Paternity Leave and Maternity Support Leave

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1 Introduction

1.1 Maternity Support Leave is available for employees either at the birth of their spouse’s/partner’s child or if they are adopting a child, at the adoption. It is also available to an employee who is the nominated carer.

1.2 In addition to maternity support leave some employees may be entitled to an additional week of statutory paternity leave (see below).

1.3 Full adoption leave is available to employees where they are the main carer of the child. Details are available in the Adoption Leave Policy.

2 Maternity support leave

2.1 Maternity support leave of up to one week with pay may be granted to the child’s father or the partner or the nominated carer of an expectant mother at or around the time of birth or adoption. A nominated carer is the person nominated by the mother to assist in the care of the child and to provide support to the mother at or around the time of birth or adoption.

2.2 Maternity support leave fulfils the entitlement for one week’s statutory paternity pay.
2.3 The procedure for maternity support leave is the same as for paternity leave specified below.

3 Paternity leave for childbirth

3.1 Eligibility

Employees who have 26 weeks continuous service with Ashford Borough Council at the 15th week before the expected date of childbirth have a right to take a single period of paternity leave of up to 2 weeks duration provided that:

- They are the child’s biological father and will have responsibility for the child’s upbringing, or is the mother’s husband, civil partner or partner and has or expects to have the main responsibility (apart from any responsibility of the mother) for the child’s upbringing;
- They are not the mother’s father, mother, grandfather, grandmother, sister, brother, aunt or uncle;
- NB: partners may be of the same sex.

3.2 Procedure

- By the 15th week prior to the expected date of birth the employees must complete an application for paternity leave form which will include a declaration of the nature of their relationship with the mother.
- Inform their manager of their intention of taking paternity leave.
- Provide a copy of form MATB1, statement of expected birth.
- Give their manager 7 days notice, or as much notice as possible of the start of their leave.

4 Paternity leave for adoption

4.1 Eligibility

Employees who have 26 weeks continuous service with Ashford Borough Council by the date on which the employee is informed that they have been matched for adoption, have a right to take a single period of paternity leave of up to 2 weeks duration provided that:

- They will be the adoptive parent’s spouse, civil partner or partner and has or expects to have the main responsibility (apart from any responsibility of the adoptive parent) for the child’s upbringing
- They are not the adoptive parent’s father, mother, grandfather, grandmother, sister, brother, aunt or uncle.
- NB partners may be of the same sex
4.2 Procedure

- As soon as possible employees must complete an application form which will include a declaration of the nature of their relationship with the other adoptive parent.
- Inform their manager of their intention of taking paternity leave for adoption.
- Provide evidence that they are being considered as an adoptive parent by a registered body and give 7 days notice, or as much notice as possible of the start of their leave.

5 Leave

5.1 Leave may only be taken at a single occasion of up to 2 weeks; it may not be split.

5.2 Leave must be completed by the 56th day following the expected date of the birth or the adoption of the child.

5.3 An employee may not take one week’s maternity support leave plus 2 weeks’ paternity leave as the maternity support leave is in place of one week’s paternity leave.

6 Statutory Paternity Pay

6.1 Employees will receive statutory paternity pay for the period of paternity leave. The current rate may be obtained from payroll or through the internet at www.dwp.gov.uk

7 Shared Parental Leave

7.1 This aspect of the policy covers all ABC employees including those employed under part-time and fixed term arrangements.

7.2 Introduction

7.2.1 Shared parental leave (SPL) and shared parental pay (ShPP), offer employees increased flexibility to take time off to be with their baby/adopted child. The SPL rights apply if the employee’s baby is due on or after 5 April 2015 (or the child being adopted is placed with the employee on or after 5 April 2015).
7.3 Eligibility

7.3.1 In order to qualify for SPL, the employee who is the mother/adopter must:
- have a partner
- be entitled to either maternity/adoption leave or Statutory Maternity Pay (SMP)/Statutory Adoption Pay (SAP) or Maternity Allowance
- have ended, or given notice to reduce, their maternity/adoption leave, or their SMP/SAP/Maternity Allowance

7.3.2 If the mother/adopter is intending to take SPL they must:
- share the primary responsibility for the child with the other parent at the time of the birth or placement for adoption
- have provided proper notification of their entitlement to SPL - including providing the necessary declarations and evidence.

