



SHARED PARENTAL LEAVE

Think Business, Think Equality

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Introduction

This guidance is for businesses that want to improve gender diversity in their workplace. It accompanies the *Think Business, Think Equality* online self-assessment tool. The free online tool enables you to assess your current employment practice, and provides tailored advice and guidance on how your business can benefit from gender diversity.

It provides information on what the law says on Shared Parental Leave and Pay. It also provides advice on how to improve your workplace practice on Shared Parental Leave, and on supporting staff during the process, including information on policies and good practice. It covers birth parents and partners of staff members who are recognised as a main adopter. There is a glossary of key terms on page 13 of this guidance.

It makes sound business sense to have good practice around Shared Parental Leave and Pay. Women do the majority of caring for children, and supporting staff to share childcare with their partners will improve gender equality not only in your business, but also in wider society. An increasing number of men now want to take a more active role in their children's lives, and Shared Parental Leave is one way in which employers can support them to do this. Having good practice around Shared Parental Leave demonstrates that you value your people, improves staff retention and will enable you to recruit from a wider talent pool.

The regulations around Shared Parental Leave are very complicated. This guidance has attempted to set out the information as clearly as possible.

The Think Business, Think Equality online tool is available at:

www.thinkbusinessthinkequality.org.uk

LEGAL DISCLAIMER

While every effort has been made to ensure that the explanations given here are accurate, only the courts or tribunals can give authoritative interpretations of the law.

What is Shared Parental Leave?

If a mother wishes to return to work early or shorten her Maternity Leave and/or Pay, she is legally entitled to Shared Parental Leave with the father or her partner within the first year of the baby's birth.

Sometimes both parents will qualify for Shared Parental Leave, allowing them to take Shared Parental Leave together or separately. If only one parent qualifies for Shared Parental Leave, that parent can use it to take their leave in separate blocks even if the other parent can't share the leave.

Shared Parental Leave can be taken in one block or, if you agree, in discontinuous blocks, for example, alternate weeks. Up to 50 weeks' Shared Parental Leave and up to 37 weeks' Shared Parental Pay may be taken.

All staff who have had a baby must take the two weeks off work immediately after childbirth (four weeks for factory workers) as **compulsory maternity leave**.

Fathers or partners who qualify for **Paternity Leave** must take it before Shared Parental Leave or they lose entitlement to Paternity Leave.

Shared Parental Pay is paid to qualifying staff at the flat rate of £140.98 a week¹ or 90% of average earnings if that's less. It's paid in the same way as other statutory payments e.g. Statutory Maternity Pay or Statutory Paternity Pay.

Who's entitled to Shared Parental Leave?

To qualify for Shared Parental Leave an employee must meet the **continuity of employment test**:

- they must have been continuously employed by the same employer for at least 26 weeks up to the end of the qualifying week (the 15th week before the expected week of childbirth); and,
- they must still be employed by the same employer in the week before any Shared Parental Leave is due to start.

Their partner must meet the **employment and earnings test**:

- the other parent must have been employed or self-employed for at least 26 weeks (not necessarily continuously) in the period of 66 weeks leading up to the expected week of childbirth. They must have earned at least £30 a week on average in 13 of those weeks.

Agency, casual and zero hours workers who are entitled to Statutory Maternity Pay or Statutory Paternity Pay are not eligible for Shared Parental Leave but are entitled to Shared Parental Pay. If they have an employed partner, the partner might also be eligible for Shared Parental Leave.

¹This correct at the time of writing. Please check www.gov.uk/shared-parental-leave-and-pay for current payment amounts.

Entitlement to Shared Parental Pay

Employees and **workers**, such as agency workers, casual workers and freelance staff who are paid through PAYE (with tax and National Insurance deducted at source), can qualify for Shared Parental Pay if they meet the normal qualifying conditions.

