

# Guidance for Employees

## Maternity Leave for Teachers

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**Contact:** School Employee Services email– [wccses@liberata.com](mailto:wccses@liberata.com)  
Revised contact number: 01905 676223

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## **MATERNITY GUIDE**

### **PREFACE**

Looking forward to and looking after a new baby is a busy and exciting time. This booklet explains what maternity leave you are entitled to as a teacher, and what you need to do to notify the school and the Local Authority about when you will be taking leave and if and when you will be returning to work.

The national maternity scheme is outlined in the Conditions of Service for School Teachers in England and Wales (the Burgundy Book).

The area of maternity rights and benefits is a fairly complex one; this booklet aims to guide you through it. However, School Employee Services Team will always be happy to help with any particular questions or queries you might have.

Nothing in this guidance shall be construed as providing less favourable than statutory rights.

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## **1. CONTRACTUAL MATERNITY LEAVE**

### **1.1 Who does this apply to?**

Teachers whose conditions of service entitle them to contractual maternity leave under the Conditions of Service for School Teachers in England and Wales (the Burgundy Book). It shall apply to all pregnant teachers regardless of length of service or number of hours worked per week.

### **1.2 Maternity pay and leave**

All pregnant employees regardless of length of service will be entitled to 26 weeks ordinary maternity leave and 26 weeks additional maternity leave.

Employees will be entitled to 39 weeks Statutory Maternity Leave and a further 13 weeks unpaid additional maternity leave. This makes a total of 52 weeks maternity leave.

#### **(a) Entitlement**

- (i) A teacher with one year or more continuous service by the 11th week before the week baby due will receive:

- 4 weeks full pay
- 2 weeks 9/10ths pay
- 12 weeks half pay plus Statutory Maternity Pay
- 21 weeks Statutory Maternity Pay
- 13 weeks unpaid leave.

The first 6 weeks of absence are offset against payments made by way of Statutory Maternity Pay or Maternity Allowance for employees not eligible for Statutory Maternity Pay.

- (ii) A teacher with 26 weeks but less than one year's continuous service by the 15th week before the week baby due will only receive the statutory maternity entitlement as follows:

- 6 weeks calculated on 90% of your average weekly salary
- 33 weeks at flat rate Statutory Maternity Pay
- 13 weeks unpaid leave.

- (iii) A teacher with less than 26 weeks continuous service by the 15th week before the week baby due will have an entitlement to:

39 weeks maternity leave which is unpaid. However, you may be entitled to either Statutory Maternity Pay or Statutory Maternity Allowance payments during this period and to check your eligibility you should forward your Maternity Certificate (Form MATB1) to School Employee Services Team. If you are not entitled to Statutory Maternity Pay you will be issued with a Form Statutory Maternity Pay 1 in order to claim from your local Benefits Agency a further 13 weeks unpaid leave.

The maternity leave period must include the 2 weeks immediately after childbirth. This is the compulsory maternity leave period.

**(b) Commencement of leave**

The earliest you can commence your maternity leave is 11 weeks before the week baby due.

You can choose to stay on at work and start your maternity leave on any day of the week after that. However, if you are sick for a pregnancy related reason, or are suspended on health and safety grounds, after the beginning of the 4th week before the week baby due then the maternity pay period is automatically triggered.

You cannot remain at work if certified medically unfit to do so (taking into account the provision of the Management of Health and Safety at Work (Amendment) Regulations 1999).

Where the baby is born before maternity leave commences, the date of childbirth will be regarded as the first day of maternity leave.

**(c) Obligation to return to duty**

Your subsequent obligation is to return to your job for at least 13 weeks (including period of school closure) as a qualifying condition to occupational maternity pay after 6 weeks absence.

Where the Governing Body/Headteacher agrees, a full-time teacher may return to work on a part-time basis for a period which equates to 13 weeks of full-time service. Similarly, where the Governing Body/Headteacher agrees, a part-time teacher may return to work on a different part-time basis for a period which equates to 13 weeks part-time service relating to her previous contract.

