

MATERNITY FAQs FOR MANAGERS

1. One of my staff has just informed me she is pregnant. What should I do?

- **For establishments using the RCUK Shared Services Centre:** you should inform retained HR and the SSC. Your staff member will be required to complete a Statutory Leave Request Form, which is available on the KnowledgeBase.
- **For establishments not using the RCUK Shared Services Centre:** you should direct her to your local HR Department. They will talk her through her entitlements and obligations. She will be asked to complete a Maternity Absence Form giving written notification of her intention to take maternity leave.

It is important that these forms are completed no later than the end of the 15th week before the child is due. She will also be required to produce a maternity certificate (form MATB1). Depending on her eligibility to Statutory Maternity Pay, she may also need to complete a MA1 claim pack from the Department for Work and Pensions (DWP).

- **Consider her health and safety**

Legally you must specifically consider any risks whilst she is pregnant or breastfeeding. Contact your local Health & Safety Officer so that a risk assessment can be carried out. They will check for physical, biological and chemical agents, as well as working conditions and processes. Common risks during pregnancy include:-

- lifting/carrying of heavy loads
- standing or sitting for long lengths of time
- work-related stress
- workstations and posture
- working long hours.

Depending on the outcome of the risk assessment, the risk may need to be removed (if possible), there may need to be a change in her working conditions or hours of work, or you may need to find suitable alternative work for her for the duration of her pregnancy. If none of these are possible, you may need to suspend her on paid leave to protect her and her child. Consult HR and/or the local Health and Safety Officer in all such cases first.

You will also need to ensure that there is somewhere suitable for her to rest.

- **Allow her paid time off for antenatal care**

She has the right to paid time off to attend antenatal classes on the advice of her GP, midwife or health visitor. This includes relaxation and parent-craft classes. You can ask for proof of the appointment or class; if she is unable to provide this, you have the right to refuse the time off.

2. What are the maternity leave and pay entitlements?

This depends on the length of her employment; full details are found in the Maternity Guidance notes (Employment Code appendix A3).

3. When should maternity leave start?

The earliest that Ordinary Maternity Leave can start is 11 weeks before the expected week of childbirth.

After this date, it is generally up to the employee when she starts her leave; she can even work right up to the date that the baby is born.

However, Ordinary Maternity Leave will commence automatically if her baby is born before the day on which she was planning to take her leave. Maternity leave may also be triggered if she is sick any time after the beginning of the 4th week before the expected week of childbirth, and her absence is due to a pregnancy related illness.

4. How long is maternity leave?

As a minimum mothers have to take 2 weeks Compulsory Maternity Leave following the birth of their child.

The maximum amount of maternity leave is 52 weeks, which is made up of 26 weeks Ordinary Maternity Leave, and 26 weeks Additional Maternity Leave.

In establishments using the RCUK SSC Ltd, she will receive a maternity leave plan from the RCUK SSC Ltd which she will complete in consultation with retained HR. Once this has been returned to the RCUK SSC Ltd, she will receive a letter confirming her maternity leave start and end dates. If she wishes to change her dates, she should complete a Change of Statutory Leave Form which is available on Knowledgebase. If changing the end date, she must give 8 weeks notice.

In establishments not using the RCUK SSC Ltd, she will be written to confirming the date on which the periods of Ordinary and Additional Maternity Leave will end. Unless otherwise informed, this is the date on which she should expect her to return. If she wishes to return earlier than this date, she must give 8 weeks written notice.

5. One of my team is about to return from Ordinary Maternity Leave. Someone else has been covering her job, and I would rather keep them in that role because they have been doing a good job. Can I give the returning employee a completely different job to do?

No. The woman returning from Ordinary Maternity Leave is legally entitled to return to the same job, on the same terms and conditions, as if she had not been absent. The only exception to this would be if a redundancy situation had arisen, in which case she is entitled to be offered suitable alternative employment.

If you do not give the returning employee her job back at the end of her maternity leave, she would be entitled to make a claim of unfair dismissal to an employment tribunal.

6. One of my team is about to return from Additional Maternity Leave. Someone else has been covering her job, and I would rather keep them in that role because they have been doing a good job. Can I give the returning employee a completely different job to do?

