Maternity Rights and Leave

Wirehouse Employer Services

HR Whitepaper

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Whitepaper – Maternity Rights & Leave

Pregnant employees are entitled not to be subjected to any type of unfavourable treatment for reasons related to their pregnancy or impending absence on maternity leave. Such unfavourable treatment would amount to direct sex discrimination and will always be unlawful.

Any dismissal on grounds related directly or indirectly to the fact that an employee is pregnant will automatically be unfair as well as discriminatory. Employees may bring complaints of pregnancy-related detriment or dismissal to an employment tribunal irrespective of their length of service.

Antenatal Care

All pregnant employees are entitled to take a reasonable amount of paid time off work on medical advice to attend antenatal appointments. An employee can be asked to produce a medical certificate or appointment card, except in the case of her first request for time off.

Health and Safety Considerations

Under health and safety legislation, if the job duties of a pregnant employee are in any way likely to cause her harm, steps must be taken to remove or reduce the risks. Consideration must be given as to whether it is necessary to:

- adjust the employee's working hours if she is normally employed on night work and removal from night working has been recommended by her doctor;
- remove the employee from any job duties that might pose a risk to her health or safety;
- transfer the employee to an alternative job - which must be on terms and conditions not substantially less favourable than those of her normal job;
- if alternative work is not available or would not remove or reduce the risks to the employee, place her on paid suspension until the commencement of her maternity leave

Maternity Leave

There are 3 types of Maternity Leave: compulsory, ordinary and additional.

Compulsory Maternity Leave

A woman who has given birth must not be allowed to do any work for a period of two weeks from the date on which her baby was born. For women who work in factories, the prohibited period is four weeks.

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Ordinary Maternity Leave and Additional Maternity Leave

Irrespective of their length of service, all pregnant employees are entitled to take 26 weeks' ordinary maternity leave, followed by 26 weeks' additional maternity leave, and resume working afterwards. All pregnant employees are therefore entitled to a total period of up to 52 weeks' maternity leave. To be eligible, an employee must give notification:

- That she is pregnant;
- Of her expected week of childbirth; and
- Of the date on which she intends her maternity leave to start.

If she is asked to do so, she must provide such notification in writing. She may also be asked to produce a certificate from a registered medical practitioner or a registered midwife stating the expected week of childbirth.

Notification must be provided no later than the end of the 15th week before the week that the baby is expected, unless this is not reasonably practicable, in which case the employee must provide notification as soon as it is reasonably practicable for her to do so. The employee can choose when to start her ordinary maternity leave, subject to two restrictions:

- Maternity leave cannot begin prior to the 11th week before the week that the baby is expected, unless the baby is born prematurely in which case maternity leave will begin the day after the baby is born; and
- The start of ordinary maternity leave will be triggered automatically if the employee is absent from work wholly or partly on account of a pregnancy-related reason within four weeks of the week her baby is due.

If an employee, who has already provided notification of her maternity leave start date, subsequently changes her mind, she may do so by giving at least 28 days' notice of the revised start date. This may be earlier or later than the date originally notified.

On receipt of an employee's notification that she intends to take maternity leave, the employer must respond in writing within the next 28 days acknowledging the employee's intentions and informing her of the date on which her additional maternity leave will end. This will be 52 weeks after the start of the employee's maternity leave.

Terms and Conditions During Maternity Leave

Regardless of the timing of an employee's expected week of childbirth, during ordinary and additional maternity leave all contractual benefits, except normal wages or salary, must continue. This means that ordinary basic salary and other monetary payments such as a shift allowance may be stopped, but all other contractual benefits must

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remain in place. It follows that both statutory and contractual annual holiday entitlement continue to accrue in the normal way and can be carried forward to the next leave year in the event that the maternity leave period straddles the leave year periods.

Employees on ordinary or additional - but not compulsory - maternity leave may carry out up to 10 days' work under their contract of employment without bringing their maternity leave period to an end or losing their entitlement to statutory maternity pay. These days are known as "keeping-in-touch days".

The days of work may be separate days or a single block, as agreed between the employee and her line manager.

