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## **MONEY BOX LIVE**

**Presenter: PAUL LEWIS**

**TRANSMISSION: 24<sup>th</sup> FEBRUARY 2010 3.00-3.30 RADIO 4**

**LEWIS:** Hello. As you may have heard in the news this morning, the European Parliament will be asked next month to improve maternity leave throughout the EU to 20 weeks on full pay. The Parliament of course may not agree, but rights for people expecting babies generally do improve over time. The UK government passed a law last month which will allow mothers to transfer the second 6 months of their maternity leave to the baby's father. Three months of that would be paid at the statutory maternity pay rate of £123 a week. That change will start from April 2011. But what are your rights today as a mother, a father, or an adoptive parent? Today Money Box Live takes your questions on rights at work for pregnant women, new mothers and fathers, and parents in general. Perhaps you're pregnant and afraid to tell your employer. Maybe you want to find out how much leave you can take, what you'll be paid, and for how long, when you can stop work and when you have to return? What are the current rights for fathers? And if you're already a parent, what are your rights now to take time off to deal with emergencies, illness or childcare? And how do all these rights translate if you're in a same sex couple? Maybe you're a small employer listening to all this and wondering how on earth you can find out what your obligations to your staff are, and perhaps deep down how you can afford them. Whatever your question, you can call Money Box Live now - 03700 100 444. With me today to answer your questions: Lucy McLynn, who's a partner with solicitors Bates Wells & Braithwaite; Eddy Graham, a welfare rights worker with Child Poverty Action Group; and Sian Keall, an employment partner at lawyers Travers Smith. Our first question today is from Sarah who's on her mobile. Sarah, your question?

**SARAH:** Hello. Yes, I just wanted to ask I've just been offered a job and I've just found out that I'm pregnant, and I just wanted to know what my rights are in terms of the job that I've been offered. Do I have to tell them? Can they withdraw the offer if I tell them? And I suppose I'm just a bit worried that if I tell them before I start that ...

**LEWIS:** Yes, a natural anxiety I think, Sarah.

**SARAH:** Yes.

**LEWIS:** Sian Keall?

**KEALL:** Well let's just start with the basics, which is that regardless of the length of service you have in the new job, you'll be entitled to take maternity leave in the same way as even if you had several years service. So your level of service with them won't be affected by ... won't affect the leave you get. It might affect the pay you get. And one of the important things to remember is leaving aside when you tell them in terms of relations with your employer, you must tell your employer that you're pregnant before the 15<sup>th</sup> week before the week you're due - people call the week you're due your expected week of childbirth - because that's the week that unless you tell them before that date, in principle you're not eligible to take your maternity leave.

**SARAH:** Sorry, that's 15 weeks before I'm due?

**KEALL:** That's right.

**SARAH:** Right, okay.

**KEALL:** And so it's very important you give them that notification. And although the rules don't require you to tell your employer in writing, I would always recommend that you do in order that there's no lack of clarity about what you're notifying them of. And what you should tell them of is that you're pregnant, when your baby is due, and the date you'd like to start your maternity leave. And whereas

we used to have rules that your length of service affected how much leave you could take, now all employees can take a full year's maternity leave.

**LEWIS:** And on the key question that Sarah asked, perhaps Lucy McLynn - does she actually have to tell her employer or her new employer that she's pregnant before she starts the job?

**McLYNN:** No, no she doesn't. And, Sarah, I can reassure you on the point about them withdrawing the job offer if you *do* decide to tell them because if they did that, that would certainly be unlawfully discriminatory against you as a pregnant women. There was in fact a case in Europe some years ago where a woman was offered a maternity cover post for a fixed term contract and she was in fact pregnant herself and was going to be having the baby during the very time she was supposed to be doing maternity cover, and when her new employer found out, they withdraw the job offer saying you should have told us that. That was a very material thing for us to have known given this was the nature of the job. And that was held to have been unlawful discrimination in the European Court.

**LEWIS:** So you don't *have* to tell them. Is it generally a good idea though? I mean would it be ... if the employers can't do much about it, would it be a good idea to tell them probably as soon as possible?

