



## HR: Maternity Leave Policy – Support Staff

<b>Review Due:</b>	September 2023
<b>Last Review</b>	September 2020
<b>Applicable to:</b>	All Trust Schools
<b>Reviewed By:</b>	ZD
<b>Approved By:</b>	Trust Board

### Comments:

This policy has been reviewed and includes guidance on maternity leave for support staff. Draft approved by external solicitors.

## Contents

1.	Policy Statement.....	2
2.	Eligibility .....	<b>Error! Bookmark not defined.</b>
3.	Initial obligations on the employee.....	3
4.	What the Trust must do .....	3
5.	Ante-natal care .....	3
6.	Maternity leave.....	3
7.	Maternity pay .....	3
8.	Terms and condition during OML and AML .....	4
9.	Pensions .....	5
10.	Contact during maternity leave.....	5
11.	Keeping-in-touch days .....	5
12.	Right to return to work .....	5
13.	Notice of return to work .....	5
14.	Returning to work to qualify for occupational maternity pay .....	6
15.	Relationship with sickness.....	6
16.	Childbirth .....	6
17.	Other absences .....	6
18.	Health and safety.....	6
19.	Annual leave.....	7
20.	Questions and answers .....	7
21.	Appendix 1 – Commencement of Maternity Leave Form .....	8

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## 1. Policy Statement

- 1.1 This policy outlines the rights and responsibilities of employees who are pregnant or have recently given birth and sets out the arrangements for pregnancy-related sickness, health and safety, and maternity leave.
- 1.2 In some cases you and your spouse or partner may be eligible to opt into the shared parental leave (SPL) scheme which gives you more flexibility to share the leave and pay available in the first year after birth. However, you must take a period of compulsory maternity leave first. Details of SPL are set out in our Shared Parental Leave Policy.
- 1.3 This policy does not form part of any employee's contract of employment and we may amend it at any time. It does not apply to agency workers or the self-employed.
- 1.4 This policy applies to support staff

## 2. Eligibility

- 2.1 All school support staff who are pregnant will be entitled to 52 weeks' maternity leave, consisting of 26 weeks' ordinary maternity leave (OML) and 26 weeks' additional maternity leave (AML) regardless of

length of service or the number of hours worked each week.

### **3. Initial obligations on the employee**

In order to be eligible for maternity provisions the employee must:

- continue to be employed (whether or not at work) immediately before the start of the absence - (the exception to this is the eligibility to be paid statutory maternity pay during the maternity pay period)
- complete the Commencement of Maternity Leave Form to notify the HR Department, in writing as soon as possible but not later than the 15th week before the expected week of childbirth (EWC) that she is pregnant, the date the baby is due and the date that it is her intention to start maternity leave; early notification is important due to health and safety reasons and this letter will be placed on the personal file.
- when available, forward the MAT B1 (the maternity certificate issued by the doctor or certified midwife stating the date on which the baby is due) to the HR Department. Note: the earliest the MAT B1 can be obtained is 14 weeks before the EWC, i.e. not earlier than the end of the 26th week of pregnancy.
- not remain at work if certified medically unfit to do so (taking into account the provisions of The Management of Health and Safety at Work (Amendment) Regulations 1999).

### **4. What the Trust must do**

Within 28 days of receipt of the initial notification from the employee the Trust must write to the employee informing them of all of their rights relating to maternity leave and return to work obligations. The notification must include confirmation of the start and end of maternity leave periods, the pay during the period of maternity leave and the expected date of the employee's return to work. The school should also undertake or arrange a risk assessment (see section 18)

### **5. Ante-natal care**

- 5.1 Employees are entitled to paid time off during normal working hours to attend appointments for ante-natal care. Employees should, however, advise their designated senior member of staff and show their appointment card if requested (unless it is the first appointment).
- 5.2 Ante-natal visits include visits to the GP, midwife or hospital. Ante-natal care may include relaxation classes where the employee's doctor, midwife or health visitor has advised as beneficial to attend.

