



A Guide To Time Off Work

This is a basic guide covering the different types of leave or absence from work and who is entitled to them. This factsheet is only an introduction to what you may be entitled to so please seek further advice where necessary. There is a separate factsheet for Maternity Rights, which covers leave and pay if you are pregnant or have just had a baby.

What kind of wage earner are you?

Your entitlement to leave, paid and/or unpaid, is dependent on your work circumstances. How you work, the number of hours you work and who you work for, all have an effect on your right to leave. In order to know what leave you are entitled to it is first necessary to establish what kind of worker you are. This is not always clear or easy, so get advice if you are in any doubt. There are 3 types of wage earners:-

Worker: Most people paid by an employer, for performing a service or task, are workers. A worker can work full or part time and may or may not be an employee. Workers have statutory rights to leave. Self-employed people are not workers.

Employee: A worker who is paid by an employer and who works under a contract of employment is an employee. Generally an employee is given work to do by the employer and told when and how to do it. An employee working part time or on a fixed contract has the same rights as an employee working full time. It is important to establish if you are a worker or an employee, as employees generally have more rights than workers. Employees have both statutory and contractual rights. Casual, Supply, Agency or Bank workers may actually be employees (i.e. they have a contract with their employer) rather than workers.

Self-Employed: Someone who is self employed makes their own decisions about the work they undertake and do not have a contract with an employer. Self-employed people have the least rights and entitlement to leave. These three definitions will be used throughout this factsheet.

What leave am I entitled to?

Below is a list of different types of leave, what it is and who is entitled to take it.

Statutory Annual Leave

All workers have a right to paid annual leave. Annual leave can be taken for any purpose but is usually used for holidays. Workers working full-time have a right to a minimum of 28 days paid leave. If you work part-time or start work during, rather than at the start of, a leave year you are entitled to a proportion of the 28 days. Your

employer may include public holidays as part of your annual leave. If this is the case you must be paid for them (see below).

If you are an employee your contract may give you more rights to annual leave.

Although you may have some say in when you take holidays this is not a right and your employer can refuse the request. However if your employer tells you to take your holidays at a certain time you cannot refuse.

Workers are only entitled to payment for unused annual leave when employment ends.

Public Holidays

Workers do not have a right to public holidays. If you are an employee you may be given them, paid or unpaid, in your contract in addition to your 28 days statutory leave. However, your employer can ask you to take leave on a public holiday and include that day as part of your 28 days annual leave but must pay you for it in this case.

Sick Leave

There is no prescribed amount of time off when you are sick. Employers have policies and procedures that must be followed when someone is off sick. Your employer may ask you for medical evidence of your illness and can discipline or dismiss you if they think your illness is not genuine or the amount of leave you take interferes with your ability to do your work.

When calculating sick leave, leave due to pregnancy-related illness or appointments, paternity, maternity, paternal and annual leave and time off for dependants should not be taken into account. Any time off relating to the above should be recorded as such so it is not included in your sickness record. A woman who is off work sick immediately after maternity leave will be treated the same as any other employee. See the Maternity Factsheet for more information on the rights of pregnant women and new mothers.

Employers should not discriminate against people with disabilities so workers who are disciplined for taking time off as a result of their disability should seek advice.

Time Off Work to Attend Medical Appointments

There is no statutory right to time off work for medical appointments. Your employer can expect

you to make appointments outside of your working times or to use any entitlement to leave you have. The only exceptions to this are for antenatal appointments (see below) or where not allowing a disabled worker time off can be viewed as a breach of the Disability Discrimination Act.

Employees may have a contractual right to unpaid/paid time off work to attend medical appointments.

For time off for medical appointments for children see "Time off for dependants".

Maternity Leave.

Workers who are not employees (self employed people, casual workers etc.) do not have a right to maternity leave. They can take time off work during and after pregnancy, but in the case of casual or agency workers, do not have a right to return to their job. Workers have a right to paid time off work to attend antenatal appointments.

All employees, whether full-time, part-time or on a fixed term contract, have a right to maternity leave of 52 weeks and paid time off to attend antenatal appointments.

Please see the Maternity Rights Factsheet for more details.

Parental Leave

Employees who have parental responsibility for a child under the age of 5, or 18 if the child is claiming Disability Living Allowance (DLA), and have worked for the same employer for at least a year, are entitled to Parental Leave. Leave of up to 13 weeks can be taken before the child's 5th birthday or, if the child is in receipt of DLA, leave is for 18 weeks and can be taken up until the child's 18th birthday. If you have more than one qualifying child you are entitled to the appropriate amount of leave for each child. The leave is unpaid.

