

Shared parental leave - Nuts and bolts and top tips

Shared parental leave (SPL) allows employed parents and adopters to share leave and pay with their partner to care for children from birth until their first birthday.

Employed mothers are entitled to 52 weeks statutory maternity leave and 39 weeks statutory maternity pay (SMP) or maternity allowance. The mother can choose whether to transfer some of her maternity leave (and pay) to her partner so he (or she) can take SPL. Shared parental leave is created from the remaining weeks of maternity leave. Fathers are entitled to 2 weeks' paternity leave.

Even if the mother is not entitled to maternity leave (because she is no longer employed, is an agency worker or self-employed) she can end her SMP or maternity allowance early to create entitlement to SPL for her partner, provided they both satisfy the qualifying tests (see below). It is not necessary for both parents to qualify for SPL.

Note the mother can stay on maternity leave while her partner is on SPL.

The provisions for adopters and parents of a child born through surrogacy are very similar so for simplicity we only refer to parents, which includes same-sex couples.

Maternity leave or SPL: Top tips for mothers choosing what to do

A mother needs to consider whether taking SPL achieves what she wants. SPL is more flexible in many ways, but if she wants to take 52 weeks leave without working more than 10 days during leave, it may not be suitable.

Matters to consider for mothers:

- Whether you want to share the caring of your child with your partner in the first year;
- Whether you want time off together, for example you could take maternity leave for 26 weeks and your partner could take 26 weeks SPL at the same time or you can take time off at separate times or a mixture of both;
- Whether you want to take advantage of working for 20 days during SPL (SPLIT days) as well as 10 days during maternity leave (KIT days); your employer must agree to you working these days;
- Whether you want to take leave in separate chunks, working in between, which can only be done during SPL, not maternity leave. Unless your partner takes SPL when you are working, you will not be able to take the full 50 weeks SPL between you as the weeks you work will reduce your SPL. This is because SPL must be taken in the first year;
- Whether you need to work during the first year for financial reasons or to keep in touch with work to avoid being 'forgotten' when on leave;

- Your financial position, eg:
 - The need to remain on maternity leave for the first 6 weeks of maternity leave so you get earnings related statutory maternity pay (*SMP*); Shared parental pay is paid only at a flat rate;
 - Whether you are entitled to enhanced maternity pay (but not enhanced shared parental pay), so that you would lose this if you moved to SPL;
 - The need to work during the first year for financial reasons;
 - The possibility of taking paid holiday during any period you are at work.

Remember once the mother has opted for SPL she cannot change her mind (except in limited circumstances), even if the relationship with her partner breaks down.

Is there any change to maternity and paternity leave and pay?

There is no change to maternity leave, paternity leave, statutory maternity pay or maternity allowance unless the mother gives it up so that she and/or her partner can take SPL and/or shared parental pay.

Additional paternity leave is no longer available. It was been replaced with SPL on 5 April 2015.

Who counts as a partner?

Partners include:

- The child's biological father
- The partner of the mother or adopter (who may be a spouse or civil partner) or the partner living in an enduring relationship with the mother/adopter and child; 'partner' excludes most relatives.

Note: entitlement is for the father of the child (C) or spouse/partner (P) 'at the date of birth'.

What are the main qualifying "tests" to qualify for SPL?

We refer to two tests in this factsheet. An employee can only take SPL if s/he satisfied the continuity of employment test. The partner must also be a worker (as SPL is for *working parents*) so must satisfy the employment and earnings test.

1. *The continuity of employment test:* the employee must have worked for the same employer for 26 weeks at the end of the 15th week before the EWC (expected week of childbirth) and remain employed until the week before the start of SPL
2. *The employment and earnings test:* the partner must have worked on an employed or self-employed basis in 26 of the last 66 weeks earning at least £30 per week on average for 13 of those weeks.

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

When can the partner (P) take SPL?

A partner (P) is entitled to SPL if:

- P is an employee
- P satisfies the *continuity of employment test*
- P is still employed in the week before any SPL is due to start;
- M is entitled to maternity leave, SMP or maternity allowance
- M satisfied the employment and earnings test
- If M is entitled to maternity leave she cuts short her leave
- If M is entitled to SMP or maternity allowance (not maternity leave), she has curtailed the maternity pay or maternity allowance period
- M has, at the date of birth, shared responsibility for the baby with the partner;
- The required notice, declarations and evidence are provided by P and M.

Remember: If one parent is not entitled to SPL (eg because she is not an employee) the other partner may still be entitled to take it if s/he is employed.

