

Bolsover District Council

Shared Parental Leave Policy and Procedures

(May 2015)



CONTROL SHEET FOR SHARED PARENTAL LEAVE

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Shared Parental Leave Policy and Procedure

Shared Parental Leave is a legal entitlement for eligible parents of babies due, or children placed for adoption, on or after 5 April 2015. It provides both parents with the opportunity to consider the best arrangement to care for their child during the child's first year.

Scope

This policy applies in relation to employees of the Council, whether they are the mother/adopter (see definition below) or the partner. If it is the mother who is employed by the Council, her partner must (where relevant) submit any notifications to take shared parental leave set out in this policy to his/her own employer, which may have its own shared parental leave policy in place.

Similarly, if it is the partner who is employed by the organisation, the mother must (where relevant) submit any notifications to take shared parental leave to her own employer.

The mother and the partner should ensure that they are each liaising with their own employer to ensure that requests for shared parental leave are handled as smoothly as possible.

Introduction

This policy sets out the rights of employees to shared parental leave and pay. Shared parental leave enables parents to share the caring responsibilities evenly or have one parent taking the main caring role, depending on their preferences and circumstances. Unlike maternity / adoption leave, eligible employees can stop and start their SPL and return to work between periods of leave with each eligible parent able to submit three notices booking periods of leave. Please note, the mother can share her leave with only **one** other person.

Shared parental leave should not be confused with ordinary parental leave, which is unaffected by shared parental leave. Ordinary parental leave is the entitlement to up to 18 weeks' unpaid leave.

As the shared parental leave provisions are complex, if an employee wishes to take shared parental leave, they should clarify the relevant procedures with a member of the HR and Payroll team.

Definitions

The following definitions are used in this policy:

SPL: Shared Parental Leave

‘Mother’ means the mother or expectant mother of the child, or the adopter (the adopter means the person who is eligible for adoption leave and/or pay. They can be male or female).

‘Partner’ means the father of the child, or the person who, at the date of the child’s birth, is married to, the civil partner of, or the partner of the mother. This includes someone, of either sex, who lives with the mother and the child in an enduring family relationship but who is not the mother’s child, parent, grandchild, grandparent, sibling, aunt, uncle, niece or nephew.

‘EWC’ means ‘expected week of childbirth’ and in this context means the week, beginning with midnight between Saturday and Sunday, in which it is expected that the baby will be born or the child placed for adoption.

‘NEI’ means Notice of Entitlement and Intention

The vast majority of employees who will be eligible for, and who will apply for, shared parental leave and/or pay will be birth parents, and therefore the references within this policy will refer to birth parents. However, the same principles apply to employees who are adopting and the intended parents in a surrogacy arrangement where they are applying for a parental order and are eligible for adoption leave and pay. Therefore, references to ‘birth’ will also apply to ‘placement’; references to maternity leave or pay will also apply to adoption leave and pay; pregnancy to adoption etc

Amount of shared parental leave available

The amount of shared parental leave to which an individual is entitled will depend on when the mother brings her maternity leave period to an end and the amount of leave that the other parent takes in respect of the child. Shared parental leave must be taken in blocks of at least one week. The employee can request to take shared parental leave in one continuous block (in which case the Council is required to accept the request as long as the employee meets the eligibility and notice requirements), or as a number of discontinuous blocks of leave (in which case the employee needs the Council’s agreement). A maximum of three requests of leave per pregnancy can normally be made by each parent.

The maximum period that parents could take as shared parental leave is 50 weeks between them, although it will normally be less than this because of any maternity leave that a mother takes before the birth.

The mother’s partner can begin a period of shared parental leave at any time from the date of the child’s birth, but the partner should bear in mind that he/she is entitled to take up to two weeks’ ordinary paternity leave following the birth, which will be lost if shared parental leave is taken first. The mother and partner must take any shared parental leave within 52 weeks of the birth or placement.

Eligibility for shared parental leave

For employees to be eligible to take shared parental leave, both parents must meet certain eligibility requirements.

Mother's eligibility for shared parental leave

The mother is eligible for shared parental leave if she:

- Has at least 26 weeks' continuous employment ending with the 15th week before the EWC (OR at the week in which notification of matching was given by the adoption agency); and
- Remains in continuous employment with the Council until the week before any period of shared parental leave;
- Has, at the date of the child's birth, the main responsibility, apart from the partner, for the care of the child;
- Is entitled to statutory maternity leave, in respect of the child;
- Complies with the relevant maternity leave curtailment requirements (or has returned to work before the end of statutory maternity leave) and shared parental leave notice and evidence requirements.

