



# MATERNITY RIGHTS AT WORK



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## Section 1: Introduction and your key rights

This briefing paper has been produced to provide information and guidance for Royal College of Midwives (RCM) members and local workplace representatives about your maternity rights during pregnancy, maternity leave and on return to work. The guidance aims to ensure you understand both your statutory rights and the rights that apply under the NHS Terms and Conditions of Service Handbook for those members employed by the NHS – referred to as NHST&CH in this document where relevant paragraphs are referenced. Note that for members in Northern Ireland there is a separate maternity leave section of the NHS Terms and Conditions of Service Handbook (Section 15 Maternity Leave Northern Ireland), maternity entitlements do not differ but paragraph number references may be different. There is currently no NHS occupational shared parental leave scheme in Northern Ireland.

As your trade union the RCM actively campaigns for improved maternity rights including greater protection from redundancy from when pregnancy begins up until six months after the end of maternity leave, including those who experience stillbirth or miscarriage. We believe that the Government should adopt the Pregnancy & Maternity (Redundancy Protection) Bill introduced by Maria Miller MP. Supportive workplaces that prioritise the health and wellbeing of staff can support the retention of midwives and maternity support workers (MSWs) in the NHS. Flexible working can be key to achieving work-life balance, but it also benefits employers by helping to retain women in the workplace who often have caring responsibilities for children, older relatives and grandchildren. The Government itself accepts that there is currently a shortage of 2,000 NHS midwives in England alone. A 2016 survey of midwives who had left midwifery or were considering leaving midwifery showed that 76% of midwives who had left would be very likely or quite likely to return if there were opportunities to work flexibly.

You should also check any maternity agreements that may apply to your employing NHS Trust under your contract of employment with that Trust. This may be available via your Trust's website or internal staff information sites. If you cannot find it you should ask your local HR department for this information or if you have concerns about your HR department finding out that you are pregnant, you can ask your local RCM workplace representative in confidence to obtain a copy of any relevant agreements.

Those RCM members who work outside the NHS for other employers will need to check their employment contracts or seek information about any occupational maternity employment rights that their employer may apply over and above the statutory minima.

### Key maternity rights for all women

- Statutory rights are your legal minimum rights that apply regardless of who your employer is. If you are employed by the NHS you will probably qualify for additional rights under the NHS occupational maternity provisions. Each section below gives details of both NHS rights for those who qualify and statutory rights. The paragraph numbers given below refer to the relevant paragraphs in the NHS Terms and Conditions Handbook which you can access [here](#)

- It is also important to ask your employer for a copy of any local maternity policies that may apply. You should be able to get this from your HR team or via your local RCM workplace representative or the information may be available on your Trust's website or intranet
- You are protected against unfair treatment and unfair dismissal because of your pregnancy. It is discrimination to dismiss you or treat you unfairly because you have taken maternity leave or exercised any of your maternity rights at work. For example if you think your employer has dismissed you because you are pregnant or if you think your employer has reduced the number of hours of work they usually give you because of your pregnancy then contact the RCM
- You have the right to ask your employer to take action to protect your health and safety and that of your baby. This should include a risk assessment to identify any risks and the action needed to address them
- **Employees** have the right to 52 weeks maternity leave and most women can qualify for 39 weeks' Statutory Maternity Pay or Maternity Allowance
- Agency, casual and other workers (including bank workers who usually have the same rights as agency workers) are not entitled to maternity leave, unless stated in your contract, but you may qualify for maternity pay. You will need to discuss time off with your employer
- Most RCM members will be employees but if you are classed as a worker rather than an employee you have different – not so beneficial – rights. It is important to be sure of your employment status. If you think you may have been incorrectly told that you are a worker rather than an employee make sure you get advice from the RCM
- **Employees** have the right to reasonable paid time off for antenatal care. Agency workers who have completed 12 weeks in the same placement have the right to paid time off for antenatal care. It doesn't matter if you work full-time or part-time, the same rights still apply.

**Your rights to both statutory and NHS maternity pay will depend on your length of service with your employer – but note that the length of service you need to qualify for statutory rights is different to the length of service you need to qualify for NHS rights. This is explained below.**

If you have concerns that you may be experiencing discriminatory treatment because of your pregnancy or maternity leave you should contact your local RCM workplace representative. If you do not have a local rep contact the RCM on 0300 303 0444.

If you are a student midwife the below information will not apply to you. You may be able to claim Universal Credit but this will not be until after your baby is born if you have no other children. If you are starting or continuing a pre-registration midwifery undergraduate or postgraduate training course from September 2020 you may be able to access parental support under the [NHS Learning Support Fund](#).

## Section 2: Maternity leave and pay

### Who qualifies for NHS occupational maternity leave and pay?

Section 15 of the NHS Terms and Conditions of Service Handbook (NHST&CH) sets out the service and notice requirements that NHS employees need to meet to qualify for NHS occupational maternity pay. You can count service with more than one NHS trust to accrue NHS rights (unlike statutory maternity pay where each NHS Trust counts as a separate employer) so you may still qualify for the NHS maternity pay even if you do not qualify for Statutory Maternity Pay.

To qualify for the NHS occupational maternity leave and pay provisions you must:

- Have at least 12 months **continuous** service with one or more NHS employers by the beginning of the 11th week before the expected week of childbirth. If you have had a break in NHS service of three months or less this will be ignored. Other absences that are not counted include absence on an employment break scheme as defined in Section 34 of the NHS Terms and Conditions handbook; and absence on maternity, adoption or shared parental leave under Section 15 of the handbook regardless of whether this was on paid or unpaid leave. Para 15.109 states that employers have the discretion to count other previous NHS service or service with other employers but you will need to discuss this with your employer who may not be keen to agree. If this is the case you should refer your employer to para 15.109 and ask why they are refusing to exercise this discretion. You can also contact your local RCM workplace representative for further advice and support.

### **AND**

- You must notify your employer in writing by the end of the 15th week before the expected week of childbirth (or if this is not possible as soon as possible after that date) that:
  - You intend to take maternity leave
  - The date you want to start your maternity leave (this can usually be any date after the start of the 11th week before the expected week of childbirth)
  - That you intend to return to work for the same NHS employer or for another NHS employer for at least three months after your maternity leave has ended
  - You must give your employer your MATB1 form from your midwife or GP which gives the date when you are expected to give birth.

*Sarah worked for Rosetree NHS Trust for five years but resigned and her employment ended on 30 November 2020. Sarah then started a new job working for Goodwood NHS Trust on 1 February 2021. Sarah was already pregnant when she started working for Goodwood although she did not realise at the time – her baby is due on 30 September. This means that Sarah has less than 26 weeks employment with Goodwood Trust by the end of the 15th week before the week her baby is due.*

*Sarah does not qualify for Statutory Maternity Pay but will need to apply for Maternity Allowance. However Sarah has been employed by NHS Trusts for more than 12 months by the 11th week before her baby is due. Although she did have a break in service in-between working for Rosetree Trust and Goodwood Trust, this was a break of less than three months so it will not be counted. Sarah will still qualify for NHS occupational maternity pay and leave. She does need to bear in mind that if she decides not to return to work for the NHS after her maternity leave finishes then she may have to pay back all the NHS occupational maternity pay that she has received.*

## How much maternity leave can I take?

All women who are employees are entitled to a total of 52 weeks of **statutory** maternity leave from their first day of employment regardless of how many hours they work or how long they have been employed.

