

Maternity rights

a guide for employers and employees

Babies due on or after 6 April 2003

Babies due earlier – see PL 958 (Rev 7)

employment legislation

dti

Department of Trade and Industry

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Introduction

Following amendments to legislation, this guide has been updated to reflect maternity rights as they apply to pregnant employees and new mothers whose expected week of childbirth begins on or after 6 April 2003. Women whose babies are due before that date should see the previous version of the guide, PL 958 (Rev 7).

The Employment Rights Act 1996, as amended by the Employment Relations Act 1999 and the Employment Act 2002, 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 and the Maternity and Parental Leave (Amendment) Regulations 2002.

This guide 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. It describes the position which applies in England, Wales and Scotland. In Northern Ireland corresponding legislation applies.

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 office or social security/Jobcentre Plus 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. **Employees who are fathers of new babies or the partner of the mother may also have a right to paternity leave with pay and both parents may be entitled to take parental leave and time off for dependants. These rights are summarised at the end of Section 4. Employees who are parents of young children may also have the right to request flexible working patterns – see the section ‘Return to work part-time after maternity leave and the right to request flexible working patterns’ in Section 8 of this guide.**

A full list of guidance booklets on employment protection legislation and related equal opportunities legislation is given at the back of this booklet in Annex D.

The Department of Trade and Industry has responsibility for employment legislation. Responsibility for sex discrimination legislation also lies with this Department in its Women and Equality Unit.

The latest version of this booklet is published on the Internet at www.dti.gov.uk/er/individual/matrights-pl1958.pdf

For further information on employment relations issues, see www.dti.gov.uk/er

Help

The interactive website www.tiger.gov.uk has separate sites designed for employers and employees which take the user through the rights and notification requirements relating to both maternity and paternity leave and pay.

For further help with maternity leave, please contact ACAS on 08457 47 47 47.

For further help with maternity pay, employers can contact the Inland Revenue on 08457 143 143. Employees should contact their local Inland Revenue office – you'll find them in your local telephone book under 'Inland Revenue'.

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Section 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); or
- 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 Section 10 for further details.

SEX DISCRIMINATION

- Women are also protected under legislation which outlaws unfair treatment, including dismissal, on grounds of their sex or because they are married. See Section 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, making her choice on a term by term basis if she wishes. 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 unemployed¹.

- To qualify for maternity leave, a woman must be an employee, that is to say must work under a contract of employment.
- To qualify for Statutory Maternity Pay (SMP), a woman must be an employed earner – that is to say must work for someone who is liable to pay the employer's share of her Class 1 National Insurance contributions (in cases of doubt contact your local Inland Revenue office and ask for the Status Inspector).
- To qualify for Maternity Allowance (MA) a woman must be (or have recently been) either an employed or self-employed earner.

The vast majority of people who qualify for leave will also qualify for pay, and vice versa: 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

¹ See booklet *Contracts of employment* (PL 810) for further information about employment status.

in connection with maternity leave do not apply to office holders (such as members of the police force, MPs, the judiciary and some company directors) or to 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.

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 notification for the start of maternity leave for each employer.



Section 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 as long as these are advised by a registered medical practitioner, registered midwife or registered health visitor.

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 week².

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 particulars³. 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

² 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).

³ 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 Section 12.

Section 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;**
- **does not return to work at the end of her leave in circumstances where her employer gives her insufficient or no notice of when it should end; or**
- **has been suspended from work for health and safety reasons connected with her maternity (Section 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).

In addition, from 6 April 2003, an employee who doesn't return from her maternity leave on time because

- her employer hasn't properly notified her of the date it ends and she reasonably believes it hasn't ended;

or

- her employer has given her less than 28 days' notice of the date it ends and it isn't reasonably practicable for her to return on that date;

has a right not to suffer detrimental treatment for returning late. See Section 6 for an explanation of the notification requirements.

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 Section 12 for further details). Detrimental treatment may also amount to unlawful discrimination on grounds of sex or marriage.

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; or**

- **taking, or seeking take, any of the benefits of ordinary maternity leave.**
- **It is also unlawful to dismiss her for not returning to work at the end of her leave in circumstances where her employer gives her insufficient or no notice of when it should end.**

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.

In addition, from 6 April 2003, it is unlawful to dismiss an employee who doesn't return from her maternity leave on time because

- her employer hasn't properly notified her of the date it ends and she reasonably believes it hasn't ended;

or

- her employer has given her less than 28 days' notice of the date it ends and it isn't reasonably practicable for her to return on that date.

See Section 6 for an explanation of the notification requirements.

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 Section 12).

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

On dismissal an employee is entitled to her normal notice or payment in lieu of notice⁴.

If the dismissal is on grounds of redundancy, the employee may be entitled to a redundancy payment⁵. 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 Section 9).

⁴ See booklet *Rights to notice and reasons for dismissal* (PL 707).

⁵ See booklet *Redundancy payments* (PL 808).

WRITTEN STATEMENT OF REASONS FOR DISMISSAL

The right to a written statement

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.**

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 Section 12). Failure to provide a written statement of the reasons for the dismissal may also give rise to a claim for unlawful discrimination on grounds of sex or marriage.

Section 4: Maternity leave

KEY FACTS

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

ORDINARY MATERNITY LEAVE

- All pregnant employees are entitled to at least 26 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 26 weeks' continuous employment by the beginning of the 14th week before the expected week of childbirth are entitled to 26 weeks' additional maternity leave.
- Additional maternity leave begins at the end of ordinary maternity leave.
- 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.

OTHER LEAVE ENTITLEMENTS FOR PARENTS

- Employees have rights to paternity leave, parental leave, time off for dependants and a right to request flexible working patterns.