A staff member will qualify for **Shared Parental Pay** if:

- they've been employed by the same employer for at least 26 weeks by the end of the qualifying week (the 15th week before the expected week of childbirth); and,
- they have average earnings of at least £113 per week² during the calculation period (eight weeks if paid weekly, or two months if paid monthly, before the end of the qualifying week).

Example: Who qualifies?

- **New mother on Statutory Maternity Pay:** An employee who meets the qualifying conditions for Statutory Maternity Pay, whose partner qualifies for Statutory Paternity Pay, and is still employed by the same employer in the week in which they want to take leave **will qualify for both** Shared Parental Leave, and Shared Parental Pay.
- **New mother on Maternity Allowance:** An employee who qualifies for Maternity Allowance, whose partner qualifies for Statutory Paternity Pay, and is still employed by the same employer in the week in which she wants to take Shared Parental Leave, **will qualify for** Shared Parental Leave, but **will not qualify for** Shared Parental Pay. Her partner will qualify for Shared Parental Leave and Shared Parental Pay. She can take Shared Parental Leave and claim Maternity Allowance during periods of absence from work.
- **New father or partner:** An employee who meets the qualifying conditions for Statutory Paternity Pay, whose partner qualifies for Statutory Maternity Pay or Maternity Allowance, and is still employed by the same employer in the week she wants to take leave, **will qualify for** Shared Parental Leave and Shared Parental Pay.
- **Agency worker:** An agency worker who qualifies for Statutory Maternity Pay (but does not qualify for Maternity Leave or Shared Parental Leave) can reduce it so as to create some Shared Parental Leave and/or Shared Parental Pay for her partner to take. Her partner will obviously need to meet the qualifying conditions for Shared Parental Leave and/or Shared Parental Pay.

²This correct at the time of writing. Please check www.gov.uk/shared-parental-leave-and-pay for current payment amounts.

Bringing Maternity Leave and/or Maternity Pay to an end to create Shared Parental Leave

If a staff member wants to take Shared Parental Leave and/or Shared Parental Pay or her partner does, she must end her Maternity Leave and/or Pay early.

If she's not entitled to Maternity Leave but is entitled to Statutory Maternity Pay or Maternity Allowance e.g. an agency worker, she can shorten her Statutory Maternity Pay or Maternity Allowance period in order to create Shared Parental Leave for her partner.

Return to work early

Maternity Leave will come to an end if the staff member returns to work, and she can't go back onto it. The amount of Shared Parental Leave and Shared Parental Pay available to her and/or her partner is calculated from the date of her return to work.

Ending Maternity Leave without returning to work

Alternatively a staff member can, while still on Maternity Leave, give at least eight weeks' notice to end her Maternity Leave and/or Pay at a future date, specified in her notice. The remaining Maternity Leave and Pay will be converted into Shared Parental Leave and Shared Parental Pay from that date and can be shared by the employee and her partner.

The amount of Shared Parental Leave available to her and/or her partner is calculated from the date in her notice. If she returns to work before the date in the notice she will not create any more Shared Parental Leave or Shared Parental Pay.

Example

Amy is entitled to 52 weeks' Maternity Leave and Statutory Maternity Pay. Her partner is entitled to two weeks' Paternity Leave and Statutory Paternity Pay. They want to be able to spend the first two months looking after their new baby and other child together.

Amy must give notice to shorten her Maternity Leave and Statutory Maternity Pay by six weeks, so she can create an entitlement to six weeks Shared Parental Leave and Shared Parental Pay for her partner to take immediately after his Paternity Leave period. They will need to give notice at least eight weeks before the start of his Shared Parental Leave.

If the mother gives notice to end her Maternity Leave early, as well as a notice of entitlement and intention to take Shared Parental Leave, the notice to end Maternity Leave is binding unless the mother has not yet returned to work and:

- it's discovered in the eight weeks since notice was given that neither the mother nor father are legally entitled to Shared Parental Leave;
- if the mother gave notice before the birth and withdraws it within six weeks of the birth:
or,
- one of the parents dies.

