

Medway Council

Shared Parental Leave Policy and Guidelines

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1. Aim of the Policy

1.1 The Shared Parental Leave Regulations 2014 came into force from 1 December 2014 and have effect only in relation to children whose expected week of birth is after 5 April 2015.

1.2 This policy sets out the statutory rights and responsibilities of employees who wish to take statutory Shared Parental Leave (SPL) and statutory Shared Parental Pay (ShPP).

2. Scope

This policy covers all Medway employees, including those employed under part-time and fixed term arrangements.

3. What is Shared Parental Leave?

SPL enables eligible parents to choose how to share the care of their child during the first year of birth (or adoption). Its purpose is to give parents more flexibility in considering how to best care for and bond with their child. All eligible employees have a statutory right to take SPL. There may also be an entitlement to ShPP.

4. Eligibility

4.1 SPL can only be used by two people:

- The mother/adopter and
- One of the following:
 - the father of the child (in the case of birth) or
 - the spouse, civil partner or partner of the child's mother/ adopter

Both parents must share the main responsibility for the care of the child at the time of the birth/placement for adoption.

4.2 An employee seeking to take SPL must satisfy each of the following criteria:

- the mother/adopter of the child must be/have been entitled to statutory maternity/adoption leave or, if not entitled to statutory maternity/adoption leave, they must be/have been entitled to statutory maternity/adoption pay or maternity allowance and must have ended or given notice to reduce any maternity/adoption entitlements
- the employee must still be working for the organisation at the start of each period of SPL
- the employee must pass the 'continuity test', requiring them to have a minimum of 26 weeks' service at the end of the 15th week before the child's expected due date/matching date

- the employee's partner must meet the 'employment and earnings test' requiring them in the 66 weeks leading up to the child's expected due date/matching date have worked for at least 26 weeks and earned an average of at least £30 a week in any 13 of those weeks (this is correct as of 2015 but may change annually)
- the employee must correctly notify the organisation of their entitlement and provide evidence as required

5. The Shared Parental Leave entitlement

5.1 Eligible employees may be entitled to take up to 50 weeks SPL during the child's first year in their family. The number of weeks available is calculated using the mother's/adopter's entitlement to maternity/adoption leave that allows them to take up to 52 weeks' leave. If they reduce their maternity/adoption leave entitlement, then they and/or their partner may opt-in to the SPL system and take any remaining weeks as SPL.

5.2 A mother/adopter may reduce their entitlement to maternity/adoption leave by returning to work before the full entitlement of 52 weeks has been taken or, they may give notice to curtail their leave at a specified future date.

5.3 A mother, subject to certain criteria, will be entitled to statutory maternity pay/ adoption pay/Maternity Allowance for up to 39 weeks. If the mother gives notice to reduce their entitlement before they will have received it for 39 weeks, then any remaining weeks could become available as ShPP. If they do this, their partner may be entitled to up to 50 weeks of SPL. This is calculated by deducting from 52 the number of weeks of SMP, SAP or MA taken by the mother/adopter.

5.4 SPL can commence as follows:

- The mother can take SPL after she has taken the legally required two weeks of maternity leave immediately following the birth of the child
- The adopter can take SPL after taking at least two weeks of adoption leave
- The father/partner/spouse can take SPL immediately following the birth/placement of the child, but may first choose to exhaust any paternity leave entitlements (as the father/partner cannot take paternity leave or pay once they have taken any SPL or ShPP)

5.5 Where a mother/adopter gives notice to curtail their maternity/adoption entitlement then the mother/adopter's partner can take leave while the mother/adopter is still using their maternity/adoption entitlements.

5.6 SPL will generally commence on the employee's chosen start date specified in their leave booking notice, or in any subsequent variation notice.

5.7 If the employee is eligible to receive it, ShPP may be paid for some or all of the SPL period.

5.8 SPL must end no later than one year after the birth/placement of the child. Any SPL not taken by the first birthday or first anniversary of placement for adoption will be lost.

5.9 SPL entitlement is not affected by the number of children born or expected as a result of the same pregnancy.

6. Notifying the Council of an entitlement and an intention to take Shared Parental Leave

6.1 If you are entitled to and are intending to take SPL, you must give your line manager at least eight weeks notification before you can take any period of SPL.

