

# Maternity Leave and Pay Procedures

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## 1. Entitlement to maternity leave

All employees are entitled to 26 weeks ordinary maternity leave (OML) and a further 26 weeks additional maternity leave (AML) regardless of their length of service.

## 2. Entitlement to maternity pay

### Statutory Maternity Pay (SMP)

Employees who are taking maternity leave and meet the eligibility criteria are entitled to 39 weeks SMP. This applies whether they intend to return to work or not. Basic requirements for eligibility are that the employee must have at least 26 weeks continuous service with the University by the beginning of the 15th week before the baby is due and average weekly earnings of not less than the lower earnings limit for the payment of National Insurance contributions. Where SMP is not payable, employees may be eligible for maternity allowance from the Department for Work and Pensions. Once an application for maternity leave has been made, the Staff Payments Office will advise on eligibility.

SMP is paid for the first 6 weeks at 90% of average weekly earnings and then for a further 33 weeks at a flat-rate (a set rate which is reviewed each year), or 90% of earnings whichever is the lower.

### Occupational Maternity Pay (OMP)

Employees who have 12 months continuous service with the University before the week the baby is due, and who intend to return to work after the birth, will receive full pay for the first 18 weeks of the maternity leave period. Where continuous service with the University is for less than 12 months, the entitlement to full pay will be on a pro-rata basis. Any SMP due during the period of full pay will be included in full pay. Where maternity allowance is received, this will be deducted from full pay during the full pay period.

OMP will not be paid during a period of agreed unpaid leave from the University i.e. a career break or leave of absence. Any SMP entitlement during this leave period would be paid. For further advice concerning individual circumstances, contact the People Hub.

Employees who do not return to work after maternity leave for at least 3 calendar months will be required to repay the difference between SMP and OMP received, except those who leave for reasons of redundancy, or fixed term contract staff whose contract expires within the OMP period (see Maternity Leave and Pay Policy for details).

### 3. Notification requirements

#### Notification of intention to take leave

By the beginning of the 15th week before the week the baby is due, employees must notify the University of the date the baby is due and the date they intend to start their maternity leave (unless this is not reasonably practicable). Maternity leave cannot start any earlier than the 11th week before the week the baby is due. The notification must also include confirmation of their intention to return to work.

#### Response to notification

The University will confirm in writing within 28 days the employees expected return to work date, the amount of full contractual pay the employee will receive, and the notification requirements if the employee wants to return earlier than 52 weeks from the start of maternity leave. Details of entitlement to SMP will be provided in writing by the Staff Payments Office.

#### Medical certificate

Staff must produce a medical certificate from a registered medical practitioner or registered midwife stating the week the baby is due. This medical evidence should normally be produced at least 21 days before the week the baby is due, or as soon as reasonably practicable. Payment of SMP cannot be made until this medical evidence has been supplied by the member of staff.

### 4. Change of start date

#### Notification

Employees can change the date they want to start their leave providing they give at least 28 days notice in writing (unless this is not reasonably practicable).

#### Birth of baby before the intended start date

If the baby is born before the leave starts, leave will start automatically from the day *after* the day the baby is born.

#### Pregnancy related illness before the intended start date

Maternity leave will start automatically if the employee is absent from work for a pregnancy related illness during or after the fourth week before the week the baby is expected to be born.

### 5. Return to work before the end of the full maternity leave period (i.e. before the end of 52 weeks)

The employee may return to work before the end of the 52 week period (except during the 2 weeks following the birth) providing they notify the University in writing at least 8 weeks before the date on which they propose to return. Where this notification is not provided, the return to work may be postponed by the University to a date that will enable the 8 weeks' notice of return, subject to this being no later than the end of the 52 week maternity leave period. In the event of the return to work being postponed, there is no contractual obligation to salary during this period.

