

Common maternity pay questions

This information sheet outlines how to qualify for:

- **Statutory Maternity Pay**
- **Maternity Allowance**
- **Employment and Support Allowance (formerly Incapacity Benefit), and**
- **Other benefits you may be able to claim during your maternity pay period.**

It answers common questions about maternity pay and explains what you are entitled to and what you can do if there is a dispute about your maternity pay.

Maternity pay

- All employees have the right to 52 weeks maternity leave.
- Agency workers, casuals and other workers are not entitled to maternity leave but may qualify for maternity pay under the normal rules.
- You have the right to a risk assessment to protect your health and safety and that of your baby.
- You have the right to reasonable time off for your antenatal care.
- You are protected against unfair treatment and unfair dismissal because of your pregnancy.
- You are entitled to Statutory Maternity Pay or Maternity Allowance if you are working lawfully in the UK and meet the qualifying conditions. SMP and MA are not classed as public funds.

For more information on rights during pregnancy and maternity leave, see [Pregnant at work 2011](#).

How to qualify for Statutory Maternity Pay (SMP)

Who can get SMP?

You can get SMP if you are an employee or worker, such as a casual or agency worker and your employer pays you through PAYE and deducts any tax or National Insurance and you meet the qualifying conditions below.

You can get SMP if:

- you have worked for the same employer for at least 26 weeks by the end of the 15th week before your expected week of childbirth. The 15th week before the expected week of childbirth is approximately the 26th week of pregnancy which means that you need to have started the job before you got pregnant to get SMP.
- you are still in your job in the 15th week before your expected week of childbirth. You are counted as being in work that week even if you only work for one day or part of a day that week or you are off sick or on holiday.

- you actually receive at least £102 (before tax) per week (April 2011 – April 2012) in earnings, *on average* in the eight weeks (if you are paid weekly) or two months (if you are paid monthly) up to the last pay day before the end of the 15th week before your baby is due.

How to work out the 15th week before the expected week of childbirth

Find the Sunday before the day your baby is due or the due day if that is a Sunday. Count back 15 Sundays from there. This Sunday is the start of the 15th week before the week your baby is due – it is known as the Qualifying Week.

What is Statutory Maternity Pay?

SMP is paid for 39 weeks. SMP is paid at two rates: for the first six weeks you get 90% of your average pay. The average is calculated from the pay you actually received in the eight weeks or two months up to the last pay day before the end of the qualifying week. After that you get a flat rate of £128.73 per week (April 2011 – April 2012) for 33 weeks or 90% of your average earnings if that is less.

Your employer pays your SMP in the same way as your salary is paid. They deduct any tax and National Insurance contributions. Your employer can claim most or all of your SMP back from HM Revenue and Customs (HMRC).

You can get SMP even if you do not plan to go back to work. You do not have to pay SMP back if you do not return to work.

When can I get SMP?

The earliest you can start your SMP is 11 weeks before the expected week of childbirth. You can work right up until the date the baby is born, unless:

- you have a pregnancy-related illness/absence in the last 4 weeks of your pregnancy or
- your baby is born before you have started your maternity leave.

If you are off sick with a pregnancy-related illness in the last four weeks of pregnancy, your SMP will start on the day after your first day

of absence from work. So, if you phone in sick on a Wednesday, your SMP period will start on Thursday. If you give birth before the start of your maternity leave, your SMP period will start on the day following the actual date of birth.

How much notice do I have to give to get SMP?

To get SMP you must give the correct notice to your employer. If you are not sure if you are entitled to SMP, you should ask anyway by giving the correct notice and your employer will work out whether or not you qualify. If you do not qualify for SMP they will give you form SMP1 to explain why and you should claim Maternity Allowance instead.

If your employer is not sure how to work out your SMP or how to claim it back, they can ring the Employers' SMP Helpline on 08457 143 143 for advice.

How to give notice for maternity leave and pay

To get maternity leave you must give your employer the following information in or before the 15th week before your baby is due (if your employer asks you to, you must put it in writing):

1. that you are pregnant
2. the expected week of childbirth
3. the date on which you intend to start your maternity leave

If you want to change the date you start your maternity leave, you must give your employer notice of the new date at least 28 days before the new date or the old date, whichever is the earliest. If there is a good reason why that is not possible, tell your employer as soon as you reasonably can.

