



An introduction to the Shared Parental Leave Regulations

What is Shared Parental Leave?

Shared Parental Leave is leave that can be taken by a mother and her partner in place of maternity leave if the mother ends maternity leave early. It is supported by Shared Parental Leave pay. Both are subject to statutory criteria being met.

Who counts as a 'partner'?

This can be the biological father or the partner of the mother (including, spouse, civil partner or joint adopter) or partner living in an enduring relationship and who lives with the mother. The 'partner' must share the main responsibility for the care of the child. The partner does not include the child's grandparents or others.

What about adopters?

Adopters or those with parental orders in surrogacy arrangements who take adoption leave and pay can also opt to end their adoption leave and pay in favour of taking Shared Parental Leave.

When does it take effect?

Shared Parental Leave is available for eligible employees whose baby is due on or after 5 April 2015.

What is the eligibility criterion for taking Shared Parental Leave? Individuals must:

- Be an employee and not a worker
- Be continuously employed for 26 weeks ending with the 15th week before the expected week of childbirth, i.e., the Qualifying Week (or to the matching date for adopters) and still be employed by you at the start of each shared parental leave period
- Have at the date of the child's birth, main responsibility to care for the child
- Have curtailed their maternity/adoption leave and pay/returned (mothers only)
- Have complied with notification requirements

What additional criteria must be met by the partner for the mother (or the mother for the partner) to be eligible?

- They must meet "*the employment and earnings test*": they must have been employed or self-employed for a total of 26 weeks (not necessarily continuously) in the period of 66 weeks leading up to the week in which the child is due (or matched for adoption) and to have earned an average of £30 per week in 13 of those weeks (not necessarily continuously). They can be employed or self employed
- They must have the main responsibility for the care of the child at the birth date.
- Be eligible for maternity/adoption leave or maternity/adoption pay or maternity allowance (mothers only)
- Have curtailed their maternity/adoption leave and pay/returned (mothers only)
- Have complied with notification requirements (mothers only)

Who is going to check that?

It is your employee's responsibility to check eligibility and then to make a signed declaration to that effect.

What are the criteria for Shared Parental Pay?

To qualify your employee must:

- Meet the qualifying requirements for Shared Parental Leave and have a partner who meets the employment and earnings test
- Have earned not less than the lower earnings limit for NI in the 8 weeks leading up to the qualifying week.

How much pay would the employee receive?

The Statutory Shared Parental Pay is the same as the maternity or adoption pay.

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How would an employee go about initiating Shared Parental Leave and Pay?

They must present their employer with certain notices at least 8 weeks before the start of any period of Shared Parental Leave. These notices are:

- A “*leave curtailment notice*” from the mother, which sets out that she proposes to end her maternity/adoption leave (and pay) in favour of shared parental leave and pay.
- A “*notice of entitlement and intention*” from the mother or partner giving an initial, non-binding, indication of each period of shared parental leave that he/she is requesting
- A “*period of leave notice*” providing the employer with a written notice setting out the start and end dates of each period of shared parental leave.

What do I need to do as an employer?

As an employer you are advised to introduce a policy and procedure which explains to employees how they can go about asking to take Shared Parental Leave and Pay and include some “notices” / forms for them to complete.

How much shared parental leave can be taken?

A mother has 52 weeks maternity leave and 39 weeks maternity pay. A mother has to take a minimum of 2 weeks compulsory maternity leave. The remainder can be transferred to shared parental leave, i.e., up to 50 weeks leave and up to 37 weeks pay. However, a more realistic scenario would be something like the mother beginning maternity leave some 8 to 4 weeks before the baby being due and then taking a minimum of 6 weeks after the baby is born. Leave must be taken in full weeks.

How many requests for leave can an employee make?

Each employee can make 3 separate requests for leave (or more if you allow it). This can be for continuous leave and discontinuous leave (separate blocks). You then have a 2 week window to consider the request.

Do I have to agree to a continuous period of parental leave?

Yes, if they meet the qualifying criteria and have submitted the right notices then you do.

Do I have to agree to discontinuous leave?

You do not have to agree this. If you do not agree to this, the employee is entitled to take the leave in one block unless they withdraw their request.

Can the parents take leave at the same time?

Yes.

Do KIT days exist during the Shared Parental Leave?

Yes, under the new regulations both parents can take up to 20 days each. These are called SPLIT days. This is in addition to any KIT days already taken by the mother when she was on maternity leave. Remember that these days are by agreement between the employer and employee. In other words the employee doesn't have a 'right' to come into work to use a SPLIT day and neither can the employer require one.

Are these amongst the most, if not the most complex regulations we have ever come across?

Yes!

Where can I go for further support?

ACAS have issued a Guidance booklet or we can provide you with a policy, procedure and friendly guidance and support.

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