

workSMART

Know Your Rights

www.worksmart.org.uk

April 2007 Edition

Maternity leave and pay

Are you a mum-to-be and in work?

Then your maternity rights
have just got better.

TUC 

Most employed mothers can now take 52 weeks maternity leave around the time of the birth, of which the first 39 weeks is paid.

This booklet tells you how to make the most of your maternity rights.



This improvement in maternity pay came into effect on 1 April 2007, so if your baby was born on or after that date then you could benefit. The information here gives you a basic guide to the new and existing rights that new and expectant mothers have and answers common questions.

Maternity rights can be complicated, as everyone's situation is different. You may need further advice than that which is offered here. You should not rely on this booklet as a comprehensive statement of the law. If you need further information, you could contact the organisations listed in the back of this booklet.

This booklet focuses on maternity leave and pay. If you would like to find out about paid paternity leave, paid adoption leave or unpaid parental leave, please see our other booklets which are available by calling the TUC *Know Your Rights* line **0870 600 4 882**, or visiting **www.worksmart.org.uk**

Check your rights with your employer

This booklet covers the basic (sometimes called statutory) rights that employers must provide for new mothers who work for them. Your employer may offer better rights than the legal minimum and you need to check your contract of employment, your staff handbook, or perhaps a special leaflet that the personnel department may provide in larger organisations to find out your entitlement with your current employer.

Improving maternity provision is a priority for unions, so if you work for an organisation that recognises unions you are very likely to enjoy better rights than the legal minimum. These will normally be included in your contract of employment. If this is the case, your employer is legally bound to honour them because they have been promised to you. If you think that you have been denied time off that you expected, or some of your maternity leave or pay, then you need to check your legal rights and should seek advice.

Worker or employee?

Some working women will get less than the legal minimum for employees, without anyone breaking the law. This is because not everyone who works for someone else is an employee in the eyes of the law.

Some employers do try and circumvent their obligations by treating their staff as self-employed. You can even find that you are taxed as if you are employed but still denied the legal rights that an employee would enjoy. This is because legally you are a worker, not an employee.

If your employer tells you that you are a worker rather than an employee, for example because you work from home, obtained work through an agency, or are a casual worker, you should seek legal advice and clarification as soon as possible. It is vital that you seek advice to be sure you get the leave and pay that is yours by rights. You can find out more about this from the TUC's booklet *Your job and the law* available from the TUC's *Know Your Rights* line **0870 600 4 882**.

If you find that you are a worker and not an employee, you do not get the full set of maternity rights, but you will still receive protection such as health and safety risk assessments that your employer must carry out, and the right to claim sex discrimination if you suffer detrimental treatment as a result of your pregnancy. You may also qualify for Maternity Allowance, and should read this booklet for your basic rights.

Antenatal care

Your employer cannot 'unreasonably refuse' you paid time off to attend antenatal care classes when you are pregnant. This includes time travelling to and from the appointments. Parentcraft and relaxation classes can be included in the term 'antenatal care', but you may find it helpful to show your employer proof from your GP or midwife that states that these classes are part of your care. Your employer has the right to ask that you produce proof from your GP, health-worker, or midwife that you have an antenatal care appointment. If they ask you for this proof and you are unable to provide it, then they have the right to refuse you the time off.



If your employer refuses you time off, or will not pay you for the time off, and you feel that this is unreasonable, you can make a complaint to an employment tribunal. You may also be able to claim that your employer's actions amount to sex discrimination, but you should seek advice. Likewise, if you are dismissed, disciplined or otherwise treated unfavourably for taking or trying to take time off for antenatal care, you should have a claim for compensation. In any of these situations you should seek advice from your trade union or a specialist legal adviser.

Maternity leave and benefits

Maternity leave

Since 1 April 2007, all pregnant employees have been entitled to 52 weeks maternity leave. You are entitled to take it regardless of how long you have worked for your employer or how many hours you work or how much you are paid, provided that you give your employer the proper notice.

Giving notice of your maternity leave

You must notify your employer of your intention to take maternity leave no later than the end of the fifteenth week before your child is due and you must give your employer the information in writing if they request it. You can notify them earlier than this, and may find it helpful to do so to ensure that your health and safety rights are observed, and that you have time off for antenatal care. You are protected under the law from being dismissed or discriminated against on the grounds of pregnancy once your employer knows that you are pregnant.

