

ADVICE NOTE: Maternity Leave

Entitlement to Statutory Maternity Leave

All employees expecting a baby are entitled to Statutory Maternity Leave (SML). There is no minimum length of service required to take SML and an employee is entitled to up to 52 weeks SML.

An employee may also be entitled to be paid Statutory Maternity Pay (SMP), provided that they meet the minimum service requirement.

OML and AML

The 52-week maternity leave period is divided into Ordinary Maternity Leave (OML) and Additional Maternity Leave (AML). Historically, there were differences between the benefits which an employee received during OML and AML which explains the reason for there being two types of maternity leave. However, in 2008 the two types of leave were harmonised so that there is no longer a difference between the benefits which an employee receives during OML and AML. However, for ease of reference, the two types of leave are still used.

OML last for up to 26 weeks and can start any time from 11 weeks before the week the baby is due.

AML lasts for up to 26 weeks and begins the day after the last day of the employee's OML.

An employee must take at least two weeks' compulsory maternity leave starting with the day on which the child is born.

Entitlement to SMP

An employee is entitled to SMP if they have 26 weeks' service before the 15th week before the baby is due. If an employee does not have 26 weeks' service before the 15th week before the baby is due, the employee may be entitled to receive Statutory Maternity Allowance and should approach the Job Centre Plus for more information.

If an employee is entitled to SMP, then they will receive 90% of their normal earnings for the first 6 weeks of maternity leave, followed by SMP (currently £124.88), or 90% of their normal weekly earnings if lower, for the next 33 weeks of maternity leave. After that period, the employee can continue to take the remaining 13 weeks maternity leave, but this will be unpaid unless they have an enhanced maternity package in their contract of employment.

Week of Maternity Leave	Entitlement to Pay
First 6 weeks of maternity leave	90% of the employee's normal earnings
Weeks 7- 39 of maternity leave	SMP or 90% of normal weekly earnings if lower
Weeks 40 -52 of maternity leave	No pay

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Notice of maternity leave

For an employee to be able to take maternity leave, they must give notice to the employer before the 15th week that the baby is due. This is usually in the form of a MATB1 form from the midwife and has to say the following things:

- That the she is pregnant;
- The week that her baby is due;
- The week she plans to start her Ordinary Maternity Leave

Starting Maternity Leave

Once an employee has given notice of her intended date to start her maternity leave, she can change her mind as long as she gives 28 days' notice of the change. If an employee is unable to give 28 days' notice of the change in start date of her maternity leave, she should give notice as soon as it reasonably practicable.

If the baby is born early, then OML starts immediately upon the birth of the baby.

Premature babies and still birth

If the baby is premature, then an employee's OML begins automatically.

If the employee loses her baby after 24 or more weeks of pregnancy, or if the baby is stillborn, then she is still entitled to maternity leave. An employee should tell her employer of such a situation as soon as is reasonably practicable.

If an employee is ill during the last four weeks of her pregnancy and this is pregnancy related, then her maternity leave will commence automatically and she should inform her employer of the reasons for her absence and that it is pregnancy related.

Rights during OML and AML

A woman is entitled to the same benefits during OML and AML.

The employer must:

- Continue to provide all contractual and discretionary benefits during maternity leave *apart from* remuneration. Remuneration includes the following:
 - Overtime;
 - Shift pay.
- Provided an employee was entitled to receive the following benefits prior to maternity leave, she will continue to be entitled to receive them during her maternity leave:
 - Continuing membership of a professional body e.g. SLCC
 - Private use of a company car;
 - PHI;
 - Private use of a mobile phone;
 - Gym membership.

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Pension Contributions during Maternity Leave

Pension payments do not need to be continued during a period of AML which is unpaid (unless the employee's contract of employment states otherwise). However, during any period of paid maternity leave the employer must continue to make contributions based upon the employee's normal pay as if she had been at work. The employee's contributions should be based upon the pay she is actually receiving during paid maternity leave.

KIT Days

Employees are entitled to work up to 10 days ('Keeping in Touch' or KIT days) during maternity leave without maternity leave coming to an end.

The main purpose of KIT days is to keep contact between the employer and employee and useful ways of an employee using KIT days include attending training courses with the team in which she works. If she is working during her KIT days rather than simply attending the workplace to maintain contact with colleagues and her employer, then she should be paid at her normal rate. If she is paid for her KIT days and these are used when the employee is being paid Statutory Maternity Pay, the SMP may be offset against any contractual pay which the employee receives.

Holiday entitlement during maternity leave

An employee on maternity leave accrues annual leave during both OML and AML, both statutory and additional contractual leave.

To avoid an employee having a full year's annual leave entitlement when they return from maternity leave, it is useful to agree with the employee how this annual leave will be taken. If an employee has a large amount of untaken annual leave accrued before they go on maternity leave then it is useful to encourage an employee to take all of their accrued annual leave before they start maternity leave. It may also be useful for an employee who has stopped receiving any form of maternity pay but still has maternity leave to take, to take the accrued annual leave before they return to work.

Although an employee cannot take annual leave whilst on maternity leave, one option is for the employee to take paid annual leave in place of the remaining unpaid maternity leave. This way, the employee still receives pay for a large proportion of the maternity leave and the employer will not need to deal with the employee taking large amounts of annual leave in the next annual leave year when she returns from maternity leave.

National Agreement on Pay and Conditions of Service

Green Book provisions provides for more generous maternity payments than statutory payments for eligible employees.

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Should the Council abide by the National Agreement on Pay and Conditions of Service (the "Green Book"), the following rules in relation to maternity leave will apply:

Employees who have less than 1 year's continuous local government service at the beginning of the 11th week before the Expected Week of Confinement (EWC) will be entitled to Statutory Maternity Pay (SMP).

Employees who have one year's continuous local government service at the 11th week before the EWC will be entitled to the following maternity payments:

For the first six weeks of absence an employee shall be entitled to 90% of a week's pay offset against payments made by way of SMP or Maternity Allowance (MA) for employees not eligible for SMP.

If she has declared her intention to return to work after her maternity leave, then for the subsequent 12 weeks, the employee is entitled to half a week's pay on top of her SMP (unless her combined contractual entitlement and SMP exceeds full pay, in which case the contractual element is reduced pro rata).

For employees not intending to return to work, during the subsequent 12 weeks the employee is entitled only to SMP.

Payments made by the Council during maternity leave are made on the understanding that the employee will return to local authority employment for a period of at least three months, which may be varied by the local authority on good cause being shown. In the event of the employee not doing so, she is required by the terms of the Agreement to refund the monies paid ("or such part thereof, if any, as the authority may decide"). Payments made to the employee by way of SMP are not refundable.

Length of Service	Week of Maternity Leave	Entitlement to Pay
Less than one year's service by 11 th week before EWC	Weeks 1-6	90% of the employee's normal earnings
	Weeks 7-39	SMP or 90% of normal weekly earnings if lower
	Weeks 40-52	No Pay
One year's service or more by 15 th week before EWC	Weeks 1-6	90% of a week's pay offset against SMP
	Weeks 7-18 if employee has declared her intention to return to work after maternity leave	50% of a week's pay on top of her SMP

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	Weeks 7-18 if employee is not intending to return to work	SMP only – Please see above guidance
	Weeks 19-39	SMP only
	Weeks 40-52	No pay

Return to work after maternity leave

An employee is entitled to return to work after taking maternity leave. If the employee returns after taking only OML, then she is entitled to return to the job in which she was employed before she went on maternity leave.

If the employee takes the full 52 week maternity leave entitlement, then unless it is not reasonably practicable, she is entitled to return to the job in which she was employed before she went on maternity leave.