Ordinary maternity leave

All pregnant employees are entitled to a period of 26 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 26 weeks' continuous employment with their employer are also entitled to **additional maternity leave**, which begins at the end of ordinary maternity leave.

The qualifying period of continuous employment of 26 weeks must be completed by the beginning of the 14th 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 Section 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 26 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 notification (see Section 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 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 ordinary 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 as if she hadn't been away.

Whether a bonus is payable to an employee on maternity leave depends on the type of bonus and the terms of the particular bonus scheme. This is a complicated area of the law on which independent legal advice should be sought.

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 counts for assessing seniority, pension rights and other personal length-of-service payments, such as pay increments under her contract of employment.

Annual leave accrues in the same way and at the same rate as if the employee was at work while she is on ordinary maternity leave. Even if the employee has no right to annual leave under her contract of employment, she will be entitled to the equivalent of four weeks' paid annual leave under the Working Time Regulations 1998. This would apply in the usual way during her ordinary maternity leave period.

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

An employee cannot take annual leave during her ordinary maternity leave but, subject to the usual arrangements with her employer, there is no reason why she cannot take a period of annual leave immediately before or after maternity leave.

THE CONTRACT OF EMPLOYMENT DURING ADDITIONAL MATERNITY LEAVE

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.
- 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.
- 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 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 (see *Equal pay: a guide to the Equal Pay Act 1970* (PL 743)) and the Sex Discrimination Act 1975

(see Section 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 as if she had not been absent. An employee returning to work from additional maternity leave is entitled to return with her seniority, pension rights and similar rights as they would have been if her employment prior to additional maternity leave were continuous with the period of employment following it.

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).

Under the Working Time Regulations 1998, an employee is entitled to four weeks' paid annual leave. This applies during her additional maternity leave period. Guidance on calculating statutory entitlement to annual leave can be found in *Your guide to the Working Time Regulations*.

An employee will only be entitled to accrue any *contractual* annual leave she is normally entitled to if she agrees this with her employer.

The entitlement to leave under the Working Time Regulations 1998 must be used during the leave year in which the leave has been awarded and cannot be carried over into a new leave year. An employee cannot take

annual leave during her additional maternity leave but, subject to the usual arrangements with her employer, there is no reason why she cannot take a period of annual leave immediately before or after maternity leave, assuming that this is within the leave year to which leave has been assigned. The only circumstances where workers can receive payment in lieu for outstanding leave under the Regulations are where the employment relationship with the employer has ended.

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 Section 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 her⁶.

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 normally⁷.

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.

⁶ Schedule 5 of the Social Security Act 1989 sets out provision governing occupational pensions during any period of paid maternity leave.

⁷ 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.

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. Public funding is available to anyone who meets the qualifying criteria⁸. An employee in these circumstances may also be entitled to resign and make a complaint of constructive unfair dismissal to an employment tribunal (see Section 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.

OTHER LEAVE ENTITLEMENTS FOR PARENTS

Paternity leave: eligible employees whose babies are due or born on or after 6 April 2003 can take up to two weeks' paid leave to care for the new baby and support the mother. For further information, see *Working Fathers: Rights to Paternity Leave and Pay* (PL 517).

⁸ For details see the Legal Services Commission (LSC) booklet *A practical guide to Community Legal Service funding by the Legal Services Commission* available from the LSC Leafletline on 0845 3000343.

Parental leave: employees (both mothers and fathers) who have completed one year's service with their employer are entitled to up to thirteen weeks' unpaid parental leave to care for their child. The leave can usually be taken up to five years from the date of birth: in the case of parents of disabled children, they can take up to eighteen weeks' leave up to the child's eighteenth birthday. For further information, see *Parental leave* (PL 509).

Time off for dependants: all employees are entitled to take a reasonable amount of unpaid time off work to deal with an emergency or unexpected situation involving a dependant. This can include where necessary taking time off to assist a dependant when she is having a baby. 'Dependant' can include the husband, wife, child or parent of the employee. (See *Time off for dependants* (URN 99/1186)).

From 6 April 2003 eligible employees (both fathers and mothers) have the right to request flexible working patterns – see **'Return to work part-time after maternity leave and the right to request flexible working patterns'** in Section 8 of this guide.

Section 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 26 weeks' Statutory Maternity Pay (SMP).
- To take advantage of this right, an employee must give her employer proper notification (see Section 6).
- The rate of SMP is 90% of the woman's average weekly earnings for the first six weeks and the lesser of £100 a week or 90% of her average weekly earnings for the remaining 20 weeks.
- Employers are reimbursed 92% of the SMP they have paid out or 104.5% if their total National Insurance liability in the previous tax year was no more than £40,000.
- Women who are not entitled to SMP but meet the qualifying conditions based on their recent employment and earnings record may claim from their social security/Jobcentre Plus office up to 26 weeks' Maternity Allowance (MA).
- Women will receive a weekly payment of MA worth 90% of their average weekly earnings up to a maximum of £100 a week.
- 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 employees should see the Department for Work and Pensions leaflet *A guide to maternity benefits* (NI 17A).

Maternity Allowance (MA) is paid by the social security/Jobcentre Plus office to qualifying women. It is based on the woman's recent employment and earnings record. For more information employees should 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 employer's help book E15 *Pay and time off work for parents for babies due or born on or after 6 April 2003* (available from their Employer's Orderline on 08457 646 646) or may phone the employers helpline on 08457 143 143 (hearing impaired employers can call 0845 602 1380).

