

Statutory Paternity Pay (SPP)

This advice note summarises the law in England and Wales regarding an employee's right to statutory paternity pay (SPP) during statutory paternity leave following the birth or adoption of a child. We recommended you read this advice note in conjunction with our advice note on Paternity Leave.

Introduction

Employees who take statutory paternity leave following the birth or adoption of a child may be eligible to receive SPP. Those who take ordinary paternity leave (OPL) may be entitled to ordinary statutory paternity pay (OSPP). Those who take additional paternity leave (APL) may be entitled to additional statutory paternity pay (ASPP).

For more information about the right to take OPL and APL, see our general advice note on Paternity Leave.

Ordinary Statutory Paternity Pay (OSPP)

Employees who take OPL following the birth or adoption of a child will, if they meet the eligibility requirements, be entitled to OSPP.

Eligibility to receive OSPP

To be eligible to receive OSPP, a person must:

- Be an 'employed earner', i.e. they must work for someone who is liable to pay their National Insurance Contributions;
- Earn more than the lower earnings limit for National Insurance Contribution purposes;
- Have been employed with the same employer for a continuous period:
 - Of at least 26 weeks ending with the 'relevant week' (see below); and
 - Beginning with the 'relevant week' and ending with the week in which the child is born or placed for adoption.
- Have received normal weekly earnings for the period of eight weeks ending with the 'relevant week';
- Be the father of the child (for births) and have or expect to have responsibility for the upbringing of the child or be married to, civil partner or partner of the child's mother or adopter, and have or expect to have main responsibility (apart from the mother or adopter) for the child's upbringing of the child;
- In adoption cases only, be the person who has elected to receive statutory paternity pay.

In birth cases, the 'relevant week' is the week immediately preceding the 14th week before the estimated week of childbirth (EWC) and, in adoption cases, the 'relevant week' is the week in which the adopter is notified of being matched with the child for the purposes of adoption.

Notice Requirement

The employee must give the employer at least 28 days' notice of the date from which the employee expects to receive OSPP. If it is not reasonably practicable to give notice within 28 days, the employee must do so as soon as reasonably practicable.

The employee must provide the following information in writing to their employer:

- Their name;
- The date from which it is expected that the liability to pay OSPP will begin;
- The period of OPL they have chosen;
- For births, the EWC and, if the child has already been born, the date of birth;
- For adoptions, the date on which the child is expected to be placed for adoption or, where the child has already been placed for adoption, the date of placement; and
- For adoptions, the date that the adopter was notified that they had been matched with the child for the purposes of adoption.

The employee must also provide evidence in the form of a written declaration stating that:

- They are taking leave either to care for the child or to support the mother or adopter; and
- For births: they are the father of the child (and have or expect to have responsibility for the upbringing of the child); or if they are not the father but are married to, civil partner or partner of the child's mother and have or expect to have main responsibility (apart from the mother) for the child's upbringing of the child);
- For adoptions: they are married to, civil partner or partner of the child's adopter (or, where there are two adopters, married to, civil partner or partner of the other adopter) and that they have or expect to have main responsibility (apart from the child's adopter or together with the other adopter) for the child's upbringing; and
- That they have elected to receive SPP for adoption and not Statutory Adoption Pay.

Period of OSPP

OSPP is payable for a period of one or two consecutive weeks within the 'qualifying period', which is 56 days from the date of the child's birth or placement for adoption.

In order to receive OSPP, the employee must be taking OPL to care for the child or support the child's mother or adopter. The employee will not receive OSPP for a 'statutory pay week' (any period of seven days) if, at the beginning of the week, that was not the purpose for which they were taking OPL.

Working during OSPP

An employee will not receive OSPP for a statutory pay week if the employee works any part of that week or if he or she works for an employer who is not liable to pay the employee OSPP.

Where an employee has one or more employers and works any part of a statutory pay week for the employer who is not liable to pay OSPP, then OSPP is payable if the employee worked for that employer in the 15th week before the EWC or the expected week of placement of a child for adoption.

Additional Statutory Paternity Pay (ASPP)

Employees who take APL are entitled to ASPP if they meet the eligibility requirements. The criteria mirror that for OSPP above. However, in addition:

- The employee must be employed for a continuous period beginning with the 'relevant week' (see above) and ending with the week before the ASPP period for the child begins;
- The employee must be taking APL in order to care for the child during the ASPP period.

The child's mother or adopter must also:

- Have been entitled to statutory maternity or adoption pay as a result of pregnancy or adoption;
- Have - or been treated as having - returned to work with at least two weeks' statutory maternity or adoption pay remaining (but not before the two weeks compulsory maternity leave or, in the case of adoption, not before two weeks after the child was placed for adoption with them).

