

This leaflet explains how you may benefit from:

- 13 weeks unpaid parental leave for both mothers and fathers
- emergency leave for parents or anyone with a caring responsibility

This leaflet gives a basic guide to these new rights, and tries to answer some common questions. Employment rights can be complicated, and everyone's situation is different, so you should not regard this leaflet as a comprehensive statement of the law. If you are unsure if the rights discussed here apply to you, then you should contact your trade union, or a specialist adviser. Sources of help are listed at the back.

This booklet does not deal with new rights covering maternity pay and leave, paternity pay and leave, adoption pay and leave as well as a new right to request to work flexibly. For more information about these please call the TUC *Know Your Rights* line **0870 600 4 882** or visit **www.worksmart.org.uk**



Check your rights with your employer

This leaflet covers the basic statutory rights that employers must provide for parents who work for them. Some employers will offer better than those laid out here, but they cannot offer less. You should check your contract of employment, your staff handbook or perhaps a special leaflet that some personnel departments will provide in larger organisations to find out your entitlement with your current employer.

Improving rights for working people, especially those with children or dependent relatives, is a priority for trade unions. If you work for an organisation that recognises a union you are very likely to enjoy better rights than the legal minimum. These will normally be included in your contract of employment. If this is the case then your employer is legally bound to honour them because they have been promised to you. If you think that you have been denied parental leave, or emergency time off when you have needed it, then you must check your legal rights and seek advice from your trade union or a specialist adviser.

Worker or employee?

This is an important question because the rights described in this leaflet only apply to employees. Not everyone who works for someone else is an employee in the eyes of the law. Some employers do try and circumvent their obligations by treating their staff as self-employed. You may even find that you are taxed as if you are an employee but denied the legal right that such workers enjoy. This is because legally you are a worker, not an employee.

If your employer tells you that you are not an employee, for example because you work from home, obtained work through an agency, or are a 'casual' worker, you should get legal advice and clarification. It is vital that you get the leave that you are entitled to. You can find out more about this from the TUC booklet *Your Job and the Law* available from the TUC *Know Your Rights* line **0870 600 4 882** or visiting **www.worksmart.org.uk**

Parental leave

Parental leave is a right for both mothers and fathers to take time off work to look after a child or to make arrangements for the welfare of a child.

Parental leave is unpaid leave so, although some employers may pay you during this time, there is no legal obligation on them to do so. If you do not get paid parental leave and are low paid, then you may be entitled to extra social security benefits or tax credits whilst taking leave. To check these rights contact your local Benefits Agency, a specialist adviser such as a Citizen's Advice Bureau, or the Inland Revenue who can advise on tax credits.

The law provides a basic right for parental leave which employers can then improve on. Many good employers will negotiate a better agreement with their staff than that laid down in the law. These negotiations will take place either with a recognised trade union or, in non-unionised workplaces, with representatives who deal with these issues. In workplaces which have these agreements, parental leave rights will be different (and may be better) so you should not rely on the scheme working exactly the same way as described here.

The basic right

Employees who have worked for their employer for at least one year and have responsibility for a child are entitled to take:

- up to 13 weeks' parental leave for that baby or child until the child's fifth birthday; or
- in adoption cases, for five years after the child is first placed with the family for adoption (or until the child's 18th birthday if that comes sooner)

Your leave entitlement is *per child* so if you have more than one child who matches the criteria above, then you are entitled to more leave.

Employees who are parents of children with a disability and in receipt of Disability Living Allowance are entitled to take 18 weeks' leave up until the child's 18th birthday.



The entitlement to the number of weeks parental leave stated above is per child transferable to another employer. So if you take four weeks' parental leave and then move jobs, you will only be entitled to take a further nine weeks' leave in respect of that child. However, if during this time the child reaches their fifth birthday, then you will lose your remaining entitlement for parental leave in respect of that child.