To get SMP you must give your employer at least 28 days notice of the date you want to start your pay. You can give notice for leave and pay together in the 15th week before your baby is due.

To get SMP you MUST give your employer a copy of your maternity certificate (form MAT B1) stating your expected week of childbirth which your midwife or GP will give you when you are about 20 weeks pregnant.

Once you have given notice, your employer must write to you within 28 days and state the date you are expected to return from maternity leave.

If you cannot give notice by the 15th week before you are due (for example because you have to go into hospital unexpectedly), you must give notice as soon as you reasonably can.

Do I still get SMP if my job ends after the 15th week before my baby is due?

Yes, you can still get SMP as long as you are employed in the 15th week before your baby is due and you meet the normal qualifying conditions stated above. It doesn't matter if you are off sick or on holiday in that week. Once you have qualified for SMP, you are entitled to receive it for the full 39 weeks. This is true even if you are made redundant, you leave your job or a fixed term contract comes to an end at any time after the 15th week before your baby is due or during your maternity leave.

Remember, SMP is not repayable if you are not going back to work and your employer can claim back all or most of it from HMRC regardless.

My employer gives extra maternity pay. Do I have to repay it if I do not go back 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 part of your maternity pay. SMP is 90% of your wages for 6 weeks and £128.73 per week for 33 weeks and is yours to keep whether you go back to work or not.

How to qualify for Maternity Allowance (MA)

You can get MA if you have changed jobs during pregnancy or you do not earn enough to get SMP or you are unemployed or self-employed during pregnancy.

To get MA:

- you need to have worked for at least 26 of the 66 weeks before the expected week of childbirth, and
- you can find 13 weeks (not necessarily in a row) in which you earned over £30 per week on average. You should choose the weeks in which you earned the most. You can add together earnings from more than one job. You can include employed and self-employed work.

What is MA?

MA is paid by the Jobcentre Plus for 39 weeks. MA is £128.73 per week (April 2011 – April 2012) for 39 weeks or 90% of your average earnings if that is less.

MA is not classed as public funds. You can claim MA if you are working lawfully in the UK and meet the qualifying conditions.

When can I get MA?

The earliest you can be paid MA is 11 weeks before your expected week of childbirth.

How do I claim MA?

The earliest you can claim MA is 15 weeks before your baby is due. You should put in your claim form as early as possible and notify the Jobcentre Plus of the date you intend to stop work. The latest you can apply for MA is three months after the date you stop work as MA can only be backdated for a maximum of three months so you may lose some MA if you apply late.

If you are not sure if you will qualify for MA you should ask your local Jobcentre Plus for form MA1 and make a claim. They will work out whether you can get the benefit. If you are not entitled to MA, they should automatically use the same claim form to check whether you can get Employment and Support Allowance instead (see section below).

If you are employed, you will need to ask your employer for form SMP1 (explaining why you do not qualify for SMP). You should also give your employer notice to start your maternity leave by the 15th week before your baby is

due (see the box above on how to give notice above).

How to qualify for Employment and Support Allowance (ESA) (formerly Incapacity Benefit)

You can get ESA if you do not qualify for SMP or MA but have done some work in the last three years but not recently. You can get ESA if:

- you have paid or been credited with enough National Insurance contributions during the last three tax years that do not overlap the current calendar year.

You do not have to take a Work Capability Assessment. Your maternity certificate (form MATB1) is accepted as evidence of incapacity for work for the period starting 6 weeks before the week the baby is due, to 14 days after the date on which the baby is born.

If you are not sure if you will qualify, you should make a claim and your Jobcentre Plus will work out whether you can get it.

What is ESA?

The rate of ESA varies according to your circumstances. ESA is £67.50 per week for a person over 25 or a single parent over 18 (April 2011 – April 2012). It is paid from six weeks before your baby is due until two weeks after your baby is born. It is also possible to get ESA if you are incapable of working because of illness or disability.

ESA is classed as public funds, therefore, you should check your immigration status before making a claim. For more information, see the Maternity Action information sheets on maternity rights and benefits according to your [immigration status](#).

How do I claim ESA?

To claim ESA, use the claim form MA1 for Maternity Allowance. If you are not entitled to MA, you should ask the Jobcentre Plus to check your National Insurance record to see if you can get ESA.

Common maternity pay questions

What earnings are used in the calculation for SMP?

