

Family Friendly rights in 2023

Surrey & Sussex LMCs

Daphne Robertson and Lillian Caller
8 November 2023

Partnership

Property

NHS Contracts

Employment

Disputes

DR Solicitors Services



Our **award-winning** expertise is associated with all areas of law required to run a professional healthcare provider. Our recent work includes:

Partnership

- Partnership deeds
- Super-partnerships

Property

- Surgery developments, purchases & sales
- Leasehold negotiations & transfers

NHS Commercial

- GMS, PMS, APMS, NHS negotiation & disputes
- PCNs & Federations

Employment

- Clinical & non-clinical employment contracts
- Business reorganisations

Disputes

- Partnership & contractual disputes & litigation
- Employment tribunals

Maternity leave – getting ready

■ Notifying an employer of pregnancy

- no requirement for an employee to notify an employer of pregnancy until the 15th week before the expected week of childbirth (EWC)
- to qualify for Statutory Maternity Leave the employee has to notify the employer:
 - that they are pregnant
 - the EWC and
 - the intended start date for the Maternity Leave
 - any time between the 11th week before the EWC and the EWC itself
 - can be changed by giving 28 days notice
- the employee will need to complete a MAT B1 certificate

Maternity leave - getting ready

■ **Sickness absence whilst pregnant**

- More than four weeks before EWC is treated as “normal” sickness absence
- Illness during the last four weeks before EWC usually triggers Maternity Leave unless odd days of sickness
- Sick pay must not be less than the sick pay given to a non-pregnant employee but that does not mean unlimited sick pay
- Any pregnancy related absence must be ignored for the purpose of any promotion or assessment of any other benefits

Maternity Leave - Employees

- **Do staff automatically get Maternity Leave and if so, how much?**
 - All NHS employees have the right to take up to 52 weeks of Maternity Leave and must take 2 weeks Maternity Leave.
 - Self employed rights will be as set out in a partnership deed

- **NHS Contractual Maternity Pay Scheme applies if:**
 - 12 months' continuous service with one or more NHS employers at the beginning of the 11th week before EWC
 - The employee tells their employer before the end of the 15th week before the EWC
 - They intend to take Maternity Leave;
 - Their intended Maternity Leave start date - usually any date from the beginning of the 11th week before the baby is born up to the EWC; and
 - That they intend to return to work with the same or another NHS employer for a minimum period of three months after your Maternity Leave has ended
 - Provide a MATB1 to the employer with the expected date of childbirth

Maternity Leave - Employees

- **What is the rate of pay?**
- **NHS Contractual Maternity Scheme**
 - **First eight weeks - full pay** less any Statutory Maternity Pay or Maternity Allowance (including any dependents' allowances)
 - **Next 14 weeks - half of full pay, plus any Statutory Maternity Pay or Maternity Allowance** (including any dependents' allowances)
 - **Next 17 weeks - Statutory Maternity Pay or Maternity Allowance** (if entitled)
 - **Remaining 13 weeks** – unpaid
 - Combination of full and half pay or fixed amount spread equally over leave period if employer agrees
- **Statutory Maternity Pay Scheme**
 - **First six weeks - 90%** of average earnings (earnings-related rate)
 - **Remaining 33 weeks** at the "prescribed rate" which is currently **£172.48 per week** or earnings-related rate if lower
 - If you're sick on Maternity Leave you are not entitled to any additional sick pay

Maternity Leave - Self Employed Partners

- **Self employed GP's**

- Check rights under your partnership deed
- No right to Statutory Maternity Leave
- No right to Statutory Maternity Pay
- May qualify for Maternity Allowance – complete DWP form online to apply for a decision on that
- Will likely qualify for protection from discrimination under Equality Act 2010

- **Rights are provided by a range of UK and EU legislation and contractual rights**

Adoption Leave - Employees

- There is an entitlement to attend up to five adoption appointments once a person is matched with a child
- One parent is entitled to up to 52 weeks adoption leave
- This can start up to 14 days before the child is due to join the household

Adoption Pay - Employees

NHS Standard Terms of Adoption Pay are as follows:

- for the first eight weeks of absence the employee will receive full pay, less any Statutory Adoption Pay receivable;
- for the next 18 weeks the employee will receive half of full pay, plus any Statutory Adoption Pay (£172.48 per week) receivable, providing the total receivable does not exceed full pay;
- for the next 13 weeks, the employee will receive any Statutory Adoption Pay that they are entitled to under the statutory scheme;
- for the final 13 weeks, the employee will receive no pay.

Adoption Pay - Employees

- If the employee is not eligible for the NHS scheme, they maybe entitled to Statutory Adoption Pay only
- This is set at the same level as Statutory Maternity Pay which is 90% of the average salary for the first 6 weeks, and then £172.48 for the next 33 weeks
- There is no equivalent to Maternity Allowance for those who do not have enough service to qualify; there are some discretionary grants which local authorities can distribute

Surrogacy Leave and Pay - Employees

- If the employee has been a surrogate (carried for another parent), they are entitled to all maternity benefits (e.g. appointments, leave and pay)
- Both of the intended parents are entitled to attend two antenatal appointments with the surrogate mother, at up to a day at a time
- One of the intended parents are entitled to adoption leave and pay
- Evidence is required of the surrogacy arrangement and the person's intention to become the legal parent of the child before the above rights apply

