

## Parental Leave Policy & Procedure

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## 1. Introduction

- 1.1 The Trust understands that the composition of families varies and is committed to support their employees as individuals as their families evolve over time. This policy and procedure sets out the commitment of the Trust in managing leave for matters relating to fertility treatment, antenatal and parental reasons.
- 1.2 This policy sets out the Trust's entitlements, requirements and position in relation to a range of leave entitlements and pay. It is in line with the national schemes set out in the Green Book and Burgundy book OR It is in line with the national statutory requirements OR the Trust has adopted some of the Green and Burgundy book scheme framework, but for the avoidance of doubt, where this policy differs the policy set out here will be the arrangement in place.

## 2. Scope

- 2.1 This policy applies to all employees of the Trust.
- 2.2 Employees transferring into the Trust may have enhanced contractual terms due to TUPE regulations.
- 2.3 Copies of documents and records relating to parental leave will be held confidentially on the employees personal file in line with GDPR.

**Table 1 - Key to abbreviations**

Code	Definition
ML	Maternity leave
CML	Compulsory maternity leave
MSL	Maternity support leave
OML	Ordinary maternity leave
AML	Additional maternity leave
PL	Paternity leave
ShPL	Shared parental leave
UPL	Unpaid parental leave
AL	Adoption leave
SMP	Statutory maternity pay
OMP	Occupational maternity pay
MP	Maternity pay
MA	Maternity allowance
SPP	Statutory paternity pay
ShPP	Shared parental pay
SAP	Statutory adoption pay
OAP	Occupational adoption pay
EWB	Expected week of childbirth
KIT	Keep in touch
SPLiT	Shared parental leave keep in touch
NCL	Neonatal care leave

**Table 2 - Types of leave**

<b>Compulsory Maternity Leave</b>	The employee does not have to take their full entitlement to maternity leave. However, they must take a minimum of two weeks of leave from the date of childbirth and may be required to have up to four weeks compulsory leave on health and safety grounds.
<b>Maternity Leave</b>	Provided the individual is an employee, and complies with the required notification procedures, they will be entitled a total maternity leave period of 52 weeks, which must be taken consecutively. The first 26 weeks is referred to as ordinary maternity leave, and the second 26 weeks as additional maternity leave.
<b>Maternity Support Leave</b>	This is an occupational benefit which applies to employees subject to green book terms and conditions. Teachers under Teachers' (Burgundy Book) Conditions of Service are not entitled to Maternity Support Leave. Maternity support leave is 5 days paid leave, pro rata for part time workers, normally taken at or around the time of the birth or adoption of a child.
<b>Paternity Leave</b>	This is a statutory entitlement, available to eligible employees who have been continuously employed by the Trust for at least 26 weeks up to any day in the qualifying week (the 15th week before the baby is due), or in the case of adoption, the matching week (either the end of the week the employee is matched with the child for UK adoptions, or the date the child enters the UK and when they want their pay to start for overseas adoptions). Where the qualifying criteria is met, paternity leave is either 1 or 2 weeks' paid leave at the statutory rate to be taken within 52 weeks of the birth or placement or arrival in the case of adoption. If the employee is taking 2 weeks they can either be taken consecutively or separately.
<b>Shared Parental Leave</b>	Employees who meet the eligibility criteria will be able to share a 'pot' of leave to be taken in the first year following birth/adoption of a child.
<b>Adoption Leave</b>	<p>Provided the employee complies with notification procedures they will be entitled to 26 weeks' Ordinary Adoption Leave and 26 weeks' Additional Adoption Leave, regardless of their length of service. Occupational and / or statutory pay applies dependent on service. The total of 52 weeks is the Adoption leave period and must be taken consecutively.</p> <p>Pre-Adoption: Employees who are going through the adoption process can apply for up to 5 days paid per year (pro rata for part time staff) to attend appointments in preparation for the</p>

	adoption – Dates of leave will be subject to agreement with line manager.
<b>Fostering Leave</b>	Employees who have been granted foster carer status are eligible for up to 5 days paid leave in the first year of foster caring, recognising that the process to becoming a foster carer is a lengthy one, during the period when carers are expected to complete the training, support and development standards. In subsequent years up to 2 days paid leave to attend annual review, on-going training and other meetings relevant to the placement of the young person. Timing of leave is subject to agreement with line manager.
<b>Parental Leave – Unpaid</b>	All employees named on the child's birth or adoption certificate, or those with parental responsibility, who have at least a year's continuous service with the Trust, are entitled to up to 18 weeks unpaid parental leave per child up until the child's 18 <sup>th</sup> Birthday.
<b>Neonatal Care Leave</b>	Day one right for employees of up to 12 weeks leave available to parents whose child is admitted into hospital for a minimum continuous period of seven or more full days in the first 28 days after the child is born. This leave is in addition to other family leave.

#### 4.1 Maternity Leave and Pay

**Table 3 – notification requirements**

<b>Step of process</b>	<b>Green Book requirements</b>	<b>Burgundy Book requirements</b>	<b>Statutory requirements</b>
Notify employer of pregnancy in writing	28 days before absence	No later than 14 weeks before EWC	At least 15 weeks before due date
Evidence needed	Certificate from registered medical practitioner or registered midwife	Certificate from registered medical practitioner or certified midwife	Written proof in either a letter from Dr or Midwife or MatB1 at least 21 days before start date of SMP
Antenatal care	Paid time off for antenatal care, evidence if requested should be provided	Paid time off for antenatal care, evidence if requested should be provided after first appointment.	Paid time off for antenatal care, evidence if requested should be provided after first appointment.
Notify employer of intention to start mat leave	At least 28 days before they wish to start mat leave	At least 21 days before they wish to start mat leave	At least 15 weeks before due date

Mat leave can commence no earlier than	11 weeks before EWC	11 weeks before EWC	11 weeks before EWC
Employer to write to employee after initial notification informing them of their last day of mat leave and expected date of return	28 days	N/A	28 days detailing how much SMP the employee will get and when it will stop
Employer to write to employee if not eligible for SMP using form SMP1	Not mentioned	Not mentioned	Within 7 days of making decision
Return to work as qualifying conditions for occupational mat pay	Three months (which may vary between authorities)	13 weeks (including school closure periods)	Should be referenced clearly in written statement of particulars
Notification of return to work date in writing if before end of 52 week period	At least 21 days before the proposed return to work date	At least 21 days before the proposed return to work date	At least 8 weeks before the proposed return to work date
Period the employer can postpone the return by if the notice above isn't given	21 days	21 days	Not mentioned (but 8 weeks due to the above and below)
Notification of return to work date if sooner than originally planned	21 days	Not mentioned	8 weeks
Notification of return to work date if later than originally planned	21 days	Not mentioned	8 weeks
Shared Parental leave – notice to begin a block of leave (including any changes)			8 weeks' written notice

## 4.2 Maternity Procedure

- 4.3 Employees are encouraged to tell their line manager that they are pregnant as early as possible, so that any necessary steps can be taken to protect their health and safety, and to enable them to access paid leave for ante-natal appointments.

