

6. Employing and managing people

6.14.1 Maternity policy

Organisations should have a policy setting out a pregnant employee's rights to maternity leave and maternity pay, which takes into account minimum statutory entitlements as well as arrangements during and after pregnancy. An employer must not subject an employee to a disadvantage or dismiss her for a reason relating to her pregnancy.

The following sample policy takes account of the changes implemented under the Work and Families Act 2006 which applies to employees that gave birth, or were expected to give birth on or after 1 April 2007. It is provided for guidance only and should not be regarded as an authoritative statement of the law.

Sample maternity policy and procedure

It is *<Name of organisation>*'s policy to comply with both the letter and spirit of the law on maternity rights. To this end its aim is to inform all female employees of their entitlement to statutory maternity rights and to ensure that those rights are understood by employees who qualify.

All pregnant employees, regardless of how long they have worked for *<Name of Organisation>* are entitled to the following:

1. Compulsory Maternity Leave (CML)

An employee must, under law, take two weeks maternity leave after giving birth. An employee may not return to work during this two-week period. *(NB the period of CML is 4 weeks for factory workers)*

2. Statutory Maternity Leave (SML)

All pregnant employees are entitled to a period of 26 weeks Ordinary Maternity Leave (OML), which includes the 2 weeks CML, and 26 weeks Additional Maternity Leave (AML) irrespective of length of service or the number of hours worked each week.

An employee can choose when they start their OML, and can choose to work right up to when the baby is born. However, an employee cannot begin OML before the beginning of the 11th week before the baby is due.

To qualify for this, the employee must inform *<insert who>* no later than the 15th week

before her expected week of childbirth (or as soon as reasonable practicable thereafter) of the following:

- a) that she is pregnant; this can be done verbally or in writing
- b) the expected week of childbirth in the form of a maternity certificate (MAT B1 form) which is available from the employee's midwife or doctor
- c) the date she intends to start her period of OML; this can be done verbally or in writing.
- d) the date from which she will be claiming Statutory Maternity Pay (SMP).

Changing the start date of Ordinary Maternity Leave (OML)

The employee has the right to change the start date of her OML providing that she gives at least 56 days notice in writing (or as soon as reasonably practicable thereafter) *<insert to whom>* of either the new start date or the original start date (whichever is earliest).

In certain circumstances, an employee's maternity leave may automatically start earlier than the date chosen for the start date of the maternity leave. This applies where the employee is absent from work wholly or partly because of pregnancy at any time during the four weeks before the expected week of childbirth.

Early births

Where the baby is born before the start of the maternity leave date, maternity leave will start on the day after giving birth. The employee must inform *<insert who>* of when she gave birth as soon as it is reasonably practicable. This can be done verbally or in writing by providing a MAT B2 form.

Miscarriage, stillbirth and the death of a baby

A miscarriage is where a baby is born dead before the end of the 24th week of pregnancy. An employee who suffers a miscarriage is not entitled to SML or SMP.

Stillbirth is where a baby is born dead during or after the 25th week of pregnancy. An employee whose baby is stillborn is entitled to SML and may be entitled to SMP. An employee whose baby is born alive but subsequently dies is entitled to SML and may be entitled to SMP.

3. Paid time off for ante-natal care

All pregnant employees are entitled to paid time off to keep appointments for ante-natal care. The employee must provide evidence, such as an appointment card, that the appointment has been made. The employee does not have to provide evidence for her first appointment for ante-natal care.

Additional rights

4. Statutory Maternity Pay (SMP)

An employee is entitled to SMP providing that:

- by the end of the 15th week before the Expected Week of Childbirth, she has been continuously employed by <Name of organisation>, for at least 26 weeks; and
- her gross earnings (earnings before tax and National Insurance deductions) are over £97.00 per week.

SMP is paid for 39 weeks at the following rates (as at April 2010)

| | |
|--------------------|--|
| First 6 weeks | 90% of the employee's average weekly earnings |
| Remaining 33 weeks | £124.88 per week or 90% of the employee's average weekly earnings if this is less than £124.88 |
| Week 40 to Week 52 | Unpaid |

Entitled employees will be paid SMP as soon as they start their Ordinary Maternity Leave (OML). SMP payments are subject to tax and National Insurance deductions. <State how SMP will be paid>.

Employees who are not entitled to SMP may be entitled to Maternity Allowance, which will be claimed through their local Social Security Office.

<Organisations that pay above statutory maternity pay, may wish to detail that here>

5. Working during maternity leave (Keeping in Touch Days)

Employees on Maternity Leave may work up to ten days during their SML without affecting their entitlement to SMP. These days, termed 'Keeping in Touch' or 'KIT Days', can be used for any work completed under the employee's contract of employment, training or any activity undertaken for the purposes of keeping in touch with the workplace. The employee must be paid for the work they do at a rate which has been mutually agreed. The type of work to be undertaken must be discussed and agreed beforehand by <insert who e.g. line manager>.

