

# Summary of the law on

# FAMILY FRIENDLY RIGHTS



Family friendly rights include, maternity, paternity and parental leave and rights for part-time workers.

This booklet is solely concerned with the employment aspects of the rights.

- MATERNITY LEAVE
- PATERNITY LEAVE
- PARENTAL LEAVE
- TIME-OFF FOR DEPENDENTS
- FLEXIBLE WORKING
- PART-TIME WORKERS



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## Introduction

Rights to maternity and parental leave and rights for part-time workers are contained in the Employment Relations Act 1999, the Maternity and Parental Leave Regulations 1999 and the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000.

New improved maternity, paternity and adoption rights and the right to apply for flexible working hours are contained within the Employment Act 2002 and apply from April 2003.

Further rights were added by the Work and Families Act 2006: Paternity and Adoption Leave (Amendment) Regulations 2006, Maternity and Parental Leave (Amendment) Regulations 2006 and Flexible Working (Amendment) Regulations 2006, and the Maternity and Parental Leave etc. and the Paternity and Adoption Leave (Amendment) Regulations 2008.



# Maternity leave

## Entitlement

New rights for working mothers and mothers-to-be came into force on 6 April 2003 and 6 April 2007. These apply where the expected week of birth is on or after these dates.

The provisions allow for three periods of maternity leave:

- Ordinary maternity leave of up to 26 weeks
- Additional maternity leave of up to 26 weeks from the date of childbirth
- 2 weeks of compulsory maternity leave

## Compulsory maternity leave

The compulsory maternity leave period is 2 weeks after childbirth.

It is a criminal offence for an employer to allow a woman to work during the 2 week compulsory leave period.



## Ordinary Maternity Leave (OML)

All female employees are entitled to 26 weeks' of ordinary maternity leave regardless of their length of service. During this period, the employee is entitled to receive all her normal contractual and related benefits, except wages or salary. She may be entitled to Statutory Maternity Pay (SMP) during this time depending on her contract and may also be entitled to additional contractual pay and benefits under her contract. During this period she will be bound by her normal contractual obligations, except the obligation to work.

The earliest a woman can start maternity leave is 11 weeks before her baby is due.

On return from Ordinary Maternity Leave, she is entitled to her old job back on the same terms and conditions.



## Additional Maternity Leave (AML)

All female employees are entitled to a further 26 weeks' of Additional Maternity Leave. This follows on from Ordinary Maternity Leave.

During this period the employment contract continues. For women employees whose baby is born before 5th October 2008, there is a distinction between OML and AML in that the only contractual terms that the employee will benefit from will be the employers' implied duty of trust and confidence, and any terms relating to notice of termination, redundancy compensation, and disciplinary or grievance procedures.

However, a new change in the law means that for women whose baby is born on or after 5th October 2008 this distinction between OML and AML is removed, and those women will be entitled to all their normal terms and conditions with the exception of remuneration.

## Returning to work

An employee is entitled to return to her old job after AML, or, if that is not reasonably practicable, to another job which is suitable for her and appropriate for her in the circumstances. The terms and conditions must be no less favourable than if she had not been absent, with seniority rights preserved as they were at the start of her AML period.

The employer or employee can no longer postpone the date of return after AML for up to 4 weeks. If, for example, an employee is too ill to return after her leave, then her maternity leave still finishes and the normal rules on sick leave apply.



## Statutory Maternity Pay (SMP)

To qualify for Statutory Maternity Pay (SMP) an employee must have 26 weeks of service as at the 15th week before childbirth. SMP is payable for 39 consecutive weeks.

The rate is 90% of earnings for the first six weeks of maternity leave followed by a flat rate of £123.06 per week (or 90% of average pay whichever is lower) for the remaining 33 weeks. (The rate increases annually each April; the above rate is correct as of 5 April 2009).

## Notification of pregnancy

An employee taking maternity leave must give notice to her employer of: her pregnancy, her expected week of childbirth and the date on which she expects her Ordinary Maternity Leave to start. She must give this notice on or before the 15th week before childbirth, but can change her plans on giving 28 days' notice.

A failure to comply with the notification requirements is unlikely to result in a loss of the job. Instead, any failure to give due notification may be treated as a disciplinary matter.

An employee wanting to return to work before the end of either her ordinary or additional maternity leave must give her employer 28 days' notice.



## Adoption leave

A new right to take adoption leave exists in relation to children matched or placed for adoption on or after 6 April 2003.

The provisions mirror the maternity leave rights and allow for an adopting parent to take 26 weeks of ordinary adoption leave followed by 26 weeks of additional adoption leave, providing the adopting parent has 26 weeks of employment service as at the day when they are notified of the match.

Statutory adoption pay is paid at a flat rate of £123.06 per week (or 90% of earnings if lower) for 39 weeks for a child placed with an adopting parent on or after 01 April 2007. (The rate increases annually each April; the above rate is correct as of 5 April 2009).

## Paternity leave

The right to paid paternity leave applies where the expected week (or actual week) of childbirth (or adoption) is on or after 6 April 2003. It is available for biological fathers of the child, husbands or partners (whether or not the biological father) where they have 26 weeks of service as at the 15th week before childbirth or adoption.

