

Maternity and paternity guide **for employers**

Introduction

Welcome to the QualitySolicitors guide to maternity and paternity rights and responsibilities, designed specifically for you, the employer in a small or medium sized business. As an employer you will almost certainly encounter many occasions when an employee announces they are expecting a baby. When this happens, you have certain responsibilities towards the employee, whether it is the mother or partner, which you should be aware of in order to navigate the letter of the law and ensure all rights and responsibilities are met.

This guide is designed to help you, the employer, understand what is expected from you in this situation, from a legal perspective. It covers everything from when an employee must notify you of their pregnancy, to employee benefits during maternity leave, to what rights an employee has to return to their job after maternity leave.

We hope this guide will ensure that you are equipped with the basic information you need. That said, if you have any questions, please don't hesitate to get in touch with your local QualitySolicitors branch.

Best wishes,

Gareth Stevens

Head of Employment Law, QualitySolicitors Clapham & Collinge

What are employers required/advised to do in the run up to maternity leave?



When is your employee required to tell you she's pregnant?

An employee is required to notify her employer of the fact she is pregnant, when the child is due to be born, and when she intends to take maternity leave, no later than the end of the 15th week before the expected week of childbirth. An employee is not required to provide any evidence in writing, however, it is advisable for an employer to request written confirmation of the pregnancy. This can be supplied in the form of a MAT B1 form by a Doctor or Midwife and will confirm the expected week of childbirth.



Do I need to carry out a risk assessment for my pregnant employee?

Employers owe a duty of health and safety to their employees and therefore once an employee notifies their employer of their pregnancy the employer is under an obligation to carry out a risk assessment. The law requires that this risk assessment needs to cover an assessment of the risks the work place poses to new or expectant mothers or their babies. If risks are identified the employer is required to alter the employee's working conditions or hours to avoid any significant risk. If this is not possible the employer needs to look at offering suitable alternative work.



Do I pay my employee for time off to attend ante-natal appointments?

All pregnant employees have a statutory right to "reasonable" paid time off during working hours to attend ante-natal appointments. This right is regardless of length of service of the employee.

What maternity pay are employees entitled to?

All employees, regardless of their length of service, are entitled to maternity leave. However, not all employees are entitled to Statutory Maternity Pay (SMP). To qualify for SMP an employee must have been continuously employed for 26 weeks up to and including the 15th week before the expected week of childbirth. The employee must also have average earnings of at least the lower earnings limit for National Insurance which currently stands at £109* per week. For the first six weeks, employees are entitled to 90% of their salary followed by 33 weeks of statutory maternity pay which is capped.

*Correct as at June 2013

What are employers required/advised to do during maternity leave?



When can an employee start their maternity leave? An employee can choose to start their maternity leave on any day leading up to the expected week of childbirth as long as it is not before the beginning of the 11th week before the expected week of childbirth. If the employee wishes to change the start date she must give her employer at least 28 days' notice.

How much time is an employee entitled to take off for maternity leave? An employee is entitled to take up to 12 month's maternity leave. The first 26 weeks are known as Ordinary Maternity Leave and the second 26 weeks are known as Additional Maternity Leave. Employees with the requisite service and earnings are entitled to 39 weeks' Statutory Maternity Pay.

As the employer, you should assume that your employee will take all 52 weeks of their Statutory Maternity Leave. Before the employee goes on maternity leave, you should tell them the date their maternity leave ends, on this basis. However, you and your employee may agree on a different date for their maternity leave to end.



What happens if an employee wants to return to work earlier than agreed? If your employee decides that she wants to return to work earlier than your agreed date, she must give you eight weeks' notice in writing of her new date of return to work.

Do I continue to provide benefits during an employee's maternity leave? During maternity leave an employee's contract of employment continues and she is entitled to the benefit of all of the terms and conditions of employment except for the terms in relation to pay. Therefore all other benefits will continue; this includes accrual of contractual annual leave, health insurance, use of company cars, health club membership etc..



