MATERNITY LEAVE SCHEME

*Implemented: 3 April 2003*

 *January 2007 - amended to incorporate statutory changes for employees whose EWC is on or after 1st April 2007*

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 *December 2017 – updated to incorporate greater reference to premature birth*

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 *February 2019 – Parental bereavement leave reference added*

 *September 2019 – clarification on childcare vouchers added in template letter*

 *January 2020 – reference to resources and guidance for miscarriage added*

 *February 2020 - updated statutory pay rates from April 2020 added*

 *March 2021 - updated statutory pay rates from April 2021 added*

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**Summary of Maternity Provisions**

* **Maternity Leave & Pay**: depends on length of service as shown below:

**Employees with less**

**than 26 weeks continuous service**

 **by the end of the 15th week before EWC¹**

No entitlement to SMP².

May be eligible for Maternity Allowance

(claim from the Benefits Agency using form SMP1)

up to 52 weeks maternity leave

**More than 26 weeks continuous service by the end of the 15th week before EWC¹,**

 **but less than**

**1 years continuous service at the 11th week before EWC**

6 weeks at 90% of weekly pay

followed by

33 weeks standard rate SMP²

up to 52 weeks maternity leave

6 weeks at 90% of weekly pay

followed by 33 weeks standard rate SMP²

+

12 weeks half-pay

(if returning to work) ³

up to 52 weeks maternity leave

**More than 1 years continuous service**

**at the 11th week before EWC¹**

* **Notification For Maternity Leave and Pay**
* At **least 28 days** before their maternity leave starts, the employee must notify their Line Manager in writing:
* that they are pregnant;
* of their expected week of childbirth (EWC¹), and
* the date on which they intend their ordinary maternity leave to commence. This cannot be earlier than the beginning of the 11th week before the expected week of childbirth (EWC¹).
* In the interests of longer term planning and cover arrangements the employee is asked to discuss their arrangements with their manager at the earliest opportunity.
* **Antenatal Care**
* Employees who are pregnant are entitled to paid time off work to receive antenatal care recommended by a GP, midwife or health visitor. Employees should request the time off in advance and may be asked to produce evidence of appointments.
* **Returning From Maternity Leave**
* It is assumed that an employee will return to work at the end of their full entitlement of maternity leave. If so, no further notification is necessary. However, an employee wishing to return earlier must give their manager at least 21 days written notice.
* Unless the job no longer exists (e.g. because of redundancy) an employee is entitled to return to the job they had before their absence and on terms and conditions which are not less favourable.
* The council operates a default agile working environment. Additionally, all employees have a right to apply to work flexibly e.g. change the working hours, vary working times, and work from home. Managers may refuse requests for business reasons.
* **Terms and Conditions**
* **Contractual Benefits :** except for SMP2 and the half-pay as indicated over the page, all other payments of salary or wages will stop during maternity leave. Any other contractual benefits will continue for the 26 weeks of OML4 e.g. car lease payments, provision of a lease car, telephone rental payments, personal-issue equipment such as mobile phones and pagers.
* **Car User Allowances:** during maternity leave, compulsory car user allowances are paid in full for the 26 weeks of OML.
* **Annual leave:** continues to accrue during the whole of the employee’s maternity leave.
* **Pension (LGPS)**6**:** employees on maternity leave pay contributions based on the pay they actually receive. Membership of the pension scheme continues throughout OML and the Council continues to pay contributions even if the employee does not receive pay. Employees can chose to pay contributions relating to unpaid AML5, but must elect to do so within 30 days of returning to work or resigning.
* **Health & Safety:** managers must conduct risk assessments which specifically take into account any risks to employees who are pregnant; have given birth within the past 6 months or who are breastfeeding. Special provisions apply to night workers.
* **Breastfeeding:** Employees are allowed up to 1.5 hours paid break per day for breastfeeding or expressing milk. Access to room facilities for breastfeeding/expressing milk can be sought from the FM concierge on the 1st floor of BWH. Facilities are available for storing milk.
* **Vacancies:** Employees on maternity leave can access jobs on the intranet via their laptop or other connected devices.
* **¹** EWC = Expected Week of Childbirth

² SMP = Statutory Maternity Pay

³ To be eligible for half-pay, a employee must return to work after their maternity leave for at least 3 months. Unless agreed otherwise, it will be paid as 12 weeks half-pay starting from the 7th week of maternity leave.

4 OML = Ordinary Maternity Leave (the first 26 weeks of maternity leave)

5 AML = Additional Maternity Leave (the second 26 weeks of maternity leave)

6 LGPS = Local Government Pension Scheme

# INTRODUCTION

* 1. This guide applies to all Council employees except teachers or lecturers. It does apply to school-based staff whose terms and conditions are governed by the NJC for Local Government Services (Green book).
	2. Changes in statutory maternity provisions were introduced for employees whose Expected Week of Childbirth (EWC) is on or after 1 April 2007; these changes are incorporated in this policy.

## Continuous Service

* + 1. The scheme offers benefits to employees which vary according to their length of continuous service. Ordinarily, continuous service is the length of employment with the current employer only. However, under national terms and conditions (the “Green Book”) previous continuous service with another employer counts for calculating occupational maternity leave and pay where:
1. the previous employer is listed on the Redundancy Payments (Continuity of Employment in Local Government, etc.) (Modification) Order 1999 and there is no break in employment when joining the Council, or
2. the employee was transferred under TUPE to an employer not covered by the modifications order and voluntarily returns to local government. There must be no break of employment when joining the Council and the return must be within 5 years of the original transfer and after 1st April 1997, or
3. a person returns to local government service following a break for reasons concerned with caring for children or other dependants. The break must not exceed 8 years and there must not have been permanent, paid, full time employment during the break. In this context, permanent employment is deemed to be any employment which interferes with the main reason for the break i.e. the caring responsibilities. Hours and nature of work will be a consideration in determining eligibility and confirmation of the above may be required in writing.

(Also see para 1.3.3 below).

* + 1. Any gap in service between two employments of more than a calendar week, i.e. running from Sunday to Saturday, constitutes a break in service with loss of continuity.
		2. It should be noted that to qualify for SMP continuous service is the length of employment with the current employer only i.e. Croydon service.

# NOTIFICATION REQUIREMENTS

## What notice must an employee give?

* + 1. At **least 28 days** before their maternity leave starts, an employee must notify their Line Manager in writing.
* that they are pregnant;
* of their expected week of childbirth (EWC), and
* the date on which they intend their ordinary maternity leave to commence. This cannot be earlier than the beginning of the 11th week before the expected week of childbirth (EWC).
	+ 1. Notification should be made using form [MA1 (Appendix 1)](#App1) and providing the MATB1 certificate from their GP or registered midwife.
		2. If not already given, notification should be given as soon as is reasonably practicable in the event of premature births or pregnancy-related sickness during the four weeks prior to the EWC and, (see para 3.3).
		3. An employee can change their mind about when they want their leave to start, providing they advise their line manager giving 21 day’s notice (unless this is not reasonably practicable).
		4. Entitlement to maternity leave and pay is lost if an employee does not comply with the above requirements.

## Response by the employer

* + 1. The Council must respond to an employee’s notification of their leave plans **within 28 days of receiving the notice** setting out the date they are expected to return to work if they takes their full entitlement to maternity leave. A model example is given at Appendix 2.

## Early return from maternity leave

* + 1. It will be assumed that an employee will be returning at the end of their full entitlement of maternity leave. If an employee wishes to return earlier than this, they must give their Line Manager at least **21 days written notice.**The same period of notice (21 days) should also be given if an employee decides to alter their previously notified early return to work.
		2. The Council can postpone an employee’s return date if the above notice is not given. However, the Council cannot postpone an employee’s return date beyond the end of their maternity leave. If an employee returns before the postponed date, the Council is under no obligation to pay them and they should be informed of this when being notified of the postponement.

