Zero hours’ contracts—maternity and parental rights

This information sheet looks at your rights to pay and leave when you have a baby if you are working on a zero hours’ contract, including:

- your legal rights at work,
- maternity leave and pay,
- paternity leave and pay, and
- shared parental leave and pay.

It also includes information on how to handle disputes with your employer and benefits for families on a low income.

Your legal rights

What is a zero hours contract?
Since May 2015 there has been a legal definition of a zero hours contract. A zero hours contract is a contract which says that you only have to work when the employer makes work available and there is no guarantee that work will be available or that it will be offered to you.

Many zero hours contracts only give ‘worker’ status and employers use these types of contracts to cover busy periods or irregular patterns of work. However, some contracts will state that you have ‘employee’ status so you need to check your written contract if you have one or ask your employer.

If you are working for the same employer over a long period of time on regular hours it is more likely that you are an employee, regardless of what it says in your contract, and you should be entitled to the same rights as an employee. Employees can work full-time or part-time and can include apprenticeships, permanent contracts and short-term or fixed-term contracts.

Am I a worker or an employee if I work for my employer on a zero hours’ contract?
If you have a written contract or a letter that sets out your terms and conditions of employment, it will say whether you are an employee or a worker. If you do not have a written contract you should ask your employer. You will need to know what your employment status is in order to work out your maternity and parental rights.

You will probably be a worker if you work under a contract for services and you do work on a more casual basis as and when needed:

- your employer deducts tax and National Insurance from your pay
- your employer provides all the equipment for your work
- your employer does not have to offer you work and you do not have to accept it.

You will probably be an employee if you work under a contract of employment or apprenticeship and the following arrangements exist at your work:

- your employer deducts tax and National Insurance from your pay
- your employer controls the work you do, when and how you do it
- your employer provides all the equipment for your work
- your employer is expected to offer you work and you are expected to accept it and for the relationship to continue.

If you are not sure about your employment status you should get advice. See below for where to go for more help.

If your employer says that you are a worker, but you have worked for your employer on a regular basis and you would expect this to continue, you may be an employee. If your employer refuses to give you the rights you are entitled to as an employee, for example, you are refused paid time off for your antenatal appointments, you can raise a grievance and, if necessary, you can go to an employment tribunal for a
What are my rights if I work on a zero hours contract?
If you are a worker on a zero hours’ contract you are entitled to:
- at least 28 days’ annual leave (pro rata if you work part-time),
- Statutory Sick Pay (if you meet the qualifying conditions),
- contractual sick pay (if your employer offers it),
- National Minimum Wage (under 25/National Living Wage (25 and over),
- Statutory Maternity Pay, Statutory Paternity Pay, Statutory Adoption Pay and Statutory Shared Parental Pay (if you meet the qualifying conditions),
- basic health and safety protection, and
- protection from discrimination.
If you are an employee on a zero hours’ contract you are entitled to the same rights above as workers as well as:
- maternity leave, paternity leave, adoption leave and shared parental leave,
- paid time off for antenatal care and some time off for antenatal appointments for partners.
- full health and safety protection,
- the right to ask for flexible work (changes to your hours, days and place of work)
- time off for dependants in an emergency,
- Parental Leave, and
- protection from dismissal, discrimination and unfair treatment.

Can my employer stop me working for other employers?
No, since May 2015 your employer cannot stop you from working for another employer and you do not have to ask for your employer’s consent to take on another contract with another employer.
If your employer treats you unfairly or dismisses you for working for another employer, for example, by no longer providing you with work, you can bring a claim for compensation in an employment tribunal. You have this protection from day one of your employment.
You must bring a claim within three months (less one day) from the date you are complaining about. You would need to show that the contract stopped you from working for another employer or appeared to stop from working for another employer.
Unfortunately there are ways to get around this protection, for example, contracts that provide a very small minimum number of hours would not come within the definition of zero hours contracts and would not be protected by the ban on working for other employers. You may be on a part-time permanent or short-term contract and you should get advice as to whether you are entitled to the same rights as an ‘employee’.

Some contracts say that you must be available to work at all times. Again, you should get advice, because you may be entitled to claim that you are an employee.

Rights during pregnancy
Am I entitled to paid time off for antenatal appointments?
If you are an employee, you have the right to take reasonable paid time off for your antenatal appointments, including time needed to travel to your clinic or GP, without loss of pay. You should let your employer know when you need time off. Your employer can ask to see your appointment card and a certificate stating that you are pregnant for all appointments apart from the first one.
Fathers and partners who are employees are entitled to unpaid time off for up to two antenatal appointments (maximum of 6.5 hours per appointment).
If you, or your partner, are workers you are not entitled to time off for antenatal care, so you will need to arrange your antenatal appointments outside your working hours wherever possible or ask your employer if you can take leave.
Agency workers who have been in the same placement for at least 12 weeks have more rights. For more information see: Agency workers – maternity rights and benefits

Do I have health and safety protection?
Yes, all workers and employees have the following health and safety protection. If you are pregnant, have given birth in the last six months or are breastfeeding, your employer must make sure that the kind of work you do and your working conditions will not put your health or your baby’s health at risk.
All employers must carry out a workplace risk assessment, including any risks to pregnant women or new mothers, and do all that is reasonable to remove or reduce any risks.
If you want your employer to take action to protect your health and safety you must notify your employer in writing that you are pregnant or have given birth in the last six months or are breastfeeding. If your employer asks for proof of your pregnancy or childbirth you must obtain a medical certificate from your midwife or GP. If you have any concerns about your health or safety at work, you should discuss it.
with your midwife or GP and ask them for a letter to show your employer.

