

Sandwell MBC

Shared Parental Leave policy – for school-based employees

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Notes

- References to “days” in this document, means “calendar days.”

- References to “Headteacher” in this document includes an employee of the school to whom the Headteacher has delegated authority for carrying out the responsibilities identified.

What is Shared Parental Leave?

Shared Parental Leave is a statutory entitlement that, from 5 April 2015, enables eligible parents to choose how to share the care of their child during the first year following birth. Its purpose is to give parents more flexibility in considering how to best care for, and bond with, their child. All eligible employees have a statutory right to take Shared Parental Leave. There may also be an entitlement to some Shared Parental Pay. This policy sets out the statutory rights and responsibilities of employees who wish to take statutory Shared Parental Leave (SPL) and statutory Shared Parental Pay (ShPP).

The Governing Body recognises that, from time to time, employees may have questions or concerns relating to their shared parental rights. A list of FAQ’s can be found on HR118.2. If you have any further queries please contact your HR Services provider.

Other sources of information are listed at the end of this document.

Scope

This policy applies to all school-based employees and non-school-based teachers (unattached teachers).

Teachers not working in schools should substitute ‘service manager’, ‘line manager’ or ‘Director’ wherever ‘head’ or ‘head teacher’ appears in this document. Similarly, the word ‘school’ should be replaced with ‘service’ or ‘establishment’

Who is eligible for Shared Parental Leave?

SPL can only be used by two people:

- The mother **and**
- One of the following:
 - the father of the child or
 - the spouse, civil partner or partner of the child's mother.

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

Additionally an employee seeking to take SPL must satisfy each of the following criteria:

- the mother of the child is entitled to statutory maternity leave or, if not, they must be/have been entitled to statutory maternity pay or maternity

- allowance and must have ended or given notice to reduce any maternity entitlements;
- the employee must still be working for the school at the start of each period of SPL;
 - the employee must pass the '**continuity of employment test**' requiring them to have a minimum of 26 weeks' service with the same employer at the end of the 15th week before the child's expected due date;
 - the employee's partner must meet the '**employment and earnings test**' requiring them in the 66 weeks leading up to the child's expected due date have worked for at least 26 weeks and earned an average of at least £30 (correct as of 2015 but may change annually) a week in any 13 of those weeks;
 - the employee must correctly notify the Headteacher of their entitlement and provide evidence as required.

The Shared Parental Leave entitlement

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

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

If the mother is not entitled to maternity leave but is entitled to Statutory Maternity Pay (SMP) or Maternity Allowance (MA), she must reduce her entitlement to less than the 39 weeks. If she does this, her partner may be entitled to up to 50 weeks of SPL. This is calculated by deducting from 52 the number of weeks of SMP or MA taken by the mother.

SPL can commence as follows:

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

Where a mother gives notice, from a future date, to curtail their maternity entitlement then the mother's partner can take leave while the mother is still using her maternity entitlements.

SPL will generally commence on the employee's chosen start date specified in their leave booking notice (i.e. for mothers on form HR118.2 and for their partners on form HR118.3), or in any subsequent variation notice (i.e. on form

HR118.4) (see "Booking Shared Parental Leave" and "Variations to arranged Shared Parental Leave" below).

If the employee is eligible to receive it, Shared Parental Pay may be paid for some, or all, of the SPL period (depending on the length of SPL period) (also see "Shared Parental Pay" below).

SPL must end no later than one year after the birth of the child. Any SPL not taken by the first birthday is lost.

Notifying the school of an entitlement to Shared Parental Leave

An employee entitled and intending to take SPL must give their Headteacher notification of their entitlement and intention to take to SPL, at least eight weeks before they can take any period of SPL.

Part of the eligibility criteria requires the employee to provide the correct notification. Mothers must give the correct notification on form HR118.2. and requires each of the following:

- the name of the employee;
- the name of the other parent;
- the start and end dates of any maternity 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 or the actual date of birth,
- 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.