Your average weekly earnings for SMP will be based on all your earnings that are subject to National Insurance contributions. Therefore, your earnings can include overtime, commission, bonuses or other sums paid during the SMP calculation period on which National Insurance contributions are paid. In some cases you may benefit from an increase in earnings which will increase the amount of SMP you receive or sometimes your SMP can be reduced if your earnings are lower than normal during the SMP calculation period. Unfortunately the rules on calculating SMP are very rigid and your employer will not have any discretion if your earnings are lower than normal in the SMP calculation period.

If you are paid weekly, the SMP calculation period includes your average weekly earnings in the last pay day before the end of the Qualifying Week (see the box on page 1) and the previous seven pay days. If you are paid monthly, the SMP calculation period is usually your average weekly earnings in the last two monthly pay days received before the end of the Qualifying Week.

If you are concerned that your employer has not calculated your average earnings correctly you can ask your employer to check with the HMRC Employer's Helpline 08457 143 143 or you can get a formal decision from your local HMRC Officer.

My employer says I do not qualify for SMP because I was off sick during my pregnancy. What can I do?

If you received Statutory Sick Pay (SSP) during all of the weeks used to calculate your average earnings for SMP you will not have earned enough to qualify for SMP and you should claim Maternity Allowance instead. Your employer should give you form SMP1 explaining why you did not qualify for SMP.

If you received SSP during part of the period used to calculate your average earnings, your

SMP may be reduced. For more information, see [Sickness during pregnancy and maternity leave](#).

If your income is reduced you may be able to claim other benefits, see below.

I receive childcare vouchers under a salary sacrifice scheme, will it affect my SMP?

SMP is based on your average earnings, which are subject to National Insurance, in the eight weeks or two months before the 15th week before your baby is due. Therefore, your SMP will be reduced if you are receiving childcare vouchers which are exempt from National Insurance contributions under a salary sacrifice scheme. You may be entitled to leave a salary sacrifice scheme during pregnancy so that your SMP is not affected, subject to the terms of the salary sacrifice agreement, but you will need to do this well before the SMP calculation period for average earnings and you will need to discuss the consequences of this with your employer. Your employer cannot make you opt out of a salary sacrifice scheme.

Can my employer deduct the value of childcare vouchers from my SMP?

No, you are entitled to your SMP in full. Childcare vouchers are considered to be a non-cash benefit which you continue to be entitled to during your maternity leave even if you are no longer earning any salary that can be sacrificed. Your employer cannot sacrifice your SMP and must continue to provide childcare vouchers as a benefit during ordinary and additional maternity leave.

What deductions can my employer make from my SMP?

SMP is subject tax and National Insurance in the normal way and your employer is entitled to make authorised deductions such as pension contributions and trade union membership. Your employer should continue to make pension contributions based on your normal salary during your paid maternity leave but any pension contributions you pay should be based on your actual rate of maternity pay.

You are also entitled to receive SMP in cash. SMP cannot be replaced by other benefits such as board and lodging or goods and

services. SMP can be offset against contractual remuneration such as contractual maternity pay but it cannot be offset against other benefits that you are entitled to during your maternity leave.

What deductions are made from MA?

Tax and National Insurance are not deducted from MA. MA is not treated as earnings for calculating future entitlement to SMP, should you become pregnant again during or shortly after your present maternity leave.

Can I get SMP/MA if I do any work during my maternity leave?

You can work for up to ten keeping in touch days (KIT days) without bringing your maternity leave to an end or losing your SMP/MA. You should agree with your employer how much you will be paid for KIT days. Your employer can offset any SMP against contractual pay. Once you have worked for ten KIT days, you will lose your SMP for any week in which you do any work, even if you only work for part of the week or for one day. If you work for more than ten KIT days and you are receiving MA, the JobCentre Plus will decide how much MA you will lose.

What if I have more than one employer?

If you have two or more employers, you can claim SMP from each of them providing you satisfy the qualifying conditions for each job. You will need to ask one employer to take a photocopy of your MATB1 maternity certificate so that each employer has a copy. You can start your maternity leave and/or SMP at different times for each job. You can also work for up to ten KIT days for each employer, at different times and keep your SMP from your other employer.

If you only qualify for SMP from one employer, you can continue to work for the employer who does not pay you SMP, providing you were employed by that employer in the 15th week before your baby was due.

Can I start work for a new employer if I am receiving SMP from my old employer?

You can work for a new employer and still receive SMP from your old employer before the birth.

