



RETURNING TO WORK

Think Business, Think Equality

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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 on what the law says on staff returning to work after Maternity, Paternity, Adoption and Shared Parental Leave. It covers birth parents and partners of a staff member recognised as a main adopter. It also provides advice on how to improve your workplace practice, and on supporting staff during their return to work. It also includes information on developing policies and good practice. There is a glossary of key terms on page 7 of this guidance.

It makes sound business sense to have good equalities practice to support staff returning to work. By demonstrating that you value your people you can improve retention, and reduce recruitment and training costs, and benefit from attracting from a wider pool of talent.

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.

Rights on returning to work after leave

If a staff member returns to work during, or at the end of, any of the following:

- **Ordinary Maternity Leave;**
- **Ordinary Adoption Leave** (the first 26 weeks of leave);
- **Paternity Leave;** or,
- **Shared Parental Leave** where they have taken total leave of 26 weeks or less on aggregate (including any other periods of statutory leave);

they are legally entitled to **return to the same job** they were doing before the start of the leave, on the **same terms and conditions** they had before. The law says they must be given

any pay rises (or improvements in other terms and conditions) that would have applied if they hadn't been on leave.

If a staff member returns to work during or at the end of:

- **Additional Maternity Leave;**
- **Additional Adoption Leave** (the second 26 weeks of leave); or,
- **Shared Parental Leave** where they have taken total leave of more than 26 weeks on aggregate (including any other periods of statutory leave);

they are usually entitled to **return to the same job** on the same terms and conditions as if they had not been absent. However, if it's not reasonably practicable for the staff member to return to their original job, they have a legal right to be offered a suitable alternative job.

The new job must be both suitable and appropriate for the staff member and on terms and conditions of employment which are **no less favourable** than their previous job.

A less favourable role may be one where the work is less senior, less interesting or there is less responsibility. Less favourable would also be where changes have been made which make the role less attractive or where earnings from commission or performance-related pay may be reduced, or where the new post is more likely to be facing redundancy.

If a staff member is given a different job on their return to work and this is partly or wholly due to their absence on Maternity Leave, they may have a claim for maternity discrimination and/or for constructive or unfair dismissal if the new job is less favourable than their previous job. To protect your business from a costly and reputationally risky tribunal claim, it makes good business sense to ensure that you treat returners fairly.

Communicating with staff about returning to work

It's good practice to hold a pre Maternity Leave meeting with your staff member, at which you can ask them informally how much leave they are planning to take at this stage. This is also a good time to informally ask if they are intending on asking to change their working pattern on their return. While staff are not legally obliged to give this information, and their circumstances may change with caring responsibilities during their leave, it's good practice to start discussing it as early as possible so that you and your staff member can begin forward planning.

You must write to the staff member within 28 days of them giving you notice for leave and pay, confirming the date their leave will end.

You must assume that the staff member will take the maximum amount of leave, for example, 52 weeks' Maternity Leave. The staff member is due back to work on the day after the end of their leave. If they wish to return earlier they must give at least eight weeks' notice.

During Maternity Leave you're legally entitled to make reasonable contact with staff and to offer them Keeping-in-Touch (KiT) days, if they want to come into work.

KiT days help staff to stay in touch with developments in the workplace, to ease their return to work and to enable them to make contact from time to time. Staff are not legally obliged to work KiT days.

If necessary, you can ask the staff member for an indication of their plans to return to work. It's good practice to bear in mind that it can be an uncertain time for staff as they are still looking after an infant and it can be difficult to find suitable childcare.

Sickness at the end of the leave period

Staff are entitled to take sick leave in the normal way at the end of any period of Maternity, Paternity, Adoption or Shared Parental Leave, following your normal sickness procedures. The staff member is 'back at work' even if they are off sick.

Example

Laura returns to work after 39 weeks' Maternity Leave and Pay. She received Statutory Maternity Pay from her employer. She is still breastfeeding her baby and after a short period back at work she calls in sick for a week with mastitis.

She's entitled to sick leave in the normal way and should be paid Statutory Sick Pay if she qualifies for it (any payments of Statutory Maternity Pay are treated as earnings for the purpose of calculating her average earnings), or contractual sick pay based on her current contractual hours, if she is entitled to full pay during sickness absence.

If the staff member has returned to work within the 39-week Statutory Maternity Pay or Maternity Allowance period and then takes sick leave, they must be paid Statutory Maternity Pay (or can claim Maternity Allowance from the Jobcentre Plus) for any week of absence.

