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Continuing to breastfeed when you return to work

This guide covers your options for continuing to breastfeed your baby on return to work, your legal rights and how to negotiate with your employer.

Breastfeeding and expressing on return to work

Why should I carry on breastfeeding?

Going back to work may be the first time you have been separated from your baby for long periods. It can be a difficult time for you and your baby. Continuing to breastfeed is one way to maintain the close relationship you have built up, providing your baby with extra comfort and security. Mothers who feel unhappy about leaving their baby when they return to work often find that continuing to breastfeed helps them to cope better.

There is also good scientific evidence of the benefits of breastfeeding.

Breastmilk protects babies against infections, so babies who are breastfed are significantly less likely to suffer from serious conditions such as gastro-enteritis, respiratory infections, urinary tract infections and ear infections.

Breastfeeding is associated with a reduced risk of later childhood diseases such as eczema, asthma, wheezing and diabetes.

Breastfeeding also protects the mother's health. Mothers who breastfeed are less likely to develop breast cancer, some forms of ovarian cancer, and hip fractures as a result of osteoporosis in old age.

How long should breastfeeding continue?

Because of the health benefits of breastfeeding, health professionals recommend that you should breastfeed *exclusively* for at least the first six months (this means that the baby doesn't need any food or drink other than breastmilk for this period). After that, the scientific evidence is that the longer you can continue breastfeeding (while also introducing your baby to solid food), the greater the ongoing health benefits for you and your baby. In some cases, prolonged breastfeeding may be a necessity, for example, if your baby is allergic to formula or cow's milk. In any event, remember that any length of

breastfeeding will have benefited you and your baby.

How can I continue breastfeeding once I go back to work?

There are various ways in which you can combine breastfeeding with going back to work:

If there is a workplace nursery or other childcare very close to your workplace, you may be able to visit your baby during the working day and breastfeed normally.

If you cannot visit your baby during the working day, you can express breastmilk.

You may decide to partially breastfeed, which means that you breastfeed your baby when you are at home but the baby is given formula milk while you are at work.

How do I go about expressing milk at work?

Just as breastfeeding is a skill to be learnt, so is expressing breastmilk. Most people find that it takes a bit of practice so it is advisable to start before you actually return to work. You can get practical advice from organisations like the National Childbirth Trust and La Leche League, see below.

You will need to talk to your employer about where you can express milk and when. Where you express your breastmilk will depend on where you work. A large employer may have a 'mother and baby room'. In other workplaces you may be able to use a first aid room, spare office or any private room, preferably with a lockable door.

How often you express milk and for how long is very individual. It will depend on how easy you find expressing, how many feeds there are when you are not with your baby and how much milk your baby normally takes. Ideally, you would be allowed to take breaks when you need them but you may have to fit around your existing breaks or lunch hour or fit in with the demands of your job. Remember, just as a baby rarely feeds to an exact schedule it will not matter if you cannot express at exactly the right time or if

you miss the occasional day. See below for negotiating with your employer.

Maternity leave and pay

How much maternity leave and pay am I entitled to?

All employees are entitled to 52 weeks maternity leave. You will qualify for Statutory Maternity Pay (SMP) if you have been in the same job for at least 26 weeks by the end of the 15th week before your baby is due and you earn at least £95 per week (April 2009-April 2010) on average in the calculation period for SMP. SMP is paid for 39 weeks. You get 90% of your average earnings for the first six weeks. You will then get a flat rate of £123.06 per week (from April 2009 to April 2010) for 33 weeks or 90% of your average earnings if you earn less than £123.06. If you do not qualify for SMP you may be able to claim Maternity Allowance (MA) from the Jobcentre Plus. This is paid for 39 weeks at the flat rate of £123.06.

Do I have to pay back my maternity pay if I do not go back to work?

