



# Maternity Policy and Procedure for Trust Support Staff

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**Equality Statement:** - Under the public sector equality duty (PSED), all trusts/academies must have due regard to the need to eliminate discrimination, harassment and victimisation and any other conduct prohibited by the Equality Act 2010; to advance equality of opportunity between those who share a relevant protected characteristic and those who do not share it and to foster good relations across all protected characteristics. This means trusts/academies must take into account equality considerations when policies are being developed, adopted and implemented.

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# 1. Introduction

This policy applies to all support staff employed in maintained schools and those to whom the National Joint Council (NJC) (Green Book) Conditions of Service apply. This includes support staff employed in academies and free trusts who were subject to transfer under TUPE Regulations unless alternative terms and conditions have since been agreed. It may also be adopted for use in schools such as academies and free schools where the conditions of the Green Book are being applied.

The document is divided into 7 main sections covering:

- [Eligibility](#)
- [Obligations](#)
- [Time Off During Pregnancy](#)
- [Maternity Leave](#)
- [Pay and Pensions](#)
- [Returning to Work](#)
- [Absences](#)

Under the policy, 'childbirth' means the birth of a living child or the birth of a child whether living or dead after 24 weeks of pregnancy.

## 2. Eligibility

All support staff who are pregnant are entitled to maternity leave regardless of length of service or hours worked each week. Benefits will vary depending on service/hours/pay.

## 3. Obligations

### 3.1 Employee

In order to be eligible for maternity leave the employee must:

- Continue to be employed (whether or not at work) immediately before the start of the maternity absence
- Notify the trust in writing (see [Appendix 1](#)) as soon as practicable but no later than the 15<sup>th</sup> week before the expected week of childbirth (EWC):
  - ✓ that she is pregnant;
  - ✓ of the expected week of childbirth;
  - ✓ when she proposes to commence her maternity leave.
- Forward the MATB1 Certificate (issued by the doctor or certified midwife stating the date on which the baby is due) to the trust. (The earliest this can be issued is 20 weeks before the EWC).
- Not remain at work if certified medically unfit to do so.

If an employee wishes to change the date on which her leave starts she must give 28 days' notice in writing. The trust must write to the employee within 28 days to confirm the new expected date of return to work.

## 3.2 Employer

Within 28 days of the initial notification from the employee the trust must write to her informing of:

- ✓ her rights to maternity leave and her return to work obligations;
- ✓ confirmation of the start and end of the maternity period;
- ✓ the pay entitlement during the period of maternity leave;
- ✓ the expected date of the employee's return to work.

There is a legal obligation under the Management of Health and Safety at Work Regulations 1999 for an employer to assess any risks to a pregnant employee and her unborn child. As such the trust should undertake or arrange a risk assessment within the first 4 weeks of notification of pregnancy and then every 4 weeks (or earlier should it be required) until the employee begins maternity leave. If risks are identified, the assessor should notify the employee and:

- ✓ remove the element of the job that is causing the risk, if this is possible;
- ✓ explore the possibility of alternative work in consultation with the employee; or
- ✓ arrange for the employee to take paid leave if no suitable alternative work can be found.

## 4. Time off during Pregnancy

### 4.1 Ante-natal care

Employees are entitled to a reasonable amount of paid time off during normal working hours for antenatal care made on the advice of a registered medical practitioner. This may include relaxation classes and parent-craft classes. Employees should advise the trust of any such appointments in advance and except for the first appointment, employees should show the employer (if requested) an appointment card or other documents showing that an appointment has been made.

## 5. Maternity Leave

### 5.1 Compulsory maternity leave

Employees must take a minimum of two weeks' maternity leave following the birth of their child. An employee may not return to work during this time.

### 5.2 Ordinary Maternity Leave (OML)

Regardless of the length of service or hours of work, employees are entitled to take up to 26 weeks' ordinary maternity leave. Employees have the right to choose when to start their maternity leave any time after the beginning of the 11<sup>th</sup> week before the baby is due to be born.

