

Shared parental leave: fathers, partners, adopters

How fathers, partners and adoptive parents (including those using a surrogate mother) can benefit from Shared Parental Leave and Pay

Shared Parental Leave (SPL) represents a real change to how employed dads, adopters and partners can share childcare responsibilities in the first year of a child's life. Dads and partners, including same sex partners, can spend more time with their children, and this can be at the same time as the mother (or primary adopter) or at different times. Eventually this could make a real difference to family lives and attitudes in the workplace.

Unfortunately, not all working parents will be entitled to Shared Parental Leave. For example:

- You must be employed to take Shared Parental Leave. Self-employed dads and partners still have no rights to paid time off – but do check what it means to be an 'employed earner' for Statutory Shared Parental Pay (see below).
- You must have worked for the same employer since before the pregnancy began, and right up to the first period of SPL.
- The mother or adopter also has to meet employment and earnings conditions in order for the other parent/partner to take SPL.

Who is a partner for SPL?

Same sex parents can take SPL as long as they meet the conditions above. In the case of a birth child, SPL can be taken either by the father of the child or by a partner (but not by both). A partner means someone who is:

- married to the mother
- the civil partner of the mother
- the partner of the mother at the time of the birth and lives with her and the child in an 'enduring family relationship'.

Some people are excluded from the definition of partner – regardless of need, a mother can't share or transfer SPL to her child, parent, grandchild, grandparent, sibling, aunt, uncle, niece or nephew.

Who is entitled?

Fathers or partners may be entitled to SPL if they meet certain conditions. Only a mother and one other person can take SPL (so if both a father and a partner are involved, only one of them can take SPL – in contrast to 2 weeks paternity leave which might be taken by more than one person).

- You must have worked for the *same* employer for 26 weeks by the end of the 15th week before the baby is due, or for adoption, 26 weeks by the end of the week in which you are notified of being matched for adoption.
- The mother of the baby/adopter of the child must meet the 'employment and earnings' condition. This requires them to have worked for at least 26 weeks in the 66 weeks before the expected week of birth or week of notification of being matched for adoption. They also need to have average earnings of at least £30 a week in at least 13 of those weeks. The work can be employed or self-employed, full-time or part-time, or a mixture, and does not have to be continuous.
- The mother/adopter must end their maternity or adoption leave and/or pay early to create a pot of SPL which could be taken by either or both of you. Pay here includes Maternity Allowance, so it may be worth a self-employed mother, who would not be entitled to SPL herself, going back to work, for example, if you would be entitled to SPL and pay.

Apart from the main conditions above, you also need to give notice, which we'll come onto later.

- To get Statutory Shared Parental Pay (ShPP), as well as the conditions above, you must earn at least £112 a week in the calculation period (the 8 weeks up to and including the 15th week before the baby is due, or the 8 weeks up to and including the week in which the couple are notified of being matched with a child)

AND the mother/adopter must be entitled to Statutory Maternity Pay (SMP), Maternity Allowance (MA) or Statutory Adoption Pay (SAP), which they end early to create some ShPP.

When can a mother (M) take SPL?

The mother (M) qualifies for SPL if:

- M is an employee
- M is entitled to statutory maternity leave
- M has worked for the same employer for 26 weeks at the end of the 15th week before the child's expected due date, (*continuity of employment test*)
- M remains employed in the week before any SPL is due to start;
- M has shortened her maternity leave by returning to work or providing a notice to curtail the leave
- M has a partner who meets the *employment and earnings test*
- P has, at the date of the birth, shared responsibility for the baby with M.
- The required notice, declarations and evidence are provided by M and P.

What about adoptive parents?

If you are adopting with your partner, and you meet the conditions of entitlement, you can take SPL. You and your partner can decide how to share this in the same way as other parents. There is a two week period of compulsory adoption leave.

Where a couple are adopting jointly, and both are employed, one of them must decide to be the main adopter for the purposes of adoption leave. This is the person who can take adoption leave, which is now a day one right (this means that since 5 April 2015 you don't have to have any length of service with your employer to take up to 52 weeks adoption leave). It's important that you are clear about which of you is going to exercise the right to adoption leave and the right to take paid time off for up to five adoption appointments. The other partner, if employed, can have unpaid time off for up to two appointments.

