

Maternity & paternity leave

Rights and benefits

This Factsheet summarises the rights and entitlements of pregnant employees and their employers. And it also looks at the responsibilities they both have towards each other to ensure everything goes as smoothly as possible when planning leave from and return to work. It sets out the key things employees must do to benefit from such things as paid time off for ante-natal appointments, maternity leave and pay and the right not to be treated unfairly because of their pregnancy or maternity leave. It also explains the procedures to help employers plan for maternity leave.

Those adopting a child may also be eligible for adoption leave and pay. If your employee is adopting a child please contact PayMyNanny for more information.

Maternity benefits

This section details employee benefits and entitlements when:

- Pregnant
- On Maternity Leave
- Returning To Work

Ante-natal appointments

An employee is entitled to take a reasonable amount of paid time off, including travelling time, in order to attend ante-natal appointments, which may include parent-craft and relaxation classes. Employees should give you as much notice as possible when they need time off, this is so they can organise cover if necessary. After the first appointment, you may ask to see the appointment card and a certificate confirming pregnancy, or MatB1 form.

Maternity Leave and Right to Return

What leave are employees entitled to?

All employees are entitled to a maximum of 52 weeks maternity leave. An employee's eligibility for paid maternity leave may be affected by her length of service (See Maternity Pay and Employee Benefits below).

How do employees take their leave?

An employee should notify you of her pregnancy when she is ready and at the latest by the 15th week before the week the baby is due.

She should give written notice of her intention to take maternity leave, and the intended commencement date of the maternity leave, by the 15th week before her expected week of childbirth, unless this is not reasonably practicable, in which case she should give as much notice as is reasonably practicable. She may subsequently change her mind about when she wants to start her leave providing she gives at least 28 days' notice (unless this is not reasonably practicable in which case she should give as much notice as is reasonably practicable).

When giving notice of her intention to take maternity leave the employee should attach a formal certificate from a doctor or midwife stating the expected week of childbirth (form Mat B1).

Confirmation

On receipt of the formal notice of leave you should write to the employee confirming leave, and informing her of the last permissible date for return from maternity leave. If she wishes to return earlier than this date she should give 8 weeks' notice of her intended date of return.

However you may consider a shorter period of notice if return to work arrangements can be made earlier.

When can an employee start her leave?

The earliest an employee may start her leave is 11 weeks before her expected week of childbirth; the latest is the date the baby is due - she may start her leave any time between these two dates. However, legally the leave must extend to at least a minimum of two weeks after the birth.

What happens if an employee is ill or gives birth before her leave date?

If the baby is born before she has begun her maternity leave, the maternity leave and pay commences on that earlier date.

An employee who is absent from work due to an illness unrelated to pregnancy can remain on sick leave until she starts maternity leave on the date previously notified in her letter of notice of maternity leave.

However, if an employee is on sick leave because of a pregnancy-related illness at the beginning of the fourth week before the expected week of birth, she will commence her maternity leave at that date and will transfer from sick pay to maternity pay; if she becomes sick with a pregnancy-related illness after the beginning of the fourth week before the expected week of birth, her maternity pay and leave will commence on the first day of illness.

If the baby is born before the 11th week before the expected week of birth, the maternity leave and pay commences immediately. Employees should inform you as soon as possible after the birth. In exceptional circumstances, the maternity leave period may commence before the 11th week, taking into account the individual circumstances.

What happens if an employee has a miscarriage or stillbirth?

Unfortunately, sometimes a pregnancy will end in a miscarriage or the baby may be born and not survive. In such cases we need to treat the situation as sensitively as possible, employees will need time to grieve and recover. In the case of a stillbirth from the 25th week of pregnancy onwards the employee is entitled to take her maternity leave and pay in the usual way.

Maternity pay

1. Employees with less than six month's service by the 15th week before the baby is due

Employees with less than six month's service, 15 weeks before the baby is due, are not entitled to Statutory Maternity Pay (SMP). They may be entitled to Maternity Benefit paid by the Benefits Agency.

2. Employees with more than six month's service

Employees with more than six month's service 15 weeks before the baby is due, are entitled to Statutory Maternity Pay so long as they earn at least equal to the lower earnings limit for NI contributions.

