

Pay and time off work for parents – Special cases

E15(Supplement)(2006)
Employer Helpbook

An employer guide to

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

Use from 6 April 2006

Help and further guidance

Help and further guidance about tax and National Insurance contributions (NICs) is available from the following sources:

The Internet

Log on to the HM Revenue and Customs (HMRC) website at www.hmrc.gov.uk/employers

Your Employer CD-ROM

Your Employer CD-ROM contains forms you can complete on screen. There is

- a **P11 Calculator** that you can save on screen. It works out the amount of tax and NICs due
- a P11D to help you report benefits in kind.

It has built-in calculators to help you work out:

- PAYE tax and NICs
- Car benefit and Car Fuel benefit
- Statutory payments.

There is a Learning Zone to help you understand topics such as Statutory Maternity Pay, Statutory Paternity Pay and Student Loan deductions.

You will find a section designed to help new and less experienced employers understand what to do when employing someone for the first time.

By telephone

(We may record calls for quality and training purposes.)

New and inexperienced employers **0845 60 70 143**
Monday to Friday 08.00 - 20.00
Saturday and Sunday 08.00 - 17.00

More experienced employers **0845 7 143 143**
Monday to Friday 08.00 - 20.00
Saturday and Sunday 08.00 - 17.00

For enquiries about our Online services **0845 60 55 999**
Monday to Friday 08.00 - 22.00
Saturday and Sunday 10.00 - 18.00

Employers with hearing difficulties
Textphone **0845 602 1380**

You must have specialised equipment such as Minicom to use this service.

A full list of Helplines and opening hours is in your *Employer Bulletin* and on our website at www.hmrc.gov.uk/contactus/helplines.htm

In person

We have Business Support Teams countrywide who will help you understand

- what records to keep
- what returns to make
- when to send us information
- online filing and electronic payments.

We offer a range of **free** workshops on many topics relevant to employers.

For more information on the workshops and other ways that the Business Support Teams may help

- log on to our website at www.hmrc.gov.uk/bst or
- call the New Employer Helpline on **0845 60 70 143** and ask for details of your local Business Support Team.

Your HM Revenue & Customs office

Your own HM Revenue & Customs office can also help you. All our office contact details are on our website at www.hmrc.gov.uk/local/employers/index.htm

Please tell us your Employer reference which is on correspondence from your HM Revenue & Customs office.

If your enquiry is about one of your employees, you must tell us their National Insurance number.

Employer Helpbooks

Our Employer Helpbooks are designed to help you understand and operate PAYE, NICs and other payroll related matters.

The Helpbooks are for guidance only, they are not comprehensive and have no legal force.

We also have many other leaflets and booklets that give further guidance, for example

- CWG2(2006), *Employer Further Guide to PAYE and NICs*
- CWG5(2006), *Class 1A NICs on benefits in kind*
- 480(2006), *Expenses and Benefits - a tax guide*

You can view, download and print the full range of Helpbooks, booklets and other forms and guidance from

- the Internet - log on at www.hmrc.gov.uk/employers
- your Employer CD-ROM.

Or you can get copies from the Employer Orderline in one of three ways:

- log on to our website at www.hmrc.gov.uk/employers
- fax **0870 2 406 406**
- phone **0845 7 646 646**

Forms and guidance in Braille, large print and audio

For details of employer forms and guidance in Braille, large print or audio call the Employer Orderline on **0845 7 646 646** and ask to speak to the Customer Service Team.

Yr Iaith Gymraeg

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

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Information

Advisory, Conciliation and Arbitration Service (Acas) (see www.acas.org.uk) telephone number **0845 7 47 47 47**.

Northern Ireland contact the Labour Relations Agency (LRA) (see www.lra.org.uk).

MOTHERS and FATHERS Who is an employee and who is an employer?

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, or would do if they were high enough, 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 HM Revenue & Customs office.

The rules on 'Evidence for pay' on page 8 of the Employer Helpbook, E15, Pay and time off work for parents, apply to agency workers.

