



# Family Leave Policy

1.2

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## **1. INTRODUCTION**

This policy sets out SHPCA's policy for maternity leave, paternity leave, adoption leave and shared parental leave. It should be read in conjunction with our Leave and Flexible Working Policy.

## **2. MATERNITY LEAVE**

### **Informing SHPCA of your pregnancy**

Employees should inform their line manager of their pregnancy as soon as they are able to do so. To qualify for statutory maternity provisions employees need to notify SHPCA no later than the 15<sup>th</sup> week before expected week of childbirth (EWC).

Employees are expected to confirm:

- The fact they are pregnant
- The expected date of the baby's birth
- The intended start date of the maternity leave. This cannot be earlier than the 11<sup>th</sup> week before the EWC. The date is confirmed on the MATB1 certificate that the employee receives from the doctor/midwife around the 26<sup>th</sup> week of pregnancy.

### **Data protection**

When managing an employee's maternity / paternity / shared parental / adoption leave and pay, SHPCA processes personal data. Data collected from the point at which an employee informs SHPCA that she is pregnant is held securely and accessed by, and disclosed to, individuals only for the purposes of managing her maternity leave and pay.

Inappropriate access or disclosure of employee data constitutes a data breach and should be reported in accordance with SHPCA's data protection policy immediately. It may also constitute a disciplinary offence, which will be dealt with under our disciplinary policy and procedure.

## **3. ANTE-NATAL CARE**

Reasonable time off is allowed for antenatal care regardless of the length of service. The employee is asked to try to accommodate appointments at reasonable times although SHPCA accepts this is not always possible.

After the first appointment a certificate from a registered doctor or midwife must be obtained confirming pregnancy along with an appointment card to show the employees line manager when time off is needed. Permission to leave must always be requested in advance of the appointment.

## **4. HEALTH AND SAFETY AT WORK DURING PREGNANCY**

As an employer we have a duty of care to ensure that during an employee's pregnancy they are not exposed to any risks that could affect them or their unborn child. To ensure this, a risk assessment will be carried out at regular intervals to identify any potential risks.

## 5. MATERNITY PAY

### Company Maternity Pay

Employees are eligible to receive an enhanced maternity pay which is payable from the commencement of Maternity leave if:

- Their average weekly earnings are in excess of the lower earnings limit for NI contributions
- They have been continuously employed by the company for **at least 2 years** as at the 15<sup>th</sup> week before the expected week of childbirth

The Companies enhanced maternity pay is payable for a period of 26 weeks at the following rate:

- 8 weeks at 100% of basic salary or 8 weeks at 90% of average weekly earnings – **whichever is higher**; and
- 18 weeks (week 9 to week 26) at 50% of basic salary (including Statutory Maternity Pay) or the SMP standard rate, whichever is higher.

These payments are subject to income tax and NI deductions.

### Statutory maternity pay (SMP)

Statutory Maternity Pay (SMP) is payable, in line with statutory limits, through SHPCA to all employees who follow the requirements of this policy. Any women who do not qualify for SMP may be entitled to maternity allowance payable through Job Centre Plus.

SMP is payable for a period of up to 39 weeks known as the Maternity pay period (MPP) which may not commence earlier than the 11<sup>th</sup> week before the EWC, but can be delayed up until the birth date.

SMP is broken down as follows:

- 6 weeks payable at the rate of 90% of average weekly earnings
- 33 weeks payable at the standard rate of SMP or, if less, 90% of average weekly earnings.

The MPP is triggered automatically if the employee is absent from work wholly or partly because of pregnancy after the beginning of the 4<sup>th</sup> week before the EWC.

The MPP can commence on any day of the week and also triggers the commencement of the Ordinary Maternity Period (OML) as outlined below.

### Maternity allowance

If the employee is not eligible for statutory maternity pay because they do not have enough service they may be eligible for Maternity Allowance from the Department of Work and Pensions (DWP). To be eligible they must:

- Have been an employed or self employed earner for at least 26 weeks in the 66 weeks prior to the 15<sup>th</sup> week before their EWC

- Have paid National Insurance contributions of a relevant class (in the case of class 1 contributions they must have paid them in full).

### **Ordinary Maternity Leave (OML)**

All women irrespective of their service or hours will be entitled to 26 weeks ordinary maternity leave (OML) and the right to return to work in the same job or, in the event of the role ending, a similar job with equally favourable conditions.

SMP is payable during the 26 weeks of OML.

