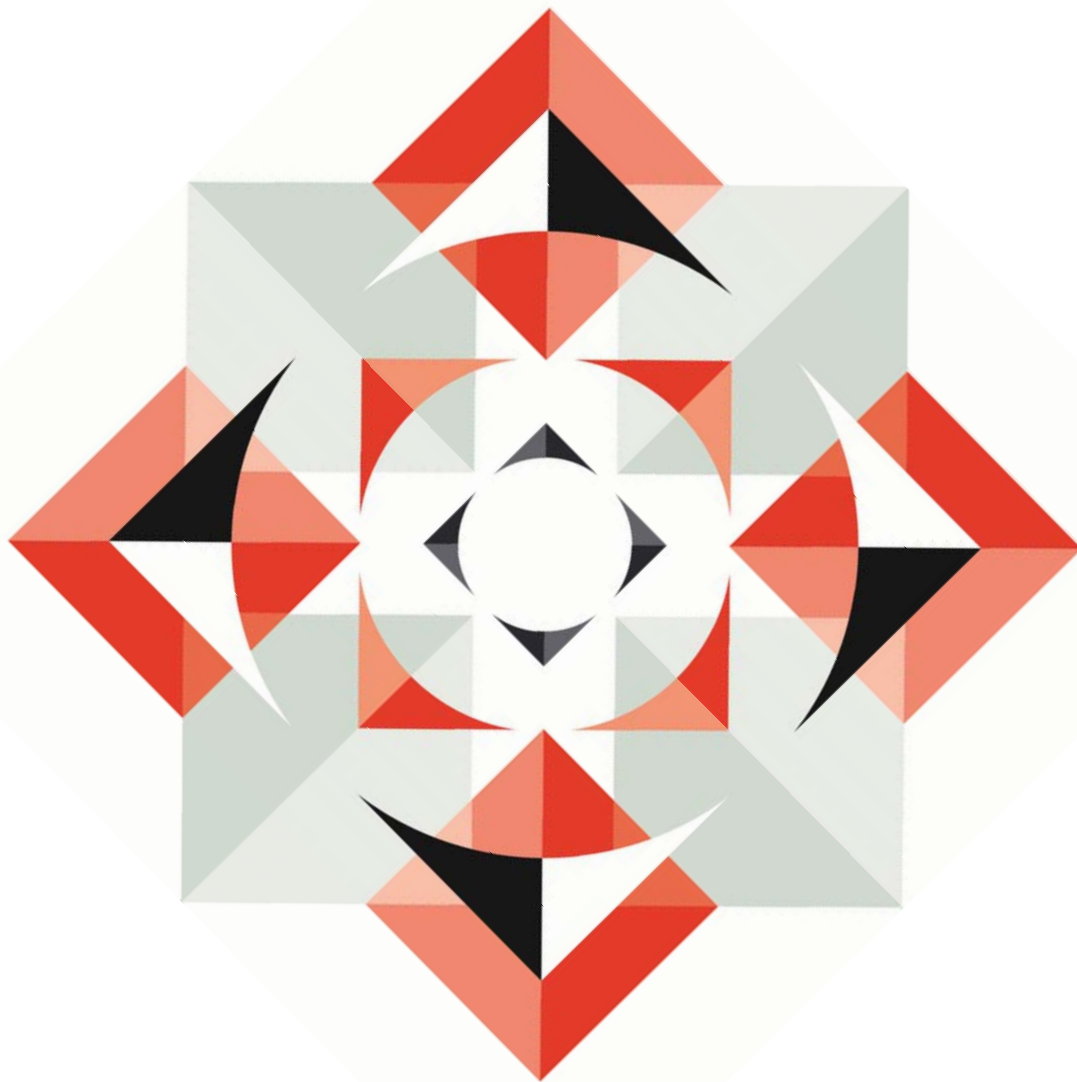


# Shared parental leave



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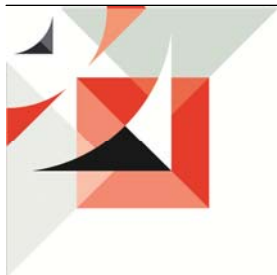
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## Introduction

The system of shared parental leave was introduced as part of the Government's commitment to create a fairer society that gives parents more flexibility to decide how they want to share care for their child in the first year.

The Government and ACAS have published guidance for employers and employees explaining how the shared parental leave regime is intended to work.

This inbrief summarises the way in which shared parental leave operates and the rights parents have under the system.

## What is shared parental leave?

Shared parental leave is a way for parents to share statutory leave and pay on the birth of a child. Additional paternity leave was abolished as a result, but the statutory regimes for maternity leave, ordinary paternity leave and parental leave have been retained.

