



Chapter 7  
Maternity, Paternity and  
other types of leave

## 7.0 Maternity, paternity and other types of leave

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## 7.1 Introduction

The rights, rules and obligations in relation to maternity, paternity, adoption, shared parental leave and flexible working are complex. Problems and legal liability for claims can arise out of an employer's failure to follow these rules. Sex discrimination and unfair dismissal are just two types of claim which can arise. For example any refusal of employment, dismissal or detriment suffered by an employee or prospective employee because of her pregnancy will amount to either sex or pregnancy discrimination. In the case of dismissal for a pregnancy related reason that dismissal is automatically unfair. For detailed information on sex discrimination see [Equal opportunities](#). For a detailed analysis of unfair dismissal rules and how to avoid effecting an unfair dismissal, see [11.0 Disciplinary and grievance](#) and [12.0 Dismissal - fair or unfair](#). This chapter also sets out the rules in relation to time off for other reasons such as paternity, shared parental leave, in relation to dependants, for adoption leave and in relation to public duties in addition to outlining flexible working rights.

## 7.2 Maternity rights

### 7.2.1 General

Pregnant employees and some agency workers have certain statutory rights including the right to maternity leave and maternity pay. This section will set out the maternity rights employees and agency workers have and what issues employers should consider when dealing with employees/agency workers who are pregnant and/or on maternity leave.

### 7.2.2 Time off for antenatal care

7.2.2.1 Regardless of a pregnant employee's length of service, she is entitled to reasonable time off during working hours for antenatal appointments.

The right does not apply in ordinary adoption cases but does apply in surrogacy arrangements.

7.2.2.2 After the first antenatal appointment, employers may ask employees to produce a copy of their appointment card or some other documentary evidence of the appointment. Employers can ask employees to show them a certificate from a registered medical practitioner, registered midwife or registered nurse stating that she is pregnant before allowing time off to attend further antenatal appointments. Employees are entitled to receive their normal pay for time spent attending such appointments.

7.2.2.3 Employers can decide what is 'reasonable' when pregnant employees request time off to attend antenatal appointments. Employees do not have a right to unlimited time off, but employers are expected to act reasonably and not refuse a request without good cause.

7.2.2.4 Pregnant agency workers who have completed the 12 weeks' qualifying period are entitled to similar rights to time off for antenatal care as pregnant employees (see [2.9 Agency workers](#) for further information on agency workers).

### 7.2.3 Risk assessment

Employers are under a general duty to carry out risk assessments with a view to identifying and dealing with risks related to jobs carried out by women of child-bearing age. There may be additional obligations once a woman becomes pregnant

It should be noted that the duty to carry out risk assessments applies to all workers, whether employees, agency or temporary workers. Once a worker has advised that she is pregnant (see [7.2.7.1 Advance notice](#) for further details about what notification is required), a risk assessment is advisable to ensure that her duties and place of work do not present any risk to her or her unborn child. This need not be done with every worker who becomes pregnant. The Courts have determined that the obligation is only triggered if the job that the worker carries out poses some apparent and discernible risk to health and safety. If it appears that such a risk may exist the employer must carry out a risk assessment then take reasonable steps to either remove the risk or remove the worker from being exposed to the risk. The risk assessment should take account of a worker's pregnancy and pregnancy-related illnesses. In addition it may also need to take account of the fact that when she returns to work she may be breastfeeding and she may have given birth in the last 6 months. A failure to carry out appropriate risk assessments in relation to a woman of child bearing age or a woman who is pregnant where apparent risks exist is likely to be regarded as sex discrimination and/or pregnancy and maternity discrimination (see [Equal opportunities](#)).

### 7.2.4 Offer alternative work

If, on completion of a risk assessment, there is a risk to the pregnant employee's health and safety, employers should offer suitable alternative work. Whether the alternative work is 'suitable' depends on:

- › whether the work is of a kind which is both suitable in relation to the pregnant employee and appropriate for her to do in the circumstances. Note, however, the general duties/work need not be the same as the employee's normal duties; and
- › whether the proposed terms and conditions are substantially less favourable in comparison to the normal terms and conditions. In essence, employees should be offered alternative work on terms and conditions that are broadly similar to their existing terms and conditions.

Similar provisions apply to pregnant agency workers who have completed the 12 weeks' qualifying period. Where the supply of any agency worker has ended on maternity grounds, the agency is required to offer to put her forward for any suitable work. What is suitable depends on the factors set out above. However, there is no obligation to offer alternative work to an agency worker if she has confirmed in writing that she no longer requires the services of the agency or beyond the intended or likely duration, whichever is longer, of the assignment which the agency worker was engaged on when it ended on maternity grounds.

### 7.2.5 Suspension on maternity grounds

If the existing job poses a risk which cannot be removed and there is no alternative work or the alternative work is not suitable, the employee must be suspended from work for as long as is necessary to avoid the risk. Employees suspended from work are entitled to be paid their usual pay whilst suspended. They are not, however, entitled to any pay during any suspension if they have unreasonably refused an offer of suitable alternative work. Adequate consultation should take place with the employee and employers should keep clear records of any discussions which take place. Employers considering suspending employees or not paying them during any period of pregnancy/maternity suspension should seek legal advice.

Agency workers who have completed the 12 weeks' qualifying service have similar rights to pay whilst suspended. There is, however, no right to pay where she has unreasonably refused an offer of suitable alternative work. The right to pay does not extend beyond the original intended duration or likely duration, of the assignment on which the agency worker was engaged when it ended due to her maternity. (See [2.9 Agency workers](#) for further information).

### 7.2.6 Failure to pay during suspension or offer alternative work

- 7.2.6.1 Employees and agency workers can raise a tribunal claim should employers or agencies fail to pay the whole or any part of their pay during a period of suspension. Such claims must be raised, in broad terms, within three months from the day the employers or agencies failed to pay. If the claim is successful, the tribunal will order the employer to pay the deficit in the employee's or worker's pay. An award could also be made for any 'injury to feelings' claimed by the employee or worker.

- 7.2.6.2 Employees and workers can also raise a claim if the employer or agency fails to offer alternative work before the employee or worker is suspended. Such claims must be raised, in broad terms, within three months from the first day of suspension. If successful, the tribunal may award compensation which they consider to be 'just and equitable' in the circumstances. When deciding on the level of compensation, tribunals will give consideration to employers' failures to offer alternative work and any loss which is connected to those failures. Again, a tribunal could also make an award for any injury to feelings.

- 7.2.6.3 The Health and Safety Executive (HSE) has published helpful guidance for employers which outlines what action employers should take to ensure that pregnant employees' health and safety is protected at work (for further details please see the New and Expectant Mothers section of the HSE website, which can be found at [www.hse.gov.uk/mothers/index.htm](http://www.hse.gov.uk/mothers/index.htm)).

### 7.2.7 Maternity leave

#### 7.2.7.1 Advance notice

- 7.2.7.1.1 In order to claim maternity leave, employees must notify their employers in writing no later than the end of the fifteenth week before the expected week of childbirth of:
- the fact that they are pregnant;
  - the expected week of childbirth; and
  - the date on which they intend to start taking leave (which must be no sooner than the beginning of the 11th week before the expected week of childbirth).

- 7.2.7.1.2 The expected week of childbirth is the week, beginning at midnight between Saturday and Sunday, in which it is expected that the baby will be born.

- 7.2.7.1.3 In addition, for the purposes of claiming Statutory Maternity Pay ('SMP') employees must provide employers with medical evidence of the date the baby is due and, where appropriate, born. This will normally be a maternity certificate called 'Form Mat B1' (which can be provided by employees' doctors). This must be signed by a doctor or midwife no earlier than 20 weeks before the expected week of childbirth.

7.2.7.1.4 Employers should ensure that employees are made aware of what notification they must give (e.g. what information the notice should contain, when it should be given and to whom etc.) and ensure that their maternity policy clearly explains these requirements.

### 7.2.7.2 Period of leave

Pregnant employees are automatically entitled to 52 weeks' maternity leave, regardless of their length of service. This is made up of 26 weeks' Ordinary Maternity Leave (OML) and 26 weeks' Additional Maternity Leave (AML). Statutory Maternity Pay can be paid for up to a maximum of 39 weeks (see [7.2.8 Maternity pay](#) for further details).

### 7.2.7.3 Compulsory maternity leave

7.2.7.3.1 Employees may not work during the 14 days immediately after the date of childbirth (4 weeks for female factory workers).

7.2.7.3.2 The European Commission has proposed that the two-week compulsory period should be extended to six weeks. Consultation has taken place on this and a number of other proposals but it has not yet been confirmed when any extension of the compulsory maternity leave period is likely to be implemented. The most notable change however is the introduction from 1 December 2014 of shared parental leave with effect from 5 April 2015. In short, under the shared parental leave regime, an employee can choose to shorten their maternity leave and pay period to enable themselves or their partner to take shared parental leave and/or receive shared parental pay. An employee will lose their entitlement to take maternity leave if they first take shared parental leave at any point after having taken the required 2 weeks compulsory maternity leave. See [7.6 Shared parental leave](#).

Shared Parental Leave is relatively complex with specific eligibility, timing and notification requirements. It is therefore important for organisations to have a shared parental leave policy in place and ensure that it dovetails appropriately with the organisation's maternity, paternity and adoption leave policies.

## 7.2.7.4 Maternity leave – start date

### 7.2.7.4.1 The intended start date

Employees must give employers notice of the date their leave is to begin. When employees give birth before the notified date or before they have notified a date, their maternity leave starts automatically on the day after the date of the birth. Also, where employees are absent from work for a pregnancy related reason at any time during the four weeks before the expected week of childbirth, their maternity leave begins automatically on the day after the first day of absence. Such employees should notify their employers that they are absent from work wholly or partly because of pregnancy and of the date on which their absence for that reason began as soon as is reasonably practicable. It is best practice for employers' maternity policies to notify employees of these requirements.

### 7.2.7.4.2 Change of start date

Once an employee has properly advised her employer of the date she wishes to start her OML, she can change this date provided that she gives written notification of the new start date by whichever is the earlier of:

- 28 days before the date she originally intended to start her leave; or
- 28 days before the new date she wishes to start her leave.

