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BOOKING UNIT

**Know
Your
Rights**

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**Leave and
pay for
mothers**

TUC 

Pregnant women are protected from harm in the workplace and have the right not to be dismissed or unfavourably treated because of their pregnancy. Most employed mothers are entitled to 52 weeks' maternity leave and 39 weeks' Statutory Maternity Pay or Maternity Allowance. Mothers with children born on or after 5 April 2015 may also be able to convert some of their maternity leave and pay into Shared Parental Leave and Pay which they or their partner can take on a more flexible basis in the first year of their child's life.

This booklet describes how these rights work. It also provides information on the right to unpaid parental leave, the right to request flexible working and the right to emergency time off for dependants, which may help mothers balance paid work with bringing up their children.

If you are adopting a child or having a child through surrogacy arrangements you may wish to refer to separate Know Your Rights booklets that cover these situations.



Check your rights with your employer

This booklet covers the basic (sometimes called 'statutory') rights that employers must provide to expectant and new mothers who work for them. Your employer may offer better rights than the legal minimum and you need to check your contract of employment or your staff handbook to find out what your entitlement with your current employer is. If you work for an organisation that recognises unions, you are likely to have better than the legal minimum rights, as unions will have negotiated higher contractual maternity pay in many workplaces.

Are you a worker or employee?

Employees are entitled to all the rights described in this booklet (this includes those on fixed-term contracts, or apprentices). However, some working women will have fewer rights than the legal minimum for employees. This is because not everyone who works for someone else is an employee in the eyes of the law and some rights apply only to employees. If your employer tells you that you are a 'worker' rather than an employee (e.g. because you were taken on via an agency or because you are a casual worker), you should

seek legal advice and clarification as soon as possible. It is vital to seek advice to be sure that you get the basic rights you are entitled to.

Same-sex partners

If you are in a same-sex relationship, you have the same basic rights when you are pregnant or become a mother as women in opposite-sex relationships. If your employer provides things like contractual maternity pay or contractual pay while on Shared Parental Leave then they must give you the same access to them.

Rights of pregnant women at work

A pregnant employee is entitled to:

- **paid time off to attend ante-natal appointments**
- **health and safety protection**
- **protection from dismissal and discrimination.**

Ante-natal care

The right to paid time off to attend ante-natal appointments includes not just appointments with midwives and medical staff but can include relaxation or parentcraft classes if recommended by a doctor or midwife. There is no maximum amount of time off. The time off allowed is what is reasonable to attend the appointment, including your travelling time to and from it.

Your employer can ask you for evidence of your pregnancy or the appointment but not if it is your first ante-natal appointment. The employer cannot force you to make up the lost time or get you to take annual leave to cover the appointment.

A pregnant agency worker who has worked for the same hirer in the same role for 12 weeks or more is also entitled to paid time off to attend ante-natal appointments.

Health and safety protection

Your employer must take reasonable steps to protect you and your unborn baby from harm in the workplace. If there are any risks (e.g. from working hours, stress, lack of hygiene, heavy lifting or working with hazardous chemicals) then your employer must temporarily adjust your work to avoid the risk.

If it is not possible to make adjustments, then you are entitled to be offered suitable alternative work at the same rate of pay and if that is not possible then you are entitled to be suspended from work on full pay.

All pregnant workers are protected from harm in the workplace but only employees and agency workers who have 12 weeks' service with the same hirer in the same role are entitled to suitable alternative work or to a paid suspension from work when it is not possible to make adjustments to reduce the risk of harm.

Protection from dismissal and discrimination

All pregnant employees and workers have the right not to suffer unfavourable treatment because of their pregnancy. For example, you should not be disciplined for pregnancy-related sickness absence or for needing more toilet breaks during the day. Or if you are an agency worker you shouldn't be refused assignments because you are pregnant. If you are a pregnant employee who is dismissed because of your pregnancy this would be an automatically unfair dismissal.