Your employer must consider the risks and take reasonable action to alter your working conditions or hours of work, such as providing somewhere to sit, extra breaks or ensuring that you do not do any heavy lifting.

If you are an employee you also have the right to be offered a suitable alternative job if it is not possible to avoid the risks. If there is no suitable alternative work you have the right to be suspended on full pay for as long as necessary to avoid the risks.

Employees who work at night have the right to transfer to day work if your midwife or doctor advises that you should stop for health and safety reasons. You must provide a medical certificate.

For more information, see *Health and safety during pregnancy and on return to work*.

**Can I be dismissed for being off sick during pregnancy?**

You are protected from unfair dismissal and discrimination if you are off sick during pregnancy. Any pregnancy-related sickness absence must be recorded separately and should not be included in your total sickness absence or used for disciplinary or redundancy purposes. If your employer stops offering you work because of pregnancy-related sickness or sickness related to a long-term condition you should seek advice as this may be pregnancy discrimination or disability discrimination.

You are entitled to receive your usual sick pay if you are off sick during pregnancy so you should be paid Statutory Sick Pay, if you qualify for it, or contractual sick pay if your employer usually provides sick pay.

For more information see *Sickness during pregnancy and maternity leave*.

**My employer has reduced my hours because of a downturn in work but no-one else has had their hours reduced and it is affecting my pay.**

You may have a claim for pregnancy discrimination and detrimental treatment if your employer is cutting your hours because of your pregnancy or in order to avoid paying you Statutory Maternity Pay. If there is a genuine reduction in work your employer may have to reduce the amount of work it can offer but this must be done in a fair and non-discriminatory manner.

If your pay is reduced during the middle of your pregnancy, roughly weeks 18 to 26 of your pregnancy, you may not qualify for Statutory Maternity Pay, see the next section on maternity pay.

If you don’t qualify for SMP you may be able to claim Maternity Allowance from the JobCentre Plus instead.

If you think that your employer is deliberately reducing your hours to avoid having to pay SMP you can make a complaint to your local HM Revenue and Customs officer who will make a formal decision, see Where to go for more help.

You should speak to your employer and ask why your hours have been reduced. You should try to raise it informally to start with but if you are unable to resolve it you could write to your employer. If you are in a union, you should speak to your union representative or ask to speak to the legal team.

If you are unable to resolve the matter, you should seek legal advice. See Dealing with disputes at work below.

**Case example**

Miss W worked about 13 hours a week (over two to three days) as a maid in a hotel. A roster was drawn up each week. She informed her employer that she was pregnant and took three days off sick. She was rostered to work for two weeks but, thereafter, was not rostered for any more work. The tribunal found that she had been treated unfavourably because of her pregnancy. Her employer said that she was not rostered because there was not enough work available but the tribunal found that another employee had been allocated more than her usual contractual hours.

*Walton v The Nottingham Gateway Hotel Ltd*.

**Maternity leave and pay**

**Am I entitled to maternity leave?**

You have to be an employee to qualify for maternity leave. All employees qualify for 52 weeks’ maternity leave from day one of their employment. Maternity leave gives you the right to take up to 52 weeks’ leave, with the right to return to your old job.

**How to give notice for maternity leave**

To get maternity leave you must give your employer the following information in or before the 15th week before your baby is due. If your employer asks you to, you must put it in writing. Tell your employer:

1. that you are pregnant
2. the expected week of childbirth
3. the date on which you intend to start your maternity leave.
If you are a **worker**, you don’t have the right to take maternity **leave** and return to your old job so you will need to agree some time off with your employer. Workers may still be entitled to **maternity pay**, see next question. When you are ready to start work again you should contact your employer. If your employer refuses to give you the same type of work because you have taken time off to have your baby, you may have a claim for discrimination and you should seek advice.

**Statutory Maternity Pay**

**What is Statutory Maternity Pay?**

SMP is paid for 39 weeks. SMP is paid at two rates: for the first six weeks you get 90% of your average pay. The average is calculated from the pay you actually received in the eight weeks or two months up to the last pay day before the end of the qualifying week. After that you get a flat rate of £145.18 per week (April 2018 – April 2019) for 33 weeks or 90% of your average earnings if they are less than £145.18.

Your employer pays your SMP in the same way as your salary is paid and on the normal payday. They deduct any tax and National Insurance contributions. Your employer can claim most or all of your SMP back from HM Revenue and Customs (HMRC).

You can get SMP even if you do not plan to go back to work with the same employer. You do not have to pay any SMP back if you do not return to work.

