

Classification Open	Item No.
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Meeting:	Employment Panel
Meeting date:	20 th September 2022
Title of report:	Maternity Policy/Guide for New and Expectant Mothers
Report by:	Cllr. Tahir Rafiq – Cabinet Member for HR & Corporate Affairs
Decision Type:	Non-key
Ward(s) to which report relates	All

EXECUTIVE SUMMARY

The Council's Maternity Policy for New and Expectant Mothers has been refreshed to reflect new guidance from the Health and Safety Executive (HSE) in relation to risk assessments.

This opportunity has also been used to clarify language in relation to the calculation of maternity pay and the Council's policy position around leave in the event of a miscarriage.

There have been no substantive changes to the policy.

RECOMMENDATION(S)

The Employment Panel is asked to agree the changes to the Policy which will then be forwarded to the Corporate Joint Consultative Committee for ratification and published on the Council's intranet pages.

KEY CONSIDERATIONS

1. Background

- 1.1 This Council's Maternity Policy sets out the organisation's formal policy position for new and expectant mothers and provides valuable advice in a number of areas. It also assists managers in supporting employees through pregnancy, maternity leave and when returning to work.

- 1.2 The Health and Safety Executive's [guidance on protecting pregnant workers and new mothers](#) has recently been updated to strengthen the expectations for employers. The legal protections provided by this guidance also apply to some transgender men, non-binary people and people with variations in sex characteristics, or who are intersex. The policy has been updated to reflect this latest position.
- 1.3 In addition to the above, learning has shown that the current policy does not present clear definitions in relation to both the calculation of occupational maternity pay and the Council's policy position in relation to miscarriage. Whilst, in practice, policy application in both these areas is operating effectively, the opportunity to update the policy has also been used to confirm the policy detail here and avoid confusion.

2. Key Changes

- 2.1 The Policy has been updated to confirm that Managers employing pregnant workers and new mothers (employees, agency workers and casual staff) must carry out an individual risk assessment as soon as they are made aware of a pregnancy and make any necessary changes to support the worker. This applies to:
- Workers who are pregnant
 - Workers who have given birth in the last 6 months, or
 - Workers who are currently breastfeeding

Managers should follow the updated [HSE Guidance](#) on carrying out risk assessments and review the risk assessment regularly to identify issues such as:

- Posture and Position
- Shift patterns
- Work related stress
- Temperature/noise
- Risk of physical injury
- Exposure to harmful substances

More detailed guidance is available to staff from the Council's Health and Safety Team.

- 2.2 The paragraph within the policy around entitlement to Occupational Maternity Pay (OMP) has been amended to make it clear that *current* pay is used within the calculation. This is current practice but some employees have misinterpreted this position previously.
- 2.3 A paragraph around miscarriage has been added. This section confirms that, if miscarriage should take place in the first 24 weeks of pregnancy, there is no

entitlement to maternity leave but that managers should support employees in a similar way to when managing a bereavement. A miscarriage after 24 weeks is classed as a stillbirth and the policy includes an existing provision in these circumstances.

2.4 The full Policy is appended with the key amendments highlighted.

OTHER ALTERNATIVE OPTIONS CONSIDERED

N/A

COMMUNITY IMPACT / CONTRIBUTION TO THE BURY 2030 STRATEGY

N/A

EQUALITY IMPACT AND CONSIDERATIONS:

Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:

A public authority must, in the exercise of its functions, have due regard to the need to -

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;*
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;*
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.*

The public sector equality duty (specific duty) requires us to consider how we can positively contribute to the advancement of equality and good relations, and demonstrate that we are paying 'due regard' in our decision making in the design of policies and in the delivery of services.

Equality Analysis	Please provide a written explanation of the outcome(s) of either conducting an initial or full EA.
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An Equality Impact Assessment has been carried out in relation to the proposed changes and no negative impacts have been identified. The changes are positive in providing enhances support in relation to the protected characteristic of pregnancy and maternity. The legal protections also apply to some transgender men, non-binary people and people with variations in sec characteristics, or who are intersex.

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ASSESSMENT OF RISK:

In relation to this policy no risks identified – The changes mitigate a potential risk by ensuring the policy is aligned with the latest HSE guidance.

CONSULTATION:

The Policy has been shared with the trade unions and following agreement will go to the Corporate Joint Consultative Committee for ratification.

LEGAL IMPLICATIONS:

This report reflects the strengthening of the HSE guidance, it is incumbent on the Council to ensure that our policies reflect the updated guidance.

