

GUIDE TO MATERNITY RIGHTS

This Maternity Rights Guide covers the statutory minimum guidelines and highlights your obligations as an employer, including legislative changes which came into effect from October 2008, and is only applicable for parents of babies born on or after 5th October 2008.

EMPLOYEE'S RIGHTS

All pregnant employees have the right to the following provisions, regardless of their length of service or hours worked per week:

- Up to 52 weeks maternity leave
- The right to paid time off for antenatal appointments
- The right to return to the same job on the same terms and conditions
- The right to continue to receive all contractual benefits except wages and salary during additional maternity leave
- Protection against unfair treatment or dismissal due to their pregnancy

EMPLOYER'S RESPONSIBILITIES

As an employer with a pregnant employee, it is their responsibility to:

- Meet the employee's health and safety needs
- Allow them time off for ante-natal care
- Ascertain whether the employee is entitled to maternity pay
- Calculate and pay the appropriate maternity pay
- Make the appropriate tax, NIC and pension deductions
- Keep the required payment records and copies of associated documents

HEALTH & SAFETY OBLIGATIONS

Employers have a legal obligation to protect the health and safety of all employees, particularly pregnant women or new mothers who may be at greater risk.

As soon as an employee informs her employer that she is pregnant, a risk assessment should be conducted on their role and workplace. Any identified risks should be communicated to the employee immediately and all reasonable steps should be taken to either remove the hazard or prevent the exposure of them to that risk. This may include temporarily altering their current working pattern or conditions or offering her a suitable alternative.

In extreme cases where a suitable alternative position is not available, and where the health and safety of the employee or her unborn child may be at risk, the employer may consider suspending the employee on full pay, until either the risk is no longer present or her maternity leave starts.

ANTE-NATAL CARE

All pregnant employees are entitled to paid time off for antenatal care, including appointments with their GP and hospital clinics. Antenatal care may also include relaxation classes and parent craft classes. The employer may ask for evidence of their appointment after the first visit but it should be noted that an employer cannot unreasonably refuse the right to time off for antenatal care. However, employees should be encouraged to make their appointments at the start or at end of their working day or outside their normal working hours if possible.

MATERNITY LEAVE ENTITLEMENT

All employees, regardless of their length of service or contracted hours are entitled to Ordinary Maternity Leave (OML) which lasts for 26 weeks and Additional Maternity Leave (AML) which lasts for a further 26 weeks, giving up to 52 weeks leave in total. AML begins on the day after OML ends.

Employees can start their leave at any time after the 11th week before their due date, provided they follow the notification procedure detailed below. An employee can change her mind on when she wishes to take her leave but must give you at least 28 days' notice.

If an employee is taken ill with a pregnancy related illness in the four weeks prior to the expected due date, maternity leave will automatically commence.

Please note it is a criminal offence to permit a woman to return to work within the 2 weeks' immediately following the birth (or 4 weeks if a woman is employed in a factory).

NOTIFICATION

An employee must notify you by the end of the 15th week before the baby is due, or if this is not possible, at the earliest opportunity, that:

- She is pregnant
- The expected week of childbirth (as detailed on her MATB1)
- The date on which she wants to start maternity leave

Your employee will also receive a MATB1 form from their GP or midwife confirming the baby's expected due date. This will be issued after the employee is 20 weeks pregnant and should be given to you at the earliest opportunity.

Once you have received this information from your employee, you have to confirm with her in writing within 28 days of her expected return to work date.

MATERNITY PAY ENTITLEMENT

To be eligible for Statutory Maternity Pay (SMP), an employee must:

- Have been employed by you for at least 26 weeks by the end of the 15th week before her due date
- Earn above the lower earnings limit
- Have given you 28 days written notice of the date on which she wishes to start receiving SMP

SMP cannot start to be paid before the 11th week before the baby's due date, unless the baby is born earlier than the 11th week, in which case, maternity pay starts the day after the birth. It is your employee's responsibility to notify you if this is the case.

SMP is payable for 39 weeks in total. There are two rates of SMP:

- First 6 weeks - 90% of the employee's average weekly earnings
- Remaining 33 weeks – 90% of average weekly earnings or the current SMP rate, whichever is less

Any leave taken over 39 weeks is unpaid.

To calculate an employee's average weekly earnings for SMP, you must use the period between her last payday on or before the Saturday in the 15th week before the due date and the payday at least 8 weeks before this date and come forward 1 day. Any overtime or bonus payments etc must be included in the calculation.

If an employee does not qualify for SMP she should be issued with a SMP1 form outlining why she does not qualify for SMP. Employees who do not qualify for SMP may be entitled to Statutory Maternity Allowance and should contact the Department of Social Security or the Job Centre Plus Office for more information.

CONTACT DURING LEAVE

Prior to an employee going on maternity leave, you may want to discuss the arrangements with her to keep in touch during her leave, should she wish to do so. You have the right in any event to maintain reasonable contact with the employee during her leave to discuss her plans for returning to work, any special arrangements to be made or training to be given to ease her return to work or simply to update her on developments at work during her absence.

KEEPING IN TOUCH DAYS

Except during the first two weeks after childbirth, an employee can agree to attend work or any training for up to 10 'keeping in touch' days during her leave period without losing any SMP or bringing their leave period to an end. Any work carried out on a day constitutes one day's work. Any work undertaken including the amount of salary paid on keeping in touch days is a matter of agreement between the employer and the employee. The employer has no right to require the employee to carry out any work and the employee has no right to undertake any work during maternity leave.

RETURNING TO WORK

Unless otherwise stated, you must assume that an employee will return to work on the day after her full maternity leave period ends.

Any employee wishing to return to work before the end of her leave entitlement must give you 8 weeks' written notice of their intended return date. If she returns to work early without notice, you have no obligation to pay her and are entitled to postpone her return until you have had sufficient notice or her leave period has expired, whichever is earliest.

On resuming work after OML, the employee is entitled to return to the same job as she occupied before her leave on the same terms and conditions of employment as if she had not been absent. The same rules apply for those employees resuming work after AML. However if it is not reasonably practicable for the employee to return to the same job, you may, through consultation, offer her suitable alternative work on terms and conditions that are no less favourable than if she had not been on leave.

You can help your employees returning after maternity leave by:

- Making them feel welcome on their return.
- Introducing them to new staff.
- Ensuring they are informed of any changes during their absence which affects their work.
- Giving time for them to settle back into work again and regain their confidence.

If an employee does not wish to return to work after her maternity leave, she needs to notify you in writing of her resignation, as per her terms of employment.

If an employee is unable to attend work at the end of her maternity leave due to sickness or injury, the employer's normal arrangements for managing sickness absence apply. Late return without prior notification or authorisation should be treated as unauthorised absence.

If you would like more tailored advice on managing maternity leave or any other employment matter please contact Peopletime Ltd on 0845 127 1360 or email info@peopletime.co.uk