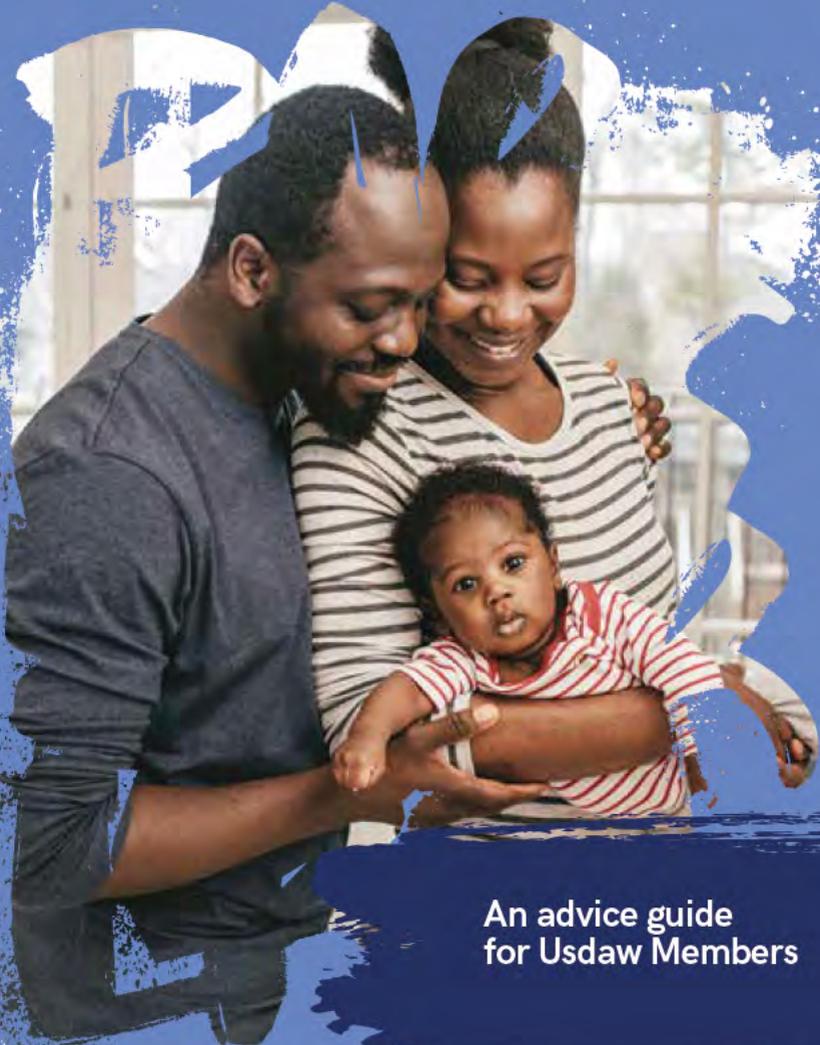


Parents and Carers  
Maternity and  
Parental Rights 2022



An advice guide  
for Usdaw Members

# Introduction

We know from listening to our members that they have an increasing number of questions about maternity and parental rights.

This guide is designed to help members with these questions and to support pregnant women and new parents at work. It provides basic, easy to understand information on maternity, paternity, shared parental leave and adoption rights. It also covers parental leave, time off for dependants and the right to request flexible working.

Finally, don't forget that help and advice is always available. Maternity and parental rights can be complex and confusing so don't hesitate to get in touch if you need to. You can contact your Area Organiser or the Equalities Section at Head Office who will be happy to help.

A handwritten signature in white ink that reads "Paddy Lillis". The signature is fluid and cursive, written in a professional style.

**Paddy Lillis**  
General Secretary



# Contents

	<b>Page</b>
<b>Section 1 Health and Safety</b>	<b>1</b>
Part 1 Antenatal Care	2
Part 2 Health and Safety at Work	3
Part 3 Avoiding the Risk – an Usdaw Case Study	5
Pregnancy Risk Assessment Letter	6
<b>Section 2 Leave and Pay</b>	<b>7</b>
Part 1 Maternity Leave	8
Part 2 Returning to Work and Notice	15
Part 3 Premature Birth and Maternity Rights	18
Part 4 Paternity Leave	21
Part 5 Adoption Leave	24
Part 6 Shared Parental Leave and Pay	30
Checklist for Mothers and Primary Carers of Adopted Children	33
Checklist for Fathers, Partners and/or Secondary Carers of Adopted Children	34
Statutory Maternity Pay Calculation Guide for women who are paid monthly	35
Statutory Maternity Pay Calculation Guide for women who are paid weekly or four-weekly	37
<b>Section 3 Returning to Work</b>	<b>39</b>
Part 1 What Happens at the End of Maternity Leave? Can You Return Early?	40
Part 2 Back at Work	42
Part 3 Breastfeeding at Work	45
Part 4 Time Off Work to be with Your Children	46
Part 5 Time Off for Dependants (Emergency Leave)	48
Part 6 Childcare	50
Useful Contacts	52
<b>Section 4 Miscarriage and Stillbirth</b>	<b>53</b>
Part 1 Your Rights After Miscarriage	54
Part 2 Your Rights After Stillbirth	55
Support Groups	56

	<b>Page</b>
<b>Section 5 Extra Money for Mothers and Babies</b>	<b>57</b>
Part 1 Universal Benefits	59
Part 2 Contributory Benefits	61
Part 3 Means-Tested Benefits	65
Part 4 Tax Credits	73
Part 5 Health Benefits	79
Part 6 Usdaw Benefits	82
Part 7 Parental Leave and Your Pension	83
Useful Contacts	84
<b>Section 6 Sickness and Redundancy</b>	<b>85</b>
Part 1 Illness During Pregnancy	86
Part 2 Illness During Maternity Leave	89
Part 3 Illness at the End of Maternity Leave	90
Part 4 Facing Redundancy Whilst Pregnant	91
Part 5 Redundancy During Maternity Leave	93
<b>Section 7 Postnatal Depression</b>	<b>94</b>
Symptoms	95
Returning to Work	95
Money Whilst You are Off Sick from Work	96
Parental Leave	96
Returning to Work on Reduced Hours	96
Legal Protection	97
Support Groups	98
<b>Section 8 Rights for Agency Workers</b>	<b>99</b>
Part 1 Am I an Agency Worker?	100
Part 2 The Agency Workers Regulations 2010	100
Part 3 Health and Safety Rights	102
Part 4 Maternity Leave	103
Part 5 Paternity Leave	105
Part 6 Adoption Leave	105
Part 7 Sickness Absence	106
Useful Contacts	107
<b>Maternity Rights Calendar</b>	<b>109</b>

# Section 1

## Health and Safety

Pregnant women and new mothers have important health and safety rights. This section explains what these rights are and sets out what to do if you are struggling to assert them.

Employers have a legal duty to protect the health and safety of pregnant and breastfeeding mothers in the following ways:

- Employers must not unreasonably refuse pregnant employees time off for antenatal care.
- Employers must make sure that your working conditions do not put your health or your baby's health at risk.



## Part 1

# Antenatal Care

If you are pregnant, you have the right to take reasonable paid time off work to attend antenatal appointments.

All pregnant women have this right, no matter how many hours you work or however recently you started your job.

Antenatal care includes the following:

- Appointments with your midwife, GP or hospital doctor.
- Antenatal and parentcraft classes.
- Relaxation classes.

Some employers are unwilling to give time off for parentcraft and relaxation classes. However, the Government has said that these classes are among the types of antenatal care which women should get paid time off for, provided you are attending on the advice of your doctor or midwife.

Fathers and partners of pregnant women also have the right to unpaid time off work to attend up to two antenatal appointments – the maximum time off allowed is 6.5 hours. This is a ‘day one’ right.

## How do I go about getting paid release?

Let your employer know as soon as you can when you need time off and how long you are likely to be away.

After your first appointment your employer can ask to see your appointment card and a certificate signed by your doctor, midwife or health visitor stating that you are pregnant.

## How much time off can I take?

You are entitled to as much time off as you need. This includes the time it takes you to travel to and from your appointment or class. There is no limit to the amount of time you can take off, as long as you can show that it is reasonable and that the appointments are made on the advice of your doctor or midwife.

Your employer does not have the right to require you to take annual leave or to make up for lost time by working your lunch hour or working late. They also cannot change your normal working hours so that antenatal care falls outside them.

If your employer refuses to give you time off to attend antenatal care get in touch with your Usdaw rep or your Usdaw Area Organiser as soon as possible.

**If you are pregnant, you have the right to take reasonable paid time off work to attend antenatal appointments.**

**All pregnant employees have this right, no matter how many hours you work or however recently you started your job.**

## Part 2

# Health and Safety at Work

If you are pregnant, breastfeeding or have given birth within the last six months, then you have a number of important rights.

As part of their general legal duties to manage health and safety, employers must identify any aspects of work that could be a risk to pregnant or breastfeeding women or their babies. This involves looking at the hazards of the job and deciding how these hazards can harm you or your baby. This is called a risk assessment and employers have to carry them out whether or not anyone at work is pregnant or a new mother.

Usdaw has produced a *Pregnancy Risk Assessment* (Leaflet 342) that reps might find useful when advising pregnant women of their legal rights. This can either be downloaded from our website [www.usdaw.org.uk/342](http://www.usdaw.org.uk/342) or a copy ordered by contacting your local Usdaw office.

At the end of this section is an example of a letter requesting a risk assessment. You can copy the wording and send your own letter to your employer asking them to carry out a personal risk assessment. Alternatively you can download this letter from the Usdaw website: [www.usdaw.org.uk/pralletter](http://www.usdaw.org.uk/pralletter)

A risk assessment should look at things like:

- Is there heavy lifting involved in your job?
- Do you work with chemicals or other substances which could pose a health risk?
- Does your work involve exposure to shocks, vibration or movement?
- Do you work in extremes of cold or heat?

Employers must tell workers about the result of the risk assessment and what action they have taken to reduce any risks. When you become pregnant, or if you are breastfeeding, you must tell your employer. At this stage they should carry out a more detailed risk assessment, taking into account any information about your own state of health. This is your own personal risk assessment and an important way of helping to protect the health and safety of you and your baby.

If this risk assessment identifies hazards that could pose a risk to you or your baby, then your employer must do all that they can to eliminate the risk or reduce it to a safe level.

If the risk cannot be removed, your employer must take action to protect you and your baby:

- If it is reasonable and if it avoids the risk, you have the right to have your working conditions or hours of work temporarily altered.
- If this is not possible, then your employer must offer you suitable alternative work. The work must be on terms and conditions which are no less favourable than your normal conditions of employment.
- If your employer is unable to offer you suitable alternative work, then you have the right to be suspended on full pay for as long as is necessary to avoid the risk. This is known as paid suspension from work. Many women in Usdaw find that they are given paid suspension when what they really want is to stay at work. Most jobs can be adapted so as to make them safe for pregnant women and their babies, so it is worth getting advice from your Usdaw rep or Area Organiser on this issue. If you are suspended for health and safety reasons your employer can start your maternity leave four weeks before your baby is due.

Many Usdaw members work in conditions which can cause particular problems for pregnant women. For more information about the problems our members experience during pregnancy, refer to Usdaw's own research document – Delivering for Pregnant Women: A report by Usdaw into women's experience of pregnancy in the retail sector. This can either be downloaded from our website at [www.usdaw.org.uk](http://www.usdaw.org.uk) or a copy ordered by contacting your local Usdaw office.

The following are examples of types of work that can cause problems.

## Shift work

Early shifts can be especially difficult if the woman is suffering with morning sickness. Many women experience extreme tiredness in the early stages of pregnancy and this will make night and evening work difficult. Mental and physical fatigue can be harmful to the health of pregnant women and new mothers and/or their babies.

A pregnant woman or new mother who usually does night work must be offered a suitable alternative or be suspended on full pay if she has a certificate from her doctor or midwife stating that it is necessary to avoid such work.

## Physical demands

Whether Usdaw women members are shelf fillers, packers, line operatives or general assistants, the work they carry out can be physically demanding. Women in Usdaw are probably lifting, bending and stretching every day of their working lives. Handling of heavy loads, where there is a risk of injury, has been shown to be potentially harmful to the health of pregnant women and new mothers and/or their babies.

## Checkout operators

Many women find that once they become pregnant, they are offered work on the checkouts on the mistaken assumption that this is light work. However, checkout work can involve heavy lifting and a great deal of twisting and stretching. Recent Health and Safety Executive figures estimate that in a busy four-hour shift, a checkout operator may lift the equivalent of one ton in weight. Reaching and stretching in the later stages of pregnancy could also become difficult and uncomfortable. Clearly therefore, checkout work may not be suitable for pregnant women.

## Environment

Extremes of noise, shocks, vibration or movement have been shown to potentially cause a risk to the health of pregnant women and new mothers and/or their babies.

High temperatures can also affect pregnant women, as they are less tolerant to heat and more liable to fainting. In addition, high temperatures may hinder breastfeeding as a result of dehydration.

## Chemicals

Certain chemicals may cause harm to pregnant women and new mothers and/or their babies. The Health and Safety Executive guidance recommends particular attention is paid to carbon monoxide, lead, and lead derivatives, and mercury, and mercury derivatives.

Usdaw members who are at all concerned about whether their work poses a health risk to them or their baby should contact their Usdaw rep, Area Organiser or the Health and Safety Section at Head Office for help.

## Aspects of pregnancy which may affect work

Apart from the hazards listed there are other aspects of pregnancy that may affect your work. The impact will vary during the course of your pregnancy and you will want to keep their effects under review.

Aspects of pregnancy	Factors in work
'Morning' sickness	Early shift work Exposure to nauseating smells
Backache	Standing/manual handling/posture
Varicose veins	Standing/sitting
Haemorrhoids	Working in hot conditions
Frequent visits to the toilet	Difficulty in leaving job/site of work
Increasing size	Use of protective clothing Work in confined areas Manual handling
Tiredness	Overtime
Balance	Problems of working on slippery, wet surfaces
Comfort	Problems of working in tightly fitting work uniforms

### Part 3

## Avoiding the Risk – an Usdaw Case Study

An Usdaw member working as a shelf filler in a supermarket notified her employer of her pregnancy. The employer conducted a specific risk assessment, with the full involvement of the member and her Usdaw rep. This showed the following problems:

- The member worked nights and was feeling exhausted after just a few hours on shift.
- The member's job involved heavy lifting and repeated bending and stretching.

The member was given a temporary transfer to daytime work on the customer service desk. The employer already provided rest facilities for pregnant and breastfeeding mothers and the member was encouraged to take regular rest breaks during her shift.

**The member had a risk free pregnancy and returned to work at the end of her maternity leave.**

# Pregnancy Risk Assessment Letter

Name \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Date \_\_\_\_\_

Dear Sir or Madam

## **Pregnancy Risk Assessment**

I am writing to inform you that I am pregnant and that my baby is due on the \_\_\_\_\_

I understand that as I have now informed you of my pregnancy I do have the right to a personal and specific risk assessment as set out in the 'Management of Health and Safety at Work Regulations 1999'.

I also understand that you should regularly review my initial assessment as my pregnancy progresses to take into account possible risks that may occur during the different stages of my pregnancy.

I am writing to ask you to arrange to see me and/or my Usdaw Health and Safety Rep\* (\*delete if not appropriate) as soon as possible in order to conduct a risk assessment.

Thank you for your time and attention to this matter. I look forward to hearing from you in the near future.

Yours faithfully

# Section 2

## Leave and Pay

This section tells you about your rights to:

- Maternity leave and pay.
- Premature birth and maternity rights.
- Paternity leave and pay.
- Adoption leave and pay.
- The notice you have to give your employer before you start and at the end of your maternity, paternity and adoption leave.
- Your rights whilst you are on maternity, paternity and adoption leave.



All women, regardless of their length of service, are entitled to 52 weeks maternity leave.

## Part 1

# Maternity Leave

All women, regardless of their length of service, are entitled to 52 weeks maternity leave – the first 26 weeks of leave is known as Ordinary Maternity Leave and the second 26 weeks leave is known as Additional Maternity Leave.

Employers will assume you are taking the full 52 weeks entitlement. If you want to return to work before the end of your 52 weeks entitlement, you must give eight weeks notice of the date you wish to return.

**Only 39 weeks of the 52 week maternity leave period is paid.**

## When can I start my Maternity Leave?

The earliest you can start your maternity leave is 11 weeks before the baby is due. However, it is up to you to decide when to stop work and you can work right up until your baby is due, if you choose to.

## Money

There are two main maternity benefits available to women on maternity leave – Statutory Maternity Pay and Maternity Allowance. Most Usdaw members will qualify for one or the other.

In some cases the Union has successfully negotiated top-ups to the minimum benefit levels referred to in this section. So it is worth checking with your Union rep to see whether your company's maternity scheme pays more than basic rate Statutory Maternity Pay or Maternity Allowance.

Statutory Maternity Pay is paid for six weeks at a rate of 90% of your average earnings, followed by 33 weeks at a flat rate of £156.66 per week (or 90% of average weekly earnings for the full 39 weeks if this is less than £156.66 per week). To qualify for Statutory Maternity Pay you have to meet all of the following criteria:

- You must have worked for the same employer for at least 26 weeks by the end of the 'Qualifying Week'.
- You need to be employed in your 'Qualifying Week' – even if it is only for one day that week.
- Have average earnings of at least £123 before tax per week in the eight weeks (if paid weekly) or two months (if paid monthly) before the end of the 'Qualifying Week'.

Working out whether you qualify for Statutory Maternity Pay can be complicated. To help you calculate whether or not you are entitled to Statutory Maternity Pay we have included two calculation guides at the end of this section. One is for women who are paid monthly, the other is for women who are paid weekly or once every four weeks.

**The 'Qualifying Week' is the 15th week before the week in which your baby is due. In practice, this means that you should have started your current job before you got pregnant and should have at least 26 weeks service by the time you are 26 weeks pregnant.**

The guide takes you through the calculation step-by-step. Don't worry! If you are not sure if you can get Statutory Maternity Pay, ask your Union rep or Area Organiser for advice.

**You must give notice for maternity leave and pay together by the 15th week before the baby is due.**

## How do I claim Statutory Maternity Pay?

To get Statutory Maternity Pay you must give your employer 28 days notice of the date you want your maternity pay to begin. Or you can give notice 'in a specific week during pregnancy'. See 'Giving notice for Maternity Leave' on page 13.

Statutory Maternity Pay usually starts on the first day of maternity leave.

To claim Statutory Maternity Pay you must give your employer your maternity certificate (MAT B1) that your GP or midwife will give you when you are about 26 weeks pregnant.

You can give notice for maternity leave and pay together in the 15th week before your baby is due (six months into your pregnancy).

## When can I get Statutory Maternity Pay?

You can choose when to stop work and when to start your leave and Statutory Maternity Pay. Statutory Maternity Pay can start on any day of the week.

The earliest your Statutory Maternity Pay can start is 11 weeks before the expected week of childbirth.

You will not lose any Statutory Maternity Pay if you choose to work close to the birth.

If you have a **pregnancy-related illness** in the last four weeks of your pregnancy, your employer can start your Statutory Maternity Pay and maternity leave even if you had planned to leave work later. If your illness is not pregnancy-related you can claim sick pay and start your Statutory Maternity Pay when you had planned.

## How are average earnings worked out for Statutory Maternity Pay?

If you qualify for Statutory Maternity Pay, you will get 90% of your average earnings for the first six weeks of your maternity leave. After that you get the basic rate of £156.66 per week (or 90% of your average earnings if this is less) for the remaining 33 weeks.

**Statutory Maternity Pay is only paid for 39 of the 52 week maternity leave period.**

Your average earnings are worked out from the pay you actually get 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 your 'Qualifying Week'.

This means that the pay you get in this eight week period is very important in determining whether you will get Statutory Maternity Pay and if you do, how much you will get for the first six weeks of your leave.

**To get Statutory Maternity Pay you must give your employer 28 days notice of the date you want your maternity pay to begin.**

This can be a problem for many women in Usdaw, who find that their hours and pay regularly go up and down. This can make qualifying for Statutory Maternity Pay difficult. It is important though to remember that

- You do not have to earn £123 in each of the weeks. Some weeks you could earn less so long as in other weeks you earn more.
- Overtime and bonus pay is included when your average earnings are being worked out, provided it has been earned in the eight week calculation period. You might want to think about trying to boost your earnings in the calculation period to increase the amount of Statutory Maternity Pay you get.
- If you get a pay rise at anytime between the start of the eight week set period for calculating Statutory Maternity Pay (see pages 35–38 for help with how to work out this date) and the end of your maternity leave, your Statutory Maternity Pay should be recalculated and increased accordingly.

## What else do I need to know?

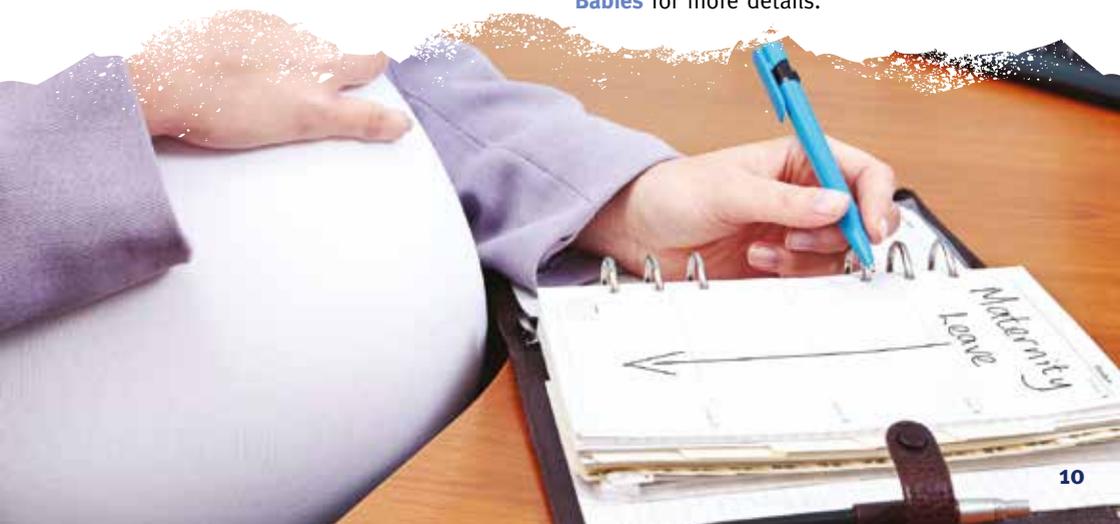
You do not have to repay Statutory Maternity Pay if you do not return to work. If your employer has topped-up Statutory Maternity Pay with contractual maternity pay this would only have to be repaid if this had been agreed in advance, or your contract makes this clear. In these circumstances you do not have to repay the Statutory Maternity Pay part of your maternity pay, only the contractual part that is paid on top of Statutory Maternity Pay.

### **You can get Statutory Maternity Pay even if you do not intend to return to work.**

If you wish to return to work before your Statutory Maternity Pay finishes you can. You will receive your normal wages when you return to work. You will not receive your normal wages plus the remaining weeks of Statutory Maternity Pay that are left to run.

You can also work for a maximum of 10 days, without bringing your maternity pay or leave period to an end, these days are known as ‘Keeping In Touch’ days – see page 14 for more details.

As well as Statutory Maternity Pay, you may also be entitled to other benefits. See [Section 5, Extra Money for Mothers and Babies](#) for more details.



## Shared Parental Leave and Pay

Shared Parental Leave and Pay gives parents the right to convert maternity leave and pay to Shared Parental Leave and Pay from the third week after the baby's birth.

Only mothers and fathers (or partners) who have 26 weeks service with the same employer by the 15 weeks before the week in which their baby is due will qualify. In order to 'share' leave with the father of the baby or her partner the mother must be entitled to maternity leave or Statutory Maternity Pay or Maternity Allowance.

Shared Parental Leave means that mothers and fathers (or partners) can decide between them who takes up the remaining 50 weeks leave (of which 37 weeks are paid) after the mother has taken the first two weeks of maternity leave.

For more details about Shared Parental Leave and Pay see Part 6 of this section on page 30.

