

Maternity Policy and Procedures

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CONTROL SHEET FOR MATERNITY POLICY

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MATERNITY POLICY

SCOPE

This policy applies to all women employees who, regardless of length of service and hours of work are entitled to maternity leave. The information in this Policy reflects the relevant legislation and specifically deals with the occupational maternity scheme of the National Joint Council for Local Government Services.

HOW TO USE THIS POLICY

Both the statutory and contractual maternity scheme offer benefits to employees which vary depending on their length of service. This leads to three groups of employees who have slightly different entitlements:

- those who have been continuously employed for 26 weeks by the 15th week before EWC,
- those who have less than 26 weeks continuous employment by the 15th week before EWC, and
- those with at least one year's continuous service at the 11th week before the EWC.

PURPOSE

This Policy is intended to help managers and employees understand maternity leave and pay.

Maternity provisions can be very complex and the information contained in the policy is intended to answer the initial questions managers and employees may have. If you have any further queries regarding maternity leave, pay, or pensions, please contact a member of the Human Resources and Payroll Team.

DEFINITIONS

Childbirth

In this context, childbirth means the live birth of a child, or a still birth after a pregnancy lasting at least 24 weeks.

Expected Week of Childbirth (EWC)

In this context, expected week of childbirth means the week, beginning with midnight between Saturday and Sunday, in which it is expected that the baby will be born.

Week of Childbirth

In this context, week of childbirth means the week, beginning with midnight between Saturday and Sunday, in which the baby is actually born.

Average weekly earnings

Average weekly earnings take into account what an employee actually earned in the 8 week period ending with the qualifying week. Therefore bonuses, pay awards and other ad-hoc payments which fall in that period count in the calculation of SMP.

Qualifying week

The qualifying week is the 15th week before the expected week of childbirth.

ABBREVIATIONS

EWC Expected Week of Childbirth

OML Ordinary Maternity Leave

AML Additional Maternity Leave

APL Additional Paternity Leave

SMP Statutory Maternity Pay

MA Maternity Allowance

SPL Statutory Paternity Leave

MSL Maternity Support Leave

SPL Shared Parental Leave

ShPP Statutory Shared Parental Pay

MATERNITY ENTITLEMENT:

Maternity entitlement can be divided into two main areas: Entitlement to Time Off, and Entitlement to Pay.

1 LEAVE

There are three types of maternity leave: ordinary, additional and compulsory.

1.1 Ordinary Maternity Leave (OML) and Additional Maternity Leave (AML)

Regardless of length of service, all women are entitled to take 26 weeks' Ordinary Maternity Leave (OML), followed by 26 weeks' Additional Maternity Leave (AML). All pregnant employees are therefore entitled to a total period of up to 52 weeks' maternity leave. This includes those employed under the Apprenticeship Scheme.

In order to be eligible for ordinary maternity leave and additional maternity leave, an employee must give notification:

- That she is pregnant;
- Of her expected week of childbirth;
- Of the date on which she intends her maternity leave to start.

If requested, the employee must provide notification in writing and provide a certificate from a registered medical practitioner or a registered midwife stating the expected week of childbirth. (Please see section 3 on Notification.)

OML can start on any day from the 11th week before the EWC.

If an employee's maternity leave has not already started, it will be triggered by the birth of the child, or a pregnancy-related absence from the beginning of the 4th week before the EWC. In both of these situations, the employee must notify her employer in writing as soon as reasonably practicable. If the employee gives birth prior to the start of her OML, OML begins on the day childbirth occurs.

An employee is still entitled to OML if she has a stillbirth after 24 weeks of pregnancy, or if the child dies.

1.2 Compulsory Maternity Leave

An employee must not return to work for two weeks following the date of childbirth.

1.3 When Does Maternity Leave Commence?

Maternity leave can start on any day from the beginning of the 11th week before the Expected Date of Childbirth (EWC), apart from two circumstances.