In addition, for the mother to be eligible for shared parental leave, the partner must:

- Have been employed, or been a self-employed earner, in at least 26 of the 66 weeks immediately preceding the EWC;
- Have average weekly earnings of at least the maternity allowance threshold for any 13 of those 66 weeks; and
- Have, at the date of the child's birth, the main responsibility, apart from the mother, for the care of the child.

Partner's eligibility for shared parental leave

The partner is eligible for shared parental leave if he/she:

- Has at least 26 weeks' continuous employment ending with the 15th week before the EWC (OR at the week in which notification of matching was given by the adoption agency); and
- Remains in continuous employment with the Council until the week before any period of shared parental leave;
- Has, at the date of the child's birth, the main responsibility, apart from the mother, for the care of the child; and
- Complies with the relevant shared parental leave notice and evidence requirements.

In addition, for the partner to be eligible for shared parental leave, the mother must:

- Have been employed or been a self employed earner during at least 26 of the 66 weeks immediately preceding the EWC;
- Have average weekly earnings of at least the maternity allowance threshold for any 13 of those 66 weeks;
- Have, at the date of the child's birth, the main responsibility, apart from the partner, for the care of the child;
- Be entitled to statutory maternity leave, statutory maternity pay or maternity allowance in respect of the child; and
- Comply with the relevant maternity leave or pay curtailment requirements (or have returned to work before the end of statutory maternity leave).

Notice requirements for shared parental leave

The notices that the parents must give to the relevant employer to be able to take shared parental leave are made up of three elements. They are:

- A 'maternity leave curtailment notice' from the mother setting out when she proposes to end her maternity leave (unless the mother has already returned to work from maternity leave);
- A 'notice of entitlement and intention' from the employee giving an initial, non-binding indication of each period of shared parental leave that he/she is requesting; and
- A 'period of leave notice' from the employee setting out the start and end dates of each period of shared parental leave that he/she is requesting.

The notice periods set out below are the minimum required by law. However, the earlier the employee informs the Council of his/her intentions, the more likely it is that the organisation will be able to accommodate the employee's wishes, particularly if he/she wants to take periods of discontinuous leave.

Employees are advised that, if they have already decided the pattern of shared parental leave that they would like to take, they can provide more than one type of notice at the same time.

Mother's notice curtailing maternity leave

Before the mother or partner can take shared parental leave, the mother must either return to work before the end of her maternity leave (by giving the required eight weeks' notice of her planned return) or provide the Council with a maternity leave curtailment notice. This notice must be in writing and state the date on which maternity leave is to end. That date must be:

- After the compulsory maternity leave period, which is the two weeks after birth;
- At least eight weeks after the date on which the mother submits the maternity leave curtailment notice to the Council

- At least one week before what would be the end of the additional maternity leave period.

The mother must provide her maternity leave curtailment notice at the same time she provides either her notice of entitlement and intention or a declaration of consent and entitlement signed by the mother confirming that her partner has given his/her employer a notice of entitlement and intention (see relevant paragraph below).

Revocation of maternity leave curtailment notice

The mother can withdraw her notice curtailing her maternity leave in limited circumstances. The withdrawal of a maternity leave curtailment notice must be in writing and can be given only if the mother has not returned to work. The mother can withdraw her maternity leave curtailment notice if:

- It is discovered that neither the mother nor the partner are entitled to shared parental leave or statutory shared parental pay and the mother withdraws her maternity leave curtailment notice within eight weeks of the date on which the notice was given;
- The maternity leave curtailment notice was given before the birth of the child and the mother withdraws her maternity leave curtailment notice within six weeks of the child's birth; or
- The partner has died.

Employee's notice of entitlement and intention (NEI)

The employee, whether the mother or the partner, must provide the Council with a non-binding notice of entitlement and intention. This must be in writing, and provided at least eight weeks before the start date of the first period of shared parental leave to be taken by the employee. It should contain the following information:

If the employee is the mother, the NEI must set out:

- The mother's name
- The partner's name
- The start and end dates of any statutory maternity leave taken or to be taken by the mother;
- The total amount of shared parental leave available;
- The child's expected week of birth and the child's date of birth (although, if the child has not yet been born, the date of birth can be provided as soon as reasonably practicable after birth, and before the first period of shared parental leave to be taken by the mother);
- How much shared parental leave the mother and partner each intend to take; and
- A non-binding indication as to when the employee intends to take shared parental leave (including the start and end dates for each period of leave).

