

MATERNITY POLICY

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1 POLICY OVERVIEW

- 1.1. This policy sets out the rights of employees to statutory and occupational maternity leave and pay.
- 1.2. The Organisation recognises that, from time to time, employees may have questions or concerns relating to their maternity rights. It is the Organisation's policy to encourage open discussion with employees to ensure that questions and problems can be resolved as quickly as possible. As the maternity provisions are complex, if an employee becomes pregnant she should clarify the relevant procedures with their manager and the HR Department to ensure that they are followed correctly.
- 1.3. All pregnant employees (regardless of length of service) have the right in law to take up to 26 weeks' ordinary maternity leave and up to a further 26 weeks' additional maternity leave and to resume work afterwards. The employee is therefore entitled to a total period of 52 weeks' maternity leave. Additional maternity leave follows on immediately from the end of the period of ordinary maternity leave.
- 1.4 All employees who take maternity leave have the right to return to work at any time during either ordinary maternity leave or additional maternity leave (except during the first two weeks from the day of childbirth) subject to their following the correct notification procedures as set out below.

2 EQUALITY IMPACT ASSESSMENT (EIA)

- 2.1 This document has been assessed for equality impact. This policy is applicable to every member of staff within the Organisation and In applying this policy, the Organisation will have due regard for the need to eliminate unlawful discrimination, promote equality of opportunity, and provide for good relations between people of diverse groups, in particular on the grounds of the following characteristics protected by the Equality Act (2010); age, disability, gender, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, and sexual orientation, in addition to offending background, trade union membership, or any other personal characteristic.

OCCUPATIONAL MATERNITY SCHEME (OMS)

3.1 Employees with more than 1 year's continuous service with the NHS by the 11th week before the Expected Week of Childbirth will be entitled to pay which lasts for a total of 39 weeks and comprises of:

- 8 weeks at full weekly pay;
- 18 weeks at half weekly pay plus lower rate of SMP; and
- 13 weeks at lower rate of SMP.

providing that the employee has informed the Organisation of her intention to return to work for the NHS for at least 3 months following the end of her Maternity Leave period.

The unpaid element is comprised of up to 13 weeks Additional Maternity Leave (AML)

3.2 The following points should be noted in respect of the payment of maternity pay under the occupational maternity scheme:

- During the first 8 weeks of absence, the full pay that is received by the employee will be off-set against payments made by way of SMP (lower or higher as applicable), or Maternity Allowance for employees not eligible for SMP;
- Occupational Maternity Pay (OMP) will only be paid if the employee declares her intention to return to work for a period of three months, following the end of the maternity leave period;
- If half weekly pay plus SMP totals more than the employee's normal week's pay, the half pay will be reduced in order for payments to be maintained at the normal weekly level;
- For employees who decide prior to the commencement of maternity leave that they will not be returning to work for the Organisation or another NHS authority for a minimum period of 3 months following their maternity leave, the period that would normally be paid at OMP will only be paid at SMP;
- If an employee receives OMP and at a later date decides that she will not be returning to work for the Organisation or another NHS authority, she will be obliged to repay any OMP received during the maternity leave period;
- If an employee is unsure whether or not she will be returning to the Organisation or another NHS authority following her maternity leave, she will be required to put her OMP 'on hold' until she has decided whether or not she will be returning to work for a period of at least 3 months. If the decision is taken to return to work, the payment

of OMP can be paid either upon the return to work (as a lump sum) or can be commenced at any point during the period of maternity leave.

3.3 By prior agreement with the employer, occupational maternity pay may be paid in a different way, for example a combination of full pay and half pay or a fixed amount spread equally over the maternity leave period.

3.4 In exceptional circumstances, for example in the case of a multiple birth or sick pre-term babies, the unpaid element of leave may be extended beyond 13 weeks. Requests for this should be submitted in writing to the employees' line manager who may seek advice from the HR Department.

REPAYMENT OF OCCUPATIONAL MATERNITY PAY (OMP)

3.5 Payments in respect of OMP are made on the understanding that the employee will return to work with the Organisation or another NHS authority for a period of at least 3 months following the end of their maternity leave period.

