



Engage MAT

Maternity Procedure –

Support Staff

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1. Introduction

The purpose of this policy and procedure is to outline maternity leave and pay provisions for support staff. Depending on whether employees meet the applicable eligibility criteria, they may have entitlement to statutory (SMP) and/or occupational maternity pay (OMP). If the employee does not have entitlement to SMP or OMP, she would have access to statutory maternity allowance through the Job Centre Plus.

Schools and academies must comply with the statutory maternity scheme. All schools must comply with the nationally agreed maternity scheme and all academies, other than those who have formally moved away from the Green Book provisions, must also follow the national maternity scheme. All schools must follow locally agreed provisions.

Other school policies/guidance may detail additional entitlements for the employee or employee's partner to maximise the time off they can have with their child. These additional entitlements include:

- paternity leave
- maternity support leave
- shared parental leave

- flexible working
- parental leave

2. Equal Opportunities

The school expects employees to adhere to this policy in line with the school's obligations under equality legislation. Headteachers must ensure that all reasonable adjustments or supportive measures are considered to allow equality of access and opportunity regardless of age, gender, ethnicity, sexual orientation, disability, faith or religion, gender identity, pregnancy or marital status.

3. Scope

It is the responsibility of Headteachers to ensure that employees for whom they are responsible are made aware of the provisions of this policy and that they are applied in a consistent manner.

4. Time off for antenatal care

All pregnant employees have the right to paid time off for antenatal care regardless of their length of service, hours of work or maternity leave entitlement. Antenatal care is defined as visits to a registered Medical Practitioner, Midwife or Health Visitor. Except for the first appointment, the employee must provide a certificate from a registered practitioner, midwife or health visitor confirming an appointment has been made.

Partners of pregnant women, wishing to take time off to attend antenatal appointments, have different entitlements. For more information please see the Trust's Paternity leave and pay scheme.

Maternity support leave is available to eligible partners and employees who are nominated by the expectant mother to assist in the care of the child and to provide her with support. See para 14 for further information.

5. Entitlement

Leave: All pregnant employees, i.e. those working under a contract of employment are entitled to take up to 52 weeks statutory maternity leave (SML) around the birth of their child, regardless of their hours of work or length of service, where the appropriate notice has been given. This includes surrogate birth mothers. This right is irrespective of how long the employee has worked for the school.

SML is made up of 26 weeks' ordinary maternity leave (OML) followed immediately by 26 weeks' additional maternity leave (AML). An employee must take a minimum of two weeks' leave after the birth of her child (compulsory maternity leave).

Pay: The school operates two maternity pay schemes, both will total a 39 week pay period. The actual amount of pay will vary depending on whether the employee is

entitled to maternity allowance (MA) or statutory maternity pay (SMP) and/or occupational maternity pay (OMP):

Statutory Maternity Pay (SMP) which is paid by the school on behalf of the Department for Work and Pensions. There are two weekly rates of SMP:

- The higher rate is 9/10 of the employee's average weekly earnings and is payable for the first six weeks of the period for which SMP is due (known as the maternity pay period).
- The lower rate is a set rate payable for the remaining 33 weeks of the maternity pay period or 9/10 of the employee's average weekly earnings where this is less than the SMP rate. The current rate is available from Educator Solutions HR Services on 01603 307760 or HRenquiry@educatorsolutions.org.uk SMP is subject to pension, tax and NI contributions.

Payroll will calculate average weekly earnings but broadly they are an average of the gross earnings paid in the 8 weeks before the end of the qualifying week.

Occupational Maternity Pay (OMP) which is paid by the school in accordance with the National and Local Conditions of Service. The amount of OMP the individual receives will depend on whether she wishes to reserve her right to return to work after the birth of the baby.

If the employee **is not intending** to return to work, she will receive 9/10 of a week's contractual pay for the first six weeks of her maternity leave offset against payments by way of SMP or MA. For the subsequent 33 weeks she will receive the lower rate SMP if she fulfils the eligibility criteria.