If the baby is born before maternity leave commences, leave will start on the date the baby is born. If an employee is taken ill with a pregnancy related condition after the beginning of the 4<sup>th</sup> week before the EWC, maternity leave will start automatically the following day.

### 5.3 Additional Maternity Leave (AML)

In addition to ordinary maternity leave all employees have the right to take up to 26 weeks' additional maternity leave, beginning on the day immediately following the day on which ordinary maternity leave ends. A total of up to 52 weeks maternity leave is available to all employees. Please refer to [paragraph 6](#) for details of pay during maternity leave.

### 5.4 Contact during maternity leave

The Academy Lead will ensure that arrangements are made for keeping in touch with the employee during their leave. The amount of contact will be dependent upon the wishes of the employee; however, the Trust reserves the right in any event to maintain reasonable contact with the employee from time to time during maternity leave. Reasonable contact may be to:

- ✓ discuss the employee's plans to return to work;
- ✓ discuss any special arrangements to be made, or training to be given, to ease an employee's return to work; and/or
- ✓ update the employee on developments at work during their absence.

### 5.5 Keeping-in-touch (KIT) days

Except during the first two weeks after childbirth, an employee can agree to work, or to attend training, for up to ten days during either ordinary maternity leave or additional maternity leave without bringing the period of maternity leave to an end and without loss of a week's OMP, SMP or MA. These are known as 'keeping-in-touch' (KIT) days. Any work carried out on a day constitutes a day's work for these purposes. Working for part of a day will count as one day. An employee will be paid for any work undertaken and this will usually be at their normal daily rate of pay.

The trust cannot require an employee to carry out any work, and the employee has no right to undertake any work during their maternity leave. Any work undertaken is entirely a matter for mutual agreement between the trust and the employee. Any KIT days worked do not extend the period of maternity leave. Once the KIT days have been used up the employee will lose a week's SMP for any week in which they agree to work for the trust.

## 6 Maternity Pay and Pensions

Maternity pay may be made up of the following elements subject to entitlement. Please also refer to [Appendix 2](#) (flow chart).

### 6.1 Statutory Maternity Pay (SMP)

SMP is a statutory entitlement for those employees whose average weekly earnings are not less than the lower earnings limit for National Insurance Contributions *and* who have completed 26 weeks' continuous service with the employer by the end of the 15<sup>th</sup> week before the EWC. SMP is paid by the trust and if eligible, forms part of the Occupational Maternity Pay (OMP).

SMP is treated as income and is therefore subject to deductions for Income Tax, National Insurance and pensions (where applicable). Payment of SMP is **not** conditional on the employee returning to work.

Employees are not entitled to SMP if either of the following apply during the period in which they are being paid SMP:

- ✓ they start working after the birth of the baby for another employer;
- ✓ they are taken into legal custody.

It is the employee's responsibility to notify the trust if either of the above events occur in the period in which they are being paid SMP. Any overpayment of SMP will be reclaimed by the academy.

## **6.2 Maternity Allowance (MA)**

Employees who do not meet the eligibility criteria for SMP may be entitled to Maternity Allowance (MA) paid directly by the Department for Work and Pensions (DWP). The trust's payroll provider will issue the employee with a form SMP1 and advise that they apply to the DWP for MA

## **6.3 Occupational Maternity pay (OMP)**

OMP is paid to employees who have completed at least one year's continuous service by the 11<sup>th</sup> week before the EWC and varies depending on length of service.

For the purpose of this scheme, a week's pay is the amount payable to the employee under the contract of employment. If there are significant variations in the employee's salary, the average salary over the 12 weeks preceding the date of absence shall be treated as a week's salary.

OMP is subject to an employee returning to work for a period of 13 weeks after their maternity leave. If the employee does not return to work for the required period, she is required to refund the Occupational Maternity pay after the first 6 weeks of their maternity leave. SMP or Maternity Allowance (MA) is not refundable, even if the employee does not make a return to work.

