

May 2011

Time off for working parents

This information sheet answers common questions on:

- Paternity leave for fathers and partners (including same sex partners)
- Adoption leave and pay
- Parental Leave for parents of young children
- The right to time off for dependents for dealing with emergencies involving your children and others who rely on you.

Before reading this information, please check your employment status. The rights outlined in this information sheet apply to employees. If you are not an employee, for example, you are self-employed or doing casual work, your rights may be different. If you are unsure about your employment status, seek advice.

For full details of maternity rights, including leave and pay, please see our leaflet [Pregnant at Work](#).

Paternity leave

What is paternity leave?

Paternity leave is up to two weeks' paid leave from work following the birth of a baby. 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.

You cannot take longer for a multiple birth but you can take parental leave if you are entitled to it (see below).

Who can take paternity leave?

You can take paternity leave if:

- you are an employee. You are usually an employee if:
 - your employer deducts tax and National Insurance from your pay
 - your employer controls the work you do and when you do it
 - your employer provides all the equipment for your work
- 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 biological father or the mother's husband or 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.

What notice do I have to give to take paternity leave?

To take paternity leave you must give your employer the following information by the 15th week before the baby is due. If your employer asks for it, the notice must be in writing:

- When the baby is expected to be born (or date of birth if already born)

- Whether you want to take one or two weeks leave
- When you want your leave to start (see next question)
- If you want to change the start of your leave, you must tell your employer at least 28 days in advance, or as soon as reasonably practicable.

To get Statutory Paternity Pay (SPP, see below) while you are on leave you must give your employer 28 days notice. You can give notice for both leave and pay in the 15th week if you wish.

If your baby is born prematurely, you should give notice, as above, as soon as reasonably practicable and tell your employer the date your baby was born.

If your baby is stillborn after the end of the 24th week of pregnancy you are still entitled to paternity leave and SPP and you should give your employer notice as above.

When does paternity leave start?

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.

Remember, your leave must be completed by 56 days from the birth (or 56 days from the due date if your baby is premature). 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. If you choose a fixed day and your baby has not been born yet you must give notice as soon as possible that you wish to take paternity leave from the day the baby is born or from a new date. You cannot have paternity leave and pay before the birth.

What are my rights during paternity leave?

During your paternity leave you are entitled to all your normal contractual terms and

conditions apart from your basic wages or salary. 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 so your length of service is continuous.

You have the right to return to exactly the same job on the same terms and conditions after paternity leave. You are protected from unfair treatment or dismissal and can claim compensation in an employment tribunal.

I want to be present when my baby is born, but have just started a new job.

What should I do?

If you are not entitled to paternity leave (see above), you could:

- take annual leave. Check with your employer about how much notice you need to give.
- take emergency time off for dependants (TOFD) to provide assistance whilst the baby is born. However, TOFD finishes as soon as the emergency is over (i.e. as soon as the baby has been born). See below for TOFD.

I would like more time off than two weeks when my baby is born; is there any extra leave I can take?

You can only take up to two weeks paternity leave but you could extend your time at home by:

- taking annual leave
- taking unpaid parental leave (if you qualify) at the birth or immediately after your paternity leave. See the section below on parental leave. You must give 21 days' notice of the date your baby is due and tell your employer how much parental leave you would like to take. You will then be allowed to take parental leave when your baby is born and your employer cannot postpone it.

When will I be able to take additional paternity leave and pay?

Fathers and partners of babies due on or after 3rd April 2011 will have the right to take additional paternity leave and pay. Fathers and partners will have the right to take up to 26 weeks additional paternity leave and up to three months additional paternity pay if the mother has not used all of her leave and pay. For more information, see [Additional paternity leave and pay](#).

Statutory Paternity Pay

What is Statutory Paternity Pay (SPP)?

SPP is paid by employers 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. Employers claim the SPP back from HMRC. You do not have to repay it if you do not go back to work for your employer.

Some employers offer additional paternity pay to their employees, so always check your contract or ask.

Can I get Statutory Paternity Pay?

