



Maternity Leave Policy

1 Introduction

- 1.1 This policy reflects the changes that have resulted from the Work & Families Act 2006 and the Maternity Leave and Parental Leave etc. and the Paternity and Adoption Leave (Amendment) Regulations 2006, and applies to pregnant employees and new mothers whose expected week of childbirth begins on or after 1 April 2007.

2 Maternity Rights

- 2.1 Maternity rights fall into four main categories:

- a) Time off for antenatal care
- b) Maternity Leave
- c) Statutory Maternity Pay (SMP)
- d) Protection against unfair treatment or dismissal

- 2.2 All expectant mothers are entitled to a, b and d. To qualify for **statutory maternity pay**, the employee must have at least **26 weeks continuous service** at the 15th week before the week the baby is due.

3 Time off for Antenatal Care

Rights in relation to time off for antenatal care

- 3.1 All pregnant employees have the right to paid time off to attend antenatal care appointments made on the advice a Doctor, Midwife or Health Visitor (you may request that an employee provides evidence of appointments if appropriate)
- 3.2 Under the Flexible Working Hours Scheme, individuals may receive credit time, even when the appointment falls outside core time, e.g. if a full time employee has an appointment at 9 am and arrives at work at 10 am following the appointment, they should be credited from 9 am. Similarly, if an appointment which starts before, or lasts until after the end of core time, this should be credited, as long as they have not worked more than 7.4 hours that day.

4 Maternity Leave

How much maternity leave can an employee take?

- 4.1 All pregnant employees can take up to one year's (52 weeks) maternity leave, irrespective of their length of service. Maternity leave consists of:
- **Ordinary Maternity Leave (OML) – 26 weeks** during which all

contractual benefits continue except remuneration.

- **Additional Maternity Leave** – a further period of **26 weeks additional maternity leave (AML)** during which the contract of employment continues but only certain terms apply. **Part of Additional Maternity Leave is paid (13 weeks) and part unpaid (13 weeks).**

4.2 **Compulsory Maternity Leave** – the minimum maternity leave that can be taken is **2 weeks** from the date of childbirth, or 4 weeks if the mother undertakes heavy work. This period of leave is compulsory.

4.3 When can maternity leave start?

4.3.1 The earliest that an employee can leave work is 11 weeks before the week in which the baby is due, ie when an employee is 29 weeks pregnant.

4.3.2 An employee can work after this date, provided they are fit and able to do so and a Doctor does not advise them to stop. This decision will depend on an employee's state of health and the type of work that they undertake.

4.3.3 If an employee is still working at the 4th week before the baby is due and goes off sick with a pregnancy related illness, this will automatically trigger maternity leave and pay.

4.3.4 If a baby is born early and an employee has not yet started their maternity leave, the date of the baby's birth will be counted as the first day of maternity leave.

4.4 Notification Times

4.4.1 For Health and Safety reasons an employee should advise their manager as soon as they know they are pregnant, in order that a Risk Assessment can be carried out on their role/job. If after this assessment has been carried out, it is felt that any of the duties could put a baby's health at risk, arrangements will be made to remove the risk. If this is not possible duties may be re-organised or an employee should be moved to undertake other work for a temporary period.

4.4.2 In the very unlikely event that there is no suitable alternative work available, an employee may be instructed not to attend work, for any period where there is an identified risk. If this happens the employee will continue to receive pay. However, if suitable alternative work is offered and refused an employee can be suspended on health and safety grounds and would lose their right to be paid during the period of suspension.

4.4.3 An employee has an obligation to formally notify their manager no later than the 15th week before the expected date of childbirth or as soon as is reasonably practicable:

- That they are pregnant
- When the expected week of childbirth will be (supported by form MATB1, which can be provided by a medical practitioner or midwife)
- Written notification of when they intend their maternity leave to commence – this date can be changed as long as the employee gives 28 days notice of the change.

4.4.4 Within 28 days of receiving an employee's notification, the employee should be notified of the end date of her maternity leave. This will be the first working day after the end of her 52 weeks combined ordinary and additional maternity leave.

4.6 What if an employee wants to return to work early from maternity leave?

4.6.1 If an employee intends to return at the end of her full 52 weeks maternity leave, she does not have to provide any notification of a return date.

4.6.2 If the employee wishes to return to work before the end of her full maternity leave period (52 weeks), the employee must provide 8 weeks notification. This notice requirement applies during both ordinary and additional maternity leave.

4.6.3 Where notice is given of less than 8 weeks, the Council may postpone the return to ensure 8 weeks notice, but this cannot be beyond the end of the maternity leave period.

