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Maternity, paternity and adoption leave and pay

Member resource

The law is stated as at 05 October 2008

Please click on the individual questions below to see the answers.

- **What legislation governs maternity, paternity and adoption leave and pay?**

A wide range of legislation governs maternity, paternity and adoption leave and pay. Most of the relevant legislation can be found consolidated into the Employment Rights Act 1996 or the Employment Relations Act 1999. However, the Employment Act 2002 also enabled some significant changes to the law in this area and further changes under the Work and Families Act 2006 came into effect from 1 April 2007 onwards. Some of the details of the rights and principles contained in the main Acts are to be found in the various implementing regulations.

The following statutes and Regulations are now in force:

- The Statutory Maternity Pay (General) Regulations 1986 (SI 1986/1960) - as amended by The Social Security, Statutory Maternity Pay and Statutory Sick Pay (Miscellaneous Amendments) Regulations 2002 (SI 2002/2690)
- Social Security Contributions and Benefits Act 1992 - as amended, deals with maternity pay
- Social Security Administrations Act 1992
- Employment Rights Act 1996
- Employment Relations Act 1999
- The Maternity and Parental Leave etc Regulations 1999 (SI 1999/3312)
- Employment Act 2002
- The Maternity and Parental Leave (Amendment) Regulations 2002 (SI 2002/2789)
- The Paternity and Adoption Leave Regulations 2002 (SI 2002/2788)
- The Statutory Paternity Pay and Statutory Adoption Pay (Administration) Regulations 2002 (SI 2002/2820)
- The Statutory Paternity Pay and Statutory Adoption Pay (Weekly Rates) Regulations 2002 (SI 2002/2818)
- The Statutory Paternity Pay and Statutory Adoption Pay (General) Regulations 2002 (SI 2002/2822)
- The Social Security (Paternity and Adoption) (Amendment) Regulations 2002 (SI 2002/2689)
- The Statutory Maternity Pay (Compensation of Employers) Amendment Regulations 2002 (SI 2002/225)
- The Statutory Maternity Pay (Compensation of Employers) Amendment Regulations 2003 (SI 2003/672)
- The Paternity and Adoption Leave (Adoption from Overseas) Regulations 2003 (SI 2003/921)

- The Statutory Paternity Pay and Statutory Adoption Pay (Amendment) Regulations 2004 (SI 2004/488)
- The Pensions Act 2004 s.265
- The Civil Partnership Act 2004
- The Civil Partnership Act (Amendments to Subordinate Legislation) Order 2005 (SI 2005/2114).
- Work and Families Act 2006
- The Maternity Leave and Parental Leave etc and the Paternity and Adoption Leave (Amendment) Regulations 2006 (SI 2006/2014)
- The Statutory Paternity Pay and Statutory Adoption Pay (General) and the Statutory Paternity Pay and Statutory Adoption Pay (Weekly Rates) (Amendment) Regulations 2006 (SI 2006/2236)
- The Statutory Maternity Pay, Social Security (Overlapping Benefits) (Amendment) Regulations 2006 (SI 2006/2379)
- The Sex Discrimination Act 1975 (Amendment) Regulations 2008 (SI 2008/656)
- The Maternity and Parental Leave etc. and the Paternity and Adoption Leave (Amendment) Regulations 2008(SI 2008/1966).

See individual questions and the question on future developments below for more information on the key provisions. The Department of Business, Enterprise and Regulatory Reform has also published comprehensive guidance for both employers and employees on maternity, paternity and adoption leave and pay.

- [Go to the BERR website](#)

In Northern Ireland, the Department for Employment and Learning has produced a guide for both employers and employees.

- [Read guide](#)

- **MATERNITY: What maternity leave are women employees entitled to?**

All relevant employees, regardless of their length of service, or part-time or full time status qualify for ordinary maternity leave (OML). (To check if an individual enjoys employee status, see our Employee status FAQ).

- [Go to Employee status FAQ](#)

A woman employee who is a new mother of her biological child is therefore usually entitled to take:

- 26 weeks ordinary maternity leave (OML) followed by
- 26 weeks additional maternity leave (AML) and
- up to four weeks unpaid parental leave if she chooses to take it up at this stage rather than subsequently. (If she chooses to use it at the end of her maternity leave then there is then a further nine weeks entitlement to parental leave to be taken before the child's fifth birthday). For full details of parental leave see our Flexible working, parental rights and family-friendly provisions FAQ).

- [Go to Flexible working, parental rights and family-friendly provisions FAQ](#)

There are a number of important points about the way the periods of leave work:

- For those employees with an expected week of childbirth which began on or after 1 April 2007 there is no qualifying period of employment for the further period of AML.

- All pregnant employees who qualify for ordinary maternity leave OML therefore also qualify for AML. AML is the further 26 weeks maternity leave producing a total of 52 weeks maternity leave.
- It is important to note that even women who were pregnant when they started working for their employer are entitled to the ordinary and additional leave.
- The employee can choose when the ordinary leave will begin but it cannot be earlier than the beginning of the 11th week before the expected week of childbirth.
- 'Compulsory' maternity leave is the period of two weeks immediately after giving birth during which the woman is not permitted to work. This is part of the ordinary leave period, not additional to it.

