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# Pregnancy and maternity rights for Spanish speaking workers

Are you a working mother-to-be of new mother? This information sheet is a guide to your rights and benefits during pregnancy and maternity leave.

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There are a few key things to remember when you read about your rights:

- If you are working lawfully in the UK you are entitled to Statutory Maternity Pay or Maternity Allowance if you meet the qualifying conditions. SMP and MA are not classed as public funds so can be claimed by women who have 'no recourse to public funds' as a condition of their visa. Women with 'no recourse to public funds' as a condition of their visa include women with spouse, dependent, student, work, domestic worker, and fiancée visas.
- EEA and Swiss nationals are eligible to apply for all benefits open to UK citizens however they must meet the residence conditions attached to some benefits. Countries in the EEA are: Austria, Belgium, Bulgaria, Cyprus (Southern), Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Lichtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Republic of Ireland, Romania, Slovakia, Spain and Sweden.
- It does not matter if you work full-time or part-time, the same rights still apply.
- You can qualify for maternity leave and pay if you have more than one job.
- You have the same maternity rights if you are an employee on a fixed-term or temporary contract. If you are not an employee, for example, because you are self employed or doing casual work, you do not have the rights to maternity leave but you may still get maternity pay and have other rights
- If you are 'ordinarily resident' in the UK you are entitled to receive free NHS maternity care. If you are not 'ordinarily resident' in the UK you may be asked to pay but you cannot

be refused maternity care if you are unable to pay. It is very important for your health and your baby's health that that you attend your maternity care appointments even if you are unable to pay.

- Undocumented women may have some maternity rights.

## Ordinary and Additional Maternity Leave

### What is Ordinary Maternity Leave (OML)?

OML is the first 26 weeks of maternity leave. If you return to work after 26 weeks' OML you have the right to return to exactly the same job. You must give your employer the correct notice in order to qualify for maternity leave (see 'How to give notice', below).

### What is Additional Maternity Leave (AML)?

AML lasts for 26 weeks and starts on the day after the end of OML. If you return to work after AML you have the right to return to the same job but, if it is not reasonably practicable, your employer can offer a suitable alternative job on similar terms and conditions.

### 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 52 weeks. If you decide not to take all of your maternity leave you should give 8 week's notice to return to work early (see 'Return to Work', below). If you only wish to take OML you should also give 8 week's notice to return to work at the end of OML.

## Quick checker Summary of rights for employees.

You are usually an employee if the following arrangements exist at your work:

- your employer deducts tax and National Insurance from your pay
- your employer controls the work you do, when and how you do it
- your employer provides all the equipment for your work.

How long have you been in your present job?	Ordinary and Additional Maternity Leave	Statutory Maternity Pay (SMP)	Time off for antenatal care	Health & safety protection	Protection from dismissal or unfair treatment
I was already pregnant when I started my present job	Yes	No, but you may qualify for Maternity Allowance.	Yes	Yes	Yes
I started my job before I got pregnant and, on average, I earn less than £102 per week	Yes	No, but you may qualify for Maternity Allowance.	Yes	Yes	Yes
I started my job before I got pregnant and, on average, I earn more than £102 per week	Yes	Yes (if you qualify). If not, you may qualify for Maternity Allowance.	Yes	Yes	Yes

## Quick checker Summary of rights for agency workers

An agency worker is provided with temporary work by an agency. An agency worker has a contract with the temporary work agency but works under the direction and supervision of the person who is hiring them to do the work.

How long have you been in your present job?	Ordinary and Additional Maternity Leave	Statutory Maternity Pay (SMP)	Time off for antenatal care	Health & safety protection	Protection from dismissal or unfair treatment
I was already pregnant when I started my present job	No	No, but you may qualify for Maternity Allowance.	Yes, if you have completed 12 weeks in a placement.	Yes, if you have completed 12 weeks in a placement.	No. Protection from sex discrimination but not unfair dismissal.
I started my job before I got pregnant and, on average, I earn less than £102 per week	No	No, but you may qualify for Maternity Allowance.	Yes, if you have completed 12 weeks in a placement.	Yes, if you have completed 12 weeks in a placement.	No. Protection from sex discrimination but not unfair dismissal.
I started my job before I got pregnant and, on average, I earn more than £102 per week	No	Yes (if you qualify). If not, you may qualify for Maternity Allowance.	Yes, if you have completed 12 weeks in a placement.	Yes, if you have completed 12 weeks in a placement.	No. Protection from sex discrimination but not unfair dismissal.

