



## FAMILY RELATED LEAVE AND OTHER LEAVE

December 2023

### Introduction

Further to the recent payroll briefing on **Maternity Leave and Employment Considerations**, there are various other forms of leave available to employees in respect of children, as set out below. In addition to these forms of leave, there are rights to take “Time off for dependants” and the right to request “Flexible Working”, which are not limited to child related matters.

An outline of the main considerations of these types of leave are set out below.

### Paternity Leave and Pay

An employee is entitled to two weeks’ statutory paternity leave assuming they;

- are the biological father of the child, the mother’s spouse or civil partner;
- have been in continuous employment for at least twenty-six weeks by the end of the 15th week before the end of the EWC (Expected Week of Confinement, ie. expected due date);
- have, or expect to have, responsibility for the child’s upbringing; or
- are taking the leave to care for the child or support the mother in caring for the child.

The leave must be taken as either one or two consecutive weeks, cannot start until the birth of the child and must be taken within eight weeks of the birth. Such leave is also available, with the same criteria, if the mother is taking adoption leave.

An employee must give notice of their intention to take paternity leave at least fifteen weeks before the EWC. As with most types of family leave, the employee’s terms and conditions of employment remain the same, bar their pay.

Statutory paternity pay is paid at the lower of £172.48 per week or 90% of the employee’s normal weekly earnings, assuming these earnings are above the lower earnings limit of £123 per week.

The Government has stated that the current legislation will be amended to be more flexible, but the full details and implementation date are awaited.

Eighth Floor  
6 New Street Square  
New Fetter Lane  
London EC4A 3AQ

And at

Q3, The Square  
Randalls Way  
Leatherhead  
Surrey KT22 7TW

T +44 (0)20 7842 2000  
F +44 (0)20 7842 2080

hello@rawlinson-hunter.com  
www.rawlinson-hunter.com

## Shared Parental leave (“SPL”) and Pay (ShPP)

An employee and their partner may be able to get SPL and ShPP if the employee is

- having a baby;
- using a surrogate to have a baby;
- adopting a child;
- fostering a child which the employee is planning to adopt;

An employee can share up to fifty weeks of leave and up to thirty-seven weeks of pay between the employee and partner, which need to be shared in the first year after the child is born or placed with the family. SPL can be taken in blocks, separated by periods of work, or taken in one go, and partners can choose to be off work together or stagger the leave and pay. An employee can split their leave into three separate blocks and must give at least eight weeks’ notice before a block of leave commences. An employer can agree that a block of leave can be split into shorter periods of, as long as it is at least one week in length, e.g. an employee could work every other week during a twelve week block, thereby using a total of six weeks of their SPL.

To be eligible for SPL, the following criteria must be met by the employee:

- being continuously employed for at least twenty-six weeks by the end of the 15th week of the EWC and remain employed until the week before any period of SPL starts;
- the mother must be entitled to statutory maternity leave and have curtailed her maternity leave or returned to work; and
- both parents must have provided their respective employers with certain notice.

A mother must take a minimum of two weeks maternity leave following birth (or four weeks if they work in a factory). For SPL to commence, the mother must do one of the following:

- end their maternity or adoption leave by returning to work;
- give binding notice to their employer of the date when they will end their maternity leave; or
- end their maternity pay.

Up to thirty-seven weeks of ShPP is available to share between the parents at the lower of the statutory rate of £172.48 per week or 90% of the employee’s normal weekly earnings.

In line with SMP, most employers can recover 92% of their ShPP from HMRC. Similarly, most small employers, whose Class 1 National Insurance contributions were less than £45,000 in the previous tax year, can recover 103% of ShPP.

### **SPL - in touch (SPLIT) days**

An employee can work up to twenty days during SPL without bringing it to an end. These are called shared parental leave in touch (“SPLIT”) days and are in addition to the 10 KIT days already permitted to those on maternity or adoption leave.