**McLYNN:** I think you have to judge the mood. And it's a rather unhelpful statement in some ways, but for some employers the right thing to do would be to tell them as early as possible because the relationship will then be one that's transparent and there will be no grudges held against you on the basis that you held a very important piece of information back. I can see that there are other situations where you feel that actually it would ... it's okay to have a right - in other words the right not be discriminated against - but if you have a deep-set feeling that someone might discriminate against you and you don't really want to be litigating whilst you're on maternity leave, then sometimes it might be better to just wait a little bit longer before you tell them to get your feet under the desk at your new job, create some good relations and then explain the situation you're in. I'm afraid it's a real judgement call.

**LEWIS:** Yes, sorry, go on Sarah.

**SARAH:** I was just going to ask, do I have to have started the job for sort of my right to keep it to apply?

**McLYNN:** No, you don't. If you are not offered a job or a job offer is withdrawn because you are a woman who is expecting a baby, that is direct sex discrimination.

**SARAH:** Right.

**LEWIS:** So the fact the job offer has been made, then from that moment you're safe?

**McLYNN:** Yes you are. You're safe in that if something happens to you, you've got a claim, which means that at least you can do something about it if you're discriminated against.

**LEWIS:** Okay, well thanks very much for your call, Sarah. I know a lot of people do worry about that, but it seems you don't have to. And on the subject of people who've just found out that they're expecting a baby, Anna emails us to say, 'I've just found out I'm expecting. I have a company car, mobile, Blackberry. Are these benefits kept in place during my maternity leave?' Sian?

**KEALL:** The good news is yes they are.

**LEWIS:** There have been cases about this too recently, haven't there?

**KEALL:** There have, and the rules have changed as well because there was a period of time when for the first 6 months you continued to have your benefits but not the second 6 months. It's now the situation that your benefits ... there are some slightly complex rules in relation to pension, but the general position is your benefits continue throughout maternity leave. What stops is your pay. So the right to receive pay stops and you get maternity pay instead.

**LEWIS:** I suppose keeping your Blackberry keeps you in touch with the workplace?

**KEALL:** Yes, it's a mixed blessing keeping your Blackberry, I think. *(laughter)*

**LEWIS:** Okay, well thanks for your email, Anna. Moving on now. Gary is calling us from Brentwood. What's your question, Gary?

**GARY:** Hi. I'm basically employed and my wife, we have an 18 month old daughter. She's pregnant again, she's 6 months pregnant. I've been in my job only 6 months, my latest job, and I wondered what I was entitled to as regards paternity leave and benefits really?

**LEWIS:** Right, paternity leave; job 6 months.

**GARY:** Yeah, on PAYE. It's not a permanent position at the moment. I mean yeah, it's just pay as you earn.

**LEWIS:** Yes, but you are in work. Lucy?

**GARY:** Yeah, I've been here 6 months, so ...

**McLYNN:** Right, was your wife pregnant at the time you started the job, if that's not an intrusive question?

**GARY:** No, just after we found out actually. No, I started the job and then almost immediately after we found out she was pregnant. It wasn't planned. But, yeah, we found out shortly after.

**McLYNN:** Right because the reason I'm asking is the way the rules work is that to qualify for paternity leave and pay, you have to have been employed for at least 26 weeks ending with the 15<sup>th</sup> week before your wife is due. And what that equates to in sort of real terms is that if someone is pregnant at the date that they're starting work,

you have entitlement; and if they're not, you don't. So that's the sort of more easy way to look at it.

**GARY:** Right.

**McLYNN:** So it sounds like you might just miss out.

**LEWIS:** Might miss it. So we often hear 26 weeks, but it's actually 26 weeks before the 15<sup>th</sup> week before the baby's due. So that's 41 weeks, isn't it, altogether?

**McLYNN:** It's 40 weeks.

**LEWIS:** 40 weeks, is it? Yes, sorry. Right, okay. So 40 weeks. So it sounds as if you may not qualify. I must say we've had quite a few emails about that as well from various people. Craig says the same thing: 'I've been told I'm not entitled to paternity leave as I haven't worked here for 26 weeks.' So that actually is the rule. Sian?

**KEALL:** I should add one point, which is that although some people will be told that their employers absolutely stick to the rule, some employers take the view that they extend the statutory rights to all their employees regardless of length of service. So if there's anyone listening to this programme who would fall outside the rules, I would encourage them to still ask because it may be that their employers are prepared to be more generous.

