

**Guidance**

# Shared Parental Leave: a good practice guide for employers and employees

June 2018



## Shared Parental Leave: a good practice guide for employers and employees

### **About Acas – What we do**

Acas provides information, advice, training, conciliation and other services for employers and employees to help prevent or resolve workplace problems. Go to [www.acas.org.uk](http://www.acas.org.uk) for more details.

### **'Must' and 'should'**

Throughout the guide, a legal requirement is indicated by the word "must" – for example 'a mother must take at least two weeks' maternity leave following the birth of the child'.

The word "should" indicates what Acas considers to be good employment practice.

### **June 2018**

Information in this guide has been revised up to the date of publication. For more information, go to the Acas website at [www.acas.org.uk](http://www.acas.org.uk) Legal information is provided for guidance only and should not be regarded as an authoritative statement of the law, which can only be made by reference to the particular circumstances which apply. It may, therefore, be wise to seek legal advice.

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## About this guide

This guidance is written to help eligible parents decide whether the benefits of Shared Parental Leave will work for them and how it could be used alongside, or instead of, traditional Maternity or Adoption leave. It is also written to provide employers with an understanding of their legal obligations and good practice procedures to use in their workplace.

This guide gives a general overview of SPL. For more detailed information on the SPL regulations see the BIS guidance:

[www.gov.uk/sharedparentalleave](http://www.gov.uk/sharedparentalleave)

## Key terms and abbreviations

The guidance uses the following key terms and abbreviations:

**Mother:** 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).

**Partner:** the child's biological father or the partner of the mother/adopter. This can be a spouse, civil partner; or a partner who is living in an enduring relationship with the mother and the child.

**SPL:** Shared Parental Leave.

**ShPP:** Statutory Shared Parental Pay.

**Continuous leave:** a period of leave that is taken in one block e.g. four weeks' leave.

**Discontinuous Leave:** a period of leave that is arranged around weeks where the employee will return to work e.g. an arrangement where an employee will work every other week for a period of three months.

**SPLIT day:** Shared Parental Leave in Touch Day.

**Unpaid Parental Leave:** separate to SPL, entitles employees to take up to 18 weeks off work to look after a child's welfare, this leave is normally unpaid.

**Match:** when an adopter is approved to adopt a named child or children.

**Curtail:** where an eligible mother brings their maternity/adoption leave and, if appropriate, pay or allowance entitlement to an end early. This is

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sometimes referred to as reducing the maternity/adoption leave period or reducing the maternity/adoption pay or Maternity Allowance period.

## Understanding Shared Parental Leave

### What is Shared Parental Leave?

SPL provide an opportunity for eligible parents to take advantage of additional flexibility in the way they choose to care for a new arrival to the family. It allows parents to share caring responsibilities evenly or have one parent taking the main caring role, depending on their preferences and circumstances. Unlike maternity/adoption leave, eligible employees can stop and start their SPL and return to work between periods of leave with each eligible parent able to submit three notices booking periods of leave (although an employer may allow more).

The amount of leave available is calculated using the mother's entitlement to maternity/adoption leave, which 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.

The SPL regulations give parents the right to take SPL and place a duty on employers to ensure that their employees are not penalised for using their entitlement or put under pressure to cancel/change a leave notification.

Employers and employees will find that having early conversations regarding leave intentions will be beneficial, enabling them both to be clear regarding the entitlement, what leave arrangements are being considered and how any leave will be accommodated.

### What happens to Maternity/Adoption/Paternity Leave?

Parents will remain entitled to take maternity, paternity and adoption leave. However, an eligible mother or adopter may now choose to reduce their maternity/adoption leave early and opt in to SPL.

A birth mother must take at least two weeks maternity leave following the birth of a child (four weeks for manual work in a factory environment) but can otherwise choose to end her maternity leave at any stage. An adopter can end their adoption leave once they have taken it for two weeks.

## The Shared Parental Leave process at a glance



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## The Shared Parental Leave eligibility criteria

A mother can only share her leave with **one** other person.

To trigger the right to SPL for one or both parents, the mother must:

- have a partner
- be entitled to maternity/adoption leave; or to statutory maternity/adoption pay or maternity allowance (if not eligible for maternity/adoption leave)
- have curtailed, or given notice to reduce, their maternity/adoption leave, or their pay/allowance (if not eligible for maternity/adoption leave).

A parent who intends to take SPL must:

- be an employee
- share the primary responsibility for the child with the other parent at the time of the birth or placement for adoption
- have properly notified their employer of their entitlement and have provided the necessary declarations and evidence.

**In addition, a parent wanting to take SPL is required to satisfy the 'continuity of employment test' and their partner must meet the 'employment and earnings test'.**

### Continuity of Employment test

The individual has worked for the same employer for at least 26 weeks at the end of the 15th week before the child's expected due date/matching date and is still working for the same employer at the start of each leave period.

### Employment earnings test

In the 66 weeks leading up to the baby's expected due date/matching date, the person has worked for at least 26 weeks and earned an average of at least £30 (as of 2018) a week in any 13 weeks.

Sometimes only one parent will be eligible. For example a self-employed parent will not be entitled to SPL themselves but they may still pass the employment and earnings test so their partner, if they are an employee, may still qualify.

