



MATERNITY LEAVE AND PAY

Think Business, Think Equality

CONTENTS

- Introduction 2
- Maternity and parental policies 2
- Health and safety 3
- Recruitment 3
- Progression and Promotion 4
- Pregnancy and Maternity as a protected characteristic 4
- When does Maternity Leave start? 4
- How much Maternity Leave are staff entitled to? 4
- What is Statutory Maternity Pay? 5
- Terms and conditions 6
- Annual leave 7
- Pay rises 7
- Sickness 8
- Contact during leave 8
- Keeping in touch 8
- Redundancy 9
- Protection from detriment or dismissal 10
- End of leave 11
- Not returning to work 11
- Glossary 12

Introduction

This guidance is for businesses that want to improve gender diversity in their workplace. It accompanies the *Think Business, Think Equality* online self-assessment tool. The free online tool enables you to assess your current employment practice, and provides tailored advice and guidance on how your business can benefit from gender diversity.

It provides information and advice on how to improve your workplace policies before notification of a pregnancy, and on supporting staff during Maternity Leave. There is a glossary of key terms on page 12 of this guidance.

The Think Business, Think Equality online tool is available at:

www.thinkbusinessthinkequality.org.uk

LEGAL DISCLAIMER

While every effort has been made to ensure that the explanations given here are accurate, only the courts or tribunals can give authoritative interpretations of the law.

Maternity and parental policies

It's good practice to have a range of policies on the amount of leave and pay that are available so that staff and managers know what their entitlements and obligations are. Policies are also helpful in setting out the steps they need to take at each stage of the process e.g. when a member of staff tells her manager she is pregnant.

All managers who are involved in managing staff directly should be trained on your suite of maternity and parental policies. Any changes to the law should be communicated to all managers to ensure that your policies and decision-making processes remain compliant with the legislation.

There is a selection of example policies available on the Equality and Human Rights Commission website www.equalityhumanrights.com.

Health and safety

You should already have done a general workplace risk assessment, however it's good practice to review this to check if any new risks have arisen once a staff member notifies you that she's pregnant. While the existing risk assessment should have already considered any specific risks to new and expectant mothers, an additional assessment will identify any specific measures to be taken to create a safe working environment.

If the staff member's work could involve risks to new or expectant mothers and you fail to carry out an assessment, and take action in respect of any risks identified, you may face a claim for sex discrimination or pregnancy and maternity discrimination.

The Health and Safety Executive provides a risk assessment template and a number of examples of risk assessments for different types of small and medium-sized businesses. Visit www.hse.gov.uk/risk/casestudies/index.htm.

Recruitment

Ensuring you have good maternity policies in place and training the people in charge of recruitment allows you to choose from the widest pool of talent when recruiting new staff.

Making assumptions about whether a woman will have children, and what impact this may have on their ability to do their job, will significantly limit the talent pool from which you're able to recruit. When selecting new staff members the process should be focused on the skills needed to fill the post. By advertising posts on a flexible basis and promoting enhanced maternity and parental policies your organisation will attract a wider selection of applicants.

Any questions asked at an interview (or in a pre-employment health questionnaire) about a woman's intentions to have a family could be interpreted as an intention to discriminate against her because she is pregnant or likely to become pregnant. This could lead to a potential sex discrimination claim if the woman is not offered a job.

Similarly, if a woman is not offered a job, any questions you asked about her health could lead her to claim that the reason she was not recruited was because you thought she might have been pregnant or might have had a disability, and so be interpreted as sex discrimination or disability discrimination.

As part of the recruitment process you cannot refuse to employ a woman because she is pregnant or may be pregnant, or has been on Maternity Leave.

If a new staff member notifies you that she is pregnant shortly after starting a new job, she is entitled to take up to 52 weeks' Maternity Leave just as any other member of staff would. If she was already pregnant before she started her job she is unlikely to qualify for Statutory Maternity Pay because she will not meet the continuous service criteria.

Progression and Promotion

By overlooking pregnant staff for promotion you're missing out on opportunities to develop talented people, which helps not only them, but also your business. A staff member does not have to tell you that they are pregnant during interview or selection procedures. It is up to the staff member to decide when they wish to tell you of their pregnancy.

A staff member is only legally required to inform you of their pregnancy if they wish to take time off for antenatal care or she is notifying you of her pregnancy for health and safety reasons.