**LEWIS:** Yes and that's always the way. I mean we tell people their legal rights, but of course some employers, many employers are more generous than that both in terms of time and in terms of money. Andy has also got a call about paternity rights from Devon. Andy?

**ANDY:** Yes.

**LEWIS:** What's your question?

**ANDY:** Well basically the question is really who pays for paternity benefit? I gather that there are a couple of weeks now in these enlightened times that is supposed to be paid for at £123 a week. Is that paid for by the government or by an employer?

**LEWIS:** Right. Are you employed?

**ANDY:** No, I'm self-employed.

**LEWIS:** Ah, I think there might be bad news coming. Self-employed people and statutory paternity pay. Lucy?

**McLYNN:** Yes, well the starting point with all of the statutory rights of maternity, paternity and adoption pay is that they only apply to employees and not to self-employed people. It may be, however, that you have some eligibility to state benefits instead.

**ANDY:** What's the rationale for that?

**LEWIS:** We never deal with rationale, Andy. *(laughter)* The government makes the laws and we explain them. Why that is, I don't know.

**ANDY:** Are they paid for by the government or by employers? I mean who funds the benefits?

**LEWIS:** I think the employer pays them, but then they're refunded by the government, I think is the position.

**McLYNN:** They're *mostly* refunded by the government. Not always 100% unless you're a small employer.

**LEWIS:** But they don't apply to self-employed people. And Eddy Graham, these things generally don't apply to self-employed people. Self-employed fathers, can they

claim paternity allowance or can self-employed mothers claim maternity allowance?

**GRAHAM:** Self-employed mothers can claim maternity allowance. That's available to both employees and the self-employed, and it's really a fallback benefit for those people who haven't worked for long enough or earned enough money to qualify for statutory maternity pay. It's a very low earnings threshold, £30 a week, and you only have to have worked for 26 of the 66 weeks before the date the baby's due. For somebody like Andy, it's really a question of looking at what other benefits he can claim like child benefit, child tax credit. There is something called a health in pregnancy grant, which is not means tested but it has to be claimed before the baby is born. So there are things available, but not generally to the self-employed who are ... you know for a self-employed man whose wife has had a baby, then no.

**LEWIS:** And there's no statutory paternity pay as there is statutory maternity pay?

**GRAHAM:** No, there won't be ... no.

**LEWIS:** No. Sorry, Andy, bad news there. I'm also a self-employed person, so I sympathise, but I'm afraid you're not going to get anything. Thanks for your call. And just obviously do make sure that you as a couple and your wife claim all you can get on that basis. And Andrea now is calling from Wandsworth. Andrea?

**ANDREA:** Yes, I work for a university and we have in our contract our holiday rights. There are three different types of holiday. There's annual leave, there are bank holidays, and there are closure days: when the university is completely closed, we're entitled to leave. And the university has said that women can accrue their holidays and take them on their return from maternity leave, their annual leave, but they're not allowed to accrue the bank holidays or the closure days that took place whilst they were on maternity leave.

**LEWIS:** Right, so the situation is - and I think this is a fairly recent thing - that while you're on maternity leave, you can sort of clock up your official annual leave and take it all at the end, so you get an extra month or whatever it is, an extra 5 weeks.



**ANDREA:** Yes.

**LEWIS:** But you're saying this doesn't apply to bank holidays and to these closure days, which the university has?

**ANDREA:** Yes. So if you're a working employee, you get those days holiday. If you're on maternity leave, they're saying that you're not entitled to accrue those days as holiday.

**LEWIS:** Right, Lucy?

**McLYNN:** Well, Andrea, I think that this will really all turn on the question of whether bank holidays and closure days are viewed as a contractual benefit in the same way as the other sorts of things Sian was talking about before with one of the earlier callers like a Blackberry, a company phone, that sort of thing, in which case you're entitled to that throughout your period of maternity leave. Or if it's classified as effectively pay, it's a right to pay in which case you're not entitled to it because what you're getting is statutory maternity pay.

**ANDREA:** Right.

**McLYNN:** And it's not I must say clear because there hasn't been a test case on this yet about how bank holidays and closure days would be classified. My personal view is that they probably would be classified as a right to pay because effectively you're getting the time off anyway because you're off on maternity leave. What you're not getting is the payment for that bank holiday or for that period of closure. So I think in my experience certainly a lot of employers will take the view that bank holidays and closure days are not something that they extend to people on maternity leave because effectively it's simply about an additional payment.

