



Employment Law
Advice Bureau

The New Law to Neonatal Care Leave & Pay:

Guide for UK Employers





For a lot of parents, the birth of a child is a moment filled with joy. However, for those whose newborns require neonatal care, this time can bring immense stress, uncertainty, and financial strain. When babies are born prematurely or with health complications, parents need to focus entirely on their child's well-being.

The UK government has confirmed that the **Neonatal Care (Leave and Pay) Act 2023** will come into force on **6 April 2025**, introducing a **new day-one employment entitlement** to neonatal care leave. Eligible employees will also receive statutory neonatal care pay, provided they meet the necessary service and earnings criteria.

This guide explains the new entitlements and their impact on employers.

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Why Does This Change Matter?

This new right will enable parents to take time off to care for their baby during their neonatal care, without using up their maternity, paternity, or shared parental leave. It aims to provide peace of mind to parents during a stressful time. The government expects around **60,000 new parents** to benefit from these changes.

The provisions will apply to employees in **England, Wales, and Scotland**.

New Liabilities for Employers...

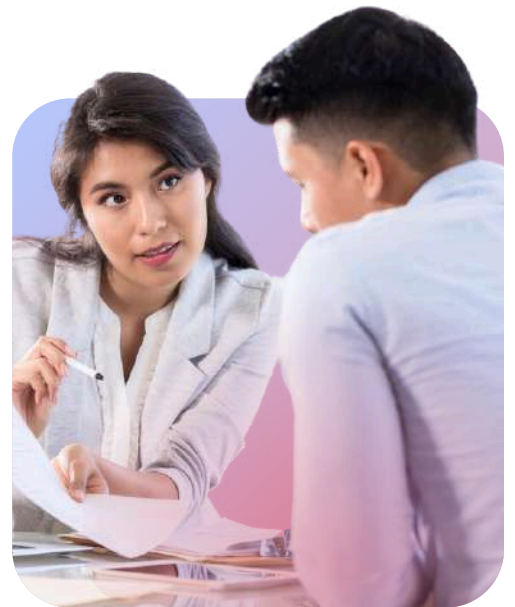
While the legislation aims to offer flexibility, it comes with added complexity.

Employers will need to:

- ✓ Ensure contracts, handbooks, and payroll practices are up to date
- ✓ Communicate new entitlements to staff
- ✓ Provide training on new obligations to managers
- ✓ Ensure the business is compliant

Opportunity for employers to set themselves apart by:

- ✓ Not only complying with the law
- ✓ Demonstrating a genuine commitment to working parents



What is Neonatal Care Leave and Pay?

Neonatal Care Leave allows parents to take time off work to care for their baby while the baby is in neonatal care, in addition to other parental leave entitlements (such as maternity, paternity, adoption, or shared parental leave).

There are three narrow categories of medical care which will count as “neonatal care”:

1. Any medical care received in a hospital.
2. Medical care received elsewhere following discharge from hospital, which must be under the direction of a consultant and includes ongoing monitoring or visits by healthcare professionals.
3. Palliative or end-of-life care.

Neonatal Care Pay refers to pay that parents/carers who fulfil certain employment requirements will receive from their employer during their Neonatal Care Leave.

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What's Changing?

Eligibility:

- At the birth of the baby, the employee must be one of: the baby's parents, the baby's intended parents (applicable to surrogacy), partner to the baby's mother (who are unrelated and living with them in an enduring family relationship) with the expectation they will have responsibility for raising the child.
- If adopting, similar principles as above apply.
- The care must last for at least seven consecutive days, starting within 28 days of birth.
- Only those with the status of "employee" will be entitled to neonatal leave and pay, which is consistent with other parental leave rights.

Leave Entitlement:

- Up to **12 weeks** of Neonatal Care Leave is available.
- This leave can be taken while the baby is receiving neonatal care, or at the end of maternity/paternity/adoption leave or within **68 weeks** of the baby's birth.
- It is a **Day 1 right**, meaning it applies regardless of the employee's length of service.
- To qualify for NCL, the baby must be born on or after 6 April 2025.

NCL must be taken to provide care for the baby. In the tragic event that the baby dies after NCL has been accrued, employees are still eligible to take the leave, as the care requirement is disapplied.

The main principle of NCL is that it is added to the end of the employee's family leave. This is because an employee whose baby requires neonatal care is likely to already be on another form of family leave, such as maternity or paternity leave. The purpose is for the employee to take NCL once their planned family leave ends, compensating for the time the baby spent in neonatal care.

However, the system must also accommodate emergency situations where the employee is not already on leave during the baby's time in neonatal care. This is typically the case when a father or partner's paternity leave has ended, yet the baby remains in hospital.



