



dti

WORKING FATHERS

Rights to paternity leave and pay

A GUIDE FOR EMPLOYERS AND EMPLOYEES



The DTI drives our ambition of 'prosperity for all' by working to create the best environment for business success in the UK. We help people and companies become more productive by promoting enterprise, innovation and creativity.

We champion UK business at home and abroad. We invest heavily in world-class science and technology. We protect the rights of working people and consumers. And we stand up for fair and open markets in the UK, Europe and the world.

Contents

Introduction	3
Section 1 Outline of the rights	6
Section 2 Who is eligible for paternity leave and pay	11
Section 3 The period of leave	15
Section 4 Notification and evidence required for leave and pay	17
Section 5 Statutory Paternity Pay (SPP) Paternity rights flowchart	23
Section 6 Terms and conditions during leave and on return	34
Section 7 Protection from detriment and dismissal	40
Section 8 Enforcement through employment tribunals	43
Section 9 Other benefits and time off rights for employees expecting a baby	47
Section 10 Where to find further information	52
Annex 1 Model self-certificate Becoming a parent (SC3)	58

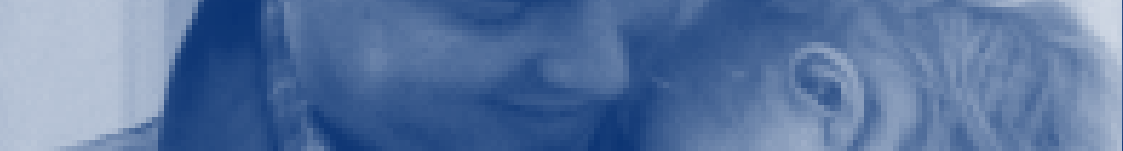
Introduction

This is a guide to paternity leave and pay. It sets out the minimum amounts of paternity leave and pay an employee is entitled to take at the time of the birth of his child. It also explains what an employee can do if he feels his employer has denied him these rights.

The guide covers paternity leave and pay for employees whose partners give birth to a child. Similar rights to paternity leave and pay are available to one member of a couple adopting jointly or the partner of an individual adopting – see Adoptive parents – rights to leave and pay (PL 515).

The Employment Act 2002 sets out the basic rights to paternity leave and pay. The Act amends the Employment Rights Act 1996 and the Social Security Contributions and Benefits Act 1992. The detail of the rights is mainly set out in the Paternity and Adoption Leave Regulations 2002 and the Statutory Paternity Pay and Statutory Adoption Pay (General) Regulations 2002.

Note that this is general guidance only: it has no legal force and cannot cover every point and situation. It describes the position which applies in England, Wales and Scotland. For Northern Ireland, corresponding legislation applies and comes into force on the same date.



The rate of Statutory Paternity Pay (SPP) given in this guidance is correct at the date of publication. The rate is subject to revision each April. Your local Inland Revenue office can advise you of the current rate.

Paternity leave and pay are part of a package of rights and benefits designed to give support to working fathers, mothers and their partners. Section 9 of this guide summarises other important rights and benefits. Section 10 explains where you can go to get further advice on employment legislation.

The latest version of this booklet is published on the Internet at
www.dti.gov.uk/er/individual/patrights-pl517.htm

For further information on working parent issues, see www.dti.gov.uk/workingparents

February 2004



Help

For further help with paternity leave, please contact the Acas helpline on 08457 47 47 47.

For further help with paternity pay, employers can contact the Inland Revenue on 08457 143 143; employees should contact their local Inland Revenue office – you'll find them in your local telephone book under 'Inland Revenue'.

For interactive tailored guidance on paternity leave and pay, see www.tiger.gov.uk



Section 1: Outline of the rights

What are the rights?

The rights to paternity leave and Statutory Paternity Pay (SPP) allow an eligible employee to take paid leave to care for his baby or to support the mother following birth. He can take either one week's or two consecutive weeks' paternity leave and during this time may be entitled to SPP (see Section 5 for more information on SPP).

When do the rights take effect?

Legislation lays down that:

- Employees whose children are expected to be born on or after 6 April 2003 benefit from the new paternity leave and pay provisions;
- Employees whose children are expected to be born on or after 6 April 2003 can take paternity leave and pay even if their children are born **earlier** than expected;
- Employees whose children are expected to be born before 6 April 2003, but whose children are born later than expected on or after 6 April 2003, can take paternity leave and pay (special notice arrangements will apply – see Section 4).

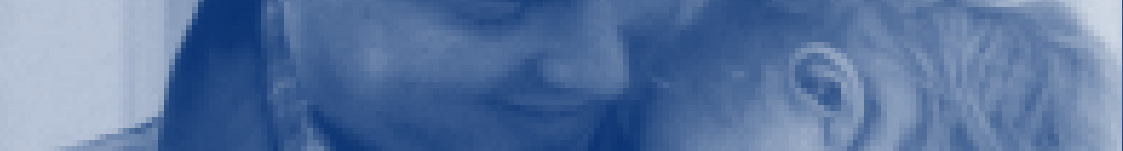
Who qualifies for these rights?

These rights apply to employees, regardless of the hours they work, provided that they satisfy the other qualifying conditions. These include twenty-six weeks' qualifying service with their employer (ending with the fifteenth week before the baby is due) – see Section 2 for full details.

- To qualify for **paternity leave**, a person must be an *employee*, that is to say must work under a contract of employment¹
- To qualify for **Statutory Paternity Pay (SPP)** a person must be an *employed earner* – that is to say, must work for someone who is liable to pay the employer's share of his Class 1 National Insurance contributions²
- In addition an employee must be earning at least the Lower Earnings Limit to qualify for SPP – see Section 5.

The vast majority of people who qualify for leave will also qualify for pay, and vice versa, but there are a few exceptions noted below.

- 1 In cases of doubt, whether a person is an employee or not is determined by a number of factors. This is explained in further detail in the booklet *Contracts of employment* (PL 810).
- 2 In cases of doubt contact your local Inland Revenue office and ask for the Status Inspector.



A self-employed person who chooses to take time off to care for his new child or its mother or someone who is not working may be able to claim other benefits – these are summarised in Section 9.

Are any particular types of workers excluded from these rights?


Most agency workers are not usually classed as employees – though some may be – and therefore may not qualify for leave. However, agency workers can be treated as employed earners and may thus be entitled to SPP.³

Office holders – such as police officers, MPs, the judiciary and some company directors – will similarly generally only qualify for pay, not leave. The same applies to members of the armed forces.

Does an employee who adopts a child qualify for paternity leave and pay?

Employees who adopt children on or after 6 April 2003 have the right to adoption leave and pay. This right applies to individuals who adopt or one member of a couple adopting jointly. The partner of an individual who adopts, or the member of a couple adopting jointly who hasn't chosen to take adoption leave,

3 In cases of doubt contact your local Inland Revenue office and ask for the Status Inspector.



may be entitled to paternity leave and pay. The rules governing this entitlement are different from those described in this booklet: they are covered in *Adoptive parents – rights to leave and pay* (PL 515).

Is an employee entitled to time off to attend antenatal care appointments?

Under the statutory right to paternity leave, employees are not entitled to time off to accompany their partner at antenatal appointments (although pregnant employees do have the right to time off – see *Maternity rights – a guide for employers and employees* (PL 958)).

What happens if an employer has their own paternity leave scheme?

This guidance is about employees' statutory rights under employment legislation. They cannot contract out of these rights. Those employees whose employment contracts give them entitlements to paternity leave may take advantage of those contractual rights or their statutory rights, depending on which are more favourable. Employees who believe they are not entitled to the statutory rights described here should check whether they are entitled to take leave under their contracts.

