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Department for
**Employment
and Learning**
www.delni.gov.uk

ER16 Maternity Rights : a guide for employers and employees



Introduction

This guide describes an employee's maternity rights and her responsibilities towards her employer. It also describes the employer's responsibilities when an employee avails of her maternity rights.

Rates of Statutory Maternity Pay

The rates of Statutory Maternity Pay (SMP) and Maternity Allowance (MA) are subject to revision by the [Department for Social Development](#) each April. This means that the rate quoted in official guidance which is printed from the internet can become out of date. The internet guidance will be updated as and when the rates change; alternatively your local Jobs and Benefits office or Social Security office can advise you of the current rates.

Other employment legislation

While this guidance describes statutory maternity rights and obligations, women who are pregnant or who have recently given birth may also take advantage of other statutory rights which apply to all employees. These are mentioned in the text where relevant.

Employees who are fathers of new babies, or who are the partner of the mother, may also have a right to paternity leave with pay, and both parents may be entitled to take parental leave and time off for dependants. Employees who are parents of young children or disabled children under the age of 18 also have the right to request flexible working. These rights are summarised in the section on '[Maternity leave](#)' (page 7).

The Department for Employment and Learning has responsibility for employment legislation, while the [Department for Social Development](#) has responsibility for SMP and MA. Her Majesty's Revenue and Customs (HMRC) has responsibility for employers' administration of SMP, and the Office of the First Minister and deputy First Minister (OFMFDM) has responsibility for sex discrimination legislation. Direct links to detailed guidance provided by these Departments is provided where appropriate.

More Help

- The leaflets '[Pregnancy and work – what you need to know as an employee – babies due on or after 1 April 2007](#)', and '[Pregnancy and work – what you need to know as an employer – babies due on or after 1 April 2007](#)' provide a summary of the rights and responsibilities of both employees and employers and a timeline of key actions. These leaflets can be downloaded from www.delni.gov.uk/workandfamilies.
- An interactive tool to help employees find individualised advice on their maternity rights and responsibilities is provided by Directgov at www.direct.gov.uk/Employment/Employees/WorkAndFamilies/fs/en.

- For further help with employment issues generally please contact the Labour Relations Agency on 028 9032 1442 or 028 7126 9639.
- www.nibusinessinfo.co.uk provides an interactive tool to assist employers understand how maternity legislation may apply to individual cases.
- For more detailed help with the administration of SMP, employers can contact HMRC (visit www.hmrc.gov.uk/pay/statutorypayments.htm or telephone 08457 143143).

Please note that this booklet gives general guidance only and should not be regarded as a complete or authoritative statement of the law. Authoritative interpretations of the law can only be given by the courts. Readers should be alert to the possibility of developments in case law that may affect the rights described.

Further information can be obtained from the Labour Relations Agency (LRA). For the addresses of its two offices, see [Appendix 2: Useful addresses](#).

The contents of this booklet apply mainly to women. However, where subject matter covered applies equally to men and women, for simplicity the masculine pronoun is used.

Any reference throughout this booklet to Jobs and Benefits offices includes JobCentres.

This booklet, [others in the series](#) and [related publications](#) are free to download from the Departmental website at www.delni.gov.uk/erpublications. Alternatively they may be obtained upon request from your local [Jobs and Benefits office](#). For information on [Jobs and Benefits offices](#): FREEPHONE 0800 353530.

Upon request, consideration may be given to making this booklet available in alternative formats and in other languages for people who are not proficient in English.

The Employment Rights ('ER') series of booklets is updated on a regular basis. As part of this updating process the Department would welcome any comment/s from members of the public regarding the content of these booklets.

All comments should be addressed to:

Department for Employment and Learning
Employment Relations Policy and Legislation Branch
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Alternatively, comments may be sent via e-mail to: erbooklets@delni.gov.uk

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Contents

What are the statutory entitlements and responsibilities?	1
Who the rights apply to	2
Definitions used in this guidance.....	3
Time off for antenatal appointments	4
The right to time off	4
Protection against detriment or dismissal and sex discrimination.....	6
Maternity leave	7
Ordinary Maternity Leave	8
Additional Maternity Leave	8
Occupational pension schemes during maternity leave	11
Annual leave and maternity leave	11
Return to work after maternity leave	12
Redundancy during maternity leave.....	12
Other entitlements.....	14
Statutory Maternity Pay and Maternity Allowance	15
Statutory Maternity Pay (SMP).....	15
Maternity Allowance (MA)	17
Keeping in touch, planning ahead and notice periods.....	19
Notification before going on maternity leave	20
Contact during maternity leave.....	23
Work during the maternity leave period – ‘Keeping In Touch Days’.....	24
Return to work after maternity leave	27
Returning to the same job after maternity leave.....	27
Dismissal on or after return to work from maternity leave	29
Health and safety at work.....	31
Annex A: Model letter acknowledging notification of maternity leave....	32
Appendix 1: Booklets in this series	34
Appendix 2: Useful addresses.....	36

What are the statutory entitlements and responsibilities?

Key facts

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

- All pregnant employees are entitled to **52 weeks' maternity leave** – **26 weeks' Ordinary Maternity Leave (OML)** and **26 weeks' Additional Maternity Leave (AML)**.
- Pregnant employees who meet qualifying conditions based on their length of service and average earnings are entitled to **39 weeks' Statutory Maternity Pay (SMP)**, which is paid by their employers and mostly or completely refunded by the Government.
- Women who are not entitled to SMP but meet qualifying conditions based on their recent employment and earnings may claim **39 weeks' Maternity Allowance (MA)**, paid direct by the [Department for Social Development \(www.dsdni.gov.uk\)](http://www.dsdni.gov.uk).
- Employers may make **reasonable contact** with a woman on maternity leave for a number of reasons, such as to discuss arrangements for her return to work.
- Employees may undertake up to ten '**Keeping In Touch Days**' during their maternity leave – allowing work under their contract of employment – by agreement with the employer.
- Employees who wish to return to work either earlier or later than agreed with the employer should provide **eight weeks' notice**, unless the employer agrees to less notice being given.
- Employees have a **right to return** to the same job after maternity leave. There may be some exceptions to this if the employee takes more than 26 weeks' maternity leave and if it is not reasonably practicable for the employer to hold her job open, but she must still be offered a job that is suitable for her and the terms and conditions must be no less favourable.
- Pregnant employees and those on maternity leave are protected under **sex discrimination** legislation which outlaws unfair treatment, including dismissal, on grounds of their sex, pregnancy or maternity leave.
- Employers are required by law to protect the health and safety of employees who are pregnant, have recently given birth, or who are breast-feeding.
- Further details on all of the above are provided in later sections of this guidance.

The statutory maternity rights described in this guidance form a **minimum standard** of protection established by Parliament. Women and their employers, or their representatives, including trade unions, remain free to negotiate and agree more favourable arrangements on a voluntary or contractual basis should they wish to do so. The Government welcomes and encourages this, where it accords with the priorities, needs and circumstances of the parties concerned. However, it should be noted that **an employee cannot be bound by an agreement which offers maternity arrangements that are less favourable than her statutory rights.**

Who the rights apply to

Most of the rights and responsibilities described in this guidance, apart from the right to MA, apply only to employees and not to the self-employed or to the unemployed. As a general rule, the following principles apply:

- *it is **sex discrimination** to treat a woman unfairly because of her pregnancy or maternity leave. This applies regardless of her employment status;*
- *to qualify for **maternity leave**, a woman must be an employee (that is, work under a contract of employment);*
- *to qualify for **Statutory Maternity Pay (SMP)**, a woman must be an employee or an employed earner – that is, must work for someone who is liable to pay the employer’s share of her Class 1 National Insurance Contributions (in case of doubt contact your local HMRC office);*
- *to qualify for **Maternity Allowance (MA)**, a woman must be – or recently have been – either an employed or self-employed earner;*
- *the vast majority of women who qualify for leave will also qualify for pay, and vice versa. There are, however, a few exceptions which are indicated in the text where relevant;*
- *the rights relating to time off for antenatal care and to maternity leave do not apply to office holders, such as members of the police force, MPs, MLAs the judiciary and some company directors, or to masters or crew members engaged in share fishing paid solely by a share of the catch;*
- *employees on **fixed-term contracts** may not be treated less favourably than similar permanent employees. For further information see ‘Fixed Term Work – A Guide to the Regulations’.*

Other restrictions are explained in the text where relevant.

