

Guide to maternity rights

March 2024

Guide to maternity rights

This guide covers:

- overview;
- paid time off for antenatal appointments;
- rights in relation to health and safety;
- protection from pregnancy-related detriment and dismissal;
- discrimination;
- statutory maternity pay;
- the right to take maternity leave;
- the right to return to work;
- interaction with parental leave; and
- shared parental leave.

Overview

The rights and protections set out in this basic guide apply to employees only. They are not available under the statutory provisions to workers (such as agency staff, consultants, and some freelancers). However, contractual rights may extend to workers.

This guide provides a summary of the statutory rights relating to pregnancy and maternity leave.

Paid time off for antenatal appointments

A pregnant employee has the right to reasonable paid time off during working hours for the purpose of receiving antenatal care. The appointment must have been made on the advice of a registered medical practitioner, registered midwife or registered health visitor (except for the first appointment) and the employee must produce evidence of that. There is no definition of antenatal care and, as well as usual doctor and midwife check-ups, it can also include complementary care (such as relaxation or parent craft classes) if the doctor or midwife recommend that such care is beneficial to the employee.

The time off must be paid at the normal rate of pay.

There is no minimum qualifying period of employment for this right.

The employer may refuse time off if the refusal is reasonable but this is very unlikely to apply in most cases.

An employee with a qualifying relationship with the mother or child (eg the child's father) has a statutory entitlement to unpaid time off work to accompany the mother to up to two antenatal appointments.

Rights in relation to health and safety

In addition to their general duty to undertake risk assessments in the workplace, employers have additional health and safety obligations in relation to new and expectant mothers.

Employers must undertake a specific assessment of workplace risks for new or expectant mothers and measures must be taken to avoid any significant risk by altering working conditions or working hours. Common risks include long working hours, work-related stress and standing or sitting for long periods.

Where it is not reasonable to alter working conditions or hours, or the risk cannot be avoided, a woman must be offered suitable alternative work on terms that are not "substantially less favourable". Where suitable alternative work is not available, or the employee reasonably refuses it, she must be suspended on full pay. If an employee unreasonably refuses suitable alternative work, the employer must still suspend her from work but will have no obligation to pay her.

An employee may bring a claim in the employment tribunals if her employer fails to: (i) offer her suitable alternative work before suspending her; (ii) pay her during any period of suspension; and/or (iii) carry out a risk assessment.

A repeated failure by an employer to adequately carry out its risk assessment obligations for a pregnant employee can be grounds for a constructive dismissal claim. Failure to carry out a risk assessment may also amount to sex discrimination.

Protection from pregnancy-related detriment and dismissal

Detriment

A pregnant woman is protected at any time from being subjected to a detriment for a reason connected to her pregnancy or statutory maternity leave. She is also protected from detriment during statutory maternity leave for a reason connected to the fact that she has given birth.

Dismissal

A woman will be automatically unfairly dismissed if the reason (or principal reason) for her dismissal is connected to her pregnancy or is for a pregnancy or maternity related reason, such as the fact that she took, sought to take or availed herself of the benefits of statutory maternity leave.

There is no requirement for an employee to have worked for an employer for two years in order to complain of unfair dismissal where the dismissal is for any of the reasons set out above.

Redundancy

Where a redundancy situation arises during her pregnancy, a woman will be treated as having been automatically unfairly dismissed if she is selected for redundancy for pregnancy related reasons. A redundancy dismissal will also be automatically unfair even if an employee's selection is not pregnancy-related, but her employer fails to comply with the requirements set out in the Maternity and Parental Leave etc Regulations 1999. The Regulations require that, if the position of a woman on maternity leave becomes redundant, the employee must be offered any suitable available vacancy with her employer or any associated employer. It is not enough to invite the woman to apply for the vacancy. The new position must be such that:

- the work to be done is both suitable and appropriate for the employee 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 in her old job.

Following changes being brought in by the Protection from Redundancy (Pregnancy and Family Leave) Act 2023, which are effective from 6 April 2024, this redundancy protection is being extended. The changes mean that an employee will have the right to be offered a suitable alternative vacancy where their role is redundant from the point at which they notify their employer of the pregnancy until 18 months after the expected week of childbirth or, if the employer is notified of the child's actual date of birth, 18 months from that date of birth.

Discrimination

A dismissal in connection with pregnancy or maternity leave is also likely to amount to discrimination under the Equality Act 2010 which makes it unlawful to discriminate because of pregnancy or maternity.