Women who do not qualify for SMP or MA

If an employee doesn't qualify for SMP, her employer should give her form SMP1 *Why I cannot pay you SMP* (available from Jobcentre plus/social security offices or www.dwp.gov.uk/advisers/claimforms.htm) which should explain why she doesn't qualify. The employee must send this form to her social security office with her completed MA form (which she can get from the office) to claim MA.

If a woman's claim for MA is unsuccessful the social security/Jobcentre Plus office 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 social security/Jobcentre Plus office. 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)⁹.

Families in which one parent is working for 16 hours or more a week may alternatively be entitled to Working Families Tax Credit, which is being replaced by the Child Tax Credit and Working Tax Credit from 6 April 2003. Child Tax Credit is a way to claim money for children whether or not the claimant is in work. Working Tax Credit supports working households on low incomes by topping up earnings. It includes support for the cost of qualifying childcare. Depending on household income, a worker may be entitled to Working Tax Credit if he or she normally works at least 16 hours a week, provided he or she is responsible for a child or has a disability¹⁰.

⁹ See the Department for Work and Pensions leaflet *A guide to Income Support* (IS20), available from social security offices.

¹⁰ For further information call the Tax Credits Helpline on 0845 300 3900, textphone 0845 300 3909.

The right to SMP

All employees who are pregnant or who have just given birth are entitled to a maximum of 26 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 Section 6).

As long as the employee leaves work after the start of the fifteenth week before her baby is due, she will qualify for SMP.

A qualifying employee may continue working right up until the date her baby is born and still retain her full 26 week entitlement to SMP.

The rate of SMP

The first six weeks of SMP are paid at 90% of the employee's average weekly earnings.

The remaining weeks are paid at the lesser of the SMP standard rate or 90% of the woman's average weekly earnings.

The SMP standard rate is £100 per week at the time of publication¹¹.

Payment of SMP

SMP is paid whether or not the employee intends to return to work for her employer. Once entitlement to SMP has been established, the employer must pay SMP even if the employee leaves the employment before the SMP starts or during the maternity pay period. 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 social security/Jobcentre plus offices.

SMP is payable only when an employee is absent from work. It is a weekly benefit, and the benefit week usually begins on a Sunday. However SMP may start on other days of the week if payment is triggered by early birth (before the woman has stopped work to start her maternity leave) or because she is absent from work for a pregnancy related reason in the four weeks immediately preceding her expected week of childbirth. In those cases it will start the day after the day of birth or the day after the first day of absence from work for a pregnancy related reason. 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.

¹¹ For the current rate of SMP employees should contact their nearest Inland Revenue office. Employers should call the employers' helpline: 0845 7 143 143.

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

SMP may be payable outside the UK¹².

Employer's reimbursement for SMP

Employers can deduct from their next payment of PAYE and National Insurance contributions, student loan and construction industry payments 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 £40,000 or less – can deduct 100% of the SMP they have paid out, plus 4.5% for the tax years 2002/3 and 2003/4 in compensation for employers' NI costs.

The right to MA

All women who are pregnant or who have just given birth are entitled to claim a maximum of 26 weeks' MA from the social security/Jobcentre plus office if:

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

or

- They are self employed.

¹² For further details of when SMP is payable outside the UK, employees should contact their nearest Inland Revenue office. Employers should call the employers' helpline: 08457 143 143.

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 averaged over a 13 week period.

Employees wishing to claim MA should ask for an MA claim pack at their Jobcentre Plus/social security Office, or maternity or child health clinic. A woman may continue working right up until the date her baby is born and still retain her full 26 week entitlement to MA.

For further details contact your local Jobcentre Plus/social security office.

The rate of MA

The MA weekly rate is the lesser of the MA standard rate or 90% of the woman's average weekly earnings. At the time of publication, the standard rate of MA is £100¹³.

Payment of MA

MA is payable only when a woman is absent from work. It is a weekly benefit, and the benefit week usually begins on a Sunday. However it may start on other days of the week if payment is triggered by early birth (before the woman has stopped work to start her maternity leave) or because she

¹³ See leaflet *Social Security benefit rates (GL 23)* to check current standard rate.

is absent from work for a pregnancy related reason in the 4 weeks immediately preceding the expected week of childbirth. In those cases it will start the day after the day of birth or the day after the first day of absence from work for a pregnancy related reason. 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 26 week period of entitlement to SMP or MA. This rule applies even if she resumes work during the 26 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 26 week period.

A woman not entitled to either SMP or MA is also disqualified from receiving SSP but the disqualification lasts for an eighteen week period surrounding the expected birth of the child. The eighteen week period starts from the Sunday of the week the woman is incapable of work because of her pregnancy if this occurs in the four weeks before her expected week of childbirth, or the Sunday of the week her baby is born, whichever is earlier.

Section 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 an employee must notify her employer no later than the end of the 15th week before the week her baby is due or as soon as reasonably practicable:
 - 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 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.
- She can give notice for her SMP at the same time: to qualify for SMP only, she must give at least 28 days' notice of the date she expects her SMP to start and provide medical evidence of pregnancy.
- She can change her leave dates as long as she gives 28 days' notice.

EMPLOYER'S ACKNOWLEDGMENT

- An employer must notify the employee of the end date of her leave within 28 days of receiving her notification.

START OF MATERNITY LEAVE BEFORE THE NOTIFIED DATE

- An employee cannot normally start her maternity leave unless she has given her employer the required 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 day after 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 fourth week before the expected week of childbirth but before the date she has notified, her maternity leave period begins automatically on the day after the first day of her absence. She must notify her employer that she is absent from work wholly or partly because of pregnancy and of the date on which her absence for that reason began as soon as is reasonably practicable.

