

# Managing your employee's maternity leave and pay

## 1. Rules for pregnant employees

By law, [anyone classed as an employee](#) must tell you:

- that they're pregnant
- the expected week of the birth – to confirm this you can ask for a medical certificate, such as a 'MAT B1' form if they're more than 20 weeks pregnant
- the date they want to start [maternity leave](#) – the earliest it can start is 11 weeks before the due date

They must tell you this information no later than 15 weeks before the due date.

This information does not have to be in writing. But if you ask for it in writing, the employee must provide it that way.

After you've received the information you must:

- reply to the employee within 28 days
- tell them they're entitled to 52 weeks' maternity leave
- confirm their return to work date – assume they'll take 52 weeks (they can change it later if they want to take less, but must give you 8 weeks' notice)

If you do not give them this information, you:

- cannot stop them from returning early without notice
- might not be able to discipline or dismiss them for delaying their return from maternity leave

## Have a policy

It's a good idea for your workplace to have a pregnancy and maternity policy that all staff can easily access, for example on an intranet or in a handbook. This can help everyone know where they stand.

## If you think your employee is pregnant and they have not told you

It's best to take a supportive and sensitive approach if you think your employee is pregnant and they have not confirmed it yet.

They may have a good reason for not telling you straight away. For example, it may be very early in the pregnancy, or they may not have told family or friends yet.

If you think they're pregnant and it's affecting their work, you could ask them for a quiet chat to discuss whether they need any support from you.

## If you've not employed them yet

A person does not have to tell you they're pregnant if you've not yet employed them, for example if they've only come for an interview.

It's against the law to ask them if they're pregnant.

It might be against the law to not employ someone because you believe they're pregnant.

## Once they've accepted a job offer

Once they've accepted a job offer, the rules for pregnant employees apply.

They must also tell you about any:

- [health and safety concerns](#)
- [planned medical or pregnancy \('antenatal'\) appointments](#)

## If you employ them less than 15 weeks before their baby is due

Once they've accepted the job offer, the person must tell you they're pregnant and follow the other rules for pregnant employees.

You must not discriminate against someone you employ, or are considering employing, because of:

- their pregnancy
- an illness related to their pregnancy, including related time off
- maternity pay or leave they take, or plan to take

The law applies regardless of how long the person has been employed.

It applies to:

- employees and workers
- some self-employed people, if the person has to do the work personally (this is a complex area so [get legal advice](#) if it affects you)

The person could take their case to an employment tribunal if they believe they've been discriminated against because of pregnancy or maternity.

Discrimination includes:

- [dismissing them](#)

- not offering them a job
- changing their pay or other terms
- forcing them to work while on maternity leave
- stopping them returning to work because they're breastfeeding

The law covers the person from the point they become pregnant until either:

- their maternity leave ends
- they return to work
- they leave their job

If you do dismiss someone while they're pregnant or on maternity leave, you must give them the reasons in writing.

You can find out more about:

- [pregnancy and maternity discrimination](#) (PDF, 511KB, 25 pages)
- [sex discrimination](#) (PDF, 472KB, 37 pages)

The law says an employer must do a risk assessment for all women of child-bearing age. These include:

- a pregnant employee and the unborn child she is carrying
- an employee who's become a new mother in the last 6 months
- an employee who's breastfeeding

You can do a single assessment covering your whole workplace.

It could be a good idea to also:

- do risk assessments for individual employees, especially if you know of any health risks for a particular employee
- cover people who are not employees, such as agency workers or the self-employed, in the assessment

Risks can include:

- heavy lifting or carrying
- long working hours
- standing or sitting for long periods without suitable breaks
- being exposed to dangerous substances
- very high or low temperatures

[Find out more about risk assessments from the Health and Safety Executive \(HSE\).](#)

## 2. Have regular health and safety discussions

Once you know an employee is pregnant, a new mother or breastfeeding, you should have regular health and safety discussions with them.

