



# Maternity rights

a guide for employers and employees

employment legislation



**dti**

Department of Trade and Industry



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# Preface

The Employment Rights Act 1996, as amended by the Employment Relations Act 1999, contains the framework for most of the maternity rights described in this booklet. The details of these rights are set out in supporting regulations, the Maternity and Parental Leave etc. Regulations 1999.

This booklet describes the maternity rights, and explains what an employee may do if she feels she has been denied them. It gives general guidance only. It has no legal force and cannot cover every point and situation. If you would like advice on your particular situation, please turn to the back page which gives further contact details. It describes the position which applies in England, Wales and Scotland. Northern Ireland has separate legislation which mirrors legislation in Britain.

## **Rates of Statutory Maternity Pay**

The rates of Statutory Maternity Pay and Maternity Allowance which appear in this booklet were correct at the time of going to press. These rates are subject to revision by the Department for Work and Pensions each April. Your local Inland Revenue National Insurance Contributions office can advise you of the current rates.

## **Employment legislation**

While this booklet describes statutory maternity rights, women who are pregnant or have recently given birth may also take advantage of other statutory rights which apply to all employees. These are mentioned in the text where relevant, as are other leaflets which provide further information.

A full list of guidance booklets on employment protection legislation and related equal opportunities legislation is given at the back of this booklet – copies of the booklets are available free of charge from Employment Service Jobcentres, the DTI website: [www.dti.gov.uk/publications](http://www.dti.gov.uk/publications), or by post from the DTI Publications Orderline: 0870 1502 500.

The Department of Trade and Industry has responsibility for employment legislation.

Responsibility for equal opportunities legislation lies with the Cabinet Office's Women and Equality Unit.

**The latest version of this booklet is published on the Internet at [www.dti.gov.uk/er/individual/maternity.pdf](http://www.dti.gov.uk/er/individual/maternity.pdf)**

**For further information on employment relations issues, see [www.dti.gov.uk/er](http://www.dti.gov.uk/er)**

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# Chapter 1: What are the statutory maternity rights?

## KEY FACTS

Maternity rights fall into four main categories:


- time off for antenatal care;
- maternity leave;
- maternity benefit (Statutory Maternity Pay or Maternity Allowance);
- protection against unfair treatment or dismissal.

## HEALTH AND SAFETY PROTECTION

- Employers are required by law to protect the health and safety of employees who are pregnant, have recently given birth or are breastfeeding.
- Health and safety protection on these grounds starts as soon as an employer knows an employee is pregnant. See Chapter 10 for further details.

## SEX DISCRIMINATION

- Women are also protected under sex discrimination legislation against unfair treatment, including dismissal, on grounds of sex or marriage. See Chapter 11.



The statutory maternity rights form a minimum standard of protection established by Parliament. Women and their employers (or their representatives) remain free to negotiate and agree more favourable arrangements on a voluntary or contractual basis, if they wish to do so. The Government welcomes and encourages this, where it accords with the priorities, needs and circumstances of the parties concerned. Where an employer and employee have agreed different arrangements, an employee will always be able to claim her statutory rights if these are better than those agreed with her employer. This means that an employee cannot be bound by an agreement which offers maternity arrangements which are not as good as the statutory rights.

### **Women excluded from the rights**

Most of the rights described in this booklet apply only to employees and not to the self-employed or to the unemployed<sup>1</sup>. There are, however, a few exceptions which are indicated in the text where relevant.

The rights relating to time off for antenatal care, to maternity leave and to protection against detriment or unfair dismissal in connection with maternity leave do not apply to:

- members of the police force;
- masters or crew members engaged in share fishing paid solely by a share of the catch.

Other restrictions are explained in the text where relevant.

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<sup>1</sup> See booklet, 'Contracts of employment' (PL 810) for further information about employment status.

## **Part-time employees**

All the rights described in this booklet apply to full-time and part-time employees, no matter how many hours they work, provided they satisfy any qualifying conditions, such as length of service.

## **Meaning of childbirth**

In this booklet, childbirth means the live birth of a child, or a still birth after a pregnancy lasting at least 24 weeks.

## **Meaning of expected week of childbirth**

In this booklet expected week of childbirth means the week, beginning with midnight between Saturday and Sunday, in which it is expected that the baby will be born.

## **Meaning of week of childbirth**

In this booklet week of childbirth means the week, beginning with midnight between Saturday and Sunday, in which the baby is actually born.

## **Meaning of associated employer**

In this booklet two employers are ‘associated employers’ if one is a company which the other directly or indirectly controls, or both are companies which are controlled by a third person.

## **Women who work for more than one employer**

Women who work for more than one employer will be able to exercise their maternity rights separately in relation to each. Employees should be careful to follow the notifications for the start and finish of maternity leave for each employer.

## Chapter 2: Time off for antenatal care

### KEY FACTS

- All pregnant employees are entitled to time off for antenatal care.
- All time off for antenatal care must be paid at the employee's normal rate of pay.
- Antenatal care may include relaxation and parentcraft classes, as well as medical examinations.
- These rights apply regardless of the employee's length of service.

### The right to time off

All pregnant employees are entitled to time off to keep appointments for antenatal care made on the advice of a registered medical practitioner, registered midwife or registered health visitor. Antenatal care is not restricted to medical examinations, for example it could include, relaxation classes and parentcraft classes.

Except in the case of her first appointment, the employee must be prepared to show her employer on request:

- a certificate from a registered medical practitioner, registered midwife or registered health visitor confirming that she is pregnant; and
- an appointment card or some other document showing that an appointment has been made.

## **Payment during time off**

The employee should be paid at her normal hourly rate of pay by her employer during the period of time off. This rate is calculated by dividing the amount of a week's pay by the number of the employee's normal working hours in a week.<sup>2</sup>

The normal working hours will usually be clear from the agreed terms and conditions of employment, or from the employee's written statement of main employment particulars<sup>3</sup>. If working hours vary from week to week, they should be averaged over the previous 12 complete working weeks. If the employee has yet to complete 12 weeks' service, the average should be estimated in the light of what could be reasonably expected from the agreed terms and conditions of employment and from the work pattern of any fellow employees in comparable jobs. Overtime is counted only if it is compulsory under the terms of the employment contract.

If the employee is entitled to payment for time off both under her agreed terms and conditions and under these statutory provisions, such entitlements are offset against each other.


## **Dismissal for asserting the right to time off**

It is unlawful for an employer to dismiss an employee, or to select her for redundancy in preference to other comparable employees, solely or mainly because she has sought to assert her statutory right to time off for antenatal care. She may assert this right either by bringing employment

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<sup>2</sup> Further guidance on what is meant by a week's pay can be found in the booklet 'Continuous employment and a week's pay' (PL 711).

<sup>3</sup> Further information can be found in the booklet 'Written statement of employment particulars' (PL 700).



tribunal proceedings or by alleging in some other way that her employer has infringed that right. It does not matter for these purposes whether or not the employee does actually have the right and whether or not it has actually been infringed, as long as she acts in good faith in seeking to assert it.

In addition, dismissal or selection for redundancy in these circumstances is likely to be unlawful under the provisions which protect women against dismissal on grounds of pregnancy or childbirth.

### **Complaints relating to time off**

An employee who has been unreasonably refused time off for antenatal care, denied her normal rate of pay during such time off or dismissed for seeking to assert the right to time off, is entitled to make a complaint to an employment tribunal. Further information about making a complaint to an employment tribunal is given in Chapter 12.

# Chapter 3: Protection against detriment or dismissal on grounds of pregnancy or childbirth

## DETRIMENTAL TREATMENT

### KEY FACTS

An employer must not subject an employee to unfair treatment at work because she:

- is pregnant;
- has given birth to a child;
- has taken, or sought to take, ordinary or additional maternity leave;
- has taken, or sought to take, any of the benefits of ordinary maternity leave;
- has been suspended from work for health and safety reasons connected to her maternity (Chapter 10).

**This protection applies regardless of the employee's length of service.**

The right not to suffer detrimental treatment at work starts as soon as a woman has told her employer that she is pregnant and lasts up to the end of her ordinary or additional maternity leave. Detrimental treatment does not include dismissal or unfair selection for redundancy. The right to be protected from dismissal or selection from redundancy on grounds of pregnancy or maternity is a separate right (see below).

## **Complaints about detrimental treatment**

Women who believe they have been unfairly treated at work for these reasons may seek redress through an employment tribunal (see Chapter 12 for further details).

## **PROTECTION FROM UNFAIR DISMISSAL**

### **KEY FACTS**

**It is unlawful for an employer to dismiss an employee, or select her for redundancy in preference to other comparable employees, for reasons connected with:**

- **her pregnancy;**
- **childbirth;**
- **maternity suspension on health and safety grounds;**
- **taking, or seeking to take, ordinary or additional maternity leave;**
- **taking, or seeking take, any of the benefits of ordinary maternity leave.**

**These rights apply regardless of the employee's length of service.**

## **Dismissal during pregnancy or maternity leave**

It is unlawful for an employer to dismiss an employee during her pregnancy, or her ordinary or additional maternity leave, or to select her for redundancy in preference to other comparable employees, solely or mainly because she is pregnant or has given birth, or for any other reason connected with her pregnancy or childbirth.

On dismissal an employee is entitled to her normal notice or payment in lieu of notice<sup>4</sup>. An employee dismissed on grounds of redundancy may also be entitled to a redundancy payment<sup>5</sup>.

### **Complaints about unfair dismissal**

An employee dismissed or selected for redundancy in these circumstances is entitled to make a complaint of unfair dismissal to an employment tribunal (see Chapter 12).

Dismissal or selection for redundancy under these circumstances may also amount to unlawful discrimination on grounds of sex or marriage (see Chapter 11).

### **Dismissal on grounds unrelated to pregnancy or childbirth**

It is not unlawful for an employer to dismiss an employee on grounds largely or wholly unrelated to her pregnancy or childbirth, unless the dismissal is unfair for some other reason or amounts to discrimination on grounds of sex or marriage. Further guidance on unfair dismissal rights can be found in booklets **Unfairly dismissed? (PL 712)** and **Dismissal – fair and unfair: a guide for employers (PL 714)**.

If the dismissal is on grounds of redundancy, the employee may be entitled to a redundancy payment. Guidance on this can be found in **Redundancy payments (PL 808)**. In addition, a woman absent on ordinary or additional maternity leave has the right, where a redundancy situation has arisen, to be offered a suitable alternative vacancy where one is available (see Chapter 9).

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<sup>4</sup> See booklet 'Rights to notice and reasons for dismissal' (PL 707).

<sup>5</sup> See booklet 'Redundancy payments' (PL 808).

