

Pay and time off work for parents - Special cases

For babies due or born
on or after 6 April 2004

An employer's further guide to

- Statutory Maternity Pay and Leave
- Statutory Paternity Pay and Leave

Help

If you need help with anything in this Help Book

Phone

Monday to Friday 8am until 8pm **0845 7 143 143**
Saturday and Sunday 8am until 5pm

Hearing impaired employers

Textphone **0845 602 1380**

You can also contact a local Inland Revenue office – you'll find them in your phone book under Inland Revenue.

Business Support Teams

We have a UK-wide network of Inland Revenue Business Advisers who can help you get started on Statutory Maternity Pay (SMP) and Statutory Paternity Pay (SPP). Workshops can be arranged for a morning or afternoon and will help you understand the payroll records to keep and the how and why of filling in forms and returns. A workshop would last two to three hours.

Our Business Advisers also offer

- a variety of payroll workshops, designed with busy employers in mind, and
- one-to-one visits at a place and time to suit you.

Call **0845 60 70 143**, or go to www.inlandrevenue.gov.uk/bst/index.htm

Help on screen

- go to www.ir-portal.gov.uk/calculators/smp for an interactive SMP calculator
- use the Employer's CD-ROM for this Help Book and the Employer's Help Book E15, *Pay and time off work for parents*, and for examples of calculating SMP/SPP
- go to www.tiger.gov.uk for interactive help on maternity and paternity leave.

Payroll - advice and guidance

For help on other subjects

- go to www.inlandrevenue.gov.uk/employers
- use the Employer's CD-ROM
- go to www.tiger.gov.uk

Abbreviations and language

For this Help Book, we have translated some of the phrases we have used in the past into everyday language

- Expected week of confinement or childbirth (EWC) becomes 'week baby due'.
- Qualifying week (QW) becomes '15th week before the week baby due'.
- Lower earnings limit (LEL) for National Insurance purposes is shown as an amount of money. The LEL is the minimum amount of earnings that an employee needs to qualify for benefits. For 2004-05 it is £79.
- Maternity Pay Period (MPP) and Paternity Pay Period (PPP) become 'pay period'.
- We have used 'father', 'he', 'him' and 'his' throughout this Help Book when talking about people who can get SPP and paternity leave. However a female partner of a same sex couple can also get SPP and paternity leave, as well as the

biological father and the mother's partner or husband who is not the baby's biological father.

When to use this Help Book

This Help Book does not cover all the law and details of SMP and SPP or maternity and paternity leave.

It only contains information on special cases.

You should use it if you have been referred here by the Employer's Help Book, *E15 Pay and time off work for parents*, because one of the special cases referred to in that Help Book applies to your employee.

Further guidance

Employer's Help Books

In addition to those included in the Employer's Pack we have Employer's Help Books covering

- *Pay and time off work for parents – Special cases, E15*
- *Pay and time off work for adoptive parents, E16*
- *Pay and time off work for parents – Special cases, E16 (Supplement)*.

The Help Books are for guidance only. They are not comprehensive and have no legal force.

We also have a number of other booklets that give further guidance, for example

- *Employer's Further Guide to PAYE and NICs, CWG2(2004)*
- *Class 1A NICs on benefits in kind, CWG5(2004)*
- *Expenses and Benefits – a tax guide, 480(2004)*.

You can view the full range of these booklets, and other forms and guidance on

- the Internet at www.inlandrevenue.gov.uk/employers
- the Employer's CD-ROM

or you can

- download them from the Internet www.inlandrevenue.gov.uk/employers
- print them from the CD-ROM*
- get copies from the Employer's Orderline www.inlandrevenue.gov.uk/employers

Phone : **0845 7 646 646**

Fax : **0870 2 406 406**

Check the Order Form in your Employer's Pack for a full list of what is available and how to order.

Forms and guidance in Braille, large print or audio

We have a range of services for people with disabilities, including leaflets in Braille, audio and large print. For details, please ask at your local Inland Revenue office or Enquiry Centre.

Yr Iaith Gymraeg/Welsh

Ffoniwch **0845 302 1489** i dderbyn fersiynau Cymraeg o ffurflenni a chanllawiau.

*The CD-ROM contains interactive features designed to help the newcomer to payroll. This simple on-line guide takes the reader through the calculation of tax and National Insurance. Calculators have been built in to help speed up your calculations of

- *Pay Adjustment and PAYE*
- *NICs contracted out and not contracted-out*
- *Car benefit and Car Fuel benefit*

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Using your own versions of the forms

You can produce your own computerised or paper versions of these forms. There is no formal approval process.

Why I cannot pay you SMP, form SMP1

It must include

- your employee's name, address and National Insurance number
- the reason why you think you cannot pay Statutory Maternity Pay (SMP), or
- if you have made some payment, but don't think you should make any more
 - the total number of weeks you have paid or think you should pay
 - the date you think you should stop paying
 - the reason why you think you should stop paying.

It will help your employee if you also include information about what she should do

- if she disagrees with your decision
- to claim Maternity Allowance.

Statutory Maternity Pay record sheet, form SMP2

It must include

- your employee's name and National Insurance number
- a record of the payment dates and the amount paid
- the date the SMP pay period began
- a record of any weeks in the 26 week period when SMP wasn't paid, with reasons.

You may also find it helpful to record

- the week baby due
- the 15th week before the week baby due
- the date of birth
- the date when your employee told you she planned to start her maternity leave
- the date she planned to start her maternity leave
- if your employee changed her mind, when she told you the new date she wanted to start her leave, and the new date.

Becoming a parent, form SC3

It must include your employee's name and National Insurance number and a declaration that they

- intend to support the mother or care for the child, **and**
- have or expect to have responsibility for the upbringing of the child, **and**
- are either
 - the baby's biological father, **or**
 - married to the baby's mother, **or**
 - living with the mother in an enduring family relationship, but are not an immediate relative.

It must also include

- the expected date of birth, and where the baby has been born, the date of birth
- the date from which the employee wants to be paid Statutory Paternity Pay (SPP)
- whether the employee wants to be paid one week or two.

Why I cannot pay you SPP, form SPP1

It must include

- your employee's name, address and National Insurance number
- the reason why you think you cannot pay SPP, or
- if you have made some payment, but don't think you should make any more
 - the date you think you should stop paying
 - the reason why you think you should stop paying.

It will help your employee if you also include information about what he should do

- if he disagrees with your decision
- to claim other government help.

Using your own versions of the forms *continued*

Statutory Paternity Pay record sheet, form SPP2

It must include

- your employee's name and National Insurance number
- a record of the payment dates and the amount paid
- the date the SPP pay period began
- a record of any unpaid SPP, with reasons.

You may also find it helpful to record

- the week baby due
- the 15th week before the week baby due
- the date of birth
- the date when your employee told you he planned to start his paternity leave
- the date he planned to start his paternity leave
- if your employee changed his mind, when he told you the new date he wanted to start his leave, and the new date.

Who is an employee and who is an employer?

General

Pay

An **employee** is a person whose earnings attract a liability to employer's secondary and employee's primary Class 1 National Insurance contributions (NICs), or would be if they were high enough.

Whoever is liable to pay the employer's Class 1 NICs is the **employer**. There does not have to be a written contract.

Employees include office holders, for example, police officers, Members of Parliament, the judiciary and some company directors.

People who are classed as employed earners for Class 1 NICs liability, for example, agency workers, are also employees.

If you are not sure who is an employee and who is an employer for pay, contact your local Inland Revenue office and ask for the Status Inspector.

Leave

An **employee** is someone working under a contract of employment. The **employer** is the person who is employing them under that contract.

Office holders, for example, police officers, Members of Parliament, the judiciary and some company directors are not included as employees.

If you are not sure who is an employee and who is an employer for leave, contact the Arbitration and Conciliation Advisory Service (Acas) (see www.acas.org.uk or or call **08457 47 47 47**) or seek independent legal advice.