SMP is **not** classed as public funds. If you are subject to immigration control, see the Maternity Action information sheets on immigration status: [www.maternityaction.org.uk/advice-2/mums-dads-scenarios/3-women-from-abroad/](http://www.maternityaction.org.uk/advice-2/mums-dads-scenarios/3-women-from-abroad/)

**Am I entitled to maternity pay?**

If you meet the qualifying conditions below and you work on a zero hours contract (either as an employee or a worker) and your employer pays you through PAYE and deducts any tax or National Insurance, you will be entitled to Statutory Maternity Pay (SMP).

You can get SMP if:

- you are paid at least £116 (before tax) per week (April 2018 – April 2019) in earnings, **on average** in the eight weeks (if you are paid weekly) or two months (if you are paid monthly) up to the last pay day before the end of the 15th week before your baby is due.

**How to work out the 15th week before the expected week of childbirth**

Find the Sunday before the day your baby is due or the due day if that is a Sunday. Count back 15 Sundays from there. This Sunday is the start of the 15th week before the week your baby is due – it is known as the Qualifying Week.

**What if I had gaps in the 26 week period of continuous employment?**

You should work out your qualifying week and count back 26 weeks in order to find the 26 week period of continuous employment. If you took annual leave, sick leave or maternity or parental leave you still count as being employed. You need a full calendar week without a contract of employment from Sunday to Saturday in order to bring about a break in employment, so even if you only worked for part of a week or part of a day it will still count as a week of work.

There are some exceptions, so if you did not work for any of the reasons below you can still count that week as part of your continuous service even if there was no contract with your employer, providing you return to work for that employer after the absence. You can count absence for the following reasons towards continuous employment:

- sickness or injury of less than 26 weeks,
- annual leave,
- pregnancy or childbirth for a period less than 26 weeks,
- adoption leave, shared parental leave, paternity leave or Parental leave,
- temporary cessation of work because your employer was not able to offer you work,
- where there was no work but by ‘arrangement and custom’ you are regarded as still being employed.

Some zero hours contracts indicate that a contract only exists when the work is provided. However, even if this is the case a series of contracts can sometimes be regarded as forming an overarching contract or a succession of contracts or a week of absence from work may count under the exceptions above.
If you are refused maternity pay because of breaks in employment you should seek advice. Your employer should give you form SMP1 stating why you do not qualify for SMP. You can ask your employer to check your entitlement to SMP with the HMRC Employer’s Helpline and if you disagree you can ask your local HMRC Officer for a formal decision.

If you do not qualify for SMP, you may qualify for Maternity Allowance instead, see below.

My employer has not given me as much work as normal after I told them about my pregnancy so I have had a lot of gaps in my employment and my earnings are lower than normal. Will it affect my SMP?

Firstly, if you have not been offered work because of your pregnancy but, for example, colleagues are being offered the same amount of work as before, this may be pregnancy discrimination and you should get advice.

If your employer has reduced your hours of work during your pregnancy in order to try to avoid paying you SMP you can make a complaint to your local HMRC Officer or call the Employee’s SMP Helpline on 0300 200 3500.

If your employer stopped giving you work solely or mainly to avoid having to pay you SMP you can also complain to HMRC. If you have at least 8 weeks’ continuous employment HMRC can order your employer to pay your SMP. You will be treated as having been employed up until the 15th week before your baby is due and your average weekly earnings will be based on your earnings in the last 8 weeks of work.

You should give your employer notice for maternity leave (if you are an employee) and pay and ask your employer to calculate your entitlement to SMP. If you are not entitled to SMP because of breaks in employment or because your earnings are too low, you may be entitled to Maternity Allowance instead, see below.

What earnings are used in the calculation for SMP?

Your average weekly earnings for SMP will be based on all your earnings paid during the SMP calculation period that are subject to National Insurance contributions. Therefore, your earnings can include overtime, commission, bonuses or other sums on which National Insurance contributions are paid. In some cases you may benefit from an increase in earnings which will increase the amount of SMP you receive or sometimes your SMP can be reduced if your earnings are lower than normal during the SMP calculation period.

Unfortunately the rules on calculating SMP are very rigid and your employer will not have any discretion if your earnings are lower than normal in the SMP calculation period, for example, if you did not work during the period because of illness or no work was available. The only exception is where you have received your normal pay earlier or later than it should have been paid, e.g. because of a Bank Holiday, not because of payroll errors. If your pay was paid earlier or later than it should have been you should contact HMRC to ask if a miscalculation can be taken into account in the calculation period.

If you are paid weekly, the SMP calculation period includes your average weekly earnings in the last pay day before the end of the Qualifying Week and the previous seven pay days. If you are paid monthly, the SMP calculation period is usually your average weekly earnings in the last two monthly pay days received before the end of the Qualifying Week.

If you are concerned that your employer has not calculated your average earnings correctly you can ask your employer to check with the HMRC Employer’s Helpline 0300 200 3200 or you can get a formal decision from your local HMRC Officer.

When can I get SMP?

The earliest you can start your SMP is 11 weeks before the expected week of childbirth. You can work right up until the date the baby is born, unless:

- you have a pregnancy-related illness/absence in the last 4 weeks of your pregnancy or
- your baby is born before you have stopped work to have your baby.