- If childbirth occurs before this date, or before the employee has been able to notify the Authority of her intention, maternity leave will begin the day after childbirth (NB See definition).
- The start of ordinary maternity leave will be triggered automatically if the employee is absent from work wholly or partly on account of a pregnancy-related condition within four weeks of the week her baby is due.

2 PAY

There are two types of pay to which an employee may be entitled. Statutory Maternity Pay which comes from the State, and Occupational Maternity Pay which is paid by the employer. Both are based on length of service as follows:

2.1 Statutory Maternity Pay

An employee who is pregnant will be eligible to receive Statutory Maternity Pay (SMP) for 39 weeks provided that:

- She has been employed for a minimum of 26 weeks as at the end of the 15th week before the week her baby is due (which is known as the qualifying week);
- She is still employed during that week, ie has not resigned or been dismissed before the beginning of that week;
- Her average weekly earnings during the period of eight weeks that immediately precede the 14th week before the expected week of childbirth, are equal to or greater than the lower earnings limit for national insurance contributions.*

If the above conditions have not been met, SMP will not be payable.

SMP is payable once the employee begins her maternity leave and it can begin on any day of the week. If an employee chooses to return to work before SMP is due to end (ie before the 39th week), she will forfeit any outstanding SMP that would otherwise have been due to her.

SMP is payable whether or not the employee intends to return to work or actually returns to work after maternity leave.

SMP is payable as follows:

- 6 weeks at 90% of average earnings;
- 33 weeks at a rate set annually by the Government or 90% of normal wage, whichever is lower.

It should be noted that SMP is regarded as earnings and therefore tax and National Insurance contributions will be deducted.

* If earnings are below this level the employee should complete form SMP1 so that she can claim Maternity Allowance from the Benefits Agency. Where a woman qualifies, she will receive 39 weeks' Maternity Allowance payable at the same flat rate as SMP or 90 percent of earnings, if less.

NB If the employee becomes eligible for a pay rise between the start of the original calculation period and the end of her maternity leave (whether OML or AML), the higher or standard rate of SMP will be recalculated to take account of the employee's pay rise, regardless of whether SMP has already been paid. This means that the employee's SMP will be recalculated and increased retrospectively, or that she may qualify for SMP if she did not previously. The employee will be paid a lump sum to make up any difference between SMP already paid and the amount payable as a result of the pay rise.

2.2 Occupational Maternity Pay

Employees with at least one year's continuous service at the 11th week before the EWC will be entitled to the following Occupational Maternity Pay:

- **Weeks 1 – 6** 90% of a week's pay (offset against payments made by way of SMP or Maternity Allowance*).
- **Weeks 7 - 18** Where an employee has declared in writing that she intends to return to work, she will receive half pay plus SMP, provided that this does not exceed full pay. This is paid on the understanding that a woman will return to local authority employment for at least three months following maternity leave. For employees not intending to return, payment will be the employee's entitlement to SMP only.

(If an employee is unsure whether or not she will return, there are two options; - to repay the half pay if she decides not to return, - or to ask the employer to withhold the half pay and receive this in a lump sum if she decides to return.)

- **Weeks 19-39** For the remaining 21 weeks, the employee will receive their SMP entitlement only.
(*This means that the statutory payments are made in addition to Occupational Maternity Pay, but the salary element will be adjusted so that the total does not exceed full pay.)

3 NOTIFICATION

3.1 Notification of Pregnancy

An employee must notify her employer of the following as soon as possible, and at least 28 days before her absence begins:

- That she is pregnant
- Of her expected week of childbirth (EWC)
- Of the date on which she wants her maternity leave to start. This cannot be earlier than the 11th week before the EWC.

If an employee who has already provided notification of her maternity leave start date subsequently changes her mind, she may do so by giving at least 28 days' notice of the revised start date. This may be earlier or later than the date originally notified, but cannot be earlier than the 11th week before the EWC.

On receipt of an employee's notification that she intends to take maternity leave, the employer must respond in writing within the next 28 days acknowledging the employee's intentions and informing her of the latest date on which she may return to work after her maternity leave. This will be 52 weeks after the start of the employee's maternity leave.

