

Maternity rights at work – baby due before 1 April 2007

About this fact sheet

This information tells you about your rights to maternity leave if your baby was due before 1 April 2007.

If your baby is due on or after 1 April 2007, you will have different rights to maternity leave. For information about your maternity rights if your baby is due after 1 April 2007, see our fact sheet, Maternity rights at work - baby due after 1 April 2007.

Who is entitled to take maternity leave?

Most women are entitled to take time off work to have a baby. This time off is called **maternity leave**. It is your right to take maternity leave no matter how long you have worked for your employer.

If you are in one of the following jobs, some of the information in this fact sheet may not apply to you. You will need to check your contract of employment to see what maternity rights you have at work. This applies to:

- women in the police force (not civilian employees)
- women in the armed forces
- share fisherwomen.

How much maternity leave can you take?

If your baby was due **before 1 April 2007**, you get a minimum of 26 weeks' leave, however long you've been working for your employer. This is called Ordinary Maternity Leave or OML. If you've been working for your employer for at least 26 weeks at the beginning of the 14th week before your baby is due, you can get an extra 26 weeks. This is called Additional Maternity Leave or AML. So you could have a total of 52 weeks maternity leave. During your AML, only certain terms of your contract are in operation, unless your employer agrees otherwise. For example, unless your employer agrees otherwise, you won't get holiday pay or pay increases whilst you're on AML.

The Directgov TIGER website has an interactive calculator which helps you to calculate what maternity leave you are entitled to. Go to www.direct.gov.uk.

Your contract of employment may give you extra rights to maternity leave, but it can't give you less than the law allows. If your contract says you have fewer rights than the law allows, you'll still be entitled to take the maternity leave described above.

When maternity leave begins and ends

When will your leave begin?

You can begin your maternity leave at any time from, the 11th week before your baby is due. If you want, you can work right up to the day your baby is born.

If you have an illness that's connected to your pregnancy in the four weeks before the baby is due, your maternity leave may have to start from that date.

When will your leave end?

If you are taking Ordinary Maternity Leave (OML), it will finish at the end of the 26th week after it began. If you are taking Additional Maternity Leave (AML), it will finish at the end of the 52nd week after it began unless you've agreed a different date with your employer.

You don't need to tell your employer that you are returning to work unless you want to return earlier. If your baby is due before 1 April 2007, you must give your employer at least 28 days warning if you want to return to work earlier than the agreed date.

When to tell your employer you want to take maternity leave

You must tell your employer, by the end of the 15th week before the baby is due, that:-

- you are pregnant
- the date your baby is due
- the date you want your maternity leave to start.

You must give your employer a medical certificate called a MATB1. You can get this from your midwife or GP. It gives the date your baby is due.

Once you have told your employer that you want to take maternity leave, they must write to you within 28 days and tell you the date you should come back to work.

Pay during maternity leave

If you have worked for your employer for at least 26 weeks at the beginning of the 15th week before your baby is due, you may qualify for **Statutory Maternity Pay** (SMP). To get SMP you must also earn at least £87.00 per week. You can get SMP even if you do not return to work after having your baby. You can get up to 26 weeks' SMP.

SMP is the minimum amount you should be paid, but your contract of employment may entitle you to more than this. Check your contract to see what you are entitled to.

If you don't qualify for SMP, you may be entitled to Maternity Allowance (MA). This is paid by the Department for Work and Pensions (DWP). You will qualify for MA if you earn an average of £30 per week or more. You must also have worked for at least 26 weeks out of the 66 weeks before the week your baby is due. You do not have to have worked for the same employer during this time and the 26 weeks do not need to have been worked in a row. You may get MA if you are self-employed.

How much will you be paid

If you are getting SMP, for the first six weeks of maternity leave you will get 90% of your usual gross weekly pay (that is, before tax and national insurance contributions are taken out). If your baby is due before 1 April 2007, for the next 20 weeks you will get 90% of your gross weekly pay or £108.85 a week, whichever is the lowest amount. Your SMP will finish at the end of 26 weeks. You should check your contract to see if you're entitled to pay after this.

If you're getting Maternity Allowance, you will receive either £112.75 a week or 90% of your average weekly earnings, whichever is lower. This will be paid for 26 weeks.

