

workSMART

Know
Your
Rights

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Paternity leave

and pay



Are you a dad-to-be, or the partner of
someone who is giving birth or adopting a child?

Then your paternity rights have just got better.

TUC 

New rights give you two weeks paid leave around the birth or adoption of your child.

Read this booklet to find out about your new rights and how to claim them.

Introduction

New rights for fathers, or partners of new mothers who are giving birth, and partners of adopting parents, come into force on 6th April 2003. This leaflet gives a basic guide to these new rights and answers common questions. The government has defined these new rights as 'paternity rights' but they apply equally to women and men.

The new right to paternity leave and pay applies to:

- fathers in married couples; or
- partners in co-habiting couples where one person in the couple is giving birth to, or adopting, the child.

A partner is defined as:

- someone of either the same sex or different sex who lives with the child and the child's mother, or the person adopting the child, in an enduring family relationship.

However, rights in this area can be complicated and everyone's situation is different, so you may find that you need to seek further advice for your circumstances. You should not rely on this leaflet as a comprehensive statement of the law.

This leaflet does not deal with the new rights for mothers themselves, or for those people who want to take paid adoption leave or unpaid parental leave, or who want to request to work flexibly. For information on these new rights please contact the TUC *Know Your Rights* line on **0870 600 4 882** or visit **www.worksmart.org.uk**

Check your rights with your employer

This booklet covers the basic (sometimes called statutory) rights that employers must provide for parents-to-be who work for them. Your employer may offer better rights than the legal minimum and you need to check your contract of employment, your staff handbook, or perhaps a special leaflet that the personnel department may provide in larger organisations to find out your entitlement with your current employer.

Improving benefits and entitlements for working parents is a priority for unions, so if you work for an organisation that recognises unions you are very likely to enjoy better rights than the legal minimum. These will normally be included in your contract of employment. If this is the case, your employer is legally bound to honour them because they have been promised to you. If you think that you have been denied some of your paternity leave or pay or time off that you expected, then you should seek advice to check your legal rights.



Worker or employee?

Some working people will get less than the legal minimum for employees, without anyone breaking the law. This is because not everyone who works for someone else is an employee in the eyes of the law.

Some employers do try and get round their obligations by treating their staff as self-employed when legally they are employees. You can even find that you are taxed as if you are employed but still denied the legal rights that an employee would enjoy. This is because, in legal terms, you are a worker not an employee.

If your employer tells you that you are a worker rather than an employee, because for example you work from home, obtained work through an agency or are a casual worker, then you must seek legal advice and clarification. It is vital that you seek advice to be sure you get the leave and pay that is yours by rights. You can find out more about this from the TUC's booklet *Your Job and the Law* available from the TUC *Know Your Rights* line **0870 600 4 882**. If you find that you are a worker and not an employee, you do not get the full set of paternity rights.

Employees are also entitled to unpaid parental leave and emergency time off for dependants and the right to not suffer detrimental treatment as a result of your need for such time off. You may also qualify for certain benefits and you should contact the Inland Revenue or your Jobcentre Plus to find out what you are entitled to. If you are a member of a trade union, you may find that they are able to help also. For more information, see the TUC's booklet *Time off for Families* available from the TUC *Know Your Rights* line **0870 600 4 882** or visit **www.worksmart.org.uk**



Paternity Leave

where your partner is giving birth

These regulations only apply to parents-to-be whose partners are giving birth in the week that begins on or after 6th April 2003. You are entitled to paid paternity leave if:

- you have been continuously employed by your current employer for 26 weeks or more by the 15th week before the baby is due; and
- you are the father of the child and expect to have responsibility for the child; or
- you are married to, or are the partner of, the child's mother, but are not the child's father, and you expect to have the main responsibility along with the mother for the upbringing of the child. (See definition of 'partner' on inside front page).

You are entitled to take either one week or two consecutive weeks' paternity leave. The period in which you must take your leave will begin on the day the child is born and finish 56 days after the day the child is born.



Giving notice to your employer

If you intend to take paternity leave you have to give your employer notice that specifies:

- the week your child is due to be born in; and
- the length of leave that you intend to take – either one week or two consecutive weeks; and
- the date that you have chosen your leave to begin on.

You must give your employer this notice in, or before, the 15th week before the week the child is due. In cases where this is not possible, or reasonably practicable, for example, if the child is born prematurely or the pregnancy is discovered very late, then notice must be given as soon as is reasonably practicable.