You should consider:

- possible risks that may occur at different stages of pregnancy
- medical advice the employee has received
- the type of work they do

## Removing and reducing risks

You must temporarily change the employee's working conditions or hours, if both of the following apply:

- the risk assessment or subsequent discussions with the employee show that risks exist
- the risks cannot be reduced or removed

### **If it's not possible to change working conditions or hours**

You must offer other suitable work to the employee. This work must be both:

- at the same rate of pay
- on terms that do not treat the employee any less favourably

### **Example**

Jean has a factory packing job that involves lifting heavy crates of food.

Jean tells their boss they're pregnant. As heavy lifting may not be safe for Jean to do while pregnant, Jean's boss offers Jean a temporary alternative job until they go on maternity leave. This job was one found to be safe for pregnant employees when the business did its health and safety risk assessment.

This job does involve packing but not heavy lifting. Jean's pay will remain the same. But the job is at a location 30 minutes further away from Jean's home.

Jean lets their boss know that this would mean extra travel time and costs. As things stand, the terms of Jean's job are not as favourable so the business could be breaking the law.

After a discussion with HR, Jean's boss tells them that the business will pay for the extra travel. Jean's boss also agrees to treat the extra travel time as part of Jean's working time. This way Jean's working day will not be any longer.

As Jean's overall terms will now be as favourable as for Jean's usual job, they are likely to be within the law. Jean accepts this temporary job.

### **If the employee does not want to do other suitable work**

If the employee does not want to do the other suitable work you've offered, it's a good idea to:

- explore with them why they do not want it
- work with them to find something else suitable

For example, if they object because of health or safety reasons, you could involve a health and safety representative (if there is one at your workplace) to help find them appropriate work.

### **When you might need to suspend the employee on full pay**

If the risks cannot be removed or reduced, and you cannot offer suitable other work, you must suspend the employee from work on full pay.

The suspension must last until either:

- their maternity leave begins
- it's safe for them to start work again

You must also give the employee:

- the outcome of the risk assessment
- the reason why the risk could not be removed

## **If they're self-employed**

If you hire someone who's pregnant and self-employed, you're still responsible for making sure they're healthy and safe at work.

It's best to discuss with them what risk assessment they need depending on the job they do.

[Find out more about health and safety for self-employed people from HSE.](#)

## **If they're an agency worker**

An agency worker's time off, pay and other rights depends on their [employment status](#).

The worker's recruitment or employment agency is responsible for fulfilling these rights.

You should:

- keep any information you have about their pregnancy confidential (for example, if you find out about it before their agency does)
- check that the job is still safe for them to do, and let them and the agency know if it's not

[Find out more about rights for agency workers.](#)

Having IVF treatment can be difficult emotionally and physically. It's a good idea to be understanding and supportive towards

someone who's having this treatment. For example, they'll probably need time off for medical appointments.

A supportive attitude also means they're more likely to be open with you about how their treatment, and any problems they're having, could affect their wellbeing or work.

An employee having IVF treatment might tell you they could become pregnant, once they've reached the 'embryo transfer' stage. This is the point when a fertilised egg (embryo) is placed inside their body. They do not have to tell you at this stage.

### 3. If they've reached the embryo transfer stage

If the employee tells you they've reached the embryo transfer stage, from a legal perspective you must treat them as pregnant.

From this stage they'll have the same rights as any pregnant person (including leave, pay, and protection from [discrimination because of pregnancy or maternity](#)).

It can take several more weeks for a pregnancy test to confirm if the pregnancy is successful. They do not have to tell you about the pregnancy's success. But an open and supportive working environment means it's more likely they'll tell you about any issues that could affect their wellbeing or work.

### 4. Maternity leave

Employees are entitled to 52 weeks' maternity leave.

They have this right from the day they start the job.

#### Changing the maternity leave start date

Your employee must give you 28 days' notice if they want to change their maternity leave start date. If it's shorter notice, the new date must be agreed by both of you.

