



Beginners Guide to Maternity Rights

Part One - Maternity Leave

Mothers have Maternity rights and Fathers have Paternity rights ... and if you get it wrong your employees can sue you.

Compulsory maternity leave

By law, all women must take a period of compulsory maternity leave following a period of childbirth. This is for their own health and safety. It is unlawful for an employer to allow any woman to work during her compulsory maternity leave period.

The compulsory maternity leave period is:

- 2 weeks from the actual date of childbirth, *or*
- 4 weeks from the actual date of childbirth if the woman works in a factory

Maternity Leave

All women, irrespective of length of service and number of hours worked, are entitled to a minimum of 52 weeks maternity leave. This is made up of 26 weeks ordinary maternity leave and a further 26 weeks of extended maternity leave.

- During this period all contractual terms and conditions, with the obvious exception of remuneration, are preserved.
- Maternity leave continues until the actual date of childbirth, if this is later than 14 weeks after commencement.
- Maternity leave may be extended if there is a health and safety reason prohibiting the woman from returning to work.
- A woman is protected from dismissal for a period of four weeks immediately after the end of the leave provided she



has a medical certificate which states that she is unfit to work (but this 4 week period is not an extension of the statutory leave period).

The regulations prohibit any employee entitled to maternity leave from working during a period of 2 weeks starting with the date of childbirth, and employers who break this rule will be fined – ie the compulsory leave period.

Notification

The woman is expected to provide written notice of her intention to take maternity leave and claim maternity pay by the end of the 15th week before EWC (expected week of childbirth). In some circumstances the notification is that childbirth has already happened!

- The notification must be given to the employer not later than 28 days before the start of the leave period or as soon as is reasonably practical if she is unable to give 28 days notice.
- That she will be absent from work because of pregnancy or childbirth
- That she intends to return to work afterwards (or not)
- The expected week of childbirth (EWC)
- The intended start date of her maternity leave.
- The intended start date of her maternity

ty pay period.

- And should enclose a certificate from a registered medical practitioner or midwife stating the EWC (form MATB1).

If the employee fails to give the required notice then she loses the right to start her maternity leave on her chosen date—unless you choose to make an exception she has to give 28 days notice, unless her child is born early in which case leave starts the day after the child is born.

As the employer you must reply



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within 28 days notifying her of the date her maternity leave entitlement will end (ie 52 weeks later), her notification rights and responsibilities and the amount of SMP you believe she is entitled to. If you fail to give proper notification then some of the rights available to you as an employer are amended. {we have an example letter available if required}

Pregnant again?

If an employee on maternity leave gets pregnant again, then they have the right to take a further maternity leave for the next child.

Commencement of maternity leave

Basic leave can start at any time after the 11th week before the expected week of childbirth (EWC). If the 6th week before the EWC has passed, then (regardless of any notification from the employee) any absence from work wholly or partly because of pregnancy of childbirth will automatically trigger the basic leave. Maternity leave starts automatically on the birth of the baby if not already started.

Return to work

The normal date of return to work is the first working day 52 weeks after her leave commenced.

If the mother wishes to return to work before this date then she must give her employer at least 8 weeks notice of her return date. If this earlier date is not convenient, the employer can postpone the date of return by up to 8 weeks, but in no circumstances can the employer postpone the employee's return to a date after the expiry of the 52 week leave period.

If the employee does not wish to return to work, then she must give notice of resignation as set down in her contract of employment (ie 1 month before the end of the 52 week leave ends).

If she terminates the contract before the SMP period ends, then you must continue to pay the SMP...provided she has not started to work for another employer.

Payment and remuneration

As the contract of employment contin-

ues during basic leave the employer must maintain all contractual benefits, eg private health insurance, company cars, holiday accrual, etc. (However remuneration is specifically excluded during basic leave!)

Length of Leave

An employee may start her maternity leave at any time after the beginning of the 11th week before the EWC. She has the right to return before the end of the 52 weeks leave, but must take at least 2 weeks maternity leave after the birth of her baby. Note the rules on notification of return dates above.

