



Parent & Carer
Alliance C.I.C.

Paternity Leave & Pay

Guidance for Employers

Quick Overview

To be eligible for paternity leave, an employee must have been continuously employed for at least 26 weeks by the end of the 15th week before the expected week of the child's birth.

- Paternity leave currently must be taken in a single block of one or two weeks within 56 days of the child's birth or adoption. If only one week is taken, the second week is lost.
- An employee must notify their employer of their leave dates no later than 15 weeks before the expected week of childbirth, or within 7 days of being matched with a child in an adoption.
- Subject to parliamentary approval of draft regulations, from 6th April, there will be changes to the paternity leave rules which will increase flexibility

WHAT IS PATERNITY LEAVE?

Paternity leave is time off for eligible employees following the birth or adoption of a child. It is to care for a child or support the child's mother. In relation to births, paternity leave can also be taken following the birth of a child to a surrogate mother, where the employee and their partner expect to obtain a parental order.

WHO IS ELIGIBLE TO TAKE PATERNITY LEAVE?

The employee must have been continuously employed for a period of at least 26 weeks by the end of the 15th week before the expected week of the child's birth.

In the case of an adopted child, the employee must have been continuously employed for at least 26 weeks leading into the week in which the adopter is notified of being matched with a child. The employee must be the father of the child, or the spouse, civil partner, or "partner" of the child's mother.

The employee must have, or expect to have, responsibility for the upbringing of the child.

WHO IS A PARTNER?

A "partner" is a person, whether of a different sex or the same sex, who lives with the mother, or adopter, and the child in an enduring family relationship. It does not include relatives of the mother or adopter such as a parent, grandparent, sister, brother, aunt, or uncle.

WHEN IS PATERNITY LEAVE NOT AVAILABLE?

An employee cannot take paternity leave if shared parental leave has already been taken.

WHAT HAPPENS IF THE BABY IS BORN PREMATURELY?

Where the baby is born before the end of the 15th week before the expected week of childbirth, but the employee does not have 26 weeks service, if the employee would have had 26 weeks' service by the end of the 15th week before what had been determined as the expected week of the child's birth, the employee is still eligible for paternity leave. Paternity leave can be taken where the baby is stillborn if the employee satisfies the eligibility criteria. Paternity leave is not available where the mother suffers a miscarriage before 24 weeks. Both parents may also have the right to statutory parental bereavement leave and pay.

HOW MUCH PATERNITY LEAVE CAN AN EMPLOYEE TAKE?

Eligible employees can take either:

- one week, or
- two weeks in one block.

An employee cannot take two separate single week blocks.

If the draft regulations are approved by parliament, in relation to children whose expected week of childbirth is after 6 April 2024 and children whose expected date of placement for adoption is on or after 6 April 2024, it will be possible to take paternity leave in two non-consecutive one-week blocks. It will, therefore, be possible to split the leave out by taking one week and then the second week later, within the first year after the birth or adoption of their child.

WHAT IF MORE THAN ONE BABY IS BORN OR ADOPTED AT THE SAME TIME?

Only the one period of paternity leave can be taken even if more than one baby is born or adopted at the same time.

If for example twins are born, the employee would still only be able to take the one week or two weeks entitlement.

WHEN DOES PATERNITY LEAVE HAVE TO BE TAKEN?

An employee must take their paternity leave within 56 days of the child's birth, or in adoption cases, of the child being placed with the employee.

If the child is born before the first day of the expected week of childbirth, the employee has from when the baby is born to 56-days after the expected week of childbirth in which to take paternity leave. This means the period that they can take paternity leave is extended.

The employee can choose to begin to start paternity leave on either:

- a) the date on which the child is born/placed with the adopter;
- b) from a specified chosen number of days/weeks after the child's birth/placement (whether this is earlier or later than expected); or
- c) from a specified predetermined date which is later than the first day of the expected week of the child's birth or expected date of placement

An employee cannot take paternity leave before the birth of the baby. If the baby has not been born by the date previously specified, then the employee must postpone paternity leave and pay to the date of the birth or a specified number of days after the birth.

Subject to parliamentary approval of the regulations, employees will be able to take their leave at any time in the first year after the birth or adoption of their child. This change will

take effect in relation to children whose expected week of childbirth is after 6 April 2024 and children whose expected date of placement for adoption is on or after 6 April 2024.

WHAT NOTICE DOES THE EMPLOYEE NEED TO GIVE THEIR EMPLOYER?