#### If they do not want to take all their leave

Employees do not have to take their full maternity leave. But they must take at least the first 2 weeks following the birth. This period is known as compulsory maternity leave.

If they work in a factory, they must take at least the first 4 weeks following the birth.

You must not discourage the employee from taking all their maternity leave.

#### 4 weeks before the baby is due

If the employee is off work because of a pregnancy-related illness within 4 weeks of the date the baby is due, maternity leave begins automatically. This is unless you and the employee agree together to delay it (for example, for health and safety reasons).

Once maternity leave starts, you must pay them maternity pay instead of sick pay.

## **If the baby arrives early or unexpectedly**

If the baby arrives early, maternity leave and pay starts on the day after the birth.

Your workplace might have a policy about who must inform you of the birth and how quickly.

If the baby's arrival is unexpected or traumatic, you might be told about it from someone other than the employee (for example, a member of their family). Even if your workplace has a policy about who should contact you, it's a good idea to be flexible and understanding in these circumstances.

## **If the baby is late and your employee planned to take leave from a specific date**

If the baby is late and your employee gave you a specific date they wanted maternity leave to start, they can still start the leave from that date.

They just need to tell you the date they give birth, so that they start their compulsory maternity leave from then.

## **If the baby is late and your employee planned to start leave the day after the birth**

If your employee told you they wanted to start maternity leave the day after the birth, you do not need to change anything.

If they want to start their maternity leave early, they must give you 28 days' notice of the new start date. If they have a good reason not to give this notice (for example, it's late in the pregnancy), you would both need to agree this date.

## **If there's a miscarriage, stillbirth or the baby dies soon after birth**

The employee still has their maternity leave and pay rights if the baby:

- is stillborn after the 24th week of pregnancy
- dies soon after birth

If the employee is eligible for [parental bereavement leave and pay](#), they have the right to take this after they finish their maternity leave.

You should be as understanding and supportive as possible in these circumstances.

If you need to discuss work-related matters with the employee, you could arrange with someone else (for example, a friend or family member):

- when this communication happens
- how it happens (for example, whether any urgent communication can be emailed to a friend or family member for a limited time)

You could also offer more time off or a phased return to work.

## **The law on discrimination**

It's against the law to treat an employee unfairly because of maternity leave they take, or plan to take.

## Maternity pay

Employees are entitled to [maternity pay](#).

## Shared Parental Leave

The pregnant employee and their partner might be able to use Shared Parental Leave (SPL). SPL allows leave to be used more flexibly between the pregnant employee and their partner.

This means the pregnant employee could end maternity leave early.

The pregnant employee must still take at least 2 weeks' maternity leave after the baby is born.

[Find out more about Shared Parental Leave.](#)

## Holiday leave

Employees build up ('accrue') paid holiday as normal during maternity leave. This includes bank holidays.

Holiday leave and maternity leave cannot be taken at the same time.

It's a good idea to:

- discuss with your employee whether they'll take their holiday leave before or after maternity leave
- keep an up-to-date note or other record of what's agreed

## Redundancy

If you need to make the employee redundant when they're pregnant or on maternity leave, you must:

- check the redundancy is genuine and necessary
- ensure you consult and keeps in touch
- use redundancy selection criteria that do not discriminate
- consider alternative work

The pregnancy or maternity must not be part of the reason to make them redundant – you might be breaking discrimination law if it is.

Find out more about:

- [managing redundancy for pregnant employees or employees on maternity leave](#) (PDF, 299KB, 13 pages)
- [managing redundancies](#)



## Dismissing them

If your employee is dismissed while pregnant (for example, as a result of [disciplinary action](#)), you must give them the reasons in writing.

Pregnancy or maternity is never a valid reason to dismiss someone. You could be breaking discrimination law if you do this.

Find out more about:

- [pregnancy and maternity discrimination](#) (PDF, 511KB, 25 pages)
- [dismissals](#)

## Agency workers

There are [different pregnancy and maternity rights for agency workers](#).

