

These Guidance Notes summarise the provisions of the Employment Rights Act 1996.

### Time off for Antenatal Care

Once an employee has advised her employer that she is pregnant, she is entitled to take reasonable paid time off to attend antenatal appointments. Antenatal care may include relaxation and exercise.

This right applies irrespective of length of service.

Employees have the right to time off for antenatal appointments, if the employee is the father or partner of the pregnant woman. There is no right to be paid for this time off and the right applies to each appointment.

### Leave and Right to Return

Regardless of length of service or hours worked, employees are entitled (subject to various notice requirements) to 26 weeks' Ordinary Maternity Leave ("OML") and to return to work without giving notice if they intend to return early in which case 8 weeks' OML will be available.

The woman is not allowed to work at a job which is physically demanding (e.g. factory workers).

A pregnant employee must notify her employer of her pregnancy before the Expected Week of Childbirth (EWC) (unless it is not reasonably practicable to do so) and when she wants her maternity leave to start. The week beginning with the EWC is known as the Qualifying Week.

OML can start any time from 11 weeks before the start of the Qualifying Week on 28 days' notice, unless it is not reasonably practicable to do so.

Maternity leave will start on whichever date is the earliest of:

- (i) The employee's chosen start date
- (ii) The day after the employee gives notice
- (iii) The day after any day on which the employee is absent for a pregnancy-related illness in the four weeks before the start of the Qualifying Week.

Once you have received notice that an employee is pregnant, you must respond within 28 days, confirming she takes her full leave entitlement. If you do not respond within 28 days, the employee intends to take her full entitlement of maternity leave she will not be required to give any further notification to her employer that she is pregnant; she will need only to turn up to work. However, if you do respond, she must give her employer notice of the date she intends to return.

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During OML and AML, the employee's receive all contractual benefits except for

continues in force and she is entitled to

If the employee returns to work at the employed before her absence, along with if she had not been absent, and on terms applied if she had not been absent. This during her absence.

allowed to return to the job in which was and all other rights as they would have been as favourable than those which would have as which would have been awarded to her

If the employee returns to work at the end employed before her absence. If that is which is both suitable for her and appropriate favourable than those which would have as rights as they would have been but for her

allowed to return to the job in which she was able, she must be allowed to return to a job instance, on terms and conditions not less than absent, and seniority, pension and other over period of AML.

Where temporary illness prevents the re dismissal. In addition, it is likely to be pregnancy for absence due to illness resu

the right to return could amount to unfair dismiss a female at any time during her

If any employee is too sick to return at t were absent on sick leave as normal. In reasons for absence and submit medical she would normally.

leave then she should be treated as if she keep you notified as to her expected return, required. She will receive any sick pay as

Please note that the employee may add a

e to the end of AML.

**Consequences of Refusing the Right t**

If you fail to allow the woman to return considered automatically unfair. In addition there is no limit to the level of damages t year qualifying period for normal unfair cases of automatic unfair dismissal where

y leave this constitutes dismissal which is discriminatory on the grounds of her sex and such discrimination. Furthermore, the one-applicable in discrimination cases, nor in on of pregnancy.

**Contact during Maternity Leave**

The employer is entitled to maintain reas may be, for instance, to discuss plans for work during her absence.

employee during her maternity leave. This to work or to update her on developments at

**Keeping In Touch Days**

Keeping In Touch ("KIT") days allow emp must be agreed between the employer a KIT days in total. Work undertaken on a can include training and other events.

e to return to work during their leave. This employee may be permitted to take up to 10 limited to the employee's normal duties and

Any work carried out on any KIT day sha

y's work.

The employer cannot require the employ taking any. Similarly, the employer is not

or can they penalise the employee for not ys.

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**Maternity Pay**

A woman with more than 26 weeks' continuous employment immediately before the 15th week before the EWC is entitled to Statutory Maternity Pay ("SMP") for a maximum of 39 weeks. For the first six weeks, the rate of SMP will be 90% of her normal weekly earnings for the first six weeks and then the Government's set weekly rate of SMP for the remaining 33 weeks, or 90% of her average week's earnings during the 66 weeks leading up to the 15th week before the EWC is entitled to SMP will be 90% of her normal weekly earnings for the first six weeks and then the Government's set weekly rate.

As stated above, contractual benefits (other than those specified in the EWC) must continue during OML and AML.

SMP is treated as earnings and so is subject to Income Tax and National Insurance Contributions.

Employers can usually recover 92% of the cost of SMP through deductions from normal NIC payments although you must keep records for three years. 'Small employers' may be able to recover the full amount of SMP. See the HMRC website for more details.

A woman who does not qualify for SMP is entitled to Maternity Allowance ("MA"). MA is paid for a maximum of 39 weeks at the rate of 90% of her normal weekly earnings or the current Government set weekly rate of MA, whichever is the lower. Employees not eligible for SMP are given a form SMP1 by their employer. This form must be used to claim MA.

**Miscarriage and Stillbirth**

If an employee's child is stillborn 24 weeks or more into pregnancy, she will keep her entitlement to maternity leave and SMP. If a live child is born after 24 weeks, the employee will retain her full rights to maternity leave and SMP. If a live child is born before 24 weeks, the employee will only be entitled to SMP for only a short time, the employee will not be entitled to maternity leave.

An employee will not have the right to return to the same job if she miscarries before 24 weeks into the pregnancy. However, if she is absent due to a miscarriage, the employee will be entitled to return to the same job or a suitable alternative job.

**Medical Suspension on Health and Safety Grounds**

Employers are required to carry out a risk assessment to identify the risks in the workplace to women who are pregnant, have recently given birth or are breastfeeding. If the employer identifies a risk of harm or danger to their health or that of their babies, the employer should advise affected employees as to the risks identified in the assessment. If a pregnant woman or nursing mother is suffering from a health condition, a risk assessment having carried out the risk assessment, a suitable alternative job or, failing that, a period of medical suspension for health and safety reasons, she must be offered suitable alternative work or, failing that, a period of medical suspension during such medical suspension.

**Requests for Part time Work or Flexible Working**

A woman working full time before going on maternity leave has an automatic right to return to part time work or some other flexible working arrangement when she returns to work from maternity leave. However, the employer can refuse such requests for flexible working arrangements if they are not considered in the light of the operational requirements of the employer's business.

**Protection against Unfair Treatment or Dismissal**

An employer must not subject an employee to unfavorable treatment at work because she is pregnant or for reasons connected with her pregnancy (including maternity leave). In addition, it is unlawful to dismiss an employee because she is pregnant or for reasons connected with her pregnancy (including maternity leave).

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to other comparable employees for reasons connected to her pregnancy. These rights are not to be based on the employee's length of service.

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