A shorter period of notice can be given if 28 days is not reasonably practicable.

### 7.2.7.5 The contract of employment during maternity leave

7.2.7.5.1 Contracts of employment continue throughout OML and AML and employees on OML or AML are entitled to all the same terms and conditions of employment which would have applied had they not been on maternity leave. The main exception is that 'remuneration' (wages and salary) is not covered and therefore, employees are not entitled to be paid their usual remuneration during OML and AML.

- 7.2.75.2 It is sometimes difficult to establish whether or not employees are still entitled to particular types of payments and/or benefits during maternity leave e.g. car allowance, bonuses or childcare vouchers etc. These benefits can sometimes be classified as 'remuneration'. Benefits such as health or life assurance, share schemes etc, are not generally regarded as remuneration and therefore cannot be withheld. This is an extremely difficult and uncertain area due to the absence of case law and so employers should seek further legal advice from Scottish Engineering before suspending or withholding any such payment or benefit from employees.
- 7.2.75.3 Employees continue to be employed during their OML and AML. OML and AML count towards their period of continuous service.
- 7.2.75.4 Annual leave accrues throughout both OML and AML in the same way and at the same rate as if the employee was at work. This includes statutory and contractual entitlement to annual leave. Where employees have a contractual right to public/ bank holidays, these will also accrue during maternity leave.
- 7.2.75.5 An employee cannot take any annual leave during OML or AML. As a result, the employee must be allowed to take all accrued holidays (including public/ bank holidays) at another time. It is common for employers to allow employees to take such accrued holidays immediately before or after their maternity leave. The timing of the holidays is normally a matter for agreement between the employee and employer. Such arrangements are particularly important as recent case law has determined that all of an employee's accrued but unused annual leave will carry over to the next leave year if they are on maternity leave. Failure to do so would constitute sex discrimination.
- 7.2.75.6 Where employees are members of any service related benefit scheme (for example, an occupational pension scheme) they will continue to accrue rights and benefits under such schemes. Any benefits and employer contributions will be calculated as if they had been working normally and receiving their normal rate of pay. Contributions payable by employees will be calculated by reference to the pay they actually receive bearing in mind that deductions cannot be made from statutory maternity pay.

## 7.2.8 Maternity pay

### 7.2.8.1 Statutory Maternity Pay (SMP)

#### 7.2.8.1.1 The right

Employees are entitled to a maximum of 39 weeks' SMP if they meet the qualifying conditions that:

- › they have worked for the employer for 26 continuous weeks ending with the 15th week before the expected week of childbirth; and
- › their average weekly earnings in the eight weeks up to and including the qualifying week have been at least equal to the lower earnings limit for National Insurance contributions (although contributions do not actually have to have been paid).

#### 7.2.8.1.2 Notice required for SMP

Employees should give their employers 28 days' notice of the day on which they want to start receiving SMP. Where an employee has properly notified a start date for OML, the same date will be taken as the start date for SMP. Employees may continue working right up until the date their baby is born and still retain the full 39 weeks' entitlement to SMP.

SMP generally starts from the date the employee has notified that the employer's SMP liability will commence although it can start earlier in certain circumstances, e.g. the baby is born earlier or the employee is absent for a pregnancy related reason within 4 weeks of the expected date of childbirth.

Employees must also provide employers with evidence as to:

- › the expected date of childbirth; and
- › where entitlement to SMP depends upon the fact of confinement, the week in which she was confined (a certificate of birth will suffice).

The evidence must normally be submitted no earlier than the beginning of the 20th week before the expected week of confinement. This can be extended if the circumstances require.

### 7.2.8.1.3 The rate of SMP

The first six weeks of SMP are paid at 90% of employees' normal average weekly earnings.

The remaining weeks are paid at the lesser of the SMP current standard rate and 90% of the employees' average weekly earnings. The current rate of SMP is £151.20. The SMP rate is reviewed annually with effect from April in each year.

## 7.2.8.2 Maternity Allowance (MA)

### 7.2.8.2.1 The right to MA

Women who are not entitled to SMP may be entitled to MA if they meet the statutory requirements.

Employees are entitled to claim a maximum of 39 weeks' MA if they:

- › are employed, but do not qualify for SMP;
- › have recently been employed; or
- › are self-employed.

Entitlement to MA is based on employment and earnings in the 66 weeks ending with the week before the expected week of childbirth. Employees must have been employed or self-employed for at least 26 weeks in the 66-week period and their gross earnings must meet the statutory limits in place from time to time. The claiming or payment of Maternity Allowance does not involve employers but instead is administered by Jobcentre Plus.

### 7.2.8.2.2 The rate of MA

The MA weekly rate is the lesser of the current MA standard rate or 90% of the employees' average weekly earnings. The current rate of MA is £151.20. Again, this rate is reviewed annually in April each year.

## 7.2.8.3 Enhanced maternity terms

Some employers offer enhanced maternity rights such as additional maternity pay or leave. Employers wishing to offer enhanced benefits should carefully consider what those benefits will be and how they will be implemented. Any enhanced terms should clearly state that the rates/benefits are inclusive of employees' entitlement to statutory maternity leave and SMP. It is recommended that any enhanced maternity benefits should be set out in a clear policy or other written document. Advice should be obtained if enhanced maternity pay or leave is offered as there may be the possibility of discrimination claims if similar enhancements are not offered under adoption leave or shared parental leave.

## 7.2.9 Return to work after maternity leave

### 7.2.9.1 The intended date of return to work after maternity leave

Where an employee has given proper notification of the intended start date for maternity leave, the employer should notify the employee of the date on which the maternity leave will end. Such notice must be given within 28 days of receipt of the notification.

### 7.2.9.2 Change of return date

7.2.9.2.1 An employee may wish to return to work before the date notified. If so, she must give the employer at least eight weeks' written notice of the new intended return date.

7.2.9.2.2 Some employees only wish to take part of their maternity leave allowance, for example 39 weeks to coincide with any entitlement to SMP. Such employees must give employers at least eight weeks' notice of the date on which they intend to return to work.

7.2.9.2.3 An employee might not wish to return to work after maternity leave. If so, she must give proper notice of termination in accordance with the terms and conditions of employment. For example, if she does not wish to return to work and the notice period is four weeks, she must notify her employer of her resignation at least four weeks before the return date.

### 7.2.9.3 Returning to work after OML

Employees returning after OML are entitled to return to the same job on the same terms and conditions of employment as if they had not been absent, unless a redundancy situation has arisen. Even if a redundancy situation has arisen, employers should act with caution and seek advice from Scottish Engineering as dealing with employees on maternity leave can give rise to complications.

### 7.2.9.4 Returning to work after AML

7.2.9.4.1 After AML employees are entitled to return to the same job on the same terms and conditions as if they had not been absent. If, however, there is some reason why it is not reasonably practicable for them to return to the same job, they should be offered a similar job on their existing terms and conditions.

7.2.9.4.2 Employees may submit flexible working requests or request to take parental leave after OML or AML. Employers should consider such requests in accordance with their legal obligations. For further details please see [7.7 Flexible working](#), [7.3 Parental leave](#) and [7.6 Shared parental leave](#).

### 7.2.9.5 Employees returning to work after two consecutive periods of maternity leave

7.2.9.5.1 It is possible that employees may become pregnant again whilst on maternity leave. If that happens the employee becomes entitled to another consecutive period of leave without returning to work.

7.2.9.5.2 Employees taking two consecutive periods of maternity leave are entitled to return to their original job or, if this is not reasonably practicable, to another job on their existing terms and conditions.

### 7.2.10 Keeping in Touch days

7.2.10.1 Employees may, with their employer's agreement, work for up to 10 days during their maternity leave without bringing the maternity leave to an end or affecting the right to SMP. These working days are called 'Keeping In Touch' (KIT) days.

7.2.10.2 Any work done on any day during the maternity leave period will count as a whole KIT day. For example, employees attending a 2-hour training session will still have used one KIT day.

7.2.10.3 There is no obligation on employees to undertake KIT days while on maternity leave nor any obligation on employers to arrange KIT days.

7.2.10.4 In addition, employers are entitled to make reasonable contact with employees during maternity leave, for example, to discuss their return to work. It is important to remember that employees absent on maternity leave should be given information which is relevant to their job even though they are absent. For example, a change of line manager or a merger of departments. Employees must be consulted with if a redundancy or other collective consultation situation arises (see [7.2.12 Pregnancy and redundancy](#) for more detail). In the same way, employees are permitted to make reasonable contact with employers.

7.2.10.5 Whilst the regulations do not specify whether an employee should be paid for KIT days it is recommended that payment is made. A failure to pay employees for KIT days may amount to sex discrimination. It appears that the amount of pay is left for agreement between employer and employee but, to avoid potential sex discrimination claims, it is advisable to pay the employee normal pay for a KIT day.

### 7.2.11 Maternity cover

7.2.11.1 In order to maintain its operations, employers often employ temporary employees to cover the work of employees on maternity leave. In these circumstances, employers should ensure that:

- › temporary employees are fully aware that their employment is for a fixed term to cover a period of maternity leave;
- › the employment contract specifies this;
- › the employment contract specifies that the employment will terminate automatically on the absent employee's return to work, either at the end of OML, AML or some earlier date if the employee chooses to return early; and
- › the notice provisions in the employment contract are drafted carefully so that the employer can terminate the temporary employee's employment even if the absent employee does not return.

7.2.11.2 Once an employee informs her employer of the intended return date, it is advisable for the employer to confirm this date with the temporary employee. If there are any changes to the intended return date, these should also be confirmed with the temporary employee as soon as possible.



