

Family rights



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Introduction

Employees who have parental responsibility for a child are afforded certain legal rights in order to protect and support their role as parents.

In this Inbrief, we summarise the basic legal position on maternity and adoption, shared parental leave, paternity leave, parental leave, time off for dependents and flexible working, referred to collectively as “family rights”.

More detailed information can be found in our Inbriefs on:

- > Maternity leave and pay
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- > Flexible working— the right to ask

Maternity/adoption leave and pay

The basic right

All pregnant employees are entitled to take up to 52 weeks’ maternity leave regardless of length of service. It is compulsory for women to take two weeks’ leave (or four weeks for factory workers) following childbirth.

Employees adopting are entitled to up to 52 weeks’ adoption leave (although only one person is entitled to take adoption leave in relation to a child).

Starting leave

Maternity leave can begin any time from the 11th week before the expected week of childbirth (EWC). The employee must give notice of the date she intends to start her leave by the end of the 15th week before the EWC, and the employer must confirm this in writing. If the employee gives birth or is absent from work due to pregnancy-related sickness at any time in the four weeks before the EWC, maternity leave will begin automatically.

Adoption leave can begin on the date a child is placed with the adopter or within 14 days before the date on which the child is expected to be placed.

Terms and conditions

During maternity/adoption leave an employee is entitled to all terms and conditions of employment except terms relating to pay.

Maternity/Adoption pay

An employee may be entitled to 39 weeks’ statutory maternity pay (SMP) while on maternity leave. This is subject to certain qualifying conditions including a requirement that the employee must have been continuously employed for at least 26 weeks by the end of the 15th week before the EWC. The employee must supply a MAT B1 certificate to her employer and give 28 days’ notice of the start of SMP.

The first six weeks of statutory maternity leave is paid at 90% of the employee’s normal weekly earnings with the following 33 weeks being paid at the lower of the prescribed statutory rate of £151.97 per week (from April 2021) or 90% of the employee’s normal weekly earnings.

Statutory adoption pay is also paid at 90% of the employee’s normal weekly earnings for the first six weeks of leave, with the following 33 weeks being paid at the lower of the prescribed statutory rate.

Returning to work

An employee does not need to return from maternity/adoption leave until the end of the 52-week period, although she may return earlier or change her original return date if she gives her employer eight weeks’ notice.

An employee who returns to work during or at the end of the first 26 weeks of maternity/adoption leave has the right to return to the same job on the same terms and conditions. An employee who returns to work after more than 26 weeks of maternity/adoption leave is entitled to return to the same job unless it is no longer reasonably practicable. In this case, the employee is entitled to return to a suitable alternative job on terms that are no less favourable than their previous role.

Redundancy

If an employee’s role becomes redundant while on maternity/adoption leave, they have the right to be offered any suitable alternative roles (including with associated employers) on terms which are no less favourable than their previous role.

KIT days

Employees are entitled to work up to ten keeping in touch or “KIT” days during maternity/adoption leave without bringing it to an end. The employer and employee must agree how much the employee is to be paid on these days.

Shared parental leave

In 2015, the government introduced a new way for parents to share statutory leave and pay on the birth of a child - called shared parental leave (SPL). Parents are not obliged to take SPL and mothers can still take the full 52 weeks of maternity leave (with 39 weeks paid). However, under the new regime, mothers can choose to bring their maternity leave to an end early (at any point after the two-week compulsory leave period following the birth) and opt-in to a period of SPL.

SPL may be taken by each parent separately or at the same time and employees can ask to stop and start their leave and return to work between periods of leave. Similar rights apply to employees who adopt and for the intended parents in a surrogacy arrangement if they are eligible for adoption leave.

The basic right

In order to take advantage of the SPL regime, certain eligibility criteria must be satisfied, including:

- being continuously employed for at least 26 weeks by the end of the 15th week before the EWC and remaining employed until the week before any period of SPL starts
- the mother must be entitled to statutory maternity leave and have curtailed her entitlement to maternity leave or returned to work
- both parents must have provided their respective employers with certain notices.

Up to 50 weeks of leave is available to be shared between the parents during the 12 months following the birth of the child (although only the portion of maternity leave which is untaken by the mother will be made available to both parents as SPL).

Terms and conditions

Employees taking SPL will be entitled to benefit from all the terms and conditions of employment, except terms relating to pay.

