

BIS

Department for Business
Innovation & Skills

PREGNANCY AND WORK

What you need to know
as an employee

BABIES DUE ON OR AFTER 3 APRIL 2011

Work during pregnancy

Returning to work

Statutory Maternity Pay

Maternity Allowance

Maternity Leave

Flexible Working

maternity
paternity

Statutory Paternity Pay

Additional Paternity Leave

Paternity Pay

Paternity Leave



This leaflet summarises the rights of both pregnant employees and their employers and their responsibilities towards each other.

It sets out the key things **you must do** under the law to benefit from the protections there to help you, such as paid time off for ante-natal appointments, maternity leave and pay and the right not to be treated unfairly because of your pregnancy, child birth or maternity leave. The laws also protect your employer, for example making sure they have time to plan for your maternity leave.

Talking to your employer about your plans from an early stage will help you both, so this leaflet also sets out what **you should do or think about** to help both of you manage your pregnancy, your maternity leave and your return to work.

At the back of this leaflet is another for you to give your employer. Passing it on will make sure your employer can find out what they need to know.

There is information at the end of this leaflet about where to look for more detail and who to speak to for advice. It also tells you where to look for information about other support for employees balancing work and family responsibilities such as the right to ask for flexible working. The leaflet also explains about how your partner can take up to two weeks' paternity leave when your baby is born and about the new right to additional paternity leave which allows him to take time off to care for your baby if you go back to work before the end of your maternity leave. Your partner may find it helpful to pass a copy of this leaflet to his employer when they discuss additional paternity leave. Copies of the leaflet are available from www.direct.gov.uk/workandfamilies (available from www.nidirect.gov.uk in Northern Ireland).



WEEK
5

As soon as you know you are pregnant

What to do

You should think about when to tell your employer you are pregnant – the laws which protect you at work only apply once your employer knows you are pregnant.

Read this leaflet to **find out your key rights and responsibilities** and where to find out more. Giving your employer the employer's part will help make sure you both have the information you need and help you discuss and make plans together, eg

- Protecting your own and your baby's health and safety while you are pregnant and when you return to work.
- Working out when you are going to start your maternity leave and when you will return to work
- Working out when you will take any annual leave which may need to be used up before your maternity leave
- Finding out if you are entitled to anything extra from your employer

Your partner may be able to take up to two weeks' ordinary **paternity leave** once the baby is born, Statutory Paternity Pay is paid at a flat rate. **Your partner should** find out more about this now. If they do not give the correct notice they could lose the right to take ordinary paternity leave.

Why

Once your employer knows you are pregnant:

- **Your employer** must conduct a risk assessment and remove risks or make alternative arrangements to protect your safety, and your baby's safety, when you are at work.
- **You are entitled** to reasonable paid time off to attend ante-natal appointments and classes which are advised by your midwife or medical practitioner. Your employer can ask for evidence of your appointments from the second appointment onwards.
- **You are protected** from unfair treatment, including dismissal or selection for redundancy for reasons connected with your pregnancy. This would also be discrimination.

Your employer must do what is set out in this leaflet. Some employers also offer extra benefits, eg extra maternity pay on top of what you are entitled to under the law.

If you are off work with a pregnancy related illness **your employer must pay** you in the same way as for any other type of illness. But if there are disciplinary rules related to sick leave in your workplace pregnancy-related illness must be excluded. You must not be treated unfairly because of any pregnancy related illness.

WEEK
10WEEK
15

By the 15th week before the week your baby is due
(this means you will be around 25 weeks pregnant)

What to do

You must:

- Tell your employer you are pregnant (if you haven't already).
- Tell your employer when you want your maternity leave and pay to start. This can be any time from 11 weeks before the week your baby is due (but if you are off work because of your pregnancy in the 4 weeks before the week your baby is due your employer may start your maternity leave and pay).
- Give this notice in writing if your employer asks you to. (You may want to do this anyway – there is a standard letter to help if you wish).
- Give your employer the maternity certificate (form MATB1) which your midwife will give you from the 21st week of your pregnancy. This confirms when your baby is due.

You can change your mind about the date you start your maternity leave but you must give your employer 28 days' notice of the change.

If you aren't planning to take your full maternity leave **you must** let your employer know when you will be coming back. You can change your mind later on as long as you give 8 weeks'

Why

You must give the correct notice so you can take maternity leave and receive Statutory Maternity Pay (SMP). **Your employer must** write to you within 28 days of your notice about your maternity leave to confirm when you are due back at work. If your employer doesn't do this you will be entitled to change your mind and return then without giving you notice. Unless you have a good reason, if you do not give your employer at least 28 days' notice of when you want SMP to start, your employer can refuse to pay you.

You are entitled to take up to **52 weeks' maternity leave**. You aren't allowed to work for the first two weeks after the birth (or the first four weeks if you work in a factory). During your 52 weeks' maternity leave your employer must continue to give you any contractual benefits you would normally receive if you were at work (eg contractual annual leave). **You continue to be an employee throughout your whole 52 weeks of maternity leave.**

To get SMP you must have been employed continuously by your employer for at least 26 weeks into the 15th week before the week baby is due and earn on average at least enough to be relevant for National

WEEK 20



15 WEEKS
BEFORE
DUE DATE

By the 15th week before your baby is due

(continued)

notice of the change. If you change your mind and decide to come back later, you must give 8 weeks' notice before the original earlier date.

