



Shared Parental Leave – the pros and cons of enhancing the statutory requirements

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Overview

1. Introduction
2. Overview of Shared Parental Leave (SPL)
3. Key issues for employers:
 - Eligibility and notification requirements
 - Practical and financial implications of the new right
 - The pros and cons of enhancing statutory requirements (leave and pay)
4. Discussion
5. Next steps

What's staying, what's going and what's new?

Staying	Going	New
<ul style="list-style-type: none">• Maternity Leave and Pay• Ordinary Paternity Leave• Adoption Leave• Unpaid Parental Leave	<ul style="list-style-type: none">• Additional Paternity Leave	<ul style="list-style-type: none">• Shared Parental Leave• Improved Adoption Leave and Pay rights• Right to accompany to ante-natal appointments• Right to attend and accompany to adoption appointments• Unpaid parental leave for children up to 18

Overview of the SPL system

Right to share up to **52 weeks'** leave and **39 weeks'** pay, provided:

Mother/main adopter must first return to work or submit notice to curtail maternity/adoption leave

Each parent has to satisfy various conditions and ensure that the other does so too

Both parents need to submit **opt-in notices, period of leave notices** and **written declarations**

Parents can then take SPL:
consecutively **or** concurrently
in a single continuous block **or** in multiple discontinuous periods

Scope of the new SPL system

When?

- Expected week of childbirth on or after 5 April 2015
- Adoption placement date on or after 5 April 2015

Who?

- **Possible permutations:**
 - Mother and partner (who is birth father)
 - Mother and partner (who is not birth father but who shares main responsibility of caring for the child)
 - Adoptive parents (including those under the Fostering to Adopt scheme, and those who have applied for a Parental Order)

Key issues: Eligibility

- How do we check an employee is eligible for SPL/ShPP?
- How do we deal with employees who claim leave/pay when they are not entitled?
- What are the risks for the organisation in that case?
- Can we re-claim any overpayments of ShPP?
- When might an employee lose their eligibility to leave or pay?

SPL – A closer look at the eligibility conditions

**Mother
or
Main
adopter**

- Satisfy the “continuity of employment” test
- Share main responsibility for the care of the child with the other parent
- Be entitled to SML/SAL, and either bring SML/SAL to an end or submit a notice to curtail it
- Comply with evidential and notification requirements

**Other
parent**

- Satisfy the “employment and earnings” test
- Share main responsibility for the care of the child with the mother or main adopter
- Comply with evidential and notification requirements

SPL – A closer look at the eligibility conditions

Birth father or partner

- Satisfy the “continuity of employment” test
- Share main responsibility for the care of the child with the other parent
- Comply with evidential and notification requirements

Other parent

- Satisfy the “employment and earnings” test
- Share main responsibility for the care of the child with the father or partner
- Be entitled to SML, SMP or MA/SAL or SAP and either bring this to an end or submit a notice to curtail it
- Comply with evidential and notification requirements

ShPP – A closer look at the eligibility conditions

Mother or Main adopter

- Satisfy the “continuity of employment” test
- **Have normal weekly earnings of not less than the lower earnings limit**
- Share main responsibility for the care of the child with the other parent **AND intend to care for the child during the ShPP period**
- Be entitled to SMP/SAP, and have had SMP/SAP period reduced
- Comply with evidential and notification requirements
- **Be absent during ShPP period due to taking SPL**

Other parent

- Satisfy the “employment and earnings” test
- Share main responsibility for the care of the child with the mother or main adopter

ShPP – A closer look at the eligibility conditions

Birth father or partner

- Satisfy the “continuity of employment” test
- Have normal weekly earnings of not less than the lower earnings limit
- Share main responsibility for the care of the child with the other parent AND intend to care for the child during the ShPP period
- Comply with evidential and notification requirements
- Be absent during ShPP period due to taking SPL

Other parent

- Satisfy the “employment and earnings” test
- Share main responsibility for the care of the child with the mother or main adopter
- Be entitled to SMP/MA/SAP, and have had SMP/MA/SAP period reduced

SPL and ShPP – a closer look at the eligibility conditions

- **“Continuity of employment”** test
 - Have at least 26 weeks’ continuous service by:
 - end of 15th week before EWC;
 - week in which adopter is notified of having been matched for adoption;
 - Remain employed in the week before SPL/ShPP starts
- **“Employment and earnings”** test
 - Be employed or self-employed earner for at least 26 weeks of the 66 weeks prior to EWC/week notified of matching for adoption; AND
 - have average weekly earnings of at least £30
- **“Lower weekly earnings limit”** for 2014/2015
 - £111 per week

Further eligibility issues

- Employees claiming SPL/ShPP when they're not entitled to it
 - Will we be liable if employee commits fraud?
 - Can we re-claim any overpayments of ShPP?
- When might an employee lose their eligibility to SPL/ShPP?
- What happens if the employee does not give the right forms or serve the right amount of notice?

Key issues: Notifications

1. Curtailment notice **or** return to work early
2. Opt-in notice ('Notice of Entitlement')
3. Booking Notice ('Period of Leave' notice)

Curtailment notice – a brief reminder

When?