Definitions used in this guidance

Part-time employees

All the rights described in this guidance apply to both full-time and to part-time employees, no matter how many hours they work, provided that they satisfy the appropriate qualifying conditions, such as length of service.

Childbirth, expected week of childbirth, week of childbirth

In this guidance, the terms listed below have the meanings shown.

“Childbirth” means the live birth of a child, or a still birth after a pregnancy lasting at least 24 weeks.

“Expected week of childbirth” refers to the week, beginning with midnight between Saturday and Sunday, during which it is expected that the baby will be born.

“Week of childbirth” means the week, beginning with midnight between Saturday and Sunday, during which the child is actually born.

Associated Employer

In this guidance two employers are “associated employers” if one is a company which the other directly or indirectly controls, or both are companies which are controlled by a third person.

Women who work for more than one employer

Women who work for more than one employer will be able to exercise their maternity entitlements – and will be subject to obligations – separately in relation to each. Employees should be careful to follow the notification for the start of maternity leave and notification for any change in return to work dates, for each employer.

Fathers

In this guidance the term ‘father’ is used (for example in connection with paternity pay and leave) to refer to the individual who is eligible for certain statutory entitlements and will either be the biological father of the child, and / or the mother’s partner, regardless of their sex.

Time off for antenatal appointments

Key facts

- All pregnant employees are entitled to paid time off to attend antenatal appointments.
- Time off for antenatal care should be paid at the employee's normal rate of pay.
- Antenatal care may include relaxation and parentcraft classes (on the advice of a healthcare professional), as well as medical examinations related to the pregnancy.
- The entitlement to paid time off for antenatal appointments applies regardless of the employee's length of service.

The right to time off

All pregnant employees are entitled to time off to keep appointments for antenatal care made on the advice of a registered medical practitioner, registered midwife or registered health visitor.

Antenatal care is not restricted to medical examinations. It could, for example, include relaxation classes and parentcraft classes as long as these are advised by a registered medical practitioner, registered midwife or registered health visitor.

The employer is entitled to ask for evidence of antenatal appointments, except in the case of the very first appointment.

With the exception of the first antenatal appointment, the employee must show her employer on request:

- ***a certificate confirming that she is pregnant.*** This can be provided by a registered medical practitioner (e.g. a doctor), a registered midwife or a registered health visitor; and
- ***an appointment card*** or some other document showing that an appointment has been made.

Payment during time off

The employee should be paid at her normal hourly rate of pay by her employer during the period of time off for antenatal care. This rate is calculated by dividing the amount of a week's pay by the number of the employee's normal working hours in a week. The normal working hours will usually be clear from the agreed terms and conditions of employment, or from the employee's written statement of main employment particulars.

If working hours vary from week to week, they should be averaged over the previous 12 complete working weeks. If the employee has yet to complete 12

weeks' service, the average should be estimated in the light of what could be reasonably expected from the agreed terms and conditions of employment and from the work pattern of any fellow employees in comparable jobs. Overtime is counted only if it is required and part of the normal working pattern.

Further guidance on calculating a week's pay

Further guidance on what is meant by a week's pay can be found in the booklet '[Rules governing continuous employment and a week's pay](#)' (ER8).

Further information can be found in the booklet '[Written statement of employment particulars](#)' (ER2).

Both booklets, and others in the Employment Rights series, can be downloaded from www.delni.gov.uk/erpublications.

Dismissal for asserting the right to time off

It is **unlawful** for an employer to dismiss an employee, or to select her for redundancy in preference to other comparable employees or subject her to less favourable treatment, solely or mainly because she has sought to assert her statutory right to time off for antenatal care.

It does not matter for these purposes whether or not the employee does actually have the right and whether or not it has actually been infringed, as long as she acts in good faith in seeking to assert it. In addition, dismissal or selection for redundancy in these circumstances is likely to be unlawful under the provisions which protect women against dismissal on grounds of pregnancy or childbirth.

Complaints relating to time off

An employee who has been unreasonably refused time off for antenatal care, denied her normal rate of pay during such time off should raise a grievance with her employer. If the dispute is not resolved then she can complain to a tribunal.

An employee who has been dismissed on the above grounds should appeal against the dismissal as part of the requirement under the statutory dispute resolution procedures. Failure by employers or employees to use these statutory procedures could result in an increase or reduction of any compensation awarded. The booklet '[Resolving disputes at work – a guide for employees](#)' sets out the statutory dispute resolution procedures that should be followed.

Fathers-to-be and time off for antenatal appointments

Fathers do **not** have a legal right to time off to accompany their partners to antenatal appointments, as this applies only to pregnant employees. However, many employers do allow their employees time off work – paid or unpaid – in order to attend antenatal appointments. The Government encourages this wherever it is practicable for both employer and employee.

Protection against detriment or dismissal and sex discrimination

Key facts

- It is **sex discrimination** to treat a female worker or job applicant less favourably for a reason related to her pregnancy or maternity leave.
- It is **sex discrimination** to dismiss a female worker for a reason connected with her pregnancy or maternity leave.
- Such **discrimination cannot be justified** whether on grounds of cost, disruption to the business, or for any other reason.
- It is also **unlawful** under the Employment Rights (Northern Ireland) Order 1996 to treat a woman unfairly, dismiss her or select her for redundancy for reasons relating to her pregnancy or maternity leave.
- This protection applies **regardless** of the employee's length of service and applies as soon as the employer knows that the employee is pregnant.

Further detailed guidance on sex discrimination and how it applies to pregnant women and women on maternity leave and their employers is available from the Office of the First Minister and deputy First Minister at www.ofmdfmi.gov.uk/index/equality/sex-discrimination-and-equal-pay.htm.

Maternity leave

Key facts

- All pregnant employees are entitled to take up to one year's (52 weeks') maternity leave, regardless of length of service with the employer. Maternity leave is a **single continuous period** and is made up of:

- **26 weeks' Ordinary Maternity Leave (OML)** – at the end of which a woman is entitled to return to the same job on the same terms and conditions as before her leave began

and

- **26 weeks' Additional Maternity Leave (AML)** – at the end of which she has the right to return to the same job or, if it is not reasonably practicable for the employer to hold this post open, to another post on terms and conditions which are no less favourable.

- AML directly follows OML; there must be **no gap** between the two.

- The law requires that an employee take a **minimum** of two weeks' (four weeks for those who work in factories) maternity leave immediately following the birth.

- During both forms of maternity leave (OML and AML) the contract of employment continues, and although the woman has no statutory right to contractual remuneration during maternity leave, she must, during OML, continue to receive all her other contractual benefits. Women whose expected week of childbirth begins on or after 5 October 2008 are also entitled to **the same** contractual benefits during AML as they receive during OML.

- A woman can choose when to start her maternity leave. This can usually be any date from the beginning of the 11th week before the week the baby is due. The woman must give the correct notice to her employer (see the section '[Keeping in touch, planning ahead and notice periods](#)' on page 19).

- **Other entitlements:** employees may also have a right to:

- **parental leave;**

- **time off for dependants;**

- **the right to request flexible working;**

- **the father of the baby may also have a right to paid paternity leave.**

All pregnant employees are entitled to **52 weeks' maternity leave** – or as much of that period as they wish to take – no matter how long they have worked for their employer. The purpose of maternity leave is to allow the mother to give birth and to recover from giving birth to her baby, as well as to bond with and care for her new child.

While it is up to employees to decide how much maternity leave they wish to take, up to the 52 weeks' maximum, the law requires that **a minimum of two weeks' leave must be taken**, or four weeks if the woman works in a factory. This is known as compulsory maternity leave.

While the new legislation introduced in 2006, applying to women whose expected week of childbirth begins on or after 1 April 2007, means that all women, regardless of their length of service, are entitled to up to 52 weeks' maternity leave, the two distinct types of maternity leave remain as before. These are **Ordinary Maternity Leave (OML)** and **Additional Maternity Leave (AML)**.

Employees can work out their maternity leave (and pay) entitlements online at tiger.direct.gov.uk/cgi-bin/maternity.cgi.

Notice requirements

The notice an employee must give her employer of her intention to take maternity leave, and arrangements for doing so, as well as notice requirements for changing the dates of return from maternity leave, are covered in '[Keeping in touch, planning ahead and notice periods](#)' beginning on page 19.

