



**BERR**

Department for Business  
Enterprise & Regulatory Reform

**PREGNANCY AND WORK**

What you need to know  
as an employer

2008-2009

# This leaflet summarises the rights of both pregnant employees and their employers and their responsibilities towards each other.

It sets out the key things you **must do** under the law and what your employee must do to benefit from the protections there for her. It also sets out the support for you, such as help with working out if you need to pay Statutory Maternity Pay and how to claim it back if you do. There is a version of this leaflet available for your employee.

Talking to your employee about her plans from an early stage will help you both, so this leaflet also sets out what you **should do or think about** to help both of you manage her work during pregnancy, her maternity leave and her return to work.

There are information at the end of this leaflet about where to look for more detail and who to speak to for advice. It also tells you where to look for information about other laws to support employees balancing work and family responsibilities and their employers, such as paternity leave and the right to ask for flexible working.

## As soon as your employee tells you she is pregnant

### What to do

Read this leaflet to **find out your key rights and responsibilities** and where to find more information. You can then talk to your employee about what the action you need to take now:

- **You must** carry out a risk assessment to identify any risk to your employee's health or that of her child. If there is a risk you must remove it or make alternative arrangements.
- **You must** allow your employee paid time off to attend ante-natal appointments. Apart from the first appointment, she must show you an appointment card if you ask for one.
- **You must** make sure that your employee is not treated unfairly, including by other colleagues.

**You can** then start to plan for her leave, eg

- All women can take up to **52 weeks' maternity leave** – does she know now whether she will be taking the full time? You must not allow her to work for the first two weeks after the birth (or the first four weeks if she works in a factory).

### Why

**These protections apply as soon as you know your employee is pregnant.**

The risk assessment identifies risks to your employee and her child while she is pregnant and after she has had her child, particularly if she is breastfeeding.

Unfair treatment connected with pregnancy, child birth or maternity leave is sex discrimination. You may be liable not only if you treat your employee unfairly but also if she is treated unfairly by colleagues.

If your employee is returning during or at the end of the first 26 weeks (ordinary maternity leave) **she is entitled** to return to the same job on terms and conditions (for example her salary, hours and the seniority of her job) as if she hadn't been away. If she takes more than 26 weeks, (additional maternity leave) **she is entitled** to return to the same job on the same terms and conditions. If that isn't reasonably practicable she is entitled to return to a suitable job on terms

## As soon as your employee tells you she is pregnant *(continued)*

- Does she have annual leave to take before her maternity leave?
- How will you manage her absence? Will you reallocate work or take on a temporary member of staff. You must hold her job open. If she is taking more than 26 weeks' maternity leave (so is taking additional maternity leave) you must offer her a suitable alternative job if it is not reasonably practicable for you to keep her original job open.

If your employee is off work with a pregnancy related illness **you must** pay her in the same way as for any other type of illness. If you have disciplinary rules related to sick leave pregnancy-related illness must be excluded.

and conditions at least as good as her previous job.

If you take on a temporary member of staff and you expect their employment to end when your original employee returns **you must** tell the temp this up front. It is fairer to the temp and it also protects you if there is a dispute over the ending of the temporary contract.

## Within 28 days of receiving your employee's dates for maternity leave

### What to do

**You must** write to your employee telling her when she is due back at work. It is also helpful to tell her how you will pay her Statutory Maternity Pay (SMP) to her.

**You must** work out whether you need to pay your employee Statutory Maternity Pay and if so, how much. SMP is subject to Tax and National Insurance. **You must** tell her if she does not qualify for SMP by giving her a form SMP1 which will help her apply for Maternity Allowance. There is an HMRC calculator and standard letters, including SMP1, you can use on the HMRC Website. You can also get help from the HMRC Employer Helpline.

You should find out about claiming back the SMP you pay. **You are entitled** to claim back at least 92%. Small employers are able to claim back all the SMP plus some compensation. If paying SMP will cause you cashflow problems you can claim the money in advance. Contact HMRC helpline.

### Why

By the 15th week before the week her baby is due **your employee must** tell you:

- She is pregnant
- When her baby is due
- When she wants her maternity leave and pay to begin.

**She must** confirm her plans in writing if you ask her to.

All employed women are able to take up to **52 weeks' maternity leave**. Your response makes sure you both know when her maternity leave will end. If she changes her mind later **she must** give you eight weeks' notice of the change and **you may** postpone her return if you wish until you have had that notice (although you can't postpone it past the end of the 52-week period). **If you don't** respond to her notification of leave **she will be entitled** to change her mind and return when she wants without giving you any notice.

## Within 28 days of receiving your employee's dates for maternity leave *(continued)*

Your employee will qualify for SMP if she has been employed by you continuously for 26 weeks into the 15th week before the week her baby is due and earns at least enough to be relevant for National Insurance purposes. SMP is paid for 39 weeks. **You must** pay 90% of your employee's average earnings for the first six weeks and then the lower of the 90% rate or a flat rate for the rest of the time.

**She must** give you at least 28 days' notice of when she wants her SMP to start and of any change to her plans about starting maternity leave. If she doesn't, you may refuse to pay her SMP or postpone the start of her leave. If there is a good reason why she couldn't give you this much notice **you must** accept less.