- 7.2.11.3 The Employment Rights Act 1996 provides that a dismissal of temporary employees is a potentially fair reason for dismissal (see [12.0 Dismissal - fair or unfair](#) for a discussion of fair reasons for dismissal) if:
- › on engaging the temporary employees, employers inform them in writing that their employment will be wholly or partly because of pregnancy, childbirth, adoption or additional paternity leave of another employee; and
  - › where the temporary employee is dismissed to make it possible to give work to the absent employees upon their return.
- 7.2.11.4 Employers must ensure that they follow a proper procedure when dismissing temporary employees and be mindful that statutory and possibly contractual notice provisions may apply. Employers are obliged to adhere to the usual principles of fairness and reasonableness (see [11.0 Disciplinary and grievance](#) and [12.0 Dismissal - fair or unfair](#) for a more detailed discussion of how to dismiss fairly), especially when temporary employees have the minimum continuous service normally required to make a complaint of unfair dismissal. If you are in any doubt as to the applicable qualifying period you must consult Scottish Engineering. Employers should always consider whether any alternative work exists for the temporary employee before dismissing them.
- 7.2.11.5 As it is likely that a temporary employee's contract will be classed as a fixed term contract, an employer should ensure that they also comply with their obligations under the Fixed Terms Regulations (see [2.0 Contracts of employment](#)).

## 7.2.12 Pregnancy and redundancy

- 7.2.12.1 There are certain rules employers must follow when considering making employees redundant during their maternity leave. Employers have a statutory duty to offer available suitable alternative employment to such employees to avoid them being made redundant. This area of the law is complex and specific advice should be sought in each case. However, in general terms any alternative work offered should be:
- › of a kind that is both suitable in relation to the employees and appropriate for them to do in the circumstances, and
  - › on substantially similar terms and conditions of employment when comparing it to their previous contract.

- 7.2.12.2 For further details of what suitable alternative employment should be offered in redundancy situations and a detailed analysis of redundancy rules and rights, see [13.0 Redundancy](#).

## 7.2.13 Dismissal or detriment

### 7.2.13.1 Automatically unfair dismissal and unlawful detriment

- 7.2.13.1.1 Under the Employment Rights Act 1996 and the Maternity and Parental Leave etc Regulations 1999, any dismissal will be automatically unfair and, like any detriment suffered by an employee on the following grounds, will amount to sex discrimination if it is on the grounds of:

- › pregnancy;
- › the fact that she has given birth to a child;
- › the fact that she is subject to a relevant requirement or a relevant recommendation (i.e. there is a health and safety risk that has been identified relating to her pregnancy which results in suspension from work (see [7.2.5 Suspension on maternity grounds](#)));
- › suspension on maternity grounds (see [paragraph 7.2.5](#));
- › the fact that she took, sought to take or availed herself of the right to OML or AML;
- › the fact that she took or sought to take:
- › parental leave (see [7.3 Parental leave](#)); or
- › time off for dependants (see [7.7 Flexible working](#));
- › the fact that she failed to return to work after a period of OML or AML in a case where:
- › the employer did not notify her of the return date and she reasonably believed that the maternity leave had not ended; or
- › the employer gave her less than 28 days' notice of the date of her return date and it was not reasonably practicable for her to return on that date;
- › the fact an employee undertook, considered undertaking or refused to undertake work during maternity leave (see [7.4.10 Dismissal and detriment](#) for further details about KIT days);
- › the fact that she declined to sign a workforce agreement for the purposes of the Maternity and Parental Leave etc Regulations 1999; and/or
- › the fact that she, being (i) a representative of members of the workforce, or (ii) a candidate in an election in which any person elected will become such a representative, performed (or proposed to perform) any functions or activities as such a representative or candidate.

A court recently considered it essential for an employer to re-examine their decision to dismiss after the employee's pregnancy was discovered. In that case the employee was dismissed for an automatically unfair reason and had been subjected to pregnancy discrimination, even though it was accepted that the employer had not known about her pregnancy at the time of dismissing.

- 7.2.13.1.2 Employees may claim that they have been subject to a detriment, for example, that they did not get a promotion after returning to work from OML, arguing that this is because they took OML. Such claims must be raised, in broad terms, within three months of the act or failure complained of. In cases where employees complain that they have been subjected to a series of acts or failures, they can raise the claim, in broad terms, within three months of the last act or failure. Sometimes it is difficult to establish whether there has been a 'course' of events or an isolated incident. Advice should be sought from Scottish Engineering where such an issue arises. For further guidance on the time limits for lodging sex discrimination claims see [16.2.2 What is early conciliation](#).

#### 7.2.13.2 Written statement

- 7.2.13.2.1 Any employee dismissed when she is pregnant or off on maternity leave should be provided with a written statement of reasons for her dismissal regardless of the length of service.
- 7.2.13.2.2 Failure to do so permits the employee to raise a tribunal claim. Should a tribunal find that the complaint is well founded, it may make a declaration as to what it believes was the employer's reason for dismissal. Also, the tribunal can make an award of compensation of two weeks' pay which is not subject to the statutory weekly cap. An employee must raise such claims, in broad terms, within three months of the effective date of termination (see [12.2 Effective Date of Termination](#)).

#### 7.2.14 Discrimination during the 'protected period'

- 7.2.14.1 In addition to general protection against any detriment and/or unfair dismissal set out in [section 7.2.13](#), an employee has additional protection against less favourable treatment during what is referred to as the 'Protected Period' (see [paragraph 7.2.14.2](#)) on the grounds:
- › of her pregnancy;
  - › that she is exercising or seeking to exercise, or has exercised or sought to exercise a statutory right to maternity leave;
  - › that she has to take compulsory maternity leave; or
  - › that she is suffering from any pregnancy-related illness.
- 7.2.14.2 Any such less favourable treatment will be unlawful discrimination if it occurs during the Protected Period. The Protected Period:
- › begins when an employee is pregnant; and
  - › ends at the end of AML or, if earlier, when an employee returns;
  - › for an employee not entitled to maternity leave, the protected period will end two weeks from the end of the pregnancy (i.e. two weeks from the date of birth, miscarriage or abortion).
- 7.2.14.3 An employee can raise a claim for discrimination, in broad terms, within three months of the date on which the less favourable treatment occurred. Awards of compensation for discrimination are not capped and, therefore, employers may be liable for unlimited damages.

## 7.3 Parental leave

### 7.3.1 General

Parental leave is the right to take unpaid time off to look after a child or make arrangements for the child's welfare.

### 7.3.2 Entitlement

7.3.2.1 The right applies to mothers and fathers or any person who has formal responsibility for a child. Parents can take parental leave either when the child is born or placed with them for adoption, or as soon as they have completed one year's service, whichever is later. The right is also extended to parents matched for adoption through "fostering to adopt".

7.3.2.2 The right to take parental leave lasts until the child's 18th birthday in all cases.

### 7.3.3 Duration

7.3.3.1 Employees are entitled to a total of 18 weeks' leave for each child.

7.3.3.2 Parental leave can be taken in blocks or multiples of one week up to a maximum of four weeks' leave each year until the employee has used the overall maximum entitlement of 18 weeks. Parents of disabled children have the flexibility to take leave a day or more at a time or longer, but still subject to a maximum of 4 weeks' leave each year.

### 7.3.4 Application for leave

An employee should request parental leave in writing and give at least 21 days' notice. The employer can postpone leave for up to 6 months if the business cannot cope with the employee's absence at that time. This employer's right does not apply if the employee gives notice to take the parental leave immediately after the time the child is born or is placed with the family for adoption.

### 7.3.5 Pay

Parental leave is unpaid.

### 7.3.6 Return to work

7.3.6.1 Employees remain employed during parental leave and are guaranteed to return to the same job as before, provided the leave is for 4 weeks or less in a year. This applies even where the leave is taken immediately after a period of OML, Statutory Paternity Leave or Ordinary Adoption Leave.

7.3.6.2 If the leave is for a longer period, including where it is taken immediately after OML, AML, Statutory Paternity Leave, Ordinary Adoption Leave or Additional Adoption Leave, employees are entitled to return to the same job, or, if that is not reasonably practicable, work which is suitable and appropriate and on the same terms and conditions of employment.

### 7.3.7 Dismissal and detriment

7.3.7.1 A dismissal will be unfair if the reason (or principal reason) for the dismissal relates to an employee taking or agreeing to take parental leave.

7.3.7.2 In addition, it is unlawful for employers to subject employees to any detriment other than dismissal, for example, disciplinary action, because they have taken or sought to take parental leave.

7.3.7.3 An employee is entitled to raise an unfair dismissal claim within three months of the dismissal.

7.3.7.4 He or she may also claim that he or she has been subject to a detriment. Such claims should be raised, in broad terms, within three months of the act or failure complained of. In cases where employees complain that they have been subjected to a series of acts or failures, they can raise their claims, in broad terms, within three months of the last act or failure.

## 7.4 Paternity leave

### 7.4.1 General

7.4.1.1 Subject to certain statutory requirements, employees whose partners give birth to or adopt a child are entitled to paternity leave.

7.4.1.2 When employees' partners adopt a child or baby, they may be entitled to paternity leave and pay. When a couple adopts they can choose who takes (if eligible) the paternity leave and decide who takes the adoption leave.

Eligible employees are entitled to take Paternity Leave. Entitlement to paternity leave is in addition to any shared parental leave entitlement. It must be taken before any period of shared parental leave. An employee, who would otherwise have taken additional paternity leave, subject to certain notification and eligibility requirements, can opt to take shared parental leave if their partner chooses to shorten their maternity or adoption leave and associated pay period to enable the employee to take shared parental leave and receive shared parental pay. See [section 7.6](#) for more information.

### 7.4.2 Time off for antenatal care

From 10 October 2014, an expectant father or partner is entitled to time off to accompany their partners to antenatal appointments. This is limited to up to 2 appointments and there is no right for the employee to be paid for such time off (subject to any contractual right). The maximum time off for each appointment is capped at six and a half hours.

### 7.4.3 Eligibility for ordinary paternity leave

7.4.3.1 To qualify for ordinary paternity leave, employees must:

- › expect to have responsibility for the baby's upbringing;
- › be taking the time off to either support the mother or to care for the new baby;
- › be either or both:
  - › the biological father of the baby; or
  - › the mother's husband or partner

or have entered a surrogacy arrangement with a woman, and have been granted, or intend to apply for, a parental order in relation to the child that she bears; and

- › not already have taken shared parental leave.

7.4.3.2 To qualify for Ordinary Statutory Paternity Pay (OSPP) employees must give employers a signed declaration containing each of these requirements.

7.4.3.3 A partner is someone who lives with the mother of the baby in an enduring family relationship but need not be an immediate relative. This includes the biological father of the baby, the mother's husband or partner and a female partner in a same-sex couple.