The right is to take either one or two consecutive weeks of leave which must be taken within 56 days of the child's birth, expected week of confinement or placement.

Notice of the intention to take paternity leave is similar for ordinary maternity or adoption leave.

Statutory paternity pay is paid at £123.06 per week (or 90% of earnings if lower). (The rate increases annually each April; the above rate is correct as of 5 April 2009).



## Parental leave

### Entitlement

Rights for employees to take parental leave came into force on 15 December 1999. This was a result of the Government implementing the provisions of the European Parental Leave Directive.

The main provisions of the Regulations are:

- Unpaid parental leave of up to 13 weeks for each parent and in relation to each child
- Unpaid parental leave of up to 18 weeks for each parent and in relation to each disabled child
- A period of 1 year's service is required before qualifying for the right
- The right to parental leave only applies to parents of children aged under 5, unless the child receives disability living allowance in which case the right continues until the age of 18
- The leave must be taken for the purpose of caring for the child

### Adoptive parents

There are equivalent provisions that apply to adoptive parents, allowing leave to be taken within the 5 year period following adoption, up to the age of 18.



## Collective agreements

The Regulations encourage employers and employees and their trade unions to negotiate collective or workforce agreements dealing with the mechanics of parental leave, such as notice requirements and how leave will be taken.

Where no such agreement is negotiated, then a model scheme, set out in the Regulations, will apply.

## Model scheme

The model scheme states that leave should be taken in blocks of no less than 1 week, and no more than 4 weeks in 1 year. A minimum of 21 days' notice prior to the proposed parental leave is required, with the exception of fathers who want to take leave straight after the baby is born. In this case 21 days' notice must be given prior to the expected week of childbirth.

## Employee rights

An employee's rights during parental leave are similar to those during Additional Maternity Leave. If an employee takes less than 4 weeks off, they have the right to return to their old job. If more than four weeks are taken, the employee's entitlement to have their job back is similar to the situation that applies to a woman returning from Additional Maternity Leave.



## Time-off for dependents

The Employment Relations Act gives employees the right to take time off for “urgent family reasons”.

The right allows an employee to be permitted by his or her employer to take a reasonable amount of time off work in order to take action which is necessary:

- To provide assistance when a dependent falls ill, gives birth or is injured
- To make arrangements for the provision of care for a dependent who is ill or injured
- In consequence of the death of a dependent
- Because of the unexpected disruption or termination of care for the dependent
- To deal with an incident involving a child of the employee occurring unexpectedly at an educational establishment which the child attends

### Definition of dependent

A dependent is defined as being a spouse, child, parent or person living in the same household (though not an employee, tenant or lodger). It also includes anyone who reasonably relies on the employee for assistance if they fall ill or for the provision of arrangements for care.

There is no definition as to what a ‘reasonable amount of time off’ means.



## Flexible working

Employees with 26 weeks of continuous service have had the right to request to work flexibly since 6 April 2003.

From 6 April 2009 the right is available to parents or adoptive parents, or a spouse or partner of a parent or adoptive parent (of the same or different sex) of children aged 16 or under. Before 6 April the right only applied to parents of children under 6 or under 18 in the case of a disabled child. The purpose of applying must be to care for the child.

The carers of adults also have the right to request to work flexibly.

The request must be made in writing and specify the change proposed, what effect the employee thinks the change might have on the employer and how this might be dealt with, and must explain the relationship between the employee and the child.

The employer must meet the employee within 28 days of the written request to discuss the application and provide a written decision within 14 days after the meeting. Refusals can be made on a number of specific grounds such as the burden of additional costs. However there are few sanctions on employers for refusing requests, and grounds under which a Tribunal claim can be made are limited.

It may however be possible to take a claim under the Sex Discrimination Act 1975 if the request is refused.



## Part-time workers

### Entitlement

Part-time workers now have a legal right in certain circumstances to be treated equally to full-time workers.

Both employees and workers are covered. The Regulations mean that a part-timer must not be treated any less favourably than a comparable full-timer, unless the difference can be justified by the employer.

This covers treatment in general (including for example dismissal and redundancy) as well as terms and conditions of employment.

### The need for a comparison

A part-timer has to make a comparison between how they have been treated, and how a comparable full-timer employed by the same employer has been treated in order to assert their right to equal treatment.

The Regulations set out what a “comparable” worker or employee means. The part-timer can only compare themselves with someone on the same type of contract. So if, for example, they are on a permanent contract, they can only compare with someone on another permanent contract.

Basically, the comparison has to be made with someone on a contract of the same duration, and of the same type. This requirement significantly limits the usefulness of the Regulations.



## Pro-rata

The pro-rata principle applies where appropriate. In relation to overtime, this means that overtime will not be paid to the part-timer until they have worked the same number of hours as the full-timer.

## Remedies

Employees have the right to complain to an Employment Tribunal if an employer fails to permit time off, unreasonably postpones leave or attempts to prevent the employee from taking leave.

Compensation is based on what the Tribunal considers is just and equitable. No award can be made for injury to feelings. There is also protection against dismissal and detriment.







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