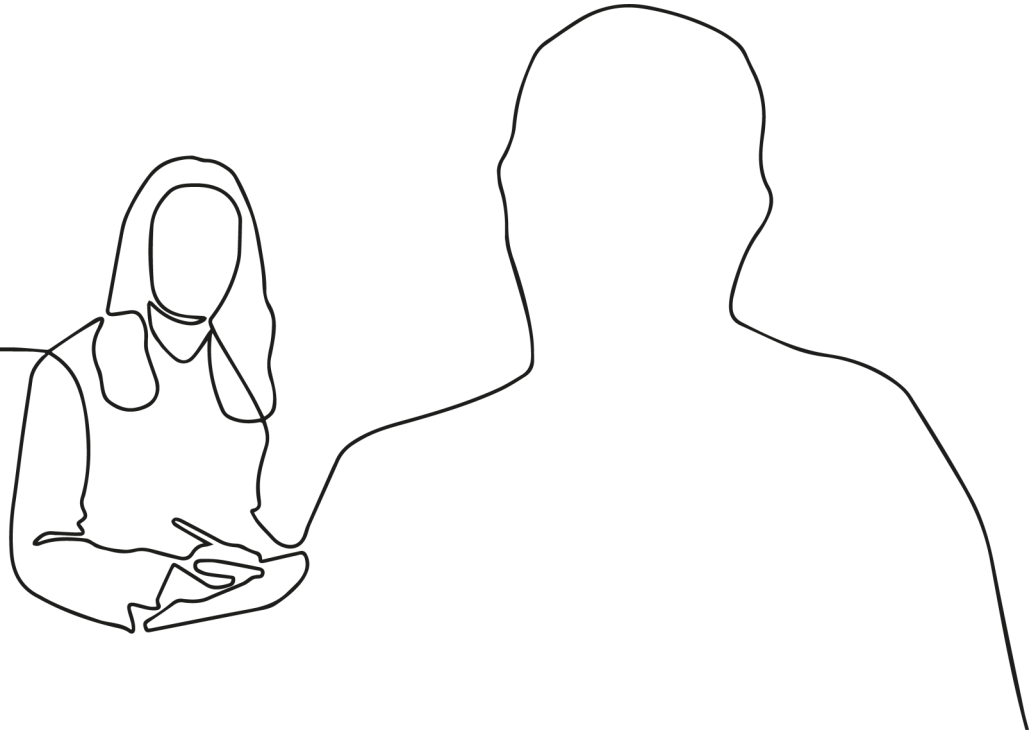


SUMMARY OF THE LAW ON FAMILY FRIENDLY RIGHTS



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.

- MATERNITY LEAVE
- PARENTERITY LEAVE
- PARENTAL LEAVE
- TIME-OFF FOR DEPENDANTS
- FLEXIBLE WORKING

MATERNITY LEAVE*

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 after the date of 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.

ORDINARY MATERNITY LEAVE

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

They may be entitled to Statutory Maternity Pay during this time and, depending on the contract, may also be entitled to additional contractual pay and benefits. They are bound by 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.

* For more details, please see our Pregnancy and Maternity leaflet

The information contained in this booklet is not a substitute for legal advice. You should talk to a lawyer or advisor before making a decision about what to do.

Thompsons Scotland LLP is regulated by the Law Society of Scotland.

ADDITIONAL MATERNITY LEAVE

All female employees are entitled to a further 26 weeks of additional maternity leave. This entitlement commences after the last day of the employee's OML period.

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

The terms and conditions of the new job must not be less favourable than if she had not been absent, with seniority rights preserved as they were at the start of her AML period.

STATUTORY MATERNITY PAY (SMP)

To qualify for Statutory Maternity Pay (SMP) an employee must have 26 weeks of service at the 15th week before childbirth.

SMP is payable for up to 39 consecutive weeks and is paid at a rate of 90% of the employee's average weekly 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).

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 on which she expects her OML to start. She must give this notice on or before the 15th week before childbirth (if possible), but can change her plans on giving 28 days' notice.

A failure to comply with the notification requirements 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 date of birth.

An employee wanting to return to work before the end of her additional maternity leave must give her employer eight weeks' notice. A failure to do so means that the employer can postpone the return date. An employee does not have to give her employer notice if she wishes to return to work before the end of her ordinary maternity leave

ADOPTION LEAVE

The provisions for adoption leave are similar, but not identical to, maternity leave rights. Adoption leave consists of ordinary adoption leave (OAL) and additional adoption leave (AAL).

