

BIS

Department for Business
Innovation & Skills

PREGNANCY AND WORK

What you need to know
as an employer

BABIES DUE ON OR AFTER 3 APRIL 2011

Work during pregnancy

Returning to work

Statutory Maternity Pay

Maternity Allowance

Maternity Leave

Flexible Working

maternity
paternity

Statutory Paternity Pay

Additional Paternity Leave

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Paternity Leave

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

It sets out the key things **you must do** under the law and what your employee must do to benefit from the protections there for her. It also sets out the support for you, such as help with working out if you need to pay Statutory Maternity Pay and how to claim it back if you do. There is a version of this leaflet available for your employee.

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

There is information at the end of this leaflet about where to look for more detail and who to speak to for advice. It also tells you where to look for information about managing your employees' maternity leave and other laws to support employees balancing work and family responsibilities and their employers, such as ordinary paternity leave and the right to ask for flexible working. The leaflet also includes information about the right for fathers to take Additional Paternity Leave.

As soon as your employee tells you she is pregnant

What to do

Read this leaflet to **find out your key rights and responsibilities** and where to find more information. You can then talk to your employee about what action you need to take now:

- **You must** carry out a risk assessment to identify any risk to your employee's health or that of her child. If there is a risk you must remove it or make alternative arrangements.
- **You must** allow your employee paid time off to attend ante-natal appointments. Apart from the first appointment, she must show you an appointment card if you ask for one.
- **You must** make sure that your employee is not treated unfairly, including by other colleagues.

You can then start to plan for her leave, eg

- All women can take up to **52 weeks' maternity leave** – does she know now whether she will be taking the full time? You must not allow her to work for the

Why

These protections apply as soon as you know your employee is pregnant.

The risk assessment identifies risks to your employee and her child while she is pregnant and after she has had her child, particularly if she is breastfeeding.

Any unfair treatment connected with pregnancy, child birth or maternity leave is discrimination. This includes dismissal or selection for redundancy for reasons related to pregnancy or maternity leave. You may be liable not only if you treat your employee unfairly but also if she is treated unfairly by colleagues.

If your employee is returning during or at the end of the first 26 weeks (ordinary maternity leave) **she is entitled** to return to the same job on terms and conditions (for example her salary, hours and the seniority of her job) as if she hadn't been away. If she takes more than 26 weeks (additional maternity leave) **she is entitled** to return to the same job on the same terms and conditions. If that

As soon as your employee tells you she is pregnant *(continued)*

first two weeks after the birth (or the first four weeks if she works in a factory).

- Does she have annual leave to take before her maternity leave?
- How will you manage her absence? Will you reallocate work or take on a temporary member of staff. You must hold her job open. If she is taking more than 26 weeks' maternity leave (so is taking additional maternity leave) you must offer her a suitable alternative job if it is not reasonably practicable for you to keep her original job open.

If your employee is off work with a pregnancy related illness **you must** pay her in the same way as for any other type of illness. If you have disciplinary rules related to sick leave pregnancy-related illness must be excluded.

isn't reasonably practicable she is entitled to return to a suitable job on terms and conditions at least as good as her previous job.

If you take on a temporary member of staff and you expect their employment to end when your original employee returns **you must** tell the temp this up front. It is fairer to the temp and it also protects you if there is a dispute over the ending of the temporary contract.

Within 28 days of receiving your employee's dates for maternity leave

What to do

You must write to your employee telling her when she is due back at work. It is also helpful to tell her how you will pay Statutory Maternity Pay (SMP) to her.

You must work out whether you need to pay your employee Statutory Maternity Pay and if so, how much. SMP is subject to Tax and National Insurance. **You must** tell her if she does not qualify for SMP by giving her a form SMP1 which will help her apply for Maternity Allowance. If she cannot get SMP from you, you must also give her back the maternity certificate (MATB1). There is an HMRC calculator and standard letters, including SMP1, you can use on the HMRC Website. You can also get help from the HMRC Employer Helpline.

You should find out about claiming back the SMP you pay. **You are entitled** to claim back at least 92%. Small employers are able to claim back all the SMP plus

Why

By the 15th week before the week her baby is due **your employee must** tell you:

- She is pregnant
- When her baby is due
- When she wants her maternity leave and pay to begin.