Advance notification

To claim maternity leave, an employee must notify her employer, no later than the end of the fifteenth week before the expected week of childbirth of:

- the fact that she is pregnant;
- the expected week of childbirth; and

- the date when she intends to start taking leave (in writing if her employer requests it), which must be a date no earlier than the beginning of the 11th week before the expected week of childbirth.

Employees may wish to use the **maternity leave plan** on the Government's interactive website (www.tiger.gov.uk) for this purpose (and to give notice at the same time of when she intends her SMP to start). For the purposes of claiming SMP, the employee must give her employer at least twenty-eight days' notice of the date she wishes to start receiving her SMP (if she has not already done so when giving the notice required for leave). This notice must be in writing if her employer requests it. In addition, for the purposes of claiming SMP she must give her employer medical evidence of the date her baby is due and, where appropriate, born. This will normally be a maternity certificate (form Mat B1), although other evidence may be accepted, which must be signed by her doctor or midwife no earlier than twenty weeks before the expected week of childbirth.

The Mat B1 certificate should be given to the employer by the end of the third week of what would be the maternity pay period. If there is good reason why the employee has not given her employer the MATB1 certificate within that three week period the time limit may be extended to the end of the thirteenth week of her maternity pay period but no longer. The employer cannot start paying SMP until he has the certificate.

If an employee is claiming leave but not SMP, she only needs to provide a maternity certificate if her employer requests it.

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 ask a Decision Maker at her local Inland Revenue Office to decide her entitlement.

Change of leave dates

Once an employee has notified her employer of the date she wishes to start her ordinary maternity leave, she can change this date as long as she notifies her employer of the new start date by whichever is the earlier of:

- 28 days before the date she originally intended to start her leave

or

- 28 days before the new date she wants to start her leave;

unless it isn't reasonably practicable to do so, in which case she must notify her employer as soon as is reasonably practicable. The notification should be in writing if the employer requests it.

Employer's notification of end of leave

An employer who has had proper notification of the intended start date for maternity leave should in turn notify their employee of the date on which her leave will end. Employers can fill in the model letter at Annex A of this guide for this purpose. If the employee is entitled to additional maternity leave (see Section 4) her employer should calculate the end date as if she is taking it (see Section 7 for details of when the employee should be expected to return to work after maternity leave). The employer should notify their employee of the end date within twenty-eight days of the employee's notification unless the employee has since changed the date her leave will start. If the employee does change the date she wishes her leave to start, the employer must notify her of the end date within twenty-eight days of the start of her leave.

Employees who haven't been properly notified of when their leave is due to end and do not return to work on time may have protection against victimisation and dismissal for this reason (see Section 3). In addition, where an employee wishes to return early from her leave, she may not be obliged to comply with requirements to give notice of this if her employer hasn't told her when her leave should end (see Section 7).

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 or, if she has changed this date, the most recent date notified. There are however some exceptions to this rule, which are described below.

The SMP pay period generally starts on the Sunday following the day on which she last worked before starting her maternity leave. It may however start on a different day if the baby is born early before the date she has notified or before she has notified any date, or the employee is absent from work for a pregnancy related reason in the 4 weeks before the week baby is due. In those cases SMP starts on the day following the date of birth, or the day following the first complete day she is absent from work for a pregnancy related reason. But see below for the notice a woman must give in these circumstances.

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 day after 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 day after the first day of absence following the beginning of the fourth 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. 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 and of the date on which absence for that reason began.

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. However, time off for attending ante-natal appointments in the four weeks before the expected week of childbirth will not trigger the start of leave (and the employee has the right to time off work to attend antenatal appointments throughout her pregnancy).

Pregnancy-related absences should not be used for disciplinary purposes, in redundancy decisions, or for any other detrimental purpose as this would be unlawful sex discrimination.

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 Sections 3 and 8).

If an employee is employed by her employer during the fifteenth week before the week baby is due and qualifies for SMP and she leaves after the start of the 15th week before the week baby is due, the employer will still have to pay SMP to her. 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 starting on a Sunday 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.

MATERNITY RIGHTS FLOWCHART

GP confirms employee is expecting a baby.

Employee is entitled to paid time off for antenatal care. **See Section 2**

Employee is entitled to 26 weeks ordinary maternity leave (OML) regardless of length of service. **See Section 4**

And;
If they have completed 26 weeks continuous employment by the 14th week before EWC, they are also entitled to 26 weeks additional maternity leave (AML). This is usually unpaid and starts immediately after OML. **See Section 4**

And;
Average weekly earnings at or above Lower Earnings Limit.
Entitled to 26 weeks Statutory Maternity Pay. **See Section 5**

NO?

May be entitled to MA or other benefits. **See Section 5**

Pregnant employee must tell their employer of their intention to take maternity leave by the 15th week before EWC, unless this is not reasonably practical. She will need to tell employer:

- that she is pregnant
 - the week her baby is expected to be born
 - when she wants her maternity leave to start (in writing if employer requests it).
- Employee qualifying for SMP must give her employer at least 28 days' notice of when she wants it to start and medical evidence of EWC (maternity certificate Mat B1 can be used for this purpose). **See Section 6**

Employee must give 28 days notice of any change of dates. **See Section 6**

Employer must respond to employees' notification within 28 days, setting out when they expect the employee to return to work if they take their full leave entitlement. **See Section 6**

Earliest start date for maternity leave is the beginning of the 11th week before EWC. **See Section 6**

If employee is absent from work with a pregnancy related illness during the four weeks before the start of EWC, maternity leave starts automatically regardless of when she actually wants her maternity leave to start. **See Section 6**

If baby born before the date employee has notified (or before any notification), maternity leave period starts automatically and employee must give employer notification as soon as is reasonably practicable. **See Section 6**

Employee continues to benefit from all terms and conditions during ordinary maternity leave except pay, and some of them during additional maternity leave **See Section 4**

Employee returns to same job after OML as if she hadn't been away. **See Section 8**

Employee returns to same job after AML as if she hadn't been away, unless not reasonably practicable and then should be offered similar job on terms and conditions no less favourable than original job. **See Section 8**

Childbirth before the intended start date

If childbirth occurs before the woman intended her entitlement to start, it starts automatically from the day after 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 baby's birth, or until her MA starts. If however the illness is pregnancy-related and occurs after the beginning of the fourth week before the expected week of childbirth, MA starts automatically on the day after the first day she is absent from work because of a pregnancy related illness.

