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MONEY BOX LIVE

Presenter: PAUL LEWIS

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LEWIS: Hello. From this week, there are some new rights for women expecting a baby. They can now keep any perks they get with the job for the whole 12 months maternity leave and not just for the first half of it. That can include childcare vouchers as well as a laptop or maybe health insurance. The changes began for mothers whose baby was born or was due yesterday, 5 October, and it brings UK law into line with the European directives on maternity rights. It's just another wrinkle on an already complex set of provisions with two sorts of paternity leave, two different periods of maternity pay, and different qualifying conditions for each. There are also changes ahead for discussions on flexible working for more parents and on sharing maternity leave between mother and father. Of course with many businesses now cutting back - and you knew we had to mention the credit crunch at some point - how does redundancy affect maternity benefits? Can you be made redundant while on maternity leave? And if it is offered, can you volunteer for it? How does that affect your rights? Of course one employee's rights are another employer's responsibility, and many employers, especially small businesses, find keeping up with the legislation difficult and fulfilling their obligations onerous. If you're an employer and you want to ring in, we'd love to hear from you. But whatever your question, you can call Money Box Live on 03700 100 444. With me today to answer your questions about maternity and paternity rights are Rachel Hadwen, who's a rights adviser from the charity Working Families; and Siân Keall, a partner at law firm Travers Smith. Our first question is from Damien who's in Hove. Damien, your question?

DAMIEN: Hi, Paul. I'd heard a little bit about the rights that came into effect yesterday, but I don't really know to what extent they go to in terms of what the changes actually are. Also, although my baby was actually due on 13th October, she was actually born on 2nd and I didn't know if we still qualified for that.

LEWIS: Congratulations! A brand new little daughter. Wonderful.

DAMIEN: Yes.

LEWIS: Well let's ask Rachel Hadwen first. What exactly is changing or *did* change yesterday?

HADWEN: Well what's changed is that contractual rights previously continued for the first six months of maternity leave, which is what we call ordinary maternity leave, and now those will continue for the second six months additional maternity leave. As your baby's due date was October 13th, your partner would qualify for the new rights because they apply to anyone whose baby has a due date on or after 5th October.

LEWIS: Or is born on or after 5th October, yes?

HADWEN: Doesn't matter.

LEWIS: It doesn't matter.

HADWEN: It's all about the due date.

LEWIS: It's about the due date, okay. And Siân, just tell us a bit more about the kind of things that might be extended this extra six months.

KEALL: As Rachel said, it applies to contractual rights, so some examples might be holiday where although during additional maternity leave - this second six month

period - employees already accrued their working time holiday, actually employees will now accrue their full contractual holiday if that's more than the minimum that their employer's required to give them. Another example of a benefit that will continue is, for example, a company car - but only a company car that you get as a perk. If you drive a vehicle purely for work purposes, you wouldn't continue to receive that. Another example of a benefit: childcare vouchers that Paul mentioned earlier. Those will continue both during ordinary and additional maternity leave now, but the thing to remember is that most employers give childcare vouchers as a salary sacrifice, so the pay of the employee reduces to allow the childcare vouchers to be given. For an employee in that situation, their maternity pay will be a little bit lower because their base rate of pay is reduced.

LEWIS: So it may be worth thinking, oddly, about giving up your right to childcare vouchers, so that your pay is a bit higher during your maternity?

KEALL: It might be.

HADWEN: It depends on the situation.

KEALL: It depends on the situation. A lot of people expecting their second child will require some childcare or need the help of some childcare, so it will depend. But also some childcare voucher schemes ask you to give a certain period of notice and also the calculation of maternity pay happens very early in pregnancy. And, therefore, if you're really early on in pregnancy and need to have a think about it, now is the time to do it. If you leave it too late, you may not be able to change it.

LEWIS: And will you need childcare vouchers when you're on maternity leave, Rachel?

HADWEN: You might well do. For example, you might need to keep a nursery place for your elder child or, depending on how your pregnancy and your birth affects you, you might not be able to provide care to your elder child. So, yes, you could well need them.

LEWIS: Siân?