- 4.4 Employees should write to their manager within the required time period detailed in table 3 to confirm;
- That they are pregnant
  - The expected week of childbirth (EWC)
  - The date they want their maternity leave to start
  - To qualify for occupational maternity pay they must also declare their intention to return to work at the end of their maternity leave
- 4.5 To enable the payment of maternity pay, employees should provide their manager with written proof of their pregnancy, as detailed in table 3. This proof states the expected week of child birth and is issued by a Registered Medical Practitioner or Certified Midwife. This evidence (in original form) is needed to ensure that maternity pay can be processed.
- 4.6 Managers must reply to the employee within 28 days of receiving written notification, to advise the expected date of return from ML. This will be based on their full leave entitlement of 52 weeks ML. If ML has been triggered by childbirth or a pregnancy-related absence the manager will similarly write to confirm their expected date of return.
- 4.7 *Starting maternity leave*
- 4.8 ML, at the earliest, can begin from the eleventh week before the EWC. ML can start from any day of the week and the same is true for MP where this is due.
- 4.9 If ML has not already started, it will be triggered by the birth of the child, or wholly or partly because of pregnancy-related sickness, from the beginning of the 4th week before the EWC. In either of these situations, the employee must notify their line manager as soon as reasonably practicable, that they have given birth or that they are absent wholly or partly because of pregnancy related sickness. If the employee does not do so, they may lose their right to paid ML. Initial notification can be by telephone but this should be followed up in writing as soon as possible.
- 4.10 If triggered by the birth of the child, ML will begin on the day that follows the day on which childbirth occurs.
- 4.11 Even when a baby has been born prematurely, or is sick, the employee must notify their employer as soon as reasonably practicable that they have given birth, and provide the date that the baby was born. Sometimes the employee is unable to obtain and complete the MAT B1 form before the birth, for example if the baby is born prematurely or the mother and /or the baby is sick. This may mean a delay in getting the form signed and sending it to their payroll provider. Therefore, the mother would not receive Statutory Maternity Pay / Maternity Allowance until the form can be provided. Employers should bear in mind that this is a very stressful time for parents and any communications regarding this or other matters should be approached sensitively and compassionately.

- 4.12 Where an employee has multiple posts within school, their ML and MP will commence on the same date for all posts based on total earnings for all roles.
- 4.13 *Illness during latter stages of pregnancy*
- 4.14 If pregnancy related illness occurs from the beginning of the 4th week before the EWC then ML will be triggered. If an employee is absent from work due to pregnancy related illness before this time, and their fit note ends at a date after the beginning of the 4<sup>th</sup> week before the EWC and they wish to return to work early then they should refer to the NHS guidance on returning to work before the fit note ends and discuss with their line manager.
- 4.15 *Changing the maternity leave start date*
- 4.16 If the employee wishes to change their ML start date they must give the required notice as outlined in table 3. This is a requirement in order to receive Statutory Maternity Pay (SMP), and will enable their manager to make cover arrangements. Their manager will write to them within 28 days to confirm their new expected date of return.
- 4.17 *Stopping maternity leave and converting to shared parental leave (ShPL)*
- 4.18 An eligible employee can opt into ShPL at any point (after compulsory maternity leave) before their return, as long as there is some untaken ML to share. Employees must give their line manager notification of their entitlement and intention to take ShPL at least eight weeks before the ShPL can begin.
- 4.19 *Returning from maternity leave*
- 4.20 Employees who intend to return to work at the end of their full ML entitlement do not have to give any further notification to their manager.
- 4.21 An employee who is returning to work after ordinary maternity leave is entitled to return to the same job in which they were employed under their original contract of employment. The same applies to employees returning from additional maternity leave, however if there have been significant changes in the organisation and it is not possible for them to return to the same job, employees should be offered a similar job on terms and conditions that are no less favourable, and must provide the same pay, benefits, holiday entitlement, seniority and location. "Job" for this purpose, means the nature of the work which they are employed to do and the capacity and place in which they are employed.
- 4.22 Where it is not practicable to return to work to the job the employee had before their maternity leave commenced, suitable alternative employment must be offered, if exceptional circumstances (other than redundancy e.g. reorganisation), which would have occurred regardless of their absence, necessitates a change in the job in which they were employed prior to their absence. The work to be done should be suitable to them and appropriate to the circumstances and the capacity and place in which they are to be employed. The terms and conditions of employment should not be less

favourable to them than if they had been able to return to the job in which they were originally employed.

**4.23 *Redundancy protection during pregnancy and during and after maternity leave***

4.24 If the employee's job is made redundant during pregnancy, ML or within 18 months of the expected week of childbirth (or date notified to the employer), called the 'protected period', they must be offered a suitable alternative vacancy. This new post must be offered before the end of the original post, and it must take effect immediately on the ending of the original role.

4.25 The suitable alternative vacancy must be such that:

- a. The work is both suitable and appropriate for them to do in their circumstances.
- b. The terms and conditions of their employment are not substantially less favourable than before.

4.26 The employee during this protected period, has a right to be offered suitable alternative vacancies before other employees and does not have to attend interviews of selection procedures.

4.27 If the employee unreasonably refuses a suitable alternative vacancy, the right to a redundancy payment can be forfeited.

**4.28 *Returning before the full leave entitlement***

4.29 If the employee wants to return before the end of their full leave entitlement of 52 weeks they must tell their manager within the notice period outlined in table 3. These notice periods are the minimum required. To help managers plan cover employees should give as much notice as possible of any changes to their plans.

4.30 If the employee has previously stated their intention to return to work before the end of the 52 week maternity period, and they wish to end their leave later, they must tell their manager at least 8 weeks before the previous end date stated.

4.31 If the employee does not give the minimum notice, their manager may postpone their return by the time period outlined in table 3 from the date they informed their manager that they would like to return early, but not to a date after their ML would have ended.

4.32 If the employee does not intend to return at the end of their ML they should give normal contractual notice.

**4.33 *Annual Leave during maternity leave***

4.34 Employees will continue to accrue annual leave during both their OML and AML. Where possible all leave should be taken in the current leave year.

4.35 Employees whose ML spans two years are usually able to carry over leave (pro rata for part time employees) in the normal way. In exceptional circumstances provisions can be made to allow employees to carry over any excess leave into the following leave year, for example if it is agreed that an employee is unable to take all of their annual leave in the leave year in which



they commence their ML they will be allowed to carry it over. For employees not returning to work, annual leave will be calculated up to the last day of employment.

- 4.36 Employees should therefore plan to take leave before commencement of ML and may wish to request some leave at the end of the ML period. If an employee does not return to work for a period of at least three months after ML, then any leave taken to which they were not entitled to will be reclaimed.

**4.37 *Annual Leave calculations for Term Time Only staff***

- 4.38 Employees who take maternity leave must be able to take their contractual leave entitlement (including bank holidays) at a time outside of their maternity leave.

- 4.39 Due to the way that term-time only employees are contracted and paid, issues around taking annual leave accrued during maternity leave can be complex. To ensure they have received their full contractual and statutory entitlements to leave it may be necessary for term-time only workers to take leave during term-time or to pay them additional leave during school closure periods.

- 4.40 An employee should not receive payment in lieu of untaken annual leave unless they do not return to their job following maternity leave. Where an employee does not return to the Trust's employment following maternity leave, their annual leave entitlement to be paid will be calculated on a pro rata basis for the leave year in question. However, it should be noted that if an employee does not return to their job they may be required to refund any OMP paid - this may be offset by payments due in respect of holiday pay.

- 4.41 Teaching staff do not have an annual leave entitlement included within their terms and conditions of service. Therefore, the statutory entitlement of 5.6 weeks of leave per year (including Bank and statutory holidays) will be considered to apply for any calculations relating to annual leave. As teachers receive full pay during all school closure periods, any such periods will be counted towards their statutory entitlement. For teaching staff the leave year runs from September to August.

**4.42 *Miscarriage, still birth or death of a child (in relation to maternity leave)***

- 4.43 The Trusts Health Assured Employee Assistance Programme is able to provide emotional support via a 24/7 helpline, staffed by BACP qualified counsellors.

- 4.44 If a miscarriage occurs earlier than the 24<sup>th</sup> week of pregnancy, the employee will not be eligible for MP and ML. However, if they are unfit to return to work at this time, they will be eligible to take sick leave, subject to the normal sick pay requirements.

- 4.45 If the baby is stillborn after the start of the 24<sup>th</sup> week of pregnancy, then the employee will still qualify for full MP and ML.