**If you don't qualify for Statutory Maternity Pay, you may be entitled to a benefit called Maternity Allowance.**

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

If you don't qualify for Statutory Maternity Pay you may be entitled to a benefit called Maternity Allowance. You may get Maternity Allowance if any of the following applies to you:

- You have changed jobs during your pregnancy.
- Your earnings are too low to receive Statutory Maternity Pay.
- You have several jobs but earn a small amount from each one.
- You stopped work during your pregnancy before your 'Qualifying Week' (the 15th week before the week in which your baby is due).

If you are in any doubt as to whether you might get Maternity Allowance, you should apply. The rules are complicated and the Department for Work and Pensions, who pay Maternity Allowance, will be able to work out whether or not you qualify.

Maternity Allowance is £156.66 per week for 39 weeks (or 90% of your average weekly earnings if this is less).

Maternity Allowance will start the day after you have stopped work. You can choose when to stop work – it can be any time from 11 weeks before your baby is due, or it can be as late as the week your baby is due.

## Payment of Statutory Maternity Pay abroad

In many cases once you have established entitlement to Statutory Maternity Pay (or Statutory Paternity Pay or Statutory Adoption Pay) it may be paid to you abroad.

## How do I qualify for Maternity Allowance?

There are two conditions you have to meet to be able to get Maternity Allowance – an employment condition and an earnings condition. Look at the employment condition first. If you meet that, go on to look at the earnings condition.

### The employment condition

You must have worked for 26 weeks (about six months) during the 66 weeks (about a year and a quarter) immediately before the week in which your baby is due, so look backwards from your due date. You do not need to have worked whole weeks; any week in which you have been employed will count.

This 66 week period is known as the ‘test period’.

### The earnings condition

Look again at your ‘test period’. You need to find 13 weeks at any time in the test period when your gross earnings averaged at least £30 per week.

If it is less than £30 on average, you will not be able to get Maternity Allowance but you might be entitled to claim Universal Credit. See Section 5, Extra Money for Mothers and Babies for more information.

## How can I claim Maternity Allowance?

You claim from your local Jobcentre Plus or social security office. You will need the claim form ‘MA1’. The number is 0800 055 6688 or visit [www.gov.uk](http://www.gov.uk) and search for ‘Maternity Allowance’ to claim online.



**Maternity Allowance is £156.66 per week for 39 weeks (or 90%) of your average weekly earnings if this is less.**

## What else do I need to know?

If you have not worked for enough weeks or earned enough by the time you are 26 weeks pregnant to qualify for Maternity Allowance you can wait to apply for Maternity Allowance later in your pregnancy.

**Remember to keep your wage slips\* for the 13 weeks you have chosen as your ‘test period’ as you will need to send these off with your claim form. Your claim form (MA1) will help you to identify the weeks you need to be looking at.**

**\*If you don’t have your wage slips, you can get a written declaration from your employer to confirm how much you have earned.**

## Giving notice for Maternity Leave

You must tell your employer of your pregnancy no later than the 15th week before the week in which your baby is due. In other words, you have to give notice in your 'Qualifying Week'.

The notice you give your employer should state the following:

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

If your employer asks for it, give them a copy of your maternity certificate (MAT B1) which your GP or midwife will give you when you are about 20 weeks pregnant. Ask for Statutory Maternity Pay (if you are entitled to it).

Your notice must be in writing if your employer requests it. The Union recommends that you always put this in writing and keep a copy for your records.

You do have the right to change the date you want to start your leave, as long as you give your employer at least 28 days notice of your new date. If there is a good reason why this isn't possible, tell your employer as soon as you reasonably can.

Your employer must then notify you in writing, within 28 days, of the date your maternity leave ends.

## Giving notice of an early return to work

All women, regardless of their length of service, are entitled to 52 weeks maternity leave. The first 26 weeks of leave is known as Ordinary Maternity Leave and the second 26 weeks leave is known as Additional Maternity Leave.

If you want to return before the end of Additional Maternity Leave you must give your employer at least eight weeks notice of the date you wish to return.

If you return to work without giving eight weeks notice your employer is entitled to postpone your return for the full notice period.

**You must tell your employer of your pregnancy no later than the 15th week before the week in which your baby is due. In other words, you have to give notice in your 'Qualifying Week'.**

**The Union recommends that you always put this in writing and keep a copy for your records.**

## 'Keeping In Touch' days during Maternity Leave

- You can work up to 10 'Keeping In Touch' days during Ordinary Maternity Leave or Additional Maternity Leave without bringing your maternity leave to an end.
- 'Keeping In Touch' days can include working, training, staff meetings or any other activity that enables the employee to stay in touch with the workplace.
- 'Keeping In Touch' days must be agreed by both the employer and the employee. Your employer cannot force you to work a 'Keeping In Touch' day(s) nor can you demand that your employer allow you to work a 'Keeping In Touch' day(s).
- 'Keeping In Touch' days can be taken at any time during the entire maternity leave period (with the exception of the first two weeks compulsory maternity leave or four weeks if a factory worker).
- 'Keeping In Touch' days can be taken up separately or as a block.
- Working for part of the day will count as a day's work.
- Any days of work will not extend the maternity leave period.
- An employee is protected from detriment and unfair dismissal for working or refusing to work during maternity leave.
- There are no specific provisions in the regulations in relation to pay for 'Keeping In Touch' days.

- Your employer is entitled to offset payment for 'Keeping In Touch' days against your Statutory Maternity Pay. For example, if your employer agrees to pay you £70 for working a 'Keeping In Touch' day, they can offset this against your Statutory Maternity Pay, therefore you will still only receive your Statutory Maternity Pay of £151.97 for the week meaning that you will receive no extra money for working a 'Keeping In Touch' day.
- Therefore, it is important that you agree with your employer before you work a 'Keeping In Touch' day whether the payment for the 'Keeping In Touch' day will be on top of your Statutory Maternity Pay or whether it will be offset against your Statutory Maternity Pay.



## Part 2

# Returning to Work and Notice

Once you have given your employer notice of the date you want to start your maternity leave, your employer is under a legal obligation to notify you of the date you are expected to return.

If your employer fails to inform you of the date you should return, or tells you too late (less than 28 days before the return date), making it not reasonably practicable for you to return in time, you are protected from victimisation or dismissal for failing to return.

**If you want to return before the end of Additional Maternity Leave you must give your employer at least eight weeks notice of the date you wish to return.**

## What if I decide not to go back to work?

If you decide not to go back to your job, you are simply resigning from your job. You should give your employer the normal notice set out in your contract. You can serve your notice period whilst you are on maternity leave.

## Your rights during maternity leave

Even though you are on maternity leave, you are still entitled to many of the benefits and rights contained in your contract. This includes the right to things like redundancy pay, to raise a grievance, to annual pay rises and the opportunity to apply for promotion.

The tables on pages 16 and 17 summarise what you are entitled to whilst you are on maternity leave. What you are entitled to depends on whether you are on Ordinary Maternity Leave (the first 26 weeks of your leave) or Additional Maternity Leave (between 26 and 52 weeks).

**If you are in any doubt as to what your rights are whilst you are on leave, you should contact your Usdaw rep or Usdaw Area Organiser who will be able to give you advice.**



# During Ordinary Maternity Leave (first 26 weeks)

## Cash payments

### You are entitled to:

- Redundancy Pay.
- Pension.
- The percentage of any bonus you earned when still at work.

### You are not entitled to:

- Wages or salary – claim maternity pay instead.

### You may be entitled to:

- Car Allowance.
- Mortgage Subsidy.
- Christmas Bonus (and definitely the percentage of the bonus you earned when still at work).
- Other bonuses (and definitely the percentage of the bonus you earned when still at work).
- Commission.
- Notice Pay if you resign or are dismissed.
- Means-tested benefit.

## Other rights

### You are entitled to:

- Continue to accrue statutory holiday of 28 days per year for a full-time worker (pro-rata entitlement for part-time workers) plus contractual holidays.
- Company car.
- Luncheon vouchers.
- Club membership.
- Childcare vouchers.
- Health and other insurance.
- Performance assessment.
- Pay review and annual increment (payable on return to work).
- Opportunities for promotion, redeployment etc.
- Notice (you must always give notice if you resign).
- Disciplinary and grievance procedures.
- Implied term of trust and confidence and to act in good faith towards your employer.
- Staff newsletter and other circulars to staff.
- First refusal of alternative work if you are made redundant.
- Consultation on redundancy or reorganisation of your workplace.
- Continuity of employment.

# After Ordinary Maternity Leave has ended up to the end of Additional Maternity Leave

## Cash payments

### You are entitled to:

- Redundancy Pay.
- The percentage of any bonus/commission that you earned when still at work.

### You are not entitled to:

- Wages or salary – claim Maternity Pay instead.

### You may be entitled to:

- Bonus/Commission (and definitely the percentage you earned when still at work).
- Notice Pay.
- Means-tested benefits.
- Car Allowance.
- Mortgage Subsidy.

## Other rights

### You are entitled to:

- Continue to accrue statutory holiday of 28 days per year for a full-time worker (pro-rata entitlement for part-time workers) plus contractual holidays.
- Performance assessments.
- Pay review and annual increment (payable on return to work).
- Opportunities for promotion, redeployment etc.
- Notice (you must always give notice if you resign).
- Disciplinary and grievance procedures.
- Implied terms of trust and confidence and to act in good faith towards your employer.
- Staff newsletter and other circulars to staff.
- First refusal of alternative work if you are made redundant.
- Consultation on redundancy or reorganisation of your workplace.
- Continuity of employment.

### You are not entitled to:

- Any other rights (unless offered by your employer in your contract of employment).

## Part 3

# Premature Birth and Maternity Rights

The maternity rights system is pretty inflexible and doesn't adapt to the needs of working mums whose babies are born prematurely and/or spend time in a special care baby unit. This section helps to explain the maternity rights of mothers whose babies are born early.

## Maternity leave

Unfortunately maternity leave is a fixed maximum period and is not extended because of premature birth.

If your baby is born before you have given notice of going on maternity leave, your maternity leave will start automatically on the day of birth. To protect your right to maternity leave you must let your employer know as soon as you can after the birth, in writing if your employer requests it:

- That your baby has been born.
- The date of birth.
- If your employer asks for proof of when the expected week of childbirth was, you should send in your maternity certificate (MAT B1) that you normally get when you are about 20 weeks pregnant.

**Maternity leave is a fixed maximum period and is not extended because of premature birth.**

If your baby is born after you have given notice of the day you wanted to start your maternity leave but before you have started your leave, your maternity leave will start automatically on the day of the birth. To protect your right to maternity leave you must let your employer know as soon as you can after the birth, in writing if your employer requests it:

- That your baby has been born.
- The date of birth.
- If your employer asks for proof of when the expected week of childbirth was, you should send in your maternity certificate (MAT B1) that you normally get when you are about 20 weeks pregnant.

If you were already on maternity leave when your baby was born early then you do not have to do anything.

## Maternity pay

If your baby is born **before you have had a chance to give notice of going on maternity leave** to protect your right to Statutory Maternity Pay you must give your employer, within 28 days of the birth if you can:

- Medical evidence of the date the baby was due. This will normally be the maternity certificate (form MAT B1) that you may already have received from your GP or midwife.
- Evidence of the date the baby was born (you should ask for a certificate from the hospital if they have not already given you one).

Your Statutory Maternity Pay will then start on the day after the birth.

If your baby was born after you have given notice but before you had planned to start your maternity leave, you should follow this same procedure. Your Statutory Maternity Pay will start the day after the birth.

If your baby is born before the qualifying week for Statutory Maternity Pay (the 15th week before your baby was due), in order to qualify for Statutory Maternity Pay you need to:

- Have at least 26 weeks continuous service with your current employer by the end of the qualifying week. If your baby is born before the qualifying week, you can get Statutory Maternity Pay if you would have had at least 26 weeks continuous service by the end of the qualifying week if your baby had not been born early.

To calculate how much Statutory Maternity Pay you are entitled to your earnings are normally averaged over the eight weeks (if paid weekly or four-weekly) or two months (if paid monthly) up to the last pay day before the end of the qualifying week.

If your baby is born before the end of the qualifying week, then you calculate your earnings over the eight weeks up to the last pay day before the week in which the baby is born.

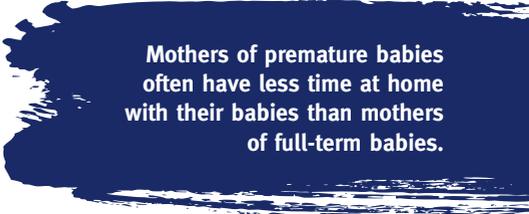
If your employer is not sure how to work out your Statutory Maternity Pay, they can phone the Employer's Helpline at Her Majesty's Revenue and Customs on 0300 200 3200.

If you do not qualify for Statutory Maternity Pay you should claim Maternity Allowance from your local Jobcentre Plus office.

If your baby is born before you have had a chance to fill in the claim form, then fill it in and send it off as soon as you possibly can, explaining on the form what has happened.

If your baby was born after you have sent in the form but before your benefit was due to start, you should let your local Jobcentre Plus office know that you have given birth.

In both circumstances, your Maternity Allowance will start on the day after the birth.



**Mothers of premature babies often have less time at home with their babies than mothers of full-term babies.**

## Can I split my maternity leave?

Mothers of babies who are born very prematurely often find that their maternity leave runs out just at the time that the baby is ready to come home or not long before this. This leaves them with little or no time at home with the baby before they have to return to work.

Some women would like the option of returning to work while the baby is in Special Care and take the rest of their maternity leave when she or he comes home from hospital.

Unfortunately at the moment there is no legal right to split or defer maternity leave on the grounds of premature birth.

You might want to consider whether the Shared Parental Leave scheme offers you more options but remember, opting into the scheme does not extend the number of weeks you are entitled to take off beyond 52 weeks (only 39 of which are paid).

## How can I extend my time at home with my baby?

It is very unfair that mothers of premature babies often have less time at home with their babies than mothers of full-term babies even though they actually need more time. Below are some ways in which you might be able to negotiate spending more time at home:

- You could try to negotiate special or compassionate leave. You do not have a legal right to this but a sympathetic employer might agree.
- You might be able to take a period of annual leave.
- Parents of children under 18 have a statutory right to take up to a total of 18 weeks unpaid parental leave. Many employers will not normally allow you to take the full 18 weeks in one block however it is probably worth sitting down and discussing your circumstances with them.

For more information on parental leave, please refer to Part 4 in [Section 3, Returning to Work](#).

## What happens to my maternity rights if my baby dies?

You are still entitled to your full maternity leave and pay if your baby is born alive but dies later or is stillborn from week 24 onwards.

For more information see [Section 4, Miscarriage and Stillbirth](#).

**Unfortunately at the moment there is no legal right to split or defer maternity leave on the grounds of premature birth. You might want to consider whether the Shared Parental Leave scheme offers you more options but remember, opting into the scheme does not extend the number of weeks you are entitled to take off beyond 52 weeks.**

## Holidays

The situation concerning holiday entitlement and maternity leave isn't as straightforward as it should be! Women continue to accrue entitlement to both statutory and contractual holidays during Ordinary Maternity Leave and Additional Maternity Leave. In other words, you continue to build up all of your entitlement to paid holiday whilst on maternity leave.

You can add holidays to the beginning or end of your maternity leave. Maternity leave will often span two years. Unfortunately, problems can arise as you have no clear legal right to carry over unused holiday into a new holiday year, however, most employers will agree this if consulted. There have been a couple of very helpful legal cases in this area confirming that women on maternity leave should not lose out on holiday.

## Part 4

# Paternity Leave

Paternity leave is available to fathers and partners (including same sex partners). You will need to satisfy the following conditions in order to qualify for paternity leave:

- Have or expect to have responsibility for the child's upbringing.
- Be either the biological father of the child or the mother's husband, partner or civil partner.
- Have worked continuously for your employer for 26 weeks leading into the 15th week before the baby is due.

Employees who adopt a child can also take paternity leave. Where a couple adopt jointly they can decide between them who takes paternity leave and who takes the new adoption leave.

**Paternity leave is available to fathers and partners (including same sex partners). Employees who adopt a child can also take paternity leave.**

## When can I take my paternity leave and how long is it?

You can choose to take either one week or two consecutive weeks paternity leave (not odd days).

Only one period of leave will be available to employees, irrespective of whether more than one child is born, as the result of the same pregnancy.

You can choose to start your leave:

- From the date of the child's birth, or
- From a chosen number of days or weeks after the child's birth, or
- From a chosen date.

Paternity leave must be taken within 56 days of the actual birth (or placement) of the child. In those cases where the baby is born early, paternity leave can be taken within the period from the actual date of birth, up to 56 days after the expected week of birth. In other words, you have more time to take your paternity leave.

**Paternity leave can start on any day of the week.**

## Shared Parental Leave and Pay

As well as Paternity Leave and Pay, you may be able to take more time off in your baby's first year of birth. This is known as Shared Parental Leave and Pay. However, not all fathers and/or partners will qualify.

For more details about Shared Parental Leave and Pay see Part 6 of this section on page 30.

## Money

The rate of Statutory Paternity Pay is £156.66 per week or 90% of average weekly earnings if this is less than £156.66.

## How do I qualify for Statutory Paternity Pay?

You have to have worked for your employer for 26 weeks by the 15th week before the baby is due (or by the week in which the adopter is matched with the child). Also you have to have average weekly earnings of more than £123 per week (before tax) in the eight weeks (if paid weekly) or two months (if paid monthly) before the 15th week before your baby is due.

## Giving notice for Statutory Paternity Pay

If you choose to take paternity leave, which lasts for two weeks and must be taken within 56 days of the baby's birth, you must give your employer at least 28 days notice of the date you want your Statutory Paternity Pay to start.

If you cannot do this, give your employer notice as soon as you reasonably can.

## Giving notice for Paternity Leave

You need to tell your employer of your intention to take paternity leave by the 15th week before the baby is due. You need to tell your employer:

- The week the baby is due.
- Whether you wish to take one or two weeks' leave.
- When you want your leave to start.
- Whether you want one or two weeks' Statutory Paternity Pay.
- That you are the baby's father or the husband/partner of the mother and that you are responsible for the baby's upbringing.

You will be able to change your mind about the date on which you want your leave to start, providing that you tell your employer at least 28 days in advance.

You will have to give your employer a completed self-certificate as evidence of your entitlement to Statutory Paternity Pay on Form SC3.

This is available to download from the Gov.uk website: [www.gov.uk](http://www.gov.uk)



## What else do I need to know?

For fathers there is no equivalent to Maternity Allowance. If you do not earn enough to qualify for Statutory Paternity Pay, you may be able to get other financial help whilst you are on paternity leave, as long as you meet the qualifying conditions.

For more information, please see **Section 5 Extra Money for Mothers and Babies**, or contact your Jobcentre Plus office on 0800 055 6688.

**The rate of Statutory Paternity Pay is £156.66 per week or 90% of average weekly earnings if this is less than £156.66.**

## Your rights during Paternity Leave

You are entitled to your normal terms and conditions of employment, except for terms relating to wages or salary (unless your contract of employment provides otherwise) throughout your paternity leave.

If you have a contractual right to paternity leave (and we have agreements concerning this with most employers) as well as your statutory right, you can take advantage of whichever is the more favourable.

Any paternity pay to which you have a contractual right will reduce the amount of Statutory Paternity Pay to which you are entitled.

Therefore, if you have a contractual right to 100% of your earnings during paternity leave and this amounts to £250 per week, you will not receive the £156.66 Statutory Paternity Pay in addition to the £250 payment.

You are entitled to return to the same job after taking paternity leave. You will also be protected from suffering unfair treatment or dismissal for taking, or seeking to take, paternity leave. If you believe that you have been treated unfairly you will be able to complain to an employment tribunal.

Shared Parental Leave and Pay is available to parents who meet the qualifying conditions. It allows mothers and adopters to convert maternity leave and pay into Shared Parental/Adoption Leave and Pay from the second week after the baby's birth.

For more details about Shared Parental Leave and Pay see Part 6 of this section on page 30.

**You are entitled to return to the same job after taking paternity leave. You will also be protected from suffering unfair treatment or dismissal for taking, or seeking to take, paternity leave.**



## Part 5

# Adoption Leave

Adoption leave is now a ‘day one’ right and is available to:

- Individuals who adopt.
- One member of a couple where a couple adopt jointly – the couple may choose which partner takes adoption leave and which partner takes paternity leave.

It is available to parents of a child who is newly matched and placed for adoption by an approved adoption agency within the UK. It will also cover the small number of cases where a child is adopted from overseas.

**Adoption leave and pay is available to individuals who adopt or one member of a couple where a couple adopt jointly.**

## Local Authority Foster Parents

Adoption leave and pay is available to local authority foster parents in the fostering for adoption scheme. In other words foster parents who have a child placed with them under Section 22C of the Children Act 1989 with a view to adopting that child. The partner of the adopter in these circumstances may be eligible for paternity leave and pay.

## Parents intending to have a child via surrogacy arrangements

One of the intended parents in a surrogacy arrangement may be eligible for adoption leave and pay if they intend to apply for and expect to obtain (or have already obtained) a Parental Order for their child under the Human Embryology and Fertilisation Act 2008. The other parent (if they are in a couple) may qualify for paternity leave and pay if they satisfy the qualifying conditions.

### **Adoption leave is a ‘day one’ right.**

The surrogate mother will be entitled to maternity leave even though she does not intend to keep the baby.

She may also be entitled to Statutory Maternity Pay if she satisfies the qualifying conditions.

See page 27 to find out more about rights for parents having a child via surrogacy.

Some adopters don’t qualify for adoption leave and pay.

An ‘adopter’ will not qualify for adoption leave and pay if they:

- Arrange a private adoption.
- Become a special guardian or kinship carer.
- Adopt a family member or a stepchild.
- Have a child with the help of a surrogate mother, where the intended parents are not eligible for a Parental Order.

## Length of Adoption Leave

Adoption leave mirrors maternity leave and lasts for 52 weeks in total.

- 26 weeks Ordinary Adoption Leave during which you may qualify for Statutory Adoption Pay, followed by:
- 26 weeks of Additional Adoption Leave if you qualify for Statutory Adoption Pay, 13 weeks of Additional Adoption Leave will also be paid. The remaining 13 weeks will be unpaid.
- You must also have worked for your employer for at least 26 weeks by the notification week to qualify for Statutory Adoption Pay.

## When can I take my adoption leave?

You can choose to start your adoption leave:

- From the date of the child's placement; or
- From a fixed date which can be up to 14 days before the expected date of placement.

Only one period of leave will be available, irrespective of whether more than one child is placed for adoption as part of the same arrangement.

If the child's placement ends during the adoption leave period, the adopter will be able to continue adoption leave for up to eight weeks.

**Adoption leave can start on any day of the week.**

## Money

During adoption leave you will be entitled to Statutory Adoption Pay from your employer, as long as you have average weekly earnings above the Lower Earnings Limit of £123 (before tax) in the eight weeks (if paid weekly) or two months (if paid monthly) before the notification week. The notification week is the week in which you are notified by the agency of being matched with a child.

If you qualify for Statutory Adoption Pay you will get 90% of your average earnings for the six weeks of your adoption leave. After that you will get a flat rate of £156.66 (or 90% of your average earnings if this is less) for the remaining 33 weeks. Statutory Adoption Pay is only paid for 39 of the 52 weeks adoption leave period.

Where a couple jointly adopt, the member who does not take adoption leave and pay (the secondary adopter) may qualify for paternity leave and pay.

**You need to tell your employer of your intention to take adoption leave within seven days of being notified by your adoption agency that you have been matched with a child for adoption.**

## Time off for adoption appointments

### Adoptive parents

A right to time off for adoption appointments in advance of a child being placed came into effect on 5 April 2015. The appointments are intended to enable the adopters to bond with the child before the child goes to live with them and for the adopters to meet the professionals who are involved in the child's care. It is hoped that this new right will increase the chances of successful adoption.

Single adopters are entitled to paid time off to attend up to five adoption appointments.

In the case of joint adoptions (ie couples who have been jointly matched to adopt the child) one of the adopters will be entitled to paid time off to attend up to five adoption appointments.

