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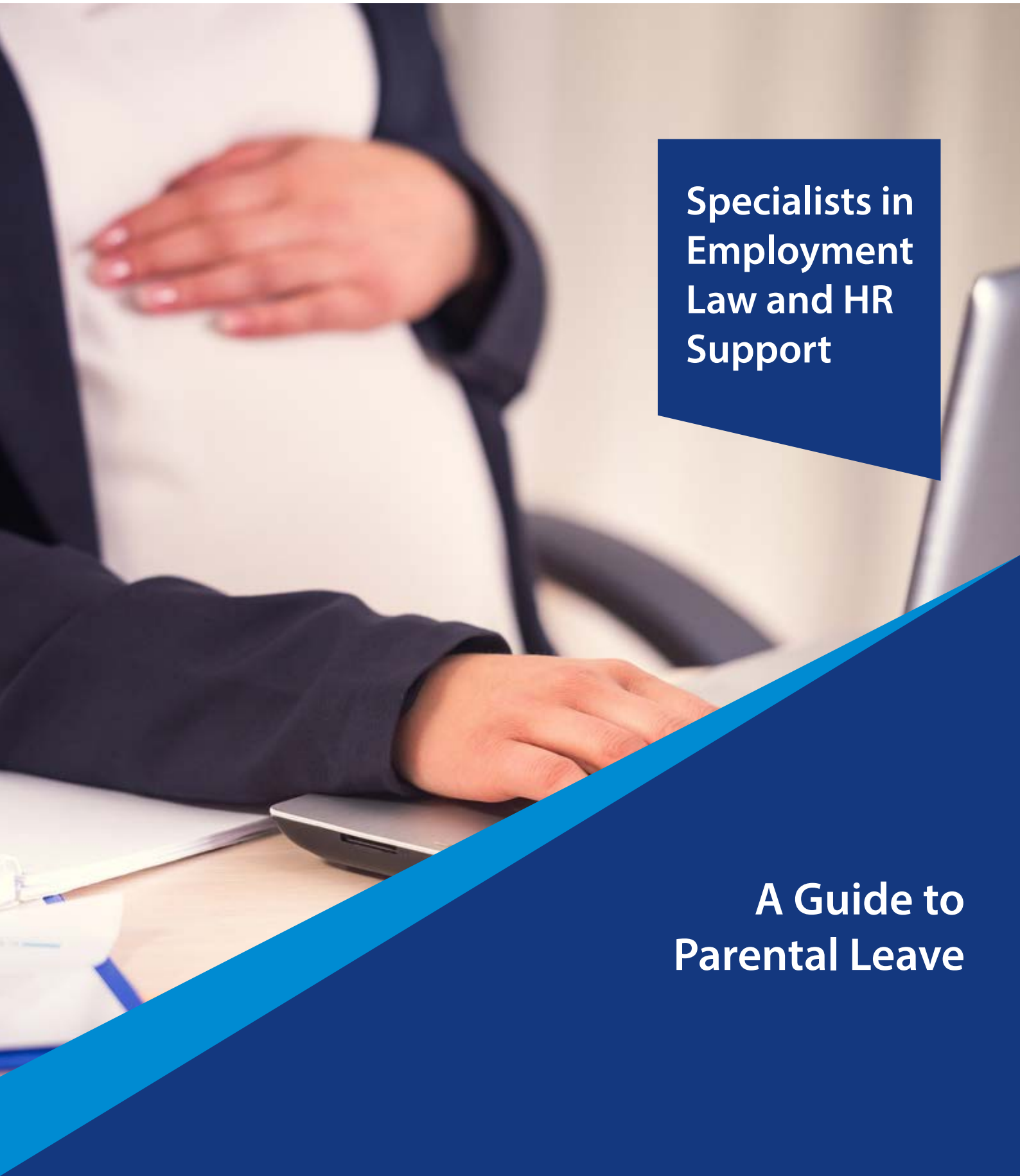

Specialists in Employment Law and HR Support

A Guide to Parental Leave

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A Guide to Parental Leave

Including valuable information on:

- **Maternity Leave and Pay**
- **Paternity Leave and Pay**
- **Shared Parental Leave and Pay**

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A Guide to Parental Leave

Maternity Leave and Pay

If a female member of your staff is expecting a baby, she can take up to 52 weeks Statutory Maternity Leave, regardless of her length of service. This is split into 26 weeks of Ordinary Maternity Leave (OML) followed by 26 weeks of Additional Maternity Leave (AML).