Parents are not obliged to take shared parental leave and mothers continue to be able to take the full 52 weeks of maternity leave (with 39 weeks paid).

However, mothers can choose to bring their maternity leave to an end at any point after the two week compulsory leave period following the birth and opt-in to a period of shared parental leave. This will give parents flexibility to choose how to split up the remaining weeks of leave between them. Shared parental leave may be taken by each parent separately or at the same time. In contrast to the statutory maternity and paternity leave scheme, employees are able to ask to stop and start their shared parental leave and return to work between periods of leave.

## Who can take shared parental leave?

This Inbrief refers to birth parents as they make up the majority of employees who will be eligible and who will apply for shared parental leave. However, similar rights apply to employees who adopt and for the intended parents in a surrogacy arrangement if they apply for a "parental order" and are eligible for adoption leave. These rights also apply to partnerships of the same sex, so references in this Inbrief to fathers should be taken as including women in same-sex partnerships.

In order to take advantage of the shared parental leave regime, both parents must meet the following eligibility criteria:

- > They must have been continuously employed for at least 26 weeks by the end of the 15th week before the expected week of childbirth;
- > They must remain employed until the week before any period of shared parental leave starts;
- > They must already have or expect to have

main responsibility for caring for their child;

- > The mother must be entitled to statutory maternity leave;
- > The mother must have curtailed her entitlement to maternity leave or have returned to work;
- > They must have provided their employers with notice of entitlement and intention to take shared parental leave;
- > They must have provided any evidence requested by their employers within 14 days of the request. This may include a copy of the birth certificate or a declaration from the parents confirming the date and place of the child's birth (if the birth certificate is not yet available) and the name and address of the other parent's employer; and
- > They have each given their employer a period of leave notice.

In certain circumstances, shared parental leave can be available where only one parent is employed as long as the other parent meets certain "employment and earnings" criteria.

## What leave is available?

Up to 50 weeks leave (i.e. everything other than the two week compulsory maternity leave period) is available to be shared between parents during the 12 months following the birth of the child.

Shared parental leave only becomes available once the mother has returned to work or given notice to end (or curtail) her entitlement maternity leave. This means that the portion of maternity leave which is untaken by the mother will, in effect, be made available to both parents as shared parental leave.

The leave can be taken separately or at the same time, subject to the following requirements:

- > The minimum period of leave must be one week;
- > The leave must be taken in multiples of complete weeks; and
- > The leave may be taken as one continuous



period or discontinuous periods.

So, the mother can return to work after maternity leave and take shared parental leave at a later date or dates (subject to the notice requirements explained below). Similarly, the father can take shared parental leave at any time – it does not need to start as soon as the mother has given notice to curtail her maternity leave or returned to work.

Shared parental leave can be taken when the other parent is on another type of leave, such as paternity leave or unpaid parental leave. A father can start a period of shared parental leave while the mother is still on maternity leave (provided she has committed to cutting short her maternity leave).

### Opting-in to shared parental leave

The process starts with the mother committing to end her maternity leave early. The parent or parents wishing to take shared parental leave must also give notice of this intention to their employer. Separately, they must also give notice of the period of leave requested.

#### *Notice to end maternity leave*

The mother must give her employer at least eight weeks' notice to curtail her maternity leave early. This notice can either be given before or after the birth. If it is given before the birth, the mother may revoke the notice up to six weeks after the birth. If it is given after the birth, the notice is binding.

#### *Notice of entitlement and intention to take shared parental leave*

Parents must also submit a written "notice of entitlement" to each of their employers at least eight weeks before the start of the first period of shared parental leave. This is a non-binding indication of how and when each parent intends to take periods of shared parental leave and should include the following information:

- > The mother's and father's names and national insurance numbers;
- > The start and end date of any period of statutory maternity leave taken or to be taken by the mother;
- > The amount of any statutory maternity pay or maternity allowance received or to be

received by the mother;

- > The expected week of childbirth and/or actual date of birth of the child;
- > The total amount of shared parental leave available;
- > An indication of how much shared parental leave both parties intend to take and the proposed start and end dates of such leave; and
- > A declaration from each parent that:
  - > The mother satisfies the eligibility criteria;
  - > The father satisfies the eligibility criteria;
  - > The information given is accurate; and
  - > If either parent ceases to meet the conditions of entitlement to shared parental leave that they will immediately notify the employer.

The parents may vary the amount of shared parental leave they intend to take by giving a written notice of variation to their employers. There is no limit on the number of times the parents may make a variation to a notice of entitlement, so long as this is done before the formal "period of leave" notice is given.

#### *Period of leave notice*

Parents will finalise their request for period(s) of leave by giving their employers a written "period of leave" notice which includes the start and end dates of the periods of leave. The period of leave notice triggers a discussion with the employer to agree the leave.