NHS employees have the right to take 52 weeks of maternity leave under the NHS scheme – which has some provisions which are better than the statutory provisions as explained below. Paragraph 15.23 states that the 52 weeks may be extended with the agreement of your employer in exceptional circumstances for example, where employees have sick pre-term babies or multiple births.

You may also be able to take other forms of leave after your maternity leave comes to an end such as any annual leave you have accrued and/or a period of parental leave. If you are ill when you are due to return to work your usual rights to occupational sick pay or statutory sick pay apply. See [Section 3](#) for more information.

### Statutory Maternity Leave

There are two different types of statutory maternity leave: Ordinary Maternity Leave and Additional Maternity Leave. All women who are employees are entitled to both types of leave from their first day of employment regardless of how many hours they work or how long they have been employed.

Agency, casual and zero hours workers are not entitled to statutory maternity leave (unless your contract specifically says so) and will have to discuss a period of absence with their employer – but they can still qualify for maternity pay as explained below.

### Ordinary Maternity Leave (OML)

OML is the first 26 weeks of maternity leave. If you return to work after 26 weeks' OML you have the right to return to exactly the same job. You must give your employer the correct notice in order to qualify for maternity leave (see 'How to give notice' below).

### **Additional Maternity Leave (AML)**

AML lasts for 26 weeks and starts on the day after the end of OML. If you return to work after AML you still have the right to return to the same job but, if it is not reasonably practicable, your employer can offer a suitable alternative job on similar terms and conditions.

See [Section 4](#) on 'Returning to work' below for information about changing your working arrangements.

### **When can I start my maternity leave?**

You can choose when to start your maternity leave. The earliest you can start your statutory or NHS leave and pay is 11 weeks before the expected week of childbirth provided you have given your employer the correct notice. You can work right up to the date your baby is born, unless:

- You have a pregnancy-related illness/absence in the last four weeks of your pregnancy or
- Your baby is born before you have started your maternity leave.

If you later want to change the date from which you wish to start your maternity leave, you should notify your employer at least 28 days beforehand or, if this is not possible – for example if you have been taken into hospital unexpectedly – as soon as is reasonably practicable beforehand.

If you are absent from work because of pregnancy (this could include sickness or a maternity suspension on health and safety grounds) in the last four weeks before your expected week of childbirth, your maternity leave will start on the day after your first day of absence from work. If you give birth before the start of your maternity leave, your leave will start on the day following the actual date of birth. For NHS employees para 15.26 NHST&CH states that any odd days of pregnancy related illness during the final four weeks can be ignored by the employer and you can still start your maternity leave on the planned date but you will need to discuss this with your employer.

### **How much NHS occupational maternity pay will I receive?**

If you meet the requirements to receive NHS maternity pay and statutory maternity pay you will receive a combination of both.

If you have enough NHS service to qualify for NHS maternity pay, and provided you return to work for the NHS, you will receive the following (para 15.20 NHST&C):

- For the first eight weeks – full pay (less any statutory maternity pay or maternity allowance, including any dependants' allowances that you receive). Full pay will be calculated using the average weekly earnings rules used for calculating Statutory Maternity Pay (para 15.22 NHST&CH)
- For the next 18 weeks – half of full pay, plus any statutory maternity pay or maternity allowance (including any dependants' allowances) that you receive
- For the next 13 weeks, you will receive any statutory maternity pay or maternity allowance if you qualify to receive them
- For the final 13 weeks you will not receive any pay.



Note that under paragraph 15.21 NHST&CH you can ask your employer if they would be willing to pay your NHS occupational maternity pay in a different way – for example by spreading it out in equal payments over the course of your whole maternity leave period if this will make it easier for you to manage financially. You will need to negotiate this with your employer.

## Who is entitled to receive Statutory Maternity Pay (SMP)?

You can get SMP if you are an employee or worker, such as a casual or agency worker and you are paid through PAYE (with tax and National Insurance deducted at source) and you meet the qualifying conditions below. It does not matter whether you work full-time or part-time or whether you will be returning to work after having your baby. You can also get SMP if you work term-time only, you are on a fixed-term or temporary contract or you are an apprentice as long as you meet the qualifying conditions below. If you do not meet the qualifying conditions for SMP, check whether you can claim Maternity Allowance instead.

Confusingly, the rules on statutory maternity leave and maternity pay are different and you need to check whether you are entitled to each right separately. All employees are entitled to maternity leave but agency, casual and zero hours workers are not entitled to leave (unless your contract specifically says so) but can still qualify for maternity pay. To qualify for SMP you must check the following (see details below):

- A. You must have worked for your employer for long enough to qualify – see *Employment Service Requirements* below
- B. You must meet the minimum earnings requirements – see *Earnings Requirements* below
- C. You must give your employer the correct notice that you are planning to take maternity leave – this must be done by a certain date see *Notice Requirements* below.

## Employment service requirements

You need to have been employed by the same employer for at least 26 weeks by the end of the 15th week before your expected week of childbirth. The 15th week before the expected week of childbirth is approximately the 26th week of pregnancy.

**You will need to know how to work out the 15th week before your baby is due.** This is known as the *Qualifying Week*. Find the Sunday before the day your baby is due or the due day if that is a Sunday. Count back 15 Sundays from there. This Sunday is the start of the 15th week before the week your baby is due so you will need to have at least 26 weeks service with your current employer by this date.

You must still be employed in the same job in all or part of the 15th week before your expected week of childbirth. You are counted as being in work in that week even if you only work for one day or part of a day or you are off sick or on holiday. If your job ends in or after the 15th week before your baby is due you are still entitled to SMP as long as you meet the other conditions.

Note that if you are employed by the NHS each NHS Trust counts as a separate employer so your qualifying service period will start from the date that you began working for your current NHS employer. Even if you do not have enough service with your current NHS employer to qualify for SMP you may still qualify for NHS occupational maternity pay – see [Section 4](#) below.

## Earnings requirements

You must have been paid at least £120 (April 2021 – April 2022) before tax in earnings, on average in the eight weeks (if you are paid weekly) or two months (if you are paid monthly) up to the last pay day before the end of the 15th week before your baby is due. 'Earnings' includes sick pay, holiday pay and any bonuses or commission that form part of your normal wages or salary. 'Earnings' does not include Maternity Allowance.

Note: if you received furlough pay during this calculation period, your employer must calculate your average weekly earnings using the pay you would have received, not your furlough pay.

You can find a Government SMP calculator [here](#).

