming their employee, but they might be prepared to be generous and tide you over a difficult period. So always worth a discussion to explore that issue.

LEWIS: Yes because some self-employed people have dozens of clients. Others really work serially, one after the other, don't they? They're on contract for six months or a year or even longer, but they are still technically self-employed people.

KEALL: That's right, that's right.

LEWIS: So just ask in fact. Always, if you don't ask, you won't get.

KEALL: Yes. I mean they've got no obligation to give it to you and you've got to ask knowing that, but there's nothing to stop you; and if they say no or even if they say yes but to a limited extent, you're better than you would have been.

LEWIS: Yes, okay, well that's very interesting. We've had a number of e-mails, I must say, on similar things, but I think not brilliant rights for self-employed people yet. Perhaps they'll be added at some time in the future. Thank you very much for your call, Sandra, and Toby. We move onto Judy now who's calling from Harrow. Judy, your question?

JUDY: Hello. Yes, I'm currently working as a maternity cover for a teacher in a school. My contract is to work until the teacher I'm covering comes back, so it's an open-ended contract. I'm concerned as to whether or not I'm entitled to any statutory period of notice. If I'm committed to being available should she come back in September or October, but then she comes back in July, where does that leave me really if that makes sense?

LEWIS: Okay, yes. Joanna Wade, we'll start with you this time.

WADE: Yes, well the basic starting point unfortunately for you, Judy, is that where somebody takes maternity leave they are absolutely entitled to come back to work, so you are the loser in that relationship. But you would be entitled to some notice depending on how long you'd worked and/or depending on what your contract said, so you wouldn't be completely out on your ear. But, I think as you recognise by asking that question, your position unfortunately comes second in terms of employment protection. Although of course, as is the way of the world, if a job comes up, you're in the right place to go for it, I suppose.

LEWIS: Siân Keall, this is sort of the other side, isn't it really: women who have the babies have a lot of rights, but the people who fill in have got to fit that variable gap that can be anything from a few months to a year?

KEALL: It's very difficult, this, because Judy what you have is effectively a fixed term contract. But it's not fixed term six months long or 12 months long. It's fixed term and it will end depending on the date on which your person you're covering returns from maternity leave. One thing to bear in mind is that individual's entitlement will be to take a maximum of a year's maternity leave; she might tack some other leave on the end of it. But if she wishes to come back early from her maternity leave, she has to give her employer eight weeks notice and so, therefore, even though you might not expect her back till some time next year, if she wanted to come back early your employer would be in a good position to give you not much less than eight weeks notice to let you know that was happening. And it would always be worth just making clear to them you would appreciate being given notice as soon as possible.

JUDY: Yes that I have done, that I have done. So would you say that eight weeks was fair or was legal or...?

KEALL: Yes, it's absolutely fair. It's probably more than you're entitled to under the contract you're working under. So if they give you eight weeks, they will probably have done the best they can in the circumstances. In fact that period was increased to eight weeks in order to help people like you.

JUDY: And what would be the minimum?

KEALL: Well the minimum will be whatever is written in your contract.

JUDY: There isn't any.

LEWIS: Isn't that normally the period you're paid over, so if you get paid monthly

it's a month; if you get paid weekly, it's a week? Or am I just being a bit old-fashioned in that thought?

KEALL: Actually it's probably only a week.

JUDY: Oh!

LEWIS: For anybody? Right.

KEALL: So, yes, in a short period of employment like this, it's only a week. So, Judy, if you get eight weeks or something close to eight weeks, your employer will have done reasonably well - in fact more than it needs to do under the law.

LEWIS: And I suppose this is like anything; that whatever your rights, talk to your employer, try and sort it out, try and get a reasonable settlement from them.

KEALL: Absolutely, absolutely.

WADE: Well I think going a bit further than that actually, the upside for Judy is that you do have quite a lot of leverage because the last thing your employer wants is for you to abandon ship before the person on maternity leave comes back. So I think for all people who are taking on roles as maternity covers, you do have some scope to negotiate a good deal in terms of notice in order to basically make sure that you stay the course. You're not without leverage.

LEWIS: Yes because I suppose you're always free to say well, look, given the uncertainty I'm going to look for another job.

WADE: Absolutely. That's right, yes.

