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## Shared parental leave and pay

Shared Parental Leave is a new right that will enable eligible mothers, fathers, partners and adopters to choose how to share time off work after their child is born or placed. This could mean that the mother or adopter shares some of the leave with her partner, perhaps returning to work for part of the time and then resuming leave at a later date.

The regulations are currently before parliament and are due to come into force 1 December 2014. The options to use the new Shared Parental Leave 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. Employers could start to receive notice of eligibility and the intention to take Shared Parental Leave from qualifying employees from January 2015.

Acas is preparing in-depth guidance and training courses to help those who deal with maternity and paternity issues understand the new system. These are due to be released in Autumn 2014.

### Key points

- Employed mothers will continue to be entitled to 52 weeks of Maternity Leave and 39 weeks of statutory maternity pay or maternity allowance
- If they choose to do so, an eligible mother can end her maternity leave early and, with her partner or the child's father, will be able to opt for Shared Parental Leave instead of Maternity Leave. If they both meet the qualifying requirements and both qualify, they will need to decide how they divide their total Shared Parental Leave and Pay entitlement between them
- Paid Paternity Leave of two weeks will continue to be available to fathers and a mother's or adopter's partners
- Adopters will have the same rights as other parents to Shared Parental leave and pay
- Intended parents in surrogacy who meet certain criteria will be eligible for statutory adoption leave and pay and Shared Parental Leave and Pay

### Shared parental leave

Shared Parental Leave is designed to give parents more flexibility in how to share the care of their child in the first year following birth or adoption. Parents will be able to share a pot of leave, and can decide to be off work at the same time and/or taking it in turns to have periods of leave to look after the child.

To qualify for Shared Parental Leave and Pay a mother must be entitled to maternity or adoption leave, or statutory maternity or adoption pay or maternity allowance and must share the main responsibility for caring for the child with the child's father or her partner. In addition, they will be required to follow a two step process to establish eligibility.

#### Step 1 - Continuity test:

A parent seeking to take Shared Parental Leave must have worked for the same employer for at least 26 weeks at the end of the 15<sup>th</sup> week before the week in which the child is due (or at the week in which an adopter was notified of having been matched with a child or adoption) and is still employed in the first week that Shared Parental Leave is to be taken.

The other parent has to 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.

#### Step 2 - Individual eligibility for pay:

To qualify for Shared Parental Pay the parent must, as well as passing the continuity test also have earned an average salary of the lower earnings limit or more (currently £111) for the 8 weeks' prior to the 15<sup>th</sup> week before the EWC.

It will be for the mother or adopter to continue on maternity leave or opt to take Shared Parental Leave.

Shared Parental Leave may be taken at any time within the period which begins on the date the child is born or date of the placement and ends 52 weeks after that date. Leave must be taken in complete weeks and may be taken either in a continuous period, which an employer cannot refuse or in a discontinuous period, which the employer can refuse.

### Maternity leave and pay

An employed mother will continue to have the right to take up to 52 weeks statutory maternity leave.

## Ante-natal appointments

All pregnant employees are entitled to reasonable time off with pay for antenatal care made on the advice of a registered medical practitioner. Except for the first appointment, employees should show the employer, if requested, an appointment card or other documents showing that an appointment has been made.

Fathers and partners of pregnant women are entitled to unpaid time off to attend two ante-natal appointments. Employers may allow this time off with pay under the terms and condition of employment. This comes into force on 1 October 2014.

Intended parents in a surrogacy case who meet the conditions set out under the Human Embryology and Fertilisation Act 2008 will also have the right to unpaid leave to attend up to two antenatal appointments.

## Paternity leave and pay

Paternity leave will continue to be available for fathers and partners. This will be a period of one or two weeks which must be used in a single block of leave and taken within 56 days of the birth.

## So how will the new regulations work in practice?

### Developing a policy

Employers may wish to develop a policy that sets out the rules and procedures for applying for and taking shared parental leave. It would be good practice when drafting or updating any policy to consult with employees over the proposed policy as this will help to ensure it works for both employees and the organisation. Once agreed the policy should be communicated to all employees.

### Notification of Shared Parental Leave

Acas is developing detailed guidance to help employers and employees understand and operate the new Shared Parental Leave process. The following sets out the process in brief terms.

