



PARENTAL LEAVE, AND FATHERS AND PARTNERS

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 Parental Leave, and the rights of fathers and partners. It also provides advice on how to improve your workplace practice on Parental Leave, and Paternity Leave and Pay, and on supporting staff, including information on policies and good practice. There is a glossary of key terms on page 7 of this guidance.

It makes sound business sense to have good practice around Parental Leave, and Paternity Leave and Pay. Supporting staff during this time in their lives will demonstrate that you value your people. This improves retention and will enable you to recruit from a wider talent pool.

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.

Time off for fathers and partners for antenatal appointments

Fathers and partners are entitled to take unpaid time off to accompany a pregnant partner to up to two antenatal appointments. The legal entitlement is capped at a maximum of 6.5 hours per appointment, including travelling and waiting time.

While you can't ask for proof of the appointment, as appointment cards are issued to the mother only, you are legally entitled to ask your staff member to provide a written declaration stating:

- the date and time of the appointment;
- they are the spouse or partner of the pregnant woman (including civil partners or same sex partners);

- they are taking the time off to accompany a pregnant woman to an antenatal appointment; and,
- that the appointment is made on the advice of a registered doctor, midwife or nurse.

Good practice

It's good practice to provide some paid time off for staff attending appointments. Where possible, it's also helpful to be flexible around the scheduling of these. This demonstrates your commitment to support staff through this process, and will help your business to retain skilled people.

Who qualifies for Paternity Leave?

Paternity Leave can be taken by:

- the biological father;
- the mother's husband, partner or civil partner; or,
- the mother's same sex partner.

Adoptive parents, whether in an opposite sex or same sex couple, are legally entitled to take Paternity Leave. They must have or expect to have responsibility for the child's upbringing.

Paternity Leave is 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. It can be taken as a single week or two consecutive weeks. It cannot be taken as odd days or as two separate weeks, unless you agree.

Paternity Leave must be taken within 56 days of the birth or adoption. If the baby is born earlier than expected, it must be taken within 56 days from the date the baby was due.

Staff have a legal right to choose to start Paternity Leave from:

- the date the child is born;
- a specified number of days after the date the child is born; or,
- a specified date after the beginning of the expected week of childbirth.

If a staff member has chosen to start Paternity Leave on the day the child is born, and they are at work that day, the Paternity Leave will begin on the day after the birth.

If they have chosen to start Paternity Leave on a specified day after the beginning of the expected week of childbirth and the baby has not yet been born, they must give notice to vary the start of Paternity Leave as soon as reasonably practicable.

They must state a new date or choose to start Paternity Leave on the day the child is born or a specified period after the birth.

To qualify for Paternity Leave, a staff member must have worked for you for at least 26 weeks by the end of the 15th week before the expected week of childbirth, and they must still be employed by you immediately before the birth.

Continuous service includes any week in which they've had a contract of employment with you, and it will include time when they're on sick leave, annual leave or taking unpaid leave. Staff who qualify for Paternity Leave could also qualify for **Shared Parental Leave**. If so, this can be taken immediately after Paternity Leave or at any time up to the child's first birthday.

The **expected week of childbirth** is the week in which the baby is due. It starts on the Sunday the baby is due (or the Sunday immediately before the day the baby is due). The expected week of childbirth is the date stated on the MAT B1 maternity certificate, issued to the mother by her midwife or GP when she is about 20 weeks' pregnant.

Statutory Paternity Pay

Statutory Paternity Pay is paid for up to two weeks to qualifying fathers or partners. It's paid at a flat rate, set by the UK Government, that rises on 6 April each year. You can claim **reimbursement** of the full Statutory Paternity Pay from HMRC.

Statutory Paternity Pay is paid at a fixed rate of £140.98 per week¹ or 90% of average earnings (if that is less). Any tax and National Insurance is deducted in the normal way.

To qualify for Statutory Paternity Pay, a staff member must have been employed by you for at least 26 weeks by the end of the 15th week before the expected week of childbirth, and they must still be employed by you immediately before the birth.