The other adopter may be entitled to unpaid time off work to attend up to two adoption appointments.

Up to 6.5 hours is allowed for each appointment.

If you are jointly adopting, you need to think about which one of you takes up the five paid adoption appointments and which one of you takes up the two unpaid adoption appointments. This is because the person who takes up the five paid appointments will not be able to take paternity leave and pay. Paternity leave and pay will only be available to the person who takes the two unpaid appointments.

You will need to provide your employer with a matching certificate that you get from your adoption agency as evidence of your entitlement to time off for adoption appointments.

### Foster parents

The right to time off to attend adoption appointments (see above) is also available where a local authority in England notifies foster parents that a child is to be, or is expected to be placed with them in a 'fostering for adoption' placement\*.

## Giving notice for adoption leave

You need to tell your employer of your intention to take adoption leave within seven days of being notified by your adoption agency that you have been matched with a child for adoption. You need to tell your employer:

- When the child is expected to be placed with you; and
- When you want your adoption leave to start.

You can change your mind about the date on which you want your adoption leave to start, providing you give at least 28 days notice, unless this is not reasonably practicable.

Your employer must then write to you within 28 days, setting out the date on which your adoption leave ends.

You do not have to give any further notice if you intend to return to work after your full adoption leave entitlement (52 weeks). However, as some of the Additional Adoption Leave period is unpaid, many employees will wish to return to work after their Statutory Adoption Pay ends – ie after 39 weeks. In these circumstances, you are in effect returning to work early and so you must give your employer eight weeks notice of the date you intend to return to work.

\*A 'fostering for adoption' placement is where a local authority places a child with foster parents who are also approved prospective adopters under Section 22C of the Children Act 1989.

**A surrogate mother has the same employment rights and protections as any other woman who is pregnant or has given birth.**

## Surrogacy

Surrogate mothers in the UK are considered the legal mother and have automatic parental responsibility. They are therefore entitled to 52 weeks maternity leave and 39 weeks pay (if certain qualifying conditions are met). A surrogate mother has the same employment rights and protections as any other woman who is pregnant or has given birth.

In April 2015, rights were introduced for parents who are having a child through a surrogacy arrangement. These new rights include time off to attend antenatal appointments with the surrogate mother and access to paid adoption leave, paternity leave or Shared Parental Leave after the child is born (where certain qualifying conditions are met).

Intended parents in a surrogacy arrangement must apply for and expect to obtain (or have already obtained) a Parental Order for their expected child under the Human Fertilisation and Embryology Act 2008 in order to access the rights outlined below. For the purposes of this and Government guidance, intended parents in a surrogacy arrangement are referred to as 'Parental Order' parents.

Acquiring legal parenthood and parental responsibility can be complex. In the first instance you may wish to visit the Human Fertilisation and Embryology Authority's website for further information ([www.hfea.gov](http://www.hfea.gov)). Should you require further advice the Union's free legal service may be able to help.

## Time off to attend antenatal appointments

'Parental Order' parents are entitled to take unpaid leave to enable them to attend up to two antenatal appointments with the surrogate mother. The maximum amount of time that you can take for each appointment is 6.5 hours.

Your employer can ask for a signed declaration from you stating:

- The date and time of the appointment.
- That it is made on the advice of a registered medical practitioner, nurse or midwife.
- That you (and your partner) expect to apply for and be granted a parental order after the birth.

This right is a right to accompany the surrogate mother only. If the surrogate mother does not want you to attend then you cannot use this right to insist that you are there.

## Adoption Leave and Pay

If you are an intended parent who has applied for or intends to apply for a parental order and expect it to be granted by the courts then you will be entitled to 52 weeks adoption leave and 39 weeks adoption pay if you meet the qualifying conditions.

Only one of the intended parents can exercise this right; the other parent may qualify for Statutory Paternity Leave and Pay following the birth.

For more details about paternity leave and pay see Part 4 of this section on page 21.

## Adoption Leave

Adoption leave is now a day one right (there is no longer a need to have a qualifying period of service). Therefore, if you have applied for and expect to be granted a parental order by the courts you will qualify for adoption leave.

## Adoption Pay

For details of how to qualify for adoption pay see page 27.

## Giving notice for adoption leave and pay

The same amount of notice is required as that of a birth mother. Different notice requirements apply to parents adopting via an agency. These are set out on page 26. The notice requirements for parental order parents are set out below:

If you are the intended parent who wants to take adoption leave and pay you must tell your employer of your intention to take adoption leave by the 15th week before the baby is due.

You need to tell your employer:

- The week the baby is due.  
Unlike parents who adopt using an agency, parental order parents cannot choose the date they want their adoption leave and pay to begin. It begins on the day the baby is born or on the following day if you are at work on the day of the birth.
- You must notify your employer of the date the baby is born as soon as you reasonably can.
- Once you have given notice your employer must then write to you within 28 days, setting out the date on which your adoption leave ends.

## Evidence

If your employer requests it you must provide them with a 'parental statutory declaration' which is a declaration that you have applied for or intend to apply for a parental order with your partner within six months of the baby's birth and you expect to be granted it.

## What happens if you don't get a parental order?

Your adoption leave and pay will come to an end early.

## Paternity leave and pay for parental order parents

If you are the second intended parent you may be entitled to paternity leave and pay. The qualifying conditions are the same as for fathers and partners of birth mothers. For more details about paternity leave and pay see Part 4 of this section on page 21.

## Rights during adoption leave

Your rights are very similar to those that women have whilst on maternity leave. See the charts on pages 16 and 17 of this section.

You are entitled to benefit from your normal terms and conditions of employment, except for those relating to wages or salary (unless your contract of employment provides otherwise), throughout your 26 weeks Ordinary Adoption Leave period.

**If you are the intended parent who wants to take adoption leave and pay you must tell your employer of your intention to take adoption leave by the 15th week before the baby is due.**

If you have contractual rights from the company you work for to adoption leave, as well as your statutory right, you can take advantage of whichever is the more favourable.

During Additional Adoption Leave, your employment contract continues and some contractual benefits and obligations remain in force. For example, those relating to compensation in the event of redundancy notice periods and disciplinary and grievance procedures.

### **'Keeping In Touch' days during adoption leave**

The same rules apply to 'Keeping In Touch' days on adoption leave as apply to 'Keeping In Touch' days on maternity leave – please see page 14 of this guide.

### **Returning to work and notice**

If you are taking Ordinary Adoption Leave only and not Additional Adoption Leave, you are guaranteed the right to return to the same job.

If you take Additional Adoption Leave, you are entitled to return to the same job, or, if

that is not reasonably practicable, a similar suitable or appropriate job.

You do not have to give notice to your employer if you intend to return to work after your full adoption leave entitlement (52 weeks). However, as some of the Additional Adoption Leave period is unpaid, many employees will wish to return to work after 39 weeks. In these circumstances, you are in effect returning to work early and so you must give your employer eight weeks notice of the date you intend to return to work.

You are protected from suffering detriment or unfair dismissal for reasons relating to taking, or seeking to take, adoption leave. If you believe you have been treated unfairly you could bring a claim in an employment tribunal.

Adoptive parents are also entitled to unpaid parental leave, the right to request flexible working and emergency time off for dependants. Working parents who adopt a child may also be eligible for Shared Parental Leave and Pay.

For more details about Shared Parental Leave and Pay see Part 6 of this section on page 30.



## Part 6

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

Shared parental leave which enables parents to share the leave allowed them in the year immediately following their baby's birth has been introduced.

The scheme opens up maternity leave to both parents so that parents can decide between them how to 'spend' this leave in the first year of the child's birth/placement for adoption.

Some members will find Shared Parental Leave helpful and will want to make use of it. But it won't suit everyone – the rules are complex and you should contact your Area Organiser if you are unsure what to do.

Shared Parental Leave is also available to adoptive parents who have a child placed with them for adoption.

Parents in same sex relationships and in some circumstances, parents who have a child via surrogacy arrangements, may also be entitled to Shared Parental Leave and Pay. Also local authority foster carers in England who are in a fostering for adoption scheme may also qualify.

Not all parents will qualify for Shared Parental Leave and Pay as both partners must meet eligibility criteria. Use the checklists on pages 33 and 34 to find out whether you (and your partner) qualify for Shared Parental Leave and Pay.

**Shared Parental Leave must be taken within one year of your baby's birth (or placement, where adopting).**

## What is Shared Parental Leave?

Shared Parental Leave doesn't replace Statutory Maternity Leave and Pay or paternity leave and pay. It runs alongside existing maternity/paternity pay and leave schemes and offers parents an alternative way to take leave.

A woman must still take two weeks maternity leave immediately following the birth of her baby. This is known as compulsory maternity leave.

It enables mothers or adoptive parents (who are eligible for Statutory Maternity Leave and Pay) to convert the remaining 50 weeks of maternity/adoption leave and 37 weeks of maternity pay into Shared Parental Leave and Pay which she and her partner (if her partner also qualifies) can take on a more flexible basis in the first year of their child's life.

## Who qualifies?

Use the checklists on pages 33 and 34 to see whether you qualify.

**You must give your employer at least eight weeks' notice of wanting to end maternity/adoption leave and pay early to take up Shared Parental Leave and/or Pay.**

## What else do I need to know about Shared Parental Leave and Pay?

Shared Parental Leave must be taken within one year of your baby's birth (or placement, where adopting).

Shared Parental Leave can only start after your baby is born or after a child is placed with you for adoption.

You must give your employer at least eight weeks notice of wanting to end maternity/adoption leave and pay early to take up Shared Parental Leave and/or Pay.

The amount of Shared Parental Leave and Pay available is essentially the amount left over from any maternity leave and pay the mother takes or in the case of adoption any adoption leave and pay that is left over.

For example, the mother gives notice to end her maternity leave after three months and opts into Shared Parental Leave with her partner. This would leave them with a total of nine months Shared Parental Leave (12 months maternity leave minus three months taken = nine months left to be taken as Shared Parental Leave). As only nine months of maternity leave are paid and she has already taken three months paid leave, this would leave six months of Shared Parental Pay.

You don't have to ask for leave in one continuous block but can ask for leave to be 'discontinuous'. This means asking for leave over a period of time with breaks in between the leave where you return to work. For example, four weeks Shared Parental Leave, followed by three weeks back at work, followed by a further four weeks Shared Parental Leave.

**Discontinuous leave can only be taken with the employer's agreement.**

Employers have a right to refuse and are not required to identify reasons for refusing a request for discontinuous leave, as they are when refusing a request for flexible working.

**Employers cannot refuse a request for a single block of continuous leave.**

For example, a mother ends her maternity leave and pay after six months and converts the remaining six months leave and three months pay to Shared Parental Leave and Pay that her partner is to take. As both parents are eligible and this is a continuous request for leave they have a statutory right to this leave and the employer cannot refuse it.

Shared Parental Leave must be taken in blocks of one week, for example not three days or ten days.

You can request up to a maximum of three separate periods of Shared Parental Leave unless the employer agrees to accept more.

## Giving notice for Shared Parental Leave and Pay

The notice requirements for Shared Parental Leave and Pay have been heavily criticised due to their complexity. A number of written notices are required including a notice of entitlement, notification for booking leave and a notice to vary leave where parents change their plans.

- Most large employers will draw up notification forms and you should be directed to these by your Union rep/manager.
- You must give your employer at least eight weeks' notice of your entitlement and intention to take Shared Parental Leave.
- You can submit up to three requests for leave, unless your employer agrees to more.

If you need help dealing with the notice requirements contact your Area Organiser.

## Requests for discontinuous leave

Where you wish to apply for a discontinuous period of leave, within two weeks of submitting the request your employer can:

- Agree to the periods of leave requested.
- Propose alternative dates for the periods of Shared Parental Leave.
- Refuse the periods of leave without proposing alternative dates.

If your employer refuses your request or does not respond to it within two weeks, then you are entitled to take the total amount of leave you have requested in one continuous block.

For example, your request for two months Shared Parental Leave, followed by a period of two months back in work, followed by a further period of two months Shared Parental Leave is refused. You would be entitled to take the total of four months leave in one continuous block.

If taking leave in a single continuous block does not suit you, then you can withdraw your original booking notice as long as you do this within 15 days of giving it.

**If your employer refuses your request or does not respond to it within two weeks, then you are entitled to take the total amount of leave you have requested in one continuous block.**

## What happens if parents change their minds about opting in to Shared Parental Leave?

Once the mother or primary carer has given notice to end their maternity leave early and informed their employer of their entitlement to take Shared Parental Leave, then the notice to end maternity leave is binding and cannot be withdrawn unless:

- Within eight weeks of the mother/primary carer submitting notice it becomes apparent that neither parent qualifies for Shared Parental Leave or Pay; or
- If the notice was given before birth, it may be withdrawn without a reason up to six weeks following birth; or
- The mother's partner dies.

However, parents who change their minds about how and when they want to take Shared Parental Leave, rather than wanting to take it at all, can vary the dates and patterns of leave they have requested if they give at least eight weeks' notice before the date the leave was due to start and the new date they have chosen.

## Shared Parental Leave In Touch Days (SPLIT)

You can work for your employer during a period of Shared Parental Leave without bringing your leave and pay period to an end for up to 20 days. These work days are called 'Shared Parental Leave In Touch' days or SPLIT days for short.

The maximum number of SPLIT days allowed is 20. They are in addition to the 10 'Keeping in Touch' days allowed to women on maternity leave or primary carers on adoption leave and operate in exactly the same way. See page 14 for details.

## Checklist 1

# For Mothers and Primary Carers of Adopted Children

### Mothers and primary carers of adopted children must:

- Share the main responsibility for caring for your child with a partner. A partner is a spouse, civil partner or someone you are in a relationship with and live with at the time of the child's birth.
- Have brought your maternity/adoption leave to an end or given notice to end your maternity/adoption leave early to your employer.
- Have been employed for at least 26 weeks by the 15th week before the week in which your baby is due and continue to be employed by them in the week before any Shared Parental Leave is due to start.
- Only employees can take Shared Parental Leave. Others classed as employed earners for Class 1 National Insurance liability, such as agency workers, may be eligible for Shared Parental Pay.
- To qualify for Shared Parental Pay, in addition to all of the above, you must also be entitled to Statutory Maternity Pay or Maternity Allowance.

### Your baby's father or your partner must also:

- Be employed (or self-employed) for at least 26 weeks in the 66 weeks prior to your due date.
- Have average weekly earnings of at least £30 during 13 of the weeks worked in this 66 week period (the weeks do not have to be consecutive).
- Have the main responsibility for caring for the child (together with you).

**As a rule, mothers and primary carers who qualify for Statutory Maternity Pay or Statutory Adoption Pay will qualify for Shared Parental Pay.**


## Checklist 2

# For Fathers, Partners and/or Secondary Carers of Adopted Children

**Fathers, partners and/or secondary carers must also meet the following eligibility criteria in their own right in order to take Shared Parental Leave and Pay:**

- Have 26 weeks service by the 15th week before the week in which your baby is due/the placement date and continue to be employed by them in the week before any Shared Parental Leave is due to start.
- Have the main caring responsibility for your baby once it is born/placed with your partner.
- Have average weekly earnings of not less than £123 in the eight weeks prior to the 15th week before the expected week of birth/placement to be entitled to Shared Parental Pay.

**The mother of the baby/your partner or primary carer must also:**

- Be entitled to maternity leave; or
- Be entitled to Statutory Maternity Pay or Maternity Allowance.
- Give notice to their employer that they want to end their maternity leave and pay period early.

**As a rule fathers, partners or secondary carers who qualify for Statutory Paternity Pay will qualify for Shared Parental Pay.**



# A calculation guide for women who are paid monthly

## Step One

### Work out the qualifying week

*The qualifying week runs from Sunday to Saturday.*

- Find the Sunday before the day the baby is due (or the day it is due if that is a Sunday). \_\_\_\_\_
- Count back 15 Sundays from this date (this is the Sunday at the start of the qualifying week). \_\_\_\_\_
- The qualifying week is: \_\_\_\_\_ – \_\_\_\_\_

## Step Two

### Work out continuous employment

*For a woman to qualify for Statutory Maternity Pay (SMP) she must have worked for her employer for at least 26 weeks by the end of the qualifying week.*

- Identify the Saturday at the end of the qualifying week. \_\_\_\_\_
- Count back 25 Saturdays from that date. \_\_\_\_\_

Was she working for her employer on this date?

If **YES** – Go to Step Three.

If **NO** – Advise her to submit a claim for Maternity Allowance.

## Step Three

### Work out the relevant 'earnings period' for calculating SMP

*For a woman to qualify for SMP she must have average earnings of over £123 per week (the lower earnings limit) during the relevant earnings period.*

- Find the last pay day before the end of the qualifying week (See Step One). i) \_\_\_\_\_
- Now find the last pay day at least eight weeks before this. ii) \_\_\_\_\_

The relevant 'earnings period' runs from the day after the second date (ii) up to and including the first date (i). \_\_\_\_\_

The relevant period for calculating SMP is: \_\_\_\_\_ – \_\_\_\_\_

## Step Four

### Calculate Average Weekly Earnings (AWE)

*Add together all gross earnings received during the relevant period.*

- Total earnings during relevant period. £ \_\_\_\_\_
- Multiply by six. £ \_\_\_\_\_
- Divide by 52 equals AWE of \_\_\_\_\_ £ \_\_\_\_\_

**If over £123 per week then she is entitled to Statutory Maternity Pay.**

**If below £123 per week, she should submit a claim for Maternity Allowance.**

# A calculation guide for women who are paid weekly or four-weekly

## Step One

### Work out the qualifying week

*The qualifying week runs from Sunday to Saturday.*

- Find the Sunday before the day the baby is due (or the day it is due if that is a Sunday). \_\_\_\_\_
- Count back 15 Sundays from this date (this is the Sunday at the start of the qualifying week). \_\_\_\_\_
- The qualifying week is: \_\_\_\_\_ – \_\_\_\_\_

## Step Two

### Work out continuous employment

*For a woman to qualify for Statutory Maternity Pay (SMP) she must have worked for her employer for at least 26 weeks by the end of the qualifying week.*

- Identify the Saturday at the end of the qualifying week. \_\_\_\_\_
- Count back 25 Saturdays from that date. \_\_\_\_\_

Was she working for her employer on this date?

If **YES** – Go to Step Three.

If **NO** – Advise her to submit a claim for Maternity Allowance.

## Step Three

### Work out the relevant 'earnings period' for calculating SMP

*For a woman to qualify for SMP she must have average earnings of over £123 per week (the lower earnings limit) during the relevant earnings period.*

- Find the last pay day before the end of the qualifying week (See Step One). i) \_\_\_\_\_
- Now find the last pay day at least eight weeks before this. For most women this means the last two monthly payments received by the end of the 'Qualifying Week'. ii) \_\_\_\_\_

The relevant 'earnings period' runs from the day after the second date (ii) up to and including the first date (i). \_\_\_\_\_

The relevant period for calculating SMP is: \_\_\_\_\_ – \_\_\_\_\_

## Step Four

### Calculate Average Weekly Earnings (AWE)

*Add together all gross earnings received during the relevant period.*

- Total earnings during relevant period. (If paid four-weekly this period will include two payslips and if paid weekly, it will include eight payslips.) £ \_\_\_\_\_
- Divide by 52 equals AWE of \_\_\_\_\_ £ \_\_\_\_\_

**If over £123 per week then she is entitled to Statutory Maternity Pay.**

**If below £123 per week, she should submit a claim for Maternity Allowance.**

# Section 3

## Returning to Work

Going back to work after having or adopting a baby can be a difficult time. This section has advice and information for Usdaw women members who are going back to work.

It deals with:

- Your rights to go back to the same job.
- What to do if you want to go back on different hours.
- Breastfeeding at work.
- Time off for family commitments once you are back.
- Finding childcare.

As always, if you need support with any aspect of going back to work, remember that Usdaw is here to help.



## Part 1

# What Happens at the End of Maternity Leave? Can You Return Early?

## At the end of maternity leave

As all women employees are entitled to 52 weeks maternity leave (26 weeks Ordinary Maternity Leave and 26 weeks Additional Maternity Leave), it will be assumed that you will be returning from your maternity leave after 52 weeks.

Therefore, if you wish to return to work before the end of 52 weeks, you must give your employer eight weeks' notice of the date you wish to return. If you do not give the correct notice your employer can postpone your return for the full notice period.

## Not returning to work at all after maternity leave

If you decide not to return to work at all then you are simply resigning from your job. You should write to your employer to tell them this and give them the normal notice that is set out in your employment contract. You can serve your notice whilst you are on maternity leave or on sick leave.

Your employer should send you your P45 and pay you for any holidays that you have not taken, including any holidays that you have accrued during your maternity leave.

**You are not required to repay any Statutory Maternity Pay you have received whilst on maternity leave.**

## Returning to work from Adoption Leave

If you plan to take your full adoption leave entitlement, 26 weeks Ordinary Adoption Leave followed by a further 26 weeks Additional Adoption Leave, then you do not have to give any notice to your employer of the date you intend to return to work.

If you want to return to work before the end of your adoption leave period, for example after your Ordinary Adoption Leave period, you must give your employer eight weeks' notice of the date you intend to return.

After you've given your employer notice of going on adoption leave, your employer must, within 28 days, write to you setting out the date they expect you to return to work.

**If your employer fails to do this, they cannot dismiss or disadvantage you for not returning on time.**

## Important

**After you give your employer notice of going on maternity leave your employer must, within 28 days, write to you setting out your expected date of return if you take your full leave. If your employer does not do this, they cannot dismiss you or disadvantage you for not returning on time.**

## Returning to work from Paternity Leave

You do not need to give notice of your return to work after taking the maximum two week Ordinary Paternity Leave.

Parents on Shared Parental Leave can only change the dates they wish their leave to start or end up to a maximum of three times, unless their employer agrees to more.

If you decide not to return to work at all then you are simply resigning from your job and are not required to repay any Statutory Maternity Pay you have received whilst on maternity leave.

## Returning to work from Shared Parental Leave

If you wish to change the date you return to work you must give your employer at least eight weeks' notice of your new return date. However, note that parents on Shared Parental Leave can only change the dates they wish their leave to start or end up to a maximum of three times (unless their employer agrees to more). If you have already asked to vary your leave three times (and remember booking leave in the first place counts as one 'notice') you may not be allowed to end your Shared Parental Leave early, even if your circumstances have changed and you are no longer responsible for caring for the child.



## Part 2

# Back at Work

### Your job

If you are going back to work after your 26 weeks Ordinary Maternity Leave, then you have the right to return to exactly the same job as before.

If you are going back to work after your Additional Maternity Leave has ended or during your Additional Maternity Leave, then you have a right to return to the same job on the same terms and conditions. However, if it is not 'reasonably practicable' for your employer to give that job back to you, then you have the right to return to a suitable alternative job that is not substantially less favourable to you.

This means that after Additional Maternity Leave your employer can't just offer you any old job. Wherever possible you should be given your previous job back. Only where this is not possible can you be given an alternative job, which must have very similar pay and conditions to your old job.

Usdaw's view is that women should be able to go back to the job they were doing before their maternity leave, if this is what they want. Employers who say this is not possible will have to show why. The Union has successfully argued that jobs with less pay, or longer hours, or different shift patterns are not acceptable.

If you are due to go back after Additional Maternity Leave and your employer says you can't have your old job back, get in touch with your Union rep, Area Organiser or the Union's Legal Department as soon as possible.

**The same rights also apply to parents returning to work after adoption leave and Shared Parental Leave.**

### Right to return to work part-time

Women who return to work after maternity leave often need their working hours to be more flexible.

This might mean working hours that fit in with childcare, making sure there is no last minute overtime, or working during term time only.

Unfortunately, women going back to work after maternity leave do not have a clear cut right to go back on 'child-friendly' hours of work.

But don't despair. If you want to change your hours of work after maternity leave, there is hope and Usdaw has lots of experience in persuading employers to agree to more 'child-friendly' hours of work.

There are two important rights which can help women who want to change their hours of work to look after their children.

