

Summary of the  
law on

# FAMILY FRIENDLY RIGHTS



Family friendly rights include maternity, paternity and parental leave and rights for part-time workers.

This booklet is solely concerned with the employment aspects of these rights.

- MATERNITY LEAVE
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- TIME-OFF FOR DEPENDENTS
- FLEXIBLE WORKING
- PART-TIME WORKERS



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# Maternity leave<sup>1</sup>

## Entitlement

All pregnant employees are entitled to 52 weeks maternity leave, irrespective of how long they have worked for their employer or how many hours they work per week. This is made up of 26 weeks of ordinary maternity leave (OML), and 26 weeks of additional maternity leave (AML).

The first two weeks of leave (starting with the date of the birth) are known as compulsory leave. It is a criminal offence for an employer not to ensure that the woman takes two weeks of leave once the baby is born. Factory workers are prohibited from working for four weeks after the birth.

## Ordinary Maternity Leave (OML)

All female employees are entitled to 26 weeks' of OML regardless of length of service. During OML, they are entitled to receive all their normal contractual and related benefits, except wages or salary.

They may be entitled to Statutory Maternity Pay during this time and, depending on the contract, may also be entitled to additional contractual pay and benefits. They are bound by their normal contractual obligations, except the obligation to work.

The earliest a woman can start maternity leave is 11 weeks before her baby is due. On return from OML, she is entitled to her old job back on the same terms and conditions.

<sup>1</sup>For more details, please see our Pregnancy and Maternity leaflet



## Additional Maternity Leave (AML)

All female employees are entitled to a further 26 weeks of additional maternity leave. This follows on from OML.

An employee is entitled to return to her old job after AML, or, if that is not reasonably practicable, to another job which is suitable for her and appropriate for her in the circumstances.

The terms and conditions must be no less favourable than if she had not been absent, with seniority rights preserved as they were at the start of her AML period.

## Statutory Maternity Pay (SMP)

To qualify for Statutory Maternity Pay (SMP) an employee must have 26 weeks of service at the 15th week before childbirth.

SMP is payable for 39 consecutive weeks and is paid at a rate of 90% of normal earnings for the first six weeks of maternity leave, followed by a flat rate for the remaining 33 weeks (or 90% of pay if lower).

Current rates (which change every April) can be found at [www.hmrc.gov.uk](http://www.hmrc.gov.uk).



## Notification of pregnancy

An employee who wants to apply for maternity leave must give notice to her employer of her pregnancy, her expected week of childbirth and the date on which she expects her OML to start. She must give this notice on or before the 15th week before childbirth (if possible), but can change her plans on giving 28 days' notice.

A failure to comply with the notification requirements could mean that the employee loses her right to start her maternity leave on the date she chose. However, there are exceptions for example where the baby is born early in which case the employee should notify the employer as soon as possible after the date of birth.

An employee wanting to return to work before the end of her additional maternity leave must give her employer eight weeks' notice. A failure to do so means that the employer can postpone the return date. An employee does not have to give her employer notice if she wishes to return to work before the end of her ordinary maternity leave.



## Adoption leave

The provisions for adoption leave mirror the maternity leave rights.

They therefore allow an adopting parent to take 26 weeks of ordinary adoption leave followed by 26 weeks of additional adoption leave, providing the adopting parent has 26 weeks of employment service as on the day they are notified of the match.

Statutory adoption pay (SAP) is paid at a flat rate (which changes every April) or 90% of earnings if lower, for 39 weeks for a child placed with an adopting parent

For up-to-date rates visit [www.hmrc.gov.uk](http://www.hmrc.gov.uk).

## Paternity leave

Paid paternity leave is available to biological fathers of the child, husbands or partners (whether or not the biological father) as long as they have 26 weeks of service as at the 15th week before childbirth or adoption.

They have the right to take either one or two consecutive weeks of leave which must be taken within 56 days of the child's birth, expected week of confinement or placement.

Notice of the intention to take paternity leave is similar for ordinary maternity or adoption leave. Statutory paternity pay is paid at a flat rate (which changes every April) or 90% of earnings if lower.

For up-to-date rates visit [www.hmrc.gov.uk](http://www.hmrc.gov.uk).



## Additional paternity leave

Fathers of babies due (or matched) on or after 3 April 2011 can take up to 26 weeks of additional paid paternity leave to care for a child between 20 weeks and a year old, but only once the mother has returned to work.

The leave is available to employees who are the father or partner of the mother or adopter and includes same sex partners and civil partners of the child's mother.

Fathers/partners must give eight weeks' written notice before taking the leave which must be taken in multiples of complete weeks (the minimum being two and the maximum being 26).

The employee will only receive additional statutory paternity pay during the time their partner would have received SMP, SAP or maternity allowance.

So for example if a mother returns to work after 30 weeks the father/partner will only be able to claim nine weeks of additional statutory paternity pay at the same rate of SMP or SAP.

