

## Shared Parental Leave (Birth) Policy

### 1. Introduction

The Arts Council of Wales (the Council) recognises its statutory responsibility when dealing with requests from employees to undertake shared parental leave. This policy outlines the arrangements for shared parental leave and pay in relation to the birth of a child. If you are adopting a child please see the Shared Parental Leave (Adoption) Policy instead.

Shared parental leave, maternity leave and paternity leave are complex issues. All employees are encouraged to have early conversations regarding their leave intentions with HR to enable the employee and the Council to be clear regarding the entitlement, what leave arrangements are being considered and how any leave will be accommodated.

### 2. Frequently Used Terms

The definitions in this paragraph apply in this document.

**Expected week of childbirth (EWC):** the week, beginning on a Sunday, in which the doctor or midwife expects the child to be born.

**Parent:** One of two people who will share the main responsibility for the child's upbringing (and who may be either the mother, the father, or the mother's partner if not the father).

**Partner:** an employee's spouse, civil partner or someone living with that person in an enduring family relationship, but not their sibling, child, parent, grandparent, grandchild, aunt, uncle, niece or nephew.

**Qualifying Week:** the fifteenth week before the EWC.

**Continuous leave:** a period of leave that is taken in one block e.g. four weeks' leave.

**Discontinuous Leave:** a period of leave that is arranged around weeks where the employee will return to work e.g. an arrangement where an employee will work every other week for a period of three months.

### 3. What is shared parental leave?

Shared parental leave (SPL) gives employees and their partners more flexibility in how to share the care of their child in the first year after birth than simply taking maternity and paternity leave.

Assuming both persons are eligible, they will be able to choose how to split the available leave, and can decide to be off work at the same time or at different times.

Employees may be able to take leave in more than one block.

#### 4. What happens to Maternity/Adoption/Paternity Leave?

Parents will remain entitled to take maternity, paternity and adoption leave. However, an eligible mother or adopter may now choose to reduce their maternity/adoption leave early and opt in to SPL.

A birth mother must take at least two weeks maternity leave following the birth of a child but can otherwise choose to end her maternity leave at any stage.

An adopter can end their adoption leave once they have taken it for two weeks.

A father, partner or civil partner can take paternity leave for one or two weeks up to 56 days after the child is born, or placed for adoption, subject to the relevant eligibility criteria as outlined in the relevant policies.

The maternity, adoption and paternity leave policies can be found on [hwb](#).

#### 5. Eligibility

Employees are entitled to SPL in relation to the birth of a child if:

- they are the child's mother, and share the main responsibility for the care of the child with the child's father or with their partner;
- they are the child's father and share the main responsibility for the care of the child with the child's mother; or
- they are the mother's partner and share the main responsibility for the care of the child with the mother (where the child's father does not share the main responsibility with the mother).

The following conditions must also be fulfilled:

- employees must have at least 26 weeks continuous employment with the Council by the end of the Qualifying Week, and still be employed by the Council in the week before the leave is to be taken;
- the other parent must have worked (in an employed or self-employed capacity) in at least 26 of the 66 weeks immediately preceding the EWC and have earned above the maternity allowance threshold in 13 of those weeks; and
- the employee, along with the other parent, must give the necessary statutory notices and declarations as summarised below, including notice to end any maternity leave, statutory maternity pay (SMP) or maternity allowance (MA) periods.

The first two weeks following birth are the compulsory maternity leave period and are reserved for the mother. This means that the mother cannot curtail her maternity leave to take shared parental leave until two weeks after the birth.

Following this, the total amount of SPL available between both parents is 50 weeks, less any weeks spent by the child's mother on maternity leave (or the weeks in which the mother has been in receipt of SMP or MA if she is not entitled to maternity leave).

If the employee is the mother they cannot start SPL until after the two-week compulsory maternity leave period.

If the employee is the child's father or the mother's partner, they should consider using their paternity leave before taking SPL. Once they start SPL they will lose any untaken paternity leave entitlement. SPL entitlement is additional to their paternity leave entitlement.

## **6. Opting in to shared parental leave and pay**

Not less than eight weeks before the date an employee intends to start their SPL, they must give HR a written opt-in notice. This will be shared and discussed with the relevant line manager and/or Director, before then being discussed at SMT.

SMT will need to provide high level consideration of the SPL plans and the likely impact these will have on the organisation's ability to manage the employee's work in their absence. Each case for SPL will be different and considered on its own merits. However, where possible, SMT will ensure consistency is applied in its consideration of SPL notices.

