

Shared Parental Leave

Transformation & Human Resources

Issued by HR Policy Team

Effective from 24 February 2015

# SHARED PARENTAL LEAVE

**1 Introduction**

* 1. This policy implements the requirements of the Shared Parental Leave Regulations 2014.
  2. The regulations, which came into force on 1 December 2014, enable working parents expecting a baby, or to adopt a child, to share time off work within the first 52 weeks following the birth/adoption of their child.

1.3 This policy sets out the eligibility criteria, and the council’s approach to requests from employees to exercise their rights to shared parental leave. This policy does not form part of any employee’s contract of employment and may be amended at any time.

1.4 Reference is made in the policy to terms and conditions relating to maternity/adoption leave, paternity leave and parental leave. Employees are referred to the respective policies on the intranet for further information.

**2 Scope**

2.1 This policy applies to all employees of the Council, except those employed in schools under the control of Governing Bodies, for whom procedures adopted by the Governing Body will apply.

2.2 Employees are as defined in section 230 of the Employment Rights Act 1996 or any substituting or amending legislation. The policy does not apply to agency workers or self employed contractors.

2.3 The right to shared parental leave will be dependent on employees satisfying the qualification criteria as set out in section 5.

**3 What is Shared Parental Leave (SPL)?**

3.1 The regulations aim to give parents more flexibility over how they share childcare between them during the first year of their child’s life. The arrangements apply to both maternity and adoptive parents who meet the eligibility criteria, where the baby is born (or placed) on or after 5 April 2015.

3.2 The right to SPL is available to the **mother** and her **partner** and these

definitions are used in this policy. The term mother refers to the woman who gives birth to a child or the adopter. The adopter means the person who is eligible for adoption leave and/or pay. They can be male or female.

3.3 The partner is the child’s biological father or the partner of the mother. This can be the spouse, civil partner; or partner who is living in an enduring relationship with the mother and the child.

**4 How does SPL operate?**

4.1 A working mother who satisfies the maternity criteria (see Maternity and Adoption Policy) will continue to be entitled to 52 weeks of maternity leave and 39 weeks of statutory maternity pay or maternity allowance.

4.2 Eligible mothers can now choose to end their maternity/adoption leave early and, with their partner, opt to take SPL **instead of** maternity leave. Mothers must end their entitlement to maternity leave in order to create an entitlement for SPL. Other than in the circumstances set out in section 7, the mother cannot go back on this decision and will not be able to alternate between maternity leave and SPL.

4.3 It will be for each parent to claim SPL from their respective employers. As well as satisfying an individual eligibility test, the mother and partner must satisfy a joint eligibility test in order for the other to qualify for leave.

4.4 Provided both partners meet the qualifying requirements, they will need to decide how the leave is to be divided between them. A mother can share her leave with only one partner. As with maternity leave, there is no entitlement to extra SPL in the event of multiple births or multiple adoptions in a single placement.

4.5 Up to 50 weeks’ SPL can be shared between the mother and partner. This being the 52 weeks maternity leave, minus the two weeks compulsory maternity leave period reserved solely for the mother, **which she must take**. The partner can however begin a period of SPL at any time from the date of the child’s birth/placement.

4.6 If eligible, partners will still be able to take one or two weeks paid paternity leave within the first 56 days following the child’s birth. Proposed legislation will however mean that where an employee chooses to take both paternity leave and shared parental leave, the period of paternity leave must come first. They will not be able to take paternity leave if they have already taken a period of shared parental leave in relation to the same child.

4.7 SPL will replace additional paternity leave, which will continue to be available only in relation to babies due on or before 5 April 2015. SPL differs from additional paternity leave in that parents can take SPL at the same time as each other.

4.8 There are no changes to ordinary parental leave and eligible employees can take up to 18 weeks’ ordinary parental leave in relation to a child before their 8th[[1]](#footnote-1) birthday (or 18th if the child is disabled). Ordinary parental leave is unpaid.

**5 Qualification Criteria**

**Eligibility criteria for SPL**

5.1 An employee’s entitlement is subject to a two stage test employment/earnings test and a continuity of employment test as shown below:

Continuity of employment

Employment and earnings test

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5.2 This right to take leave is subject to not only the employee satisfying their own eligibility criteria, but is also dependent on their partner meeting certain eligibility requirements as shown below:

Employment & Earnings and Continuity tests

Continuity of employment test: 26 weeks’ employment with LBH at 15th week before EWC and remains in that employment

5.3 This means that an employee must have:

* 26 weeks’ continuous service with Hounslow Council by the end of the 15th week before the expected week of childbirth/placement and have remained in continuous employment up to the week before SPL is taken
* the primary responsibility for the care of the child (with their partner) at the time of the birth or placement for adoption
* properly notified the council of their entitlement and intention to take SPL (see section 7, step 1)
* provided the necessary declarations and evidence in respect of the birth/adoption and their partners employment