Paternity Leave and Pay - Employees

- The NHS handbook calls this “new parent support leave” (intended to be gender neutral) rather than paternity leave
- Any person who has worked for the NHS for over 12 months continuously will receive two weeks full pay on leave
- The two weeks do not have to be continuous
- When there is a multiple birth, only one period of leave would apply
- If the person does not have 12 months continuous NHS service, they may be entitled to statutory paternity pay which is paid at the rate of £172.48 per week

Parental Leave - Employees

- is in addition to Maternity Leave, Paternity Leave or Adoption Leave
- all eligible employees (i.e. continuously employed for a period of not less than one year with responsibility for a child) are entitled to take a total of **up to 18 weeks' unpaid Parental Leave for each child** to care for that child
- can be taken at any time before a child's 18th birthday
- provided (check local/contractual agreements/policy):
 - employee to give employer at least **21 days' notice** of intention to take Parental Leave
 - a maximum of **four weeks** Parental Leave can be taken in any given year
 - you (the employer) may postpone Parental Leave by up to **six months** to avoid undue operational disruption
- gives a right to return to the same job (or in certain cases a suitable alternative job)

Eligibility for Parental Leave

An employee will be eligible for parental leave if:

- they are classed as an employee and have been with the GP Practice for at least 1 year
- the employee is named on the child's birth or adoption certificate or they are a foster parent who has received personal responsibility through the courts
- the child is under 18.

You can ask for proof of the child's age so long as such requests are reasonable. You can also extend parental leave to other types of workers if you wish.

What to do if an employee asks for Parental Leave

- Check they meet the eligibility requirements
- Check the employee has made the request at least 21 days in advance
- Check whether their contract of employment allows for the Parental Leave to be paid leave (under statute Parental Leave is unpaid)
- Find out if the employee's child receives disability living allowance or personal independence payments. This will impact whether the employee can take off in individual days or must take off a week at once
- Check the employee has not used up their Parental Leave allowance - it is good practice to keep records of all Parental Leave taken throughout an employee's period of employment
- Check if you have a significant reason to postpone the employee's Parental Leave such as that their absence would cause significant disruption to the running of the Practice. You can postpone a request for Parental Leave for up to 6 months. To validly postpone, you must respond to the employee's request in writing within 7 days.

Considerations for managing Parental Leave

- Parental Leave allowance is spread across an 18 year period and it is likely that an employee will have worked for multiple employers during this time. Consider including questions about how much Parental Leave has been taken when conducting reference checks
- Consider asking employees to declare any previous Parental Leave they have taken when they start work at the Practice
- You can change the terms of the default statutory Parental Leave scheme. You can make the terms more or less favourable by getting employees to agree to a workforce or collective agreement. If you decide to make terms less favourable, consider the impact this could have on employee morale and the priorities of employees who are parents.

Shared Parental Leave

Shared parental leave can be used in the following ways:

- the mother returns to work early from maternity leave, and takes shared parental leave at a later date
- the mother returns to work and her partner takes parental leave
- both parents take shared parental leave at the same time
- both parents share the shared parental leave evenly and are off work at different times
- both parents return to work at the same time and take shared parental leave at a later date

Shared Parental Leave

- Can be taken by parents who conceived a child, are adopting a child, or are entering into a surrogacy arrangement
- The aim is for the care of the child over the one year period following the birth to be distributed between the two parents – the birth mother must take two weeks leave after delivery
- NHS terms and Conditions of Service Handbook, S15.44 – covers pay and procedure including for couples working in the same organisation
- Eligible employees will be entitled to claim up to 37 weeks of statutory shared parental leave pay (ShPP), less any weeks of statutory maternity pay, maternity allowance or statutory adoption pay that has already been claimed by either partner. If returning to their role, they receive 6 weeks full pay, then 18 weeks half pay before reverting to ShPP

KIT days & SPLIT days

■ Keeping in touch/KIT days

- Work, training, social events
- Up to a maximum of ten KIT days without ending Maternity Leave
- Not compulsory so can't insist on them (either side)
- Part day work/training counts as a whole KIT day
- Employer can't discriminate if you don't take them
- Paid at your basic daily rate for the hours worked, less appropriate Maternity Leave payment
- Up to 20 SPLIT days can be taken: Employer can grant a day's leave in lieu when they fall in a period where full or half pay is due to the employee

Going back to work

■ What about going back to work?

- Employer works out return date based on 52 weeks of leave
- Under the NHS Terms and conditions of service you must give employer at least **28 days of notice** if you wish to return to work before your expected return date (statutory notice is 8 weeks)
- Right to return to your job under your original contract (no less favourable terms and conditions) whether returning from Maternity Leave or Shared Parental Leave
- Unless taken more than 26 weeks of leave or taken at least 4 weeks of Parental Leave in addition to 26 weeks Maternity Leave AND not reasonably practicable, then right to similar or suitable alternative job (no less favourable terms and conditions)

■ What if I want/have to delay my return?

- Mutual agreement with employer
- Annual leave (accrued and carried forward)
- Sick Leave- same entitlement to Sick Leave and pay as other employees
- Parental leave

Thank you



Daphne Robertson

Phone: 01483 511555

E-mail: enquiries@drsolicitors.com



Lillian Caller

Phone: 01483 511555

E-mail: enquiries@drsolicitors.com