

Maternity leave and return to work

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You are allowed to work up to ten keeping in touch (KIT) days during maternity or adoption leave without bringing your leave or pay to an end.

You are also allowed to work up to 20 shared-parental-in-touch (SPLIT) days without bringing shared parental leave or pay to an end.

[Working during maternity, adoption or shared parental leave](#)

How many KIT/SPLIT days am I entitled to?

You can work for up to ten KIT days without bringing your maternity/adoption leave to an end or losing your Statutory Maternity/Adoption Pay and for up to 20 SPLIT days without ending your shared parental leave or losing your Statutory Shared Parental Pay. If you have more than one job, your KIT/SPLIT days apply to each job separately.

If both parents are taking shared parental leave (SPL), you can work up to 20 SPLIT days each during your SPL regardless of how much SPL you are taking. If only one parent is taking SPL, that parent can work up to 20 SPLIT days during their SPL.

What type of work can I do on a KIT/SPLIT day?

A KIT/SPLIT day can include any work that you would normally do as part of your contract of employment, including training, conferences, meetings and 'any activity undertaken for the purposes of keeping in touch with the workplace'. You can use a KIT/SPLIT day to keep up to date with what has been happening in your workplace while you have been on leave; to attend a training

course or staff meeting; to complete a project or to help you settle back into work gradually at the end of your maternity, adoption or shared parental leave.

Even if you only work for part of a day or a couple of hours it will still use up one of your KIT/SPLIT days.

You will need to agree with your employer what you will be doing and how much you will be paid (see below for payment). In some cases you may need to agree where you will work e.g. in your normal place of work or working from home.

If I contact my employer or take my baby into work will it count as a KIT/SPLIT day?

KIT/SPLIT days should usually include any work you are likely to do under your contract of employment or in the normal course of your work.

The law allows your employer to make reasonable contact during your leave, for example, to discuss your return to work, so a reasonable amount of contact will not generally be counted as work and is separate from KIT/SPLIT days.

If you are visiting colleagues to show them your new baby it is also unlikely to count as a keeping in touch day unless you have agreed it with your employer or arranged to combine your visit with some work or a meeting, for example. However, if your employer is making a large amount of contact and asking you to get involved in work you should speak to your employer and ask them to agree to some KIT/SPLIT days. You also need to check in advance what you will be paid and whether it will be on top of your statutory pay or set off against it (see below).

When can KIT/SPLIT days be worked?

KIT/SPLIT days can be worked at any time during maternity leave or adoption leave (52 weeks) or during a period of shared parental leave. You can work either before or after the birth but you cannot work during the two weeks of compulsory maternity leave immediately after the birth (four weeks for factory workers).

You can work KIT/SPLIT days during your paid leave or unpaid leave. You should agree the rate of pay with your employer and you should be paid in the normal way, at the normal time, see below for more on pay.

KIT/SPLIT days can only be undertaken by agreement on both sides but a policy that specifically excludes KIT/SPLIT days during certain parts of leave (other than the period immediately after the birth) would not comply with the regulations, see below. You are entitled to rely on your statutory (legal) rights and would be entitled to a KIT/SPLIT day if you are required to come to work for a meeting, training or other work-related activities. See below for more information on what to do if you are not paid for a KIT/SPLIT day or you are treated unfavourably for working or refusing to work a KIT/SPLIT day.

KIT/ SPLIT days do not have to be consecutive and any KIT/SPLIT days you work will not extend your leave period.

Does a half day count as a KIT/SPLIT day?

Working for part of a day or even a couple of hours will use up one of your 10 KIT days or 20 SPLIT days. You will usually only be paid for the hours worked and you need to agree what you will be paid with your employer in advance.

A day's work will be the normal hours or shift patterns at your workplace. If you don't want to leave your baby for a full day or you are using KIT/SPLIT days for a phased return to work, you can ask your employer if you can work a shorter day and it will be a matter for agreement between you and your employer.

Do I have to work a KIT/SPLIT day?

No, you cannot be forced to work a KIT/SPLIT day. You may not wish to work during your leave or you may not be able to if there is no childcare available. It may also depend on how much you will be paid for working a KIT/SPLIT day as it may not be worth your while if you need to pay for travel and childcare (see below).

You should not be treated unfairly for refusing to work a KIT/SPLIT day if you are not able to. If you have arranged to work a KIT/SPLIT day but you are unable to because of sickness or childcare difficulties your employer should not penalise you.

Do I have the right to work KIT/SPLIT days?

No, you cannot insist on working KIT/SPLIT days during your leave. They are a matter for agreement between you and your employer and your employer does not have to offer them.

My maternity pay has come to an end now, what happens if I work more than ten KIT days?

Once your 39 week maternity pay period has ended, any KIT days that you work will not affect your SMP or Maternity Allowance. As set out below, you still need to agree the rate of pay for any days worked, whether that is during your paid leave or your unpaid maternity leave period. Once you have completed ten KIT days, you will need to agree with your employer that you can continue on maternity leave until the end of the 52 week period.

Can I use KIT/SPLIT days to work part-time for a period before returning to work?

Yes, you could work part-time e.g. two days a week, by using KIT/SPLIT days before returning to work, if you and your employer agree. Using KIT or SPLIT days to achieve part-time work for a period may help you and your employer see how well it works and it may strengthen your arguments when making a request to work part-time. You must agree the rate of pay for any KIT/SPLIT days, see below.

If you want to work part-time permanently after the end of your leave, you should make a request for flexible work. If possible, apply for flexible work at least three months before your return to work to allow your employer enough time to consider your application.

My employer has asked me to do some work that is different from my normal work – could it affect my right to return to my old job?

If you are going to be doing a large amount of work during your maternity, adoption or shared parental leave and it is different from your normal job you should make sure that you will still have the right to return to your old job. If you are unsure you should ask your employer to confirm in writing that any work done during your leave will not affect your right to return to your old job. You have the right to return to the job you were doing **immediately before the start of your leave** if you take up to six months' maternity or adoption leave or up to six months' leave on aggregate if you are taking shared parental leave (including any maternity, paternity, adoption and shared parental leave).

If you take longer than six months' leave or six months on aggregate if you are taking shared parental leave (including any maternity, paternity, adoption and shared parental leave), you still have the right to return to the same job but if your employer can show it is not reasonably practicable for you to return to your old job, they have the right to offer you a suitable alternative job. If you are not offered your old job back and you do not think your employer had a good reason you should seek advice.

Which regulations cover KIT days?

The Maternity and Parental Leave Regulations 1999, regulation 12A, provide the right to work up to ten KIT days during maternity leave. Maternity leave lasts for up to 52 weeks.

Regulation 12A.—(1) Subject to paragraph (5), an employee may carry out up to 10 days' work for her employer during her statutory maternity leave period without bringing her maternity leave to an end.

(2) For the purposes of this regulation, any work carried out on any day shall constitute a day's work.

(3) Subject to paragraph (4), for the purposes of this regulation, work means any work done under the contract of employment and may include training or any activity undertaken for the purposes of keeping in touch with the workplace.

(4) Reasonable contact from time to time between an employee and her employer which either party is entitled to make during a maternity leave period (for example to discuss an employee's return to work) shall not bring that period to an end.

(5) Paragraph (1) shall not apply in relation to any work carried out by the employee at any time from childbirth to the end of the period of two weeks which commences with the day on which childbirth occurs.

(6) This regulation does not confer any right on an employer to require that any work be carried out during the statutory maternity leave period, nor any right on an employee to work during the statutory maternity leave period.

(7) Any days' work carried out under this regulation shall not have the effect of extending the total duration of the statutory maternity leave period.

The same provisions apply to shared parental leave in the Shared Parental Leave Regulations 2014, regulation 37.

Payment for KIT/SPLIT days

Am I entitled to my normal pay for KIT/SPLIT days?

Unfortunately the regulations do not state what an employee should be paid for working a KITSPLIT day but employers are expected to pay your normal rate of pay. You are entitled to be paid at least the National Minimum Wage (not including the SMP/SAP or ShPP part of your pay) for any work that you do during leave. You can find more information on the National Minimum Wage here: <https://www.gov.uk/national-minimum-wage-rates>

If you work a KIT/SPLIT day during your maternity, adoption or shared parental pay period you must continue to be paid your weekly Statutory Maternity Pay (SMP), Statutory Adoption Pay (SAP), Maternity Allowance or Statutory Shared Parental Pay (ShPP), but any additional pay for a KIT/SPLIT day must be agreed between you and your employer before you do any work. Pay for a KIT/SPLIT day can be offset against the statutory pay (as long as you are still receiving at least the National Minimum Wage) so you will not always receive both. For more on Maternity Allowance see the section below.

If you are paying for childcare and travel costs you should let your employer know in advance so that your employer can take that into consideration. As a matter of good practice your employer should pay your normal wage for working a KIT/SPLIT day even if you work a shorter day as you may have incurred the same expenses in order to get to work.

My employer has asked me to come into work for a KIT day but has said that I won't be paid for it until my maternity leave ends. Is that right?

No, you are entitled to be paid for any KIT or SPLIT days worked in the same way and at the same time as other employees so this will usually be in the payroll following the week or month in which you do some work. Your employer must pay for any KIT/SPLIT days at the time you do the work and cannot delay payment. It is very important to check whether you will be paid for a KIT/SPLIT day on top of your statutory pay or whether it will be offset against it, see next question. If you have not been paid at the correct time, you should speak to your employer, HR or payroll manager as there may have been a misunderstanding.

The law says that you are not entitled to 'remuneration' (salary or wages) during maternity, adoption and shared parental leave because you normally receive maternity, adoption or shared parental pay instead. However, your employer must still pay any sums that are owed to you during your maternity, adoption or shared parental leave, especially if you have worked during your leave. This applies whether you work any KIT/SPLIT days during your SMP/SAP/ShPP period or during unpaid maternity/adoption/shared parental leave.

You must also be paid any holiday pay, commission payments and any other sums owed during your leave period. Many employers pay contractual maternity, adoption or shared parental pay during the leave period so there is no rule that prevents an employer from paying you additional sums during your leave.

Can my employer offset pay for KIT/SPLIT days against SMP/SAP/ShPP?

Yes, your employer is entitled to offset any contractual pay for a KIT/SPLIT day against your SMP/SAP/ShPP but they do not have to. It is very important that you agree with your employer what you will be paid for working a KIT/SPLIT day and whether it will be offset against your SMP/SAP/ShPP or whether you will receive the pay as well as your SMP/SAP/ShPP, see the examples below. You should ask your employer to confirm what you will be paid and when you will be paid in writing. If your employer is going to offset your pay against your SMP/SAP/ShPP payments and you decide that it is not worthwhile to work a KIT/SPLIT day during your leave, you are entitled to refuse to work a KIT/SPLIT days.

When discussing pay for KIT/SPLIT days with your employer, make sure that your employer is aware that they can claim back 92% of the SMP/SAP/ShPP from HM Revenue & Customs. Small employers claim back 103%. Employers can also claim advance funding from HMRC to cover their SMP/SAP/ShPP payments, if needed.

Your employer cannot pay you less than the weekly amount you should receive as SMP/SAP/ShPP and must not pay you less than the National Minimum Wage for the hours worked (not including the SMP/SAP/ShPP payment).

- SMP/SAP is paid for 39 weeks at the rate of 90% of your average wages for the first six weeks and a flat rate of £156.66 (April 2022 to April 2023), or 90% of your average earnings if lower, for the remaining 33 weeks.
- ShPP is paid at the flat rate of £156.66 (April 2022 to April 2023) or 90% of your average earnings if lower.

If your employer needs to work out a daily amount of SMP/SAP or ShPP, they must divide the weekly amount by 1/7th (£156.66 divided by 7 = £22.38 per day).

Example 1 – Pay for KIT/SPLIT day is offset against statutory pay

If an employee earns £70 for working 7 hours, which is offset against the statutory payment of £22.38 for one day, she is paid £47.62 for the KIT day plus £156.66 SMP/SAP/ShPP. She has not been paid the National Minimum Wage for the 7 hours of work as pay for a KIT day cannot include the SMP/SAP/ShPP. [/box]

Example 2 – Pay for KIT/SPLIT days is offset against statutory pay

If an employee earns £100 for working a KIT day, which is offset against her SMP for that day, she will be paid £77.62 (£100 less £22.38 daily rate) for the KIT day, plus £156.66 SMP weekly payment. She has been paid at least the National Minimum Wage for a 7 hour KIT day (not including the SMP paid). If an employee works for three KIT/SPLIT days in the same week and earns £300 for the KIT/SPLIT days, which is offset against her SMP/SAP/ShPP (£156.66 divided by 7, multiplied by 3 = £67.14), she will earn £232.86 (£300 less £67.14), plus £156.66 SMP/SAP/ShPP. She has been paid at least the National Minimum Wage for a 7 hour KIT day (not including the SMP paid).

Example 3 – Pay for KIT/SPLIT days is not offset against SMP/SAP/ShPP

If the employer agrees not to offset any pay against the weekly payment of SMP/SAP/ShPP, an employee who earns £100 for working one KIT/ SPLIT day will receive £256.66 for that week (£100 plus £156.66) and has been paid at least the National Minimum Wage (not including any statutory pay).

Which regulations apply to pay for KIT/SPLIT days?

The Statutory Maternity Pay (General) Regulations 1986 states:

Regulation 9A. In a case where a woman does any work under a contract of service with her employer on any day but for not more than 10 days (whether consecutive or not), during her maternity pay period, statutory maternity pay shall continue to be payable to the employee by the employer.

The Social Security Contributions and Benefits Act 1992, s.166, states:

Section 166(4) Where for any purposes of this Part of this Act or of regulations it is necessary to calculate the daily rate of statutory maternity pay, the amount payable by way of statutory maternity pay for any day shall be taken as one seventh of the weekly rate.

The same provisions apply to shared parental pay in the Statutory Shared Parental Pay Regulations 2014, regulation 12 and 40.

What happens if I work for more than ten KIT or 20 SPLIT days?

If you work for more than 20 SPLIT days it will bring your ShPP to an end.

If your employer asks you to work more than ten KIT days during your maternity or adoption leave you should make sure that your employer will not be treating you as having returned to work and that you can still return on the date agreed or the end of your 52 week maternity/adoption leave period.

In order to avoid any dispute, if you are intending to work more than ten KIT, ask your employer to confirm any KIT days in writing, as well as the rate of pay, and that your maternity/adoption leave will continue after the KIT days.

Once you have worked for more than ten KIT days you will lose a week's SMP/SAP for any week in which you do some work, even if it's only for one day. If a week contains, for example, the last of the ten KIT days and another (eleventh) day of work during your maternity/adoption leave, you will lose that week's SMP/SAP. However, you are still entitled to any contractual pay that has been agreed for your KIT days.

If you have more than one job, your KIT days apply to each job separately. You would only lose SMP/SAP in the week in which you worked more than ten KIT days from the employer paying you SMP/SAP.

Example: working more than ten KIT days during maternity/adoption leave

An employee works two KIT days in one week but she has now worked eleven KIT days in total during her maternity/adoption leave. Her employer pays £100 for each KIT day. She will lose SMP/SAP for that week because she has worked more than ten KIT days. However, she will be paid £200 contractual pay for the two KIT days worked that week. If you have used up your ten KIT days and you are entitled to shared parental leave and pay, you could give notice to end your maternity leave and go onto shared parental leave so that you can take up to 20 SPLIT days.

You need to give at least 8 weeks' notice to take SPL and you should check your entitlement carefully.

I have two jobs but I only get SMP from my main job, what happens if I do some work for my other employer?

If you have more than one job, your KIT days apply to each job separately. If you are getting SMP from one job, you can work for up to ten KIT days for the employer who is paying you SMP without losing your SMP.

The rules on working during your SMP period if you have more than one job are complex

Maternity Allowance and KIT days for employed and self-employed women

Will I lose Maternity Allowance if I work for more than ten KIT days?

Maternity Allowance (MA) is paid by the Department for Work and Pensions (DWP) to women who do not qualify for Statutory Maternity Pay or who are self-employed. MA is paid for 39 weeks at the rate of 90% of your average earnings up to a maximum of £156.66 per week (April 2022 to April 2023).

If you are receiving Maternity Allowance from the DWP you may work for up to ten KIT days without losing Maternity Allowance. The ten KIT days will include any employed or self-employed work you do, including working for different employers.

If you work for more than ten days you can be disqualified from receiving Maternity Allowance for a reasonable period. This will be assessed by DWP in relation to the amount of work you are doing. Your Maternity Allowance should not be automatically stopped. The decision-maker should look at the circumstances of each case, see examples below.

Examples of disqualification by DWP after working more than ten KIT days

Example 1 An employee worked full-time before maternity leave and has completed ten KIT days during her Maternity Allowance period.

She wants to continue working one day a week for the next 8 weeks. She should only be disqualified from receiving MA for a day a week for those 8 weeks. The weekly rate of Maternity Allowance should be divided by 7 to find a daily rate (£156.66 divided by 7 = £22.38). Her Maternity Allowance should continue to be paid at the rate of £134.28 per week (£156.66 less £22.38 = £134.28).

Example 2 An employee worked two days a week before maternity leave and has completed ten KIT days during her Maternity Allowance period.

She wants to continue to work for two days a week over the next five weeks. She is likely to be disqualified from receiving Maternity Allowance for those five weeks as she has completed ten KIT days and returned to the same work pattern as before her maternity leave. Once she stops working, if she has any weeks of her Maternity Allowance period remaining, she can telephone DWP and ask for her Maternity Allowance to be paid again.

The full guidance on disqualification from Maternity Allowance for working more than ten KIT days can be found at section 62596 –62600 in the Department for Work and Pensions' decision-makers guide

here:https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/563140/dmgch62.pdf

If you are refused Maternity Allowance or you are disqualified unreasonably, you can ask for a Mandatory Reconsideration (a review) within 28 days of the decision, or as soon as possible. When asking for a mandatory reconsideration you should quote the guidance above and ask them to review the decision. If you do not agree with the mandatory reconsideration, you can appeal to a First-tier Tribunal. For more information, see: www.gov.uk/mandatory-reconsideration.

If you have been disqualified from receiving Maternity Allowance, your employer should still pay you any contractual pay agreed for working a KIT day.

What counts as 'work' if I am self-employed?

You should count any work that you normally do in the course of your job for the purposes of work during a KIT day. This includes work that you do from your own home. If you are doing small tasks like checking emails or updating your website, it is a good idea to arrange to do as much work as possible in one day rather than spreading it over several days. In that way you won't use up too many KIT days when you are only doing an hour or two of work.

It is also important to keep a record of the days that you worked. If you are unable to provide a record of days worked, DWP will make an estimate.

If you are self-employed, guidance from the DWP says that the following minimal maintenance and admin tasks that will enable you to keep your business going and return to work do *not* count towards the ten KIT days providing you do not receive direct payment for the work:

- Carrying out necessary administration.
- Accepting work which is due to start after your return to work and after your MA ends.
- Carrying out essential maintenance to your website or equipment.
- Responding to correspondence requesting information as long as it does not relate to work to be carried out before your return to work and before your MA ends.
- Keeping essential formal qualifications and licenses up-to-date.
- Keeping skills at an acceptable level. This should not include formal paid-for training.
- Preparing for work arranged before your MA period starts but to be carried out after your return to work and after your MA ends.

You are allowed to work for up to ten days during your Maternity Allowance period without losing Maternity Allowance. Once you have worked for more than ten days you will be disqualified from receiving Maternity Allowance but a decision-maker at DWP will decide what period of disqualification is reasonable depending on the number of days you have worked, see questions above.

Note: if you do not notify the DWP that you intend to return to work early or the DWP decides that you are disqualified from receiving the rest of your Maternity Allowance, you may end up with an overpayment.

If you receive payments during your Maternity Allowance, for example, for goods sold before you started your leave, it does not disqualify you from receiving Maternity Allowance. It is the number of days of work that count.

I returned to work early and stopped receiving Maternity Allowance but now need to take some more time off, can I go back onto Maternity Allowance?

Once your Maternity Allowance period has started, it continues to run in the background for up to 39 weeks even if you return to work (employed and self-employed) for a period and stop receiving it. You are entitled to claim Maternity Allowance for any full week in which you are absent from work during the Maternity Allowance period. For example, if you are off sick within the 39 week pay period you are entitled to claim Maternity Allowance and you should contact telephone Maternity Allowance claims on 0800 169 0283 and ask to go back onto Maternity Allowance.

An **employed** mother who is claiming Maternity Allowance is not entitled to Statutory Shared Parental Pay but can give notice to take shared parental leave. This would allow you to take leave more flexibly than in one block of maternity leave, for example, if you need to return to work for a period. This is a complicated area so it is a good idea to get specialist advice if you want to take SPL and claim Maternity Allowance in this way.

A **self-employed** mother cannot qualify for shared parental leave or Statutory Shared Parental Pay so you can only claim Maternity Allowance for up to 39 weeks. If you do some work and stop receiving

Maternity Allowance it continues to run in the background and you are entitled to receive it for any week in which you are absent from work. If you need to take more time off and you are still within your 39 week Maternity Allowance period you can telephone Maternity Allowance claims on 0800 169 0283 and ask to go back onto Maternity Allowance.

Protection from unfair treatment, dismissal and loss of pay

Where can I find Government guidance on KIT days to show my employer?

After Maternity Leave

Pregnant Pickle

People, Prejudice & Pregnancy

You can find guidance from ACAS on working during maternity and shared parental leave here: <https://www.acas.org.uk/managing-your-employees-maternity-leave-and-pay/planning-maternity-leave>.

You can find guidance on working during the maternity pay period here (bear in mind that this guidance only relates to the 39 week SMP or Maternity Allowance period):

www.gov.uk/government/publications/maternity-benefits-technical-guidance

Sections 3.12 (SMP) and 4.10 (Maternity Allowance)

What can I do if my employer is treating me unfairly for refusing to work during my maternity, adoption or shared parental leave?

Any days of work during maternity, adoption or shared parental leave must be agreed by both parties and neither you nor your employer can insist on working KIT/SPLIT days. They are optional and you should not be treated unfairly for being unable to work any KIT days or for refusing to work during your maternity, adoption or shared parental leave. Similarly, if it was agreed that you would do some work during your leave, for example, to complete a project, you must not be treated unfairly if you are unable to work any pre-arranged KIT/SPLIT days.

You are protected against unfair treatment and dismissal on the grounds of maternity, adoption and shared parental leave. If your employer does treat you unfairly you should talk to your employer informally to start with. You should get advice or talk to your union, if you have one. If you are dismissed or treated unfairly for working a KIT day or refusing to work a KIT day, you can bring a claim in an employment tribunal for detrimental treatment or unfair dismissal. You must contact ACAS, within the time limit, before starting a tribunal claim, see below.

What can I do if I have not been paid properly for working during my maternity, adoption or shared parental leave?

If your SMP/SAP/ShPP was not paid correctly or you were not paid the National Minimum Wage as a result of working a KIT day, you can contact HMRC Statutory Payments Disputes Team on 0300 322 9422 and ask for a formal decision. HMRC will order your employer to pay any SMP/SAP/ShPP owing. If your employer goes into liquidation or does not have enough money to pay your SMP/SAP/ShPP, HMRC will pay your statutory pay directly. If you do not agree with HMRC's decision, you can appeal to a First-tier Tribunal (Tax).

If you were not paid correctly (or at all) for KIT days or were not paid the National Minimum Wage you can make a claim for loss of wages in an employment tribunal. In order to make a claim in an employment tribunal you must contact ACAS within three months, less one day, on 0300 123 11 00. If ACAS are not able to resolve it through Early Conciliation, you can make a claim in a tribunal. For more information, see *Dealing with problems at work*.

Where to go for more help

Maternity Action

For information on maternity and parental rights at work and benefits, see: www.maternityaction.org.uk

Maternity Rights Advice Line:

Nationwide (except London) – 0808 802 0029

London (if you live or work in a London borough) – 0808 802 0057

For opening hours see: <https://maternityaction.org.uk/advice-line/>

ACAS

For advice on employment rights or for Early Conciliation if you are thinking of making a tribunal claim

After Maternity Leave

Pregnant Pickle

People, Prejudice & Pregnancy

www.acas.org.uk

Helpline: 0300 123 11 00 (offers telephone interpreting service)

Citizens Advice

For information about your rights see: www.citizensadvice.org.uk

You can telephone the national Citizens Advice phone service on 03444 111 444

You can get help with Universal Credit claims through the free national Help to Claim service:

England: [0800 144 8444](tel:08001448444), Wales: [0800 024 1220](tel:08000241220), Scotland: [0800 023 2581](tel:08000232581)

For more information on how to find your local Citizens Advice Bureau, see:

<https://www.citizensadvice.org.uk/about-us/contact-us/contact-us/contact-us/>

Civil Legal Advice

If you are eligible for legal aid you can get free legal advice on 0345 345 4 345 (offers translation service). To check your eligibility see www.gov.uk/civil-legal-advice

To search for specialist legal advisers or solicitors in your area see: <https://find-legal-advice.justice.gov.uk/>

Equality Advisory Support Service

Help and advice on discrimination and human rights www.equalityadvisoryservice.com

Helpline: 0808 800 0082 Mon – Fri 9am – 7pm, Sat 10am – 2pm

Textphone: 0808 800 0084

Equalities and Human Rights Commission (EHRC)

For information and advice about discrimination law www.equalityhumanrights.com

For information for employees and employers about pregnancy and maternity rights in the workplace see: www.equalityhumanrights.com/about-us/our-work/key-projects/managing-pregnancy-and-maternity-workplace

GOV.UK

The government's online information service www.gov.uk

Jobcentre Plus

To make new telephone benefit claims or request claim forms, including Maternity Allowance and Sure Start Maternity Grant: 0800 055 6688 Mon – Fri 8am – 6pm

For ESA/JSA/Income Support claims: 0800 169 0310 Mon – Fri 8am – 6pm

For Maternity Allowance claims: 0800 169 0283 Mon – Fri 8am – 6pm

For Sure Start Maternity Grant claims: 0800 169 0140 Mon – Fri 8am – 6pm/For Best Start Grant claims in Scotland: 0800 182 2222

Universal Credit helpline – for new claims and existing online claims: 0800 328 5644. Mon – Fri 8am – 6pm

For help with claiming Universal Credit see: www.gov.uk/universal-credit

HM Revenue & Customs (HMRC)

Tax Credit Helpline: 0345 300 3900 Mon – Fri 8am-8pm, Sat 8am-4pm, Sun 9am -5pm

Child Benefit: 0300 200 3100 Mon – Fri 8am-8pm, Sat 8am- 4pm

For queries about Statutory Maternity Pay, Adoption Pay, Paternity Pay and Shared Parental Pay:

Employees helpline 0300 200 3500

Employers helpline 0300 200 3200

HMRC Statutory Payments Disputes Team

If you cannot resolve a dispute about your SMP, you can ask HMRC for a formal decision on your entitlement. You can also ask HMRC to pay your SMP if your employer has refused to pay, has dismissed you to avoid paying SMP or has gone into liquidation. This includes disputes about Statutory Maternity Pay/Adoption Pay/Paternity Pay/Shared Parental Pay/Parental Bereavement Pay or Statutory Sick Pay

See: <https://www.gov.uk/guidance/statutory-pay-entitlement-how-to-deal-with-disagreements>

Telephone: 0300 322 9422

You can also write to the Statutory Payments Disputes Team at HM Revenue and Customs, PT Operations, Statutory Payments Dispute Team, BX9 1AN.

