

## What is shared parental leave and why it is being introduced?

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Shared parental leave is a new way for parents to share statutory leave and pay on the birth of a child. It replaces the current additional paternity leave regime. However, it is separate from the right to unpaid parental leave and does not replace the current maternity leave and pay regime. Similar rights apply to adoptions. The intended parents in a surrogacy arrangement are also entitled to take advantage of shared parental leave. These rights also apply to partnerships of the same sex, so references in this factsheet to fathers should be taken as including women in same-sex partnerships.

This introductory factsheet relates to the shared parental leave regime which applies to England, Wales and Scotland only.

The right to shared parental leave only applies to employees who fulfil the relevant eligibility criteria which are explained below. The new right allows the mother to choose to bring her maternity leave to an end at any point after the initial two week compulsory maternity leave period following the birth of the child. The parents can then choose how to split up the remaining weeks of leave between them. Shared parental leave can be taken by each parent separately or at the same time.

Shared parental leave will apply to parents of children due on or after 5 April 2015 and has been brought into effect by various sets of legislation.

The Children and Families Act 2014 came into force on 13 March 2014 and makes the legislative changes necessary for implementing shared parental leave and allows the Secretary of State to make regulations setting out the detail of the new system.

The Shared Parental Leave Regulations 2014 set out:

- the right to take shared parental leave once maternity leave has been brought to an end
- the period available for shared parental leave and how this can be taken
- the eligibility criteria for taking the leave
- provisions on how notifications and requests should be made
- provisions on terms and conditions during leave, the right to return to work and protections from detriment or dismissal for taking the leave, and
- an increase to 'Keeping in touch' days.

The Statutory Shared Parental Pay (General) Regulations 2014 set out the eligibility conditions for claiming shared parental pay and details of the notifications that must be given to the employer. The Maternity and Adoption Leave (Curtailed of Statutory Rights to Leave) Regulations 2014 deal with bringing maternity leave to an end. The Statutory Maternity Pay and Statutory Adoption Pay (Curtailed) Regulations 2014 and the Maternity Allowance (Curtailed) Regulations 2014 deal with bringing maternity pay or allowance to an end.

The Paternity and Adoption Leave (Amendment) Regulations 2014 will make amendments which in part relate to the introduction of shared parental leave, but also relate to other existing adoption and paternity rights.

The above Regulations came into force on 1 December 2014.

The Government has stated that it wishes to move away from the current 'old-fashioned' and inflexible arrangements for maternity and paternity leave and create a new, more equal system which allows both parents to assist with childcare and keep a strong link to their workplace. The stated aim is to remove the perception that it is mainly a woman's role to stay at home and look after the child and help ensure that more businesses are making best use of women's talents.

The Government intends that the new system will:

- allow fathers to play a greater role in raising their child,
- help mothers return to work when they want to without losing leave entitlement, and
- allow mothers to return to work temporarily for a busy period or an important project.

The Government and Acas have published a range of guidance for employers and employees explaining how the shared parental leave regime is intended to work (see Useful contacts below). As well as a general overview of shared parental leave, the Department for Business, Innovation and Skills has published a guide for employers looking at some of the more technical aspects of the scheme. Acas has published a good practice guide for employers and other support and advice, including a free shared parental leave policy template and downloadable sample letters.

## **Impact of shared parental leave on current maternity and paternity regimes**

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The impact of the introduction of shared parental leave on the current system of maternity and paternity leave is described below.

### **Maternity leave**

- Women will continue to be entitled to take 26 weeks' ordinary and 26 weeks' additional maternity leave as they are now.
- The mother must take two weeks' compulsory maternity leave immediately following the birth of the child, which may not be shared with the father.
- Women's rights during maternity leave will stay the same.
- Statutory maternity pay entitlements will stay the same.

However, the key change is that women can elect to bring maternity leave to an end early and opt-in to a period of shared parental leave and pay instead.

## **Paternity leave**

- The two week period of ordinary paternity leave (paid at the statutory rate) will continue to be available.
- Ordinary paternity leave must be taken during the eight weeks following the birth of the child (but is not compulsory) and may not be shared with the mother.

Additional paternity leave and additional statutory paternity pay will be abolished in relation to parents of children due on or after 5 April 2015 and replaced with shared parental leave and pay.

## **How shared parental leave will work?**

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The new system of shared parental leave is explained under the following headings.