You can get SMP and MA even if you do not plan to go back to work or if your employment ends during the SMP/MA period. You do not have to pay SMP or MA back if you don't return to work. If your employer has given you extra (contractual) maternity pay you only have to repay it if that was agreed in advance or specifically stated in your maternity policy. You only ever have to repay the extra contractual pay, never the SMP/MA part of your maternity pay.

Do I have to tell my employer how much maternity leave I am going to take?

No, your employer should assume that you will be taking all of the maternity leave to which you are entitled. If you decide not to take all of your maternity leave you should give your employer notice that you are returning to work early.

Do I have to give notice of my return from maternity leave?

You do not need to give any notice of return if you are going back to work at the end of maternity leave. You simply go to work on

the day that you are due back which will be the day after the end of the 52 week period.

Do I have to give notice if I want to return to work early?

If you want to return to work before the end of your maternity leave, you must give your employer at least 8 weeks notice of the date you will be returning. If you return to work without giving 8 weeks notice, your employer is entitled to postpone your return for the full notice period but your employer cannot postpone it beyond the end of your maternity leave period.

What should I do if I do not want to go back to work?

You should resign in the normal way, giving the notice required by your contract or the notice period that is normally given in your workplace. If you do not have a written contract or nothing has been said you should give at least a week's notice.

What happens if I need more time off work?

You cannot stay off work after your maternity leave has ended as you will lose your right to return to work if you do not go back at the end of your 52 weeks' leave.

If you need more time off you could:

- ask your employer if you can take annual leave immediately after your maternity leave. All employees are entitled to at least 28 days paid annual leave (from April 2009). This can include paid Bank Holidays. Annual leave should be agreed with your employer in the normal way and you should not be treated less favourably because you have been away on annual leave. Your normal holiday entitlement continues to accrue during maternity leave so you may have some holiday owing to you.
- ask your employer if they will agree to a further period off work. You should ask your employer to confirm this agreement in writing and to confirm that you will have the right to return to the same job.

- take some Parental Leave at the end of your maternity leave. You are entitled to take up to 13 weeks parental leave up until your child's 5th birthday. Parents of disabled children can take up to 18 weeks parental leave up to the child's 18th birthday. Parental leave can normally only be taken in blocks of a week, up to four weeks a year but your employer may be more flexible. You must give at least 21 days notice to take parental leave. Parental leave is usually unpaid unless your employer offers paid leave. You need to have worked for your employer for one year to qualify for parental leave.
- if you cannot return because you are ill you can take sick leave but you must follow your employer's sickness procedures.

What happens if I need time off after I return to work?

In addition to time off listed above, you are also entitled to urgent unpaid leave to care for a dependant in an emergency. The leave can be used if a dependant falls ill, gives birth or is injured or there is a sudden problem with arrangements for care of the dependant (e.g. if your childminder falls ill). You are only entitled to take the time off necessary to deal with the emergency and to make arrangements for the care of the dependant. You should tell your employer why you are absent as soon as possible and when you expect to return to work.

Benefits

Are there any benefits I can claim?

Once your baby is born you can claim Child Benefit. You may also be entitled to Child Tax Credit and/or Working Tax Credit. For more information and an application form, telephone the Tax Credit Helpline on 0845 300 3900.

If you or your partner are receiving income support, income-based Jobseekers Allowance or Child Tax Credit of at least the family element (£10.50 per week), you may be entitled to a Sure Start Maternity Grant of

£500 for each child. Claim on form SF100 (Sure Start), available from local Jobcentre Plus offices, from 11 weeks before the baby is due until three months after the birth.

Your legal rights

In many other European countries breastfeeding mothers have a statutory right to paid breastfeeding breaks or a shorter working day if they have a baby under 12 months. In the UK, breastfeeding mothers have some legal protection under health and safety and sex discrimination laws.

Employers have legal obligations to provide:

- Health and safety protection
- Flexible working hours and protection from indirect sex discrimination
- Rest facilities
- Protection from harassment

Health and safety protection

Is there a health and safety risk at work?