If you are off sick with a pregnancy-related illness in the last four weeks of pregnancy, your SMP will start on the day after your first day of absence from work. So, if you phone in sick on a Wednesday, your SMP period will start on Thursday. If you give birth before you stop work to have your baby or, if you are an employee, before the start of your maternity leave, your SMP period will start on the day following the actual date of birth.

How to give notice for Statutory Maternity Pay

To get SMP you must give your employer at least 28 days’ notice of the date you want to start your pay. You MUST give your employer a copy of your maternity certificate (form MAT B1) stating your expected week of childbirth which your midwife or GP will give you when you are about 20 weeks’ pregnant.

If you are an employee you can give notice for maternity leave and pay together in the 15th week before your baby is due.
Can I do any work during the SMP period?

You can work for up to ten keeping in touch days (KIT days) without losing your SMP. If you are an ‘employee’ you can work for ten KIT days without bringing your maternity leave to an end. You should agree with your employer how much you will be paid for KIT days. Your employer can offset any SMP against contractual pay. Once you have worked for ten KIT days, you will lose your SMP for any week in which you do any work, even if you only work for part of the week or for one day.

What happens if I’m not entitled to SMP?

If you are not sure if you are entitled to SMP, you should ask your employer anyway by giving the correct notice above and your employer will work out whether or not you qualify. If you do not qualify for SMP they will give you form SMP1 to explain why and you should claim Maternity Allowance instead.

If your employer is not sure how to work out your SMP or how to claim it back, they can ring the Employers’ SMP Helpline on 0300 200 3500 for advice. It is a good idea to give your employer as much notice as possible for claiming SMP so that your employer can start paying it as soon as you are ready to stop work.

Do I still get SMP if my job ends after the 15th week before my baby is due?

Yes, you can still get SMP as long as you are employed in the 15th week (the Qualifying Week) before your baby is due and you meet the normal qualifying conditions stated above.

You are counted as being employed in the Qualifying Week even if you only work for one day or part of a day or you have a contract for that week but you are off sick or on holiday.

Once you have qualified for SMP, you are entitled to receive it for the full 39 weeks. This is true even if you are made redundant or you leave your job or a fixed term contract comes to an end at any time after the 15th week before your baby is due.

Remember, SMP is yours to keep and you do not have to repay it. Your employer can claim back all or most of it from HMRC.

What can I do if my employer does not pay SMP correctly?

If you think that your employer has made a mistake or you are having difficulties with your employer paying SMP you should write to your employer or make a formal complaint. If you and your employer do not agree, you can ask your local HM Revenue and Customs Officer to make a formal decision. You must apply within 6 months. If HMRC order your employer to pay your SMP, your employer can be fined for failure to pay it.

If your employer does not pay your SMP or has gone out of business it will be paid by the Statutory Payments Disputes Team, see Where to go for more help.

My employer has told me they do not have enough money to pay my SMP. What can I do?

Your employer can apply to their HMRC Accounts Office for advance funding if they do not have enough money to pay any statutory payments such as SMP.

Maternity Allowance

I’m not entitled to SMP, can I get Maternity Allowance?

If you work on a zero hours contract and you don’t qualify for SMP, you may be able to claim Maternity Allowance (MA) instead. You can get MA if you have changed jobs during pregnancy or had breaks in your employment or you do not earn enough to get SMP.

You can also claim MA if you are unemployed or self-employed during pregnancy.

To get MA:

- you need to have been employed or self-employed for at least 26 of the 66 weeks before the expected week of childbirth, and
- you can find 13 weeks (not necessarily in a row) in which you earned over £30 per week on average. You should choose the weeks in which you earned the most. You can add together earnings from more than one job. You can include employed work as an employee or as a worker and self-employed work.
- You can also claim MA if your baby is due on or after 27 July 2014 and you are the spouse or civil partner of a self-employed person and you help in their business.

The 26 week period does not have to be 26 weeks in a row. It can include any weeks in the 66 week period before the week your baby is due and it can include work with different employers. You can also include any weeks on maternity leave for a previous child that fall within the 66 week period.

What is MA?

MA is paid by the Jobcentre Plus for 39 weeks. MA is £145.18 per week (April 2018 – April 2019) for 39 weeks or 90% of your average earnings if that is less than £145.18.

If you are claiming MA as the spouse or civil partner of a self-employed person, it is payable for 14 weeks at the rate of £27 per week.
MA is not classed as public funds and will not affect future immigration applications. If you are subject to immigration control, see the Maternity Action information sheets on immigration status: www.maternityaction.org.uk/advice-2/mums-dads-scenarios/3-women-from-abroad/

When can I get MA?
The earliest you can be paid MA is 11 weeks before your expected week of childbirth.

How do I claim MA?
The earliest you can claim MA is 15 weeks before your baby is due. You should put in your claim form as early as possible and notify the Jobcentre Plus of the date you intend to stop work. The latest you can apply for MA is three months after the date you stop work as MA can only be backdated for a maximum of three months so you may lose some MA if you apply late.

If you are not sure if you will qualify for MA you should ask your local Jobcentre Plus for form MA1 and make a claim or phone the Jobcentre Plus claim line on 0800 055 6688. They will work out whether you can get MA. If you are not entitled to MA, they should automatically use the same claim form to check whether you can get Employment and Support Allowance instead (see section below).

