



The HR Edit

Series 2, Episode 2: Parental Leave

[Music]

0:00:12- **Helen**

Hello and welcome to the HR edit, the podcast from South East Employers taking a look at those common and often tricky HR questions. Today I'm joined by Michelle and Sarah and we're going to be discussing parental leave. Michelle, should we start with the basics, with what is parental leave?

0:00:28- **Michelle**

Absolutely. There are two types of parental leave that we're going to talk about today. The first one is ordinary parental leave, and that has been around for a very long time and originally was just called parental leave. And we've also got shared parental leave, which is a newer set of regulations that have been implemented to help families effectively bond more effectively in the first year of their child's life. So I'll start off talking a bit about the ordinary parental leave. As I said, this has been around for a while, but things have changed over the years. So we now have 18 weeks of unpaid leave that can be taken any time up until the child's 18th birthday, and that is 18 weeks per child. So, unlike maternity leave, if you give birth to twins, you only get one lot of maternity leave. With ordinary parental leave, you would get two lots of 18 weeks of unpaid leave to take up until those twins reach the age of 18.

0:01:40- **Sarah**

Wow, that's a lot. That seems like a lot, or it sounds like a lot. I've got two children myself, so I would be entitled to that 18 weeks individually for both of them. But ordinarily if my children have an appointment or I've got to take them somewhere or whatever, I would normally use annual leave or a bit of flexi leave. In what circumstances would you use parental leave so?

0:02:08- **Michelle**

in terms of when it gets used, the law sets out that parental leave should be taken in week blocks, so you're more likely to be taking it if you have run out of annual leave and need to cover a school holiday or you effectively want to take a bigger chunk of time off than your annual leave policy allows.

A lot of employers will limit annual leave to two weeks at a time, so you might tag on another couple of weeks using the ordinary parental leave to extend that break away from work and spending time with your children. However, employers can have their own policy that says that you can take it in shorter periods of time than a week. A day here, a day there. Most employers will keep to that week block requirement just because it's easier to administer through payroll, because it's unpaid you're not having to deduct or do those calculations about what a day's pay is, etc. etc. The exception to that would be is where parents have a child with a disability and as a reason adjustment, it would be quite normal to allow an employee to take ordinary parental leave in blocks of a day, two days, and that's quite often



used if normal care arrangements have fallen through and the parent has to step in to undertake those care arrangements. So that's the situation where you might use it for, or allow ordinary parental leave to be used in shorter periods than a week.

0:03:47- **Sarah**

Michelle, just to throw the cat amongst the pigeons then, if a certain organisation has got a lot of employees, a lot of parents and we're talking about the reason you take it in a child care or during some holidays, because it doesn't cover the amount of time that children have off what happens if an organisation has a lot of parents suddenly taking a lot of leave around the same time? Is that quite disruptive? Is it encouraged? Is it discouraged?

0:04:17- **Michelle**

It can be quite disruptive, especially when you've got lots of people trying to take a time off at the same time. But in the same way that you'd have to manage annual leave requests, there is an ability to manage the requests to take unpaid parental leave as well. You can't deny it flat out, but you can ask them to delay it to a more convenient time. The challenge, of course, is if they're taking it in order to spend four weeks with family in a different country. That's going to be quite challenging for them to manage to move those dates.

So it is sort of a case by case basis, but yes, it can be quite disruptive if you are a predominantly parent based workforce. What I would say, though, is, because it's unpaid, very few people actually take up the opportunity to take this ordinary parental leave. You have to be in quite a good financial position to be able to take a couple of weeks without any pay, and whilst employers don't necessarily promote the fact that this parental leave exists, they also don't kind of dissuade people. It just sits as one of a number of policies in the family friendly suite of policies that all employees will be directed to if they have a family.

0:05:50- **Sarah**

Yeah, I mean it was a bit of a funny question and actually, looking back now in my years of work, I've never taken any parental leave and I don't think I know anybody that has. But it's one of those policies that's really helpful to a lot of families and is there if you need it.

