

# Employment Law

May 2015

## In this article

In this article, we provide updates to figures which took effect from 5th April, provide an update on the recent holiday pay case and set out major changes to Parental rights, the principal one being the introduction of Shared Parental Leave.

## Annual Updates which took effect on 6<sup>th</sup> April 2015

### Parental payments

Type of Payment	Rate	Maximum period
Statutory Maternity Pay (Higher rate)	90% of weekly earnings	6 weeks
Statutory Maternity Pay (basic rate)	£139.58 per week (or 90% of earnings if lower)	33 weeks
Maternity allowance	£139.58 per week (or 90% of earnings if lower)	39 weeks
Statutory paternity pay	£139.58 per week (or 90% of earnings if lower)	2 weeks
Shared Parental Pay	£139.58 per week (or 90% of earnings if lower)	39 weeks (less any weeks spent by mother or adopter on SMP, MA or SAP)
Statutory Adoption Pay (Higher rate)	90% of weekly earnings	6 weeks
Statutory adoption pay (basic rate)	£139.58 per week (or 90% of earnings if lower)	33 weeks

**Statutory Sick Pay**

£88.45 per week (for up to 28 weeks in any 3 year period)

**Maximum weekly pay for redundancy calculation**

£475 per week

**Guarantee Pay**

£26 per day (subject to a maximum of 5 days or £130 in any 3 months)

**Update on Holiday Pay: Commission**

Earlier this year we mentioned the case of Lock v British Gas [2014]. The Leicester Employment Tribunal has now set out how employers should calculate holiday pay for workers who are paid partly by commission. Their holiday pay in respect of any particular period of holiday is based on a calculation of a week's pay calculated at the average remuneration payable by the employer to the worker in respect of the period of 12 weeks ending-

1. Where the calculation date is the last day of the week, with that week, and
2. Otherwise, with the last complete week before the calculation date.

The rate of holiday pay could therefore vary during the course of a year according to the amount earned by the worker in the 12 weeks immediately preceding the holiday.

**Parental Rights: Shared Parental Leave**

The Shared Parental Leave Regulations which were brought into force this year.

They apply to parents of any child whose expected date of birth was, or who was matched for adoption, on or after 5th April 2015.

It enables both parents of a child to take paid parental leave during the first year of the baby's life/adoption.

The length of entitlement is the same as for maternity leave and involves the mother entitled to maternity leave giving up a portion of her entitlement to maternity leave, in favour of that portion being Shared Parental Leave (SPL) and allocated to themselves and/or their partner who must have responsibility for caring for the child and can either be the child's parent, the mother's civil partner or a partner who lives with the mother and child in an enduring family relationship. Parents can each take SPL at the same time or consecutively, but the total entitlement of both parents combined is 50

weeks (the mother must take a minimum of 2 weeks maternity leave immediately after the birth).

SPL can be taken as one continuous period or more than one discontinuous period.

### **Entitlement to Shared Parental leave**

An employee is entitled to SPL if they satisfy a "continuity of employment test" and their partner satisfies an "employment and earnings test." The partner may be employed or self-employed. It is possible for either mother or partner or both parents to be eligible for SPL. Even where only the mother takes SPL, it still enables her to take leave in discontinuous periods (rather than a single continuous period of maternity leave).

Additionally a mother who wishes to take SPL must be eligible for statutory maternity leave and have the main responsibility for the care of the child.

For a parent who is not the mother to take SPL, the mother must be eligible for statutory maternity leave, statutory maternity pay or maternity allowance and have the main responsibility for the care of the child.

### **Shared Parental pay**

Subject to having earned above the lower earnings limit in the 8 weeks leading up to the 15th week before the child's due date/matching date, Parents are entitled to be paid Shared Parental Pay (ShPP). ShPP is payable by the employer at the ordinary maternity leave rate (currently £139.58 per week). The combined entitlement to ShPP and Statutory maternity Pay (SMP) is 39 weeks. Mothers are still entitled to receive 6 weeks SMP at 90% of their earnings as part of the combined 39 weeks entitlement.

### **Procedure for applying for SPL**

To claim SPL, the parents must give their employer 3 notices:-

1. Mothers must give notice to shorten their maternity leave
2. Both parents must give their respective employers a notice of entitlement and intention to take parental leave and provide specific prescribed information
3. Each parent must notify their employer with a "period of leave notice" at least 8 weeks in advance of them taking a period of SPL (which can only be booked in blocks of complete weeks)

As long as they give the employer 8 week's notice an employer cannot refuse a single continuous period of SPL, although they are entitled to refuse a period of discontinuous SPL within 2 weeks of being notified.

An employer is entitled to request details of the other partner's employer.

An employee can apply to vary their SPL by serving the employer with a "variation notice" a least 8 weeks in advance of the date the variation is to take place. The employer is entitled to refuse a request to vary SPL within 2 weeks of being notified.

**Further Information:**

- Link to the Regulations:  
<http://www.legislation.gov.uk/ukxi/2014/3050/contents/made>
- Link to ACAS Guidance:  
<http://www.acas.org.uk/index.aspx?articleid=4911>

**Parental Rights: Other Changes**

**Parental leave:**

An employee with parental responsibility for a child who has been continuously employed for 1 year has the right to be absent from work up to a maximum of 13 weeks on parental leave for the purpose of caring for a child. Since April 2015 this can be exercised any time up to the child's 18th birthday (previously it was only up to the child's 5th birthday).

**Ante-natal appointments:**

Fathers now have the right to take time off during working hours to accompany the prospective mother when she attends ante-natal appointments on up to 2 occasions. This is subject to the appointment being made on medical advice and the employer is entitled to ask the employee to provide a signed declaration to confirm eligibility.

**Adoption:**

Employees have the right to take paid time off during working hours to attend adoption appointments. The primary adopter on up to 5 occasions and the other adopter on up to 2 occasions.

An employee who adopts a child will be entitled to adoption leave, without any qualifying period of employment. Adoption pay (which is subject to a length of service and minimum earnings requirement) is now 90% of normal pay during the first 6 weeks of adoption leave and 33 weeks at £139.58 per week.

**Surrogate Parents:**

Parents who have a child through surrogacy (provided they meet the eligibility criteria) are entitled to take ordinary paternity leave and pay, adoption leave and pay and shared parental leave and pay. Both parents are also entitled to take unpaid time off to attend 2 ante-natal appointments with the woman carrying the child.

**Contact us:**

For a free, no obligation discussion call **Gill Wilkinson** on York **01904 716 000** or Wetherby **01937 583 210** or if you prefer you may email her at **[gillian.wilkinson@warekay.co.uk](mailto:gillian.wilkinson@warekay.co.uk)**.