

## Employment Rights for Expectant Parents

If you or your partner are working and expecting a baby, you should be aware of your rights with regard to maternity and/or paternity issues. A mother can choose to end her maternity leave and pay, and opt for [Shared Parental Leave and Pay](#) instead.

### MATERNITY LEAVE AND PAY

Maternity leave, which guarantees the right to return to work, is only available to employees. Other workers (for example, agency workers) have no automatic right to return to a job. Employees are entitled to take up to 52 weeks' (one year) maternity leave:

- Ordinary Maternity Leave (OML) - which is 26 weeks
- Additional Maternity Leave (AML) - which is a further 26 weeks, beginning immediately after OML.

During the maternity leave, employees can receive maternity pay for up to 39 weeks, known as the Maternity Pay Period. Depending on entitlement, this is made up of either:

- Statutory Maternity Pay
- Maternity Allowance.

After the Maternity Pay Period expires, employees can take an additional 13 weeks' unpaid leave. Some employers offer an enhanced package of Contractual Maternity Pay, which exceeds the statutory entitlement. Check your contract of employment to determine if this applies in your case.

Expectant mothers are also entitled to paid-time-off for antenatal care. This includes doctor or midwife appointments, parentcraft classes, scans etc. You may need to give your employer a letter from your GP or midwife confirming that these appointments are for antenatal care.

### Statutory Maternity Pay (SMP)

You are eligible for SMP if you have been in the same job for at least 26 weeks by the 15th week before your baby is due (i.e. you were in the same job at week one of your

pregnancy) and you earn an average of at least £125 per week. If you are eligible for SMP, you will receive 90% of your average pay for the first six weeks of your maternity leave, and then £187.18 (or 90% of your gross weekly earnings if this is lower) for the following 33 weeks. This makes up your full Maternity Pay Period.

## **Maternity Allowance**

If you do not qualify for SMP you may be eligible to receive Maternity Allowance for up to 39 weeks through your local Jobs and Benefits Office or Jobcentre Plus, provided you've been either:

- registered as self-employed for at least 26 weeks in the 66 weeks before your baby's due
- employed for at least 26 weeks in the 66 weeks before your baby's due

If you've been employed, you must have been earning (or classed as earning) £30 a week or more in at least 13 weeks of your employment. The weeks do not have to be together.

You may still qualify if you've recently stopped working. It does not matter if you had different jobs or periods of unemployment.

Maternity Allowance is paid at a rate of £187.18 per week, or 90% of your average pay (whichever is lower) for 39 weeks.

Visit [www.gov.uk/maternity-allowance/overview](http://www.gov.uk/maternity-allowance/overview) for more information on Maternity Allowance.

## **Terms and Conditions during Maternity Leave**

During Ordinary Maternity Leave and Additional Maternity Leave, if you are an employee you will continue to be employed and to benefit from the normal terms and conditions of employment other than the terms or conditions relating to remuneration.

## **When can I start my maternity leave?**

You can start your maternity leave as early as 11 weeks before your baby is born. You are required to inform your employer at least 15 weeks before your baby is due:

- that you are pregnant
- the week in which your baby is expected
- the date on which you intend to start your maternity leave.

You are not obliged to tell your employer any earlier than this. However, if your employer

does not know that you are pregnant they will be unable to perform the necessary health and safety risk assessment, and the right to paid-time-off for antenatal care will not apply. Equally, you will not be protected against pregnancy-related discrimination or dismissal.

If you are absent from work for a pregnancy related illness during the four weeks before the start of your expected week of childbirth, your maternity leave will start automatically.

If you subsequently change your mind about the date you would like to start your maternity leave, you should give your employer at least 28 days' notice before the old or the new date, whichever is sooner.

If you wish to end your maternity leave and pay and opt for Shared Parental Leave and Pay instead, please refer to our [Shared Parental Leave](#) factsheet for more information. You will be required to give your employer at least 8 weeks' notice to do so.

## Work during Maternity Leave

You may carry out up to ten days work for your employer during your statutory maternity leave period without triggering the end of the maternity leave. These 'keeping in touch' days are optional and should only be arranged by agreement. Any days worked do not extend the maternity leave period.

## Going back to work after maternity leave

Your employer will assume that you will return to work at the end of your 52 week Ordinary and Additional Maternity Leave period. If you wish to return to work before this, you need to give your employer at least eight weeks' notice of your return date. However, you cannot return to work within two weeks of your baby's birth (four weeks if you work in a factory). This is known as Compulsory Maternity Leave.

If you return to work after OML (the first 26 weeks of maternity leave), you have the right to return to exactly the same job. If you return to work after AML (the second 26 weeks of maternity leave), you also have the right to return to the same job; however if your employer cannot reasonably offer the same job, they can offer you a suitable alternative job, on the same or very similar terms and conditions.