Maternity leave and pay

If you are an employee you are entitled to 52 weeks' maternity leave. This is regardless of how long you have worked for your employer.

You must take at least two weeks of maternity leave ('Compulsory Maternity Leave') after the birth (or four weeks' leave if you work in a factory).

To qualify for Statutory Maternity Pay (SMP), you must have worked for your employer for at least 26 weeks by the 15th week before the week the baby is due and your average gross earnings must be equal to or more than the Lower Earnings Limit in the eight weeks prior to the 15th week before the baby is due.

The first six weeks of SMP is paid at 90 per cent of your normal weekly earnings and the remaining 33 weeks is paid at a flat rate (or 90 per cent of your earnings if you earn less than the flat rate). See www.gov.uk/maternity-pay-leave/pay for the current flat rate.

SMP is paid through the payroll and your employer deducts any tax and national insurance from it.

If you do not qualify for SMP then you may be able to claim Maternity Allowance (MA). To qualify for MA, you must have:

- worked for at least 26 of the 66 weeks before the week in which your baby is due
- earned on average more than £30 a week for 13 weeks during that time (not necessarily in a row).

MA is claimed and paid through Jobcentre Plus. It is payable for 39 weeks. It is paid at the flat rate throughout (or 90 per cent of your earnings if you earn less than the flat rate).

Working out the qualifying week and other time limits

To work out when the 15th week is before the expected week of childbirth (the 'qualifying week'), you find the Sunday immediately before your due date and count back 15 Sundays from then (not including the Sunday immediately before).

To work out the deadline for giving notice to your employer, you also count back 15 Sundays from the Sunday immediately before your due date.

To work out the earliest date you can begin your maternity leave, you count back 11 Sundays from the Sunday immediately before your due date.

Notifying your employer

You must notify your employer of your intention to take maternity leave no later than the 15th week before the week your child is due. You cannot start your leave earlier than the 11th week before your baby is due.

Your notice should state:

- that you are pregnant
- the expected week of childbirth
- the date on which you intend to start your maternity leave.

Your employer can request a copy of your MATB1 form which will be given to you by your doctor or midwife around week 20 of your pregnancy. Your employer will need this to process any claim for SMP.

Once you have given notice you can change your mind by giving your employer notice of your new plans at least 28 days before the original start date or the new start date for your leave, whichever is the earliest.

Although you don't have to give notice of your maternity leave until

you are around six months' pregnant, it is advisable to notify your employer of your pregnancy at an earlier stage so that you can benefit from the rights to paid time off for ante-natal care, health and safety protection and protection from pregnancy discrimination.

The start of your maternity leave will be automatically triggered if your baby is born before you were due to start your maternity leave. The leave will start the day after the birth.

If you are still working in the last four weeks of pregnancy and you have a pregnancy-related illness or absence then your employer can insist that you start your maternity leave early.

During maternity leave

While you are on maternity leave your employment contract continues. This means you continue to accrue annual leave and are entitled to routine pay rises, redundancy pay, childcare vouchers, and a company car or mobile phone (unless for business use only). The only thing that does not continue

is your entitlement to normal pay. Instead you will receive SMP or MA for up to 39 weeks. You might also qualify for contractual maternity pay for some or all of your leave so check your staff handbook or contract of employment. Your employer must also continue your pension contributions for any paid period of maternity leave.

If you cannot take all your accrued annual leave in a leave year because of maternity leave then you can carry it forward to the following year.

Whilst on maternity leave your employer must not discriminate against you because you are taking leave. For example, they must let you know about promotion opportunities that arise and they must make sure you are properly informed and fairly treated during any redundancy or restructuring exercise that affects you.

Keeping in Touch days

You can work for up to ten 'Keeping in Touch' (KIT) days during your maternity leave without this bringing your maternity leave to an end and you can continue to receive SMP or MA. KIT days could be used for you to attend a training day, staff meeting or do a full day's work. Anything you do on a KIT day will count as a full day's work, even if you only attended a meeting for a couple of hours or did a half day's work.