Pregnancy and Maternity as a protected characteristic

Under the Equality Act 2010, **pregnancy and maternity** is a protected characteristic which means that pregnant staff and other workers are protected from discrimination from day one of their employment. Job applicants are also protected in this regard, and can make a claim for discrimination if they think they've been discriminated against during the recruitment process because they are pregnant or on Maternity Leave.

When does Maternity Leave start?

It's up to your staff member to choose when she would like her leave to start. The earliest they can start their leave is 11 weeks before the expected week of childbirth.

The expected week of childbirth starts on the Sunday of the week the baby is due. The expected week of childbirth is the week written on the **MAT B1 maternity certificate**, which is provided by a midwife or GP when a woman is about 20 weeks' pregnant.

The start of a staff member's Maternity Leave will be triggered automatically if their child is born prematurely. It will also be triggered automatically where a staff member is absent for a pregnancy-related reason during the four weeks before the expected week of childbirth unless you agree that she can carry on working.

How much Maternity Leave are staff entitled to?

All pregnant staff are entitled to 52 weeks' Maternity Leave. Maternity Leave consists of **26 weeks' Ordinary Maternity Leave**, which includes the period of compulsory maternity

leave, and **26 weeks' Additional Maternity Leave**. Additional Maternity Leave follows on immediately from Ordinary Maternity Leave.

The **compulsory maternity leave** period is two weeks after childbirth, and four weeks for a woman working in a factory: this is a legal requirement. You must ensure that a woman does not work during this period.

What is Statutory Maternity Pay?

Statutory Maternity Pay is paid for 39 weeks. It is paid by you and reimbursed by HM Revenue and Customs. Once a staff member has met the qualifying conditions Statutory Maternity Pay is payable even if the employee resigns, is dismissed or made redundant, or advises you they will not be returning from Maternity/Adoption Leave.

The 15th week before the expected week of childbirth is known as the “qualifying week”. The **expected week of childbirth** starts on the Sunday at the beginning of the week in which the baby is due. It is different from the actual week of childbirth.

Agency workers, casual workers and some freelance workers may qualify for Statutory Maternity Pay if they meet the normal qualifying conditions for Statutory Maternity Pay.

To be eligible for Statutory Maternity Pay, employee staff member must have:

- at least 26 weeks' continuous service with you by the end of the qualifying week;
- be employed by you in all or part of the qualifying week; and,
- have average earnings before tax of at least the Lower Earnings Limit of £ 113 per week¹ in the eight weeks (if paid weekly) or two months (if paid monthly) before the end of the 15th week before the expected week of childbirth.

Statutory Maternity Pay is paid at 90% of average earnings for the first six weeks. The remaining 33 weeks are paid at £140.98 per week² or 90% of average earnings if that is less. Tax and National Insurance contributions are deducted in the normal way.

If a staff member does not qualify for Statutory Maternity Pay they may still qualify for **Maternity Allowance** or Employment and Support Allowance. You must complete form **Statutory Maternity Pay1** explaining why and give it to her along with her **MAT B1 maternity certificate**.

¹This correct at the time of writing. Please check www.gov.uk/maternity-pay-leave for current payment amounts.

²As above.

Good practice: Contractual Maternity Pay

It's good practice to offer enhanced Maternity Pay, over and above the statutory minimum. For example, you may offer Maternity Pay at full or half pay for some or all of the leave period. Providing enhanced Maternity Pay demonstrates that you value your people, improves your reputation as an employer, and will make your business more attractive to a wider pool of talent.

If, after Maternity Leave, a staff member doesn't return to work for a reasonable period e.g. three months, you can ask for any contractual Maternity Pay (over and above the Statutory Maternity Pay element) to be repaid. Make sure you that this is included in your Maternity Policy, and that the staff member is aware of this.

A staff member should be allowed to repay any contractual Maternity Pay in small instalments. They will be considered to be back at work once their Maternity Leave period has ended, even if they are on sick leave, annual leave or unpaid leave or have reduced their hours of work.

Terms and conditions

A staff member's terms and conditions of employment continue as if they are still at work, apart from the right to remuneration, throughout Maternity, Paternity, Adoption and Shared Parental Leave. 'Remuneration' usually means normal salary or wages which are replaced by Maternity, Paternity, Adoption, or Shared Parental Pay.

