

New Maternity Rights

Key changes to the maternity leave regulations came into force on 1 October 2006. The changes apply to a female employee whose baby is due on or after 1 April 2007. It is the date the baby is due which governs whether the new rules apply, not the actual date of birth. If the baby is due before 1 April 2007, the previous legislation and guidance will continue to apply.

The changes include:-

- **Maternity Leave**

The service requirement for Additional Maternity Leave has been removed. (previously an employee had to have 26 weeks' continuous service by the end of the 15th week before the expected week of birth)

All employees are now entitled to take up to one year (52 weeks) maternity leave or as much of that period as they wish to take.

It should be noted that Maternity leave is still made up, as before, of 26 weeks Ordinary Maternity Leave and 26 weeks Additional Maternity Leave and the distinction between the two remains.

- **Statutory Maternity Pay ("SMP")**

(a) SMP has been increased to 39 weeks (previously 26 weeks)

As before the first 6 weeks of SMP are paid at 90% of salary with the remaining 33 weeks paid at the current statutory rate (currently £108.85, rising to £112.75 in April 2007)

It should be noted that the service and income requirements for SMP still remain. To be entitled to SMP an employee must have 26 weeks service by the end of the 15th week before the expected week of birth and earn not less than the lower earnings limit applying to National Insurance Contributions. If an employee does not satisfy these requirements then she may be entitled to claim Maternity Allowance from the Department of Social Security

(b) The start date for SMP entitlement has changed. SMP entitlement now commences on the day maternity leave begins (previously the first Sunday after leave starts).

- **Notice**

The notification periods for an early return to work have been extended to help employers plan for an employee's return:-

- If an employee wishes to return prior to the expiry of the 52 weeks maternity leave, she needs to give 8 weeks notice (previously 28 days notice).
- If an employee changes her mind about the return date, she will need to give 8 weeks notice of the change prior to the return date.
- If an employee attempts to return without giving 8 weeks notice then an employer can postpone her return until the 8 week period has expired, although can agree a shorter notice period.

It should be noted that if the employer does not give the appropriate notice to the employee of when the 52 week maternity leave will end, the employee is not obliged to give 8 weeks notice.

- **Pension Contributions**

As before employees receive pension contributions during any period of "paid maternity leave". "Paid Maternity Leave" is when the employee is receiving SMP or contractual maternity pay or a combination of both. Due to the extension of the leave period to 39 weeks employers will now be obliged to continue pension contributions for longer.

- **Reasonable Contact**

The new regulations make it clear that employers may have reasonable contact with a woman on maternity leave and vice versa. The frequency and nature of contact will depend upon factors such as the nature of the work, the employee's post and any agreement reached. The sort of contact expected would be to discuss arrangements for the employee's return to work, to keep the employee informed of any relevant promotion opportunities, job vacancies and any information relating to her job that she would have been aware of if she had been working. What is "reasonable" contact will vary according to the circumstances.

- **Keeping In Touch Days ("KIT")**

Employees may undertake up to 10 KIT days during their maternity leave without losing maternity pay or bringing maternity leave to an end. It is expected that KIT days will be used for training, appraisals, attending meetings and committees etc.

Work which may be done on KIT days is any work under the contract of employment and is entirely a matter for agreement between the employer and employee. Any work carried out, even if only for part of a day, will use a whole KIT day from the 10 available. KIT days can be taken as single days, in blocks or consecutively.

An employer does not have the right to require work to be done during the maternity leave period and an employee does not have the right to have work provided. There needs to be agreement between employer and employee.

The amount of any payment will also be for the employer and employee to agree. However employers need to ensure that they comply with all statutory obligations, for example paying at least the minimum wage during the hours worked and ensuring men and women receive equal pay for work of equal value.

For further advice please contact a member of the Employment Team on 0115 9 100 200 or email enquiries@actons.co.uk



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