

Maternity Rights

Your rights at work if you are having a baby



Overview

This factsheet will help you to understand your maternity rights at work if you are having a baby. As the laws on maternity entitlements are complex, this factsheet can only offer a simple guide to the basics. It is always worth seeking specialist legal advice about your own particular situation.

We offer additional factsheets relating to maternity, including *'Family Leave – your rights to take time off work for family matters'*, *'Health & safety issues for pregnant women in the workplace'* and *'Returning to work and flexible working'*.

Antenatal appointments

If you are an employee with a contract of employment, you are entitled to paid time off work for antenatal care arranged on the advice of a registered medical practitioner. *More information on this is available in the factsheet 'Health & safety issues for pregnant women in the workplace'.*

Your employer must do a risk assessment

Once you have told your employer about your pregnancy they must carry out a risk assessment to check for any potential risks in your workplace and working arrangements. If any risks are identified, the employer must take measures to eliminate them. This could include changing your working hours or offering you an alternative role. If this is not possible, you should be sent home on full pay until the risk is eliminated. Your employment rights should be protected during this time. *More information on this is available in the factsheet 'Health & safety issues for pregnant women in the workplace'.*

Maternity leave

All pregnant employees have the right to 12 months' maternity leave. It does not matter how many hours you work or how long you have worked for your employer.

Ordinary Maternity Leave (OML) – lasts for 26 weeks. Whether or not you will be paid depends on your contract of employment or your entitlement to Statutory Maternity Pay (SMP). You can start your OML up to 11 weeks before your baby is due. OML is automatically triggered if you have a maternity-related absence in the four weeks before your due date.

Additional Maternity Leave (AML) – lasts for 26 weeks and starts at the end of OML. During AML, a woman is entitled to the same contractual benefits that she was entitled to during OML.

There are also important issues relating to the notice you must give if you decide to return to work sooner than expected.

If you want to take more time off before going back to work, consider taking annual leave or requesting unpaid parental leave.

Notice Requirements – You must notify your employer that you are pregnant, the date your baby is due and when you intend to take maternity leave, by the 15th week before the baby is due – the 'Qualifying Week'. You do not have to tell your employer earlier, but if you do it will help to protect you from pregnancy-related discrimination and ensure your employer takes steps to protect your health and safety and that of your baby.

If your maternity leave spans a holiday year, take your annual leave before you go on maternity leave or check with your employer that you can carry it over, otherwise you may lose it.

If your baby was born on or after 3rd April 2011 you may be able to transfer some of your maternity leave (including some paid leave) to the baby's father – see our factsheet *'Paternity Rights'*.

Statutory Maternity Pay (SMP)

For SMP, you must give at least 28 days' notice of when you want payment to start. Your SMP will be based on the earnings you receive in the eight weeks before the Qualifying Week. To get the best maternity package, you should try to ensure that any bonuses due are paid during these eight weeks.

You receive SMP for nine months. For the first six weeks you receive 90% of your average pay. After that, you should get the basic rate (£128.73 from 3rd April 2011) for 33 weeks, or 90% of your average earnings if that is lower. Therefore, if you take the full 12 months' maternity leave to which you are entitled, only three months will be unpaid. The Government intends to extend paid maternity leave to cover the full 12 months but it is not certain when this will take effect.

Remember that your employer claims most of this money back from the state (and all of it if they are a small employer).

You are entitled to SMP if you have worked for your employer for 26 weeks by the Qualifying Week, and you earn more than the Lower Earnings Limit for National Insurance contributions (£102 per week from 6th April 2011). As a rough test, if you were working for your employer when you became pregnant you should have sufficient service to get SMP. If you leave employment after that date, because you are dismissed or you resign, you will still qualify for SMP to be paid by your employer. Many employers are not aware of this.

Usually, the earliest date that SMP can start is from the 11th week before the week your baby is due. The latest it can start is from the day after the birth. There are some exceptions to this: for example, if your baby is born before the start of the 11th week. If you continue to work after the 11th week before the week your baby is due, your SMP will start from any day you choose once you have stopped work. In other words, your SMP should start from the first day of your maternity leave.