# MATERNITY LEAVE

* 1. All employees, provided they comply with the notification procedures (see paragraph 2), will be entitled to 52 weeks’ maternity leave (regardless of service).
	2. An employee must **not** return to work for two weeks following the date of childbirth.

## When does Maternity Leave commence?

* + 1. Maternity Leave commences on the date the employee notifies their line manager that they intends it to begin, apart from two circumstances:
* if childbirth occurs before this date or before they have notified their Line Manager of their intention, then maternity leave begins on the date of childbirth, or
* if an employee is absent wholly or partly because of pregnancy in the four weeks prior to their EWC. In this case, maternity leave commences on the first day of such absence (see 3.3.2 below).
	+ 1. If either of these circumstances apply the employee must inform their Line Manager in writing as soon as is reasonably practicable. In the event of pregnancy-related sickness some discretion is allowed to waive the triggering of maternity leave and allow the employee to return to work. The Occupational Health Service should be consulted in cases where discretion is required.

## Working During Maternity Leave

* + 1. An employee can by mutual agreement with their manager work for up to 10 days during her maternity leave without bringing their maternity leave to an end or affecting their SMP entitlement. (see section 7 for full details).

## Contact during maternity leave

* + 1. An employer and employee are permitted to make reasonable contact during maternity leave. This contact can be used to help with planning the return to work and advising employees about developments at work. This contact does not constitute ’work’ as referred to in 3.4.1 above.
1. **PREMATURE BIRTH**
	* 1. The NHS defines premature babies as those born before 37 weeks gestation. There are three sub-categories of premature babies:
	* Extremely preterm (before 28 weeks)
	* Very preterm (before 32 weeks)
	* Moderate to late preterm (32-37 weeks)

When a baby is born prematurely, or with health needs, it can be a difficult, stressful and expensive time for parents especially where a premature baby is in hospital for an extended period. In recognition of this, the council wants to take a proactive step to assist our employees, who are experiencing premature birth in compliance with our commitment to the ‘[Smallest Thing – Employer with a Heart’ charter](https://thesmallestthings.org/take-action/employers-with-heart-the-smallest-things-best-practice-charter/).

* + 1. Parents of babies (including same sex couples) born before 37 weeks will now be entitled to receive extra leave and full pay for the number of working days covering from when their baby was born to the original expected due date of birth (EWC). This entitlement is subject to eligibility (see 5.4). The leave and pay entitlement will be added to the end of the employee’s Maternity Leave period as paid additional leave. This means the employee will be able to spend more time with their baby. Employees should discuss and agree with their line manager their return date to work taking into account this extra leave.
		2. In addition, eligible partners of employees (including same sex couples) who have given birth to premature babies will also be entitled to the receive additional paid leave of two extra weeks subject to eligibility. This leave entitlement will be added to the end of the employee’s Maternity Support Leave / Paternity Leave period. It is important to note that the employee’s normal entitlement to Maternity Support Leave and Paternity Leave will continue to apply and will not be affected by this scheme.
		3. Employees will be eligible for this Premature Baby Leave entitlement if they are the biological parent of the child or the employee’s spouse or partner (including same sex relationships).
		4. In order for the additional leave/pay to be implemented, it is important that Line Managers advise HR Consultancy (humanresources@croydon.gov.uk) of the premature birth so that the necessary arrangements for can be initiated. The employee should complete ***Appendix 3 (Request for Premature Baby Leave/Pay***).
		5. Any queries regarding this scheme or extending an employee’s entitlement can be discussed with HR Consultancy (humanresources@croydon.gov.uk).
		6. It is also important to note that the employee’s normal entitlement to maternity pay will continue to apply and will not be affected by this scheme.
		7. To support employees during this difficult time, managers should
* Ensure that employees have provided documents required to commence their maternity leave payments. Due to the unexpected nature of premature birth this may not have happened. If this is the case employees should be reminded of the requirements to ensure that their Statutory and Occupational Maternity payments can commence as quickly as possible following the birth.
* Discuss the best method of and regularity of contact to be maintained between the council and the employee or their nominated representative during this time, respecting the employee’s right to privacy if the employee would prefer to be left alone during this difficult time.
* Discuss and agreed with the employee the information that they would like their colleagues to be told about the situation.
* Understand that parents of premature babies are likely to experience a range of emotions caused by their babies’ health; these emotions could include anxiety, depression, isolation, stress and fear. Remind the employee of the Council’s Employee Assistance Programme [**Workplace Options**](https://www.workplaceoptions.co.uk/member-login-2/) which offers free confidential advice and counselling. This is a free and fully confidential service available 24 hours per day / 7 days a week, 365 days a year, provided by an external provider. Employees and their household members can contact the provider free of charge for any advice and support

Contact details: 0800 243 458

Email: assistance@workplaceoptions.com

Website: <https://www.workplaceoptions.co.uk/member-login-2/>

**username: Croydon
​password: Employee**

* + 1. Returning to work may be difficult for parents, as their baby may have been in hospital for a while or may have ongoing sickness which may cause worry or anxiousness. Ongoing hospital appointments may also be taking place and plans about returning to work may have changed.
		2. Consideration should be given to the employee with each case judged on its own merits. For example, extending the period of absence after maternity leave ends (via using additional leave – see 4.1.6) might be appropriate in some cases.
		3. Wherever possible managers should try and balance the needs of the business with understanding the pressures on parents. Support can be offered in the following ways:
* By reminding the employee about the option of using shared parental leave
* By reminding the employee about any annual leave accrued which could be taken
* By reminding the employee about the option to purchase additional annual leave if needed
* By offering additional special leave (which could be paid or unpaid) and reminding the employee about the option to request unpaid leave for short periods of time or Sabbatical Leave (if appropriate) for an extended time period.
* By offering unpaid parental leave
* By enabling agile working or considering a request for a formal flexible working pattern either temporarily or permanently.

# MATERNITY PAY

* 1. **Payment for employees with *less than 26 weeks continuous service at the end of the 15th week before the EWC* will be:**
* no entitlement to SMP (will need SMP1 form to apply for Maternity Allowance)
	1. **Payment for employees with *more than 26 weeks continuous service by the end of the 15th week before EWC but less than one year’s continuous service at the 11th week before EWC* will be:**
* 6 weeks at 90% of weekly pay, followed by
* 33 weeks standard rate SMP
	1. **Payment for employees with *at least one year’s continuous* service at the 11th week before the EWC will be:**
		1. Where an employee declares an intention to return to work:
* 6 weeks at 90% of weekly pay (offset against payments made by way of SMP or Maternity Allowance)
* 33 weeks standard rate SMP 2
* 12 weeks’ half pay. This is paid on the understanding that a employee returns to local authority employment for at least 3 months.
	+ 1. Where an employee does not declare an intention to return to work:
* 6 weeks at 90% of weekly pay (offset against payments made by way of SMP or Maternity Allowance)
* 33 weeks standard rate SMP 2

## Eligibility For SMP

* + 1. To be eligible for SMP an employee must:
* have 26 weeks’ continuous Croydon service by the 15th week before EWC
* be pregnant and reached, or have given birth before reaching, the start of the 11th week before the EWC.
* have average weekly earnings, for the 8 week period ending with the qualifying week of not less than the lower earnings limit (see Appendix 3)
* have stopped working to commence maternity leave
* have met the appropriate notification requirements (see para 2)
	+ 1. SMP starts on the day that maternity leave commences.