Your employer refuses to pay you during maternity leave

If your employer refuses to pay SMP, or does not pay you what you think you should get, you can ask your employer to give you a letter explaining:

- why they won't pay you; *and*
- how they have worked out the amount you will get; *and*
- what weeks they are paying you for.

If you are still not happy with their decision, you can ask an officer at the local HM Revenue and Customs office to decide who is right. HM Revenue and Customs can fine an employer up to £3,000 if they repeatedly fail to pay you SMP.

Unfair treatment at work because of pregnancy or maternity leave

You should not be treated differently at work because you are pregnant, or have just had a baby. For example, you should not be denied opportunities for promotion or given different terms and conditions to those you had before. If you think you are being treated unfairly because you are pregnant or because of your maternity leave, you can make a complaint to an **employment tribunal for sex discrimination**. You may need to raise a written grievance with your employer first. You should get help to do this from

a trade union representative if you have one, or from an experienced adviser (see below). There are strict time limits for complaining to an employment tribunal, and you should check that these do not run out before you make your complaint.

You are dismissed from work because of pregnancy or maternity leave

If you are dismissed from work because you are pregnant, have taken maternity leave or have just had a baby, you can make a complaint to an employment tribunal for unfair dismissal and for sex discrimination. It does not matter how long you have worked for your employer.

You must have told your employer that you are pregnant and, where possible, have given them a sick note as proof. You will also need to raise a written grievance with your employer first.

You should get help to complain to an employment tribunal from a trade union representative if you have one, or from an experienced adviser (see below). There are strict time limits for making a complaint, and you should check that you do not miss them.

Returning to work after maternity leave

In most cases, your employer must allow you to return to work after having a baby. All women must take at least two weeks off work after giving birth, or four weeks if you work in a factory.

If your employer refuses to let you return to work after maternity leave, this is a dismissal. You will be able to make a complaint to an employment tribunal for unfair dismissal and/or sex discrimination. However, you may have to raise a written grievance with your employer first.

The right to return to the same job after maternity leave

If you have taken 26 weeks Ordinary Maternity Leave (OML), you have the right to return to the same job as the one you had before you went on leave. If your employer does not let you return to the same job, this is a dismissal, and you will be able to claim **unfair dismissal** and/or **sex discrimination** from an employment tribunal.

If you have taken Additional Maternity Leave (AML) as well as OML, you are entitled to return to the same job unless your employer says this is not reasonable. In this case, you should be offered another suitable job with the same pay and conditions as you had before maternity leave. If your employer does not offer you another suitable job, or offers you an unsuitable job and dismisses you when you refuse it, you will be able to claim **unfair dismissal** and/or **sex discrimination** from an employment tribunal (you may have to raise a written grievance with your employer first).

If you have taken AML and you work for a **firm employing less than 6 people**, different rules apply. You are only entitled to return to the same job if

it is practical for you to do so. If it is not, your employer may dismiss you without offering you a suitable alternative. However, you will still be able to make a claim for unfair dismissal and discrimination.

If you were working full time before your maternity leave, you may want to return to work part time, job share or on different hours. This is called **flexible working**. Your employer does not have to agree to let you do flexible working, but they must treat your request seriously. If you are refused, you may be able to make a claim for sex discrimination from an employment tribunal. If you go back to work part time, your terms and conditions of employment should not be changed without your agreement.

If your terms and conditions are changed, you may be able to make a claim for sex discrimination from an employment tribunal (you may have to raise a written grievance with your first).

Further help

Citizens Advice Bureau

Citizens Advice Bureaux give free, confidential, impartial and independent advice on a limitless range of subjects, including employment rights. They can also refer you to a more specialist source of advice, if needed.. To find your nearest CAB, including those that give advice by e-mail, click on [nearest CAB](#). You can also look in your local telephone directory.

Other information on Adviceguide which might help

- Rights of working fathers
- Dealing with grievances, dismissal and disciplinary action at work
- Time off work
- Sex discrimination and sexual harassment at work
- Employer withholds your pay
- Parental rights at work

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This fact sheet was last updated on 1 April 2007 and is reviewed on a monthly basis. If it is some time since you obtained this fact sheet, please contact your local Citizens Advice Bureau to check if it is still correct. Or visit our website - www.adviceguide.org.uk - where you can download an up-to-date copy.