

This factsheet is designed to be a quick guide to the things that new parents ask us about the most. We have tried to ensure it is accurate at **April 2021**. It may not be accurate after that date. What your rights actually are can be complicated, so get more advice, especially if you work but are not an employee (like an agency worker) or if you are not a UK citizen. Working Families will not be liable for any losses subsequent to the use or misuse of this information and guidance.

In this series of factsheets we explain some of the things that you can claim to help with the costs of bringing up a child, as well as some of your rights at work when you or your partner are having a baby, and your right to ask for flexible working when you have children. This factsheet has basic information on rights at work. There is much more information and some tools to help you work out what is best for your family at [workingfamilies.org.uk](https://www.workingfamilies.org.uk).

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For more information visit: [workingfamilies.org.uk](https://www.workingfamilies.org.uk)

Working Families' helpline:

**0300 012 0312** or [workingfamilies.org.uk/contact-us-for-advice](https://www.workingfamilies.org.uk/contact-us-for-advice)





## Health and safety for pregnant employees

Pregnancy itself is not an illness, but it can affect the things you can do. Employers who employ women of childbearing age have a duty to do a 'general' health and safety assessment to identify risks to pregnant women. As soon as your employer has been informed in writing that you are pregnant (this can include a sicknote for pregnancy-related illness), and there is evidence of risk, a personal health and safety assessment must be done for you. As every pregnancy is different, the assessment should be done in conjunction with you. It may be helpful to ask your doctor for evidence that there are potential risks to you or your unborn baby from your work.

Once the risks have been identified, they must be eliminated if possible. You must be given information on the identified risk and what is going to be done about it. It may be that reducing your time at work would remove or reduce the risk; if so, your hours of work should be temporarily changed, if reasonable (if your hours are reduced, your pay should remain the same, so you should be paid for your normal working hours).

If no adjustment or change to working hours will help, then you should be offered a suitable alternative job on similar terms and conditions, which is reasonable for you to do. Whether or not the alternative is reasonable for you to do depends on the type of work, the rate of pay, the hours and times of work and the location of the work.

The alternative job must be safe for you to do. If there is no reasonable alternative job, or no safe job, you must be suspended on full pay so long as the risk remains. This is not sick leave and should not be counted as such.

Because what is safe may change during your pregnancy, your employer may be obliged to carry out another risk assessment later on, to check if any new risks have arisen and your job needs to be altered further. Note that special rules apply for pregnant night workers.

## Time off for antenatal care for employees

Pregnant employees have the right to reasonable paid time off work for antenatal appointments, which includes the time spent travelling to an appointment and waiting. You cannot be refused time off for the first appointment, but for subsequent appointments your employer can ask for written proof of the appointment and a certificate or note from your doctor or midwife, stating that you are pregnant. If you do not, when asked, provide these, your employer can refuse the time off.

This is the only circumstance in which employers can refuse time off. They cannot ask you to make appointments in your own time, or make the time up later.

An antenatal appointment is any appointment you make on the advice of your doctor, midwife or health visitor, so it can sometimes include activities such as parentcraft and relaxation classes. It is unlawful for an employer to refuse reasonable time off, to refuse pay for the time off, to dismiss a woman or to treat her less favourably because she has taken time off.

Fathers and co-habiting partners who are employees now have the right to attend up to two antenatal appointments for a maximum of 6.5 hours on each occasion, on an unpaid basis.



## Maternity leave and pay

All female employees (not 'workers') are entitled to 52 weeks' maternity leave. You should give your employer written notice of when you want to take it, by the end of the 15<sup>th</sup> week before your baby is due (about 25 weeks pregnant). Most female employees or agency workers will be able to get Statutory Maternity Pay or Maternity Allowance. Self-employed women can usually claim Maternity Allowance. Statutory Maternity Pay and Maternity Allowance are paid for the first 39 weeks of maternity leave. The last 13 weeks of leave are unpaid.

## Statutory Maternity Pay

You can get Statutory Maternity Pay (SMP) if you have worked for your employer since before you became pregnant, you are still employed by them 15 weeks before your baby is due (when you are about 25 weeks pregnant) and you earn at least £120 a week (from April 2021) in roughly weeks 18-25 of your pregnancy. This could apply if you are an employee or an agency worker. For the first six weeks of your maternity leave, your Statutory Maternity Pay is 90 per cent of average earnings (based on roughly weeks 18-25 of your pregnancy). For the next 33 weeks, it is paid at 90 per cent of your average earnings or £151.97 per week (from April 2021), whichever is lower. Your employer is responsible for paying your SMP or giving you written reasons why you are not entitled, in which case they will give you an SMP1 form.

