Rules

for shared parental leave

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Parents will soon be legally entitled to share statutory leave following the birth or adoption of a child. This 'shared parental leave' will apply to eligible parents of babies due, or children placed for adoption, on or after 5 April 2015. It allows employees to break their absence from work into separate blocks and to share some of the leave with their spouse or partner. Potentially, eligible parents, in the first year of a child's birth or adoption, will be able to dip in and out of their job, taking time off to provide care for the child.

Greater flexibility

The idea is to allow greater flexibility for new parents in setting their work-life balances in

their child's first year. This will have an impact on employers and there are, therefore, precise procedures to be followed.

The mother would normally be able to take up to 52 weeks' maternity leave. Shared parental leave allows a mother to turn her maternity leave into shared parental leave. The actual amount of shared parental leave available depends on how much maternity leave is taken.

Since a mother must take at least two weeks' compulsory maternity leave following the birth of their child, there could be up to 50 weeks of shared parental leave available. Any week or weeks of maternity leave taken by the mother before the birth of the child or after the two weeks of compulsory maternity leave reduces the shared parental leave available by a corresponding amount. The remaining amount of shared parental leave can be used by either the mother or her spouse or partner to take time off work to look after the child.

It is the mother's initial choice whether or not to opt for shared parental leave, but once that choice has been made the couple must agree when they should take leave. They may choose to take time off at the same time, consecutively or alternately. Whatever their decision, shared parental leave must be taken by the child's first birthday – any unused leave at that date would be lost.

Written notice

To use these rights, eligible parents (Table 1) must give their employer proper written notice; in fact, three different notices.

First, the mother must give notice to end her maternity leave and change over to shared parental leave. Second, both parents must give their employers a *notice of entitlement* letter that sets out their basic eligibility (Table 2). Finally, each must provide a *notice of leave* letter that specifies the actual dates that the employee wishes to take as shared parental leave. It should include the start date, end date and overall amount of leave to be taken, which must be in full weeks. Each notification fulfils a specific purpose but the employee could combine them all into one letter.

Time limits are important. Eight weeks' notice must be given, both by the mother to switch over from maternity leave and by either parent before the start of a period of shared parental leave.

Table 1 Who can share the leave?

A mother must:

- Be an employee entitled to maternity leave or self-employed and entitled to maternity allowance
- Have given notice to end her maternity leave and take shared parental leave.

A partner must:

- Be the mother's spouse, civil partner or partner (who is a person in a long-term relationship with the mother and living with the mother and child), or the child's biological father (even if they are not in a stable relationship with the mother)
- Share the primary parental responsibility for the child with the mother at the time of the birth
- Be an employee, who is entitled to paternity leave.

Continuity

A major change introduced by shared parental leave is the facility to divide leave into separate blocks, where a parent can return to work between blocks and go back on leave later on. Each block must, however, be made up of full weeks. This could cause difficulties for an employer, so how a practice responds to a *notice of leave* letter will depend on if the employee is asking for a continuous period of leave or a series of separate blocks.

If a continuous period of shared parental leave is requested, this request must be agreed. But if the employee asks for two or more separate blocks of leave – which would be interspersed by periods back in work – this is subject to the approval of the employer.

If you have an objective business or operational reason to refuse a request for leave to be taken in blocks you can. But you must respond in writing, setting out your reason within two weeks. In this situation, the employee's overall amount of requested leave defaults to a single period of leave to begin on the original start date for their intended

parental leave, working one week on and one week off up to the child's first birthday. This pattern of shared parental leave would require an employer's agreement but in some job roles could occur under the new arrangements.

Shared parental pay

Most mothers taking maternity leave will be entitled to Statutory Maternity Pay (SMP), which is available for up to 39 weeks. If an employee opts into shared parental leave then the Statutory Maternity Pay remaining becomes available as Shared Parental Pay (ShPP). This can be claimed by either partner while on shared parental leave. The eligibility for each partner is based on the same earnings criteria for Statutory Maternity Pay and Statutory Paternity Pay.

If both parents qualify for ShPP, they must decide who will receive it or how it will be divided. Each must inform their respective employers of how much ShPP each parent intends to take and when they expect to take ShPP. They must also include a declaration from the employee's partner confirming their

Table 2 Notice of entitlement letter

A *notice of entitlement* letter must include the following:

- The date that the child is expected or their actual date of birth
- The spouse's or partner's name
- The spouse's or partner's address and National Insurance number
- Confirmation that the spouse or partner shares childcare responsibility
- The amount of shared parental leave available overall for both parents
- The dates of any maternity leave that will be, or has been, taken
- The amount of shared parental leave that the employee intends to take
- The amount of shared parental leave their spouse or partner intends to take
- A personal declaration that the employee meets the eligibility criteria for shared parental leave and that all the information provided is accurate
- A signed declaration from the employee's spouse or partner that they meet the eligibility criteria for shared parental leave.

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first block of leave. You should ensure that your employee understands these default provisions because they can change the start date by amending their notice of leave or could withdraw their request altogether.

Being able to refuse a request for shared parental leave to be taken in separate blocks would seem to negate the employee's new right but an employee can submit three separate notice of leave letters within the year. If each one asks for a continuous block of leave then, as currently understood, each of these three blocks of leave would have to be agreed. But this provision has given rise to the misconception that shared parental leave can only be taken in three distinct blocks. While this is the default situation where an employee gives you three separate *notice of leave* letters, they could in any of these requests ask for their leave to be split into many more parts. It is therefore theoretically possible that an employee could take 25 blocks of shared

agreement to the employee claiming their amount of ShPP. It is expected that this notice would be given at the same time as a *notice of leave* letter.

Another way to SPLIT it

The concept of Keeping-in-Touch (KIT) days that apply to maternity leave has been extended to shared parental leave. This allows an employee to attend work during a period of leave for training purposes or just to stay up to date with what is happening in their workplace.

Under shared parental leave these are known as Shared-Parental-Leave-In-Touch (SPLIT) days; up to 20 SPLIT days are available overall to be shared by the parents. The employees should contact their employers to discuss the date or dates of SPLIT days that they wish to work, though there is no obligation on either party to agree to a specific date.

Sharing adoption leave

The right to opt into shared parental leave also applies to employees who are on adoption leave. From the end of a compulsory period of adoption leave, that is two weeks after the placement of the child, the adopter can opt into shared parental leave and share some of this with their partner or co-adopter. The same rules and procedures apply to giving notice, taking leave and claiming ShPP.

More details

Shared parental leave is a new system and exactly how it will work for businesses, employers and employees remains to be seen. If your principal is a BDA member, the BDA Advice *Employees maternity and parental leave and pay* (see www.bda.org/advice) provides further information.

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