It is not compulsory for her to take the full 52 weeks' Statutory Maternity Leave, but she must take a minimum of two weeks after her baby is born – or four weeks if she is a factory worker.

All her employment rights are protected while she is on Statutory Maternity Leave. This includes her right to any pay rises, accrued holiday and her right to return to work. She may be entitled to take some of her maternity leave as shared parental leave.

Am I eligible for Statutory Maternity Leave?

Only employees qualify for Statutory Maternity Leave – a "worker" does not.

A female employee will qualify for Statutory Maternity Leave regardless of how long she has worked for you, how many hours she works or how much she is paid.

She does not have to provide you with proof of her pregnancy to claim SML.

How much notice should my employee give me before her maternity leave begins and when should it start?

Your employee must tell you when her baby is due at least 15 weeks in advance of her due date, along with when she wants her OML to start. She must give you at least 28 days' notice of this and you can ask her to provide the information in writing. You are obliged, within 28 days, to tell her how much SMP she will receive and when it will start and finish.

If she wishes to change the start date for her OML, she can do so providing she gives you at least 28 days' notice of the new date – or as much notice as is reasonably possible. The earliest she can start her OML is 11 weeks before her due date.

OML will usually start on the day that she requested, but if her baby is born early, it will start the day after the birth. If she is off work for a pregnancy-related reason in the four weeks before her expected due date, then her OML starts on the second day of her absence.

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Who qualifies for Statutory Maternity Pay?

Your employee must earn a minimum average of £113 a week and have worked for you continuously for at least 26 weeks – prior to the 15th week before her due date – to qualify for Statutory Maternity Pay (SMP).
She must also provide you with the correct notice and proof that she is pregnant. This could be a letter from her doctor or midwife, or her MATB1 certificate which she should receive from her doctor or midwife about 20 weeks before the due date.

How is Statutory Maternity Pay calculated?

If your employee qualifies for SMP, she will be eligible to be paid for up to 39 weeks, calculated as follows:

- 90% of her average weekly earnings (before tax) for the first six weeks
- £140.98 or 90% of her average weekly earnings (whichever is lower) for the next 33 weeks.

SMP is paid in the same way as her salary or wages, monthly or weekly, and Income Tax and National Insurance are deducted as usual. SMP usually starts as soon as she commences her maternity leave.

If she is off work for a pregnancy-related reason in the four weeks before her due date, her SMP will start automatically. If she is dismissed at any time after the 15th week, she is entitled to be paid SMP for the full 39-week period.

What happens if she is not eligible for Statutory Maternity Pay?

If you decide she is not eligible for SMP, you must give her an SMP1 form within seven days of making your decision, explaining why. She might be able to claim Maternity Allowance instead, which is essentially the same, except there is no right to receive 90% of her earnings during the first 6 weeks.

What happens if she loses her baby?

She will receive SML and SMP if her baby is stillborn after the start of the 24th week of her pregnancy. If she miscarries before this point, she will not. If her baby lives for only a short period of time after birth, she will be entitled to receive full SML and SMP.

Can my employee take time off for antenatal appointments?

You must allow your employee a reasonable amount of paid time off work to attend antenatal clinics. You can request proof that she is pregnant and/or an appointment card to confirm she is attending an antenatal clinic, although for obvious reasons this doesn't apply to her first appointment.

Do I need to carry out any risk assessments?

