

Summary of Maternity Leave and Pay for All Categories of Employees

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Summary of Maternity Leave and Pay for All Categories of Employees

1. Introduction

- 1.1. Maternity leave and pay entitlements can be a complex issue. The tables in this document give a summary of the different entitlements and the qualifying requirements. Statutory entitlements are those provided for by employment law; contractual entitlements are part of the employee's contract of employment.
- 1.2. The status of the employee's contract of employment during the maternity leave period is treated as if they are temporarily absent from work. This means that all contractual benefits, except pay, must continue as normal. Annual leave entitlement will accrue as normal.

2. Entitlement to maternity leave and pay for all categories of employees, with less than 26 weeks service as at the 15th week before the EWC

- 2.1. All employees are entitled to take up to one year (52 weeks) maternity leave from day one of employment. The 52 weeks leave consists of 26 weeks Ordinary Maternity Leave (OML) followed continuously by 26 weeks Additional Maternity Leave (AML). An employee cannot return to work earlier than two weeks after childbirth.
- 2.2. There is a requirement to give the employer **at least 28 days' notice** of the date on which the absence will begin. If the employee wishes to resign their employment the normal contractual notice period applies. In all cases, Schools are advised to request notification as early as possible although the statutory requirement is for the employee to notify the employer of the intention to take maternity leave by **15 weeks before the Expected Week of Childbirth (EWC)**. The employer is required to respond to the request within **28 days** of the request being made.
- 2.3. The employee is not required to give notice of their intention to return to work following maternity leave unless they return before the end of the 52 week period, in which case they must give 21 days' notice of their intention to return.
- 2.4. A summary of the entitlements and obligations to maternity leave and pay for employees in Schools is set out in appendices 1 and 2.

3. Entitlement to maternity leave and pay for all categories of employees with more than 26 weeks service as at the 15th week before the EWC but less than one years' service as at the 11th week before the EWC

- 3.1. In addition to the maternity entitlement for employees set out above, for those with more than 26 weeks service as at 15 weeks before the EWC, there is a possible entitlement to be paid Statutory Maternity Pay (SMP), depending on the employee meeting certain conditions.
- 3.2. To qualify for SMP the following conditions must be met:
 - The employee must have been continuously employed by their current employer for at least 26 weeks by the beginning of the 15th week before the EWC. This 15th week is called the qualifying week.

- The employee must have average weekly earnings in the calculation period (which is the eight weeks or two months before the end of the qualifying week) at or above the lower earnings limit for payment of National Insurance contributions. The lower earnings limit is reviewed in the April of each year.
- The employee must still be pregnant at the 11th week before the EWC or have had the baby by that time.

4. Entitlement to maternity leave and pay for all categories of employees with more than one year's service as at the 11th week before the EWC

- 4.1. For those employees with more than one year's service as at the 11th week before the EWC, in addition to the above maternity leave and pay entitlements there is an entitlement to receive contractual maternity pay in line with the conditions of service for either teaching staff or support staff.
- 4.2. A summary of the entitlements and obligations to maternity leave and pay for all categories of staff with more than one year's service as at the 11th week before the EWC is set out in appendix 2.

5. Miscellaneous provisions

5.1. Ante-natal care

A pregnant employee has a right to reasonable paid time off to attend ante-natal care appointments. They should produce evidence of appointments if requested to do so by the Employer.

5.2. Pregnancy-related illness

If a pregnant employee is absent from work due to a pregnancy-related illness in the 4 weeks before the EWC, then the period of maternity leave will commence automatically.

5.3. Premature Birth

Where a baby is born prematurely the employee should ensure that the Headteacher is informed. The period of maternity leave will commence automatically the day after the birth unless maternity leave had already commenced. Discretion should be used as to whether it is appropriate to extend the maternity leave period or take any other special action as necessary.

5.4. Death of a Baby and Still Birth

If the baby dies or is stillborn after 24 weeks' pregnancy, the provisions of the relevant scheme apply. Where this occurs before 24 weeks (miscarriage), consideration as to the circumstances should be made and, where necessary, special leave or sick leave should be granted. The decision should be made with consideration given to the needs of the employee and medical advice.

5.5. Dismissal Protection

The law protects an employee against dismissal when they are pregnant or during maternity leave regardless of hours worked or length of service. Only when a dismissal would have occurred, regardless of the fact that the employee is pregnant or on maternity leave, would a dismissal not be automatically unfair.

5.6. Keeping in Touch Days

Employees may, by agreement with their employer, attend work for up to ten days' under their contract of employment during the maternity leave period. These days are known as "Keeping in Touch days" (KIT days). Such days are different to the reasonable contact that employers and employees may make with one another, as during KIT days employees can carry out work for the employer, for which they may be paid.

Any work done on any day during the maternity pay or maternity leave period will count as a whole KIT day, up to the ten day maximum. In other words, if an employee comes in for a one-hour training session and does no other work that day, they will have used one of their KIT days.

The type of work that the employee undertakes on a KIT day is a matter for agreement between the two parties. They may be used for any activity which would ordinarily be classed as work under the woman's contract.

The employee may be paid for the work undertaken during KIT days without loss of SMP. The rate of pay is a matter for agreement with the employer. However, when determining the rate of pay for each KIT day, the employer must be mindful of equal pay considerations. Please contact your HR Adviser at EPM if you require further information.

6. Health and Safety

6.1. Pregnant employees must be given specific health and safety protection under UK Health and Safety Legislation. The main provisions are set out below.