KEALL: The other point to make about childcare vouchers is that childcare vouchers should be live and able to be used for a year, so they've got a 12 month live period; and so even if you decide actually you don't want to use childcare vouchers during your maternity leave, you might well for example decide to hoard them up and use them to help you on your return to work. Most mothers don't cover all of their childcare expenses with the vouchers they get given, so you could use your backlog as a top-up going forward.

LEWIS: I see. And that's perfectly acceptable?

KEALL: That's fine.

LEWIS: Okay. Well thanks very much for your call, Damien. I hope that answers your question. Some rights, some interesting rights, and they certainly will apply to your new daughter. Liz now is calling us from Merseyside. Liz, your question?

LIZ: Hello, Paul. I work for an independent adoption agency, Adoption Matters North West, and we're based across the North West of England and in north Wales, and obviously we're hoping that any rights and benefits which are available for birth parents will be available to adoptive parents. The children that they're adopting are generally not infants and they often have had a very disrupted early few years and they really need that period of stability with a parent being able to be at home with them for as long as possible.

LEWIS: Yes, so you're talking generally or just about these new rights that apply from 5th October?

LIZ: Well I'm not too sure how they're going to work for our adoptive parents...

LEWIS: Right, okay.

LIZ: ... so you know any guidance you've got would be helpful.

LEWIS: Rachel?

HADWEN: Well the short answer is yes. The extension of contractual rights to the second half of maternity leave also applies to the second half of adoption leave, additional adoption leave, so if your parents do have non-cash benefits then they should be able to preserve them throughout their adoption leave.

LEWIS: The rules are different though slightly for adoptive parents, Siân, aren't they, than for birth parents?

KEALL: They're very slightly different. Nothing has changed as a result of the new rules other than the extension that Rachel just mentioned, but the level of adoption pay is what's called the lower rate of maternity pay, which is just over £118 a week, and that applies all the way through adoption leave, all the way through the nine months that you get paid for. Whereas maternity leave, the first six weeks you get paid at 90% of pay and there's no equivalent for adoption leave.

LEWIS: And those are the statutory amounts. Of course some employers give more than that, don't they?

KEALL: That's right. Many employers pay in excess of that, particularly if they want to encourage an employee to return to work.

LEWIS: We've had an e-mail on just this subject actually, which says... obviously there is some confusion. "Me and my husband are in the process of adopting. What time are we allowed work or is it at the company's discretion?" At the moment they're using their holiday days. Well they shouldn't be having to do that, should they?

HADWEN: That depends how long they've been working for their employer. The

thing about adoption, if you're adopting with your partner, is you've got to decide one of you is going to take adoption leave and the other possibly paternity leave, but in both cases you need 26 weeks of work with the same employer. So it may be that they're not entitled and that's why they're having to take annual leave. You'd want to check their situation.

LEWIS: Right, I see. Okay. So it's perhaps slightly different, but worth checking, but pretty much the same and certainly a lot better than it used to be. I hope that answered your question, Liz. Thanks very much for calling. Rebecca now from Kingston on Thames. Rebecca, your question?

REBECCA: Hello, yes. My question's about the right to return to work on a part-time or a job share basis. I'm taking my full 12 months' maternity leave and I've had informal discussions with my employer about this, but they think that they couldn't see how my job could be done on a part-time or job share basis.

LEWIS: This is a real problem, isn't it, very often? How old's your baby, Rebecca?

REBECCA: She's 8 months old now.

LEWIS: Eight months, so you're going back in 4 months time?

REBECCA: Yes.

LEWIS: So you're discussing it in good time with your employer.

REBECCA: Yes.

LEWIS: Siân, what are the rules?

KEALL: The rules are that if you want to make a formal flexible working request - and that's what one of these requests is called - you should put your request in writing

to your employer and they then have an obligation to hold a meeting with you to discuss the request and then give you an answer to your request. And there are eight reasons that a request like that can be turned down and they're very business related reasons. The recommendation I'd give you, Rebecca, is that if you're putting this forward, think as much as possible and put it down in the letter about how it might work in practice because the more you've worked through in your own mind and put a proposal that you think really works down on paper, the harder it is for your employer to reject the proposal - whereas if you just ask for a part-time arrangement, it's a bit easier for them to say no.

