Maternity Guide

Notification of Pregnancy

Once an employee has notified you she is pregnant you should carry out a risk assessment. This should be repeated at least twice as the pregnancy progresses.

Time off for Antenatal Care

Once an employee has advised her employer that she is pregnant, she is entitled to take reasonable paid time off to attend antenatal appointments made on the advice of her doctor, midwife or health visitor. Antenatal care may include relaxation and parentcraft classes.

This right applies irrespective of length of service.

Employees have the right to time off to accompany a pregnant woman to up to two antenatal care appointments, if the employee is the father of the baby, or the partner of the pregnant woman. There is no right to be paid for this time off and the employee can take a maximum of six and a half hours for each appointment.

Leave and Right to Return

Regardless of length of service or hours of work, female employees are entitled (subject to various notice requirements) to 26 weeks' Ordinary Maternity Leave ("OML") and 26 weeks' Additional Maternity Leave ("AML") and to return to work without giving notice of the date on which they intend to return (unless they intend to return early in which case 8 weeks' notice must be given).

The woman is not allowed to work at all within two weeks of the birth (or four weeks in certain industrial positions e.g. factory workers).

A pregnant employee must notify her employer by the 15th week before the Expected Week of Childbirth (EWC) (unless it is not reasonably practicable to do so), that she is pregnant, her expected week of childbirth and when she wants her maternity leave to start. The 15th week before the EWC is known as the Qualifying Week.

OML can start any time from 11 weeks before the EWC. It is possible to change the start of maternity leave on 28 days' notice, unless it is not reasonably practicable to do so.

Maternity leave will start on whichever date is the earliest of:

(i) The employee's chosen start date

(ii) The day after the employee gives birth

(iii) The day after any day on which the employee is absent for a pregnancy-related reason (e.g. pregnancy-related illness) in the four weeks before the EWC.

Once you have received notice that an employee is pregnant as above, you must respond within 28 days, giving the date on which she is expected to return to work assuming she takes her full leave entitlement of 52 weeks. If the employee intends to take her full entitlement to maternity leave she

will not be required to give any further notification to her employer that she will be returning to work at the end of her maternity leave; she will need only to turn up to work. However, if she wants to return to work before the end of her full maternity leave entitlement then she must give her employer 8 weeks' notice of the date she intends to return.

During OML and AML, the employee's contract of employment continues in force and she is entitled to receive all contractual benefits except for salary/ remuneration. This is a complex area of law so fi you are not sure how this applies in a particular case, please seek advice.

If the employee returns to work at the end of OML, she must be allowed to return to the job in which was employed before her absence, along with the seniority, pension and all other rights as they would have been if she had not been absent, and on terms and conditions not less favourable than those which would have applied if she had not been absent. This includes any pay rises which would have been awarded to her during her absence.

If the employee returns to work at the end of AML, she must be allowed to return to the job in which she was employed before her absence. If that is not reasonably practicable, she must be allowed to return to a job which is both suitable for her and appropriate in the circumstance, on terms and conditions not less favourable than those which would have applied if she had not been absent, and seniority, pension and other rights as they would have been but for her absence, but ignoring her period of AML. NOTE: This is the clear legal position but I would never recommend you remove the right for her to return to her original job under these circumstances. I would always recommend you ignore this rule except where the employee does not return after 52 weeks.

Where temporary illness prevents the return to work, refusal of the right to return could amount to unfair dismissal. In addition, it is likely to be automatically unfair to dismiss a female at any time during her pregnancy for absence due to illness resulting from the pregnancy.

If any employee is too sick to return at the end of her maternity leave then she should be treated as if she were absent on sick leave as normal. In other words, she must keep you notified as to her expected return, reasons for absence and submit medical certificates as and when required. She will receive any sick pay as she would normally.

Please note that the employee may add a period of Parental Leave to the end of AML.