KIT days are entirely voluntary. Your employer cannot make you do any work during your leave. There is no statutory entitlement to be paid your

normal pay during a KIT day. It is up to you to agree with your employer how much you will be paid.

Redundancy while on leave

If you are made redundant whilst on leave, your employer must offer you any suitable alternative work that is available. The terms and conditions of the new job must not be substantially less favourable than those that applied to your old job.

Returning to work

If you want to return to work before the end of your full 52 weeks' maternity leave then you must give your employer at least eight weeks' notice of your intended date of return. If you return after 26 weeks or less maternity leave (or a combination of maternity leave and Shared Parental Leave), you have the right to return to the same job you had before you went on leave.

If you return to work after more than 26 weeks' leave (or a combination of maternity leave and Shared Parental Leave), you have the right to return to the same job unless your employer can show that it was not reasonably practicable to have kept the job open for you. In this case you are entitled to return to a suitable and appropriate job on terms and conditions that are not less favourable.

Breastfeeding and return to work

If you are still breastfeeding when you return to work you should inform your employer. Under health and safety legislation, your employer is required to provide you with adequate rest facilities and to ensure that you and your baby are not exposed to particular risks in the workplace.

There is no statutory right to time off to express milk or breastfeed a baby in the workplace or to facilities

for expressing and storing milk. However, if your employer refuses to accommodate your needs as a breastfeeding mother you should speak to your union representative or seek legal advice as you may be able to claim sex discrimination.



Shared Parental Leave and Pay

Mothers of babies due on or after 5 April 2015 have the option of converting some of their maternity leave and pay into Shared Parental Leave (SPL) and Shared Parental Pay (ShPP). This would allow them to share some of the first year's leave and pay with their partner/the child's father or they could use it to take leave on a more flexible basis.

The maximum amount of maternity leave that can be converted into SPL is 50 weeks and the maximum amount of SMP or MA that can be converted into ShPP is 37 weeks. This is because the compulsory two weeks of maternity leave cannot be converted.



Sharing leave with your partner or the father

If your partner is not the child's father but shares the main responsibility for caring for your child then you can share your leave with them. A partner is a spouse, civil partner or someone you are in a relationship with and live with at the time of the child's birth.

If you are not in a relationship with the child's father but you still share the main responsibility for caring for your child then you can share your leave with him,

You cannot share your leave with more than one person.

A single mother who does not share responsibility for raising her child with the other parent cannot share her leave with anyone else or take any SPL herself.

For simplicity, this guide uses only the term 'partner' but it applies in the same way to separated fathers who share the main responsibility for raising the child.

Eligibility for SPL and ShPP

For **you** to be eligible to take a period of SPL:

- You must be entitled to statutory maternity leave.
- You must have brought the leave to an early end by returning to work or given notice to your employer that you intend to bring it to an early end.
- You must have been employed by your employer for at least 26 weeks by the 15th week before the expected week of birth and continue to be employed by them.

- You must share the main responsibility for caring for your child with your partner.
- Your partner must have been an employee or a self-employed earner for at least 26 out of the 66 weeks immediately before the expected week of birth and have earned an average £30 a week in 13 of the 66 weeks (it doesn't have to be consecutively).

To qualify for ShPP, you must also have an entitlement to SMP, to which you have given notice you will bring to an early end.

For **your partner** to be eligible to take a period of SPL:

- You must be entitled to statutory maternity leave or Statutory Maternity Pay (SMP) or Maternity Allowance (MA).
 - You must have:
 - brought the leave to an early end by returning to work or given notice to your employer that you intend to bring the leave to an early end
- OR
- given notice to your employer that you intend to bring your SMP or MA entitlement to an early end.
 - Your partner must have been continuously employed by their current employer for at least 26 weeks by the 15th week before the expected week of birth and continue to be employed by them.