If you have not completed 12 weeks in a placement, you are not entitled to time off for antenatal care. You have the right to a health and safety risk assessment but not suitable alternative work or suspension on full pay. The 12 week qualifying period is triggered by working 12 weeks in the same job with the same hirer starting from the 1<sup>st</sup> October 2011. Absence due to pregnancy, maternity or childbirth does not break the qualifying period.

## Quick checker

### Summary of rights for casuals and other workers who are not employees or agency workers.

How long have you been in your present job?	Ordinary and Additional Maternity Leave	Statutory Maternity Pay (SMP)	Time off for antenatal care	Health & safety protection	Protection from dismissal or unfair treatment
I was already pregnant when I started my present job	No	No, but you may qualify for Maternity Allowance.	No	Right to a risk assessment but not suitable alternative work or suspension on full pay.	Protection from sex discrimination but not unfair dismissal.
I started my job before I got pregnant and, on average, I earn less than £102 per week	No	No, but you may qualify for Maternity Allowance.	No	Right to a risk assessment but not suitable alternative work or suspension on full pay.	Protection from sex discrimination but not unfair dismissal.
I started my job before I got pregnant and, on average, I earn more than £102 per week	No	Yes (if you qualify). If not, you may qualify for Maternity Allowance.	No	Right to a risk assessment but not suitable alternative work or suspension on full pay.	Protection from sex discrimination but not unfair dismissal.

#### Who gets it?

You are entitled to maternity leave regardless of how early your baby is born. You are also entitled to maternity leave if your baby dies after the birth or is stillborn after the end of week 24.

All women employees are entitled to OML and AML from day one of their employment. It doesn't matter how many hours you work or how long you have worked for your employer.

You are usually an employee if the following arrangements exist at your work:

- your employer deducts tax and National Insurance from your pay
- your employer controls the work you do, when and how you do it
- your employer provides all the equipment for your work.

If you work for an agency or do casual work, you are probably not an employee, but you can still get maternity pay (see below).

Some agency workers have a contractual right to maternity leave so you should check

your contract. If not, you should agree with your agency/employer how much time you will be taking off to have your baby. You are protected by discrimination law if you are treated less favourably because you have been absent because of pregnancy or childbirth.

#### When can I start maternity leave?

The earliest you can start your ordinary maternity leave is 11 weeks before your expected week of childbirth. This is when you are about 29 weeks pregnant, but you have to use the due date on your MAT B1 certificate which your midwife or GP will give you. Find the Sunday before your baby is due (or the due date if it is a Sunday) and count back 11 Sundays from there. It is up to you to decide when you want to stop work. You can work right up until the date the baby is born, unless:

- You have a pregnancy-related illness/absence in the last four weeks of your pregnancy. In this case your employer can start your maternity leave even if you are off sick for only one day.

However, if you are ill only for a short time your employer may agree to let you start your maternity leave when you had planned, for example, if they have arranged maternity cover.

- Your baby is born before the day you were planning to start your leave. In this case leave will start on the day after the birth and you should tell your employer as soon as you can that you have given birth.

#### I have more than one job. Does this affect my maternity leave?

All pregnant employees are entitled to 52 weeks maternity leave. The normal rules apply about when to take your maternity leave. You can take your entitlement separately for each job so, for example, you can start your maternity leave at different times if you wish. It is entirely up to you to decide when you want to take your maternity leave.

For more information for employees with more than one job see [Rights for parents with more than one job](#).

## How to give notice

### When do I have to tell my employer I'm pregnant?

The latest time you can tell your employer that you are pregnant is the 15th week before your baby is due. There is nothing to say that you have to tell your employer any earlier although it may be to your advantage, for example, special health and safety rights during pregnancy and the right to paid time off for antenatal care apply when your employer knows you are pregnant. The law protects you from being dismissed or discriminated against on the grounds of pregnancy once your employer knows you are pregnant.

