

## Desktop Guide to HR - Maternity Leave

### Maternity Rights

Pregnant employees have four key rights:

- paid time off for antenatal care
- maternity leave
- maternity pay and benefits
- protection from unfair treatment or discrimination

In addition, employers also have certain obligations to ensure the health and safety of pregnant employees.

On this page, we'll take a look at each of these in turn - and what they mean for you and your employees.

### Paid Time Off for Antenatal Care

All pregnant employees, however long they have been in their jobs, are entitled to reasonable time off work for antenatal care. Any time off must be paid at their normal rate of pay. It is unlawful for an employer to refuse to give reasonable time off for ante-natal care or to pay an employee their normal rate of pay.

The employer can ask for evidence of antenatal appointments from the second appointment onwards in the form of a medical certificate confirming the pregnancy and an appointment card or some other written evidence of the appointment.

Antenatal care may include relaxation or parent craft classes as well as medical examinations, if these are recommended by the employee's midwife or doctor.

Fathers do not have a legal right to time off to accompany their partners to antenatal appointments as the right to paid time off only applies to pregnant employees. However, many companies recognise how important a time this is and let their employees either take paid time off or make up the time later.

### Maternity Leave

Pregnant employees have a statutory right to take 26 weeks of 'Ordinary Maternity Leave' and 26 weeks of 'Additional Maternity Leave'. This is irrespective of how long they have been an employee, how many hours they work or how much they are paid.

Whilst normally an employee can choose when to take this, if an employee is off work for a pregnancy-related illness during the four weeks before the baby is due, the maternity leave and Statutory Maternity Pay (from the employer) or Maternity Allowance (from Jobcentre Plus) will start automatically, no matter what has previously been agreed.

If an employee decides they do not want to take Statutory Maternity Leave, they must take compulsory maternity leave which is the two weeks off after the baby is born or four weeks if they work in a factory.

During this time an employee keeps all of her normal employment rights and benefits (apart from wages). *See the next section for more on this.*

### Holiday During Maternity Leave

As already touched upon, employees will continue to accrue all their entitlements to paid holiday throughout their Ordinary and Additional Maternity Leave.

Employees can add holiday to the beginning or end of their maternity leave, although they cannot carry over untaken holiday entitlement if the maternity leave goes over two holiday years.

Because of this it's often best to take holiday at the beginning of the maternity leave.

### **Redundancy During Maternity Leave**

It is automatically unfair and automatic sex discrimination for an employer to select an employee for redundancy or dismiss them for a reason connected with maternity leave, birth or pregnancy.

However, the employer can make an employee redundant whilst on maternity leave if they can fairly justify their choice. For example, if the employer is closing a section of their business that the employee normally works in and is making all employees in that section redundant, then the employee on maternity leave can be made redundant as well. However, if the employer needs to make staff cuts across the company, they cannot make an employee redundant because they are on or about to go on maternity leave.

Employees who are made redundant whilst on maternity leave have special rights to be offered any suitable alternative job in the company. This is even if there are other employees that might be more suitable for the job. If the employee is offered a new job, they are still entitled to the four week trial period, which should start when they return from maternity leave.

Employees who are made redundant or dismissed during their maternity leave are entitled to be given a written statement explaining the Company's reasons for the decision and should also receive their normal notice period or pay in lieu of notice and redundancy payment, if they are entitled to receive them.

### **Contact During Maternity Leave**

The employer is entitled to make reasonable contact with employees during their maternity leave to update them on changes within the business including any promotion opportunities or job vacancies.

Also, employees are entitled to work with pay for up to ten days during their maternity leave without losing Statutory Maternity Pay (or Maternity Allowance) or bringing their leave to an end.

However, these 'keeping in touch' (KIT) days may only be worked if both employee and employer agree.

### **Returning From Maternity Leave**

When an employee returns to work after ordinary maternity leave, they have a right to the same job and the same terms and conditions as if they hadn't been absent.

This also applies when they return after additional maternity leave, unless the employer can show that it is not reasonably practicable to take the employee back in their original job, eg. if the role no longer exists. The Company should offer the employee alternative work with the same terms and conditions as before the employee started her maternity leave.

Employers should automatically assume the employee will be taking the full 12 months' maternity leave unless told differently. The employee is required to give the employer a minimum of 8 weeks' notice if they wish to return to work early.

Parents of children under the age of 16 or a disabled child under 18 are entitled to request flexible working arrangements. The employer must give any request of this nature due consideration and respond to the employee in writing.

If the employee returns to work and is still breastfeeding (which covers both feeding the baby and expressing milk), the Employer must carry out a risk assessment to identify risks to the employee as a

breastfeeding mother or to her baby. If there are risks, the Employer must do all that is reasonable to remove the risks or make alternative arrangements. Employers must also provide suitable rest facilities.

Although there is no legal requirement, employers are encouraged to provide a private, healthy and safe environment for nursing mothers to express and store milk.

Employees are entitled to an additional four weeks' unpaid parental leave at the end of their maternity leave without affecting their right to return, although parental leave doesn't have to follow straight on after maternity leave.

