

## Update on Statutory Payments for 2023/24 (Lecture B1370 – 26.23 minutes)

### *Statutory Sick Pay (SSP) Rates*

<u>Average Weekly Earnings</u>	<u>SSP Weekly RATE</u>
Less than £123	NIL
£123 or above	£109.40 from 6 April 2023

(2022/23 - £99.35 if earnings equal or exceed £123 a week)

SSP is payable for maximum 28 weeks in one PIW (period of incapacity to work) or linked PIWs.

There is no specified service required except that the employee has to have carried out some work under their contract.

To qualify the employee must be sick for a PIW being 4 or more consecutive calendar days but the first three waiting days, or working days, of PIW are discounted and not paid. SSP is then paid on a daily basis, calculated as the weekly rate divided by the number of qualifying days, for the employee, in the week.

### *Long term sickness*

Employees who are long term sick continue to accrue their holiday entitlement so are entitled to claim their holiday and be paid.

The ECJ say that all workers are entitled to up to four weeks of holiday pay each year they are on sick leave and to take that leave or be paid in lieu. This does not comply with Working Time Regulations which state that employees must use their statutory holiday within a year or lose it.

### *Statutory Maternity Pay (SMP)*

Employees are entitled to unpaid statutory maternity leave from the first day of employment with no qualifying conditions.

SMP will be payable for a maximum 39 weeks if the employee has been continuously employed for 26 weeks into the qualifying week (QW) and has earnings which equal or exceed £123 a week.

From 2 April 2023 SMP is payable, where average weekly earnings equal or exceed £123 at two rates for the 39-week Maternity Pay Period (MPP).

- a. Higher Rate, being 90% of average weekly earnings, this is paid for the first 6 weeks of MPP, plus
- b. Lower Rate, being the lower of £172.48 (2022/23 - £156.66) or 90% of average weekly earnings for a maximum of 33 weeks.

### *Statutory Adoption Pay (SAP) Rates*

Employees are entitled to unpaid statutory adoption leave from the first day of employment with no qualifying conditions. Parents who meet the criteria to apply for a parental order in surrogacy cases are eligible to apply for statutory adoption pay and leave.

SAP will be payable for a maximum 39 weeks if the employee has been continuously employed for 26 weeks into the matching week (MW), i.e. when the employee has been matched with a child, and has earnings which equal or exceed £123 a week.

From 2 April 2023 SAP is payable, where average weekly earnings equal or exceed £123 at two rates for the 39-week Adoption Pay Period (APP).

- a. Higher Rate, being 90% of average weekly earnings, this is paid for the first 6 weeks of APP, plus
- b. Lower Rate, being the lower of £172.48 (2022/23 - £156.66) or 90% of average weekly earnings for a maximum of 33 weeks.

#### *Statutory Paternity Pay (SPP) Rates*

The employee, if they qualify, will be entitled to 2 weeks leave and 2 weeks pay.

To take the leave the employee must have been employed at least 26 weeks into the qualifying week (QW) or MW. The leave must be taken within 56 days of the birth or placement of the child.

To qualify to receive SPP the employee must be employed at least 26 weeks into the QW or MW and have average weekly earnings which equal or exceed £123.

On birth or adoption of a child - From 2 April 2023 SPP will be payable at the lower of £172.48 (2022/23 - £156.66) or 90% of average weekly earnings, for a maximum of two weeks if the average weekly earnings equal or exceed £123.

#### *Shared Parental Leave (SPL) and Shared Parental Pay (ShPP)*

Parents of babies due and adopters of children placed for adoption are entitled to Shared Parental Leave and Pay. It is not available for single parents. SPL and ShPP replace additional statutory paternity leave and pay which was available for babies due or children placed for adoption before 5 April 2015.

Where the mother does not use all her maternity leave she can convert the balance of her leave into shared paternity leave (SPL). The mother has to take the compulsory 2 weeks maternity leave and pay after the birth or 4 weeks if she works in a factory. Then both parents can share the remaining 50 weeks leave and any remaining balance of pay up to 37 weeks. The right to SPL and ShPP also applies to employees who adopt a child on or after 5 April 2015. In this case the adopter must take at least 2 weeks of adoption leave and pay.

