

Employment

Shared parental leave and flexible working – what you need to know

The Children and Families Act 2014 extended the right to request flexible working to all employees and introduced the concept of shared parental leave. The changes to flexible working came into force on 30 June 2014 and shared parental leave has been available since April 2015.

The right to request flexible working

All employees who have worked for 26 weeks or more have the right to request flexible working. You have to consider requests in a reasonable manner and within a reasonable period of time. The more detailed rules setting out a specific process have been abolished.

The new procedure

The new procedure includes the following steps:

- the employee requests a flexible working arrangement
- you agree the request or arrange to discuss it
- if you do not agree the request, you have to give the employee a chance to appeal

- you have to notify the employee of your decision within three months of receipt of the request, including any appeal
- if the employee fails to attend two consecutive meetings to discuss the request or an appeal without good reason, you can treat the request as withdrawn.

An employee has the right to bring a tribunal claim if you fail to hold a meeting within 28 days of the request, fail to notify the employee of a decision, fail to offer a right to appeal, refuse the request for a reason other than the business reasons under section 80G of the Employment Rights Act 1996, reject the application on incorrect facts, delay in giving your decision or unfairly treat the request as withdrawn. An employee must bring a tribunal claim within three months of the date on which the application is treated as withdrawn or the final decision is communicated.

In addition, an employee may be able to bring a claim for direct or indirect discrimination if their request is rejected. An employee may also treat a rejection that amounts to discrimination as a fundamental breach of contract, potentially allowing them to resign and claim constructive dismissal.

Guidance

Acas has published a code of practice and a good practice guide on handling requests to work flexibly.

Shared parental leave

This applies to parents of babies due on or after 5 April 2015 and to children placed for adoption on or after 5 April 2015. The system gives parents choice and freedom in how they share the care of their child in the first year after birth, enabling both parents to keep a strong link to the workplace. This scheme allows a woman to return to work early and share the remainder of her leave and pay with her partner, although the standard entitlement to 52 weeks of maternity leave and 39 weeks of pay remains the default position.

Eligibility criteria for shared parental leave

To qualify, the mother must be entitled to maternity leave, have given notice to curtail her leave and share the main responsibility for caring for the child with the child's father or her partner.

For a parent to be eligible to take shared parental leave (SPL), they must be an employee and have worked for the same employer for at least 26 weeks at the end

of the 15th week before the week in which the child is due and still be employed in the first week that SPL is to be taken.

The other parent must have worked for at least 26 weeks in the 66 weeks before the due date and have earned above the maternity allowance threshold (currently £30) in 13 of the 66 weeks.

To qualify for shared parental pay, an employee must have earned an average salary of the lower earnings limit (currently £116) for the eight weeks prior to the 15th week before the expected due date.

The procedure

- The woman must give at least eight weeks' notice of her intention to end maternity leave and pay and enter the SPL system. This can be given before the birth but she will have six weeks after the birth to revoke it.
- An employee must give eight weeks' notice of their intention to take SPL.
- The employer and employee should agree the pattern of leave within two weeks. If it cannot be agreed, the parent will be able to take the leave requested in one block.
- The employer is only obliged to accept three notifications of intention to take leave per employee. This includes the initial request and two further changes.

The details

Eligible employees will have up to 50 weeks' leave and 37 weeks' pay, as the mother must take the first two weeks of leave after

the birth. Following this, she can choose to end her maternity leave and share the remaining leave with her partner as SPL. This can be taken in a single period or in multiple blocks. The cut-off point will be 52 weeks from the birth.

Additional paternity leave and additional statutory paternity pay have been abolished. A parent can take ordinary paternity leave in conjunction with SPL.

Parents will have a joint entitlement to SPL and pay. The maximum amount of SPL and pay available will be the balance of the mother's untaken maternity leave and pay or allowance. The leave can be taken together or separately. Each parent will have up to 20 'keep in touch' days while on SPL (known as SPLIT days), in addition to the mother's 10 'keep in touch' days on maternity leave (or KIT days). These are days at work or attending training, which do not bring the leave to an end.

Employees will be entitled to all contractual terms and benefits (such as pension contributions, annual leave and private use of a company car) apart from pay during a period of SPL. They will continue to accrue holiday entitlement and can also carry forward unused holiday into the next holiday year.

An employee may bring an automatic unfair dismissal claim if you dismiss them for a reason based on their return from SPL or if you fail to provide the same role to an employee who is returning to work from any period of leave that totals 26 weeks or less in aggregate, even if taken in separate blocks.

Appointments

Partners have the right to unpaid time off to attend two ante-natal appointments, with a maximum duration of six and a half hours per appointment. An adoptive parent is also able to take paid time off to attend up to five adoption appointments. If you unreasonably refuse a request then the employee's remedy is compensation amounting to twice their hourly salary for each hour for which they would have been absent.

Guidance

Acas has published a good practice guide for employers and employees. The Government has published an employer guide, an employee guide and a technical guide for employers.

Action points

If you have not already done so, you should:

- Decide what your policy will be, and whether you will pay enhanced shared parental pay.
- Draft a new shared parental leave policy and template letters.
- Update your existing maternity, paternity and adoption policies.
- Communicate the new policies to staff and train managers.

Grandparents

The Government intended to extend the scheme to working grandparents by 2018 and a consultation is expected.

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