## Contractual maternity pay

As well as SMP, your employer may pay you contractual/occupational maternity pay, which might have different conditions and may be closer to the amount of your normal wage. You should

ask your employer about this. Your employer does not have to pay more than SMP unless you have a contractual right to additional maternity pay.

## Maternity Allowance

If you cannot get SMP, you may be entitled to Maternity Allowance (MA). You can get this if you are employed or self-employed or have been working recently. It is based on the 66 weeks before your baby is due. You need to have 26 weeks of work in that time, which do not have to be consecutive and can be with different employers and/or self-employed. You also need to have at least 13 weeks in that time when you earned £30 a week or more on average. If you are self-employed, you must have paid Class 2 National Insurance or had a certificate of low earnings exception which will be used as evidence of your wages.

Maternity Allowance is paid at 90 per cent of your average earnings or £151.97 per week whichever is lower. It is paid at the same rate for 39 weeks. If you have paid enough Class 2 National Insurance, you get maximum MA (£151.97 per week from April 2021). If you could have paid Class 2 NI but you did not do so, you get minimum MA (£27 per week). You can pay Class 2 National Insurance early and on a voluntary basis in order to get the higher rate. After you make your claim, you will be told if you need to pay Class 2 NI early in order to get maximum MA.

You claim Maternity Allowance from Jobcentre Plus or online at [GOV.UK](https://www.gov.uk). If you have been employed in the 15<sup>th</sup> week before your baby is due, you will need written evidence from your employer that you are not entitled to SMP. This is usually provided on a form called SMP1 that you get from your employer.



## When you can start maternity leave and pay

The earliest you can start your maternity leave and pay is 11 weeks before your baby is due, unless you give birth before then. It is up to you to decide when you wish to start your maternity leave and you can work right up to the birth if you wish. You should give your employer notice of the day you want your maternity leave and pay to start; for leave, you should provide notice by the end of the 15<sup>th</sup> week before the baby is due.

If you are off work with a pregnancy-related absence in the four weeks before your baby is due, your employer can insist you start your maternity leave. In that case your leave and pay will start the day after your first day of pregnancy-related absence.

If you give birth before you start maternity leave, your leave and pay will start the day after the birth. SMP or MA will start on the same day as your maternity leave i.e. the day stated in your notice or, if applicable, the day after your first day of pregnancy-related absence or the day after the birth.

Note: You should notify your employer as soon as reasonably practicable if you are absent for a pregnancy-related reason in the four weeks before your due date, or if you give birth before you start your maternity leave.

## Discrimination and dismissal

It is unlawful to dismiss someone (including by making her redundant) or to treat her less favourably because she is pregnant, has a pregnancy-related sickness or takes maternity leave. If you think this is happening to you, visit Working Families' online articles on

[discrimination](#), [dismissal](#) and [problems at work](#) for more information. For advice, you can ring our helpline on 0300 012 0312 or email us at [advice@workingfamilies.org.uk](mailto:advice@workingfamilies.org.uk).

## Paternity leave

In order to be eligible for paternity leave, you must be an employee and must:

- have or expect to have responsibility for the child's upbringing;
- be the biological father of the child or the mother's husband, civil partner or cohabiting partner (you live with the mother and child);
- have worked continuously for your employer for 26 weeks by the end of the 15<sup>th</sup> week before the baby is due – this means since before the mother became pregnant; and
- still be employed by the employer on the day the child is born.

You should give written notice to take paternity leave by the end of the 15<sup>th</sup> week before the baby is due. This is when the mother is about 25 weeks pregnant. If you haven't given notice, do so as soon as possible. You can choose when to take your leave, which can be one or two consecutive weeks, and usually has to be taken within 56 days of the birth.

Most employees who are entitled to paternity leave will also be entitled to Statutory Paternity Pay (SPP). You must earn at least £120 a week (from April 2021). It is worth £151.97 per week (from April 2021), or 90 per cent of average earnings, whichever is lower. Some agency workers, who have enough service, can get SPP if they meet the earnings condition. Self-employed fathers and partners are not entitled to paternity leave and SPP (unless they pay themselves via PAYE and pay Class 1 National Insurance).



## Shared Parental Leave (SPL)

A mother must take her compulsory two weeks' maternity leave (four weeks if she is a factory worker) but then the remainder of the leave (50 weeks) and pay (37 weeks) can be shared through Shared Parental Leave (SPL) and Shared Parental Pay (ShPP), provided the qualifying conditions and notice requirements are met. SPL can be taken at any time in the baby's first year.