### **Eligibility criteria for shared parental leave**

If a woman decides not to take her full maternity leave entitlement, she and the father will be able to opt-in to shared parental leave. Both parents must meet a set of eligibility criteria, which are:

- They must have been continuously employed for at least 26 weeks by the end of the 15th week before the expected week of childbirth.
- They must remain continuously employed until the week before any period of shared parental leave starts.
- They already have or expect to have main responsibility for caring for the child.
- The mother is entitled to statutory maternity leave.
- The mother has curtailed her entitlement to maternity leave or has returned to work.
- They have provided their employers with notice of entitlement and intention to take shared parental leave (see below).
- They have provided any evidence requested by their employer within 14 days of the request. This may include a copy of the birth certificate, or a declaration from the parents confirming the date and place of the child's birth if the birth certificate is not yet available, and the name and address of the other parent's employer.
- They have given the employer a period of leave notice (see below).

There is no need for employers to contact one another to make checks on the eligibility criteria or declarations.

Shared parental leave will also be available to a father where the mother works, but does not qualify for statutory maternity leave, such as where she is self-employed. Where the mother has received statutory maternity pay or maternity allowance during a period of not working, the father can still qualify for shared parental leave if this maternity pay period is ended early. This only applies if the

father is employed and meets the other eligibility criteria set out above. The mother in this situation is not able to take shared parental leave.

## **Amount of shared parental leave available**

The maximum amount of leave that can be shared between the parents is 50 weeks. The leave can be taken during the 12 months following the birth of the child, but cannot begin earlier than two weeks following the child's birth.

Shared parental leave only becomes available once the mother has given notice to end her entitlement to maternity leave early. This means that the portion of maternity leave which is untaken by the mother will, in effect, be converted into shared parental leave. Only the two weeks of compulsory maternity leave may not be shared in this way. Therefore, any period of maternity leave taken by the mother will be deducted from the period of 50 weeks' shared parental leave, with the balance available to be shared between the parents.

The leave can be taken separately or at the same time, subject to the following requirements:

- the minimum period of leave must be one week,
- the leave must be taken in multiples of complete weeks, and
- the leave may be taken as one continuous period or discontinuous periods.

This means that the mother can return to work after maternity leave and take shared parental leave at a later date or dates (subject to the notice requirements explained below). Similarly, the father can take shared parental leave at any time – it does not need to start as soon as the mother has given notice to curtail her entitlement to maternity leave or returned to work.

Shared parental leave can also be taken when the other partner is on another type of leave, such as paternity leave or unpaid parental leave. Despite some uncertainty in the wording of the Regulations, the Government has confirmed that a father could start a period of shared parental leave while the mother is still on maternity leave provided she has given a binding notice to end her entitlement to maternity leave (see below).

## **Notifications and requests to take shared parental leave**

The provisions in the regulations about notifications and requests to take leave are quite complicated and various different notices may need to be given by both parents at different times. The process starts with the mother giving notice to end her maternity leave early. The parent or parents wishing to take shared parental leave must then give notice of this intention to their employer. Separately, they must also give notice of the period of leave requested.

### **Notice to end maternity leave**

The mother must give her employer eight weeks' notice to end her entitlement to maternity leave early, which will then enable both parents to take advantage of the shared parental leave regime.

This notice can be given before or after the birth. If it is given after the birth, the notice is binding. However, if notice is given before the birth, the mother is able to revoke the notice up to six weeks after the birth – this is in case an unplanned situation arises following the birth of the child.

### **Notice of entitlement and intention to take shared parental leave**

If one or both parents wish to take shared parental leave they must submit a written 'notice of entitlement' to their own employer at least eight weeks before the start of the first period of shared parental leave. The notice should include certain information, including:

- the mother's and father's names and national insurance numbers,
- the start and end date of any period of statutory maternity leave taken/to be taken by the mother,
- the amount of any statutory maternity pay or maternity allowance received or to be received by the mother,
- the expected week of childbirth and/or actual date of birth of the child,
- the total amount of shared parental leave available,
- confirmation that the mother/father is sharing child care responsibilities with their partner,
- a non-binding indication of how much shared parental leave both parties intend to take and the proposed start and end dates of such leave, and
- a declaration from each parent to confirm that:
  - the mother satisfies the eligibility criteria,
  - the father satisfies the eligibility criteria,
  - that the information given is accurate, and
  - that if either parent ceases to meet the conditions of entitlement to shared parental leave then they will immediately notify the employer.

The parents may vary the amount of shared parental leave they intend to take by giving written notice to their employers. There is no limit on the number of times the parents may make a variation to a notice of entitlement to shared parental leave, so long as this is done before the formal 'period of leave' notice has been given (see below).