**and** **their partner** must have:

* been employed or self-employed for any part of at least 26 of the 66 weeks leading up to the expected week of childbirth
* in 13 weeks of the 66 week period have earned an average of at least £30 a week
* paid either class 1 or class 2 national insurance contributions in those weeks (or hold an exemption certificate for those weeks)

Additionally the **mother** must

* be entitled to statutory maternity/adoption leave
* have ended or given notice to reduce, her entitlement to statutory maternity/adoption leave, or their maternity pay/allowance by curtailing her leave or returning to work
* have a partner who satisfies the employment and earnings test and, at the time of the child’s birth/placement, who (apart from the mother) has the main responsibility for caring for the child

**Eligibility for Statutory Shared Parental Pay (ShPP)**

5.4 To qualify to receive ShPP:

a **mother** must

* have average weekly earnings of not less than the lower earnings threshold in the 8 weeks prior to the 15th week before the expected week of birth or placement date
* intend to care for the child during each week ShPP is paid to her
* be entitled to SMP and have reduced her maternity pay period
* be absent from work on SPL during each week in which ShPP is paid to her
* have a partner who satisfies the employment and earnings test (as set out in 5.3)
* provide a notice of entitlement and intention to take SPL and ShPP
* 8 weeks before the first period of leave to be taken by her

a **partner** must:

* have average weekly earnings of not less than the lower earnings threshold in the 8 weeks prior to the 15th week before the expected week of birth or placement date
* intend to care for the child during each week ShPP is paid to them
* be absent from work on SPL during each week in which ShPP is paid to them
* have a partner who is entitled to statutory/adoption maternity pay or maternity allowance and who has curtailed their entitlement or returned to work

**6 Requesting SPL**

6.1 Parents who qualify for the right will need to decide if SPL is the best option for them. In arriving at this decision they should consider:

* whether one or both parents qualify for SPL
* when does the mother wish to return to work
* how would they like to share the SPL
* is there a contractual entitlement to enhanced maternity/adoption/ paternity pay and would reducing the mother’s maternity/adoption leave impact on this
* the wider financial implications for both parents e.g. pay and pensions
* availability of other legal rights e.g. flexible working, annual leave and parental leave

6.2 Parents can choose to opt into SPL at any time, provided there is some

untaken maternity leave to share. Ultimately the mother or primary adopter would decide whether to end their maternity/adoption leave early and opt into SPL. Where the mother is a Hounslow Council employee they should do this by completing the “Curtailment of maternity leave/adoption leave form”, available on the intranet.

**How can SPL be taken**

6.3 An employee opting to take SPL must notify their manager in writing of their entitlement to SPL and must also seek to book the leave they wish to take, giving at least 8 weeks’ notice before they plan to take SPL.

6.4 SPL can be taken using **three** separate notices to book the leave provided the eligibility criteria continues to apply. This means that following one request for leave an employee can ask a further two times to take more leave or to change the pattern of SPL they wish to take, again with 8 weeks notice.

6.5 The notice must indicate whether the SPL is a “continuous” or “discontinuous block”. Continuous leave is a period of SPL that is taken in one block e.g. four weeks. Discontinuous leave is SPL over a period of time, with breaks between the leave where the employee returns to work e.g. four weeks SPL followed by three weeks at work, followed by a further four weeks SPL.

6.6 SPL can start on any day of the week but must be taken in **complete weeks**, therefore a SPL notice for one week beginning on a Tuesday will finish on the following Monday.

6.7 Employers can refuse to agree a discontinuous leave request but a

notification of continuous leave cannot be refused.

**7 Booking SPL**

**Step 1 – Giving notice of eligibility and intention to take SPL**

7.1 A written notice of entitlement and intention to take SPL must be received at least eight weeks before the start of the first period of leave. A form exists for this purpose and is available on the intranet.

7.2 In their notification, the employee must provide the following information:

* names of the mother and partner
* start and end date of any statutory maternity/adoption leave
* total amount of SPL available to be taken
* child’s expected week of birth, actual birth or date of placement
* how much SPL leave the mother and partner each intend to take
* an indication as to when they intend to take SPL (this can be changed)
* a signed declaration from the employee that:
* they will be sharing responsibility for the care of the child
* the mother has given notice to end her maternity entitlement
* they meet the continuity of employment test
* the information that they have given is accurate
* should they cease to be eligible they will immediately inform their manager

7.3 The employee’s partner must also provide the Council a signed

declaration stating:

* their name, address and national insurance number
* they are the father, mother of the child or partner of the mother of the child
* they meet the criteria for the employment and earnings test
* (if the mother) they are entitled to statutory maternity leave, statutory maternity pay or maternity allowance and that they have given notice to end that leave and pay/allowance
* that at the time of the birth or placement they shared (will share) the responsibility for the care of the child with the employee seeking SPL
* they consent to the amount of leave and pay that the employee is seeking to take
* they consent to the employer receiving this declaration to process the information contained within it
* (in the case of the mother) that the mother will immediately inform their partner should the mother cease to satisfy the eligibility conditions

7.4 When a manager becomes aware that an employee is intending to take

SPL, it may be helpful to arrange an informal discussion with the employee to better understand their future intentions. A formal meeting is not necessary until the employee submits their notice of leave (see step 2).

