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Department for
**Employment
and Learning**
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ER25 Parental Leave: A Guide for Employers and Employees



Introduction

This booklet addresses some of the more frequently asked questions on the right to parental leave. It also sets out how the Government would encourage employers to go beyond the minimum provisions of the Regulations, where it is possible to do so. The Good Practice Examples are intended to help employers recognise where they can improve on any aspect of the right to parental leave, where this accords with the priorities, needs and circumstances of the parties concerned, and with what the business or organisation can afford.

Please note that this booklet gives general guidance only and should not be regarded as a complete or authoritative statement of the law. Authoritative interpretations of the law can only be given by the courts. Readers should be alert to the possibility of developments in case law that may affect the rights described.

Further information can be obtained from the Labour Relations Agency (LRA). For the addresses of its two offices, see [Appendix 2](#).

The contents of this booklet apply equally to men and women. For simplicity, however, the masculine pronoun is used throughout.

Any reference throughout this booklet to Jobs and Benefits offices includes JobCentres.

This booklet, [others in the series](#) and [related publications](#) are free to download from the Departmental website at www.delni.gov.uk/erpublications. Alternatively they may be obtained upon request from your local [Jobs and Benefits office](#). For information on [Jobs and Benefits offices](#): FREEPHONE 0800 353530.

Upon request, consideration may be given to making this booklet available in alternative formats and in other languages for people who are not proficient in English.

The Employment Rights ('ER') series of booklets is updated on a regular basis. As part of this updating process the Department would welcome any comment/s from members of the public regarding the content of these booklets.

All comments should be addressed to:

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Introduction

What is parental leave?

Parental leave is a right for employees who meet certain qualifying conditions to take time off work to look after a child or make arrangements for the child's welfare. Parents can use it to spend more time with children and strike a better balance between their work and family commitments.

There is no statutory requirement for an employer to pay an employee for time off on parental leave. Employers are, however, free to operate contractual schemes.

The period of parental leave is:

- *13 weeks off work (in total, not per year) for each child, up to their fifth birthday (or up to five years after the placement date of an adopted child);*
- *18 weeks (in total) for each disabled child, up to the child's 18th birthday.*

See '[How much leave can an employee take?](#)' on page 5 for more information on the duration of parental leave.

The legislation

The right to parental leave was introduced on 15 December 1999 by the Maternity and Parental Leave Regulations (Northern Ireland) 1999, which have been amended on a number of occasions since. Changes (brought about by the Maternity and Parental Leave etc. (Amendment No. 2) Regulations 2002 were introduced on 21 April 2002. The changes extended parental leave to parents of:

- *children who were under five years old on 15th December 1999;*
- *children who were placed for adoption less than five years before that date; and*
- *disabled children under 18.*

Parents of children who were born or placed for adoption between 15 December 1994 and 14 December 1999 became entitled to parental leave, providing they had the necessary qualifying service (see '[Who can take parental leave?](#)' on page 3). These newly qualified parents had until **20 July 2005** to take their full entitlement, or, for adoptive parents, until the child's 18th birthday, if that was sooner. Parents of disabled children have until their child's 18th birthday to take their full entitlement. (See '[When can leave be taken?](#)' on page 6).

The Maternity and Parental Leave etc. (Amendment No. 3) Regulations 2002, which came into operation on 24 November 2002, improved the treatment of a parent's terms and conditions of employment on return to work from a period of parental leave.

Disabled children

For the purposes of parental leave, a "disabled child" is a child for whom an award of Disability Living Allowance has been made. Parents of children for whom an award of Disability Living Allowance has been made are entitled to 18 weeks' parental leave, instead of the standard 13 weeks available to other parents, and are able to use their leave up to their child's 18th birthday.

Employed or self-employed?

The rights described in this booklet apply to full-time and part-time employees, provided they satisfy the qualifying conditions for parental leave, such as length of service, and have a contract of employment, written or unwritten, with their employer. Whether someone is an employee working under a contract of employment or a self-employed person working under a contract to provide services depends upon the true nature of the agreement entered into by the parties. If the employer has a duty to provide work, controls when and how it is done, supplies equipment to do it and pays tax and national insurance contributions on the worker's behalf, then it is likely that the worker is an employee. Further information on employment status and contracts of employment can be found in the Employment Rights booklet '[Contracts of Employment: changes, breach of contract and deductions from wages](#)' (ER21).

People not covered by the provisions

In addition to self-employed workers, the Regulations do not apply to members of the police service, or masters or crew members engaged in share fishing paid solely by share of the catch.

Other 'family-friendly' rights

Time off for dependants

All employees have the right to take a reasonable amount of time off work to deal with an emergency involving a dependant, and not to be dismissed or victimised for doing so. The Employment Rights booklet '[Time off for dependants](#)' (ER24) provides more detail of this right.

Maternity leave

All pregnant employees are entitled to 26 weeks' ordinary maternity leave and 26 weeks' additional maternity leave (regardless of how long they have worked for their employer). A woman may also be able to receive Statutory Maternity Pay from her employer or Maternity Allowance during the first 39 weeks of her maternity leave. The Employment Rights booklet '[Maternity Rights – a guide for employers and employees](#)' (ER16) gives further information.