Contractual rights to maternity leave

If an employee has a contractual right to maternity leave in addition to the statutory right set out in this guidance, she may take advantage of whichever is the most favourable to her.

Ordinary Maternity Leave

Ordinary Maternity Leave (OML) lasts for 26 weeks and may begin at a time of the woman's choosing, any time from 11 weeks before the expected week of birth up until the birth itself. If the employee is absent from work due to a pregnancy-related reason after the beginning of the fourth week before the expected week of childbirth, but before the date she has notified, the maternity leave period begins automatically on the day after the first day of her absence.

Additional Maternity Leave

Additional Maternity Leave lasts for 26 weeks and, if taken, must follow immediately after Ordinary Maternity Leave. There cannot be gaps between the two types of maternity leave.

Contract of employment during Ordinary and Additional Maternity Leave

The contract of employment continues throughout the 52 weeks of maternity leave (26 weeks' OML and 26 weeks' AML), unless either the employer or employee expressly ends it, or it expires.

It is unlawful to select a woman for redundancy or terminate her contract solely or principally because she is pregnant or on maternity leave. Any redundancy must follow the correct procedures (for more information see booklet '[Redundancy payments](#)' (ER3), available from the Department for Employment and Learning's website at www.delni.gov.uk/erbooklets).

During OML an employee has a statutory right to continue to benefit from the terms and conditions of employment which would have applied to her had she been at work instead of on leave except for the terms providing for her wages or salary. For women whose expected week of childbirth is on or after 5 October 2008, this right will continue throughout OML **and** AML. Whether a bonus is payable to an employee on maternity leave depends on the type of bonus and the terms of the particular bonus scheme.

Examples of contractual terms and conditions that will continue to apply during maternity leave might include, for example gym membership; participation in share schemes; reimbursement of professional subscriptions; the use of a company car or mobile phone (unless provided for business use only); and other benefits such as health club membership.

However, if the employee does any of the limited amount of work allowed during maternity leave she should receive contractual pay, the detail of which will depend on the agreement she reaches with her employer over the amount and the nature of the work (see '[Work during the maternity leave period – Keeping In Touch Days](#)' on page 24).

Contract of employment during Additional Maternity Leave

For women whose expected week of childbirth is before 5 October 2008, the minimum terms and conditions of the employment contract which apply (subject to any contractual agreement to the contrary) during Additional Maternity Leave are those set out below:

- *The employee is entitled to benefit from her employer's implied obligation to her of trust and confidence;*
- *She is bound by her implied obligation to her employer of good faith;*
- *The employee is bound by any terms in her contract relating to:*
 - *disclosure of confidential information,*
 - *acceptance of gifts or other benefits,*
 - *participation in any other business;*

- *She is entitled to receive whatever period of notice her contract provides for if her employment is terminated (an employee who is pregnant or on maternity leave is protected from dismissal which is wholly or partly related to her pregnancy or maternity leave);*
- *She must give her employer the notice provided for by her contract of employment if she is terminating her contract;*
- *She is entitled to any contractual rights to compensation and statutory redundancy pay if she is made redundant;*
- *Any terms and conditions in the contract of employment relating to disciplinary or grievance procedures will continue to apply.*

The continuation of any other terms and conditions is a matter for negotiation and agreement between the employer and employee (or their representatives). Employers should, however, ensure that they are acting lawfully under the Equal Pay Act (Northern Ireland) 1970 and the Sex Discrimination (Northern Ireland) Order 1976. For further information on this legislation, visit the website of the Office of the First Minister and deputy First Minister (www.ofmdfmni.gov.uk).

Continuous employment

During her Ordinary Maternity Leave period a woman continues to be employed. This means that **the OML period counts towards the woman's period of continuous employment for the purposes of entitlement to other statutory employment rights** (for example, the right to a redundancy payment). It also counts for assessing seniority, pension rights, and other personal length-of-service payments, such as pay increments under her contract of employment.

For women whose expected week of childbirth is on or after 5 October 2008, **this right will continue throughout Ordinary and Additional Maternity leave.**

However, for women whose expected week of childbirth is before 5 October 2008, **the Additional Maternity Leave period is not required to be counted** for the purpose of calculating payments based on an individual employee's length of service – such as pension rights and pay increases linked to length of service (unless the contract of employment provides for service to accrue during Additional Maternity Leave for the purposes of contractual benefits). In these circumstances the period of employment before the start of Additional Maternity Leave will be 'joined up' with the period of employment on the mother's return to work as if the two were continuous.

Employers should, of course, ensure that they are acting lawfully under the Equal Pay Act (Northern Ireland) 1970 and the Sex Discrimination (Northern Ireland) Order 1976. For further information on this legislation, visit the website of the Office of the First Minister and deputy First Minister (www.ofmdfmni.gov.uk).

Guidance on the accrual of annual leave during both Ordinary and Additional Maternity Leave is provided at the end of this section.

Occupational pension schemes during maternity leave

Employer contributions

During any period of 'paid maternity leave' – regardless of whether this is Ordinary or Additional Maternity Leave – an employer's pension contribution should be calculated as if the woman is working normally and receiving the normal remuneration for doing so. 'Paid maternity leave' is when the employee is receiving Statutory Maternity Pay (SMP) or contractual (occupational) maternity pay, or a combination of both. In other words, if an employee takes 26 weeks' OML followed by 13 weeks' AML, returning to work when the period of SMP comes to an end (see the '[Statutory Maternity Pay and Maternity Allowance](#)' chapter beginning on page 15), the pension contributions the employer makes should continue throughout the whole period as though the woman was working normally and had taken no maternity leave at all. However, if the employee does not return to work when her paid maternity leave comes to an end and instead remains on leave, using up the rest of her unpaid AML, **the employer need not continue the pension contributions during the unpaid leave unless the contract of service provides otherwise.**

Employee contributions

If the rules of the pension scheme require the employee to contribute towards her occupational pension, her contributions should be based on the amount of pay she receives during the maternity leave period – whether Statutory Maternity Pay, contractual pay, or a combination of both.

Further information on occupational pensions can be found on the [Department for Social Development](#) website.

Annual leave and maternity leave

Employees on maternity leave retain their entitlement to statutory annual leave (four weeks' paid leave per year) throughout ordinary and additional maternity leave. If the employee is also entitled to contractual annual leave (that is, annual leave that is provided by her contract, on top of the four weeks statutory minimum provided by law) **she will continue to accrue this additional, contractual entitlement during Ordinary Maternity Leave.** A woman whose expected week of childbirth is on or after October 2008 continues to accrue contractual annual leave during Additional Maternity leave. However, a woman whose child is expected before that date does not continue accruing contractual annual leave during AML unless she has agreed otherwise with her employer.

It is not possible for an employee to take annual leave at the same time as maternity leave. It will, though, usually be possible for an employee to use any untaken annual leave either before she starts her maternity leave, or once her maternity leave has finished.

She could, for example, agree with her employer that she will take two weeks' annual leave immediately before starting maternity leave. This would mean that her last day at work before maternity leave was actually two weeks before her maternity leave began. It should be remembered, though, that if the baby is born early the maternity leave must start from that point.

Employers and employees will often find it useful, once the woman has given notice that she is pregnant, to incorporate annual leave arrangements into their planning. This is particularly important if the employee plans to take a whole year's maternity leave, as **it is not possible to carry over statutory annual leave from one leave year to the next, or to pay the employee in lieu of any untaken statutory annual leave unless the contract is terminated**. It is, of course, up to the employer and the employee to agree between them whether to carry over or provide pay in lieu of any untaken contractual annual leave above the statutory minimum.

Return to work after maternity leave

Return before or at the end of Ordinary Maternity Leave

When a woman returns to work from OML, she has a right to return to the **same job** on the **same terms and conditions** as before her leave began. See '[Return to work after maternity leave](#)' on page 27 for more information.

She is entitled to benefit from any general improvements to the rate of pay, or other terms and conditions, which may have been introduced for her grade or class of work while she was away, as if she hadn't been away. If a pay rise has been awarded during maternity leave and, but for her absence, she would have received it, her employer should have recalculated her SMP. More detailed advice can be obtained from the [Department for Social Development](#).

