

SHARED PARENTAL LEAVE AND PAY POLICY

Contents

Section 1.0	<u>Introduction</u>	Page 2
Section 2.0	<u>Entitlement to Shared Parental Leave</u>	Page 2
Section 3.0	<u>Shared Parental Leave</u>	Page 3
Section 4.0	<u>Shared Parental Pay</u>	Page 5
Section 5.0	<u>Shared Parental Leave in Touch Days (SPLIT) days</u>	Page 6
Section 6.0	<u>Returning to work following Shared Parental Leave</u>	Page 6
Section 7.0	<u>Terms and Conditions of Employment</u>	Page 6
Section 8.0	<u>Equality and Diversity</u>	Page 7
Section 9.0	<u>Income Tax and National Insurance</u>	Page 7

SHARED PARENTAL LEAVE AND PAY POLICY

1.0 **INTRODUCTION**

1.1 Shared Parental Leave (SPL) is a legal entitlement introduced under the Children and Families Act 2014, and babies born, placed for adoption and to intended parents through surrogacy.

1.2 Under the Shared Parental Leave and Pay policy the mother/adopter are still entitled to the maximum of 52 weeks maternity/adoption leave (refer to Maternity and Adoption leave policy) but can choose to switch part of their maternity/adoption leave and pay into shared parental leave and shared parental pay, providing the eligibility requirements are met. This enables parents to share the caring responsibilities more evenly should they so wish. Unlike maternity/adoption leave eligible employees can stop and start their SPL and return to work between periods of leave.

1.3 In the 52 week period the mother/adopter must take 2 weeks compulsory maternity/adoption leave following which eligible parents will be able to take the remaining maternity leave and pay between them.

1.4 Partners will still be able to take two weeks Maternity/Adoption Support leave (refer to Maternity/Adoption Support Leave policy).

1.5 Employees still have a statutory right to take Parental leave.

1.6 Shared Parental Leave must be taken between the baby's birth and first birthday.

2.0 **Entitlement to Shared Parental Leave**

2.1 SPL can be taken by the mother and the child's father or the mother's spouse, civil partner or other partner. The Shared Parental Leave policy is available to all employees but both parents must meet the qualifying conditions in order for SPL to apply. If the mother does not qualify for maternity leave or maternity allowance then her partner will not be eligible for SPL or shared parental pay.

2.2 Shared parental leave is also available to adoptive parents. Surrogate parents who meet the criteria to apply for a Parental Order will be eligible for adoption leave and pay and shared parental leave and pay if they meet the qualifying criteria.

2.3 In order for a parent to take SPL they are required to satisfy the continuity of employment test and the employment and earnings test.

Continuity of employment test

Both the mother/adopter and their partner must have worked for their employers continually for at least 26 weeks up to the 15th week before the expected week of childbirth and are still working for the employer at the start of each shared parental leave period.

Employment and Earnings test

In the 66 weeks leading up to the expected due date of the child the partner has worked for at least 26 weeks and their average gross weekly earnings must be equal to or above the

specified threshold known as the lower earnings limit. The partner can be employed, self employed or an agency worker.

- 2.4 If both parents meet the qualifying requirements then there will be a joint entitlement to SPL and the parents will have to determine how to divide the leave entitlement once the mother/adopter has decided to curtail their maternity/adoption leave, by completing **Form 1, Curtailment of Maternity Leave and Pay /Adoption Leave and Pay**.
- 2.5 If the mother/adopter does reduce and curtail their maternity/adoption entitlement then they can opt to participate in SPL and take any remaining weeks as SPL. It is up to the parents to decide how they share SPL; they can either take it in turns, take time off together or they can choose for just the partner to take SPL.. Please refer to the guidance at the front of the Shared Parental Leave Forms which identifies the relevant forms to be completed in each instance. Example A - mother/adopter and their partner are both eligible for SPL. The mother/adopter ends their maternity/adoption leave after 12 weeks, leaving 40 weeks available for SPL. The mother/adopter then takes 30 weeks SPL and their partner takes the remaining 10 weeks. **Form 2, Notification that Mother is intending to take SPL** and **Form 4, Notification that Partner is intending to take SPL (for Partner's Employer)** should be used in this instance.
- 2.6 The child's father is still entitled to two weeks maternity support leave before taking SPL, as SPL is additional to maternity support leave entitlement. If however, SPL is started the child's father will lose any untaken maternity support leave.