If childbirth occurs early the employee must notify the Authority that she has given birth. This notification must be provided as soon as reasonably practicable and must be in writing.

3.2 Notification of Return

An employee who decides to return to work at the end of her additional maternity leave is not required to give any specific notice of her return date. She may simply turn up to work in the usual way on the appropriate date.

If however she wishes to return to work early, including at the end of her ordinary maternity leave, she must give at least eight weeks' notice in writing of the date on which she intends to return.

3.3 Requests to return on varied hours

If a woman wishes to return from maternity leave on reduced hours, she should make the request as soon as possible, and no later than 28 days prior to her intended return to work date.

3.4 Right to return to the same job

The employee has the right to resume working in the same job on return from OML. If the employee returns to work after a period of AML, she is entitled to return either to the same job or, if this is not reasonably practicable, to another suitable job that is on terms and conditions not less favourable.

Employees on an Apprenticeship contract have a right to return to the job in which they were employed up to the end of the Apprenticeship contract.

3.5 Failure to return to work

Failure to return to work by the end of maternity leave will be treated as an unauthorised absence unless the employee is sick and produces a current fit note before the end of the maternity leave period.

If the employee decides during maternity leave that she does not wish to return to work, she should give written notice of resignation to the organisation as soon as possible and in accordance with the terms of her contract of employment.

4 KEEPING-IN-TOUCH DAYS

Employees on ordinary or additional – but not compulsory – maternity leave may do up to 10 days' work under their contract of employment without bringing their maternity leave period to an end or losing their entitlement to statutory maternity pay. These days are known as 'keeping-in-touch' days.

The employee can go in for one hour or a whole day. This will still be a 'keeping-in-touch' day. The days of work may be separate days or a single block, as agreed between the employee and her manager. The provision can be used in a number of ways, for example to invite an employee on maternity leave to go on a training course, to attend an important team meeting, or to undergo an EDPR interview.

Line managers may not, however, oblige the employee to do any work during their maternity leave. Neither are employees entitled to be offered any work to do. The amount and type of work to be done is subject to the agreement of both parties, as is the amount of remuneration that the employee will be paid. A woman's maternity

leave will not be extended due to the fact that she has carried out some work during this period.

5 REASONABLE CONTACT

Managers may make reasonable contact with employees who are on maternity leave, for example to discuss the employee's plans to return to work, significant workplace developments, job vacancies, training opportunities or whether the employee might wish to seek any changes to her working hours or pattern of work on her return. This would not constitute 'work' and would not therefore count towards the 10 days.

In the case of Apprentices, prior to going on maternity leave the Apprenticeship Officer will ascertain whether or not the Apprentice wishes to receive copies of any job vacancies or training opportunities during their maternity leave. Should there be any significant workplace developments, they will be informed of these in writing by the Apprenticeship Officer.

6 CONTRACTUAL BENEFITS

Apart from remuneration, an employee is entitled to benefit from the same terms and conditions of employment throughout the ordinary maternity leave and additional maternity leave period.

What qualifies as remuneration?

Examples of payments which count as remuneration are:

- Basic Pay
- Contractual overtime

6.1 Car User Allowances

An employee is entitled to receive the allowance in full (pro rata to hours worked) for the whole of the ordinary maternity leave and additional maternity leave period.

6.2 Mobile Phone

Employees who are in receipt of a mobile phone will continue to have the provision of the mobile phone for the whole of the ordinary maternity leave and additional maternity leave period.

6.3 Childcare Vouchers

An employee is entitled to request and receive childcare vouchers for the whole of the ordinary maternity leave and additional maternity leave period.

6.4 Annual Leave

Annual leave is a contractual benefit and therefore must be protected during the AML period. This means that annual leave continues to accrue during the maternity leave period and will be added to their entitlement for the leave year. Therefore the time when an employee is on maternity leave will count towards her continuous service for the purposes of qualifying for additional annual leave (ie the additional five days leave after five years service) and longer sick pay entitlement.