### **Additional Maternity Leave (AML)**

All women irrespective of their service or hours of work will be entitled to 26 weeks AML.

Employees have the right to return to a similar job with equally favourable conditions after AML. They are not automatically entitled to return to their role prior to maternity leave.

No maternity pay is payable during the last 13 weeks of AML. All other contractual benefits will continue to apply, including non cash benefits associated with any salary sacrifice benefits.

### **Compulsory Maternity Leave**

This is a compulsory period of maternity leave referring to the first two weeks after the date of birth where a woman is prohibited from returning to work or working any KIT days. It is included in the 26 weeks OML.

## **6. SICKNESS DURING PREGNANCY**

Absence due to sickness that has nothing to do with pregnancy shall be treated as sick leave until the baby is born (unless maternity leave has commenced).

If the employee is on sick leave during the 4 weeks prior to the expected week of childbirth, and that sickness or incapacity is related wholly or partly to the pregnancy, the employee will be deemed to have started their maternity leave period and their maternity pay period will start on the second day of sickness.

## **7. KEEP IN TOUCH DAYS (KIT DAYS)**

Employees on maternity leave can request to work 10 'keep in touch days' (KIT) during the maternity leave period. KIT days enable the employee to attend meetings, complete handovers, training courses or for example finish a project that they commenced before starting their maternity leave. There is no obligation for the employee or the employer to utilise this entitlement however the following rules apply:

- No keeping in touch days can be taken during the first two weeks directly after childbirth. This is the compulsory leave period.
- The employee has to give reasonable notice of when she would like to utilise her entitlement and this has to be agreed with SHPCA manager.

- Regardless of if an employee attends for an hour meeting or 7 hour handover each occasion will constitute as a full KIT day and will be deducted from the 10 day allowance.

## **8. RETURN TO WORK**

The employee should keep in reasonable contact with SHPCA during maternity leave.

The employee will normally return to their own job following maternity leave. However where this is not possible as a result of reorganisation a suitable alternative position will be offered.

The employee has no automatic right to return to part-time working if they are full time before going on maternity leave. However the employee does have the right to submit a flexible working application. This should be submitted at least 8 weeks before the intended return to work date in order that the application can be processed in a fair and equitable manner.

## **9. CHANGING DATE OF RETURN TO WORK / NOT INTENDING TO RETURN TO WORK FOLLOWING MATERNITY LEAVE**

The employee is required to give at least eight weeks notice in writing if they intend to change the agreed return to work date.

If an employee who intended to return to work changes their mind, the employee is required to give their normal contractual notice in line with their contract of employment.

## **10. OPTIONS FOR PENSION CONTRIBUTIONS DURING MATERNITY LEAVE**

The NHS Pensions scheme guidance is as follows:

- During unpaid maternity leave, the employee has two choices - either to remain in the scheme, or to opt out for the whole of her maternity leave, or until her return to work, whichever is the sooner.

If she opts out, the employer must not remove her from the scheme but on the end of year return, calculate the number of days which were included in any period of unpaid leave and enter this in the box for the number of "Disallowed Days". This will ensure the pension contributions are correct and will more importantly ensure the employee does not lose any benefits.

If the employee opts out the employer will not be liable to pay any contribution during that period either. The employee must be made aware of this.

If the employee decides to keep up her payments, then these must be calculated as being the relevant percentage of the pay she was receiving immediately prior to her unpaid Maternity Leave (i.e. SMP plus Practice maternity pay [if any]). The payments do not have to be collected immediately, or at all until the employee returns to paid employment, or 52 weeks, whichever is the sooner. Once the employee has returned to work, the arrears should be paid in one



lump sum, or over an agreed reasonable period to accommodate the employee's affordability. This timescale is recommended to be 12 months or less if possible.

It is important to note that once a decision has been made as to which of the options will be taken, this cannot be reversed.

## **11. SHARED PARENTAL LEAVE**

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.

Following the two weeks of mandatory Maternity Leave, the mother/adopter can choose to stop the maternity leave and share the remaining leave (up to 50 weeks) with the secondary partner.

The use of SPL forfeits the rights to use any further maternity or paternity leave for the child.

SPL can be a more flexible alternative to maternity and paternity arrangements and give employees greater options in career and childcare planning.

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 is lost.

## **12. SHARED PARENTAL LEAVE ELIGIBILITY**

The Policy applies to all employees and Partners.

Both parents are eligible for SPL, 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.