7.4 Continuity of employment test

7.4.1 Unlike maternity leave which is a ‘day one right’, i.e. maternity leave can be taken no matter how long the employee has worked for ABC; in order to be able to take SPL the employee will need to meet the continuity of employment test. This means that the employee must:

- have been continuously employed by ABC for 26 weeks up to and including the 15th week before the week in which their baby is due to be born
- still be employed by ABC in the week before any shared parental leave is due to start.

7.4.2 If the employee is adopting a child they will meet the continuity of employment test if they:

- have been continuously employed by ABC for 26 weeks in the week in which they are notified of having been matched with a child for adoption and are still employed by ABC before any SPL is due to start
- are still employed by ABC in the week before any SPL is due to start.
7.5 Employment and earnings test.

7.5.1 If the employee is the partner of the mother/adopter, s/he will, in order to qualify for SPL, need to meet the employment and earnings test. In order to meet the test the employee must:

- have been an employed or self-employed earner in Great Britain for a total 26 weeks (not necessarily continuously) in the period of 66 weeks leading up to the week in which the child is due (or is matched for adoption)
- during 13 of those weeks have earned an average of a specified amount (determined annually by Government)

7.5.2 If both the employee and their partner meet the qualifying criteria set out above they will have a joint entitlement to SPL. If the employee wishes to take SPL, they will be able to decide with their partner how they wish to divide the available leave.

7.5.3 If the employee is the mother/adopter and s/he meets the continuity of employment test s/he will be able to use SPL even if his/her partner is not eligible to share the leave. This arrangement will give the employee greater flexibility than with maternity/adoption leave as s/he will be able to stop and start his/her leave by booking separate blocks of SPL.

7.6 Employee’s Responsibilities

7.6.1 It is the responsibility of the employee and their partner to establish whether they are eligible for SPL. As part of the process of opting into SPL, the employee and their partner must provide signed declarations (to be submitted at the same time as their 8 week notification to take SPL) which state that they have entitlement to SPL. Further information about the declarations is set out in this Section 7.9.

7.6.2 Employees must provide immediate notification of any change in their circumstances which affects their eligibility to SPL.

7.7 Amount of leave that can be shared

7.7.1 Employees are required to take a minimum of 2 weeks of maternity leave following the birth of their baby; this is called compulsory maternity leave. Employees who are adopting must also take off a minimum of two weeks after the adaptation.
7.7.2 In view of the compulsory maternity leave period, the maximum amount of SPL that can be shared is 50 weeks.

7.8 **Shared Parental Pay (ShPP)**

7.8.1 ShPP is paid at a flat rate (the same rate as Statutory Maternity Pay) To receive ShPP the employee must meet the qualifying requirements for SPL and have a partner who meets the 'employment and earnings test'. The employee will also need to have average earnings of not less than the lower earnings limit for National Insurance (NI).

7.8.2 Where the employee is the mother/adopter, they will, in order to receive ShPP provide 8 weeks’ notice of their intention to reduce his/her SMP/SAP entitlement by ending their maternity/adoption leave period.

7.8.3 If the employee gives this notice before s/he has received SMP/SAP for 39 weeks any remaining weeks can then be used as ShPP. For example if the employee reduces his/her SMP/SAP entitlement after 26 weeks this would mean that s/he and their partner would have 13 weeks of ShPP available.

7.9 **Notifying the Council of an entitlement and an intention to take Shared Parental Leave**

7.9.1 If the employee is entitled to and is intending to take SPL, they must give their line manager at least eight weeks notification before they can take any period of SPL.

7.9.2 Part of the eligibility criteria requires the employee to provide the council with correct notification. All notifications must be in writing and requires each of the following:

- employee’s name
- payroll number
- 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 the employee was re notified of having been matched with the child and the date of placement for adoption
- the amount of SPL the employee and their partner each intend to take
- a non-binding indication of when the employee expects to take the leave

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7.9.3 The employee must provide their 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 the employee is not the mother/adopter, they must confirm they are either the father of the child or the spouse, civil partner or partner of the mother/adopter
- that should they cease to be eligible they will immediately inform the council

7.9.4 The employee must provide their line manager with a signed declaration from their 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 the employee
- the name and business address of the employee’s 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 the employee intends to take
- that they consent to the council processing the information
- that they will provide immediate notification that you should they cease to satisfy the eligibility conditions

7.9.5 The employee is required to complete and submit the relevant forms (available on the intranet under Personnel > Staff > Forms) to confirm their entitlement to Shared Parental Pay (ShPP), details of the partner they are sharing their leave with and notification of their intention to take Shared Parental Leave.