Return before or at the end of Additional Maternity Leave

An employee who returns to work after AML – in other words a woman who has taken more than 26 weeks' maternity leave – is entitled to return to the **same job** on the **same terms and conditions** of employment as if she had not been absent, **unless there is a reason why it is not reasonably practicable** for her to return to her old job, in which case she should be offered a similar job on terms and conditions which are not less favourable than her original job.

It is good practice for employers to consult with mothers about any proposed changes to their job at the end of their maternity leave if it is possible to do so.

Redundancy during maternity leave

If a redundancy situation arises at any stage during an employee's maternity leave which means it is not practicable for the employer to continue to employ the woman under her original contract of employment, she is entitled to be offered (before that contract ends) a suitable alternative vacancy, where one is available. This includes a vacancy with an associated employer or with a successor to the original employer.

The new contract must take effect immediately on the ending of the original one and must be such that:

- *the work to be done by the employee is both suitable and appropriate for her to do in the circumstances; and*
- *the capacity and place in which she is to be employed and the other terms and conditions of her employment are not substantially less favourable to her than if she had continued to be employed under the original contract.*

It is unlawful for an employer to make an employee redundant during her ordinary or additional maternity leave period without first complying with these requirements. An employee made redundant in these circumstances is entitled to make a complaint of unfair dismissal to an industrial tribunal and she may also be able to claim sex discrimination. An employee who has been dismissed in this way should appeal against the dismissal as part of the requirement under the statutory dispute resolution procedures. Failure by employers or employees to use these statutory procedures could result in an increase or reduction in any compensation awarded. The booklet '[Resolving disputes at work – a guide for employees](#)' sets out the statutory dispute resolution procedures that should be followed.

If the employer has a suitable alternative vacancy available but fails to offer it to the employee, the redundancy dismissal will be regarded as an **unfair dismissal**. If the employer offers the employee a suitable alternative vacancy (she is entitled to a four-week trial period in which to decide whether the employment is suitable, and this period may be extended beyond four weeks by written agreement) and she unreasonably refuses it, either before or during the trial period, she may forfeit her right to a redundancy payment.

Further guidance is available from the the [redundancy payments](#) section of the website at www.delni.gov.uk/er.

Entitlements on redundancy during maternity leave

If an employee on ordinary or additional maternity leave is made redundant, her maternity leave period comes to an end. She is entitled to receive from her employer a written statement of the reasons for her dismissal, regardless of whether or not she has requested one, and regardless of her length of service. If her employer fails to provide a statement, or provides one that she considers to be inadequate or untrue, she may make a complaint to an industrial tribunal, having first followed the statutory dispute resolution procedures (see the booklet '[Resolving disputes at work – a guide for employees](#)'). The employee should also receive her normal notice entitlement, or pay in lieu of notice (see booklet '[Rights to notice and reasons for dismissal](#)' (ER15)).

The employee may also be entitled to a redundancy payment (see the [redundancy payments](#) section of the website at www.delni.gov.uk/er).

The employee will still be entitled to Statutory Maternity Pay of up to 39 weeks once she has qualified for it.

Other entitlements

There are a number of other statutory entitlements which employees or their partners may be able to take advantage of. Separate guidance is available for each of these, but in summary, they include:

Parental leave

Parental leave is a right to take up to **13 weeks' unpaid time off work** to look after a child up to the child's fifth birthday (or 18th birthday for disabled children) or make arrangements for the child's welfare. Parents can use it to spend more time with children and strike a better balance between their work and family commitments. The right applies to mothers and fathers and to a person who has obtained formal parental responsibility for a child.

For more information see '[Parental leave: a guide for employers and employees](#)' (ER25).

Time off for dependants

Time off for dependants is a right allowing employees to take a **reasonable amount of time off work** to deal with certain unexpected or sudden emergencies and to make any necessary longer-term arrangements.

For more information see the booklet 'Time off for dependants' ER24. Booklets in the Employment Rights series are available online from the Department for Employment and Learning at www.delni.gov.uk/erbooklets.

The right to request flexible working

Employees who are the parents of young children (under 6 or under 18 in the case of disabled children) have the **right to request flexible working patterns**. Employers are required to give such requests serious consideration, and may only turn such requests down if they follow a set procedure and are able to justify the decision.

Full advice and guidance on the right to request flexible working is provided in booklet '[Flexible working: a guide for employers and employees](#)' (ER36).

Paternity leave and pay

The rights to paternity leave and Statutory Paternity Pay (SPP) allow an eligible employee to take **paid leave to care for his baby or to support the mother** following birth. To be eligible, the employee must be either the baby's biological father or the partner of the mother, and take responsibility for the child's upbringing. He can take either one week's or two consecutive weeks' paternity leave and during this time may be entitled to SPP.

For more information, see '[Rights to paternity leave and pay](#)' (ER34).

Statutory Maternity Pay and Maternity Allowance

Key facts

- Pregnant employees who meet qualifying conditions based on their **length of service** with their employer and their **average earnings**, and who give their employer the correct notice, are entitled to receive from their employer **up to 39 weeks' Statutory Maternity Pay (SMP)**.
- Employers who are liable to pay SMP may reclaim 92% of the amount they pay from Her Majesty's Revenue and Customs (HMRC). Businesses may be eligible to claim back 104.5% of the money they pay out in SMP if their total National Insurance Liability in the previous tax year was £45,000 or less.
- The rate of SMP is **90% of a woman's average weekly earnings for the first six weeks, followed by the lesser of a flat rate – currently £117.18 a week – or 90% of her average weekly earnings for the remaining 33 weeks**. The flat rate is subject to review every April.
- Women who are not entitled to SMP but meet qualifying conditions based on their recent employment and earnings records may claim **up to 39 weeks' Maternity Allowance (MA)** from the Social Security Agency.
- Women may, by agreement with their employer, undertake **up to 10 days' work** under their contract of service without losing any SMP or MA. See '[Keeping in touch, planning ahead and notice periods](#)' beginning on page 19.

Employees can work out their maternity pay (and leave) entitlements online at tiger.direct.gov.uk/cgi-bin/maternity.cgi.

Statutory Maternity Pay (SMP)

All employees who are pregnant or who have just given birth are entitled to a maximum of 39 weeks' SMP if:

- *they have worked for their employer for a **continuous period of at least 26 weeks ending with the qualifying week – that is, the fifteenth week before childbirth**; and*
- *their average weekly earnings in the eight weeks up to and including the qualifying week (or the equivalent period if they are paid monthly) have been at least equal to the Lower Earnings Limit for National Insurance contributions (although they do not actually have to have paid any contributions). Information on the current amount of the Lower Earnings Limit is available online from the HMRC website at www.hmrc.gov.uk/employers/rates_and_limits.htm or by contacting your local HMRC office.*

In order to take advantage of the right to SMP the employee must give her employer proper advance notification of her intentions (this requirement is fully explained in '[Keeping in touch, planning ahead and notice periods](#)' (page 19).

As long as the employee leaves work after the start of the fifteenth week before her baby is due, she will qualify for SMP.

A qualifying employee may continue working right up until the date her baby is born and still retain her full 39 week entitlement to SMP.

The rate of SMP

The first six weeks of SMP are paid at 90% of the employee's average weekly earnings.

The remaining weeks are paid at the lesser of the SMP flat rate – currently £117.18 (subject to review every April) – or 90% of the woman's average weekly earnings.

Payment of SMP

SMP is paid whether or not the employee intends to return to work for her employer. Once entitlement to SMP has been established, the employer must pay SMP even if the employee leaves the employment before the SMP starts or during the maternity pay period. If for any reason an employee is not entitled to SMP, her employer should complete and give her the Social Security Agency form SMP1 (an explanation of why SMP is not payable). This will help the employee to claim Maternity Allowance (MA) from the Social Security Agency.

Office-holders, for example directors of companies, have the same entitlement to SMP as other employees.

Women held in legal custody cannot get SMP. They may be able to get some MA once they have been released.

Employer's reimbursement for SMP

Employers can deduct from their next payment of PAYE and National Insurance contributions, student loan and construction industry payments to HMRC an amount equal to 92% of the SMP they have paid out in the preceding period.

Employers qualifying for Small Employer's Relief are entitled to recover 100% of the SMP they have paid out, plus 4.5% in compensation for employer's National Insurance costs.

A 'small employer' is an employer who paid (or was liable to pay) gross Class 1 National Insurance Contributions of £45,000 or less in the individual employee's qualifying tax year.

