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| Version | 3 |
| Last Revision Date | June 2011 |



Maternity Leave Policy

| DOCUMENT CONTROL | |
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| POLICY NAME | Maternity Leave Policy |
| Department | Human Resources |
| Telephone Number | 01443 444501 01443 444502 01443 444503 |
| Initial Policy Launch Date | October 1996 |
| Reviewing Officer | Alison Cade, Peter Cushion, Richard Evans |
| Review Date | June 2011 |
| Date of Equality Impact Assessment | 2008 |
| | |
| REVISION HISTORY | |
| Date | Revised By |
| September 2006 | Alison Cade, Peter Cushion, Richard Evans |
| May 2011 | Alison Cade, Peter Cushion, Richard Evans |
| June 2011 | Alison Cade, Peter Cushion, Richard Evans |
| | |
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| DOCUMENT APPROVAL | |
| This document has received approval from: | Date of Approval |
| HR Senior Management Team | |
| Corporate Management Team | |
| Cabinet | |

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1. OBJECTIVE

The purpose of this policy is to provide guidance on the legislation governing the rights and obligations of employees who are pregnant, and the Council's procedure.

2. INTRODUCTION

Statutory regulations regarding Maternity Leave were contained within the Employment Act 2002 and became effective from 6 April 2003. The Employment Act 2002 introduced a new improved maternity leave scheme to replace previous provisions contained in Part VIII of the Employment Rights Act 1996, and amended by the Employment Relations Act 1999. Changes to the rules affecting maternity leave, pay and return to work will become effective for children born on or after 1 April 2007.

3. MAIN PROVISIONS

The statutory provisions apply to women whose expected week of childbirth (EWC) is on or after 1 April 2007. In summary the main rights are:

- The right to paid time off during working hours for antenatal care
- The right to special protection under health and safety legislation
- The right to be paid Statutory Maternity Pay (SMP) subject to the qualifying conditions
- The right not to be discriminated against on account of pregnancy or maternity leave
- The right to take maternity leave and return to work
- The right not to be dismissed on account of pregnancy or maternity leave
- The right to optional 'keeping in touch' (KIT) days, which enables a woman to work for up to 10 days during her maternity period

4. NOTIFICATION

It is advisable that an employee who is pregnant advises their line manager as soon as she learns that she is pregnant. This is in the employee's own interests as such notification may instigate action to safeguard the well-being of the mother-to-be and of her unborn child. Early notification also enables the Council to ensure that the employee is fully informed of her rights and obligations in law.

An employee must notify her employer of the following at least 28 days before her absence begins:

- That she is pregnant
- The expected week of childbirth (EWC). A certificate (form MAT B.1) is required from a registered medical practitioner or a registered midwife stating the EWC
- The date she wants her maternity leave to start. This cannot be earlier than the 11th week before the EWC

The Council will then respond to the employee's notification of her leave plans within 28 days detailing the expected date of return from maternity leave.

5. TIME OFF FOR ANTENATAL CARE

All pregnant women have the right to leave of absence with pay for attending antenatal appointments.

6. MATERNITY LEAVE

6.1 Maternity Leave

Provided employees have complied with the notification procedures all pregnant employees (regardless of service or hours of work) will be entitled to 52 weeks Maternity Leave.

6.2 Earliest & Latest Dates for Commencing Maternity Leave

The earliest date that maternity leave can commence is 11 weeks before the EWC and the latest date is either the Sunday before the EWC or the Sunday before the birth of the baby.

6.3 Compulsory Maternity Leave

No employees are permitted to return to work in the two-week period immediately following the birth of the child.

6.4 Keeping in Touch (KIT) Days

- Keeping in touch (KIT) days are intended to facilitate a smooth return to work for women returning from maternity leave. Before going on leave, the employer and the employee should discuss and agree any voluntary arrangements, for keeping in touch during the employee's maternity leave. An employee may work for up to 10 KIT days during OML or AML without bringing her maternity leave to an end. An employee may not work during the two weeks of compulsory maternity leave immediately after the birth of her baby.

