

8. Maternity

The legislation on Maternity Rights can be found in the **Employment Rights Act 1996**, the **Maternity and Parental Leave etc. Regulations 1999**, the **Management of Health and Safety at Work Regulations 1999** and the **Work and Families Act 2006**.

UK Gov: Employment Rights Act 1996

UK Gov: Maternity and Parental Leave etc. Regulations 1999

UK Gov: Mgmt of Health and Safety at Work Regulations 1999

UK Gov: Work and Families Act 2006

Maternity Leave

The information noted here applies to the rights of the actual birth mother, who requires to have met the statutory conditions to be entitled to maternity leave on the basis that they have undergone a pregnancy and have given birth.

An employer has a duty of care for its employees, and it is best practice that contracts of employment and company policies set out any contractual maternity pay.

It is a legal requirement for a pregnant employee to inform their employer of this no later than 15 weeks before the due date of their baby.

Pregnant employees have the right to paid time off work for antenatal care. Employers must not suggest that an employee should arrange antenatal appointments outside their working hours, nor should they be asked to use holiday entitlement to attend

these appointments. An employee should not be asked to make this time up.

Citizens Advice Scotland:
If you work at night

Pregnant employees have the right to take 52 weeks maternity leave. It is made up of 26 weeks Ordinary Maternity Leave (OML) and the remaining 26 weeks of Additional Maternity Leave. Employees can request to return to work before the 52 weeks' period.

UK Gov: Maternity pay and leave



Compulsory maternity leave is for 2 weeks following birth or 4 weeks for factory workers. This leave starts immediately following childbirth.

Those who are self employed also must take the corresponding compulsory maternity leave relevant to their industry sector.

ACAS: Managing pregnancy and maternity



Employers should be encouraging employees and workers to inform them of their pregnancy as soon as possible, to enable all necessary action required under Health & Safety legislation to protect the employee / worker from any harm.

HSE: Protecting pregnant workers and new mothers



Employees must write to an employer giving them at least 28 days' notice of when they want to commence Statutory Maternity Leave. Employees are obliged to provide employers of proof of their pregnancy, by providing them with a MATB1 form no later than 20 weeks before the expected due date.

Employers have a duty to confirm start and end dates of Statutory Maternity Leave in writing within 28 days of being informed by the pregnant employee.

The earliest that maternity leave can commence is from the beginning of the

11th week before the estimated week of childbirth.

Employees have the right to company sick pay or statutory sick pay if they become unwell when they are pregnant.

UK Gov: How to claim



UK Gov: Pregnant employees' rights



The government has an online calculator to check entitlement to Maternity Leave, Pay or Maternity Allowance.

Statutory Maternity Pay (SMP) is paid for 39 weeks.

- 90% of your average weekly earnings (before tax) for the first 6 weeks.

- £187.18 or 90% of your average weekly earnings (whichever is lower) for the next 33 weeks.

UK Gov: Check if you can get Maternity Pay etc.



If you need more help with employment rights, contact your nearest **Citizens Advice Bureau**.

Eligibility for Statutory Maternity Pay SMP

Statutory Maternity Pay is paid by an employer.

An employee must have worked continuously for the employer for 26 weeks up to the 15th week before the expected week of childbirth (EWC) and earn an average of £125 per week and provide adequate notice to the employer of their maternity leave.

Eligibility for Maternity Allowance

Maternity Allowance is paid by the government.

An individual must have been employed or self employed for at least 26 weeks in the 66 weeks before the EWC and have earned at least £30 per week over any 13 weeks within the qualifying 66 week period.

Maternity Allowance can be paid for up to 39 weeks, applications for this should be made directly with the Jobcentre.

Employers must ensure that they are providing their employees with their full benefit package throughout the period of maternity leave other than their pay.

Annual leave is accrued as normal and the 5.6 weeks' can be carried over into the next annual leave year where an employee was unable to take it, due to family leave, this does not include any additional contractual annual leave over the statute.

Performance Related Bonuses

Employers should be paying employees any bonus for periods they have worked including the corresponding compulsory periods of maternity leave.

Pension Contributions

Employers must continue to make employer pension contributions at the employee's normal rate of pay throughout the entire period of paid maternity leave. There is no requirement for employers to make pension contributions during unpaid periods of additional maternity leave.