4.7 What if an employee decides not to return to work at the end of maternity leave?

4.7.1 An employee should give the normal notice applicable under their Contract of Employment if they do not intend to return to work at the end of their maternity leave.

5 **Maternity Pay**

5.1 Employees will be entitled to **Statutory Maternity Pay (SMP)**, currently £123.06 per week from 1 April 2009 (or 90% of average weekly earnings if this is lower) if they meet the following conditions:

- The employee has been **employed continuously** for a minimum of **26 weeks** at the end of the **15th week** before the expected week of childbirth
- The **average earnings** in the **8 weeks** up to and including the qualifying week (15th week before the expected date of childbirth) are **equal to or above the lower earnings limit for National Insurance**

contributions (for SMP purposes, currently £100 per week as from 1 April 2007) (SMP rates are normally increased in April each year).

- 5.1.1 If an employee does not qualify for SMP because they have less than 26 weeks service at the qualifying date or because their earnings are below the lower earning limit for national insurance, they may be entitled to receive **State Maternity Allowance** and should contact their local Job Centre Plus Office for advice.
- 5.2 Employees who meet the qualifying criteria are entitled to **39 weeks paid leave** (for women expecting babies on or after 1 April 2007).
- The first 6 weeks of maternity leave to be paid at 90% of their average weekly earnings
 - The remaining 33 weeks will be paid at the standard SMP rate, currently £123.06 a week, or 90% of their average earnings if this is lower than £123.06 (SMP rates are normally increased in April each year).

Employees who meet the qualifying criteria will be eligible for these payments whether or not they intend to return to work at the end of their maternity leave.

5.3 Additional Payments – Contractual Maternity Leave

- 5.3.1 Employees with at least 1 years' service at the 11th week before the EWC can choose to receive an additional payment equivalent to 12 weeks half pay or 20 weeks at 30% of pay if they meet the qualifying criteria above and intend to return to work at the end of their maternity leave for a minimum of 3 months.
- 5.3.2 In order to qualify for this payment employees must notify their manager that they intend to return to work at the end of the their maternity leave.
- 5.3.3 Payment can be:
- Paid with SMP from week 7 to week 18 of Ordinary Maternity Leave at 50% of the employee's average earnings (weeks 19-39 would then be paid at SMP rate only)
 - Spread over the 20 weeks between week 7 and 26 of Ordinary Maternity Leave at 30% of the employee's average pay. This will be paid in addition to SMP, which is paid up until week 39.
 - Paid as a lump sum on the employee's return to work or after they have been back at work for 3 months (this option may be preferred if an employee is unsure whether or not they will be returning to work)

NB If the payment added to the statutory maternity pay adds up to more than the average pay the payment will be reduced to the level of the employee's usual pay.

5.3.4 If an employee does not come back to work, or works for less than 3 months they will have to repay this amount in full (net payment – excludes tax and NI).

5.4 Maternity Pay and pension contributions

- The Local Government Superannuation Scheme regulations cover maternity contributions when an employee goes on maternity leave
- Employees must normally pay contributions on any monies they receive
- Contributions can only be stopped if an employee opts out of the Local Government Superannuation Scheme as soon as they go on maternity leave. It is recommended that further guidance is obtained from the Payroll Manager before considering exercising this option.
- Employees can also choose to pay pension contributions on the period of unpaid maternity leave (remaining 13 weeks of Additional Maternity Leave)

5.5 When does maternity pay start?

5.5.1 Prior to the introduction of this new legislation, SMP had to start on the first Sunday following the day an employee has stopped work. Now SMP can start from any day of the week, so when an employee has confirmed her last working day, SMP will be able to start the next day.

6 **Keeping in Touch**

6.1 The intention of the 'keeping in touch' days is that employees on maternity leave do not miss key occasions such as significant training events or important team meetings.

6.2 The new legislation introduces the ability to enable employees to 'keep in touch' through agreement by working up to 10 days during the maternity leave period.

6.3 A 'Keeping in touch' day can be taken at any time either during ordinary or additional maternity leave with the exception of the first two weeks following the birth of the baby (the compulsory leave period).

6.4 In addition, the format of the 'keeping in touch' days is flexible. They can be taken in any format but cannot exceed 10 actual days, whether a full or part

day is worked. For example, the work could be a single day; you could take the 10 days in one block, or several blocks of less days. In any of these examples, you also do not have to work a full day. However, both the timing and the format need to be agreed by both parties.

6.5 How does this affect Maternity Leave?

6.5.1 Working any of these days will not bring the period of maternity leave to an end, nor extend it. Maternity Leave remains at 52 weeks.