### How do I work out the 15th week before my baby is due?

Find the Sunday before your baby is due (or the due date if it is a Sunday) and count back 15 Sundays from there. That is the start of the 15th week before your expected week of childbirth.

You should use the due date on the MAT B1 certificate which your midwife or GP will give you when you are about 20 weeks pregnant.

### What am I entitled to during maternity leave?

You are still entitled to your statutory rights (i.e. rights that apply by law to all employees in this country) throughout your maternity leave. For example, everyone has a legal right to 28 days paid annual leave whether they are on maternity leave or not. Also your employer must not discriminate against you by failing to consider you for opportunities such as promotion or a pay rise.

The following rights continue during OML and AML:

- the notice period in your contract of employment will still apply (if either you or your employer wish to terminate your employment)
- you will be entitled to redundancy pay (after two years' service)
- disciplinary and grievance procedures will apply

### How do I 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 28 days notice of the date you want to start your pay. 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. You can give notice for leave and pay together in the 15th week before your baby is due.

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.

## Maternity Pay

### What is Statutory Maternity Pay (SMP)?

SMP is paid for 39 weeks to women who qualify for it. Your employer pays it to you and then claims most or all of it back from HMRC. You can get it even if you do not plan to go back to work or you are dismissed or made redundant (after the 26th week of pregnancy). You do not have to pay any SMP back if you do not return to work.

Casual, agency and other workers can get SMP if you meet the normal qualifying conditions. You are a 'worker' if your employer pays you through PAYE and deducts any tax and NI but you are not an employee or self-employed.

### Who gets SMP?

You get SMP if:

- you have worked for the same employer for at least 26 weeks by the end of the 15th week before the expected week of childbirth (which is approximately the 26th week of pregnancy). In other words you need to have started the job before you got pregnant, and
- you are still in your job in the 15th week before your baby is due – even if it's only for one day that week - or you are off sick or on holiday, and
- you actually receive at least £102 per week 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.

To get SMP you must give the correct notice to your employer (see 'How to give notice', above). If you are not sure if you are entitled to SMP, ask anyway. Your employer will work out whether or not you qualify for SMP and if you do not qualify they will give you form SMP1 to explain why. You should then check to see if you can get Maternity Allowance (see 'Maternity Allowance', below).

If your employer is not sure how to work out your SMP or how to claim it back, they can ring the HMRC Employers' Helpline on 08457 143 143 for advice. For more information on maternity pay problems, see [Common maternity pay questions](#).

#### How much is SMP?

SMP is paid at two rates: for the first six weeks you get 90% of your average pay. After that you are paid £128.73 per week (April 2011 – April 2012), or 90% of your average earnings if that is lower, for 33 weeks.

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.

Your employer pays your SMP in the same way as your salary is paid. They deduct any tax and National Insurance contributions.

#### When can I get SMP?

As with maternity leave, 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.

Your SMP will usually start on the same day as your maternity leave. If your maternity leave and pay is triggered by one of the reasons above, your SMP will start as follows:

- 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 will start on the day following the actual date of birth.

You can work for the employer who pays your SMP for up to 10 days during leave without losing any SMP ('Keeping in Touch' days). But, if you do more than 10 days work, you cannot get SMP for any week in which you work – even for part of a week.

#### 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 does not 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 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.

#### My employer gives extra maternity pay. Do I have to repay it if I don't go back to work?

If your employer gives 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 average pay for six weeks and £128.73 for 33 weeks. SMP is yours to keep whether you go back or not.

#### Can I claim SMP from more than one employer?

Yes, you can claim SMP from more than one job providing you satisfy the qualifying conditions for each job. You can start your maternity leave and/or SMP at different times for each job.

For more information for employees with more than one job see [Rights for parents with more than one job](#).

#### Can I still get SMP if I go abroad to have my baby or visit relatives?

Yes, once you have qualified for SMP you are entitled to receive it even if you go abroad for a holiday or to visit relatives.

#### I am not a UK citizen. Am I entitled to SMP?

If you have been working lawfully in the UK and meet the qualifying conditions, you will be entitled to receive SMP. This includes EEA and Swiss nationals and women with 'no recourse to public funds' as a condition of their visa. **SMP is not classed as a public fund.**

Undocumented migrants who are working for employers who are unaware of their immigration status may be able to claim SMP. For more information see [Maternity rights and benefits: undocumented migrants](#).

