

## Pregnancy & Maternity Guide

### Overview

*Composite Legal Expenses Insurance provides advice to thousands of businesses and individuals each year through its legal advice helpline. The vast majority of calls to the helpline come from businesses seeking help on employment related matters.*

*Our expert lawyers have used their years of experience dealing with these matters to create this guide for you to use as a reference tool.*

*The guide has been condensed as much as possible to make sure you only get an overview of the area, for that reason it should not be viewed as comprehensive or as a substitute for specific legal advice.*

*If you have the benefit of a legal expenses policy with us, then the guide can be used in addition to the advice we provide and you should contact our advisors for advice in relation to any specific situations.*

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# PREGNANCY & MATERNITY

## Pregnancy and maternity

Pregnant employees and new mothers get various additional rights to protect them in the workplace and safeguard their continued employment, the following are some of the key rights that will apply:

- Paid time off for antenatal appointments
- Health and safety protection while pregnant
- Up to 52 weeks' maternity leave
- Statutory maternity pay
- The right to return to the same job
- Priority for suitable alternative employment in a redundancy situation
- Protection from dismissal, detriment or discrimination because of pregnancy or maternity

It is also important for employers to carry out a health and safety risk assessment once they become aware an employee is pregnant.

Employers should inform employees of their entitlements and how to take advantage of them. This can usually be done in a staff handbook.

### The period of protection

The period of protection begins when a woman becomes pregnant and will end:

- If she has the right to maternity leave, at the end of the maternity leave period or (if earlier) when she returns to work after pregnancy.
- If she does not have the right to maternity leave, at the end of the period of two weeks beginning with the end of the pregnancy.

### Paid time off for ante-natal care

A pregnant employee has the right to paid time off to attend ante-natal classes. This can include relaxation or parent classes, provided they are recommended by the employee's doctor or midwife.

Employees are entitled to a reasonable amount of time off and they are entitled to their normal rate of pay.

The employee does not need to provide evidence for the first appointment but can be asked for evidence of subsequent appointments.

### Compulsory maternity leave

All employees have to take a minimum of two weeks' maternity starting on the day childbirth occurs. Factory workers have to take a minimum of four weeks'.

If an employer allows an employee to work during compulsory maternity leave the employer will be guilty of a criminal offence.

### Ordinary maternity leave ("OML")

All employees are entitled to 26 weeks OML regardless of length of service. OML will begin on whichever of the following is sooner:

- On an agreed date but not before the start of the 11th week before the beginning of the week in which the baby is due, or

- Birth, or
- Absence with a pregnancy related illness during the 4 weeks before the week in which the baby is due.

### **Additional maternity leave (“AML”)**

All employees are *also* entitled to AML regardless of length of service.

Length of AML is also 26 weeks. No notice needs to be given by the employee of her intention to take AML. It is *presumed* she will take it unless she notifies otherwise.

### **Rights during maternity leave (OML & AML)**

During maternity leave, employees are entitled to benefit from all their normal terms and conditions of employment excluding remuneration (monetary wages or salary).

### **Returning from maternity leave**

At the end of OML, employees have the right to return to the original job.

At the end of AML generally an employee is entitled to return from leave to the job she left. However, where it is not reasonably practicable, for a reason other than redundancy, the employer can offer her another job which is both suitable for her and appropriate for her.

If a redundancy situation arises during OML or AML and the employee is selected for redundancy, she must be given priority for any suitable alternative employment that may be available.

### **Notification**

The employee should notify you of her intention to take maternity leave by the end of the 15<sup>th</sup> week before the baby is due (“EWC”). As well as confirming the pregnancy and the EWC, the employee should inform you when she intends to start her maternity leave.

Employees are entitled to request to start maternity leave up to 11 weeks before the EWC.

Upon receiving this notification an employer is required to give a written response within 28 days. This response must confirm the date AML will end and explain that the employee would be expected to return to work from that date. The end of AML will be 52 weeks from the start of maternity leave.

Employers should presume, unless they hear otherwise, that the employee will take the full 52 weeks of maternity leave.

If an employee wants to return to work early, she will need to give at least 8 weeks’ notice of her intention to do this.

### **Statutory Maternity Pay (SMP)**

Employees will qualify for 39 weeks of SMP if they:

- Had 26 weeks’ continuous service at the 15<sup>th</sup> week before the EWC; and

- Earn on average at least £113 (*as at 5<sup>th</sup> July 2017*) a week

Employees will still be entitled to SMP if their baby is:

- Born early – regardless of when
- Is stillborn after the start of the 24<sup>th</sup> week of pregnancy
- Dies after being born

Current rates of SMP are:

- 90% of the employee's average weekly earnings (before tax) for the first 6 weeks
- £140.98 (*as at 5<sup>th</sup> July 2017*) or 90% of the employee's average weekly earnings (whichever is lower) for the next 33 weeks

SMP usually starts when maternity leave starts.

If an employee is not entitled to SMP you must supply the SMP1 form and inform her that she may be entitled to maternity allowance, usually claimed from the local job centre.

### **Keeping in touch days**

Normally during maternity leave, an employee cannot undertake work for her employer without bringing the maternity leave to an end. However, if both the employee and the employer agree, it is possible for an employee to work up to 10 days during maternity leave. These 10 days are known as keeping in touch days.

- On any keeping in touch day the employee will be entitled to be paid at their normal basic pay rate
- Keeping in touch days cannot be taken during compulsory maternity leave (see above)
- An employee cannot be treated less favourably for refusing to carry out keeping in touch days