

This factsheet is designed to be a quick guide to the things that new parents ask us about the most. What your rights actually are can be complicated, so get more advice, especially if you work but are not an employee (like an agency worker) or if you are not a UK citizen.

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Introduction

In this series of factsheets we explain some of the things that you can claim to help with the costs of bringing up a child, as well as some of your rights at work when you or your partner are having a baby, and your right to ask for flexible working when you have children. This factsheet has basic information on rights at work. There is much more information and some tools to help you work out what is best for your family at www.workingfamilies.org.uk

Health and Safety for pregnant employees

Pregnancy itself is not an illness, but it can affect the things you can do. Employers who employ women of childbearing age have a duty to do a “general” health and safety assessment to identify risks to pregnant women. As soon as your employer has been informed in writing that you are pregnant (this can include a sicknote for pregnancy-related illness), and there is evidence of risk, a personal health and safety assessment must be done for you. As every pregnancy is different, the assessment should be done in conjunction with you. It may be helpful to ask your doctor for evidence that there are potential risks to you or your unborn baby from your work.

Once the risks have been identified, they must be eliminated if possible. You must be given information on the identified risk and what is going to be done about it. It may be that reducing your time at work would remove or reduce the risk; if so, your hours of work should be temporarily changed, if reasonable (if your hours are reduced, your pay should remain the same, so you should be paid for your normal working hours).

If no adjustment or change to working hours will help, then you should be offered a suitable alternative job on similar terms and conditions, which is reasonable for you to do. Whether or not the alternative is reasonable for you to do depends on the type of work, the rate of pay, the hours and times of work and the location of the work.

Of course the alternative job must be safe for you to do. If there is no reasonable alternative job, or no safe job, you must be suspended on full pay so long as the risk remains. This is not sick leave, and should not be counted as such.

Because what is safe may change during your pregnancy, your employer may be obliged to carry out another risk assessment later on, to check if any new risks have arisen and your job needs to be altered further. Note that special rules apply for pregnant night workers.

Time off for ante-natal care for employees

Pregnant employees have the right to reasonable paid time off work for ante-natal appointments, which includes the time spent travelling to an appointment and waiting. You cannot be refused time off for the first appointment, but for subsequent appointments your employer can ask for written proof of the appointment and a certificate or note from your doctor or midwife, stating that you are pregnant. If you do not, when asked, provide these, your employer can refuse the time off.

This is the only circumstance in which employers can refuse time off. They cannot ask you to make appointments in your own time, or make the time up later.

An ante-natal appointment is any appointment you make on the advice of your doctor, midwife or health visitor, so it can sometimes include activities such as parentcraft and relaxation classes. It is unlawful for an employer to refuse reasonable time off, to refuse pay for the time off, to dismiss a woman or to treat her less favourably because she has taken time off.

Fathers and co-habiting partners who are employees now have the right to attend up to two ante-natal appointments for a maximum of 6.5 hours on each occasion, on an unpaid basis.

Maternity leave and Pay

All women who are employees are entitled to 52 weeks maternity leave. You should give your employer written notice of when you want to take it, by the end of the 15th week before your baby is due (about 25 weeks' pregnant). Most women who are employed or agency workers will be able to get Statutory Maternity Pay or Maternity Allowance. Self employed women can usually claim Maternity Allowance. Statutory Maternity Pay and Maternity Allowance are paid for the first 39 weeks of maternity leave.

Statutory Maternity Pay

You can get Statutory Maternity Pay (SMP) if you have worked for your employer since before you became pregnant, you are still employed by them 15 weeks before your baby is due (when you are about 25 weeks' pregnant) and you earn at least £116 a week (from April 2018) in roughly weeks 18-25 of your pregnancy. This could apply if you are an agency worker or any employed earner – you don't have to be an employee. For the first six weeks of your maternity leave, your Statutory Maternity Pay is 90 per cent of average earnings (based on roughly weeks 18-25 of your pregnancy). For the next 33 weeks, it is paid at 90 per cent of your average earnings or £145.18 per week (from April 2018), whichever is lower. Your employer is responsible for paying your SMP or giving you written reasons why you are not entitled.