Under the old law for a woman whose expected week of childbirth was before 1 April 2007, her eligibility for AML only arose after she had completed 26 weeks' continuous service. (See the question on continuous service in our Discipline and grievances at work FAQ).

Further guidance on maternity leave and pay is available on the Department for Business, Enterprise and Regulatory Reform website.

- [View guidance](#)
- **What notice is an employee required to give to their employer when taking maternity leave and when returning to work?**

The following explains what employees should do to notify their employers when taking maternity leave and when returning to work.

Commencement of maternity leave

An employee must notify her employer of:

- her intention to take maternity leave, and
- the date such leave is due to commence.

This notice must be in writing if the employer requests it (see also question below on statutory maternity pay) and the notification must be no later than the end of the 15th week before the expected week of childbirth (EWC).

Once an employer receives notice of the date on which an employee wishes to commence maternity leave, they should respond in writing within 28 days, setting out the expected date of return for that employee.

An employee may change her mind about the date she intends to commence her maternity leave provided she gives her employer the appropriate amount of notice.

An employer can trigger the period of maternity leave automatically if the employee is absent for pregnancy-related sickness four weeks before the EWC or if childbirth occurs earlier then the maternity leave will start on the day after the day on which childbirth occurs.

Return to work

A woman is not required to forewarn her employer if she intends to return to work the day after her maternity leave ends but if she wishes to return to work before the end of the ordinary and additional maternity leave she must give her employer eight weeks' notice of her return date or any earlier return date.

If an employee attempts to return to work earlier than the end of her additional maternity leave and this notice has not been given, the employer may postpone the leave to such date which does give eight weeks notice provided that is not later than the end of the maternity leave period.

See also question below on what notice an employee should give if they do not intend returning to work.

- **What notice is an employee required to give to their employer if they do not intend returning to work?**

Although an employee does not have to give the employer notice if she intends to return to work at the end of her maternity leave, if she does not intend to return she should give at least the period of notice required by her contract of employment.

This amount of notice will vary and will either be the period of notice agreed in the contract or the amount of statutory minimum notice - see the question on notice and employment contracts in our Terms and conditions of employment FAQ.

- [Go to Terms and conditions of employment FAQ](#)

In practice many employees who do not intend to return may not decide until the last minute. If an employee does not give the contractual amount of notice, this is a theoretical breach of contract by the employee. Whilst it may be inconvenient for the employer there is little they can do about an employee who decides not to return.

- **What benefits must employers provide during ordinary and additional maternity leave?**

The position concerning the benefits which employers must provide during ordinary maternity leave (OML) and additional maternity leave (AML) is more complicated than may appear at first glance. Employees taking maternity leave whose expected week of childbirth (EWC) started on or after 5 October 2008 will have the right to full contractual benefits (other than pay) during the whole of their maternity leave. However the law governing the position is complex and it is important that employers fully understand the position which is explained below.

The complexities arise from the following:

- the law treats entitlement to remuneration (wages) and other benefits differently,
- some legislation distinguishes between the concepts of OML and AML,
- other legislation distinguishes between paid and unpaid periods of maternity absence,
- historically during the AML period some rights could be suspended, although subsequent case law and legislation has closed the distinction between the two periods.

Therefore, the key points when considering what general benefits employees are entitled to during (OML) and (AML) are as follows:

- an employee's contract of employment continues during OML and they are entitled to receive all contractual benefits except remuneration
- employees will be entitled to maternity pay during the statutory maternity pay period instead of normal salary - see question below on statutory maternity pay
- in addition to statutory or contractual maternity pay an employee on maternity leave will be entitled to other benefits.

The relevant positions are dealt with under separate headings below to reflect the apparent differences in rights between OML, AML and the paid period of maternity leave.

It is important to note that the periods for OML and AML remain, as they have for some time, at 26 weeks followed by a further 26 weeks. The period for SMP is currently 39 weeks so that during the first part of AML the employee may be entitled to SMP as well as employment related benefits.

The period of AML has always been a rather strange legal concept with the employee enjoying restricted rights, now it is arguable that the legal status of an employee during this period has become even more complex. This is explained further below. (Previously there was a neat symmetry between leave and pay in the vast majority of cases, as the SMP period reflected the OML period and there was no entitlement to pay during AML.)

Ordinary maternity leave (OML)

During OML, an employee is entitled to maternity pay. In addition, an employee's contract of employment continues during OML and she is entitled to receive all contractual benefits, except remuneration.

Remuneration is narrowly defined as 'salary or wages' (see Regulation 9 of The Maternity and Parental Leave Regulations 1999). What constitutes salary or wages has given rise to differing legal opinions. It is clearly an important question because if a benefit can be categorised as something other than remuneration the employee will still be entitled to it. Examples of contractual benefits which accrue during OML include contractual and working time holiday entitlement, health insurance, contractual bonuses and use of a company car and mobile telephone. If an employee falls sick during her OML at present, contractual sick pay appears not to be payable instead of maternity pay for the weeks of incapacity, although this principle may fall to be challenged and careful legal advice should be taken.