Your partner must have also earned not less than the Lower Earnings Limit, on average, in the eight weeks prior to the 15th week before the expected week of birth to qualify for ShPP.

Notifying your employer of an early end to maternity leave and pay

To notify your employer that you won't be using your full maternity entitlement, you must give them written notice at least eight weeks before the date you intend it to end. This is called a 'curtailment notice'.

You can give a curtailment notice to your employer before giving birth and starting your maternity leave. You might want to do this to create some SPL for your partner to use around the time of the birth. For example, you could notify your employer before the start of your maternity leave that you intend to only take 26 weeks' leave and SMP. This would then create an entitlement to 26 weeks' SPL (52 minus 26 weeks) and 13 weeks' ShPP (39 minus 26 weeks). Your partner could then let their employer know that they wish to take four weeks of SPL and ShPP straight after their two weeks' paternity leave so they can be at home for the first six weeks after the birth.

If you give your employer a curtailment notice before the birth but you change your mind and decide you want more maternity leave, you can withdraw the curtailment notice within six weeks of the birth.

Some key points about SPL:

- Once you convert your maternity leave or pay entitlement into SPL and ShPP it becomes a shared entitlement which either you or your partner can use (if both of you meet the eligibility requirements for taking it). You might want to take SPL instead of maternity leave so that you can return to work for a period but then be off again later in the year.
- You may qualify to take SPL but your partner may not. This would be the case if your partner was self-employed or didn't have the required 26 weeks' service with their employer.
- If you have an entitlement to contractual maternity pay, you might lose it if you bring your maternity leave to an early end and switch to SPL. You should check with your employer whether they provide contractual pay to employees on SPL before curtailing your maternity leave.
- You and your partner can use SPL to be off work at the same time.
- You can request a discontinuous pattern for taking SPL from your employer, for example, two weeks on, two weeks off, but your employer has the right to refuse such a request.
- You can take a maximum of three blocks of SPL unless your employer agrees to a discontinuous pattern of leave or agrees to accept more than three notices of leave.
- SPL cannot be taken in multiples of less than a week.
- SPL cannot be used after the child's first birthday.



Notice of entitlement and intention to take SPL

If you would like to use SPL and ShPP, you must give your employer two kinds of notice. The first is a notice of your entitlement and intention to use SPL and the second is a 'booking notice' to book a period of SPL.

The first notice is not binding. It must be given to your employer at least eight weeks before you intend to take any SPL and ShPP. It lets your employer know that you qualify for SPL and ShPP and would like to use it.

You must include the following information in this notice:

- your name
- your partner's name
- the start and end dates of:
 - your maternity leave
 - your SMP or MA
- the total amount of SPL and ShPP that is available once your maternity entitlements come to an end
- the child's expected week of birth and the actual date of birth
- how much SPL and ShPP you and your partner intend to take
- an indication of when you intend to take your SPL and ShPP.

You need to include a signed declaration that you meet the eligibility criteria for SPL and that you will notify them if that changes. You must also give your employer a signed declaration from your partner

that includes their name, address and national insurance number and states that they meet the employment and earnings requirements for you to qualify for SPL. Your partner must also consent to the amount of SPL and ShPP you intend to claim and give their consent to your employer processing their information.

Your employer can ask for a copy of your child's birth certificate and the name and address of your partner's employer. If your employer asks for this information then you must give it to them within 14 days of the request. If the child has not yet been born or a certificate has not yet been issued then you need to provide the certificate within 14 days of birth or provide a signed declaration of the date and location of the birth. If your partner does not have an employer then you need to provide a signed declaration that they are not employed.

For details of how your partner can take SPL see the Know Your Rights leaflet *Leave and Pay for Fathers and Partners*.