You can get SPP if your employer pays your wages, usually through PAYE, and deducts tax and NI (or would do if you earned enough) and you meet the following conditions:

- 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 (£102 per week April 2011-April 2012) on average, before tax, in the eight weeks (if paid weekly) or two months (if paid monthly) before the 15th week before your baby is born.

How do I claim Statutory Paternity Pay?

To get Statutory Paternity Pay, you must give your employer notice of the date you want payment to start at least 28 days before or as soon as reasonably practicable. To give notice you could ask your employer for form SC3 or give your employer a signed letter stating that:

- you want to receive one or two weeks' SPP
- you are the baby's father or the husband/partner of the mother
- you are responsible for the baby's upbringing
- you are taking time off to be with your child or the mother.

SPP can start on any day of the week, for example, from Tuesday to Monday but you cannot get a week's SPP if you do any work between those days – even for an odd day.

If you work for more than one employer, you can qualify for SPP from each employer. You can work for one employer and receive SPP from the other as long as the employer you do some work for employed you in the 15th week before the baby is due. In other words, you cannot get SPP from one employer if you are doing some work for a new employer during your paternity pay period.

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 you wages, usually through PAYE, and you meet the conditions above for SPP. You will need to agree the time off with your employer/agency while you stop work to receive SPP.

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

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

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 a form SPP1 explaining why you cannot get it. You may be able to claim Income Support during your paternity leave. Contact your local Jobcentre Plus for a claim form. For more information, see [Money for parents and babies](#).

Adoption leave and pay***What rights do I have if I adopt a child?***

You may be entitled to adoption leave of 52 weeks and Statutory Adoption Pay for 39 weeks when you adopt a child. To qualify, you must:

- be newly matched with a child by an adoption agency, and
- have agreed to the match and set a placement date, and
- be an employee, and
- have worked continuously for your current employer for at least 26 weeks before the beginning of the week in which you are matched with a child, and
- earn, on average, at least £102 per week (April 2011-April 2012) in order to qualify for Statutory Adoption Pay.

If you meet these conditions, you or your partner (only one of you can get adoption leave and pay, but you can choose who) will be entitled to 26 weeks' ordinary adoption leave and 26 weeks' additional maternity leave.

If your earnings are high enough, you can be paid Statutory Adoption Pay of £128.73 per week (April 2011-April 2012) or 90% of your average earnings if that is lower.

Both parents are also entitled to parental leave, see below.

What notice do I have give my employer?

For adoption leave, you must inform your employer within seven days of the match (or as soon as possible);

- When the child will be placed with you

- When you want your leave to start
You need to give your employer 28 days' notice that you wish to be paid Statutory Adoption Pay. You can give notice for both pay and leave at the same time, and should do this in writing.

What are my rights during adoption leave?

You can do paid work for up to ten days for your normal employer (who pays your Statutory Adoption Pay) and your adoption pay will not be affected. If you work for more than ten days, your Statutory Adoption Pay will not be paid for any week in which you work (even if you only work for a day). If you start working for a new employer after the child has been placed with you, your Statutory Adoption Pay will stop.

All your contractual rights except the right to normal pay continue during ordinary and additional adoption leave. The period you are on leave – both ordinary and additional leave - counts towards your continuous service.

You have the right to return to your job after ordinary adoption leave, and to your job or, if this is not possible, to a suitable alternative after additional adoption leave.

You are protected from unfair treatment or dismissal and can claim compensation in an employment tribunal.

Can my partner get any leave or pay?

Your partner may be entitled to paternity leave and statutory paternity pay, see above. Your partner should give notice to his/her employer within seven days of the match being made for leave and 28 days notice for pay, and must have been continuously employed for at least 26 weeks at the beginning of the week which the match is made and still be working for the same employer at the time they take leave.

You can also take parental leave around the time that your child is placed for adoption with you. You should give your employer 21 days' notice of the date of the placement.

You then have the right to take time off and your employer cannot postpone your leave.

Parental Leave***What is parental leave?***

Parental leave is designed to give parents more time with their young children. It entitles you to take 13 weeks' leave per parent per child, usually unpaid, 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.

