



NEWHAVEN TOWN COUNCIL

Maternity, Paternity, Adoptive Entitlements

The details of Maternity, Paternity and Adoptive Pay and Leave are fairly complex and subject to change as and when new legislation is introduced. In this regard, forthcoming extensions and alterations to these rights are expected between 2013 and 2015.

Legislation covers both leave and pay and the following are just some of the current key points an employer should be aware of.

Maternity Leave

Ordinary Maternity Leave (OML) = 26 weeks. There is no qualifying period of employment.

Compulsory Leave. This is the two week period immediately after giving birth during which the woman is **not** permitted to work. This is part of OML – not additional to it.

Additional Maternity Leave (AML) = 26 weeks. This follows on from the end of the OML and there is no qualifying period of employment.

The earliest a woman can start her maternity leave is the beginning of the eleventh week before the baby is expected. She has to provide her employer with details of the Expected Week of Confinement (EWC) and the start date of her maternity leave. The employer must reply to this notification within 28 days and state the date by which the woman will be expected to return to work after she has finished her full maternity leave entitlement (ie after both OML and AML). The woman may choose to return at an earlier date and it is for her to notify the employer of such an intention. If she chooses to do so, she must give 8 weeks' notice if she intends to return to work before the end of the maternity (or adoption) leave period.

Maternity Pay

Statutory Maternity Pay (SMP) entitlement is for 39 weeks. To qualify for SMP, the employee must:

- have at least 26 weeks' continuous service with her employer as at the 15th week before the EWC;
- work for an employer who is liable (or would be liable but for low earnings) to pay the employer's share of Class 1 National Insurance contributions;
- have average weekly earnings in the eight weeks up to and including the qualifying week at or above the lower earnings limit for the payment of National Insurance;
- give her employer medical evidence of her pregnancy (form MATB1) which can only be issued from the 21st week of pregnancy;

The first 6 weeks of SMP is paid at 90% of average weekly earnings and the remainder at the current lower statutory level or 90% of the average weekly earnings if this less. The SMP rate normally increases in April each year. To find out how to calculate SMP use the following link <https://www.gov.uk/maternity-paternity-calculator>.

Women who do not qualify for SMP may be able to claim Maternity Allowance (MA). This is based on their recent employment and earnings record and is a state benefit which is payable for 39 weeks. Form SMP1 is required to support your employee's claim to MA and should be given to the employee to enable her to process her claim. Employees can download a MA claim form from the Department for Works and Pensions website.

Maternity Risk Assessment

Employers have responsibilities when one of their staff becomes pregnant. Once the employer has been advised by a member of their staff that they are pregnant, it is recommended that they conduct a risk assessment on any potential issues which may occur during the course of the pregnant employee's work. Depending on the assessment, it might be necessary to make adjustments, such as to their work station or work programme. It is advisable to record this on a Maternity Risk Assessment Form (which should then be filed on the individual's personnel file and on the Employer's Health & Safety Master File).

In addition, employers will need to plan for the period of Maternity Leave, ie how they will provide adequate cover for the post concerned.

Other Benefits during Statutory Maternity Leave

All contractual terms (for example holidays or benefits) apart from remuneration continue during SML. The position concerning pension contributions is more complex. Pension contributions are a benefit, treated separately from other benefits. Under the Social Security Act 1989 employers must maintain 'employment related benefits' for as long as paid maternity absence continues. This means that employees have a right to pension contributions for the entire period of paid maternity absence which for many women is the 39 week period of SMP.

Other rights before, during and after maternity

In addition to SML, SMP and MA, a qualifying female employee is entitled to:

- return to the job which she had when returning from OML or to one of an equivalent status when returning from AML. Her rights to pay, conditions and benefits are protected
- time off to attend ante-natal care appointments at her normal rate of pay on provision of the appointment
- request a risk assessment during her pregnancy (see above)
- request alternative work where any risks to her health and that of the baby can be avoided
- if health and safety measures cannot be complied with, remuneration on suspension on maternity grounds
- not to be subjected to any detriment, disadvantage, unfair treatment or dismissal because of the pregnancy, maternity leave, etc

Paternity Rights

To qualify, the employee must

- have been continuously employed for 26 weeks ending with the fifteenth week before the baby is due;
- must be the baby's biological father or the partner/husband of the mother;
- must have (or expects to have) responsibility for the baby's upbringing.

