

Most of the rights in this factsheet apply to employees. If you are self employed or an agency worker please see our factsheet on atypical workers.

Always check your contract of employment as it may offer you better rights than the law. Your contract can offer you better, but not worse, rights than those contained in this factsheet.

Maternity Leave

All employees are entitled to 52 weeks maternity leave, regardless of length of service or the number of hours worked. Your maternity leave is divided into 26 weeks Ordinary Maternity leave (OML) and 26 weeks Additional Maternity Leave (AML), Our factsheet *Rights during Maternity Leave* gives more information on the rights you have whilst you are off work on maternity leave. There are slightly different rights to return to work depending on whether you return after OML or AML, see our factsheet *After Maternity Leave*.

Maternity Pay

There are two types of maternity pay - Statutory Maternity Pay (SMP) and Maternity Allowance (MA). Both are paid for a total of 39 weeks.

Statutory Maternity Pay

To qualify for Statutory Maternity Pay (SMP) you must:

1) Have worked for your employer for 26 weeks by the end of the 15th week before your baby is due (see service condition below for more detail)

AND

2) Have average pay of at least £95 a week (this is the lower earnings limit for National Insurance for April 09-10- see earnings condition below for more detail).

If you answer yes to both these questions you will get SMP. You will get 90 % of your normal pay for 6 weeks followed by 33 weeks at £123.06 (April 2009/10 rates) or 90 % of your normal pay, whichever is the lower.

SMP is paid to you by your employer who can claim back the money from HM Revenue and Customs. You are entitled to SMP even if you do not intend to return to work and you cannot be asked to repay it. If you receive extra contractual maternity pay you can only be asked to repay it if your contract states that you must do so or if this was agreed with your employer.

Service Condition

To get SMP you need to have worked for your employer for 26 weeks by the end of the 15th week before your baby is due. This roughly means that as long as you started the job before you became pregnant, and you have worked for at least a day or part of a day in each week since then, you will meet the service requirement. Not all breaks from employment will break your continuous service. Breaks where you were on annual leave, sick leave, parental leave or taking time off for dependents will not break your continuous service. If you leave your job or are dismissed after the 15th week before your baby is due, you will still be entitled to SMP.

Earnings Condition

To qualify for SMP you must also have earned at least £95 per week on average in the calculation period. The calculation period is the eight weeks, if you are paid weekly, up to and including the 15th week before your baby is due. If you are paid monthly, the calculation period is usually based on the last two monthly payments received before the end of the 15th week before your baby is due.

To work out the average if you are monthly paid, add up the pay on the payslips, divide by the number of months covered (this will usually be two), multiply by 12 and divide that number by 52, to get a weekly average. Pay can include holiday pay, bonuses, overtime, sick pay and any previous periods of SMP but not Maternity Allowance.

To claim SMP give your employer notice, see Notice below, and your MATB1 form. Your employer will work out whether you qualify for it. If you do not qualify for SMP, your employer must give you form SMP1. If you think your employer has done the calculation wrongly, or if they haven't come to a decision within four weeks of giving notice for SMP, you can ask HM Revenue and Customs to intervene. See our factsheet *Enforcing your benefit rights* for more details about this.

Pay rises after the calculation period

If you are given a pay rise at any time between the beginning of your calculation period for SMP and the end of your maternity leave, even if it is not backdated, you are treated as having received it during the calculation period and your SMP should be recalculated so that you receive a backdated increase to your SMP.

Maternity Allowance

If you do not qualify for SMP, you may still be able to get MA. This is paid by Jobcentre Plus directly to you. This factsheet explains how MA is calculated for women who are, or have been, employed. If you are claiming MA as a self employed person, please see our factsheet on Atypical Workers.

To qualify for Maternity Allowance you must :

1) Have worked for at least 26 weeks in the 66 weeks (15 months) before your baby is due. The work does not have to be continuous, or for the same employer.

AND

2) Have earned more than £30 a week in 13 of those weeks. The weeks do not have to be continuous or for the same employer, and you can add together earnings from more than one job. You should use the 13 weeks where you were paid the most. Pay can include holiday pay, bonuses, overtime, sick pay and any previous periods of SMP but not Maternity Allowance.