For example, staff members continue to benefit from the following types of contractual terms and conditions:

- Share schemes.
- Health insurance.
- Childcare vouchers.
- Gym membership.
- The right to use a company car or mobile phone (unless these are provided for business use only).
- The reimbursement of professional subscriptions.

A staff member should receive their normal pension contributions at the normal rate during Maternity, Paternity, and Adoption Leave.

If staff contribute to their pension, their contributions should be based on the actual Maternity, Paternity or Adoption Pay they receive.

Annual leave

A staff member's entitlement to annual leave accrues during Maternity Leave and normal rules on taking annual leave should apply. The Working Time Regulations 1999 legally entitle all employees to a minimum of 28 days' statutory holiday. The current regulations state that staff must take statutory annual leave in the leave year in which it accrues, however, case law also says that employees who have been unable to take annual leave because of sickness or Maternity Leave should be allowed to carry it forward. The UK Government has indicated an intention to amend the Working Time Regulations to allow employees to carry leave forward.

To avoid a build-up of holiday entitlement, it's good practice to meet with your staff member early in the pregnancy or adoption process, to discuss with them to plan when they intend to take annual leave. It is also good practice to allow staff to use accrued annual leave to create a phased return to work by working a shorter week.

If they give the correct notice, a staff member is legally entitled to end Maternity or Adoption Leave early, and take some annual leave, which should be agreed in the normal way.

Pay rises

Staff on Maternity Leave are entitled to any pay rises in the same way as other colleagues.

Any pay rises must be reflected in the staff member's Statutory Maternity Pay or contractual Maternity Pay. If a pay rise takes effect at any time from the start of the 8-week calculation period for Statutory Maternity Pay, you must recalculate their average earnings to take account of the pay rise and pay them any additional Statutory Maternity Pay that they are entitled to.

If the pay rise means that a staff member who was not entitled to Statutory Maternity Pay will now have average earnings high enough to qualify for it, you must pay them any Statutory Maternity Pay that is over and above the amount they would have received in Maternity Allowance.

You can ask your staff member to get a letter from their Jobcentre Plus confirming the amount of Maternity Allowance they were paid. Refusing to award a pay rise because of pregnancy or absence on Maternity Leave could lead to a claim for discrimination.

Sickness

If the staff member qualifies for Statutory Maternity Pay or Maternity Allowance, they can't receive **Statutory Sick Pay** during the 39 week Maternity Pay period, regardless of whether they return to work in that period. They should instead be paid Statutory Maternity Pay or Maternity Allowance. Statutory Maternity Pay and Maternity Allowance continue to run in the background for the full 39 week period. If a staff member does not qualify for Statutory Maternity Pay or Maternity Allowance, they are disqualified from receiving Statutory Sick Pay for 18 weeks.

If a staff member returns to work during the 39 week Maternity Pay period and is off sick, the employer should pay their Statutory Maternity Pay or they will be able to bring a claim at an employment tribunal. You are reimbursed in the normal way from HMRC.

Staff who are receiving Maternity Allowance should claim it from the Jobcentre Plus if they are absent from work during the Maternity Allowance period. If the staff member is entitled to contractual sick pay, you should top up the statutory amount or the Maternity Allowance amount to their contractual pay or she will be able to bring a claim at an employment tribunal.

Contact during leave

You can make reasonable contact with staff during Maternity Leave, Adoption Leave, or Shared Parental Leave. What constitutes 'reasonable' will depend on the circumstances and the staff member, such as their role and what you have agreed with them. You can contact staff to discuss their return to work.

You must let staff know about any promotion opportunities or other information relating to their job that they would normally be made aware of if they were working.

Keeping in touch

You and your staff member can agree to work for up to ten keeping-in-touch (KiT) days during Maternity or Adoption Leave without bringing the leave to an end (or losing Statutory Maternity Pay, Statutory Adoption Pay or Additional Statutory Paternity Pay). Neither you nor your staff may insist on working KiT days unless you both agree.

KiT days can be worked at any time during Maternity or Adoption Leave except during the compulsory Maternity Leave period. Any work done on any day during the Maternity or Adoption Leave period will count as a whole day towards the ten day limit.

