

## General Welfare Requirement: Suitable People

Providers must ensure that adults looking after children, or having unsupervised access to them, are suitable to do so.

## Employment

### 2.1.9 Neonatal Care (Leave and Pay)

#### Policy Statement for St Joseph's Pre-school

The purpose of this policy is to provide additional support for employees who need to take time off work to care for their newborn baby who requires neonatal care. The Neonatal Care (Leave and Pay) Act 2023 came into force on 6 April 2025. It allows families to be by their child's side without having to work throughout or use up existing leave.

The Act is the primary legislation and is supported by two secondary legislations, namely:

- The Neonatal Care Leave and Miscellaneous Amendments Regulations 2025; and
- The Statutory Neonatal Care Pay (General) Regulations 2025.

The regulations apply to babies born on or after 6 April 2025 and applies to England, Scotland and Wales.

#### Neonatal Care: Meaning

A newborn or a baby's first 28 days of life who could be admitted to neonatal care<sup>1</sup> for a number of reasons, for example:

- born early;
- are very small;
- have an infection;
- have jaundice;
- have had a very difficult birth; or
- are undergoing complex surgery.

The definition in the regulations for neonatal care is described as medical care received in

- a hospital;
- palliative or end of life care;
- or any other place (that meets specific criteria<sup>2</sup>).

A baby who is born prematurely or is ill or injured at birth will most likely be cared for on a neonatal care unit or ward in a hospital.

#### Statutory Neonatal Care Leave (NCL)

##### *Eligibility requirements*

A baby must receive neonatal care in order for the parents to qualify for NCL and neonatal care pay (NCP). A parent is defined as:

- birth and adoptive<sup>3</sup> parents, partners<sup>4</sup>;
- parents who are fostering to adopt and overseas adopters;
- intended parents in surrogacy arrangements<sup>5</sup>.

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<sup>1</sup> The NHS use the term 'neonatal' or 'special care babies'

<sup>2</sup> It is expected that a baby who returns home but is still receiving care direction from a consultant will likely still be covered.

<sup>3</sup> Primary, secondary or single adopters

<sup>4</sup> including same sex partners.

### Qualifying for leave

This is a day 1 right for those legally classed as an employee. Workers do not qualify, however, St Joseph's Pre-school will be supportive of a worker who needs additional time off.

- Employees must have parental responsibility or other prescribed responsibility for the child;
- The child must begin to receive neonatal care before the end of the 28 days beginning with the day after the child's birth;
- Neonatal care must last for at least 7 consecutive days;
- For adoption, the 7 days of neonatal care needs to be received after the adoption placement date.

**NB:** The day after admittance to neonatal care is "Day 1" of the 7 consecutive days. The 7 day threshold needs to be met to have legal entitlement for leave.

St Joseph's Pre-school will be flexible and supportive of an employee who needs additional time off but does not qualify for NCL.

Eligible employees are entitled to take at least 1 week's leave and the maximum amount of leave available is capped at 12 weeks. This leave must be taken within 68 weeks of the date of the child's birth or the date of placement in the case of adoption<sup>6</sup>.

#### *Working out how much leave is available:*

Note that the amount of leave does not increase when there are multiple births, even if more than one baby is receiving neonatal care. If both parents are eligible, then they both get the same available leave. For example:

Time spent in neonatal care	Amount of leave available
3 weeks	up to 3 weeks
16 weeks	capped at 12 weeks
5.5 weeks	up to 5 weeks <sup>7</sup>

#### *Interaction with other family leave*

Employees can only be on one type of family leave at a time. In practice, maternity and adoption leave will have already started whilst the baby is receiving neonatal care. This leave cannot be paused for NCL to be taken, but it can be taken afterwards.

If paternity or shared paternity leave is planned for a later date, then NCL could be taken before it. When the baby remains in neonatal care, the eligible leave will accrue. It may then be possible to take the NCL before the planned paternity leave, or take the paternity leave as planned then continue with NCL immediately afterwards. This is known as "non-consecutive Tier 1 leave" – for more information, see below.

St Joseph's Pre-school will seek additional advice for specific circumstances to ensure parent can access their full entitlements to family leave.

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<sup>5</sup> This means those who intend to apply within 6 months of the birth for a parental order and who reasonably expect to be granted that order.

<sup>6</sup> (a) the Date of Birth for birth parent and intended parent of a surrogacy situation; (b) date child is placed with adopter; (c) the 68 weeks starts on the date the child enters Great Britain for an overseas adopter.

<sup>7</sup> Note no half weeks given.

### *Notices of leave: a two tiered approach*

There are two different types of notice requirements dependent on when NCL will be taken.

- Tier 1: this begins when the child starts receiving neonatal care and ends on the 7<sup>th</sup> day after neonatal care stops;
- Tier 2: this is any period within the total 68-week period that is not within Tier 1.