Insolvency Service Helpline

You can currently only contact the Insolvency Service online.

For what you can claim if your employer goes out of business, see: <https://www.gov.uk/your-rights-if-your-employer-is-insolvent>

Law Centres Network

To find out if there is a Law Centre in your area telephone 020 3637 1330 or

see: www.lawcentres.org.uk/

Turn2us

Online benefits calculator and grant search www.turn2us.org.uk

Shared parental leave and pay

This page contains information on:

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2. [The qualifying conditions for shared parental leave](#)
3. [The qualifying conditions for Statutory Shared Parental Pay](#)
4. [Occupational shared parental pay policies](#)
5. [Reducing maternity leave/pay to create shared parental leave/pay](#)
6. [Maternity Allowance and shared parental leave](#)
7. [How to give notice for shared parental leave/pay](#)
8. [Rights during Shared Parental Leave](#)
9. [Return to work after SPL](#)
10. [Benefits for families](#)
11. [Where to go for more help](#)

March 2022

Shared parental leave allows mothers to end maternity leave/pay early so that one or both parents can take leave in a more flexible way during the baby's first year. Parents can take time off at the same time or separately.

Who can take shared parental leave

Can I take shared parental leave (SPL)?

You can take SPL if you are the mother, father or the mother's spouse or partner, including civil partners and same sex partners.

SPL can only be taken by **employees**. If you are not an employee, for example, if you are an agency worker or you are on a zero hours contract, you cannot take shared parental **leave** but you may be entitled to Statutory Shared Parental Pay (ShPP) if you want to take some time off work more flexibly in the year after your baby's birth.

If the mother is self-employed and claiming Maternity Allowance, she is *not* entitled to take SPL or ShPP but her partner may be able to take SPL/ShPP if s/he is employed. If the father/partner is self-employed s/he will *not* be able to take SPL/ShPP.

Single parents will not be able to qualify for shared parental leave. If you have separated from your partner, you can take SPL/ShPP if you both meet the qualifying conditions and the mother has reduced her maternity leave/pay.

A parent can only take shared parental leave if you have responsibility for the care of the child at the birth and you are using the leave to care for the baby.

Do both parents need to take SPL?

No, the mother can stay on maternity leave/pay (or on Maternity Allowance), while the father/partner takes shared parental leave/pay. However, even if only one parent is going to take SPL e.g. the father/partner, **both parents will need to meet the qualifying tests** (see below).

If both parents meet the qualifying conditions and are entitled to take SPL/ShPP, they can both choose to take SPL/ShPP or they may decide that only one parent will take SPL/ShPP e.g. the mother may want to stay on maternity leave because she will benefit from a good workplace maternity policy while the father/partner takes SPL.

Note: in most cases the mother is better off staying on maternity leave but she will need to reduce her maternity leave/pay period to create shared parental leave for the father/partner to take.

Maternity leave can only be taken in one block so if the mother needs to take leave in-between periods of work she may want to end her maternity leave and take blocks of SPL instead.

What are the advantages and disadvantages of taking shared parental leave and pay?

Shared parental leave/pay does not provide any additional leave for parents. Shared parental leave/pay can only be created by the mother reducing her maternity leave/pay e.g. maternity leave/pay must be reduced by 3 months to create 3 months shared parental leave/pay. The option of taking shared parental leave and pay will not suit all families and it will depend on your circumstances.

These are some of the factors to consider:

- are both parents entitled to take SPL/ShPP or only one parent?
- do you want to take leave together or separately?
- does your or your partner's employer offer enhanced contractual maternity pay, paternity pay or shared parental pay? Have you checked the conditions?
- does the mother want to reduce her maternity leave/pay period?
- are there other options, such as taking annual leave, Parental Leave, working some keeping in touch days or asking for flexible work?

You should also note the following:

- Maternity leave can only be taken in one block but shared parental leave can be taken in blocks of leave (within a year from the birth).
- Once the mother has curtailed (reduced) her maternity leave/SMP or Maternity Allowance it can only be withdrawn in very limited circumstances so the mother cannot go back onto maternity leave/SMP/Maternity Allowance if things change.
- SMP is paid at the higher rate of 90% of the mother's average earnings for the first six weeks. After the first six weeks SMP is paid at the statutory rate. ShPP is only paid at the statutory rate so a mother will usually be better off on maternity leave for the first six weeks and possibly for longer if her employer offers enhanced contractual maternity pay.
- Mothers are protected from discrimination on the grounds of pregnancy and maternity leave. This protected period ends at the end of maternity leave and does not protect a mother during shared parental leave.
- Shared parental leave does not give parents any new rights to additional leave and pay – it simply allows mothers to transfer some of their untaken maternity leave/pay to the father/partner. If you or the father/partner need additional leave i.e. more than 52 weeks maternity leave or 39 weeks maternity pay, you may be able to take Parental Leave. Parental Leave is different from shared parental leave and is usually unpaid. You can take 18 weeks Parental Leave per parent, per child up to each child's 18th birthday.

The qualifying conditions for shared parental leave

Do I qualify for shared parental leave?

The parent who is going to take SPL must be an employee and must meet the continuity of employment test:

- you must have been continuously employed by the same employer for at least 26 weeks up to the end of the qualifying week (the 15th week before the expected week of childbirth), and
- you must still be employed by the same employer in the week before your shared parental leave is due to start. You must also have a partner who meets the **employment and earnings test**:
- Your partner must have been employed or self-employed for at least 26 weeks (not necessarily continuously) in the period of 66 weeks leading up to the expected week of childbirth and must have earned at least £30 a week on average in 13 of those weeks

How do I work out the 15th week before my baby is due?

Find the Sunday before your baby is due (or the due date if it is a Sunday) and count back 15 Sundays from there. That is the start of the 15th week before your expected week of childbirth. You should use the due date on the MAT B1 certificate which is provided by a midwife or GP when the mother is about 20 weeks' pregnant.

Examples of entitlement to shared parental leave and pay

Mother qualifies for maternity leave and Statutory Maternity Pay (SMP)/Father or partner qualifies for paternity leave and Statutory Paternity Pay (SPP)

Both parents will qualify for SPL and ShPP if they are still employed by the same employer up to the start of the week in which they wish to take SPL. The mother can stay on maternity leave/SMP if she wishes or she can curtail (reduce) her maternity leave/SMP to create SPL/ShPP for her or the father/partner to take.

Mother qualifies for maternity leave and Maternity Allowance/Father or partner qualifies for paternity leave and Statutory Paternity Pay

The mother will qualify for SPL but she will not be entitled to ShPP so she will need to stay on maternity leave/Maternity Allowance (see the section below on Maternity Allowance and shared parental leave). Her partner will qualify for SPL and ShPP if she curtails (reduces) her maternity leave and Maternity Allowance.

Mother is self-employed on Maternity Allowance/ Father or partner qualifies for paternity leave and Statutory Paternity Pay

The mother is not entitled to SPL or ShPP. Her partner qualifies for SPL and ShPP if the mother curtails (reduces) her Maternity Allowance period.

Agency worker who qualifies for Statutory Maternity Pay but not maternity leave/Father or partner qualifies for paternity leave and Statutory Paternity Pay

An agency worker, who is not an employee, qualifies for SMP or ShPP but does not qualify for maternity leave or shared parental leave. Her partner qualifies for SPL and/or ShPP if she curtails (reduces) her SMP period.

How much shared parental leave and pay can I take?

The rules on **leave** and **pay** are different so you need to work each one out separately. All pregnant employees are entitled to 52 weeks' maternity **leave** whereas maternity **pay** (Statutory Maternity Pay and Maternity Allowance) only lasts for 39 weeks. As the mother must take at least two weeks' (4 weeks for factory workers) compulsory maternity leave immediately after the birth, a mother can create a maximum of 50 weeks' shared parental leave (SPL) and up to 37 weeks' Statutory Shared Parental Pay (ShPP) for her and/or her partner to take.

Self-employed mothers are also required to take at least two weeks' Maternity Allowance immediately after the birth so the mother can create a maximum of 37 weeks' Statutory Shared Parental Pay for her employed partner to take. Mothers on Maternity Allowance cannot qualify for ShPP for themselves.

Example – employed mother reduces maternity leave and pay before returning to work

Whilst on maternity leave, Sonya gives binding notice to end her maternity leave and SMP after 26 weeks. She and/or her partner can take up to 26 weeks' SPL and up to 13 weeks ShPP. Sonya's partner can take some SPL while Sonya is still on maternity leave or both parents can take SPL/ShPP up to one year from the birth. Note: if Sonya takes less than the 26 weeks' maternity leave, she cannot create any more SPL i.e. if she returns before the 26 weeks she cannot use those weeks as SPL.

Example – employed mother returns to work early Sofie returns to work after 26 weeks' maternity leave and SMP. She and/or her partner can take up to 26 weeks' SPL and up to 13 weeks ShPP. They can take SPL and ShPP together or separately, up to one year from the birth.

Can my partner and I take paid shared parental leave together?

Yes, you can take paid and unpaid shared parental leave at the same time or at different times as the scheme is designed to give parents flexibility as to how they share out and take their leave in the first year from birth.

The Shared Parental Leave Regulations 2014, reg. 7, state that a parent is entitled to take SPL (paid or unpaid) at the same time as the other parent is receiving Statutory Maternity Pay, Maternity Allowance, Statutory Paternity Pay, Statutory Adoption Pay or Statutory Shared Parental Pay or is on maternity leave. The Statutory Shared Parental Pay Regulations 2014, reg.11 state that ShPP can be taken at any time up to a year from the birth. It makes no difference whether parents take the leave or pay at the same time or separately in that year.

It is up to you and your partner to decide how and when you wish to take your leave. You are entitled to the same leave and pay that you would normally qualify for, regardless of whether you take it separately or together. For example, if you and your partner want to spend the first six weeks at home together looking after your new baby, the mother can stay on maternity leave and her partner can take SPL/ShPP or you can both take SPL/ShPP together.

Fathers and partners can take shared parental leave immediately after paternity leave when both parents are off work together or when the mother has returned to work.

When can I take SPL?

SPL can be taken at any time from the end of the two week compulsory maternity leave period (four weeks for factory workers) up until 52 weeks from the birth.

Fathers and partners can take SPL at any time after the two week paternity leave period up to 52 weeks from the birth. A father or the mother's partner cannot take SPL before paternity leave as s/he will lose the right to paternity leave.

It is a good idea to speak to your employer early on about your plans to take SPL so that you can both consider what will work and how your leave will be accommodated, see How to give notice for shared parental leave/pay below.

Amelia is entitled to 52 weeks maternity leave and 39 weeks' SMP. Her partner is entitled to 2 weeks' paternity leave and pay. They want to be able to spend the first two months looking after their new baby and young toddler together. Amelia must give notice to reduce her maternity leave and SMP by 6 weeks to create 6 weeks' SPL and ShPP for her partner. He must give at least 8 weeks' notice to his employer to take SPL/ShPP immediately after his paternity leave period.

The qualifying conditions for Statutory Shared Parental Pay

Do I qualify for Statutory Shared Parental Pay (ShPP)?

You need to check whether you qualify for shared parental **leave** as well as Statutory Shared Parental **Pay** as the qualifying conditions for each are different.

Employees and workers, such as agency workers, casual workers and freelance staff who are paid through PAYE, with tax and National Insurance deducted at source, can qualify for ShPP if you meet the qualifying conditions below.

You will qualify for ShPP if you meet the **continuity of employment test** and your partner meets the **employment and earnings test**, see How do I qualify for shared parental leave, above, and:

- you have average earnings of at least £123 per week (April 2022 – April 2023) during the calculation period (8 weeks if you are paid weekly or 2 months if you are paid monthly before the end of the 15th week before your baby is due).

This is the same as the qualifying conditions for Statutory Maternity Pay (SMP) and Statutory Paternity Pay (SPP). This means that if you qualify for SMP or SPP, you will also qualify for ShPP as long as you are still employed by the same employer up to the start of the week in which you wish to take ShPP.

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Note: if the mother does not qualify for SMP, but is getting Maternity Allowance instead, she will not be entitled to ShPP but will meet the employment and earnings test to enable her employed partner to qualify for SPL/ShPP.

How much is ShPP?

ShPP is paid at the flat rate of £156.66 a week (April 2022 – April 2023) or 90% of your average earnings, whichever is lower.

ShPP is paid by your employer in the same way as other statutory payments such as SMP or SPP.

You do not have to repay ShPP if you do not return to work.

All employers can claim back 92% of ShPP (103% for small employers) from HM Revenue and Customs. If your employer is unable to pay, is insolvent or refuses to pay ShPP you should contact the Statutory Payment Disputes Team on 0300 322 9422, see Where to go for more help.

Note: the mother will usually be better off on Statutory Maternity Pay for the first six weeks as it is paid at 90% of her average earnings.

Occupational shared parental pay policies

If my employer provides enhanced contractual maternity pay, do they have to provide contractual shared parental pay?

In the case of *Ali v Capita Customer Ltd* the employer provided 14 weeks enhanced maternity pay but only paid ShPP to a parent on shared parental leave. In the case of *Hextall v Chief Constable of Leicestershire Police* the employer paid 18 weeks full pay to a woman on maternity leave but only ShPP to a parent on SPL. The Court of Appeal has decided that this is not direct sex discrimination or indirect sex discrimination because the law allows special treatment for a mother following pregnancy and childbirth for a minimum period of at least 14 weeks.

If your employer offers enhanced contractual shared parental pay it should be offered to men and women taking shared parental leave. In the employment tribunal case *Snell v Network Rail Infrastructure Ltd* (Case no. S/4100178/2016), Network Rail's enhanced shared parental pay policy provided for full pay for six months for a mother taking SPL but only SPP for the father or mother's partner if they took SPL. As their policy disadvantaged more men than women wanting to take shared parental leave it was found to be indirect sex discrimination.

Employers must offer the same terms to mothers and fathers under a shared parental leave or family leave policy.

My employer provides enhanced shared parental pay but deducts any weeks of maternity leave/pay taken by my partner. Can they do that?

Employers can decide on the terms of their contractual pay policies, however, they need to ensure that they do not discriminate. Some employers provide a freestanding right to enhanced shared parental pay e.g. 3 months fully paid leave, others provide what appears to be a more generous contractual provision but deduct any weeks of paid maternity leave taken by the mother or operate a sliding scale whereby any enhanced shared parental pay starts from the date the mother starts her paid maternity leave. These types of policies reduce the amount of paid shared parental leave available to the father/partner and/or reduce the amount of maternity leave taken by the mother. If a policy disadvantages one sex more than the other an employer needs to decide if it can be justified. If you are disadvantaged by your employer's policies because of your sex, you should talk to your employer about the impact of their policy and ask for their reasons for continuing with such a policy. You can get further advice from Maternity Action, see Where to go for more help below.

If my employer provides enhanced contractual shared parental pay do I have to repay it if I don't return to work?

Your employer can ask you to repay any enhanced shared parental pay (not the ShPP element of £156.66 per week) if you do not return to work for a specified period after the end of your leave e.g.

three months. Any repayment conditions must be agreed before the start of the leave and you should check your contract or employer's policy for details of any repayment conditions. You are usually regarded as 'back at work' once your shared parental leave period has ended, even if you are on sick leave, annual leave or unpaid leave or if you reduce or change your hours of work but you should check your employer's policy.

If you have to repay any contractual shared parental pay you can ask to repay it in reasonable instalments depending on your income and outgoings. If necessary you should seek free debt advice: www.moneyadviceservice.org.uk/en/tools/debt-advice-locator.

Am I still entitled to enhanced maternity pay or enhanced shared parental pay if my partner is taking paid leave at the same time as me?

The shared parental leave and pay regulations state that parents are entitled to take shared parental leave and ShPP at the same time as the other parent is taking SPL/ShPP, maternity leave or maternity pay and they can take it whenever they choose up to a year from the birth. However, it is up to employers to decide whether or not to offer enhanced contractual pay (on top of the ShPP element of £156.66 per week) and the conditions that apply to any enhanced pay.

Reducing maternity leave/pay to create shared parental leave/pay

How do I create SPL/ShPP?

There are no separate or additional rights to shared parental leave or pay. If you or your partner want to take SPL/ShPP, you must reduce your maternity leave and/or pay in order to create the shared parental leave/pay. For example, maternity leave/pay is reduced by 3 months to create 3 months' shared parental leave/pay. This means the mother will be going back to work earlier.

If you are an agency worker or on a zero hours contract, you are not entitled to maternity leave or SPL but if you are getting SMP or Maternity Allowance you can end your SMP/Maternity Allowance early in order to create shared parental leave/pay for your partner.

How do I curtail (reduce) my maternity leave?

Curtailing (reducing) your leave – You must give at least 8 weeks' notice to end your maternity leave at a future date, specified in your notice, to enable you and/or your partner to take SPL. This is called a 'Curtailed Notice'. The amount of SPL available is calculated **from the date in the Curtailed Notice** e.g. mother will return to work at the end of week 26, mother or partner will have 13 weeks SPL to take. If the mother returns to work earlier than the date given in the Curtailed Notice, you will not create any more SPL.

Returning to work early – Maternity leave will come to an end if you return to work and you cannot go back onto maternity leave. If you want to take more leave you can take SPL. The amount of SPL and ShPP available to you and/or your partner is calculated **from the date of return to work** i.e. the date your maternity leave ended.

Do I have to end my maternity pay in order to create ShPP?

Yes, if you return to work early, although you will stop receiving your maternity pay, your entitlement to SMP or Maternity Allowance continues to run in the background for 39 weeks from when it started (the maternity pay period).

If you are off sick during the maternity pay period, you will go back on to SMP/Maternity Allowance if you are absent from work. If you normally receive full sick pay from your employer, your employer must top up the SMP/Maternity Allowance to your full pay.

Any SMP or MA you received after you returned to work as a result of sickness during the maternity pay period will not reduce the number of weeks of SPL and/or ShPP available to you and your partner, as the number of weeks of SMP or MA taken for the purpose of ShPP is determined **from the date of your return to work**.

Example – returning to work early during SMP period

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Emily returns to work after 26 weeks' maternity leave and SMP. She has 26 weeks' leave SPL and 13 weeks ShPP available to her and/or her partner. After two weeks back at work she is off sick for a week so her employer pays her SMP for that week as she is still within her 39 week SMP period. This does not reduce her SPL and ShPP entitlement as any weeks of SMP paid to Emily following her return to work are disregarded.

How do I curtail (reduce) SMP?

a) Curtailing (reducing) your leave

You must give at least 8 weeks' notice to end your SMP at a future date, specified in your notice, to enable you and/or your partner to take ShPP. This is called a 'Curtailment Notice'. The amount of ShPP available is calculated **from the date in the Curtailment Notice** e.g. mother will return to work at the end of week 26, mother or partner will have 13 weeks ShPP to take. If the mother returns to work earlier than the date given in the Curtailment Notice, you cannot create any more ShPP.

b) Returning to work early

If you have already returned to work your SMP continues to run in the background so you must give at least 8 weeks' notice to end your SMP. **You must give notice by the end of the 30th week of your SMP period at the latest.** Your SMP will end at the end of the pay week in which you give your notice and you can no longer claim it if you are off work. The amount of ShPP available to you or your partner is calculated **from the date of your return to work.**

Note: if your SMP started on a Friday, your pay week will end on a Thursday.

Example – returning to work before giving notice to take SPL/ShPP

Amy returns to work after taking 20 weeks SMP. She will need to end her entitlement to SMP in order to create any entitlement to ShPP for her and her partner. If she gives notice before the end of the 30th week, she or her partner can take up to 19 weeks ShPP at any time before their child's first birthday.

Can I withdraw a notice to reduce my maternity leave or pay?

Once you have given a Curtailment Notice to reduce your maternity leave/pay **it is binding** and you can only change your mind in very limited circumstances. If your employment or relationship is uncertain or your partner may not be able to take shared parental leave once it's booked, it may be better to wait before giving notice to reduce your maternity leave/pay.

Once you have given a Curtailment Notice you can only change your mind if:

- You have not yet returned to work and it is discovered in the eight weeks since you gave notice that neither you nor your partner are entitled to SPL, or
- one parent dies, or
- you gave notice before the birth and withdraw it within six weeks of the birth

You must inform your employer in writing if you wish to withdraw notice to take SPL. You will remain on maternity leave and you are still entitled to take up to 52 weeks' maternity leave even if your partner had taken some shared parental leave before you gave a withdrawal notice.

If you give notice to reduce your SMP or Maternity Allowance period, you can only withdraw your notice if:

- your partner dies or
- you gave notice before the birth and you withdraw your notice within six weeks of the birth

Maternity Allowance and shared parental leave

How do I curtail (reduce) my Maternity Allowance?

A mother on Maternity Allowance will need to reduce her MA period in order to create SPL/ShPP for her partner to take.

a) Curtailing (reducing) your leave

You must give at least 8 weeks' notice to the JobCentre Plus to end your MA at a future date, specified in your notice, to enable your partner to take ShPP. This is called a 'Curtailment Notice'. The amount of ShPP available is calculated **from the date in the Curtailment Notice** e.g. mother will return to work at the end of week 26, partner will have 13 weeks ShPP to take. If the mother returns to work earlier than the date given in the Curtailment Notice, you cannot create any more ShPP. Note: if you are not able to give 8 weeks' notice to reduce your MA period, you can ask the JobCentre Plus to consider a shorter notice period if you have a good reason.

b) Returning to work early

If you have already returned to work, your MA continues to run in the background so you must give at least 8 weeks' notice to the JobCentre Plus to end your MA period, if your partner wants to take some SPL/ShPP. **You must give notice by the end of the 30th week of your MA period at the latest.** Your MA will end at the end of the pay week in which you give your notice and you can no longer claim it if you are off work. The amount of ShPP available to your partner is calculated **from the date of your return to work.**

Note: if your MA started on a Wednesday, your pay week will end on a Tuesday. You cannot withdraw your notice to curtail your MA period, except in very limited circumstances, see above.

I am employed and entitled to Maternity Allowance. Can I take shared parental leave so that I can take my leave more flexibly?

An employed mother on Maternity Allowance can curtail her maternity leave/MA period in order to create shared parental leave/pay for her partner. For example, if you curtail your maternity leave and Maternity Allowance by four weeks, your partner can take four weeks' SPL and ShPP if s/he qualifies. Your Maternity Allowance period will end after 35 weeks ($39 - 4 = 35$ weeks). If you intend to take your full 39 week Maternity Allowance period, your partner will not be entitled to any Statutory Shared Parental Pay but if you curtail your maternity leave, your partner can take up to 13 weeks unpaid shared parental leave ($52 - 39 = 13$).

You need to make sure that you claim your Maternity Allowance on time as your MA period will start from the date that you start your maternity leave or from the birth, at the latest, if you work up to the birth. You must claim MA within three months from the start of the MA period, otherwise you will lose some or all of your pay.

If you decide to return to work early your Maternity Allowance pay period continues to run in the background. If you are off sick within the 39 week pay period you are entitled to claim Maternity Allowance and you should contact Jobcentre Plus. If you are refused Maternity Allowance during a period of sick leave you should seek advice. You are also entitled to work for up to ten 'keeping in touch' days without bringing your maternity leave to an end or losing your Maternity Allowance. For more information on working during your maternity leave see: [Keeping in touch during leave](#). If you need to take your leave more flexibly than in one block of maternity leave and you are employed you can curtail your maternity leave in order to create shared parental leave. Providing you are still within your 39 week MA period, you can contact JobCentre Plus and ask to be paid MA if you take shared parental leave to care for your baby.

A mother on MA cannot qualify for ShPP, but if you are employed you can curtail your maternity leave to create shared parental leave but it is very important that you do not curtail your Maternity Allowance if you want to be able to claim it during a period of shared parental leave. You should only curtail your Maternity Allowance if your partner is going to take SPL/ShPP.

You should bear in mind that Government guidance on shared parental leave has conflicting information on this:

'Employed mothers who qualify for MA cannot take SPL or ShPP themselves but can 'create' SPL and/or ShPP for an employed father or partner to take....' page 10.

However, page 26 of the Parents Guide says: '...if the mother is entitled to MA, this will be payable through Jobcentre Plus if she is absent from work for whatever reason whilst the 39 week MA period continues to run.' www.gov.uk/guidance/shared-parental-leave-and-pay-guidance-and-tools-for-parents#parents-guide

You can get further advice from **Maternity Action**, see Where to go for more help below.