## Rate of SMP

* + 1. SMP is paid at two rates. For the first 6 weeks, it is paid at 90% of normal weekly earnings (NWE). NWE is the employee's actual average weekly earnings over the reference period. The reference period is the eight-week period up to and including the qualifying week (i.e. the 15th week before the expected week of childbirth). Therefore, pay awards and other ad-hoc payments which fall during the eight-week period count in the calculation of SMP.
		2. For the remaining 33 weeks[[1]](#footnote-2), SMP is paid at a standard rate that is reviewed annually (see Appendix 3 for current rates). For those earning less than the standard rate of SMP, SMP will be paid at 90% of earnings.
		3. SMP is regarded as earnings and the Council will deduct tax and National Insurance contributions from payments and make their own contributions.

## SMP and Employees with more than one contract of employment

* + 1. If an employee has two or more separate contracts with the Council, they may have two or more entitlements to SMP. However, they must stop working under both contracts before they will be entitled to any SMP under either contract.

## When Does SMP End?

* + 1. SMP must end when an employer has paid an employee SMP for 39 weeks.4
			1. But it can end earlier than this if after the baby is born but before the end of the maternity pay period, an employee works for an employer who did not employ them in the qualifying week. It is up to the employee to tell the employer paying them SMP about their new job. Employees should do this as soon as possible, and make sure they return any SMP payment they get that covers the week they started work and any part of the period after they resumed work.

## SMP and Statutory Sick Pay (SSP)

* + 1. SMP is payable throughout the whole 39 week Maternity Pay Period (MPP)[[2]](#footnote-3). This has implications for which of the two benefits are payable if an employee is sick or unable to return to work during the MPP. For example, if an employee notified their Line Manager that they intended to return to work before the end of the Maternity Pay Period but was subsequently unable to do so due to illness, they should be paid SMP until the end of the MPP and not SSP. Similarly, if they returned to work before the expiry of the MPP but then became ill and was absent from work, they should be paid SMP and not SSP until the end of the MPP. In both cases, SMP should be topped up with occupational sick pay (subject to eligibility) but the total should not exceed their normal pay. Entitlement to occupational sick pay will depend on length of service and the amount of sick leave already taken.

## Statutory Maternity Pay and Leavers

* + 1. Employees who qualify for SMP will receive it, even if they leave employment voluntarily for a reason wholly unconnected with their pregnancy.

## Qualifying conditions for half pay

* + 1. To receive the half pay an employee must make a declaration that they intend to return to work. If the employee declares then that they do not intend to return to work, they will not be eligible to receive the 12 weeks half pay.
		2. To be able to keep the 12 weeks’ half pay, an employee must return to work for three months after maternity leave. If a period of unpaid leave (e.g. parental leave or career break) follows on from maternity leave there must be a return to work for three months following the unpaid leave. An employee who is unable to physically return to work due to sickness, will still be treated as having returned. If they do not return, they must repay such proportion of the pay (but not the SMP) as determined by the Council. However, the longer they return to work, the less they should have to repay.

## Rate of Half Pay

* + 1. “Half pay” is half of a weeks’ pay. For employees whose pay does not vary with the amount of work done, a week’s pay is defined as the amount payable under the current contract of employment for working the normal hours in a week. If an employee does not have normal working hours, a week’s pay is the average pay in the 12 week period proceeding the date on which the last complete week ended. Any week in this period where no money was earned must be excluded.

5.11.2 Payments for SMP for a week or part of a week can be rounded up to the next penny for the purpose of calculating SMP.

## 5.12 Payment of Half-Pay

5.12.1 An employee will have the choice whether to be paid their half-pay during their maternity leave or when they actually returns to work. When paid during maternity leave, the half-pay will normally be paid over 12 consecutive weeks, starting from the seventh week of maternity leave. Alternatively, the same sum (equivalent to 6 weeks full pay) may be spread over a different period as outlined in the MA1 form. Employees wishing to make alternative arrangements should seek advice from the HR consultancy.

# 6. CONTRACTUAL BENEFITS

## 6.1 What benefits continue to be provided during OML?

6.1.1 The Employment Rights Act requires employers to protect an employee’s terms and conditions of employment throughout the OML period. The only exception to this is that an employee is not entitled to receive remuneration. Instead, they are only entitled to SMP.

6.1.2 The definition of remuneration is considered as wages or salary and this would not be provided during the 26-week OML period. For example:

* Basic pay (includes London Weighting)
* Contractual overtime
* Shift allowances/Call out or Standby
* Honoraria/Acting Up payments

However, all other terms and conditions of employment must be maintained during the OML period. For example:

* Essential car user allowance
* Car lease payments
* Provision of a lease car
* Telephone rental payments.
* Provision of mobile phone/pager

## 6.2 What benefits continue to be provided during AML?

6.2.1 By statute, the contract continues throughout the AML. However, the terms and conditions, which apply during this period, are limited. The employee is entitled to the benefit of the employer’s implied obligation of trust and confidence and any terms and conditions relating to notice, compensation in the event of redundancy and disciplinary and grievance procedures. The employee is bound by the implied obligation of good faith and terms relating to notice, disclosure of confidential information, acceptance of gifts or other benefits and participation in any other business.

6.2.2 Entitlement to other terms and conditions during the AML is dependent on the Green Book and any locally agreed conditions and also the requirement not to discriminate .However, apart from annual leave and sick leave, the Green Book does not mention the treatment of contractual benefits during maternity leave. Therefore, entitlement to contractual benefits is mainly determined by the requirement not to discriminate.

## 6.3 Annual leave etc

6.3.1 The whole of an employee’s contractual annual leave will continue to accrue during the maternity leave. Additionally the employee will continue to accrue bank holiday (between weeks 7 to 52) during their maternity leave.

6.3.2 An employee who has accrued annual leave and bank holidays during maternity leave will be able to carry over up to their maximum leave entitlement to the following leave year if that is when they return.

6.3.3 It will be expected that the employee will return to work after their maternity leave with a **proportionate amount** of leave to take within the leave year.

6.3.4 The Green Book provides that paid maternity leave and authorised unpaid maternity leave of up to a maximum of 52 weeks maternity leave will count as continuous service for the purpose of the sickness scheme and annual leave. Thus, when an employee is on maternity leave, the time will count towards their continuous service for the purposes of qualifying for additional annual leave (i.e. the additional five days leave after five years’ service) and longer sick pay entitlement.

## 6.4 Annual Leave etc and Part-Time Employees

6.4.1 Employees working less than the standard 36 hour week have their bank holidays, pro-rated at the beginning of their leave year and recorded in hours. Therefore any bank holidays which fall within an employee’s OML period should be deducted from their leave entitlement, preferably before starting maternity leave.

6.4.2 Questions often arise when an employee who had worked full-time prior to taking maternity leave, returns to work on a part-time basis. In the interests of fairness and good practice, annual leave accrued during the period of full time working should be protected. For example, an employee who worked full-time returns to work on a part-time basis, working 5 half days a week. They accrued 10 days leave as a full-timer. They should be entitled to 20 half days leave. On their return, however, the annual leave entitlement from that date will be pro-rated and this also applies to bank holidays (see above).

## 6.5 Mobile phones

6.5.1Employees going on maternity leave should continue to receive this benefit. If there are any conditions attached, e.g. the Council will cease to pay for certain aspects of its use after three months’ absence, it will be legitimate for the Council to reduce the benefit to employees on maternity leave after the same period.

## 6.6 Car user allowances

6.6.1 The Green Book sets out the terms on which compulsory car user allowances are payable when an employee is absent through illness. An employee is entitled to receive the allowance in full for the period of Ordinary Maternity Leave (i.e. 26 weeks).

## 6.7 Pension contributions

6.7.1 The Council will continue to pay pension contributions throughout OML whether or not the employee actually receives any pay. This is because during this period an employee is entitled to the terms and conditions of employment that would have applied if they had not been absent. The Council’s contributions will be based on what the employee would have been earning had they been working normally.