0:06:08- **Michelle**

Yes, and I think that's the thing more than anything. I do know people who have taken the ordinary parental leave, but in reality I think most people are more likely to take this unpaid parental leave when there is sort of an emergency situation or a significant change in circumstances where you can't plan for it and it's something that needs to be dealt with quite quickly. So yeah, I mean the people I know who have taken it. It has been planned, it's been to extend a holiday, but it is a reassurance that actually at some point, if you needed to take a month off work, you could potentially, most employers will put some kind of limit on how much you can take in one go, in the same way that they limit annual leave. But there will always be a level of flexibility if there's an emergency situation that requires an extended period of time of ordinary parental leave.

0:07:09- **Helen**



Michelle, what are the eligibility criteria for parental leave?

0:07:12- **Michelle**

So for ordinary parental leave it's actually relatively straightforward. You have to have one year of continuous service and you have to have responsibility, or expect to have responsibility for that child or for a child. So effectively, if you are in a parental role to a child, you are able to take ordinary parental leave. Now in local government it does get a little bit more tricky because obviously for a lot of rights around family friendly entitlements we recognise previous modification order service. So for our maternity scheme, for example, if you have previous local government service, that is counted towards your entitled to occupational maternity pay.

Again, that is a contractual provision. It is not part of the statute. It's not set out anywhere in law that says you know we must do this. It is purely written into the contract via the Green Book terms and conditions. So the Green Book itself doesn't currently include any policy or procedure on ordinary parental leave.

So it becomes the responsibility of each employer to create their own policy and therefore as an individual employer you can choose whether you require that one year of continuous service to be effectively statutory service so that would be one year with yourself as the employer or whether you're going to recognise previous local government or modification order service in order to qualify for ordinary parental leave.

Now what that does is, if someone has five years service with another council, effectively this becomes a day one right for your new employee. That's fine If that's something you want to do in terms of being supportive of your employee. What I would say is that if you are bringing people in from other organisations listed on the modification order, one of the questions you should be asking their previous employer is how much ordinary parental leave has that individual taken up until the date they have left their employment? And the reason for that is remember it is a total of 18 weeks up to the age of 18. So you don't get that per employer. So it's really important to understand whether an individual has taken any before so that you're not giving them more than they are entitled to.

0:09:53- **Sarah**

And it's probably a good point to drop in, Michelle, you know just a little plug for series one that we have a podcast episode on continuous service and the modification order, so check out the website or wherever you get your podcast.

0:10:08- **Helen**

So, moving on to shared parental leave, Michelle, can you tell us a little bit about that?

0:10:12- **Michelle**

Yes, absolutely so. Shared parental leave is the newer version, the younger child, let's call it that in the parental leave framework and effectively this is designed to allow the family to bond more effectively in that first year of a child's life and it was deliberately sort of structured to create the ability for parents to take time off at the same time and sort of be a full family unit during that first year. Now I'm going to be referring to sort of the first year of the child's life and relating to sort of the birth child, but it also applies to people who are adopting children and the. You know the sort of timeframe is. You know that first 52 weeks after the child is placed with you in an adoption situation. But for ease, I'm just going to refer to the sort of the birth, because that's the more regular type of question that we get asked. So, effectively, what shared parental leave does is it enables the primary parent and in a birth situation that is normally the mother to hand off her maternity leave. I could tail it, bring it to an end and share the remaining balance of the 52 weeks with the other parent.

Now, in a birth situation, there is a two-week period immediately following the birth of the child. That is a protected period for the mother. It is designed to give the mother time to recover from the birth and that is absolutely protected. You cannot give that up. You cannot sign away your rights to that. As a mother who's given birth, you absolutely under statute to take that two-week period following the birth as your own. But beyond that, now there is a greater level of flexibility in terms of maternity leave and shared parental leave. So if the mother has given birth and has not taken any maternity leave prior to giving birth, that first two weeks being the protected period, that leaves a balance of 50 weeks that can be shared. So that 50 weeks can be shared in any way, shape or form, the legal requirement is that the mother must have either curtailed or given notice that they will curtail their maternity leave on a specified date with the view to then moving into shared parental leave.