## 6. Health and safety

### Antenatal care

Employees who are pregnant are entitled to time off with pay for antenatal care - i.e. to attend an arranged appointment for antenatal care on the advice of a doctor, midwife or health visitor.

See section 10 for further details regarding who can accompany a pregnant woman to her antenatal appointments.

### Risk assessment

A risk assessment should be carried out by the line manager for all staff to identify any risk to a pregnant employee's health or that of their child. The assessment should be repeated throughout the pregnancy at appropriate intervals, based upon the perceived level of risk associated with the role and/or the individual circumstances of the pregnancy. Please see the information on new and expectant mothers on the A-Z of the Health and Safety Intranet.

### Rest facilities

Rest facilities are available for pregnant and breastfeeding mothers within People Services at Walton Hall and can be accessed by contacting the People Hub on 01908 (5)41111, via Ask People Services or by emailing [People-Hub@open.ac.uk](mailto:People-Hub@open.ac.uk). The facility includes hand washing and toilet facilities.

Open University facilities external to Walton Hall must ensure that they provide suitable facilities for new and expectant mothers to rest/breastfeed, ideally close to hand washing and toilet facilities and a fridge for storage.

## 7. Terms that apply during maternity leave

### Contractual benefits

An employee will continue to receive all of their non-pay contractual benefits, such as annual leave accrual, throughout the whole of the maternity leave period (i.e. during ordinary maternity leave and additional maternity leave). Leave accrued must be taken in accordance with the employee's terms and conditions.

Employees who are currently receiving Computershare Voucher Services Childcare Vouchers, may continue to receive these whilst on leave, if they so wish, by contacting the People Hub.

Pension rights will continue during the maternity pay period (OMP and SMP) - see section 12.

### Annual leave

Employees are entitled to take their annual leave for the leave year in which maternity leave is taken, before and/or after maternity leave. Annual leave cannot usually be carried over from one annual leave year to the next. If the end of the annual leave year (31st July) is due to fall during the maternity leave period, the employee should ensure (in discussion with their line manager) that, where operationally feasible, they have taken the remainder of their entitlement for the current leave year before starting their maternity leave period.

In exceptional circumstances, where it is not possible to take annual leave either before or after maternity leave, within the same leave year, it may be carried forward into the next leave year. The timing of this leave must be agreed in advance with the line manager (it may be agreed that it is possible to take leave before returning to work, or at agreed times throughout the following leave year, subject to operational needs).

Public holidays and closure days that fall within the maternity leave period are recorded as additional leave and can be taken at the end of the maternity leave period and immediately prior to returning to work, or added to the annual leave entitlement on return to work.

Managers are encouraged to discuss and plan with their members of staff the taking of annual leave around the maternity leave period at an early stage, making it clear what is operationally feasible in terms of timing.

Where a member of staff is changing to part-time working on return from maternity leave and there is a substantial amount of outstanding leave which will be difficult to accommodate operationally, consideration should be given to this being taken before the contractual change takes place, in discussion with the individual.

### Keeping in Touch (KIT) days

Managers can make reasonable contact with employees during their maternity leave (e.g. to let them know about any changes happening at work). The kind of contact that will be maintained should be agreed with the employee beforehand.

Employees can carry out up to 10 days work during their maternity leave period without losing their entitlement to SMP or bringing their maternity leave to an end. Any work on any day will constitute a day's work for this purpose. This can include training or any activity undertaken for the purposes of keeping in touch with the workplace. Such work must not take place during the 2 weeks immediately after the birth of a baby.

Employers do not have the right to require an employee to work during the maternity leave period, nor does the employee have the right to insist that the employer provides any days of work during that period. Any work carried out under this provision will not have the effect of extending the total duration of the maternity leave period.

The University will enhance the statutory payment and pay full pay for KIT days, except during the full-pay period when the employee is already receiving full payment.

KIT days will be paid at the employees' normal rate of pay. This will be paid at either a full day or half day depending on the number of hours worked.