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

They must have earned, on average, at least the Lower Earnings Limit of £113 per week² before tax, in the eight weeks (if paid weekly) or two months (if paid monthly) before the end of the 15th week before the expected week of childbirth. Agency workers, casual workers and some freelance workers may qualify for Statutory Paternity Pay, but not Paternity Leave, if they meet the normal qualifying conditions for Statutory Paternity Pay.

HMRC Statutory Pay Guidance on Statutory Paternity Pay can be found at www.gov.uk/government/collections/statutory-pay.

Staff who qualify for Statutory Paternity Pay will also qualify for Statutory **Shared Parental Pay** which can be taken immediately after a period of Statutory Paternity Pay or up to the child's first birthday.

There is more information on Shared Parental Leave and Pay in the *Think Business, Think Equality* guidance on **Shared Parental Leave**.

Failure to qualify for Statutory Paternity Pay

If a staff member doesn't qualify for Statutory Paternity Pay, you should complete form **Statutory Paternity Pay 1** explaining why, and give it to the them. This form is available on the UK Government website: www.gov.uk/government/collections/statutory-pay-forms.

A parent who does not qualify for Statutory Paternity Pay may be able to claim income support or tax credits. You could allow the parent to take annual leave instead, which will provide more flexibility for them.

Reimbursement of Statutory Paternity Pay

Employers can reclaim Statutory Paternity Pay from HMRC, as long as they return to work after Paternity Leave. If a staff member doesn't return to work because they are dismissed, made redundant or resign, Statutory Paternity Pay is not repayable, as Statutory Paternity Pay is reimbursed by HMRC.

Notice for Paternity Leave and Pay

Staff must give you notice to take Paternity Leave by the end of the 15th week before the expected week of childbirth.

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

They can give you notice for Statutory Paternity Pay at the same time as notice for leave. They must give you at least 28 days' notice to receive Statutory Paternity Pay. If it's not reasonably practicable, they must give you notice as soon as possible. They must let you know the following (and in writing, if you request):

- the date the baby is due;
- whether they wish to take one or two weeks' Paternity Leave; and,
- the date they wish to start their leave.

In order to claim Statutory Paternity Pay, a staff member must give you a completed self-certificate.

They must let you know the actual date of the child's birth, as soon as reasonably practicable. You are entitled to ask for this in writing.

Good practice: Enhanced Paternity Leave and Pay

You can offer enhanced or contractual Paternity Leave and Pay of more than the legal minimum. This could be a mixture of full and half pay. Any contractual pay will top-up the Statutory Paternity Pay, which can be reclaimed from HMRC. Providing enhanced Paternity Pay demonstrates that you value your people, improves your reputation as an employer, and will make your business more attractive to a wider pool of talent. It also enables fathers and partners to take a more active role in their children's lives.

Rights during Paternity Leave

Staff are entitled to their normal contractual terms and conditions during Paternity Leave, apart from the right to remuneration. This includes annual leave, which they are entitled to accrue in the normal way.

Right to return to the same job

Staff are entitled to return to exactly the same job, with the same terms and conditions after Paternity Leave. The law says that they must not be treated less favourably, dismissed or selected for redundancy for a reason relating to Paternity Leave.

Parental Leave

Staff who have worked for you for at least a year are entitled to take up to 18 weeks of unpaid **Parental Leave** to look after a child up to the age of 18. The employee must be the father of the child or have (or expect to have) parental responsibility, and be taking the time off to look after the child. **Parental Leave** is different to **Shared Parental Leave**, which enables eligible mothers, fathers, partners and adopters to choose how to share time off work after their child is born or placed.

More information on Parental Leave is available on the ACAS website: www.acas.org.uk.

Time off for dependants

Staff who have caring responsibilities for a child or an adult are entitled to take unpaid time off during working hours to deal with unforeseen matters and emergencies. There is no legal right to be paid, but it's good practice to offer an amount of paid time off for dependants. It demonstrates you value your people, and recognise the complexities that come with caring roles.

More information on the **right to time off for dependants** is on the ACAS website: www.acas.org.uk.

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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