

Technical factsheet

Family-friendly rights

This factsheet is part of a suite of employment factsheets and a pro forma contract and statement of terms and conditions that are updated regularly. These are:

- The contract of employment
- The standard statement of terms and conditions
- Working time
- Age discrimination
- Dealing with sickness
- Managing performance
- Disciplinary and dismissal procedures
- Unlawful discrimination
- Redundancy
- Settlement offers
- Family-friendly rights
- Employment status: workers

A number of important rights have been introduced in an effort to address the work/life balance problems faced in modern working families. These rights are only accorded to employees. Most of them depend upon serving a particular period of continuous employment. Employers are free to provide enhancement to these rights if they wish but the outline below is the basic statutory entitlement.

These rights have been in place for some time and in some cases are more generous than the minimum equivalent EU rights. It therefore seems unlikely that there will be any change to them in a way that would be adverse to employees as a result of Brexit.

In April 2015, a right to shared parental leave (SPL) was introduced, which is dealt with below.

Maternity leave and pay

- All women are entitled to 52 weeks' maternity leave, regardless of how long they have been working for the employer. The first six months of this is called ordinary maternity leave (OML), while the second half is called additional maternity leave (AML).
- There are two maternity benefits for pregnant working women: statutory maternity pay (SMP), which is administered by employers to qualifying mothers or adopters; and maternity allowance (MA), which is paid by the state.
- Although maternity leave can now be converted to SPL (see below), it still remains a separate right that can stand alone. There is no obligation to convert the leave to SPL, and unless or until the mother brings the leave to an end by returning to work or states that she wishes to convert it to SPL, the leave remains as maternity leave.
- Women cannot start maternity leave until the 11th week before their expected date of childbirth (EDC).
- The minimum period of notice that the expectant mother must give of her intention to take maternity leave is 28 days; this is notice of when she expects the employer's liability to pay her SMP to start, not the date she expects the baby.
- An employee must notify her employer of her intention to take maternity leave by the 15th week before the EDC on her satisfying the qualification for SMP and giving the correct notice, even if her employment ends after this point and for whatever reason.
- The employer must respond to the woman's notification of her leave plans within 28 days, setting out the date on which they expect her to return to work; this will be one year from the date of the start of maternity leave.
- Where a woman wishes to come back early from maternity leave, she will have to give 56 days' notice to her employer of her intention.
- Women are entitled to accrue their full contractual holiday rights throughout their maternity leave and are entitled to retain any contractual benefits they may have such as company car, gym membership, medical insurance etc throughout their leave.
- Maternity pay is for 39 weeks but is only payable by the employer to women who have **six months' service** at the 15th week before the expected week of childbirth (EWC). SMP is paid for six weeks at 90% of the employees average weekly earnings

and 33 weeks at £140.98 unless the woman earns less than this, in which case the whole period is payable at that rate. (This is the current statutory minimum for the year to April 2018 and goes up each year.) The remaining 13 weeks is unpaid. For those employees who do not qualify, maternity allowance is paid by the state directly to the mother at the basic rate for the full 39 weeks.

- Where a new or expectant mother is employed to carry out work which, because of her condition, places her health and safety at risk, the employer must assess the risk and take steps to ensure that she is not exposed to it (Management of Health and Safety at Work Regulations 1999). The employer may have to alter the employee's working conditions or hours of work where it is reasonable to do so, if taking such measures would avoid the identified risk. If there is no suitable adjustment, then the employer is required to find her alternative work on the same terms and conditions, or she will remain away from work on full pay.
- A woman on OML (first 26 weeks) is entitled to return to the same job in which she was employed before her absence. Where she has continued her leave onto AML (second 26 weeks), her entitlement is to return to an alternative suitable position, if her original one is not available, with terms and conditions no less favourable than those she enjoyed before.
- The employer is entitled to maintain reasonable contact with a woman on maternity leave. The employer is also entitled to ask an employee on maternity leave to come back in for up to 10 days prior to her official return, probably anticipated as odd days rather than a block, for things like important meetings and training (keeping-in-touch or KIT days). The employer does not have to request such days and the employee does not have to agree to come back but, if she does, it does not affect her legal rights to maternity pay or to leave in any way. There is nothing in the regulations about payment for those days although employer and employee usually reach agreement about this. In any week in which an employee does any work, at least the national minimum wage will be payable in any event, but normally the employer will offer to pay for the day at the usual pay rate.
- There has been a recent important decision on breastfeeding, involving the EasyJet airline. It is a reminder to employers to ensure that they have adequate arrangements in place to accommodate female employees who are breastfeeding. It should not be an expectation that women will give up breastfeeding upon returning to work after maternity leave.

