



# **Maternity and Paternity Leave and Pay**

**Policy and Procedure  
2014**

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## **Glossary**

### **EWC - Expected Week of Childbirth**

This is the week your doctor or midwife states your baby is due. It starts on a Sunday and runs to the following Saturday.

### **QW - Qualifying Week**

This determines whether your length of service qualifies you for Statutory Maternity Pay. The qualifying week is the 15th week before your EWC. You must have 26 weeks continuous service including part of the QW to be eligible for Statutory Maternity Pay.

### **MATB1 Maternity Certificate**

A form supplied to a pregnant woman by her doctor or midwife as evidence of the expected week of childbirth. You must give this form to the council as evidence of your EWC.

### **SMP - Statutory Maternity Pay**

Statutory Maternity Pay is a legal entitlement (dependent on satisfying the qualifying requirements) to a weekly payment which replaces your normal earnings to enable you to take time off around the birth of your baby. SMP is paid via the council at higher rate SMP (9/10 pay) for the first six weeks, followed by 33 weeks at the standard rate per week, or 90 per cent of normal weekly earnings, whichever is lower.

### **SPP - Statutory Paternity Pay**

The statutory minimum payment available to fathers or adoptive fathers taking leave within eight weeks of the child's birth or adoption.

### **CMP - Contractual Maternity Pay**

This is maternity pay from the council due to you under your Contract of Employment.

### **OPP – Occupational Paternity Pay**

This is paternity pay from the council due to you under your Contract of Employment.

### **OML - Ordinary Maternity Leave**

A period of 26 weeks' leave that may begin at any time on or after the beginning of the 11th week before a pregnant woman's expected week of childbirth.

### **AML - Additional Maternity Leave**

A further period of 26 weeks' leave taken immediately following ordinary maternity leave.

### **PL - Paternity Leave**

A period of one weeks' leave or two consecutive weeks' leave, usually taken within eight weeks of the child's birth or adoption.

### **SPL - Shared Parental leave**

On 5 April 2015, parental and adoption rights changed with the introduction of Shared Parental Leave and Pay. This means that if your baby was due or placed for adoption on, or after, 5 April 2015, you may be eligible for Shared Parental Leave and Pay instead of Additional Paternity Leave and Pay which is no longer available.

### **LEL - Lower Earnings Limit**

This is the limit below which National Insurance is not due.

### **KIT days - Keeping in touch days**

These are days, during which an employee on maternity, paternity or adoption leave, can agree with their employer to work. The employee can work for up to 10 days during his or her maternity, paternity or adoption leave period without bringing that period of leave to an end and without the loss of a week's statutory maternity, paternity or adoption pay as a result of carrying out that work.

## **Maternity and Paternity Leave and Pay**

### **1. Introduction**

- 1.1 This policy sets out the rights of employees to statutory maternity and paternity leave and pay. This policy and procedure should be followed by all employees of West Suffolk Council.
- 1.2 All pregnant employees are entitled to 52 weeks maternity leave **regardless of the number of hours worked and length of service**. If you have 26 weeks continuous service by the 15th week before the baby is due (known as the qualifying week) you are also entitled to 39 weeks Statutory Maternity Pay subject to qualifying requirements. If you have more than one year's continuous service, you will also be eligible for additional contractual maternity benefits.
- 1.3 You are not entitled to your normal pay during maternity leave, but you are entitled to all other non-remuneration benefits and terms and conditions that you would otherwise have i.e. annual leave, discounted gym membership, essential car user allowance, lease car, mobile phone, laptop, childcare vouchers, eye test and public holidays.
- 1.4 Your rights come partly from statute and partly from your Contract of Employment.

### **2. Keeping you safe whilst at work**

- 2.1 We strive to create and maintain a healthy and safe working environment. As soon as you know you are pregnant you must notify your manager, confidentially if you wish, who will carry out a risk assessment as soon as possible to identify any particular risks. You should, also, read the relevant section of the Health and Safety policy.
- 2.2 If you wish to continue working after 36 weeks of pregnancy you will be asked to carry out a further risk assessment with your manager. If you work more than 50 per cent of your time at home, the risk assessment should be carried out based on your home and the Health and Safety Manager should be contacted in these circumstances.
- 2.3 You must complete a further risk assessment with your manager when you return to work.

### **3. Maternity leave**

- 3.1 All pregnant employees are entitled to 26 weeks ordinary maternity leave (OML), plus 26 weeks additional maternity leave (AML), making 52 weeks maternity leave.
- 3.2 You may not return to work two weeks from the date of childbirth. This is called compulsory maternity leave.

