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Myerson **Employment**

Our guide for pregnant people at work

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Welcome

We understand the complexities of modern life and, therefore, everything we do is ultimately about you, and it is important you get to know the team that will be working with you every step of the way. It's a deep source of satisfaction that so many clients choose Myerson as their trusted adviser.

Why Myerson?

Our Employment Solicitors offer clear and confidential advice to businesses facing employment issues. **We are proud to have been recognised as the "Employment Team of the Year" at the prestigious Manchester Legal Awards 2024.**

As a Top 200 UK Law Firm, we are also proud to be ranked as '**Top Tier**' in the prestigious international directory **The Legal 500**, and commended by The Times '**Best Law Firms 2023**'. This means you can be certain that you will be receiving the highest quality legal advice.

Being a full-service law firm means we are well placed to provide wide-ranging, tailored legal advice to meet your individual needs. We work closely with other departments internally including Real Estate, Corporate, Commercial and Private Wealth Lawyers to ensure that your needs are protected comprehensively.

You can find out more about our **Employment Team** by clicking [here](#).



Pregnant people at work

Congratulations, you've just found out you're expecting! So, what do you do now? This guide is designed to talk you through the process of engaging with your work in relation to your pregnancy and the rights you have.

When should I inform work that I'm pregnant?

If you are entitled to paid maternity leave (discussed later) then you must inform your employer that you're pregnant no later than the 15th week before you baby is due. Or, if that is not possible, as soon as you can.

You must tell your employer:

- That you're pregnant
- The date of the week your baby is due (this is confirmed by your doctor and the MAT B1 form)
- The date you intend to start maternity leave
- While the notification doesn't have to be in writing, it's usually a good idea to at least email your HR or manager with this information.

You may choose to inform your employer earlier than 15 weeks before your baby is due, particularly if you are attending antenatal appointments or suffering from morning sickness or tiredness as this can open up a dialogue as to your needs and how work may accommodate these.

Also, don't worry about telling your employer that you're pregnant as it's against the law for them to dismiss you or treat you unfairly because of it.



Does my employer need to acknowledge my pregnancy?

After you've told your employer, they have 28 days to notify you of the date on which your maternity will end (and the date you are expected to return to work). The end of your maternity leave will generally be 52 weeks from the start (unless you choose to take less time).

What is a MAT B1 certificate and should I give this to my employer?

A MAT B1 certificate is a document produced by your doctor or midwife. It is your medical evidence of pregnancy and confirms the date that your baby is due. You should receive this when you reach your 20 week mark or soon after when you have your routine appointment. The MAT B1 cannot be issued before you are 20 weeks pregnant.

You will need to provide a copy of your MAT B1 certificate to your employer as this is needed to arrange your maternity pay and benefits. You should aim to provide the certificate as soon as possible and, generally, by no later than the third week of your maternity leave. If you miss this timeframe and do not have a good reason for doing so then your pay for maternity leave may be affected.



Should my employer undertake a health and safety assessment once I've told them I'm pregnant?

All employers are under a duty to protect the health and safety of their employees. There are special duties that apply in respect of new or expectant persons in the workplace. This includes assessing and monitoring risk and where a risk is apparent, adjusting conditions of work, hours or providing suitable alternative work. Any adjustment made should be temporary and the terms of your contract should not change, for example your pay should remain the same.

Where adjustments cannot be made then the employer might have to place you on paid suspension leave for as long as necessary until the risk is removed or you start maternity leave to protect your health and safety and that of your unborn child.

Am I entitled to time off for antenatal care?

All pregnant employees have a statutory right to reasonable time off with full pay for antenatal care, regardless of hours worked or length of service. Reasonable time off includes the length of the appointment or class, as well as travelling time. It's generally a good idea to talk to your employer about appointment times and estimated length as you may be allowed to work flexibly around these, by working from home before or after your appointment or changing your start and finish time.

If you haven't told your employer that you're pregnant then you may choose to take the time off as you would for any other medical appointment but your employer may not pay you for it or you may have to make your time up later. Your employer cannot make you change the antenatal appointment to a different time if you don't want to.



What happens if I'm sick when I'm pregnant?

If you need to take time off sick due to your pregnancy then it's against the law for your employer to treat you unfairly. If you're sick and it's not related to your pregnancy, however, it will be treated in the same way as any other sickness absence.

If you're off due to pregnancy related sickness in the four weeks before your baby is due then, by law, your maternity leave will start automatically after your first day off.