The type of work that the staff member undertakes is a matter for agreement between you and your staff member. Keeping in touch may be used for anything you would usually class as 'work' under the staff member's contract of employment.

Your staff are entitled to be paid for KiT days. It is good practice to agree the rate of pay for days worked with your staff; payment for KiT days can be set out in the employment contract or agreed on a case-by-case basis.

If your staff member is receiving Statutory Maternity Pay, Statutory Adoption Pay or Shared Parental Pay they will continue to receive it, and you can offset those amounts paid towards any contractual pay agreed by the two parties. You will be able to recover Statutory Maternity Pay, Statutory Adoption Pay, Statutory Paternity Pay or Shared Parental Pay in the normal way.

If the staff member is not entitled to Statutory Maternity Pay but is claiming Maternity Allowance from the Jobcentre Plus, they can also work for up to ten KiT days without losing their Maternity Allowance. If they work more than ten KiT days, the Jobcentre Plus will decide how much Maternity Allowance she will lose for that week.

Redundancy

If there are any proposed redundancies, you must consult with all your staff including those absent on Maternity, Paternity, Adoption or Shared Parental Leave.

If a staff member's position is made redundant during Maternity, Adoption or Shared Parental Leave, you must offer them a suitable alternative vacancy, where one is available. If the staff member refuses a suitable alternative vacancy, they may forfeit the right to a redundancy payment.

This includes a vacancy with an associated employer or with a successor to the original employer. The new contract must be offered before the end of the original contract and it must take effect immediately on the ending of the original contract.

The new contract must be for work that is both suitable and appropriate for them to do in the circumstances and the terms and conditions cannot be 'less favourable' than under their original contract.

They must be offered the vacancies before other members of staff and the staff member does not have to attend interviews or selection procedures for the vacant post. This special protection is necessary because the staff member may be about to give birth, may have caring responsibilities or may have been absent from the workplace for some time.

If you make a staff member redundant during Maternity, Paternity, Adoption or Shared Parental Leave, you must pay them for any annual leave they have built up to the end of their employment contract.

If you make a staff member redundant during Maternity, Paternity, Adoption or Shared Parental Leave, they must receive any statutory redundancy pay or contractual redundancy pay they qualify for in the normal way.

When you are assessing their length of service to work out their Statutory Redundancy Payment, you must include any time they spent on Maternity, Paternity, Adoption or Shared Parental Leave as continuous service.

For help calculating Statutory Redundancy Payments, you can contact the [Redundancy Payments Helpline on 0845 145 0004](#).

Staff made redundant during Maternity, Paternity, Adoption or Shared Parental Leave must be given notice if they have been in the job for at least one month. If the contract of employment provides for notice of at least a week more than the statutory minimum notice period, the statutory provisions do not apply and you must give them the notice required by the contract.

Staff on Maternity, Paternity, Adoption or Shared Parental Leave are entitled to receive notice pay under the statutory provisions. You can offset any payments of Statutory Maternity Pay, Statutory Adoption Pay, Statutory Paternity Pay, or Shared Parental Pay against statutory notice pay.

A staff member may be entitled to contractual notice pay, depending on the terms of the contract. It may be unlawful to refuse notice pay during the 39 week Maternity and Adoption Pay period.

Protection from detriment or dismissal

You mustn't dismiss a staff member or treat them less favourably for any reasons related to Maternity, Paternity, Adoption or Shared Parental Leave.

The law protects staff from discrimination from day one of employment. They mustn't be treated less favourably or dismissed or made redundant because they've taken **Parental Leave** or **Time Off for Dependents**, or have asked for flexible work.

A staff member must not **suffer a detriment** (a legal term which means they must not be

penalised or treated less favourably) or be dismissed for refusing to work KiT days or **shared-parental-leave-in-touch (SPLiT) days** or for working or considering working KiT/SPLiT days.

A member of staff's long-term position at work must not be affected by their absence on Maternity, Paternity, Adoption or Shared Parental Leave. For example, they must not be treated any less favourably in terms of promotion prospects, pay reviews, appraisals and training and development opportunities.

A staff member must not be made redundant for a pregnancy-related reason connected to pregnancy, childbirth or absence on Maternity, Paternity, Adoption or Shared Parental Leave.

If a staff member is dismissed during Maternity Leave (including because of redundancy), you must provide a written statement of the reasons for their dismissal, whether or not they request it.

