



# Guidance for employers: pregnancy and maternity

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# 1. Main legal frameworks

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The four main legal rights of pregnant employees:

- paid time off for antenatal care
- maternity leave
- maternity pay or maternity allowance
- protection against unfair treatment, discrimination or dismissal.

Employers cannot change a pregnant employee's contract terms and conditions without agreement - if they do, they are in breach of contract.

Employers must give pregnant employees time off for antenatal care and pay their normal rate for this time off. The father or pregnant woman's partner has the right to unpaid time off work to go to 2 antenatal appointments.

The Management of Health and Safety at Work Regulations 1999 (16 to 18) relates to pregnant workers and new mothers. Employers must manage the risks to those of childbearing age, pregnant workers and new mothers. This includes considering the advice of doctors or a midwife about night work and the health of the worker. The employer has specific duties once they have been notified by a worker about pregnancy, birth and breastfeeding.

The Employment Rights Act (section 67) 1996 covers offering alternative work (depending on availability) for those under pregnancy and maternity.

Workplace (Health Safety and Welfare) Regulations Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 covers the need for employers to arrange a suitable place for pregnant and breastfeeding workers to rest.

The Equality Act 2010 makes it unlawful to dismiss or discriminate against a worker because they are pregnant, a new mother or are breastfeeding. Breaches of health and safety law may also be discrimination under the Act, depending on the circumstances. The Act requires no length of service qualification and gives protective rights to a broad range of workers, including contract, agency and apprentice workers.

## 2. Discrimination and victimisation

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It is unlawful to discriminate against an employee or are considering employing because they are pregnant, have an illness related to pregnancy or plan to take maternity leave. This applies to an employee regardless of how long the person has been employed. The law applies to anyone classed as an employee or worker.

Types of behaviour considered discrimination because of pregnancy and maternity:

- dismissal;
- not offering them a job;
- not including a person in training opportunities;
- being refused a promotion;
- changing their pay or employment terms;
- compelling them to work while on maternity leave;
- the employer made the employee redundant while on maternity leave and the employer failed to consult the employee, disadvantaging them in the selection process and did not offer them a suitable alternative position.
- stopping them returning to work because they are breastfeeding.

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

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

If the employer dismisses the employee while they are pregnant or on maternity leave, the employer must give them the reasons in writing.

An employer victimises an employee if they treat the employee badly because they made a complaint about pregnancy and maternity related discrimination or supported someone else making the complaint.

### 3. Notification of pregnancy and maternity

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Once the employee has informed the employer in writing, the employer must complete an individual risk assessment and make any necessary changes and adjustments to support the employee.

A job applicant does not have to tell an employer during the recruitment process that they are pregnant. If they volunteer the information the interviewers and decision makers should not make a choice based on that information. If the applicant is successful, they should notify the employer about their pregnancy at the latest by the 15th week before the expected week of childbirth. If they join after the 15th week, they should tell the employer as soon as reasonably practicable.

### 4. Agency and temporary workers

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Employers have the same duties under health and safety law for agency or temporary workers. For health and safety purposes, they should be treated no differently to other employees and workers. Agency workers may be able to get Statutory Maternity Pay but not Statutory Maternity leave. An agency worker has employee's pregnancy rights after working in the role for 12 weeks. It is discrimination if because of pregnancy and maternity your agency refuses to place you in a job, the agency refuses to keep you on its books or the agency only offers you short jobs and gives longer placements to other workers.

### 5. Risk assessments

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Employers are responsible for providing a safe working environment while effectively managing risks to the health and safety of all workers, including women of a childbearing age. Employers must conduct individual risk assessments for pregnant workers and new mothers.

This applies to workers who:

- are pregnant;
- have given birth in the last 6 months, or
- are currently breastfeeding.

Employers must review existing general risk management and controls for pregnant workers and new mothers. They must discuss conditions or circumstances of individual employees that may affect their work. Employers must discuss any concerns of the employee about how their work could affect their pregnancy. Employers can consult safety representatives or trade unions for further direction. They must also take account of any medical recommendations provided by their doctor or midwife.

Employers must regularly review worker's individual risk assessments and make any necessary adjustments as the pregnancy progresses and/or if there are any significant changes to required job activity or the workplace in general.

It is important to keep a record of all discussions and findings and share these with the employee/worker concerned. Employers should include any information on significant risk (if identified), any mitigating actions and how the employer will keep the employee safe through their pregnancy.

If the employer identifies a risk that could cause harm to your worker or their child, the employer must decide if they can control it and if they cannot control it then they must work through the following:

Adjust the working conditions or hours to avoid the risk.