- 4.46 If a child dies within the ML period the employee will remain eligible for MP and ML in the usual way.
- 4.47 *Neonatal care leave (in relation to maternity leave)*
- 4.48 In the event a child requires neonatal care for a minimum continuous period of seven or more full days in the first 28 days of their birth there is an additional leave entitlement of neonatal care leave (see also section 14 for further details including notice and pay).
- 4.49 Neonatal care leave should be taken after maternity leave ends. This is because maternity leave will be triggered by the birth of the child and cannot be paused and restarted.
- 4.50 Maternity pay (MP)
- 4.51 *Who qualifies for statutory maternity pay (SMP)?*
- 4.52 If an employee has completed 26 weeks' continuous service with the Trust by the 15th week before the EWC (and average earnings are at least the lower limit for N.I. contributions), they will be entitled to SMP i.e. six weeks at 9/10ths (90%) of their normal pay and 33 weeks lower rate of SMP, paid at the lower of 90% of average weekly earnings or the statutory rate set by government.
- 4.53 SMP is worked out based on the average weekly pay received during the eight week period, 15 weeks before EWC (weeks 17 to 25 of pregnancy).
- 4.54 If the baby is born before or during the Qualifying Week (the 15<sup>th</sup> week, Saturday to Sunday, before the week the baby is due) the continuous employment rule is satisfied if they would have completed 26 weeks' continuous employment had it not been for the baby's early birth. The average weekly earnings would then be worked out using the birth date instead of the Qualifying Week.
- 4.55 For employees who are on fixed term contracts who meet the above eligibility but whose contract ceases during the maternity period, SMP will be paid throughout the maternity period. Therefore the contract end date and date of end of SMP payments may be different. If the option for shared parental leave is taken up, SMP will cease and be replaced by Shared Parental Pay (ShPP).
- 4.56 Where the Trust offers salary sacrifice schemes
- 4.57 It is important to note that as a salary sacrifice benefit reduces cash pay, the amount of salary that the employee pays National Insurance contributions on is also reduced. Staff who participate in a salary sacrifice scheme will have been informed through the terms and conditions of the scheme of the impact on any allowances including maternity. Any salary sacrifice applicable for the employee during this eight week period will reduce entitlement to SMP. In addition, employees remain responsible for payments due for the goods or services through salary sacrifice during ML. However salary deductions cannot be made during periods of SMP or nil pay and repayment arrangements will have to be set up through a separate agreement.

4.58 *What if the employee does not qualify for SMP?*

4.59 If the employee does not have 26 weeks continuous service prior to the 15th week before the baby is due, they may be eligible for Maternity Allowance (MA) paid by the Department for Work and Pensions.

4.60 If the employee is not entitled to SMP, the Trust will send the employee a form SMP1. The employee should then send the completed form to the Department for Work and Pensions along with their original MAT B1.

4.61 *Who qualifies for occupational maternity pay (OMP)?*

4.62 Where the green book is applied for support staff, In line with paragraph 14, continuous service with any body on the Local Government Modification Order counts for the purposes of the occupational maternity scheme. In addition to Local Government employers, Academies are listed on the order, as are free schools. This means that support staff, employed on green book terms, are entitled to OMP where they have completed at least one year's continuous service with any body or bodies listed under the order.

- Teachers employed on burgundy book terms and conditions are entitled to OMP where they have completed at least one year's continuous service (with any body or bodies listed under the order) at the 11<sup>th</sup> week before the EWC and who confirm in writing their intention to return to work after ML.

4.63 The OMP provisions for both support and teaching staff are summarised in the table below with further detail given below.

	Teaching Staff	Support Staff
Weeks 1 - 6	4 weeks at 100% and 2 weeks at 90% of normal pay (offset against SMP if eligible or MA)	6 weeks at 90% of normal pay (offset against SMP if eligible)
<i>Returning to work following maternity</i>		
Weeks 7 - 18	12 weeks at ½ pay (plus SMP if eligible or MA) or 6 weeks full pay spread as agreed between employee and employer or 6 weeks paid in full on return to work	
Weeks 19 - 39	21 weeks at flat rate SMP (if eligible) or MA	
<i>Not returning to work following maternity</i>		
Weeks 7 – 39	33 weeks at flat rate SMP (if eligible) or MA	
Weeks 40 – 52	Unpaid maternity leave	
<i>Minimum period employee must return to work</i>		
	Period equal to 13 weeks based on contractual hours prior to maternity leave	3 months either full or part-time

The Green Book states that payments made for OMP will be on the basis that the employee returns to local government employment for a period of at least three months (which may be varied), and in the event that the employee does not, they shall refund the moneys. Where the Green Book is adopted, it is our understanding based on national advice, that this would apply equally to Academy Trusts, therefore if an employee left the Trust's employment at the end of maternity leave to take up

employment with another Trust or with an LA (or any other organisation listed on the modification order – please see below for further information), without a break in service, the OMP would not be refundable. Trusts may seek to introduce their own variation to this clause locally through union consultation and negotiation. It is a further point to note that the Green Book states that continuous service for the purposes of entitlements regarding OMP includes continuous service with any public authority to which the Redundancy Payments (Continuity of Employment in Local Government etc) (Modification) Order 1999 applies.

- 4.64 For support staff employed in line with green book terms and conditions, OMP is equivalent to an additional six weeks full pay. It is paid on the understanding that the employee will return to employment with a body listed within the Local Government Modification Order for at least three months (excluding any period of unpaid parental leave). This time period will apply even if the employee returns to work under different working arrangements e.g. reduced hours following a flexible working request.
- 4.57 For support staff employed in line with green book terms and conditions, OMP is equivalent to an additional six weeks full pay. It is paid on the understanding that the employee will return to Trust employment for at least three months (excluding any period of unpaid parental leave). This time period will apply even if the employee returns to work under different working arrangements e.g. reduced hours following a flexible working request.
- 4.65 Regardless of the date of return, SMP cannot be paid in part weeks, whereas OMP would be paid up to the day before the employee returns.
- 4.66 *Maternity Pay for Support Staff*
- 4.67 For support staff employed in line with green book terms and conditions, OMP is equivalent to an additional six weeks full pay. It is paid on the understanding that the employee will return to Trust employment for at least three months (excluding any period of unpaid parental leave). This time period will apply even if the employee returns to work under different working arrangements e.g. reduced hours following a flexible working request.
- 4.68 OMP is generally paid between weeks seven and 18 on top of SMP or Maternity Allowance (MA), at the rate of half a week's pay, without any deduction of SMP or MA. However, half pay plus SMP (or MA and any dependant's allowances if not eligible for SMP) cannot exceed full pay.
- 4.69 Pay calculations are based on when money is due rather than when it is paid, so the 'half pay plus SMP must not exceed full pay' refers to the weekly calculation based on weeks 7-18 when OMP is due. In addition to the above, 21 weeks of leave at the lower rate SMP, which is paid at the lower of 90% of average weekly earnings or the statutory rate set by government.
- 4.70 Where an employee has multiple posts, the OMP applies on all of their established posts at the time they are going on, ML. Should they meet the

continuous service requirement for OMP for more than 12 months then their OMP will reflect the multiple posts.

*4.71 Maternity Pay for Teaching staff*

4.72 For teaching staff OMP is paid on the understanding that the employee will return to their job for at least 13 weeks (or longer equivalent period if they return on fewer hours than they were previously working) excluding any period of unpaid parental leave.

4.73 The twelve week's half pay is generally paid between weeks 7 and 18 on top of SMP or Maternity Allowance (MA), without any deduction of SMP or MA. However, half pay plus SMP (or MA and any dependant's allowances if not eligible for SMP) cannot exceed full pay.

4.74 Alternatively, the equivalent amount (six weeks' pay) can be paid in any other mutually agreed distribution, such as 3/10ths pay per week for the remaining 20 weeks of OML, or the amount in full when the employee returns to work after ML.

4.75 Pay calculations are based on when money is due rather than when it is paid, so the 'half pay plus SMP must not exceed full pay' refers to the weekly calculation based on weeks 7-18 when OMP is due. In addition to the above, 21 weeks of leave at the lower rate SMP, which is paid at the lower of 90% of average weekly earnings or the statutory rate set by government.

4.76 Where an employee has multiple posts, the OMP applies on all of their established posts at the time they are going on, ML. Should they meet the continuous service requirement for OMP then their OMP will reflect the multiple posts.