Your partner must tell his employer by the 15th week before the week the baby is due if he wants to take ordinary paternity leave.

Ordinary paternity leave can be taken as one or two continuous week's leave. It can be taken up to eight weeks after your baby was born – or if your baby is early, up to eight weeks after your baby was due. If your partner gives the notice too late he may lose his right to take the leave. There is a standard form, SC3, to help on the Directgov website (nidirect in Northern Ireland).

Insurance purposes. SMP is paid for up to 39 weeks. You get 90% of your average earnings for the first six weeks and then a standard rate for the rest of the time or the 90% rate if that is less than the standard rate. Tax and National Insurance are payable on SMP.

Your employer must tell you if you don't qualify by giving you form SMP1. This will help you claim **Maternity Allowance (MA) from Jobcentre Plus** instead. In Northern Ireland you can take it to your local Jobs & Benefits Office. MA is paid for 39 weeks at a standard rate or a weekly rate equal to 90% of your average earnings, if that is less. To get MA you must be employed or self-employed in any 26 out of the 66 weeks ending the week before week baby is due and earn £30 a week on average.

If your employer contributes to an occupational pension **they must** continue to make their usual contributions for the whole time you are receiving any SMP or contractual maternity pay.



Before you begin your maternity leave and during your leave

What to do

You should talk to your employer to agree what kind of contact you will have with your workplace during your maternity leave, eg:

- How you will be told about changes happening at work, including job vacancies.
- Would you like an opportunity to work to help you keep in touch, or to attend a particular event or take up a training opportunity? If so you can agree up to ten days of work during your maternity leave.
- If you and your employer agree that you will do some work to help you keep in touch you should discuss the arrangements with your employer. For example, what pay will you receive for the work you do, or what will your hours be?

You and your employer may find it helpful to start talking about these plans early.

Why

You and your employer may make reasonable contact during your maternity leave. Keeping in touch with work can help to make it easier when it is time to go back.

As well as staying in contact with your employer during your maternity leave, if you and your employer both agree **you can** do up to 10 days' work during your maternity leave. These are known as 'Keeping In Touch Days'. They aren't limited to your usual job – they could be used for training or other events. You may want to use some Keeping in Touch Days to ease your return to work. You cannot work during the first two weeks (four if you work in a factory) after the baby is born.

You and your employer must both agree that you will do these and the arrangements including what you will be doing and how you will be paid. You can't be required to take up Keeping in Touch Days, it is up to you to choose. Nor does your employer have to offer them to you. Your employer cannot demand that you go into work at any time during your maternity leave period nor can you be penalised for refusing to take up a Keeping in Touch Day.

MATERNITY LEAVE ▶

Before you return to work

What to do

There are options to help you and your partner to balance caring for your child and work:

- **additional paternity leave** lets your partner take time off to care for your baby if you go back to work before the end of your maternity leave (see next section)
- the **right to request flexible working**
- rights to time off such as **parental leave** and **time off to deal with a family emergency**
- financial support from the Government such as **tax credits**.

You should plan your return to work with your employer.

If you are still going back on the date you told your employer there is no need to give any more notice.

If you want to change your date of return **you must** give your employer 8 weeks' notice of the change.

You should talk to your employer in good time if you want to try to agree a different working pattern to the one you worked before your maternity leave. With some employers this can be done informally, otherwise there is a set procedure you must follow to make a written request under the right to request flexible working. Your employer

Why

Planning will make your return easier for you and your employer. Your partner will need to give his employer 8 weeks' notice if he wants to take additional paternity leave.

If you don't give enough notice of your new return date **your employer** may postpone your return until they've had 8 weeks' notice.

If you **return to work** during or at the end of the first 26 weeks (ordinary maternity leave) you are entitled to the same job on terms and conditions (eg your salary, hours and the seniority of your job) as if you hadn't been away. If you take additional maternity leave **you are entitled** to the same job on the same terms and conditions but if your employer cannot give you the exact job back for good reasons, **you are entitled** to a suitable job at the same level with terms and conditions at least as good as your previous job.

You are entitled to make a request to change to a flexible working pattern. You must follow the correct procedure if you want the law about requesting flexible working to apply. **Your employer must** seriously consider your request and follow their part of the procedure.

Your employer must carry out a risk assessment to identify risks to you as a

MATERNITY LEAVE



Before you return to work *(continued)*

may take up to six weeks to reach a decision on a formal request so it is important to plan ahead.

You should let your employer know if you are planning to breastfeed when you return to work and want to be sure of your health and safety protection.

If you decide not to return to work **you must** give your employer at least the amount of notice for leaving your job under your contract. It would help your employer if you let them know as soon as you are sure.

