

Pregnant women enjoy certain rights at work that give them protection during the period of their pregnancy, as well as during maternity leave. But not everyone - and that includes employers - are clear what those rights are. This leaflet summarises the basic statutory rights that are available to women at work.

What ante-natal rights does a woman have?

Women are entitled to a reasonable amount of paid time off to attend ante-natal appointments during working hours. The woman must have permission from her employer to attend.

Can an employer refuse to give the time off?

It may be reasonable for an employer to refuse someone time off if, say, she works part time, and could attend the appointment or class on one of her non-working days (as long as that does not involve rearranging her normal working hours).

If the woman thinks that her employer's refusal is unreasonable, she can complain to a tribunal within three months of the date of the missed appointment. She can claim compensation if she is disciplined or subjected to any disadvantage for taking time off, and can also claim unlawful sex discrimination.

Who is entitled to these rights?

As with most maternity rights, the woman must be an employee in order to benefit. Agency workers may, in some cases, be employees, but their situation will depend on the facts in the individual case.

The entitlement applies from day one of employment.

What about fertility treatment?

Women receiving fertility treatment are not entitled to paid time off for ante-natal care because they are not yet pregnant.

Who is entitled to ordinary maternity leave?

All female employees are entitled to ordinary maternity leave (OML) of 26 weeks, irrespective of how long they have worked for their employer or how many hours they work per week.

What notice does a woman have to give before going on OML?

To apply for maternity leave, a woman must tell her employer (although not necessarily in writing) at least 15 weeks before the week in which baby is due (if possible):

that she is pregnant

the date when the baby is due (the employer can ask to see evidence such as a medical certificate, MAT B1 form)

the date when she intends to start her maternity leave

What does the employer have to do?

Once the employee has told the employer when she intends to start OML, the employer must write to her within 28 days, telling her when she is expected to return, based on the assumption that she wants to take her full 26 week entitlement.

If the employer fails to tell the woman when her maternity leave ends, he or she cannot then complain if she does not return on the right date. The woman can, however, complain if she suffers a disadvantage because she comes back late. If she is dismissed as a result, it is likely to be automatically unfair.

What happens if the woman fails to give the correct notice?

If the woman fails to comply with any or all of the notification requirements, or gave them late and cannot satisfy the 'not reasonably practical' test, she loses her right to OML. She does however remain entitled to the usual protection from unfair dismissal and less favourable treatment for a pregnancy or maternity related reason, and may also be able to claim that her treatment amounts to sex discrimination.

What happens if the woman is ill?

If a woman is ill during her pregnancy and it has nothing to do with her pregnancy, she is entitled to claim sick leave in the usual way until the date when she starts OML.

If, however, she is off work with an illness which is wholly or partly to do with her pregnancy any time in the four weeks leading up to the due date, then OML will be automatically triggered.

What terms and conditions apply during OML?

During OML, the woman is entitled to all the same terms and conditions (apart from the right to be paid), had she not been away from work. Equally, she is bound by any obligations under her contract, unless they conflict with her right to take leave.

Payment is defined in the legislation as 'wages or salary'. It follows therefore that the woman is still entitled to receive all benefits in kind during her OML such as pension contributions or the use of a company car. It is not clear, however, whether profit-related pay schemes, bonuses and commissions are included.

If the payment relates to work before she went on leave, she should receive it; if it relates to work she would have done had she not been on OML, she may not be entitled to it. If the payment relates to a longer period (such as a year), she should receive a pro rata amount to reflect the time when she was at work.

If her employer refuses to pay her these benefits, she can bring a claim for breach of contract in the county court, or in an employment tribunal if she has left work. She may also be able to claim for unlawful deduction of wages or sex discrimination through an employment tribunal.

All service-related benefits accrue during OML.

What is additional maternity leave?

Women with 26 weeks service at the 15th week before the baby is due are also entitled to a further 26 weeks' additional maternity leave (AML), which is normally unpaid and is taken straight after OML.

What terms and conditions apply during AML?

Although an employee's contract of employment continues during AML, women are only entitled to a limited number of terms and conditions. These include the benefit of her employer's implied duty of trust and confidence, her right to notice of termination, and the benefit of the procedures on disciplinary and grievance.

Most benefits such as pay and bonuses are not therefore payable during AML unless they relate to a period before the maternity leave started. Employers are not required to make pension contributions during unpaid AML (unless the contract or scheme says otherwise) and the period of AML does not count towards pensionable service. Rights based on seniority or service do not accrue during AML.