*4.77 Keeping in touch days (KIT days) during maternity leave*

4.78 The maternity regulations allow an employee to work for up to 10 days/occasions during ML without bringing their ML to an end. The statutory entitlement to up to 10 KIT days is not applied pro-rata for part-time employees, but they may only take place by agreement between the employer and the employee. Where a request is made it should not be unreasonably refused. Working for part of a day will count as one day/occasion and the employee will be paid for the hours worked at their contractual rate. Payment will be offset against any maternity pay/allowance paid for that week. The employee will not lose any SMP/OMP/MA for working up to 10 days. Work is defined as any work that is done under their contract of employment and this may include training or any activity undertaken for the purposes of keeping in touch with their workplace.

4.79 An employer cannot insist that an employee carries out work and equally the employee cannot insist that they are given work to do during this period under the KIT arrangements.

4.80 Where work is done during their maternity period they will continue to receive their SMP/OMP/MA where it is due and they should also be paid for any work

that they do under their contract of employment. This work will be paid at the employee's hourly contractual rate and will be offset against any maternity benefits due.

- 4.81 However, they will not be able to carry out any work during the first two weeks following the birth of their child i.e. during the compulsory maternity leave period.
- 4.82 It is important to note that once an employee has used up the 10 keeping in touch days/sessions if they then work again they will not receive their maternity or adoption benefits for that week. Therefore, records must be kept to avoid this.
- 4.83 If the employee works for another employer during the SMP period but before the baby is born then SMP will continue be paid. If the employee works for another employer during the SMP period but after the baby is born, the employer should check whether they worked for the other employer during the 15th week before the baby was due. If they did, SMP should be paid as usual. If, however, the employee is working for another employer for which they did not work during the 15th week before the baby was due, the school will stop paying SMP from the start of the week that the employee works for the other employer. It is up to the employee to inform the school that they are working for someone else during their statutory maternity pay period.

## **5.1 Maternity guidance for line managers**

### **5.2 Health and safety risk assessment**

5.3 Line managers should undertake the relevant risk assessments as soon as they are informed about the employee's pregnancy. Advice on health and safety issues is available from the HSE guidance.

5.4 Where a significant risk has been identified that could damage the health or safety of a new or expectant employee or their unborn child, the school will take any protective or preventative measures required to eliminate it. If this would not avoid the risk, the following steps are carried out in the hierarchy below:

- If it is reasonable to do so, alter working conditions or hours of work;
- If the risk cannot be avoided in this way, employees should be offered suitable alternative employment. Suitable alternative employment means work which is both suitable in relation to the employee and appropriate for them to do in the circumstances and on existing or no less favourable terms and conditions.
- If no suitable alternative work is available, medical suspension. This means they are entitled to paid leave or, where suitable alternative work is available but refused, unpaid leave.

5.5 An employee can be medically suspended in this way at any time starting from when they become pregnant until either:

- a. **The date on which they have notified that their maternity leave starts;**
- b. **The start of the 4<sup>th</sup> week before the EWC if the above date has not been notified.**

5.6 Should medical suspension occur after the 4<sup>th</sup> week before the EWC, this will automatically trigger the start of maternity leave. Suspension on health and safety grounds can also occur during any period from the end of their maternity leave up until the 6<sup>th</sup> month from the date of childbirth (later if breastfeeding goes beyond this date).

5.7 A new or expectant employee who works nights and provides a medical certificate showing that their health and safety is at risk if they continue with night work should be offered suitable alternative employment. Where that is not possible they are given paid leave. This protective measure operates from when the school is aware that the employee is pregnant until the later of six months after the date of childbirth, or miscarriage where this occurs, or until the employee stops breastfeeding.

### **5.8 Notification requirements**

5.9 The Trust must write to the employee within 28 days of receiving the Maternity Notification Form stating the expected date of return from ML. This will be based on the full entitlement to 52 weeks ML. If ML has been triggered by childbirth or pregnancy-related absence the line manager will likewise confirm the expected date of return.



- 5.10 The Trust must notify their payroll provider in writing as soon as the employee is known to be entitled to SMP and/or OMP and send them the employee's original MatB1 form. A notification of maternity leave entitlement form can be used for this purpose.
- 5.11 *During maternity leave – line manager contact with the employee*
- 5.12 The employer can make 'reasonable contact' with the employee whilst they are on maternity leave. This would normally be to discuss return arrangements or to discuss work-related training that may be available or to inform the employee of any changes in the workplace that may affect them.
- 5.13 Employers should ensure that employees who are on maternity leave are not disadvantaged when it comes to having the opportunity to apply for vacancies within the organisation. They should therefore consider putting in place a system of notifying employees on maternity leave of vacancies that arise. This might involve, for example, a regular general email rounding up all vacancies, or more personal contact from the employee's line manager where a vacancy in an area in which they are interested arises.
- 5.14 If a suitably qualified employee who is on maternity leave wishes to apply for a vacancy, they are entitled to be considered for the position even though they may not be able to start the vacant post until their maternity leave ends.
- 5.15 *During maternity leave – employee detriment and dismissal*
- 5.16 An employee who is pregnant or on maternity leave is protected from detrimental treatment (being treated unfairly or less favourably due to an act, or deliberate failure to act by the employer) or dismissal because they:
- are pregnant;
  - have given birth to a child;
  - have taken, or seeks to take, maternity leave;
  - have taken, or seeks to take, any of the benefits of ordinary maternity leave;
  - have been suspended from work on maternity health and safety grounds;
  - are being made redundant during their maternity leave and has not been offered any available suitable alternative employment.
- 5.17 Protection includes any detrimental treatment or dismissal after they failed to return to work following maternity leave where either:
- Their line manager did not notify the employee in accordance with the statutory duties or otherwise of the date on which their maternity leave would end and they reasonably believed that their maternity leave had not ended;
  - Their line manager gave them less than 28 days' notice of the date their maternity leave would end and it was not reasonably practicable for them to return on that date.



- 5.18 Employees can claim unfair dismissal regardless of length of service if related to pregnancy or maternity leave. An employee dismissed at any time during pregnancy or maternity leave is entitled to written reasons for dismissal (whether requested or not). Employers can dismiss employees for reasons unrelated to pregnancy, such as conduct, and any such employee must have two years' continuous service to claim unfair dismissal at an employment tribunal.
- 5.19 If an employee is made redundant during pregnancy, maternity leave or within 18 months of the expected week of childbirth the employee has a right to be offered suitable alternative vacancies before other employees and does not have to attend interviews or selection procedures.

## 6.1 **Paternity leave (PL)**

6.2 An employee who is a father to be or will share the responsibility with a partner for bringing up a child, may have the right to Statutory Paternity Leave and Pay. This includes those who are adopting a child or having a baby through a surrogacy arrangement.

6.3 Paternity leave entitlement is two weeks, and can be taken in one two-week block, or two one-week blocks. This will be the same amount of leave if the partner has a multiple birth (e.g. twins) or multiple adoption. Paternity leave can start on any day of the week but must be completed within the first year after the date of birth of the child, or placement for adoption.

6.4 A week is the same amount of days that is normally worked in a week, e.g. if the employee only works on Mondays and Tuesdays a week is two days.

6.5 To qualify for paternity leave and pay employees must:

- a. have or expect to have responsibility for a newly born or adopted child's upbringing. The employee may be the biological father of the child, the biological mother's husband, the father, partner or the adoptive parent who is not the primary carer.
- b. have been continuously employed by the Trust for at least 26 weeks by the 15th week before the baby is born, or by the week the child's adopter is notified of having been matched with a child
- c. have average weekly earnings at or above the lower earnings limit
- d. provide a copy of either the MAT B1 form or the adoption matching certificate, and give the correct notice of their intention to take paternity leave (at least four weeks before the intended date of paternity leave or seven days before paternity adoption leave).