The mother must inform you in writing if she wishes to withdraw notice to take Shared Parental Leave. The mother will remain on Maternity Leave and can still take up to 52 weeks' Maternity Leave even if her partner had taken some Shared Parental Leave before she gave a withdrawal notice.

If the mother gives notice to end Statutory Maternity Pay or Maternity Allowance early, she can only withdraw her notice to curtail Statutory Maternity Pay or Maternity Allowance if her partner dies or she gave notice before the birth and withdraws it within six weeks of the birth.

What happens when a mother returns to work during the 39 week Maternity Pay period?

Returning to work ends Maternity Leave but it doesn't automatically end an a staff member's Statutory Maternity Pay or Maternity Allowance period, which will continue to run in the background for 39 weeks from when it started. An staff member who is off sick during the Statutory Maternity Pay/Maternity Allowance period will go back on to Statutory Maternity Pay/Maternity Allowance if she is absent from work for a week or more during the 39 week Maternity Pay period.

If a staff member returns to work and wishes to take Shared Parental Leave and/or Shared Parental Pay at a later date, she must give you at least eight weeks' notice. If Shared Parental Pay is to be shared, notice must be given by the ninth week before the end of the Statutory Maternity Pay/Maternity Allowance period at the latest, so that the eight weeks' notice expires at least a full week before the end of the Statutory Maternity Pay/Maternity Allowance period.

Shared Parental Pay can be taken up to 52 weeks from the birth; it doesn't have to be taken in the 39 week Statutory Maternity Pay/Maternity Allowance pay period. Any Statutory Maternity Pay or Maternity Allowance paid to the mother as a result of sickness during the

Maternity Pay period will not reduce the number of weeks of Shared Parental Leave and/or Shared Parental Pay available to her and her partner. This is because the number of weeks of Statutory Maternity Pay or Maternity Allowance already taken for the purpose of Shared Parental Pay is worked out by counting only those weeks before the date the mother returned to work.

Example

Rose returns to work after 26 weeks' Maternity Leave and Statutory Maternity Pay. She has 26 weeks' leave Shared Parental Leave and 13 weeks' Shared Parental Pay available to her and/or her partner. After two weeks back at work she is off sick for a week so her employer pays her Statutory Maternity Pay for that week as she is still within her 39 week Statutory Maternity Pay period.

The employer tops it up to her full contractual pay and reclaims the Statutory Maternity Pay element from HMRC. This doesn't reduce her Shared Parental Leave and Shared Parental Pay entitlement, as any weeks of Statutory Maternity Pay paid to Rose following her return to work do not count for the purpose of calculating entitlement to Shared Parental Pay.

Length of Shared Parental Leave and Pay

A staff member is entitled to share with her partner:

- the amount of Maternity Leave or Statutory Maternity Pay that she hasn't already taken by the time she returns to work; **or**,
- when she gives notice to switch from Statutory Maternity Leave to Shared Parental Leave while still on Maternity Leave, the date she gave for switching to Shared Parental Leave.

That means 52 weeks' leave **less** the number of weeks of Maternity Leave taken, and 39 weeks' Statutory Maternity Pay **less** the number of weeks of Statutory Maternity Pay taken.

The **maximum number of weeks of Shared Parental Leave and Pay** that could be available to the parents to share between them is **50 weeks of leave and 37 weeks of pay**, because the mother must take at least two weeks' compulsory maternity leave (four weeks for factory workers).

Example

- Ellie returns to work after 26 weeks' Maternity Leave and Statutory Maternity Pay. She has 26 weeks' Shared Parental Leave and 13 weeks' Shared Parental Pay available to her and/or her partner. They can take Shared Parental Leave together or separately up to one year from the birth.
- Freya gives notice to end her Maternity Leave and Statutory Maternity Pay early after 26 weeks. She has 26 weeks' Shared Parental Leave and 13 weeks' Shared Parental Pay available to her and/or her partner. Her partner can take some Shared Parental Leave while she's on Maternity Leave or she and/or her partner can take it up to one year from the birth. If Freya returns to work before the date she gave in her notice she cannot create any more Shared Parental Leave.