## Notice requirements

To get maternity leave you must give your employer the following information on or before the 15th week before your baby is due. If your employer asks you to, you must put it in writing but it is a good idea to do this anyway and keep a copy. You may want to think about telling your employer earlier than this to ensure that you are able to access your special health and safety rights during your pregnancy and time off for antenatal care (see below for more information on this).

You need to tell your employer:

- That you are pregnant
- The expected week of childbirth
- The date on which you intend to start your maternity leave.

If you want to change the date you start your maternity leave, you must give your employer notice of the new date at least 28 days before the new date or the old date, whichever is the earliest. If there is a good reason why that is not possible, tell your employer as soon as you reasonably can.

You must give your employer at least 28 days' notice of the date you want to start your maternity pay. Once you have given notice, your employer must write to you within 28 days and state the date you are expected to return from maternity leave.

You can give notice for leave and pay together in the 15th week before your baby is due.

**To get SMP you MUST give your employer a copy of your maternity certificate (form MAT B1)** stating your expected week of childbirth which your midwife or GP will give you once you are at least 20 weeks pregnant.

If you cannot give notice by the 15th week before you are due (for example because you have to go into hospital unexpectedly), you must give notice as soon as you reasonably can.

## How much Statutory Maternity Pay can I receive?

SMP is paid for 39 weeks and is paid at two rates:

- For the first six weeks you get 90% of your average pay. Your average pay is based on your earnings when you are approximately 18 to 26 weeks' pregnant
- After the first six weeks, you get a flat rate of £151.97 per week (April 2021 – April 2022) for 33 weeks or 90% of your average earnings if that is less.

Your average weekly earnings for SMP will be based on all your gross earnings that are subject to National Insurance (NI) contributions. This can include holiday pay, overtime, bonuses, arrears of pay or other sums paid during the SMP calculation period on which NI contributions are paid. In some cases you may benefit from an increase in earnings which will increase the amount of SMP you receive or sometimes your SMP can be reduced if your earnings are lower than normal during the SMP calculation period.

## Do I have to pay any SMP or NHS maternity pay back if I don't return to work?

You can get SMP even if you do not plan to go back to work or your job ends after the 15th week before your baby is due. You do not have to pay any of your SMP back if you do not return to work. If you cannot return to work for your current NHS employer – for example if you have had to relocate for personal reasons – you will not have to repay the statutory maternity pay you received.

If you return to work for the same or for a different NHS employer within 15 months from the date you started your maternity leave for a period of at least three months you will not have to repay the NHS occupational maternity leave you received (para 15.82). If you do not return to work for the same NHS employer or another NHS employer within that time, you will need to repay any NHS occupational maternity pay that you received. If you qualified for statutory maternity pay then you will need to repay the difference between the statutory pay you received and the NHS occupational maternity pay you received. Note that paragraph 15.82 does state *that: 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.* However this can be difficult to negotiate so if you find yourself in this position contact the RCM for advice.

*Priya had worked for Redwood NHS Trust for eight years before she went on maternity leave on 1 January 2019. She qualified for both statutory and NHS maternity pay. Just after she had her baby for personal reasons she had to relocate to a new town approximately 100 miles away so can no longer continue working for Redwood NHS Trust.*

*Priya managed to get a job with a different NHS Trust with her contract starting on 1 March 2020. Priya sent Redwood Trust confirmation of her new job and was therefore able to keep the additional NHS occupational maternity pay that she had received as well as the statutory maternity pay because she had found a new NHS job within 15 months of starting her maternity leave. If Priya had not been able to find a new job with the NHS or if she had started one more than 15 months after her maternity leave began Redwood would probably have asked her to repay the NHS occupational maternity pay she received less the statutory maternity pay she received because she was entitled to keep this whether or not she returned to work.*

*Priya could have tried to argue that to reclaim this money would cause her undue hardship or distress but she would have to provide clear evidence to show this and it would be at the discretion of Redwood NHS Trust.*

## **What happens if I don't qualify for Statutory Maternity Pay?**

If you do not qualify for Statutory Maternity Pay – for example if you do not have the length of service you need with your current employer or have not earned enough as explained above – you may still qualify for NHS occupational maternity pay. If you do not qualify for SMP you may qualify for Maternity Allowance.

If you do not have enough service with your current employer or you did not earn enough to qualify for SMP you may still be able to claim MA.

MA is paid by the Jobcentre Plus for 39 weeks. MA is paid at the rate of £151.97 per week (April 2021 – April 2022) or 90% of your average earnings (if that is less).

You can get MA if you have changed jobs during pregnancy or you have not earned enough to get SMP or you are unemployed or self-employed during pregnancy. You do not need to be currently employed to claim MA, you may qualify for it on the basis of previous employment.

## How do I qualify for Maternity Allowance?

- You need to have been employed or self-employed for at least 26 weeks (they do not need to be in a row) out of the 66 weeks before your expected week of childbirth, and
- You can find 13 weeks (they do not need to be in a row) in which you earned over £30 per week on average. You should choose the weeks in which you earned the most. You can add together earnings from more than one employer. Note: if you send in payslips when you received furlough pay, you can ask the Maternity Allowance Claims Department to work out your average weekly earnings using the pay you would have received, not your furlough pay.

You do not need to work full-time, working part of a week will still count. You can include employed and self-employed work in order to meet the qualifying conditions. You are also considered to be employed in any week in which you have a contract with an agency or zero hours contract. You can also claim a lower rate of MA if you are the spouse or civil partner of a self-employed person and you help in their business.

Maternity Allowance is not means-tested and does not depend on your household income. You can qualify for it if you meet the qualifying conditions above.

You can find more information about Maternity Allowance [here](#).

You can find information about other benefits that you might be able to claim [here](#).

## What information must my employer give me about my maternity leave and pay rights?

Para 15.19 NHST&CH says that your NHS employer must discuss your plans with you and should then confirm in writing:

- Your paid and unpaid leave entitlements under the NHS agreement (or your statutory entitlements if you do not qualify for NHS maternity rights)
- Unless you have told your employer that you will be returning to work before the end of the 52 weeks maternity leave period, they must confirm your expected return date as being at the end of the 52 weeks of paid and unpaid maternity leave
- The length of any period of accrued annual leave which it has been agreed that you can take following the end of the formal maternity leave period
- The need for you to give your NHS employer at least 28 days of notice if you wish to return to work before the expected return date – note that this is a shorter notice period than the statutory requirement for eight weeks' notice.

Note that for all employees, including those employed by non NHS employers, once you have given your employer notice of the date you want to start your maternity leave and pay your employer must write to you within 28 days stating the date that your maternity leave will end (52 weeks from the start date). You are legally required to give at least eight weeks' notice if you want to return to work before the end of your 52 week maternity leave period but if your employer does not write back to you stating the date that your maternity leave will end, they cannot insist on you giving eight weeks' notice to return before the end of the 52 week period.