To work out your average earnings add together all your earnings in the 13 weeks and divide by 13. Maternity Allowance is paid at a flat rate of £123.06 (April 09-10) for the whole period or 90% of your average earnings whichever is the lower. You will receive MA for 39 weeks.

You can claim MA from your local Jobcentre Plus on form MA1. You will need to send your MATB1, 13 weeks' payslips or written proof of your earnings and, if you are employed in the 15th week before your baby is due, form SMP1 from your employer stating why you are not entitled to SMP. The Jobcentre Plus will work out whether you qualify for MA. If you do not qualify for MA make sure the Jobcentre checks whether you are entitled to Employment and Support Allowance (ESA). ESA is not means-tested but depends on whether you have paid or been credited with enough NI contributions in the previous 3 tax years. It may be payable for a small part of your maternity leave. For more information about ESA, see our factsheet *Benefits for families*.

If you have two or more jobs

If you work for more than one employer you can claim SMP from each job if you meet the qualifications for it (e.g you have worked there for long enough and earned more than £95 a week). If you do not qualify for SMP you may be able to get Maternity Allowance. You can get two lots of SMP but you can't get two lots of MA or MA and SMP at the same time. Your calculation of earnings for MA can be based on earnings from two or more jobs though.

The start of maternity leave and pay

The earliest you can start your maternity leave and pay is 11 weeks before your baby is due unless you give birth before then. It is up to you to decide when you wish to start your maternity leave and you can work right up to the birth if you wish. Your leave will start on the day stated in your notice.

If you are off work with a pregnancy-related absence in the four weeks before your baby is due, your employer can insist you start your maternity leave. In that case your leave and pay will start the day after your first day of pregnancy-related absence. If you give birth before you start maternity leave, your leave and pay will start the day after the birth. SMP or MA will start on the same day as your maternity leave i.e. the day stated in your notice or, if applicable, the day after your first day of pregnancy-related absence or the day after the birth.

Note: You should notify your employer as soon as reasonably practicable if you are absent for a pregnancy-related reason in the four weeks before your EWC or if you give birth.

How to work out your weeks

Weeks for the purposes of maternity leave always start on a Sunday. The “Expected Week of Childbirth” (EWC) is the week in which your baby is due, according to the MATB1 form which you can get from your midwife or GP once you are at least 20 weeks pregnant. To find the 15th week before the EWC – which is when you should give notice to your employer that you want to take maternity leave, find the Sunday before the due date (unless your baby is due on a Sunday, in which case use the due date), and count back 15 weeks. HM Revenue and Customs produces a Help Book for employer with tables of dates to help work out whether you qualify for maternity leave and pay. Your employer can order the Help Book and get help with paying and reclaiming SMP from the Employers Helpline on 08457 143 143.

Notice for maternity leave and pay

To get maternity leave you must give your employer notice in or before the 15th week before your baby is due. If your employer asks you to, you must put it in writing. You must tell your employer that you are pregnant, your EWC, and the date you wish to start your OML, see the example letter below. You do not have to give separate notice for OML and AML, your employer should assume that you will take all the leave you are entitled to. Your employer must write to you within 28 days of receipt of your notice, and state the date your maternity leave will end.

23rd February 2009

Dear Ms Williams,

I am writing to confirm that I am pregnant, and that my baby is due in the week Sunday 7th June – Saturday 13th June.

I would like to take a week's annual leave from the 25th May and then start my maternity leave and pay on Monday 1st June. If I am not entitled to SMP, please send me form SMP1 so I can claim Maternity Allowance.

To get SMP you must give your employer your MATB1 form at least 28 days before you wish to start your pay. In practice many women give notice in writing for maternity leave and pay together by the 15th week before the baby is due.

Working during Maternity Leave

You may work for up to 10 days without bringing your maternity leave to an end or losing your SMP or MA. These days are known as Keeping In Touch days (KIT days) and can only take place if both you and your employer would like them to. You cannot be made to work during maternity leave, nor can you demand to have work during maternity leave. These KIT days can be worked at any time during maternity leave except for during the two weeks of compulsory maternity leave immediately after the birth (four weeks for factory workers). If you receive MA and are planning on working (whether employed or self employed), you must inform the Jobcentre, even if it is a KIT day.