Miscarriage

Childbirth means the birth of a living child or the birth of a child whether living or dead after 24 weeks of pregnancy. A woman who suffers a miscarriage before the end of the 24th week of pregnancy and is absent from work will not be absent because of childbirth and does not qualify for maternity leave or benefit.

What job do they return to?

There is a difference between returning to work after Ordinary leave (first 26 weeks) and Additional or extended leave.

On her return to work after OL an employee must be reinstated in the same kind of job she had before her maternity absence, at the same place, in the same capacity, ie the same job with the same rights.

If she returns to work after taking Additional leave, then she still has the right to return to the same job with the same rights ...but if it is not reasonably practicable for the employer to do this then she can return to any job that is suitable and appropriate for her to do and on terms and conditions that are no less favourable than the ones she was on.

On her return to work your employee can ask for flexible working. You have a legal duty to consider this request seriously and there are separate rules about flexible working requests.

Redundancy and Dismissal

If a redundancy situation has arisen during the additional leave period, or if there is some other genuine reason why her original job is no longer available, you must offer her any other suitable work that is available when she returns.

If an employee is dismissed and the reason or principle reason is related to pregnancy or childbirth then the dismissal is automatically deemed to be unfair.

Any employee who is dismissed during maternity leave is entitled to an accurate written statement of the reasons. If the employer does not provide one then the employee has a right of complaint to the tribunal.

Small Employers

Businesses that employ five people or fewer, including associated businesses and the woman herself, at the start of a woman's absence on maternity leave do not have to comply with the statutory right to return to work if it is not reasonably practicable for the employer to permit her to return to work or to offer her suitable alternative employment. It would be up to the employer to prove that it was not reasonably practicable in the ensuing tribunal case!



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Part Two - Maternity Pay

Part time employees

UK Law makes no distinction between part time or full time employees. Both are covered by the legislation.

Ante-Natal Care

All pregnant employees are entitled to paid time off for antenatal care appointments made on the advice of a registered medical practitioner, registered midwife or registered health visitor. Employers are entitled to request copies of the appointment cards and proof of pregnancy from the employee.

Health and Safety

All employers are required to carry out health and safety risk assessments. Expectant mothers can claim unlawful sex discrimination if their employer fails to carry out a risk assessment after being notified of the pregnancy. Similarly breastfeeding mothers require a health and safety risk assessment.

Contact during Leave

During the maternity leave period you can make reasonable contact with an employee - and she may make contact with you. In addition, an employee can come to work as a way of keeping in touch with workplace developments. You can make contact with the employee by any means, eg telephone, email, letter, a meeting in the workplace.

Keeping in touch Days

Employees may work and be paid for up to ten 'Keeping in Touch' (KIT) days during their maternity leave - allowing work under their contract of employment - by agreement with the employer, without removing their eligibility for SMP.

A KIT day doesn't have to be a full working day and even 1 hours work counts as a 'day'

Eligibility

Employees who fulfill the following criteria qualify for Statutory Maternity Pay (SMP):

- have been continuously employed for the 26 weeks ending with the 15th week before the EWC

- have average weekly earnings at least equal to the lower earnings limit for NI contributions (£87 per week for 2007/08)
- still be pregnant (or have given birth) by the 11th week before the EWC
- have stopped working because of pregnancy or childbirth
- notified her employer of her maternity absence
- provide evidence of her EWC

Qualifying Week (QW)

A pregnant employee's qualifying week is the 15th week before the expected week of confinement (EWC). A week is defined as Sunday to Saturday.

Average Weekly Earnings

The general rule for calculating average weekly earnings is to add up the earnings over the 8 weeks up to and including the last pay day before the end of the QW and to divide this by 8. Any payment which is treated as earnings for NIC purposes must be included and the gross figure must be used.

Note that there is a minimum weekly earnings before SMP is due. From 19 July 2009 minimum average weekly earnings must be £95 or more to qualify.

Medical Evidence

Before SMP can be paid, an employer must have evidence of the date the employee's baby is due. Normally the registered medical practitioner or midwife will issue a form MAT B1. This form cannot be issued before the 27th week of pregnancy.