If both parents are employees and both meet the qualifying requirements then there will be a joint entitlement and the parents will have to determine how to divide the leave entitlement once the mother has decided to curtail their maternity/adoption leave.

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## Shared Parental Pay

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.

Information on the current statutory rate for ShPP can be found at [www.acas.org.uk/spl](http://www.acas.org.uk/spl)

If both parents qualify for ShPP they must decide how it will be divided, and they must each inform their employer of their entitlement.

To qualify for ShPP an employee needs to have met the 'continuity of employment test' and their partner must meet the 'employment and earnings test', just like SPL. In addition, the employee must also have earned above the 'Lower Earnings Limit' in the eight weeks leading up to and including the 15th week before the child's due date/matching date and still be employed with the same employer at the start of the first period of ShPP.

If an employee's employment comes to an end while they are still entitled to some ShPP then any remaining weeks will usually remain payable unless they start working for someone else.

### Lower Earnings Limit

The amount of gross weekly earnings that allow an employee to qualify for certain state benefits. This changes each April. For the current rate, go to [www.acas.org.uk/spl](http://www.acas.org.uk/spl)

## Should an employer have a Shared Parental Leave policy?

To ensure consistency in making and responding to notifications regarding SPL it is a good idea for employers to set out the working arrangements and the employee's rights in a policy or workforce agreement. It can be a standalone policy, which refers to and interacts with other family friendly policies, or it could be included within a wider maternity and paternity policy.

Some employers may decide not to have an SPL policy. However, they should ensure their employees know how to apply for SPL and must still meet the statutory minimum requirements in the legislation.

When developing an SPL policy, any existing consultation and/or negotiating arrangements should be followed so that employees or their representatives can contribute to it.

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A policy should include, for example:

- a statement advising that all notices for a continuous period of leave, from eligible employees, will be accepted and that all requests for discontinuous leave will be considered
- the amount of notifications to book/vary leave available to the employee
- how employees should inform their employer of their entitlement to SPL, who the notification should be sent to and what should be included in it
- how a notice to book leave will be handled
- the time limits for dealing with a notice to book SPL
- Shared Parental Leave in Touch days
- contact during SPL
- the payments an employee may be entitled to while on SPL
- where to find forms and further information

Acas has developed a sample SPL policy that employers can adapt to their own needs at [www.acas.org.uk/spl](http://www.acas.org.uk/spl)

## Shared Parental Leave: Steps for an employee

### **Step 1: Becoming aware of a pregnancy or an adoption match**

Not everyone will meet the criteria to qualify for SPL but even those who are eligible may find that other arrangements suit them better. Parents should consider:

- if SPL is suitable for them,
- what leave arrangements may suit them best.

### **Consider if SPL may be suitable**

When deciding if SPL may be suitable, considerations might include:

- whether one or both parents qualify for SPL and how they would like to share the care of the child?
- whether the mother is prepared to reduce their maternity/adoption leave?
- is there a contractual entitlement to enhanced maternity/adoption/paternity/SPL pay and would reducing the mother's maternity/adoption leave impact on this?
- availability of other legal rights (such as flexible working requests, annual leave and parental leave) and how they could work alongside SPL?
- the wider financial implications to the family eg pay and pensions.

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If parents don't choose SPL at first, they have the option to use it at a later date while they are still eligible. For example, six months into a maternity leave period, a mother may choose to reduce their maternity leave by two months, giving their partner the chance to take those two months as SPL (provided they give eight weeks' notice to their employer and take the SPL within a year of the birth/adoption).

### For example...

Akilah is due to have a child in two months' time. She and her partner would like to share in caring for the child. Akilah is entitled to contractually-enhanced maternity pay for 26 weeks while her partner has access to statutory pay rates under SPL and has not taken any annual leave so far in this year. Akilah and her manager also want her to remain involved in a high-profile work project that will continue for some time.

### Why SPL might not suit Akilah...

- it makes financial sense for Akilah to take advantage of her enhanced maternity pay scheme for at least 26 weeks.
- while her partner wants more than the two weeks' paternity leave to care for the child, he might prefer to use his annual leave for this purpose instead of SPL.

### Why SPL might suit Akilah...

- SPL offers a good opportunity for the couple to equally share the time to raise the child between them.
- she could still take advantage of her occupational maternity pay by continuing maternity leave while her partner takes a period of SPL.
- she could stay involved in the project through the use of SPLIT days.

## Consider what leave arrangements may work best

SPL can:

- be taken in a **continuous block** or **multiple discontinuous blocks**
- start on any day of the week
- only be taken in complete weeks (so if SPL lasts for one week and begins on a Tuesday it will finish on the following Monday)
- be taken using three separate notices to book leave (although an employer could decide to accept more)
- be taken by the partner, while the mother is still on maternity/adoption leave if the mother reduces their entitlement to maternity/adoption leave.

Notifying an employer of a **continuous block** means taking an unbroken period of leave. For example, this could be a notification for a period of

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six weeks' leave. Eligible employees have a statutory right to take SPL in this way and an employer cannot refuse it.

Requesting a **discontinuous block** means asking for leave over a period of time, with breaks between the leave where the employee returns to work. For example, four weeks' SPL followed by three weeks back at work, followed by a further four weeks' SPL.