## WRITTEN STATEMENT OF REASONS FOR DISMISSAL

### KEY FACTS

- An employee dismissed during pregnancy or ordinary or additional maternity leave is entitled to an accurate written statement of the reasons.
- The employee does not have to request the statement.
- This right applies regardless of the employee's length of service.

### The right to a written statement

An employee dismissed at any time during pregnancy or statutory maternity leave is entitled to receive from her employer a written statement of the reasons for her dismissal, regardless of whether or not she has requested one and regardless of her length of service. If her employer unreasonably fails to provide a statement, or provides one that she considers inadequate or untrue, she may make a complaint to an employment tribunal (see Chapter 12).

# Chapter 4: Maternity leave

## KEY FACTS

- To take advantage of maternity leave the employee must give her employer proper notification (see Chapter 6).

## ORDINARY MATERNITY LEAVE

- All pregnant employees are entitled to at least 18 weeks' ordinary maternity leave. This applies regardless of length of service.
- The contract of employment continues during ordinary maternity leave.
- During her ordinary maternity leave period the employee must continue to receive all her contractual benefits except wages or salary.

## ADDITIONAL MATERNITY LEAVE

- Employees who have completed one years' continuous employment by the 11th week before the expected week of childbirth are entitled to additional maternity leave.
- Additional maternity leave runs immediately from the end of ordinary maternity leave up to the end of the 29th week after childbirth, counting from the start of the week in which the baby was born.
- The contract of employment continues during additional maternity leave.
- Some terms of the employment contract continue during additional maternity leave. The continuance of any other terms and conditions of the contract are a matter for agreement between the employer and the employee.

## Ordinary maternity leave

All pregnant employees are entitled to a period of 18 weeks' **ordinary maternity leave**. This right to maternity leave applies regardless of an employee's length of service.

## Additional maternity leave

Employees who have completed one year's continuous employment with their employer are also entitled to **additional maternity leave**, which runs from the end of ordinary maternity leave up to the end of a period of 29 weeks, beginning with the start of the week in which the baby was born.

The qualifying period of continuous employment of one year must be completed by the beginning of the 11th week before the expected week of childbirth.

## Compulsory maternity leave

An employee may not work for her employer immediately after childbirth.

This period of **compulsory maternity leave** lasts for:

- two weeks from the date of childbirth, or
- four weeks from the date of childbirth if she works in a factory, or
- until some later date, if there exists another statutory requirement (apart from any requirement to suspend her from work on maternity grounds under health and safety regulations – see Chapter 10) which prohibits the employee from working due to the fact that she has recently given birth.

If the compulsory maternity leave period falls later than 18 weeks after the start of ordinary maternity leave the period of ordinary maternity leave will continue until the end of compulsory maternity leave. All the entitlements and conditions which apply during ordinary maternity leave will continue throughout compulsory maternity leave.

### **Notice requirements**

In order to take advantage of the right to ordinary and additional maternity leave (if she qualifies) the employee must give her employer the proper notifications (see Chapter 6).

### **Contractual rights to maternity leave**

If an employee has a contractual right to maternity leave as well as the statutory right, she may take advantage of whichever is in any particular respect the more favourable to her.

## **THE CONTRACT OF EMPLOYMENT DURING THE 18 WEEKS' ORDINARY MATERNITY LEAVE**

### **Contract of employment**

The contract of employment continues throughout ordinary maternity leave unless either party to the contract expressly ends it or it expires.

### **Terms and conditions**

During ordinary maternity leave an employee has a statutory right to continue to benefit from the terms and conditions of employment which would have applied to her had she been at work instead of on leave, **except for the terms providing for her wages or salary.**

This means that if, for example, holiday entitlement would normally accrue while the employee was at work, it must continue to accrue while she is on maternity leave. However, while on maternity leave, she has no

statutory right to continue to receive remuneration – that is the monetary salary or wages payable to an employee for her work.

Entitlement to wages or salary during maternity leave is a matter for negotiation and agreement between the parties concerned (or their representatives).

Further examples of contractual terms and conditions which women should continue to benefit from during maternity leave are participation in share schemes; reimbursement of professional subscriptions; the use of a company car or mobile phone (unless provided for business use only) and other perks such as health club membership.

An employee resuming work after ordinary maternity leave is entitled to benefit from any general improvements to the rate of pay (or other terms and conditions) which may have been introduced for her grade or class of work while she has been away.

### **Continuous employment**

The employee continues to be employed during her ordinary maternity leave period, which therefore counts towards her period of continuous employment for the purposes of entitlement to other statutory employment rights (for example, the right to a redundancy payment). It also accounts for assessing seniority, pension rights and other personal length-of-service payments, such as pay increments under her contract of employment.

Guidance on calculating statutory holiday entitlement can be found in the **Guide to the Working Time Regulations**.

## **THE CONTRACT OF EMPLOYMENT DURING ADDITIONAL MATERNITY LEAVE (after the 18 weeks' ordinary maternity leave expires)**

### **Contract of employment**

The contract of employment continues throughout additional maternity leave unless either party expressly ends it or it expires.

### **Terms and conditions**

During additional maternity leave a woman does not have a statutory entitlement to receive remuneration from her employer. In the absence of any agreement to the contrary, the terms and conditions of the employment contract which apply during additional maternity leave are those set out below:

- The employee is entitled to benefit from her employer's implied obligation to her of trust and confidence.
- She is bound by her implied obligation to her employer of good faith.
- She is entitled to receive whatever period of notice her contract provides for if her employment is terminated.
- She must give her employer the notice provided for by her contract of employment if she is terminating her employment.
- She is entitled to any contractual rights to compensation if she is made redundant.
- Any terms and conditions in the contract of employment relating to disciplinary or grievance procedures will continue to apply.

- The employee is bound by any terms in her contract relating to:
  - disclosure of confidential information
  - acceptance of gifts or other benefits
  - participation in any other business.

The continuation of any other terms and conditions is a matter for negotiation and agreement between the employer and employee (or their representatives). Employers should however ensure that they are acting lawfully under the Equal Pay Act 1970<sup>6</sup> and the Sex Discrimination Act 1975 (see Chapter 11), and should note that employment-related schemes for pensions or other benefits during any period of paid maternity leave or absence are governed by Schedule 5 of the Social Security Act 1989.

An employee resuming work after additional maternity leave is entitled to benefit from any general improvements to the rate of pay (or other terms and conditions) which may have been introduced for her grade or class of work while she has been away.

## **Continuous employment**

The employee continues to be employed during her additional maternity leave period, which therefore counts towards her period of continuous employment for the purposes of entitlement to other statutory employment rights. Further guidance can be found in **Continuous employment and a week's pay (PL 711)**. Guidance on calculating statutory entitlement to annual leave can be found in the **Guide to the Working Time Regulations**.

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<sup>6</sup> See 'Equal pay: a guide to the Equal Pay Act 1970' (PL 743), available from the Cabinet Office's Women and Equality Unit.

Unlike the period of ordinary maternity leave, the additional maternity leave period is not required to be counted for the purpose of assessing seniority, pension rights and other payments based on an individual employee's length of service – such as pay increases linked to length of service, (unless the employee's contract of employment provides for service to accrue during additional maternity leave for the purposes of contractual benefits). In these circumstances the period of employment before the start of additional maternity leave will be 'joined up' with the period of employment on her return to work as if they were continuous.

Employers should however ensure that they are acting lawfully under the Equal Pay Act 1970 (see **Equal pay: a guide to the Equal Pay Act 1970 (PL 743)**) and the Sex Discrimination Act 1975 (see Chapter 11).

## **OCCUPATIONAL PENSION SCHEMES**

### **Paid maternity leave (ordinary or additional maternity leave)**

During periods of 'paid maternity leave' – either ordinary or additional maternity leave – an employer's pension contribution should be calculated as if the woman is working normally and receiving the normal remuneration payable for doing so. 'Paid' maternity leave is when the employee is receiving Statutory Maternity Pay or contractual maternity pay (or a combination of both). If the rules of the scheme require the employee to contribute towards her occupational pension her contribution should be based on the amount of contractual pay or Statutory Maternity Pay which is being paid to her.<sup>7</sup>

### **Unpaid ordinary maternity leave**

A woman on ordinary maternity leave is entitled to benefit from her normal terms and conditions of employment other than remuneration. Pension contributions are not remuneration so her occupational pension rights will

continue to accrue during the ordinary maternity leave period as if she was working normally. The level of pension contributions from the employer and employee will normally depend upon the precise nature of the pension scheme. But in non-contributory salary-related schemes (ie those financed solely by the employer) the pension rights must accrue as if the employee was working normally.<sup>8</sup>

### **Unpaid additional maternity leave**

For periods of unpaid maternity leave during the additional maternity leave period whether or not occupational pension rights continue to accrue will depend on the rules of the scheme and if so, the conditions of any such accrual.

## **COMPLAINTS ABOUT TERMS AND CONDITIONS DURING ORDINARY OR ADDITIONAL MATERNITY LEAVE**

If an employee on maternity leave is denied the benefit of the terms and conditions of employment to which she is entitled, she may obtain redress through the civil courts by claiming damages for breach of contract, just as if she were still at work. Legal aid is available for those who meet the qualifying conditions<sup>9</sup>. An employee in these circumstances may also be entitled to resign and make a complaint of constructive unfair dismissal to

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<sup>7</sup> Schedule 5 of the Social Security Act 1989 sets out provision governing occupational pensions during any period of paid maternity leave.

<sup>8</sup> Section 71 of the Employment Rights Act 1996 governs the position during a period of ordinary maternity leave when a woman does not receive contractual or statutory maternity pay, for example if she does not qualify for such payments, and accordingly the provisions of the 1989 Act do not apply.

<sup>9</sup> For details see the Legal Aid Board booklets 'How to get free or low cost legal aid' and 'A practical guide to legal aid'.

an employment tribunal (see Chapter 12 for further details). Before taking any such action, however, it is normally advisable to obtain legal or other professional guidance, perhaps from a local Law Centre or Citizens Advice Bureau.

If the breach of contract amounts to an unauthorised deduction from the employee's wages, it may form the basis of a complaint to an employment tribunal. (See **Contracts of Employment (PL 810)**).

Detrimental treatment of a woman in these circumstances may also give rise to a claim under the Equal Pay Act 1970. (See **Equal Pay: A guide to the Equal Pay Act 1970 (PL 743)**). All these rights apply regardless of the employee's length of service.

# Chapter 5: Maternity benefit

## KEY FACTS

- Pregnant employees who meet qualifying conditions based on their length of service and average earnings are entitled to receive from their employers up to 18 weeks' Statutory Maternity Pay (SMP).
- To take advantage of this right, an employee must give her employer proper notification (see Chapter 6).
- The rate of SMP is usually 90% of the employee's salary for the first six weeks and £75.00 for the remaining 12 weeks.
- Employers are reimbursed 92% of the SMP they have paid out or 105% if their total National Insurance liability in the previous tax year was no more than £20,000.
- Women who are not entitled to SMP but meet the qualifying conditions based on their recent National Insurance record are entitled to claim from the Benefits Agency up to 18 weeks' Maternity Allowance (MA).
- The standard rate of MA is £75.00 per week. Women who do not qualify for the standard rate will receive 90% of their average gross earnings up to a maximum of £75.00.
- SMP and MA are payable only for weeks in which the recipient does not work for her employer.

