



GENERAL WELFARE AND EMPLOYMENT RIGHTS FOR PARENTS AND CARERS

These rights may differ depending on your employment status. This is a guide for employees and the self-employed.

A Bectu guide • March 2024

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Contents

Introduction	3
General welfare and employment rights for parents	3
The parental rights of workers in continuous employment.....	4
The parental rights of workers who do not have 'employee' status.	5
Costs of parenting.....	6

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Introduction

Your work-based rights take two forms:

- Your **'statutory rights'** – everyone has these (and some people in continuous employment, who have 'employee status' may also have more statutory rights than people in more irregular working arrangements, but even these rights may also be determined by how long you have been employed).
- Your **'contractual employment rights'** – sometimes employers offer more generous terms than your statutory rights.

Most of this briefing covers your statutory rights but workers in employment should check their contract, letter of appointment, HR policies or staff handbook to see if they have any contractual improvements on statutory rights.

General welfare and employment rights for parents

In the UK, the employment and welfare rights that apply in the months leading up to childbirth, and in the early years of a child's life, vary depending upon employment status. Some of them only apply to people with 'employee' status who meet certain eligibility criteria, such as having worked for their employer for a minimum period. [You can find more detail in Prospect's guide to parental and family leave.](#)

In the case of workers who are not in regular employment, or who have less than 26 weeks of continuous employment with their current employer, the entitlements may be significantly lower, and they may depend on the amount of National Insurance contributions (NICs) that the worker in question has made.

In summary, those welfare rights are:

1. **Maternity leave:** Pregnant employees are entitled to up to 52 weeks of maternity leave, regardless of their length of service. The first 26 weeks are known as Ordinary Maternity Leave (OML), and the final 26 weeks are known as Additional Maternity Leave (AML).
2. **Statutory Maternity Pay (SMP):** If an employee qualifies for SMP, they are entitled to 90% of their average weekly earnings for the first six weeks of their maternity leave, followed by £172.48 per week or 90% of their average weekly earnings (whichever is lower) for the next 33 weeks.
3. **Paternity leave and pay:** The father or partner of a pregnant employee (including same-sex partners) may be entitled to up to two weeks of paternity leave and pay.
4. **Shared parental leave and pay:** If both parents are eligible, they can share up to 50 weeks of leave and up to 37 weeks of pay after the birth or adoption of their child.
5. **Flexible working:** Parents of young children have the right to request flexible working arrangements from their employer.
6. **Childcare support:** Parents may be eligible for various forms of childcare support, including tax-free childcare and 15 hours of free childcare for 2-year-olds and 30 hours of free childcare for 3–4-year-olds.
7. **Universal Credit and other benefits:** Parents on low incomes may be eligible for Universal Credit, as well as other benefits such as Child Benefit and Child Tax Credit.
8. **Unpaid parental leave:** Anyone with employee status who has been in continuous employment for more than one year is entitled to take some unpaid leave to look after children who are under the age of 18. Each parent can take up to 18 weeks of parental leave for each child until each child is 18 years old. If an employee takes it, it must be in blocks of weeks, and to a maximum of four weeks a year for each child.

Any money you get is paid in the same way as your wages, for example monthly or weekly. Tax and National Insurance will be deducted.

There are also additional rights for pregnant employees, fathers and partners, for example paid time off to attend antenatal care appointments and protection against unfair treatment, discrimination or dismissal. However, this guide does not explore these in detail.

The parental rights of workers in continuous employment

In the UK, there are different eligibility criteria for claiming maternity leave, statutory maternity pay, paternity leave and pay, and shared parental leave and pay from employers. Here are the general requirements for each:

Maternity leave:

- Employees must give their employer at least 28 days' notice of when they intend to start their maternity leave, and they must provide proof of pregnancy (such as a doctor's letter).
- Employees must have worked continuously for their employer for at least 26 weeks by the end of the 15th week before the expected week of childbirth (known as the "qualifying week").
- The employee must be pregnant, have given birth, or have adopted a child. You still qualify for maternity leave if your baby is stillborn after 24 weeks of pregnancy or your baby only lives a short time after birth. You would then have the right to parental bereavement leave and pay after you finish your maternity leave.

Statutory Maternity Pay (SMP):

- The employee must have worked continuously for their employer for at least 26 weeks by the end of the qualifying week.
- The employee must be earning at least £123 per week before tax in the eight weeks leading up to the end of the qualifying week.
- The employee must be pregnant, have given birth, or have adopted a child.

