

PENSIONS IN 30 PODCASTS

25 Family leave and impact on pension contributions and benefits

Key Points

- Whether pension benefits should continue to build up whilst an employee is on family leave depends on whether the employee is on a period of paid or unpaid family leave.
- Pension benefits should continue (and contributions be paid) in respect of an employee on leave as detailed below for any period of paid leave (whether statutory or contractual).
- The extent to which there is an obligation on employers to continue to provide pension benefits during periods of unpaid family leave is an area of unsettled law. Many practitioners agree that during periods of unpaid leave, employers are under no legal obligation to pay contributions or provide benefit accrual unless the employee has a specific contractual right to such contributions or accrual.

Main Sources

- Employment Rights Act 1996
- Pensions Act 2004
- Maternity and Parental Leave etc. Regulations 1999
- Social Security Act 1989
- Children and Families Act 2014

Family Leave

Family leave includes:

- Maternity leave;
- Paternity leave;
- Adoption leave;
- Shared parental leave; and
- Parental leave.

Pension entitlement during periods of family leave varies depending on the type of leave and whether the leave is paid or unpaid. Pension entitlement is based on legislation and case law.

Maternity leave and pensions

Maternity leave in the UK is divided between periods of ordinary maternity leave ("OML") and additional maternity leave ("AML"). Under the Employment Rights Act 1996, an employee on OML or AML is entitled to the benefit of all of the "terms and conditions of employment" which would have applied had the employee not been on maternity leave.

Those terms and conditions are defined as matters connected with an employee's employment (whether or not they arise under her contract of employment), excluding any related to "remuneration".

When determining an employee's pension rights during a period of maternity leave, the important distinction is whether she is in receipt of any pay. While the statutory maternity leave period is 52 weeks (26 weeks OML plus 26 weeks AML), the statutory maternity pay period is 39 weeks (OML plus half of AML). Employers may elect to offer enhanced contractual maternity pay covering the whole 52 week period.

More information

Find out more about our Pension team at [gowlingwlg.com/pensions-uk](https://www.gowlingwlg.com/pensions-uk).

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If an employee is receiving maternity pay (whether statutory, contractual, or both) the employer has an obligation to maintain her pension benefits as if she was at work. As a result:

- pension benefits, including contributions, must continue during periods of OML; and
- during periods of AML, pension benefits need only continue if the employee is being paid (unless continued provision is a specific term of the employment contract).

Employer contributions during paid periods of maternity leave must be based on the employee's normal pay, had she not been on maternity leave.

In order to continue to benefit from ongoing pension benefits during the paid maternity leave period the employer may require the employee to make contributions out of her maternity pay. However, the employee's contribution will be based on the actual pay she receives rather than on her pre-maternity leave salary.

The law is not absolutely clear as to whether the obligation to provide an employee on maternity leave with all the terms and conditions of her employment (other than "remuneration") should include the ongoing provision of pension benefits, even when she is on unpaid AML. This depends on whether pension benefits constitute "remuneration" or not.

The general consensus is that there is no obligation to continue to provide pension benefits during a period of unpaid AML (unless the employer has contractually promised to do so). This is taking the view that pension contributions are a form of "remuneration" and so need not be continued during the unpaid leave period. Case law currently remains untested on this point.

Assuming contributions do cease during a period of unpaid AML, the member's pensionable service before and after the maternity leave period must be treated as unbroken.

Paternity and adoption leave and pensions

Section 265 of the Pensions Act 2004 brought the treatment of pension benefits during paid paternity and adoption leave into line with the position for maternity leave.

That is, during periods of paid paternity or adoption leave, the employee should continue to benefit from ongoing pension benefits, including employer contributions. The employer's contributions should continue to be calculated on the employee's normal salary (i.e. as though the employee was not on leave). As for the treatment of employees on maternity leave, the employee's contribution should be based on the actual pay received whilst on paternity or adoption leave.

Shared parental leave and pensions

The Children and Families Act 2014 introduced shared parental leave ("ShPL") for parents of children due to be born/placed for adoption on or after 5 April 2015. Eligible parents can share up to 50 weeks of ShPL and up to 37 weeks of statutory shared parental pay.

Employer contributions during periods of ShPL are determined on the same basis as for maternity leave. In other words, they only need to be paid for as long as the employee is in receipt of pay. Pensionable service before and after any period of unpaid ShPL must be treated as continuous.

During periods of paid ShPL employer contributions should continue to be based on the employee's normal salary (i.e. as though the employee was not on leave). However, the employee's contribution should be based on the actual pay received whilst on leave.

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Parental leave and pensions

The obligations on an employer during parental leave are less onerous than for other types of leave. This is because parental leave is a statutory right to up to 18 weeks of unpaid leave during the first five years of the child's life. Employers have no statutory obligation to continue paying pension contributions or to provide ongoing benefit accrual.

However, if an employee is entitled to paid parental leave under their employment contract, pension contributions must be paid by the employer as usual, and employee contributions (if required) should be deducted on the basis of pay actually received.

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