Your notice must state:

- that you are pregnant; and
- the expected week of childbirth; and
- the date on which you intend your maternity leave to start.

Your employer can request that you give them a copy of your MAT B1 certificate which you will be given by either your GP or midwife when you are about 20 weeks pregnant and which states the week that your child is due. Your employer can request that all the notice you give is in writing. This may be good practice in any case to avoid any problems in the future, but make sure you keep a copy.

Once you have given notice of the date that you intend the leave to begin on, you can subsequently change your mind and vary the date. In this case you must notify your employer of the variation at least 28 days before the new date begins, or if this is not reasonably practicable, as soon as is reasonably practicable.

Starting maternity leave

The earliest time that you can start your maternity leave is 11 weeks before your expected week of childbirth. Look at the 'due date' on your MAT B1 pregnancy certificate that your midwife or GP will give you. Then count back eleven Sundays from the Sunday before your due date.

This is the earliest date you can start your leave. For example, if the date your baby is due falls on a Tuesday then you should use the Sunday immediately before that and count back eleven Sundays from then.

As long as it does not fall before the 11 weeks before your baby is due, it is generally up to you to decide what day your maternity leave begins. You can even choose to work right up to the date the baby is born. However, the start of your maternity leave might be triggered automatically if:

- You have a pregnancy-related illness or absence in the last four weeks of your pregnancy. In this case you must inform your employer that you have an illness that relates to the pregnancy and they can insist that you start your maternity leave even if you are off sick for only one day. However, many employers will allow you to carry on working until you had planned to start your leave, especially if you have only been away for a short time.

- Your baby is born before the day on which you were planning to start your leave. In this situation, your leave starts automatically on the day after the day of the birth. You must notify your employer as soon as reasonably practicable that you have given birth and the date of the birth.

When you are away from work on maternity leave you may qualify for Statutory Maternity Pay (SMP) or state benefits (**see page 10**). Many employers provide higher levels of maternity pay than the statutory minimum, particularly when unions have pressed for this.





Notice from your employer of the date the leave will end

Once you have notified your employer of your intention to take maternity leave, your employer has 28 days in which to tell you the date that your leave will end on. If your employer fails to do this, the law says that they have to give you this notice at least 28 days before the date that they are expecting your leave to end on.

Contractual rights...

Under the law, maternity leave is divided into two sections. The first 26 weeks are called Ordinary Maternity Leave (OML) and the second 26 weeks are called Additional Maternity Leave (AML). You are entitled to different rights under OML to under AML, but you should check whether your employer offers something better than the protection offered by the law.

...during Ordinary Maternity Leave

During the 26-week OML period you are entitled to all of the contractual rights (such as pension or holidays) that you would have received if you had not been on leave. These include any special rights in your job contract such as company car or mobile phone, unless they are for business use only. The only element that does not continue is your wages. Your basic statutory legal rights will also continue such as paid holidays which you can accrue while you are on OML.

...during Additional Maternity Leave

During Additional Maternity Leave you will continue to be an employee but your employer will not be obliged to pay your wages during any of that time.

The only other contractual rights and duties which continue automatically are:

- the notice period in your contract – you or your employer should still give this amount of notice if either of you want to end your job contract;
- your right to redundancy pay if you are made redundant;
- procedures for grievance or disciplinary;
- terms on not working for competing organisations or disclosing confidential information about your employer's business.

During Additional Maternity Leave, all other contractual rights and benefits such as pension or paid holidays can be suspended, although your statutory rights to annual leave may continue. However, unions often negotiate with employers for contractual rights and benefits to continue as if a woman on Additional Maternity Leave were still at work.

Some good employers may well provide a better deal than the legal minimum and you should check your contract. You should check any other relevant employers' policies or union agreements.

Your employer must not discriminate against you while you are on any part of your maternity leave. If you feel that you have been discriminated against while on maternity leave, you may be able to take a sex discrimination claim to an employment tribunal. You should seek advice from your union or a legal specialist in such cases.