Paternity leave

Employed fathers may be entitled to take one or two weeks' paternity leave and Statutory Paternity Pay (SPP). To qualify employees must have worked continuously for their employer for 26 weeks at the beginning of the fourteenth week before the week their baby is due. To be eligible for SPP they must also earn above a certain amount. The Employment Rights booklet '[Rights to paternity leave and pay](#)' (ER34) gives further information.

Adoption leave

Employees adopting a child who is placed for adoption may be entitled to 52 weeks' adoption leave and 39 weeks' Statutory Adoption Pay (SAP). To qualify for leave employees must satisfy length of service requirements. To qualify for SAP they must also earn above a certain amount. Where a couple adopts they can choose which one of them will take adoption leave and pay and which will take paternity leave and pay. If an individual adopts, their partner, if they have one, may be able to take paternity leave and pay. The Employment Rights booklet '[Adoptive parents: a guide for employers and employees](#)' (ER35) gives further information.

Right to request flexible working

Employees who are parents of children aged under six or of disabled children aged under 18, or who care for an adult relative or someone living with them who is an adult, have the right to apply to work flexibly. Their employers must take such requests seriously. The Employment Rights booklet '[Flexible working: a guide for employers and employees](#)' (ER36) gives further information.

Parental leave – the minimum standard

Who can take parental leave?

Relationship to the child

Both mothers and fathers, whether they are the birth or adoptive parents, can qualify for parental leave, provided they are employees (see the section on [‘Disabled children’](#) on page 1).

They must either be named on the child’s birth certificate or they must have, or expect to have, parental responsibility under the law¹ for the child. The parents of a child do not have to be living with the child in order to qualify for parental leave.

Employees who are adopting a child will be entitled to take parental leave because they will have parental responsibility when they adopt.

In some cases legal responsibility for looking after a child will have been given to someone other than a birth or adoptive parent, such as a guardian. If an individual has acquired parental responsibility for the child, he will be entitled to parental leave if the qualifying conditions set out in this booklet are met.

Parental leave must be to care for a child. (See the section [‘Caring for a child’](#) on page 4).

Length of employment

Employees with children born on or after 15 December 1999 (the date the right was first introduced) who want to take parental leave must have worked for their employer continuously for a year by the time they want to take the leave.

Parents of children who were born or placed for adoption between 15 December 1994 and 14 December 1999 or parents of a disabled child under 18, who want to take parental leave, must have either worked for their current employer continuously for one year by the time they want to take the leave, or have worked for a previous employer continuously for a year during the period 15 December 1998 to 20 April 2002 and be currently employed.

Good practice examples

- Employers can extend entitlement to parental leave to individuals with informal responsibility for looking after a child, such as grandparents, step-parents or long term foster parents.
- Employers can waive the one-year qualifying period if they wish, or set a lower qualifying period. This may particularly help parents who are returning to the labour market and could help the employer to attract more candidates for a vacancy.

- Employers can disregard the child's age and allow the parents of older children to take some parental leave.

Frequently asked questions

1. What happens when there is a break in employment before the one-year qualifying period is completed?

Continuous employment usually means working for the same employer without a break, but it does not always mean this. Sometimes employment can be regarded as continuous in spite of short breaks. For example, absence from work because of sickness or pregnancy, paternity or adoption leave, temporary lay-off and holiday breaks all count automatically, provided the employment contract continues throughout. In the case of parents of children born between 15th December 1994 and 14th December 1999 or parents of disabled children, the qualifying service is met by employment with any employer for a period of more than one year between 15th December 1998 and 20th April 2002, even when this is not his current employer. The Employment Rights booklet '[Continuous employment and a week's pay](#)' (ER8) provides detailed guidance on this issue.

2. What happens if an employee has qualified for parental leave, but then changes jobs?

Unless the new employer is an associated employer, employees with children born or adopted on or after 15th December 1999 (the date the right was introduced) need to complete a year's qualifying service with their new employer before they can take parental leave. Employees with children born or adopted between 15th December 1994 and 14th December 1999 need to have completed **a year's continuous** service with an employer between 15th December 1998 and 20th April 2002. The Employment Rights booklet '[Continuous employment and a week's pay](#)' (ER8), provides guidance on when time with a previous employer may count towards continuity of employment.

Caring for a child

The purpose of parental leave is to care for a child. This means looking after the welfare of a child and can include making arrangements for the good of a child. Caring for a child does not necessarily mean being with the child 24 hours a day. The leave might be taken simply to enable the parents to spend more time with young children. Examples of the way leave might be used:

- *to spend more time with the child in early years;*
- *to accompany a child during a stay in hospital;*
- *checking out new schools;*
- *settling a child into new childcare arrangements; and*

- *to enable a family to spend more time together, for example, taking the child to stay with grandparents.*

Frequently asked questions

3. How can employers deal with parents who do not use parental leave to care for a child?

Parental leave is to look after a child, which includes making arrangements for the good of the child. If the employee uses the leave for some other purpose, then he would be acting dishonestly and the employer can deal with this situation according to the business's usual disciplinary procedures.