**ANDREA:** Could I just ask? I thought that the European Court of Justice had said that you cannot be on holiday and on maternity leave at the same time. Isn't that

correct?

**LEWIS:** That was the basis of taking the statutory leave at the end of the time, wasn't it? Sian?

**ANDREA:** Yes, so I'm not quite sure why that wouldn't apply to bank holidays.

**LEWIS:** (*laughs*) I'm sure there are lawyers who can argue it both ways. That's what they're paid for and they're very good at it. Sian, would you take the other view or do you think this is right?

**KEALL:** No. I think Lucy's right and certainly my experience of clients is that most employers I come across don't grant bank holidays and closure days, but they do of course comply with the law to allow people to accrue working time holiday, contractual holiday. The only further sort of practical point to make - and Andrea, you may be well aware of this - is to think very carefully about how you take your holiday, so that you don't lose out at the end of a holiday year. So it is important to have a look at how much holiday you're going to accrue and make sure you take some before you go on maternity leave and can take some at the end, so that you don't fall foul of the use it or lose it rule if a holiday year ends while you're away. You may have an employer who's very flexible about you carrying it over, but actually quite a lot aren't and they do worry about the consequences. So use your holiday carefully is the message.

**LEWIS:** Okay, I think we'll move on, Andrea, but thanks for your call. I think if you want to be a test case, I'm sure you'd find someone who'd be very happy to take it up. It is a very interesting point. It's the kind of thing that does generally go right to the top of the European Court of Justice. We now have a call from Rachel who's calling us from her mobile. Rachel, your question?

**RACHEL:** Hello. Yes, so I feel as if I'm kind of stuck in the middle at the moment because I've just found out that I'm expecting my first child. Now I'm married. Our circumstances are that I work for an agency just cleaning houses. It's classed as being

self-employed. I know previously that I haven't been able to claim any benefits, not entitled because I spent five years doing volunteer work and I didn't pay enough national insurance doing this. Now my husband's in full-time education. He does work, but it's definitely not enough to support us both if I'm out of work. So I was wondering where that stands if I can't get benefits and I can't take anything from my employer?

**LEWIS:** Right, Eddy Graham, is Rachel going to get maternity allowance?

**GRAHAM:** Well maternity allowance is certainly available to people who are self-employed, Rachel. I mean as long as you have worked for 26 weeks in the 66 weeks before the date the baby's due and that you have earned more than £30 in those weeks, then you will qualify for maternity allowance. The fact that your husband is working or is a full-time student is completely irrelevant, so you'd be entitled to maternity allowance of £123 a week for 39 weeks.

**RACHEL:** Is that even though previously they said I couldn't have jobseeker's, housing benefit or anything?

**GRAHAM:** Well I mean I'm not sure what your circumstances were then. All I can say to you now is that you can claim maternity allowance; and if your income with the maternity allowance and your husband's earnings are low enough, you might be entitled to a means tested benefit like housing benefit if you have to pay your rent.

**RACHEL:** Okay, thank you very much.

**GRAHAM:** You should also look into things ... there is the health and pregnancy grant, which you can claim from the Inland Revenue. And obviously once the child is born, child benefit and child tax credit.

**RACHEL:** Yes, okay.

**LEWIS:** Well worth looking into those because child tax credit particularly is very under claimed. Now I've been taken to task by somebody who's emailed to say I was suggesting in my introduction that adoptive parents were not mothers or fathers, so I apologise if I said that. I certainly didn't mean it. But let's just clear this up while we're talking about adoptive parents. Do they now have exactly the same rights as people whose baby is conceived and born in the family? Lucy, you seem to be shaking your head.

**McLYNN:** Well no because I think I'm right in saying that the primary adopter, the one who is effectively in the position of the mother of the child that's being born has slightly less good pay rights. The same amount of time off, a full year off, but the right to statutory adoption pay is at the lower rate for the entire pay period of up to 39 weeks; whereas the mother of a *born* child - put it that way - gets 90% for the first 6 weeks and there's a higher rate of statutory maternity pay that applies in that situation.

