

6. Employing and managing people

6.14.2 Paternity policy

Organisations should have a policy setting out an employee's rights to paternity leave and paternity pay, which takes into account minimum statutory entitlements. An employer must not subject an employee to a disadvantage or dismiss him or her for taking, or seeking to take, paternity leave.

The following sample policy is provided for guidance only and should not be regarded as an authoritative statement of the law.

Sample Paternity policy and procedure

It is *<Name of organisation>*'s policy to comply with both the letter and spirit of the law on paternity rights. To this end its aim is to inform all employees of their entitlement to statutory paternity rights and to ensure that those rights are understood by employees who qualify.

1. Eligibility for Statutory Paternity Leave (SPL)

An employee is entitled to statutory paternity leave providing that they:

Births

- are the biological father of the child, the mother's husband or partner; and
- have been employed with this organisation for at least 26 weeks by the end of the 15th week before the start of the week when the baby's due; and
- are taking the time off to support the mother and/or care for the baby;
- are working for this organisation from the qualifying week up to the date of birth. If their contract ends before the birth, they do not qualify for leave, unless they go on to work for an associated employer. If their contract ends after the birth, they retain their right to leave (and pay if they qualify);
- have notified this organisation of their intention to take paternity leave.

UK adoptions

- are either one of two parents jointly adopting the child or the partner of someone adopting the child individually; and
- have responsibility for the child's upbringing with the other joint adoptive parent or the individual adopter; and
- are not taking statutory adoption leave and pay; and

- have been employed with this organisation for at least 26 weeks by the end of the week in which the employee is notified of being matched with the child; and will continue to work for the organisation from the qualifying week to the date of the child's placement; and
- the employee will be taking time off to support the adopter and/or to care for the child.

Overseas adoptions

- are either one of two parents jointly adopting the child or the partner of someone adopting the child individually; and
- have responsibility for the child's upbringing with the other joint adoptive parent or the individual adopter; and
- are not taking statutory adoption leave and pay; and
- have been employed with this organisation for at least 26 weeks into the week that the adopter receives official notification; and
- continue to work for the organisation until the point the child enters the UK.

(NB: The employer should ask the employee to complete a form of declaration as evidence that the employee meets the eligibility criteria. The employee can use Inland Revenue form SC3 for this purpose).

Official Notification for Overseas Adoptions

This is written notification issued by or on behalf of the relevant domestic authority that they have issued a certificate which confirms that the other or main adopter is eligible to adopt.

2. Entitlement to Paternity Leave

The employee is entitled to either one or two weeks' paternity leave. The employee cannot take two non-consecutive weeks, nor can they take odd days. If the employee chooses to take two weeks, they must be taken together.

3. Taking Paternity Leave

The employee can choose to start the paternity leave:

Births

- on the day the baby is born
- from a specific date after the first day of the week in which the baby is expected to be born

UK adoptions

- on the day the child is placed with the adopter
- from a specific date after the date of the child's placement

Overseas adoptions

- from the date the child enters the UK
- from a specific date after the date of the child enters the UK

Paternity Leave can start on any day of the week, but not before the baby is born, placed with the adopter and in relation to overseas adoptions, has not entered the UK.

Paternity leave must to finish within 56 days of the baby being born, placed with the adopter and in relation to overseas adoption within 56 days of the child entering the UK.

Multiple births

The employee is entitled to one period of SPL regardless of the number of children resulting from a single pregnancy.

Early births

Where the baby is born early, the employee can take paternity leave within the period starting from the actual date of birth up to 56 days starting from the Sunday of the week that the baby was originally due.

(The employer should treat the employee as having the necessary length of service if the baby is born earlier than the 14th week before the EWC or if the birth hadn't occurred early, the employee would have been employed continuously for the 26 weeks).

Stillbirths

Provided that the employee meets all the other conditions, the employee can still take paternity leave if the child is stillborn after 24 weeks of pregnancy.

(If the stillbirth occurs before the end of the 24th week of pregnancy the employer may consider allowing the employee to take sick or compassionate leave).

Death of baby during or after the day of birth

The employee is entitled to SPL if the baby is born alive but then later dies.

4. Notification procedures

To claim Statutory Paternity Pay the employee must inform *<Name of organisation>*:

Births

- when they intend to take leave by the 15th week before the baby is due
- the expected date of the baby's birth
- whether they wish to take one or two weeks leave

UK adoptions

- within seven days of the employee's wife, partner or civil partner being told by the adoption agency that they've been matched with a child.
- whether they wish to take one or two weeks leave

Overseas adoptions

In the first stage the employee must inform this organisation of:

- the date on which the other or main adopter received official notification
- the date the child is expected to enter the UK

In the second stage the employee must:

- give at least 28 days notice of the actual date they want their SPL to start

In the third stage the employee must:

- inform this organisation of the date the child entered the UK
- whether they wish to take one or two weeks leave

5. Changing the date of the Paternity Leave

The employee may change the start date of their Paternity Leave providing that he/she gives at least 28 days notice in writing *<Insert to whom>* (or as soon as reasonably practicable) of either the new start date or the original start date (whichever is earliest). This can be done by completing an SC3 form.