**Discontinuous leave, in a single notice, can only be taken with the employer's agreement** and is most likely to be accepted where the needs of the employer and employee have both been considered. Once a request for discontinuous leave is made the employee and employer will have a discussion period of 14 calendar days to talk about the request.

### Factors for an employee

- essential dates where leave must take place
- any challenging/busy periods coming up
- leave needs of partner
- desire for and availability of childcare options

### Factors for an employer

- important events/days planned
- any challenging/busy periods coming up
- how the role will be covered
- staffing issues during the period

If a request for discontinuous leave is not agreed then the total amount of leave in the request must be taken as one continuous block unless the employee withdraws their notice and submits a new request (see the Default Provisions p22).

Finally, for both types of SPL arrangements, it is important to consider how reliant a parent is on the proposed pattern the other parent is seeking to agree. Where both parents are taking continuous leave, this consideration is minimal because the patterns must be accepted by the respective employers. Where the care of the child is dependent on one or both of the parents agreeing discontinuous leave arrangements and one is refused, one or both parents may need to withdraw their notification and make new amended ones.

Having an early discussion can be helpful for an employee to explore options, find out what discontinuous leave arrangements the employer may be agreeable to, and what plans the employer has to accommodate the leave. It is good practice for employees and employers to do this before formal notices to book leave are given.

### **For example...**

Soraya and her partner are adopting a child and whilst her partner will take the main caring role, Soraya would like to be at home for the first few months. They have agreed that her partner's adoption leave will finish after six months and that Soraya will take three months SPL.

Soraya works in a shop and knows that she will be able to earn more money during the Christmas period compared to the rest of the year. She discusses the situation with the owner and explains that she is thinking about taking leave in October and November, will work December (while family will be around to help with the care of the child), and will then take SPL again in January when the shop is quieter.

The owner thinks the proposal is a good one, especially as it takes into account the needs of the business.

## **Step 2: Choosing SPL and providing an entitlement notification**

SPL can only be taken once the mother has:

- returned to work, or
- given notice to their employer that reduces their notification of maternity/adoption leave and confirming when their entitlement to maternity/adoption leave will come to an end. Notice is binding so cannot be withdrawn (except in certain circumstances).

### **Mother's not entitled to maternity/adoption leave**

If the mother is not entitled to maternity/adoption leave (for example because they are self-employed), they must have ended, or given notice to reduce, their maternity/adoption pay period or maternity allowance period, for their partner to be eligible for SPL.

If an employee is eligible for, and intends to take SPL they must provide their employer with a notice of entitlement to take SPL. The notice of entitlement must be submitted at least eight weeks before the employee intends to take a period of SPL.

### **Submitting a notice of entitlement to take SPL**

To have the right to take SPL, an employee must submit a notice of entitlement that includes:

- how many weeks maternity/adoption leave (or maternity/adoption pay or maternity allowance if the mother was not eligible for maternity/adoption leave) has been/will be taken
- how much leave both parents are entitled to take

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- how much leave each parent intends to take
- when they expect to take their leave
- the signatures of both parents

**It must be accompanied by a declaration from the employee's partner** that confirms, at the time of the birth they:

- share the main responsibility for the care of the child with the employee
- meet the employment and earnings test
- consent to the employee taking the number of weeks of SPL specified in the employee's notice of entitlement

A full list of what must be included in the employee's notice can be found in [Appendix 1](#).

Acas has also developed forms that eligible employees can complete and send to their employer to create an entitlement to SPL at [www.acas.org.uk/spl](http://www.acas.org.uk/spl)

The employee does not have to take their leave on the dates they state in the notice of entitlement to take SPL but it will give their employer an idea of what is being considered.

### **Can parents change their minds about opting-in to SPL?**

Once the mother has given notice to end maternity/adoption leave and either parent has informed their employer of their entitlement to take SPL then the notice to end maternity leave is binding and cannot be withdrawn unless:

- within eight weeks of the mother submitting notice to end their maternity/adoption leave it transpires that neither parent qualifies for SPL or ShPP
- when notice was given before birth, it may be withdrawn without a reason up to six weeks following the birth
- the mother's partner dies.

### **Can parents change their minds about how they share the SPL?**

If there is a joint entitlement to SPL, parents will have notified their respective employers of how much leave they each intend to take as part of the entitlement notice. They can vary this allocation of leave between them at any stage. To vary this, both parents must notify each employer in writing of the following:

- details of their original division of leave
- that they are changing their division of leave
- advising how they now intend to take the available SPL.

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Both parents must sign the notice to confirm that they are in agreement with the variation. If leave was booked that will no longer take place, a notice to vary leave must also be made (see p22).

### Claiming Shared Parental Pay

If either the mother or partner wishes to claim ShPP then the mother must also give notice to reduce or end their maternity/adoption pay or allowance entitlement.

If the employee intends to claim ShPP, they must give their employer notice, which must include:

- how much ShPP both parents are entitled to take
- how much ShPP each parent intends to take
- when they expect to take ShPP
- a declaration from the employee's partner confirming their agreement to the employee claiming their amount of ShPP.

The notice to claim ShPP can be included within the notice of entitlement to take SPL.