What happens if an employer has their own paternity pay scheme?

The employer must pay the SPP the employee is entitled to. If the employee is also entitled to contractual paternity pay for the same period as he is entitled to SPP and it is more than the SPP, the employer should top up the SPP to the amount of the contractual paternity pay.

Meaning of expected week of childbirth or the week the baby is due

In this booklet 'expected week of childbirth' or 'the week the baby is due' means the week, beginning with midnight between Saturday and Sunday, in which it is expected that the baby will be born.



Section 2: Who is eligible for paternity leave and pay

What makes an employee eligible for paternity leave?

An employee is eligible for paternity leave if he has or expects to have responsibility for his baby's upbringing and is either or both

- the biological father of his baby
- the mother's husband or partner⁴

In addition, he must

- have worked continuously for the same employer:
 - for twenty-six weeks ending with the fifteenth week before the baby is due (the 'qualifying week') and
 - from the fifteenth week before the baby is due up to the date of birth;
- be taking the time off either to support the mother or to care for the new baby.

⁴ 'Partner' may include a female partner in a same sex couple. Where this guide refers to employees as 'father', 'he', 'him' or 'his', this should be taken to include those female same sex partners who qualify.



What is paternity leave for?

An employee can only take paternity leave in order to care for his new baby or support the mother of the baby – he cannot take leave for any other purpose.

Who qualifies as a ‘partner’?

For the purposes of deciding if an employee is eligible for paternity leave, a partner is someone who lives with the mother of the baby in an enduring family relationship but is not an immediate relative (and see footnote 4 on previous page).

Are there any exceptions to the qualifying conditions for leave?

If the baby is born earlier than the fourteenth week before it is due and, but for the birth occurring early, the employee would have been employed continuously for the twenty-six weeks, then he will be deemed to have the necessary length of service.

Will an employee qualify for leave if his baby is stillborn or dies following birth?

A qualifying employee will be entitled to paid leave if his baby is stillborn after twenty-four weeks of pregnancy.

If the baby is born alive at any point in the pregnancy but dies later, the employee will be entitled to paid paternity leave in the usual way.

What qualifying conditions are there for Statutory Paternity Pay?

In addition to the qualifications for leave (see above), to qualify for Statutory Paternity Pay (SPP) an employee must have average weekly earnings at or above the Lower Earnings Limit for National Insurance at the end of his qualifying week. The employee does not have to pay National Insurance to qualify. Section 5 of this guide covers SPP in more detail.

What counts as working continuously for the period needed to qualify for pay and leave?

Continuous employment generally means working for the same employer without a break, but this is not always the case. An employee's continuity of employment for the purposes of qualifying for SPP and paternity leave will not be regarded as broken in certain circumstances. For more information on the law in this area, see *Continuous employment and a week's pay* (PL 711).

If an employee changes jobs before his baby is born will he qualify for pay and leave?

Unless the new employer is an associated employer, the employee probably won't qualify for pay or leave. The booklet *Continuous employment and a week's pay* (PL 711) will tell you more about when time with a previous employer may count towards continuity of employment.



If an employee's contract ends after his baby is born, will he be entitled to pay or leave?

The employee is still entitled to SPP, even if his contract ends after the baby is born. However, if he starts work for a new employer, he cannot get SPP for any week he works for them.

What happens if the employer decides the employee doesn't qualify for SPP or paternity leave?

If the employer decides that the employee is not entitled to SPP for any reason, they must give him a written statement. Form SPP1 *I cannot pay you Statutory Paternity Pay* (SPP) (available from the Inland Revenue Employer's Orderline on 08457 646 646) can be used for this.

If the employee disagrees, he should first discuss it with his employer. If he is still unhappy he should contact an Inland Revenue office to ask for a decision – see Section 5 for more information.

If the disagreement is about paternity leave, the employer or employee may contact Acas.

Section 3: The period of leave

How much paternity leave can an employee take?

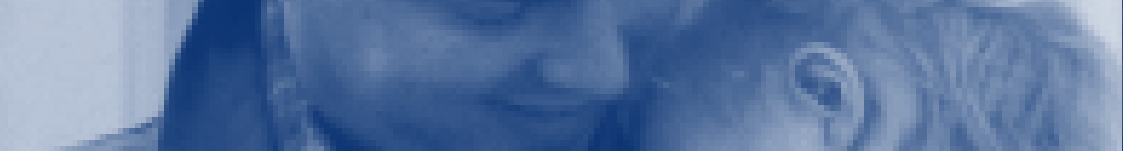
Eligible employees can choose to take either one week's or two consecutive weeks' paternity leave. It can't be taken as odd days or as two separate weeks.

Employees can take only one period of leave even if more than one baby is born as the result of the same pregnancy.

When can an employee start his leave?

Leave cannot start until the birth of the baby. Otherwise, an employee can choose to start his leave:

- on the date of the baby's birth (whether this is earlier or later than expected); or
- on a date falling such number of days after the date on which the child is born (whether this is earlier or later than expected) as the employee notifies to his employer; or
- on a chosen date as notified to his employer which falls after the first day of the expected week of childbirth.



Employees must give their employer the required notice of their leave – see Section 4.

If an employee specifies the date of birth as the day he wishes to start his leave and he is at work on that day, his leave will begin on the next day.

If an employee qualifies for leave because, although the expected week of childbirth is before 6 April 2003, his baby is born after that date, he must specify an actual date on which his leave will begin, and this must be at least twenty-eight days after the date on which notice is given (see Section 4).

Must leave be taken within a certain period?

Paternity leave can start on any day of the week, as long as the employee has given the required notice. It must be completed:

- within fifty-six days of the actual date of birth of the child; or
- if the child is born earlier than expected, between the birth and fifty-six days from the first day of the expected week of birth.

Section 4: Notification and evidence required for leave and pay

When must an employee tell his employer that he is going to take leave?

To qualify for paternity leave, an employee must tell his employer that he intends to take paternity leave by the end of the fifteenth week before the week his baby is due or, if this isn't possible, as soon as is reasonably practicable.

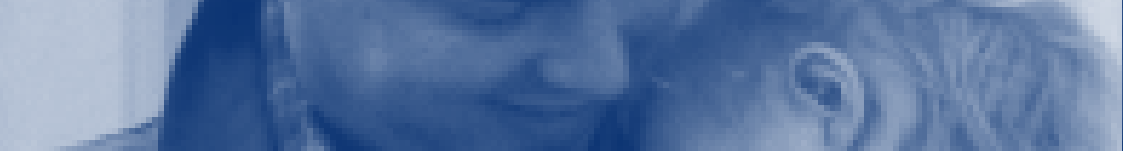
When must an employee tell his employer that he wants SPP?

To qualify for SPP, an employee must tell his employer that he wants to get SPP at least 28 days beforehand. Where an employee is entitled to both pay and leave, the notice given for leave by the fifteenth week before the week the baby is due can count for pay as well.

What must an employee tell his employer if he wants to take leave or claim SPP?

To claim either paternity leave or Statutory Paternity Pay (SPP), he must tell his employer:

- the expected week of the baby's birth

- 
- whether he wishes to take one or two weeks' leave
 - when he wants to start his leave

In addition, to claim SPP he must make a declaration (see below). The employee must also tell his employer when his baby was actually born as soon as is reasonably practicable after the birth.

What is the declaration an employee must make to be entitled to SPP?

