

Pregnant during maternity leave

This information sheet explains your rights and benefits if you are pregnant again during your maternity leave. It sets out:

- **Rights to maternity leave and pay for the new pregnancy, and**
- **Rights to return to work after two periods of maternity leave.**

Rights to maternity leave and pay

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 £102 per week (April 2011-April 2012) 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 then get a flat rate of £128.73 per week (from April 2011-April 2012) for 33 weeks or 90% of your average earnings if you earn less than £128.73.

If you do not qualify for SMP you may be able to claim Maternity Allowance (MA) from the Jobcentre Plus. MA is paid for 39 weeks at the flat rate of £128.73.

See our information sheet [Pregnant at work 2011](#) for more information on your rights to leave and pay.

Maternity leave

Am I entitled to more maternity leave for my new pregnancy?

Yes, you are entitled to Ordinary and Additional Maternity Leave of 52 weeks for your new pregnancy. It does not matter how many periods of maternity leave you have taken or whether they overlap or not.

When can I take my new maternity leave?

Firstly, work out the date you are due back at work from your current period of maternity leave. You need to think about whether you want to take your full entitlement, if not, you must give at least eight weeks' notice that you wish to return early.

The earliest you can start your second period of maternity leave is the beginning of the 11th week before the week your baby is due. It is up to you to decide when you wish to start your next maternity leave and you should give your employer notice of the date

you wish to start your next maternity leave in the 15th week before your baby is due.

If your first maternity leave ends before the 11th week before your next baby is due or before the date you wish to start your next maternity leave you will have to return to work for the time in between. You may wish to return to work for a while in between your two periods of maternity leave or you may not. You should check your entitlement to maternity pay carefully and your rights on return to work if you take consecutive periods of leave. It is up to you to decide what you wish to do but be sure to follow the correct notice requirements for both periods of maternity leave.

I do not want to have to return to work in between my first and second maternity leave. Can I take any other leave?

If your first maternity leave ends before the earliest date you can start your second maternity leave there may be other types of leave you can take so that you do not have to return to work in between.

- You could take Parental Leave, providing you give your employer at least 21 days notice. You are entitled to take 13 weeks Parental Leave per parent per child. It should usually be taken in blocks of a week, up to four weeks a year, but your employer may allow you to take more. Parental Leave is usually unpaid, unless your employer offers paid leave, so check whether this affects your rights to maternity pay. You should also check below on your rights to return to work following consecutive periods of maternity/Parental Leave. See our information sheet [Time off for working parents](#) for more information on Parental Leave.
- You may have accrued some annual leave. You are entitled to at least 28 days paid leave a year (pro-rata if you work part-time), this may include paid Bank Holidays. Annual Leave continues to accrue during Ordinary and Additional Maternity Leave. You

- should discuss your annual leave with your employer to be sure that you take as much leave as possible in the year in which it accrues. Otherwise you may return to work with a lot of annual leave still to take or you could lose some of your leave if you are not able to carry it all forward to a new leave year.
- If you are not well enough to return to work in between both periods of maternity leave, you are entitled to take sick leave as normal and you should follow your employer's normal sickness reporting procedures. If you receive Statutory Sick Pay (SSP) during sick leave, you should check your maternity pay position carefully as SSP may affect your entitlement to maternity pay.

You should discuss your options with your employer and be sure to give the correct notice for each type of leave. Your employer is entitled to turn down a request for annual leave, for example, if too many employees want to take leave at the same time. Your employer can also postpone a period of Parental Leave where the employer can show that the business would be unduly disrupted but your employer should not refuse annual leave or Parental Leave because of your pregnancy or maternity leave.

Maternity pay

Am I entitled to maternity pay for my next baby?

Even though you will be entitled to maternity leave for your next pregnancy, you may not qualify for Statutory Maternity Pay (SMP) unless your earnings are high enough in the calculation period for SMP. See the box below for how to work out the calculation period for SMP.

If your average earnings during the calculation period are lower than the Lower Earnings Limit of £102 (April 2011-April 2012) you will not qualify for SMP from your employer. If you are receiving SMP (for your first pregnancy) during your calculation period, SMP counts as 'earnings' for calculating your average earnings for your next pregnancy. Therefore, if the calculation

Calculation period for SMP

The calculation period for SMP is the eight weeks (if you are paid weekly) or two months (if you are paid monthly) before the end of the qualifying week. The qualifying week is the 15th week before the week your baby is due. Find the Sunday immediately before the day your baby is due and count back 15 weeks. That is your qualifying week. If your baby is due on a Sunday, count back 15 weeks from your due date. If you are paid weekly, you count the qualifying week and the previous seven weeks. If you are paid monthly, you find the last monthly pay day before the end of the qualifying week and the one before that. See 'Where to go for more help' below, for help with calculating your SMP.

period falls when you are receiving SMP or contractual maternity pay you will qualify for SMP the second time around. 'Earnings' also includes sick pay, holiday pay and any bonuses or commission that form part of your normal wages or salary. 'Earnings' does not include Maternity Allowance. The first 6 weeks of your SMP will be paid at 90% of your average earnings during the calculation period.