LEWIS: Right, okay Judy. Well some sound advice from our lawyers there. Avoiding litigation but negotiating hard, I think was the advice there. Let's move onto

Nancy now in London. Nancy, your question?

NANCY: Oh hello. I'm self-employed, but also I work for an employer. I work as a supply teaching assistant. And when I was filling in my maternity allowance form, I found that there's a qualifying week and if you worked for an employer during this qualifying week then you have to fill in their details. And I'd worked one day that week for these employers and as a result of that they have to pay me statutory maternity pay, which comes out at only £96 a week because that's an average of how much I earned with them over that period of time. So I'm actually getting less money than I would by state maternity allowance because I worked one day for them over that period of time and I'm just wondering if there's any way I can sort it out. I mean it's only £20, but when you're down to £96 a week as your only income then £20 counts as quite a lot really.

LEWIS: Absolutely, especially over nine months.

NANCY: Yes.

LEWIS: I said it was complicated in the introduction. Rachel Hadwen, I wasn't quite clear *how* complicated. Explain this one to us.

HADWEN: Well if you get statutory maternity pay from any employer, you can't get maternity allowance as well.

NANCY: Right, even though it's considerably less?

HADWEN: Yeah, even though it's considerably less. You can't get both. So the position that you're in - if you meet all the conditions for statutory maternity pay, which are you've worked for the same employer throughout the pregnancy; you earned at least £90...

NANCY: I did, but I was working for other people as well.

HADWEN: That unfortunately doesn't come into it.

NANCY: And I was working self-employed.

HADWEN: Yeah ... and you earned at least £90 a week and you're still employed by them, even if it's only for one day in the qualifying week, which is, as you probably know, 15 weeks before the baby's due.

NANCY: Yeah.

HADWEN: So, unfortunately, if you meet all these conditions you get statutory maternity pay and that is based on an average of the money that you get from that employer in a particular period of the pregnancy - roughly weeks 18 to 25 - and there's nothing you can do about that.

NANCY: Right.

HADWEN: The only good news I *can* give you is that when you claim tax credits for your baby, you will eventually benefit from having less money because up to £100 of statutory maternity pay can be ignored for tax credits, which are based on your income, so you will ultimately get more tax credits because you have got less money in this tax year.

NANCY: Right, so that would go from when the baby's born?

HADWEN: Yes, you can claim tax credits. Is this your first baby?

NANCY: Yes.

HADWEN: Yeah, so you can claim tax credits and get them backdated to the date of birth. They will initially be based on last tax year, not this tax year, but you will ultimately benefit from the fact that all that statutory maternity pay can be ignored for

tax credits.

NANCY: I see.

LEWIS: I don't want to make this even more complicated, but we've had an e-mail from Rhian who said that she did shift work at the time that her qualifying date for statutory maternity pay arose - this was a few years ago - and she worked a lot of shifts so that she had more money in that crucial period and that boosted her pay. Is that possible, Siân?

KEALL: It is. It's the eight week period leading up to the 15th week. I'm sorry about all these weeks; it's the way these things work. The eight week period leading up to the 15th week before the child is due is the period over which you calculate someone's earnings to work out what their maternity pay will be. And one thing we haven't said so far is that for someone who's in employment, the first six weeks of maternity leave are paid at 90% of pay, so calculating earnings is really important because if you earn a lot during that period, 90% of a lot is more. As a result, well informed employees who have the option to work overtime are well advised to do it during that period, if they feel able to obviously, because they increase their earnings and therefore they increase the maternity pay they receive.

LEWIS: And, Joanna, if you get a bonus once a year and you time things right, can that count?

WADE: Absolutely. This is a very good advert for good family planning because if you get it right, then... I mean I've known people who've got hundreds of thousands of pounds times six whose bonus has fallen in the right period. And of course the joy for the employer is that 92% of that comes from the government, so it's actually a very good way of paying your employee rather a good bonus without actually having to fund it yourself.

LEWIS: I can see all you city lawyers with your diaries out at this moment.

(laughter)

WADE: The other thing to say is that if you have two jobs and you get statutory maternity pay through both of them, you've got two jobs as an employee, you do get double statutory maternity pay.

KEALL: Absolutely.

WADE: So it's unfortunate that Nancy has the employed and self-employed. If she had two employed jobs, then she'd be doing rather well.