Pay increases

An employee returning from OML is entitled to the benefit of any general improvements to her rate of pay or other terms and conditions which may have been introduced for her grade whilst she was away. Any pay increase made before the end of the woman's maternity leave must be taken into account even if it is not backdated - see *Alabaster v Woolwich Building Society and another* (unreported, ECJ/ C-147/02, 30 March 2004, ECJ) which is explained in detail in the question below.

Bonuses

In *Hoyland v Asda Stores Ltd [2005] IRLR 438, EAT* there was a bonus scheme in place which specified that there would be a pro-rata reduction for all employees to account for part-time employment and absences of eight consecutive weeks or more. Mrs Hoyland complained of sex discrimination under the Sex Discrimination Act 1975, pregnancy related detriment under Employment Rights Act 1996 s.47C and a breach of Article 141 of the Treaty of Rome when ASDA made a pro rata reduction to the £300 normal bonus to reflect Mrs Hoyland's part time status and the fact she had been absent on maternity leave. The EAT decided that:

- no reduction to an annual bonus was allowed in respect of the two week period of compulsory maternity leave
- a pro-rata reduction of an annual bonus to take account of ordinary maternity leave was permissible and is neither sex discrimination nor pregnancy-related detriment nor a breach of Article 141 of the Treaty of Rome.

Following this case the Sex Discrimination Act 1975 (Amendment) Regulations 2008, SI 2008/656 have confirmed that any period of compulsory maternity leave must be taken into account when assessing entitlement to a discretionary bonus, otherwise claims for sex discrimination may be brought in relation to eligibility for bonuses relating to this period. This will affect women whose expected week of childbirth (EWC) started on or after 5 October 2008.

Additional maternity leave period (AML)

The contract of employment also remains in existence during AML. It can only be brought to an end by resignation or express dismissal. An employee taking AML is, like an employee taking OML, entitled to the

benefit of (and bound by any obligations arising from) all the terms and conditions of employment which would have applied if she had not been absent. This does not include terms and conditions about remuneration as defined above.

Employment related benefits during AML

Although there is a conceptual difference between OML and AML there is now little practical difference between the two periods as far as benefits are concerned. This is because the law changed for employees whose EWC started on or after 5 October 2008. As there are employees whose EWC was before 5 October 2008 still on maternity leave and employees whose EWC was on or after that date on maternity leave as well, employers may have to operate two sets of rules for different employees.

Benefits during AML for employees whose expected week of childbirth was before 5 October 2008

During AML the traditional position was that only limited contractual terms and conditions remained in force. For employees whose EWC started before 5 October 2008 employers did not have to offer all contractual benefits during AML unless they were prepared to do so voluntarily.

For example the right to accumulate holiday does not apply during AML in the same way as during OML for women whose EWC started before 5 October 2008. However, the Working Time Regulations 1998 provide that all workers have the right to a minimum amount of leave per year. For further details on holiday entitlement - see question below on holiday entitlement during OML and AML.

Pension contributions are a benefit which are treated separately from other benefits. Under the Social Security Act 1989 employers must maintain 'employment related benefits' for as long as paid maternity absence continues. This means that employees with an EWC both before, on and after 5 October 2008 have a right to pension contributions for the entire period of paid maternity absence, which for many women is the 39 week period of SMP. Other payments falling within this category will include payments for termination of service, retirement, death, interruptions of service and payments for sickness, accidents or injuries or unemployment. The Government has made it clear that pension contributions were not intended to be caught by the October 2008 changes and should therefore continue to be paid during the period of paid leave. (However there is a potential legal argument that pension contributions should be paid until the end of AML and further case law may clarify this possibility).

Benefits during AML for employees whose expected week of childbirth was on or after 5 October 2008

The position concerning benefits has changed during the AML period for employees whose EWC started on or after 5 October 2008. Essentially employees whose EWC started on or after this date have the right to full contractual benefits (other than pay) during AML. This is the result of the Sex Discrimination 1975 (Amendment) Regulations 2008.

Under these Regulations:

- claims for discrimination in relation to terms and conditions of employment during periods of AML are allowed to the same extent to which they are available in relation to periods of OML, and
- claims for discrimination are allowed in relation to eligibility for bonuses while on compulsory maternity leave.

Therefore benefits such as company cars, childcare vouchers and holiday entitlement accrue during the AML period. Employers are not permitted to deduct money from wages to cover the cost of providing these benefits. Employers should have checked their maternity leave policies and procedures to ensure that women will continue to accrue holiday entitlement and other contractual benefits such as company cars, gym membership, mobile phone use, life and health insurance etc throughout the entire period of maternity leave. Employees also continue to earn their full contractual holiday entitlement during the AML period - see question below on holiday entitlement during OML and AML.

For information on pension contributions see the above section on benefits during AML for employees whose EWC was before 5 October 2008.

The Government Equalities Office has published a factsheet on the changes under the new Regulations.

- [Read factsheet](#)

The HMRC has also published useful guidance on the relationship between salary sacrifice arrangements and SMP and at what non-cash benefits employers should provide to their employees during statutory maternity leave following the changes in the law from 2008.

