

Paternity Leave and Pay

... some of the questions you
may want the answers to



**The Men's Project
Parents Advice Centre**

[www.mensproject.org and www.parentsadvicecentre.org]

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Introduction

Paternity Leave and Pay are part of a package of rights and benefits designed to give support to working fathers, mothers and their partners. These paternity rights have applied in Northern Ireland since 6th April 2003. This fact sheet provides answers to some of the key questions you might have about these issues.

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 or two consecutive weeks' Paternity Leave and, during this time, may be entitled to SPP.

This fact sheet describes the situation in Northern Ireland. However, in England, Wales and Scotland corresponding legislation applies and came into force at the same time. Much of the material presented in this fact sheet comes from the booklet titled "ER34 - Right to Paternity Leave and Pay" by the Department for Employment and Learning.

Throughout this document, "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.

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Paternity Leave and Pay: Questions and Answers

Who qualifies for these rights?

These rights apply to employees - regardless of the hours they work - provided that they satisfy some conditions. These include twenty-six weeks' qualifying service with their employer (ending with the fifteenth week before the baby is due). However ...

- ❑ To qualify for Paternity Leave a person must be an employee i.e. they must work under a contract of employment.
- ❑ To qualify for Statutory Paternity Pay (SPP) a person must be an employed earner i.e. they must work for someone who is liable to pay the employer's share of his Class 1 National Insurance contributions.
- ❑ An employee must be earning at least the Lower Earnings Limit to qualify for SPP.

The vast majority of people who qualify for leave will also qualify for pay, and vice versa, but there are a few exceptions. A self-employed person who chooses to take time off to care for his new child or its mother, or someone who is not currently working, may be able to claim other benefits.

Are any particular types of workers excluded from these rights?

Agency workers are not usually classed as employees (though some may be) and may not qualify for leave. However, agency workers can be treated as employed earners and may, therefore, be entitled to SPP. Office holders, such as police officers, MPs, the judiciary, and some company directors will, similarly, generally only qualify for pay but not leave. The same applies to members of the armed forces.

Does an employee who adopts a child qualify?

Since 6th April 2003, employees who adopt children have had the right to Adoption Leave and Pay. This right applies to individuals who adopt or one member of a couple adopting jointly. The partner or civil partner of an individual who adopts, or the member of a couple adopting jointly who hasn't chosen to take Adoption Leave, may be entitled to Paternity Leave and Pay.

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.

What happens if an employer has their own Paternity Leave scheme?

Those employees whose employment contracts give them entitlements to Paternity Leave may take advantage of these contractual rights or their statutory rights - depending on which are most favourable. Employees who believe that they are not entitled to statutory rights 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.

Who is eligible for Paternity Leave and Pay?

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;
- mother's husband, partner or civil partner.

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.
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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'?

A partner is someone who lives with the mother of the baby in an enduring family relationship but is not an immediate relative. 'Partner' may include a female partner in a same-sex couple. Where this fact sheet refers to the employee as 'father', 'he', 'him' or 'his', this should be taken to include those female same-sex partners who qualify.

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, 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.

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.

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 detailing the reasons. If the employee disagrees, he should first discuss it with his employer. If he is still unhappy, he should contact his local H.M. Revenue and Customs office to ask for a decision. If the disagreement is about Paternity Leave, the employee may contact the Labour Relations Agency.

How much Paternity Leave can an employee take?

Eligible employees can choose to take either one week or two consecutive weeks' Paternity Leave. Paternity Leave cannot be taken as odd days or as two separate weeks. Employees can only take 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. An employee can choose to start his leave on ...

- the date of the baby's birth (whether this is earlier or later than expected);
- a date falling after the day on which the child is born (whether this is earlier or later than expected) that the employee notifies to his employer;
- 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. 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.

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. However, 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.

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 next question) and 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 to either 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, civil partner or husband of the mother.
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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. The information needed to claim Paternity Leave must be put in writing if the employer requests it. It may, therefore, 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 the 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).

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:

- ❑ if he wants to change his leave so it starts on the date of the 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 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 can't 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 the 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 booklet "ER25 Parental Leave: A Guide for Employers and Employees".

What is Statutory Paternity Pay?

During 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.

What must an employee do to get SPP?

An employee must give his employer a completed form (SC3 - Becoming a Parent) at least 28 days before he wants his SPP to start. If he has already done this for the purposes of claiming leave, he will have fulfilled the notice requirements for pay as well. If the employee cannot 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 why it was late. If the employer thinks that the employee didn't have a good reason, they can refuse to pay SPP.

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 received 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.

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 Health and Personal Social Services may have two or more contracts of employment split between different Health and Personal Social Services bodies.

Can an employer make deductions from SPP?

SPP is treated as earnings, so an employer should make any deductions (such as income tax and National Insurance 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 can be paid through a payroll service, insurance company, friendly society 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.

How much is SPP?

The rate of SPP is the same as the standard rate of Statutory Maternity Pay. It is, currently (as of January 2009), £117.18 a week or 90% of average weekly earnings if this is less than £117.18. In the case of a multiple birth, entitlement to SPP is exactly the same as if there was only one baby.

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, Tax Credits or a Maternity Grant.

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 on leave?

Most people who work for an employer and earn enough, on average, to equal or exceed the National Insurance Lower Earnings Limit, 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.

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 H.M. Revenue and Customs office, who will arrange payment. H.M. Revenue and Customs 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 H.M. Revenue and Customs for funding to pay the SPP.

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.

Will the Paternity Leave / Pay situation change in the future?

Following a recent consultation, there are plans to introduce additional paid Paternity Leave. This will enable fathers to benefit from increased leave and statutory pay if the mother returns to work after six months but before the end of her Maternity Leave.

Where can I find out more?

There are a lot of useful online resources, for example ...

Department of Employment and Learning:

www.delni.gov.uk/index/publications/pubs-employment-rights/erbooklets/er34.htm

Department of Social Development:

www.dsdni.gov.uk/index/ssa/benefit_information/a-z_of_benefits/statutory_paternity_pay_birth.htm

NI Business Info:

www.nibusinessinfo.co.uk/bdotg/action/layer?r.l1=1073858787&topicId=1080898067&site=191&r.l2=1080898061&r.s=tl&tc=191AD010307&gclid=CL-W4a_RnJYCFSFTEAodAik-8Q

Citizen's Advice Bureau:

www.adviceguide.org.uk/nireland/life/employment_northern_ireland/parental_rights_at_work.htm - Paternityleave

Directgov:

www.direct.gov.uk/en/Parents/Moneyandworkentitlements/Parentalleaveandpay/DG_10029398

Tailored Interactive Guidance on Employment Rights (TIGER):

<http://tiger.direct.gov.uk/cgi-bin/paternity.cgi>