

MATERNITY LEAVE AND NOTICE

THE ADVICE GIVEN IN THIS FACTSHEET IS FOR BABIES DUE ON OR AFTER 1ST APRIL 2007

Maternity Leave and Notice

All employees, regardless of length of service, are entitled to 52 weeks of Maternity Leave.

The earliest you can start your maternity leave is 11 weeks before the week the baby is due. After this date you can start maternity leave whenever you like, you can work right up to the birth if you wish. However, if you are off with a pregnancy related absence in the four weeks before the week your baby is due; your employer can insist you start your maternity leave. If you give birth before you start maternity leave, your leave starts the day after you give birth.

Maternity Pay

This factsheet is for women who are employees.
Always check your contract of employment as it may offer you better rights than the law.
Your contract can offer you better, but not worse, rights than the statutory minimum.

Again, check your contract as you may get more than Statutory Maternity Pay. Whatever your contract says you cannot be offered less than the legal minimum.

SMP

If you are paid through Pay as You Earn (PAYE, with tax and National Insurance deducted by your employer) you may be entitled to Statutory Maternity Pay (SMP), as long as you meet the qualifying conditions. SMP is usually paid through your employer and has now been extended to 39 weeks.

The rate of SMP is 90% of a woman's average weekly earning for the first six weeks, followed by the lesser of a flat rate of – currently £108.85 a week – or 90% of her average weekly earnings for the remaining 33 weeks. The flat rate is subject to review every April.

If you do not qualify for SMP, your employer must give you form SMP1. If you think your employer has done the calculation wrongly, or if they haven't come to a decision by four weeks of your giving notice to claim SMP, you can ask the Inland Revenue to intervene. Call your local tax office for details of how to do this.

Maternity Allowance

If you do not qualify for SMP, you may still be able to get Maternity Allowance (MA). This is paid by the Department for Work and Pensions directly to you.

Giving notice

You must give written notice to your employer to take maternity leave and get maternity pay. You may have given written notice to your employer before, for example so you can have paid time off for ante natal appointments, or to get a health and safety assessment. However you must still give the correct notice by the end of the 15th week before the week the baby is due.

Once you have given notice your employer has 28 days to write to you confirming when you are expected to return after your maternity leave. If you are not entitled to SMP, you must also be given form SMP1.

The notice you must give if you are changing your date of return from maternity leave is eight weeks.

MATERNITY LEAVE AND NOTICE

THE ADVICE GIVEN IN THIS FACTSHEET IS FOR BABIES DUE ON OR AFTER 1ST APRIL 2007

Rights during Maternity Leave

26 weeks Ordinary Maternity Leave (OML) – during which the contract of employment continues, and during which the employee must continue to receive all her contractual benefits except (unless agreed otherwise) wages or salary.

26 weeks Additional Maternity Leave (AML) – during which the contract of employment continues but only certain terms of that contract apply. Employers and employees may agree between themselves for other terms to continue, although this is not required by law.

Holidays

It is a good idea to discuss with your employer before your maternity leave when you will take the holiday which you will accrue. You can take holiday prior to or after maternity leave but not during maternity leave. You can take holiday you have not yet accrued before going on maternity leave. Note that if you take holiday before going on maternity leave & give birth early, you will lose the holiday.

Carrying Over Leave

You cannot normally carry your leave over into another leave year unless your contract or employer permits this. However, if you are prevented from taking holiday by your employer or because you were on maternity leave, it might be possible to argue that not letting you carry holiday over is sex discrimination.

Working in Maternity Leave

Optional keeping in touch days enable a woman to work for up to ten days (paid) during maternity leave period. If the employer offers an employee the opportunity to work a Keeping in Touch Day she is entitled to turn the opportunity down without suffering any consequences as a result.

If you are dismissed.

It is not necessarily unlawful to dismiss a woman on maternity leave, but you must be given written reasons why. The dismissal must not be related to pregnancy, childbirth or maternity leave, and normal unfair dismissal rules apply.

Dismissal after the 15th week before the week the baby is due will not affect your rights to maternity pay.

Women on maternity leave have special protection from redundancy, please see our factsheet After Maternity Leave for more details.

On maternity leave and pregnant again

The fact you are on maternity leave does not change your rights to further periods of maternity leave. The normal rules apply, however you may not have earned enough (or anything) in the calculation period to claim SMP. However, you may be able to claim Maternity Allowance.

Telling your employer

There is no legal obligation to tell your employer that you are pregnant until the 15th week before the week your baby is due, when you give notice of your intention to take maternity leave and claim statutory maternity pay.

There are, however, advantages to telling your employer early. Once you have told your employer that you are pregnant, in writing, you must be given a health and safety assessment and you also have the right to paid time off work for antenatal appointments. (see below).

Many women wish to keep their pregnancy secret at first, and if you do tell your employer earlier than when you want others to know about it then you must make it clear that you expect confidentiality.

Time off for antenatal care

Employees have the right to reasonable paid time off work for antenatal appointments, which includes the time spent travelling to an appointment & waiting. You cannot be refused time off for the first appointment, but for subsequent appointments your employer can ask for

MATERNITY LEAVE AND NOTICE

THE ADVICE GIVEN IN THIS FACTSHEET IS FOR BABIES DUE ON OR AFTER 1ST APRIL 2007

written proof of the appointment and a certificate or note from your doctor or midwife, stating that you are pregnant. If you do not, when asked, provide these, your employer can refuse the time off. This is the only circumstance in which employers can refuse time off. They cannot ask you to make appointments in your own time, or make the time up later.

