

Employment Law Update

Welcome...the Work
and Families Act
(Northern Ireland) 2015



The Work and Families Act (Northern Ireland) 2015 (the "Act") received Royal Assent on 8 January 2015 and comes into full legal effect on 5 April 2015.

The main purpose of the Act is to provide a legislative framework enabling Northern Ireland leave and pay entitlements to continue to match those available to working parents in Great Britain.

The Act will bring with it the following key changes from 5 April 2015:

NEW Shared Parental Leave and Shared Parental Pay

1. The Shared Parental Leave Regulations (Northern Ireland) 2015 will enable parents to share leave and take time off in a more flexible way in the first year of their child's life (or a year after the child has been placed for adoption). A mother can volunteer to end her maternity (or adoption) leave early in order to "free up" weeks to be taken as Shared Parental Leave (SPL). Parents will also be entitled to Shared Parental Pay (ShPP). The rate of ShPP from 5 April 2015 will be £139.58. (For more information on the new system of SPL and ShPP, please see our online guidance note or contact us directly).

Paternity Leave and Paternity Pay

2. Additional paternity leave and pay will be abolished and will be replaced by the right to SPL and ShPP. Ordinary paternity leave and pay of two weeks will continue to be available for fathers. The rate of statutory paternity pay from 5 April 2015 is £139.58

Flexible Working

3. The requirement for an employee to be a "carer" of a child or adult will be removed from the existing legislation. The right to request flexible working will be extended to all employees regardless of their personal circumstances provided they have been continuously employed for 26 weeks.

Parental Leave

- Parents will be entitled to take 18 weeks of unpaid Parental Leave at any time before the child's 18th birthday. To date, parental leave could only be taken up to the child's 5th birthday. As is still the case, parental leave can only be taken in blocks of a week or a whole number of weeks, and an employee may not take more than 4 weeks' parental leave a year in relation to each child (these rules are more flexible in relation to disabled children).

Adoption Leave and Pay

- Statutory adoption leave and pay will be brought in line with maternity leave and pay. Adoption leave will become a statutory right from day one (where applicable) and the first six weeks of statutory adoption pay will be paid at 90% of the employee's normal earnings (the same as statutory maternity pay). The rate of statutory adoption pay from 5 April 2015 is £139.58.

Introductory meetings and ante-natal appointments

- The Act facilitates paid time off work for primary adopters to attend up to 5 introductory meetings before a child is placed with them for adoption and unpaid time off for secondary adopters to attend 2 such meetings. Partners of expectant mothers will be entitled to similar time off, enabling them to take unpaid time off work to accompany a pregnant woman to 2 ante-natal appointments.

Foster / Surrogate Parents

- Provision is made in the Act allowing foster parents who are a child's intended adoptive parents to access adoption pay and leave, and intended parents in surrogacy arrangements to avail of paternity and adoption leave and pay.

Action points:

- Update your current policies, for instance, paternity leave, flexible working and parental leave policies.
- Develop a shared parental leave policy.

The contents of this guidance note are for information purposes only and do not constitute legal advice.

If you require advice, please contact:



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Shared Parental Leave and Shared Parental Pay - Guidance Note



On 5 April 2015, the Work and Families Act (Northern Ireland) 2015 will come into force and will give effect to the Shared Parental Leave Regulations (Northern Ireland) 2015.

Shared Parental Leave (SPL) is a new legal entitlement for eligible parents of babies due, or children placed for adoption, on or after, 5 April 2014. SPL enables parents to share the caring responsibilities for their child in its first year and take time off work in a more flexible way. The new rules also provide for Shared Parental Pay (ShPP).

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 separate notices booking periods of leave (or altering SPL).

How is SPL created?

Eligible mothers can volunteer to end their maternity (or adoption) leave early to “free up” weeks to be taken as SPL.

How much SPL or ShPP can be taken?

A mother must still take **2 weeks** compulsory maternity leave and maternity pay, or adoption leave and pay (4 weeks if she is a factory worker) which means that:

- Maximum amount of SPL available = 50 weeks (or 48 weeks if a factory worker)
- Maximum amount of ShPP available = 37 weeks (or 35 weeks if a factory worker)

How can an employee take SPL?

Maternity leave (or adoption leave) must be “curtailed” (i.e. brought to an end) before an employee can take SPL. Maternity (or adoption) leave can be curtailed in one of two ways:

1. The mother actually returning to work. The mother will have to give notice to her employer to end maternity (or adoption) pay at least 9 weeks before the expiry of the 39 weeks to ensure ShPP is available; or
2. The mother giving a curtailment notice to her employer confirming that she will not be taking her full maternity leave entitlement and that her maternity (or adoption) leave will come to an end on a specified date in the future. A curtailment notice, once served, is binding on the employee and cannot be withdrawn (except in very limited circumstances).

Who is eligible for SPL and ShPP?

Only employees will be eligible for SPL. It will not apply to self-employed, unemployed or agency workers.

The eligibility criteria for SPL will hopefully be familiar to employers as it is essentially the same criteria as for statutory maternity leave and statutory paternity leave. Similarly, the eligibility criteria for ShPP will be familiar to employers as an employee will be entitled to ShPP if they would be entitled to statutory maternity pay or statutory paternity pay and their partner meets the "employment and earnings test".

It is the employee's responsibility to ensure that they are eligible for SPL and/or ShPP. They must provide a declaration to this effect and there is no requirement on the employer to check that the information provided is correct.

Choosing to opt into the SPL system

Step 1: Employee serves **notice of entitlement**

(at least 8 weeks before leave can be taken)

(notice must include how many weeks maternity/adoption has been taken; how much remains to be taken as SPL; how much each parent intends to take; when they expect to take SPL; signatures by both parents)



Step 2: Employee to submit a **notice to "book" a period of leave**

(at least 8 weeks before leave can be taken)



(a) Employee requests a continuous block of SPL - this cannot be refused by employer



(b) Employee requests periods of discontinuous leave - this can be refused by an employer in terms of the pattern (but not the amount) of leave



Employer will have a discussion period of 14 days to talk about the request. If not agreed then the total amount of leave must be taken as one continuous block.

Following SPL, employee has right to return:

1. to the same job if returning from any period of leave that includes maternity leave / paternity leave / adoption leave / SPL that totals 26 weeks or less; or
2. to the same job, or if that is not reasonably practicable, to a similar job that is suitable and appropriate for the employee to do in the circumstances (that is no less favourable) if leave totals more than 26 weeks.

Action Points:

- Review existing policies
- Introduce SPL and ShPP policy
- Consider whether your business will enhance ShPP in line with maternity / paternity pay.

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