## **Statutory Maternity Pay (SMP) and Maternity Allowance (MA)**

There are two main maternity benefits:

**Statutory Maternity Pay (SMP)** is paid by employers to women who qualify. It has minimum earnings and continuous employment conditions. For more information see the Department for Work and Pensions leaflet **A guide to maternity benefits (NI 17A)**.

**Maternity Allowance (MA)** is paid by the Benefits Agency to qualifying women. It is based on the woman's recent employment and earnings record. For more information see the Department for Work and Pensions leaflet **A guide to maternity benefits (NI 17A)**.

Employers can get more information on SMP from the Inland Revenue **Statutory maternity pay manual for employers (CA29)** or may phone the employers helpline on 08457 143 143.

### **Women who do not qualify for SMP or MA**

If a woman's claim for MA is unsuccessful the Benefits Agency will automatically check to see if she can receive some Incapacity Benefit instead. This is based on different National Insurance contribution criteria and is paid from six weeks before the expected week of childbirth up to 14 days after the baby's birth. The maternity certificate (Mat B1) is accepted as evidence of incapacity for work.

Women who are entitled neither to SMP nor to MA, or whose income during their maternity leave or absence falls short of their needs, may be able to claim Income Support from the Benefits Agency. This is an income-related benefit with maximum levels set each year by the Government. However, income support is not normally payable if the woman (or her partner) has savings amounting to £8,000 or more or works for 16 hours a week or more (24 hours for partners)<sup>10</sup>.

Families in which one parent is working for 16 hours a week or more may alternatively be entitled to Working Families Tax Credit.<sup>11</sup>

## **The right to SMP**

All employees who are pregnant or who have just given birth are entitled to a maximum of 18 weeks' SMP if:

- they have worked for their employer for a continuous period of at least 26 weeks ending with the qualifying week – that is, the 15th week before the expected week of childbirth; and
- their average weekly earnings in the eight weeks up to and including the qualifying week (or the equivalent period if they are monthly paid) have been at least equal to the lower earnings limit for National Insurance contributions (although they do not actually have to have paid any contributions).

In order to take advantage of the right to SMP, the employee must give her employer proper advance notification of her intentions (this requirement is fully explained in Chapter 6).

The employee must also have stopped work/left her employment for a reason connected with her pregnancy. If she leaves her employment for reasons wholly unconnected with her pregnancy, she will only qualify for SMP in certain circumstances.

A qualifying employee may continue working right up until the date her baby is born and still retain her full 18 week entitlement to SMP.

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<sup>10</sup> See the Department for Work and Pensions leaflet, 'Income Support' (IS1).

<sup>11</sup> For further information phone the Working Families helpline on 0845 609 5000.

## The rate of SMP

The first six weeks of SMP are paid at 90% of the employee's average weekly earnings (or at the SMP flat rate if this is higher).

The remaining weeks are paid at the SMP flat rate.

The SMP flat rate is currently £75.00 per week.

## Payment of SMP

**SMP is paid whether or not the employee intends to return to work for her employer.** If for any reason an employee is not entitled to SMP, her employer should complete and give her the Department for Work and Pensions form SMP1 (an explanation of why SMP is not payable). This will help the employee to claim MA from the Benefits Agency.

**SMP is payable only when an employee is absent from work.** It is a weekly benefit, and the benefit week begins on a Sunday. It is usually paid in the same way and at the same time as the employee's wages would be paid. If an employee does any work for her employer in any particular week, she is disqualified from receiving SMP for that week.

Office holders, for example directors of companies, have the same entitlement to SMP as other employees.

Women held in legal custody cannot get SMP. They may be able to get some MA once they have been released.

SMP is payable outside the UK<sup>12</sup>.

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<sup>12</sup> For further details, contact your nearest Inland Revenue National Insurance Contributions Office.

## **Employer's reimbursement for SMP**

Employers can deduct from their next payment of PAYE and National Insurance contributions to the Inland Revenue an amount equal to 92% of the SMP they have paid out in the preceding period.

Small employers – those whose total gross National Insurance liability in the last complete tax year before the qualifying week was £20,000 or less – can deduct 100% of the SMP they have paid out, plus 5% to cover other costs.

## **The right to MA**

All women who are pregnant or who have just given birth are entitled to claim a maximum of 18 weeks' MA from the Benefits Agency if:

- They are employed, but do not qualify for SMP; or
- They have recently been employed; or
- They are self employed.

Entitlement to MA is based on the woman's employment and earnings in the 66 weeks ending with the week before the expected week of childbirth.

## **The employment test**

A woman must have been employed or self-employed in at least 26 weeks, in the 66 week period.

## **The earnings test**

A woman's gross earnings must be at least £30.00 a week over a 13 week period.

Claims should be made using form MA1, copies of which are available from the Benefits Agency and from antenatal clinics.

A woman may continue working right up until the date her baby is born and still retain her full 18 week entitlement to MA.

For further details contact your local Benefits Agency.

### **The rate of MA**

The standard rate of MA is £75.00. A woman who does not qualify for the standard rate will receive 90% of her average earnings up to £75.00.

### **Payment of MA**

MA is payable only when a woman is absent from work. It is a weekly benefit, and the benefit week begins on a Sunday. It is paid by order book, which can be cashed weekly at the woman's chosen post office, or paid directly into a bank or building society account every four weeks in arrears.

### **Disqualification from Statutory Sick Pay (SSP)**

A woman is disqualified from receiving Statutory Sick Pay (SSP) throughout the whole of her 18 week period of entitlement to SMP or MA. This rule applies even if she resumes work during the 18 week period and then falls ill before the end of that period. If this happens she can go back to receiving SMP or MA, but not SSP. Her SSP entitlement has to be considered afresh at the end of the 18 week period.

## Chapter 6: The start of maternity leave and maternity benefit

### KEY FACTS

#### NOTICE FOR START OF MATERNITY LEAVE/SMP

- To take advantage of the right to maternity leave and/or SMP an employee must notify her employer at least 21 days, or as soon as reasonably practicable, before she intends to start her leave:
  - that she is pregnant;
  - when the expected week of childbirth will be, by means of a medical certificate if her employer so requests;
  - when she intends her maternity leave and/or SMP to start, in writing if her employer so requests.

The start of maternity leave must be no earlier than the 11th week before the expected week of childbirth.

#### START OF MATERNITY LEAVE BEFORE THE NOTIFIED DATE

- An employee does not have a statutory right to maternity leave unless she has given her employer 21 days' notice, except in the following circumstances:
  - If the employee gives birth before the date she has notified, or before she has notified a date, her maternity leave period starts automatically on the date of the birth. She must notify her employer as soon as is reasonably practicable of the date of birth.

– If the employee is absent from work due to a pregnancy-related reason after the beginning of the sixth week before the expected week of childbirth but before the date she has notified, or before she has notified a date, her maternity leave period begins automatically on the first day of her absence. She must notify her employer that she is absent from work wholly or partly because of pregnancy as soon as is reasonably practicable.

### **Advance notification**

At least **21** days before she intends to start taking maternity leave and/or receiving SMP, an employee must notify her employer of:

- the fact that she is pregnant;
- the expected week of childbirth;
- the date when she intends to start taking leave (and/or receiving SMP), which must be a date no earlier than the beginning of the 11th week before the expected week of childbirth.

These notifications may be given at different times if the employee wishes. The employee does not need to notify her employer in writing that she is pregnant or when the expected week of childbirth will be. However, she must give her employer a medical certificate from a registered medical practitioner or midwife stating the expected week of childbirth (the maternity certificate, Mat B1, from a doctor or a midwife can be used for this purpose), and notice of the start date of her maternity leave in writing, if requested to do so by her employer.

If she does not wish to take maternity leave but only to receive SMP, the Mat B1 certificate need not be given until the end of the third week of what would be the maternity pay period (or the 13th week if there is good reason why it could not be given earlier). The employer cannot start paying SMP until the certificate has been received. For the purposes of SMP entitlement, the certificate can be accepted by the employer only if it has been signed by the medical practitioner or midwife no earlier than 20 weeks before the expected week of childbirth.

Women who fail to give the required notifications within the specified time limits may lose their rights to SMP and to start maternity leave on their intended start date. The time limits can be extended only in circumstances where it was not reasonably practicable for the notification in question to have been given any earlier. If an employer refuses to pay SMP in these circumstances, the employee may however ask for a written statement to that effect and apply to a Decision Maker at her local Inland Revenue National Insurance Contributions Office.

### **The intended start date**

The maternity leave period normally starts on the date which the employee has notified to her employer as the date she intends it to start. There are however some exceptions to this rule, which are described below.

The SMP period generally starts on the Sunday following the day on which the maternity leave period starts.

### **Absence due to childbirth before the intended start date**

If childbirth occurs before the date the employee has notified (or before she has notified any date), the maternity leave period starts automatically

on the date of the birth (even if this is before the beginning of the 11th week before the expected week of childbirth). In order to preserve her rights to maternity leave and SMP, the employee must as soon as is reasonably practicable give her employer notice (in writing if requested) of the date of childbirth and (if she has not already given it) evidence of the date the baby was expected. Evidence of both the expected date and the actual date of birth can be provided together on the maternity certificate (Mat B1) issued by a doctor or midwife.

### **Absence for a pregnancy-related reason before the intended start date**

An employee who is absent from work due to illness will normally be able to take sick leave until she starts maternity leave on the date notified to her employer as described above. If the illness is unrelated to her pregnancy she can remain on sick leave and receive Statutory Sick Pay/Incapacity Benefit right up to the date of the baby's birth, or until the date she has notified as the date on which she intends her maternity leave to start.

If, however, the illness is pregnancy-related, the maternity leave period starts automatically on the first day of absence following the beginning of the sixth week before the expected week of childbirth. This applies even if the day of absence is before the date the employee has notified as the date on which she intends her leave to start (or before she has notified any date). In order to preserve her rights, the employee must as soon as is reasonably practicable give her employer notice (in writing if requested) that she is absent from work wholly or partly because of pregnancy.

Odd days of pregnancy-related illness may be disregarded at the employer's discretion if the employee wishes to defer the start of her maternity leave period.

The same arrangements apply if the employee's absence is for some other pregnancy-related reason.

