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Myerson **Employment**

Our guide to maternity rights for employers

0161 941 4000 | myerson.co.uk | lawyers@myerson.co.uk

Welcome

We understand the complexities of modern life and, therefore, everything we do is ultimately about you, and it is important you get to know the team that will be working with you every step of the way. It's a deep source of satisfaction that so many clients choose Myerson as their trusted adviser.

Why Myerson?

Our Employment Solicitors offer clear and confidential advice to businesses facing employment issues.

As a Top 200 UK Law Firm, we are also proud to be ranked as **'Top Tier'** in the prestigious international directory **The Legal 500**, and commended by The Times **'Best Law Firms 2023'**. This means you can be certain that you will be receiving the highest quality legal advice.

Being a full-service law firm means we are well placed to provide wide-ranging, tailored legal advice to meet your individual needs. We work closely with other departments internally including Real Estate, Corporate, Commercial and Private Wealth Lawyers to ensure that your needs are protected comprehensively.

You can find out more about our **Employment Team** by clicking [here](#).



Pregnant People At Work For Employers

There is often a lot of different information about what an employer should do when a staff member becomes pregnant. This guide is designed to assist employers through the process of engaging with your pregnant employee and the rights they have.

When should an employee inform work that they are pregnant?

If an employee is entitled to paid maternity leave (discussed later) then they must inform their employer that they're pregnant no later than the 15th week before their baby is due. Or, if that is not possible, as soon as they can.

The employee must tell their employer:

- That they're pregnant
- The date of the week their baby is due (this is confirmed by the employee's doctor and the MAT B1 form)
- The date they intend to start maternity leave

While the notification doesn't have to be in writing, it's usually a good idea for an employer to ask the employee to at least email their HR team or manager with this information.



Some employees choose to inform their employer earlier than 15 weeks before their baby is due, particularly if they are attending antenatal appointments or are suffering from morning sickness or tiredness as this can open up a dialogue as to the employee's needs and what steps an employer needs to take to accommodate these.

Remember, it's against the law for an employer to dismiss or treat an employee unfairly because they are pregnant.

Does an employer need to acknowledge an employee's pregnancy?

After an employee has told their employer that they are pregnant, the date they are due and the date they intend to start maternity leave, an employer has 28 days to notify the employee of the date on which their maternity will end (and the date they are expected to return to work). The end of an employee's maternity leave will generally be 52 weeks from the start (unless they choose to take less time).

What is a MAT B1 certificate and should a copy be provided to an employer?

A MAT B1 certificate is a document produced by an employee's doctor or midwife. It is their medical evidence of pregnancy and confirms the date that their baby is due. An employee should receive this when they reach their 20th week of pregnancy or soon after when the employee has their next routine appointment. The MAT B1 cannot be issued before the employee is 20 weeks pregnant.



An employee will need to provide a copy of their MAT B1 certificate to their employer as this is needed to arrange maternity pay and benefits. Employers should encourage employees to provide the certificate as soon as possible and, generally, by no later than the third week of their maternity leave. If the employee misses this timeframe and does not have a good reason for doing so then their pay for maternity leave may be affected.

Should an employer undertake a health and safety assessment once an employee has informed the business of their pregnancy?

All employers are under a duty to protect the health and safety of their employees. There are special duties that apply in respect of new or expectant persons in the workplace. This includes assessing and monitoring risk and where a risk is apparent, adjusting conditions of work, hours or providing suitable alternative work. Any adjustment made should be temporary and the terms of an employee's contract should not change. For example, their pay should remain the same.

Where adjustments cannot be made then the employer might have to place an employee on paid suspension leave for as long as necessary until the risk is removed or they start maternity leave to protect the employee's health and safety and that of their unborn child.



Are employees entitled to time off for antenatal care?

All pregnant employees have a statutory right to reasonable time off with full pay for antenatal care, regardless of hours worked or length of service. Reasonable time off includes the length of the appointment or class, as well as travelling time. It's generally a good idea to talk to the employee about appointment times and estimated length as an employer may allow the employee to work flexibly around these, by working from home before or after the appointment, or by changing the employee's start and finish time, for example.

Note, an employer cannot make an employee change their antenatal appointment to a different time if the employee doesn't want to.

What happens if an employee is sick when they're pregnant?

If an employee needs to take time off sick due to their pregnancy then it's against the law for an employer to treat the employee unfairly. If an employee is sick and it's not related to their pregnancy, however, it should be treated in the same way as any other sickness absence.

If an employee is off due to pregnancy related sickness in the four weeks before their baby is due then, by law, their maternity leave will start automatically after the employee's first day off.



When does maternity leave start?

All employees (regardless of length of service) have the right to up to 52 weeks' maternity leave. This amount of leave is not affected even if the employee has more than one baby.