The mother's NEI must also include a declaration signed by her that:

- She satisfies, or will satisfy, the eligibility requirements to take shared parental leave;
- The information she gives in the NEI is accurate; and
- She will immediately inform the Council if she ceases to care for the child.

In addition, the mother's NEI must include a declaration signed by her partner:

- Specifying the partner's name, address and national insurance number (or declaring that the partner does not have a national insurance number);
- Declaring that the partner satisfies, or will satisfy, the conditions set out above (see mother's eligibility for SPL);
- Declaring that the partner is the father of the child, or is married to, the civil partner of, or the partner of, the mother;
- Declaring that the partner consents to the amount of leave that the mother intends to take; and
- Declaring that the partner consents to the Council processing the information in the partner's declaration.

If the employee is the partner, the partner's NEI must set out:

- The partner's name;
- The mother's name
- The start and end dates of any periods of statutory maternity leave, statutory maternity pay or maternity allowance taken or to be taken by the mother;
- The total amount of SPL available;
- The child's EWC and the child's date of birth (although, if the child has not yet been born, the date of birth can be provided as soon as reasonably practicable after birth, and before the first period of SPL to be taken by the partner);
- How much SPL the partner and mother each intend to take; and
- A non-binding indication as to when the partner intends to take SPL (including the start and end dates for each period of leave).

The partner's NEI must include a declaration signed by the partner that:

- He/she satisfies, or will satisfy, the eligibility requirements to take shared parental leave;
- The information given by the partner in the NEI is accurate; and
- He/she will immediately inform the organisation if he/she ceases to care for the child or if the mother informs him/her that she no longer meets the requirement to have curtailed her maternity leave or pay period.

In addition, the partner's NEI must include a declaration signed by the mother:

- Specifying the mother's name, address and national insurance number (or declaring that the mother does not have a national insurance number);
- Declaring that the mother satisfies, or will satisfy, the conditions set out above (see Partner's eligibility for SPL) and she will notify the partner if she no longer qualifies for maternity leave, statutory maternity pay or maternity allowance;
- Declaring that the mother consents to the amount of leave that the partner intends to take;
- Declaring that she will immediately inform the Council if she no longer meets the requirement to have curtailed her maternity leave or pay period; and
- Declaring that the mother consents to the Council processing the information in the mother's declaration.

Within 14 days of receiving an NEI from the employee, whether the mother or partner, the Council can request from the employee;

- A copy of the child's birth certificate (or, if the child has not been born, a copy of the birth certificate within 14 days of the birth – if the birth certificate has yet to be issued after this period, a signed declaration stating the date and location of the child's birth will suffice); and
- The name and address of the other parent's employer (or a declaration that the other parent has no employer).

The employee has 14 days from the date of the request to send the information to the Council.

Variation or cancellation of notice of entitlement and intention

The employee can vary or cancel his/her proposed shared parental leave dates following the submission of an NEI, provided that he/she does this in writing. The written notice must contain:

- An indication as to when the employee intends to take SPL (including the start and end dates for each period of leave);
- Details of any periods of SPL that have been notified through a period of leave notice;
- Details of any periods of statutory shared parental pay that have been notified in relation to periods where SPL was not to be taken; and
- A declaration signed by the mother and the partner that they agree to the variation.

Any indication of leave intended to be taken that the employee provides in a variation of notice of entitlement and intention is non-binding until he/she provides a period of leave notice in relation to that period of leave. There is no limit on the number of variations of notice of entitlement and intention that the employee can make.

Employee's period of leave notice

To take a period of shared parental leave, the employee must provide the Council with a written notice setting out the start and end dates of each period of shared parental leave requested in that notice.

A period of leave notice must be given not less than eight weeks before the start date of the first period of SPL requested in the notice. The notice may be given at the same time as a notice of entitlement and intention and can be a request for a continuous period of leave or discontinuous periods of leave.

Variation or cancellation of period of leave notice

The employee can vary or cancel his/her proposed shared parental leave dates following the submission of a period of leave notice, provided that he/she provides the Council with a written notice not less than eight weeks before any period of leave varied or cancelled by the notice is due to commence. The written notice can:

- Vary the start date or the end date of any period of shared parental leave or cancel a request for leave;
- Request that a continuous period of leave become discontinuous periods of leave; or
- Request that discontinuous periods of leave become a continuous period of leave.

