

Maternity & Paternity Rights for Employees

Maternity

All pregnant Employees are entitled to 52 weeks' maternity leave regardless of their length of service. This is formed of: 26 weeks' of ordinary maternity leave (OML); and 26 weeks' additional maternity leave (AML).

There is a period of 2 weeks' compulsory maternity leave commencing on the date of birth.

Women benefit from all normal Terms & Conditions while on maternity leave, excluding terms on remuneration which is by payment of Statutory Maternity Pay (SMP).

Qualification criteria for SMP are as follows:

1. Qualifying period for SMP - at least 26 weeks' continuous service ending with the week preceding the 14th week before the EWC ("expected week of confinement")
2. Qualifying pay level - Normal weekly earnings must not be less than the lower limit for the payment of NI (currently £97 2010/11)

If an employee fails to qualify, she may still benefit from maternity allowance (MA) if she has been employed/self-employed in at least 26 of the 66 weeks ending with the week before the EWC.

The period of payment for SMP, statutory adoption pay and maternity allowance is 39 weeks (this covers all of OML and part of AML).

The rate of SMP is as follows:

- First six weeks of maternity leave - Employee is entitled to 90% of their average weekly earnings with no upper limit.
- Remaining 33 weeks - Employee is entitled to the standard rate (currently £124.88 from April 2010) or a rate equal to 90% of their average weekly earnings, whichever is lower.

Holiday and Sick Pay

The employee continues to accrue up to 5.6 weeks' statutory holiday leave during AML. Maternity leave cannot count towards holiday leave. If predetermined holiday leave coincides with maternity leave, the employee is entitled to the benefit of both. She can take the amount of overlapping holiday either before or after her maternity leave. If it is not possible to take the holiday during the current leave year, Employers would be well advised to allow untaken holiday to be carried forward to the following leave year.

There is no entitlement to claim sick pay during maternity leave. Maternity is not an illness. If unable to return to work after OML/AML due to sickness, the employee will be treated like any other sick employee.

Keeping In Touch Days

During the course of maternity leave an Employer may make reasonable contact with an Employee. What constitutes reasonable contact will depend on: the nature of the Employee's work and any agreement that has been reached between the Employer and Employee as to contact before the maternity leave began.

Employees may do up to 10 days work under their contract of employment at any stage during their maternity period without bringing their maternity leave to an end with the exception of the first two weeks after the baby is born (or 4 weeks in the case of an employee who works in a factory). These are known as "Keeping in Touch Days". Any work done, whether a whole day or just one hour of the day, on any day during the period counts as one "Keeping in Touch Day". Keeping in Touch Days allow work to be done under the employee's contract of employment and accordingly the employee is entitled to be paid for these days. The rate of pay is something to be determined between the employee and employer.

Returning To Work

All Employees have a right to return to work after maternity leave regardless of the size of the employer.

- When returning during or at the end of OML, a woman may return to her old job on terms no less favourable than if she had not been absent.
- When returning during or at the end of AML, she may return to her old job on terms no less favourable, if this is reasonably practicable. If this is not reasonably practicable, she can return to a suitable alternative post.

When an Employee wishes to return to work before the end of her full maternity leave period (whether OML or AML) she must give her employer eight weeks' notice of her return to work.

PATERNITY

Fathers and certain other partners have the right to take up to 2 weeks' paid paternity leave. This applies equally in circumstances of adoption. Terms and benefits remain as if not absent from work.

Qualification criteria are as follows:

1. Must be an Employee
2. Must be taking leave to care for newborn child or to support the mother
3. Must have been continuously employed for at least 26 weeks by the start of the 14th week before Expected Week of Confinement
4. Must be the father of the child, or the mother's husband or partner (if not the father)
5. Must have or expect to have responsibility for the upbringing of the child

The employee must give appropriate notice in or before 15th week before the expected week of childbirth, informing the employer of: the expected week of childbirth; length of proposed absence; start date of proposed leave.

Statutory Paternity Pay is paid at the standard weekly rate (£124.88, as from April 2010) or 90% of weekly earnings, whichever is lower.

This checklist is provided for your general information only and does not seek to set out the employment legislation in this area in detail. If you have any queries or wish to discuss specific circumstances, please do not hesitate to contact one of our employment team who will be happy to assist.

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