REBECCA: Right.

LEWIS: This puts the burden on the mother though, doesn't it Rachel?

HADWEN: Well one thing that will help is, Rebecca, you could consider using the government form to make your flexible working request. You don't have to do this, but if you do it will make sure that you give all the information that you need to give to make sure that you're covered by the right to request. And in particular the form's got a section which says "What effect will this have on my workplace and how can the effect be dealt with?" and it's really important that you cover that. You can get that from the BERR website - that's berr.gov.uk

REBECCA: And if it came to the situation where they just said no, what would my options be really apart from you know resigning in a way or ...?

HADWEN: Well we certainly wouldn't advise you to resign.

REBECCA: No.

HADWEN: What you would do would be look at the reasons that they've given you. They should give you written reasons following a meeting. And there are eight different business reasons that they can give. Examples are things like effect on ability

to meet customer demand, inability to redistribute work amongst existing staff. They can give one of eight business reasons or they could give more than one.

REBECCA: Okay.

HADWEN: And then you've got the right to appeal internally.

LEWIS: So there's an internal appeal...

HADWEN: An internal appeal.

LEWIS: ... and then ultimately you could go to an employment tribunal?

HADWEN: You could. And you'd almost certainly want to consider as well whether you should add when you consider going to a tribunal an argument of indirect sex discrimination because women as a group are more likely to lose out by a requirement to work full-time.

REBECCA: Okay.

LEWIS: So it sounds as if you've got quite a bit of work to do, Rebecca, as well as looking after that little baby that we can hear in the background. But hopefully...

REBECCA: *(laughing)* Sorry.

LEWIS: Don't apologize, it's lovely. But hopefully you'll get your rights eventually and I hope that helps you along with that.

REBECCA: Thanks for your advice, thank you.

LEWIS: Thank you very much for your call. We're now going to go to Russ in Basingstoke. Russ, your question?

RUSS: Oh hi, yeah. I'd just like to put forward a question really for the small business employer. You know I have 15 employees - 10 of those are women and a number of those are of childbearing years. Now all the new legislation that's coming in is aimed at very much erring on the side of protecting the woman and supporting her through pregnancy, but all of the cost of that is being borne by the small employer - so extended leave, flexible working hours, right to take time off to spend with your children. Why isn't the government more or less taking an approach which if society wants to support pregnant women or fathers as well, why aren't there tax reliefs for people who do provide better care for their employees?

LEWIS: Yes. I mean you're not against the rights, Russ; you're just against you paying for it as a small employer. Is that a fair summary?

RUSS: Well basically yes. All of the cost of this seems to be borne by the employer. There seems to be no you know equalization of rights for the employer to have some of that cost recovered.

LEWIS: Rachel?

HADWEN: Well, I think it is a problem and we do know that there are a lot of employers out there who are worried about this. One of the things that we at Working Families would say is that in the future we hope that these rights will be shared more equally between women *and* men and that, therefore, you won't look at potential employees and say well I'm not happy about employing so many women.

LEWIS: That won't reduce the cost for Russ though, will it?

HADWEN: It won't reduce the cost. No, it won't.

LEWIS: He could employ 12 men and have exactly the same problem as with his 15 women.

HADWEN: I mean one thing to remember is that statutory maternity pay is fully recoverable from the Revenue, as is statutory paternity pay, and you don't have to pay more than that. There are, however, other additional costs which you may face with some of the other rights.

LEWIS: Russ, I mean one of the things people say to me - and have said on this programme before - is that it's not so much those things. It's the fact that you have to fill a gap of an unknown length with a new member of staff, in effect. You don't know if the woman who's off is coming back and this is a sort of interruption of business. Is that the kind of thing you're complaining about?

RUSS: Absolutely, yeah absolutely correct, yeah. I mean it's those hidden costs which you can't very easily calculate until after the event - having to hire temporary staff, you don't know if somebody's going to come back to work. And I understand, I mean I am sympathetic to the situation and the plight, so to speak, but at the same time it's almost an open-ended cheque-book you know for the employer; that we just have to keep funding and funding and funding this until a year or so after the birth.

LEWIS: Yes. Siân?