Agency workers

Pay

Agency workers can be treated as employees for PAYE tax and Class 1 NICs. If you have to deduct PAYE tax and Class 1 NICs from the agency worker's earnings then you will have to pay them Statutory Maternity Pay (SMP) or Statutory Paternity Pay (SPP) if they satisfy the qualifying conditions. If you're not sure whether you have to deduct PAYE tax and Class 1 NICs from the agency worker's earnings contact your local Inland Revenue office and ask for the Status Inspector.

The rules on 'Evidence for pay' on page 12 of the Employer's Help Book E15, *Pay and time off work for parents*, apply to agency workers.

There are special rules for

- has your employee worked for you long enough? See page 9, and
- does your employee earn enough? If they are not paid on every payday, see page 15. If they are paid on every payday follow the guidance starting on page 14 of the Employer's Help Book, E15

- when should your employee give you dates for pay and leave? Where agency workers are not entitled to maternity or paternity leave they only have to give you 28 days notice of when they want to start being paid SMP or SPP.

Employers should allow sufficient flexibility of notice because of the possible differences between the expected date of birth and actual date of birth.

There are no special rules on

- paying SMP or SPP, see page 21 of the Employer's Help Book, E15
- how much SMP or SPP you can get back, see page 23 of the Employer's Help Book, E15
- where does the money come from? See page 24 of the Employer's Help Book, E15
- keeping records, see page 25 of the Employer's Help Book, E15
- stillbirth, see page 30 of the Employer's Help Book, E15
- baby born more than 15 weeks before due date, see page 28 of the Employer's Help Book, E15
- baby born before intended start of leave, see page 29 of the Employer's Help Book, E15
- pregnancy related illness, see page 30 of the Employer's Help Book, E15.

Leave

Agency workers who are not employees (that is, not employed under a contract of employment) are not entitled to maternity or paternity leave. If you're not sure whether a worker is employed under a contract of employment, contact the Arbitration and Conciliation Advisory Service (Acas) (see www.acas.org.uk or call **08457 47 47 47**).

Casual workers

General

A casual worker is usually someone who works for somebody as and when they are required, but

- they do not have to accept the work that is offered
- the person with the work does not have to offer it to them.

Pay

If you have to deduct PAYE tax and Class 1 NICs from the casual worker's earnings then you will have to pay them Statutory Maternity Pay (SMP) or Statutory Paternity Pay (SPP) if they satisfy the qualifying conditions. If you're not sure whether you have to deduct PAYE tax and Class 1 NICs from the worker's earnings contact your local Inland Revenue office and ask for the Status Inspector.

The rules on 'Evidence for pay' on page 12 of the Employer's Help Book, E15, apply to casual workers.

Who is an employee and who is an employer? *continued*

There are special rules for

- has your employee worked for you long enough? See page 8, and
- does your employee earn enough? If they are not paid on every payday see page 15. If they are paid on every payday follow the guidance starting on page 14 of the Employer's Help Book, *E15, Pay and time off work for parents*,
- when should your employee give you dates for pay and leave? If the casual worker is not entitled to leave they only have to give you 28 days notice of when they want to start being paid SMP or SPP. If the casual worker is an employee and entitled to leave, follow the rules on page 18 of the Employer's Help Book, *E15*.

There are no special rules on

- paying SMP or SPP, see page 21 of the Employer's Help Book, *E15*
- how much SMP or SPP you can get back, see page 23 of the Employer's Help Book, *E15*
- where does the money come from? See page 24 of the Employer's Help Book, *E15*
- keeping records, see page 25 of the Employer's Help Book, *E15*
- stillbirth, see page 30 of the Employer's Help Book, *E15*
- baby born more than 15 weeks before due date, see page 28 of the Employer's Help Book, *E15*
- baby born before intended start of leave, see page 29 of the Employer's Help Book, *E15*
- pregnancy related illness, see page 30 of the Employer's Help Book, *E15*.

Leave

Casual workers who are not employees (that is, are not employed under a contract of employment) are not entitled to maternity or paternity leave. If you're not sure whether a worker is employed under a contract of employment or not contact the Arbitration and Conciliation Advisory Service (Acas) (see www.acas.org.uk or call **08457 47 47 47**).

Mariners

Pay

Mariners **cannot get** SMP or SPP if

- they are employed on a foreign-going ship, **or**
- you do not have a place of business in the UK.

Foreign-going mariners pay a special rate of National Insurance contributions under category letters: R, T, W, Q, N, O, H, K, V.

Mariners **can get** SMP or SPP if you have a place of business in the UK and they are on a home-trade ship. There are special rules on 'Has your employee worked

for you long enough?' for employees who work outside the UK, see page 8. All the other rules in the Employer's Help Book, *E15*, apply.

If you're not sure which of the above applies contact your local Inland Revenue office.

Leave

Mariners **can get** maternity or paternity leave if they

- are employed on board a ship registered in the register maintained under Section 8 of the Merchant Shipping Act 1995, specifying a port in Great Britain or Northern Ireland as the port to which the vessel belongs
- do not work wholly outside Great Britain or Northern Ireland, and
- are ordinarily resident in Great Britain or Northern Ireland.

Mariners **cannot get** maternity or paternity leave if they are the master, or a member of crew, of a fishing vessel where they are paid only by a share of the profits or gross earnings of the vessel.

If you are not sure whether the mariner can get leave or not contact the Arbitration and Conciliation Advisory Service (Acas) (see www.acas.org.uk or call **08457 47 47 47**) or seek independent legal advice.

Has your employee worked for you long enough?

Employee works abroad

Leave

Employees who work outside the UK may be entitled to maternity or paternity leave under UK law. The law in this area is complex. For more information please contact the Arbitration and Conciliation Advisory Service (Acas) (see www.acas.org.uk or call **08457 47 47 47**) or seek independent legal advice. If there is a dispute an employment tribunal will need to decide the issue.

Pay

Mothers

Where she works for you outside the UK between

- the latest start date for employment with you, and
- the Sunday of the 15th week before the week baby due

she can get Statutory Maternity Pay (SMP), if you were liable to pay Class 1 National Insurance contributions (NICs) on her earnings throughout that period.

She can still get SMP if you would have been liable to pay Class 1 NICs if her earnings had been higher.

Tables showing the week baby due, the latest start date for employment with you and the Sunday of the 15th week before the week baby due are on pages 31 and 32 of the Employer's Help Book, *E15*.

If you weren't liable to pay Class 1 NICs throughout that period and she worked for you in the European Economic Area she may still be able to get SMP, see the paragraph below.

Where she works for you within the European Economic Area between

- the latest start date for employment with you, and
- the week before the 15th week before the week baby due

she can get SMP if

- she worked for you in the UK in the 15th week before the week baby due, and
- you were liable to pay Class 1 NICs on her earnings for that week.

She can still get SMP if you would have been liable to pay Class 1 NICs if her earnings had been higher.

Tables showing the week baby due, the latest start date for employment with you and the 15th week before the week baby due are on pages 31 and 32 of the Employer's Help Book, *E15*.

All the other rules in the Employer's Help Book *E15*, apply.

Fathers

The length of time the father must have worked for you to get Statutory Paternity Pay (SPP) is split into two. All the other rules in the Employer's Help Book, *E15*, apply.

Step 1

Where he works for you outside the UK between

- the latest start date for employment with you, and
- the Sunday of the 15th week before the week baby due

he can get SPP, if you were liable to pay Class 1 NICs on his earnings throughout that period.

He can still get SPP if you would have been liable to pay Class 1 NICs if his earnings had been higher.

Tables showing the week baby due, the latest start date for employment with you and the Sunday of the 15th week before the week baby due are on pages 31 and 32 of the Employer's Help Book, *E15*.

If you weren't liable to pay Class 1 NICs throughout that period and he worked for you in the European Economic Area he may still be able to get SPP, see the paragraph below.

Where he works for you within the European Economic Area between

- the latest start date for employment with you, and
- the week before the 15th week before the week baby due

he can get SPP if

- he worked for you in the UK in the 15th week before the week baby due, and
- you were liable to pay Class 1 NICs on his earnings for that week.

