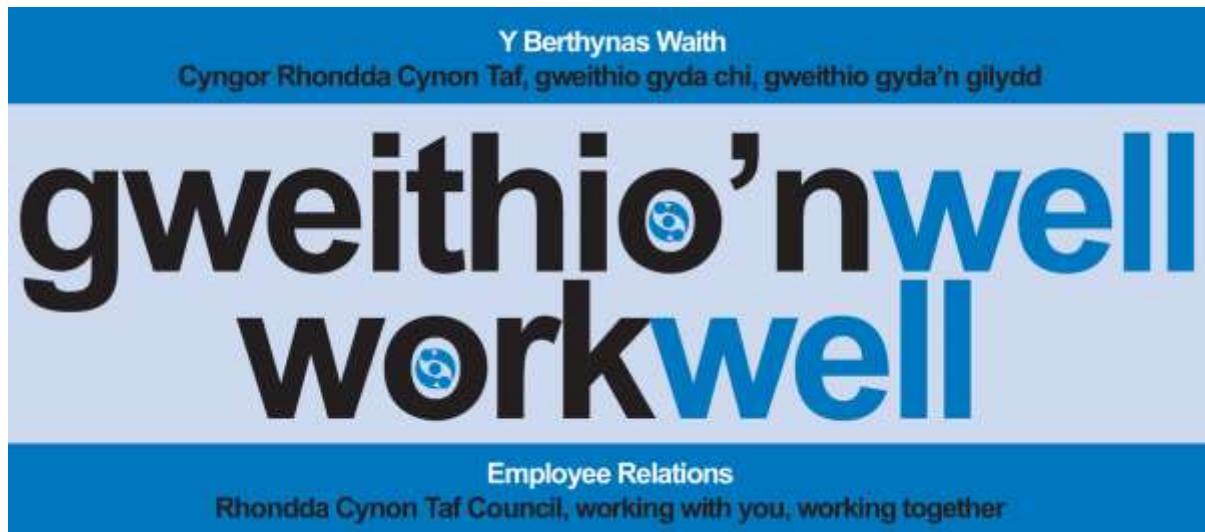


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## Maternity Leave Policy

This document is available in Welsh please see Polisi Absenoldeb Mamolaeth



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**This document is available in Welsh or English and other formats are available when requested.**

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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.

Shared Parental Leave, Adoption/Surrogacy Leave, Maternity Support and Paternity Leave policies are also available.

This policy is inclusive regardless of gender identity or sexual orientation, therefor the term partner within this document refers to same-sex partners, those of the opposite sex and inclusive of all trans identities.

## **2. MAIN PROVISIONS**

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 they learn that they are pregnant. This is in the employee's own interests as such notification may instigate action to safeguard the well-being of themselves and of their unborn child. Early notification also enables the Council to ensure that the employee is fully informed of their rights and obligations in law.

An employee must notify the Council of the following at least 28 days before their absence begins:

- That they are 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 that they want their maternity leave to start. This cannot be earlier than the 11<sup>th</sup> week before the EWC.

The Council will then respond to the employee's notification of their leave plans

within 28 days detailing the expected date of return from maternity leave. Correspondence needs to be issued in the language preference of the employee (Welsh or English).

## **5. TIME OFF FOR ANTENATAL CARE.**

- 5.1 All pregnant employees have the right to leave of absence with pay for attending antenatal appointments.
- 5.2 Other expectant parents have the right to unpaid leave to accompany the pregnant employee to up to 2 antenatal appointments.

### **Who is entitled to time off?**

The right to time off will apply to any employee, regardless of length of service, who is either:

- the pregnant employees spouse or civil partner;
- the pregnant employee's partner in an enduring relationship but not a relative (i.e. not a parent, grandparent, sibling or uncle/aunt);
- the parent of the expected child;
- the intended parents of a child in a surrogacy arrangement, if they expect to be entitled to and intend to apply for a parental order in respect of that child.

Reasonable time will be allowed to attend 2 appointments, sufficient time to cover travel, waiting and attendance at the appointment, not exceeding 6 hours and 30 minutes per appointment.

## **6. MATERNITY LEAVE**

- 6.1 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 day following the birth of the baby if the baby is born early.

### **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 employees 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 their maternity leave without bringing their maternity leave to an end. An employee may not work during the two weeks of compulsory maternity leave immediately after the birth of their 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.
- KIT days are paid using the following calculation:
  - **annual salary divided by 365 (1/7<sup>th</sup>)**.
  - for example, if annual salary is £19,939, divide by 365 = £54.63 (amount paid per full KIT day). In this example, KIT day is paid at £54.63 per day.
- If an employee is in receipt of Statutory Maternity Pay this will be taken into consideration when calculating payment for KIT days. Statutory Maternity Pay 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 (at 1/7<sup>th</sup>). 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 15<sup>th</sup> week before the EWC.

