



## Employment Law Family-friendly rights

There are many family-friendly statutory rights available in the workplace. As an employee, it is important to understand what these are.

This factsheet looks at rights relating to maternity and paternity leave and pay, Shared Parental Leave and employment policies which can help give you flexibility to care for your dependants after any leave following the birth has ended.

These rights are a basic entitlement for all employees and may be enhanced by additional contractual rights. Always check your contract and staff handbook to see what these are.

### Maternity rights

If you are pregnant you are entitled to time off (maternity leave) regardless of how long you have been employed. You may also be entitled to maternity pay depending on your length of service. Some of the maternity leave can be shared with your partner under the new entitlement to Shared Parental Leave (SPL). See the section on SPL below.

### Rights prior to maternity leave

#### Antenatal appointments

You are entitled to reasonable time off with pay for any antenatal care advised by a registered medical practitioner. This may include parenting classes if these are recommended by your GP. Where requested you should show your employer an appointment card or other documents showing an appointment has been made.

Fathers and partners of pregnant women are entitled to unpaid time off to attend two antenatal appointments.

Employers may allow this time off with pay under the terms and conditions of their employment.

Intended parents in a surrogacy case who meet the conditions set out under the Human Embryology and Fertilisation Act 2008 will also have the right to unpaid leave to attend up to two antenatal appointments.

If you want to learn more about this subject you can do so [here](#) on the .GOV website.

#### Sickness absence

Being pregnant can sometimes cause significant sickness requiring time off work. In these circumstances you will receive either Statutory Sick Pay (SSP) or contractual sick pay depending on your entitlement.

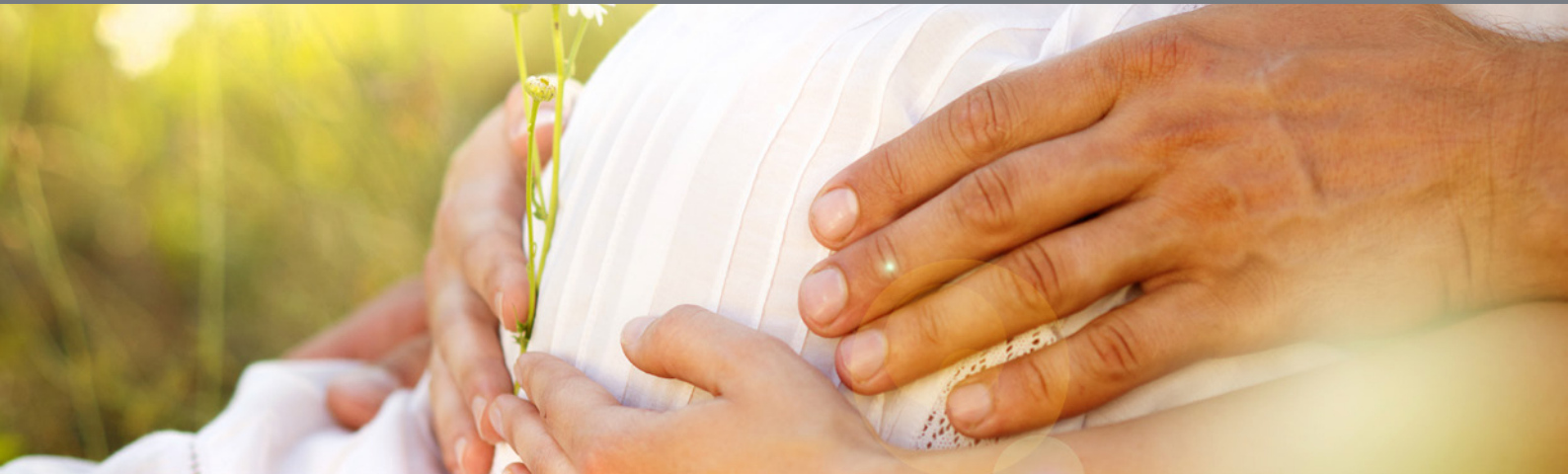
Any absence for pregnancy-related illness should be disregarded for any absence management policy. You should not suffer a detriment or be disadvantaged in any way for the time you are absent as a result of a pregnancy-related illness.

#### Maternity leave

A female employee must take at least two weeks off work, or four weeks if they work in a factory, after they have a baby.

Generally, however, most employees will want to take an extended period of maternity leave. All pregnant employees are entitled to 52 weeks' of maternity leave. The first 26 weeks are known as Ordinary Maternity Leave (OML) and the second 26 weeks' are known as Additional Maternity Leave (AML). Statutory Maternity Pay or Maternity Allowance, whichever the employee is entitled to, is payable for the first 39 weeks. The remaining weeks, if taken, may be unpaid. This depends on your employment terms and conditions.