Notice for Shared Parental Leave and Pay

It's your staff member's responsibility to check their own eligibility for Shared Parental Leave and/or Pay. They must give you a **written declaration** confirming that they are eligible.

They must also provide a declaration from the other parent stating that they meet the **employment and earnings test** and consent to the staff member taking Shared Parental Leave and/or Pay.

You're not required to check or confirm the information given by the other parent, or speak to the other employer to check their eligibility, but you may do so if you wish. It's up to the other parent to notify their employer of their eligibility.

A staff member must give you notice of their entitlement and intention to take Shared Parental Leave to you **at least eight weeks before the first period of Shared Parental Leave**.

They must also give you a **booking notice** at least eight weeks before each period of Shared Parental Leave that they wish to take. They can give a separate notice for Shared Parental Pay, and the same eight weeks' notice applies, but in most cases they will give notice for leave and pay at the same time.

The **notice of entitlement and intention** to take Shared Parental Leave should include:

- the number of weeks that the mother took Maternity Leave (or will have taken, where they have given notice to shorten Maternity Leave at a future date);
- how many weeks of Shared Parental Leave is available to the parents (52 weeks, minus any Maternity Leave taken/to be taken);
- how much leave each parent intends to take;
- a declaration from the other parent stating that they meet the employment and earnings test, and that they consent to the employee taking Shared Parental Leave and/or Pay and to you processing information provided by them;
- a non-binding indication of how the employee will take the Shared Parental Leave that is available to them; and,
- the expected week of birth of the baby (or the actual date of birth if the child has already been born).

Staff are entitled to give written notice varying the amount of Shared Parental Leave each parent intends to take, and an indication of when they intend to take it. Both parents must give their written consent to the variation. These variation notices are non-binding and there is no limit to the number of variation notices that can be given.

You're entitled to ask your staff member for the name and address of the other parent's employer and they must provide it within 14 days. You can also ask for a copy of the child's birth certificate (or a declaration stating the date and place of birth if no birth certificate is available).

Managing notices to book Shared Parental Leave

Once a staff member has notified you of their entitlement to take Shared Parental Leave, they will also have to submit a notice to book any particular period of leave.

Notice to book leave must be given at least eight weeks before leave can be taken. In many cases, a booking notice will be submitted at the same time as the notice of entitlement is submitted.

The law says that a staff member may only give a **maximum of three notices** to book leave or to vary a previously agreed pattern of leave. However, it's good practice to accept more than three booking notices.

A notice may be for a single, continuous block of leave or may request discontinuous periods of leave.

If they ask to take a single block of leave in their booking notice, they are legally entitled to take it and you can't refuse notice to book a single block of Shared Parental Leave.

If they give notice to book a discontinuous pattern of leave e.g. two weeks' Shared Parental Leave, a month at work, then two more weeks' Shared Parental Leave, you don't have to agree to it. It is good practice though to try to accommodate all requests for leave, wherever possible.

There is a two week discussion period, starting on the date that the staff member gives the booking notice, to talk to them about the pattern of leave they have requested and propose alternatives, or to refuse the pattern. They're entitled to the four weeks' Shared Parental Leave requested, but are only entitled to take it in the discontinuous pattern proposed if you agree.

You can't stop a staff member from taking the amount of Shared Parental Leave requested in the notice, but you can ask for changes to when discontinuous periods of Shared Parental Leave are taken where it would be difficult to accommodate.

If you refuse the proposed pattern of Shared Parental Leave and you're not able to agree any other pattern with your staff member, the weeks of leave in the notice may be taken in a single continuous block starting on a date specified by them (not less than eight weeks from the date the original notice was given).