3.6 Should an employee not return to work for at least 3 months following her maternity leave, full contractual maternity pay (minus SMP) will be repayable, and will be recovered by the Organisation.

STATUTORY MATERNITY PAY (SMP)

3.7 Employees with less than 26 weeks continuous service should contact the Job Centre Plus to establish if they have any entitlement to pay during maternity leave (Statutory Maternity Pay (SMP) or Maternity Allowance).

3.8 Employees with more than 26 weeks continuous service by the 15th week before Expected Week of Childbirth but less than 1 year's continuous NHS service by the 11th week before the Expected Week of Childbirth will be entitled to pay which lasts for a total of 39 weeks and comprises of:

- 6 weeks at 90% of weekly earnings;
- 33 weeks at the standard rate of SMP.

3.9 The unpaid element comprises of up to 13 weeks Additional Maternity Leave providing that the employee has informed the Organisation of her intention to return to work for the NHS for at least 3 months following the end of her Maternity Leave period.

3.10 In order to qualify for SMP, the employee must have been employed by the Organisation for 26 weeks by the 15th week before the EWC. The employee must also:

- Have average earnings of not less than the lower earnings limit for the payment of National Insurance contributions for the 8 weeks ending with the 15th week before the EWC;

- Still be pregnant at the 11th week before the baby is due, or have had the baby by that time;
- Have advised the Organisation of the date that she intends to commence maternity leave and provided her Mat B 1 certificate.

3.11 There are two rates of SMP which can be payable:

The Higher rate:

- Is only payable in the first 6 weeks of the Maternity Pay Period (MPP);
- Is paid at 90% of the average weekly earnings (as detailed above);
- However, if SMP at the higher rate is greater than 90% of the employee's average earnings, SMP at the higher rate will be paid for 39 weeks.

The Lower rate:

- Is payable for up to 39 weeks, however if the higher rate is payable for a portion of the MPP, the lower rate will only be paid for 33 weeks (after the higher rate has ended);
- Is a fixed amount, which is normally reviewed each year. Please contact the payroll department for information regarding the current lower rate of SMP.
- Statutory maternity pay is treated as earnings and is therefore subject to PAYE and national insurance deductions.

FIXED-TERM CONTRACT OR TRAINING CONTRACT EMPLOYEES

3.12 Employees subject to fixed term or training contracts which expire after the 11th week before the EWC and who meet the following criteria shall have their contract extended so as to allow them to receive the 39 weeks paid Contractual Maternity Leave specified in 4.1.3:

- Have 12 months continuous NHS service at the 11th week before the EWC;
- Have notified the Organisation in writing of the intention to take Maternity Leave by the end of the 15th week before the EWC;
- Intend to work for an NHS employer for a minimum of 3 months following the end of the Maternity Leave period;
- Have provided a Mat B1 detailing the expected date of childbirth.

3.13 If there is no right of return to be exercised because the contract would have ended if pregnancy and childbirth had not occurred, the repayment provisions set out in 2.7 and 2.8 will not apply.

3.14 Staff on fixed-term contracts who do not meet the 12 months continuous service condition may still be entitled to SMP.

- 3.15 Any maternity absence (paid and unpaid) up to 52 weeks before a further NHS appointment, will not constitute a break in service.

4 TIMING OF LEAVE

4.1 Maternity leave can start at any time after the beginning of the 11th week before the employee's expected week of childbirth (unless her child is born prematurely before that date in which case it will start earlier). Maternity leave will start on whichever date is the earlier of:

- The employee's chosen start date;
- The day after the employee gives birth; or
- The day after any day on which the employee is absent for a pregnancy-related reason in the four weeks before the expected week of childbirth.

4.2 If the employee gives birth before her maternity leave was due to start, she must notify the Organisation in writing of the date of the birth as soon as reasonably practicable.

4.3 The law obliges all employees to take a minimum of two weeks of maternity leave immediately after the birth of the child (four weeks in the case of factory workers).