### **6. Maternity leave**

#### **6.1 Compulsory maternity leave**

Employees must take a minimum of two weeks' maternity leave following the birth of their child. This increases to four weeks if they work in a workshop environment.

#### **6.2 Ordinary maternity leave**

Regardless of length of service and hours of work, employees are entitled to take up to 26 weeks' maternity leave (this is inclusive of the compulsory maternity leave). Employees have a right to choose when to start their maternity leave any time after the beginning of the 11th week before the baby is due. If the baby is born before they start maternity leave, they will start the leave on the day after the baby is born. If an employee is taken ill with a pregnancy-related condition after the beginning of the fourth week before the baby is due, maternity leave will start automatically.

#### **6.3 Additional maternity leave**

In addition to her ordinary maternity leave, an employee has the right to take up to 26 weeks' additional maternity leave, beginning on the day immediately following the day on which her ordinary maternity leave ends.

### **7. Maternity Pay (previously two sections, now one)**

- 7.1 **Occupational Maternity Pay (OMP)** - is payable for up to 39 weeks and will stop if the employee returns to work.

An employee is entitled to OMP if:

- they have been continuously employed for at least one year at the 11<sup>th</sup> week before the Expected Week of childbirth and is still employed by the Trust during that week,
- they provide the Trust with a doctors or midwives certificate (MATB1 form) stating the Expected Week of Childbirth,
- They give at least 28 days' notice (or, if that is not possible, as much notice as they can) of their intention to take maternity leave; and
- They are still pregnant 11 weeks before the start of the Expected Week of Childbirth or have already given birth,

OMP is calculated as follows:

- First 6 weeks: 90% of a weeks' salary (based on average of 12 weeks preceding the date of absence)
- 12 weeks: 50% of a weeks' salary (based on an average of 12 weeks preceding the date of absence) plus SMP at the Prescribed Rate (not exceeding full pay)
- 21 weeks SMP at the Prescribed Rate
- No pay for any remaining period of absence up to the date of return.

In the event of the employee not being available or being unable to return to her job for the required period, the employee will refund such sum after the first six weeks' payment to the Trust.

7.2 **Statutory Maternity Pay (SMP)** - is a statutory entitlement. To qualify the employee must meet the following conditions:

- provide the Trust with a doctor's or midwife's certificate (MAT B1 form) stating their Expected Week of childbirth,
- give at least 28 days' notice (or, if that is not possible, as much notice as they can) of their intention to take maternity leave,
- have completed 26 week's continuous service and is employed in the 'qualifying week' – the 15<sup>th</sup> week before the expected week of childbirth
- still be pregnant 11 weeks before the start of the Expected Week of Childbirth or already have given birth.

SMP is calculated as follows:

- 6 weeks at 90% of normal pay and 33 weeks of SMP paid at the Prescribed Rate  
Or
- 90% of average weekly earnings if this is less than the Prescribed Rate

7.3 **Maternity Allowance (MA)** – some employees are not eligible to receive maternity pay from their employer for several reasons. In such circumstances, the Trust will issue the employee with a SMP 1 form and advise that they should apply to the Department for Work and Pensions (DWP) for Maternity Allowance which is paid directly by the DWP. Please note: MA is paid direct by the DWP. The employee must inform the Trust of the amount they are receiving to ensure that there is no overpayment of maternity pay.

7.4 SMP is treated as income and it is therefore subject to deductions for Income Tax, National Insurance and Pensions (where applicable). SMP is not conditional upon the employee returning to work. Employees will not be entitled to SMP if any of the following apply to them during the period in which they are being paid SMP:

- they start working, after the birth of the baby, for another employer, this includes another local authority or Foundation School; or
- they are taken into legal custody. It is the employee's responsibility to notify the Trust if any of the above events occur during the period in which they are being paid SMP.

## 8. Terms and conditions during OML and AML

All the terms and conditions of employment remain in force during OML and AML, except for the terms relating to pay. In particular, pension benefits shall continue.