7.4.3.4 In addition the employee must have worked continuously for the employer:

- › for 26 weeks ending with the 15th week before the baby is due; and
- › from the 15th week before the baby is due up to the date of birth.

### 7.4.4 The period of leave

#### 7.4.4.1 Length of ordinary paternity leave

7.4.4.1.1 Eligible employees can choose to take either one week or two consecutive weeks' ordinary paternity leave. This leave cannot be taken as odd days or as two separate weeks.

7.4.4.1.2 Only one period of leave can be taken even if more than one baby is born as the result of the same pregnancy.

#### 7.4.4.2 Commencement of ordinary paternity leave

7.4.4.2.1 Employees cannot start ordinary paternity leave until the baby is born and must give the employer details of when they intend to start the leave which may be:

- › on the date of the baby's birth (whether this is earlier or later than expected); or
- › on a date falling a certain number of days or weeks after the date on which the baby is born (whether this is earlier or later than expected); or
- › from a specific date after the first day of the week in which the baby is expected to be born.

7.4.4.2.2 When employees specify the date of birth as the start date of their leave and they are at work on that day, their leave will begin on the next day.

7.4.4.2.3 Employees cannot take ordinary paternity leave or be paid SPP before the baby is born. If the baby is not born by the date specified, employees must change the date on which their leave starts or choose to take leave from the actual date of birth or a specified number of days after the birth.

#### 7.4.4.3 Period during which ordinary paternity leave must be taken

7.4.4.3.1 Ordinary paternity leave can start on any day of the week, as long as the employee has given the required notice.

7.4.4.3.2 It must be completed:

- › within 56 days of the date of birth; or
- › if the baby is born earlier than expected, within 56 days of the first day of the week during which the baby was due.

#### 7.4.4.4 Notification of intention to take ordinary paternity leave

7.4.4.4.1 Employees must inform their employers that they intend to take ordinary paternity leave by the end of the 15th week before the baby is due (if that is not possible, as soon as is reasonably practicable) and confirm:

- › the expected week of the baby's birth;
- › whether they wish to take one or two weeks' leave; and
- › when they want the ordinary paternity leave to start.

7.4.4.4.2 Employees should complete a Paternity Leave Self-Certificate form, (form SC3) which can be found on HMRC's website [hmrc.gov.uk](https://www.hmrc.gov.uk). This will cover both ordinary paternity leave and SPP and should be submitted to employers by the end of the 15th week before the baby is due.

#### 7.4.4.5 Change of start date

7.4.4.5.1 Employees can change the start date of their ordinary paternity leave (but not the length of the leave they are taking) as long as they give the required notice as follows:

- › if they want their leave to start on the date of the birth, they must give notice of this new date at least 28 days before the first day of the expected week of childbirth; or
- › if they want to change their start date to a specific number of days after the birth, they must give notice of this new date at least 28 days before the date falling the same specific number of days after the first day of the expected week of childbirth; or
- › if they want to change their leave to start on a particular date, they must give notice of this new date 28 days before that date.

7.4.4.5.2 The expected week of childbirth is the week, beginning with midnight between Saturday and Sunday, in which it is expected that the baby will be born.

7.4.4.5.3 Employees wishing to change their leave start date should complete another Paternity Leave Self-Certificate (form SC3).

### 7.4.5 Statutory Paternity Pay (SPP)

#### 7.4.5.1 General

Employers will pay Statutory Paternity Pay (SPP) for either 1 or 2 weeks depending on the amount of ordinary paternity leave taken. The amount of SPP is the lesser of the current standard rate (£151.20 - which is the same as Statutory Maternity Pay) and 90% of the employees' average weekly earnings. The current standard rate is reviewed annually with effect from April in each year.

#### 7.4.5.2 Applying for SPP

7.4.5.2.1 Employees must give employers a completed paternity leave self-certificate form at least 28 days before they want their SPP to start.

7.4.5.2.2 If they cannot give their employers the self-certificate 28 days before they want their payment of SPP to begin, they must do so as soon as possible and explain why it is late. When an employer believes that that an employee did not have a good reason, it can refuse to pay SPP.

### 7.4.5.3 Payment of SPP

7.4.5.3.1 SPP is a weekly payment due at the end of each SPP week. The SPP week can start on any day. For example, for employees starting their leave on a Tuesday, a week's SPP runs from the Tuesday to the next Monday.

7.4.5.3.2 SPP will not be paid for any SPP week in which the employee does some paid work, or for any SPP week in which they are sick and entitled to Statutory Sick Pay. When employees are unwell before starting their period of ordinary paternity leave, they may postpone it, however the 56-day period within which employees should take their leave will not be extended.

## 7.4.6 Terms and conditions during ordinary paternity leave and on return

### 7.4.6.1 Contractual terms and conditions while on ordinary paternity leave

7.4.6.1.1 The contract of employment continues throughout ordinary paternity leave. While on ordinary paternity leave, employees are entitled to benefit from all their normal terms and conditions, except for terms relating to wages or salary. Employers should take legal advice before withholding any benefits or payments to employees during ordinary paternity leave.

7.4.6.1.2 At the end of ordinary paternity leave, employees are entitled to return to the same job as before on the same terms and conditions of employment as if they had not been absent, unless a redundancy situation has arisen.

7.4.6.1.3 Employees who are members of any service related benefit schemes, for example, an occupational pension scheme, will continue to accrue rights and benefits under such schemes. Any benefits and employer contributions will be calculated as if they had been working normally and receiving their normal rate of pay. Contributions payable by employees will be calculated by reference to the pay they actually receive.

### 7.4.6.2 Annual leave during ordinary paternity leave

Employees will continue to accrue annual leave while on ordinary paternity leave. They are not entitled to take annual leave during ordinary paternity leave but, subject to employers' holiday procedures, can apply to take a period of annual leave immediately before or after ordinary paternity leave.

## 7.4.7 Parental leave immediately before or after ordinary paternity leave

Please see [7.3.4 Application for leave](#) above for further details of how an employee can take parental leave immediately after a period of statutory paternity leave.

## 7.4.8 Ordinary paternity leave when a child is placed for adoption

### 7.4.8.1 Eligibility

7.4.8.1.1 Eligible employees can take up to 2 weeks' paid ordinary paternity leave following the placement of a child for adoption. To qualify for ordinary paternity leave in these circumstances the employee must:

- › either be married to, or the partner of the adopter;
- › have or expect to have main responsibility for the child's upbringing, with the adopter;
- › have been continuously employed for at least 26 weeks ending with the week in which the adopter is notified of having been matched with the child. The week in question starts on a Sunday and ends on a Saturday;
- › continue to work from the week in which the adopter is notified of having been matched with a child up to the date of placement;
- › notify the employer of when he wants to take ordinary paternity leave no later than 7 days after the adopter is notified that they have been matched with a child; and
- › be taking time off either to support the adopter, or to care for the child, or both.

7.4.8.1.2 In addition, to qualify for Statutory Paternity Pay they must:

- › either be married to, in a civil partnership with, or be the partner of, the child's adopter;
- › notify their employer of when they want to receive SPP at least 28 days before the date they want payment to begin, or as soon as reasonably practicable; and
- › have average weekly earnings at or above the lower earnings limited for National Insurance which applied at the end of the matching week.

#### **7.4.8.2 Period of ordinary paternity leave and pay**

Ordinary paternity leave and SPP can begin any time from the date of the child's placement with the adopter, but must be taken within 56 days of this date.

Employees can choose to begin ordinary paternity leave and SPP on:

- › the date on which the child is placed with the adopter, even if this is earlier or later than the expected date of placement; or
- › a predetermined date after the date of placement; or
- › a date following a specified number of days after the expected date of placement.

#### **7.4.8.3 Notification of intention to take ordinary paternity leave and claim SPP**

7.4.8.3.1 Employees must confirm that they intend to take ordinary paternity leave no later than 7 days after the day the adopter is notified of having been matched with the child or as soon as is reasonably practicable.

7.4.8.3.2 They must give the employers at least 28 days' notice of the date on which they want SPP to start, or as soon as is reasonably practicable.

7.4.8.3.3 When employees change their mind about when they want their leave to start, they must give at least 28 days' notice before the new start date.

7.4.8.3.4 If the date of placement changes before they begin ordinary paternity leave, they must give appropriate notice to change the start date as outlined above.

7.4.8.3.5 They must tell the employer the date on which the child is expected to be placed for adoption and the date on which the adopter was notified of being matched for adoption.

#### **7.4.9 Additional paternity leave**

7.4.9.1 Since 5 April 2015 the entitlement to Additional Paternity Leave has been replaced by Shared Parental Leave. See [7.6 Shared parental leave](#) for further details.

#### **7.4.10 Dismissal and detriment**

7.4.10.1 A dismissal will be unfair if the reason or principal reason relates to employees taking, agreeing to take, or refusing to take paternity leave. An employee must raise the claim within three months of the dismissal.

7.4.10.2 It is unlawful for employers to subject employees to any detriment (for example, removal of discretionary bonus whilst other employees received a bonus), by any act or any deliberate failure to act because employees took or sought to take paternity leave. Employees should raise such a claim, in broad terms, within three months of the act or failure complained of. In cases where employees complain that they have been subjected to a series of acts or omissions, they can raise a complaint, in broad terms, within three months of the last act or omission.

## 7.5 Adoption leave

### 7.5.1 General

7.5.1.1 Employees have certain statutory rights in relation to adopted children placed with adoptive parents on or after 6 April 2003. There are certain 'adoption' terms with which employers should familiarise themselves:

› **Adopter**

A person who has been matched with a child for adoption or, if the couple have been matched jointly, the member of the couple who has chosen to take adoption leave and/or Statutory Adoption Pay ('SAP');

› **Matched/Matching**

This is when an adoption agency decides that the person would be a suitable adoptive parent for the child, either individually or with another person;

› **Notification of Matching**

The process of a person being informed of having been matched with a child for adoption by the adoption agency;

› **Matching Certificate**

A document issued to the Adopter by the Adoption Agency confirming details of the adoption;

› **Placement**

A child is placed for adoption when the child goes to live with the Adopter or Adopters with a view to being adopted by them in the future.