You must consider

- has your employee worked for you long enough? See pages 5 and 7, and
- does your employee earn enough? If they are not paid on every payday, see page 9. If they are paid on every payday follow the guidance starting on page 14 of the Employer Helpbook, 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.

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 Acas, or in Northern Ireland contact the LRA.

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 HM Revenue & Customs office.

The rules on 'Evidence for pay' on page 8 of Employer Helpbook, E15, apply to casual workers.

You must consider

- has your employee worked for you long enough? See page 3, and
- does your employee earn enough? If they are not paid on every payday see page 9. If they are paid on every payday follow the guidance starting on page 9 of the Employer Helpbook, 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 pages 9 and 10 of the Employer Helpbook, 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 Acas, or in Northern Ireland contact the LRA.

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.

Mariners can get SMP or SPP if you have a place of business in the UK and they are on a home-trade ship.

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

There are special rules on 'Has your employee worked for you long enough?' for employees who work outside the UK, see page 5. All the other rules in the Employer Helpbook, E15, apply. If you're not sure which of the above applies contact your local HM Revenue & Customs office.

Leave

Mariners can get maternity or paternity leave if they

- are employed on board a ship registered and 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 Acas, or in Northern Ireland contact the LRA or seek independent legal advice.

MOTHERS and FATHERS *continued* Has your employee worked for you long enough?

Reinstatement after dismissal

If either the mother or father did not work for you during the period you worked out using pages 27 and 28 of the Employer Helpbook, E15,

- because you dismissed them, and
- they are then reinstated because an employment tribunal decides that you dismissed them unfairly, or
- if you reinstate them as a result of a statutory grievance procedure

they are entitled to SMP and maternity leave or SPP and paternity leave, as if they had not been dismissed.

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 27 and 28 of the Employer Helpbook, 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.

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 27 and 28 of the Employer Helpbook, E15, because they were on strike, they may still be able to get SMP and additional maternity leave or SPP and paternity leave. For SMP and additional maternity leave see page 6 and for SPP and paternity leave see page 8.

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 27 and 28 of the Employer Helpbook, E15, because you did not have work to offer them, they can get SMP and additional maternity leave or SPP and paternity leave.

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 27 and 28 of the Employer Helpbook, E15, because of public holidays, they can get SMP and additional maternity leave or SPP and paternity leave.

Break in employment because of sickness or injury

If either the mother or father did not work for you for the full 26 weeks during the period you worked out using pages 27 and 28 of the Employer Helpbook, E15, because they were sick or injured, they can get SMP and additional maternity leave or SPP and paternity leave.

Break in employment because of adoption leave

If either the mother or father did not work for you during the whole period you worked out using pages 27 and 28 of the Employer Helpbook, 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 Helpbook, E16, *Pay and time off work for adoptive parents*, for more information about adoption leave.

Break in employment because of paternity leave

If either the mother or father did not work for you during the whole period you worked out using pages 27 and 28 of the Employer Helpbook, 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.

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 27 and 28 of the Employer Helpbook, 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 www.dti.gov.uk/workingparents

For Northern Ireland contact the Department of Employment and Learning, Employment Rights Branch on 028 9025 7580 or www.delni.gov.uk

For further information

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. A booklet *Transfers of Undertakings (PL699 Rev 6) a guide to regulations* is available from www.dti.gov.uk/er

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 Acas, or in Northern Ireland contact the LRA.

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

- 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
- 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.

If continuity of employment is not broken the

- mother can get SMP and additional maternity leave
- father can get SPP and paternity leave,

This applies as long as they work for you and the previous employer during the period you worked out using the tables on pages 27 and 28 of the Employer Helpbook, 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. The woman is still entitled to 26 weeks ordinary maternity leave.
- 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.

All the other rules in the Employer Helpbook, E15, apply. The tables for working out the periods to use are on pages 27 and 28 of the Employer Helpbook, E15.

