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MATERNITY RIGHTS AND RELATED TOPICS

Employers should undertake a risk assessment in relation to pregnant employees.

Pregnant employees are entitled to paid time off for ante-natal care.

All employees are entitled to 26 weeks' ordinary maternity leave (OML). OML will start no earlier than the 11th week before the expected week of confinement (EWC). The employee must notify her employer that she is pregnant, her expected week of confinement (EWC), and the date she wants her OML to start. The employer then has to write to her within 28 days with the date he calculates her leave will end.

All women whose EWC is on or after 1 April 2007 will be entitled to 26 weeks additional maternity leave irrespective of their length of service.

Maternity leave may be 'triggered' earlier than planned if the baby is born early or the woman is absent from work for a pregnancy-related reason after the beginning of the 4th week before her EWC.

An employee can bring forward the date of her return to work but she must give **8 weeks' notice**. An employee has the right to return to the same job at the end of OML. Slightly different right after AML – see statute. Employee can postpone return beyond end of maternity leave period if sick (usual rules re sickness absence apply), or if she is able to 'add' another leave period such as annual leave or parental leave.

Note – all rights and benefits continue to accrue during OML (except salary), but the only benefit that accrues during AML is annual leave.

Statutory Maternity Pay (SMP)

(Note: an employee may be entitled to better maternity pay under her contract).

To qualify for SMP a woman needs to have 26 weeks' continuous employment at the start of the 15th week before her EWC, and have average

weekly earnings above the lower earnings threshold for NI contributions. (£87 in 2007/2008 tax year).

If she is eligible, the employee must give her employer 28 days' notice of when SMP will become payable (i.e. start of OML). SMP is paid at 90% of earnings for 6 weeks followed by a flat rate of £108.85 or 90% of normal weekly earnings if lower, for 33 weeks. Tax and NI are deducted.

The employer can recoup 92% of SMP or 100% if his total gross Class 1 NI contributions for the tax year are less than £45,000, plus an admin charge of 4½%.

Maternity Allowance (MA)

If a woman is not eligible for SMP she may be able to claim MA. She needs to have had 26 weeks employment out of the previous 66 weeks, and earnings of at least £30 per week in 13 of those weeks. MA is paid at a flat rate of £108.85 per week or 90% of normal weekly earnings if lower, and is paid direct by the Department of Work and Pensions.

All women who are entitled to Maternity Allowance will receive it for a maximum of 39 weeks.

'Keeping in touch days' and 'reasonable contact'

'Keeping in touch', or KIT days, mean that an employee can undertake up to ten days' work for the employer during the statutory maternity (or adoption) leave period without this affecting their entitlement to statutory payments for that week or bringing the leave itself to an end, or extending the total leave period. It is important to note, however, that any work done under these new provisions must be by agreement between the parties – neither party can insist on it without the other's consent.

New rules introduced in 2007 have also clarified the fact that 'reasonable contact' is permitted by both sides during the statutory leave period – although this should remove the anxiety felt by some employers about contacting employees on maternity or adoption leave, detailed guidance on what will be accepted as 'reasonable' contact is not yet available.

Adoption leave, pay etc

Employees who adopt a child have broadly similar rights to adoption leave, adoption pay and so on as those who give birth, except that they need to have 26 weeks continuous employment at the time they are notified that an adoptive match has been made in order to qualify for these rights. The adoption pay period, the notice required to return early, the introduction of keeping in touch days and the right to make reasonable contact during adoption leave all 'mirror' those detailed under maternity rights, where the Only one parent may take adoption leave.

Paternity rights

These rights can apply to the same-sex partner of a woman having a child. Similar rights are also available to one member of a couple adopting jointly or the partner of an individual adopting.

A person taking paternity leave needs to have 26 weeks' continuous employment at the start of the 14th week before the mother's EWC and meet the NI lower earnings threshold. He/she can take either 1 or 2 weeks paternity leave (but not 2 separate weeks), up to 56 days after the birth. Statutory Paternity Pay is paid at the same rate as basic SMP. In order to claim SPP the employee should complete Form SC3 (see DTI website).

Additional Paternity Leave and Pay

As part of the government's same "family-friendly" reforms it is intended that the partner of a woman having a child should be entitled to up to 26 weeks Additional Paternity Leave (some of which would be paid) if the mother herself returns early from statutory maternity leave. The Government's response to consultation on these proposals was recently published, and consultation on draft regulations will now follow, but there is no firm date as yet for the implementation of these new rights.

Parental Leave

Each parent of a child under 5 (18 if disabled child) who has 1 year's continuous employment is entitled to take up to 13 weeks (18 weeks in the case of a disabled child) of unpaid parental leave, no more than 4 weeks to be taken in any one year. The employee must give at least 21 days' notice of his/her wish to take parental leave, and the employer can postpone the leave by up to 6 months on the basis of his business needs.

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North Yorkshire Forum for Voluntary Organisations,
Crayke House, Birch Way, Easingwold Business Park,
Stillington Road, Easingwold York YO61 3FB, Tel. 01347 825710
Registered Charity No: 518117