He can still get SPP if you would have been liable to pay Class 1 NICs if his earnings had been higher.

Tables showing the week baby due, the latest start date for employment with you and the 15th week before the week baby due are on pages 31 and 32 of the Employer's Help Book, *E15*.

Step 2

To get SPP the father must continue to work for you from the 15th week before the week baby due right up until the baby is born. It does not matter where he works, or whether you are liable to pay Class 1 NICs.

Has your employee worked for you long enough? *continued*

The European Economic Area (EEA)

Countries within the EEA are

- Austria
- Belgium
- Denmark, excluding Faroe Islands
- Finland
- France, including Guadeloupe, Martinique, Guiana, Reunion, Corsica and Saint-Pierre et Miquelon
- Germany
- Gibraltar
- Greece, including Macedonia, Thrace, Epirus, Thessaly, Continental Greece, the Peloponese, the Dodecanese, the Cyclades, the Ionian Islands, the Aegean Islands and Crete
- Iceland
- Ireland, Republic of
- Italy, including Elba, Sicily, Trieste and Sardinia
- Liechtenstein
- Luxembourg
- Netherlands, the
- Norway
- Portugal, including the Azores and Madeira
- Spain, including the Balearic Islands - Majorca, Minorca, Ibiza and Formantara, the Canary Islands, Chute and Melissa
- Sweden
- Switzerland
- UK, including England, Wales, Scotland and Northern Ireland (but **not** the Channel Islands or the Isle of Man).

Agency workers, supply teachers, seasonal workers or other sporadic employment

Pay - How long they must have worked for you

Mothers

Agency workers

Agency workers may not have been placed with clients in every week between

- the latest start date for employment with you, and
- the Sunday of the 15th week before the week baby due.

A week means Sunday to Saturday. Count part weeks as full weeks. Tables showing the week baby due, the latest start date for employment with you and the 15th week before the week baby due are on pages 31 and 32 of the Employer's Help Book, *E15*.

If the agency worker was placed with clients by you in every week she will satisfy the employment condition.

If she was not placed with clients by you in every week, and particularly in the 15th week before the week baby due you need to check why not.

She can still get SMP if

- you did not have work to offer her
- she didn't work because she was on paid leave under the Working Time Regulations
- you offered her work and she turned it down because she was sick or pregnant.

If she didn't work because she was sick, then to get SMP she **must** do some more work for a client through you within 26 weeks of her first day of sickness.

If she did not work in the 15th week before the week baby due, then to get SMP she **must** do some more work for a client through you before starting her maternity absence.

Supply teachers, seasonal workers, and other sporadic employment

Supply teachers, seasonal workers, and other employees who work as and when you need them may not have worked for you in every week between

- the latest start date for employment with you, and
- the Sunday of the 15th week before the week baby due.

A week means Sunday to Saturday. Count part weeks as full weeks. Tables showing the week baby due, the latest start date for employment with you and the 15th week before the week baby due are on pages 31 and 32 of the Employer's Help Book, *E15*.

If she did work for you in every week she will satisfy the employment condition.

If she didn't work for you in every week you need to check why not.

She can still get SMP if she didn't work because

- she was on paid leave under the Working Time Regulations, or
- you did not have work to offer her.

If you offered her work and she turned it down, she may still be able to get SMP - check the relevant paragraph on pages 12 to 14 depending on why she turned the work down.

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Has your employee worked for you long enough? *continued*

Fathers

General

The length of time the father must have worked to get SPP is split into two.

Step 1

He must work in every week between

- the latest start date for employment with you, and
- the Sunday of the 15th week before the week baby due.

Step 2

He must continue to work in every week from the 15th week before the week baby due right up until the baby is born.

A week means Sunday to Saturday. Count part weeks as full weeks. Tables showing the week baby due, the latest start date for employment with you and the 15th week before the week baby due are on pages 31 and 32 of the Employer's Help Book, *E15*.

Agency workers

You may not have placed agency workers with clients in every week.

If the agency worker was placed with clients by you in every week he can get SPP. If he was not placed with clients by you in every week, and particularly in the 15th week before the week baby due, you need to check why not.

If you did not have work to offer him he can still get SPP.

If you offered him work and he turned it down, he may still be able to get SPP.

If he didn't work because he was on paid leave under the Working Time Regulations he can get SPP.

If he didn't work because he was sick, then to get SPP he **must** do some more work for a client through you within 26 weeks of his first day of sickness.

If he did not work in the 15th week before the week baby due, then to get SPP he **must** do some more work for a client through you before starting his paternity absence.

Supply teachers, seasonal workers, and other sporadic employment

Supply teachers, seasonal workers, and other employees who work as and when you need them may not have worked for you in every week.

If your employee worked for you in every week he will have satisfied the employment condition.

If he didn't work for you in every week you need to check why not.

He can still get SPP if

- he didn't work because he was on paid leave under the Working Time Regulations
- you did not have work to offer him.

If you offered him work and he turned it down, he may still be able to get SPP - check the relevant paragraph on pages 12 to 14 depending on why he turned the work down.

Leave - General

Agency workers

If there is no contract of employment then agency workers cannot usually get maternity or paternity leave, see page 6.

Supply teachers

Supply teachers who work under a contract of employment can get maternity and paternity leave. There are special rules on how long they must have worked for you, go to 'Leave - How long they must have worked for you' below.

Seasonal workers and other sporadic employment

Seasonal workers and other employees who work under a contract of employment as and when you need them usually get maternity or paternity leave. There are special rules on how long they must have worked for you, go to 'Leave - How long they must have worked for you' below.

Leave - How long they must have worked for you

Mothers

Ordinary maternity leave

A mother who works under a contract of employment will get ordinary maternity leave no matter how long she has worked for you.

Additional maternity leave

She must have been continuously employed for 26 weeks at the beginning of the 14th week before the week the baby is due.

A week means Sunday to Saturday. Count part weeks as full weeks. Tables showing the week baby due, the latest start date for employment with you and the 15th week before the week baby due are on pages 31 and 32 of the Employer's Help Book, *E15*.

If she did work for you in every week she can get additional maternity leave. If she didn't work for you in every week you need to check why not.

Has your employee worked for you long enough? *continued*

If she didn't work because she was sick, on maternity or parental leave, on a temporary lay-off or on holiday, she can get additional maternity leave if the contract continues.

If the contract does not continue, she can still get additional maternity leave if

- she is sick or injured and is then re-engaged within 26 weeks of the contract being terminated
- work ceases temporarily
- she is not working but her contract is regarded as continuing for some purposes, by arrangement or custom
- she is not working for some other reason specified on pages 12 to 14.

If you need more information about this please contact the Arbitration and Conciliation Advisory Service (Acas) (see or call **08457 47 47 47**) or seek independent legal advice.

Fathers

The length of time the father must have worked to get paternity leave is split into two.

Step 1

He may not have worked in every week between

- the latest start date for employment with you, and
- the Sunday of the 15th week before the week baby due

Step 2

He may not have **continued to work** in every week from the 15th week before the week baby due right up until his leave starts.

A week means Sunday to Saturday. Count part weeks as full weeks. Tables showing the week baby due, the latest start date for employment with you and the 15th week before the week baby due are on pages 31 and 32 of the Employer's Help Book, *E15*.

If he did work for you in every week in Step 1 and Step 2 he can get paternity leave. If he didn't work for you in every week you need to check why not.

If he didn't work because he was sick, on parental leave (or for female partner, maternity leave), on a temporary lay-off or on holiday, he can still get paternity leave if the contract continues.

If the contract does not continue, he can still get paternity leave if

- he is sick or injured and is then re-engaged within 26 weeks of the contract being terminated
- work ceases temporarily
- he is not working but his contract is regarded as continuing for some purposes, by arrangement or custom
- he is not working for some other reason specified on pages 12 to 14.

If you need more information about this please contact the Arbitration and Conciliation Advisory Service (Acas) (see www.acas.org.uk or call **08457 47 47 47**) or seek independent legal advice.