Consequences of Refusing the Right to Return

If you fail to allow the woman to return at the end of maternity leave this constitutes dismissal which is considered automatically unfair. In addition, this will be directly discriminatory on the grounds of her sex and there is no limit to the level of damages that can be awarded for such discrimination. Furthermore, the one-year qualifying period for normal unfair dismissal claims is not applicable in discrimination cases, nor in cases of automatic unfair dismissal where the dismissal is by reason of pregnancy.

Contact during Maternity Leave

The employer is entitled to maintain reasonable contact with the employee during her maternity leave. This may be, for instance, to discuss plans for the employee's return to work or to update her on developments at work during her absence.

Keeping In Touch Days

Keeping In Touch ("KIT") days allow employees on maternity leave to return to work during their leave. This must be agreed between the employer and the employee. An employee may be permitted to take up to 10 KIT days in total. Work undertaken on a KIT day need not be limited to the employee's normal duties and can include training and other events.

Any work carried out on any KIT day constitutes a day's work.

The employer cannot require the employee to take KIT days, nor can they penalise the employee for not taking any. Similarly, the employer is not obliged to offer such days.

The law is silent on the pay attached to KIT days, however I would recommend that the employee is paid her normal hourly rate for any hours worked.

Maternity Pay

A woman with more than 26 weeks' continuous service as at the 15th week before the EWC is entitled to Statutory Maternity Pay ("SMP") for a maximum of 39 weeks. SMP will be 90% of her normal weekly earnings for the first six weeks and then the current Government set weekly rate of SMP for the remaining 33 weeks, or 90% of her average week's earnings if this is less than the Government's set weekly rate.

As stated above, contractual benefits (other than salary/remuneration) must continue during OML and AML.

SMP is treated as earnings and so is subject to deductions for income tax and National Insurance Contributions.

Employers can usually recover 92% of such maternity payments through deductions from normal NIC payments although you must keep records of SMP payments for three years. 'Small employers' may be able to recover the full amount of SMP. See the HM Revenue & Customs website for more details.

A woman who does not qualify for SMP might be entitled to Maternity Allowance ("MA"). MA is paid for a maximum of 39 weeks at the rate of 90% of the employee's normal weekly earnings or the current Government set weekly rate of MA, whichever is lower. Employees not eligible for SMP are given a form SMP1 by their employer. This form must be taken to a Job Centre Plus to claim MA.

Miscarriage and Stillbirth

If an employee's child is stillborn 24 weeks or more into the pregnancy, she will keep her entitlement to maternity leave and SMP. If a live child is born prematurely and lives for only a short time, the employee will retain her full rights to maternity leave and SMP, irrespective of the timing of the birth.

An employee will not have the right to maternity leave or SMP if she miscarries before 24 weeks into the pregnancy. However, if she is absent due to sickness after the miscarriage, the employee will be entitled to statutory (and, if applicable, contractual) sick pay.

Medical Suspension on Health and Safety Grounds

Employers are required to carry out a risk assessment to assess the risks in the workplace to women who are pregnant, have recently given birth or are breast feeding where their work may involve a risk of harm or danger to their health or that of their baby. In these circumstances, the employer should advise affected employees as to the risks identified in the risk assessment. If, having carried out the risk assessment, a pregnant woman or nursing mother is suspended from her job for health and safety reasons, she must be offered suitable alternative work or, failing that, full remuneration during such medical suspension.

Requests for Part time Work or Flexible Working

A woman working full time before going on maternity leave has no automatic right to return to part time work (or some other flexible working arrangement) when she comes back to work from maternity leave. However, all such requests for flexible working must be seriously considered in the light of the operational requirements of the employer's business.

Protection against Unfair Treatment or Dismissal

An employer must not subject an employee to unfair treatment at work because she is pregnant or for reasons connected with her pregnancy (e.g. seeking to take maternity leave). In addition, it is unlawful to dismiss an employee or select her for redundancy in preference to other comparable employees for reasons connected to her pregnancy. These rights apply regardless of the employee's length of service.

Shared Parental Leave

The mother can share any part of her leave and pay entitlement (except for the 2/4 weeks' compulsory element) with her partner. The rules on this are complex and it is rarely done, but please enquire for details.