

Most general guides to maternity rights in books and magazines are aimed at women who are employees. If you are self employed, or a “worker”, your rights will be different to those of a “normal” employee.

To work out what your rights are, you first need to determine whether you are an employee, self employed or a worker. For some people employment status is obvious, but sometimes while you might be called a contractor or self employed, you could actually be an employee. There are many factors a tribunal will look at when deciding if a worker is employed, self employed or a worker. These include how the person is paid (whether you pay your own tax and National Insurance contributions or not), how much control the worker has over how and when s/he does the job and if there is an expectation the employer will provide work and the worker will do it. Have a look at our factsheet entitled Types of Workers for more information.

**Below is a chart summarising who gets what rights:**

<p>Employees, whether permanent, temporary, casual or on a zero hours contract</p>	<p>Maternity Leave Statutory Maternity Pay (if meet conditions) Full Health and safety rights Right to paid time off for ante-natal appointments Protection from sex discrimination</p>
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<p>Workers –Agency workers and some casual staff</p>	<p>Statutory Maternity Pay (if meet conditions) Right to health and safety assessment and to removal of risks where possible. Protection from sex discrimination Time off for ante-natal appointments (unpaid)</p>
<p>Self employed – running your own business and responsible for your own tax and national insurance</p>	<p>Right to health and safety assessment and to removal of risks where possible. Protection from sex discrimination Maternity Allowance (if meet conditions)</p>

### **The Self employed**

#### **Rights during Pregnancy and Leave**

#### **If you work for yourself**

If you are a self employed woman running her own business, and are genuinely your own boss, you will not need to think about many of the maternity rights. However, you may need to employ maternity leave cover to keep the business running while you are absent, and you may have worries about money. Working Families cannot advise you on employing someone, or about running a business. However we do have factsheets which explain about claiming Tax Credits and other benefits.

### **If you contract your services to other businesses**

Even if you are self employed, the companies you work for as a contractor have duties towards you. You have protection from sex discrimination, and the right to a health and safety risk assessment and to have risks removed, where possible. However you do not have the right to be offered alternative work or to be signed off on full pay where the risks cannot be removed.

Although you are not entitled to maternity leave in that you have no right to return to your job after your absence, you are still protected by sex discrimination law, and if you are not being offered work because you have taken time off to have a child, you may have a sex discrimination case.

### **Maternity Pay**

Self employed women do not have the right to Statutory Maternity Pay. Instead you will have to claim Maternity Allowance. To qualify for this you must have been employed or self employed for any 26 weeks in the 66 weeks leading up to the week your baby is due. These weeks do not have to be in an unbroken block, and you could use some time where you were employed and some where you were self employed.

You also need to have 13 weeks where you have either paid class 2 National Insurance contributions, or held a Certificate of Small Earnings Exception. If you have been paying Class 2 NI, you will be treated as having enough earnings to qualify for £123.06 per week MA. If you had a Certificate, you will be treated as having earned £30 per week, and so will be entitled to £27 per week Maternity Allowance.

If you own a limited company and pay yourself a salary through PAYE from the company, you will qualify for SMP as an employee, provided you meet the usual test. Call the HMRC employer's helpline on 08457 143 143

## **Workers**

Workers are those people who are somewhere between the self employed & employees. They are likely to have some control over whether they work or not but are usually paid via PAYE (with tax and NI removed). Workers have fewer rights than employees. Most agency workers are workers, rather than employees. However, most agency workers are paid by the agency through PAYE (with tax and NI removed), so can qualify for maternity pay.

### **Rights during pregnancy**

Workers have some of the same rights as employees, such as the right not to be discriminated against because of pregnancy.

You should not be treated less favourably, or refused work because you are pregnant or have asserted one of your rights, such as the right to time off for ante-natal care or the right to a health and safety assessment (see below).

The duty not to discriminate falls on both the agency and the company where you are working if you are an agency worker.

Workers are allowed time off for sickness and Statutory Sick Pay in the same way as employees. If you are off sick this does not break your continuous service for maternity pay (see below).

Workers who are pregnant have the right to be protected from risks. The company at whose premises you are working must perform a risk assessment, and remove any risks to you as a pregnant woman. However, if the risks cannot be removed, unlike employees, you have no right to be offered a suitable alternative job or to be suspended on full pay. Like employees, you have the right to time off for any antenatal appointment your doctor or midwife has advised you to attend. Unlike an employee, you do not have the right to be paid for this time off.