Reinstatement after unfair dismissal

If either the mother or father did not work for you during the period you worked out using pages 31 and 32 of the Employer's Help Book, *E15*, because you dismissed them, and they are then reinstated because an employment tribunal decides that you dismissed them unfairly, they are entitled to SMP and maternity leave or SPP and paternity leave, as if they had not been dismissed.

All the other rules in the Employer's Help Book, *E15*, apply.

Reinstatement following service in the Armed Forces

If either the mother or father did not work for you during the period you worked out using pages 31 and 32 of the Employer's Help Book, *E15*, because they were serving in the Armed Forces and they return to work for you within six months of the end of their service in the Forces under the Reserve Forces (Safeguard of Employment) Regulations, they may still be able to get SMP and additional maternity leave or SPP and paternity leave.

Mothers

To get SMP and additional maternity leave she must have worked for you for at least 26 weeks at the beginning of the 14th week before the week the baby is due. Do not count the period she served in the Armed Forces as part of the 26 weeks.

A week means Sunday to Saturday. Count part weeks as full weeks. Tables showing the 15th week before the week baby due are on pages 31 and 32 of the Employer's Help Book, *E15*.

All the other rules in the Employer's Help Book, *E15*, apply.

Fathers

The length of time the father must have worked to get SPP and paternity leave is split into two.

Step 1

He must have worked for you for at least 26 weeks, up to and including the 15th week before the week baby due. Do not count the period he served in the Armed Forces as part of the 26 weeks.

A week means Sunday to Saturday. Count part weeks as full weeks. Tables showing the 15th week before the week baby due are on pages 31 and 32 of the Employer's Help Book, *E15*.

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Has your employee worked for you long enough? *continued*

Step 2

He must continue to work for you right up until the baby is born.

All the other rules in the Employer's Help Book, *E15*, apply.

Break in employment because of trade disputes or industrial action

If either the mother or father did not work for you during the period you worked out using pages 31 and 32 of the Employer's Help Book, *E15*, because they were on strike, they may still be able to get SMP and additional maternity leave or SPP and paternity leave.

Mothers

To get SMP and additional maternity leave she must have worked for you for at least 26 weeks at the beginning of the 14th week before the week baby is due. Do not count the period she was on strike even for one day, as that week will not count as part of the 26 weeks.

A week means Sunday to Saturday. Count part weeks as full weeks. Tables showing the 15th week before the week the baby is due for SMP and the whole of the 15th week for additional maternity leave are on pages 31 and 32 of the Employer's Help Book, *E15*.

All the other rules in the Employer's Help Book, *E15*, apply.

Fathers

The length of time the father must have worked to get SPP and paternity leave is split into two.

Step 1

He must have worked for you for at least 26 weeks, up to and including the 15th week before the week baby due. Do not count the period he was on strike as part of the 26 weeks.

A week means Sunday to Saturday. Count part weeks as full weeks. Tables showing the 15th week before the week baby due are on pages 31 and 32 of the Employer's Help Book, *E15*.

Step 2

He must continue to work for you right up until the baby is born.

All the other rules in the Employer's Help Book, *E15*, apply.

Break in employment because of temporary cessation of work

If either the mother or father did not work for you during the period you worked out using pages 31 and 32 of the Employer's Help Book, *E15*, because you did not have work to offer them, they can get SMP and additional maternity leave or SPP and paternity leave.

All the other rules in the Employer's Help Book, *E15*, apply.

Break in employment because of public holidays

If either the mother or father did not work for you during the period you worked out using pages 31 and 32 of the Employer's Help Book, *E15*, because of public holidays, they can get SMP and additional maternity leave or SPP and paternity leave.

All the other rules in the Employer's Help Book, *E15*, apply.

Break in employment because of sickness or injury

If either the mother or father did not work for you for 26 weeks or less during the period you worked out using pages 31 and 32 of the Employer's Help Book, *E15*, because they were sick or injured, they can get SMP and additional maternity leave or SPP and paternity leave.

All the other rules in the Employer's Help Book, *E15*, apply.

Break in employment because of pregnancy

Mother

If the mother did not work for you between

- the latest start date for employment with you, and
- the Sunday of the 15th week before the week baby due

she can still get SMP and additional maternity leave if she

- was on ordinary or additional maternity leave and she worked for you before and after the break, or
- was not working because of the birth, and she worked for you before and after the break, and the break is not more than 26 weeks.

All the other rules in the Employer's Help Book, *E15*, apply.

Mother's female partner

The length of time the mother's female partner must have worked to get SPP and paternity leave is split into two.

Step 1

She must work in every week between

- the latest start date for employment with you, and
- the Sunday of the 15th week before the week baby due.

Has your employee worked for you long enough? *continued*

Step 2

She must **continue to work** in every week from the 15th week before the week baby due right up until the baby is born.

A week means Sunday to Saturday. Count part weeks as full weeks. Tables showing the week baby due, the latest start date for employment with you and the 15th week before the week baby due are on pages 31 and 32 of the Employer's Help Book, *E15*.

If the mother's female partner did not work for you during the periods above because of pregnancy, she can still get SPP and paternity leave if she

- was on ordinary or additional maternity leave, and
- she worked for you before and after the break.

All the other rules in the Employer's Help Book, *E15*, apply.

Break in employment because of adoption leave

If either the mother or father did not work for you during the period you worked out using pages 31 and 32 of the Employer's Help Book, *E15*

- because they were on adoption leave, and
- they worked for you before and after the break

they can get SMP and additional maternity leave or SPP and paternity leave.

See the Employer's Help Book *Pay and time off work for adoptive parents*, *E16*, for more information about adoption leave.

All the other rules in the Employer's Help Book, *E15*, apply.

Break in employment because of paternity leave

If either the mother or father did not work for you during the period you worked out using pages 31 and 32 of the Employer's Help Book, *E15*

- because they took paternity leave when they were adopting a child or when a baby was born, and
- they worked for you before and after the break

they can get SMP and additional maternity leave or SPP and paternity leave.

All the other rules in the Employer's Help Book, *E15*, apply.

Break in employment because of parental leave

If either the mother or father did not work for you during the period you worked out using pages 31 and 32 of the Employer's Help Book, *E15*

- because they took parental leave, and
- they worked for you before and after the break

they can get SMP and additional maternity leave or SPP and paternity leave.

For more information on parental leave see the Department of Trade and Industry publication *Parental leave - a guide for employers and employees*, available from **0870 1502 500** or www.dti.gov.uk/er

All the other rules in the Employer's Help Book, *E15*, apply.

Change of employer

If you take over a business and the Transfer of Undertakings (Protection of Employment) Regulations 1981 apply, then continuity of employment is not broken. The Transfer of Undertakings (Protection of Employment) Regulations 1981 are often referred to as the TUPE Regulations.

Usually the regulations apply when you take over the business as a going concern, with no interruption to trading, and take over the contracts of employment of all those employed in the business immediately before the transfer.

If you are not sure if the Transfer of Undertakings (Protection of Employment) Regulations 1981 apply contact the Arbitration and Conciliation Advisory Service (Acas) (see www.acas.org.uk or call **08457 47 47 47**).

If the regulations don't apply continuity of employment may not be broken.

Continuity of employment is also not broken when

- one corporate body takes over from another as the employer by or under an Act of Parliament
- the employer dies and their personal representative or trustees keep the employee on
- there is a change in the partners, personal representatives or trustees
- the employee moves from one employer to another and at the time of the move the two employers are associated, for example
 - one is controlled by the other either directly or indirectly, or
 - both companies are controlled by a third party, either directly or indirectly

continued over ►

Has your employee worked for you long enough? *continued*

- a teacher in a school maintained by a local education authority moves to another school maintained by the same authority, including maintained schools where the governors of the school, rather than the local education authority, are the teacher's employer.

If continuity of employment is not broken the mother and father can get SMP and additional maternity leave or SPP and paternity leave, as long as they work for you and the previous employer during the period you worked out using pages 31 and 32 of the Employer's Help Book, *E15*.