KEALL: I suppose there is one practical piece of advice because it's easy to sympathize but actually there's nothing anyone can do about the legislation. You know it is as the government have put it. Unless that changes in the future, we're stuck with it. But...

LEWIS: Well there's also European legislation, so we're not really going to get rid of it, are we I think, even if a different government came in?

KEALL: Yes, I mean it could tweak slightly but not very substantively.

RUSS: Well the new European legislation, as I understand it, is talking about periods of 52 weeks holiday or leave, shall we say.

KEALL: Well let me just pick up on that point because one thing that some employers do - and this may address, if not your financial concerns at least your practical ones - is put a maternity policy in place that effectively pays additional money whilst an individual's on maternity leave, so you might decide to pay a longer period of time at full pay and not decrease as statutory maternity pay does, effectively on the condition that the employee returns to work after a shorter period of time. Now that might be say six months rather than a year. So if you felt that you could cover a six month gap and you wanted to incentivise people to come back after six months, one way might be to make a more generous maternity policy but make the payment... either only make the payment when they come back to work or - which is a bit tough if people want to pay their mortgages - or to pay it and then recoup it from them if they don't come back.

RUSS: Yeah, I think it's practically impossible and I think the sort of image that that would portray of trying to recover money after a woman's decided not to come back is... it's also counterproductive, isn't it? The legislation is trying to protect women and enable them to come back to work rather than force them back into work when they don't want to or too early.

KEALL: I agree and nothing about this would be trying to force someone back into work. It's more to incentivise somebody who might otherwise think, well I don't know about six or nine or 12 and make the decision easier for them financially.

LEWIS: And, Russ, are you finding it difficult as a small employer to understand the rules and make sure you're conforming with them? And if you don't, you can be in trouble, can't you?

RUSS: Well absolutely - I mean not just on this issue, but on many, many issues. The burden that's put on small companies is exactly the same as if I were a large, you know, multi-national. I mean I have the same burdens of health and safety and employment law and issues for pregnant women and the new chemical legislation, the new Reach legislation that's coming through. The burden on small companies is actually phenomenal these days.

LEWIS: Okay, we must move on, Russ, but thanks very much for those points. And I've just had an e-mail in fact from BERR, the government department, from Geoff there who says "updated, clear and simplified guidance on maternity, paternity and adoption rights and pay is now out on direct.gov." He thinks it's great. I'm sure you do, Geoff. I hope it is. I'm sure we'll have a look at it later and there'll be a link to that on our website. But thanks very much for that e-mail. And while we're talking about these subjects, we've had an e-mail from Mary who says "I've been on maternity leave since May 8th. I've now decided I'm not going to return. Can you tell me if I have to pay back any of the maternity pay I've had from my employer?" Rachel?

HADWEN: It depends what maternity pay she's received. If she's had statutory maternity Pay, which is 90% of your average earnings for the first six weeks and then the flat rate of £117.18 a week - or 90% if that's less - you don't have to pay that back ever. But many employers pay more than that. And if they do, as Siân's just explained in fact, they may have a scheme where the payment of contractual occupational maternity pay is linked to having to pay it back if you don't return.

LEWIS: So generous employers who do pay you more than the minimum in fact can ask for it back. How long do you have to go back to keep it?

KEALL: It depends on the scheme. It's just a contractual matter, so some schemes will say as long as you come back for a month effectively your obligation to repay goes immediately. Others are more prescriptive and they say you will only have to repay if you leave work say 12 months after returning from maternity leave.

LEWIS: And what obligation does a mother have to tell the employer what she's planning to do?

KEALL: Well she has an obligation to notify that she's going on maternity leave, but effectively then she has just the right to go back. But she does have to, if she wishes to terminate her employment, comply with her contractual notice provisions.

LEWIS: So she has to give a month's notice or whatever it is?

KEALL: Whatever it is it says in her contract, yes.

LEWIS: And of course there are these keeping in touch days now which help improve communication, one would hope, between employer and employee.

HADWEN: And also if she wants to go back less than a year after she's taken maternity leave, she must now give eight weeks notice, which helps people like Russ, the small employer, who just rang because it means they do have eight weeks to terminate the contract of their temporary employee if necessary.

