

May 2011

Rights at work for fathers and partners – Polish workers

This information sheet is for new and expectant fathers and partners, including same sex partners. It gives you an outline of your rights to time off and pay at the birth and for the first year of your baby's life. It also answers common questions about your rights at work and benefits for families.

Who do these rights apply to?

The rights in this information sheet apply to the biological father as well as the mother's husband, partner or civil partner, including same sex partners. Parental leave (which is different from *paternity* leave) can also be taken by anyone who has a parental responsibility order for a child, see below for more on parental leave.

From 30th April 2011 Polish nationals are no longer required to register under the Worker Registration Scheme for authorisation to work and have the same rights as other EEA nationals.

Can I take time off to attend antenatal appointments with my spouse/partner?

Fathers and partners do not have a legal right to paid time off work to accompany their spouse/partner to antenatal appointments as this only applies to pregnant women. However, as a matter of good practice the government encourages all employers to allow expectant fathers and partners to attend antenatal appointments without loss of pay. See the Department for Business, Innovation and Skills' leaflet [Fathers-to-be and antenatal appointments: a good practice guide](#).

You should discuss with your employer which antenatal appointments you wish to attend, for example, you may only wish to attend scans or you may need to attend more appointments if there are particular concerns or tests. If your employer does not provide paid leave, you could ask if you can work at home for part of the day or make up the time later. Alternatively, you could take paid annual leave.

Ordinary and Additional Paternity Leave and pay

What is Ordinary Paternity Leave?

You can take two weeks' Paternity Leave (PL) at the time of the birth. You have the right to return to exactly the same job. You **MUST** give your employer the correct notice

in order to qualify for paternity leave. You cannot take longer for a multiple birth but you can take parental leave if you are entitled to it. For full details of paternity leave and parental leave, see the information sheet [Time Off for Working Parents](#).

What is Additional Paternity Leave (APL)?

The right to take APL applies to parents of babies due on or after 3 April 2011. You can take APL for up to 26 weeks, once your baby is at least 20 weeks old, if the mother returns to work before the end of her maternity leave. If you return to work after APL you have the right to return to exactly the same job. For full details of APL, see the information sheet [Additional Paternity Leave and Pay](#).

Who gets it?

You can only take PL and/or APL if you are an employee. Self-employed, agency, freelance and casual workers are not entitled to PL or APL but may be able to agree a period of time off. Workers may still qualify for paternity pay, see 'Paternity Pay' below.

You are usually an employee if the following arrangements exist at your work:

- your employer deducts tax and National Insurance from your pay
- your employer controls the work you do, when and how you do it
- your employer provides all the equipment for your work.

To qualify for PL and/or APL you must:

- 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.
- be employed by the same employer up to the birth (for PL) and up to the week before the start of APL (for APL).

- be the biological father or the mother's husband or partner (including same sex partners).
- be responsible for the child and be taking time off to care for the child or support the mother.

How do I work out the 15th week before my baby is due?

Find the Sunday before your baby is due (or the due date if it is a Sunday) and count back 15 Sundays from there. That is the start of the 15th week before your expected week of childbirth.

You should use the due date on the MAT B1 maternity certificate which the mother will get when she is about 20 weeks pregnant.

When can I take paternity leave?

You can take one week or two weeks in a row but not odd days or two separate weeks. Paternity leave must be taken within 56 days of the birth. If the baby is born before the expected week, paternity leave can be taken any time from the actual date of birth up to 56 days from the date the baby would have been due. Paternity leave can start on any day of the week.

You can choose to start your leave on:

- the day the baby is born, or
- a fixed number of days/weeks after the birth, or
- a fixed date after the day the baby is due.

If you choose to start your leave on the day the baby is born and you are at work that day, your leave will start the following day.

Can I get Statutory Paternity Pay (SPP)?

If you are working lawfully in the UK you are entitled to Statutory Paternity Pay or Additional Statutory Paternity Pay (see below) if you meet the qualifying conditions. SPP and ASPP are not classed as public funds.

You can get SPP if:

- you are the baby's father or the husband/partner of the mother and

you are responsible for the baby's upbringing.

- 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 earn at least the weekly lower earnings limit on average (before tax) (currently ££102) in the eight weeks (if paid weekly) or two months (if paid monthly) before the 15th week before your baby is born.

You MUST give the correct notice to get paternity pay, see below.

If you do agency, casual or freelance work, you may not be regarded as an 'employee' so you will not qualify for paternity LEAVE, however, you can get SPP if your employer deducts tax and NI from your wages, usually through PAYE, and you meet the conditions above for SPP.

How much is SPP?

SPP is paid by your employer for up to two weeks. SPP is paid at £128.73 per week (April 2011 – April 2012) or 90% of your average earnings if that is lower.

Some employers offer contractual paternity pay, so always check your contract or ask.

Can I get Additional Statutory Paternity Pay (ASPP) if I take Additional Paternity Leave?

If you meet the qualifying conditions for SPP and remain with your employer until the start of APL you will qualify for ASPP. ASPP is only payable if the mother goes back to work before the end of her maternity pay period. ASPP is paid at the same rate as SPP and will last for a maximum of 19 weeks depending on how much maternity pay the mother has taken. For full details of ASPP, see the information sheet [Additional Paternity Leave and Pay](#).

