Statutory Parental Bereavement Pay and Leave

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Matthew Brown provides an introduction to Statutory Parental Bereavement Pay and Leave

It is intended that entitlement to Statutory Parental Bereavement Pay and Leave will come into effect from 6 April 2020.

The Parental Bereavement (Leave and Pay) Act 2018 introduced a new employment right to Parental Bereavement Leave and an entitlement to Statutory Parental Bereavement Pay for any qualifying parent who loses a child (under the age of 18)

or who suffers a still-birth from 24 weeks of pregnancy. The new entitlement will apply to deaths from 6 April 2020.

Statutory Parental Bereavement Leave will be a ‘day one’ employment right, whereas eligibility for Statutory Parental Bereavement Pay will be subject to certain qualifying conditions, as is the case for other parental Statutory Payments. Entitlement to receive Statutory Parental Bereavement Pay will generally follow the same administration rules as all other parental statutory payments and will be treated as earnings for tax and National Insurance Contributions purposes. It cannot be salary sacrificed.

The Parental Bereavement (Leave and Pay) Regulations were laid in Parliament on 23 January 2020. These implement entitlement to Statutory Parental Bereavement pay and leave from 6 April 2020. They include the definition of a bereaved parent, the window in which the entitlement can be taken (the ‘qualifying period’), how the leave and pay can be taken, and record keeping, along with further details of how the entitlement will work in practice.

Detailed guidance for parents and employers will be available on GOV.UK before 6 April 2020. There will also be forms available for employers/employees to use to record entitlement etc. This includes employer’s record keeping forms and the employee’s declaration form for Statutory Parental Bereavement Pay.

Entitlement to Statutory Parental Bereavement Leave

As noted above, Statutory Parental Bereavement Leave is a ‘day one’ right. There is no length of service conditions etc and leave may be taken at any time in the qualifying period. Entitlement to Statutory Parental Bereavement Leave should be considered separately from entitlement to Statutory Parental Bereavement Pay. So, an employee can take unpaid leave even if the employee is not entitled to, or does not claim, Statutory Parental Bereavement Pay.

Statutory Parental Bereavement Leave can be taken as a single block of 2 weeks, or as two separate blocks of 1 week each. It cannot be taken in days. The leave must be taken within the qualifying period of 56 weeks, starting with the date of the child’s death.

An employee will need to give notice for Statutory Parental Bereavement Leave but written notice is not required (although written notice is required for entitlement to

Statutory Parental Bereavement Pay). The required length of notice for leave will vary depending on whether the employee intends to take leave within the first 8 weeks following the death, or later. For leave taken in the first 8 weeks following the child's death, the employee will need to notify their employer before they would be due to start work on the first day of absence, and for leave taken in later periods, the employee will need to provide notice at least 1 week before the start of the leave period.

In order to qualify for Statutory Parental Bereavement Leave the employee must be a bereaved parent. The definition of a bereaved parent is discussed below.

For the purposes of entitlement to both Statutory Parental Bereavement Leave and Statutory Parental Bereavement pay, 'child' means any person under the age of 18, and includes any child still-born after 24 weeks of pregnancy.

In the case where an employee is eligible for Statutory Parental Bereavement Leave and Pay as a result of the deaths of more than one child, they will be entitled to 2 weeks' Statutory Parental Bereavement Leave and Pay in respect of each child.

Entitlement to Statutory Parental Bereavement Pay

Employees who meet the requisite conditions outlined below will be entitled to two weeks' Statutory Parental Bereavement Pay.

Statutory Parental Bereavement Pay can be taken as a single block of 2 weeks, or as two separate blocks of 1 week each. It cannot be taken in individual days. The entitlement must be taken within 56 weeks, starting with the date of the child's death (although an employee is not obliged to take their full entitlement if they choose not to). Statutory Parental Bereavement Pay may start on any day of the week and can be aligned with pay periods in the same manner as all other statutory payments.

