

# New rights to Neonatal Care Leave and Pay Act: What do employers need to know

31 January 2025  Claire Rosney

The Neonatal Care (Leave and Pay) Act 2023 ('the Act') provides new rights for parents of a child receiving neonatal care to take time off and subject to certain conditions, pay.

Although the Act was passed in May 2023, the Regulations containing the details of how the entitlements will work in practice have only just been published.

## Leave entitlement

Eligible employees will be entitled to take up to 12 weeks statutory neonatal care leave in circumstances where the care lasts for at least seven days and the care commences before the child is 28 days old. To reflect the fact that parents may be on another form of leave, such as maternity or paternity leave during this time, the leave may be added onto the end of another period of statutory leave. However, it must be taken within 68 weeks of the child's birth. The right to neonatal leave is a day-one right, with no minimum qualifying service requirement.

## Pay entitlement

Employees with 26 weeks' continuous service at the relevant date and who have average earnings of at least £123 a week, will be entitled to statutory neonatal care pay which is paid at the same rate as statutory paternity pay.

## Notice provisions

Notice provisions apply in respect of both leave and pay, however there is provision for an employer and employee to mutually agree to waive these provisions. In a notable difference to other forms of statutory family leave, notice requirements differ depending upon whether it is a 'tier 1 period' or a 'tier 2 period'. In short, tier one is where the leave is taken whilst the child is receiving neonatal care or during the week following the end of neonatal care. Therefore, as the mother is likely to be on maternity leave during the tier 1 period, tier 1 leave is most likely to be taken by the child's father or mother's partner. However, tier 1 leave provides for much more flexibility as no advance notice is required and the leave can be taken as non-consecutive weeks whereas tier 2 leave requires at least 15 days' notice and can only be taken consecutively.

## Protections

Following the scheme of other statutory family leave, employees taking statutory neonatal care leave will be entitled to:

- The right to return to the same or another suitable role;
- Protection from redundancy both during and for a period after taking the leave;
- Protection from detriment, and
- Protection from unfair dismissal.

Equally employees remain entitled to their existing terms and conditions during neonatal care leave except for pay.

# Three key steps for organisations to take

Subject to the parliamentary approval the new Regulations will apply to parents of children born on or after 6 April 2025. In readiness for the new rules, organisations should:

- Introduce a new policy or update existing family leave policies setting out the entitlements;
- Send comms to all staff informing them of the new rights; and
- Educate managers on the new entitlements including rights of employees who take neonatal leave.

Please contact us if you'd like to discuss further.

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