### **Dismissal or resignation before the intended start date**

If an employee resigns or is dismissed before the date she has notified, or before she has notified a date, she loses the right to maternity leave. (Dismissal will however be unfair if it is maternity-related. See Chapters 3 and 8).

The employer will still have to pay the employee SMP if she qualified for it. Payment will begin in accordance with the date she has notified or, if the resignation or dismissal takes place before she has notified a date, from the later of:

- the 11th week before the expected week of childbirth;
- the first complete week after the employment ends.

### **Start of Maternity Allowance (MA)**

The MA period normally starts from:

- in the case of a woman who is unemployed, the 11th week before the expected week of childbirth;
- in the case of a woman who is employed or self-employed, a week chosen by the woman herself, which must be no earlier than the 11th week before the expected week of childbirth.

There are however some exceptions, which are described below.

### **Childbirth before the intended start date**

If childbirth occurs before the woman intended her entitlement to start, it starts automatically from the week following childbirth.

## **Absence from work for a pregnancy-related reason before the intended start date**

An employee who is absent from work due to illness will normally be able to take sick leave and receive Statutory Sick Pay/Incapacity Benefit right up until the week of the baby's birth, or until the week she intended to start receiving MA. If however the illness is pregnancy-related and occurs after the beginning of the sixth week before the expected week of childbirth, entitlement to MA starts automatically.

MA will be payable from the week in which the absence first occurs, or from the week after that depending on whether the woman worked for her employer or was receiving Statutory Sick Pay in the same week.

## **Length of SMP or MA period**

The SMP or MA period generally lasts until 18 weeks after the date on which it started. If, however, the employee resumes work during that period no maternity benefit is payable for any week in which she works. SMP will stop completely if a woman starts work for a new employer after her baby is born<sup>13</sup>.

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<sup>13</sup> For more information about the situation where a woman works for more than one employer or starts working for a new employer, see the Department for Work and Pensions booklet 'A guide to maternity benefits' (NI 17A) and the Inland Revenue publication 'Statutory Maternity Pay manual for employers (CA29)'.

# Chapter 7: Notice for return to work after maternity leave

## KEY FACTS

### RETURN TO WORK BEFORE THE END OF ORDINARY OR ADDITIONAL MATERNITY LEAVE

- If the employee intends to return to work before the end of her ordinary or additional maternity leave period, she must give her employer at least 21 days' notice of her date of return.

### RETURN TO WORK AT THE END OF ORDINARY MATERNITY LEAVE

- An employee does not have to give her employer advance notice if she intends to return to work immediately after the end of her ordinary maternity leave period.

### RETURN TO WORK AFTER ADDITIONAL MATERNITY LEAVE

- The employer may write out to a woman no earlier than 21 days before the end of the ordinary maternity leave period to:
  - confirm her child's date of birth, and
  - ask her whether she is still intending to return to work after her additional maternity leave.
- The letter must explain to the employee:
  - how she works out when her additional maternity leave period will end
  - warning her that if she fails to respond to the letter, she will not have protection against detriment or dismissal on grounds of taking additional maternity leave.

The employee must reply within 21 days of receiving the letter.

## **The intended date of return to work after ordinary or additional maternity leave**

Unless otherwise notified, the date on which the employees returns to work will be:

- the first working day after the end of her 18 weeks' ordinary maternity leave period; or
- if she qualifies for additional maternity leave, the first working day after the end of 29 weeks from the birth of the baby, counting from the Sunday at the beginning of the week in which the baby was born; or
- within any longer leave period allowed on a voluntary or contractual basis by her employer.

## **Resumption of work before the end of ordinary or additional maternity leave**

- If the employee intends to return to work before the end of her ordinary or additional maternity leave she must give her employer 21 days' notice of the date of her return. This notice does not have to be in writing.
- Where an employee qualifies for additional maternity leave, but only wishes to take the 18 weeks ordinary maternity leave she must give her employer 21 days notice of her return to work because she will be returning to work before her full maternity leave entitlement has ended.
- If the employee attempts to return to work earlier than the end of her ordinary or additional maternity leave without giving her employer 21 days' notice, her employer may postpone her return until 21 days' notice has been given.
- The employer may not postpone her return to a date later than the end of her ordinary or additional maternity leave.

- An employee whose return has been postponed under these circumstances is not entitled to receive wages or salary if she returns to work during the period of postponement.

### **Resumption of work at the end of ordinary maternity leave**

If an employee is entitled only to ordinary maternity leave and intends to return to work immediately after the end of it she does not have to give notice of her return.

### **Notice for resumption of work after additional maternity leave**

Where a woman qualifies for additional maternity leave, she should let her employer know when the baby is born so that she and her employer can plan for her return 29 weeks later.

- The employer may write to an employee no earlier than 21 days before the end of her ordinary maternity leave asking her to notify him **in writing** of the date of the baby's birth and whether she is still intending to return to work. **A sample letter is given at Annex A.**
- The employer's letter must explain to the employee how she works out when her additional maternity leave ends; and  
warn her that failure to respond to the letter will mean that she is not protected against dismissal or detriment on grounds of taking additional maternity leave.
- The employee must reply within **21** days of receiving the letter.

## **Failure to respond to the employer's written request for confirmation of return date**

If the employee does not respond to her employer's request for confirmation of the baby's birth date and her intention to return to work, or if she only responds more than 21 days after receiving the letter, the employer may decide what penalty, if any, is appropriate in the circumstances. If the employer decides to take disciplinary action against her she will not be able to rely on protection from detriment on the grounds that she took additional maternity leave, and if she is dismissed she will not be able to make a complaint to an employment tribunal that her dismissal was **automatically unfair on grounds that she took additional maternity leave**. However, an employee dismissed under these circumstances may still present a complaint to an employment tribunal if she considers that her dismissal was generally unfair. It would then be for the tribunal to determine whether her dismissal was appropriate and fair in all the circumstances.

Any disciplinary or grievance procedures which form part of the contract of employment will continue to apply during maternity leave. To apply procedures and penalties more harshly to a woman who takes maternity leave than other employees in similar circumstances could amount to sex discrimination (see Chapter 11).

## **Sickness at the end of ordinary or additional maternity leave**

Where an employee is unable to attend work at the end of her ordinary or additional maternity leave due to sickness, the normal contractual arrangements for sickness absence will apply, for example, she should notify her employer in the normal way.



## **Employees who do not wish to return to work after maternity leave**

An employee who does not wish to return to work after her ordinary or additional maternity leave must give her employer the notice of termination required by her contract of employment, or where there is none, the statutory notice<sup>14</sup>.

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<sup>14</sup> See booklet, 'Rights to notice and reasons for dismissal' (PL 707).

## Chapter 8: Rights on and after return to work from maternity leave

### KEY FACTS

#### ORDINARY MATERNITY LEAVE

- An employee who resumes work after ordinary maternity leave is entitled to return to the same job on the same terms and conditions as if she had not been absent, unless a redundancy situation has arisen (see Chapter 9).

#### ADDITIONAL MATERNITY LEAVE

- An employee who returns to work after additional maternity leave is also entitled to return to the same job on the same terms and conditions as if she had not been absent, unless a redundancy situation has arisen (see Chapter 9).
- If, however, there is some reason other than redundancy why it is not reasonably practicable for her employer to take her back in her original job, she is entitled to be offered suitable alternative work.

### **Return to work after ordinary maternity leave**

An employee who resumes work after ordinary maternity leave is entitled to return to the same job on the same terms and conditions of employment as if she had not been absent, unless a redundancy situation has arisen, in which case she is entitled to be offered a suitable alternative vacancy (see Chapter 9 on redundancy).

An employee who is not given her job back at the end of ordinary maternity leave is entitled to make a complaint of unfair dismissal to an employment tribunal (see Chapter 12).

## **Return to work after additional maternity leave**

After additional maternity leave an employee is entitled to return to work to the same job, on the same terms and conditions as if she had not been absent. However, if there is some reason why it is not reasonably practicable for her to return to the same job she should be offered a similar job on terms and conditions which are no less favourable than her original job. This right varies where an employee works for a firm employing five employees or less. See below, **Circumstances where dismissal at the end of additional maternity leave will not be unfair.**

## **Return to work after ordinary maternity leave followed by parental leave**

Employees who have completed one year's service with their employer, whether before or during a period of maternity leave, may be entitled to parental leave which may be taken immediately after ordinary maternity leave (subject to the notice requirements for taking parental leave). An employee returning to work after ordinary maternity leave followed by a period of parental leave of **four weeks or less** is entitled to return to her original job on the same terms and conditions as if she had not been absent.

An employee who takes a period of parental leave of over four weeks immediately after the end of ordinary maternity leave is entitled to return to the same job on the same terms and conditions as if she had not been absent, unless that is not reasonably practicable, in which case she is entitled to be offered a similar job.

Terms and conditions relating to parental leave may vary depending on whether an employee is subject to the statutory fallback scheme or whether a workforce, collective or individual agreement is in place.

## **Return to work after parental leave of four weeks or less, taken immediately after the end of additional maternity leave**

An employee who takes a period of parental leave of four weeks or less immediately after a period of additional maternity leave is entitled to return to her original job unless:

- it would not have been reasonably practicable for her to have returned to that job at the end of the additional maternity leave period, **and**
- it is still not reasonably practicable for her to return to that job at the end of parental leave,

in which case, she is entitled to return to a similar job.

## **Return to work after a period of parental leave of over four weeks taken immediately after the end of additional maternity leave**

An employee who takes a period of parental leave of more than four weeks immediately after additional maternity leave is entitled to return to her original job or, if that is not reasonably practicable, to a similar job.

## **Offer of similar job after additional maternity leave**

Where there is a reason which makes it impracticable for the employee to be taken back in her original job, a similar job must be found for her. The new job must be such that:

- the work to be done by the employee is both suitable and appropriate for her to do in the circumstances; and
- the capacity and place in which she is to be employed and the other terms and conditions of her employment are no less favourable to her than if she had continued to be employed in her old job.

- If the offer made is suitable and the employee refuses she will have effectively resigned.
- If the offer is not suitable the employee may bring a complaint of unfair dismissal to an employment tribunal.

In all cases, employers should also ensure that transfers to alternative work are lawful under the Sex Discrimination Act 1975 (see Chapter 11).

### **Return to work part-time after maternity leave**

There is no specific statutory right for a woman to change her working conditions, including hours of work, on return to work from maternity leave, unless this is provided for in her contract of employment. However, there may be circumstances where a refusal to permit a woman to return to work part-time amounts to unlawful indirect sex discrimination.

Employees may complain of indirect sex discrimination if they believe that the proportion of **women** (or men) who can comply with a requirement or condition imposed by their employer is considerably smaller than the proportion of **men** (or women) who can comply with it. For example, it may be more difficult for female employees to fulfill the requirement to work full time than it would be for male employees because of their childcare responsibilities. In such circumstances an employer would have to show that there were objective reasons, which had nothing to do with her sex, for requiring her to work full-time. Further information on indirect sex discrimination is given in Chapter 11.