You will need to provide payslips or proof of earnings and ask your employer for form SMP1 (explaining why you do not qualify for SMP). You will also need your MAT B1 maternity certificate from your midwife.

What happens if I do any work during the MA period?
You can work for up to ten keeping in touch days (KIT days) without losing your MA. If you are an ‘employee’ you can work for ten KIT days without bringing your maternity leave to an end. You should agree with your employer how much you will be paid for KIT days. If you work for more than ten KIT days, the Jobcentre Plus will decide how much MA you will lose. It should be reasonable and should be in proportion to the number of days worked. For more information, see Keeping in touch during leave.

What can I do if I do not receive the correct amount of MA?
You can ask the decision-maker to look at your claim again. If you are still not happy you can ask to appeal.

I’m not entitled to Maternity Allowance, is there anything else I can claim
You may be entitled to Employment and Support Allowance (ESA) if you do not qualify for SMP or MA but have done some work in the last three years but not recently.

You can get ESA if:
• you have paid or been credited with enough National Insurance contributions during the last three tax years that do not overlap the current calendar year.

You do not have to take a Work Capability Assessment. Your maternity certificate (form MATB1) is accepted as evidence of incapacity for work for the period starting 6 weeks before the week the baby is due, to 14 days after the date on which the baby is born.

If you are not sure if you will qualify, you should make a claim and your Jobcentre Plus will work out whether you can get it.

What is ESA?
The rate of ESA varies according to your circumstances. ESA is £73.10 per week for a person over 25 or a single parent over 18 (April 2018 – April 2019). It is paid from six weeks before your baby is due until two weeks after your baby is born. It is also possible to get ESA if you are incapable of working because of illness or disability.

ESA is classed as public funds, therefore, you should check your immigration status before making a claim. If you are subject to immigration control, see the Maternity Action information sheets on immigration status: www.maternityaction.org.uk/advice-2/mums-dads-scenarios/3-women-from-abroad/

Rights for fathers and partners on zero hours contracts
Can I take paid time off when my baby is born?
Fathers and partners, including same sex partners, who work on zero hours contracts are entitled to paternity leave and pay if they meet the qualifying conditions.

Employees who have been employed by the same employer for 26 weeks by the 15th week before your baby is due and who are still employed up to the birth are entitled to take up to two weeks’ paternity leave. If you are a ‘worker’ on a zero hours contract you will not qualify for paternity leave but may still be able to qualify for Statutory Paternity Pay (SPP). You can get SPP if your employer deducts tax and NI from your wages, usually through PAYE, and you meet the following conditions for SPP:
• you are the baby’s father or the husband/partner of the mother and you are responsible for the baby’s upbringing,
• you have been employed by your employer for 26 weeks by the 15th week before the baby is due or, if the baby is born before then, you would have worked for your employer for 26 weeks by the 15th week before the baby is due,
• you are still employed by the same employer up to the day your child is born (for SPP),
• you earn at least the weekly lower earnings limit on average (before tax) (currently £116) in the eight weeks (if paid weekly) or two months (if paid monthly) before the 15th week before your baby is born.

Workers on a zero hours contract who qualify for SPP can take one or two weeks off work and be paid SPP while they are not working. Employees can take paternity leave and SPP.

SPP is not classed as ‘public funds’ and will not affect future immigration applications.

You must give the correct notice for paternity leave and SPP. For more information, see Time off for working parents.

How much is Statutory Paternity Pay (SPP)?
SPP is paid by your employer for up to two weeks. SPP is paid at £145.18 per week (April 2018 – April 2019) or 90% of your average earnings if that is lower.

Some employers offer contractual paternity pay, so always check your contract or ask.

Can my employer ask me to pay SPP back if I do not go back to work?
No, all employers can claim the SPP and/or ShPP back from HM Revenue and Customs (HMRC). You do not have to repay it if you do not go back to work for your employer, for example, if you resign or you are dismissed or made redundant at any time after the start of your paternity leave or SPP. Your employer can get help and advice about paying and reclaiming SPP from the HMRC Employer Helpline on 0300 200 3200.

What can I do if my employer refuses to pay SPP?
For more information on how to meet the qualifying conditions for SPP if you work on a zero hours contract, see the section above on Statutory Maternity Pay. If you are refused SPP or your employer dismisses you or stops giving you work to avoid payment of SPP, you can contact your local HM Revenue and Customs Office for a formal decision or telephone the HMRC Employee’s Helpline on 0300 200 3500 for advice. If your employer refuses to pay SPP or goes out of business and is unable to pay SPP, you can contact the HMRC Statutory Payments Disputes Team.

Shared parental leave and pay for parents on zero hours’ contracts

Who can take shared parental leave (SPL)?
Shared parental leave allows the mother to shorten her maternity leave or maternity pay period in order for her partner to take time off or, if the mother has returned to work early, she can take shared parental leave if she wants more time off. SPL can be taken up to a year from the baby’s birth. Parents can take SPL at the same time or separately.