4. Can employees take parental leave when a child suddenly falls sick?

This will depend on the workplace scheme. Many schemes, including the fallback scheme (see the chapter '[The fallback scheme](#)' beginning on page 13), will require a period of notice before the employee can take parental leave. Workplace schemes can be as flexible as they wish about this.

Where it is not possible for the employee to use parental leave to care for a sick child, the employee will be able to take a short amount of time off to deal with the onset of the child's illness. This is allowed under the right to time off for dependants. There is no qualifying period for entitlement. The Employment Rights booklet '[Time off for dependants](#)' (ER24) sets out the details of this right.

How much leave can an employee take?

Each parent can take 13 weeks' parental leave for each child. This means that both mothers and fathers, if they have twins or adopt more than one child at a time, can take 13 weeks' leave for each child.

Parents of disabled children can take 18 weeks' parental leave for each disabled child.

One week's parental leave is equal to the length of time that an employee is normally required to work in a week. This means that a week's leave for an employee who usually works from Monday to Friday is equal to five days, while for an employee who works Mondays and Tuesdays only, a week's leave is equal to two days.

Some employees' working patterns vary from week to week. In such cases, an average working week needs to be calculated as a fraction of the period for which he is required to work in a year. For example, an employee who is contracted to work three days a week for 30 weeks, four days a week for 18 weeks, and two days a week for four weeks would calculate the number of days leave in his average week by dividing the total number of working days in these periods by 52.

In cases where the leave taken is in blocks of less than one week, a week is only deducted from an employee's overall entitlement to 13 weeks, (18 weeks

for parents of disabled children) when the short periods of leave add up to what would be a normal or average working week.

Good practice example

Employers can increase the total length of leave to over 13 weeks, (18 weeks for parents of disabled children) or disregard leave taken in a previous job.

Frequently asked questions

5. Can a father transfer any part of his leave entitlement to the mother?

Parental leave is an individual right and can not be transferred between parents.

6. How are periods of absence dealt with in calculating an average working week?

Any calculation should include weeks where under the contract of employment the employee would be expected to work, disregarding the possibility that the employee may take any of these weeks as holiday or sick leave.

7. What happens if an individual's status changes from full-time to part-time, or vice versa, during the time period which parental leave can be taken?

If an employee who takes parental leave in blocks of one week changes his hours of work, then a week's parental leave would be equal to what would be a normal working week under the new contract of employment.

When can leave be taken?²

Parents of children born on or after 15 December 1999 (the date the right was first introduced), can take parental leave up to the child's fifth birthday.

Parents of disabled children can take leave up to the child's 18th birthday.

Good practice example

Employers and employees can agree that the leave can be taken over a longer period.

Frequently asked questions

8. Can parental leave be taken immediately after maternity leave?

Mothers can take parental leave immediately after a period of maternity leave, provided that any notice requirements set in the workplace or [fallback scheme](#), whichever is applicable, are met, and provided that other conditions, such as the qualifying period are met.

9. What is the date of placement?

The date of placement is the date when a child is placed by an external agency into a family home prior to formal adoption. Parents can take leave in respect of a child who was placed for adoption with the family before 15 December 1994, where the legal adoption process has been completed on or after 15 December 1994.

10. What happens if there is no date of placement?

There may be occasions when there is no date of placement; for example, if the child is already in a family when a step-parent formally adopts the child in the place of a parent. In such cases, the period in which leave can be taken starts when the step-parent acquires a reasonable expectation of gaining parental responsibility and ends on the child's fifth birthday.

Terms and conditions during parental leave

Some terms and conditions of employment continue to apply during periods of parental leave. These are set out below.

An employee is entitled to benefit from his employer's implied obligation to him of trust and confidence during parental leave, and any contractual terms and conditions relating to:

- *notice periods;*
- *any compensation if the employee is made redundant; and*
- *the business' disciplinary or grievance procedures;*

The employee is bound by his implied obligation of good faith during parental leave and by any contractual terms and conditions relating to:

- *notice periods;*
- *disclosure of confidential information;*
- *the employee working for someone else.*

Employed or self-employed?

The employment contract continues during an absence on parental leave, unless it is terminated by the employer or employee. This means that an employee continues to benefit from his statutory employment rights during parental leave.

The continuation of other terms and conditions during parental leave, such as access to a company car or mobile phone, and perks such as health club membership, remains a contractual matter between the employer and employee.

Frequently asked questions

11. Is parental leave paid?

The right does not include a statutory right to receive pay during leave, so whether or not the employee will be paid is left to the employer's discretion, or to the contract of employment between them.

12. Is an employee entitled to receive any bonuses which may fall during parental leave?

Payments of bonuses during parental leave can be a complicated area, where independent legal advice should be sought. Whether a bonus is payable to an employee on parental leave depends on the type of bonus and terms of the particular bonus scheme.

Generally, however, an employee will be entitled to the bonus if it relates to performance or work already done prior to his parental leave. An employee is unlikely to be entitled to the bonus if it is a reward for future work or performance, during a period in which the employee would be absent on parental leave.

