

UK Family Friendly Leave Rights



Straight → Talking Advice

With the exception of shared parental leave and pay, it is common for employers to enhance the family friendly rights provided to employees under UK law, and this is often seen as an attractive benefit to employees in the UK, particularly where employers offer enhanced levels of maternity and paternity leave and pay.

Employees in the UK have access to a number of different family related leave rights that employers should be aware of, not just maternity leave, but other types of leave including adoption leave, bereavement related leave and time off for dependants.

Statutory Maternity Leave and Pay

Pregnant employees are eligible to take up to 52 weeks maternity leave.

A pregnant employee will qualify for Statutory Maternity Pay (SMP) if they:

- Have been on the payroll in the 15th week prior to the expected week of childbirth (EWC), known as the “Qualifying Week”.
- Been 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 (the earnings threshold is linked to the National Insurance threshold so can change each tax year).
- 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.
- Provide her employer with a doctor's letter or maternity certificate (usually a ‘MATBI’ certificate) from a medical professional confirming the EWC.

SMP is paid at the following rates:

- Higher rate – paid for 6-weeks at 90% of the employee's average weekly earnings (AWE) before tax.
- 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, employers who qualify for “Small Employer’s Relief” may be able to reclaim at the higher rate of 103% if they have paid £45,000 or less in Class 1 National Insurance contributions in the last complete tax year before Qualifying Week.

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.

Enhanced maternity pay

It can be an attractive benefit for employers to enhance the statutory maternity and paternity pay so that employees receive a higher (perhaps their normal) rate of pay for a period, normally with a clawback if employees leave within a certain timeframe of returning from leave.

Employers should be aware that:

- Employees taking these types of leave have protected rights, including to pay rises, accrual of holiday, and to return to work.
- 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.

Further information and eligibility requirements can be found on the [Gov.uk website](#).

Statutory Adoption Leave and Pay

Similarly to Statutory Maternity Leave and Pay, eligible employees can take up to 52 weeks of Statutory Adoption Leave.

Provided the employee qualifies, Statutory Adoption Pay (SAP) is paid for up to 39 weeks. The rate of SAP is set by the government and is usually paid at 90% of the employee’s average weekly earnings for the first 6 weeks, followed by a fixed rate for the remaining 33 weeks.

Enhanced adoption pay

It is again common for employers to offer enhanced adoption pay so that employees receive a higher (perhaps their normal) rate of pay for a period, and indeed failure to do so could leave employers at risk of discrimination claims.

Further details can be found on the [Gov.uk website](#).

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.

To qualify for SPP, the employee must:

- Be the father, husband or partner of the mother (or adopter), the child’s adopter or the intended parent (if they are having a baby through a surrogacy arrangement).
- Be classed as an ‘employee’ and be employed 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 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.

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

Enhanced paternity pay

Again, employers often offer enhanced paternity pay so that employees receive a higher (perhaps their normal) rate of pay for a period, with a similar clawback provision to that discussed in relation to enhanced maternity pay.

Further details can be found on the [Gov.uk website](#).

Shared Parental Leave and Pay

Shared Parental Leave(SPL) 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 Shared Parental Pay (ShPP) are complex and are dependent on whether the parents are birth parents, adopters or having a child through surrogacy.

Most employers are not currently offering enhanced ShPP, and whilst there have been legal challenges to this position, recent cases have determined that this would most likely not constitute unlawful discrimination.

The rules around SPL and ShPP are fairly complex, and there is a certain amount of admin to be completed around SPL and ShPP. Whilst further details can be found at the Gov.uk website, we would recommend discussing this with an adviser beforehand

There is a certain amount of HR admin to be completed around SPL and ShPP, and further details can be found on the [Gov.uk website](#).

Other Family Friendly Rights

Parental Bereavement Leave and Pay

Employees who are parents, or partners of parents, either by biology, adoption or surrogacy, to a child under 18 (including stillbirths after 24 weeks of pregnancy) who died after 6 April 2020 (applicable in England, Scotland and Wales), are entitled to Parental Bereavement Leave and Statutory Parental Bereavement Pay.

This applies regardless of the employees length of service.

Employers do offer Compassionate Leave in the UK. This is not a legal entitlement but normally 1 week at full pay. It normally covers the death of close family members or could be allowed in situations where there is a serious illness to a close family member.

Further information on Parental Bereavement Leave and Pay can be found on the [Gov.uk website](#).

Unpaid Parental Leave (Not to be confused with Shared Parental Leave)

This is probably the least well known type of family leave in the UK, and in practice is rarely ever taken up.

Parents with at least one year's continuous service with their employer can take up to 18 weeks of unpaid parental leave for each child and adopted child, up to their 18th birthday (with a maximum of 4 weeks in any single year). Parental leave is unpaid, and has to be taken for the purpose of caring for a child.

Further information on Unpaid Parental Leave can be found on the [Gov.uk website](#).

Time off for dependants and Carer's leave

Employees have a right to take a reasonable amount of unpaid time off work for urgent family reasons.

The right to time off to care for dependants is intended to be for emergencies only, and the time taken off is unpaid.

Time off for dependants is normally one or two days but under then legislation the reasonable amount of time off to take action which is "necessary" to deal with the emergency. Employers should consider requests on a case by case basis and take advice if they are considering declining a request.

Further information on time off for dependants and carer's leave can be found on the [Gov.uk website](#).

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