Both parents have to meet conditions about their employment and earnings. Self-employed parents or people who have recently started jobs won't be able to take Shared Parental Leave or get Shared Parental Pay, but their partners might be able to (see the different test set out below).

You can split up to 50 weeks of Shared Parental Leave between you, if you both meet the conditions. Or if only one of you is entitled, you can decide how much time to take as SPL.

The parent taking the SPL must:

- have worked for the same employer for 26 weeks by the end of the 15<sup>th</sup> week before the baby is due (or by the date you are matched with your adopted child);
- still be working for the employer right up to when they take SPL; and
- will get ShPP if they earn at least the [lower earnings limit](#) on average in a set period before the due date, and any SMP/MA/SAP (Statutory Adoption Pay) has been curtailed.

The other parent/partner must meet a different test (the employment and earnings test) of:

- having worked for at least 26 weeks in the 66 weeks before the expected week of birth or the week you are notified of being matched for adoption; and
- having average weekly earnings of at least £30 a week for 13 of those weeks.

The other person could be employed or self-employed and could have changed jobs or not worked for the same employer for the whole of the pregnancy.

Shared Parental Leave can be taken in one continuous block or up to three separate blocks. Parents can share leave sequentially or be off together at the same time. The maximum total leave to be shared remains at 50 weeks.

ShPP is the flat rate of £151.97 per week (from April 2021) or 90 per cent of your average earnings, whichever is lower, and can last for the balance of the SMP/MA pay period (week 39 after birth).

There are various notices to be given. More information is on our website at [workingfamilies.org.uk](https://www.workingfamilies.org.uk).

## Returning to work after maternity leave

You do not need to give any notice of return if you are going back to work at the end of maternity leave. You simply go to work on the day that you are due back. Your employer should have written to you to confirm the date your maternity leave ends, though they do not always do this. If you take all the maternity leave that you are legally entitled to (the first 26 weeks of Ordinary Maternity Leave plus the next 26 weeks of Additional Maternity Leave), you are due back to work on the day after the end of the 52-week period.

## Notice of early return

If you want to return before the end of your 52 weeks' maternity leave, you should give your employer at least eight weeks' notice of the date





you will be returning. You can change your mind about returning to work early provided that you give at least eight weeks' notice before the date you now intend to return or the date you had intended to return, whichever is earliest.

## If you do not want to return to work

If you do not want to go back to work after your maternity leave, you just give notice in the normal way, as if you were at work. You can check your contract of employment to find out how much notice you need to give. You can do this at any time, but if you wait until towards the end of your maternity leave you will retain all your rights until your notice runs out. For example, employed women accrue holidays during their maternity leave, but you stop accruing these if you resign because once your notice runs out you are no longer employed.

You *never* have to pay back any Statutory Maternity Pay if you do not return to work. If you got more than Statutory Maternity Pay (occupational or contractual maternity pay), then your employer may have attached conditions which mean you have to pay some money back if you do not return. However, you only have to repay if the conditions were stated in your contract or maternity policy or agreed with your employer before you started your maternity leave.

## Right to return

When you go back to work after Ordinary Maternity Leave (the first six months of maternity leave), you have the right to return to your old job on your old terms and conditions.

When you go back to work after taking some Additional Maternity Leave (any part of the second six months of maternity leave), you have the right to return to your old job on your old terms and conditions unless it is 'not reasonably practicable', in which case your employer must offer you a suitable alternative job on similar terms and conditions. It is very unusual for it to be 'not reasonably practicable' to give you your job back unless there is a redundancy situation (see below). If your job still exists but your employer is only offering you an alternative, please call or email our helpline for advice.

If your employer does not allow you to return to work after maternity leave or you are not given your old job back, or not given a suitable alternative job if you are returning after some Additional Maternity Leave, you may have a claim for automatic unfair dismissal and maternity/sex discrimination. If your employer is claiming that your job is redundant, get advice.

If you want to return to work on a different pattern, for instance you want to work part-time in what was a full-time job, read about flexible working in our [New parents toolkit | Part 3: Flexible working](#). Your employer does not have to allow you to change your work pattern but should only refuse your request for a good reason.