Many of the details of parental leave are not hard and fast rules and can be negotiated in a workforce agreement or collective agreement. If there is no agreement at your workplace you can rely on the default scheme which is set out in this section.

What is a collective agreement?

If there is a union or staff association at your workplace, a collective agreement will be negotiated by the representatives and will probably cover other matters as well as the detail about parental leave.

What is a workforce agreement?

If there is no union at your place of work, you can negotiate a workforce agreement between the staff and the employer, which can have much more detailed rules about how parental leave should work. It cannot take away your basic right to 13 weeks' leave, but it could contain very different rules about how and when parental leave is taken, a system tailored to suit your particular workplace. You can agree anything that improves upon the legal minimum, but your employer cannot take your legal minimum rights away. For example, you might be able to negotiate:

- that you can take more than four weeks per year or less than blocks of one week;
- that parental leave should be paid at a certain rate;
- that it should not always be necessary to give as much as 21 days' notice for

parental leave (for example, if you were only going to be on leave for two days).

What is the default scheme?

If there is no collective or workforce agreement in place, then you will be entitled to the default scheme. The default scheme kicks in when there are no other rules in place agreed by a collective or workforce agreement and is the legal minimum that you are entitled to. Under the default scheme:

- parental leave is unpaid;
- you can only take four weeks per year per child;
- you can only take it in blocks of a week or more (unless your child is disabled when you can take it blocks of one day or more);
- you must always give 21 days' notice if you want to take leave.

Who can take parental leave?

You can take parental leave for your child as long as;

- you are an employee (see paternity leave above for the definition of an employee)
- you have been employed by your company for at least a year
- you take the leave before your child's fifth birthday (but see below for exceptions).

Both parents can take parental leave for each child that they have.

If you adopted a child you have to take the leave within five years of the adoption placement, or before the child is 18, whichever is sooner. If your child is disabled, you must take the leave before their 18th birthday.

Also, anyone who has, or expects to have, a parental responsibility order for a child can take parental leave for that child – see the next question. This could include grandparents (but probably only if the grandparent lives with the child), step parents and parents in same-sex couples.

What is a parental responsibility order?

This is a court order to say that you are legally responsible for a child. The natural mother of a child automatically has parental responsibility for the child and so does the father, if the mother is married to him. If the parents are not married, the father will automatically be entitled to take parental leave for the child if his name appears on the birth certificate (even though he does not automatically have parental responsibility). In all other circumstances, to get a parental responsibility order you would have to seek further advice and go to court.

How do I take parental leave?

In order to take parental leave, you must give your employer 21 days' notice, in writing, of the date you want to start your leave and how much leave you want to take. You should provide proof of your entitlement to parental leave to your employer (for example, baby's birth certificate, certificate showing baby's due date, proof of adoption, proof of child's entitlement to Disability Living Allowance).

Is there a limit to how much leave I can take at a time?

You can usually only take parental leave in blocks of a week or more up to four weeks per child in any one year. You can take blocks of parental leave in a row i.e. two weeks together, up to a maximum of four weeks a year. If your child is disabled, you can take parental leave in blocks of a day or more up to four weeks per child per year. However, you and your employer could agree for you to take more than this or your workplace may have a collective or workforce agreement which allows you to take more leave at one time.

Each year begins from the date you first became entitled to parental leave for the child in question. So, it will normally be a year from your child's birthday.

Will I be paid while I am on parental leave?

Parental leave is usually unpaid, unless your employer offers to pay some of it.

If you are a single parent, or you are the main wage earner in your family and your family gets tax credits, Housing Benefit or Council Tax Benefit, then you will be able to claim Income Support during your parental leave. For more information, see [Money for Parents and babies](#).

Are my employment rights affected while I am on parental leave?

During parental leave you will continue to be an employee, but it is likely that you won't receive any of your usual contractual benefits (e.g. company car) unless your employer offers it. The only rights that will continue automatically will be:

- the notice period in your contract of employment (or, if there is none, the legal minimum) will still apply (if either you or your employer wish to terminate your employment)
- you will be entitled to redundancy pay, if you qualify
- disciplinary and grievance procedures will apply
- if your contract has a section which states that you must not work for any other company, this will still apply.