In drawing up the terms and conditions of any bonus scheme, employers should take particular care not to indirectly discriminate on grounds of sex against those employees taking parental leave.

13. Can holiday entitlement accrue during periods of parental leave?

A period of absence on parental leave does not affect entitlement to paid annual leave under the Working Time Regulations (Northern Ireland) 1998. The booklet '[A guide to the Working Time Regulations](#)' provides more information on the entitlement to statutory holiday leave.

The accrual of additional contractual holiday entitlement during parental leave is a matter for agreement between the parties concerned (or their representatives).

Returning to work after parental leave

An employee is entitled to return to the same job as before if the parental leave was for four weeks or less **and either** an isolated period of leave **or** the last of two or more consecutive periods of statutory leave which didn't include any period of additional maternity leave or additional adoption leave.

After a period of parental leave of more than four weeks or parental leave which was preceded or followed by consecutive periods of leave which included a period of additional maternity leave or additional adoption leave the employee is entitled to return to the job in which he was employed before, unless that is not reasonably practicable. If it is not reasonably practicable for the employee to return to the same job they are entitled to return to a similar job which has the same or better status, terms and conditions as the old job.

An employee returning to work after parental leave is entitled to benefit from any general improvement to the rate of pay (or other terms and conditions) which may have been introduced for his grade or class of work while he has been away.

Frequently asked questions

14. What happens to an employee's seniority rights on resuming work after taking parental leave?

Generally an employee's seniority and pension rights are unaffected by parental leave and rights on return from parental leave should be the same as they would have been if the employee had not been absent.

However, if the parental leave period is consecutive with other periods of statutory leave which include a period of additional maternity leave or additional adoption leave, the periods of employment before the additional maternity leave or additional adoption leave are joined together with the period of employment following it as if the two periods were continuous. The additional maternity leave period or additional adoption leave period does not count for the purposes of assessing seniority pension rights or calculating length of service for statutory rights, such as two years' service for redundancy payments. (See '[Terms and conditions during parental leave](#)' on page 7).

Parental leave and redundancy

An employee taking parental leave should be treated the same as any other employee when a redundancy situation arises. This includes treatment relating to consultation about the redundancy and consideration for any other job vacancies. The booklet '[Redundancy consultation and notification](#)' (ER4) gives general information about the statutory redundancy rights.

It is unlawful for an employer to select an employee for redundancy solely or mainly on the basis that he is taking, proposing to take, or has taken, parental leave.

Making workplace agreements about parental leave

Designing a flexible scheme

Wherever possible, employers and employees should make their own agreements about how parental leave will work in a particular workplace. They may choose to do so through collective, workforce or individual agreements. In small firms especially, where employers and employees work closely together, individual arrangements may be easier to agree. Any agreement should be incorporated into the employee's contract of employment.

Collective agreements

Collective agreements are made between one or more independent trade unions and an employer (or employer's association).

Workforce agreements

A workforce agreement can be made if employers and employees have no collective agreement already. It may apply to the whole workforce or a group of employees within it. If it is to apply to a group of employees, the group must share a workplace or do related work or belong to a particular department or unit within their employer's business.

Where terms and conditions are normally determined by a collective agreement, then employers cannot use workforce agreements for the purposes of parental leave.

Individual agreements

Other agreements may be between an employer and an individual employee.

How to set up a workforce agreement

Employers should first decide with whom they want to make the agreement: the whole workforce or a group within it. One or more representatives for the workforce or the group should then be elected to negotiate the agreement with the employer. This process should be set up by the employer.

The employer should:

- *decide on the number of representatives to be elected;*
- *ensure candidates are members of the workforce on the date of the election or, in the case of a group, a member of the group to whom the agreement is to apply;*
- *allow each employee a vote for each representative to be elected to represent them;*

- *ensure as far as is reasonably practicable that they are elected by secret ballot; and*
- *ensure that the votes are counted fairly and accurately.*

To be valid, a workforce agreement must:

- *be in writing;*
- *be shown to all employees it will apply to, together with a guide explaining what it means;*
- *be signed when it comes into effect, either by all representatives or by most of the workforce where 20 or fewer employees are employed; and*
- *last for no longer than five years.*

What are the basic rules for all parental leave schemes?

All schemes must provide key elements – the bottom line – consisting of:

- *13 weeks' parental leave for each child;*
- *18 weeks' parental leave for parents of each disabled child;*
- *for parents of children born or adopted on or after 15 December 1999, the employee's rights to take leave last until the child's fifth birthday or until five years have elapsed following placement in the case of adoption;*
- *parents of disabled children are able to use their leave up until the child's 18th birthday;*
- *the employee will remain employed while on parental leave: some terms, such as contractual notice and redundancy terms will still apply;*
- *where the leave is taken for a period of four weeks or less and is **either** an isolated period of leave **or** the last of two or more consecutive periods of leave which did not include any period of additional maternity leave or additional adoption leave the employee will be entitled to go back to the same job; and*
- *in all other cases, an employee returning to work after parental leave of more than 4 weeks, or after consecutive periods of family leave, which included additional maternity leave or additional adoption leave, is entitled to return to the same job as before, or if that is not reasonably practicable, to another job which is suitable and appropriate.*

What other matters can employers and employees agree?