- As a result of this, employers may need to make adjustments to ensure that women returning to work following maternity leave who may wish to continue expressing milk are able to do so. ACAS has produced guidance on this which can be found at bit.ly/acas-bf.

Paternity leave and pay

- The father of a child, or the mother's partner, is entitled to two weeks' paid paternity leave; this also applies to adoptions.
- There is a qualifying period for employees of **26 weeks' service** as at the 15th week before the child is expected to be born/the approved match is made.
- This is additional to the existing right to normal parental leave and SPL (both dealt with below).
- The leave is to be taken in a single block of two weeks or one week at the option of the father or mother's partner, and this will follow the birth or the adoption of the child.
- Paternity leave has to be completed within a period of 56 days, beginning with the date of the birth/adoption.
- Employees taking paternity leave must have, or expect to have, responsibility for the child's upbringing, and be the biological father of the child or the mother's husband or partner. Employees can ask their employers to provide a self-certificate as evidence that they meet their criteria.
- Employees are required to inform their employers of their intention to take paternity leave by the 15th week before the baby is expected, specifying the week the baby is due, whether they want to take one or two weeks' leave and when they want their leave to start. They can change their mind as long as they give 28 days' notice.
- Regulations provide for a right to return after paternity leave and protection for employees from detriment and unfair dismissal in connection with having taken or wanting to take paternity leave.
- The rate from April 2017 is £140.98 per week or 90% of the employee's average weekly earnings, whichever is less.
- Employees are entitled to unpaid time off during working hours to accompany their partner/child's mother to up to two antenatal appointments.
- Adoption is dealt with below.

Shared parental leave

Shared parental leave (SPL) has been introduced to allow mothers and fathers to 'share out' leave and to take parcels of time to care for their child. It is designed to prevent women having to take large blocks of leave every time they have a child, which may have a detrimental impact on their careers, and also to allow the father or the mother's partner to have a right to share the care of their child in the first year of its life. The periods of payment and rate of payment remain the same, and are identical to maternity pay set out above (other than the six weeks at the enhanced rate, which is payable only to the mother). The leave and pay is seen as a single package that the couple may share out as they choose, subject to certain restrictions.

- Parents (including adopters and the partners of the mother) will be able to 'mix and match' their leave, sharing out a pot of leave in a pattern to be agreed between them, subject to a limited right to object by the employer.
- Mothers have to take the first two weeks off work after the birth of their child (four weeks in the case of manual workers) but after that they are free to return to work if they wish to and hand some or all of the remaining leave to their partner/father of the child. They have to opt to terminate maternity leave and therefore convert what remains of the rights and benefits of maternity pay and leave to SPL with shared parental pay (ShPP).
- In order to calculate what period is available for SPL, the employer will add together any period of maternity leave taken before the baby is born to the two weeks after the birth, and the balance left from 52 weeks will be available for the parents to share.
- Once a woman returns to work from maternity leave, her leave comes to an end, whereas with SPL either party can return to work sporadically, taking it in turns to care for the baby.
- Each parent will be able to give a minimum of three leave notices to their employer. If they are applying for a period of continuous leave, for example four weeks, then there will be no discretion to refuse them. If they are for discontinuous leave, for example two weeks on, two weeks off, then the employer will be able to refuse to grant the request.
- Each leave notice must be given to the employer at least eight weeks before the parent in question wishes to take their leave.