### **Period of leave notice**

Parents must also provide their employers with a written 'period of leave' notice by giving the start and end dates of the periods of leave requested. The period of leave notice triggers a discussion with the employer to agree the leave.

- The notice must be given not less than eight weeks prior to the requested start date.

- The notice can be given at the same time as the notice of entitlement referred to above, or can be given later.
- The notice can request one or more periods of leave.
- If the notice has been given before the child is born then the start date may be expressed as a number of days from the date the child is born.

Only three period of leave notices in total can be given by each parent, including requests to vary a period of leave that has already been arranged.

### **Agreeing shared parental leave with employees**

The rules on agreeing requests for shared parental leave with the employee vary depending on the pattern of leave that has been asked for.

#### **Continuous periods of shared parental leave:**

If an employee simply requests one period of continuous shared parental leave, the employee is entitled to take that period of leave. The employer cannot refuse this request provided the employee meets the eligibility criteria stated above.

#### **Discontinuous periods of shared parental leave:**

Agreement is necessary if an employee requests discontinuous periods of shared parental leave – meaning two or more periods of leave separated by periods at work. Within two weeks of the date of the period of leave notice the employer may:

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

If the parties can agree the periods of leave within this two week period then the employee is entitled to take that leave on the agreed dates. If the parties cannot agree the periods of leave then the employee may either withdraw the request or take the total amount of leave requested as one continuous period of leave. The default position is that leave should be taken in a single block commencing on a date specified by the employee but with at least eight weeks' notice to the employer.

### **Variations to a period of shared parental leave**

Once the parties have agreed a period of leave, if the employee wishes to amend the period they must send the employer written notice to vary the leave.

The variation notice may:

- vary start and end dates,

- vary the amount of leave, or
- ask for a single period of leave to become discontinuous or vice versa.

The notice must be given at least eight weeks before the date to be varied and the new date. The employee may only give three period of leave notices and/or requests for variations to leave in total.

### **Change in employees' circumstances**

It is possible that a parent's circumstances may change after periods of shared parental leave have been arranged. This could be difficult for an employer if the change is at short notice and arrangements to cover the absence are already in place. Therefore, the regulations allow the employer to hold the employee to the agreed arrangements in certain circumstances. This is designed to ensure that the employer will always have at least eight weeks' notice of a change in the planned arrangements.

If less than eight weeks before either parent is due to take a period of parental leave

- the parent informs their employer that they no longer meet the conditions of entitlement and,
- it is not reasonably practicable for the employer to accommodate this change in circumstances

then the employer may still require that the parent takes a period of leave. The leave must be treated as shared parental leave and will start on the same date that the next period of shared parental leave was due to start. It will either end on the same end date, or eight weeks from the date the employer is informed of the change in circumstances, whichever is earlier.

### **Entitlement to shared parental pay**

Up to 37 weeks of shared parental pay will be available to be shared between the parents.

Statutory shared parental pay is paid for 37 weeks at the **lower** of the statutory prescribed rate (which as of July 2014 is £138.18 for statutory maternity and paternity pay) or 90 per cent of the relevant parent's normal weekly earnings (subject to the lower earnings limit). The remaining 13 weeks of shared parental leave are unpaid.

This means that statutory shared parental pay is paid at the lower level throughout the leave period. Unlike with statutory maternity pay, there is no provision for the first six weeks to be paid at 90 per cent of the parent's actual weekly earnings. This is the case even if the mother returns from maternity leave after only two weeks, during the period where the higher level of maternity pay would have been available to her.

### **Enhanced shared parental pay**

Some employers may choose to pay enhanced shared parental pay to their employees. There is no requirement in the legislation for an employer to pay shared parental pay at the same rate as any enhanced maternity pay.

However, there may be arguments that an employer should pay the same amount for both types of leave. In particular, a man on shared parental leave may say that it is sex discrimination not to pay him the same as would have been paid to a female employee who was taking maternity leave at the equivalent time. The fact that maternity leave is being retained should make it easier to treat enhanced maternity pay differently. The law also allows special treatment (including in relation to pay) for women on maternity leave. Broadly this is because of the need to physically recover from the birth and bond with the child.

Employers should carefully consider the reasons for treating enhanced maternity pay differently. For example, an employer might argue that shared parental leave is for a different purpose of caring for the child and so the two should not be treated the same. However, it is likely that the uncertainty in this area will only be resolved through future court decisions and employers should assess the risks associated with operating different enhanced rates of pay for maternity and shared parental leave.

### **Two examples of how shared parental leave and pay may work**

Two examples of how shared parental leave and pay may work are provided below.

