

ROYAL HOLLOWAY UNIVERSITY OF LONDON

ADDITIONAL PATERNITY LEAVE FREQUENTLY ASKED QUESTIONS

1. Which employees will benefit from the new right to additional paternity leave?

The additional paternity leave legislation came into force on 6 April 2010, but the right to additional paternity leave applies only to fathers and partners of mothers of children with an expected week of birth beginning on or after 3 April 2011 (or in an adoption situation, where the notification of the match with a child is on or after 3 April 2011, or where the child enters Great Britain on or after 3 April 2011, in relation to an adoption from overseas).

2. Which employees qualify for additional paternity leave?

The right to additional paternity leave applies only to fathers or partners of mothers of children with an expected week of birth beginning on or after 3 April 2011 (or in an adoption situation, where the notification of the match with a child is on or after 3 April 2011, or where the child enters Great Britain on or after 3 April 2011, in relation to an adoption from overseas).

In a birth situation, an employee will qualify for additional paternity leave if he or she is the child's father, or is married to, the partner of, or the civil partner of the child's mother. The employee must also have at least 26 weeks' continuous employment with the employer, ending with the 15th week before the expected week of childbirth, and remain in continuous employment with the employer until the week before the first week of the additional paternity leave. The employee must have, or expect to have, the main responsibility (apart from the child's mother) for the child's upbringing.

In an adoption situation, an employee who is one of a couple adopting a child will qualify for additional paternity leave if he or she has at least 26 weeks' continuous employment with the employer, ending with the week in which he or she is notified of the adoptive match (or for an adoption from overseas, 26 weeks' continuous employment ending with the week in which official notification was sent from the relevant domestic authority, or commencing with the week in which his or her employment with the employer began), and remains in continuous employment with the employer until the week before the first week of the additional paternity leave.

3. Are employees entitled to be paid during additional paternity leave?

The child's mother, or the main adopter in an adoption situation, ends his or her period of maternity or adoption leave before using the maximum entitlement to 39 weeks' statutory maternity pay, statutory maternity allowance or statutory adoption pay, the employee taking additional paternity leave is entitled to be paid for the remainder of the 39-week period, assuming that he or she has average earnings of at

least the lower earnings limit for national insurance purposes. In effect, the couple are paid for 39 weeks between them. Additional paternity leave pay is paid at the statutory maternity pay rate, or 90% of the employee's earnings, if this is less than the statutory rate.

The right to additional paternity leave and pay applies only to fathers or partners of mothers of children with an expected week of birth beginning on or after 3 April 2011 (or in an adoption situation, where the notification of the match with a child is on or after 3 April 2011, or where the child enters Great Britain on or after 3 April 2011, in relation to an adoption from overseas).

4. In which circumstances is an employee entitled to receive statutory paternity pay?

To be entitled to ordinary and additional statutory paternity pay an employee must have, or expect to have, responsibility for the child's upbringing, and have average weekly earnings of at least the lower earnings limit for national insurance purposes over the eight-week period ending with the 15th week before the expected week of birth or the week in which the child's adopter is notified of being matched with the child for adoption. He or she must also have been continuously employed for a minimum of 26 weeks by the end of the 15th week before the child's expected week of birth, or by the end of the week in which the child's adopter is notified of having been matched with the child for adoption and have remained in the same employment until the week before the pay period begins. In a birth situation the employee must be the father of the child or the spouse, civil partner or partner of the child's mother. In an adoption situation, for ordinary statutory paternity pay, the employee must be the spouse, civil partner or partner of the child's adopter, or one of a couple jointly adopting a child. For additional statutory paternity pay the employee must be the spouse, civil partner or partner of the child's adopter and have been matched with the child for adoption.

5. For how many weeks may an employee be paid additional statutory paternity pay?

An employee may be paid additional statutory paternity pay for between two and 19 weeks.

Where a mother or main adopter returns to work before taking his or her full entitlement to maternity leave or adoption leave, his or her partner, or the child's father, may take additional paternity leave for between two and 26 weeks. The earliest that additional paternity leave can begin is 20 weeks after the baby is born, or, in the case of adoptions, 20 weeks after the placement.

An exception to this is where the mother dies before the end of her maternity pay period, in which case additional paternity leave may start from the date of the mother's death and additional statutory paternity pay may be payable for up to 39 weeks. Additional paternity leave must end by the child's first birthday. Additional statutory paternity pay will be payable only during the period that the mother would have received statutory maternity pay or maternity allowance had she not returned to work.

If, on returning to work, the mother or main adopter has not received his or her full 39-week entitlement to statutory maternity pay, maternity allowance or statutory adoption pay, the employee taking additional paternity leave may take the outstanding, untaken statutory payment as additional statutory paternity pay. The period for which additional statutory paternity pay is payable is based on the number of weeks' pay that the mother or main adopter would have received had he or she not returned to work.

6. Where an employee take ordinary or additional paternity leave followed immediately by more than 4 weeks' parental leave, is he/she entitled to return to his/her original job?

