



# **MARISH**

## **Academy Trust**



## **Shared Parental Leave and Pay Policy**

### **(Frequently Asked Questions)**

The Frequently Asked Questions are taken from the guidance from Department for Business Innovation & Skills and are provided to support our Shared Parental Leave and Pay Policy to assist schools to manage requests for Shared Parental Leave and pay.

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## **Qualifying conditions for shared parental leave and pay**

### **1. Who is eligible for shared parental leave?**

Working parents who share the main responsibility for caring for their child are able to opt into the shared parental leave system.

Only employees are entitled to shared parental leave.

Agency workers, self-employed parents, or parents who are not employed, are not entitled to shared parental leave.

### **2. Do both parents always qualify for shared parental leave?**

Sometimes both parents will qualify for shared parental leave. Sometimes only one parent will qualify.

Where both the mother and the child's father/mother's partner are employed and both qualify for shared parental leave, then they must agree between them how many weeks of leave each of them will take and each must notify their employer of the number of weeks that they have decided each employee will take.

### **3. What are the eligibility requirements that the parents have to meet to qualify for shared parental leave?**

To qualify for shared parental leave an employee must satisfy a number of conditions:

#### **Maternity entitlements**

The mother of the child must be entitled to maternity leave or (if she is not entitled to maternity leave) to statutory maternity pay or maternity allowance. In addition, she must have curtailed her entitlement to maternity leave (or her maternity pay or maternity allowance period) before she has taken her full entitlement.

#### **Care of the child**

The mother must be sharing the main responsibility for the care of the child with the child's father or the mother's partner.

#### **The qualification test for the employee: 'Continuity of employment test'**

The employee must meet a 'continuity of employment test'.

The 'continuity of employment test' is as follows: the employee must have been continuously employed by the same employer for 26 weeks at the end of the 15<sup>th</sup> week before the expected week of childbirth and remain employed by that employer at the start of the week in which shared parental leave is to be taken.

The 'continuity of employment test' is similar to the test for statutory maternity pay and statutory paternity pay. So an employee who is entitled to statutory maternity pay or statutory paternity pay is likely to meet the 'continuity of employment test' for shared parental leave.

### **The qualification for the other parent: the 'employment and earnings test'**

The other parent – who must be the partner of the employee (i.e. the mother's partner or the child's father – even if the father is not in a relationship with the mother) must satisfy an 'employment and earnings test' and must make a declaration that they meet this test. The 'employment and earnings test' requires that in the 66 weeks leading up to the week in which the child is due, they have worked in Great Britain for at least 26 weeks and in 13 weeks in that 66 week period they have earned an average of £30 a week.

The employment and earnings in the period could have been as an employee, a worker or agency worker, or on a self-employed basis.

## **4. Who is eligible for statutory shared parental pay?**

Only a mother who qualified for statutory maternity pay will be entitled to statutory shared parental pay.

Where a mother qualified for statutory maternity pay or maternity allowance, her partner would be entitled to shared parental pay if they qualified for statutory paternity pay.

An employee who does not meet the qualifying conditions for statutory maternity pay or statutory paternity pay will not meet the qualifying conditions for statutory shared parental pay.

An agency worker who is not entitled to maternity leave or shared parental leave would be entitled to statutory shared parental pay if they were entitled to statutory maternity pay.

The partner of an agency worker would usually qualify for statutory shared parental pay if they qualified for statutory paternity pay and the mother of the child qualified for statutory maternity pay or maternity allowance.

A self-employed person, or a person who is not working, will not be eligible for statutory shared parental pay.

## **5. What are the qualifying requirements for statutory shared parental pay?**

Statutory shared parental pay is only available if the mother was entitled to statutory maternity pay (SMP) or maternity allowance (MA). If a mother does not qualify for SMP or MA, then the parents may qualify for shared parental leave, but they cannot qualify for statutory shared parental pay.

A mother is entitled to 39 weeks of SMP or MA. She has to reduce the number of weeks she is paid SMP or MA for any statutory shared parental pay to be created.

An employee will only qualify for statutory shared parental pay if they qualify for shared parental leave. In addition to meeting the qualification requirements for shared parental leave, an employee must have earnings not less than the Lower Earnings Limit (£111 a week in 2014-15) in the relevant period. The 'relevant period' is usually the 8 weeks leading up to the end of the 15<sup>th</sup> week in which the child is due to be born.

As the relevant qualifying criteria is identical to that required for SMP and statutory paternity pay, an employee will only qualify for statutory shared parental pay if they qualified for SMP or statutory



paternity pay. A mother who qualified for MA will not qualify for statutory shared parental pay, but her employed partner might.

## **6. How will my employee know if they meet the ‘continuity of employment test’?**

Your employee will probably know if they meet the ‘continuity of employment test’, if they know when they were first employed by you. You will also know if your employee meets the test for your employment or pay records.

Since the ‘continuity of employment test’ for statutory maternity pay or paternity pay is similar to the test for shared parental leave, an employee who is eligible for statutory maternity pay or paternity pay will know they meet the ‘continuity of employment test’ for shared parental leave.

## **7. How will my employee know if their partner meets the ‘employment and earnings test’?**

Your employee will need to ask their partner if they meet the ‘employment and earnings test’. The partner will know from their payslips (if they are employed) or their National Insurance Contributions (if they are self-employed) when they worked and what they earned.

## **8. What if both parents are employees?**

If both the mother and her partner meet the eligibility criteria, then both are entitled to shared parental leave and they need to decide how they will share the available leave between them.

If the mother brings forward the date on which her maternity leave period ends, the untaken maternity leave would be available for the mother and her partner to share as shared parental leave. They may take the leave concurrently and both take time off work together if they wish.

## **9. Will an employee who receives maternity allowance be eligible for shared parental leave and/or pay?**

An employee who is entitled to maternity leave and maternity allowance may qualify for shared parental leave, but she will not be entitled to statutory shared parental pay. A mother who did not meet the qualifying requirements for statutory maternity pay cannot meet the qualifying requirements for statutory shared parental pay. However, her employed partner may be entitled to shared parental leave and statutory shared parental pay if the mother curtails her maternity leave and maternity allowance (and her partner satisfied the qualifying conditions for shared parental leave and statutory shared parental pay). The partner would be able to take the balance of her maternity leave as shared parental leave and the balance of her maternity allowance as statutory shared parental pay.

## **10. Can self-employed people get shared parental leave and pay?**

A self-employed parent will not be eligible for shared parental leave or pay but if they satisfy the ‘employment and earnings test’ this may enable their employed partner to access shared parental leave and pay.

### **11. What if both parents are self-employed?**

Neither parent will be entitled to shared parental leave or pay. The mother may be entitled to maternity allowance. If the mother has recently lost her job and she qualified for statutory maternity pay before losing her job, she will also be entitled to statutory maternity pay.

### **12. Can adopters and parents whose child is born through a surrogacy arrangement access the shared parental leave and pay system?**

Shared parental leave and statutory shared parental pay may also be available for adoptive parents or parents whose child is born through a surrogacy arrangement if they are entitled to adoption leave and/or statutory adoption pay.

### **13. Can there be any entitlement to shared parental leave if a mother is not entitled to maternity leave?**

In some cases a woman may not be entitled to maternity leave, but she may be entitled to statutory maternity pay or maternity allowance. For example an agency worker or a woman who has recently lost her job may be entitled to statutory maternity pay and a self-employed woman may be entitled to maternity allowance.

If such a mother chooses to reduce her statutory maternity pay or maternity allowance period and take fewer than 39 weeks of pay or allowance, then her employed partner could take the untaken weeks as shared parental leave if they are eligible for leave. In this case, the number of weeks of pay or allowance must be deducted from 52 weeks to calculate the number of weeks of shared parental leave that will be available for the partner to take.

#### **Opting into shared parental leave and pay**

### **14. How does shared parental leave and pay arise?**

Shared parental leave arises when an eligible mother or adopter brings forward the date on which their maternity leave period ends and certain eligibility criteria are met.

There are 2 ways for a mother/adopter to bring forward the date on which their maternity/adoption leave period end:

- They can return to work; or
- They can give notice to their employer to end their maternity/adoption leave on a date they specify in the notice. This will enable the number of weeks of shared parental leave to be calculated before the mother/adopter has returned to work.

Shared parental leave is created from the number of weeks of untaken maternity/adoption leave.

If the mother/adopter is not entitled to maternity/adoption leave but is entitled to statutory maternity pay (SMP)/statutory adoption pay (SAP) or maternity allowance (MA), they may take fewer than the 39 weeks of the pay or allowance to which they are entitled. If they do this, the partner, if they are

employed and meets the eligibility criteria, will be entitled to up to 50 weeks of shared parental leave. This is calculated by deducting from 52 weeks the number of weeks for which the mother has claimed SMP or MA or an adopter has claimed SAP.

Statutory shared parental pay is created where a mother is entitled to SMP or MA and curtails her entitlement (i.e. takes less than 39 weeks of pay or allowance). The untaken weeks of SMP or MA can be taken by the parent who is on shared parental leave, if they meet the qualifying conditions for this. The same principles apply to an adopter who curtails their SAP.

In some circumstances (such as the case of any agency worker) a parent who is eligible for SMP or statutory paternity pay but who is not entitled to maternity or paternity leave may be entitled to statutory shared parental pay but they will not be entitled for shared parental leave.