LEWIS: And just looking at it from the sort of other side, from people who don't earn very much, your pay after those six weeks goes down not necessarily to £117 odd but to that or 90% of your pay, whichever is lower. Is that right? So you might, as in the case that we've just heard.

HADWEN: Yes, but it doesn't change. If 90% is the lower, it just stays the same.

LEWIS: Sure. But I mean that means you can be getting that for nine months, so that is quite a lot, as we said at the start. Yes?

KEALL: There's one other thing to bear in mind, which is that if you get a pay rise during the period *after* that eight week calculation period, that obliges your employer to recalculate your maternity pay. So although the eight week period is set in stone, if you get a pay rise that still is going to put you in a better financial position.

LEWIS: Right. We've had very few comments or e-mails from employers, but I'm going to put their point of view now and just say how on earth are they supposed to keep up with all this and make sure *they're* on the right side of the law? Siân, you help employers. How do you keep them up to date?

KEALL: A lot of employers outsource their payroll because not only maternity pay issues but an awful lot of other pay issues are now very complicated. They're difficult to administer, they're difficult to work out, and so a lot of small employers I think, if

they don't already outsource their payroll almost will save themselves time and effort from doing so because these things are technically very challenging. But that's just getting the payroll right. In terms of just making sure that you comply with the rights that all these individuals have - and we haven't picked up yet the right to request flexible working, that incorporates a very clear set of steps an employer has to take and issues it has to think about - there's a lot of demand on employers that small organisations do find difficulty grappling with.

LEWIS: But that's okay to outsource it if you're a fairly big company, but if you've got two or three employees or even a dozen or so you're not going to have the resources. Rachel?

HADWEN: Well you can get help with working out statutory maternity pay and of course statutory paternity pay and adoption pay from the Revenue. They produce a booklet called E15, which tells you how to work it out, and they do have a helpline number that you can ring if you get stuck. So there are sources of information. Obviously employers have still got to do a bit of reading.

LEWIS: Sure, but it's just one of the obligations of being an employer now, I suppose, even a very small one. Let's bring Lucy in here because, Lucy, you've got a relevant question I think?

LUCY: Yeah, well I'm coming towards the end of my maternity leave and I've recently been into work to discuss going back and I made a request for part-time working. I was after four days a week and I was told no, that I couldn't have that on my job as a manager, what I used to do, but I could go back four days a week if I stepped down and went down a title - less pay, less bonus, less responsibility. And I'm sort of a bit shell shocked by it and I'm not really sure that I got quite good enough justification from them. As an employee, you have to state your case quite fully about how you think part-time working could work and I'm just wondering how much does an employer have to give me good justification? They rather simply said we don't see this as a four day a week job. The team is too busy.

LEWIS: Yes. I must say we've had some e-mails about this, including one saying - this is from the husband, John - saying my wife's returning to work and she wants to go back to do 20 hours and the employer's insisted it was 37 and they're coming to some sort of deal in the middle. Siân, how does this week because I thought you had almost a right to part-time working after childbirth?

KEALL: It's not a right. It is a right to request, but it leads on to some very powerful rights that I'll come onto in a second. I referred earlier to flexible working and what you have as an employee, Lucy - and I think you used this probably - is a right to ask your employer to reconsider the way that you do your job and to work out with you whether it can be done in a slightly different way, whether that's days of work, hours of work or even location of work.

LEWIS: Working at home, for example?

KEALL: Working at home, for example.

LUCY: Yes, yes.

KEALL: What the flexible working rules do is they oblige the employer to comply with a set of steps; primarily to meet with you to discuss the proposals you've put forward, and then after meeting with you to reply to your request in writing confirming whether they agree with it or whether they don't. And if they don't, they have to explain why not and give you one of eight specified grounds for refusing that request. And there are a range of them. I won't run through them all, but they can be an inability for the employer to reorganize work among its existing staff; or if you've asked for times of day off when they are particularly busy, to show that it doesn't work with the work.

LEWIS: And does it include the kind of thing Lucy's employer said to her; that she's a manager and she's got to be there all the time?

KEALL: Well I think that's quite difficult. I mean acting for employers, I would advise employers to be very cautious before running that sort of argument because there are lots of management jobs that *could* be done on four days a week. And actually if you're an employer, to properly deal with a request of this sort you can't give a glib response. You have to really delve down into the detail of the job; work out how it might work on a four day a week basis; work out what the problems with that might be and then give an answer. So I think, Lucy, you would be entirely justified in going back to ask them some more questions like this.