To get SPP, the employee must give his employer a signed declaration that he:

- is taking leave either to care for his child or to support the mother or both;
- has or expects to have responsibility for the upbringing of the child;
- is the father of the child and/or the partner or husband of the mother.

This declaration is included on the model self-certificate SC3 *Becoming a parent* reproduced at Appendix 1. The employer should accept this declaration at face value unless they have very good reasons for believing it is false.

Does the employee have to give the information required to claim leave and pay in writing?

To get SPP an employee must give his employer a completed self-certificate as evidence of his entitlement at least 28 days before he wants his SPP to begin. A model self-certificate (SC3 *Becoming a parent*) for employers and employees to use is provided at Appendix 1 to this guide.

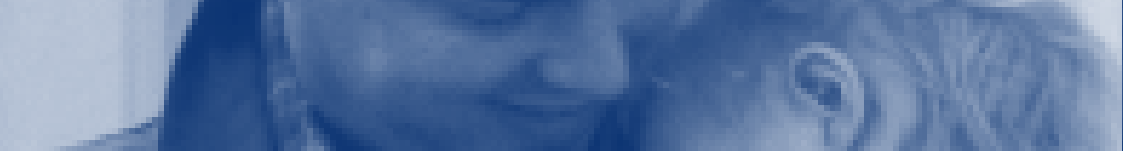
The information needed to claim paternity leave must be put in writing if the employer requests it. It therefore may make sense for the employee to provide a completed self-certificate for both leave and pay when giving his notice for leave.

The employee should tell his employer the date of birth – in writing if the employer requests it. However, the employee is not obliged to give his employer any medical evidence of the pregnancy or birth (unlike the obligation on the mother to provide medical evidence to claim Statutory Maternity Pay).

Does an employee have to give an actual date on which he intends to start leave?

Section 3 explains the options an employee has in deciding when to start his leave:

- if he plans to start it on the date of birth then he should tell his employer this;


- 
- if he plans to start leave on a particular date after the first day of the week the baby is due, he must specify the date;
 - if he chooses to take leave a certain number of days after the birth, he needs to specify how many days that will be.

Can an employee change his mind about when his leave starts?

An employee can change the date on which he wants his leave to start (but not the length of the leave he is taking) as long as he gives his employer the required notice as follows:

- if he wants to change his leave so it starts on the date of birth, at least twenty-eight days before the first day of the week the baby is due;
- if he wants to change his leave so it starts a specified number of days after the birth, at least twenty-eight days before the date falling the same number of days after the first day of the week the baby is due;
- if he wants to change his leave so it starts on a particular date, twenty-eight days before that date.

If this isn't possible, he should tell his employer as soon as is reasonably practicable. If an employee changes his mind, he should fill in a new self-certificate.



What must an employee do to fulfil the notice requirements for leave and pay if his baby is born earlier than expected?

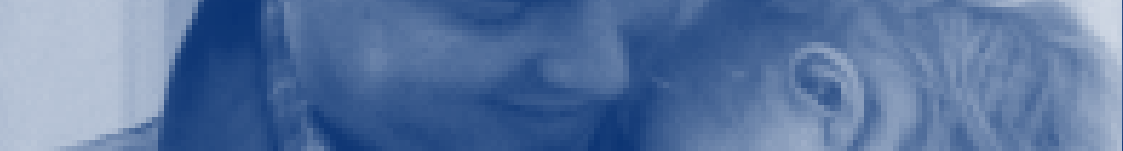
If the baby is born before it is due, the employee may not be able to give his employer the required notice of his leave. He should, however, give the information and declaration required on the form SC3 as soon as is reasonably practicable if he wants to claim leave and/or pay. He can take his leave at any time between the birth and fifty-six days after the first day of the week the baby was due.

What must an employee do if he has told his employer his leave will begin on a specified date but the baby isn't born by that date?

An employee cannot take paternity leave or be paid SPP before the birth of his baby. If the baby isn't born by the date he specified, then he must change the date or choose to take leave from the actual date of birth or a specified number of days after the birth. Whatever he chooses to do, he must give his employer notice as soon as possible.

Can an employee involved in an industrial dispute give notice that he is going to take paternity leave?

If an employee is involved in an industrial dispute, he can still give his employer notice of the date his paternity leave will start. This date can be within the



period of the dispute. Any notice that the employee has already given to his employer is not affected by a subsequent trade dispute.

How should an employee give notice if he intends to take parental leave immediately before or after his paternity leave?

He should give the required notice for parental leave as well as his notice for paternity leave. For further details about parental leave, see *Parental leave: a guide for employers and employees* (PL 509).

Section 5: Statutory paternity pay (SPP)

Note: *the figures quoted in this section for rates of SPP and the lower earnings limit are correct at the time of going to press. Your local Inland Revenue office can advise you of the current rates.*

What is Statutory Paternity Pay?

During their paternity leave, most employees will be entitled to Statutory Paternity Pay (SPP) from their employers. SPP is paid weekly by employers for either one or two weeks depending on the amount of leave the employee has chosen.

Employers should refer to the Inland Revenue employer's help book *E15 Pay and time off work for parents for babies due or born on or after 6 April 2003*, which explains in detail what they have to do to work out if their employee is entitled to SPP and how much to pay and when. There is also a supplement to the E15 which covers special cases. The help book, supplement and forms referred to in this section are available from the Inland Revenue Employer's Orderline on 08457 646 646 (unless otherwise stated). Form *SC3 Becoming a parent* is also reproduced at Appendix 1 of this guide.



What must an employee do to get SPP?


An employee must give his employer a completed form SC3 *Becoming a parent* at least twenty-eight days before he wants his SPP to start. If he has already done this for the purposes of claiming leave (see Section 4), he will have fulfilled the notice requirements for pay as well.

If the employee can't give his employer the self-certificate 28 days before he wants his payment of SPP to begin, he must do it as soon as possible and explain why it is late. The employer should accept this if the employee has a good reason for telling them late. If the employer thinks that the employee didn't have a good reason, they can refuse to pay SPP.

When an employee claims SPP, what must his employer do?

The employer must check whether the employee satisfies the qualifying conditions. As well as giving the employer the required notice and giving a declaration of his family commitment (see Section 4), the employee must have:

- worked continuously for that employer
 - for the twenty-six weeks ending with the fifteenth week before the week the baby is due;

- 
- from the fifteenth week before the week the baby is due up to the date of birth
 - and average weekly earnings at or above the Lower Earnings Limit for National Insurance purposes which applies at the end of the fifteenth week before the week the baby is due.

How are average weekly earnings calculated in order to find out if an employee qualifies for pay?

Average weekly earnings are worked out over a period of at least eight weeks up to and including the last normal pay day on or before the Saturday of the fifteenth week before the week the baby is due. All the pay the employee got in that period must be taken into account. Pay means earnings which are liable for Class 1 National Insurance contributions, or earnings which would be liable if they were high enough. Detailed guidance on this is given in the help book E15 (see 'What is statutory paternity pay?' at the start of this section).



How is an employee's entitlement to SPP worked out if he is working for more than one employer?

If an employee has more than one employer, he may be entitled to SPP from each one. The same is true if he has more than one contract with the same employer, as long as his National Insurance contributions are paid separately for each contract.

Employees working for the NHS may have two or more contracts of employment split between different NHS bodies such as Strategic Health Authorities, NHS trusts or primary care trusts.


For guidance on the special rules in such situations please see the help book E15 supplement (see 'What is statutory paternity pay?' at the start of this section).

Can an employer make deductions from SPP?