- [Read guidance](#)

- **What is the position concerning holiday entitlement during ordinary and additional maternity leave?**

The starting point in considering the position concerning holiday entitlement during ordinary maternity leave (OML) and additional maternity leave (AML) is to remember that the law changed for employees whose expected week of childbirth (EWC) started on or after 5 October 2008.

Holiday entitlement during OML

An employee builds up her entitlement to paid holiday during the OML period. This applies for all women on OML regardless of whether their EWC started before, on, or after 5 October 2008. This will include the employee's contractual holiday entitlement. This is because women on OML retain all their contractual rights (except for pay), as though they were still at work.

Most employees will take the paid holiday which has accrued before or after their maternity leave.

Holiday entitlement during AML

Historically the position has been that an employee only built up her entitlement to the statutory minimum holiday entitlement during the AML period.

This means that for employees whose EWC started before 5 October 2008 their contractual leave will only accrue if their contract allows for accrual of contractual holiday rights during AML. If the contract does not allow for this, or if it is silent, then contractual leave will not accrue. To promote good employee relations some employers therefore already choose to include provisions in the employee's contract which allow contractual holiday to accrue during AML.

The position concerning contractual leave in excess of the statutory minimum holiday entitlement during AML was the subject of dispute and has generated some case law. See for example *Land Brandenburg v Sass 2005 IRLR 147, ECJ*.

Accordingly for those employees whose EWC started on or after 5 October 2008 the Sex Discrimination Act 1975 (Amendment) Regulations 2008 will apply. These Regulations made it clear that employers must continue to provide any non-cash benefits that they have agreed to provide under the employment contract during both AML as well as OML. This means that these employees are entitled to accrue any contractual annual holiday over and above the statutory entitlement.

Example of holiday entitlement during OML and AML

A full time employed accountant is contractually entitled to six weeks (30 days) holiday per year. There is no provision in her contract allowing for contractual leave to accrue during AML. If her (EWC) begins before 5 October 2008 she would be entitled to:

- o 15 days contractual holiday accrued during the 26 week OML period, plus
- o 12* days statutory minimum holiday entitlement accrued during 26 week AML period.

If her EWC begins on or after 5 October 2008 she would be entitled to:

- o 15 days contractual holiday accrued during the 26 week OML period, plus
- o 15 days contractual holiday entitlement accrued during 26 week AML period.

*This is based on the 24 days (4.8 weeks) statutory minimum holiday entitlement applicable from October 2007 - see question on minimum annual leave in our Working Time Regulations FAQ.

Carrying holiday entitlement over

Problems may arise if the employee's contract does not allow for holiday to be carried over from one holiday year to another, or if the contract does not give a right to payment in lieu of untaken holiday entitlement, or if an employee does not have time to take her holiday after her maternity leave and before the end of the leave year.

The simplest solution is to allow a woman to take annual leave immediately before the period of maternity leave begins or to carry over her holiday to the next holiday year. Indeed most employers will allow a woman to add her accrued paid holiday to the beginning or end of her maternity leave period.

The European Court of Justice (ECJ) has held that a woman must be able to take at least her statutory minimum holiday entitlement under the Working Time Directive during a period other than her maternity leave. (See *Merino-Gomez v Continental Industries del Caucho* [2004] IRLR 407, ECJ and *Federatie Nederlandse Vakbeweging v Staat Der Nederlanden* [2006] IRLR 561, ECJ)

See also the question above on what benefits must employers provide during OML and AML for more information and details of guidance published by the Government Equalities Office and HMRC and the question on bank holidays and maternity leave in our Bank holidays FAQ.

- o [Go to Bank holidays FAQ](#)
- **Following the decision in Alabaster what happens to the level of statutory maternity pay if the employee is awarded a pay rise before, or while absent on maternity leave ?**

If an employee is awarded a pay rise (or would have been awarded such a rise) had she not been absent on maternity leave her Statutory Maternity Pay (SMP) must be increased to take the pay rise into account.

In *Alabaster v. Barclays Bank PLC and The Secretary of State for Social Security* [2005] EWCA Civ 508 the Court of Appeal decided that this increase applies if the employer grants a pay rise that is effective:

- o during the relevant period for calculating SMP i.e. the 8 week period ending with the last normal pay day before the end of the 15th week before the expected week of childbirth (the relevant period), and
- o after that period (but before maternity leave starts), and
- o during ordinary maternity leave, and
- o during additional maternity leave.

In addition, if a pay rise has an effective date which falls before the beginning of the relevant period and the earnings used in that calculation have not been adjusted to reflect that pay rise, then SMP must also be recalculated to reflect that pay rise.

This means that SMP must be adjusted to take into account a pay rise (or pay rises) which occur during a lengthy period. This period could span 17 months from the start of the relevant period to the end of any maternity leave. Pay rises do not need to be backdated into the reference period for them to be taken into account.

The government introduced the Statutory Maternity Pay (General) (Amendment) Regulations 2005 to address the impact of pay rises on SMP following the decision in Alabaster. The Regulations which came into force on 6 April 2005 confirm that if an employer grants a pay rise that is effective:

- from a date between the start of the period used to calculate a woman's SMP, and
- the end of her maternity leave

then the employer must recalculate the employees average weekly earnings taking account of the pay rise and pay any arrears of SMP.

