



# Formal notice not required to have “sought to take” parental leave

Jack Castle

In *Hilton Foods Solutions v Wright* [2024] EAT 28 the Employment Appeal Tribunal considered the meaning of “sought to take” parental leave in the Maternity and Parental Leave etc. Regulations 1999. Whether an employee “sought to take” parental leave is a factual matter for the Employment Tribunal taking into account all relevant evidence. Importantly, it is not necessary for an employee to give formal notice under Schedule 2 of those Regulations. This may also apply to other forms of leave with protection for those who “sought to take” it, including the new entitlement to carer’s leave.

Jack Castle acted for the successful Respondent with Daniel Hallström, on behalf of the Free Representation Unit.

## FACTUAL BACKGROUND

1. Mr Wright brought a claim for automatic unfair dismissal on grounds that he “sought to take” parental leave ([section 99 Employment Rights Act 1996](#) and [Regulation 20\(3\)\(e\)\(ii\) Maternity and Parental Leave etc. Regulations 1999](#) (“MPLR”). He alleged a series of informal discussions about parental leave had taken place between himself and various employees of the Respondent, including HR, that he had requested the parental leave policy, and had raised

taking parental leave with the Respondent’s managing director, who had told him he could not. He was subsequently dismissed.

2. It was accepted that Mr Wright had not given formal notice under [Schedule 2 MPLR](#). Schedule 2 contains prescriptive requirements as to the notice an employer must be given before an employee takes parental leave.
3. The Respondent applied, unsuccessfully, to strike out Mr Wright’s claim for automatic unfair dismissal on the basis that Mr Wright could not have “sought to take” parental leave because he had not complied with Schedule 2 MPLR. It then appealed to the EAT.
4. This was the first time the EAT had considered the meaning of and approach to “sought to take” in the MPLR.

## RESULT

5. The EAT (His Honour Judge James Taylor) held that a wide and purposive approach should be given to the MPLR (at [20]). As a result, a number of consequences would flow from the Respondent’s contention incompatible with a purposive construction of the MPLR (at [21]–[24]).
6. The EAT concluded that “*there is not an absolute requirement that an employee must have given notice to take parental leave under the terms of paragraphs 1(b) and 3 of Schedule 2 MPLR in order for the employee to have “sought” to take parental leave*”. The Employment Tribunal is best placed to decide “*on a proper consideration of all of the relevant facts [...] whether a stage has been reached at which it can be said the employee has sought to take parental leave, applying a purposive approach to interpretation of the regulations*” (at [27]).
7. As such, “*while giving notice to take parental leave under the terms of paragraphs 1(b) and 3 of Schedule 2 to MPLR will, save in exceptional circumstances,*

*demonstrate that an employee has “sought” to take parental leave, it is not the only way that the fact that the employee has sought to take parental leave can be evidenced” (at [27]).*

8. Mr Wright also made arguments concerning the European Charter of Fundamental Rights and the underlying EU Directive. The EAT considered its conclusion was compatible with this material but did not need to rely on it (at [28]).
9. The employer’s appeal was dismissed. Mr Wright’s claim will continue towards final hearing, with whether he “sought to take” parental leave as a live question of fact.

### **CONCLUSION: THREE POINTS**

10. First, employers are not able to rely definitively on the absence of formal notice of parental leave. It is a question of fact whether a “*stage has been reached*” where an employee has *sought to take* parental leave. The presence or absence of formal notice is evidence in that assessment.
11. Second, the “*sought to take*” wording is also present in protections from unfair dismissal connected with maternity leave and time off for dependents, as well as other forms of leave including: paternity leave ([Regulation 29\(3\)\(za\) Paternity and Adoption Leave Regulations 2002](#)); parental bereavement leave ([Regulation 13\(3\)\(a\) Parental Bereavement Leave Regulations 2020](#)); and carer’s leave ([Regulation 12\(3\)\(a\) Carer’s Leave Regulations 2024](#), in force from 6 April 2024).
12. Although these provisions and their notice requirements are distinct (and some also protect against a scenario where “*the employer believed that the employee was likely to take*” or the employee “*made use of the benefits of*” that

leave) it may be that the EAT’s approach to “sought” in the context of MPLR has a role to play for other types of leave also.

13. Third, being based solely on domestic material the decision should not be affected by the potential consequences of the Retained EU Law (Revocation and Reform) Act 2023 and its re-organisation of the treatment of what was EU law.

**Jack Castle**

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