5 EARLY CHILDBIRTH

PREMATURE CONFINEMENT

4.1 In the event of an employee's baby being born prematurely (earlier than the 11th week before the expected week of childbirth), the employee's maternity leave will be deemed to have commenced on the day after the birth.

4.2 In very special circumstances (for example if a baby is hospitalized for some months before it is allowed to return home with the mother), maternity leave can be stopped and recommenced. In this case, the employee would by law, have to remain absent from the workplace for a minimum of 2 weeks, but could then choose to return to work for an interim period, before recommencing maternity leave when the baby was released from hospital. In this case, the maternity leave would commence on the date of the birth, and any weeks absent from work following this would contribute to the total number of weeks absent due to maternity (OML and AML). If you consider that this situation applies to you, contact should be made with both your line manager and the Human Resources Department to discuss this further.

- 4.3 If a baby is stillborn or born and subsequently dies at or before the 15th week before the expected date of childbirth, any absence will be treated as normal sick leave and there will be no entitlement to maternity leave or maternity pay.
- 4.4 If a baby is stillborn, or is born and subsequently dies after the start of the 16th week before the expected week of childbirth, then the employee has an entitlement to full maternity leave and maternity pay, as appropriate.
- 4.5 In cases where an employee has exhausted their right to contractual sick pay, provision for paid time off at this time may be given under 'Special Leave'.

5 NOTICE REQUIREMENTS

- 5.1 On becoming pregnant, an employee should notify her line manager as soon as possible. This is important as there are health and safety considerations for the Organisation.
- 5.2 By the end of the qualifying week, or as soon as reasonably practicable afterwards, the employee is required to inform the Organisation in writing of:
- The fact that she is pregnant;
 - Her expected week of childbirth; and
 - The date on which she intends to start her maternity leave.
- 5.3 The employee must also provide a MAT B1 form, which is a certificate from a doctor or midwife confirming the expected week of childbirth. The form must have either the doctor's name and address or the midwife's name and registration number on it.
- 5.4 The employee is permitted to bring forward her maternity leave start date, provided that she advises the Organisation in writing at least 28 days before the new start date or, if that is not possible, as soon as reasonably practicable. The employee may also postpone her maternity leave start date, provided that she advises the Organisation in writing at least 28 days before the original proposed start date or, if that is not possible, as soon as reasonably practicable.
- 5.5 The Organisation will formally respond in writing to the employee's notification of her leave plans within 28 days, confirming the date on which she is expected to return to work if she takes her full 52-week entitlement to maternity leave.
- 5.6 The employee is required to give at least 28 days' notice of the date that she wants her statutory maternity pay to begin. If it is not possible for the employee to give 28 days' notice, for example if the baby arrives early, she should tell the Organisation as soon as reasonably practicable.

6 TIME OFF FOR ANTENATAL CARE

- 6.1 All employees regardless of their length of service or hours worked have the right to time off work for antenatal care. This applies to both prospective mothers and fathers. This time off work should be given with full pay.
- 6.2 In order to be entitled to take time off for antenatal care, the employee may be required to produce a certificate from the doctor, registered midwife or registered health visitor. Except in the case of the first appointment, the employee should also produce evidence of the appointment, such as a medical certificate or appointment card, if requested to do so.
- 6.3 Antenatal care may include relaxation and parent craft classes that the doctor, midwife or health visitor has advised to attend, in addition to medical examinations.
- 6.4 The employee should endeavor to give the line manager as much notice as possible of antenatal appointments and, wherever possible, try to arrange them as near to the start or end of the working day as possible.