The rules on leave and pay are different so you need to check you are entitled to each separately. Shared parental leave can only be taken by employees who qualify for maternity leave or paternity leave. If you are a worker on a zero hours contract, you cannot take shared parental leave but you may be entitled to Statutory Shared Parental Pay (ShPP) if you want to take time off work to look after your baby.

Even if one parent is not entitled to leave or pay, the other partner may be so you need to check the qualifying conditions for each parent.

If you are an employee, you can find full details of shared parental leave and pay in our information sheet Shared Parental Leave and Pay. The details below apply when one or both parents are workers on zero hours contracts.

Do I qualify for Statutory Shared Parental Pay (ShPP)?
If you are a worker on a zero hours contract and you qualify for Statutory Maternity Pay or Statutory Paternity Pay you will also qualify for ShPP as long as you are still employed by the same employer up to the start of the week in which you wish to take ShPP.

Note: if you do not qualify for SMP, but you are getting Maternity Allowance instead, you will not qualify for ShPP but your partner may still be entitled to ShPP if your partner qualifies for Statutory Paternity Pay.
How much is ShPP?

ShPP is paid at the flat rate of £145.18 a week (April 2018 - April 2019) or 90% of your average earnings if that is less. ShPP is paid by your employer in the same way as other statutory payments such as SMP or SPP.

You do not have to repay ShPP if you do not return to work.

All employers can claim back 92% of ShPP (103% for small employers) from HM Revenue and Customs.

How much paid time off can we take?

Statutory Maternity Pay and Maternity Allowance last for 39 weeks. All mothers must take at least two weeks’ (4 weeks for factory workers) off work immediately after the birth. This means that a mother who is not entitled to maternity leave but is entitled to SMP can create up to 37 weeks’ Statutory Shared Parental Pay (ShPP) for her and/or her partner to take.

A mother who is not entitled to maternity leave but is entitled to Maternity Allowance can create up to 37 weeks’ Statutory Shared Parental Pay (ShPP) for her partner to take but she cannot qualify for ShPP for herself.

Example 1, if the mother is employed and reduces her maternity leave and SMP by 6 six weeks, she will be entitled to maternity leave for 46 weeks (52 – 6 = 46) and SMP for 33 weeks (39 – 6 = 33). The father/partner (on a zero hours contract) can take time off work (as he will not be entitled to paternity leave) and receive ShPP for up to six weeks.

How do I create SPL or ShPP for me and my partner to take?

If the mother is entitled to maternity leave she must end her maternity leave early in order to create shared parental leave for herself or her partner. If the mother is not entitled to maternity leave but is entitled to SMP she must end her SMP early in order to create ShPP for herself or her partner to take. Your maternity leave/pay can end in two ways:

A) Returning to work early

Maternity leave will come to an end if you return to work. If you return to work your maternity leave will end and you cannot go back onto maternity leave. The amount of SPL and ShPP available to you and/or your partner is calculated from the date of return to work.

B) Curtailing (reducing) your leave

Alternatively, you can give at least 8 weeks’ notice to curtail (reduce) your maternity leave and/or pay at a future date, specified in your notice, to enable you and/or your partner to take SPL. The amount of SPL/ShPP available to you and/or your partner is calculated from the date in your notice. If you return to work earlier than the date given in your notice you will not create any more SPL or ShPP.

You should think carefully before giving notice to end your maternity leave and pay because you can only cancel the notice in very limited circumstances if you gave notice before the birth and cancel within six weeks of the birth or your partner dies.

Do I have to end my maternity pay in order to create ShPP?

Yes, if you return to work early, although you may not receive any maternity pay, your entitlement to SMP or Maternity Allowance continues to run in the
background for 39 weeks from when it started (the maternity pay period).

If you are off sick during the SMP/Maternity Allowance period, you will go back on to SMP/ Maternity Allowance if you are absent from work for a week or more during your 39 week maternity pay period. If you normally receive full sick pay from your employer, your employer must top up the SMP/ Maternity Allowance to your full pay.

Any SMP or MA you received after you returned to work as a result of sickness during the maternity pay period will not reduce the number of weeks of SPL and/or ShPP available to you and your partner, as the number of weeks of SMP or MA taken for the purpose of ShPP is determined at the point of your return to work.

If you have already returned to work and want to take SPL and/or ShPP at a later date you must give at least 8 weeks’ notice to end your maternity pay period before the end of the 38th week, so that you or your partner can use any untaken SMP. This means that you will have to give notice by the end of the 30th week of your maternity pay period at the latest. The amount of ShPP available to you or your partner is determined by the number of weeks of SMP/ Maternity Allowance untaken at the date of your return to work.

Example – returning to work before giving notice to take SPL/ShPP
Amy returns to work after taking 20 weeks SMP. She has not yet given notice of intention to take SPL or ShPP. She will need to end her entitlement to SMP by the end of week 38 of her SMP period in order to create any entitlement to ShPP for her and her partner. If she gives notice before the 30th week, she or her partner can take up to 19 weeks ShPP (39 minus 20 weeks already taken = 19 weeks remaining) at any time before their child’s first birthday.