The leave and pay can be taken by the mother, the child's father or the mother's partner and must be taken in weekly blocks. Any leave or pay not taken by the child's first birthday or one year after the adoption is lost. The SPL and pay can be stopped and started, with the employee returning to work between periods of leave and employees are entitled to take up to 3 separate blocks of SPL and pay if they wish. Employees are required to give their employers at least 8 weeks' notice before they are absent from work on SPL.

Rate of Pay - ShPP will be paid at the lower of £172.48 (2022/23 - £156.66) a week or 90% of average weekly earnings or the rate applicable from the new tax year.

Amount of Leave - Employees can choose how much of the leave they each take. The employees can suggest a flexible pattern of leave to their employer and they have the right to take SPL in up to 3

blocks – concurrently or consecutively. If the employee's partner is not eligible for SPL then the employee can still book their leave in separate blocks.

**Eligibility** - To qualify for SPL the employee must have 26 weeks continuous employment at the 15th week before the expected week of childbirth, or placement date for adoptions, and remain in that employment when the leave is taken. The employee's partner must also satisfy minimum employment and earnings criteria to be eligible for SPL. If the partner is not eligible for SPL and ShPP then they cannot share the leave with the employee.

**Notice to End SML or SAL** - The mother or adopter must either end their SML or SAL by returning to work or have given "binding notice" to their employer of the date they intend to end their SML or SAL. The mother or adopter must give at least 8 weeks' notice to their employer to end their SMP or SAP. Their partner can start their SPL while they are still on maternity or adoption leave as long as they have given the binding notice to end it.

**Leave** – An employee must give a separate written notification at least 8 weeks before the start of any period of SPL. The notice must state when the leave will start and end and can request more than one period of leave. The leave must be taken in minimum week blocks. If the employee requests one continuous period of leave they are entitled to take it. If they ask for separate periods of leave the employer can:

1. Agree the requested leave;
2. Refuse the request;
3. Refuse the request but propose alternative dates.

**Return to Work** - During SPL the employee's normal terms and conditions of employment continue except those relating to pay. Employees who are on SPL who are at risk of redundancy are entitled to be offered suitable alternative employment if there is such a vacancy. An employee returning to work from SPL is entitled to return to the same job if they are coming back from SPL after 26 weeks or less. If the leave period exceeds this and it is not reasonably practicable to return to the same job then they return to a suitable alternative.

#### *Other Parental Leave Entitlements*

**Antenatal Appointments** – Pregnant mothers have the right to reasonable paid time off work to attend antenatal appointments. This right will be extended to apply to fathers, or the mother's partner, for attendance at two appointments, 6.5hrs each although this time off will be unpaid. Similar provisions will apply for adoptive parents. The adopter will be given paid time off for five appointments and their partner will be able to attend two meetings but this time off will be unpaid.

**Surrogacy** - Parents who have a child through a surrogacy arrangement will be entitled to take ordinary paternity leave and pay and adoption leave and pay and shared parental leave and pay provided they meet the eligibility criteria. They will be allowed to take time off, unpaid, to attend two ante natal appointments with the mother of the child.

#### *Keeping in Touch Days (KIT)*

Employees are to come into work for up to ten KIT days to enable them to retain contact with their workplace. Any payment made to the employee for KIT days should be based on their contracted remuneration, not the SMP/SAP rate and there is no loss of statutory pay. SMP/SAP can be offset

against the contractual salary. Whatever amount is paid for the day only the SMP/SAP part can be reclaimed by the employer from HMRC.

Shared Parental Leave in Touch (SPLIT) days - Each employee can work up to 20 SPLIT days during SPL without bringing the leave to an end. These days are in addition to the 10 KIT days available to employees on maternity or adoption leave.

#### *Statutory Parental Bereavement Leave and Pay (SPBL and SPBP)*

From 6 April 2020 employed parents who lose a child under the age of 18, or suffer a still birth from 24 weeks, have been entitled to 2 weeks of parental bereavement leave as a day one right. With effect from April 2022 the same rights have applied in Northern Ireland.

