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# Maternity, paternity and adoption rights

Introduces maternity and paternity rights, shared parental leave, and adoption rights in the UK

## Introduction

Statutory maternity, paternity and adoption rights in the UK apply both before and after birth or adoption. Mothers, fathers, adoptive parents and same-sex partners are entitled to paternity, maternity or adoption leave and pay and shared parental leave.

This factsheet introduces the main rights, outlines shared parental leave and looks briefly at adoption rights, which are broadly in line with statutory maternity leave and pay. Lastly, the factsheet offers guidance for employers on implementing, monitoring and reviewing their policies.

## The context for maternity, paternity and adoption rights

Given the very high proportion of working men and women who are parents, it makes sense from a societal and employment perspective to support their need to balance work and childcare. We believe employers should be proactive in supporting and retaining employees who need to balance work with family commitments.

Women employees in the UK have had statutory maternity rights for many years, and fathers, partners and adoptive parents now have statutory rights to paternity leave, adoption and shared parental leave.

As well as maternity, paternity and adoption rights, other important 'family-friendly' measures include the right to unpaid parental leave, the right to time off for emergencies involving dependents and the right to request flexible working. See our factsheets on flexible working and working hours and time off work.

The information in this factsheet mostly relates to statutory rights. Many employers offer more than these minimum rights in contractual maternity, paternity, adoption and parental leave policies. These policies covering leave and pay should be inclusive and coherent, and available to all staff. As well as enhancing minimum statutory leave and pay entitlements, employers can make a real difference to working parents by providing flexible working arrangements and fostering an inclusive, family-friendly working environment.

## The legal position

Most of the relevant UK legislation is in the Employment Rights Act 1996, the Employment Relations Act 1999, the Employment Act 2002 and the Work and Families Act 2006. Shared parental leave (SPL) arrangements are covered in the Children and Families Act 2014.

Any unfavourable treatment of a woman because of her pregnancy, childbirth or maternity is unlawful and is likely to constitute pregnancy and maternity-related discrimination and may also give rise to a constructive unfair dismissal claim. There may also be a constructive unfair dismissal claim. CIPD members can find out more detail on all aspects of these family rights in our [Maternity, paternity, shared parental and adoption leave and pay Q&As](#), [Requesting flexible working Q&As](#) and [Parental rights and other family-friendly provisions Q&As](#).

Our [Brexit hub](#) has more on what the implications of leaving the EU might be for UK employment law.

## **Recent and forthcoming changes**

From 6 April 2020 the Parental Bereavement (Leave and Pay) Act 2018 gives employed parents the right to two weeks' bereavement leave following the death of a child, paid at a set rate if the parent has 26 weeks' service.

In the March 2020 Budget, a new neonatal leave and pay entitlement was announced for employed parents whose babies need neonatal care for an extended period. Parents will be less pressured in choosing between returning to work and the baby's care. A maximum of twelve weeks leave will be paid at £160 a week, funded by the Government and not by employers. An implementation date and details will follow. It's not known if the leave will be shared between both parents.

The law currently gives women made redundant while on maternity leave the right to be offered a suitable alternative role in advance of their colleagues. A Bill to extend this protection for six months beyond maternity leave was not passed in the last Parliamentary session. It may be reintroduced.

# Maternity rights

## Ante natal care

Pregnant employees are entitled to paid time off to attend ante-natal medical appointments recommended by the doctor, nurse or midwife. This can include recommended parenting or relaxation classes.

Fathers and partners who are employees can take unpaid time off to accompany their partner to up to two appointments. The companion can take 6.5 hours per appointment, including travelling and waiting time. Any additional time can be taken with the employer's consent or as holiday.

## Maternity leave

There are various descriptions used for maternity leave in the UK. Key terms are:

- **Compulsory leave:** the two weeks immediately after giving birth during which the woman is not permitted to work (four weeks if she works in a factory).
- **Statutory Maternity Leave (SML):** the 52 weeks of leave a woman may take. There is no qualifying period for the 52 weeks but there is a qualifying period for some of the statutory maternity pay.
- **Shared Parental Leave (SPL):** the shared leave available to either or both parents.

The earliest date a woman can start maternity leave is the beginning of the eleventh week before the baby is expected. She must notify her employer with details of the week the baby is expected and the date she chooses to start maternity leave. The employer must respond within 28 days stating the date the woman is expected to return after the maternity leave.

