

# Pay and time off work for parents – special cases

E15(Supplement)(2007)  
Employer Helpbook

To use for employees whose babies are  
due on or after 1 April 2007

*An employer guide to*

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

## Help and further guidance

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

### The Internet

Go to [www.hmrc.gov.uk/employers](http://www.hmrc.gov.uk/employers)

#### Your Employer CD-ROM

Most of the forms and guidance you will need are available to view or print from your CD-ROM. There are also forms you can complete and save on-screen.

Your CD-ROM contains the following calculators

- P45 calculator to check the P45 details of new employees
- P11 calculator that works out the amount of tax and NICs due.
- Car benefit and Car Fuel benefit calculator
- Collection of Student Loans calculator
- Statutory Payment calculators.

There is a Learning Zone to help you understand topics such as Statutory Payments and Student Loan deductions.

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

#### Employer Helpbooks

Our Employer Helpbooks will 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.

There are also other leaflets and booklets that give further guidance, for example:

- CWG2(2007), *Employer Further Guide to PAYE and NICs*
- CWG5(2007), *Class1A NICs on benefits in kind*
- 480(2007), *Expenses and Benefits - a tax guide.*

You can view, download and print the full range of Helpbooks, booklets and other forms and guidance from our website at [www.hmrc.gov.uk/employers](http://www.hmrc.gov.uk/employers) or your Employer CD-ROM.

Or you can order copies from the Employer Orderline

- from our website at [www.hmrc.gov.uk/employers/emp-form.htm](http://www.hmrc.gov.uk/employers/emp-form.htm)
- by fax **0870 240 6406**
- by phone **0845 764 6646**.

#### 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 764 6646** and ask to speak to the Customer Service Team.

#### Yr Iaith Gymraeg

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

### By phone - Employer Helplines

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

New employers and employers with less than 3 years payroll experience

#### New Employer Helpline

**0845 607 0143**

Monday to Friday 08:00 - 20:00  
Saturday and Sunday

08:00 - 17:00

Employers with more than 3 years payroll experience

#### Employer Helpline

**0845 714 3143**

Monday to Friday 08:00 - 20:00  
Saturday and Sunday

08:00 - 17:00

Employers who are deaf or hard of hearing

#### Textphone **0845 602 1380**

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

A list of Helplines and opening hours is available

- on our website at [www.hmrc.gov.uk/contactus/helplines.htm](http://www.hmrc.gov.uk/contactus/helplines.htm)
- on your CD-ROM, and
- in your Employer Bulletin.

### 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](http://www.hmrc.gov.uk/local/employers/index.htm)

When contacting us please tell us your Employer reference. You will find it on correspondence from your HM Revenue & Customs office.

### In Person

We can offer you education and support on all aspects of your payroll explaining

- what you need to do
- the deadlines you need to meet
- the forms you need to fill in
- the records you need to keep.

We also have a range of workshops which are free of charge on many payroll topics.

You can get further information about the workshops from our website at [www.hmrc.gov.uk/bst](http://www.hmrc.gov.uk/bst), or you can call the

- New Employer Helpline on **0845 607 0143**
- Employer Helpline on **0845 714 3143**

### Online Services

For enquiries about our online services

- go to [www.hmrc.gov.uk/efiling/help/mainhelp.htm](http://www.hmrc.gov.uk/efiling/help/mainhelp.htm)
- email helpdesk @ [ir-efile.gov.uk](mailto:ir-efile.gov.uk)
- phone **0845 605 5999**  
open 7 days a week 08:00 - 20:00.

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## Information

Advisory, Conciliation and Arbitration Service (Acas)  
(go to [www.acas.org.uk](http://www.acas.org.uk)) telephone number  
**0845 7 47 47 47.**

Northern Ireland contact the Labour Relations Agency (LRA) (go to [www.lra.org.uk](http://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 9 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 15 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.

### 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 9 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 10 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 10 and 11 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. Casual workers who are employees could be eligible if they satisfy all the qualifying conditions. If you're not sure whether a worker is employed under a contract of employment or not contact Acas, or telephone **0845 47 47 47**, or in Northern Ireland contact the LRA or telephone **028 9 03 21 442**.

## 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 the 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 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 maternity leave or, SPP and paternity leave. For SMP 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 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 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 whole of 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 maternity leave or SPP and paternity leave if the total period of incapacity is 26 weeks or less.

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

they can get SMP and 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*, go to [www.dti.gov.uk/employment/workandfamilies/parental-leave/index.html](http://www.dti.gov.uk/employment/workandfamilies/parental-leave/index.html)

For Northern Ireland contact the Department of Employment and Learning, Employment Rights Branch on **028 9025 7580** or go to [www.delni.gov.uk](http://www.delni.gov.uk)

## For further information

### Change of employer

If you take over a business or part of a business and the Transfer of Undertakings (Protection of Employment) Regulations 2006 apply, then continuity of employment is not broken. The Transfer of Undertakings (Protection of Employment) Regulations 2006 are often referred to as the TUPE Regulations.

The regulations apply when you take over an economic entity (a business, part of a business or a service provision) and take over the contracts of employment of the employees being transferred with the business. The 'employee liability information' which the transferor employer must provide will give the identities of those employees being transferred with the business.

If you are not sure if the Transfer of Undertakings (Protection of Employment) Regulations 2006 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 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 **52** weeks maternity leave
- you take on the business before the end of the 15th week before the week baby due, the mother **cannot** get SMP (the woman will be entitled to 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 in this instance a week means Sunday to Saturday as a week means different things in different contexts. 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 and 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 were not liable to pay Class 1 NICs throughout that period and she worked for you in the European Economic Area, see page 20 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 and additional maternity leave**

Employed women are legally entitled to up to one year's maternity leave. Women do not need to qualify for SMP to be able to take maternity leave. There are two types of maternity leave

- Ordinary Maternity Leave is the first 26 weeks' maternity leave, and
- Additional Maternity Leave is the second 26 weeks'.