- The work can be consecutive or not, and can include training or other activities which enable the employee to keep in touch with the workplace. Any such work must be by agreement and neither the employer nor the employee can insist upon it.
- The employer should agree with the employee payment for time worked during KIT days. Payment will be in accordance with the employee's contract of employment on a like for like basis e.g. if the employee attends for a full day she will be paid a full days pay.
- If an employee is in receipt of SMP this will be taken into consideration when calculating payment for KIT days. SMP will be broken down into a daily rate and the employer will pay the difference to ensure the employee receives full pay for the KIT day. Employees should note that they will not receive SMP plus a full days pay for KIT days they are attending.

7. **MATERNITY PAY**

Maternity pay can be made up of a number of different components:

- Statutory Maternity Pay (SMP)
- Maternity Allowance (MA)
- Occupational Maternity Pay (OMP)

Qualification for maternity pay is dependent on an employee's continuous service at the beginning of the 15th week before the EWC.

A summary of the payments are detailed below:

| Length of Service at the beginning of the 15 th week before the EWC | Maternity Pay |
|--|--|
| Employees with less than 26 weeks service | No entitlement to Statutory Maternity Pay (SMP) but may be eligible for Maternity Allowance from the Department of Work and Pensions. |
| Employees with more than 26 weeks but less than one years service | <ul style="list-style-type: none"> Where an employee has 26 weeks continuous service at the beginning of the 15th week before the EWC and her earnings are higher than the lower earnings limit for NI contributions, she will be entitled to receive: <ul style="list-style-type: none"> 6 weeks at 9/10ths of a week's pay; followed by 33 weeks flat rate Statutory Maternity Pay (SMP). Where earnings are less than the lower earnings limit for NI Contributions, she will be entitled to the above payments but any benefits received from the Department of Work and Pensions will be deducted. |
| Employees with more than one years service | <ul style="list-style-type: none"> Where an employee has more than 1 year's continuous service at the beginning of the 15th week before the EWC and her earnings are higher than the lower earnings limit for NI Contributions, she will be entitled to receive: <ul style="list-style-type: none"> 6 weeks at 9/10ths of a week's pay; followed by 12 weeks half pay and flat rate Statutory Maternity Pay (SMP), for weeks 7 to 18, providing it does not exceed normal full pay; followed by 21 weeks at flat rate SMP; If the employee does not return to work for a minimum of 3 months then any monies received in excess of SMP during weeks 7-18 will be recoverable. Service Directors have the discretion to waive the recovery of the money if they so wish due to extenuating reasons. Where earnings are less than the lower earnings limit for NI Contributions, she will be entitled to the above payments but any benefits received from the Department of Work and Pensions will be deducted. |

In all cases the employee has the right to terminate their employment and receive the appropriate payment depending upon their length of service i.e. any employee with more than 26 weeks service at the beginning of the 15th week prior to the EWC will receive 6 weeks at 9/10ths of a week's pay and 33 weeks flat rate SMP.

8. **RETURNING TO WORK AFTER MATERNITY LEAVE**

It will be assumed that an employee will be returning at the end of Maternity Leave, which is 52 weeks from the date of commencement. If an employee wishes to return earlier than this date they must give 8 weeks notice.

Should an employee wish to change the date of return from maternity leave, then notification must be provided at least 8 weeks in advance of the change.

If an employee is unable to return to the same job which she held prior to her maternity commencing, she should be offered an alternative job which is the same grade and broadly similar in duties to her previous post. As with any other employee she should be consulted on any changes to her job whether they are due to an internal restructuring of the division or reorganisation prior to the change actually taking place. Similarly any potential redundancy situation should be discussed with the employee with a view to possible redeployment, again prior to the actual situation arising.