6.7.2 The employee will also pay contributions but based on the pay they actually receives, at a rate of 6% (or 5% for protected-rate ex-manual workers). If they receive no pay during this period, for example because they do not qualify for SMP, they will not have to pay any contributions. However, it should be noted that any additional contributions payable by the employee (e.g. to purchase added years) are payable throughout the whole period of maternity absence based on the employee’s notional full pay.

6.7.3 An employee’s entitlement regarding pension contributions during AML is governed by the Social Security Act 1989. During AML, both the employer and employee must pay pension contributions throughout the period in which the employee receives statutory and/or contractual maternity pay. The employer’s contributions are based on the pay, which the employee would have received had they been working normally. The employee will make contributions based on the actual amount of SMP/contractual maternity pay they receive.

6.7.4 No contributions will be payable by either the employee or the employer in any period of AML in which an employee receives no pay.

6.7.5 When the employee returns to work, or equally if they resign or is dismissed during or after the AML, they can pay the contributions relating to any period of unpaid maternity leave. They must elect to do so within 30 days of returning to work or resigning. Contributions will be based on the pay received immediately before the unpaid period began. For most employees, this will be their half pay plus SMP. The rate that applies will be 6% (or 5% for protected-rate ex-manual workers).

6.7.6 An employee’s membership in the pension scheme is preserved whilst their contributions are payable. Therefore, employees in the Local Government Pension Scheme will have their membership preserved during OML and for any period of AML in which they receive SMP and/or contractual maternity pay. Any period of unpaid AML will not count as membership (unless an election is made to pay contributions for this period following return to work or resignation).

# 7. WORKING DURING MATERNITY LEAVE (“Keeping In Touch Days”)

7.1 A employee can work for up to 10 days during their maternity leave on a “keeping-in-touch” (KIT) day without bringing the maternity leave to an end or losing SMP. Work is defined as any work done under the contract of employment and may include training or any activity undertaken for the purposes of keeping in touch with the work place.

7.2 KIT days do not need to be worked as consecutive days and may be worked at any time during the maternity leave, except for within two weeks after the birth of the child. In counting the number of KIT days worked, part of a day will count as a whole day.

7.3 KIT days are worked by mutual agreement between the manager and the employee. Managers cannot insist that an employee works during maternity leave and an employee on maternity leave cannot insist on being given any work to do.

7.4 An employee will receive their normal pay for the hours worked on KIT days minus any entitlement to SMP or half-pay. The total duration of the maternity leave period remains at 52 weeks regardless of whether or not KIT days are worked.

7.5 Payment for hours worked during KIT days will be worked out on an hourly basis (based on the employee’s normal salary) but will be subject to deductions for entitlement to SMP or half-pay.

# 8. RETURNING TO WORK

## 8.1. Which ‘job’ must an employee return to?

8.1.2 Generally, an employee who takes maternity leave is entitled to return from maternity leave to the job in which they were employed before their absence. The return to work must be on terms and conditions no less favourable than those that would have applied had they not been absent. [[3]](#footnote-4)

8.1.3 If a return to the same job is not practicable because of redundancy, the employee is entitled to be offered another job where one exists that is both suitable for them and appropriate for them to do in the circumstances. In this situation, their pay and terms and conditions must not be substantially less favourable than those that would have applied had a return to their original job been possible.

8.1.4 For these purposes, a “job” is defined as the nature of the work they are employed to do, in accordance with her contract and the capacity and place in which they are so employed.

8.1.5 Where a redundancy situation exists, see para 9.7 below.

## 8.2 Postponing return to work

8.2.1 The Council can only postpone an employee’s return if they return early without giving the appropriate notification (see 2.3). However, if, due to sickness, an employee is unable to return to work at the end of their maternity leave period or on the date they have notified (if they intended to return early), the normal sickness provisions will apply from the date they were due to return. Therefore, if they comply with the normal rules of the sickness scheme, they will be entitled to occupational sick pay from the notified date of return or expiry of the maternity leave period if no date was notified.

8.2.2 An employee’s absence should then be treated like that of any other employee who is unable to attend work due to sickness. However, dismissals for pregnancy-related illnesses (including post-natal depression) risk being found automatically unfair even if the illness occurs after the maternity leave period. Therefore, managers need to be aware of the reason for an employee’s illness where this occurs directly after maternity leave, since any ensuing dismissal could be regarded as being automatically unfair. It is recommended that managers seek advice from HR consultancy in these circumstances.

## 8.3 Failure to return

8.3.1 In all other cases, where an employee does not return to work, their absence should not be viewed as an automatic termination of the employment relationship. This is because the contract has continued throughout their maternity leave. Consequently, their employment can only end if it is expressly terminated either by dismissal or resignation.

8.3.2. If the employee simply fails to turn up for work, their absence is unauthorised and should be dealt with as any other case of this nature. It is important to ensure that an employee is aware of the date by which they must return to work and the consequences if they fail to do so. It is recommended that managers seek advice from HR consultancy in these circumstances.

## 8.4 Parental Leave

8.4.1 Most parents will have a statutory entitlement to take up to 13 weeks unpaid leave to care for a child under the age of eighteen. A maximum of four weeks parental leave can usually be taken immediately following maternity leave. For further details see the [Family Scheme](http://intranet.croydon.net/staff/handbook/Mod%2010%20Chapt%201%20Family%20Leave.doc).

## 8.5 Employee no longer wishes to return

8.5.1 If the employee no longer wishes to return to work, they will effectively be resigning and is obliged to give their contractual notice. Managers should inform HR consultancy who will write to the employee seeking confirmation that they do wish to resign.

## 8.6 Flexible Working

8.6.1 If an employee wishes to return on conditions which are different to their original contract e.g. part time, job sharing, more flexible hours, they have to seek her manager’s agreement as there is no *automatic* right to do so. All employees have the right to *apply* to work flexibly. Managers have a duty to give serious consideration to such requests. The Council’s Flexible Working policy gives every employee the right to request to work flexibly and gives details of the process to be followed, both by employee and manager. The Council operates a number of flexible working arrangements including part-time working, job-sharing and a career break scheme. For details, please see the HR Handbook.

8.6.2 However, in many cases, a refusal to allow an employee to work part time, for example, could amount to unlawful indirect sex discrimination. If the refusal cannot be justified, the employer could be required to pay an award of compensation to the employee and, since there is no cap on awards in cases of discrimination, the costs may be high.

## 8.7. Returning to work after a career break or period of unpaid leave

8.7.1 Where an employee returns to work after a career break and there is difficulty in finding a suitable post to return to, the employee will be asked to complete a form for the corporate redeployment register. The employee can stay on the register for a maximum of three months i.e. the notice period required when returning from a career break. During that time, all efforts to find a suitable post will also be made in the employee’s substantive department. For further details of the Redeployment scheme, please see the HR Handbook).

## 8.8. Breastfeeding/storage facilities

8.8.1 Facilities are provided for pregnant or breastfeeding employees to rest, breastfeed and store milk. To access these facilities, employees should make a request to the concierge desk on the first floor of BWH. Breastfeeding employees can take reasonable paid breaks totalling up to 1½ hours during a full working day. Employees working part-time will have pro-rated nursing breaks. The definition of breastfeeding in this section includes expressing milk.

# 9. HEALTH AND SAFETY

9.1.1 All employers must take adequate steps to protect their employees’ health and safety whilst at work. There are various pieces of legislation which address many aspects of this obligation e.g. Health and Safety at Work Act 1974, Management of Health and Safety Regulations and the Working Time Regulations. However, we should be aware that there is an overriding duty of care towards employees, which needs to be considered even though the relevant employment legislation may have been fully complied with.