## 9. Pensions

9.1 The 39 weeks maternity pay period, regardless of whether the employee receives SMP or OMP, is treated as pay for pension purposes and pension contributions, based on the pay received, will be deducted. This

means that the 39 weeks counts towards pension calculations when the employee retires.

- 9.2 There is no obligation to pay contributions on the remainder of the maternity leave period. However, should the employee wish to pay pension contributions for the duration of the unpaid maternity leave, advice should be sought from the Payroll Department

## **10. Contact during maternity leave**

The designated senior member of staff will ensure that arrangements are made for keeping in contact with the employee during their maternity leave. The amount of contact will be dependent upon the wishes of the employee; however, the school reserves the right in any event to maintain reasonable contact with employees from time to time during their maternity leave. Reasonable contact is:

- to discuss the employee's plans to return to work.
- to discuss any special arrangements to be made, or training to be given, to ease an employee's return to work; or
- to update the employee on developments at work during their absence. This would not constitute 'work' and such contact will not bring the maternity leave period to an end.

## **11. Keeping-in-touch days**

- 11.1 Except during the first two weeks after childbirth, an employee can agree to work, or to attend training, for up to ten days during either ordinary maternity leave or additional maternity leave without that work bringing the period of their maternity leave to an end and without loss of a week's SMP or MA. These are known as 'keeping-in-touch' days.
- 11.2 Any work carried out on a day shall constitute a day's work for these purposes. Working for part of a day will count as one day. An employee will be paid for any work undertaken. Payment will be made at the normal basic rate of pay and will be paid on top of any maternity pay entitlement.
- 11.3 The school has no right to require an employee to carry out any work, and the employee has no right to undertake any work, during their maternity leave. Any work undertaken is entirely a matter for agreement between the school and employee. Any keeping-in-touch days worked do not extend the period of maternity leave.
- 11.4 Once the keeping-in-touch days have been used up the employee will lose a week's SMP for any week in which they agree to work for the school.

## **12. Right to return to work**

- 12.1 Once you have notified the Trust in writing of your Intended Start Date, we will send you a letter within 28 days to inform you of your Expected Return Date. If your start date has been changed (either because you gave us notice to change it, or because maternity leave started early due to illness or premature childbirth) we shall write to you within 28 days of the start of maternity leave with a revised Expected Return Date.
- 12.2 Shortly before you are due to return to work, we may invite you to have a discussion (whether in person or by telephone) about the arrangements for your return. This may cover:
- updating you on any changes that have occurred during your absence,
  - any training needs you might have; and
  - any changes to working arrangements (for example if you have made a request to work part-time)
- 12.3 You are normally entitled to return to work in the same position as you held before commencing leave. Your terms of employment shall be the same as they would have been had you not been absent.
- 12.4 However, if you have taken any period of AML or more than four weeks' parental leave, and it is not reasonably practicable for us to allow you to return into the same position; we may give you another suitable and appropriate job on terms and conditions that are not less favourable.

## **13. Notice of return to work**

- 13.1 An employee will have been notified of the date of expected return by Human Resources. If an employee wants to return early from maternity leave they must give 21 days' notice. Where this notice is not given, the employer may postpone the return for up to eight weeks from the date when the employee informs the employer of the early return or up to the expected date of return, whichever is the sooner.

- 13.2 If an employee wishes to return later than the expected return date, the employee shall be expected to give not less than 21 days' notice, although as much notice as possible is preferred.
- 13.3 If a member of staff does not intend to return to work, or are unsure, it is helpful if they discuss this with the school as early as possible. If the employee decides not to return they should give notice of resignation in accordance with their employment contract. The amount of maternity leave left to run when the employee gives notice, this must be at least equal to their contractual notice period, otherwise the school may require the employee to return to work for the remainder of the notice period.
- 13.4 If a member of staff does not return on the specified date, their absence may be considered unauthorised and the designated senior member of staff may make contact. Where an employee is unable to return to work at the end of her period of maternity leave due to sickness, the sick pay scheme will apply.