However, it should be noted that there is no provision for carry-forward of leave from one leave year to the next. Therefore dependent on the employee's individual leave year and the timing of the maternity leave, the employee may wish to convert part of the unpaid AML period to paid leave. For guidance on this, please speak to a member of the Human Resource Team.

Apprentices who do not return to work before the end of their Apprenticeship contract are entitled to payment for any untaken days as part of their final salary.

6.5 Sickness Absence

If an employee is absent from work during pregnancy owing to sickness, she will receive normal statutory / contractual sick pay in the same manner as she would during any other sickness absence provided that she has not yet begun OML. If, however, the employee is absent from work due to a pregnancy related illness after the beginning of the fourth week before her EWC, her maternity leave will start automatically.

If the employee is absent from work wholly or partly because of pregnancy during the four weeks before the EWC, she must confirm this in writing as soon as reasonably practicable.

6.6 Pension Contributions

During the employee's paid maternity leave she will continue to pay superannuation contributions on the actual maternity pay she has received (including statutory pay, contractual pay and any payment in respect of KIT days). The employer's contributions will be based on the employee's assumed pensionable pay, which will be calculated in accordance with the Local Government Pension Scheme rules.

No contributions will be payable by either the employee or the employer in any period of AML in which a woman receives no pay.

Any period of unpaid AML will not count as membership unless an election is made to pay contributions for this period following return to work or resignation (see below).

When the employee returns to work, or equally if she resigns or is dismissed during or after the AML, she can pay the contributions relating to any period of unpaid maternity leave. If the employee wishes to buy back the amount of 'lost' pension in respect of the unpaid period of absence they can do so through an age related APC (Additional Pension Contribution) contract, either over a period of time or, if impracticable, Derbyshire County Council may determine that a lump sum is appropriate. If the employee elects to enter into an APC contract within 30 days of returning from the leave, the cost will be split 1/3rd employee and 2/3rds employer. If they elect for an APC contract after the 30 day period the full cost of the APC will be borne by the employee.

An employee's membership in the pension scheme is preserved while her contributions are payable. Therefore, employees in the Local Government Pension Scheme will have their continuity of membership preserved during OML and for any period of the AML in which they receive SMP and/or contractual maternity pay, or have entered into an APC contract for the unpaid period of absence.

6.7 Working Pattern

Employees returning from maternity leave may request a variation to their working pattern, and should refer to the Council's Policies on Job-sharing, Carer's Leave and the Career Break Scheme. In addition, employees have a statutory right to apply for flexible working. Please refer to the separate policy on Flexible Working.

6.8 Less favourable treatment

An employee who is treated less favourably on the grounds of their pregnancy or ordinary or additional maternity leave period, can make a claim for maternity-related discrimination.

7 HEALTH AND SAFETY

The Authority owes their employees a duty of care. The Authority must therefore take adequate steps to protect their employee's health and safety whilst at work. There are various pieces of health and safety related employment legislation which address many aspects of this obligation.

In the field of maternity, there are a number of statutory obligations on employers regarding the health and safety of pregnant employees and those who are new mothers.

7.1 Stage One: Notification of Pregnancy

Where an employee notifies the Authority that she is pregnant or a new mother, the particular risks that she faces specifically in her working environment as a result of her condition will have to be assessed.

Risk Assessment

Under the Management of Health and Safety at Work Regulations, employers are required to make a suitable and sufficient assessment of the health and safety risks to which their employees are exposed at work.

Where women of child bearing age are employed the risk assessment must take into account risks to new and expectant mothers.

The Health and Safety Adviser is available to be consulted in relation to pregnant workers and risk assessment. However, all managers have an important role to play as they will be more aware of any potential risks in their areas. The following are examples of the type of risks that can arise in the workplace.

- For pregnant women and women who have had a caesarean section, lifting heavy items can lead to injury.
- Physical fatigue from standing for long periods of time can lead to miscarriage.

Special consideration should be paid towards the higher risks incurred in early pregnancy when the foetus is in the early stages of formation eg of muscular – skeletal problems as well as the risks from chemical/pathogenic hazards.

