

Maternity & Paternity Leave



It is automatically unfair to dismiss an employee on pregnancy-related grounds. Where the employment ends because of genuine redundancy or because the woman's fixed-term contract has come to an end during the maternity leave period, the employee must be offered any suitable available vacancy.



Statutory Maternity Leave

An employee is eligible to take up to 52 weeks maternity leave. The first 26 weeks is known as "Ordinary Maternity Leave" with the remaining 26 weeks known as "Additional Maternity Leave".

The first 39 weeks are paid with the remaining 13 weeks unpaid.

Statutory Maternity Pay (SMP)

A pregnant employee will qualify for SMP if they have been employed by their employer for long enough and have earned over the earnings threshold – the earnings threshold is linked to the National Insurance threshold so can change each tax year.

The qualifying conditions are as follows:

- Been on the payroll in the 15th week prior to the expected week of childbirth (EWC), known as the "Qualifying Week"
- Be continuously employed for at least 26 weeks up and including the Qualifying Week
- Earn at least £120 per week (gross) in an eight week period prior to the Qualifying Week
- By the end of the Qualifying Week, the employee must have informed her employer of her wish to take maternity leave, and informed them when she wishes to start her leave – a lady can decide to change her start date, but must do so before 28 days of her intended date
- Provide her employer with a doctor's letter or maternity certificate (usually a MATB1) from a midwife or doctor confirming the EWC

Rates of SMP

Statutory Maternity Pay (SMP) is treated as earnings so is subject to deductions for tax and National Insurance contributions.

There are two rates of SMP as follows:

- Higher rate – paid for 6-weeks. 90% of their average weekly earnings (AWE) before

tax calculated over the 8-weeks prior to their Qualifying Week.

- Lower rate – paid for 33 week. Paid as the lower of 90% of AWE or £151.97 – this flat rate is reviewed each April and announced by HMRC
- The remaining 13 weeks can be taken as unpaid

92% of the SMP paid is reclaimable from HMRC. However, some employers may be able to reclaim 103% if they qualify for “Small Employer’s Relief” – to qualify, an employer must have paid £45,000 or less in Class 1 National Insurance contributions in the last complete tax year before her Qualifying Week

If an employer cannot afford to make the payment of SMP, they may be eligible for funding which can be applied for via the HMRC website.

If an employee works for the company for any week or part week during their Maternity Pay Period, then SMP is not payable for the whole week in which the work was done. The exception to this is an employee may work for up to 10 “Keeping In Touch (KIT)” days for which she is paid in full.

If an employee resigns or is dismissed (for whatever reason) during her Maternity Pay Period, she must continue to be paid until her entitlement ends. This is unless she takes up employment with another employer in which case her SMP must stop with the last weekly payment immediately before she starts with the other employer.

The employee will continue to accrue holiday entitlement as if she were at work.

Any other non-cash benefits which were provided to the lady prior to her maternity leave must continue throughout her maternity leave.

Employer pension contributions should be based on the salary before the lady went on maternity leave, but employee contributions are based on the ladies actual earnings.

Similar rules apply for statutory adoption leave

Statutory Paternity Leave and Pay

An employee will qualify for Statutory Paternity Leave and Pay (SPP) if their partner is having a baby, they are adopting a child or having a baby through a surrogacy arrangement.

Employees can choose to take either 1 or 2 weeks consecutively. The leave cannot start before the birth and must be finished within 56 days of the birth – these rules are different for employees who are adopting and can be found on the HMRC website.

To qualify for SPP, the employee must satisfy certain qualifying conditions:

- Must be one of the following:
 - Father
 - Husband or partner of the mother (or adopter)
 - Childs adopter
 - Intended parent (if they are having a baby through a surrogacy arrangement)
- Be classed as an employee and be employed by you up to the date the child is born (or placed)
- Be continuously employed for at least 26 weeks up and including the Qualifying Week – the Qualifying Week is defined as the 15th week before the baby is due
- Earn at least £120 per week (gross) in an eight week “relevant period”
- Be taking time off to look after the child or their partner
- Be responsible for the child’s upbringing
- By the end of the Qualifying Week, the employee must have informed their employer of their intention to take paternity leave, when they want their leave to start and how much leave they wish to take
- As with Statutory Maternity Pay, an employee can change their start date but must do so before 28 days of the intended date

Statutory Paternity Pay is currently payable at the lower of £151.97 per week or 90% of the employee’s average weekly earnings

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Disclaimer: This note does not contain a full statement of the law and it does not constitute legal advice. Please contact us if you have any questions about the information set out above.

92% of the SPP paid can be reclaimed from HMRC in the same way as Statutory Maternity Pay.

The right to paternity leave/pay is not available if the eligible employee requests Shared Parental Leave instead (see below).

Shared Parental Leave and Pay

Shared Parental Leave allows eligible mothers and their partner to take it in turns to use the remaining Maternity Leave (up to a maximum of 50 weeks minus any weeks taken by the mother) and any remaining SMP (up to a maximum 37 weeks minus any SMP weeks already taken).

The rules around SPL and ShPP are complex and are dependent on whether the parents are birth parents, adopters or having a child through surrogacy.

There is a certain amount of HR admin to be completed around SPL and ShPP so further details can be found on the .gov.uk website.