They have five days after the end of the two week discussion period in which to specify the date they will start Shared Parental Leave. If they don't specify a date, Shared Parental Leave will begin on the start date of the first period of discontinuous leave that they originally applied for.

A staff member can withdraw their booking notice in the two weeks after the booking notice is given (on or before the 15th day), unless you have agreed the pattern in the notice or agreement has already been reached with the employee in that period. For example, if the other parent's employer has not agreed a pattern of discontinuous leave, both parents may wish to withdraw it.

Employment law protects staff against less favourable treatment for asking to take or taking Shared Parental Leave.

Notice to vary Shared Parental Leave/Shared Parental Pay once it's been agreed

If Shared Parental Leave has been booked and agreed, a staff member can change it by giving a variation notice. They must give at least eight weeks' notice to vary Shared Parental Leave.

They can use a variation notice to end a period of Shared Parental Leave earlier or later or to aggregate a number of discontinuous weeks into a single block.

The law entitles staff to make three notices to vary agreed leave, but it's good practice to agree to accept more than three.

Notice for Shared Parental Leave for premature births for leave immediately after the birth

Where a baby is born before the beginning of the expected week of childbirth, different notification requirements apply for Shared Parental Leave/ Shared Parental Pay booked for the eight weeks following the expected week of the birth.

Where a staff member has:

- notified you of entitlement to Shared Parental Leave and/or Pay;
- has also given notice to book a period of Shared Parental Leave and/or Shared Parental Pay to start within eight weeks of the child's expected week of birth; and,
- the child is born early;

then the parent may move forward the leave and pay that they have booked, if they wish.

They must give you a notice to vary the Shared Parental Leave and/or Shared Parental Pay that they originally applied for as soon as is practically possible following the birth.

Example

Abie's partner was planning to take two weeks of Paternity Leave after the birth and had booked four weeks of Shared Parental Leave to be taken immediately after the Paternity Leave. Their baby is born five weeks early, but Abie's partner can still take the same amount of Shared Parental Leave two weeks after the actual date of the birth, if he notifies his employer of the change as soon as reasonably practicable after their child's birth.

If a baby is born eight or more weeks before the expected week of childbirth and a parent has notified entitlement and intention to take Shared Parental Leave and/or Shared Parental Pay but has not yet booked it, the parent can book a period of leave to start within eight weeks of the actual birth if they give the notice as soon as is reasonably practicable after the child's actual birth.

Where the parent hasn't given a notice of entitlement and intention to take Shared Parental Leave and/or Shared Parental Pay and the child is born eight or more weeks before the expected week of childbirth, the parent doesn't need to give eight weeks' notice of entitlement but must give that notice as soon as reasonably practicable after the actual date of birth. The parent doesn't need to give eight weeks' notice to book a period of leave if the period of leave is to start within eight weeks.

This doesn't apply to Shared Parental Leave or Shared Parental Pay that was booked for a period starting after eight weeks after the birth, or to any change in the number of weeks of Shared Parental Leave or Shared Parental Pay booked.

A staff member must give a variation notice to make any changes to leave starting eight weeks after the birth or changes in the number of weeks of Shared Parental Leave booked, even if the baby is born prematurely.

Reimbursement from HMRC

You can claim reimbursement of 92% of any Shared Parental Pay paid to your staff. If your annual liability for Class 1 National Insurance contributions for the last complete tax year before the woman's qualifying week was £45,000 or less, you can claim 103% of the Shared Parental Pay paid to your staff.

A staff member doesn't have to repay any Shared Parental Pay if they don't return to work after Maternity Leave, as you can claim reimbursement by HMRC.