If an employee is unsure whether they will be making a return to work following their maternity leave, they can request that the trust's payroll provider withhold the refundable OMP element of their maternity pay. If the employee subsequently returns to work for the qualifying period, they will receive the OMP owed to them.

Where the trust agrees, a full-time employee may return to work on a part-time basis for a period which equates to 13 weeks' full-time service. Similarly, where the trust agrees, a part-time employee may return to work on a different part-time basis for a period which equates to 13 weeks' part-time service relating to her previous contract.

The 13-week period (or part-time equivalent) starts from the date the employee actually returns to work or the date during the school holiday on which the employee has notified the trust in writing that she is available to work, provided she actually returns to duty on the first day after the period of closure.

## **6.4 Maternity Pay – Green Book Conditions of Service – see also Appendix 3**

- a) Employees who have less than one year's continuous local government service at the beginning of the 11<sup>th</sup> week before the EWC and less than 26 weeks' continuous service with the trust or Local Authority at the qualifying week (15<sup>th</sup> week before the EWC), are not entitled to Occupational Maternity Pay and have insufficient service to qualify for Statutory Maternity Pay (SMP).

If an employee is not entitled to SMP, she may be entitled to Maternity Allowance (MA) ([see paragraph 6.2](#)).

b) Employees who have less than one year's continuous local government service, at the beginning of the 11<sup>th</sup> week before the EWC are not entitled to Occupational Maternity Pay. However, if the employee has at least 26 weeks' continuous service, at the qualifying week (15<sup>th</sup> week before the EWC), they may be entitled to Statutory Maternity Pay (subject to the relevant earnings limit). If they are not entitled to SMP they may be entitled Maternity Allowance (see [paragraph 6.2](#)). If eligible for SMP, pay is as follows:

- 6 weeks SMP @ 90% pay
- 33 weeks SMP
- 13 weeks unpaid

c) Employees who have completed one year's continuous local government service at the 11<sup>th</sup> week before the EWC are entitled to both OMP and SMP (subject to the relevant earnings limit). Pay is as follows:

- 6 weeks' 90% pay (inclusive of SMP if eligible)
- 12 weeks' half pay plus SMP if eligible
- 21 weeks' SMP if eligible
- 13 weeks unpaid

**N.B. During any period of combined half pay plus SMP or MA the total payable must not exceed the employee's normal full pay.**

## 6.5 Pensions

If an employee is receiving contractual or statutory pay, they will continue to accrue pension benefits. Contributions will continue to be deducted while they are in receipt of maternity pay and the trust will continue to pay the employer's contribution. Contributions will not be made during periods of no pay. For more information please contact the Local Government Pension Scheme for your area or visit: <https://www.lgpsmember.org/>

## 6.6 Salary Sacrifice

Employees who have sacrificed salary in return for benefits (e.g. childcare vouchers) may wish to review the arrangements in advance of their maternity leave. Advice should be sought from the trust's payroll provider or the benefit provider at the earliest opportunity.

# 7. Returning to Work

## 7.1 Returning after Ordinary Maternity Leave (OML)

After ordinary maternity leave, an employee is entitled to return to the job in which she was employed under her original contract of employment.

If an employee fails to return to work on the expected date after OML due to illness, please refer to [paragraph 8.1](#).



## 7.2 Returning after Additional Maternity Leave (AML)

After additional maternity leave, an employee is entitled to return to either the job that she left, or a suitable alternative job, if her original job is no longer available, on terms and conditions no less favourable than those which would have been applicable to her had she not been absent. ('Job', for this purpose, means the nature of the work which she is employed to do and the capacity and place in which she is so employed.)

Where it is not practicable by reasons of redundancy for the employer to permit the employee to return to work in her job as defined in the above paragraph, the employee is entitled to be offered a suitable alternative vacancy, where one exists, provided that the work to be done in that post is suitable to her and appropriate to the circumstances, and that the capacity and place in which she is to be employed and her terms and conditions of employment are not substantially less favourable to her than if she had been able to return to the job in which she was originally employed.