9. **MANAGEMENT OF HEALTH & SAFETY AT WORK REGULATIONS 1999**

The Management of Health & Safety at Work Regulations 1999 provides specific health and safety protection for women of childbearing age or new and expectant mothers.

Detailed below are the main requirements:

9.1 **Risk Assessments**

Specific risk assessments must be carried out where women of childbearing age or new and expectant mothers may be at risk from a work process, working condition or physical, chemical or biological agent.

The purpose of the risk assessment is to assess those risks faced by women of childbearing age or new and expectant mothers and where reasonably practicable, identify the preventative and protective measures to control those risks.

The phrase 'new and expectant mothers' is defined as:

- Those who are pregnant.
- Those who have given birth or miscarried within the previous six months.
- Those who are breast feeding

9.2 Night Workers

Employees who are contracted to work at night will be given special consideration if they have a medical certificate stating that night work could affect their health and safety. In this respect the Council will give the following protection:

Offer the employee a suitable daytime alternative if any is available: or if that is not reasonable

Suspend her from work, on full pay, for as long as necessary to protect her health and safety.

Although the protection afforded will technically apply from the time the Council receives notification from the employee that she is pregnant, the Council's obligation will apply from the time it is aware that the employee is pregnant until 6 months after the date of childbirth (or miscarriage) or in cases where the employee is breast feeding, until she stops breast feeding.

10. MANAGERIAL RESPONSIBILITIES

As soon as a line manager is aware that an employee is pregnant they should:

- undertake a risk assessment of the work area and, if necessary, consider the possibility of alternative work.
- explore the possibility of offering day work if the employee is a night worker and provides a medical certificate stating that it is unsafe for her to continue working nights.
- ensure that reasonable time off is given to receive antenatal care (this includes sufficient travelling time).
- refer the employee to the relevant section to receive the appropriate advice & information on the benefits available and her responsibilities under the Council's maternity provisions.
- consider what arrangements will need to be made in the employee's absence to maintain service standards.
- maintain contact with the employee during her maternity leave and ensure that she receives all necessary circulars regarding the division/Council.
- on their return to duty arrange for any training/discussions that may be needed to familiarise her with any new procedures or policies.

11. ADDITIONAL RELATED MATTERS

11.1 Sickness Absence

- Employees who become sick prior to the commencement of their Maternity Leave will be entitled to receive the following payments:
- if sick prior to the 11th week before the EWC, then Occupational Sick Pay (OSP) and Statutory Sick Pay (SSP) will be paid.
- if sick between the 5th and 11th week before the EWC then OSP and SSP will be paid up to the notified start date of Maternity Leave at which point SMP becomes payable.
- if sick during the four weeks prior to the EWC, OSP and SSP will be paid up to the notified start date of Maternity Leave at which point SMP becomes payable. However if the illness is pregnancy related then SMP may be triggered automatically even if it is before the notified date for starting Maternity Leave.

If, due to sickness, an employee is unable to return to work at the end of her maternity leave or on the date she has notified (if she intended to return early), the Council's normal sickness provisions will apply from the date she was due to return. Where the sickness has occurred during the ordinary maternity leave period, the employee will receive SMP topped up with occupational sick pay, if eligible. If an employee is sick after the expiry of her ordinary maternity leave period or during the additional maternity leave period, she will receive SSP plus Occupational Sick Pay, if eligible.

11.2 Early/Late Births

If the baby is born before the qualifying week (QW), (the QW is 15 weeks prior to the EWC), continuous employment is measured up to the QW i.e. the continuous employment the employee would have had if she had not given birth prior to the QW. If this adds up to 26 weeks, then she will qualify.

If the baby is born after the QW but before the date the employee notified the Council she wanted her maternity leave to start, then maternity leave will commence from the date of childbirth, and maternity pay will commence for 39 weeks on the day following the actual birth.

If the baby is born after the expected week of childbirth, the maternity pay period is not affected. SMP will be paid for a period of 39 weeks only.