### Redundancy

Where it is not possible for an employee on maternity leave to continue in their role as a consequence of redundancy, they are entitled by law to be offered any suitable alternative vacancy. The work has to be suitable and appropriate for them. The terms and conditions of the new job must be substantially no less favourable than if they had continued under their previous contract.

If such an alternative role exists, it must be offered to them without a competitive process. The employee on maternity leave must be given priority for such a role over any employee at risk and must not be put into competition with any other staff not on maternity leave, regardless of whether there are other people at risk who might have been suitable for the post.

The University has responsibility for deciding whether a vacancy is suitable, after considering aspects such as function, location, pay and reasonableness based on the knowledge of the personal circumstances and will make every effort to identify a suitable acceptable alternative. Appropriate consultation will take place but special arrangements may be necessary if maternity leave has commenced. Any new role will be offered subject to a trial period.

## **8. Additional or consultancy payments for University staff during maternity leave**

Where a member of staff undertakes additional or consultancy work for the University (i.e. work outside of their contract of employment) during their maternity leave period, they will lose the right to receive any SMP which would have been payable in relation to the week(s) in which the work was undertaken. This will not affect any entitlement to OMP under the University's maternity leave scheme.

If the work is undertaken in one of the first 6 weeks of maternity leave (when SMP is payable at a higher rate), this period will be extended so that the individual still receives 6 weeks of SMP at the higher rate. The overall duration of the statutory maternity pay period will not be extended.

A Keeping In Touch (KIT) day cannot be used to undertake the additional or consultancy work.

## **9. Return from maternity leave**

### **Statutory unpaid parental leave**

Where eligible, staff will be entitled to a period of up to 4 weeks unpaid parental leave immediately following the 52 weeks of maternity leave (see the Unpaid Parental Leave Policy for more details).

### **Employment position**

If employees return to work after the ordinary maternity leave period (the first 26 weeks of leave) they retain the right to return to the job in which they were previously employed under their contract of employment.

If they return during or immediately after the additional maternity leave period (the second 26 weeks of leave) they have the right to return to their own job or suitable alternative employment on terms and conditions no less favourable than those that would have applied if maternity leave had not been taken.

When an employee returns to work, they will benefit from any improvements made to their rate of pay or other terms and conditions while they were on maternity leave.

### **Agile working**

The University will seriously consider all requests for changes to working arrangements (on either a temporary or permanent basis) following maternity leave, in accordance with the 'Agile Working Policy'.

Personal circumstances can be disclosed and will be taken into consideration when making decisions concerning such requests. Employees should be aware that student focus and operational effectiveness take precedence in any considerations about agile or flexible working.

## Breastfeeding

As breastfeeding mothers can face special risks to their health and safety, line managers should ensure that a New and Expectant Mother Risk Assessment is completed in each case and is kept under review for the new mother whilst they are continuing to breastfeed.

The normal hazard management control measures in place for the risk will usually be adequate, but where additional risks are identified, appropriate measures must be taken immediately in response to the assessment and discussed with the individual worker.

During the short transitional period following the return to work, mothers who are still breastfeeding may be granted, where possible, time to feed their babies during normal working hours, on the understanding that normal duties are not adversely affected.

While there is no specific legal requirement to provide paid breaks or facilities for new mothers, in order to breastfeed or to express milk for storage, line managers should consider reasonably and proportionately, any request for temporary changes to work patterns/breaks from a breastfeeding mother, in order to enable the employee to continue to breastfeed and facilitate their return to the workplace.

The Agile Working Policy enables all employees to make requests for temporary/permanent changes to their working arrangements. By agreeing to temporary changes to working arrangements, the University may be able to accommodate and enable a mother who is breastfeeding to return to work, while continuing to meet business needs.