No. The woman returning from Additional Maternity Leave is legally entitled to return to the same job, on the same terms and conditions, as if she had not been absent, *unless you can demonstrate that it was not reasonably practicable to have kept the job open for her*. If this is the case, then you must offer her a similar job that is suitable and appropriate, on terms and conditions no less favourable. The same would need to apply had a redundancy situation arisen.

7. I need to make some redundancies in my team. This includes a female member of staff who is on maternity leave. Do I treat her any differently?

Yes. Women on Ordinary or Additional Maternity Leave *must* be offered a suitable alternative vacancy where one is available. In essence, she will be treated more favourably than other potentially redundant employees.

If there are no suitable alternative vacancies, then she can be made redundant during or after maternity leave. However, you must ensure that there is a fair selection process when deciding which employees will be made redundant. To avoid a claim of unfair dismissal or sex discrimination, it is imperative that your selection is completely unconnected to her pregnancy, childbirth or maternity leave.

If you do have to make a woman redundant whilst she is on maternity leave, if she qualified for Statutory Maternity Pay, she will continue to receive it for the full 39 weeks.

8. I have been notified that a temporary (period) employee of mine is pregnant. Her contract is due to end whilst she is on Ordinary Maternity Leave. Will her contract end as normal?

Yes. If she is employed on a temporary (period) contract which ends during her maternity leave, her employment will be deemed to have finished on the date the contract expires.

You need to ensure that any decision relating to the expiry or non-renewal of her contract is unrelated to her pregnancy, childbirth or maternity leave.

If she was qualified to receive Statutory Maternity Pay, as long as she was still employed in the 15th week before the child was due, she will still receive the full 39 weeks allowance regardless of when the contract expires. Her contractual maternity pay will continue until the date on which the contract expires.

9. I have a pregnant team member who has taken a lot of time off sick. How can I deal with this?

It is important to note that if a woman suffers a detriment due to a pregnancy related sickness, this amounts to unlawful sex discrimination (e.g. using pregnancy related absences for disciplinary purposes).

Up until the 4th week before her expected week of childbirth, you should treat her absence in accordance with the normal sickness procedures. This is regardless of whether the illness is pregnancy related or not. However, it should be noted that when monitoring attendance under BBSRC's Health and Attendance Strategy, pregnancy related absences are excluded from the Bradford scoring system.

After the beginning of the 4th week before her expected week of childbirth, if her absence is not related to her pregnancy, you should treat her absence as normal. If she is absent due to a pregnancy related illness, her period of Ordinary Maternity Leave starts automatically on the day after the first day of absence.

10. I have a pregnant team member that I need to discipline. Can I do this?

Unless the grounds for the disciplinary are related to her pregnancy, childbirth or maternity leave, or any other discriminatory reason, then yes, you can continue with your disciplinary investigation and hearing.

11. What happens with an employee's annual leave when she is on maternity leave?

An employee continues to accrue her full contractual annual leave entitlement throughout both ordinary and additional maternity leave.

An employee may not take annual leave during SML, you should instead allow the employee to take any untaken annual leave before or after the leave year.

Because the rules relating to the normal carry over of leave to the next leave year still apply, your employee will need to ensure that she plans ahead to accommodate this, otherwise she will lose any entitlement that she doesn't take.

Your local HR Department / RCUK SSC Ltd (if applicable) can assist in calculating this leave for your employee.

12. Can someone returning from maternity leave take extra time off in lieu for the public holidays and privilege days they missed?

No – she would not get time off in lieu for public holidays or privilege days that fell during her maternity leave period.

13. A member of my team was due to return to work from maternity leave this week, but is ill. What happens now?

She should be treated in exactly the same way as any other employee who is absent. She is entitled to paid sick leave as per normal sickness procedures. Once the period of sickness has ended, she must return to work.

14. Can employees on maternity leave take career breaks?

Yes. A career break of up to 5 years can be taken at the end of Ordinary or Additional Maternity leave. Because managers have up to 42 days to respond to a career break request, the employee would need to forward her request in advance of the end of her maternity leave.

15. If an employee has taken a career break at the end of her maternity leave, what notice period would she need to give if she wanted to return?

Once the period of maternity leave has ended, and the beginning of the career break has commenced, normal career break procedures will apply. She would therefore be required to give 12 weeks notice of her intended return date, unless a different notice period had been previously agreed.

16. A member of my team, who is going on maternity leave, has requested to work flexibly on her return. What should I do?