Compulsory Maternity Leave

For health and safety reasons all women must take a period of Compulsory Maternity Leave following childbirth. It is unlawful for an employer to allow a woman to work during her Compulsory Maternity Leave period.

Compulsory Maternity Leave lasts for two weeks from the date of childbirth, or four weeks if you work in a factory. All your employment entitlements and conditions that apply while you are on Ordinary Maternity Leave will also apply while you are on Compulsory Maternity Leave.



Keeping in Touch days

After the first two weeks after the baby's birth, you may carry out up to ten days' work for your employer (or employers if you have more than one) without losing any maternity pay. The type of work you do on these 'Keeping in Touch' (KiT) days could include taking part in training or attending a staff meeting or actually doing a full day's work. Anything you do on any day will count as though you had worked a full day, even if you only went into work for two hours. However, KiT days cannot be used to extend your maternity leave period.

These KiT days are entirely voluntary and by agreement. Your employer cannot demand that you work at any point during your maternity leave period. If you choose to work a KiT day, your employer does not have to pay you your normal wages, but your maternity pay is not affected by working such a day. Some good employers might decide to pay you your normal wages for that day, although you should check that this does not jeopardise your maternity pay, and some might allow time off 'in lieu' when your maternity leave period ends and you return to work.

Returning to work after maternity leave

You do not need to give any notice that you are returning to work at the end of your maternity leave, and you can simply turn up at work on the day that you are due back. However, you might find it helpful to contact your employer just to make sure that they know you're coming back!

You must return to work on the day after the last day of your 52 weeks maternity leave period.

If you want to return to work earlier than the end of the full 52 weeks of leave that you are entitled to take, then you must give your employer 8 weeks' notice of your intention to return.

Notice from your employer of the date your maternity leave ends

If your employer fails to comply with either of the notice periods (**see page 5**), and you return to work on the day that you thought you were supposed to return on (a day that you reasonably thought to be the day after the last day of your maternity leave), your employer cannot turn you away or refuse to pay you for any work that you do.

You are protected under the law if:

- your employer fails to give you notice of your return date and then attempts to dismiss or discipline you when you fail to return on that date;
- your employer gives you less than 28 days notice of the date that your maternity leave period would end and it was not reasonably practicable for you to return to work on that date.

Your job when you return

After returning from **Ordinary Maternity Leave**, you have the right to go back to the same job you were doing before you went on leave.

After returning from **Additional Maternity Leave** you also have the right to return to the same job unless your employer can demonstrate that it is not reasonably practicable to have kept that job open for you. In this case you are still entitled to an alternative job that is both suitable and appropriate for you.

Requesting the right to return to work flexibly

Many new mothers would like to return to work on a part-time basis and some good employers are happy to negotiate such new terms. Employees who have children under six, or disabled children under 18, have the right to request to work flexibly including part time, and to have that request considered seriously by their employer.

This is an important right, and your trade union may well negotiate better terms and conditions in line with this right in your workplace. You should check your contract or your staff handbook, talk to your trade union representative and (where appropriate) your Personnel Department to ensure that you get access to all that your employer offers in this area.

See the TUC *Know Your Rights* booklet *Flexible Working for Parents and Carers* on this issue.



Maternity pay and benefits

Statutory Maternity Pay (SMP)

The rules on maternity pay are complicated. You need to be aware of one legal term – ‘the qualifying week’. This is the 15th week before you are expected to give birth. You must meet the following conditions in order to get SMP:

- you must have worked for at least 26 weeks by the end of the qualifying week and you must still be in your job in the qualifying week (although it does not matter if you are off sick or on holiday during that week); and
- your average gross earnings per week must have been at, or above, the Lower Earnings Limit (LEL) in the 8 weeks (if you are paid weekly) or the two months (if you are paid monthly) up to the last payday before the end of the qualifying week.

You are only entitled to receive maternity pay for 39 weeks of your maternity leave period. For the first 6 weeks of your ordinary maternity leave you are entitled to receive 90% of your average pay, after that and for the next 33 weeks you get a flat rate (which tends to increase slightly each tax year) or 90% of your average earnings if those are less than the flat rate.