FINANCIAL IMPLICATIONS:

There are no additional financial implications of these changes over and above the existing policy

REPORT AUTHOR AND CONTACT DETAILS:

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Maternity Policy for New and Expectant Mothers

**Your Rights to Maternity Leave and
Maternity Pay**

Breastfeeding in the Workplace

Updated September 2022



INTRODUCTION

This Policy has been developed to give valuable advice to new and expectant mothers working for the Council. It will also assist managers in supporting employees through pregnancy, maternity leave and returning to work. It will be updated every 3 years or sooner if there are any changes in legislation, national guidance or local arrangements.

The [Health and Safety Executive's guidance on protecting pregnant workers and new mothers](#) applies to all new and expectant mothers. It is important for employers to support them all equally. The legal protections also apply to some transgender men, non-binary people and people with variations in sex characteristics, or who are intersex.

Glossary of Terms frequently used when referring to pregnancy and maternity leave/pay:

<p>Confinement Birth of a living child; or the birth of a child whether living or dead after 24 weeks of pregnancy</p> <p>EDC Expected date of confinement/childbirth</p> <p>EWC Expected week of confinement/childbirth – this is the week in which your baby is due and usually begins on the Sunday before your EDC</p> <p>SMP Statutory Maternity Pay</p> <p>OMP Occupational Maternity Pay</p> <p>MA Maternity Allowance, this is a DSS benefit for women who are not entitled to SMP</p> <p>SSP Statutory Sick Pay</p>	<p>QW Qualifying Week; i.e. the 15th week before your baby is due</p> <p>MATB1 Maternity certificate which must be presented to your employer (This will be given to you by your midwife or Doctor)</p> <p>DWP Department for Work and Pensions</p> <p>CML Compulsory Maternity Leave</p> <p>OML Ordinary Maternity Leave</p> <p>AML Additional Maternity Leave</p> <p>MPP Maternity Pay Period</p> <p>KIT Days Keeping in Touch Days</p>
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PREGNANCY, MATERNITY LEAVE/MATERNITY PAY

NOTIFICATION OF PREGNANCY

As your employer, it helps us to support you throughout your pregnancy if we are aware that you are expecting a baby as soon as possible. It will ensure that you receive your full entitlement of paid time off for ante-natal appointments. It also gives us the maximum time to calculate your benefits and arrange cover for your post whilst you are on maternity leave.

You are required to notify your line manager and HR in writing of your pregnancy, and give an indication of your expected week of childbirth and when you would like to start maternity leave. (You can change your mind about this date provided you give 28 days' notice of the revised start date). Once they have written confirmation of your pregnancy your manager will complete a Pregnancy Health and Safety checklist with you and arrange for a risk assessment to take place.

You will be sent a letter and other documents, outlining the conditions of your maternity leave and your entitlement. You will need to respond to this letter outlining if it is your intention or not to return to work.

As soon as you receive your maternity certificate (MATB1) you should forward this to HR.

RISK ASSESSMENT

Managers employing pregnant workers and new mothers (employees, agency workers and casual staff) must carry out an individual risk assessment as soon as they are made aware of a pregnancy and make any necessary changes to support the worker. This applies to:

- Workers who are pregnant
- Workers who have given birth in the last 6 months, or
- Workers who are currently breastfeeding

Managers should follow the [HSE Guidance on carrying out risk assessments](#) and information and templates are available on the Council's [Health and Safety Intranet Pages](#).

The risk assessment must be reviewed regularly, for example at different stages of the pregnancy, and amended as appropriate. Some common risks might be:

- Posture and Position
- Shift patterns
- Work related stress
- Temperature/noise
- Risk of physical injury

- Exposure to harmful substances

ANTENATAL CARE

You will be granted leave of absence as appropriate for ante natal appointments, including scans. You must be able to provide evidence of any such appointments upon request.

Fathers and partners (including same sex partners) of pregnant women are entitled to unpaid time off to attend two ante-natal appointments. "Partner" includes the spouse or civil partner of the pregnant woman and a person (of either sex) in a long term relationship with her. The right applies whether the child is conceived naturally or through donor insemination. It also extends to those who will become parents through a surrogacy arrangement if they expect to satisfy the conditions for and intend to apply for a Parental Order for the child born through that arrangement.

Employees accompanying the expectant mother to her ante-natal appointments are entitled to unpaid leave for 1 or 2 appointments. The time off is capped at six and a half hours for each appointment. (Refer to 'Guide to Time off to accompany a pregnant woman to ante-natal appointments')

SICKNESS

If you are off sick during pregnancy you are obliged to follow the normal sickness absence procedures. If your sickness is pregnancy related you should inform your manager. Sickness during pregnancy will be recorded; however, pregnancy related sickness will not be counted in the Supporting Positive Attendance policy.