Can my employer ask me to pay SPP/ASPP back if I do not go back to work?

No, all employers can claim the SPP and/or ASPP back from HM Revenue and Customs (HMRC). You do not have to repay it if you do not go back to work for your employer, for example, if you resign or are dismissed or made redundant at any time after the start of your paternity leave and/or APL. Your employer can get help and advice about paying and reclaiming SPP/ASPP from the HMRC Employer Helpline on 08457 143 143.

When do I have to give notice to take paternity leave and/or pay?

To get paternity leave you MUST give your employer notice in or before the 15th week before your baby is due. If your employer asks you to, you must put it in writing. To get SPP you must give your employer at least 28 days notice of the date you want to start your pay or you can give notice for leave and pay together in the 15th week before your baby is due. For full details of how to give notice for paternity leave and pay, see [Time Off for Working Parents](#).

If you want to take APL and pay you MUST give your employer at least eight weeks notice and provide a written notice, a signed declaration and a declaration from the mother, see [Additional Paternity Leave and Pay](#) for more full details of how to get APL and ASPP.

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

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

Can I get SPP/ASPP if I go abroad to visit relatives?

Yes, you can still get SPP/ASPP if you go abroad on holiday or to visit relatives.

What happens if my baby is stillborn or dies after birth?

You remain entitled to PL and SPP if your baby is stillborn after the end of the 24th week of pregnancy (in or after the 16th week before the expected week of childbirth). You also remain entitled to PL and SPP if your baby was born alive but died at any point after the birth. If your baby dies during APL or after you have given notice to take APL, you are entitled to remain on APL for eight weeks or until the end of your APL if it ends earlier.

Rights at work

What are my rights during paternity leave and/or APL?

You are entitled to all your normal contractual terms and conditions apart from your basic wages or salary (as you may qualify for paternity pay). 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 paternity pay you actually receive.

You are still regarded as continuing in employment during paternity leave and APL so your length of service should be treated as continuous.

You have the right to return to exactly the same job on the same terms and conditions after paternity leave and/or APL. If you take *parental* leave of four weeks or more immediately after paternity leave or APL your employer can offer a suitable alternative job if it is not reasonably practicable to allow you to return to the same job.

What happens if I am made redundant during paternity leave?

If you are made redundant during PL or APL your PL/APL will end on the day your contract ends. You will still be entitled to continue to receive SPP or ASPP unless you start work for a new employer. If your employer goes into liquidation you can still claim any statutory redundancy pay and SPP/ASPP from HMRC. However, if your contract ends before the birth you will not be entitled to SPP and if it ends before the start of your APL you will not be entitled to ASPP.

If you are selected for redundancy because you have taken or are about to take paternity leave and/or APL you may have a claim for unfair dismissal and you should seek legal advice.

If you are facing redundancy during APL, you have the right to be offered a suitable alternative vacancy if one exists, with priority over other employees.

Can I take more time off?

You can take Parental Leave. Parental leave is usually unpaid but you should check your contract of employment or ask your employer. Parental leave allows you to take 13 weeks' leave, per parent, per child, up to the child's fifth birthday. If your child is disabled, each parent can take up to 18 weeks parental leave before the child's 18th birthday.

You are entitled to parental leave as long as you are an employee and you have been employed by the same employer for at least a year. You must give your employer at least 21 days' notice, in writing, of the date you want to start your leave and how much leave you want to take. Your employer can only ask you to postpone your parental leave if it would cause undue disruption to the business. You are protected against dismissal, redundancy and unfair treatment on the grounds of parental leave. For more information on Parental Leave, see [Time Off for Working Parents](#).

If you want to take paid leave you can ask your employer to take annual leave. You

should follow your employer's normal leave procedure. All workers are entitled to at least 28 days paid annual leave per year (this can include Bank Holidays). Your employer can ask you to take your leave at another time but they must allow you to be able to use all your annual leave in each leave year. If you are not well enough to return to work after PL or APL you can take sick leave in the normal way and should follow your employer's normal sickness reporting procedures.

What happens if I need time off to care for the mother or baby?

You can take emergency time off if:

- a dependant falls ill, gives birth or is injured and needs your assistance.
- you need to make arrangements for the care of a dependant who is ill or injured.
- there is a sudden disruption of arrangements for the care of a dependant.
- there is an unexpected incident at school involving your child (when the school has responsibility for your child).
- your dependant dies.

Emergency time off for dependants is usually unpaid but some employers allow some paid leave for family emergencies. You should let your employer know as soon as reasonably practicable that you need to take time off. You are only entitled to take the time off necessary to deal with the emergency and make arrangements for the mother or child's care. If you need more time off you will need to take annual leave or give notice to take parental leave. You are protected against unfair treatment on the grounds of time off for dependants. For more information, see [Time Off for Working Parents](#).

Can I change my working hours so that I can take my child to nursery?

You have the right to make a request for flexible work if you are an employee and you have worked for your employer for at least 26 weeks by the time you make your request

and you have not made a request for flexible work in the last twelve months.