## **I am on a fixed term contract – how will that affect my rights?**

For NHS employees, paras 15.83 to 15.88 explain that if you are on a fixed term contract which ends after the 11th week before the expected week of childbirth, and if you meet the service requirements to be entitled to NHS occupational maternity pay, then your contract will be extended to allow you to receive the 52 weeks which includes any occupational or statutory maternity pay as well as the final 13 weeks of unpaid leave. If you do not have the right to return because your contract would have ended if you had not been pregnant or taken maternity leave then you will not be required to repay any of the NHS occupational maternity pay that you receive.

If you meet the service and earnings requirements to qualify for Statutory Maternity Pay and provided you are employed in all or part of the 15th week before your baby is due (so as long as your fixed term contract ends in or after that 15th week) you will be entitled to receive SMP for the full 39 weeks – unless you start work for another employer at which point your SMP will come to an end.

*Maria is employed on a fixed term contract. Her colleague, Jess, is employed in a similar role, also on a fixed term contract. Both Maria and Jess were told informally that there was a strong possibility that they would both have their contracts extended. Maria found out that she was pregnant and told her employer. She was then told that there was no funding to support the extension of her fixed term contract. She then discovered that Jess' contract had been extended.*

*Maria raised a grievance with the help of the RCM. The employer tried to argue that the two posts were funded from different funding streams which was why Jess' contract was being extended but Maria's was not going to be continued. Maria and the RCM disputed the accuracy of this and appealed the decision. After the appeal Maria's contract was extended and she was able to take maternity leave with occupational maternity pay.*

*The case was settled through judicial mediation and Maria was very happy with the £2000 compensation that the RCM secured for her for injury to feelings arising from the discriminatory treatment she had experienced.*

## **What happens if an NHS pay award comes into effect during my period of maternity pay or my next pay progression step is due?**

For SMP a pay increase from the start of the calculation period until the end of maternity leave must be taken into account and SMP recalculated. If an NHS pay increase is made and is backdated to a date before you started your maternity leave, your maternity pay will be recalculated to take account of the increase (para 15.22 NHST&CH).

If the implementation date for the pay award falls during your maternity pay period then your maternity pay will be recalculated from the date the increase comes into effect. If you are due to advance up a pay progression point during your maternity leave period this will take effect as if you had not been on maternity leave – even if any pay step progression meeting could not take place because you had started your maternity leave before the meeting was due (paras 15.91–92 NHST&CH).

Again any such increase means that your maternity pay will be recalculated from the date the increase came into effect. The only exception would be if you had a pay step review meeting before you started your maternity leave which found that you had not met the standards to allow you to progress to the next pay point.

## Section 3: Health, safety and wellbeing during and after your pregnancy

### What health and safety protections do I have at work?

If you are pregnant, have given birth in the last six months or are breastfeeding, your employer must make sure that the kind of work you do and your working conditions will not put your health or your baby's health at risk. It is up to you to decide when you want to tell your employer about your pregnancy and some women prefer to keep this private in the early stages. The latest you must tell your employer is by the 15th week before the expected week of childbirth but if you want your employer to take action to protect your health and safety you must tell them in writing that you are pregnant.

All employers must carry out a workplace risk assessment, including identifying any risks to pregnant women or new mothers, and do all that is reasonable to remove or reduce any risks. If you have any concerns about risks you should speak to your GP or midwife and also your RCM health and safety representative who can help to make sure that a full risk assessment is carried out. For midwives the kinds of risks that should be considered include:

- Standing for long periods
- Night work – your GP or midwife should be able to advise you on the particular risks. You have the right to transfer to suitable alternative day work if you are pregnant, breastfeeding or have given birth in the last six months. You must tell your employer in writing that you are pregnant and provide a medical certificate saying that you cannot work at night for health and safety reasons.
- Lifting or moving women in your care or assisting with walking
- Lifting or moving equipment
- Physical, biological and chemical agents – biological agents includes infectious diseases such as coronavirus COVID-19
- Very high or low temperatures
- Tiredness – employers must provide suitable facilities for a pregnant woman or nursing mother to rest, which should include somewhere to lie down
- Working alone – particularly for community based staff.

If the risk assessment reveals a risk, your employer must do all that is reasonable to remove it or prevent your exposure to it. Your employer must give you information on the risks and what action has been taken. They must:

**Step 1:** temporarily alter your working conditions or hours of work, if this is reasonable and avoids the risk, such as allowing extra breaks, ensuring that you can sit down and avoiding heavy lifting. This applies to all workers.

**Step 2:** If that is not possible or does not avoid the risk, your employer must offer you suitable alternative work on terms and conditions that are not substantially less favourable than your original job. Alternative work must be suitable and appropriate for you to do. This usually means that work will only be suitable if it is similar to your normal job and involves the same skills and experience. It will usually only be regarded as appropriate if it is on the same terms and conditions, including pay, and on the same days or hours.

**Step 3:** If there is no suitable alternative work, your employer must suspend you on full pay for as long as necessary to avoid the risk.

Steps 2 and 3 apply to employees only and agency workers with more than 12 weeks in the same placement. They do not apply to those categorised as workers.

During the COVID-19 pandemic many NHS staff who have been working whilst pregnant have had concerns about the risks to themselves and their baby. Maternity Action has produced a set of FAQs for pregnant women and new mothers on rights and benefits during the pandemic which you can access on [their website](#) but do speak to your RCM workplace representative for advice.

### **Do I get paid time off for antenatal care?**

As a midwife or MSW you will be well aware of the importance of attending regular antenatal check-ups for both your own and your baby's wellbeing. This can include any classes, appointments or scans made on the advice of a registered doctor, midwife or health visitor.

If you are an employee, you have the right to take reasonable time off for your antenatal appointments, including time needed to travel to your clinic or GP, without loss of pay. You should be paid at your usual rate. The same rights apply to employees regardless of the number of hours you work or length of service. You are entitled to time off for antenatal care within your normal working hours whether you work full-time or part-time, are temporary or permanent or on a fixed term contract or you are an apprentice.

If you work for an agency or do casual work, you are probably not an employee unless it is stated in your contract or terms and conditions of employment. If you are not sure about your employment status you should get advice. Women who are classed as workers rather than employees are not entitled to paid time off for antenatal appointments so you will need to discuss with your employer taking time away from the workplace to attend. Note that agency workers who have **completed 12 weeks in the same placement** have the right to paid time off for antenatal appointments and classes that fall during your normal work hours.

### **If I take sick leave or reduce my hours during my pregnancy will it affect my maternity pay?**

This will depend on whether you qualify for statutory maternity pay only or NHS maternity pay and whether your pay is affected by any absence on sick leave.

If you qualify for NHS occupational maternity pay, paragraph 15.22 NHST&CH makes it clear that if you are on unpaid sick leave or a period of sick leave when you are only receiving half pay, your maternity pay will still be calculated as if you had received full sick pay.