6.2. Risk Assessment

Employers must assess all workplaces for risks to the health and safety of their employees and others affected by their work activities. In particular, they must consider if there are specific or enhanced risks for new and expectant mothers who are defined as "an employee who is pregnant, who has given birth or miscarried within the previous six months, or who is breast feeding". Such risks would include exposure to certain harmful substances or microbial agents/infectious diseases; extremes of heat and cold; noise; movement and posture; lifting/handling loads; and potential exposure to violence (including verbal abuse).

6.3. Where an unacceptable risk is identified the employer must take any protective or preventative measures required by other health and safety legislation to remove it. See <http://www.hse.gov.uk/risk/resources.htm> for risk assessment form templates. Where this would not prevent the employee from being at risk, a hierarchy of measures should be followed:

- If it is reasonable to do so, working conditions or hours of work should be altered to avoid (or minimise) the risk;
- If this is not possible, or the risk cannot be avoided by this, the employee should be offered suitable alternative employment on existing, or not substantially less favourable, terms and conditions;
- If no suitable alternative work is available, the employee should be given leave of absence with full pay. If the employee refuses an offer of suitable alternative work, the leave may reasonably be unpaid.

6.4. Period of Protection

These provisions apply from the time the School receives written notification that the employee is pregnant until 6 months after the date of childbirth, or until the employee stops breast feeding if they continue to do so beyond this six month period. The paid leave of absence provisions will not apply during the maternity leave period. The employee will receive whatever maternity pay they are entitled to as normal.

7. The administration of maternity leave

- 7.1. When the employee notifies the Headteacher (or other designated person) that they are pregnant they should be given the appropriate maternity leave application form and summary of entitlements.
- 7.2. The School is advised to make it clear that it is the responsibility of the employee to notify the School by, at the latest, the 15th week before the EWC, of the intended date maternity leave is to commence. Should the employee decide they intend to commence maternity leave at an earlier date, they are required to give a minimum of 28 days' notice of the revised date.

When the Headteacher has received formal confirmation of an employee's intention to take maternity leave, the completed maternity application form should be forwarded to the HR Adviser immediately to enable a response to be sent to the employee within, the statutory required, 28 days. EPM provides a schedule of maternity leave pay for the employee.

- 7.3. A certificate of pregnancy from a registered medical practitioner or midwife (MatB1) should also be provided to the employer. The MatB1 is not issued until the 20th week before the EWC.
- 7.4. If the employee chooses to return before the end of the 52 weeks maternity leave period, they are required to give a minimum of 21 days' notice of the revised return date, in writing, to the Headteacher.
- 7.5. When the School has been informed of the above, then the HR Adviser for the School should be notified via the EPM portal in order that any maternity cover arrangements may be terminated and the employee's full pay re-commenced as appropriate.

8. Pensions

- 8.1. Members of the Teachers' Pension Scheme (TPS) and Local Government Pension Scheme (LGPS) will pay contributions based on the actual maternity pay received during the first 39 weeks of the maternity pay period.
- 8.2. During unpaid maternity leave the employer shall not make any payments into the pension scheme and the employee will no longer continue paying contributions. Employees should seek further information from the relevant pension scheme in respect of their options to enhance contributions for the period of unpaid maternity leave.

Appendix 1

Entitlement to maternity leave and pay for all categories of employees with less than 26 weeks service as at the 15th week before the EWC

Entitlements				Obligations		
Category of employee	Period with employer	Length of absence	Pay	Period of notice by employee to employer of intention to cease work	Period of notice by employee to employer to change the date maternity absence begins	Period of notice by employee to employer of intention to return to work
Support	Less than 26 weeks service as at 15 weeks before EWC	Up to 52 weeks	No contractual or statutory maternity pay Form SMP1 to be provided by payroll provider to apply for statutory maternity allowance	By 15 th week before EWC if not earlier	28 days	None unless returning before 52 weeks, then 21 days
Teachers	Less than 26 weeks service as at 15 weeks before EWC	Up to 52 weeks	No contractual or statutory maternity pay Form SMP1 to be provided by payroll provider to apply for statutory maternity allowance	By 15 th week before EWC if not earlier	28 days	None unless returning before 52 weeks, then 21 days

EWC: Expected Week of Childbirth

SMP: Statutory Maternity Pay

Appendix 2

Entitlement to maternity leave and pay for all categories of employees with more than one year's service as at the 11th week before the EWC

Entitlements				Obligations		
Category of employee	Period with employer	Length of absence	Pay	Period of notice by employee to employer of intention to cease work	Period of notice by employee to employer to change the date maternity absence begins	Period of notice by employee to employer of intention to return to work
Support	One year with any Maintained School as at 11 weeks before EWC	A total of up to 52 weeks leave; of which: up to 11 weeks may be taken before EWC	Six weeks at 90% of average earnings, followed by 12 weeks half pay & lower rate SMP followed by 21 weeks lower rate SMP only. Remainder unpaid.	By 15th week before EWC if not earlier	28 days	None unless returning before 52 weeks, then a minimum of 21 days
Teachers	One year with any Maintained School as at 11 weeks before EWC	A total of up to 52 weeks leave; of which up to 11 weeks may be taken before EWC	Four weeks at full pay, two weeks at 90% of average earnings, followed by 12 weeks half pay & lower rate SMP followed by 21 weeks lower rate SMP only. Remainder unpaid.	By 15th week before EWC if not earlier	28 days	None unless returning before 52 weeks, then a minimum of 21 days

*All Statutory Payments subject to National Insurance Contributions

All half pay payments are conditional on a return to work

EWC: Expected Week of Childbirth

SMP: Statutory Maternity Pay