## **7. Ending maternity leave**

If the employee is the child's mother and wants to opt into the SPL scheme, they must give the Council at least eight weeks' written notice to end their maternity leave (a curtailment notice) before they can take SPL. The notice must state the date their maternity leave will end. Employees can give the notice before or after they give birth, but cannot end their maternity leave until at least two weeks after birth.

They must also give the Council, at the same time as the curtailment notice, a notice to opt into the SPL scheme (see paragraph 6) or a written declaration that the other parent has given their employer an opt-in notice and that they have given the necessary declarations in that notice.

The other parent may be eligible to take SPL from their employer before the employee's maternity leave ends, provided that the employee has given the curtailment notice.

The curtailment notice is binding and cannot usually be revoked. An employee can only revoke a curtailment notice if maternity leave has not yet ended and one of the following applies:

- if they realise that neither they nor the other parent are in fact eligible for SPL or ShPP, in which case they can revoke the curtailment notice in writing up to eight weeks after it was given;
- if they gave the curtailment notice before giving birth, they can revoke it in writing up to six weeks after birth; or
- if the other parent has died.

Once an employee has revoked a curtailment notice, they will be unable to opt back into the SPL scheme, unless one of the exceptions outlined above applies.

## **8. Ending the partner's maternity leave or pay**

If the employee is not the mother, but the mother is still on maternity leave or claiming SMP or MA, the employee will only be able to take SPL once the mother has either:

- returned to work;

- given her employer a curtailment notice to end her maternity leave;
- given her employer a curtailment notice to end her SMP (if she is entitled to SMP but not maternity leave); or
- given the benefits office a curtailment notice to end her MA (if she is not entitled to maternity leave or SMP).

## 9. Booking SPL dates

Having opted into SPL, employees must book their leave by giving the Council a period of leave notice form. This may be given at the same time as the opt-in notice or later, provided it is at least eight weeks before the start of SPL.

The period of leave notice can either give the dates they want to take leave or, if the child has not been born yet, it can state the number of days after birth that they want the leave to start and end. This may be particularly useful if they intend to take paternity leave starting on the date of birth and wish to take SPL straight afterwards. Leave must be taken in blocks of at least one week.

If the employee's period of leave notice gives a single continuous block of SPL they will be entitled to take the leave set out in the notice.

If the employee's period of leave notice requests split periods of SPL, with periods of work in between, the Council will consider the request as set out in paragraph 10, below.

Employees can give up to three period of leave notices. This may enable them to take up to three separate blocks of SPL (although if they give a notice to vary or cancel a period of leave this will in most cases count as a further period of leave notice; see paragraph 11) .

## 10.Procedure for requesting split periods of SPL

In general, a period of leave notice should set out a single continuous block of leave. The Council may be willing to consider a period of leave notice where the SPL is split into shorter periods with periods of work in between. It is best to discuss this with the relevant line manager in good time before formally submitting a period of leave notice. This will give SMT more time to consider the request and hopefully agree a pattern of leave with the employee from the start.

If employees want to request split periods of SPL, they must set out the requested pattern of leave in their period of leave notice. SMT will either agree to the request or start a two-week discussion period. At the end of that period, HR will confirm any agreed arrangements in writing. If agreement has not been reached, the employee will be entitled to take the full amount of requested SPL as one continuous block, starting on the start date given in the notice (for example, if the employee requested three separate periods of four weeks each, they will be combined into one 12-week period of leave). Alternatively, the employee may:

- choose a new start date (which must be at least eight weeks after their original period of leave notice was given), and tell HR within five days of the end of the two-week discussion period; or
- withdraw their period of leave notice within two days of the end of the two-week discussion period (in which case the notice will not be counted and they may submit a new one if they choose).

## **11.Changing the dates or cancelling SPL**

Employees can cancel a period of leave by notifying HR in writing at least eight weeks before the start date in the period of leave notice.

Employees can change the start date for a period of leave by notifying HR in writing at least eight weeks before the original start date and the new start date.

Employees can change the end date for a period of leave by notifying HR in writing at least eight weeks before the original end date and the new end date.

Employees can combine split periods of leave into a single continuous period of leave by notifying HR in writing at least eight weeks before the start date of the first period.

Employees can request that a continuous period of leave be split into two or more discontinuous periods with periods of work in between. SMT will consider any such request as set out in paragraph 10.

A notice to change or cancel a period of leave will count as one of the three permitted period of leave notices, unless:

- the variation is a result of the employee's child being born earlier or later than the EWC;
- the variation is at the Council's request; or
- the employee and the Council agree otherwise.