When does my maternity leave start?

All employees (regardless of length of service) have the right to up to 52 weeks' maternity leave. This amount of leave is not affected even if you have more than one baby.

Maternity leave will start on:

- Your intended start date, if notified to your employer. The earliest date that you can start your maternity leave is 11 weeks before the date your baby is due (unless the baby is born prematurely);
- The day after any day you are off sick for any pregnancy-related absence in the four weeks before your due date; or
- The day after you give birth.

If you have notified your employer of your intended start date then you can change your mind about this as long as you give 28 days' notice of the new date. Your employer must then re-confirm the end date for your maternity leave within 28 days of the start of your leave.



If the start of your maternity is brought forward earlier than intended (by reason of you being off sick or having your baby early) then your employer must inform you of your new maternity end date within 28 days of receiving notification of your absence or the birth.

How long is maternity leave?

While all employees are entitled to a maximum of 52 weeks' statutory maternity leave (split as 26 weeks' ordinary maternity leave and a further 26 weeks' additional maternity leave), you can choose to take less time off. Employees must, however, take a minimum of two weeks' maternity leave and this is extended to a minimum of four weeks for factory workers. This is known as compulsory maternity leave.

If you wish to return to work earlier than anticipated, you must give your employer at least eight weeks' notice of your return. You are, however, prohibited from returning to work during your compulsory maternity leave.

Should my employer pay me during maternity leave?

Workers and employees are entitled to statutory maternity pay (SMP) as long as all the following apply:

- You have been working continuously for 26 weeks for the same employer up to and including the 15th week before your baby is due; and
- Your normal weekly earnings are not less than the Lower Earnings Limit for National Insurance Contributions.
- You have given the correct notice and supplied the MAT B1 certificate (as detailed above).



If you are eligible for SMP then it is paid for 39 weeks at the following rates:

- For the first 6 weeks, you get 90% of your average weekly earnings
- For the following 33 weeks, you get a flat statutory rate as set by the government for the relevant tax year or 90% of your average weekly earnings (whichever is lower).

This means, if you take the full 52 weeks' maternity leave, the last 13 weeks are unpaid. SMP is paid at the same amount even if you have more than one baby. Some employers offer enhanced maternity pay (e.g. more than SMP or pay for a longer period) and you will need to check your contract for details of this.

If you are paid enhanced maternity pay and you either do not return to work after maternity leave or leave shortly after, you might have to repay some or all of the enhanced amount, depending on your employer's policy.

Individuals who do not qualify for SMP (for example, because they have left work before qualifying for SMP, have insufficient earnings or continuity of service, or are self-employed) may qualify for Maternity Allowance, which is a social security benefit paid by Jobcentre Plus.

I have been dismissed, should I still receive SMP?

Generally, yes. If you are dismissed or you resign during the SMP period, your maternity leave will come to an end but your employer must continue to pay SMP for the remainder of the SMP period.

This is because your entitlement to SMP is not conditional upon remaining an employee. The exception to this is if you start working for a new employer after the birth of your baby. In this case, your SMP entitlement will cease from the beginning of the week in which you start new work.

Even if you enter into a settlement agreement with your employer, it is not possible to compromise your right to future SMP within an overall settlement sum for loss of employment.



What happens to my holiday entitlement and other benefits during maternity leave?

You are entitled to the same contractual terms and benefits (other than the right to pay, which is replaced by the right to maternity pay) whilst you are on maternity leave, as you would normally be. This includes any right to a company car, health insurance and accrual of holidays.

You still accrue holiday entitlement during your maternity leave but you cannot take holiday during maternity leave. You are therefore allowed to take your full holiday entitlement outside of your leave period, which may mean that your statutory holiday entitlement may be carried over to the next holiday year.

It's a good idea to discuss your holiday entitlement with your employer before you commence maternity leave as it may be that you can arrange to take your holiday entitlement before or after.

What if I suffer a miscarriage, or still birth or my baby dies?

If your baby is stillborn after the 24th week of pregnancy or your baby only lives for a short time after birth (at any stage of pregnancy) then you are still entitled to maternity leave and pay. You will need to inform your employer as soon as possible but a partner, friend or family member can do this for you if you need them to.

You may also be eligible for parental bereavement leave and pay and you have the right to take this after you finish your maternity leave. If you have a miscarriage or stillbirth before 24 weeks, you are not entitled to maternity leave or pay but your employer may be able to offer other types of support, such as flexible working or time off.



