

Q&A on Shared Parental Leave

In this Q&A, employment lawyers Paula Chan and Marsha Thompson at Slater & Gordon, talk through what you need to know about the new right for parents to take Shared Parental Leave.

Q: What is Shared Parental Leave?

Shared Parental Leave (SPL) is a new right that will enable eligible mums, dads, partners and adopters to choose how to share time off work after their child is born or placed with them in the case of adoption. The regulations are currently before parliament and are due to come into force on 1 December 2014. It will be available to mums and dads whose baby is due on or after 5 April 2015, or whose child is placed for adoption on or after 5 April 2015.

Q: Who can take Shared Parental Leave?

If you're a mum (including an adoptive mum) and want to take SPL, you must meet the following conditions:

1. You must have been continuously employed for 26 weeks at the end of the 15th week before your baby is due, or the week of notification in the case of adoption. If your child is born early then you meet this condition if you would have been employed at the end of the 15th week before your due date.
2. You must have the main responsibility for the care of your child.
3. You must be entitled to Statutory Maternity Leave or pay, Adoption Leave or pay or Maternity Allowance.
4. You must also be employed by the same employer whilst you take SPL.

In addition, your partner must meet the following conditions if you are to take SPL:

1. They must have been employed or self-employed in 26 of the preceding 66 weeks before the due date, earning on average £30 or more for 13 of those weeks; and
2. They must have responsibility for your baby along with you.

Your partner may be your baby's father or the person who is, at the date of your baby's birth, your spouse, civil partner or partner (including same sex partner). Your partner or spouse (whether same sex or different sex) must live with you and must be in an enduring family relationship but cannot be your child, parent, grandchild, grandparent, sibling, aunt, uncle, niece or nephew.

Where your partner wishes to take SPL, they must:

1. Have been continuously employed for 26 weeks at the end of the 15th week before your baby is due, or the week of notification in the case of adoption.
2. Be responsible for the care of your baby along with you.

Q: What happens to my maternity leave or maternity pay?

To take SPL you must end your Statutory Maternity or Adoption Leave and/or pay or allowance period, or return to work. If you are not entitled to such leave then you must end your Statutory Maternity Pay or Maternity Allowance period.

SPL will also replace Additional Paternity Leave (APL).

Q: When can Shared Parental Leave be taken?

It can be taken at any time from when your baby is born or the date your baby is placed with you, and ends 52 weeks (one year) after that date. SPL has to be taken in complete weeks and can be taken in one continuous period. You can also ask to take SPL over different blocks of time. Your partner can take SPL whilst the mother remains on maternity leave, bearing in mind that her maternity leave will be shorter to allow the father to take SPL.

Q: How do I make a request for Shared Parental Leave?

First of all, take a look at your employer's Shared Parental Leave Policy; ask HR if you can't find it. If you want to take SPL you have to provide your employer with at least eight weeks' notice (though if your baby is born more than eight weeks early, this period can be shorter). This is done by giving your employer a *notice of entitlement and intention* to take SPL.

The notice of entitlement and intention to take SPL must include:

- Your partner's name.
- The period of leave available.
- The period of leave you are entitled to.
- The period of leave you wish to take.
- Details of how you expect to take your leave.
- The total amount of Statutory SPL available and how much you and your partner intend to take.
- Confirmation that you are sharing childcare responsibility with your partner.

You must also include a signed declaration from your partner with their name, address and national insurance number, confirmation that they satisfy the qualifying requirements for SPL and Statutory Shared Parental Pay and confirmation that they agree to you taking SPL and Statutory Shared Parental Pay.

Eligible employees can give their employer up to three separate notices in relation to SPL. If you ask for one continuous period of leave this must be granted by your employer. Requests for discontinuous blocks of leave can be refused by your employer but if refused you are entitled to take the leave in one single continuous period. It's best to discuss this with your employer first if possible so you know what will work for both you and your employer.

You or your partner may be required to provide your employer with a copy of your child's birth certificate and the name and address of your partner's employer. Your employer has 14 days from the date you submit your notice to request this and you have 14 days to respond.

Q: How do I end maternity leave in order to start Shared Parental Leave?

In addition to any *notice of entitlement and intention* to start SPL, you must also provide a *leave curtailment notice*. This must be in writing and state the date you wish to end your leave period, which must be:

- at least one day after the end of the compulsory maternity leave period (i.e. two to four weeks following the birth of your baby); and
- at least eight weeks after the date on which you gave your leave curtailment notice to your employer.

Where you are ending or shortening an Additional Maternity Leave period, you must give written notice of at least one week before the last day of your Additional Maternity Leave period.

If you are not entitled to statutory maternity leave but receive Statutory Maternity Pay or Maternity Allowance, you can end your pay so that your partner can take SPL. This means your partner will be entitled to 52 weeks of SPL less the amount of weeks for which you received Statutory Maternity Pay or Allowance as at the date of the curtailment.