SPP is treated as earnings, so an employer should make any deductions (such as income tax and NI contributions) that are due – the only exception is an Attachment of Earnings Order. Employers can also deduct pension contributions or trade union subscriptions from SPP.

How is the employee paid SPP?

SPP is a weekly payment due at the end of each SPP week. SPP weeks can start on any day. For example, if an employee starts his leave on a Tuesday, then



a week's SPP runs from the Tuesday to the next Monday. This may mean that employers have to pay a mixture of wages and SPP at the end of the leave period.

SPP can be paid through an insurance company, friendly society, payroll service or other third party, but it cannot be paid in kind, or as board and lodging, or by way of a service.

SPP cannot be paid for more than two weeks and it cannot be paid for any SPP week in which the employee does some work for the employer, or for any SPP week the employee is sick and entitled to get Statutory Sick Pay. For more information about paying SPP see the help book E15 (see 'What is statutory paternity pay?' at the start of this section).

How much is SPP?

The standard rate of SPP is the same as the standard rate of Statutory Maternity Pay, which is £100 a week or 90% of an employee's average weekly earnings if that is less than £100. For all payment weeks beginning on or after 4 April 2004 the rate is being increased to £102.80, or 90% of an employee's average weekly earnings if that is less.

In the case of a multiple birth, entitlement to SPP is exactly the same as if there was one baby.



Where does the money to pay SPP come from?

Employers should use the money they collect for:

- PAYE tax
- National Insurance contributions
- Construction Industry scheme deductions and
- Student loan deductions

to fund the SPP they have to pay.

If they don't have enough money from this, they can apply to the Inland Revenue for an advance. For more information about this, see the help book E15 (see 'What is statutory paternity pay?' at the start of this section).

Some employers have to fund 8%: this will depend on their Class 1 National Insurance liability. Again, see the help book E15 for further details.

What should an employer do if his employee doesn't qualify for SPP?

If the employer decides that their employee is not entitled to SPP for any reason, they must give him a written statement. Form SPP1 *I cannot pay you Statutory Paternity Pay (SPP)* (see 'What is statutory paternity pay?' at the start of this section) can be used for this.

Can an employee get any other form of financial support during paternity leave?

Employees who don't qualify for SPP, or who are normally low-paid, may be able to get Income Support while on paternity leave. Additional financial support may be available through Housing Benefit, Council Tax Benefit, Tax Credits or a Sure Start Maternity Grant. See Section 9 for further information.

What can an employee do if he disagrees with a decision that he doesn't qualify for SPP?

If an employee disagrees, he should first discuss it with his employer. If he is still unhappy he should contact his local Inland Revenue office to ask for a decision.

The Inland Revenue will look at anything in writing that has to do with the question he has raised and will ask for more evidence from employee or employer if needed. Both employer and employee will get copies of their decision and both have the right to appeal to the Tax Commissioners within 30 days of the date of the decision.

For more information about appeals see leaflet IR37, which is available from any Inland Revenue office.



Are there any circumstances in which SPP is stopped?

If an employee is taken into legal custody at any time whilst on paternity leave, his employer no longer has to pay him SPP. Legal custody means being detained by the police, usually arrested and/or in prison.

If an employee dies, his employer will not be liable for SPP in the following week.

What happens if the employee is sick when he is planning to take paternity leave?

Most people who work for an employer and earn enough on average to equal or exceed the National Insurance lower earnings limit (LEL) get Statutory Sick Pay (SSP) from their employer when they are sick.

An employee cannot be paid SPP and SSP at the same time. If an employee is unwell before starting his period of paternity leave, he should postpone it. The fifty-six day period within which he should take his leave is not extended under these circumstances.

For more information on what to do see the supplement to the E15 help book (see 'What is statutory paternity pay?' at the start of this section).

Can an employee get SPP if his employer can't pay it?

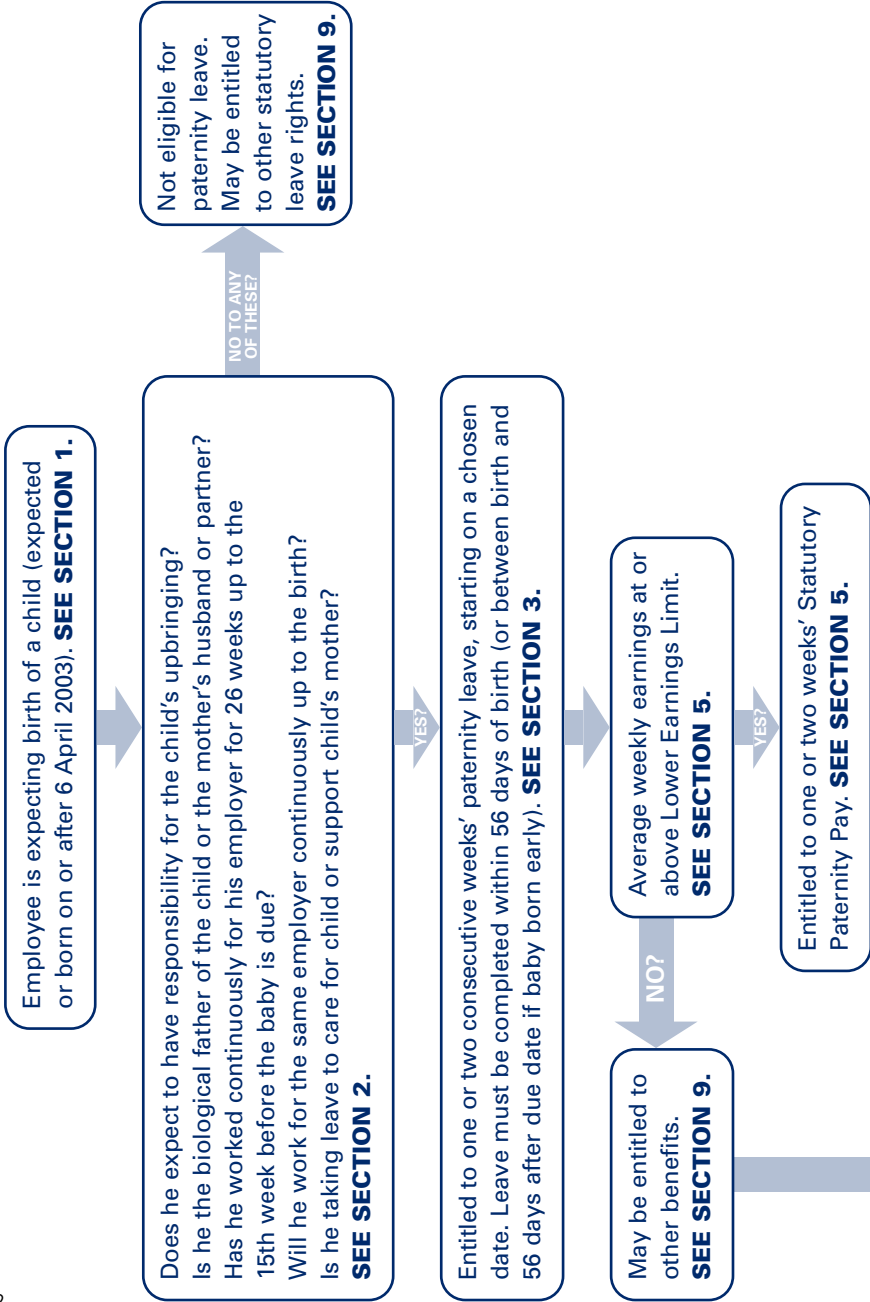
If an employer can't pay SPP because they are bankrupt or insolvent, the employee should tell his local Inland Revenue office who will arrange payment. The Inland Revenue can however only pay SPP from the first week of the employer's insolvency. Any SPP due for earlier weeks remains the responsibility of the employer.