All employed women are entitled to both giving a total of 52 weeks maternity leave regardless of their length of service.

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

If she did not work because she was sick, on maternity, paternity, adoption or parental leave, on a temporary lay-off or on holiday, she can get maternity leave if the contract continues.

If the contract does not continue, she can still get 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 and 4.

A week, in this instance, 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.

For more information go to [www.dti.gov.uk/employment/workandfamilies/maternity-leave-pay/index.html](http://www.dti.gov.uk/employment/workandfamilies/maternity-leave-pay/index.html) or contact Acas, or in Northern Ireland the LRA or seek independent legal advice.

### **Reinstatement following service in the Armed Forces**

To get SMP 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, in this instance, 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 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, in this instance, 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 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 maternity leave if she

- was on 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, in this instance, 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 20 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 20) 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 go to [www.dti.gov.uk/er/work\\_time\\_regs](http://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, see 'Leave - How long has he 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, see 'Leave - How long they must have worked for you' 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 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 10, 15 and 16 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 15 of the Employer Helpbook, E15. At Step 6 divide the figure in Step 5 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 15 of the Employer Helpbook, E15. At Step 6 divide the figure in Step 5 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 15 of the Employer Helpbook, E15. At Step 6 you must still divide the figure in Step 5 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 15 and 16 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 15 and 16 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

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 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 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.

/	/
---	---

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 normal 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 earnings paid in between the dates in 4 and 3 (inclusive).

£	
---	--

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 16.

--

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.)**

£	
---	--

**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 payday 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 2007 and 31 December 2007 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 16.

--

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.)**

£	
---	--

### 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

- £84.00 for babies due between 16 July 2006 and 14 July 2007
- £87.00 for babies due between 15 July 2007 and 19 July 2008

and they received 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 include** these expense payments and benefits in kind and **re-calculate** your employee's average weekly earnings.

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 SMP is re-calculated to take account of a 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 pay rise which means you have to work out your employee's SMP again. You must re-calculate their average weekly earnings as shown on page 14.

If they do not intend to return to work after the birth they may still be entitled to benefit from the 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 weekly earnings using the earnings paid in the set period as increased by the 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

- £84.00 for babies due between 16 July 2006 and 14 July 2007
- £87.00 for babies due between 15 July 2007 and 19 July 2008

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 pay rise, excluding the PAYE Settlement Agreement earnings, are less than their original earnings. If this is the case, do nothing, your employee may continue to receive the SMP as originally calculated.

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

### Step 2

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

If the new average weekly earnings amount is at least

- £84.00 for babies due between 16 July 2006 and 14 July 2007
- £87.00 for babies due between 15 July 2007 and 19 July 2008 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. <b>This is the last day of the set period.</b>	<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. <b>This is the first day of the set period.</b>	<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. <b>(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.</b>	£ <input type="text" value=""/> <input type="text" value=""/>
	£ <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 2007 and 31 December 2007 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 16.	<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 9 by 12.	£ <input type="text" value=""/> <input type="text" value=""/>
11. Divide the figure in 10 by 52. <b>(Don't round up or down to whole pence here, use the unrounded amount to decide if your employee's earnings are high enough).</b>	£ <input type="text" value=""/> <input type="text" value=""/>

### Employee earns enough

If the amount

- is at least £84.00 gross a week for babies due between 16 July 2006 and 14 July 2007
- is at least £87.00 gross a week for babies due between 15 July 2007 and 19 July 2008

go to page 10 of the Employer Helpbook, E15 for 'When should your employee give you dates for pay and leave?'

### Employee doesn't earn enough

If the amount is less than £87.00 they do not earn enough

- 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.

### 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 15, 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

An employee's Maternity Pay Period (MPP) may 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

A woman can work for you under her contract of service and during her SMP pay period for up to 10 days without losing her SMP for the week in which that work is done. These 10 days are called 'Keeping in Touch' (KIT) days and enable your employee to undertake the odd days training or do some work for you on occasion to keep in touch during her maternity leave without losing her SMP or ending her maternity leave.

The KIT days may be used consecutively, singly or in blocks, it is for you and your employee to agree how they should be used if your employee wishes to do some work. But any work on any day (even as little as an hour) will count as a whole KIT day.

The amount of pay she receives for work done is something for you to agree with your employee but the minimum you must pay is the SMP rate the woman is entitled to.

If your employee does more than 10 days work for you in her SMP pay period you cannot pay SMP to her for any week in which she does such work. To be clear if a week in the SMP pay period contains only KIT days, SMP should be paid. If a week in the SMP pay period contains the last of the KIT days and also another day or days of work for you, or she has used up all her KIT days, you must stop SMP for each week in which such work is done.

### 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. 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.

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

### 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.

#### Mothers

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 26 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.

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

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.

### Fathers

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 £300.00 with a £60.00 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 £3,000.00
  - SPP, the maximum penalty is £300.00.

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

Countries within the EEA are

- Austria
- Belgium
- Bulgaria
- 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
- Norway
- Poland
- Portugal, including the Azores and Madeira
- Romania
- Slovakia
- Slovenia
- Spain, including the Balearic Islands - Majorca, Minorca, Ibiza and Formentera, the Canary Islands, Chute and Melissa
- Sweden
- Switzerland
- UK, including Wales, Scotland and Northern Ireland (but not the Channel Islands or the Isle of Man).

