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Rights**

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Leave and pay for fathers and partners

TUC 

If you are an expectant father or the partner of someone due to give birth or adopt a child, you could be entitled to time off to attend ante-natal appointments plus up to two weeks' paid paternity leave. You may also be able to take more time off in the first year as Shared Parental Leave and be entitled to some Shared Parental Pay.

Other rights that may help you combine paid work with looking after your child include unpaid parental leave, the right to request flexible working and emergency time off for dependants.

This booklet explains who is entitled to these rights and how they work. It focuses on how these rights work following the birth of a child. If you are adopting a child or using a surrogate to have a child you may want to refer to the Know Your Rights leaflets for these situations.



Check your rights with your employer

This booklet covers the basic (sometimes called 'statutory') rights that employers must provide to qualifying expectant fathers and partners 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 have pushed for higher contractual pay during paternity leave.

Are you a worker or employee?

This is an important question because most of the rights described in this booklet only apply to employees. Not everyone who works for someone else is an employee in the eyes of the law. If your employer tells you that you are not an employee, for example, because you are self-employed or an agency worker, you should seek advice and clarification to make sure that this is really the case and you are not missing out on leave and pay that you are entitled to.

Same-sex partners

Same-sex partners are entitled to the same basic leave and pay rights as opposite-sex partners when they have children. If employers provide better contractual rights to leave and pay then they must provide these to same-sex partners too. To exclude same-sex partners would be sexual orientation discrimination, which is unlawful.

Time off to attend ante-natal appointments

From 1 October 2014, an expectant father or the partner of a pregnant woman is entitled to unpaid time off work to attend up to two ante-natal appointments. The maximum amount of time off work that you can take for each appointment is 6.5 hours.

A 'partner' is a spouse, civil partner or someone who lives with and is in a long-term relationship with the pregnant woman.

All employees have this right from day one. Agency workers qualify for this right if they have been in the same role for the same hirer for 12 weeks or more.

Your employer can ask you for a signed declaration stating:

- the date and time of the appointment
- that you qualify for the right as the expectant father or partner of the pregnant woman
- that the appointment is made on the advice of a doctor, midwife or nurse.

Your employer cannot ask you for the appointment card because this is the property of the pregnant woman.

The right is to time off work to attend an appointment if the pregnant woman wishes you to be there. It is not a right to attend an appointment. Ante-natal appointments are about monitoring the health and well-being of the mother and unborn baby and it is up to the pregnant woman to decide who she wants to accompany her to the appointment.

Paternity leave and pay

The basic right to paternity leave is one week or two consecutive weeks' leave around the time of the birth.

Statutory paternity pay is paid at a flat rate for each week of paternity leave (or 90 per cent of your normal earnings if that is lower). See www.gov.uk/paternity-pay-leave/pay for the current rate of statutory pay.

Remember you may be entitled to a higher rate of pay from your employer, so check your contract of employment or staff handbook. Your employer may ask you to complete the form SC3 which is available from HMRC before you take your paternity leave. You must complete this form if you are going to claim statutory paternity pay.

Eligibility for paternity leave

You are entitled to paternity leave if you:

- have been continuously employed by your employer for 26 weeks or more by the 15th week before the baby is due and are still employed by them
- are the father of the child and expect to have responsibility for raising the child

OR

- you are the spouse, civil partner or co-habiting partner of the child's mother and expect to have the main responsibility along with the mother for raising the child.

To qualify for statutory paternity pay, you must also earn, on average, the Lower Earnings Limit or more in the eight-week period before the 15th week before the week the baby is due. (Find the Sunday immediately before the due date and count back 15 Sundays from then).

The earliest paternity leave can start is the date the child is born. If necessary, you can use the emergency right to unpaid time off for dependants to make sure you are there for the labour and birth.

Paternity leave must be taken within 56 days of the birth of the child. If the baby is born prematurely then you have 56 days from the first day of the week in which the child was due to take your leave.

