

Maternity and paternity guide **for employees**

Introduction

Welcome to the QualitySolicitors guide to your maternity and paternity rights and responsibilities, designed specifically for you as an employee.

Starting or growing a family is one of life's milestones and it can be overwhelming. We want to make sure that you have all the information and guidance you need to manage your pregnancy and maternity leave within the workplace in a simple and stress free way.

This guide explains everything from when and how to tell your employer you're pregnant, right through to accruing holiday during maternity leave and what job you're entitled to return to after maternity leave.

We hope this guide will equip you with all the essential information you need. That said, if you have any questions, please don't hesitate to get in touch with your local QualitySolicitors firm.

Best wishes,

Andrew Kerrigan

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I'm pregnant, what are my rights and responsibilities at work?

One of the first things you should think about is how and when you should inform your employer that you're pregnant.



When do I tell them? You are required to notify your employer that you're pregnant, when the child is due to be born, and when you intend to take maternity leave, no later than the end of the 15th week before the expected week of your child's birth.



How do I tell them? Most companies will have a clearly laid out policy for all employees with regards to maternity and paternity leave. This policy should be set out in a staff handbook and should include the processes and procedures 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. Your employer is entitled to request confirmation of your pregnancy in the form of a MAT B1 form. This can be supplied by a Doctor or Midwife and confirms the expected week of childbirth.



Who should I tell that I'm pregnant? There is no absolute right answer to this question as it will depend on your company and you should consult the company's employee handbook. For example, you might tell your line manager, your head of department or your HR department. You should however make sure you inform someone who will place the information on your personnel file.



What happens next? Employers owe a duty of health and safety to their employees. So once you've notified your employer of your pregnancy, they are 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, your employer is required to alter your working conditions or hours to avoid any significant risk. If this is not possible your employer needs to look at offering you suitable alternative work.

All pregnant employees have a statutory right to "reasonable" paid time off during working hours to attend ante-natal appointments. You are entitled to this right no matter how long you've worked for the company.

Maternity leave: who is entitled to it?



What am I 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.

What if I'm an agency worker? Agency workers must have accrued 12 weeks' continuous work in the same role with the same hirer in order to qualify for SMP.

I'm self-employed, what are my rights to SMP and how do I get it? Generally a self-employed woman is not entitled to SMP. One of the qualifying criteria is that a woman must be an "employed earner" whose earnings attract a liability for employers and Class 1 National Insurance contributions. However a self-employed woman may qualify for Maternity Allowance payable directly by the Department for Work and Pensions. For more information visit www.dwp.gov.uk



How much is statutory maternity pay? SMP is paid for up to 39 weeks and is broken down in the following way:

- 90% of your average weekly earnings (before tax) for the first six weeks.
- £136.78* or 90% of your average weekly earnings (whichever is lower) for the next 33 weeks.
- SMP is paid in the same way as your wages (e.g. monthly or weekly). Tax and National Insurance will be deducted.

Who actually pays SMP - my employer or the Government?

Your employer pays SMP and can claim a reimbursement from the Government. Maternity Allowance is paid directly by the Department for Work and Pensions.

*Correct as at June 2013

During maternity leave



When does it start? You can choose to start your 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 you wish to change the start date you must give your employer at least 28 days' notice.

How long is it? You are entitled to take up to 12 months' maternity leave. The first 26 weeks are known as Ordinary Maternity Leave (OML) and the second 26 weeks are known as Additional Maternity Leave (AML).

Your employer will assume that you will take all 52 weeks of their Statutory Maternity Leave (SML). Before you go on maternity leave, your employer will tell you the date your maternity leave ends, on this basis. However, you and your employer may agree on a different date for your maternity leave to end.

If you decide to return to work earlier than your agreed date, you must give eight weeks' notice in writing of the new date of return to work.



Am I legally entitled to accrue holiday whilst on maternity leave? Yes, holiday does accrue during your period of maternity leave.

Will my employer still pay into my pension whilst I'm on maternity leave? Your rights are protected during the 39 week period of paid maternity leave. Only during the last 13 week period of AML can rights alter. Pension rights under an employment-related benefits scheme will be suspended during the unpaid part of the AML. Your employment contract may extend these rights throughout the full 52 week period of OML and AML.



Will I still be eligible for employee benefits whilst on maternity leave? Employee benefits such as private health insurance, employee discounts, private use of a company car do continue during maternity leave. However benefits provided for business only such as a laptop or mobile phone do not extend during the maternity leave period. It's best to confirm with your employer so that you know which benefits you will continue to have during your maternity leave.



Is my boss within his/her rights to contact me whilst I'm on maternity leave? An employer may make "reasonable contact" with you from time to time during your maternity leave. This can be used to keep you informed of what is going on at work and arrange your return to work. As well as informal contact during maternity leave there is provision in the law for what are known as "keeping in touch days". These allow employees to 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 staff updates. Such keeping in touch days must be agreed between employer and employee and cannot be forced upon either party.



Can I be made redundant whilst on maternity leave? You can be made redundant whilst on maternity leave. Your employer must follow the correct redundancy process and procedure and should include you in the same way as if you 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.

Returning to work after maternity leave



Am I entitled to get my role back within the company after maternity leave? If you return to work within 26 weeks, you are entitled to return to your original job. This means you will return to a job on terms and conditions no less favourable. For example a teacher returning may not have exactly the same classes she had before taking leave but all pay and benefits will remain the same.

After a period of AML, the obligations on the employer are less stringent. You are generally entitled to return to work to the same job, but your employer has more flexibility to allow them to move you into another role and not the same role. If it is not practicable for your employer to allow you to return in the same job, you are entitled to return to a different job which is suitable and appropriate and on no less favourable terms and conditions.

What happens if I decide during my maternity leave that I want to go back to work but only part-time? Am I entitled to do this? You have a right to request part-time working and a right to expect a reason if your request is refused. You have no entitlement to insist on part time hours after a period of maternity leave. However any application for part-time hours must be carefully considered by the employer and they must ensure that a refusal does not leave them open to an accusation of sex discrimination. Before making any such request, you should check your contract of employment.



Am I entitled to flexible working when I return from maternity leave? An employee with 26 weeks' continuous employment can formally apply in writing for a change in hours, times or location of work for the purpose of enabling the employee to care for a child under the age of 17. The employer may only refuse such an application on a limited set of grounds.

If I am paid maternity pay, am I legally required to return to my job? If so, do I have to remain in my role for a certain amount of time after maternity leave or am I free to leave? You are entitled to resign during your maternity leave if you so choose and not return to work. You are still bound by your contractual notice period however and therefore must give your contractual notice to terminate your employment and this may be timed to end when the maternity leave comes to an end. If you simply don't return to work and fail to notify your employer, you will be treated as an unauthorised absentee and could be dismissed.

Paternity leave



An employee seeking to take paternity leave must meet a number of requirements before qualifying for paternity pay. You must have been employed for a continuous 26 weeks ending the week preceding the 15th week before the baby is due.

Ordinary Paternity Leave is a period of either one week or two continuous weeks' leave. This leave must be taken between the date on which the child is born and 56 days after that date. Fathers or partners do not have the right to paid time off to attend ante-natal appointments with the mother of the child.

As an employee you must give at least 28 days' notice of your intention to take leave, the length of paternity leave (one or two weeks), and the date when you intend to take the leave.

You must also provide evidence of the child's birth and a written declaration as to the relationship with the child's mother.



On 13th November 2012 the Government's Children and Families Bill 2012-13 announced a new system of statutory parental rights which 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. In these circumstances, your employer has the right to request signed declarations from the mother and father or partner confirming the mother has returned to work.

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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.