The other partner can, if they are also employed, take paternity leave (2 weeks taken within 56 days of the placement of the child with your family). You would need to meet the usual conditions for paternity leave, which haven't changed – so you need to have worked for 26 weeks by the end of the week you are matched for adoption.

After the first 2 weeks of adoption leave, if the couple want to share the rest of the leave they can do so, subject to meeting the same conditions as for other parents (they would need to have given notice in advance, see below).

Being a partner in this situation is the same as for a birth child, ie, someone who is:

- Married to the adopter
- The civil partner of the adopter
- The partner of the adopter and lives with her/him and the child in an 'enduring family relationship' (with the same exclusions of family members who cannot also be partners).

Parents having a child through surrogacy

New rights, also starting on 5 April 2015, give a parent having a child via a surrogate mother the right to adoption leave if they are employed. This applies if they either have a parental order with their partner, or intend to apply for one (and expect it to be granted). At least one of the couple must be the biological parent of the child.

One of the couple can therefore take adoption leave and the other paternity leave, provided they meet all the conditions. Adoption leave is now a day one right for employees. Paternity leave still requires that an employee has been employed for 26 weeks by the end of the 15th week before the baby is due. So, if you are the partner of someone who is taking adoption leave for a baby born via a surrogate, you will need to have worked for your employer since before the pregnancy began.

In addition, for both statutory adoption and statutory paternity pay, you need to have average earnings of at least £112 a week.

Shared Parental Leave and Pay also apply to this group of parents, again if they meet the conditions. This means that the person taking adoption leave can shorten the leave to take/share shared parental leave. This gives couples who both qualify for SPL the option to share leave after the first two weeks, in the same way as other parents.

Choices for adoptive parents

Adoptive parents, whether using a surrogate or being matched with a child, may need to make choices about which parent takes adoption leave and which paternity leave (where both are employed) as well as whether to use SPL.

When considering the options:

- Statutory Adoption Pay is paid at 90 per cent of average earnings for the first six weeks (from 5 April 2015)

- Statutory Paternity Pay remains capped at £139.58 a week (check whether an employer pays more)
- Statutory Shared Parental Pay has no higher rate (and so will be 90 per cent of earnings or £139.58, whichever is less, throughout, but again check whether an employer pays more).

Making decisions about SPL

When deciding whether to take advantage of SPL, it's important to remember that it needs to be a joint decision. You will need the consent of the mother/adopter in order to take any SPL, as well as their curtailment of leave and pay to create the pot of SPL.

Factors to consider:

- Do you want to take some time off together? This can be very helpful whether it's a birth child or an adoption. Two weeks' paternity leave isn't very much and many dads and partners welcome the chance to spend more time with their new family. Taking time off together is possible with SPL. The downside is there will be less maternity or adoption leave for the mother or primary adopter as they have to shorten their leave by giving a binding commitment to end leave and pay early). *There is no extra time off!*
- Do you want to take some time off whilst your partner returns to work? This may be useful so that you share time with your new child, your partner will be earning and you will (if you meet the conditions) get ShPP.
- The first two weeks of maternity and adoption leave are compulsory – you can't curtail leave sooner than this (compulsory maternity leave is four weeks for factory workers). Remember that the first 6 weeks of SMP and SAP are higher than ShPP, so it usually won't make sense to lose those weeks
- Paternity leave must be taken before SPL; if SPL is taken by an employee, they cannot then take paternity leave.

Statutory Shared Parental Pay – a few points to remember

There is no extra money in the SPL system. Any Statutory Shared Parental Pay is created by the curtailment of Statutory Maternity Pay, Statutory Adoption Pay or Maternity Allowance.

Curtailment means giving binding notice to stop these payments early (either to the employer, or, for Maternity Allowance, to Jobcentre Plus).

- ShPP is 90 per cent of average earnings or £139.58, whichever is less. It probably doesn't make sense for most parents to sacrifice any of the first 6 weeks of SMP or Statutory Adoption Pay.