Ordinary Maternity Leave (OML) lasts for 26 weeks and cannot commence earlier than 11 weeks before the week you are expected to give birth - known as the



Expected Week of Confinement (EWC) - and no later than the day after the birth.

Additional Maternity Leave (AML) commences on the day after the last day of OML and continues for a further period of 26 weeks. The difference between OML and AML is around your rights to return to your previous role. See the information below on returning to work for further information.

### **Notifying your employer**

You should notify your employer of your pregnancy before the end of the 15th week before your expected due date, unless it was not reasonably practicable to do so, or at least 21 days before you intend to take the leave. Your employer may request a copy of your MAT B1 form. This is provided by your health practitioner at about 20 weeks gestation and confirms the baby's due date.

Although there is no legal obligation to do so, your employer may undertake a risk assessment to assess any workplace risk to you and your baby. If any risks are identified your employer will be required to take reasonable steps to remove them or, if necessary, offer alternative work or change your working hours. You can find out more about risk assessments on the HSE website [here](#).

To calculate the start date of your maternity leave you can use the online calculator found [here](#) on the .GOV website.

### **Returning to Work**

There is a presumption in law that you will take the full maternity leave entitlement of 52 weeks. In order to return earlier than 52 weeks, you must give your

employer eight weeks' notice. If you do not intend to return at all you should give contractual notice terminating your contract of employment.

If you return to work after OML you are entitled to return to the job you were doing prior to maternity leave. After AML you have the right to return to a job on terms and conditions no less favourable than those which you would have had if you had not been absent. You should retain seniority, pension rights and benefits. If for any reason you can't return to your old job, you should be able to return to a similar role with no loss of benefits or status.

### **Keeping in Touch Days (KIT days)**

You are entitled to a maximum of ten KIT days during maternity leave. You cannot, however, insist upon which days you want to work. The exact timing is subject to agreement with your employers. Where it is agreed that you spend time in the workplace this can include training sessions, staff meetings or project work.

Payment for the KIT days will depend on the agreement with your employer. Good practice recommends you are paid your full salary but this will include any amounts you would have received for maternity pay. In other words, you will not receive more than your salary and maternity pay.

While you are on maternity leave you are still an employee and entitled to be kept informed of any important changes in the workplace. You must be informed about anything that may affect your return to work, such as redundancy consultations.

## Maternity pay

There are two types of maternity pay - Statutory Maternity Pay (SMP) and Maternity Allowance (MA). To qualify for SMP you must:

- have 26 weeks service by the 15th week before the week the baby is due (EWC)
- have ceased work (be on maternity leave)
- earn at least an average of £113 per week
- have given correct notice
- have produced medical evidence of pregnancy and the due date

SMP is payable for 39 weeks. It is paid at a rate of 90 per cent of salary for the first six weeks and either £140.98 or 90 per cent of average weekly earnings, whichever is lower, for the remaining 33 weeks.

If you earn less than £113 a week you will qualify for Maternity Allowance, provided that you:

- have been employed (or self-employed) for at least 26 weeks (including partial weeks) within the 66 weeks up to and including the week in which the baby is due to be born
- have earned at least £30 a week in at least 13 of those weeks
- have reached the 11th week before the expected week of childbirth
- are not receiving statutory maternity pay (SMP)

## Paternity leave

Paternity leave has generally been replaced by Shared Parental Leave (SPL). This is set out below and applies to all children born after 5th April 2015. However, you remain entitled to paternity leave of either one or two weeks paternity leave (your choice) to be taken within 56 days of the birth of your child.

To qualify you must:

- be employed
- have worked for your employer for 26 weeks by the end of week the baby is expected to be born
- be the biological father or the child's adopter
- be involved with the care of the child

Paternity leave is paid at the same rate as SMP/MA and is subject to tax and National Insurance deductions.

## Shared parental leave (SPL)

Shared Parental Leave (SPL) enables eligible parents to share time off work after their child is born or adopted. These regulations apply to children due to be born after 5th April 2015 or placed for adoption after that date. While the mother's eligibility for maternity leave and maternity pay remain the same, if both parents qualify, it is an option to share maternity leave with the father of the child by ending maternity leave early and opting for shared parental leave.

For example, if a mother ends her maternity leave after twelve weeks that leaves a further 40 weeks of leave that can be shared between the parents. The parents may take 20 weeks of the shared parental leave each or split it in any other way they like. They may choose to take the time off at the same time or at different times.