## 10. The right for partners to accompany at antenatal appointments

### Who can take leave for antenatal appointments?

All employees and qualifying agency workers, are entitled to take unpaid time off work, to accompany an expectant mother to 2 of her ante-natal appointments if they are:

- a) the baby's father;
- b) the expectant mother's spouse, her civil partner, or partner (of either sex) in an enduring relationship; or
- c) intended parents of a child in a surrogacy arrangement if they expect to be entitled to and intend to apply for a parental order in respect of that child.

The leave is available to those who have a relationship with the pregnant woman or their unborn child.

The University will pay employees for up to 2 appointments at the basic rate of pay. It is expected that no more than half a day of pre-authorized absence from work will be required for each ante-natal appointment and the University will support up to a maximum of 6 1/2 hours for each paid appointment, in order to allow for travel and waiting time, plus attendance at the ante-natal appointment.

Any additional time and/or appointments may be taken as annual leave.

Qualifying agency workers may take the statutory time off as unpaid leave and should notify their employment agency directly.

### Notification requirements

Any employee who wishes to apply to take paid leave to accompany the mother to an ante-natal appointment is required to provide the following details when making the request to their line manager:

- a) that the employee has a qualifying relationship with a pregnant woman or their expected child;
- b) that the employee's purpose in taking time off is to accompany a pregnant woman to an ante-natal appointment;
- c) that the appointment in question is made on the advice of a registered medical practitioner, registered midwife or registered nurse; and
- d) the date and time of the appointment.

The request for time off should provide reasonable notice of the appointment and may be used to attend scans, tests or other routine appointments, as necessary.

## 11. Shared Parental Leave (SPL) and Shared Parental Pay (ShPP)

Eligible employees can decide whether to exercise their right to take SPL.

If they choose to do so, the mother may end their maternity leave early, at any point after the initial 2 week compulsory maternity leave period following the birth of a child. The remaining weeks of leave/statutory pay may then be shared with their partner/the child's father (where eligible to do so). The SPL and ShPP may be taken in blocks by the parents/partners, either consecutively or concurrently, so long as the correct notice period is provided to the employer(s) and that the employer(s) agree with the proposed patterns of leave.

The entitlement for a mother to take maternity leave and receive maternity pay remains unchanged - if they decide to continue on maternity leave (as per the University's Maternity Leave and Pay policy) and not take SPL and ShPP, they may do so and need take no further action.

Further guidance can be found in the Shared Parental Leave and Pay Policy and Procedures on the People Services Intranet and via Ask People Services.

## 12. Pension arrangements

During maternity leave, those staff who are members of the pension scheme will:

- Continue to pay member pension contributions which will be based on the level of actual pay received (the University will make up any shortfall resulting from a reduction in earnings during paid maternity leave).
- Continue to build up pensionable service while in receipt of any form of maternity pay. During unpaid maternity leave, pensionable service will be suspended, and there will be a gap in the pensionable service record unless the individual elects to make up the contributions on their return to work.
- Continue to benefit from life cover or incapacity benefits, whilst on suspended membership during maternity leave.

A gap in the pensionable service record arising from suspended membership whilst on maternity leave can be made up on return to work, as long as the individual elects to do so within 6 months of returning from maternity leave. In these circumstances, the contributions due would be based on the salary earned on return to work, and the University would pay the usual employer contribution. The arrears are due over the same period as the length of suspended membership. Please refer to the relevant information on the USS website for further details.

### 13. Useful references

Maternity Leave and Pay Policy  
Shared Parental Leave and Pay Policy  
Agile Working Policy  
Unpaid Career Breaks Policy (for Staff with Caring Responsibilities)  
Unpaid Parental Leave Policy  
Line Managers Guide: Redundancy and Redeployment of Staff who are on  
Maternity/Shared Parental/Adoption Leave  
New and Expectant Mothers guidance (available on Health and Safety Intranet)  
New and Expectant Mothers Assessment Form (Health and Safety Intranet)  
USS website: [www.uss.co.uk](http://www.uss.co.uk)