## **15. How does a mother opt into shared parental leave and pay?**

The maternity system will continue to operate in the same way that it does currently for all women. This means that all employed women will continue to be eligible for 52 weeks' maternity leave and will be eligible for 39 weeks' statutory maternity pay if they meet the earnings requirements. Women who do not qualify for statutory maternity pay may qualify for maternity allowance.

An employed mother who is eligible for maternity leave, and who has a partner with whom she is sharing the care of her child, may be able to reduce the weeks of maternity leave below 52, in order to create some weeks of shared parental leave.

She can do this by returning to work or, alternatively, she can give notice to her employer that she will end her maternity leave at a future date. The mother chooses the date she will end her maternity leave and specifies this in the notice she gives her employer.

In either case, the number of weeks that have been taken, or will have been taken, as maternity leave can be calculated. The number of weeks of maternity leave taken/to be taken are deducted from the total of 52 weeks to calculate the number of weeks of shared parental leave created. These weeks of shared parental leave will be available to the mother and her partner if they both satisfy the eligibility criteria.

## **16. With whom can the mother/adopter share leave and pay?**

Working parents can share the care of their child and combine work and childcare.

The mother may share any shared parental leave with the 'other parent' with whom she shares the main responsibility for the care of the child and who must be one of the following:

- The child's father;
- A person to whom the mother is married or in a civil partnership with; or
- A partner (including a same sex partner) who lives with the mother and the child in an enduring family relationship but is not the mother's child, parent, grandchild, grandparent, sibling, aunt, uncle, niece or nephew

An adopter may share any shared parental leave with their spouse, civil partner, or partner (as above).

Shared parental leave and statutory shared parental pay are only available to a mother or adopter who is sharing the care of the child with the child's father or her partner or spouse.

## **17. When can the father/mother's partner access shared parental leave and pay?**

The father or mother's partner can only access the shared parental leave and pay system when the mother ends, or commits to end at a future date, her maternity leave and pay/allowance.

Where a mother is not entitled to maternity leave (because, for example, she is self-employed or an agency worker or has recently become unemployed), and she is entitled to statutory maternity pay or maternity allowance, a mother can create shared parental leave for her employed partner to take by ending, or committing to end on a given date, her statutory maternity pay or maternity allowance.

## **18. How much shared parental leave is available?**

The maximum amount of leave available to a mother and her partner/child's father is 50 weeks. An employed mother is required to be off work on maternity leave for at least the first 2 weeks after giving birth.

To calculate the actual amount of shared parental leave available, any weeks of maternity leave taken must be deducted from the full entitlement of 52 weeks' maternity leave. So the number of weeks of shared parental leave is calculated by deducting from 52 either:

- The number of weeks of maternity leave taken by the mother; or
- If the mother is not entitled to maternity leave, the number of weeks of statutory maternity pay or maternity allowance claimed by the mother

In addition, where a mother has given a curtailment notice before birth and the partner/child's father has taken shared parental leave following the birth and the mother then revokes her curtailment notice within 6 weeks of the birth, any shared parental leave taken by the other parent must be deducted from any entitlement to shared parental leave. Similarly, any shared parental leave that the other parent had booked prior to mother's revocation of her curtailment notice which the other parent's employer requires them to take, must also be deducted.

## **19. How much statutory shared parental pay is available?**

In order for entitlement to statutory shared parental pay to arise, the mother must have reduced (curtailed) her statutory maternity pay (SMP) period or her maternity allowance (MA) period (i.e. she must have taken or intend to take less than 39 weeks of pay or allowance).

If the woman has given notice to end her maternity pay or allowance in advance, the number of weeks of statutory shared parental pay that is potentially available is 39 weeks less the number of weeks that the mother will have claimed SMP or MA on the date she gave in the notice for when she intends to end her SMP or MA. The maximum amount of statutory shared parental pay that is payable (except in the case of death of the mother) is 37 weeks. The same principles apply in the case of adoption where the adopter reduces their statutory adoption pay period.

If a woman has returned to work before notifying her employer of her own or her partner's/child's father's entitlement to statutory shared parental pay, she will be required to end her maternity pay period or her maternity allowance period before the end of the 39<sup>th</sup> week. In this case, the number of weeks of statutory shared parental pay that is available is 39 weeks less the number of weeks of SMP or MA taken by the mother as of the date she returned to work. If she received any further SMP

or MA for absence from work subsequent to her return to work, for example, if she is off sick, these weeks are not deducted from her and/or her partner's entitlement to statutory shared parental pay.

Any statutory shared parental pay already taken must be deducted from the total entitlement.

### **Ending maternity or adoption leave and pay early**

## **20. Ending maternity or adoption leave early to create shared parental leave and pay**

A birth mother can only opt into shared parental leave if she brings forward the date on which her maternity leave period ends or, where she is not entitled to maternity leave, where she ends her statutory maternity pay (SMP) or maternity allowance (MA) early.

She can bring forward the date on which her maternity leave period ends either by:

- Giving her employer written notice of curtailment; or
- Returning to work

Where the mother gives her employer a maternity leave curtailment notice her maternity leave will end on the date she specified in this notice, even if she returns to work before that date.

The mother can end her SMP or MA entitlement by giving her employer notice that she wishes to take less than 39 weeks of pay or allowance.

If the mother has ended her maternity leave by giving a curtailment notice it is only effective if she gives her employer at the same time a notice or declaration that she or her partner will take shared parental leave or pay. If she has done so, the curtailment notice is binding and her maternity leave period will end on the date specified in the notice, where or not she returns to work on that date. She may delay her return to work by taking shared parental leave (if she is eligible) or another type of leave immediately after her maternity leave. She cannot remain on maternity leave after her leave curtailment date as her entitlement to that leave ends on this date.

The mother must give 8 weeks' notice to her employer before she can take a period of shared parental leave. Her partner will also need to give their employer 8 weeks' notice of any shared parental leave that they want to take.

The same principles apply in the case of adoption. The adopter's adoption leave will end on the date that they return to work or the date specified by them in the adoption leave curtailment notice that they give their employer. Where a curtailment notice has been given by the adopter, their adoption leave will end on the date that they specify in the notice, even if the adopter returns to work before that date.

## **21. What does ‘curtailment of maternity or adoption leave’ and ‘curtailment of maternity or adoption pay’ or ‘curtailment of maternity allowance’ mean?**

‘Curtailment of maternity leave’ means bringing forward the date on which the mother’s maternity leave period ends before the whole entitlement of 52 weeks of maternity leave is taken.

‘Curtailment of maternity pay’ means cutting short the mother’s entitlement to maternity pay before 39 weeks of that pay has been taken.

‘Curtailment of maternity allowance’ means cutting short the mother’s entitlement to maternity allowance before 39 weeks of that allowance has been taken.

‘Curtailment of adoption leave’ means bringing forward the date on which the adopter’s adoption leave period ends before the whole entitlement of 52 weeks of adoption leave is taken.

‘Curtailment of adoption pay’ means cutting short the adopter’s entitlement to adoption pay before 39 weeks of that pay has been taken.

## **22. How does a mother curtail her maternity leave?**

A mother entitled to maternity leave has to bring forward the date on which her maternity leave period ends in order to create shared parental leave. The amount of shared parental leave available is the number of untaken weeks of maternity leave.

A mother can bring forward the date on which her maternity leave ends (reduce it to fewer than 52 weeks) either:

- By returning to work; or
- Giving written notice to her employer to end her maternity leave period on a future date which the mother must specify. This has to be accompanied by either the mother or the partner submitting to their employer a notice of entitlement to shared parental leave.

Once the mother has brought forward the date on which her maternity leave period ends, the untaken weeks of maternity leave are available to be taken as shared parental leave. If she gives notice to curtail her leave on a future date, then, provided the eligibility criteria are satisfied, her partner can start taking shared parental leave whilst she is still on maternity leave.

## **23. What if a woman changes her mind and wants to stay on maternity leave?**

Once a mother has returned to work, she cannot restart her maternity leave.

Other than in very limited circumstances a mother cannot change her decision to end her maternity leave after a curtailment notice has been given to her employer. The limited circumstances where a mother can revoke (cancel) her maternity leave curtailment notice are:

- Where the notice was given before birth – she is only entitled to revoke the notice in the 6 weeks immediately following birth;
- Where the other parent dies; and

- Where it subsequently transpires that neither of the parents was entitled to shared parental leave or pay

Once a mother has given a curtailment notice, the balance of her maternity leave that is untaken on the date her maternity leave period ends will be the number of weeks of shared parental leave available.

## **24. What happens if the mother revokes her leave curtailment notice and so exits shared parental leave in the 6 weeks following birth?**

Her maternity leave reverts to 52 weeks of leave.

The mother and her partner's entitlement to shared parental leave cease immediately and both parents must inform their respective employers of the change in circumstances if they have notified entitlement to shared parental leave.

If the partner has already started taking shared parental leave or agreed a period of shared parental leave which is due to start within the 8 weeks following the revocation, their employer may require the partner to be absent from work on unpaid leave for some or all of the period. This protects an employer who has put cover in place for when the employee is on shared parental leave. That employer will not have to accept the employee back into the workplace with no notice.

