



Employment Law - Family friendly rights

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

This factsheet outlines those 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.

Maternity rights

Any pregnant employee is entitled to time off (maternity leave) regardless of how long they have been employed. They may also be entitled to maternity pay depending on their length of service. Some of the maternity leave can be shared with their partner under the shared parental Leave (SPL) provisions. See below.

Rights prior to maternity leave

Antenatal appointments

A pregnant employee is 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 a GP. Where requested, the employee should show their 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.

Sickness absence

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

Any absence for pregnancy-related illness should be disregarded for absence management. An employee should not suffer a detriment or be disadvantaged in any way for the time they 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.

Ordinary Maternity Leave (OML) lasts for 26 weeks and cannot commence earlier than 11 weeks before the week they 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.

Employment Law

- Family friendly rights

Notifying the employer

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

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

Returning to Work

There is a presumption in law that an employee will take the full maternity leave entitlement of 52 weeks. To return earlier than 52 weeks, they must give their employer eight weeks' notice. If they do not intend

to return at all they should give contractual notice terminating their contract of employment.

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

Keeping in Touch Days (KIT days)

An employee on maternity leave is entitled to a maximum of ten optional KIT days during their time off. Neither they nor their employer can insist on these days being worked. Where it is agreed that they 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 between the employer and the employee. Good practice recommends an employee is paid their full salary but this will include any amounts they would have received for maternity pay. In other words, they will not receive more than their usual salary including any maternity pay.

While on maternity leave an employee is still entitled to be kept informed of any important changes in the workplace. They must be informed about anything that may affect their 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 an employee 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 £123 per week
- have given correct notice and have produced medical evidence of pregnancy and the due date

SMP is payable for 39 weeks. It is paid at a rate of 90 percent of salary for the first six weeks and either £156.66 or 90 per cent of average weekly earnings, whichever is lower, for the remaining 33 weeks.

If the employee earns less than £123 a week they will qualify for Maternity Allowance, provided they:

- 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)

Maternity Allowance is the same weekly payment as SMP and is payable for 39 weeks.

Paternity leave

Paternity leave has generally been replaced by Shared Parental Leave (SPL). However, an employee remains entitled to paternity leave of either one or two weeks (their choice) to be taken within 56 days of the birth of their child.



Employment Law

- Family friendly rights



To qualify they must:

- be employed
- have worked for their 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 all children including those placed for adoption. 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 £156.66 per week or 90 per cent of an employee's average weekly earnings, whichever is lower. It is given for 39 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 an employee wishes to take SPL they must have worked for their 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. The employee must provide the correct notice, including a declaration that their 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 the employee is adopting a child, the entitlement to adoption leave and pay is similar to maternity and paternity leave and pay, though there are some differences. More information can be found [here](#).

Time off to care for dependants

An employee is 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 the employee 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

They are entitled to this time off even if they have not worked for their employer for very long, but there is no entitlement for them to be paid, unless this is provided in their contract of employment.

Parental leave

Each parent who has worked for their employer for 12

Employment Law

- Family friendly rights

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.

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 they usually work three days, one week of parental leave will amount to three days of leave.

An employee is required to give 21 days' notice to their employer of the date they would like their leave to start. They can be asked by their employer to alter the proposed leave dates if there is a business need for them to do so. If the employer writes to postpone the leave dates this must be done within seven days of the original request and the employer must suggest alternative dates within six months of the requested start date.

Parental Bereavement Leave

If an employee has suffered the loss of a child under the age of 18 years old or suffered a stillbirth from 24 weeks of pregnancy, they will be entitled to two weeks Parental Bereavement Leave. Parental Bereavement Leave can be taken as a two-week block, or in two one-week periods within 56 weeks of the bereavement.

Anyone wishing to take Parental Bereavement Leave must do so within 56 days of the child's death. Employers must be notified on the first day of absence or as soon as practicably possible. Parental Bereavement Leave to be taken after 56 days of the bereavement requires the employee to give the employer one week's notice.

In some circumstances, Parental Bereavement Leave may be paid.

Eligibility for paid Parental Bereavement Leave:

- **the employee must have been employed for 26 weeks up to the end of the week immediately before the bereavement.**
- **they must earn on average £123 pw over an eight-week period**

If the employee meets the eligibility criteria, Parental Bereavement Leave will be paid £156.66 a week or 90%

of the average weekly earnings (whichever is lower).

If the employee is not eligible but has still suffered a parental bereavement, they are still entitled to two weeks unpaid Parental Bereavement Leave.

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 an employee is expected to work. For example, rather than doing five days a week 9am until 5pm they could ask to work five days a week 7am until 3pm, or request a 20 minute lunch break rather than one hour to enable the employee to leave work earlier.

An employee can make one written request every 12 months, which the 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 the 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 the employee in writing, a meeting with them, consideration of the request, informing them of the decision and allowing them to appeal the decision.

ACAS have produced a code of practice and guidance on how to deal with flexible working requests which can be seen [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.

Copyright © 2021 by Law Express - All rights reserved. This article or any portion thereof may not be reproduced or used in any manner whatsoever without the express written permission of the publisher.