## **12.Premature birth**

If the child is born before their expected due date and the employee had booked to take SPL within the first eight weeks of the due date, they may take the same period of time off after the actual birth without having to provide eight weeks' notice, by submitting a notice to vary their leave as soon as is reasonably practicable. Unlike most other variation notices, this would not count as one of the employee's three notifications. Any leave arranged after the first eight weeks of the due date is still bound by the eight-week notice required to vary leave.

If the child is born more than eight weeks before their expected due date and the notice of entitlement to SPL and/or a notice to book SPL have not yet been given, then there is no requirement to give eight weeks' notice before the period of leave starts. The notices should be given as soon as is reasonably practicable after the actual birth.

## **13.Shared parental pay (ShPP)**

Employees may be able to claim Statutory Shared Parental Pay (SShPP) of up to 39 weeks (less any weeks of SMP or MA claimed by them or their partner) if they have at least 26 weeks' continuous employment with the Council at the end of the Qualifying Week and their average earnings are not less than the lower earnings limit set by the government each tax year. SShPP is paid by employers at a rate set by the government each year.

The Council will pay full salary for the first 26 weeks of SPL (less any weeks of Arts Council of Wales' contractual maternity pay, SMP or MA claimed by them or their partner) followed by 13 weeks at a flat rate SShPP. An employee is entitled to contractual ShPP if:

- they have been continuously employed by the Council for at least 26 weeks and completed their probationary period at the end of the qualifying week and are still employed during that week;
- their average weekly earnings in the eight weeks up to and including the qualifying week are not less than the lower earnings limit for National Insurance contributions;
- they, or their partner, is still pregnant 11 weeks before the start of the expected week of childbirth (or has already given birth);
- they, or their partner, provides a MAT B1 form stating the expected week of childbirth;
- they give the Council proper notification of their intention to take SPL in accordance with the rules set out above.

Employees should tell the Council in their period of leave notice(s) whether they intend to claim ShPP or SShPP during their leave (and if applicable, for what period). If it is not in their period of leave notice they can tell the Council in writing, at least eight weeks before they want SShPP to start.

#### **14.Contractual terms and conditions during SPL**

Employees' terms and conditions of employment remain in force during SPL, except for the terms relating to pay.

Annual leave entitlement will continue to accrue at the rate provided under the employee's contract. If their SPL will continue into the next holiday year, any holiday entitlement that cannot reasonably be taken before starting their leave can be carried over. Employees should discuss their holiday plans with their line manager in good time before starting SPL. All holiday dates are subject to approval by the relevant line manager.

As all employees are automatically enrolled into the pension scheme, the Council will make employer pension contributions during any period of paid SPL, based on the employee's normal salary, in accordance with the pension scheme rules. Any employee contributions made will be based on the amount of any shared parental pay they are receiving, unless the employee informs the Council that they wish to make up any shortfall.

#### **15.Keeping in Touch**

The Council may make reasonable contact with employees from time to time during their SPL, although this will be kept to a minimum. This may include contacting employees to discuss arrangements for their return to work.

During SPL employees and the Council will be able to agree up to 20 Shared Parental Leave in Touch ("SPLIT") days. There is no obligation on the Council to offer these days, or for employees to agree to them. SPLIT days are in addition to any KIT days that employees may have taken during maternity leave.

Any work undertaken, and the amount of salary paid for any work done on SPLIT days, is entirely a matter for agreement between employees and the Council.

## 16. Returning to work

Employees must give eight weeks' written notice of their new return date if they want to end a period of SPL early. If they have already given the Council three period of leave notices, they will not be able to end their SPL early without the Council's agreement.

If employees want to extend their SPL, assuming they still have unused SPL entitlement remaining, they must give the Council a written period of leave notice at least eight weeks before the date they were due to return to work. If they have already given the Council three period of leave notices they will not be able to extend their SPL without the Council's agreement. They may instead be able to request annual leave or ordinary parental leave (see our [Parental Leave Policy](#)), subject to the needs of the organisation.

Employees are normally entitled to return to work in the position they held before starting SPL, and on the same terms of employment. However, if it is not reasonably practicable for the Council to allow them to return into the same position, it may give them another suitable and appropriate job on terms and conditions that are not less favourable, but only in the following circumstances:

- if their SPL and any maternity or paternity leave they have taken adds up to more than 26 weeks in total (whether or not taken consecutively); or
- if they took SPL consecutively with more than four weeks of ordinary parental leave.

If employees want to change their hours or other working arrangements on return from SPL, they should make a request under the Council's [Flexible Working Policy](#). It is helpful if such requests are made as early as possible.

If employees decide they do not want to return to work, they should give written notice of resignation as soon as possible and in accordance with the terms of their employment contract. If the notice period expires after SPL has ended, the Council may require the employee to return to work for the remainder of the notice period.

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