The employee does not have to remain in employment with the same employer until the week before Statutory Parental Bereavement Pay is taken. They will be entitled to the payment if they meet the requisite conditions at the 'relevant week' (the 'relevant week' is the week before the one in which the child died). Where an employee is entitled to Statutory Parental Bereavement Pay and leaves employment after taking only 1 week (or before taking any), the 'former' employer remains liable for Statutory Parental Bereavement Pay (assuming the employee meets the

entitlement conditions (see below) at the time of the child's death and provides the required notice etc).

If an employee works for any part of the week for which they have claimed Statutory Parental Bereavement Pay, the employer has no obligation to pay Statutory Parental Bereavement Pay for that week. The employee will still be entitled to receive payment for the second week if not already taken.

Statutory Parental Bereavement Pay cannot interrupt another statutory payment. So, for example, there will be no entitlement to Statutory Parental Bereavement Pay in respect of any week during any part of which an employee is entitled to Statutory Sick Pay. Statutory Parental Bereavement Pay can be taken at the end of the other statutory entitlement, or later. For example, this means a bereaved mother could have 39 weeks of Statutory Maternity Pay then 2 weeks of Statutory Parental Bereavement Pay and the other parent can have two weeks Statutory Parental Bereavement Pay.

Statutory Parental Bereavement Pay must, however, be taken within the qualifying period which begins with the date of death and ends 56 weeks after that date. In the case of a stillbirth, the 'date of death' should be read as the date of birth of the stillborn child.

There is no liability to pay Statutory Parental Bereavement Pay for any week following that in which the person claiming it has died.
There will be no prescribed limit to the number of people who can claim Statutory Parental Bereavement Pay in respect of one child, however every claimant's entitlement will be subject to that particular individual meeting the qualifying conditions set out below.
The start date for claims will be 6 April 2020 which means that entitlement will arise (subject to qualifying conditions being met) for any parent whose child dies, or who has a still-birth, on or after 6 April 2020.

Entitlement to Statutory Parental Bereavement Pay - Conditions

The conditions for entitlement to Statutory Parental Bereavement Pay concerns an employee's length of service and earnings, and the employee's relationship with the child.

The first condition (length of service and earnings) is:

- The employee has been continuously employed for at least 26 weeks at the relevant week,
- The employee has average weekly earnings of at least the lower earnings limit (LEL) (in force at the relevant week) in the relevant period
- The employee has given the employer the correct notice, and
- The employee has completed the employee declaration.

The ‘relevant week’ is the week (ending with a Saturday) before the week in which the child dies.

The ‘relevant period’ is the period of 8 weeks ending with the relevant week.

The average weekly earnings rules and calculations are similar to those for Statutory Maternity Pay and Statutory Adoption Pay, the only difference being the relevant period, outlined above.

An employee must give their employer ‘notice’ for Statutory Parental Bereavement Pay in writing within 28 days of the first day of the Statutory Parental Bereavement Pay period (or where not reasonably practicable, then as soon as reasonably practicable). An employee can, however, withdraw their notice but this has to be done in writing no later than the first day of the week in which the Statutory Parental Bereavement Pay is due to start if claimed within the first 8 weeks after the child's death, or no later than one week before the start date if claimed between the start of week 9 and week 56.

The employee must provide evidence of entitlement in writing at the same time which must contain a written declaration that the person meets the qualifying conditions for Statutory Parental Bereavement Pay as well as (i) the name of the person claiming Statutory Parental Bereavement Pay, (ii) the date of the child’s death (or date of birth for a stillborn child) and (iii) the period or periods in relation to which Statutory Parental Bereavement Pay is to be paid.

Note that an individual living in Northern Ireland who has a contract of employment made under the Employment Rights (Northern Ireland) Order 1996 will not qualify for Statutory Parental Bereavement Pay but if the individual is living in Northern Ireland and has a contract of employment made under the GB Employments Rights Act 1996 they will be eligible to claim Statutory Parental Bereavement Pay, subject to all eligibility criteria for SPBP being met.

