

# Pregnancy and Maternity

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## Introduction

Legislation is in place to protect pregnant women and women who are on maternity leave such as the Equality Act 2010, the Maternity and Paternity Leave Regulations 1999 and the Employment Rights Act 1996. There is also European legislation such as the Equal Treatment Directive and the Pregnant Workers Directive. From 1<sup>st</sup> October 2010 the Equality Act consolidated all of the equality legislation.

## Maternity rights – how much notice?

You must tell your employer that you are pregnant, the due date of birth and confirm when you would like to go on maternity leave no later than the 15<sup>th</sup> week before the week of your baby's due date of birth. Your employer may ask to see your MAT B1 form.

## Does my employer have to do anything once they know I'm pregnant?

Your employer should carry out a risk assessment of your workplace in order to assess whether there are any risks in your working arrangements or in the workplace. If there are risks, then your employer must try to reduce these as much as possible or eliminate them.

In addition, after you have informed your employer of the date that you would like to commence your maternity leave, they must write to you within 28 days confirming when you are expected to return to work, assuming you want to take your full 52 weeks maternity leave.

## Can I take time off work when pregnant for appointments?

You are entitled to paid time off work to attend ante-natal care. You must make sure that you give your employer as much notice as possible of the appointment. If your employer asks for proof of pregnancy then you can provide your MAT B1 form and also evidence of the appointment.

*"You are entitled to 52 weeks' maternity leave. This is made up of Ordinary Maternity Leave and Additional Maternity Leave"*

## What if my employer refuses time off?

Your employer cannot refuse you time off work without good reason. However, you should try to organise appointments at a time that is as convenient as possible to the employer, such as at the beginning or end of the day, or outside of work hours, if possible, otherwise a refusal by your employer may be reasonable.

## What happens if I am ill during my pregnancy and take sick leave?

Your maternity leave will automatically commence if you take sick leave due to a pregnancy related illness within the 4 weeks prior to the due date or when your baby is born if you give birth before you commence maternity leave. If you are ill for reasons unrelated to your pregnancy then you can claim sick leave as usual.

## How long can I take maternity leave for?

You are entitled to 52 weeks' maternity leave. How long you have been in your current job and how many hours you work are irrelevant. The 52 weeks are made up as follows:

### Ordinary Maternity Leave (OML)

This is the first 26 weeks and includes the initial 2 weeks of compulsory maternity leave which commences on the date of birth. Whether you will be paid during this period depends in your contract. You can start OML up to 11 weeks before your baby is due. You are entitled to return to work in the same role at the end of your OML.

### Additional Maternity Leave (AML)

This is the second 26 weeks period during which you are entitled to the same contractual benefits as those received during OML. You can return to work either in the same role or if not reasonably practicable, in another suitable role on terms and conditions which are no less favourable.



*Our expert discrimination lawyers have significant expertise of representing senior executives in maternity and pregnancy disputes.*

## Am I entitled to Statutory Maternity Pay (SMP)?

You are entitled to SMP for up to 39 weeks as long as you have been in continuous employment with the same employer for 26 weeks, up to and including the 15th week before the week of your baby's due date, and you earn more than the Lower Earnings Limit for NI contributions.

## How much is SMP?

It is paid at 90% of your average weekly earnings for the first 6 weeks of your maternity leave. This is the higher rate SMP and is calculated by using your weekly earnings for the 8 weeks immediately prior to the 15th week before the expected week of childbirth. You will then receive the basic rate of SMP for the next 33 weeks. Therefore if you

take your full 12 months maternity leave the last 3 months will be unpaid. You do not have to repay SMP.

## If I do not qualify for SMP am I entitled to anything else?

You may be entitled to Maternity Allowance if you are not entitled to SMP. Go to [www.direct.gov.uk](http://www.direct.gov.uk) for more details.

## Can the baby's father share my maternity leave?

If you qualify for SMP, Statutory Adoption Pay or Maternity Allowance and you return to work before the end of your maternity leave then they are entitled to 26 weeks additional paternity leave. In order to qualify for this they must have been employed by their current employer for 26 weeks at the 15th week before the expected week of childbirth and they must be responsible for looking after the baby. They must also give notice in writing 8 weeks before taking the paternity leave.