There is no specific statutory right for a woman returning from maternity leave to change her working hours. However, all parents with young children have the right to request flexible working hours. As the right to request flexible working by parents is supported by legislation, the following summarised procedure must be followed:-

- (i) the request must be made in writing using the relevant form (see Appendix 3.1 of the Employment Code);
- (ii) you must either agree to the request and notify the employee in writing or hold a meeting with the employee to discuss the application within 28 days of receipt of the application;
- (iii) you must give the employee a written decision within 14 days of the meeting being held.

For further information see part 2 of Section A3 of the Employment Code.

Managers should consider that all positions are suitable for flexible working, unless there are legitimate business reasons why it cannot be done.

17. What happens with PPDR and pay awards when an employee is on maternity leave?

Performance assessment and pay awards will be based on the quality of the work undertaken when the employee was actually at work, and PPDR objectives must be adjusted to take her circumstances into account.

If the employee is absent for more than nine months (on both Ordinary and Additional Maternity leave) then the pay award will normally be based on a successful performance.

18. A member of my team is about to go on maternity leave - should I keep in touch with her whilst she is absent?

Keep in Touch days (KITs), arranged by mutual agreement between yourself and your team member allow her the opportunity to attend work for up to 10 KIT days without bringing her maternity leave to an end. Please note that there is no obligation for her to undertake such days but she is encouraged to stay in touch.

Keep-in-touch measures might involve, for example:

- regular visits back to the establishment;
- computer based access to the place of work;
- inclusion on circulation lists for relevant documents/publications;
- invitations to seminars or events;
- attending training sessions.

Before your employee goes on leave, it would be a good idea to discuss with her how many KIT days or how much contact, if any, she would like. Your team member may be able to suggest other steps that would help to keep her up to date on developments at the establishment and in her field of work. The maternity questionnaire (Annex C of the guidance on maternity leave and entitlements) provides a framework of useful questions to consider.

Users of the RCUK SSC Ltd will be required to agree their KIT work days with their manager, who will inform the SSC accordingly. The SSC will then confirm the KIT days in writing to the employee.

19. I recently held some interviews and the successful candidate has just started her new job. However, she has just told me she is pregnant. Why didn't she tell me at interview? Can I dismiss her?

She was not obliged to tell you at the interview stage that she was pregnant, and for you to have asked would provide her with strong evidence of a breach of the sex discrimination provisions in the legislation. Legally, she does not have to tell her employer that she is pregnant until the end of the 15th week before the baby is due, or as soon as reasonably practicable. Failure to give notification could affect her right to Statutory Maternity Pay and to start maternity leave on her intended start date.

It is unlawful for an employer to dismiss an employee during her pregnancy or maternity leave solely or mainly because she is pregnant or has given birth, or for any other reason connected with pregnancy or childbirth.

20. I am about to interview some internal candidates for a promotion opportunity. One of the candidates is pregnant. It would be inconvenient to recruit someone about to go on maternity leave. What should I do?

The fact that the candidate is pregnant should have no bearing on the interview process; you should be selecting the right person for the job. Sex discrimination is unlawful in a variety of employment situations, including recruitment. To avoid any claim of discrimination, you should ensure that the interview process is fair and consistent, and that your selection decision is based objectively on the candidate's experience, skills and ability to carry out the job.

21. I have interviewed some candidates for a temporary opportunity. One of the candidates (who is very well suited to the role) is pregnant and is likely to be absent for much of the contract (which would end during her maternity leave). What should I do?

If the pregnant candidate is the best person for the role, then you should offer her the position; if she accepts, then you would need to re-recruit to the post in due course to cover for her maternity leave. To reject her for any reason relating to her pregnancy would be unlawful; any rejection should be based on objective reasons relating to her skills and abilities.

22. An employee is returning from maternity leave and has informed me that she is still breastfeeding. What should I do?

It is up to the employee how long she wishes to breastfeed, and returning to work does not mean that she has to stop. She should provide you with written notification that she is breastfeeding as soon as possible, and you should ensure that a specific risk assessment is carried out.

As with the risk assessments carried out whilst she was pregnant, the Health & Safety Officer will check for physical, biological and chemical agents, as well as working conditions and processes. Depending on the outcome of the risk assessment, there may need to be a removal of the risk, a change in her working conditions or hours of work, or you may need to find suitable alternative work for her. If none of these are possible, you may need to suspend her on paid leave to protect her and her child.