As well as SMP, your employer may pay you contractual/occupational maternity pay, which might have different conditions and may be closer to the amount of your normal wage. You should ask your employer about this. Your employer does not have to pay more than SMP unless you have a contractual right to additional maternity pay.

Maternity Allowance

If you cannot get SMP, you may be entitled to Maternity Allowance (MA). You can get this if you are employed or self-employed, or have been working recently. It is based on the 66 weeks before your baby is due. You need to have 26 weeks of work in that time, which do not have to be consecutive and can be with different employers and/or self-employed. You also need to have at least 13 weeks in that time when you earned £30 a week or more on average. If you are self-employed, you must have paid Class 2 National Insurance or had a certificate of low earnings exception which will be used as evidence of your wages.

Maternity Allowance is paid at 90 per cent of your average earnings or £145.18 per week whichever is lower. It is paid at the same rate for 39 weeks. If you have paid enough Class 2 National Insurance, you get maximum MA (£145.18 per week from April 2018). If you could have paid Class 2 NI but you did not do so, you get minimum MA (£27 per week). After you make your claim, you will be told if you need to pay Class 2 NI early in order to get maximum MA.

You claim Maternity Allowance from Jobcentre Plus or online at www.gov.uk. If you have been employed in the 15th week before your baby is due, you will need written evidence from your employer that you are not entitled to SMP. This is usually provided on a form called SMP1 that you get from your employer.

When you can start 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. You should give your employer notice of the day you want your maternity leave and pay to start; for leave this should be by the end of the 15th week before the baby is due.

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 due date, or if you give birth before you start your maternity leave.

Discrimination and dismissal

It is unlawful to dismiss someone (including by making her redundant) or to treat her less favourably because she is pregnant, has a pregnancy-related sickness or takes maternity leave. If you think this is happening to you, ring our helpline on 0300 012 0312 for advice.

Paternity leave

In order to be eligible for paternity leave you must be an employee and must:

- have or expect to have responsibility for the child's upbringing,
- be the biological father of the child or the mother's husband, civil partner or cohabiting partner (you live with the mother and child),
- have worked continuously for your employer for 26 weeks by the end of the 15th week before the baby is due – this means since before the mother became pregnant – and –
- still be employed by the employer on the day the child is born.

You should give written notice to take paternity leave by the end of the 15th week before the baby is due. This is when the mother is about 25 weeks pregnant. If you haven't given notice, do so as soon as possible. You can choose when to take your leave, which can be one or two weeks, and usually has to be taken within 56 days of the birth.

Most employees who are entitled to paternity leave will also be entitled to Statutory Paternity Pay (SPP). You must earn at least £116 a week (from April 2018). It is worth £145.18 per

week (from April 2018), or 90 per cent of average earnings whichever is lower. Employed earners, like agency workers, who have enough service, can get SPP if they meet the earnings condition. Self-employed fathers and partners are not entitled to paternity leave and SPP (unless they pay themselves via PAYE and pay Class 1 National Insurance).

Shared parental leave

Shared parental leave (SPL) and pay (ShPP) help some couples to share up to 50 weeks of leave and 37 weeks of pay between them. Only employed parents can take SPL, and the other parent must also have some recent work history (which could be self-employed or employed). For example, you may be able to take this if you qualify for paternity leave and pay and your partner meets the employment and earnings conditions for SMP or MA. SPL can be taken at any time in the baby's first year, but it does require notice to be given by both parents. SPL is created by curtailing maternity leave and/or pay, but it can be taken at the same time as maternity leave, as long as the woman has given binding notice she will return early. Women on maternity leave can also take SPL if they wish to end their maternity leave and then take some SPL at a later date. ShPP is the flat rate of £145.18 per week (or 90 per cent of average earnings, whichever is lower) and can last for the balance of the SMP/MA pay period.

More information is on our website at www.workingfamilies.org.uk

Returning To Work after maternity leave

You do not need to give any notice of return if you are going back to work at the end of maternity leave. You simply go to work on the day that you are due back. Your employer should have written to you to confirm the date your maternity leave ends, though they do not always do this. If you take all the maternity leave that you are legally entitled to (Ordinary Maternity Leave plus Additional Maternity Leave), you are due back to work on the day after the end of the 52 week period.