I am self-employed and need to do some work during my MA period to keep my business going.

Will my MA end once I go back to work?

No, once your 39 week MA period has started, it continues to run in the background even if you return to work. You are entitled to claim MA for any full week in which you are absent from work during the MA period. You are entitled to work for up to ten 'keeping in touch' days without losing your Maternity Allowance. After ten 'KIT' days have been used you can be disqualified from receiving Maternity Allowance for a reasonable period in relation to the number of days you work. For example, if you go back to work one day a week, you should only lose 1/7th of your MA for those weeks. If you go back to work for 4 weeks, you are entitled to MA for the first 2 weeks (10 days) and you may be disqualified from receiving MA for the last 2 weeks.

Note: if you have curtailed (reduced) your Maternity Allowance period to enable your partner to take some shared parental leave this will reduce the MA period. For example, if your partner is going to take 8 weeks' shared parental leave, you must curtail your Maternity Allowance by eight weeks. Your Maternity Allowance period will end on week 31. You can now only receive Maternity Allowance if you are absent from work during the 31 week period (39 – 8 = 31 weeks).

What can I do if I have been refused MA or disqualified from receiving it?

If you are unhappy about a Maternity Allowance decision, you can ask for a Mandatory Reconsideration within 28 days of receiving a decision from the Jobcentre Plus, or as soon as possible. If your MA is still refused you can appeal within 28 days of receiving the Mandatory Reconsideration decision and you should seek advice. You can get further advice from Maternity Action, see Where to go for more help below.

For more information on appealing, see: www.gov.uk/mandatory-reconsideration.

I am self-employed and entitled to claim Maternity Allowance. Can my partner take shared parental leave?

If your partner is self-employed, s/he cannot take shared parental leave/ShPP.

If your partner is employed, and meets the qualifying conditions, you can curtail (reduce) your Maternity Allowance period in order to create shared parental leave/pay for your partner. Entitlement to leave and pay are different and you need to work each one out separately. A mother who is self-employed is entitled to Maternity Allowance but not maternity leave. However, if your partner is an employee, your partner is entitled to 52 weeks' shared parental leave, less any weeks of Maternity Allowance taken, and 39 weeks' Statutory Shared Parental Pay, less any weeks of Maternity Allowance taken. The mother must take at least two weeks' Maternity Allowance immediately after the birth.

Example: if you take 20 weeks' MA, your partner is entitled to take a maximum of 32 weeks shared parental leave (52-20 = 32) and 19 weeks ShPP (39-20 = 19). If you take your full 39 week Maternity Allowance period, your partner will not be eligible for any ShPP.

You need to make sure that you claim your Maternity Allowance on time as your MA period will start from the date that you stop work or from the birth, **at the latest**. You must claim MA within three months from the start of the MA period, otherwise you will lose some or all of it. The time limit is strict and JobCentre Plus do not allow late claims under any circumstances.

I am self-employed and my partner is employed. His employer provides well paid shared parental leave. Do I have to give up some of my Maternity Allowance?

Yes, unfortunately your partner can only take shared parental leave and pay if you reduce your MA. Shared parental leave did not create any new rights for parents but gave mothers the choice to transfer any unused maternity leave and pay to their partner. You and your partner cannot have more than 39 weeks of pay between you, made up of Maternity Allowance and Statutory Shared Parental Pay. Any other shared parental leave would be unpaid leave unless the employer provides enhanced shared parental pay that is not dependent on him receiving Statutory Shared Parental Pay. Example, Father/mother's partner is entitled to 6 months' fully paid shared parental leave from his employer. The mother will need to curtail/reduce her MA by 26 weeks. She will be entitled to MA for 13 weeks. Her partner will be entitled to 9 months shared parental leave (52 weeks less 13 weeks = 39 weeks) and 6 months' Statutory Shared Parental Pay (39 weeks less 13 weeks = 26 weeks). Your partner should check his entitlement to shared parental pay under his employer's policy very carefully, as some policies have further restrictions on the pay available to the employee. You can get further advice from **Maternity Action**, see below.

In order to avoid an overpayment of MA, you must give at least 8 weeks' notice to curtail your MA.

[How to give notice for shared parental leave/pay](#)

How do I give notice to take SPL and ShPP?

You must check your entitlement to SPL and/or ShPP carefully and give the correct notice to your employer. Each parent must give notice to their employer. It is a good idea to talk to your employer in advance to discuss the pattern of SPL you are hoping to take.

You must give a **'notice of entitlement and intention to take shared parental leave'** at least eight weeks before the first period of shared parental leave. You must also give a **'booking notice'** at least eight weeks before each period of shared parental leave that you wish to take.

You can give a separate notice for ShPP but in most cases you should give notice for leave and pay at the same time.

The **'notice of entitlement and intention to take SPL'** should include:

- the number of weeks that the mother took maternity leave (or will have taken, where notice has been given to curtail maternity leave at a future date);
- how many weeks of shared parental leave and pay is available to the parents (52 weeks minus any maternity leave taken/to be taken);
- how much leave each intends to take;
- a declaration from the other parent stating that s/he meets the employment and earnings test and is entitled to maternity leave, SMP or Maternity Allowance. This declaration will also state that s/he consents to the employee taking shared parental leave and/or pay and to the employer processing information provided by them;
- the expected week of birth of the baby (or the actual date of birth if the child has already been born); and
- a non-binding indication of how the employee will take the shared parental leave that is available to him or her. You can change the indication of how much SPL each parent intends to take and when you intend to take it, by writing to your employer. Both parents must give

their written consent to the variation. These variation notices are non-binding and there is no limit to the number of variation notices that can be given.

Notice for ShPP must be given at least 8 weeks before the first period of leave and must include:

- how much ShPP the parents are entitled to (39 weeks minus any SMP taken/to be taken)
- how much ShPP the parent intends to take,
- when you wish to take ShPP,
- a declaration from the other parent stating that s/he consents to the parent taking ShPP

Sample forms for giving notice are available from ACAS, see: <https://www.acas.org.uk/shared-parental-leave-forms>.

There are also model notices and declarations in the Parent's Guide to SPL: www.gov.uk/guidance/shared-parental-leave-and-pay-guidance-and-tools-for-parents#parents-guide.

Can my employer contact my partner's employer?

Employers are not required to check or confirm the information given by your partner or speak to your partner's employer but they may check the information in your partner's declaration if they wish to. For example, if the father is taking shared parental leave and pay, his employer can ask the mother's employer if the information in her declaration is correct i.e. that the mother is entitled to SMP, MA or maternity leave and that the mother has curtailed her SMP, MA or maternity leave or has returned to work.

If your employer asks you for the name and address of your partner's employer, you must provide it within 14 days. Your employer may also ask for a copy of your child's birth certificate (or a declaration stating the date and place of birth if no birth certificate is available).

Your employer is entitled to check that the information in your notice is correct when contacting your partner's employer but your employer should not ask your partner's employer for any other information about your partner's employment. Also, your employer should not pass on any information about your employment, pay or leave arrangements without your consent e.g. how much you will be paid. This information is only relevant to your own employer with whom you are booking your leave.

Employers should bear in mind that one parent may have left their job or the parents may have separated without this affecting their entitlement to shared parental leave.

How do I give notice to book SPL?

You must give at least eight weeks' notice to book leave. You can give your employer a maximum of three separate notices to book or vary a period of SPL, although your employer can agree to more booking notices if they wish to.

You can specify a date for the start of your SPL or you could book your leave to start 'two weeks after the birth', for instance, for fathers who wish to take some SPL immediately after paternity leave.

Remember: the mother must also give at least eight weeks' notice to curtail (reduce) her maternity leave and/or pay in order for her or her partner to take SPL/ShPP. If she cannot get SMP, she must claim Maternity Allowance and then reduce it to create SPL/ShPP for her partner.

Can I book separate periods of SPL or do I have to take it all in one block?

If you give notice to book a single block of leave, your employer cannot refuse your request and you are entitled to take the leave on the dates requested.

Remember: you can give up to three notices to book or vary your leave.

However, if you book a period of discontinuous leave in one booking notice, e.g. two weeks' SPL at Easter, one weeks' SPL for May half term and six weeks' SPL over the summer holiday, your employer can refuse your request.

There is a two week discussion period, starting on the date that you give the booking notice, to talk to your employer about the pattern of leave that you have requested. In the example above you are entitled to take the nine weeks' SPL in one block but you are only entitled to take it in the discontinuous pattern requested if your employer agrees to it.

Your employer can ask for changes to a discontinuous pattern of SPL where it would be difficult to accommodate.

If your employer refuses the discontinuous pattern of SPL you have requested and you are not able to agree any other pattern with your employer, the weeks of leave in your booking notice may be taken in a single continuous block starting on any date you choose (as long as it is at least 8 weeks away). You must tell your employer the date you will start SPL within five days after the end of the two week discussion period. If you do not specify a date, your SPL will begin on the start date of the first period of discontinuous leave that you originally applied for.

You can withdraw a booking notice in the 2 weeks after the booking notice is given (on or before the 15th day), unless agreement has been reached. For example, if one parent's employer has not agreed a pattern of discontinuous leave, both parents may wish to withdraw it.

Can I change the dates of my SPL/ShPP?

Yes, you can change or cancel your proposed shared parental leave dates after submitting a 'notice of entitlement and intention to take shared parental leave', which gives an indication of the leave pattern that you intend to take but is non-binding until you provide a booking notice in relation to the particular period of leave. There is no limit on the number of variations of notice of entitlement and intention that you can make.

Once you have submitted a 'booking' notice to book your SPL, you can change or cancel your shared parental leave dates by giving your employer at least 8 weeks' written notice. You can submit a maximum of three separate booking notices and a variation notice counts towards this total. Your employer can agree to more than three notices.

Note: the mother can only cancel her notice to curtail/reduce her maternity leave or pay in very limited circumstances so she cannot go back onto maternity leave/pay if you cancel SPL/ShPP.

If you have given your employer a booking notice requesting discontinuous leave and your employer has refused the request or no agreement has been reached within the two-week discussion period as to when the leave will be taken, you may withdraw the period of leave notice. A notice for discontinuous leave that has been withdrawn before it is agreed does not count towards the maximum of three requests for leave that you can make.

What happens if my partner's employer refuses our leave pattern?

If you need to change your SPL dates because your partner's employer has refused your partner's request for discontinuous periods of SPL, you can either withdraw the notice and give your employer a new request, or, if your employer has already agreed to your request for SPL, give your employer a variation notice. You can give a maximum of three leave or variation notices but you can ask your employer to agree to more than three.

What happens to SPL if my baby is born early?

If your baby is born before the beginning of the expected week of childbirth and you have already given 'notice of entitlement and intention to take SPL' and notice to book SPL or ShPP for the eight weeks following the expected week of the birth, you can take the leave and pay that has been booked after the actual birth if you wish. You must give a notice to vary the SPL as soon as practicable following the birth. This will not count towards your three notices to book/vary leave.

Example

Gail's partner was planning to take two weeks of paternity leave after the birth and had booked four weeks of SPL to be taken immediately after the paternity leave. Their baby is born five weeks early but Gail's partner can still take the same amount of SPL two weeks after the actual date of the birth, if he notifies his employer of the change as soon as reasonably practicable after their child's birth. If your baby is born eight or more weeks before the expected week of childbirth and you gave 'notice of entitlement and intention to take SPL' but you have not yet booked a period of SPL, you can book a period of leave to start within eight weeks of the actual birth if you give the notice as soon as reasonably practicable after the child's actual birth.

If you have not given a 'notice of entitlement and intention to take SPL', and your baby is born eight or more weeks before the expected week of childbirth, you do not need to give eight weeks' notice but you must give notice as soon as reasonably practicable after the birth. You should be treated as having given eight weeks' notice if your period of leave is to start within eight weeks.

If you booked SPL or ShPP to start after eight weeks after the birth, you must give a variation notice to make any changes to leave starting eight weeks after the birth, even if the baby is born prematurely.

Rights during Shared Parental Leave

Do I continue to accrue annual leave during shared parental leave?

Yes, you are entitled to accrue statutory annual leave during periods of SPL as if you are still at work. All workers are entitled to 5.6 weeks' statutory annual leave (pro-rata if you work part-time). For example, if you work 5 days a week, multiply 5 x 5.6: you are entitled to 28 days annual leave. If you work 3 days a week, multiply 3 x 5.6: you are entitled to 16.8 days annual leave. Leave should be rounded up to the nearest half day, not rounded down.

You are also entitled to your contractual benefits (apart from your normal salary) during SPL. This means that you continue to accrue any contractual annual leave that your employer offers in addition to your statutory annual leave entitlement and any other benefits you are entitled to under your contract of employment. For example, if your employer offers 30 days paid annual leave a year, you are entitled to continue to accrue that as if you were at work.

If you are unable to take all your annual leave in the leave year because of absence on shared parental leave or other types of parental leave, your employer should allow you to carry the leave forward to the next leave year. See www.gov.uk/holiday-entitlement-rights/calculate-leave-entitlement.

If you are not allowed to carry forward your annual leave you should seek legal advice. See below for where to go for more help.

Am I entitled to take a Bank Holiday that falls during SPL at another time?

If your employer provides the minimum statutory entitlement of 5.6 weeks including Bank Holidays, you should be granted a day off at another time if a Bank Holiday falls during a period of SPL.

If your employer gives you paid time off on Bank Holidays, in addition to the statutory minimum of 5.6 weeks, then it is up to your employer whether you are entitled to take a Bank Holiday at another time.

Can I do any work during SPL?

Yes, you can work for your employer for up to 20 shared-parental-leave-in-touch (SPLIT) days during your SPL. If both parents are taking SPL, you can work up to 20 SPLIT days each during your SPL regardless of how much SPL you are taking. If only one parent is taking SPL, that parent can work up to 20 SPLIT days during their SPL.

You can work up to 20 days continuously or on odd days, without bringing your SPL or ShPP to an end. Once you have worked 20 SPLIT days it will bring your entitlement to SPL/ShPP to an end.

SPL and ShPP must be taken in blocks of one week, however, you can use SPLIT days to work part-time if you and your employer agree. You can use up to 20 SPLIT days to return to work for part of a week without bringing your SPL to an end.

Neither you nor your employer can insist on working SPLIT days.

You could use SPLIT days to try out a new working pattern before making a formal flexible working request or to return to work in a gradual way.

Note: you must agree in advance with your employer the rate of pay for any SPLIT days and whether it will be paid in addition to any ShPP or whether the ShPP will be offset against your pay.

Remember: your employer can reclaim 92% (103% for small employers) of ShPP from HM Revenue & Customs.

Can I take SPL from my main employer if I have a second job and need to continue to do some work during my leave?

If you do some self-employed work as a second job, you can continue to run your business while taking SPL from your employer but you need to bear in mind that you can only take SPL for the purpose of caring for a child so you would need to show that you are still caring for your child during your leave. You can receive ShPP whilst doing self-employed work or work for which you are not liable to pay Class 1 national insurance contributions.

If you are employed (not self-employed) in your second job, see Rights for parents with more than one job for more information on working for another employer during SPL.

I have been told that there may be redundancies. Can I be made redundant during SPL?

You should be consulted about any proposed redundancies if you are on shared parental leave and your employer must follow a fair procedure.

Special protection is provided during maternity leave and shared parental leave because you may have given birth recently or may have been absent from the workplace for some time. This means that if you are made redundant during shared parental leave, you are entitled to be offered a suitable alternative vacancy, where one is available, before other employees. You should not have to attend interviews or selection procedures for the vacant post. The new contract must be offered before the end of the original contract and it must take effect immediately even if you are still on leave. The new contract must be suitable and appropriate for you and must be on similar terms and conditions to your old job.

If you unreasonably refuse the offer of a suitable alternative vacancy you may lose the right to a redundancy payment.

If you are made redundant during shared parental leave you are entitled to be paid for any annual leave that has accrued up to the end of your employment contract.

If you are receiving ShPP you should continue to be paid it for the period booked, even if you are made redundant as your employer is entitled to reclaim any ShPP from HM Revenue & Customs.

Any enhanced contractual shared parental pay will end when your contract ends.

For more information on redundancy, see Redundancy during pregnancy, maternity and parental leave.

Can the father/partner still have SPL/ShPP if the mother's job ends?

If the mother's job ends e.g. she is made redundant, she resigns or a fixed term contract comes to an end, she remains entitled to receive up to a maximum of 39 weeks' SMP (even if she had already returned to work) and the employer should continue to pay any SMP owing.

If the father/partner is taking SPL/ShPP, the mother will need to curtail her maternity leave/SMP in order to create SPL/ShPP for her partner. Once she has given notice to curtail her maternity leave/SMP her partner is entitled to take SPL/ShPP and that remains the case even if the mother's job ends (for whatever reason). Her partner can still take the SPL whenever s/he chooses.

Example, Emily curtails her maternity leave/SMP by 4 weeks and her partner gives notice to take 4 weeks' SPL/ShPP when Emily returns to work. Emily is offered a new job and resigns. Her partner is

still entitled to take the 4 weeks' SPL/ShPP as Emily had curtailed her maternity leave/SMP by 4 weeks. Emily's SMP will now end after 35 weeks ($39 - 4 = 35$ weeks) or earlier if she starts a new job before week 35.

Remember: a couple have 50 weeks SPL and 37 weeks ShPP to share between them in the year after the birth. The amount of SPL/ShPP depends on how many weeks of maternity leave and pay the mother uses. Providing the mother curtails her maternity leave and pay to create SPL/ShPP for her partner, it makes no difference whether the mother then returns to work, changes jobs or her job ends.

Can I still take SPL/ShPP if I am going to be made redundant?

The parent who is taking SPL/ShPP must be employed up to the start of the week in which the SPL/ShPP starts. If your job ends or you are made redundant during a period of SPL/ShPP, you remain entitled to ShPP up to the end of the period of leave booked (unless you start a new job). If you are going to be made redundant and you want to receive ShPP, you should book the rest of the ShPP period before your employment ends.

Your employer should continue to pay ShPP as if you were still at work. If your employer is unable to pay, is insolvent or refuses to pay you should contact the Statutory Payment Disputes Team on 0300 322 9422, see *Where to go* for more help.

Can I claim sick pay if I am unwell during SPL?

If you call in sick during shared parental leave and you meet the qualifying conditions for Statutory Sick Pay, your employer must pay you Statutory Sick Pay instead of ShPP. If you have been receiving SMP, SPP or ShPP it will count as earnings for calculating your entitlement to Statutory Sick Pay. However, you should note that Statutory Sick Pay is paid at the rate of £99.35 per week (April 2022-April 2022).

If your employer pays contractual sick pay i.e. full pay when you are off sick, you must end your SPL and return to work in order to qualify for contractual sick pay.

If my maternity leave and pay are triggered early because of pregnancy-related sickness, will it affect my partner's SPL/ShPP?

Your employer can start your maternity leave pay in the four weeks before your expected week of childbirth if you are off sick for a pregnancy-related reason. This means that your maternity leave and pay will start earlier than you had intended and will end earlier than it would otherwise have done. Your partner can still take their SPL/ShPP as planned or s/he can give notice to change the dates of their leave.

Example

Melissa curtailed her maternity leave/SMP by 8 weeks so that her partner could take 8 weeks SPL/ShPP when she returns to work. Melissa intended to work up to the birth and then take 31 weeks of maternity leave and SMP ($39 - 8 = 31$ weeks). She was off sick with a pregnancy-related condition 4 weeks before her due date. Her employer triggered her maternity leave and pay on the following day. This meant that her 31 weeks of maternity leave and pay started 4 weeks early and would end 4 weeks early. If her partner wants to take his 8 weeks SPL/ShPP when she returns to work he will need to give his employer at least 8 weeks' notice to start his SPL/ShPP 4 weeks earlier than previously planned.

Can I be dismissed for taking SPL?

You are protected against detrimental treatment or unfair dismissal for asking to take or taking SPL. A woman is protected against discrimination on the grounds of pregnancy and maternity leave up until the end of her maternity leave period. This is called the 'protected period'. In a pregnancy or maternity discrimination case you do not have to compare your treatment to that of a man to show discrimination.

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For more information see [Pregnancy Discrimination](#) and [Rights during maternity leave and return to work](#).

Outside the protected period, men and women have protection against sex discrimination if they are treated less favourably at work. If a woman is treated less favourably as a result of taking shared parental leave she would have to compare her treatment to that of a man (and vice versa for a man) in order to show sex discrimination.

If you are treated unfairly at work because of shared parental leave you should seek advice.

Return to work after SPL

Am I entitled to return to the same job after SPL?

You are entitled to return to exactly the same job on the same terms and conditions as you were doing immediately before the start of that period of leave, if you return to work after taking ordinary maternity leave, paternity leave, Parental Leave of four weeks or less, and after SPL where your total leave adds up to 26 weeks or less on aggregate (you have to include any periods of SPL, maternity or paternity leave taken in respect of this baby). You only need to add leave you have taken, not periods of leave taken by your partner.

You are also entitled to return to exactly the same job on the same terms and conditions as you were doing immediately before the start of that period of leave if you return to work after taking additional maternity leave, Parental Leave of more than four weeks, and after SPL where your total leave adds up to more than 26 weeks on aggregate (including any periods of SPL, maternity or paternity leave taken in respect of this baby). However, if it is not reasonably practicable for you to return to the same job you must be offered a suitable alternative job on similar terms and conditions.

Your employer must have a good reason why you cannot return to your old job, for example, changes in the workplace that have happened while you were away. If your employer took on cover while you were on leave, your employer must allow you to return to your old job.

You should take care if you are given a different temporary role to cover between periods of leave, for example, if you are asked to cover a different role between maternity leave and shared parental leave, as you will have the right to return to the job you were doing immediately before your last period of leave when you return from shared parental leave. If you are asked to cover a temporary role you should ask your employer to confirm in writing that you still have the right to return to your original job. If you are unsure you should seek advice.

Can I ask to work part-time after taking SPL?

Yes, you are entitled to ask for changes to your working hours, days or place of work at any time, as long as you have worked for your employer for at least 26 weeks. Your employer must consider how you can do your current job on the working pattern you are asking for. Your employer must consider your request within a reasonable time and give you a decision within three months. Your employer can refuse your request if there are good business reasons.

Benefits for families

Are there any benefits I am entitled to during SPL?

Once your baby is born you can claim Child Benefit. Families in receipt of Child Benefit will be subject to a high earner child benefit charge if one or more parent earns over £50,000.

If you are already claiming Child Tax Credit and/or Working Tax Credit you may be able to claim an additional amount for a new baby. The first £100 per week of SMP, ShPP and all of Maternity Allowance is ignored as income for tax credits purposes so you may be entitled to more help during your maternity pay period. You should get advice *before* making a new claim for Universal Credit as

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you cannot go back onto tax credits and you may be worse off on Universal Credit. For more information contact the Tax Credit Helpline on 0345 300 3900 or see: www.gov.uk/child-tax-credit/already-claiming.

You may be able to claim Universal Credit (if you are not receiving Child or Working Tax Credit) if you are on a low income, you have had a new baby or during maternity or parental leave. SMP and ShPP are treated as earnings and are partially disregarded under Universal Credit rules but all of Maternity Allowance is treated as unearned income and is deducted from a Universal Credit award. For more information on Universal Credit, see: www.gov.uk/universal-credit You can also get advice from the Citizens Advice free Universal Credit Help to Claim service: England: [0800 144 8444](tel:08001448444), Wales: [0800 024 1220](tel:08000241220), Scotland: [0800 023 2581](tel:08000232581).

For an online benefits calculator, see www.betteroffcalculator.co.uk.

If you are receiving Universal Credit, Income Support, income-based Jobseekers Allowance or Employment Support Allowance (not contribution-based benefits) or Child Tax Credit you may be entitled to a Sure Start Maternity Grant of £500 (England, Wales, NI) for your first baby or first multiple birth or Best Start Grant of £600 in Scotland for your first baby and £300 for a subsequent baby. You may also be entitled to Healthy Start/Best Start Foods if you are pregnant or have a young child.

This information sheet was produced in March 2022. It is very important to get up-to-date advice as law and guidance changes.

This guide is for information purposes only and should not be treated as legal advice. You are strongly advised to get personal legal advice about the individual circumstances of your case.

