

Maternity Rights in the UK



CRODA

Contents

	Page
Introduction	4
Definitions and abbreviations	5
Company policy on maternity leave	6
Employee obligations	6
Right to privacy	6
Health & Safety	6
Antenatal care	7
Sick leave during pregnancy	7
Maternity Leave	8
Maternity Pay	12
Notification requirements	13
Maternity rights flowchart	14
Holidays	16
Protection against detrimental treatment or dismissal	16
Notes for managers	17

Introduction

This booklet contains a brief outline of the rights and conditions relating to maternity leave and pay. The legislation related to these rights is complicated and details cannot be given in full. If you have any queries please contact Group HR at Cowick Hall. This booklet gives general guidance only and should not be regarded as a comprehensive or authoritative statement of the law.

The right to take maternity leave is technically quite independent of the right to receive statutory maternity pay. Therefore all sections of this booklet should be considered before making decisions. The Company must comply with Social Security and Inland Revenue rules and cannot be held liable for any decision made by an employee regarding any aspects of maternity leave or pay.

The information given is correct as at April 2013 and applies to UK employees only.

Definitions and abbreviations

Term	Abbreviation	Meaning
Childbirth		In this booklet childbirth means the live birth of a child, or a still birth after a pregnancy lasting at least 24 weeks.
Expected week of childbirth	EWC	In this booklet expected week of childbirth means the week, beginning with midnight between Saturday and Sunday, in which it is expected that the baby will be born.
Week of childbirth		In this booklet week of childbirth means the week, beginning with midnight between Saturday and Sunday, in which the baby is actually born.
Lower Earnings Limit	LEL	The level of weekly earnings set by the government above which National Insurance contributions are payable. The LEL is £109 per week from April 2013.
Statutory Maternity Pay	SMP	Money that must be paid for a maximum of 39 weeks by an employer to qualifying pregnant employees. There are service, earnings and notification tests to qualify. The standard weekly rate from April 2013 is £136.78 and it is payable for 39 weeks.
Maternity Allowance	MA	Money payable to pregnant women who are not eligible for SMP.
Statutory Sick Pay	SSP	Money paid by employers to qualifying employees absent through sickness. The standard weekly rate from April 2013 is £86.70 and it is payable for 28 weeks in one spell of incapacity. There are service, earnings and notification tests to qualify.
Ordinary Maternity Leave	OML	A period of 26 weeks leave from work around childbirth subject to notification tests.
Additional Maternity Leave	AML	A period of 26 weeks leave from work starting when OML is exhausted.
Keeping in Touch Days	KIT	Ten keeping in Touch days are allowed for a woman to do a limited amount of work whilst still retaining SMP during the 39 weeks entitlement and does not signify the end of maternity leave.

Company Policy on Maternity Leave

It is Company policy that eligible employees should receive all rights due under the legislation relating to maternity policy and maternity pay. The Company will provide information to employees so that rights can be understood and accessed. It will also ensure that managers are aware of their responsibilities in this respect. The Company supports working mothers and will not tolerate any form of discrimination against them.

Employee Obligations

The procedures which you need to follow in order to claim your maternity rights are complicated. It is therefore important that you familiarise yourself with the requirements set out in this booklet so that you know what information you need to give us and when.

Right to Privacy

Employees have the right to keep private their plans and intentions regarding family and children. There are no reasons why anyone, either in management or colleagues, should ask or expect to be told details of someone's personal life. There is no legal requirement that an employee should inform her employer that she is pregnant at any particular stage of her pregnancy. The requirement to inform is only triggered if the employee wants to take advantage of her rights to maternity leave and pay.

However, the Company cannot be expected to provide support or help if it has no knowledge of a pregnancy. Therefore, for reasons of both Health and Safety and to ensure rights are accessed, employees are asked to advise their manager of pregnancy at the earliest opportunity.

Health & Safety

The Company's normal risk assessment processes take into consideration the general risks that are inherent in the workplace. Thought will have been given to any risk within the workplace to pregnant women, unborn babies and new/breast feeding mothers. However, as soon as a pregnancy is notified a specific risk assessment will be carried out in relation to the individual. Pregnant women are therefore urged to tell their manager/health and safety advisor of their pregnancy as soon as possible. The Company will then be able to confirm whether or not it is safe for the woman to continue to work in their existing role during pregnancy.