If you are not entitled to NHS maternity rights and you receive Statutory Sick Pay or you reduce your hours during approximately weeks 18 to 26 of your pregnancy, your Statutory Maternity Pay may be affected.

In order to qualify for Statutory Maternity Pay you need to earn at least £120 per week on average (April 2021– April 2022) in the two months (if you are paid monthly) or eight weeks (if you are paid weekly) before the end of the 15th week before your baby is due. If you are only receiving Statutory Sick Pay during this period your average weekly earnings will be below the £120 weekly earnings requirement and you will no longer qualify for SMP. You will need to claim Maternity Allowance instead. If your maternity pay is at risk you may wish to use annual leave during these weeks to bring your earnings above £120 per week.

### **Can my employer make me start my maternity leave early if I am off sick?**

If you are off sick at any time during your pregnancy up to the start of the fourth week before the week your baby is due you are entitled to any sick pay that you would receive if you were not pregnant.

Normally it is up to you to decide when you wish to start your maternity leave and you must give your employer notice by the 15th week before your baby is due. However, if you are absent from work because of your pregnancy, your employer can start your maternity leave from the start of the fourth week before the week your baby is due. Pregnancy-related absence includes pregnancy-related illness and suspension on health and safety grounds. Note that para 15.26 NHST&CH does state that any odd days of pregnancy related illness during the final four weeks can be ignored by the employer and you can still start your maternity leave on the planned date but you will need to discuss this with your employer.

### **What if I am sick when I am due to return to work?**

If you are off sick when you are due to return to work after your maternity leave then your normal sickness absence provisions will apply and you should receive any NHS occupational sick pay that you are entitled to.

If you are not entitled to NHS occupational sick pay you may be eligible for Statutory Sick Pay (SSP), however, it can be difficult to qualify for SSP immediately after maternity leave. You cannot claim SSP during the 39 week maternity pay period. To qualify for SSP after the end of the maternity pay period your period of sick leave must start on or after your return to work. You must also earn at least £120 per week on average in order to qualify for SSP. If you are returning from unpaid maternity leave you may find it difficult to meet the earnings requirement. You must also earn at least £120 per week on average **in the eight weeks before you are ill** in order to qualify for SSP.

## Section 4: Returning to work

### When can I return to work and what notice must I give my employer?

Once your maternity leave has started it will run for up to 52 weeks and your employer must assume you are going to take the full 52 weeks unless you tell them otherwise. You do not need to give notice to return to work unless you wish to return before the end of the 52 week period. NHS employees must give at least 28 days notice if they intend to return to work earlier. Those for whom the NHS terms and conditions do not apply must give at least eight weeks' notice to return to work early. However it is obviously a good idea to stay in touch with your manager and talk about arrangements for your return – especially if you want to change your working hours or request flexible or different working arrangements. It can take a while to agree such a change with your employer so it is sensible to start discussions as early as possible (at least three to four months before your return) especially if you need to make childcare arrangements to fit in with your working pattern.

See also information below about Keeping in Touch (KIT) days which provide for up to 10 paid working days during your maternity leave to help you to keep in touch while you are away.

### Can I return to my old job when my maternity leave finishes?

For NHS employees, NHST&C paragraph 15.78 states that you have the right to return to your job under your original contract and on no less favourable terms and conditions, regardless of how long you have been away on maternity leave.

The statutory provisions for maternity leave cover two types of maternity leave:

- Ordinary Maternity Leave (OML) is the first 26 weeks of maternity leave. If you return to work after 26 weeks OML you have the right to return to exactly the same job
- Additional Maternity Leave (AML) lasts for 26 weeks and starts on the day after the end of OML. If you return to work after AML you still have the right to return to the same job but, if it is not reasonably practicable, your employer can offer a suitable alternative job on similar terms and conditions.

### What if I want to change my working hours or other arrangements?

For NHS employees paragraph 15.79 NHST&CH makes it clear that if you want to return to work on different hours the NHS employer has a duty to facilitate this wherever possible and you should be allowed to return on different hours in the same job. If this is not possible the employer must write to you explaining why and providing "objectively justifiable reasons" for this. You should then be allowed to return to the same pay band and to work of a similar nature and status to the job you had before you went on maternity leave. If you think your employer has unreasonably refused a request speak to your RCM workplace representative for advice.

You can return to work on a flexible basis such as reduced or changed hours for a temporary period. You will need to agree this with your employer and get it confirmed in writing that this is a temporary arrangement and how long it will last. This will not affect your right to return to your original NHS job on your original terms and conditions when the agreed temporary period finishes. This can be a good way of testing out a change to your hours to make sure it works for you and can help convince a reluctant manager that you can carry out your original job with a different working arrangement.

For more information on requesting flexible work or changing your working arrangements and what to do if your employer refuses your request see the RCM [Flexible Working guidance](#).

## What are Keeping In Touch (KIT) days?

You can work for up to ten KIT days without bringing your maternity leave to an end or losing your NHS or Statutory Maternity Pay. You can work KIT days at any time during maternity leave, either before or after the birth but they cannot be used to extend your period of maternity leave. You cannot work a KIT day during the two weeks of compulsory maternity leave immediately after the birth.

A KIT day can include any work that you would normally do as part of your contract of employment, including training, conferences, meetings and 'any activity undertaken for the purposes of keeping in touch with the workplace'. You can use a KIT day to keep up to date with what has been happening in your workplace while you have been on leave; to attend a training course or staff meeting; to complete a project or to help you settle back into work gradually at the end of your maternity, adoption or shared parental leave.

You could use your KIT days to work part-time before returning to work e.g. two days a week, if you and your employer agree. Using KIT days to achieve part-time work for a period may help you and your employer see how well it works and it may strengthen your arguments for making a request to work part-time.

Paragraph 15.66 of the NHST&CH recommends that you and your employer have early discussions before you go on maternity leave about how you will keep in touch informally and to plan and make arrangements for KIT days.

## Do I have to work KIT days and does my employer have to allow me to?

You cannot insist on working KIT days during your leave. They are a matter for agreement between you and your employer and your employer does not have to offer them. You cannot be forced to work a KIT day. You may not wish to work during your leave or you may not be able to if there is no childcare available. It may also depend on how much you will be paid for working a KIT day as it may not be worth your while if you need to pay for travel and childcare.

You should not be treated unfairly for refusing to work a KIT day if you are not able to. If you have arranged to work a KIT day but you are unable to because of sickness or childcare difficulties your employer should not penalise you.

## How much pay will I receive for working a KIT day?

You should agree the rate of pay with your employer and you should be paid in the normal way, at the normal time. Paragraph 15.74 makes it clear that NHS employees will be paid at their basic daily rate for the KIT hours worked, less any occupational or statutory maternity payments.

Even if you only work for part of a day or a couple of hours it will still use up one of your KIT days. You will usually only be paid for the hours worked and you need to agree what you will be paid with your employer in advance. A day's work will be the normal hours or shift patterns at your workplace. If you don't want to leave your baby for a full day or you are using KIT days for a phased return to work, you can ask your employer if you can work a shorter day and it will be a matter for agreement between you and your employer.