9.1.2 In maternity terms, there are a number of statutory obligations on employers regarding the health and safety of pregnant employees and those who are new parents. These can be summarised below.

## 9.2 Risk assessment

9.2.1 Under regulation 3 of the Management of Health and Safety at Work Regulations 1999, we are required to make a suitable and sufficient assessment of the health and safety risks to which our employees are exposed at work.

9.2.2 Where employees of childbearing age work for us, the risk assessment must take into account any risks to new or expectant employees and their children. New and expectant employees are employees who are pregnant, have given birth within the last six months or who are breastfeeding. A risk assessment is to identify hazards and to determine the extent of the risk from those hazards so that it can be decided if enough precautions have been taken or more should be done to prevent harm. *Hazard* means anything that can cause harm. *Risk* is the chance, high or low, that someone may be harmed by the hazard.

9.2.3 Employers must consider the risks from all processes or working conditions, or physical, biological or chemical agents in all areas of activity. Each position must be considered whether it is currently occupied by an employee or not.

## 9.3. Preventative action

9.3.1 Once the hazards in any job have been evaluated, the preventative measures necessary should be determined. Employees of childbearing age should be informed of the risks identified and the action that will be taken.

## 9.4 Notification of pregnancy

9.4.1 When an employee notifies her employer that they are pregnant or a new parent, further action will have to be taken. The particular risks that they face as a result of their condition will have to be assessed and appropriate steps taken.

9.4.2 Checks must be made to ensure that the preventative action identified as a result of the risk assessment has been undertaken. If they are still exposed to a risk that could jeopardise her health and safety after the identified action has been carried out, then the following steps must be taken to remove them from the risk;

* their working conditions and/hours of work should be temporarily adjusted; or if it is not reasonable to do this, or it would not avoid the risk;
* suitable alternative work should be offered, using the Redeployment procedure if necessary. For further details, please see the HR & OD.

9.4.3 Alternative work will be suitable if:

* It is of a kind which is suitable in relation to them and appropriate for them to do in the circumstances; and
* The terms and conditions applicable, if they differ from their normal conditions, are not substantially less favourable to them.

9.4.4 If an employee is not offered alternative work, which is available, they can make a claim to an employment tribunal within three months of the start of their suspension (see below). If the complaint is upheld, the tribunal may make an award of compensation. There is no upper limit on the sum which can be awarded.

9.4.5 If there is no alternative work available, they should be suspended from work for as long as necessary to protect her safety or health or that of their child. Any period of suspension must be paid – an employee is entitled to receive a week’s pay for each week of suspension, or proportionate amount for any period of less than a week.

9.4.6 If an employer fails to pay an employee during a period of suspension on maternity grounds, the employee may make a claim to an employment tribunal within three months starting from the day on which should have been paid. If the complaint is upheld, the tribunal will award the amount of remuneration they should have received.

*Note: The employer is not required to take action if a employee has not notified them in writing of their pregnancy or birth or that that are breastfeeding. However, providing a medical certificate, which identifies a pregnancy-related illness, can be sufficient indication of pregnancy. An employer is also not required to alter hours of work or suspend a employee if they has failed to produce a certificate of pregnancy (MATB1 which is available during the 26th week of pregnancy) or other certification from her GP when requested (within a reasonable amount of time).*

9.4.7 The assessment should be reviewed as risks can vary according to the stage of pregnancy and there are different risks for those who are breastfeeding.

## 9.5 Night workers

9.5.1 If a new or expectant employee is a night worker and they supplies a certificate from their GP or registered midwife stating that it is necessary for their health and safety that they do not work at any time specified on the certificate, they must be offered suitable alternative day work or, if no day work is available, they must be suspended on full pay for as long as is necessary.

## 9.6. Other aspects of pregnancy that may affect work

9.6.1 It is good practice, although not a legal requirement, to consider the following aspects of pregnancy, which can affect an employee’s work and consider whether alternative arrangements can be made.

Aspect of pregnancyWork Affected

Morning sickness Early shift work

Exposure to nauseating smells

Backache Standing/manual handling/posture

Varicose veins Standing/sitting

Haemorrhoids Working in hot conditions

Frequent visits to the toilet Difficulty in leaving job/site

Increasing size Use of protective clothing

Working in confined areas

Manual handling

Tiredness Overtime

Evening work

Balance Problems when working on slippery, wet surfaces

Comfort Problems working in tightly fitting areas

## 9.7. Travel to/from work

9.7.1 There is no legal requirement, but good practice dictates that if possible, working hours should be adjusted if an employee experiences difficulty, e.g. overcrowding on trains, buses, trams, when travelling to and from work during the rush hour. This may be particularly significant in the later stages of pregnancy.

## 9.8 Display screen equipment (VDUs)

9.8.1 Some pregnant employees may be concerned about radiation from DSE. HSE guidance states that the levels of radiation are well below international limits and pose no significant risk to health. However, if an employee is worried, their concerns should be sympathetically addressed and they may request an appointment with the Occupational Health Section to discuss their concerns.

# 10. DISMISSAL

10.1 Apart from being good practice to ensure that dismissals only happen when necessary and are carried out according to fair procedures, a failure to do so is potentially costly. There is therefore a need for managers to make sure that they are familiar with the statutory dismissal procedure to avoid situations in which a employee can bring an unfair dismissal complaint against the council. Managers are recommended to seek advice from the HR Consultancy.

10.1.1 To succeed at an employment tribunal, an employee will need to demonstrate that they were dismissed and that the dismissal was unfair.

10.1.2 If an employee has been dismissed on pregnancy-related grounds, this will also constitute discrimination under the Equality Act 2010. There is no qualifying period for bringing a claim of sex discrimination and, importantly, if successful, there is no limit on the amount of compensation, which can be awarded.

10.1.3Employers should be aware that an employee who is dismissed for a reason which is not covered by the Equality Act might still try to claim unlawful sex discrimination. Equally, if they suffer a detriment (short of dismissal) as a result of their sex, they could make a discrimination claim. Again, there is no service qualification requirement and there is no cap on the compensation that can be awarded in a successful claim.

10.1.4 There are certain circumstances where it will be fairly clear that a dismissal was pregnancy-related. For example, if an employee is dismissed due to absence and their absences were caused by a pregnancy-related illness, they will have been automatically unfairly dismissed. Equally, if the employer decides that the cost of maternity pay and leave is too great, and as a result the employee is dismissed, they will have been dismissed for a pregnancy-related reason.

## 10.2. Written reasons for dismissal to be provided

10.2.1 It should be noted that where an employee is dismissed while they are pregnant, or if the dismissal terminates during either their OML or AML period, they must be provided with written reasons for her dismissal, **without first having to request them**.

## 10.3. Redundancy

10.3.1 Any consideration of redundancy, as it applies to employees on maternity leave, is very complicated. In an attempt to simplify matters, a step-by-step approach is set out, providing the key considerations in managing the process.

10.3.2 The first question to address is whether a employee on maternity leave is actually redundant. The Employment Rights Act (ERA) states that a person is dismissed on redundancy grounds if the dismissal is for any of the following reasons:

* The business is closing down
* The place of work is changing
* The requirement for employees to carry out work of a particular kind has ceased or diminished
* The requirement for employees to carry out work of a particular kind in the place where they were employed has ceased or diminished.

10.3.3 If, after applying this definition, a employee on maternity leave is redundant, it is necessary to begin the consultation process. Clearly when an employee is on maternity leave, consultation may not be as straightforward since the person is not at the workplace to speak to, write to, invite to briefings and meetings and so on. Employers need to ensure that these employees are not overlooked. Employees on maternity leave are likely to be feeling particularly vulnerable and ensuring that they are fully and regularly informed and consulted will help them not to feel isolated from proceedings.

