

## **MATERNITY LEAVE, PAY AND NOTICE FACTSHEET**

### **Maternity Leave**

All employees are entitled to 52 weeks maternity leave, regardless of length of service or the number of hours worked. This is divided as follows :

- 26 weeks of ordinary maternity leave; and
- 26 weeks of additional maternity leave

There are slightly different rights to return to work depending on whether you return after OML or AML. Please read our separate factsheet on "Rights during maternity leave" for further information.

The earliest you can start your maternity leave is 11 weeks before your baby is due unless you give birth by then. However, if you are off work with a pregnancy related absence in the four weeks before your baby is due, your employer can trigger the commencement of your maternity leave.

### **Maternity Pay**

There are two types of maternity pay - Statutory Maternity Pay (SMP) and Maternity Allowance (MA). Both are paid for a total of 39 weeks.

To qualify for Statutory Maternity Pay (SMP) you must have continuously worked for your employer for 26 weeks by the end of the 15<sup>th</sup> week before your baby is due and still be employed by the same employer during that week and have an average pay of at least £90 a week in the "calculation period", this being eight weeks leading up to and including the 15<sup>th</sup> week before your baby is due.

If you are entitled to SMP, you will get 90 % of your normal pay for 6 weeks followed by 33 weeks at £117.18 (April 2008-9 rates) or 90 % of your normal pay, whichever is the lower. You are entitled to SMP even if you do not intend to return to work and you cannot be asked to repay it.

If you receive additional contractual enhanced maternity pay you can only be asked to repay it if your contract says it must be or if this was agreed with your employer.

### **Notice for maternity leave and maternity pay**

In order to get maternity leave, you must give your employer notice on or before the 15<sup>th</sup> week before your baby is due. If your employer requests this to be put in writing, you must do so. Your notice should specify that you are pregnant, your expected week of childbirth and the date you wish to commence maternity leave.

In order to get SMP, you must give your employer notice of at least 28 days before you want it to commence. You must also provide your MATB1 form no later than three weeks after your maternity pay commences. In practice, most women give notice in writing for maternity leave and pay at the same time.

Once you have given notice, your employer should write to you within 28 days confirming the date your maternity leave will end. If you are not entitled to SMP, you must also be given form

SMP1. If you are not entitled to SMP, you may be entitled to maternity allowance. You should contact your local Job Centre Plus office for eligibility requirements.

You do not have to give separate notice for ordinary maternity leave and additional maternity leave. Your employer should assume that you will take all the leave you are entitled to, unless you give them notice that you intend to return to work earlier. There are separate rules for the notice requirements with regards to returning to work earlier than the full 52 weeks and you should contact us for further details.

For further advice on this topic, please contact Joanna Robson at Babylaw™ at [jo.robson@babylaw.co.uk](mailto:jo.robson@babylaw.co.uk) or 08445 61 11 61.

This factsheet is intended to give general information about legal topics and is not intended to apply to specific circumstances. Its contents should not, therefore, be regarded as constituting legal advice and should not be relied upon as such. In relation to any particular problem that you may have, you are advised to seek specific legal advice.

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