Statutory Maternity Pay is paid at 2 levels: -

- 90% of earnings for the first six weeks of the maternity leave
- The statutory rate for the following 33 weeks of the maternity leave, or 90% of earnings if the employee earns less than the statutory rate. (*SMP rates are amended each tax year, please ask your account manager at paymynanny.net for the current rate)

Benefits during maternity leave

During the maternity leave period (paid and unpaid) the contract of employment continues in force. All the terms and conditions of the contract continue with the exception of salary. Continuity of service is maintained, and any pay review, which may take place during the maternity leave period (paid or unpaid) will be implemented.

What happens to benefits?

Holidays

Holiday entitlement as stated in the employee's contract of employment will accrue during the maternity leave period.

An employee may not take annual leave during maternity leave; therefore the employee should be able to take any accrued untaken annual leave before and/or after her maternity leave.

Holiday accrued during the current holiday year while on maternity leave can be added to the end of the employee's leave period with the agreement of the employer, or must be taken within three months of return.

If an employee decides not to return to work after her baby is born, she will be paid for the holiday accrued while on maternity leave.

Other benefits during maternity leave

The rules covering non-cash benefits applicable during maternity leave are complex. Essentially employers are now obliged to provide non-cash contractual benefits for example company cars, mobile phones, accommodation and insurance policies during both Ordinary Maternity Leave (OML) and Additional Maternity Leave (AML). If you have any questions please contact PayMyNanny

Contact during maternity Leave

Good and open communication is important during throughout the pregnancy and leave. It is extremely helpful when both parties are open about their intentions and the earlier an employee talks about what they might like to do when they return, the more time and opportunity you will have to take this into consideration while they are on leave. You should talk to your employee about how much contact and communication she would like to have during her leave. Either party is entitled to initiate contact during the maternity period (for example, to discuss the employee's return to work or potential work related issues that may concern them) and such contact will not bring the maternity period to an end.

Keeping in Touch Days (KIT)

An employee is able to agree with you to complete up to 10 days' work during her statutory maternity leave period without bringing her maternity leave to an end. An employee may come and see you for meetings, etc for all or part of the day (i.e. the KIT working time may be taken in hours in agreement with you). However, employees should be aware that regardless of the number of hours worked on a KIT day, it will be deemed that they have taken a full KIT day.

Please note that this provision does not apply during the compulsory two-week leave period commencing on and including the day on which childbirth occurs.

Work means any work done under the contract of employment and may include training, attending meetings and committees or any activity undertaken for the purposes of keeping in touch with the workplace. This provision does not confer any right on the employer to require any work to be carried out during the statutory maternity leave period, nor any right on an employee to request work during this period. Also, there is no obligation on either the employer or employee to make use of these days. Any days' work carried out will not have the effect of extending the total statutory maternity leave period. These KIT days will be paid at the employee's normal rate of pay. Where employees are receiving maternity pay this will be made up to their normal rate of pay.

Health and safety during pregnancy and return to work

As an employer you will want to safeguard and support employees during their pregnancy. To do this, you need to identify anything they are concerned about regarding their job, the environment they work in, and take any appropriate steps to ensure they're safe and happy. It's important that employees talk to you about any concerns at any time.

Therefore regular risk assessments of the working environment should be carried out in order to protect the safety of mother and child for any employee who may become pregnant.

Under your duty of care you need to be aware of risks throughout the pregnancy and take reasonable care to:

- Ensure safe working practices; be aware of things such as lifting, carrying etc.
- Provide a safe working environment
- Provide safe equipment
- Ensure you and your family act competently and safely
- Carry out risk assessments

A risk assessment should be made as soon as the employee has confirmed her pregnancy in writing. Naturally the risks will be different at various times for the employee, depending on her stage of pregnancy, whether she has given birth within the last six months, or is breast feeding. So, regular risk assessments will need to be completed throughout the pregnancy. Additional checks may be necessary if there is a change in job role or tasks and as the employee develops in size. Risk assessments will be done with the employer. As well as identifying hazards, it is good to be aware of the possibility of the following:

- Morning sickness;
- Backache;
- Fatigue;
- The employee's increasing size may limit her ability to do certain tasks.