10.3.4 If an employer fails to consult a employee on maternity leave, an employment tribunal may infer the reason for not doing so was related to her pregnancy. If so, this amounts to direct sex discrimination.

10.3.5 Case law has established that employers must apply fair selection criteria and then operate a fair procedure to determine which employees will in fact be made redundant.

10.3.6 However, caution needs to be exercised in being objective about the criteria such as attendance record, efficiency in the job, experience and length of service. For example, any absence for pregnancy related reasons e.g. time off for hospital appointments or sick leave should be discounted. If performance is a criterion, a employee’s absence will make assessment of her performance more complex.

10.3.7 There is also a need to consider how to ensure that the employee on maternity leave can participate in the selection process – can they attend interviews, take part in any assessments etc. A failure to offer employees on maternity leave the same opportunities as other employees could be discriminatory.

10.3.8 If, having completed the selection process, it transpires that a employee on maternity leave is to be made redundant, there are a number of issues, which need to be addressed. These are:

* Do any suitable alternative vacancies exist? The Regulations specify that a vacancy will be suitable if the work to be done is of a kind that is suitable for the employee and appropriate for her to do in the circumstances. Also, the terms and conditions must not be substantially less favourable than those of their existing contract.
* Where a suitable vacancy does exist then the employee must be offered the post in preference to anyone else who is about to be made redundant or whose employment is at risk for other reasons e.g. on health grounds. This is because the employee on maternity leave is ‘entitled to be offered’ the vacancy. The result of this could be that one department, which has a number of potentially redundant individuals (none of whom are on maternity leave), must offer a suitable vacancy to a employee in another department (who is on maternity leave) before it is offered to any of its own staff. However, a refusal of alternative employment does not affect entitlement to redundancy pay.
* However, if the redundancy selection process is delayed until an employee on maternity leave returns to work the special provisions concerning offers of suitable vacancies as set out above, do not apply. Instead, the employee would be considered as any other person who is potentially redundant and they would not have a statutory right to be offered a vacancy in preference to their colleagues.
* Where a suitable alternative vacancy exists, it must be offered to the employee before their existing contract expires and must take effect immediately when the old one terminates.
* If there are no suitable alternative vacancies, the employee on maternity leave should be regarded as any other employee who is potentially redundant. There is a need, in consultation with the employee, to consider whether any posts, which are vacant, would be acceptable, even if the terms are less favourable. If no opportunities exist, the Council would be entitled to dismiss the employee on grounds of redundancy.
* If an employee is made redundant during her 26-week OML, they will continue to receive SMP for the rest of the period. However, their entitlement to benefits under the contract, such as half pay, will cease on dismissal. An employee who has been receiving half pay, but is then made redundant, will not have to repay the money even if they do not return to work for three months.

## 10.4. Fixed term contracts

10.4.1 Fixed term contracts now include all temporary contracts of employment. The non-renewal of a fixed-term contract is a dismissal and will have to be justified in the usual way. If the contract would have been renewed but for the employee’s pregnancy, then it must be renewed, otherwise the dismissal may be held to be for a pregnancy-related reason and will consequently be automatically unfair. It may also constitute sex discrimination.

10.4.2 However, there may be times when a contract would not have been renewed in any event. If the reason for non-renewal is redundancy, then the redeployment register should be considered, if appropriate.

11. GENERAL

## 11.1 Detriment and Discrimination

11.1.1 Direct sex discrimination occurs if a person is treated less favourably than another on the basis of their sex. Case law has established that less favourable treatment on grounds of pregnancy or childbirth is direct sex discrimination

11.1.2 However, outside the 26 week OML period, this unique protection of employees no longer applies. As a result, employees on AML should be compared to employees of a different sex on unpaid sick leave, to assess whether they are being treated less favourably than other employees. If they are, they may seek to bring a claim of direct sex discrimination. Therefore, to avoid any such claims, employees on AML and employees on unpaid sick leave should be treated equally as regards the whole range of contractual benefits, which apply.

11.1.3 A employee must not be subjected to any detriment by any act or any deliberate failure to act by her employer because they:

* Are pregnant
* Has given birth (only applicable during the OML and AML period)
* Took or sought to take OML or AML, or availed herself of the benefits of OML (i.e. the terms and conditions of her contract during OML)
* Is the subject of a relevant requirement or recommendation as defined in s. 66(2) of the ERA (this includes recommendations under the Health and Safety at Work Act etc. 1974) i.e. is suspended from work on maternity grounds.
* Refused to work during their maternity leave.

11.1.4 Detriment can cover many things, eg failure to be promoted or offered training. An employee who believes that she has been subjected to a detriment can bring a claim to an employment tribunal.

11.1.5 Maintaining contact with employees when they are on maternity leave and informing them of developments and opportunities may help to prevent a situation arising where they believe they have suffered a detriment. It is therefore important that contact is maintained with members of staff whilst they are on maternity leave. They should be kept informed of developments and changes within the department and organisation, e.g. by sending copies of all memos/e-mails where relevant. Contacting staff by phone occasionally during their maternity leave may also help them feel less isolated from work and may make it easier for them to return after a long absence. Arrangements should be agreed before maternity leave commences.

11.1.6 Employees will be able to access internal vacancies via connected council laptops or other devices. Employees should be supported if they wish to apply for any other posts whilst they are on maternity leave.

11.1.7 Employees should also be given the opportunity to attend training courses or conferences. It should be made clear to all employees on maternity leave that this is entirely voluntary and any refusal to attend will not be detrimental to them.

11.1.8 An employee who believes they have suffered a detriment can bring a claim to an employment tribunal within 3 months of the act or failure to act. If the complaint is upheld, the tribunal can award compensation having regard to the infringement to which the complaint relates and any loss which is attributable to the act or failure to act including any expenses incurred and the loss of any benefit.

## 11.2 Time off for antenatal care

11.2.1An employee who is pregnant has the right not to be unreasonably refused paid time off to keep an appointment to receive antenatal care. Antenatal care includes doctors, midwives and hospital appointments. It also includes relaxation, exercise and parent craft classes where this is deemed to be important for the employee’s health/welfare. Spouses and co-partners (who include same sex) /nominated carers and prospective adoptive or foster parents may also have time off (unpaid) to attend such classes where appropriate and on production of evidence of appointments if so requested by the manager.

*Note that in all cases, the right only applies where the appointment has been made on the advice of a GP, registered midwife or health visitor.*

11.2.2 If, after the first appointment, the employer asks the employee to produce certification of their pregnancy and documentation concerning their appointment, they must produce them in order to protect their right to time off. This provision is included in the Green Book.

11.2.3 Pay, during time off, is at the ‘appropriate hourly rate’, that is their normal rate of pay for normal working hours. Where a employee does not have normal working hours, the rate of pay during time off should be their average rate in the last complete 12 weeks prior to the time off.

11.2.4 If an employee is refused either time off or pay during time off, they can complain to an employment tribunal within 3 months of the date of the appointment. If the complaint is well founded, the tribunal will make a declaration to that effect. They will also order the employer to pay to the employee the remuneration which would have been due had the time off or pay not been refused.

*11.2.5 Caution: It is automatically unfair to dismiss a employee for asserting their statutory right to time off for antenatal care. Equally, dismissing an employee for a reason relating to time off may be automatically unfair, if it is regarded as a dismissal for a pregnancy-related reason.*

## 11.3 Time off for fertility treatment

11.3.1 An employee wishing to take time off for fertility treatment may be entitled to reasonable time off (unpaid) to attend appointments, subject to service delivery considerations. Line managers are requested to allow time off wherever possible on production of evidence of appointments.

