March 2017

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 £113 per week (April 2017-April 2018) 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 £140.98 per week (from April 2017 to April 2018) for 33 weeks or 90% of your average earnings if you earn less than £140.98. 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 £140.98.

**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 back any SMP or MA if you do not 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.

If you have not used up all your maternity leave and you think that you and/or your partner might want to take some shared parental leave, you must give at least 8 weeks’ notice. See Shared parental leave and pay for more information.

**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?**

If you have returned to work early and want to take some more leave, you may be able to take shared parental leave if you and your partner qualify and you give the correct notice. Shared parental leave must be taken within a year of the birth. See Shared parental leave and pay for more information.

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. 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 18 weeks’ Parental Leave per parent up until your child’s 18th birthday (this is different from the new right to shared parental leave). 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. Families in receipt of child benefit will be subject to a high earner child benefit charge if one or more parent earns over £50,000.

Working and non-working families 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 0345 300 3900.

If you or your partner are receiving Income Support, income-based Jobseekers Allowance or Child Tax Credit of more than £100 per week 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) or first multiple birth. 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. Most of these benefits will gradually be replaced with Universal Credit.

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, you may be able to argue that it is 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.

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. All employers must carry out a general workplace risk assessment. If they employ women of childbearing age employers must also carry out a ‘specific’ risk assessment of risks to new and expectant mothers arising from ‘any processes, working conditions, physical, biological and chemical agents’. If the risk assessment reveals a risk, your employer must do all that is reasonable to remove it or prevent your exposure to it. Your employer must give you information on the risks and what action has been taken.

If there are still risks to your health and safety and you want your employer to take action you must tell your employer in writing that you are breastfeeding. Your employer must consider the risks and take reasonable action to temporarily change your working conditions or hours of work, for example, working shorter shifts, giving regular shifts or avoiding night work or overnight stays.

Reasonable action to protect your health and safety while you are breastfeeding could include adequate rest breaks to ensure proper nutrition, access to water and washing facilities. Your employer should ensure that the environment is not too hot or too cold. Employers should also consider levels of fatigue, stress and changes in posture.

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.

Case study

In a recent case involving two Easyjet cabin crew members, it was found to be indirect sex discrimination and a breach of
the health and safety regulations when Easyjet refused to provide shorter, individual rosters while the women were breastfeeding. Both women had letters from their GPs stating that working for longer than eight hours increased the risks of engorgement and mastitis. Easyjet had offered ground work for a period of six months but the tribunal agreed that employers must continue to protect their health and safety and provide suitable alternative work for as long as breastfeeding continues.

McFarlane & Ambacher v easyjet Airline Co Ltd, 2016

<table>
<thead>
<tr>
<th>THE LAW</th>
<th>IN PRACTICE</th>
</tr>
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<tbody>
<tr>
<td>1. Is there a risk to your health or safety or that of your baby from your working conditions or hours?</td>
<td>Do your working conditions prevent you from continuing to breastfeed successfully? If so, your health or your baby’s health may be put at risk.</td>
</tr>
<tr>
<td>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.</td>
<td>Your employer should make reasonable adjustments to your job, e.g. breastfeeding/expressing breaks, a shorter working day, regular shifts.</td>
</tr>
<tr>
<td>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.</td>
<td>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, without loss of pay and conditions.</td>
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4. If there is no suitable alternative work available, your employer must suspend you on full pay.

This is only likely to be necessary where your work brings you into contact with certain chemicals or other risks to breastfeeding and where there are no other alternatives.

These duties are set out in the Management of Health and Safety at Work Regulations 1999 and the Employment Rights Act 1996. For more information, see Health and safety during pregnancy and on return to work.

Am I entitled to breastfeeding breaks?

Unfortunately, the law does not currently allow a simple, straightforward right to breastfeeding breaks. However, your employer must consider any health and safety issues, as stated above.