Maternity pay starts as soon as your employee starts maternity leave.

## 5. Pay set out in the employment contract

The employee's contract should state:

- how much pay they get when on maternity leave
- how long they get this pay for

Pay set out in the employment contract is known as 'enhanced' or 'contractual' maternity pay, if it's above the legal minimum for maternity pay.

Offering enhanced maternity pay can help your business attract and keep the best employees.

## The legal minimum for maternity pay

If your business does not offer enhanced maternity pay, it must pay the following.

### **During the first 6 weeks of maternity leave**

Pay them 90% of their average weekly earnings (before tax).

### **During the next 33 weeks of maternity leave**

Pay whichever of these is lower:

- 90% of their average weekly earnings (before tax)

- Statutory Maternity Pay (SMP) – currently £151.20 a week

Unless the contract says otherwise, you do not have to provide maternity pay after this period has ended.

## Eligibility

An employee is eligible for SMP if both of the following apply:

- they've worked continuously for your business for at least 26 weeks, ending with the 15th week before the week the baby is due
- their average weekly earnings are at least £120 a week, up to the end of the 15th week before the baby is due

A worker might also be eligible for SMP.

If an employer offers enhanced maternity pay, it must always be higher than SMP.

## Calculating Statutory Maternity Pay

You can use the [maternity pay calculator on GOV.UK](#).

## If they're not entitled to Statutory Maternity Pay

If the employee is not entitled to SMP, you must give them the 'SMP1' form within 7 days of your decision.

You can find more information about the [SMP1 form on GOV.UK](#).

## Maternity Allowance

A pregnant employee or worker might be eligible for Maternity Allowance, if they cannot get enhanced maternity pay or SMP.

Maternity Allowance is paid by the government. It lasts for up to 39 weeks.

[Find out more about Maternity Allowance on GOV.UK](#).

## Keeping records

You must keep records of SMP payments. You can find out more about:

- [keeping SMP records on GOV.UK](#)
- [help with statutory pay on GOV.UK](#)

## Repayment if they do not return to work after maternity leave

If they do not return to work after maternity leave, the employee might have to repay maternity pay depending on the type of pay and what their contract says.

## They do not return to work and have taken Statutory Maternity Pay

The employee does not need to repay any SMP they've taken.

## **They do not return to work and have taken enhanced maternity pay**

The employee must repay some or all of their enhanced maternity pay if the [written terms of their employment](#) say so.

If this money does need to be repaid:

- the written terms must be clear about the circumstances
- you should remind the employee informally about this repayment (such in any regular meetings you have with them) before they start getting this money

## **Questions about Statutory Maternity Pay**

You can call the [HM Revenue and Customs \(HMRC\) enquiry line](#) if:

- you and someone else disagree about how much SMP they should get, or for how long
- you cannot pay it (for example, because you're insolvent)

## **Agency workers**

[Find out more about maternity pay for agency workers.](#)

## **The law on discrimination**

By law, an employee is protected against discrimination from the start of their pregnancy until they either:

- end maternity leave
- return to work
- leave their job

The employee is protected against discrimination resulting from:

- their pregnancy
- illness related to their pregnancy, including related absence they take or plan to take
- maternity pay they take or plan to take
- the employer not wanting them to return to work because they're breastfeeding

[Find out more about pregnancy and maternity discrimination](#) (PDF, 524KB, 25 pages).

If an employee cannot come to work because of a pregnancy-related illness, they should:

-

report in sick in the usual way

- get their usual [sick pay](#)

Pregnancy-related illness can include:

- morning sickness (nausea and vomiting)
- tiredness
- headache
- backache
- bleeding

If you're not sure whether an illness is pregnancy related, you can ask them to provide a note from the doctor ('fit note').

