

Shared Parental Leave

Parents of babies due to be born or placed for adoption on or after 5th April 2015 now potentially have, if they are eligible, a right to Shared Parental Leave which aims to give parents much more flexibility to decide how to split the 52 weeks leave between them.

The Mother must take the first 2 weeks (usually 4 weeks if she works in a factory) as Maternity Leave but the remaining 50 (or 48) weeks can now effectively be split between the parents in any way they choose meaning that both parents could take leave at the same time or alternate leave between the two of them in blocks.

Each parent has the right to submit up to 3 requests for leave which means that employees could request 3 separate blocks of leave throughout the first year of the baby's life, returning to work between blocks. The employee could also ask to take the leave in more than 3 separate blocks but this would be subject to the employer's agreement because the employer has no obligation to allow a request for leave which is not in one continuous block and the employee only has a right to 3 separate requests.

The limit of 3 requests includes requests for changes and therefore employees who intend to take more than one block of leave, and who have any doubt as to when they will want to take that leave, would be well advised to save at least one of their 3 requests to allow them the opportunity to change the dates they intend to take leave if necessary or to leave serving the request for that period of leave as late as possible (no less than 8 weeks before).

Shared Parental pay (ShPP) is restricted to the basic rate (currently £139.58 per week or 90% of salary whichever is lower). The enhanced 90% of usual salary payment which applies to the first 6 weeks of

maternity and adoption leave does not apply to shared parental pay and therefore, it seems likely that most mothers (or main adopters) will at least take the initial first 6 weeks as maternity (adoption) leave.

Each parent on shared parental leave may work up to 20 shared parental leave in touch (SPILT) days but these are, like existing keeping in touch days, optional and require the agreement of both parties.

The protection that parents have whilst taking, or seeking to take, Shared Parental Leave, is similar to the protection for parents on maternity or paternity leave. Employers must not treat employees less favourably due to their request to take Shared Parental Leave and dismissal for reasons connected to the parent taking Shared Parental Leave will usually be automatically unfair.

A parent returning from Shared Parental Leave will have the right to return to the same, or similar job. The question as to whether they have a right to return to exactly the same job, or a suitable and appropriate alternative, will depend on the total number of weeks leave, and the type of leave, the parent has taken.

It remains to be seen how many couples choose to use Shared Parental Leave. The Government estimates only 2% to 8% of eligible couples will apply for Shared Parental Leave in 2015/2016 and the old right for fathers to take Additional Paternity Leave was rarely used.

The rules and notice requirements in relation to Shared Parental Leave are complex. Employers need to understand what they must agree and what they have the right to refuse therefore it is useful to have a comprehensive policy in place for both parties to refer to.

The above information is not intended to be a complete or definitive statement of the law. For further advice on Shared Parental Leave or other employment law matters please contact our Employment Law team.