

## **STATUTORY PATERNITY LEAVE AND PAY**

### **ADDITIONAL STATUTORY PATERNITY LEAVE**

1. Following the birth of a child or the placement of a child for adoption, the statutory entitlement to paternity leave and pay will give eligible employees the right to take paid leave to care for their new child or support the mother or adopter.

#### **Eligibility**

2. Employees will need to satisfy the following conditions in order to qualify for paternity leave. They must:
  - have or expect to have responsibility for the child's upbringing
  - be the mother or adopter's spouse or partner
  - have worked continuously for their employer for 26 weeks leading into the week in which the adopter is notified of being matched with a child.
3. Employers can ask their employees to provide a self-certificate as evidence that they meet these eligibility conditions.

#### **Length of paternity leave**

4. Eligible employees will be entitled to choose to take either one week or two consecutive weeks' paid paternity leave (not odd days).
5. They can choose to start their leave:
  - from the date of the child's birth or placement (whether this is earlier or later than expected) or
  - from a chosen number of days or week after the date of the child's birth or placement (whether this is earlier or later than expected) or
  - from a chosen date.
6. Leave can start on any day of the week on or following the child's birth or placement but must be completed within 56 days of this date.
7. Only one period of leave will be available to employees irrespective of whether more than one child is born or adopted.

## **Statutory Paternity Pay**

8. During their paternity leave, most employees will be entitled to Statutory Paternity Pay (SPP) from their employers. Statutory Paternity Pay will be paid by employers for either one or two consecutive weeks as the employee has chosen. For 2009/10 the weekly rate is the lesser of:
- the standard rate - £123.06 or
  - the earning-related rate - 90% of employee's average weekly earnings.

## **Notice of intention to take paternity leave**

9. Employees will be required to inform their employers of their intention to take paternity leave in or before the 15<sup>th</sup> week before the expected week of the birth of the child or within seven days of the adopter being notified by their adoption agency that they have been matched with a child, unless this is not reasonably practicable. They will need to tell their employers:
- when the child is expected to be born/when the child is expected to be placed
  - whether they wish to take one or two weeks' leave
  - when they want their leave to start.
10. Employees will be able to change their mind about the date on which they want their leave to start providing they tell their employer 28 days in advance (unless this is not reasonably practicable). Employees will have to tell their employers the date they expect any payments of SPP to start at least 28 days in advance, unless this is not reasonably practicable.

## **Self certificate**

11. Employees will have to give their employers a completed self certificate as evidence of their entitlement to SPP. Employers can also request a completed self certificate as evidence of entitlement to paternity leave. The self certificate must include a declaration that the employee meets certain eligibility conditions and provide the information specified above as part of the notice requirements.
12. By providing a completed self certificate, employees will be able to satisfy both the notice and evidence conditions for paternity leave and pay. Employers will not be expected to carry out any further checks.

## **Contractual benefits**

13. Employees are entitled to the benefit of their normal terms and conditions of employment, except for terms relating to wages or salary (unless their contract of employment provides otherwise), throughout their paternity leave. However, most employees will be entitled to SPP for this period. If the employee has a contractual right to paternity leave as well as the statutory

right, s/he may take advantage of whichever is the more favourable. Any paternity pay to which s/he has a contractual right reduces the amount of SPP to which s/he is entitled.

### **Return to work after paternity leave**

14. Employees will be entitled to return to the same job following paternity leave.

### **Additional Statutory Paternity Leave**

15. The right to additional statutory paternity leave is available to fathers and partners of mothers of children due on or after 3 April 2011, or adoptive parents who are notified of having been matched with a child on or after 3 April 2011.
16. Employees who qualify for additional statutory paternity leave may elect to take up to 26 weeks' additional statutory paternity leave within the first year of the child's life provided that the mother has returned to work before using her full entitlement to maternity leave. Additional paternity leave is also available to adoptive parents within the first year after the child's placement for adoption, provided that the child's adopter who elected to take adoption leave has returned to work before using her or his full entitlement to adoption leave.
17. The employee's additional statutory paternity leave will have to have ended by the point at which their partner's additional maternity leave or adoption leave would have ended i.e. at the end of the 52<sup>nd</sup> week after the partner's statutory maternity or adoption leave began. The employee will only be eligible to receive additional statutory paternity leave pay during the period their partner would have been receiving statutory maternity or adoption pay.
18. Only one period of additional statutory paternity leave will be available to employees irrespective of whether more than one child is born from one pregnancy or one adoption arrangement.

### **Eligibility**

19. Employees will need to satisfy the following conditions in order to qualify for additional statutory paternity leave. They must:
  - be the child's biological father or is the mother's husband, civil partner or partner but not the child's biological father and have or expect to have the main responsibility (apart from the responsibility of the mother) for the child's upbringing
  - be the mother or adopter's spouse or partner
  - have been continuously employed for at least 26 weeks by the end of the 15<sup>th</sup> week before the expected week of childbirth/ending with the week in which they were notified of having been matched with a child;

- remain in continuous employment until the week before the first week of additional statutory paternity leave and
- have provided the employer with a leave notice, an employee declaration and a mother declaration and, where applicable, provided evidence and further information supporting the claim for additional paternity leave.