If either the woman or her unborn child is considered to be at risk then the Company will discuss the options with her. These could include altering the role, the work environment, working hours or transferring to an alternative role during the pregnancy. In any of the cases, job grade, rate of pay and other benefits will remain the same. In the unlikely circumstance that no alternative role can be found then the employee will be placed on paid leave until either the risk no longer exists or the maternity leave starts, whichever happens first.

Rarely, when starting some jobs, women will be advised that although they are perfectly safe in normal circumstances there could be risks in pregnancy. Women in such jobs should seek advice from their GP about these risks when contemplating pregnancy or finding themselves pregnant.

Details of risk assessments can be seen on application to your line manager or health and safety advisor/representative.

Antenatal care

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. All that the Company asks is that in order to minimise any disruption to the business, women should try to arrange appointments as far in advance as possible and as close to the start or end of the working day as possible. If a pregnant employee works shifts they are expected to arrange appointments when they are not at work.

Antenatal care includes appointments with a GP or midwife, hospital appointments for scans and tests, and other appointments made on the recommendation of a GP or midwife such as relaxation classes and parentcraft classes.

In order to have time off for antenatal classes a woman must:

- a. Inform her manager that she is pregnant.
- b. Tell her manager the date and time of any appointment as well as a best estimate of how long she will be absent (including travelling time).
- c. If requested she must produce an appointment card or some other document showing that an appointment has been made.

The woman will be paid at her usual rate for attending appointments that have been notified to the Company in advance in accordance with the above procedures.

Sick leave during pregnancy

If a woman is ill during pregnancy before the start of maternity leave, the normal rules relating to notification procedures, sick notes, sick leave and sick pay entitlements will apply.

If absence from work is as a result of a pregnancy-related illness at any time after the start of the fourth week before a child is due the Company reserves the right to require maternity leave to start straightaway (see page 7 OML).

If the Company does require the woman to start maternity leave then entitlement to sick pay will cease and instead she will receive maternity pay.

Maternity Leave

Introduction

The legislation on maternity leave has changed over time, the information given below is correct as at April 2013. The right to take maternity leave is technically quite independent of the right to receive statutory maternity pay (SMP). The total amount of SMP to which an employee is entitled may also affect how much time off she decides to take. (For details of SMP see page 10.)

There are three types of maternity leave, which are explained below. To take advantage of maternity leave an employee **must** give proper notice.

The key features of the maternity leave framework are as follows:

- 26 weeks of ordinary maternity leave (paid)
- 26 weeks of additional maternity leave (13 of which are paid)
- 26 weeks qualification period for statutory maternity pay
- 2 weeks of compulsory leave
- notification arrangements by the 15th week before the expected week of childbirth (EWC)
- four weeks used for maternity trigger if employee is off sick with a pregnancy related reason.

Ordinary Maternity Leave (OML)

All pregnant employees are entitled to 26 weeks OML, no matter how short a period of time they may have been employed for and no matter how many hours a week they work. The status of the contract is also irrelevant - permanent, temporary, casual, part time, fixed term – all women have the right to take OML from the first day of employment.

A woman can start her OML at any time from the start of the 11th week before the EWC. Apart from this, an employee normally has a completely free choice as to when her OML starts. However, there are two exceptions to this:

1. If her baby is born in advance of the 11th week before the EWC or if she miscarries before the 11th week before the EWC but after 24 weeks of pregnancy, then her maternity leave starts on the date of childbirth.
2. If she is absent through illness for a pregnancy-related reason at any time after the start of the 4th week before the EWC then the start of her OML period is triggered automatically. This is so even if she originally intended to work for a further period and is subsequently fit enough to return to work for a time before her child is born. The Company can at its discretion waive the right to trigger OML due to sickness.