## **Maternity Pay**

Employed workers qualify for Statutory Maternity Pay (SMP) as long as they meet the continuous service and earnings conditions which employees also have to meet.

To get SMP, you need to have been “continuously employed” by the same employer (the agency, if you are an agency worker) for the 26 weeks leading up to the 15<sup>th</sup> week before the week the baby is due. You must also be working for the agency in the 15<sup>th</sup> week before the week the baby is due. If you started work for the agency before you were pregnant, and have worked at least part of one day every Sunday to Saturday week, by the time you reach the 15<sup>th</sup> week before the week the baby is due (again, a Sunday to Saturday week), you will meet this requirement.

If there are weeks where you did not work, this will not break your continuous service if the reason you did not work was one of the following:

- You were unavailable to work because you were off sick. If you are ill it is important the agency knows this is the reason you were not working.
- You were taking annual leave. All employees & workers have the right to take the equivalent of 24 days’ paid annual leave per year.
- The agency did not have any work for you.

If you did not work for the agency in the 15<sup>th</sup> week before the week the baby is due for one of these reasons, you will still be able to claim SMP as long as you did further work for the agency after that week.

As well as the service requirement you must have earned enough in the “calculation period”. This is the eight weeks leading up to & including the 15<sup>th</sup> week before the week the baby is due if you are paid weekly. Your pay for this period must average out to at least £95 per week. This can include holiday or sick pay.

If you do not qualify for SMP you may be able to claim Maternity Allowance.

## **Maternity Leave**

Workers do not have the right to maternity leave in that there is no right to return to the same job. Of course this doesn't mean you cannot have the time off! If you are an agency worker, you are under no obligation to take work from the agency so you can take as much time off as you like. When you are ready to return to work, you are in the same position as anyone else asking the agency to find work for them. However, you must not be refused work because you have been pregnant/away due to a birth.

### **If you become an employee of the company you work for during pregnancy**

If you go from working for the agency to being an employee of the company for whom you do the work, it will be a change of employer and you may lose your right to SMP if the change happens before the 15<sup>th</sup> week before the week the baby is due.

However it is likely you will still be able to claim Maternity Allowance, and you will be in a better position as an employee as you will have the right to return to your job after maternity leave.

### **Temps and fixed term contracts**

Generally speaking, a temporary or fixed term contract has no special status in law, and if you are an employee, you will have all the rights of a permanent employee. In fact, it is unlawful to treat fixed term workers less favourably than permanent workers.

If you are on a fixed term contract which is not renewed, it is still a dismissal under law, and has the potential to be an unfair dismissal, depending on the circumstances.

This section of the factsheet examines the effect on your maternity rights of the end of a fixed term contract during pregnancy or maternity leave.

## **Rights during pregnancy**

You have all the rights that any employee has, and cannot be treated any less favourably because you are on a fixed term or temporary contract.

If your contract ends and is not renewed, you need to look at the reasons why. If there is no longer a need for you to do the work, for example because the project has ended, you are redundant, and if you have 2 years' continuous service with the employer you will be entitled to a redundancy payment.

If the job still exists, and your contract is not renewed because of your pregnancy or maternity leave, the dismissal will be discriminatory and automatically unfair. A woman who is dismissed while pregnant must be given written reasons for her dismissal.

It is automatically unfair to dismiss a woman because she is pregnant or intends to take maternity leave even if this means that she is unable to work for the majority of the contract, whether because of maternity leave or because of health and safety reasons.

## **Maternity Pay**

You will qualify for Statutory Maternity Pay as long as you meet the continuous service and pay requirements. One problem which can occur for fixed term workers is that their contract ends before their maternity leave starts. If the contract ends and is not renewed before the 15<sup>th</sup> week before the week the baby is due, you will lose your right to SMP, unless your contract was not renewed to avoid paying you SMP. If you do not qualify for SMP you may be able to claim Maternity Allowance instead.

If your contract ends and is not renewed after the 15<sup>th</sup> week before the week the baby is due, or during the 15<sup>th</sup> week before the week the baby is due (as long as you did some work in that week), you will be entitled to SMP.

## **Maternity Leave**

Fixed term or temporary employees are entitled to maternity leave in the same way as permanent employees. If your contract ends and is not renewed during your maternity leave, you need to look at the reasons why. Any reason for non-renewal connected to pregnancy or maternity leave is unfair. If your job still exists, your employer must have a fair reason for the dismissal.