Employers and employees may wish to contact the Equal Opportunities Commission for further advice.

## **DISMISSAL ON OR AFTER RESUMPTION OF WORK AFTER MATERNITY LEAVE**

### **KEY FACTS**

- **An employee who is dismissed during ordinary or additional maternity leave, at the end of maternity leave or after she resumes work, on the grounds that she has taken maternity leave or in the case of ordinary maternity leave has accessed the benefits of maternity leave may make a claim for unfair dismissal through an employment tribunal (see Chapter 12).**
- **Dismissal or other detrimental treatment due to these circumstances may also amount to unlawful sex discrimination (See Chapter 11).**

An employee who is dismissed during or after the end of a maternity leave period, or selected for redundancy in preference to other comparable employees, solely or mainly because she has taken maternity leave or availed herself of the benefit of the terms and conditions of employment to which she was entitled during that leave is entitled to make a complaint of unfair dismissal to an employment tribunal (see Chapter 12).

Dismissal, selection for redundancy or other detrimental treatment in these circumstances may also amount to unlawful discrimination on grounds of sex or marriage (see Chapter 11).

## **Circumstances where a dismissal at the end of additional maternity leave will not be unfair:**

An employee who is not given her job back, or offered a suitable alternative job, at the end of additional maternity leave will not be regarded as unfairly dismissed if the employer can show an employment tribunal that:

- her original job was no longer available because of redundancy and there was no suitable alternative work available which could be offered to her; (see Chapter 9)
- it was not reasonably practicable (on grounds other than redundancy) for her to be taken back in her original job or a similar job and an associated employer had offered her suitable alternative employment which she had either accepted or unreasonably refused; or
- it was not reasonably practicable for her to be taken back in her original job or to be offered a similar job and that the employer (together with any associated employers) employed only five or fewer people (including the employee herself) at the point when her additional maternity leave period ended.

**Employers should however ensure that they are acting lawfully under the Sex Discrimination Act 1975 (see Chapter 11).**

## **Dismissal on grounds unrelated to maternity leave**

An employer may dismiss an employee on grounds largely or wholly unrelated to the fact that she has taken or availed herself of the benefits of maternity leave, unless the dismissal is unfair for some other reason or amounts to discrimination on grounds of sex or marriage (see Chapter 11). Further guidance on unfair dismissal can be found in **Unfairly dismissed? (PL 712)** and **Dismissal – fair and unfair: a guide for**

**employers (PL 714)**. If the dismissal is on grounds of redundancy, the employee may be entitled to a redundancy payment, and further guidance can be found in **Redundancy payments (PL 808)**.

## **TERMS AND CONDITIONS ON OR AFTER RESUMPTION OF WORK**

### **Ordinary maternity leave**

An employee returning to work after ordinary maternity leave is entitled to have the same job and the same terms and conditions as if she had not been absent (unless a redundancy situation arose during her maternity leave – see Chapter 9).

An employee resuming work after ordinary maternity leave is entitled to benefit from any general improvements to the rate of pay (or other terms and conditions) which may have been introduced for her grade or class of work while she has been away.

### **Additional maternity leave**

An employee returning to work after additional maternity leave is entitled to have the same job back on the same terms and conditions, except where a redundancy situation has arisen (see Chapter 9), or there is some other reason why it is not reasonably practicable for the employer to take her back in her original job. In these circumstances she is generally entitled to be offered a similar job which has the same or better status and terms and conditions as the old job.

Unlike the period of ordinary maternity leave, the additional maternity leave period is not required to be counted for the purpose of assessing seniority, pension rights and other personal length-of-service payments (unless the employee's contract of employment provides for service to

accrue during additional maternity leave for the purposes of contractual benefits). In these circumstances the period of employment before the start of additional maternity leave will be treated as ‘joined up’ with the period of employment on her return to work as if they were continuous.

An employee resuming work after additional maternity leave is entitled to benefit from any **general** improvements to the rate of pay (or other terms and conditions) which may have been introduced for her grade or class of work while she has been away.

### **Variation of terms and conditions of employment**

Any variation to the terms and conditions of employment, such as hours of work, must be agreed between the employer and the employee, unless the contract of employment specifically allows for changes without agreement. This means that an employer may not in general impose less favourable terms and conditions upon an employee who resumes work after maternity leave, and an employee in these circumstances may not in general demand more favourable terms and conditions. It is however unlawful to discriminate against a woman on the grounds of sex in relation to her terms and conditions (see Chapter 11).

### **Complaints about variation of terms and conditions**

An employee whose employer unilaterally makes detrimental changes to her terms and conditions of employment may obtain redress through the civil courts by claiming damages for breach of contract. Legal Aid is available for those who meet the qualifying conditions<sup>15</sup>.

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<sup>15</sup> See the Legal Aid Board booklets ‘How to get free or low cost legal help’ and ‘A practical guide to legal aid’.

An employee in these circumstances may also be entitled to resign and make a complaint of constructive unfair dismissal to an employment tribunal (see Chapter 12 for further details). Before taking any such action, however, it is normally advisable to obtain legal or other professional guidance, perhaps from a local Law Centre or Citizens Advice Bureau.

If the breach of contract amounts to an unauthorised deduction from the employee's wages, this could also form the basis of a complaint to an employment tribunal. Further details can be found in **Contracts of employment (PL 810)**.

A breach of contract in these circumstances may also give rise to a claim under the Equal Pay Act 1970. For further information, consult the booklet **Equal pay: A guide to the Equal Pay Act 1970 (PL 743)**. (Available from the Cabinet Office's Women and Equality Unit).

All these rights apply regardless of the employee's length of service.

## Chapter 9: Redundancy during maternity leave

If a redundancy situation arises during an employee's ordinary or additional maternity leave which makes it impracticable for the employer to continue to employ her under her original contract of employment, she is entitled to be offered (before that contract ends) a suitable alternative vacancy, where one is available. This includes a vacancy with an associated employer or with a successor to the original employer. The new contract must take effect immediately on the ending of the original one and must be such that:

- the work to be done by the employee is both suitable and appropriate for her to do in the circumstances; and
- the capacity and place in which she is to be employed and the other terms and conditions of her employment are not substantially less favourable to her than if she had continued to be employed under the original contract.

It is unlawful for an employer to make an employee redundant during ordinary or additional maternity leave period without first complying with these requirements. An employee made redundant in these circumstances is entitled to make a complaint of unfair dismissal to an employment tribunal (see Chapter 12 for further details).

If the employer has a suitable alternative vacancy available but fails to offer it to the employee, the redundancy dismissal will be regarded as an unfair dismissal.

If the employer offers the employee a suitable alternative vacancy and she unreasonably refuses it, she may forfeit her right to a redundancy payment. Further guidance can be found in the booklet **Redundancy payments (PL 808)**.

### **Entitlements on redundancy during maternity leave**

If an employee on ordinary or additional maternity leave is made redundant, whether lawfully or unlawfully, her maternity leave period comes to an end. The employee is entitled to receive from her employer a written statement of the reasons for her dismissal, regardless of whether or not she has requested one, and regardless of her length of service. If her employer fails to provide a statement, or provides one that she considers to be inadequate or untrue, she may make a complaint to an employment tribunal. The employee should also receive her normal notice entitlement, or pay in lieu of notice (see **Rights to notice and reasons for dismissal PL 707**). The employee may additionally be entitled to a redundancy payment (see **Redundancy payments PL 808**).

The employee will still be entitled to receive Statutory Maternity Pay for up to 18 weeks once she has qualified for it (see Chapter 5).

# Chapter 10: Health and Safety

## KEY FACTS

- Employers are required to protect the health and safety at work of all employees and others, including new and expectant mothers.
- When assessing risks in their workplace they should pay particular attention to risks that could affect the health or safety of new or expectant mothers or their babies.
- All reasonably practicable measures should be taken to prevent exposure to risks through removal of hazards or implementation of controls.
- If a risk remains which could damage the health or safety of a new or expectant mother or her baby, employers must follow a series of steps to make sure she is not exposed to that risk.
- New and expectant mothers must not be required to work at night if they have a medical certificate stating that the night work could damage their health or safety.
- The ultimate action to avoid a risk to a new or expectant mother is to suspend her from work on maternity grounds, but before being suspended, she must be offered suitable alternative work, if any is available.
- A woman on maternity suspension must be paid her normal wages or salary by her employer for as long as the suspension lasts.
- It is unlawful for an employer to dismiss an employee because of a health and safety regulation which could give rise to maternity suspension.
- All these rights apply regardless of the employee's length of service or hours of work.


This chapter concerns the protection of the health and safety of women of childbearing age or who are pregnant or have given birth within the last six months or who are breastfeeding. The latter three groups are referred to here as ‘new and expectant mothers’. Further guidance can be found in the booklet **Suspension from work on medical or maternity grounds under health and safety regulations (PL 705)**.

### **Risk assessment**

All employers are required under the Management of Health and Safety at Work (MHSW) Regulations 1992, as amended, to assess the risks to health and safety to which their employees and others could be exposed as a result of their undertakings.

Employers of women of childbearing age, whose workplace or work activity could involve a risk to the health or safety of a new or expectant mother or her baby, are specifically required by law to assess those risks. A list of agents, processes, and working conditions that could present a risk to the health or safety of new or expectant mothers is given at the end of this chapter, with some advice about the nature of the possible risks. This is not necessarily a complete list of risks – there could be others which should be considered.

If risks are identified by the assessment, information about them should be given to all women of childbearing age in the workplace. Employers should also explain what they will do to make sure that new and expectant mothers are not exposed to the risks that could cause them harm. They can also give the information to employee representatives.



If an individual believes there is a risk to her health or safety, or to that of her baby, which her employer has not considered in the risk assessment, she should bring the risk to the attention of her employer or health and safety representative. If the employer discounts the risk, and the individual remains concerned, she may wish to discuss it with her doctor, or to get in touch with her local office of the Health & Safety Executive (HSE) to ask for advice. Individuals can also get advice from their local HSE office if the risk assessment identifies a risk but the employer will not take the necessary preventive action.

### **Avoiding the risk**

When employers have identified a significant risk that could damage the health or safety of a new or expectant mother, they need to decide what action to take. Some risks, for instance from chemicals, are already covered by specific health and safety regulations. In those cases employers should follow the requirements of those regulations. Generally, employers should try to remove the hazard or prevent exposure to the risk. If that is not possible the employer should take steps to reduce or remove the effect of the risk, for instance by providing aids to help with manual handling duties.