If the employer is not insolvent or bankrupt, but is in financial difficulties or the business is closed, they must still pay SPP. The employer can apply to the Inland Revenue for funding to pay the SPP. Employees should be particularly careful to make sure they give their employer their self-certificate at the right time. If they have any difficulty in getting payment, employees should contact their Inland Revenue office.

Does an employee have to pay back his SPP if he doesn't return to work after his paternity leave?

Employees do not have to pay SPP back even if they do not return to work.

Paternity rights flowchart



Employee taking leave must tell his employer of his intention to take paternity leave by the 15th week before the baby is expected and include specific information. Must give 28 days' notice of any change of date. **SEE SECTION 4.**

Employee claiming pay must give his employer a self-certificate at least 28 days before the date he wants pay to start. **SEE SECTION 4.**

Baby born early – employee must give notice as soon as reasonably practicable. **SEE SECTION 4.**

Baby is born on or near due date, employee takes leave at specified time. **SEE SECTION 3.**

Baby is born late and employee wants to delay leave. **SEE SECTION 4.**

Employee continues to benefit from terms and conditions during leave. **SEE SECTION 6.**

Employee returns to same job after paternity leave as if he hadn't been away. **SEE SECTION 6.**




Section 6: Terms and conditions during leave and on return

Do employees continue to benefit from their contractual terms and conditions while they are on paternity leave?

The contract of employment continues throughout paternity leave, unless either the employer or the employee expressly ends it or it expires.

This means that while they are on paternity leave, employees are entitled to benefit from all those normal terms and conditions of employment, except for terms relating to wages or salary (unless their contract of employment provides otherwise), which would have applied were they not on paternity leave. If the employee has a contractual right to paternity leave as well as the statutory right, he may take advantage of whichever is more favourable. If the employee is also entitled to contractual paternity pay for the same period they are entitled to SPP and it is:

- more than the SPP, the employer should top up the SPP to the amount of contractual paternity pay;
- less than the SPP, the employer must pay the SPP.

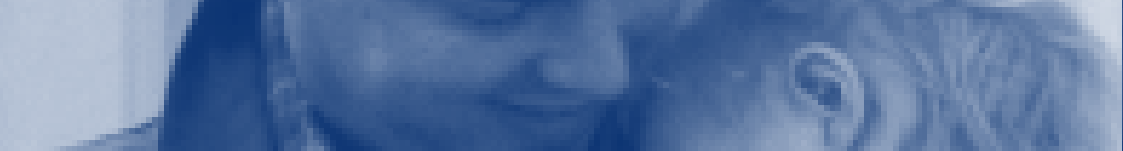


Terms and conditions which an employee should continue to benefit from include participation in share schemes, reimbursement of professional subscriptions, use of a company car or mobile phone (unless it is provided for business use only) and health club membership.

Can holiday accrue during periods of paternity leave?

An employee continues to accrue annual leave while on paternity leave. Even if he has no rights to annual leave under his contract of employment, he will be entitled to the equivalent of four weeks' paid annual leave under the Working Time Regulations 1998. Guidance on calculating statutory entitlement to annual leave can be found in the *Your guide to working time regulations*.

An employee isn't entitled to take annual leave during paternity leave but, subject to the usual arrangements with his employer, there is no reason why he cannot take a period of annual leave immediately before or after paternity leave.



Does a period of paternity leave count as continuous service for the purposes of employment rights requiring qualifying service and for calculating redundancy payments?


A period of paternity leave counts towards a period of continuous employment for the purposes of statutory employment rights, including calculating a redundancy payment. For further information on the redundancy payment scheme under the Employment Rights Act 1996, see the booklet *Redundancy payments* (PL 808).

It also counts for contractually agreed arrangements based on length of service such as pay increments and assessing seniority.

Are pension contributions continued during paternity leave?

There is currently no statutory requirement for employers to make pension contributions when an employee is on paternity leave and receiving only SPP. If an employee is receiving contractual pay during paternity leave, employer and employee contributions should be paid on the amount of contractual pay the employee is receiving.

The Government has introduced provisions in the Pensions Bill which will change the rules on pension contributions by bringing them into line with contributions during maternity leave. Under the proposed arrangement, when an employee is on paid



paternity leave (that means receiving SPP and/or contractual pay) the employer will pay contributions as if the employee were working normally and receiving the normal pay for doing so.

What can an employee do if his employer doesn't comply with the terms and conditions in his employment contract during his paternity leave?

An employee on paternity leave who is denied benefits he is entitled to under his contract may seek redress just as if he were at work through the civil courts by claiming damages for breach of contract or, if the breach is an unlawful deduction from wages, he may make a claim to an employment tribunal – see Section 8.

Employers and employees should contact Acas for advice about this issue.

Employees may be able to resign and make a claim for constructive unfair dismissal if the breach of contract is fundamental. Constructive dismissal is however a complex area of the law, and it is advisable to seek legal advice before doing so, perhaps from a Citizens Advice Bureau or local law centre.

An employee may also present a claim to an employment tribunal that he has been subjected to a detriment by any act – or any deliberate failure to act – by their employer because he took or sought to take paternity leave (see Section 7 of this guide).


Can an employee return to his job after taking paternity leave?

At the end of paternity leave, an employee is guaranteed the right to return to the same job as before on the same terms and conditions of employment as if he had not been absent, unless a redundancy situation has arisen.

He is also entitled to benefit from any general improvements to the rate of pay or other terms and conditions introduced while he was away.

If an employee is not given his job back at the end of paternity leave, he may make a complaint of unfair dismissal to an employment tribunal – see Section 8.





Is the position different if the employee takes parental leave or any other statutory leave immediately before or after paternity leave?

When paternity leave is followed by a period of parental leave or vice versa, if the employee takes up to four weeks' parental leave he is entitled to return to the same job on the same terms and conditions as if he had not been absent. If he takes more than four weeks' parental leave (or periods of additional maternity or additional adoption leave), he is still entitled to return to the same job on the same terms and conditions as if he had not been absent unless this is not reasonably practicable, in which case he is entitled to be offered a similar job.

What should an employee do if he is ill at the end of his paternity leave?

If an employee can't go back to work at the end of his paternity leave because of illness, he should follow the normal procedures for sickness absence for his job such as notifying his employer.



Section 7: Protection from detriment and dismissal


Employees are protected from suffering a detriment or dismissal for taking, or seeking to take, paternity leave. Employees who believe they have been treated unfairly for these reasons can complain to an employment tribunal (see Section 8) regardless of their length of service. Employees who are not given their job back at the end of paternity leave are entitled to make a complaint of unfair dismissal, again regardless of their length of service.

What protection is there against detriment for taking paternity leave?

An employee is protected against being subjected to detriment by any act or deliberate failure to act by their employer because he:

- took paternity leave or
- sought to take paternity leave

Detriment can cover a wide range of forms of unfair treatment, such as denial of promotion, facilities or training opportunities which the employer would otherwise have offered or made available.



Employees who suffer unfair treatment at work for the above reasons may make a complaint to an employment tribunal.

In what circumstances is an employee protected from dismissal under the rights?

Dismissal means the termination of employment by the employer, with or without notice. It could also include constructive dismissal, where the employee has resigned because the employer has made a substantial breach of the contract of employment indicating that he or she intends no longer to be bound by it. Or, it could include the expiry of a fixed-term contract without its renewal or the end of a task contract that expires when a specific task has been completed or a specific event does or does not happen. The booklet *Unfairly dismissed?* (PL 712) sets out the meaning of dismissal more fully.