Employers should assume women will take all 52 weeks' leave unless notified to the contrary. Mothers may wish to curtail part of the leave to enable their partner to take SPL. Alternatively, they may return to work earlier than planned, in which case the employee should give at least eight weeks' notice, unless the employer agrees to shorten this notification period.

## Maternity pay

Mothers in the UK are entitled to up to 39 weeks' **Statutory Maternity Pay (SMP)**. To qualify, the employee must:

- Work for an employer who is liable (or would be liable but for the employee's low earnings) to pay the employer's share of Class 1 National Insurance contributions
- Have average weekly earnings in the eight weeks preceding the qualifying week, at or above the lower earnings limit for the payment of National Insurance contributions
- Have 26 weeks' continuous service with her employer (assessed at the 15th week before the week the baby is due).

The first six weeks of SMP is paid at 90% of average weekly earnings and the remainder at the lower statutory level (or 90% of the average weekly earnings, if this is less than the lower level). SMP rates have historically increased in April each year with some exceptions. Current rates can be found on our [Statutory rates page](#) or from [GOV.UK](#).

Some organisations have more generous contractual terms and pay a woman during the entire period of leave.

Women who do not qualify for SMP might qualify for **Maternity Allowance (MA)**: this is based on their recent employment and earnings record and is a state benefit which is payable for 39 weeks. To qualify, a woman must:

- Be employed but not qualify for SMP.
- Be self-employed, or have been recently employed.
- Have been employed or self-employed for at least 26 of the 66 weeks ending with the week before the expected week of childbirth.
- Earn at least a specified amount per week (set by the Government and currently £30 or more) on average in any 13 weeks in the test period.

## Other benefits during maternity leave

All contractual terms (for example holidays or benefits) apart from remuneration continue during SML. This means that paid holiday entitlement accrues during maternity leave. The position concerning pension contributions is more complex. CIPD members can see more in our [law Q&As on on maternity, paternity, shared parental and adoption leave and pay](#).

## Other rights before, during and after maternity

As well as maternity leave and pay, women who satisfy the relevant qualifying conditions are entitled to:

- Return to their previous job on the same benefits, terms and conditions, if they have been on maternity leave for 26 weeks or less.
- Return to the same job, or one with equivalent favourable terms and conditions, if it is genuinely not reasonably practicable for them to return to the former job, if

maternity leave is more than 26 weeks.

- Request a risk assessment during pregnancy.
- Request alternative work where any risks to the health of the expectant mother and baby can be avoided.
- Full pay while on maternity suspension if health and safety measures cannot be complied with or if the risk can't be avoided by reasonable changes to working conditions, or suitable alternative work.
- Protection from detriment, disadvantage, unfair treatment or dismissal because of the pregnancy, maternity leave, etc.
- Up to ten 'keeping in touch' (KIT) days during maternity leave without losing any entitlement to maternity pay. The employer is not obliged to offer any KIT days and the employee is not obliged to work any that are offered.

In addition, the Equality Act 2010 prohibits pregnancy and maternity discrimination which has been increasing.

## Paternity rights

### **Paternity leave**

The main eligibility factors for basic paternity leave in the UK are:

- Continuous employment for 26 weeks ending with the 15th week before the baby is due.
- The employee must be the baby's biological father or the partner of the mother.
- The employee has (or expects to have) responsibility for the baby's upbringing.

The maximum duration of the basic statutory leave is two weeks. Unless agreed otherwise, paternity leave must be taken between:

- The date of the baby's birth or any day of the week following the birth, and
- Within 56 days of the baby's birth date.

The employee must inform the employer of their intention to take paternity leave by the end of the fifteenth week before the baby is expected. The employee must provide the following details:

- The start date of the leave to be taken.
- The week the baby is expected.
- The duration of leave to be taken.

### **Paternity pay**

The rate of **Statutory Paternity Pay** (SPP) is the same as SMP. However, an employee who does not qualify for SPP may be entitled to other welfare benefits.

## Rights during and after paternity leave

An employee who qualifies for paternity leave is entitled to:

- Return to the same job.
- Return to the same terms and conditions of employment.
- Not be subjected to a disadvantage, unfair treatment or dismissal.