To receive SMP you must give your employer 28 days’ notice of the date that you want the pay to start on. Your SMP would normally start on the day after the start of your maternity leave period. To claim your SMP, you must give your employer a copy of your MAT B1 form – your maternity certificate which states your expected week of childbirth which your midwife or GP will give you when you are about 20 weeks pregnant. You may find it easier to give your notice for your leave and pay together in the 15th week before the baby is due.

Maternity Allowance

If you are not entitled to receive SMP, you may qualify for Maternity Allowance (MA). You should seek advice from your local Jobcentre Plus office or Citizens Advice Bureau about your eligibility.

You can get MA if you have changed jobs during pregnancy or you do not earn enough to qualify for SMP or you are unemployed or self-employed during your pregnancy. You have to have been working for at least 26 of the 66 weeks ending with the week before the expected week of childbirth, and in the time that you were working there were 13 weeks (not necessarily in a row) when you earned more than £30 per week.

Other benefits

If you are not entitled to receive either SMP or MA, then you may be entitled to receive other benefits such as Incapacity Benefit. Many parents will qualify for Tax Credits. To check these rights you need to contact Jobcentre Plus or HMRC (formerly the Inland Revenue), or you could talk to a specialist adviser.



Your health and safety

Risk assessment

Every employer has to assess health and safety risks for their staff. If any staff are women of child-bearing age, this risk assessment must include any risks which might be posed to the health and safety of a woman who is pregnant, breastfeeding or has given birth within the previous six months.

The most common hazards facing pregnant women at work include:

- back strain in jobs requiring prolonged sitting, standing or lifting;
- violence in jobs that involve contact with the public.

Once a risk is identified your employer must take appropriate action to deal with it. Employers' obligations are set down in rules and regulations set by the Health and Safety Executive (**see contacts**). Your employer also has a general duty to care for the health and safety of anyone who works for them.

If you are affected by an identified risk and you are an employee, then you have these further rights:

- if there is a significant risk that cannot be avoided by compliance with appropriate preventative or protective action, then your employer must alter your working conditions or hours of work to avoid the risk;
- if this would not be reasonable, or would not avoid the risk, then the employer must offer you any suitable alternative work that is available. This must not be on terms less favourable than your normal terms and conditions;
- if this is still not sufficient to avoid the risk, you have the right to be suspended from work on your normal pay.

To exercise these rights, you must tell your employer in writing that you are pregnant or breastfeeding, or that you have given birth in the last six months.

There are also a number of health and safety regulations to protect pregnant and breastfeeding women exposed to particular job-specific risks such as lead or radiation.



If you get the sack or are treated unfairly

Women taking Ordinary or Additional Maternity Leave have the right not to be dismissed (including being made redundant) or treated unfairly for any reason connected with pregnancy, childbirth or maternity leave.

If you are dismissed while you are pregnant or during maternity leave, your employer must give you a written statement of the reasons for the dismissal. If you are unhappy with these reasons and you want to make a claim against your employer, or if you think you have experienced unfavourable treatment because of pregnancy or maternity, get advice immediately from your union or a specialist adviser, as there are strict time limits involved in bringing cases.

You may also have a claim for compensation for sex discrimination: under general sex discrimination law, women are likely to have a good claim in many cases of less favourable treatment because of pregnancy or maternity.

You are also protected from other forms of detrimental treatment, connected with either your pregnancy, childbirth or maternity leave. This can include, for example, being harassed, having to do inconvenient shifts or having your job downgraded.

Night work

If you are pregnant or a new mother, your doctor may give you a certificate saying that night work could affect your health and safety. If you give this to your employer, they must either offer you suitable alternative daytime work or if that is not reasonable, suspend you from work (on full pay) for as long as necessary to protect your health and safety.

If you are in dispute with your employer about any risks to your health and safety whilst pregnant or as a new mother, contact your union, the Health and Safety Executive or a Law Centre for further advice.

Questions and answers

What happens if I am sick during pregnancy, maternity leave or when I was supposed to return to work?

If you are absent through sickness during pregnancy while you are still at work, you should usually be paid sick pay in the same way as other staff. However, if you are sick during the last four weeks of your pregnancy your employer can insist that your maternity leave starts, although some employers may prefer to overlook odd days of absence.