Unlike other forms of discrimination, a woman who brings a claim for pregnancy/ maternity related discrimination is not required to show that she was treated less favourably than another employee who was not pregnant or on maternity leave. The woman only needs to show she was treated unfavourably for a pregnancy or maternity related reason.

Statutory maternity pay

What is statutory maternity pay?

An employee will be entitled to statutory maternity pay (SMP) where she has both: (i) 26 weeks' continuous employment with the employer up to and including the 15th week before the expected week of childbirth (EWC); and (ii) average earnings of at least the National Insurance lower earnings limit during the eight-week period ending with the 15th week before the EWC. The EWC is the week, measured from Sunday to Saturday, in which childbirth is expected to occur.

SMP is payable for 39 consecutive weeks at prescribed statutory rates (set out in the table below). The SMP start date depends on when the employee gives notice of, and starts her maternity leave. However, the first

week of the period will not be earlier than the 11th week before the EWC or later than the day immediately following the day of childbirth.

There are very detailed conditions regarding entitlement to SMP and the notice the employee must give her employer of her intention to take maternity leave. These are beyond the scope of this guide.

SMP rates

Period	Entitlement
First six weeks	90% of the woman's "normal weekly earnings" ("higher rate SMP")
Remainder of the period	The lesser of standard rate of £184.03 per week (from April 2024) or 90% of the woman's "normal weekly earnings" ("lower rate SMP")

"Normal weekly earnings" are calculated on the basis of the woman's average earnings in an eight-week reference period which usually ends on the last normal pay day before the end of the 15th week before the EWC.

If a woman receives a pay rise that takes effect at any time between the beginning of the reference period and the end of her statutory maternity leave period, she is treated as if she had been paid at the new rate for the entire reference period. The employer is therefore required to recalculate her SMP on that basis.

The Government maintains a [maternity pay calculator](#) which helps employers to calculate an employee's SMP.

Employers may recoup approximately 92% of SMP paid from HM Revenue & Customs through the PAYE system. Small employers may recoup 100% plus an administration fee.

The right to take maternity leave

There are three different types of statutory maternity leave (SML): (i) compulsory maternity leave (CML); (ii) ordinary maternity leave (OML); and (iii) additional maternity leave (AML).

Statutory maternity leave

SML is the name for OML and AML. The rules retain the distinction between OML and AML due to the different rights that arise after the respective periods of leave.

Compulsory maternity leave

An employee entitled to SML (see below) must not be permitted by her employer to work for two weeks after the baby is born (four weeks for workers in certain factories and workshops). This is known as "compulsory maternity leave". Failure to comply with this prohibition is a criminal offence and the employer will be liable to a fine if convicted. A woman on maternity leave will also be able to claim discrimination for non-payment of a discretionary bonus that relates to the CML period.

Ordinary maternity leave

Duration

The OML period lasts for 26 weeks. It will end if the employee's employment is terminated (although SMP may not).

The OML period starts with:

- the date which the employee notifies as the date on which she intends her absence to commence; or
- if earlier, the day after the first day on which she is absent from work, wholly or partly because of pregnancy or related illness, after the beginning of the fourth week before the EWC; or
- if earlier, the day after the date on which the baby is born.

Rights during OML

An employee on OML is entitled to the benefit of all her usual terms and conditions of employment which would have applied had she been at work. She does not, however, have any entitlement to "remuneration", which is defined as wages or salary. Employees on OML should therefore retain other benefits such as holiday entitlement, company car etc.

For her part, the employee remains bound by any obligations arising under her terms and conditions of employment, such as restrictive covenants etc.

Additional maternity leave

Duration

AML follows immediately after the end of the OML period and also lasts for up to a further 26 weeks.

There is no qualifying period of employment for AML and it is available to all employees who have a right to OML. This means that an employee can take a total of up to 52 weeks' statutory maternity leave.

Rights during AML

Women are entitled to the same rights during AML as they are during OML (with the exception in some cases to receipt of pension benefits which is covered in more detail below).

Notification requirements

In order to enjoy the right to SML, the employee must tell her employer no later than the end of the 15th week before the EWC or as soon as reasonably practicable:

- that she is pregnant. She must also confirm her EWC (and if requested to do so by her employer, she must also produce a certificate from a registered medical practitioner or a registered midwife (such as a MAT B1), confirming the EWC); and
- the date on which she intends her SML to start. This must be done in writing if the employer requests it.

The employee's notice may not specify a start date earlier than the beginning of the 11th week before the EWC.

If the baby is born before the notified start date or before the woman has given notice to her employer, the employee must notify her employer, in writing, that she has given birth as soon as is reasonably practicable after the birth.