## **25. What happens to the mother's partner/the child's father when a mother revokes her notice to end her maternity leave within 6 weeks of the birth?**

When the mother exits shared parental leave by revoking her maternity leave curtailment notice before the date of curtailment and within 6 weeks of the birth, her partner's entitlement to shared parental leave ceases with immediate effect. If the partner has notified their employer that they are entitled to shared parental leave, then they must tell the employer that they are no longer entitled to leave (if the mother revokes her notice to curtail maternity leave, then no shared parental leave exists).

As with additional paternity leave, the partner's employer may require them to be absent on the shared parental leave they have booked for up to 8 weeks from the date on which the employer is informed of the revocation if that revocation happens either:

- While the partner is on shared parental leave; or
- Within 8 weeks of a booked period of shared parental leave being due to start

This is to enable the other parent's employer to have 8 weeks to stand down any cover arrangements that might have been put in place in anticipation of their employee's absence on shared parental leave. This period of absence is subject to negotiation so the other parent's employer may agree a shorter period of notice before their employee's return to work.

If the partner's employer requires their employee to be absent from work, the absence is treated as shared parental leave (even though there is no entitlement).

Entitlement to statutory shared parental pay ceases immediately on revocation of the mother's notice to end her maternity pay/allowance as the pay or allowance as the pay or allowance period is reinstated. Consequently, if the other parent is required by their employer to be absent in the period

following revocation of the mother's curtailment notice, for example, because their employer had employed someone to cover their job, the other parent is not entitled to statutory shared parental pay in that period. The maximum amount of time that the other parent's employer can require them to be absent from work in these circumstances is 8 weeks.

If a mother revokes a leave curtailment notice before the curtailment date and before the end of the sixth week following birth, her partner may have taken up to 6 weeks of shared parental leave and pay (although more likely it will be 4 weeks as the first 2 weeks of any leave or pay taken are likely to be paternity leave and pay, as a partner qualifying for shared parental leave will also qualify for paternity leave and pay).

Since the partner was entitled to the shared parental leave and pay at the point it was taken, the employer must not recover any payment to which the employee was entitled before the mother revoked her notice to curtail her maternity leave and pay as that is not an overpayment. The employer will be able to recover the statutory payment from HMRC in the usual way.

## **26. If a mother revokes her notice to curtail her maternity leave, can she still opt into shared parental leave at a later date?**

A mother who gives notice to end her maternity leave prior to the birth of her child can revoke this notice provided she does this before the leave curtailment date (i.e. the date she said that would end her maternity leave on) and provided she revokes the notice within 6 weeks of the birth of her child. In this case, she and her partner can subsequently opt into shared parental leave at a later date.

If revocation occurs due to the absence of entitlement or following the death of the mother's partner, there is no further opportunity to opt into the shared parental leave system.

## **27. If a mother revokes her maternity leave curtailment notice within 6 weeks of the birth, and then opts into shared parental leave at a later date, does this affect the number of weeks of shared parental leave available?**

A mother who gives notice to bring forward the date on which her maternity leave period ends before the birth and then revokes it in the 6 weeks following the birth and before her leave curtailment date may decide at a later date to opt into shared parental leave and statutory shared parental pay with the same partner.

Any shared parental leave and pay taken by a partner in the period between birth and when a mother revokes her notice to end her maternity leave must be deducted from any entitlement to shared parental leave and pay, should the couple subsequently opt into shared parental leave and pay at a later stage.

Similarly, any shared parental leave that an employer requires an employee to take after revocation (where the partner had booked leave) must also be deducted.



## **28. What happens if the parents discover they are not entitled to shared parental leave after all?**

If the parents discover neither of them is entitled to either shared parental leave or pay in the 8 weeks following the mother giving a curtailment notice to her employer, then she may revoke the curtailment notice and remain on maternity leave.

## **29. What happens if the parents discover 8 weeks after the mother has curtailed her maternity leave that neither of them is entitled to shared parental leave or pay?**

We don't expect this to happen, but it is a theoretical possibility. Should this occur, a mother's maternity leave had to end on the date she specified in the curtailment notice (i.e. on her leave curtailment date). Her maternity pay or allowance period does not, however, end.

## **30. What happens with pay when a mother returns to work without opting into shared parental leave or pay?**

The 39 weeks that a mother is entitled to statutory maternity pay or maternity allowance is called the maternity pay period or the maternity allowance period. When a mother returns to work before the end of the maternity pay period her maternity pay period does not end but continues to 'run in the background'. So if a woman is absent from work for whatever reason in the 39 week period in which her maternity pay period continues running, her employer must pay her statutory maternity pay (where the mother receives a contractual payment from her employer that is higher than statutory maternity pay, employer can reclaim the statutory maternity pay from HRMC).

Similarly, if the mother is entitled to maternity allowance, this will be payable through Jobcentre Plus if she is absent from work for whatever reason whilst the 39 week period continues to run.

So in order to create an entitlement to statutory shared parental pay (for herself and/or her partner), the mother must end her maternity pay or allowance period in order to opt into statutory shared parental pay.

### **Calculating the number of weeks of entitlement to shared parental leave and pay**

## **31. Examples of calculating the number of weeks of shared parental leave and pay**

### **Example 1: Jean and Pete**

7 weeks before having her baby, and 3 weeks before her maternity leave and pay starts, Jean gives her employer notice to curtail her maternity leave and pay after 10 weeks of maternity leave. At the same time, the baby's father, Pete, gave his employer notice to start 26 weeks of shared parental leave following on from his paternity leave. 5 weeks after birth, Jean realises she is not ready to return to work so soon and she revokes her notice to curtail her maternity leave and pay. At that point, Pete ceases to be entitled to shared parental leave and pay as Jean has revoked her notice to end her maternity leave and pay. He has already taken 3 weeks of shared parental leave. Pete's employer has recruited a new person to do Pete's job while he was away, expecting him to be away

for 6 months. Pete's employer requires Pete to take compulsory shared parental leave for 8 weeks until week 11 after the birth.

Jean then decides at a later date to curtail her maternity leave and pay after 26 weeks. This creates the following entitlement:

Shared parental leave:

52 weeks of maternity leave, minus

The 30 weeks of maternity leave taken (4 weeks before birth and 26 weeks after)

3 weeks of shared parental leave taken by Pete before Jean revoked her previous curtailment notice, less

8 weeks of absence on shared parental leave that Pete's employer required him to take following Jean's revocation

Total weeks of shared parental leave =  $52 - (30+3+8) = 11$  weeks

Statutory shared parental pay:

39 weeks of maternity pay, less

30 weeks of maternity pay taken by Jean, less

3 weeks of statutory shared parental pay taken by Pete prior to Jean's revocation of her pay curtailment notice

Total weeks of shared parental pay =  $39 - (30+3) = 6$  weeks

**Example 2: Salma and Abdullah**

Salma started her maternity leave 4 weeks before the birth of her child. At that time she wanted to return to work at 12 weeks after the birth and she expected to have taken 16 weeks of maternity leave and pay at that point. As she knows what she wants to do, she gives her employer a curtailment notice 2 weeks after the birth specifying a leave curtailment date 12 weeks after the date of the birth (and 16 weeks after her maternity leave began). At the curtailment date she will have taken 16 weeks' maternity leave and 16 weeks maternity pay. The effect of the curtailment notice is to end the maternity leave and pay on the curtailment date and to create 36 weeks of shared parental leave and 23 weeks of statutory shared parental pay. However, in the event, Salma decides to go back to work before her leave curtailment date and she gives her employer 8 weeks' notice of the date of her return to work. Her early return to work does not change the number of weeks of shared parental leave and pay to which she and her husband, Abdullah, are entitled; this was determined by the leave and pay curtailment date and is unaffected by her early return to work.

**Example 3: Shakia and Leroy**

Shakia goes into early labour with her child and starts her maternity leave the day following the birth. She returns to work after 12 weeks, not planning to take any shared parental leave and pay as her mother will look after the child whilst Shakia works. However, 3 weeks after her return to work Shakia contracts shingles and is off work sick for 2 weeks, during which time she is paid statutory maternity pay. After she returns to work, Shakia's mum falls and breaks her leg and can no longer look after her granddaughter. Shakia and her husband, Leroy, decide that the easiest thing will be for Leroy to take some shared parental leave and stay at home until the baby is about 10 months old. Shakia notifies her employer that she is ending her maternity pay period and that Leroy is opting into shared parental leave and pay. The maternity pay period ends on the last day of the pay week in which the notice is given. Leroy notifies his employer that he is eligible for shared parental leave and pay and intends to take the shared parental leave and pay in 8 weeks' time.

Shakia and Leroy are entitled to 40 weeks' shared parental leave. This is because Shakia returned to work after 12 weeks of maternity leave and these 12 weeks are deducted from the total available (52 weeks).

Shakia and Leroy are entitled to 27 weeks of statutory shared parental pay calculated as follows: the total of 39 weeks available minus the 12 weeks in which she received maternity pay following the birth of the child. The 2 weeks of statutory maternity pay paid to Shakia whilst she was absent from work with shingles is disregarded for the purposes of calculating entitlement to the weeks of statutory shared parental pay.