If the calculation period falls during all or part of the last 13 weeks of unpaid Additional Maternity Leave or during a period or unpaid Parental Leave or Statutory Sick Pay, your SMP for your second period of maternity leave may be reduced or you may not qualify for SMP at all.

If you do not qualify for SMP, your employer should give you form SMP1 explaining why you do not qualify. You should apply to your local JobCentre Plus for Maternity Allowance instead.

My employer pays contractual maternity pay. Can I get it for my next pregnancy?

If your employer pays contractual maternity pay, you will have to check the terms of your contract or maternity policy to see if you qualify.

Rights to return to work after consecutive periods of leave

Do I have the right to return to my job after a second period of maternity leave?

Your rights on return to work will depend on how much leave you take and whether you take all your leave consecutively (immediately after each other) or with gaps in between. The table below sets out your rights to return after consecutive periods of leave. You will be counted as having returned to work in between periods of leave if you returned to work after your leave came to an end or you gave notice to end it early. You will also be counted as having returned to work if you were on annual leave or sick leave. It does not matter how long you returned to work, even if you return to work for one day it will count as a break in your leave.

Right to return to the same job	Ordinary Maternity Leave (OML) Parental Leave of four weeks or less OML plus Parental Leave of four weeks or less (or Parental Leave of four weeks or less followed by OML)
Right to return to the same job or, where it is not reasonably practicable, to a suitable alternative job	OML plus Additional Maternity Leave (AML) Parental Leave of four weeks or more OML plus Parental Leave of four weeks or more OML/AML followed immediately by a second period of OML or Parental Leave of any length OML/AML followed immediately by OML/AML

You should note that if you take OML and AML for your first pregnancy, immediately followed by a second period of OML, you do not have the right to return to exactly the same job as you normally would following OML. If the second period of OML is immediately after a previous period of AML, your rights on return are the same as when you are returning from AML. If you return to work for a day or more in between the first AML and second OML you will have the right to return to exactly the same job.

If you return to the same job, you are entitled to receive the same terms and conditions that applied immediately before your leave began. If you are offered a suitable alternative job, you are entitled to be offered similar terms and conditions that are not substantially less favourable than your terms and conditions in your previous job. Throughout OML/AML and Parental Leave your seniority, pension and other service-related rights should remain as they would have been if you had not been absent from work.

If you are not allowed to return to the same job or you are not offered a suitable alternative job on similar terms and conditions, you may have a claim for unfair dismissal, detriment and/or sex discrimination.

What should I do if I decide not to return to work?

You should resign in the normal way, giving your employer as much notice as possible and at least the notice required by your contract. You do not have to return to work for your notice period. You are still entitled to receive your SMP or Maternity Allowance for up to 39 weeks, even if your job has ended, and you do not have to repay any SMP/MA if you decide not to go back to work.

Can I reduce my hours if I return to work after a second period of maternity leave?

The law gives all employees with a child under 17 the right to ask for flexible work. You can make a request at any time, providing you have been employed for at least 26 weeks. You can only make one

request a year. You should make your request about three to four months before you wish the change to take place. Information and application forms can be found on the government website www.bis.gov.uk. Any change to your hours of work will normally be permanent, unless you and your employer specifically agree to a temporary change. If you want to reduce your hours for a few months to ease your return to work, you must make sure that this is agreed with your employer from the outset.

You need to think carefully about what type of flexible work you want (e.g. part-time or working from home) and how it would fit in with your job. 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. Your employer should consider how you can do your current job more flexibly. If your employer refuses your request you can appeal and you should seek advice from one of the organisations listed below. See the information sheet [Child friendly working hours](#) for more information.

Are there any benefits I can claim?

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

advice on employment law:
08457 47 47 47 www.acas.org.uk

Community Legal Service

how to find a legal adviser in your area
0845 345 4345
www.communitylegaladvice.org.uk

Citizens Advice Bureaux

See your local phone book or
www.citizensadvice.org.uk or
www.adviceguide.org.uk for benefits and other information

EHRC

Advice on discrimination and human rights law
www.equalityhumanrights.com
0845 604 6610 - England
0845 604 8810 - Wales
0845 604 5510 – Scotland

Gingerbread

information line and leaflets on benefits and maternity rights for one parent families: 0800 0185026 www.oneparentfamily.co.uk

HMRC Tax Credit Helpline

0845 300 3900

HMRC SMP Employer's Helpline

08457 143 143

HMRC E15 Employer's SMP Help Book

www.hmrc.gov.uk

Law Centres Federation

how to find free local legal advice: 020 7428 4400 www.lawcentres.org.uk

Working Families

Information on employment rights and benefits:
0800 013 0313
www.workingfamilies.org.uk

This information sheet was produced by Maternity Action in May 2011. It is always 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