If that is not possible give them suitable alternative work.

The Employment Rights Act 1996 states that suitable alternative work should be offered, where appropriate, before any suspension from work. This must be suitable and appropriate for the pregnant worker or new mother, and on the same terms and conditions, including pay.

If that is not possible then the employer can suspend the worker on paid leave for as long as necessary to protect their health and safety and that of their child.

If the employer cannot put the necessary control measures in place, they must suspend the worker on full pay in line with the Management of Health and Safety at Work Regulations 1999.

## 6. Employee pregnancy and maternity rights

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Up to 52 weeks' maternity leave if the individual is having a baby and they are legally classed as an employee.

Employees have this right from their first day of starting a job.

By law, the employee must take at least 2 weeks off after their baby is born (4 weeks if the person works in a factory). After this, it is up to the employee how many of the 52 weeks Employees get the same amount of maternity leave and pay even if they have more than one baby, for example twins.

Other rights include:

- Returning to the previous job on the same terms if maternity leave is 26 weeks or less.
- Coming back to the same job or an equivalent one if it is not reasonably practicable to return to the former job for those on maternity leave of more than 26 weeks.
- Up to ten Keep in Touch (KIT) days during maternity leave.

## 7. Maternity leave and pay

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The earliest date maternity leave can start is the beginning of the eleventh week before the baby is expected. The employee must notify the employer with details of their expected date and when they choose to start maternity leave. The employer must respond within 28 days, stating the expected date of return after the maternity leave. Employers should assume all 52 weeks' leave will be taken unless notified otherwise. Employees may be entitled to maternity pay when they take maternity leave. Ensure this is checked with the employer. An employee is entitled to up to 39 weeks' Statutory Maternity Pay (SMP) if they meet certain National Insurance contributions and have 26 weeks' continuous service (assessed at the 15th week before the child is due). Employees who do not qualify for SMP might qualify for Maternity Allowance (MA).

## 8. Absences during pregnancy

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An employer must not include absences because of pregnancy or pregnancy-related illness in 'managing absence triggers' – a trigger is the number of days' absence in an employer's policy when managers would consider disciplinary warnings, and ultimately dismissal, unless attendance at work improves. Neither should absences because of pregnancy or pregnancy-related illness be included in any other kind of absence record. Negative comments or warnings about absences because of pregnancy or pregnancy-related illness are likely to be discriminatory.

## 9. Return to work

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If the employee has worked for the employer continuously for 26 weeks, they have a right to ask to work flexibly. Remember that maternity leave counts as continuous service. Flexible working arrangements could include reduced hours, change in the work pattern, job share, working from home or working the same number of hours over fewer days. The employer must agree to flexible working where it can accommodate the request but can turn it down on business grounds defined in flexible working regulations.

## 10. Shared parental leave

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If the employee has a partner, they could use shared parental leave. The employee would need to end their maternity leave early and the remaining entitlement can be used more flexibly between the employee and their partner. However, the employee must still take a minimum of 2 weeks' maternity leave after the baby is born. It is best to plan shared parental leave early and notify the employer as soon as possible.

## 11. Holiday and maternity leave

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Employees still accrue (build up) their usual holiday entitlement while they are on maternity leave. This includes bank holidays.

Employees cannot take holiday or get holiday pay while on maternity leave. But they can arrange with their employer for them to take it before or after maternity leave.

It might be written in the contract that an employee gets more than statutory holiday entitlement. This can be called 'enhanced' or 'contractual' holiday entitlement.

By law, the employer must allow the employee to take their statutory holiday entitlement during the holiday year.

## 12. Time off for pregnancy appointments

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By law, the employee has the right to reasonable time off with full pay for antenatal (pregnancy-related) appointments and care before they have their baby. Employees have this right from the first day of employment if they are legally classed as an employee and whether they work full time or part time.

The antenatal appointments need to be on the advice of a doctor, nurse or midwife and can include health checks, scans and relaxation classes.

If the person works through an agency, they can get paid time off for antenatal appointments if they have worked in the same placement for at least 12 weeks in a row.

'Reasonable' time off for an antenatal appointment includes the length of the appointment or class and travel to and from it.

An employer can agree to flexible working if the employee has an appointment in the middle of a working day. This should be agreed in advance. The employer cannot compel the employee to change an antenatal appointment to a different time if the employee does not want to. If the employee does not want to or is not ready to tell the employer they are pregnant, the employee can choose to take the antenatal appointment time as they would another medical appointment, for example to go to the doctor or dentist.