Length of SMP or MA period

The SMP or MA period generally lasts until 26 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, after the baby is born, a woman starts work for an employer other than the one paying her SMP, unless she had worked for that employer in the fifteenth week before the week the baby is due¹⁴.

¹⁴ 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 supplement to the Inland Revenue's employer's help book *Pay and time of work for parents for babies due or born on or after 6 April 2003* (E 15) available from their Employer's Orderline on 08457 646 646.

Section 7: Return to work after maternity leave

KEY FACTS

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

- The employer must notify the employee of the date her leave will end.
- 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 28 days' notice of her date of return unless her employer has failed to give her appropriate notification of the date of the end of her leave.

RETURN TO WORK AT THE END OF MATERNITY LEAVE

- An employee who does not qualify for additional maternity leave 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 (which should be the date notified by her employer).
- An employee does not have to give her employer advance notice if she intends to return to work immediately after the end of her additional maternity leave period (which should be the date notified by her employer).
- An employee must give the normal notice if she doesn't intend to return to work after her maternity leave.

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

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

- the first working day after the end of her 26 weeks' ordinary maternity leave period; or
- if she qualifies for additional maternity leave, the first working day after the end of her 52 weeks' ordinary and additional maternity leave combined; or
- within any longer leave period allowed on a voluntary or contractual basis by her employer.

Her employer should have notified her of this date within twenty-eight days of her notification that she is taking leave – see Section 6.

Return to work before the end of ordinary or additional maternity leave

- If the employee intends to return to work before the date her employer notified her of (which will be the date her additional maternity leave ends, unless she didn't qualify for this, in which case it will be the date her ordinary maternity leave ends) she must give her employer 28 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 26 weeks' ordinary maternity leave she must give her employer 28 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 28 days' notice, her employer may postpone her return until 28 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.
- Exceptionally, the employee is not obliged to give 28 days' notice of her early return if her employer didn't give her appropriate notification of when her leave should end (see Section 6).

Return to 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.

Return to work at the end of additional maternity leave

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

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.

If an employee can't return to work because of a pregnancy-related illness – for example post-natal depression – both employer and employee should talk to ACAS about the situation. In particular, employers should be aware that employees may have protection under the sex discrimination legislation if they are disciplined or dismissed in such circumstances.

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 notice¹⁵.



¹⁵ See booklet *Rights to notice and reasons for dismissal* (PL 707).

Section 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 Section 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 Section 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.
- Employees who wish to vary their working pattern on return from maternity leave have the right to request a flexible working pattern.

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 Section 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 Section 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 – for more information see *Parental leave – a guide for employers and employees* (PL 509)). 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 – for more information see *Parental leave – a guide for employers and employees* (PL 509).

Return to work after parental leave taken immediately after the end of additional maternity leave

An employee who takes a period of parental leave immediately after a period of additional maternity leave is entitled to return to her original job or, if it is not reasonably practicable for her to return to that job, to another which is similar.

Employees who return to work after two consecutive periods of maternity leave

It is possible that an employee who takes her full entitlement to maternity leave of fifty-two weeks may become pregnant while on leave and become entitled to another, consecutive period of leave without returning to work. An employee who takes two consecutive periods of maternity leave which include one or more periods of additional maternity leave is entitled to return to her original job or, if this is not reasonably practicable, to another which is similar.

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.

Note that:


- 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 Section 11).

Return to work part-time after maternity leave and the right to request flexible working patterns

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, from 6 April 2003, employees who are parents of young children have the right to request flexible working patterns. Employers are required to give such request serious consideration. In order to qualify for this right a parent must:

- be an employee;
- have a child under 6, or 18 where the child is disabled;
- be responsible for the child as its parent or as the partner of the parent (including adoptive and foster parents);
- be making the application to enable them to care for the child;
- have worked for their employer continuously for 26 weeks at the date the application is made; and
- have not made another application to work flexibly under the right during the past twelve months.



If the request is agreed, this will form a permanent change to the employee's terms and conditions to incorporate the new working pattern. For further information, see *Flexible working: the right to apply – a basic summary* (PL 516).

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 provision, criterion or practice 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 fulfil 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 Section 11.

Employees may wish to contact the Equal Opportunities Commission for further advice. Employers in England can contact Equality Direct for further advice. See Annex C for contact details.

DISMISSAL ON OR AFTER RETURN TO 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 Section 12).**
- **Dismissal or other detrimental treatment due to these circumstances may also amount to unlawful sex discrimination (see Section 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 Section 12). It is unlawful to dismiss in certain circumstances where an employee fails to return from her maternity leave on time because her employer has given inadequate or no notification of the end date of her leave (see Section 3).

Dismissal, selection for redundancy or other detrimental treatment in these circumstances may also amount to unlawful discrimination on grounds of sex or marriage (see Section 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 Section 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 Section 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 Section 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 RETURN TO 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 Section 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 Section 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 as if she had not been absent.