If your employee is off work because of her pregnancy in the four weeks before the week her baby is due you must start her maternity leave and pay from the first day after the first day of her absence for pregnancy in those 4 weeks.

## Before your employee begins her maternity leave and during her leave

### What to do

**You and your employee can** make reasonable contact during maternity leave. You should agree with her what kind of contact you will have, eg:

- How you will let her know about any changes happening at work, including job vacancies
- Will there be opportunities for her to work or attend training or other events during her maternity leave? If so you can agree that she works for up to 10 days during her leave.

**You must** work out what other payments or benefits you must give her during maternity leave. The rules on contractual benefits due during maternity leave are changing in 2008:

- During the first 26 weeks (ordinary maternity leave) **you must** continue to give your employee any contractual benefits she would normally receive, as if she were at work (for example gym membership). For babies due on or after 5 October 2008, these benefits must

### Why

Keeping in touch can help to make it easier for both of you when it comes time for your employee to come back.

**She is not obliged to do any work** or attend any events during maternity leave but if you both agree she can do up to 10 days' work during her maternity leave. These are known as "Keeping In Touch Days". They aren't limited to her usual job - they could be used for training or other events. It may be helpful for her to use some Keeping in Touch Days to ease her return to work. She can't work during the first two weeks (four weeks if she works in a factory) after the birth.

**You and your employee must both agree that she will do these and the arrangements including what she will be doing and how she will be paid.**

She can't be required to take up Keeping in Touch Days and you are not obliged to offer them. You cannot demand your employee goes into work at any time during her maternity leave period nor can

## Before your employee begins her maternity leave and during her leave

*(continued)*

continue throughout the maternity leave period.

- Employees with babies due before 5 October, aren't entitled in law to these during the second 26 weeks (additional maternity leave) although you may continue to offer contractual benefits during this period. **She continues to be an employee throughout the whole 52 weeks of maternity leave**
- If you contribute to an occupational pension you must make your usual contributions for the whole time she is receiving any SMP or contractual maternity pay from you.

she be penalised for refusing to take up a Keeping in Touch Day.

## Before your employee returns to work

### What to do

**You should** talk to your employee to plan her return to work and think about the practicalities. If you took on temporary staff to cover her absence you should consider if you need to give the temp notice that their employment will be ending because your original employee is returning.

If your employee changes her mind about her return date **she must** give you eight weeks' notice of the change. If she hasn't and you need more notice **you can** postpone her return until you've had 8 weeks' notice (although you can't postpone it past the end of the 52-week period).

If your employee makes a request to change to work flexibly, including part-time, you must seriously consider her request. You can turn it down on genuine business grounds or agree a different arrangement.

If your employee lets you know she will be breastfeeding **you must** talk to her about any arrangements you will need to make, do a risk assessment and remove any risk you find.

### Why

Planning will help to make the return easier for you both.

If your employee has taken additional maternity leave and there is a good reason why your employee cannot return to her original job you must offer her a suitable job on terms at least as good as her original job. You should let your employee know the reasons and what job she will be returning to.

If she makes a written request under the statutory right to request flexible working **you must** follow the set procedure. It may also potentially be sex discrimination if she is unjustifiably refused a change to her working pattern.

**You must** provide facilities for your employee to rest and to store expressed milk. The risk assessment identifies any health and safety risks to your employee as a breastfeeding mother or to her child. If there is a risk you must remove it.

## If there is a problem

### What to do

**You should** talk to your employee as soon as you can to try to resolve the problem.

If she brings a formal grievance **you must** consider it following the statutory dispute resolution procedure.

If there is a redundancy situation during maternity leave **you must** offer your employee any suitable alternative vacancy.

You can get free confidential advice from the Acas helpline on 08457 47 47 47 or in Northern Ireland the Labour Relations Agency on 0289032 1442.

If there is a disagreement about your employee's Statutory Maternity Pay you can ask HMRC for advice. She can ask HMRC for a decision if you cannot sort the problem out.

### Why

**It's better** for you and your employee if you can sort out any problems between yourselves quickly. **Your employee is protected** from any unfair treatment connected with pregnancy, child birth or maternity leave. If you don't treat your employee fairly you could face an employment tribunal.

**You must** offer your employee any alternative vacancy her redundancy, otherwise it may be considered to be unfair dismissal and/ or sex discrimination.

## When you want more information

**There is more information about all these issues, including the rates of maternity and paternity pay and standard letters to help you respond to your employee's notification at [www.businesslink.gov.uk](http://www.businesslink.gov.uk) (in Northern Ireland, [www.nibusinessinfo.co.uk](http://www.nibusinessinfo.co.uk)).**

**You can also get free confidential advice on these issues (apart from maternity pay) from Acas on 08457 47 47 47 or in Northern Ireland the Labour Relations Agency on 028 9032 1442.**

**For more detailed information about SMP, including help with calculations and standard letters see [www.hmrc.gov.uk/employers/](http://www.hmrc.gov.uk/employers/) or call the HMRC employer's helpline on 08457 143 143.**

**For more detailed information about health and safety see [www.hse.gov.uk](http://www.hse.gov.uk) or call HSE Info Line on 0845 345 0055.**

### Disclaimer

This guide has no legal force and cannot cover every point and situation