- No less than 8 weeks before the intended start of the first SPL period
- Must take at least 2 weeks' maternity/adoption leave before curtail

Content

- Specify end date of mother's maternity leave/pay/allowance, or of adopter's adoption leave/pay
- End date must be at least 8 weeks after the date the employer is given curtailment notice

Points to note

- Usually given at same time as Opt-in Notice
- If curtailing maternity or adoption leave, remember to curtail pay as well
- Can revoke curtailment notice only in limited circumstances

Opt-in notice - a brief reminder

When?

- No less than 8 weeks before the intended start of the first SPL period

Content

- Parents' names
- Start and end dates of mother's maternity leave/pay/allowance, or of adopter's adoption leave/pay
- Total amount of SPL available, and how much each parent intends to take
- EWC and actual date of child's birth, or date of adoption placement
- Non-binding indication of when the employee intends to take SPL

Declarations

- **Employee:** that they satisfy the eligibility criteria, that the information in the notice is accurate and that they will inform employer if they cease to fulfil the eligibility conditions
- **Other parent:** that they satisfy the eligibility criteria, consent to amount of leave co-parent intends to take, and that they will inform other parent if they cease to fulfil the eligibility conditions

Booking notice – a brief reminder

What?

- Notifies the employer of the employee's intended dates of leave
- Maximum of **3** period of leave notices per employee per child

When?

- At least 8 weeks before the intended start of SPL

Outcome

- **Continuous** period of leave requested = employee entitled to take
- **Discontinuous** periods of leave requested = employer can hold discussions to try to reach a compromise, failing which the employee may:
 - take the total period of leave in a single block, with at least 8 weeks' notice from the original submission date; or
 - withdraw the request with no detriment

Notification issues – what happens where...

- Mother/adopter entitled to maternity/adoption leave or pay but doesn't serve:
 - leave curtailment notice
 - pay curtailment notice
- Mother/adopter not entitled to leave, is entitled to pay, but doesn't serve:
 - pay curtailment notice

Key issues: practical implications

- Managing discontinuous requests
- Managing redundancies
- Treatment of pay and benefits
 - Whether to enhance ShPP

Discontinuous requests - an overview

- Employees can request to take discontinuous periods of SPL
- 2 week discussion period
- The employer may:
 - consent to the periods of leave requested
 - refuse but propose alternative dates
 - refuse without proposing alternative dates
 - not respond
- If the request is refused, the employee can take the total amount of leave requested as a continuous period or withdraw the notice

Discontinuous requests

- Can we ban them in the policy?
- Can we refuse them in every case?
- What if several people make the same or different discontinuous requests?
- How do we manage short, discontinuous periods of leave?

Managing redundancies

- Selection process/criteria
- Employer obliged to offer available suitable alternative role to employee on SPL at risk of redundancy (cf maternity)
- Failure to offer suitable alternative will render dismissal automatically unfair
- When does the duty kick in?
 - *Sefton Borough Council v Wainwright, EAT*
- What happens to ShPP?

Pay and benefits during leave

- The statutory position
- What happens to benefits?
- What should we pay for SPLIT days?
- Should we offer enhanced pay?

Paying someone on SPL

- Statutory Shared Parental Pay (ShPP)
 - How much? And for how long?
- Continuation of benefits during SPL
 - Holiday
 - Pension
 - Insured Benefits
 - Childcare vouchers etc
- Bonuses and commission
- SPLIT days

To enhance or not.....

- Do you currently pay statutory rates only – and therefore are planning to pay statutory rates only for ShPP?
- YES
- NO

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- Do you currently enhance maternity pay (and will continue to do so) but are not planning to enhance ShPP?
 - YES
 - NO

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- Are you proposing to enhance ShPP?
 - YES
 - NO

The decision drivers on enhancing ShPP

- The legal position
 - Extent of existing occupational enhancement relevant
 - Scope of proposed enhancement
- The employee relations proposition, including the need for consistency
- The financial implications
- Brand/reputational considerations

SPL payment options

- Some ShPP options
 1. Remove all enhanced maternity pay, and just pay statutory maternity pay and statutory ShPP
 2. Maintain existing enhanced maternity scheme, but pay only statutory ShPP to all employees
 3. Level down enhanced maternity pay, so offer lower enhanced maternity pay and enhanced ShPP at the same rate
 4. Maintain existing enhanced maternity scheme and provide equivalent enhanced ShPP for all employees
 5. The 'pot' approach
 - Offset other enhanced family leave payments
 - One shared pot where both employees work at same employer
 6. Variations on a theme, for example:
 - only enhance if SPL taken during enhanced maternity pay period
 - only enhance for the first period of SPL (discourages discontinuous leave)

Group discussion

- To enhance or not?

Next steps: things to do now

- Put in place your SPL policy and update your other policies
- Decide whether to enhance ShPP
- Make sure HR and Payroll know how to respond to queries about leave and pay
- Set up internal systems to ensure requests are dealt with consistently
- Train line managers on the new regime and how to respond to requests



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