MOTHERS Pay – How long must she have worked for you?

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 27 and 28 of the Employer Helpbook, 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.

For SMP/SPP 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 27 and 28 of the Employer Helpbook, 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 3 to 4 depending on why she turned the work down.

Employee works abroad

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 27 and 28 of the Employer Helpbook, E15.

If you weren't liable to pay Class 1 NICs throughout that period and she worked for you in the European Economic Area, see page 21 for the list of countries, 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, or would have been 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 27 and 28 of the Employer Helpbook, E15.

MOTHERS *continued* Leave – How long must she have worked for you?

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 by the end 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 27 and 28 of the Employer Helpbook, 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.

If she didn't work because she was sick, on maternity, paternity, adoption 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 3 to 4.

If you need more information about this please contact Acas, or in Northern Ireland contact the LRA or seek independent legal advice.

Reinstatement following service in the Armed Forces

To get SMP and additional maternity leave she must have worked for you for at least 26 weeks by the end of the 15th week before the week baby 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 27 and 28 of the Employer Helpbook, E15.

Break in employment because of trade disputes or industrial action

To get SMP and additional maternity leave she must have worked for you for at least 26 weeks by the end of the 15th week before the week baby 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 baby due for SMP and the whole of the 15th week for additional maternity leave are on pages 27 and 28 of the Employer Helpbook, E15.

Break in employment because of pregnancy

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 a 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 Helpbook, E15, apply. The tables for working out the periods to use are on pages 27 and 28 of the Employer Helpbook, E15.

FATHERS Pay – How long must he have worked for you?

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 27 and 28 of the Employer Helpbook, E15.

Employee works abroad

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 Helpbook, 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 27 and 28 of the Employer Helpbook, E15.

If you weren't liable to pay Class 1 NICs throughout that period and he worked for you in the European Economic Area, see page 21 for the list of countries, he may still be able to get SPP, see the paragraph below.

Where he works for you within the European Economic Area (for a list of the countries see page 21) 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 27 and 28 of the Employer Helpbook, 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.

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

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. The leaflet 'Your guide to the Working Time Regulations' gives more information and can be obtained from the DTI website www.dti.gov.uk/er/work_time_regs

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 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 3 to 4 depending on why he turned the work down.

Leave – General

If there is no contract of employment then agency workers cannot usually get maternity or paternity leave, see page 2.

Supply teachers who work under a contract of employment can get maternity and paternity leave.

FATHERS *continued*

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 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' see below.

Leave – How long has he worked for you

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 27 and 28 of the Employer Helpbook, 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 paternity, adoption or 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 3 and 4.

If you need more information about this please contact the Acas, or in Northern Ireland contact the LRA or seek independent legal advice.

Pay and Leave

Break in employment because of trade disputes or industrial action

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 27 and 28 of the Employer Helpbook, E15.

Step 2

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

Reinstatement following service in the Armed Forces

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 27 and 28 of the Employer Helpbook, E15.

Step 2

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

Mother's Female Partner

Length of time they must have worked for you

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 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

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 week baby due, the latest start date for employment with you and the 15th week before the week baby due are on pages 27 and 28 of the Employer Helpbook, 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.

MOTHERS AND FATHERS 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 9, 14 and 15 of the Employer Helpbook, 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 14 of the Employer Helpbook, 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' see pages 5 and 7.

If you do not pay your employees in a regular pay pattern use the check sheet for employees paid at irregular intervals on page 10 of this Helpbook 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 14 of the Employer Helpbook, 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 14 of the Employer Helpbook, 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 11 of this Helpbook 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 14

and 15 of the Employer Helpbook, 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 4. 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 15 of the Employer Helpbook, 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 12 of this Helpbook. 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 CWG2, *Employer Further Guide to PAYE and NICs*.

Overpayment/underpayment of earnings made during the set period

So where an overpayment or underpayment of wages was made within the set period, it is this overpaid or underpaid amount that must be included in the AWE calculation for deciding if SMP/SPP is due.