Other practical points to note arising from the Alabaster decision and the subsequent legislation include the fact that:

- Where a pay rise occurs employers must recalculate their employees average weekly earnings taking account of the pay rise, and pay the arrears of SMP.
- Employers can recover the extra SMP paid out on or after 6 April 2005 at the reimbursement rate appropriate to the tax year in which the SMP arrears are paid.
- Low paid woman may qualify for SMP for the first time if their earnings were previously below the lower earnings limit in which case employers should then pay the difference between Maternity Allowance already paid and the SMP that is due.
- Comments made by the Court of Appeal suggest that the position may be the same with respect to both SMP and contractual maternity pay. Employers should therefore calculate the value of contractual benefits, such as pension contributions and return to work bonuses, for those on maternity leave very carefully indeed.
- Maternity related equal pay claims can be brought with a six month time limit from the end of employment. There is no requirement on the claimant to find a male comparator in maternity related equal pay cases. This means that employers who haven't given the benefit of a pay rise in calculating maternity pay can be faced with claims for the difference in pay going back six years at any time up to six months after the employee's employment has ended.
- Employers who still employ some-one who has previously taken maternity leave are vulnerable to claims now, however long ago the maternity leave was taken, although the Equal Pay Act restricts remedy to six years back pay.
- There is no general requirement on employers to go back and re-calculate SMP for past periods but they will have to consider specific claims if made by current employees who had SMP paid within the last 6 years and those former employees who claim within 6 months leaving employment.
- Employers will be able to recoup any areas of SMP paid on the basis of such requests against their next remittance of tax, NI etc to the Inland Revenue.

The Department for Work and Pensions and HMRC have also published guidance.

- [View DWP guidance](#)
- [View HMRC guidance](#)

- **What statutory maternity pay must an employer pay?**

When paying statutory maternity pay (SMP) many employers choose to rely on the statutory maternity provisions as set out below. Some employers will have contractual maternity pay provisions instead. These will override the entitlements set out below as long as the provisions are more beneficial than the statutory ones.

To claim SMP the employee must give the employer medical evidence of the date her baby is due in addition to the notification relating to maternity leave (please see the question above on notice and maternity leave) This will normally be a maternity certificate (known as Mat B1), although other evidence may be acceptable, which must be signed by the doctor or midwife no earlier than twenty weeks before the expected week of childbirth.

The eligibility to SMP depends upon a number of factors which are set out below:

- The payment period for both SMP (and Maternity Allowance if appropriate) is 39 weeks: the first six weeks will be paid at 90% of average weekly earnings and the remainder at the lower level which is £117.18 with effect from 6 April 2008 (**SMP rates are normally increased in April each year and for details of April 2009 figures which were issued after this FAQ was updated see below***),
- At the beginning of the qualifying week (which is the end of the 15th week before the EWC), a woman must have completed 26 weeks' continuous service with the same employer to qualify for SMP. (See the question on continuity of employment in our Discipline and grievances at work FAQ),
- Because there is now no qualifying service requirement for AML all pregnant employees who qualify for OML will be able to take advantage of the statutory extended leave period of 52 weeks leave. Only those who also qualify for SMP will be paid at the statutory rate for 39 weeks of that period followed by a further unpaid 13 weeks. A minority of women who have not worked for their employer for the requisite period will therefore find themselves in the curious position of being entitled to 52 weeks leave but not being entitled to SMP at all, although they may qualify for Maternity Allowance instead.
- The minimum period of notice that must be given to employers before SMP is payable is 28 days.
- Employees may choose on which day of the week their SMP begins rather than the Sunday after their last day at work.
- Employees may work for the employer who is paying their SMP for up to ten 'keeping in touch' (KIT) days during this period and be paid at their normal rate.
- To be entitled to SMP an employee must earn before tax an average of the current Lower Earnings Limit for National Insurance Contributions (currently at least £87 per week). The average earnings must have been at this level for eight weeks prior to the last pay day before the qualifying week.

***For the April 2009 SMP rate see our Employment law at work data page.**

- [Go to Employment law at work data](#)

Further information on SMP is available on the HMRC website.

- [Go to HMRC website](#)

(There are plans to further extend the 39 weeks pay period to 52 weeks before the next election. See our question below on future developments).

- **What are keeping in touch (KIT) days and the usual arrangements for payment?**

Previously a woman lost one week of statutory maternity pay (SMP) for each week in which she undertook any work for her employer. In order to facilitate occasional training, or keeping in touch without losing SMP, changes were introduced for employees whose babies were born on or after 1 April 2007. These Regulations provided for the employer and employee who is on maternity leave to make reasonable contact from time to time during a maternity leave period without bringing that period to an end. In addition, an employee who is on maternity leave can work for her employer for up to 10 days by mutual agreement without losing SMP. Important points to note include the following:

- the employee can go in for one hour or a whole day. This will still be a Keeping in Touch (KIT) day,
- the decision to undertake a KIT day must be made by agreement between the employee and the employer,
- the KIT day will not bring an employee's maternity leave period to an end,
- the employer has no right to demand that any such KIT work is undertaken and the employee has no right to undertake such work.