SPL is paid at £145.18 per week or 90 per cent of an employee's average weekly earnings, whichever is lower. It is given for 37 weeks, with the remaining 13 weeks of entitlement, if taken, being unpaid.

### Qualifying requirements:

1. The mother must qualify for Statutory Maternity pay, Maternity Allowance or Statutory Adoption Pay.
2. The father must qualify for Statutory Paternity Pay and have a partner who qualifies for Statutory pay as above.
3. If you wish to take SPL you must have worked for your employer for at least 26 weeks at the end of the 15th week before the week in which the child is due (or at the week in which an adopter was notified of having been matched with a child) and remain employed in the first week that SPL is to be taken.
4. The other parent has worked for 26 weeks in the 66 weeks leading up to the due date and has earned above the Maternity Allowance threshold of £30 a week in 13 of the 66 weeks. If the other parent does not qualify they will not be able to have SPL.
5. You must provide the correct notice, including a declaration your partner meets the employment income, to allow them to have SPL.



SPL may be taken at any time beginning on the date the child is born, or date of the adoption placement, and ends 52 weeks after that date. Leave must be taken in complete weeks and may be taken either in a continuous period, which an employer cannot refuse, or in a discontinuous period, which the employer can refuse.

## Adoption Leave

If you are adopting a child, the entitlement to adoption leave and pay is similar to maternity and paternity leave and pay, though there are some differences. You can find more information [here](#).

## Time off to care for dependants

As an employee you are entitled to reasonable time off to care for a dependant in an emergency. A dependant is defined as husband or wife, child, parent or someone living in the same household. The amount of time allowed off is to enable you to make proper arrangements for the continued care of the dependant, not to care for them on a longer term basis. Examples of an emergency include:

- a dependant being ill or injured
- a disruption in childcare arrangements
- a disruption to a child's schooling
- the death of a dependant

You are entitled to this time off even if you have not worked for your employer for very long, but there is no entitlement for you to be paid, unless this is provided in your contract of employment. Your employer must not treat you unfairly for asserting this statutory right.

## Parental leave

Each parent who has worked for their employer for 12 months or more, is entitled to take up to a maximum of 18 weeks' leave for each child they have responsibility for up until the child is aged 18.

This is generally unpaid, but some employers will provide a better entitlement than the legal minimum, so check your employment terms and conditions.

Parental leave must be taken in blocks of a week - unless the child is disabled - for up to four weeks in any year, although employers can agree to longer periods. A week is defined as the usual length of time an employee works in one week, so if you usually work three days, one week of parental leave will amount to three days of leave.

You are required to give 21 days' notice to your employer of the date you would like your leave to start. You can be asked by your employer to alter the proposed leave dates if there is a business need for you to do so. If your employer writes to postpone your leave dates this must be done within seven days of your original request and your employer must suggest alternative dates within six months of the requested start date. They cannot request a change in the amount of leave requested.

## Flexible Working

All employees with 26 weeks' continuous service have the right to request flexible working, provided they have not made a request in the previous 12 months. Flexible working means working different hours than the usual hours you are expected to work. For example, rather than doing five days a week 9am until 5pm you could

ask to work five days a week 7am until 3pm, or you could ask to take a 20 minute lunch break rather than one hour to enable you to leave work earlier.

You can make one written request every 12 months, which your employer must deal with within three months. The employer can refuse the request on any of the eight business grounds set out in the legislation:

- the burden of additional costs
- an inability to reorganise work amongst existing staff
- an inability to recruit additional staff
- a detrimental impact on quality
- a detrimental impact on performance
- detrimental effect on ability to meet customer demand
- insufficient work for the periods the employee proposes to work
- a planned structural change to the business

It is the duty of your employer to give a flexible working request full and proper consideration and to do so through a reasonable process. A reasonable process will normally consist of a request from you in writing, a meeting with them, consideration of the request, informing you of the decision and allowing you to appeal the decision. The employer may change their decision as a result of an appeal.

ACAS have produced a code of practice and guidance on how to deal with flexible working requests which you can see [here](#).

*NOTE: Please be aware there are links contained within this factsheet that may take you to external sites, we are not responsible for their content. This is a general advice and information factsheet only and should not be treated as a definitive guide and does not constitute legal or professional advice. We are not a law firm and information is not intended to create a solicitor client relationship. Law Express does not accept any responsibility for any loss which may arise from relying on information contained in this factsheet. This is not a substitute for legal advice and specific and personal legal advice should be taken on any individual matter. If you need more details or information about the matters referred to in this factsheet please seek formal legal advice. This factsheet is correct at time of going to print. The law set out in this factsheet applies to England and Wales unless otherwise stated.*