Maternity leave will start on:

- The employee's intended start date, if notified to the employer. The earliest date that an employee can start maternity leave is 11 weeks before the date their baby is due (unless the baby is born prematurely);
- The day after any day the employee is off sick for any pregnancy-related absence in the four weeks before the employee's due date; or
- The day after the employee gives birth.

If an employee has notified their employer of their intended start date then the employee can change their mind about this as long as they give the employer 28 days' notice of the new date. An employer must then re-confirm the end date for the employee's maternity leave within 28 days of the start of the employee's leave.

If the start of an employee's maternity is brought forward earlier than intended (by reason of them being off sick or having their baby early) then an employer must inform their employee of their new maternity end date within 28 days of receiving notification of the employee's absence or the birth.



How long is maternity leave?

While all employees are entitled to a maximum of 52 weeks' statutory maternity leave (split as 26 weeks' ordinary maternity leave and a further 26 weeks' additional maternity leave), an employee can choose to take less time off. Employees must, however, take a minimum of two weeks' maternity leave and this is extended to a minimum of four weeks for factory workers. This is known as compulsory maternity leave.

If an employee wishes to return to work earlier than anticipated, they must give their employer at least eight weeks' notice of their return. An employee is, however, prohibited from returning to work during their period of compulsory maternity leave.

Should an employee be paid during maternity leave?

Workers and employees are entitled to statutory maternity pay (SMP) as long as all the following apply:

- They have been working continuously for 26 weeks for the same employer up to and including the 15th week before their baby is due; and
- Their normal weekly earnings are not less than the Lower Earnings Limit for National Insurance Contributions; and
- They have given their employer correct notice and supplied the MAT B1 certificate (as detailed above).



If an employee is eligible for SMP then it is paid for 39 weeks at the following rates:

- For the first 6 weeks, the employee gets 90% of their average weekly earnings
- For the following 33 weeks, the employee gets a flat statutory rate as set by the government for the relevant tax year or 90% of their average weekly earnings (whichever is lower).

This means, if an employee takes the full 52 weeks' maternity leave, the last 13 weeks are unpaid (unless the employer offers enhanced maternity pay). Employers who offer enhanced maternity pay often have a policy which confirms that, if the employee either does not return to work after maternity leave or leaves employment shortly after, the employee has to repay some or all of the enhanced pay. It is best to take legal advice in putting in place any such policy or repayment terms.

SMP is paid at the same amount even if the employee has more than one baby.

Individuals who do not qualify for SMP (for example, because they have left work before qualifying for SMP, have insufficient earnings or continuity of service, or are self-employed) may qualify for Maternity Allowance, which is a social security benefit paid by Jobcentre Plus.

An employee has been dismissed, should they receive SMP?

Generally, yes. If an employee is dismissed or resigns during the SMP period, their maternity leave will come to an end but an employer must continue to pay SMP for the remainder of the SMP period. This is because an employee's entitlement to SMP is not conditional upon remaining an employee. The exception to this is if an employee starts working for a new employer after the birth of their baby. In this case, their SMP entitlement will cease from the beginning of the week in which they start new work.



Even if an employer enters into a settlement agreement with their employee, it is not possible to compromise their right to future SMP within an overall settlement sum for loss of employment.

What happens to an employee's holiday entitlement and other benefits during maternity leave?

An employee is entitled to the same contractual terms and benefits (other than the right to pay, which is replaced by the right to maternity pay) whilst they are on maternity leave, as they would normally be. This includes any right to a company car, health insurance and accrual of holidays.

Employees still accrue holiday entitlement during their maternity leave but an employee cannot take holiday during maternity leave. An employee is therefore allowed to take their full holiday entitlement outside of the leave period, which may mean that their holiday entitlement may be carried over to the next holiday year. It's a good idea for an employer to discuss an employee's holiday entitlement with them before they commence maternity leave as it may be that the employee wishes to arrange to take holiday entitlement before or after.

What if the employee suffers a miscarriage, or still birth or their baby dies?

If an employee's baby is stillborn after the 24th week of pregnancy or their baby only lives for a short time after birth (at any stage of pregnancy) then an employee is still entitled to maternity leave and pay.



An employee will need to inform their employer as soon as possible but a partner, friend or family member can do this on behalf of the employee. The employee may also be eligible for parental bereavement leave and pay and the employee has the right to take this after their maternity leave finishes.

If an employee has a miscarriage or stillbirth before 24 weeks, they are not entitled to maternity leave or pay but an employer should consider other types of support, such as flexible working or time off, as well as any counselling or employee assistance programmes that may be available.

Should an employee be told about workplace news while they're on maternity leave?

An employer has the right to a reasonable amount of contact with an employee while they are on maternity leave. It's usually best practice to have a meeting with the employee before they commence their leave to discuss how much contact they would like to have, along with how best to contact them. An employer should continue to include the employee on the distribution list for workplace news bulletins, vacancies, promotion opportunities and reorganisation or redundancy news as well as social events and training courses, unless the employee requests otherwise. There should, however, be no pressure placed on the employee to take any action or attend any events during their maternity leave.



