

BLP: LOOKING AHEAD

Key changes in employment law explained

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Shared Parental Leave – Draft regulations published

The introduction of shared parental leave (SPL) moved a step closer with The Children and Families Act 2014, which sets out the framework for the new leave, receiving Royal Assent on 13 March 2014 and the publication of draft regulations on SPL and pay.

The Children and Families Act introduces a number of changes to family friendly law including:

- from 30 June 2014, the extension of the right to request flexible working to all employees with 26 weeks' service (click [here](#) for our Looking Ahead on the extension of this right);
- from 1 October 2014, the right for fathers and partners to take time off work to attend antenatal and adoption appointments; and
- from 5 April 2015, the introduction of SPL and comparable rights for adopters as for birth parents.

The draft regulations set out further detail on how the Government's proposals for the new SPL and pay system will work and build on the Government's response to its earlier consultation. Click on the following links for our previous Looking Ahead factsheets on [the Government's original proposals in relation to changes to family friendly law](#), [the Government's consultation on SPL](#) and the [Government's response to the consultation](#).

Key points from the draft regulations include:

Eligibility to take leave: Both parents must satisfy complicated eligibility tests before either parent can take SPL. In order to take SPL, an employee must have 26 weeks' continuous employment and still be employed in the week before SPL is due to start. In addition, the employee's partner must have been employed or be a self-employed earner for at least 26 out of the 66 weeks before the expected week of childbirth or notification of being matched for adoption, and have minimum earnings in the previous tax year.

Period of time when SPL can be taken: SPL is generally available for up to 50 weeks shared between both parents. It can be taken at any time up to 52 weeks from the date of birth or the date that the child is placed for adoption, provided that the mother or main adopter has brought their maternity or adoption leave to an end. For birth mothers, SPL cannot start until the end of her two-week compulsory leave period.

The amount and periods of leave: SPL must be taken in minimum blocks of one week. Employees will be able to take the leave in continuous or discontinuous blocks, and in large blocks or a number of small blocks. This leave can be taken concurrently or at separate times from their partner.

Notification of intention to take SPL: Employees must give their employer at least eight weeks' notice of their intention to take SPL, which includes a non-binding indication of their proposed leave pattern.

Mother's right to revoke notice to end maternity leave: Mothers who give notice before the birth of their child of their intention to end their maternity leave and take SPL have up to six weeks after the birth to revoke that notice.

Notice of period of leave: In addition to the notice of intention to take SPL, employees have to give their employer at least eight weeks' notice of each block of leave. The notice can relate to one block or multiple blocks of leave. In the two weeks after the period of leave notice is given, the employer may (a) consent to the leave, (b) propose alternative dates or (c) refuse the leave without proposing alternative dates, or the employee may withdraw the notice.

Agreeing leave: If the employer agrees the leave (or the employer's proposed alternative dates are agreed by the employee), the leave starts on the agreed date. If there is no agreement, the employee can withdraw the notice or take the total period of leave requested in one continuous block.

Changing leave and new leave patterns: Unless notice is withdrawn, employees are limited to three notifications to take leave or to change previously agreed patterns of leave (the original notification and two further changes or new notifications). Changes that are requested by the employer or mutually agreed between the employer and employee do not count towards this cap.

Contact between employers: There is no requirement for the respective employers to contact each other to confirm their employee's entitlement to take leave or the amount of leave that their respective employees have requested or to discuss whether the leave requests can be accommodated. However, as part of the notification process, both parents have to give certain declarations setting out key information.

Number of KIT days available to employees taking SPL: Both parents are entitled to up to 20 KIT days each, less, in the case of the mother or main adopter, any days already taken during maternity or adoption leave.

Rights on return to work: Employees returning from SPL have the right to return to the same job provided the total leave taken by the employee (including maternity, paternity or adoption leave, and/or SPL) is 26 weeks or less, even if the SPL is taken in discontinuous blocks. Where the employee's total leave exceeds 26 weeks, the employee has the right to return to the same job, or if that is not reasonably practicable, to a similar job.

Redundancy: Where employees are made redundant while on SPL and there is a suitable alternative vacancy, they have priority in relation to that position as compared to other employees who are at risk of redundancy. This mirrors the current position for those on maternity and adoption leave.

BLP Comment

- Despite the Government's stated and often repeated intention to make the new system of SPL and pay simple to use and easy to understand, the draft regulations do not give employers the clarity that they need to operate the new rights and a number of unanswered questions remain as to how the system will actually work in practice. Simplification of the regulations and further detailed guidance is critical if employers and employees are to have any chance of understanding the new system.
- Although the decision to limit the number of change requests and to encourage employees to provide upfront notification of their leave intentions goes some way to reducing the level of uncertainty for employers, the potential for employees to take an unlimited number of small blocks of leave will still present employers with real challenges in planning effective cover during periods of absence.
- While employers can refuse any small blocks of leave proposed by employees, a policy of refusal could give rise to potential discrimination issues. There are also potential issues regarding whether employers need to offer enhanced shared parental pay, as many do for those on maternity leave, and whether bonus wording needs to be amended to reflect time off for SPL.

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Getting in touch

If you would like to talk through your project or discuss solutions to your legal needs, please get in touch.

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