### 7.5.2 Time off for adoption appointments

An employee who has received notification of an adoption has a right to take time off during working hours for pre-adoption appointments as detailed below i.e. they do not require length of service to obtain the right.

There are two types of time off that an employee may take, that being paid or unpaid. The employee must elect which one they will be taking. This will determine whether they or their partner will be able to take paternity leave. Taking paid time off for appointments will prevent that employee from taking paternity leave as they will be the "adopter" and entitled to take adoption leave.

To take paid time off the employee must elect to do so. The entitlement is to attend up to 5 appointments that have been arranged by the adoption agency. The employer is entitled to request a document from the employee showing the date and time of the appointment and that it has been arranged by the adoption agency prior to permitting attendance. Time off can be up to 6.5 hours per appointment. Employees are entitled to receive their normal pay for time spent attending such appointments.

The employee who is not the "adopter" has the right to take unpaid time off. The entitlement is to attend up to two appointments that have been arranged by the adoption agency. The employer is entitled to request a document from the employee showing the date and time of the appointment and that it has been arranged by the adoption agency prior to permitting attendance. Time off can be up to 6.5 hours per appointment.

Employers can refuse time off for adoption appointments. However, if the refusal is unreasonable the employee can bring a claim to the employment tribunal. A claim can also be raised if an employer does not pay for time off where pay is due to an adopter.

Agency workers who have completed the 12 weeks' qualifying period are entitled to similar rights to time off for adoption appointments as employees (see [2.9 Agency workers](#)).

### 7.5.3 Duration

Eligible employees are entitled to 52 weeks' adoption leave. This is made up of 26 weeks' Ordinary Adoption Leave (OAL) and 26 weeks' Additional Adoption Leave (AAL). Statutory Adoption Pay (SAP) is paid for a maximum of 39 weeks. Although the leave may continue for up to another 13 weeks, this period of leave is unpaid. With the introduction of the shared parental leave regime with effect from 5 April 2015, subject to certain eligibility and notification requirements, an employee can choose to shorten their adoption leave and pay period to enable themselves or their partner to take shared parental leave and receive shared parental pay. An employee who is eligible and elects to take shared parental leave is likely to have their entitlement to adoption leave and pay reduced. For more information on shared parental leave see [7.6.1 General](#).



#### 7.5.4 Eligibility

From 5 April 2015, an employee's right to adoption leave is a day one right, i.e. there is no requirement of 26 weeks prior service with the employer to be eligible. To qualify for adoption leave employees must:

- › either have been newly matched to a child by an adoption agency i.e. not, for example, where a step-parent is adopting a partner's child, have been matched with a child through "fostering to adopt" or have entered a surrogacy arrangement with a woman, and have been granted, or intend to apply for, a parental order in relation to the child that she bears;
- › have confirmed with the adoption agency that they agree that the child should be placed with them on the date of placement; and
- › where they are adopting jointly as part of a couple, only one or the other of the Adopters will be entitled to adoption leave. The other (male or female) may be entitled to paternity leave and/or shared parental leave

#### 7.5.5 Ordinary Adoption Leave (OAL)

Employees who meet the above criteria are entitled to 26 consecutive weeks' OAL. They can only take one period of OAL, regardless of how many children are placed at one time.

#### 7.5.6 Additional Adoption Leave (AAL)

Employees who qualify for OAL also qualify for AAL. The entitlement to AAL is limited to:

- › up to 26 consecutive weeks' AAL immediately after OAL (i.e. OAL and AAL run back to back with no break in between); and
- › one period of AAL regardless of how many children are placed at any one time.

#### 7.5.7 The contract of employment during adoption leave (OAL and AAL)

7.5.7.1 Employees' contracts continue throughout adoption leave. They have a statutory right to continue to benefit from terms and conditions of employment, except for in relation to 'remuneration' (7.2.7.5). Adoption leave counts towards the period of continuous employment.

7.5.7.2 Annual leave accrues in the same way and at the same rate as if employees were at work. This includes statutory and contractual entitlement to annual leave. Where employees have a contractual right to public/bank holidays, these will also accrue during adoption leave.

7.5.7.3 Employees cannot take annual leave during adoption leave. As a result, employees must be allowed to take their accrued holidays (including public/bank holidays) at another time. It is common for employers to allow employees to take such accrued holidays immediately before or after their adoption leave, however, the timing of the holidays is normally a matter for agreement between employees and employers. An employee may be precluded from carrying over holidays into a subsequent leave year if the employee had the opportunity to take the leave in the previous year but did not take the leave.

7.5.7.4 For employees who are members of any service related benefit schemes, for example, an occupational pension scheme, they will continue to accrue rights and benefits under such schemes. Any benefits and employer contributions will be calculated as if the employee had been working normally and receiving the normal rate of pay. Contributions payable by employees will be calculated by reference to the pay they actually receive.

#### 7.5.8 Start date of adoption leave

7.5.8.1 Employees may choose to commence their adoption leave:

- › on the date of the placement of the child; or
- › some other fixed date during the 14 days before the expected date of the placement of the child.

7.5.8.2 The start date can be any day of the week. Leave must start no later than the expected date of placement.

7.5.8.3 Employees can change their start date by giving 28 days' advance notice, provided this does not conflict with the employer's arrangements for dealing with the employee's absence.

## 7.5.9 Notice for adoption leave and adoption pay

7.5.9.1 Employees must give written notice of:

- › their intention to take adoption leave within 7 days of being notified of having been matched with a child;
- › the expected placement date;
- › the start date of the adoption leave; and
- › for Statutory Adoption Pay purposes:
  - › written notice of the date they wish to receive Statutory Adoption Pay (notice of this must be given at least 28 days before they want payment to begin); and
  - › a copy of a Matching Certificate from the adoption agency.

7.5.9.2 Employees may apply for an extension of time for notification where it is not reasonably practicable to comply with the 7 day or 28 day time limits. Employers may ask employees to provide a Matching Certificate from the adoption agency as evidence of their entitlement to adoption leave.

## 7.5.10 Statutory Adoption Pay (SAP)

7.5.10.1 Employees who meet the qualifying conditions for adoption leave and give notice as detailed above will also qualify for Statutory Adoption Pay (SAP), provided they earn no less than the lower earnings limit for the purposes of Class 1 National Insurance Contributions at the end of the matching week.

7.5.10.2 Employees are entitled to SAP for 39 weeks of their adoption leave. The first six weeks of SAP are paid at 90% of employees' normal average weekly earnings. The remaining weeks are paid at the lesser of the SAP current standard rate and 90% of the employees' average weekly earnings. The current rate of SAP is £151.20. The SAP rate is reviewed annually with effect from April in each year.

## 7.5.11 Return to work

7.5.11.1 Employers should write to employees within 28 days of receiving the employee's notice, acknowledging receipt of the notice, setting out the date on which the adoption leave expires and when they are expected to return to work. There is no need for employees to give any further notice of intention to return to work.

7.5.11.2 However, when an employee intends to return before the adoption leave ends, he or she must give eight weeks' notice of the new return date.

7.5.11.3 OAL or AAL will end prematurely if there is a disrupted placement, for example, the child is returned to the adoption agency. In these circumstances employees can continue the adoption leave for a further 8 weeks, provided that it does not go beyond the date the leave would have ended if the placement had not been disrupted.

### 7.5.11.4 Return to work after OAL

Employees are entitled to return from OAL to the same job in which they were employed before their absence.

### 7.5.11.5 Return to work after AAL

7.5.11.5.1 Employees are entitled to return from AAL to work on the same terms and conditions as if they had not been absent. If that is not reasonably practicable they should return to work to a job which is both suitable and appropriate and on their existing terms and conditions.

7.5.11.5.2 Some employees may not wish to return to work after adoption leave. In these circumstances they must give proper notice of termination of employment to the employer in accordance with the employment contract.

## 7.5.12 Keeping in Touch days

Employees may, with their employer's agreement, work for up to 10 days during their adoption leave without bringing their adoption leave to an end or affecting the right to SAP. These are called 'Keeping In Touch' (KIT) days. For further details on KIT days see [7.2.10 Keeping in Touch days](#).

## 7.5.13 Dismissal and detriment

7.5.13.1 A dismissal will be unfair if the reason or principal reason relates to the employee taking, agreeing to take or refusing to take adoption leave.

- 7.5.13.2 Under the Paternity and Adoption Leave Regulations 2002, it is unlawful for employers to subject an employee to any detriment by any act, or any deliberate failure to act, because:
- › the employee took or sought to take adoption leave;
  - › an employer believed that the employee was likely to take adoption leave;
  - › the employee undertook, considered, undertaking or refused to undertake work; or
  - › the employee failed to return after a period of additional adoption leave in a case where:
    - › the employer did not notify the employee as required or otherwise of the date on which the leave ended and the employee reasonably believed that the period had not ended; or
    - › the employer gave the employee less than 28 days' notice of the date on which the leave would end, and it was not reasonably practicable for the employee to return on that date.
- 7.5.13.3 Employees are entitled to raise an unfair dismissal claim within three months of the dismissal.
- 7.5.13.4 They may also claim that they have been subject to a detriment, for example, overlooked for promotion, and should raise, in broad terms, such a claim within three months of the act or failure complained of. In cases where employees complain that they have been subjected to a series of acts or failures, they can raise a complaint, in broad terms, within three months of the last act or failure.

## 7.6 Shared parental leave

### 7.6.1 General

Shared parental leave is an entitlement to take leave that applies to all employees with an expected week of childbirth or date of placement for adoption on or after April 5, 2015. The entitlement was introduced by the Shared Parental Leave Regulations 2014 in order to provide parents with greater flexibility for taking leave during their first year with their child.

7.6.1.1 Those employees who satisfy the eligibility criteria will be able to take up to 50 weeks shared parental leave minus any maternity or adoption leave already used (excluding the first 2 weeks of maternity (or 4 weeks in the case of a female factory worker) or adoption leave). During this period they may also be entitled to receive statutory shared parental pay. Eligible parents may be off work simultaneously or at the separate times and can each take up to 3 separate blocks (or potentially more with employer consent) of leave. Importantly, for shared parental leave entitlement to be available a mother or primary adopter must choose to curtail their maternity or adoption leave so that the remaining weeks can be allocated for shared parental leave. Shared parental leave replaces the right to additional paternity leave.