The usual arrangement for payment for KIT days appears to be that during these days the employees should be paid at their normal rate as they are carrying out work for their employer under their contract. Even if they are simply attending a training day this still falls under their contract of employment. (Indeed an employee who did not receive their normal rate may be able to claim breach of contract unless she agreed to accept a reduced amount.)

The rate of pay is always a matter for agreement between the employer and employee and may be provided for:

- in the employment contract, or
- as agreed on a case-by-case basis.

If the employee is receiving statutory maternity pay:

- the employer should continue to pay her SMP for the week in which any KIT work is undertaken,
- the employer will be able to reclaim reimbursement for some or all of this money in the normal way from the Revenue,
- the employer may count the amount of SMP for the week in which the work is done towards the agreed contractual pay,
- it will be permissible to agree an amount of contractual pay for the KIT work over and above the weekly SMP rate to reflect the work the woman has done. (Whatever amount of money is paid by the employer in respect of KIT days, the employer will continue to be able to recover funding for the SMP paid, as normal.)

For example if an employee is absent from work on either maternity or adoption leave from Monday 19 May 2008 for 39 weeks if she returns to work for two days a month in September, October, November, December and January 2009 she would not lose any week of paid SMP.

If an employee agrees to accept a reduced amount for KIT day the employer may still be exposed to statutory claims, for example under the National Minimum Wage or Equal Pay Acts. Accordingly the most sensible commercial solution (as the amounts will not be vast) is to pay the full contractual amount.

The Department for Business, Enterprise and Regulatory Reform has published guidance on KIT days and SMP.

• **What happens if an employee is sick at the end of her period of additional maternity leave?**

The woman should be treated in exactly the same way as any other employee who is absent. If the reason for the continuing absence is sickness, then provided the employee has presented a sick note she should be paid sick pay and be permitted to take sick leave, as any other employee. If there is no adequate reason for her absence, then the use of disciplinary procedures may be appropriate. Note that if the employee is treated less favourably than any other employee who is absent, then the employer may face a sex discrimination claim. (See the question below on dismissal and less favourable treatment).

- **What happens if an employee's position becomes redundant during the ordinary and /or additional maternity leave period?**

If the employee cannot be permitted to return to her previous job because that role has become redundant, she must be offered a suitable alternative vacancy where one is available. This means that such an employee will be treated more favourably than any other potentially redundant employees, even those who are better qualified.

This is the result of Regulation 10 of the Maternity and Parental Leave Regulations 1999 (SI 1999/3312) which states that employees on maternity leave are entitled to be offered suitable alternative employment before the end of their existing contracts if such employment exists. This is effectively a form of positive discrimination so that the employee is effectively entitled to the job automatically.

There would be no need for an employee absent on maternity leave to compete for an suitable alternative post as the above section means the employer must offer such a vacancy to the absent employee. Although this applies to employees on maternity leave, most sensible employers would offer vacancies as a priority to pregnant employees as well, to protect themselves from discrimination claims. Points to note concerning this right include the following:

- The Regulation applies where, during maternity leave period, it is not practicable by reason of redundancy for the employer to continue the existing contract of employment. It only applies to terminations by reason of redundancy and not dismissals for other reasons.
- Where there is a suitable available vacancy, the employee is entitled to be offered alternative employment with her employer before the end of her employment.
- Any alternative work offered must be suitable for the employee and appropriate for her to do in her new circumstances, and on terms not substantially less favourable than her old employment.

Failure to comply with this provision will render the dismissal automatically unfair. If there are no suitable alternative vacancies, an employee may be made redundant during or after maternity leave, but in order to avoid a claim of unfair dismissal or sex discrimination it is necessary to follow a fair selection process when deciding which employees will be made redundant. In particular, it is necessary to ensure the selection is nothing to do with her pregnancy, childbirth or maternity leave.

- **What other statutory claims may pregnant employees and those on maternity leave bring against an employer who tries to dismiss or treat them less favourably as a result of exercising their rights?**

Pregnant employees and those on maternity leave may pursue the following claims if dismissed or treated less favourably:

- Automatically unfair dismissal: It is automatically unfair to dismiss an employee for a reason connected with her pregnancy or the fact that she has taken maternity leave - see Regulation 20 of the Maternity and Parental Leave Regulations 1999.
- Protection from detriment: An employee must not be subjected to any other detriment because of her pregnancy or her intention to exercise her right to maternity leave - see Regulation 19 of the Maternity and Parental Leave Regulations 1999.
- Sex discrimination - under the Sex Discrimination Act 1975

Examples of detrimental treatment include a unilateral change in terms and conditions, a loss of status or the removal of a contractual benefit such as a company car or mobile telephone.

