

Additional paternity leave and pay

This information sheet looks at a new right for fathers and partners (including same sex partners) to take additional paternity leave and pay in order to share the care of their baby if the mother does not take all her maternity leave and pay. The new right applies to parents of babies due on or after 3 April 2011.

The new rights in brief:

- Fathers and partners (including same sex partners) will be able to take up to 26 weeks' additional paternity leave (APL).
- APL can only be taken once the mother has returned to work or is treated as returning to work.
- APL must be taken during the first year of your child's life and can begin anytime from 20 weeks after the birth.
- APL can be paid for a maximum of 19 weeks, depending on how much maternity leave and pay the mother has taken. It is paid at £128.73 per week from April 2011 – April 2012, the same rate as Statutory Maternity Pay (SMP).
- Mothers are currently entitled to 52 weeks maternity leave and 39 weeks SMP or Maternity Allowance (if they qualify). APL will be paid if it is taken before the end of the mother's maternity pay period.
- Agency and casual workers will not be entitled to leave but may be able to transfer entitlement to pay, if they qualify for it.
- These new rights will only apply to parents of babies who are **due** on or after **3 April 2011**, regardless of when the baby is actually born.

Additional paternity leave

Who is entitled to additional paternity leave?

You are entitled to additional paternity leave (APL) if:

- you have been continuously employed with the same employer for at least 26 weeks by the 15th week before the baby is due (or, if your baby is born early, you would have been continuously employed until the 15th week), and
- you are still employed by the same employer until the week before the first week of APL, and

- you are the child's father or the mother's husband, partner or civil partner (including same sex partners), and
- you are responsible for the child's upbringing.

The qualifying conditions for APL are similar to the qualifying conditions for taking paternity leave at the time of the birth – see the box below.

You must give the correct notice to your employer in order to qualify for APL and the child's mother must provide a signed declaration, see the box below on giving notice for APL and pay.

You can only take APL if the mother is entitled to maternity leave and/or SMP or Maternity Allowance (MA) and she has returned to work or is treated as returning to work, see below.

You cannot take longer APL for a multiple birth although you may be able to take Parental Leave if you qualify for it, see our information sheet [Time Off for Working Parents](#). Note: Parental Leave is different from *paternity* leave and is available to both parents.

How do I qualify for paternity leave at the time of the birth?

You qualify for two weeks' paternity leave at the time of the birth if:

- you are an employee.
- you have worked for your employer for 26 weeks by the 15th week before the baby is due or, if the baby is born before then, you would have worked for your employer for 26 weeks by the 15th week before the baby is due.
- you are still employed by the same employer before the birth.
- you are the child's father or the mother's husband, partner or civil partner (including same sex partners).
- you are responsible for the child and are taking time off to care for the child or support the mother.

You can take up to two weeks paternity leave following the birth of your baby. It must be taken within 56 days of the birth or within 56 days of the date your baby was due. You will qualify for up to two weeks' Statutory Paternity Pay if you meet the conditions above and you earn at least £102 on average (April 2011 – April 2012) in the eight weeks (if paid weekly) or two months (if paid monthly) before the 15th week before your baby is due. Statutory Paternity Pay is £128.73 per week from April 2011 – April 2012. You must give the correct notice to your employer to get paternity leave and pay.

If you need more detailed information on paternity leave and pay at the time of the birth see our leaflet [Time Off for Working Parents](#).

How much APL can I take?

You can take a minimum of two weeks APL up to a maximum of 26 weeks. APL can only be taken in complete weeks with no gaps in between. APL must be completed by your child's first birthday.

When can I start APL?

You can start APL from 20 weeks after the birth until your baby's first birthday. You can only take APL once the mother has returned to work or is 'treated' as returning to work. The mother is treated as returning to work on the day her maternity leave ends even if she then takes sick leave, annual leave or parental leave. However, if you wish to take APL during the mother's maternity pay period and to receive Additional Statutory Paternity Pay (ASPP), the mother must physically return to work at the end of her maternity leave, see the section on ASPP for more details.

Note that the mother must give at least eight weeks notice to her employer that she is returning to work early and a signed declaration in respect of your intention to take APL (see below for more on notice).

