

# Parental leave

a guide for employers and employees

Employment Legislation

**dti**

Department of Trade and Industry

# Foreword

This booklet gives general guidance only and should not be regarded as a comprehensive or authoritative statement of the law. It describes the position which applies in England, Wales and Scotland. It addresses some of the more frequently asked questions on the right to parental leave. It also sets out how the Government would encourage employers to go beyond the minimum provisions of the Regulations, where it is possible to do so. The Good Practice Examples are intended to help employers recognise where they can improve on any aspect of the right to parental leave, where this accords with the priorities, needs and circumstances of the parties concerned, and with what the business or organisation can afford.

Further advice on legislation concerning employment is available from the Advisory, Conciliation and Arbitration Service (ACAS). Details on how to contact ACAS, as well as other organisations are contained in Chapter 8 of this booklet.

A full list of guidance booklets on employment legislation is given in Chapter 8 of this booklet. Copies of the booklets are available free of charge from Employment Service Jobcentres or from the DTI publications orderline (tel: 0870 1502 500).

**The latest version of this booklet is published on the Internet at [www.dti.gov.uk/er/individual/parental.pdf](http://www.dti.gov.uk/er/individual/parental.pdf)**

**For further information on employment relations issues, see [www.dti.gov.uk/er](http://www.dti.gov.uk/er)**

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# Chapter 1: Introduction

## 1.1 What is parental leave?

This booklet sets out guidance on the right to parental leave. Parental leave is a right to take time off work to look after a child or make arrangements for the child's welfare. Parents can use it to spend more time with children and strike a better balance between their work and family commitments.

## 1.2 The legislation

The right to parental leave was first introduced on 15 December 1999 under the Maternity and Parental Leave Regulations etc. 1999<sup>1</sup>. These Regulations were made under the Employment Rights Act 1996, as amended by the Employment Relations Act 1999. From 10 January 2002, changes to parental leave came into force under the Maternity and Parental Leave (Amendment) Regulations 2001<sup>2</sup>. The new rights will benefit parents of disabled children, and parents of children who were under five years old on 15 December 1999.

### The main changes to the Regulations

Parents of disabled children are entitled to 18 weeks' parental leave (previously 13 weeks) up to the child's 18th birthday, providing they have qualifying length of service (see 2.1 *Who can take parental leave?*).

Parents of all children who were born or placed for adoption between 15 December 1994 and 14 December 1999 are entitled to parental leave, providing they have qualifying length of service (see 2.1 *Who can take parental leave?*). Parents will have until **31 March 2005** to take their full entitlement, or in the case of adoption until the child's 18th birthday, if that is sooner. (Parents of disabled children will have until their child's 18th birthday to take their full entitlement).

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<sup>1</sup>S.I.1999 No. 3312

<sup>2</sup>S.I.2001 No. 4010

### **1.3 Employed or self-employed?**

The rights described in this booklet apply to full-time and part-time employees, provided that they satisfy the qualifying conditions for parental leave, such as length of service, and have a contract of employment, written or unwritten, with their employer. Whether someone is an employee working under a contract of employment or a self-employed person working under a contract to provide services depends upon the true nature of the agreement entered into by the parties. If the employer has a duty to provide work, controls when and how it is done, supplies equipment to do it and pays tax and national insurance contributions on the worker's behalf, then it is likely that the worker is an employee. Further information on employment status and contracts of employment can be found in the booklet *Contracts of employment* (PL 810).

### **1.4 People not covered by the provisions**

In addition to self-employed workers, the Regulations do not apply to members of the police service or the armed forces, or masters or crew members engaged in share fishing paid solely by a share of the catch.



## 1.5 Other rights

Since 15 December 1999, all employees have 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 leaflet *Family emergency? Your right to time off* (PL 506) provides more detail on this new right.

Pregnant employees expecting babies in or after the week commencing 30 April 2000 will benefit from changes to maternity rights, which include extending ordinary maternity leave to 18 weeks, in line with Statutory Maternity Pay, and reducing the qualifying period for additional maternity leave from two years to one year.

The booklet *Maternity rights* (PL 958) gives guidance on existing maternity rights. The details of these rights are set out in supporting Regulations, the Maternity and Parental Leave etc. Regulations 1999.

# Chapter 2: Parental leave – the minimum standard

## 2.1 Who can take parental leave?

Both mothers and fathers, whether they are the natural or adoptive parents, can qualify for parental leave, provided that they are employees (see 1.3).

They must either be named on the child's birth certificate or they must have, or expect to have, parental responsibility under the law<sup>1</sup> for the child. The parents of a child do not have to be living with the child in order to qualify for parental leave.

Employees who are adopting a child will be entitled to take parental leave because they will have parental responsibility when they adopt.

In some cases legal responsibility for looking after a child will have been given to someone other than a natural or adoptive parent, such as a guardian. If an individual has acquired parental responsibility for the child, he or she will be entitled to parental leave if the qualifying conditions set out in this booklet are met.

Employees with children born on or after 15 December 1999 (the date the right was first introduced) who want to take parental leave, must have worked for their employer continuously for a year by the time they want to take the leave.