If continuity of employment is broken and

- you take on the business after the end of the 15th week before the week baby due, the previous employer must pay SMP to the mother
- you take on the business before the end of the 15th week before the week baby due, the mother cannot get SMP or additional maternity leave
- you take on the business after the birth of the baby, the previous employer must pay SPP to the father
- you take on the business before the birth of the baby, the father cannot get SPP or paternity leave.

Does your employee earn enough?

The following paragraphs explain how to work out your employee's average weekly earnings in the set period for the various special cases. All the other guidance on what counts as earnings and how much your employee needs to earn applies. See pages 14 to 17 of the Employer's Help Book, *E15*.

Weekly paid employee gets regular payment earlier or later than normal

This usually happens when you pay holiday pay in advance.

Follow Steps 1 to 6 of the weekly check sheet on page 16 of the Employer's Help Book, *E15*. At Step 7 divide the figure in Step 6 by the number of weeks' wages in the payment.

Employee paid at irregular intervals

If you pay your employee at irregular intervals because they don't work for you during every pay period, see 'agency workers, supply teachers, seasonal workers or other sporadic employment' below.

If you do not pay your employees in a regular pay pattern use the check sheet on page 16 of this Help Book to work out their average weekly earnings.

Weekly paid employee without whole number of weeks in the set earnings period

This usually happens when you have to bring your employee's normal payday forward because of Bank Holidays at Easter or Christmas.

Follow Steps 1 to 6 of the weekly check sheet on page 16 of the Employer's Help Book, *E15*. At Step 7 divide the figure in Step 6 by the number of weeks' wages in the payment.

Agency workers, supply teachers, seasonal workers or other sporadic employment

Employees paid in multiples of a week

Use the weekly check sheet on page 16 of the Employer's Help Book, *E15*. At Step 7 you must still divide the figure in Step 6 by the number of whole weeks in the set period, even if your employee was not paid for some of the weeks.

Employees paid calendar monthly

Use the check sheet on page 17 of this Help Book to work out their average weekly earnings.

Change of employer in the set earnings period

If you

- take over a business between the dates in Steps 5 and 3 (inclusive) of the check sheets on pages 16 and 17 of the Employer's Help Book, *E15*, and
- have worked out that the mother and father have worked for you and the previous employer long enough to get Statutory Maternity Pay (SMP) and Statutory Paternity Pay (SPP), see 'Change of employer' on page 13

you must still add together all their earnings in between the dates in Steps 5 and 3 (inclusive) even where some of them were paid by the previous employer.

Directors

If the director is contractually paid a regular salary calculate their average weekly earnings like any other employee; see pages 14 to 17 of the Employer's Help Book, *E15*. The director may also be paid a bonus or fees by a formal vote. If so, only include this if it is paid in the set period.

If the director is paid by a formal vote calculate their average weekly earnings using the check sheet on page 18 of this Help Book. A formal vote usually takes place at the company's Annual General Meeting and is agreed in the company minutes. A director who is paid by a formal vote may draw money from the business on a regular basis.

Do **not** include this money when working out the director's average weekly earnings.

Employees with more than one job

Your employee could have more than one job with you or work for you and another employer.

If all the employee's earnings have to be added together to work out Class 1 National Insurance contributions (NICs) they have to be added together to work out the employee's average weekly earnings, and the employee can only get one lot of SMP or SPP.

If Class 1 NICs are worked out separately on the employee's earnings, then you must work out their average weekly earnings separately, and the employee can get more than one lot of SMP or SPP.

For more information on how to work out Class 1 NICs for employees with more than one job see the booklet *Employer's Further Guide to PAYE and NICs*, CWG2.

Check sheet for employees paid at irregular intervals - page 16 ►

Check sheet for monthly paid supply teachers, seasonal workers, agency workers etc. - page 17 ►

Check sheet for directors paid by a formal vote - page 18 ►

Does your employee earn enough? (continued) - page 19 ►

Does your employee earn enough? *continued*

Check sheet for employees paid at irregular intervals

To work out average weekly earnings if you do not pay your employees in a regular pay pattern

1. Enter date baby is due.

2. Find the date of the Saturday in the 15th week before the week baby due.
(Use the tables on pages 31 and 32 of the Employer's Help Book, *E15*).

3. Find the date of the last payday on or before that Saturday.
This is the last day of the set period. If you use the *Deductions Working Sheet*, form *P11*, to record your employee's earnings you may find the tables on page 15 of the Employer's Help Book, *E15*, useful as they show how pay dates relate to the tax weeks and months on form *P11* (or form *P12* if you operate the Simplified Deduction Scheme)

4. Count back eight weeks from the date in 3 and come forward one day, for example, if eight weeks back is 22nd June, enter 23rd.

5. Find the date of the payday before the date in 4 and come forward one day, for example, 15 May becomes 16 May. **This is the first day of the set period.**

6. Add together the earnings paid in between the dates in 5 and 3 (inclusive).

7. Work out the number of days between the dates in 5 and 3 (inclusive).

8. Divide the figure in 6 by the number of days in 7.

9. Multiply the figure in 8 by 7.

(To be fair to your employee **don't round up or down** to whole pence here, you'll do this when you come to 'The amounts to pay', see page 21 of the Employer's Help Book, *E15*.)

Does your employee earn enough? *continued*

Check sheet for monthly paid agency workers, supply teachers, seasonal workers, or other sporadic employment

To work out average weekly earnings for employees paid calendar monthly

1. Enter date baby is due.

2. Find the date of the Saturday in the 15th week before the week baby due.
(Use the table on pages 31 and 32 of the Employer's Help Book, *E15*).

3. Find the date of the last normal payday on or before that Saturday.
This is the last day of the set period. If you use the *Deductions Working Sheet*, form P11, to record your employee's earnings you may find the table on page 15 of the Employer's Help Book, *E15*, useful as it shows how monthly pay dates relate to the tax months on form P11 (or form P12 if you operate the Simplified Deduction Scheme).

4. Count back eight weeks from the date in 3 and come forward one day, for example, if eight weeks back is 22nd June, use 23rd.

5. Find the date of the payday before the date in 4 and come forward one day, for example, 25 May becomes 26 May. **This is the first day of the set period.**

6. Add together the earnings paid between the dates in 5 and 3 (inclusive).

7. Work out how many whole months there are between the dates in 5 and 3 (inclusive). For example, if the dates were 1 October and 31 December there are three whole months. If there isn't a whole number of months see 'Working out the number of rounded months when there isn't a whole number of months in the set period' on page 21.

8. Divide the figure in 6 by the number of whole months in 7.

9. Multiply the figure in 8 by 12.

10. Divide the figure in 9 by 52.

(To be fair to your employee **don't round up or down** to whole pence here, you'll do this when you come to 'The amounts to pay', see page 21 of the Employer's Help Book, *E15*).

Check sheet for directors paid by a formal vote - page 18 ►

Does your employee earn enough? (*continued*) - page 19 ►

Does your employee earn enough? *continued*

Check sheet for directors paid by a formal vote

To work out average weekly earnings for directors paid by a formal vote

1. Enter date baby is due.

2. Find the date of the Saturday in the 15th week before the week baby due.
(Use the tables on pages 31 and 32 of the Employer's Help Book, *E15*.)

3. Find the date of the last vote on or before that Saturday.
This is the last day of the set period.

4. Count back eight weeks from the date in 3 and come forward one day,
for example, if eight weeks back is 22nd June, use 23rd.

5. Find the date of the vote before the date in 4 and come forward one day,
for example, 15th May becomes 16th May. **This is the first day of the set period.**

6. Add together the money voted between the dates in 5 and 3 (inclusive).
(Do not include any money drawn in anticipation of the vote.)

7. Work out how many whole months there are between the dates in 5 and 3
(inclusive). For example, if the dates were 1 January 2004 and 31 December 2004
there are 12 whole months. If there isn't a whole number of months see
'Working out the number of rounded months when there isn't a whole number
of months in the set period' on page 21.