It is unlawful for an employer to dismiss an employee because he:

- took paternity leave or
- sought to take paternity leave

This protection against dismissal also applies if an employee is selected for redundancy on these grounds.



What happens if a redundancy situation arises when an employee is on paternity leave?

An employee taking paternity leave should be treated in the same way as any other employee when a redundancy situation arises. This includes treatment relating to consultation about the redundancy and consideration for any other job vacancies. The booklet *Redundancy consultation and notification* (PL 833) gives general information about statutory redundancy rights.



Section 8: Enforcement through employment tribunals

What should an employer or employee do if they disagree about entitlement to paternity leave?

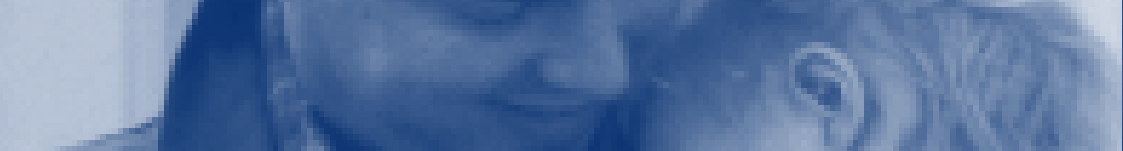
They should first seek to resolve the matter by mutual agreement – perhaps through the business’s own grievance or appeals procedure, where one exists. If an employee does not try to resolve the problem in this way, any compensation awarded by an employment tribunal at a later stage may be reduced.

If the matter can’t be sorted out, both employer and employee can contact the Advisory, Conciliation and Arbitration Service (Acas) helpline on 08457 47 47 47 for help. They can both seek the services of an Acas conciliator before the employee makes an application to a tribunal.

Under what circumstances can an employee complain to an employment tribunal?

If the matter cannot be settled between employer and employee, the employee may want to bring a case to an employment tribunal if he has grounds for doing so. He will have grounds for making a complaint to an employment tribunal if the employer:

- prevents, or attempts to prevent, him taking paternity leave;

- 
- subjects him to detriment in connection with paternity leave (see Section 7);
 - dismisses him in connection with paternity leave (see Section 7).


Employees should bear in mind that the time limit for making a complaint to an employment tribunal (see next page) will still apply and will not normally be extended because attempts have been made to settle the matter in advance.

What is the procedure for making a complaint to an employment tribunal?

The complaint should normally be made within **three months** of the refusal to allow the employee to take paternity leave, or of the detriment or dismissal. Where the detriment suffered is due to the employer's failure to act or provide a benefit, the complaint should be made within three months of the failure to act.

An extension to the time limit can be granted only in exceptional circumstances, where the employment tribunal is satisfied that it was not reasonably practicable for the complaint to have been made any earlier.

An employee who wishes to make a complaint to an employment tribunal should obtain a copy of the explanatory leaflet *How to apply to an employment*



tribunal which contains a copy of the application form IT1 (or IT1 (Scot) in Scotland). The leaflet explains the procedure and gives the address of the employment tribunal office to which the completed form should be sent. The booklet is available from Jobcentre Plus/Social Security offices, Citizens Advice Bureaux, from the DTI Publications Orderline on **0870 1502 500**, or from the Employment Tribunals Service website (www.ets.gov.uk).

When the employment tribunal office receives the completed form, it will send a copy to a conciliator at Acas who will try to help the two sides to reach a settlement of the complaint.

If conciliation is not possible or fails, the employment tribunal will hear the case, and both parties should attend the hearing. They may claim travelling expenses and other expenses within certain limits. Employment tribunal hearings are conducted informally and in a way which makes it easy for the parties to present their own case if they wish to do so. However, if either party wants to be represented – whether by a lawyer or by someone else such as a trade union, an employer association, a relative or a friend – this is permitted.



What remedies does the employment tribunal have?

Where an employee complains that he or she has been refused paternity leave, or prevented from taking paternity leave, and the tribunal finds the complaint well-founded, it will make a declaration to that effect and may order the payment of compensation.

Where an employee complains that he or she has been subjected to a detriment and the tribunal finds the complaint well-founded, it can make a declaration to that effect and may order the payment of compensation. There is no limit on awards in cases of detriment. It is for the tribunal to decide the appropriate award, taking account of the loss suffered by the applicant.

Where a tribunal finds that the employee was unfairly dismissed or selected for redundancy, it will order re-instatement or re-employment, or the payment of compensation. For further details of remedies in cases of unfair dismissal, see *Unfairly dismissed?* (PL 712) and *Dismissal – fair and unfair: a guide for employers* (PL 714). The booklet *Limits on payments* (PL 827) sets out the financial limits payable on compensation awards for unfair dismissal.

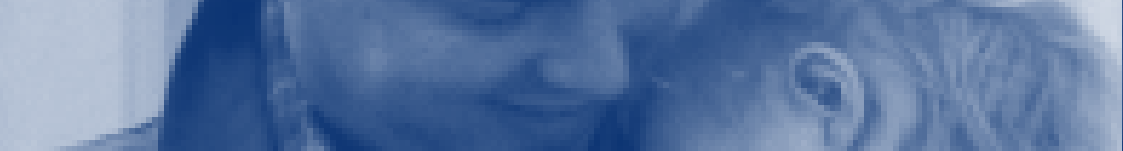
Section 9: Other benefits and time off rights for employees expecting a baby

Note: Employees should first check with their employer to see if they are entitled under their contract to take paid time off when their baby is born.

What financial benefits may employees be entitled to at the time of the birth of their child other than Statutory Paternity Pay?

Income support may be payable to people who have a low income (including some of those on Statutory Paternity Pay) or no income at all. There are qualifying conditions which all claimants must meet in order to receive it: for example, savings should not exceed £8,000 and the employee's partner should not be working. *A guide to Income Support IS20* gives further information and is available from the local Jobcentre Plus/Social Security Office.

Housing and Council Tax Benefit are income related benefits designed to help meet the costs of rent and council tax. If an employee is on Income Support or on a low income and is liable to pay either rent or council tax, then he may already be receiving these benefits. If an employee's income is stopped or




reduced during paternity leave, or the employee receives Income Support, he may be entitled to Housing and Council Tax Benefit. If an employee already receives these benefits, he may be entitled to an increase in the benefit. Further advice or leaflet RR2 on Housing and Council Tax Benefit can be obtained from a local authority.

Child Tax Credit and Working Tax Credit are two tax credits administered by the Inland Revenue and payable from 6 April 2003. They replace, among other things, the Children's Tax Credit, Working Families' Tax Credit and Disabled Person's Tax Credit.

Both tax credits are based on household income. Child Tax Credit is a way to claim money for children whether or not the claimant is in work.

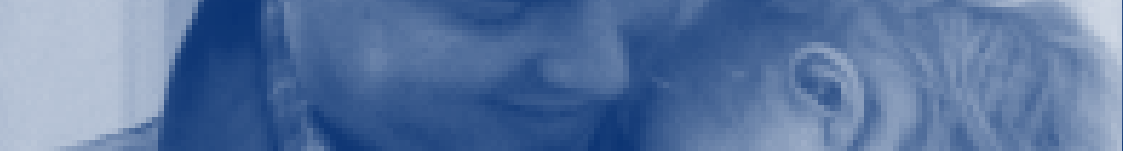
Working Tax Credit supports working households on low incomes by topping up earnings. It includes support for the cost of qualifying child care. Depending on household income, a worker may be entitled to Working Tax Credit if he or she normally works at least 16 hours a week, provided he or she is responsible for a child or has a disability. If the worker does not have a child or a disability, he or she must be aged at least 25 and work 30 or more hours a week to qualify.