7 HEALTH AND SAFETY

- 7.1 The Organisation has a duty to take care of the health and safety of all employees. We are also required to carry out a risk assessment to assess the workplace risks to women who are pregnant, have recently given birth or are breastfeeding, where the work is of a kind that could involve a risk of harm or danger to her health and safety or the health and safety of her baby and the risk arises from either processes, working conditions or physical, chemical or biological agents in the workplace. The details of a risk assessment and further guidelines can be found in the New and Expectant Mothers Policy.
- 7.2 If the risk assessment reveals that the employee would be exposed to health hazards in carrying out her normal job duties, the Organisation will take such steps as are reasonably necessary to avoid those risks, such as altering the employee's working conditions. In some cases, this may mean offering the employee suitable alternative work (if available) on terms and conditions that are not substantially less favourable. It may be necessary to obtain a medical opinion from the Occupational Health Department as to the suitability of the work offered.
- 7.3 If it is not possible for the Organisation to alter the employee's working conditions to remove the risks to her health and there is no suitable alternative work available to offer her on a temporary basis, the Organisation may suspend her from work on maternity grounds until such time as there are no longer any risks to her health. This may be for the remainder of her pregnancy until the commencement of her maternity leave. If an employee is suspended in these circumstances, her employment will continue during

the period of the suspension and it does not in any way affect her statutory or contractual employment and maternity rights. The employee will be entitled to her normal salary and contractual benefits during the period of her suspension, unless she has unreasonably refused an offer of suitable alternative employment.

8 SICKNESS ABSENCE

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

8.2 If the employee is absent from work wholly or partly because of pregnancy during the four weeks before the expected week of childbirth, she must notify the Organisation in writing of this as soon as reasonably practicable.

9 RIGHTS DURING MATERNITY LEAVE

9.1 During ordinary maternity leave and additional maternity leave, all terms and conditions of the employee's contract except normal pay will continue. Salary will be replaced by the Occupational Maternity Pay and/or Statutory Maternity Pay if the employee is eligible for it.

9.2 This means that, while sums payable by way of salary will cease, all other benefits will remain in place. For example, holiday entitlement will continue to accrue and pension contributions will continue to be paid.

10 ANNUAL LEAVE

10.1 Employees will continue to accrue both statutory and any additional contractual holiday entitlement during both the 26 weeks' ordinary maternity leave period and 26 weeks' additional maternity leave period.

10.2 An employee who has requested maternity leave will be advised before she starts ordinary maternity leave whether or not she has any outstanding holiday entitlement.

The Organisation may:

- Require the employee to take such outstanding holiday before commencing maternity leave;
- Agree in conjunction with the relevant Head of Department that the employee should carry the leave over and take it on return to work after maternity leave; or
- For holiday entitlement in excess of the statutory minimum, pay the employee for any outstanding holiday leave as if the employee were leaving.

These options will be discussed with the employee prior to the start of maternity leave.

11 CONTACT DURING MATERNITY LEAVE

11.1 The Organisation reserves the right to maintain reasonable contact with employees during maternity leave. This may be to discuss employees' plans for return to work, to discuss any special arrangements to be made or training to be given to ease their return to work or to update them on developments at work during their absence.

KEEPING-IN-TOUCH DAYS

11.2 Employees can agree to work for the Organisation (or to attend training) for up to 10 days during their maternity leave without that work bringing their maternity leave to an end and without loss of a week's statutory maternity pay. These are known as "keeping-in-touch" days. Any work carried out on a day shall constitute a day's work for these purposes.

11.3 The Organisation has no right to require employees to carry out any work and employees have no right to undertake any work during their maternity leave. Any work undertaken, and the amount of salary paid for any work done on keeping-in-touch days, is entirely a matter for agreement between employees and the Organisation.

12 NHS PENSION SCHEME

12.1 If the pregnant employee is a member of the NHS Pension scheme, contributions will continue to be deducted from salary during periods of paid maternity leave. However, to ensure that pensionable service is not broken, pension contributions will be due to be paid on any periods of unpaid maternity leave. Any outstanding contributions will be recovered when the employee returns to work. It may be advisable for the employee to contact the Pensions department to make arrangements for this.

12.2 For those employees who have less than 2 years' service and who will not be returning to work following their maternity leave, there may be an entitlement to a refund of pension contributions. The employee should contact the Pensions department for further information on this.

13 RETURNING TO WORK AFTER MATERNITY LEAVE

13.1 The employee may return to work at any time during ordinary maternity leave (after the minimum period of 2 weeks after giving birth) or additional maternity leave, provided that she gives the appropriate notification.

13.2 There is no requirement for an employee to notify the Organisation of her intention to return to work, unless she is intending to return before the end of the 52 week maternity leave period. In that case at least eight weeks' notice in writing to the Organisation of the date on which she intends to return must be given.