A summary of the payments detailed below:

Length of Service at the beginning of the 15 <sup>th</sup> week before the EWC	Maternity Pay
<b>Employees with less than 26 weeks service</b>	No entitlement to Statutory Maternity Pay (SMP) but may be eligible for Maternity Allowance from the Department of Work and Pensions.
<b>Employees with more than 26 weeks but less than one years service</b>	<ul style="list-style-type: none"> <li>• Where an employee has 26 weeks continuous service at the beginning of the 15<sup>th</sup> week before the EWC and their earnings are higher than the lower earnings limit for NI contributions, they will be entitled to receive: <ul style="list-style-type: none"> <li>– 6 weeks at 9/10ths of a week's pay; followed by</li> <li>– 33 weeks flat rate Statutory Maternity Pay (SMP).</li> </ul> </li> <li>• Where earnings are less than the lower earnings limit for NI Contributions, they will be entitled to the above payments but any benefits received from the Department of Work and Pensions will be deducted.</li> </ul>
<b>Employees with more than one years service</b>	<ul style="list-style-type: none"> <li>• Where an employee has more than 1 year's continuous service at the beginning of the 15<sup>th</sup> week before the EWC and their earnings are higher than the lower earnings limit for NI Contributions, they will be entitled to receive: <ul style="list-style-type: none"> <li>– 6 weeks at 9/10ths of a week's pay; followed by</li> <li>– 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</li> <li>– 21 weeks at flat rate SMP;</li> <li>– 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.</li> <li>– <b>Service Directors have the discretion to waive the recovery of the money if they so wish due to extenuating reasons.</b></li> </ul> </li> <li>• Where earnings are less than the lower earnings limit for NI Contributions, they will be entitled to the above payments but any benefits received from the Department of Work and Pensions will be deducted.</li> </ul>

**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 15<sup>th</sup> 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 they held prior to their maternity commencing, they should be offered an alternative job which is the same grade and broadly similar in duties to their previous post. As with any other employee they should be consulted on any changes to their 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, as amended, places a duty on the Council with regard to the health and safety of new and expectant mothers.

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

- Those who are pregnant
- Those who have given birth within the previous six months. Giving birth is defined as 'delivered a child or, after 24 weeks of pregnancy, a stillborn child'.
- Those who are breastfeeding

Detailed below are the main requirements:

### **9.1 Risk Assessments**

When an employee notifies their line manager that they are pregnant, a specific risk assessment must be carried out to ascertain any risk posed to the health and safety of the expectant mother and to the unborn child. Possible hazards to be considered during the risk assessment could include a work process, working condition or physical, chemical or biological agents.

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

#### 9.2 Night Workers

Employees who are contracted to work at night will be given special consideration if they have medical advice 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 them from work, on full pay, for as long as necessary to protect their health and safety.

Although the protection afforded will technically apply from the time the Council receives notification from the employee that they are 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 they stop 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 medical advice stating that it is unsafe for them 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 their 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 they receives all necessary circulars regarding the division/Council
- on their return to duty arrange for any training/discussions that may be needed to familiarise them 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 11<sup>th</sup> week before the EWC, then Occupational Sick Pay (OSP) and Statutory Sick Pay (SSP) will be paid
- if sick between the 5<sup>th</sup> and 11<sup>th</sup> 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 their maternity leave or on the date they have notified (if they intended to return early), the Council's normal sickness provisions will apply from the date she was due to return. Periods of sickness during the maternity leave have no effect on either maternity leave or maternity pay. The maternity pay will continue as normal until such time as they would either normally expire because all entitlement has been used or the employee has returned to work. However, if an employee wished to end their maternity leave in order to record the absence as sick leave, this would serve to terminate the maternity leave period and the right to maternity pay. Occupational and Statutory Sick Pay would be payable if eligible. There is no provision to stop and re-start maternity leave and pay.

## **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 they 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 they wanted their 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**

An employee will be entitled to the benefits of the maternity leave scheme should they have a stillbirth after 24 weeks or more of their pregnancy. However, in such unfortunate circumstances, it may be likely that the employee will wish to return to work when they are fit enough. If they have already started their maternity leave they 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 an employee will be automatically unfair, regardless of service or hours worked if:

- it is on pregnancy-related grounds
- if it results from their 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 they have not been offered any suitable available alternative
- selection for redundancy is pregnancy-related

If an employee is dismissed during pregnancy or maternity leave they will be entitled to a written reason for their dismissal without having to request it, regardless of service and hours worked. Language preference will be respected where possible.

#### 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 their normal contractual duty on health and safety grounds. If they are suspended before the birth of the child and the period of suspension is likely to last until the birth, they are entitled to delay their maternity leave until this date.

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

#### 11.6 Redundancy

If an employee's post becomes redundant during their maternity leave period they must be offered any suitable available alternative

employment before their 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 they may be fairly dismissed as long as the Service 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.

As there are no earnings during unpaid maternity leave period/s, the pension is 'lost'. An employee can however, choose to buy back the pension on any periods of unpaid maternity leave by paying Additional Pension Contributions (APCS). Form MATL1 is included in the maternity pack sent by HR and provides further information on the potential impact of the 'lost' pension. The MATL1 form should be completed by the individual employee and returned to the Payroll section in the week prior to their return to duty. If the employee chooses Option 1, the relevant pension buy-back information will be provided.

#### **11.8 Assisted Car Purchase Agreements**

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

#### **11.9 Salary Sacrifice**

Arrangements will be made with the employee to ensure that any salary sacrifice schemes continue during the maternity leave period as part of their continuing contractual benefits.

#### **11.10 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** - in certain circumstances an employee on maternity leave could be disadvantaged should they take the full 12 months maternity leave. 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.

#### 11.11 Bank Holidays

The Council will ensure that any employee 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 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  
Maternity Support and Paternity Leave  
Adoption/Surrogacy Leave Policy  
Shared Parental Leave Policy