The eligibility criteria includes:

- the employee must still be working for SHPCA at the start of each period of SPL
- the mother/adopter of the child must be/have been entitled to statutory maternity/adoption leave or statutory maternity/adoption pay or maternity allowance and must have ended or given notice to reduce any maternity/adoption entitlements
- the employee must 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 at least £390 in total in 13 of those 66 weeks
- the employee must correctly notify the organisation of their entitlement and provide evidence as required.

SHPCA will consider all requests in a reasonable manner

Employees will not receive less favourable treatment on the basis of raising a SPL request

## Shared Parental Leave Requests

Different types of leave may include continuous leave notifications or discontinuous leave notifications.

**Continuous leave** is a period of full weeks taken in a single unbroken period.

An employee has the right to take a continuous block of leave notified in a single application form, so long as it does not exceed the total number of weeks SPL available to them and SHPCA has been given eight weeks' notice.

An employee may submit up to three separate notifications for continuous periods of leave.

**Discontinuous leave** is where a request has two or more periods of (full weeks) of SPL where the employee would return to work in between leave.

SHPCA reserves the right to reject any discontinuous leave but will consider, where practical accommodating the request. Each request will be considered on a case-by-case basis. Agreeing to one request will not set a precedent or create the right for another employee to be granted a similar pattern of SPL.

Where SHPCA refuses the leave, the employee can either withdraw it within 15 days of giving it, or can take the leave in a single continuous block.

If the employee chooses to take the leave in a single continuous block following a refusal, they have until the 19<sup>th</sup> day from the date of the original application to choose when they want the leave period to begin. The leave cannot start sooner than eight weeks from the date the application was submitted. If the employee does not choose a start date then the leave will begin on the first leave date requested in the original notification.

## 13. SHARED PARENTAL LEAVE PROCEDURE

As of 1<sup>st</sup> December 2014, any eligible employee has the right to request SPL.

Where possible, the employee should meet with the employer to notify them of the intention to submit an application and discuss any details

Employees and their partner should complete the Shared Parental Leave Application Form in full, failure to do so could prevent the application from being accepted

- Employees must give at least 8 weeks' notice of the date on which they wish to start the leave
- Employees have the right to submit three notifications/variances specifying the leave periods they wish to take
- Notifications may include single periods of weeks of leave or two or more periods of weeks of leave where the employee intends to return to work in between
- SPL can only be taken in complete weeks but may start on any day of the week

Employees will be invited to a meeting to discuss the request which may, at this meeting be accepted

- The meeting will be held in a private room
- Notes will be taken
- The employee is entitled to be accompanied by a Trade Union representative or colleague
- The date of the meeting can be rearranged within 5 days of the original meeting date where a representative or colleague is unavailable
- The meeting will explore in detail the leave proposed and what will happen while the employee is away from work. Where it is a request for discontinuous leave the discussion may also focus on how the leave proposal could be agreed, whether a modified arrangement would be agreeable to the employee and the organisation, and what the outcome may be if no agreement is reached.

Following the meeting, the employee will receive confirmation in writing of whether the leave has been accepted or rejected (only in discontinuous leave situations) within 14 days of receiving the application

### **Requesting further evidence of eligibility**

SHPCA may, within 14 days of the SPL application being given, request:

- the name and business address of the partner's employer (where the employee's partner is no longer employed or is self employed their contact details must be given instead)
- in the case of biological parents, 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 they were notified of having been matched with the child and the date on which the agency expects to place the child for adoption
- in order to be entitled to SPL, the employee must produce this information within 14 days of the employer's request.
- approach the other parent's employer for verification of the shared parental agreement.

## **14. FRAUDULENT CLAIMS**

Where there is a suspicion that fraudulent information may have been provided or where SHPCA has been informed by the HMRC that a fraudulent claim was made, SHPCA will investigate the matter further in accordance with SHPCA's investigation and disciplinary procedures.

## **15. VARIATIONS**

Employees can cancel or submit a variation (using a new application form) if they provide eight weeks notice before the start date.

Employees are entitled to 3 variations and any variation or cancellation, including the notice to return to work early will reduce the remaining entitlement by one.

A change as a result of a child being born early or where SHPCA requests a change (only if the employee agrees) will not count towards the entitlement.

Any variations will be confirmed in writing.

## **16. SHARED PARENTAL LEAVE PAY**

Eligible employees may be entitled to take up to 37 weeks (of the 50 SPL weeks) Statutory Shared Parental Pay although this will depend on when the mother/adopter chooses to end maternity/adoption leave and start a SPL arrangement.