Maternity Allowance (MA)

All women who are pregnant or who have just given birth are entitled to claim a maximum of 39 weeks' Maternity Allowance (MA) from the Social Security Agency if:

- *they are employed but do not qualify for SMP;*
- *they have recently been employed;*
- *they are self-employed.*

Entitlement to MA is based on the woman's employment and earnings in the 66 weeks ending with the week before the expected week of childbirth. The employment rule must be considered before the earnings rule.

The employment rule

A woman must have been employed and/or self-employed for at least 26 weeks in her 66 week period test period. The 26 weeks do not have to be consecutive and it does not matter how much the woman earns.

Weeks when the woman has not worked a full week count towards the 26 weeks.

If the woman is self-employed, she must register as such with HMRC.

The earnings rule

A woman's gross earnings, on average (i.e. for any 13 weeks in the test period – see the section '[Period for calculating average weekly earnings](#)' on page 18) must be not less than the Maternity Allowance Threshold (MAT – currently £30.00 per week) in force at the beginning of your test period. If the woman has more than one employer, all earnings will count when working out the average.

If the woman is an employee, the earnings rule is based on her gross earnings during her test period. Gross earnings are the employee's earnings before any deductions and may include Statutory Adoption Pay, Statutory Maternity Pay, Statutory Paternity Pay or Statutory Sick Pay.

If the woman is a student in receipt of a bursary, her bursary is not treated as earnings for MA purposes.

If the woman is part of a salary sacrifice scheme this will mean that she has voluntarily given up the right to some of her earnings in return for benefits from the employer e.g. childcare vouchers. Reduced earnings may reduce the entitlement to MA or may mean that the woman will not be entitled to MA as her earnings are below the MAT.

If the woman is self-employed and does not have a small earnings exception certificate, for any week covered by a Class 2 National Insurance contribution she will be treated as having earnings sufficient to result in the

standard rate of MA, payable at the end of the week covered by a Class 2 NI contribution.

If the woman is self-employed and holds a small earnings exception certificate, she will be treated as having earnings equal to the MAT at the end of any week covered by the certificate.

If the woman is employed and self-employed, earnings from her employment and earnings she is treated as having from self-employment can be added together to help her get more MA.

Period for calculating average weekly earnings

The woman's earnings are averaged over any 13 weeks. The 13 weeks do not have to be in a row and she may choose the weeks with the most earnings to help her get more MA. Earnings from all the woman's jobs (if she has more than one) and earnings she is treated as having from self-employment will be used to work out her average weekly earnings. If her average is at least equal to the MAT in force at the beginning of her test period she will get MA.

For further details contact your local Jobs and Benefits office, Social Security Office or Incapacity Benefits Branch.

The rate of MA

If the woman satisfies [the employment rule](#) and [the earnings rule](#) (see page 17), she will be entitled to MA for a maximum of 39 weeks. The MA weekly rate is the lesser of the MA flat rate – £117.18 for 2008-2009 – or 90% of the woman's average weekly earnings.

More detailed guidance on Statutory Maternity Pay and Maternity Allowance is available from the following sources:

- [Department for Social Development](#);
- [The Social Security Agency publication 'A guide to maternity benefits' \(NIL17A\)](#);
- [Advice for employers on administering Statutory Maternity Pay from HMRC](#);
- [the online calculator provided by HMRC to help employers calculate SMP payments at \[www.hmrc.gov.uk/calcs/smp.htm\]\(http://www.hmrc.gov.uk/calcs/smp.htm\)](#);
- [HMRC's Employers' Helpline, which can help employers work out the amount of SMP to pay and provide advice on how and when to pay it: phone 08457 143143.](#)

Keeping in touch, planning ahead and notice periods

Key facts

Before taking maternity leave

- To take maternity leave, an employee should inform her employer **no later than the end of the 15th week before the week the baby is due** (or as soon as is reasonably practicable) that: (i) she is pregnant; (ii) when the expected week of childbirth is; (iii) when she wants her maternity leave to start.
- An employer must notify the employee of the end date of her maternity leave **within 28 days** of receiving her notification.
- The woman can change the date she starts her maternity leave as long as she gives **28 days' notice** to her employer.
- The employee can give notice for her Statutory Maternity Pay at the same time.

During maternity leave

- The employer may **make contact** with the employee (and vice versa) while she is on maternity leave, **as long as the amount and type of contact is not unreasonable**, to discuss a range of issues – e.g. to discuss her plans for returning to work, or to keep her informed of important developments at the workplace. The employee should be informed of any relevant promotion opportunities or job vacancies that arise during maternity leave.
- The employee can do **up to 10 days' work** under her contract of employment, as long as both she and her employer have agreed for this to happen, and agree on what work is to be done and how much she will be paid for it.

Returning to work

- If the employee returns at the end of her full 52 weeks of maternity leave and has not told her employer that she wishes to come back at any other time, **she does not need to provide any further notice**.
- The employee can change the dates of her return to work as long as she gives **eight weeks' notice** to her employer.
- If the employee decides not to return to work at the end of her maternity leave **she is entitled to continue to receive her full amount of statutory maternity leave and pay**. She must give the employer at least the notice required by her contract or, where there is none, the statutory notice.

- (for employees: see [Direct.gov guidance on giving notice](#); for employers: see [Nlbusinessinfo advice on correct periods of notice](#)).

Notification before going on maternity leave

Although the law only requires the woman to tell her employer that she is pregnant and will take maternity leave **by the end of the fifteenth week before the expected week of birth**, she and her employer will both benefit if she shares the news as early as possible before then. This will mean that her employer knows that she is entitled to paid time off for antenatal care, and that particular health and safety and sex discrimination rules apply. It will also help the employer plan ahead and make arrangements for covering the period whole the employee is away.

To claim maternity leave an employee should notify her employer no later than the end of the fifteenth week before the expected week of childbirth of:

- *The fact that she is pregnant;*
- *The expected week of childbirth;*
- *The date when she intends to start taking leave (she must provide this in writing if the employer requests it).*

Her maternity leave can start no earlier than the beginning of the 11th week before the expected week of childbirth (although it could start automatically before then if she gives birth early). The expected date of birth is given on the MATB1 form that the employee will have been given by her healthcare provider.

Employers may find it helpful to use the interactive online tool [Managing expectant and new mothers at work](#) at www.nibusinessinfo.co.uk. By answering a simple series of questions most employers can obtain a guide to their rights and responsibilities towards new or expectant mothers.

Many employees will find it convenient to give notice of the date for the start of Statutory Maternity Pay (SMP) at the same time. The date for the start of SMP can be the same as the start date for maternity leave. The [Department for Social Development](#) provides more information on claiming SMP and the evidence the employer will need to see.

If the employee is claiming maternity leave but not SMP she only needs to provide a maternity certificate if the employer requests it.

If an employee doesn't give her employer the required notification for the start of maternity leave she may lose her right to start maternity leave on her chosen date. Employers are only required to make exceptions to this where it was not reasonably practicable for the notice to have been given any earlier.

Changing the start of maternity leave

Once a woman has notified her employer of the date she wishes to start her maternity leave, **she can change this date as long as she notifies her employer of the new start date by whichever is the earlier of either 28 days before the date she originally intended to start her leave or 28 days before the new date she wants to start her leave.**

However, if it is not reasonably practicable for her to give this much notice (for example if the baby is born early and she has to start her leave straight away) then she does not have to. In these circumstances she should give her employer as much notice as possible. The notification should be in writing if the employer requests this.

Confirmation by the employer of the end date of leave

Once an employee has provided the necessary notice of the intended start date of her leave, **her employer should in turn notify the employee of the date on which the leave will end.** This will normally be 52 weeks (one year) from the start of maternity leave. Employers can use the model letter template at [Annex A](#) for this purpose.

The employer should notify the employee of the end date within 28 days of the employee's notification, unless the employee has since changed the date her leave will start. In that case, the employer must notify her of the end date within 28 days of the start of her leave.

If an employee isn't properly notified by her employer of the date of the end of her maternity leave, and subsequently does not return to work on time, she may have protection against victimisation and dismissal for this reason. In addition, if the employee wishes to change her return dates, she may not be obliged to comply with the notice requirements if her employer has not told her when her leave should end.