Managers may make reasonable contact with employees who are on maternity leave, e.g. to discuss the employee's plans to return to work or whether she might wish to seek any changes to her working hours or pattern of work on her return.

Return to Work After Maternity Leave

An employee who decides to return to work at the end of her additional maternity leave is not required to give notice of her return date. She may simply turn up to work in the usual way on the appropriate date. If, however, she wishes to return to work early, including at the end of her ordinary maternity leave, she must give at least eight weeks' notice of the intended early return date.

There is no option for the employer to postpone an employee's return to work except in circumstances where she fails to give the necessary eight weeks' notice for an early return. Her return cannot, however, be postponed beyond what would otherwise have been the last date of her maternity leave.

An employee can change her mind more than once about her return date provided that she gives at least eight weeks' notice before whichever is earlier of the date on which she now intends to return and the date on which she had intended to return.

An employee has the right to resume working in the same job if she is returning to work at the end of ordinary maternity leave. If she is returning to work after additional maternity leave, the entitlement is to return either to the same job or, if this is not reasonably practicable from the employer's perspective, to another suitable job on terms and conditions that are not less favourable.

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Statutory Maternity Pay

An employee who is pregnant will be eligible to receive statutory maternity pay (SMP) for 39 weeks provided that:

- She has been employed for a minimum of 26 weeks as at the end of the 15th week before the week her baby is due (which is known as the qualifying week);
- She is still employed during that week, i.e. has not resigned or been dismissed before the beginning of that week; and
- Her average weekly earnings are equal to or greater than the lower earnings limit for national insurance contributions SMP may be paid only once the employee begins her maternity leave. It can begin on any day of the week according to the date that the employee has notified as the start date of her maternity leave.

If an employee chooses to return to work before the end of her maternity pay period she will forfeit any outstanding SMP that would otherwise have been due to her.

Where the employee works for up to 10 keeping-in-touch days during her maternity leave, SMP will be paid in the normal way. The manager will also need to agree with the employee in advance how much contractual payment she will receive for the work done.

SMP is payable whether or not the employee intends to return to work or actually returns to work after maternity leave.

There are two rates of SMP. The higher rate is paid for the first six weeks of an employee's maternity leave. This is 90% of the employee's average weekly earnings, based on earnings during the period of eight weeks that immediately precede the 14th week before the expected week of childbirth. The standard rate is then payable for up to 33 more weeks. This is a flat weekly rate determined by the Government from time to time. The current government rates are referred to under the 'Statutory Payments'.

SMP is treated as earnings and is therefore subject to PAYE and national insurance contributions in the normal way.

Transferring to Shared Parental Leave

An employee may be entitled to curtail their Maternity Leave and opt into the Shared Parental Leave and Pay scheme. If eligible this enables them to share the care of their child for up to fifty weeks following birth or adoption which can be shared between the Mother and Spouse /Partner/Civil Partner during the first year of the birth, provided that both satisfy the eligibility requirements.

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The employee must give their employer at least eight weeks' written notice to end their maternity leave (known as a curtailment notice). The notice must state the date the maternity leave will end and the notice can be given before or after maternity leave starts, provided at least two weeks' maternity leave has been taken.

The employee must have a minimum of twenty-six weeks' continuous service of employment which must be achieved by the end of the fifteenth week before their due date/matching date.

2024 changes to the law

From April 2024, extra redundancy protection is granted to pregnant workers and new parents. This is an extension to the provisions already in place for those on maternity leave.

Employers will be required to offer suitable alternative vacancies to the below groups of employees who are at risk of redundancy:

a) pregnant employees – from the date the employer is notified of pregnancy until maternity leave starts or until 2 weeks after end of pregnancy where pregnancy ends.
b) maternity and adoption leavers - for 18 months from the date of the expected week of childbirth (or the child's birth if the employer is informed) or placement for adoption/date the child enters Great Britain
c) shared parental leavers – for 18 months after the child's birth or placement (or date they enter Great Britain). Extra rules apply for partners.

This information is provided for general reference purposes only. If you have a specific enquiry relating to this topic please contact Wirehouse on:

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