**Example 1:** The mother's employer pays statutory pay only for both maternity leave and shared parental leave. The father's employer pays full pay for the entire shared parental leave period. The parents want to maximise their income while caring for their baby. They therefore decide that the mother will take 6 weeks maternity leave at the higher rate of statutory pay (90 per cent of her actual earnings). The mother will then end her maternity leave early and return to work, and the father will take shared parental leave for the remaining 46 weeks during which his employer will pay him in full.

**Example 2:** A female couple already has three children, and one partner is now expecting twins. They want to arrange their maternity, paternity and shared parental leave so that they can care for all of their children together. Both of their employers pay at statutory rates for both types of leave. They decide that the birth mother will take two weeks' compulsory maternity leave, and her partner will take two weeks' ordinary paternity leave on the birth of the children. They then want to take all of their entitlement to shared parental leave concurrently so that the birth mother can care for the new babies while her partner takes care of their existing children. This means that the birth mother must bring her maternity leave to an end immediately following the two week compulsory maternity leave period. The shared parental leave regime can then begin straight away for both parents.

### **Shared Parental Leave In Touch days**

Shared parental leave in touch (SPLIT) days have been introduced for parents taking shared parental leave. These are in addition to the Keeping in touch (KIT) days already available for women on statutory maternity leave. Each parent is entitled to 20 SPLIT days under shared parental leave.

### **Protections for employees taking up shared parental leave**

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As with maternity and paternity leave, protections have been put in place for employees who take shared parental leave in order to ensure that they are not disadvantaged by taking this leave. These protections relate to terms of employment, return to work, and general treatment. Employees who take shared parental leave are entitled to the benefit of all terms and conditions of employment, except remuneration, which would have applied if they had not been absent. An employee's right to return to the same job varies depending on the length of the leave. The key time period is 26 weeks, including any combination of maternity, adoption, paternity or shared parental leave. Employees are entitled to return to the same job if they have taken leave of 26 weeks or less, regardless of how many periods of leave they have taken. Employees who take more than 26 weeks' leave have the right to return to either the same job, or a similar job if it is not reasonably practicable to return to the same position.

Employees also have protection against dismissal or detriment for making or proposing to make use of the new shared parental leave system.

## **Adoption and surrogacy**

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Shared parental leave will apply to parents who are adopting a child due to be placed on or after 5 April 2015 via an adoption agency. In order for adoptive parents to take shared parental leave in respect of a child they must meet similar eligibility criteria as described above, and be entitled to statutory adoption leave. Parents must provide a similar notice of entitlement to their employers. However, the notice must also confirm:

- the date the parents were notified as having been matched with the child,
- the date the child is expected to be placed with the parents, and
- a declaration which includes the parents' national insurance numbers and consent to the amount of time the other parent intends to take.

If the employer requests any evidence of eligibility then, instead of providing a birth certificate, the employee may be required to provide copies of documents issued by the adoption agency confirming the date the parents were matched with the child. The other requirements such as for giving notice, timeframes and periods of continuous or discontinuous parental leave follow the same process as outlined above.

For surrogacy arrangements, if the intended parents have applied, or intend to apply, for a 'parental order' then, subject to meeting qualifying conditions, the nominated 'primary' adopter will be entitled to take adoption leave and pay and to end their adoption leave early and move onto shared parental leave.

## **Action points for employers**

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Employers should:

- Review and update existing maternity, paternity and adoption policies and prepare policies and procedures relating to shared parental leave.
- Consider how employee requests for continuous blocks of leave will be administered by the organisation (given that these requests cannot be refused).
- Consider how employee requests for discontinuous patterns of leave will be evaluated and responded to, including what factors to be taken into account.
- Train managers to ensure they understand their responsibilities in delivering the organisation's policies and know who to contact for further guidance and information.
- Consider and assess the risks associated with continuing to pay enhanced maternity pay, but not offering enhanced pay for shared parental leave.

## **CIPD viewpoint**

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The move to shared parental leave provides working mums and dads with more flexibility over how they can share and balance their caring responsibilities in a way that suits their individual circumstances. Over time it should help support a culture change to a point where many more men take a more active role in fatherhood in the first year of their child's life and at the same time support women who want to have a family and a career.

However, many fathers are likely to be inhibited from taking up their entitlement to shared parental leave for financial reasons. Employers should ensure that they are creative and innovative in supporting and retaining talented employees and many are willing to offer more generous payments than those required by legislation. Policies on parental leave should be inclusive and coherent. It is important employers train managers to ensure they understand their responsibilities in delivering the organisation's policies and know who to contact for further guidance and information.