The employee must provide the Headteacher with a signed declaration stating:

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

Additionally, the employee must provide the school with a signed declaration from their partner confirming:

- their name, address and national insurance number;
- that they are the mother of the child or they are the father of the child or are the spouse, civil partner or partner of the mother;
- that they satisfy the 'employment and earnings test' (see "Who is eligible for Shared Parental Leave?" above), and had, at the date of the child's birth the main responsibility for the child, along with the employee;

- that they consent to the amount of SPL that the employee intends to take;
- that they consent to the employer processing the information contained in the declaration form.

Requesting further evidence of eligibility

The Headteacher will request a copy of the child's birth certificate or, where one has not yet been issued, a declaration as to the expected date/ place of birth within 14 days of receipt of a Notification.

In order to be entitled to SPL, the employee must produce this information within 14 days of the Headteacher's request.

Fraudulent claims

The employer can, where there is a suspicion that fraudulent information may have been provided or where the employer has been informed by the HMRC that a fraudulent claim was made, investigate the matter further in accordance with the usual investigation and disciplinary procedures.

Initial discussions regarding Shared Parental Leave

An employee considering taking SPL is encouraged to contact their Headteacher to arrange an informal discussion as early as possible regarding their potential entitlement, to talk about their plans and to enable the school to support the individual.

Formal notification

Upon receiving a leave booking notice (i.e. form HR118.2 or HR118.3) the Headteacher will usually arrange a meeting to discuss it. Where a notice is for a single period of continuous leave, or where a request for discontinuous leave can without further discussion be approved in the terms stated in the employee's notice booking leave, a meeting may not be necessary. **A request for a continuous period of leave cannot be refused by the employer.**

At the meeting the employee may, if they wish, be accompanied by a workplace colleague or recognised trade union representative.

The purpose of the meeting is to discuss in detail the leave proposed and what will happen while the employee is away from work. Where it is a request for discontinuous leave the discussion may also focus on how the leave proposal could be agreed, whether a modified arrangement would be agreeable to the employee and the Headteacher, and what the outcome may be if no agreement is reached.

Booking Shared Parental Leave

In addition to notifying the Headteacher of entitlement to SPL/ShPP, an employee must also give notice to take the leave. In many cases, notice to take leave will be given at the same time as the notice of entitlement to SPL.

The employee has the right to submit three notifications specifying leave periods they are intending to take. Each one of the notifications may contain either:

- (a) a single unbroken block of weeks of leave known as “**continuous period of leave**” (for example, six weeks in a row).

An employee has the right to take a continuous block of leave notified in a single notification, so long as it does not exceed the total number of weeks of SPL available to them and the employer has been given at least eight weeks’ notice.

OR

- (b) two or more weeks of **discontinuous leave**, where the employee intends to return to work between periods of leave.

A single notification may also contain a request for two or more periods of **discontinuous leave**, which means asking for a set number of weeks of leave over a period of time, with breaks between the leave where the employee returns to work (for example, an arrangement where an employee will take six weeks of SPL and work every other week for a period of three months).

Where there is concern over accommodating the notification, the Headteacher may seek to arrange a meeting to discuss the notification with a view to agreeing an arrangement that meets both the needs of the employee and the school (see “Initial discussions regarding Shared Parental Leave” and “Formal notification” above).

The Headteacher will consider a notification for discontinuous leave but has the right to refuse it. If the leave pattern is refused, the employee can either withdraw the notification within 15 days of giving it, or alternatively, can take the leave in a single continuous block.

When can Shared Parental Leave be taken?

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

The employee must book SPL by giving the correct notification at least eight weeks before the date on which they wish to start the leave and (if applicable) receive ShPP

Responding to a Shared Parental Leave notification within statutory timescales

Once the Headteacher receives the SPL notification it will be dealt with as soon as possible, but a response must be provided by no later than the 14th day after the request was made.

All notices for Shared Parental Leave will be given on form HR118.2 (for mothers) or form HR118.3 (for mother's partners).

Requests for continuous leave cannot be refused.

All requests for discontinuous leave will be carefully considered, weighing up the potential benefits to the employee and to the employer against any adverse impact to the school.

Each request for discontinuous leave will be considered on a case-by-case basis. Agreeing to one request will not set a precedent or create the right for another employee to be granted a similar pattern of SPL.

The employee will be informed in writing of the decision as soon as is reasonably practicable, but no later than the 14th day after the leave notification was made. The request may be granted in full or in part: for example, the Headteacher may propose a modified version of the request.

