

Shared parental leave and pensions

✓ **Pranav Yajnik and Laura Clarke explore the considerations of the new shared parental leave regime for pension fund trustees**

The shared parental leave (SPL) regime came into force at the beginning of April this year. In a move away from 'traditional' maternity leave, the regime allows a parent to bring their maternity or adoption leave to an end early, and opt-in instead to SPL. The first two weeks of compulsory maternity leave are reserved for the mother. The remaining period of 50 weeks leave can be shared between the parents as SPL. Parents taking SPL may also be entitled to receive statutory shared parental pay (ShPP). This is available for 37 weeks and is paid at the flat rate only. Employers may enhance ShPP, just as statutory maternity pay may be enhanced. Both parents have to pass a test to determine eligibility for SPL and statutory ShPP, which includes (amongst other things) elements in relation to continuous employment, curtailment of maternity leave, employment and earnings, and having main responsibility for caring for the child.

What do employers need to be aware of?

- Eligible employees are entitled to opt-in to SPL as of right, both the legal right to choose to take SPL and to determine when they take it.
- An employer cannot refuse a request for continuous leave. If discontinuous leave is requested then the employer will have 14 days to discuss the request with the employee and consider how and

whether the request, or a modified version of it, can be agreed.

- During SPL an employee is entitled to benefit from all of the terms and conditions of their employment (including accrual of holiday and benefits), except for remuneration. They are also bound by any obligations arising from the terms and conditions except the need to attend work.



- An employee is entitled to return to their previous job after a period of SPL if their leave is 26 weeks or less, regardless of whether the leave has been continuous or discontinuous. If the leave is more than 26 weeks, and it is not reasonably practicable for them to return to the same position, the employee must be offered a suitable alternative job on terms and conditions that are no less favourable, if one is available.
- An employer should take care to deal with SPL requests fairly and consistently as causing an employee to suffer a detriment, or dismissing an employee as a result of exercising or seeking to exercise their right to take SPL is unlawful.

- The employer should consider how they can facilitate a smooth and positive administration of the process to ensure any leave has the least impact on their operations. Although there is no obligation to have an SPL policy or hold informal discussions, it may be a good idea so that both parent and line managers are aware of how the 'opt-in' and notification processes will operate.

What do pension scheme trustees have to do?

- Parents are entitled to continue to participate in their employer occupational pension scheme during SPL.
- Pension scheme trustees should ensure that their scheme is operated in compliance with the new provisions and any updated HR policies, and that scheme administrators are aware of them.
- During a period of paid SPL, the employee will pay pension contributions on the basis of the salary received. However, the employer will pay contributions as if the employee were earning their normal salary. During unpaid SPL, no pension contributions are required.
- Administrators will need to work out between each parent's employer who is taking which periods of SPL, and confirm whether ShPP has been enhanced in respect of the relevant parent, and calculate contributions accordingly.
- From a practical perspective, given that many pension schemes are currently going through an amendment exercise in response to the wider industry reforms introduced earlier this year, it is advisable to update the family leave provisions in trust deeds and rules at the same time to reflect the new rights.

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