## Maternity Allowance

#### What is Maternity Allowance?

Maternity Allowance (MA) is paid by your local Jobcentre Plus for 39 weeks. You may be able to get MA if you do not qualify for SMP from your employer, for example, because you started a new job when you were already pregnant, your earnings are too low or you are self-employed.

#### Who gets Maternity Allowance?

You can claim MA if:

- you 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. **Both employed and self-employed work counts for Maternity Allowance.**

You may be able to take periods of employment in Spain or other EEA countries into account when calculating the number of weeks in which you have been employed for Maternity Allowance purposes. If you paid sickness insurance in another EEA country you may be able to use it to help get Maternity Allowance but only if, since coming to the UK, you have worked and

earned at least a certain amount a week or, if you are self-employed, you have paid insurance contributions or hold a Small Earnings Exception. You should ask for a record of your sickness insurance on form E104 from the authorities in other EEA countries you have lived.

If in doubt, 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 'Employment Support Allowance', below).

The earliest you can claim MA is 15 weeks before your baby is due and the earliest it can be paid to you is 11 weeks before you are due. You should put in your claim form as early as possible and notify Jobcentre Plus of the date you intend to stop work.

#### **How much is Maternity Allowance?**

Maternity Allowance is paid at £128.73 per week (April 2011-April 2012), or 90% of your average pay if that is lower, for 39 weeks.

#### **Can I get MA if I go abroad to have my baby or to visit relatives?**

You can keep MA if you go to a country in the EEA, apart from Iceland, Norway, Lichtenstein and Switzerland. You should contact your JobCentre Plus well in advance and fill out form BF5.

You can get more information on getting MA if you are going abroad from the:

International Pension Centre Department for Work and Pensions Tyneview Park, Benton, Newcastle-upon-Tyne NE98 1BA Phone: 0191 218 7777

You may be able to keep MA if you go to countries which are not in the EEA. Contact the International Pension Centre for more information.

#### **I am not a UK citizen. Am I entitled to MA?**

If you have been working lawfully in UK and meet the qualifying conditions, you will be entitled to receive MA. This includes EEA and Swiss nationals and women with 'no recourse to public funds' as a condition of

their visa. **MA is not classed as a public fund.**

Undocumented migrants who are working for employers who are unaware of their immigration status may benefit from maternity pay and benefit during their pregnancy. For more information see [Maternity rights and benefits: undocumented migrants](#)

## **Employment and Support Allowance (ESA)**

#### **What is ESA?**

ESA (formerly Incapacity Benefit) is a weekly allowance which can be paid to pregnant women who do not qualify for Statutory Maternity Pay or Maternity Allowance. ESA is classed as public funds. You do not have to complete a Work Capability Assessment as your MAT B1 maternity certificate will be accepted as proof of incapacity for work for six weeks before your baby is due until two weeks after the birth. It is also possible to get ESA if you are incapable of working because of illness or disability.

#### **Who gets ESA?**

You 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 may be able to use social security contributions paid in other EEA countries to qualify for ESA. You should ask the Jobcentre Plus adviser to work out whether you can get the benefit. If in doubt, claim.

To claim ESA, use the claim form for Maternity Allowance (see 'Maternity Allowance', above). If you are not entitled to MA, the Jobcentre Plus should check automatically to see if you can get ESA.

#### **When is ESA paid to pregnant women?**

ESA can be paid from six weeks before your baby is due until two weeks after your baby is born. The rate of ESA varies according to

your circumstances. ESA is currently paid at the rate of £67.50 per week for a single parent over 18 or a single person over 25 (April 2011 – April 2012).

#### **Can I get ESA if I go abroad to have my baby or visit relatives?**

ESA may be paid for up to four weeks if you go abroad temporarily, however, if you go to a country outside the EEA or Switzerland permanently or for more than four weeks you will not get ESA. In all circumstances you must contact your JobCentre Plus well in advance to discuss your claim. If you are going to an EEA country or Switzerland for more than four weeks you should also contact the International Pension Centre, see under Maternity Allowance.

