

Employment briefing

Shared Parental leave

Shared Parental Leave (SPL) is a new regime which will enable eligible mothers, fathers, partners and adopters to choose how to share time off work after their child is born or placed.

The options to use SPL rights will apply for parents who meet the eligibility criteria where a baby is due to be born on or after 5 April 2015 or for children who are placed for adoption on or after that date. This note focuses on the regime for births - the regime for adoption is largely similar.

Why the legislation has been introduced

The Government's stated intention in introducing SPL is to allow both parents to take an increased role in the upbringing of their children and reduce the number of instances where the burden of childcare falls exclusively on the mother.

What the Shared Parental regime will allow

Currently, mothers are entitled to 52 weeks of maternity leave and 39 weeks of statutory maternity pay (SMP) or maternity allowance. Under the new regime, mothers will be able to volunteer to curtail their maternity leave and/or pay early in order to share the leave or pay with their partner. For these purposes a mother's partner may include the mother's spouse, civil partner, the child's father or any other person with whom the mother is in an enduring family relationship.

With the exception of the two weeks' compulsory maternity leave after birth (which cannot be shared), parents will be able to share the pot of 50 weeks of parental leave. Parents can decide to be off work at the same time or on an alternating basis and leave may be shared in blocks of one week or more.

Employees can also share parental pay, but the total amount of statutory pay remains the same, i.e. 2

weeks for the father and 39 weeks for the mother (out of which 37 weeks of the mother's entitlement may be shared).

The old regime will largely stay the same

Employed mothers who do not 'opt into' SPL will continue to be entitled to 52 weeks of maternity leave and 39 weeks of statutory maternity pay or maternity allowance.

Paid paternity leave of two weeks will continue to be available to fathers but additional parental leave and pay will be replaced by rights under the new regime.

Note that, 'parental leave' which entitles parents to 18 weeks of unpaid leave prior to a child's fifth birthday (or 18th birthday if the child is disabled) is not altered by this new regime.

How a parent will qualify for SPL

If a mother is applying for SPL, both she and her 'partner' (P) must meet certain eligibility requirements.

The mother must:

- have worked for the same employer for at least 26 weeks up to and including the 15th week before the week in which the child is due;
- be employed the week before SPL is to be taken;
- have the main responsibility for the care of the child (other than the responsibility of P);
- be entitled to statutory maternity leave in respect of the child; and
- claim the leave in accordance with the regime (see below).

P must:

- have the main responsibility for the care of the child (other than the responsibility of the mother);
- have worked for 26 weeks in the 66 weeks leading up to the due date; and

- have earned above the maternity allowance threshold of £30 a week in 13 of the 66 weeks.

When the partner is applying for SPL, the qualification requirements are, broadly speaking, reversed (as applicable) so that both the mother and partner have to meet the relevant tests.

How employees will claim SPL

A mother seeking to claim SPL will need to curtail her maternity leave, notify her employer of her entitlement and book periods of leave. In practice, we anticipate that employees will carry out several steps at the same time.

Curtailing maternity

A mother will have to curtail her maternity leave in order to benefit from SPL. Maternity leave can be curtailed by the mother returning to work or providing notice of an intention to return to work. This notice must be given at least eight weeks before the date on which the mother wishes her leave or pay entitlement to end.

Entitlement to parental leave

Both parents opting for SPL must notify their respective employer of their entitlement to SPL no less than eight weeks before the start of the first period of parental leave. A notice to take SPL should include specified information, including (but not limited to) the following:

- how much leave is available to share;
- how much leave each parent is intending to take;
- a declaration from the employee's partner giving consent to SPL and confirming their eligibility; and
- a non-binding indication of when the leave will be taken.

Booking parental leave

Both parents opting for SPL must also "book" the leave they wish to take, giving their employer at least 8 weeks' notice. Each eligible employee can give their employer up to **three** separate notices (although an employer may accept more).

Booking continuous leave

If an employee requests a continuous block of leave then the request cannot be refused. It appears, therefore, that an eligible employee will be able to request three distinct periods of continuous leave by using each of their three requests.

Booking discontinuous leave

As well as booking continuous leave, the regime allows an employee to request "discontinuous" leave (that is,

several periods of leave in blocks of one week or more). If such a request is made, the employer has 14 days to accept the request, propose alternatives or refuse the pattern.

If agreement is not reached in this period then the employee may choose to take the total amount of leave requested as a continuous period of leave or withdraw their notice (the notice may be withdrawn within 15 days of the original notice). A withdrawn notice will not count towards the allotted three requests.

If the notice is not withdrawn, a period of continuous leave will commence on the date of the employee's choosing or - if they fail to provide a date within 19 days of the original notice - the start date of their original request.

Varying leave

Once an employee has become entitled to a period of SPL, they may give a written notice to request a variation of that period. This variation will count towards one of the three allotted notices with certain exceptions (e.g. where the child is born early or the employee is responding to an employer request).

When the leave can be taken and keeping in touch during leave

SPL may be taken at any time between the date the child is born and 52 weeks after that date.

Each parent will be able to work for up to 20 days whilst they are on SPL. These are in addition to the ten maternity leave "Keeping in Touch" days.

The employer and employee are also entitled to make reasonable contact with each other from time to time during a period of SPL (such as discussing an employee's return to work) without bringing the period of leave to an end.

What happens to the employment relationship during periods of SPL?

As is currently the case with statutory maternity, paternity and adoption leave, an employee taking SPL will be entitled to the benefit of the terms and conditions of employment which would have applied had they not been absent, except for the terms as to remuneration.

Therefore, with the exception of pay, the employee's other benefits (such as the accrual of contractual annual leave and health club membership) will continue.

When an employee returns to work following a period of SPL, they will be entitled to return to the same job if their combined leave totalled 26 weeks or less. If their leave exceeded 26 weeks, they will be entitled to the same job, unless it is not reasonably practicable, in which case the employer must offer a suitable and appropriate job on terms which are no less favourable.

Qualifying for Shared Parental Pay

In order to qualify for SPL, the mother or partner must (in addition to meeting the requirements for leave stated above) have earned an average salary of the lower earnings limit or more (currently £111) for the 8 weeks prior to the 15th week before the expected week of childbirth.

As with shared parental leave, qualifying individuals will be required to provide specified information to their employers prior to sharing statutory pay and will need to provide at least eight weeks' notice of an intention to share such pay.

Some key points for employers to consider

A) Update policies

Employers should update their maternity, paternity and adoption policies in line with the new regime.

B) Maternity/Paternity cover

Given that an employee may have periods of discontinuous leave, the SPL regime may make it more difficult for employers to plan for appropriate cover during periods of absence. Early discussions may mitigate some of these difficulties.

C) Early discussions

As above, early and informal discussion may help the employer and employee to manage leave under the SPL regime.

D) Evidential requirements

The burden of proving eligibility for SPL generally falls on the requesting individual. The employer does have the right to request relevant evidence including the birth certificate of the child and the contact details of the partner's employer. However, employers will need to take a consistent and reasonable approach when obtaining evidential information.

E) Enhanced paternity pay?

Employers will need to consider what approach they want to take in relation to paternity pay, and whether this is to match any enhanced pay offered. There are potential discrimination issues at play in this area and employers should take advice on potential risks and possible options.

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