### *Notice of intention to take neonatal care leave (NCL)*

When an employee intends to take NCL, they must give their employer the following information:

- name of employee;
- child's date of birth or if relevant the date of placement (re adoption) or entry into Great Britain (re overseas adoption);
- the date the child started to receive neonatal care, or each date it started if there is more than one occasion;
- if neonatal care has ended, the date it ended;
- the date the neonatal care leave (NCL) is to begin and the number of weeks the notice is for;
- confirmation that time is to be used to care for the child;
- if it is the first time notice is given, then a declaration that the employee has parental responsibility for the child.

This information should be given as soon as reasonably practical to do so.

### *Tier 1 in practice<sup>8</sup>*

- the eligible employee can start NCL after the first 7 qualifying days of neonatal care;
- parents may not have expected or made any plans to take NCL;
- notice can be given informally, and can be given on the first day of absence;
- it does not need to be in writing;
- Tier 1 leave can be taken in non-consecutive weeks.

St Joseph's Pre-school will confirm in writing to the employee that their notice has been received and reconfirm details to avoid any misunderstandings.

### *Further requirements for notice*

Once the employee has given notice of intention to take NCL, they must inform St Joseph's Pre-school:

- when the child stops receiving neonatal care;
- if the child starts to receive neonatal care again, the date it started and the date when it ends.

### *Tier 2 notice requirements*

During any other period, within the total 68-week period that is not Tier 1.

- written notice is required;
- single week's leave: at least 15 days before the start date;
- two or more weeks' leave: at least 18 days before the leave starts.

**NB:** Leave cannot be split and must be taken consecutively.

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<sup>8</sup> Whilst the child is still receiving neonatal care and for 1 week after care has ended.

St Joseph's Pre-school notes that the law allows an employer and employee to agree between them to waive the requirements to give notice. Thus the employee's leave will begin on a mutually agreed date. The Pre-school will confirmed this in writing.

### *Special circumstances*

Neonatal care leave can still be taken in some circumstances, for example when:

- a baby dies<sup>9</sup>;
- an adoption is disrupted;
- an application for a parental order fails.

### *Additional rights and protection*

Note that the following remain in place during NCL.

- contracted terms and conditions;
- protection against detriment and dismissal;
- right to return to work;
- redundancy protection;
- keeping in touch;
- confidentiality – including agreeing what can be said when planning a return to work and to help avoid difficult circumstances.

### **Statutory Neonatal Care Pay (NCP)**

An employee will be entitled to statutory NCP if they:

- have parental responsibility;
- intend to care for the child during the leave;

They also need to:

- be an employed earner:
  - includes employees;
  - could include some workers;
- meet certain conditions in the 'relevant week'.

### *When is the 'relevant week'?*

This varies depending on which type of family leave the employee is entitled to.

<b>Entitled to</b>	<b>Relevant week</b>
Statutory maternity/paternity pay – birth	the same week that was used to calculate SMP/SPP (ie. 15 <sup>th</sup> week before the due date).
Statutory adoption pay/paternity pay – adoption	the same week that was used to calculate SAP/SPP (ie. the week in which they or the adopter are notified of being matched with a child for the adoption purpose).
All other cases	the week immediately before the week in which the neonatal care starts

### *Check qualifying criteria*

The person must also meet the following conditions:

- have worked continuously for 26 weeks ending with the 'relevant week';
- have been in employment at the end of the 'relevant week';

<sup>9</sup> See also 2.1.6 Bereavement Leave

- earned on average, at least the lower earnings limit in the 8 weeks ending with the ‘relevant week’.

*Amount and notice*

The weekly rate is the same as for other statutory family pay. These are overseen by HMRC. For the latest rates visit [www.gov.uk](http://www.gov.uk).

Notices and evidence can be complex. However, an employer and employee can agree to waive the requirement to give notice.

Alternatively, the employee must give written notice:

- Tier 1: leave, 28 days (ie. 28 days counts from the first statutory pay week it relates to);
- Tier 2: one week’s leave, 15 days (ie. to be given before the first day of the statutory pay week it relates to);
- Tier 2: two or more consecutive week’s leave, 28 days (ie. to be given before the first day of the statutory pay week it relates to).

**Further Guidance**

- [www.gov.uk](http://www.gov.uk): HMRC guidance on neonatal pay
- [www.acas.org.uk](http://www.acas.org.uk): Neonatal Care leave and pay

**Associated policies and procedures**

- 2.1.3      Sickness and absence
- 2.1.6      Bereavement Leave
- 2.6         Staff Wellbeing

<b>Version Number</b>	<b>Author</b>	<b>Purpose of change</b>	<b>Date</b>
1.0	K Coupe	New policy written taking advice from ACAS to ensure compliance to statutory requirements from 6 April 2025). Inclusion of hyperlinks to ACAS and HMRC websites.	5 May 2025 Committee Member (B Wheeler)