

# Paternity Rights

## Your rights to paternity leave & pay following birth or adoption



### Overview

New fathers or the partners of new mothers may be entitled to one or two week's statutory paternity leave, which may be paid. You may also have the right to paternity leave under the terms of your contract of employment.

### Statutory paternity leave

Statutory paternity leave is a one or two week period of leave taken on the birth or adoption of a child, by a full or part-time employee who is the spouse or partner of the mother and who expects to have responsibility for raising the child. 'Partner' means a person (of a different or the same sex) who lives with the mother or adopter and the child in an enduring family relationship but is not a relative of the mother or adopter.

To qualify, you must have worked for your employer for 26 continuous weeks at the end of the 15th week before the expected week of childbirth, or at the end of the week in which you are notified of being matched with your adoptive child. As a rough guide, if you were working for your employer when your partner became pregnant you should qualify for paternity leave.

Paternity leave can be taken as one whole week or two consecutive whole weeks. You can choose when to start your paternity leave, but you must normally take it within 56 days of the child's birth or placement for adoption.

### Notice

You must give written notice to your employer of when the baby is due, when you intend to take paternity leave and how much leave you want to take. This notice must be given on or before the 15th week before the expected week of the child's birth.

You can change the date when your paternity leave starts as long as you give 28 day's notice to your employer.

### Statutory paternity pay

If you earn more than the Lower Earnings Limit for National Insurance (currently £97 per week), you will be entitled to be paid during your statutory paternity leave. Statutory paternity pay (SPP) is currently (as of April 2010) £124.06 per week or 90 per cent of average weekly earnings if this is lower. Tax and National Insurance are paid on SPP in the same way as regular wages.

### Terms and conditions

While on statutory paternity leave you are entitled to all the benefits (other than wages or salary) to which you would be entitled if you were at work, and you have the right to return to your job at the end of paternity leave.

During periods of paid paternity or adoption leave your employer's contributions to a money purchase pension scheme should continue as normal and should be calculated as if you were receiving your normal salary.

If you are required to contribute towards your pension scheme, your contributions can only be calculated by reference to the contractual pay or SPP you actually receive while on paternity leave. This means your contributions may be less than they would have been if you were working normally. In a money purchase scheme, the employer is not obliged to make good this shortfall, but must do so if you are in a salary-related scheme.

### Adoption

The right to statutory paternity leave and pay applies, with a few minor differences, on adoption as well as birth. The two types of statutory paternity leave are generally referred to together as 'Paternity Leave'.

Importantly, the right to paternity leave on adoption is separate from and in addition to the right to adoption leave. Adoptive parents can choose which parent takes adoption leave (up to one year) and which takes paternity leave (one or two weeks). When a couple adopts a child jointly, one partner (who can be male or female) elects to be the child's adopter.



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## Contractual rights

You may have better rights to paternity leave in your contract of employment. If you do, you are entitled to benefit from that scheme instead of the statutory scheme. Check your terms and conditions for details.

## Problems at work

A father or partner who is dismissed or subjected to less favourable treatment because of taking paternity leave may have an Employment Tribunal claim for automatic unfair dismissal and/or discrimination. An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer for reasons relating to paternity leave. The law in this area is complex and there is a three month time limit for pursuing Tribunal claims, so you should take legal advice as quickly as possible.

## Rights to longer paternity leave? Watch this space

You may have read about new rights to longer paternity leave under the Work and Families Act 2006. The act introduces the power to allow up to 26 additional weeks paternity leave before the child's first birthday (Additional Paternity Leave), some of which can be paid if the child's mother has already returned to work.

These new paternity leave rights will apply to parents whose babies are born on or after 3rd April 2010 (or in relation to adoption a person who is notified of having been matched on or after 3rd April 2011). The features of the new legislation include the following:

- The right to Additional Paternity Leave only arises in the event that your spouse or partner has returned to work whilst some of their Statutory Maternity or Adoption Leave remains outstanding.
- A minimum of 2 weeks (in a continuous block) Additional Paternity Leave has to be taken.
- The earliest Additional Paternity Leave can be taken is 20 weeks after the birth of a child or adoption placement.
- You need to notify your employer 8 weeks in advance of your requirement to take Additional Paternity Leave.
- You will be entitled to Additional Statutory Paternity Pay for the period of Additional Paternity Leave. This is paid out at the same rate as Ordinary Paternity Leave.
- Both Additional Paternity Leave and Additional Statutory Paternity Pay need to be verified by your employer. There are a number of requirements which you will have to satisfy.

The legislation surrounding these new rights is not yet in force. At the earliest the legislation is due to be in force on 3rd April 2011.

Please see our factsheets '*Maternity Rights*' and '*Family Leave*' for further details about the rights that may be available to your family.





*"An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer for reasons relating to paternity leave."*

## Contact Us

*Please feel free to discuss your own position and concerns. Contact your nearest Russell Jones & Walker office or call:*

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This factsheet is for general guidance only and should not be treated as a definitive guide or be regarded as legal advice. If you need more details or information about the matters referred to in this factsheet please seek independent formal legal advice. This information was correct at time of going to press April 2010.