Employees are required to give their employer notice of their intention to take paternity leave. The employer can request this notice in writing from the employee.

The notice must be given in or before the 15th week before the expected week of the child's birth.

In the case of an adopted child, notice should be given no more than seven days after the date on which the adopter was notified of having been matched with a child.

If the circumstances are such that providing the employer with notice as above is not possible, it should be given as soon as is reasonably practicable.

The notice must specify:

- a) the expected week of birth/placement;
- b) whether they wish to take one or two weeks' leave; and
- c) when they want their leave to start.

In adoption cases the notice must also state the date on which the adopter was notified of having been matched with the child.

Where the employer so requests, the employee must also give the employer a signed declaration as to the purpose of the absence and that the eligibility conditions have been met.

The employee can change their mind about the date on which they want their leave to start. They would need to notify their employer at least 28 days in advance unless this is not reasonably practicable.

The employee must also provide a further notice, in writing if the employer so requests it, as soon as is reasonably practicable after the child's birth/ placement, of the date on which the child was born/ placed.

For children whose expected week of childbirth is after 6 April 2024 and children whose expected date of placement for adoption is 6 April 2024, subject to parliamentary approval of the draft regulations, employees will be required to give 15 weeks' notice of entitlement to their employer. They will then only need to give 28 days' notice of the leave dates.

IS PATERNITY LEAVE PAID?

Yes, the one or two weeks of paternity leave is paid if the employee meets the following eligibility requirements:

- a) has a prescribed relationship with the child and the mother/adopter;
- b) has been continuously employed by the employer for at least 26 weeks continuing into the 15th week before the baby is due, or at least 26 weeks leading into the week in which the adopter is notified of being matched with a child;
- c) has average weekly earnings of not less than the lower earnings limit in the qualifying or matching week as appropriate;
- d) has remained in continuous employment with the employer from the end of the qualifying/matching week up to the date of the child's birth/ placement; and
- e) intends at the start of the paternity pay period to care for the child or support the mother/adopter.

HOW MUCH IS STATUTORY PATERNITY PAY?

Statutory Paternity Pay (SPP) is the lowest of the following:

- a) from April 2023, £172.48, though this rate is reviewed, and usually increased, each year; or
- b) 90% of the employee's normally weekly earnings.

IF THE EMPLOYEE STARTS WORK FOR SOMEONE ELSE WHILST ON PATERNITY LEAVE, DO I STILL HAVE TO PAY THEM?

If an employee starts work for a new employer who is not liable to pay the employee statutory paternity pay, and for whom the employee did not work in the qualifying/matching week, there is no liability to pay statutory paternity pay for any remaining leave.

DO I STILL HAVE TO PAY IF THE EMPLOYEE LEAVES?

Entitlement to statutory paternity pay cannot be established until the baby is actually born or, in the case of an adoption, placed with the adopter. However, once it has been established it cannot be lost, for example if an employee was dismissed after the birth/placement but

before the planned start of their leave and pay period, they would still be entitled to receive the statutory paternity pay

CAN I RECLAIM STATUTORY PATERNITY PAY?

Employers can recover 92% of statutory paternity pay. This recovery is made by deducting the amount to be recovered from any allowable payments due to HMRC for the tax month in which the statutory paternity pay was paid. Employers may be able to claim Small Employers Relief if their total Class 1 NI contributions in the previous tax year are below an annual threshold of £45,000 in the qualifying tax year. If the statutory paternity pay amount to be recovered exceeds the contribution due in a month, the excess can be deducted from the PAYE income tax due that month.

DO I HAVE TO KEEP RECORDS?

An employer has a duty to keep records for three years after the end of a tax year in which the employee's SPP started.

CAN THE EMPLOYEE CARRY OUT ANY WORK FOR ME WHILST ON PATERNITY LEAVE?

No. The employee must not carry out work of any kind whilst they are on paternity leave.

CAN KIT DAYS BE TAKEN WHILST ON PATERNITY LEAVE?

No. Keeping in touch (KIT) days cannot be taken by an employee whilst on paternity leave.

WHAT HAPPENS TO THE EMPLOYEE'S TERMS & CONDITIONS DURING PATERNITY LEAVE?

All usual terms and conditions remain whilst an employee is taking paternity leave, except for pay. The employee should continue therefore to receive all benefits as usual.

Employees taking paternity leave have the right not to be subjected to any detriment or to be dismissed because they are taking paternity leave. If they are, a claim can be brought in an employment tribunal.



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