### **Removal of employees from risk**

If, despite taking all reasonably practicable measures, there is still a risk that could jeopardize the health or safety of a new or expectant mother or her baby, then employers must follow a sequence of steps to remove any employee who is a new or expectant mother from the risk. The MHSW Regulations provide that employers need to do this when they have been told in writing that an employee is pregnant, has given birth within the previous six months or is breastfeeding. They also provide for employers to request in writing a certificate from a registered medical practitioner, or a registered midwife, confirming that the employee is

pregnant. Despite the requirement of written notification of pregnancy, more general legal duties require employers to take the action necessary to protect a worker they know to be pregnant or breastfeeding whether or not formal notification has been received. The three steps to remove an employee from a risk are as follows:

- temporarily adjust the employee's working conditions and/or hours of work; or if it is not reasonable to do so, or would not avoid the risk;
- offer her suitable alternative work if any is available; or if that is not feasible
- suspend her from work for as long as necessary to protect her safety or health or that of her child.

The measures taken to avoid the risk must continue for as long as the risk exists.

### **Night work**

Employers need to consider risks to new and expectant mothers who work at night. If an employee who is a new or expectant mother works at night, and has a medical certificate stating that night work could affect her health or safety, the employer must either:

- offer her suitable alternative daytime work; or if that is not reasonable
- suspend her from work for as long as necessary to protect her health or safety.

### **Offers of suitable alternative work**

Where an employee is offered suitable alternative work, the work must be:

- both suitable and appropriate for her to do in the circumstances; and

- on terms and conditions no less favourable than her normal terms and conditions.

An employee is entitled to make a complaint to an employment tribunal if there is suitable alternative work available which her employer has failed to offer her before suspending her from work on maternity grounds.

### **Entitlements during maternity suspension**

An employee on maternity suspension is entitled to be paid remuneration – that is, wages or salary – at her full normal rate for as long as the suspension continues. The only exception is where she has unreasonably refused an offer of suitable alternative work, in which case no remuneration is payable for the period during which the offer applies.

If an employee has both a statutory right and a contractual right to remuneration during maternity suspension, such entitlements can be offset against each other.

The employee continues to be employed during the maternity suspension period, which therefore counts towards her period of continuous employment for the purposes of assessing seniority, pension rights and other personal length-of-service payments, such as pay increments. Contractual benefits are also likely to continue as normal during the maternity suspension unless the employer and employee have mutually agreed to vary them. Employers must also ensure that they are acting lawfully under the Equal Pay Act 1970 and the Sex Discrimination Act 1975, and where pension entitlement is concerned under Schedule 5 to the Social Security Act 1989.

## **Complaints about remuneration during maternity suspension**

An employee whose employer fails to pay her some or all of the remuneration due for any day of maternity suspension is entitled to make a complaint to an employment tribunal (see Chapter 12).

## **Dismissal on grounds related to maternity suspension**

It is unlawful for an employer to dismiss an employee, or to select her for redundancy in preference to other comparable employees, solely or mainly because of a health and safety regulation which could give rise to maternity suspension. An employee dismissed or selected for redundancy in these circumstances is entitled to make a complaint of unfair dismissal to an employment tribunal (see Chapter 12).

## **Physical, chemical and biological agents, and working conditions that may affect the health and safety of new or expectant mothers**

### **PHYSICAL AGENTS**

#### **Shocks, vibration or movement**

Regular exposure to shocks, low frequency vibration, for example driving or riding in off-road vehicles, or excessive movement, may increase the risk of a miscarriage. Long-term exposure to vibration does not cause foetal abnormalities but often occurs with heavy physical work, so there may be an increased risk of premature birth or low birth weight.

#### **Manual handling of loads where there is a risk of injury**

Pregnant workers are especially at risk from manual handling injury – for example hormonal changes can affect the ligaments, increasing susceptibility to injury; and postural problems may increase as the pregnancy progresses.

There can also be risks for those who have recently given birth, for example after a caesarean section there is likely to be a temporary limitation on lifting and handling capability.

There is no evidence to suggest that breastfeeding mothers are at greater risk from manual handling injury than any other workers.

**Movements and postures, travelling – either inside or outside the establishment – mental and physical fatigue, and other physical burdens connected with the activity of new or expectant mothers.**

Fatigue from standing and other physical work has long been associated with miscarriage, premature birth and low birth weight.

Excessive physical or mental pressure may cause stress and can give rise to anxiety and raised blood pressure.

Pregnant workers may experience problems in working at heights, for example ladders, platforms, and in working in tightly fitting workspaces or with workstations which do not adjust sufficiently to take account of increased abdominal size, particularly during the later stages of pregnancy. This may lead to strain or sprain injuries. Dexterity, agility, co-ordination, speed of movement, reach and balance may also be impaired, and an increased risk of accidents may need to be considered.

**Noise**

There appears to be no specific risk to new or expectant mothers or to the foetus, but prolonged exposure to loud noise may lead to increased blood pressure and tiredness.

### **Ionising Radiation**

Significant exposure to ionising radiation can be harmful to the foetus and this is recognised by placing limits on the external radiation dose to the abdomen of the expectant mother for the declared term of her pregnancy.

If a nursing mother works with radioactive liquids or dusts, these can cause exposure of the child, particularly through contamination of the mother's skin.

Also, there may be a risk to the foetus from significant amounts of radioactive contamination breathed in or ingested by the mother and transferred across the placenta.

### **Non-ionising electromagnetic radiation (NIEMR)**


**Optical radiation:** Pregnant or breastfeeding mothers are at no greater risk than other workers.

**Electromagnetic fields and waves (e.g. radio-frequency radiation):** Exposure to electric and magnetic fields within current recommendations is not known to cause harm to the foetus or the mother. However, extreme over-exposure to radio-frequency radiation could cause harm by raising body temperature.

### **Extremes of cold or heat**

When pregnant, women tolerate heat less well and may more readily faint or be more liable to heat stress. The risk is likely to be reduced after birth but it is not certain how quickly an improvement comes about.

Breastfeeding may be impaired by heat dehydration.



No specific problems arise from working in extreme cold, although clearly for other health and safety reasons, warm clothing should be provided.

### **Work in hyperbaric atmosphere, for example pressurised enclosures and underwater diving**

**Compressed air:** People who work in compressed air are at risk of developing the bends. This is due to free bubbles of gas in the circulation.

It is not clear whether pregnant women are more at risk of the bends but potentially the foetus could be seriously harmed by such gas bubbles.

For those who have recently given birth there is a small increase in the risk of the bends.

There is no physiological reason why a breastfeeding mother should not work in compressed air (although there would be obvious practical difficulties).

**Diving:** Pregnant workers are advised not to dive at all during pregnancy due to the possible effects of exposure to hyperbaric environment on the foetus.

There is no evidence to suggest that breastfeeding and diving are incompatible.

## **BIOLOGICAL AGENTS**

### **Any biological agent of hazard groups 2, 3 and 4 (Categorisation of biological agents according to hazard and categories of containment – Advisory Committee on Dangerous Pathogens)**

Many biological agents within the three risk groups can affect the unborn child if the mother is infected during pregnancy. These may be transmitted through the placenta while the child is in the womb, or during or after birth, for example through breastfeeding or through close physical contact between mother and child. Examples of agents where the child might be infected in one of these ways are hepatitis B, HIV (the AIDS virus), herpes, TB, syphilis, chickenpox and typhoid. For most workers, the risk of infection is not higher at work than from living in the community; but in certain occupations, exposure to infections is more likely, for example laboratory workers, health care, people looking after animals and dealing with animal products.

### **Biological agents known to cause abortion of the foetus, or physical and neurological damage. These agents are included in hazard groups 2, 3 and 4**

Rubella (German measles) and toxoplasma can harm the foetus, as can some other biological agents, for example cytomegalovirus (an infection common in the community) and chlamydia in sheep. The risks of infection are generally no higher for workers than others, except in those exposed occupations listed above. For more information, see HSE guidance **Infection risks to new and expectant mothers: a guide for employers**.

## **CHEMICAL AGENTS**

### **Substances labelled R40, R45 and R46 under Directive 67/548/EEC (since amended or adapted on a number of occasions)**

There are about 200 substances labelled with these risk phrases:

**R40:** possible risk of irreversible effects

**R45:** may cause cancer

**R46:** may cause heritable genetic damage

**R49:** may cause cancer by inhalation

**R61:** may cause harm to the unborn child

**R63:** possible risk of harm to the unborn child

**R64:** may cause harm to breastfed babies.

The actual risk to health of these substances can only be determined following a risk assessment of a particular substance at the place of work – i.e. although the substances listed may have the potential to endanger health or safety, there may be no risk in practice, for example if exposure is below a level which might cause harm.

### **Chemical agents and industrial processes in Annex 1 to Directive 90/394/EEC**

The substances, preparations and processes listed in Annex 1 of the EC Directive on the Control of Carcinogenic Substances are covered by the Control of Substances Hazardous to Health Regulations (COSHH), and are included in the list at Appendix 5 to HSE publication **EH40 Occupational Exposure Limits**.

### **Mercury and mercury derivatives**

Organic mercury compounds could have adverse effects on the foetus. Animal studies and human observations have demonstrated that exposure to these forms of mercury during pregnancy can slow the growth of the unborn baby, disrupt the nervous system, and cause the mother to be poisoned.

No clear evidence of adverse effects on developing foetus from studies of humans exposed to mercury and inorganic mercury compounds.

No indication that mothers are more likely to suffer greater adverse effects from mercury and its compounds after the birth of the baby.

Potential for health effects in children from exposure to mercury and mercury compounds is uncertain.

### **Antimitotic (cytotoxic) drugs**

In the long term these drugs cause damage to genetic information in sperm and eggs. Some can cause cancer. Absorption is by inhalation or through the skin.

### **Chemical agents of known and dangerous percutaneous absorption (i.e. that may be absorbed through the skin). This includes some pesticides.**

The HSE guidance publication **EH40 Occupational exposure limits**, updated annually, contains tables of inhalation exposure limits for certain hazardous substances. Some of these substances can also penetrate intact skin and become absorbed into the body, causing ill-health effects. These substances are marked 'Sk' in the tables. As with all substances, the risks will depend on the way that the substance is being used as well as on its hazardous properties. Absorption through the skin can result from localised contamination, for example from a splash on the skin or

clothing, or in certain cases, from exposure to high atmospheric concentrations of vapour.

### **Carbon monoxide**

Carbon monoxide readily crosses the placenta and can result in the foetus being starved of oxygen. Data on the effects of exposure to carbon monoxide on pregnant women are limited but there is evidence of adverse effects on the foetus. Both the level and duration of maternal exposure are important factors in the effect on the foetus.

There is no indication that breastfed babies suffer adverse effects from their mother's exposure to carbon monoxide, nor that the mother is significantly more sensitive to carbon monoxide after giving birth.