Now, if your employer only gives you statutory maternity pay or you're only entitled to maternity allowance, then this will you know. You could literally give the notice that you will curtail after the first two weeks postpartum and move into shared parental leave immediately, because actually the shared parental leave and pay scheme is just the statutory scheme in most cases now. Currently, the majority of employers have not enhanced their shared parental leave scheme. So if you are only entitled to maternity allowance or your employer only provides for statutory maternity pay, then your pay entitlements won't differ whether you are on maternity leave or shared parental leave. The difference will come with where there is a contractual maternity pay policy in place where pay is enhanced for a specific period of your maternity leave.

It's worth then checking whether that is mirrored into any shared parental leave and pay policy. And the reason for that is if you have enhanced maternity pay but not enhanced shared parental leave pay, it is worth keeping that enhanced period as maternity leave and giving notice of curtailment. After that has concluded, you can future proof. You can effectively say I will curtail my maternity leave at the end of the 18th week and then move into shared parental leave. By giving that notice, your partner can then take shared parental leave whilst you are on maternity leave, so you can both be off at the same time.

0:15:02- Sarah

I was going to ask you a question then, because you've just mentioned that you, then both parents, can be off at the same time. Practically speaking, how does it work? Does one parent go back to work and the primary parent go back to work and then the partner is off, or is it a shared? Can they all be at home together as a family unit for the rest of that time, or that time halved?

0:15:28- **Michelle**

So you're right. In fact it is incredibly flexible. Once you could tail maternity. The shared parental leave side of things is incredibly flexible. So you can take time off together so that the entire family unit can be together. You can take it in turns, so the primary parent returns to work, the other parent takes time off, so you're kind of tagging in and out, a bit like a relay race, or you can do a mix, so it is really, really flexible. So if we took an example that the mother took no maternity leave prior to giving birth, had that protected two weeks, that gives a balance of 50 weeks that can be taken as shared parental leave.

I'm going to work on the basis that there is no enhancement to maternity or shared parental leave at this point. We're just dealing with that statutory entitlement, because that makes it slightly easier. So if you have that 50 weeks of effect for the remaining balance, it can be worked in a number of ways so you could both take five weeks off together, reducing the overall entitlement down to 40 weeks. You can then tag team in and out. So five weeks, five weeks, five weeks, five weeks, so that's another 20 weeks gone, so we're down to a 20 weeks balance, and then you could then decide that you're going to take the next 10 weeks off together to use the entire entitlement. You also don't have to do them back-to-back. So if you have, if you're fortunate enough to have family around who are prepared and, let's face it, a lot of grandparents are kind of chomping at the bit to look after a child for, you know, a week, you could sort of both be at work, both parents could be at work for that week while the grandparents are caring for the child, and then move into back into the shared parental leave afterwards. So it's really, really flexible.

The criteria is effectively, though the balance, or the total of the 52 weeks has to be taken within the first year of that child's life. So if, if the primary parent has taken a month off before they give birth, so four weeks off, then you've got two protected weeks. You're down to, if my maths is correct, 46 weeks. I reckon that's right, fabulous, as long as those 46 weeks are taken between the date of birth and the day before the first birthday of the child. That's. That's the only requirement there is. You know, if you haven't used it by the day before the child's first birthday, you do lose it, but if you're, you know if you're going to take any time off at the same time to be a whole family unit, you shouldn't have a problem in terms of it expiring effectively, I think.

0:18:38- **Sarah**

I know the answer to this one, Michelle, but just to put this question out there so we can get some clarity on it. Then this is a statutory, this is statutory legislation. This is something that all workplaces will allow. So say, the primary parent works at one organisation, that this is. You know, people do this all the time. The other parent works at another organisation, which is completely different. But they will allow this kind of 52 weeks of this flexibility. Is that right?