Employees have the right to request a flexible working arrangement, e.g. part-time hours, compressed hours, term-time working or working from home. Your employer has a statutory duty to **consider** your request. Please refer to our [Employment Rights for Working Parents](#) factsheet for further information on flexible working.

## **I am due to return to work after maternity leave, however I am pregnant again. What are my rights and entitlements?**

If you have returned to work, however briefly, after your initial maternity leave, you will be entitled to the same rights as with your previous period of maternity leave. If your two periods of maternity leave run consecutively without you returning to work in between, you have the right to return to the same job **or a suitable alternative position**, regardless of whether you have taken 26 weeks (OML) or 52 weeks (OML and AML).

## **What happens if I decide not to return to work after my maternity leave?**

If you decide not to return to work after maternity leave you need to resign from your job according to the terms and conditions of your contract, giving the correct notice period which can run whilst you are on maternity leave. If you do not have a contract of employment or other agreement, one week's notice will suffice. You will not be required to repay any Statutory Maternity Pay or Maternity Allowance that you received. Depending on what is stated in your contract of employment, you may be expected to repay some, or all, of any Contractual Maternity Pay you received.

## **I am expecting a baby and I am looking for a new job. Do I need to inform prospective employers that I am pregnant?**

No. You are not required to inform a prospective employer (for example, at a job interview) that you are pregnant. The fact that you are pregnant should not influence whether or not you are successful in obtaining employment. To refuse to employ a woman because she is pregnant is considered to be sex discrimination. Please note that by changing employers whilst pregnant, you may not qualify for Statutory Maternity Pay, depending on whether you leave before or after the qualifying week (ie the 15<sup>th</sup> week before your baby is due.) However, if you are not entitled to Statutory Maternity Pay you may be entitled to Maternity Allowance instead.

## **Detriment and dismissal**

Dismissal of a woman who is pregnant or on maternity leave, on grounds of redundancy, is automatically unfair if the employer has failed to offer her a suitable alternative vacancy. It is unlawful to subject a woman to detriment and dismissal is automatically unfair if it is for:

- a reason connected to her pregnancy
- the fact that she has given birth or sought to avail of maternity leave
- a reason relating to the use of 'keeping in touch days'.

## PATERNITY LEAVE AND PAY

### What is Statutory Paternity Leave?

In Northern Ireland Statutory Paternity Leave is a period of up to two weeks leave from your workplace around the time of your child's birth (or adoption, in the case of adoptive parents). To qualify for Statutory Paternity Leave you must be one of the following:

- biological father of the child
- mother's husband or partner (including same-sex relationships)
- child's adopter
- husband or partner (including same-sex relationships) of the child's adopter.

You must be an employee who has worked continuously for the same employer for at least 26 weeks by the end of the 15th week before the baby is due. If the baby is born prematurely before the fourteenth week before it is due, the qualifying conditions relating to length of service will depend on the baby's **due date**.

You need to inform your employer in writing of the following by the beginning of the 15th week before the baby is due:

- the baby's due date
- if you would like to take one or two weeks' Statutory Paternity Leave
- when you expect your Statutory Paternity Leave to start.

The leave must be taken in one block of one or two weeks, not odd days or two separate weeks, and must be taken within eight weeks of the child's birth or adoption. The parent must be taking the time off to support the mother or carer of the baby. Entitlement to Statutory Paternity Leave is in addition to your normal holiday allowance. If you don't qualify for Statutory Paternity Leave, your employer may agree to give you some time off, or you could take paid annual leave.

N.B. Statutory Paternity Leave operates differently in GB, see [www.gov.uk/paternity-pay-leave](http://www.gov.uk/paternity-pay-leave) for more details.

### What is Statutory Paternity Pay?

During Statutory Paternity Leave, the parent may be eligible to receive Statutory Paternity Pay. This is paid at £187.18 per week or 90% of your average weekly earnings if this is less. Some employers offer more generous paternity packages. This should be outlined in your

contract of employment. To qualify for Statutory Paternity Pay you must have average weekly earnings above the lower earnings limit for National Insurance purposes, £125 per week.

If you are an agency worker, office holder or subcontractor you will not normally have the right to Statutory Paternity Leave, but you may still be eligible for Statutory Paternity Pay.

Expectant fathers have a statutory right to unpaid time off to accompany their wife or partner to up to two antenatal appointments. However, some employers may grant paid time off for these appointments at their discretion.

If you qualify for Statutory Paternity Leave but not Statutory Paternity Pay, you may qualify for Income Support while on Statutory Paternity Leave.

## SHARED PARENTAL LEAVE RIGHTS FOR PARENTS

If you or your partner have or adopt a child then you may be entitled to Shared Parental Leave. This entitlement was introduced for children born or adopted on or after 5 April 2015. This new system reflects the changing way working parents are choosing to care for their children, and balance their working responsibilities by giving you the right to volunteer to share time off after birth or adoption. Shared Parental Leave means that you and your partner could choose to be at home together, or to work at different times, and share the care of your child during their first year.