<Name of organisation> cannot insist that the employee completes any work during their maternity leave and the employee is protected from suffering a detriment or being dismissed by refusing to complete a KIT day. Equally an employee cannot demand to work at any time during their maternity leave period.

For the purposes of this procedure a part of a day or a whole day will count as one KIT day. An employee's maternity leave will not be extended if a KIT day is used.

6. Reasonable contact

The employee and their *<insert e.g. line manager>* are entitled to make 'reasonable contact' with each other during the period of maternity leave. During the maternity leave period the employee is entitled to be kept informed of issues such as vacancies, significant workplace developments and training opportunities. Reasonable contact does not count towards the 10 KIT days nor does it bring the period of maternity leave to an end.

Contractual benefits

7. Annual leave

During Ordinary Maternity Leave (OML) the employee will continue to accrue annual leave as though they were in work. *<State when annual leave year runs>*. The employee must take annual leave in the year that it is accrued. *<Insert rules regarding the carry-over of annual leave to the next leave year>*

During Additional Maternity Leave (AML) the employee will only accrue statutory annual leave.

8. Pension contributions

If the employer makes a contribution to a pension scheme, they must continue to make payments as though the employee is receiving a full salary. This should be stated here.

Information about the employee's individual contribution should be stated here. e.g. what the employee should do should she wish to suspend contributions during her maternity leave.

9. Pay rises

Any pay rises awarded during the period of OML or AML must take effect when the employee returns to work.

10. Training and development Opportunities

Employees on maternity leave must be informed of any training or development opportunities.

11. Period of continuous service

An employee's period of OML counts towards their continuous service and will, therefore, also count towards the assessment of seniority and pension rights.

12. Notification of statutory rights

Once notification of pregnancy has been received from an employee the *<insert e.g. line manager/HR Manager>* will notify the employee in writing within 28 days, or as soon as is reasonably practicable, of their entitlement to statutory maternity rights and when she is due to return from maternity leave.

13. Risk assessments

<Name of organisation> will ensure that a risk assessment is carried out to assess any possible risk for all new or expectant mothers, or mothers that have notified *<Name of organisation>* that they are breastfeeding.

<Name of organisation> will ensure that the risk assessment is specific to her post, and will take account of her own concerns and those of her medical or health practitioner. A note of the assessment and any actions undertaken will be recorded and retained in the employee's personnel file.

14. Returning to work after maternity leave

The employee does not have to give advance notice to *<Name of organisation>* of her intention to return to work at the end of her maternity leave. It will be assumed that the employee will come back to work on the date that *<Name of organisation>* notified as the end of the maternity leave period.

Employees wanting to return early from maternity leave must give *<insert who e.g. line Manager/HR Manager>* 8 weeks notice of their date of return. If she does not give 8 weeks notice, *<Name of organisation>* has the right to delay her return until 8 weeks have elapsed, or, until the original date of return (whichever occurs sooner).

The employee returning to work after OML is entitled to return to the job in which she was employed before her absence, on the same terms and conditions of employment.

The employee returning to work after AML is entitled to return to the job in which she was employed before her absence, on the same terms and conditions of employment. If it is not reasonably practicable to do this, she should return to another job which is both suitable for her and appropriate for her to do in the circumstances, which are no less favourable than the original job.

<Upon the employee's return from maternity leave, a meeting with the employee should be held to discuss any changes which have taken place during her absence. This will be an opportunity to discuss any issues relating to breastfeeding. The employee should be encouraged to raise, at this meeting, any queries or concerns they may have>.

15. Right to request flexible working patterns

Parents who have been employed by <Name of Organisation> for at least 26 weeks and have, or expect to have responsibility for the upbringing of a child up to the age of 6, or 18 if the child is disabled, have the right to request flexible working patterns. <Name of organisation> will give such requests serious consideration. In order to qualify for this right, a parent must meet certain criteria. <Organisations may find it useful to put a flexible working policy in place – see Information Sheet 6.14.3)

16. Inability to return after maternity leave

If the employee is too ill to return to work following maternity leave, <Name of organisation's> Sickness and Absence Policy will apply.

17. Employees who do not wish to return to work after maternity leave

Where the employee does not wish to return to work after her maternity leave, she must give notice of termination as outlined in her Statement of Particulars/Contract of Employment.

Disclaimer

The information provided in this sheet is intended for guidance only. It is not a substitute for professional advice and we cannot accept any responsibility for loss occasioned as a result of any person acting or refraining from acting upon it.

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