The start of maternity leave

The maternity leave period normally starts on the date which the employee has notified to her employer as the date she intends it to start. There are some exceptions to this rule, as set out below:

Absence due to childbirth before the intended start date

If childbirth occurs before the date the employee has notified (or before she has notified any date) the maternity leave period starts **automatically** on the day after the date of the birth. This happens even if the birth takes place before the start of the 11th week before the birth was originally expected. In this circumstance the woman should give her employer notice – in writing if the employer requests it – of the date of the birth if it has already taken place, and the date the birth was originally expected. Evidence of the actual and expected dates of birth can be provided together on the maternity certificate (MATB1) provided by the doctor or midwife.

Absence for a pregnancy-related reason before the intended start date

An employee who is absent from work due to illness will normally be able to take sick leave until she starts maternity leave on the date notified to her employer. However, if the illness is related to her pregnancy, the maternity leave period starts automatically on the day after the first day of absence following the beginning of the fourth week before the expected week of childbirth.

Dismissal or resignation before the intended start date

If an employee resigns or is dismissed before the date she has notified, or before she has notified a date, she loses the right to maternity leave, but she will still be eligible for SMP if she is employed after the 15th week before the expected week of childbirth.

Notification of change of return to work dates while on maternity leave

Unless otherwise notified, the date on which an employee returns to work will normally be **the first working day 52 weeks after her maternity leave began**. This is because all employees are entitled to 26 weeks' Ordinary Maternity Leave (OML) and a further 26 weeks' Additional Maternity Leave (AML) (see the '[Maternity leave](#)' section on page 7).

Return to work before the end of maternity leave

If the employee wishes to return to work before the end of her full maternity leave period (this will normally be the end date the employer confirmed to her before she went on leave), she must give her employer **eight weeks' notice** of her return to work. This notice requirement applies during both OML and AML. The notice period is the **minimum** the employer is entitled to expect, but the employer can of course accept less or no notice at his discretion.

If the employee attempts to return to work earlier than the end of her maternity leave without giving her employer eight weeks' notice, the employer may postpone her return until the full eight weeks' notice has been given. However, the employer may not postpone her return to a date later than the end of her maternity leave period.

An employee whose return has been postponed under these circumstances is not entitled to receive wages or salary if she returns to work during the period of postponement. However, if the employer didn't provide appropriate notification of when her leave should end (see '[Confirmation by the employer of the end date of leave](#)' on page 21), the employee is not obliged to give the eight weeks' notice.

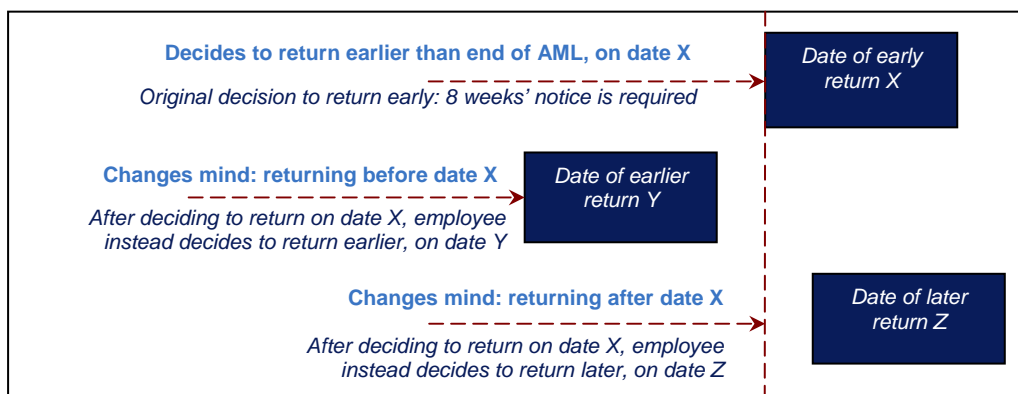
For example, if an employee was due to return to work after 52 weeks' maternity leave on 1st August, but then decided to return to work after 39 weeks of leave (that is, on 9th May) she would need to give her employer eight weeks' notice of the new date (that is, by 14th March). [Figure 1](#) provides an illustration.

Returning to work later than previously notified

An employee who has notified her employer that she wishes to return to work before the end of her maternity leave, as set out in the paragraphs above, is entitled to change her mind. However, in these circumstances she should give her employer notice of this new, later, date of return at least eight weeks before the earlier date.

For example, if, having started her maternity leave, an employee decides that she does not wish to take her full entitlement of 52 weeks and gives her employer notice that she will return after six months (for example, on 1 October) she can still change her mind and tell her employer that she will take a longer period away – up to the full year of maternity leave – as long as she gives eight weeks' notice before the earlier date (in this case, eight weeks before 1 October – i.e. 6th August). *Figure 1* provides an illustration.

Figure 1: Giving notice of date of return to work



Employees who do not wish to return to work after maternity leave

An employee who does not wish to return to work after her maternity leave must give her employer the notice of termination required by her contract of employment. However, it will usually help her employer if she can give as much notice as possible. As long as she specifies the date on which she wishes to terminate the contract (this could be the first day she was due back at work after maternity leave) this will not, of itself, mean that she is no longer entitled to maternity leave or pay for the rest of the maternity leave period. The Government therefore encourages women who do not wish to return to work after their maternity leave to give their employers as much notice as possible, pointing out that doing so will not automatically end their leave or pay.

Contact during maternity leave

During the maternity leave period an employer may make **reasonable contact** with an employee, and in the same way an employee may make contact with her employer. The frequency and nature of the contact will depend on a number of factors, such as:

- *the nature of the work and the employee's post;*

- *any agreement that the employer and employee might have reached before maternity leave began as to contact; and*
- *whether either party needs to communicate important information to the other, such as, for example, news of changes at the workplace that might affect the employee on her return.*

The contact between employer and employee can be made in any way that best suits either or both of them. For example, it could be by telephone, by e-mail, by letter, might involve the employee making a visit to the workplace, or could take place in other ways.

Employers should note that they must, in any event, keep the employee informed of promotion opportunities and other information relating to her job that she would normally be made aware of if she was working.

Employers and employees will often find it helpful, before maternity leave starts, to **discuss arrangements** for staying in touch with each other. This might include agreements on the way in which contact will happen, how often, and who will initiate the contact. It might also cover the reasons for making contact and the types of things that could be discussed.

What constitutes “reasonable” contact will vary according to the circumstances. Some women will be happy to stay in close touch with the workplace and will not mind frequent contact with the employer. Others, however, will prefer to keep such contact to a minimum.

Work during the maternity leave period – ‘Keeping In Touch Days’

Employees may, by agreement with their employer, do up to ten days’ work – known as ‘Keeping In Touch Days’ – under their contract of employment during the maternity leave period. **Such days are different to the reasonable contact that employers and employees may make with one another** – described under ‘[Contact during maternity leave](#)’ above – as during Keeping In Touch Days employees can actually **carry out work** for the employer, for which they will be paid.

If the work carried out during one shift straddles midnight it may be counted as one day for the purposes of Keeping In Touch Days, if the employee’s normal working pattern is such that this would fall within a normal working day.

Any work done on any day during the maternity pay or maternity leave period will count as a whole Keeping In Touch Day, up to the 10 day maximum. In other words, if an employee comes in for a one-hour training session and does no other work that day, she will have used one of her Keeping In Touch Days.

The type of work that the employee undertakes on Keeping In Touch Days is a matter for **agreement** between the two parties. They may be used for any activity which would ordinarily be classed as work under the woman’s contract, for which she would be paid, but could be particularly useful in

enabling a woman to attend a conference, undertake a training activity or attend for a team meeting for example.

Protection against detriment or dismissal

Work during maternity leave may only take place **by agreement between both employer and employee**. An employer may not require an employee to work during maternity leave if she does not wish to, nor does an employee have the right to work Keeping In Touch Days if her employer does not agree to them.

If the employer offers an employee the opportunity to work a Keeping In Touch Day, she is entitled to turn the opportunity down without suffering any consequences as a result. **It is unlawful for an employee to suffer detriment for not agreeing to work Keeping In Touch Days, or for working or considering such work.**

It is also unlawful to dismiss an employee for not agreeing to work a Keeping In Touch Day, or for working or considering such work.