3.3 Ordinary maternity leave can start at any time after the beginning of the 11th week before the EWC (unless the baby is born prematurely before that date in which case it will start earlier).

3.4 Additional maternity leave will start immediately after ordinary maternity leave (from week 27).

#### 4. **Giving notice to take maternity leave**

4.1 You are required to give 28 days notice of the start of your maternity leave, if reasonably practical. The notification must be in writing to Human Resources and must be no later than the end of the 15th week before the baby is due (or as soon as is practicable) stating:

1. that you are pregnant;
2. the expected week of childbirth;
3. the start date of your maternity leave (this can be any day of the week);
4. the date you intend to return to work after your maternity leave; and
5. the arrangements for payment of your contractual maternity pay and pension (if applicable).

4.2 Human Resources will respond within 28 days of receipt of your letter setting out the end date of the additional maternity leave or confirm the date you have stated that you intend to return to work.

4.3 The start date of maternity leave may be changed by giving 28 days notice and Human Resources (HR) will respond within 28 days of the notification. You must, also, supply the original copy of your MATB1 certificate confirming the expected date of childbirth, which is provided by the doctor or midwife after the 20th week of pregnancy.

4.4 If your baby is born early, maternity leave starts at the latest, the day after the birth. If you are absent from work with a pregnancy related illness during the last four weeks of your pregnancy, maternity leave will start automatically on the day after the first day of absence.

4.5 If you resign or are dismissed before the date you have notified, or before you have notified a date, you lose the right to maternity leave, but you will still be eligible for statutory maternity pay if you are employed after the 15th week before the expected week of childbirth. If you are dismissed prior to or during maternity leave you forfeit the right to contractual maternity pay from the date of dismissal.

#### 5. **Maternity pay**

##### 5.1 Statutory Maternity Pay (SMP)

You are entitled to receive SMP providing you are still employed at the 15th week before the expected week of childbirth if you:-

- a) have 26 weeks' continuous local government employment by the qualifying week;
- b) are earning above the lower earnings limit (LEL) for the payment of national insurance contributions;
- c) are still pregnant at the 11th week before the EWC;.
- d) have stopped all work wholly or partly because of pregnancy or childbirth; and
- e) provide evidence of EWC (normally MATB1).

SMP is 39 weeks' pay made up of the following;

- 6 weeks at 90 per cent of your average weekly earnings **plus**
- 33 weeks payable at the SMP rate set by the Government for the relevant tax year (or at 90 per cent of average weekly earnings for full 39 weeks if earnings are less than the SMP rate).

SMP is reviewed annually by the Inland Revenue (HMRC) and is subject to tax and national insurance deductions.

If you have more than one job you may be able to get SMP from each employer. Employees who are not eligible for SMP may be entitled to receive maternity allowance payable directly by the Government. The council will provide the employee with an SMP1 form used to apply for maternity allowance.

You will not be required to repay any SMP payments if you do not return to work.

## 5.2 Disentitlement from SMP

You will lose your entitlement to SMP in the following circumstances;

- lack of medical evidence (i.e. no MATB1);
- working for the council or another employer during maternity leave (except for KIT days); or
- being taken into legal custody.

The onus is on the employee to inform her employer of the above.

## 5.3 Contractual Maternity Pay (CMP)

In addition to SMP you will be entitled to contractual maternity pay if you have:

- a) completed one year's continuous local government service at the 11th week before EWC; and
- b) declared an intention to return to work for three months following maternity leave.

Contractual maternity pay is an additional 12 weeks at half pay.

The 12 weeks' half pay can be paid as it becomes due (i.e. from week seven onwards) and the employee can choose to have this paid during maternity leave spread over a mutually agreed distribution (up to a maximum of 33 weeks), or as a lump sum three months after returning from maternity leave.

The 12 weeks half pay is refundable **gross** if the employee does not return to work for a period of at least three months because of resignation or dismissal. This three month period is not calculated on a pro-rata basis for part-time employees. If you are uncertain about returning to work it is suggested that you consider deferring payment of your half pay until you have returned to work for three months.

If combined SMP and CMP exceed your normal full pay, you will only receive your normal pay.

If you have no entitlement to SMP, CML or maternity allowance, you will still be entitled to 52 weeks unpaid maternity leave.

#### 5.4 Pension

If you are a member of the pension scheme, pension contributions will be deducted from the SMP, CMP and KIT days worked whilst on maternity leave.

**During Ordinary Maternity Leave:** counts as membership under the scheme, and you will pay contributions at your normal percentage rate based on the pay you actually receive during your OML. If OML is unpaid, it still counts as membership but you do not contribute to the pension scheme.