The 13 week period (or part-time equivalent) starts from the date you return to work (even if this is within a school holiday period).

Please note that if you decide to return to duty during a holiday period it is a requirement under the Maternity Leave Conditions - *Burgundy Book Conditions of Service for School Teachers in England and Wales, Section 5: Maternity Scheme, Paragraph 5.3* - that a certificate/letter declaring that you are 'medically fit to be available to work' is obtained and forwarded to your School Office (copy to School Employee Services required for payroll purposes). Your General Practitioner may make a charge for this 'statement of fitness certificate/letter' which will not be refunded by the school.

*Should you be unable to provide evidence of fitness, please note your salary will be not be reinstated until the first day of term after the holiday period.*

### 1.3 Shared Parental Leave

The Shared Parental Leave Regulations 2014 provide an opportunity for parents to consider a flexible approach to caring for a child during the child's first year by sharing the entitlement to leave.

The amount of leave is calculated using the mother's entitlement to maternity leave. A mother must still take a minimum of two weeks' leave following the birth meaning that the maximum of 50 weeks' leave can be shared. Please refer to the factsheet at the end of this document and/or the separate guidance on Shared Parental Leave for more information.

### 1.4 Who to inform

No later than the 15th week before the week baby due you should notify your Headteacher and School Employee Services Team of:

- (a) the fact that you are pregnant
- (b) the week baby due
- (c) the date on which you wish to start maternity leave.

You **must** confirm your plans in writing (completion of pro-forma).

You **must** also produce a certificate from a registered medical practitioner or certified midwife (Form MATB1).

If you have notified your Headteacher of the date on which you intend your maternity leave period to start you may subsequently vary that date provided that you notify your Headteacher and School Employee Services Team of the variation at least:

- (a) 28 days before the date varied; or
- (b) 28 days before the new date

whichever is the earlier or if that is not reasonably practicable as soon as is reasonably practicable.

Your employer is required to respond to the notification of your leave plans within 28 days setting out the date on which you are expected to return to duty if you take your full entitlement to maternity leave.

Please note that the earliest you can commence your leave is the beginning of the 11th week before the baby is due.

## 2. RETURNING TO DUTY

You have the right to return to the job in which you were employed under your original contract of employment and on terms and conditions not less favourable than those which would have been available if you were not absent.

If you intend to return before the end of the 26 weeks ordinary maternity leave or additional maternity leave, you must notify your Headteacher and School Employee Services Team, in writing, at least 21 days before the day on which you propose to return, of the date of your intended return.

### Polite notice

Please confirm with you Headteacher and SES colleagues of your return to duty at the end of your Additional Maternity leave. The Mercury iTrent payroll system will keep your Maternity Leave open until official notification has been received for the subsequent reinstatement of salary.

You will need to produce a medical certificate if you are unable to attend work at the end of your maternity leave due to sickness and the normal contractual arrangements for sickness absence will apply.

## **3. NON-RETURN TO DUTY AND RESIGNATIONS**

In the event that you are not available, or you are unable, to return to your job for the required period, you will be required to refund the 12 weeks of paid absence on half salary. (**N.B.** Payments made to you by way of Statutory Maternity Pay are not refundable).

If you decide not to return to duty or return to duty and then wish to resign you must give the statutory periods of notice in accordance with the Conditions of Service for School Teachers in England and Wales (the Burgundy Book).

## **4. DEFINITIONS**

### **(a) Job**

Job, for this purpose, means the nature of the work which you are employed to do and the capacity and place in which you are so employed.

### **(b) Week's pay**

For the purpose of this scheme, a week's pay is the amount payable to you under your current contract of employment. If there are significant variations in your salary, your average salary over the 12 weeks preceding the date of absence shall be treated as a week's salary.

### **(c) Childbirth**

Childbirth means the birth of a living child, or the birth of a child whether living or dead after 24 weeks pregnancy.