#### **I am not a UK Citizen. Can I claim ESA?**

Women with indefinite leave to remain and EEA nationals are entitled to receive ESA if they meet the qualifying conditions. ESA is classed as public funds. Women who have 'no recourse to public funds' as a condition of their visa are not entitled to ESA. For more information see [Maternity rights and benefits: women with 'no recourse to public funds'](#). Undocumented migrants are not entitled to claim ESA. For more information see [Maternity rights and benefits: Undocumented migrants](#).

## Return to work

### 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 52 weeks' maternity leave. You simply go to work on the day that you are due back.

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 do not give this notice and just turn up at work before the end of your maternity leave, your employer can send you away for up to 8 weeks or until the end of your leave, whichever is earlier.

The law does not allow you to work for two weeks after childbirth and this period is known as Compulsory Maternity Leave. You will not be allowed to return to work during this time.

### What happens when I go back?

If you go back to work after OML, you have the right to return to exactly the same job.

If you go back to work after AML, you also have the right to return to exactly the same job. But, if your employer can show that it is not reasonably practicable for you to return to the same job, for example, because the job no longer exists, you have the right to be offered a suitable alternative job on very similar terms and conditions.

### 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 OML or AML.

If you need more time off you could:

- ask your employer if you can take annual leave immediately after your maternity leave. Note that paid holiday 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. For more information, see [Time off for working parents](#). You must give 21 days notice to take parental leave and it is usually unpaid unless your employer offers paid parental leave. If you cannot return because you are ill you can take sick leave as long as you follow your employer's sickness procedures. For more information, see [Sickness during pregnancy and maternity leave](#).

### 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 contract or nothing has been said you should give a week's notice.

You do NOT have to repay any of the SMP you received.

### What happens if I say I want to return to work and I change my mind?

Many women find it impossible to know before the birth how they will feel afterwards, so it is always a good idea to say you are coming back in order to keep your options open. If you decide later not to return you can resign from your job in the normal way. Your notice period can run at the same time as your maternity leave.

### Can I go back part-time?

You have the right to ask for part-time or flexible hours and your employer has a duty to seriously consider your request. Your employer must have a good business reason for refusing. If you or your partner want to work part-time or to change your hours, see [Child-friendly working hours](#).

### My maternity leave ends soon and I'm pregnant again. What rights will I have?

You will be entitled to maternity leave for your new baby and you may also qualify for SMP or Maternity Allowance. For more information, see [Pregnant during Maternity Leave](#).

## Other rights and benefits

### Paid time off for antenatal care

If you are an employee, you have the right to take reasonable time off for your antenatal appointments, including time needed to travel to your clinic or GP, without loss of pay. You should let your employer know when you need time off. Your employer can ask to see your appointment card and a certificate stating that you are pregnant for all appointments apart from the first one.

Antenatal care can include parentcraft and relaxation classes. You may need a letter to show your employer from your GP or midwife, saying that these classes are part of your antenatal care.

If you are an agency worker who has completed 12 weeks in a placement, you are entitled to paid time off for antenatal care.

### Health and safety rights

If you are pregnant, have recently given birth or are breastfeeding, your employer must make sure that the kind of work you do and your working conditions will not put your health or your baby's health at risk. To get the full benefit of this legal protection you must notify your employer in writing that you are pregnant or have recently given birth or are breastfeeding.

If you are an employee or an agency worker who has completed 12 weeks in a placement, your employer must:

- Carry out a risk assessment at your workplace and do all that is reasonable to remove or reduce the risks found.
- If there are still risks, your employer must alter your working conditions or hours of work to remove the risk.
- If this is not possible or would not avoid the risk, your employer must offer you a suitable alternative job.

- If this is not possible your employer must suspend you on full pay for as long as is necessary to avoid the risks.

If you do night work and your doctor advises that you should stop for health and safety reasons, you have the right to transfer to day work or, if that is not possible, to be suspended on full pay. You must provide a medical certificate.

Different rules apply if you are not an employee or an agency worker who has completed 12 weeks in a placement. Your employer must carry out a risk assessment at your workplace and do all that is reasonable to remove or reduce the risks found. If there are still risks, your employer must alter your working conditions or hours of work to remove the risk. If this is not possible or would not avoid the risk, your employer is *not* required to offer you a suitable alternative job or to suspend you on full pay.