Compulsory maternity leave

A mother must take two weeks' compulsory leave immediately after the birth. If an employee returns to work within the two week period, the Company faces a fine if the Health and Safety Executive takes action. The compulsory leave period is extended to four weeks if the woman works in a factory or workshop premises.

Compulsory leave is considered to fall within OML and is not an additional 2 weeks.

Additional Maternity Leave

All women who qualify for OML (OML) also qualify for Additional Maternity Leave (AML). Therefore a woman has the right to AML from day one of her employment and all women are entitled to 52 weeks maternity leave in total.

Calculating when maternity leave will start

To work out the key dates regarding maternity leave the following are required:

- the date on which the child is due
- the employee's start date with the Company (including any periods counting towards continuous employment)

There is a very useful government website to assist with this. By inputting the expected date of childbirth a calendar will be displayed automatically, giving the information needed about maternity leave and pay. The website is:

<http://www.direct.gov.uk/en/Parents/Moneyandworkentitlements/WorkAndFamilies/Pregnancyandmaternityrights/index.htm>

Click on maternity leave and then personalised help.

Ending maternity leave

The woman is expected to take the full leave entitlement. The Company will therefore assume a return to work date starting the first working day after 52 weeks from the start of maternity leave. Once a start date for maternity leave is established with the Company then the Company must give written notification of the return to work date. A woman may return early by giving the appropriate notice in writing (see page 11).

An employee no longer has the right to delay her return from maternity leave for medical reasons. However, if she is sick at the end of her maternity leave, she will be subject to the Company's usual sickness provisions. If she is sick, she must notify her manager in the usual way. The usual considerations as to absence management will apply.

Keeping In Touch Days

Ten “Keeping in Touch” days (KIT) allow a woman to do a limited amount of work under their contract during maternity leave period without it affecting statutory maternity pay or initiating the end of their maternity leave. Any work done on any day will count as a whole KIT day. In other words if the woman attends work for a one hour training session for example she will have used one of her KIT days. It is entirely a matter for the employee and employer how and when KIT days are used during her maternity pay period. Once those days have been used up, the woman will once again lose a week’s SMP for any day in which she does work under her contract of service for the employer paying her SMP. There are no changes to the rules where the woman works for someone else during the maternity leave.

For example, if a woman earns £50.00 for a KIT day, she will retain her SMP, although the £50.00 earned will be offset against this, meaning she will receive £136.78 for the week. If she works for three KIT days in the same week and earns £150.00 she will receive £150.00 – her SMP being offset, as now, against contractual pay paid for the same week.

Job on return to work

When an employee is absent on OML she is entitled to the benefit of the terms and conditions of employment which would have applied if she had not been absent, other than remuneration. This means that she is entitled to return from OML to the job in which she was employed before her absence.

An employee returning from AML is entitled to return from leave to the job in which she was employed before her absence, or, if not reasonably practicable, to another job which is both suitable for her and appropriate for her to do in the circumstances.

In particular the Company must ensure that the employee returns on terms and conditions no less favourable than those which would have applied had she not been absent on maternity leave. Her seniority, pension rights and similar rights must remain as they would have been if the period prior to her AML was continuous with her employment following her return to work.

Failure to return to work

At any time, a woman may choose not to return to work following maternity leave by giving written notice to the Company of resignation from employment.

An employee failing to return in other circumstances will be treated as being absent (with or without leave). The circumstances of the absence will be dealt with in the normal way e.g. sick leave. Unauthorised or unreasonable absence will be dealt with through the Company’s disciplinary procedures.

Terms and conditions during maternity leave

During OML and AML an employee is entitled to the benefit of all the contractual terms and conditions of employment which would have applied had she not been absent, but excluding “remuneration” which is defined to mean sums payable by way of wages or salary only, or any contractual monetary payments. The right to accrued holidays will continue (see page 16). The employee continues to be bound by any obligations under the contract of employment, except for the obligation to work.

The employee is entitled to the benefit of the Company’s implied obligation of trust and confidence and any terms relating to:

- continuity of employment
- notice of termination of employment
- compensation in the event of redundancy
- disciplinary or grievance procedures

Maternity Pay

Eligibility (SMP)

To be eligible for SMP woman must have been continuously employed for 26 weeks by the end of the 15th week before the expected week of childbirth (the qualifying week). She must earn above the lower earnings limit (LEL) and she must correctly notify the Company of her pregnancy.