If you are absent from work partly or wholly due to pregnancy after the 4th week before the EWC your maternity leave will automatically be triggered, even though you may have opted to start your maternity leave later. This is regardless of how long the absence is.

REST FACILITIES

The Council is required to provide a smoke free area for pregnant women to rest.

MATERNITY LEAVE/PAY

Entitlement to Maternity leave:

All employees irrespective of length of service are entitled to ordinary maternity leave (OML) of 26 weeks, followed by 26 weeks' additional maternity leave (AML); giving a total of 52 weeks' continuous leave.

If you are on a temporary contract your maternity leave will expire on the termination of your contract.

Commencing Maternity Leave:

You must give 28 days' notice of your intention to commence your maternity leave where practicable. If the baby arrives early contact your manager as soon as possible.

You will be expected to commence your maternity leave no earlier than 11 weeks before your EWC or the time of childbirth if that is earlier. You can choose to start your maternity leave any time after the 11th week before the EWC, provided that you give at least 28 days' notice where reasonably practicable. See the section on Early Birth which explains what will happen should your baby arrive before the planned start of your maternity leave.

You will be written to within 28 days of receipt of your written notification, stating your expected date of return from maternity leave.

Entitlement to Statutory Maternity Pay (SMP):

To qualify for SMP you have to satisfy two basic rules:

- The continuous employment rule;
- The earnings rule.

This means you must:

- have been employed by your employer without a break for at least 26 weeks including the qualifying week;
- have average weekly earnings in the eight weeks up to and including the qualifying week at or above the lower earnings limit for the payment of National Insurance contributions, (Please refer to the WLB rates table for current rate for SMP).

If you have changed employer during your pregnancy please seek advice on your entitlement from HR as you may not meet the continuous employment rule. One exception to this is if you are a teacher in a school maintained by a local education authority and you move to another school maintained by the same authority; in these circumstances your continuous employment for SMP purposes is maintained.

Providing you continue to work after the 11th week before the week your baby is due you can choose the start date for your SMP.

If: -

- your baby is born early; or
- you are absent if from work wholly or partly because of pregnancy or pregnancy related illness after the beginning of the 4th week before the EWC;

your SMP and maternity leave will commence automatically.

Women who do not qualify for SMP:

If you do not meet the qualification rules for SMP you may qualify for Maternity Allowance (MA): this is based on your recent employment and earnings record and is a state benefit which may be payable for 39 weeks and is the same rate as SMP.

To qualify, you must be employed or have been employed for at least 26 weeks of the 66 weeks ending with the week before the EWC and earned at least a specified amount per week on average in any 13 weeks in the test period.

If you are not entitled to SMP (HR/Payroll can advise you on this matter) you will need a completed form SMP1 from HR/Payroll. You should take the form to your local Benefits Agency office who will advise you of your entitlement to maternity allowance or incapacity benefit.

Entitlement to Occupational Maternity Pay (OMP):

If you have completed one year's continuous local government service at the 11th week before the EWC you are entitled to OMP; i.e. 12 weeks' at ½ pay (using current pay). Continuous service with an employer that is part of the Greater Manchester Continuous Service Commitment is also included.

OMP will only be paid if you make a written declaration that you intend to return to work for a period of at least 3 months following your maternity leave; if you do not return you will have to repay the OMP paid to you.

For eligible employees payments are:

- 6 weeks at 90% of average earnings (including SMP or Maternity Allowance);
- 12 weeks at ½ pay (using current pay) plus SMP or Maternity Allowance (subject to normal full pay not being exceeded);
- 21 weeks at the standard rate SMP.

For the Current SMP rate please refer to the WLB rates table.

Payments made to you in respect of SMP are **not** refundable to the Authority if you don't return to work following your maternity leave.

- Payments will be subject to deductions for Income Tax, NI and Pension.
- A further 13 weeks' additional leave entitlement will be at nil pay.

If you meet the continuous service requirements for payment of OMP as detailed above, but do not qualify for SMP or MA you will be paid at nine-tenths of a week's pay for the first six weeks' of your maternity leave, but this will not be offset against SMP or MA.

Pension Implications

Your pension rights will continue during your period of absence and in line with the Local Government Pension Scheme Regulations you will be required to make pension contributions on the maternity pay that you receive during your period of absence.

Under the LGPS 2014 Regulations you will not be paying pension contributions for any period of unpaid absence; so this will reduce your pension benefits when you retire. Active members of the Scheme can recoup lost benefits by paying Additional Pension Contributions (APCs) by completing Greater Manchester Pension Fund Form P38(1). This form can be downloaded from www.gmpf.org.uk and should be returned to the Council's Pensions Team.