Am I required to continue paying into an employee's pension during maternity leave? An employer is also required to continue to pay full pension contributions into an employee's pension scheme. The employer may not make any reduction to reflect the fact that the employee is being paid less than normal. The employee's contribution will be reduced to reflect the employee's Statutory Maternity Pay (SMP). Once SMP runs out after 39 weeks the employer is not required to continue to pay pension contributions beyond this period.

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What are employers required/advised to do during maternity leave? (cont'd)



Can I get in touch with an employee whilst she is off? An employer may make “reasonable contact” with an employee from time to time during their maternity leave. This can be used to keep the employee informed of what is going on at work and deal with their return to work. In fact it is better to keep an employee informed of what is going on at work, including job vacancies and promotion opportunities to avoid the risk of claims for discrimination.

As well as informal contact during maternity leave there is provision in the law for what are known as “keeping in touch days”. Employees can work up to a maximum of 10 days during maternity leave without bringing their maternity leave to an end. This is helpful where an employer may have training days and other staff updates. These keeping in touch days must be agreed between employer and employee and cannot be forced upon either party.



Can an employee be made redundant whilst she is on maternity leave? If a redundancy situation arises during an employee’s maternity leave the employer can still dismiss an employee on maternity leave. The employer must follow the correct redundancy process and procedure and should include the employee on maternity leave in the same way as if she were still at work. The only difference with an employee on maternity leave is that if any suitable alternative vacancy exists this should be offered to the employee on maternity leave. An employee on maternity leave is given priority for this role over other employees. This is a rare example of positive discrimination.

What are employers required/advised to do with regards to those returning to work after maternity leave?

An employee is entitled to take up to 52 weeks' maternity leave. Unless otherwise indicated by the employee, the return to work date would be at the end of the 52 weeks' full maternity leave period. If an employee wishes to return to work earlier than her Statutory Maternity Leave she must give at least eight weeks' notice of her return date.



Must I keep an employee's role available until she returns?

If the employee only takes Ordinary Maternity Leave of up to 26 weeks they are entitled to return to the same job they were employed in before going on maternity leave. The terms of employment must be the same, or not less favourable than prior to maternity leave. They can of course be more favourable if pay rises have occurred during maternity leave. Where the employee has taken any period of Additional Maternity Leave after the 26 weeks' Ordinary Maternity Leave then they are generally entitled to return to work to the same job, but the employer has more flexibility to allow them to move the employee into another role and not the same role. If it is not practicable for the employer to allow the employee to return in the same job, the employee is entitled to return to a different job which is suitable and appropriate and on no less favourable terms and conditions.



Is an employee entitled to flexible working when she returns?

Employees who have children under the age of 17 have the right to request flexible working. An employee coming back from maternity leave has the right to return to the same or similar job, and will have the right to request flexible working. If the employee requests flexible working then the employer should give proper consideration to any request under the statutory procedure. There is no requirement to grant flexible working but any request should be considered in line with the statutory scheme.



Can an employee resign during her maternity leave? An employee is entitled to resign during maternity leave if she so chooses and not return to work. The employee must give their contractual notice to terminate their employment and this may be done so that their employment ends at the same time that their maternity leave is due to end.

What are employers required/advised to do in the run up to paternity leave?



What paternity leave and paternity pay is your employee entitled to? Your employee may be entitled to take one or two weeks' continuous paternity leave. This leave must be taken between the date on which the child is born and 56 days after that date. To qualify for paternity leave your employee must:

- Have been employed by you for at least 26 weeks by 15 weeks before their partner's due date.
- Be the father of the child, or the mother's husband, civil partner or cohabiting partner (same sex partners are included).
- Have, or expect to have, responsibility for bringing up the child.

To get Statutory Paternity Pay, your employee must meet the conditions above and also:

- Still be working for you when the baby is born.
- Have average weekly earnings of at least the lower earnings limit for National Insurance Contributions.

For the latest information on Statutory Paternity Leave and pay entitlement, take a look at www.gov.uk/paternity-pay-leave.



What notice must employees give? An employee must give written notice of their intention to take paternity leave by giving details of the expected week of childbirth, the length of paternity leave (one or two weeks), and the date when they intend to take the leave.