## Breastfeeding and returning to work

For six months after giving birth, if there is evidence of a risk to you or your baby's health, your employer has a duty to carry out a risk assessment and adjust your duties, workplace or hours to remove any risks. If you are breastfeeding for longer than this, you are still entitled to health and safety protection if you can show that your baby's health would suffer if you



cannot continue to breastfeed. You must tell your employer in writing that you gave birth in the last six months or that you are breastfeeding. This applies whether you are returning from maternity leave or starting a new job. The adjustments your employer might make could include giving you breaks to express milk or to breastfeed and they must by law provide you with a place to rest, breastfeed or express. See our [guide to returning to work while breastfeeding for more information](#).

## Parental bereavement leave

Employed parents are entitled to two weeks of bereavement leave following the death of a child. The death must occur after 6 April 2020 for parents to be eligible. This includes parents who suffer a stillbirth after the 24<sup>th</sup> week of pregnancy. All parent employees are entitled to two weeks' unpaid leave. To be eligible for paid leave, the parents must:

- have been employed for at least 26 weeks (6 months) at the date of the child's death; and
- earn more than the lower earnings limit (£120 a week from April 2021) on average for the period of 8 weeks ending on the date of the child's death.

The leave will be paid at the same rate as maternity pay per week (£151.97 from April 2021).

There is more information available on our website here: [workingfamilies.org.uk/articles/parental-bereavement-leave-jacks-law](https://www.workingfamilies.org.uk/articles/parental-bereavement-leave-jacks-law).



## Useful contacts

### Working Families

- We have two more parent toolkits/factsheets at [workingfamilies.org.uk/articles/advice-for-parents-factsheet](https://www.workingfamilies.org.uk/articles/advice-for-parents-factsheet)
- [advice@workingfamilies.org.uk](mailto:advice@workingfamilies.org.uk)
- Helpline: 0300 012 0312
- There is more information for parents at [workingfamilies.org.uk](https://www.workingfamilies.org.uk)

### Acas

Acas (Advisory, Conciliation and Arbitration Service) provides free, impartial information and advice to employers and employees on workplace relations and employment law.

- Phone: 0300 123 1100
- [acas.org.uk](https://www.acas.org.uk)

### Advice for single parents

- [gingerbread.org.uk](https://www.gingerbread.org.uk) (England/Wales)
- [opfs.org.uk](https://www.opfs.org.uk) (Scotland)

### Child Benefit

- Phone: 0300 200 3100
- [gov.uk/childbenefit](https://www.gov.uk/childbenefit)

### Citizens Advice

Get information on your rights in employment, benefits and other areas, or find your local Citizens Advice at:

- [citizensadvice.org.uk](https://www.citizensadvice.org.uk)
- [cas.org.uk](https://www.cas.org.uk) (Scotland)
- [citizensadvice.org.uk/about-us/northern-ireland](https://www.citizensadvice.org.uk/about-us/northern-ireland) (Northern Ireland)

### Contact – for families with disabled children

- Phone: 0808 808 3555
- [contact.org.uk](https://www.contact.org.uk)

### Entitled to – free benefits calculator

- [entitledto.co.uk](https://www.entitledto.co.uk)

### Jobcentre Plus/DWP

- Phone: 0800 055 6688
- You can find your nearest Jobcentre Plus in England, Wales and Scotland by looking at [gov.uk/contact-jobcentre-plus](https://www.gov.uk/contact-jobcentre-plus)
- In Northern Ireland, contact your local Jobs & Benefits office: [nidirect.gov.uk/contacts/jobs-benefits-offices](https://www.nidirect.gov.uk/contacts/jobs-benefits-offices)

### Maternity Action

Advice on maternity rights and pregnancy discrimination:

- Helpline: 0808 802 0029
- [maternityaction.org.uk](https://www.maternityaction.org.uk)

### Tax Credits helpline

- Phone: 0345 300 3900
- [gov.uk/taxcredits](https://www.gov.uk/taxcredits)

### Universal Credit helpline

- Phone: 0800 328 9344
- [gov.uk/universal-credit](https://www.gov.uk/universal-credit)





## Can you help?

Working Families needs your help! If you can, please [donate online at workingfamilies.org.uk](https://www.workingfamilies.org.uk).

## Complaints procedure

Every year, Working Families offers advice to thousands of parents and carers on their employment rights and in-work benefits. Occasionally someone may feel we got things wrong, in which case we need to be told so we can put things right.

If you have a comment or complaint about any aspect of our service, please email us at [advice@workingfamilies.org.uk](mailto:advice@workingfamilies.org.uk).



Please note that the information and guidance contained in this toolkit is a short summary for information purposes only. It is not exhaustive. Every reasonable effort has been made to make sure the information is accurate and up to date, but no responsibility for its accuracy and correctness, or for any consequences of relying on it, is assumed by the author or the publisher.

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