



Shared parental leave

The new shared parental leave and pay system is now in force for children due or adopted on or after 5 April 2015. The new system allows parents and adopters more flexibility in how they care for their child during the first year. Eligible parents will have the right to share up to 52 weeks' leave to care for their child and up to 39 weeks' shared parental pay (minus the period that the mother has spent on maternity leave and/or in receipt of statutory maternity pay or maternity allowance). Mirror provisions apply in relation to children placed for adoption on or after 5 April 2015.

Employers need to prepare shared parental leave policies and amend their existing maternity, paternity and adoption policies to take account of the new system. Employers that currently provide enhanced maternity pay and benefits also need to consider how they propose to structure any enhanced shared parental pay and benefits.

Maternity leave and paternity leave

The changes do not affect the existing entitlement to statutory maternity leave or ordinary paternity leave, which will continue unaffected. However, the entitlement to additional paternity leave and additional paternity pay has been abolished. Parents can exercise the new right to shared parental leave where the mother curtails her maternity leave, but the mother must take at least 2 weeks' compulsory maternity leave before doing so. Although paternity leave will continue to be available to fathers, where it is not taken before any period of shared parental leave begins, the father will lose his right to take it.

Who will be eligible?

The new system applies to the mother and father of the relevant child or the person who is married to, the civil partner or the partner of, the mother of the relevant child. In this note we refer to "mother" and "father" as those eligible to take shared parental leave.

In order to qualify for shared parental leave, both parents must have main responsibility for the care of the child (apart from any responsibility of the other parent) and have complied with various notice requirements.

The mother must also be entitled to statutory maternity leave and have given notice to curtail her maternity leave by serving the appropriate notice. If a mother does not qualify for statutory maternity leave (e.g. because she is not an employee) but has

received statutory maternity pay or maternity allowance which has come to an end, then the father can qualify for shared parental leave but the mother will not.

To be eligible, both parents must also satisfy certain criteria in relation to their earnings and the duration of their employment.

How can leave be taken?

Shared parental leave must be taken in blocks of at least a week and all leave must be taken within 52 weeks of the child's birth. In practice, the parents could take their leave together; the mother could return to work and allow her partner to take the balance of her leave; or the parents could take the leave in turns.

Where the employee requests a continuous period of shared parental leave, the employer must agree to it. Where the employee requests discontinuous periods of shared parental leave, the employer can agree to it, propose alternative dates or refuse the request altogether, in which case the employee would be entitled to one continuous period of leave. In most cases, once notice to take a period of shared parental leave has been given, employees can vary the requested leave a maximum of two times, unless the employee and the employer agree otherwise.

Notice

Employees are required to provide 8 weeks' notice of their intention to take a period of shared parental leave. There are various notices that must be served and the rules surrounding these are quite complex. Acas have published guidance for both employers and employees which provides some helpful information in relation to the notice requirements and the steps which need to be followed.

Shared parental leave in touch days

An eligible mother and father will each have an entitlement to 20 "shared parental leave in touch" (SPLIT) days where they can work without bringing the shared parental leave to an end. These days will be in addition to the mother's entitlement to 10 "keeping in touch" (KIT) days during her maternity leave.

Protection

There are various provisions relating to terms and conditions during leave, the right to return to work, rights on redundancy, and protection from detriment and dismissal, which are similar

to the current provisions relating to maternity, adoption and paternity leave.

Shared parental pay

Statutory shared parental pay (ShPP) will be available for up to 39 weeks for eligible employees (minus the period that the mother has spent on maternity leave and/or in receipt of statutory maternity pay or maternity allowance). Unlike maternity pay which is paid at 90% of the mothers' average weekly earnings during the first six weeks of maternity leave followed by the statutory amount (which is currently £139.58 per week) for the remaining 33 weeks, mothers and fathers taking shared parental leave will only be eligible to receive the statutory amount for the whole shared parental leave period.

It is at the discretion of employers whether they wish to offer enhanced schemes for men and women taking shared parental

leave. There is no legal requirement for employers to create an enhanced scheme and during the consultation process the government advised employers that offering enhanced maternity pay would not mean they were required to offer an equivalent level of pay under a shared parental pay scheme for men. However, if an enhanced shared parental pay scheme is offered to mothers on shared parental leave it could, of course, constitute sex discrimination if such an enhanced scheme were not offered to fathers. There is also a risk of indirect discrimination and employers may need to justify any difference in treatment if shared parental pay and maternity pay are paid at different rates. The circumstances for each employer will be different and, for those employers that currently have enhanced maternity pay schemes, it would be advisable to take legal advice before deciding whether or not to enhance shared parental pay.

What should employers do to prepare for the new system?

It is essential that employers get to grips with the changes now and, if you have not done so already, you should consider taking the following steps:

- draft and implement a new shared parental leave policy and inform employees about its introduction
- amend existing maternity, paternity and adoption policies to comply with the new regime
- ensure a process is in place to allow the employer to calculate whether or not an employee meets the basic requirements for shared parental leave (see the government's online calculator at www.gov.uk/government/news/calculate-your-leave-and-pay-when-you-have-a-child)
- consider preparing template notifications for employees to use and model forms for the employer to respond to employees' notices
- decide on the approach to ShPP and whether to pay enhanced benefits for those on shared parental leave, or statutory rates only
- ensure that those responsible for administering the new scheme within HR and payroll understand the new regime and have the necessary structures in place
- train line managers on the new scheme and how they should deal with shared parental leave requests.

Contact

If you would like more information, or specific advice on any of the changes please contact Luke Bowery or get in touch with your usual Burges Salmon contact.



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