You cannot claim sick pay from your employer if you are ill while on maternity leave. If you are sick when your maternity leave is due to end, the usual sickness procedures of your employer will apply to you even if you cannot physically return to work i.e. you will have to notify your employer in the same way as you would have done had you been at work when you fell ill.

If you suffer dismissal or other unfavourable treatment because of a pregnancy-related illness before, during or after maternity leave, you may have a claim for unfair dismissal, sex discrimination and/or protection from detriment.

If you have any difficulties with enforcing your rights under these rules, get advice immediately from your union or specialist adviser.

Can I do any work for my employer while I'm on maternity leave?

You may carry out up to ten days' work for your employer (or employers if you have more than one) without losing any maternity pay. These are known as 'Keeping in Touch' (KiT) days and they can include attending a training day or staff meeting or actually doing a full day's work. Anything you do on any day will count as though you had worked a full day, even if you only went into work for two hours. KiT days cannot be used to extend your maternity leave period.

If you choose to work on a KiT day, your employer does not have to pay you your normal wages, but your maternity pay is not affected. Some good employers might decide to pay you your normal wages for that day, although you should check that this does not jeopardise your maternity pay, and some might allow time off 'in lieu' when your maternity leave period ends and you return to work.

Working a KiT day has to be by agreement between you and your employer. You cannot be forced to work at any point during your maternity leave period. If you feel that you are being forced to work or that you are suffering any detrimental treatment for not working during your maternity leave period then you should seek legal advice, as this is against the law.

I want to carry on breastfeeding my baby for as long as possible. What rights do I have which will help me to do this?

The law does not specifically allow you to delay your return to work from maternity leave or to take special leave once back at work in order to continue breastfeeding, but the law can still help.

You should ensure that your employer has written notification that you are breastfeeding so that in the health and safety 'risk assessment' (see page 12) they can take account of the particular risks to you and your baby while you are breastfeeding. If your working conditions prevent you from continuing to breastfeed, your baby's health will be put at risk, so your employer should allow you to make reasonable adjustments to your job such as breaks to breastfeed or express milk, or a shorter working day. Your employer also has a legal duty to provide 'suitable facilities' for a breastfeeding mother to rest.

If your job is so stressful or tiring that even with adjustments you would be unable to continue breastfeeding then you have the right to be transferred to a different job that is compatible with breastfeeding, or to be suspended on full pay.

If your employer is not complying with these legal provisions, is treating you badly, or is threatening dismissal, take advice. In many cases, sex discrimination, unfair dismissal or protection from detriment rights will apply as well.

What rights do I have if I have a stillbirth, a miscarriage or an abortion?

If you give birth to your baby after 24 weeks of pregnancy, but the baby dies before you have given birth, this is known as a stillbirth. You will have exactly the same rights to leave, pay and protection from discrimination or dismissal had your baby been born alive.

In very rare cases, a woman might have to terminate her pregnancy after 24 weeks of pregnancy. In this instance, it would be treated in the same way as a stillbirth and the same maternity rights apply.

If your baby is born alive but dies soon after you have given birth then you are also entitled to all the same rights to pay and leave as if your baby had lived.

If you experience a miscarriage or terminate a pregnancy before 24 weeks of pregnancy, then you are not entitled to any maternity rights but you are entitled to access your employer's normal sickness procedures.

What happens to my Statutory Maternity Pay if my job ends?

Once you have qualified for SMP you are entitled to receive it for the full 39 weeks, (but see page 10 for the conditions you must meet). It does not matter if you are off sick or on holiday in the qualifying week. This is the case even if you are made redundant, you leave your job, or a fixed term contract comes to an end at any time after the 15th week before your baby is due or during your maternity leave.

You must remember that you do not have to pay SMP back if you are not returning to work after your leave period.

Do I have to repay my contractual maternity pay if I don't go back to work?

Some employers offer contractual maternity pay that can be better than SMP and is something that trade unions can negotiate with employers. If you receive contractual maternity pay and you decide not to return to that job, you only have to repay it if it was agreed in advance or specifically stated in your maternity policy or your contract. In these cases, you only have to pay back the extra contractual pay, not the SMP part of your maternity pay.