6.6 Employees can start their leave from:

- a. the date of the child's birth or date of placement for adoption; or
- b. a chosen number of days or weeks after the date of the child's birth or date of placement for adoption; or
- c. another chosen date

6.7 Employees can choose to be paid SPP for either one or two consecutive weeks, but not odd days. Employees need to complete a SPP self-certificate form. Statutory Paternity Pay (SPP) is the same as SMP, or 90% of average weekly earnings, whichever is less.

6.8 *Miscarriage, still birth or death of a child (in relation to paternity leave)*

6.9 Employees still qualify for paternity leave and pay if the baby is either:

- stillborn from 24 weeks of pregnancy
- born alive at any point in the pregnancy but later dies

6.10 *Neonatal Care Leave (in relation to paternity leave)*

- 6.11 In the event a child requires neonatal care for a minimum continuous period of seven or more full days in the first 28 days of their birth there is an additional leave entitlement of neonatal care leave (see also section 14 for further details including notice and pay).
- 6.12 Individuals eligible to take paternity leave may also request Neonatal Care Leave if eligible. Employees must notify their line manager within the first 28 days of the birth of the child if they need to take Neonatal Care Leave.

## **7.1 Maternity support leave (MSL)**

7.2 Please note that maternity support leave is a contractual entitlement under the Green Book which applies to support staff only. This benefit does not apply to teachers employed under Teachers' (Burgundy Book) Conditions of Service.

7.3 Maternity support leave is one week's paid leave, pro rata for part time workers, at or around the time of the birth or adoption of a child. This is an occupational benefit for support staff and applies to all employees who meet the qualifying criteria.

7.4 MSL payment is based on normal weekly contractual hours (or an average week's pay, where varied hours are regularly worked).

7.5 To qualify for maternity support leave and pay school employees must:

- a. Be the person nominated by an expectant person or a soon-to-be adoptive parent (where that adoptive parent will be the primary carer to the child), to be the primary provider of support and care to them at or around the time of the arrival of their child
- b. The nominated carer may be:
- c. the biological father of the child, the parent or primary carer's husband or partner, or the adoptive parent who is not the primary carer
- d. Someone else with a caring relationship to the mother/ primary carer and/or the child may be eligible for MSL, but will need to demonstrate their relationship and why they are taking on this role
- e. Have completed 26 weeks' continuous service with the Trust or a related employer at the time they make the request
- f. Provide a copy of either the MAT B1 form or the adoption matching certificate.

7.6 MSL is not statutory but should be refused only in exceptional circumstances, to meet service needs.

## **7.7 Combining paternity and maternity support leave**

7.8 An employee eligible for Paternity Leave may also be eligible for MSL. An employee who takes one week of MSL can take only one week of Statutory Paternity Leave with Statutory Paternity Pay (where eligible for SPP).

7.9 Employees are entitled to either MSL, PL or a combination, and the associated Trust policy on maternity support leave pay for the relevant individual is as follows:

	MSL	Paternity	Payment
Biological father	Yes	Yes	One week pay, one week SPP*
Husband or Partner of primary carer	Yes	Yes	One week pay, one week SPP*

	MSL	Paternity	Payment
Secondary adoptive parent	Yes	Yes	One week pay, one week SPP*
A relative with close caring relationship (e.g. parent)	Yes	No	One week pay
Someone else with a caring relationship to the primary carer and/or child**	Yes	No	One week pay
Teachers (who also meet 1, 2 or 3 above)	No	Yes	Two weeks SPP*

\* Where eligible for SPP

\*\* Need to demonstrate nature of relationship and why they are taking on this role.

## **8.1 Adoption leave (AL)**

### **8.2 Confirming adoption**

8.3 The employee should tell the Trust as soon as they have been approved as the primary adopter so that working arrangements can be planned. This may be before the employee has received or needs to submit their documentary evidence. The Trust will respond in writing to acknowledge their initial notification. Employees can access AL from the start of their employment with the Trust; there is no qualifying period for the leave element.

8.4 The employee must inform their manager in writing of their intention to take AL within seven days of being notified by their adoption agency that they have been matched with a child for adoption. This is known as the notification period.

8.5 They should tell their manager in writing:

- a. That they are adopting a child
- b. When the child is expected to be placed with them
- c. When they want their adoption leave to start

8.6 In addition they should:

- a. Give at least 28 days' notice of the date they expect any payments of Statutory Adoption Pay (SAP) to start, if reasonably practicable
- b. Declare their intention to return to work at the end of the period of AL, to qualify for OAP; and give their manager a 'matching certificate' from their adoption agency as proof of their entitlement to SAP and AL. Employees should ask their adoption agency for this certificate, which will include basic information on matching and expected placement dates

8.7 The Trust will respond in writing using the appropriate template letter to advise the expected return date from AL. This will be based on their full leave entitlement of 52 weeks unless notified otherwise.

8.8 Employees going through the adoption process can apply for up to 5 days paid leave per year (pro rata for part time staff). This pre adoption leave can be used in preparation for the adoption.

### **8.9 Starting adoption leave**

8.10 Employees can choose to start their leave on any day of the week, either:

- a. From the date of the child's placement; or
- b. From a fixed date which can be up to 14 days before the expected date of placement; or
- c. From a 'fixed point' to be agreed, where a child is being adopted from overseas

- 8.11 If the employee's placement is delayed for any reason and they have already started AL they will not be able to stop it and start again at a later date, unless it becomes a disrupted placement. If the employee plans to start AL before the actual date of placement they should check the placement is to start as planned.
- 8.12 If the employee has started AL before the placement of the child and they are subsequently notified that the placement will not be made; or, if during the employee's AL the child placed with them is returned to the adoption agency or dies; then, the manager will discuss with them sympathetically an appropriate date on which to return to work. Usually in this situation the employee's AL finishes eight weeks after the end of the week in which the disruption took place, or earlier if their AL was due to finish before this time. The employee should still give 28 days' notice to return to work.
- 8.13 *Neonatal Care Leave (in relation to adoption leave)*
- 8.14 In the event a child to be adopted requires neonatal care for a minimum continuous period of seven or more full days within the first 28 days of their birth there is an additional leave entitlement of neonatal care leave. (see also section 14 for further details including notice and pay)
- 8.15 Neonatal care leave should be taken after adoption leave ends. This is because adoption leave will be triggered by the birth of the child and cannot be paused and restarted.
- 8.16 *Changing the AL start date*
- 8.17 If the employee subsequently wants to change the date on which their leave starts, they must give at least 28 days' notice if reasonably practicable. The manager will reply in writing within 28 days to confirm their new expected date of return.
- 8.18 *Returning from adoption leave*
- 8.19 Employees who intend to return to work at the end of their full AL entitlement do not have to give any further notification to their manager.
- 8.20 An employee is entitled to return to the job in which they were employed under their original contract of employment and on terms and conditions not less favourable than those which would have been applicable to them if they had not been on adoption leave. "Job" for this purpose, means the nature of the work which they are employed to do and the capacity and place in which they are employed.
- 8.21 Where it is not practicable by reason of redundancy to return to work to the job the employee had before their adoption leave commenced, they must be offered a suitable alternative post, if this is available, which must be on terms and conditions not substantially less favourable than those on which they were originally employed.