If the employee **is intending** to return to work, OMP will be paid for 18 weeks (but the SMP total payment period extends to 39 weeks). Payments will be calculated as follows:

- for the first six weeks of absence, the employee will receive SMP at 9/10 of a week's average contractual pay.
- for the same six week period described above, the employee will receive 1/10 of their weekly contractual pay as OMP.
- for the next 12 weeks, the employee will also receive half a week's contractual pay as OMP (in addition to any entitlement to SMP or MA provided the two combined do not exceed full pay).
- this is followed by a further 21 weeks at the lower rate SMP provided the eligibility criteria is fulfilled.
- the final 13 weeks are unpaid

OMP will be calculated on contractual weekly pay. If the employee qualifies for both OMP and SMP, she will be paid whatever amount is the greater for the first six weeks.

As a qualifying condition for OMP, (irrespective of whether there have been any agreed changes in working hours) the employee will be required to return to local authority employment/Trust employment for a period of at least 12 weeks. Any unpaid leave taken following maternity leave does not count towards this qualifying period. If she does not return she will be asked to repay the 12 weeks half pay and 6 weeks at 1/10 of pay. However, in cases of involuntary termination, repayment of OMP will be considered on a case by case basis. Arrangements to have OMP payments of 12 weeks at half pay and 6 weeks at 1/10th paid over the 33 week SMP period or as a one off lump sum may be made where this is mutually agreed between the school and the employee. Alternatively it is possible, if the employee wishes, to ask for the OMP payments of 12 weeks half pay and 6 weeks at 1/10th to be held until their return to work.

6. Eligibility

Leave: To qualify for maternity leave, the employee needs to notify their Headteacher/ Principal that they wish to take maternity leave. This needs to be done no later than the end of the 15th week before the EWC by completing the *Maternity leave and pay form (F208)* on HR InfoSpace.

Pay

Statutory maternity pay (SMP) eligibility criteria:

To receive SMP, an employee must satisfy the following conditions:

- have been continuously employed by their current employer for at least 26 weeks¹, at the start of the 15th week before the baby is due. This 15th week is known as the qualifying week (expected week of childbirth EWC).
- have average earnings of not less than the lower earnings limit for payment of National Insurance contributions between the last normal pay day before the 15th week before the EWC and 8 weeks prior to this
- still be pregnant at the 11th week before the week the baby is due or have had the baby by that time.
- have provided the MATB1² showing the date the baby is due at least 28 days before the maternity leave is due to start, and have stopped work.

Payroll will not pay SMP until documentary evidence is received.

If the employee does not qualify, her original MAT B1 must be returned to her by Payroll with form SMP1 explaining why the school is unable to pay SMP and how she can claim maternity allowance (MA) from the Jobcentre Plus. Headteachers will

¹ If a woman's baby is born early, before or during the qualifying week and she would have completed 26 weeks employment but for the early birth, the continuous employment rule is satisfied.

² The earliest the MATB1 is available is the 14th week before the baby is due (i.e. the 26th week of pregnancy). This means that at the time when the qualifying week should be established (i.e. the 15th week before the baby is due) the MATB1 may not be available.

need to check if the employee receives this, because any entitlement to SMA is offset against the amount of any occupational maternity pay she may qualify for.

If any of the circumstances outlined below apply to an employee then she will cease to be, entitled to SMP:

- the employee does not give 28 days' notice of the date she intends to start her maternity leave and the reason given for the delay is unacceptable
- the employee is taken into legal custody during the maternity pay period.
- The employee starts working after the birth for someone who did not employ them in the 15th week before baby due.

Employees are advised to let Educator Solutions HR Services know if the circumstances outlined above become applicable to them.

Occupational maternity pay (OMP) eligibility criteria

The occupational maternity scheme applies to pregnant employees regardless of the number of hours worked per week. To qualify for OMP the employee must have:

- completed at least 1 years' continuous local government service by the 11th week before the date the baby is due

Continuous service does not have to be with their current employer but can include other employment covered under the redundancy modification order. Therefore, previous continuous service with other local authorities and organisations will count towards local government service.

If an employee has less than 1 years' continuous local government service at the 11th week before the date her baby is due, then she will not qualify for OMP, but will still get SMP or SMA (statutory maternity allowance) as appropriate.

7. Commencement of maternity leave

The starting date of the maternity leave period should normally be agreed between the employee and the Headteacher. However, the final decision is the employee's. The earliest she can start her maternity leave is 11 weeks before the baby is due, or from the time of childbirth if that is earlier, but she can, if she wants to and is fit enough, work right up to the time the baby is due.