Where to go for more help

Maternity Action

For information on maternity and parental rights at work and benefits, see: www.maternityaction.org.uk

Maternity Rights Advice Line:

Nationwide (except London) – 0808 802 0029

London (if you live or work in a London borough) – 0808 802 0057

For opening hours see: <https://maternityaction.org.uk/advice-line/>

ACAS

For advice on employment rights or for Early Conciliation if you are thinking of making a tribunal claim

www.acas.org.uk

Helpline: 0300 123 11 00 (offers telephone interpreting service)

Citizens Advice

For information about your rights see: www.citizensadvice.org.uk

You can telephone the national Citizens Advice phone service on 03444 111 444

You can get help with Universal Credit claims through the free national Help to Claim service:

England: [0800 144 8444](tel:08001448444), Wales: [0800 024 1220](tel:08000241220), Scotland: [0800 023 2581](tel:08000232581)

For more information on how to find your local Citizens Advice Bureau, see:

<https://www.citizensadvice.org.uk/about-us/contact-us/contact-us/contact-us/>

Civil Legal Advice

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If you are eligible for legal aid you can get free legal advice on 0345 345 4 345 (offers translation service). To check your eligibility see www.gov.uk/civil-legal-advice

To search for specialist legal advisers or solicitors in your area see: <https://find-legal-advice.justice.gov.uk/>

Equality Advisory Support Service

Help and advice on discrimination and human rights www.equalityadvisoryservice.com

Helpline: 0808 800 0082 Mon – Fri 9am – 7pm, Sat 10am – 2pm

Textphone: 0808 800 0084

Equalities and Human Rights Commission (EHRC)

For information and advice about discrimination law www.equalityhumanrights.com

For information for employees and employers about pregnancy and maternity rights in the workplace see: www.equalityhumanrights.com/about-us/our-work/key-projects/managing-pregnancy-and-maternity-workplace

GOV.UK

The government's online information service www.gov.uk

Jobcentre Plus

To make new telephone benefit claims or request claim forms, including Maternity Allowance and Sure Start Maternity Grant: 0800 055 6688 Mon – Fri 8am – 6pm

For ESA/JSA/Income Support claims: 0800 169 0310 Mon – Fri 8am – 6pm

For Maternity Allowance claims: 0800 169 0283 Mon – Fri 8am – 6pm

For Sure Start Maternity Grant claims: 0800 169 0140 Mon – Fri 8am – 6pm/For Best Start Grant claims in Scotland: 0800 182 2222

Universal Credit helpline – for new claims and existing online claims: 0800 328 5644. Mon – Fri 8am – 6pm

For help with claiming Universal Credit see: www.gov.uk/universal-credit

HM Revenue & Customs (HMRC)

Tax Credit Helpline: 0345 300 3900 Mon – Fri 8am-8pm, Sat 8am-4pm, Sun 9am -5pm

Child Benefit: 0300 200 3100 Mon – Fri 8am-8pm, Sat 8am- 4pm

For queries about Statutory Maternity Pay, Adoption Pay, Paternity Pay and Shared Parental Pay:

Employees helpline 0300 200 3500

Employers helpline 0300 200 3200

HMRC Statutory Payments Disputes Team

If you cannot resolve a dispute about your SMP, you can ask HMRC for a formal decision on your entitlement. You can also ask HMRC to pay your SMP if your employer has refused to pay, has dismissed you to avoid paying SMP or has gone into liquidation. This includes disputes about Statutory Maternity Pay/Adoption Pay/Paternity Pay/Shared Parental Pay/Parental Bereavement Pay or Statutory Sick Pay

See: <https://www.gov.uk/guidance/statutory-pay-entitlement-how-to-deal-with-disagreements>

Telephone: 0300 322 9422

You can also write to the Statutory Payments Disputes Team at HM Revenue and Customs, PT Operations, Statutory Payments Dispute Team, BX9 1AN.

Insolvency Service Helpline

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You can currently only contact the Insolvency Service online.

For what you can claim if your employer goes out of business, see: <https://www.gov.uk/your-rights-if-your-employer-is-insolvent>

Law Centres Network

To find out if there is a Law Centre in your area telephone 020 3637 1330 or

see: www.lawcentres.org.uk/

Turn2us

Online benefits calculator and grant search www.turn2us.org.uk

Resigning from your job during pregnancy and maternity leave

This page contains information on:

1. [Resigning from your job during pregnancy](#)
2. [Maternity pay if you are resigning](#)
3. [Maternity Allowance](#)
4. [Resigning from your job during or after maternity leave](#)
5. [Benefits for families](#)
6. [Where to go for more help](#)

March 2022

This information sheet explains what you should do if you want to resign from your job during pregnancy, maternity leave or after returning to work.

If you resign late in pregnancy or during your maternity leave you may still be able to receive all of your Statutory Maternity Pay or Maternity Allowance but it is important to check your rights before you hand in your notice.

Resigning from your job during pregnancy

If you want to resign from your job when you are pregnant, you should hand in your notice in the normal way, giving the notice period required by your employer. Your job will end at the end of your notice period and you are entitled to continue to receive your normal pay and benefits during the notice period. When you resign is a choice for you but it may impact whether or not you qualify for maternity pay.

If I resign will I still get SMP?

You will still be entitled to Statutory Maternity Pay if your job ends in or after the end of the 15th week before your baby is due (this is roughly week 26 of your pregnancy) and you meet the other qualifying conditions. However, if your job ends before the end of the 15th week before your baby is due you will not be entitled to Statutory Maternity Pay but you may be entitled to Maternity Allowance instead (even if you are no longer employed). Your rights to maternity pay are explained below.

How to work out the 15th week before the expected week of childbirth

Find the Sunday before the day your baby is due or the due day if that is a Sunday. Count back 15 Sundays from there. This Sunday is the start of the 15th week before the week your baby is due – it is known as the Qualifying Week.

How do I find out how much notice I have to give?

If you have a written contract of employment, your notice period will be stated there. If you do not have a written contract of employment you may have been given a written statement of employment particulars or a letter when you started your job which had details of your rate of pay, notice period etc. Alternatively, you can ask your employer or HR department, if you have one. If there is no agreed notice period at your work the law says that if you have been employed for one month or more you should give at least one week's notice. Wherever possible you should give as much notice as you reasonably can. If you cannot give as much notice as you are expected to, you could try to reach an agreement with your employer about an acceptable period of notice. Employers are entitled to waive their right to a notice period by providing a payment in lieu of notice but only if this is stated in a written contract. If an employer is entitled to make a payment in lieu of notice your employment ends immediately.

You remain employed during your notice period and should continue to accrue your normal benefits such as annual leave. You are also entitled to take sick leave during your notice period, if necessary, or to take some of your annual leave, with the agreement of your employer.

Maternity pay if you are resigning

Can I get SMP if I leave my job?

You can get SMP if you meet all of the following three qualifying conditions:

- you have been employed by the same employer for at least 26 weeks by end of the 15th week before your expected week of childbirth. This includes agency work, casual and zero hours work. The 15th week before the expected week of childbirth is approximately the 26th week of pregnancy which means that you need to have started the job before you got pregnant to get SMP.
- you are still employed in the same job in all or part of the 15th week before your expected week of childbirth. You are counted as being employed in that week even if you only work for one day or part of a day that week or you are on sick leave, annual leave or maternity leave. You can still qualify for SMP if you resign or your job comes to an end at any time in or after the 15th week before your baby is due as long as you are employed in all or part of that week.
- you earn at least £123 per week on average (April 2022 – April 2023) before tax in the eight weeks (if you are paid weekly) or two months (if you are paid monthly) up to the last pay day before the end of the 15th week before your baby is due.

If you do not meet the qualifying conditions for SMP or you leave your job before the 15th week before your expected week of childbirth, see if you qualify for Maternity Allowance (below).

Once you have qualified for SMP you are entitled to receive all of it from your employer for 39 weeks even if you resign from your job, you are dismissed/made redundant, your contract ends or you decide not to go back to work after maternity leave. SMP is not repayable. Please note

however that if you start working for a **new** employer during your SMP pay period, your SMP will cease to be payable, see below for more information.

How much is Statutory Maternity Pay and how many weeks is it paid for?

SMP is paid for 39 weeks (the remaining 13 weeks of maternity leave are unpaid).

SMP is paid at two rates: for the first six weeks you get 90% of your average pay. The average is calculated from the pay you actually received in the eight weeks or two months up to the last pay day before the end of the qualifying week. After that you get a flat rate of £156.66 per week (April 2022 – April 2023) for 33 weeks or 90% of your average earnings if you earn less than £156.66. Your employer pays your SMP in the same way as your salary is paid. They deduct any tax and National Insurance contributions.

All employers claim SMP back from HM Revenue and Customs (HMRC), including the higher rate for the first 6 weeks.

SMP is not classed as public funds. You can continue to receive SMP if you go abroad either temporarily or permanently.

When can I get SMP?

The earliest you can start your SMP is 11 weeks before the expected week of childbirth. You can choose when you want to start your maternity leave and pay unless:

- you have a pregnancy-related illness/absence in the last 4 weeks before your expected week of childbirth; or
- your baby is born before you have started your maternity leave; or
- you are unemployed, in which case your SMP will start from 11 weeks before the expected week of childbirth unemployed or from the day after your job ends if that is later.

If you are absent from work because of pregnancy (this could include sickness or a maternity suspension on health and safety grounds) in the last four weeks before your expected week of childbirth, your SMP will start on the day after your first day of absence from work. So, if you call in sick on a Wednesday, your SMP period will start on Thursday.

If you give birth before the start of your maternity leave, your SMP period will start on the day following the actual date of birth and you must let your employer know as soon as possible that you have given birth.

I am not planning to return to work after maternity leave as I want to stay at home and look after my baby, when should I resign?

You may want to wait until after the birth before making a decision about resigning from your job in case your circumstances change or you change your mind about staying at home. In general, it is best to keep your options open until after you have had your baby. You do not have to tell your employer how much maternity leave you are taking as your employer should assume that you are taking the full 52 weeks.

If you decide to resign after having your baby, you will be entitled to continue to receive your Statutory Maternity Pay or Maternity Allowance for the remaining 39 weeks (unless you start a new job) and you will be entitled to your usual contractual benefits such as annual leave, up to the end of your notice period.

How to give notice for maternity leave and pay

To get maternity leave you must give your employer the following information in or before the 15th week before your baby is due (if your employer asks you to, you must put it in writing):

1. that you are pregnant
2. the expected week of childbirth

3. the date on which you intend to start your maternity leave

If you want to change the date you start your maternity leave, you must give your employer notice of the new date at least 28 days before the new date or the old date, whichever is the earliest. If there is a good reason why that is not possible, tell your employer as soon as you reasonably can. To get SMP you must give your employer at least 28 days' notice of the date you want to start your pay. You can give notice for leave and pay together in the 15th week before your baby is due.

To get SMP you MUST give your employer a copy of your maternity certificate (form MAT B1) stating your expected week of childbirth which your midwife or GP will give you when you are about 20 weeks pregnant.

Once you have given notice, your employer must write to you within 28 days and state the date you are expected to return from maternity leave.

If you cannot give notice by the 15th week before you are due (for example because you have to go into hospital unexpectedly), you must give notice as soon as you reasonably can.

What can I do if my employer does not pay SMP correctly?

If you think that your employer has made a mistake or you are having difficulties with your employer paying SMP, you should contact your employer, for example, by speaking to your payroll department or HR. Your employer can get help and advice on paying and reclaiming your SMP from the HMRC Employer's Helpline on 0300 200 3200. Your employer can also get advance payments from HMRC if they are unable to pay your SMP.

If you and your employer do not agree, you can ask HMRC Statutory Payments Disputes Team for a formal decision on your entitlement to SMP: 0300 322 9422. If your employer does not pay your SMP or your employer has gone into liquidation, the Statutory Payments Disputes Team will pay your SMP directly.

For more information, see [Maternity Pay Questions](#)

My employer has told me that my SMP will be paid in a lump sum as I am leaving?

Your employer can continue to pay your SMP through the payroll in the normal way but they can pay SMP in a lump sum if they wish to. You and your employer may pay more National Insurance if they pay your SMP in a lump sum.

SMP is taxable but if you have paid a large amount of tax on a lump sum payment you should contact HMRC to see if you are eligible for a tax refund. You cannot get a refund of National Insurance.

You can contact the Student Loans Company for a refund if your income over the tax year is below the annual threshold for repayment of your student loan. You will need to wait until the end of the tax year to contact them.

If you are claiming benefits, such as housing benefit or Universal Credit, see Benefits below for more information on how a lump sum payment will be treated.

Will I lose SMP if I get a new job?

Before the birth: you can start work for a new employer before the birth and still receive SMP from your old employer.

After the birth: once your baby has been born you cannot get SMP from your old employer if you do any work for a new employer during your SMP period, unless you were employed by the new employer in all or part of the 15th week before your baby was due. You must tell your old employer to stop paying your SMP if you do any work for the new employer after the birth.

If your new job will be self-employment it does not affect your SMP and you are entitled to do self-employed work either before or after the birth and receive SMP from your employer.

For more information on getting SMP if you have more than one job or you change jobs during your SMP period, see the information sheet [Changing jobs or more than one job](#)

Maternity Allowance

Can I get Maternity Allowance (MA) if I leave my job?

You can get MA if you are not able to qualify for SMP or you are unemployed or self-employed and you meet the qualifying conditions below.

If you resign from your job **before** the 15th week before the expected week of childbirth, you will not qualify for SMP but you may be able to get Maternity Allowance instead.

To get MA:

- you need to have been employed or self-employed for at least 26 of the 66 weeks before the expected week of childbirth, and
- you need to find 13 weeks (not necessarily in a row) in which you earned over £30 per week on average. You should choose the weeks in which you earned in order to get the maximum rate of MA of £156.66 per week. You can add together earnings from more than one job.

How much is MA?

MA is paid by the Jobcentre Plus for 39 weeks. MA is £156.66 per week (April 2022 – April 2023) for 39 weeks or 90% of your average earnings if that is less.

MA is not classed as public funds. You can continue to claim MA if you go abroad temporarily but you should notify the JobCentre Plus.

When can I get MA?

The earliest you can be paid MA is 11 weeks before your expected week of childbirth. If you are still working after the 11th week before your baby is due you can choose when to start your MA period and you should put the date on your MA claim form.

If you are no longer employed, your MA period will automatically start from 11 weeks before your expected week of childbirth or from the date your job ends if later.

Your MA will start the day after childbirth if you are still working when you have your baby or it will start 4 weeks before your expected week of childbirth if you are off work for a pregnancy-related reason in the last four weeks.

How do I claim MA?

The earliest you can claim MA is 15 weeks before your baby is due. The latest you can apply for MA is three months after the date you stop work as MA can only be backdated for a maximum of three months so you may lose some MA if you apply late.

If you are not sure if you will qualify for MA you should phone the JobCentre Plus claim line on 0800 055 6688 and ask for form MA1 or you can complete it online

here: www.gov.uk/government/publications/maternity-allowance-claim-form

They will work out whether you can get the benefit. If you are not entitled to MA, they should automatically use the same claim form to check whether you can get Employment and Support Allowance (Maternity) instead.

If you are employed, you will need to ask your employer for form SMP1 (explaining why you do not qualify for SMP). Don't delay sending in your MA claim form if you are waiting for your employer to provide an SMP1.

You will also need to send in payslips covering a 13 week or 4 month period. You can pick any 13 weeks/4 months in your 66 week test period, they don't need to be in a row, and you should pick your highest earnings in order to get the maximum MA. If you do not have payslips you can send bank statements or other proof of earnings. Don't delay sending in your claim if you do not have these documents, MA Claims will ask for more evidence if they need it.

For more information on claiming Maternity Allowance, see [Maternity Pay Questions](#)

Can I start work for a new employer if I am receiving Maternity Allowance?

You can work for up to ten days during your Maternity Allowance period as an employee or in self-employment. This includes work for any employer (an existing one if you have one or a new employer) during your MA period. This is ten days in total, not ten days for each employer. Work for part of a day counts a whole day.

You should report any days of work to the JobCentre Plus. After you have worked for ten days you will be disqualified from receiving Maternity Allowance for a reasonable period depending on how many days you work. For example, if you used to work 5 days a week and you are only working for one day a week during your maternity pay period you should only lose 1/7th of your Maternity Allowance. The JobCentre Plus will make a decision about how much Maternity Allowance you will lose.

For more information see [Keeping in touch during leave](#)

Resigning from your job during or after maternity leave

I have decided not to return to work. What should I do and what am I entitled to?

You should resign in the normal way, giving the notice period stated in your contract or agreed with your employer. If you resign during your maternity leave, you do not have to go into work during your notice period, you can remain on maternity leave. But if you resign after the end of your maternity leave, you should work your notice unless you have agreed to take annual leave or you need to take sick leave.

Maternity pay lasts for 39 weeks but maternity leave lasts for 52 weeks (the last 13 weeks is usually unpaid). You are entitled to remain on maternity leave for up to 52 weeks and resign towards the end of your maternity leave period if you decide that you are not able to return to work.

You continue to accrue all your contractual benefits, apart from your normal wages/salary, during maternity leave and you will be entitled to continue to receive any contractual benefits until the date your contract of employment comes to an end i.e. at the end of your notice period.

You continue to accrue annual leave as if you were still at work during maternity leave. Annual leave will continue to accrue up to the end of your notice period and you are entitled to be paid for any annual leave that you have not yet taken. Your employer should pay this, together with any notice pay you may be eligible for, in your final pay slip.

You do not have to repay any Statutory Maternity Pay or Maternity Allowance and you should continue to receive it from your employer/JobCentre Plus for the full 39 weeks even if you resign before the end of the maternity pay period.

What happens if we have booked shared parental leave and one of us resigns?

Shared parental leave allows the mother to transfer any untaken maternity leave and pay (SMP or Maternity Allowance) to her partner to take as shared parental leave/pay. Parents can take the leave separately or together. Once the mother has returned to work or given notice to curtail her maternity leave it cannot be revoked, except in very limited circumstances, so it is best to be sure that you or your partner will be able to take the leave booked.

If the parent who is taking shared parental leave resigns, you remain entitled to the shared parental leave you have booked up to the end of your employment. Any Statutory Shared Parental Pay will be payable for the period booked. You will not be entitled to your shared parental leave if you resign and your notice expires before the period of leave you have booked because you must be employed with the same employer up to the start of your leave.

If the mother has not taken all her maternity leave/pay and has transferred it to her partner, she can resign and it will not affect her partner's entitlement to take shared parental leave/pay.

For more information, see [Shared Parental Leave and Pay](#)

My employer pays occupational (company) maternity pay, will I have to repay it if I resign?

Firstly, you will be entitled to receive any occupational maternity pay up until the end of your notice period. Secondly, you should check your employment contract or maternity policy to see if you are

required to repay your occupational maternity pay if you do not return to work for a reasonable period after maternity leave, this is usually 3 to 6 months.

You can only be asked to repay occupational maternity pay if it was agreed before your leave or is stated in your employer's maternity policy. You can also only be asked to repay any occupational (company) maternity pay over and above the amount of SMP or Maternity Allowance that you were entitled to. **Your employer cannot ask you to pay back any SMP and you do not have to pay back any Maternity Allowance to the Job Centre Plus.** Remember: SMP is paid at 90% of your average earnings for the first six weeks.

If you have to repay any occupational maternity pay, you can ask to repay it in small instalments. If you have returned to work for part of the period required you should only be required to repay part of the maternity pay. For example, if you return to work for two out of the three months required under your policy and you are unable to continue working, it would be reasonable to repay 1/3rd of your occupational maternity pay. However, you will need to check the terms of your maternity policy and speak to your employer.

It may be worth exploring ways of returning to work if you want to avoid having to repay your occupational maternity pay. For example, can you use your accrued annual leave for a phased return to work or return part-time or on a more flexible working arrangement? If your employer has refused a flexible work request without good business reasons and you are not able to return for childcare reasons you may have a claim for indirect sex discrimination. See our information sheet [Child friendly working hours](#)

Once your maternity leave has ended you are 'back at work', therefore returning part-time or taking further leave such as annual leave or sick leave will often count towards your return to work period. Occupational maternity pay is a benefit provided by your employer and you will need to check your contract or maternity policy for your employer's terms and conditions. If there is a dispute about whether your maternity pay is repayable or how much is repayable you should talk to your employer to try to resolve it. Your employer may be willing to waive repayment of your occupational maternity pay as part of an exit settlement if you are not able to return to work after maternity leave.

You can ask to repay any company maternity pay or overpayment in reasonable instalments, taking account of your household income and outgoings. You must be able to cover essential bills and housing costs. You may find it helpful to speak to a debt adviser who can help you negotiate with your employer and agree a reasonable repayment plan. You can get free regulated debt advice from Stepchange – www.stepchange.org/ and Debt Advice Foundation – www.debtadvicefoundation.org/about-us/

If there has been an overpayment of pay or maternity pay during your maternity leave, your employer can recoup it. If you are not returning to work, your employer may deduct any occupational maternity pay that you owe from any outstanding wages or holiday pay. If you do not agree with the amount that has been deducted you should write to your employer. If you are unable to resolve it you can make a claim for unauthorised deduction of wages in an employment tribunal. You must start the claim within three months (less one day) from the date of the deduction or series of deductions and you should speak to ACAS first to start Early Conciliation, see [Where to go for more help](#).

Am I entitled to be paid for any annual leave that is owing to me?

You continue to accrue annual leave as normal during the 52 week maternity leave period. It may be maternity discrimination if your employer refuses to provide your normal paid holiday and benefits because you have been on maternity leave. For more information, see [Rights during maternity leave and return to work](#)

You continue to accrue annual leave up until the date that your employment ends i.e. the end of your notice period. If you still have annual leave owing to you when your job comes to an end, your employer must pay you for any annual leave that you have not been able to take.

If you are owed annual leave or any other sums at the end of your employment you should contact your employer, for example, by speaking to your payroll department or HR. If you are unable to resolve it you can make a claim for unauthorised deduction of wages in an employment tribunal. You must start the claim within three months (less one day) and you should speak to ACAS first to start Early Conciliation, see [Where to go for more help](#).

Benefits for families

Can I claim any benefits if I resign from my job during pregnancy?

If you resign **before** you are 29 weeks pregnant you may be entitled to:

- New style Jobseekers Allowance (JSA) if you are able to work and are taking steps to look for work, or
- New style Employment and Support Allowance (ESA) if you are not able to work because of illness/disability
- Universal Credit (if you are not claiming Working/Child Tax Credit)
- Statutory Maternity Pay from your old employer if you resigned in or after the 15th week before your expected week of childbirth and you meet the qualifying conditions for SMP, or
- Maternity Allowance if you meet the qualifying conditions and cannot get SMP. See section above on Maternity pay if you are resigning.

You may also be entitled to other help such as food vouchers and the Sure Start/Best Start Maternity Grant, see below.

Note: your SMP or Maternity Allowance will automatically start from the 11th week before your baby is due (when you are 29 weeks' pregnant) if you are unemployed at that date or from the date your job ends if later.

You can no longer make a new claim for Working/Child Tax Credit but if you are already receiving tax credits for older children, your Working Tax Credit will end after a 4 week run-on if you stop working. You can remain on Child Tax Credit and you can go back onto Working Tax Credit if you get a new job. You must report any changes of circumstances to the Tax Credit Helpline, including stopping or starting a new job, having a new baby or going onto maternity leave/pay.

Am I entitled to any benefits once my baby is born?

Once your baby is born you can claim Child Benefit. Families in receipt of child benefit will be subject to a high earner child benefit charge if one or more parent earns more than £50,000.

Tax Credits

If you are already claiming Child Tax Credit and/or Working Tax Credit you may be able to claim an additional amount for a new baby or if your income drops or you are on sick pay or maternity pay. You are treated as working during your SMP/Maternity Allowance period and the first £100 per week of SMP and all of Maternity Allowance is ignored as income for tax credits purposes so you may be entitled to more help during your maternity pay period. If you resign from your job, your Working Tax Credit will continue for a four-week run-on but you can remain on Child Tax Credit if you stop work.

You should get advice **before** making a new claim for Universal Credit as this will end your tax credits and you may be worse off on Universal Credit. For more information or to report any changes of circumstances, contact the Tax Credit Helpline on 0345 300 3900 or see: www.gov.uk/child-tax-credit/already-claiming

Universal Credit

You may be able to claim Universal Credit (if you are not receiving Working/Child Tax Credit) if you lose your job, you are on a low income or Statutory Sick Pay (SSP) or during your maternity leave. Statutory Sick Pay and Statutory Maternity Pay are largely disregarded if you are claiming Universal Credit but Maternity Allowance is treated as 'unearned income' and is deducted in full from Universal Credit. You are exempt from work-related requirements if you are a single parent or nominated as the main carer of a child under 3.

For more information on Universal Credit, see: www.gov.uk/universal-credit For an online calculator, see www.betteroffcalculator.co.uk

You can get more advice on Universal Credit claims through the free Citizens Advice Help to Claim service: England: [0800 144 8444](tel:08001448444), Wales: [0800 024 1220](tel:08000241220), Scotland: [0800 023 2581](tel:08000232581)

Food vouchers and Sure Start/Best Start Maternity Grant

If you or your partner are receiving Universal Credit, Child Tax Credit, Income Support or income-based Jobseekers Allowance you may be entitled to [Healthy Start vouchers](#) and a Sure Start Maternity Grant of £500 for your first child (or if there are no other children aged under 16 in your family) or first multiple birth. Claim on form SF100 (Sure Start), available from your local Jobcentre Plus or online [here](#), from 11 weeks before your baby is due until 6 months after the birth.

If you live in Scotland you may be eligible for Best Start Grants and Best Start Foods, see: www.mygov.scot/best-start-grant-best-start-foods/

Housing and council tax

You may also be able to get help from your local council with discretionary housing payments, council tax reduction or local welfare assistance schemes.

For more information on benefits, see: [Money for Parents and Babies](#)

Can I claim Universal Credit and/or New-style Job Seekers Allowance if I resigned from my job?

You can claim contribution-based **New-style Jobseekers Allowance (NS-JSA)** if you are unemployed or working less than 16 hours a week and you have sufficient National Insurance contributions in the last two to three years, not the year in which you make your benefit claim. Your partner's earnings and your savings are not taken into account for contribution-based benefits.

You must be available and looking for work but you can limit your available hours to fit with your childcare. You can claim NS-JSA online here: www.gov.uk/guidance/new-style-jobseekers-allowance

Once you have made a claim you will be given an appointment with a work coach. You can claim NS-JSA if you have resigned from your job, providing you are available for work. You can be sanctioned for 91 days for losing work but you would be eligible for JSA after that period. You cannot be sanctioned for voluntary redundancy, stopping work because of a strike, increasing your hours for a trial period which does not work out or following a lay off or short time working.

If you are refused NS-JSA because you resigned from your job and it was not truly voluntarily, for example, if your workplace was unsafe during pregnancy, you suffered pregnancy/maternity discrimination, there were changes to your role after maternity leave or you were forced to leave because of childcare or other problems at work, you should appeal a refusal and set out your reasons for leaving. You can get advice on NS-JSA claims from your local Citizens Advice.

You may also be able to claim **Universal Credit** (depending on your household income, number of dependents and your housing costs). Contribution-based benefits and Maternity Allowance are taken into account as income if you are claiming Universal Credit and will be deducted pound for pound but you may still be entitled to Universal Credit to top up these benefits or if you have a low income or have lost work.