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<sup>1</sup> 'parental responsibility' has the meaning given by section 3 of the Children Act 1989, and 'parental responsibilities' has the meaning given by section 1(3) of the Children (Scotland) Act 1995.

Employees of children who were born or placed for adoption between 15 December 1994 and 14 December 1999 who want to take parental leave, must have **either** worked for their current employer **continuously for one year** by the time they want to take the leave, **or** have worked for a previous employer continuously for a year during the period 15 December 1998 and 9 January 2002.

Parental leave must be to care for a child (see 2.2).

The parents of children born or adopted on or after 15 December 1999 (the date the right was first introduced) are entitled to parental leave under the 1999 Parental Leave Regulations. Parental leave can be taken up to their child's fifth birthday, or fifth anniversary of placement date for adoption (or 18th birthday if that is sooner).

The parents of children born or adopted between 15 December 1994 and 14 December 1999 are entitled to parental leave under the 2001 Parental Leave Regulations. Parental leave can be taken **up to 31 March 2005**, (or in the case of adoption, up until the child's 18th birthday if that is sooner).

Parents of disabled children born on or after 15 December 1994 are entitled to parental leave up to their child's 18th birthday.

Where the formal adoption of a child, or the placement of a child for adoption, takes place on or after 15 December 1994, the adoptive parents will be entitled to parental leave, even where the child was born before that date (see 2.4).

Where the formal adoption of a child takes place on or after 15 December 1994, the adoptive parents will be entitled to parental leave, even where the child has been placed with the family before the Regulations came into effect.

## GOOD PRACTICE EXAMPLES

- Employers can extend entitlement of parental leave to individuals with informal responsibility for looking after a child, such as grandparents, step-parents or long term foster parents.
- Employers can waive the one-year qualifying period if they so wish, or set a lower qualifying period. This may particularly help parents who are returning to the labour market and could help the employer to attract more candidates for a vacancy.
- Employers can disregard the fact that a child was born or adopted before 15 December 1994 and allow the parents of older children to take some parental leave.

## FREQUENTLY ASKED QUESTIONS

### What happens when there is a break in employment before the one-year qualifying period is completed?

Continuous employment usually means working for the same employer without a break, but it does not always mean this. Sometimes employment can be regarded as continuous in spite of short breaks. For example, absence from work because of sickness or pregnancy, temporary lay-off and holiday breaks all count automatically, provided the employment contract continues throughout. In the case of parents of children born between 15 December 1994 and 14 December 1999, continuous employment can be regarded as working for the same employer without a break during the period 15 December 1998 and 9 January 2002. The booklet *Continuous employment and a week's pay* (PL 711) provides detailed guidance on this issue.

## What happens if an employee has qualified for parental leave, but then changes jobs?

Unless the new employer is an associated employer, employees with children born on or adopted on or after 15 December 1999 (the date the right was first introduced) need to complete a years qualifying service with their new employer before he or she can take parental leave. Employees with children born on or adopted between 15 December 1994 and 14 December 1999 need to have completed **a year's continuous** service with an employer between 15 December 1998 and 9 January 2002. The booklet *Continuous employment and a week's pay* (PL 711) provides guidance on when time with a previous employer may count towards continuity of employment.

### 2.2 Caring for a child

The purpose of parental leave is to care for a child. This means looking after the welfare of a child and can include making arrangements for the good of a child. Caring for a child does not necessarily mean being with the child 24 hours a day. The leave might be taken simply to enable the parents to spend more time with young children. Examples of the way leave might be used:

- to spend more time with the child in early years;
- to accompany a child during a stay in hospital;
- checking out new schools;
- settling a child into new childcare arrangements;
- to enable a family to spend more time together, for example, taking the child to stay with grandparents.

## FREQUENTLY ASKED QUESTIONS

### How can employers deal with parents who do not use parental leave to care for a child?

Parental leave is to look after a child, which includes making arrangements for the good of the child. If the employee uses the leave for some other purpose, then he or she would be acting dishonestly and the employer can deal with this situation according to the business's usual disciplinary procedures.

### Can employees take parental leave when a child suddenly falls sick?

This will depend on the workplace scheme. Many schemes, including the fallback scheme (see Chapter 4), will require a period of notice before the employee can take parental leave. Workplace schemes can be as flexible as they wish about this.

Where it is not possible for the employee to use parental leave to care for a sick child, the employee will be able to take a short amount of time off to deal with the onset of the child's illness. This is allowed under the right to time off for dependants. There is no qualifying period for entitlement. The leaflet *Family emergency? Your right to time off* (PL 506) sets out details of this right.

## 2.3 How much leave can an employee take?

Each parent can take 13 weeks' parental leave for each child. This means that both mothers and fathers, if they have twins or adopt more than one child at a time, can take 13 weeks' leave for each child.

Parents of disabled children can take 18 weeks' parental leave for each disabled child born or adopted.

One week's parental leave is equal to the length of time that an employee is normally required to work in a week. This means that a week's leave for an employee who usually works from Monday to Friday is equal to five days, while for an employee who works Mondays and Tuesdays only, a week's leave is equal to two days.