### **Notification Requirements – entitlement to shared parental leave and pay and booking leave and pay**

## **32. How will I know if my employee wants to take shared parental leave?**

There are 2 types of notices that an employee is required to give their employer before taking shared parental leave:

- Firstly an eligible employee is required to notify their employer of their entitlement to, and intention to take, shared parental leave. This is a 'one-off' notification. However, an employee can vary the amount of shared parental leave they intend to take by notifying their employer of the variation (this will be necessary when the parents want to transfer weeks of shared parental leave between them);
- In addition, an employee will need to give a notice to their employer of any period that the employee wishes to take as shared parental leave, effectively a 'booking' notification.

In some cases, both types of notice will be submitted at the same time. However, a 'booking' notice may be submitted after the entitlement notice.

## **33. What information will the notice of entitlement to shared parental leave contain in birth scenarios?**

When a woman curtails her maternity leave and/or pay/allowance, this will create an entitlement to shared parental leave and/or statutory shared parental pay if the mother and her partner meet the qualifying requirements.

The mother and her partner need to give their respective employers written notice of their entitlement to shared parental leave at least 8 weeks before they intend to take the leave. The notice must contain a declaration from the other parent (in case of the mother, the other parent is the child's father, her spouse, civil partner, or a partner with whom she shares the main responsibility for the care of her child; where the employee is the child's father or the mother's partner, civil partner or spouse, the other parent is the mother).

The mother's written notice to her employer must include the following:

- her name
- her partner's name
- the start and end dates of her maternity leave

- the total amount of shared parental leave available (52 weeks minus any maternity leave taken/to be taken) and the total number of weeks shared parental pay available
- the expected week of the birth of the baby (or the actual date of birth if the child has already been born)
- the number of weeks' shared parental leave and pay the mother and her partner each intend to take and an indication of the start and end dates of the periods of shared parental leave the mother intends to take. This indication is not binding.

The mother also needs to give her employer:

- a) a declaration signed by herself confirming that:
  - she has been working with the employer for 26 weeks by the end of the 15<sup>th</sup> week before the baby's due date
  - she will have the main caring responsibility for the baby (along with her partner), and will inform her employer immediately if this changes
  - she is entitled to statutory maternity leave and pay
  - she has returned to work before her maternity leave has ended or is committing to ending her maternity leave early
  - the information she has given is accurate
- b) a declaration signed by the mother's partner which must:
  - give their name and address, and national insurance number (or they must declare that they do not have a national insurance number)
  - confirm they have worked for 26 weeks out of the 66 weeks leading up to the expected week of childbirth and has earned at least £30 in 13 of those weeks
  - confirm they are the child's father, or the mother's partner, civil partner or spouse
  - confirm that they will have the main caring responsibility for the baby (along with the mother)
  - confirm they consent to the mother taking amount of leave set out in the notice that the mother has given to her employer
  - confirm that they consent to the mother's employer processing the information about them included in the declaration

In the two weeks following the mother giving notice of their entitlement to and intention to take, shared parental leave, the employer may request:

- a copy of the birth certificate
- the name and address of the mother's partner's employer

The mother has 14 days to respond. If the child has already been born at the time their employer makes the request, the mother must give her employer either a copy of the birth certificate or, if the birth certificate has not yet been issued, a signed declaration stating the date and location of the birth and stating that a birth certificate has not yet been issued.

If the child has not yet been born at the time of their employer's request, the mother must provide a copy of the birth certificate within 14 days of the birth, or if the birth certificate has not yet been

issued, a signed declaration stating the date and location of the birth and stating that a birth certificate has not yet been issued.

If there is no employer for her partner (i.e. if they are self-employed) she must provide a declaration that there is no employer.

The mother's partner's notice of entitlement and intention to the employer must include the following:

- their name
- the name of their partner – the mother of the baby
- the start and end date of the mother's maternity leave or, if the mother is not entitled to maternity leave, the amount of statutory maternity pay or maternity allowance received or to be received
- The total amount of shared parental leave available (52 weeks minus any maternity leave taken/to be taken, or where the mother is not entitled to maternity leave, 39 weeks minus any statutory maternity pay or maternity allowance received or to be received)
- the total number of weeks shared parental pay available
- the expected date of birth of the baby (or the actual date of birth if the child has already been born)
- how the parents think they will split and take their shared parental leave

The partner also needs to give:

- a) a declaration signed by them confirming that:
  - they have been working with the same employer for 26 weeks by the end of the 15<sup>th</sup> week before the baby's due date
  - they will have the main caring responsibility for the baby (along with the mother), and will inform their employer immediately if this changes
  - they are the father of the child or spouse, civil partner or partner of the mother
  - they will inform their employer if the mother revokes her curtailment notice
  - the information given is accurate
- b) a declaration signed by the mother which:
  - gives her name and address, and national insurance number (or a declaration that she does not have a national insurance number)
  - confirms she has worked for 26 weeks out of the 66 weeks leading up to the expected due date and has earned at least £30 in 13 of those weeks
  - confirms she is entitled to statutory maternity leave, statutory maternity pay or maternity allowance
  - confirms that she will have the main caring responsibility for the baby (along with her partner)
  - confirms she has ended her maternity leave by returning to work or curtailing that leave and/or curtailed her statutory maternity pay or maternity allowance
  - confirms she will inform her partner immediately if she revokes her curtailment of leave and pay or allowance

- confirms she consents to her partner taking the amount of leave set out in the partner's notice to their employer
- confirms that she consents to her partner's employer processing the information about her included in the declaration

In the two weeks following the partner giving notice of their entitlement to and intention to take, shared parental leave, the employer may request:

- a copy of the birth certificate
- the name and address of the mother's/partner's employer

The partner has 14 days to respond. If the child has already been born at the time their employer makes the request, the partner must give their employer either a copy of the birth certificate or, if the birth certificate has not yet been issued, a signed declaration stating the date and location of the birth and stating that a birth certificate has not yet been issued.

If the child has not yet been born at the time of their employer's request, the partner must provide a copy of the birth certificate within 14 days of the birth, or if the birth certificate has not yet been issued, a signed declaration stating the date and location of the birth and stating that a birth certificate has not yet been issued.

If there is no employer for the mother (i.e., if she is self-employed) the partner must provide a declaration to their employer that there is no employer.

### **34. What information will the notice of entitlement to shared parental leave contain in adoptions?**

### **35. What is a non-binding indication of when the employee expects to take the leave?**

The notice of entitlement to take shared parental leave must include a non-binding indication of when the employee expects to take leave. It is non-binding so it creates no actual certainty for an employer and it does not give the employee an entitlement to take that leave. An employee still needs to give the employer a booking notice to take any particular periods of shared parental leave.

But a non-binding indication forces the parents to look ahead over the whole year and consider how they might want to take their leave. This encourages planning over the longer term. In addition, it shows the employer what the employee is thinking and creates an opportunity for an early discussion between the employer and employee which in turn is likely to create more trust and certainty.

### **36. Can the employer ask for additional information after receiving a notice of entitlement?**

Following submission of a notice of entitlement, an employer has a right to request certain additional evidence and the employee is required to provide it, in order to be entitled to the shared parental leave.

Specifically, where an employee notifies their employer of entitlement to shared parental leave, the employer may request within 14 days:

- A copy of the child's birth certificate
- The name and address of the other parent's employer

In this situation, the employee has 14 days to provide:

- A copy of the child's birth certificate, where one has been issued or, if the birth certificate has yet to be issued, a declaration signed by the employee which states the date and location of the child's birth; and
- The name and address of the other parent's employer or a declaration that the other parent has no employer (if, for example, the other parent is not working at the time or is self-employed)

Where the employer's request for a copy of the child's birth certificate is made before the child is born, the employee must, within 14 days of the child's birth, provide:

- A copy of the child's birth certificate, where one has been issued; or
- If the birth certificate has yet to be issued, a declaration signed by the employee which states the date and location of the child's birth

### **37. What if my employee and their partner change their minds on how the shared parental leave should be divided?**

If the parents decide that a different division of the total shared parental leave available would suit them better, they can alter the division of the leave between them if they both agree. They are each required to give a variation notice to their employer, setting out the new amounts of leave accruing to each parent, and signed by both parents.

### **38. When does my employee have to tell me that they want to be absent from work on shared parental leave?**

Employees are required to give you 8 weeks' notice of any period of shared parental leave. In many cases, the first period of leave will be notified at the same time as they notify you that they are entitled to take shared parental leave. However, a notice to book shared parental leave may be given at another time.

### **39. What information should the notice to 'book' leave contain?**

An employee who has notified their employer of their entitlement to shared parental leave must also give notice to 'book' leave at least 8 weeks before the first week of leave is due to start. In many cases, an employee is likely to give the employer a booking notice at the same time that he or she gives the notice of entitlement.

A booking notice must specify the weeks of shared parental leave that the employee proposes to take. It must state a minimum of 1 week and may specify more weeks in a single continuous block, or discontinuous blocks of leave.

#### **40. Does my employee have a right to take the leave that they have 'booked'?**

Where a booking notice notifies a single continuous block of leave, the employee has a right to take that leave on the dates notified (providing they have given 8 weeks' notice).

If a notice requests leave in discontinuous weeks, an employer is entitled to require all the weeks of leave to be taken in a single block.

So, if an employee gives their employer a booking notice to take 12 weeks of shared parental leave not in a single block, but, for example, in a discontinuous pattern taking every other week off for the next 24 weeks, the employee has the right to 12 weeks leave, but they do not have the right to the pattern of leave proposed in the booking notice.