LUCY: Yes, I think so. They did offer me you know... I think from their point of view, they think of it as quite a good compromise, you know. They have offered me four days a week, including a day working from home, but it's all at a much lower level with much less responsibility and I'm not sure at this stage in my career I want to sort of down step.

LEWIS: Because you are entitled to the same job or a job at the same level, aren't you, Joanna?

WADE: Absolutely you are, yes. I mean the whole point of sex discrimination law is that women shouldn't suffer a disadvantage because of having children and that's exactly what's happening to you. Now in practical terms, you may decide to just like it and lump it because that's the best way of at least having a job because going to war with your employer is not obviously a pleasant thing to have to do. But underlying the process that you've just been through is the right not to be what they call indirectly discriminated against. And basically what that means is if they apply a rule to you that you can't do basically because you're a woman and a mother that the men *could* more easily do, that's a bit of law with a *huge* amount more teeth than what we've just been discussing and the employer has to have very, very, very good reasons for saying no.

LEWIS: If people were advised by you, Joanna... I'm sure that's right, but many people go into this - as I'm sure Lucy has - feeling that they're not really... they can't afford a lawyer, they don't want a lawyer, they don't want to take it to that sort of level. What can people say? What are the sort of tactics for people to say without

employing... going to the expense of a lawyer and all the anxiety and hostility that might create?

WADE: Well absolutely, it is extremely difficult. It's very difficult to take on your employer and keep your job and so many people do compromise in the end. There is quite a lot of information out on the internet and the Equality and Human Rights Commission has got some good stuff on its website; but particularly this area, there is a wall of silence on the government websites that doesn't, funnily enough, indicate that you can bring these sex discrimination claims. But in broad terms, I would say that anything that goes wrong with maternity is arguably discrimination. Obviously that's a very broad statement, but there are some very strong rights. You just need to drill down and find them.

LEWIS: And that's simply on the grounds that pregnancy happens to women and not men?

WADE: Absolutely, that's right. And the policy point is that women will never be equal in the workplace unless there are these high levels of protection for mothers.

LEWIS: Yes, so something for employers to be wary of. Rachel, you want to add something.

HADWEN: I just thought Lucy might benefit from looking at the Working Families website and having a quick look at the flexible working fact sheet, which does list a lot of the successful cases there have been.

LEWIS: Siân?

KEALL: One final point, Lucy, is that the flexible working rules provide for a meeting. I don't know whether you had one before, but actually you can sometimes progress these issues just by sitting down face to face with your employers. It's quite difficult to do it by telephone. So if you do have some childcare available and you do

have the ability to go in and see them, you might find that without having to hire a lawyer or litigate but just by thinking a lot about it before you go in, looking at fact sheets, looking at the websites, including the government websites, you might prepare yourself to have a very informed discussion which made your employer really sit up and think about its obligations.

LEWIS: Okay, a lot of preparation and homework. And I should say that on our website, bbc.co.uk/moneybox, there are links to numerous sources of advice, including Working Families and government websites. And in a few days time on that website, you'll be able to read a transcript of the whole programme if you haven't been able to make notes. I know there's a lot of facts coming thick and fast on the programme today. I've also had an e-mail from somebody who says outsourcing payroll is perfectly feasible for very small businesses. I'm always being told I'm wrong on this programme. She operates payrolls for many people who have between one and ten employees. So even small employers can outsource.

KEALL: That fits in with my experience certainly.

LEWIS: Okay, I've learned something, as I always do. Anne now from Silverstone, your question?

ANNE: Oh hello, thank you. I've got a situation because I'm an adoptive parent, I expected there to be - like there is an equivalent for statutory maternity pay, there is statutory adoption pay - I expected there to be an equivalent for maternity allowance, for self-employed people I'm talking about. But when I looked into it, I discovered that no such thing exists which seems to go right against the government's you know encouragement for people to come forward as adoptive parents.

LEWIS: Yes, I was surprised to learn this too because I thought there was equality now. But, Rachel, there isn't.