Some employees' working patterns vary from week to week. In such cases, an average working week needs to be calculated as a fraction of the period for which he or she is required to work in a year. For example, an employee who is contracted to work three days a week for 30 weeks, four days a week for 18 weeks, and two days a week for four weeks would calculate the number of days leave in his or her average week by dividing the total number of working days in these periods by 52.

In cases where the leave taken is in blocks of less than one week, a week is only deducted from an employee's overall entitlement to 13 weeks, (18 weeks for parents of disabled children) when the short periods of leave add up to what would be a normal or average working week.

#### **GOOD PRACTICE EXAMPLE**

**Employers can increase the total length of leave to over 13 weeks, (18 weeks for parents of disabled children) or disregard leave taken in a previous job.**

### **FREQUENTLY ASKED QUESTIONS**

**Can a father transfer any or part of his leave entitlement to the mother?**

Parental leave is an individual right and can not be transferred between parents.

**How are periods of absence dealt with in calculating an average working week?**

Any calculation should include weeks where under the contract of employment the employee would be expected to work, disregarding the possibility that the employee may take any of these weeks as holiday or sick leave.

## **What happens if an individual's status changes from full-time to part-time, or vice versa, during the time period during which parental leave can be taken?**

If an employee, who takes parental leave in blocks of one week, changes his or her hours of work, then a week's parental leave would be equal to what would be a normal working week under the new contract of employment.

### **2.4 When can leave be taken?**

Parents of children born on or after 15 December 1999 (the date the right was first introduced), can take parental leave up to the child's fifth birthday.

Adoptive parents of children born on or after 15 December 1999 (the date the right was first introduced), can take leave up to the fifth anniversary of the date when the placement for adoption began, or the child's 18th birthday if this is earlier.

Parents of children born between 15 December 1994 and 14 December 1999 can take parental leave up until **31 March 2005**.

Adoptive parents of children placed for adoption between 15 December 1994 and 14 December 1999 can take parental leave up to **31 March 2005**, or the child's 18th birthday if this is sooner.

Parents of children born or adopted on or after 15th December 1994 whose child is entitled to a disability living allowance, can take leave up to the child's 18th birthday.

#### **GOOD PRACTICE EXAMPLE**

**Employers and employees can agree that the leave can be taken over a longer period.**

## FREQUENTLY ASKED QUESTIONS

### Can parental leave be taken immediately after maternity leave?

Mothers can take parental leave immediately after a period of maternity leave, provided that any notice requirements set in the workplace or fallback scheme, whichever is applicable, are met, and provided that other conditions, such as the qualifying period, are met.

### What is the date of placement?

The date of placement is the date when a child is placed by an external agency into a family home prior to formal adoption. Parents can take leave in respect of a child who is placed for adoption with the family before 15 December 1994, where the final adoption takes place on or after 15 December 1994.

### What happens if there is no date of placement?

There may be occasions when there is no date of placement; for example, if the child is already in a family when a step-parent formally adopts the child in the place of a parent. In such cases, the period in which leave can be taken starts when the step-parent acquires parental responsibility and ends on the child's fifth birthday when parental responsibility is acquired on or after 15 December 1999.

When the step-parent has acquired parental responsibility between 15 December 1994 and 14 December 1999, the period ends on **31 March 2005**, or the child's 18th birthday if this is sooner.

## 2.5 Terms and conditions during parental leave

Some terms and conditions of employment continue to apply during periods of parental leave. These are set out below.

An employee is entitled to benefit from his or her employer's implied obligation to him or her of trust and confidence during parental leave, and any contractual terms and conditions relating to:

- notice periods;
- any compensation if the employee is made redundant;
- the business' disciplinary or grievance procedures.

The employee is bound by his or her implied obligation of good faith during parental leave and by any contractual terms and conditions relating to:

- notice periods;
- disclosure of confidential information;
- acceptance of gifts, or other benefits;
- the employee working for some one else.

The employment contract continues during an absence of parental leave, unless it is terminated by the employer or employee. This means that an employee continues to benefit from his or her statutory employment rights during parental leave.

The continuation of other terms and conditions during parental leave, such as access to a company car or mobile phone, and perks such as health club membership, remains a contractual matter between the employer and employee.

## **FREQUENTLY ASKED QUESTIONS**

### **Is parental leave paid?**

The right does not include a statutory right to pay, so whether or not the employee will be paid is left to the employer's discretion, or to the contract of employment between them.

## **Is an employee entitled to receive any bonuses which may fall during parental leave?**

Payments of bonuses during parental leave can be a complicated area, where independent legal advice should be sought. Whether a bonus is payable to an employee on parental leave depends on the type of bonus and the terms of the particular bonus scheme.

Generally, however, an employee will be entitled to the bonus if it relates to performance or work already done prior to his or her parental leave. An employee is unlikely to be entitled to the bonus if it is a reward for future work or performance, during a period in which the employee would be absent on parental leave.