You will need to agree with your employer what you will be doing and how much you will be paid. In some cases you may need to agree where you will work e.g. in your normal place of work or working from home.

For NHS employees, para 15.67 says that 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 but you will have to negotiate this with your employer.

If you have more than one job, your KIT days apply to each job separately.

## What happens if there is a re-organisation while I am pregnant or on maternity leave or my job is at threat of redundancy?

You can be made redundant during pregnancy or maternity or parental leave, providing it is a genuine redundancy situation and you have not been selected for redundancy *because of* your pregnancy or leave. If you are being made redundant you may be entitled to redundancy pay and/or notice pay.

If you think that your employer has selected you for redundancy because you are pregnant or on maternity leave or to avoid paying maternity pay you should contact the RCM for advice.

You will need to have been employed for at least eight weeks and to show that your employer ended your contract 'solely or mainly' to avoid having to pay your SMP. This could include redundancy, dismissal or non-renewal of a fixed-term contract. You should consider what evidence you have about the timing of your redundancy, for instance, if it was shortly before the 15th week before your baby is due and other evidence about your employer's reasons for redundancy, for example, whether you were the only employee made redundant.

You will not get SMP if you are made redundant and your employment ends **before** your qualifying week (the 15th week before your baby is due) but you may be able to claim Maternity Allowance.

Your employer will have to consider the pool of employees that will be selected for redundancy. Your employer will also have to consider what selection criteria will be used and they must ensure that the selection is carried out objectively and fairly and is non-discriminatory. For example, your employer must not include pregnancy-related sickness absence or absence on maternity leave.

Your employer should consult individually with all employees who may be faced with redundancy, regardless of the number of employees to be made redundant. If you are one of the employees affected, your employer should consult with you during your maternity leave. Failure to consult could be maternity discrimination.

If you are made redundant during your maternity leave, regulation 10 of the Maternity and Parental Leave etc Regulations 1999 states that a woman on maternity leave must be offered a **suitable alternative vacancy**, if one exists, as soon as their post is at risk of redundancy. This is because you may be about to give birth or may have been out of the workplace for some time and you would be disadvantaged in having to compete for roles.

Your employer must consider whether a suitable alternative vacancy exists between the time your redundancy becomes known and the time when your maternity leave period is ended by redundancy. The terms and conditions of this new job must be not substantially less favourable than your original job. You should be given first refusal of any suitable alternative job and you should not have to attend interviews as you have priority over other workers being made redundant (who are not on maternity leave).

If there is a suitable alternative role you should be offered it **during** your maternity leave and as soon as your employer becomes aware that your role is potentially redundant. Your employer should not wait until you return to work (you can remain on maternity leave and return to the new job when your leave ends).

If your employer fails to offer you a suitable alternative vacancy under regulation 10 this may be automatic unfair dismissal. In some cases this may also be maternity discrimination.

If no suitable alternative vacancy exists, you are entitled to any redundancy/notice pay you qualify for. If you are offered a suitable alternative job and unreasonably refuse it, you will lose your right to redundancy pay. The NHS provides redundancy payments over and above the statutory minimum and you can find more information in Section 16 of the NHS Terms and Conditions Handbook.

## **What should I do if I want to resign during my pregnancy or maternity leave?**

If you want to resign from your job when you are pregnant you should hand in your notice in the normal way, giving the notice period required by your employer – this should be set out in your contract of employment. Your job will end at the end of your notice period so you remain employed during your notice period and should continue to receive your normal pay and accrue your normal benefits such as annual leave. You are also entitled to take sick leave during your notice period, if necessary, and to take annual leave, with the agreement of your employer.

It is advisable to wait until you have had your baby before making a decision about resigning from your job in case your circumstances change or you change your mind about staying at home. In general, it is best to keep your options open until after you have had your baby. You do not have to tell your employer how much maternity leave you are taking as your employer should assume that you are taking the full 52 weeks.

You will still be entitled to Statutory Maternity Pay if your job ends after the end of the 15th week before your baby is due (this is roughly week 26 of your pregnancy) and you meet the normal qualifying conditions. However, if your job ends before the end of the 15th week before your baby is due you will not be entitled to Statutory Maternity Pay but you may be entitled to Maternity Allowance instead (even if you are no longer employed).

If you received NHS occupational maternity pay you will need to repay this (less any SMP or Maternity Allowance you received) unless you get another job with the same or with a different NHS employer within 15 months of starting your maternity leave.

### **I want to continue breastfeeding when I return to work – can I ask my employer for support?**

In the UK, breastfeeding mothers have some legal protection under health and safety and sex discrimination laws. Employers have legal obligations to provide:

- Health and safety protection
- Flexible working hours and protection from indirect sex discrimination
- Rest facilities
- Protection from harassment.

Your employer has a duty to ensure a safe environment for breastfeeding women as they do for pregnant women and should carry out a risk assessment to identify any potential risks to you or your baby if you are breastfeeding when you return to work (See Section 3 above). It is good practice for your employer to have a policy on breastfeeding setting out how breastfeeding and expressing milk will be accommodated in the workplace. If you want to continue breastfeeding it is advisable to speak to your employer before you return to make them aware of your plans and to give them the opportunity to accommodate your request.

If there are still risks to your health and safety and you want your employer to take action **you must tell your employer in writing that you are breastfeeding.**

Your employer must consider the risk and take reasonable action to temporarily change your working conditions or hours of work, for example, working shorter shifts, giving regular shifts or avoiding night work or overnight stays. Such changes should be reviewed but should not be time limited to enable you to continue breastfeeding for as long as you wish to. Reasonable action to protect your health and safety while you are breastfeeding could include adequate rest breaks to ensure proper nutrition, access to water and washing facilities. Your employer should ensure that the environment is not too hot or too cold. Employers should also consider levels of fatigue, stress and changes in posture. This should include somewhere for the women to rest including facilities to lie down as outlined in the ACAS guidance [Accommodating breastfeeding employees in the workplace](#).

If adjustments to your working hours or conditions would not avoid risks to breastfeeding, you should be given a temporary transfer to suitable alternative work. Any alternative work or additional breaks for breastfeeding or expressing milk should be provided without loss of pay.

There are various ways in which you can combine breastfeeding with going back to work. If there is a workplace nursery or other childcare very close to your workplace, you may be able to visit your baby during the working day and breastfeed normally. If you cannot visit your baby during the working day, you can express breastmilk. You may decide to partially breastfeed, which means that you breastfeed your baby when you are at home but the baby is given formula milk while you are at work.

You will need to talk to your employer about where you can express milk and when. Where you express your breastmilk will depend on where you work. Refrigerated storage facilities should be available to keep expressed milk chilled. A large employer may have a 'mother and baby room'. In other workplaces you may be able to use a spare office or any private room, preferably with a lockable door. A first aid room is not generally appropriate because of potential risk of infection. It is not appropriate to be asked to breastfeed or express milk in a toilet because of hygiene issues.