Normally maternity leave will commence on the day specified by the employee concerned but this can be triggered by absence due to pregnancy or the birth of the baby. When this happens the maternity leave and maternity pay period is deemed to have begun on the day following the first day of absence or childbirth.

If the employee is absent from work because of a pregnancy related illness on or after the start of the 4th week before the baby is due this should be treated as the

start of her maternity leave unless it is a very minor illness and she is expected to return within 1 or 2 days,

If the employee is ill for a non-pregnancy related reason, she will be regarded as being on sick leave until either the baby is born, or the date she has given as the start date of her maternity leave, when she will start receiving her maternity pay.

It follows that if an employee is off sick during or after the 4th week before the baby is due and she has not started her maternity leave, it is essential the reason for her absence is immediately discovered. Normally the employee's certificate from her GP will state if her sickness is pregnancy related. For illnesses where it is not possible to decide if the absence is due to pregnancy then the advice of the school medical adviser should be sought.

The date that an employee wishes to start maternity leave can be changed but 21 days' notice needs to be provided prior to when the maternity leave was originally due to start.

8. Notification

The employee needs to notify their Headteacher that they wish to take maternity leave. This needs to be done no later than the end of the 15th week before the EWC. This can be done by completing the *Maternity leave and pay form (F208)*.

If the employee does not give the required notification, she loses her right to start maternity leave on her chosen date. The only exception to this is where it is not reasonably practicable for the employee to give notice any earlier e.g. if the baby is born much earlier than expected, i.e. well before the qualifying week.

It should be noted that the qualifying week for SMP is the 15th week before the week the baby is due and the qualifying week for OMP is the 11th week before the week the baby is due.

The Headteacher is required to confirm the end date of maternity leave, which will normally be assumed to be 52 weeks from the intended start of maternity leave, unless the employee has notified otherwise at this stage. The statutory requirement is for confirmation to be sent to the employee within 28 days of the employee's notification. Failure to confirm within this timescale may result in the employee having protection against dismissal if she fails to return to work on time, and she also may not be obliged to give 21 days' notice of changing her return to work date.

9. Keeping in touch (KIT) days

KIT Days are a statutory entitlement where the individual may work for up to 10 days during their maternity leave without the loss of statutory maternity payments for that week, or their maternity leave being terminated. Both parties must be in agreement of any such work - the individual cannot be required to attend a KIT Day, nor is the

employee entitled to request a KIT Day if there is no practicable reason for them to attend the workplace i.e. work activities, training, INSET day etc. A KIT day cannot take place during the first two weeks following the birth of a child (compulsory maternity leave). KIT Days do not have to be consecutive and can be used for work activities, training or any other activity such as a staff meeting or INSET day that enables the employee to keep in touch with the workplace. Working for part of a day will count as one day's work.

Employees who attend a KIT day will be paid their contractual pay for that day and any SMP entitlement for that week will be offset against the employee's actual earnings. Working for part of a day will count as one day's work. Completion of a *Keeping in touch (KIT) day claim form (F208b)* is required. Returning to work

10. Returning to Work

An employee is expected to return to work at the end of her maternity leave period on the date notified to her by the employer. Specific notification, to the employee's Headteacher, of the return date is only required from the employee where it is to be before the natural end of the 52 week (one year) period. An employee wishing to return before the end of the maternity leave period is required to give 21 days' notice of the earlier date she proposes to return. If an employee changes her mind about the day she proposes to return, she must give her employer 21 days' notice of the new date, if this is earlier than the original date she notified or if she is now proposing to return later than the original date, she must give notice of the new return date 21 days before the original return date.

In cases where the notice given is less than this, management can postpone the return to ensure the minimum notice period above, as long as this does not go beyond the end of the maternity leave period. Any postponement is conditional upon the employee having been issued with the required notice of expected date of return within the 28 day limit. Where no early or prior notice of a date of return is given the employee will be expected to return to work at the end of the 52 week leave period.

Headteachers will need to inform their payroll provider when an employee's maternity leave ends, even if they are not returning to work straight away e.g. due to taking annual leave. Customers whose payroll provider is Norfolk County Council can do this by email. It will ensure the employee is paid correctly.