If you qualify for paternity leave you may be asked by your employer for a self-certificate, form SC3 '*Becoming a Parent*', confirming you are entitled take the leave. You only have to give your employer a completed certificate if they ask you to, and you should take a copy of it so both you and your employer are clear of the dates and information. If you are entitled to paternity pay you will need to fill in the self-certificate in order to claim it, but you only need to submit the self-certificate to your employer once to confirm your eligibility for both leave and pay.

Once the child has been born and, as soon as is reasonably practicable, you must give your employer notice of the date that the child was born on.

You can choose when your leave period will begin, but it must start on one of these dates:

- the day the child is born; or
- a day which falls a certain number of days after the child is born, as specified by you to your employer before the child is born; or
- a pre-determined date that falls after the first day of the week that the child is due, which you specify to your employer.

Varying the date

Once you have given your employer notice of the date you intend your leave to start on, you are entitled to vary this date but you have to give your employer 28 days notice of the new date that your leave will start on. If it is not possible to give 28 days notice, you must give this notice as soon as is 'reasonably practicable'.

If the child is not born on or before that date, you can vary your leave date to begin:

- with a later pre-determined date; or
- on a specified number of days after the child is born; or
- on the date that the child is born.

Your paternity leave period will begin on the date you specified in the final notice you gave your employer.

If you have stated that your leave period will begin on the date that the child is born, and you are at work on that date, then your paternity leave period will begin the next day.



Terms and conditions while you are on leave

If you return to work after a period of paternity leave and have taken no other leave, or you have taken paternity leave followed by annual leave or other statutory leave, then you are entitled to benefit from the terms and conditions which would have been afforded to you as if you had not been away – except for those terms and conditions relating to remuneration (i.e. wages, salary).

However, you may choose to take paternity leave followed by a period of parental leave of more than four weeks. If this is the case, then you are entitled to return to the same job with the same terms and conditions as were in place immediately before the extra leave began (which is the section of parental leave that exceeds more than four weeks).

Returning to work after paternity leave

You are entitled to return to the same job that you were employed in before you went on leave, and benefit from the same conditions as if you'd never been on leave, (unless a redundancy situation has arisen). You are entitled to benefit from any general improvements to the rate of pay or other terms and conditions which may have been introduced for your grade or class of work while you were away. This is the case if you took the paternity leave on its own, or linked it with other statutory leave such as annual leave or less than four weeks of parental leave.

You may choose to link your paternity leave period with, for example, a period of parental leave of more than four weeks. If this is the case then you are entitled to return to the job you were employed in before taking the leave, or, if that is not reasonably practicable, another job which is suitable and appropriate for you, and which has similar – and certainly not less favourable – terms and conditions attached.

Paternity Leave

where your partner is

adopting



Entitlement

These regulations are only applicable to an employee who is matched with, or notified that they will be matched with, a child on or after 6th April 2003. You are entitled to paid paternity leave if:

- you have been continuously employed by your current employer for 26 weeks or more when your partner is notified that they have been matched with a child; and
 - you are either married to, or are the partner of, the person adopting the child; and
 - you expect to have the main responsibility, along with the person adopting the child, for the upbringing of the adopted child.
- You are entitled to take either one week or two consecutive weeks' paternity leave. The period in which you must take your leave will begin on the day the child is placed with the adopting parent and will finish 56 days after that date.
- Your leave period can start on:
- the day the placement is made; or
 - a day which falls a certain number of days after the placement is made, as specified by you to your employer; or
 - a pre-determined date that falls after the first day of the week that the child placed, which you specify to your employer.

Giving notice

If you wish to take paternity leave, you must give your employer notice that specifies:

- the date that you and/or your partner were notified that a child had been matched with you for adoption; and
- the date that you are expecting the child to be placed with you and/or your partner; and
- the date that you want your paternity leave period to begin.

You must give this notice within seven days of the adopter being notified of having been matched with a child. If this is not reasonably practicable, then you must give notice as soon as is reasonably practicable.

If you qualify for paternity leave your employer can ask you to complete a self-certificate form (SC4 *Becoming an Adoptive Parent*) that confirms you are entitled to take paternity leave. You only have to give this certificate to your employer if they ask you to, and if you are entitled to paternity pay you will need to complete the self certificate form in order to claim it. However, you only need to submit the certificate once to qualify for both leave and pay.

It is advisable that you get a copy of the certificate once you have completed it, so that both you and your employer are clear of the dates and information you have agreed on.