Key points on entitlement to SPL

Sharing leave is only possible if both partners satisfy certain conditions

An employed mother can take SPL if she is entitled to statutory maternity leave and has sufficient continuous service

An employed partner can take SPL if the mother is entitled to either maternity leave, SMP or MA, provided s/he has sufficient continuous service. So s/he may be entitled to SPL even though the mother cannot get either maternity leave or SPL

Note: It is possible for only one of a couple to take SPL provided both satisfy the qualifying tests.

What if the mother is an employee but the father is self-employed?

The father will not be able to take SPL as he is not employed; the mother can take it if the father satisfied the *Employment and earnings test*, (ie has worked in 26 of the last 66 weeks earning at least £30 per week on average for 13 of those weeks).

What if the father is an employee but the mother is self-employed?

The mother cannot take SPL because she is not employed. If the mother qualifies for maternity allowance, she can shorten this, and give her partner access to shared parental leave if he is employed and complies with the *continuity of employment* test.

An example The mother is a self-employed worker who satisfies *the employment and earnings test* and is eligible for maternity allowance. Her partner is an employee who satisfies the *continuity of employment* test. The mother is not entitled to SPL because she is self-employed. But, if she shortens her maternity allowance (ie gives some of the 39 weeks up) her partner can take up to 50 weeks SPL. The amount of SPL he can take is calculated by deducting from 52 weeks the number of weeks' SMP or MA claimed. This also applies if the mother was entitled to SMP not maternity leave.

What about agency workers?

Agency workers who are entitled to SMP or paternity pay are not eligible for SPL but their employed partner may be. If the agency worker satisfies the employment and earnings test, their employee partner can take SPL. Agency workers may be entitled to shared parental pay. This could apply to other atypical workers such as casuals, those on a zero hour's contract and some freelance contractors who are not self-employed.

How much SPL can be taken?

It depends on how much leave or pay the mother gives up in order to create SPL. If she shortens her maternity leave by 12 weeks, she and her partner can take, between them, the remaining 38 weeks as SPL. It is for the parents to decide how to share SPL.

Note the 50 weeks includes any maternity leave taken before the birth, but not the 2 weeks of compulsory leave immediately after the birth, which the mother must take.

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.

Can SPL be taken for a few days at a time?

No, it cannot be taken for less than one week at a time and it must be taken in multiples of a week, though it may start mid-week. For example, an employee cannot take one week and 3 days. The employee could work some SPLIT days on one of the other days if the employer agrees.

Do the parents have to agree about how much SPL each will take?

Yes. Neither parent can take SPL unless the other has signed a declaration agreeing to the division of leave.

Main advantages of SPL over maternity leave

- It can be shared between the parents, either at the same time or separately
- Both parents can take the leave at the same time; but SPL can be taken by just one of them
- It can be taken in three blocks of time (or more if the employer agrees) whereas maternity leave must be taken in one block.
- The employee can work for 20 days (SPLIT) during SPL (if agreed with the employer) as well as 10 KIT days during maternity leave
- An employee can take paid holiday during the period they are working

Are there any disadvantages in SPL for women entitled to maternity leave/pay?

The Equality Act only protects women from unfavourable treatment for taking maternity leave, not shared parental leave. Employees must not be treated badly or dismissed for taking SPL but the protection from discrimination is not as strong for a woman as it is when she is on maternity leave

If the employer pays enhanced maternity pay to women on maternity leave but does not pay enhanced shared parental pay, the mother would lose that extra enhanced maternity pay if she moved on to shared parental leave before the end of the enhanced maternity pay period.

If an employee is made redundant on maternity leave she remains entitled to SMP/MA for the remaining 39 weeks unless she starts a new job. She will only continue to be entitled to ShPP if she has booked it for the full period. It does not automatically continue to be payable like SMP.

The right to return to the same job applies to employees who take 26 weeks ordinary maternity leave. Employees returning from a period of SPL have the right to return to the same job if they take 26 weeks or less in aggregate (including any maternity, paternity, shared parental leave). This could lead to employees (mothers or fathers) who combine maternity/paternity leave with SPL losing this stronger protection despite taking quite short individual periods of leave.

For example, if an employee takes 12 weeks maternity leave, returns to work for 4 weeks, then takes 15 weeks SPL, s/he is treated as returning after more than 26 weeks, so that the employer can offer a suitable alternative job if it is not reasonably practical for the employee to return to the same job.

