Section 15: Maternity leave and pay

Introduction

15.1 All employees will have the right to take 52 weeks of maternity leave.

15.2 Paragraphs 15.7 to 15.55 of this Section set out the maternity leave and pay entitlements of NHS employees under the NHS contractual maternity leave scheme.

15.3 Paragraphs 15.56 to 15.60 give information about the position of staff who are not covered by this scheme because they do not have the necessary service or do not intend to return to NHS employment.

15.4 Paragraphs 15.61 to 15.65 define the service that can be counted towards the 12 month continuous service qualification set out in paragraph 15.7 (i) and which breaks in service may be disregarded for this purpose.

15.5 Paragraph 15.66 explains how to get further information about employees' statutory entitlements.

15.6 Where, locally, staff and employer representatives agree arrangements which provide benefits to staff beyond those provided by this section, those local arrangements will apply.

Eligibility

15.7 An employee working full-time or part-time will be entitled to paid and unpaid maternity leave under the NHS contractual maternity pay scheme if:

i) she has 12 months' continuous service (see paragraphs 15.61 to 15.65) with one or more NHS employers at the beginning of the 11th week before the expected week of childbirth;

ii) she notifies her employer in writing before the end of the 15th week before the expected date of childbirth (or if this is not possible, as soon as is reasonably practicable thereafter):

(a) of her intention to take maternity leave;

(b) of the date she wishes to start her maternity leave – she can choose when to start her maternity leave – this can usually be any date from the beginning of the 11th week before the baby is born (but see paragraph 15.8);

(c) that she intends to return to work with the same or another NHS employer for a minimum period of three months after her maternity leave has ended;

(d) and provides a MATB1 form from her midwife or GP giving the expected date of childbirth.

Changing the maternity leave start date

15.8 If the employee subsequently wants to change the date from which she wishes her leave to start, she should notify her employer at least 28 days beforehand (or, if this is not possible, as soon as is reasonably practicable beforehand).

Confirming maternity leave and pay

15.9 Following discussion with the employee, the employer should confirm in writing:

i) the employee's paid and unpaid leave entitlements under this agreement (or statutory entitlements if the employee does not qualify under this agreement);

ii) unless an earlier return date has been given by the employee, her expected return date, based on her 52 weeks paid and unpaid leave entitlement under this agreement; and

iii) the length of any period of accrued annual leave which it has been agreed may be taken following the end of the formal maternity leave period (see paragraphs 15.49 and 15.50);

iv) the need for the employee to give at least 28 days of notice if she wishes to return to work before the expected return date.

Keeping in touch

15.10 Before going on leave, the employer and the employee should also discuss and agree any voluntary arrangements for keeping in touch during the employee's maternity leave, including:

i) any voluntary arrangements that may help her keep in touch with developments at work and, nearer the time of her return, to help facilitate her return to work;

ii) keeping the employer in touch with any developments that may affect her intended date of return.

Keeping in touch during the maternity leave period

15.11 To facilitate the process of keeping in touch, it is important that the employer and employee have early discussion to plan and make arrangements for "keeping in touch days" (KIT days) before the employee's maternity leave takes place.

15.12 To enable employees to take up the opportunity to work KIT days, employers should consider the scope for reimbursement of reasonable childcare costs or the provision of childcare facilities.

15.13 KIT days are intended to facilitate a smooth return to work for women returning from maternity leave.

15.14 An employee may work for up to a maximum of ten KIT days without bringing her maternity leave to an end. Any days of work will not extend the maternity leave period.

15.15 An employee may not work during the two weeks of compulsory maternity leave immediately after the birth of her baby.

15.16 The work can be consecutive or not and can include training or other activities which enable the employee to keep in touch with the workplace.

15.17 Any such work must be by agreement and neither the employer nor the employee can insist upon it.

15.18 The employee will be paid at their basic daily rate for the hours worked, less appropriate maternity leave payment for KIT days worked.