In drawing up the terms and conditions of any bonus scheme, employers should take particular care not to indirectly discriminate on grounds of sex against those employees taking parental leave.

Further information about sex discrimination can be found in the booklet *Sex Discrimination: a guide to the Sex Discrimination Act 1975 (PL 955)*.<sup>1</sup>

## **Can holiday accrue during periods of parental leave?**

A period of absence on parental leave does not affect entitlement to paid annual leave under the Working Time Regulations. The booklet *A Guide to the Working Time Regulations*<sup>2</sup> provides more information on the entitlement to statutory holiday leave.

The accrual of additional contractual holiday entitlement during parental leave is a matter for agreement between the parties concerned (or their representatives).

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<sup>1</sup> *Sex Discrimination: a guide to the Sex Discrimination Act 1975 (PL 955)* can be ordered on 0845 6022260

<sup>2</sup> *A guide to the Working Time Regulations* can be ordered on 0845 6000 925.

### **What happens if an employee does not want to return to work after parental leave?**

An employee needs to terminate his or her employment contract in accordance with the contractual notice requirements. In the absence of any provision for longer notice in the contract of employment, an employee is required to give his or her employer the statutory minimum of at least one week's notice. The booklet *Rights to notice and reasons for dismissal* (PL 707) provides more information relating to rights to notice contained in employment legislation.

### **Does the period of parental leave count as continuous service for the purposes of calculating redundancy payments?**

A period of parental leave counts towards a period of continuous employment for the purposes of statutory employment protection rights, including calculating a redundancy payment. Furthermore, periods of unpaid parental leave are disregarded for the purposes of calculating the amount of a redundancy payment.

For further information on the redundancy payment scheme under the Employment Rights Act 1996, see the booklet *Redundancy payments* (PL 808).

### **Are pension contributions continued during parental leave?**

When an employee is on a period of unpaid parental leave, occupational pension rights that have accrued prior to the commencement of parental leave are frozen until the employee returns to work.

## **2.6 Returning to work after parental leave**

At the end of parental leave, an employee is guaranteed the right to return to the same job as before if the leave was for a period of four weeks or less; if it was for a longer period the employee is entitled to return to the same job, or, if that is not reasonably practicable, a similar job which has the same or better status, terms and conditions as the old job.

## 2.7 Returning to work after ordinary maternity leave

When parental leave lasts four weeks or less and it follows **ordinary maternity leave**, the employee is entitled to return to the same job. If the period is for a longer period than four weeks, she is entitled to return to the same job, or, if that is not reasonably practicable, a similar job which has the same or better status, terms and conditions as the old job. (The employee should ensure that the required notice period for parental leave is given to their employer, if parental leave is to follow immediately after the maternity period).

## 2.8 Returning to work after additional maternity leave

When parental leave lasts four weeks or less and it follows **additional maternity leave**, the employee is entitled to return to the same job she would have been entitled to return to after her additional maternity leave period.

If the parental leave is for a longer period than four weeks, she can return to the same job she would have been entitled to return to at the end of her additional maternity leave, unless it is not reasonably practicable for her employer to keep that job open. If this is the case, she is entitled to a similar job which has the same or better status, terms and conditions as the old job.

In all cases, employers should ensure that transfers to alternative work are lawful under the Sex Discrimination Act 1975.

An employee returning to work after parental leave is entitled to benefit from any general improvements to the rate of pay (or other terms and conditions) which may have been introduced for his or her grade or class of work while he or she has been away. (The employee should ensure that the required notice period for parental leave is given to their employer, if parental leave is to follow immediately after the maternity period).

## FREQUENTLY ASKED QUESTIONS

### What happens to an employee's seniority rights on resuming work after taking parental leave?

Unless there are contractual provisions in place, the parental leave period is not required to be counted for the purposes of assessing seniority, pension rights and other personal length of service payments. In these circumstances, the periods of employment before and after parental leave are, in effect, joined together as if they were continuous. However, parental leave does count for the purposes of calculating length of service for statutory rights, such as two years' service for redundancy payments (see 2.5).

### 2.9 Parental leave and redundancy

An employee taking parental leave should be treated the same 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.

It is unlawful for an employer to select an employee for redundancy solely or mainly on the basis that he or she is taking, proposing to take, or has taken, parental leave.



# Chapter 3: Flexibility – making agreements in the workplace about how parental leave works

## 3.1 Designing a flexible scheme

Wherever possible, employers and employees should make their own agreements about how parental leave will work in a particular workplace. They may choose to do so through collective, workforce or individual agreements. In small firms especially, where employers and employees work closely together, individual arrangements may be easier to agree. Any agreement should be incorporated into the employee's contract of employment.

## 3.2 Collective agreements

Collective agreements are made between one or more independent trade unions and an employer (or an employers' association).

Where terms and conditions are normally determined by a collective agreement, then employers cannot use workforce agreements for the purposes of parental leave.

## 3.3 Workforce agreements

A workforce agreement can be made if employers and employees have no collective agreement already. It may apply to the whole workforce or a group of employees within it. If it is to apply to a group of employees, the group must share a workplace or do related work or belong to a particular department or unit within their employer's business.