You can claim reimbursement of any Statutory Maternity Pay from HMRC in the normal way. The 39-week Statutory Maternity Pay period runs from the date that the staff member started their Maternity Leave and Pay.

Health and safety

If a staff member returns to work within six months of giving birth or while they are breastfeeding, you must consider any risks identified by the workplace risk assessment, and take reasonable action to remove or reduce any risks to your staff member or their child by temporarily altering working conditions or hours of work. The staff member must notify you in writing that they have given birth in the last six months or are breastfeeding.

Breastfeeding

Once you have been informed in writing that your staff member is breastfeeding or expressing milk, you must consider those risks identified by the workplace risk assessment and take reasonable action to reduce or remove any risks.

If the work could involve risks to staff who are breastfeeding, the workplace risk assessment must include an assessment of risks to new or expectant mothers arising from processes, working conditions, and physical, biological or chemical agents.

It's good practice to ask staff before they return to work if they're breastfeeding so that you can take the appropriate steps to make the job safe before they return to work.

If the work could involve risks and you don't assess the risks to new or expectant mothers and their child and take action, you're potentially at risk of a claim for sex discrimination. It could also have serious consequences for the mother and/or child.

You must take reasonable action to remove, reduce or control any risks, for example by altering working conditions or hours of work. If there are significant risks which can't be removed, you must temporarily alter your staff member's working conditions or hours of work for as long as they are breastfeeding.

If a significant risk remains, then your staff member is legally entitled to be offered suitable alternative work or, if none is available, to be suspended on full pay. Staff are legally entitled to return to their normal position on the same terms and conditions once they've finished breastfeeding or there's no longer a health and safety risk.

Reasonable action to protect the health and safety of staff who are breastfeeding could include:

- ensuring that they have adequate rest breaks;
- shorter shifts to ensure proper nutrition; and,
- access to water and washing facilities.

The law says you must to provide somewhere for a staff member to rest whilst they are breastfeeding, and should do so for as long as they wish to breastfeed.

Good practice: Supporting staff who are breastfeeding

- It's good practice to provide a private room in where staff can breastfeed or express. The rest room may be a suitable place. Toilets or sick rooms are not hygienic places for staff to breastfeed or express.
- A staff member is likely to need access to washing facilities and a clean fridge for storing milk. While there's no legal obligation to provide these facilities, there may be health and safety issues to consider, and it's good practice to do so.

Managing a return to work

It's good practice to plan a return to work which updates staff on any changes that have taken place during their leave around their role and the wider workplace. A return to work meeting is also a good opportunity to discuss any training that staff may have missed and to schedule time for this to ensure staff skills are kept up to date.

Offering a phased return is also considered a good way to allow staff members time to adjust to their new work-life balance.

Flexible working

All staff with at least 26 weeks' service have a legal **right to make a flexible working request** to change the hours, days or place of work of their existing job. If the staff member is on Maternity, Paternity or Adoption Leave, they are entitled to return to the same job that they were doing immediately before the start of their leave.

To find out more about how to improve your flexible working practices go to: www.thinkbusinessthinkquality.org.uk.

Return to work after Parental Leave

If a staff member wishes to take Parental Leave immediately after Maternity, Paternity or Adoption Leave, they must follow the standard notice requirements.

If a staff member has taken Parental Leave of four weeks or less, either on its own or following on from Ordinary Maternity Leave, Ordinary Adoption Leave, Paternity Leave, or Shared Parental Leave (where the total leave taken is 26 weeks or less on aggregate), they have the right to return to exactly the same job.

If they have taken consecutive periods of leave including Parental Leave (for more than four weeks); Additional Maternity Leave; Additional Adoption Leave; and Shared Parental Leave (where the total leave taken is more than 26 weeks on aggregate), they are **entitled to return to the same job** they were doing before their leave. Where this isn't reasonably practicable, they have the right to return to a similar job on terms and conditions that are **not less favourable**.

Time off for dependants

Staff who have caring responsibilities for a child or an adult are entitled to take unpaid time off during working hours to deal with unforeseen matters and emergencies. There is no legal right to be paid, but it's good practice to offer an amount of paid time off for dependants. It demonstrates you value your people, and recognise the complexities that come with caring roles.

More information on the **right to time off for dependants** is on the ACAS website: www.acas.org.uk.

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.

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