Notice of early return

If you want to return before the end of your 52 weeks maternity leave, you should give your employer at least 8 weeks' notice of the date you will be returning. You can change your mind about returning to work early provided that you give at least 8 weeks' notice before the date you now intend to return or the date you had intended to return, whichever is earliest.

If you do not want to return to work

If you do not want to go back to work after your maternity leave, you just give notice in the normal way, as if you were at work. You can do this at any time, but if you wait until towards the end of your maternity leave you will retain all your rights until your notice runs out. For example, employed women accrue holidays during their maternity leave, but you stop accruing these if you resign because once your notice runs out you are no longer employed.

You *never* have to pay back any Statutory Maternity Pay if you do not return to work. If you got more than Statutory Maternity Pay (occupational or contractual maternity pay), then your employer may have attached conditions which mean you have to pay some money back if you do not return. However, you only have to repay if the conditions were stated in your contract or maternity policy, or agreed with your employer before you started your maternity leave.

Right to Return

When you go back to work after OML (the first six months of maternity leave) you have the right to return to your old job on your old terms and conditions.

When you go back to work after taking some AML (any part of the second six months of maternity leave) you have the right to return to your old job on your old terms and conditions unless it is “not reasonably practicable”, in which case your employer must offer you a suitable alternative job on similar terms and conditions. It is very unusual for it to be “not reasonably practicable” to give you your job back unless there is a redundancy situation (see below). If your job still exists but your employer is only offering you an alternative, please call our helpline for advice.

If you are not allowed to return to work after maternity leave or you are not given your old job back, or not given a suitable alternative job if you are returning after some AML, you may have a claim for automatic unfair dismissal and sex discrimination. If your employer is claiming that your job is redundant, get advice.

If you want to return to work on a different pattern, for instance you want to work part time in what was a full time job, read about flexible working below. Your employer does not have to allow you to change your work pattern but should only refuse your request for a good reason.

Breastfeeding and returning to work

For six months after giving birth, if there is evidence of a risk to you or your baby's health, your employer has a duty to carry out a risk assessment and adjust your duties, workplace or hours to remove any risks. If you are breastfeeding for longer than this, you are still entitled to health and safety protection if you can show that your baby's health would suffer if you cannot continue to breastfeed. You must tell your employer in writing that you gave birth in the last six months or that you are breastfeeding. This applies whether you are returning from maternity leave or starting a new job. The adjustments your employer might make could include giving you breaks to express milk or to breastfeed.

Useful contacts

Working Families

advice@workingfamilies.org.uk

Helpline: 0300 012 0312

There is more information for parents at
www.workingfamilies.org.uk

Child Benefit

Telephone: 0300 200 3100

www.gov.uk/childbenefit

Contact For Families of Disabled Children

Telephone: 0808 808 3555

www.cafamily.org.uk

Citizens Advice Bureau

Get information on your rights in employment, benefits and other areas, or find your local Citizens Advice Bureau at
www.citizensadvice.org.uk

In Scotland, you can find your nearest CAB via www.cas.org.uk

Maternity Action

Advice on maternity rights and pregnancy discrimination

www.maternityaction.org.uk

Helpline: 0808 802 0029

Jobcentre Plus/DWP

You can find your nearest Jobcentre Plus office in England, Wales and Scotland by looking at www.gov.uk

You can ring them to make a claim for benefits on 0800 055 6688

In Northern Ireland, contact the Social Security Agency.

Tax Credits Helpline

Telephone: 0345 300 3900

www.gov.uk/taxcredits

Universal Credit Helpline

Telephone: 0800 328 9344

www.gov.uk/universal-credit

Advice for single parents

www.gingerbread.org.uk (England/Wales)

www.opfs.org.uk (Scotland)

The advice given in this factsheet is accurate at April 2018. It may not be accurate after that date.

Working Families needs your help! Donate online at www.workingfamilies.org.uk

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

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 020 7253 7243, email advice@workingfamilies.org.uk or write to us at: Working Families, Cambridge House, 1 Addington Square, London SE5 0HF

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