## 3.4 Individual agreements

Other agreements may be between an employer and an individual employee.

### **3.5 How to set up a workforce agreement**

Employers should first decide with whom they want to make the agreement: the whole workforce or a group within it. One or more representatives for the workforce or the group should then be elected to negotiate the agreement with the employer. This process should be set up by the employer.

The employer should:

- decide on the number of representatives to be elected;
- ensure candidates are members of the workforce on the date of the election or, in the case of a group, a member of the group to whom the agreement is to apply;
- allow each employee a vote for each representative to be elected to represent them;
- ensure as far as is reasonably practicable that they are elected by secret ballot;
- ensure that the votes are counted fairly and accurately.

To be valid, a workforce agreement must:

- be in writing;
- be shown to all employees it will apply to, together with a guide explaining what it means;
- be signed when it comes into effect, either by all representatives or by most of the workforce where 20 or fewer employees are employed;
- last for no longer than five years, (or last no longer than 31 March 2005, for employees of children born or adopted).

### **3.6 What are the basic rules for all parental leave schemes?**

All schemes must provide key elements – the bottom line – consisting of:

- 13 weeks' parental leave for each child;
- 18 weeks' parental leave for parents of each disabled child;
- for parents of children born or adopted on or after 15 December 1999, the employee's rights to take the leave last until the child's fifth birthday or until five years have elapsed following placement in the case of adoption;
- for parents of children born or adopted between 15 December 1994 and 14 December 1999, the employee's rights to take the leave last until **31 March 2005**, (or until the child's 18th birthday if this is sooner, in the case of adoption);
- parents of disabled children are able to use their leave over a longer period, up until the child's 18th birthday;
- the employee will remain employed while on parental leave; some terms, such as contractual notice and redundancy terms will still apply;
- at the end of parental leave an employee is guaranteed the right to return to the same job as before, or, if that is not practicable, to a similar job which has the same or better status, terms and conditions as the old job; where the leave taken is for a period of four weeks or less, the employee will be entitled to go back to the same job.

### **3.7 What other matters can employers and employees agree?**

Agreements can also cover matters such as how much notice of parental leave must be given, arrangements for postponing the leave when the business cannot cope or could be harmed by the employee's absence, and how leave should be taken.

### **3.8 What happens when there is no agreement in the workplace?**

Where no agreements are reached between the employer and employee, or until an agreement is in place, the fallback scheme automatically comes into effect.

Where there is collective or workforce agreement, employers and employees are not bound by the provisions set out in the fallback scheme.

Under an individual agreement, an employee will always have the right to rely on any of the provisions in the fallback scheme, if they are more favourable than the contractual arrangement in any respect.

#### **FREQUENTLY ASKED QUESTIONS**

##### **Can an employee or employer change any aspect of a workforce or collective agreement?**

Collective agreements can continue indefinitely and workforce agreements must be for a fixed term; the term must not be longer than five years (31 March 2005 for employees of children born or adopted between 15 December 1994 and 14 December 1999). Employers and employees can seek to re-negotiate the terms and conditions of a workforce or collective agreement.

Whilst the agreement is in force, both employers and employees are bound by its terms provided it has been incorporated into the employees' contracts of employment.



# Chapter 4: The fallback scheme

It will be preferable for a scheme to be agreed at local level. However, if this does not happen then the fallback scheme will apply.

## 4.1 What happens under the fallback scheme?

An employee can take leave in blocks of one week or more (for example, in two-week or three-week blocks), up to a maximum of four weeks in a year for each child.

Parents whose child is entitled to disability living allowance can take the leave in days or periods shorter than a week.

## 4.2 Notice provisions

An employee needs to give at least 21 days' notice to his or her employer, giving the dates when the leave is to start and finish. The notice does not have to be in writing.

## 4.3 Postponement provisions

If an employer considers that an employee's absence would unduly disrupt the business, then the employer can postpone the leave for no longer than six months after the beginning of the period that the employee originally wanted to start his or her parental leave.

The employer should discuss the postponement with the employee and give notice of the postponement in writing no later than seven days after the employee's notice to take leave was given to him. The employer's notice should state the reason for the postponement and set out the new dates of parental leave. The length of the leave should be equivalent to that in the employee's original request.

Leave may only be postponed where the employer considers that the business would be unduly disrupted if the employee took leave at the time he or she has chosen. Employers may be justified in postponing leave when, for example, the work is at a seasonal peak; where a significant

proportion of the workforce applies for parental leave at the same time; or when the employee's role is such that his or her absence at a particular time would unduly harm the business.

#### **4.4 Exceptions to the postponement provisions**

When an employee applies to take parental leave immediately after the birth or adoption of a child, then the employer cannot postpone the leave.

The employee needs to give 21 days' notice before the beginning of the expected week of childbirth (expectant mothers will be able to provide this information to their partners). In the case of adoption, the employee needs to give 21 days' notice of the expected week of placement. In rare cases where this is not possible, an adoptive parent should give the notice as soon as is reasonably practicable.