Can I do any work for my employer during APL?

Yes, you may work for up to ten 'Keeping in Touch' days during APL. KIT days can be taken individually or consecutively. Any work carried out on a day is counted as one day's work. Work includes training, meetings or any activity undertaken for the purpose of keeping in touch with the workplace. You and your employer can make reasonable contact during APL. This will not bring your APL to an end.

Neither you, nor your employer, can insist on working during APL.

What are my rights during APL?

You are entitled to the benefit of all of the terms and conditions of your contract, apart from the right to normal pay, which would have applied if you had not been absent on APL. Benefits such as share schemes, a company car or mobile phone (unless provided for business use only) continue during paternity leave. Your employer must continue to pay your pension contributions based on your normal salary but any contributions you pay should be based on the rate of any paternity pay you actually receive. You are still regarded as continuing in employment during paternity leave so your length of service is continuous.

Can I return to the same job after APL?

You have the right to return to exactly the same job on the same terms and conditions after a single period of APL or consecutive periods of APL and parental leave of four weeks or less.

If you take a consecutive period of APL and parental leave of more than four weeks you are entitled to return to the same job or, if it is not reasonably practicable, a suitable alternative job on similar terms and conditions.

You are entitled to return with the same seniority, pension and similar rights as if you had not been absent, and your employment is regarded as continuous.

Can I go back to work before the end of APL?

You can end your APL early providing you give at least six weeks' notice. Your employer is entitled to postpone your return to work up to a maximum of six weeks if you do not give sufficient notice. If you do return to work during that six week period your employer can refuse to pay.

What are my rights if I am made redundant during APL?

You are entitled to be consulted and to receive any redundancy pay that you would normally have qualified for. You also have the right to be offered any suitable alternative vacancy that exists before it is offered to colleagues who are not on maternity leave or APL. If you are made redundant during APL and you are receiving

ASPP, you are entitled to continue to receive any outstanding ASPP that is owing to you, see below for more on pay.

What happens if I am dismissed or treated unfairly during APL?

If you are selected for redundancy, dismissed or treated unfairly because you wish to take or have taken APL, you are protected from unfair treatment or automatic unfair dismissal. You can make a claim in an employment tribunal within three months.

Additional statutory paternity pay (ASPP)

Who can get ASPP?

You can get ASPP if you are an employee or a 'worker', for example, an agency worker or casual worker. You are a 'worker' if you are paid through PAYE with any tax and National Insurance is deducted by your employer. Workers are not entitled to take APL but you may be able to agree a period of time off with your employer.

How do I qualify for ASPP?

You will qualify for ASPP if:

- you are the father or the mother's husband, partner or civil partner (including same sex partners), and

- you have been continuously employed with the same employer for at least 26 weeks by the 15th week before the baby is due (or, if your baby is born early, you would have been continuously employed until the 15th week), and
- you are still employed by the same employer until the week before the ASPP begins, and
- you have average earnings of at least £102 (April 2011 – April 2012) in the eight weeks (if paid weekly) or two months (if paid monthly) before the 15th week before your baby is due.

You must give the correct notice to get ASPP, see below.

How much is ASPP?

ASPP is paid at the same rate as Statutory Maternity Pay, Maternity Allowance and Statutory Paternity Pay (at the birth), which is £128.73 per week (April 2011 – April 2012) or 90% of your average earnings if that is less than £128.73. You must have ASPP for at least two weeks, which means that the mother will need to return to work at least two weeks before the end of her maternity pay period. You can get ASPP for up to 19 weeks depending on when the mother returns to work.

You should check your contract to see if your employer offers any extra contractual pay for fathers or partners taking APL.

When does ASPP start?

ASPP can only start when the mother returns to work before her Statutory Maternity Pay (SMP) or Maternity Allowance (MA) period have run out. SMP and MA are currently paid for 39 weeks. For example, if the mother goes back to work after 26 weeks' ordinary maternity leave, she would have 13 weeks SMP or MA remaining, which the father could receive as ASPP for the first 13 weeks of APL.