### Step 3: Notification booking leave

An employee is entitled to submit three separate notices to book leave, although an employer can allow them more. This means that an employee could book three separate periods of leave during the child's first year in the family. Any variation to booking leave already booked will, in most circumstances, count as one of the three notices (see p29).

#### For example...

Harvi's partner gives notice to reduce her maternity leave to six months. Harvi books to take six weeks off in one continuous block following the birth of their child. Several months later Harvi books a further three weeks in a continuous block so that he can take the child to visit family. Harvi saves his final notice to book leave in case anything unexpected arises.

**A notice to book SPL must be submitted at least eight weeks before any period of leave would begin.** It must be in writing, dated and clearly set out what leave the employee intends to take.

Acas has developed letters booking continuous leave and requesting discontinuous leave that eligible employees may use and adapt at [www.acas.org.uk/spl](http://www.acas.org.uk/spl)

### Booking leave before birth

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If the child has not yet been born then a booking can specify that it will commence after a period of time following birth. For example an employee could book two weeks' leave to begin "two weeks after the child's birth".

### **Step 4: Outcome**

In most circumstances (all continuous leave notifications and agreed discontinuous leave requests) an employee will not need to take any further action and will proceed to take their leave as notified.

Should an employer fail to respond to a notification then the employee should check that their employer received the request. The employee will be entitled to take a continuous leave booking even if the employer does not respond to the notification

If no agreement is reached regarding a discontinuous leave request during the 14 calendar days discussion period or no response is given, then the leave will default to a single continuous block. The employee will then have to decide whether to take the leave as a continuous block or to withdraw the request. An employee should understand the default provisions that are in place so they do not miss an action point deadline.

### **The Default Provisions (discontinuous leave only)**

#### **Within 14 calendar days of the original notification...**

If an agreement is reached regarding when the employee will take their leave, no default provisions will apply. If no agreement is reached or the employer refuses the discontinuous leave notification or the employer makes no response to a discontinuous leave notification, the default provisions will apply.

#### **Within 15 calendar days of the original notification...**

If no agreement is reached, the employee may withdraw their discontinuous leave notification. If the employee does withdraw the request it will not count as one of their three notices to book leave. If the employee does not withdraw their request, the discontinuous leave notification automatically defaults to a period of continuous leave.

#### **Within 19 calendar days of the original notification...**

The employee can choose when the continuous leave will commence but it cannot start sooner than eight weeks from the date the original notification was given. If the employee does not choose, the start date automatically defaults to the date the requested discontinuous leave would have first started.

## Shared Parental Leave Steps for an employer

### **Step 1: Becoming aware of a pregnancy or an adoption match**

If an employer becomes aware of an employee's pregnancy or being matched to adopt, there are a number of steps they can take to ensure leave is arranged smoothly and positively.

Where a notice to take maternity, adoption or paternity leave has been made, it might help to arrange an informal discussion to raise the option of SPL. This may be because the employee is considering it, or there is uncertainty about their eligibility, or they were not aware of the option.

A discussion at this stage could be a good opportunity to draw the employee's attention to the different options (maternity, paternity, adoption, flexible working etc), which may include both statutory and contractually-enhanced schemes.

Although this discussion should be as informal as possible, an employer may allow their employee to be accompanied by a workplace colleague, trade union representative or even a personal friend or family member. Line managers should be fully aware of the rights and entitlements of employees seeking to take SPL. Employers should make sure that line

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managers are aware of their procedures for dealing with SPL and are equipped to take a proactive and supportive role.

## **Shared Parental Leave is a legal entitlement**

Qualifying employees have the legal right to choose to take SPL, to determine when they take it and to not suffer any detriment for using or seeking to use SPL.

Although an employer can refuse to agree to a discontinuous leave request, the entitlement remains and the number of weeks requested in the notice will default to a single block of continuous leave.

Workplace cultures and practices will vary and handling the SPL process should fit into usual workplace practice. An employer may suggest arrangements and periods which suit the organisation better than the original request and see if the employee is agreeable.

## **Step 2: Choosing SPL and receiving an entitlement notification**

### **Discussing early intentions**

Upon receiving a notification of entitlement seeking an informal discussion regarding plans to take SPL can provide an opportunity for the employer and employee to talk about their preferences and what leave the employee had indicated they were considering taking in their notice of entitlement.

The purpose of such a conversation is for the employer to get an idea of the type and pattern of leave an employee may be interested in taking, giving them time to consider how best to accommodate any forthcoming notice to book SPL. It can also be an opportunity to discuss what forms of discontinuous leave patterns could be accommodated and what an employer is most likely to agree to.

Like in Step 1, if the employee wishes, it can be good practice (and for some employers, it may also be workplace policy) to allow them to be accompanied by a workplace colleague, trade union representative or even a personal friend or family member.

### **Why might allowing the employee to be accompanied help?**

- English may not be their first language and the colleague may be in a position to help facilitate the discussion.
- It may be necessary under the Equality Act 2010 as part of a reasonable access requirement for a disabled employee.

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- It can give the employee confidence.
- If the colleague is a trade union representative they may have experience of prior successful arrangements and knowledge of wider workforce practices.

### Making early preparations

At this early stage an employer should consider:

- What leave arrangements the employee has indicated they are considering taking?
- What impact the employee's absence will have on the organisation and what steps can be taken to mitigate this?
- Whether a discussion has taken place regarding SPL and, if one has, how the points raised will be handled?
- If a further discussion now would be beneficial?