7.6.1.2 The right to take shared parental leave is also available to employees who have entered a surrogacy arrangement with a woman, and have been granted, or intend to apply for, a parental order in relation to the child that she bears.

### 7.6.2 Eligibility

In order to be eligible to take shared parental leave and receive shared parental pay, an employee must meet certain requirements:- (i) the mother or primary adopter and co-parent (mother's civil partner/spouse or the child's father) must both have the main responsibility for caring for the child, be that a newly born child or a newly placed child to adoptive parents; (ii) the mother or primary adopter must choose to curtail their maternity or adoption leave. This can be done by returning to work or by serving a curtailment notice on their employer.

7.6.2.1 For the mother or primary adopter to qualify for shared parental leave they must:

- › Have been employed for at least 26 weeks immediately preceding either the 15th week prior to the expected week of birth or the week prior to notification of a match for adoption;
- › Still be working for the employer the week preceding the start of any period of SPL;
- › Be entitled to take maternity/adoption leave; and
- › The co-parent also satisfies certain conditions.

7.6.2.2 For the co-parent to qualify for shared parental leave they must:

- › Have been employed for at least 26 weeks immediately preceding either the 15th week prior to the expected week of birth or the week prior to notification of a match for adoption;
- › Still be working for the employer the week preceding the start of any period of SPL;
- › Share the primary care for the child with mother or primary adopter at the time of the child's birth/adoption;
- › Mother or primary adopter have worked on a self/employed basis for 26 of the last 66 weeks and have average weekly earnings of £30 in 13 of those weeks; and
- › Mother or primary adopter has curtailed maternity/adoption leave.

## 7.6.3 The period of leave

### 7.6.3.1 Length of shared parental leave

Eligible employees may take up to 50 weeks shared parental leave between themselves and the co-parent, subject to both parents meeting the specified conditions. The maximum period of leave will be determined by the amount of weeks remaining following the mother or primary adopter's curtailment of their maternity or adoption leave.

### 7.6.3.2 Continuous and discontinuous periods of leave

Employees with an entitlement to shared parental leave may request to take leave in one continuous block or in discontinuous blocks. There is no restriction on the pattern of leave requested for discontinuous blocks, subject to any block requested being a minimum of one week in length. Both parents may choose to take leave at the same time.

If requesting a period of continuous leave then the employee will be entitled to take shared parental leave for the weeks requested and dates provided. However, if requesting periods of discontinuous leave a 14-day consultation period with the employer is automatically triggered. The employer can:

- › consent to the periods of leave requested;
- › propose alternative dates for the periods of leave; or
- › refuse the periods of leave requested without proposing alternative dates.

Where no agreement is reached on the proposed leave, the employee is entitled to take the requested number of weeks as a continuous period of shared parental leave which commences either on a date of the employee's choosing at least 8 weeks after the notice is given or, at the start of the first block of leave.

### 7.6.3.3 Commencement of shared parental leave

Shared parental leave cannot have effect during a mother's period of compulsory maternity leave (see [7.2.7.3 Compulsory maternity leave](#)). The same restriction applies to the first two weeks of adoption leave. Shared parental leave can be taken at any time during the 50 week period after this time.

### 7.6.3.4 Period during which shared parental leave must be taken

Shared parental leave must be taken within the first year of the birth or the date that the child was placed with the parents.

### 7.6.3.5 Notification of intention to take

Employees must inform their employers that they intend to take shared parental leave at least 8 weeks before the proposed date of commencement of leave. This is done by serving of curtailment notices, notices of entitlement and period of leave notices on the employer. An employee may submit the notices together or individually.

### 7.6.3.6 Curtailment notice

To be entitled to shared parental leave, the mother or primary adopter must have served a curtailment notice (or have returned to work). The notice must be in writing and state the date that maternity/adoption leave is to end. The date of curtailment must be after the first two weeks of maternity/adoption leave.

### 7.6.3.7 Notice of entitlement

The employee requesting leave must serve on their employer a notice of entitlement, which requires to state:

- › The names of the parents;
- › The co-parent's address, and national insurance number;
- › A declaration that both parents meet the specified conditions, that the information provided is accurate and that the employer may process all information provided;
- › Total amount of shared parental leave available at that point;
- › The expected week of birth/date of placement for adoption;
- › Proposed start and end dates of leave; and
- › How the leave will be shared.

The proposed period(s) of shared parental leave in a notice of entitlement are non-binding. An employee may vary their notice of entitlement an unlimited number of times.

### 7.6.3.8 Period of leave notice

The employee must also serve on their employer a period of leave notice, which sets out the start and end dates of each period of shared parental leave requested in that notice. There is a statutory limit of three period of leave notices that an employee may submit, though an employer has discretion to allow more. An employer may also request for the period of leave notice to state whether the employee is seeking statutory shared parental pay (see [7.6.5 Shared parental leave pay](#)).

An employee can seek to vary the period leave by providing written notice of variation even after the period of shared parental leave has been agreed. This done by submitting a period of leave notice and allows the employee to do one of the following:

- › vary the start date or the end date of any period of shared parental leave provided that the notice is given not less than eight weeks before both the date varied and the new date;
- › request that a single period of leave become discontinuous periods of leave or vice versa;
- › vary (including cancel) the amount of leave requested provided that the notice is given not less than eight weeks before any period of leave varied by the notice is due to commence.

### 7.6.3.9 Concurrent leave

An eligible employee can take shared parental leave at the same time as the other parent or adopter may be on a period of shared parental leave, maternity leave or paternity leave, subject to the necessary notice requirements being provided. If both parents/adopters are taking shared parental leave during the same week, then this will count as 2 weeks of the available leave entitlement remaining.

## 7.6.4 Contracts of employment during shared parental leave

7.6.4.1 Contracts of employment continue throughout periods of shared parental leave and employees are entitled to all the same terms and conditions of employment which would have applied had they not been on leave. The main exception is that 'remuneration' (wages and salary) is not covered and therefore, employees are not entitled to be paid their usual remuneration during shared parental leave. For further information on what counts as remuneration see [paragraph 7.2.7.5.2](#).

7.6.4.2 Employees continue to be employed during periods of shared parental leave. Shared parental leave counts towards their period of continuous service.

7.6.4.3 Annual leave accrues throughout both shared parental leave in the same way and at the same rate as if the employee was at work. This includes statutory and contractual entitlement to annual leave. Where employees have a contractual right to public/bank holidays, these will also accrue during shared parental leave. The holidays cannot be taken during shared parental leave and should be allowed to be taken before or after shared parental leave. Holidays should be taken in the appropriate holiday year and there should be no payment in lieu of statutory holiday entitlement.

7.6.4.4 Contributions to any occupational pension scheme should continue during shared parental leave, with the amount being based on the amount of statutory or contractual shared parental pay being made but the employer contributes as though the employee was working normally.

## 7.6.5 Shared parental leave pay

### 7.6.5.1 Statutory shared parental pay

#### The right

Any employee who has been continuously employed by their employer for at least 26 weeks as at the 15th week before the expected week of birth/the week prior to notification of a match for adoption is entitled to statutory shared parental pay (ShPP). ShPP is due and payable from the day that shared parental leave starts. ShPP will be available for the remaining entitlement of maternity or adoption leave following the mother or primary adopter's curtailment of such leave, up to maximum of 37 weeks.

### 7.6.5.2 Notice required for ShPP

An employee must inform their employer of that they are seeking to receive ShPP at least 8 weeks prior to commencement of the period of leave. ShPP cannot be paid prior to that date or during maternity or adoption leave.

### 7.6.5.3 The rate of ShPP

The rate for ShPP is either the statutory rate of £151.20 a week or 90 per cent of normal weekly earnings, whichever is the lower. The ShPP rate is reviewed annually with effect from April each year.

### 7.6.5.4 Enhanced schemes

The Department for Business, Innovation and Skills states in guidance that offering enhanced shared parental pay schemes to mothers and co-parents will be at the sole discretion of the employer.

If enhanced shared parental pay is paid to mothers then it must also be paid to co-parents. However, employers who offer enhanced maternity pay but not enhanced shared parental pay will, according to recent case law, not be committing an act of sex discrimination. This is because maternity leave is to protect the birth mother for matters exclusive to pregnancy and childbirth is not shared by the husband or partner. For more information on sex discrimination see [6.4.7 Sex](#).

## 7.6.6 Keeping in Touch days

7.6.6.1 Employees may, with their employer's agreement, work for up to 20 days during their shared parental leave without bringing the leave period to an end or affecting their right to ShPP. These days are in addition to the "keeping in touch days" for maternity or adoption leave. For further information on Keeping in Touch days see [7.2.10 Keeping in Touch days](#).

## 7.6.7 Return to work after shared parental leave

- 7.6.7.1 There is no requirement for notice of return to be given by the employee, although this is advisable. Should the employee wish to return to work before their full entitlement to shared parental leave has expired, they will be required to submit a notice of variation to their employer at least eight weeks prior of the return date (see [7.6.3.7 Notice of entitlement](#)).
- 7.6.7.2 Employees returning from shared parental leave totalling 26 weeks or less are entitled to return to their old job on the same terms and conditions as if they had not been absent, unless a redundancy situation has arisen. Employers should seek advice from Scottish Engineering if a redundancy situation has arisen.
- 7.6.7.3 Employees returning from shared parental leave totalling more than 26 weeks have the right to return to their old job, or, if it is not reasonably practicable, to another job suitable for them on terms no less favourable than those which would have applied had there been no shared parental leave.

## 7.6.8 Unfair dismissal and protection from detriment

- 7.6.8.1 Under the Employment Rights Act 1996 and the Shared Parental Leave Regulations 2014 any dismissal will be automatically unfair where the employee was dismissed because they took, sought to take or made use of the benefit of shared parental leave. Such dismissals include redundancy if the fact that the employee took, sought to take, or made use of the benefit of shared parental leave was connected with the reason for redundancy selection.
- 7.6.8.2 An employee will also be protected from detriment due to any act, or any deliberate failure to act, by an employer because the employee took, sought to take, or made use of the benefit of shared parental leave.