### **Breastfeeding**

There is some legal protection under health and safety and sex discrimination laws for breastfeeding mothers at work. For more information, see [Continuing to breastfeed on return to work](#).

### **Dismissal or unfair treatment**

It is against the law for your employer to treat you unfairly, dismiss you or select you for redundancy for any reason connected with pregnancy, childbirth or maternity leave. If you are dismissed while you are pregnant or during your maternity leave, your employer must state the reason for your dismissal in writing. You can make a claim in an employment tribunal within three months. For more information, see [Dealing with pregnancy and maternity-related problems at work](#).

### **Sickness**

You are protected from unfair dismissal and sex discrimination if you are off sick during pregnancy. Any pregnancy-related sickness absence must be recorded separately and

should not be included in your total sickness absence for disciplinary or redundancy purposes. For more information see [Sickness during pregnancy and maternity leave](#).

### **Redundancy**

If you are made redundant because you are pregnant or taking maternity leave, you may have a claim for unfair dismissal and sex discrimination. If you are made redundant during maternity leave you have the right to be offered any suitable alternative vacancy before it is offered to any other employees. This special protection is provided by Reg. 10 of the Maternity and Parental Leave etc Regulations 1999. You do not have to go for interview or assessment procedures if you are on maternity leave and there is a suitable alternative vacancy. For more information, see [Redundancy during pregnancy and maternity leave](#).

### **Paternity leave**

Fathers and partners (including same sex partners) have the legal right to take two weeks off at the birth if they qualify. For more information, see [Time off for working parents](#).

Fathers or partners of babies due on or after 3 April 2011 have the right to take additional paternity leave, if they qualify, if the mother wishes to return to work early. For more information, see [Additional Paternity Leave](#).

### **Parental leave and time off for dependants**

Parents are entitled to take up to 13 weeks unpaid parental leave per parent per child, up until the child's 5th birthday. Parents are also entitled to unpaid emergency leave to care for a dependant who falls ill, gives birth or is injured. The leave can also be used if there is a sudden problem with arrangements for care of the dependant e.g. if your childminder falls ill. For more information, see [Time off for working parents](#).

### **Other Benefits**

Other benefits available for pregnant women and new mothers include Child Benefit, free NHS prescriptions, free NHS dental care, Income Support, Sure Start Maternity Grant, Social Fund grants and loans, help with housing costs, Child Tax Credit, Working Tax Credit, Healthy Start, and help with fares to hospital. For more information on benefits see [Money for Parents and Babies](#).

Eligibility for benefits is dependent on your immigration status. UK nationals, women with indefinite leave to remain and women with humanitarian protection are eligible for benefits.

EEA nationals are eligible to apply for all benefits open to UK citizens however they must meet the residence conditions attached to some benefits. For more information, see [Maternity rights and benefits: EU, EEA and Swiss nationals](#).

Women with 'no recourse to public funds' as a condition of their visa are not eligible for benefits. There are some exceptions.

Women escaping domestic violence and women who are family members of EEA or Swiss nationals may be eligible for benefits. For more information see [Maternity rights and benefits: women with no recourse to public funds](#)

Women who are undocumented are not entitled to benefits. For more information, see [Maternity rights and benefits: undocumented migrants](#).

## NHS Maternity Care

### Who is entitled to free NHS maternity care?

NHS care during pregnancy and birth is provided free of charge to women who are 'ordinarily resident' in the UK. To be 'ordinarily resident' in the UK you must be **both** living 'lawfully' in the UK and be 'settled' in the UK.

You are 'lawfully' resident in the UK if you have permission from the UK government to be here. For example you have a UK or EEA passport, indefinite leave to remain or a current visa.

You are 'settled' in the UK if you have been living here lawfully for six months or more and plan to stay longer. Under certain circumstances, you may also be considered 'settled' in the UK if you have been here less than six months. For more information, see [Entitlement to free NHS maternity care for women from abroad](#).