Once the risk assessment has been carried out further action may be required to make sure that everything possible has been done to reduce or eliminate the risk.

7.2 Stage Two: Action Following Notification

Appropriate steps should be taken as follows by the Health and Safety Adviser:

- Checks must be made to ensure that the preventative action identified as a result of the risk assessment has been undertaken. If the employee is still exposed to a risk that could jeopardise her health and safety after the identified action has been carried out, then her working conditions and hours of work should be

temporarily adjusted, or if it is not reasonable to do this, or it would not avoid the risk, suitable work should be offered, if any is available.

Alternative work will be suitable if:

- It is a kind which is suitable in relation to her and appropriate for her to do in the circumstances; and
- The terms and conditions applicable, if they differ from her normal conditions, are not substantially less favourable to her;

All measures taken must continue for as long as the risk exists.

If there is no suitable alternative work available, the employee must be suspended on full pay for as long as the risk remains or until the commencement of her maternity leave.

Managers play an important role in helping to identify the risks and in helping to adapt working arrangements if necessary.

Please contact Human Resources and/or the Health and Safety Adviser for advice if an employee informs management that she is pregnant, has recently given birth or is breast feeding.

It is important to review the assessment as risks can vary according to the stage of pregnancy and there are different risks for those who are breast feeding.

If the employee works in a manual job which involves lifting, ladder work, contact with hazardous substances or work that is particularly stressful, the Authority will give the employee every help and assistance to continue their job. At a later stage in the pregnancy, redeployment may be considered wherever practicable.

Display Screen Equipment

DSE (display screen equipment) users who have concerns over their work will be given an opportunity to discuss any anxieties with their line manager. Consideration will be given to either reduce or eliminate the need for work at DSE should this be requested. There are no scientific or medical reasons to link DSE work with any risks to pregnancy.

Ante-Natal Care

All pregnant employees are entitled to take a reasonable amount of paid time off work on medical advice to attend antenatal appointments. An employee can be asked to produce a medical certificate or appointment card, except in the case of her first request for time off.

Managers cannot ask employees to work additional hours to make up for any time spent at ante-natal appointments,

“Ante-natal care” includes doctors, midwives and hospital appointments. It can also include relaxation and exercise classes and parentcraft classes, where the appointment has been made on the advice of a registered midwife, doctor or health visitor.

The employee should endeavour to give her line manager as much notice as possible of antenatal appointments and, wherever possible, try to arrange them as near to the start or end of the working day as possible.

8 QUESTION AND ANSWERS

8.1 What if the employee has more than one contract?

The Authority aggregates its payment of National Insurance Contributions (NICs) for the employee, therefore the contracts of employment are effectively combined for SMP purposes and only one entitlement arises.

8.2 What are the employee’s rights on returning to work?

After a period of OML, the woman is entitled to return from leave to the job in which she was employed before her absence. This does include apprentices, provided that maternity leave ends before the conclusion of the apprenticeship contract.

After AML, the woman is entitled to return either to the job she was in before her absence or, if impracticable, the employer has the right to have her return to another job which is both suitable and appropriate for her in the circumstances.

8.3 What if the employee becomes pregnant again during maternity leave?

It will be possible, although rare, for a woman to be able to take a further period of ordinary and additional maternity leave (if she was having another child) following on from a former period of ordinary and additional maternity leave. Identical provisions apply, and her right to return will be as it was after the first period of AML.

8.4 What happens if the employee is sick?

If an employee notifies the Authority that she intends to return to work before the end of the 26 week period, and is unable to do so due to sickness or she returns and is subsequently absent due to sickness, she should receive SMP until the end of the 39 week period. This

should be topped up with occupational sick pay, but the total should not exceed her normal pay. The employee's entitlement to occupational sick pay will depend on her length of service and the amount of sick leave already taken.