UK Gov: The Employment Rights Regulations 2023



ACAS also has produced guidance for employers on a best practice approach for employees who have suffered a miscarriage or stillbirth.

ACAS: Time off work for bereavement



Maternity Leave and Pay Rights following a stillbirth or neonatal deaths

If an employee's baby is stillborn before the date of their planned Maternity Leave, or, their baby does not survive, then the employee will still have eligibility for Maternity Leave.

The employee's right to Statutory Maternity Pay or Maternity Allowance if they meet the qualifying criteria is noted above.

If an employee's baby is stillborn after the end of the 24th week of pregnancy or if the baby is born alive at any time during the pregnancy but then does not survive, the employee would also be entitled to Statutory Maternity Pay or Maternity Allowance if the qualifying conditions for this are met.



If you need more help with employment rights, contact your nearest **Citizens Advice Bureau**.

Keeping in Touch (KIT) days

An employer has the right to make a reasonable amount of contact with an employee on maternity leave.

An employer should know that there is no obligation placed upon an employee on maternity leave to work to the maximum of 10 keeping in touch days, where an employee would then receive their normal rate of pay for any hours worked.

Where an employee has opted for Shared Parental Leave, they have the right to work 20 shared parental keeping in touch days. This means that an employee can have up to 30 keeping in touch days, which does not have the effect of ending the maternity leave or shared parental leave. Information on this can be found here:

UK Gov: Employee rights when on leave

ACAS: Maternity leave and pay

Right to return to work

Employees have the right to return to the same job after the period of OML (26 weeks).

Where an employee has exercised the right to take additional maternity leave and there has been a significant change within the organisation, e.g. a restructure, it may not be possible for the employee to return to the same job role they had prior to taking OML, in this case the employer has right to offer the employee a similar job which cannot be on worse terms than prior to commencing OML.

ACAS: Maternity leave and pay: Returning to work

An employer has a duty to undertake individual risk assessments for mothers returning from maternity leave, and particularly for those who are still breastfeeding they should be provided with somewhere suitable for them to rest within the workplace.

Protection from Pregnancy and Maternity Discrimination

The Equality Act 2010 Part 2, chapter 1, section 4 sets out that 'pregnancy and maternity' is a protected characteristic. Under Chapter 2, section 18 of the Act, Pregnancy and Maternity Discrimination is a prohibited conduct at work.

UK Gov: Equality Act 2010

IVF

Pre-pregnancy rights to time off for IVF treatments are not covered under rights for antenatal care arrangements, ACAS has provided best practice guidance on this for employers.

ACAS: IVF treatment



If you need more help with employment rights, contact your nearest **Citizens Advice Bureau**.

The Protection from Redundancy (Pregnancy and Family Leave) Act 2023

Additional redundancy protection for pregnancy, those who suffer a miscarriage and those on maternity leave, adoption leave or shared parental leave (for a defined period) came into force on 6 April 2024.

UK Gov: Protection from Redundancy Act 2023



- having a baby
- using a surrogate to have a baby
- adopting a child
- fostering a child who you're planning to adopt

Information and eligibility criteria are set out in the links below:-

UK Gov: Shared Parental Leave and Pay



UK Gov: Maternity Leave, Adoption Leave...



Neonatal Care (Leave and Pay)

Neonatal Care (Leave and Pay) Act 2023 came into force on 6 April 2025, this provides new rights for parents of babies admitted into hospital before they are 28 days old for stays of at least one week or more, will receive 12 weeks of leave, paid at the statutory rate and this will be in addition to their maternity or paternity leave. This is a day one right.

UK Gov: Statutory Neonatal Care Pay and Leave



The government has produced information for employers:

UK Gov: Statutory Maternity Pay and Leave



Employers can normally reclaim 92% of payments for Statutory Maternity Pay (SMP), as well as Statutory Paternity Pay (SPP), Statutory Adoption Pay (SAP), Statutory Parental Bereavement Pay, Statutory Neonatal Care Pay and Statutory Shared Parental Pay (ShPP) and the rate of reimbursement for small business employers is currently 108.5%. Employers are reimbursed via HMRC.

UK Gov: Get financial help with statutory pay



Shared Parental Leave

The government has prepared a guide for Shared Parental Leave and Pay

An employee and their partner may be able to get Shared Parental Leave (SPL) and Statutory Shared Parental Pay (ShPP) if they are:

South of Scotland Employment Rights Advice Service

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