### For example...

Two months before bakery supervisor Sophia begins her maternity leave, Felix, her manager, receives notice from Sophia curtailing her maternity leave after 39 weeks and a notice of entitlement to SPL. The notice of entitlement indicates that she is currently considering returning to work for one month and then taking a further two months off as SPL.

On his rounds, Felix discusses the plans with Sophia. Having a discussion allows Felix to get a better understanding of what leave Sophia intends to take. In turn, Sophia is made aware of the process and what information to provide Felix with.

When her notice to book SPL arrives Felix is well prepared and has already considered how the bakery team will accommodate her absence. He feels there is no need for a further meeting so confirms to Sophia in writing that her SPL request has been received, confirming the start and end dates of the leave.

### Step 3: Notification booking leave

Upon receiving a notice to book leave, the employer's next step will depend on whether the employee has given notice that they will take a continuous block of leave or has requested a discontinuous block of leave.

A notification for continuous leave cannot be refused and therefore an employer will only need to decide how the leave period will be covered. If discontinuous leave is requested then the employer will have 14 calendar days to discuss the proposal with the employee and consider how and whether the request, or a modified version of it, can be agreed. Upon receiving a request for discontinuous leave an employer may wish to consider:

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- What impact will the leave arrangements have on the business and could this be mitigated?
- Would any modification to the leave reduce the impact on the business and might the employee be agreeable to this?
- Might other considerations help achieve a mutually beneficial agreement?
- The likely outcome if the request for discontinuous leave is not agreed? (See default provisions see p22.)

Employers will often find it beneficial to have a meeting with the employee once they have received a notice to book SPL. Although it should be kept as informal as possible, an employer should inform their employee that they have the option to be accompanied by a colleague, trade union representative and possibly even a personal friend or family member. Whilst there is no legal requirement to do so, it can be reassuring to the employee and help encourage an open-minded discussion.

Even when the notification is for continuous leave and there is little to discuss, or where it is a request for discontinuous leave that is likely to be refused, holding such a meeting can help ensure mutual understanding and avoid any confusion regarding the notification. It is possible for an employer and an employee to agree/accept a modification to an SPL notification at the meeting itself.

The meeting should be held in private and arranged in advance. If the initial date is problematic then another date should be arranged if possible, or if both parties agree, it could be held over the telephone.

### **Tips to encourage a good discussion...**

Workplaces do vary but a few common tips to help ensure a good discussion are:

- Arrange a mutually convenient time and place.
- Consider the notification details before the meeting and think about how the impact could be managed.
- Remember that with proper notification, the employee is entitled to take continuous SPL when they want and the purpose of the leave is to care for the child.
- Consider what arrangements could be discussed to make the leave as mutually beneficial as practicable.
- Prepare questions to ask at the meeting to ensure all points are clarified and dealt with.
- Be open-minded to suggestions to encourage flexibility.
- Give each other the chance to put forward views.
- Discuss how the leave could be accommodated taking account of the employee's workload.

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- Record agreed outcomes from the meeting in writing and let the employee have a copy.

### Step 4: Outcome

Depending on the circumstances involved, there are four possible outcomes once an employer has received, considered and discussed a notice to book SPL:

- Unconditionally accept a leave notification.
- Confirm an agreed modification to a leave notification.
- Refuse a leave notification (discontinuous leave only).
- Fail to respond to a leave notification.

#### A) Unconditionally accept a leave notification

A continuous leave notification must be accepted.

If a discontinuous leave notification is made and is completely acceptable to an employer (possibly as a result of holding an early discussion before the notification is made, as outlined in Step 1), they should confirm their agreement to the employee, ideally in writing, within 14 calendar days of the date the notification was received, confirming the relevant leave dates being taken.

#### B) Confirm an agreed modification to a leave notification

If the employer and employee agree a different discontinuous leave arrangement to the one originally requested by the employee, both should confirm their agreement, ideally in writing, within 14 calendar days of the date the notification was received, confirming the agreed dates.

The new arrangement could include different dates/duration to the pattern originally requested or could be a move to a continuous leave arrangement instead.

There is no legal requirement for an employee to change a continuous leave notification but if they are agreeable to a modification then this may be agreed instead. An employee should not be put under any pressure to change the period or face any detriment if they refuse.

A modification in either of these instances will not count as a further statutory notification and this should be confirmed in writing.

#### C) Refuse a leave notification (discontinuous leave only)

Where the employer is not immediately agreeable to a notification for discontinuous leave they should always seek to arrange a meeting to discuss the request with the employee.

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If the notification remains unacceptable to an employer, they should provide the following, ideally in writing, within 14 calendar days of the date the notification was given:

- proposed alternative dates (wherever the option is viable) for the employee to consider AND
- a confirmation of their refusal AND
- clear information on what options are now available to the employee ie withdraw, move to the default provisions or agree a modified arrangement.

If no agreement is reached then the employee and employer need to be mindful of the default provisions (see the end of this section for details).