- **PATERNITY: Which employees qualify for paternity leave?**

In order to qualify for paternity leave a man must:

- be an employee
- have been continuously employed by the same employer for at least 26 weeks by the 15th week before the expected week of childbirth (see question on continuous employment in the Discipline and grievances at work FAQ)
- have or expect to have responsibility for the upbringing of the child
- be the biological father OR be married to OR be the partner of the child's mother
- take the leave for the specific purpose of caring for a newborn-child and supporting the mother (or for the purpose of caring for a child newly-placed for adoption and supporting the adoptive parent).
- [Go to Discipline and grievances at work FAQ](#)

To check if an individual enjoys employee status see our Employee status FAQ.

- [Go to Employee status FAQ](#)

As the entitlement to paternity leave is based on a relationship with the child's mother, paternity and adoption leave also apply to partnerships of the same sex. Since 5 December 2005 unmarried 'civil partners' have had the same rights as spouses in many respects. This includes an entitlement to paternity, maternity and adoption leave and pay. (See Civil Partnership Act 2004 and the Civil Partnership Act 2004 (Amendments to Subordinate Legislation) Order 2005 (SI 2005/2114)).

- **What paternity leave must employers provide?**

Employers must provide the right to two weeks' paid paternity leave which can be taken in two ways: either

- as a single week, or
- as 2 weeks consecutively.

Paternity leave must be taken within a 56-day period which starts either on the date of birth, or at the beginning of the expected week of childbirth, whichever is the later.

Following the Work and Families Act 2006 the Government has provided for a system of additional paternity leave which will be available following the birth or adoption of a child. This is expected to come into force by the end of the current Parliament and may coincide with the increase of maternity pay to 52 weeks. Employers may wish to start planning for it now - see question below on future developments.

- **What notice is an employee required to give to their employer when taking paternity leave and to obtain statutory paternity pay?**

It is sensible for the employee to provide a completed self-certificate for both leave and pay when providing the notice for leave. However separate provisions govern leave and pay separately.

Leave

The employee is required to give his employer a self-certificate of entitlement to leave. The employee should provide:

- their name
- the expected week of the child's birth (EWC) or, if birth has already occurred, the actual date of birth
- the length of the period of leave required and the date from which leave is requested
- the date of return.

The above information should be given to the employer on or before the 15th week before the EWC or, if this is not practicable, as soon as possible thereafter and at least 28 days before the leave commences.

The employee is not obliged to give his employer any medical evidence of the pregnancy or birth (unlike the medical evidence required to claim Statutory Maternity Pay).

Pay

To get SPP, the employee must provide the employer with a completed self-certificate that he is the father of the child and/or the partner or husband of the mother and:

- is taking leave either to care for his child and/or to support the mother, and
- has or expects to have responsibility for the upbringing of the child.

Employers should usually accept this declaration unless they have very good reasons for believing it is false. The employee must give his employer a completed self-certificate as evidence of his entitlement at least 28 days before he wants his SPP to begin.

A model self-certificate (SC3 Becoming a parent) for employers and employees to use is available from the HM Revenue and Customs.

• **What statutory paternity pay and benefits must employers provide during paternity leave?**

The level of statutory paternity pay (SPP) is the same as the flat rate for statutory maternity pay (SMP), £117.18 per week from 6 April 2008, or 90% of the employees average weekly earnings if this is less than £117.18. (**SMP rates are normally increased in April each year and for the April 2009 rates which were issued since this FAQ was updated see below***). However, many employers pay contractual paternity pay at the normal rate of pay for two weeks.

***For the April 2009 SPP and SMP rates see our Employment law at work page.**

- [Go to Employment law at work data](#)

In addition, employees retain the benefit of their terms and conditions of employment (with the exception of contractual remuneration) and are entitled to return to work.

As for paternity leave, an employee is currently required to have completed 26 weeks continuous service as at the qualification week (15 weeks before the expected week of childbirth or, in the case of adoptive paternity pay, the week in which an approved match is made) to be eligible for paternity pay. (See question on continuity of employment in our Discipline and grievances at work FAQ).

- [Go to Discipline and grievances at work FAQ](#)

Further information is available from the HMRC website.

- [Go to HMRC website](#)

Paternity leave and pay is expected to change before the end of the current Parliament - for more details see the question below on future developments. SPP will continue to be paid by employers but they will be able to recover most or all of it, normally offset against National Insurance contributions due.

- **What other statutory claims may men bring against an employer who tries to dismiss or treat them less favourably as a result of exercising their rights?**

As with employees taking maternity leave employees taking or seeking to take paternity leave are protected if dismissed or treated less favourably. As a result, they may claim:

- Automatically unfair dismissal: It is automatically unfair to dismiss an employee for a reason connected with paternity leave - see Regulation 29 of the Paternity and Adoption Leave Regulations 2002.
- Protection from detriment: An employee must not be subjected to any other detriment because of exercising or seeking to exercise his right to paternity leave - see Regulation 28 of the Paternity and Adoption Leave Regulations 2002.
- Sex discrimination - under the Sex Discrimination Act 1975, sex discrimination can also occur against men.

- **Can an employee delay the start of paternity leave after giving notice to their employer?**

Yes, provided that the employee gives his employer written notice of the required change, whether to the date on which he requires the leave to commence, or to its length. The notice must be at least 28 days notice before the new leave date.