What is Additional Paternity Leave? Fathers are entitled to Additional Paternity Leave in relation to babies born on or after 3rd April 2011.

This is a period of leave which can be between two weeks and 26 weeks. This leave must be taken within a window that starts 20 weeks after the birth and ends 12 months after the birth. For the father or partner to take this additional leave the mother must have returned to work. The father or partner can also receive Statutory Paternity Pay if the mother has not used up her full entitlement to the 39 weeks Statutory Maternity Pay. It is advisable for the employer to request signed declarations from the mother and father or partner confirming the mother has returned to work.



New legislation. On 13th November 2012 the Government's Children and Families Bill 2012-13 announced that a new system of statutory parental rights will be introduced in 2015. This will allow parents to share the maternity leave and pay that is currently available only to mothers. A woman has to take a minimum of two weeks' maternity leave by law. After this time, parents are entitled to share the remaining 50 weeks' maternity/paternity leave, with fathers or partners able to take up to 26 weeks assuming the mother has returned to work. This means that a mother can take a proportion of the 50 weeks, and the remaining maternity leave allowance (up to 26 weeks) can be transferred to the father or partner whilst the mother can return to work.

What are employers required/advised to do during paternity leave?



How does paternity leave affect holiday entitlement and benefits? During Ordinary Paternity Leave an employee's contract of employment continues and the employer must treat the employee the same as if they were not absent except in relation to pay. The employee will continue to accrue holiday and will still be entitled to be paid pension contributions and to any other benefits such as company car, gym memberships etc..



Can I contact my employee on paternity leave? An employer is entitled to reasonable contact with an employee on paternity leave.

What are employers required/advised to do with regard to those returning to work after paternity leave?



If your employee returns after two weeks: An employee is entitled to return to the same job following Ordinary Paternity Leave of one or two weeks.



What happens if an employee chooses to take Additional Paternity Leave? During Additional Paternity Leave an employee is entitled to the same contractual benefits as if they were still at work except for the pay they receive. As with maternity leave there is provision for up to 10 keeping in touch days with an employee on additional paternity leave.



Can I make an employee redundant during Additional Paternity Leave? If a redundancy situation arises during a period of Additional Paternity Leave the employee on leave should still be included in the process, but if they are made redundant they should be automatically offered any suitable alternative before any other redundant employees.

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What are employers required/advised to do with regard to those returning to work after paternity leave?



Do I need to keep an employee's job available during Additional Paternity Leave? Your employee is entitled to return to the same job if their Additional Paternity Leave does not last for longer than 26 weeks and does not include any period which would have been Additional Maternity Leave if taken by the mother. If it does cover a period which would have been Additional Maternity Leave then the same rules apply as to the mother, and the employee is entitled to return to the same job unless it is not reasonably practicable for them to do so and the employer can offer another job that is suitable and appropriate to the employee in the circumstances and on no less favourable terms.



Is an employee entitled to flexible working when he returns? Employees who have children under the age of 17 have the right to request flexible working. An employee coming back from Additional Paternity Leave has the right to return to the same or similar job, and will have the right to request flexible working. If the employee requests flexible working then the employer should give proper consideration to any request under the statutory procedure. There is no requirement to grant flexible working but any request should be considered in line with the statutory scheme.

Company policy for maternity/paternity leave

QualitySolicitors recommends that all businesses or organisations create and establish a clear policy for all employees with regard to maternity and paternity leave. This policy could be set out in a staff handbook and should include the process and procedure that an employee and an employer should go through when an employee is pregnant or if an employee's partner is pregnant. This means everyone involved is clear from the outset what their roles and responsibilities are. If you need help creating a policy for maternity/paternity leave we can help. Visit qualitysolicitors.com/find-solicitor to find your local branch.

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0800 999 7070
qualitysolicitors.com

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Disclaimer: We have done our best to ensure that the information contained in this guide is correct as at June 2013. However, the guide has no legal force and the information may become inaccurate over time, due to changes in the law. It is not possible to cover every situation or point in this type of guide and some of the information is over-simplified. We recommend that you check with us to take legal advice on your particular circumstances before you take action.