The maximum ASPP payable is currently 19 weeks. This would be based on the mother starting her maternity leave and pay on the day the baby was born and returning to work 20 weeks after the baby's birth. She would

have 19 weeks' SMP remaining which the father could take as ASPP for the first 19 weeks of APL.

Can I get ASPP if the mother takes annual leave at the end of her maternity leave?

No, you cannot get ASPP if the mother takes annual leave immediately after the end of her maternity leave, as she will not be treated as returning to work until she physically goes back into work on the day after the end of her annual leave. However, you can continue to receive ASPP if the mother has already returned to work, even for one day, and then wishes to take annual leave.

Can I get ASPP if the mother is not well enough to return to work at the end of her maternity leave?

If the mother is not well enough to return to work immediately after the end of her maternity leave she will continue to be paid her SMP or MA. This should be topped up to full pay if she normally receives full pay when she is off sick. Statutory Sick Pay is not payable during the maternity pay period, but the mother would be paid SMP or MA instead. This means that you cannot receive ASPP until she returns to work and you should give your employer a withdrawal notice, see below.

If she had already returned to work and then takes sick leave, you can continue to receive ASPP even if the mother has gone back onto SMP or MA.

What happens if the mother is made redundant or starts a new job?

If the mother is made redundant, her maternity leave will end on the day her contract comes to an end but she remains entitled to SMP or Maternity Allowance for the full 39 weeks. You would not be entitled to ASPP as she is not returning to work and you should give your employer a withdrawal notice, see below.

If the mother gets a new job, she is not entitled to SMP/MA from the date she starts her new job. The father or partner can get

ASPP providing the mother has started her new job and has at least two weeks SMP/MA remaining.

Sarah was made redundant two weeks before her baby was due. She is still entitled to 39 weeks Statutory Maternity Pay (SMP). If she gets a new job, her SMP from her former employer will stop from the date she starts work with her new employer. Her partner would be entitled to APL and any outstanding ASPP from the date the mother starts work with the new employer.

Do I have to repay ASPP if I do not return to work after APL or my job ends after APL?

No, as with SMP, ASPP is not repayable if you do not return to work. You are entitled to receive it in full if your job comes to an end or you decide not to return to work. If you are resigning, you must give your employer the notice required by your contract of employment.

All employers can claim ASPP back from HM Revenue and Customs (HMRC). Small businesses (defined as paying £45,000 or less in National Insurance contributions) can claim back 104.5% of any ASPP they have paid out. Your employer can get help and advice about paying and reclaiming ASPP from the HMRC Employer Helpline on 08457 143 143.

Can agency or casual workers transfer entitlement to pay?

Yes, if the mother is an agency worker and entitled to SMP or MA, the father or partner can get ASPP (if they meet the qualifying conditions) if the mother returns to work at least two weeks before the end of the 39 week maternity pay period. If the father/partner is an employee they are entitled to APL. If the father/partner is an agency/casual worker they are not entitled to APL but can ask for time off work.

How to give notice for APL and ASPP

You must give your employer at least eight weeks notice before the date you wish to

start APL and/or ASPP. Notice must be given in writing stating:

- your full name,
- your baby's expected week of childbirth;
- your baby's date of birth, and
- the dates you wish to start and end your APL and/or ASPP.

You must also give your employer a signed declaration stating that:

- the information in your written notice is correct,
- you are taking APL and/or ASPP to care for your child, and
- you are the child's father or the mother's husband, partner or civil partner (including same sex partners) and you are responsible for the child's upbringing.

The mother must also give a signed declaration stating:

- her name and address and National Insurance number;
- the date she intends to return to work, or will be treated as returning to work, and that she has given her employer notice that she is returning to work;
- that she is entitled to SMP or MA and the date her SMP or MA started;
- that the person taking APL is the child's father or the mother's husband, partner or civil partner and is responsible for the child's upbringing and is the only person, to her knowledge, taking APL and/or ASPP in respect of their child; and
- that she consents to the employer processing the information required in the declaration.

Your employer must confirm the dates of your APL and/or ASPP in writing within 28 days of receiving your notice to take APL. Your employer can also ask for a copy of your child's birth certificate and the name and address of the mother's employer or her business address, if the mother is self-employed, within 28 days of receiving your notice to take APL and you must supply it within 28 days of your employer's request.