### **For example... refusing discontinuous leave**

Zar and his partner are hoping to split SPL equally to care for their child. His partner would like to take discontinuous leave because this would enable her to continue to be involved in an important project. She would therefore like to work one month in every two. Zar therefore puts in a discontinuous leave notification to his employer that mirrors his partner's.

Zar and his employer discuss the notification. His employer is concerned it will not work because of his HR role in a business merger, which Zar needs regular involvement in or someone else to take over completely. Zar's employer writes to him within 14 calendar days of the notification being made to advise that they cannot agree to his request. It makes clear that Zar is entitled to take the whole period off in one continuous block and that this will begin on the start date he originally requested unless he confirms a different date.

Having discussed it with his employer Zar understands why it was difficult to agree to. He and his partner decide that it will be best for Zar to take the continuous block. His partner will withdraw her request for discontinuous leave, work on the project during this time, and take a period of continuous leave once Zar's leave finishes.

### **D) Fail to respond to a leave notification**

This outcome is not good practice and should be avoided wherever possible. Although employers are under no statutory obligation to respond to any notification regarding SPL, providing a response in writing is good practice and advantageous to maintaining good working relations.

A continuous leave notification must be accepted. If no response is made to such a notification, the employee has the right to take the leave as outlined in the notification.

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If a response is not provided to a request for discontinuous leave it will be regarded as having been refused and the employee and employer need to be mindful of the default provisions.

Acas has developed a range of sample letters that employers may use and adapt to respond to SPL notifications at [www.acas.org.uk/spl](http://www.acas.org.uk/spl)

### **The Default Provisions (discontinuous leave only)**

Understanding the default provisions is essential because they could make the difference between an employee withdrawing their notification (and possibly applying again) or taking a continuous block of SPL instead.

#### **Within 14 calendar days of the original notification...**

If an agreement is reached regarding when the employee will take their leave, no default provisions will apply. If no agreement is reached or the employer refuses the discontinuous leave notification or the employer makes no response to a discontinuous leave notification, the default provisions will apply.

#### **Within 15 calendar days of the original notification...**

If no agreement is reached, the employee may withdraw their discontinuous leave notification. If the employee does withdraw the request it will not count as one of their three notices to book leave. If the employee does not withdraw their request, the discontinuous leave notification automatically defaults to a period of continuous leave.

#### **Within 19 calendar days of the original notification...**

The employee can choose when the continuous leave will commence but it cannot start sooner than eight weeks from the date the original notification was given. If the employee does not choose, the start date automatically defaults to the date the requested discontinuous leave would have first started.

## Considerations during Shared Parental Leave

### **Cancelling or varying booked Shared Parental Leave**

Situations will arise where an employee may need to vary or cancel a period of booked leave. An employee should give written notice to vary/cancel their leave and make clear what change they are seeking. Any variation must be made at least eight weeks before the dates varied begin.

A notice to vary booked SPL will count as a further notification. Therefore if the employee had originally agreed the leave as part of their first notice to book SPL, cancelling or varying the leave would count as a second

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notification, meaning, unless the employer allowed them to give more notices, they would only have one further notification to use any remaining leave.

If the employee has already used up all of their notifications the employer is under no obligation to agree to vary/cancel the leave but could still consider the request and decide whether it is reasonably practicable to grant it.

Instances where the employer proposes a variation to leave, and the employee is agreeable, would not count as a further notification and this should be confirmed in writing.

## **Working and communicating during Shared Parental Leave**

Some contact during SPL periods will usually be beneficial for employers and employees. Whether this is done through SPLIT days or pre-arranged phone contact is for both parties to consider.

### **Reasonable contact**

Reasonable contact allows employers and employees to keep up-to-date on changes within the workplace and to personal circumstances that can help ease the employee's return to work. The employer has legal obligations to the employee while they are away from work and therefore should keep the employee informed about everyday issues eg staffing changes and job opportunities.

How and when contact will take place should be discussed in advance of the leave period being taken and agreed upon.

### **SPLIT days**

During SPL an employee and employer will be able to agree up to 20 Shared Parental Leave In Touch (SPLIT) days. There is no obligation on an employer to offer these days or for an employee to agree to them. SPLIT days can be used in situations where both parties feel it would be beneficial for the employee to attend a work-related activity, for example a training session or a team meeting, or to work part of a week to help the employee return to their role in a gradual way.

Both parties should be clear about how much an employee will be paid for working a SPLIT day and whether the contractual pay will top up ShPP to

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full pay or whether the contractual pay will be additional to the week's ShPP.

SPLIT days payments need to meet National Minimum Wage requirements and not be discriminatory, so it will usually be necessary to pay an employee for the work they do at the rate they would usually receive, and offset any ShPP they would have received for that week against that total.

### **For example...**

Lucie has been on maternity leave for five months. She gave notice to end her maternity leave after eight months so her partner could have a month's SPL. She will then take a further three months SPL herself.

Lucie does feel that it would be beneficial if she could reacquaint herself with her role and colleagues during her three months of SPL before her full return and talks to her manager about this. Her manager is keen to also have Lucie attend a team training day in that period too.

Lucie and her manager agree to one SPLIT day a month in her first two months of SPL and two SPLIT days a week in her final month of SPL. They agree that Lucie will receive full pay for any SPLIT day worked in addition to any remaining ShPP.