You can claim Universal Credit if you have resigned from your job providing you are fit for work, you sign a claimant commitment and meet the job-seeking requirements. You are not required to look for work if you are more than 29 weeks' pregnant or have given birth in the last 15 weeks (including a stillbirth) or you are the sole or main carer of a child under one. If you have a child between one and three you are expected to take part in work-related activities such as work preparation.

If you are required to look for work e.g. if you are fit for work and you do not have children under 3, you can be sanctioned for 91 days for losing work but you would be eligible for Universal Credit after that period. You cannot be sanctioned for voluntary redundancy, stopping work because of a strike, increasing your hours for a trial period which does not work out or following a lay off or short time working.

If you are refused Universal Credit because you resigned from your job and it was not truly voluntarily, for example, if your workplace was unsafe during pregnancy, you suffered pregnancy/maternity discrimination, there were changes to your role after maternity leave or you were forced to leave because of childcare or other problems at work, you should appeal a refusal and set out your reasons for leaving. You can get advice on Universal Credit claims from the free nationwide Citizens Advice Help to Claim service – England: [0800 144 8444](tel:08001448444), Wales: [0800 024 1220](tel:08000241220), Scotland: [0800 023 2581](tel:08000232581)

I have resigned and will be receiving SMP up to the end of the 39 week maternity pay period. Will the payments of SMP affect my benefits and does it make a difference if my employer continues to pay my SMP weekly/monthly or in a lump sum?

SMP will automatically be paid from the 11th week before your expected week of childbirth if your job has ended or from the day after your job ends if later.

SMP is treated differently for different benefits:

Tax Credits

If you resigned whilst receiving SMP, you should be treated as working the hours you used to work until the end of the 39-week maternity pay period. This means that you can be entitled to Working Tax Credit whilst you are getting SMP even if you have left your job. If you resigned before your SMP could start to be paid (i.e. before the 11th week before your baby's due date), you may be entitled to a 4-week run-on of Working Tax Credit when your job ends and may still be treated as working if you start to receive SMP after the 4-week run-on of Working Tax Credit. You can continue to receive Child Tax Credit if you have left your job and you may be better off on Child Tax Credit than on Universal Credit.

The first £100 per week of your SMP is ignored as income for tax credits; if you are paid your SMP in a lump sum this means that up to £3,900 could be ignored as income. A lump sum payment of SMP will be taken into account in the tax year it was paid (rather than over a 39 week period which may fall in different tax years); this may affect your entitlement to tax credits as it could increase your total taxable annual income in the year it is paid.

Housing Benefit

If you are receiving Housing Benefit when your job ends, a lump sum payment of SMP would be taken into account as earnings for the number of weeks the payment covers i.e. for 39 weeks. If you start claiming Housing Benefit after your job ends, the lump sum of SMP should be ignored as income or earnings.

Universal Credit

If you are paid SMP as a lump sum and receive or claim Universal Credit, the lump sum payment will be taken into account as earnings in the monthly assessment period in which the payment is made. This means that you may lose entitlement to Universal Credit for the monthly assessment period in which the lump sum is paid and have to reclaim UC the following month. Once the lump sum SMP has been paid you will be treated as having no maternity pay in subsequent monthly assessment periods.

This information sheet was written in March 2022. It is very important to get up-to-date advice as law and guidance changes.

This guide is for information purposes only and should not be treated as legal advice. You are strongly advised to get personal legal advice about the individual circumstances of your case.

Where to go for more help

Maternity Action

For information on maternity and parental rights at work and benefits,

see: www.maternityaction.org.uk

Maternity Rights Advice Line:

Nationwide (except London) – 0808 802 0029

London – 0808 802 0057

For opening hours see: <https://maternityaction.org.uk/advice-line/>

ACAS

For advice on employment rights or for Early Conciliation if you are thinking of making a tribunal claim

www.acas.org.uk

Helpline: 0300 123 11 00 (offers telephone interpreting service)

Citizens Advice

For information about your rights see: www.citizensadvice.org.uk

You can telephone the national Citizens Advice phone service on 03444 111 444

You can get help with Universal Credit claims through the free national Help to Claim service:

England: [0800 144 8444](tel:08001448444), Wales: [0800 024 1220](tel:08000241220), Scotland: [0800 023 2581](tel:08000232581)

For more information on how to find your local Citizens Advice Bureau, see:

<https://www.citizensadvice.org.uk/about-us/contact-us/contact-us/contact-us/>

Civil Legal Advice

If you are eligible for legal aid you can get free legal advice on 0345 345 4 345 (offers translation service). To check your eligibility see www.gov.uk/civil-legal-advice

To search for specialist legal advisers or solicitors in your area see: <https://find-legal-advice.justice.gov.uk>

Equality Advisory Support Service

Help and advice on discrimination and human rights www.equalityadvisoryservice.com

Helpline: 0808 800 0082 Mon – Fri 9am – 7pm, Sat 10am – 2pm

Textphone: 0808 800 0084

Equalities and Human Rights Commission (EHRC)

For information and advice about discrimination law www.equalityhumanrights.com

For information for employees and employers about pregnancy and maternity rights in the workplace see: www.equalityhumanrights.com/about-us/our-work/key-projects/managing-pregnancy-and-maternity-workplace

GOV.UK

The government's online information service www.gov.uk

Jobcentre Plus

To make new telephone benefit claims or request claim forms, including Maternity Allowance and Sure Start Maternity Grant: 0800 055 6688 Mon – Fri 8am – 6pm

For ESA/JSA/Income Support claims: 0800 169 0310 Mon – Fri 8am – 6pm

For Maternity Allowance claims: 0800 169 0283 Mon – Fri 8am – 6pm

After Maternity Leave

Pregnant Pickle

People, Prejudice & Pregnancy

For Sure Start Maternity Grant claims: 0800 169 0140 Mon – Fri 8am – 6pm/For Best Start Grant claims in Scotland: 0800 182 2222

Universal Credit helpline – for new claims and existing online claims: 0800 328 5644. Mon – Fri 8am – 6pm

For help with claiming Universal Credit see: www.gov.uk/universal-credit

HM Revenue & Customs (HMRC)

Tax Credit Helpline: 0345 300 3900 Mon – Fri 8am-8pm, Sat 8am-4pm, Sun 9am -5pm

Child Benefit: 0300 200 3100 Mon – Fri 8am-8pm, Sat 8am- 4pm

For queries about Statutory Maternity Pay, Adoption Pay, Paternity Pay and Shared Parental Pay:

Employees helpline 0300 200 3500

Employers helpline 0300 200 3200

HMRC Statutory Payments Disputes Team

If you cannot resolve a dispute about your SMP, you can ask HMRC for a formal decision on your entitlement. You can also ask HMRC to pay your SMP if your employer has refused to pay or has gone into liquidation.

See: <https://www.gov.uk/guidance/statutory-pay-entitlement-how-to-deal-with-disagreements>

Telephone: 0300 322 9422 – for disputes about Statutory Maternity Pay/Adoption Pay/Paternity Pay/Shared Parental Pay/Parental Bereavement Pay or Statutory Sick Pay

You can also write to the Statutory Payments Disputes Team at HM Revenue and Customs, PT Operations, Statutory Payments Dispute Team, BX9 1AN.

Insolvency Service Helpline

You can currently only contact the Insolvency Service online.

For what you can claim if your employer goes out of business, see: <https://www.gov.uk/your-rights-if-your-employer-is-insolvent>

Law Centres Network

To find out if there is a Law Centre in your area telephone 020 3637 1330 or

see: www.lawcentres.org.uk/

Turn2us

Online benefits calculator and grant search www.turn2us.org.uk

Child-friendly working hours

This page contains information on:

1. [Your rights when asking for child-friendly working hours](#)
2. [How to ask for child-friendly working hours](#)
3. [What to do if your request has been refused](#)
4. [Your legal rights](#)

March 2022

This information sheet explains the rights you have if you want to change your hours to fit in with caring for your children.

Your rights when asking for child-friendly working hours

Can I ask to change my working hours?

If you need to change the hours you work because of childcare, you can make a request for flexible work. Your employer has a duty to consider your request in a reasonable manner and your employer must not discriminate against you.

This information sheet explains how to ask for child-friendly working hours and what you can do if your employer refuses your request.

Who has the right to ask for flexible work?

All employees (including trainees and apprentices) have the statutory (legal) right to make a request for changes to their hours of work, days of work or place of work providing:

- you have been employed by your employer for at least 26 weeks by the time you make your request, and
- you have not made a request for flexible work in the last twelve months (whether it was granted or refused).

You are still employed during maternity, paternity or periods of parental leave, so any weeks of leave count towards your continuous employment.

You can ask to work flexibly even if you're not an employee or you do not fit the requirements set out above, however you will not fall within the legal framework set out below.

What changes to my work can I ask for?

You can ask to change **your hours of work, your days of work, your place of work or a combination of all of these** in relation to your present job. Your employer is not expected to find you a different job.

This means you can ask to work part-time, flexi-time, term-time only or on hours or shifts that fit with your childcare. You can also ask to work at home.

Can my employer refuse my request?

Your employer must properly consider your request. All employers have a duty to consider requests in a reasonable manner (see 'How to ask for child-friendly working hours' below).

Your employer can only refuse your request for one of the following business reasons:

- the burden of additional costs
- the detrimental effect on the ability to meet customer demand
- they are unable to reorganise the work among existing staff
- they are unable to recruit additional staff
- the detrimental effect on quality
- detrimental effect on performance
- there is not enough work during the periods the employee wants to work, or
- planned structural changes

Your employer must also explain why that reason applies in your circumstances. Remember: under the regulations your employer must consider how you can do your present job in the way that you have requested. They are not expected to find you another part-time job.

Note: This right is in addition to the law on sex discrimination – see later in this information sheet. There are many similarities between the two rights and both will apply so you may have a claim under both.

How to ask for child-friendly working hours

When should I ask to change my working hours?

There are no hard and fast rules on when to ask but you will need to give your employer time to consider your application and time to make any changes necessary, for example, to recruit a job-share partner. If you ask to change your hours using the statutory (legal) right to request flexible work your employer must consider your request in a reasonable manner and must provide a decision within three months of the date of your application unless you and your employer agreed to a longer period.

Wherever possible, it is a good idea to make your request *at least three to four months* before you want the new arrangement to start.

How do I make a statutory flexible work application?

If you want to use your legal right to ask for flexible work, you must make an application **in writing** and you **MUST** include all of the following. This is called a **statutory flexible work application** under the Employment Rights Act 1996 s.80F:

- State that this is an application for flexible work under s 80F of the Employment Rights Act 1996.
- State the working pattern you are asking for and the date you want it to start
- Explain what effect, if any, you think the new working pattern would have on your employer and how you think it could be dealt with
- State whether you have asked before and, if so, when
- Sign and date the application

Throughout, you should remember this is a negotiation, you have the right to ask for flexible working, but not the right to get the arrangement you wish for. In order to maximise your chances of success, it may be a good idea to present your employer with two or three different workable scenarios. It will be more difficult for your employer to justify refusing a number of options than it will be to justify refusing just one scenario. Also bear in mind that you are asking your employer to be flexible so it is a good idea if you can also be flexible and be prepared to make compromises yourself. This may make it much more likely that you can come to a workable solution together. Your application can be made by letter or email and you should keep a copy. Your employer may have a standard form for making an application, so you should check. Alternatively, you could use the government application form: Form FW(A) available at: www.gov.uk/government/publications/the-right-to-request-flexible-working-form. This form includes an acknowledgment slip for your employer to return to you confirming that they have received your application.

You can also use our model letter to make a statutory request for flexible work [here](#). This contains useful drafting notes and suggestions on how to make your application as thorough and well thought out as possible. Do spend some time on the request as you can only make one request every 12 months so it is important to make it as good as it can be. Be realistic and set out how the arrangements you are asking for could work in practice. Think about what concerns your employer might have about the changes you are asking for and make suggestions about how any difficulties could be overcome, for example, how will your role be covered on your non-working days.

How much information do I have to give about the effect of the changes and how it could be dealt with?

You should think about the impact of the change(s) you are requesting. Your employer will want to make sure your request will not have a detrimental impact on their business. The more you can show that any impact will be minimal or how it can be dealt with, the more likely it is your employer will agree. It's therefore vital you spend some time considering this aspect of your application.

You should try to put yourself in your employer's shoes and think about what objections or fears they might have about your proposal and then try to address it as best you can. You probably know your job better than anyone else so think about how the new working pattern could work. For instance, is there someone else who does the same job as you who can cover? If not, you could suggest that your employer takes on another part-timer or job-share partner.

The more you can demonstrate to your employer that your proposal is workable, and that you can demonstrate solutions to any objections they may have, the more likely it is that your request will be granted or at the very least, that your employer will not be justified in refusing it.

What happens when my employer receives the application?

Your employer must consider your request in a reasonable manner. This usually means that your employer should meet with you to discuss your application and provide a decision within a reasonable period. You do not have a legal right to appeal a refusal but many employers do allow you to appeal if they refuse your request. You are allowed to have a work colleague with you at the meeting and appeal and you should notify your employer if you will be accompanied.

Your employer must provide a decision within three months of the date of your application unless you and your employer agree to a longer period.

ACAS have provided guidance for employers on how to handle requests in a reasonable manner and a Code of Practice on handling requests which may be useful to show to your employer, see: <https://www.acas.org.uk/making-a-flexible-working-request>

What happens if I cannot attend the meeting?

You should notify your employer and ask to rearrange the meeting. You might want to suggest that the meeting can be done online as a way to move things forward. If you can't attend, your employer should allow you to rearrange if you have a good reason such as illness or childcare difficulties.

If you do not attend two meetings or appeals your employer is entitled to consider your application as withdrawn.

What if my employer needs more time to consider my request?

If either you or your employer would like more time to reach a decision you can both agree to an extension of the time period. It is a good idea to record this agreement in writing.

I returned to work full-time for a year after maternity leave but cannot continue because my parents can no longer help out with childcare. Can I now ask my employer if I can reduce my hours?

Yes, the right to ask for flexible work applies at any time but you can only make one statutory request a year. If you have already made one request in the last 12 months, you can make a further request but this would be outside the statutory rules and therefore your employer would not need to point to one of the 8 business reasons for refusal or deal with your application within 3 months etc.

You would still have the right to have your request properly considered and to be given reasons for refusing. If your employer refused, you may want to consider if you could make arguments of indirect sex discrimination (see below).

My employer agreed to let me work part-time but I would now like to increase my hours. Can I go back to my full-time job?

No; not without your employer's agreement. Once you and your employer have agreed to a new working arrangement it is a permanent change in your contract and you do not have the right to

return to a full-time contract unless this was agreed in advance or you and your employer agree on an increase in hours. If you are not sure you want to remain on flexible / part time hours, you could negotiate a trial period at the outset and/or agree that you will return to your full time job after a set period of time.

It is generally a good idea to agree to a trial period of around 6 months and set a review date. This would mean that neither you nor your employer would be stuck with arrangements permanently if it does not work out. This might also encourage your employer to agree if the reason that is holding them back is that they are reluctant to agree to a permanent change. This also means, if it works well for the six months and you want it to continue, your employer will have little argument against extending it.

If my employer agrees, when does the new arrangement start?

If your employer agrees to your request at the outset, they must write to you confirming the new arrangement and the date on which it will start.

The new arrangement should start on the date agreed between you and your employer. This will usually be the date you asked to start the new arrangement, which could be the day you go back to work after maternity leave. It should not be backdated to the date you made the application.

Your terms and conditions, such as pay and leave, will remain the same until the date the new arrangement starts when they will be pro-rated to reflect your new working pattern. For example, if you used to work full time, your annual leave will be based on your full time hours up until the date that your full-time contract ends even if you were on maternity leave during that period. Your annual leave will be pro-rated according to the part-time hours agreed with your employer from the start of your part-time contract. Your length of employment should continue from when you first started work for your employer (including any periods on maternity leave). If you are given a new contract make sure it states that your length of service is continuous with your previous period of employment.

The change to your working arrangements will be a permanent change to your contract of employment unless the agreement states that it is only to be for a limited or temporary period.

What to do if your request has been refused

My maternity leave ends soon and my employer has not made a decision. What can I do?

It is important to try to maintain good communication with your employer while trying to negotiate a satisfactory outcome. Wherever possible try to arrange a telephone conversation to discuss it or send an email asking for a phone call or meeting to try to resolve it.

You could contact your employer and send a copy of this leaflet, pointing out that the matter is now urgent and that you are entitled to receive a decision within three months of the date of your application for flexible work.

If all attempts to contact your employer have failed you could write to your employer (keep a copy), giving details of previous communications or attempts to contact them and ask for an urgent decision with a deadline for replying e.g. seven days.

If you are on maternity leave and cannot go back to work because of your employer's failure to deal with your request in time, you should write to your employer and let them know that you are still planning to come back to work but it is impossible to do so as they have not given you a decision. In order to extend your time at home while you make other arrangements or continue negotiating with your employer you could consider:

- Taking **annual leave**, you can take a day, a few days, a week, or a few weeks in a block at the end of your maternity leave. Any annual leave should be agreed with your employer in the

normal way and it is a good idea to confirm in writing the dates on which you are ending maternity leave and taking annual leave. All employees are entitled to at least 28 days, pro rata for part time staff, paid leave a year. Annual leave continues to accrue during ordinary and additional maternity. This means if you have taken a full year of maternity leave, you will have accrued a full year of annual leave.

- **Parental leave.** Provided you have one year's employment with your employer, you can take up to four weeks parental leave a year per child (up to a maximum of 18 weeks per child before your child's 18th birthday). This means if you have 2 children, you can take 8 weeks parental leave a year. If you have a partner, they could also try to take some parental leave to help out with childcare. Unfortunately, parental leave is usually unpaid. In order to take parental leave you will need to give 21 days' notice. Your employer cannot refuse a request for parental leave but they can postpone it for up to 6 months if it would unduly disrupt the business, which would be unlikely if you are taking it at the end of maternity leave.
- **Emergency time off for dependents** – if parental leave has been refused and you have no annual leave to take, and you have tried to find alternative care but there are no alternative sources of childcare, you can take time off for dependents. This is unpaid, emergency leave and is expected to be used to cover unforeseen, short term, emergency type situations but it can be used if you have tried all other sources of childcare and nothing is available.

If you are unable to negotiate a successful outcome you should not go 'absent without leave' as your employer could take disciplinary action against you or treat it as grounds for dismissal. You can explain you are taking emergency time off for dependents but remember you cannot normally use time off for dependents for an extended period. If you are able to return to work on your old hours, for example, full time, you should make it clear (preferably in writing) that you are doing so "under protest" and that you need a decision as a matter of urgency. However, you should note that if you return to work on a full-time basis you may find it difficult to bring a case of indirect sex discrimination later on because you have to show why you are now

disadvantaged by having to work full-time because of your childcare.

If you are forced to resign, you should give your employer the notice of resignation required by your contract. If possible, you should seek legal advice on whether you have a case under the right to request flexible working or under sex discrimination law before resigning.

What can I do if my employer refuses my request?

There is no legal right to appeal a refusal of a flexible working application but most employers will offer an opportunity to appeal the refusal. It is important to use the appeal so that you can discuss any misunderstandings or explore other possibilities in relation to your working hours. You now know why your employer is refusing your request so you can respond to their concerns or refute their reasons for refusal. You can also use the appeal to suggest alternative working patterns to the one set out in your original application if you think these would allay your employer's concerns.

You should write to your employer stating your reasons for appealing and sign and date the letter. Make sure you comply with their policy on appealing. Your employer should hold a meeting to discuss your appeal and should provide a final decision within the decision period of three months from the date of your initial application.

You can find a model letter for appealing a refusal of flexible work [here](#).

How do I know if my employer had a good reason to refuse my request?

It will largely depend on the circumstances of your work. If your new working pattern would cause your employer problems then they may be justified in refusing. A classic way to challenge an employer's refusal is if their decision was based on incorrect facts – so do check your employer's reasoning carefully and see if they need reminding of the correct position.

If you bring a claim for indirect sex discrimination, an employment tribunal would decide whether your employer had a good reason to refuse. There have been many tribunal cases under sex discrimination law in the last few years and many of the reasons given by employers are not seen as justifiable – see the section on sex discrimination law below.

You can get further advice on your employer's reasons for refusing from your trade union representative, local Citizens Advice Bureau or from one of the organisations listed at the end of this factsheet. If you want advice on whether you might have a legal claim you should see a specialist employment lawyer.

What can I do if I don't think my employer had a good reason to refuse my request?

If you have asked to appeal your employer's decision and the appeal has been refused, you should continue trying to talk to your employer to try to resolve it and explore all the possibilities. If you think that you are no longer going to be able to resolve it by talking to your employer you should raise it formally by writing to your employer. You can use your employer's grievance procedure but this is often treated as a complaint which can sour employment relations. Wherever possible it is more constructive to focus on finding solutions and trying to explore a way forward.

If you cannot resolve it, you will need to raise it formally with your employer in writing and you should contact ACAS (see Where to go for more help) for Early Conciliation if you are thinking of making a claim in an employment tribunal.

If you cannot resolve it and you need to make a claim in the employment tribunal under the statutory right to request flexible working and/or sex discrimination, the tribunal will only have power to declare whether the employer's decision is unlawful and may award you with compensation (see below). They do not have the power to force your employer to grant your flexible working request. Therefore, it is important to try to remain positive and continue with the negotiation wherever possible. Try to make your request attractive to your employer – try to make it more likely that they will say yes to your request.

If I feel my employer has not followed the rules in dealing with my statutory right to request flexible work, can I make a claim in the employment tribunal?

You can only make a claim in an employment tribunal under the statutory right to request (Employment Rights Act 1996 s. 80H) for a few limited reasons, including:

- Your employer failed to consider your request in a reasonable manner (for example, they did not give you a decision within three months or they refused your request for a reason that is not included in the regulations, (see above for the statutory reasons for refusing)),
- Your employer rejected your request based on incorrect facts,
- Your employer wrongly treated your application as withdrawn.

For claims under the Employment Rights Act 1996 s.80H the tribunal can order your employer to reconsider your application and can award up to eight weeks pay in compensation, capped at £571 per week (April 2022 – April 2023).

You must make a complaint to an employment tribunal within three months (less one day) of the date your request was rejected or withdrawn or three months (less one day) from the date your employer should have decided your application. You cannot make a complaint until you have received your employer's decision or the three month period for making a decision has expired. You also have to complete the Acas Early Conciliation process before you will be eligible to make a claim to the employment tribunal – see Where to go for more help.

If you make a tribunal claim under the statutory right to request the tribunal will not look at whether the employer was justified in refusing your request unless you can show that your employer got the facts wrong. You will need to make a claim for indirect sex discrimination if you want to challenge your employer's reasons for refusing your request.

Can I make a claim for indirect sex discrimination?

If you make a claim for indirect sex discrimination for refusal of your flexible work request, an employment tribunal will look carefully at your employer's reasons for refusing your request and whether they were justified in refusing. If you can show that your employer's policy or practice indirectly discriminates against women, you can receive compensation for loss of salary (if you have had to leave your job) and injury to feelings. These are difficult claims to bring and you should get legal advice if you are thinking of bringing a claim.

See next section for more information and employment tribunal decisions.

How do I make a claim in an employment tribunal?

You **must** make a tribunal claim **within three months (less one day) of the date of refusal of your request**. The three month time limit applies to claims under the statutory right to request flexible work and claims for discrimination. Before making a tribunal claim you should try to solve it informally by talking to your employer but do not miss your tribunal deadline. Try to keep it amicable and constructive as this will be the best way to keep a good relationship with your employer if you want to return to work and find a workable solution. If your employer has refused your request you should ask to appeal their decision and they should hold a meeting with you to discuss it. If this is not successful, as a last resort, you could make a formal complaint in writing or use your employer's grievance procedure.

You MUST contact ACAS within the time limit in order to start Early Conciliation if you are thinking of making a claim in an employment tribunal.

Your legal rights

What are my rights under sex discrimination law?

There isn't an absolute legal right to change your working pattern but if you need to change the way you work because of your childcare responsibilities, your employer should properly consider your request and look at how you can do your old job in a way that meets your childcare needs. Your employer can only refuse for one of the eight business reasons listed above.

It may be indirect sex discrimination if an employer has a policy or practice that makes it harder for women to balance work and child-caring responsibilities. As women tend to shoulder more childcare responsibilities than men, a policy or practice that requires women to work long or inflexible hours, or full time, or varying shift patterns can have a greater negative impact on larger numbers of women than men; as more women will be unable to comply with this requirement to work long or inflexible hours due to childcare responsibilities. Even if you can show this, your employer may be able to defend a claim for indirect sex discrimination if they can show the policy was a proportionate way to achieve a legitimate aim (i.e. it was reasonable and genuinely necessary to run their business this way).

If a man's request to change his working pattern is refused but women in the company have been granted the changes they requested, he may be able to make a claim for direct sex discrimination.

Your employer will only know if they have a good reason for refusing your request by giving it a lot of thought. For example, refusing to even consider your request or having a policy of refusing part-time work would probably be seen as sex discrimination by an employment tribunal. An employer must consider each individual request in order to avoid discriminating against a woman or man with childcare responsibilities. People often assume that a job has to be done full-time or at certain fixed times of day. But, if you and your employer look carefully at your job you may be able to work out a more child-friendly option – perhaps one that neither of you had considered before.

Summary of sex discrimination claims

If a man is refused part-time work or changes to his working hours, he may have a claim for direct discrimination because of sex under the Equality Act (section 13) if his employer allows a woman to work part-time or reduce her working hours but not a man.

Indirect Sex Discrimination

If a woman is refused part-time work or changes to her working hours and she is unable to work the hours requested by her employer, she may have a claim for indirect discrimination because of sex under the Equality Act 2010 (section 19). It is indirect sex discrimination if:

- there is a policy or practice at your work (such as requiring full-time work or giving better benefits to full-time workers) and
- far fewer women than men are able to work in that way and
- it is to the woman's detriment or puts her at a disadvantage, and
- the employer cannot show that the policy or practice is.

