



Think Business, Think Equality

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# INTRODUCTION

This guidance is for businesses that want to improve gender equality and 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. This guidance is accompanied by a **Glossary of terms** and a resource setting out **key messages**. You can use these key messages to inform your policies, shape internal procedures, or support conversations about how your business can better support staff during pregnancy, maternity, and parenthood.

It makes good 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](http://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.



# RETURNING TO WORK

## THE MOTHERHOOD PENALTY

It's important that your business fosters workplace culture and practice that is supportive of women who are pregnant or on maternity leave. Many women report a lack of support from their employer during pregnancy, and challenges in returning to work.

This is driven by biased attitudes and assumptions about mothers' commitment to their roles and careers, and their desire to develop and progress. Evidence shows that fathers are not treated in the same way: while women experience a 'motherhood penalty', fathers often experience a 'fatherhood bonus' on becoming a parent.

You must ensure you are aware of employee rights on returning to work after leave, and what you need to do to support a smooth and successful transition.

## 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. It's important to let them know that you want to support them in their return to work, and that you're open to flexible working options.

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 aren't 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 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 make flexible working work for your business go to:  
[www.thinkbusinessthinkequality.org.uk](http://www.thinkbusinessthinkequality.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're 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](http://www.acas.org.uk).

The content of this guidance is based on Equality and Human Rights Commission resources.



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

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 Close the Gap



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is a Scottish charity, no SC046842.

Published January 2022