6.2 Part of the eligibility criteria requires you to provide the organisation with correct notification. All notifications must be in writing (an e-mail is acceptable) and requires each of the following:

- your name
- your ERN
- the name of the other parent
- the start and end date of any maternity/adoption leave or pay, or maternity allowance, taken in respect of the child and the total amount of SPL available
- the date on which the child is expected to be born and the actual date of birth or, in the case of an adopted child, the date on which you were notified of having been matched with the child and the date of placement for adoption
- the amount of SPL you and your partner each intend to take
- a non-binding indication of when you expect to take the leave

6.3 You must provide your line manager with a signed declaration stating:

- that you meet, or will meet, the eligibility conditions and are entitled to take SPL
- that the information you have given is accurate
- if you are not the mother/adopter, you must confirm that you are either the father of the child or the spouse, civil partner or partner of the mother/adopter
- that should you cease to be eligible you will immediately inform the organisation

6.4 You must provide your line manager with a signed declaration from your partner confirming:

- their name, address and national insurance number (or a declaration that they do not have a national insurance number)

- that they are the mother/adopter of the child or they are the father of the child or are the spouse, civil partner or partner of the mother/adopter
- that they satisfy the 'employment and earnings test', and have at the date of the child's birth or placement for adoption the main responsibility for the child along with you
- the name and business address of your partner's employer (where your partner is not employed or is self-employed their contact details if not previously provided must be given instead)
- that they consent to the amount of SPL that you intend to take
- that they consent to the Council processing the information
- in the case that you are the mother/adopter, that they will immediately inform you should they cease to satisfy the eligibility conditions

6.5 You must provide to your manager as evidence of eligibility

- in the case of biological parents and when available, a copy of the child's birth certificate (or, where one has not been issued, a declaration as to the time and place of the birth)
- in the case of an adopted child, documentary evidence of the name and address of the adoption agency, the date on which you were notified of having been matched with the child and the date on which the agency expects to place the child for adoption with you

7. Fraudulent claims

Where there is a suspicion that you may have provided false information, the Council will investigate the matter in accordance with the Disciplinary and Grievance Policy.

8. Booking Shared Parental Leave

8.1 In addition to notifying your line manager of your entitlement to SPL/ShPP, you must also give notice to take the leave. It is expected that your notice to take leave will be given at the same time as your notice of entitlement to SPL.

8.2 You have the right to submit three notifications specifying the leave periods that you are intending to take. Each notification may contain either (a) a single period of weeks of leave; or (b) two or more weeks of discontinuous leave, where you intend to return to work between periods of leave.

8.3 SPL can only be taken in complete weeks but may begin on any day of the week. For example, if a week of SPL began on a Tuesday it would finish on a Monday. Where you return to work between periods of SPL, your next period of SPL can start on any day of the week.

8.4 You must book SPL by giving the correct notification at least eight weeks before the date on which you wish to start the leave and (if applicable) receive ShPP.

8.5 Your notification can be for a period of continuous leave, which means a notification of a number of weeks taken in a single unbroken period of leave (for example, six weeks in a row).

8.6 You have the right to take a continuous block of leave notified in a single notification, so long as it does not exceed the total number of weeks of SPL available to you (specified in the notice of entitlement) and you have given the Council at least eight weeks' notice.

8.7 You may submit up to three separate notifications for continuous periods of leave.

8.8 A single notification may also contain a request for two or more periods of discontinuous leave, which means asking for a set number of weeks of leave over a period of time with breaks between the leave where you return to work.

8.9 Where discontinuous leave has been requested, the Council will consider this but it has the right to deny the request and to then discuss with you about alternative dates. If no leave pattern can be agreed, you can either withdraw your request or you can take the leave in a single continuous block. If you choose to take the SPL in a single continuous block, you have until 19 days from the date that your original notification was given to choose when you want the SPL period to begin. The SPL cannot start sooner than eight weeks from the date the original notification was submitted. If you do not choose a start date, then the SPL will begin on the first leave date requested in the original notification.

9. Variations to arranged Shared Parental Leave

9.1 You are permitted to vary or cancel an agreed and booked period of SPL, provided that you advise the organisation in writing at least eight weeks before the date of any variation. Any new start date cannot be sooner than eight weeks from the date of the variation request.

9.2 Any variation or cancellation notification made by you, including notice to return to work early, will usually count as a new notification reducing your right to book or vary leave by one. However, a change as a result of a child being born early, or as a result of the Council requesting it be changed, and you being agreeable to the change, will not count as a further notification.

10. Statutory Shared Parental Pay (ShPP)

10.1 You may be entitled to take up to 37 weeks ShPP while taking SPL. The amount of week's available will depend on the amount by which the mother reduces their maternity pay period or maternity allowance period.

10.2 ShPP may be payable during some or all of SPL, depending on the length and timing of the leave.

10.3 In addition to meeting the eligibility requirements for SPL, if you are seeking to claim ShPP, you must further satisfy each of the following criteria:

- the mother must be/have been entitled to statutory maternity pay or maternity allowance and must have reduced their maternity pay period or maternity allowance period
- you must intend to care for the child during the week in which ShPP is payable
- you must have an average weekly earnings for the period of eight weeks leading up to and including the 15th week before the child's expected due date are not less than the lower earnings limit in force for national insurance contributions
- you must remain in continuous employment until the first week of ShPP has begun
- you must give proper notification in accordance with the rules set out below (see 10.5)

10.4 If you are entitled to receive ShPP, you must at least eight weeks before receiving any ShPP, give your line manager written notice advising him/her of your entitlement to ShPP. To avoid duplication, if possible, this should be included as part of your notice of entitlement to take SPL.

