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EMPLOYMENTGUIDE

A GUIDE TO **STATUTORY MATERNITY RIGHTS**

Time off for Antenatal Care

All pregnant employees (regardless of length of service) are entitled to paid time off in order to keep antenatal appointments.

Compulsory Maternity Leave

It is compulsory for an employee to take two weeks off work (four weeks if employed in a factory) following the birth of her child.

Statutory Maternity Leave (SML)

A pregnant employee is entitled to 52 weeks' SML, regardless of her length of service. This is made up of 26 weeks' ordinary maternity leave (OML) followed by 26 weeks' additional maternity leave (AML).

Notification

To claim SML, the employee must notify her employer of her pregnancy, the expected week of childbirth and the date that she intends to start maternity leave no later than the end of the 15th week before the expected week of birth. If she cannot do it by then, she must do so as soon as reasonably practicable.

The employee can choose to work up to the date of the birth, but cannot start her leave any earlier than the beginning of the 11th

week before the expected week of birth. The maternity leave period will start automatically if the baby is born early or if the mother suffers a pregnancy-related illness within four weeks of the expected date of birth.

If the employee gives birth before the date notified to her employer, she should give her employer notice of the date of childbirth as soon as possible.

Where an employee suffers a pregnancy-related illness she should notify her employer as soon as possible that she is absent from work because of pregnancy and the date on which her pregnancy-related absence began.

Within 28 days of receipt of the employee's notification that she is pregnant, the employer must notify the employee of her expected return date, taking into account AML.

If an employee intends to take all of her OML and AML, she does not need to give notice of her return to work. If she intends to return to work any earlier, she must give her employer at least eight weeks' notice.

Terms of Employment

The rules on terms of employment during SML changed for employees whose due date was on or after 5 October 2008. The employee is entitled to benefit from all terms of her employment which would have



applied had she been at work (except on pay). This now applies to employees on both OML and AML.

Keeping in Touch Days

An employee may agree with her employer to carry out up to ten days' work for her employer during SML without bringing her maternity leave to an end. However, the employer cannot require her to do so, nor does the employee have the right to work during SML.

Return to Work

Where an employee returns to work during or at the end of OML, she is entitled to return to the same job and on the same terms as if she had not been absent, unless there is a redundancy situation. Where an employee returns to work during or at the end of AML, she is entitled to return to the same job and terms unless there is some reason why this is not reasonably practicable. In this case, she should be offered a similar job on terms

which are no less favourable than her original job.

Statutory Maternity Pay (SMP)

An employee must meet certain qualifying conditions to receive SMP.

- First, she must have worked for her employer for a continuous period of 26 weeks ending with the 15th week before the expected week of birth. This means that she must have already been working for the employer when she fell pregnant.
- Second, her average weekly earnings for the 8 week period up to the 15th week before the expected week of birth must be at least the lower earnings limit for National Insurance.

A qualifying employee is entitled to 39 weeks' SMP. This is made up of:

- 90% of the employee's average weekly earnings for the first six weeks; and

- the remaining 33 weeks paid at the rate set by Government for the current tax year (£123.06 from 5 April 2009) or 90% of the employee's average weekly earnings (whichever is the lower).

To claim SMP, the employee must give her employer 28 days' notice of when she wants to start receiving SMP and should provide medical evidence of the date the baby is due.

An employer can recover 92% of the SMP it has paid from H M Revenue and Customs.

This Guide is intended to be a general guide to statutory maternity rights and is not a substitute for taking advice on specific issues. If you have any specific questions about your own circumstances please contact a member of Martineau's Employment & Pensions Group for definitive advice on:
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