The KIT days do not have to be consecutive. They can be used for any work-related activity including training, conferences or meetings. Working for part of a day will count as one day's work. Your employers can also make reasonable contact with you during your leave, for example, to discuss your return to work. Any work during your maternity leave must be by agreement and neither you nor your employer can insist on it. Days of work will not extend your maternity leave period. You are protected from dismissal and detriment for refusing to work during maternity leave.

The new regulations on KIT days do not say anything about how much an employee should be paid for working. However, there are other rules about pay – under the National Minimum Wage Act and the Equal Pay Act - which your employer must stick to. You must get your SMP as normal during the week in which you work a KIT day. It will then be a matter for agreement between you and your employer as to how much you get paid on top of that. Most employers will probably top up the SMP for the day on which you have worked in order to make it up to a normal day's pay, or they may just pay a normal day's pay on top of your SMP.

If your employer is suggesting paying less than this, they may be in breach of the rules on equal pay and minimum wage – ring the helpline for further advice. In addition, remember that it is always your right to refuse to work on a KIT day if you want to.

Working for another employer

Prior to the birth, you may work for another employer (A) and claim SMP from your original employer (B). After the birth, you may only work for employer A and claim SMP from employer B at the same time if you worked for employer A in the 15th week before your baby was due. You must inform employer B of what you are doing. However if you did not work for employer A in the 15th week before the baby is due you may not work after the birth for employer A and still claim SMP from employer B.

You can also do self employed or voluntary work without any loss of SMP. During unpaid maternity leave, you can work for another employer unless there is a clause in your contract limiting any other work. Working during MA can lead to you being disqualified from getting MA for as long as the DWP deems reasonable in the circumstances.

If you are dismissed

If you are dismissed (including by being made redundant) during pregnancy or maternity leave you must be given written reasons for the dismissal. It is automatically unfair and sex discrimination to dismiss a woman for a reason connected to pregnancy, childbirth or maternity leave. This protection applies from day one of your employment.

If you are dismissed after the 15th week before your baby is due you are still entitled to SMP in full from your employer. If before, you may still get Maternity Allowance. If you are made redundant during maternity leave you have special protection, see our factsheet *After Maternity Leave* for more details.

On maternity leave and pregnant again

The fact that you are on maternity leave does not change your rights to further periods of maternity leave and pay. You continue to be an employee during your maternity leave and have continuous service. The normal rules for qualifying for maternity leave and pay for your next baby apply. However, you may not have earned enough (or anything) in the relevant calculation period to qualify for SMP. If you do not qualify for SMP for your next baby you may be able to claim MA.

Expected changes

The government has plans to increase maternity pay to 52 weeks at some time in the future, and to allow some of the leave to be taken by the father/partner instead. Keep an eye on our website, www.workingfamilies.org.uk for updates.

Useful contacts

Working Families

1-3 Berry St, London, EC1V 0AA

Helpline: 0800 013 0313

E-mail

edads@workingfamilies.org.uk or

advice@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

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

In Northern Ireland:

www.lra.org.uk

Bar Pro Bono Unit

289-293 High Holborn, London,
WC1V 7HZ

A small charity which may be able
to provide free legal advice or
representation. To apply for
assistance telephone 020 7611
9500 for an application form.

www.barprobono.org.uk

Citizens Advice Bureau

You can find out where your
nearest Citizens Advice Bureau is
from the phone book or

www.citizensadvice.org.uk

(England and Wales). Their advice
website is at

www.adviceguide.org.uk for advice
on a whole range of issues from
employment to benefits and debt
advice

In Scotland: www.cas.org.uk

In Northern Ireland:

www.citizensadvice.co.uk

Community Legal Advice

For finding a solicitor with the CLS quality mark in your area. The helpline can also give you free advice if you qualify for legal aid.
Telephone: 0845 345 4 345
Minicom 0845 609 6677
www.communitylegaladvice.org.uk

Employment Tribunal Enquiry Line

Telephone orderline: 0845 795 9775
Minicom: 0845 757 3722
www.employmenttribunals.gov.uk
In Northern Ireland:
www.employmenttribunalsni.co.uk

The Commission for Equality and Human Rights

www.equalityhumanrights.com
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
In Northern Ireland:
www.equalityni.org

Law Centres Federation

To find out if there is a free legal advice centre in your area
www.lawcentres.org.uk
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.

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