

## 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

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Employment status: workers

A number of important rights have been introduced in an effort to address the work/life balance problems faced by modern working families. These rights are only accorded to employees, rather than casual or agency workers, and 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.

## **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 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 who qualify for maternity leave are also entitled to paid time off for antenatal appointments.
- 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 employee's average weekly earnings, and then 33 weeks at £172.48 from April 2023 (£156.66 in 2021/22)

unless the woman earns less than this, in which case the whole period is payable at that rate. 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.

- 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 and medical insurance, throughout their leave.
- 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 (known as 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 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.

### **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.
- The rate is the same as the statutory basic maternity pay paid out above.
- 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.

- Employees are also 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) was introduced to allow parents to 'share out' leave between them and to take parcels of time to care for their child. It is designed to prevent the primary caregiver having to take large blocks of leave, which may have a detrimental impact on their career, and also to allow the other parent 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 or primary carer). 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 any remaining 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 any period of maternity leave taken before the baby is born to the two weeks after the birth which must be taken, and the balance of pay and leave left from the 52 weeks will be available for the parents to share. In practice, however, the 90% element of SMP can only be taken by the mother or primary carer, and therefore it is in the mother's interest to remain on maternity leave for at least 6 weeks after the birth of the baby in order to take her full 90% entitlement to pay before she brings her maternity leave to an end. Most parents will therefore share a maximum of 46 weeks' leave and 33 weeks' pay.
- 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).
- 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.
- Where SPL is taken simultaneously and 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 SPL 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. It will not work in the opposite direction, so if a mother is employed and the partner is self-employed, the mother will have to simply take maternity leave and pay as before, as the father has no entitlement.
- 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.
- 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.

- Acas provides guidance on this.
- 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, and the structure broadly mirrors that for maternity leave and pay.
- 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, provided the primary carer has been employed for 26 weeks continuously leading up to the date on which they were matched with the child.
- 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, 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 are able to 'opt in' to the new shared parental leave and pay system, which makes it easier for both adoptive parents to take leave around the time of a child's placement for adoption. Shared parental leave and pay is also 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 is someone 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, unpaid entitlement available to both parents up until the child is aged 18, but because it is unpaid it is rarely taken.
- 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, during/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, unless the employer agrees.



- 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. The reasons should include one or more of the following in order to be sufficient to justify the refusal:
  - 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.
- 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.
- It is also interesting to consider what impact the pandemic may have had on these requests; with so many employees working from home for long periods in 2020/21, it is likely to be more difficult for employers to argue that some flexibility is impossible. Employees will support their requests by contending that they still performed their role while they were unable to come into the workplace. This is certainly likely to work to some extent, but employers will have legitimate concerns about training of junior staff, customer service and mental health, which will need

to be addressed and recognised.

- 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 has suffered a detriment or has been 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. There have been a number of important recent cases in which mothers have successfully claimed for sex discrimination when flexible working requests were turned down. In *Dobson v North Cumbria Integrated Care NHS Trust 2021*, the employment appeal tribunal took judicial notice of the fact that women generally sustained the main burden of childcare, compelling employers to take particular account of that when making decisions about flexibility.

- An employee can make a claim to an employment tribunal in relation to flexible working requests, but only where the employer has failed to comply with the procedural rules above, eg it has not given one of the permitted reasons, or has not completed the procedure within three months. (In *Walsh v Network Rail Infrastructure*, a tribunal recently decided that any appeal must also be included in the three-month limit.) It is also possible for the employee to go to the tribunal if the employer has made the decision on the basis of incorrect facts or has treated the employee's request as withdrawn when it has not been. The tribunal cannot question the commercial validity of the employer's decision or interrogate the business reasons; it is purely about whether procedures have been properly followed. Where the tribunal finds that this is the case, it will make a declaration to that effect and may require the employer to reconsider the request and/or award compensation of up to eight week's pay (with current maximum set at £538 pw).

- Read Acas's [guidance](#).

### **Bereavement leave**

The Parental Bereavement Leave and Pay Regulations came into force from 6 April 2020. They grant two weeks' paid leave to all working parents who lose a child under 18, including stillbirths from 24 weeks of pregnancy. The leave is paid at the prevailing statutory rate. This will apply regardless of length of service and may be taken in blocks of two separate weeks or a full two weeks, to be flexible over when the leave is needed the most, such as marking an anniversary.

### **REFORM**

There has been a strengthening of rights for pregnant women in redundancy situations and this is detailed in [Technical factsheet: Redundancy](#). The government is also looking at a number of proposed upgrades to family-friendly policies.

The government originally proposed to make a number of reforms to these rights via an Employment Act, but has now elected to support a number of Private Members' Bills through Parliament.

### **Flexible working reform**

The Employment Relations (Flexible Working) Bill and secondary legislation proposes to:

- Remove the 26-week qualifying period before employees can request flexible working, making it a day-one right.
- Require employers to consult with their employees, as a means of exploring the available options, before rejecting a flexible working request.
- Allow employees to make two flexible working requests in any 12-month period.
- Require employers to respond to requests within two months (down from three).
- Remove the requirement for employees to set out how the effects of their flexible working request might be dealt with by their employer.

## **Carers' leave**

The Carer's Leave Bill proposed the introduction of a day-one right for up to five working days of unpaid leave for employees with long-term caring responsibilities of a dependant, either arranging or providing care.

Dependants include partners, children, parents, people living in the same house as the employee and people who reasonably rely on the employee.

The employee will be required to give notice twice the length of the leave and can take the time as partial or full days. These can be taken flexibly at different times to suit their caring responsibilities. Proof is not needed to show how the leave has been used.

Employers should be aware that if the bill becomes law, employees will be protected from dismissal or detriment due to taking this leave. If an employer dismisses an employee because of this leave, it will be an automatic unfair dismissal.

The bill has gone through all stages in the Commons and at the time of writing is at the report stage in the House of Lords.

## **Neonatal leave**

The Neonatal Care (Leave and Pay) Bill introduces two new rights: neonatal care leave and statutory neonatal care pay. Both rights would require the Secretary of State to pass regulations in order to bring them into force and specify the details of how they operate. This change is therefore provisional, as the bill is currently at the committee stage in the House of Lords, but it is likely to be passed without opposition.

The right to neonatal leave would be a day-one right, available to all employees. It would apply to parents of children who spend at least one week in neonatal care. The maximum duration of the leave, and how and when it must be taken, would be set by regulations but would be at least one week, and the period in which it has be taken would last a minimum of 68 weeks starting from the date of the child's birth.

The right to neonatal care pay during periods of neonatal care leave would be available to all employees with at least 26 weeks' continuous service and whose weekly earnings are at or above

the lower earnings limit (currently £123 per week for 2023/24). The level and duration of pay would be set by regulations but the limit that could be claimed would be at least 12 weeks.

The new rights would apply to England, Scotland and Wales but not Northern Ireland, where employment law is a devolved matter.

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