10.5 In addition to what must be included in the notice of entitlement to take SPL, any notice that advises of an entitlement for ShPP must include:

- the start and end dates of any maternity pay or maternity allowance
- the total amount of ShPP available, the amount of ShPP you and your partner each intend to claim, and a non-binding indication of when you expect to claim ShPP
- a signed declaration from you, confirming that the information you have given is correct, that you meet or will meet the criteria for ShPP and that you will immediately inform the organisation should you cease to be eligible

10.6 It must be accompanied by a signed declaration from your partner confirming:

- their agreement to you claiming ShPP and for the Council to process any ShPP payments to you
- in the case whether the partner is the mother, that they have reduced their maternity pay or maternity allowance
- in the case whether the partner is the mother that they will immediately inform their partner should they cease to satisfy the eligibility conditions

10.7 Any ShPP due will be paid at a rate set by the Government for the relevant tax year.

11. Terms and conditions during Shared Parental Leave

11.1 Except for your salary, your contract of employment continues in force and you will receive all your contractual benefits.

11.2 Pension contributions will continue to be made during any period when you are receiving ShPP but not during any unpaid period. Your contributions will be based on actual pay, while the Councils contributions will be based on the salary that you would have received had you not been taking SPL.

12. Annual Leave

SPL is granted in addition to your normal annual holiday entitlement. You are reminded that holiday should, wherever possible, be taken in the year that it is earned. Where an SPL period overlaps leave years, you should discuss with your line manager how your annual leave entitlement can be used to ensure that it is not untaken at the end of the holiday year.

13. Contact during Shared Parental Leave

Before a period of SPL begins, your line manager will discuss with you the arrangements for you to keep in touch. The Council reserves the right in any event to maintain reasonable contact with you from time to time during your SPL.

14. Shared Parental Leave in Touch days

14.1 You can agree to carry out work for the organisation for up to 20 days during SPL without bringing your period of SPL to an end or impacting on your right to claim ShPP for that week. These are known as "Shared Parental Leave in Touch" or SPLIT days. Any work carried out on a day or part of a day shall constitute a day's work for these purposes.

14.2 The Council has no right to require you to carry out any work, and the Council is under no obligation to offer you any work during your SPL. Any work undertaken is a matter for agreement between the Council and you. You will receive full pay for any day worked under these arrangements. If a SPLIT day occurs during a week when you are receiving ShPP, this will be effectively 'topped up' so that you receive full pay for the day in question. Any SPLIT days worked do not extend the period of SPL.

14.3 You may, with the agreement of the Council, use SPLIT days to work part of a week during your SPL or as part of return to work arrangements towards the end of a long period of SPL or to trial a possible flexible working pattern.

14.4 SPLIT days are in addition to Keeping in Touch (KIT) days that are already available to those on maternity or adoption leave.

15. Returning to work after Shared Parental Leave

15.1 You will have been formally advised in writing of the end date of any period of SPL and you are expected to return on the next working day after this date, unless you notify your line manager otherwise. If you are unable to attend work due to sickness, the normal arrangements for reporting sickness absence will apply.

15.2 If you wish to return to work earlier than the expected return date, you may provide a written notice to your line manager to vary the SPL and you must give the organisation at least eight weeks notice of your date of your early return and this will count as one of your notifications. If you have already used your three notifications to book and/or vary leave then the Council does not have to accept your notice to return early but may agree to do so.

15.3 On returning to work after SPL, you are entitled to return to the same job if the aggregate of the total statutory maternity leave and SPL that you have taken amounts to 26 weeks or less. The same job is defined as the one that you occupied immediately before commencing maternity leave and the most recent period of SPL.

15.4 If the aggregate of your maternity leave and SPL amounts to 26 weeks or more, you are entitled to return to the same job you held before commencing the last period of leave. If this is not reasonably practicable, you are entitled to another job within the Council that is both suitable and appropriate and on no less favourable terms and conditions.

15.5 If you also take a period of unpaid parental leave of 4 weeks or less, this will have no effect on your right to return and you will still be entitled to return to the same job as you occupied before taking the last period of leave if the aggregate weeks of maternity leave and SPL do not exceed 26 weeks.

15.6 If a parent takes a period of 5 weeks of unpaid parental leave, even if the total aggregate weeks of maternity and SPL do not exceed 26 weeks, you will be entitled to return to the same job you held before commencing the last period of leave. If this is not reasonably practicable, you will be entitled to another job within the Council that is both suitable and appropriate and on no less favourable terms and conditions.

16. Special Circumstances and further information

In certain situations, your rights and requirements regarding SPL and ShPP may change. In these circumstances the Council will abide by any statutory obligations and you should refer to the documents listed below and/or clarify any issues or queries with your line manager (or HR Services).

- The Shared Parental Leave Regulations 2014
- The Shared Parental Pay (General) Regulations 2014
- The Maternity and Adoption Leave (Curtailed of Statutory Rights to Leave) Regulations 2014
- Employment Rights Act 1996
- Child and Families Act 2014
- Equality Act 2010