## Parental Leave

An employee can take up to eighteen weeks’ parental leave for each of their children, hence could take up to thirty-six weeks if the employee had twins, unless the employer agrees a higher amount of leave. Such leave must be taken in full weeks and a maximum of four weeks can be taken in any given year per child, except in the case of a disabled child where there is no annual restriction. Parental leave is an entitlement per child and hence if an employee has taken ten weeks for a child with one employer, they are only permitted to take a further eight weeks for that child with a new employer. Parental leave is available for parents to look after their child’s welfare, such as spending more time with

them, looking at new schools, visiting grandparents etc. Parental leave is unpaid.

Employees are eligible for parental leave where:

- They have been with their current employer for at least one year;
- They are named on the birth certificate or have parental responsibility (in broad terms, this means that the employee provides a home for the child and protects and maintains the child)
- They are not self-employed or a worker (broadly defined as an individual working under a contract or agreement for work but which is more casual than under an employment contract)
- They are not a foster parent, unless they have secured parental responsibility
- The child is under 18

Where an employee wants to take parental leave, they must give the employer at least twenty-one days' notice before the intended start date and confirm both the start and end date. An employer cannot delay or postpone the leave if:

- There is no significant reason (such as serious disruption to the business);
- It is being taken by the father or partner immediately after the birth (or adoption) of the child
- Postponing it would mean that the employee is no longer entitled to the leave as the child would be over 18 years

If the leave is to be validly postponed, the employer must:

- Write explaining why within seven days of the original request
- Suggest a new date within six months of the requested date
- Not change the amount of leave being requested

### **Statutory Parental Bereavement Leave (“PBL”) and Statutory Parental Bereavement Pay (“PBP”)**

An employee and their partner can take time off work if their child dies before they turn 18 or if the employee has a stillbirth after twenty-four weeks of pregnancy. As in the majority of situations where an employee is on such leave, employment rights are protected, including an entitlement to a pay rise, accruing holiday and returning to work.

From the first day of employment, an employee is entitled to take two weeks' leave for each child that has died or was stillborn; these weeks can be taken together, separately or only one week taken. The leave can start from the date of death and must finish within fifty-six weeks of this date. A week is measured by the usual number of days that the employee works in a week. It may be that the employee is taking another type of statutory leave, such as maternity leave when the child dies. In this situation, the PBL can only start after the other leave has ended, although it does not have to be taken immediately afterwards. If PBL is interrupted by the start of another type of statutory leave, the remaining PBL can be taken at the end of the other leave (as long as this is within the 56 weeks from the date of death). However, the employee can take PBL between blocks of Shared Parental Leave.

There are two hurdles that have to be met to be eligible for PBL:

#### ***Parent criteria***

There are very detailed rules used to determine if a parent qualifies, but in summary, they are as follow;

- You are the child's or baby's parent, either biological, adoptive or parent of a child born to a surrogate, or the partner of the child or baby's parent
- You or your partner had day to day responsibility for the child
- You or your partner were an adoptive parent (there are slightly different rules for a child adopted from outside of the UK); and
- You or your partner had a baby with the help of a surrogate parent

## ***Employee criteria***

As above, as long as the individual is classed as an employee they are eligible for such leave from day one.

There are detailed rules regarding the notice required – again in summary:

0 to 8 weeks after death – before the start of the employee's normal start time of the first day

9 to 56 weeks – at least one week.

## ***Pay***

To be able to claim PBP, and assuming the employee meets the PBL criteria, an additional hurdle to be met is that the employee must have been continuously employed for at least 26 weeks up to the week immediately preceding the death or stillbirth. The employee must also:

- Continue to be employed up to the day the child dies or is stillborn
- Earn on average of £123 gross a week over an 8 week period
- Provide the employer with the correct notice, including the date of death, when you want PBL to start and whether you are taking one or two weeks leave.

A declaration must be completed, which is an online form, and sent to the employer.

## **Time off for Dependants**

An employee is allowed to take time off for a dependant to deal with an emergency. A dependant is defined as;

- a spouse
- a partner
- a child
- a grandchild
- a parent
- someone you care for

The employee is entitled to a reasonable amount of time to deal with an emergency – there is no specified time permitted and it will depend on the specific situation in question. The employee must tell the employer as soon as reasonable that they are taking the time off, it does not need to be in writing and the employee does not need to provide proof of the situation. There are no limits as to how many times an employee can take time off but the employer may want to review the situation if it is affecting the employee's ability to do their job.