## Shared parental leave

Shared parental leave (SPL) may also be available. The basic principle is that employed mothers can switch part of their leave and pay into SPL and shared parental pay, provided the parents satisfy the eligibility requirements. The mother and partner must have worked for their employers continuously for at least 26 weeks up to the 15th week before the expected week of childbirth.

The mother can choose whether to give up her leave and the parents can choose how they share any SPL, either taking it in turns or taking time off together. The eligibility, notification and variation procedures are complex but at least eight weeks' notice must be given before the start of SPL.

SPL becomes available once the mother has given notice to end her entitlement to maternity leave early:

- The minimum period of leave must be one week.
- The leave must be taken in multiples of complete weeks as either one continuous period or discontinuous periods.

Employers may pay enhanced payments for SPL. Case law has shown that it's not discriminatory to provide shared parental pay to mothers' partners that is less than an enhanced rate of maternity pay provided to the mother.

SPL has been criticised because the take up has been very low despite a [government campaign](#) to encourage more parents to take it.

Qualifying employees are also entitled to unpaid parental leave of up to 18 weeks for each child or adopted child up to their 18th birthday.

Listen to our [shared parental leave podcast](#). CIPD members can find out more in our [Maternity, paternity, shared parental and adoption leave and pay Q&As](#).

## Adoption rights

Statutory adoption leave and pay in the UK have been broadly in line with statutory maternity leave and pay since April 2015.

The primary adopter can also take paid time off for up to five adoption appointments. The other adopter can take unpaid time off for up to two appointments.

### **Adoption leave**

Qualifying employees may take up to 52 weeks' adoption leave. Some surrogate parents are also entitled to adoption leave.

If a couple jointly adopt a child, one adoptive parent may take adoption leave and the other may be able to take paternity leave and shared parental leave in broadly the same way as they do following the birth of a child (see above).

### **Adoption pay**

**Statutory Adoption Pay (SAP)** is payable for 39 weeks and there is a qualifying service requirement of 26 weeks' continuous employment. The rate of SAP is the same as SMP (see above). Adopters whose average weekly earnings are below the lower earnings limit for National Insurance purposes do not qualify for SAP but may qualify for other welfare benefits.

## Guidance for employers

Employers should:

- Include references to maternity, paternity and adoption rights in equality, diversity and work-life balance policies and promote these to staff.
- Monitor and evaluate take up of available provisions to ensure that they:
  - Comply with any extensions and alterations to these rights as they occur.
  - Continue to meet the needs of both the business and the individual.
  - Don't exclude some employees or cause unfair disadvantage.
- Make sure that line managers understand how to implement the organisation's comprehensive and up to date maternity, paternity and parental leave policies and know how to access further information and guidance. Staff handbooks and

employment literature should explain the provisions clearly and invite people to raise issues they do not understand.

## Recovery of SMP, SPP, and SAP

Most employers can recover 92% of the cost of these payments from the government. The amount that can be recovered depends on the employer's annual National Insurance payments.

## Useful contacts and further reading

### Contacts

[Acas – Maternity, paternity and adoption leave and pay](#)

[GOV.UK - Holidays, time off, sick leave, maternity and paternity leave](#)

[GOV.UK - Shared parental leave and pay](#)

[Equality and Human Rights Commission – Managing pregnancy and maternity in the workplace](#)

[Working Families](#)

### Books and reports

CABRITA, J. and WOHLGEMUTH, F. (2015) *Promoting uptake of parental and paternity leave among fathers in the European Union*. Luxembourg: Publications Office of the European Union.

DEPARTMENT FOR BUSINESS, INNOVATION AND SKILLS. (2015) *Shared parental leave: public attitudes*. London: BIS.

DEPARTMENT FOR BUSINESS, INNOVATION AND SKILLS and EQUALITY AND HUMAN RIGHTS COMMISSION. (2016) *Pregnancy and maternity-related discrimination and disadvantage: final reports*. London: BIS and EHRC.

HOUSE OF COMMONS Women and Equalities Committee (2018) *Fathers and the workplace*. HC 358, Session 2017-19.

### Journal articles

ALIDINA, R. (2019) [Why a more robust paternity leave policy is key to gender equality](#).

*People Management* (online). 13 March.

LOCH, P. (2019) How to promote paternity leave. *People Management* (online). 5 July.

THOMPSON, C. (2020) Pregnancy and maternity discrimination update. *People Management* (online). 15 April.

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