0:19:06- **Michelle**

Absolutely, they are required because, as you say, it is a statutory entitlement. There are some eligibility criteria, so the parent must have 26 weeks continuous service at the 15th week before the expected week of childbirth. Really complicated, but that's how it has been, that is how it is set out in law and actually that mirrors requirements around maternity leave and pay as well. So it's that you know, the 15th week before the expected week of childbirth is you know a term that we are familiar with in the HR world? So yes, it's the 26 weeks of continuous service at the 15th week before expected week of childbirth. And that's true for both. And again, the same applies in terms of whether we as employers want to honour modification order service in that continuous service. And that's again.

We don't have a shared parental leave policy in the Green Book, largely because the Green Book was actually last updated substantially before we even had the idea of shared parental leave. But obviously, as employers, you know that want to be supportive of our workforce we do, you know. We will obviously create our own policies around this. I'm aware that some councils have mapped their maternity pay provisions across to their shared parental leave and pay policies, so effectively providing that 12 weeks at half pay. But a vast majority of employers haven't done that. They've simply stuck to the statutory scheme, as I was saying, in terms of recognising continuous service.

That is very much up to each employer to do or to make their own decisions around that. So you know, you could have again someone who effectively has transferred in or moved in from another authority and would meet the 26 weeks continuous service requirement Very quickly within your employment. So you have to balance out that being supportive versus actually are you in a position where you want to be able to employ someone and then within sort of three months, they are entitled to shared parental leave. So it's just something to bear in mind. From a legal perspective, the minimum would be 26 weeks with you as a. It's a, it's a statutory entitlement, so that that means that the 26 weeks service starts with the date that they start working for you.

0:21:44- **Sarah**

Yeah, and I suppose practically speaking as well. I mean, you can't just go in and demand that you're going to do share parental, be in share parental leave with your partner. You know it is a bit of compromise in there as well, as sort of working out with your employer. I want to, I want to do it this way. How can we work it? I suppose? I mean, there is that kind of compromise there as well.

0:22:02- **Michelle**

Yes and when you give notice that you intend to take shared parental leave, there are sort of rules around how you go about doing that. You can take it in there's a technical term for it but basically means you can issue notice of intention to take shared parental leave up to three times. But each of those notices can include disaggregated blocks. So you can issue a notice to say, actually I want to take two weeks off, come back for two weeks off. Or you can issue that I want to take six weeks off in one hit. So there are again goes back to flexibility. There

are lots of ways of doing it the disaggregated one. The employer has more of an ability to challenge that because that can be more disruptive. You don't have a right to say no, but you can ask them to be a bit more flexible or move the dates slightly to kind of enable you to manage the workload a bit better.

0:23:09- **Sarah**

Can I just start with a question, then, based on my own experience? I have two children, I am married and my husband took paternity leave. Does this replace paternity leave, or is this as well as paternity leave? Is I suppose what I'm asking.

0:23:24- **Michelle**

It's as well as so effectively. You know, the partner the other parent has that two-week paternity leave period and in the majority of local government that is paid at full pay for the two weeks. But that's not the statutory position. The statutory position is that it is at the statutory rate of pay and then shared parental leave can kick in so effectively if the primary parent works up until the day they give birth, both parents can be off for those first two weeks under maternity and paternity leave and then move across into the shared parental leave, which of course then means you've actually got 54 weeks between the two of you.

0:24:15- **Helen**

So, Michelle, what happens with shared parental leave if the baby is born early?

0:24:20- **Michelle**

So if the baby is born after the 15th week before the expected birth, effectively maternal leave just starts at that point in time and nothing really changes. But if the baby is born before that 15th week before the expected week of childbirth, effectively that primary parent will be treated as if they had gone to term with regards to shared parental leave. So effectively that qualifying requirement of 26 weeks of continuous service, if it's not met by the time the person actually gives birth, they will be treated as having met it if the expected week of childbirth would have enabled them to qualify.

0:25:06- **Helen**

Michelle, what rights do you have during the leave?