Does this apply to me?

Yes, the Equality Act 2010 applies to all employers. You can make a claim if you are an employee, worker, agency worker, trainee, apprentice or a job applicant.

If you are claiming indirect sex discrimination you will have to show that you would be disadvantaged by not being allowed to work the child-friendly hours you need to. In other words, you must have a good reason for asking to work differently – just as an employer must have a good reason for refusing.

Do I have to show that I have been disadvantaged?

Tribunals will usually do a statistical analysis to determine whether women have been placed at a particular disadvantage. But they can also take account of common knowledge about the position of women in society generally. In deciding that a new shift system had a disparate adverse impact on women, in the leading case of [London Underground Ltd v Edwards \[1998\] IRLR 364](#), the Court of Appeal noted that women are more likely than men to be single parents caring for children and will be disadvantaged by requirements to work certain hours or shifts.

In the more recent case of [Dobson v North Cumbria Integrated Care NHS Foundation Trust UKEAT/0220/19](#), the Employment Appeal Tribunal decided that tribunals can take judicial notice of the “childcare disparity” when deciding indirect sex discrimination claims, namely that women, because of their childcare responsibilities, are less likely to be able to accommodate certain working patterns.

However, in some cases it has been noted that society has changed and women will not inevitably be disadvantaged by a requirement to work full-time or to work certain shift patterns. Some cases have distinguished between women who choose to work part-time and those who need to work

part-time. It is important therefore to be able to demonstrate why you need the working hours you are requesting and why you would be disadvantaged by your employer's refusal.

Examples of a good reason might be:

- You cannot find or afford full-time childcare.
- You cannot find or afford childcare outside the hours of 9am and 5pm, Monday to Friday.
- You have to be there when your child or children come home from school.
- Your parent or relative cannot look after your child full-time.
- You are suffering severe stress from working long hours
- You are distressed or disadvantaged by having to work your old hours.

Do I have to make a formal application to ask for child-friendly working hours under sex discrimination law?

No, there is no specific application procedure under sex discrimination law so you should first make your request under the statutory right to request flexible work – see How to ask for child-friendly working hours. If your request is refused you should get advice about bringing a claim in an employment tribunal under both rights because under sex discrimination law the tribunal will look closely at whether your employer had good reasons for refusing and you can receive higher compensation.

What counts as a good reason for refusing a request?

As flexible working hours have become much more common and widespread, many of the reasons given for refusing are not accepted by employment tribunals. Recently a lot of employees have managed to work successfully at home and/or on a flexible basis throughout lockdown. If this worked in your workplace during lockdown, it may be a precedent has now been set – in that it may now be difficult for your employer to legitimately argue that working from home or other flexible arrangements are not feasible.

There have been a lot of cases on indirect sex discrimination over the past few years. You should bear in mind that employment tribunal decisions do not have to be followed by other tribunals but they might give you an idea of the types of claims that have been successful – or for the ones that have not been successful see below. You should get legal advice on your individual circumstances.

“There are no part-time vacancies”

This is NOT a good reason. To avoid discrimination, an employer must seriously consider every request from a woman asking to work different hours because of her childcare responsibilities. A blanket policy of not having part-time work is likely to be seen as discriminatory in itself. Also, your employer should be looking at how you can do your present job on a part-time or more flexible basis, not looking for other part-time work. The reasons for not offering part-time work must be carefully considered. For example, if there is too much work for you to do your job part-time, your employer could recruit a job-share.

Mrs Shaw was an area sales rep. She was unable to work full-time after maternity leave and asked to work 2 days a week and within 100 miles of her home. She made a statutory request for flexible work but her employer rejected her request outright. She resigned immediately as she felt that her employer had breached the duty of 'trust and confidence' and she claimed constructive unfair dismissal, direct and indirect sex discrimination. The Employment Appeal Tribunal held that the rejection of her statutory flexible work request because she was a woman was sex discrimination and that her employer's insistence on full-time work was a condition that adversely impacted on women and was capable of being indirect sex discrimination. This amounted to a fundamental

breach of the contract entitling her to resign and claim constructive unfair dismissal. *Shaw v CCL Ltd* UKEAT/0512/06

“The job is too senior”

Again, this is not a good reason. To avoid discrimination, an employer must seriously consider any woman’s request to work flexibly, no matter how senior. Some organisations now have very senior people who job-share.

Mrs G wanted to start job-sharing after her maternity leave. The company said this was not possible for someone at her level and ruled out any other options. Mrs G resigned and the employment tribunal said there had been indirect sex discrimination and awarded her £35,000.

Given v Scottish Power plc (1995)

“Last minute overtime is an essential part of the job”

If you can no longer do last minute overtime, or any overtime, your employer should look at other options such as a job-share or ‘on call’ rota. By looking at your job carefully you and your employer may find that the overtime you do is not essential or that the overtime you do is quite regular and predictable and you may be able to plan your childcare around it.

“It is too expensive”

To make this argument stick, your employer needs to show that the sums add up. In fact, this may not be the case as National Insurance costs are no higher for part-timers, because they are worked out as a percentage of salary, and your employer may not have to buy extra equipment if part-timers and job-sharers share desks, computers etc. Your employer also needs to take into account the financial benefits of having flexible workers, for example, flexible cover if someone is off sick or on holiday.

“Continuity is crucial”

Employers sometimes refuse part-time work or job-sharing because they need someone who can provide “continuity”. But by looking at the job carefully, you and your employer may be able to think of practical ways around this. When one employer used this argument to say two receptionists could not job-share, the chairman of the employment tribunal said the problem could be overcome ‘by the simple means of a notepad’!

It may also be possible to consider what arrangements are already in place for ensuring continuity when you or a colleague take annual leave, sick leave and/or other types of leave. Are there some good practices in place already that preserve continuity?

“We can’t find a job share partner”

Your employer would need to show that they had made reasonable efforts to recruit inside and outside the organisation. They would also need to show that there would be particular difficulty in finding a job share partner, for example, the job was highly skilled and it would be particularly difficult to get someone else to do the work part-time or job share. Otherwise, there may not be a good reason why you could not go part-time while your employer looks for a job share partner. To overcome this issue, you may be able to suggest that you could assist in finding a job share partner and/or offer training to a new recruit.

“There are too many staff working fixed shifts”

Employers must consider the impact of requiring employees with childcare responsibilities to work certain shift patterns.

Ms S worked as cabin crew for an airline. A full-time roster required her to work 22 days a month. After her maternity leave she asked to work a fixed roster of 11 days a month owing to the difficulty

of finding nursery care because of the unusual hours that she worked. Her employer refused her request as they said they had too many employees already working fixed shifts. The employment tribunal said that this amounted to indirect sex discrimination as she was disadvantaged by the refusal to provide her with fixed shifts. *Seville v Flybe 2016*

What sort of reasons might an employment tribunal accept for refusing a request?

An employer would be justified in refusing flexible work if there were good business reasons and there was no alternative solution. Employers are expected to take account of technological advances e.g. to look at whether you can work from home and they would be expected to consider your request properly as well as any compromises you suggest.

Here are some recent employment tribunal cases which found that the employer was justified in refusing a request.

Mrs W was a designer. She asked to reduce her hours after returning from maternity leave, working from home after 6pm in the evenings, with occasional visits to the office. Her employer said that she could reduce her hours but refused her request to work from home on the basis that she needed to work face-to-face with the team of designers and they sometimes needed to change designs at short notice which would be difficult if she was working at home in the evenings.

Mrs W resigned and claimed indirect sex discrimination and constructive unfair dismissal but her claims were unsuccessful. The employment tribunal found that the employer was justified in refusing her request as they had seriously considered her request but found that it would be harmful and inconvenient for the business.

Whiteman v CPS Interiors Ltd ET/2601103//2015

Ms S worked as an Executive Secretary for an investment bank. After maternity leave she asked to move from full-time work to working three days in the office and one day at home. She was a single parent but her family could look after her child for three days and she could pay for a nursery for one day. Her employer refused her request as they said it would be detrimental to clients and would put added pressure on colleagues. They discussed a number of compromises but her employer thought they were all unsuitable.

Her claim for indirect sex discrimination was unsuccessful as the employment tribunal found that she was not disadvantaged by the refusal to work part-time as she would have been better off financially working full-time.

Smith v Gleacher Shacklock LLP ET/2202747/2015

Redundancy during pregnancy, maternity and parental leave

This page contains information on:

1. [Your rights if you are being made redundant](#)
2. [Redundancy during pregnancy](#)
3. [Entitlement to adoption or shared parental leave if you or your partner are facing redundancy](#)

4. [Redundancy during maternity, adoption or shared parental leave](#)
5. [Fixed term contracts and redundancy](#)
6. [Unfair dismissal and discrimination](#)
7. [Benefits for families](#)
8. [Where to go for more help](#)

March 2022

This information sheet explains your legal rights if you are made redundant while you are pregnant, on maternity leave or parental leave.

Some terms used in this information sheet

Maternity leave: This lasts for 52 weeks. Ordinary maternity leave (OML) lasts for 26 weeks from the day you start your maternity leave. **Additional maternity leave (AML)** starts at the end of OML and lasts for 26 weeks.

Statutory Maternity Pay (SMP): paid by your employer for 39 weeks if you meet the qualifying conditions. SMP is paid for 6 weeks at 90% of your average salary and for 33 weeks at a flat rate of £156.66 per week (April 2022-April 2023) or 90% of your average earnings if that is less.

Maternity Allowance (MA): paid by the JobCentre Plus to women who do not qualify for SMP and self-employed women. MA is paid for 39 weeks at a flat rate of £156.66 per week (April 2022-April 2023) or 90% of your average earnings if that is less.

Types of parental leave

Adoption leave: This lasts for 52 weeks. Ordinary adoption leave lasts for 26 weeks from the day you start your adoption leave. **Additional adoption leave** starts at the end of OAL and lasts for 26 weeks.

Shared parental leave: maternity and adoption leave/pay can be reduced to create shared parental leave for the father or partner.

Parental leave: this is the right to 18 weeks' unpaid leave, per parent, per child, up to your child's 18th birthday.

Your rights if you are being made redundant

What is redundancy?

There are three situations in which you can lawfully lose your job because of redundancy. These are:

- when the business closes down either temporarily or permanently;
- when the business moves and you cannot get to the new place of work;
- when fewer employees are required for existing work.

You can be made redundant during pregnancy or maternity or parental leave, providing it is a genuine redundancy situation and you have not been selected for redundancy *because of* your pregnancy or leave.

If you are being made redundant you may be entitled to redundancy pay and/or notice pay. Your contract of employment may give better rights. Always check your contract if you have one.

You may still be entitled to maternity, adoption or shared parental pay, see below.

Am I entitled to redundancy pay?

If you have worked for your employer for at least two years, and you are aged 17 or over, you are entitled to a statutory redundancy payment when you are made redundant. Statutory redundancy pay is worked out as below.

Your employer may offer you an additional contractual redundancy payment because they operate their own redundancy payment scheme. You should check your contract of employment or policies

Statutory redundancy payment

If you are aged 21 or under you get half a week's gross pay for every complete year of employment with the same employer.

If you are aged 22-40 you get one week's gross pay for every complete year of employment with the same employer.

If you are aged 41 or over you get one and a half weeks gross pay for every complete year of employment with the same employer.

There is a maximum limit of 20 years' service, no more than 20 years is taken into account.

There is a maximum weekly wage limit of £571 per week (April 22 – April 23)

Note: If you are on maternity or parental leave, your statutory redundancy pay should be calculated using your normal week's pay or average week's pay received **before** your statutory leave period started. It should **not** be based on your SMP or contractual maternity pay.

Note 2: If you returned to work part-time after maternity leave your redundancy pay will be based on your pay *at the time of the redundancy*, however, your length of service will be based on how long you have been in your job (including years working full-time and part-time).

I have been on maternity leave, can I count that as continuous employment for redundancy pay purposes even though I was not working?

Yes, your terms and conditions are continuous during your maternity leave so you can count this leave for redundancy pay purposes even though you were not in work.

I have put in a request for voluntary redundancy, does my employer have to accept my request?

Some organisations may invite employees to apply for voluntary redundancies. Your employer does not have to accept your request to be made voluntarily redundant however they still have to follow a fair procedure when considering voluntary redundancies and your legal rights will not differ from those who have been selected for compulsory redundancy.

Am I entitled to notice pay?

You are entitled to a paid notice period if you have been in your job for at least one month (see below if you are on maternity or parental leave). The amount you get will depend on your contract of employment. You should check your contract or staff handbook to see how much notice your employer has to give. If nothing is mentioned, you will be entitled to the statutory notice which is one week's paid notice after one month's service and after two years' service, a week's notice for each year that you have worked for your employer, up to a maximum of 12 weeks. The statutory rate is capped at £571 per week for 2022-2023.

If your employer gives you a 'payment in lieu of notice' (PILON), your employment will end on that date. However, your employer can only make a 'payment in lieu of notice' if there is a clause in your contract which allows them to do so. If not, you are entitled to a period of paid notice and your contract of employment will end at the end of your notice period.

Note: your employment ends at the end of your notice period (whether you have to work it or not) so that is when your redundancy takes effect. If you are still employed in all or part of your qualifying week (the 15th week before your baby is due) you can still get SMP – see Redundancy during pregnancy below.

Your annual leave accrues up to the end of your redundancy notice period, unless you are paid in lieu of notice.

Can I get SMP as well as redundancy and notice pay?

If you qualify for SMP, you will receive the full amount of SMP due after tax and NIC deductions in addition to your redundancy pay. A contractual redundancy payment is not subject to tax and National Insurance contributions and cannot be offset against your SMP.

When a settlement agreement includes contractual redundancy and SMP, the agreement must clearly record the full amount of SMP to which you are entitled, tax and NICs deductions, and the full amount of contractual redundancy. If the settlement agreement does not specify the amount of SMP payable you would be entitled to ask your employer to pay any outstanding SMP. If your employer does not pay your full SMP you should contact HM Revenue & Customs Statutory Payments Disputes Team on 0300 322 9422.

Your employer can offset your SMP against any other contractual remuneration payable e.g. payment for keeping in touch days or notice pay. The same applies to all other statutory parental pay. See below for notice pay if you are on maternity or parental leave.

Can I get redundancy and notice pay if my employer is insolvent?

If your employer is insolvent you can apply to the Insolvency Service for a redundancy payment, statutory notice pay, unpaid holiday pay and wages (see Where to go for more help below).

I think that my employer is making me redundant to avoid paying my SMP. What can I do?

If you are made redundant before the 15th week before your expected week of childbirth you will not be able to qualify for SMP. However, if you think that your employer made you redundant in order to avoid paying your SMP (or other types of statutory parental pay) you may be able to claim the pay directly from HMRC. You can contact HMRC Statutory Payments Disputes Team on 0300 322 9422 and ask for a formal decision. You must do this within six months of the first day on which your SMP was due.

You will need to have been employed for at least 8 weeks and to show that your employer ended your contract 'solely or mainly' to avoid having to pay your SMP. This could include redundancy, dismissal or non-renewal of a fixed-term contract. You should consider what evidence you have about the timing of your redundancy, for instance, if it was shortly before the 15th week before your baby is due and other evidence about your employer's reasons for redundancy, for example, whether you were the only employee made redundant.

If HMRC decide that your contract was ended to avoid paying SMP, your SMP will be based on your average earnings in the 8 weeks before your last pay under your contract.

You may also have a claim for unfair dismissal, automatic unfair dismissal and/or pregnancy discrimination (see below).

A Maternity Allowance claim can only be backdated for three months so you may need to claim Maternity Allowance while waiting for a decision on your SMP. For more information on maternity pay, see [Maternity Pay Questions](#)

If HMRC decide that your contract was not ended to avoid paying SMP, you can appeal to a First-tier (Tax) Tribunal. This also applies where your employer ended your contract to avoid paying Statutory Paternity Pay, Statutory Adoption Pay and Statutory Shared Parental Pay. For more information see: <https://maternityaction.org.uk/advice/dealing-with-problems-at-work/>

Redundancy during pregnancy

I am going to be made redundant during my pregnancy. Do I still qualify for Statutory Maternity Pay (SMP)?

To get SMP you must

- have worked for the same employer for at least 26 weeks by the end of the **qualifying week** (the 15th week before the week your baby is due) and

- be employed in all or part of your qualifying week (employment includes part of a day and includes days on annual leave or sick leave), *and*
- earn at least £123 (April 2022-April 2023) on average in the eight weeks or two months before the end of the qualifying week.

You will not get SMP if you are made redundant and your employment ends **before** your qualifying week (the 15th week before your baby is due) but you may be able to claim Maternity Allowance. If you are made redundant and your employment ends **in or after** your qualifying week, you are still entitled to SMP for 39 weeks. If you are already on maternity leave and receiving SMP, your maternity **leave** will come to an end when your employment ends but your SMP must continue for the rest of the 39 week period.

In order to claim SMP you must give your employer 28 days' notice of the date you want to start your pay. You must also give your employer a copy of your Maternity Certificate (MATB1) stating your expected week of childbirth which your midwife or GP will give you when you are about 20 weeks pregnant.

If you do not meet the qualifying conditions for SMP you may be able to claim Maternity Allowance from your local Jobcentre Plus. In order to apply for Maternity Allowance you will need to ask your employer to give you form SMP1 which explains why you were not entitled to SMP.

Note: once you qualify for SMP you are entitled to receive it for the full 39 weeks even if your job ends during the SMP period.

If you think you have been made redundant *because of* your pregnancy or maternity leave you may have a claim for pregnancy/maternity discrimination, see Unfair dismissal and discrimination below. If you think that your employer has made you redundant to avoid paying your SMP, you can claim your SMP from HMRC, see the question above.

For more information on maternity pay, see: <https://maternityaction.org.uk/advice/maternity-pay-questions/>

Entitlement to adoption or shared parental leave if you or your partner are facing redundancy

In order to qualify for Statutory Adoption Pay (SAP) you must have:

- been employed by your employer for at least 26 weeks ending with the end of the Matching week, and
- earned at least £123 (April 2022-April 2023) on average in the eight weeks (if paid weekly) or two months (if paid monthly) ending with the Matching week.

Once you have met these qualifying conditions you remain entitled to SAP for the 39 week period even if you are made redundant after the matching week. If your SAP has not yet started, it will begin 14 days before the expected date of placement or the day after your job ends if later.

If you are made redundant during your adoption leave and you are receiving SAP you can continue to be paid it for the remaining period unless you start a new job. Your adoption *leave* will end on the day your employment ends as well as any employment benefits such as occupational adoption pay (unless you can negotiate this as part of a redundancy package). If you are unfairly selected for redundancy *because of* your adoption leave and you have lost some or all of your occupational adoption pay you can include those losses in any claims for unfair dismissal/automatic unfair dismissal.

For more information, see: Adoption leave and pay – rights for parents

Can my partner still take shared parental leave if the mother/adopter is made redundant?

Yes, if the mother or adopter has given notice to curtail (cut short) the maternity or adoption leave period in order to transfer some of it to the other parent and the other parent has given notice to take shared parental leave with his/her employer, it makes no difference to that parent's entitlement to shared parental leave if the mother or adopter is made redundant. The other parent can continue to take shared parental leave for the period booked.

For example, the mother curtails her maternity leave at 6 months and her partner gives notice to take 3 month's shared parental leave. The mother is made redundant after the birth but can continue to receive her SMP for the 6 month period. Her partner can continue to take the 3 months' shared parental leave that has been booked with his employer.

For more information, see [*Shared parental leave and pay*](#).

Can I still take shared parental leave and pay if I am made redundant before or during my shared parental leave (SPL)?

If your job ends *before* the start of SPL you will not be entitled to it as you must be employed up to the start of the week before your SPL starts.

If you are made redundant *during* your shared parental leave and you are receiving Statutory Shared Parental Pay, you can continue to be paid it for the remaining period of leave that has been booked unless you start a new job. Your shared parental *leave* will end on the day your employment ends as well as any employment benefits such as occupational shared parental pay (unless you can negotiate this as part of a redundancy package). If you are unfairly selected for redundancy *because of your* shared parental leave and you have lost some or all or you occupational shared parental pay you can include those losses in any claims for unfair dismissal/automatic unfair dismissal.

Redundancy during maternity, adoption or shared parental leave

The company I worked for has now closed and I have been made redundant. Am I entitled to the rest of my SMP?

Yes, once you have met the qualifying conditions for SMP or any other statutory parental pay, you are entitled to receive it for 39 weeks unless you start a new job after your baby's birth or adoption. If your employer is insolvent or refuses to pay all or part of your SMP, HM Revenue and Customs automatically becomes liable for any outstanding SMP as well as any other statutory paternity, adoption or shared parental pay. Contact the Statutory Payments Dispute Team on 0300 322 9422. The receiver or liquidator may be able to write confirming how much SMP your employer owes you.

If I am made redundant while on maternity leave, what happens to my occupational maternity pay?

Your occupational maternity pay will end when your contract ends as it is a benefit provided by your employer. However, you are entitled to continue to receive the rest of your Statutory Maternity Pay for 39 weeks. You may be able to negotiate to be paid some or all of your occupational maternity pay as part of your redundancy package.

If you are unfairly selected for redundancy because of your pregnancy or maternity leave and you have lost some or all or you occupational maternity pay you can include those losses in any claims for unfair dismissal or discrimination (see below).

Am I entitled to paid notice if I am made redundant while I am on leave?

This a complex issue and the rules are not very clear. The statutory (legal) period of paid notice is one week's notice for each year of continuous employment with your employer, up to a maximum of 12 weeks. You are entitled to receive **paid statutory notice** when you are on maternity or parental leave.

However, if your contract of employment gives you at least one week's notice more than your *statutory* notice period above, you have to rely on the notice period in your contract – **contractual notice**. Contractual notice is usually considered to be 'remuneration' which you are not entitled to unless it is stated in your contract or your employer agrees to pay it as part of your redundancy package. For example, if you have worked for your employer for three full years and are entitled to 3 weeks' statutory notice but your contract gives you one month's notice – this is a week more than your statutory notice so you are only entitled to your contractual notice.

You must also bear in mind that if your period of paid notice overlaps with your 39 week SMP or parental pay period, your employer is entitled to offset SMP or other statutory parental pay against statutory or contractual notice pay paid in respect of the same week so you will not receive both.

If your contract allows your employer to provide a 'payment in lieu of notice' (PILON), your employment will end immediately and you will receive a PILON, not a paid notice period. Your employer can only offset SMP or other parental pay against contractual remuneration paid in respect of that week.

I am on maternity leave and my employer has just told me that they will have to make cutbacks. Where do I stand if I am likely to be made redundant?

Your employer will have to consider the pool of employees that will be selected for redundancy. Your employer will also have to consider what selection criteria will be used and they must ensure that the selection is carried out objectively and fairly and is non-discriminatory. For example, your employer must not include pregnancy-related sickness absence or absence on maternity leave. If your employer is planning to make more than 20 employees redundant within a period of 90 days, they should carry out a collective consultation with the union or elected representatives of the affected employees.

Your employer should also consult individually with all employees who may be faced with redundancy, regardless of the number of employees to be made redundant. If you are one of the employees affected, your employer should consult with you during your maternity leave. Failure to consult could be maternity discrimination.

The consultation process should look at ways of avoiding redundancies, reducing the number of redundancies and minimising the effects of redundancy. For example, your employer could ask for volunteers for redundancy and look at redeployment or retraining opportunities.

If you are at risk of redundancy during your maternity leave, Regulation 10 of the Maternity and Parental Leave Regulations 1999 says that if there is a suitable alternative vacancy it should be offered to you as you are on maternity leave.

I am on maternity leave. I have been told my job is at risk of redundancy and that I need to be interviewed for other posts. Do I have any rights?

If you are made redundant during your maternity leave, regulation 10 of the Maternity and Parental Leave etc Regulations 1999 (see extract below) states that a woman on maternity leave must be offered a **suitable alternative vacancy**, if one exists, as soon as her post is at risk of redundancy. This is because you may be about to give birth or may have been out of the workplace for some time and you would be disadvantaged in having to compete for roles. This protection also applies if you are on adoption leave or shared parental leave.

Your employer must consider whether a suitable alternative vacancy exists between the time your redundancy becomes known and the time when your maternity leave period is ended by redundancy. The terms and conditions of this new job must be not substantially less favourable than your original job. You should be given first refusal of any suitable alternative job and you should not have to attend interviews as you have priority over other workers being made redundant (who are not on maternity leave).

If there is a suitable alternative role you should be offered it **during** your maternity leave and as soon as your employer becomes aware that your role is potentially redundant. Your employer

should not wait until you return to work (you can remain on maternity leave and return to the new job when your leave ends).

If your employer fails to offer you a suitable alternative vacancy under regulation 10 this may be automatic unfair dismissal. In some cases this may also be maternity discrimination.

If no suitable alternative vacancy exists, you are entitled to any redundancy/notice pay you qualify for (see above). If you are offered a suitable alternative job and unreasonably refuse it, you will lose your right to redundancy pay.

Cases on the right to be offered suitable alternative work:

In the case of ***Simpson v Endsleigh Insurance Services Ltd* UKEAT/0544/09** the employer closed down several branches, including Mrs S's place of work, while she was on maternity leave. During the redundancy consultation process she was invited to apply for a position in a branch in another town. She failed to apply and argued that she should have been offered the role. The employer's view was that the role was less favourable and she would have to relocate. The Employment Appeal Tribunal (EAT) said it is up to the employer to decide whether a role is suitable taking account of what they know about the employee and her work experience but that regulation 10 does not allow employers to test an employee's suitability by inviting her for assessment or interview. The EAT said that regulation 10 'protects those on maternity leave in preference to those still working' and that the employer must offer a suitable alternative role (if one exists) not just send details of a vacancy and invite an employee on leave to apply for it.