8. Divide the figure in 6 by the number of whole months in 7.

9. Multiply the figure in 8 by 12.

10. Divide the figure in 9 by 52.
(To be fair to your employee **don't round up or down** to whole pence here,
you'll do this when you come to 'The amounts to pay' see page 21 of
the Employer's Help Book, *E15*.)

Does your employee earn enough? *continued*

Earnings in set period covered in a back-dated pay rise

Mothers

If she gets a back-dated pay rise which increases the amount of earnings already paid in the set period for working out her average weekly earnings

- you must re-calculate her average weekly earnings
- pay any extra Statutory Maternity Pay (SMP) due.

If she gets a back-dated pay rise which means that her earnings are now high enough for her to get SMP when she could not before

- work out 90% of her average weekly earnings
- take away the standard rate of SMP
- pay her the difference for six weeks.

If 90% of her average weekly earnings is less than the standard rate you do not have to pay her anything.

This is because you can assume that she received the balance of the SMP now due as Maternity Allowance from the Jobcentre plus/social security office. **However**, she may not have been entitled to Maternity Allowance, or the Maternity Allowance she got may have been less than the SMP she is now entitled to. If this is so, she must get a letter from the Jobcentre plus/social security office to confirm how much Maternity Allowance she had.

If your employee gives you a letter from the Jobcentre plus/social security office showing how much Maternity Allowance she got

- work out the total amount of SMP she is entitled to
- take away the Maternity Allowance she was paid
- take away any SMP you have already paid her
- pay her the difference.

If she does not intend to return to work after the birth she may still be entitled to benefit from the back-dated pay rise. You should check the terms of her old contract of employment with you.

Fathers

If he gets a back-dated pay rise which increases the amount of earnings already paid in the set period for working out his average weekly earnings and his average weekly earnings are less than £114.

- you must re-calculate his average weekly earnings
- pay the extra Statutory Paternity Pay (SPP) due.

Earnings in the set period include correction of an over/underpayment of wages

If you have adjusted an employee's wages to correct an over or underpayment in an earlier pay period, the actual amount of gross earnings paid within the set period will be those that have taken this adjustment into account.

For example, the employee was overpaid £50 in their June pay. To correct the error, this amount was then deducted from their August pay which fell within the set period between 1 August and 30 September.

The average weekly earnings in the set period were therefore £50 less than those earnings which would normally have been used.

NHS employees

NHS employees whose contracts are split between Health Authorities (now known as Strategic Health Authorities) and/or NHS Trusts as a result of NHS re-organisation, can choose to have all their earnings added together for working out average weekly earnings for SMP and SPP purposes.

This means that employees with low earnings from their individual contracts won't lose out on SMP and SPP just because of NHS re-organisation.

If the employee wants to have all their earnings added together for working out their average weekly earnings they must tell all their employers about this at least 28 days before they expect their entitlement to SMP and SPP to begin.

Within 28 days of telling their employers that they want to have all their earnings added together for working out their average weekly earnings, they must tell each employer

- the name and address of each employer
- the date of commencement of employment with each employer
- details of earnings from each employer during the set period.

If they can't tell their employers within 28 days they must tell them as soon as they can.

Their choice only applies to the current pregnancy.

Employee doesn't qualify and some of their earnings are included in a PAYE Settlement Agreement

If your employee has average weekly earnings of less than

- £77 for babies due between 6 April 2004 and 17 July 2004
- £79 for babies due between 18 July 2004 and 16 July 2005

and they got any expense payments or benefits in kind in the set period, which were included in a PAYE Settlement Agreement you may need to re-calculate their average weekly earnings.

If any of these expense payments and benefits in kind would have been liable for Class 1 NICs if they had not been included in the PAYE Settlement Agreement, **you must re-calculate** your employee's average weekly earnings including these expense payments and benefits in kind.

continued over ►

Does your employee earn enough? *continued*

PAYE Settlement Agreements are a more flexible way of dealing with some expense payments and benefits in kind. Earnings included in a PAYE Settlement Agreement are liable for Class 1B NICs.

For more information on PAYE Settlement Agreements and whether something is liable for Class 1 NICs, see the booklet *Employer's Further Guide to PAYE and NICs*, CWG2.

Some of employee's earnings are included in a PAYE Settlement Agreement and earnings in set period are covered in a back-dated pay rise

Mothers

If you had to re-calculate her earnings because she didn't qualify and

- some of her earnings were included in a PAYE Settlement Agreement, and
- she then gets a back-dated pay rise which increases the amount of earnings already paid in the set period for working out her average weekly earnings

you must re-calculate her average weekly earnings, as shown in the next column.

If she does not intend to return to work after the birth she may still be entitled to benefit from the back-dated pay rise. You should check the terms of her old contract of employment with you.

Fathers

If you had to re-calculate his earnings because he didn't qualify, and

- some of his earnings were included in a PAYE Settlement Agreement, and
- he then gets a back-dated pay rise which increases the amount of earnings already paid in the set period for working out his average weekly earnings, and
- his average weekly earnings are less than £114

you must re-calculate his average weekly earnings as shown in the next column.

Re-calculating your employee's average weekly earnings

Step 1

Re-calculate their average earnings using the earnings paid in the set period as increased by the back-dated pay rise. Do not include any expense payments and benefits in kind at this stage.

If the new average weekly earnings amount is at least

- £77 for babies due between 6 April 2004 and 17 July 2004, or
- £79 for babies due between 18 July 2004 and 16 July 2005

your employee's earnings are high enough to get SMP/SPP. So

- work out the total amount of SMP/SPP they are now entitled to
- take away any SMP/SPP you have already paid them
- pay any extra SMP/SPP due.

If they are not entitled to any extra SMP/SPP because their average weekly earnings with the back-dated pay rise, are less than their average weekly earnings, including the expense payments and benefits in kind in the PAYE Settlement Agreement, do nothing.

If the new average weekly earnings are less than the LEL shown above go to Step 2.

Step 2

Re-calculate their average earnings using the earnings paid in the set period as increased by the back-dated pay rise including the expense payments and benefits in kind.

If the new average weekly earnings amount is at least

- £77 for babies due between 6 April 2004 and 17 July 2004, or
- £79 for babies due between 18 July 2004 and 16 July 2005

your employee's earnings are high enough to get SMP/SPP. So

- work out the total amount of SMP/SPP they are now entitled to
- take away any SMP/SPP you have already paid them
- pay any extra SMP/SPP due.

If the new average weekly earnings are less than the LEL shown above they still cannot get SMP/SPP.

- **Mothers** - give her *Why I cannot pay you SMP*, form SMP1. Take a copy of the *Maternity Certificate*, form MAT B1 and give the original back to her.
- **Fathers** - give him *Why I cannot pay you SPP*, form SPP1. Take a copy of the declaration on *Becoming a parent*, form SC3 and give the original back to him.

Does your employee earn enough? *continued*

Employees paid calendar monthly with more or less than two payments in the period

If your employee is paid calendar monthly and there are more or less than two payments in the period at Step 6 of the check sheet on page 17 of the Employer's Help Book, *E15*, use Steps 7 to 10 below.

7. Work out how many whole months there are between the dates in 5 and 3 (inclusive). For example, if the dates were 1 January 2004 and 31 December 2004 there are 12 whole months. If there aren't a whole number of months see 'Working out the number of rounded months when there aren't a whole number of months in the set period' below.

8. Divide the figure in 6 by the number of months in 7.

£	
---	--

9. Multiply the figure in 8 by 12.

£	
---	--

10. Divide the figure in 9 by 52.

(To be fair to your employee **don't round up or down** to whole pence here, you'll do this when you come to 'the amounts to pay', see page 21 of the Employer's Help Book, *E15*.)

£	
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Working out the number of rounded months when there aren't a whole number of months in the set period

To calculate average weekly earnings for employees paid calendar monthly, when there aren't a whole number of months between the dates in 5 and 3, when you get to Step 7 of the check sheets, work out the number of rounded months as follows.

Count the number of whole months.

For example, if the date at 3 is 19 December, and the date at 5 is 1 October there are two whole months (1 October to 31 October and 1 November to 30 November).