7.9.6 There are two sets of forms – one needed by a mother and the person she will share Shared Parental Leave with, and one needed by an adopter who has taken adoption leave and/or pay and the person they will share Shared Parental Leave with.

7.9.7 The employee must provide their 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 the employee

7.10 Fraudulent claims

7.10.1 Where there is a suspicion that the employee may have provided false information, the council will request appropriate documentary evidence (as set out section 7.18) and investigate the matter in accordance with the Disciplinary Procedure.

7.11 Making a request for SPL

7.11.1 In addition to notifying their line manager of their entitlement to SPL/ShPP the employee must also provide notice to book a period of SPL they must submit a written 'notification' to make their request.

7.11.2 Notifications must be submitted at least 8 weeks before the employee intends the SPL to start.

7.11.3 Employees can submit up to 3 notifications for periods of SPL. For example the employee may initially just want to take off 3 months and this is what they set out in their original SPL notification. However, having returned to work, the employee then decides that they would like to take a further period of SPL. The employee will be able to submit a second notification requesting a further period of SPL. If the employee still has some SPL remaining they will have the option of submitting a further notification to request a period of leave.

7.11.4 When an employee is considering taking off SPL they are encouraged to discuss this with their line manager the earliest opportunity. This will provide an opportunity for the employee to talk through the time off that they will be looking to take and will allow the manager to have a longer period of time to consider options on how the work could be covered whilst the employee is on SPL.

7.11.5 On a notification, employees can request either a continuous block of SPL or discontinuous leave (see below).
7.12 Continuous SPL

7.12.1 This is a period of leave that is taken in an unbroken block, e.g. the employee takes 6 months off following the birth of their baby/placement of the child. If the employee makes a request for a period of continuous SPL this cannot be turned down (providing they have given the appropriate notice and the required information).

7.13 Discontinuous SPL

7.13.1 This is where the requested SPL is not being taken off as an unbroken block. Instead, the employee is requesting SPL over a period of time with breaks between the periods of leave. By requesting discontinuous leave it means that the employee will return to work between periods of SPL. For example, the employee may wish to have six months off in total but doesn’t want this as a continuous block of leave. Instead, the employee may wish to take off 2 months of SPL and then return to work for 3 months before taking off another 4 months of SPL.

7.13.2 Unlike continuous leave, requests for discontinuous leave can be turned down. When considering a request for discontinuous leave you will be able to take into account the needs of the business. If you are not able to agree to the employee’s request you will need to set out the reasons for this.

7.14 Grounds to refuse a request for discontinuous leave

7.14.1 Each request will need to be considered on its individual merits and there is not a specific list of reasons for turning down a request for discontinuous leave. However, the following are some factors that can be taken into account:

- the burden of additional costs (i.e. the stop-start nature of the proposed SPL pattern means that it will not be possible to easily employ a temporary replacement and therefore an agency worker may be required)
- difficulties in securing temporary cover will adversely impact on service delivery
- lack of continuity in cover arrangements will adversely affect the quality and/or performance of the activities
- an inability to reorganise the work amongst the other members of the team/service
7.15  Refusing a requested pattern of SPL

7.15.1 Within 14 days of receipt of the employee’s notification the manager will need to meet with them to discuss the reasons why they have not been able to agree to the requested SPL. As part of the discussion, if the needs of the business allow, the manager should consider alternative discontinuous leave arrangements. Alternatively, the manager should discuss with the employee about amending their SPL to become a continuous block.

7.16  Failure to agree a mutually acceptable alternative SPL arrangement

7.16.1 If the manager and the employee are unable to agree an alternative SPL arrangement the employee has the following options:

- they can choose to withdraw their request for SPL (this withdrawal will not count as one of their 3 booking notifications)
- they can submit a new revised request for SPL

7.16.2 If within 15 calendar days of the manager’s notification of the refusal to a requested pattern of SPL, the employee has not withdrawn their SPL request, the request will default to being considered to be a continuous block of SPL. The continuous block of SPL will commence on the date identified in the employee’s original SPL notification.

7.16.3 Providing the employee makes a request within 19 calendar days of their original SPL notification they can choose to commence their continuous block of SPL from a different date (but it cannot start sooner than 8 weeks from the date of the original notification was given).