- 8.22 Suitable alternative employment may also be offered if exceptional circumstances (other than redundancy e.g. reorganisation), which would have occurred regardless of their absence, necessitate a change in the job in which they were employed prior to their absence. The work to be done should be suitable to them and appropriate to the circumstances and the capacity and place in which they are to be employed. The terms and conditions of employment should not be less favourable to them than if they had been able to return to the job in which they were originally employed.
- 8.23 *Redundancy protection during and after Adoption Leave*
- 8.24 If the employee's job is made redundant during AL or within 18 months from either the date of adoption placements starts or the date the child enters England, Scotland, or Wales (if an overseas adoption), called the 'protected period', they must be offered a suitable alternative vacancy. This new post must be offered before the end of the original post, and it must take effect immediately on the ending of the original role.
- 8.25 The suitable alternative vacancy must be such that:
- a. The work is both suitable and appropriate for them to do in their circumstances.
  - b. The terms and conditions of their employment are not substantially less favourable than before.
- 8.26 The employee during this protected period, has a right to be offered suitable alternative vacancies before other employees and does not have to attend interviews of selection procedures.
- 8.27 If the employee unreasonably refuses a suitable alternative vacancy, the right to a redundancy payment can be forfeited.
- 8.28 *Keeping in touch (KIT) days during Adoption Leave*
- 8.29 During AL employees are entitled to work KIT days on the same basis as during maternity leave. Where work is done during the adoption leave period they will continue to receive their SAP where it is due and should also be paid for any work that they do under their contract of employment. This work will be paid at the employee's hourly contractual rate and will be offset against the SAP/OAP due.
- 8.30 Adoption pay
- 8.31 *Statutory adoption pay (SAP)*
- 8.32 SAP is payable if the employee has been in continuous employment for 26 weeks by the week in which they are matched with a child for adoption, and has average weekly earnings equal to or above the lower earnings limit. Adopters who have average weekly earnings below the Lower Earnings Limit for National Insurance Contributions will not qualify for SAP. Employees who are not entitled to these may be able to access other benefits, and should contact their local Jobcentre Plus, Benefits office, or adoption agency.
- 8.33 SAP ceases if the employee starts working for a new employer after the child has been placed, or if the placement is disrupted.



8.34 SAP is paid for up to 39 weeks, starting from any day of the week. The first six weeks of pay is paid at 9/10ths (90%) of a week's pay (offset against OAP), followed by 33 weeks at the current SAP rate (the statutory rate set by government).

8.35 *Occupational adoption pay (OAP)*

8.36 *Adoption pay for Support Staff*

8.37 Occupational Adoption Pay is available to employees who have completed 1 year's continuous Trust/local government service at the 11th week before the expected week of the child's placement. Support staff entitlements are as follows:

- a. For the first six weeks 9/10ths of a week's pay offset against SAP payments
- b. For employees who declare in writing that they intend to return to work will for the subsequent 12 weeks receive half a week's pay plus SAP, where eligible, to a limit of full pay. This is paid on the understanding that they return to Trust employment for at least 3 months (excluding any period of unpaid parental leave)

8.38 *Who qualifies for occupational adoption pay (OAP)?*

8.39 Where the green book is applied for support staff, In line with paragraph 14, continuous service with any body on the Local Government Modification Order counts for the purposes of any occupational adoption scheme. In addition to Local Government employers, Academies are listed on the order, as are free schools. This means that support staff, employed on green book terms, are entitled to OAP where they have completed at least one year's continuous service with any body or bodies listed under the order.

Teachers employed on burgundy book terms and conditions are entitled to OAP where they have completed at least one year's continuous service (with any body or bodies listed under the order) at the 11<sup>th</sup> week before the EWC and who confirm in writing their intention to return to work after ML.

8.40 *Adoption pay for Teaching Staff*

8.41 Occupational Adoption Pay is available to employees who have completed 1 year's continuous Trust/local government service at the 11th week before the expected week of the child's placement. Teachers entitlements are as follows

- a. For the first four weeks full-pay offset against SAP payments
- b. For the next two weeks 9/10ths of a week's pay offset against SAP payments
- c. For employees who declare in writing that they intend to return to work will for the subsequent 12 weeks receive half a week's pay plus SAP, where eligible, to a limit of full pay. This is paid on the understanding that they return to employment with the Trust for at least 13 weeks or equivalent period (excluding any period of unpaid parental leave).



## 9.1 Shared Parental Leave (ShPL)

9.2 ShPL and ShPP is available to employees who are expecting a baby or adoption placement, from the date of the baby's birth or the adoption of a child, subject to eligibility. The leave must be taken before the child's first birthday or one year from the adoption date. The mother/primary adopter can share the leave with their partner if they're also eligible for ShPL, and choose how much of the leave each of them will take.

9.3 Employees are encouraged to discuss their potential plans regarding ShPL at the earliest opportunity, to enable the organisation to support them effectively.

### 9.4 *Eligibility criteria for ShPL*

9.5 ShPL can only be used by two people:

- a. **The mother/adopter; and**
- b. **one of**
- c. **the father of the child (in the case of birth)**
- d. **or the spouse, civil partner or partner of the child's mother/adopter**

9.6 Additionally, an employee seeking to take ShPL must satisfy each of the following criteria:

- a. **Mother/Parent/adopter must be/have been entitled to statutory maternity/adoption leave or have been entitled to statutory maternity/adoption pay or maternity allowance and must have ended or given notice to reduce any maternity /adoption allowances.**
- b. **The employee must still be working for the organisation at the start of each period of ShPL.**
- c. **The employee must pass the 'continuity test' requiring them to have a minimum of 26 weeks service at the end of the 15th week before the EWC/matching date.**
- d. **The employee's partner must meet the 'employment and earnings test' requiring them (in the 66 weeks leading up to the EWC/matching date) to have worked for at least 26 weeks and earned an average of at least £30 a week (this is correct as of the date of this document review but may change annually) in any 13 of those weeks.**
- e. **The employee must correctly notify their line manager of their entitlement and provide evidence as required.**

### 9.7 *ShPL entitlements*

9.8 The number of weeks available is calculated using the mother/adopter's entitlement to maternity/adoption leave, which allows up to 52 weeks leave. The mother/parent/adopter can reduce this entitlement; they and/or their partner can opt into the ShPL system and take any remaining weeks as ShPL.

- 9.9 If the mother/parent/adopter is not entitled to maternity/adoption leave, but is entitled to SMP, SAP or MA they must reduce their entitlement to less than 39 weeks.
- 9.10 If such a mother/parent chooses to reduce their statutory maternity pay or maternity allowance period and take fewer than 39 weeks of pay or allowance, then their employed partner could take the untaken weeks as shared parental leave if he (or they) is eligible for leave. In this case, the number of weeks of pay or allowance must be deducted from 52 weeks to calculate the number of weeks of shared parental leave that will be available for the partner to take.
- 9.11 *Timing of ShPL*
- 9.12 The parent can take ShPL after they have taken the legally required two weeks of CML immediately following the birth of the child.
- 9.13 The adopter can take ShPL after taking at least two weeks of AL.
- 9.14 The father/partner/spouse can take ShPL immediately following the birth/placement of the child, but may first choose to exhaust any PL entitlements.
- 9.15 If a mother/parent/adopter gives notice to curtail their maternity/adoption entitlement then the partner can take leave while the mother/parent/adopter is still using their maternity/adoption allowance.
- 9.16 *Giving notice of the intention to take ShPL*
- 9.17 Employees must give at least eight weeks' notice to their employer of their intent to take ShPL. This notice must be in writing, and include:
- a. **The name of the employee**
  - b. **The name of the other parent**
  - c. **The start and end dates of any maternity/adoption leave or pay, or maternity allowance, taken in respect of the child and the total amount of ShPL available**
  - d. **The date on which the child is expected to be born, and the actual date of birth, or in the case of an adopted child, the date on which the employee was notified of having been matched with the child and the adoption placement date**
  - e. **The amount of ShPL the employee and their partner each intend to take**
  - f. **A non-binding indication of when the employee expects to take the leave**
- 9.18 Variation is only permitted by mutual consent of both parents, and leave already booked can only be varied with eight weeks' notice of the change.
- 9.19 *Employee notification requirements*
- 9.20 Employees must provide the Trust with a signed declaration stating:

- a. **That they meet, or will meet the eligibility conditions and are entitled to take ShPL.**
  - b. **That the information they have given is accurate.**
  - c. **If they are not the mother/parent/adopter they must confirm that they are either the father of the child, or are the spouse, civil partner or partner of the mother/parent/adopter.**
  - d. **That should they cease to be eligible they will immediately inform the organisation.**
- 9.21 The Trust may, within 14 days of the ShPL entitlement notification being given, request:
- a. **The name and business address of the partner's employer (where the partner is no longer employer or is self-employed their contract details must be given instead).**
  - b. **In the case of biological parents, a copy of the child's birth certificate (or where one has not been issued, a declaration as to the time and place of birth).**
  - c. **In the case of an adopted child, documentary evidence of the name and the address of the adoption agency , the date of the matching notification and the date which the child is expected to be placed for adoption.**
- 9.22 The Trust reserves the right to investigate further where there is cause to believe that a fraudulent claim has been made. Any investigation would be carried out in accordance with the appropriate process and without acting in a discriminatory manner in relation to any of the protected characteristics defined in the Equality Act 2010.
- 9.23 *Booking ShPL*
- 9.24 In addition to notifying the employer of the intention to take ShPL, the employee must also give notice to take the leave. In many cases, this will be done at the same time. The correct notification must be given at least eight weeks before the date on which they wish to start the leave and (if applicable) receive ShPP.
- 9.25 Employees have the right to submit no more than three notifications specifying leave periods they are intending to take. Each notification may contain either:
- a. **A single period of weeks of leave or**
  - b. **Two or more weeks of discontinuous leave, where the employee intends to return to work between periods of leave.**
- 9.26 ShPL can only be taken in complete weeks, but it may begin on any day of the week.
- 9.27 A written response will be provided to the employee no later than the 14th day after the leave request was made.

#### 9.28 *Continuous leave notifications*

- 9.29 A notification can be for a period of continuous leave which means a notification of a number of weeks taken in an unbroken period of leave e.g. six weeks in a row. Employees can take a continuous block of leave so long as it does not exceed the total number of weeks of ShPL available to them and the correct notice period has been given.

#### 9.30 *Discontinuous leave notifications*

- 9.31 A single notification may contain a request for two or more periods of discontinuous leave, which means asking for a set number of weeks over a period, with breaks in between, e.g. employee takes six weeks of ShPL, and then works every other week for a period of three months.
- 9.32 It is not a statutory right to have periods of discontinuous leave. All requests will be carefully considered, weighing up the potential benefits to the employee and to the organisation against any adverse effects to the service.
- 9.33 If a notification request for discontinuous leave is refused, the employee can either withdraw it within 15 days of giving it, or can take the leave in a single continuous block. If the option of a single continuous block is taken, the employee has until the 19th day from the original date of notification to choose when they want the leave period to begin. The leave cannot start sooner than eight weeks from the date the original notification was submitted. If the employee does not choose a leave date the leave will begin on the date specified in the original notification.

#### 9.34 *Commencing ShPL*

- 9.35 ShPL will generally commence on the employee's chosen start date. However, if the baby arrives early the leave can start and notice be given as soon as practically possible. It must end no later than one year after the birth/placement of the child. Any ShPL not taken by this point will be lost.

#### 9.36 *Varying ShPL*

- 9.37 Employees are permitted to vary or cancel an agreed and booked period of ShPL provided that they advise their line manager in writing at least eight weeks before the start of any variation. Any new start date cannot be sooner than eight weeks from the date of the variation request.
- 9.38 Variation/cancellation notifications will usually count as a new notification, thus reducing the employee's right to book/vary leave by one. Exceptions to this will be changes due to early births, or as a result of the organisation requesting the change and it being agreed by the employee. Any variation will be confirmed in writing by the Trust.

#### 9.39 *Return to work following ShPL*

- 9.40 The Trust will have confirmed the return date in writing to the employee and the employee will be expected to return to work on the next working day after this date, unless they notify the Trust otherwise.
- 9.41 If the employee has been off for no more than 26 weeks they will be eligible to return to the same job. If the employee has been on leave for more than 26 weeks they will return to the same job unless this is not possible, then the employee will be entitled to return to a role which is suitable and has no less favourable terms and conditions.
- 9.42 If the employee also takes a period of unpaid parental leave of four weeks or less, this will have no effect on their right to return to the same job as they occupied before taking the last period of leave if the aggregated weeks of maternity/ paternity/ adoption and ShPL do not exceed 26 weeks.
- 9.43 If the employee takes a period of unpaid parental leave of 5 weeks, even if the aggregate weeks of maternity/paternity/adoption and ShPL do not exceed 26 weeks, the employee will be entitled to return to the same job, unless this is not possible. In such cases, the employee will be entitled to return to a role which is suitable and has no less favourable terms and conditions.
- 9.44 Where it is not practicable by reason of redundancy to return to work to the job the employee had before their shared parental leave commenced, they must be offered a suitable alternative post, if this is available, which must be on terms and conditions not substantially less favourable than those on which they were originally employed.
- 9.45 Suitable alternative employment may also be offered if exceptional circumstances (other than redundancy e.g. reorganisation), which would have occurred regardless of their absence, necessitate a change in the job in which they were employed prior to their absence. The work to be done should be suitable to them and appropriate to the circumstances and the capacity and place in which they are to be employed. The terms and conditions of employment should not be less favourable to them than if they had been able to return to the job in which they were originally employed.
- 9.46 *Redundancy protection during and after Shared Parental Leave*
- 9.47 If the employee's job is made redundant during ShPL, called the 'protected period', they must be offered a suitable alternative vacancy. This new post must be offered before the end of the original post, and it must take effect immediately on the ending of the original role.
- a. If the employee takes less than 6 weeks ShPL, the redundancy protected period ends on the last day of the block of leave.
  - b. If the employee takes 6 weeks or more of continuous leave, the redundancy protected period ends 18 months from the date of the child's birth.
  - c. If the employee takes discontinuous leave, the redundancy protected period finishes at the end of each period of ShPL.
- 9.48 The suitable alternative vacancy must be such that:

- a. The work is both suitable and appropriate for them to do in their circumstances.
  - b. The terms and conditions of their employment are not substantially less favourable than before.
- 9.49 The employee during this protected period, has a right to be offered suitable alternative vacancies before other employees and does not have to attend interviews of selection procedures.
- 9.50 If the employee unreasonably refuses a suitable alternative vacancy, the right to a redundancy payment can be forfeited.
- 9.51 *ShPL in touch days (SPLiT days)*
- 9.52 Each parent will be entitled to up to 20 keep in touch days, plus the mother/parent will also have their entitlement of 10 maternity leave keep in touch days. This work will be paid at the employee's hourly contractual rate.
- 9.53 Shared parental pay (ShPP)
- 9.54 Eligible employees may be entitled to take up to 37 weeks Shared Parental Pay (ShPP) while taking ShPL. The amount available will depend on the amount by which the mother/parent/adoption reduces their maternity/adoption pay period or maternity allowance period.
- 9.55 In addition to meeting the eligibility requirements for ShPL, an employee seeking to claim ShPP must further satisfy each of the following criteria:
  - a. Mother/parent/adoption must be/have been entitled to statutory maternity/adoption pay/maternity allowance, and must have reduced their maternity/adoption pay/maternity allowance pay period.
  - b. The employee must intend to care for the child during the week in which ShPP is payable.
  - c. The employee must have average weekly earnings for the period of eight weeks leading up to and including the 15th week before the due date/matching date that are not less than the lower earnings limit in force for national insurance contributions.
  - d. The employee must remain in continuous employment until the first week of ShPP has begun.
  - e. The employee must give proper notification in accordance with the rules set out below.
- 9.56 Where an employee is entitled to receive ShPP they must, at least eight weeks before receiving any ShPP, give their line manager written notice advising of their entitlement to ShPP. If possible this should be included as part of the notice of entitlement to take ShPL.
- 9.57 In addition, any notice that advises of entitlement for ShPP must include:
  - a. The start and end dates of any maternity/adoption pay or maternity allowance.



- b. The total amount of ShPP available, the amount of ShPP the employee and their partner each intend to claim, and a non-binding indication of when the employee expects to claim ShPP.
- c. A signed declaration from the employee confirming that the information they have given is accurate, that they will meet or will meet the criteria for ShPP and that they will immediately inform the organisation should they cease to be eligible.