After a period of ordinary or additional paternity leave, an employee has the right to return to the same job on the same terms and conditions of employment as if he or she had not been absent. An employee who takes a period of parental leave after his or her paternity leave has same right of return provided that the period of parental leave does not exceed four weeks.

If the employee takes more than four weeks' parental leave, he or she is entitled to return to the same job on the same terms and conditions, unless this is not reasonably practicable. If it is not reasonably practicable, he or she has the right to return to suitable alternative work on terms and conditions that are no less favourable than those that applied to the original role.

7. Are the 10 keeping in touch days during additional paternity or adoption leave pro-rated for part- time employees?

No. Regulation 12A of the Maternity and Parental Leave etc Regulations 1999 (SI 1999/3312) and reg.26 of the Additional Paternity Leave Regulations 2010 (SI 2010/1055) do not make provision for the 10 keeping-in-touch days to be pro-rated for part-time employees. For example, an employee who normally works only a three-day week is still entitled to 10 keeping-in-touch days.

8. Is it possible for a woman to take additional paternity leave?

Yes. The right to statutory ordinary and additional paternity leave is available to the civil partner of the biological mother of a child. It is also available to the partner of the biological mother of a child, where "partner" means a person of either sex who lives with the mother in an enduring family relationship but is not her parent, grandparent, sibling, uncle or aunt.

Paternity leave is also available to the spouse, civil partner or partner of either sex of a child's adopter, or to one of a couple who jointly adopt a child.

9. Is there a specific time period when additional paternity leave can be taken?

The right to additional paternity leave applies only to fathers or partners of mothers of children with an expected week of birth beginning on or after 3 April 2011 (or in an adoption situation, where the notification of the match with a child is on or after 3

April 2011, or where the child enters Great Britain on or after 3 April 2011, in relation to an adoption from overseas).

In a birth situation, an employee who qualifies for additional paternity leave can take between two and 26 weeks' additional leave in the period that begins 20 weeks after the child is born and ends one year after the birth. The child's mother's period of maternity leave must have come to an end.

In an adoption situation, an employee who qualifies for additional paternity leave can take between two and 26 weeks' leave in the period that begins 20 weeks after the child's placement for adoption and ends one year after the placement. Additional paternity leave in relation to adoption from overseas must be taken in the period that begins 20 weeks after the child enters Great Britain and ends one year after that date. The employee's partner's statutory adoption leave must have come to an end.

In effect, the employee taking additional paternity leave "takes over" the period of maternity leave or adoption leave. If the child's mother, or the other adoptive parent, dies in the first year of the child's life, the additional paternity leave can begin at any time after the death and last until the child's first birthday.

Additional paternity leave must be taken as one continuous period, in multiples of complete weeks.

The employee must give the employer at least eight weeks' notice of his or her start and finish dates for the additional paternity leave.

10. Can an employer ask an employee for proof he/she qualifies for additional paternity leave?

The right to additional paternity leave applies only to fathers or partners of mothers of children with an expected week of birth beginning on or after 3 April 2011 (or in an adoption situation, where the notification of the match with a child is on or after 3 April 2011).

In a birth situation, the employee must give the employer at least eight weeks' notice of his or her additional paternity leave, and at the same time must give the employer two written declarations, one by the employee and one by the child's mother. The employee's declaration must state that:

- the purpose of the leave is to care for the child;
- the employee is the child's father, or is married to, or the partner or civil partner of, the child's mother; and
- the employee has, or expects to have, the main responsibility (apart from any responsibility of the child's mother) for the upbringing of the child.

The mother's declaration must state:

- her name and address;
- the date that she intends to return to work;
- her national insurance number;

- that the employee is the child's father, or is the mother's spouse, partner or civil partner;
- that the employee has, or expects to have, the main responsibility (apart from any responsibility the mother has) for the upbringing of the child;
- that the employee is, to the mother's knowledge, the only person exercising the right to take additional paternity leave in respect of the child; and
- that she consents to the employer processing this data.

The employer can request that the employee provide a copy of the child's birth certificate. It can also ask for the name and address of the mother's employer (or her business address if she is self-employed).

In an adoption situation, the employee must give the employer at least eight weeks' notice of his or her additional paternity leave, and at the same time must give the employer two written declarations, one by the employee and one by the child's adopter. The employee's declaration must state that:

- the purpose of the leave is to care for the child;
- he or she is married to, or the partner or civil partner of, the adopter; and
- he or she has been matched with the child for adoption.

The adopter declaration must state:

- the adopter's name and address;
- the date that the adopter intends to return to work;
- the adopter's national insurance number;
- that the employee is married to, or the partner or civil partner of, the adopter; and
- that the adopter consents to the employer processing this data.

In addition, the employer can request evidence in the form of documents issued by the adoption agency showing: the name and address of the adoption agency; the date that the employee was matched with the child; and the expected date of placement. It can also ask for the name and address of the adopter's employer (or the adopter's business address if he or she is self-employed).

In relation to an adoption from overseas, the employer can request a copy of the official notification document and evidence of the date on which the child entered Great Britain. It can also ask for the name and address of the adopter's employer (or the adopter's business address if he or she is self-employed).