AML does not count towards pension, seniority rights or any other rights that depend on a period of qualifying service. Instead, the woman's rights are 'frozen' at the beginning of the AML period and then revive on her return to work.

What are the rules on annual leave?

Paid annual leave (both contractual and statutory under the Working Time Regulations) continue to accrue during OML. The leave should therefore be taken either before or after maternity leave.

If the annual leave period coincides with the period of maternity leave (such as a compulsory shut down), then the woman has the right to take that annual leave at some other time, either before or after the maternity leave.

Women also still accrue statutory holiday rights (but not contractual holiday rights, unless the contract says something different) during AML. Women should therefore try and take their paid leave at the end of their AML period.

What notice do women have to give?

Women are not required to give any notice to their employer that they intend to return to work after the end of their full maternity leave. If a woman does not wish to return, she must hand in her notice in the normal way before the end of her maternity leave period.

If a woman wants to return before the end of her full leave period, she has to tell her employer at least 28 days beforehand when she intends to come back. If she fails to do that, the employer has the right to delay her return until the end of the 28-day notice period. The employer cannot, however, delay her return once the full leave period has come to an end or she has given the appropriate notice that she intends to return early.

What terms and conditions apply on return from OML?

After OML a woman is entitled to return to the same job that she was doing before she left, on terms that are no less favourable. If her employer refuses to allow her to do that, she is likely to be able to make a tribunal claim for less favourable treatment by reason of pregnancy and maternity leave, sex discrimination and possibly also unfair dismissal.

What terms and conditions apply after AML?

As with OML, someone returning from AML is entitled to return to the job they were doing before they went on leave, on terms that are no less favourable. However, if it is not reasonably practical for the employer to let the woman return to her old job, for a reason other than redundancy, he or she can offer her another job that is 'suitable' for her and 'appropriate' in the circumstances.

What happens if the employer refuses to allow the woman to return?

If an employer refuses to take someone back, this would constitute an automatically unfair dismissal unless the reason was because her job had been made redundant, or if it was not reasonably practical to take her back perhaps because of an internal reorganisation. In these circumstances the usual rules on unfair dismissal would apply.

What rights does a woman have if she is made redundant?

If a woman is made redundant during her maternity leave, her employer must offer her suitable, alternative employment (if it exists) which is appropriate for her to do. She has priority in being offered alternative work over other staff who are not on maternity leave.

The terms and conditions should not be substantially less favourable than her old job - for instance, they should not be of a lower status. And the tribunal will

also take into account whether the new job poses problems for the woman, such as increased travelling time and greater childcare costs.

What is Statutory Maternity Pay (SMP)?

SMP is the money paid by an employer to a pregnant woman for up to 26 weeks if she satisfies the qualifying conditions, outlined below.

SMP is subject to tax and NI contributions. It can be paid weekly or monthly, or even as a lump sum (although this increases the woman's liability to NI contributions). Frequently, women are entitled to more favourable contractual terms, in which case the employer can offset SMP against the contractual payments.

Who is entitled to SMP?

To qualify for SMP, the woman has to:

Be pregnant at the 11th week before the expected week of childbirth

Be in continuous employment for 26 weeks with the same employer, up to and including the 15th week before the expected week of childbirth (the 'qualifying' week)

Have average weekly earnings during an eight week reference period ending with the qualifying week that are high enough to make her eligible to pay class 1 NI contributions

Have given 28 days' notice to her employer as to when he or she is liable to start paying SMP (or less than that if it is not reasonably practical to give 28 days' notice)

Have produced a medical certificate from a doctor or midwife, which gives the date when she is due to give birth

Have stopped work for her employer (for whatever reason)

How much is SMP?

SMP is paid at a rate of 90% of normal earnings for the first six weeks of OML, followed by a flat rate which changes every year for the remaining 20 weeks - currently £102.80. Normal earnings are calculated by reference to an eight-week reference period prior to the 15th week before the EWC. This will include a backdated pay rise that an employer may have awarded to staff even if it postdates the eight-week reference period.

Under what circumstances does a woman have to pay back SMP?

None. The only money that an employer can recoup is any contractual maternity benefit that he or she provides, over and above SMP.

Who can claim maternity allowance?

Maternity allowance is a benefit payable to women who do not qualify for SMP. To claim the allowance they need to:

Have been employed (or self-employed) for at least 26 weeks in the 66 weeks before the baby is due.

Have average weekly earnings over any 13 weeks in the 66 week-period of more than £30 per week.

It is paid for 26 weeks at a flat rate or at 90% of average weekly earnings, whichever is less. It cannot start before the 11th week before the baby is due.

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