This may mean an employee is eligible for SMP/SPP even if their AWE would otherwise have been below the LEL, or they could be excluded where an underpayment of wages means their AWE fall below the LEL. Adjust any overpayment or underpayment of wages in the normal manner and note your wage records accordingly.

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 Find the 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 27 and 28 of the Employer Helpbook, E15.)

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

- 4 Count back to the pay day at least eight weeks from the date in 3 and
come forward one day, for example 22 June, enter 23 June.
This is the first day of the set period.

- 5 Add together the earnings paid in between the dates in 4 and 3 (inclusive).

- 6 Work out the number of days between the dates in 4 and 3 (inclusive).

- 7 Divide the figure in 5 by the number of days in 6.

- 8 Multiply the figure in 7 by 7.
**(Don't round up or down to whole pence here, use the unrounded amount
to decide if your employee's earnings are high enough).**

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 Find the date baby is due	<input type="text" value="/ /"/>
2 Find the date of the Saturday in the 15th week before the week baby due. (Use the table on pages 27 and 28 of the Employer Helpbook, E15.)	<input type="text" value="/ /"/>
3 Find the date of the last normal pay day on or before that Saturday. This is the last day of the set period.	<input type="text" value="/ /"/>
4 Count back to the pay day at least eight weeks from the date in 3 and come forward one day, for example 22 June, enter 23 June. This is the first day of the set period.	<input type="text" value="/ /"/>
5 Add together the earnings paid in between the dates in 4 and 3 (inclusive).	£ <input type="text" value=""/> <input type="text" value=""/>
6 Work out how many whole months there are between the dates in 4 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 17. Exclude any contracted weeks where the employee did no work, but only if there are less than eight weeks between these.	<input type="text" value=""/>
7 Divide the figure in 5 by the number of whole months in 6.	£ <input type="text" value=""/> <input type="text" value=""/>
8 Multiply the figure in 7 by 12.	£ <input type="text" value=""/> <input type="text" value=""/>
9 Divide the figure in 8 by 52. (Don't round up or down to whole pence here, use the unrounded amount to decide if your employee's earnings are high enough.)	£ <input type="text" value=""/> <input type="text" value=""/>

Check sheet for directors paid by a formal vote

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

- 1 Find the 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 27 and 28 of the Employer Helpbook, E15.)

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

- 4 Count back to the pay day at least eight weeks from the date in 3 and come forward one day, for example 22 June, enter 23 June.
This is the first day of the set period.

- 5 Add together the money voted between the dates in 4 and 3 (inclusive).
(Do not include any money drawn in anticipation of the vote).

- 6 Work out how many whole months there are between the dates in 4 and 3 (inclusive). For example, if the dates were 1 January 2006 and 31 December 2006 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 17.

- 7 Divide the figure in 5 by the number of whole months in 6.

- 8 Multiply the figure in 7 by 12.

- 9 Divide the figure in 8 by 52.
(Don't round up or down to whole pence here, use the unrounded amount to decide if your employee's earnings are high enough.)

MOTHERS AND FATHERS *continued* Does your employee earn enough? *continued*

Earnings in set period where pay rise awarded before or during maternity leave

Mothers

Following the European Court of Justice decision in the case of *Alabaster* the Statutory Maternity Pay (General) Regulations 1986 were amended from April 2005.

For pay rises awarded on or after 6 April 2005

You must recalculate SMP average weekly earnings to take account of pay rises awarded, or which would have been awarded to a woman had she not been on maternity leave if:

- you awarded a pay rise on or after 6 April 2005, or before that date had granted a pay rise which had not been put into payment by then, and
- the pay rise was effective from anytime between the start of the eight week set period for calculating SMP and the end of the woman's statutory maternity leave. (This is ordinary maternity leave and any additional maternity leave applicable in her case).