The second condition (relationship with the child) means that in order to qualify for Statutory Parental Bereavement Pay (or Leave) the employee must be a bereaved parent. This requires that the person must meet, at the date of the child's death, the following conditions as to their relationship with the child who has died:

- The person must be the child's parent, including (a) adoptive parents, after a formal court adoption order has been made, and (b) parents of a child born to a surrogate, after a formal court parental order has been made. It does not include biological parents once an adoption order or parental order has been made, unless the biological parent(s) has a contact order which allows them to maintain contact with the child after the adoption;
- Adoptive parents, before a formal adoption order has been made, from the point at which the child is placed with them for adoption, so long as that placement has not been disrupted or terminated. In the case of an adoption from outside the UK, the adoptive parent will qualify before a court order is made if the child is living with them following their entry into Great Britain, and if they have received a written notification from the relevant domestic authority that it is prepared to, or has already, issued a certificate confirming that the person has been assessed and approved as a suitable adoptive parents;
- Parents of a child born to a surrogate, before a formal parental order has been made, if they have applied for a parental order or intended to apply for a parental order (and expected to get it) within 6 months of the child's birth;
- The child's 'parent in fact' (see below); and
- The partner of any of the above (whether of a different sex or the same sex), if they lived with the person above and the child in an enduring family relationship.

An employee will be the child's 'parent in fact' if they don't meet any of the above conditions, but the child has been living with them, in their own home, continuously for a period of 4 weeks ending with the date of death, and they have had day to day responsibility for the child's care during that time. Any temporary or intermittent absences are disregarded when deciding whether a period is 'continuous'. For example, a 'parent in fact' could be a grandparent who has been looking after the child in place of the child's parents. This person will have provided day to day care for the child in their own home for a continuous period of at least four weeks ending with the child's death. However, the person will not qualify as a 'parent in fact' if either (i) one of the child's parents, or anyone with parental responsibility (or in

Scotland, parental responsibilities) for the child, is living in the same premises, or (ii) the person was receiving (or was entitled to receive) remuneration in respect of the care of the child. The following types of payment do not count as ‘remuneration’ in this situation:

a) A fee or allowance paid by a local authority to a foster parent;
b) Payments wholly or mainly intended to reimburse the person for expenses arising from the person’s care of the child; or
c) Amounts received pursuant to the terms of a will, trust or similar instrument which makes provision in respect of the child’s care.

The employee is required to produce a written declaration to the effect they meet the qualifying conditions. For example, that they meet the ‘relationship with child’ condition. An employer cannot request any additional evidence but if the employer believes there is no entitlement they can refuse.

Entitlement to Statutory Parental Bereavement Pay - Pay

If an employee meets the eligibility criteria detailed above they are entitled to receive Statutory Parental Bereavement Pay. This will be paid at the statutory flat weekly rate of £151.20 (for the year 2020/21) (or 90% of average earnings, where this is lower). The rate will be uprated each year, in line with other statutory payments. As Statutory Parental Bereavement Pay is a weekly payment that can start any day of the week, if it crosses two pay periods it can be split and aligned as is the case for other statutory payments.

If an employee works at any time in the week for which Statutory Parental Bereavement Pay is claimed they will lose entitlement for that week.

Entitlement to Statutory Parental Bereavement Pay – Record-keeping and reporting

Employers will have to keep records for 3 years after the end of the tax year in which the employer made the payments of Statutory Parental Bereavement Pay, in line with all other Statutory Payments (excluding Statutory Sick Pay). Records will include details of the Statutory Parental Bereavement Pay payments that have been made and recovered (date period began and the amount paid in each week) and the corresponding evidence including the name of employee, the date of child’s death (or date of birth in case of a stillbirth), the period(s) for which it has been paid, and

the employee’s written declaration that qualifying conditions have been met. If the employer did not pay Statutory Parental Bereavement Pay to the employee in respect of a week that was within the employee’s period of payment, the employer must record that week along with the reason no payment was made. Pro forma new declaration, record keeping and non-entitlement forms will be available on GOV.UK.

Statutory Parental Bereavement Pay will be reported and reclaimed in the same standard way for all other Statutory Payments via the PAYE Real Time Information (RTI) FPS & EPS submissions. Statutory Parental Bereavement Pay payments can be recovered by employers in the same way as other Parental Payments (generally 92% but 100% + 3% compensation for those who meet the definition of ‘small’ employers) via the EPS. Lastly, the P60 will include a field to record Statutory Parental Bereavement Pay.