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 Section 11). It should also be noted that employees have a right to request flexible working hours – see ‘Return to work part-time after maternity leave and the right to request flexible working patterns’ earlier in this section.

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. Public funding is available for those who meet the qualifying criteria¹⁶.

¹⁶ See the Legal Services Commission (LSC) booklet *A practical guide to Community Legal Service funding by the Legal Services Commission* available from the LSC Leafletline on 0845 3000343.

An employee in these circumstances may also be entitled to resign and make a complaint of constructive unfair dismissal to an employment tribunal (see Section 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 DTI Publications Orderline – see Annex D).

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



Section 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 Section 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 26 weeks once she has qualified for it (see Section 5).

Section 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.
- Employers should inform their employees of any potential risks and the need to provide written notification that they are a new or expectant mother as early as possible.
- 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.
- The same steps should be taken if the new or expectant mother has provided 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 section concerns the protection of the health and safety of women of childbearing age including new and expectant mothers. The term 'new and expectant mothers' includes women:

- who are pregnant;
- who have given birth within the last six months;


or

- who are breastfeeding.

The maternity suspension provisions described below apply to all three of these categories.

Risk assessment

All employers are required under the Management of Health and Safety at Work (MHSW) Regulations 1992, as amended, to assess risks to the health and safety of their employees and others including risks to new and expectant mothers and their children. New and expectant mothers may be able to claim unlawful sex discrimination (see Section 11) if their employer fails to carry out a risk assessment.



New and expectant mothers may be particularly at risk from different physical, biological and chemical agents, processes and working conditions. These risks will vary depending on the employees' health, and at different stages of pregnancy. Some of the more common risks might be:

- Lifting/carrying of heavy loads
- Standing or sitting for long lengths of time
- Exposure to infectious diseases
- Exposure to lead
- Work-related stress
- Workstations and posture
- Exposure to radioactive material
- Other people's smoke in the workplace
- Threat of violence in the workplace
- Long working hours
- Excessively noisy workplaces

More details of agents, processes, and working conditions that could present a risk to the health or safety of new or expectant mothers and the action employers must take to avoid any risk are given in guidance produced by the Health and Safety Executive (HSE) – *New and expectant mothers at work – a guide for employers* (HSG 122), available from HSE Books (telephone 01787 881 165).

If risks are identified by the assessment, information about them should be given to all women of childbearing age in the workplace. Employers should 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

should also inform them of the need to receive written notification of pregnancy/breastfeeding as early as possible. This action can be taken through employee representatives. Employees may find it helpful to read the HSE leaflet *A guide for new and expectant mothers who work* (available from HSE books on 01787 881 165). This guide gives advice on health and safety matters including returning to work whilst breastfeeding.


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 the HSE Infoline (telephone 0870 1545 500) to ask for advice.

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 jeopardise 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 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 – see the booklet *Suspension from work on medical or maternity grounds under health and safety regulations* (PL 705).

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 the booklet *Suspension from work on medical or maternity grounds under health and safety regulations* (PL 705). Failure to suspend a pregnant employee on full pay in the absence of a suitable alternative post may also amount to sex discrimination.

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 the booklet *Suspension from work on medical or maternity grounds under health and safety regulations* (PL 705).

Section 11: Sex discrimination

KEY FACTS

- **Women must not be discriminated against directly or indirectly on grounds of their sex or because they are married.**
- **This applies regardless of length of service.**

Protection against sex discrimination

The purpose of the Sex Discrimination Act 1975 (referred to as ‘the Act’ throughout the rest of this section) is to confer protection against discrimination on grounds of sex (that is, discrimination 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 (Rev1), available from the DTI Publications Orderline).

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.

Although not mentioned in the Act, discrimination because of pregnancy is regarded as direct sex discrimination and is unlawful.

Women who are pregnant, have recently given birth or are breastfeeding may have certain additional protections under the Act. 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.

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 section 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 because it has a disproportionate detrimental effect on one sex. Indirect sex discrimination occurs where an employer applies a provision, criterion or practice equally to women and men as a means of deciding who should be given a benefit, or selected for some form of less favourable treatment, but the provision, criterion or practice:

- is such that it would be to the detriment of a considerably larger proportion of women than of men;
- cannot be shown by the employer to be objectively justifiable irrespective of the sex of the person to whom it is applied; and
- is to the detriment of the woman in question.

Objective justification will be shown if the provision, criterion or practice 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

The following summaries of key European Court of Justice rulings in sex discrimination cases set out how European case law has affected domestic legislation on pregnancy-related sex discrimination. It is not intended to be a comprehensive list of all European rulings in this subject area.

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.

In **Hardman**, the Employment Appeal Tribunal held that a failure to carry out a risk assessment in respect of a pregnant worker amounted to direct sex discrimination under the Sex Discrimination Act 1975, in addition to being a failure to comply with general obligations under health and safety legislation.

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 because she is married is entitled to make a complaint to an employment tribunal (see Section 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. Contact details are given in Annex C of this guide.

Section 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, E15 *Pay and time off work for parents for babies due or born on or after 6 April 2003* 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.

A **questions procedure** can be used to establish the facts in a sex discrimination case. The questionnaire can be served on an employer before bringing a complaint to a tribunal, but not more than 3 months after the date of the treatment complained of. Where a complaint has already been made to a tribunal, the questionnaire must be served within 21 days

beginning when the complaint was received by the tribunal. The employer is not obliged to respond, but if the employer refuses to respond, or responds evasively, the employment tribunal can draw inferences. This could include an inference that the reason for the failure to respond properly was because the employer's action was discriminatory. The question and any responses can be admitted as evidence before the tribunal.