An employee can only take a pattern of discontinuous leave if their employer agrees.

#### **41. What if my employee wants to book discontinuous shared parental leave?**

An employee can only take a pattern of discontinuous leave if you agree to that pattern of leave.

An employer may, for example, think that it is better to have the employee at work one week in a fortnight than to lose them for a solid 3 month block. On the other hand, the employer may prefer, and can suggest, a different pattern of discontinuous leave, for example, 2 weeks absence on shared parental leave and then 2 weeks back at work over an agreed period. Or the employer may simply refuse the discontinuous pattern of leave proposed by the employee and require them to take the leave in a single continuous block.

#### **42. Can my employee withdraw their notice to take leave?**

An employee is not entitled to withdraw a notice for a single continuous block of leave, but may do so if you agree to the withdrawal.

An employee may withdraw their notice to 'book' discontinuous leave within 15 days of giving it, providing that they have not already reached an agreement with their employer about when they will be absent from work.

If a notice is withdrawn it does not count towards the cap of 3 booking notifications.

Once the 15<sup>th</sup> day has passed, any change to the period of leave booked must be done by a variation notice. This is subject to 8 weeks' notice and counts towards the cap of 3 booking notifications.

#### **Patterns of shared parental leave**

#### **43. I want to refuse the pattern of leave that my employee is proposing in their booking form**

If the employee is proposing a discontinuous period of leave in a single booking notification, you can refuse the pattern proposed.



If you refuse a pattern of discontinuous leave, the employee can take their leave as a single continuous block at a time starting on date of their choosing (no less than 8 weeks from the date the notice was given).

The employee has 5 days in which to tell you the date they will start their leave. If no date is specified, the leave will begin on the date of the first day of the first period of discontinuous leave that the employee originally applied for.

The employee may choose to withdraw their notice if you have refused their preferred pattern of leave or if you have not responded during the 2 week discussion period.

#### **44. So an employer will always get 8 weeks' notice before an employee takes shared parental leave?**

In the majority of cases, yes. However, the 8 weeks' notice to book leave is not observed in the following circumstances:

- In the case of the father/partner, where the mother dies;
- In the case of the mother, where the father/partner dies; or
- Where the baby is born more than 8 weeks early

#### **45. What happens if the employer refuses a pattern of leave proposed by the employee?**

If an eligible employee has submitted a proper booking notice for a single block of leave, the employer cannot refuse to give the employee this leave and the employee cannot withdraw their booking notice unless the employer agrees to this. The employer does not have to respond to the notice, but it would be good practice to acknowledge receipt of the notice and the dates of leave booked.

An employee who has requested a discontinuous pattern of leave has 2 weeks to withdraw their booking notice and they don't have to give a reason if they do withdraw. If the employee wants to vary the dates given in the notice once the deadline for withdrawing the notice has passed (i.e. after day 15), then he or she will have to submit a notice to vary the leave, giving at least 8 weeks' notice of any change.

If the employee has submitted a notice containing a pattern of discontinuous leave, the employer can do one of the following:

- Agree the pattern of leave proposed by the employee;
- Propose an alternative pattern of leave that must be agreed by the employee;
- Refuse a pattern of leave and require the leave to be taken in a single block;
- Not respond to the employee's notice.

There is a 2 week period for discussion following the date of submission of the booking notice. The employee may withdraw the notice at any time up to and including the 15th day after submission of the notice.

If no agreement can be reached between the employer and employee on the pattern of leave the employee will take within the 2 week discussion period, or if the employer does not respond to a notice proposing a pattern of leave and the employee does not withdraw the notice, the employee is required to take the leave in a single continuous block.

The employee has 5 days following the end of the discussion period to specify the date on which he or she will start the continuous period of leave of the number of weeks set out in the booking notice. The leave cannot start within 8 weeks of the date that the booking notice was submitted.

If the employee does not specify the start date within 5 days of the end of the two-week discussion period, then the continuous block of leave must start on the first date of the first week of leave specified in the booking notice. If the employee wants to change this, he or she must submit a notice of variation, subject to 8 weeks' notice.

#### **46. Can an employee force a pattern of leave on an employer by submitting separate booking notices of each period of leave?**

Yes, providing the employee gives the appropriate notice they can request up to 3 separate blocks of continuous leave.

There is a statutory cap of 3 notices to book shared parental leave, but the employer can allow the employee to submit more notices.

The following booking notices count towards the cap of 3:

- A notice to book continuous or discontinuous periods of leave that is not withdrawn on or before the 15th day following submission;
- A notice to vary a previously notified (or varied) period of leave.

A request by an employer to an employee to vary a period of agreed leave does not count towards the employee's maximum number of notices.

#### **47. What happens if I agree to my employee's proposed leave pattern, but the other parent's employer doesn't?**

We recognise that, for some parents, patterns of leave will only work if both parents' employers agree to the patterns of leave that their respective employees have proposed. If one employer says that the leave must be taken in a single block, this may not work for the family.

There is a 2 week discussion period where the employee has requested a discontinuous pattern of leave in a single booking notice. An employee can withdraw a booking notice at the end of the 2 weeks period (on the 15th day) without penalty. A booking notice withdrawn by the 15th day following submission does not count towards the cap of 3 notifications.

The purpose of allowing the booking notice to be withdrawn is precisely to take into account the fact that both parents are trying to agree patterns of leave with their employer.

An early discussion(s) between the employer and the employee, held shortly after an employee gives the employer a notice of entitlement to shared parental leave with a non-binding indication of when the leave will be taken, is likely to reduce the likelihood of withdrawn notices as the employer and their employee will have a clearer understanding of the other's needs.

#### **48. Can an employee change an agreed pattern of leave?**

Yes, provided that they don't exceed the cap of 3 notifications. Employees are able to make 3 notifications, including notifying changes to agreed periods or patterns of shared parental leave. An employer may allow additional changes.

The process for giving a variation notice, changing leave patterns or agreeing new patterns, will be the same as the initial process for booking leave.

##### **Example: Hazel**

Hazel gave her employer a booking notice on 1 May with 8 weeks' notice to take shared parental leave from 1 July for 6 months. On 1 June, her plans changed as her mother-in-law came to live with her and offered to provide free child care. As Hazel and her husband needed her income, they decided Hazel would return to work at the earliest opportunity. She submitted on 1 June a notice to end her shared parental leave in 8 weeks' time (1 August). In total, Hazel took 4 weeks of leave rather than 6 months. Her employer had 2 months to stand down the cover arrangements that he had put in place for 6 months starting on 1 July. The booking and variation to the leave used 2 of Hazel's 3 opportunities to book shared parental leave.

#### **49. What if the employee and the other parent decide to transfer weeks of shared parental leave between them?**

The employee and their partner can decide to change the way they have allocated the total number of weeks of shared parental leave between them. This would require each employee to give their employer notice that they wish to change their original entitlement notice. The variation notice must set out the total number of weeks of shared parental leave and pay already taken by the parents and the new division of the leave and pay. Both parents need to sign the notice to confirm their agreement to the new division. The variation notice must give an indication of when the leave might be taken, but it is not a booking notice and does not count towards the cap of 3 notifications to book leave.

If the employee acquires more weeks of shared parental leave as a result of a transfer of leave between the parents, any additional weeks are still subject to the cap of 3 notifications to book leave. If an employee has already given 3 booking notices, then they will not be able to take the additional weeks of leave unless the employer chooses to disregard the cap of 3 and to accept one or more additional booking notices.

#### **50. How can an employer require leave to be taken in a single block?**

If the employee gives their employer a booking notice proposing separate, discontinuous, periods of leave, the employer does not have to agree to the pattern of leave proposed. There is a 2 week discussion period where the parties can discuss the notice. We recommend that the employer tells the employee at the earliest opportunity that the proposed leave pattern is not acceptable.

If the employer and employee cannot agree a leave pattern or the employer does not respond to the employee's notice, then the leave may only be taken in a single continuous block.

An employee who has requested a discontinuous pattern of leave in a single notice has until the 15th day after giving the notice to withdraw it (they can only withdraw the notice if the employer has not already agreed to the proposed pattern of leave). Where the employer requires the employee take the leave as a continuous block, he or she should tell the employer the date on which the leave will start (it cannot be before a period of 8 weeks from the date the notice was given). If within 5 days of the end of the 2 week discussion period the employee does not specify the date on which the leave will start, then the leave will start on the first day of the first week of leave proposed in the employee's original booking notice.

### **51. Does a limit of 3 booking notifications mean leave can only be taken in 3 blocks?**

No. An employee may give notice to their employer of all the leave they want to take – be it in a single block or a discontinuous pattern of leave – in one notification. They then have 2 further opportunities to make changes.

### **52. What happens if an employer doesn't respond to a notice to book leave?**

If an employer does not respond within two weeks of being given the notice requesting discontinuous leave, the notice may be withdrawn by the employee on the 15th day or, if it is not withdrawn, the leave may be taken in a single continuous block.

The employee has 5 days from the end of the two week discussion period to specify the date on which the single block of leave will start (no earlier than 8 weeks from the date the booking notice was given). If the employee does not do so, the single block of leave starts on the first day of the first week of leave proposed in the original booking notice.