The Equality Act says that an employer must seriously consider a woman's request to work flexibly so that she can look after her children. Employers have to have a good reason for refusing. Employers must be able to show they have a real business need for insisting your job is done during the hours they stipulate/demand, otherwise you may have a claim of indirect sex discrimination against them.

**If you are going back to work after your 26 weeks Ordinary Maternity Leave, then you have the right to return to exactly the same job as before. The same rights also apply to parents returning to work after adoption leave and Shared Parental Leave.**

**The Equality Act says that an employer must seriously consider a woman's request to work flexibly so that she can look after her children. Employers have to have a good reason for refusing.**

**Employers must be able to show they have a real business need for insisting your job is done during the hours they stipulate/demand, otherwise you may have a claim of indirect sex discrimination against them.**

## The right to request flexible working

The right to request flexible working is available to all employees with at least 26 weeks' continuous service with their employer. Employees with less than 26 weeks' service, agency workers and office holders are excluded from the right. However, although they are prevented from exercising the formal right to request flexible working outlined in this section, this does not stop them from asking their employer about changing their working hours.

**Employers should respond in a 'timely manner'. they must decide on a request, including any appeal, within three months.**

## Who can apply?

- All employees (with 26 weeks' service) have the right to ask for a change to their contract to work flexibly – this might mean a change to the days or hours you work or a change to your place of work for instance to work in a store nearer your home or closer to your childminder or nursery.
- Agency workers are excluded.
- Employees can only make one request in a 12 month period. Even if your request is turned down you cannot make another request using the statutory procedure. However, you can ask your employer for a change informally at any time.
- Any request that is agreed represents a permanent change in your contract, terms and conditions. Although employers can agree to a change for a shorter period of time. If an agreement has been made that you will revert back to your old hours of work after a specified period make sure you obtain this agreement in writing.

## Making an application

You must make your request in writing. There are certain things you must include in your written request for it to be valid such as what changes you are seeking and when you would like the changes to come into effect. For more information about this and a standard application form download a copy of the 'Right to request flexible working' application form and briefing from Usdaw's website at [www.usdaw.org.uk](http://www.usdaw.org.uk)

Acas Guidance that accompanies the Right advises employers that once they receive a request they should (unfortunately this does not mean they must) arrange to discuss it with you as soon as possible.

It is good practice to allow you to be accompanied by a trade union rep at any meeting your employer decides to hold but they do not have to allow this.

Your employer must deal with requests in a 'timely manner'. The law requires that your request must be decided on within three months from when it was received, including any appeals. This time period can be extended but only as long as you agree to an extension.

Your employer should consider your request carefully and can only reject your request if there are clear business reasons for doing so. The business reasons are set out in the legislation. They must explain how the business reason(s) apply to your case and set out any appeal process they allow. Whilst an employer is advised to let you know their decision in writing they are not required to do so.

Whilst it is good practice for an employer to allow you to appeal a decision to refuse your request, the law doesn't require them to do so.

## The right to request flexible working in summary

- Available to any employee with 26 weeks' service at the date of the request.
- A request can be made for any reason.
- Employers should respond in a 'timely manner'. They must decide on a request, including any appeal, within three months.
- Employers should set up a meeting with you to discuss your request but they don't have to.
- Your employer should allow you to be accompanied at the meeting but they don't have to allow this.
- Your employer should give you a decision in writing but they don't have to.
- Your employer should consider an appeal but they don't have to.



## Part 3

# Breastfeeding at Work

Just because you are returning to work does not mean that you have to stop breastfeeding your baby, although whether or not you choose to do so depends upon you and your baby, the type of work you do, the hours that you work and the attitude of your employer and colleagues. Before the end of your maternity leave you should write to your employer to let them know that you will still be breastfeeding when you return to work. In the UK, breastfeeding mothers do have some legal protection under health and safety and sex discrimination laws.

## Your legal rights

Whilst you are breastfeeding, you and your baby have special health and safety protection. To make sure that you are protected you must tell your employer, in writing, that you are breastfeeding.

## Facilities for breastfeeding or expressing milk

Your employer is obliged by law to provide 'suitable facilities' for a breastfeeding mother to 'rest'. This is in the Management of Health and Safety at Work Regulations 1999 (SI 3242). It is important to note that somewhere suitable to rest does not mean the women's toilets.

**Your employer is obliged by law to provide 'suitable facilities' for a breastfeeding mother to 'rest' (this does not mean the women's toilets).**

## Risk assessments

So long as you are breastfeeding your baby, your employer must consider whether your working conditions are a risk to your health or to the health of your baby. This is called a 'risk assessment'.

Where there is a risk to your baby's health, your employer must take certain steps. This might include temporarily changing your working conditions or hours of work, if it is reasonable and if this avoids the risk. For example, you should be allowed to work shorter shifts or have a break to express milk.

## Protection from harmful substances

Some hazardous substances, for example lead, can enter breast milk and may pose a risk to your breastfed baby. If your work brings you into contact with dangerous substances, you must let your employer know, in writing, that you are breastfeeding.

If the job cannot be made safe you must be transferred to a suitable alternative job or suspended on full pay. For more information on health and safety when pregnant and after giving birth, please see **Section 1, Health and Safety**.

## Sex discrimination law and breastfeeding

Where your employer has a working practice which negatively impacts more on you because you are breastfeeding than it would a man, and they cannot justify the working practice, you may have an indirect sex discrimination claim against them. You may also have a claim for direct sex discrimination where you are treated badly because you are breastfeeding or if you are harassed.

## Part 4

# Time Off Work to be with Your Children

Once you are back at work there will obviously be times when you need time off to be with your child. This could be at short notice, perhaps if your child has had a fall at nursery, or on a more planned basis, such as a school play or visit to the dentist.

This section explains your rights if you need time off work to be with your child. The rights set out here are basic minimum rights to which everyone is entitled. In many cases Usdaw has negotiated rights to time off, which are better than the basic rights set out below. You should always check your staff handbook, or get in touch with your Union rep to find out what else you might be entitled to.

**All the rights in this section can be taken by men as well as women.**

## Unpaid parental leave

Unpaid parental leave is designed to allow parents to spend more time with their young children. It entitles you to a total of 18 weeks' unpaid leave per parent per child (to be taken before the child's 18th birthday).

**It should not be confused with Shared Parental Leave.**

Many of the details of unpaid parental leave are not 'hard and fast rules' and so it is important to check whether or not Usdaw has negotiated an agreement in your workplace that gives you more flexibility than your basic legal rights.

Although you have a legal right to parental leave if you satisfy the qualifying conditions (see below), there is no right to be paid

whilst on parental leave. However, check your contract or staff handbook to see whether or not paid leave has been negotiated at your workplace, for at least part of this period.

## Qualifying conditions

- Your child must be under 18 years old.
- You must have been employed for one year by the same employer before you take it.
- You have to take the leave by the time your child is 18.
- Both parents can take parental leave for each child that they have.

## Adopted children

If you have adopted a child then you are also entitled to take parental leave for that child. You have to take your leave by the time your child is 18.

## Giving notice

In order to take parental leave you must usually (unless you have a workplace agreement that says otherwise) give your employer 21 days' notice, in writing, of the date you want to start your leave and how much leave you want to take. Usually it must be taken in blocks of one week or more, rather than taken as odd days.

## Limits to how much leave can be taken at one time

Usually you can only take a maximum of four weeks' parental leave per child in any one year. However, you and your employer might negotiate and agree you can take more than this. Remember, Usdaw may have already negotiated a collective or workplace agreement that may allow you to take more of your leave at one time.

## Your rights whilst on parental leave

During parental leave you continue to be an employee but it is unlikely that you will continue to receive any of your usual contractual benefits. The following rights are the only rights that continue automatically:

- The notice period in your contract of employment (or, if there is none, the legal minimum) will still apply if either you or your employer want to terminate your employment.
- You will be entitled to redundancy pay, if you qualify. The disciplinary and grievance procedures still apply.
- If your contract of employment states that you cannot work for any other company, this will still apply.
- Your period of parental leave will still count as continuous service with your employer.

## Refusals by employers to grant parental leave

Your employer cannot refuse you parental leave in the following circumstances:

- If you are a father and want to take time off for your baby's birth.
- If you are adopting a child and want to take parental leave at the time of the placement.

**If you have taken parental leave of four weeks or less, you have the right to return to exactly the same job that you were doing before you left.**

**Parental leave entitles you to a total of 18 weeks unpaid leave per parent per child (to be taken before the child's 18th birthday). Both parents can take parental leave for each child they have.**

At all other times your employer cannot refuse your request to take parental leave but can postpone your parental leave once, for up to six months, if the 'functioning of the business would be unduly disrupted by your absence on leave'.

If your employer does want to postpone your leave they must:

- Tell you this in writing within seven days of your request.
- Give you the reasons why they have postponed your leave and the date (within six months) of when you are allowed to take your leave.

## Returning to work after a period of parental leave

You do not need to give any notice of your return to work after taking parental leave. You simply return to work at the end of your agreed period of leave.

If you have taken parental leave of four weeks or less you have the right to return to exactly the same job that you were doing before you left.

If you have taken parental leave of more than four weeks, your employer must allow you to return to a similar job if it is not possible (or 'reasonably practicable') for you to return to your old job. This new job must have the same terms and conditions as your old job and must involve the same type of work.

## Part 5

# Time Off for Dependants (Emergency Leave)

Time off for dependants is the right to take reasonable amounts of unpaid leave from work in order to deal with emergencies involving others that rely on you. This includes your child(ren).

A dependant is someone who relies on you and usually means a relative or close family member such as your husband or wife, your child or parent. You can also take dependants' leave for your partner or for someone else that lives with you and relies upon you. It is even possible to take dependants' leave for a neighbour if they have no one else to support them.

It doesn't matter how long you have been in your current job or how many hours per week you work.

The law says that you have the right to 'reasonable' time off, however, as there is no legal definition of what is reasonable, how much time off you are allowed will depend upon the particular circumstances of your case.

## The circumstances in which you can take dependants' leave

You can take time off in the following circumstances:

- If a dependant falls ill, gives birth or is injured and needs your assistance.
- If you need to make arrangements for the care of a dependant who is either ill or injured.
- If there is a sudden disruption of arrangements for the care of a dependant.
- If there is an unexpected incident at school involving your child.
- If your dependant dies.



## The amount of dependants' leave

The law says that you have the right to 'reasonable' time off, however, as there is no legal definition of what is reasonable, how much time off you are allowed will depend upon the particular circumstances of your case.

However, it has to be necessary for you to take the time off, it can't be just something that you would prefer to do. For example:

If your child has chicken pox you will have to take time off to deal with this crisis and to make arrangements for childcare but you could probably not take two weeks off whilst your child recovers, since this would no longer be an emergency. As time goes by the rules will become clearer, as the courts interpret the law.

## Pay and notice for dependants' leave

Many employers do already pay their employees for a number of days per year for emergency or dependants' leave, however, you do not have a right to paid emergency time off for dependants. It is worth checking your contract or your staff handbook for further details.

As far as notice is concerned, as time off for dependants is time that you have to take off in an emergency because something unforeseen has happened, you don't need to give notice in advance. However, you should inform your employer as soon as possible of the reason for your absence and how long you expect it to last. You must return to work as soon as you can and you do not have to provide proof to your employer as to the reason for the time off.

**Many employers do already pay their employees for a number of days per year for emergency or dependants' leave, however, you do not have a right to paid emergency time off for dependants.**



## Part 6

# Childcare

Trying to find childcare that's affordable, available and local can be really difficult. The search for childcare can be especially difficult for many women in Usdaw working weekends, late nights and early in the morning. There simply aren't enough affordable childcare places at the times our members need them.

For this reason many Usdaw members rely on grandparents, partners and close friends for their childcare. Currently there isn't any financial help available towards the costs of childcare if you are paying a relative, friend or neighbour to look after your child, unless that person is a registered childminder.

In order to get help from the Government towards the cost of childcare, it has to be with an approved childcare provider. This means someone that is either registered with the local authority or OFSTED.

## Childcare vouchers and other employer schemes

The following schemes are closed to new applicants:

- Childcare vouchers.
- Childcare your employer arranges with a provider (known as 'directly contracted childcare').

If you joined one of these schemes on or before 4 October 2018, you might be able to keep getting vouchers or directly contracted childcare.

In order to get help from the Government towards the cost of childcare, it has to be with an approved childcare provider. This means someone that is either registered with the local authority or OFSTED.

### If you joined a childcare voucher scheme or a directly contracted childcare scheme on or before 4 October 2018

You can keep getting vouchers or directly contracted childcare as long as:

- Your wages were adjusted on or before 4 October 2018.
- You stay with the same employer and they continue to run the scheme.
- You do not take an unpaid career break of longer than a year.

You can take up to £55 a week of your wages, which you do not pay tax or National Insurance on.

### If you get Tax-Free Childcare

You cannot continue to claim childcare vouchers or directly contracted childcare if you successfully apply for Tax-Free Childcare.

Which scheme you're better off with depends on your situation. Use the childcare calculator to work out which type of support is best for you. Visit [www.gov.uk/childcare-calculator](http://www.gov.uk/childcare-calculator)

You must tell your employer within 90 days if you get Tax-Free Childcare. They'll then stop giving you new vouchers or directly contracted childcare.

You can continue to use any vouchers you already have, including to make a joint payment for childcare with Tax-Free Childcare. There's no deadline for using your vouchers or directly contracted childcare.

Once you've told your employer that you're getting Tax-Free Childcare, you cannot rejoin their voucher scheme or their directly contracted childcare scheme.

## Tax-free Childcare Scheme

Tax-Free Childcare is a new Government scheme to help working parents with the cost of childcare.

Parents of the youngest children can now open an online account, which they can use to pay for childcare from a registered provider.

For every £8 a parent pays in, the Government will pay in an extra £2. Parents can receive up to £2,000 per child, per year, towards their childcare costs, or £4,000 for disabled children.

The scheme will be available for children under the age of 12, or under 17 for disabled children.

To qualify, parents have to be in work, and each expecting to earn at least £152 a week. Each parent must not have income over £100,000 per year.

### If you get tax credits, Universal Credit or childcare vouchers

You cannot get Tax-Free Childcare at the same time as claiming Working Tax Credit, Child Tax Credit, Universal Credit or childcare vouchers.

Which scheme you will be better off with depends on your situation. Visit [www.gov.uk/childcare-calculator](http://www.gov.uk/childcare-calculator) to use the childcare calculator to work out which type of support is best for you.

### When support will stop

If you successfully apply for Tax-Free Childcare:

- Working Tax Credit or Child Tax Credit stops straight away.
- Childcare vouchers can continue for up to 90 days.

You should apply for Tax-Free Childcare before cancelling your Universal Credit claim.

In general parents with lower ongoing childcare costs (a few days a week) or periodic costs (such as school holiday only costs) will be better off in the existing scheme.

Existing childcare schemes will continue up until 2018 and beyond, as long as your employer continues to run the scheme, up until your child is five years old (or 16 if disabled).

**Most local authorities provide free childcare for 30 hours a week for all children aged between two and four years old to parents in work. However, recent cuts in Government spending have meant that more than a third of councils are now struggling to meet demand.**

## Free childcare for 3-4 year olds

All three and four year olds are entitled to 15 hours of free early education a week for 38 weeks of the year.

Three year olds become entitled to this free place in the school term following their third birthday. Some two year olds are also eligible.

Some parents in England may qualify for up to 30 hours free childcare. Parents of three and four year olds will need to meet the following criteria in order to be eligible:

- Earn or expect to earn the equivalent to 16 hours at National Minimum or Living Wage over the coming three months.
- This equates to £152 a week (or c.£7,904 a year) for each parent over 23 years old or £146.88 a week (or c.£7,637.76 a year) for each parent between 21 and 22 years old.
- This applies whether you are in paid employment, self-employed or on zero-hours contract.
- The parent (and their partner where applicable) should be seeking the free childcare to enable them to work.
- Where one or both parents are on maternity, paternity, shared parental or adoption leave, or if they are on statutory sick leave.

Usdaw will continue to encourage employers to get more involved in childcare. Workplace crèches or nurseries are still few and far between.

If you would like more information about trying to get your employer to become involved in childcare, please contact Usdaw's Equalities Section on 0161 224 2804.

## Useful Contacts

**If you want help to find childcare in your area the following organisations can help:**

### Coram Family and Childcare

A national charity created from a merger of the Family and Parenting Institute and the Daycare Trust working to make the UK a better place for families.

Web: [www.coram.org.uk](http://www.coram.org.uk)

### Family Lives (formerly Parentline Plus)

A national charity providing help and support in all aspects of family life.

Parentline: 0808 800 2222

Web: [www.familylives.org.uk](http://www.familylives.org.uk)

### Her Majesty's Revenue and Customs

For more information about Child Tax Credit, part of Working Tax Credit (WTC), contact the Tax Credit helpline.

Tel: 0345 300 3900

(Textphone 0345 300 3909)

Web: [www.gov.uk/government/organisations/hm-revenue-customs](http://www.gov.uk/government/organisations/hm-revenue-customs)



# Section 4

## Miscarriage and Stillbirth

There can be some confusion over what happens to your maternity rights if your baby is stillborn or you have a miscarriage. This section offers you some guidance in these situations.

### Definitions:

- A stillbirth is where your baby is born dead after the 24th week of pregnancy. The hospital should give you a certificate of stillbirth.
- A miscarriage is where your baby is born dead before 24 weeks of pregnancy.



## Part 1

# Your Rights After Miscarriage

### Compassionate leave

If you have a miscarriage you do not have the right to maternity leave or pay, nor is your partner (if you have one) entitled to paternity leave or pay.

You may want to check your contract of employment or staff handbook to see whether or not you are able to take paid compassionate leave, rather than paid sick leave, in the event of a miscarriage.

### Sick pay

If you are not entitled to paid compassionate leave or are only entitled to this for a very short period of time, you should take sick leave and your employer should pay you either:

- **Statutory Sick Pay**

In order to qualify for Statutory Sick Pay you have to normally have earned enough to pay National Insurance. For more information about the qualifying conditions for Statutory Sick Pay, please see Section 6, *Sickness and Redundancy*.

- **Contractual Sick Pay**

You will be entitled to this if your contract of employment gives you this right, or if other people at your workplace normally receive it.

If you are not entitled to either of the above payments you should claim Employment and Support Allowance. For more information contact Jobcentre Plus on 0800 055 6688.

**If you have a miscarriage you do not have the right to maternity leave or pay. If you are not entitled to paid compassionate leave you should take sick leave and your employer should pay you either Statutory Sick Pay or Contractual Sick Pay.**

### Sick leave

You should be allowed to take as much sick leave (as opposed to sick pay) as you need. You must obtain a medical certificate (fit note) from your GP to cover you throughout the period that you are off work.

This is the case, even if your employer usually only allows a limited amount of sick leave.

This is because your employer is not allowed to discriminate against you, dismiss you or put you at a 'disadvantage' because of a pregnancy-related absence. It may be sex discrimination if your employer claims that miscarriage is not covered by your workplace sick pay scheme.

### NHS Exemption Certificate

Following a miscarriage you are no longer entitled to use the Exemption Certificate for free NHS prescriptions and dental treatment.

## Part 2

# Your Rights After Stillbirth

## Right to maternity leave and pay

You have exactly the same rights to maternity leave and pay as if your baby had been born alive.

- If you are already on maternity leave when your baby is stillborn you do not have to do anything and your rights to pay and leave continue.
- If your baby is stillborn after you have given notice of the date you wanted your maternity leave to start but before you have left work, your maternity leave will start automatically the day after the stillbirth. You must let your employer know as soon as you can that you have given birth – in writing if your employer requests it:
  - That your baby was stillborn; and
  - The date of the stillbirth. You can give a copy of the certificate of stillbirth to your employer that your midwife will give to you.
  - If your employer asks for confirmation of when the expected week of childbirth was, you should send in your MAT B1 form that your midwife or GP will have given you at around your 20th week of pregnancy.
- If your baby is stillborn before you have given notice of going on maternity leave, your maternity leave will start automatically on the day of the stillbirth. You must let your employer know as soon as you can – in writing if your employer requests it.

**Should you have any difficulties, it is important that you contact your local Usdaw rep, Area Organiser, or the Equalities Section at Usdaw's Head Office for further advice.**

## Claiming Statutory Maternity Pay

- If you are already receiving Statutory Maternity Pay when your baby is stillborn, you do not need to do anything.
- If your baby is stillborn after you have given notice of the date that you wanted your maternity leave and pay to start, but before you have left work, you must let your employer know within 28 days if you can, that you have given birth and of the date your absence from work began. Your Statutory Maternity Pay period will then start from the day after the day of the stillbirth.
- If your baby is stillborn before you have given notice of the date you want your Statutory Maternity Pay to start, you must send your employer; evidence of the date the baby was due, evidence of the date the baby was stillborn and request Statutory Maternity Pay. You must do this within 28 days of the stillbirth, or as soon as you reasonably can.
- If your baby is stillborn before the end of the qualifying week for Statutory Maternity Pay (the 15th week before the week the baby is due), there are special rules. Contact your local Usdaw rep, Area Organiser or the Equalities Officer at Usdaw's Head Office for further information.
- In the event of a stillbirth, your partner (if you have one) is entitled to take paternity leave and pay if he or she satisfies the qualifying conditions.

- If your baby is born alive at any stage of your pregnancy and subsequently dies, you will be entitled to maternity leave and pay (if you satisfy the qualifying conditions).

## NHS Exemption Certificate

You are entitled to keep this certificate and use it to get free NHS prescriptions and dental treatment for the 12 months following the stillbirth.

## Statutory Parental Bereavement Leave and Pay

You and your partner may be able to take time off work if your child dies before they turn 18, or if you have a stillbirth after 24 weeks of pregnancy.

- **Parental Bereavement Leave:** All employed parents have a day one right to two weeks leave for each child who has died or is stillborn. Leave can be taken as one block or as two separate blocks of one week.
- **Statutory Parental Bereavement Pay:** You may be able to claim pay during this time if you have been continuously employed for 26 weeks up to the end of the ‘relevant week’ (the week ending with the Saturday immediately before the week of the death or stillbirth) and earn at least £123 a week. The payment is £156.66 a week or 90% of your average weekly earnings (whichever is lower).

You have 56 weeks in which to take your leave or claim pay from the date of the child’s death. If you’re taking another type of statutory leave (for example, maternity leave or paternity leave) when the child dies or stillbirth happens, your Parental Bereavement Leave must start after the other leave has ended but does not have to be taken immediately after.

You must give your employer notice before taking Parental Bereavement Leave. How much notice depends on when you’re taking the leave:

- **0-8 weeks after the child’s death or stillbirth:** Before you would normally start work on the first day of the week or weeks you want to take off work.
- **9-56 weeks after the child’s death or stillbirth:** At least one week’s notice before the start of the week or weeks you want to take off work.

You can give notice by speaking to your employer. You do not need to give proof of death or stillbirth.

To claim Statutory Parental Bereavement Pay you must make a request in writing to your employer within 28 days of the first day of the week you’re claiming the payment for. You must include your name, the dates you wish to claim Statutory Parental Bereavement Pay for and the date of your child’s death.

## Support Groups

### The Stillbirth and Neonatal Death Charity (SANDS)

Victoria Charity Centre  
11 Belgrave Road, London SW1V 1RB

Helpline: 0808 164 3332  
Web: [www.sands.org.uk](http://www.sands.org.uk)

### The Miscarriage Association

17 Wentworth Terrace  
Wakefield WF1 3QW

Tel: 01924 200 799 (Mon-Fri 9am-4pm)  
Web: [www.miscarriageassociation.org.uk](http://www.miscarriageassociation.org.uk)

### The National Childbirth Trust

Helpline: 0300 330 0700  
Web: [www.nct.org.uk](http://www.nct.org.uk)

# Section 5

## Extra Money for Mothers and Babies

This section tells you about extra money you might be able to claim from the Government in the form of social security benefits or Tax Credits. If you are simply getting Statutory Maternity Pay at the moment, you may well be entitled to claim extra money. You might be missing out on benefits even if you are in work (full-time or part-time).

There are six main categories of benefit available to women whilst pregnant or after they have given birth.