Academies: hrcnceexternals@norfolk.gov.uk

Please include the date of return from maternity leave and if there are any changes e.g. changes to hours.

When the employee returns to work at the end of her maternity leave, she is entitled to return to the job in which she was employed under her original contract of employment and on terms and conditions not less favourable than those that would

have applied had she not been absent. In the event of this position being no longer available through reason of redundancy the employee will be entitled to be offered alternative employment where available in accordance with the terms and conditions of the Schools' Staffing Adjustment Procedure.

As a matter of good practice Headteachers are advised to maintain reasonable contact with their employees throughout their maternity leave, to let them know of changes occurring in the workplace and to keep informed about changes to the employee's plans. This contact does not count towards the 10 KIT days.

An employee is able to return from maternity leave during a school holiday period, providing she has met any conditions as outlined in this scheme and is medically fit to do so.

10.1 Returning to work on a part-time basis

Some women wish to return to work on reduced hours after their period of maternity leave.

Under the Flexible Working Regulations they have the right to request this. Employers must give such requests full consideration and have an obligation to formally respond to the request. It follows that Headteachers should assess the practicalities of allowing a return on this basis and not unreasonably refuse it. Headteachers will be required to justify any decision not to allow such a return.

10.2 Delaying return to work

If the employee is unable to return to work on the expected day due to sickness, the absence will be covered by the sickness scheme in the normal way.

11. Resigning from work

11.1 Resignation before maternity leave

If the employee states, before she leaves work to have her baby, that she will not be returning to work and gives her resignation date as her last day of service, then her contract of employment ends with effect from the day after that date. She will still be entitled to SMP or SMA provided she fulfils the eligibility criteria but she will not be entitled to any OMP payments.

If she does not give a resignation date an appropriate date should be agreed. This will normally be her last day of service or the last day of her 39-week maternity pay period. In the latter case, the employee will be entitled to receive all contractual benefits for the maternity pay period (except remuneration) as described in section 12.

11.2 Resignation during maternity leave

If during a period of maternity leave an employee tenders her written resignation, her last date of service would be the date of her letter. As described above, the

employee will be entitled to receive all contractual benefits up to her resignation (except remuneration).

An employee who has received the full OMP entitlement and subsequently resigns from her post will be required to repay twelve weeks half pay and 6 weeks at 10% of weekly contracted pay.

Failure to inform an employee of her expected date of return within the specified 28-day period can have the following implications for the employer:

- If a woman does not give the required 21 days notice of intention to return on a date earlier than the end of her maternity leave the employer is not able to postpone her return to work. The employee becomes protected from suffering a detriment or being dismissed if she fails to return after the end of her maternity leave and she reasonably believed that it had not ended.
- If the employee simply does not return at the end of the maternity leave, it should not be presumed she has resigned. Legislation and case law has confirmed that while an employee may lose her right to return to work, the contract of employment will still subsist until one of the parties brings it to an end e.g. by resignation or dismissal. In such cases, Headteachers are advised to find out the reason why the employee has not returned. If she does not intend to return to work then she should be asked to resign as described above. If she is experiencing difficulties e.g. problems with organising childcare, then she should be allowed a reasonable extension to her unpaid maternity leave. To dismiss an employee in these circumstances is likely to constitute unfair dismissal and sex discrimination

12. Contractual status during maternity leave

Contractual benefits

Entitlement to contractual benefits should be at least those which would apply had the employee been absent due to sickness. For the purpose of calculating a week's pay, this will include contractual allowances throughout the whole of her 52 weeks of maternity payments.

Excess travel

If an employee is entitled to excess travel payments these will be suspended for the duration of their maternity leave. However, the employee will still be entitled to the full 12 months of payments. Therefore, payments will restart once the employee returns to work and the payment period extended by the length of time the employee was on maternity leave.

Salary sacrifice arrangements

Employees need to be aware that if they are participating in a salary sacrifice arrangement e.g. for childcare vouchers, or thinking of doing so, payments for maternity pay may be affected due to reductions in national insurance contributions and income tax.