If a discontinuous leave pattern is refused then the employee

a) may withdraw the request on or before the 15th day after the notification was given (Failure to withdraw notices in this time period means that employees "use up" of their three notifications); or

b) may combine the total number of weeks in the notice in a single continuous block.

If the employee wants to take this action, they have until the 19th day from the date the original notification was given to inform the Headteacher when they want the leave period to begin. In this instance the leave cannot be refused, but cannot start earlier than eight weeks after the original notification was given nor sooner than the original start date requested. If the employee does not choose a start date then the leave will begin on the first leave date requested in the original notification.

Variations to amend an arranged period of Shared Parental Leave

Arranged periods of Shared Parental Leave are not binding on the employee who is, therefore, permitted to vary or cancel an agreed and booked period of SPL, provided that s/he advises the Headteacher in writing at least eight weeks before the commencement of any variation. Any new start date cannot be sooner than eight weeks from the date of the variation request.

If the request to vary is for a discontinuous period then this would need to be considered by the Headteacher. A request to vary will count towards one of the three notifications that an employee can make.

A notice to vary a continuous period of leave with another request for a continuous period of leave cannot be refused by the employer.

Any variation or cancellation notification made by the employee, including notice to return to work early, will usually count as a new notification reducing the employee's right to book/vary leave by one. (i.e. a request to vary will count towards one of the three notifications that an employee can make.) However, a change as a result of a child being born early, or as a result of the Headteacher requesting it be changed, and the employee being agreeable to the change, will not count as further notification. Any variation will be confirmed in writing by the Headteacher.

Statutory Shared Parental Pay (ShPP)

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

In addition to meeting the eligibility requirements for SPL, an employee seeking to claim ShPP must further satisfy each of the following criteria:

- the mother must be/have been entitled to Statutory Maternity Pay or maternity allowance and must have reduced their maternity pay period or maternity allowance period;
- the employee must intend to care for the child during the week in which ShPP is payable;
- the employee must 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.
- the employee must remain in continuous employment until the first week of ShPP has begun;
- the employee must give proper notification in accordance with the rules set out below.

Where an employee is entitled to receive ShPP they must, at least eight weeks before receiving any ShPP, give their Headteacher written notice advising of their entitlement to ShPP. To avoid duplication, this is included as part of the notice of entitlement to take SPL.

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

- the start and end dates of any maternity pay or maternity allowance;
- the total number of ShPP weeks available, the amount of ShPP weeks the employee and their partner each intend to claim, and a non-binding indication of when the employee expects to claim ShPP;
- a signed declaration from the employee confirming that the information they have given is correct, that they meet, or will meet, the criteria for ShPP and that they will immediately inform the employer should they cease to be eligible.

The form must be accompanied by a signed declaration from the employee's partner confirming:

- their agreement to the employee claiming ShPP and for the employer to process any ShPP payments to the employee.

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

Terms and conditions during Shared Parental Leave

During the period of SPL, the employee's contract of employment continues in force and they are entitled to receive all their contractual benefits, except for salary. In particular, any benefits in kind will continue and contractual annual leave entitlement will continue to accrue.

Pension contributions will continue to be made during any period when the employee is receiving ShPP but not during any period of unpaid SPL. Employee contributions will be based on actual pay.

Any unpaid periods of SPL may affect an employee's pension benefits

Accrual of Annual Leave during Shared Parental Leave

SPL is granted in addition to an employee's normal annual holiday entitlement. Employees are reminded that holiday should, wherever possible, be taken in the year that it is earned. Where an SPL period overlaps two leave years, the employee should consider how their annual leave entitlement can be used to ensure that it is not untaken at the end of the employee's holiday year.

Teachers

Shared Parental Leave can commence during either term time or a school closure period as long as the criteria for commencing Shared Parental is satisfied.

On a return from Shared Parental Leave, employees will only be allowed to take outstanding leave during term time during that leave year if there are insufficient school closures to accommodate leave in that year.

Non-teaching staff with non-term time working pattern

Should a bank holiday fall within a period of Shared Parental Leave, the employee is entitled to take the equivalent paid leave which must be taken before returning to work.

