

Payroll

Maternity Rights and SMP

Maternity Rights fall into 5 broad categories:

1. Maternity leave
2. Maternity pay
3. Paternity leave
4. Parental leave
5. Flexible working patterns

This note is primarily concerned with entitlement to, and calculation of Statutory Maternity Leave and Statutory Maternity Pay.

Paternity Leave is available to eligible fathers, who can take up to 2 weeks paid leave.

For more information see “DTI Publication - Working Fathers: Rights to Paternity leave and Pay (PL 517)” available at: -

<http://www.dti.gov.uk/er/workingparents.htm>.

Parental Leave is available to mothers and fathers who have completed one year’s service with their employer. The entitlement is up to 13 weeks unpaid parental leave. This leave can be taken at any time up to 5 years from the date of birth.

For more information see “DTI Publication – Parental Leave (PL 509)” available at: -

<http://www.dti.gov.uk/er/workingparents.htm>.

Or there is a new maternity tool on business link at

<http://www.businesslink.gov.uk/bdotg/action/layer?topicId=1077460344&tc=000AD040190032>

and a calculator at

<http://www.hmrc.gov.uk/calcs/smp.htm>

Eligible mothers and fathers have the right to request flexible working patterns from the employer. Employers are required to give such requests serious consideration. For more information see “Section 8 of DTI Publication – Maternity rights: a guide for employers and employees”.

The Department of Trade and Industry is responsible for employment legislation. A detailed guide on maternity rights is published by the DTI and is available at: -

<http://www.dti.gov.uk/er/individual/matrights-pl958.pdf>.

The interactive website <http://www.tiger.gov.uk> has separate sites designed for employers and employees which take the user through the rights and notification requirements relating to both maternity and paternity leave and pay.

- Key Dates

To understand the rules there are 3 key dates that need to be explained: -

1. Expected week of childbirth – the Sunday before the week the child is expected to be born.
2. Week of Childbirth – the Sunday before the week the baby is actually born
3. Qualifying week – The end of the 15th week before the expected week of childbirth.

- Maternity Leave

All employees are entitled to paid time off for antenatal care.

After 1st April 2007 employees are entitled to at least 39 weeks ordinary maternity leave. This applies regardless of length of service and applies to both full and part time members of staff. During this period of leave the employee will normally be able to claim Statutory Maternity Pay or Maternity Allowance (in place of wages). In addition they must continue to receive all other contractual benefits i.e. holiday, pension, use of company car etc.

Employees, who have completed 26 weeks continuous employment by the beginning of the 14th week before the expected week of childbirth, are entitled to 39 weeks additional maternity leave, which begins at the end of ordinary maternity leave. This leave is generally unpaid but some terms and conditions continue (e.g. confidentiality, trust, notice period etc). Others (e.g. holiday) are a matter for agreement between the employer and employee.

The employee must tell the employer: -

- That she is pregnant.
- When the expected week of childbirth will be.
- When she intends her maternity leave to start.

Maternity leave can start from the 11th week before the expected week of childbirth.

The employer must notify the employee of the end date of her leave. A model letter is available at: -

<http://www.dti.gov.uk/er/maternity.htm>.

If the baby is born before the intended start date or, if the employee becomes ill, in a pregnancy related illness, within 4 weeks of the expected date of childbirth then leave starts on that date regardless of the start date intended.

On returning to work the employee is entitled to return to the same job on the same terms and conditions. There is no specific statutory right for a woman to change working conditions, including hours of work, on return to work from maternity leave. However employees who are parents of young children have the right to request flexible working patterns (see above).

- Maternity Pay

There are two main maternity pay benefits: -

1. Statutory Maternity Pay (SMP) – paid by the employer to employees.
2. Maternity Allowance (MA) – paid by the Social Security / Jobcentre Plus Office.

Statutory Maternity Pay is available to employees that meet certain qualifying conditions based on length of service and pay rates. Employees meeting these conditions are entitled to 39 weeks SMP.

SMP is based on PAYE earnings as Class 1 national insurance deductions and cannot be based on dividend earnings.

To qualify the woman must have worked for the employer for a continuous period of at least 26 weeks ending with the qualifying week (i.e. the end of the 15th week before the expected week of childbirth). The employee's average earnings in the 8 weeks up to and including the qualifying week must have been at least equal to the lower earnings limit for NI. The employee must give the employer proper advance notification of any intentions, and must leave work after the start of the 15th week before the baby is due. To claim SMP the employee must give the employer maternity certificate Mat B1. SMP is paid whether or not the employee intends to return to work for the employer.

SMP Pay Rates: -

- 90% of average weekly earnings for the first 6 weeks.
- The lesser of £128.73 a week or 90% of average weekly earnings for the remaining 20 weeks.

Employers are reimbursed 92% of the SMP they have paid out. This is paid via a deduction from their next PAYE / NI payment and is paid and reimbursed via the payroll system. Small employers, with a total NI liability in the previous tax year of no more than £45,000, can deduct 103%.

Women who are not entitled to SMP, but meet the qualifying conditions based on their recent employment and earnings record, may claim **Maternity Allowance** from their social security office directly (e.g. self employed women or women who recently changed jobs)

Entitlement to MA is based on the woman's employment and earnings in the 66 weeks before the expected week of childbirth.

If an employee doesn't qualify for SMP, the employer should issue form "SMP1 Why I cannot pay you SMP" (http://www.dwp.gov.uk/resourcecentre/claim_forms.asp). To claim, the employee must send this to the social security office with the completed MA form.

MA Pay Rates: -

- 90% of their average weekly earnings up to a maximum of £128.73 per week.

SMP and MA are payable only for the weeks in which the employee is on Statutory Maternity Leave.

This note covers the main maternity benefits affecting employers and the self employed however other benefits may be available to employees that do not qualify for either SMP or MA.

Keeping in Touch days

Currently a woman will lose a weeks SMP if she does any work (however little) in a maternity pay week under her contract of service for the employer paying her SMP.

The introduction of 10 (ten) "Keeping in Touch" (KIT) days will allow a woman to do a limited amount of work under their contract during the MPP for the employer paying them SMP and retain her SMP for that week. Any work done under her contract on any day will count as a whole KIT day. In other words if the woman attends work for a one hour training session for example she will have used one of her KIT days.

There are no restrictions on when KIT days can be used for SMP although the maternity leave regulations prohibit a woman from working for two weeks after

childbirth. So it is entirely a matter for the woman and her employer how and when KIT days are used during her maternity pay period.

Once those days have been used up, the woman will once again lose a weeks SMP for any week in which she does any work under her contract of service for the employer paying her SMP. So, to be clear, if a “week” in the Maternity Pay Period contains only “KIT” days, SMP will be retained. If a “week” contains, for example, the last of the “KIT” days and also another day or days of work for the employer paying SMP, the woman will once again lose that weeks SMP.

In addition women will be able to take their maternity pay from the date they take leave, rather than starting the maternity leave period on a Sunday. Under the current rules women have to wait until the Sunday after starting leave to be entitled to SMP.

The legislation also allows for SMP to be paid for fractions of a week.