## **5. STATUTORY MATERNITY PAY**

### **5.1 What is Statutory Maternity Pay?**

Statutory Maternity Pay is the statutory element of maternity pay which is payable. It is paid whether or not you return to work after maternity leave.

Statutory Maternity Pay is only payable for complete weeks.

Statutory Maternity Pay is payable for a maximum of 39 weeks. There are two stages:

- (a) for the first 6 weeks – 90% of your average weekly salary;
- (b) for the next 33 weeks – flat rate payment which is not less than the standard rate of Statutory Sick Pay (SSP).



## **5.2 Qualifying conditions for Statutory Maternity Pay**

To qualify for Statutory Maternity Pay you will need to:

- (a) earn above the lower earnings limit for the payment of National Insurance Contributions;
- (b) provide your Headteacher and School Employee Services Team with written notice at least 28 days before the maternity absence is due to start;
- (c) have provided School Employee Services Team with your Maternity Certificate (Form MATB1).

## **5.3 When can Statutory Maternity Pay start?**

Statutory Maternity Pay cannot be paid before the 11th week before the week baby due. However, if you resign between the 15th and 11th week before the week baby due you may still be entitled to Statutory Maternity Pay.

## **5.4 Working during the 39 week Statutory Maternity Pay period/ 'Keeping in Touch' days**

You can work for up to 10 days during your maternity leave without affecting your Statutory Maternity Pay. Working for part of a day will count as one day. You will, however, lose your Statutory Maternity Pay for any week in which you work in excess of these 10 days.

Work is defined as any work done under the contract of employment and may include training or any activity undertaken for the purpose of keeping in touch with the workplace.

This provision is designed to facilitate you working during your Statutory Maternity Pay period. Your Headteacher cannot insist you carry out any work and you are protected from suffering any detriment or being dismissed for refusing to do so. Equally, you cannot insist on being given any work to do.

Your maternity leave will not be extended due the fact that you have carried out some work during this period.

It will be a matter of agreement between you and your Headteacher as to whether or not you will be paid for any work done during these 10 days.

Where payment is agreed, and the KIT days fall within your contractual maternity leave period (i.e. the first 18 weeks), you will only receive payment for the difference between the contractual days pay and any additional payment for KIT days worked.

You cannot carry out any work during the first 2 weeks following the birth of the child and it is an offence to permit an employee to work during this period (known as the compulsory maternity leave period).

Statutory Maternity Pay ceases if you start work for a new employer during the 39 week period and were not employed by that employer during the 15th week before the week baby due.

### **5.5 What if you are not entitled to Statutory Maternity Pay?**

If you are not entitled to Statutory Maternity Pay or are excluded for any of the reasons stated above, you will be issued with a Form (Statutory Maternity Pay 1) by the payroll team which you should take along with your Maternity Certificate (Form MATB1) to your local Social Security Office, as you may be entitled to a Maternity Allowance.

You are not entitled to Statutory Sick Pay during your 39 weeks Statutory Maternity Pay period.

### **5.6 Premature births**

If your baby is born before or during the 15th week before the week baby due, you must give notice of the actual date of birth within 21 days of the birth.

Statutory Maternity Pay is payable and average earnings will be calculated from 8 weeks prior to the actual date of birth.

### **5.7 Late births**

If your baby is born after the week baby due, Statutory Maternity Pay is not affected.

### **5.8 Stillbirths**

Statutory Maternity Pay and Contractual Maternity Pay are payable for still births which occur after the end of the 15th week before the week baby due. For stillbirths or miscarriage before this, sick pay or special leave are likely to be appropriate.

## **6. TIME OFF FOR ANTE-NATAL CARE**

Before your baby is born you have the right to paid time off for ante-natal care and you must produce evidence of appointments if requested to do so by your Headteacher. The baby's father / your partner also has the right to unpaid time off to accompany you to up to two ante-natal appointments.