Booking notice for SPL

Once you have given the notice of entitlement and intention to use SPL, you must give your employer a booking notice. This is a binding notice which tells them the start and end dates of any period of SPL you plan to take. You can give a maximum of three booking notices (unless your employer agrees to accept more).

The booking notice must be given at least eight weeks before the intended start date of SPL. It can provide notice of the start and end dates of more than one period of SPL. If it does, it will be treated as a request for discontinuous leave which your employer can refuse. However, if it provides notice of just one period of SPL then the employer must grant it.

Requests for discontinuous leave

If you request discontinuous leave, within two weeks of receiving your booking notice your employer can:

- agree to the periods of leave requested
- propose alternative dates for the periods of leave
- refuse the periods of leave without proposing alternative dates.

If your employer agrees to the requested leave or agrees alternative dates with you then you are entitled to take the leave. If alternative dates are agreed you need to give a new booking notice to your employer. This will not count towards your maximum of three.

If the employer refuses your request or does not respond to it within two weeks, then you are entitled to take the total amount of leave you requested in the booking notice as one continuous block. You can choose a start date for this leave by giving notice of it within five days of the end of the two-week period. The start date you choose must be at least eight weeks after the date on which you gave your original notice.

If you don't notify your employer of a start date, the leave must begin

on the start date of the first period of leave you requested in your booking notice.

Alternatively, if you can't reach agreement with your employer, you can withdraw your original booking notice within 15 days of giving it. It will not count towards your maximum of three notices and you can begin again.

If you change your mind about a period of SPL

You can change your mind about a period of SPL but you must give your employer at least eight weeks' notice before both the date you were meant to start your leave and the new date you've chosen.

If you give notice that you want to vary a period of SPL that you've already booked, it will count towards the maximum of three notices you can give, unless the variation:

- withdraws a notice of discontinuous leave that your employer wouldn't agree to.
- is because you originally requested discontinuous leave and your employer suggested alternative dates which you've agreed to
- is because your child was born earlier or later than the expected week of birth.

Shared Parental Leave In Touch days

You can work for your employer during a period of SPL without bringing it to an end. These work days are known as 'Shared Parental Leave In Touch days' or SPLIT days. They operate in exactly the same way as KIT days do during maternity leave (see above).

The maximum number of SPLIT days you can use is 20. This maximum applies to the whole period you are eligible to take SPL (i.e the 50 weeks after birth) rather than to each period of SPL that you take.

SPLIT days could be used to give you a period of part-time work, for example, you could choose to take six weeks of SPL after maternity leave and agree with your employer that you will work three SPLIT days a week. This would use up 18 of your SPLIT days.

Working during SPL does not extend your SPL entitlement. In the example given, you would still use up six weeks of your SPL entitlement even though you were working three days a week during those six weeks.

You can still receive ShPP during SPL so if your employer agreed to pay your normal rate of pay for any SPLIT days worked this may help make a period of part-time work more affordable.

During SPL and return to work

You have the same rights during SPL as you do during maternity leave and the same rights apply upon return to work.



Unpaid parental leave

As well as maternity leave and Shared Parental Leave, which are restricted to the first year of a child's life, many working parents also qualify for unpaid parental leave. From 5 April 2015, the entitlement of 18 weeks' leave per child can be used up to the child's 18th birthday.

To qualify you must have responsibility for a child and have at least a year's service with your current employer.

Under the basic right you have to take parental leave in blocks of one week or multiples of a week. If you do take less than a full week's leave, it will still count as a week and be deducted from your total entitlement. However, if your child is disabled or your employer has agreed to leave being taken in shorter periods, you may be able to take parental leave on a daily or shorter basis.

Under the basic right, you can't take more than four weeks' parental leave a year for each child (if you have two children the maximum amount would be eight weeks' leave a year) but your employer may agree to vary this.

To take parental leave, you must give your employer at least 21 days' notice. Your employer can postpone a period of parental leave that you have requested if they believe it would unduly disrupt the business. However, they must allow you to take the leave at an agreed date within six months of the start date you requested.