Can the employee agree to do work while they're on maternity leave?

An employee can agree to carry out up to 10 days' work during their maternity leave, known as "keeping in touch days" ('KIT days'). These are intended to help the employee stay in touch with their employer and their work. KIT days may be taken at any stage during the employee's maternity leave as long as this is agreed between the employer and their employee, except during the compulsory maternity leave period.

The type of work that the employee can carry out on a KIT day is a matter for agreement between the employer and the employee but any day on which work is done during the maternity pay or leave period will count as a whole KIT day. So, if the employee comes into work for a one-hour training session and does no other work, that will still count as one KIT day. The rate of pay will depend on the work carried out and will be as agreed between the employer and their employee. Any payment may be offset against the employee's SMP.

An employee does not have the right to request to work a KIT day if their employer does not agree and, similarly, an employer cannot require an employee to work a KIT day during their maternity leave. If an employee works more than 10 KIT days then their maternity leave and pay will automatically end.

Can an employee be made redundant while they are on maternity leave?

It's unlawful for an employer to make an employee redundant or to end their employment just because they're pregnant or on maternity leave.



If a redundancy situation arises while an employee is on maternity leave and it's not possible for an employer to continue their role, the employee is entitled to be offered a suitable alternative position (where one is available). This alternative position can be with an associated employer e.g. another company. An employee on maternity leave or an employee who has recently returned from maternity leave, takes priority for the alternative role over other employees who are also at risk of redundancy. If an employer does not offer such an employee an alternative role (where there is a suitable one available for them) then they will likely be able to claim that their redundancy was unfair.

If an employee refuses a suitable offer of an alternative role then their redundancy will likely be fair and if an employee unreasonably refuses the offer, they risk losing their right to a redundancy payment.

Is it possible to change an employee's role following their return from maternity leave?

The right to return to work to the same job that the employee was doing before maternity leave differs depending on how long they have actually taken off. If the employee took 26 weeks or less of maternity ('ordinary maternity leave') then they have the right to return to the same job they were doing before. If they've taken more than 26 weeks of maternity leave ('additional maternity leave') then they still have the right to return to their job on the same terms as before they left, unless there's a good business reason why they can't.

It is not simply good enough that the person covering their maternity leave is staying on in the role but it may be that an employer has made significant changes within the business. If that is the case then the employee can be offered a similar job on no less favourable terms. This means that all benefits, pay, level of seniority, hours of work and location etc must all be the same as the employee's previous job.



If an employer doesn't give the employee their job back or changes their terms of employment without the employee's agreement then they may have a claim for unfair dismissal and/or maternity discrimination.

Does an employer need to undertake a risk assessment upon the employee's return to work?

Just as when the employee was pregnant, an employer should assess any risks to the employee's health and safety upon their return to work following maternity leave. The employee may have taken the decision to breastfeed their baby and so an employer must provide them with somewhere suitable for them to rest if this is the case.

An employer is not legally required to provide an employee with paid breastfeeding breaks or to provide somewhere for the employee to breastfeed or express milk at work. However, an employer must take reasonable action to avoid any risk to the employee's health and that of their baby so it may be that an employee asks an employer to organise something for them, such as a private room, more regular breaks or a fridge to store the milk.

Can an employee change their working hours?

If an employee wants to change their hours or duties, either upon returning from maternity leave or sometime after, they may be able to make a flexible working request. In this case, the employee should follow the employer's internal flexible working policy and procedure.



Does an employer have to permit time off for an employee to look after their child or spend more time with their child?

All employees are entitled to take dependant leave. This is reasonable time off to deal with an emergency involving a dependant (e.g. a child). Dependent leave is unpaid, unless the employer has an enhanced policy. For longer periods of time off or to deal with something other than an emergency, an employee may wish to take annual leave or parental leave (if they are eligible).

Parental leave is unpaid (unless the employer has an enhanced policy) and is usually taken to look after their child's welfare, such as spending more time with a child, looking at schools, settling children into childcare arrangements or spending more time with family.

There are various rules surrounding dependent leave and parental leave. If you require more information about these, please do not hesitate to contact one of our employment lawyers.

Please note that the information contained in this Guide is for general guidance only and you should not rely on this Guide without first taking legal advice.



You're in safe hands!

If you would like further information about how we can help you with **Maternity Rights**, or if you have any questions, please don't hesitate to contact a member of our **Employment Law Team** today.

Call: 0161 941 4000

Click: myerson.co.uk

Email: lawyers@myerson.co.uk



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Myerson Solicitors

Grosvenor House, 20 Barrington Road,
Altrincham, Cheshire, WA14 1HB

Tel: 0161 941 4000 | lawyers@myerson.co.uk

www.myerson.co.uk



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