A questions procedure for establishing the facts in an equal pay case will be introduced in 2003.

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 assistance from a conciliator of the Advisory Conciliation and Arbitration Service (ACAS) to resolve the dispute whether or not a complaint has already been made to a tribunal. However, it should be noted that the time limit for making a complaint to an employment tribunal will still apply and will not 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 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 sent¹⁷.

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 voluntary settlement of the complaint.

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 for antenatal care, 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.

¹⁷ This booklet can also be obtained from the DTI Publications Orderline: 0870 1502 500 or from the Employment Tribunals Service website (www.ets.gov.uk).

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 an order declaring the rights of the parties, an order requiring the employer to pay the complainant compensation and a recommendation that the employer take action to remedy the discrimination within a specified time. 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: Model letter for employers to acknowledge notification of maternity leave

This letter should be used when only the statutory levels of leave and pay are provided. (Employer must respond within 28 days of receipt of employee's notification).

Date:

Dear [*name of employee*],

Congratulations and thank you for telling me about your pregnancy and the date that your baby is due. I am writing to you about your maternity leave and pay.

As we have discussed, you are eligible for **26 weeks' ordinary maternity leave/52 weeks' maternity leave (26 weeks' ordinary maternity leave plus 26 weeks' additional maternity leave)** [*delete as appropriate*].

Given your chosen start date of [*insert date*], your maternity leave will end on [*insert date*].

If you want to change the date your leave starts you must, if at all possible, tell me at least 28 days before your proposed new start date or 28 days before [*insert date leave starts*] (your original start date), whichever is sooner.

If you decide to return to work before [*insert date leave ends*], you must give me at least 28 days notice.

As we discussed, you are eligible for **26 weeks' Statutory Maternity Pay/not eligible for Statutory Maternity Pay** [*delete as appropriate*].

Your maternity pay will be £[*insert amount*] from [*insert date*] to [*insert date*] and £[*insert amount*] from [*insert date*] to [*insert date*].

or

The form SMP1 (enclosed) explains why you do not qualify for Statutory Maternity Pay. You may however be entitled to Maternity Allowance. If you take this form to the Jobcentre Plus or social security office at [*insert local details*], they will be able to tell you more.

As your employer I want to make sure that your health and safety as a pregnant mother are protected while you are working, and that you are not exposed to risk. I have already carried out an assessment to identify hazards in our workplace that could be a risk to any new, expectant, or breastfeeding mothers. Now you have told me you are pregnant I will arrange for a specific risk assessment of your job and we will discuss what actions to take if any problems are identified. If you have any further concerns, following this assessment and specifically in relation to your pregnancy, please let me know immediately.

If you decide not to return to work you must still give me proper notice. Your decision will not affect your entitlement to SMP.

If you have any questions about any aspect of your maternity entitlement please do not hesitate to get in touch with me. I wish you well.

Yours sincerely,

Annex B: Main changes to maternity rights for women expecting babies on or after 6 April 2003

Baby due on or before 5/4/03

Baby due on or after 6/4/03

Length of leave

Ordinary maternity leave – 18 weeks

Ordinary maternity leave – 26 weeks

Additional maternity leave begins at the end of ordinary maternity leave and ends 29 weeks after the date of birth.

Additional maternity leave begins at the end of ordinary maternity leave and ends 26 weeks later.

Length of qualifying service for Additional Maternity Leave

Continuous employment for one year at the beginning of the 11th week before the EWC.

Continuous employment for 26 weeks at the beginning of the 14th week before the EWC.

Start of maternity leave

Start of leave can be triggered by pregnancy-related absence in the 6 weeks before EWC.

Start of leave can be triggered by pregnancy-related absence in the 4 weeks before EWC (leave would start the day after the 1st day of the absence).

If leave is triggered by birth, it starts on the day of the birth.

If leave is triggered by birth, it starts on the day after the day of the birth.

Baby due on or before 5/4/03

Baby due on or after 6/4/03

Pay

SMP pay period lasts for up to 18 weeks and always starts on Sunday.

*SMP pay period lasts for up to 26 weeks, usually starts on a Sunday but may start on a different day if triggered by birth or pregnancy related absence.

Start of SMP triggered by pregnancy related absence in the 6 weeks before EWC.

*Start of SMP triggered by pregnancy related absence in the 4 weeks before the EWC (pay would start the day after the 1st day of absence).

If employee leaves work after the start of the 15th week before the week the baby is due, whether she gets SMP or not depends on why she left.

Why the employee left doesn't matter. As long as it is after the start of the 15th week before the week the baby is due and she satisfies the conditions she must get SMP.

Where SMP triggered by birth, SMP starts on day after the day of birth.

* If the leave period spans 6 April 2003, special pay arrangements apply – see *A guide to Maternity Benefits* (NI 17A) available from Jobcentre Plus/social security offices.

**Baby due on or before
5/4/03**

**Baby due on or after
6/4/03**

Rate of SMP/MA*

SMP

- First 6 weeks of payment at 90% of her average weekly earnings or £75 – whichever is the higher amount.
- Following 12 weeks paid at a flat rate of £75.

MA

- 18 weeks at £75 if her average earnings are at least equal to the Lower Earnings Limit; if less, but at least £30, then 90% of earnings, but not more than £75.

SMP

- (when the changes are fully in place):
- First 6 weeks of payment at 90% her average weekly earnings.
 - Followed by 20 weeks at £100 a week or, if less, 90% of her average weekly earnings.

MA

- (when the changes are fully in place):
- 26 weeks at £100 a week or, if less, 90% of her average weekly earnings.