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

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

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

14 TRANSFER OF MATERNITY LEAVE

14.1 If an employee proposes to return to work by giving proper notification, her spouse, civil partner or partner may be eligible to take additional paternity leave (and additional statutory paternity pay) once she has returned to work.

14.2 The earliest that additional paternity leave may commence is 20 weeks after the date on which the child is born and it must end no later than 12 months after the date of birth. The minimum period of additional paternity leave is two consecutive weeks and the maximum period is 26 weeks.

14.3 Further details should be obtained from the employee's spouse's or partner's employer. She will be required to submit a written and signed declaration form to that employer, which may also make additional enquiries of the Organisation to verify its employee's entitlement to additional paternity leave and pay.

15 ADOPTION LEAVE

15.1 Adoption leave and pay entitlements apply to eligible staff where a child who is under 18 years of age, is newly placed for adoption within the UK. Entitlement is in line with the Organisation's maternity leave and pay provisions. Adoption leave and pay are available to:

- Staff who adopt and have primary carer responsibility for that child;
- One member of a couple, where a couple adopt jointly.

15.2 However, where both parents have the same employer, the period of leave may be shared, with one parent identified as the primary carer and entitled to the majority of the leave. The partner of the primary carer is entitled to occupational paternity leave and pay.

15.3 Eligibility for occupational adoption pay will be 12 months continuous NHS service ending with the week in which they are notified of being matched with the child for adoption. Occupational adoption pay will be in line with Occupational Maternity pay.

15.4 A copy of the matching certificate must be presented to the HR office when applying for adoption leave.

15.5 Reasonable time off to attend official meetings in the adoption process should also be given.

16 DISMISSAL WHILST ON MATERNITY LEAVE

16.1 Under the Employment Rights Act 1996 and the Equality Act 2010 it is automatically unfair to dismiss an employee where the reason or principal reason for dismissal is because the employee is pregnant or for any other reason connected with her pregnancy.

16.2 An employee may be fairly dismissed for reasons unconnected to her pregnancy or maternity leave where the dismissal would have occurred regardless of the fact that the employee is pregnant / on maternity leave. In such cases the reason for dismissal and its fairness would be judged in the normal way, i.e. the Organisation would have to show that the dismissal fell within one of the 5 fair reasons to dismiss, which are:

- Capability or qualifications;

- Conduct;
- Redundancy;
- Illegality or contravention of a statutory duty;
- Some other substantial reason (SOSR).

REDUNDANCY

- 16.3 An employer seeking to carry out a redundancy or restructuring exercise needs to be particularly careful when dealing with employees who are pregnant or on maternity leave. Such employees are afforded special protection under employment legislation.
- 16.4 This does not mean that an employer can never dismiss pregnant employees or those on maternity leave. Provided that there is a genuine redundancy situation and that the employer has carried out a fair procedure, the employer is entitled to dismiss employees even if they are pregnant or absent from work on maternity leave.
- 16.5 Any employee who is made redundant after the 15th week before the EWC retains her entitlement to SMP.
- 16.6 Any employee whose job is to be made redundant and would normally be entitled to Occupational Maternity Pay (OMP) retains the right to receive OMP (based upon any payments due to her up to the cessation date of her contract of employment) as if she had been returning to work.
- 16.7 Should a restructure take place whilst an employee is on maternity leave, they will receive full details and be consulted with in the same way as for other staff.
- 16.8 An employee given notice of redundancy during her maternity period is entitled to receive full pay during her period of notice. However where this notice period (or any part of it) coincides with any paid maternity leave period, the maternity pay due (whether occupational or SMP), will be subsumed within the paid notice, i.e. the employees pay will not exceed their normal full pay whilst under notice.
- 16.9 Where the employee's contract of employment ceases for reason of redundancy before all SMP payments have been made, the Organisation is responsible (under SMP regulations) for paying any remaining weeks of SMP payments due.
- 16.10 An employee would only be entitled to receive a redundancy payment if she meets the service qualifications for such a payment.