

Statutory Maternity Leave and Pay

Pregnant employees are entitled to 52 weeks Statutory Maternity Leave if they give the correct notice to the employer. Employees don't have to take 52 weeks if they don't want to, however, the first 2 weeks following the birth must be taken or 4 weeks for those who work in a factory.

Key points

- Pregnant employees have the right to 52 weeks maternity leave.
- 39 weeks could be paid which may be Statutory Maternity Pay, Maternity Allowance or contractual maternity pay (contractual pay may be more than statutory pay or could be paid for longer than 39 week - this will depend on the terms of employment).
- Pregnant employees are protected against unfair treatment and discrimination.
- During maternity leave an employee and employer can agree to have up to 10 keeping in touch days.
- Employees are entitled to paid reasonable time off for antenatal care.
- Women returning to work following Maternity Leave have the right to return to the original job or suitable alternative.

A pregnant employee has the right to both 26 weeks of ordinary maternity leave as well as 26 weeks of additional maternity leave. To qualify for maternity leave, a woman must tell her employer at least 15 weeks before the baby is due:

- that she is pregnant
- the expected week of childbirth, by means of a medical certificate if requested
- the date she intends to start maternity leave. This can normally be any date which is no earlier than the beginning of the 11th week before the baby is due. It is best to advise the employer as soon as possible.

Once notification has been given to the employer they must write to the employee, within 28 days of receiving her notification, setting out her return date. The employee must give eight weeks' notice to change the return date. Maternity Leave will automatically start 4 weeks before the baby is due if the employee is off work for pregnancy-related illness. If the baby arrives early the leave will start on the day after the birth.

Antenatal care

All pregnant employees are entitled to reasonable time off with pay for [antenatal care](#) antenatal care made on the advice of a registered medical practitioner, which may include relaxation classes and parent-craft classes. Except for the first appointment, employees should show the employer, if they ask an appointment card or other documents showing that an appointment has been made. An expectant father or partner of a pregnant woman has the right to take time off work to go to 2 antenatal appointments.

Statutory maternity pay

Statutory maternity pay (SMP) will be payable if an employee has been employed continuously for at least 26 weeks ending with the 15th week before the expected week of childbirth, and has

an average weekly earnings at least equal to the lower earnings limit for National Insurance contributions. SMP is payable for 39 weeks; for the first six weeks it is paid at 90 percent of the average weekly earnings. The following 33 weeks will be paid at the SMP rate or 90 per cent of the average weekly earnings whichever is the lower. The standard rate for SMP is reviewed every April. The SMP rate has been £139.58 per week since April 2016. From 2 April 2017, the rate will be £140.98.

Some employers may have contractual maternity pay which can be more than the statutory rate, for example 26 weeks of full pay, this will depend on the terms and conditions of employment.

Maternity Allowance

Women who do not qualify for Statutory Maternity Pay may be entitled to Maternity Allowance, paid by Jobcentre Plus, for up to 39 weeks. To qualify, they must have been employed or self-employed for 26 weeks out of the 66 weeks before the expected week of childbirth. Women can claim maternity allowance once they have reached 26 weeks of pregnancy, and payments can start 11 weeks before the baby is due.

Maternity Allowance may be payable for 39 weeks if a woman does not qualify for Statutory Maternity Pay and she meets the following qualifying conditions.

In the 66 weeks before the baby is due the mother must have:

- been employed or self-employed for at least 26 weeks (these need not be consecutive weeks).
- earned at least £30 a week, on average, in over any 13 of those 26 weeks.

Maternity Allowance may be payable for 14 weeks at a lower rate where the mother is the spouse or partner of a self-employed person and helps in their business. For more information on the wider range of options for claiming Maternity Allowance and benefits as a new parent visit GOV.UK - Maternity Allowance.

Maternity suspension

Employers must take into account any health and safety risks to new and expectant mothers and should assess the risks to the woman and baby. Risks could include:

- heavy lifting or carrying
- standing or sitting for long period without adequate breaks
- exposure to toxic substances
- long working hours.

If the risk cannot be avoided, the employer must take steps to remove the risk or offer different suitable work (with no less favourable terms and conditions); if no suitable alternative work is available, the employer must suspend the expectant mother on full pay for as long as necessary to protect her health and safety or that of her baby.

Employee rights while on Maternity Leave

During the maternity leave, the employee is entitled to benefit from all her normal terms and conditions of employment, except for remuneration (monetary wages or salary). Employees can do up to 10 days' work during her maternity leave without losing any Statutory Maternity Pay. These days are called Keeping in touch days and are optional both employee and employer need to agree them. Payment for these days should be agreed before the employee comes into work.

At the end of maternity leave, the employee has the right to return to her original job, if that is not possible then a similar job on the same terms and conditions should be offered. If a redundancy situation arises, she must be offered a suitable alternative vacancy if one is available. If there is no suitable alternative work, she may be entitled to redundancy pay.

Redundancies for pregnant employees or those on maternity leave

Myth: Pregnant women and women on maternity leave cannot be made redundant.

This is not true. In a genuine redundancy situation, and where there is no suitable alternative work available for those on maternity leave, then pregnant employees (or those on maternity leave) can lawfully be made redundant. This is providing that pregnancy and maternity is not the reason for redundancy, the redundancy is genuine and you have followed the correct redundancy procedures and have considered any redeployment.

Checklist for a fair process:

- is the redundancy genuine?
- have employers consulted with employees on maternity leave?
- has the right selection criteria been decided upon?
- are there any suitable alternative vacancies?
- what does the law say?

What the law says.

- During the protected period (the beginning to the end of the maternity leave) unfavourable treatment of a woman because she is pregnant or on maternity leave is unlawful.
- A woman on maternity leave has the right to return to the same job before she left, or if not possible at the end of the 52 weeks maternity leave than a suitable alternative must be found.
- Selecting a woman for redundancy because of her pregnancy, maternity leave or a related reason is automatically unfair dismissal as well as being unlawful discrimination.
- Failure to consult a woman on maternity leave about possible redundancy is likely to be unlawful discrimination.
- A women made redundant while on maternity leave must be offered any suitable alternative vacancy if there is one available she doesn't need to apply for it.

For further information please see the  [Managing redundancy for pregnant employees or those on maternity leave \[334kb\]](#).