HADWEN: I'm afraid, Anne, that what you found out is absolutely right. As things stand at the moment there's no equivalent of maternity allowance for self-employed

adoptive parents. Nor is there an equivalent for self-employed dads. My best advice to you is to go and speak to your MP because the government actually said the last time that this was raised that there wouldn't be enough demand for this particular right. But I think...

ANNE: Yeah, that's the answer I got from Revenue & Customs.

HADWEN: I don't think that's a good enough argument because either there isn't enough demand, in which case it's not going to cost the government very much, or there is a lot of demand in which case it's a matter of the rights of this particular group of people. And of course we want to encourage adoption and we want to encourage self-employed dads to take time off to help with the childcare.

LEWIS: So, Anne, I'm afraid it's campaigning rather than money for you at the moment, but thanks very much for your call. We're going to go now to Tina in West Yorkshire. Tina, your question?

TINA: Hello, I've got a bit of a moral dilemma really. I definitely don't want to return to work and I have checked out actually with the ACAS helpline... I don't know if anybody's mentioned that, but they were wonderful.

LEWIS: That's the Advisory Conciliation and Arbitration Service, yes.

TINA: That's right, they were really helpful. And I've learned that I will be entitled, even if I resigned now - I'm already four months into maternity leave - if I resigned now I would be entitled to my statutory maternity pay still. The only problem is I obviously wouldn't receive my employer's contribution to my pension and I'm just wondering whether to string out my time on maternity leave or whether I should do the right thing and hand my notice in straightaway?

LEWIS: Right, I suppose this might be resolved by saying after four months perhaps you're not completely sure - if that doesn't sound too patronizing - and eight months

from now you might change your mind. But, Siân, what do you advise on this?

KEALL: Hello Tina.

TINA: Hello.

KEALL: I would advise you to sit tight at the moment. I don't think you should regard it as a moral dilemma. I think it's very honourable that you do, but actually this is a period of great upheaval in your life. I've taken maternity leave recently, so I know. And I'm not suggesting you're going to change your mind necessarily, but by staying on maternity leave you leave your options open. It might be, for example, that your employer would go through a redundancy process and make you redundant during that period, in which case you'd receive redundancy pay. It might be your employer would come to you with a proposal for a different role that you might decide you wanted to do on a one day a week basis.

TINA: Okay.

KEALL: A lot can change in a year and the only thing you need to make sure that you do is if you decide you don't want to go back after 12 months that you give in advance of that 12 months the proper period of notice under your contract of employment. So that's the thing you must legally do. So if you've got to give three months notice, then at nine months you should be handing that in. The other thing to bear in mind is that you continue to accrue holiday during your maternity leave period. Now that does get a bit complicated depending when the holiday year runs out, but depending on your holiday year that may mean that you accrue further financial rights which will be valuable. So in the short-term, my advice would be sit tight, don't feel you're doing the wrong thing. You can give them indications you're not going out to help them, go ahead with replacing you if you want to be open, opaque, but I wouldn't hand your notice in.

TINA: Okay.

LEWIS: And, Joanna, it's worth stressing, isn't it, that whatever you decide, you don't lose your statutory maternity pay?

WADE: That's right. I think the other thing that's worth emphasizing that Tina has found out is that you get your normal... the employer is obliged to pay the normal level of pension contribution during the paid period of your maternity leave. So for nine months, you get the normal contributions into your pension even though your salary's gone down, which is a *huge* benefit and worth keeping in itself.

LEWIS: And that might... from October we're not quite sure if that's going to extend to 12 months.

WADE: That's right. Exactly... yes, yes.

LEWIS: We think though it might.

WADE: We think it probably will.

LEWIS: Okay. Well thanks very much for that, Tina, and I hope that's helped you a little bit with that dilemma. I am going to have to draw it to a close now, I'm afraid, because we're running out of time, so I'll just say my thanks to Joanna Wade of Palmer Wade; Siân Keall with Travers Smith; and Rachel Hadwen from Working Families. Thanks to all of you for your calls and e-mails. As I said earlier, you can find out more about paternity, maternity and parental rights from the BBC Action Line. That's 0800 044 044. Our website of course has all that information and more: bbc.co.uk/moneybox. You can listen to the programme again, you can download or subscribe to the podcast - and then you can listen to it when the baby's asleep; and in a couple of days read a transcript. I'm back at noon on Saturday with Money Box and here to take more of your calls on Money Box Live next Monday afternoon when the subject will be borrowing and debt.