## 7.6.9 Further information

The Department for Business, Innovation and Skills has published detailed guidance titled "*Shared parental leave and pay: employers' technical guide*" which can be accessed via the [gov.uk website](http://gov.uk).

## 7.7 Flexible working

### 7.7.1 General

- 7.7.1.1 Prior to 30 June 2014, parents, including adopters, guardians and foster parents of children aged 16 or under, or of disabled children aged 18 or under, had the right to request a change to their working arrangements.
- 7.7.1.2 In addition, employees who are, or expect to be, caring for:
- › a relative;
  - › a spouse, partner or civil partner; or
  - › a person living with them (not a lodger or live-in employee) who is aged 18 or over who is in need of care also have the right to request flexible working arrangements.
- 7.7.1.3 From 30 June 2014, any employee with 26 weeks' continuous service may make a flexible working request.
- 7.7.1.4 Eligible employees may request any of the following (the list is not exhaustive):
- › a change in working hours;
  - › to work from home;
  - › job sharing;
  - › working term-time only;
  - › working part-time;
  - › shifts.
- 7.7.1.5 It is not an automatic right to work flexibly as there may be circumstances when employers are unable to accommodate the change requested (please see [7.6.5 Shared parental leave pay](#)).
- 7.7.1.6 Employees can only make one application in any rolling 12-month period.

### 7.7.2 How employees should apply?

The application must:

- › be in writing;
  - › specify the date of the application;
  - › specify the change(s) applied for;
  - › specify the date on which the employee would like the change to take effect; and
  - › explain what effect, if any, they believe the change would have on the employer's business and how any such effect can be dealt with.
- › That this is a statutory request and if they have made a previous application for flexible working and the date of that application;

Employers should, but are not obliged to, provide guidance on what information an application must contain.

### 7.7.3 Meeting

- 7.7.3.1 Following the introduction of the right to request flexible working for all qualifying employees, employers should try to set up a meeting with the employee in a timely manner, as all requests need to be considered within 3 months of receipt of the request. This includes any process of appeal.
- 7.7.3.2 If an employee is unable to attend the meeting, the date should be rearranged.
- 7.7.3.3 Following the changes in June 2014, employees no longer have the right to be accompanied at any meeting or discussion regarding their flexible working request. Nonetheless, it is good practice to allow them to be accompanied. Employers should refer to the ACAS Code of Practice and ACAS Guide on Flexible Working available at their website [www.acas.org.uk](http://www.acas.org.uk).

#### Deciding on a request

Employers should carefully consider any requests made and weigh up the benefits and drawbacks to their business before making a decision. Employers are still entitled to refuse a request on the same grounds as before the changes were brought in.

#### 7.7.4 Grounds for refusal

- 7.7.4.1 Employers can refuse an application for flexible working if they consider that one or more of the following grounds apply:
- › there will be a burden of additional costs;
  - › it will have a detrimental effect on ability to meet customer demand;
  - › the employer is unable to re-organise work among existing staff;
  - › the employer is unable to recruit additional staff;
  - › it will have a detrimental impact on quality;
  - › it will have a detrimental impact on performance;
  - › there is insufficient work during the period the employee proposes to work;
  - › there are planned structural changes; or
  - › on any other grounds as the Secretary of State may specify.
- 7.7.4.2 Employers are not, therefore, obliged to agree to any request if any of the above grounds apply. Despite this, employers must still act reasonably and it would be advisable to take legal advice from Scottish Engineering before declining any flexible working request.

#### 7.7.5 Notification of outcome

- 7.7.5.1 If an application is accepted, employers should confirm the acceptance, specify the change to the employee's terms and conditions of employment and the date it will become effective.
- 7.7.5.2 If the application is unsuccessful, employers should confirm their decision in writing and specify which of the grounds for refusal apply (see [7.6.5 Shared parental leave pay](#)). The notice of the decision should also contain a sufficient explanation of why those grounds apply. It should also confirm the employee has a right of appeal and specify the relevant appeal procedures.

#### 7.7.6 Appeal process

- 7.7.6.1 Following the changes in June 2014, employees no longer have the right to appeal any decision regarding their flexible working request. Nonetheless it is good practice to allow an employee to appeal a refusal to work flexibly. It is also good practice to allow an employee to be accompanied at any appeal meeting. Employees should be aware that any appeal must be concluded within 3 months from the receipt of the original request, unless an extension is agreed with the employee

#### 7.7.7 Notification of appeal outcome

- 7.7.7.1 If an appeal is successful, the employer should notify the employee in writing of the changes to the contract of employment and the date the changes will take effect.
- 7.7.7.2 If an appeal is unsuccessful, the employer should confirm this in writing and provide an explanation of the grounds for rejecting the application.

#### 7.7.8 Extension of timescales

- 7.7.8.1 The timescales referred to in this section can be extended by mutual agreement. Any such agreement should be recorded in writing by the employer and should:
- › specify what period the extension relates to;
  - › specify the date on which the extension is to end;
  - › be dated; and
  - › be sent to the employee.
- 7.7.8.2 Employees may raise a tribunal claim if the employer has failed to comply with its duties to consider the request reasonably or if the decision made to reject the application was based on incorrect facts. Any such claim must be raised, in broad terms, within three months of either the date the employer notified the employee of the appeal decision or the date on which the alleged breach of the duty was committed.

A tribunal may award up to 8 weeks' pay subject to the statutory cap on a week's pay.

#### 7.7.9 Implications of flexible working

An accepted application is a permanent contractual variation. The agreed terms form part of the employees' contract of employment and cannot be changed unless both parties agree. Employees will not automatically revert back to their previous terms and conditions of employment should they subsequently decide that they no longer wish to work in the flexible pattern requested and granted.



### 7.7.10 Dismissal and detriment

- 7.7.10.1 Any dismissal because, or principally because, an employee has made or proposes to make an application for flexible working is unfair. Similarly, an employee has the right not to be subjected to any detriment because he or she has made or proposes to make an application for flexible working.
- 7.7.10.2 There is no qualifying period of continuous service required for employees to raise an unfair dismissal claim if the dismissal was because a flexible working request was made.

## 7.8 Time off for dependants

### 7.8.1 Parental Bereavement (Leave and Pay) Act 2018

The Government has passed legislation to provide a statutory right for bereaved parents to be entitled to take a period of up to 2 weeks' paid leave. The right will be available to employees who suffer the loss of a child under the age of 18, including instances of still birth where pregnancy has reached 24 weeks. The period of leave would have to be taken within 56 days of the death of the child. The right to leave is a "day one" right without the need for a period of qualifying service.

If the employee has 26 weeks or more service then they may be entitled to receive statutory parental bereavement pay for the period of leave taken. This will be paid at the same statutory rate as applies to SMP, SAP, etc (currently £151.20), or 90% of average earnings, whichever is the lower.

Employees will be protected from detriment or dismissal if they took, sought to take or availed themselves of the benefits of parental bereavement leave.

The right has been available since 6 April 2020.

### 7.8.2 The right to time off

- 7.8.2.1 Employees have the right to take a reasonable amount of unpaid time off work to deal with certain unexpected events or emergencies involving a dependant.
- 7.8.2.2 7.8.1.2 A dependant includes an employee's husband, wife or civil partner, child, parent, or someone who lives in the employee's household as a member of the family. In certain cases the definition of a dependant also extends to someone who reasonably relies on an employee for assistance or for making arrangements for the provision of care.

### 7.8.3 What constitutes an unexpected event or emergency?

7.8.3.1 An unexpected event or emergency includes a situation where a dependant falls ill, gives birth, is injured, assaulted or dies. It also includes the unexpected breakdown of care arrangements for a dependant or to deal with an unexpected incident involving a child whilst at school. These are considered in more detail below.

#### 7.8.3.2 Illness of a dependant

The illness can be physical or mental and does not need to be serious or life threatening. It also includes the unexpected deterioration of the health of a dependant who was previously ill but who did not require care during working hours. In these circumstances, employees have the right to time off to provide immediate care and, if necessary, to make arrangements for long-term care. In the case of illness, a dependant also includes someone who reasonably relies on the employee for assistance or to make arrangements for the provision of care in the event that they fall ill.

#### 7.8.3.3 A dependant is injured or assaulted

The injury does not have to be serious and can be a physical or mental injury, for example, where someone has been robbed and is extremely upset. In the case of injury or assault, a dependant also includes someone who reasonably relies on employees for assistance when they are injured or assaulted or to make arrangements for the provision of care in the event of injury.

#### 7.8.3.4 A dependant gives birth

This right does not only apply to an expectant father but extends to any dependant of the employee who is giving or has just given birth. The right does not apply to time off to care for the child after the birth but this may be covered by paternity or parental leave. See [7.3 Parental leave](#) and [7.4 Paternity leave](#).

#### 7.8.3.5 Death of a dependant

Following the death of a dependant, employees have the right to time off to make funeral arrangements and to attend the funeral.

#### 7.8.3.6 Unexpected breakdown of care arrangements

This covers matters such as a child minder cancelling at short-notice or a nursery or care home closing unexpectedly. In these circumstances, a dependant also includes someone who reasonably relies on an employee to make arrangements for the provision of care.

#### 7.8.3.7 Unexpected incident involving the employee's children whilst at school

This deals with situations such as when a child is suspended from school. It would also cover the child being injured or ill, which is also covered by the right to time off for illness or injury.

### 7.8.4 Duty to inform the employers

To qualify for the right to time off, employees must tell employers the reason for the absence as soon as reasonably practicable after the need arises and state how long they expect to be absent.

### 7.8.5 When the right does not apply

#### 7.8.5.1 Non-dependants

7.8.6 The right to time off only applies to situations involving a dependant. 'Dependant' does not include:

- › someone living in an employee's house as a boarder, tenant, or lodger;
- › someone living in an employee's house as an employee, such as a live-in housekeeper;
- › a family friend unless that person reasonably relies on the employee as discussed at [section 7.7.1.2](#) above; nor
- › a pet.

#### 7.8.6.1 Non-emergencies and foreseeable situations

The right to time off applies to unexpected situations involving dependants. It does not therefore include foreseeable events. If an employee knows in advance that his or her child's school is due to close, for example on a bank holiday, then he or she should make the necessary care arrangements in advance. Similarly, if a dependant is due to go into hospital for a routine operation there is no right to take time off. It does not include time off for domestic incidents such as a burst water pipe.