The mother must take a minimum of 2 weeks' maternity leave following the birth.

Shared parental pay is paid at 90% of your average weekly earnings or the government set statutory rate, whichever is lower. The rate is currently £151.20.

### **Terms and Conditions**

The employee's Terms and Conditions remain in place whilst on Shared Parental Leave. Employees are entitled to continue receiving contractual benefits except salary.

Annual leave will continue to accrue during SPL and where SPL overlaps two leave years, the remaining entitlement will be carried over.

In most occasions, employees will be asked to use any remaining annual leave before starting SPL.

### **Contact and Keeping in Touch (Split Days)**

SHPCA reserves the right to maintain reasonable contact during SPL. Where possible, a contact plan will be agreed.

Discussions may cover changes in SHPCA, promotion opportunities, return to work plans or outstanding training.

An employee also has the right to request to work (or attend training) up to 20 days during SPL (between the two parents) without bringing the period of SPL to an end or impacting their right to claim Statutory SP Pay. These are referred to as Shared Parental Leave in Touch days (SPLIT days).

This is additional to any KIT days taken during maternity/adoption leave.

SHPCA is neither obliged to offer the employee work, nor to require the employee to carry out any work. Any work undertaken is subject to mutual agreement.

The employee working a SPLIT day will receive full pay for any day worked. If the employee is receiving SP pay, the pay will be topped up for that day. Any work carried out or any training attended during a day or part day will be treated as a full day for these purposes.

## Returning to Work

If the employee is unable to return to work on the next working day after the SPL ends due to sickness or another reason, the relevant policy will apply. Late return without prior authorisation may be treated as unauthorised absence.

On returning to work after SPL, the employee is entitled to return to the same job on the same terms and conditions (if totalling 26 weeks absence).

If the employee takes more than 26 weeks absence, if the same job is not reasonably practicable, another suitable and appropriate job on no less favourable terms will be provided.

In certain circumstances some rights mentioned may be changed although this will only be the case where UK legislation allows.

## References

<https://www.gov.uk/shared-parental-leave-and-pay/what-youll-get>

## 17. PATERNITY LEAVE

Employees are entitled to take Statutory Paternity Leave if they are adopting a child (secondary adopter), are a father or share the responsibility for bringing up a child.

## 18. PATERNITY LEAVE ELIGIBILITY

Paternity Leave is available to employees who:

- have or expect to have responsibility for the child's upbringing
- are the biological father of the child or the mother's husband or partner (including same sex relationships)
- have worked continuously for their employer for 26 weeks ending with the 15th week before the baby is due or the end of the week in which the child's adopter is notified of being matched with the child
- give the correct notice.

## 19. PATERNITY LEAVE PROTOCOL

Employees who wish to take Paternity leave should inform their line manager at the earliest opportunity and no later than the end of the 15<sup>th</sup> week before the expected week of childbirth.

Employees can take one or two full weeks off (consecutively) and it must take place within 56 days of the actual date of birth of the child.

Paternity Leave cannot start until the birth of the baby.

Employees must complete the attached form and submit it to SHPCA in line with these rules.

To change the start date, you must give your employer 28 days' notice where practical.

## **20. PATERNITY LEAVE PAY**

To qualify for Statutory Paternity Pay you must have worked for SHPCA continuously for at least 26 weeks by the 15<sup>th</sup> week before the expected week of childbirth, earn at least £116 per week (before tax), give the correct notice and be employed by SHPCA up to the date of birth.

Statutory Paternity Pay is £151.20 (as of April 2020) or 90% of your average weekly earnings (whichever is lower)

If you are not eligible for pay, you will be issued with an SPP1 form within 28 days. (ASPP1 if you are adopting).

## **21. ANTE-NATAL APPOINTMENTS**

Fathers and partners of pregnant women are entitled to unpaid time off to attend two ante-natal appointments.

## **22. ADOPTION APPOINTMENTS**

Employees adopting a child are entitled to take time off to attend adoption appointments.

Where an employee is part of a couple jointly adopting a child, the couple can elect for one of them to take paid time off to attend up to five adoption appointments. The other can elect to take unpaid time off to attend up to two adoption appointments (the secondary adopter – the individual who would normally take Paternity Leave).

The appointment must have been arranged by or at the request of the adoption agency. The time off must be taken before the date of the child's placement for adoption with the employee.