People receiving Statutory Maternity Pay, Statutory Paternity Pay or Statutory Adoption Pay are treated as being in work for Working Tax Credit purposes as long as they were working the necessary number of hours (16 or 30, as the case may be) immediately before they started receiving these payments.

For more information about Child Tax Credit or Working Tax Credit, or to obtain the claim forms, phone the Tax Credits Helpline on **0845 300 3900**. People with speech or hearing problems using a textphone can dial **0845 300 3909** (England, Scotland and Wales).

An employee's pregnant partner may be eligible for **Statutory Maternity Pay** or, if her earnings are below the required amount or she is self-employed, **Maternity Allowance**. The duration of these benefits is being extended from eighteen to twenty-six weeks for women whose babies are due in a week beginning on or after 6 April 2003. Pregnant employees may also be eligible for a **Sure Start Maternity Grant**. *A guide to Maternity benefits NI17A* gives further information on these benefits and is available from Jobcentre Plus/Social Security offices or www.dwp.gov.uk/advisers/index.htm#guides




What time off rights do employees have apart from Paternity leave at the time of the birth of their child?

The right to time off for dependants gives all employees the right to take a reasonable amount of time off work to deal with an emergency involving a dependant, and not to be dismissed or victimised for doing so. The booklet *Time off for dependants (URN 99/1186)* provides more detail on this new right.

The right to parental leave gives employees – both mothers and fathers – who have completed one year's continuous service with their employer the right to up to thirteen weeks' unpaid parental leave to care for their child between the birth and the child's fifth birthday. In cases of adoption, the leave can be taken up to five years from the placement of the child, or up to the child's 18th birthday if that is sooner. Parents of disabled children can take up to eighteen weeks' parental leave up to the child's 18th birthday. Further information is available in *Parental leave (PL 509)*.

Changes to the rights to maternity leave give all pregnant employees whose babies are due on or after 6 April 2003 the right to a period of ordinary maternity leave increased from eighteen to twenty-six weeks (regardless of how long they have worked for their employer), in line with the period for Statutory Maternity Pay and Maternity Allowance (see above).



At the same time the qualifying period for additional maternity leave (lasting twenty-six weeks from the end of ordinary maternity leave) is reduced – employees who have worked continuously for their employer for twenty-six weeks by the fifteenth week before the week their baby is due will qualify. Additional maternity leave is usually unpaid although employees may have contractual rights to pay during this period. The booklet *Maternity rights* (PL 958) gives guidance on existing maternity rights and the changes.

The right for parents of young or disabled children to request flexible working gives eligible employees (from 6 April 2003) who are parents of children aged under six or of disabled children aged under eighteen the right to apply to work flexibly. Their employers must take such requests seriously. The leaflet *Flexible working: the right to apply* (PL 516) gives further information.



Section 10: Where to find further information

(i) Acas (the Advisory Conciliation and Arbitration Service):

Helpline number: 08457 47 47 47

Website: www.acas.org.uk

Interactive guidance on employment rights (including employer and employee guidance on maternity, paternity and adoption rights) at www.tiger.gov.uk

Acas main offices

London

22/23 Floors, Euston Tower, 286 Euston Road,
London NW1 3JJ

East of England

Ross House, Kempson Way, Suffolk Business Park,
Bury St Edmonds, Suffolk IP32 7AR

East Midlands

Lancaster House, 10 Sherwood Rise, Nottingham
NG7 6JE

West Midlands

Warwick House, 6 Highfield Road, Edgbaston,
Birmingham B15 3ED

North West

Commercial Union House, 2-10 Albert Square,
Manchester M60 8AD

Pavilion 1, The Matchworks, Speke Road, Speke,
Liverpool L19 2PH

North East

Cross House, Westgate Road, Newcastle upon
Tyne NE1 4XX

Scotland

151 West George Street, Glasgow, G2 2JJ

South West

Regent House, 27a Regent Street, Clifton, Bristol,
BS8 4HR

South East

Suites 3-5, Business Centre, 1-7 Commercial
Road, Paddock Wood, Kent TN12 6EN

Westminster House, Fleet Road, Fleet, Hants
GU51 3QL

Wales

3 Purbeck House, Lambourne Crescent, Llanishen,
Cardiff CF14 5GJ

Yorkshire and Humberside

Commerce House, St Alban's Place, Leeds LS2 8HH

(ii) The Inland Revenue (for more information on Statutory Paternity Pay):

Website: www.inlandrevenue.gov.uk

You can contact them on 08457 143 143 (textphone 0845 602 1380) or contact your local Inland Revenue office

To find out about their network of Business Support Teams who offer workshops and one-to-one visits to employers you can call them on this number or find details at www.inlandrevenue.gov.uk/bst/index.htm



(iii) Department for Work and Pensions (for more information on benefits available to expectant mothers and families):

Website: www.dwp.gov.uk

(iv) The Department of Trade and Industry (for more information on employment rights):

Website: www.dti.gov.uk/workingparents

Publications Orderline:

Tel: 0870 1502 500

website: www.dti.gov.uk/publications

(v) Other useful organisations

Equality Direct (for queries from employers on equality issues in England)

Tel: 0845 600 3444

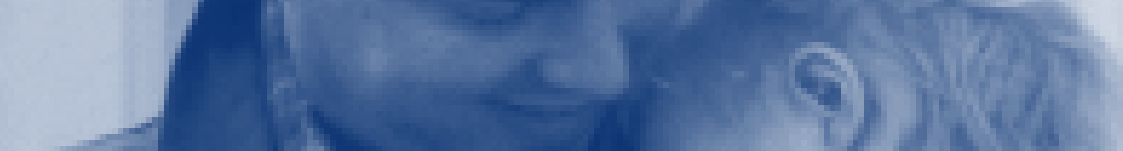
Equal Opportunities Commission (EOC)
(for queries from employees on sex discrimination legislation)

Arndale House, Arndale Centre, Manchester M4 3EQ

EOC helpline: 08456 015901

EOC (Scotland)

St Stephens House, 279 Bath Street, Glasgow G2 4JL



EOC (Wales)

Windsor House, Windsor Lane, Cardiff CF10 3GE

Commission for Racial Equality

St Dunstan's House

201-211 Borough High Street

London SE1 1G7

Tel: 020 7939 0000

Disability Rights Commission

Freepost MID 02164, Stratford-upon-Avon, CV37 9BR

Tel: 08457 622 633

Tax Credits helpline

Tel: 0845 300 3900

Textphone: 0845 300 3909

Childcare Link (freephone helpline for childcare information)