0:25:07- **Michelle**

So in both cases the ordinary parental leave and the shared parental leave the contractual employment continues to exist between the parties. So all the normal contractual visions continue to be in place, and that's a cruel of annual leave, continuous service, all of that kind of thing, sick pay. The only thing that doesn't continue is that right to remuneration, because they're not actually ready, willing and able to work, they are taking a leave for a specific period, so the pay element sort of effectively gets suspended and the shared parental pay entitlement kicks in. Obviously, with ordinary parental leave there is no automatic pay entitlement. If your employer has put a policy in that says you will receive some pay, that then kicks in. The other thing to be aware of for extended periods of family leave. So this will apply for maternity, shared parental leave, adoption leave. During all periods of family friendly



leave, the employee generally has the right to return to their job or, if that's not practicable, a suitable alternative. Now, in reality, we do know that redundancy situations arise throughout the year and can't be planned around when people are off on family friendly leave. So, effectively, what this means is that if you are going through a restructure and you have employees who are out of the workplace due to maternity, paternity, adoption or shared parental leave, you have to make an effort to engage them in the consultation process and, whilst they are on leave, there is a piece of legislation in place that actually protects them from redundancy. That doesn't mean you can't make them redundant. What it means is that if you are going through that restructure and their post is identified as being one of the ones that is to be made redundant, you have an obligation to offer them a suitable alternative vacancy, without competitive selection against people who are currently in work. What that means is that if you have someone who is on shared parental leave and they have taken a block of shared parental leave let's say three months during that period, if their post becomes redundant and they are issued with notice of redundancy and that is quite key they have to be under notice of redundancy. Not we're going to delete your post. We're letting you know now if you have actually issued notice during that three month period that they are on shared parental leave. If a suitable alternative post is identified, they must be offered it ahead of anybody else. The exception to that is if there are multiple employees who are on family friendly leave and for whom that post is a suitable alternative employment. You could then competitively select between those individuals, but you cannot make them compete against people who are currently in the workplace so effectively. It's sort of looking a little bit like positive discrimination, but it is in recognition that actually it is harder to participate in a competitive selection process when you are not in the workplace for an extended period of time.

We now have a piece of legislation that has received royal assent that will likely extend that period of protection. So at the moment the protection is whilst you are on that family friendly leave it was talked about a number of years ago. We now have the first piece of legislation that says that the government intends to put in further legislation but it has to be done through secondary legislation to extend that protection period and it's likely, given what was consulted on, that the protection will extend to during the pregnancy and probably for six months after they return to work after taking family friendly leave. As I say, that's not law yet, but that is what was consulted on. So that is what we know. That is where the government is minded to go with this particular piece of protection legislation.

0:29:55- **Sarah**

And that sounds like a really good piece of legislation to protect families when they have been had a child or adopted or whatever.

0:30:05- **Michelle**

And you know we have, you know, someone who is pregnant has protection because you can't discriminate against them on the basis of their pregnancy, but this does provide that extra protection to say, you know, actually during your pregnancy you have to be offered that suitable alternative employment and again, it's that recognition that whilst you're pregnant that's quite a hard job in itself and so you're not necessarily performing at your absolute best



and I know from experience that was that's the case for me brain fog kind of kicked in. So, actually, you know, and for people who suffer really badly with morning sickness or, you know, complications during their pregnancy that enable them to still work but not at their full capacity, this is really important because actually, you know, it does protect their security, their employment security going forwards. And again, that six month period post family leave Fantastic idea. Because, again, if you have been out of the workplace for six months for you know, on some form of family friendly leave, actually coming back into the workplace, it can take quite a significant period of time to kind of get back up on your feet and up to full speed.

You know, I know when I returned I'd in total had about 15 months off, because my daughter is older than this piece of legislation, the shared parental leave legislation. I had 15 months off because I took annual leave and I came back part time and you know all sorts of stuff. It probably took me about three months to get back up to speed because the world of employment law at that time changed so quickly. It slowed in. It slowed in the last few years because, you know, Brexit and the pandemic meant that the government wasn't looking at employment law and wasn't introducing new legislation. But even then case law changes on such a regular basis and the new focuses of HR teams shift very, very quickly. So it can take a long time to come back in and kind of really get back up to full speed when you, when you've had that extended period of time out of the workplace.