15.19 Working for part of any day will count as one KIT day.

15.20 Any employee who is breastfeeding must be risk assessed and facilities provided in accordance with paragraph 15.34.

Paid maternity leave: amount of pay

15.21 Where an employee intends to return to work the amount of contractual maternity pay receivable is as follows:

i) for the first eight weeks of absence the employee will receive full pay, less any Statutory Maternity Pay or maternity allowance (including any dependents' allowances) receivable;

ii) for the next 18 weeks the employee will receive half of full pay, plus any Statutory Maternity Pay or maternity allowance (including any dependents' allowances) receivable, providing the total receivable does not exceed full pay;

iii) for the next 13 weeks, the employee will receive any Statutory Maternity Pay or maternity allowance that they are entitled to under the statutory scheme.

15.22 By prior agreement with the employer, occupational maternity pay may be paid in a different way, for example a combination of full pay and half pay or a fixed amount spread equally over the maternity leave period.

Calculation of maternity pay

15.23 Full pay will be calculated using the average weekly earnings rules used for calculating Statutory Maternity Pay entitlements, subject to the following qualifications:

i) in the event of a pay award or annual increment being implemented before the paid maternity leave period begins, the maternity pay should be calculated as though the pay award or annual increment had effect throughout the entire Statutory Maternity Pay calculation period. If such a pay award was agreed retrospectively, the maternity pay should be re-calculated on the same basis;

ii) in the event of a pay award or annual increment being implemented during the paid maternity leave period, the maternity pay due from the date of the pay award or annual increment should be increased accordingly. If such a pay award was agreed retrospectively the maternity pay should be re-calculated on the same basis;

iii) in the case of an employee on unpaid sick absence or on sick absence attracting half pay

during the whole or part of the period used for calculating average weekly earnings, in accordance with the earnings rules for Statutory Maternity Pay purposes, average weekly earnings for the period of sick absence shall be calculated on the basis of notional full sick pay.

Unpaid contractual leave

15.24 Employees are also entitled to take a further 13 weeks as unpaid leave to bring the total of leave to 52 weeks. However, this may be extended by local agreement in exceptional circumstances, for example, where employees have sick pre-term babies or multiple births.

Commencement and duration of leave.

15.25 An employee may begin her maternity leave at any time between 11 weeks before the expected week of childbirth and the expected week of childbirth, provided she gives the required notice.

Sickness prior to childbirth

15.26 If an employee is off work ill, or becomes ill, with a pregnancy-related illness during the last four weeks before the expected week of childbirth, maternity leave will normally commence at the beginning of the 4th week before the expected week of childbirth or the beginning of the next week after the employee last worked, whichever is the later. Absence prior to the last four weeks before the expected week of childbirth, supported by a medical statement of incapacity for work, or a self-certificate, shall be treated as sickness absence in accordance with normal leave provisions.

15.27 Odd days of pregnancy-related illness during this period may be disregarded if the employee wishes to continue working till the maternity leave start date previously notified to the employer.

Pre-term birth

15.28 Where an employee's baby is born alive prematurely, the employee will be entitled to the same amount of maternity leave and pay as if her baby was born at full term.

15.29 Where an employee's baby is born before the 11th week before the expected week of childbirth and the employee has worked during the actual week of childbirth, maternity leave will start on the first day of the employee's absence.

15.30 Where an employee's baby is born before the 11th week before the expected week of childbirth and the employee has been absent from work on certified sickness absence during the actual week of childbirth, maternity leave will start the day after the day of birth.

15.31 Where an employee's baby is born before the 11th week before the expected week of childbirth and the baby is in hospital, the employee may split her maternity leave entitlement, taking a minimum period of two weeks' leave immediately after childbirth and the rest of her leave following her baby's discharge from hospital.

Still birth

15.32 Where an employee's baby is born dead after the 24th week of pregnancy, the employee will be entitled to the same amount of maternity leave and pay as if her baby was born alive.

Miscarriage

15.33 Where an employee has a miscarriage before the 25th week of pregnancy, normal sickness absence provisions will apply as necessary.