### **Lead and lead derivatives – in so far as these agents are capable of being absorbed by the human organism**

Occupational exposure to lead in the early 1900s, when exposure was poorly controlled, was associated with high frequencies of spontaneous abortion, stillbirth and infertility. Exposure is now better controlled under the Control of Lead at Work Regulations. However, lead can cross the placenta and there remain concerns about the possible effects of material lead exposure on the neurological development of the foetus and the breastfed infant. Lead can enter breast milk. Since it is thought that the nervous system of young children is particularly sensitive to the toxic effects of lead, the exposure of breastfeeding mothers to lead should be viewed with concern.

## **WORKING CONDITIONS**

### **Underground mining work**

Mines often have difficult physical conditions and many of the physical agents described in this guidance are a regular part of the mining environment.

### **Work with Display Screen Equipment (VDUs)**

Anxiety about radiation emissions from display screen equipment and possible effects on pregnant women has been widespread. However, there is substantial evidence that these concerns are unfounded. The National Radiological Protection Board, which has the statutory function of providing information and advice on all radiation matters to Government Departments, has given the advice below which summarises scientific understanding:

- The levels of ionising and non-ionising electromagnetic radiation which are likely to be generated by display screen equipment are well below those set out in international recommendations for limiting risk to human health created by such emissions and the National Radiological Protection Board does not consider such levels to pose a significant risk to health. No special protective measures are therefore needed to protect the health of people from this radiation.
- There has been considerable public concern about reports of higher levels of miscarriage and birth defects among some groups of visual display unit (VDU) workers, in particular due to electromagnetic radiation. Many scientific studies have been carried out, but taken as a whole their results do not show any link between miscarriages or birth defects and working with VDUs. Research and reviews of the scientific evidence will continue to be undertaken.

# Chapter 11: Sex discrimination

## KEY FACTS

- Women must not be discriminated against directly or indirectly on grounds of sex or marriage.
- This applies regardless of length of service.

## Protection against sex discrimination

Women who are pregnant, have recently given birth or are breastfeeding may have certain additional protections under the Sex Discrimination Act 1975 (referred to as ‘the Act’ throughout the rest of this chapter). The purpose of the Act is to confer protection against discrimination on grounds of sex (that is, between men and women) and on grounds of being married. Further details can be found in **Sex Discrimination: a guide to the Sex Discrimination Act 1975 (PL 955)**. (Available from the Cabinet Office’s Women and Equality Unit). In any particular case the issue will be whether or not the treatment of the pregnant woman or mother can be regarded as sex discrimination within the meaning of the Act.

Sex discrimination is unlawful in a comprehensive range of employment situations, including recruitment, treatment while at work and dismissal. ‘Employment’ for these purposes means employment under a contract of service or apprenticeship or a contract personally to execute any work or labour. It covers self-employed persons who enter into a contract to work personally.

It is not unlawful under the Act for an employer to discriminate by affording **special treatment** to women in connection with pregnancy or childbirth.

## Direct and indirect discrimination

The Act defines two kinds of discrimination, generally referred to as **direct** and **indirect**. (This chapter only concerns discrimination against women, but the Act also prohibits discrimination against men).

**Direct sex discrimination** arises where a person treats a woman, on the ground of her sex, less favourably than he treats, or would treat, a man.

**Indirect sex discrimination** consists of treatment which is neutral in formal terms as between men and women but is in practice discriminatory in having a disproportionate detrimental effect on one sex. Indirect sex discrimination occurs where an employer applies a condition or requirement as a means of deciding who should be given a benefit, or selected for some form of less favourable treatment, and the requirement or condition:

- is applied or would be applied equally to men and to women;
- is such that the proportion of women who can comply with it is considerably smaller than the proportion of men who can comply with it;
- is to the detriment of the woman in question because she cannot comply with it; and
- cannot be shown by the employer to be objectively justifiable irrespective of the sex of the person to whom it is applied.

Objective justification will be shown if the requirement corresponds to a real need on the part of the employer, and is appropriate and necessary to achieving that objective.

## Direct discrimination in cases of pregnancy

In the **Dekker** case, the European Court of Justice held that an employer who refuses to recruit a woman who is pregnant because of the adverse consequences for him of her pregnancy is acting in breach of the EC Equal Treatment Directive. The Court held that, as pregnancy is a condition unique to women, a woman refused employment on account of her pregnancy has suffered direct discrimination on grounds of sex. It is not necessary to consider whether or not a man would have been treated more favourably.

In **Hertz**, the Court held that the same principle applies in the case of dismissal of a pregnant woman. However, they went on to hold that it does not apply to all circumstances arising out of pregnancy: in the case of absence due to pregnancy-related illness, if the dismissal was due to absence during the maternity leave period the dismissal would amount to direct sex discrimination. However, if the dismissal was due to absence for pregnancy-related illness after the maternity period, it would not be sex discrimination if a man with a similar sickness record would have been similarly dismissed.

In the case of **Brown v Rentokil**, the European Court has gone on to establish that absence due to pregnancy-related illness during the period extending from the start of pregnancy to the start of maternity leave cannot be taken into account for computation of the period justifying a woman's dismissal under national law.

In the **Webb** case the House of Lords held, following a ruling of the European Court of Justice in that case, that the Sex Discrimination Act 1975 must be interpreted to the effect that dismissal of a woman, because she will be temporarily unavailable for work at a time when to her knowledge her services will be particularly required, will amount to direct

sex discrimination where the contract of employment is for an indefinite period and the reason why she will be unavailable is pregnancy.


In the **Gillespie** case, the European Court established that women on maternity leave are in a special position which requires special protection but which is not comparable with that of a man or woman actually at work. The Court went on to hold that the European equal treatment provisions do not therefore require women to receive full pay or any specified level of pay during maternity leave, provided that the level of pay they do receive is not so low as to prevent them being able to benefit from the maternity leave provisions.

### **Protection based on indirect discrimination**

The law preventing indirect discrimination may additionally afford protection against less favourable treatment on grounds which are in neutral terms but have a disproportionate impact on women, for example because of family commitments or because of having taken a career break.

For example, in a well-known case a rule that applicants for the post of Executive Officer in the Civil Service had to be aged under 28 was challenged as being indirectly discriminatory against women. The employment tribunal noted that many women between 25 and 35 take career breaks, to have children and look after them while young. This was likely to mean that a considerably smaller proportion of women than of men were able to meet the requirement, and its lawfulness would depend on whether or not it was objectively justified.

Protection against indirect discrimination may also be relevant for women resuming work after childbirth. In another case, for example, a woman who had previously worked full-time applied to return to work part-time and this was refused. The employer was held to have applied a requirement that she should work full-time, which was a requirement



with which a considerably smaller proportion of women than of men could comply. The tribunal went on to hold that the employer had not proved that it was objectively justified.

### **Complaints about sex discrimination**

A woman who believes that she has been discriminated against on grounds of sex or marriage is entitled to make a complaint to an employment tribunal (see Chapter 12), or seek assistance in pursuing a claim from the Equal Opportunities Commission (EOC). The EOC is an independent statutory body established by the Sex Discrimination Act, to help enforce the legislation and to promote equality of opportunities between the sexes. The EOC can be contacted at Arndale House, Arndale Centre, Manchester, M4 3EQ (Telephone: 0161 833 9244).

# Chapter 12: Complaints to employment tribunals

## Complaints which may not be made to an employment tribunal

Complaints about infringement of the rights described in this booklet should normally be made to an employment tribunal. Disputes about maternity benefit entitlement, however, cannot be resolved in this way – see the Department for Work and Pensions leaflet, **A guide to maternity benefits (NI 17A)** and the Inland Revenue booklet, **Statutory Maternity Pay manual for employers (CA29)** for details of how to proceed in these cases. Other exceptions are indicated in the text where relevant.

## Time limits

Complaints to an employment tribunal about infringement of the rights described in this booklet must normally be made within three months of the date on which the infringement in question occurred – for example, within three months of the date of the appointment for antenatal care in the case of a complaint about unreasonable refusal of time-off, or within three months of the date of dismissal in the case of a complaint of unfair dismissal. An extension of the time limit can be granted only in exceptional circumstances, where the employment tribunal is satisfied that:

- it was not reasonably practicable for the complaint to have been made any earlier; or
- in sex discrimination cases only, that it is just and equitable in all the circumstances for an extension to be granted.

## Settling a dispute

An employee who believes that she is entitled to make a complaint to an employment tribunal should first seek to resolve the dispute by mutual agreement with her employer – perhaps through the business’s own grievance or appeals procedure, where one exists. If an employee does not try to resolve the problem in this way, any compensation awarded by an employment tribunal at a later stage may be reduced. She and her employer may also seek advice from a conciliator of the Advisory Conciliation and Arbitration Service (ACAS). However, it should be noted that the time limit for making a complaint to an employment tribunal will still apply and will not normally be extended to allow for the fact that attempts have been made to settle the dispute in advance.

## Procedure for making a complaint to an employment tribunal

An employee who wishes to make a complaint to an employment tribunal should go to her local Employment Service jobcentre which will provide her with a copy of the booklet **How to apply to an employment tribunal** containing a copy of the application form **IT1** – or **IT1 (Scot)** in Scotland – which explains the procedure and gives the address of the employment tribunal office to which the completed form should be sent.<sup>16</sup>

When the employment tribunal office receives the completed form it will send a copy to a conciliator of the Advisory, Conciliation and Arbitration Service who will attempt to get the two sides to reach a settlement of the complaint.

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<sup>16</sup> This booklet can also be obtained from the DTI Publications Orderline: 0870 1502 500.

If conciliation is not possible or fails, the employment tribunal will hear the case. Both parties should attend. They may claim travelling expenses and other expenses within certain limits. Employment tribunal hearings are conducted informally and in a way which makes it easy for the parties to present their own case if they wish to do so. However, if either party wants to be represented – whether by a lawyer or by someone else such as a trade union, an employer’s association, a relative or a friend – this is permitted.

## **REMEDIES**

### **Remedies for unreasonable refusal of time off for antenatal care**

If the employment tribunal finds that the employee was unreasonably refused time off, it will order the employer to pay her an amount equal to the amount she would have received had she been allowed time off. No deduction will be made from the award to take account of any wages or salary received by the employee for working during the period when she should have been allowed time off.

If the employment tribunal finds that the employee was allowed time off but did not receive her normal rate of pay during that period, it will order the employer to pay the money, or the balance of the money, due to her.

### **Remedies for unfair dismissal**

If the employment tribunal finds that the employee was unfairly dismissed or selected for redundancy, it can order the employer to reinstate her in her old job or to re-engage her in a similar one – if that is what she wants. If she is reinstated or re-engaged, her continuity of employment will be preserved. If neither reinstatement nor re-engagement is

practicable, or if the employee does not want to return to work for the employer, the employment tribunal will instead make a cash award of compensation to be paid to the employee by the employer. If the employment tribunal has ordered reinstatement or re-engagement and the employer fails to comply with that order, further compensation will be awarded. For further details of remedies in cases of unfair dismissal, see **Unfairly dismissed? (PL 712)** and **Dismissal – fair and unfair: a guide for employers (PL 714)**.