When Keeping In Touch Days may be worked

Up to ten days' work under the employee's contract of employment may be undertaken at any stage during the maternity leave period, by agreement with the employer, **except during the first two weeks after the baby is born (or during the first four weeks if the employee works in a factory).**

Payment for Keeping In Touch Days

Because Keeping In Touch Days allow work to be done under the employee's contract of employment, the employee is entitled to be paid for that work. The rate of pay is a matter for agreement with the employer, and may be as set out in the employment contract or as agreed on a case-by-case basis. However, the employer will need to bear in mind their statutory obligations about paying staff, such as ensuring they pay at least the National Minimum Wage and their responsibilities to ensure women and men receive equal pay for work of equal value.

National Minimum Wage

Compliance with the National Minimum Wage (NMW) is calculated by reference to a pay period that may be the week in which the work is done, or may be up to a month (the pay reference period will normally be the period at which employees are paid). By dividing the payments made in that pay reference period by the number of hours worked, employers and employees may calculate whether or not pay has been at or above the NMW rate. It should be noted that the pay reference period may not always be the same as the week in which Keeping in Touch work has been done.

Statutory Maternity Pay (SMP) and Keeping In Touch Days

If the employee is receiving Statutory Maternity Pay (SMP), the employer should continue to pay her SMP for the week in which any Keeping in Touch work is done by the employee. The employer will be able to reclaim

reimbursement for some or all of this money in the normal way from HMRC as before.

If the employee is receiving SMP the employer may count the amount of SMP for the week in which the work is done towards the contractual pay agreed by the two parties. However, it will always be possible to agree an amount of contractual remuneration over and above the weekly SMP rate to reflect the work the woman has done. **This is something that both parties need to agree between themselves before any work is done.** Whatever amount of money is paid by the employer in respect of Keeping In Touch Days, the employer will continue to be able to recover funding from HMRC, for the SMP paid, as normal.

Return to work after maternity leave

Key facts

- An employee who returns to work after Ordinary Maternity Leave (OML) is entitled to return to the **same job** on the **same terms and conditions** as if she had not been absent, unless a redundancy situation has arisen (see the '[Maternity leave](#)' section on page 7).
- An employee who returns to work after Additional Maternity Leave (AML) is also normally entitled to return to the same job on the same terms and conditions as if she had not been absent, unless a redundancy situation has arisen (see the '[Maternity leave](#)' section). However, if there is a reason other than redundancy which means that it is not reasonably practicable for her employer to take her back to the same job, she is entitled to be offered suitable alternative work.
- Employees who have children aged under six (or disabled children under 18) have the **right to request flexible working** and their employers have a duty to seriously consider that request.
- An employee who is dismissed during or at the end of maternity leave, or after she resumes work, on the grounds that she took maternity leave may make a claim for unfair dismissal through an industrial tribunal.

Returning to the same job after maternity leave

When a woman returns to work from maternity leave she has the right to return to the **same job**, on the **same terms and conditions**, as though she had not been absent. However, there can be exceptions to this, depending on whether she returns after a period of Ordinary Maternity Leave (OML – the first 26 weeks) or Additional Maternity Leave (AML – the second 26 weeks). See the '[Maternity leave](#)' section for further information on the details of maternity leave.

Ordinary Maternity Leave

An employee who returns to work after Ordinary Maternity Leave (OML) – in other words a woman who has taken no more than 26 weeks' maternity leave – is entitled to return to the **same job** on the **same terms and conditions** of employment as if she had not been absent, **unless a redundancy situation has arisen**, in which case she is entitled to be offered a suitable alternative vacancy.

An employee who is not allowed to return to her job at the end of OML is entitled to make a complaint of unfair dismissal to an industrial tribunal. If she is not given the same job back, she may bring a claim for sex discrimination or a detriment claim in a tribunal, or might be able to claim constructive dismissal.

Additional Maternity Leave

An employee who returns to work after Additional Maternity Leave (AML) – in other words a woman who has taken more than 26 weeks' maternity leave – is entitled to return to the **same job** on the **same terms and conditions** of employment as if she had not been absent **unless there is a reason why it is not reasonably practicable** for her to return to her old job, in which case she should be offered a **similar job** on **terms and conditions which are no less favourable** than her original job.

It is good practice for employers to consult with mothers about any proposed changes to their job at the end of their maternity leave if it is possible to do so.

If parental leave is taken immediately after maternity leave

A period of parental leave of four weeks or less has no impact on the right of return of the employee. An employee who takes a period of parental leave of more than four weeks straight after the end of either OML or AML is treated as though they were returning to work after Additional Maternity Leave (see '[Additional Maternity Leave](#)' above).

Parental leave is a separate entitlement for employees who have completed one year's service with their employer. It is a right to unpaid time off. Further guidance and advice on parental leave is available in the Departmental publication '[Parental leave: a guide for employers and employees](#)' (ER25).

If there is a reason which makes it impracticable for the employee to return to her original job, a similar job must be found for her. The new job must be such that:

- *the work done by the employee is both suitable and appropriate for her to do in the circumstances; and*
- *the terms and conditions of her employment – including the quality of the working environment – are no less favourable to her than they would have been had she continued to be employed in her old job.*

If the new job that is offered to the employee fulfils the criteria above and the employee refuses it, she will have effectively resigned.

If the new job that is offered to the employee is not suitable or appropriate or if the terms and conditions are less favourable than they would have been if she had returned to her old job, the employee may bring a claim for sex discrimination or a detriment claim in a tribunal, or might be able to claim constructive dismissal.

The right to request flexible working

Employees who are the parents of young children (under the age of 6) or disabled children (under the age of 18) have the **right to request flexible working** patterns. Employers are required to give such requests serious consideration, and may only turn such requests down if they follow a set procedure and are able to justify the decision. Full advice and guidance on the

right to request flexible working is provided in the Departmental publication [‘Flexible working: a guide for employers and employees’ \(ER36\)](#).

There may be circumstances where a refusal to permit a woman to work part-time or to change her working pattern in some way amounts to unlawful indirect sex discrimination. For example, it may be more difficult for female employees to fulfil the requirement to work full time, given their childcare commitments, than it would be for male equivalents to do so. In circumstances such as this the employer would need to show that there were objective reasons for asking her to work full-time that had nothing to do with her sex.

Dismissal on or after return to work from maternity leave

It is unlawful to dismiss an employee during or after a maternity leave period, or select her for redundancy in preference to other comparable employees, solely or mainly because she has taken maternity leave or benefited from the terms and conditions of employment to which she was entitled during that leave. An employee who has been dismissed on these grounds should appeal against the dismissal as part of the requirement under the statutory dispute resolution procedures. Failure by employers or employees to use the statutory procedures could result in an increase or reduction in any compensation awarded. The booklet [‘Resolving disputes at work – a guide for employees’](#) sets out the statutory dispute resolution procedures that should be followed.

Dismissal, selection for redundancy or other detrimental treatment in these circumstances may also amount to unlawful discrimination on grounds of sex or marriage.

Circumstances where a dismissal at the end of Additional Maternity Leave will not be unfair

An employee who is not given her job back, or who is not offered a suitable alternative job, at the end of additional maternity leave will not be regarded as unfairly dismissed if the employer can show an industrial tribunal that:

- *her original job was no longer available because of redundancy and there was no suitable alternative work available which could be offered to her; or*
- *it was not reasonably practicable (on grounds other than redundancy) for her to be taken back in her original job or a similar job and an associated employer had offered her suitable alternative employment which she had either accepted or unreasonably refused.*

Dismissal on grounds unrelated to maternity leave

An employer may dismiss an employee on grounds largely or wholly unrelated to the fact that she has taken or availed herself of the benefits of maternity leave, unless the dismissal is unfair for some other reason or amounts to discrimination on grounds of sex or marriage (see the section [‘Protection against detriment or dismissal and sex discrimination’](#) on page 6).

Employers must normally ensure they comply with the Statutory Dispute Resolution Procedures to avoid such a dismissal being found to be automatically unfair. Failure to follow the statutory procedures, where they apply, may lead to an uplift to any award of compensation made.

Further guidance on unfair dismissal can be found in '[Dismissal: fair and unfair – a guide for employers](#)' (ER18). If the dismissal is on grounds of redundancy, the employee may be entitled to a redundancy payment. Further guidance can be found on the [redundancy payments](#) section of the website at www.delni.gov.uk/er.