11.3 Miscarriages/Still Birth

National Conditions of Service define confinement as the birth of a living child or the birth of a child whether living or dead after 24 weeks of pregnancy. Therefore if a woman has a stillbirth after 24 weeks or more of her pregnancy, she is entitled to the benefits of the maternity leave scheme.

However in such unfortunate circumstances, it may be likely that the employee will wish to return to work when she is fit enough. If she has already started her maternity leave she must give the required notice of return (see Section 8). In any event the employee must take the compulsory two weeks maternity leave following the birth. If a miscarriage occurs before the 24th week then the employee will technically not have commenced her maternity leave and in such circumstances the Council's sickness scheme shall apply.

11.4 Dismissal

The dismissal of a woman will be automatically unfair, regardless of service or hours worked if:

- it is on pregnancy-related grounds
- if it results from her decision to take advantage of the benefits available through the maternity leave period
- if it is on health & safety grounds which would lead to maternity suspension
- the grounds for dismissal are redundancy and she has not been offered any suitable available alternative
- selection for redundancy is pregnancy-related

If an employee is dismissed during pregnancy or maternity leave she will be entitled to a written reason for her dismissal without having to request it, regardless of service and hours worked.

11.5 Suspension From Work On Maternity Grounds

An employee, who is pregnant, or has recently given birth or is breastfeeding, may be suspended from her normal contractual duty on health and safety grounds. If she is suspended before the birth of the child and the period of suspension is likely to last until the birth, she is entitled to delay her maternity leave until this date.

During the suspension, an employee is entitled to receive her normal remuneration and all other contractual benefits. She is also entitled to be offered any suitable alternative work before the suspension takes place. If she turns down an offer of such work, she will lose her right to receive pay during the suspension.

11.6 Redundancy

If an employee's post becomes redundant during her maternity leave period she must be offered any suitable available alternative employment before her original contract ends. The new contract must not be less favourable than the original contract, in terms of conditions of service and location.

If the employee turns down any suitable alternative employment, then she may be fairly dismissed as long as the Division can show that it acted fairly and took adequate steps to find alternative work.

11.7 Pension Contributions

Under the Local Government Pension Scheme pension contributions are payable during the ordinary maternity leave period on the remuneration and SMP actually received.

Should the maternity leave extend beyond 39 weeks into unpaid leave, it is up to individual employees to determine whether they pay pension contributions on the unpaid maternity leave period.

Further information is available from the Pension Section and Human Resources.

11.8 Assisted Car Purchase Agreements

Arrangements will be made by the manager to recover payments during the period of maternity leave.

11.9 Annual Leave

An employee will continue to accrue annual leave entitlement during her period of maternity leave and not just for the paid 39-week period.

Carrying over leave entitlement - Staff are encouraged to take some or all of their annual leave entitlement immediately before the commencement of maternity leave. In instances where this is not reasonable (e.g. maternity leave is due to begin early in the new leave year; or the needs of the service do not permit all annual leave entitlement to be taken during the leave year), the untaken portion of annual leave may be carried over into the new leave year. Should you require further guidance on this matter please do not hesitate to contact Human Resources.

11.10 Bank Holidays

The Council will ensure that any member of staff on maternity leave will receive normal pay for any bank holidays that fall within the maternity leave period (N.B. they will not receive an extra days leave entitlement following their return to duty).

Payment will vary depending on what scheme the individual has chosen and what payments she is receiving. For example where a bank holiday occurs and an employee:

- is receiving 90% of pay in accordance with the Maternity Scheme, they will be reimbursed the difference between what they are receiving under the Maternity Scheme and their normal pay i.e. 10% of the normal pay.
- has determined to take a period of extended unpaid additional maternity leave, the individual would be reimbursed a day's normal pay.

12. OTHER RELATED POLICIES

Pregnant Women at Work – HS8
Paternity Leave and Maternity Support Leave
Adoption Leave Policy