## **14. Returning to work to qualify for occupational maternity pay**

- 14.1 Under her terms of employment, immediately following her period of maternity leave, an employee has an obligation to return to work for at least 13 weeks (including periods of school closure) in order to qualify for the 12 weeks' half pay (occupational maternity pay). Where the school agrees, a full-time employee may return to work on a part-time basis for a period which equates to 13 weeks' full-time service. Similarly, where the school agrees, a part-time employee may return to work on a different part-time basis for a period which equates to 13 weeks' part-time service relating to her previous contract. The 13-week period (or part-time equivalent) starts from the date the employee actually returns to work or the date during the school holiday on which the employee has notified the school that she is available to work, provided she actually returns to duty on the first day after the period of closure. If the employee does not intend to return to work, she can delay making her decision whether or not to return to work until after the baby is born; the job is kept open up to the expected date of return, however the employee will be expected to give the required notice.
- 14.2 Employees also have the right to request a variation to their contract so that they can work more flexibly and thereby balance their childcare responsibilities with their work commitments. The procedure for requesting flexible working is included within the flexible working policy.

## **15. Relationship with sickness**

- 15.1 Periods of pregnancy-related sickness absence shall be paid in accordance with the employee's contract of employment in the same manner as any other sickness absence. Periods of pregnancy-related sickness absence from the start of the employee's pregnancy until the end of the maternity leave will be recorded separately from other sickness records and will be disregarded in any future employment-related decisions. If employees are absent through illness whilst pregnant, they should report this to their manager in the usual way.
- 15.2 If, however, employees are absent with a pregnancy-related illness on or after the start of the 4th week before the baby is due, then their maternity leave will start automatically. If they are unable to return to work on the expected date due to illness, they should report this to their manager in the usual way and sickness absence arrangements and pay will apply.

## **16. Childbirth**

Childbirth means the birth of a living child or the birth of a child whether living or dead after 24 weeks of pregnancy.

## **17. Other absences**

If, in the early months of pregnancy, an employee is advised by an approved medical practitioner to absent herself from school because of the risk of rubella or parvovirus or any other significant health risk, she shall be granted leave with full pay, provided that she does not unreasonably refuse to serve in another school where there is no such undue risk. Absence on account of illness which is attributable to the pregnancy, including absence on account of miscarriage, and which occurs outside the period of absence for maternity, shall be treated as ordinary absence on sick leave and shall be subject to the conditions governing sick leave, provided it is covered by a doctor's statement or self-certification, whichever is applicable.

## 18. Health and safety

- 18.1 Immediately after an employee has notified the leadership of her pregnancy, a risk assessment must be undertaken. The school will provide the teacher with information as to any risks identified in the risk assessment, and any preventive and protective measures that have been or will be taken. If the School considers that, as a new or expectant mother, the teacher would be exposed to health hazards in carrying out her normal work the School will take such steps as are necessary (for as long as they are necessary) to avoid those risks. This may involve:
- removing the element of the job that is causing the risk, if this is possible;
  - explore the possibility of alternative work in consultation with the employee; or
  - arrange for the employee to take paid leave if no suitable alternative work can be found.
- 18.2 Employers are also required to take into consideration any risks to employees who are breast feeding and have returned to work. Advice and guidance is available from the HR department.

## 19. Annual leave

An employee who takes maternity leave must be able to take the 28 days' statutory annual leave at a time outside her maternity leave. A school may not treat any part of the maternity leave period, i.e. ordinary maternity leave (OML) or additional maternity leave (AML), as annual leave. Annual leave entitlement can be offset by any period of school closure that has taken place in the leave year in question, i.e. both before and after the maternity leave period. Prior to commencing her maternity leave, an employee should be advised that she has a statutory entitlement to

- 28 days' annual leave and that this should be taken either before or after the maternity leave period during school closure periods.
- Where the return from maternity leave is so close to the end of the leave year that there is not enough time to take all her annual leave entitlement, an employee
- must be allowed to carry over any balance of her leave to the following leave year. An employee can be required to take this during the remaining periods of school closure after the 28 days' annual leave for that leave year has been accommodated.
- It is not possible for either the employee or the school/local authority to decide to carry over the annual leave into the next leave year if there is time to take the leave in the current leave year, i.e. in school closures or in term time.