If an employee fails to return to work on the expected date after AML due to illness, please refer to [paragraph 8.1](#).

## 7.3 Notice Requirements

Before beginning Maternity Leave an employee should be notified of the date of her expected return to work. The employee is not required to give any further notice of her intentions to return on this date. However, if an employee wishes to return early from maternity leave they **must** give 28 days' notice. Where this notice is not given, the employer **may** postpone the return for up to eight weeks from the date when the employee informs the employer of the early return or up to the expected date of return, whichever is sooner.

If the employee does not return on the specified date, their absence may be recorded as unauthorised.

Where an employee is unable to return to work at the end of her period of maternity leave due to sickness, the conditions of the sick pay scheme and the trust's attendance policy will apply. Please refer to [paragraph 8.1](#)

## 7.4 Flexible Working

Employees have the right to request a variation to their contract so that they can work more flexibly and thereby balance their childcare responsibilities with work commitments.

There is no automatic right to return to work following Maternity Leave on an adjusted working pattern, however careful consideration will be given on receipt of a request in accordance with the trust's Flexible Working policy.

## 7.5 Continuous Service

Maternity leave is regarded as continuous service and does not constitute a break in service even when unpaid. Any period of unpaid leave however does not count towards pensionable service in the assessment of retirement benefits.

During the time that an employee is receiving maternity pay, National Insurance, Income Tax and pension contributions (where applicable) will be deducted from the gross pay.

# 8. Absences

## 8.1 Sickness

Maternity leave is not taken into account for the calculation of the period of entitlement to sick leave.

If an employee is absent through illness whilst pregnant, they should report this to the trust in the usual way. Such absences will be managed through the trust's Attendance Management policy. If, however, employees are absent with a pregnancy related illness, whether wholly or partly, on or after the start of the 4th week before the baby is due, then their maternity leave will start automatically on the following day.

If an employee is absent through illness whilst pregnant and the illness is attributable to the pregnancy, including absence on account of miscarriage, and this occurs outside the period of absence for maternity, it will be treated as ordinary absence on sick leave and shall be subject to the conditions governing sick leave, provided it is covered by a doctor's statement (e.g. Fit note).

If the employee is unable to return to work on the expected date due to illness, they should report this to the trust in the usual way. Full entitlement to SMP has to be paid before Statutory Sick pay (SSP) can start. Absences will then be managed through the Attendance Management policy.

## 8.2 Other absences

If, in the early months of pregnancy, an employee is advised by an approved medical practitioner to absent herself from trust because of the risk of rubella or parvovirus, she will be granted leave with full pay, provided that she does not unreasonably refuse to serve in another trust where there is no such undue risk, if requested to do so.

## 8.3 Fertility Treatment

There is no statutory right to time off to undertake fertility investigations or treatment e.g. in-vitro fertilisation (IVF). This should be requested through the normal processes detailed in the trust's Leave of Absence policy for medical appointments.

When embryo transfer occurs, it is advisable that the employee notify the trust that she has had an embryo transfer and may become pregnant. Once an embryo attaches itself inside an employee's body she is legally regarded as pregnant and the provisions of this policy will apply. In these circumstances the employee must inform the trust in writing of confirmation of her pregnancy as detailed in [section 3](#) of this policy.

## 8.4 Statutory Annual Leave

An employee who takes maternity leave must be able to take the 28 days' statutory annual leave (or pro-rated amount if applicable) at a time outside her maternity leave. Employees may have a contractual entitlement to annual leave which exceeds statutory leave entitlement, however accrual of annual leave during periods of maternity leave only applies to the statutory leave entitlement of 28 days (or pro-rated amount if applicable). An employer may not treat any part of the maternity leave period as annual leave.

Employees who are employed on all year-round contracts, will be permitted to take their statutory annual leave during school holidays where possible and if not during term time, subject to usual leave authorisation from the Academy Lead.