These categories are:

1. **Universal benefits** – are benefits that all others can claim.
2. **Contributory benefits** – are benefits for women who have paid the right amount of National Insurance contributions in the last two or three tax years before the calendar year in which you make your claim.
3. **Means-tested benefits** – are benefits that take into account your income and savings. The lower your income, the more likely you will be entitled to a means-tested benefit.
4. **Tax Credits and Universal Credit** – are benefits for families with children and couples or single people in work but on a low income.
5. **Health benefits** – are benefits that are available to women on a low income during pregnancy and after birth.

## Important

Many of the benefits mentioned in this section are usually only paid to you from and including the date you make your claim. It is, therefore, very important to remember that if you are in doubt about whether or not you qualify for a benefit, make a claim. Support and assistance is available from Usdaw. Contact your Usdaw rep or Area Organiser.

6. Usdaw benefits - if you are an Usdaw member on maternity leave, there are further benefits you are entitled to, such as our Maternity Grant.

To claim many of the benefits described in this section, you will have to complete a claim form. Benefit claim forms are available from your local Jobcentre Plus office and larger post offices. Tax Credit claim forms are available from Her Majesty's Revenue and Customs.

This section also includes helpline telephone numbers. You can request a claim form by ringing the telephone helpline number. You can also visit the Department for Work and Pensions website or Her Majesty's Revenue and Customs. A lot of claim forms referred to in this section can be printed from these sites or filled in online.



## Part 1

# Universal Benefits

These are benefits that mothers can get during pregnancy and after birth.

## Child Benefit

### What is it?

Child Benefit is paid to help parents with the cost of caring for children. Although Child Benefit is a non means-tested benefit, if your income or your partner's income exceeds £50,000 (individual income, not combined joint income) you may be liable to pay tax in respect of Child Benefit. It is payable for each child from birth until either their 16th birthday or their 19th birthday if in full-time, non advanced, education.

### Who gets it?

Child Benefit is usually paid to the mother. If the mother does not have responsibility for the child it should be paid to the person responsible for the child. The child has to be living in Britain and usually either the child, or the person claiming, must have been living in Britain for at least six months before a claim is made.

### How much is it?

- £21.80 a week for your first child.
- £14.45 a week for each child after this.

**A Benefit Cap may be applied if the total amount of certain benefits you receive (including Child Benefit) exceeds a specified amount.**

**NHS prescriptions\* and dental care are free throughout your pregnancy and for 12 months after you have given birth.**

### How do I claim?

You can get a claim form from your local Jobcentre Plus office or larger post offices, or by contacting the Child Benefit office on 0300 200 3100 (textphone 0300 200 3103) to order a form.

Alternatively, to download or complete the form online, go to [www.gov.uk](http://www.gov.uk)

Fill in the forms as soon as you can and send them to the Child Benefit Centre in the prepaid envelope along with the baby's birth certificate. You will be given a free birth certificate when you register your baby's birth. The Child Benefit Centre will return the certificate to you.

### How is it paid?

Child Benefit is generally paid every four weeks on a Monday directly into a bank account. You can ask for Child Benefit to be paid to you on a weekly basis if you can show that a four-weekly payment will cause you 'severe hardship'. You must write to your local Jobcentre Plus office to request this.

### Anything else?

Child Benefit can help to protect your state retirement pension if you stay at home to look after your child. For every complete year that you get Child Benefit but you don't pay enough National Insurance to count towards the basic pension, you automatically get a class 3 contribution credit.

## Free prescriptions

### Who gets them?

NHS prescriptions\* are free throughout your pregnancy and for 12 months after you have given birth. Your child is also entitled to free prescriptions up until the age of 16.

### How do I claim?

To claim during pregnancy or within the first 12 months of birth, ask either your doctor or midwife for Form FW8 and send it to your Health Authority (in Scotland, the Health Board). You will be sent a Maternity Exemption Certificate which lasts for one year after your due date. This applies even if your baby is stillborn or has since died.

For more information about help with health costs visit [www.nhs.uk](http://www.nhs.uk)

## Free dental treatment

### Who gets it?

You can get free NHS dental care if you are pregnant or have given birth within the last 12 months. This continues to apply if your baby is stillborn or dies within 12 months of birth.

### How do I claim?

You claim by ticking a box on a form provided by the dentist or by showing your Exemption Certificate.

*\*Prescriptions are free in Scotland and Wales.*



## Part 2

# Benefits Based on NI Contributions

Whether or not you qualify for the following benefits will depend upon whether you have made the right amount of National Insurance contributions in the last three years.

Therefore, these benefits will usually only be paid to women who have worked in the recent past. If in doubt, make a claim. You are not expected to know whether or not you satisfy the contribution conditions.

## 'New Style' Jobseeker's Allowance

### Who should claim it?

This benefit is designed to help you cope financially should you lose your job, say through redundancy. It doesn't matter if you have a partner who is in work, as their income is not taken into account.

For example:

If you are made redundant during pregnancy you may well be entitled to contribution-based Jobseeker's Allowance. However, when you reach your 29th week of pregnancy if you are then entitled to Statutory Maternity Pay or Maternity Allowance you will receive these benefits instead. This is because you are treated as 'unavailable for work' whilst in receipt of these benefits.

**If you are a lone parent, you may be able to claim Income Support, Tax Credits or Universal Credit (if you come under the Universal Credit system) instead of Jobseeker's Allowance.**

If you are made redundant after giving birth, you cannot be paid contribution-based Jobseeker's Allowance whilst you are still in receipt of Statutory Maternity Pay or Maternity Allowance. However, after your Statutory Maternity Pay or Maternity Allowance runs out, if you are fit and able to actively seek work, you may want to claim contribution-based Jobseeker's Allowance.

If you are a lone parent, you may be able to claim Income Support or Tax Credits instead of Jobseeker's Allowance (see Parts 3 and 4 of this section).

### What is it?

It is a benefit that is paid to people who are either unemployed or usually working less than 16 hours per week (although there is an 'earnings limit'). **It is paid for a maximum of 26 weeks.**

### Who gets it?

You will qualify if you have paid the right amount of National Insurance contributions in the last two tax years before the calendar year in which you claim. You also have to demonstrate that you are actively seeking and available for work. You are able to restrict the hours that you are available for work if you have caring responsibilities such as looking after children. In any event, you cannot restrict the number of hours that you are available for work to less than 16.

If you do not satisfy the contribution conditions you may be able to claim income-based Jobseeker's Allowance or Universal Credit instead (if you come under the Universal Credit system, see page 75 for details).

### How much is it?

- If you are under 25 you get £61.05 per week.
- If you are 25 or over you get £77 per week.

Your partner's earnings are not taken into account but if you are in part-time work your earnings will affect the amount of contribution-based Jobseeker's Allowance you are entitled to.

### How do I claim?

Unlike other benefits, Jobseeker's Allowance claim forms are only available from Jobcentre Plus offices. You must contact Jobcentre Plus on 0800 055 6688 or online at [www.gov.uk](http://www.gov.uk) for a claim form.

On receipt of the claim form the Jobcentre Plus office will give you an appointment for an interview. At the interview you will be asked to sign a 'Jobseeker's Agreement'. This agreement confirms the hours that you are available for work and the steps that you have agreed to take to find employment. You must be available for work for at least 16 hours per week and no less.

### How is it paid?

Contribution-based Jobseeker's Allowance is paid fortnightly in arrears. It is paid into a bank or building society account. Every two weeks you have to visit the Jobcentre Plus office to 'sign on'. You will usually be questioned about the attempts you have made to find work and your personal adviser at the Jobcentre Plus office will make sure that you are sticking to the terms of your Jobseeker's Agreement. Failure to sign on or to actively seek work, can lead to your benefit being stopped.

### Anything else?

If you decide not to return to work after a period of maternity leave, you can make a claim for contribution-based Jobseeker's Allowance, however, you may find that although you are entitled to it, your payment is 'suspended'. This is because the decision maker at the Jobcentre Plus office may decide that you have voluntarily given up employment.

If you are in this situation you should appeal against the decision to suspend your benefit. If, however, you can show 'good cause' for resigning from your former employment, your benefit payment will be reinstated.



# Employment and Support Allowance

## Who should claim it?

It is a benefit that can compensate you for a loss of earnings if you are unable to work because of illness or disability whilst pregnant, or after giving birth. Employment and Support Allowance replaced Incapacity Benefit in 2008.

## What is it?

There are two types of Employment and Support Allowance:

- Contribution-based.
- Income-related.

It is payable to women who are incapable of work because of pregnancy and who don't qualify for Statutory Sick Pay. It can also be paid to women after birth who aren't well enough to return to work at the end of maternity leave.

## Who gets it?

### Contribution-based Employment and Support Allowance

You may be entitled to contribution-based Employment and Support Allowance if you are incapable of work, do not receive Statutory Sick Pay and you have paid or been credited with the right amount of National Insurance contributions in the two years before the calendar year in which you claim.

You can still get contribution-based Employment and Support Allowance if you get Statutory Maternity, Paternity, Shared Parental or Adoption Pay and the amount you receive is less than the Employment and Support Allowance.

Your Employment and Support Allowance is reduced by the amount of Statutory Maternity, Paternity, Shared Parental or Adoption Pay you receive.

If you are not in the Support Group (see page 64 for details) contribution-based ESA is paid for 365 days only.

### Income-related Employment and Support Allowance

You may be entitled to claim income-related Employment and Support Allowance or Universal Credit if you do not have enough money coming in, or you have not paid enough National Insurance contributions, and you satisfy the entitlement conditions. This means that you have savings of less than £16,000 and, if you have a partner or civil partner, they work for less than 24 hours a week on average.

In order to claim money for your child or children you will need to claim Child Tax Credit (see Part 4 of this section) and Child Benefit (see Part 1 of this section) or Universal Credit (see Part 4 of this section).

## How it works

Employment and Support Allowance consists of two phases:

- The assessment phase rate is paid for the first 13 weeks of your claim while a decision is made on your capability for work through the Work Capability Assessment.
- The main phase starts from week 14 of your claim, if the Work Capability Assessment shows that your illness or disability does limit your ability to work.

There are two groups within the main phase:

### **Work-Related Activity Group**

If you are placed in the Work-Related Activity Group, you will be expected to take part in work focused interviews with your personal adviser. You will get support to help you prepare for suitable work.

In return, you will receive a work-related activity component (an extra payment) in addition to your basic rate.

The Government has recently announced its intention to remove this for all new claimants.

### **Support Group**

If you are placed in the Support Group because your illness or disability has a severe effect on your ability to work, you will not be expected to take part in any work. You can do so on a voluntary basis if you want to.

You will receive a support component (an extra payment) in addition to your basic rate.

### **How much is it?**

The amount you get depends on your circumstances – including what effect your disability or illness has on your ability to work.

You will be treated as having limited capability for work (and therefore not have to score points in the assessment) where you have a sick note and you are within six weeks of the baby's due date up until two weeks after the baby is born. You will also be treated as having limited capability for work on any other day when working would cause a serious risk to your health or the health of your baby.

In most cases you will not get any money for the first three days of your claim. These are called 'waiting days'.

Depending on your circumstances you may be able to get more money if you get income-related Employment and Support Allowance or Universal Credit.

You can only get extra money for your husband, wife or civil partner if you get income-related Employment and Support Allowance or Universal Credit.

### **How do I claim?**

#### **Claiming by telephone or textphone**

You can claim Employment and Support Allowance by telephone or textphone. An adviser at the contact centre will go through the application with you and fill in the form. You will not have to fill in any forms yourself.

Lines are open Monday to Friday, from 8.00am to 6.00pm.

Contact centre numbers:

- Telephone: 0800 055 6688
- Textphone: 0800 023 4888

#### **Claiming online**

You can claim online via the Department for Work and Pensions Benefits online service – you can download a claim form at [www.gov.uk](http://www.gov.uk)

**You do not have to start your claim by telephone but this is the way the DWP usually prefer you claim.**

**Employment Support Allowance is a benefit that can compensate you for a loss of earnings if you are unable to work because of illness or disability whilst pregnant, or after giving birth.**

## Part 3

# Means-Tested Benefits

Means-tested benefits are paid to ensure that your income does not drop below a certain level. To be entitled to means-tested benefits you do not have to satisfy any contribution conditions. Instead your income and capital have to be sufficiently low for you to qualify.

## Income Support

### What is it?

Income Support is a benefit that is paid to people who are either not in work or not in full-time work. Full-time work means work that is over 16 hours per week. If you are part of a couple and your partner is working over 16 hours per week but less than 24 hours per week you may be able to claim Income Support depending on your income.

### Who gets it?

Income Support can be paid to people aged over 16 who either have no income or a low income. Carers and lone parents who have responsibility for a child aged under five can claim Income Support.

You can no longer make a new claim for Income Support, you can apply for Universal Credit instead.

Child Benefit is disregarded in full for Child Tax Credit and Child Tax Credit is disregarded in full for Income Support.

People who are incapable of work, for example, if you are too ill to work because of your pregnancy or your baby is due within the next six weeks, should claim Employment and Support Allowance (see Part 2 of this section for more details).

**Income Support is a benefit that is paid to people who are either not in work or not in full-time work. Full-time work means work that is over 16 hours per week.**

**You cannot get Income Support if you are under 60 and have savings over £16,000.**

### How much is it?

There is a formula for calculating how much Income Support you will be paid. It depends upon a number of factors, including your age and whether or not you are disabled.

Your income will be taken into account when assessing how much Income Support you will be paid, as will any earnings you might have because of part-time work. If you are in work some of your earnings will be disregarded. The amount of the earnings disregarded varies.

### How do I claim?

You are usually required to start your claim by telephoning a 'contact centre'. Your local Jobcentre Plus office has this telephone number and it may also be displayed in local advice centres or libraries. The centre takes basic details and then calls you back to go through details of your claim.

### How is it paid?

Income Support is normally paid two weeks in arrears although it can be paid weekly. It will be paid directly into your bank account or building society.

### Anything else?

You may not be able to get Income Support before your baby is born if you have other income, for example Statutory Maternity Pay or Maternity Allowance. You should always ask about claiming again after your baby is born or if your income goes down or your maternity payments stop.

If you are a lone parent and incapable of work you should claim Employment and Support Allowance (see Part 2 of this section for more details). You should send in medical certificates as this could eventually lead to an increase in the amount of Employment and Support Allowance you receive. Similarly if either you or your child/children are disabled and receive a disability benefit you need to let the Department for Work and Pensions know as this will increase the amount of Child Tax Credit that is paid to you. This is because the law accepts that as you have extra needs, you need extra money.

If you are already getting Income Support before your baby is born, you must tell your local Jobcentre Plus office as soon as your baby is born, otherwise you might lose out.

## Income-based Jobseeker's Allowance

### What is it?

Income-based Jobseeker's Allowance is paid to people that are either not in work or only in part-time work but are able to work. It is similar to Income Support in that it provides you with a basic income. If you are part of a couple with children and both of you are out of work and neither of you are either sick or disabled or a 'carer', you would usually have to claim Jobseeker's Allowance rather than Income Support.

### Who can get it?

The rules for income-based Jobseeker's Allowance are very similar to the rules for contribution-based Jobseeker's Allowance (see Part 2 of this section) in that you have to be actively seeking and available for work. However, you do not have to satisfy any contribution conditions to qualify for income-based Jobseeker's Allowance. You must not have savings over £16,000. You cannot work over 16 hours per week or if you are part of a couple, your partner cannot work more than 24 hours per week.

### How much is it?

Income-based Jobseeker's Allowance is calculated in the same way as Income Support (see page 65 for details).

### How do I claim?

You make a claim in the same way as you would make a claim for contribution-based Jobseeker's Allowance (see Part 2 of this section – 'Contributory Benefits'). You need to contact your nearest Jobcentre Plus office for a claim form as soon as you can, otherwise you might miss out on benefit. You must sign on every fortnight otherwise you risk losing your benefit.

**Income-based Jobseeker's Allowance is paid to people that are either not in work or only in part-time work but are able to work. It is similar to Income Support in that it provides you with a basic income.**

Community Care Grants and Crisis Loans (previously available from the Social Fund) were abolished in April 2013 and replaced by localised schemes and short-term advances. Contact your local Town Hall for details.

### **How is it paid?**

Income-based Jobseeker's Allowance is paid fortnightly in arrears directly into a bank or building society account.

### **Anything else?**

If you receive either Income Support or income-based Jobseeker's Allowance and have children at primary or secondary school you will qualify for free school meals.

## **The social fund budgeting loans**

Budgeting loans are interest free loans to cover the cost of items for which it is difficult to budget.

If/when you come under the Universal Credit System (see page 75 for details) you will not be able to apply for a budgeting loan and you will have to apply for a budgeting advance of your Universal Credit payments instead.

### **Who gets it?**

In order to qualify you have to be:

- In receipt of a qualifying benefit – Income Support, income-based Jobseeker's Allowance, income-related Employment and Support Allowance, Pension Credit.
- In receipt of the qualifying benefit for 26 weeks prior to your application.

The loan must be for an 'allowable expense' and maternity expenses are deemed allowable expenses.

### **How much is it?**

The amount you get depends on several factors including who is in your household, the amount you request, what you can afford to repay and whether or not you have any outstanding budgeting loan debt.

### **How do I claim?**

Applications must be in writing either on an approved form (SF500) or in some other written form. You can get the application form from your local DWP office or download one from [www.gov.uk](http://www.gov.uk) or by calling 0800 169 0140.

### **Anything else?**

If you are unhappy with a decision, you can ask for a review.

## **Sure Start Maternity Grant**

### **What is it?**

This is a lump sum payment (that you do not have to pay back) to help you buy things for your first newborn baby.

### **Who gets it?**

It is paid to you if you receive a qualifying benefit. Qualifying benefits are income-based Jobseeker's Allowance, Income Support, income-related Employment and Support Allowance, Pension Credit and Universal Credit. You will also qualify for the maternity grant if you are in receipt of Child Tax Credit of more than £10.45 per week or Working Tax Credit where a disability element is included in the award. You have to be expecting a baby within the next 11 weeks or have given birth or adopted a child in the last three months.

### How much is it?

It is £500 for your first baby. You cannot claim for any subsequent children. You will only qualify if there is no other member of your family under 16 years old at the time of your claim. However, a grant can be awarded for each child of a multiple birth, provided there is no other child under 16 years old.

### How do I claim?

You need to claim on Form SF100. You can get this form from your local Jobcentre Plus office or from [www.gov.uk](http://www.gov.uk) or by calling the Helpline on 0800 169 0140.

The back of the claim form needs to be filled in either by your GP, health visitor or midwife as they have to confirm that you have received health and welfare advice relating to your baby.

### Anything else?

There is no provision for claiming outside of the above time limits so you need to make sure you make a claim as soon as you can.

You can claim the grant even if your baby is stillborn at any time after 24 weeks of pregnancy.

If you live in Scotland you cannot get a Sure Start Maternity Grant. You can apply for a Pregnancy and Baby Payment through [mygov.scot/best-start-grant-best-start-foods](http://mygov.scot/best-start-grant-best-start-foods)

**If you receive a qualifying benefit, the Sure Start Maternity Grant is a £500 payment (that you do not have to pay back) to help you buy things for your first newborn baby.**

**You can receive help with your mortgage interest payments if you are in receipt of a qualifying benefit. You cannot get help towards repayment of capital or contributions to a linked PEP, endowment or insurance policy.**

## Help with housing costs

Housing costs include help with your mortgage interest, rent and council tax.

Universal Credit has replaced Housing Benefit and help with mortgage interest payments for new claimants (see pages 70-72 for more details).

## Help with mortgage interest payments

### What is it?

You can receive help with your mortgage interest payments if you are in receipt of a qualifying benefit. Before 6 April 2018 support for mortgage interest was paid in the form of a benefit. However, now it's paid as a loan. You have to pay interest and repay the loan when you sell or transfer ownership of the property. You cannot get help towards repayment of capital or contributions to a linked PEP, endowment or insurance policy. You will probably not receive help straight away. There is a waiting period as to begin with, you are expected to rely on mortgage protection payments or other income or savings.

### Who gets it?

You can only get help towards your mortgage interest repayments if you get income-based Jobseeker's Allowance, Income Support, income-related Employment and Support Allowance, Pension Credit or Universal Credit providing you're not in paid employment.

## How much is it?

You will not normally receive help straight away.

### For customers making a new claim to benefit:

- There is a waiting period of 39 weeks before help is provided at 100% of eligible mortgage interest.
- The capital limit up to which mortgage interest can be met is £200,000.
- There is a two year time limit on payment of mortgage interest but only for new Jobseeker's Allowance claims.

### Rules that apply to customers in receipt of help prior to 5 January 2009

If you are already receiving help with your mortgage before 5 January 2009, the help you receive will not be changed, and you will be treated under the old rules. If you stop claiming and a future claim links to your previous claim under the department's linking rules, you will be treated under the old rules. The old rules are as follows:

- Different rules apply depending on whether the loan was taken out before or after 2 October 1995.
- For loans to purchase the property (and home improvement loans) taken out after 2 October 1995, there is a waiting period of 39 weeks before help is provided, and 100% of eligible mortgage interest is paid from week 40.
- The capital limit up to which mortgage interest can be met is £100,000.
- Vulnerable customers who fall into certain specific groups, and customers with a loan taken out prior to 2 October 1995, receive no help for the first eight weeks of their claim, 50% of eligible interest for a further 18 weeks and 100% of their eligible mortgage interest from week 27.

The amount that you are paid is based upon a standard average interest rate. This might be less than the interest rates your lender charges. If this is the case you are expected to meet any 'shortfall' yourself.

From 2018 mortgage interest payment support moved from a state benefit to a state-backed repayable loan. A charge will be placed on the recipient's mortgage and you will be expected to repay the amount that you have received, plus interest, either when you get back into work or when your home is sold.

### How do I claim?

The Department for Work and Pensions or Jobcentre Plus should send you a claim form. Contact Jobcentre Plus on 0800 055 6688 for more information.

You should be given an additional form to give to your mortgage lender.

### How is it paid?

Your allowable interest costs can be paid to you as part of your income-based Jobseeker's Allowance or Income Support or more usually, the payment is made direct to your mortgage lender.

### Anything else?

If you fall into arrears with your mortgage payments it is very important for you to speak to your lender. You may be able to negotiate reduced payments for a temporary period (for example, during your maternity leave). Some mortgage agreements allow you to have a 'repayment holiday' for a certain length of time.

## The amount of Housing Benefit you receive will be reduced if it is decided you have more bedrooms than you need.

### Housing Benefit

Housing Benefit can help you pay your rent if you're unemployed, on a low income or claiming benefits. It's being replaced by Universal Credit.

You can only make a new claim for Housing Benefit if one of the following is true:

- You're getting the severe disability premium, or are entitled to it.
- You got, or were entitled to, the severe disability premium within the last month and are still eligible for it.
- You have reached State Pension age.
- You live in temporary accommodation.
- You live in sheltered or supported housing with special facilities such as alarms or wardens.

If not, you'll need to claim Universal Credit instead.

If you are of working age you can only make a new claim for housing benefit if one of the following applies:

- You or your partner are State Pension age.
- You claim other benefits which include a severe disability premium.
- You're staying in a refuge, hostel or some types of supported or temporary housing.

Otherwise, you must claim Universal Credit instead.

### What is it?

Housing Benefit is paid to people who have a low income and who pay rent. It is paid whether you are in work or not. It is administered by your local authority and not by the Department for Work and Pensions. It can be paid to you with other social security benefits or by itself.

Housing Benefit is eventually set to be abolished and an amount for help with rent will be included in Universal Credit instead.

### Who gets it?

You can get Housing Benefit if your income is low enough and you are liable to pay rent. You cannot get Housing Benefit if you are under 60 and have savings over £16,000. If you are under 60 and have savings over £6,000, you will be treated as having an extra income of £1 per week for every £250 you have over £6,000. For example, if you have savings of £8,100 you will be treated as having an extra income of £9 per week on top of any other income you might have.

### How much is it?

The amount of Housing Benefit you can get depends upon a number of factors. It depends upon your age, your income, who else lives in your home, when you took up tenancy and how many bedrooms your property has.