### Shared Parental Leave and Pay

The mother has the right to choose whether to take her full maternity leave and pay or to end this and opt for Shared Parental Leave instead.

### How do I know if we are eligible for Shared Parental Leave and Statutory Shared Parental Pay?

Shared Parental Leave (SPL) and Statutory Shared Parental Pay (ShPP) must be taken between the baby's birth and first birthday (or within one year of adoption). To qualify for SPL you must share care of the child with either:

- your husband, wife, civil partner or joint adopter
- the child's other parent
- your partner (if they live with you and the child).

You must also:

- have been employed continuously for at least 26 weeks by the end of the 15th week before the due date (or by the date you are matched with your adopted child), and
- be employed by the same employer while you take SPL.

### Your partner's eligibility

During the 66 weeks before the baby is due your partner must:

- have been working for at least 26 weeks (these weeks do not need to be consecutive)
- have earned at least £30 a week on average in 13 of the 66 weeks
- be employed, self-employed or an agency worker.

Both parents must meet the eligibility conditions to be able to get SPL and ShPP. If only one qualifies then you cannot share the leave.

If only one parent is eligible then they can use SPL to book leave in separate blocks even if their partner can't share it.

## What Shared Parental Pay will I be entitled to?

You will qualify for Shared Parental Pay if **one** of the following applies:

- you qualify for Statutory Maternity Pay or Statutory Adoption Pay
- you qualify for Statutory Paternity Pay and have a partner who qualifies for Statutory Maternity Pay, Maternity Allowance or Statutory Adoption Pay.

The mother must take a minimum of two weeks' maternity leave following the birth of the child (four weeks if she works in a factory).

## What Shared Parental Leave will I be entitled to?

If you are eligible and you or your partner can end Maternity or Adoption Leave and Pay (or Maternity Allowance) early, you can take:

- the remainder of the 52 weeks of leave (up to a maximum of 50 weeks) as Shared Parental Leave (SPL)
- the remainder of the 39 weeks of pay or Maternity Allowance (up to a maximum of 37 weeks) as Statutory Shared Parental Pay (ShPP).

**Example:** A mother and her partner are both eligible for Shared Parental Leave (SPL). The mother ends her Maternity Leave after 10 weeks, leaving 42 weeks (of the total 52 week entitlement) available for SPL. She takes 30 weeks SPL and her partner takes the other 12 weeks.

## Check your eligibility to SPL and ShPP online

The Government has provided an online tool to help employers and their employees to check eligibility for Shared Parental Leave and Statutory Shared Parental Pay. This tool, along with further information, is available at [www.gov.uk/shared-parental-leave-and-pay](http://www.gov.uk/shared-parental-leave-and-pay).

In order to use this tool you will need to know the following information:

- your child's due date or birth date
- your and your partner's employment status and earnings; and
- if you and your partner can get Statutory Maternity Pay or Statutory Paternity Pay.

## **How does this affect the Statutory Paternity Leave and Pay?**

Statutory Paid Paternity Leave of two weeks is paid at a rate of £187.18 per week (or 90% of the employee's average weekly earnings, whichever is lower), and will continue to be available to fathers, and a mother's or adopter's partner. Additional Paternity Leave will no longer be available as Shared Parental Leave will replace it for those with children born on or after 5 April 2015.

Paternity leave must be taken within the first 8 weeks after the child is born. If this is not taken before the commencement of a period of Shared Parental Leave then this entitlement is lost.

## WHAT ADDITIONAL SUPPORT COULD I BE ENTITLED TO?

### Child Benefit

Once your baby is born you should apply for Child Benefit. You can access information and complete the application online at [www.gov.uk/child-benefit/how-to-claim](http://www.gov.uk/child-benefit/how-to-claim).

### Universal Credit

Depending on your circumstances and family income, you may be entitled to [Universal Credit](#).

### Sure Start Maternity Grant

The Sure Start Maternity Grant is a one-off payment of £500, paid to families on a low income to help with the costs of a new baby.

To be eligible for the grant you must be in receipt of certain benefits, Income-related Employment and Support Allowance, Pension Credit, or Universal Credit.

If you do not receive any of these benefits listed you may become eligible after the birth of a child, and therefore you may become eligible for the grant once this has been determined.

In most instances, the Sure Start Maternity Grant is only payable where the conditions above are met and where the child being claimed for is the only child in the household under the age of 16.

**For further information or advice on Maternity, Paternity and Shared Parental Leave entitlement, work-life balance and workplace legislation affecting parents, you can contact our Family Benefits Advice Service on [fbas@employersforchildcare.org](mailto:fbas@employersforchildcare.org).**