Agreements can also cover matters such as how much notice of parental leave must be given, arrangements for postponing the leave when the business cannot cope or could be harmed by the employee's absence, and how leave should be taken.

What happens when there is no agreement in the workplace?

Where no agreements are reached between the employer and employee, or until an agreement is in place, the [fallback scheme](#) automatically comes into effect.

Where there is collective or workforce agreement, employers and employees are not bound by the provisions set out in the [fallback scheme](#).

Under an individual agreement, an employee will always have the right to rely on any of the provisions in the [fallback scheme](#), if they are more favourable than the contractual arrangement in any respect.

Frequently asked questions

15. Can an employee or employer change any aspect of a workforce or collective agreement?

Collective agreements can continue indefinitely and workforce agreements must be for a fixed term; the term must not be longer than five years. Employers and employees can seek to re-negotiate the terms and conditions of a workforce or collective agreement.

Whilst the agreement is in force, both employers and employees are bound by its terms provided it has been incorporated into the employees' contracts of employment.

The fallback scheme

It will be preferable for a scheme to be agreed at local level. However, if this does not happen then the fallback scheme will apply.

What happens under the fallback scheme?

An employee can take leave in blocks of one week or more (for example, in two-week or three-week blocks), up to a maximum of four weeks in a year for each child.

Parents whose child is entitled to Disability Living Allowance can take the leave in days or periods shorter than a week.

Giving the employer notice of parental leave

An employee needs to give at least 21 days' notice to his employer, giving the dates when the parental leave is to start and finish. The notice does not have to be in writing.

Where an employee wishes to take parental leave immediately after the birth of a child, the employee needs to give 21 days' notice before the beginning of the expected week of childbirth (expectant mothers will be able to provide this information to their partners). Where parental leave is required immediately after the placement of a child for adoption, the employee needs to give 21 days' notice of the expected week of placement. In rare cases where this is not possible, an adoptive parent should give the notice as soon as is reasonably practicable.

Provided that the employee has given the notice set out above, parental leave will start on the day on which the child is born, regardless of whether the child is born early or late, or the day on which the child is placed for adoption. The employee should ensure that the required notice period for parental leave is given to their employer, if parental leave is to follow immediately after the maternity period.

Postponement of parental leave by the employer

If an employer considers that an employee's absence would unduly disrupt the business, then the employer can postpone the leave for no longer than six months after the beginning of the period that the employee originally wanted to start his parental leave.

The employer should discuss the postponement with the employee and give notice of the postponement in writing no later than seven days after the employee's notice to take leave was given to him. The employer's notice should state the reason for the postponement and set out the new dates of parental leave. The length of the leave should be equivalent to that in the employee's original request.

Leave may only be postponed where the employer considers that the business would be unduly disrupted if the employee took leave at the time he has chosen. Employers may be justified in postponing leave when, for example, the work is at a seasonal peak; where a significant proportion of the workforce applies for parental leave at the same time, or when the employee's role is such that his absence at a particular time would unduly harm the business.

Exceptions to the postponement provisions

When an employee applies to take parental leave immediately after the birth or adoption of a child, then the employer cannot postpone the leave.

Women who have given birth are entitled to maternity leave after the birth of their child. Whether they are able to take parental leave immediately after maternity leave would be subject to the normal arrangements for postponement and would depend on whether their absence would unduly disrupt the business (see '[Postponement of parental leave by the employer](#)' on page 13).

Record keeping

Employers are not required to keep records of parental leave taken, but many will want to do so for their own purposes.

Employers are free to disregard any parental leave previously taken.

Employers are free to request records from a previous employer, although the previous employer is not required to have kept them or supply them. For parents of children born or adopted between 15 December 1994 and 14 December 1999, employers are free to request evidence of an employee's previous service from an employer, where the period of service with that employer is being counted as qualifying service when determining the employee's eligibility for parental leave.

Frequently asked questions

16. How is a year calculated?

For parents of children born or adopted on or after 15 December 1999, a year is a 12-month period which starts when the employee first becomes entitled to take parental leave in respect of an individual child. The employee will become entitled to take parental leave either when the child is born or when he has completed a year's service, whichever is later.

If there is a break in service, for example because the employee has started working for a new employer, a new leave year will start when the employee has built up one year's service with the new employer.

For parents of children born or adopted between 15 December 1994 and 14 December 1999, a year is a 12-month period the employee has worked **continuously** for an employer during the period 15 December 1998 and 20

April 2002. This can be with either the employee's current employer or a previous employer.

17. Can an employer ask to see evidence of entitlement to parental leave?

An employer can ask to see evidence that the employee is the parent of a child or has parental responsibility for the child, that the child is below the age at which the right to parental leave ceases and, where relevant, that the child is entitled to Disability Living Allowance. Evidence might take the form of the child's birth certificate, papers confirming the child's adoption or the date of placement for adoption, or in the case of a disabled child, a record of Disability Living Allowance payments for the child. The employer's request must be reasonable; it may not be reasonable for the employer to check on the employee's entitlement on every occasion on which leave is asked for.