Once your baby has been born you cannot get SMP from your old employer if you start work for a new employer, unless you were employed by the new employer in the 15th week before your baby was due.

If you do work for an employer who is not liable to pay Class 1 National Insurance contributions, such as voluntary work or self-employment, your SMP is not affected.

Can an agency worker get SMP?

Agency workers, casual workers and other workers who are paid through PAYE with tax and National Insurance deducted by their employer are entitled to SMP if you meet the normal qualifying conditions. You will be treated as having 26 weeks continuous employment even if you were unable to work because of sickness, annual leave, pregnancy or there was no work available in any particular week. There are special rules on continuous service for temporary and seasonal workers which may allow you to count weeks when you were not working. If you are refused SMP because of breaks in your employment record your employer should give you form SMP1. You can ask your employer to check your entitlement to SMP with the HMRC Employer's Helpline and if you disagree you can ask your local HMRC Officer for a formal decision. If you cannot get SMP, you may qualify for Maternity Allowance instead.

Agency and other workers are not entitled to maternity leave but you may be able to agree some time off with your agency or employer. If you are not allowed to return to work because of absence due to pregnancy or childbirth you may have a claim for sex discrimination.

Can I still get SMP if I am dismissed or made redundant?

You can still get SMP if you were employed in all or part of the 15th week before your baby is due and you meet the qualifying conditions for SMP. You are entitled to receive SMP for the full 39 weeks regardless of when your job ends. Your employer can pay the SMP in a

lump sum but they may have to pay more National Insurance.

SMP can be offset against contractual redundancy pay or against statutory or contractual notice pay but not against statutory redundancy pay. In some cases, your employer may make a payment in lieu of notice but they can only do this if it is stated in your contract. Your employer cannot offset SMP against a payment in lieu of notice.

If you were dismissed or made redundant before the 15th week before your baby was due, you will not qualify for SMP but you may qualify for Maternity Allowance from the JobCentre Plus. If your employer dismissed you or made you redundant or reduced your salary to avoid having to pay SMP, you may have a claim for automatic unfair dismissal and/or sex discrimination. For more information, see [Pregnancy Discrimination](#). For more information on redundancy, see [Redundancy during pregnancy and maternity leave](#).

I got a pay rise after going on maternity leave. Should I get more SMP?

If you get a pay rise which is effective from anytime between the start of the eight week calculation period for SMP and the end of your ordinary maternity leave (26 weeks), your employer should re-calculate your average earnings and adjust the amount of SMP you get. Your employer can get help with re-calculating your SMP from the HMRC Employer's Helpline.

If you are receiving Maternity Allowance but you would qualify for SMP after receiving a pay rise, you should ask your employer to recalculate your average earnings as you are entitled to benefit from a pay rise. This applies even if you do not intend to return to work.

What can I do if my employer does not pay SMP correctly?

If you think that your employer has made a mistake or you are having difficulties with your employer paying SMP you should write to your employer or make a formal complaint. If you and your employer do not agree, you can ask your local HM Revenue and Customs Officer

to make a formal decision. You must apply within 6 months. If HMRC order your employer to pay your SMP, your employer can be fined for failure to pay it. You can also make a claim in an employment tribunal for unlawful deduction of wages if your employer does not pay all or part of your SMP. You must make a tribunal claim within 3 months.

My employer has told me they do not have enough money to pay my SMP. What can I do?

Your employer can apply to their HMRC Accounts Office for advance funding if they do not have enough money to pay any statutory payments such as SMP.

My employer has gone into liquidation. Can I still get my SMP?

Yes, you can claim your SMP from the HMRC Statutory Payments Disputes Team on 0191 22 55 22 1.

What happens if my baby is born early?

If your baby is born early, your maternity leave and SMP or MA will start on the day after the birth. You should give your employer or the JobCentre Plus your MATB1 maternity certificate and evidence of your baby's date of birth such as a birth certificate, within 21 days of the birth or as soon as reasonably practicable.

Can I still get maternity pay if my baby is stillborn?

You are entitled to maternity leave and SMP or MA if your baby is stillborn after the end of the 24th week of pregnancy. This is calculated as being in or after the 16th week before the week your baby was due.

If your baby is born alive but does not survive, you continue to be entitled to full maternity leave and SMP or MA, regardless of how long your baby lived or when your baby was born.

What can I claim if I am self-employed?