If the form is returned within 30 days of your last day of absence, your Employer will contribute 2/3rds of the cost; otherwise the full cost of buying the lost pension is payable by you.

The Pensions Team can tell you how much pension you have lost as a result of the break and then you can get a rough idea of the cost by going on the APC online calculator at www.gmpf.org.uk

For further information contact the Pensions Team at pensions@bury.gov.uk

Implications for employees who are leasing a car through the Council's Car Lease Scheme

You are advised to think very carefully as to whether you join the Car Lease Scheme if you are likely to have maternity leave during the period of your car lease agreement. This is because Statutory Maternity Pay (SMP) and Occupational Maternity Pay (OMP) are calculated on the amount of average weekly earnings during the 8-week period, fifteen weeks prior to the expected date of confinement (weeks 17 to 25 of pregnancy). A 'salary sacrifice' arrangement (such as the Car Lease Scheme) will reduce the amount of salary that is liable to National Insurance Contributions; and consequentially will reduce the level of your SMP/OMP. To combat this, the Council will make a payment to you based on the salary you would have received prior to salary sacrifice.

From the start date of payment of your SMP you will pay for your car on a net deduction basis which is more expensive than the salary sacrifice deductions. When you return to work you will automatically revert back to the salary sacrifice arrangement.

If you are pregnant and have a lease car another option is for you to return the car but you will be subject to early termination charges.

BIRTH

You (or someone on your behalf) should notify your manager/HR as soon as possible after the birth.

EARLY BIRTH

If your baby is born before the start of your planned maternity leave, your maternity leave and payment of your SMP will commence on the day following the day your baby was born.

MISCARRIAGE

If a miscarriage happens in the first 24 weeks of pregnancy, there is no entitlement to maternity leave. However, as many see this as a bereavement employees should be supported in the same way. Any sickness absence should be categorised as 'pregnancy

related' and not counted towards sickness triggers. A miscarriage after 24 weeks is classed as a stillbirth.

STILLBIRTH/DEATH OF A BABY AFTER BIRTH

In the tragic event of an employee giving birth to a stillborn baby, they are still entitled to maternity leave if the birth happens after 24 weeks of pregnancy. As with an early birth should this happen before the planned start date of the maternity leave their maternity leave and payment of SMP would commence the day following the stillbirth. If the stillbirth occurs before the end of the 24th week of pregnancy employees should take sick leave or special leave if appropriate.

If the baby is born alive but then later dies the employee is entitled to maternity leave.

KEEPING IN TOUCH (KIT) DAYS

Keeping in Touch days were introduced to encourage a smooth return to work for women following their maternity leave and allow you to return to work for up to 10 days without bringing your maternity leave to an end. KIT days are not compulsory and must be arranged by mutual agreement between you and your manager. Even if you don't have any KIT days you may find it beneficial to keep in touch more informally during your maternity leave.

Any work done, whether it is a one hour team meeting, a two hour training session, or a full day, would be classed as one of your KIT days. There is a record sheet that can be used to record when your KIT days have been taken and the number of hours you worked. You will be paid at your current spine point or rate of pay for the hours you work so must submit an overtime sheet for these hours in order to be paid correctly.

Your SMP will be offset against your earnings on a KIT day so, for example, if you earn £50.00 for a KIT day, the £50.00 will be offset against the SMP payment for the week and you will still receive the SMP payment (please refer to WLB rates table for current rate for SMP). If you worked 3 KIT days in a week and received £150.00 for the 3 days, the SMP payment will be offset and you would receive £150.00 for the week.

You should speak to your manager if you want to arrange some KIT days and record your hours worked on both the record sheet and an overtime form so you can be paid correctly.

RETURNING FROM MATERNITY LEAVE

You may return to work at any time during your maternity leave subject to you taking 2 weeks' compulsory maternity leave. Compulsory maternity leave will commence from the birth of the baby.

No notification is required if you intend to return to work at the end of the maternity leave (52 weeks). However, if you choose to return **before the end** of the 52 weeks you must give 21 days' notice in writing to Human Resources.

Where insufficient notice is given your department may postpone your return to ensure the required notice.

Providing you meet eligibility requirements you have the choice to transfer up to six months' leave to the child's father should you want to, the leave can be taken by the father once you have returned to work. [The term "father" refers to the person taking the additional paternity leave but is available to either sex and also applies to employees married to or the partner (including same sex partner) and civil partner of mothers]. Some of the leave may be paid if it is taken during what would have been your 39 week statutory pay period; in these cases the you must bring your maternity leave to an end by giving notice to return early and must bring your SMP or maternity allowance to an end by actually returning to work.