You can ask to change your hours of work, your days of work or your place of work. If you want to apply to change your hours you must make a written application to your employer. For more information, see [Child-friendly working hours](#).

Your employer must give your request serious consideration and follow a set procedure. Your employer can only refuse your request for one of the following business reasons:

- the burden of additional costs
- the detrimental effect on the ability to meet customer demand
- they are unable to reorganise the work among existing staff
- they are unable to recruit additional staff
- the detrimental effect on quality
- detrimental effect on performance
- there is not enough work during the periods the employee wants to work, or
- planned structural changes.

Your employer must explain why that reason applies in your circumstances. You have a right to appeal and to use your employer's grievance procedure. If your employer does not follow the procedure you can make a complaint in an employment tribunal. If your request is refused you may have a claim for sex discrimination and you should seek legal advice, see Useful Contacts below. It may be indirect sex discrimination if an employer refuses a woman's request to change her working pattern. If a man's request to change his working pattern is refused but women in similar jobs have been allowed flexible work, he may be able to make a claim for direct sex discrimination.

What can I do if I am treated unfairly for taking leave?

If you are dismissed, made redundant or treated unfairly because you are going to take or have taken paternity, parental or dependants' leave, you are protected from

unfair dismissal or detrimental treatment. If a woman is allowed more favourable parental or dependants' leave than a man, you may have a claim for sex discrimination.

You can make a complaint using your employer's grievance procedure. If you cannot resolve the matter you can make a claim in an employment tribunal. You should seek legal advice as strict time limits apply.

Benefits

What benefits can we claim when our baby is born?

From 30th April 2011 Polish nationals are eligible to apply for benefits in the same way as other EEA nationals, however, you must meet the residence conditions attached to some benefits.

If you are on a low income you may be entitled to Income Support, Housing Benefit and Council Tax Benefit. You can claim Income Support, HB and CTB if you have the right to reside here and are habitually resident in the UK. If you are receiving Income Support, income-based Jobseeker's Allowance or Child Tax Credit of more than the family element, you may be entitled to the Sure Start Maternity Grant (SSMG) of £500 to buy things for your baby. From April 2011, the SSMG is only paid for the first baby. These benefits are classed as public funds and cannot be claimed by someone subject to immigration control, such as a family member who is not an EEA national.

For more information on benefits for Polish nationals, see [Maternity rights and benefits: EU, EEA and Swiss nationals \(including A8 and A2\)](#)

I do not qualify for SPP. Can I claim anything else?

If you do not qualify for SPP, for example, if your earnings are too low, your employer must give you form SPP1 explaining why you cannot get it. If you do not agree with your employer you can ask your local HMRC Officer to make a formal decision.

If you do not qualify for SPP, you may be able to claim Income Support during your paternity leave (see above). You should contact your local JobCentre Plus.

More Maternity Action information sheets

In Polish:

[Ciąża i uprawnienia macierzyńskie dla pracownik z Polski, 2011 r](#) (Pregnancy and Maternity Rights for Polish workers, also available in [English](#))

[Karmienie piersią w miejscach publicznych](#) (Breastfeeding in public places – also available in [English](#))

In English:

[Pregnant at work](#) – your rights to leave and pay

[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

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

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

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

[Common maternity pay problems](#) – a guide to maternity pay and benefits

[Pregnancy discrimination](#) – what to do if you are experiencing discrimination during your pregnancy

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

[Sickness during pregnancy and maternity leave](#) guide to sick leave and pay
[Breastfeeding on return to work](#) – your rights if you wish to continue breastfeeding on return to work

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

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

[Maternity rights and immigration status](#) – Maternity Action also produces a series of information sheets on maternity rights according to immigration status: women with ‘no recourse to public funds’; EU, EEA and Swiss nationals; asylum seekers; refugees; refused asylum seekers; undocumented migrants; and women with ‘indefinite leave to remain’.

Available at www.maternityaction.org.uk

Equalities and Human Rights Commission (EHRC)

For information and advice about discrimination law
www.equalitieshumanrights.com Helpline: 0845 604 6610 - England
0845 604 8810 - Wales
0845 604 5510 – Scotland

HM Revenue and Customs SPP Helpline
08457 143 143. For queries about SPP.

Redundancy Payments Office Helpline
0845 145 0004. Claims for redundancy pay when employer is insolvent.

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

UK Border Agency

www.ukba.homeoffice.gov.uk
EEA Residency Enquiries Bureau - 0845 010 5200 (Mon. to Fri. 9am to 5pm).
Email: UKBAeuropeanenquiries@ukba.gsi.gov.uk
Worker Registration Scheme customer contact centre - 0114 207 4074 (Mon. to Fri. 9am to 5pm)

Working Families

Advice on rights and benefits for families
www.workingfamilies.org.uk
Helpline 0800 013 0313

Useful contacts

Maternity Action

Maternity rights and benefits for British parents and parents from abroad
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.clsdirect.org.uk
Helpline: 0845 345 4 345

This information sheet was produced in May 2011. Benefit rates apply from April 2011 to April 2012. It is always important to get up-to-date advice.