**LEWIS:** And is there also paternity leave for the other adoptive parent? There is?

**McLYNN:** Yes, in the normal way.

**LEWIS:** And if this was a same sex couple, they can choose, can they, who is the primary adopter and who is the non-primary?

**McLYNN:** Yes, and this is where paternity leave is not very well phrased in those circumstances ...

**LEWIS:** No, absolutely.

**McLYNN:** ... because the primary adopter would take adoption leave, but adoption leave that's like maternity leave, and the other one would take paternity leave.

**LEWIS:** So those are the distinctions I was trying to draw, not implying that adoptive parents are not mothers and fathers. I apologise to adoptive parents for that. Let's ask

Luli now in Kent who has a question. Luli, your question?

**LULI:** Hello. (*noise on line*)

**LEWIS:** Oh Luli, the line is terrible, but do try and ask your question.

**LULI:** Yeah my question was because me and my partner, we're expecting a baby. Hello?

**LEWIS:** Yes, yes.

**LULI:** Can you hear me? Yes?

**LEWIS:** Congratulations. What's your question?

**LULI:** Well thank you. The question is because both of us, we have mortgages because we bought our houses before we met, and now I'm worried about mortgage payments when she's on maternity leave and I want to know do you get any benefits with regard to sort of holiday payments or that sort of thing?

**LEWIS:** Right, is your partner working?

**LULI:** Yeah she's working, yeah.

**LEWIS:** Right, so she'll get statutory maternity pay and maternity leave. Let's ask Eddy Graham about help with mortgage payments because that is a bit difficult, I know.

**GRAHAM:** Luli, mortgage payments, you can get help from the government to pay your mortgage but it's only available with certain means tested benefits and they're going to be income support, employment and support allowance, jobseeker's allowance or pension credit. And if you're both of working age ... are you working

full-time yourself?

**LULI:** Yeah I do, yeah. But, as I say, I've got my mortgage to pay. That's the thing.

**GRAHAM:** Okay.

**LULI:** And we haven't got an agreement with the bank to let, you know. So we can't actually let the other house and we have to pay for them both, you know.

**GRAHAM:** Okay. You'd only be able to claim help with a mortgage anyway for the house that you normally live in. And if you're in full-time work, then you and your partner will be treated as a couple and you will be ruled out of means tested benefits, and that is the only way that you would get help with your mortgage.

**LEWIS:** Yes, so it's a question of seeing if you can apply for means tested benefits in your circumstances, which may be a bit tricky I think in those circumstances. Is an option just to live apart, live one in each house?

**GRAHAM:** Well I could never advise somebody to do that, Paul. But I mean ...

**LEWIS:** But people do it, don't they? I mean we have to accept people do that sometimes.

**GRAHAM:** If you were in separate households, if your wife was in another house or she wasn't working, she may well find that (because she wouldn't be treated as working because she's on maternity leave for those purposes) that she could claim income support, for example, and get help with the mortgage.

**LEWIS:** But that would have to be not just living separately. You wouldn't have to be a couple in any sense in order to do that ...

**GRAHAM:** Yes.

**LEWIS:** ... so that would be rather different. Okay. We've also had a number of emails from employers saying ... I'm just looking for the one I was reading a moment ago. But saying what is it with all these rights for mothers? Can they waive them? Oh here it is. This is Graham who says: 'As a small business, unless we can get ladies to waive their maternity rights, we'll have to resort to subcontracting for their services.' And small employers do find this quite onerous, Lucy.

**McLYNN:** Yes, yes, I would certainly agree with that. My husband runs a small business and he's had employees who have had to take time off for maternity leave. It's a great strain on the business. I have every sympathy.

**LEWIS:** But it is just an expense of running a business now, isn't it?

**McLYNN:** It is. And I mean also bear in mind, of course, that the small employer can reclaim any statutory maternity pay that they pay out for example from the government in full, plus an additional 4.5% from the national insurance contributions. So in terms of the actual money, there is a mechanism for getting that back.

**LEWIS:** But I suppose also, Sian, it's just a process, isn't it? You've got to employ someone for maternity cover, you've got to train them, they've got to do the job. People find this ... got to do recruitment. This is a big expense to businesses of *all* sizes.