Childcare vouchers

Where the employee is in receipt of childcare vouchers via salary sacrifice they can either:

- suspend their childcare vouchers during maternity leave - the employee will need to contact their childcare voucher provider to inform them of this.
- continue to receive childcare vouchers during maternity leave providing their occupational maternity pay covers the cost of the vouchers – this is the default position.

The provision of childcare vouchers will be suspended if an employee's occupational maternity pay does not cover the cost of providing their childcare vouchers. Statutory Payments such as Statutory Maternity Pay cannot be exchanged for childcare vouchers.

Annual leave (all year round staff)

Contractual annual leave entitlement, including Bank Holidays, continues to accrue throughout both OML and AML. Annual leave may not be taken during maternity leave. The employee should be encouraged to take all the annual leave she has accrued before starting her maternity leave. The timing of this leave should be discussed with her as soon as possible after she informs the school she is pregnant.

An employee who starts and finishes her maternity leave during the same leave year is entitled to take during that leave year all of her annual leave she would have had if she had been at work instead of on maternity leave.

An employee whose maternity leave crosses two leave years is entitled:

- in the first leave year to whatever leave she would have had, had she not been on maternity leave and,
- In the second leave year when she returns to work she is entitled to her full annual leave entitlement.

If the employee returns to work on a part-time basis, having previously been full-time, then her annual leave entitlement on return should be pro-rated to her new hours of work. However the accrual of annual leave during her maternity leave should be based on the contract of employment in existence at the start of her maternity leave (i.e. based on her former contracted hours). This can cause problems because it could, in effect, double the employee's leave entitlement. In such cases, appropriate arrangements should be made to ensure accrued annual leave is taken as paid leave at the end of the maternity leave period. It is therefore

important that the employee remains on her previous contract of employment until her accrued annual leave has been taken.

Where an employee does not return to work after the birth of her baby and she has taken annual leave exceeding her pro-rata entitlement up to the point in the leave year when her employment ends, the cost should be recovered from the employee. Where this provision is applied generally to employees leaving the school and not just to those leaving after maternity leave, it is unlikely to amount to unlawful sex discrimination.

Sickness during maternity leave

If the employee is sick during her paid maternity leave, it does not affect her maternity pay and she need not comply with the sickness notification procedures. If however she is sick during her unpaid maternity leave, she should inform the school and Payroll as soon as possible and provide a medical certificate as she may be entitled to statutory sick pay. Payroll will be able to advise if she has any entitlement to this.

Pensions

If the individual is a member of the Local Government Pension Scheme, contributions will be deducted on all OMP and SMP payments made to her. Pensionable Pay for calculating LGPS pensions during periods of paid maternity leave is assumed to be equal to average pay before the leave commenced. During unpaid maternity leave, the employee will have the option of making up the "lost" pension. The cost of this is based on the employee's age at the time the option is made and can usually be paid in a lump sum or over a period of time. Customers whose payroll provider is Norfolk County Council - an option form will be sent to employees if they are going to be in a period of unpaid maternity leave.

Pregnancy and unfair dismissal

It is automatically unfair to dismiss a woman:

- for a pregnancy or pregnancy related reason
- at the end of her general maternity leave because she has given birth or a related reason
- after her general maternity leave because she has availed herself of maternity benefits
- within 4 weeks from the end of her general maternity leave where she is covered by a medical certificate
- where a requirement to suspend on health and safety grounds is the main reason for the dismissal
- where she is prevented from exercising her right to return because of redundancy and she is not offered a suitable alternative vacancy where it is available.

- she is made redundant during her maternity leave and is not offered available suitable alternative employment.

In the above circumstances, employees will be entitled to bring unfair dismissal claims regardless of the hours they work or their length of service.

Where a woman is dismissed at any time during her pregnancy or maternity leave she is entitled to be provided with written reasons for her dismissal (whether requested or not).

However, employers are not prevented from dismissing employees for reasons unconnected to their pregnancy (e.g. for redundancy or misconduct reasons). Where a dismissal would have occurred regardless of the fact that the employee is pregnant or on maternity leave, such a dismissal will not be automatically unfair. The fairness will be judged according to the reasonableness of the employer's actions. Employees will need two years' service to make an unfair dismissal claim in these circumstances.