If the effective date of the pay rise falls before the start of the set period but the earnings in the set period at the time SMP was originally calculated had not been adjusted to reflect that pay rise before the end of the set period

- you must re-calculate her average weekly earnings to include the pay rise as though it was effective from the beginning of the set period
- pay any extra Statutory Maternity Pay (SMP) due.

If a pay rise is awarded which on recalculation means that her earnings are now high enough for her to get SMP when she could not before you should

- 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 may not have to pay her anything. This is because she may have received the balance of the SMP now due as Maternity Allowance from the Jobcentre Plus/social security office.

However, not all women are entitled to Maternity Allowance, or the Maternity Allowance she got may have been less than the SMP she is now entitled to. You should therefore ask her to get a letter from the Jobcentre Plus/social security office to confirm how much Maternity Allowance she received.

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.

She should still benefit from a pay rise even if she does not intend to return to work with you after her maternity leave has ended.

If a pay award is made after she has terminated her employment and the pay rise is backdated into a time when she was working for you or was on maternity leave with you, she may be entitled to benefit from the pay rise. You should check the terms of her old contract of employment with you.

If more than one pay rise has been awarded during the above period you will need to perform separate calculations for each.

For pay rises awarded prior to 6 April 2005

The amending legislation is not retrospective and therefore there is no general requirement on employers to re-calculate SMP. However, legal advice indicates that employers should be advised to consider a specific claim for arrears of SMP that may be due as a result of pay rises awarded in the past.

If the woman makes such a claim then legal advice is that you should consider recalculating the SMP due where a pay rise was awarded or put into payment before 6 April 2005 but was effective from:

- anytime between the start of the eight week set period for calculating SMP and the end of the woman's statutory maternity leave. (This is ordinary maternity leave and any additional maternity leave applicable in her case).

The time limit for bringing any claim is six months after the last day a woman was employed in the employment in respect of which the claim is made. Where a claim is made the limitation on any arrears (whether the woman is still employed or has left employment but is within time to claim) is six years from the date the claim is made.

This means you are advised to consider a claim for arrears on the following basis:

- For former employees:
a claim must be made within six months of their leaving your employment.
- For current employees:
the SMP must have been paid less than six years before she makes her claim.

However, if the six year point falls within a woman's Maternity Pay Period, the woman will also be entitled to a re-calculation (if she can substantiate her claim). But in these cases she will only be entitled to receive any enhanced payments for those weeks within the Maternity Pay Period where less than six years have passed since she made her claim.

The six years should be calculated from the date the woman asks for a re-calculation.

You are of course only obliged to keep SMP records for three years after the end of the tax year to which they refer. Therefore if a woman makes a claim in respect of a period for which you do not have necessary records, it is reasonable for you to ask her to provide sufficient evidence to substantiate her claim in order to allow you to re-calculate any SMP due.

MOTHERS AND FATHERS *continued* Does your employee earn enough? *continued*

You are of course entitled to recover any arrears of SMP paid on the basis of such requests in the normal way.

Contact the Employer Helpline on **0845 7 143 143** if you need further advice.

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 £84

- you must re-calculate his average weekly earnings
- pay the extra SPP due.

NHS employees

NHS employees whose contracts are split between Health Authorities (now known as Strategic Health Authorities) and 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.

- Only those who had one or more contracts with the HA which were split on the establishment of one, or more NHS Trusts, can qualify.
- 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.

Where an employee has a number of contracts that are merged following the re-organisation of a Trust or Health Authority and they are in receipt of more than one payment of SMP or SPP at that time, they will continue to receive the same number of payments until entitlement to those payments cease, for whatever reason, for example they return to work.

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.

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

- £82 for babies due between 17 July 2005 and 15 July 2006
- £84 for babies due between 16 July 2006 and 14 July 2007

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.

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 CWG2, *Employer Further Guide to PAYE and NICs*.

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

If you had to re-calculate your employee's earnings because they didn't qualify and

- some of their earnings were included in a PAYE Settlement Agreement, and
- they then get a back-dated pay rise which increases the amount of earnings already paid in the set period for working out their average weekly earnings you must re-calculate their average weekly earnings, as shown in the next column.