If a pregnant woman, one who has recently given birth or is breast feeding, is having difficulty performing her normal duties, for health and safety reasons you may need to consider appropriate work adjustments. This can include changes to working environment, or hours. In exceptional circumstances where this is not sufficient to control the risk the employee will be suspended from work on full pay as it is necessary to protect their health and safety.

Return to Work

What job can an employee return to?

Although all employees are entitled to a maximum of 52 weeks maternity leave, it is important that they understand that their right to return may differ depending on the amount of leave they take. If an employee takes what is termed as "Ordinary Maternity Leave" (max. 26 weeks) she's entitled to return to exactly the same job that she left.

If an employee decides to take more than 26 weeks and up to 52 weeks leave (i.e. Ordinary and Additional Leave) she's entitled to come back to the same job she left or if that's not practical, she can return to a suitable job on very similar terms and conditions.

Notification of return to work

If an employee intends to return to work at the end of her full maternity leave period entitlement she is not required to give notice of her return. However, if an employee wants to return earlier or later than a date previously specified she is required to give 8 weeks written notice of this intention. If she gives less than 8 weeks' notice, her maternity leave may be extended for up to 8 weeks' after the date of giving notice of return, to allow her employer to make any necessary arrangements.

If an employee decides not to return to work at the end of her maternity leave she will need to give notice of leaving in writing to her employer in accordance with her contract.

Before your nanny returns to work you may want to talk to her about what she intends to do about her own childcare arrangements – will she have her own child carer, or would she like to bring her baby with her to work? Whether nanny brings her child to work is at the employer's discretion, however it can be a way of retaining a good nanny. Many parents in this situation take a % off the nanny's normal rate of pay to reflect the fact the nanny is able to bring their own child to work, therefore saving childcare costs.

A parent employing a nanny with their child attending the work place must ensure they have adequate insurance for this purpose. Employers have a duty of care to make sure their home is safe for the nanny's child to be present i.e. stair gates, locks on cupboards and garden areas are to the level for that child's age. A risk assessment is advised that both parties sign.

Statutory entitlements on return to work

Shared Parental Leave

Shared Parental Leave (SPL) and Shared Parental Pay (ShPP) system has been introduced for children due, or adopted on or after 5 April 2015. The system will allow parents and adopters more flexibility in how they care for their child during the first year. Eligible mothers and fathers will have the right to share up to 52 weeks' leave to care for their child and up to 39 weeks' ShPP (minus the period that the mother has spent on maternity leave and/or been in receipt of maternity pay or maternity allowance).

Parents will be able to share a pot of leave, and can decide to be off work at the same time and/or take it in turns to have periods of leave to look after the child.

Emergency leave

All employees have a statutory right to short periods of unpaid leave in order to make arrangements to deal with family emergencies (personal and domestic leave). For more information please see Factsheet Holidays and Other Time Off Work, or contact PayMyNanny.

Parental leave

All employees who have a year's service have a statutory right to unpaid parental leave. For more information please see factsheet Holidays and Other Time Off Work, or contact PayMyNanny.

Flexible working

All employees who have 26 weeks service at the date of application have a statutory right to apply for flexible working to care for the child. For more information please contact PayMyNanny.

Non-return to work

If an employee is unable to return to work, because she is medically unfit, at the end of her entitlement to maternity leave, she should submit medical certification in the usual way and she will then transfer from maternity leave to sick leave. Subsequently the normal sickness procedures will be followed.

If an employee does not return to work after the 52nd week of maternity leave she will lose her statutory right to return.

Fixed term contracts and maternity leave

When an employee is on maternity leave, the Procedures for Ending Fixed Term Contracts must still be carefully followed.

Recourse to grievance procedure

An employee who feels dissatisfied with any decision made in respect of her maternity rights will be able to raise a grievance in accordance with the employer's normal procedure. Employees will have the right to be represented at this meeting.

Other Useful Contacts

www.direct.gov.uk

www.bbc.co.uk/parenting/having_a_baby

www.nhsdirect.nhs.uk