A	
----------	--

Count the number of odd days.

For example, if the date at 3 is 19 December, and the date at 5 is 1 October, there are 19 odd days (1 December to 19 December).

B	
----------	--

Round the number of odd days up or down as shown in 'Rounding rules' below

C	
----------	--

Work out the number of rounded months by adding the number in box A to the number in box C.

D	
----------	--

Rounding rules

If the date at 3 is in

- February - round 14 days or less down and 15 days or more up
- any month except February - round 15 days or less down and 16 days or more up.

Then use the number of rounded months at Step 7 and follow the rest of the steps in the relevant check sheet.

When should your employee give you dates for pay and leave?

Acknowledging your employee's notice

You must write to the mother within 28 days of the date she told you when she wants to take her maternity leave, to confirm

- the date she intends to stop work
- the date you expect her to return to work.

You might find this sample letter useful if you only provide the statutory levels of pay and leave.

Use 'Text A' if your employee is entitled to Statutory Maternity Pay (SMP) and 'Text B' if your employee is not entitled to SMP.

Date

Dear *[name of employee]*,

Congratulations and thank you for telling me about your pregnancy and the date that your baby is due. I am writing to you about your maternity leave and pay.

As we have discussed, you are eligible for **26 weeks' ordinary maternity leave/ 52 weeks' maternity leave (26 weeks' ordinary maternity leave plus 26 weeks' additional maternity leave)*** *[*delete as appropriate]*.

Given your chosen start date of *[insert date]*, your maternity leave will end on *[insert date]*.

If you want to change the date your leave starts you must, if at all possible, tell me at least 28 days before your proposed new start date, or 28 days before *[insert date leave starts]* (your original start date), whichever is sooner.

If you decide to return to work before *[insert date leave ends]*, you must give me at least 28 days notice.

Insert 'Text A' from page 23, if your employee is entitled to SMP,

or

'Text B' from page 23, if your employee is not entitled to SMP.

Yours sincerely

[Your name]

When should your employee give you dates for pay and leave? *continued*

Text A

As we discussed, you are eligible for 26 weeks' Statutory Maternity Pay.

Your maternity pay will be £[insert amount] from [insert date] to [insert date] and £[insert amount] from [insert date] to [insert date].

As your employer I want to make sure that your health and safety as a pregnant mother are protected while you are working, and that you are not exposed to risk. I have already carried out an assessment to identify hazards in our workplace that could be a risk to any new, expectant, or breastfeeding mothers. Now you have told me you are pregnant I will arrange for a specific risk assessment of your job and we will discuss what actions to take if any problems are identified. If you have any further concerns, following this assessment and specifically in relation to your pregnancy, please let me know immediately.

If you decide not to return to work you must still give me proper notice. Your decision will not affect your entitlement to SMP.

Text B

As we discussed, you are not eligible for Statutory Maternity Pay.

The form SMP1 (enclosed) explains why you do not qualify for Statutory Maternity Pay (SMP). You may however be entitled to Maternity Allowance. If you take this form to the Jobcentre plus or social security office at [insert local details from the phone book], they will be able to tell you more.

As your employer I want to make sure that your health and safety as a pregnant mother are protected while you are working, and that you are not exposed to risk. I have already carried out an assessment to identify hazards in our workplace that could be a risk to any new, expectant, or breastfeeding mothers. Now you have told me you are pregnant I will arrange for a specific risk assessment of your job and we will discuss what actions to take if any problems are identified. If you have any further concerns, following this assessment and specifically in relation to your pregnancy, please let me know immediately.

If you decide not to return to work you must still give me proper notice.

If you have any questions about any aspect of your maternity entitlement please do not hesitate to get in touch with me. I wish you well.

Paying Statutory Maternity Pay (SMP)/Statutory Paternity Pay (SPP)

General

SMP weeks may not run from Sunday to Saturday any more and SPP weeks can run from any day, see page 21 of the Employers Help Book, E15.

Employee works for you during the pay period

You cannot pay SMP/SPP for any SMP or SPP pay week in which your employee works for you. Even if your employee only works for you for half a day they will still lose a whole weeks' SMP/SPP.

If the mother works for you during the SMP pay period, they are not entitled to SMP during that SMP pay week. Where the mother is entitled to 6 weeks at 90% of her average weekly earnings and £102.80 for the remaining weeks, the SMP lost is always at £102.80, not 90% of her average weekly earnings, even if she works for you during the first 6 weeks of the SMP pay period.

Earnings in the set period include correction of an over/underpayment of wages

If you have adjusted an employee's wages to correct an over or underpayment in an earlier pay period, the actual amount of gross earnings paid within the set period will be those that have taken this adjustment into account.

For example, the employee was overpaid £50 in their June pay. To correct the error, this amount was then deducted from their August pay which fell within the set period between 1 August and 30 September.

The average weekly earnings in the set period were therefore £50 less than those earnings which would normally have been used.

Employee works for another employer during the pay period

Mother

If your employee works for another employer during the SMP pay period but before the baby is born carry on paying SMP.

All employees

If your employee works for another employer during the SMP or SPP pay period after the baby is born, you need to check whether they worked for that employer during the 15th week before the week baby due. A table showing these dates is on pages 31 and 32 of the Employer's Help Book, E15.

It is up to your employee to tell you that they are working for another employer.

If your employee is working for someone they worked for during the 15th week before the week baby due, you should continue to pay them SMP/SPP as normal.

If your employee is working for someone they did not work for during the 15th week before the week baby due, you must stop paying SMP/SPP from the start of the week they work for that employer.

- **Mothers** - give her *Why I cannot pay you SMP*, form SMP1. Take a copy of the *Maternity Certificate*, form MAT B1 and send the original back to her.
- **Fathers** - give him *Why I cannot pay you SPP*, form SPP1. Take a copy of the declaration on *Becoming a parent*, form SC3 and send the original back to him.

Employee is taken into legal custody during the pay period

You cannot pay SMP/SPP for any SMP or SPP pay week your employee is in legal custody or for any week in the pay period after that.

- **Mothers** - give her *Why I cannot pay you SMP*, form SMP1. Take a copy of the *Maternity Certificate*, form MAT B1 and give the original back to her.
- **Fathers** - give him *Why I cannot pay you SPP*, form SPP1. Take a copy of the declaration on *Becoming a parent*, form SC3 and give the original back to him.

It is your employee's responsibility to tell you if they are taken into legal custody.

Your employee is in legal custody if they are detained. Usually this means they are arrested or in prison.

They are not in legal custody if they are

- voluntarily helping police with their enquiries
- out on bail
- serving a suspended sentence.

Employee is sick during the pay period

Mothers

If the mother becomes sick during the SMP pay period do not pay her Statutory Sick Pay (SSP) but continue to pay her SMP as normal.

You may need to think about topping up her SMP with occupational sick pay.

Fathers

If the father becomes sick during the SPP pay period you must check whether he is entitled to SSP or not, see the Employer's Help Book E14, *What to do if your employee is sick*.

You cannot pay him SPP for any week in which he is entitled to be paid SSP. Give him *Why I cannot pay you SPP*, form SPP1. Take a copy of the declaration on *Becoming a parent*, form SC3 and give the original back to him.

Bear in mind that

- SPP weeks can start on any day of the week
- your employee won't normally be entitled to be paid SSP from the very first day he is incapable of work.

Paying Statutory Maternity Pay (SMP)/Statutory Paternity Pay (SPP) *continued*

Employee dies during the pay period

If your employee dies during the SMP or SPP pay period, you should pay SMP/SPP for the week in which they die, but not for any week in the pay period after that.

The baby dies during the pay period

If the baby dies during the SMP or SPP pay period, payment should continue as normal.

You become insolvent during the pay period

If you become insolvent during the SMP or SPP pay period, the Inland Revenue will pay your employee's SMP/SPP from the date of the insolvency.

You should tell your employees to contact their local Inland Revenue office.

It will help if you or the liquidator can let us know which of your employees are affected so we can pay them as soon as possible.

