



T THOMPSONS
SOLICITORS

STANDING UP FOR YOU

**Summary of the law
on family friendly rights**

Our pledge to you

Thompsons Solicitors has been standing up for the injured and mistreated since Harry Thompson founded the firm in 1921. We have fought for millions of people, won countless landmark cases and secured key legal reforms.

We have more experience of winning personal injury and employment claims than any other firm – and we use that experience solely for the injured and mistreated.

Thompsons will stand up for you by:

Staying true to our principles – regardless of how difficult our job is made by government, employers or the insurance industry

Remaining committed to the trade union movement, working closely with them and with professional associations for the benefit of working people everywhere

Thompsons pledge that we will:

Work solely for the injured or mistreated

Refuse to represent insurance companies and employers

Invest our specialist expertise in each and every case

Fight for the maximum compensation in the shortest possible time

standing up for you

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The Spirit of Brotherhood
by Bernard Meadows

About this booklet

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 these rights and applies in England, Wales and Scotland (except where indicated) only.

- Maternity leave
- Paternity leave
- Parental leave
- Time off for dependants
- Flexible working
- Part-time workers

Maternity Leave¹

Entitlement

All pregnant employees are entitled to 52 weeks maternity leave, irrespective of how long they have worked for their employer or how many hours they work per week. This is made up of 26 weeks of ordinary maternity leave (OML) and 26 weeks of additional maternity leave (AML).

The first two weeks of leave (starting from the date of the birth) are known as compulsory leave. It is a criminal offence for an employer not to ensure that the woman takes two weeks of leave once the baby is born. Factory workers are prohibited from working for four weeks after the birth.

¹ for more details, please see our pregnancy and maternity leaflet.

Ordinary Maternity Leave (OML)

All female employees are entitled to 26 weeks of OML regardless of the length of their service. During OML, they are entitled to receive all of their normal contractual and related benefits, with the exception of wages or salary.



They may be entitled to Statutory Maternity Pay (SMP) during this time and, depending on their contract, may also be entitled to additional contractual pay and benefits. They are bound by all of their 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 OML, 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 OML.

They may be entitled to Statutory Maternity Pay for some of this leave (SMP is payable for 39 weeks). They should also check their contract to see if they are entitled to any contractual maternity pay and for any part of AML.

An employee is entitled to return to the same job after AML or, if that is not reasonably practicable, to another job which is both suitable and appropriate for her to do in the circumstances.

The terms and conditions must be no less favourable than if she had not been absent, with continuity of employment preserved throughout the period of AML.

Statutory Maternity Pay (SMP)

To qualify for SMP an employee must have 26 weeks service at the 15th week before the expected week of childbirth.

SMP is payable for 39 consecutive weeks and is paid at a rate of 90% of normal earnings for the first six weeks of maternity leave, followed by a flat rate for the remaining 33 weeks (or 90% of pay if lower).

Current rates (which change every April) can be found at www.gov.uk.

Notification of Pregnancy

An employee who wants to apply for maternity leave must give notice to her employer of her pregnancy, her expected week of childbirth and the date she expects her OML to start. She must give this notice on or before the 15th week before the expected week of childbirth (if possible), but can change her plans on giving 28 days' notice.

A failure to comply with the notification requirement could mean that the employee loses her right to start her maternity leave on the date she chose. However, there are exceptions, for example, where the baby is born early, in which case the employee should notify the employer as soon as possible after the birth.

An employee wanting to return to work before the end of her full statutory maternity leave entitlement (ordinary and additional) has to give eight weeks' notice. Failure to do so means that the employer can postpone the return date.

However, a woman who takes her full statutory leave of 52 weeks does not have to give notice.

Note, that maternity leave can be triggered if the employee is off work wholly or partly because of pregnancy during or after the fourth week before the expected week of childbirth.

Adoption Leave

The provisions for adoption leave mirror the maternity leave rights.

They therefore allow an adopting parent to take 26 weeks of ordinary adoption leave followed by 26 weeks of additional adoption leave from day one of employment. To be entitled to take adoption leave, the employee must give their employer notice of intention to take adoption leave, within 7 days of being notified by the adoption agency that they have been matched to a child.

Rights during adoption leave are the same as for maternity leave.

Statutory adoption pay (SAP) is payable to those who have 26 weeks' continuous service by the week they are matched to a child. SAP is paid in the same way as statutory maternity pay i.e. six weeks at 90% of pay or the statutory rate, whichever is the lower; plus 33 weeks at the statutory rate (which changes every April).

Note, adoption leave is available to parents in a surrogacy arrangement who qualify for a parental order and those who are fostering to adopt and who have been approved and notified by a local authority.

For up-to-date rates visit www.gov.uk.

Paternity Leave

Paid Paternity is available to fathers, partners, civil partners and adoptive parents so long as they have 26 weeks continuous service as at the 15th week before the expected week of childbirth or by the week they are notified of being matched with a child. It is also available to certain qualifying foster parents and intended parents in a surrogacy.

They have the right to take either one or two consecutive weeks of leave which must be taken within 56 days of the child's birth, parental order or placement.

Notice of the intention to take paternity leave is the same as for maternity or adoption leave. Statutory paternity pay is paid at a flat rate (which changes every April) or 90% of earnings if lower.

For up-to-date rates visit www.gov.uk.

Unpaid Parental Leave

Employees who have responsibility for a child are entitled to unpaid parental leave of up to 18 weeks for each child under the age of 18.