**Step 2 - Notice of period(s) of SPL**

7.5 In some cases employees may have submitted this in step 1, however this is not a requirement. Employees are asked to submit the notification of leave booking in writing to their line manager. This must be given 8 weeks before leave can be taken. A HR form exists for this purpose and is available on the intranet.

7.6 Employees must indicate in the booking whether it is continuous or

discontinuous leave. A period of continuous leave cannot be refused and therefore managers should consider how the absence will be covered.

7.7 Requests for discontinuous leave will need to be considered by

managers but may be refused if the request cannot be accommodated.

7.8 In both cases managers are advised to arrange a meeting with the employee.

**Meeting**

7.9 The meeting should ideally take place within 5 working days of receiving the notification to book SPL. Managers are obliged to respond within 14 days of receipt of the notice; the timing of the meeting is therefore important.

7.10 In preparation for the meeting managers should consider possible impact of the SPL on the service, how this might be managed and any outstanding questions.

7.11 The employee may be accompanied at the meeting by their trade union

representative or a work colleague.

7.12 The purpose of the meeting is to:

* discuss how the leave could be accommodated taking into account the

employee’s workload or work programme

* discuss what impact the leave arrangements would have on the overall service and how this could be mitigated
* consider what arrangements might be acceptable to make the leave mutually beneficial
* discuss contact during any period of SPL to ensure employee is kept informed and updated
* ensure that any questions are addressed

**Outcomes**

7.13 Following the discussion there are four possible outcomes:

* unconditional acceptance
* an agreed modification
* a refusal to a discontinuous leave
* a failure to respond

Unconditional acceptance

7.14 Continuous leave notification must be accepted and where a discontinuous leave is accepted then managers should confirm both decisions in writing within 14 calendar days of receiving the notification.

Agreed modification

7.15 Continuous leave request – There is no obligation on employees to change a continuous leave notification and managers should not put any pressure on the employee to do so. If, however they are agreeable to a modification then this may be agreed.

7.16 Discontinuous leave request – A different arrangement to the one originally requested is agreed with the employee. This may be different dates/duration to the pattern requested or even a continuous leave arrangement.

7.17 In both circumstances the agreed modification should be confirmed in writing within 14 calendar days of receiving the notification.

A refusal to a discontinuous leave

7.18 A decision to refuse should only be taken following a meeting with the

employee. If the notification still remains unacceptable then the manager must confirm the decision in writing within 14 calendar days of receiving the notification.

7.19 The decision letter should include (where possible) proposed

alternative dates, confirmation of the refusal and what options are now

available to the employee i.e. withdraw, move to default positions or agree a modified arrangement.

A failure to respond

7.20 This is not recommended. If this should occur then an employee has the right to the leave set out in a continuous notification, whereas a discontinuous notification will be regarded has having been refused and the default provisions will apply.

**The Default provisions**

7.21 The default provisions set out below apply only to requests for discontinuous leave:

**Cancelling or Varying booked SPL**

7.22 Employees must give written notice to vary or cancel any SPL that has been agreed, setting out clearly what changes are sought. Any variation must be made at least eight weeks before the revised dates begin. A variation will count towards one of the three leave notifications permitted.

**Early Birth/Change in circumstances**

Early Birth

7.23 The requirement to give eight weeks’ notice to vary a period of SPL will not apply if an employee is to take SPL within eight weeks of the birth of the child and the child is born before the due date. Instead should the employee wish to take the same period of leave to commence following the birth, the requirement is to provide notice to vary the leave as soon as is reasonably practicable after the child’s birth. Such a notice would not count as one of the employee’s three notifications.

7.24 If the child is born more than eight weeks before the due date and the notice of entitlement 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 notice should be given as soon as is reasonable practicable after the actual birth.

Death of child during birth, or within the first year

7.25 Where this occurs before the submission of the notice of entitlement to take SPL then the employee cannot opt into SPL because a qualifying condition is caring for a child. The mother will remain entitled to maternity leave and the partner may still qualify for statutory paternity leave.

7.26 If the parents had opted into SPL and booked the leave, they will still be entitled to take the booked leave. No further notice booking leave can be submitted and only one variation notice can be given to reduce a period of leave or to rearrange a discontinuous leave arrangement into a single block of leave.

7.27 An employee who is on SPL may cancel agreed SPL and return to work by giving eight weeks’ notice of their return to work.