**Housing Benefit can help you pay your rent if you're unemployed, on a low income or claiming benefits. It's being replaced by Universal Credit.**

## Housing Benefit and the 'Bedroom Tax'

If you receive Housing Benefit and rent your home from a 'social landlord' (the council or a housing association) the amount of Housing Benefit you receive will be reduced if it is decided you have more bedrooms than you need.

You are allowed one bedroom for each of the following:

- You, the tenant, (and your partner if you have one).
- A person who is not a child (aged 16 or over).
- Two children of the same sex under the age of 16.
- Two children of the opposite sex under the age of 10.
- A non-resident adult carer providing overnight care.
- You (or your partner) are a 'qualifying parent or carer' (see (a) opposite).
- A 'child who cannot share a bedroom' (see (b) opposite).†
- A disabled child requiring overnight care.
- Foster child (only 1 bedroom is allowed regardless of the number or sex of the children).

**If you are affected by a reduction in your Housing Benefit because you are considered to have too many bedrooms you should apply for a Discretionary Housing Payment from your local authority.**

- Child away at university who plans to return home (second or third year students living in privately rented accommodation may not count).
- Child in the Armed Forces who plans to return home.

On 9 November 2016 the Supreme Court ruled in favour of a couple who cannot share a bedroom due to health reasons. The Government must now act to amend the regulations to allow an additional bedroom for couples who cannot share a bedroom due to health reasons.

- (a) You count as a qualifying parent or carer if:
- A child has been placed (or in Scotland boarded out) with you (or your partner) under specified provisions – eg, prior to adoption or as a foster parent; or
  - You (or your partner) are an approved foster parent (in Scotland this includes foster and kinship carers). This provision applies even if you do not currently have a child placed with you, provided you have become an approved foster parent, or have fostered a child, within the last 52 weeks.
- (b) To count as a child who cannot share a bedroom:
- The child must be under 16 and must be entitled to the middle or higher rate of the care component of Disability Living Allowance; and
  - The local authority must be satisfied that because of her/his disability, the child cannot reasonably share a bedroom with another child.

## Exemptions

- People in privately rented or social housing who do not receive help with their rent via Housing Benefit will not be affected.
- The bedroom tax only affects people of working age. Anyone who is over the qualifying age for state pension credit or who has a partner over the age will be exempt from the bedroom tax.
- If you have recently been bereaved you will be exempt for 12 months after the bereavement.
- If you have a child away in the Armed or Reserve Forces (if they plan to return to live with you).
- If someone who normally lives with you is away for up to a year if they intend to return and are away for particular reasons (for example, they're in hospital).

## Rates of reduction

- 14% of the total eligible rent if you are considered to have one bedroom too many.
- 25% of the total eligible rent if you are considered to have two or more bedrooms too many.

If your Housing Benefit is restricted you have to meet the shortfall yourself.

## Discretionary Housing Payments

If you are affected by a reduction in your Housing Benefit because you are considered to have too many bedrooms you should apply for a Discretionary Housing Payment from your local authority. Guidance to local authorities suggests:

*“For those claimants who cannot cover a reduction in Housing Benefit from their own resources and who have a compelling case for remaining in their current accommodation, there is the Discretionary Housing Payments Fund.”*

Ask your local authority how to make a claim for Discretionary Housing Payments. It is up to your local authority to decide for how long you can be paid and how far your payments can be backdated.

## Council Tax Reduction

If you need help to pay your council tax, you might be able to get a reduction under your local authority's council tax reduction scheme.

In England and Wales local authorities can devise their own local schemes which must meet minimum requirements. In Scotland there is a national scheme administered by local authorities.

The amount of help you will get will depend upon your income.

Ask your local authority for details of their scheme and how to make a claim for help with your council tax.



## Part 4

# Tax Credits

Now that Universal Credit has been fully rolled-out across the UK, most people can no longer make a new claim for Tax Credits and have to claim Universal Credit instead (renewal claims can continue).

Until July 2019, you'll only automatically be moved onto Universal Credit if you're a new claimant or if your circumstances change. After July 2019, it is expected that everyone on 'legacy benefits' will gradually start being moved across to Universal Credit. It is expected to take at least four years to move everyone in receipt of a 'legacy benefit' onto Universal Credit.

If you are already in receipt of Tax Credits then your claim should not be affected by Universal Credit unless you:

- Choose to claim Universal Credit.  
**Note: Most people with children, disabled people and single parents will be worse off on Universal Credit. Once you claim Universal Credit, your Tax Credit(s) award will end and with very few exceptions you cannot go back. You should therefore seek independent advice from your local Citizens Advice Bureau before taking a decision to move from Tax Credits to Universal Credit.**

Child Tax Credit is financial support for children. Single parents or couples with children can claim it, whether in work or not.

- Have a change in circumstances that ends your Tax Credit award including:
  - A partner leaves or joins your household.
  - You or your partner stop work or reduce your hours below the level required for your Tax Credit claim to continue.
  - You are claiming for only one child and your circumstances change so that you are no longer responsible for them (ie they leave home).
  - You need to make a claim for another benefit which Universal Credit has replaced (such as housing benefit).

There are two Tax Credits – **Child Tax Credit and Working Tax Credit.**

### Who gets them?

## Child Tax Credit

Child Tax Credit is financial support for children. Single parents or couples with children can claim it, whether in work or not.

Child Tax Credit is paid in to the bank account of the main carer in the family (usually the woman).

### Two Child Limit – Tax Credits and Universal Credit

Applies to England, Scotland, Wales and Northern Ireland.

### What is it?

From April 2017, support for children through Tax Credits and Universal Credit has been limited to two children.

For Child Tax Credit, an additional element (payment) will not be included for a third (or more) child born on or after 6 April 2017 unless an exception applies. Elements will continue to be included for all children born before 6 April 2017.

## Exceptions

- A child who is part of a multiple birth, other than the first child in a multiple birth where there are already two or more children included in the award.
- A child who has been adopted from local authority care in the UK.
- A child whose parent is a child or qualifying young person who the claimant is getting Child Tax Credit for.
- A child who is the responsibility of a 'friend or family carer' because they are unable to live with his/her parents and would otherwise be at risk of being in care.
- A child who is likely to have been conceived as a result of rape or in a coercive or controlling relationship, and the claimant is not living at the same address as the alleged perpetrator at the time the exception applies.

## Working Tax Credit

Working Tax Credit is financial support for low paid workers. It is also paid directly into a bank account. It is significant, as you do not have to have children to be eligible. If you are making a joint claim as a couple and both of you are in work, you can choose which one of you should receive it.

- If you do not have children, you must be aged at least 25 and work at least 30 hours per week.
- If you are a single parent or disabled, you can claim from the age of 16 and you must be working at least 16 hours per week.
- If you are a couple with children, you can claim from the age of 16 but you and your partner must work 24 hours between you. One of you must work at least 16 out of the 24 hours.

**Working Tax Credit is financial support for low paid workers. It is also paid directly into a bank account. It is significant, as you do not have to have children to be eligible.**

Working Tax Credit can help with costs of registered childcare (see page 50). You will be treated as working during maternity leave if you receive Statutory Maternity Pay or Maternity Allowance, as long as you were working at least 16 hours per week on average, before your leave started.

### How do I claim?

There is only one claim form for both Tax Credits. Contact the Tax Credit helpline on 0345 300 3900 or 0345 300 3909 (textphone). Find out more about Tax Credits by visiting [www.gov.uk](http://www.gov.uk)

### How much will I get?

Your Tax Credit award will depend on your current circumstances – for example, whether or not you are in work, how many children you have and whether you pay for registered childcare and your annual income.

Awards will initially be calculated on the previous tax year's gross income – you need to keep hold of your P60. They will be revised either during the year or at the end of the year to reflect increases of more than £2,500 or any falls in income of (for example because you are on maternity leave) more than £2,500. Child Benefit, the first £151.97 of Statutory Maternity Pay and Maternity Allowance are ignored as income when calculating your entitlement. Any child maintenance you receive is also ignored, so if you apply for tax credits you do not have to fill in a form for the Child Support Agency as you are asked to do with some other means-tested benefits.

## Help with childcare

You may be able to get extra Working Tax Credit to help with the cost of childcare if:

- You are a single parent working, or treated as working, for at least 16 hours per week.
- You are in a couple where each of you works, or is treated as working, for at least 16 hours per week or one of you is disabled.
- You pay for registered childcare.

If you qualify you will get extra Working Tax Credit to cover 70% of your childcare costs up to a maximum of £175 per week for one child, or £300 per week if you have two or more children. This means that Childcare Tax Credit is worth up to £122.50 per week (one child) or £210 per week (two or more children).

### Changes in circumstances

Awards are made for one year at a time but Her Majesty's Revenue and Customs will respond to certain changes in circumstances during that time. You must notify them within one month if:

- Your household circumstances change, ie you stop work or cease to be responsible for a child or young person.
- Your childcare costs are reduced or stop.
- Your annual income rises by more than £2,500 (to avoid an overpayment at the end of the tax year).
- Any increase or reduction in entitlement will be backdated to the date of the change. Always check your award notice for further information about any income changes that might affect your award.

### Anything else?

You will be able to claim £500 Sure Start Maternity Grant from the Social Fund for your first baby if you are in receipt of Child Tax Credit of more than £545 per year for your first baby. You may also qualify for health benefits (see Part 5 in this section for more information). For a more detailed briefing on Tax Credits contact the Equalities Section at Usdaw's Head Office or visit [www.usdaw.org.uk](http://www.usdaw.org.uk)

## Universal Credit

**Please be aware that the rules governing entitlement to benefits including Universal Credit are complex and subject to frequent change.**

Universal Credit is a new, means-tested benefit for people of working age. It replaces the following benefits:

- Income Support.
- Income-based Job Seekers Allowance.
- Income-related Employment and Support Allowance.
- Housing Benefit.
- Child Tax Credit and Working Tax Credit.

These benefits have become known as 'legacy benefits'.

Other benefits that are not means-tested continue to be paid separately to Universal Credit such as Disability Living Allowance, Personal Independence Payment and Carer's Allowance. Child Benefit also continues to be paid separately.

Benefits based on National Insurance contributions, such as contribution-based Jobseeker's Allowance and contributory Employment and Support Allowance are not being replaced and work alongside Universal Credit.

Benefits for those over the State Pension age, such as the State Pension and Pension Credit, are also not being replaced. Neither is Council Tax Reduction/Support so you should check to see if you can claim it in addition to Universal Credit.

### Who gets it?

Universal Credit is a benefit for both single people and couples on a low income to provide financial support for living costs. It can be paid to people in or out of work.

You can claim if you:

- Are aged 18 or over (although there are exceptions for some 16 or 17 year olds).
- Are under the qualifying age for Pension Credit. If you are in a couple and only one of you is over Pension Credit age, then you will have to claim Universal Credit.
- Are in Great Britain.
- Are not in education.
- Accept a 'claimant commitment'.

This is a contract between you and the Department for Work and Pensions and may include requirements about what you will do to look for work or increase the number of hours you work. If you are doing some work you will normally be expected to look for more work, as much as you are able to do, or until you are earning at least 35 x the National Minimum Wage a week. However, no work-related requirements at all can be imposed on you if you are:

- The responsible carer for a child under one.
- You are pregnant and there are 11 weeks or less before the week your baby is due; or

- You had a baby not more than 15 weeks ago; or
- You are an adopter and it is not more 12 months since your child was placed with you for adoption.

There are other exemptions from work-related requirements for parents of children aged under five, carers of disabled children or adults and sick and disabled adults.

### How much will I get?

When calculating how much Universal Credit people will get, a basic rate called the 'standard allowance' is included and extra amounts for people in different circumstances are paid on top. For example, additional amounts are paid if you have children, you or they are disabled or you need help with housing costs.

For claimants in work, Universal Credit operates in a similar way to Tax Credits. In other words, earnings below a certain threshold are disregarded (work allowance). Net earnings above the disregard are deducted from Universal Credit at the rate of 55p for every pound of extra earnings. In other words, claimants keep 45p for every pound earned above the disregard.

The amount of earnings that are disregarded vary, depending on family circumstances and whether or not your Universal Credit award includes an amount for housing costs.

**Universal Credit is a benefit for both single people and couples on a low income to provide financial support for living costs. It can be paid to people in or out of work.**

**Universal Credit can include a housing costs element if you are renting accommodation, are an owner occupier or if you pay service charges.**

However, unlike Tax Credits there are no rules about the number of hours you have to work to qualify. This means that if you are in paid work of only one or two hours a week you may qualify.

### **Help with housing costs via Universal Credit**

Universal Credit can include a housing costs element if you are renting accommodation, are an owner occupier or if you pay service charges.

If you are a private tenant or you are in the socially rented sector and your home has more bedrooms than the rules allow your rent is either restricted or your housing costs reduced by a percentage (see page 71 for details).

You cannot get any help with your mortgage payments if you (or your partner) have any earned income, no matter how low your earnings are. This is very much a change for the worse as previously people in work on low incomes were able to receive some help towards their mortgage interest payments via Income Support.

### **How do I claim?**

In most cases, claims for Universal Credit must be made online at [www.gov.uk/universalcredit](http://www.gov.uk/universalcredit)

Trade unions together with welfare rights and disability rights organisations have expressed serious concern about this requirement as not everyone has access to the internet or is able to use a computer to claim or manage their claim online.

In practice, the Department for Work and Pensions says that people in these circumstances will be helped to make a claim online via the telephone service, or possibly at a local office or via a home visit. The Universal credit helpline number is 0800 328 5644 (Textphone: 0800 328 1344) Monday to Friday, 8am to 6pm (closed on bank holidays).

### **How will I be paid?**

#### **If you live in England and Wales**

Your award is assessed over an assessment period of one calendar month, beginning from the date of your claim. Universal Credit should normally be paid directly into your account within seven days of the last day of the monthly assessment period.

If you find monthly payments difficult to budget for, or having payment of Universal Credit housing costs for rent paid directly to you rather than your landlord is leading to serious arrears, it may be possible to be paid more frequently through 'alternative payment arrangements'.

#### **If you live in Scotland**

You have the option of twice-monthly payments instead of once a month. You can also ask for the housing costs element to be paid directly to your landlord instead of you.

#### **If you live in Northern Ireland**

Things are slightly different in Northern Ireland as, unlike the rest of the UK, unless you ask to be paid your Universal Credit monthly you will get two payments a month instead of one.

Help with your housing costs is also slightly different as your rent will usually be paid directly to your landlord instead of to you.

## Reporting changes in your circumstances

It's important to tell the Department for Work and Pensions all the changes it asks you to report as well as any other changes you think might affect your award. You should get a letter that confirms the change and tells you how your award of Universal Credit is affected.

If you are employed you don't normally need to report changes in your earnings. Department for Work and Pensions gets information on your earnings from Her Majesty's Revenue and Customs (HMRC) through its 'real time information system'. Under this, your employer sends HMRC information about your earnings every time you are paid. However, you may be asked to report your earnings if, for example, your employer isn't doing this properly or a report is missing or is wrong.

## Will I be better off on Universal Credit?

Whether people will be better or worse off under Universal Credit will depend upon their income, housing costs and the make-up of their household but most people with children, single parents and disabled workers will be worse off.

There is a free, anonymous, online benefit calculator on the 'Entitled to' website at [www.entitledto.org.uk](http://www.entitledto.org.uk)

**It's important to tell the Department for Work and Pensions all the changes it asks you to report as well as any other changes you think might affect your award.**

## Free School Meals

All school children from primary one to three in state schools in Scotland are entitled to a free school meal as well.

If you are in Northern Ireland or Wales (or in England or Scotland and your child is not covered by the rules above) for your child to qualify for free school meals, you must get one of the following benefits:

- Income-based Jobseeker's Allowance.
- Income Support.
- Income-related Employment and Support Allowance.
- Universal Credit, if you apply on or after 1 April 2018, your household income must be less than £7,400 a year (after tax and not including benefits you get).

The following benefits and assistance also apply for qualifying for free school meals:

- The guarantee part of Pension Credit.
- Child Tax Credit, as long as you are not getting Working Tax Credit and have an annual income of less than £16,190 (£15,860 in Scotland).
- Support under Part VI of the Immigration and Asylum Act 1999.
- In England and Wales, if you are getting Working Tax Credit for a run on period of four weeks because you have stopped work or reduced your hours to less than 16 hours a week, or in some cases, less than 24 or 30 hours a week, you may still be able to get free school meals for your children.
- Children who get Income Support or Income-based Jobseeker's Allowance in their own right qualify as well.

*Thanks to CPAG for the information in this chapter concerning Universal Credit.*

## Part 5

# Health Benefits

## Healthy Start Food and Vitamins

The Healthy Start scheme is changing to a digital scheme.

If you qualify for Healthy Start food and vitamins you get free vitamins as well as a pre-paid card that can be used to buy specific types of food.

The paper voucher scheme will end in early 2022. Individuals receiving paper vouchers will be contacted and invited to move onto the new pre-paid card scheme. If you do not reapply to the new Healthy Start Scheme your benefit will end.

If you live in Scotland you cannot apply for this scheme. You should apply to use the Best Start Grant and Best Start Foods scheme through the Scottish Government website: [mygov.scot/best-start-grant-best-start-foods](http://mygov.scot/best-start-grant-best-start-foods)

### Who gets it?

People who are eligible include the following:

- If you are more than 10 weeks pregnant or have at least one child under four years old, AND you or your family are receiving:
  - Income Support, or
  - Income-based Jobseeker's Allowance, or
  - Child Tax Credit and the family has an annual income below £16,190, or
  - Universal Credit (with a family take home pay of £408 or less per month).
- If you are pregnant and are under 18 years old.

You can call the Healthy Start helpline on 0300 330 7010 to check if you qualify.

### How does it work?

If you are accepted onto the scheme you will receive a pre-paid card which is automatically topped up every four weeks. You should receive your card within 5-10 days of a successful application.

The payment is equivalent to £4.25 a week if you are pregnant, £8.50 a week for each baby aged under one and £4.25 a week for each child aged between one and four.

Unlike vouchers, the card scheme means that any money you don't spend will remain on your card and can be put towards healthy milk and food in the future.

Your payment will be automatically added to your card every four weeks, so once you qualify and receive your card you no longer have to wait to receive vouchers in the post.

You will also get advice about healthy eating, breastfeeding, infant feeding and how to use the card.

Many well known shops and supermarkets take part in the scheme. Look out for a Healthy Start sticker in the window and make sure they accept Mastercard.

Your pre-paid card can be used to purchase:

- Fresh milk.
- Fresh fruit and vegetables.
- Baby-milk formula.

The foods have to be the specified types of food. For example, the milk must be liquid cow's milk and not flavoured types. The infant formula must be based on cow's milk and be a type that is suitable from birth. The fruit and vegetables have to be fresh, not frozen or tinned, but includes salad. It does not include fruit juices or smoothies.

In addition, you can get free vitamin supplements. Your midwife or health visitor will let you know how these are provided in your local area. You just need to show your card to collect your free vitamins.

### How do I apply to get Healthy Start vouchers?

You apply by completing a claim form. You can:

- Apply online at [www.services.nhsbsa.nhs.uk/apply-for-healthy-start/](http://www.services.nhsbsa.nhs.uk/apply-for-healthy-start/)
- Call 0345 607 6823 and ask for a form to be sent to you (form HSo1).
- Ask your midwife or health visitor for a form.

You may need your midwife/health visitor to sign the form to confirm you are pregnant. Once you have completed your form, provided you are eligible you should receive your pre-paid card within 5-10 working days.

### How can I find out more?

This is a brief summary of the Healthy Start scheme and is for guidance only. It does not cover all situations nor is it a full statement of the law. Visit the Healthy Start website for further information on the benefits you may be entitled to: [www.healthystart.nhs.uk](http://www.healthystart.nhs.uk)

## Help with hospital fares

### Who gets it?

If your family receives Income Support, income-based Jobseeker's Allowance, income-related Employment and Support Allowance or Pension Credit Guarantee Credit, you can get a refund for fares that you have paid to and from hospital (including visits for antenatal care).

If you qualify for help you will be sent an NHS Tax Credit Exemption Certificate by the Prescription Pricing Authority.

### How do I claim?

1. Get an application leaflet – see below where you can get it from. You need to fill in Part A of the application form carefully in black ink using **CAPITAL** letters.
2. Take the form to your midwife or health visitor and ask them to fill in and sign Part B (you do not need to pay for this).
3. Make sure all the information on the form is correct and that you and your health professional have both signed and dated it. **IMPORTANT: forms that have not been signed by a health professional cannot be accepted so make sure you do not miss this step out.**



4. Send the form to the address below – either write the address on a plain envelope (you don't need a stamp).

Freepost RRTR-SYAE-JKCR  
Healthy Start Issuing Unit  
PO Box 1067  
Warrington  
WA55 1EG

### How to get the application leaflet

You can get an application leaflet by:

- Asking your midwife or health visitor for one.
- Calling the Healthy Start helpline on 0345 607 6823 and asking them to send one to you by post.
- Filling in the form online and then printing it off to check and sign.
- emailing a blank form (PDF) to yourself.
- Or downloading it directly from this website. If you are emailing a blank application form to yourself or downloading it from this website, you will need to have the free Adobe Acrobat Reader to view and print it.

<https://www.healthystart.nhs.uk/healthy-start-vouchers/how-to-apply>

If you do not receive a qualifying benefit you may still be able to get some help if you are on a low income. You have to fill in Form HC1, which you should be able to get from your doctor's surgery, the hospital or your local Jobcentre Plus office. It is also available online visit [www.nhsbsa.nhs.uk/sites/default/files/2017-05/HC1-health-costs-help-claim-form.pdf](http://www.nhsbsa.nhs.uk/sites/default/files/2017-05/HC1-health-costs-help-claim-form.pdf) or type Form HC1 into your search engine. Depending on how low your income is, you may be given either certificate HC2 which means you will qualify for free services or certificate HC3 which means that you qualify for some help.

You then show the certificate at the hospital when you visit, or you can claim later (within three months) on Form HC5.



If you are a member of Usdaw you can claim a refund of your Union contributions when you return to work after maternity leave.

## Part 6

# Usdaw Benefits

## Usdaw contributions

If you are a member of Usdaw you can claim a refund of your Union contributions when you return to work after maternity leave. You can be refunded any contributions you have paid from the week following the date of your baby's birth, up until the date you return to work (up to a maximum period of 29 weeks). To claim your refund, send a photocopy of your baby's birth certificate together with confirmation of the date you actually returned to work and your name and address to: Usdaw Head Office, Voyager Building, 2 Furness Quay, Salford Quays, Manchester M50 3XZ.

## Maternity Grant

Under Usdaw rules, women members on Scale A who have 12 months membership at the time of their baby's birth are eligible for a one-off payment of £40 – this is the Usdaw Maternity Grant. Members on Scale C are entitled to a one-off Maternity Grant payment of £30. See opposite for details on how to claim.

## Paternity Grant

Usdaw also offers a Paternity Grant to new fathers and partners (including same sex partners). The conditions for entitlement and the amount of the payment are exactly the same as for the Maternity Grant.

### How to claim

You can make a claim by post, email or by speaking to your Branch Secretary or local Usdaw office. To make a claim you need to provide a copy or photo of the birth certificate, along with a covering note including your name, address and membership number (where possible) and a sentence saying that you are writing to apply for either Usdaw's Maternity or Paternity Grant. You send this by post to the Benefits Section at Usdaw's Head Office or by email to [benefits.enquiries@usdaw.org.uk](mailto:benefits.enquiries@usdaw.org.uk)

Alternatively, you can speak to your Branch Secretary (who can apply for the grant on your behalf) or local Usdaw office for assistance in applying.

The claims must be made within 24 months of the baby's birth.



## Part 7

# Parental Leave and Your Pension

Parental leave covers maternity leave, paternity leave and adoption leave.

You and your employer will usually still make pension contributions while you are on paid parental leave.

You do have the right to stop paying your pension contributions whilst on parental leave, but you will be treated as having left the scheme.

There are basically two types of pension schemes, those known as defined benefit (for example a final salary or CARE scheme)

or defined contribution (for example Group Stakeholder or Group Personal Pension), your rights differ depending on which type of scheme you are contributing to.