Varying the date that the leave starts on

Once you have given your employer notice of the date you intend to start your leave on, you are entitled to vary that date, provided you give your employer 28 days notice of the new date.

If it is not possible to give 28 days notice, you must give this notice as soon as is “reasonably practicable”.

If the child has not been placed in your care by this date, then you can choose another date, either pre-determined, or a specific number of days after the child is placed with you, for the leave to begin on. If you are unable to give 28 days notice in this case, then you must give notice as soon as is reasonably practicable.

Your paternity leave period will begin on the date you specified in the final notice you gave your employer. If you have stated that your leave period should begin on the date that the child is placed in your care, and you are at work on that date, then your paternity leave period will begin the next day.

Once the adopted child has been placed in your care, you must give your employer notice as soon as is reasonably practicable of the date of that the placement happened.

Terms and conditions while on leave

You are entitled to benefit from exactly the same terms and conditions that you would have received had you not been on leave, except for those terms and conditions relating to remuneration (i.e. wages, salary). You may be entitled to receive paternity pay (see page 10) which is set at a statutory amount.

If you return to work after a period of paternity leave and have taken no other leave, or you have taken paternity leave followed by annual leave or other such statutory leave including four weeks or less of parental leave, then you are entitled to benefit from the terms and conditions you had before taking leave.

However, you may choose to take paternity leave followed by a period of parental leave of more than four weeks. If this is the case, then you are entitled to return to the same job with the same terms and conditions as were in place immediately before the extra leave began (which is the section of parental leave that exceeds more than four weeks).

Returning to work

You are entitled to return to the same job that you were employed in before you went on leave, and benefit from the same conditions as if you had never been on leave. This is the case if you took the paternity leave on its own and no other leave, or linked it with other statutory leave such as annual leave.

You may choose to link it with, for example, a period of parental leave of more than four weeks. If this is the case then you are entitled to return to the job you were employed in before taking the leave, or, if that is not reasonably practicable, another job which is suitable and appropriate for you, and which has similar – and certainly not less favourable – terms and conditions attached.

If you choose to take paternity leave followed by parental leave of more than four weeks, your employer may be able to argue that the job you were in before you went on this leave is no longer available or it is not reasonably practicable for you to return to that job. In such a case, they have to offer you a job that is suitable and appropriate for you with no less favourable terms and conditions as the job you were in before you went on leave. If you ‘unreasonably refuse’ this job, then you cannot claim unfair dismissal as you will have effectively resigned from the post.

However, it is vital that you seek advice about this matter. If you are a member of a trade union or work for a unionised workplace then you should contact them. You could also seek advice from a legal specialist to ensure that you get all the rights that you are entitled to.



Statutory Paternity Pay

where your partner is giving birth

These regulations apply to parents who are taking paternity leave for a child due or born on or after 6th April 2003. Statutory Paternity Pay can be quite complicated so you may need to seek further advice regarding your entitlements. However, you should know one legal term before checking your entitlements, and that is your 'qualifying week', which is the end of the 15th week before the child is due.

You are entitled to paid paternity leave if you are an employee, and:

- you have been continuously employed by your current employer for 26 weeks or more by the end of the qualifying week; and
- you are the father of the child and expect to have responsibility for the child; or
- you are married to or are the partner of the child's mother, but are not the child's father, and you expect to have the main responsibility, along with the mother, for the upbringing of the child; and

- you have been earning at or above the Lower Earnings Limit (LEL)* before tax on average over the eight weeks up to the end of the qualifying week.

If your child is born early then you qualify for SPP if you would have been working for your current employer for at least 26 weeks by the qualifying week even if the child is born before the qualifying week.

Your SPP can begin on:

- the date the child is born, or if you are at work on that day, then the following day; or
- a date that falls a certain number of days after the child is born as specified by you; or
- a pre-determined date which you have specified to your employer and which falls later than the first day of the week that your child is due.

**The lower earnings limit (LEL) is set at £75.00 for the period 6 April 2003 to 19 July 2003. From 20 July 2003 to 19 July 2004 it will be set at £77.00.*

You can claim SPP in blocks of one week or two weeks – up to a maximum of two weeks. You will be paid either £100 per week, or 90% of your average weekly earnings if you earn less than £100 per week. Your average weekly earnings are calculated using your gross pay, which includes the pay that forms part of your NI contributions.

If you qualify for paternity pay, you will have to submit to your employer a self-certificate form, (SC3 *Becoming a Parent*), confirming you are entitled to paternity pay. You need to give this to your employer at least 28 days before the date that the pay is due to start on, or as soon as reasonably practicable if that is not possible.