18. Can service with a previous employer count when asking for leave?

Parents of children born or adopted on or after 15 December 1999 must have worked for their current employer for one continuous year by the time they wish to take parental leave.

Parents of children born or adopted between 15 December 1994 and 14 December 1999 must have worked continuously for one year for either their current employer or a previous employer during the period 15 December 1998 and 20 April 2002, and must be employed at the time they wish to take parental leave.

19. Can an employer ask for evidence of qualifying service with a previous employer?

An employer of a parent of a child born or adopted between 15 December 1994 and 14 December 1999, who is relying on a period of service with a previous employer in order to satisfy the one year service requirement, can ask to see evidence of the relevant period of service.

20. Can an employee lose his entitlement to leave if, by postponing leave, the date for taking this leave goes past the child's fifth birthday (or the usual last date which would apply to them)?

An employee should not lose the entitlement to parental leave because leave is postponed by the employer. An employer may only postpone a period of parental leave for a period of six months and not after the child's 18th birthday.

Protection from detriment and dismissal

Protection from detriment

Detriment can cover a wide range of discriminatory actions, such as denial of promotion, facilities or training opportunities which the employer would otherwise have offered or made available.

An employer cannot subject an employee to a detriment because he:

- *took parental leave;*
- *sought to take parental leave;*

or because the employee has:

- *declined to sign a workforce agreement on parental leave; or*
- *performed, or proposed to perform any functions or activities as a representative or candidate in connection with such an agreement.*

Employees who suffer unfair treatment at work for the above reasons are entitled to make a complaint to an industrial tribunal (see the chapter on '[Resolving disputes](#)').

Protection from dismissal

Dismissal means the termination of employment by the employer, with or without notice. It could also include constructive dismissal, where the employee has resigned because the employer has breached the contract of employment. Or, it could include the expiry of a fixed-term contract without its renewal. The booklet '[Unfairly Dismissed?](#)' (ER13) sets out more fully the meaning of dismissal.

It is unlawful for an employer to dismiss an employee because he:

- *took parental leave;*
- *sought to take parental leave;*

Or because the employee has:

- *declined to sign a workforce agreement on parental leave; or*
- *performed, or proposed to perform any functions or activities as a representative or candidate in connection with such an agreement.*

An employee dismissed or selected for redundancy in these circumstances is entitled to make a complaint of unfair dismissal to an industrial tribunal (see the chapter on '[Resolving disputes](#)' below).

Resolving disputes

Attempting to resolve the problem at work

Where there is a dispute about parental leave between the employee and the employer, it is a good idea for both to try to sort the problem out between them. It may be helpful to talk the matter over with line management and to involve a union representative (where there is one). It may even be necessary to use the business's own grievance or appeals procedure or to seek outside assistance from the Labour Relations Agency.

The time limit for making a complaint to an industrial tribunal will normally be extended by three months to allow for attempts to be made to settle the matter.

If no attempt is made by an employee to resolve a grievance by putting it in writing and allowing the employer to reply, a subsequent tribunal claim will usually not be accepted. If an employee does put the problem in writing but does not attend a formal meeting with the employer to discuss it, it is possible that a tribunal could reduce any award made to the employee. (The tribunal can also increase an award if the employer has not followed the proper steps.)

Complaints to industrial tribunals

However, if an acceptable solution cannot be found and the employer:

- *unreasonably postpones a period of parental leave requested by the employee;*
- *prevents, or attempts to prevent, the employee taking parental leave;*
- *subjects the employee to detriment in connection with parental leave;*
or
- *dismisses the employee in connection with parental leave.*

the employee has the right to complain to an industrial tribunal.

The complaint should normally be made within **three months** of the employer's postponement of parental leave or refusal to allow the employee to take parental leave, or of the detriment or dismissal. Where the detriment suffered is due to the employer's failure to act or provide a benefit, the complaint should be made within **three months** of the failure to act. An extension to the time limit will normally be granted where attempts are being made to resolve the dispute – see '[Attempting to resolve the problem at work](#)' above. Alternatively, in exceptional circumstances, an extension can be granted where the industrial tribunal is satisfied that it was not reasonably practicable for the complaint to have been made earlier.

An employee who wishes to make a complaint to an industrial tribunal should obtain an application form IT1 (NI) and an explanatory leaflet from the Office of Industrial Tribunals and the Fair Employment Tribunal (OITFET) (see [‘Appendix 2: Useful addresses’](#)).

When OITFET receives the completed application form, it will send a copy to the LRA, which will try and help the two sides to reach a settlement of the complaint.

If conciliation is not possible or fails, the industrial tribunal will hear the case, and both parties should attend the hearing. They may claim travelling expenses and other expenses within certain limits. Industrial tribunal hearings are conducted informally and in a way which makes it easy for the parties to present their own case if they wish to do so. However, if either party wants to be represented – whether by a lawyer or by someone else such as a trade union, an employers’ association, a relative or a friend – this is permitted.