Note: Paid time off for ante-natal care Partners do not have a legal right to time off to accompany their partners to antenatal appointments as the right to paid time off only applies to pregnant employees. However, many organisations recognise how important a time this is and let their employees either take paid time off or make up the time later. If the organisation chooses to do this then clear guidelines must be stipulated in this policy.

6. Enhanced Paternity Leave

Paternity Leave arrangements can be enhanced to attract or retain employees. These arrangements should be a contractual right rather than a discretionary case-by-case basis to avoid direct or indirect discrimination.

7. Entitlement to Statutory Paternity Pay (SPP)

An employee is entitled to SPP providing that they:

Births

- have been employed with this organisation for at least 26 weeks by the end of the 15th week before the start of the week when the baby's due; and
- have an average weekly gross earnings (earnings before tax and National Insurance deductions) of £97.00 or over; and
- self certify their eligibility for SPP by giving form SC3 at least 28 days before they want their SPP to start.

The rate of SPP remains the same regardless of the number of children resulting from one pregnancy.

UK adoption

- have been employed with this organisation for at least 26 weeks by the week in which the adopter is notified of having being matched with a child; and
- have an average weekly gross earnings (earnings before tax and National Insurance deductions) of £97.00 or over; and
- self certify their eligibility for SPP by giving form SC4 at least 28 days before they want their SPP to start; and
- continue to work for you from the matching week to the date of the placement.

Overseas adoption

- have been employed with this organisation for at least 26 weeks by the week that the adopter receives official notification or by the time they want SPP to begin (whichever is later); and
- have an average weekly gross earnings (earnings before tax and National Insurance deductions) of £97.00 or over; and
- self certify their eligibility for SPP by giving form SC5 at least 28 days before they want their SPP to start; and
- they continue to work for you up until the point the child arrives in the UK.

8. Rates and duration

SPP is paid for one or two consecutive weeks at £124.88 or 90 percent of the employee's average weekly earnings if this is less (as at April 2010)

(The employer should pay SPP to the employee in the same way and at the same time as the employee's normal wages. This should be stipulated here).

(As SPP is treated as normal pay, the employer should deduct tax and National Insurance as usual. Again this will be stated here).

Organisations may wish to consider doing more than the legal minimum, however they must ensure that any provision is equally available to all staff and that the organisation can sustain it. If this is the case the organisation should detail that here.

9. Annual leave

The employee continues to accrue statutory (and any contractual) annual leave entitlement throughout SPL. The employee may not take annual leave during paternity leave, but may take it immediately before or after paternity leave and follow the organisation's rules for requesting annual leave.

10. Pension contributions

If the employer makes a contribution to a pension scheme, they must continue to make payments as though the employee is receiving a full salary while the employee is on

paternity leave. This is regardless of whether the employee is receiving statutory or enhanced paternity pay. This should be stated here.

There are specific rules regarding the employee's contributions if the organisation provides an Occupational Pension Scheme - guidance should be sought from the organisation's pension provider. Details of which should be stated here.

11. Pay rises

Any pay rises awarded during the period of PL must take effect when the employee returns to work.

12. Training and development opportunities

Employees on paternity leave must be informed of any training or development opportunities.

13. Period of continuous service

An employee's period of PL counts towards their continuous service and will, therefore, also count towards the assessment of seniority, pension and redundancy rights.

14. Dismissal

You must not:

- dismiss an employee or select them for redundancy because they took, or sought to take, paternity leave
- prevent an employee returning to work after their paternity leave

If you dismiss an employee in these circumstances, they may take a complaint of unfair dismissal to an employment tribunal regardless of their length of service.

15. Redundancy during Paternity Leave

If there is a redundancy situation at the same time as an employee's paternity leave, they must be treated the same as any other employee under the circumstances. This might be consulting them about the redundancy or considering them for any other suitable job vacancies.

16. Notification of statutory rights

Once a request for Statutory Paternity Leave has been received from an employee the <insert e.g. line manager/HR Manager> will notify the employee in writing as soon as is reasonably practicable, of their entitlement to statutory paternity rights.

17. Returning to work after Paternity Leave

The employee is entitled to return to the same job on the same terms and conditions of employment as if they had not been absent on paternity leave.

18. Right to request flexible working patterns

Parents who have been employed by *<Name of organisation>* for at least 26 weeks and have, or expect to have responsibility for the upbringing of a child up to the age of 6, or 18 if the child is disabled, have the right to request flexible working patterns. *<Name of organisation>* will give such requests serious consideration. In order to qualify for this right, a parent must meet certain criteria. *<Organisations may find it useful to put a flexible working policy in place >*

19. Inability to return after paternity Leave

If the employee is too ill to return to work following paternity leave, *<Name of organisation>*'s Sickness and Absence Policy will apply.

20. Employees who do not wish to return to work after paternity leave

Where the employee does not wish to return to work after his/her paternity leave, he/she must give notice of termination as outlined in his/her Statement of Particulars/Contract of Employment.

Further information

ACAS

Tel: 08457 474747

www.acas.org.uk

Business Link

Tel: 0845 600 9 006

www.businesslink.gov.uk

HMRC Employer Helpline

Tel: 0845 7143143

WCVA / Wales TUC Cymru

The good employment code

Tel: 0800 2888 329

www.wcva.org.uk

Wales TUC Cymru

Tel: 029 20 347010

wtuc@tuc.org.uk

www.wtuc.org.uk

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For further information contact

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