- > The "period of leave" notice must be given not less than eight weeks prior to the requested start date;
- > The notice can be given at the same time as the notice of entitlement (see above), or it can be given later;
- > The notice can request one or more periods of leave; and
- > If the notice has been given before the child is born then the start date may be expressed as a number of days from the date the child

is born.

Only three "period of leave" notices in total can be given by each parent, including requests to vary a period of leave that has already been arranged.

### Agreeing shared parental leave arrangements

The rules on agreeing requests for shared parental leave with the employer vary depending on the pattern of leave that has been requested.

#### *Continuous period of shared parental leave*

If an employee simply requests one period of continuous shared parental leave, the employee is entitled to take that period of leave. If the employee meets the eligibility criteria, the employer cannot refuse this request.

#### *Discontinuous periods of shared parental leave*

Agreement is necessary if an employee requests discontinuous periods of shared parental leave (meaning two or more periods of leave separated by periods at work). Within two weeks of the date of the period of leave notice the employer may:

- > Agree to the periods of leave requested;
- > Propose alternative dates; or
- > Refuse the leave without proposing alternative dates.

If the parties agree the period of leave within the two week period then the employee is entitled to take that leave on the agreed dates.

If the parties cannot agree the periods of leave then the employee may either withdraw the request or take the total amount of leave requested as one continuous period of leave. If the request is withdrawn in the two week period (or the day after that period ends) it will not be counted as one of the three "period of leave" notices.

### Dealing with unforeseen circumstances

The shared parental leave regime is modified in certain circumstances where a child is born earlier than expected, if either parent ceases to be entitled to shared parental leave or a parent or the child dies.

## Rights during shared parental leave

### *Shared parental pay*

Up to 37 weeks of shared parental pay will be available to be shared between the parents at the lower of the statutory prescribed rate (which is currently £148.68 per week) or 90% of the relevant parent's normal weekly earnings. The remaining 13 weeks of shared parental leave are unpaid.

This means that statutory shared parental pay is paid at a minimal level throughout the leave period. Unlike with statutory maternity pay, there is no provision for the first six weeks to be paid at 90% of the parents actual weekly earnings. This is the case even if the mother returns from maternity leave after only two weeks, during the period where the higher level of maternity pay would have been available to her.

Whilst employers may decide to offer enhanced pay for shared parental leave, there is no requirement in the legislation to do so. However, if an employer pays different rates for shared parental leave and maternity leave, a man on shared parental leave may argue that it is sex discrimination not to pay him the same enhanced pay as would have been paid to a female employee who was taking maternity leave at an equivalent time. Employers should carefully consider the reasons for treating enhanced maternity pay differently and assess the risk of potential sex discrimination claims.

### *In touch days*

Employers are entitled to make reasonable contact with absent employees from time to time during a period of shared parental leave without bringing the period of leave to an end. Each parent taking shared parental leave also will be entitled to 20 shared parental leave in touch ("SPLIT") days. These are separate and in addition to the keeping in touch (KIT) days already available for women on statutory maternity leave.

### *Benefits*

As is the case with maternity and paternity

leave, employees taking shared parental leave will be entitled to benefit from all the terms and conditions of employment, except remuneration, as if they had not been absent from work. This means that parents will continue to accrue annual leave and enjoy other contractual benefits whilst they are on shared parental leave.

## Rights on returning to work

An employee's rights on return to work after taking shared parental leave will depend on how much shared parental leave has been taken, either on its own or in conjunction with another period of statutory leave (e.g. maternity, paternity or adoption leave).

Generally, where an employee returns from a period of shared parental leave which, when added to other periods of leave, is 26 weeks or less, the employee is entitled to return to the same job, even if the leave is taken in discontinuous blocks. Once the employee has taken more than 26 weeks of leave in aggregate, then the employee will have the right to return to the same job or, if it is not reasonable practicable for the employer to permit the employee to return to that job, to another job which is suitable for them and appropriate for them to do in the circumstances.

## Other protections

Employees can benefit from additional redundancy protections in the same way that is currently provided to employees on maternity leave. These provisions essentially give employees on shared parental leave priority over other employees who are also at risk of redundancy. An employee will have a claim for automatically unfair dismissal if an employer does not comply with this obligation.

Employees are also protected against dismissal or detriment for making or proposing to make use of the shared parental leave regime.

For further information on this subject please contact:

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This publication provides general guidance only: expert advice should be sought in relation to particular circumstances. Please let us know by email ([info@lewissilkin.com](mailto:info@lewissilkin.com)) if you would prefer not to receive this type of information or wish to alter the contact details we hold for you.

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