A woman does not have to intend to return to work to get SMP.

Rate of SMP

Once an employees ten KIT days have been taken SMP can only be paid for weeks in which the recipient does not work i.e. when she is on maternity leave.

There are two rates of SMP:

- Higher rate – for the first six weeks an employee receives 90% of her usual salary. The usual salary is calculated as the average salary in the 8 weeks up to and including the qualifying week.
- Standard rate – for the remaining 33 weeks an employee receives the lesser of the standard weekly SMP rate or 90% of her average salary. The standard rate is £136.78 from April 2013 and is normally reviewed annually.

SMP is an employment payment and is therefore subject to the usual pay deductions.

Maternity Allowance

An employee who has not worked long enough to qualify for SMP may be able to claim statutory maternity allowance if she has worked for a total period of 26 weeks in the 66 weeks preceding the qualifying week (the 15th week before the baby is due). Periods of employment with other employers as well as self-employment can be included and need not be consecutive.

Maternity allowance is a social security benefit and details of how to apply for it can be obtained from any DSS office.

Pension Scheme

Membership of the Company pension scheme continues during maternity leave. All benefits of the scheme remain in place. Deductions will continue to be made as long as the employee is receiving SMP.

Croda Maternity Pay

The Company now provides maternity pay for the full 52 weeks for employees that are eligible to receive it:

- 90% of weekly salary for the first 6 weeks
- 20% of weekly salary plus SMP for 33 weeks
- 20% of weekly salary for 13 weeks

Please be aware that should an employee not return to work for at least eight weeks following the end of their maternity leave the Company has the right to reclaim the enhanced maternity pay.

Notification requirements

OML, AML and Statutory Maternity Pay are all conditional upon employees giving the Company notice at the right time.

To claim maternity leave and SMP, an employee must notify the Company in writing, no later than the end of the fifteenth week before the expected week of childbirth of:

1. the fact that she is pregnant;
and
2. the week in which her child is due, (the EWC). If the birth has occurred, the date should be advised to the employer as soon as possible;
and
3. the date on which she intends her OML period to start (which must be a date no earlier than the beginning of the 11th week before the expected week of childbirth).

She must also provide a certificate from her GP or midwife confirming the EWC. This is usually provided in a standard form called MAT B1 obtainable from the employee's medical practitioner after the 14th week before the EWC. The MAT B1 should be sent to the Salaries department. The Company cannot start paying SMP until the certificate has been provided.

Women who fail to give the required notifications within the specified time limits may lose their rights to SMP and to start maternity leave on their intended start date. The time limits can be extended only in circumstances where it was not reasonably practicable for the notification in question to have been given any earlier.

Changing the notified leave start date

A woman can change the notified start date for OML by writing with the new date by whichever is the earlier of:

- 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

The Company may at its discretion waive the right to 28 days notice providing there is appropriate consultation and business needs are met.

Confirmation of end date of maternity leave

The Company will respond to the employee's notification by confirming in writing the date on which the woman is expected to return to work. This must be done within 28 days of receipt of the employees' notification.

Changing the return to work date

If a woman wishes to return to work before the end of the 52 weeks' leave she is entitled to, then she must give at least 8 weeks notice in writing of the new date.

Maternity Rights Flowchart

GP confirms employee is expecting baby



Employee is entitled to paid time off for antenatal care. [See page 7](#)



Employee is entitled to 26 weeks ordinary maternity leave (OML) regardless of length of service, hours of work etc. [See page 8](#)
Subject to notification.



All employees are also entitled to 26 weeks additional maternity leave (AML). [See page 9](#)



And:
If average weekly earnings are above lower earnings limit (LEL) they are entitled to 39 weeks statutory maternity pay (SMP) [See page 12](#)
Subject to notification

No?

