

# A Guide to Parental Rights

## HUMAN RESOURCES

**The purpose of this note is to set out some key legal and practical issues to consider when managing absent employees, to help ensure that any legal risk to your business is minimised.**

### Key points

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- Employees are entitled to a reasonable amount of paid time off for antenatal care.
- Pregnant employees have the right to take up to a year of maternity leave.
- Employees do not have to take a full year if they do not want to, but the shortest maternity leave that can be taken is two weeks (or four weeks for those who work in a factory).
- 39 weeks could be paid leave, which may be statutory maternity pay, maternity allowance or contractual maternity pay (contractual pay may be more than statutory pay or could be paid for longer than 39 weeks - this will depend on the terms of employment).
- Pregnant employees are protected against unfair treatment and discrimination.
- During maternity leave an employee and employer can agree to have up to 10 keeping in touch (KIT) days.
- Women returning to work following maternity leave have the right to return to their original job or a suitable alternative.

### Antenatal care

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All pregnant employees are entitled to time off, with pay, for antenatal care made on the advice of a doctor, nurse or midwife, which may include medical appointments, relaxation classes and parenting classes. Agency workers can also take this time off if they have been working for the same hirer for at least 12 weeks in a row. An expectant father or partner of a pregnant woman has the right to take unpaid time off work to go to two antenatal appointments. It is not reasonable to question any medical advice given to a pregnant employee.

### Maternity leave

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A pregnant employee has the right to both 26 weeks of ordinary maternity leave as well as 26 weeks of additional maternity leave. To qualify for maternity leave, the employee must tell you the following information at least 15 weeks before their baby is due:

- that she is pregnant;
- the expected week of childbirth, by means of a medical certificate if requested; and
- the date she wants to start maternity leave (typically this can be any date which is no earlier than the beginning of the 11th week before the baby is due).

Once this notification has been given to you, you must write to the employee, within 28 days of receiving it, setting out her return date. Maternity leave can start any day from 11 weeks before the due date of the baby and

will automatically start four weeks before the baby is due if the employee is off work for pregnancy-related illness. If the baby arrives early the leave will start on the day after the birth. The employee must give eight weeks' notice to change the return date.

## Maternity pay

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The minimum maternity pay an employee is entitled to is statutory maternity pay (SMP) and this will be payable if an employee has:

- been employed continuously for at least 26 weeks ending with the 15th week before the expected week of childbirth; and
- average weekly earnings at least equal to the lower earnings limit for National Insurance contributions.

SMP is payable for 39 weeks; for the first six weeks it is paid at 90 percent of the average weekly earnings. The following 33 weeks will be paid at the SMP rate or 90 per cent of the average weekly earnings whichever is the lower. The SMP rate from 7 April 2024 is £184.03 per week and this is reviewed every April.

Some employers offer contractual maternity pay as a benefit, this is often more than SMP, for example 26 weeks of full pay.

Women who do not qualify for SMP may be entitled to maternity allowance, paid by Jobcentre Plus, for up to 39 weeks.

## Providing a safe working environment

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Upon being notified of an employee's pregnancy you must take into account any health and safety risks to the employee and their baby (this is called a risk assessment). Risks could include:

- heavy lifting or carrying;
- standing or sitting for long periods without adequate breaks;
- exposure to toxic substances; and
- long working hours.

If the risk cannot be avoided, you must take steps to ensure the employee and her baby are protected either by changing working conditions (for example by providing a different chair or shorter hours), by giving her different work (this could mean providing office work rather than manual work) or if there is no suitable alternative, the employee must be told to stay at home on full pay for as long as necessary to protect her health and safety and that of her baby.

## Employee rights while on maternity leave

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During maternity leave, the employee is entitled to benefit from all her normal terms and conditions of employment (for example holiday accrual and pension contributions), except for wages or salary.

Employees can do up to 10 days' work during their maternity leave without losing any statutory maternity pay. These days are called 'keeping in touch' or 'KIT' days and are optional - both employee and employer need to agree them. Attending meetings or training could count as keeping in touch days and payment for these days should either be in the contract of employment or agreed before the employee comes into work.

At the end of maternity leave, the employee has the right to return to her original job. If that is not possible then a similar job on the same pay and conditions should be offered. If a redundancy situation arises within a period of 18 months from the first day of the expected week of childbirth or the actual date of birth, the employee must be offered a suitable alternative vacancy if one is available. If there is no suitable alternative work, she may be entitled to redundancy pay.