Health and safety of employees pre and post birth

15.34 Where an employee is pregnant, has recently given birth or is breastfeeding, the employer must carry out a risk assessment of her working conditions. If it is found, or a medical practitioner considers, that an employee or her child would be at risk were she to continue with her normal duties, the employer should provide suitable alternative work for which the employee will receive her normal rate of pay. Where it is not reasonably practicable to offer suitable alternative work, the employee should be suspended on full pay.

15.35 These provisions also apply to an employee who is breastfeeding if it is found that her normal duties would prevent her from successfully breastfeeding her child.

Return to work

15.36 An employee who intends to return to work at the end of her full maternity leave will not be required to give any further notification to the employer, although if she wishes to return early, she must give at least 28 days' notice.

15.37 An employee has the right to return to her job under her original contract and on no less favourable terms and conditions.

Returning on flexible working arrangements

15.38 If, at the end of maternity leave, the employee wishes to return to work on different hours, the NHS employer has a duty to facilitate this, wherever possible. The employee will return to work on different hours, in the same job. If this is not possible, the employer must provide written, objectively justifiable reasons for this and the employee should return to the same pay band and work of a similar nature and status, to that which they held prior to their maternity absence.

15.39 If it is agreed that the employee will return to work on a flexible basis, including changed or reduced hours, for an agreed temporary period, this will not affect the employee's right to return to her job under her original contract, at the end of the agreed period.

Sickness following the end of maternity leave

15.40 In the event of illness following the date the employee was due to return to work, normal sickness absence provisions will apply as necessary.

Failure to return to work

15.41 If an employee who has notified her employer of her intention to return to work for the

same or a different NHS employer, in accordance with paragraph 15.7 (ii) (c), fails to do so within 15 months of the beginning of her maternity leave, she will be liable to refund the whole of her maternity pay, less any Statutory Maternity Pay, received. In cases where the employer considers that to enforce this provision would cause undue hardship or distress, the employer will have the discretion to waive their rights to recovery.

Miscellaneous provisions

Fixed-term contracts or training contracts

15.42 Employees subject to fixed-term or training contracts which expire after the 11th week before the expected week of childbirth and who satisfy the conditions in paragraphs 15.7 (i), 15.7 (ii) (a), 15.7 (ii) (b) and 15.7 (ii) (d), shall have their contracts extended so as to allow them to receive the 52 weeks, which includes paid contractual and statutory maternity pay, and the remaining 13 weeks of unpaid maternity leave.

15.43 Absence on maternity leave (paid and unpaid) up to 52 weeks before a further NHS appointment shall not constitute a break in service.

15.44 If there is no right of return to be exercised because the contract would have ended if pregnancy and childbirth had not occurred, the repayment provisions set out in paragraph 15.41 will not apply.

15.45 Employees on fixed-term contracts who do not meet the 12 months' continuous service condition set out in paragraph 15.7 (i), may still be entitled to Statutory Maternity Pay.

Rotational training contracts

15.46 Where an employee is on a planned rotation of appointments with one or more NHS employers, as part of an agreed programme of training, she shall have the right to return to work in the same post or in the next planned post, irrespective of whether the contract would otherwise have ended if pregnancy and childbirth had not occurred. In such circumstances the employee's contract will be extended to enable the practitioner to complete the agreed programme of training.

Contractual rights

15.47 During maternity leave (both paid and unpaid) an employee retains all of her contractual rights, except remuneration.

Increments

15.48 Maternity leave, whether paid or unpaid, shall count as service for annual increments and for the purposes of any service qualification period for additional annual leave. The expectation is that an employee on maternity leave would progress through a KSF gateway (increment in England and Wales) on the due date, if concerns had not been raised about the ability to meet their KSF outline prior to maternity leave.

Annual leave and public holidays

15.49 Employees on paid and unpaid maternity leave retain their right to the annual leave and public holidays provided by Section 13.