**During Additional Maternity Leave:** counts as membership under the scheme during paid leave only. You will pay contributions at your normal percentage rate on any pay you are entitled to and KIT days worked during your AML. Any unpaid leave will not count towards reckonable membership unless you opt to pay contributions for this period within 30 days of your return to work or resignation. If you do not pay contributions, the period does not count as membership under the scheme.

If you defer payment of your CMP until you have returned to work for three months, contributions will be paid on your normal monthly salary plus your 12 weeks half pay lump sum.

Contact HR for further information.

### 6. **Contact during maternity leave**

- 6.1 The council reserves the right to maintain reasonable contact with employees during maternity leave. This may be to discuss plans for

returning to work, to discuss any special arrangements to be made or training to give updates on developments at work during their absence.

## **7. Keeping in touch (KIT) days**

- 7.1 You can agree to work a maximum of 10 days (or 10 part days) by mutual agreement during your maternity leave. These are known as keeping in touch (KIT) days and will not end your maternity leave. The number of KIT days will not be reduced for part time employees i.e. employees working three days a week still can take up to 10 KIT days. KIT days can be taken either before or after the birth, but not during the compulsory maternity leave.
- 7.2 KIT days will be paid as either a half or full day depending on the number of hours you work. If you work less than half of your standard working day you will be paid a half day KIT day. If you work more than half of your standard working day you will be paid at your full normal daily rate which will be offset against a day's SMP.
- 7.3 If you work a KIT day on a day which is normally a non-working day, or if you have an irregular working pattern, you will be paid either a half or full day based on an average of your weekly working hours.
- 7.4 KIT days will not extend the overall period of maternity leave.
- 7.5 If you are a member of the pension scheme, pension will be deducted at your normal contribution rate, and the days will count for reckonable service.
- 7.6 KIT days can be used for any activity which would form part of the employment e.g. attend team meetings, staff briefings, training. This is a voluntary scheme and it is helpful to discuss these arrangements with your manager before the start of your maternity leave.

## **8. Right to return to work**

- 8.1 The date you are due to return to work will be the first working day 52 weeks after the start of maternity leave, unless you have notified otherwise. If you have already given notice to return to work as part of your initial letter no further notice is required.
- 8.2 You have the right to amend your return to work date by giving 8 weeks' notice in writing. If less than eight weeks' notice is given, your return to work may be postponed until the full eight weeks' notice has been given or until the end of the 52 weeks maternity leave, whichever is the sooner. There is no entitlement to pay if your return to work is postponed.

## **9. Decision not to return to work**

- 9.1 If, whilst on maternity leave, you decide that you do not wish to return to work, you should give written notice of resignation to your manager and

HR as soon as possible and in accordance with the terms of your Contract of Employment. You should specify the date of termination, which could be the end date of the 52 weeks' maternity leave, in which case you will continue to receive any maternity pay due and to accrue annual leave during the notice period.

## **10. During ordinary maternity leave**

- 10.1 If you return to work before or at the end of OML you are entitled to return to the same job that you left on the same terms and conditions as if you had not been absent – unless a redundancy situation has arisen.

## **11. During additional maternity leave**

- 11.1 If you return to work during AML you have the right to return to the same job or, where that is not practicable, a suitable alternative role, which is no less favourable than your original job with regard to the terms and conditions of employment – unless a redundancy situation has arisen.

## **12. Statutory paternity leave and pay**

- 12.1 You are entitled to take up to two weeks' statutory paternity leave if you are the child's biological or adopting father or partner (male or female) to support the mother or to look after the baby. To qualify for statutory paternity leave you must have 26 weeks' continuous service before the 15th week before the baby is due, continue to be employed by the council until the date the baby is born, and have average weekly earnings which are at least equal to the Lower Earnings Limit (LEL) for national insurance contributions.

Your entitlement to paternity pay depends on your length of service with the council at the end of the 15th week before your partner's expected week of childbirth. This is known as the qualifying week.

Two schemes operate for council employees – the statutory scheme and the council's occupational scheme. You may be eligible for payments under either or both schemes. A small number of employees are not eligible for payments under either scheme.

### **Less than 26 weeks' service at the end of the qualifying week**

If you have less than 26 weeks' service at the end of the qualifying week, you are not entitled to paternity pay. This means that if your partner was already pregnant when you joined the council, you will be able to take up to two weeks' paternity leave but it will be unpaid. You could choose to take annual leave instead.