May be entitled to MA.
[See page 12](#)

Notification:

Pregnant employee must tell the Company in writing of her intention to take maternity leave by the 15th week before EWC. She will need to state:

- that she is pregnant
- the date her baby is expected to be born
- when she wants to start maternity leave
- that she claims maternity pay

She will need to provide a MAT B1 or similar evidence of pregnancy

[See page 13](#)



Continued on next page

Notification: As foot of previous page

Employee must give 8 weeks notice of any change of dates.
[See page 13](#)

Company must respond to employees' notification within 28 days, setting out when the employee is expected to return to work if they take their full leave entitlement. [See page 13](#)

Earliest date for maternity leave is the beginning of the 11th week before EWC.
[See page 8](#)

If employee is absent from work with a pregnancy related illness during the four weeks before the start of EWC, maternity leave starts automatically regardless of when she actually wants her maternity leave to start.
[See page 8](#)

If the baby is born before the date employee has notified (or before any notification), maternity leave period starts automatically and employee must give employer notification as soon as is reasonably practicable.

Employee continues to benefit from all terms and conditions during OML and AML except pay. [See page 11](#)

Employee returns to same job after OML as if she hadn't been away. [See page 10](#)

Employee returns to same job after AML as if she had not been away, unless not reasonably practicable and then she should be offered similar job on terms and conditions no less favourable than original job. [See page 10](#)

Holidays

Pregnant employees are entitled to accrue holidays as per the terms and conditions of their employment contract throughout OML and AML. For full time employees, this is 25 days plus 8 public holidays. If a full time employee were to take the full 52 weeks maternity leave they would accrue 33 days holiday. Please contact Group HR for specific details of your holiday entitlement.

In principle holidays must be taken – not paid in lieu. In practice this means delaying the start of maternity leave by having holiday prior to leave or delaying the actual return to work by taking holiday after the end of maternity leave. This will need to be discussed and agreed with the line manager. Payment for holidays will be at the normal rate and will be made in the week/month that holidays are taken.

Protection against detrimental treatment or dismissal

The right not to suffer detrimental treatment at work starts as soon as a woman has told the Company that she is pregnant and lasts up to the end of her maternity leave. The protection applies regardless of the employee's length of service.

An employer must not subject an employee to unfair treatment at work because she:

- is pregnant
- has taken or intends to take leave for antenatal care
- has given birth to a child
- has taken, or sought to take OML or AML
- has taken or sought to take SMP or any other benefit of OML
- does not return to work at the end of her leave in circumstances where the Company failed to give notice of the date of return to work
- has been suspended from work for health and safety reasons connected with her pregnancy

Furthermore it is unlawful for the Company to dismiss an employee or select her for redundancy in preference to other comparable employees, for reasons connected with:

- asserting her right to time off for antenatal care
- her pregnancy
- childbirth
- maternity suspension on health and safety grounds
- taking, or seeking to take maternity leave
- taking or seeking to take any of the benefits of OML
- not returning to work on the due date in circumstances where the Company failed to give notice of the date of return to work

Notes for Managers

1. Discrimination

Discriminatory recruitment practices are unlawful i.e. recruiters must not make recruitment decisions based on the current or potential pregnancy of a candidate. Equally decisions on promotion or suitability for internal job moves must be based on objective considerations.

2. Risk assessments

Risk assessments covering the risk within the workplace to pregnant women, the unborn child and new/breast feeding mothers must be completed as soon as an employer **proposes** to employ a woman in any capacity. A secondary risk assessment should be completed whenever a woman notifies the Company that she is pregnant. Any specific risks must be identified and either the risk must be eliminated or the woman moved to a different job.

3. Maintaining contact

It is the manager's responsibility to set in place suitable arrangements to maintain contact with an employee who is on maternity leave. It is important that the employee is kept up to date with both business and social matters.

4. Training

On return to work the manager must arrange induction training to ensure that the employee is brought up to date with current business procedures etc. It will also be necessary to make sure that the woman receives any training or instructions given to work colleagues during her absence.

5. Pay and Benefits

The manager must include the woman in any review of pay and benefits that takes place during her maternity leave. In particular she must be included in the April pay review and her new salary should be notified to her in the usual way.



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