There are very few direct risks from working but scientific evidence shows that the baby's health and the mother's health are put at risk if the mother does not breastfeed until the baby is at least 12 months old. So if your working conditions stop you from breastfeeding successfully, they are putting yours and your baby's health at risk.

Some hazardous substances can enter breastmilk and might pose a risk to your baby. If your work brings you into contact with a dangerous substance, your employer should take appropriate steps to make the job safe. If the job cannot be made safe, you must be transferred to a suitable alternative job or suspended on full pay.

Current Health and Safety Executive guidance includes the following:

- Ionising radiation
- Lead
- Mercury

- Certain biological agents may be transmitted through breastfeeding or through close physical contact between mother and child. Examples of agents where the child might be infected are hepatitis B, HIV (the AIDS virus), herpes, syphilis, chickenpox and typhoid. For most workers, the risk of infection is not higher at work than elsewhere, but in certain occupations exposure to infections is more likely, for example laboratory work, health care, looking after animals or dealing with animal products.
- Substances labelled R64 may cause harm to breastfed babies.

The Health and Safety Executive has many useful booklets on health and safety at work for breastfeeding mothers, see www.hse.gov.uk or telephone their information line on 0845 345 0055.

What action should my employer take?

All employers have a duty to protect the health and safety of their employees. While you are breastfeeding, you and your baby have special health and safety protection under the same regulations that give protection to pregnant employees. To make use of this protection, you must tell your employer in writing that you are breastfeeding. So long as you are breastfeeding, your employer must consider whether your working conditions are a risk to your health or to the health of your baby. This is called a risk assessment.

When there is a risk to yours or your baby's health, your employer must take certain steps to avoid the risk. These include temporarily changing your working conditions or hours of work, if it is reasonable and if it avoids the risk. For example, working shorter shifts, having extra breaks to express milk, giving regular shifts or avoiding night work or overnight stays.

If adjustments to your working hours or conditions would not be enough to enable you to continue breastfeeding, then you should be given a temporary transfer to

alternative work. Examples might be where your job involves extensive travel away from home, or where your GP has advised that your job is so stressful or tiring that your ability to breastfeed will be jeopardised. Any alternative work or additional breaks for breastfeeding or expressing milk should be provided without loss of pay.

THE LAW	IN PRACTICE
1. Is there a risk to your health or safety or that of your baby from your working conditions or hours?	Do your working conditions prevent you from continuing to breastfeed successfully? If so, your health and your baby's health are being put at risk.
2. If yes, your employer must do all that is reasonable to remove the risk, including temporarily changing your working conditions or hours of work.	Your employer should make reasonable adjustments to your job, e.g. breastfeeding/ expressing breaks, a shorter working day, regular shifts.
3. If the risk cannot be avoided, your employer must offer you suitable alternative work, on terms and conditions which are not substantially less favourable than your original job.	If your work is intrinsically incompatible with breastfeeding, for example because of extensive travel or unusual stress, you should be transferred to a different job.
4. If there is no suitable alternative work available, your employer must suspend you on full pay.	This is unlikely ever to be necessary! But in theory, this is the bottom line.

These duties are set out in the Management of Health and Safety at Work Regulations 1999 and the Employment Rights Act 1996.

Flexible working hours and protection from indirect sex discrimination

Can I ask to reduce my working hours on return to work?

The law gives all employees with a child under 17 the right to ask for flexible work. You must have been employed for at least 26 weeks. You need to make an application to your employer. Information and application forms can be found on the government website www.berr.gov.uk. You will need to think carefully about what type of flexible work you want and how it would fit in with your job. Any change to your working pattern, e.g. moving to part-time work, will normally be permanent, unless you and your employer specifically agree to a temporary change. Your employer must seriously consider your request and can only refuse for certain business-related reasons e.g. where it would have a detrimental effect on customers or on performance.