## **23. ADOPTION LEAVE**

An employee is entitled to statutory adoption leave (SAL) if:

- They have been matched with a child by a UK adoption agency.
- Have confirmed with the agency that they wish to have the child placed with them and agreed a date of placement.
- Adoption leave is a day 1 right.
- Notified SHPCA of when they want to take their SAL no more than seven days after they are notified that they've been matched with a child.
- When the child arrives in the UK or within 28 days (overseas adoption).

An employee will not qualify for statutory adoption leave or pay if they:

- Arrange a private adoption
- Become a special guardian
- Adopt a stepchild or family member

Where a couple adopt jointly, only one will be eligible for SAL, however, Shared Parental Leave could be chosen.

## **24. SURROGACY ARRANGEMENTS**

You can get pay and leave if the child is due on or after 5 April 2015.

To qualify for Statutory Adoption Pay, you must have worked continuously for your employer for at least 26 weeks by the 15th week before the baby's due. All the other conditions for qualifying for pay and leave are the same as for adoptive parents.

If you're genetically related to the child (ie the egg or sperm donor), you can choose to get paternity leave and pay instead. You can't get both.

## **25. OVERSEAS ADOPTIONS**

The conditions are the same except for both leave and pay you must:

- have worked continuously for your employer for at least 26 weeks by the time you get your 'official notification'
- sign form SC6 if you're adopting a child with your partner

The official notification is permission from a UK authority that you can adopt from abroad. Form SC6 confirms you're not taking paternity leave or pay.

## **26. NOTIFICATION OF COMMENCING ADOPTION LEAVE**

An employee can start their adoption leave for 14 days before the child starts living with them. The adoption leave can commence on any day of the week but must commence on the date the child starts living with the employee.

The employee must give SHPCA at least 7 days notice of the child being placed with them.

## **27. STATUTORY ADOPTION PAY (SAP)**

To be eligible, employees must have worked for the employer continuously for at least 26 weeks by the week they were matched with a child.

Statutory adoption pay (SAP), in line with statutory obligations, is payable through SHPCA to all employees who follow the requirements of the policy and the qualifying criteria as set out by gov.uk. Any individuals who do not qualify for SAP may be entitled to adoption allowance payable through Job Centre plus.

SAP is payable for a period of up to 39 weeks known as the adoption pay period (APP), which may not commence earlier than 14 days before the child starts living with the employee, but has to commence on the date the child is placed with them.

The breakdown of SAP is as follows:-

- 6 weeks payable at the rate of 9/10ths of average weekly earnings;
- 33 weeks payable at the standard rate of SAP or, if less, 90% of average weekly earnings.

## **28. ORDINARY ADOPTION LEAVE (OAL)**

All employees are entitled to 26 weeks ordinary adoption leave (OAL) which follows the same principles as additional maternity leave, please refer to this section for more information.

## **29. ADDITIONAL ADOPTION LEAVE (AAL)**

All employees are entitled to 26 weeks additional adoption leave (AAL) which follows the same principles as additional maternity leave, please refer to this section for more information.

For further information on KIT days and benefits applicable during adoption leave please refer to the maternity leave policy. Co adopters are also entitled to paternity leave please refer to this section for more information.

Women have no automatic right to return to part-time working if they are full time before going on adoption leave. However SHPCA will consider all options available to accommodate such a request.

Where a couple adopts a child, only one of the parents can take adoption leave – the couple can choose. If the mother elects to take adoption leave, the father or partner can still take paternity and parental leave.

The father or partner may also take Shared Parental Leave (SPL)

If the father elects to take adoption leave he is still entitled to parental leave, but not paternity leave.

Adoption leave is only available where a child is newly placed for adoption – the right does not apply to stepfamily adoptions or adoptions by a child's existing foster carers.

## **30. ADOPTION APPOINTMENTS**

Parents adopting a child are entitled to paid time off work to attend up to 5 adoption appointments. Secondary adopters are entitled to unpaid time off for up to two appointments.





## APPENDIX 1 REQUEST FOR PATERNITY LEAVE

### Employee Details

Surname:	Start date with SHPCA:
Forename(s):	<b>Dates of requested leave:</b> (1 full week or two full consecutive weeks)
Date of Child's Expected Birth or adoption placement:	
Signed:	

SHPCA treats personal data collected while managing your paternity leave and pay in accordance with its Data Protection Policy. Information about how your data is used and the basis for processing your data is provided in SHPCA's Employee Privacy Notice.

SHPCA reserves the right to request a copy of the MATB1 form or adoption certificates.