Maternity Allowance – If you are not entitled to SMP you may be entitled to Maternity Allowance or social security payments. Contact your local Benefits Agency for more details.

You may be able to claim Maternity Allowance if you have changed jobs during your pregnancy, if you are self-employed or if you have had periods of low earnings or unemployment during your pregnancy. Maternity Allowance is currently £128.73 a week for 39 weeks (or 90% of your average earnings if that is less) – as of 3rd April 2011.

Returning to work

You do not have to give notice to your employer of the date when you will return from maternity leave. Your employer should assume that you will take your full 12 months' entitlement unless you tell them otherwise.

You must give 28 days' notice to your employer if you intend to return to work before the end of your OML. If you wish to return to work early after a period of AML, you must give at least eight weeks' notice. If you don't give enough notice, your employer is entitled to delay your return to work to take advantage of the eight week notice period. When you return to work after OML you are entitled to go back to exactly the same job.

When you return to work after AML you are entitled to the same job or, if that is not reasonably practical, a suitable job on terms and conditions which are no less favourable. If you work for a small employer who does not employ more than five individuals, and you are not allowed to return to the same or a similar job after your AML, you will still be able to bring a claim for automatic unfair dismissal.

If you have at least 26 weeks' service, you have the right to ask for part-time, reduced or flexible hours. Your employer has a duty to seriously consider your request but they may refuse if there are good business reasons for doing so. As this means following a specific procedure which can take some time, you should think about making your application as soon as possible after the birth. *Please see our factsheet 'Returning to Work and Flexible Working' for more details.*

Your employer should carry out a risk assessment on your return to work. This should take into account any health and safety issues concerning you and your baby.

More information on this is available from the factsheet 'Health & safety issues for women in the workplace'.

If you do not want to return to work after your maternity leave you must give contractual notice. To maximise your entitlements, you should give notice so that your leaving date coincides with the end of your maternity leave. You are also entitled to be paid in lieu of any outstanding accrued holidays as they stand at the date of termination, including any leave built up during your maternity leave. You do not have to repay your SMP. However, some contracts can oblige you to repay all or part of any enhanced maternity pay.

Redundancy

You can be made redundant while on maternity leave if your position is genuinely redundant. But it would be unfair dismissal and sex discrimination to select you for automatic redundancy just because you are pregnant or on maternity leave. If you are made redundant while on maternity leave, your employer must offer you any suitable alternative vacancies, even if they are with another company in the same group and even if there are better qualified candidates for the position. You cannot be made to apply for any such vacancy or be interviewed for it – it should simply be offered to you. If you are made redundant, and qualify for SMP, you should continue to receive it.

Keeping in touch

While on maternity leave you can agree with your employer to work up to ten days without bringing your maternity leave to an end or losing out on maternity pay. These 'Keeping in Touch' days are designed to allow you to go into work and maintain links with the workplace. These days can be taken at any time except in the two weeks immediately following the birth of your child.

Reasonable contact – As well as these 'Keeping in Touch' days, your employer is entitled to make 'reasonable contact' with you while you are on maternity leave without this bringing your period of maternity leave to an end.

Feeling you are being unfairly treated?

This area of the law is complex. If you are having difficulties with your employer while pregnant or on maternity leave – such as your employer failing to consider your health and safety needs, attempting to make you redundant or refusing to properly consider your request for flexible working – then you should consider taking legal advice as such treatment could amount to sex discrimination. It's important to act quickly, because in almost all cases you will only have three months less one day from the date of your employer's action to bring a claim in the Employment Tribunal.

For more information on sex discrimination, flexible working and redundancy, please see our factsheets 'Sex Discrimination', 'Returning to Work and Flexible Working' and 'Unfair Dismissal', part of the Employment Law series.

Contact Us

Please feel free to discuss your own position and concerns. Contact your nearest Russell Jones & Walker office or call:



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This factsheet is for general guidance only and should not be treated as a definitive guide or be regarded as legal advice. If you need more details or information about the matters referred to in this factsheet please seek formal legal advice. This information was correct at time of going to press August 2011.