A father/partner is not entitled to a mother's enhanced contractual maternity pay unless there is specific provision in their contract to enhanced additional paternity pay.



## Parental leave

Employees are also entitled to unpaid parental leave of up to 13 weeks for each parent and in relation to each child; and unpaid parental leave of up to 18 weeks for each parent and in relation to each disabled child.

The right to parental leave only applies to parents of children aged under 5, unless the child receives disability living allowance in which case the right continues until the age of 18.

To qualify, employees need one year's continuous service. The leave must be taken for the purpose of caring for the child and parents cannot take more than four weeks leave per child per year.

### Adoptive parents

There are equivalent provisions that apply to adoptive parents, allowing leave to be taken within the five-year period following adoption and up to the age of 18 for a child who receives disability living allowance.

### Collective agreements

The regulations encourage employers and employees and their trade unions to negotiate collective or workforce agreements dealing with the mechanics of parental leave, such as notice requirements and how leave will be taken.

Where no such agreement is negotiated, then a model scheme, set out in the regulations, will apply.



## Model scheme

The model scheme states that leave should be taken in blocks of no less than one week, and no more than four weeks in one year.

Parents must give a minimum of 21 days' notice prior to the proposed parental leave, with the exception of fathers who want to take leave straight after the baby is born, in which case they have to give 21 days' notice prior to the expected week of childbirth.

## Employee rights

An employee's rights during parental leave are limited to the contractual right to trust and confidence, notice, redundancy and discipline and grievance.

If an employee takes less than four weeks off, they have the right to return to their old job. If they take more than four weeks, their entitlement to have their job back is similar to the situation that applies to a woman returning from Additional Maternity Leave.



## Time off for dependents

The Employment Rights Act gives employees the right to take time off for “urgent family reasons”. The right allows an employee to take a reasonable amount of time off work in order to take action which is necessary:

- To provide assistance when a dependent falls ill, gives birth or is injured.
- To make arrangements for the provision of care for a dependent who is ill or injured.
- In consequence of the death of a dependent.
- Because of the unexpected disruption or termination of care for the dependent.
- To deal with an incident involving a child of the employee occurring unexpectedly at an educational establishment which the child attends.

### Definition of dependent

A dependent is defined as a spouse, child, parent or person living in the same household (though not an employee, tenant or lodger). It also includes anyone who reasonably relies on the employee for assistance if they fall ill or for the provision of arrangements for care.

There is no definition as to what a ‘reasonable amount of time off’ means. However, it is important that the employee tells their employer as soon as they can of the reason for the absence and how long they expect to be absent.



## Flexible working

Employees with 26 weeks of continuous service have the right to request to work flexibly. This is available to employees who have parental responsibility for a child aged 16 or under (18 in the case of a disabled child).

The purpose of applying for flexible working must be to care for the child. The carers of adults also have the right to request to work flexibly.

The request must be made in writing and specify the change proposed, what effect the employee thinks the change might have on the employer and how this might be dealt with, and must explain the relationship between the employee and the child.

The employer must meet the employee within 28 days of the written request to discuss the application and provide a written decision within 14 days after the meeting.

Refusals can be made on a number of specific grounds such as the burden of additional costs. However there are few sanctions on employers for refusing requests, and grounds under which a Tribunal claim can be made are limited.

It may however be possible to take a claim for sex discrimination if the request is refused.



## Part-time workers

### Entitlement

Part-time workers have the legal right in certain circumstances to be treated equally to full-time workers. Both employees and workers are covered.

The legislation says that a part-timer must not be treated any less favourably than a comparable full-timer, unless the difference can be justified by the employer.

This covers treatment in general (including for example dismissal and redundancy) as well as terms and conditions of employment.

### The need for a comparison

A part-timer has to make a comparison between how they have been treated, and how a comparable full-timer employed by the same employer has been treated in order to assert their right to equal treatment.

The law sets out what a “comparable” worker or employee means. The part-timer can only compare themselves with a full-timer who is employed on the same type of contract and who is engaged in broadly similar work. When considering broadly similar work case law has established that the focus should be on the similarities and not the differences.

Because of the way the law is drafted many part-timers doing jobs only done by part-timers (such as cleaning jobs) will not fall within the protection of the part-time regulations.



## Pro-rata

The pro-rata principle applies where appropriate. In relation to overtime, this means that overtime will not be paid to the part-timer until they have worked the same number of hours as the full-timer.

## Right to receive written statement

Part-time employees can request a written statement of reasons why they have been treated less favourably than a comparable full-timer. The employer must respond within 21 days.

## Remedies

Employees have the right to complain to an employment Tribunal if they have been subject to a detriment or if they have been dismissed for taking time off or seeking to exercise their rights. They must submit their claim within three months less one day of the dismissal or detriment.









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