SMP combines a payment, that lasts for six weeks, based primarily upon employment earnings, followed by Maternity Allowance (MA). MA is paid to people who have been employed or have recently stopped working for the remainder of the first 39 weeks. For those in receipt of SMP, during the first six weeks, they receive 90% of their average pay, based on their earnings during the eight weeks or two months before their qualifying week (the 'relevant period'). During the remaining 33 weeks, they will receive the MA payment which is paid at a flat rate (£172.48 per week) or 90% of their average earnings, whichever is lower.

Employers are entitled to reclaim 92% of employees' Statutory Maternity Pay (SMP) and up to 103% if their business is eligible for Small Employers' Relief¹.

However, some employers will offer employees enhanced maternity pay on top of SMP. This is to attract and retain employees and can differ from one employer to the next. For example, rather than just paying 90% of their wages, an employer could choose to pay their employee anything up to full pay for the first six months of their maternity leave.

Paternity leave and pay:

- The employee must be the biological father of the child, the mother's spouse or partner (including same-sex partners), or the child's adopter.
- The employee must have worked continuously for their employer for at least 26 weeks by the end of the qualifying week (the 15th week before the baby is due) and be employed up until the date of the birth, earning at least £123 a week (before tax).

¹ They are entitled to this if they have paid less than £45,000 in Class 1 National Insurance contributions.

- Their employment rights are protected during this period.
- They can receive the statutory weekly rate of paternity pay which is £172.48, or 90% of your average weekly earnings (whichever is lower). This income is treated in the same way as normal salary income, and it is subject to tax and NIC deductions.
- Paternity leave cannot start before the birth. It must end within 56 days of the birth (or due date if the baby is early). These dates differ in the case of adoption.

Shared parental leave and pay:

- The mother must have been entitled to maternity leave and pay or statutory maternity pay and must have ended her maternity leave and pay (or returned to work).
- The mother's partner must have worked continuously for their employer for at least 26 weeks by the end of the qualifying week.
- The mother's partner must be the biological father of the child, the mother's spouse or partner, or the child's adopter.

It's important to note that there may be additional criteria or rules for each of these entitlements, and they can vary depending on individual circumstances. Employees should speak to their employer or seek advice from the government's official website or a professional adviser if they are unsure about their eligibility.

Parental rights for employees on fixed-term contracts

Employees on fixed-term contracts share the same parental rights as all employees, however, access to certain rights which are restricted based on a time period of continual employment become more complicated, for example where employment is through a number of short-term contracts.

- Being on a fixed-term contract should not impede your statutory maternity or paternity pay so long as you meet the threshold criteria.
- However, your right to maternity or paternity leave and the associated right to return to the same job, will end when your fixed term contract ends.
- Employees may not be able to access any enhanced parental rights in the contracts of individual employers if they are on a fixed-term contract which comes to an end during maternity leave, and the employer may have clawback provisions in place (a contractual provision whereby money already paid to an employee must be returned to an employer or benefactor, sometimes with a penalty).
- If an employee's fixed contract comes to an end during a period of shared parental leave, they will no longer meet the eligibility for shared parental leave.
- Those employed on fixed-term contracts may not be eligible for unpaid parental leave unless they have had the same employer for one year or more.

The parental rights of workers who do not have 'employee' status.

People who work in freelance, casual or irregular employment will not qualify for many of the rights enjoyed by people who are in continuous employment.

Because of the qualifying periods set out above, in most cases, these workers do not have a statutory right to maternity leave and pay, paternity leave and pay, or shared parental leave and pay from their employer.

In cases like this, there are some other, different forms of financial support that may be available, such as:

1. **Maternity Allowance (MA):** Those who are self-employed who are pregnant or have recently given birth may be eligible for MA, which is a weekly payment for up to 39 weeks. To qualify, they must have been self-employed for at least 26 weeks in the 66 weeks before the due date and have paid the appropriate NICs (see below for more detail).

For those who are in receipt of MA payment, it is paid at a flat rate, at a maximum of £172.48 per week. However, their entitlement depends on how many Class 2 NICs they've made in the 66 weeks before the baby is due. To get the full £172.48 per week they must have:

- a) been registered with HM Revenue and Customs (HMRC) for at least 26 weeks in the 66 weeks before the baby is due.
- b) paid Class 2 NICs for at least 13 of the 66 weeks before the baby is due.

If the worker has paid less than 13 weeks of Class 2 NICs, their MA will be calculated based on how many weeks of contributions they've made. If they have not paid any Class 2 NICs, they will only be entitled to £27 per week MA (though the entitlement can be improved by paying more Class 2 NICs).

2. **Universal Credit:** these workers may be eligible for Universal Credit, A means-tested benefit. For example, a lone parent with a child under 1 would not need to look for work to get Universal Credit.

Due to the precarious nature of their employment, and the complexity of their tax obligations, it is not unusual for these workers to have missed NIC payments during the qualifying period. For those on very low incomes, making such payments may even have been seen as an unaffordable investment at the time.