### **53. How long has an employer got to consider a request for a discontinuous pattern of leave?**

There is a 2 week discussion period where the employer and employee may discuss a leave notification and also consider alternative arrangements.

At the end of the 2 week discussion period an employee may withdraw the notification without penalty by the 15th day after the notice was given, provided that they haven't already reached an agreement with their employer. We consider that such an arrangement is essential when 2 parents might be applying for complementary periods of leave at the same time and one may be refused.

A withdrawn notification will NOT count towards the cap of 3 notifications.

## **54. If my employee and their partner decided to transfer all of the leave to one parent does the right to 3 notifications transfer with the extra leave?**

No. The cap of 3 notifications applies to each employee (and is per employer, if the employee has 2 or more employers) and cannot be transferred between the parents as the leave can.

## **55. How is notice served?**

Notification of entitlement to shared parental leave and pay and notification to 'book' shared parental leave must be in writing and may be given by:

- Electronic communication, where the employer has agreed;
- Post; or
- Personal delivery.

### **Early and late births**

## **56. What happens if a baby which is due on or after 5<sup>th</sup> April 2015 is born early?**

Entitlement to shared parental leave and pay is linked to the baby's due date. The actual date of birth is irrelevant. So if an employee is expecting a child that is due on or after 5 April 2015 but their child is born on or before 4 April 2015 they will still be eligible for shared parental leave and pay.

## **57. What happens if a baby which is due on or before 4<sup>th</sup> April is born late?**

Shared parental leave and pay is for eligible working parents who are expecting a baby which is due on or after 5 April 2015 (or placed with them for adoption on or after that date). If their child is due on or before 4 April 2015 the employee will not be eligible for shared parental leave or pay, even if the baby is born late. But they may be eligible for additional paternity leave and pay.

## **58. Are there any changes to the notification arrangements in the event of an early birth?**

Where a child is born before the beginning of the week in which the child was due, different notification requirements apply in respect of shared parental leave/pay in the eight weeks following the expected week of the birth. Generally speaking the requirement to give 8 weeks' notice of entitlement or to book periods of shared parental leave is deemed as being satisfied if the employee gives notice as soon as reasonably practicable after the birth. See the rules that apply in the different circumstances described in this section.

### **59. Employee has given notice of entitlement and 'booked' a period of shared parental leave and/or pay starting within 8 weeks of their child's due date and the child is born early**

Where an employee has notified his or her employer of their entitlement to shared parental leave or pay and has also given notice to "book" a period of shared parental leave or pay to start within 8 weeks of the child's expected week of birth and the child is born early, the employee may take the leave and pay that they have 'booked' early if they wish (i.e. they can bring the leave and pay that they have 'booked' forward so that they are taking it at the equivalent time to when they would have been had the baby had been born on time.

The employee must give their employer a notice to vary the shared parental leave and pay that they originally applied for as soon as practicable following the birth. For example, if the mother's partner was planning to take 2 weeks of paternity leave after the birth and had booked 3 weeks of shared parental leave and/or pay to be taken after their paternity leave (thus being at home for a continuous period of 5 weeks), he or she could start their paternity leave after the birth and take the same amount of shared parental leave and pay 2 weeks later (i.e. after their paternity leave) if he or she notified their employer of the change as soon as reasonably practicable after their child's birth.

### **60. Employee has given notice of entitlement and has 'booked' a period of shared parental leave and/or pay starting more than 8 weeks after their child's due date and the child is born early**

There are no special provisions for this situation. Any changes to leave or pay would require 8 weeks' notice.

### **61. Employee has given notice of entitlement but has not 'booked' a period of shared parental leave and/or pay and the child is born more than 8 weeks early**

There is also a modification where a parent has notified entitlement to shared parental leave but has not "booked" any leave yet, and the child is born 8 or more weeks before the week in which the child was due to be born. In these cases the parent can book a period of leave to start within 8 weeks of the actual birth if he or she gives the notice as soon as reasonably practicable after the child's actual birth (i.e. there is no requirement for 8 weeks' notice).

### **62. Employee has not given notice of entitlement and the child is born more than 8 weeks early**

Where the parent has not given a notice of entitlement to shared parental leave, and the child is born eight or more weeks before the first day of the expected week of birth, then the requirement for 8 weeks' notice before the start date of a period of leave is to be treated as satisfied if the notice is given as soon as reasonably practicable after the actual date of birth. Similarly the requirement to give 8 weeks' notice to "book" a period of leave is to be treated as satisfied if the period of leave is to start within eight weeks.

### **63. What happens if a woman specifies a date in her maternity leave curtailment notice and the baby is born late so, when her curtailment date arrives, she's still on her compulsory maternity leave?**

The mother has to take at least 2 weeks of maternity leave (4 weeks if she works in a factory or workshop) immediately following birth. This is a health and safety requirement as the mother needs to recover from the birth.

Where the mother has given a leave curtailment notice with a leave curtailment date that falls within her compulsory maternity leave period (i.e. the 2 weeks following birth, 4 weeks if she works in a factory or workshop) because her baby is born late, the leave curtailment notice is invalid. In these circumstances the mother must give her employer a further leave curtailment notice (if she still wishes to curtail her maternity leave before returning to work) and the leave curtailment date that she gives in her second notice must be at least 8 weeks after that notice.

In these circumstances the mother must take at least 8 weeks maternity leave before starting any shared parental leave (because she needs to give 8 weeks' notice of her maternity leave curtailment date) but the father or mother's partner can start to take shared parental leave from birth (or after a period of paternity leave) if they wish.

#### **Employer's responsibility and liability**

### **64. Are there any checks required by the employer?**

Whilst there is no obligation on the employer to do so, it is expected that the employer will check that their employee does in fact meet the continuity of employment test (26 weeks' employment) and the average weekly earnings test for 8 weeks requirement (for ShPP).

However, if the employee is the mother and she qualified for statutory maternity pay, or if the employee is the mother's partner and he or she qualified for paternity leave/pay, then the employer would have already done the necessary checks as continuity of service test is required is the same for all of them.

The employer does not make any checks in relation to the other parent. The information on their declaration is taken on trust, although the employer may ask the employee for the name and address of the other parent's employer (if he or she has an employer).

### **65. How can I check if my employee is telling the truth about their partner or if the partner is telling the truth?**

An employer is not required to verify that the partner meets the employment and earnings test. An employer may require the employee to provide the name and address of the partner's employer and may contact them. However, the partner may not be employed at the time the employee notifies entitlement to shared parental leave.

## **66. How will employers know how much leave the family has taken?**

Your employee will tell you how much shared parental leave is available to him or her and the other parent. They will also tell you how much leave each of them intends to take and they will give you the written consent of the other parent to the division of the leave. Once it is established how much shared parental leave your employee will take, you will wish to record the cumulative weeks taken as shared parental leave to ensure the entitlement is not exceeded.

## **67. Will employers be liable if their employee commits a fraud e.g., by claiming too much leave or pay?**

Employers will not be liable in the event of their employee claiming more leave than they are entitled to and we do not expect them to perform detailed checks, e.g. contacting their employee's partner's employer to satisfy themselves that their employee is entitled to the leave or pay that they are claiming.

Employers are entitled to rely on the information about the other parent provided to them by their employee but employers who want to check can ask their employee for the name of the other parent's employer and contact them if they wish.

Employees who deliberately defraud the system could face a significant financial penalty and be required to pay back any amounts that they have over claimed.

HMRC will use a risk based regime to identify parents who have over claimed their entitlement to statutory shared parental pay. Individual claimants can be linked via their national insurance numbers.

In the event of a fraud being detected, employers will use their own policies to determine how the employee is dealt with by them in the same way that they would rely on their own policy in the event of other misconduct coming to light.

## **68. How will an employer claim back any overpayments of statutory shared parental pay?**

Employers will not have to carry out checks to establish if the information provided by their employee about the other parent's employment and earnings is correct. But they can contact the other parent's employer if they wish.

An employer who has made an overpayment to an employee will be able to recover the overpayment(s) of statutory shared parental pay from their employees in the same way that they currently recover overpayments of additional statutory paternity pay and other statutory payments.

## **69. How does the employer know if their employee qualifies for shared parental leave or pay?**

An employer cannot know until their employee tells them as the qualifying conditions require BOTH parents to satisfy qualifying conditions. An employer might know that their employee would meet the continuity of employment and average earnings test, but will not know until their employee tells them that:

- The employee is sharing the care of the child with their partner; and



- The partner satisfies the employment and earnings test.

## **70. What about if my employee separates from his or her partner? What happens to the shared parental leave and/or pay?**

Shared parental leave and pay can be shared between parents who have the main responsibility for the care of the child at the time of the birth (or placement for adoption). Even if the parents separate, each continues to be entitled to shared parental leave and pay if they are caring for the child in the week they take the leave and pay.

An employee is not allowed to be on the shared parental leave or claiming statutory shared parental pay if they are not caring for the child.

The amount of shared parental leave or pay that an employee is entitled to may change if the employee varies the notice of entitlement with another notice signed by both parents.

An employer does not need to concern him or herself with the domestic arrangements of his or her employee.

## **71. How much money is statutory shared parental pay and who pays it?**

An eligible couple can claim up to 37 weeks of statutory shared parental pay (this can rise to 39 weeks for a mother's partner where the mother dies in childbirth).