3.0 **Shared Parental Leave Process**

- 3.1 The total amount of Shared Parental Leave available is 50 weeks, less the weeks spent by the child's mother/adopter on maternity/adoption leave. SPL can start on any day of the week but can only be taken in complete weeks (so if SPL begins on a Wednesday it would end the following Tuesday).
- 3.2 If the child's mother/adopter wishes to opt into the SPL scheme, they should give at least eight weeks written notice to end their maternity/adoption leave before taking SPL. This is known as a curtailment notice which can be given before or after the birth of the baby, but maternity/adoption leave cannot end until at least two weeks after the baby is born. The employee should complete **Form 1 Curtailment of Maternity Leave and Pay/Adoption Leave and Pay**.
- 3.3 Once a mother/adopter has given notice to end their maternity/adoption leave and either parent has informed the Council/School of their entitlement to take SPL then the notice to end maternity/adoption leave is binding and cannot be withdrawn unless:-
- a) Within 8 weeks of submitting her notice to end maternity/adoption leave it is raised that neither parent qualifies for SPL
 - b) When notice was given before the birth of the baby, it may be withdrawn without a reason up to 6 weeks following the birth
 - c) The mother/adopters partner dies

Once the curtailment notice has been revoked the child's mother/adopter will be unable to opt back into the scheme unless (b) applies.

- 3.4 In addition to notifying the Council/School of an employee's wish to curtail their Maternity/Adoption Leave/Pay an employee must also give notice to take the leave. In most cases notice to take leave will be given at the same time as the notice of entitlement to SPL. **Form 2 Notification that Mother/adopter is intending to take Shared Parental Leave.**
- 3.5 SPL can be taken using 3 separate notices to book leave. Each notice to book SPL can be for either a continuous block or multiple discontinuous blocks. A continuous block is an unbroken period of leave e.g. a period of 6 weeks. Employees have a right to take leave in this way and this cannot be refused.
- 3.6 In order to book a continuous block of SPL the employee should refer to the guidance at the front of the Shared Parental Leave Forms as this identifies which forms they should complete according to who is taking SPL. The employee must ensure the completed forms are submitted to their manager at least 8 weeks before any leave begins. Once received the manager should meet with the employee to discuss the application. The employee has the option to be accompanied at the meeting by a trade union representative if they are available or work colleague.

The meeting should be held in private and arranged in advance and the manager should:

- Consider the notification details before the meeting and think about how the impact of the request could be managed
 - Remember that the employee is entitled to take continuous SPL when they want to and the purpose of the leave is to care for their child
 - Consider what arrangements could be discussed to make the leave as mutually beneficial as possible
 - Prepare questions for the meeting to ensure that all the points are clarified and dealt with
 - Be open minded to suggestions and flexible
 - Have a two way discussion and give each other the opportunity to put forward views
 - Discuss how the leave could be accommodated taking account of the employees workload
- 3.7 A continuous leave application **must** be accepted and the agreement should be confirmed in writing by the Manager within 14 days of the date the notification was received. **(Letter 1)**
- 3.8 An employee can also request a discontinuous block and ask for SPL over a period of time, with breaks in between where the employee returns to work. E.g. 4 weeks SPL followed by 3 weeks back at work followed by a further 3 weeks SPL. The employer is entitled to consider the needs of the Council/School before agreeing to discontinuous blocks of SPL.
- 3.9 A meeting should be held within 14 days of the original notification to discuss the request and the employee has the option to be accompanied at the meeting by a trade union representative if one is available or work colleague. If a discontinuous leave pattern is refused then the employee may withdraw the request without detriment on or before the 15th day after the notification was given; or may take the total number of weeks in the notice in a single

continuous block. If the employee does withdraw the request it will not count as one of their 3 notices to book SPL. (**Letter 2**).

3.10

A request for discontinuous leave can be rejected if the request is unacceptable and a response should be given to the employee within 14 days of the date of notification. The manager should consider:-

- a) The impact the SPL will have on the Council/School;
- b) Would any changes to the SPL reduce the impact on the Council/School and is this option suitable for the employee (e.g. a request at the financial year end may have a detrimental impact on service delivery, but to take some SPL in February or April could be agreed).

3.11

If a discontinuous leave application is accepted then the manager should confirm this with the employee within 14 days of the notification being received (**Letter 1**).

If an employee needs to vary or cancel a period of booked leave then this is permitted providing the employee makes a written request at least 8 weeks before the SPL is due to commence. The letter should include the reason for varying/cancelling the leave and what changes they are seeking. A notice to vary booked SPL would count as a further notification so if the agreed leave was part of their first notice to book SPL, cancelling or varying would count as a second notification. Any new start date cannot be sooner than eight weeks from the date of the variation request, unless the child is born early.

4.0 **Shared Parental Pay**

4.1 Employees have to establish eligibility in order to receive shared parental pay (ShPP) and an employee will be eligible if:-

The employee has complied with the appropriate notices and declarations;

The mother/adopter is entitled to statutory maternity/adoption pay but has reduced their maternity/adoption pay period;

Both parents have the main responsibility for looking after the child;

The employee will be caring for the child during each week that ShPP is paid;

Both parents satisfy the continuity of employment test (See section 2.3);

Both parents satisfy the normal weekly earnings test (See section 2.3).

