



Thoroughbred Breeders' Association Employment Law Fact Sheet No 14

Maternity Rights and Shared Parental Leave

Pregnant women are entitled to wide ranging employment law protection so proceed with great caution.

In particular note that pregnancy is not an illness and so it is not open to you to dismiss for incapacity. This is an area where you should take individual advice if in any doubt.

All women are entitled to a period of 26 weeks Ordinary Maternity Leave and 26 weeks' Additional Maternity Leave regardless of length of service. The employee must notify you by the end of the 15th week before her due date:

- That she is pregnant;
- The expected due date; and
- The date she intends to begin her maternity leave (usually no earlier than the beginning of the 11th week before the due date).

You should then write to the employee, within 28 days of this notification informing of her return date. The employee can bring forward their intended start date by giving 28 days' notice. The employee can change their return date by giving you 8 weeks' notice.

Parents also have the alternative option of curtailing maternity leave and taking leave under a separate system of Shared Parental Leave ('SPL'). See below.

Risk Assessments

Employers must carry out a risk assessment for pregnant women and periodically where the workforce includes women of childbearing age. You should consider how risk can be avoided or reduced, consider changing working conditions/hours of work or consider alternative work. If no such work is available the employee may be placed on maternity suspension on full pay.

Time off for antenatal care

All pregnant employees are entitled to time off with pay to keep appointments for antenatal care. Amongst other things this may include relaxation classes and parent-craft classes.

The pregnant woman's husband, partner or civil partner (including same sex partners), or the father or parent of the pregnant woman's child can take unpaid time off work for the purpose of attending up to two antenatal appointments with the pregnant woman. Up to 6.5 hours is permitted per appointment.

During Maternity Leave

- The employee is entitled to benefit from all of her normal terms and conditions of employment (including any accommodation provided), except in respect of pay.
- Subject to eligibility she is entitled to maternity pay at 90% of salary for 6 weeks and 33 weeks at £184.03 or 90% of salary if this is lower (employers can claim maternity pay back through national insurance contributions). These figures usually change in April each year so should be checked. They are up to date as of April 2024. Eligibility arises where the employee has at least 26 weeks service by the 15th week before the baby is due and has earned on average an amount equal to the lower earnings limit (currently £123). Where there is no entitlement to maternity pay there may be an entitlement to maternity allowance.



- If a redundancy situation arises she must be offered a suitable alternative vacancy before this is offered to anyone else, if one is available.
- She is entitled to up to ten keep in touch or 'KIT' days, where she is able to attend work without breaking her maternity leave or losing her entitlement to SMP.
- At the end of her ordinary maternity leave period she is entitled to the job in which she was employed before her absence.
- If the employee has taken any period of AML or a period of at least four weeks parental leave on top of her AML and there is some reason why it is not reasonably practical for her to return to the same job she is entitled to return to a job which is both suitable and appropriate and on no less favourable terms and conditions.
- She is entitled to compensation if made redundant, at the statutory rate (or contractual if better).

Employing a temporary replacement

You should inform the replacement in writing that you are employing them to take the place of an employee who is absent due to pregnancy and that the employment will be terminated on the return of this employee. It is still advisable to follow a fair dismissal procedure; the termination will be due to Some Other Substantial Reason - see guide on Legal Reasons for Dismissal.

Shared Parental Leave (SPL)

Overview:

SPL is a separate system of leave which has been available in respect of children where the expected week of childbirth began on or after 5 April 2015 (or in cases of adoption, where the child was placed with the couple on or after 5 April 2015).

This system is not mandatory. The default position on the birth/adoption of a child is that the 52 weeks of statutory maternity leave (39 paid) will remain in place. However, this scheme makes up to 50 weeks of SPL available should parents wish to take SPL instead.



Subject to the compulsory 2 week period of maternity leave, the mother (or primary adopter) can choose to end statutory maternity or adoption leave early, and with her partner or child's father, continue for the balance of the entitlement with SPL instead. The same will apply in respect of curtailment of adoption leave.

SPL can be taken at any time within the 52 weeks following the birth or placement. Leave must be taken in complete weeks and may be taken either in one period (which an employer cannot refuse) or in a discontinuous period (which an employer can refuse).

An employee opting for SPL must notify their employer of their entitlement to SPL and must provide a notice to book the leave at least 8 weeks prior to the intended start date. The notice must confirm the following:

- How much leave is available
- How much leave they are entitled to take
- How much leave they are intending to take
- How they expect to take it

An employee is limited to serving 3 such notices.

An employer may also request a copy of the child's birth certificate or documents notifying the primary adopter that the child was to be placed with them, together with the name and address of the other parent's employer.

Establishing eligibility to take SPL:

To qualify for SPL a mother or primary adopter must be entitled to statutory maternity leave and must share the main responsibility for caring for the child with their partner or the child's father. In addition, there will be a requirement to pass the following tests:

- Step 1 – Continuity Test

A parent seeking to take SPL must have worked for the same employer for at least 26 weeks at the end of the 15th week before the week in which the child is due (or in the case of adoptions, the week in which an adopter was notified of having been matched with a child for adoption).

- Step 2 – Eligibility for Shared Parental Pay (ShPP)

As well as passing the continuity test, a parent must also have earned an average salary of the lower earnings limit or more for the 8 weeks' prior to the 15th week before the expected week in which the child is due.

To share the leave the other parent must also pass eligibility tests (see: <https://www.gov.uk/shared-parental-leave-and-pay-employer-guide>)

Options for an employer once a notice has been received:

- A continuous leave notification must be unconditionally accepted.
- An employer may attempt to agree a modification to a continuous leave request but should be proceed with caution. The employee is under no obligation to agree to this and the employer should not apply pressure for them to do so.
- Where a discontinuous leave application has been made, in the two week period following the application the employer may either:



- Consent to the request
- Propose alternative dates
- Refuse without proposing alternative dates

Where no agreement is reached, the employee has an entitlement to take the total amount of SPL requested in one continuous period of leave.

Rights during and on return from SPL:

As with maternity leave, an employee on SPL has rights in respect of returning to work and in respect of any redundancy situation occurring during their period of SPL.

An employee may work for up to 20 days during the SPL period (shared parental leave in touch or 'SPLIT' days) without bringing the SPL to an end. This is additional to any KIT days that a woman may have already had on maternity leave.

Unfair Dismissal and Discrimination

A dismissal for a reason related to pregnancy or maternity leave or shared parental leave is automatically unfair and the employee is also entitled to bring a discrimination claim under Equality Act 2010.

Further information

Visit the link below and use the 'SMP Calculator' to work out an individual's maternity rights:

<https://www.gov.uk/pay-leave-for-parents>

Visit the link below for further information regarding the system of Shared Parental Leave and to download the ACAS good practice guide:

<http://www.acas.org.uk/index.aspx?articleid=4911>

Further Employer guidance on Shared Parental Leave can also be found at GOV.UK:

<https://www.gov.uk/shared-parental-leave-and-pay-employer-guide>

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