### **At least 26 weeks' service at the end of the qualifying week**

If you have at least 26 weeks' service at the end of the qualifying week, you may be entitled to receive one weeks' full pay and one weeks'

statutory paternity pay (SPP). To qualify for statutory paternity pay, you must have qualified for paternity leave and your average weekly earnings must be greater or equal to the LEL set by the government. Your average weekly earnings are calculated by taking your average pay for the qualifying week and the seven weeks before it.

If you are eligible for SPP, you will receive the second weeks' pay at the standard SPP rate or 90 per cent of your average weekly earnings, whichever is lower. Central government determines the standard SPP rate. If your earnings are below the LEL, or you are not entitled to SPP, you may be entitled to other support from the Department for Work and Pensions.

Your SPP will be paid by the council in the same way as your normal salary. It is subject to tax and national insurance deductions.

### **At least 52 weeks' service at the end of the qualifying week**

If you have at least 52 weeks' service at the end of the qualifying week, you will receive be able to take up to two weeks' leave on full pay.

You will not be eligible for occupational paternity leave more than once in any 12 month period.

- 12.2 You must take paternity leave within eight weeks of the birth or adoption, and the two weeks must be complete and consecutive weeks. You cannot start paternity leave before the child is born. You should give written notice of your intention to take paternity leave 15 weeks before the expected date of childbirth, or as much notice as is practical.

### **13. Shared parental leave**

- 13.1 On 5 April 2015, parental and adoption rights changed with the introduction of Shared Parental Leave and Pay. This means that if your baby was due or placed for adoption on, or after, 5 April 2015, you may be eligible for Shared Parental Leave and Pay instead of Additional Paternity Leave and Pay which is no longer available to you. Guidance on Shared Parental Leave is available on the intranet.

### **14. Parental leave**

- 14.1 Parental Leave is different to shared parental leave and statutory paternity leave. Parental Leave is an entitlement of 18 weeks unpaid leave for each child up to their 18th birthday. This allows eligible employees to take time off work to look after a child's welfare (i.e. spend more time with a child, look at new schools, settle a child into a new childcare arrangement). To be eligible to take this leave you must meet the eligibility criteria (i.e. to be employed by either council for more than 1 year, be the named person on the child's birth or adoption certificate). The leave must be taken in whole weeks (i.e. 1 or 2 weeks). More information and full eligibility criteria on Parental Leave can be found on the acas.org.uk website.

## **15. Time off for antenatal care**

- 15.1 You have a right to a reasonable amount of paid time off to attend antenatal care appointments and will be required to produce evidence of the appointments if requested to do so by your manager.
- 16.2 The father, husband, civil partner or partner is also entitled to unpaid time off to attend up to two antenatal appointments. You should be able to produce an appointment card or other document confirming the appointment if requested to do so by your manager.
- 16.3 Reasonable requests for time off for parenting classes will be considered.

## **17 Rest facilities**

- 17.1 We provide rest facilities for those employees who are pregnant or breastfeeding or who have given birth within the previous six months.

## **18 Unable to return to work due to illness**

- 18.1 If you are unable to return to work at the end of your maternity leave due to illness you will revert to the sick leave and pay you are entitled to in accordance with your Contract of Employment. You will be able to self-certify for the first seven days of absence and a certificate from your GP will be required from day eight onwards.

## **19 Flexible working**

- 19.1 If you wish to vary your working arrangements on your return from maternity leave this will be considered in accordance with the Flexible Working Policy. Any requests should be discussed with your manager in the first instance and will be given due consideration and will not be unreasonably refused; but requests will be considered in the light of maintaining the efficient requirements of the service. Where changes to working are not possible the reasons will be fully discussed and put in writing.
- 19.2 Returning on a different basis (e.g. part time from full time) will affect some of your entitlements, such as annual leave. Further advice should be obtained from your manager or HR.
- 19.3 Returning part time does not affect your entitlement to retain your 12 weeks at half pay, providing you return to work for the minimum period of three months.

## **20 Annual leave**

- 20.1 You will continue to accrue annual leave throughout your maternity leave. If you return to work on a part time basis, your annual leave entitlement

will be accrued on a pro-rata basis from the date of the contractual change.

- 20.2 It is advised that, wherever possible, employees take all of their annual leave entitlement for the current leave year before maternity leave starts, this should however be agreed with your manager. Annual leave, which cannot be taken, may be carried forward into the subsequent leave year however, only one week's leave may be carried forward to the end of May, by agreement.
- 20.3 Subject to approval with your manager, annual leave can be taken in the first weeks back at work, effectively extending the maternity leave period. However any such period of annual leave is subject to operational requirements.