Maternity Pay Period

SMP is payable for a period of up to 39 weeks, the MPP. The earliest a woman can start her MPP is the 11th week before the EWC. The MPP will terminate before the end of the 18th week if the woman:

- is taken into legal custody
- dies

- works for her employer during the MPP either before or after the birth - in which case SMP is not payable for any week in which the employee works.
- takes only the basic leave or otherwise returns to work before the end of the 18 weeks

Rates of SMP

The first 6 weeks are payable at a rate of 90% of the employee's average weekly earnings, the remaining 33 weeks are payable at the lower of the statutory week amount or 90% of the average weekly earnings. These statutory rates change each year and you should check that they are still current, but at the time of printing the rates are:

| Tax year | SMP |
|-----------|---------|
| 2011/2012 | £128.73 |
| 2010/2011 | £124.88 |

Employers reclaim

Employers can reclaim 92% of the SMP paid. Small employers can reclaim more, 104.5%, if their total national insurance liability in the previous tax year was no more than £45,000.

This is 100% of the SMP plus 4.5% NI compensation.



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Part Three - Paternity Pay

Statutory Maternity Allowance

If an employee does not qualify for SMP she may qualify for statutory maternity allowance, which is a state benefit paid at a similar rate to the lower rate of SMP. SMA is claimable by completing a form obtainable from the DSS or Jobcentre Plus.

Holiday Pay

Mothers continue to accrue holiday pay whilst on maternity leave. However you cannot pay an employee in lieu of any untaken statutory annual leave unless the contract is terminated. Therefore you should ask your employee to take this leave either before or after her maternity leave.

PATERNITY RIGHTS

Fathers have rights to! The partner of a pregnant woman has the right to claim paternity leave. Employees whose EWC is before 2 April 2011 are only entitled to 2 weeks paid leave.

Employees whose EWC is on or after 3 April 2011 continue to benefit from this 2-week Ordinary Paternity Leave (OPL) but can also take between two weeks and six months Additional Paternity Leave (APL).

Ordinary Paternity Leave

Can start on any day, but not before the baby is born, and must end within 56 days of the baby's birth.

Additional Paternity Leave

The circumstances for APL to apply is that the mother of the child has returned to work before the end of her statutory maternity leave period. In effect the mother and father can share the leave period between them.

Additional Paternity Leave has to be taken as a single block of time between the time the child is 20 weeks old and 1 year old. It does not have to start immediately the mother returns to work, but it does have to finish when the child is one year old.

Qualifying for Paternity Leave

To qualify for ordinary paternity leave the father must have been working for the employer for at least 26 weeks by either

- (a) the end of the 15th week before the baby is due, or,
- (b) the end of the week the father is notified he is matched with the child.

Further the man must either be:

- The biological father of the child
- Mother's husband or partner (including same sex relationships)
- Child's adopter
- Husband or partner of the child's adopter (including same sex relationships)

Qualifying for Additional Paternity Pay

To qualify for pay during the additional leave period, firstly, the mother or adopter needs to have stopped claiming maternity pay and secondly there needs to be some unpaid maternity pay, thirdly the father's average earnings is at or above the lower earnings limit for nic (ie pays class 1 nic) . Otherwise the APL is unpaid leave.

Notification

The father should give you written notice within either:

- At least 15 weeks before the EWC, or,
- Within 7 days of being notified by the adoption agency that they have been matched with a child.

The father must inform you of:

- The date of EWC, or when the baby is expected to be placed with you for adoption.
- Whether he wants one or two weeks of OPL
- The date the OPL is to start.

Note that HMRC form SC3 is used to notify for OPL and form HMRC SC7 for APL (and forms SC8 or SC9 for adoption). Once the baby is born the father has 28 days to provide a copy

of the birth or adoption certificate.

The employer must confirm the details of the Paternity leave period in writing .

The amounts and criteria are the same for paternity pay and for maternity pay.

ADOPTION RIGHTS

Statutory Adoption Pay is very similar to SMP and allows for the same 39 weeks of payment and 52 weeks leave.

Additional information

Website about employee rights www.direct.gov.uk or www.businesslink.gov.uk

Caveat

Employment Law is complex and this guide only gives general guidance and is no substitute for proper professional advice. No liability can be accepted by Jonathan Vowles Chartered Accountants for any action or inaction taken as a result of reading it.

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