

The Parent Trap – How workplace flexibility works in practice

Employment Breakfast Seminar
27 January 2015



“Son, if you really want something
in this life, you have to work for it.
Now quiet! They're about to
announce the lottery numbers.”
Homer Simpson

“ I always give 100% at Work:
10% Monday, 23% Tuesday, 40%
Wednesday, 22% Thursday,
and 5% Friday. ” *Anonymous*

What will you get from today?

1. “Ins and outs” of Shared Parental Leave
2. Rights of Working Parents – where is the law now?
3. Case studies – flexible working and parenting at work
4. Flexible Working in Practice

Shared Parental Leave

John Carter

Machins Solicitors LLP

27.01.15



FAQS

- When will the mother/ father or partner be eligible to take SPL?
- How much notice must employees give?
- Can employees on SPL take keeping-in-touch days?
- What is "discontinuous leave" under SPL?
- Can an employer refuse leave requests or postpone these?
- Do employees receive statutory or enhanced pay on SPL?
- How is pay divided if both parents are on SPL?
- Who is responsible for paying the employer's partner?
- What about the accrual of holiday and benefits during SPL?
- What rights do employees have to return to work after SPL?

SPL what is it?

SPL is a new way for parents to share statutory leave and pay:

- on the birth of a child or
- the placing of child in adoption

On or after 5 April 2015

Why has it been introduced?

- To replace the current 'old fashioned' and 'inflexible' arrangements
- To allow both parents to assist with childcare
- To allow mothers to return to work when they want without losing leave entitlement
- To allow mothers to return to work temporarily to cover a busy period or project

SPL- the impact on existing regimes

Maternity leave

- Women can still take 26 weeks ordinary maternity leave and 26 weeks additional maternity leave
- A birth mother must still take 2 weeks compulsory maternity leave immediately after the birth- this cannot be shared under SPL

SPL- the impact on existing regimes

- Women's rights during maternity leave are unchanged
- Statutory maternity pay remains unchanged
- The key change is that women can elect to bring maternity leave to an end early and opt into a period of shared parental leave instead.

SPL- the impact on existing regimes

Paternity leave

- The 2 week period of ordinary leave can still be taken but is not compulsory
- Ordinary paternity leave must be taken during the 8 weeks following birth and cannot be shared
- Additional paternity leave & additional statutory paternity pay abolished - replaced with SPL & statutory shared parental pay (ShPP)

Eligibility for SPL- the mother

To qualify for SPL the **mother** must:

- Have a partner
- Qualify for statutory maternity leave/adoption leave or to statutory maternity pay or maternity allowance
- Have curtailed, or given notice to reduce, their maternity/adoption leave or their maternity/adoption pay or allowance

Eligibility for SPL- the mother

- Have been continuously employed for 26 weeks by the end of the 15th week before the expected week of delivery (the continuity of employment test)

Eligibility for SPL- the partner

The partner must:

- Have worked for at least 26 weeks in the 66 weeks prior to the expected due date/matching date and earned an average of at least £30 a week in any 13 weeks (the employment and earnings test)

Eligibility for SPL - both

To qualify for SPL both parents must:

- Have been continuously employed for 26 weeks by the end of the 15th week before the expected due date/matching date
- Remain continuously employed until the week before any period of SPL starts
- Have or expect to have the main responsibility for childcare

Eligibility for SPL - both

- Have provided their employers with notice of entitlement and intention to take SPL
- Have provided any evidence requested by their employer within 14 days of the request
- Have given their employer a period of leave notice

Eligibility for SPL

A **self-employed mother** will not be eligible for statutory maternity leave

But

If she has received statutory maternity pay or allowance **the partner** can still qualify for SPL if they are an employee and meet the tests stated above

Eligibility for SPL

An employer should grant SPL and ShPP based upon the information and declarations made by the employee.

They can request:

- A copy of the child's birth certificate
- The contact details of the partners employers but there is no obligation to contact them

Amount of SPL

Maximum 50 weeks commencing 2 weeks after birth/matching date

SPL can:

- Only be taken in complete weeks
- Be taken as one complete block or discontinuous periods
- Be taken using 3 separate notices to book leave

Amount of SPL

SPL can:

- Be taken by the partner while the mother is still on maternity/adoption leave if the mother reduces their entitlement
- Be taken by the partner after the mother has returned to work (provided notice to reduce maternity/adoption leave has been given)

SPL Notices to end leave

The mother must give notice to end maternity/adoption leave early

The notice:

- Must be given at least 8 weeks in advance of planned end of maternity leave
- If given after birth it is binding
- If given before the birth the mother has up to 6 weeks from the birth to revoke it

SPL Notice of entitlement

- Both the mother and partner must give their employers a **notice of entitlement and intention to take shared parental leave**
- The notice must be given at least 8 weeks before the start of the first period of SPL and must contain certain information

SPL Notice of entitlement

- The mother and partners names and NI numbers
- The start and end date of any period of statutory maternity leave taken/to be taken by the mother
- The amount of any statutory maternity pay or maternity allowance received or to be received by the mother
- The expected week of birth or actual date of birth of the child
- The total amount of SPL available
- Confirmation that the mother/father is sharing child care with partner
- An indication of how much SPL each partner intends to take and the proposed start and end dates of SPL
- A declaration from each partner that they meet the criteria