KEALL: And the keeping in touch days for a number of my clients have been really positive. They find them very beneficial in terms of trying to keep up good relations and encourage people back. Because a lot of this is trying to, as your caller said earlier, trying to get people back to work, and keeping in touch days I think reminds them actually they do like work and they like the people they work with and they want to come back and do it again.

LEWIS: Yes indeed and of course things change very rapidly nowadays. A year is a long time in employment. Anyway, thank you for that e-mail and we'll move on now to Patrick from Dumbarton. Patrick, your question?

PATRICK: Good afternoon. I'm self-employed and I'm about to become a father. I understand that I get no support for paternity leave because I'm self-employed. I gladly pay my taxes and don't want to ask for much support, but paternity leave is important. If I take time off, I lose income, which is hard at this time with the baby coming up. So I'd like to ask is there anything I can do to get support; and, if not, do you think the situation will change for self-employed people in future?

LEWIS: Rachel?

HADWEN: Well this is a problem that's been going on for several years now. If you are self-employed and you don't set up a Pay As You Earn scheme - so you're not employing yourself, you're simply self-employed - then you're not entitled to what we call statutory payments, including Statutory Paternity Pay, and there's at the moment nothing that you can do about that; there's no equivalent that you can claim from the benefit system. So actually the best advice that I can give you is to go and see your MP or write to your MP and say you're not happy about it.

LEWIS: That's probably going to take a lot longer than the average pregnancy though, isn't it? (*laughs*)

PATRICK: Baby two or three.

HADWEN: Well this is something that many charities, including Working Families, have been asking for for a very long time and still...

LEWIS: It wouldn't really be very expensive either, would it?

HADWEN: Well you wouldn't have thought so. When you consider that they are definitely going to extend maternity pay again to a whole year, you'd think that they could also extend this right to self-employed fathers.

LEWIS: Yes. Siân?

KEALL: There's very little to add to that. I'm afraid, Patrick, there's no good news from your situation.

LEWIS: I'm sorry, Patrick, we don't often do this, but we're just saying tough really, you're absolutely right. Write to your MP.

HADWEN: The only thing that I would say is make sure that you claim your child benefit and tax credits for your baby and make sure that you get the support for your

child, the financial support for your child which you are entitled to.

LEWIS: And of course if your income as a couple is severely reduced, then child tax credits will go up. Thanks very much for your call, Patrick. And we've had an interesting e-mail from Tristana who says in Sweden parents have over a year of fully paid paternity leave. How do employers in Swedish society cope with that? Well I know in Germany I think it's three years. I mean Britain, although people here see it as very generous, in fact basically it's the same or better throughout Europe, Siân.

KEALL: And there are some very interesting sort of philosophical debates you can have about how best to keep women in the workforce because some of the same jurisdictions that give these generous maternity rights also place obligations on companies to have a certain level of female employees at board level, and in some ways you need both of those in tandem to avoid the effect of very generous maternity rights meaning that effectively women are disadvantaged by taking them.

LEWIS: Let's bring Lesley in now because she's sort of slightly at the other end, I think. Lesley, what's your question?

LESLEY: I'll just be brief because I'm phoning on behalf of a friend of mine. She's Slovakian, she's been over here for a year or so. She's pregnant, the baby's due in December, she intends to leave work in November. The problem is her employer has cut her hours because the minimum wage went up and she's wondering how it will affect her maternity pay, which is important for her.

LEWIS: Right. Well indeed.

LESLEY: She's 29 and she's worked for them for more than a year.

LEWIS: This was the rise on 1st October, which was a very tiny rise - about 20 odd pence an hour as far as I can recall.

LESLEY: I know, it's crazy, isn't it?

LEWIS: Siân, this seems a very... I don't want to make a judgement on something when we've just heard one side, but it does sound a pretty harsh thing to do.

KEALL: It does, doesn't it? The good news for your friend, Lesley, is that she has probably, based on the dates you've just given us of a baby due in December, passed the date or the set of dates on which her maternity pay will be calculated, so even if her pay is dropped now she's still accrued the right to receive 90% of her earnings during the first six weeks of her maternity leave and those earnings will be at her old higher rate, not her new lower rate. So that's some good news.