## Are there other types of leave that I can take when my maternity leave period finishes?

You continue to accrue annual leave during your maternity leave as if you were at work so you will need to discuss with your employer when you can take this (See [Section 5](#) for more details).

You may also be able to take:

**A period of unpaid leave:** but you will need to negotiate this with your employer.

**Parental leave:** this is designed to give parents more time with their young children. It entitles you to take 18 weeks' leave per parent per child, usually unpaid, up to your child's 18th birthday.

**Shared parental leave:** this allows mothers to end maternity leave/pay early so that one or both parents can take leave in a more flexible way during the baby's first year. It doesn't give parents any extra leave. Parents can take time off at the same time or separately.

The rules for these types of statutory leave are complex so for up to date information on who qualifies and how to request such leave from your employer visit the [Maternity Action website](#).

NHS employees who have 12 months continuous service by the 11th week before the expected week of childbirth are entitled to paid and unpaid shared parental leave under the NHS occupational shared parental leave scheme, England, Scotland and Wales only (paras 15.16 – 15.17 NHST&CH). You must give your employer a minimum of eight weeks' notice of when you want to take your leave using your NHS Trust's local procedure or booking form. You must also confirm that you will return to work for the NHS for at least three months after taking the leave. The mother must confirm that they are bringing their maternity leave and pay arrangements to an early end.

Your NHS Trust should have a local agreement negotiated with the Staff Side trade unions which sets out entitlements to pay and how to put in a request which reflect the minimum pay and entitlements as set out in the handbook. You can find further information along with various scenarios explaining how NHS occupational shared parental leave provisions operate in a number of different situations via the [NHS Employers website](#).

### **What happens if I get pregnant again and want to start my next period of maternity leave without returning to work?**

You are entitled to a further period of up to 52 weeks' maternity leave for your new pregnancy. It does not matter how many periods of maternity leave you have taken or whether they overlap or not. You can return to work between your periods of leave or you can take two consecutive periods of maternity leave. See Section 5 below for information on how your NHS occupational maternity pay or Statutory Maternity Pay may be affected.



## Section 5: Other terms and conditions

### What happens to my terms and conditions of employment during my period of maternity leave?

You are entitled to your normal contractual terms and conditions, apart from 'remuneration' (your wages/salary), during ordinary and additional maternity leave. This means you are entitled to continue to accrue your normal benefits such as paid holiday as if you were at work.

You are still entitled to be paid for any payments owing during your maternity leave, for example, for any work done before your leave, any keeping-in-touch days that you work during your leave and any bonuses or other sums that become payable. You are entitled to keep other 'non-cash' contractual benefits, such as subscriptions, memberships, lunch vouchers and to accrue paid holiday as normal. You are entitled to keep a mobile phone and company car that are provided for personal and business use during your maternity leave.

Paragraph 15.90 of the NHS Terms and Conditions Handbook makes it clear that: *During maternity leave (both paid and unpaid) and employee retains all of their contractual rights, except remuneration.*

### What happens about my annual leave and bank holidays?

During maternity leave you continue to build up your normal holiday entitlement as if you were still at work. Under the Working Time Regulations all workers are entitled to 28 days statutory annual leave. If you get more than 28 days holiday a year (as is the case for NHS employees) the extra leave is contractual leave which is provided by your employer. You may find that you have accrued a large amount of annual leave. You will need to discuss with your employer when you can take this leave.

For NHS employees paras 15.93 and 15.94 NHST&CH explain that you are entitled to accrue any entitlements to annual leave and bank holidays during your paid and unpaid period of maternity leave. If unused annual leave and public holidays exceed local provisions for carry over to the next leave year it may be beneficial for both you and your employer if you take the unused annual leave and public holidays before and/or after the agreed (paid and unpaid) maternity leave period. Payment in lieu may be considered as an option where accrual of annual leave and public holidays exceeds normal carry over provisions but you will need to discuss this with your employer.

### What happens about my pension?

You should also be able to continue making contributions into any occupational pension scheme such as the NHS Pension Scheme that you usually make. For information on the NHS pension scheme and maternity leave you can access NHS Business Services Authority guidance [here](#).

### **What if my baby is born early?**

If your baby is born prematurely and you have not yet started your maternity leave, your maternity leave will start on the day after the birth. There is no flexibility over the start of your leave as it is compulsory to be off work for the first two weeks after childbirth. You will still be entitled to the same amount of maternity leave and pay as if the baby had been born on its due date. Unfortunately there is currently no legal right to additional leave if your baby is born early.

For NHS employees para 15.30 NHST&CH explains that 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 choose to split their maternity leave entitlement, taking a minimum period of two weeks' leave immediately after childbirth and the rest of their leave following their baby's discharge from hospital.

### **What happens if I get pregnant again before I return to work?**

If you get pregnant again not long after giving birth and you need to take another period of maternity leave concurrently or soon after your current period of maternity leave this may affect your entitlements to maternity pay for your next baby. If you are an NHS employee and qualify for NHS occupational maternity pay your entitlements to maternity pay for your next baby will be calculated as if you were earning your usual full pay, even if you are receiving half pay, SMP, Maternity Allowance or are on unpaid leave during the period used to calculate your maternity pay for your next baby (para 15.22 NHST&CH).

If you do not qualify for NHS maternity pay any entitlement to SMP may be affected. Your maternity pay will again be calculated on your earnings and you must have been paid at least £120 (April 2021 – April 2022) before tax in earnings, on average in the eight weeks (if you are paid weekly) or two months (if you are paid monthly) up to the last pay day before the end of the 15th week before your next baby is due. Earnings includes SMP. If the amount you received in maternity pay during this period was below £120 or if you were on Maternity Allowance or unpaid leave then you will not reach the minimum earnings requirement to claim SMP for your next baby. You can claim Maternity Allowance instead.

### **What happens if I have a miscarriage?**

If your baby is stillborn before the end of the 24th week of pregnancy it is treated as a miscarriage. Unfortunately you cannot qualify for maternity leave or pay if you have a miscarriage. You will be protected against discriminatory treatment by your employer because of your miscarriage or because you have taken sick leave certified as being related to your miscarriage.

If you need time off work following the loss of your baby you can ask your employer if they provide compassionate leave or you could ask to take annual leave or agree a period of unpaid leave. You are entitled to take sick leave if you are not well enough to work and you should follow your employer's sickness reporting procedures. You should receive any sick pay that you would be entitled to receive if you were on sick leave for any other reason. It is up to your GP or medical practitioner to decide whether your sickness is related to your pregnancy or miscarriage. If your sick leave is certified as pregnancy or miscarriage-related that will apply for as long as your sick leave lasts.

You are protected against pregnancy discrimination during the protected period which lasts for two weeks from the end of your pregnancy. If you are dismissed or treated unfairly after that period you are protected against sex discrimination and/or indirect sex discrimination.