You are still entitled to receive SMP or MA for up to 39 weeks even if your employment ends, so long as you don't start work again.

breastfeeding mother or to your baby. If there are risks **they must** do all that is reasonable to remove the risks or make alternative arrangements for you. Your employer must also provide suitable rest facilities.

You are required by law to give the right notice if you are resigning but giving longer is helpful. You are still entitled to SMP or MA even if you are not going back to work. Your maternity leave and employment protections continue until the date you give as the end of your employment. This could be the end of your maternity leave if you choose. Your notice period can run during your maternity leave.

Additional Paternity Leave

What to do

If you are returning to work before the end of your statutory maternity leave, **your partner may be eligible** for up to 26 weeks' Additional Paternity Leave (APL) once you have returned to work. If you are returning to work before the end of your 39 week Statutory Maternity Pay, or Maternity Allowance period, then **your partner may also be eligible** for Additional Statutory Paternity Pay (ASPP) during

Why

To be eligible for APL your partner must have been employed by the same employer for at least 26 weeks into the 15th week before your baby's due date and stay with that employer until the week before he wishes to take APL. You must have been eligible for SMP or MA in order for your partner to be eligible for ASPP. If you weren't eligible for SMP or MA, your partner may still be able to take unpaid APL if you were



Additional Paternity Leave *(continued)*

the period in which you would have got SMP or MA.

Your partner can only start APL once you have returned to work. Your partner can choose to take between 2 and 26 weeks' leave. Leave can start at any point after your baby is 20 weeks old and must be completed by your baby's first birthday. ASPP can only be paid if it is taken during your SMP/MA period. Any APL your partner takes after the end of your SMP/MA period will be unpaid.

Your partner must give his employer 8 weeks' notice that he wants to take APL & ASPP. It is a good idea for your partner to give notice at the same time as you tell your employer when you want to return to work. Form SC7 is available from Direct.gov (nidirect.gov in Northern Ireland) to help. **You and your partner must** both complete and sign that form.

During APL, **your partner is protected** against dismissal, detriment and redundancy for reasons related to APL.

Your partner can work up to 10 days' "Keeping in Touch Days" during his APL without affecting his APL or ASPP. The same rules apply as for Keeping In Touch days during maternity leave.

eligible for statutory maternity leave. ASPP is paid at 90% of your partner's average weekly earnings up to the same standard rate as SMP/MA.

Your partner can only start APL once you have actually resumed working. He cannot begin APL if you are on a period of annual, sick or parental leave directly after your maternity leave. But once you have returned to work, your partner's APL and ASPP are not affected by you taking annual, sick or parental leave. It does not matter if you are returning to work full time or part time

Your partner's employer can delay APL if your partner does not give 8 weeks' notice of his APL. **Your partner can** change the dates later if he needs to, as long as he gives 6 weeks' notice. If he does not, and his employer cannot allow the change, your partner will have to take the leave on the dates he originally told his employer.

Your partner is entitled to return to the same job on terms and conditions (e.g. salary, hours and the seniority of his job) as if he hadn't been away, so long as he is returning to work within 26 weeks. **He continues to be an employee through out the whole period of APL.** During APL **his employer must** continue to give him any contractual benefits he would usually receive if he was at work.

If there is a problem

What to do

You should talk to your employer as soon as you can to try to resolve the problem.

You can get free confidential advice from Acas 08457 47 47 47 or, in Northern Ireland the Labour Relations Agency on 028 9032 1442. Think about whether there is other support you can use to help you find a solution. **You may need** to bring a formal grievance if you cannot resolve the situation.

If you disagree with your employer's decision about your entitlement to Statutory Maternity Pay and you cannot resolve this with your employer you can ask HMRC for a decision. Phone the HMRC Statutory Payments Disputes Team on 0191 2255221.

There may be other sources of help for you, for example, a Citizens Advice Bureau, or your trade union.

Why

It's better for you and your employer if you can sort out any problems between yourselves quickly.

You are protected from any unfair treatment connected with your pregnancy, childbirth or maternity leave, including being dismissed or selected for redundancy because of your pregnancy or maternity leave. This will also be discrimination.

If there is a redundancy situation during your maternity leave **you are entitled** to be offered any vacancy your employer has which is suitable for you.

When you are ready for more information

There is more information about all these issues, including the rates of maternity and paternity pay and standard letters to help you and your partner give the notice you need to at www.direct.gov.uk/employees (in Northern Ireland, www.nidirect.gov.uk/index/employment).

You can also get free confidential advice on these issues (apart from maternity pay) from the Acas Helpline on 08457 47 47 47 or, in Northern Ireland the Labour Relations Agency on 028 9032 1442.

If you need help about Statutory Maternity Pay phone HMRC Employees helpline on 0845 302 1479. For Maternity Allowance phone Jobcentre Plus on 0800 055 6688 or in Northern Ireland phone 028 9033 6000.

A guide for new and expectant mothers can be downloaded from www.hse.gov.uk/mothers or call HSE info Line on 0845 345 0055.

Disclaimer

This guide has no legal force and cannot cover every point and situation.



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