If you have notified us of your date of return but cannot return to work because of sickness you are required to produce a Doctor's certificate before the notified date of return. If you haven't yet informed us of your date of return you must produce a Doctor's certificate on the expiry of your maternity leave period. At this stage normal contractual sick pay arrangements apply.

You will be entitled to return to the post that you now occupy or a suitable alternative post where for some reason, e.g. redundancy or restructure, it is not practicable for you to return to the original post.

If you wish to return to work on a job share or part time basis, it is important that you put this request in writing to your Chief Officer at the earliest opportunity.

If your Chief Officer agrees to you returning to work on a part time or job share basis you will be entitled to retain the 12 weeks $\frac{1}{2}$ pay that you received during your maternity leave, as long as you work for at least 3 months upon your return.

HOLIDAY ENTITLEMENT

You are allowed to take your full holiday entitlement in the year in which your maternity leave falls on the understanding that you reimburse the Council as appropriate on a pro rata basis should you choose not to return to work. This applies if you are entitled to paid or unpaid maternity leave.

You will also be entitled to any fixed holidays such as Bank Holidays that fall during your paid or unpaid maternity leave. These fixed holidays will be treated as annual leave for this purpose and taking these days as leave, either before or after maternity leave, must be requested in the usual way.

If your maternity leave straddles two leave years you will be permitted to carry over any untaken leave into the next leave year, should the need arise.

If you work term time only your pay is calculated as 12 equal monthly installments across the year. Each installment includes a combination of your salary payment and payment for your annual leave and bank holidays; and you are required to take your leave during

school closure periods. Annual leave accrued whilst on maternity leave will be offset by any period of school closure that occurs in the leave year in question, both before and after your maternity leave.

If your maternity leave falls over 2 annual leave years, any outstanding leave remaining at the end of the leave year will be carried forward into the following leave year.

If you have salary deductions for 3 days' unpaid leave the deductions will cease altogether for the full period of the maternity leave and the deduction is pro-rated for the months that you commence and return from maternity leave. The 3 days' unpaid leave will also be pro-rated to reflect this.

Prior to your return to work following maternity leave your Departmental HR will assess whether or not you are owed any annual leave entitlement. If you have outstanding leave you will be given the option to either take the leave: -

- During term-time, but only with the approval of your line manager. In these cases there will be no adjustment to your pay; or
- During school closure periods when your pay will be adjusted to reflect any shortfall in holiday pay received during your period of maternity leave.

You cannot insist on payment for untaken annual leave unless you are leaving the Council.

These arrangements will also apply to term time only employees taking adoption leave and additional paternity leave.

SURROGACY

If you are acting as a surrogate mother, you are entitled to the same maternity leave and pay.

If another woman is acting as surrogate for you, you are not entitled to maternity leave or pay, as entitlement is dependent on actual pregnancy and production of a MATB1 certificate.

PREGNANCY CHECKLIST

1. Notify Manager and Human Resources in writing:-
 - Of your pregnancy
 - Of your expected week of childbirth
 - When you wish to commence maternity leave (you must give at least 28 days' notice)
2. Manager will carry out risk assessment
3. Human Resources will notify you in writing of the conditions of your maternity leave
4. Forward your MATB1 to HR upon receipt
5. Notify Manager of antenatal appointments
6. Give 28 days' notice of your intention to start your maternity leave. You can choose to start your maternity leave any time after the 11th week before the EWC (unless the birth of your baby is earlier)
7. Notify HR when baby is born
8. Arrange any required KIT days
9. Notify Manager of the date you are returning to work (you must give at least 21 days' notice if you are returning before the end of your maternity leave (52 weeks))

BREASTFEEDING IN THE WORKPLACE

RETURNING TO WORK AND BREASTFEEDING

Many women will choose to breastfeed their babies and returning to work should not have any effect on this. If you will be continuing to breast feed your baby after you return to work you should advise your manager in writing ideally before you return.

RISK ASSESSMENT

Once your manager has been informed you will still be breastfeeding, they will carry out/review your individual risk assessment. There may be different risks when breastfeeding, other than those associated with pregnancy and these should be considered. Managers should refer to the health and Safety guidelines – link above.

REST FACILITIES

The Council is required to provide a smoke free area for breastfeeding mothers to rest and lie down when required.

EXPRESSING/STORING MILK

It is good practice for employers to provide a private room for nursing mothers to express milk when they need to during the working day and, if possible, make arrangements for facilities to store the milk. This could be in the rest room. If you need to make use of any of these facilities you should make the arrangements with your manager. NOTE: Toilets are not considered to be a suitable facility for these purposes.

Further information is available from Human Resources