Statutory shared parental pay is paid to an employee by their employer at the lower of 90% of salary or the flat rate of £138.18 a week (2014-15 tax year). It is paid by the employer in the same way that other statutory payments (such as statutory maternity pay or ordinary and additional statutory paternity pay) are paid. Employers can reclaim from the Exchequer (by means of underpayments of national insurance contributions to HMRC) either 92% or 103% of the payment (depending on the size of the employer's national insurance contributions pay bill).

## **72. Will employers need to contact each other to find out what their employees' leave and pay entitlements are?**

No. An employer can ask for the name and address of the other parent's employer, and may contact them if they so wish. This is the current arrangement for additional paternity leave and pay.

## **73. How much will statutory shared parental pay cost employers?**

Employers will pay statutory shared parental pay in the same way they make other statutory payments, such as statutory maternity pay, paternity pay, additional statutory paternity pay and statutory adoption pay. They are able to claim back at least 92% of all statutory maternity, paternity, adoption and statutory shared parental pay payments they make from HMRC. Small employers (those whose tax/NICs contributions are less than £45,000 per annum) are able to claim back 100% of the statutory payments they make plus 3% towards the employer's national insurance contribution. This will be the same for statutory shared parental pay.

## **Employment rights of employees on shared parental leave**

### **74. What terms and conditions apply during shared parental leave?**

During any period of shared parental leave an employee benefits from all of the terms and conditions of employment which would have applied if the employee had not been absent from work (except for remuneration), and is bound by any obligations in those terms and conditions (except they don't need to go to work).

### **75. What employment protections will apply in relation to shared parental leave?**

An employee is protected from detriment and from unfair dismissal connected with the taking of shared parental leave.

If an employee is made redundant whilst on shared parental leave, he or she is entitled to be offered a suitable alternative vacancy if one arises. This is the same as the level of protection available to a mother on maternity leave.

### **76. Does an employee have the right to return to the same job after taking shared parental leave?**

The right to return to the same job will be maintained for returning from any period of relevant statutory leave that includes maternity, or paternity, adoption or shared parental leave that totals 26 weeks or less in aggregate, even if the leave is taken in discontinuous blocks. This will mean that an employee who takes 26 weeks or less of any combination of relevant statutory leave will have the right to return to the same job. Periods of unpaid parental leave of more than four weeks are excluded from the '26 week calculation'.

Once the employee has taken more than 26 weeks of relevant statutory leave in aggregate (including any combination of maternity, paternity, adoption or shared parental leave) then the employee will have the right to return to the same job that they were doing immediately preceding the last period of absence, or, if it is not reasonably practicable for the employer to permit the employee to return to that job, to another job which is both suitable for the employee and appropriate for the employee to do in the circumstances (sometimes referred to as a similar job).

Unpaid parental leave is not included in the 26 week aggregate total. Taken in isolation, an employee can take up to four weeks of unpaid parental leave and have the right to return to the same job. If an employee takes more than four weeks in isolation, he or she will have the right to return to the same or a similar job.

If an employee takes a period of more than 4 weeks unpaid parental leave as part of a string of family-related leave, they will have the right to return to the same or a similar job.

#### **Example A**

Helen takes 10 weeks of maternity leave and then returns to work to the same job for 4 weeks to complete a project she had started before her maternity leave. She then takes 16 weeks of SPL and

then returns to work. Helen has the right to return to the same job she was doing before her period of shared parental leave.

#### **Example B**

Sarah takes 10 weeks of maternity leave and then returns to work to the same job for 4 weeks to complete a project she had started before her maternity leave. She then takes 17 weeks of shared parental leave and then returns to work. Sarah does not have the right to return to the same job, as her aggregate leave has exceeded 26 weeks. She has the right to return to the same job unless that's not reasonably practicable, in which case she has the right to return to an appropriate similar job.

#### **Example C**

Ben takes 2 weeks of paternity leave and then returns to his job as a warehouse supervisor for 16 weeks. He then takes 4 weeks of unpaid parental leave whilst his wife returns to work to complete a project she started before her maternity leave. He then returns to work for 12 weeks, during which time he changes from the warehouse to the accounts section. At a later date, he takes a further 16 weeks of shared parental leave for the same child, Ben has the right to return to the same job he was doing in the accounts department before his shared parental leave, as his paternity leave and shared parental leave do not exceed 26 weeks in aggregate.

## **77. Contractual rights to shared parental leave and pay**

Employees who meet the qualifying requirements and have correctly notified their employer of their entitlement to, and intention to take, shared parental leave and/or pay and who have booked the shared parental leave and/or pay have a statutory right to it.

However, an employer is free to offer a contractual scheme that is more favourable to the employee, for example, by waiving the requirement for 8 weeks' notice to take leave, allowing additional leave that could be taken after the first year, accepting unlimited numbers of notices to book leave, etc. In addition, an employer is free to top up the statutory shared parental pay by paying some or all of the shared parental pay at a higher rate determined by the employment contract, which may or may not be the same as the employer offers to mothers on maternity leave. If they do so then when the employee takes that leave and pay, the employee may not exercise the statutory right and the corresponding contractual right separately, i.e. they cannot take occupational shared parental leave and/or pay and then have a right to statutory shared parental leave and/or pay as well.

## **78. Can an employee take shared parental leave whenever he or she wants?**

We encourage employers and employees to discuss parental leave arrangements at the earliest opportunity. The system will work best if there are no surprises on either side.

Employees are required to give their employer at least 8 weeks' notice of entitlement to shared parental leave and at least 8 weeks' notice of any absence on leave (these notices may be given concurrently).

## **79. What would happen to an employer who did not let an employee take leave?**

An employee has a statutory right to shared parental leave if he or she satisfies all of the eligibility criteria.

An employer who denied an employee their statutory right to shared parental leave is likely to face a successful challenge in an Employment Tribunal.

### **Employees who have more than one job**

## **80. What happens if my employee has 2 jobs?**

If your employee is the child's mother and is entitled to maternity leave from you and also from another employer she must bring forward the date on which her maternity leave and/or pay periods end with both you and her other employer(s). Shared parental leave and/or pay can only be created if the mother gives all of her employers who are liable to give her maternity leave or pay notice at the same time.

If your employee (whether the mother or the partner) meets the criteria for shared parental leave and shared parental pay in his or her employment with you, he or she can take leave and pay from the employment with you. If your employee also meets the criteria for shared parental leave and pay from another job as well, then they can take the leave and pay from the other employer as well.

## **81. How much shared parental leave is an employee with 2 jobs entitled to?**

Where an employee has 2 (or more) jobs and they qualify for shared parental leave in respect of each employment, they are entitled to take shared parental leave from each of their employers.

If the mother wants to take or create shared parental leave for her partner/the child's father to take and she has 2 (or more) jobs, she must have brought forward the date on which her maternity leave period ends for each of her jobs either by returning to work or by giving notice to end her maternity leave period (the notice must be given to each of her employers at the same time).

A mother cannot take shared parental leave if she has only brought forward the date on which her maternity leave period ends with one of her employers. A mother cannot still be on maternity leave in one job and on shared parental leave in another job, because she must curtail all her maternity leave entitlement (from both jobs) for any entitlement to shared parental leave to arise.

## **82. Calculation of the maximum amount of shared parental leave available in the event of multiple employers**

The number of weeks of shared parental leave is calculated by the deducting the maximum number of weeks that the woman has taken (i.e. the total length of absence, even if it is with different employers).

### **Example: Mother on maternity leave from 2 different employments**

A mother is on maternity leave from employment A and employment B. She returns to work in employment A on week 20. She returns to work in employment B in week 25.

The maximum amount of shared parental leave in this case will be  $52-25=27$  weeks (not  $52-20$ ).

**Example: Mother gives notice to curtail her maternity leave to 2 different employers**

A mother gives notice to curtail her maternity leave from employer A from week 32 of her maternity leave period and a notice to curtail maternity leave from employer B from week 30 of that leave period.

The maximum amount of shared parental leave in this case will be  $52-32=20$  weeks (not  $52-30$ ).

**Cases of maternal, paternal and infant death**

### **83. What happens if death occurs before maternity leave and pay is curtailed?**

If the mother dies before bringing forward the date on which her maternity leave period ends and before the end of her maternity pay or allowance period, then her partner will still be able to access shared parental leave in the same way that he or she would have been able to had the mother curtailed her maternity leave and pay/allowance before her death. The amount of shared parental leave available for the partner will be 52 weeks and the amount of statutory shared parental pay will be 39 weeks, less the number of weeks of maternity leave (or statutory maternity pay or maternity allowance) taken by the mother prior to her death.

If the mother dies without having taken any maternity leave (for example if a woman dies during childbirth without having previously started her maternity leave) or any pay/allowance, then the full 52 weeks of leave and 39 weeks of pay is available as shared parental leave and pay (usually shared parental leave is capped at 50 weeks as maternity leave cannot be ended before the 2 week compulsory absence period following the birth).

If the mother had curtailed her maternity leave period before her death by giving notice to her employer and then revoked that curtailment, any shared parental leave and pay taken by her partner in relation to the child resulting from the curtailment would also need to be deducted.