Once your employee has told you she is pregnant, you should carry out a risk assessment. If you do not, she might be able to claim against you for unlawful sex discrimination. You should record the findings of the risk assessment in writing, but you can tell her about them verbally.

If the assessment shows there to be a risk or a perceived risk to her or her child, you must change her working conditions or hours to mitigate it. If this cannot be done, then you should suspend her on full pay until the risk has passed.

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What are KIT "keeping in touch" days?

Your female employee can if she wishes, work for you for up to 10 days during her maternity leave without bringing it to an end. These days are known as KIT days ("keeping in touch") and can include any activity designed to keep her in contact with the business.

KIT days are entirely optional and can be taken separately or in one block. Any work she undertakes on a KIT day will count as a full day's work, no matter how long she is actually there for, and you must pay her accordingly.

KIT days cannot be used during the two-week compulsory leave period immediately after the birth of her child. If your employee exceeds 10 KIT days and work an 11th day (or more) she loses her SMP for that week.

Your employee's right to return to work

If your employee returns to work during her OMP, she are entitled to return to her old job, on the same terms and conditions.

If she returns to work during or immediately after her AML, she has the right to return to her old position – but if that is not reasonably practicable, she has the right to return to another suitable role that is "no less favourable" than her original one. If she wants to return to work before the end of her OML or AML, she must give you at least 8 weeks' notice of the date on which she would like to return.

She does not have a statutory right to return to work on a part-time basis, but if you fail to consider a request for flexible working, she may be able to lodge a sex discrimination claim against you.

Can I make my employee redundant while she is on maternity leave?

If your employee is selected for redundancy or dismissed for a reason connected with her pregnancy, the dismissal would be automatically unfair and she would likely have a sex discrimination claim against you.

In the case that a genuine redundancy situation arises while she is on maternity leave, you must offer her a suitable alternative position the day after her contract ends. If you do not, your dismissal will be unfair – unless she unreasonably refused an offer of suitable alternative work, or you can show that there simply were not any other jobs that she could do.

If she is subjected to any form of victimisation or any other detriment for taking advantage of her legal rights during pregnancy, childbirth or maternity leave, she may be able to make a claim against you in an employment tribunal.

The rules relating to maternity leave and pay are quite complex and can create confusion.
If you need advice regarding your employees' rights and entitlements, Delphi can help.

Contact us today on 0113 867 2815.

Paternity Leave and Pay

As an employer, your male employees can qualify for paternity leave on the birth of their child, providing they are the baby's biological father, the expectant mother's spouse or civil partner, or they are in a long-term relationship with the expectant mother. All of an employee's legal rights must be protected while they are on paternity leave, including their entitlement to any pay rises, accrued holiday and their right to return to work.

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Who is eligible for paternity leave?

To qualify for paternity leave, your staff member must be an employee, and have worked continuously for you for at least 26 weeks by the end of the 15th week before the expected due date, known as the 'qualifying week'.
They must also tell you of their intention to take paternity leave before the end of the qualifying week.

How much paternity leave can be taken?

A male employee can take either one or two weeks' paternity leave. Whichever option they choose, it must be taken all in one go – they can't take odd days here and there.

For example, if they decide to take two weeks, this must be consecutive. A week is the same number of days that they would normally work – so if they only work part-time, on Tuesdays and Wednesdays for instance, a week would be two days.

When does paternity leave start and finish?

Paternity leave can start either on the day your employee's baby is born or sometime after the birth, but it must end within 56 days of the birth.

Your employee does not have to tell you exactly when they want their paternity leave to start, but they do have to give you a realistic estimate. They are also legally entitled to take time off to accompany their partner to two antenatal appointments for up to 6.5 hours each.

How should my employee claim paternity leave?

At least 15 weeks before your employee's baby is due, they must inform you of the due date, whether they want to take one or two weeks' paternity leave and when they want it to start.

What if my employee wishes to take shared parental leave?

Your employee may also be eligible for shared parental leave, but they cannot take paternity leave after this.

Who is eligible for paternity pay?