Note: if an employee works in between taking periods of SPL, her right to return from SPL is to the job she was last doing (before the most recent period of SPL), not the job she was doing before the start of maternity leave. The same applies to employees taking SPL.

TAKING SPL: STEPS EMPLOYEES MUST TAKE

What is the procedure for taking SPL?

Overview: The first step is for the mother to return to work (after giving 8 weeks' notice) or give notice to shorten her maternity leave in the future by serving a *curtailment notice*. An employee wanting to take SPL must then provide the employer with a non-binding '*Notification of entitlement*', giving an indication of how much SPL s/he (and her partner) want to take and when they might want to take it. This is followed by a '*Notification of a leave booking*' which sets out the details of when exactly each want to take leave. 8 weeks' notice is necessary.

For ACAS forms of notices see <http://www.acas.org.uk/index.aspx?articleid=4911>

Reducing maternity leave

The mother must shorten/curtail her maternity leave by:

- Either returning to work by giving at least 8 weeks' notice to end her maternity leave period; it is best, but not essential to put it in writing; or
- Serving a curtailment notice to end her maternity leave on a specified future date. At the same time she must give a notice of entitlement to SPL (or a declaration of consent and entitlement stating that P has given a notice of entitlement and intention to take SPL)
- If the mother is only entitled to SMP or MA (and not maternity leave) she can curtail her maternity pay period, ie the 39 weeks she is entitled to SMP or MA.

Note: Even if a woman is entitled to leave AND pay, she must curtail pay (whether that be SMP or MA) in order to create ShPP. Otherwise the SPL will be unpaid.

Leave curtailment notice requirements

The mother's notice must be in writing and must give the date on which her maternity leave (OML or AML) is to end (the *leave curtailment date*). The date specified in the notice must be at least:

- a. One day after the end of the compulsory leave period, because the mother must take at least 2 weeks compulsory leave,
- b. 8 weeks after M gives the notice to her employer; ie the standard notice period,
- c. One week before the end of the AML period so that at least one week's SPL can be taken by the partner.

Can the mother change her mind once she has sent a curtailment notice?

The curtailment notice can be revoked if done before the leave curtailment date and

- the mother gave the notice before the birth and she revokes her curtailment notice in the 6 weeks following the birth; in these circumstances she can opt into SPL later, or
- neither the mother or her partner is entitled to SPL or pay; the revocation notice must be given within 8 weeks, or
- the mother's partner dies and the notice is given within a reasonable time.

A *Revocation notice* must be in writing and state that M revokes her leave curtailment notice. Similar provisions apply to a curtailment notice for SMP or maternity allowance.

Note: The mother cannot go back on to maternity leave once she has returned to work

Notice of entitlement requirements

The **notice of entitlement** must set out, at least 8 weeks before the start of SPL:

- Both parents' name
- The start and end dates of any period of maternity leave taken or to be taken by M;
- The total amount of SPL available;
- How much leave M and P intends to take;
- M's expected start and end date for each period of SPL;
- The signature of both parents.

Mother's declaration (in support of her notice of entitlement)

M's **declaration** must state:

- She satisfies the conditions of entitlement for SPL;
- That the information given in the notice is accurate and
- M will inform her employer if s/he ceases to be entitled for SPL.

P's **declaration** must

- Specify P's name, address and NI number
- State that P satisfies the eligibility criteria including the employment and earnings test
- Confirm P's relationship with M, ie as spouse, civil partner or father of C,
- Consent to the amount of leave which M intends to take
- Confirming that the other parent will inform the employee parent if s/he ceases to fulfil the conditions to entitlement.

Both declarations must be given to the mother's employer with her notice of entitlement.

Partner's notice of entitlement and intention to take SPL

This is similar to the mother's notice of entitlement but must also state his relationship with the child and that he will inform his employer if the mother tells him she has revoke her leave curtailment notice. The mother must also sign a declaration with her name, address and NI number, that she satisfies the conditions for SPL, that she consents to the amount of leave the father intends to take and she will tell the father if she revokes her curtailment notice.

If the mother is not entitled to maternity leave details will have to be given of the start and end dates of SMP or maternity allowance. Both parents also have to provide signed declarations.

Notice of booking leave requirements

The final step is for the employee to book leave by specifying start and finish date(s) of SPL. These may differ from dates in the Notice of Entitlement. The employee may give up to three notices to take SPL, which includes notices to cancel leave

The notice may set out one period of SPL, which the employer must agree.