If your employer refuses your request you should seek legal advice, see Working Families and Equality and Human Rights Commission. You can appeal to your employer and you may be able to resolve it through mediation, see ACAS. You have legal protection against indirect sex discrimination. Indirect sex discrimination occurs when you have an apparently gender-neutral requirement, which in fact disadvantages more women than men (or more men than women) and which cannot be justified on business grounds. For example, an employer might require all posts to be full time or all employees to work a particular shift rotation. If a breastfeeding employee asked for a temporary alteration in her hours in order to continue breastfeeding (e.g. working

part time or avoiding night shifts), and she would be disadvantaged if this was refused (because she would be unable to breastfeed), her employer should grant her request unless there are good business reasons for refusing.

Case study

A woman was specifically advised by her GP to breastfeed for at least 12 months because there was a strong history of eczema in her family. She returned to work when her baby was six months old and asked to work part time for six months in order to continue breastfeeding around her working hours. The employer refused, but she won her case for indirect sex discrimination at an employment tribunal. *Squillaci v WS Atkins (Services) Ltd.*

Rest facilities

Employers are obliged under the Workplace (Health, Safety and Welfare) Regulations 1992 to provide "suitable facilities" for a breastfeeding employee to "rest". The Approved Code of Practice states that these facilities should be conveniently situated in relation to sanitary facilities and, where necessary, include the facility to lie down. These "rest facilities" are very likely to also be a suitable place for breastfeeding or expressing. Although private, the ladies toilet is never a suitable place in which to breastfeed a baby or collect milk.

The Health and Safety Executive and guidance from the European Commission recommend that employers should provide:

- access to a private room where women can breastfeed or express breast milk;
- use of secure, clean refrigerators for storing expressed breast milk while at work, and
- facilities for washing, sterilising and storing receptacles.

Protection from harassment

You are protected against sexual harassment which could include detrimental treatment or offensive teasing on the grounds of breastfeeding.

Negotiating with your employer

Think about what you want before you go back to work and speak to your manager or the relevant person at your workplace. Remember, they may never have heard of expressing milk so you may have to come up with practical suggestions about what you need. Ask for a risk assessment and, if necessary, get information for your employer about your health and safety rights from the HSE.

If your employer refuses, tell them about the health reasons for breastfeeding and ask your trade union or occupational health nurse for support. You can use your employer's grievance procedure if you wish to complain. If your employer refuses to give breastfeeding breaks, see if you can use your lunch or other breaks or take them at a slightly different time.

If your employer refuses a request to change your hours to enable you to continue breastfeeding, seek advice about indirect sex discrimination.

Where to go for more help

ACAS

08457 47 47 47 for advice on employment law.

www.acas.org.uk

Department for Business, Enterprise and Regulatory Reform

Employment law information and forms:

www.berr.gov.uk

Interactive maternity rights website:

www.direct.gov.uk

Equality and Human Rights Commission

Advice on discrimination and human rights law www.equalityhumanrights.org.uk

0845 604 6610 – England

0845 604 8810 – Wales

0845 604 5510 – Scotland

Health and Safety Executive

Information Line: 0845 345 0055

www.hse.gov.uk

La Leche League

0845 120 2918

www.laleche.org.uk

National Childbirth Trust

Breastfeeding Line 0300 3300 771

www.nct.org.uk

The Breastfeeding Network

National Breastfeeding Helpline 0844 20

909 20,

Breastfeeding Network 0844 412 4664

www.breastfeedingnetwork.org.uk

The Scottish Breastfeeding Group

www.healthscotland.com

The UNICEF UK Baby Friendly Initiative

Information for parents, including a free leaflet on breastfeeding and expressing breastmilk:

www.babyfriendly.org.uk

Tax Credits Helpline

0845 300 3900

www.hmrc.gov.uk/taxcredits

Working Families

Advice on maternity rights and benefits.

Helpline 0800 013 0313.

www.workingfamilies.org.uk

This factsheet was produced by Maternity Action in September 2009. It is always important to get up-to-date advice.

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