9.58 ShPP is paid at is paid at the statutory rate set by government per week or 90% of an employee's average weekly earnings, whichever is lower (the rate of pay will be set by the Government for each relevant tax year).

## **10.1 Unpaid Parental Leave**

- 10.2 Eligible employees can take unpaid parental leave to look after their child's welfare, for example to:
- a. Spend more time with their children
  - b. Look at new schools
  - c. Settle children into new childcare arrangements
  - d. Spend more time with family, such as visiting grandparents
- 10.3 The entitlement is for 18 weeks unpaid leave per child, up to the child's 18<sup>th</sup> birthday.
- 10.4 Leave should be taken in blocks or multiples of one week (except for parents of children in receipt of disability living allowance, where leave can be taken in periods of one day or more), with a maximum four weeks leave in any year. A year is based on the birth date of the child. Employees should give 21 days' notice of their request to take leave.
- 10.5 Employers can postpone when this leave is taken up to a maximum six months for business reasons, except for requests to take leave immediately after a child is born or placed for adoption.
- 10.6 Where qualifying employees wish to take leave to begin on the date on which the child is born or adopted, a minimum of 28 days' notice is required before the beginning of the expected week of childbirth and should specify the duration of the period of leave to be taken.
- 10.7 If the leave is not to be taken immediately after the birth or adoption of a child then the employer may postpone it if they consider that the 'operation of its business would be unduly disrupted' if the employee took leave during that period. The employer must agree with the employee to allow the same length of leave to begin no later than six months after the commencement of the postponed period.
- 10.8 Any period of unpaid parental leave, not exceeding four weeks that is taken within a period of shared parental leave, will not count towards the 26-week period, which is the time at which employees are entitled to return to the same job that they left.

## **11.1 Surrogacy**

- 11.2 Surrogates are the legal mother/parent of any child they carry, unless they sign a parental order after they give birth transferring their rights to the intended parents. The person who gives birth is always treated as the legal mother/parent and has the right to keep the child - even if they're not genetically related. Surrogacy contracts aren't enforced by UK law, even if a contract has been signed with the intended parents and they've paid for any expenses. The child's legal father or 'second parent' is the surrogate's husband or civil partner unless legal rights are transferred to someone else or the surrogate's husband/civil partner didn't give permission to their wife/partner.
- 11.3 Every pregnant employee has the right to 52 weeks maternity leave and to return to their job after this. What a birth parent does after the child is born has no impact on their right to maternity leave.
- 11.4 Surrogacy laws are very complicated – to find out more, visit the Human Fertilisation and Embryology Authority website or talk to a legal advisor.

## **12.1 Special Guardianships**

- 12.2 The Trust's Leave Policy allows for unpaid dependant's leave so this could be considered alongside any annual leave and/or flexi leave entitlements.

### **13.1 Pension implications of unpaid leave**

13.2 During any periods of paid leave covered by this policy and procedure (including both occupation and statutory payments) employees will pay pension contributions calculated on the actual pay they receive. During unpaid leave pension contributions will not be made.

13.3 *Support staff who are members of the Local Government Pension Scheme*

13.5 *Teaching staff*

13.6 The Teachers' Pension Scheme does not allow members to buy back service for periods of unpaid leave, including maternity.

## 14.1 Neonatal Care Leave

Under the Neonatal Care (Leave and Pay) Act 2023 effective 6 April 2025 an employee with parental or significant personal relationship to a child receiving neonatal care is entitled to a day-one right to take up to 12 weeks of neonatal care leave if their baby is admitted to neonatal care facilities (SCBU/special care baby unit) for at least seven consecutive days in the first 28 days of the birth of the child.

Employees are entitled to one week of statutory Neonatal Care Leave for each qualifying week during which a baby receives uninterrupted neonatal care (up to the maximum of 12 weeks).

This leave is in addition to any existing leave entitlements, such as maternity, paternity, or shared parental leave.

If more than one child from the same pregnancy needs neonatal care each child's qualifying period is assessed separately. If no single child meets the qualifying period requirement, the parent/carer does not qualify for NCL. If multiple children receive care at the same time, NCL accrues for only one child.

### 14.2 *Who is eligible to take Neonatal Care Leave?*

#### 14.3 An eligible employee must be either:

- a. The baby's parent, intended parent, or partner of the child's mother at the date of birth.
- b. In cases of adoption, the baby's adopted, prospective adopter, or the partner of either at the date the baby is placed.

### 14.4 *What is Neonatal Care Leave?*

#### 14.5 Neonatal care is:

- a. Medical care received in a hospital.
- b. Medical care under the direction of a consultant after the child leaves hospital which includes ongoing monitoring and visits from healthcare professionals arranged by the hospital.
- c. Palliative or end-of-life care.

### 14.6 *When can employees take Neonatal Care Leave?*

#### 14.7 Leave must be taken with 68 weeks from the birth of the baby or the date of adoption placement. Neonatal care is available in two distinct periods:

- a. 'Tier 1 period': This begins when the baby starts receiving neonatal care and lasts until the seventh day after the care ends. During this period neonatal care can be taken in non-continuous blocks of at least one week.
- b. 'Tier 2 period': This period refers to any time outside of 'tier 1' when the employee is still eligible for neonatal care leave (i.e. during the 68 weeks from birth or adoption placement). Leave during this phase must be taken in a continuous block only.

### 14.8 *How much leave can an employee take?*

14.9 Employees are eligible to take up to 12 weeks of neonatal care leave with a minimum entitlement of one week for each qualifying week during which a baby receives uninterrupted neonatal care. Neonatal care must be taken in non-continuous blocks of at least one week.

14.10 Neonatal Care Leave must be taken in weekly blocks. It does not accrue until the baby has received seven continuous days of neonatal care.

**14.11 *Confirming Neonatal Care Leave***

14.12 For employees taking maternity or adoption leave (which has started or triggered by the birth of the child) the entitlement will be taken at the end of these periods of family leave. They must notify their manager of the requirement for NCL as soon as is practicable but as a minimum at least four weeks prior to taking NCL.

14.13 For employees eligible to take paternity leave, they must request NCL as needed, within the first 28 days of birth. Employees must notify their line manager as soon as possible if they need to take NCL immediately.

14.14 Employees must provide employer with notice when taking neonatal care leave by providing:

- a. confirmation that employee is taking leave to care for the baby.
- b. the date when baby began receiving neonatal care.
- c. start date of the leave.
- d. total number of weeks leave.
- e. eligibility and intention to claim neonatal care leave pay.

**14.15 *Redundancy protection during and after Neonatal Care Leave***

14.16 If the employee's job is made redundant during NCL, called the 'protected period', they must be offered a suitable alternative vacancy. This new post must be offered before the end of the original post, and it must take effect immediately on the ending of the original role.

- a. If the employee takes less than 6 weeks NCL, the redundancy protected period ends on the last day of the block of leave.
- b. If the employee takes 6 weeks or more of continuous leave, the redundancy protected period ends 18 months from the date of the child's birth.

14.17 The suitable alternative vacancy must be such that:

- a. The work is both suitable and appropriate for them to do in their circumstances.
- b. The terms and conditions of their employment are not substantially less favourable than before.

14.18 The employee during this protected period, has a right to be offered suitable alternative vacancies before other employees and does not have to attend interviews of selection procedures.

14.19 If the employee unreasonably refuses a suitable alternative vacancy, the right to a redundancy payment can be forfeited.

**14.20 *Neonatal Care Leave Pay***

*14.21 Statutory Neonatal Care Pay*

- 14.22 Employees will qualify for Statutory Neonatal Care Pay (SNCP) if the employee has at least 26 weeks of continuous service and earn at least the lower earnings limit.
- 14.23 SNCP will be paid at the statutory rate or 90% of the employee's average weekly earnings, whichever is lower.
- 14.24 Employees will continue to accrue annual leave during periods of Neonatal Care Leave and maintain the same employment protections as those associated with other forms of family-related leave, such as maternity or paternity leave.
- 14.25 SNCP will not apply in any week that eligible employees are also entitled to statutory sick pay provisions.