Providing notice once the child has been born

You should tell your employer of the date that the child is born, as soon as reasonably practicable. However, if you specified that the pay and leave should start on a pre-determined date, and the child has not been born by then, you must tell your employer, as soon as reasonably practicable. In this case, you can choose for your pay period to start on:

- the date the child is born; or
- a specified number of days after the child is born; or
- a new pre-determined date that falls later than the first day of the week the child is due.

You don't have to take your leave and pay as soon as the child is born, but you do have to take it within a time period which starts on the day the child is born and end 56 days after that date.



Statutory Paternity Pay (SPP)

where your partner is adopting

These regulations apply to employees who are matched or placed with a child for adoption on or after 6th April 2003. Statutory Paternity Pay can be quite complicated, so you may seek further advice regarding your entitlements. You should know one legal term, the 'qualifying week'. For adopting parents seeking paternity leave and pay this is the week beginning with the Sunday that you and your partner receive notification of having been matched with the child and ends on the following Saturday.

You are entitled to paid paternity leave if you are an employee, and:

- you have been continuously employed by your current employer for 26 weeks or more by the end of the qualifying week; and
- you are married to, or the partner of, the child's adopter or the other person adopting the child along with yourself; and
- you have, or expect to have, the main responsibility, along with the other adopter, for the upbringing of the child; and
- your gross earnings have been at or above the Lower Earnings Limit (see footnote on page 10) on average per week in the eight weeks up to the end of the qualifying week.

Remember that in all of these cases, your partner is defined as person of the same sex or different sex, who you live with, along with the child, in 'an enduring family relationship'.

Your SPP can begin on:

- the date the child is placed with you, or, if you are at work on that day, the following day; or
- the date which falls a specified number of days after the child is placed with you; or
- a pre-determined date which you specify to your employer, and which falls later than the date on which your placement is expected to take place.



You can choose to receive SPP for either one week or two, up to a maximum of two weeks. You will be paid either £100 or 90% of your average weekly earnings if you earn less than £100 per week. Your average weekly earnings are calculated using your gross pay, which includes pay that forms part of your NI contributions.

If you qualify for SPP your employer can request that you provide evidence of this by completing a self-certification form (SC4 *Becoming an Adoptive Parent*) which states that you meet the conditions to qualify for SPP, and that you have chosen to take SPP in relation to this adoption rather than Statutory Adoption Pay.

You must provide your employer with this information at least 28 days before the date that the paternity leave is due to begin, or as soon as reasonably practicable if that is not possible.

Providing notice once the placement has been made

If your employer requests it, you must give them the date that the child was placed in your care as soon as reasonably practicable.

However, you may have agreed with your employer that your pay and leave should begin on a pre-determined date, only to find that the placement is not made by that date. In this case, you must give your employer notice as soon as reasonably practicable, that the placement has not been made. You can then choose a new date on which to begin your SPP. It can start on:

- the date the child is placed;
- a specified number of days after the child is placed; or
- a new pre-determined date that falls after the date that the placement is expected to now take place.

Notice of this new date must be given as soon as is reasonably practicable, and you must take your paternity leave in a time period which begins on the day the child is placed in your care and ends 56 days after that date.

Questions and answers

Am I entitled to more leave if it is a multiple birth or more than one child is being adopted at the same time?

The number of babies born at the same birth does not affect the amount of leave you are entitled to take. So whether your partner gives birth to one baby or has a multiple birth, your leave entitlement remains the same.

The same applies to adoption. The amount of leave you are entitled to is not affected by the number of children that are being placed with your partner and you as part of the same placement.

Am I still entitled to take paternity leave if my child is born prematurely?

If your child is born prematurely you are entitled to take paternity leave providing you would have been working for your employer for 26 weeks by the qualifying week if the pregnancy had gone to full term.

What happens to my entitlement if the child is stillborn or dies?

If your child is stillborn after 24 weeks of the pregnancy, or dies after this time, you are still entitled to take paternity leave if you have worked with your employer for 26 weeks by the qualifying week.

What happens to my SPP entitlement if I work during the time that I am being paid it?

You are not entitled to receive any other payments for employment while you are receiving Statutory Paternity Pay from an employer. If you do work for which you receive payment, for an employer who is not liable to pay you SPP (i.e. you don't meet the qualifying period of weeks necessary to receive SPP while working for this employer) then the employer who was liable to pay you SPP can cease paying you for the remainder of the pay period.