Important note:

When the UK Government first introduced the right to parental leave, they stipulated that it only applied to children born on or after 15th December 1999. This meant that parents of children under five at the time, born before that date, would lose out. However, following legal action taken by the TUC, the Government amended this decision. The new rules state that if your child's fifth birthday is on or after 15th December 1999 or, in the case of an adopted child, the fifth anniversary of their placement falls on or after that date, then you have until 31st March 2005 to take your parental leave entitlement.

In these circumstances, if you have worked for your current employer for a year, then a year's service between 15th December 1998 and 9 January 2002 with a previous employer (who was not your employer on 9 January 2002) is regarded as sufficient service for you to qualify for parental leave.

How should the leave be taken?

Unless your employer agrees otherwise, leave must be taken a week at a time or in multiples of one week. So under the basic right, if you take less than a full week's parental leave during any week then this will be counted as a whole week of your parental leave entitlement. The only exception to this is for parents of children in receipt of Disability Living Allowance who are entitled to take their parental leave in shorter periods than a week – and can, for example, take it for one day per week.

No more than four weeks' leave may be taken in any one year, except where you have more than one child giving you the right to take leave. Again, if you are the parent of a child in receipt of Disability Living Allowance, then you could take one day per week over 20 weeks and this would use up your annual four-week entitlement for that child.

Giving notice

You must give 21 days' notice of taking parental leave and you must specify the dates that you intend your parental leave to start and finish on. You are not obliged to put this notice in writing, but it is often a good idea to do so in case there is any confusion at a later date.



Giving notice of leave that starts with the birth of a child or adoption

If you are a father-to-be wanting to take leave from the date of the birth, you should give notice at least 21 days before the beginning of the expected week of the birth. You should say when the baby is due and how much leave you want to take once the baby is born. Provided you have given this notice, you can start your parental leave as soon as the baby is actually born, regardless of whether it is earlier or later than was expected.

However, you may decide to take paternity leave (which is paid) instead of or as well as parental leave. You are required to give 28 days' notice for paternity leave and you should see the *Know Your Rights* leaflet *Paternity leave and pay* for more information on this area.

If you are about to have a child placed with you for adoption, you should give notice at least 21 days before the beginning of the expected week of the placement, stating how much leave you want to take. If this is difficult because of the adoption proceedings or any other reason, you should give notice as soon as it is reasonably practicable to do so. You are now entitled to 26 weeks' ordinary adoption leave followed by 26 weeks' additional adoption leave - see the *Know Your Rights* line leaflet *Adoption leave and pay* for more information on this. If you choose to take your parental leave to run immediately after your adoption leave period has finished then you may do so, as long as you have given the correct notice.

Returning to work

If you take leave for four weeks or less you have the right to return to the same job as before. This is the case if you take parental leave following a different form of statutory leave such as paternity leave, *ordinary* maternity leave or *ordinary* adoption leave.

However, if you take more than four weeks' parental leave on its own, or combined with *additional* maternity leave or *additional* adoption leave, then you have the right to return to the same job unless your employer can demonstrate that it is not reasonably practicable to let you do this. If this is the case, then you are entitled to another job that is both suitable and appropriate for you.



Terms and conditions while on **parental leave**

During parental leave you will still be an employee but your employer is not obliged to pay your wages during that time. Your contractual rights, such as the right to 20 days' paid annual leave, will not be affected and can accrue while you are on parental leave, but your employer can suspend your contractual rights such as any paid holiday over and above the statutory minimum.

Seniority and pensionable service

You took parental leave *before* 6th April 2003, then your employer does not have to count the period of leave when they are calculating your seniority or pensionable service. However, all parental leave taken *after* 6th April 2003 must be counted for purposes of seniority, pension and similar rights. In these circumstances you will be treated as if you had never been absent.

The other contractual rights that continue automatically are:

- the notice period in your contract – you or your employer should still give this amount of notice if either of you want to end your job contract
- your right to redundancy pay if you are made redundant
- procedures for grievance or disciplinary action
- terms on not working for competing organisations or disclosing confidential information about your employer's business

Unions often negotiate with employers for contractual rights and benefits to continue as if the employee was still at work. Some good employers may well provide a better deal than the legal minimum and you should check your contract. You should check any other relevant employers' policies or union agreements. Whatever the case in your circumstances, your *statutory* rights (i.e. rights that apply by law to all employees in this country) will continue.