What happens if I am no longer entitled to APL/ASPP or the mother will not be returning to work?

You must give a withdrawal notice as soon as reasonably practicable if you are no longer entitled to APL and/or ASPP or if the mother is not returning to work, for example, if she is dismissed or made redundant or is not well enough to return at the end of maternity leave.

You are not entitled to APL if you are no longer the child's father or the mother's husband, partner or civil partner or the mother is no longer entitled to maternity leave, SMP or MA or the mother will not be returning to work or will not be treated as returning to work. Note: if the mother is dismissed or made redundant she will still be entitled to her remaining SMP or MA but this can be transferred to the father/partner if she starts a new job.

Your employer can insist that you take a period of APL if you have given withdrawal notice less than six weeks from the start of APL, or after your APL has already begun, and it is not reasonably practicable for your employer to accommodate the withdrawal. In this situation, your employer can only make you take a maximum of six weeks' APL from the date of the withdrawal notice or the date your APL would have ended, if that is earlier. Your employer must confirm the dates of your APL in writing as soon as reasonably practicable and it must be before the start of your APL.

Can I cancel APL/ASPP or change the dates?

You can cancel your APL and/or ASPP, or change the start and end dates of your APL and/or ASPP, provided you give your employer written notice at least six weeks before the old or the new date, whichever is earliest. If it is not possible to give six weeks' notice you should give notice as soon as reasonably practicable.

If you have not given at least six weeks notice and it is not reasonable practicable for your employer to accommodate the change in arrangements, your employer can insist

that you take a period of APL starting on the date specified in your notice to take APL and ending six weeks after you gave notice to cancel APL, or on the date your APL would have ended if that is earlier. Your employer must confirm the dates of your APL in writing as soon as reasonably practicable and it must be before the start of your APL.

Can I take APL if the mother dies?

You can take APL if the mother dies within 12 months of your baby's birth and she would have qualified for maternity leave, SMP or MA. You can take APL and/or ASPP at any time from the date of the mother's death, up to 12 months after your baby's birth. You can take APL for two weeks up to a maximum period of 12 months. APL must be continuous and taken in whole weeks. You cannot take a further period of APL if you have already taken APL and it has ended before the mother's death but if you are on APL when the mother dies you can extend it up to a maximum of 52 weeks providing it ends by your baby's first birthday. You can take ASPP up to the date the mother would have received it unless you decide to return to work early.

You must give notice as soon as reasonably practicable after the mother's death, but within eight weeks of her death. Notice must be in writing stating:

- your name
- your baby's expected week of birth;
- your baby's date of birth; and
- the dates you wish to start and end your APL and/or ASPP.

You must also give your employer a signed declaration stating that you are taking APL to care for your child and that you are the child's father or you were the mother's husband, partner or civil partner (including same sex partners) before her death. You must also state the mother's name and last address; the date of her death; her National Insurance number; and the date her maternity pay period began or would have begun.

Within 28 days of receiving your notice to take APL, your employer can ask you to provide a copy of your baby's birth certificate

and the name and address of the mother's employer or her business address if she was self-employed. You must provide it within 28 days of receiving your employer's request.

If your APL starts within eight weeks of the mother's death you will be treated as having complied with the notice requirements if you inform your employer, as soon as reasonably practicable, that the mother has died and give your notice and declaration within eight weeks of her death. You can give your notice and declaration more than eight weeks after her death if it is at least six weeks before the date you have chosen to start your APL.

Will I lose ASPP if I work for my employer during APL?

You can work for up to ten 'Keeping in Touch' days without losing your ASPP. You and your employer will have to agree the rate of pay for any KIT days that you work. Your ASPP can be offset against any pay for working KIT days.

If you have a second job you can receive ASPP from your first employer if you were employed in your second job in the 15th week before your baby was due and you are not entitled to ASPP from your second employer. Otherwise, you are not entitled to ASPP if you do any work for another employer.

What can I do if my employer refuses to pay ASPP?