ACAS guidance gives the following advice to employers when asked to consider additional breaks for breastfeeding:

Employers should consider providing short breaks for breastfeeding or expressing milk, weighing it up against the likely impact it might have on the business. Employers should be careful not to discriminate against breastfeeding employees. If employers are unable to grant additional breaks, they could consider slightly extending normal breaks for the employee such as a mid-morning coffee break or leaving earlier in the day to minimise any disruption to the business.

Flexible working hours and protection from indirect sex discrimination

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

All employees have 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 - https://www.gov.uk/flexible-working. 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. Your employer must consider your request in a reasonable manner and give you a decision within three months.

If your employer refuses your request you can ask to appeal your employer’s decision so that you have an opportunity to clear up any misunderstandings or explore other options. If it is still refused you should seek legal advice, see Where to go for more help.

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. For more information, see Child-friendly working hours.

You must contact ACAS Early Conciliation on 0300 123 11 00 before making a tribunal claim. You must make a tribunal claim within three months less one day. For more
information, see Dealing with problems at work.

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. For more information on your health and safety rights see www.hse.gov.uk/mothers

If you want your employer to take action to protect your health and safety you must notify your employer if writing that you are breastfeeding. If your employer does not take reasonable action, 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

Breastfeeding
Health and Safety Executive
www.hse.gov.uk/mothers
La Leche League
0345 120 2918
www.laleche.org.uk
National Childbirth Trust
NCT helpline 0300 330 0700
NCT breastfeeding support helpline 0300 330 0771
www.nct.org.uk
National Breastfeeding Helpline
0300 100 0212

NHS advice on breastfeeding on return to work:

Breastfeeding Network
0300 100 0210
Breastfeeding support in Bengali/Sylheti
0300 456 2421
www.breastfeedingnetwork.org.uk

The Association of Breastfeeding Mothers
08444 122 949
www.abm.me.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

Your rights

Maternity Action
Advice on maternity and parental rights and benefits for families
www.maternityaction.org.uk
Helpline: 0808 802 0029

ACAS
For advice on employment rights or for Early Conciliation if you are thinking of making a tribunal claim. See www.acas.org.uk
Helpline: 0300 123 11 00 (offers telephone interpreting service)

ACAS guide: Accommodating breastfeeding employees in the workplace, see http://www.acas.org.uk/media/pdf/2/1/Acas-guide-on-accommodating-breastfeeding-in-the-workplace.pdf

Citizens’ Advice
For information about your rights and to find details of local advice bureau
www.citizensadvice.org.uk

Factsheets available in English, Welsh, Bengali, Gujarati, Punjabi, Urdu and Chinese

The CAB is currently developing a national advice phone service. If you live or work in Wales call 08444 77 20 20. For England, call 08444 111 444 or check your local bureau's
contact details as it is not available in all areas yet. www.citizensadvice.org.uk

Civil Legal Advice
If you are eligible for legal aid you can get free legal advice on 0345 345 4 345 (offers translation service). To check your eligibility see www.gov.uk/civil-legal-advice

To search for specialist legal advisers or solicitors in your area see find-legal-advice.justice.gov.uk

Equalities and Human Rights Commission (EHRC)
For information and advice about discrimination law www.equalityhumanrights.com
For information for employees and employers about pregnancy and maternity rights in the workplace see: www.equalityhumanrights.com/about-us/our-work/key-projects/managing-pregnancy-and-maternity-workplace


Lawyers can get specialist help with discrimination claims from the EHRC Lawyers Referral Helpline 0161 829 8407.