Dealing with problems at work

Dismissal or unfair treatment
It is against the law for your employer to treat you unfairly, dismiss you or select you for redundancy for any reason connected with pregnancy, childbirth or maternity leave, see Pregnancy Discrimination or Discrimination during maternity leave.

You must have worked for your employer for a year to make a claim for ordinary unfair dismissal. If you start a new job after 6 April 2012 you will need to have worked for your employer for two years to claim ordinary unfair dismissal but you can claim discrimination and automatic unfair dismissal on the grounds of pregnancy and maternity leave from day one of your employment.

If you are dismissed while you are pregnant or during your maternity leave, your employer must state the reason for your dismissal in writing.

What can I do?
If you think that you have been treated unfavourably (e.g. loss of hours/work/pay) as a result of being pregnant, you should obtain legal advice as soon as possible. If you are in a union you can usually get legal help with bringing a claim.

You should try to resolve it amicably if possible to start with. Try speaking to your employer informally. If necessary you could write to your employer. If you are unable to resolve it you should get advice as soon as possible.

There are strict time limits for making a claim in an employment tribunal. The tribunal must receive a claim within three months (less one day). Time limits for some claims can only be extended for very good reasons.

You must contact ACAS Early Conciliation on 0300 123 11 00 before making a tribunal claim.

See the information sheet, Dealing with problems at work, for more on how to negotiate with your employer and how to bring a claim in a tribunal.

Benefits for families

Are there any benefits I can claim if I am on a low income?

Once your baby is born you can claim Child Benefit. Families in receipt of Child Benefit will be subject to a high earner child benefit charge if one or more parent earns over £50,000.

Working and non-working families may be able to claim Child Tax Credit and/or Working Tax Credit depending on your family income. For more information and an application form, telephone the Tax Credit Helpline on 0345 300 3900.

If you or your partner are receiving Income Support, income-based Jobseekers Allowance, Child Tax Credit or Universal Credit you may be entitled to a Sure Start Maternity Grant of £500 for your first child (unless other children are 16 or over) or first multiple birth. Claim on form SF100 (Sure Start), available from Jobcentre Plus offices, from 11 weeks before the baby is due until 3 months after the birth.

These benefits will gradually be replaced by Universal Credit, depending on where you live.

For more information on benefits for families, see Money for Parents and Babies.
How do I work out my hours and earnings when it changes all the time because I work on a zero hours contract?

If you do not have set hours and the amount of work you or your partner does changes from week to week, you should work out your average hours over the five weeks immediately before the date of your claim. You can ask for a different period to be used if this period is not typical e.g. you worked overtime or were off sick.

If you work every week but the number of hours changes every week, you can average your hours by adding together your total hours and dividing by the number of weeks e.g. add together your hours in the last five weeks and divide by 5.

Do not count any weeks in which you were:
- On paid holiday,
- Absent from work because you turned down work or no work was available,
- Off sick,
- On maternity, paternity, adoption or shared parental leave.

If you work term-time only you will usually have to average your hours over the weeks in which you are actually working and this will apply for the whole year even though you have periods of no work. However, if you work seasonally or on a casual basis or you only work at certain times of the year and you are unemployed the rest of the year, you may be able to argue that you should only use the weeks in which you are in work and not count the weeks when you are unemployed.

If you have just started work or the amount of work you do has changed you can ask for a decision on your hours to be revised. If you are refused benefit because your hours were too high but you are not now earning as much, you can make a new claim. You must notify changes in your circumstances so that you do not face an overpayment and civil penalties. You can get advice from the organisations below.

This information sheet was produced in March 2018. It is always important to get up-to-date advice

Where to go for more help

Maternity Action
Advice on maternity and parental rights and benefits
www.maternityaction.org.uk
Maternity Rights Advice Line 0808 802 0029 - www.maternityaction.org.uk/advice-2/advice-line/

ACAS
For advice on employment rights or for Early Conciliation if you are thinking of making a tribunal claim
www.acas.org.uk
Helpline: 0300 123 11 00 (offers telephone interpreting service)

Citizens Advice
For information about your rights and to find details of local advice bureau
www.citizensadvice.org.uk

Civil Legal Advice
If you are eligible for legal aid you can get free legal advice on 0345 345 4 345 (offers translation service). To check your eligibility see www.gov.uk/civil-legal-advice
To search for specialist legal advisers or solicitors in your area see: find-legal-advice.justice.gov.uk

Equality Advisory Support Service
Help and advice on discrimination and human rights
www.equalityadvisoryservice.com
Helpline: 0808 800 0082 Mon – Fri 9am – 7pm, Sat 10am – 2pm
Textphone: 0808 800 0084

Egalities and Human Rights Commission (EHRC)
For information and advice about discrimination law
www.equalityhumanrights.com
For information for employees and employers about pregnancy and maternity rights in the workplace see: www.equalityhumanrights.com/about-us/our-work/key-projects/managing-pregnancy-and-maternity-workplace