If you take less than four consecutive weeks of parental leave you have the right to return to the same job. If you take more than four consecutive weeks, you have the right to return to the same job unless that is not reasonably practicable, in which case you have the right to return to a similar job on terms and conditions that are not less favourable.



Right to request flexible working

As a mother you may wish to reduce or vary your working hours to accommodate your childcare responsibilities.

All employees with 26 weeks or more service with their employer have the right to request flexible working. Your employer has a duty to consider a request reasonably.

A request must be in writing and must include:

- the date of the application, the change you are requesting and when you'd like it to begin
- what effect you think the change would have on your employer and how that could be dealt with
- a statement that it is a statutory request and if you have made a previous request the date you made that request on.

You can only make one statutory request a year.

Acas have a statutory code of practice that explains what an employer should do with a request. It says: they should arrange to discuss the request with you as soon as possible; they should allow you to be accompanied at a meeting by a colleague; they should inform you

in writing of their decision; and if they reject the request they should allow you to appeal that decision.

The employer must give you a final response within 12 weeks of receiving your initial request.

If you want to vary your hours when you return to work after maternity leave or SPL then you should make sure you make your request in good time as it could take 12 weeks to get a final decision.

If your employer agrees to your statutory request then it results in a permanent contract change. If you or your employer want to trial a period of flexible working or you only want to vary your working arrangements for a temporary period then it is important that you agree this in writing.

Your employer can say no to your request for one of eight business reasons. They cover: additional costs; an inability to reorganise work; an inability to recruit additional staff; detrimental impact on quality, performance or customer service; insufficient work for the periods the employee proposes to work; and a planned structural change to the business.

If your employer rejects your request you may be able to claim indirect sex discrimination. Mothers are more likely to be put at a disadvantage by a requirement to work long or fixed hours.



Time off for dependants

As a working parent you also have a statutory right to time off work:

- if your child falls ill
- to make arrangements to help care for your child if they are ill or injured
- to deal with an unexpected breakdown in childcare
- to deal with an unexpected incident at school that involves your child.

The right is to a reasonable amount of time off to deal with the immediate crisis; for example, to put alternative childcare arrangements in place if your childminder is ill or your nursery won't take your child because they are ill.

You must tell your employer why you are off work as soon as possible.

The time off doesn't have to be paid. However, your employer may agree to pay it or they may provide a certain amount of paid carer's leave or compassionate leave that can be used in these circumstances.



Contacts

Acas

Acas National Euston Tower
286 Euston Road
London NW1 3JJ
Helpline: 08457 474747
www.acas.org.uk
Twitter: @acasorguk

Maternity Action

52-54 Featherstone Street
London
EC1Y 8RT
T: 020 7253 2288
E: info@maternityaction.org.uk
Helpline: 0845 600 8533

Working Families

Cambridge House
1 Addington Square
London
SE5 0HF
Tel: 020 7253 7243

Free legal helpline for low income families:

0300 012 0312 or email: advice@workingfamilies.org.uk

www.workingfamilies.org.uk

Twitter: @workingfamUK

Unions today – Your friend at work

The rights described in this booklet – and many others such as the minimum wage – have been won by union campaigning. Without union help and assistance many workers don't get the full benefit of their rights. Unions also help negotiate better pay and conditions than the legal minima, including far better provisions for family-friendly employment.

Every day unions help thousands of people at work and every year they win hundreds of millions of pounds in compensation for their members through legal action.

To find out more about trade unions and which is the best for you visit the TUC website **www.tuc.org.uk/joinaunion**

www.worksmart.org.uk

This is a one-stop site for everyone at work. The site provides a range of information about working life – whether you are a union member or not.



Congress House, Great Russell Street, London WC1B 3LS
Tel: 020 7636 4030
www.tuc.org.uk