## Paternity leave and pay

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An expectant mother's partner may also be entitled to 1 or 2 weeks of paternity leave and this can also be taken when adopting a child. There are certain criteria to be fulfilled to qualify for this.

Where the expected week of childbirth is after 6 April 2024 or the expected date of placement for adoption is on or after 6 April 2024, an eligible employee can choose to take:

- one single period of leave of 1 or 2 weeks; or
- two separate, non-consecutive periods of leave of 1 week.

Employees have to give 28 days' notice before each period of leave and will be able to vary any dates given on 28 days' notice. Paternity leave can be taken at any time in the 52 weeks after birth or adoption.

Those eligible for paternity leave are often entitled to statutory paternity pay and this is paid at the same rate as SMP.

## Adoption leave and pay

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Similarly to maternity rights, the primary adopter may be entitled to 52 weeks of adoption leave, of which 39 weeks is paid if they qualify for statutory adoption pay (paid at the same rate as SMP). A couple cannot take adoption leave at the same time, although paternity leave can be used.

The primary adopter is entitled to paid time off to attend 5 meetings (totalling up to 6.5 hours) before the placement. The other adoptive parent is entitled to unpaid time off to attend 2 meetings.

At the end of adoption leave, the employee has the right to return to their original job. If that is not possible then a similar job on the same pay and conditions should be offered. If a redundancy situation arises within a period of 18 months from the date of placement, the employee must be offered a suitable alternative vacancy if one is available. If there is no suitable alternative work, they may be entitled to redundancy pay.

## Shared parental leave and pay

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Eligible parents are entitled to share leave and pay during the first year after their baby's birth or placement. In summary, this allows parents to share up to 50 of the 52 weeks' statutory maternity leave and up to 37 of the 39 weeks' SMP that is available to mothers. Statutory shared parental pay is paid at the same rate as SMP.

For parents to get shared parental leave, the mother or primary adopter must do one of the following to allow their partner to take shared parental leave (at least 8 weeks before the mother or primary adopter wishes their leave/pay entitlement to end):

- end their maternity/adoption leave and return to work; or
- give notice to cut their maternity/adoption leave short (as well as give notice to opt in to the shared parental leave scheme, or a declaration that their partner has given notice).

Shared parental leave can be taken in up to 3 blocks and both parents can take shared parental leave at the same time or at different times. Various qualifying criteria have to be satisfied for shared parental leave.

The parent who is to take shared parental leave must:

- have worked for the employer for at least 26 weeks by the end of the 15th week before their baby is due or their adoption placement date;
- still be working for the employer a week before the start of each block of leave they take; and
- be legally classed as an employee.
- worked for at least 26 of 66 weeks before the expected birth date or adoption placement date;
- earned an average of at least £30 a week in any 13 weeks of those 66 weeks (£390 in total).
- The other parent must have:

At the end of maternity leave, the employee has the right to return to their original job. If that is not possible then a similar job on the same pay and conditions should be offered. If a redundancy situation arises within a period of 18 months from the first day of the expected week of childbirth or the actual date of birth, the employee must be offered a suitable alternative vacancy if one is available. If there is no suitable alternative work, they may be entitled to redundancy pay.

## Parental bereavement leave

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In the event of a stillbirth or the death of child under the age of 18, eligible parents are entitled to 1 or 2 weeks of parental bereavement leave. An eligible employee can choose to take:

- one single period of leave of 1 or 2 weeks; or
- two separate, non-consecutive periods of leave of 1 week.

Parental bereavement leave may be taken any time in the first 56 weeks after death or stillbirth of child. If taken during the first eight weeks, the employee needs only to give notice of intention to take parental bereavement leave before they are due to start work on the first day of leave. If taken between weeks 9 to 56, employees have to give at least one weeks' notice.

- Those eligible for paternity leave are often entitled to statutory parental bereavement pay and this is paid at the same rate as SMP. There are various eligibility criteria, including the requirement for the employee to have at least 6 months' continuous service.

*This article is not intended to constitute a definitive, up-to-date, or complete statement of the law, nor is any part of it intended to constitute legal advice for any specific situation. You should take specific advice when dealing with specific situations and jurisdictions outside England & Wales.*

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