- Check whether either employer (if both parents are entitled) is offering more than ShPP.
- The 90 per cent of average earnings rule may mean that, in some cases, your partner's statutory payment would be less or more than yours; think about exactly how much you will each receive during time off
- Consider patterns of work and what an employer is likely to accept (if you need to book discontinuous leave and can't do this with your 3 booking notices, see below).

If an employee works during SPL does that reduce the amount of leave?

Apart from SPLIT days (see below) working in between periods of SPL reduces the time within which SPL can be taken, unless the partner takes SPL when their partner is working. If both are working, the period in which SPL can be taken is reduced by the weeks worked, because SPL has to be taken in the first year. For example, if an employee returns to work for 12 weeks and her partner is not on SPL during that period, the time they have left in which to take the SPL available to both of them is reduced by 12 weeks.

Employed earners and ShPP

Being an 'employed earner' means that there is someone who is liable to pay Class 1 national insurance, or would be liable if you earned enough – you don't have to be employed. The test for length of service in ShPP depends on being an employed earner for 26 weeks by the end of the relevant week (the 15th week before the baby is due for birth children, or the week in which you are notified of being matched with a child for adoptive children).

You must also continue to be an employed earner, with the same employer, until the first period for which you are paid ShPP. As a result, many agency workers will meet the conditions for ShPP (having worked for the agency throughout the pregnancy/up to the matching date and beyond, earning at least £112 a week in the calculation period), but will not be entitled to maternity leave, adoption leave, paternity leave or indeed shared parental leave.

This can mean:

An agency worker entitled to SMP but not leave could create a pot of SPL/ShPP for their partner if the partner is employed and meets the conditions.

An agency worker could get ShPP if they meet the conditions, had worked for the agency for a sufficient length of time and had a partner who met the employment and earnings conditions. Care should be taken, because someone who is definitely an agency worker and not an employee will have no right to return to the same job after taking time on ShPP. Working Families provide more guidance on [employment status](#) on our website, but you may need to seek advice.

A brief introduction to notice for SPL

If you have decided that you and/or your partner will take some SPL, the first step is to make sure that maternity or adoption leave and/or pay are curtailed . Unless leave is to be taken after the end of the maternity or adoption pay period, both leave and pay need to be curtailed, which can be done in one step where SMP is concerned, but where a woman is employed and will be entitled to maternity allowance (MA), she will need to curtail the maternity leave via her employer and MA via Jobcentre Plus.

The second step is to give notice of intention and entitlement to the employer (to both employers if both parents intend to take SPL), followed by booking notices which confirm actual dates when SPL will be taken. Up to 3 booking notices can be used. An employer must accept a booking notice for continuous leave. If you wish to break up your leave, it is advisable to talk to your employer about this as soon as possible. If an employer refuses your booking for discontinuous leave, you may have to use more than one booking notice to get the pattern you want. Pro-formas for curtailing leave and giving notice of intention and entitlement are on the [ACAS website](#). Be aware of the deadlines: notice usually has to be given at least 8 weeks in advance of the leave or pay sought.

SPLASH will provide more information about notice in a future post.

Further information

Working Families <http://www.workingfamilies.org.uk/article-categories/shared-parental-leave/>

Helpline for parents and carers: 0300 012 0312

Email advice: advice@workingfamilies.org.uk

Maternity Action <http://www.maternityaction.org.uk/wp/advice-2/mums-dads-scenarios/shared-parental-leave-and-pay/>

Advice Line: 0845 600 85 33

YESS <http://www.yesslaw.org.uk/fact-sheets/shared-parental-leave/>

020 3701 7530/7531

info@yesslaw.org.uk

Acas <http://www.acas.org.uk/index.aspx?articleid=4911>

Practical Law <http://www.practicallaw.com/employment>

About SPLash

SPLash (SPL advice on sharing) has been created by an alliance of organisations with expertise in employment law and issues affecting parents at work. Its purpose is the sharing of knowledge and best practice on Shared Parental Leave.

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