4.2 Once eligibility is established the ShPP time period and rate of pay is as follows:-

Employed mothers/adopters are entitled to 39 weeks statutory maternity pay when on maternity/adoption leave and if the parents decide to opt into the SPL scheme then part of the maternity/adoption pay will swap to the partner. The total period of paid leave will not exceed 39 weeks whichever partner takes the leave. If both parents qualify for SHPP they must decide who will receive it and how it will be divided.

4.3

Enhanced Statutory/Occupational Maternity/ Adoption pay during the first 18 weeks of Maternity/Adoption pay **is only available to the mother/adopter during Maternity/Adoption Leave and all SHPP will be paid at the current rate of Statutory Maternity/ Adoption Pay.**

4.4

The rate of ShPP is set by the government and details of the rate can be found at <https://www.gov.uk/shared-parental-leave-and-pay/what-youll-get> but currently (as at 6 April 2019) it is paid at £148.68 or 90% of your average weekly earnings (whichever is lower).

It is the employee's responsibility to check they are eligible and leave and pay is based on the declarations and information provided by the employee. If it is discovered ShPP was incorrectly paid and an overpayment is made, the Council/School can recover payments.

5.0 **Shared Parental Leave in Touch (SPLIT) days**

5.1 During SPL an employee can request up to 20 Shared Parental Leave In Touch (SPLIT) days. There is no obligation for the manager to offer these days or for the employee to agree to them. SPLIT days can be used where it is felt beneficial for the employee to attend work to undertake a work-related activity, such as a team meeting or a training event.

5.2 SPLIT days are in addition to the 10 Keeping in Touch (KIT) days which are allowed during maternity and adoption leave. Therefore, a mother/adopter can take up to 10 KIT days and 20 SPLIT days without bringing to an end their maternity leave or SPL.

5.3 An employee will receive their normal basic rate of pay for time spent at work on a SPLIT day and this will be inclusive of any shared parental pay entitlement.

6.0 **Returning to work following Shared Parental Leave**

6.1 An employee, on returning to work following a period of SPL has an entitlement to return to the same job. If this is not reasonably practicable, i.e. during the absence of the employee there has been a reorganisation, then the employee must be offered a suitable and appropriate job on terms and conditions which are not less favourable.

6.2 If an employee wishes to make a change to their hours or other working arrangements on return from SPL then the employee should make a request using the Councils/Schools flexible working policies available on the Managers and Employee Hubs'.

6.3 If an employee makes a decision not to return to work, then the employee should give notice of their resignation in accordance with their contract of employment.

6.4 In addition, from 6 April 2024, The Maternity Leave, Adoption Leave and Shared Parental Leave (Amendment) Regulations 2024 extends the protections for redeployment opportunities in a redundancy situation for pregnant employees and those who have recently returned from maternity/adoption leave and shared parental leave.

These protections will be discussed with affected individuals during any Managing Change process.

7.0 **Terms and Conditions**

- 7.1 An employee's terms and conditions of employment will remain in force during SPL, with the exception of the terms relating to pay.
- 7.2 Employees still accrue annual leave whilst on SPL but cannot take annual, statutory or additional discretionary leave during Shared Parental Leave. Employees should therefore endeavour to take their full entitlement for the current leave year, either before the commencement of SPL or after the end of the SPL or a combination of both. This should be planned in advance and agreement reached with the manager in the normal manner.
- 7.3 If an employee fails to return to work following a period of SPL and resigns from their post then all leave entitlements will be calculated to the last day of work and monies will be reclaimed if excess leave has been taken.
- 7.4 Any employee who makes a fraudulent claim in accordance with this policy would be subject to the Councils/Schools disciplinary procedure.
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8.0 **EQUALITY AND DIVERSITY**

- 8.1 The Council/School is committed to having an equal and diverse workforce.
- 8.2 The Shared Parental Leave and Pay policy will improve equality between women and men, enabling them both to share their entitlement to parental leave. This can help to reduce the interruption to a mother's career development that Maternity Leave can cause. It can also enable fathers to take a greater role in caring for their young children. This has the potential to enable more women to progress their careers both within and beyond the Council/School to the same extent and pace as men.
- 8.3 The Council/School will ensure that male employees are supported to take SPL just as readily as female employees are supported to take Maternity Leave. The policy will be monitored to assess how frequently it is used and the balance of the SPL that is taken by men and women. We will look to benchmark our performance on SPL with other local authorities and large employers in the region.
- 8.4 The policy will be promoted to all employees to make sure they are aware of their entitlements and to make it as understandable as possible.
- 8.5 The policy applies equally to adopting parents and same sex parents as it does heterosexual parents.
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9.0 **INCOME TAX AND NATIONAL INSURANCE CONTRIBUTIONS**

- 9.1 Shared Parental Leave is assessable to tax under Schedule E (75) [ICTA 1988, S150; FA 2002, S35]. As such, payments made by the Council to employees during periods of shared parental leave are subject to tax and national insurance in the normal manner, having regard to rates applicable at the time such payments are made.
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