**KEALL:** It can be. I mean it can be particularly acutely difficult in small businesses, but actually big businesses can often have small teams who find this issue difficult. But the one thing I would say is that of course a mother or an adoptive parent who takes maternity leave or adoption leave can choose to come back early if they want to do so. There's no concept of *waiving* rights. You know you get them automatically. But if a woman for example decided she wished to take 26 weeks leave rather than the full year, she's got the right to come back early. She does have to give prior notice to her employer.

**LEWIS:** And of course employers can't put any pressure on people to do that, can

they?

**KEALL:** No, no they can't, and it's got to be absolutely her choice. But some do. And because of the right to request flexible working, it might be that somebody wants to come back to get some income going slightly earlier on perhaps a reduced basis.

**LEWIS:** And I suppose the proposals that are coming in in 2011 are designed exactly to address that, so that the mother can go back after 6 months and then the father can take over some of that leave with at least statutory paternity pay as the money that they get?

**KEALL:** Yes after 20 weeks leave ..

**LEWIS:** 20 weeks.

**KEALL:** ... the mother can return to work. And if she returns to work, she can transfer her leave to her partner. And that partner gets the benefit of the leave but also the pay that the mother would otherwise have received. It's not for the mother's employer to pay him the pay. He gets that from his own employer and there's various sort of slightly complicated notification requirements. But that's designed exactly to give that flexibility.

**LEWIS:** Okay. Mary now calling us from Liverpool. Mary, your question?

**MARY:** Oh hello. I'm pregnant. I'm due in April and I'm hoping to take the full 12 months off work. And I'm the main earner in our family. Well it's just my husband and I at the moment. He's been told he's not entitled to paternity leave or paternity pay and he wasn't entitled to benefits earlier this year when he was unemployed because of my salary. My question is really in about the last 3 months of my maternity leave when I'm going to be basically not receiving any money, would we be entitled to claim for any other kind of benefits then?



**GRAHAM:** Well, Mary, is your husband working at the moment and will he be working when you're off on unpaid leave?

**MARY:** Yes, he will be.

**GRAHAM:** Okay.

**MARY:** Well hopefully, you know unless he loses his job.

**GRAHAM:** Okay, well hopefully that doesn't happen. If he's working full-time, then you would be able to claim because you've got a dependent child. You'd be able to claim child tax credit and working tax credit as well as child benefit. So you may find that if you've got children, you can get quite substantial amounts of tax credits paid and you get an extra amount if you've got a child under one in the family. So the situation probably will be different than before because you've got a child and you could find that you are entitled to quite a lot of benefits and tax credits.

**LEWIS:** Okay, so worth checking at the time, Mary. Thanks for your question. And very quickly we'll just squeeze Rachel in from Weston-super-Mare. Could you ask your question very quickly, Rachel?

**RACHEL:** Hiya. I'm due to go back in a couple of weeks and have put in a request for flexible working hours. My employer, I'm having a meeting with them basically tomorrow because they've declined the hours that I wanted to do. I think that they're going to come back with either nothing at all or my full-time hours.

**LEWIS:** Okay, let me just put that to the lawyers because I think from the note I've got here it says you wanted to drop it from 5 days to 3 and your employer is resisting that.

**RACHEL:** Yes.

**LEWIS:** Lucy?

**McLYNN:** Well I mean in a nutshell you've obviously got the right to *request* for that. You don't have a right to *get* it. But if your employer refuses to give that to you, you may well have arguments that their requirement that you're working full time is indirectly sex discriminatory against you as a woman with childcare responsibilities. And certainly, just to pick up on the point you made, they couldn't refuse to offer you your full-time hours back. At the very least, you have that guaranteed.

**LEWIS:** Okay. Some help there and I'm sure you can get advice from Citizens Advice if you want it or indeed from your union if you're in one. But we must end there. Just a quick warning from a health and safety practitioner who says if you are pregnant please tell your employer as soon as possible if there's any risk in your job from your being pregnant. That is all we have time for. More than time in fact. Lucy McLynn from Bates Wells & Braithwaite, thanks. Thanks to Eddy Graham of Child Poverty Action Group and to Sean Keall from Travers Smith. More on our website, [bbc.co.uk/moneybox](http://bbc.co.uk/moneybox), the Action Line - 0800 044 044. Money Box is back on Saturday. Vincent Duggleby back here, Money Box Live next Wednesday afternoon.