To qualify for paternity pay, your employee must:

- Have worked for you continuously for at least 26 weeks by the end of the 15th week before the expected due date (known as the 'qualifying week')
- Remain working for you up to the date of the baby's birth
- Earn at least £113 a week (before tax)
- Provide you with the correct notice.

How much paternity pay will my employee receive?

The current rate is £140.98 per week, or 90% of your employee's average weekly earnings, whichever is lower.
Paternity pay is paid in the same way as your employee's wages – monthly or weekly. Income tax and national insurance are deducted in the normal way. When your employee makes a paternity pay claim, you must confirm when it will begin and end.

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What happens if my employee loses their baby?

Your employee will still qualify for paternity leave and/or pay if their baby is stillborn from 24 weeks of pregnancy, or if they lose the baby following the birth.

What should I do if my employee is not eligible?

If your employee is not eligible for either paternity leave or pay, you must tell them why within 28 days. If you need advice regarding your employees' paternity rights, Delphi can help.

We specialise in employment law and with extensive experience, we are highly qualified to assist you with any paternity issues you might have. **Contact us today on 0113 867 2815 to find out more.**

Shared Parental Leave and Pay

Shared parental leave (SPL) allows a mother to end her maternity leave early and opt to share it with the child's father, or her partner, providing they meet the eligibility requirements.

Parents who qualify can share a pot of leave and take it in turns to have time off work, in order to care for their child. Or if they prefer, they could both be off work at the same time.

Who qualifies for shared parental leave?

Each parent qualifies separately for SPL. For example, if you employ the mother they must:

- Have been employed for at least 26 weeks continuously by the end of the 15th week before the due date – or for adoptions, by the date they were matched with their child – and must still be employed by you during the first week that SPL is taken.
- Have joint responsibility for the child with either their husband, wife, civil partner or joint adopter, the child's other parent or their partner – providing that they live with your employee and the child.
- Be an employee with a contract of employment – not self-employed or a freelance worker. Most agency and casual staff do not have the right to SPL.
- If you employ the father, or the mother's partner, they must:
- Have worked for a minimum of 26 weeks, non-consecutively, in the 66-week period prior to the due date – or for adoptions, the week they were matched with their child – and have earned an average of at least £390 in 13 weeks of the 66-week period.

If both parents satisfy the criteria above, they will be able to make use of the pot of SPL.

When does shared parental leave start?

SPL starts when the mother returns to work – ending any period of maternity or adoption leave – and shares childcare responsibilities with the father, or her partner.
She cannot return to work before the end of the compulsory two weeks of maternity leave following the birth or adoption, or four weeks if she works in a factory.
Providing the parents meet the criteria for SPL and have ended their maternity or adoption leave early, they can take whatever remains of the 52 weeks' maternity or adoption leave entitlement as SPL.

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When can shared parental leave be taken?

SPL must be taken between the child's birth and its first birthday, or within one year of adoption.

How is shared parental leave booked?

An employee must give you at least eight weeks' written notice of the dates on which they want to take SPL. However, during the six weeks after the birth or adoption, the mother can change her mind and remain on maternity leave.
SPL can be taken in up to three blocks of complete weeks, separated by periods of work, instead of taking it all in one go like maternity or adoption leave. You cannot refuse a request for SPL if it is all booked in one block, but you can refuse a request for non-consecutive periods of SPL.

Is shared parental leave paid?

SPL is paid at the same rate as statutory maternity pay. To qualify for shared parental pay, both parents must meet the continuity of employment and relevant earnings tests.

Delphi can provide advice on shared parental leave and pay matters. Shared parental leave and shared parental pay are complex areas of law, which often cause confusion amongst employers and can result in claims of victimisation or sex discrimination. If you need more detailed advice on these matters to avoid potentially costly litigation, Delphi can help you. We specialise in employment law and – with many years of experience – are highly-qualified to assist you with any shared parental leave or pay issues you might have.
Contact us today on 0113 867 2815 to find out more.