It might be possible to negotiate with your employer for other rights in your contract to continue. Your period of parental leave will count as continuous service with your employer.

However, you are still entitled to your statutory rights (i.e. rights that apply by law to all employees in this country). For example, everyone has a legal right to at least 28 days paid annual leave per year whether or not they are on maternity, paternity, parental or adoption leave.

Your employer must not sack you or treat you unfairly because you are taking parental leave. Also, your employer must not discriminate against you by failing to consider you for opportunities such as promotion.

What happens when I return to work after parental leave?

You do not need to give any notice of your return, you simply come back to work at the end of your agreed period of leave.

If you have taken parental leave of four weeks or less, you have the right to return to exactly the same job you were doing before you left. If you have taken parental leave of more than four weeks, your employer must allow you to return to a similar job if it is not reasonably practicable for you to return to your old job. This new job must have the same terms and conditions as your old job and involve the same type of work.

Can I take parental leave at the end of ordinary maternity leave or paternity leave?

Yes, as long as you follow the notice procedures for taking parental leave. If you take parental leave after ordinary maternity leave or paternity leave, you will be entitled to return to your old job. However, if you take parental leave of more than four weeks, the rules are different. For more information, see [Pregnant during maternity leave](#). If your employer can show that it is not possible to give you your old job back, they can offer you a suitable alternative job with the same terms and conditions and the same type of work.

Could I take parental leave at the end of additional maternity leave?

Yes, as long as you follow the notice procedures for taking parental leave. At the end of additional maternity leave, you have the right to return to the same job as you were doing before your maternity leave but, if your employer can show that it is not reasonably practicable to give you your old job back, they can offer you a suitable alternative job with the same terms and conditions and the same type of work.

Can my employer refuse my request to take parental leave?

If you are a father who wants to take time off for the birth of your baby, or if you are adopting a child and want parental leave at

the time of placement, your leave cannot be refused or postponed.

At all other times your employer cannot REFUSE your request to take parental leave but your employer is allowed to POSTPONE your parental leave once, for up to six months, if they can show that the business would be unduly disrupted by your absence on leave. Your employer cannot postpone parental leave for any other reason.

If your employer does want to postpone your leave they must tell you this in writing within seven days of your request. You must also be given the reasons why the leave has to be postponed and a date within 6 months when you are allowed to take the leave.

How do I enforce my rights if my employer will not let me take parental leave?

You should raise a grievance with your employer and follow the grievance procedure. If you cannot reach an agreement you can make a claim in an Employment Tribunal if your employer refuses you the rights set out in this leaflet. You must make a claim within three months of the act you are complaining about.

I tried to book parental leave for my child's Christmas holidays, but my employer refused. My mother was going to care for him, but now she is sick. What can I do?

Your employer is allowed to postpone your parental leave once, for up to six months, if it would disrupt the business, for example, if it will be particularly busy at that time.

If there is an emergency and you have no one available to care for your child, you can take time off for dependants whilst the emergency lasts – see the next section.

My daughter is sick. Can I phone my employer and ask to take parental leave today?

You cannot take parental leave without giving 21 days' notice, unless you and your employer have agreed to this in a collective or workforce agreement. However, you can take time off for dependants without giving

notice if there is an emergency, until you have made alternative arrangements.

I am expecting twins. What will I be entitled to?

Both parents will be entitled to 13 weeks' parental leave for each child, to be taken before their fifth birthday. That means that each child in a multiple birth will entitle its parents to a separate amount of parental leave.

What counts as a week?

A week of parental leave means your normal working week. If your working week varies, then it is calculated by dividing a year's worth of work periods by 52 to make an average week.

What am I entitled to if I work part-time?

You are still entitled to 13 weeks' parental leave. This will be based on your normal working week, so if you usually work two days per week you will get 13 weeks at this rate (a total of 26 days' leave).

You are entitled to time off for dependants in the same way as a full-time employee.

What if I change my job?