You may be entitled to Maternity Allowance if you meet the normal conditions. You do not need to prove your earnings when claiming MA as the JobCentre Plus will check your NI contributions record.

A self-employed woman is treated as having the following earnings regardless of the amount you actually earn:

- If you pay a class 2 NI contribution, you will be treated as earning £128.73 a week (April 2011-April 2012). You will be entitled to MA of £124.88 per week.
- If you hold a small earnings exception certificate from NI, you will be treated as earning £30 a week (the MA threshold). You will be entitled to MA of £27 per week (90% of your deemed average earnings). You can only receive a higher rate of MA if you can add any employed earnings.

What can I do if I do not receive the correct amount of MA?

You can ask the decision-maker to look at your claim again. If you are still not happy you can ask to appeal.

Other benefits payable during the maternity pay period

Once your baby is born you can claim Child Benefit. From April 2013, Child Benefit will not be payable to families with a higher rate tax payer. You may be able to claim Child Tax Credit and/or Working Tax Credit depending on your family income. 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 more than the family element you may be entitled to a Sure Start Maternity Grant of £500 for your first child (or if there are no other children aged under 16 in your family). Claim on form SF100 (Sure Start), available from Jobcentre Plus offices, from 11 weeks before the baby is due until 3 months after the birth.

Where to go for more help

Maternity Action

Advice on maternity rights and benefits
www.maternityaction.org.uk
Helpline 0845 600 8533

ACAS

For general employment law advice
08457 47 47 47
www.acas.org.uk

Citizen's Advice Bureau

For general help and advice. You can find your nearest CAB in your phone book or www.adviceguide.org.uk

Community Legal Advice

0845 345 4345 for advice on employment law and benefits and how to find an adviser in your area.
www.communitylegaladvice.org.uk for information and how to find a legal adviser.

Department of Business, Innovation and Skills

For information on employment law, see www.bis.gov.uk.
For an interactive guide to maternity rights (TIGER) see the Direct Gov website: www.direct.gov.uk

HM Revenue and Customs Employers' Helpline

08457 143 143 - for queries about SMP.
The Employer's Helpbook for Statutory Maternity Pay E15 2010 is also available at www.hmrc.gov.uk

Redundancy Payments Office Helpline

0845 145 0004. Claims for redundancy pay when employer is insolvent.

Statutory Payments Disputes Team

Room BP 3202, Benton Park View, Longbenton, Newcastle upon Tyne, NE98 1YS. Claims for SMP when employer is insolvent or refuses to pay SMP.

Working Families

www.workingfamilies.org.uk
Rights at work
Helpline 0800 013 0313.

This information sheet was produced in May 2011. It is important to get up-to-date advice.

More Maternity Action information sheets

[Pregnant at work 2011](#) – a brief guide to your rights to maternity leave and pay

[Rights at work for fathers and partners](#) – a brief guide to rights for fathers and partners

[Additional paternity leave and pay](#) – new rights for fathers and partners

[Time off for working parents](#) – rights to paternity leave, adoption leave, parental leave and time off in an emergency

[Child friendly working hours](#) – rights to ask for changes in your working hours to fit with your childcare or other caring responsibilities

[Money for parents and babies](#) – benefits for families

[Common maternity pay questions](#) – how to qualify for Statutory Maternity Pay, Maternity Allowance and Employment and Support Allowance.

[Rights for parents with more than one job](#) – rights for parents working more than one job

[Redundancy during pregnancy and maternity leave](#) – your rights if you are made redundant

[Dealing with pregnancy and maternity-related problems at work](#) – how to deal with problems at work

[Pregnancy discrimination](#) – what is pregnancy discrimination and what you can do about it

[Discrimination during maternity leave](#) – what you can do about discrimination during maternity leave

[Pregnant during maternity leave](#) – your rights if you become pregnant on maternity leave

[Breastfeeding on return to work](#) – your rights if you wish to continue breastfeeding on return to work

[Sickness during pregnancy and maternity leave](#) – rights and benefits during sick leave

[Breastfeeding in public places](#) – your right to breastfeed when you are out and about

[Polish language information](#) - rights at work for mothers, fathers and partners; your right to breastfeed when you are out and about

[Maternity rights for migrants](#) – information for EU nationals and other migrants

[Maternity rights for refugees and asylum seekers](#) – information for refugees, asylum seekers and refused asylum seekers

Available at www.maternityaction.org.uk