Provided that the employee has given the notice set out above, parental leave will start on the day on which the child is born, regardless of whether the child is born early or late, or placed for adoption.

Women who have given birth are entitled to maternity leave after the birth of their child, so whether they are able to take parental leave immediately after maternity leave would be subject to the normal arrangements for postponement and would depend on whether their absence would unduly disrupt the business (see 4.3).

#### **4.5 Record keeping**

Employers are not required to keep records of parental leave taken, although many will want to do so for their own purposes.

Employers are free to disregard any parental leave previously taken.

Employers are free to request records from a previous employer, even though the previous employer is not required to have kept them or supply them. For parents of children born or adopted between 15 December

1994 and 14 December 1999, employers are free to request evidence of an employee's previous service from an employer, where the period of service with that employer is being counted as qualifying service when determining the employee's eligibility for parental leave.

## **FREQUENTLY ASKED QUESTIONS**

### **How is a year calculated?**

For parents of children born or adopted on or after 15 December 1999, a year is a 12-month period, which starts when the employee first becomes entitled to take parental leave in respect of an individual child. The employee will become entitled to take parental leave either when the child is born or when he or she has completed a year's service, whichever is later.

If there is a break in service, for example because the employee has started working for a new employer, a new leave year will start when the employee has built up one year's service with the new employer.

For parents of children born or adopted between 15 December 1994 and 14 December 1999, a year is a 12-month period the employee has worked **continuously** for an employer during the period 15 December 1998 and 9 January 2002. This can either be the employee's current employer or a previous employer.

### **Can an employer ask to see evidence of entitlement to parental leave?**

An employer can ask to see evidence that the employee is the parent of a child or has parental responsibility for the child, that the child is below the age at which the right to parental leave ceases and, where relevant, that the child is entitled to disability living allowance; evidence might take the form of the child's birth certificate, papers confirming a child's adoption or the date of placement in adoption cases, or in the case of a disabled child, a record of disability living allowance payments for the

child. The employer's request must be reasonable; it may not be reasonable for the employer to check on the employee's entitlement on every occasion on which leave is asked for.

### **Can service with a previous employer count when asking for leave?**

Parents covered by the 1999 Parental Leave Regulations (parents of children born or adopted on or after 15 December 1999) must have worked for their *current* employer for one continuous year by the time they wish to take parental leave.

Parents covered by the 2001 Parental Leave Regulations (parents of children born or adopted between 15 December 1994 and 14 December 1999) must have worked continuously for one year for either their current employer or a previous employer during the period 15 December 1998 and 9 January 2002, by the time they wish to take parental leave.

### **Can an employer ask for evidence of qualifying service with a previous employer?**

An employer of a parent covered by the 2001 Parental Leave Regulations (parent of a child born or adopted between 15 December 1994 and 14 December 1999), who is relying on a period of service with a previous employer in order to satisfy the one year service requirement, can ask to see evidence of the relevant period of service.

### **Can an employee lose his or her entitlement to leave if, by postponing leave, the date for taking this leave goes past the child's 5th birthday (31 March 2005, for parents of children born or adopted between 15 December 1994 and 14 December 1999)?**

If, because of postponement, the period of parental leave falls after the child's fifth birthday, (31 March 2005 for parents of children born or adopted between 15 December 1994 and 14 December 1999), then the employee is allowed to take the leave after this date.

# Chapter 5: Protection from detriment and dismissal

## 5.1 Protection from detriment

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

An employer cannot subject an employee to a detriment because he or she:

- took parental leave,
- sought to take parental leave,

or because the employee has:

- declined to sign a workforce agreement on parental leave,
- performed, or proposed to perform, any functions or activities as a representative or candidate in connection with such an agreement.

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

## 5.2 Protection from dismissal

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 breached the contract of employment. Or, it could include the expiry of a fixed-term contract without its renewal. The booklet *Unfairly dismissed?* (PL 712) sets out more fully the meaning of dismissal.

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

- took parental leave,
- sought to take parental leave,

or because the employee has:

- declined to sign a workforce agreement on parental leave,
- performed, or proposed to perform, any functions or activities as a representative or candidate in connection with such an agreement.

An employee dismissed or selected for redundancy in these circumstances is entitled to make a complaint of unfair dismissal to an employment tribunal.

# Chapter 6: Enforcement through employment tribunals

## 6.1 Grounds for making a complaint

An employee has grounds for making a complaint to an employment tribunal if the employer:

- unreasonably postpones a period of parental leave requested by the employee;
- prevents, or attempts to prevent, the employee taking parental leave;
- subjects the employee to detriment in connection with parental leave;
- dismisses the employee in connection with parental leave.

## 6.2 Resolving disputes

An employee who believes that he or she is entitled to make a complaint to an employment tribunal (see 6.3) should first seek to resolve the matter by mutual agreement with the employer – 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. However, it should be noted that the time limit for making a complaint to an employment tribunal will still apply and will not normally be extended to allow for the fact that attempts have been made to settle the matter in advance.

The employee and employer may also seek advice from a conciliator of the Advisory, Conciliation and Arbitration Service (ACAS), the addresses of which are given in Chapter 8 of this booklet.