## Defined Benefit (DB)

If you are a member of a DB scheme your parental leave must be treated as pensionable service. Your benefits, including any benefits you are entitled to in the event of your death, will be based on your salary before you went on parental leave.



You will continue to pay your contributions, but these will be based on your actual salary. Your employer will continue to pay contributions on your behalf but these will be based on your salary before you went off on parental leave.

If in the event that you have a period of unpaid parental leave after your paid parental leave, this time will not count for pensionable service. However, your time in the scheme before and after the period of unpaid leave must be treated as continuous service. You are allowed to make up your contributions for any unpaid period of parental leave when you return to work. You would then have no breaks in your pensionable service.

## Defined Contribution (DC)

While you are on paid parental leave you will continue to make pension contributions based on the salary that you receive. Your employer will continue to pay contributions but based on your salary had you not gone on parental leave. If your employer matches your contribution it must match the contribution you would normally pay, not what you are actually paying during your parental leave.

Any benefits which you are entitled to in the event of death must be based on your benefits prior to you going on parental leave.

If you have a period of unpaid parental leave following your paid parental leave you will not be expected to continue your contributions, however, you do have the option to continue if you wish. Your employer will not however have to pay contributions unless your contract of employment states otherwise.

When you return from parental leave you may be able to make up your contributions for any unpaid period of parental leave. Your employer may help too but this will depend on the scheme rules.

## Useful Contacts

**If you need more help or further advice you could contact:**

### Jobcentre Plus

Tel: 0800 169 0283 to discuss a claim, already made, for Maternity Allowance, or: 0800 055 6688 for new benefit claims.

### Benefits Calculators

Web: [www.entitledto.co.uk](http://www.entitledto.co.uk)

Web: [www.turn2us.org.uk](http://www.turn2us.org.uk)

### Your local Usdaw Office

Tel: 0800 030 80 30 (freephone)

### The Equalities Section at Usdaw's Head Office

Tel: 0161 224 2804

### Your local Citizens Advice

Web: [www.citizensadvice.org.uk](http://www.citizensadvice.org.uk)

### Turn2Us

A charity helping people access benefits, grants and other financial support.

Web: [www.turn2us.org.uk](http://www.turn2us.org.uk)



# Section 6

## Sickness and Redundancy

Many Usdaw women members worry about taking time off sick when they are pregnant or on maternity leave. This section is here to help. It explains the important rights you have if you are unwell, either before or after your baby is born.

This section also deals with questions about redundancy and what to do if you think you are going to be made redundant whilst you are on maternity leave, or during your pregnancy.

This section does not deal with issues around stillbirth and miscarriage. See Section 4, Miscarriage and Stillbirth, in this Guide for advice on this.

Here, we have tried to answer some of the most common questions women in Usdaw ask about sickness and redundancy.

Remember, if in doubt or if you want more information about anything in this Guide, get in touch with the Union. Usdaw reps and full-time officials are there to help.



## Part 1

# Illness During Pregnancy

If you are ill during your pregnancy and need to take time off work there are two important points to remember:

- Always follow your employer's normal rules about what to do if you are too ill to attend work.
- It is against the law for your employer to sack you for being ill with a pregnancy-related illness during your pregnancy. Dismissal on pregnancy-related grounds is automatically unfair and unlawful sex discrimination. You have this protection no matter how long you have worked for your employer or the number of hours you work.

## Can I claim sick pay from my employer if I am ill during my pregnancy?

You have the same right to paid sick leave as any other employee. It does not matter what the reason for your illness is. The only exception to this rule is that you might have to claim Statutory Maternity Pay instead of Statutory Sick Pay if you fall ill in the last four weeks of your pregnancy. See below if this applies to you.

If you fall ill at any other time during your pregnancy you will be paid Statutory Sick Pay, if you satisfy the qualifying conditions.

## What are the qualifying conditions for Statutory Sick Pay?

There are certain conditions you have to meet if you are going to get Statutory Sick Pay. These are set out below and you have to meet them all:

- You must be an employee. This does not mean that you must have a written contract of employment. It is the fact that you are employed that matters rather than any documents. The majority of Usdaw members will be able to meet this condition.
- You must also be incapable of work due to ill-health.
- You must have been sick for four or more consecutive days. Every day of the week (including Sunday) counts for this purpose even if it is not a day that you would normally work.
- You must have earnings equal to or more than the lower earnings limit. At the moment the lower earnings limit is £123 per week.

It is your gross earnings (before tax and National Insurance) that are taken into account.

You will not be able to get Statutory Sick Pay at the same time as you are getting Statutory Maternity Pay or Maternity Allowance.

**The basic rate of Statutory Sick Pay is currently £96.35 per week and it is paid for a maximum of 28 weeks.**

## Important

Many Usdaw members work for employers who operate some kind of sickness absence policy. These policies work by adding up the amount of sick leave you have taken or the total number of absences you have had in a given period. Pregnancy-related illness cannot be counted as being part of your total sickness absence from work, nor can it be used as a reason for disciplinary action or redundancy.

In effect, your employer will keep a separate record for your days off sick during your pregnancy.

## How much is Statutory Sick Pay?

The basic rate of Statutory Sick Pay is currently £99.35 per week and it is paid for a maximum of 28 weeks.

Udaw has had some success in negotiating improvements to sick pay schemes so it is worth checking whether your employer pays anything over and above basic Statutory Sick Pay.

## Can my employer insist that I start my maternity leave early if I am off sick and therefore avoid paying me Statutory Sick Pay?

Normally the law gives you the right to choose when you start your maternity leave. The earliest you can start your maternity leave is 11 weeks before you expect to have the baby.

However, if you are absent from work for a pregnancy-related reason in the last four weeks of your pregnancy, your employer can bounce you on to maternity leave from the first day of absence after the start of your 36th week. This means that your employer can decide your maternity leave has started even though you might not want it to.

This can be a real problem for Usdaw women members. The last few weeks of pregnancy can be very tiring and women don't need the extra worry of thinking a day's sickness here and there could trigger the start of their maternity leave.

If you do not want your maternity leave to start you may be able to persuade your employer that they should ignore the odd day's illness during the last four weeks of your pregnancy. This is in line with the Government's advice to employers.

**Get in touch with your Union rep or Usdaw Area Organiser if you need help in this situation.**

If you are having time off sick in the last four weeks of pregnancy there are two really important points to remember:

- Your employer can only bounce you onto maternity leave if your illness is pregnancy-related. So it's really important to be clear when your illness is pregnancy-related and when it's not.
- If you do have to start your maternity leave automatically within the last four weeks of pregnancy, to protect your right to maternity pay you should give your employer notice as soon as you can that you are absent for a pregnancy-related reason.

## Will my right to Statutory Maternity Pay be affected if I am ill during my pregnancy?

If you are off work sick during your pregnancy, this could affect your Statutory Maternity Pay. Here's how:

- Whether or not you can get Statutory Maternity Pay depends on how much you earn. You need to be earning at least £123 per week (before tax) in the eight weeks before the end of your qualifying week. Your qualifying week means the 15th week before your expected week of childbirth.
- If you go off sick during this eight week period and you go onto Statutory Sick Pay, this could take your average earnings below £123 per week. If this happens, you may not be able to get Statutory Maternity Pay.
- If you don't qualify for Statutory Maternity Pay you may still be able to claim a benefit called Maternity Allowance from the Department for Work and Pensions. For more information see **Section 2, Leave and Pay**.

Don't hesitate to get help and advice from the Union if you are in this situation. There is lots more information on qualifying for maternity pay in **Section 2, Leave and Pay** and your Union rep or Usdaw Area Organiser can offer help and support if you are ill during pregnancy.

## I am not unwell but I am having problems standing at work for long periods. Do I have to go on sick leave?

Lots of Usdaw women members have jobs which involve standing for long periods of time. Pregnancy can make this kind of work difficult particularly as your size increases.

But pregnancy isn't an illness! Just because you are getting tired or can't stand for as long as you used to does not mean you are ill, nor should you have to take time off sick. If you are having problems standing then your employer should help you find a solution to the problem. Employers have a legal duty to protect the health of you and your baby. Once you have told them in writing that you are pregnant, your employer must carry out a risk assessment to look at all your working conditions.

The result of this risk assessment could mean being offered suitable alternative work which is less physically tiring than your usual job, being given a chair to sit on or an alteration to working hours without loss of pay. If this is not possible then you have the right to be given time off work with full pay.

For more information about your health and safety rights at work whilst pregnant or after giving birth, see **Section 1, Health and Safety**.

**You will not be able to get Statutory Sick Pay at the same time as you are getting Statutory Maternity Pay or Maternity Allowance.**

## Part 2

# Illness During Maternity Leave

## Can I claim sick pay?

All women, regardless of their length of service, are entitled to 52 weeks maternity leave. The first 26 weeks of leave is known as Ordinary Maternity Leave and the second 26 weeks is known as Additional Maternity Leave.

Statutory Maternity Pay is paid for 39 weeks, therefore if you are ill during the first 39 weeks of your maternity leave you cannot claim Statutory Sick Pay.

If you are sick after the 39 weeks and your Statutory Maternity Pay has ended, you can claim Statutory Sick Pay. However, you will have to end your maternity leave and notify your employer that you are ending your maternity leave and taking sick leave. You will then be able to receive Statutory Sick Pay, as long as there were no weeks in between you claiming this and the time when you were receiving maternity pay.

**Statutory Maternity Pay is paid for 39 weeks, therefore if you are ill during the first 39 weeks of your maternity leave you cannot claim Statutory Sick Pay.**

You will also need to follow your employers usual rules under their sickness policy with regard to providing them with a medical certificate. If you choose to do this, you would have to go back to work once you were well enough. You cannot go back onto maternity leave once you get better.

You should get further advice from your Union rep or Area Organiser before making a decision to swap your maternity leave for sickness absence in this way.

Alternatively, you could put in a claim for Employment and Support Allowance during your Additional Maternity Leave, if your entitlement to Statutory Sick Pay has run out, by applying with your fit note to the Department for Work and Pensions. See **Section 5, Extra Money for Mothers and Babies** for further information on benefits during pregnancy and maternity leave.

If you are paid full pay when you are off sick under your company sickness policy, rather than Statutory Sick Pay, then if you are off sick during maternity leave, you would have to give notice to your employer to end your maternity leave in order to be able to get the sick pay. You would have to tell them that you are unwell and need to take sick leave. You will also have to follow your employer's usual sick pay policy rules and provide them with medical certificates as necessary. Usually, company sick pay policies only allow a certain amount of full paid sick leave before the money reduces to Statutory Sick Pay so do check your particular policy.

## Part 3

# Illness at the End of Maternity Leave

If your maternity leave has run out but you are not well enough to go back to work, your employer cannot dismiss you because of this. You have the right to be treated like any other member of staff who is not fit to go to work and your employer's normal sick pay and sickness absence rules apply.

If you are ill at the end of your maternity leave you are treated as being back at work, even if you do not physically go back straight away because you are ill.

You should notify your employer of your sickness in the normal way and send in a fit note if necessary. If your maternity leave ends on a Sunday and you are due to return to work on Monday (the following day), any sickness reporting procedures you need to comply with, such as notifying your employer that you are sick and getting a sick note, must be done on or after the Monday but not before.

If you can't go back to work at the end of 39 weeks because you are ill, then you may be able to get Statutory Sick Pay. Provided you have been getting maternity pay of at least £123 per week in the last eight weeks and you become sick the day after the last day of your 39 weeks maternity leave, you should qualify.

If you are threatened with the sack for being ill at the end of your maternity leave you should get in touch with your Area Organiser or our Legal Department straight away.

If you can't go back to work at the end of your Additional Maternity Leave because you are ill, then you could find it difficult to get Statutory Sick Pay. This is because you have

**If your maternity leave has run out but you are not well enough to go back to work, your employer cannot dismiss you because of this, and your employer's normal sick pay and sickness absence rules apply.**

to have been in receipt of at least £123 per week in the eight weeks before the day you became sick to qualify.

As many Usdaw women members don't get any maternity pay after the first 39 weeks maternity leave, it is unlikely that they will qualify for Statutory Sick Pay after the end of Additional Maternity Leave.

If you don't qualify for Statutory Sick Pay you should apply to the Department for Work and Pensions for Employment and Support Allowance. For more details on Employment and Support Allowance see **Section 5, Extra Money for Mothers and Babies.**

Always remember:

- You must always follow your employer's normal sickness procedure if you are ill at the end of your maternity leave.
- Always keep a copy of any correspondence, including your fit notes and make a note of any telephone conversations with your employer about your maternity leave. This will help if there are problems later.
- Don't hesitate to get in touch with your Union rep or Area Organiser if you need help, for example, if you are having to take a prolonged period of sick leave and your employer is requiring details of your condition.

## Part 4

# Facing Redundancy Whilst Pregnant

In an ideal world no one would have to worry about being made redundant, least of all during pregnancy or shortly after giving birth, but it does happen and Usdaw is committed to giving women in this situation clear advice, lots of support and all the help we can.

There are two really important points to remember if you are faced with redundancy:

- You should get in touch with your Union rep or Area Organiser as soon as possible. The information in this section is only a general guide and is no substitute for the skills and knowledge of your rep or full-time official.
- You cannot be selected for redundancy because of your pregnancy or for being on, or intending to take, maternity leave.

If this happens you can make a claim for unfair dismissal and sex discrimination and should contact the Union's Legal Department without delay. This protection applies to you from the first day of your employment.

## What exactly is redundancy?

There are three situations in which you can lawfully lose your job because of redundancy. These are:

- When the business closes down either temporarily or permanently.
- When the business moves and you cannot get to the new place of work.
- When fewer employees are required for existing work.

## I am going to be made redundant during my pregnancy. Will I still qualify for Statutory Maternity Pay?

Unfortunately, you will not get Statutory Maternity Pay if you cease to be employed and the redundancy takes effect BEFORE your 'qualifying week'. Your qualifying week is the 15th week before your baby is due. However, you may be able to claim Maternity Allowance instead. For a further explanation of how to identify your qualifying week and for further information about Maternity Allowance, please see **Section 2, Leave and Pay**.

If you are made redundant **IN OR AFTER** your qualifying week it is likely that you will qualify for Statutory Maternity Pay under the following rules, as long as you meet the usual qualifying criteria for receiving Statutory Maternity Pay:

- You are an employee.
- You have been employed for 26 weeks by your qualifying week.
- If you are dismissed, made redundant, take voluntary redundancy or you have to leave work involuntarily (eg because a fixed-term contract has come to an end), you are still entitled to Statutory Maternity Pay.
- Your average earnings are at least £123 per week. The average is worked out based on pay received in the eight weeks or in the two monthly pay cheques received before the end of your qualifying week.

Remember, if you do not qualify for Statutory Maternity Pay you may be able to claim Maternity Allowance instead.

## I was made redundant just before my 'qualifying week' for Statutory Maternity Pay. Can I claim anything?

If your employer deliberately selects you for redundancy in order to avoid paying you Statutory Maternity Pay and you would have qualified for it had s/he not done this, your employer automatically becomes liable to pay it to you. You must apply to your local Revenue and Customs National Insurance Contributions office (normally located at your local Department for Work and Pensions office) within six months of the first day on which your Statutory Maternity Pay was due. You can obtain the address of your local National Insurance Contributions Office by telephoning any local office of Her Majesty's Revenue and Customs.

You will also have a claim for unfair dismissal and sex discrimination and a claim for unpaid wages for a loss of Statutory Maternity Pay.

## Will I get redundancy pay?

If you have worked for your employer for at least two years, you are entitled to a statutory redundancy payment when you are made redundant. Usdaw may have negotiated an additional contractual redundancy scheme with your employer so it is worth checking this out. If they do not, you should get the statutory redundancy payment. The amount that you will receive is calculated according to a formula per the example in Part 5 overleaf.

**If you have worked for your employer for at least two years, you are entitled to a statutory redundancy payment if you are made redundant.**

**You cannot be selected for redundancy because of your pregnancy or for being on, or intending to take, maternity leave.**

## How much redundancy pay will I get?

- If you are aged under 22, for every complete year of employment with the same employer, you get half a week's gross pay.
- If you are aged 22-40, for every complete year of employment with the same employer, you get one week's gross pay.
- If you are aged 41 or over, for every complete year of employment with the same employer, you get one and a half week's gross pay.

For this formula there is a minimum service requirement of two years and a maximum limit of 20 years service. There is also a maximum limit of £571 for one week's pay.

## How do I work out when my employment actually ends?

Your employment actually ends at the end of the notice period (whether you have to work it or not) so that is when your redundancy takes effect. For example, if you have been working for the same employer for 18 months and are made redundant, you are entitled to one week's paid notice. Your redundancy takes effect after that week of paid notice has ended. If you are still employed in all or part of your qualifying week (the 15th week before the baby is due), you can still qualify for Statutory Maternity Pay. It is important that you make sure that you include any weeks of paid notice, even if you do not work during these weeks, as this may carry your employment through into your qualifying week for Statutory Maternity Pay purposes.



## Part 5

# Redundancy During Maternity Leave

**I have received five weeks of my Statutory Maternity Pay. The company I worked for has now gone bust and I have been made redundant. Am I entitled to the rest of my Statutory Maternity Pay?**

Yes, you are entitled to the rest of your Statutory Maternity Pay. As you have established entitlement to Statutory Maternity Pay before your employer became insolvent, you are entitled to continue to receive it. When your employer is insolvent, Her Majesty's Revenue and Customs automatically become liable for any outstanding Statutory Maternity Pay. If you can, ask the receiver or the liquidator to write to you confirming how much your employer owes you.

**You are entitled to the rest of your Statutory Maternity Pay. As you have established entitlement to Statutory Maternity Pay before your employer became insolvent, you are entitled to continue to receive it.**

Your statutory redundancy pay should be calculated using your normal or average week's pay that you were receiving before your maternity leave period started. It should not be calculated by using a week in which you received Statutory Maternity Pay. If your employer is insolvent you can apply to the Secretary of State for Trade and Industry for a redundancy payment. If your period of paid notice overlaps with your 39 week SMP period, your employer is entitled to offset SMP against statutory notice pay.

# Section 7

## Postnatal Depression

Postnatal depression is very common. It affects at least one new mother in six. It can emerge at any time in the first year after your baby's birth, but seems to be more common when your baby is between four and six months old. Postnatal depression can happen whatever your family circumstances and whether or not the baby is your first.

If you are suffering from postnatal depression, it is really important that you know your rights. For example, you have the right to keep your job at the end of your maternity leave even if you are ill and so cannot actually go back to work. Alternatively, you do not have to go back to work if you feel that you can't cope.

This section tells you a little bit about the symptoms of postnatal depression and then goes on to tell you about your rights to money, leave and pay.



## Symptoms

Everyone is different and experiences different feelings, however, below are a few of the more common symptoms of postnatal depression.

It is unlikely that you will experience all of the following symptoms, however, you may well experience a combination of them.

- Despondency; a feeling that nothing is any good.
- Lethargy, tiredness or numbness.
- A sense of inadequacy; feeling unable to cope.
- Guilt about not coping.
- Tearfulness.
- Unusual irritability which makes the guilt worse.
- Sleep problems.
- A feeling of hostility or indifference to a loved one.
- Loss of interest in sex.
- Unpredictable panic attacks, causing rapid heartbeat, sweaty palms and feelings of sickness and faintness.
- Strong feelings of anxiety about things that normally wouldn't bother you, such as being left alone in the house.
- Difficulty concentrating and making decisions.

**If you are sick after your maternity leave has ended, you should be treated in exactly the same way as any other employee. You should, therefore, follow your employer's normal sickness procedures.**

## Returning to Work

Returning to work after having a baby is a stressful time for any mum. If you are suffering from postnatal depression, you might not be well enough to go back to work. Don't worry. If you are sick after your maternity leave has ended, you should be treated in exactly the same way as any other employee. You should, therefore, follow your employer's normal sickness procedures.

Before the date that you are due to go back to work, you need to tell your employer that you are not well enough to return and hand in a fit note from your GP in exactly the same way as you would if you were not on maternity leave. You need to make sure that you are always covered by a fit note, so if the one you have runs out, make sure you put in another one.

Your employer must abide by the terms of their normal sickness policy. For example, they should not ask to see your medical records after only one week of sickness otherwise they may be discriminating against you.

## Money Whilst You are Off Sick from Work

- If you are off sick and your employer has a sick pay scheme you should be entitled to company sick pay.
- If your employer does not have a sick pay scheme you might be entitled to Statutory Sick Pay. This is more likely if you are sick from work after your period of Ordinary Maternity Leave. For more information on sick pay. See **Section 6, Sickness and Redundancy.**
- If you are not entitled to Statutory Sick Pay or your illness lasts longer than 28 weeks, you should apply for Employment and Support Allowance from your local Department for Work and Pensions Office. For more information on social security benefits, see **Section 5, Extra Money for Mothers and Babies.**
- Where you have a partner who is working, you might want to claim Tax Credits. Tax Credits might help you to qualify for other benefits.

**If you are off sick and your employer has a sick pay scheme you should be entitled to company sick pay. If not, you might be entitled to Statutory Sick Pay.**

## Parental Leave

If you would rather not take sick leave from work at the end of your maternity leave, you might want to consider taking parental leave if you have worked for your employer for one year. You are entitled to a maximum of 18 weeks (before your child's 18th birthday). Most employers allow a maximum of four weeks per year but some employers are more flexible than this. Parental leave is unpaid, however, your employer may allow some paid parental leave. Check your contract or staff handbook to see what your rights are.

If you wish to take parental leave you must give your employer 21 days' notice. At the end of your parental leave period, you have the right to keep your job if you can return at that time. If you don't feel well enough to go back to work at the end of your parental leave, then you can take sick leave from work.

## Returning to Work on Reduced Hours

One solution might be to talk to your employer about returning to work on reduced or more flexible hours. You do have a legal right to request flexible working from your employer and your employer has to seriously consider your request. You should not be refused a change in your hours unless your employer can show the refusal is for good business reasons. Although you have no right of appeal against your employer's refusal (you do have the right of appeal if you can show that your employer has not seriously considered your request), you might have a claim for indirect sex discrimination (see page 95).

## Legal Protection

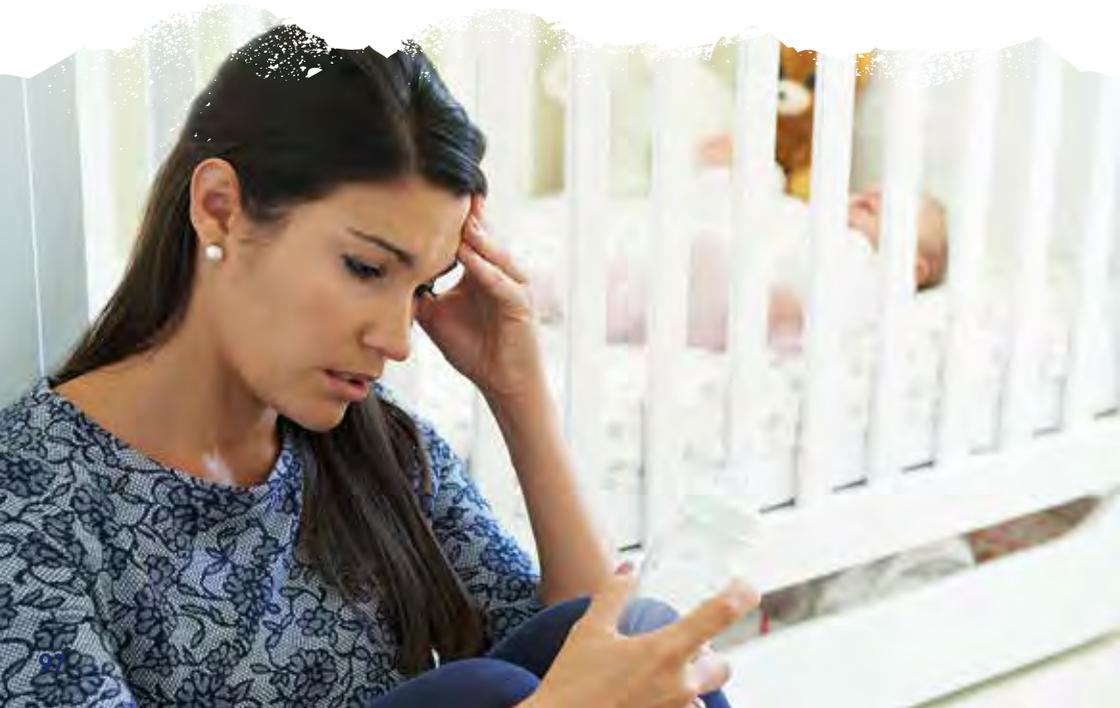
After maternity leave, where you have been off sick for a while, it is potentially fair (and therefore not unfair dismissal) for your employer to dismiss you, as you are not capable of doing the job because of illness.