Remedies

Where an employee complains that his request for parental leave has been unreasonably postponed, or that he has been refused parental leave, or prevented from taking parental leave, and the tribunal finds the complaint well-founded, it will make a declaration to that effect and may order the payment of compensation.

Where an employee complains that he has been subjected to a detriment and the tribunal finds the complaint well-founded, it will make a declaration to that effect and may order the payment of compensation. There is no limit on awards in cases of detriment. It is for the tribunal to decide the appropriate award, taking account of the loss suffered by the applicant.

Where a tribunal finds that the employee was unfairly dismissed or selected for redundancy, it will order reinstatement or re-employment, or the payment of compensation. For further details of remedies in cases of unfair dismissal, see [‘Unfairly Dismissed?’ \(ER13\)](#) and [‘Dismissal: fair and unfair: a guide for employers’ \(ER18\)](#). The booklet [‘Limits on payments’ \(ER19\)](#) sets out the financial limits payable on compensation awards for unfair dismissal.

Enforcing agreements

Both employers and employees are bound by an agreement provided it has been incorporated into the contract of employment.

An employee may seek legal redress if his employer breaches the contract of employment. The Employment Rights booklet [‘Contracts of Employment: changes, breach of contract and deductions from wages’ \(ER21\)](#) explains the means of redress available to both employees and employers in these circumstances.

Other help employees can get during parental leave

Claiming Income Support during parental leave

Income Support can be paid to people who take parental leave and qualify under the existing rules for claiming Income Support. Further information on Income Support is available from your local Social Security Office/[Jobs and Benefits office](#), the [Social Security Agency's](#) website or by contacting the [Benefit Enquiry Line](#) on 0800 220 674.

Unless the employee is disabled or lone parent, employees need to satisfy additional conditions in order to qualify for Income Support during parental leave. Claimants must be receiving either Working Tax Credit and Child Tax Credit or Housing Benefit immediately before taking parental leave. In addition, the following conditions apply:

- *the leave must be unpaid;*
- *the leave should not exceed 13 weeks in total (18 weeks for parents of disabled children), and no more than 4 weeks in any one year;*
- *the leave is taken to look after a child who lives with the claimant and is the claimant's own child;*
- *in the case of an employee whose child is born or adopted on or after 15 December 1999, the leave is taken by the child's fifth birthday, or up to five years from the placement date for adoption, or the adopted child's 18th birthday if this is sooner;*
- *in the case of an employee for whose child Disability Living Allowance has been awarded, taken by the child's 18th birthday.*

Employees will need to provide some details about their family and incomes to their local Social Security Office/[Jobs and Benefits office](#), as well as evidence about their leave from their employer.

The local Social Security Office/[Jobs and Benefits office](#) will provide a claim form for the employee to complete, which will ask for information on such issues as details of income or receipt of qualifying benefits.

Employees will need to ask their employer to confirm in writing that the employee is taking parental leave and the dates when the leave starts and ends.

Other benefits

Jobseeker's Allowance is benefit for people who are unemployed and are looking for work. Employees may be able to claim Jobseeker's Allowance during parental leave. More information about Jobseeker's Allowance can be obtained from leaflet '[Helping you back to work](#)' (JSAL5) which is available from [Jobs and Benefits offices](#) and Social Security Offices.

Housing Benefit is an income-related benefit designed to help meet the costs of rent. If an employee is on Income Support or on a low income and is liable to pay rent, then he may already be receiving these benefits. If an employee's income is stopped or reduced during parental leave, or the employee receives Income Support, he may be entitled to Housing Benefit. If an employee already receives these benefits, he may be entitled to an increase in the benefit.

Further advice or leaflet '[A guide to Housing Benefit](#)' (RR2) can be obtained from the Department of Social Development.

Child Tax Credit and Working Tax Credit

Child Tax Credit and Working Tax Credit are administered by Her Majesty's Revenue and Customs (HMRC) and have been payable since April 2003. Both tax credits are based on household income.

Child Tax Credit is a way to claim money for children, whether or not the claimant is in work.

Working Tax Credit supports working people on low incomes by topping up earnings. It includes support for the cost of qualifying childcare. Depending on household income, parents may be entitled to Working Tax Credit if they are normally engaged in qualifying remunerative work for at least 16 hours a week.

People taking parental (or any other unpaid) leave are not engaged in qualifying remunerative work during that leave. But they may still qualify for Working Tax Credit, if the leave does not last long enough to alter their "normal working hours". As a general rule HMRC would not regard parental (or other unpaid) leave lasting up to 4 weeks as altering a person's normal working hours.

Endnotes

¹ "Parental responsibility" has the meaning given by Article 6 of the Children (Northern Ireland) Order 1995.

² Historical note: parents of children born between 15 December 1994 and 14 December 1999 were entitled to take parental leave up until 20 July 2005. Parents of children adopted between 15 December 1994 and 14 December 1999 likewise were entitled to take parental leave up to 20 July 2005, or the child's 18th birthday if this was sooner.

Appendix 1: Booklets in this series

Booklets in this series are available online from www.delni.gov.uk/erbooklets or can be obtained by contacting the Department.