Amount of ASPP

The total number of weeks of ASPP that the employee may receive will depend on the number of unused weeks of maternity allowance, SMP or SAP that were left when their spouse or partner returned to work.

Notice requirement

At least eight weeks before the date on which the employee wishes to start ASPP the employee must give their employer written notice of:

- Their name;
- The EWC or the date on which the employee was notified of having been matched for adoption with the child;
- The child's date of birth or the date on which the child was placed for adoption with the employee; and
- The date from which it is expected that the liability to pay ASPP will begin;
- The date on which it is expected that the liability to pay ASPP will end.

A signed 'employee declaration' stating that:

- The information they have provided is correct;
- The purpose of their APL will be to care for the child;
- They are either the child's father or married to, civil partner or partner of the child's mother or, in the case of adoption, they are married to, civil partner or partner of the child's adopter;
- They have, or expect to have, main responsibility (apart from the child's mother) for bringing up the child or, for adoptions, that they have been matched for adoption with the child.

A signed 'mother declaration' from the child's mother or an 'adopter declaration' from the child's adopter, stating:

- The mother's or adopter's, name, address and national insurance number.
- That the mother or adopter, was entitled, by reason of her pregnancy with the child or by reason of the adoption, to maternity allowance or statutory maternity or adoption pay;
- The start date of the statutory maternity allowance period or maternity or adoption pay period in respect of the child;
- That the mother, or adopter, has given their employer notice that they are returning to work;
- The date on which the mother or adopter intends to return to work;
- That to their knowledge the employee is the only applicant for ASPP for the child;
- That the mother or adopter consents to the employer processing the information that they have provided in the declaration.

Within 28 days of receiving the information and declarations, the employer:

- May request the name and business address of the mother's or adopter's, employer; and
- May (in birth cases) request a copy of the child's birth certificate;
- May (in adoption cases) request evidence, in the form of one or more documents issued by the adoption agency that matched the employee with the child, of:
 - The agency's name and address;
 - The date on which the employee was notified of having been matched with the child;
 - The date given by the agency on which it expected to place the child with the employee for adoption.

The employee must comply within 28 days of such a request being made by the employer. Following this, the employer has 28 days to provide the employee with written confirmation of the start and end dates of their ASPP period.

Period of ASPP

ASPP is payable for a period (i.e. the ASPP period) of up to 26 weeks.

It begins on the date notified by the employee as long as by that date:

- The child is at least 20 weeks old or at least 20 weeks have passed since the date of the child's adoption;
- The child's mother/adopter has returned to work.

ASPP ends on the date notified by the employee or, if earlier:

- The end of the mother's maternity allowance or statutory maternity pay period or the adopter's statutory adoption pay period; or
- The child's first birthday (in birth cases) or, in the case of multiple births, that of the first child born;
- The first anniversary of the child's placement for adoption (in adoption cases) or, in the case of the adoption of more than one child as part of an arrangement, the first anniversary of the first child's placement.

ASPP will automatically be brought to an end where:

- It is not the employee's purpose, at the beginning of the week in question, to care for the child; or
- The employee works for any employer during any part of a week, with limited exceptions (see working during ASPP below).

Working during ASPP

This is similar to working during OSPP (above), with the exception that an employee can work for up to ten days, known as Keeping in Touch or KIT days, without bringing their entitlement to ASPP to an end.

The weekly rate of SPP

The weekly rate of SPP, which applies both on birth and adoption, is the lesser of:

- £135.45 a week (rising to £136.78 a week from April 2013); or
- 90% of the employee's normal weekly earnings.

SPP and contractual remuneration

The fact that an employee is entitled to SPP does not affect their right to 'contractual remuneration'. However, any 'contractual remuneration' can be offset against any liability the employer has to pay SPP and vice versa.

For these purposes, 'contractual remuneration' means sums payable under a contract of service:

- By way of remuneration;
- For incapacity for work due to sickness or injury; or
- By reason of the birth or adoption of a child.

Liability for payment of SPP

The liability to pay SPP falls on the employer. An employer cannot contract out of the SPP scheme.

If you would like further advice on this topic or more specific information please contact Nick Jones on 0117 904 5912 or njones@lyonsdavidson.co.uk

The purpose of this general advice note is to provide a general summary of information around a specific topic. It should not however be taken as legal advice and should not be relied on as such. We recommend that you always obtain specific legal advice in respect of a particular issue or matter. Please contact our employment team if you have a question about anything related to the subject matter of this note.

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