It's a good idea to:

- take the employee's wellbeing seriously, particularly if there are any [known health and safety risks](#) (you could also be breaking discrimination law if you do not allow them the time off)
- be as flexible as you can about the amount of sick leave they take (pregnancy-related illnesses affect people differently)

## Recording absence

You should record pregnancy-related absence separately from other sickness absence.

You should not count these absences towards any review or trigger points in your absence policy.

Find out more about:

- [sick pay](#)
- [absence policies](#)

## 4 weeks before the baby is due

If the employee is off work because of a pregnancy-related illness within 4 weeks of the due date, maternity leave begins automatically. This is unless you and the employee agree together to delay it (for example, for health and safety reasons).

Once maternity leave starts, you must pay them maternity pay instead of sick pay.

## 6. If they have a difficult pregnancy

It's a good idea to be understanding towards an employee who's having physical or mental health difficulties when pregnant.

For example, consider offering:

- different work start and finish times

- working from home
- extra breaks
- an occupational health assessment, for example to look at whether a chair can be adjusted for someone with back pain

If they need long-term changes to how they work, [flexible working](#) might be a good idea.

## The law on discrimination

It's against the law to treat an employee unfairly because of a pregnancy-related illness.

Pregnant employees are entitled to time off with full pay for pregnancy-related ('antenatal') appointments.

Antenatal appointments include:

- medical appointments related to a pregnancy
- classes for pregnancy-related health, fitness or relaxation
- sessions that support the person's mental health and wellbeing

Paid time off for antenatal appointments includes travel time.

The employee should give you as much notice as possible for time off work.

## 7. How much time is needed

The law does not say how much time can be taken off, only that it must be a 'reasonable' amount.

Usually, a pregnant employee needs:

- up to 10 antenatal appointments if it's their first baby
- around 7 antenatal appointments if they've had a baby before

As every pregnancy is different, it's a good idea to be flexible and understanding if an employee needs more appointments.

After the first appointment, they must provide an appointment card or other evidence of their appointments if you ask for it.

## If they're adopting

By law:

- the main adopter is entitled to paid time off for up to 5 adoption appointments
-

the secondary adopter is entitled to take unpaid time off for up to 2 appointments

Some employment contracts may allow for more, or paid, time off for these appointments.

[Find out more about rights for employees using adoption.](#)

## If they're using surrogacy

Unless the contract says otherwise, an employee can take unpaid time off for 2 antenatal appointments if they're using surrogacy and will become the child's legal parent once it's born.

[Find out more about rights for employees using surrogacy.](#)

## If they're having IVF treatment

There's no legal right for time off work for IVF treatment or related sickness. But you should treat an employee's IVF appointments and any sickness the same as any other medical appointment or sickness. Check the employment contract if you're not sure.

It's a good idea to be open to any requests your employee has for:

- flexible working
- paid time off, unpaid time off or holiday

## Agency workers

There are [different rights for antenatal appointments for agency workers](#).

## The law on discrimination

It's against the law to treat an employee unfairly because of their antenatal appointments.

Before maternity leave starts, you should agree with your employee the best way to keep in touch about important changes or news at work.

This includes arranging how you'll keep in touch. Try and agree a way of keeping in touch that's comfortable for your employee, for example you can ask them if they prefer email to phone calls.

By law you must tell them about:

- promotion or other job opportunities
- redundancies
- any reorganisation that could affect their job

You could also tell them about:

- social events
- colleagues who are leaving or joining
- arrangements for their return to work

It's a good idea to:

- let the employee decide how much contact they want, unless the contact is about things you must tell them about
- remind them they do not have to do any work during maternity leave

## 8. Keeping in touch days

You and the employee could have up to 10 optional keeping in touch days (KIT days) during the maternity leave, if both sides agree.

KIT days help employees stay in contact with their workplace, for example by joining training sessions or team meetings.

Both sides should agree the following before deciding KIT days:

- the work the employee will do on these days
- the pay (this cannot be below the [National Minimum Wage](#))

If an employee works part of a KIT day, it still counts as a full day.

