

PARENTAL LEAVE

Parental leave was first introduced on 15th December 1999 to give parents of children born or adopted on or after that date, the right to take a period of time off work to look after a child or make arrangements for the child's welfare. Parents can use it to spend more time with children and strike a better balance between their work and family commitments. The leave is unpaid.

Who can take parental leave?

Employees qualify if all of these apply:

- they've been in the company for more than a year
- they're named on a child's birth or adoption certificate
- they have or expect to have parental responsibility
- they're not self-employed or a 'worker' – eg, an agency worker or contractor
- they're not a foster parent (unless they've secured parental responsibility through the courts)
- the child is under 5 (or 18 in special circumstances)

How long does parental leave last?

Employees get 18 weeks in total for each child. Parents of disabled children get 18 weeks in total. (For the purposes of parental leave, a disabled child is one for whom disability living allowance has been awarded). The limit on how much parental leave can be taken a year is 4 weeks (unless the employer agrees otherwise). Unless the employer agrees otherwise, or the child is disabled, leave should be taken in blocks of one week. A 'week' equals the length of time an employee normally works in one week.

Example:

If an employee works 3 days a week, one 'week' of parental leave equals 3 days. If an employee works irregular weeks, the number of days in a 'week' is the total number of days they work a year divided by 52.

What happens if an employee has twins?

Parental leave is for each child, so if twins are born

each parent will get 18 weeks leave for each child (18 weeks for parents of each disabled child).

When does parental leave have to be taken by?

Employees can choose to take parental leave at any time. Parents of children can take the leave up until the child's fifth birthday. In adoption cases, Parental Leave can be taken for five years after the child is first placed with the family for adoption (or until the child's 18th birthday if that comes sooner).

Will employees be able to return to the same job after parental leave?

At the end of parental leave, an employee is guaranteed the right to return to the same job as before if the leave was for a period of four weeks or less; if it was for a longer period, the employee is entitled to return to the same job or if that is not reasonably practicable, a similar job which has the same or better status, terms and conditions as the old job.

When parental leave follows maternity leave, the general rule is that a woman is entitled to return to the same job she had before the leave. If at the end of additional maternity leave this would not have been reasonably practicable and it is still not reasonably practicable at the end of Parental Leave, she is entitled to return to a similar job which has the same or better status, terms and conditions as the old job.

What procedures have to be followed before an employee can take parental leave?

Employers and employees can agree their own procedures for taking parental leave. They can do this by using workforce or collective agreements or through individual arrangements. Any of these agreements will apply to an employee only if it is part of the employee's contract of employment.

What happens if there is no agreement?

There is a fallback scheme which will apply auto-

matically where employers and their employees have no other agreement operating.

What happens under the fallback scheme?

- In most cases, leave must be taken in blocks or multiples of one week.
- The exception to the above is that parents of disabled children can take leave in blocks or multiples of one day.
- In all cases a maximum of four weeks' parental leave in a year can be taken in respect of any individual child.
- 21 days' notice must be given;
- The employer can postpone the leave for up to six months where the business would be particularly disrupted if the leave were taken at the time requested.
- Leave cannot be postponed when the employee gives notice to take it immediately after the time the child is born or is placed with the family for adoption.

What is the procedure for postponing leave under the fallback scheme?

If an employer considers that an employee's absence would unduly disrupt the business, then the employer can postpone the leave for no longer than six months after the beginning of the period that the employee originally wanted to start his or her parental leave. The employer should discuss the matter with the employee and confirm the postponement arrangements in writing no later than seven days after the employee's notice to take leave. The employer's notice should state the reason for the postponement and set out the new dates of parental leave. The length of the leave should be equivalent to the employee's original request.

Under what circumstances can an employer postpone leave in the fallback scheme?

Employers may be justified in postponing leave when, for example, the work is at a seasonal peak; where a significant proportion of the workforce applies for parental leave at the same time or, when the employee's role is such that his or her absence at a particular time would unduly harm the business.

Can leave be postponed under the fallback scheme if an employee wants to take leave immediately after the birth or adoption of a child?

When an employee applies to take parental leave

immediately after the birth or adoption of a child, then the employer cannot postpone the leave. The employee needs to give 21 days' notice before the beginning of the expected week of childbirth (expectant mothers will be able to provide this information to their partners). In the case of adoption, the employee needs to give 21 days' notice of the expected week of placement. In rare cases where this is not possible, an adoptive parent should give the notice as soon as is reasonably practicable.

Do employers need to keep records?

Employers are not required to keep records of parental leave taken, although many will want to do so for their own purposes. When an employee changes jobs, employers will be free to make enquiries of a previous employer or seek a declaration from the employee about how much parental leave he or she has taken.

Can employers ask for evidence that the employee is entitled to parental leave?

An employer can ask to see evidence to confirm the employee is the parent or the person who is legally responsible for the child. Evidence might take the form of information contained in the child's birth certificate, papers confirming a child's adoption or the date of placement in adoption cases or in the case of a disabled child, the award of Disability Living Allowance for the child. The employer's request must be reasonable; it may not be reasonable for him to check on the employee's entitlement on every occasion on which leave is asked for.

What if an employer refuses to allow an employee to take parental leave?

Employees will have the right to go to an employment tribunal if the employer prevents or attempts to prevent them from taking parental leave. An employee who takes parental leave will also be protected from victimisation, including dismissal, for taking it.

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