To qualify, employees need one year's continuous service by the date the leave is to start. The leave must be taken for the purpose of caring for the child and must be taken in periods of a week, subject to a maximum of four weeks (unless the child is entitled to disability living allowance).

Collective Agreements

The Regulations encourage employers, employees and their trade unions to negotiate collective or workforce agreements dealing with the mechanics of parental leave. This could include providing for leave to be paid, shorter notice periods and longer leave.

Where no such agreement is negotiated, then the 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 one week, and no more than four weeks in one year.

Parents must give a minimum of 21 days' notice prior to the proposed parental leave. Fathers who want to take leave straight after the baby is born have to give 21 days' notice before the expected week of childbirth. Adoptive parents who wish to take leave at the beginning of the date of adoption must give 21 days' notice before the beginning of the week the placement is expected to occur.

Employee Rights

Employee rights during parental leave are limited to the contractual right to trust and confidence, notice, redundancy, discipline and grievance.

If an employee takes four weeks off or less, or when added to other statutory leave for the child which is not more than 26 weeks they have the right to return to their old job. If they take more than four weeks or when added to other statutory leave for the child which is more than 26 weeks, they have the right to return to the same job unless it was not reasonably practicable for them to do so, a similar job on no less favourable terms and conditions.

Flexible Parental Leave

Fathers or partners of mothers who qualify for Statutory Maternity Leave or Pay may be able to share the mother's maternity leave under the right to shared parental leave and pay.

In addition to the right to maternity, adoption and paternity leave and pay, parents have the right to shared parental leave.

This allows parents who are entitled to maternity and adoption leave and pay to share some of that leave with their partner.

The mother or adopter must take two weeks' compulsory leave following the birth or placement but the rest of the 50 weeks leave and 37 weeks' pay can be shared provided certain eligibility and notification requirements are met.

To qualify for shared parental leave, one partner must be entitled to some form of maternity or adoption leave or pay and have been employed for at least 26 weeks by the 15th week before the week the baby is due. The partner must have worked for at least 26 weeks in the 66 weeks leading up to the week before the baby is due and earned more than £30 per week.

In order to take the leave the mother or adopter must first either return to work or give notice to bring their maternity or adoption leave to an end (a curtailment notice). A notice of entitlement and intention to take shared parental leave must also be given to the employer at least eight weeks before the first proposed period of shared parental leave.

If either parent takes 26 weeks' leave or less in total, they are entitled to return to the job in which they were employed before they went on leave. If they take more than 26 weeks and it is not reasonably practicable for their employer to let them return to that job the employee can be asked to return to one that is similar.

Employees who take shared parental leave are entitled to the benefit of all the terms and conditions of employment which would have applied if they had not been on leave with the exception of pay.

Time off for Dependents

The Employment Rights Act 1996 gives employees the right to take time off for an "urgent family reason". The right allows an employee to take a reasonable amount of time off work in order to take action which is necessary:

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

Definition of Dependant

A dependant is defined as 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 in the event of illness or injury.

There is no definition as to what a 'reasonable amount of time off' means. However, it is important that the employee tells their employer as soon as they can of the reason for the absence and how long they expect to be absent.



Flexible Working

Women on maternity leave who wish to return to work on different terms and conditions should check their contract first as some employers allow women to return to work on different terms, such as part-time. Alternatively, a woman could make a statutory request for flexible working. If the request is refused, she may be able to claim she has been indirectly discriminated against because of her sex if the employer cannot show that their refusal is justified.

Part-time Workers

Entitlement

Part-time workers have the legal right in certain circumstances to be treated equally to full-time workers. Both employees and workers are covered.

The legislation says 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-time worker 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.

The part-timer can only compare themselves with a full-timer who is employed on the same type of contract and who is engaged in broadly similar work. When considering broadly similar work, case law has established that the focus should be on the similarities and not the differences.

Because of the way the law is drafted many part-timers doing jobs only done by part-timers (such as cleaning jobs) will not fall within the protection 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 a part-timer until they have worked the same number of hours as a full-timer.

Right to receive written statement

Part-time employees can request a written statement of the reasons why they have been treated less favourably than a comparable full-timer. The employer must respond within 21 days.

Remedies

Employees have the right to complain to an Employment Tribunal if they have been subject to a detriment or if they have been dismissed for taking time off or seeking to exercise their rights. They must submit their claim within three months less one day of the dismissal or detriment.

How do workers gather information from their employer?

Workers can use the ACAS (Advisory, Conciliation and Arbitration Service) guidance, 'Asking and responding to questions of discrimination in the workplace', to request information from the employer which is relevant to a potential claim of discrimination.

Although the employer is not under a legal obligation to respond if the case proceeds to an employment tribunal hearing, an employment tribunal may draw an inference if the employer does not respond or its replies are evasive.

What is Early Conciliation?

Early Conciliation is the requirement to contact ACAS before lodging an employment tribunal claim. This can be done over the phone or by completing an Early Conciliation notification form on line on the ACAS website (www.acas.org.uk).

Early Conciliation usually lasts for four weeks, after which a conciliation certificate is issued. The Early Conciliation certificate number must be put on the employment tribunal claim form (ET1). If it is not, the claim form will be rejected and the claim may go out of time.

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For more information visit:

www.thompsonstradeunion.law



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The information contained in this booklet is not a substitute for legal advice. You should talk to a lawyer or adviser before making a decision about what to do. Thompsons Solicitors is a trading name of Thompsons Solicitors LLP and is regulated by the Solicitors Regulation Authority.

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