0:32:25- **Sarah**

Michelle, here's one out of the blue. If you are a single parent, or you are a parent with a partner, but you prefer the flexibility of shared parental leave over maternity leave, Are you then allowed to take shared parental leave but not share it?

0:32:46- **Michelle**

So although the legislation is set out as shared parental leave, that is a bit of a misnomer when you actually read the regulations.

At no point in the text of the law does it say that the shared parental leave actually has to be shared between two people. Now, when I got asked this question a few years back, I was like okay, that's a bit odd, but it is actually true. So if a mother or a primary parent wants to curtail the maternity or adoption leave and move over to shared parental leave but not actually share it with the partner, that is perfectly legitimate. Now you might ask me why people would do that. The key actually is nothing to do with the actual leave itself or the pay, because obviously those are, you know, fairly evenly matched between the two of maternity and adoption leave. You probably do have a 12 week at half pay entitlement in local government, which isn't necessarily mirrored across into shared parental leave, but actually it comes from the keeping in touch days and the benefit of being able to stop and start shared parental leave. So with maternity and adoption leave it is continuous. The second you return to work it brings those periods of leave and entitlements to pay to an end. If, however, you curtail and move into shared parental leave, as we discussed earlier. You can do those disaggregated blocks so you can take four weeks, work for two weeks, take four weeks, work for two weeks and break up your periods of leave. Obviously the caveats around needing to take all of the leave within the first year of the child's life or placement still applies. But



actually in maternity, if you've taken four or six weeks before the birth of the child and then you've got two weeks of required maternity leave, you then have a significant sort of bit of leeway of around a month where you could work for a month. You could take three months of shared parental leave, work for a week, take another three months of shared parental leave, work for a week. So it's just topping up every so often that your income Now.

The other thing that I mentioned was kit days, the keeping in touch days. Now, under maternity and adoption, the parent taking that leave is entitled to 10 kit days. Obviously it has to be in agreement with both employer and employee. One can't demand of the other. With shared parental leave it is a total of 20 kit days and again they don't actually have to be shared across two individuals If and I'll talk about a mother here.

If a mother gives birth on maternity leave could tail some maternity moves over to shared parental. During their maternity leave she could do up to 10 kit days, provided the employer has the work to offer and agrees to it. Those kit days are not deducted from the 20 that are available through shared parental leave. So in theory that individual could have 30 kit days in the year and although it's not specified in the legislation effectively, you know it basically says I think the legislation says something along the lines of paid in accordance with contract or, if it doesn't, that's what it effectively implies.

So we recommend that you pay for the hours that the individual is working on a kit day. So if they work for four hours on a kit day, you pay them for four hours at their normal rate of pay. I know some employers just pay a day's pay regardless of how many hours are worked, but you know our recommendation is always pay for the hours. But that means ultimately that that individual could work for up to 30 days during the year of leave and their normal contractual pay for those days, which will then enable them to afford potentially to take that full year off because they're not going into a period of nil pay in the same way, because they'll have an ability to put some income in.

0:37:30- **Helen**

Yeah, I'd never thought of it that way, but you can definitely see the advantages of moving to shared parental leave. And that brings us to the end of our discussion about parental leave. Thank you, as always, Michelle and Sarah.

If you are a member of South East employers and have any questions or queries related to parental leave, you can always contact us at www.seemp.co.uk or for any other topics of HR advice. You can also visit the HR edit webpage at www.seemp.co.uk/theHRedit for any resources related to any of our episodes. Be sure to subscribe to the podcast on Apple podcasts, spotify or wherever you get your podcasts, and visit the South East Employers website at www.seemp.co.uk for more information on how the SE team can help support you with anything HR related. Thank you for listening and we'll see you next time.

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