To be a 'fair' dismissal an employer must determine the nature and the cause of your illness and its likely outcome. Your employer has to follow a fair dismissal procedure.

However, you may have the right to take your employer to an Employment Tribunal on the grounds of unfair dismissal and/or sex discrimination or disability discrimination.

The law relating to dismissal and discrimination is very complicated. Please always seek the advice of a full-time Usdaw official or our Legal Department if you have been, or believe that you are, at risk of being dismissed because of your illness.

After maternity leave, where you have been off sick for a while, it is potentially fair (and therefore not unfair dismissal) for your employer to dismiss you, as you are not capable of doing the job because of illness.



# Support Groups

**Postnatal depression is not only a distressing condition it's a serious and disabling one. If it isn't acknowledged it will only get worse.**

**Sources of help include a GP, midwife, health visitor, community psychiatric nurse, psychiatrist, psychotherapist or counsellor.**

**Other sources of help include:**

## **The Association for Postnatal Illness (APNI)**

Tel: 0207 386 0868

Web: [www.apni.org](http://www.apni.org)

## **British Association for Counselling and Psychotherapy**

Web: [www.bacp.co.uk](http://www.bacp.co.uk)

## **British Psychoanalytic Council**

Tel: 020 7561 9240

Web: [www.bpc.org.uk](http://www.bpc.org.uk)

## **Gingerbread (Support organisations for single parent families)**

Helpline: 0808 802 0925

Web: [www.gingerbread.org.uk](http://www.gingerbread.org.uk)

## **Mind (National Mental Health Charity)**

Info line: 0300 123 3393

Web: [www.mind.org.uk](http://www.mind.org.uk)

## **The National Childbirth Trust**

NCT helpline: 0300 330 0700

Web: [www.nct.org.uk](http://www.nct.org.uk)

## **Family Lives**

Parentline: 080 8800 2222

Web: [www.familylives.org.uk](http://www.familylives.org.uk)

## **Pay and Work Rights**

Helpline (Acas)

Tel: 0300 123 1100

Web: [www.acas.org.uk](http://www.acas.org.uk)

## **Tax Credit Helpline**

Tel: 0345 300 3900

Textphone: 0345 300 3909

Web: [www.hmrc.gov.uk](http://www.hmrc.gov.uk)

## **Working Families**

Helpline: 0300 012 0312

Web: [www.workingfamilies.org.uk](http://www.workingfamilies.org.uk)



# Section 8

## Rights for Agency Workers

Women who work for an employment agency (agency workers) have some, but not all, of the same pregnancy and maternity rights as UK employees. What rights you have will depend upon how long you have worked for a hirer and whether or not you have worked for them in the same role.

This section explains the rights agency workers have during their pregnancy and maternity.

All pregnant women working legally in the UK have the right to health and safety protection at work and the right not to be treated unfairly or harassed because of their pregnancy or childbirth.

Pregnancy and maternity rights are complicated and can be particularly confusing for agency workers and for women who come to work in the UK from abroad.

If you need help to understand your rights, Usdaw is here to help. Contact your Union rep or Usdaw Area Organiser for help and advice.



## Part 1

# Am I an Agency Worker?

Agency workers are employed by an Employment Agency that is registered under the Employment Agencies Act 1973.

As an agency worker you probably have a 'contract for services' with your agency. This simply means that you are not actually employed by the agency (and so are not an employee) but you have an agreement that they will look for work for you.

This work is often called temporary work or agency work. The firm who hires you pays a fee to the agency for finding you, and the agency pays your wages.

There is no legal obligation on the agency to actually find you work and when they do you are not under a legal duty to accept it.

## Part 2

# The Agency Workers Regulations 2010

These regulations strengthen rights for agency workers, particularly a woman's health and safety rights during pregnancy. The regulations came into force on 1st October 2011 and apply to women agency workers who qualify for equal treatment after working in the same role with the same 'hirer' for a continuous 12 week period. What this means in practice is explained in more detail opposite.

## Equal Treatment Rule

In order to qualify for 'equal treatment' with a pregnant woman who is directly employed you must have worked for 12 continuous weeks in the same role with the same hirer.

You don't have to work every day of a week in order for that week to count towards the 12 weeks. The week will count as a full week if you work for at least one day in that week (a week will start on the first day of your assignment with that hirer).

## Reaching 12 Weeks

It is not very common for agency workers to work for 12 weeks in a row in the same role with the same hirer. It is much more usual for you to have gaps in the days or weeks you are on site.

To take account of this, the regulations say that any break in an assignment that lasts for less than six weeks will effectively press the 'pause' button on your 12 week qualifying period.

So for example, on 31 January 2022 you have worked in the same role for the same hirer for 10 weeks. You aren't then asked to return to site until 21 February 2022 (three weeks later). When you return to the site again you return in the same role as before. Because you are returning in the same role with the same hirer and you have been away from the site for less than six weeks you don't have to start building up your 12 weeks all over again. Instead the 10 weeks that you worked up until 31 January still count towards your 12 week qualifying period. This means that you would only have to work for another two weeks from 21 February to reach the 12 week 'equal treatment' threshold.

The qualifying period will also pause in the following situations:

- During sick leave for up to 28 weeks.
- During any period spent serving on a jury for up to 28 weeks.
- During any period of annual leave.
- During periods of 'factory shutdown'.
- During strike or industrial action.

There are also certain limited situations where any weeks spent away from your assignment will still count towards the 12 week threshold necessary to establish equal treatment. These are:

- Any break due to pregnancy, childbirth or maternity which happens either during pregnancy or for up to 26 weeks after giving birth (or up to the date you return to work from maternity leave whichever is the earlier).

For example if you are away from an assignment for two weeks because you are sick for a reason directly connected with your pregnancy then those two weeks will still count towards the 12 week qualifying period.

Any time off you spend on

- Maternity leave.
- Adoption leave.
- Paternity leave.

All pregnant women and women on maternity leave have legal protection from discrimination under the Equality Act 2010. Agencies and hirers must make sure women are not treated unfairly, because of their pregnancy or maternity, or harassed. The extract below from Government Guidance makes this very clear.

This guidance applies to pregnant women, women who have given birth in the last six months or women who are breastfeeding.

**The intention of these provisions is to protect agency workers who are pregnant or who are new mothers, with the aim of keeping them in the workplace and to ensure women are not treated unfairly because of their pregnancy.**

**This is in addition to existing discrimination protections in the Equality Act 2010. The Equality Act provides that less favourable treatment on grounds of pregnancy or maternity is discrimination.**

**This would mean, for example, it would be discrimination if an agency refused to place a worker, or if a hirer refused to accept a worker because she was pregnant. Similarly, it would be discrimination if a placement were terminated because of pregnancy or if the worker was subject to a detriment because of her pregnancy. An employment agency needs to ensure that it doesn't discriminate when offering/providing its services.**

**For example, it may be indirect discrimination if an agency refused to accept a woman onto its books because she only wanted to accept part-time work or offered only very short term placements to pregnant women while offering longer placements to other agency workers. Case law indicates that, it may be discrimination in certain circumstances where a company fails to allow an agency worker to return to the temporary post which she had previously occupied, following absence due to maternity.**

## Part 3

# Health and Safety Rights

## Time off for antenatal care

If you do not meet the 12 week equal treatment rule (explained on page 100) you have the right to unpaid time off for any antenatal appointments that your doctor or midwife has advised you to attend. After your first appointment you can be asked to show your appointment card proving the appointments.

The agency cannot treat you unfairly nor can you be refused work because you are pregnant or have taken time off for antenatal care.

If you do meet the 12 week equal treatment rule you are entitled to paid time off from 'working hours' to attend antenatal appointments that your doctor or midwife has advised you to attend. This right is the same as any other pregnant employee's.

This includes the time it takes for you to travel to and from your appointment. Your employer does not have the right to require you to take annual leave or to make up for lost time by working your lunch or working the time back.

You are entitled to be paid your normal hourly rate for each hour that you miss of your 'assignment'.

If your hours of work vary from week to week, your hours should be calculated by averaging the hours worked each week over the previous 12 week period.

## Right to unpaid time off to accompany a pregnant woman to antenatal appointments

If your partner or the father of the child meets the 12 week equal treatment rule (see page 100 for more details) they have the right to accompany you to two antenatal appointments up to a maximum of 6.5 hours each. This right is unpaid.

## Risk Assessments

All pregnant women workers are entitled to a risk assessment.

It is important for you to tell the agency and your employer of your pregnancy as soon as you can as otherwise you may not benefit from the better levels of protection afforded to pregnant workers. There is an example of a standard letter on page 6 that you can copy and send to the agency.

A risk assessment should look at things like:

- Does your job involve heavy lifting or work with chemicals or other substances which might pose a health risk?

The employment agency should ensure the company you are assigned to carries out a risk assessment. The agency should also inform you of the outcome of the risk assessment.

**If a risk is identified, it should be removed or reduced to a safe level.**

## Right to a suitable alternative

If a risk to you or your baby's health and safety is identified following a risk assessment, then the company must do all they can to remove it or reduce it to a safe level.

If this isn't possible then the agency should offer you a suitable alternative assignment or job on no less favourable terms and conditions. In other words the pay must be similar as well as the location and working hours. The right to suitable alternative work will last for as long as the original job/assignment was intended to last.

If the agency cannot find you a suitable alternative job or assignment, then they have to pay you for as long as your original assignment or job would have lasted. You are entitled to receive a weeks pay for each week you aren't able to work in your original job or assignment. This is known as 'maternity suspension'.

If the agency does offer you a suitable alternative and you turn it down 'unreasonably' then they do not have to pay you. If you are offered an alternative that you don't think is suitable but the agency does then seek advice from your Usdaw rep or Area Organiser.

For more information see **Section 1, Health and Safety**.

**All pregnant women workers are entitled to a risk assessment. If a risk is identified, it should be removed or reduced to a safe level.**

## Part 4

# Maternity Leave

Surprisingly, agency workers do not have the right to maternity leave but of course this doesn't mean that you cannot take time off.

As an agency worker you are not under any duty to take work from the agency so you can take as much time off as you like. When you are ready to return to work, you are in the same position as you were before you went off on maternity leave. You cannot be refused work because you have been away on maternity leave.

Remember, any time off connected with pregnancy or childbirth (up to 26 weeks after the birth of your baby) will not interrupt the 12 week continuous service you need to be protected by the Agency Workers Regulations.

## Statutory Maternity Pay

Agency workers can qualify for Statutory Maternity Pay provided they meet the same rules in relation to earnings and continuous service as any other worker.

There are special rules for agency workers in terms of what amounts to 'continuous' service to take account of the fact that as an agency worker you may not work every day of the week or every week.

These rules are complicated so if you have any questions don't hesitate to speak to your Usdaw rep or Area Organiser.

To qualify for Statutory Maternity Pay you have to meet all of the following rules:

- You have worked for the same agency/ employer for at least 26 weeks by the 15th week before the week in which your baby is due. This week is known as the 'Qualifying Week'. See below for what continuous service means.
- You still work for the agency in your qualifying week.
- Have average gross earnings of at least £123 in the eight weeks before the end of the Qualifying Week. See **Section 2, Leave and Pay**, for help to calculate your average earnings.

## Continuous service

You don't have to work a full week for that week to count towards your 26 weeks 'continuous service'. The week will count if you work for at least one day in every week.

Also if there are weeks where you didn't work, these weeks won't break your continuous service if you didn't work for one of the following reasons:

- You didn't work because you were off sick for up to 28 weeks or for as long as your sickness lasts if it is directly related to your pregnancy. This is why it is important you let the agency know if you are ill.
- You were taking annual leave.
- The agency didn't have any work for you.

If you didn't work for the agency in your 'Qualifying Week' (the 15th week before the week the baby is due) for one of the above reasons you may still qualify for Statutory Maternity Pay.



## Paid irregularly?

If you are not paid regularly find the date you were last paid before or in the Qualifying Week (15 weeks before the week in which the baby is due) and count back eight weeks. Add together your earnings and divide by eight, this will give you an average.

If your average earnings over the eight weeks come to £123 or more you should qualify for Statutory Maternity Pay. Remember add together your earnings before tax and National Insurance are taken out.

Don't worry, if you don't qualify for Statutory Maternity Pay, consider claiming Maternity Allowance instead. See **Section 2, Leave and Pay** for more information about Maternity Allowance.

## How much is Statutory Maternity Pay?

It is paid for six weeks at 90% of your average earnings, followed by 33 weeks at a flat rate of £156.66 (or 90% of average weekly earnings for the full 39 weeks if this is less than £156.66).

## Part 5

# Paternity Leave

Three years ago a system of Shared Parental Leave and Pay was introduced. For more details about Shared Parental Leave and Pay see Part 6 of Section 2 on page 30.

## Statutory Paternity Pay

The rules relating to Statutory Paternity Pay are very similar to those for Statutory Maternity Pay.

To qualify you must be an employed earner. You will qualify if you meet the rules below and the agency deducts tax and National Insurance from your pay:

- Be either the biological father of the child, or the mother's husband, partner or civil partner.
- You have worked for the same agency/ employer for at least 26 weeks by the 15th week before the week in which your baby is due. This week is known as the 'Qualifying Week'. See page 104 for what continuous service means.
- You still work for the agency in your qualifying week.
- Have average gross earnings of at least £123 in the eight weeks before the end of the Qualifying Week. See **Section 2, Leave and Pay**, for help to calculate your average earnings.
- Have or expect to have responsibility for the baby's upbringing.

## How much is Statutory Paternity Pay?

Statutory Paternity Pay is £156.66 or 90% of your average earnings (whichever is the lower) for one or two consecutive weeks.

## Part 6

# Adoption Leave

## Statutory Adoption Pay

The rules relating to Statutory Adoption Pay are very similar to those for Statutory Paternity Pay.

To qualify you must be an employed earner. You will qualify if you meet the rules below and the agency deducts tax and National Insurance from your pay.

- You are placed with, or expect to be placed with, a child for adoption by an approved adoption agency within the UK.
- You have worked for the same agency/ employer for at least 26 weeks by the 15th week before the week in which you are notified of having been matched with a child for adoption. See page 104 for what continuous service means.
- Have average gross earnings of at least £123 in the eight weeks before the week you are notified of having been matched with a child. See **Section 2, Leave and Pay**, for help to calculate your average earnings.
- You give your employer a 'matching certificate' that you can get from the adoption agency.

**Three years ago a system of Shared Parental Leave and Pay was introduced - see page 30 of this booklet for more details**

## How much is Statutory Adoption Pay?

Statutory Adoption Pay is paid at 90% of your average earnings for the first six weeks, then at a flat rate of £156.66 for the remaining 33 weeks.

For more details about Statutory Maternity Pay, Statutory Paternity and Adoption Pay and Maternity Allowance see **Section 2, Leave and Pay**.

## Time off to attend adoption appointments

If you are the sole or primary adopter of a child and you meet the equal treatment rule (see page 100) you have the right to:

- Attend up to five pre-adoption appointments during working hours; and
- To be paid for each period of absence.

If you are the child's secondary adopter, provided you meet the 12 week equal treatment rule, you have the right to attend up to two pre-adoption appointments during working hours. Note this right is unpaid.

## Part 7 Sickness Absence

### What to do if you're off sick during pregnancy and after maternity leave

Agency workers have the same statutory rights during sickness as any other employed earner. If the agency deducts tax and National Insurance from your pay and you meet the qualifying conditions for Statutory Sick Pay you should qualify for pay during sickness. See **Section 6, Sickness and Redundancy** for more details about how to qualify for Statutory Sick Pay.

Unfortunately other parental rights such as emergency time off for dependants and parental leave are only available to employees and so exclude agency workers. An employee is a person who works under a 'contract of service' as opposed to under a 'contract for services.'

**If you're not sure whether you are an 'employee' or an 'agency worker' get in touch with your Area Organiser for advice.**



# Useful Contacts

## Trade Union Contacts

### European Trade Union Confederation (ETUC)

The voice of European workers.

Web: [www.etuc.org](http://www.etuc.org)

### International Labour Organisation

Oversees international labour standards.

Web: [www.ilo.org](http://www.ilo.org)

### International Trade Union Confederation (ITUC)

The main international trade union organisation.

Web: [www.ituc-csi.org](http://www.ituc-csi.org)

### TUC

Basic rights at work.

Web: [www.tuc.org.uk](http://www.tuc.org.uk)

## Employment advice for vulnerable and migrant workers

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

Employment rights advice.

Web: [www.acas.org.uk](http://www.acas.org.uk)

### ACAS Helpline

Confidential and free helpline on basic pay and working rights.

Tel: 0300 123 1100.

### Citizens Advice

Work and welfare rights information.

Web: [www.citizensadvice.org.uk](http://www.citizensadvice.org.uk)

### Equality and Human Rights Commission

Promote and monitor human rights.

Web: [www.equalityhumanrights.com](http://www.equalityhumanrights.com)

### Financial Conduct Authority (FCA)

Advice about financial products and services.

Web: [www.fca.org.uk](http://www.fca.org.uk)

### Gov.uk

Information about starting work, the minimum wage, tax and benefits for migrant workers.

Web: [www.gov.uk](http://www.gov.uk)

### Foreign and Commonwealth Office

Support British citizens overseas.

Web: [www.gov.uk/government/organisations/foreign-commonwealth-office](http://www.gov.uk/government/organisations/foreign-commonwealth-office)

### Gangmasters' and Labour Abuse Authority

Regulates those who supply labour or use workers to provide services in agriculture, forestry, horticulture, shellfish gathering and food processing and packaging.

Web: [www.gla.gov.uk](http://www.gla.gov.uk)

### Health and Safety Executive

Workplace safety.

Web: [www.hse.gov.uk](http://www.hse.gov.uk)

### HM Revenue and Customs

National minimum wage legislation.

Web: [www.gov.uk/government/organisations/hm-revenue-customs](http://www.gov.uk/government/organisations/hm-revenue-customs)

### **Office of the Immigration Services Commissioner**

Responsible for regulating immigration advisers by ensuring they are fit and competent and act in the best interest of their clients.

Web: [www.gov.uk/government/organisations/office-of-the-immigration-services-commissioner](http://www.gov.uk/government/organisations/office-of-the-immigration-services-commissioner)

### **The Recruitment and Employment Confederation**

The voice of the Recruitment Industry.

Web: [www.rec.uk.com](http://www.rec.uk.com)

### **UK Visas and Immigration**

Responsible for securing the UK border and controlling migration in the UK.

Web: [www.gov.uk/government/organisations/uk-visas-and-immigration](http://www.gov.uk/government/organisations/uk-visas-and-immigration)

## **Migrant workers campaigning and support organisations**

### **Federation of Poles**

Federation of Poles in Great Britain.

Web: [www.zpwb.org.uk](http://www.zpwb.org.uk)

### **Joint Council for the Welfare of Immigrants**

Campaigns for justice in immigration, nationality and refugee law and policy.

Web: [www.jcwi.org.uk](http://www.jcwi.org.uk)

### **Migrants Rights Network (MRN)**

Working for a rights-based approach to migration, with migrants as full partners in developing the policies and procedures which affect life in the UK.

Web: [www.migrantsrights.org.uk](http://www.migrantsrights.org.uk)

### **Migrant Voice**

Migrant-led organisation to amplify migrant voices and build support for rights.

Web: [www.migrantvoice.org](http://www.migrantvoice.org)

### **Oxfam**

A global movement of people working with others to overcome poverty and suffering.

Web: [www.oxfam.org.uk](http://www.oxfam.org.uk)

### **Polish Educational and Cultural Association Northern Ireland**

Polish association in Northern Ireland.

Web: [www.peca-ni.org/home](http://www.peca-ni.org/home)

### **Refugee Council Online**

The Refugee Council.

Web: [www.refugeecouncil.org.uk](http://www.refugeecouncil.org.uk)

### **The Runnymede Trust**

Promotes a multi-ethnic Britain.

Web: [www.runnymedetrust.org](http://www.runnymedetrust.org)

### **Scottish Refugee Council**

Independent charity helping refugees and people seeking asylum in Scotland.

Web: [www.scottishrefugeecouncil.org.uk](http://www.scottishrefugeecouncil.org.uk)

# Maternity Rights Calendar

## A week by week guide to maternity rights and benefits

### In the early weeks of your pregnancy

- Get a copy of Usdaw's Maternity and Parental Rights Guide. It's full of useful advice about your rights at work and explains what money and leave pregnant women, new mothers and parents are entitled to. Check your contract or staff handbook to see what rights your employer offers – they may be better than the legal minimum described in this chart.
- Health and safety risks can develop at any stage of pregnancy. Problems can arise from heavy lifting, too much driving, extremes of hot or cold and awkward postures or movements. It is important that you tell your employer in writing that you are pregnant and ask them to do a risk assessment. Your employer has a legal duty to make sure

that your health and that of your baby are not put at risk by the work you do. Usdaw's Maternity and Parental Rights Guide has information on health and safety and a model letter for you to sign and send to your employer requesting a risk assessment.

- You are entitled to paid time off work to go to antenatal appointments. This includes relaxation and parentcraft classes. Your partner/the father of your child is entitled to accompany you to two antenatal appointments – this right is unpaid.
- All pregnant women are entitled to free prescriptions and free dental treatment throughout their pregnancy and for 12 months after their baby is born.
- All pregnant women are entitled to take 52 weeks maternity leave.

### From week 20 of your pregnancy

- Your GP or midwife will give you your MAT B1 certificate. You will need this to claim Statutory Maternity Pay or Maternity Allowance.

### Week 24 of your pregnancy

- If your baby is stillborn after the 24th week of pregnancy all maternity rights apply in the same way as a live birth.
- Parents should give notice to their employer of their intention to take maternity or paternity leave, during this week.

## Week 26 of your pregnancy

- All women are entitled to take 52 weeks maternity leave. You must tell your employer no later than the 15th week before the week in which your baby is due: that you are pregnant; the date your baby is due; and the date you want your maternity leave to start.
- If you have worked for your employer for 26 weeks by the 15th week before your baby is due and your average earnings are at least £123 per week (before tax) you should be entitled to Statutory Maternity Pay. Statutory Maternity Pay is 90% of your average earnings for the first six weeks and then £156.66 per week (or 90% of your average weekly earnings if this is less) for 33 weeks.
- If you don't qualify for Statutory Maternity Pay you need to claim Maternity Allowance from your local Jobcentre Plus office.

## Week 36 of your pregnancy

- It is up to you when to start your maternity leave but if you are absent from work for a pregnancy-related reason in the last four weeks of your pregnancy your employer can start your maternity leave and pay. If your baby is born early your leave and pay start from the day after your baby is born.

## Week 37 of your pregnancy

- If your partner wishes to take parental leave at the time of the birth, at the latest he/she should send his/her employer 21 days' notice.

## Week 29 of your pregnancy

- You can start your leave and pay this week provided you have given the right notice. If you do not want to start your leave this week you can start it whenever you choose from this point onwards.

If you are unemployed your Maternity Allowance will start this week so make sure you have claimed.

- If you are getting Jobseeker's Allowance, Income Support, income-related Employment and Support Allowance, Universal Credit, Pension Credit, Working Tax Credit, that includes the disability element or Child Tax Credit of more than £545 per annum, and you have nobody in your family aged under 16, you should claim a Sure Start Maternity Grant of £500 to help with the costs of your new baby. You have to claim it within three months of the baby's birth and you can get the claim form from your local Jobcentre Plus office (see the phone book for their number). You can only get a grant for your first baby.