Health and safety at work

Key facts

- Employers are required to protect the health and safety at work of all employees, including new and expectant mothers and mothers who are breastfeeding.
- The Management of Health and Safety at Work Regulations (Northern Ireland) 2000 require employers to assess risks to their employees, including new and expectant mothers, and to do what is reasonably practicable to control those risks.
- To meet their legal obligations employers are required to carry out a specific risk assessment, paying particular attention to risks that could affect the health and safety of the new or expectant mother or her child. Once the employer has been informed by the employee that she is pregnant, has recently given birth or is breastfeeding, the risk assessment should be carried out.
- Some examples of the hazards to consider include working long hours, stress and violence, exposure to toxic chemicals or pesticides and manual handling.
- If the risk assessment identifies any specific risks that cannot be avoided the employer is required to follow a series of steps to ensure that she is not exposed to that risk, such as making changes to the working conditions; hours of work or offer alternative suitable work. If none of these steps are possible this may ultimately result in suspending her from work on full pay to protect her and her unborn child.
- There is no statutory right to time off work for breastfeeding. However, employers must provide pregnant and breastfeeding employees with a place to rest and with suitable rest periods.
- The Health and Safety Executive provides further advice and guidance for new and expectant mothers and their employers, available online at www.hse.gov.uk/mothers/index.htm

Annex A: Model letter acknowledging notification of maternity leave

The letter overleaf can be used as a template by an employer when he receives notification from an employee of her intention to take maternity leave. The letter relates only to the statutory levels of leave and pay.

The employer must respond to the employee **within 28 days of receipt** of her notification.

[Date]

Dear [name of employee],

Congratulations and thank you for telling me about your pregnancy and the date that your baby is due. I am writing to you about your maternity leave and pay.

As we have discussed, you are eligible to take up to 52 weeks' maternity leave (consisting of 26 weeks' Ordinary Maternity Leave and 26 weeks' Additional Maternity Leave). Given your chosen start date of [insert date], your maternity leave will end on [insert date].

If you want to change the date your leave starts you must, if at all possible, tell me at least 28 days before your proposed new start date or 28 days before [insert date leave starts] (your original start date), whichever is sooner.

If you decide to return to work before [insert date leave ends], you must give me at least 8 weeks' notice.

As we also discussed, you are eligible for 39 weeks' Statutory Maternity Pay (SMP). Your maternity pay will be £[insert amount] from [insert date] to [insert date] and £[insert amount] from [insert date] to [insert date].

OR

As we also discussed, you are not eligible for Statutory Maternity Pay (SMP). The form SMP1 (enclosed) explains why you do not qualify for Statutory Maternity Pay. You may, however, be entitled to Maternity Allowance. If you take this form to the Social Security office, Jobs and Benefits office, or Incapacity Benefits Branch at [insert local details], they will be able to tell you more.

[delete either paragraph as appropriate].

As your employer, I want to make sure that your health and safety as a pregnant woman are protected while you are working, and that you are not exposed to risk. I have already carried out an assessment to identify hazards in our workplace that could be a risk to any new, expectant, or breastfeeding mothers. Now you have told me you are pregnant I will arrange for a specific risk assessment of your job and we will discuss what actions to take if any problems are identified. If you have any further concerns following this assessment and specifically in relation to your pregnancy, please let me know immediately.

If you decide not to return to work you must still give me proper notice. Your decision will not affect your entitlement to SMP.

If you have any questions about any aspect of your maternity entitlement, please do not hesitate to get in touch with me. I wish you well.

Yours sincerely

Appendix 1: Booklets in this series

Booklets in this series are available online from www.delni.gov.uk/erbooklets or can be obtained by contacting the Department.

- ER 1 *Individual rights and responsibilities of employees*
- ER 2 *Written statement of employment particulars*
- ER 3 *Redundancy entitlement statutory rights*
- ER 4 *Redundancy consultation and notification*
- ER 5 *Your rights if your employer is insolvent*
- ER 6 *Unjustifiable discipline by a trade union*
- ER 7 *Time off for public duties*
- ER 8 *Continuous employment and a week's pay*
- ER 10 *Suspension from work on medical or maternity grounds*
- ER 12 *Pay statements: what they must itemise*
- ER 13 *Unfairly dismissed?*
- ER 14 *Guarantee payments*
- ER 15 *Rights to notice and reasons for dismissal*
- ER 16 *Maternity rights: a guide for employers and employees*
- ER 17 *Help with meeting redundancy costs for employers in financial difficulty*
- ER 18 *Dismissal: fair and unfair - a guide for employers*
- ER 19 *Limits on payments and awards*
- ER 21 *Contracts of employment: changes, breach of contract and deductions from wages*
- ER 22 *Criminal records and employment*
- ER 23 *Payment of union subscriptions through "check off"*
- ER 24 *Time off for dependants*
- ER 25 *Parental leave: a guide for employers and employees*
- ER 26 *Time off for study or training*

- ER 27** *Industrial action and the law: a guide for employees*
- ER 28** *Trade union executive elections*
- ER 29** *Industrial action and the law: a guide for employers*
- ER 30** *Industrial action and the law: a guide for individuals whose supply of goods or services is affected by unlawful industrial action*
- ER 31** *Union membership: rights of members and non-members*
- ER 33** *Trade union political funds*
- ER 34** *Rights to paternity leave and pay*
- ER 35** *Adoptive parents: a guide for employers and employees*
- ER 36** *Flexible working: a guide for employers and employees*

(Additional employment rights publications, covering a range of other issues, can be found online at www.delni.gov.uk/erpublications or can be obtained from the Department).

Appendix 2: Useful addresses

Certification Officer for Northern Ireland

10-12 Gordon Street
Belfast
BT1 2LG

Tel: 028 9023 7773

Fax: 028 9023 2271

Textphone: 028 9023 8411

Website: www.nicertoffice.com

Email: info@nicertoffice.com

Department for Employment and Learning

Redundancy Payments Service
Room 203
Adelaide House
39-49 Adelaide Street
Belfast
BT2 8FD

Tel: 028 9025 7956

Freephone: 080 0585 811

Fax: 028 9025 7555

Website: www.redundancyni.gov.uk

E-mail: rhsquery@delni.gov.uk

The Health & Safety Executive for Northern Ireland

83 Ladas Drive
Belfast
BT6 9FR

Tel: 028 9024 3249

Fax: 028 9023 5383

Textphone: 028 9054 6896

Freephone Helpline: 080 0032 0121

Website: www.hseni.gov.uk

Department for Employment and Learning

Employment Relations Policy and
Legislation Branch
Room 203
Adelaide House
39-49 Adelaide Street
Belfast
BT2 8FD

Tel: 028 9025 7580

Website: www.delni.gov.uk/er

E-mail: erbooklets@delni.gov.uk

The Equality Commission for Northern Ireland

Equality House
7-9 Shaftesbury Square
Belfast
BT2 7DP

Tel: 028 9050 0600

Fax: 028 9033 1544

Textphone: 028 9050 0589

Website: www.equalityni.org

E-mail: information@equalityni.org

Industrial Court

Room 203
Adelaide House
39-49 Adelaide Street
Belfast
BT2 8FD

Tel: 028 9025 7599

Fax: 028 9025 7555

Website: www.industrialcourt.gov.uk

E-mail: enquiries@industrialcourt.gov.uk

Labour Relations Agency

Head Office
2-8 Gordon Street
Belfast
BT1 2LG

Tel: 028 9032 1442

Fax: 028 9033 0827

Textphone: 028 9023 8411

Website: www.lra.org.uk

E-mail: info@lra.org.uk

NI Business Info

(website giving information on a wide range of issues for employers)

Website: www.nibusinessinfo.co.uk

Labour Relations Agency

Regional Office
1-3 Guildhall Street
Londonderry
BT48 6BJ

Tel: 028 7126 9639

Fax: 028 7126 7729

Textphone: 028 9023 8411

Website: www.lra.org.uk

E-mail: info@lra.org.uk

Office of the Industrial Tribunals and the Fair Employment Tribunal

Long Bridge House
20-24 Waring Street
Belfast
BT1 2EB

Tel: 028 9032 7666

Fax: 028 9023 0184

Website:

www.employmenttribunalsni.org

people:skills:jobs:



Department for
**Employment
and Learning**
www.delni.gov.uk



INVESTOR IN PEOPLE

THE DEPARTMENT:

Our aim is to promote learning and skills, to prepare people for work and to support the economy.

This document is available in other formats upon request.

Further information:

telephone: 028 9025 7580

e-mail: employment.rights@delni.gov.uk

website: www.delni.gov.uk