Where the mother has died, the requirement for the partner to give 8 weeks' notice of entitlement to shared parental leave and pay and 8 weeks' notice to book leave does not apply. Instead, he or she is required to tell his or her employer as "soon as is reasonably practicable" that he or she is entitled and to book the first period of leave. Should the partner not take all the leave in a single continuous block, subsequent notices to take shared parental leave remain subject to 8 weeks' notice.

If the mother's partner or the child's father dies before the mother has brought forward the date on which her maternity leave period and pay/allowance period ends, the mother remains on maternity leave and pay/allowance. She cannot bring forward the date on which her maternity leave period ends and opt into shared parental leave after the death of her partner as she will not be able to meet the requirement that she shares the main responsibility for the care of her child with the person who was her partner/the child's father on the date of the child's birth.

If the child dies before the mother has brought forward the date on which her maternity leave period ends, the mother and her partner will not be allowed to opt into shared parental leave and pay as one

of the qualifying conditions is having the main responsibility for the care of the child (with the other parent). If there is no child to care for, the mother remains entitled to maternity leave and pay/allowance and her partner is entitled to paternity leave/pay.

## **84. What happens if death occurs after maternity leave and pay is curtailed?**

If the mother's partner or child's father dies after the mother has given notice to bring forward the date on which her maternity leave period and pay/allowance end, but she has not returned to work (in the case of maternity leave) and the curtailment date has not passed, the mother may revoke the curtailment notice and revert to 52 weeks of maternity leave and 39 weeks of statutory maternity pay/maternity allowance. Any shared parental leave or pay taken by her partner before death will not affect this.

Alternatively, she will be able to remain opted in to shared parental leave and pay if she wishes and any untaken leave and pay that was available to the couple will default to her. She will need to notify her employer of the additional shared parental leave weeks added to her entitlement. Where she had used her cap of 3 notifications, she will acquire a statutory right to a 4th notification to book leave. The 8 weeks' notification period does not apply for the first period of leave booked, or a variation to a period of booked leave, following the partner's death; instead, she is required to tell her employer as "soon as is reasonably practicable" and provide the date of her partner's death.

If the mother dies after bringing forward the date on which her maternity leave period ends, the available shared parental leave and pay defaults to the mother's partner/the child's father if he or she would have been entitled to this leave and pay had the mother not died.

Where the mother had already notified her employer of entitlement to shared parental leave or pay before her death, that untaken leave and pay so notified is available to her partner after her death. The partner will need to notify his or her employer of the additional weeks of shared parental leave and/or pay that are transferring to him by means of a variation notice to their original notice of entitlement. Where the partner wants to start a period of leave, or to vary a period of leave, the 8 weeks' notice does not apply for the first period of leave booked or changed following the mother's death; instead, the partner is required to tell his or her employer as "soon as is reasonably practicable" and to provide the date of the mother's death. In addition, where the partner has already used the 3 opportunities to book or vary a period of leave, he or she acquires a statutory entitlement to make a 4th notification.

If the mother's partner/the child's father had no entitlement to shared parental leave or pay before the mother's death (e.g., if the partner/father is not an employee or is employed but does not meet the continuity of employment test, or the mother did not meet the employment and earnings test), no entitlement is created for the partner by the fact of the mother's death.

If the parents are employees and their child dies after they had opted into shared parental leave and/or pay, they each continue to be entitled to take the leave and pay that they booked before the death. Any entitlement to shared parental leave or pay that had not been booked at the time of the child's death is no longer available to the parent. Shared parental leave or pay is only available to an employee if that leave or pay had been booked prior to the death of the child. An employee may reduce a period of leave booked or cancel a period of leave, subject to 8 weeks' notice. No further notice can be given to book leave and only one variation notice may be given to reduce a period of leave or to aggregate discontinuous weeks into a single block of leave.

## **Shared Parental Leave in Touch (SPLIT) Days**

### **85. Will there be an equivalent of Keeping in Touch (KIT) days under shared parental leave?**

Each parent entitled to shared parental leave or statutory shared parental pay will have an individual entitlement to 20 shared parental leave in touch (“SPLIT”) days. This will enable them to work on up to 20 days (per employer if a parent has multiple employers) – either continuously or on odd days – without bringing to an end their shared parental leave or pay.

### **86. Can parents work part-time whilst on shared parental leave?**

Whilst shared parental leave and pay will need to be taken in minimum blocks of one week, employees eligible for shared parental leave can work part-time if both they and their employer agree.

An employee can use up to 20 shared parental leave in touch days (“SPLIT days”) to return to work for part of a week without bringing their shared parental leave to an end. An employee would also be able to receive statutory shared parental pay for that week. This will enable parents to try out a new working pattern before making a formal flexible working request, or to return to work in a gradual way.

### **87. Payments for shared parental leave in touch (SPLIT) days**

Because shared parental leave in touch (“SPLIT”) days allows work to be done under the employee’s contract of employment, the employee is entitled to be paid for that work. The rate of pay is a matter for agreement with the employer, and may be as set out in the employment contract or as agreed on a case-by-case basis. However, the employer will need to bear in mind their statutory obligations about paying staff, such as ensuring that the employee is paid at least the National Minimum Wage.

## **The interaction between shared parental leave and pay and sick leave and pay**

### **88. Can an employee take sickness absence while on shared parental leave?**

An employee is only entitled to be absent from work on shared parental leave if they are caring for the child that the leave relates to whilst they are off work.

In the unlikely event that your employee is too ill to care for the child during a week that they are meant to be on shared parental leave they should inform you immediately. In these circumstances their entitlement to be on shared parental leave in the week that they are ill ceases but the employee may be entitled to be absent from work on sick leave.

If the employee is entitled to be absent from work on sick leave your normal policy on sick leave will apply to them.

## **89. Is an employee entitled to statutory shared parental pay if they are claiming sick pay?**

Where an employee who is claiming statutory shared parental pay for a week does not have the intention at the beginning of that week to care for the child (for example because that person is too sick) then statutory shared parental pay will not be payable for that week. Statutory shared parental pay will also not be payable in any week where the employee became entitled to statutory sick pay for any part of that week. If they have already received statutory shared parental pay in respect of a week where they are also claiming statutory sick pay, the employer may be able to recover the overpayment from the employee as an overpayment of wages.

### **Occupational schemes**

## **90. Can I continue with our occupational maternity/paternity scheme?**

Yes. An occupational maternity or paternity scheme may continue and not be extended to shared parental leave. However, a mother must be on maternity leave and not shared parental leave and a father (or mother's partner) must be on paternity leave and not shared parental leave to benefit from such occupational schemes.

## **91. Will women on shared parental leave be able to continue to be part of an occupational maternity scheme?**

Occupational maternity schemes will be able to continue for women on maternity leave.

Introducing a new statutory right to shared parental leave and pay does not affect the current arrangements around maternity leave and pay. Maternity leave is a protected period, and companies are able to offer maternity benefits to women only, when they are on maternity leave.

Where employers wish to offer a maternity scheme of a fixed length to those on maternity leave, as many do currently, they will continue to be able to do so. The ability to offer such schemes to women on maternity leave will be unaffected by the ability of a woman to reduce the length of her maternity leave in order to allow access to shared parental leave.

## **92. Will employers be forced to provide occupational pay for men and women on shared parental leave?**

No. It will be entirely at the discretion of employers whether they wish to offer occupational parental schemes for men and women taking shared parental leave. The way in which employers respond to these changes will therefore vary across different employers based on their individual business plans.

There is no legal requirement for companies to create occupational parental leave schemes. However, a maternity scheme can only be offered to a woman on maternity leave. If an occupational scheme is offered to a mother on shared parental leave, it could constitute sex discrimination if such an occupational scheme were not offered to fathers/a mother's partner.

### **Miscellaneous**



### **93. How does shared parental leave and pay interact with additional paternity leave and pay?**

Shared parental leave and statutory shared parental pay will replace the existing entitlements to additional paternity leave (“APL”) and additional statutory paternity pay (“ASPP”) for the parents of babies due on or after 5 April 2015 (or placed for adoption on or after that date).

The parents of a baby due on or before 4 April 2015 (even if the baby is not born until after that date) will remain entitled to APL and ASPP. Similarly where an adoption is completed on or before 4 August the parents would be entitled to APL and ASPP. So in some workplaces, there will be people on APL and ASPP up until April 2016, whilst others are on shared parental leave and statutory shared parental pay. For 2015-16, both systems will be in place, but there is very clear eligibility as to which system applies in the case of each employee.

### **94. Am I able to get in touch with staff off on shared parental leave? Are there any rules around this?**

There is no prohibition on reasonable contact between an employer and an employee on shared parental leave. The legislation provides for shared parental leave in touch (“SPLiT”) days for the employee to attend the workplace, and telephone calls can certainly take place whilst the employee is on shared parental leave.

### **95. Do I need to arrange payroll to pay staff for days worked when they are taking discontinuous blocks of shared parental leave?**

Yes. When an employee is at work, they should be paid as per their usual contractual arrangements. Unless the employer is offering occupational shared parental pay, then an employee on shared parental leave who is entitled to statutory shared parental pay must receive this statutory payment for the weeks he or she is entitled to it.

### **96. Does an employee accrue contractual annual leave while on shared parental leave?**

Yes. The legislation provides that an employee on shared parental leave is entitled to all the benefits of all the terms and conditions of employment (excluding remuneration) which would have applied had the employee not been absent on leave.