If your employer does not know it's a pregnancy-related appointment, they can treat that time off as they would any other medical appointment. This means the employee might not get paid for it or they may have to make up the time later, depending on their contract.

## 13. Night work

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Pregnant workers and new mothers can work nights, provided the work involved presents no risk to the health and safety of them or their child. However, the employer should offer suitable alternative day work, on the same terms and conditions, when individual risk assessment has identified a risk from night work and/or when the doctor or midwife has provided a medical certificate stating they should not work nights.

If it is not possible to provide alternative day work, the employer must suspend the employee from work on paid leave for as long as necessary. This is to protect their health and safety and their child.

## 14. Rest and breastfeeding at work

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Pregnant workers and breastfeeding mothers are entitled to more frequent rest breaks. The employer should agree the timing and frequency with the employee and provide a suitable area where they can rest, lie down if necessary and ensure the space is hygienic and private so the employee can express milk if they choose to (toilets are not suitable for this). Employers should include a fridge to store the milk.

## 15. Eligibility for statutory paternity leave

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The employee must have or expect to have responsibility for the child's upbringing, or care of their partner. They must be one or both of the following:

- the child's father;
- married to, the civil partner or partner of the mother or birth parent
  - this includes same-sex partners.

They must have been continuously employed by the same employer for at least 26 weeks up to any day in the 'qualifying week'.

Eligibility criteria is different for adoption or having a child through surrogacy.

## 16. Paternity leave and pay for adoption

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When a couple adopt a child, one person is the 'main adopter' and one is the 'secondary adopter'. The main adopter can take adoption leave and pay. The secondary adopter can take paternity leave. Employees cannot change or swap which one they're taking once they have informed their employers.



## 17. Taking parental leave

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Parents have the right to unpaid time off work when they need to look after their children.

This is called 'ordinary parental leave' or unpaid parental leave. Parental leave is additional to other types of time off employees are usually entitled to including maternity and adoption leave. Parental leave is usually unpaid, but some employers might offer pay. This should be written in the employment contract.

To be eligible for parental leave the parent must be legally classed as an employee and have worked for the employer for 1 year or more.

Step-parents can also have parental responsibility where it's agreed between all parents.

If someone is separated from the other parent or does not live with their child, they still have the right to parental leave if they have parental responsibility for their child.

Each parent can take up to 18 weeks of parental leave for each child until each child is 18 years old. If an employee takes it, it must be in blocks of weeks and a maximum of 4 weeks a year for each child.

## 18. Taking parental leave for a disabled child

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An employee can take parental leave in blocks of days rather than weeks if they receive a Disability Living Allowance or Personal Independence Payment.

## 19. Workplace policy and best practice

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It is best practice to have a workplace pregnancy and maternity policy and ensure all employees have been notified of it and have access to it. This helps to ensure that the employer and employee are aware of their duties, responsibilities and rights and it can help mitigate any disagreements.

Employers should also include reference to maternity, paternity and adoption rights in their equality, diversity and inclusion (EDI) and work-life balance policies.

Employers should evidence and audit that line managers understand how to implement the policies and monitor take up to ensure both the needs of the organisation and individual employee are met and consistent with the legal frameworks.

## 20. Key terms

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Employee – under the Equality Act 2010 regarding discrimination matters, the term ‘employee’ includes those on a contract of employment, workers and agency workers, apprentices, some self-employed people and job applicants.

Pregnancy is the condition of being pregnant or expecting a baby.

Protected period is the period when the Equality Act 2010 protects the employee from discrimination when they become pregnant until their right to maternity leave ends and they return to work or if they do not have the right to maternity leave, 2 weeks after the child is born.

Maternity refers to the period after the birth and is linked to maternity leave in the employment context.

Statutory Maternity Leave (SML): 52 weeks of leave an employee may take. There is no qualifying period for the leave but there is a qualifying period for some of the statutory maternity pay.

Shared Parental Leave (SPL): the shared leave available to either or both parents.

## Further reading

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ACAS (2023) Maternity, paternity and adoption leave and pay  
(online at [www.acas.org.uk](http://www.acas.org.uk))

GOV.UK (2023) Pregnant employees’ rights  
(online at [www.gov.uk](http://www.gov.uk))

GOV.UK (2023) Your rights as an agency worker  
(online at [www.gov.uk](http://www.gov.uk))

EDHR (2023) Managing pregnancy and maternity in the workplace  
(online at [www.equalityhumanrights.com](http://www.equalityhumanrights.com))

Working Families (2023) Pregnancy and Maternity  
(online at [www.workingfamilies.org.uk](http://www.workingfamilies.org.uk))