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To provide flexibility and minimise notice requirements, NCL is divided into two distinct periods, referred to as tier 1 and tier 2.

- If NCL is taken while the baby is receiving care or up to one week after discharge, it is classified as a tier 1 period. Tier 1 leave can be taken in non-continuous blocks, with a minimum duration of one week at a time.
- All other NCL falls under the tier 2 period and must be taken as one continuous block.

Notice Requirements?

In line with other types of parental leave, employees should provide notice of their intention to take NCL. The notice should include the following details:

- The employee's name
- The baby's date of birth (or the date of placement/entry to Great Britain if adopting)
- The start date(s) of neonatal care
- The date on which neonatal care ended (if applicable)
- The date on which the employee intends to take the leave
- The number of weeks of NCL the notice is being given for
- A statement confirming that the leave is being taken to care for the baby
- Confirmation that the employee is eligible for the leave due to their relationship with the baby

Please Note: The required notice period will depend on when the leave is taken.

However, employers should note that both the employer and the employee can agree to mutually waive any notice requirements.

Pay Entitlement:

- Statutory Neonatal Care Pay (SNCP) is available for employees with **26 weeks of continuous service** and earnings of at least **£125 per week** (from April 2025).
- The pay rate is set at the **statutory rate (£187.18 per week** from April 2025) or **90% of average weekly earnings**, whichever is lower.
- Unlike SNCL, SNCP is not a day one right.



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Reimbursement for employers:

- Small employers (those paying less than £45,000 in gross NICs annually) can reclaim **103%** of SNCP.
- Larger employers can reclaim 92%.

Employee Protections During NCL

As with other family leave entitlements, employees will retain the same terms and conditions of employment during Neonatal Care Leave (NCL), except for pay. Similar rules apply regarding the employee's right to return to their original role, which will always be the case for a single period of NCL.

Employees who take 6 continuous weeks of NCL are also entitled to extended redundancy protection rights (if these rights do not already apply through maternity, adoption, or paternity leave). This includes the right to be offered a suitable alternative vacancy, starting the day after the employee completes six consecutive weeks of leave and lasting until the child turns 18 months old.

Employees are also protected from detriment and dismissal for exercising their right to take NCL. Dismissal for a reason related to the employee taking NCL will be considered automatically unfair.

8 Key Considerations for Employers

With confirmation that Neonatal Care Leave (NCL) will apply from 6 April 2025, employers now have clarity on how the leave will work. Here are the key considerations for employers:

1. Timing

Employees will generally take NCL at the end of their other parental leave entitlement (unless interrupted). Some eligible employees may choose to end their maternity leave once statutory maternity pay ends at 39 weeks, and then move to NCL and Statutory Neonatal Care Pay (SNCP) for 12 weeks. This could result in nearly a full year of paid leave (at statutory rates unless enhanced).



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2. Notice

Determining the required level of notice and whether the employee falls under tier 1 or tier 2 can be complex. As employers have the option to waive notice requirements, many may choose to do so, especially for employees who are not taking or have already taken other leave.

3. Policies

Employers will need a clear policy outlining the statutory right to leave and pay, along with any enhanced rights. Employers should consider creating a template form for employees to complete when submitting their notice. If enhanced family leave is offered, the employer will need to consider the impact of NCL on these enhancements.

4. Enhancements

Some employers have already introduced early neonatal leave and pay policies, while others may want to enhance their offering now that the statutory scheme is finalised. Many will choose to implement enhancements on a discretionary basis.

5. Training

Given the complexities of this new right, it's a good opportunity for employers to offer refresher family leave training for HR staff, covering NCL and upcoming changes in the Employment Rights Bill.

6. Redundancy

Employers will need to add employees taking over six weeks of NCL to the group of employees who are entitled to priority status in redundancy situations. As protection continues until the child turns 18 months, it will be important to track employees taking this leave, similar to other types of parental leave.



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7. Data Privacy

Baby's medical conditions are private under data protection laws. Employers must respect the employee's wishes regarding the sharing of information about the reason and nature of the leave they are taking.

8. Absence Management

The effects of a traumatic birth or a baby spending time in neonatal care could lead to long-term physical or mental health conditions. Employers should be mindful of this if there is a change in the employee's performance, behaviour, or absence. Requests for time off or increased sickness leave should be approached carefully to avoid potential disability discrimination risks.

Employers Next Steps

Employers should be either amending existing related family friendly policies or introducing a specific neonatal care leave and pay policy.

Ensuring your policies, contracts, and HR processes align with the new rules is essential to maintaining compliance and providing the right support for your team.

At EAB, we understand the challenges of implementing new employment legislation. That's why we're working proactively to help businesses prepare with complimentary advice on this change.

Arrange a Call Back for advice in preparing a policy or providing training to your teams.

Arrange a Callback