The employer must notify the employee in writing within 28 days of receiving the employee's notice (or any varied notice) of the date on which the SML will end which is assumed to be 52 weeks later.

Pension contributions

Employers must continue to pay pension contributions/provide pension benefits throughout the period of paid maternity leave (ie while the employee is receiving any SMP or any company maternity pay) at the rate the employer paid/provided prior to the employee starting maternity leave. However, the employee will be able to make pension contributions based on the rate of pay they are actually receiving during their leave.

Interaction with contractual rights

If the employee's contract also provides entitlement to maternity leave, the employee may not exercise the contractual and statutory rights separately. However, in taking the leave the employee may take advantage of whichever right is, in any particular respect, more favourable.

Work during SML

Keeping in touch or "KIT" days allow a woman to work during SML without losing their entitlement to SMP for that week or triggering the end of their SML period. This is primarily to encourage more effective communication between employers and employees during maternity leave and to ease employees' return to work. These KIT days are limited to a maximum of 10 days that may be taken at any time during maternity leave (except during the CML period). Employees have a right to maternity pay on KIT days but pay (in addition to SMP) will be a matter for negotiation. Many employers pay normal rates to prevent potential discrimination claims.

Offering and taking KIT days is entirely voluntary - employees who take them, consider taking them or refuse to take them will be protected if they are subjected to any detriment by their employer as a result.

Contact between employee and employer during maternity leave

An employer may make contact with the employee (and vice versa) while she is on maternity leave, as long as the amount and type of contact is not unreasonable, to discuss a range of issues - for example, her plans for returning to work, or to keep her informed of important developments at the workplace. In addition, the employee should be informed of any relevant promotion opportunities or job vacancies that arise during maternity leave.

Prudent employers will seek to agree the parameters and method of contact with the employee before they start maternity leave.

The right to return to work

Notification of return

If an employee is entitled to SML, she does not need to give any notice of her intention to return to work unless she intends to return *before* the end of the SML period. In that case, she must give the employer not less than eight weeks' notice of her return date. If she attempts to return to work without having given that notice, the employer may postpone her return for eight weeks provided that this is no later than the end of the SML period.

Return from OML

Apart from in a redundancy situation, an employee returning after OML is entitled to return to the job in which she was employed before her absence. This carries with it the right to return on terms and conditions no less favourable than those she would have enjoyed had she not been absent on OML. Her seniority, pension rights and similar rights must be as they would have been had she not been absent from work.

Return from AML

An employee who returns to work after AML is also entitled to return to the same job on the same terms and conditions as if she had not been absent unless it is not reasonably practicable for her to do so. In such a case, she must be offered another job that is both suitable and appropriate for her to do in the circumstances, on terms and conditions that are no less favourable than those which would have applied had she not been absent. Her seniority, pension rights and similar rights must be as they would have been had she not been absent from work.

Right to return to work part-time or flexibly?

There is no statutory right for an employee to return to work on a part-time basis (if she worked full-time prior to her OML or AML). However, requests for flexible working must be handled carefully to comply with the relevant legislation on flexible working and if liability for sex discrimination is to be avoided. For further details, please see our [Guide to right to request flexible working](#).

Interaction with parental leave

An employee may, subject to complying with the relevant notification requirements, add a period of statutory unpaid parental leave to the end of her OML or (more likely) her AML. For further details, please see our [Guide to parental leave](#).

Shared parental leave

An eligible mother may also wish to opt into the statutory shared parental leave scheme which allows parents more flexibility in the sharing of childcare responsibilities following the birth or adoption of a child.

Broadly, a mother can continue to benefit from 52 weeks' SML and (if eligible) 39 weeks' SMP. However, she may opt to end her SML early and share the remaining period of leave (and pay) with her partner (subject to qualifying criteria) under the statutory shared parental leave and pay regimes.

For more information, please see our [Guide to shared parental leave](#). The Government has also produced an [employer guide on shared parental leave and pay](#) and Acas has various resources relating to [time off work for parents](#).

March 2024

Further resources

Government's [guidance on statutory maternity pay and leave](#)

Acas's advice on [time off work for parents](#)

Government's [maternity, adoption and paternity calculator for employers](#)

Government's [employer guide on shared parental leave and pay](#)

The content in this document is for general purposes and guidance only. It does not constitute legal or professional advice and should not be relied on or treated as a substitute for specific advice relevant to particular circumstances. For legal advice, please contact your main contact partner at the relevant CMS member firm.