



Employment Law Guide for Employers

# Maternity, Paternity & Parental Leave



PENINSULA



# Maternity, Paternity & Parental Leave

**This employment law guide explores the basics of maternity, paternity, adoption, shared parental & parental leave and time off for dependants and offers guidance on how to avoid common pitfalls.**

## Time off for ante-natal appointments

A pregnant employee is entitled to take paid time off during normal working hours to receive antenatal care. All pregnant employees have this right, regardless of their length of service, and it applies to appointments made on the advice of a medical practitioner. The employer can ask for an appointment card as evidence for all appointments except for the first one.

The father of the child has the right to take unpaid time off to accompany the mother to a maximum of 2 antenatal appointments, up to a maximum of 6.5 hours per appointment. The right to accompany the mother extends further than just the father; the mother could be accompanied by:

- The mother's husband/civil partner/partner (of either sex);
- Intended parents in a surrogacy arrangement.

## Maternity Leave

All pregnant employees are entitled to a maximum of 52 weeks' maternity leave, which is split into 3 categories:

### Compulsory leave

This leave is mandatory. It is unlawful for an employer to allow an employee to work during the 2 week period starting from the date of birth. Where a woman works in a factory, the compulsory leave period is 4 weeks;

### Ordinary maternity leave

All pregnant employees are entitled to ordinary maternity leave (OML) lasting a maximum of 26 weeks, including the compulsory leave period. The earliest date that OML can start is the 11th week before the expected week of childbirth and can start as late as the day after the date of the birth.

### Additional maternity leave

All pregnant employees are also entitled to 26 weeks' additional maternity leave (AML). Additional maternity leave commences on the day after the last day of the OML period.

During all elements of maternity leave, the employee is entitled to benefit from the same terms and conditions of employment that they would have if they had not been on leave. The only exception is pay.

## Paternity Leave

Fathers are entitled to take a single period of 2 weeks' paternity leave starting from the date the baby is born, provided that they have 26 weeks' service by the end of the 15th week before the childbirth. Leave cannot be taken in two separate blocks – if the employee takes a block of one week, they will lose the entitlement to the other week. Leave must be taken within 56 days of the baby's birth.

**Eligible employees get 18 weeks unpaid parental leave for each child, to be taken before their 18th birthday**

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As well as fathers, the following employees are also entitled to paternity leave:

- The mother's husband;
- The mother's civil partner;
- The mother's partner.

In addition, paternity leave can be taken when a child is adopted. When a child is adopted by a couple, one of the couple may be entitled to take adoption leave; the other may be entitled to take paternity leave. In these cases, it will be the adopter's husband; civil partner or partner who can take paternity leave.

During paternity leave, the employee is entitled to benefit from the same terms and conditions of employment that they would have if they had not been on leave. The only exception is pay.

### **Time off for Adoption Appointments**

Employees are entitled to take time off during normal working hours to attend adoption appointments. The right does not depend on any minimum length of service or hours of work.

The main adopter is entitled to paid time off for 5 appointments; the secondary adopter has the right to take unpaid time off for 2 appointments. The maximum time permitted for each appointment is 6.5 hours.

### **Adoption Leave**

Adoption leave is available to all employees regardless of length of service or hours of work. It is only available when a child is adopted via an adoption agency; it will not apply where a stepfather adopts his step-children. In addition, parents who receive a child through a surrogacy arrangement and who are eligible for and obtain a Parental Order; and dual approved prospective adopters are entitled to take adoption leave.

Adoption leave is structured in a very similar way to maternity leave, with two periods of 'ordinary' and 'additional' leave that last a total maximum of 52 weeks. The earliest date that adoption leave can start is 14 days before the expected date of placement of the child.

During adoption leave, the employee is entitled to benefit from the same terms and conditions of employment that they would have if they had not been on leave. The only exception is pay.

### **Statutory Maternity/Paternity/Adoption Pay**

**The first 6 weeks of Statutory Maternity Pay are paid at 90% of the employee's average earnings**

Employees on maternity/paternity/adoption leave are entitled to statutory payments during leave provided they meet the eligibility requirements.

Requirements vary slightly but generally the employee must have 26 weeks' continuous service counted back from the 15th week before the expected week of childbirth or placement; and earn at least the lower earnings level (currently £118 per week).

Statutory maternity and adoption pay is paid for a maximum of 39 weeks. The first 6 weeks are paid at the rate of 90% of the employee's wages, and the remaining weeks are paid at the lower of (currently) £148.68 per week or the 90% figure. Statutory paternity leave is paid for a maximum of 2 weeks at the statutory rate.

The statutory pay rates are reviewed each April.