### **My baby was stillborn – do I have any entitlements?**

The date of your baby's stillbirth will be stated on the certificate of stillbirth issued by the registrar or a certificate of registration of stillbirth issued by your midwife or doctor. If your baby was delivered after the end of the 24th week of pregnancy you are entitled to maternity leave and any maternity pay that you qualify for. If your baby was stillborn before the 15th week before your expected week of childbirth, your average weekly earnings will be based on the eight weeks/two months prior to the week in which your baby was stillborn.

Your partner will also be entitled to paternity leave and pay if s/he meets the normal qualifying conditions. You may also qualify for parental bereavement leave/pay, see below.

### **My baby died shortly after the birth. What happens to my maternity leave and pay?**

You are still entitled to your maternity leave and pay once you have qualified for it and it is up to you to decide how long you want to stay on leave. If you do not want to stay off work for the full 52 weeks you can give eight weeks' notice to return to work early (28 days if NHS terms and conditions apply to you). Maternity leave and pay must be given for all live births, even if your baby only lives for a short time, as long as you meet the qualifying conditions. You may also be entitled to child or parental bereavement leave and pay as explained below.

### **What happens when a child dies?**

The NHS provides entitlements to child bereavement leave and pay over and above your rights to statutory parental bereavement leave and pay. If you are not an NHS employee you may have rights to statutory parental bereavement leave and pay (see below). You will need to meet service and earnings requirements to qualify for the pay but the leave is a day one right. The statutory provisions are explained below the following information about the NHS provisions.

### **NHS child bereavement leave provisions**

Section 23 of the NHST&CH (England, Scotland and Wales only) sets out the minimum support available for bereaved parents noting that individual NHS Trusts may have their own provisions over and above this. A bereaved parent is defined as anyone who had responsibility as one of the primary carers for a child who has died. This includes adoptive parents, legal guardians, individuals who are fostering to adopt, and any other parent/child relationship that the employing organisation deems to be reasonable. For example, this may include grandparents who have had caring responsibilities for a child, or instances where someone other than the biological parent is the primary carer (this could be the case where the parents of the child have separated). This is a day one right for NHS employees so bereaved parents will not be required to demonstrate any eligibility criteria.

Parents who experience a stillbirth from the 24th week of pregnancy will be eligible for NHS child bereavement leave as well as any rights they have to maternity leave and pay.

There is no requirement for the child to be under 18 years of age.

All bereaved parents employed by the NHS will be eligible for a minimum of two weeks of child bereavement leave. This does not have to be taken in one block of leave – they can agree with the employer how they will take it and it can be taken at any time up to 56 weeks after the death of the child. They will be entitled to two weeks' occupational child bereavement pay which will include any entitlement to statutory parental bereavement pay. Pay is calculated on the basis of what the individual would have received had he/she been at work. This would normally be based on the previous three months at work or any other reference period that may be locally agreed.

Your NHS employer should have a locally agreed procedure setting out how to let them know when a child has died. Bereaved parents will at no point be required to produce the child's Death Certificate, or any other official documents, in order to access child bereavement leave or pay. The employer may ask for a written declaration from the employee, within a reasonable timeframe, in order to satisfy statutory requirements.

Where both parents of a deceased child work in the same NHS organisation, the entitlements apply to both members of staff.

Bereavement leave and pay may be extended to members of staff where they were hoping to become parents under surrogacy arrangements but that has to be agreed at local level with the NHS employer.

### **What is statutory parental bereavement leave?**

You can take two weeks statutory parental bereavement leave following a stillbirth or the death of a child under 18 if you are an employee and you give the correct notice. This is a day one right so applies from your first day of employment. You can take the leave at any time up to 56 weeks from the date of the stillbirth or death.

If you want to take your leave immediately or up to eight weeks from your baby's stillbirth or death you must tell your employer before you would normally start work in the week in which you wish to take leave. If you want to take your leave from nine to 56 weeks after your baby's stillbirth or death you must tell your employer at least a week before you wish to take leave.

You must tell your employer by phone, email or other message, the date of your baby's stillbirth or death, the date you want to start your leave and whether you wish to take one or two weeks' leave. You can take each week separately. You do not need to provide proof of the stillbirth or death but you must complete a declaration. You can find a declaration [here](#).

### **What is statutory parental bereavement pay?**

You are entitled to statutory parental bereavement pay of £151.97 per week (April 2021 – April 2022) for up to two weeks if you are an employee, agency or zero hours worker and:

- You have been continuously employed for at least 26 weeks by the week immediately before your baby's stillbirth or death, and
- You earn at least £120 per week (before tax) (April 2021 – April 2022) in the eight weeks (if you are paid weekly) or two months (if you are paid monthly) before the week in which your baby was stillborn or died. If you were on furlough during that period your employer must use your normal earnings, not your furlough pay.

You can take statutory parental bereavement leave/pay in addition to any maternity or paternity leave/pay you qualify for and you may qualify for it even if you do not qualify for Statutory Maternity Pay or Statutory Paternity Pay.

## Section 6: Useful links

### **Royal College of Midwives**

The Royal College of Midwives has a number of briefings that you may find helpful which can be accessed at [www.rcm.org.uk](http://www.rcm.org.uk)

You can speak to your local RCM workplace representative about any of the issues covered in this guide or, if you don't have a workplace representative, phone RCM Connect on 0300 303 0444.

### **NHS Terms and Conditions of Service Handbook**

The handbook sets out the rights of NHS employees working in the UK including parental leave and pay. You can find it via: [www.nhsemployers.org/tchandbook/](http://www.nhsemployers.org/tchandbook/)

Section 15 covers leave and pay for new parents including maternity leave and pay.

### **Maternity Action**

Maternity Action is the UK's maternity rights charity dedicated to promoting, protecting and enhancing the rights of all pregnant women, new mothers and their families to employment, social security and health care.

Their website contains dozens of information papers providing detailed, easy to read information about a huge range of maternity and other parental employment rights. These cover a range of issues including rights for women in casual work; women who have more than one job; welfare benefits that you may be able to claim.

You can access this information at [www.maternityaction.org.uk](http://www.maternityaction.org.uk)

### **Advisory, Conciliation and Arbitration Service (ACAS)**

ACAS guides are available at [www.acas.org.uk](http://www.acas.org.uk)

### **HMRC pay and leave calculator**

HMRC maternity pay and leave calculator [www.gov.uk/pay-leave-for-parents](http://www.gov.uk/pay-leave-for-parents)

### **Breastfeeding**

For more information on breastfeeding go to Breastfeeding after returning to work or study [www.unicef.org.uk](http://www.unicef.org.uk)

### **Child bereavement**

Sands is the leading stillbirth and neonatal charity in the UK [www.sands.org.uk](http://www.sands.org.uk) Sands provides bereavement support services both nationally through its Freephone helpline, mobile app, online community and resources, and locally through a UK-wide network of around 100 regional support groups.

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