

FACT OR FICTION?



HR expert **Vicky Stanton** tackles four examples of the confusion that can arise surrounding employee rights...

find out more



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Employing people comes with challenges, and it can be particularly difficult when a member of staff comes to you in a given situation and tells you they 'have a right to' something, or the 'law says' something else about the topic on his or her mind. Here are some of the more common statements you might be confronted with, with the answer as to whether they are fact or fiction...

"I CAN BRING MY PARTNER/PARENT/SOLICITOR TO THE DISCIPLINARY HEARING."

No they cannot, unless the partner/parent/solicitor works for you too. An employee has the right to be accompanied by a fellow employee, or a trade union representative or official. A trade union representative who is not an official must have certification to act on behalf of the trade union as competent to accompany the employee.

The companion has the right to address the meeting to put and sum up the employee's case, respond to any views raised on behalf of the employee, request a break in proceedings to confer with the employee, and also confer with them during the meeting.

The companion does not have the right to answer any questions put directly to the employee, prevent the employer from putting their case or asking questions, or act without the consent of the employee.

"I CAN COME BACK TO WORK PART TIME AFTER MY MATERNITY LEAVE ENDS."

No - there is no automatic right for anyone to return on or reduce to part-time hours. Employees have a legal right to request flexible working, which you must consider seriously. The request must be made in writing, and only if you have a clear business reason why it cannot be accommodated, can you refuse it. You must respond formally to the request. You should meet with the employee within 28 days of the request and you must respond within 14 days after the meeting. If you

have agreed to the change you need to issue a new contract to the employee.

If you don't agree the change, the employee has the right to appeal, but they can't appeal if they only disagree with the business reasons for the rejection. An employee cannot make another flexible working request for 12 months.

The statutory right on returning from maternity leave is to return to the same job after ordinary maternity leave (first 26 weeks) or if this is not reasonably practical (e.g. the job no longer exists) a similar job with the same pay and conditions after additional maternity leave (last 26 weeks).

"I CAN JUST TURN UP AFTER MY MATERNITY LEAVE HAS FINISHED AND START WORK."

As the employer, you have the right to assume that your employee will take all 52 weeks of statutory maternity leave (unless of course they have advised differently initially). If an employee takes all 52 weeks then they do not have to give notice that they are returning. However, if they wish to return earlier, e.g. when their statutory maternity pay ends, they must give you at least eight weeks' notice. If they don't, you can insist that they don't return until eight weeks have passed. Your employee must tell you if they are returning to work early or they want to change the date of their return.

If they decide not to return to work, they should give you notice of termination of contract in the normal way.

"I AM ALLOWED PAID TIME OFF FOR BANK HOLIDAYS IN ADDITION TO MY STATUTORY LEAVE."

This depends on the employee's terms and conditions of employment. Employees are legally entitled to 5.6 weeks paid holiday per year. An employee working five days per week

must receive 28 days paid annual leave per year (i.e. five days x 5.6 weeks).

Part-time workers are also entitled to 5.6 weeks of paid holiday per year, but pro rata to the number of days they work.

You can choose to include bank/public holidays as part of an employee's statutory annual leave entitlement or pay them as additional days. You can decide what to do as long as it is clear in the written statement of terms and conditions of employment.

Nb. There is speculation that an additional bank holiday may be given for the day of the christening of Prince George. If you pay additional bank holidays this will be one more to pay, but if you include bank holidays in the statutory entitlement you will need to advise staff that they will have to allocate one more to this additional holiday as soon as any announcement is made.