Note: For these purposes 'partner' in relation to the child's mother means a person (whether of the same or opposite sex) who lives with the mother and child in an enduring family relationship but is not the mother's father, mother, grandmother, grandfather, sister, brother, aunt or uncle.

### **Timing of Additional Statutory Paternity Leave**

20. The earliest that additional statutory paternity leave can commence is 20 weeks after the date on which the child is born or 20 weeks after the date of placement of the child for adoption. It must end not later than 12 months after that date. Additional paternity leave must be taken as a single continuous block in multiples of complete weeks, the minimum period being two consecutive weeks and the maximum period 26 weeks.

### **Notice of intention to take Additional Statutory Paternity Leave**

21. Employees will be required to inform their employers of their intention to take additional statutory paternity leave at least eight weeks prior to the chosen start date by providing:

a 'leave notice' – a written notification specifying the child's expected week of birth and actual date of birth and the intended start and end date of the additional statutory paternity leave;

An 'employee declaration' – a written declaration signed by the employee stating that the purpose of the additional leave is to care for the child and that s/he satisfies the relationship eligibility conditions and

a 'mother declaration' - a written declaration signed by the mother stating:

- her name, address and national insurance number;
- the date on which she intends to return to work;
- that the employee satisfies the relationship eligibility conditions for APL and has or expects to have the main responsibility (other than the responsibility of the mother) for the child's upbringing;
- that the employee is, to her knowledge, the only person exercising the entitlement to additional statutory paternity leave in respect of the child and
- that she consents to the employer processing the information contained in the declaration.

22. Employers may ask their employees to provide a copy of the child's birth certificate and/or the name and address of the mother's employer (or, if the mother is self-employed, the mother's business address) within 28 days of receiving the leave notice. The employee must supply the requested documentation within 28 days of the employer's request.
23. Employees will be able to bring forward the APL start date provided that the employer is advised of this at least six weeks before the new start date or, if that is not possible, as soon as reasonably practicable. An employee may also postpone the start date, or cancel the request altogether, provided the employer is advised of this at least six weeks before the new start date or, if that is not possible, as soon as reasonably practicable.
24. The employer must confirm the additional statutory paternity leave start and end dates in writing to the employee within 28 days of receiving the notice and supporting documentation.

### **Contractual benefits**

25. Employees are entitled to the benefit of their normal terms and conditions of employment, except for terms relating to wages or salary (unless their contract of employment provides otherwise) throughout the period of additional statutory paternity leave and are bound by any obligations arising from those. Employees may qualify however for Additional Statutory Paternity Pay (ASPP). Any additional pay to which s/he has a contractual right should be offset by the amount of ASPP to which s/he is entitled.

### **Return to work after additional statutory paternity leave**

26. An employee who returns to work after a period of additional statutory paternity leave that was an isolated period of leave, or the last of two or more consecutive periods of statutory leave, not including a period of additional maternity leave or additional adoption leave or a period of parental leave of more than four weeks, is entitled to return to work to the job in which s/he was employed immediately before the absence.
27. Where the period of additional statutory paternity leave does not fall into this description, the employee is entitled to return to the job s/he held immediately before the period of leave began or, if this is not reasonably practicable, to another job that is both suitable and appropriate for her or him to do.

### **Early return to work after additional statutory paternity leave**

28. Where employees intend to return to work earlier than the end of their additional statutory paternity leave period, they must give their employer at least six weeks' notice of the date on which they intend to return. Where employees notify their employer of an early return date, but subsequently change their mind about returning to work on this date, they must let their employer know at least six weeks before the earlier of the date on which they

now intend to return and the date on which they had intended to return.

29. Should an employee fail to give the correct notice of an early return, her or his employer may delay the employee's return so that it has six weeks' notice. If the employer notifies the employee that her or his return has been postponed, but the employee returns to work anyway, the employee is not entitled to be paid until the date to which her or his return has been postponed. Where the employer failed to inform the employee of the date on which her or his additional statutory paternity leave period would end, the employee does not have to give notice of her or his intention to return to work early, and the employer has no right to delay the employee's return or to withhold pay where the employee returns early.

### **Keeping in touch**

30. Employees may voluntarily carry out up to 10 days' work for their employer during their additional statutory paternity leave period without bringing it to an end. The purpose of this provision is to allow an employee to "keep in touch" with the workplace. Work includes any work done under the contract of employment and may include training or any activity aimed at keeping in touch. Any work carried out on a day constitutes one day's work. An employee on additional statutory paternity leave is not obliged to work keeping-in-touch days, nor is an employer obliged to provide them.
31. Reasonable contact from time to time during additional statutory paternity leave, which either party is entitled to make, for example to discuss the employee's return to work, does not bring the additional statutory paternity leave period to an end.

### **Redundancy during additional statutory paternity leave**

32. An employee who is made redundant during his or her additional statutory paternity leave has the right, where there is a suitable alternative vacancy, to be offered suitable alternative employment under a new contract that begins on the day immediately following the day on which the employee's previous contract came to an end. The work to be done under the new contract must be both suitable for the employee and appropriate for her or him to do in the circumstances. The provisions of the new contract relating to the capacity and place in which the employee is to be employed, and the other terms and conditions of employment, must not be substantially less favourable to the employee than if s/he had continued to be employed under her or his previous contract.

### **Additional Paternity Leave – Adoption**

33. Similar provision exists in respect of adoption.