For term time only staff, the statutory annual leave entitlement can be offset by any period of trust closure that has taken place in the leave year in question, i.e. both before and after the maternity leave period. Prior to commencing her maternity leave an employee should be advised that she has a statutory entitlement to 28 days' annual leave (or pro-rated amount if applicable) and that this should be taken either before or after the maternity leave period during trust closure periods. On her return from maternity leave, a term time only employee must be allowed to take any outstanding leave during term time during that leave year if there are insufficient school closures to accommodate her leave in that leave year.

Where the return from maternity leave is so close to the end of the leave year that there is not enough time to take all her annual leave entitlement, a term time only employee must be allowed to carry over any balance of her leave to the following leave year. An employee can be required to take this during the remaining periods of school closure after the 28 days' annual leave (or pro-rated amount if applicable) for that leave year has been accommodated.

**It is not possible for either the employee or the trust to decide to carry over the annual leave into the next leave year if there is time to take the leave in the current leave year, i.e. in school closures or in term time.**

### Further advice

The Academy Leads (or nominee) should seek advice from One Education HR&People if they have any queries about the content or implementation of this policy.

**Notifications of entitlement to pay and leave may be undertaken on behalf of the trust by the trust's payroll provider. The trust must ensure that all relevant documentation is provided in a timely manner to the payroll provider.**

### Relevant Associated Policies

- Attendance Management Policy
- Leave of Absence Policy
- Flexible Working Policy
- Shared Parental Leave

## Appendix 1

### Notification of Pregnancy

Employee Name	
Employment Start Date	
Job Title	
Expected date of Childbirth (EDC)	
Expected Week of Childbirth (EWC) (Sunday before the expected date of childbirth)	
MATB1 form Attached to Notification? If not, when will this be supplied?	YES / NO
Requested maternity leave start date	
Do you intend to take the full 52 weeks maternity leave?	YES / NO
If the answer is NO to the above, your requested maternity leave end date	
Any other information that the trust may need to know regarding your pregnancy	

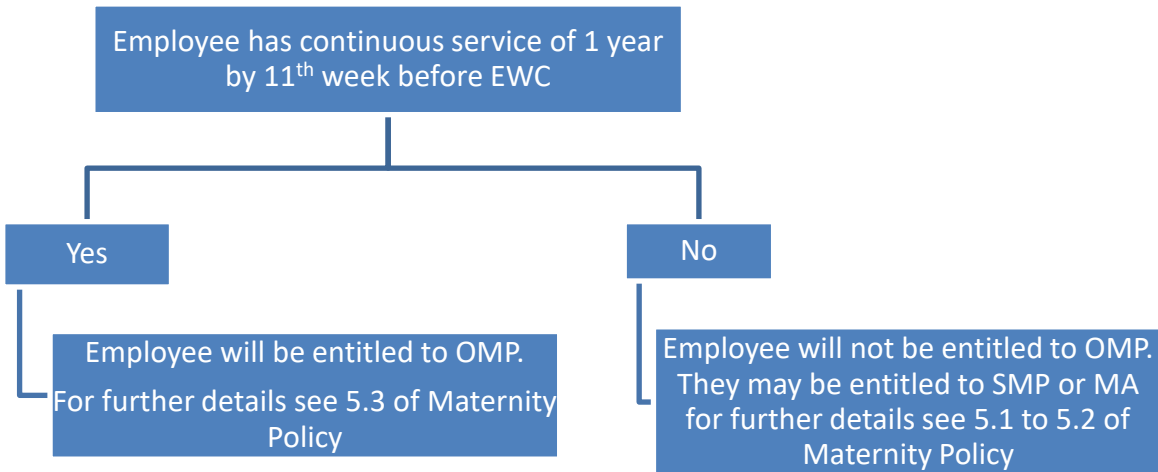
Date:

Signed:

## Appendix 2

### Occupational Maternity Pay (OMP) Entitlements

#### Is the employee entitled to OMP?



#### Does the employee need to pay back OMP following Maternity Leave?