LESLEY: And her employer's obliged to pay it?

KEALL: Her employer is obliged to pay it and in fact her employer shouldn't, as Rachel referred to earlier, shouldn't suffer a disadvantage because actually most, if not all, of the cost of that will be able to be recouped from Revenue & Customs. The more difficult question about cutting hours is that if the real reason for the cutting hours is nothing to do with the small rise in the minimum wage but actually is because the individual is pregnant, then effectively what the employer has probably done is what's called indirect sex discrimination - in other words they've taken a step that affects her because of her maternity. In fact it could *even* be *direct* discrimination. But either way, one of the things that your friend ought to think about is whether she ought to be raising a grievance with her employer about the change to her pay and also whether actually she's agreed to it because employers can't just unilaterally cut hours unless they've got a right under the contract to do so. If she's got a contractual right to a number of hours, she could complain about that. So for a lot of reasons the pay cut I think is a very difficult one.

HADWEN: I would also say very quickly that because she's from Slovakia, you might want to check that her work is registered because if it's not she may have a problem claiming benefits.

LESLEY: Ah right because she's working in a café and... Well she's working all the hours that God sends, as they do, but never mind. Thank you for your help.

LEWIS: Okay, thanks very much for your call Lesley. I just wanted a quick word about redundancy. We've had a number of e-mails about this. One lady writes to us and says she's standing by the phone waiting to hear if she's been made redundant. Briefly, how do maternity rights, how does redundancy affect them?

KEALL: Well actually it sounds slightly odd to say this, but women who are on maternity leave are in a better position than other employees when it comes to redundancy because all employers dealing with any employee have an obligation to offer suitable alternative employment for people facing redundancy. But because it's recognized that employees in maternity leave are in a particularly vulnerable situation, they effectively go to the front of the queue in terms of looking for alternative employment for them, so if there is a suitable role available either in their employer's business or a group company then they should be given that alternative role and it's not an excuse for the employer to say we need somebody straight away.

LEWIS: So although redundancy's obviously a worry for all employees, it shouldn't affect women who are on maternity leave more. Let me just move on to our last call. I think Tina is calling us. Tina, your question?

TINA: It's not a question, it's more a statement. I'm the chairman of Women into Business and I'm a vice president of the Small Business Bureau and it seems to be that people think they have an automatic right for small businesses to become the social services of the government. What people don't understand when they quote Scandinavia is that a) most of the women in Scandinavia run two jobs. Also the make up of the industrial base of companies is 95% of companies in Britain are small businesses.

LEWIS: Let me ask you, Tina. I understand the points and we've talked about them a bit earlier, but what would you do? Given that I presume you would agree that people should have some rights when they're pregnant, what would you do to pay for them?

TINA: Well personally I don't think it is a small business. We are constantly being told by government to follow the entrepreneurial culture of America, but they understand the different problems of small businesses versus large companies that have the personnel and the financial ability to cover these rules and regulations. And consequently small businesses are excluded from these rules and that's...

LEWIS: So you would like to see that here?

TINA: You have to do that. You have to state that a company... if you have two senior members who are key personnel taking a year off, there is possibly not going to be a business for them to return to.

LEWIS: Okay, thanks for your comment. I must cut you off there because I just want to ask one question and you've really got ten seconds to answer it here. Unmarried people - same rights as married people?

HADWEN: Yeah...

KEALL: Yes.

HADWEN: ... absolutely the same rights. If you're not married but you live with your partner who's having a baby, then you potentially have rights to take paternity leave if you meet all the conditions.

LEWIS: Good. Thank you very much. That's all we have time for. My thanks to Rachel Hadwen from Working Families and Siân Keall of Travers Smith. And thanks to you for all your calls and e-mails of which we've had many. You can find out more from our website and the BBC Action Line I'll give you first - 0800 044 044. Our website is bbc.co.uk/moneybox. You can listen again, download a copy, subscribe to the podcast, or in a couple of days read a transcript. I'm back at noon on Saturday with Money Box to take more of your calls. Next Monday as well on Money Box Live when the subject will be small businesses. How are they coping with, yes, the

credit crunch?