- ER 1 *Individual rights and responsibilities of employees*
- ER 2 *Written statement of employment particulars*
- ER 3 *Redundancy entitlement statutory rights*
- ER 4 *Redundancy consultation and notification*
- ER 5 *Your rights if your employer is insolvent*
- ER 6 *Unjustifiable discipline by a trade union*
- ER 7 *Time off for public duties*
- ER 8 *Continuous employment and a week's pay*
- ER 10 *Suspension from work on medical or maternity grounds*
- ER 12 *Pay statements: what they must itemise*
- ER 13 *Unfairly dismissed?*
- ER 14 *Guarantee payments*
- ER 15 *Rights to notice and reasons for dismissal*
- ER 16 *Maternity rights: a guide for employers and employees*
- ER 17 *Help with meeting redundancy costs for employers in financial difficulty*
- ER 18 *Dismissal: fair and unfair - a guide for employers*
- ER 19 *Limits on payments and awards*
- ER 21 *Contracts of employment: changes, breach of contract and deductions from wages*
- ER 22 *Criminal records and employment*
- ER 23 *Payment of union subscriptions through "check off"*
- ER 24 *Time off for dependants*
- ER 25 *Parental leave: a guide for employers and employees*
- ER 26 *Time off for study or training*

- ER 27** *Industrial action and the law: a guide for employees*
- ER 28** *Trade union executive elections*
- ER 29** *Industrial action and the law: a guide for employers*
- ER 30** *Industrial action and the law: a guide for individuals whose supply of goods or services is affected by unlawful industrial action*
- ER 31** *Union membership: rights of members and non-members*
- ER 33** *Trade union political funds*
- ER 34** *Rights to paternity leave and pay*
- ER 35** *Adoptive parents: a guide for employers and employees*
- ER 36** *Flexible working: a guide for employers and employees*

Additional employment rights publications, covering a range of other issues, can be found online at www.delni.gov.uk/erpublications or can be obtained from the Department.

Appendix 2: Useful addresses

Certification Officer for Northern Ireland

10-12 Gordon Street
Belfast
BT1 2LG

Tel: 028 9023 7773

Fax: 028 9023 2271

Textphone: 028 9023 8411

Website: www.nicertoffice.com

Email: info@nicertoffice.com

Department for Employment and Learning

Redundancy Payments Service
Room 203
Adelaide House
39-49 Adelaide Street
Belfast
BT2 8FD

Tel: 028 9025 7956

Freephone: 080 0585 811

Fax: 028 9025 7555

Website: www.redundancyni.gov.uk

E-mail: rpsquery@delni.gov.uk

The Health & Safety Executive for Northern Ireland

83 Ladas Drive
Belfast
BT6 9FR

Tel: 028 9024 3249

Fax: 028 9023 5383

Textphone: 028 9054 6896

Freephone Helpline: 080 0032 0121

Website: www.hseni.gov.uk

Department for Employment and Learning

Employment Relations Policy and
Legislation Branch
Room 203
Adelaide House
39-49 Adelaide Street
Belfast
BT2 8FD

Tel: 028 9025 7580

Website: www.delni.gov.uk/er

E-mail: erbooklets@delni.gov.uk

The Equality Commission for Northern Ireland

Equality House
7-9 Shaftesbury Square
Belfast
BT2 7DP

Tel: 028 9050 0600

Fax: 028 9033 1544

Textphone: 028 9050 0589

Website: www.equalityni.org

E-mail: information@equalityni.org

Industrial Court

Room 203
Adelaide House
39-49 Adelaide Street
Belfast
BT2 8FD

Tel: 028 9025 7599

Fax: 028 9025 7555

Website: www.industrialcourt.gov.uk

E-mail: enquiries@industrialcourt.gov.uk

Labour Relations Agency

Head Office
2-8 Gordon Street
Belfast
BT1 2LG

Tel: 028 9032 1442

Fax: 028 9033 0827

Textphone: 028 9023 8411

Website: www.lra.org.uk

E-mail: info@lra.org.uk

NI Business Info

(website giving information on a wide range of issues for employers)

Website: www.nibusinessinfo.co.uk

Labour Relations Agency

Regional Office
1-3 Guildhall Street
Londonderry
BT48 6BJ

Tel: 028 7126 9639

Fax: 028 7126 7729

Textphone: 028 9023 8411

Website: www.lra.org.uk

E-mail: info@lra.org.uk

Office of the Industrial Tribunals and the Fair Employment Tribunal

Killymeal House
2 Cromac Quay
Ormeau Road
Belfast
BT7 2JD

Tel: 028 9032 7666

Fax: 028 9023 0184

Website: www.employmenttribunalsni.org

people:skills:jobs:



Department for
**Employment
and Learning**
www.delni.gov.uk



INVESTOR IN PEOPLE

THE DEPARTMENT:

Our aim is to promote learning and skills, to prepare people for work and to support the economy.

This document is available in other formats upon request.

Further information:

telephone: 028 9025 7580

e-mail: employment.rights@delni.gov.uk

website: www.delni.gov.uk