

Introduction

Parental leave is a form of statutory unpaid leave available to many working parents, in addition to statutory maternity, paternity and adoption leave and shared parental leave. Parental leave can be flexible in terms of the time at which it is taken and the way in which the total leave entitlement may be split up into a number of shorter periods (unlike arrangements for maternity, paternity or adoption leave).

The right to parental leave

Parental leave is available to birth and adoptive parents and also to anyone who has, or expects to have, parental responsibility for a child.

Eligible employees may:

- take up to 18 weeks' unpaid parental leave for each child for the purpose of caring for that child.
- take parental leave at any time before the child's 18th birthday.
- continue to benefit from certain contractual rights and obligations during the period of parental leave absence (similar to those which apply to an employee on maternity leave).
- return to the same job (or in certain cases a suitable alternative job) at the end of the leave.

Which employees are eligible for parental leave?

To take parental leave, your employee must:

- have been in your employment for at least a year; and
- have, or expect to have, responsibility for a child. In practice, those "responsible" for a child will include:
 - both birth parents (whether or not they are living with the child)
 - adoptive parents
 - parents under a surrogacy arrangement who have secured, or expect to secure, legal parental responsibility
 - others who have legal parental responsibility for a child, such as a guardian

Purpose of the leave

On the parental leave page of its gov.uk website, the government gives the following examples of reasons for which leave might be taken:

- spending more time with children
- looking at new schools
- settling a child into new childcare arrangements
- spending more time with family (for example, visiting grandparents)

Employee's contract during leave

During parental leave, the employee continues to benefit from:

- the employer's implied obligation of trust and confidence
- any contractual terms and conditions relating to:
 - notice periods;
 - compensation for redundancy; and
 - disciplinary and grievance procedures.

At the same time, the employee remains bound by:

- the implied obligation of good faith towards the employer).
- any contractual terms and conditions relating to:
 - notice periods;
 - disclosure of confidential information;
 - acceptance of gifts or benefits; and
 - restrictions on their freedom to work for anyone else.

Pay and benefits

The contract's provisions relating to pay and other benefits are suspended (unless you have contractually agreed otherwise). Your employee's right to accrue holiday over and above statutory holiday is equally dependent on you reaching agreement with your employee to allow them to accrue contractual holiday during leave.

Returning to work

Your employee has the right to return to the same job in which they were employed prior to taking parental leave unless that is not reasonably practicable for you. In such a case, the employee will have the right to return to another job which is both suitable and appropriate for the employee to do in the circumstances.

On return to work (whether to the same or to an alternative job), an employee is entitled to return on terms and conditions not less favourable than those which would have applied if they had not been absent.

Conditions for taking leave

An employee may only take parental leave under the statutory scheme if three conditions have been fulfilled:

- The employee has complied with any request from you to produce evidence of their entitlement to parental leave;
- The employee has given you at least 21 days' notice of the period of leave they wish to take.
- You have not postponed the period of leave.

Postponing the start of parental leave

Except where your employee wishes to take parental leave immediately on the birth of a child, or on the placement of a child for adoption, you are entitled to postpone an employee's leave for up to six months if you consider that the operation of your business would otherwise be unduly disrupted. Before postponing leave, you must:

- Consult with the employee over the date to which leave should be postponed;
- Give notice of the postponement to the employee in writing (no later than seven days after the employee gave notice to take parental leave) stating:
 - the reason for the postponement; and
 - the new beginning and end dates of the period of leave which you will permit the employee to take. The length of the new period of leave should be the same as the employee's original request.

Amount of leave

An employee cannot take less than one week and not more than four weeks' leave per year in respect of any individual child.

Complaint by employee to Employment Tribunal

There are a number of breaches in relation to parental leave that, if committed by you, would entitle the employee to bring a complaint to an employment tribunal, and, if successful, to receive compensation. These are:

- subjecting the employee to a detriment for taking or seeking to take parental leave.
- dismissing the employee for taking or seeking to take parental leave.
- unreasonably postponing a requested period of parental leave.
- preventing or attempting to prevent the taking of parental leave.

Acas early conciliation

These claims are subject to Acas early conciliation (EC). Once Acas have been contacted in a potential case to which the EC rules apply, Acas will try to facilitate a settlement. It is not possible to present a claim to a tribunal without an EC certificate which confirms that the case was referred to Acas and that the EC process has come to an end.

The Information presented here has been provided by



Bath Employment Law
EXPERT ADVICE MADE CLEAR

If you would like advice about how the issues in this factsheet apply to your situation, please contact Tony Brown on 01225 740097 or by email to tony@bathemploymentlaw.co.uk.

Warning - this factsheet is provided for information only and is not a substitute for legal advice. You should obtain specific, personal advice about your circumstances and not rely on the information or comments in this factsheet.