You will have to work for your new employer for a year in order to qualify for parental leave, unless your new employer has a more generous policy. You can carry over parental leave that you haven't taken from one employer to the next and your new employer is allowed to ask you and your old employer about how much parental leave you have taken so far. However, neither you nor your old employer has a duty to pass on this information.

Could I use my parental leave to work part time four days a week for a year?

You can usually only take parental leave in blocks of a week or more (unless your child is disabled). However, you and your employer are allowed to change this rule in a collective or workforce agreement or you could ask your employer if you could take parental leave more flexibly.

What happens if I am treated unfairly because I want to take parental leave?

Your employer must not treat you unfairly because you are taking parental leave. If they do, you can make a complaint in an Employment Tribunal. Try to resolve the matter informally with your employer first. If you are unable to agree you should make a formal complaint using your employer's grievance procedure. If you are sacked for taking parental leave then you can make a claim for unfair dismissal within three months, to the Employment Tribunal. For more information, see [Dealing with pregnancy and maternity-related problems at work](#).

Time Off For Dependents**What is time off for dependants (TOFD)?**

This is the right to take reasonable amounts of unpaid leave from work in order to deal with emergencies involving others who rely on you.

You must be an employee to be able to take TOFD. It doesn't matter how long you have been in your current job or how many hours a week you work.

Who is classed as a 'dependant'?

Your husband, wife, parent, or child whether or not they live with you. You can also take it for someone who actually lives with you, such as your partner. You can't take it for other people who live with you but are not part of your family, such as an employee, tenant, lodger or boarder. You may also be able to take it for others who depend on you for assistance, such as a neighbour who has no other person who can support them.

When can I take time off for dependants?

You can take the time off in the following circumstances:

- If a dependant falls ill, gives birth or is injured and needs your assistance.
- If you need to make arrangements for the care of a dependant who is ill or injured.
- If there is a sudden disruption of arrangements for the care of a dependant.

- If there is an unexpected incident at school involving your child (when the school has responsibility for your child).
- If your dependant dies.

How much time off can I have?

There is no legal definition of how much time off is reasonable, so it will depend on the particular circumstances. However it has to be necessary for you to take the time off, it can't just be something that you would prefer to do. The time off will have to be reasonable for the circumstances. For example, if your child has chicken pox you can take time off to deal with this crisis and to make arrangements for childcare but you probably could not take TOFD to cover a long period of sick leave, since this would no longer be an emergency.

Will I be paid while I am off?

Employers do not have to pay you for any time you take off to look after your family or other dependants. However, some employers do offer paid emergency time off or family leave; check your contract or ask your HR department if you are not sure what your employer offers. If paid family leave is offered, they can't take away this contractual right without your agreement.

How do I take time off for dependants?

As time off for dependants is time off for unforeseen circumstances you don't need to give notice in advance. But, you MUST tell your employer as soon as possible of the reason for your absence and how long you expect it to last. You must return to work as soon as you can and you do not have to provide proof to your employer as to the reason for the time off.

What can I do if I am treated unfairly because I took time off for a dependant?

Your employer must not treat you unfairly because you are taking time off. If they do you can make a claim in an Employment Tribunal. Try to resolve the matter informally with your employer first. If you are unable to agree you should make a formal complaint using your employer's grievance procedure. If you are sacked for taking time off then you can make a claim for unfair dismissal, within three months, to the Employment Tribunal.

For more information, see [Dealing with pregnancy and maternity-related problems at work](#).

Benefits for parents**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.

Where to go for more help

Maternity Action

Advice on maternity rights and benefits

www.maternityaction.org.uk

Helpline 0845 600 8533

Directgov

The government's online information resource

www.direct.gov.uk

ACAS

For advice on employment rights or arbitration services

www.acas.org.uk Helpline: 08457 47 47 47

Equality and Human Rights Commission (EHRC)

For information and advice about discrimination law

www.equalityhumanrights.com

Helpline: 0845 604 6610

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

Working Families

Rights at work

www.workingfamilies.org.uk Helpline 0800

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This factsheet was produced by Maternity Action in May 2011. It is always 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