Paying through an agent

You can arrange for the SMP/SPP to be paid through an insurance company, friendly society, payroll service or other third party. However, bear in mind that you, as the employer, are responsible for making sure that it is paid according to the rules.

Non-cash payments

You may normally pay some or all of your employee's earnings as a non-cash payment, for example providing board and lodging or giving them goods or services.

However you must pay any SMP/SPP in full in cash.

Your employee's contract should state whether they can continue to get non-cash benefits, like a company car or mobile phone while they are on maternity or paternity leave. For more information please contact the Arbitration and Conciliation Advisory Service (Acas) (see www.acas.org.uk or call **08457 47 47 47**) or seek independent legal advice.

Employee has more than one employer

If your employee has more than one employer they can get SMP/SPP from each employer if they satisfy all the terms and conditions.

They can choose to take different time off from each employer.

Employee has more than one job with you

If your employee has more than one job with you, you should have worked out whether they can get more than one lot of SMP/SPP from you, when you were looking at whether their earnings were high enough, see page 15.

If they can only get one lot of SMP/SPP from you, they should take the same time off from each job otherwise they will lose some of their SMP/SPP because they are working for you.

If they can get more than one lot of SMP/SPP from you they can choose to take different time off from each job.

Lump sums

You can pay your employee their SMP/SPP in a lump sum, but we don't recommend it in case something changes during their SMP/SPP pay period.

If you do decide to pay the SMP/SPP as a lump sum, you and your employee could pay more National Insurance contributions (NICs) than if you paid it on their normal payday. See Employer's Help Book E13, *Day-to-day payroll*, for more information on working out NICs.

I pay maternity or paternity pay under an employee's contract of employment.

If you pay maternity or paternity pay under an employee's contract of employment and they can also get SMP/SPP you need to consider what you must pay your employee for each week in the pay period.

For Statutory Maternity Pay

You must pay your employee at least the SMP they are entitled to for any week in the pay period.

Whatever you pay your employee, you must still work out how much SMP your employee was entitled to and keep the relevant records, see page 25 of the Employer's Help Book, E15.

If your employee is also entitled to maternity pay under their contract and this is

- the same as or more than the SMP for any week in the pay period, then you must pay at least the maternity pay under their contract. The SMP they are entitled to is offset against the maternity pay under their contract
- less than the SMP for any week in the pay period, then you must pay at least SMP. The maternity pay they are entitled to under their contract is offset against the SMP.

Paying Statutory Maternity Pay (SMP)/Statutory Paternity Pay (SPP) continued

If you have set up a scheme to pay your employees maternity pay and your employees pay all the contributions into that scheme, you must pay them the SMP on top of the maternity pay they can get under the scheme.

If you have set up a scheme to pay your employees maternity pay and you and your employees share paying the contributions into that scheme, you must

- make sure that the proportion of the maternity pay they can get under the scheme which is based on your contributions is more than the SMP, or
- pay them money on top of the maternity pay they can get under the scheme, so that the extra money and the proportion of the maternity pay they can get under the scheme which is based on your contributions is at least the same as the SMP.

For Statutory Paternity Pay

If you pay paternity pay under an employee's contract of employment and they can also get SPP you need to consider what you must pay your employee during the one or two week SPP pay period.

You must pay your employee at least the SPP they are entitled to. The maximum amount is £205.60.

Whatever you pay your employee, you must still work out how much SPP your employee was entitled to and keep the relevant records.

If your employee is also entitled to paternity pay under their contract.

You must pay at least the paternity pay they are entitled to under their contract if:

- your employee has chosen or can only get one weeks SPP and
- the paternity pay under their contract is for one week or less and
- it is same as or more than the SPP

OR

- your employee has chosen to get two weeks SPP and
- the paternity pay under their contract is for two weeks or less and
- it is same as or more than the SPP

You must pay at least the SPP they are entitled to if:

- your employee has chosen to get one weeks SPP, and
- the paternity pay under their contract is for one week or less and
- it is less than the SPP

OR

- your employee has chosen to get two weeks SPP and
- the paternity pay under their contract is for two weeks or less and
- it is less than the SPP.

The SPP they are entitled to and paternity pay they are entitled to under their contract are offset against each other.

NHS employees

NHS re-organisation during the pay period

If there is an NHS re-organisation while an employee is getting SMP or SPP, payment should continue as normal.

Who pays if the employee chooses to have all their earnings added together to work out their average weekly earnings?

If part of the employee's contract is still with the Health Authority (now known as a Strategic Health Authority), then that Authority must pay all the SMP/SPP.

If all the employee's contracts were transferred to an NHS Trust, then the first Trust to which their contract was transferred must pay all the SMP/SPP.

How much do I get back?

General

The amount you get back depends on your **total gross**, employers' plus employees', Class 1 National Insurance liability.

I wasn't an employer for the whole of 2002-03 and 2003-04

Check which tax year you need to look at depending on the baby's due date

- for babies born between 20 July 2003 and 17 July 2004, look at 2002-03
- for babies due between 18 July 2004 and 16 July 2005, look at 2003-04 .

If you were an employer for the whole of that tax year and your annual liability for Class 1 National Insurance contributions (NICs) is £45,000 or less you are entitled to

- 100% of the Statutory Maternity Pay (SMP)/ Statutory Paternity Pay (SPP), and
- 4.5% as compensation for the NICs you pay on the SMP/SPP.

If you were an employer for the whole of that tax year and your annual liability for Class 1 NICs is more than £45,000 you

- are entitled to 92% of the SMP/SPP and
- have to fund 8% yourself.

If you weren't an employer for the whole of that tax year follow the steps below

1. Add together your liability for Class 1 NICs for the tax months in that year.

£	
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2. Work out the number of tax months you were an employer in that year. Count part months as whole months and remember that tax months run from the 6th of one month to the 5th of the following month.

£	
---	--

3. Divide the figure in 1 by the figure in 2

£	
---	--

4. Multiply the figure in 3 by 12

£	
---	--

If the figure in 4 is £45,000 or less you are entitled to

- 100% of the SMP/SPP and
- 4.5% as compensation for the NICs you pay on the SMP/SPP.

If the figure in 4 is more than £45,000 you

- are entitled to 92% of the SMP/SPP and
- have to fund 8% yourself.

How much do I get back? *continued*

If you weren't an employer at all in that tax year follow the steps below

1. Enter date baby is due.	<input type="text" value="/ /"/>
2. Find the date of the Sunday in the 15th week before the week baby due. (Use the table on pages 31 and 32 of the Employer's Help Book, E15).	<input type="text" value="/ /"/>
3. Identify the tax year in which the Sunday in the 15th week before the week baby due falls.	<input type="text"/>
4. Identify the tax month before the Sunday in the 15th week before the week baby due. Remember that tax months run from the 6th of one month to the 5th of the following month.	<input type="text"/>
5. Add together your liability for Class 1 NICs between the start of the tax year you identified at 3, or the first tax month for which you were liable to Class 1 NICs, and the tax month you identified at 4, inclusive.	<input type="text" value="£"/> <input type="text"/>
6. Work out the number of tax months between the start of the tax year you identified at 3, or the first tax month for which you were liable for Class 1 NICs and the tax month you identified at 4, inclusive.	<input type="text"/>
7. Divide the figure in 5 by the figure in 6.	<input type="text" value="£"/> <input type="text"/>
8. Multiply the figure in 7 by 12.	<input type="text" value="£"/> <input type="text"/>

If the figure in 8 is £45,000 or less you are entitled to

- 100% of the SMP/SPP and
- 4.5% as compensation for the NICs you pay on the SMP/SPP

If the figure in 8 is more than £45,000 you

- are entitled to 92% of the SMP/SPP and
- have to fund 8% yourself.

I pay maternity or paternity pay under an employee's contract of employment

If you pay maternity or paternity pay under an employee's contract of employment you are only entitled to get back a percentage of the SMP/SPP paid, not a percentage of any extra maternity or paternity pay you paid under the employee's contract of employment.

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