An adopting parent is entitled to take up to 26 weeks (OAL). This entitlement can be extended for a further 26 weeks (AAL).

The adopting parent must give their employer seven days notice of the date that they intend their OAL to commence.

The employer will remain bound by the terms of the adopting parent's contract, with the notable exception of salary. The adopting parent may be entitled to statutory adoption pay (SAP). Please note that the entitlement to SAP is subject to specific requirements. It is recommended that you contact our dedicated employment law specialists for further advice.

PATERNITY LEAVE

Paid paternity leave is available to biological fathers, husbands or partners (whether or not the biological father) as long as they have 26 weeks of service as at the 15th week before childbirth or adoption. An employee is not entitled to take paternity leave in respect of a child if they have already used their shared parental leave to care for the said child.

An employee has the right to take either: (a) one week of leave; (b) two consecutive weeks of leave; (c) or two non consecutive weeks of leave. The employee must complete their parental leave no later than 52 weeks of the child's birth.

The employee may be entitled to statutory paternity pay (SPP). Please note that the entitlement to SPP is subject to specific requirements. It is recommended that you contact our dedicated employment law specialists for further advice.

SHARED PARENTAL LEAVE

Shared parental leave supplements the entitlement to maternity leave, adoption leave and paternity leave. Mothers on maternity leave are entitled to curtail their maternity leave (excluding the compulsory period of leave and any maternity leave until taken) by giving notice to their employer. The relinquished maternity leave is then converted into shared parental leave. The mother can choose another person (e.g., the father of the child) to take this period of shared parental leave with her.

To qualify for shared parental leave, both the mother and the father must meet a number of qualifying criteria:-

1. The mother must qualify for Statutory Maternity Leave and Pay
2. Both parents must have at least 26 weeks' continuous employment at the end of the 14th week before the expected week of childbirth (EWB)
3. They must both remain in employment with the same employer until the week before the leave is due to begin
4. Both parents must be in employment or self-employment for 26 out of the 66 weeks before the EWB and had average earnings of not less than £30 a week during that week
5. Both parents must have primary responsibility for the care of the child

In order for Shared Parental Leave to be taken, the mother cannot take all of her Statutory Maternity Leave and Statutory Maternity Pay. There are strict notice requirements, both for the mother to bring her leave to an end and for the partner to give notice that Shared Parental Leave is being taken. If these requirements are not met then the entitlement will be lost. More detail of the notice requirements and other rights in relation to Shared Parental Leave can be found at www.gov.uk

PARENTAL LEAVE

Workers with at least one year of employment are entitled to unpaid parental leave of up to 18 weeks per child. Each parent is entitled to parental leave. If there are twins, each parent will have a parental leave entitlement of 36 weeks. Parental leave will become a “day one right” from April 2026, meaning that a worker will be entitled to take parental leave from the start date of their employment.

COLLECTIVE AGREEMENTS

The Regulations encourage employers and employees and their trade unions to negotiate collective or workforce agreements dealing with the mechanics of parental leave, such as notice requirements and how leave will be taken.

Where no such agreement is negotiated, then a 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, with the exception of fathers who want to take leave straight after the baby is born, in which case they have to give 21 days' notice prior to the expected week of childbirth.

EMPLOYEE RIGHTS

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

If an employee takes less than four weeks off, they have the right to return to their old job. If they take more than four weeks, their entitlement to have their job back is similar to the situation that applies to a woman returning from AML.

Women who qualify will be entitled to statutory maternity pay for 39 weeks of their maternity leave and eligible fathers will be entitled to two weeks' ordinary statutory paternity pay. Fathers and other eligible employees are entitled to take unpaid leave to attend two antenatal appointments.

TIME OFF FOR DEPENDANTS

The Employment Rights Act gives employees the right to take time off for "urgent family reasons". 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 the 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.

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

Employees with 26 weeks of continuous service have the right to request to work flexibly.

The request must be made in writing and specify the change proposed, what effect the employee thinks the change might have on the employer and how this might be dealt with, and must explain the relationship between the employee and the child.

The employer must consider the request and provide a decision no later than 2 months of the making of the request.

Refusals can be made on a number of specific grounds such as the burden of additional costs. However there are few sanctions on employers for refusing requests, and the grounds on which a Tribunal claim are limited.

It may however be possible to submit a claim for sex discrimination if the request is refused.

0800 0891 331

For more information visit:

TalkToThompsons.com

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.