### 6.3 Complaints to employment tribunals

The complaint should normally be made within **three months** of the employer's postponement of parental leave or refusal to allow the employee to take parental 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 go to a local Employment Service Jobcentre to obtain a copy of the booklet *How to apply to an employment tribunal* containing a copy of the application form IT1 – or IT (Scot) in Scotland – which explains the procedure and gives the address of the employment tribunal office to which the completed form should be sent.

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's association, a relative or a friend – this is permitted.

## 6.4 Remedies

Where an employee complains that his or her request for parental leave has been unreasonably postponed, or that he or she has been refused parental leave, or prevented from taking parental 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 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.

## 6.5 Enforcing agreements

Both employers and employees are bound by an agreement provided it has been incorporated into the contract of employment.

An employee may seek legal redress if his or her employer breaches the contract of employment. The booklet *Contracts of employment* (PL 810) explains the means of redress available to both employees and employers in these circumstances.

# Chapter 7: Other help employees can get during parental leave

## 7.1 Claiming income support during parental leave

Income Support can be paid to people who have a low income or no income at all. There are qualifying conditions which all claimants must meet in order to receive Income Support. For example, savings should not exceed £8,000 and the employee's partner (if he or she has one) should not be working. The Social Security leaflet *Babies and Children* (BC1) sets out further details on benefits which might be available for people with children.

Unless the employee is a disabled or lone parent, employees need to satisfy additional conditions in order to qualify for Income Support during parental leave. Claimants must be receiving either Working Families Tax Credit, Disabled Persons Tax Credit, Housing Benefit, or Council Tax Credit immediately before taking parental leave. In addition, the following conditions apply:

- the leave must be unpaid;
- the leave should not exceed 13 weeks in total (18 weeks for parents of disabled children), and no more than four weeks in any one year;
- the leave is taken to look after a child who lives with the claimant and is the claimant's own child;
- in the case of an employee whose child is born or adopted on or after 15 December 1999, the leave is taken by the child's fifth birthday, or up to five years from the placement date for adoption;
- in the case of an employee whose child was born or adopted between 15 December 1994 and 14 December 1999, the leave is taken by **31 March 2005**, or by the child's 18th birthday, in the case of adoption).

- in the case of an employee whose child is born on or after 15 December 1994 and is entitled to a disability living allowance, taken by the child's 18th birthday.

Employees will need to provide some details about their family and incomes to their local Benefits Agency Office, as well as evidence about their leave from their employer.

The local Benefits Agency will provide a claim form for the employee to complete, which will ask for information on such issues as details of income or receipt of qualifying benefits.

Employees will need to ask their employer to confirm in writing that the employee is taking parental leave and the dates when the leave starts and ends.

## **7.2 Other benefits**

Jobseeker's Allowance is a benefit for people who are unemployed and are looking for work. Employees may be able to claim Jobseeker's Allowance during parental leave. More information about Jobseeker's Allowance can be obtained from leaflet JSAL5, "Helping you back to Work", which is available from Employment Service Jobcentres.

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 or she may already be receiving these benefits. If an employee's income is stopped or reduced during parental leave, or the employee receives Income Support, he or she may be entitled to Housing and Council Tax Benefit. If an employee already receives these benefits, he or she 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.

### **7.3 Working Families' and Disabled Person's Tax Credits**

Working Families' Tax Credit and Disabled Person's Tax Credit are designed to help make work pay for families and disabled people. Employees need to be at work when they apply, but tax credit awards are fixed and last for 26 weeks regardless of whether the recipient takes parental leave while it is being paid.



# Chapter 8: Where to find further information

## 8.1 Useful addresses

### ACAS main offices

#### Midlands

Warwick House, 6 Highfield Road, Edgbaston, Birmingham B15 3ED  
Anderson House, Clinton Avenue, Nottingham NG5 1AW

#### Northern

Commerce House, St Alban's Place, Leeds LS2 8HH  
Cross House, Westgate Road, Newcastle upon Tyne NE1 4XX

#### North West

Commercial Union House, 2-10 Albert Square, Manchester M60 8AD  
Pavilion 1, The Matchworks, Speke Road, Speke, Liverpool L19 2PH

#### South West

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

#### London, Eastern and Southern

Clifton House, 83-117 Euston Road, London NW1 2RB  
Ross House, Kempson Way, Suffolk Business Park, Bury St Edmonds,  
Suffolk IP32 7AR  
Suites 3-5, Business Centre, 1-7 Commercial Road, Paddock Wood,  
Kent TN12 6EN  
Westminster House, Fleet Road, Fleet, Hants GU51 3QL