Tel: 08000 96 02 96

Website: www.childcarelink.gov.uk

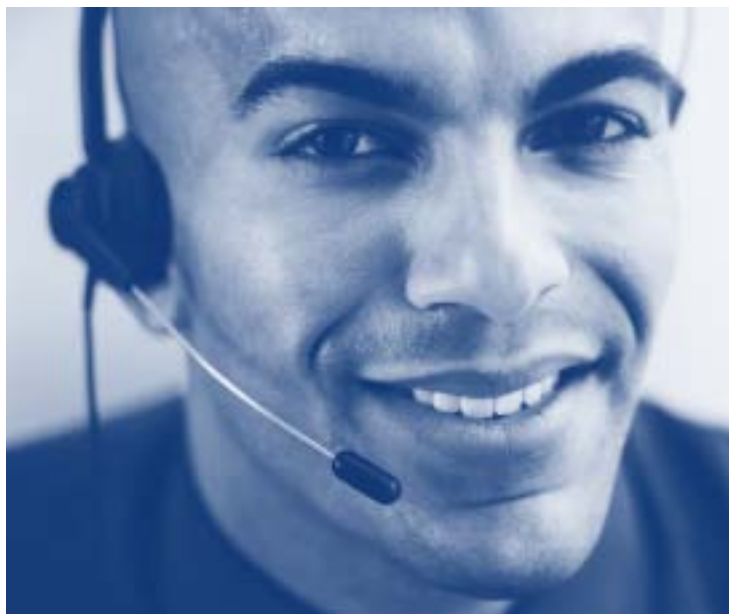
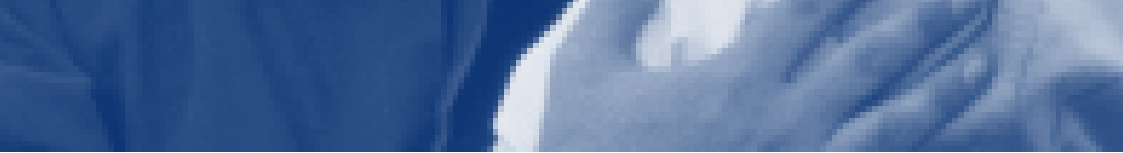
Parentline (confidential freephone helpline run by Parentline Plus, providing support to families)

Tel: 0808 800 2222

Maternity Alliance (information and advice on all aspects of maternity and parental rights and benefits)

Advice line: 020 7588 8582

Website: www.maternityalliance.org.uk



Tommy's the baby charity (information and advice on pregnancy health matters)

Tel: 08707 707070

Website: www.tommys.org

Community Legal Service

Tel: 0845 608 1122

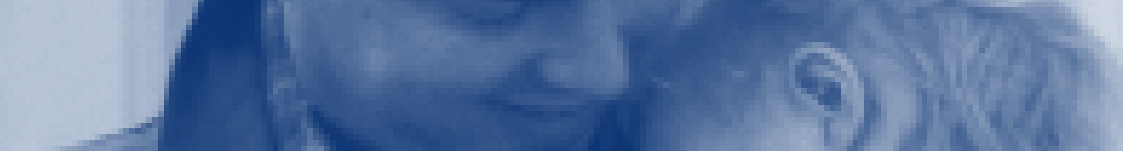
Low Pay Units:

Scottish: 0141 221 4491

West Midlands: 0121 643 3972

Pay and Employment Rights Service:

Yorks and Humberside: 01924 439 381



Employment Tribunals Service enquiry line

(advice on employment tribunals procedures):

0845 795 9775

Website: www.ets.gov.uk

Fathers Direct

Herald House, Lambs Passage, Bunhill Row,
London EC1Y 8TQ

Website: www.fathersdirect.com

Working Families

1-3 Berry Street,
London EC1V 0AA

Website: www.workingfamilies.org.uk

Appendix 1: Model self-certificate



Statutory Paternity Pay/ Paternity Leave

Becoming a parent

If you want to take time off work to support the mother of a baby or look after the baby you may be entitled to

- Statutory Paternity Pay (SPP) - at least part of your wages will be paid for two weeks. You will get £100 or 90% of your average weekly earnings, whichever is less.
- Paternity Leave - up to two weeks time off.

Depending on your circumstances you may not qualify for SPP and/or paternity leave. Your employer will let you know. If this is the case you will get more advice and information at the time.

If you need help with this form please contact any Inland Revenue office. You will find the number in the phone book.

Please read through the terms and conditions on page 2 and if you think you might qualify, then

- Fill in the statement on page 3.
- Give the completed statement to your employer.

Other help

The DTI publications *Maternity Rights - a guide for employers and employees*, and *Paternity Leave and Pay - a basic summary* give information on these rights. The maternity publication also gives details of other booklets covering employment protection and related equal opportunities legislation. Available from

- DTI publications on **0870 1502 500**, or
- go to www.dti.gov.uk/er
- Jobcentre plus/social security office.

A DWP publication *A guide to Maternity benefits*, leaflet *NI 17A*, has details of other booklets covering social security benefits and some brief information on paternity. Available from

- Jobcentre plus/social security office - see your phone book, or
- go to www.dwp.gov.uk/advisers/index.htm#guides

This also has details of other booklets covering social security benefits and some brief information on paternity.

You can also contact

- any Inland Revenue office
- any Arbitration and Conciliation Advisory Service (ACAS) office (see www.acas.org.uk for details)
- www.tiger.gov.uk

Information on all aspects of employment legislation is also usually available from citizens advice bureaux, low pay units, trade unions and other bodies

If you are not entitled to SPP you may be entitled to other government help. Contact your local Jobcentre plus/social security office.



Terms and conditions

On this form we haven't covered all of the law that relates to Statutory Paternity Pay (SPP) and leave. So if you are in any doubt about your entitlement talk to your employer or contact any Inland Revenue office.

SPP and paternity leave are available to

- a biological father
- a partner/husband that is not the baby's biological father
- a female partner in a same sex couple.

You must be able to declare that

- you are
 - the baby's biological father, or
 - married to the mother, or
 - living with the mother in an enduring family relationship, but are not an immediate relative, and
- you will be responsible for the child's upbringing, and
- you will take time off work to support the mother or care for the child.

You must be continuously employed during the pregnancy.

To get SPP you must also have average earnings over a set period above a set amount - your employer will work this out for you.

You can choose to take one or two whole weeks leave any time up to 8 weeks after the date of birth. If the baby is born early you can choose to take your leave any time between the actual date of birth and the end of an 8 week period running from the Sunday of the week the baby was originally due. You cannot take odd days off work, but the weeks can start on any day, for example from Tuesday to Monday.

You must discuss your leave plans with your employer and tell them what time off you want by the 15th week before the week the baby is due. Your employer can tell you when this is if you're not sure. You can change your mind but you must give your employer 28 days notice of the dates. You and your employer may find it helpful if you filled in a new version of this form.

If you can't tell your employer what time off you want in time, or the baby is born sooner or later than expected, please discuss the situation with your employer. If you are unable to resolve any disagreement contact any Inland Revenue office for advice.

Disagreements

If your employer tells you that you are not entitled to SPP and/or paternity leave you can challenge that decision. If you need help with this, for

- SPP - contact your Inland Revenue office.
- Paternity leave - contact ACAS, you will find the number in your phone book.

Your dates for pay and leave

The baby is due on

And, if the baby has been born, please enter the actual date of birth

I would like my SPP and/or paternity leave to start on

I want to be away from work for one/two* weeks *(*delete as appropriate)*

Your declaration

Surname

First name(s)

National Insurance (NI) Number

--	--	--	--	--	--	--	--

You must be able to tick all three boxes below to get Statutory Paternity Pay and paternity leave.

I declare that

- I am
 - the baby's biological father, or
 - married to the mother, or
 - living with the mother in an enduring family relationship, but am not an immediate relative
- I have responsibility for the child's upbringing
- I will take time off work to support the mother or care for the child.

Signature

Date

Give this page to your employer, but keep the terms and conditions for your records.



Printed in the UK on recycled paper with a minimum HMSO score of 75.
First Published January 2003. Department of Trade and Industry.

© Crown Copyright. <http://www.dti.gov.uk/>

DTI/Pub 7177/10k/02/03/AR.

URN 02/1517