## **7. OTHER ABSENCES**

If in the early months or pregnancy you are advised by an approved medical practitioner that you should be absent from school because of the risk of rubella, you shall be granted leave with full pay, provided that you do not unreasonably refuse to serve in another school where there is no such undue risk.

Absence on account of illness which is attributed to the pregnancy, including absence on account of miscarriage, and which occurs outside the period of absence for maternity, shall be treated as ordinary absence on sick leave and shall be subject to the conditions normally governing such leave, provided it is covered by a doctor's statement.

## **8. RELATIONSHIP WITH SICKNESS**

Maternity Leave will not be treated as sick leave and will not, therefore, affect entitlement to sickness leave.

## **9. PENSION CONTRIBUTIONS**

Whilst you are in receipt of salary, or Statutory Maternity Pay, or both, you will be treated as though you are working normally for the purposes of access to occupational pension scheme membership and benefits. The Local Authority will pay the normal contributions towards the pension scheme during the period of maternity leave for which remuneration is received. However, you will only be required to pay contributions on the amount of actual salary, or Statutory Maternity Pay or both that you are receiving.

Any period of unpaid maternity leave will be non-pensionable.

## **10. MANAGEMENT OF HEALTH AND SAFETY AT WORK REGULATIONS 1999**

Management of Health and Safety at Work Regulations 1999 require that particular account should be taken of risks to new and expectant mothers when undertaking risk assessments. Full details regarding this can be found in Section 2.26 (page 2.68) of the Handbook of Safety Information. You should, therefore, notify your Headteacher as soon as practicable in order to reduce the effect of any possible risks to you or your unborn child.

## **11. REASONABLE CONTACT**

The Regulations make it clear that you and your Headteacher are allowed to make reasonable contact during maternity leave to discuss such issues as the return to work. This would not constitute 'work' and would not, therefore, count towards the 10 days. The Regulations specifically provide that such contact will not bring the maternity leave period to an end.

## **12. ACCRUAL OF ANNUAL LEAVE DURING MATERNITY LEAVE**

Whilst teachers do not have a 'contractual' entitlement to annual leave, they do have a 'statutory' entitlement under the Working Time Regulations (WTR) currently 28 days (5.6 weeks), with effect from 1st April 2009.

**This is not an additional entitlement to annual leave on top of the current school closure arrangements.**

A Workforce Agreement has been agreed with the Teacher Unions that the Annual Leave Year will commence on 1st September in line with the start of the academic school year.

Teachers are entitled to take the 28 days statutory annual leave at a time outside of the maternity leave period. This should be taken either before or after the maternity leave period during school closure periods.

As there are 66 days (13.2 weeks) during school closure periods within the annual leave year which the 'statutory' annual leave entitlement can be taken, (see chart below) in most cases teachers will have either had, or will be able to take, their 'statutory' annual leave entitlement in periods of school closure before or after maternity leave.

Where the return from maternity leave is so close to the end of the leave year, i.e. 31st August, a teacher must be allowed to carry over any balances of her leave to the following leave year. The teacher will normally be required to take this during the remaining periods of school closure after the 28 days annual leave for that leave year has been accommodated.

It is not possible for either the teacher or the Authority to decide to carry over the annual leave into the next leave year if there is time to take the leave in the current leave year, i.e. in school closure or in term time.

Under the WTR it will not be possible for a teacher to obtain payment in lieu of untaken annual leave instead of taking leave during the leave year. The only instance when payment in lieu may be necessary is if the teacher does not return to her job following maternity leave.

The accrual of leave is not affected by what stage of maternity leave a teacher is at or whether they are receiving pay.

### **Example of School Closure Periods**

October	5 days (1 week)
December	10 days (2 weeks)
February	5 days (1 week)
March/April	10 days (2 weeks)
May	5 days (1 week)
July	10 days (2 weeks)
August	20 days (4 weeks)
plus May Day Bank Holiday	
<b>Total</b>	<b>66 days (13.2 weeks)</b>