If your job no longer exists, perhaps because the project you were working on has come to an end, there is a redundancy situation.

Even if you have not worked for your employer for long enough to qualify for a redundancy payment, you are afforded special protection as a woman on maternity leave. You **MUST** be offered any suitable alternative vacancy which exists. This means that if there is a group of people, only some of whom are being made redundant, someone else must be selected for redundancy instead of the woman on maternity leave.

## **Casual workers and seasonal workers**

Many people who believe themselves to be casual workers are actually normal employees, who happen not to have written contracts of employment or set hours. Some casual workers, however, are genuinely workers, who may or may not have a “zero hours” contract, and who come into work as and when it is needed, rather than for a certain amount of time per week. Some seasonal workers are also employees, and will have all the rights that “full time” employees have. Others may be workers. If you are unsure whether or not you are a worker or an employee, seek advice.

The problem seasonal workers, like casual workers, will often have is showing the continuous service required for Statutory Maternity Pay. If you work at least part of a day in every Sunday to Saturday week, your continuous service is unbroken. In weeks where you did not work because of sick leave, because you were signed off for health and safety reasons or because you were taking annual leave, your continuous service continues. Many casual workers will build up enough continuous service this way.

Even if there are weeks which appear to break your continuous service, you may still be seen to have been continuously employed if:

- You are a seasonal worker and your seasonal lay off periods are relatively short compared to your periods of work.
- You work in education and are on a series of academic or term time contracts.
- You are not in work but due to “arrangement or custom” you are seen as continuing in employment.

In addition, if you are paid irregularly, you may not have been paid in the “calculation period” for SMP. Workers who are paid irregularly must find their last pay date before or in the 15<sup>th</sup> week before the week the baby is due, and count back eight weeks. This is your calculation period.

For explanations of maternity leave and pay for employees, and how to claim Maternity Allowance as an employee or worker, please see our factsheet on Maternity Leave and Pay. For more details about rights for pregnant employees, see our Pregnancy factsheet.

## Useful Contacts

### Working Families

1-3 Berry St, London, EC1V 0AA

Helpline: 0800 013 0313

E-mail

[edads@workingfamilies.org.uk](mailto:edads@workingfamilies.org.uk) or

txt 07800 004722

Orderline for free factsheets: Kate

Aresti on 020 7253 7243

Waving not drowning project for  
parents of disabled children: Janet

Mearns on 020 020 7017 0072

[www.workingfamilies.org.uk](http://www.workingfamilies.org.uk)

Registered Charity No 1099808

Company No 4727690

### ACAS

Free advice line giving employment  
law advice

Telephone: 0845 747 47 47

Minicom: 08456 06 16 00

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

### Citizens Advice Bureau

You can find out where your  
nearest Citizens Advice Bureau is  
through the National Association of  
Citizens Advice Bureaux

[www.nacab.org.uk](http://www.nacab.org.uk). Advice from

the CAB is available at

[www.adviceguide.org.uk](http://www.adviceguide.org.uk)

### Community Legal Service (Directory)

For finding a solicitor with the CLS  
quality mark in your area

Telephone: 0845 345 4 345

Minicom 0845 609 6677

[www.clsdirect.org.uk](http://www.clsdirect.org.uk)

### Employment Tribunal Enquiry Line

Telephone orderline: 0845 795  
9775

Minicom: 0845 757 3722

[www.ets.gov.uk](http://www.ets.gov.uk)

**The Commission for Equality and Human Rights**

<http://www.equalityhumanrights.com>

[info@equalityhumanrights.com](mailto:info@equalityhumanrights.com)

England: phone 0845 604 6610,  
textphone: 0845 604 6620

Wales: phone 0845 604 8810,  
textphone 0845 604 8820

Scotland: phone 0845 604 5510,  
textphone 0845 604 5520

If you require a copy of this leaflet in large print, please call 020 7253 7243

**Law Centres Federation**

To find out if there is a free legal advice centre in your area

[www.lawcentres.org.uk](http://www.lawcentres.org.uk)

[info@lawcentres.org.uk](mailto:info@lawcentres.org.uk)

**The advice given in this factsheet is accurate at April 2009. It may not be accurate after that date.**

*Working Families operates a complaints procedure to ensure any complaints are dealt with thoroughly and fairly. If you would like to have details of the procedure or to make a complaint please contact the Chief Executive at Working Families.*