Support for parents working through their own limited companies

- If you are a director or an employee of your own company (paying yourself a salary with tax and class 1 National Insurance deducted at source) then you can pay yourself statutory maternity or paternity pay if you meet the standard qualifying conditions. This may not be possible for sole directors of small companies though, unless the business can continue to operate during a director's time off. That's because if there's no money coming into the business, there will be no funds to provide SMP/SPP.
- If you do not meet the criteria or eligibility for SMP/SPP, you may be able to claim MA.
- It is not possible, however, to claim MA through self-employment if you already receive SMP from an employer.
- Self-employed people may be able to access shared parental leave but may have to reduce the maternity allowance period in order to do so.
- There is no equivalent to MA for self-employed fathers and partners who want to take time off.

Costs of parenting

In the UK, the cost of pre-school childcare varies depending on the region and type of childcare, with prices in London generally highest. On average², full-time nursery care for a child under two years old costs around £263 per week, while part-time care for a child of the same age costs around £138 per week. The average cost for families using an after-

² <https://www.nct.org.uk/life-parent/work-and-childcare/childcare/average-childcare-costs>

school club for five days is £62 per week and the average price of holiday childcare is £138 per week.

Financial assistance

There are a range of financial assistance programs to help parents pay for childcare. These include:

1. **Tax-Free Childcare:** This is a government scheme that provides eligible families with up to £500 every three months per child under 11 towards the cost of childcare, or up to £1,000 every three months if a child is disabled. To be eligible, parents must be working and earning at least the minimum wage, but no more than £100,000 per year.
2. **15 and 30 hour childcare:** If you're in work – or if you are in a partnership and both of you are working – and earning at least minimum wage for 16 hours a week and less than £100,000, you might be able to get 30 hours a week free childcare for 3-4 year olds and 15 hours of funded childcare a week for 38 weeks a year for 2-year-olds from 1 April 2024. From September 2024, this scheme will be expanded and up to 15 hours free childcare will be available for eligible working families in England with a child between 9 and 23 months old, and from September 2025, up to 30 hours for eligible working families in England with a child from 9 months old up to school age.
3. **Childcare vouchers:** This is a scheme that allows employers to offer their employees vouchers to help pay for childcare. The vouchers are tax-free and can be used to pay for various types of childcare, including nurseries, childminders, and after-school clubs. However, the scheme closed to new applicants in 2018.
4. **Universal Credit:** This is a government benefit that provides financial support to low-income families³. Eligible families can claim up to 85% of their childcare costs, up to a maximum of £951 per month for one child or £1,630 per month for two or more children.
5. **Working Tax Credit:** This is a government benefit that provides financial support to low-income families who are working. Eligible families can claim up to 70% of their childcare costs, up to a maximum of £175 per week for one child or £300 per week for two or more children.

Flexible working

Flexible working is where you agree a variation to the standard terms and conditions offered by your employer. For example, you can ask to change the hours of work, or the location you work from (and this can include working from home).

Depending on how long you have been in continuous employment, you may have a legal right to request flexible working and from April 2024, any employee will have the statutory right to make a flexible working request from day 1 of employment.

For more information, see <https://prospect.org.uk/article/what-is-flexible-working/>

Adoption rights

When you take time off to adopt a child or have a child through a surrogacy arrangement you might be eligible for:

- Statutory Adoption Leave

³Where a parent is considering the possibility of receiving Universal Credit, in the first year of life, a child will normally have a nominated lead carer. The lead carer will not need to look for work.

- Statutory Adoption Pay

There are rules on when and how to claim your paid leave and if you want to change your dates. You may also be eligible to take Shared Parental Leave and Pay.

Other time off when needed – caring responsibilities

It can be very difficult for a worker to manage their job alongside caring responsibilities. Someone with employee status will have some rights that they can exercise to help with this.

Employees can legally take a 'reasonable' amount of time off work to deal with an emergency when it involves someone who relies on you for help (a 'dependant'). This could mean a spouse, partner, child, parent, or others who rely on you. The self-employed, an agency worker, or someone on a short-term contract may not have as many rights in this respect. Agency workers and those on short-term contracts in particular may wish to contact the union for more advice.

From 6 April 2024, employees will be entitled to unpaid leave to give or arrange care for a 'dependant' who has a disability, a physical or mental illness or injury and is in need of care for more than three months, or has care needs because of old age. This will give unpaid carers who are in employment a legal right to the equivalent of one week's working time of unpaid carer's leave every 12 months.

Beyond this, carers should consider requesting flexible working, compassionate leave or unpaid as needed, and discussing these with their employer.