Shared parental pay

Up to 37 weeks of shared parental pay (SPP) will be available to be shared between the parents at the lower of the prescribed statutory rate (£151.97 per week from April 2021) or 90% of the employee's normal weekly earnings.

Returning to work

Generally, where an employee returns from a period of SPL which is 26 weeks or less, the employee is entitled to return to the same job. Once the employee has taken more than 26 weeks of leave in aggregate, the employee will have the right to return a suitable alternative job on terms that are no less favourable than their previous role.

Redundancy

Employees benefit from additional redundancy protection in the same way as is provided for employees on maternity leave.

SPLIT days

Each parent taking SPL will be entitled to 20 shared parental leave in touch or "SPLIT" days. These are separate and in addition to the KIT days already available for women on maternity leave.

Paternity leave and pay

An employee is entitled to two weeks' statutory paternity leave if they:

- are the biological father of a child, the mother's spouse partner or civil partner
- have been continuously employed for at least 26 weeks by the end of the 15th week before the EWC
- have, or expect to have, responsibility for the child's upbringing; and
- are taking the leave to care for the child or support the mother in caring for the child.

The leave must be taken as either one or two consecutive weeks. The earliest it can start is on the birth of the child and it must be taken within eight weeks of birth. Statutory paternity leave is also available to employees whose spouse, partner or civil partner has taken adoption leave.

Starting leave

There are specific notification requirements that apply. Essentially, an employee must give the employer notice of an intention to take statutory paternity leave at least 15 weeks before the EWC.

Terms and conditions

During paternity leave an employee is entitled to all terms and conditions of employment, except terms relating to pay.

Paternity pay

An employee is entitled to statutory paternity pay if their normal weekly earnings are not less than the lower earnings limit. This is paid at a standard rate of the lower of the prescribed statutory rate (£151.97 per week from April 2021) or 90% of the employee's normal weekly earnings.

Parental leave

The basic right

Parents with a minimum of 12 months' continuous employment are entitled to ask their employer for unpaid leave in order to care for children under the age of 18. "Parents" include birth or adoptive parents or anyone who assumes parental responsibility for a child.

The entitlement is to a maximum of 18 weeks' leave per child with a maximum of four weeks' leave per child per year (except in the case of a child with a disability where there is no annual restriction).

Procedure

The employee must give the employer 21 days' notice, setting out the dates on which they wish to begin and end leave. The employer may postpone (but cannot refuse or alter) a request for parental leave if the operation of the business would be unduly disrupted (except in relation to a request for parental leave upon the immediate birth/adoption of a child). If an employer wishes to postpone a request for parental leave it must do so promptly and in consultation with the employee.

After any period of parental leave, the parent has the right to return to the same job.

Time off for dependants

The basic right

All employees have a right to take unpaid leave for a reasonable amount of time, for the following specific purposes:

- to provide assistance on an occasion when a dependant falls ill, gives birth or is injured or assaulted
- to make arrangements for the provision of care for a dependant who is ill or injured (not to provide care itself)
- on the death of a dependant
- because of the unexpected disruption or termination of arrangements for the care of a dependant

- to deal with an unexpected incident involving the employee's child while they are at school.

A "dependant" is an employee's spouse or civil partner, child, parent, or a person who lives in the same household as the employee (otherwise than by reason of being their employee, tenant, lodger or boarder).

Procedure

The employee must inform the employer of the reason for and expected duration of the absence as soon as reasonably practicable. The employee should also inform the employer of any changes in circumstances which may lengthen or shorten the duration of leave.

Flexible working

The basic right

The right to request flexible working was extended in 2014 to all employees with at least 26 weeks' service.

An eligible employee may request a change to the hours they work, the times they work or to work from a different location (i.e. from home).

Procedure

The employee must submit a written application setting out details of the request and addressing any likely impacts it may have on the employer's business and how these may be accommodated. Employers are no longer required to follow a prescribed procedure but must deal with requests in a "reasonable manner". The employer can only refuse the request on the following specified grounds, which must be clearly set out in the decision letter with an explanation as to why they apply:

- burden of additional costs
- detrimental effect on ability to meet

customer demand

- inability to re-organise work among existing staff
- inability to recruit additional staff
- detrimental impact on quality
- detrimental impact on performance
- insufficiency of work during the periods the employee proposes to work; or
- planned structural changes

It is important for employers dealing with flexible working requests to be alive to the danger of discrimination claims based on protected characteristics such as sex, age or disability. This aspect is covered in more detail in our Inbrief Flexible working – the right to ask.

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