If you are refused ASPP or your employer dismisses you to avoid payment of ASPP, you can contact your local HM Revenue and Customs Office for a formal decision. If your employer refuses to pay ASPP, you can raise a formal grievance with your employer and make a claim for unlawful deduction of wages in an employment tribunal. If your employer has gone into liquidation you can claim payment of any outstanding ASPP from HMRC.

Are there any benefits we can claim?

Once your baby is born you can claim Child Benefit. From April 2013, Child Benefit will not be payable to families with a higher rate

tax payer. You may be able to claim Child Tax Credit and/or Working Tax Credit depending on your family income. For more information and an application form, telephone the Tax Credit Helpline on 0845 300 3900.

If you or your partner are receiving Income Support, income-based Jobseekers Allowance or Child Tax Credit of more than the family element you may be entitled to a Sure Start Maternity Grant of £500 for your first child (or if there are no other children aged under 16 in your family). Claim on form SF100 (Sure Start), available from Jobcentre Plus offices, from 11 weeks before the baby is due until 3 months after the birth.

Useful contacts

Maternity Action

Advice on maternity rights and benefits
www.maternityaction.org.uk
Helpline 0845 600 8533

ACAS

For advice on employment rights or arbitration services
www.acas.org.uk
Helpline: 08457 47 47 47

Directgov

The government's online information resource
www.direct.gov.uk

Department for Business, Innovation and Skills (BIS)

The government website on employment rights for parents.
www.bis.gov.uk see Employment Matters, Work and Families

Citizens' Advice

For information about your rights and to find details of local advice bureau
www.adviceguide.org.uk

Community Legal Advice

For legal information and to search for specialist legal advice in your area
www.communitylegaladvice.org.uk

Helpline: 0845 345 4 345

Equalities and Human Rights Commission (EHRC)

For information and advice about discrimination law
www.equalityhumanrights.com

Helpline:

0845 604 6610 - England
0845 604 8810 - Wales
0845 604 5510 – Scotland

HM Revenue and Customs

Employers' Helpline - 08457 143 143. For queries about SPP and ASPP.

Statutory Payments Dispute Team

Room BP 3202, Benton Park View, Longbenton, Newcastle upon Tyne, NE98 1YS. Claims for SPP/ASPP when employer is insolvent or refuses to pay SPP/ASPP.

Working Families

Rights at work
www.workingfamilies.org.uk
Helpline 0800 013 0313

This information sheet was produced in May 2011. It is important to get up-to-date advice.

More Maternity Action information sheets

[Pregnant at work 2011](#) – a brief guide to your rights to maternity leave and pay

[Rights at work for fathers and partners](#) – a brief guide to rights for fathers and partners

[Additional paternity leave and pay](#) – new rights for fathers and partners

[Time off for working parents](#) – rights to paternity leave, adoption leave, parental leave and time off in an emergency

[Child friendly working hours](#) – rights to ask for changes in your working hours to fit with your childcare or other caring responsibilities

[Money for parents and babies](#) – benefits for families

[Common maternity pay questions](#) – how to qualify for Statutory Maternity Pay, Maternity Allowance and Employment and Support Allowance.

[Rights for parents with more than one job](#) – rights for parents working more than one job

[Redundancy during pregnancy and maternity leave](#) – your rights if you are made redundant

[Dealing with pregnancy and maternity-related problems at work](#) – how to deal with problems at work

[Pregnancy discrimination](#) – what is pregnancy discrimination and what you can do about it

[Discrimination during maternity leave](#) – what you can do about discrimination during maternity leave

[Pregnant during maternity leave](#) – your rights if you become pregnant on maternity leave

[Breastfeeding on return to work](#) – your rights if you wish to continue breastfeeding on return to work

[Sickness during pregnancy and maternity leave](#) – rights and benefits during sick leave

[Breastfeeding in public places](#) – your right to breastfeed when you are out and about

[Polish language information](#) - rights at work for mothers, fathers and partners; your right to breastfeed when you are out and about

[Maternity rights for migrants](#) – information for EU nationals and other migrants

[Maternity rights for refugees and asylum seekers](#) – information for refugees, asylum seekers and refused asylum seekers

Available at www.maternityaction.org.uk