## 20. Questions and answers

### **What is the minimum provision for maternity leave?**

Every pregnant employee has the right to take up to 26 weeks' ordinary maternity leave and 26 weeks' additional maternity leave. To exercise her right to maternity leave, an employee must notify her employer of her intentions by the end of the 15th week before her expected week of childbirth. She must inform her employer of the date on which she intends to start her ordinary maternity leave and, if asked to do so, produce Form Mat B1 or the equivalent, signed by her doctor or midwife. An employee who has specified a date on which she intends to start her ordinary maternity leave has the right to change her mind about that date so long as she notifies her employer of this at least 28 days before the revised start date.

### **Does an employee have the right to return to the same job after maternity leave?**

If the woman returns after a period of ordinary maternity leave, she has the right to return to the job she occupied before her maternity leave. If she has taken additional maternity leave or more than four weeks' parental leave, she has the right to return to her original job unless this is not reasonably practicable, in which case she has the right to be offered suitable alternative employment on terms no less favourable than the terms she enjoyed in her original job.

### **Can an employer terminate the contract of an employee on maternity leave?**

It is automatically unfair to dismiss an employee or select her for redundancy either because she is pregnant or has given birth or because she has exercised her statutory rights in pregnancy or maternity. An employee who is dismissed during her pregnancy or maternity leave must be provided with a written statement explaining the reasons for her dismissal.

### **Will the dismissal of an employee who is taken on temporarily to fill in for a pregnant woman be fair?**

The dismissal of a temporary employee recruited to replace a permanent employee who is absent from work on maternity leave will be treated as fair so long as the temporary employee is advised in writing, before his or her employment begins, that the appointment is for that specific purpose or until an agreed date and that the contract will be terminated once the regular employee returns to work. It is also important

that the correct procedures are carried out.

**Apart from the right to statutory maternity leave what other statutory rights do pregnant women and new mothers have?**

Pregnant women and new mothers have a number of statutory rights including the right to a reasonable amount of paid time off work to enable attendance at antenatal appointments, provided that attendance has been recommended by a doctor, midwife or health visitor, the right to suitable rest facilities, and the right not to be victimised, penalised or subjected to any detriment for taking advantage of their rights in pregnancy, childbirth or maternity.

**What happens when an employee has given birth early before the start of her maternity leave?**

Maternity leave will start on the day following the birth. SMP will also start on the following day.

**If an employee is off sick from work due to a pregnancy-related condition, when does her maternity leave start?**

Maternity leave can only be triggered by a pregnancy-related condition from the beginning of the fourth week before the expected week of confinement.

## Appendix 1

### COMMENCEMENT OF MATERNITY LEAVE FORM

Once you have worked out when you wish to commence maternity leave you should notify your headteacher and complete the following form and return to the HR department. You must notify both the headteacher and HR department when you intend to take your maternity leave at least 28 days before the start date or you could put your entitlement to be paid at risk. You may change the dates by giving at least 8 weeks' notice.

Name:	
Address:	
Job Title:	
Expected date of childbirth:	

I intend to commence maternity leave on:	
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I intend to return from maternity leave on:	
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I do not intend to return to work following maternity leave	
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I attach my MATB1 Certificate:	
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I will send my MATB1 Certificate as soon as it is available	
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Please read the following statements carefully, and tick the applicable one:	
I wish to receive all payments in respect of maternity leave as they become due. If I do not return to work at the end of my maternity leave, I will forfeit additional payments not entitled to except Statutory Maternity Pay and will repay the monies received	
I do not wish to receive any payment other than Statutory Maternity pay until I return to work following my maternity leave.	

Signed:	
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Date:	
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