Q: What happens after I make a request for SPL?

You should receive one of the following answers from your employer:

1. The notification is unconditionally accepted (which must happen in the case of continuous leave applications) or
2. Your employer may want to agree a change to a leave request (which you're not obliged to agree to in the case of a continuous leave application) or
3. A discontinuous leave notification is refused.

If your request is refused, or if no response is received, you can withdraw your notification on or before the 15th day after you made the notification and it will not count as one of your three notifications. If you don't do so then you will need to take the total amount of leave requested in one continuous period. You can choose when that period will begin within 19 days of the notification being submitted to your employer so long as it doesn't start before the start date set out in the notification. If you don't choose a different date then the leave will start on the date you included in the notification form.

Q: What if I change my mind?

You can change your decision to end Maternity or Adoption leave early if the planned end date for this leave has not passed and you have not yet returned to work, so long as:

- (a) You found out during the eight week period that you or your partner is not eligible for Shared Parental Leave (SPL) or pay or
- (b) your partner has died or
- (c) you tell your employer less than six weeks after your baby is born so long as you gave notice before the birth.

Q: How long is Shared Parental Leave?

If you are eligible for SPL and you or your partner ends Maternity or Adoption Leave and Pay, then you can take the rest of the 52 weeks of leave as SPL and take the rest of your pay or allowance as Statutory Shared Parental Pay. It is important to note that the law requires a new mum to take a compulsory period of two weeks maternity leave after the birth of their baby (which in some cases may be a minimum of four weeks for factory workers).

You can suggest a flexible pattern of SPL to your employer, and can take your leave in up to three separate periods. It is possible for your employer to agree you can take your leave in more than three periods in varying lengths.

If both you and your partner are entitled to SPL, you can take the leave at the same time. The amount of SPL you and your partner are entitled to take will be reduced by the number of weeks of SPL which the other parent has notified, taken or been required to take. This ensures that the total number of weeks taken overall, and between both parents, is 52 weeks.

Interestingly, where both parents are eligible for SPL, the leave can be taken by one partner whilst the other partner is taking a different period of leave including Maternity Leave, Parental Leave and Ordinary Paternity Leave. The government's guidance on this gives the following example:

“A woman and her partner are both eligible for SPL. The mother goes on maternity leave 10 weeks before her baby is born. She decides that she'll take 16 weeks of maternity leave and gives notice to her employer. Since the woman has given binding notice, her partner can start SPL as soon as the baby has been born (as long as they've given at least 8 weeks' notice).”

A mother is required to give *leave curtailment notice* to indicate that her maternity leave will be ending early, but this guidance suggests that statutory maternity leave can be continued until after the mother's partner starts SPL.

Paternity Leave and pay entitlement is completely separate and does not impact on the number of weeks SPL or pay available to you.

Q: What will I be paid during Shared Parental Leave?

You will qualify for Statutory Shared Parental Pay if you qualify for Statutory Maternity Pay, or Statutory Paternity Pay and have a partner who qualifies for Statutory Maternity Pay or Maternity Allowance or Statutory Adoption Pay.

Statutory Shared Parental Pay will be paid at the rate of £138.18 per week or 90% of your average weekly earnings, whichever is lower.

Q: What are my employment rights with regards to shared parental leave?

You will be entitled to the same terms and conditions of employment if you take SPL, other than in relation to remuneration (including salary and bonuses).

You and your partner have the option of working up to 20 paid days each during SPL, and these days will be called Shared Parental Leave in Touch days (SPLIT days). These days will need to be agreed with your employer. These days are in addition to the 10 keeping in touch (or KIT) days those on maternity or adoption leave are entitled to.

You also benefit from additional redundancy protection. If you are placed at risk of redundancy whilst on leave and there is a suitable alternative vacancy then you are entitled to be offered that role before your contract ends.

You are entitled to return to work after taking leave. When added to any other period of statutory leave, if your SPL does not exceed 26 weeks you are entitled to return to your job as it was before you took leave. If your combined leave period is longer, and if it is not reasonably practicable for you to return to your job, you are entitled to return to another job which is suitable and appropriate.

Importantly, those taking SPL are entitled not to be subjected to a detriment (i.e. treated unfavourably) or dismissed because they have taken or seek to take SPL.

Further information

NCT's helpline offers practical and emotional support in all areas of pregnancy, birth and early parenthood: 0300 330 0700.

Law firm, [Slater & Gordon](#) provides useful information and advice on employment law, maternity discrimination and rights.

You can read more about [Shared Parental Leave](#) on the ACAS website.

Directgov and Working Families have information on Shared Parental Leave.

You might find attending one of NCT's Early Days groups helpful as they give you the opportunity to explore different approaches to important parenting issues with a qualified group leader and other new parents in your area.

Make friends with other parents-to-be and new parents in your local area for support and friendship by seeing what NCT activities are happening nearby.