* If the leave period spans 6 April 2003, special pay arrangements apply – see *A guide to Maternity Benefits* (NI 17A) available from Jobcentre Plus social/security offices.

Baby due on or before 5/4/03

Baby due on or after 6/4/03

Notification

Employee must give 21 days' notice to qualify for leave and pay.

Employee cannot change leave dates once she has given notice.

Employer not obliged to notify employee of date on which her leave ends.

Employee who decides to return to work earlier than the end of her leave must give 21 days' notice of her new return date.

Employer may write to employee taking additional maternity leave to ask her to confirm the date of birth and whether she still intends to return to work. Employee must reply within 21 days.

(i) Notice no later than end of 15th week before EWC to qualify for leave

(ii) 28 days' notice to qualify for pay.

Employee can change leave dates if she gives necessary notice.

Employer who has had proper notification of leave should tell the employee the date on which their leave should end.

Employee who decides to return to work earlier than the end of her leave must give 28 days' notice of her new return date unless her employer didn't notify her of the date of the end of her leave.

Employee who doesn't wish to return to work after additional maternity leave only has to give normal notice that she is leaving her job.

Annex C: Where to find further information

USEFUL ADDRESSES

ACAS main offices

London

22/23 Floors, Euston Tower, 286 Euston Road, London NW1 3JJ.

East of England

Ross House, Kempson Way, Suffolk Business Park, Bury St Edmunds, Suffolk IP32 7AR

East Midlands

Lancaster House, 10 Sherwood Rise, Nottingham NG7 6JE

West Midlands

Warwick House, 6 Highfield Road, Edgbaston, Birmingham B15 3ED

North West

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

North East

Cross House, Westgate Road, Newcastle upon Tyne NE1 4XX

Scotland

151 West George Street, Glasgow G2 2JJ

South West

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

South East

Suites 3-5, Business Centre, 1-7 Commercial Road, Paddock Wood,
Kent TN12 6EN

Westminster House, Fleet Road, Fleet, Hants GU51 3QL

Wales

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

Yorkshire and Humberside

Commerce House, St Alban's Place, Leeds LS2 8HH

Other addresses

Equal Opportunities Commission (EOC)

Arndale House, Arndale Centre, Manchester M4 3EQ

EOC (Scotland)

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

EOC (Wales)

Windsor House, Windsor Place, Cardiff CF10 3GE

Commission for Racial Equality

St Dunstan's House
201-211 Borough High Street
London SE1 IG7

Disability Rights Commission

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

Law Centres Federation

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

Maternity Alliance

45 Beech Street, London EC2P 2LX

USEFUL TELEPHONE NUMBERS AND INTERNET SITES

ACAS helpline number: 08457 47 47 47

minicom number: 08456 06 16 00

Website: www.acas.org.uk

Tiger website – www.tiger.gov.uk (for tailored information on maternity and paternity rights)

Inland Revenue employers' helpline – 08457 143 143

(textphone 0845 602 1380)

(for employers seeking advice on Statutory Maternity Pay)

Website: www.inlandrevenue.gov.uk

Department for Work and Pensions website – www.dwp.gov.uk

(advice for employees claiming social security)

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

Website: www.maternityalliance.org.uk

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

Equality Direct (for queries from employers on equality issues in England) – 0845 600 3444

EOC helpline: 08456 015901

Commission for Racial Equality: 020 7939 0000

Disability Rights Commission: 08457 622 633

Tax Credits helpline – 0845 300 3900 (textphone 0845 300 3909)

Employment Tribunals Service:

Website: www.ets.gov.uk

Enquiry line (advice on employment tribunal procedures): 0845 795 9775

Annex D: 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, internet: www.dti.gov.uk/publications).

- 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: citizen's right to prevent disruption
- 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 – Transfers of undertakings: a guide to the regulations
- PL 700 – Written statement of employment particulars
- PL 502 – Disclosures in the public interest: protections for workers who ‘blow the whistle’
- PL 702 – Time off for public duties
- PL 704 – Pay statements: what they must itemise
- 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 718 – Your rights if your employer is insolvent
- PL 711 – Continuous employment and a week’s pay: rules for calculation

- PL 743 – A guide to the Equal Pay Act
- PL 955 – A guide to the Sex Discrimination Act

- How to apply to an employment tribunal
- What to do if taken to an employment tribunal
- Hearings at employment tribunals

- PL 808 – Redundancy entitlement – statutory rights: a guide for employees
- PL 810 – Contracts of employment
- PL 827 – Limits on payments
- PL 833 – Redundancy consultation and notification

- 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 509
 - Parental leave: a guide for employers and employees
- PL 510
 - Parental leave: a short guide
- PL 512
 - Fixed-term work: a guide to the regulations
- PL 513
 - Fixed-term work: short compliance guide
- PL 507
 - Maternity leave: changes – a basic summary
- PL 514
 - Paternity: leave and pay – a basic summary
- PL 517
 - Working fathers: rights to paternity leave and pay – a guide for employers and employees
- PL 515
 - Adoptive parents: rights to leave and pay – a basic summary
- PL 516
 - Flexible working: the right to apply – a basic summary
- 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
- Your guide to the Working Time Regulations
 - A short guide to the Working Time Regulations

ACAS Publications

Advisory Handbooks

Employing people: a handbook for small firms

Discipline and Grievances at work

The A-Z of work

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

Representation at work

For details of how to order and prices, please contact:

ACAS Publications, P.O. Box 235, Middlesex UB3 1HF or telephone:

0870 242 9090; fax: 020 8867 3225; email: acas@eclogistics.co.uk

For all other enquiries, call ACAS helpline on 08457 47 47 47.