An antenatal appointment is any appointment you make on the advice of your doctor, midwife or health visitor. This includes parent craft and relaxation classes.

Note that this right only extends to pregnant women, not to their partners.

Sickness and health and safety

Sickness

If you are ill during pregnancy normal sickness rules apply, with a few exceptions. If the illness is pregnancy related it must be recorded as such, it does not count towards your sickness record & you cannot be dismissed for it. You should not be treated less favourably than other employees because you are sick, so for instance if your employer pays sick employees then you too must also be paid. If your employer does not pay sick employees then you may be entitled to Statutory Sick Pay, in accordance with the normal rules. Note that if you are sick during your pregnancy & not receiving your normal pay this could affect your entitlement to Statutory Maternity Pay.

If you are off work with a pregnancy related absence (this could include a health and safety suspension, see below) in the four weeks before the week the baby is due, your employer can insist that you begin your maternity leave. This is the only circumstance where your employer has any say into when your maternity leave starts.

If you are not too ill to work, but your job is making you ill, or is not safe to do in pregnancy, then you are not sick, the problem is health and safety.

Health and Safety

Pregnancy itself is not an illness, but it can affect the things you can do. Employers who employ women of childbearing age have a duty to have a "general" health and safety assessment to identify risks to pregnant women. As soon as your employer has been informed in writing that you are pregnant (this can include a sick note for pregnancy related illness), a personal health and safety assessment must be done for you. As every pregnancy is different, the assessment should be done in conjunction with you.

The assessment will look not just the more obvious and dramatic risks, like heavy lifting and working with chemicals. The assessment looks at all risk to your and your unborn baby's health.

It might be helpful to ask your doctor or midwife what risks there are for you, for example some women's ligaments soften making even light lifting a problem. For other women the issue might be the need to take frequent toilet breaks, or the kind of chair they use.

Once the risks have been identified, they must be eliminated if possible. For example, if you are at risk of back pain from standing for long periods, you should be offered a chair. You must be given information on the identified risk & what is going to be done about it. If it is not possible to remove the risks then your working conditions or hours of work should be temporarily changed, if reasonable. If this is impossible, then you should be offered a suitable alternative job on similar terms and conditions which are reasonable for you to do. Whether or not the alternative is reasonable for you to do depends on the type of work, the rate of pay, the hours and times of work and the location of the work. Of course the alternative job must be safe for you to do. If there is no reasonable alternative job, or no safe job, you must be suspended on full pay so long as the risk remains. This is not sick leave, and should not be counted as such.

Note that special rules apply for pregnant night workers. Also note that the duty to carry out the risk assessment described above also applies to women who are breastfeeding or who gave birth less than 6 months ago.

MATERNITY LEAVE AND NOTICE

THE ADVICE GIVEN IN THIS FACTSHEET IS FOR BABIES DUE ON OR AFTER 1ST APRIL 2007

Dismissal during pregnancy

It can be legal to dismiss a pregnant woman, but the normal rules of dismissal apply, and the dismissal must not in any way be related to her pregnancy or intention to take maternity leave. A dismissal because of pregnancy, birth or maternity leave is an automatic unfair dismissal. If you are dismissed while pregnant (or on maternity leave) you must be given written reasons for the dismissal.

Unlike women on maternity leave pregnant women have no special protection in a redundancy situation. However, the redundancy selection criteria must not take into account reasons connected to pregnancy (including pregnancy related illness) or maternity leave.

Discrimination

You must not be treated less favourably because you are pregnant, or because you are going to take maternity leave.

Q&A

I'm finding work very hard to cope with, when can I start my leave?

The earliest you can start maternity leave is 11 weeks before the week in which your baby is due. However starting maternity leave early may not be the best solution to your problem. If you are having difficulties because your job is not safe for a pregnant woman you have health and safety rights, see above. If you are ill you can take sick leave, but you need to consider the effect of doing this on your pay & on your future maternity pay.

I have been dismissed, I asked my employer for written reasons but he refused because I have not been there for a year.

Women who are pregnant or on maternity leave have the automatic right to written reasons for dismissal. Seek legal advice straight away

My boss hasn't said anything, but my colleagues are upsetting me by making jokes about my weight gain and remarks about the time off I'm having.

Your employer has a duty to prevent acts of discrimination by staff. Talk to your manager, and if the bullying persists put in a grievance.

I'm pregnant and looking for work, do these rights apply to me?

All the rights in this factsheet apply from day one of employment. In addition, you must not be discriminated against in recruitment because you are pregnant. Remember, you have no duty to tell an employer (or potential employer) that you are pregnant until the 15th week before your baby is due.

New rights for pregnant women – babies due on or after 1st April 2007

The rules which have changed are:-

- Any employee who qualifies for additional maternity leave will now automatically qualify for additional maternity leave regardless of length of service.
- The payment period for SMP and maternity allowance has been extended to 39 weeks.
- The notice a woman must give if she is changing her date of return from maternity leave has been increased from 28 days to 8 weeks.

MATERNITY LEAVE AND NOTICE

THE ADVICE GIVEN IN THIS FACTSHEET IS FOR BABIES DUE ON OR AFTER 1ST APRIL 2007

- Optional keeping in touch days have been introduced enabling a woman to work for up to 10 days during her maternity leave period.