Can my employer dismiss me if they think I'm going to take paternity leave or if I've asked to take paternity leave?

It is against the law for your employer to dismiss you or penalise you in any way for asking to take paternity leave, or seeking Statutory Paternity Pay. This is the case regardless of how long you have worked for your employer.

Are there any circumstances under which I cannot claim SPP?

If you are sick when your paternity leave period is due to begin you cannot claim both Statutory Sick Pay and Statutory Paternity Pay. If your sickness begins before your leave period starts, you can postpone your leave period to begin at a later date and give notice to your employer of this change. However you must take your paternity leave within the 56 days following the child's birth or placement, and you cannot extend the leave or pay period beyond that time.

If you are taken into legal custody or sentenced to prison (and the sentence is not suspended), your employer can suspend your SPP payments immediately.

If you die while claiming SPP, your employer is entitled to stop payments of the SPP for the week following your death.

What happens if my employer attempts to avoid paying me SPP?

Your employer is not allowed to terminate your contract of employment simply because they want to avoid paying you SPP. If your employer does this, and you would have been employed by them in the qualifying week if they hadn't terminated your contract, and you have been employed by them for at least eight weeks continuously before your contract was terminated, then you will be viewed as having worked continuously for your employer up to the child's birth or placement with you for adoption.

In this case, your SPP will be calculated using your earnings of the eight weeks immediately prior to your contract being terminated.

Contacts

ACAS

Public enquiry points – general advice for workers and employers on legal rights
T: 08457 47 47 47 (9am - 4.30pm)
www.acas.org.uk

Benefits Agency

(Your local office will be in the phone book)
This information is available from the Department of Work and Pensions
www.dwp.gov.uk

BAAF Adoption and Fostering

Offers advice and information for people thinking of adopting and fostering as well as services for children separated from their families of origin.
T: 020 7593 2000 E: mail@baaf.org.uk

Community Legal Service

Offers directory on legal help available in England and Wales. Information is available in English, Welsh and other community languages.
www.justask.org.uk

Citizens Advice Bureau

Your local CABx office will be listed in your telephone directory. You can also visit www.citizensadvice.org.uk to find advice and information online.

Department of Trade and Industry

The DTI has produced guidance on all of the new rights available to working parents after 6th April 2003 at www.tiger.gov.uk

Equal Opportunities Commission

Advice and support on sex discrimination and maternity/parental rights legislation.
T: 08456 015 901
www.eoc.org.uk

Employment Tribunal Service Enquiry Line

Information about making a claim.
www.employmenttribunals.gov.uk
There is an enquiries helpline which can give general information but cannot provide legal advice 08457 959775

Fathers Direct

Provides information for fathers, and fathers-to-be.
T: 020 7920 9491
E: enquiries@fathersdirect.com
www.fathersdirect.com

Health and Safety Executive

Advice on pregnancy/maternity and health and safety – Infoline provides access to the HSE's health and safety information, and access to expert advice and guidance.
T: 08701 545 500 (8am - 6pm)
E: hseinformationsservices@natbrit.com

Inland Revenue (tax credits) For calls in England, Wales, Scotland: 0845 300 3900 (8am-8pm) For calls in Northern Ireland 0845 603 2000 (8am - 8pm)
www.inlandrevenue.gov.uk

Law Society

Information on specialist solicitors
T: 020 7242 1222 www.lawsociety.org.uk

Law Centres Federation

T: 020 7387 8570 www.lawcentres.org.uk

Maternity Alliance

Provides advice and information to new and expectant mothers.
T: 020 7490 7638
E: info@maternityalliance.org.uk
www.maternityalliance.org.uk

Parents at Work

Advice on flexible/'family-friendly' working
T: 020 7253 7243
www.parentsatwork.org.uk



Unions today – your friend at work

The new rights described in this leaflet – and many others such as the minimum wage – have been won by union campaigning. And without union help and assistance many workers won't get the full benefit of new rights at work.

Every day unions help thousands of people at work. Last year unions won a record £330 million compensation for their members through legal action. They won £1 million in equal pay claims – an average of £15,000 per member.

And of course unions help negotiate better pay and conditions, including far better provisions for family friendly employment than the legal minimums.

To find out more about joining a union call the TUC *Know Your Rights* line **0870 600 4 882**.

www.worksmart.org.uk
– the one-stop site for everyone at work. This website provides a range of information about working life and your rights at work – whether you are a union member or not. The full text of this leaflet, plus the whole range of rights materials, is on the site – just a click away!



Trades Union Congress

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