Limit on number of requests for leave

The employee can provide a combined total of up to three period of leave notices or variations of period of leave notices per pregnancy.

Continuous period of shared parental leave

If the employee submits a period of leave notice requesting one continuous period of leave, they will be entitled to take that period of leave.

Discontinuous periods of shared parental leave

The employee may submit a period of leave notice requesting discontinuous periods of leave. The Council will respond within two weeks and will either:

- Consent to the pattern of leave requested;
- Propose an alternative pattern of leave; or
- Refuse the pattern of leave requested.

If agreement is not reached within the two-week discussion period, the employee is entitled to take the leave as one continuous period of leave. In that event, the employee must choose a start date for the leave that is at least eight weeks from the date on which the period of leave notice was originally given. The employee must

notify the Council of that date within five days of the end of the two-week discussion period, and if they do not do so then the period of continuous leave will start on the date of the first period of leave requested in the period of leave notice.

Alternatively, if the Council has refused the request, or no agreement has been reached during the two-week discussion period, the employee may withdraw a period of leave notice requesting discontinuous periods of leave. The employee can withdraw a period of leave notice at any time on or before the 15th day after the period of leave notice was given. A notice for discontinuous leave that has been withdrawn before it is agreed does not count towards the total number of requests for leave that an employee can make.

Shared Parental Pay

- If an employee meets the qualification criteria they will be entitled to a maximum of 37 weeks shared parental pay between them (NB this excludes the 2 weeks compulsory maternity leave immediately following childbirth and any maternity leave taken prior to the birth).
- Shared parental pay is at a nationally fixed standard weekly rate equivalent to SMP or 90% of the employee's normal weekly earnings if they earn less than this.
- It is up to the parents as to who is paid the statutory shared parental pay and how it is apportioned between them.

Eligibility for statutory shared parental pay

Both the mother and partner are eligible for statutory shared parental pay if they meet the criteria for statutory shared parental leave (see above), and if the mother is entitled to statutory maternity pay in respect of the child, but the maternity pay period has been reduced. In addition they must also:

- have normal weekly earnings for a period of eight weeks ending with the 15th week before the EWC of at least the lower earnings limit for national insurance contribution purposes;
- be absent from work and intend to care for the child during each week in which they receive statutory shared parental pay.

Rights during shared parental leave

During shared parental leave, all terms and conditions of the employee's contract, except normal pay, will continue. Salary will be replaced by statutory shared parental pay if the employee is eligible to receive this.

Whilst this means that holidays will continue to accrue when an employee is off on SPL, please note that carry-forward of untaken leave from one leave year to the next is not permitted so this should be taken into consideration when applying for SPL.

Contact during SPL

The Council reserves the right to maintain reasonable contact with employees during SPL. This may be to discuss employees' plans for their return to work, to discuss any special arrangements to be made or training to be given to ease their return to work or to update them on developments at work during their absence.

An employee can agree to work for the Council (or to attend training) for up to 20 days during SPL without that work bringing the period of SPL and pay to an end. These are known as 'shared parental leave in touch (SPLIT) days'.

The Council has no right to require employees to carry out any work, and employees have no right to undertake any work, during their SPL. Any work undertaken, and the amount of salary paid for any work done on SPLIT days, will be a matter of agreement between the employee and the Council. If you are entitled to receive statutory shared parental pay for any week during which you attend work for SPLIT days, you will still receive this in the usual way. In addition, the employee will be paid for each hour that they work during a SPLIT day at their normal hourly rate.

Returning to work following SPL

The employee has the right to resume working in the same job when returning to work from SPL if the period of leave, when added to any other period of SPL, SML or SPL taken by the employee in relation to the same child, is 26 weeks or less.

If the employee is returning to work from SPL and the period of leave taken is more than 26 weeks when added to any other period of SPL, SML or SPL taken in relation to the same child, or was the last of two or more consecutive periods of statutory leave that included a period of ordinary parental leave of more than four weeks, or a period of additional maternity leave, the employee has the right to return to the same job unless this is not reasonably practicable. In these circumstances, if it is not reasonably practicable for the organisation to permit a return to the same job, the employee has the right to return to another job that is suitable and appropriate for him/her.