## Shared Parental Leave

### Up to 50 weeks of leave can be taken as Shared Parental Leave

Shared Parental Leave (ShPL) is a leave system that eligible employees can opt into, allowing them to share leave between themselves.

To be an eligible employee, an employee must:

- Have been employed continuously for at least 26 weeks by the end of the 15th week before the expected week of childbirth (EWC);
- Have a partner who meets the employment and earnings test – during the 66 weeks before the EWC or being matched, the partner has worked a minimum of 26 weeks and has earned, on average, at least £30 a week in any 13 weeks; and
- Share the care of the child with the other parent.

In addition to this, the mother must be entitled to maternity leave, maternity pay or maternity allowance and have ended, or given notice to end, her maternity leave.

Both parents may not be eligible for ShPL. If the mother qualifies but her partner doesn't, then the mother can opt-in to take ShPL and take leave in separate blocks by herself.

A number of notice requirements have to be met before ShPL can be taken. Firstly, the mother needs to give notice to end or reduce her maternity leave, a curtailment notice, at least 8 weeks before the start of the first period of ShPL. They must also provide a notice of entitlement to their employer containing details such as their partner's name and a non-binding indication of the periods of leave they will take.

To book a period of leave, the employee must give a period of leave notice at least 8 weeks before the leave would begin. A maximum of three notices can be given, though more can be agreed with the employer. A request for continuous leave cannot be refused. If the employer does not respond to a request for discontinuous leave or an agreement cannot be reached or the request is declined, the employee can take the period of leave as one continuous block or withdraw the notice within 15 calendar days of submitting it. If the employee withdraws the notice it does not count towards the maximum of three period of leave notices.

### How can Shared Parental Leave be taken?

The mother has to take two, or four, weeks compulsory maternity leave even if she plans to, or has already, opted-in to take ShPL. The partner can also take the two weeks paternity leave available to them before starting ShPL.

The remaining leave can then be shared between the mother and her partner. Leave must end 52 weeks after the first date leave was taken.

The main advantage of the ShPL system is that the leave does not have to be taken in one consecutive period and both parents can take leave at the same time. Leave can be taken in minimum blocks of one week.

### Shared Parental Pay

If the mother has ended her maternity pay or maternity allowance before the full pay entitlement has been used, the remaining weeks can be claimed as Shared Parental Pay (ShPP). Employees are entitled to ShPP if they meet certain criteria.

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To qualify for ShPP, an employee must:

- Qualify for Shared Parental Leave;
- Have a partner who meets the employment and earnings test; and
- Have earned, on average, at least the Lower Earnings Limit in the eight weeks before the 15th week before the expected due date.

ShPP is paid at a set rate of (currently) £148.68 per week.

### Parental Leave

Parents are entitled to take a maximum of 18 weeks' unpaid parental leave in order to care for their child. This means looking after the welfare of the child and that can include, for example, to:

- Spend more time with the child in early years;
- Accompany the child during a stay in hospital;
- Investigate new schools;
- Settle the child into new child care arrangements; or
- Enable the family to spend more time together, for example, when taking the child to stay with grandparents.

Employees must have one year's service in order to take parental leave. In the absence of any organisational policy on parental leave, the employee is limited to taking 4 weeks parental leave per year. Leave can be taken during the first 18 years of the child's life.

Employers cannot refuse an application for parental leave, however, they can postpone it for up to 6 months.

### Time off for Dependants

Employees have a statutory right to take time off work to deal with emergencies involving a dependant. Although there may be a contractual right to time off for

other reasons, this statutory right relates only to emergencies involving a dependant.

Time off for dependants can be taken in relation to an unforeseen event involving:

- Spouse;
- Civil partner;
- Child;
- Parent;
- Someone who lives with the employee as part of the family; or
- Someone who relies on the employee in the event of emergencies, such as an elderly neighbour.

Employees only have a right to take a reasonable amount of time off but legislation does not give an indication as to what is classed as 'reasonable'. This will depend on the facts involved and therefore can vary from occasion to occasion. Usually, two days per occasion should be sufficient to allow the employee to make arrangements.

### The law gives the following as instances where the statutory right will apply:

- To provide assistance when a dependant falls ill, gives birth, is injured or assaulted;
- To make arrangements for the care of a dependant who is ill or injured;
- In consequence of the death of a dependant;
- Because of an unexpected disruption of arrangements of a dependant's care;
- To deal with an incident involving the employee's child whilst at school/nursery etc.

Time off for dependants is unpaid, although employers can choose to provide payment on a contractual basis, in which case the employer may set their own rules on the level of payment and how long payment will last for.