## **Returning to work after Shared Parental Leave**

When an employee returns to work following a period of SPL they are entitled to return to the same job if their combined leave period (comprising of maternity/paternity/adoption and shared parental leave) totalled 26 weeks or less. This is unaffected by unpaid parental leave of up to four weeks being taken as well.

In the case where the number of weeks of maternity/paternity/adoption and SPL exceeds 26 weeks in aggregate, or the total number of unpaid parental week exceeds four weeks, an employer must allow an employee to return to the same job unless it is not reasonably practicable, in which case they must offer a suitable and appropriate job on terms and conditions that are no less favourable.

It is rare to justify any change to an employee's role even after 26 weeks. If an employee believes they have unreasonably not been allowed to return to their role they should express their concerns in writing to their employer and seek advice or support from trade union representatives where they are available.

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## Annual leave during Shared Parental Leave

Just like maternity, adoption and paternity leave employees still accrue annual leave while on SPL. The employee should try to take annual leave within their leave year wherever possible. Where this is not possible, it would be good practice for an employer to allow it to be carried-over.

### For example...

Lorna receives 28 days statutory annual leave each year. Her leave year starts in January and ends in December. She learns she is due to give birth next October and understands that her annual leave will continue to accrue when she is taking maternity leave/SPL.

Lorna knows that she needs to take as much of her current annual leave allowance as possible before her leave year ends but thinks she may end up with a few days of leave left untaken.

Lorna discusses this with her line manager. They both agree that it makes sense for Lorna to be allowed to carry over this leave.

## Other key considerations

### Protection for seeking to take/taking Shared Parental leave

During SPL an employee is entitled to benefit from all of the terms and conditions of their employment except for remuneration (this generally means wages). They are also bound by any obligations arising from the terms and conditions except the need to attend work.

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If a redundancy situation arises while an employee is on SPL they, like a mother on maternity leave, must be offered a suitable alternative vacancy if one is available. For more information visit

[www.acas.org.uk/redundancy](http://www.acas.org.uk/redundancy)

Should an employee believe that they have suffered a detriment, or been dismissed as a result of exercising or seeking to exercise their right to take SPL they should express their concerns in writing to their employer and seek advice or support from trade union representatives where they are available.

If an employee wishes to pursue matters after exhausting their internal procedures, they must use the Acas Early conciliation service to try to resolve matters before taking it to an Employment Tribunal where an employer could face the possibility of incurring financial penalties. Early

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conciliation should only be used after the employee feels that they have exhausted the employer's internal procedures providing that this can be done before the expiry of the three-month time limit to raise an Employment Tribunal claim. For more information visit [www.acas.org.uk/earlyconciliation](http://www.acas.org.uk/earlyconciliation)

## Shared Parental Leave and discrimination

In addition to the SPL regulations, employers should ensure that they do not discriminate (inadvertently or otherwise) against employees in any way. Under the Equality Act 2010, there are nine protected characteristics including gender, sexual orientation, pregnancy and maternity. As such, it is essential to handle all eligible SPL requests fairly and consistently.

### For example...

Peter works on a production line for a large firm. He knows the firm has received and authorised a couple of discontinuous SPL notifications from female employees in similar roles. However, his notification has been declined without any obvious reason. Also, his supervisor told other team members about the request and they are now referring to him in a derogatory manner as "the wife".

Peter raises a formal complaint that he has been discriminated against on the grounds of his gender and that he has suffered a detriment for requesting SPL. Whilst the complaint is dealt with to his satisfaction, the time taken to investigate the matter, carry out disciplinary procedures and train staff makes the company realise that some initial manager training around SPL would have saved a lot of time, money and disruption.

For more information about discrimination, see [www.acas.org.uk/equality](http://www.acas.org.uk/equality).

## Does an employer need to check an employee's eligibility?

It is the employee's responsibility to check that they are eligible for SPL and ShPP and an employer should grant leave and pay based on the information and declarations provided by the employee. If it is subsequently discovered that ShPP was incorrectly paid, an employer should correct their records and may recover wrongly paid ShPP as an overpayment of wages, as applies to all statutory payments.

Apart from checking whether their own employee meets the continuity of employment and earnings criteria (as they would for statutory maternity pay or paternity pay), a notice of entitlement to take SPL or ShPP and the

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accompanying declarations will be sufficient evidence of a right to claim SPL and ShPP.

An employer can, within 14 calendar days of receiving the notice, request a copy of the child's birth certificate (if one is available). They can also request the contact details for the employee's partner's employer. If a request is made then these details must be provided within 14 calendar days.

Employers should take into account that the criteria for the employment and earnings test means that the partner could be self-employed or no longer employed and still meet the requirements.

If an employer intends to contact the other employer, they should ensure that any actions are consistent with their policies/existing approach to conducting fair investigations, consider their data protection obligations and duty of confidentiality.

An employer should approach each notification for SPL in a consistent and reasonable manner and ensure that they do not act in a way that could be interpreted as discriminatory.

## **Early birth and special circumstances**

In certain situations an employee's rights and requirements to take SPL do change.

### **Early birth**

If the child is born before their expected due date and the employee had booked to take SPL within the first eight weeks of the due date, they may take the same period of time off after the actual birth without having to provide eight weeks' notice, by submitting a notice to vary their leave as soon as is reasonably practicable. Unlike most other variation notices, this would not count as one of the employee's three notifications.