Those with 26 weeks service at their child's death and earnings above the LEL, £123 a week, will also be entitled to parental bereavement pay (SPBP) at the statutory flat weekly rate of £172.48 (2022/23 - £156.66) or 90% of average weekly earnings, if lower.

Average weekly earnings are calculated as for SMP/SAP but with a difference:

“relevant week” is the week ending with a Saturday before the week in which the child dies

“relevant period” is the period of 8 weeks ending with the relevant week.

Bereaved parents are those who are the primary carers of the child, so legal parents, adoptive parents, parents who foster to adopt, parents of a child born to a surrogate, individuals with a court order giving them day to day responsibility for caring for the child and kinship carers, being primary carers without legal status.

The employee will not be required to give written notice for the parental bereavement leave. The length of notice required for the leave depends on whether the employee is taking the leave within 8 weeks following the death (period A) or later (period B).

Period A - notification before they would be due to start work on the first day of absence

Period B – notice of at least one week before starting the leave period

The leave can be taken as a single block, or one or two weeks or as two separate weeks taken at different times. The leave must be taken within 56 weeks from the child's death, so allowing for anniversaries and other important dates.

The employee must provide written notice for SPBP within 28 days beginning with the 1st day of the week in which SPBP is being claimed, stating the dates of the period(s) to which the claim relates. The employee must provide in writing their name, the date of the child's death and a declaration they meet the conditions of eligibility.

#### *Recovery of SMP, SAP, SPP, ShPP and SPBP – 2023/24*

Large employers can recover 92% of their costs from HMRC. However where an employer qualifies as a small employer they can recover 100% of SMP, SAP, SPP, ShPP and SPBP paid plus an additional 3% being the small employers compensation rate from HMRC.

A “small employer” will be an employer where total gross Class 1 NICs are £45,000 or less in the qualifying tax year. Be careful to check in 2023/24 as HSLC may have increased gross NIC to over £45,000 in 2022/23, the previous qualifying tax year.

### *The Carers Leave Bill - New Right for Unpaid Leave for Carers*

Following the “Carer’s Leave Consultation” there was clear support for the introduction of a leave right for unpaid carers. The Carers Bill has passed its second reading in Parliament so will become law in due course. Carers leave will be a right, from day one of employment, for unpaid carers to take up to one week, 5 working days, unpaid leave each year to look after the person for whom they care. Employees, where eligible, will be able to take the leave either individual day or half days up to a block of one week. The employee will be required to give notice of the leave the same as for annual leave being twice the length of the leave required plus one day. It is likely the employer will have limited scope for rejecting requests for the leave.

The entitlement to statutory carer’s leave will:

- Be available to employees regardless of length of service – so from day one
- Depend on the carer’s relationship with the person being cared for – using the definition of dependant as in right to time off for dependants – spouse, civil partner, child, parent
- Depend in the person being cared for having a long term care need – long term illness or injury (mental or physical), a disability as defined by Equality Act 2010 or issues related to old age. There would be limited exemptions from the “long term care” requirement such as re a terminal illness

### *Extension of Redundancy Protection for New Parents and Pregnant Employees*

The Protection from Redundancy (Pregnancy and Family Leave) Bill will enable redundancy protection to apply to all pregnant women as well as new parents returning to work after leave. The “protection period” will be extended to run from the date the employee notifies her employer she is pregnant to 18 months after the birth. This means that a new mother returning to work after a year of maternity leave has a further 6 months redundancy protection. The extended protection will also be available to parents returning from adoption or shared parental leave.

Currently employees on maternity leave who are at risk of redundancy must be offered suitable alternative roles before making them redundant. This special protection ends when the maternity leave ends or two weeks after pregnancy ends for women not entitled to maternity leave.

### *Extended Leave for Neonatal Care*

On 15 July 2022 the Neonatal Care (Leave and Pay) Bill received government backing and it is anticipated that this could be introduced from 2023. This Bill will allow parents, from day one of employment, to take up to 12 weeks of paid leave in addition to the usual statutory maternity and statutory paternity leave and pay periods. This will be an employment right from day one of employment.

The criteria are:

- the admission to hospital lasts for a continuous period of 7 days or more
- the baby is neonate - aged 28 days or less

*Contributed by Alexandra Durrant*