If an employee is unable to return to work at the end of the 52 week maternity leave period or on the date she has notified (if she intended to return early) due to illness she will be entitled to SSP as she will then be outside the Maternity Pay Period. This should be made up to full pay with occupational sick pay, if eligible. The normal sickness provisions will apply from the date she was due to return.

8.5 What happens if the employee decides not to return to work?

If the employee simply fails to turn up for work, her absence is unauthorised and should be dealt with as any other case of this nature, under the Council's Disciplinary Procedure if necessary. It is important to ensure that an employee is aware of the last day by which she must return.

If the employee no longer wishes to return to work, she will effectively be resigning and should notify the Council in accordance with her contractual obligations.

8.6 What is the difference between Parental Leave and Shared Parental Leave?

Parental Leave Parental leave is for employees to take time off work to look after a child's welfare, is normally unpaid, and is available for each child up to their 18th birthday.

If the employee has completed one year's service with the Council, they are entitled to a total of 18 weeks unpaid parental leave for each child born or adopted. The leave can be taken in blocks of a week or multiples of a week, and may not be taken as odd days unless the child is disabled. No more than four weeks parental leave can be taken during a year. Please see separate policy on Parental Leave for more information.

Shared parental leave enables mothers to commit to ending their maternity leave and pay at a future date, and to share the untaken balance of leave and pay as shared parental leave and pay with their partner, or to return to work early from maternity leave and opt in to shared parental leave and pay at a later date.

Shared parental leave must be taken in blocks of at least one week. The employee can request to take shared parental leave in one continuous block (in which case the Council will have to accept the request as long as eligibility and notice requirements are met), or as a number of separate blocks of leave (in which case the employee needs

the Council's agreement to this). Please see separate policy on Shared Parental Leave for full information.

8.7 What should an employee do if she feels she is being treated differently because she is pregnant and intends to take maternity leave?

Employees have a right not to suffer any harassment, intimidation or detriment on the grounds of pregnancy, childbirth or maternity leave. Employees who are treated less favourably can bring a claim for maternity-related discrimination. Employees should discuss this with a member of the Human Resource Team and/or their Trade Union Representative who will advise on their rights.

8.8 What happens if an employee changes her mind about returning to work, or does not complete the three months after receiving half pay under the Occupational Maternity Pay scheme?

If she does not return for three months she must repay the 12 weeks half pay (but not the SMP) as determined by the Authority. However, the longer she returns to work the less she will have to repay.

If the employee simply fails to turn up for work, her absence is unauthorised and should be dealt with as any other case of this nature.

8.9 What happens if the baby dies, or if the employee miscarries?

If the baby dies or is still-born after 24 weeks pregnancy the Scheme applies. Where miscarriage occurs before 24 weeks, sympathetic consideration will be given to the circumstances and as necessary special leave or sick leave will be considered. The decision will be based upon the needs of the employee and medical opinion.

8.10 What can the employee do to ensure a healthy lifestyle?

During the first three months of your pregnancy, working may be difficult particularly if you are feeling sick and tired. You should make maximum use of lunchtime periods to rest but if you feel the need to rest at some other time explain this to your supervisor or manager.

In general – employees wanting specific advice on diet/exercise, smoking, alcohol and drugs should consult their GP or other relevant health care professional.

8.11 How will the employee's maternity pay be paid?

Maternity pay is usually paid in the same way as wages/salary.

8.12 What about pay awards?

Any pay award will be reflected in the calculation of maternity pay. Employees are entitled to backdated awards.

8.13 Will the employee's grade be affected?

Maternity leave will not affect job grade, employees are entitled to return to exactly the same grade as before they left. Unless for reasons of redundancy or reorganisation it is not possible or practicable for employees to return to their own job following maternity leave, they will normally return to the job they are contracted to on terms and conditions not less favourable than had they not been absent.

8.14 What happens if the employee is part way through post-entry training?

If an employee is part way through a Post Entry Training course when she goes on maternity leave then she will not be required to continue attendance. However, should she wish to do so she may continue on a voluntary basis but she will not be eligible to claim travelling and subsistence expenses. The two year repayment clause will be waived automatically.