Any leave arranged after the first eight weeks of the due date is still bound by the eight-week notice required to vary leave.

If the child is born more than eight weeks before their expected due date and the notice of entitlement to SPL 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 notices should be given as soon as is reasonably practicable after the actual birth.

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### **Death of the child before or during birth, or within the first year**

Should the child die before the parents have submitted a notice of entitlement to take SPL then they cannot opt into SPL because a qualifying condition is caring for a child. The mother will remain entitled to maternity leave and the mother's partner could still qualify for statutory paternity leave.

If the parents have opted into SPL and they have booked 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.

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

### **Partner no longer caring for the child**

If the circumstances of an employee who has booked SPL change so that they will no longer be responsible for caring for the child (unless it is because the child has died), their entitlement to both SPL and ShPP will immediately cease and they must tell their employer.

If the employee has any SPL arranged within eight weeks of their entitlement ceasing, their employer can still require them to take it as SPL if it is not reasonably practicable for the employer to have their employee in work, for example because cover has been arranged. Any weeks of SPL arranged after eight weeks of their entitlement ceasing must be cancelled.

If the remaining parent will be continuing to care for the child then they will still be eligible to take their SPL entitlement. If the other parent, who is no longer caring for the child had any SPL leave entitlement outstanding, the remaining parent will only be able to transfer it into their own entitlement if they can get the signed agreement of the other parent to a notice confirming a variation of leave entitlement (see p29).

### **Death of a parent during the child's first year**

If either parent dies and the other parent is taking, or is entitled to SPL then they will continue to be eligible. Any SPL that was due to be taken by the deceased parent may be transferred to the other parent if the other parent is eligible for SPL.

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Should it be necessary for the other parent to take a further period of SPL or to vary pre-agreed leave then notice may be given as soon as is reasonably practicable if eight weeks' notice cannot be given. If they have already given three notices to take leave they must be allowed to submit one further notice to book/amend SPL.

### **Multiple births/adoptions**

An employee is not entitled to extra SPL or ShPP if they are expecting more than one child. The entitlements are, like maternity leave, the same as if the employee was expecting one child. This also applies to multiple adoptions that occur in a single placement.

## Further advice and support

### **Appendix 1: Information required in an SPL notice of entitlement**

The employee must provide their employer with:

- the names of the mother and partner
- the start and end date of any statutory maternity or adoption leave
- the total amount of shared parental leave available
- the child's expected week of birth, actual date of birth, or date of placement
- how much shared parental leave the mother and partner each intend to take
- an indication as to when they intend to take shared parental leave (an employee does not have to take their leave as they indicate in this document)
- a signed declaration from the employee seeking to take SPL 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 they have given is accurate
  - should they cease to be eligible they will immediately inform their employer.

The partner of the employee must also provide their partner's employer with 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 the responsibility for the care of the child with the employee seeking to take 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

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- (in the case of the mother) that the mother will immediately inform their partner should the mother cease to satisfy the eligibility conditions.

## Suggested further reading

### Acas

[www.acas.org.uk/flexibleworking](http://www.acas.org.uk/flexibleworking)

[www.acas.org.uk/maternity](http://www.acas.org.uk/maternity)

[www.acas.org.uk/paternity](http://www.acas.org.uk/paternity)

[www.acas.org.uk/adoption](http://www.acas.org.uk/adoption)

[www.acas.org.uk/spl](http://www.acas.org.uk/spl)

### Other Acas publications

Whether you need to know how to write a contract of employment, how much holiday an employee is entitled to, or about the latest employment legislation, our range of booklets and online guides give practical information and advice for both employers and employees on workplace matters. Go to [www.acas.org.uk/publications](http://www.acas.org.uk/publications) for more information.

### For BIS and Gov.uk material

<https://www.gov.uk/sharedparentalleave>

An employer with queries regarding the payment of ShPP should contact HMRC [www.hmrc.gov.uk](http://www.hmrc.gov.uk).

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Visit [www.acas.org.uk](http://www.acas.org.uk) for:

- Employment relations and employment law guidance – free to view, download or share
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- An introduction to other Acas services including mediation, conciliation, training, arbitration and the Acas Early Conciliation service
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**The Acas Model Workplace.** This engaging and interactive tool can help an employer diagnose employment relations issues in its workplace. The tool will work with you to identify areas of improvement you can consider, and will point toward the latest guidance and best practice:

[www.acas.org.uk/modelworkplace](http://www.acas.org.uk/modelworkplace)

**Acas Helpline Online.** Have a question? We have a database of frequently asked employment queries that has been developed to help both employees and employers. It is an automated system, designed to give you a straightforward answer to your employment questions, and also gives links to further advice and guidance on our website:

[www.acas.org.uk/helplineonline](http://www.acas.org.uk/helplineonline)

**Acas Helpline.** Call the Acas Helpline for free and impartial advice. We can provide employers and employees with clear and confidential guidance about any kind of dispute or relationship issue in the workplace. You may want to know about employment rights and rules, best practice or may need advice about a dispute. Whatever it is, our team are on hand. Find out more: [www.acas.org.uk/helpline](http://www.acas.org.uk/helpline)

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