Employers must provide pregnant and breastfeeding employees with a suitable place to rest and breastfeed. (Please note that it is not suitable to use toilets for this purpose.)

23. What happens if the employee has a stillbirth or miscarriage?

A stillbirth is where the baby is born dead after the start of the 24th week of pregnancy. A miscarriage is where the baby is lost before the start of the 24th week of pregnancy.

Your employee will be given a certificate of stillbirth at the hospital. She will have exactly the same rights to leave, pay and protection from dismissal or discrimination as if the baby had been born alive. In the case of a miscarriage before the 24th week, she does not have the right to maternity leave or pay, but normal sickness procedures will apply.

If the baby is born alive but dies soon afterwards, however many weeks old the baby was, all the normal rights to maternity leave and pay apply.

24. What happens if my team member decides not to return to work after her baby is born?

She needs to let you know as soon as possible (and you in turn must inform retained HR (and the RCUK SSC Ltd where applicable) that she will not be returning to work. She will not be asked to repay her Statutory Maternity Pay or her contractual maternity pay. Her employment will terminate on either the last day on which Statutory Maternity Pay is payable, or the last day of her notice period, whichever is later - notice periods are contained in section A14 of the Employment Code.

25. A team member resigned after deciding not to return to work after her baby was born, but has now changed her mind. What happens now?

Although she has no right to return, if (within a reasonable period) it is possible to make the necessary arrangements for her to return, you should allow her to do so.

26. I have an employee on maternity leave, and she has just informed me she is pregnant again. What happens now?

As her maternity leave does not break her continuity of service, her right to maternity leave for this new pregnancy will be based on her total service with the employer. If she wishes to maintain her right to return to the same job at the end of Ordinary Maternity Leave, she will need to physically come back in to work for a period, even if it is just for a day.

27. What can you tell me about the BBSRC Childcare Voucher scheme?

Childcare Vouchers is a salary sacrifice scheme and will be exempt from Employee and Employer National Insurance deductions and Employee Tax for up to £55 per week. Employees can therefore save considerable amounts of the value of the vouchers they request - depending on the contribution rate for any occupational pension scheme to which the employee belongs - and BBSRC will offset the administration costs incurred against the Employer's NI saved.

Vouchers can be used to pay for registered and approved childcare only, up to the child reaching age 16 (up to age 18 for a child with a disability), as follows:-

- registered childminders, nurseries and play schemes;
- out-of-hours clubs on school premises run by a school or local authority;
- childcare schemes run by school governing bodies under the 'extended schools' scheme;
- childcare schemes run by approved providers, e.g. an out-of-school hours scheme or a provider approved under a Ministry of Defence accreditation scheme;
- in England only, childcare given in the child's own home by a domiciliary worker or nurse from a registered agency who cares for the child or children;
- in Scotland only, childcare given in the child's own home by (or introduced through) childcare agencies, including sitter services and nanny agencies, which must be registered;
- approved foster carers (the care must be for a child who is not the foster carer's foster child).

Further information can be obtained from your local HR Department.

28. My team member has just returned from maternity leave and wishes to take parental leave on an ad-hoc basis, i.e. one day here and one day there. What are the rules relating to how this should be taken?

Parental leave must be taken in blocks of full weeks; unless the child has a disability (i.e. receives disability living allowance), in this situation employees may take time off in days instead of weeks in order to use parental leave for hospital visits.

Further information about Parental leave is found in Employment Code appendix A8.8.

29. Apart from the guidance on maternity leave and entitlements on the BBSRC intranet, where else can I find information on maternity rights, general information on pregnancy, maternity leave and pay, and childbirth?

Apart from your local HR department and the RCUK SSC Ltd (where applicable) you may find the following sites useful:

<http://www.hse.gov.uk/mothers/index.htm> Health and Safety Executive –advice for new and expectant mothers

<http://www.dti.gov.uk/employment/employment-legislation/employment-guidance/page34031.html> Department for Business Innovation & Skills - Maternity entitlements and responsibilities: a guide

<http://www.direct.gov.uk/en/Employment/Employees/WorkAndFamilies/index.htm> Tailored interactive guidance on employment rights including when a child is born or adopted