## 11.4. Post-natal depression

11.4.1 Post-natal depression is counted as a disability under the Disability Discrimination Act and absences due to post-natal depression should be considered accordingly. Post-natal depression is defined as a pregnancy related condition and managers should seek advice from the HR consultancy as and when issues arise.

## 11.5 Miscarriage, termination, still-birth and death of a baby

11.5.1 Miscarriage is the spontaneous loss of a baby any time up to 24 weeks in pregnancy. Up to one in four pregnancies can end in miscarriage and therefore this may not be an unusual occurrence in a workplace. If an employee begins to miscarry at work, they are likely to be distressed, frightened or anxious and may need medical assistance.

Employees will also need support and understanding in the longer term and line managers should signpost them to the council’s support resources such as Mental Health First Aiders and EAP. Employees and line managers can seek assistance on understanding miscarriage by visiting the Miscarriage Association website <https://www.miscarriageassociation.org.uk/>.

Guidance on how to support employees is also available within the ‘Miscarriage and the workplace’ leaflet which is available on this website: <https://www.miscarriageassociation.org.uk/information/leaflets/>

11.5.2 If the baby is stillborn after 24 weeks’ pregnancy or is born live **at any stage of pregnancy** and later dies (no matter how soon after birth) maternity leave and pay apply as set out in the maternity scheme. Parental Bereavement Leave and pay subject to eligibility will also be applicable as outlined in the Family Leave and Additional/Other Leave policies.

11.5.3 Where a baby is stillborn before the end of the 24th week of pregnancy or a termination takes place before the end of the 24th week of pregnancy, there is no eligibility to maternity leave or maternity pay.  Special leave provisions and/or sick leave may be used as appropriate to support the individual through this difficult period, taking into consideration the employee’s needs and medical opinion.

# 12. DATA PROTECTION

12.1.1When managing an employee's maternity leave and pay, the council processes personal data collected in accordance with the workforce data protection policy which can be found in the [HR handbook.](https://intranet.croydon.gov.uk/working-croydon/hr/hr-handbook)

12.1.2 Data collected from the point at which an employee informs the council that they are

pregnant is held securely and accessed by, and disclosed to, individuals only for the purposes of managing their maternity leave and pay.

12.1.3 Inappropriate access or disclosure of employee data constitutes a data breach and

should be reported in accordance with the council’s workplace data protection policy immediately. It may also constitute a disciplinary offence, which will be dealt with under the council’s disciplinary procedure.

**Appendix 1 Form MA1**

**Maternity Pay & Leave Claim Form**

You must complete this form and send it to your line manager at least 28 days before your maternity leave commences. Please attach your MATB1.

Surname ……………………………………… First names ………………………….……..

Employee No. ……………………………….. Date started with the LBC………………….

Expected Date Date maternity

of Childbirth ……………………….… Leave will start: ……………………..………

MATB1 is attached (please tick): Yes No

**Statutory Maternity Pay - tick the box that applies:**

 ✓

|  |
| --- |
| a) I had 26 weeks continuous service at the end of the 15th week before the EWC and claim my entitlement to SMP. I undertake to inform you immediately should I be taken into legal custody, commence work for another employer or leave the area of the European Economic Area. |
| b) I am not eligible for SMP because I did not have 26 weeks continuous service at the 15th week before the EWC. |

**Occupational Maternity Pay - tick the box that applies**

 ✓

|  |  |
| --- | --- |
| c) | I am not eligible for occupational maternity pay because:1. I do not intend to return to work.
2. I did not have 1 year’s continuous service at the 11th week before EWC.
 |
| d)  | I am eligible for occupational maternity pay (half pay) and intend returning to work after my maternity leave and I wish my half pay to be: ***paid during my maternity leave as 12 weeks half-pay starting from the 7th week of my maternity leave*** OR alternatively***I wish to have half-pay paid as a lump sum, 3 months after returning from maternity leave*** |

The council treats personal data collected while managing your maternity leave and pay in accordance with the **workforce data protection policy** which can be found in the [HR handbook](https://intranet.croydon.gov.uk/working-croydon/hr/hr-handbook). Information about how your data is used and the basis for processing your data is provided in the workforce privacy notice.

I understand that if I do not return to work following my maternity leave (including any period of unpaid leave) for at least 3 months, I will be required to repay any occupational maternity pay (half pay) I have received.

**SIGNED ………………………………….……………… DATE ………………………**

|  |  |  |  |
| --- | --- | --- | --- |
|

|  |  |
| --- | --- |
| Appendix 2 – Model letter to acknowledge notification of maternity leave |  |

PRIVATE AND CONFIDENTIAL Contact Line manager e-mailName and AddressDear First Name **Re: Maternity leave and pay**Thank you for informing me of your pregnancy and the date your baby is due. I am writing to you about your maternity leave and pay. You are entitled to 52 weeks maternity leave. This comprises of 26 weeks ordinary maternity leave and a further 26 weeks additional maternity leave.As a statutory requirement I need to inform you that you must take a minimum of two weeks maternity leave.You have advised me that you wish to start your maternity leave on **XXX.**Should your baby be born before the above date, your maternity leave will commence on the day after childbirth. Please also be aware that employees who give birth before 37 weeks of pregnancy will also be entitled to additional leave and pay for covering the period from the baby’s date of birth to their original expected due date of birth. This leave and pay entitlement will be added after the end of your maternity leave.**If you experience premature birth circumstances, please notify me as soon as possible.** If you are absent because of a pregnancy related condition in the 4 weeks before your expected week of childbirth (EWC), this will trigger the commencement of your maternity leave and any maternity pay. You will normally be eligible for Statutory Maternity Pay (SMP) if you:* have 26 weeks continuous service with your employer (e.g. Croydon Council) by the 15th week before EWC and
* are pregnant or have given birth after 24 weeks of pregnancy and
* have average weekly earnings, for the 8 week period ending with the qualifying week, of not less than the lower earnings limit **(£120 per week before tax, from 4 April 2021)**

Statutory maternity pay is payable for 39 weeks. The first six weeks are paid at 90% of your average weekly pay at the qualifying week. The remaining weeks are paid at the standard rate of SMP **(£151.97 per week before tax, from 4 April 2021)**or 90% of your average weekly pay if this is less than the standard rate of SMP.You may be entitled to contractual maternity pay and where this applies it will be mentioned below. Please also note that payment of both SMP and contractual maternity pay will stop if you return to work before the relevant pay period expires. However, if having returned to work you go sick during the maternity pay period, SMP is payable and not Statutory Sick Pay (SSP).On the basis that you have more than 26 weeks continuous Croydon service by the end of the 15th week before the EWC, more than 1 year’s continuous local government service at the 11th week before the EWC and your average weekly earnings are more than £118 per week you are entitled to: * Whichever is the higher of 6 weeks at 90% of contractual weekly pay or 6 weeks at 90% of average weekly pay followed by
* 33 weeks standard rate SMP or 90% of average weekly pay if earning less than the standard rate of SMP
* 12 weeks at 50% of contractual weekly pay (contractual maternity pay). This will be paid as you have indicated on your MA1 form. If however you do not return to work this will have to be repaid in a lump sum.