You may be able to negotiate when and how you take parental leave with your employer, but if not, the following rules apply-

Leave must be taken in one week blocks unless your child gets DLA in which case leave may be taken a day at a time. More than one week may be taken at a time but a maximum of 4 weeks per child can be taken per year. You must give your employer at least 21 days notice of when you want to take leave, how much time you will be taking and when you will return. Your employer

can postpone your leave but not if you want to take it immediately after maternity leave.

Parental leave should not be treated as sick leave and you should not be criticized in any way for taking it.

Paternity Leave

You are entitled to paternity leave, of one or two weeks, if you are an employee, have been with the same employer for 26 weeks by the end of the 15th week before the baby is due and are still employed by the same employer on the day the baby is born. You must also expect to have responsibility for the baby or be the biological father or be married to or the civil partner of the mother. Therefore more than one person can take paternity leave for the same baby but biological relatives of the pregnant woman cannot take paternity leave.

You must give your employer notice of when you want to take leave and if you are taking one or two weeks. Notice should be given by the 15th week before the expected date of delivery and the leave must usually be taken within 56 days of the birth.

Most employees are entitled to Statutory Paternity Pay

Flexible Working

Employees who have been with the same employer for at least 26 weeks and have a child under 17, or under 18 if the child is in receipt of Disability Living Allowance, or be caring for an adult (over 18) have the right to ask for flexible working.

The request has to be in writing and must state that you have caring responsibilities and say what working arrangements you are asking for. There are many different kinds of working patterns to be considered and it is important to be sure of your needs as the request could result in a permanent change in your contract.

Your employer does not have to grant the request but has to give one or more reasons from a permitted list for turning down your application. You have a right to appeal if you do not agree with the decision.

Time Off For Dependants.

You have the right to take a reasonable amount of unpaid leave to deal with an 'emergency' involving a dependant. It is sometimes called carer's leave. A dependant is anyone who depends on you in an emergency situation. Situations where leave may be taken include illness, assault or death of a family member and breakdown of childcare. A reasonable amount of time depends on the circumstances. There is no limit to the number of separate periods you can have off or to the amount of time taken during each period, however the situation must generally be considered an emergency or an unforeseen circumstance. If you know in advance that you will need time off for a dependant, for example to

attend a doctor's appointment or be at the birth of a dependant's baby, this can also be taken as dependant's leave as long as no other arrangements could have reasonably been made.

If you are an employee you may have entitlement to some paid time off for dependants.

Dependants leave is not sick leave and should not be considered as such, however if the time you take off to care for a dependant becomes predictable or lasts for long periods of time it may be argued by your employer that it does not meet the criteria for dependants leave and you may be disciplined.

Adoption Leave

If you are an employee, employed continuously with the same employer for at least 26 weeks and have been matched for adoption you may be entitled to Adoption Leave of 52 weeks and to Statutory Adoption Pay.

If you are not entitled to adoption leave you should check your entitlement to Paternity Leave (see above).

Other Circumstances Where You May Be Entitled To Leave

You are entitled to a reasonable amount of paid leave if you are involved in trade union activities, looking for work during a redundancy procedure, or are 16 - 18 years old and studying or training. From 6th April 2010 employees over the age of 18 years also have the right to request time off work to attend training that will improve their performance at work. The employee has to have been working with their employer for at least 26 weeks and, at the moment, the employer has to have 250, or more, people working for them. This leave is unpaid. You are entitled to unpaid leave to perform public duties.

If you are required for Jury Duty or are cited in court your employer has to grant you time off or face being held in contempt of court.

Useful Contacts

Working Families

Helpline: 0800 013 0313

Email: advice@workingfamilies.org.uk

Web: www.workingfamilies.org.uk

ACAS Scotland

151 West George Street

Glasgow G22 2JJ

Helpline: 08457 47 47 47

Open Monday to Friday 8am to 8pm and Saturday 9am to pm

Edinburgh University Free Legal Clinic

Offers free advice and referral centre on Monday nights. To make an appointment, phone 07799 724 648 between 10am and 5pm Monday-Friday.

Citizen's Advice Bureau

You can find your local bureau in the telephone directory or from www.cas.org.uk

Pay & Workers' Rights Helpline

A Government service giving information on employment rights in 100 different languages.

Tel: 0800 917 2368

Text Phone: 0800 121 4042