### **Maternity Pay and Benefits**

Whilst you may choose to offer your employees pay whilst they are on maternity leave (this is called Contractual Maternity Pay), it is unusual for small businesses to offer this. This means it is likely you will either pay your employees Statutory Maternity Pay or they will claim Maternity Allowance through the Jobcentre Plus.

*(If you are considering offering your employees Contractual Maternity Pay, get in touch and we can send you some information on developing Contractual Maternity Pay policies)*

#### **Statutory Maternity Pay**

Statutory Maternity Pay (SMP) is payable for up to 39 weeks provided the employee meets certain conditions. To qualify, an employee must have been:

- continuously employed by the same employer for at least 26 weeks prior to the 15<sup>th</sup> week before the week the baby is due
- earn an average of at least £102 per week gross (formerly £97 prior to the 4th April 2011)

An employee is required to notify their employer at least 28 days prior to the start of the maternity leave to claim SMP.

SMP is paid by the employer at 90% of the employee's average weekly earnings for the first six weeks and then £128.73 for the remaining 39 weeks, however a significant percentage of this is reclaimable from the government (seek advice on this from your accountant). These sums are subject to the usual deductions for income tax and national insurance.

#### **Maternity Allowance**

Employees who are ineligible to receive SMP may be eligible for Maternity Allowance (MA) from Jobcentre Plus if they are:

- employed, or
- self-employed and pay Class 2 National Insurance contributions, or
- have a Small Earnings Exception Certificate, or
- are not employed currently but have worked close to or during their pregnancy.

To qualify, a pregnant woman must:

- have been employed or self-employed for at least 26 of the 66 weeks before the baby was due
- earned an average of £30 over any 13 of those 66 weeks.

The standard rate of MA is £128.73 or 90% of average weekly earnings, whichever is the lower.

MA can be claimed from 11 weeks before the baby's due date, is paid for up to 39 weeks and is not liable for deductions for income tax and national insurance contributions.

If your employees are not eligible for Statutory Maternity Pay but are eligible for Maternity Pay, they should contact their local Jobcentre Plus directly.

### **Benefits During Maternity Leave**

In addition to Maternity Pay, employees are entitled to continue to receive any benefits they receive through their employment.

This might include any access to a company car or mobile phone that has been part of the employment contract; employer contributions to an occupational pension scheme (whilst the employee is receiving Statutory Maternity Pay); and all entitlements to paid holiday during both the Ordinary and Additional parts of Maternity Leave.

However, some contractual benefits which are provided for business use only can be suspended, e.g. a business only mobile phone or access to a pool car.

### **Unfair Treatment and Discrimination**

It's unlawful sex discrimination for employers to treat women less favourably because of their pregnancy or because they take maternity leave. Such treatment includes things like:

- cutting working hours without the employee's agreement
- giving unsuitable work
- making an employee redundant because of pregnancy
- treating days off sick due to pregnancy as disciplinary issues

Employers are also prohibited from changing an employee's terms and conditions of employment while they are pregnant without their agreement.

### **Health and Safety**

Employers also have certain obligations to ensure the health and safety of pregnant employees.

Also, as some workplace hazards can affect pregnancy at a very early stage or even before conception, employers must also think of the health of women of child bearing age, not just wait until an employee tells them they are pregnant. This means employers, as part of their normal risk assessment, must consider if any work is likely to present a particular risk to women of child bearing age.

Additionally, as soon as the Employer is informed that an employee is pregnant, they should review their risk assessment for the specific work carried out by that employee and identify any changes that are necessary to protect them and their unborn baby's health. Employers should involve the employee in the process and continue to review the assessment on a monthly basis as the pregnancy progresses to see if any adjustments are necessary.

Common risks include:

- lifting or carrying heavy loads
- standing or sitting for long periods
- exposure to toxic substances
- long working hours

The employer must then either remove the risk or remove the employee from being exposed to it (for example, by offering suitable alternative work). If neither of these is possible, the employer should suspend the employee from work on full pay.

### **Your Employees' Responsibilities**

Whilst the majority of this section has been about your responsibilities towards your pregnant employees, it's important you make your employees aware of their responsibilities towards you as their employer.

Currently, your employees **must** tell you they are pregnant at least 15 weeks before the beginning of the week when their baby is due. They should also state when they want to start their maternity leave and receive Statutory Maternity Pay.

However, you should make sure your employees know it's a good idea for them to tell you earlier, because it will let you plan around their maternity leave and make sure you can carry out your legal obligations. This is particularly important if there are any health and safety issues to take into account. This is also important for the employee as they won't be able to take paid time off for ante-natal appointments until they have told you they are pregnant.

**--- PLEASE NOTE ---**

The information set out in this document is correct at 1<sup>st</sup> May 2011. As the legislation that applies in this article/document is general in its context, your specific circumstances may require tailored advice for it to be effective. If in doubt, contact Crispin Rhodes on 01908 230969 or email [angela@crispinrhodes.co.uk](mailto:angela@crispinrhodes.co.uk) or [sharon.pugh@crispinrhodes.co.uk](mailto:sharon.pugh@crispinrhodes.co.uk)