You have advised me that you wish to return to work and I will expect you to return at the end of your full maternity leave entitlement. Given your chosen start date of maternity leave, this will be **XXX*.*** . If returning on this date you will not be required to give any further notification. Should you wish to return before this date, you must notify me in writing 21 days before your new return date. If you do not give this notice, your return may be postponed. Should you decide during the course of your maternity leave that you do not wish to return to work, you should resign from your post by notifying me in writing, to give your contractual notice in accordance with your terms of employment. If you have opted to receive your half pay maternity pay and you do not return to work for the required time, please note that this will have to be repaid in a lump sum.**The effect of maternity leave if you have childcare vouchers:** Maternity pay is calculated over the 8 week period prior to the 15 week period before the expected week. To avoid any negative impact on your Statutory Maternity Pay/Statutory Adoption Pay, you may wish to opt out of the scheme 23 weeks prior to the expected week of your childbirth/adoption. Email payroll@croydon.gov.uk if you do wish to opt out. **Please read the FAQs on the intranet carefully to see the implications** **if you have childcare vouchers. This** is covered under the question ‘what happens if I go on maternity/adoption leave to have another baby?’ If you do not have access to the intranet please request your manager to send you the FAQs from the intranet As a default if you do not opt out from the scheme at an earlier stage, your childcare vouchers will be suspended at the start of your maternity leave. Contact payroll only if you wish to continue in periods when you have salary which can be used for the childcare vouchers. In other periods such as zero pay, or when you are in receipt of SMP, your deductions will be stopped. **To restart your deductions, post return from maternity, you must let payroll know.****E-mail:** **payroll@croydon.gov.uk****. If you have a break of over 12 months you will not be able to re-join the scheme as the government has changed the regulations. To ensure you can remain in the scheme you must re-join before the 12 month break gets over. Detailed FAQs are on the intranet.** **Please note that you can only re-join the childcare voucher scheme if you have less than 12 months break from pay deductions.**If work is available, you may choose to work for up to 10 days during your maternity leave on a “keeping-in-touch” (KIT) day without bringing the maternity leave to an end or losing SMP. Work is defined as any work done under the contract of employment and may include training or any activity undertaken for the purposes of keeping in touch with the work place. KIT days do not need to be worked as consecutive days and may be worked at any time during the maternity leave, except for within two weeks after the birth of the child. In counting the number of KIT days worked, part of a day will count as a whole day. KIT days are worked by mutual agreement between the manager and the employee. Managers cannot insist that a employee works during maternity leave and a employee on maternity leave cannot insist on being given any work to do.If you work KIT days, you will receive whichever is the higher of SMP or your normal pay for the hours worked on KIT days minus any entitlement to SMP or half-pay. The total duration of the maternity leave period remains at 52 weeks regardless of whether or not KIT days are worked.If you wish to use the KIT days please contact me to discuss further. You will continue to accrue annual leave and bank holiday (between weeks 7 to 52) during your maternity leave. If you accrue annual leave during maternity leave you will be able to carry over up to your maximum entitlement (31 days) to the following leave year if that is when you return. If you are returning close to the end of the leave year you may need to add leave to the beginning or end of your maternity leave.It will be expected however, that you return to work after maternity leave (and any carried over leave) with a **proportionate amount** of annual leave to take within the current leave year.If you are a member of the Local Government Pension Scheme, contributions will continue to be deducted during the paid part of your maternity leave. Contributions will be based on the actual pay you receive, including SMP and any half-pay. During any unpaid maternity leave, no contributions will be deducted. Should you wish to pay contributions relating to unpaid maternity leave, you must elect to do so within 30 days of returning to work or resigning. For further information, please contact the Pensions team on pensions@croydon.gov.uk. The pensions team will write to remind you of this when you return to work.The council treats personal data collected while managing your maternity leave and pay in accordance with the **workforce data protection policy** which can be found in the [HR handbook](https://intranet.croydon.gov.uk/working-croydon/hr/hr-handbook). Information about how your data is used and the basis for processing your data is provided in the workforce privacy notice.During the period of maternity leave, I encourage you to keep in touch with me to discuss and plan for your return. I am happy to discuss the above and any other aspects of your maternity entitlements should you so wish.Please accept my best wishes for the coming months.Yours sincerely**Line Manager Name** **Job Title** *Cc to* *humanresources@croydon.gov.uk*Appendix 3 – Request for Premature Baby Leave/Pay |  |

|  |  |  |  |
| --- | --- | --- | --- |
| Name: |  | Employee Number (found on your payslip): |  |

|  |  |  |  |
| --- | --- | --- | --- |
| Original date baby was due (according to EWC): |  | Actual date of birth |  |

I declare that:

* I am: - the baby’s biological parent, or

 - married to the other parent (including same sex spouse), or

- living with the other parent in an enduring family relationship

(including same sex relationship),

 but am not an immediate relative (e.g. nominated carer)

* I have or will have responsibility for the child’s upbringing
* I will take time off work to support the parent or care for the child
* I have been employed continuously by Croydon Council for

at least 26 weeks by the 15th week before the EWC.

* ***I declare that the baby has been born prematurely (before 37 weeks)***

***A total of …………………… (working days/weeks) before their due date***

***I am claiming Maternity Premature Baby Pay and Leave for this time period.***

***N.B: Employees claiming paternity premature baby leave/pay will be eligible for two weeks extra paid leave.***

***I am claiming Paternity Premature Baby Pay/Leave (2 weeks).***

**NB: it is a disciplinary offence to give false information on this form**

The council treats personal data collected while managing your paternity leave and pay in accordance with the **workforce data protection policy**. Information about how your data is used and the basis for processing your data is provided in the council’s **workforce privacy notice**. These documents can be found in the [HR Handbook](https://intranet.croydon.gov.uk/working-croydon/hr/hr-handbook).

|  |  |  |  |
| --- | --- | --- | --- |
| Signature: |  | Date: |  |

***This form should be returned to the Line Manager, who should then forward to the humanresources@croydon.gov.uk***



|  |  |
| --- | --- |
| Appendix 4 – Model letter to confirm revised return to work date after premature baby birth |  |

PRIVATE AND CONFIDENTIAL Contact Line manager e-mail

Name and Address

Dear First Name

**Re: Maternity leave return date**

Thank you for speaking/confirming to me on………(date) concerning the revised date for your return to work.

As you know, the arrangement originally was that you would take [number] weeks' maternity leave [and/or ….. day’s annual leave.]

As you commenced maternity leave on [date], you were due to return to work on [date], which is the next working day after the end of your maternity leave. Due to the birth of your baby prematurely on ……… (date) and the addition of ……. days/weeks after you’re your maternity leave period [and/or …… days annual leave], you have confirmed that you will now return to work on ………. (date).

Please remember that additional support can be offered by the council when you return to work. This may comprise of:

* requesting shared parental leave
* purchasing additional annual leave if needed [within the relevant timescale]
* requesting additional special leave (which could be paid or unpaid)
* requesting unpaid parental leave
* working in an agile way or considering making a request for a formal flexible working pattern either temporarily or permanently.

If you have any queries prior to your return to work, please do not hesitate to contact me to discuss further.

 Otherwise, we look forward to seeing you on [date].

Yours sincerely

**Line Manager Name**

**Job Title**

*Cc to* *humanresources@croydon.gov.uk*

**Appendix 5 - Statutory Benefits**

**With Effect From 4 April 2021**

N.B. Paternity pay, is available to individuals regardless of gender identity or gender expression and to the spouse, civil partner or partner (including same sex couples) of the biological parent of a child.

Lower earnings limit £120.00 per week

Statutory Maternity Pay (SMP) £151.97 per week

Statutory Paternity Pay (SPP) £151.87 per week

Statutory Adoption Pay (SAP) £151.97 per week

Maternity Allowance (standard rate) £151.97 per week

Shared Parental Pay (subject to eligibility) £151.97 per week

Parental Bereavement Pay (subject to eligibility) £151.97 per week

These rates are subject to revision by the [Department for Work and Pensions](https://www.gov.uk/maternity-pay-leave) each April.

1. [↑](#footnote-ref-2)
2. [↑](#footnote-ref-3)
3. *National conditions for employees covered by the “Green Book”. This is more favourable than statutory provisions for returning to work.* [↑](#footnote-ref-4)