In the case of ***Eversheds Legal Services v De Belin* UKEAT/0352/10** it was decided that the right to more favourable treatment under Regulation 10 only applies to alternative jobs that are suitable. The Employment Appeal Tribunal said that employers do not have to automatically increase the scores of an employee who is on maternity leave or to give set scores or maximum score as this goes beyond what is reasonably necessary to protect a woman against any disadvantage she may suffer as a result of being absent on leave.

In the case of ***Sefton Borough Council v Wainwright* UKEAT/0168/14**, Miss W's employer decided to combine two jobs into one, making one person redundant, in a restructuring exercise. The employer interviewed both employees and offered the job to the other person, making Miss W redundant. The Employment Appeal Tribunal (EAT) decided that failure to offer the role was an automatic unfair dismissal and Miss W had a right to be offered the job once the employer knew that there was a redundancy situation affecting her role. The EAT said that 'the Respondent [employer] was obliged to assess what available vacancies might have been suitable and to offer one or more of those to the Claimant. She should not have been required to engage in some form of selection process.' In some cases there may also be maternity discrimination under s.18 of the Equality Act but you will need to show that the reason why you were treated in that way was *because of* your maternity leave. The EAT also said that if there are a number of posts available, a woman on maternity leave should be offered a suitable alternative vacancy but she can be considered alongside other employees for other posts.

Failure to offer a suitable alternative vacancy amounts to an automatic unfair dismissal.

Maternity and Parental Leave etc Regulations 1999, regulation 10, is as follows. The same protection applies to shared parental leave under the Shared Parental Leave Regulations 2014, regulation 39 and adoption leave under the Paternity and Adoption Leave Regulations 2002, regulation 23.

10 (1) This regulation applies where, during an employee's ordinary or additional maternity leave period [including shared parental leave and adoption leave], it is not practicable by reason of redundancy for her employer to continue to employ her under her existing contract of employment.

(2) Where there is a suitable available vacancy, the employee is entitled to be offered (before the end of her employment under her existing contract) alternative employment with her employer or

his successor, or an associated employer, under a new contract of employment which complies with paragraph (3) (and takes effect immediately on the ending of her employment under the previous contract).

(3) The new contract of employment must be such that—

(a) the work to be done under it is of a kind which is both suitable in relation to the employee and appropriate for her to do in the circumstances, and

(b) its provisions as to the capacity and place in which she is to be employed, and as to the other terms and conditions of her employment, are not substantially less favourable to her than if she had continued to be employed under the previous contract.

<https://www.legislation.gov.uk/ukxi/1999/3312/regulation/10>

I have been made redundant while on maternity leave as the role I used to do no longer exists but the work I used to do seems to have been merged into two other people's jobs.

This may be a genuine redundancy situation, see the legal definition of redundancy on page 1, but you might not have been fairly selected for redundancy. Your employer has to use fair selection criteria and must not automatically choose you because you are on maternity leave.

You may have a number of claims and you should seek legal advice:

- It may be *unfair dismissal* (if you have two years' service or more) if it was not a genuine redundancy situation or your employer did not follow a fair process.
- It may be *maternity discrimination* if you were selected *because of* your maternity leave.
- If you were not offered a suitable alternative vacancy during your employment, it may be *automatic unfair dismissal*.

I have been made redundant but they are keeping on the employee who is covering my role while I was on maternity leave. Where do I stand?

This may not be a genuine redundancy situation if your job still exists (and your maternity cover is carrying out your role) and you have been made redundant or you have been selected because of your maternity leave.

Case study

In the case of [Stelfox v Westco Building Components Ltd ET/15083/95](#) the employer hired a temporary maternity leave replacement who was made permanent before the claimant returned to work. Her employer offered her another job at the same rate of pay. The tribunal held that the employer had not demonstrated that it was not reasonably practicable to give the claimant her job back. The employer had failed to even consider whether she should be offered her old job when her maternity cover asked to be made permanent.

Your employer may be able to show that it is not reasonably practicable for you to return to your old role if there has been a genuine business reorganisation and you cannot return to your old job but a simple preference for someone else to perform the role is unlikely to be sufficient. If you are 'bumped' out of your role in favour of your maternity cover this may also amount to maternity discrimination.

It is also unlikely to be a genuine redundancy situation if your job still exists (and your maternity cover is carrying out your role) and you have been made redundant or you have been selected for redundancy because of your absence on maternity leave. If you are made redundant in situations where your maternity cover was kept in your post you may have a claim for unfair dismissal, automatic unfair dismissal and/or maternity discrimination and you should seek legal advice.

I am on maternity leave and my job is going. My employer says that when I return from leave I can apply for other jobs.

Your employment (and maternity leave) will come to an end at the end of your notice period. This

means that you will only accrue benefits, such as annual leave, up to the end of your notice period. However, you remain entitled to your full Statutory Maternity Pay or Maternity Allowance even if your job comes to an end during your maternity pay period.

If there are any suitable alternative vacancies available at any time up to the end of your employment you are entitled to be offered the vacancy during your maternity leave and you are not expected to have to apply for it or attend interviews under regulation 10 of the Maternity and Parental Leave Regulations 1999 (see above). A suitable alternative vacancy must be offered under a new contract that begins on the day immediately following the day on which your current contract ends. You can still take the rest of your maternity leave.

It may be an automatic unfair dismissal if your employer makes you redundant without offering any suitable alternative vacancies that are available from the point at which you are at risk of redundancy up to the end of your contract.

If your redundancy is not going to take effect until after the end of your maternity leave, you will not be protected by regulation 10. However, if your employer delayed your redundancy until after the end of your maternity leave, in order to avoid giving you alternative work, you may have a claim for automatic unfair dismissal and maternity discrimination and you should seek advice.

I have accepted an alternative role and my employer says I can do a trial period in that role? What happens if I don't like it?

If you accept the offer of the alternative employment, where the terms and conditions may be different from your original terms then you are entitled to do a trial period in that job. The trial period should start within or no later than 4 weeks after the end of your previous job and last for no more than four calendar weeks. This period can be extended for training purposes only. If you terminate the contract at the end of the trial period, then you are treated as having been dismissed from your original contract and you are entitled to a redundancy payment.

You can lose your right to redundancy pay if you work for more than four weeks in your trial role. You may lose the right to a redundancy payment if you undertake a trial period in the new role and the new role is suitable, but you unreasonably terminate your employment during the trial period.

I am on maternity leave and my employer is reducing the number of staff. Staff have been told that they must apply for one of the positions.

If your employer is restructuring or reorganising the workplace without reducing the number of staff, there may not be a redundancy situation. Nonetheless, employers should consult with all employees affected, including women on maternity leave. If your employer is reorganising or restructuring the workplace, it will be up to you and other employees to agree the changes.

If you are returning from ordinary maternity leave (the first 6 months), you are entitled to return to the same job as you were doing before your maternity leave. If you are returning after taking additional maternity leave (more than 6 months' maternity leave), you are still entitled to return to the job you were doing before your maternity leave but, if it is *not reasonably practicable* for you to return to your old job, your employer can offer you a suitable alternative job on the same terms and conditions. This means your employer must have a good business reason as to why you cannot return to your old job, for example, changes in the type of work, projects coming to an end or loss of contracts.

If your employer is reducing the number of staff there will be a redundancy situation. A redundancy is where the workplace closes down, the workplace moves or fewer employees are required for existing work. If you are one of the employees facing redundancy, you do not have to apply for suitable alternative work if you are on maternity leave. Under regulation 10 of the Maternity and Parental Leave Regulations 1999, you are entitled to be offered a suitable alternative post (if one exists) as soon as your post is at risk of redundancy. Your employer should not wait until you return to work although you can remain on maternity leave and return to your new post at the end of your leave.

My company has warned employees of impending redundancies. I was hoping to return to work part-time after my maternity leave. How are my rights affected by the redundancies?

If your job is identified as at risk of redundancy, you should consider first whether this is a genuine redundancy situation (see the legal definition of redundancy in the first question). Your employer must consult with employees and explore options to save jobs. You can use the consultation to raise the possibility of reducing your hours as an alternative to redundancy.

Your employer must consider whether there is a suitable alternative vacancy on your current hours. If you have already made a request for part-time hours, you may be able to argue that it is not a suitable alternative post if you are unable to work those hours because of childcare responsibilities. If you unreasonably refuse an offer of a suitable alternative role you will lose your right to a redundancy payment.

If you have not yet requested part-time work, you will need to put in a formal flexible work application. Your employer must seriously consider your request and can only refuse to adjust the hours if there is a good business reason why the vacancy could not be done in this way.

If you think that you were selected for redundancy because of your request for part-time work, this may be an unfair dismissal, less favourable treatment of part-time workers and/or indirect sex discrimination e.g. if the employer is only offering full-time roles.

Case example:

Miss R was a legal secretary. She asked to return to work part-time after maternity leave. She was made redundant shortly before the end of her leave when her employer was downsizing. The tribunal found that it was an unfair dismissal as it was based on the fact that she had asked to reduce her hours and that it was pregnancy discrimination as the employer took into account her pregnancy-related sickness absence in assessing her attendance at work. *Holden & Co LLP v Russell*, EAT 2014

I have been made redundant and I am working out my notice period, can I get any time off to look for work?

If you have been continuously employed for 2 years or more then you have the right to reasonable paid time off to look for a new job. This can include going for interviews as well as time off for registering with agencies or going to the Jobcentre Plus. You do not need to provide your employer with proof of interviews but you should keep any evidence in case there is a dispute about whether you took a reasonable amount of time off.

Fixed term contracts and redundancy

I am on maternity leave and I have been told that my contract will not be renewed, will I still get SMP and redundancy pay?

Yes, you will still be entitled to your Statutory Maternity Pay for the remainder of your 39 week SMP period. Your employer has the option of paying this in a lump sum. Any occupational maternity pay will end when your employment ends unless you can negotiate it as part of your redundancy package.

To be eligible for redundancy pay you must have a minimum of 2 years' continuous employment and you are entitled to the same contractual or statutory redundancy pay as permanent employees.

Will my employer have to offer me suitable alternative employment if my fixed term contract ends due to a redundancy?

If you are on maternity leave your employer will have to consider you for suitable alternative employment even if you are on a fixed term contract. You have the right not to be treated less

favourably compared to employees on permanent contracts, unless that different treatment can be objectively justified.

Does my employer still have to follow a redundancy process even if my contract is coming to an end and I am told that I will be made redundant?

Yes, your employer still has to follow relevant redundancy procedures and show that the reason for terminating your contract is fair and give you written reasons for the termination.

Unfair dismissal and discrimination

Has my employer used a fair procedure?

Your employer should give as much warning as possible of impending redundancies to enable trades unions and employees to consider alternative solutions. You have the right to be individually consulted even if you are on maternity leave. In addition, the law says that if you work for an employer who is proposing to make 20 or more people redundant who work at one workplace within a period of 90 days or less, your employer must consult all the appropriate representatives of any of the employees who may be affected at least 30 days before the first redundancy. If they are proposing to make more than 100 employees redundant within 90 days or less, they must begin consultation at least 45 days beforehand. You may have a tribunal claim for a protective award of not more than 90 days salary. If you are made redundant without any consultation, you are likely to have claims for unfair dismissal and pregnancy/maternity discrimination.

Should I have been chosen as the one to be made redundant?

Your employer must use fair selection criteria when selecting employees for redundancy. For example:

- Ability, experience and attendance
- Pregnancy, pregnancy-related illness or absence on maternity leave must not be taken into account
- Criteria which may indirectly discriminate against women (e.g. selecting part-timers ahead of full-timers) may be unlawful.

You should think about:

- How many redundancies are being made?
- Is it only you being made redundant?
- Who else is being made redundant?
- What reason/s are being given for the redundancies?

If you think you may have been unfairly selected for redundancy, you can ask your employer what criteria were used to select you for redundancy and how you were assessed against those criteria. You are entitled to a written statement of the reasons for your dismissal if you are made redundant during pregnancy, maternity or adoption leave.

As part of the consultation process, you should be given an opportunity to contest your selection for redundancy. This may involve explaining to your employer any factors which may have led to your selection and of which your employer is unaware (e.g. a personal crisis at home which may have affected your performance temporarily or bullying at work). It is also an opportunity to consider other vacancies within the organisation which may be suitable for you.

What can I do if I think that my employer is not offering me one of the posts that I think would be a suitable alternative vacancy?

Some employers may not be aware of the special protection that exists in relation to redundancy during maternity, adoption and shared parental leave, so you could give them a copy of this information sheet.

If you are not offered a suitable alternative vacancy (if there was one), you may have a claim for automatic unfair dismissal. You may also have other claims and you should get advice.

Note: if you unreasonably refuse suitable alternative work you would not be entitled to receive compensation for the dismissal or to receive a redundancy payment.

If you and your employer cannot agree about the suitable alternative work it will be up to an employment tribunal to decide whether an alternative role was 'suitable' or whether your employer should have offered it if you were on maternity, adoption or shared parental leave.

What type of claims can I make if I think the redundancy was unfair or discriminatory?

If you are made redundant while you are pregnant or on maternity leave you may have a number of claims:

Unfair dismissal

- There was no genuine redundancy situation,
- Your employer did not follow an agreed selection procedure,
- The selection criteria were unfair in themselves or were unfairly applied,
- There was a failure to consult and warn.

Automatic unfair dismissal

- You were selected for redundancy because of pregnancy, maternity, adoption, parental or shared parental leave or for other prohibited reasons such as having taken time off for antenatal or adoption appointments or taking time off for dependants.
- You were not offered a suitable alternative vacancy (if one existed) during maternity, adoption or shared parental leave.

Pregnancy/maternity discrimination

- You were selected for redundancy because of pregnancy or maternity leave or for other prohibited reasons such as having taken time off for antenatal appointments.
- You were treated unfavourably because of pregnancy or maternity leave e.g. you were not consulted while on maternity leave.

Other claims

- Loss of redundancy pay,
- Loss of notice pay, wrongful dismissal,
- Other losses e.g. wages, holiday pay,

You will need to be an employee with two years' service to bring an unfair dismissal claim but all other claims are day one rights.

If your employer is insolvent you can claim redundancy, notice pay and other losses from the Insolvency Service, see Where to go for more help below.

If you were not paid SMP or other statutory parental payments or your employer dismissed you to avoid paying statutory pay, you should contact HMRC Statutory Payments Disputes Team to start a claim on 0300 322 9422.

How do I make a claim in an employment tribunal?

Firstly, it's important to talk to your employer and give them information on your rights. If you want to challenge a redundancy decision you can ask for an appeal meeting. You can continue talking to your employer to try to resolve it and to explore constructive solutions but if you are unable to resolve it you can raise a grievance as a last resort and you must contact ACAS if you want to pursue a tribunal claim.

You should seek legal advice about your individual circumstances, claims and prospects of success as the outcome of a tribunal case can never be certain.

There are strict time limits for making claims in an employment tribunal of three months (less one day) from the date of the dismissal/redundancy or act/s of discrimination. Time limits can only be extended for very good reasons. **You must contact ACAS Early Conciliation on 0300 123 11 00 within the time limit before making a tribunal claim.**

ACAS will try to help you to settle through Early Conciliation but if your employer is not willing to engage in early conciliation or you cannot settle, ACAS will issue an early conciliation certificate and you can send in your ET1 claim form.

For more information on how to resolve disputes and how to start a tribunal claim, see *Dealing with problems at work*.

Benefits for families

Can I claim any benefits if I have been made redundant?

You may be eligible for Universal Credit depending on your household income, number of dependants and any rent you pay. If you are eligible for Universal Credit you may also be entitled to discretionary housing payments from your local council, the Sure Start Maternity Grant (for your first baby or first multiple birth) and Healthy Start vouchers if you're pregnant or have a child under four. If you are already receiving Working Tax Credit this will end after a four week 'run on' if your job ends. You can remain on Child Tax Credit and you may be entitled to an increase if you have no income or you are receiving SMP, Maternity Allowance or other statutory parental pay.

You may be entitled to New Style Jobseekers Allowance (JSA) or Employment Support Allowance (ESA) based on your National Insurance contributions in the last two to three years if you are looking for work or not well enough to work. If you live with a partner, their income and work will not affect your entitlement to contributory New Style JSA/ESA.

If you are entitled to Statutory Maternity Pay or Maternity Allowance, this will be paid from when you are 29 weeks' pregnant if you are unemployed or from the date that you stop work if later.

You may also be entitled to other help such as Child Benefit and Council Tax Reduction. Your local council may also have local welfare assistance schemes.

For more information on benefits for families, see *Money for Parents and Babies*.

Will my redundancy pay affect my entitlement to benefits?

Your final earnings, such as any holiday pay, notice pay or statutory maternity or parental pay will be taken into account in the Universal Credit assessment period in which they are paid.

Lump sum payments of statutory and contractual redundancy pay and a payment in lieu of notice (PILON) will be treated as capital.

If I am made redundant after my 'qualifying week' for SMP (the 15th week before the baby is due) but then do some work for another employer before my baby is born, what happens to my SMP?

Once you have qualified for SMP your SMP will start being paid to you by your employer (employer A) on the Sunday of the 11th week before the week your baby is due if your contract has ended by then or when you stop work if later.

If you work for a new employer (employer B) *before your baby is born* and you were not employed by employer B in the 15th week before your baby is due, you can continue to receive your SMP from

employer A up to the birth. However, you must tell employer A to stop paying your SMP if you do any work for employer B *after your baby is born* if you are still within your maternity pay period (39 weeks).

Query- If you are on maternity leave with employer B after your baby is born....

If you were employed by employer B during the 15th week before your baby was due, you can work for employer B both before and after your baby is born and continue to receive SMP from employer A.

I have been made redundant and will be receiving SMP for 39 weeks. Will the payments of SMP affect my benefits and does it make a difference if my employer continues to pay my SMP weekly/monthly or in a lump sum?

SMP is treated in different ways for different benefits:

Tax Credits

If you were made redundant whilst receiving SMP, you should be treated as working the hours you used to work until the end of the 39-week maternity pay period. This means that you continue to be entitled to Working Tax Credit whilst you are getting SMP even if your job has ended. If you are made redundant *before* your SMP period starts your Working Tax Credit will end after a four week run-on after your job ends.

The first £100 per week of your SMP is ignored as income for tax credits; if you are paid your SMP in a lump sum this means that up to £3,900 could be ignored as income. A lump sum payment of SMP will be taken into account in the tax year it was paid (rather than over a 39 week period which may fall in different tax years); this may affect your entitlement to tax credits as it could increase your total taxable annual income in the year it is paid.

Housing Benefit

If you are already receiving Housing Benefit when your job ends, a lump sum payment of SMP would be taken into account as earnings for the number of weeks the payment covers i.e. for 39 weeks. If you start claiming Housing Benefit after your job ends, the lump sum of SMP should be ignored as income or earnings.

Universal Credit

If you are paid SMP on a weekly/monthly basis and you are claiming Universal Credit, your SMP will be treated as monthly earnings and will be partly disregarded under the work allowance. If you are paid SMP as a lump sum it will only be taken into account as earnings in the month in which the lump sum payment is made. This means that you may lose entitlement to Universal Credit for the month in which the lump sum is paid and you may have to reclaim Universal Credit the following month. You will be treated as having nil income in the following months as your SMP has already been paid in full.

This information sheet was written in March 2022. It is very important to get up-to-date advice as law and guidance changes.

This guide is for information purposes only and should not be treated as legal advice. You are strongly advised to get personal legal advice about the individual circumstances of your case.

Where to go for more help

Maternity Action

For information on maternity and parental rights at work and benefits,

see: www.maternityaction.org.uk

Maternity Rights Advice Line:

Nationwide (except London) – 0808 802 0029

After Maternity Leave

Pregnant Pickle

People, Prejudice & Pregnancy

London (if you live or work in a London borough) – 0808 802 0057

For opening hours see: <https://maternityaction.org.uk/advice-line/>

ACAS

For advice on employment rights or for Early Conciliation if you are thinking of making a tribunal claim

www.acas.org.uk

Helpline: 0300 123 11 00 (offers telephone interpreting service)

Citizens Advice

For information about your rights see: www.citizensadvice.org.uk

You can telephone the national Citizens Advice phone service on 03444 111 444

You can get help with Universal Credit claims through the free national Help to Claim service:

England: [0800 144 8444](tel:08001448444), Wales: [0800 024 1220](tel:08000241220), Scotland: [0800 023 2581](tel:08000232581)

For more information on how to find your local Citizens Advice Bureau, see:

<https://www.citizensadvice.org.uk/about-us/contact-us/contact-us/contact-us/>

Civil Legal Advice

If you are eligible for legal aid you can get free legal advice on 0345 345 4 345 (offers translation service). To check your eligibility see www.gov.uk/civil-legal-advice

To search for specialist legal advisers or solicitors in your area see: <https://find-legal-advice.justice.gov.uk/>

Equality Advisory Support Service

Help and advice on discrimination and human rights www.equalityadvisoryservice.com

Helpline: 0808 800 0082 Mon – Fri 9am – 7pm, Sat 10am – 2pm

Textphone: 0808 800 0084

Equalities and Human Rights Commission (EHRC)

For information and advice about discrimination law www.equalityhumanrights.com

For information for employees and employers about pregnancy and maternity rights in the workplace see: www.equalityhumanrights.com/about-us/our-work/key-projects/managing-pregnancy-and-maternity-workplace

GOV.UK

The government's online information service www.gov.uk

Jobcentre Plus

To make new telephone benefit claims or request claim forms, including Maternity Allowance and Sure Start Maternity Grant: 0800 055 6688 Mon – Fri 8am – 6pm

For ESA/JSA/Income Support claims: 0800 169 0310 Mon – Fri 8am – 6pm

For Maternity Allowance claims: 0800 169 0283 Mon – Fri 8am – 6pm

For Sure Start Maternity Grant claims: 0800 169 0140 Mon – Fri 8am – 6pm/For Best Start Grant claims in Scotland: 0800 182 2222

Universal Credit helpline – for new claims and existing online claims: 0800 328 5644. Mon – Fri 8am – 6pm

For help with claiming Universal Credit see: www.gov.uk/universal-credit

HM Revenue & Customs (HMRC)

After Maternity Leave

Pregnant Pickle

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Tax Credit Helpline: 0345 300 3900 Mon – Fri 8am-8pm, Sat 8am-4pm, Sun 9am -5pm

Child Benefit: 0300 200 3100 Mon – Fri 8am-8pm, Sat 8am- 4pm

For queries about Statutory Maternity Pay, Adoption Pay, Paternity Pay and Shared Parental Pay:

Employees helpline 0300 200 3500

Employers helpline 0300 200 3200

HMRC Statutory Payments Disputes Team

If you cannot resolve a dispute about your SMP, you can ask HMRC for a formal decision on your entitlement. You can also ask HMRC to pay your SMP if your employer has refused to pay, has dismissed you to avoid paying SMP or has gone into liquidation. This includes disputes about Statutory Maternity Pay/Adoption Pay/Paternity Pay/Shared Parental Pay/Parental Bereavement Pay or Statutory Sick Pay

See: <https://www.gov.uk/guidance/statutory-pay-entitlement-how-to-deal-with-disagreements>

Telephone: 0300 322 9422

You can also write to the Statutory Payments Disputes Team at HM Revenue and Customs, PT Operations, Statutory Payments Dispute Team, BX9 1AN.

Insolvency Service Helpline

You can currently only contact the Insolvency Service online.

For what you can claim if your employer goes out of business, see: <https://www.gov.uk/your-rights-if-your-employer-is-insolvent>

Law Centres Network

To find out if there is a Law Centre in your area telephone 020 3637 1330 or see: www.lawcentres.org.uk/

Turn2us

Online benefits calculator and grant search www.turn2us.org.uk

Time off for working parents

This page contains information on:

1. [Paternity leave for fathers and partners \(including same sex partners\)](#)
2. [Statutory Paternity Pay](#)
3. [Parental Leave](#)
4. [Time Off For Dependants](#)
5. [Benefits for families](#)
6. [Where to go for more help](#)

March 2022

Before reading this information, please check your employment status. Some of the rights outlined in this information sheet apply to **employees**. If you are not an employee, for example, you are self-employed or doing casual or agency work, your rights may be different. If you are unsure about your employment status, seek advice.

Paternity leave for fathers and partners (including same sex partners)

What is paternity leave?

Paternity leave is up to two weeks' paid leave from work following the birth of a baby. You can take one week or two weeks in a row but not odd days or two separate weeks.

Paternity leave must be taken within 56 days of the birth. If the baby is born before the expected week, paternity leave can be taken any time from the actual date of birth up to 56 days from the date the baby would have been DUE.

You cannot take longer for a multiple birth but you can take parental leave if you are entitled to it (see below).

Who can take paternity leave?

You can take paternity leave if:

- you are an employee.
- you have been employed by the same employer for 26 weeks by the 15th week before the baby is due or, if the baby is born before then, you would have been employed by your employer for 26 weeks by the 15th week before the baby is due.
- you are still employed by the same employer before the birth.
- you are the father or the mother's husband or partner (including same sex partners and civil partners).
- you are responsible for the child and are taking time off to care for the child or support the mother.

Apprentices are employees and are entitled to the same parental rights as other employees.

If you are not an employee, you are not entitled to paternity leave but you can still qualify for Statutory Paternity Pay if you meet the normal conditions, see below, and you want to stop work for up to two weeks at the birth of your baby.

What notice do I have to give to take paternity leave?

To take paternity leave you must give your employer the following information by the 15th week before the baby is due. If your employer asks for it, the notice must be in writing:

- When the baby is expected to be born (or date of birth if already born)
- Whether you want to take one or two weeks leave
- When you want your leave to start (see next question)
- If you want to change the start of your leave, you must tell your employer at least 28 days in advance, or as soon as reasonably practicable.

To get Statutory Paternity Pay (SPP) while you are on leave, you must give your employer 28 days' notice. You can give notice for both leave and pay in the 15th week if you wish.

If your baby is born prematurely, you should give notice, as above, as soon as reasonably practicable and tell your employer the date your baby was born.