Alternatively the notice may set out three discontinuous periods of leave, which the employer can refuse.

The notice must:

- Be in writing and be dated;
- Be given at least 8 weeks before the start of the leave;
- Set out what leave the employee intends to take and when;
- If the child is not born, give the period it will start after the birth;

Does the employee have to provide any evidence to the employer?

When the employer receives a notice of entitlement and intention to take SPL, they may ask for a copy of the child's birth certificate (or for adopters the notice of placement) and the name and address of the other parent's employer.

How far in advance does the employee have to provide dates of SPL?

After the employee has giving a notice of entitlement and intention to take SPL, written notice should be given at least 8 weeks before they want to start SPL. The notice must set out the start and end date of SPL, whether it is taken in one continuous period or separate blocks.

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#SPLash (Shared Parental Leave advice on sharing)



When can the SPL start?

SPL, can start from once the mother has given 8 weeks' notice that she wants to curtail her maternity leave and her period of compulsory maternity leave has ended (2 weeks, or 4 weeks in a factory). It must be taken before the child's first birthday.

Note: Remember the mother can only get 90% of earnings for the first six weeks on SMP, not if taking ShPP.

When must the employee give notice to book leave?

The notice to book leave can be given at the same time as, or after, the notice of entitlement.

Can the employee book more than one period of leave?

Yes, an employee is allowed to book up to three separate periods and more if the employer agrees.

For example

- She takes 20 weeks maternity leave.
- She returns to work for 4 weeks.
- She goes on SPL for 8 weeks.
- She returns to work for 8 weeks during which she takes annual leave of 2 weeks.
- She goes on SPL for 4 weeks.
- She returns to work for 7 weeks.
- She takes SPL for 1 week.

Can an employee change his/her mind about how the leave is divided between the partners?

Yes. Both partners must provide a signed written notice, giving:

- Details of how the original leave was to be divided;
- Stating that they are changing it;
- Setting out how they intend to take the leave.

If booked leave is to be varied, notice to vary that leave must also be given. Notice must be given at least 8 weeks before the leave is due to start. BUT remember the curtailment notice is very difficult to vary so it may not be possible to vary the date maternity leave ends.

EMPLOYER RESPONSE

What information can the employer request when an employee asks for leave?

The employer must agree to a request for one continuous period of SPL.

The employer does not have to agree to a discontinuous leave request. The employer has 2 weeks to accept a request for discontinuous leave, refuse it or suggest an alternative (for example different dates).

If an employee has returned to work can she then go back on to maternity leave?

No, once an employee has returned to work she cannot go back on to maternity leave.

Can an employee take discontinuous leave?

Yes. If the employer agrees, the employee can take SPL either:

- In a single continuous block or;
- In small blocks of leave (minimum one week), so that the employee can mix work and leave. The maximum number of separate blocks of leave are 3, unless the employer agrees to more.

The employee can make up to 3 separate requests for a period of continuous leave. An employer cannot refuse a request for continuous leave.

This means that an employee could do as follows:

- Return from maternity leave after 12 weeks.
- Submit a request for SPL for a period of 4 weeks to start in 8 weeks' time.
- Take 4 weeks SPL and return to work.
- Submit a second request for SPL for a period of 8 weeks to start in 8 weeks' time.
- Take those 8 weeks off and return to work.
- Submit a third request for 2 weeks off in 8 weeks' time.
- Take those 2 weeks off and return to work.

RIGHTS AND RESPONSIBILITIES DURING SPL

What contact with the employer should an employee have during SPL?

There may be reasonable contact. The employee should be consulted about:

- any redundancy situation;
- any substantial changes to their job;
- any new jobs.

Can an employee work during SPL?

If the employee and employer agree, the employee can work for up to 20 days. These are called SPLIT days and are in addition to the 10 KIT (Keeping in Touch) days that can be taken while on maternity leave.

What if there is a redundancy situation when the employee is on SPL?

If the employee is made redundant during SPL they must be offered any suitable alternative work and this is in preference to other redundant employees.

SHARED PARENTAL PAY (ShPP)

Can pay be transferred as well as leave?

Yes. Statutory maternity pay (SMP) is available to female employees from the 11th week before the *expected week of birth* or the actual birth if earlier. It is paid for 39 weeks (the *maternity pay period – MPP*) with the first 6 weeks being at 90% of pay (and then either the flat rate of £145.18 (as at April 2018) or 90% if this is lower, for the remaining 33 weeks. But only 37 weeks (or less) are available for ShPP as the mother must take the first 2 weeks after the birth. Women who do not qualify for SMP will often qualify for maternity allowance which is paid at £145.18 (as at April 2018) or 90% of average earnings if this is lower.

