

PATERNITY LEAVE AND PAY

Key Legal Points

- Paternity leave and pay is available to an employee who is the partner of either a woman who has given birth or someone who is adopting a child, either one of two parents jointly adopting or having a baby through a surrogacy arrangement.
- The leave must be used for the purpose of caring for the child or supporting the child's mother in her caring for the child.
- To qualify for paternity leave, an employee must **tell their employer** that they intend to take paternity leave **by the end of the 15th week before the week the baby is due**.
- Eligible employees (see below) can take **either one or two consecutive weeks' paternity leave**. Paternity leave can start on any day of the week. Paternity leave **cannot be taken as odd days or as two separate weeks**.
- Employees who have worked for their employer continuously for **26 weeks by the end of the 15th week before the baby is due** may be entitled to paid paternity leave for the birth or adoption of a child.
- Leave cannot start until the birth of the baby and must be taken **within 56 days of the actual date of birth of the child**.
- The employee is not obliged to give you any medical evidence of the pregnancy or birth.
- Employees can take unpaid time off work to accompany a pregnant woman to **2 antenatal appointments** (up to 6.5 hours for each but the employer can choose to give more) if they are: the baby's father; or the expectant mother's spouse or civil partner; or in a long-term relationship with the expectant mother; or the intended parent (for surrogacy arrangements).
- An employee may still get paternity leave or pay if the child is stillborn after 24 weeks of the pregnancy or the child is born alive at any point in the pregnancy but later dies.
- During Statutory Paternity Leave employees **may be eligible for Statutory Paternity Pay (SPP)**. SPP is payable at a standard weekly rate which changes every year. If SPP is paid, employers will normally be able to recover some or all of the amount paid.
- Employees may also be eligible for **Shared Parental Leave (SPL)**, see Section 11 for details, which is different to **Parental Leave** (See Section 12). Employees cannot take Paternity Leave after Shared Parental Leave.

Qualifying Conditions for Statutory Paternity Pay

To qualify for **SPP**, an employee **must tell their employer that they want to get SPP at least 28 days beforehand** and must meet the same earnings and service criteria as an employee seeking to qualify for SMP (See Section 8 for SMP entitlements). To claim SPP the employee must make a declaration by completing a self-certificate 'Becoming a Parent' (SC3) form available from HMRC.

Where an employee is entitled to both pay and leave, the notice given for leave by the 15th week before the week the baby is due can count for pay as well. It may therefore make sense for the employee to provide a completed self-certificate for both leave and pay when giving their notice for leave.

Terms and Conditions during Paternity Leave

- The employee has a statutory right to **continue to benefit from all the terms and conditions** of their employment which would have applied had they been at work, **the exception being wages** or salary (although the employee may be entitled to SPP).
- The employee **continues to accrue** both full statutory **annual leave** (i.e. 5.6 weeks or pro rata equivalent) and any additional contractual leave during the period of paternity leave. An employee is not entitled to take annual leave during paternity leave but, subject to the usual arrangements with you, there is no reason why they cannot take a period of annual leave immediately before and/or after paternity leave.
- **Benefits** such as share schemes, use of company car and phone (unless these are provided for business use only) **do continue** during the entire period of Paternity Leave. However what is determined as "benefits/renumeration" is dependent on the specific circumstances so it is advisable to seek further legal advice if in doubt.
- While an employee is on Paternity Leave, employer contributions to an **Occupational Pension Scheme** should continue as if the employee is working normally and receiving normal pay for doing so. This is regardless of whether or not the employee is receiving ordinary statutory and/or enhanced paternity pay.

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If the Pension Scheme rules require employee contributions to continue during Paternity Leave, the employee's contributions should be based on the amount of statutory and/or contractual paternity pay they are receiving. Employee contributions will therefore stop if the employee is not receiving any paternity pay but the scheme rules may still allow them to make voluntary contributions.

- Paternity Leave counts towards an employee's period of **continuous employment** for the purposes of entitlement to other statutory employment rights, e.g. the right to a redundancy payment.
- It also counts towards assessing **seniority and personal length-of-service payments**, such as pay increments, under the contract of employment.

Communication

An employee can change the date on which they want their leave to start (but not the length of the leave being taken). However, the employee must give the employer notice of this (i.e. 28 days notice of the change should be given). A new self-certificate should also be completed by the employee.

If the employee is not entitled to SPP for any reason, provide them with a written statement. The form 'Why I cannot pay you SPP' (SPP1) is available from Her Majesty's Revenue and Customs website (www.hmrc.gov.uk).

Protection from Detrimental Treatment and Dismissal

Employees are protected from suffering a detriment or dismissal for taking, or seeking to take, paternity leave. Examples of detrimental treatment include denial of promotion, facilities or training opportunities which would normally have been available to the employee.

Related rights

Be aware that employees have the **right to request flexible working, shared parental leave, parental leave and time off for dependants**. See Sections 7, 11 and 12.

See the NI Business Info website (www.nibusinessinfo.co.uk) for full details and further information.