Non-teaching staff with term time working pattern

Annual leave and bank holidays entitlements must be taken within the school closure periods within their leave year, either side of the Shared Parental Leave period. Where this is not possible, agreement as to when the paid leave will be taken must be reached with the employee's manager.

Contact during Shared Parental Leave

Before an employee's SPL begins, their Headteacher should discuss the arrangements for them to keep in touch during their leave. The school reserves the right in any event to maintain reasonable contact with the employee from time to time during their SPL. This may be to discuss the employee's plans to return to work, to ensure the individual is aware of any possible job opportunities, to discuss any special arrangements to be made or training to be given to ease their return to work or simply to update them on developments at work during their absence.

Shared Parental Leave in Touch (SPLiT) days

An employee can agree to work or attend training for up to 20 days during SPL without bringing their period of SPL to an end or impacting on their right to claim ShPP for that week. These are known as "Shared Parental Leave in Touch" (i.e. SPLiT) days.

The Headteacher has no right to require the employee to carry out any work, and is under no obligation to offer the employee any work, during the employee's SPL. Any work undertaken is a matter for agreement between the Headteacher and the employee. Any SPLiT days worked do not extend the period of SPL.

An employee, with the agreement of the Headteacher, may use SPLiT days to work part of a week during SPL. The Headteacher and the employee may use SPLiT days to effect a gradual return to work by the employee towards the end of a long period of SPL or to trial a possible flexible working pattern.

SPLiT days may be taken in one block, or in single days.

For working on a SPLiT day, employees will be paid their standard day's pay in line with the School Teachers Pay and Conditions Document (including any Teaching and Learning Responsibility payments). If the employee is receiving any ShPP during this time, pay will be increased to make up a standard day's pay.

Employees can claim payment for working on SPLiT Days on form HR605s.

Returning to work after Shared Parental Leave

The employee is expected to return on the next working day after the date they have informed the school they will be returning to work, unless they notify the Headteacher otherwise. If they are unable to attend work due to sickness or injury, the school's normal arrangements for sickness absence will apply. In any other case, late return without prior authorisation will be treated as unauthorised absence.

If the employee wishes to return to work earlier than the expected return date, they may provide a written notice to vary the leave and must give the Headteacher at least eight weeks' notice of their date of early return. This will count as one of the employee's notifications. If they have already used their three notifications to book and/or vary leave then the Headteacher does not have to accept the notice to return early, but may do if it is considered to be reasonably practicable to do so.

On returning to work after SPL, the employee is entitled to return to the same job if the employee's aggregate total of their statutory maternity leave and SPL amounts to 26 weeks or less, he or she will return to the same job. For mothers this means the same job as the one they occupied immediately before commencing maternity leave and the most recent period of SPL, on the same terms and conditions of employment as if they had not been absent.

For partners, this means the same job they occupied immediately before the most recent period of Shared Parental Leave on the same terms and conditions of employment as if they had not been absent.

If their maternity/paternity leave and SPL amounts to 26 weeks or more in aggregate, the employee is entitled to return to the same job they held before commencing the last period of leave or, if this is not reasonably practicable, to another job which is both suitable and appropriate and on terms and conditions no less favourable.

The details of the Shared Parental Leave policy do not affect an employee's right to apply for Unpaid Parental Leave (see form HR85).

If the employee also takes a period of Unpaid Parental Leave of four weeks or less, this will have no effect on the employee's right to return and the employee will still be entitled to return to the same job as they occupied before taking the last period of leave if the aggregate weeks of maternity and SPL do not exceed 26 weeks.

If a parent takes a period of five weeks of Unpaid Parental Leave, even if the total aggregate weeks of maternity and SPL do not exceed 26 weeks, the employee will be entitled to return to the same job they held before commencing the last period of leave or, if this is not reasonably practicable, to another job which is suitable and appropriate and on terms and conditions no less favourable.

Further information

Any queries or issues on Shared Parental Leave can be raised with the school's HR provider.

Trade unions:	ACSL	02476 675317
	GMB	0121 569 5990
	NASUWT	0121 232 9400
	NUT	0121 567 5446
	Unison	0121 569 5996
	Unite	0121 569 6143

www.acas.org.uk

www.cipd.co.uk