



November 2014



Do you employ staff?

Do you have difficulty understanding  
your legal and contractual  
responsibilities as an employer?

Do employment problems keep you  
awake at night?

Hassle Free HR - Taking the hassle out of your HR and H&S Management

■ [Visit our website](#)

## Employment Law Update

### A Brief Over-view of Shared Parental Leave

As of 1<sup>st</sup> December 2014 the new rules for Shared Parental Leave (which will replace Additional Paternity Leave) will come into force for parents of children born or matched for adoption on or after 5<sup>th</sup> April 2015. This will now enable parents to choose how they share their time off to care for their children. If the parents choose to do so, an eligible mother can end her maternity leave early (at any time, as long as the compulsory 2 weeks of maternity leave, or 4 weeks in the case of a factory worker, have been taken) and share parental leave with her partner or the child's father, instead of continuing with her maternity leave. Alternatively, both parents may opt to take some of the Shared Parental Leave at the same time! Shared Parental Leave is designed to give parents more flexibility in how to manage the care of their child during the child's first year/the first year of the child's adoption.

Shared Parental Leave can be up to 50 weeks of leave, with Statutory Shared Parental Pay payable for 37 of those weeks. The leave can be taken as a continuous period, or the employee can choose to separate their leave in to up to 3 separate blocks, or more than 3 at the discretion of the employer. Blocks of Shared Parental Pay can either be continual leave, which the employer cannot dispute, or the blocks can be split into work and leave, as shown in an example below. An employer can dispute their employee requesting their leave in this way.

Shared Parental Leave can be taken by an eligible employee even if their partner is not fully eligible and they are therefore not technically 'sharing' the leave. If their partner is eligible, then both parents can choose to take their leave at different times, or they may

opt to take their leave at the same time.

## Qualifying for Shared Parental Leave and Pay

To qualify for Shared Parental Leave, the mother or adopter must be entitled to, and have given notice to curtail their, maternity or adoption entitlements. They must also share the main responsibility for caring for the child with their;

- Partner
- Husband, wife, civil partner, or joint adopter, or
- The child's other parent.

For a parent to be eligible for Shared Parental Leave they must pass the Continuity of Employment test. In turn, the other parent in the family must meet the Employment and Earnings Test.

### Continuity of Employment Test

In order to pass this test the employee must have worked for the same employer for at least 26 weeks at the end of the 15<sup>th</sup> week before the last week in which the child is due (or at the week in which the adopter was notified of having been matched with a child for adoption) and still be employed in the first week that Shared Parental Leave is to be taken.

### Employment and Earnings Test

In order to pass this test the employee must have worked for at least 26 weeks in the 66 weeks leading up to the due date and have earned above the Maternity Allowance threshold of £30 a week in 13 of those 66 weeks.

If the mother/adopter and their partner both pass the Continuity of Employment test, then both parents will be eligible to take Shared Parental Leave. However, if the mother/adopter passes the Continuity of Employment test, but their partner does not, the mother/adopter will still be eligible to take Shared Parental Leave if their partner passes the Employment and Earnings Test, but their partner will not. Unfortunately, if the mother/adopter passes the Continuity of Employment test but their partner does not pass either test, the mother/adopter will be unable to take Shared Parental Leave but will of course still be entitled to take either Maternity or Adoption Leave, as normal.

### Statutory Shared Parental Pay (ShPP)

Statutory Shared Parental Pay will be payable for up to 37 weeks at the amount of £138.18 or 90% of the employee's average weekly earnings, whichever is lower.

If the mother/adopter chooses to end their entitlement to maternity/adoption leave and pay before they have used their full entitlement, Statutory Shared Parental Pay can be claimed for any remaining weeks.

To qualify for ShPP a parent must, as well as passing the Continuity of Employment test, also have earned an average salary of the lower earnings limit of £111 for the 8 weeks' prior to the 15<sup>th</sup> week before the expected due date or matching date. Like Shared Parental Leave the other parent must meet the Employment and Earnings Test.

### Examples of Shared Parental Leave

The following are two separate examples of how Shared Parental Leave may be used in practice.

1. A mother and her partner are both eligible for Shared Parental Leave. The mother ends her Maternity Leave after 12 weeks, leaving 40 weeks (of the total 52 week entitlement) available for Shared Parental Leave. She takes a further 30 weeks and her partner takes the remaining 10.
2. A mother finishes her Maternity Leave at the end of October 2015 and takes the rest of her leave as Shared Parental Leave. She shares it with her partner, who is also eligible. They each take the whole of November 2015 as their first blocks of Shared Parental Leave. The partner then returns to work. The mother also returns to work in December 2015 to cover the busy Christmas period. She gives her employer notice that she intends to go on leave again in February 2016 – this will be her second block of Shared Parental Leave. Her employer agrees to a work pattern of 2 weeks on, 2 weeks off during the second block.

Sources: Acas "Shared Parental Leave and Pay"

Gov.uk "Shared Parental Leave and Pay; An Employer Guide" 2014

For retained clients, we will be fully updating your maternity, adoption and paternity leaves policies in advance of April 2015.

This is a very complex change to the governments' family friendly provisions and so if you have any queries relating to any of the subjects raised within this newsletter then please don't hesitate to contact us at [hradvice@hasslefreehr.co.uk](mailto:hradvice@hasslefreehr.co.uk)

For clarification of any of the above updates or for advice and guidance on any HR and/or Health and Safety Concerns contact us by emailing [hradvice@hasslefreehr.co.uk](mailto:hradvice@hasslefreehr.co.uk) or by calling 02476 664092.

Hassle Free HR Limited Registration Number: 5844301