After Maternity Leave

Pregnant Pickle

People, Prejudice & Pregnancy

If your baby is stillborn after the end of the 24th week of pregnancy you are still entitled to paternity leave and Statutory Paternity Pay (if you meet the qualifying conditions) and you should give your employer notice as above.

When does paternity leave start?

Paternity leave can start on any day of the week. You can choose to start your leave on:

- the day the baby is born, or
- a fixed number of days/weeks after the birth, or
- a fixed date after the day the baby is due

Remember, your leave must be completed by 56 days from the birth (or 56 days from the due date if your baby is premature).

If you choose to start your leave on the day the baby is born and you are at work that day, your leave will start the following day. If you choose a fixed day and your baby has not been born yet you must give notice as soon as possible that you wish to take paternity leave from the day the baby is born or from a new date. You cannot have paternity leave and pay before the birth.

What are my rights during paternity leave?

During your paternity leave you are entitled to all your normal contractual terms and conditions apart from your basic wages or salary. Benefits such as share schemes, a company car or mobile phone (unless provided for business use only) continue during paternity leave. You continue to accrue your normal holiday entitlement. Your employer must continue to pay your pension contributions based on your normal salary but any contributions you pay should be based on the paternity pay you actually receive. You are still regarded as continuing in employment during paternity leave so your length of service is continuous.

You have the right to return to exactly the same job on the same terms and conditions after paternity leave.

You are protected against unfair treatment or automatic unfair dismissal for reasons relating to paternity leave from day one of your employment.

I want to be present when my baby is born, but have just started a new job. What should I do?

If you are not entitled to paternity leave (see above), you could:

- take annual leave. Check with your employer about how much notice you need to give.
- take emergency time off for dependants (TOFD). See below for TOFD.

I would like more time off than two weeks when my baby is born; is there any extra leave I can take?

You can only take up to two weeks paternity leave but you could extend your time at home by:

- taking annual leave or
 - taking unpaid parental leave (if you qualify) at the birth or immediately after your paternity leave
- See the section below on parental leave. You must give 21 days' notice of the date your baby is due and tell your employer how much parental leave you would like to take. Your employer cannot postpone parental leave if you give notice to take it when your baby is born.

If you qualify for paternity leave and Statutory Paternity Pay (see below), you will also qualify for shared parental leave and pay if the mother does not take all of her maternity leave or pay and you both meet the qualifying conditions. You can take shared parental leave up to a year from the birth.

Statutory Paternity Pay

What is Statutory Paternity Pay (SPP)?

SPP is paid by employers for up to two weeks. SPP is paid at £156.66 per week (April 2022 – April 2023) or 90% of your average earnings if that is lower.

Employers claim the SPP back from HMRC. You do not have to repay it if you do not go back to work for your employer.

Some employers offer additional paternity pay, so always check your contract or ask.

Can I get Statutory Paternity Pay?

You can get SPP if your employer pays your wages, usually through PAYE, and deducts tax and NI (or would do if you earned enough) and you meet the following conditions:

- you are the baby's father or the husband/partner of the mother and you are responsible for the baby's upbringing.
- you have been employed by your employer for 26 weeks by the 15th week before the baby is due or, if the baby is born before then, you would have been employed by your employer for 26 weeks by the 15th week before the baby is due.
- you are still employed by the same employer before the birth.
- you earn at least the weekly lower earnings limit (£123 per week April 2022 – April 2023) on average, before tax, in the eight weeks (if paid weekly) or two months (if paid monthly) before the 15th week before your baby is born.

You do not have to be an employee to get SPP. Agency, casual, freelance workers and workers on zero hours contracts can also get SPP if you meet the conditions above and your employer pays your wages and deducts tax and NI. The employer pays SPP in the same way as wages and claims it back from HM Revenue & Customs. You will need to agree the time off with your employer/agency while you stop work to receive SPP.

SPP is not classed as public funds and will not affect future immigration applications.

How do I claim Statutory Paternity Pay?

To get Statutory Paternity Pay, you must give your employer notice of the date you want payment to start at least 28 days before or as soon as reasonably practicable.

To give notice you could ask your employer for form SC3 or give your employer a signed letter stating that:

- you want to receive one or two weeks' SPP
- you are the baby's father or the husband/ partner of the mother
- you are responsible for the baby's upbringing
- you are taking time off to be with your child or the mother.

Form SC3 is also available on www.hmrc.gov.uk/forms/sc3.pdf.

SPP can start on any day of the week, for example, from Tuesday to Monday but you cannot get a week's SPP if you do any work between those days – even for an odd day.

If you work for more than one employer, you can qualify for SPP from each employer, if you meet the qualifying conditions in each job. You can work for one employer (B) and receive SPP from your other employer (A) as long as employer B employed you in the 15th week before the baby is due.

If you work for an employer who did not employ you in the 15th week before your baby was due, you are not entitled to SPP from employer A.

What can I do if my employer refuses to pay SPP?

If your employer does not pay your SPP or goes into liquidation you can claim it directly from the HMRC Statutory Payment Disputes Team on 0300 322 9422. If you are dismissed or made redundant 'solely or mainly' to avoid payment of SPP you can ask the Statutory Payments Disputes Team for a formal decision and they will order your employer to pay your SPP. See Where to go for more help below.

I do not qualify for SPP. Can I claim anything else?

If you do not qualify for SPP, for example, if your earnings are too low, your employer must give you form SPP1 explaining why you cannot get it. You cannot claim SPP if you are self-employed. You may be able to claim Universal Credit during your paternity leave (depending on your family income and circumstances). See benefits for families below.

Can I get sick pay if I am not well enough to work during paternity leave?

If you are entitled to contractual sick pay you should speak to your employer and follow your employer's normal sickness procedures. Once you are well, you must return to work, you cannot go back onto paternity leave.

If you do not have a contractual right to sick pay, you cannot be paid SPP for any week in which you are entitled to Statutory Sick Pay. If you are receiving Statutory Sick Pay before the start of paternity leave, your employer should continue to pay Statutory Sick Pay. If you call in sick during paternity leave and you meet the qualifying conditions for Statutory Sick Pay, you should not be paid SPP but should receive Statutory Sick Pay instead. Payments of SPP count as earnings for calculating average earnings for Statutory Sick Pay purposes. Statutory Sick Pay is £99.35 per week (April 2022 – April 2023).

Parental Leave

What is parental leave?

Parental leave is designed to give parents more time with their young children. It entitles you to take 18 weeks' leave per parent per child, usually unpaid, up to your child's 18th birthday.

Many of the details of parental leave are not hard and fast rules and can be negotiated in a workforce agreement or collective agreement. If there is no agreement at your workplace you can rely on the default scheme which is set out in this section.

What is a collective agreement?

If there is a union or staff association at your workplace, a collective agreement will be negotiated by the representatives and will probably cover other matters as well as the details about parental leave.

What is a workforce agreement?

If there is no union at your place of work, you can negotiate a workforce agreement between the staff and the employer, which can have much more detailed rules about how parental leave should work. It cannot take away your basic right to 13 weeks' leave, but it could contain very different rules about how and when parental leave is taken, a system tailored to suit your particular workplace. You can agree anything that improves upon the legal minimum, but your employer cannot take your legal minimum rights away. For example, you might be able to negotiate:

- that you can take more than four weeks per year or less than blocks of one week;
- that parental leave should be paid at a certain rate;
- that it should not always be necessary to give as much as 21 days' notice for parental leave (for example, if you were only going to be on leave for two days).

What is the default scheme?

If there is no collective or workforce agreement in place, then you will be entitled to the default scheme. The default scheme kicks in when there are no other rules in place agreed by a collective or workforce agreement and is the legal minimum that you are entitled to. Under the default scheme:

- parental leave is unpaid;
- you can only take four weeks per year per child;
- you can only take it in blocks of a week or more (unless your child is disabled when you can take it blocks of one day or more);
- you must always give 21 days' notice if you want to take parental leave

Who can take parental leave?

You can take parental leave for your child as long as;

- you are an employee
- you have been employed by the same employer for at least a year
- you take the leave before your child's 18th birthday

Both parents can take up to 18 weeks' parental leave for **each** child.

Anyone who has, or expects to have, parental responsibility for a child can take parental leave for that child – see the next question.

Who has parental responsibility for a child?

The birth mother automatically has parental responsibility for the child and so does the father, if you are married to the mother or your name appears on the birth certificate. Otherwise you can apply for a parental responsibility order.

For more information, see Government guidance here: www.gov.uk/parental-rights-responsibilities.

How do I take parental leave?

In order to take parental leave, you must give your employer 21 days' notice, in writing, of the date you want to start your leave and how much leave you want to take. You should provide proof of your entitlement to parental leave to your employer (for example, baby's birth certificate, certificate showing your baby's due date or proof of adoption).

Is there a limit to how much leave I can take at a time?

You can usually only take parental leave in blocks of a week or more up to four weeks per child in any one year. You can take blocks of parental leave in a row i.e. two weeks together, up to a maximum of four weeks a year. If your child is disabled, you can take parental leave in blocks of a day or more up to four weeks per child per year. However, you and your employer could agree for you to take more than this or your workplace may have a collective or workforce agreement which allows you to take more leave at one time.

Each year begins from the date you first became entitled to parental leave for the child in question. So, it will normally be a year from your child's birthday.

Will I be paid while I am on parental leave?

Parental leave is usually unpaid, unless your employer offers to pay some of it.

You may be able to claim Universal Credit during unpaid parental leave (depending on your family income and circumstances). See benefits for families below.

Are my employment rights affected while I am on parental leave?

During parental leave you will continue to be an employee, but it is likely that you won't receive any of your usual contractual benefits (e.g. company car) unless your employer offers it. The only rights that will continue automatically will be:

- the notice period in your contract of employment (or, if there is none, the legal minimum) will still apply (if either you or your employer wish to terminate your employment)
- you will be entitled to redundancy pay, if you qualify
- disciplinary and grievance procedures will apply
- if your contract has a section which states that you must not work for any other company, this will still apply

It might be possible to negotiate with your employer for other rights in your contract to continue. Your period of parental leave will count as continuous service with your employer.

You are still entitled to your statutory rights (i.e. rights that apply by law to all employees in this country) whilst you are on parental leave. For example, all workers and employees have a legal right to at least 28 days' paid holiday per year and this continues to accrue as normal during maternity, paternity, parental or adoption leave.

Your employer must not dismiss or treat you unfairly because you are taking parental leave, such as, failing to consider you for opportunities such as training or promotion.

What happens when I return to work after parental leave?

You do not need to give any notice of your return, you simply come back to work at the end of your agreed period of leave.

If you have taken parental leave of four weeks or less, you have the right to return to exactly the same job you were doing before you left. If you have taken parental leave of more than four weeks, your employer must allow you to return to a similar job if it is not reasonably practicable for you to return to your old job, see the table below. This new job must have the same terms and conditions as your old job and involve the same type of work.

Can I take parental leave at the end of ordinary maternity leave or paternity leave?

Yes, as long as you follow the notice procedures for taking parental leave. If you take parental leave after ordinary maternity leave or paternity leave, you will be entitled to return to your old job. However, if you take parental leave of more than four weeks, the rules are different, see the table below. If your employer can show that it is not possible to give you your old job back, they can offer you a suitable alternative job with the same terms and conditions and the same type of work.

Could I take parental leave at the end of additional maternity leave?

Yes, as long as you follow the notice procedures for taking parental leave. At the end of additional maternity leave, you have the right to return to the same job as you were doing before your maternity leave but, if your employer can show that it is not reasonably practicable to give you your old job back, they can offer you a suitable alternative job with the same terms and conditions and the same type of work.

Right to return to the same job	Ordinary Maternity Leave (OML) – the first 26 weeks
	Parental Leave of four weeks or less
	OML plus Parental Leave of four weeks or less (or Parental Leave of four weeks or less followed by OML)

	Shared parental leave (SPL) where your total leave adds up to 26 weeks or less on aggregate (you have to include any periods of SPL and maternity leave taken in respect of this baby).
Right to return to the same job or, where it is not reasonably practicable, to a suitable alternative job	<p>OML plus Additional Maternity Leave (AML) – more than 26 weeks of maternity leave</p> <p>Parental Leave of four weeks or more</p> <p>OML plus Parental Leave of four weeks or more</p> <p>OML/AML followed immediately by a second period of OML or Parental Leave of any length</p> <p>OML/AML followed immediately by OML/ AML</p> <p>Shared parental leave (SPL) where your total leave adds up to more than 26 weeks on aggregate (including any periods of SPL and maternity leave taken in respect of this baby)</p>

You will be counted as having returned to work in between periods of leave if you returned to work after your leave came to an end or you gave notice to end it early. You will also be counted as having returned to work if you were on annual leave or sick leave. It does not matter how long you returned to work, even if you return to work for one day it will count as a break in your leave.

If you return to the same job, you are entitled to receive the same terms and conditions that applied immediately before your leave began. If you are offered a suitable alternative job, you are entitled to be offered similar terms and conditions that are not substantially less favourable than your terms and conditions in your previous job. Throughout OML/ AML and Parental Leave your seniority, pension and other service-related rights should remain as they would have been if you had not been absent from work.

If you are not allowed to return to the same job or you are not offered a suitable alternative job on similar terms and conditions, you may have a claim for unfair dismissal, detriment and/or discrimination.

Can my employer refuse my request to take parental leave?

If you are a father who wants to take time off for the birth of your baby, or if you are adopting a child and want parental leave at the time of placement, your leave cannot be refused or postponed. At all other times your employer cannot REFUSE your request to take parental leave but your employer is allowed to POSTPONE your parental leave once, for up to six months, if they can show that the business would be unduly disrupted by your absence on leave. Your employer cannot postpone parental leave for any other reason.

If your employer does want to postpone your leave they must tell you this in writing within seven days of your request. You must also be given the reasons why the leave has to be postponed and a date within 6 months when you are allowed to take the leave.

What can I do if my employer will not let me take parental leave?

You should talk to your employer informally and give them some information on your rights. If necessary you could write to your employer. If you cannot resolve it you may be able to make a claim in an employment tribunal and you should seek advice as soon as possible. You must make a claim within three months (less one day) of the act you are complaining about. You must contact ACAS Early Conciliation within the time limit on 0300 123 11 00 before making a tribunal claim.

I tried to book parental leave for my child's Christmas holidays, but my employer refused. My mother was going to care for him, but now she is sick. What can I do?

Your employer is allowed to postpone your parental leave once, for up to six months, if it would disrupt the business, for example, if it will be particularly busy at that time.

If there is an emergency and you have no one available to care for your child, you can take time off for dependants whilst the emergency lasts – see the next section.

My daughter is sick. Can I phone my employer and ask to take parental leave today?

You cannot take parental leave without giving 21 days' notice, unless you and your employer have agreed to this in a collective or workforce agreement. However, you can take time off for dependants without giving notice if there is an emergency, until you have made alternative arrangements.

I am expecting twins. What will I be entitled to?

Both parents will be entitled to 18 weeks' parental leave for each child, to be taken before their 18th birthday. Parents are entitled to a separate amount of parental leave for each child in a multiple birth.

What counts as a week?

A week of parental leave means your normal working week. If your working week varies, then it is calculated by dividing a year's worth of work periods by 52 to make an average week.

What am I entitled to if I work part-time?

You are still entitled to 18 weeks' parental leave. This will be based on your normal working week, so if you usually work two days per week you will get 18 weeks at this rate (a total of 36 days' leave). You are entitled to time off for dependants in the same way as a full-time employee.

What if I change my job?

You will have to work for your new employer for a year in order to qualify for parental leave, unless your new employer has a more generous policy. You can carry over parental leave that you have not taken from one employer to the next and your new employer is allowed to ask you and your old employer about how much parental leave you have taken so far. However, neither you nor your old employer has a duty to pass on this information.

Could I use my parental leave to work part time four days a week for a year?

You can usually only take parental leave in blocks of a week or more (unless your child is disabled). However, you and your employer are allowed to change this rule in a collective or workforce agreement or you could ask your employer if you could take parental leave more flexibly.

What happens if I am treated unfairly because I want to take parental leave?

Your employer must not dismiss you or treat you unfairly because you are taking parental leave. You should try to resolve it amicably wherever possible by talking to your employer informally. If necessary you could write to your employer. If you are unable to resolve it you may be able to make a claim in an employment tribunal and you should get advice as soon as possible.

If you are dismissed, made redundant or treated unfairly for taking parental leave you can make a claim within three months, less one day. You are protected against discrimination and unfair treatment for reasons relating to parental leave from day one of your employment.

You must contact ACAS Early Conciliation within the time limit on 0300 123 11 00 before making a tribunal claim.

Time Off For Dependants

What is time off for dependants (TOFD)?

This is the right to take reasonable amounts of unpaid leave from work in order to deal with emergencies involving others who rely on you.

You must be an employee to be able to take TOFD. It doesn't matter how long you have been in your current job or how many hours a week you work.

Who is classed as a 'dependant'?

Your husband, wife, parent, or child whether or not they live with you. You can also take it for someone who lives with you, such as your partner. You cannot take it for other people who live with you but are not part of your family, such as an employee, tenant, lodger or boarder. You may also be able to take it for others who depend on you for assistance, such as a neighbour who has no other person who can support them.

When can I take time off for dependants?

You can take the time off in the following circumstances:

- If a dependant falls ill, gives birth or is injured and needs your assistance.
- If you need to make arrangements for the care of a dependant who is ill or injured.
- If there is a sudden disruption of arrangements for the care of a dependant.
- If there is an unexpected incident at school involving your child (when the school has responsibility for your child).
- If your dependant dies.

How much time off can I have?

There is no legal definition of how much time off is reasonable, so it will depend on the particular circumstances. However it has to be necessary for you to take the time off, it can't just be something that you would prefer to do. The time off will have to be reasonable for the circumstances. For example, if your child has chicken pox you can take time off to deal with this crisis and to make arrangements for childcare but you probably could not take TOFD to cover a long period of sick leave, since this would no longer be an emergency.

Will I be paid while I am off?

Employers do not have to pay you for any time you take off to look after your family or other dependants.

However, some employers provide paid emergency time off or family leave; check your contract or ask your HR department if you are not sure what your employer offers. If paid family leave is offered, they can't take away this contractual right without your agreement.

How do I take time off for dependants?

As time off for dependants is time off for unforeseen circumstances you do not need to give notice in advance. But, you MUST tell your employer as soon as possible of the reason for your absence and how long you expect it to last. You must return to work as soon as you can and you do not have to provide proof to your employer as to the reason for the time off.

What can I do if I am treated unfairly because I took time off for a dependant?

Your employer must not treat you unfairly because you are taking time off. You should try to resolve it amicably wherever possible by talking to your employer informally. If necessary you could write to your employer. If you are unable to resolve it you may be able to make a claim in an employment tribunal and you should get advice as soon as possible.

If you are dismissed or treated unfairly for taking time off you can make a claim in an Employment Tribunal. You need to be employed for two years to bring a claim for unfair dismissal, but you are

protected against discrimination, automatic unfair dismissal and unfair treatment for reasons relating to time off for family reasons from day one of your employment.

You must start a tribunal claim within three months, less one day, from the date of the act or series of acts you are complaining about. **You must contact ACAS Early Conciliation within the time limit on 0300 123 11 00 before making a tribunal claim.**

Benefits for families

Are there any benefits we can claim?

Child Benefit

Once your baby is born you can claim Child Benefit. Families in receipt of child benefit will be subject to a high earner child benefit charge if one or more parent earns more than £50,000.

Tax Credits

If you are already receiving Child Tax Credit and/or Working Tax Credit you may be entitled to an additional amount for a new baby or if your income drops or you take maternity or parental leave. You should get advice **before** making a new claim for Universal Credit as you cannot go back onto tax credits and you may be worse off on Universal Credit. For more information or to report any changes of circumstances, contact the Tax Credit Helpline on 0345 300 3900 or see: www.gov.uk/child-tax-credit/already-claiming

Universal Credit

You may be able to claim Universal Credit (depending on your family income and circumstances) if you are on a low income or taking maternity or parental leave. Statutory Maternity, Paternity, Adoption, Shared Parental Pay and Statutory Sick Pay are treated as earnings when claiming Universal Credit and are largely disregarded. You are exempt from work-related requirements if you are a single parent or nominated as the main carer of a child under 3.

For more information on Universal Credit, see: www.gov.uk/universal-credit.

For an online calculator, see www.betteroffcalculator.co.uk.

You can get more advice on Universal Credit claims through the free Citizens Advice Help to Claim service: England: [0800 144 8444](tel:08001448444), Wales: [0800 024 1220](tel:08000241220), Scotland: [0800 023 2581](tel:08000232581).

Food vouchers and Sure Start/Best Start Maternity Grant

If you or your partner are receiving Universal Credit, Child Tax Credit, Income Support or income-based Jobseekers Allowance you may be entitled to Healthy Start vouchers and a Sure Start Maternity Grant of £500 for your first child (or if there are no other children aged under 16 in your family) or first multiple birth. Claim on form SF100 (Sure Start), available from your local Jobcentre Plus or online [here](#), from 11 weeks before your baby is due until 6 months after the birth.

If you live in Scotland you may be eligible for Best Start Grants and Best Start Foods, see: www.mygov.scot/best-start-grant-best-start-foods/

Housing and council tax

You may also be able to get help from your local council with discretionary housing payments, council tax reduction or local welfare assistance schemes.

For more information on benefits, see: [Money for Parents and Babies](#)

This information sheet was written in March 2022. It is very important to get up-to-date advice as law and guidance changes.

This guide is for information purposes only and should not be treated as legal advice. You are strongly advised to get personal legal advice about the individual circumstances of your case.

Where to go for more help

After Maternity Leave

Pregnant Pickle

People, Prejudice & Pregnancy

Maternity Action

For information on maternity and parental rights at work and benefits,

see: www.maternityaction.org.uk

Maternity Rights Advice Line:

Nationwide (except London) – 0808 802 0029

London (if you live or work in a London borough) – 0808 802 0057

For opening hours see: <https://maternityaction.org.uk/advice-line/>

ACAS

For advice on employment rights or for Early Conciliation if you are thinking of making a tribunal claim

www.acas.org.uk

Helpline: 0300 123 11 00 (offers telephone interpreting service)

Citizens Advice

For information about your rights see: www.citizensadvice.org.uk

You can telephone the national Citizens Advice phone service on 03444 111 444

You can get help with Universal Credit claims through the free national Help to Claim service:

England: [0800 144 8444](tel:08001448444), Wales: [0800 024 1220](tel:08000241220), Scotland: [0800 023 2581](tel:08000232581)

For more information on how to find your local Citizens Advice Bureau, see:

<https://www.citizensadvice.org.uk/about-us/contact-us/contact-us/contact-us/>

Civil Legal Advice

If you are eligible for legal aid you can get free legal advice on 0345 345 4 345 (offers translation service). To check your eligibility see www.gov.uk/civil-legal-advice

To search for specialist legal advisers or solicitors in your area see: <https://find-legal-advice.justice.gov.uk/>

Equality Advisory Support Service

Help and advice on discrimination and human rights www.equalityadvisoryservice.com

Helpline: 0808 800 0082 Mon – Fri 9am – 7pm, Sat 10am – 2pm

Textphone: 0808 800 0084

Equalities and Human Rights Commission (EHRC)

For information and advice about discrimination law www.equalityhumanrights.com

For information for employees and employers about pregnancy and maternity rights in the workplace see: www.equalityhumanrights.com/about-us/our-work/key-projects/managing-pregnancy-and-maternity-workplace

GOV.UK

The government's online information service www.gov.uk

Jobcentre Plus

To make new telephone benefit claims or request claim forms, including Maternity Allowance and Sure Start Maternity Grant: 0800 055 6688 Mon – Fri 8am – 6pm

For ESA/JSA/Income Support claims: 0800 169 0310 Mon – Fri 8am – 6pm

For Maternity Allowance claims: 0800 169 0283 Mon – Fri 8am – 6pm

For Sure Start Maternity Grant claims: 0800 169 0140 Mon – Fri 8am – 6pm/For Best Start Grant claims in Scotland: 0800 182 2222

After Maternity Leave

Pregnant Pickle

People, Prejudice & Pregnancy

Universal Credit helpline – for new claims and existing online claims: 0800 328 5644. Mon – Fri 8am – 6pm

For help with claiming Universal Credit see: www.gov.uk/universal-credit

HM Revenue & Customs (HMRC)

Tax Credit Helpline: 0345 300 3900 Mon – Fri 8am-8pm, Sat 8am-4pm, Sun 9am -5pm

Child Benefit: 0300 200 3100 Mon – Fri 8am-8pm, Sat 8am- 4pm

For queries about Statutory Maternity Pay, Adoption Pay, Paternity Pay and Shared Parental Pay:

Employees helpline 0300 200 3500

Employers helpline 0300 200 3200

HMRC Statutory Payments Disputes Team

If you cannot resolve a dispute about your SMP, you can ask HMRC for a formal decision on your entitlement. You can also ask HMRC to pay your SMP if your employer has refused to pay, has dismissed you to avoid paying SMP or has gone into liquidation. This includes disputes about Statutory Maternity Pay/Adoption Pay/Paternity Pay/Shared Parental Pay/Parental Bereavement Pay or Statutory Sick Pay

See: <https://www.gov.uk/guidance/statutory-pay-entitlement-how-to-deal-with-disagreements>

Telephone: 0300 322 9422

You can also write to the Statutory Payments Disputes Team at HM Revenue and Customs, PT Operations, Statutory Payments Dispute Team, BX9 1AN.

Insolvency Service Helpline

You can currently only contact the Insolvency Service online.

For what you can claim if your employer goes out of business, see: <https://www.gov.uk/your-rights-if-your-employer-is-insolvent>

Law Centres Network

To find out if there is a Law Centre in your area telephone 020 3637 1330 or

see: www.lawcentres.org.uk/

Turn2us

Online benefits calculator and grant search www.turn2us.org.uk