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

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 PAYE Settlement Agreement expense payments and benefits in kind at this stage.

If the new average weekly earnings amount is at least

- £82 for babies due between 17 July 2005 and 15 July 2006, or
- £84 for babies due between 16 July 2006 and 14 July 2007

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.

Your employee may not be entitled to any extra SMP/SPP because their average weekly earnings with the back-dated pay rise, excluding the PAYE Settlement Agreement earnings, are less than their original average weekly earnings.

You can now include the PAYE Settlement Agreement earnings to see if they may be entitled to any extra SMP/SPP, if the recalculated earnings are still less than their original average weekly earnings, do nothing.

If the new average weekly earnings are less than the LEL 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

- £82 for babies due between 17 July 2005 and 15 July 2006, or
- £84 for babies due between 16 July 2006 and 14 July 2007 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 form SMP1, *Why I cannot pay you SMP*. Take a copy of the form MAT B1, *Maternity Certificate*, and give the original back to her.
- Fathers - give him form SPP1, *Why I cannot pay you SPP*. Take a copy of the declaration on form SC3, *Becoming a parent*, and give the original back to him.

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

To work out average weekly earnings for employees paid calendar monthly	
1. Find the date baby is due	<input type="text" value="/ /"/>
2. Find the date of the Saturday in the 15th week before the week baby due.	<input type="text" value="/ /"/>
3. Find the date of the normal payday on or before that Saturday. This is the last day of the set period.	<input type="text" value="/ /"/>
4. Count back to the pay day at least eight weeks from the date in 3 and come forward one day, for example 22 June, enter 23 June. This is the first day of the set period.	<input type="text" value="/ /"/>
5. Add together the earnings paid in between the dates in 4 and 3 (inclusive). If there are more or less than two payments in the period - see steps 8 to 11 below	£ <input type="text" value=""/> <input type="text" value=""/>
6. Multiply the figure at 5 by 6	£ <input type="text" value=""/> <input type="text" value=""/>
7. Divide the figure at 6 by 52. (You don't round up or down to whole pence here, use the unrounded amounts to decide if your employee's earnings are high enough). If your employee is paid calendar monthly and there are more or less than two payments in the period at step 5 above use steps 8 to 11 below.	£ <input type="text" value=""/> <input type="text" value=""/>
8. Work out how many whole months there are between the dates in 4 and 3 (inclusive). For example, if the dates were 1 January 2006 and 31 December 2006 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' see page 17.	<input type="text" value=""/>
9. Divide the figure in 5 by the number of months in 8.	£ <input type="text" value=""/> <input type="text" value=""/>
10. Multiply the figure in 7 by 12.	£ <input type="text" value=""/> <input type="text" value=""/>
11. Divide the figure in 8 by 52. (Don't round up or down to whole pence here, use the unrounded amount to decide if your employee's earnings are high enough).	£ <input type="text" value=""/> <input type="text" value=""/>

Employee earns enough

If the amount at 7

- is at least £82 gross a week for babies due between 17 July 2005 and 15 July 2006
- is at least £84 gross a week for babies due between 16 July 2006 and 14 July 2007

go to page 9 of the Employer Helpbook, E15 for 'When should your employee give you dates for pay and leave?'

Employee doesn't earn enough

If from the amount at 7 they don't earn enough

- Mothers - give her *Why I cannot pay you SMP*, form SMP1. Take a copy of the *Maternity Certificate*, form MATB1, 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*, SC3 and give the original back to him.

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

Working out the number of rounded months when there are not 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 4 and 3 as in the chart on page 16, when you get to Step 5 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 4 is 1 October there are two whole months (1 October to 31 October and 1 November to 30 November).

Count the number of odd days.

For example, if the date at 3 is 19 December, and the date at 4 is 1 October, there are 19 odd days (1 December to 19 December).