SPL Notice of Leave booking

Each partner must give to their employer
Notification of a leave booking

- SPL can be booked at the same time as the notice of entitlement or subsequently and confirms the dates of SPL requested.
- Must be made at least 8 weeks before an period of SPL would begin
- Up to 3 requests can be made

Employers response

- **Continuous leave** – the employee is entitled to take the leave even if the employer does not agree
- **Discontinuous leave** – the employer may
 - Agree to the period of leave requested
 - Propose alternative dates
 - Refuse the leave without proposing alternative dates

SPL - the default provisions

In the case of a discontinuous SPL request if within 14 days there is

- no agreement
- the request is refused or
- the employer fails to respond

Then the default provisions will apply

SPL - the default provisions

The default provisions are:

- Unless the employee withdraws the notice within 15 days it defaults to period of continuous SPL
- Unless, within 19 days the employee chooses when to start the period of continuous leave it defaults to start on the date given in the notice

Cancelling or varying SPL

An employee can give written notice to vary/cancel their booked SPL.

A request to vary/cancel:

- Must be made at least 8 weeks before the booked leave was due to start
- Will count as one of the 3 notifications

Cancelling or varying SPL

If an employee has used up their 3 notifications the employer is not obliged to agree the variation/cancellation

If the employer wishes to vary agreed leave and the employee agrees this would not count as a variation

Returning to work after SPL

Following a period of SPL the employee is entitled to return to the same job if their combined period of leave totalled 26 weeks or less

If the combined period of leave exceeded 26 weeks the employer must allow the employee to return to the same job unless it is not reasonably practicable

SPL – odds & sods

During SPL:

- Annual leave will continue to accrue
- The employee will have the same protection from redundancy as a mother on maternity leave i.e. they must be offered a suitable alternative vacancy if one is available
- Up to 20 SPLIT days can be agreed

Eligibility for shared parental pay (ShPP)

- A mother may be entitled to statutory maternity pay/adoption pay/maternity allowance for up to 39 weeks. Up to 37 weeks can be paid as ShPP, the remaining 13 weeks of SPL are unpaid
- If the mother gives notice to reduce her entitlement then any remaining weeks could become available as ShPP.

Eligibility for shared parental pay (ShPP)

To qualify for ShPP the **mother** must

- Meet the continuity of employment test
- Have earned above the Lower Earnings Limit (£111) for the 8 weeks up to and including the 15th week before the expected due date/matching date
- Be employed with the same employer at the start of the first period of ShPP
- The **partner** must meet the employment and earnings test

Amount of shared parental pay

ShPP is paid at £138.18 (£139.56 pw from 05.04.15) or 90% of your average weekly earnings (whichever is lower).

The whole period of SPL is paid at this level. There is no requirement for the first 6 weeks to be paid at 90% of actual weekly earnings unlike with Statutory Maternity Pay

Rights of Working Parents

Jackie Cuneen

Machins Solicitors LLP

Where were we?

All employees (incl. parents) 2 basic rights:

1. Contractual – contract of employment
2. Statutory :
 - Unfair dismissal – (2 years' service)
 - Unlawful discrimination - **sex**, sexual orientation, **marital/ civil partnership status**, gender reassignment, age, race, religion or belief, disability and **pregnancy**

NB Part-Time Workers Regs 2000

Equal Treatment / Sex discrimination

- Equal pay - equal treatment for the sexes under their employment contracts
- **Direct Discrimination** - treating someone less favourably because of their sex
- **Indirect discrimination** – applying practices that have a disproportionate effect on one sex and cannot be objectively justified
- **Harassment**
- **Victimisation**

Parents' protection from dismissal

- **Automatically unfair dismissal**, If dismissed due to pregnancy, parental leave, paternity and maternity leave, taking Time Off for Dependents etc
- **Redundancy** – right to return to old job after 26 weeks' Ordinary Maternity, Adoption, Paternity Leave, or if return after Additional Maternity leave only if it is *reasonably practicable* if not right to *suitable alternative*.
- **NB** If made redundant **during** maternity leave automatic right to be offered suitable alternative vacancy – Reg 10 MPL Regs 1999

Pregnancy/ Maternity discrimination

- **Unlawful discrimination:** If a woman who is pregnant or on maternity leave is treated *unfavourably* (NB the test is not whether she is treated worse than someone else) from the time she informs employer you are pregnant to the end of her maternity leave (the *protected period*) because of pregnancy, related illness or maternity leave.

Right to time off work

- Maternity leave (paid/unpaid)
- Paternity leave (paid/unpaid)
- Adoption leave (paid/unpaid)
- Parental leave (children under 5 or 18 if disabled
Time off for dependants (unpaid)
- Time off for ante-natal care (paid)

- **NB Employees cannot be treated less favourably for exercising these rights**

Where are we now?

- Right to request flexible working – extended to all employees with 26 weeks' service - **30 June 2014**
- Right to accompany to ante-natal appointments (unpaid) husband/ partner of pregnant woman - **1 Oct 2014**
- Shared Parental Leave - **5 Apr 2015**

Case studies –Flexible Working and Parenting at work

- How do we implement leave/ flexible working procedures?
- How do we treat parents equally?
- How do we avoid discrimination/ unfair dismissal and other claims?

Contact Details

- Jackie Cuneen

jackie.cuneen@machins.co.uk

Tel: 01582 514389

- John Carter

john.carter@machins.co.uk

Tel: 01582 514328

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