Parents who qualify for the right will need to decide if Shared Parental Leave is the best option for them. Ultimately it is for the mother or primary adopter to decide whether to end their maternity or adoption leave early and opt into Shared Parental Leave. They will need to consider their personal circumstance and should take into account such things as:

- Which parents qualify for Shared Parental Leave
- When does the mother wish to return to work
- The family financial implications
- How will the sharing of the upbringing of the child work

Parents can choose to opt into Shared Parental Leave at any time, so long as there is some untaken maternity leave to share.

An employee opting for Shared Parental Leave must notify his or her employer of their entitlement to Shared Parental Leave and must "book" the leave they wish to take, giving their employer at least 8 weeks' notice. Each eligible employee can give their employer up to 3 separate notices. Each notice can be for a block of leave, or the notice may be for a pattern of "discontinuous" leave involving different periods of leave. If a parent asks for discontinuous blocks of leave in a notification the employer can refuse and require that the total weeks of leave in the notice to be taken in a single continuous block. However, where the employee's notification is for a continuous block of leave the employer is required to agree. It is therefore beneficial for the employee and employer to discuss and attempt to agree the way in which the different blocks of leave can be taken.

If an employee wishes to take Shared Parental Leave they must provide their employer with a notice of entitlement to take Shared Parental Leave. The notice must be given at least eight weeks before the start of a period of Shared Parental Leave. Each parent entitled and intending to take Shared Parental Leave must give their employer a notice which must include:

- How much leave is available
- How much leave they are entitled to take
- How much leave the parent is intending to take
- How they expect to take it

Any notice to book Shared Parental Leave must be given at least eight weeks before the leave is due to start.

### Discussing intentions early on

Having an early and informal discussion can provide an opportunity for both the employee and employer to talk about their preference regarding when Shared Parental Leave is taken. Employers can use this discussion as an opportunity to point out the different options such as maternity, paternity leave (or adoption leave), and can ensure the employee is aware of their statutory rights or any contractual schemes the employer has in place. It can also be an opportunity to discuss when any discontinuous leave can be best accommodated.

### Discussing a notification for Shared Parental Leave

Once a notification for a period of leave has been received an employer may wish to consider:

- Is the request for leave one continuous block or discontinuous blocks

- What cover will be needed for the employee's absence
- Will a discussion with the employee be beneficial at this time
- Is any modification to a discontinuous leave request necessary

Depending on the circumstances involved, there are four outcomes available to an employer once they have received, considered and discussed a Shared Parental Leave notification. It is important to note an employer cannot refuse a notification for continuous leave.

- A) A continuous leave notification must be unconditionally accepted
- B) Whilst the employee is under no obligation to modify a continuous leave notification and should never be put under pressure to do so, an employer may attempt to seek an agreed modification to a continuous leave request
- C) A discontinuous leave notification can be refused
- D) Whilst it is not good practice and should be avoided, it is possible for an employer to make no response to a leave notification.

For outcomes C and D above, the employee can withdraw their notification on or before the 15<sup>th</sup> day after the notification was originally made and it will not count as one of their three notifications. If not, they must take the total amount of leave notified in one continuous block. The employee can choose when this leave period will begin within 19 days of the date the notification was given to the employer but it cannot start sooner than the initial notified start date. If they don't, the leave will begin on the starting date stated in the original notification.

## Acas Shared Parental Leave training

Acas has scheduled training sessions for employers to help them better understand Shared Parental Leave.

The training covers:

- Who qualifies for shared parental leave and pay?
- Notifying the employer and booking shared parental leave and pay
- When and how shared parental leave and pay can be taken
- How to discuss plans and agree patterns of leave with qualifying employees
- How to respond to requests for shared parental leave and pay
- How to deal with requests to change patterns of leave
- Developing a policy and rules to manage the process

View upcoming course dates and locations on [Shared parental leave](#).

If you have a group of staff to train, we can come to you. Complete our [online enquiry form](#) to enquire about our in-company services.

## Further information

### Other Sites

- [GOV.UK - Shared Parental Leave and Pay: employer guide](#)
- [GOV.UK - Shared Parental Leave and Pay](#)
- [GOV.UK - Surrogacy: legal rights of parents and surrogates](#)