Paternity Leave (PL) = up to 2 weeks to be taken either as just one week or two weeks together (not two separate weeks). It cannot be taken before the child is born but can start from the date of the baby's birth or any day of the week following the birth but it must be taken by the 56th day after the date of birth. If the baby is born earlier than expected, then the leave can be taken any time between the actual date of birth and the end of an eight week period starting from the Sunday of the week the baby was originally due. Odds days off work cannot be taken but the weeks can start on any day, for example, from Tuesday to Monday.

The employee has an obligation to inform the employer of the intention to take paternity leave by the end of the fifteenth week before the baby is expected and the employee must provide the start date of the leave to be taken, the week the baby is expected and the duration of the leave to be taken. The employee can change their mind on this but must give the employer 28 days notice of the revised dates.

Paternity Pay = 2 weeks, provided the employee completes a self-certificate form. HMRC provide the best form to use (see their website) which also gives terms and conditions explaining the employee's rights. Eligible employees will be entitled to receive whatever the current Statutory Paternity Pay (SPP) is or 90% of their average weekly earnings, whichever is less. To calculate SPP use the following link <https://www.gov.uk/maternity-paternity-calculator>.

Rights during and after Paternity Leave

A qualifying male employee is entitled to:

- return to the same job
- return to the same terms and conditions of employment
- not to be subjected to any disadvantage, unfair treatment or dismissal

Qualifying fathers are also entitled to unpaid Parental Leave and to request flexible working.

Additional Paternity Leave (APL)

Regulations providing for additional paternity leave and pay for eligible employees apply to fathers of babies due on or after 3 April 2011 and adoptive fathers who are notified of having been matched with a child on or after that date, as well as civil partners.

A father/civil partner can qualify for APL if the mother agrees to forgo an equivalent period of maternity leave. For a father/civil partner to take APL, the mother must have ended her maternity leave. APL must be taken as one continuous period, must be for full weeks and for a period between two and 26 weeks. APL may be taken at any time between 20 weeks

after the child is born and the child's first birthday. APL may not be taken until eight weeks after the date on which the father/civil partner gives their employer the required notice, unless the employer agrees to waive the notice requirements.

The regulations are more stringent when it comes to **pay**. If the mother has not taken her full entitlement to SMP when she returns to work, the outstanding amount transfers to the father/her partner who is to take APL. Therefore the employee will only receive it during the time their partner would have received SMP, SAP or MA.

Rights for Adoptive parents

Subject to certain qualifying conditions, paid adoption leave and pay are available.

Adoption Leave

An employee must be newly-matched with a child for adoption by an approved adoption agency, and have worked continuously for the same employer for 26 weeks leading into the week in which they are notified of the matched with a child for adoption – the 'matching week'. They will then be entitled to 26 weeks Ordinary Adoption Leave (OAL), immediately followed by 26 weeks Additional Adoption Leave (AAL), giving a total of up to 52 weeks. During OAL and part of AAL, most adopters will be entitled to Statutory Adoptive Pay (SAP) from their employers on a similar basis to that governing SMP.

Adoption Pay

SAP is payable for 39 weeks at the same rate as the lower rate of SMP. Adopters whose average weekly earnings are below the lower earnings limited for NI purposes do not qualify for SAP but may qualify for other welfare benefits.

Rights to additional paternity leave and pay when adopting a child apply in broadly the same way as they do following the birth of a child.

Unpaid parental leave

This increased from 13 weeks to 18 weeks in March 2013.

Keeping in Touch Days (KITs)

Optional Keeping in Touch days during both Maternity Leave and Additional Maternity Leave give employees the chance to go to work, to undertake training and keep in touch for up to 10 days without losing their right to maternity pay. The employer is not obliged to offer any KIT days and the employee is not obliged to work any that are offered. The employer and employee should agree on how much the employee will be paid for a KIT day. It could be set out in the employment contract or it may be decided on a discretionary, case-by-case basis.

This law applies equally to those taking paternity or adoption leave.

Please note that some of the details set out above are expected to change when the provisions of the Children and Families Bill come fully into force which is expected some time in 2015.

As stated at the beginning, the above are some of the current key points for you to note.

Full details about Maternity, Paternity and Adoptive Leave and Pay may be found on several websites:

- HM Revenue and Customs
- Department for Business, Innovation and Skills (BIS) – work and families pages
- Acas

(For full details of website addresses go to the section “Useful Websites” at the end of this handbook.)