A staff member doesn't need to give notice if they are returning to work at the end of the 52-week Maternity or Adoption Leave period. This is the date which you confirmed to them in writing.

End of leave

The staff member must give at least eight weeks' notice if they intend to return to work any earlier than the end of the 52 week Maternity or Adoption Leave Period. If they do not give at least eight weeks' notice, you can postpone their return to work until the eight weeks' notice has elapsed.

If you did not write to your staff member prior to Maternity or Adoption Leave to let them know the relevant date, you cannot postpone their return to work. A staff member's return to work may not be postponed to a date after the end of the 52 week Maternity or Adoption Leave entitlement.

Not returning to work

If a staff member does not want to return to work after Maternity, Paternity, Adoption or Shared Parental Leave, they must resign, giving you notice in the normal way.

They are able to serve their notice while on Maternity, Paternity, Adoption or Shared Parental Leave. Having resigned, a member of staff is entitled to be paid for any annual leave they have built up to the date of resignation.

Glossary

Additional Adoption Leave: The second 26 weeks of Adoption Leave.

Additional Maternity Leave: The second 26 weeks of Maternity Leave, which follows on immediately from Ordinary Maternity Leave.

Adoption Leave: A period of 52 weeks leave that employees are entitled to once they have been matched with a child.

Compulsory Maternity Leave: The two weeks immediately following childbirth are compulsory leave (this increases to four weeks for factory workers).

Continuity of Employment Test: Measures an employee must meet to qualify for Shared Parental Leave.

Contractual Adoption Pay: Enhanced Adoption Pay over and above the statutory minimum. The payment amount is set by the employer.

Contractual Maternity Pay: Enhanced Maternity Pay over and above the statutory minimum. The payment amount is set by the employer.

Employment and Earnings Test: Measures an employee's partner must meet to qualify for Shared Parental Leave.

Expected Week of Childbirth: The week in which the baby is due.

Matching Certificate: A certificate from the adoption agency confirming the staff member has been matched with a child for adoption.

Matching Week: The week in which the staff member is notified of having been matched with a child by an adoption agency.

Maternity Allowance: A state allowance which is paid to a woman if she doesn't qualify for Statutory Maternity Pay. The amount paid depends on individual eligibility.

Maternity Leave: The amount of time that a woman is legally allowed to be absent from work in the weeks before and after she has a baby. All pregnant staff are entitled to 52 weeks' Maternity Leave.

Ordinary Adoption Leave: The first 26 weeks of Adoption Leave.

Ordinary Maternity Leave: The first 26 weeks of Maternity Leave, which includes the period of Compulsory Maternity Leave.

Parental Leave: Leave which allows parents take time off work to look after a child. This leave is normally unpaid, and is available for each child up to their 18th birthday.

Paternity Leave: A maximum of two weeks' leave following the birth of a child or the adoption of a child, taken to support the mother or care for the new child.

Qualifying Week: The 15th week before the expected week of childbirth.

Shared Parental Leave: Leave which allows mothers to end Maternity Leave/Pay early so that one or both parents can take leave in a more flexible way during their child's first year. Parents can take leave at the same time or separately.

Shared Parental Pay: Weekly payments for parents on Shared Parental Leave who meet both the Continuity of Employment Test and whose partner meets the Employment and Earnings Test.

Statutory Adoption Pay: Weekly payments for people on Adoption Leave set by the Government.

Statutory Maternity Pay: Weekly payments for women on Maternity Leave set by the Government.

Statutory Paternity Pay: Weekly payments for people on Paternity Leave set by the Government.

The content of this guidance is based on Equality and Human Rights Commission campaign materials and resources. Find out more at:
www.equalityhumanrights.com/en/our-work/managing-pregnancy-and-maternity-workplace

Close the Gap works in Scotland on women's participation in the labour market. We work with employers, trade unions and policymakers to enable and encourage action to address the causes of women's inequality at work.

Close the Gap

info@closethegap.org.uk

www.closethegap.org.uk

Twitter: [@closethepaygap](https://twitter.com/closethepaygap)

Facebook: www.facebook.com/closethepaygap

Published June 2017

Close the Gap (SCIO) (known as Close the Gap) is a Scottish charity, SC046842.



Close the Gap