There is no requirement for the employer to pay the employee for any such time taken off.

Examples of an emergency are needing to take a child to the doctors as they have fallen ill. It should be noted that this is different to a planned hospital appointment for a child, as an example, which is not considered an emergency, as it is planned, and hence this type of situation is not covered by Time Off For Dependants.

## **Flexible Working Requests**

All employees have a legal right to request flexible working, which may include the right to work from home or to have flexible start and finish times. At present, an employee must have been working for at least twenty-six weeks before being eligible to make such a request and one request per annum is permitted.

Employees make a “statutory request” in writing to the employer, either by email or letter, or such format as the employer determines. The main points that are required are the details of how the employee wants to work flexibly, the effect on the business and how this could be dealt with, when they want to change to start and whether or not they have made such a request previously. Upon receipt, the employer must follow the following process:

- Consider the request in a reasonable manner and make a decision within three months (or longer if the employee agrees)
- If the employer agrees, change the terms and conditions in the employee’s contract and detail the start date of the new arrangements
- If the employer disagrees, they must write to the employee giving the reasons why such a request is being turned down, which could include the extra cost to the business, the work cannot be reorganised amongst the existing staff, a lack of work to do during the proposed times etc.

Employees do not have a statutory right of appeal if the request is turned down, but there is an argument that the decision should be discussed with the employee to demonstrate that the process have been dealt with in a reasonable manner. Ultimately, the employee may be able to complain to an employment tribunal if they consider there are grounds that the outcome has not been reasonable (not simply that the request has been turned down).

In July 2023 a bill has been passed in Parliament changing some of the above conditions and it is expected that this will become legislation some time in 2024. The Employment Relations (Flexible Working) Act 2023 will enable employees to make two requests per annum and the employer will need to respond within two months rather than the current three months. In respect of the process to be followed, employees will no longer need to set out the impact of granting such a request will have on their role and how it may be dealt with. In addition, the employer will have to consult with the staff member before the request is refused.

It was thought that the new legislation would also make this request possible from Day 1 of employment but this was not included in the above bill. However, the Government has stated that this right will be introduced through separate, secondary legislation, but there is no date for this change at present.

## Conclusions

Whilst family related leave regularly occurs in the workplace, the rules surrounding such leave are often complex and need to be handled carefully by the employer, as this can be a sensitive area for the employee. The above is an overview of the rights and processes to be followed, but in certain cases, especially Shared Parental Leave, a more detailed review of the rules will be required to implement the policy. Employers should ensure that their staff handbooks set out the rules for all such leave and hence all employees are able to determine their eligibility.

Please contact your usual Rawlinson & Hunter contact or any of those listed below if you have any queries in relation to the matters raised in this briefing:

Lynne Hunt  
Director  
Direct Dial: (+44) 20 7842 2025  
Email: lynne.hunt@rawlinson-hunter.com

Salma Khan  
Director  
Direct Dial: (+44) 20 7842 2070  
Email: salma.khan@rawlinson-hunter.com

Yueling Wei  
Partner  
Direct Dial: (+44) 20 7842 2098  
Email: yueling.wei@rawlinson-hunter.com

Craig Davies  
Partner  
Direct Dial: (+44) 20 7842 2136  
Email: craig.davies@rawlinson-hunter.com

James Randall  
Partner  
Direct Dial: (+44) 20 7842 2131  
Email: james.randall@rawlinson-hunter.com

William Watson  
Partner  
Direct Dial: (+44) 20 7842 2111  
Email: william.watson@rawlinson-hunter.com

Kulwarn Nagra  
Partner  
Direct Dial: (+44) 20 7842 2130  
Email: kulwarn.nagra@rawlinson-hunter.com

Catherine Thompson  
Partner  
Direct Dial: (+44) 20 7842 2028  
Email: catherine.thompson@rawlinson-hunter.com

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