Should I be told about workplace news while I'm on maternity leave?

Your employer has the right to a reasonable amount of contact with you while you are on maternity leave. It's usually best practice to have a meeting with your employer or manager before commencing your leave to discuss how much contact you would like to have, along with how best to be contacted.

You should continue to be included on the distribution list for workplace news bulletins, vacancies, promotion opportunities and reorganisation or redundancy news as well as social events and training courses, unless you request otherwise. There should, however, be no pressure placed on you to take any action or attend any events during your maternity leave.

Can I agree to do work while I'm on maternity leave?

You can agree to carry out up to 10 days' work during your maternity leave, known as "keeping in touch days" ('KIT days'). These are intended to help you stay in touch with your employer and your work. KIT days may be taken at any stage during your maternity leave if this is agreed with your employer, except during the compulsory maternity leave period.

The type of work that you can carry out on a KIT day is a matter for agreement between you and your employer but any day on which work is done during the maternity pay or leave period will count as a whole KIT day. So, if you go into work for a one-hour training session and do no other work, that will still count as one KIT day.



You do not have the right to request to work a KIT day if your employer does not agree and, similarly, an employer cannot require you to work a KIT day during your maternity leave. If you work more than 10 KIT days then your maternity leave and pay will automatically end.

Can I be made redundant while I'm on maternity leave?

It's unlawful for an employer to make you redundant or to end your employment just because you're pregnant or on maternity leave. That doesn't mean, however, that you cannot be made redundant while you are pregnant or on maternity leave.

If a redundancy situation arises while you're on maternity leave and it's not possible for the employer to continue your role, you are entitled to be offered a suitable alternative position (where one is available). This alternative position can be with an associated employer e.g. another company.

You, as an employee on maternity leave, take priority for the alternative role over other employees who are also at risk of redundancy. If the employer does not offer you an alternative role (where there is a suitable one available for you) then your redundancy will likely be unfair.

If you refuse a suitable offer of an alternative role then your redundancy will likely be fair and if you unreasonably refuse the offer, you risk losing your right to a redundancy payment.



I'm going back to work, can my role be different?

The right to return to work to the same job you were doing before maternity leave differs depending on how long you've actually taken off. If you took 26 weeks or less of maternity ('ordinary maternity leave') then you have the right to return to the same job you were doing before.

If you've taken more than 26 weeks of maternity leave ('additional maternity leave') then you still have the right to return to your job on the same terms as before you left, unless there's a good business reason why you can't. It is not simply good enough that the person covering your maternity leave is staying on in your role but it may be that your employer has made significant changes within the business.

If that is the case then you can be offered a similar job on no less favourable terms. This means that all benefits, pay, level of seniority, hours of work and location etc must all be the same as your previous job. If your employer doesn't give you your job back or changes your terms of employment without your agreement then you may have a claim for unfair dismissal and/or maternity discrimination.

Does my employer need to undertake a risk assessment upon my return to work?

Just as when you were pregnant, your employer should assess any risks to your health and safety upon your return to work following maternity leave. You may have taken the decision to breastfeed your baby and so your employer must provide you with somewhere suitable for you to rest if this is the case. Your employer is not legally required to provide you with paid breastfeeding breaks or to provide somewhere for you to breastfeed or express milk at work.



However, your employer must take reasonable action to avoid any risk to yours or your baby's health and so you could ask if your employer could organise something for you, such as a private room, more regular breaks or a fridge to store the milk.

Can I change my working hours?

If you want to change your hours or duties, either upon returning from maternity leave or sometime after, you may be able to make a flexible working request.

My child has suddenly become poorly, can I take time off work?

If you're an employee, you are entitled to take dependant leave. This is reasonable time off to deal with an emergency involving a dependant (e.g. a child). For longer periods of time off you may wish to take annual leave or parental leave (if you are eligible).

I want to spend some time with my child, what can I do?

You may wish to book annual leave off work to spend time with your child. Additionally, eligible employees are entitled to take unpaid parental leave to look after their child's welfare.

This can be to spend more time with a child, look at schools, settle children into childcare arrangements or spend more time with family.

Please note that the information contained in this Guide is for general guidance only and you should not rely on this Guide without first taking legal advice on the circumstances of your own case.



You're in safe hands!

If you would like further information about how we can help you with your **Pregnancy at Work**, or if you have any questions, please don't hesitate to contact a member of our **Employment Law Team** today.

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