Equality Advisory Support Service
Help and advice on discrimination and human rights www.equalityadvisoryservice.com
Helpline: 0808 800 0082
Textphone: 0808 800 0084
Mon.- Fri. 9am – 8pm
Sat. 10am – 7pm

GOV.UK
The government’s online information service www.gov.uk

JobCentre Plus Claim Line
Telephone benefit claims, including Maternity Allowance, 0800 055 6688 Mon.– Fri. 8am – 6pm

HMRC Tax Credit Helpline
For information and claims for Child Tax Credit and Working Tax Credit (including help with registered childcare costs) for working and non-working families.
Helpline: 0345 300 3900

HM Revenue & Customs
For queries about Statutory Maternity Pay, Statutory Adoption Pay, Statutory Shared Parental Pay and Statutory Paternity Pay: Employee’s helpline 0300 200 3500
Employer’s helpline 0300 200 3200

For detailed guidance for employers on SMP, SAP, SPP and Statutory Sick Pay see www.gov.uk/government/collections/statutory-pay

Statutory Payments Dispute Team
Claims for Statutory Maternity, Paternity, Shared Parental and Adoption Pay when employer is insolvent or refuses to pay.
Room BP 3202, Benton Park View, Longbenton, Newcastle upon Tyne, NE98 1YS.
Tel. No. 03000 560 630

Working Families
For information and advice on benefits and rights at work, see www.workingfamilies.org.uk
Helpline 0300 012 0312

Your Employment Settlement Service
For advice and help with settling disputes at work, including 15 minutes free advice, see www.yesslaw.org.uk
Tel. 020 3701 7530/7531

More Maternity Action information sheets
Rights during pregnancy and maternity leave
Pregnant at work
Pregnancy discrimination
Discrimination during maternity leave and on return to work
Resigning during pregnancy and maternity leave
Keeping in touch days
Pregnant during maternity leave (when you are expecting again)
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Shared parental leave and pay
Premature births – rights to maternity leave and pay
Miscarriage, stillbirth and neonatal death – rights to time off and pay for parents

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- Asking to change your working hours
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- Redundancy, dismissal and discrimination
Dealing with problems at work
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Redundancy – additional questions
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Discrimination during maternity leave and on return to work

Health and safety, breastfeeding and sickness
Sickness during pregnancy and maternity leave
Health and safety during pregnancy and on return to work

UNISON – a million voices for change
Sponsored by the UK’s leading public service union, campaigning to create a fairer society. To join or for more information call 0800 171 2190. Or call the Trades Union Congress (TUC) 020 7636 4030 for advice on which is the appropriate union for your workplace www.tuc.org.uk
Postnatal depression and depression during pregnancy – your maternity rights and benefits (Coming Soon)
Breastfeeding on return to work
Breastfeeding in public places
Breastfeeding while out and about – taking action
- Apprentices, agency workers and zero hours contracts
  Apprentices – maternity rights and benefits
  Agency workers – maternity rights and benefits
  More than one job – your maternity rights and benefits
  Zero hours contracts – maternity and parental rights

Fathers and partners, including same sex partners
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Shared parental leave and pay
Shared parental leave for adoptive parents
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Coming from abroad – maternity rights and benefits
Indefinite leave to remain, right of abode and UK citizens – maternity rights and benefits

Charging for NHS maternity care
NHS care for women from abroad (England)
NHS care for women from abroad (Scotland, Wales and Northern Ireland)
Indefinite leave to remain, right of abode and UK citizens – entitlement to NHS maternity care

Polish language guides to maternity and parental rights
Ciaza i uprawnienia macierzynskie dla pracownic z Polski
Pregnancy and maternity rights for Polish workers (in English)
Karmienie piersia w miejscach publicznych
Breastfeeding in public places (in English)
Uprawnienia w pracy dla ojców i partnerów polskich
Rights at work for Polish fathers and partners (in English)

- Spanish language guides to maternity rights and benefits
Derechos por embarazo y maternidad de las mujeres trabajadoras de habla hispana
Pregnancy and maternity rights for Spanish speaking workers (in English)
Información para mujeres de habla hispana sobre ayudas económicas para progenitores y bebés
Money for parents and babies for Spanish speakers (in English)

- Portuguese language guides to maternity rights and benefits
Gravidez e direitos de maternidade para trabalhadoras que falam português
Pregnancy and maternity rights for Portuguese speaking workers (in English)
Auxílio financeiro para pais e bebés que falam português
Money for parents and babies for Portuguese speakers (in English)

Available at www.maternityaction.org.uk