### 7.8.7 What if no right to time off exists?

If employees do not have a statutory right, employers can still agree to them having time off. This may take the form of paid or unpaid time off, or a holiday and is entirely at an employer's discretion. When employers exercise their discretion they should confirm the arrangements in writing and that the arrangements only apply to that particular situation. It is not possible to exclude the right to time off for dependants, even if the employee agrees.

### 7.8.8 Paid time off?

There is no statutory right to paid time off for dependants, however, employees' contracts of employment may provide more favourable rights, for example, paid time off after bereavement. Whilst employers would always be best advised to have a clear written policy in place, this may be implied through custom and practice.

For further information on implied contractual terms see [2.5 Implied terms](#).

If there is a contractual right to paid time off for dependants, employers should ensure that this is applied equally to all employees and the right does not operate in a discriminatory manner. For further information on discrimination see [Equal opportunities](#).

## 7.9 Time off for jury service

7.9.1 Employees called up for jury service must be allowed time off work to perform this duty. Employers who refuse to permit employees to attend jury service may be in contempt of court and could therefore face criminal charges.

7.9.2 Employees should not be dismissed or treated unfairly as a result of being called up for jury service. A dismissal for this reason is automatically unfair. In addition, employees do not need a minimum period of continuous employment to claim unfair dismissal.

### 7.9.3 Deferring jury service

7.9.3.1 Employees have a right to ask for jury service to be deferred for up to 12 months from the date first notified. Therefore, if employees are called for Jury Service at a particularly busy or otherwise inconvenient time for the business, employers can request that employees ask for the jury service to be deferred. Employers may also make submissions to the court, however, there is no guarantee that the court will take these into account.

7.9.3.2 As previously mentioned, employees have the right not to be dismissed for taking time off for jury service. If, however, the employee has been informed that his or her absence on jury service will cause substantial loss to the employer's business and the employee unreasonably refuses to apply for the jury service to be deferred, he or she is not protected against dismissal. The employer would still have to follow appropriate procedures and rules in order to avoid a claim for unfair dismissal. For further information see [11.0 Disciplinary and grievance](#) and [12.0 Dismissal - fair or unfair](#).

### 7.9.4 Paid time off?

Whilst employees have the right to time off for jury service, there is no right to paid time off, unless the contract of employment provides for this. Employees can, however, claim for travel, subsistence expenses and loss of earnings from the court. Employers will need to fill out a Certificate of Loss of Earnings to allow the employees to make a claim. Limits are placed on the loss of earnings that can be claimed. There may be a shortfall in the employee's wages during the period of jury service. There is no obligation on employers to make employees' wages up to their normal amount unless the contract of employment provides for this.

## 7.10 Time off for public duties

7.10.1 Employees have the right to time off for various public duties and services.

The exact right to time off will depend on the type of duty or service and also what work employees do. Employees have the right to time off work for public duties if they are:

- › a Justice of the Peace (a Magistrate in England and Wales);
- › a local Councillor;
- › a School Governor;
- › a member of a police authority;
- › a member of any statutory tribunal (e.g. an Employment Tribunal or Children's Panel);
- › a member of the managing or governing body of an educational establishment;
- › a member of a school council or board in Scotland;
- › a member of the General Teaching Councils for England and Wales;
- › a member of a NHS Trust or Health Board;
- › a member of the Scottish Environment Protection Agency (or the Environment Agency in England and Wales);
- › a member of the Prison Visiting Committee (or the Prison Independent Monitoring Boards in England and Wales); or
- › a member of Scottish Water or a Water Customer Consultation Panel.

7.10.2 Employers should note that the right to time off for public duties only applies to employees.

### 7.10.3 The right to reasonable time off

Employees who are required to carry out public duties are entitled to 'reasonable' time off in order to attend meetings and to carry out duties. Employees must agree the time off with employers in advance and employers can refuse to allow the time off if it believes that the request is unreasonable. There is no minimum or maximum amount of time off which is defined as being 'reasonable'. What is reasonable will depend on a number of factors including:

- › the nature of the public duties;
- › how much time employees need to carry out the duties;
- › what effect the time off will have on the running of the employers' business; and
- › how much time employees have already taken off for public duties.

### 7.10.4 Paid time off?

Whilst employees have a right to reasonable time off there is no right to payment. Whether employees are entitled to payment is down to the contract of employment and is otherwise at the employers' discretion.

## 7.11 Reserve Forces duty

7.11.1 Where an employee joins one of the Reserve Forces (the Regular or Army Reserves, Royal Naval Reserve, Royal Marines Reserve or Royal Auxiliary Air Force), they may be mobilised at any time to be used on full-time operations, as well as be expected to attend regular training. As a member of the reserves an employee will have certain employment rights.

### 7.11.2 Leave for training

Employers are under no obligation to offer paid or unpaid leave to reservist employees. Employees may be expected to use their existing holiday entitlement or seek the agreement of their employer for unpaid leave.

### 7.11.3 Mobilisation

When a reservist is to be mobilised, the employer receives written notice from the MoD, together with an explanation of their rights and obligations. The employer has the right to seek an exemption for their employee from the mobilisation or a revocation or deferral of the mobilisation if their absence would cause harm to the business. This includes financial harm, impairment to the ability to produce goods and services. The application for exemption, deferral or revocation must be made within seven days of receiving the mobilisation notice. There is an appeals process if the employer is dissatisfied with the MoD's response to their application.

### 7.11.4 Return to work

A reservist has the right to be reinstated by his former employer (i.e. the employer by whom he or she was employed within the four week period immediately before mobilisation). Following demobilisation, reservists must write to the employer (usually by the third Monday following the end of military service), making an application for reinstatement of their employment. Re-employment should be in the same job and on terms and conditions no less favourable than those which would have applied if there had been no call-up. If not reasonable and practicable to do so, the employee must be offered the most favourable terms and conditions that are reasonable and practicable in the circumstances. The employee must be allowed to remain in post for a minimum protected period, depending on their pre-mobilisation length of service.

7.11.5 The employer has the right to refuse reinstatement if it would result in the dismissal of another employee who was employed before the reservist was mobilised, whose job is as permanent as the reservist's and who had longer service at the time of the mobilisation.

### 7.11.6 Is there a right to payment?

There is no obligation to continue paying a reservist who has been mobilised and is absent from the workplace.

7.11.7 An employer may claim financial assistance to cover the additional costs of replacing an employee who is mobilised, over and above their earnings. This may include hiring a temporary replacement and the cost of training the reservist on his or her return.

7.11.8 Employer incentive payments are also available where an employee is mobilised. These are not conditional on loss, but are restricted to eligible small/medium sized businesses. Payment can be up to £500 per month per reservist.

### 7.11.9 Legal remedies for the employee

If an employer terminates a reservist's employment on the grounds that they may be mobilised at a future date, it is guilty of a criminal offence. A court can order the employer to pay compensation to the employee as well as levying a fine. The employee may also have a claim for unfair dismissal. There is no qualifying period of service for a reservist to raise such a claim.

7.11.10 Reservists can also complain to a Reinstatement Committee if they are dissatisfied with their employer's response following demobilisation. This Committee can order reinstatement or compensation, which is enforceable in a sheriff court. Failure to comply with a reinstatement order may incur a fine of up to £1,000 plus compensation for the employee.

## 7.12 Summary of employees' statutory rights to time off work

Summary of employees' statutory rights to time off work

Right to time off	Employees only or all workers	Paid?	How long?
Time off for dependants	Employees only	No	Reasonable time off
Time off for jury service	All workers	No	To carry out jury service
Time off for public service and duties	Employees only	No	Reasonable time off
Time off for Armed Forces Reservists who are called up for active service*	All workers	No	Indefinite
Time off for job-seeking or making arrangements for training in a redundancy situation <i>See Chapter 13</i>	Employees only	Yes	Reasonable time off
Time off for employee representatives in collective redundancy situations <i>See Chapter 13</i>	Employees only	Yes	Reasonable time off
Time off for employee representatives off in a business transfer situation <i>See Chapter 13</i>	Employees only	Yes	Reasonable time
Time off for negotiation, information and consultation representatives	Employees only	Yes	Reasonable time off and consultation representatives
Basic training/continuing training for young workers	Employees only	Yes	Reasonable time off
Time off for carrying out duties as an employee safety representative	Employees only	Yes	Reasonable time off
Time off for carrying out duties relating to Pension Scheme Trustee training and duties	Employees only	Yes	Reasonable time off
Time off for Trade Union training and duties <i>See Chapter 8</i>	Employees only	Yes	Reasonable time off

- \* An employer may be able to obtain an exemption on behalf of the employees
- \*\* 26 weeks OML and 26 weeks AML
- \*\*\* Less any any maternity or adoption leave already taken
- \*\*\*\* Up to 6 months pay for employees with one month's service or more

Right to time off	Employees only or all workers	Paid?	How long?
Time off for Trade Union activities <i>See Chapter 8</i>	Employees only	No	Reasonable time off
Time off to accompany a colleague at a disciplinary or grievance hearing colleague at the hearing <i>See Chapter 11</i>	All workers	Yes	To accompany the colleague at the hearing
Time off to accompany a colleague at a flexible working hearing <i>See Chapter 7</i>	All workers	Yes	To accompany the colleague at the hearing
Maternity leave	Employees only	Yes,	52 weeks**
Paternity leave	Employees only but <i>see Chapter 7</i>	Yes,	Up to 2 weeks
Adoption leave	Employees only but <i>see Chapter 7</i>	Yes	52 weeks**
Shared Parental Leave	Employees only	Yes	Up to 52 weeks***
Shared Parental Leave	Employees only but <i>see Chapter 7</i>	Yes	Up to 52 weeks***
Antenatal care	Employees only but <i>see Chapter 7</i>	Yes	Reasonable time off
Suspension from work on maternity grounds	Employees only	Yes	For as long as necessary to avoid the risk
Suspension from work on maternity grounds	Employees only	Yes	For as long as necessary to avoid the risk
Suspension from work on medical grounds <i>See Chapter 4</i>	Employees only	Yes****	For the length of the suspension

Summary of employees' statutory rights to time off work