## Can my employer contact me when I am on maternity leave?

Your employer can make reasonable contact with you so that they can keep you updated of any changes at work. You can also go into work for up to 10 "keep in touch" days although your employer is not obliged to offer this to you and you are not obliged to take these days.

## My employer wants to make me redundant whilst I am on maternity leave. What are my rights?

It is possible to be made redundant whilst on maternity leave. If this occurs then your employer must offer you a suitable, alternative role, if possible. The terms of employment must not be substantially less favourable than your previous role.

## How much notice should I give to my employer before returning to work?

Your employer should assume that you are going to take 12 months maternity leave and so you are not obliged to give your employer any notice. However, if you want to return to work before the end of the OML period then you must give 28 days' notice. If you want to return before the end of the AML period then you must give your employer at least 8 weeks' notice. If you decide you do not want to return to work at all then you must give your contractual notice.

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*"The terms of employment must not be substantially less favorable than your previous role."*

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## Can I return to work on a part-time basis?

If you have been employed for at least 26 weeks then you can ask for part time work or reduced or flexible hours. Your employer must consider this request although they can decline if there are good business reasons.

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*“When you return to work, any pay increase that would have occurred whilst on maternity leave must be taken into account.”*

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## My employer does not want me to return to work. What can I do?

Unless your role has been made redundant and it is not possible to offer you an alternative role or it is not reasonably practicable to take you back, then the fact that your employer will not allow you to return to work will amount to unfair dismissal. You may also have a claim for pregnancy related detriment.

## What happens to my annual leave and benefits whilst I am on maternity leave?

Your contractual annual leave will continue to accrue right until the end of the AML period. You are entitled to the same terms and conditions of employment, apart from the right to be paid, whilst on maternity leave and so you are entitled to any benefits. In addition, when you return to work any pay increase that would have occurred whilst on maternity leave must be taken into account and any bonus you would have received must be paid at the same time that you would ordinarily have received it.

## How can I make a claim if I think my employer has discriminated against me because I am pregnant or on maternity leave?

Any claim for pregnancy or maternity discrimination must be brought in the Employment Tribunal within 3 months less 1 day of the treatment complained about. If there are a number of acts complained of, then your claim must be brought within 3 months' less 1 day from the end of that conduct. It is therefore important to seek legal advice quickly so that you do not miss any deadlines.

## About us

We are a niche firm of employment and discrimination lawyers. We have practised successfully in the City and at some of the UK's largest employment law firms. We also have expertise of working in-house.

Rahman Lowe offers the same quality service and advice as large City law firms but unlike most of our peers in the City, we act for both companies and senior executives. This enables us to anticipate problems before they arise and to advise on tactics.

We work in partnership with our clients and our priority is to build long term trusted relationships. Our partner led teams are committed to ensuring that our legal advice consistently exceeds our clients' expectations.

Our employment lawyers are experts and they regularly conduct seminars and training on developments in Employment and Discrimination Law for our clients. We also conduct training for LexisNexis, a leading global professional information provider and the Chartered Institute of Personnel and Development (CIPD), Europe's largest network of HR professionals.

## Bespoke employment law advice

Our specialist employment lawyers provide bespoke employment law advice, which is tailor-made to meet your specific requirements. We use our legal knowledge to provide creative solutions and our emphasis is on service and results. We have significant experience of the following:

- Pregnancy and maternity discrimination
- Race, sex, age, religion and belief discrimination
- Whistleblowing
- Unfair dismissal
- Redundancy
- Drafting and negotiating terms and conditions
- Equal pay
- Disciplinary and grievance
- Bonus disputes
- Breach of contract and wrongful dismissal claims
- FSA regulatory matters.



*"Our specialist employment lawyers provide bespoke employment law advice"*



“Jahad provides us with pragmatic employment law advice. He is strategic, commercial and very client friendly. I would have no hesitation recommending him”.

**Marta Grande**  
HR Manager, Vivienne Westwood Ltd

“Jahad is an extremely knowledgeable employment lawyer who provides prudent and pragmatic advice. He exhibits a real can-do attitude. The team at Rahman Lowe provides an excellent service”.

**Peter To, Director**  
City Quays Ltd

## Contact us

Please feel free to telephone us to discuss your own position and concerns.

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