- In practice, most employers are likely to say that the employee cannot have the right to lodge any more than three leave notices, so this will operate as an effective maximum for most employees.
- The total period of leave a couple can take cannot exceed 52 weeks, with only nine months of that time qualifying for statutory pay (as is currently the case with SMP). The 90% element of SMP can only be taken by the mother and the rest is payable at the statutory rate; therefore it is in the mother's interest to take her full 90% entitlement to pay before she brings her maternity leave to an end.
- Taking into account the two weeks' compulsory leave, this means that parents will be able to share up to 50 weeks of leave and 37 weeks of pay. SPL and ShPP can either be taken by each parent consecutively or by both parents at the same time, as long as the combined amount does not exceed the total entitlement.
- SPL can be taken simultaneously; where the parents are off work at the same time, this will count as double and be taken away from the total entitlement, and means that the 52-week leave period will come to an end earlier.
- Parents who adopt are eligible for the new shared parental leave on equal terms with biological parents.
- Each parent must meet the qualifying criteria for leave and/or pay in their own right. It does mean that a self-employed woman who has an employed partner and who meets the minimum earning requirement can pass on her SPL to her employed partner, although it will not work in the opposite direction if a mother is employed and the man self-employed. In that case, she will have to simply take maternity leave and pay as before.
- Paternity leave (dealt with above) is to remain at two weeks but will be reviewed in 2018.
- Leave must be taken in a minimum of one-week blocks. It is proposed that shared parental leave can be taken by the biological father or the mother's partner; it will not be available to, for example, a grandparent who is to care for the child. However, the government has recently consulted on introducing grandparent leave, with a view to introduction in 2018.
- During the period of SPL, there are equivalent days to the KIT days; these are known as SPLIT days and will enable either parent who is on a block of leave to work a maximum of 20 of these days during SPL. There is no obligation to offer them or for

the employee to accept them, if offered. Although there are no provisions on payment, it will probably be normal for them to be paid at the usual rate and/or for the statutory payment to be made up to full pay.

- There is Acas guidance on this at bit.ly/acas-spl and technical advice for employers at bit.ly/spl-tech.
- The expectation is that the parties, ie the employers and employees, will get together at an early stage to talk about the arrangements to be made once the child is born to enable the best and most predictable outcome for both parties.

Adoption leave and pay

- This applies to employees where an approved adoption agency notifies of a match.
- Application to the employer must be made within seven days of notification of the placement.
- Ordinary adoption leave is for a period of up to 26 weeks and additional adoption leave is for another 26 weeks, giving one year. There is no qualifying period of service for this right.
- Adoption pay is paid in the same way and at the same rate over the same period as maternity pay.
- It is available to an adoptive parent who is matched with a child by an approved adoption agency, and employees must give their employer a matching certificate from an approved adoption agency to support their entitlement to leave.
- It is available to both married couples and individuals who adopt and for placements of children up to age 18.
- This leave does not apply to step-parent adoptions or adoptions by people who are already fostering the child.
- Primary adopters are entitled to take paid time off for up to five 'adoption appointments' and the secondary adopter to take unpaid time off for up to two such appointments.
- Adoptive parents who qualify for adoption leave and pay will be able to 'opt in' to the new shared parental leave and pay system, which will make it easier for both adoptive parents to take leave around the time of a child's placement for adoption. Shared parental leave and pay will also be available for the intended parents in a surrogacy arrangement provided that they qualify for adoption leave and pay.

Dependant care leave

- An employee is entitled to take a reasonable amount of time off during working hours for various important family matters relating to a dependant .
- **There is no qualifying period of employment for this right.** Dependants include spouse, child, parent or someone who lives in the same household but is not an employee, tenant, lodger or boarder, or who reasonably relies on the employee for assistance.
- There is no general right for time off for domestic incidents, for example, for a washing machine flood.
- There is no express limitation on the amount of time off that an employee can take, but it should be reasonable – about two days' maximum is what is anticipated.
- There are no formalised notice requirements for the right, but the employee should inform the employer of their absence and the reason for it as soon as is reasonably practicable, and also of the expected duration of their absence.
- There is no right to payment. In practice, many employers either do not pay for the time or require the employee to work in lieu.
- Again, it will be unlawful to dismiss or subject any employee to a detriment because they have taken the leave or sought to take it, but if they fail to notify the employer of their absence, are not truthful about the reason or do not explain the reason for it, it may well be fair to dismiss for unauthorised absence.