Notifying your employer

If you intend to take paternity leave you have to give your employer notice that specifies:

- the expected week of childbirth
- the length of the leave that you intend to take (i.e. either one week or two weeks' leave)
- the date that you have chosen for your leave to begin.

You can choose one of the following dates for the leave to begin:

- the date the child is born
- a date falling a set number of days after the child is born
- a specified date which is after the first day of the expected week of birth.

You must give your employer notice of your paternity leave in or before the 15th week before the expected week of birth or if this is not possible as soon as is reasonably practicable. You can work out when this deadline is by counting back 15 Sundays from the Sunday immediately before the due date.

Once you have given your employer notice, you can change your mind provided you give them notice at least 28 days before the original start date or your new start date, whichever is soonest.

Once the child is born and, as soon as is reasonably practicable, you must let your employer know the date of birth. If you have asked for the leave to start on the day your child is born and you are at work that day then the leave will begin on the following day.



During paternity leave

All your terms and conditions (e.g. accrual of holidays, pension contributions, access to company car) continue as if you had not taken leave, except your right to receive your normal pay (you will receive paternity pay instead).

Return to work

You are entitled to return to the same job on the same terms and conditions as before you went away.

Protection from detriment and dismissal

Your employer must not subject you to any detriment or dismiss you because you have taken or intend to take paternity leave.



Shared Parental Leave and Pay

If you are expecting a child on or after 5 April 2015 you may be able to use Shared Parental Leave (SPL) to take more time off work in the first year to care for your child if your partner agrees to bring her maternity leave and pay to an early end. The maximum amount of leave that you could take is 50 weeks because your partner's entitlement to maternity leave is 52 weeks and two of those weeks are compulsory so cannot be converted into SPL. The maximum amount of pay you could claim is 37 weeks (39 weeks' Statutory Maternity Pay or Maternity Allowance minus the two compulsory weeks of maternity leave). ShPP is paid at the same flat rate (or 90 per cent of your normal earnings if that is lower) as statutory paternity pay.

Partners and fathers

If you are not the child's father but you are the mother's partner and share the main responsibility for caring for the child, then you may be entitled to SPL. A partner is someone who is the spouse or civil partner of the mother or someone who is in a relationship with the mother and lives with her at the time of the birth.

If you are the child's father but you are no longer in a relationship with the child's mother you may still be able to use SPL if you share the main responsibility for caring for the child with the mother.

The mother cannot share leave with more than one person.

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

Eligibility for SPL and ShPP

To be eligible for SPL:

- You must have been continuously employed by your current 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 have the main responsibility for caring for the child along with your partner.
- Your partner must be entitled to statutory maternity leave and/or Statutory Maternity Pay (SMP) or Maternity Allowance (MA).
- She must have:
 - brought her maternity leave to an early end by returning to work or given notice to her employer that she intends to bring it to an early end;
 - AND/OR
 - she must have given notice to her employer that she intends to bring her SMP or MA entitlement to an early end.

To qualify for ShPP, your average earnings must be equal to at least the Lower Earnings Limit in the eight weeks up to the 15th week before the expected week of birth. (You can take SPL without qualifying for or claiming ShPP).

If your partner gives her employer notice that she does not intend to use her full entitlement to maternity leave and pay, this is called a 'curtailment notice'. She must give this notice at least eight weeks before the date she wants her maternity leave and pay to come to an end.

You can't give your employer notice of your intention to take SPL until your partner has returned to work or given her employer a curtailment notice.

Your partner can give a curtailment notice to her employer before giving birth. For example, she could notify her employer before the start of her maternity leave that she intends to bring it to an end after 26 weeks. This would then create an entitlement to 26 weeks' SPL (52 minus 26 weeks) and 13 weeks' ShPP (39 minus 26 weeks). You could then notify your employer that you would like to take four weeks of SPL and ShPP straight after your two weeks' paternity leave so you can be at home with your partner and new baby for the first six weeks after birth. You may want to use some more of the remaining SPL and ShPP later in the year once your partner returns to work.