Some employers offer enhanced packages, such as a lump sum of money, to women if they return to work after maternity leave. This is perfectly legal but may not suit all mothers, as they often need the money when they are on leave, not once they have returned to work.

I work part-time. Are my maternity rights different?

No, your maternity rights are the same as those of a full-time worker. Remember also that, as a part-time worker, you may be protected from unfavourable treatment by sex discrimination legislation and by additional rights for part time workers. For more information call the TUC's *Know Your Rights* line on **0870 600 4 882** and request the *Working Part-Time* booklet, or visit www.worksmart.org.uk

If I go for a job interview, do I have to tell them that I'm pregnant?

No. The fact that you are pregnant should not have any bearing on whether you are the right person for the job.

If the employer asks in the interview whether you are pregnant or plan to have children, this is strong evidence that the employer is in breach of sex discrimination legislation. If you get the job, legally you do not have to tell an employer that you are pregnant until the end of the 15th week before the baby is due, although you may want to tell them earlier to claim health and safety protection, or paid time-off for ante-natal care. If you change jobs during your pregnancy, then you will not qualify for SMP because you must have worked for the same employer for 26 weeks by the end of the 15th week before the baby is due.

My maternity leave is about to finish and I am pregnant again. What are my rights?

Your maternity leave does not break your continuity of employment, so your right to maternity leave for this pregnancy will be based on your total services with this employer. You might also qualify for SMP, as long as you meet the normal conditions.

However, it is important that you physically go back into work for a period – even just one day – in order to maintain all of your rights. Otherwise you lose the right to return to exactly the same job as you normally would have at the end of ordinary maternity leave. You will, however, have the same rights as you would have received on returning from additional maternity leave i.e. the right to return to the same job, or if that is not reasonably practicable, a suitable alternative job on similar terms and conditions.

Contacts

ACAS

General advice for workers and employers on legal rights.

T: 08457 47 47 47 (9am-4.30pm)

www.acas.org.uk

Citizens Advice Bureaux

Your local CAB office will be listed in your telephone directory. You can also visit www.citizensadvice.org.uk to find advice and information online.

Department of Trade and Industry

The DTI has produced guidance on rights available to working parents.

www.direct.gov.uk

Employment Tribunal Service

Information about making a claim:

www.employmenttribunals.gov.uk

There is also an enquiries helpline which can give general information but cannot provide legal advice.

T: 08457 959 775

Equal Opportunities Commission

Advice and support on sex discrimination and maternity/parental rights legislation.

T: 08456 015 901

www.eoc.org.uk

Health and Safety Executive

Advice on pregnancy/maternity and health and safety. Infoline provides access to the HSE's health and safety information and access to expert advice and guidance.

T: 0845 345 0055 (8am-6pm).

www.hse.gov.uk

HMRC (Tax credits)

For calls in England, Wales, Scotland:

0845 300 3900 (8am-8pm)

For calls in Northern Ireland:

0845 603 2000 (8am-8pm).

www.hmrc.gov.uk

Jobcentre Plus

Your local office will be in the phone book or is available from the Department of Work and Pensions website.

www.dwp.gov.uk

Law Centres Federation

T: 020 7387 8570

www.lawcentres.org.uk

Law Society

Information on specialist solicitors.

T: 020 7242 1222

www.lawsociety.org.uk

Working Families

Free advice and information, including a helpline and a website for families, including those on low incomes.

T: 0800 013 0313 (helpline number)

T: 020 7253 7243

www.workingfamilies.org.uk

Unions today – your friend at work

The new rights described in this booklet – and many others such as the minimum wage – have been won by union campaigning. Without union help and assistance many workers won't get the full benefit of new rights at work.

Every day unions help thousands of people at work and every year they win hundreds of millions of pounds in compensation for their members through legal action.

Unions also help negotiate better pay and conditions, including far better provisions for family-friendly employment than the legal minimums.

To find out more about joining a union call the *TUC Know Your Rights* line on **0870 600 4 882**.

www.worksmart.org.uk is the one-stop site for everyone at work. The website provides a range of information about working life and your rights at work – whether you are a union member or not. The full text of this booklet, plus the whole range of rights materials, is on the site – just a click away!



Trades Union Congress

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Tel: 020 7636 4030

www.tuc.org.uk