Parental leave

- This is not to be confused with shared parental leave laid out above; this is a separate entitlement of both parents up until the child is aged 18 and is rarely taken as it is unpaid.
- The idea behind it is that it allows parents to take a block of leave to deal with an issue in relation to a child in a planned way; this could be, for example, to settle a child into a new school, following a divorce or to deal with a situation where the child is being bullied.
- The maximum is 18 weeks per child in total but no more than four weeks can usually be taken in any one year.
- The employee must be a parent of that child and the parent must be named on the birth certificate.

- To qualify for parental leave, the employee needs at least one year's continuous service with the employer.
- The right applies to both parents individually, so either or both may take it when they wish, if they qualify.
- It is not paid, but all contractual benefits in kind must continue, eg holiday, car, insurance etc.
- Parents can take the leave on the birth of the child or once they have one year's service, whichever is the later.
- At the end of parental leave, the employee is guaranteed the right to return to the same job as before or, if that is not practicable, then a similar job with comparable terms and conditions and status.
- Where the leave taken is four weeks or less, there is an absolute entitlement to return to the original job.
- Part-timers enjoy pro-rata rights.

There is no obligation on employees to take this leave but they cannot be discriminated against for doing so, either in terms of dismissal or action short of dismissal. Although there is no requirement to keep records, as a practical matter it would seem essential.

Flexible working

This right has been simplified and extended to all employees.

- To be eligible to make a request, an employee needs **26 weeks' continuous service** with the employer.
- The person must not be an agency worker or someone who has made an application to work flexibly under the right in the last 12 months; employees can only make one application in any 12-month period.
- Employees wishing to adopt a flexible working pattern will need to submit a written application to their employer, outlining precisely what change they want to make and how they foresee that the employer can organise the work to be able to do this.
- The employer will then call a meeting with the employee to discuss the request in detail. There used to be a right to be accompanied to this meeting but this is no longer the case.
- There is no **automatic** right to work flexibly as there may be circumstances when the employer is unable to accommodate the desired work pattern.

- Employees are able to request:
 - a change to the hours they work
 - a change to the times when they are required to work
 - to work from home.
- Where the change is agreed it takes effect as a **permanent** alteration to the employee's contract.
- Where an employer refuses a request from the employee, they must give the decision in writing. It used to be necessary to provide one of the business reasons laid out below and it is still best practice to give reasons in writing, although it is no longer a legal requirement to do so. The reasons are still useful to refer to, as they give an indication of the sorts of justifications that employers can give for refusal, and they were:
 - unacceptable additional cost to the organisation
 - difficulty of reorganising work among existing staff
 - inability to recruit additional staff
 - the employer considers it will have a detrimental impact on quality
 - the employer considers it will have a detrimental impact on customer service
 - the employer considers it will have a detrimental impact on performance
 - there is insufficient work for the employee at the time they want to work
 - there are planned structural changes which will not fit in with the request for flexibility.
- Note that if an employer provides spurious or ill-considered grounds and the employee is forced to leave, they may well have a claim for constructive dismissal on the grounds of a breach of trust and confidence.
- There used to be a right of appeal from a refusal to grant flexible working but this has been removed.
- There also used to be tight time limits for each stage of the process but that has been replaced with a general requirement to complete the process within three months from the date of the request, unless it is agreed otherwise by both parties.
- An employee who is dismissed in connection with a request for flexible working will be unfairly dismissed even if they have not been continuously employed for two years.

- It is worth bearing in mind that a request for flexible working made by a mother returning from maternity leave needs to be treated with much more caution than a standard flexible working request. This is because she may have a claim for sex discrimination if the request is not properly considered and is not granted where it appears unreasonable to refuse it.
- Acas has guidance on this at bit.ly/acas-flex.

Bereavement leave

The government has just announced that a new right to bereavement leave will be granted for parents who have lost a child, following the introduction of the Parental Bereavement (Pay and Leave) Bill. We do not have full details at the moment, but it will apply to the death of a child under 18, is granted per child, and will be given for two weeks. It will be paid, but we do not know the rate at the moment, and the actual date of introduction is yet to be announced.

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