## 21 **Bank/Public holidays**

- 21.1 You will be entitled to a day off in lieu for each bank or public holiday that falls during your period of maternity leave. For any bank/public holiday that falls on what would have been a normal working day, you will be entitled to the number of hours you would have worked on that day. For any bank/public holidays that fall on a non-working day, you will be entitled to one fifth of your working week. These hours will be added to your accrued annual leave entitlement upon your return to work.

## 22 **Childcare vouchers**

- 22.1 If you are participating in our childcare voucher scheme (or any other salary sacrifice scheme) you can either:
  - remain in the salary sacrifice scheme and continue to receive contractual non-cash benefits throughout your maternity leave; OR
  - opt out of the scheme so your salary is higher for the purpose of calculating your maternity pay during the qualifying period.
- 22.2 If you wish to change your current arrangements regarding childcare vouchers (increase, decrease, opt in, opt out) you must inform Human Resources **in writing before the qualifying week**. Whatever arrangement is in place by your qualifying week will then continue until you return to work at the end of your maternity leave.
- 22.3 If you remain in the scheme we will deduct the value of these non-cash benefits from CMP only as far as possible. If you choose to take CMP as a lump sum at the end of your maternity leave this value will be deducted from the lump sum before payment as far as possible.
- 22.4 Further information about the scheme is on the intranet.

## **23      Redundancy**

- 23.1 In the case of a job becoming redundant whilst the job-holder is on maternity leave, the council will consider the employee for any other suitable alternative work that becomes available. The employee will have the right to be considered for such work, even though they are on maternity leave. Any such offer will be made before the current employment ends and the new employment will commence immediately to preserve continuous service.
- 23.2 If there is no such work available, the employee will be made redundant and receive redundancy pay in line with the statutory and contractual entitlements plus all maternity pay that they would otherwise have been entitled to.
- 23.3 Maternity leave counts as continuous service for redundancy purposes and does not adversely affect your right to a redundancy payment.

## **24      Industrial action**

- 24.1 If industrial action or any other interruption of work makes it unreasonable for the employee to return on the date that she has specified, she may, instead, return when work resumes.

## **25      Probationary period**

- 25.1 If you commence your maternity leave during your probationary period you will have your probationary period extended and will complete the outstanding period when you return to work.

## **26      Job vacancies**

- 26.1 You are able to view all job vacancies during your maternity leave via MiHR, which can be accessed by the link at the bottom of the front page of the West Suffolk website.

## **27      Parental Bereavement Leave**

- 27.1 You are entitled to 2 weeks' paid leave if you lose a child under the age of 18, or suffer a stillbirth from 24 weeks of pregnancy. This is a day-one right. The leave can be taken as a single block of two weeks or two separate blocks of one week taken at different times. The leave must be taken within 56 weeks of the date of the death of the child.

## **28      Concerns**

- 28.1 If you have any concerns in relation to your pregnancy you should contact your manager or HR, who will ensure that sensitive consideration is given to any issues raised. A counselling or occupational health service is also available through HR to offer support and advice if needed.

- 28.2 If an employee suffers a miscarriage or the baby dies before 24 weeks of pregnancy, the employee will be eligible for sick leave or possibly special/compassionate leave, according to the circumstances.
- 28.3 If a baby is stillborn or dies from 24 weeks of pregnancy, the mother is still entitled to maternity pay and leave.
- 28.4 If a baby is born prematurely, and survives, we will consider requests for extended leave on an individual basis.
- 28.5 Requests for reasonable time off for IVF treatment will be considered by your manager or HR dependent on individual circumstances and operational business need. This time off will be unpaid.

## **29 Enquiries and change control**

- 29.1 All enquiries relating to this document should be directed to HR.
- 29.2 This policy will be subject to a review every two years and will be initiated by the Assistant Director (Human Resources, Legal & Democratic Services). Suggestions for any changes to this document should also be forwarded to the Assistant Director (Human Resources, Legal & Democratic Services).
- 29.3 Further information on maternity, shared parental and paternity leave and pay is available from HR.

## **Revisions**

<b>Date of review or revision</b>	<b>Reason</b>	<b>Author</b>
June 2019	Change to paternity pay and parental bereavement leave	Victoria Hunt
February 2015	Updated Format	Mandy Coleman
October 2014	Change in legislation	Victoria Abbott
February/March 2014	Joint FHDC and SEBC policies	Victoria Abbott
February 2012	SMP & SPP actual rates removed	Lin Webster
May 2011	Changes in legislation	Bronwen Stacey
April 2010	Increase in SMP	Lin Webster