Special considerations also apply to redundancy during pregnancy or maternity leave. Where redundancy occurs during the period of paid maternity leave (i.e. the first 39 weeks of leave), the employee is entitled to be offered any existing suitable alternative employment. Suitable alternative employment means work that is suitable for the employee and appropriate for her to do in the circumstances and on terms and conditions, which are not substantially less favourable, than those under her previous contract. The offer must be made before the existing contract comes to an end, to take effect immediately on the ending of the original contract. A trial period will be applicable where redeployment has occurred due to redundancy.

Where the redundancy would take effect in a period of unpaid maternity leave employees retain their right to return within the 52-week period. It is the responsibility of Headteachers to ensure that employees who are absent from work on maternity leave are kept consulted on any restructuring within their departments. This means that regardless of whether the contract of employment continues, women can exercise their right to return. Where redundancy means there is no job for them to return to, the employee is entitled to be offered any existing suitable alternative to coincide with her date of return to work i.e. the end of her period of maternity leave or earlier if she gives 21 days notice of the wish to return before this. As a result of this it is advisable to delay any redundancy dismissal until the employee reaches her date of return. It is only where no suitable alternative vacancy exists at this time that notice is given and a redundancy payment made.

13. Health and Safety

Appropriate risk assessments should be undertaken and health and safety implications considered to ensure the pregnant employee can continue to work safely and all aspects of health and safety requirements are complied with.

14. Maternity Support Leave (Support staff only):

(applicable to academies following green book provisions)

The National Conditions of Service for NJC for Local Government Services (Green Book) employees provide that the Maternity Support Leave scheme provides for 5 days' paid leave (pro rata for part time employees) at contractual pay for nominated carers at or around the time of the birth of a child, or children.

In most cases such care and support would be provided by the father, partner, civil partner/same sex partner and therefore their first week of statutory paternity pay will be 'topped up'. However, the role can otherwise be fulfilled by a relative or someone who has a caring relationship with the mother and/or child e.g. grandparent. If this is the case the *Maternity support leave and pay form (F208m)* on HR InfoSpace can be used. Please note the mother does not have to be a school/academy employee for your employee to take MSL and only one nominated carer per expectant mother can take advantage of MSL.

15. Other/change in circumstances

15.1 Premature birth

If the baby is born early, but after the employee has gone on maternity leave, it will have no effect on the maternity pay she is entitled to.

If the employee's baby is born before the maternity pay period is due to start, she must, if reasonably practicable, give notice of the date she had the baby within 28 days. OMP and/or SMP should be paid from the day following the day of childbirth.

15.2 Stillborn birth

If a baby survives for only an instant, it is a live birth not a stillbirth.

If the baby is stillborn before the 24th week of pregnancy, i.e. earlier than the 16th week before the expected week of childbirth, SMP/OMP is not payable. Instead the sick pay scheme applies.

If the baby is stillborn after the start of the 16th week before the expected week of childbirth, then SMP/OMP should be paid as it would for a live birth.

15.3 Entitlement to SMP/OMP if a baby dies after birth

In the event of the employee giving birth to a live baby which later dies during the maternity leave period, SMP/OMP should continue to be paid.

15.4 Employees working under more than one contract

If an employee works under two separate contracts of employment and the employer pays National Insurance Contributions separately for each contract, eligibility for the payment of SMP will be assessed separately.

If the pay from the contracts is added together before National Insurance contributions are calculated, then SMP is assessed on the total payment.

If the employee satisfies the qualifying rules with more than one employer she can receive SMP from each of them.

16. Data protection

When managing an employee's maternity leave and pay, the school processes personal data collected in accordance with its data protection policy. Data collected from the point at which an employee informs the school that they plan to take maternity leave is held securely and accessed by, and disclosed to, individuals only for the purposes of managing their maternity leave and pay. Inappropriate access or disclosure of employee data constitutes a data breach and should be reported in accordance with the school's data protection policy immediately. It may also constitute a disciplinary offence, which will be dealt with under the school's disciplinary procedure.

17. Associated documents

- New and expectant mothers policy (P640)
- New and expectant mothers guidance (G640)
- Maternity provisions flowchart (G208a)
- Maternity leave and pay form (MP1) – support staff
- Keeping in touch (KIT) claim form (F208b)
- Maternity support leave form – support staff (F208m)
- Absence staff return form (F213o)
- Flexible working guidance (G204)