

## Maternity rights at work

### Who is entitled to take maternity leave?

Most women employees 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?

Most women have the right to take up to 52 weeks' maternity leave. This does not depend on how long you have worked for your employer.

The first 26 weeks of maternity leave are called Ordinary Maternity Leave (OML). During OML, you will still get all the same rights under your contract of employment as if you were still at work. The only exception is that you will not get your normal pay unless your contract allows for it.

You can also take an additional 26 weeks' maternity leave called Additional Maternity Leave (AML). This makes a total of 52 weeks' maternity leave. Again, this doesn't depend on how long you have worked for your employer. If you're taking AML, this must follow on directly after Ordinary Maternity Leave and there must be no gap between the two.

Directgov has an interactive calculator which helps you to calculate what maternity leave you are entitled to. Go to [www.direct.gov.uk](http://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 allowed by law.

### When maternity leave begins and ends

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.

If you are taking Ordinary Maternity Leave (OML), it will finish at the end of the 26<sup>th</sup> week after it began. If you are taking Additional Maternity Leave (AML), it will finish at the end of the 52<sup>nd</sup> 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. You must give your employer at least eight weeks' 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

You may qualify for **Statutory Maternity Pay (SMP)** if:

- you have been continuously employed for at least one day a week by the same employer for at least 26 weeks up to the end of the 15th week before your baby is due. The 15<sup>th</sup> week is called the qualifying week, *and*
- you are still in the job in the 15th week before the baby is due, *and*
- you have average weekly earnings of at least £107 a week.

You can get SMP even if you do not return to work after having your baby. You can get up to 39 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). For the next 33 weeks, you will be paid 90% of your gross weekly pay or £135.45 a week, whichever is the lowest amount. Your SMP will finish at the end of 39 weeks. Check your contract to see if you are entitled to pay after this.

If you're getting Maternity Allowance, you will receive either £135.45 a week or 90% of your average weekly earnings, whichever is lower. This will be paid for 39 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.

## **Discrimination at work because of pregnancy or maternity leave**

You should not be discriminated against at work because you are pregnant, are on maternity leave 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 claim to an **employment tribunal for discrimination**. You should first try to talk to your employer about this informally. If this doesn't work, you may then need to raise a written grievance. You can get help to do this from a trade union representative if you have one, or from an experienced adviser (see below). If these steps do not sort out the problem you can make a claim to an employment tribunal. There is a strict three-month time limit for making a claim, so check that you do not miss it.

### **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 claim to an employment tribunal for discrimination and for unfair dismissal. 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 certificate from your doctor or midwife as proof. If you have been dismissed, you could try talking to your employer about it if you want to get them to change their mind. You can also appeal against the decision if you want to. If this doesn't work, you can think about making a claim to an employment tribunal.

You should get help to make a claim to an employment tribunal from a trade union representative if you have one, or from an experienced adviser (see below). There is a strict three-month time limit for making a claim, so check that you do not miss it.

### **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 claim to an employment tribunal for unfair dismissal or discrimination. Sometimes you can make a claim for both of these.

## 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**, or **discrimination** from an employment tribunal. Sometimes you can make a claim for both of these.

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** or **discrimination** from an employment tribunal. Sometimes you can make a claim for both of these.

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 discrimination to 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 discrimination to an employment tribunal.

## Further help

### Maternity Action

An organisation providing information for employees and employers about their rights, responsibilities and entitlements during pregnancy, maternity leave and returning to work.

Telephone: 0845 600 8533 (Wednesday: 3pm – 7pm; Thursday: 3pm – 7pm; Friday: 10am – 2pm)

Website: [www.maternityaction.org.uk](http://www.maternityaction.org.uk).

### Citizens Advice Bureau

Citizens Advice Bureaux give free, confidential, impartial and independent advice on a wide 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.

[www.adviceguide.org.uk](http://www.adviceguide.org.uk)

## Other information on Adviceguide which might help

- Rights of working fathers
- Discrimination at work because of pregnancy or maternity leave
- Sex discrimination and sexual harassment at work
- Resolving disputes at work
- Parental rights at work

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