She must confirm her plans in writing if you ask her to.

All employed women are able to take up to **52 weeks' maternity leave**. Your response makes sure you both know when her maternity leave will end. If she changes her mind later **she must** give you eight weeks' notice of the change and **you may** postpone her return if you wish until you have had that notice (although you can't postpone it past the end of the 52-week period). **If you don't** respond to her notification of leave **she will be entitled** to change her mind and

Within 28 days of receiving your employee's dates for maternity leave *(continued)*

some compensation. If paying SMP will cause you cashflow problems you can claim the money in advance. Contact the HMRC helpline.

Your employee will qualify for SMP if she has been employed by you continuously for 26 weeks into the 15th week before the week her baby is due and earns on average at least enough to be relevant for National Insurance purposes. SMP is paid for 39 weeks. **You must** pay 90% of your employee's average weekly earnings for the first six weeks and then the lower of the 90% rate or a standard rate for the rest of the time.

return when she wants without giving you any notice.

She must give you at least 28 days' notice of when she wants her SMP to start and of any change to her plans about starting maternity leave. If she doesn't, you may refuse to pay her SMP or postpone the start of her leave. If there is a good reason why she couldn't give you this much notice you must accept less.

If your employee is off work because of her pregnancy in the four weeks before the week her baby is due you may start her maternity leave and pay from the day after the first day of her absence for pregnancy in those 4 weeks

Before your employee begins her maternity leave and during her leave

What to do

You and your employee can make reasonable contact during maternity leave. You should agree with her what kind of contact you will have, eg

- How you will let her know about any changes happening at work, including job vacancies
- Will there be opportunities for her to work or attend training or other events during her maternity leave? If so you can agree that she works for up to 10 days during her leave.
- If you and your employee agree that she will do some work to help you keep in touch you should discuss the arrangements with her. For example, what pay will she receive for the work she does or what will her hours be?

You must work out what other payments or benefits you must give her during maternity leave:

- Throughout the 52 weeks' maternity

Why

Keeping in touch can help to make it easier for both of you when it comes time for your employee to come back.

She is not obliged to do any work or attend any events during maternity leave but if you both agree **she can** do up to 10 days' work during her maternity leave. These are known as 'Keeping In Touch Days'. They aren't limited to her usual job – they could be used for training or other events. It may be helpful for her to use some Keeping in Touch Days to ease her return to work. She can't work during the first two weeks (four weeks if she works in a factory) after the birth.

You and your employee must both agree that she will do these and the arrangements including what she will be doing and how she will be paid. She can't be required to take up Keeping in Touch Days and you are not obliged to offer them. You cannot demand your

Before your employee begins her maternity leave and during her leave (continued)

leave **you must** continue to give your employee any contractual benefits she would normally receive, as if she were at work (for example contractual annual leave). **She continues to be an employee throughout the whole 52 weeks of maternity leave.**

- If you contribute to an occupational pension you must make your usual contributions for the whole time she is receiving any SMP or contractual maternity pay from you.

employee goes into work at any time during her maternity leave period nor can she be penalised for refusing to take up a Keeping in Touch Day.

Before your employee returns to work

What to do

You should talk to your employee to plan her return to work and think about the practicalities. If you took on temporary staff to cover her absence you should consider if you need to give the temp notice that their employment will be ending because your original employee is returning.

If your employee changes her mind about her return date **she must** give you eight weeks' notice of the change. If she hasn't and you need more notice **you can** postpone her return until you've had eight weeks' notice (although you can't postpone it past the end of the 52-week period).

If your employee makes a request to change to work flexibly, including part-time, you must seriously consider her request.

You can turn it down on genuine business grounds or agree a different arrangement.

If your employee lets you know she will be breastfeeding **you must** talk to her about any arrangements you will need to make, do a risk assessment and remove any risk you find.

Why

Planning will help to make the return easier for you both.

If your employee has taken additional maternity leave and there is a good reason why your employee cannot return to her original job you must offer her a suitable job on terms at least as good as her original job. You should let your employee know the reasons and what job she will be returning to.

If she makes a written request under the statutory right to request flexible working **you must** follow the set procedure. It may also potentially be sex discrimination if she is unjustifiably refused a change to her working pattern.