15.50 Where unused annual leave and public holidays exceed local provisions for carry over to the next leave year it may be beneficial to the employer and employee for the employee to take the unused annual leave and public holidays before and/or after the agreed (paid and unpaid) maternity leave period. The amount of annual leave and public holidays to be taken in this way, or carried over, should be discussed and agreed between the employee and employer. Payment in lieu may be considered as an option where accrual of annual leave and public holidays exceeds normal carry over provisions.

Pensions

15.51 Pension rights and contributions shall be dealt with in accordance with the provisions of the NHS Superannuation Regulations.

Antenatal care

15.52 Pregnant employees have the right to paid time off for antenatal care. Antenatal care includes relaxation and parent-craft classes as well as appointments for antenatal care.

Post-natal care and breastfeeding mothers

15.53 Women who have recently given birth should have paid time off for post-natal care e.g. attendance at health clinics.

15.54 Employers are required to undertake a risk assessment and to provide breastfeeding women with suitable private rest facilities. The Health and Safety Executive Guidance recommends that employers provide:

- a clean, healthy and safe environment for women who are breastfeeding;
- suitable access to a private room to express and store milk in an appropriate refrigerator.

15.55 Employers are reminded that they should consider requests for flexible working arrangements to support breastfeeding women at work.

Employees not returning to NHS employment

15.56 An employee who satisfies the conditions in paragraph 15.7, except that she does not intend to work with the same or another NHS employer for a minimum period of three months after her maternity leave is ended, will be entitled to pay equivalent to Statutory Maternity Pay, which is paid at 90 per cent of her average weekly earnings for the first six weeks of her maternity leave and to a flat rate sum for the following 33 weeks.

Employees with less than 12 months' continuous service

15.57 If an employee does not satisfy the conditions in paragraph 15.7 for occupational

maternity pay, she may be entitled to Statutory Maternity Pay. Statutory Maternity Pay will be paid regardless of whether she satisfies the conditions in paragraph 15.7.

15.58 If her earnings are too low for her to qualify for Statutory Maternity Pay, or she does not qualify for another reason, she should be advised to claim maternity allowance from her local Job Centre Plus or social security office.

15.59 All employees will have a right to take 52 weeks of maternity leave whether or not they return to NHS employment.

15.60 Paragraph 15.66 contains further information on statutory maternity entitlements.

Continuous service

15.61 For the purposes of calculating whether the employee meets the qualification set out in paragraph 15.7 (i) to have had 12 months of continuous service with one or more NHS employers, the following provisions shall apply:

i) NHS employers include health authorities, NHS boards, NHS trusts and the Northern Ireland Health Service;
ii) a break in service of three months or less will be disregarded (though not count as service).

15.62 The following breaks in service will also be disregarded (though not count as service):

i) employment under the terms of an honorary contract;
ii) employment as a locum with a general practitioner for a period not exceeding 12 months;
iii) a period of up to 12 months spent abroad as part of a definite programme of postgraduate training on the advice of the postgraduate dean or college or faculty advisor in the speciality concerned;
iv) a period of voluntary service overseas with a recognised international relief organisation for a period of 12 months, which may exceptionally be extended for 12 months at the discretion of the employer which recruits the employee on her return;
v) absence on a employment break scheme in accordance with the provisions of Section 36 of this Handbook;
vi) absence on maternity leave (paid or unpaid) as provided for under this agreement.

15.63 Employers may at their discretion extend the period specified in paragraphs 15.61 (ii) and 15.62.

15.64 Employment as a trainee with a general medical practitioner in accordance with the provisions of the Trainee Practitioner Scheme, shall similarly be disregarded and count as service.

15.65 Employers have the discretion to count other previous NHS service or service with other employers.

Information about statutory maternity/adoption leave, Shared Parental Leave and paternity leave and pay

15.66 There are occasions when employees are entitled to other statutory benefits/allowances and information about all statutory maternity/adoption, Shared Parental Leave and paternity rights can be found using the following link: www.gov.uk

Information about health and safety for new and expectant mothers at work can be found using the following link: http://www.hse.gov.uk/mothers/