Some key points about SPL:

- Your partner doesn't have to be an employee with an entitlement to maternity leave for you to qualify for SPL. She may be self-employed or an agency worker who has an entitlement to Statutory Maternity Pay or Maternity Allowance but not leave.
- Once your partner's maternity leave and pay have been brought to an end and converted into SPL and ShPP, it becomes a shared entitlement which either of you can use if you both meet the eligibility requirements for taking it.
- You can use SPL to be off work at the same time as your partner. You could both be off work on SPL or you could take some SPL while your partner is still on maternity leave.
- You can break up your SPL entitlement – for example, you could take a month of SPL near the time of the birth and a second month of SPL once your partner returns to work.
- 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, 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 basically 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 partner's maternity leave
 - your partner's SMP or Maternity Allowance
- the total amount of SPL and ShPP that is available once your partner's maternity leave and pay comes 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 also need to give your employer a signed declaration that you meet the eligibility criteria for SPL and ShPP and that you will inform them if this is no longer the case.

Your employer will need a signed declaration from your partner too, which includes her name, address and national insurance number and states that she qualifies for maternity leave and/or SMP or MA. She must consent to the amount of SPL and ShPP you intend to claim. She must also give her consent to your employer processing her 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 does ask 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 but qualifies for SMP or MA then you need to provide a signed declaration that she is not employed.

There is no limit on the number of times you can vary your non-binding notice of intention to take SPL.

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. It will not count towards your maximum of three notices.

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 then count towards your maximum of three notices and you can begin again.

If you change your mind

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. 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.

Your employer can't make you work during a period of SPL but you might find it beneficial to use SPLIT days, for example, to attend a training day or generally keep in touch.

There is no requirement for the SPLIT days to be paid at your normal rate of pay that is for you to agree with your employer. You can still be paid ShPP for the weeks you are working SPLIT days.

These days could be used to give you a period of part-time work. This might be useful if you want to trial a period of part-time work or you want to help with childcare when your partner returns to work. For example, you could take six weeks of SPL and agree with your employer that you will work three SPLIT days a week while on SPL. This would use 18 of your SPLIT days. If your employer agrees to pay your normal pay for SPLIT days and you are still receiving ShPP then it may make a period of part-time work more affordable.

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 actually working three days a week.

Terms and conditions during SPL

As with paternity leave all your terms and conditions continue, except your right to receive your normal wage or salary, and you are protected from detriment or dismissal because you have tried to take or have taken a period of SPL.

Redundancy during SPL

If your job becomes redundant while you are on SPL you have the right to be offered a suitable and appropriate alternative vacancy if one exists with your employer. This new post must have terms and conditions that are not substantially less favourable than your previous job.

Returning to work after SPL

If the total amount of SPL and paternity leave you have taken does not exceed 26 weeks you have the right to return to the same job with the same rights and terms and conditions.

If you have taken more than 26 weeks' SPL and paternity leave, in total, then 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.

Unpaid parental leave

As well as paternity leave which is restricted to the time of the birth and Shared Parental Leave which is restricted to the first year of a child's life, many working parents also qualify for unpaid parental leave.

If you are a father or have parental responsibility for a child and have at least a year's service with your current employer, you can take up to 18 weeks' unpaid parental leave to care for your child. The leave entitlement is per child. So if you have two children your total entitlement is 36 weeks.

From 5 April 2015, parental leave can be used up to the child's 18th birthday.

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). However, your employer may 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 (unless it's to be taken around the time of the birth) 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 had requested.

If you've taken less than four consecutive weeks of parental leave you have the right to return to the same job. However, 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 father or a partner with responsibility for bringing up a child 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 which 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 your employer agrees to the request then it results in a permanent change in your contract. If you want to trial a period of flexible working or only want a temporary variation then you should make sure you agree this with your employer 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 but they have granted similar requests from mothers then you might be able to claim sex discrimination.



Emergency time off for dependants

As a working parent you have a statutory right to time off that could be used in the following circumstances:

- to help if a child falls ill or is injured
- to make arrangements to help care for a child who is 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 usual nursery or childminder can't look after your child.

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.



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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.



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