No longer caring for the child

7.28 In these circumstances employees who have booked SPL are no longer entitled to SPL or ShPP and they must immediately inform their employer.

7.29 If any SPL has been arranged within the eight weeks of the entitlement ceasing, the employee no longer caring for the child can still be required to take the SPL if it is not reasonably practicable for the employee to return to work earlier. Any weeks of SPL arranged after eight weeks of the entitlement ceasing must be cancelled.

7.30 If the employee is the parent left caring for the child than their partner’s outstanding SPL may be transferred over into the employee’s entitlement. To do this the employee would need the signed agreement of the partner in a notice confirming a variation of leave entitlement.

Death of a parent during the child’s first year

7.31 If their partner dies, and the employee is taking or is entitled to take SPL then they will continue to be eligible. Any SPL that was due to be taken by the deceased partner may transfer to the employee if they remain eligible.

7.32 Should it be necessary for the employee to take a further period of SPL or to vary a pre-agreed leave then notice may be given as soon as is reasonably practicable if eight weeks’ notice cannot be given. If three notices of leave have already been given then one further notice may be submitted.

**8 During SPL**

**Reasonable contact whilst on SPL**

8.1 Managers are required to keep absent employees up dated on changes in the workplace and/or on the employees personal circumstances. The level of contact and how it takes place should be agreed by the line manager and the employee before the employee takes their leave.

8.2 This type of contact does not count as work and does not bring the SPL period to an end. It may include receiving team briefings, in-house magazines, information on departmental or organisational changes, information on job vacancies and training opportunities, phone calls etc.

8.3 In some instances, changing circumstances in the Council could mean additional contact may be necessary to ensure that adequate involvement and consultation on key issues takes place.

**Shared Parental Leave Keeping in Touch days (SPLIT)**

8.4 Up to 20 SPLIT days may be agreed between the employee and the manager, at which time the employee will be able to work during their SPL without bringing the period of SPL to an end. SPLIT days are not compulsory

8.5 The purpose of SPLIT days is to enable employees to remain “in touch” with work related activity such as training events, staff/team meetings, occasional days of work etc. Where possible these days should be agreed in advance before the commencement of any SPL.

8.6 Employees will be paid for the hours actually worked on a SPLIT day, even though, for record keeping purposes, any part of a day worked will count as one day.

8.7 SPLIT days are paid at the employee’s basic contractual pay rate, at a rate of 1/365 x annual salary, less any SPL Pay **or** an employee may be able to take the time as TOIL in accordance with the flexi-time scheme.

**9 Terms & Conditions on SPL**

9.1 An employee who takes SPL is entitled to the benefit of their terms and conditions of employment apart from remuneration (wages or salary).

**Annual Leave**

9.2 Employees will accrue rights to annual leave during periods of SPL and be able to take day(s) in lieu (pro-rata for part timers) for any bank holidays that occur during the SPL period. Employees should still try to take annual leave within their leave year wherever possible.

**Pensions**

9.3 For those employees in the Local Government superannuation scheme, the Authority will continue to make employers 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 will be based on the amount of shared parental pay received. If employees wish to make up any shortfall in their pension contributions they should do so by initially contacting their HR team.

**Statutory shared parental pay**

9.4 Statutory shared parental pay (ShPP) is paid at either the fixed rate (currently specified as £138.18 per week) or 90% of normal weekly earnings if this is less. There is no entitlement to SHPP during any time an employee is entitled to statutory sick pay.

**Right to Return after SPL**

9.5 Employees are entitled to return to the same job they had prior to taking SPL where their total statutory leave taken in relation to that child is 26 weeks or less. The 26 weeks can be made up of ordinary maternity/paternity/adoption and SPL leave.

9.6 If the employee takes more than 26 weeks’ statutory leave, any additional maternity leave or parental leave of more than four weeks, they will be entitled to return to their previous job, or where this is not reasonable practicable, to another job which is both suitable and appropriate on terms and conditions that are no less favourable.

**Redundancy during SPL**

9.7 Employees on SPL receive the same protection as other forms of family leave e.g. maternity/adoption.

9.8 If an employee on SPL is to be made redundant they are entitled to be

offered any suitable alternative vacancy that the employer, successor

or associated employer may have.

9.9 The work must be suitable and appropriate to the employee and the terms and conditions must not be substantially less favourable. A failure to comply with this provision will amount to an automatic dismissal.

**Protection from detriment and unfair dismissal**

9.10 Employees are protected from suffering a detriment due to the fact that:

* they took, sought to take, or made use of the benefits of SPL
* the employer believed that employee was likely to take SPL
* the employee undertook, considered undertaking or refused to undertake work as allowed for by the provision of SPLIT days

1. The Government plans to increase this age limit to 18 from 6 April 2015. [↑](#footnote-ref-1)