7.17  Receiving a SPL notification from an employee

7.17.1 The manager will need to check that the employee has provided all of the required information (including details of their partner) and has also submitted the required signed declarations. If the SPL notification is for continuous leave or if the manager is able to agree to the requested discontinuous leave, the manager will need to advise Personnel and Development Services of the details of the employee’s SPL.
7.18 Circumstances where an employee can be required to provide supporting information for their SPL request

7.18.1 The employee is responsible for providing accurate information on their notice of entitlement (and the required signed declarations). If the employee deliberately falsifies information in order to fraudulently claim SPL and ShPP, this is likely to constitute gross misconduct and could, depending on the outcome of an investigation process and disciplinary hearing, result in dismissal.

7.18.2 In most cases it will not be necessary to request any further evidence in support of the SPL documentation. However, if there is any reason to suspect that the information provided by the employee isn’t correct, e.g. contradictory information is brought to the council’s attention, the employee can be requested to provide a copy of the baby’s birth certificate (if one is available) and/or the contact details of the employee’s partner’s employer. The employee will be required to provide the requested information within 14 calendar days. If necessary, the council can contact the other employer to ask them if the details provided are correct.

7.19 Request to cancel or vary a booked period SPL

7.19.1 Booked SPL can be cancelled or varied by the employee providing that they provide a variation notification. The employee will need to give at least 8 weeks’ notice of the variation. A variation notification counts as one of the 3 notifications than an employee is able to make. The variation notification will need to set out:

- details of the arrangement that the employee and their partner had originally intended to take.
- that the employee wishes to change the leave arrangement.
- details of the new SPL arrangement that the employee and their partner wish to take.

7.19.2 Both the employee and their partner must sign a written variation notification to confirm they agree to what is being requested.

7.20 Shared Parental Leave in Touch (SPLIT) days

7.20.1 SPLIT days can be used in situations where the manager and the employee feels that it would be beneficial for them to attend a work-related activity, e.g. a training session or a team meeting etc.
7.20.2 There is no obligation for the council to offer SPLIT days to the employee and they are under no obligation to agree to work on the days that are offered. The employee can work up to 20 SPLIT days, for which they will be paid, without affecting their statutory pay or leave.

7.20.3 If the employee is in the paid part of their SPL, the SPLIT days will be offset against any pay they are receiving. This means that unless the pay for the hours the employee works in that week exceeds the pay they are currently receiving, there will be no change in their pay. If the employee is in the unpaid part of their SPL they will receive contractual pay for hours worked.

7.21 Returning to work after Shared Parental Leave

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

7.21.2 If the employee wishes to return to work earlier than the expected return date, they must provide a written notice to their manager to vary the SPL and provide at least eight weeks notice of the date of their early return and this will count as one of their notifications. If the employee has already used their three notifications to book and/or vary leave then the council does not have to accept your notice to return early but may agree do so.

7.22 Right to return to work

7.22.1 Returning to work at the end of SPL the employee has the right to return to the job in which they were employed (subject to 7.22.2 under their original contract of employment and on terms and conditions not less favourable than those that would have been applicable if the employee had not been absent.

7.22.2 “Job” for this purpose, means the nature of the work which the individual is employed to do and the capacity and place in which they are so employed.

7.22.3 Where it is not practicable by reason of redundancy for the council to permit the employee to return to work in their job as defined in above; the employee shall be entitled to be offered a suitable alternative vacancy where one exists, provided that the work to be done in that post is suitable to them and appropriate to the circumstances, and that the capacity and place in which the individual is to be employed and their terms and conditions of employment are
not substantially less favourable to them than if they had been able to return to the job in which they were originally employed.

7.22.4 Suitable alternative employment may also be offered if exceptional circumstances other than redundancy (e.g. a general re-organisation), which would have occurred if the employee had not been absent, necessitate a change in the job in which they were employed prior to their absence. The work to be done should be suitable to the employee and be appropriate to the circumstances and the capacity and place in which they are to be employed and their terms and conditions of employment should not be less favourable if the employee had been able to return to the job in which they were originally employed.

7.23 Special Circumstances

7.23.1 In certain situations, the rights and requirements regarding SPL and ShPP (both statutory and contractual entitlements) may change. In these circumstances the council will abide by any statutory and organisational obligations.

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