Your employer must not discriminate against you while you are on any part of your parental leave. If you feel that you have been discriminated while on parental leave, you may be able to take a claim to an employment tribunal. You should seek advice from your union or a legal specialist in such cases.

Employers' right to postpone parental leave

If an employer considers that your absence would unduly disrupt the business then they can postpone your parental leave for no longer than six months after the date when you originally wanted to start your leave.

Your employer should discuss this with you and confirm the postponement in writing no later than seven days after you have given them your notice of wanting to take leave. The employer's notice should say why they are postponing the leave and set out new dates for it. Your employer cannot postpone your leave entitlement a second time, even if they feel that their reasons for refusing the leave in the first instance have not changed.

If the postponement of parental leave by the employer means that the leave then starts after the child's fifth birthday/ placement anniversary, or 18th birthday where relevant, then you are still entitled to take it. However, if this situation occurs then you should seek advice immediately from your union rep or an advice agency.

Time off for dependants

All employees have the right to 'reasonable' time off work to help people such as family members or friends who depend on them for assistance in an emergency. There is no set limit on how much time off can be taken but you can only take off the time necessary to sort out the immediate 'problem'.

This time off does not have to be paid by the employer, even though the leave may only be for a few hours during a paid working day. However some employers (often those with trade union agreements on 'family', 'special' or 'carer's' leave) already give paid leave in these circumstances, perhaps up to a certain number of days per year.

What is a dependant?

A 'dependant' means your parent, wife, husband or child, or someone who lives with you as part of your family. It does not include someone in a more commercial relationship with you, such as a live-in employee or a tenant.

A 'dependant' can also be someone who 'reasonably' relies on you for help if they are ill, or has an accident or when their normal care arrangements have broken down (for example, if they are a neighbour or friend of yours with a disability).

What time off can be taken?

An employee has the right to 'reasonable' time off:

- to help when a dependant falls ill, gives birth, is injured or assaulted – ('illness' or 'injury' includes mental illness or injury);
- when a dependant dies;
- to cope when the arrangements for caring for a dependant unexpectedly break down;
- to cope with an unexpected incident involving a dependant child during school hours, or on a school trip or in other circumstances when the school has responsibility for the child.

Employees relying on this right must tell their employer, as soon as reasonably practicable, why they are absent and (unless they are already back at work), for how long the absence is likely to last. The nature of this right means it is for times of emergency, or unexpected incidences, rather than events for which the employee has forewarning. In the latter circumstances, employees would be expected to take a different form of leave than this one.

The right to time off for dependants depends, to a large extent, on what is 'reasonable' and this is not defined in law. Therefore, it can be difficult to know where you stand if your employer refuses you your right to leave or argues that you took unauthorised leave. In this situation, you should consult your union rep or a specialist adviser immediately.

These leave rights do not apply to other domestic emergencies such as break-ins, fire or floods, although most employers should be reasonable in these circumstances.



Questions and answers

Who counts as a 'parent' in order to be able to take parental leave?

Only parents, carers with 'parental responsibility' or who expect to get 'parental responsibility', and fathers who are registered on a child's birth certificate are entitled to take parental leave for a child. Natural mothers and married fathers automatically have parental responsibility. Unmarried fathers will have 'parental responsibility' if they have been granted it by the mother or have a court order granting it. Adoptive parents will get 'parental responsibility' when the adoption order is made. However, from 2004 parental responsibility will be given when the placement is made rather than the adoption order. Same-sex partners or others may sometimes get 'parental responsibility' through legal proceedings. If your employer is disputing your right to take leave on this ground, you may need to get advice from a family lawyer or specialist family law adviser. You can contact the Law Society for details of family law specialists.

Can my employer require me to produce evidence of being a parent in order to take parental leave?

An employer can ask to see evidence about your responsibility for a child. You might need to produce a birth certificate, adoption papers, other papers about legal proceedings regarding the child, or evidence of a Disability Living Allowance award. If you are unhappy about your employer's demands about producing evidence, consult your union rep or a specialist adviser.