What must the mother do to transfer her SMP or maternity allowance?

It is not enough for the mother to return to work. To create entitlement to ShPP the mother **must** cut short her MPP or MA pay period with a *curtailment notice*, giving 8 weeks' notice. She can serve a curtailment notice after she has returned to work.

How much is ShPP?

ShPP is the same as the flat rate for statutory maternity pay and maternity allowance. From 6 April 2018 to 5 April 2019 it is £145.18 a week or 90% of an employee's average weekly earnings, whichever is lower.

Is there a minimum earnings test for shared parental pay?

Yes. It is the same as for statutory maternity pay. Parents must be earning the lower earnings limit (£116 per week or £503 per month as at April 2018), in the relevant period (i.e. the 8 weeks before the 14th week before the baby is due). The definition is one of 'employed earner', not employee, which means it is wider for shared parental pay than for leave and simply means that Class 1 National Insurance is payable. For example, agency and other atypical workers may be entitled to ShPP.

To claim ShPP the employee must give the employer:

- Notice of how much ShPP both employees are entitled to take;
- Notice of how much ShPP each intend to take;
- Notice as to when the employee expects to take ShPP;
- A declaration from the partner confirming they agree to the employee claiming ShPP.

A woman who is on SPL, so not working for her employer at the time, can claim ShPP, which is paid by her employer.

A parent can work for up to 20 SPLIT days without losing entitlement to ShPP

What job is an employee entitled to return to after shared parental leave?

- If an employee returns after a period of leave (whether maternity, paternity, adoption or SPL) of up to 26 weeks they are entitled to return to the same job. Up to 4 weeks unpaid parental leave is not taken into account.
- If an employee returns after more than 26 weeks of leave (whether maternity, paternity, adoption or SPL) they are entitled to return to the same job unless it is not reasonably

practicable, in which case they must be offered a suitable and appropriate job on equivalent terms and condition.

Note: The job to which the employee is entitled to return is the one she did most recently, even if it was only for 4 weeks in between periods of SPL. Employees would be advised only to agree to return to the same job as they were doing before taking any maternity leave or SPL.

Is an employee entitled to accrue annual leave during SPL?

Yes, in the same way as during maternity, adoption and paternity leave.

Can an employee be disadvantaged or dismissed for taking SPL?

No. An employer must not subject an employee to disadvantage or dismiss them because they:

- Plan to take, are taking or took SPL;
- The employer believed that they were likely to take SPL;
- The employee worked or refused to work during SPL, used SPLIT days.

Key points

- Only employees can take SPL; they must have a partner (separated partners still qualify if sharing responsibility for care of child at the time of birth)
- SPL allows mothers (or adopters) to shorten their maternity leave (and pay) to share the leave (and pay) with their partner in order to care for children in their first year; it is the mother's choice whether to share leave
- The mother can only share with one person; it is her choice provided her partner satisfies the qualifying conditions
- Even if only one parent is entitled to SPL and/or ShPP (eg one is self-employed or not entitled to ShPP), the other partner may still be entitled to SPL/ShPP if both satisfy the qualifying conditions
- The employee taking SPL must have been employed 26 weeks by the 15th week before the expected week of childbirth and remain employed in the week before the start of SPL. Their partner must also satisfy an *employment and earnings test*
- At least 8 weeks' written notice must be given to end maternity leave and start of SPL
- SPL can only be taken a week at a time but can start mid-week. SPLIT days can be used to work part-time by agreement with employer
- SPL can be taken by both parents at the same time or at separate times; they must decide how to take it. The mother can remain on maternity leave while the partner is on SPL
- SPL can be taken in up to three separate blocks (unlike maternity leave) or more if the employer agrees
- There are detailed notice provisions which must be followed
- Employees can work for up to 20 days during SPL (*SPLIT days*), as well as 10 days during maternity leave (*KIT days*). These must be agreed with employer.

YESS lawyers provide advice and support to employees and employers to settle workplace disputes without litigation; Life's too short to litigate! For information contact Camilla or Emma on info@yesslaw.org.uk

Maternity Action advice line	Working Families helpline
0845 600 8533	0300 012 0312
Wednesday 3pm – 7pm	advice@workingfamilies.org.uk
Thursday 3pm – 7pm	
Friday 10am – 2pm	

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