

Shared parental leave: staff rights



Legal expert Sarah Buxton has advice for ADAM members re parental leave...

THESE are numerous key rights for employees who are expecting and/or are on maternity and these are the basic rights that all practice managers need to be aware of:

- Time off for antenatal appointments.
- Health and safety protection while pregnant and breastfeeding.
- Up to 52 weeks' maternity leave. Employees are entitled to one year's statutory maternity leave (made up of ordinary maternity leave (OML) and additional maternity leave (AML)), regardless of length of service.
- Statutory maternity pay (SMP) for up to 39 weeks.
- The right to return to the same job.
- Priority for alternative employment in

redundancy cases.

- The right to request flexible working conditions on return to work.
- Protection from dismissal, detriment or discrimination by reason of pregnancy or maternity.

This article is going to focus on Shared Parental Leave. This effectively allows parents to share the statutory maternity leave and pay that is available to mothers (and allows adoptive parents to share the adoption leave and pay available to the primary adopter). It is up to the employees

to propose the pattern of leave that they wish to take, and to discuss this with their individual employers. The entitlement to 52 weeks of maternity leave (39 weeks paid) will remain the default position for all employed women, as will the two-week period of compulsory maternity leave. However, if the parents wish to share this leave and take up shared parental leave (SPL) and shared parental pay (SPP).

Qualifying parents are able to share between them up to 50 weeks of leave and 37 weeks of pay (that is, everything other than the compulsory maternity leave period). The mother will be entitled to give notice that she wishes to curtail (end) her maternity leave and start SPL before the child's birth. However, she can change her mind within six weeks of the birth.

Employees are required to provide a non-binding indication of their expected pattern of leave when they opt into the SPL scheme.

Both parents will need to give their respective employers eight weeks' notice of the dates on which they wish to begin SPL and claim SPP. If they wish to take several blocks of leave, they must give their employers eight weeks' notice in respect of each period of leave. The eight weeks will include a two week discussion period between the employer and employee. It should be borne in mind that parents are able to take SPL at the same time as each other or separately.

Each employee can make up to three notifications for leave or changes to periods of leave, inclusive of the original request to take SPL. However, it will be open to the employer and employee to agree further periods of leave, or changes, if this works for both parties. However, in relation to requests for discontinuous periods of SPL, employers are not obliged to agree to the SPL pattern proposed by their employees. The parents' respective employers will not need to contact each other to discuss their employees' leave entitlements. The default position where agreement cannot be reached will be for a parent's portion of leave to be taken in one continuous block, to start on a date of their choice.

Each parent taking SPL has 20 optional KIT-style days (referred to as SPLIT days), in addition to the mother's 10 KIT day entitlement during maternity leave.

An employee returning to work from SPL has the right to return to the same job no matter how many periods of shared parental leave they have taken, as long as they have taken 26 or fewer weeks' leave in total. This 26-week total will include periods of maternity, adoption, paternity and shared parental leave. Once they have exceeded 26 weeks' leave, or where in addition to SPL they have taken a period of parental leave of more than four weeks (this refers to the old-style ordinary parental leave rather than shared parental leave), they would only have the right to return to the same or a similar job.

Shared parental leave is complex and, if it goes wrong, can result in the employee making a claim to the employment tribunal. The compensation awarded in such claims is unlimited and therefore can result in the employee being paid thousands and thousands of pounds. The advice is always to seek expert advice. ■

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