What happens if I change my job?

If you have not taken all your leave in one job you carry over any extra leave to your new job. But you must wait until you have worked for your new employer for more than a year before you can take any more parental leave. If this takes you beyond your child's fifth birthday (or the other qualifying conditions for adopted or disabled children) then you will lose the leave entitlement. Employers are not obliged to keep records of parental leave, so you should keep a diary of any parental leave you take, and you may want to get your current employer to sign this if you change jobs so that you have some evidence of how much leave you have left.

Does my paternity leave or extra maternity leave count toward parental leave?

There is a separate legal right to paternity leave, which is the right to time off for fathers (or partners of the mother) around the time of the birth of a baby or a child's placement for adoption. Since part of the purpose of this leave is to help and support the mother at this time, it should not count as 'parental' leave. Get advice if your employer is trying to deduct your paternity leave from your 13 weeks' parental leave. Legal rights to 'ordinary' and 'additional' maternity leave are also in addition to the right to parental leave.

Women employees are now entitled to 26 weeks ordinary maternity leave from day one in their jobs. For more information call the TUC *Know Your Rights* line for a copy of the leaflets *Maternity leave and pay* or *Adoption leave and pay*. If your employer is trying to deduct this right to leave from your 13 weeks' parental leave, get advice from your union rep or a specialist adviser, as your employer may be in breach of your contract or sex discrimination law.

What happens if my employer tries to prevent me taking parental leave or time off for dependants, or dismisses or disadvantages me?

You have the right to complain to an employment tribunal if your employer has unreasonably refused to let you take time off for dependants, unreasonably postponed your parental leave or has prevented or tried to prevent you from taking parental leave. You also have a separate right not to be dismissed or subjected to any unfavourable treatment other than dismissal (such as harassing you, downgrading your job or cutting your pay) because you have taken parental leave or time off for dependants or have tried to do so.

If you decide to make a complaint to a tribunal, you must make sure that any complaint is made within three months of the actions of your employer that you are complaining about. Otherwise, it is very unlikely that your complaint will be heard. If you are considering making a complaint, get advice from a union rep, a solicitor or another specialist adviser.

Contacts

Maternity Alliance

Campaigns for better rights for new mothers and parents, provides advice to pregnant women and new parents.

T: 020 7490 7638

www.maternityalliance.org.uk

Parents at Work

Campaigns for rights for working parents.

T: 020 7253 7243

www.parentsatwork.org.uk

Discrimination Law Association

Promotes legal advice for people suffering discrimination; provided information on discrimination law; campaigns for improvement in the scope and enforcement of UK discrimination law.

T: 01933 412337

www.discrimination-law.org.uk

Health and Safety Executive

Provides advice and information to working people and employers on health and safety matters, including those related to pregnancy and maternity.

T: 08701 545500

www.hse.gov.uk

Citizens Advice Bureaux

Telephone numbers in local phone directories.

www.adviceguide.org.uk

Equal Opportunities Commission

Provides advice on sex discrimination and maternity/parental rights legislation.

T: 0845 601 5901

www.eoc.org.uk

ACAS

Provides advice to working people and employers on employment rights and law. Also sets up arbitration in disputes.

T: 0845 747 4747

www.acas.org.uk

Department for Trade and Industry (DTI)

Provides website dedicated to parental rights for employers and working people.

www.tiger.gov.uk

Employment Tribunals Service

Provides advice and information on taking a case to an employment tribunal.

T: 0845 795 9775 (this helpline can only provide general information and cannot provide legal advice)

www.employmenttribunals.gov.uk

Benefits Agency

Local information is in the telephone directory. Information is also available from the Department for Work and Pensions

www.dwp.gov.uk

Community Legal Service

Offers directory on legal help available in England and Wales.

www.justask.org.uk

Fathersdirect

Provides information for fathers and fathers-to-be. Campaigns for better rights for parents – including fathers.

020 7920 9491

www.fathersdirect.com

