

JSCC Discussion Topic September 2017 Shared Parental Leave – 2.5 Years On

What is Shared Parental Leave?

Shared parental leave was introduced in April 2015 and is designed to allow parents/adopters to take leave flexibly during the first year after birth or adoption and return to work in the same role or another job which is suitable and appropriate. The Council's Shared Parental Leave Policy implements the statutory provisions and is supported by FAQs, Guidance for Managers and a suite of standard templates which are all available on the intranet.

What does it comprise?

Up to 50 weeks' leave and 37 weeks pay can be shared between parents if the mother/adopter brings their maternity/adoption leave and pay to an end early. The available leave and pay can then be allocated between the parents as they agree. Both parents do not have to work for NHDC to claim the leave and pay, but both must satisfy the relevant eligibility criteria.

Shared parental leave and pay must be requested in accordance with complex notification requirements set out in statute. Shared parental leave must be taken in blocks of at least one week but does not have to be taken as a single period of leave and both parents can elect to be on leave at the same time (either one on maternity leave and one on shared parental leave, or both on shared parental leave). Employees are entitled to up to 3 periods of shared parental leave.

Statutory shared parental pay is paid at the rate of lower rate statutory maternity pay. Terms and conditions of employment during a period of shared parental leave mirror those applicable during maternity leave, i.e. continue in force except in relation to pay.

Employees may be asked to attend work on occasional days (up to 20) during their shared parental leave period, known as "Shared Parental Leave in Touch", (SPLIT), days. If an employee works a SPLIT day, they are paid their normal rate of pay for the hours actually worked, inclusive of any statutory shared parental pay entitlement.

What were the concerns at the time Shared Parental Leave was introduced?

- Possibility of direct or indirect discrimination where equal rights not given to those taking shared parental leave as opposed to maternity/leave, even though it was legally permissible to differentiate.
- Employers were concerned about the difficulties in the management of discontinuous periods of leave.
- The complexity of the new shared parental leave provisions would heap red tape on employers and add extra disruption for small firms.
- The complexity of the new shared parental leave provisions would add to employees' stress at a time when they were trying to manage the introduction of a new member to the family.

What's the current picture?

A recent survey of 300 employers showed only just over a quarter (25.4%) enhance shared parental pay beyond the statutory provisions. In comparison, 57% enhance maternity and adoption pay.* Within the group of employers responding to the survey who enhanced both maternity/adoption pay and shared parental pay, the majority are broadly matching their maternity provision. 61% of those who have not enhanced shared parental pay responded that

*Childcare & Family Friendly Benefits: Employer Survey and Parental Leave Benchmark July 2017 by My Family Care JSCC (27.9.17)

they were reviewing their policies and may enhance in the future. Prohibitive costs were the most cited reason for not enhancing to date.

Interestingly, the above results are not typical of local authority employers in the East of England. A recent benchmarking showed that of the 17 local authorities who responded, none enhanced the statutory shared parental leave provisions and only 1 currently enhanced shared parental pay provisions above the statutory requirements. Very few employees have taken up their shared parental leave entitlements in the authorities who responded, with 10 out of the 17 of these saying there had been no applications at all. None of the 17 authorities who responded have any plans to amend their current shared parental leave and pay provisions.

A number of other issues in respect of shared parental leave have also been highlighted:

- Financial affordability is a concern even where shared parental pay is enhanced and there is anxiety about the long term financial impact of taking shared parental leave.
- Many employees are not fully aware of all the options.
- There is mixed understanding of the complex notification process by those wishing to take the leave and so deadlines can be missed.
- To use shared parental leave the mother has to give up some existing maternity leave. Not all employees prepared to do this as they are sacrificing some of their time with the child in the first year to give it to their partner.
- There are concerns about long term impact on careers. Those taking this leave are seen as pioneers and not all employees are comfortable with this.
- Practice has shown the ability to take discontinuous leave is not attractive to employees with continuous periods of leave being preferred.

The differentiation between maternity/adoption pay and shared parental pay was allowed for in original government guidelines, but is increasingly coming under scrutiny in tribunals. So far there have been two notable cases, but neither of these has yet caused significant pressure to build towards the increasing of shared parental pay to the level of maternity/pay. Indeed, there are concerns that if the most recent decision, which has been appealed by the employer, is upheld, it will lead to the levelling down of maternity/adoption pay to equate with shared parental pay, rather than a levelling up of the latter, as employers will not be able to withstand the additional costs such a levelling up would incur. Overall therefore, the situation is much as it was when the legislation was introduced, the legal position is not clear cut and there remains the potential for claims such as indirect discrimination or unlawful detriment to succeed.

What's North Herts' experience of Shared Parental Leave?

To date only one employee has taken shared parental leave at the Council.

To address concerns that employees are not fully aware of the provisions of shared parental leave the availability of this option will be included in the information given to those commencing maternity leave and on a periodic basis in the quarterly HR Updates for managers and in Insight.

What's expected for the future?

In October 2015, Chancellor George Osborne said he would implement an extension of shared parental leave and pay to grandparents in 2018. A consultation on the details of this extension was originally expected in May 2016, but was delayed until after the EU referendum and has yet to be commenced.

In line with the other employers in the region, there are currently no plans to revise NHDC's shared parental leave and pay provisions, but developments in government policy and the outcomes of future legal cases will continue to be monitored closely.