### What if you are not 'ordinarily resident' in the UK

If you are not ordinarily resident in the UK you may be asked to pay for the maternity care you receive but you cannot be refused care if you are unable to pay. It is very important for your health and your baby's health that that you attend your maternity care appointments even if you are unable to pay.

For more information, see [Entitlement to free NHS maternity care for women from abroad](#).

## Where to go for more help

### Maternity Action

Maternity rights and benefits for British parents and parents from abroad.  
[www.maternityaction.org.uk](http://www.maternityaction.org.uk)  
Helpline 0845 600 8533 (Spanish spoken)

### TUC 'Basic Rights @ Work'

Information on basic workplace rights, including how your [employment status determines your workplace rights](#), through to [what those rights are](#), on to [video introductions to enforcement agencies](#) who can help to enforce your basic workplace rights.  
[www.tuc.org.uk/workplace/tuc-19833-f0.cfm](http://www.tuc.org.uk/workplace/tuc-19833-f0.cfm)

### Latin American Women's Rights Service

Advice, advocacy, information and counselling provided in Spanish and Portuguese  
[www.lawrs.org.uk](http://www.lawrs.org.uk)

### UK Border Agency

[www.ukba.homeoffice.gov.uk](http://www.ukba.homeoffice.gov.uk)  
EEA Residency Enquiries Bureau - 0845 010 5200 (Mon. to Fri. 9am to 5pm).  
Email:  
[UKBAeuropeanenquiries@ukba.gsi.gov.uk](mailto:UKBAeuropeanenquiries@ukba.gsi.gov.uk)

### Directgov

The government's online information resource  
[www.direct.gov.uk](http://www.direct.gov.uk)

### ACAS

For advice on employment rights or arbitration services  
[www.acas.org.uk](http://www.acas.org.uk) Helpline: 08457 47 47 47 (offers telephone interpreting service)

### Equalities and Human Rights Commission (EHRC)

For information and advice about discrimination law  
[www.equalitieshumanrights.com](http://www.equalitieshumanrights.com)  
Helpline:  
0845 604 6610 - England  
0845 604 8810 - Wales

0845 604 5510 – Scotland  
The EHRC can arrange to contact you in the language of your choice.

### Citizens' Advice

For information about your rights and to find details of local advice bureau  
[www.adviceguide.org.uk](http://www.adviceguide.org.uk)

### Child Poverty Action Group

[www.cpag.org.uk](http://www.cpag.org.uk)  
Advice on benefits and tax credits.  
For advisors only - 020 7833 4627, any weekday from 2-4pm. You can ask your legal adviser or an adviser from a Citizen's Advice Bureau to contact CPAG on your behalf for specialist immigration and benefits advice.

### Community Legal Advice

For legal information and to search for specialist legal advice in your area  
[www.clsdirect.org.uk](http://www.clsdirect.org.uk) Helpline: 0845 345 4 345 (offers translation service)

### Working Families

Advice on maternity rights and benefits  
[www.workingfamilies.org.uk](http://www.workingfamilies.org.uk) Helpline 0800 013 0313

This information sheet was produced in October 2011. Benefit rates apply from April 2011 to April 2012. It is always important to get up-to-date advice.



Produced with support from the Trade Union Congress

### **How a trade union can help you**

Trade unions are organisations of workers who come together to support each other in the workplace. Trade Unions offer protection to workers and have expertise in negotiating with employers and representing the interests of all workers. This includes ensuring that pregnant women and new mothers in the workplace get adequate health and safety risk assessments, get the maternity pay and leave they're entitled to, and are not subjected to discrimination at work as a result of their pregnancy.

Joining a union need not be expensive: many offer reduced rates for low paid or part time workers. Often unions offer rates of only a few pounds per month for the unemployed, women on maternity leave, apprentices, or very low paid workers.

Unions offer a range of other benefits including free training and education and free legal services. Your union will pay the legal costs of representing you at an employment tribunal if you have a serious problem at work and your union agrees that you have a case.

To find the right union for you check the TUC's union finder <http://www.worksmart.org.uk/unionfinder/> or email the TUC at [infoenquiries@tuc.org.uk](mailto:infoenquiries@tuc.org.uk).

## **More Maternity Action information sheets**

- [Pregnant at work 2010](#) – 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](http://www.maternityaction.org.uk)