Shared-Parental-Leave-in-Touch days

Each parent entitled to Shared Parental Leave or Shared Parental Pay will have an individual entitlement to 20 Shared-Parental-Leave-in-Touch (SPLiT) days. This will enable them to work up to 20 days (per employer), either continuously or on odd days, without bringing Shared Parental Leave or Shared Parental Pay to an end.

While Shared Parental Leave and Shared Parental Pay will need to be taken in minimum blocks of one week, staff eligible for Shared Parental Leave can work part-time, if you both

agree. A staff member can use SPLiT days to return to work for part of a week without bringing their Shared Parental Leave to an end.

A staff member would also be able to receive Shared Parental Pay for that week. This enables parents to try out a new working pattern before making a formal flexible working request, or to return to work in a gradual way.

Because SPLiT days allow work to be done under the staff member's contract of employment, they are legally entitled to be paid for that work. You should agree the rate of pay for any days worked.

Pay for SPLiT days may be set out in the employment contract or as agreed on a case-by-case basis. However, you should ensure that payments for SPLiT days comply with equal pay law and the National Minimum Wage.

Glossary

Additional Adoption Leave: The second 26 weeks of Adoption Leave.

Additional Maternity Leave: The second 26 weeks of Maternity Leave, which follows on immediately from Ordinary Maternity Leave.

Adoption Leave: A period of 52 weeks leave that employees are entitled to once they have been matched with a child.

Compulsory Maternity Leave: The two weeks immediately following childbirth are compulsory leave (this increases to four weeks for factory workers).

Continuity of Employment Test: Measures an employee must meet to qualify for Shared Parental Leave.

Contractual Adoption Pay: Enhanced Adoption Pay over and above the statutory minimum. The payment amount is set by the employer.

Contractual Maternity Pay: Enhanced Maternity Pay over and above the statutory minimum. The payment amount is set by the employer.

Employment and Earnings Test: Measures an employee's partner must meet to qualify for Shared Parental Leave.

Expected Week of Childbirth: The week in which the baby is due.

Matching Certificate: A certificate from the adoption agency confirming the staff member has been matched with a child for adoption.

Matching Week: The week in which the staff member is notified of having been matched with a child by an adoption agency.

Maternity Allowance: A state allowance which is paid to a woman if she doesn't qualify for Statutory Maternity Pay. The amount paid depends on individual eligibility.

Maternity Leave: The amount of time that a woman is legally allowed to be absent from work in the weeks before and after she has a baby. All pregnant staff are entitled to 52 weeks' Maternity Leave.

Ordinary Adoption Leave: The first 26 weeks of Adoption Leave.

Ordinary Maternity Leave: The first 26 weeks of Maternity Leave, which includes the period of Compulsory Maternity Leave.

Parental Leave: Leave which allows parents take time off work to look after a child. This leave is normally unpaid, and is available for each child up to their 18th birthday.

Paternity Leave: A maximum of two weeks' leave following the birth of a child or the adoption of a child, taken to support the mother or care for the new child.

Qualifying Week: The 15th week before the expected week of childbirth.

Shared Parental Leave: Leave which allows mothers to end Maternity Leave/Pay early so that one or both parents can take leave in a more flexible way during their child's first year. Parents can take leave at the same time or separately.

Shared Parental Pay: Weekly payments for parents on Shared Parental Leave who meet both the Continuity of Employment Test and whose partner meets the Employment and Earnings Test.

Statutory Adoption Pay: Weekly payments for people on Adoption Leave set by the Government.

Statutory Maternity Pay: Weekly payments for women on Maternity Leave set by the Government.

Statutory Paternity Pay: Weekly payments for people on Paternity Leave set by the Government.

The content of this guidance is based on Equality and Human Rights Commission campaign materials and resources. Find out more at:
www.equalityhumanrights.com/en/our-work/managing-pregnancy-and-maternity-workplace

Close the Gap works in Scotland on women's participation in the labour market. We work with employers, trade unions and policymakers to enable and encourage action to address the causes of women's inequality at work.

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