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

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

Rounding rules

If the date at 3 is in

- February - round 14 days or less down and 15 days or more up
- for the other months - round 15 days or less down and 16 days or more up.

Then use the number of rounded months at Step 6 and follow the rest of the steps in the relevant check sheet.

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

General

Sometimes (see Employer Helpbook E15 page 19) an employee's Maternity Pay Period (MPP) will not start on a Sunday. Where the MPP does start on a day other than a Sunday, each week within the MPP will start on the day of the week their MPP started.

For example, where the MPP starts on a Tuesday, pay weeks within their MPP will run from Tuesday through to Monday.

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, she is 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 the standard rate of £108.85 for the remaining weeks and provided she has worked for you for less than 20 weeks of the pay period, the SMP lost is always at £108.85 not 90% of her average weekly earnings, even if she works for you during the first 6 weeks of the SMP pay period.

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 27 and 28 of the Employer Helpbook, 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 form SMP1, *Why I cannot pay you SMP*. Take a copy of the form MAT B1, *Maternity Certificate*, and send the original back to her.

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

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, HM Revenue & Customs will pay your employee's SMP/SPP from the date of the insolvency.

You should tell your employees to contact their local HM Revenue & Customs 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. Even if the contract does not specify it, your employee is probably entitled to these benefits during ordinary maternity leave or paternity leave.

For more information please contact Acas or call **0845 7 47 47 47**, or in Northern Ireland contact the LRA 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 work out whether they can get more than one payment of SMP/SPP from you, when you were looking at whether their earnings were high enough, see page 9.

If they can only get one payment 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 are entitled to more than one payment of SMP/SPP from you they can choose to take different time off from each job without losing their entitlement to SMP/SPP.

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 Helpbook, E13, *Day-to-day payroll*, for more information on working out NICs.

Payment of 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.

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 Helpbook, 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 the SMP.

The maternity pay they are entitled to under their contract can be offset against the SMP. 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.

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

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 amount of SPP they are entitled to. 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 the 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 the 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 a NHS re-organisation while an employee of the HA or NHS Trust is getting SMP or SPP, payment should continue as normal.

Under re-organisation someone could be getting more than one amount of SMP/SPP from various Trusts which are now merging with each other/another. **They will keep entitlement to all amounts of SMP/SPP they have at the time of the merger.**

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 Strategic Health Authority, then that Authority must pay all the SMP/SPP.

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

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 Acas, or in Northern Ireland contact the LRA or seek independent legal advice. If there is a dispute an employment tribunal will need to decide the issue.

Penalties

The National Insurance Contributions and Statutory Payments Act 2004 came into force from 1 January 2005 and employers failing or refusing to operate the SMP/SPP schemes correctly can incur civil penalties similar to those in place for PAYE and NICs.

For failure to produce records, documents or to provide information, the maximum penalty is £300 with a £60 daily penalty for continuance of the failure. For refusal, failure or repeated failures to

- produce records
- keep records
- make payments of SMP/SPP to an employee who has entitlement, or
- for fraud or negligence in respect of incorrect statements, declarations, records, documents and payment of :
 - SMP, the maximum penalty is £3000
 - SPP, the maximum penalty is £300.

A list of countries in the European Economic Area (EEA)

Countries within the EEA are

- Austria
- Belgium
- Cyprus
- Czech Republic
- Denmark, excluding Faroe Islands
- Estonia
- 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
- Hungary
- Iceland
- Ireland, Republic of
- Italy, including Elba, Sicily, Trieste and Sardinia
- Latvia
- Liechtenstein
- Lithuania
- Luxembourg
- Malta
- Netherlands, the
- Norway
- Poland
- Portugal, including the Azores and Madeira
- Spain, including the Balearic Islands - Majorca, Minorca, Ibiza and Formentera, the Canary Islands, Chute and Melissa
- Slovakia
- Slovenia
- Sweden
- Switzerland
- UK, including Wales, Scotland and Northern Ireland (but not the Channel Islands or the Isle of Man).