#### Scotland

Franborough House, 123-157 Bothwell Street, Glasgow, G2 7JR

#### Wales

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

#### Head Office

Brandon House, 180 Borough High Street, London, SE1 1LW

## **Other addresses**

### **Equal Opportunities Commission (EOC)**

Arndale House, Arndale Centre, Manchester M4 3EQ

Tel: 0161 833 9244 Fax: 0161 838 8312

### **EOC (Scotland)**

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

Tel: 0141 248 5833 Fax: 0141 248 5834

### **EOC (Wales)**

Windsor House, Windsor Place, Cardiff CF10 3GE

Tel: 029 20343552 Fax: 029 20641079

### **Commission for Racial Equality**

Elliot House, 10-12 Allington Street, London SW1E 5EH

Tel: 020 7828 7022

### **Disability Rights Commission**

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

Tel: 08457 622 633

## **8.2 Useful publications**

### **ACAS publications**

#### **Advisory handbooks**

Employing people: a handbook for small firms  
Discipline at work  
Employment handbook

#### **Advisory booklets**

Job evaluation: an introduction  
Employee appraisal  
Pay systems  
Redundancy handling  
Personnel data and record keeping  
Changing patterns of work  
Absence and labour turnover  
Appraisal-related pay  
Recruitment and induction  
Health and employment  
Employee communications and consultation  
Effective organisations: the people factor  
Supervision  
Teamwork success through people  
Employment policies

For details of how to order and prices, please contact:

ACAS Publications, PO Box 235, Hayes, Middlesex, UB3 1HF; telephone:  
0870 242 9090; fax: 020 8867 3225; email: [acas@ecologistics.co.uk](mailto:acas@ecologistics.co.uk)

For all other enquiries, see list of ACAS helplines.

**The following booklets on employment and trade union legislation can be obtained free of charge from Jobcentres and other offices of the Employment Service. They are also available by post from the DTI Publications Orderline, (tel: 0870 1502 500, fax: 0870 1502 333, email: [publications@dti.gsi.gov.uk](mailto:publications@dti.gsi.gov.uk)).**

- PL 865 – Unjustifiable discipline by a trade union
- PL 866 – Trade union executive elections
- PL 871 – Union membership
- PL 867 – Trade union funds and accounting records
- PL 868 – Trade union political funds
- PL 944 – The payment of trade union subscriptions through the check-off: a guide for employers, trade unions and their members
- PL 869 – Industrial action and the law: a guide for employees, trade union members and others
- PL 870 – Industrial action and the law: a guide for employers, their customers and suppliers, and others
- PL 943 – Industrial action and the law: a guide for individuals on the right to stop the unlawful organisation of industrial action
- PL 962 – Statutory Code of Practice: Industrial action ballots and notice to employers
- PL 928 – Statutory Code of Practice: Picketing
- PL 500 – Statutory Code of Practice: Access to workers during recognition and derecognition ballots
  
- PL 712 – Unfairly dismissed?
- PL 707 – Rights to notice and reasons for dismissal
- PL 958 – Maternity rights: a guide for employers and employees
- PL 714 – Dismissal – fair and unfair: a guide for employers

- PL 716 – Individual rights of employees: a guide for employers and employees
- PL 699 – Employment rights on the transfer of an undertaking
- PL 700 – Written statement of employment particulars
- PL 702 – Time off for public duties
- PL 704 – Itemised pay statement
- PL 724 – Guarantee payments
- PL 718 – Your rights if your employer is insolvent
- PL 705 – Suspension from work on medical or maternity grounds under health and safety regulations
- PL 720 – Benefit repayment: a guide for employers
- PL 711 – Continuous employment and a week's pay

How to apply to an employment tribunal  
 What to do if taken to an employment tribunal  
 Hearings at employment tribunals

- PL 703 – Time off for job hunting or to arrange training when facing redundancy
- PL 808 – Redundancy payments
- PL 810 – Contracts of employment
- PL 827 – Limits on payments
- PL 833 – Redundancy consultation and notification
- RPL 1 – Offsetting pensions against redundancy payments
- PL 960 – Sunday shop and betting work: employees' rights
- Time off for dependants: a guide for employers and employees
- PL 506 – Family emergency? Your right to time off
- PL 510 – Parental leave: a short guide

## 8.3 Useful telephone numbers and internet sites

### ACAS helplines

Birmingham	(0121) 456 5856
Bristol	(0117) 946 9500
Cardiff	(029) 2076 1126
Fleet	(01252) 811868
Glasgow	(0141) 204 2677
Leeds	(0113) 243 1371
Liverpool	(0151) 427 8881
London	(020) 7396 5100
Manchester	(0161) 833 8585
Newcastle upon Tyne	(0191) 261 2191
Nottingham	(0115) 969 3355

ACAS website – [www.acas.org.uk](http://www.acas.org.uk)

Working Families' Tax Credit helpline – 0845 609 5000

Disabled Person's Tax Credit helpline – 0845 605 5858.

Childcare Link – 08000 96 02 96 (freephone helpline for childcare information), website – [www.childcarelink.gov.uk](http://www.childcarelink.gov.uk)

Parentline – 0808 800 2222 (confidential freephone helpline run by Parentline Plus, providing support to families)

Maternity Alliance advice line – 020 7588 8582 (information and advice on all aspects of maternity and parental rights and benefits)

Tommy's the baby charity – 020 7620 0188 (information and advice on pregnancy health matters), website – [www.tommys.org](http://www.tommys.org)