If they work more than 10 KIT days, their maternity leave and pay automatically end.

### **If they're taking Shared Parental Leave**

As well as taking up to 10 KIT days, an employee taking Shared Parental Leave (SPL) might be able to take 20 extra days for keeping in touch.

These extra days are known as 'Shared Parental Leave in touch days' (SPLIT days).

[Find out more about Shared Parental Leave.](#)

## **If they become pregnant on maternity leave**

If the employee becomes pregnant while on maternity leave, they're entitled to another 52 weeks' maternity leave.

By law, the employee cannot start their next maternity leave until the 11th week before their baby is due. So if their first maternity leave ends before that point, they'll need to either:

- return to work until at least the 11th week before the baby is due
- see if they can stay off work by taking another type of leave (such as holiday leave) – it's up to you to decide if they can do this and they must give you the correct notice

## Employing someone else to do the work

You can choose to employ someone else to do the work ('maternity cover') while the employee is on maternity leave.

The maternity cover can be an existing or new employee.

Usually these roles are temporary with a fixed end date.

You must tell the person doing maternity cover what happens when their role ends. For example:

- if they're an existing employee, whether they'll go back to their previous role or to a different one
- if they're a new employee, whether their job will come to an end – if so you must end their contract fairly

Once their maternity leave has ended, the employee's right to return to the same job depends on how much leave they've taken.

## 9. They've taken up to 26 weeks' maternity leave

They have the right to return to the same job.

## They've taken more than 26 weeks' maternity leave

They have the right to return to the same job unless the employer has a genuine reason to offer them an alternative.

This right applies even if someone else is doing that person's job well while they're on maternity leave.

If there's no alternative but to offer them a different job, the job must be suitable, appropriate and on the same terms. For example, it must have the same:

- pay
- benefits
- holiday leave and pay
- location
- seniority

## Returning to work sooner than planned

If an employee wants to return before taking all their maternity leave, they must tell you in writing at least 8 weeks before the date they want to return.



## If they want to change how they work

An employee can make a [flexible working request](#) if they want to make significant changes to how they work (for example, different working hours).

## Holiday leave and pay

Employees build up ('accrue') paid holiday as normal during maternity leave.

This means they could return to work with a lot of holiday to take. So it's a good idea to agree with them how they'll take their holiday before they go on maternity leave.

Whether they'll need to carry over any holiday depends how far through the holiday year they return to work. For example, if they take 6 months' maternity leave and return to work with 6 months left of the holiday year, they might have time to take their holiday.

[Find out more about holiday leave and pay.](#)

## Health and safety

The law says you must do a [health and safety risk assessment](#) for women of child-bearing age, including pregnant women and new mothers.

## Breastfeeding

By law, you must provide somewhere suitable for your employee to rest if they're breastfeeding.

It's a good idea to also provide support so they can breastfeed or express milk at work, such as a private room and a fridge to store the milk.

## Time off for emergencies

Employees have the legal right to reasonable time off to look after a dependant, such as a child or partner. What's 'reasonable' depends on the situation and circumstances involved.

The employee should tell you as soon as possible:

- the reason for the absence
- how much time they'll need

This time off is without pay, unless the employee's contract says otherwise.

## Redundancy

By law, you cannot make an employee redundant for taking maternity leave or requesting flexible working to care for their child.

[Find out more about the employee's rights.](#)

## If they want to leave their job

The employee must follow the usual process for resigning, including giving notice. This process should be written in their employment contract.

It's a good idea to consider any handover that might be needed. You could use [keeping in touch days](#) (KIT days) to do this.

They might need to [repay some or all of their maternity pay](#) if they took 'contractual' maternity pay.

## If they have a complaint

If the employee is unhappy about how their return to work has been managed, they can raise the issue with you.

It's best if they [raise the issue informally](#) first.

They can also [raise a formal complaint](#) ('grievance').