6.6 How does this affect Statutory Maternity Pay?

6.6.1 You will not lose SMP if you work a 'Keeping in touch day' at any time during Ordinary Maternity Leave or the first 13 weeks of Additional Maternity Leave (i.e. the period in which SMP is paid). However, if you choose to work for longer than the 10 days, a week's SMP will be lost for any day worked beyond this 10-day period.

6.6.2 Payment for a 'keeping in touch' day will be at an employee's normal rate on an hour for hour basis.

6.6.3 If you worked a standard working day as a 'keeping in touch day' while in receipt of SMP, then the SMP payment would be offset against your normal pay for that day.

6.6.4 If you are not receiving SMP when you work a 'keeping in touch' day as you are on unpaid maternity leave, you will be paid your normal rate of pay on an hour for hour basis. In other words, if you work a standard working day, you would receive your normal day's pay for any full day worked, whether in receipt of SMP or not.

There is no requirement whatsoever for you to do the days if you do not want to, nor do you have the right to insist that the work is provided. The days you do work are to be agreed with your line manager, and remember you do not have to do the whole 10 days.

7 Reasonable Contact

7.1 The new legislation also states that 'reasonable contact from time to time' with an employee on maternity leave is to be expected and will not bring the period of maternity leave to an end.

7.2 Dependant upon the circumstances, there may be time when reasonable contact may be more appropriate than a 'keeping in touch' day.

7.3 The intention was that this contact would aid discussion for items such as:

- whether or not any planned date of return has changed or is likely to,
- requests for flexible working

- an update on developments at work during the period of leave

8 Protection Against Unfair Treatment or Dismissal

- 8.1 During ordinary maternity leave an employee retains the right to return to the same job on the same terms and conditions, unless a redundancy situation has arisen, in which case they will be offered a suitable alternative vacancy. If an employee takes additional maternity leave they will normally be able to return to the same job. In rare circumstances where this is not reasonably practicable, ie because re-organisations have taken place, they will be offered an alternative job that is suitable and appropriate.
- 8.2 Employees who apply for jobs with other Local Authorities whilst on maternity leave
- 8.2.1 Employees have the right to apply for and accept jobs with other local authorities whilst on maternity leave without losing out on their entitlements.
- 8.3 Employees returning to work
- 8.3.1 Employees have the right to request a variation to their working pattern/hours on return from maternity leave via the Request to Flexible Working process. This may be refused if there is an objective business reason.

9 Maternity Leave and Continuous Service

- 9.1 Ordinary and Additional Maternity Leave will count as continuous service for accrual of holiday entitlement, sick pay entitlement etc.
- 9.2 If an employee decides not to return to work after their baby is born, but returns to a job with a local authority within 8 years, their previous service will be deemed as continuous provided that they have not had any permanent full time employment during that period. For annual leave, there is no time limit provided they have not undertaken any permanent full time work.

10 Holiday Entitlement

- 10.1 Annual Leave
- 10.1.1 Employees will accrue annual leave as if they had been at work all the time.
- 10.1.2 If maternity leave spans the end of the leave year and they have not taken all their entitlement, they will lose any leave accrued before March 31, except for 3 days carry over.

10.1.3 If any employee resigns whilst on maternity leave their annual leave entitlement will be calculated up the date of their letter of resignation.

10.1.4 If an employee does not return to work and has taken more leave than they are entitled to at the date of resignation, they will be required to repay money in respect of any excess leave taken.

10.2 Bank Holidays

10.2.1 During both Ordinary Maternity Leave (OML) and Additional Maternity Leave (AML) employees continue to be entitled to bank holidays. Where a bank holiday falls within this period, the employee should be credited with the time. However, as with annual leave only the equivalent of 3 days leave can be carried over.

11 **Additional Information**

11.1 What if a baby dies or is stillborn?

11.1.1 Fortunately these situations are rare, but if a baby should die or is stillborn after 24 weeks of pregnancy, the Maternity Scheme will still apply.

11.1.2 Any problems experienced before the 36th week of pregnancy would be covered by the Council's normal Sickness Scheme.

11.1.3 The Manager or a member of the Human Resources section should contact an employee to discuss the employee's needs in these circumstances. It may be appropriate to offer the services of the Employee Support Officer, who can in turn recommend appropriate external support agencies.

12 **Professional Fees**

12.1 If an employee has support for professional fees included in their terms and conditions, they should contact their professional association as this may be discounted during the maternity leave period.

13 **Review of Policy**

13.1 This policy will be reviewed on a regular basis to reflect any changes in employment legislation.

14 Records

- 14.1 All written documentation and forms such as the MATB1 will be kept confidential, and retained in accordance with the Data Protection Act 1998.

Human Resources
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