### **Remedies for sex discrimination**

If the employment tribunal finds that a person has been discriminated against, it may make a declaration, a recommendation that the employer take action to remedy the discrimination, or an award of compensation. For further details of remedies in cases of sex discrimination, see **Sex discrimination: a guide to the Sex Discrimination Act 1975 (PL 955)**. There is no statutory maximum on awards in cases of sex discrimination. Such awards may also include an amount for injury to feelings.

# Annex A: Example of a standard letter seeking confirmation of date of childbirth and return to work after additional maternity leave

**(Employers:** Please refer to Chapter 7 of the booklet before sending this letter. You should also check whether you have arrangements within your own business which require you to follow a different procedure.)


Date:

Dear (name of employee)

I am writing to you about your maternity leave. I believe you should have had your baby by now. I hope that everything is going well for you and the baby.

When you went on maternity leave, it was on the basis that you intended to return to work. I am writing to find out if this is still your intention. You are entitled to carry on taking maternity leave for 29 weeks from the time of the baby's birth. This period of 29 weeks includes the week in which you had your baby. To work out when your maternity leave ends you should count 29 weeks from the Sunday of the week in which your baby was born.

In order for me/us to plan my/the business around your returning to work I need to know whether you still intend to return to work. To work out when you are due to return I need to know the date on which your baby was born. You therefore need to let me know in writing when the baby was born and whether you intend to return to work. If you wish, you can do this by completing the details required in the box at the bottom of this letter and returning it to me. **You must send this information to me within 21 days of receiving this letter.** I would suggest you keep this letter safe along with a copy of your response. I am required to point out that if you do not provide the information



requested by me, in writing, within 21 days of receiving this letter, you will no longer have the full protection of the law relating to women taking maternity leave. The law would allow me to take disciplinary action. Disciplinary action could involve a penalty or, in extreme cases, dismissal and you would not be able to rely on making a complaint to an employment tribunal that you had been treated wrongly **on the grounds that you took additional maternity leave.**

I must stress that I hope that there will be no need for any disciplinary measures and that you will send me the information as I have requested.

If you have any difficulty with this request or if you have had to change your plans in any way and would like to talk through your options, please get in touch with [give name and contact telephone of someone in the company who can help] for advice.

**TO BE COMPLETED BY EMPLOYEE AND RETURNED TO EMPLOYER WITHIN 21 DAYS OF RECEIPT**

**CONFIRMATION OF DATE OF CHILDBIRTH AND INTENTION TO RETURN TO WORK** (see Chapter 7 of the Maternity rights booklet)

My baby was born on (give the date on which your baby was born):

.....

I intend/no longer intend\* to return to work at the end of my additional maternity leave (\*delete as appropriate)

**NAME:**

**SIGNATURE:**

**JOB TITLE:**

**DATE:**

# Annex B: Where to find further information

## Useful addresses

### ACAS main offices

#### Midlands

Warwick House, 6 Highfield Road, Edgbaston, Birmingham B15 3ED  
Anderson House, Clinton Avenue, Nottingham NG5 1AW

#### Northern

Commerce House, St Alban's Place, Leeds LS2 8HH  
Cross House, Westgate Road, Newcastle upon Tyne NE1 4XX

#### North West

Commercial Union House, 2-10 Albert Square, Manchester M60 8AD  
Pavilion 1, The Matchworks, Speke Road, Speke, Liverpool, L19 2PH

#### South West

Regent House, 27a Regent Street, Clifton, Bristol, BS8 4HR

#### London, Eastern and Southern

Clifton House, 83-117 Euston Road, London NW1 2RB  
Ross House, Kempson Way, Suffolk Business Park, Bury St Edmunds,  
Suffolk, IP32 7AR  
Suites 3-5, Business Centre, 1-7 Commercial Road, Paddock Wood,  
Kent TN12 6EN  
Westminster House, Fleet Road, Fleet, Hants GU51 3QL

#### Scotland

Franborough House, 123-157 Bothwell Street, Glasgow, G2 7JR

#### Wales

3 Purbeck House, Lambourne Crescent, Llanishen, Cardiff CF14 5GJ

#### Head Office

Brandon House, 180 Borough High Street, London, SE1 1LW

## **Other addresses**

### **Equal Opportunities Commission (EOC)**

Arndale House, Arndale Centre, Manchester M4 3EQ

Tel: 0161 833 9244 Fax: 0161 838 8312

### **EOC (Scotland)**

St Stephens House, 279 Bath Street, Glasgow G2 4JL

Tel: 0141 248 5833 Fax: 0141 248 5834

### **EOC (Wales)**

Windsor House, Windsor Place, Cardiff CF10 3GE

Tel: 029 20343552 Fax: 029 20641079

### **Commission for Racial Equality**

Elliot House, 10-12 Allington Street, London SW1E 5EH

Tel: 020 7828 7022

### **Disability Rights Commission**

Freepost MID 02164, Stratford-upon-Avon CV37 9BR

Tel: 08457 622 633

### **Law Centres Federation**

Duchess House, 18-19 Warren Street, London W1T 5LR

### **Maternity Alliance**

45 Beech Street, London EC2P 2LX

Tel: 020 7588 8582

## Useful telephone numbers and internet sites

### ACAS helplines

Birmingham	(0121) 456 5856
Bristol	(0117) 946 9500
Cardiff	(029) 2076 1126
Fleet	(01252) 811868
Glasgow	(0141) 204 2677
Liverpool	(0151) 427 8881
Leeds	(0113) 243 1371
London	(020) 7396 5100
Manchester	(0161) 833 8585
Newcastle upon Tyne	(0191) 261 2191
Nottingham	(0115) 969 3355

ACAS website – [www.acas.org.uk](http://www.acas.org.uk)

Tiger website – [www.tiger.gov.uk](http://www.tiger.gov.uk) (for tailored information on maternity rights)

Maternity Alliance advice line – 020 7588 8582 (information and advice on all aspects of maternity, parental rights and benefits)

Parentline – 0808 800 2222 (confidential freephone helpline run by Parentline Plus providing support to families)

Childcare Link - 08000 96 02 96 (freephone helpline for childcare information), website – [www.childcarelink.gov.uk](http://www.childcarelink.gov.uk)

Working Families' Tax Credit helpline – 0845 609 5000

Department for Work and Pensions website – [www.dwp.gov.uk](http://www.dwp.gov.uk)  
(advice for employees claiming social security)

Department for Work and Pensions employer's helpline – 08457 143 143  
(for employers seeking advice on Statutory Maternity Pay)

Inland Revenue advice lines – 0845 60 70 143 (new employers),  
0845 7 143 143 (experienced employers), website –  
[www.inlandrevenue.gov.uk/employers/employee\\_pregnant.htm](http://www.inlandrevenue.gov.uk/employers/employee_pregnant.htm)

# Annex C: Publications

## Other employment legislation publications

The following booklets on employment and trade union legislation can be obtained free of charge from Jobcentres and other offices of the Employment Service. They are also available by post from the DTI Publications Orderline, (tel: 0870 1502 500, fax: 0870 1502 333, email: [publications@dti.gsi.gov.uk](mailto:publications@dti.gsi.gov.uk)).

- PL 865 – Unjustifiable discipline by a trade union
- PL 866 – Trade union executive elections
- PL 871 – Union membership: rights of members and non-members
- PL 867 – Trade union funds and accounting records
- PL 868 – Trade union political funds
- PL 944 – The payment of trade union subscriptions through the check-off: a guide for employers, trade unions and their members
- PL 869 – Industrial action and the law: a guide for employees, trade union members and others
- PL 870 – Industrial action and the law: a guide for employers, their customers and suppliers, and others
- PL 943 – Industrial action and the law: a guide for individuals on the right to stop the unlawful organisation of industrial action
- PL 962 – Statutory Code of Practice: Industrial action ballots and notice to employers
- PL 928 – Statutory Code of Practice: Picketing
- PL 500 – Statutory Code of Practice: Access to workers during recognition and derecognition ballots
- PL 712 – Unfairly dismissed?
- PL 707 – Rights to notice and reasons for dismissal
- PL 714 – Dismissal – fair and unfair: a guide for employers

- PL 716 – Individual rights of employees: a guide for employers and employees
- PL 699 – Employment rights on the transfer of an undertaking
- PL 700 – Written statement of employment particulars
- PL 702 – Time off for public duties
- PL 704 – Itemised pay statement
- PL 724 – Guarantee payments
- PL 718 – Your rights if your employer is insolvent
- PL 705 – Suspension from work on medical or maternity grounds under health and safety regulations
- PL 720 – Benefit repayment: a guide for employers
- PL 711 – Continuous employment and a week's pay: rules for calculation
  - How to apply to an employment tribunal
  - What to do if taken to an employment tribunal
  - Hearings at employment tribunals
  - Appeals to employment tribunals concerning improvement or prohibition notices under Health and Safety at Work etc. Act 1974
- PL 703 – Time off for job hunting or to arrange training when facing redundancy
- PL 808 – Redundancy payments
- PL 810 – Contracts of employment
- PL 827 – Limits on payments
- PL 833 – Redundancy consultation and notification
- RPL 1 – Offsetting pensions against redundancy payments

- PL 960
  - Sunday shop and betting work: employees' rights
  - Time off for dependants: a guide for employers and employees
- PL 506
  - Family emergency? Your right to time off
- PL 507
  - Maternity rights: a short guide
  - Parental leave: a short guide

The following booklets are available from national minimum wage enquiries on 0845 6000 678:

National minimum wage: a short guide for employees

National minimum wage: a short guide for employers

National minimum wage: a short guide for young workers

PL 501 A detailed guide to the national minimum wage

A Guide to the Working Time Regulations is available by calling 0845 6000 925

## **ACAS Publications**

### **Advisory Handbooks**

Employing people: a handbook for small firms

Discipline at work

Employment handbook

### **Advisory Booklets**

Job evaluation: an introduction

Employee appraisal

Introduction to payment systems

Redundancy handling

Personnel records

Changing patterns of work

Absence and labour turnover

Appraisal-related pay

Recruitment and induction

Health and employment

Employee communications and consultation

Effective organisations: the people factor

Supervision

The company handbook

Teamwork success through people

Employment policies

For details of how to order ACAS Publications, please write to  
ACAS Reader Ltd, P.O.Box 16, Earl Shilton, Leicester LE9 8ZZ;  
or telephone: 01455 852 225

For all other enquiries, see list of ACAS public enquiry points.