GOV.UK
The government’s online information service
www.gov.uk

Jobcentre Plus
To make new telephone benefit claims or request claim forms, including Maternity Allowance and Sure Start Maternity Grant: 0800 055 6688 Mon – Fri 8am – 6pm
For ESA/JSA/Income Support claims: 0800 169 0310 Mon – Fri 8am – 6pm
For Maternity Allowance claims: 0800 169 0283 Mon – Fri 8am – 6pm
For Sure Start Maternity Grant claims: 0800 169 0140 Mon – Fri 8am – 6pm
Universal Credit helpline - if you cannot make an online claim: 0800 328 9344 Mon – Fri 8am – 6pm
Universal Credit helpline – for new claims and existing online claims: 0800 328 5644.
HM Revenue & Customs
Tax Credit Helpline: 0345 300 3900 Mon – Fri 8am-8pm, Sat 8am-4pm, Sun 9am -5pm
Child Benefit: 0300 200 3100 Mon – Fri 8am-8pm, Sat 8am-4pm
For queries about Statutory Maternity Pay, Adoption Pay, Paternity Pay and Shared Parental Pay:
Employees helpline 0300 200 3500
Employers helpline 0300 200 3200
For detailed guidance for employers on SMP, SAP, SPP and Statutory Sick Pay see www.gov.uk/government/collections/statutory-pay

HMRC Statutory Payments Disputes Team
For payments of Statutory Maternity Pay/Adoption Pay/Paternity Pay/Shared Parental Pay or Statutory Sick Pay when your employer is insolvent or refusing to pay: 0300 0560 630

Insolvency Service Helpline
What you can claim when your employer goes out of business: www.gov.uk/your-rights-if-your-employer-is-insolvent/claiming-money-owed-to-you
National Insolvency Unit Helpline 0300 678 0015/0017
Companies House 0303 1234 500
Redundancy payments enquiry line 0330 331 0020

Turn2us
Online benefits calculator and grant search
www.turn2us.org.uk

Working Families
For information and advice on benefits and rights at work
www.workingfamilies.org.uk
Helpline 0300 012 0312

Your Employment Settlement Service
For advice and help with settling disputes at work, including 15 minutes free advice www.yesslaw.org.uk
Tel. 020 3701 7530/7531

More Maternity Action information sheets
Rights during pregnancy and maternity leave
Pregnant at work
Pregnancy discrimination
Discrimination during maternity leave and on return to work
Resigning during pregnancy and maternity leave
Keeping in touch days
Pregnant during maternity leave (when you are expecting again)
More than one job – your maternity rights and benefits
Shared parental leave and pay
Premature births – rights to maternity leave and pay
Miscarriage, stillbirth and neonatal death – rights to time off and pay for parents

Maternity pay and benefits
Maternity pay questions
Money for parents and babies
Benefit and tax credit rates

Asking to change your working hours
Child-friendly working hours

Redundancy, dismissal and discrimination
Dealing with problems at work
Redundancy during pregnancy and maternity leave
Redundancy – additional questions
Pregnancy discrimination
Discrimination during maternity leave and on return to work

Health and safety, breastfeeding and sickness
Sickness during pregnancy and maternity leave
Health and safety during pregnancy and on return to work
Postnatal depression and depression during pregnancy – your maternity rights and benefits
Breastfeeding on return to work
Breastfeeding in public places
Breastfeeding while out and about – taking action
Childbirth injuries – rights at work and benefits for new mothers

Apprentices, agency workers and zero hours contracts
Apprentices – maternity rights and benefits
Agency workers – maternity rights and benefits
More than one job – your maternity rights and benefits
Zero hours contracts – maternity and parental rights

Fathers and partners, including same sex partners
Rights at work for fathers and partners
Shared parental leave and pay
Shared parental leave for adoptive parents
Time off for working parents
Child-friendly working hours
Dealing with problems at work

Adoption or surrogacy
Adoption leave and pay – rights for parents
Surrogacy arrangements – time off and pay for parents
Shared parental leave for adoptive parents

Coming from abroad – maternity rights and benefits
Indefinite leave to remain, right of abode and UK citizens – maternity rights and benefits

www.maternityaction.org.uk
Charging for NHS maternity care

NHS care for women from abroad (England)

NHS care for women from abroad (Scotland, Wales and Northern Ireland)

Indefinite leave to remain, right of abode and UK citizens – entitlement to NHS maternity care

Polish language guides to maternity and parental rights

Ciaza i uprawnienia macierzynskie dla pracownic z Polski

Pregnancy and maternity rights for Polish workers (in English)

Karmienie piersia w miejscach publicznych

Breastfeeding in public places (in English)

Uprawnienia w pracy dla ojcow i partnerow polscy pracownicy

Rights at work for Polish fathers and partners (in English)

Spanish language guides to maternity rights and benefits

Derechos por embarazo y maternidad de las mujeres trabajadoras de habla hispana

Pregnancy and maternity rights for Spanish speaking workers (in English)

Información para mujeres de habla espanola sobre ayudas economicas para progenitores y bebés

Money for parents and babies for Spanish speakers (in English)

Portuguese language guides to maternity rights and benefits

Gravidez e direitos de maternidade para trabalhadoras que falam portugues

Pregnancy and maternity rights for Portuguese speaking workers (in English)

Auxilio financier para pais e bebês que falam português

Money for parents and babies for Portuguese speakers (in English)

Available at www.maternityaction.org.uk