You must provide facilities for your employee to rest and to store expressed milk. The risk assessment identifies any health and safety risks to your employee as a breastfeeding mother or to her child. If there is a risk you must remove it.

Additional Paternity Leave and Pay

What to do

If a mother returns to work before the end of her maternity leave period, her partner may be eligible for Additional Paternity Leave (APL). If she returns before the end of her SMP or MA period, her partner may also be eligible for Additional Statutory Paternity Pay (ASPP). This section gives information about what to do if one of your employees wishes to take APL.

Your employee must give you at least 8 weeks' notice. This must be given in writing and can be on form SC7, available from Directgov (nidirect.gov in Northern Ireland). Both parents must complete and sign the form. The form will give you details of the mother's maternity leave and pay period and when she returned to work.

You can ask for additional evidence of entitlement in the form of the child's birth certificate. You can also ask for the name and address of the mother's employer.

Your employee can choose to take between 2 and 26 weeks' leave. Leave can be started at any point after the baby is 20 weeks old and must be completed by the baby's first birthday. ASPP can only be paid during the mother's SMP/MA period. Leave taken after the end of the SMP/MA period will be unpaid.

Your employee can change the dates of his leave by giving six weeks' notice of the change. If he doesn't give you 6 weeks' notice of a change you should accept this if you can, but you can refuse the change.

Your employee continues to be employed throughout the whole APL period. During APL, **you must** continue to give your employee any contractual benefits he would normally receive as if he were at work.

You may have reasonable contact with your employee during APL, and you and your employee can agree that he will work up to 10 days during his APL.

Why

To be eligible for APL your employee must have been employed by you for at least 26 weeks into the 15th week before the baby's due date and remain in your employment until the week before he wishes to take APL. APL can only be taken once the mother has returned to work. Information about her return to work will be given to you as part of your employee's notice.

The mother must have been eligible for SMP or MA in order for her partner to be eligible for ASPP. Her partner may be eligible for unpaid APL if the mother was eligible for Statutory Maternity leave but not SMP or MA.

ASPP is paid at 90% of your employee's average weekly earnings up to the same standard rate as SMP.

If your employee gives you less than six weeks' notice to change the dates and it is not reasonable for you to accommodate the change, **you can** require the employee keeps to the original date (or dates if both the start and end date are within six weeks of notice being given).

On return from APL **your employee is entitled** to return to the same job on terms and conditions (for example salary, hours and the seniority of job) as if he hadn't been away.

The same rules apply for keeping in contact and Keeping in Touch Days during APL as apply during maternity leave, **You and your employee may agree** that he will work up to 10 days. He is not obliged to work and you are not obliged to offer him work. **You must both** agree the terms, including payment, for any Keeping In Touch Days.

If there is a problem

What to do

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

If she brings a formal grievance **you should** consider it following a fair and reasonable procedure

If there is a redundancy situation during maternity leave or additional paternity leave **you must** offer your employee any suitable alternative vacancy.

You can get free confidential advice from the Acas helpline on 08457 47 47 47 or in Northern Ireland the Labour Relations Agency on 0289032 1442.

If there is a disagreement about your employee's Statutory Maternity Pay you can ask HMRC for advice. She can ask HMRC for a decision if you cannot sort the problem out.

Why

It's better for you and your employee if you can sort out any problems between yourselves quickly. **Your employee is protected** from any unfair treatment connected with pregnancy, child birth or maternity leave. If you don't treat your employee fairly you could face an employment tribunal.

You must offer your employee any alternative vacancy if there is a redundancy situation, otherwise it may be considered to be unfair dismissal and/or discrimination.

When you want more information

There is more information about all these issues, including the rates of maternity and paternity pay and standard letters to help you respond to your employee's notification at www.businesslink.gov.uk (in Northern Ireland, www.nibusinessinfo.co.uk).

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

For more detailed information about SMP or ASPP, including help with calculations and standard letters see www.hmrc.gov.uk/employers/ or call the HMRC employer's helpline on 08457 143 143.

For more detailed information about health and safety for pregnant women and new mothers see www.hse.gov.uk or call HSE Info Line on 0845 345 0055.

Disclaimer

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