- **What is the status of the employee's contract during paternity leave absence?**

Regulation 12 of the Paternity and Adoption Leave Regulations 2002 confirms that an employee qualifying for paternity leave will be entitled to retain the benefit of their terms and conditions of employment (with the exception of contractual remuneration) and is entitled to return to work.

- **Is an employee entitled to paid paternity leave and unpaid parental leave?**

Yes. The right to paid paternity leave is in addition to any parental leave rights. This means that provided the employee qualifies for both types of leave, in the first year of the child's life an employee could have a total of six weeks absence from work, two paid at the statutory rate and four weeks unpaid. (There may be more favourable contractual provisions that apply). See also our Flexible working, parental rights and family-friendly provisions FAQ.

- [Go to FAQ](#)

When additional paternity leave becomes available (see the question below on future developments), this will also be in addition to, not instead of, unpaid parental leave.

- **ADOPTION: Which employees qualify for adoption leave?**

The essential requirements for qualifying for adoption leave are that an employee must:

- be newly-matched with a child for adoption by an approved adoption agency, and
- have worked continuously for the same employer for 26 weeks leading into the week in which they are notified of being matched with a child for adoption (the 'matching week') (See question on continuity of employment in our Discipline and grievances FAQ)
- be the only partner taking adoption leave.
- [Go to Discipline and grievance procedures FAQ](#)

(To check if an individual enjoys employee status, see our Employee status FAQ).

- [Go to Employee status FAQ](#)

The system essentially mirrors the maternity leave provisions - see the question above on maternity leave, but note that:

- Adoption leave is not available to both parents. If one partner is eligible for adoption leave and pay, the other may take paternity leave and pay.
- The entitlement to adoption leave applies to partners of the same sex.
- An employee must be able to demonstrate that they will have responsibility for the upbringing of the child it does not matter if they are not married.
- A match occurs when an approved adoption agency matches an adopter with a child.

- **What adoption leave must employers provide?**

The Employment Act 2002 introduced paid adoption leave for the first time and the Work and Families Act 2006 extended those rights.

Where an approved adoption agency notifies the adopter of a match with a child, paid adoption and paid paternity leave is available.

Adoption leave essentially mirrors maternity leave in that it is split into two kinds of leave:

- 26 weeks ordinary adoption leave, immediately followed by
- 26 weeks additional adoption leave, giving a total of up to 52 weeks.

The availability of statutory adoption leave depends upon a number of other factors including the fact that a woman's eligibility for additional adoption leave will arise after she has completed 26 weeks' continuous service (see question on continuity of employment in our Discipline and grievances FAQ) ending with the week in which the employee is notified of having been matched with the child. This is in contrast to maternity leave where employees whose babies were expected to be born after 1 April 2007 regardless of length of service will qualify for ordinary and additional maternity leave totalling 52 weeks.

- [Go to Discipline and grievance procedures FAQ](#)

The other parent may take paternity leave which must be taken within 56 days beginning on the date in which the child is placed with the adopter, or at a later date if agreed, as long as it is taken within 56 days of the placement date.

Further guidance on adoption leave and pay is available on the Department for Business, Enterprise and Regulatory Reform website.

- [Go to BERR website](#)

- **What notice is an employee required to give to their employer when taking adoption leave?**

An employee must give their employer notice no more than seven days after the date on which they have been notified of having been matched with a child for the purposes of adoption unless this is not reasonably practicable. They need to tell their employer:

- when the child is expected to be placed with them
- when they want to start their adoption leave.

An employer must, within 28 days of receiving the employees notice, write to the employee stating the date the employee is expected to return from adoption leave.

Like maternity leave, an employee is currently required to give at least eight weeks notice of the date on which they intend to return to work if it is earlier than the end of the adoption leave period. No notice is required if the employee intends to return at the end of the full adoption leave period.

The adopter can change the date on which they want the leave to start, provided they give their employer notice (which should be in writing if the employer so requests) at least eight weeks in advance unless this is not practicable.

Likewise, adopters must tell their employees at least 28 days in advance of the date they expect any payment of statutory adoption pay to start unless this is not reasonably practicable.

An employer may request documentary evidence of employees' entitlement to adoption leave. This may be in the form of a letter from the adoption agency giving the name and address of the employee and the date on which a child is to be placed for adoption.

- **What statutory adoption pay and benefits must employers provide during adoption leave?**

The position concerning pay and benefits during adoption leave has some hidden complexities. Before deciding the benefits to include in their adoption policy (or if there is no policy, what should be offered a particular employee) employers should be familiar with the legal position:

- concerning maternity pay and benefits,
- concerning adoption pay and benefits, and
- contained in the sex discrimination legislation.

Many employers choose to offer exactly the same pay and benefits for both maternity and adoption leave and indeed it is probably best practice to do so. However it appears that there are some anomalies between adoption and maternity related pay and benefits which case law or further legislation will have to resolve. The issues are dealt with under separate headings below:

Statutory adoption pay (SAP)

Most adopters will be entitled to statutory adoption pay (SAP) from their employers as long as they have average weekly earnings at or above the Lower Earnings Limit for National Insurance which applied at the end of the matching week.

For matches made both before and after 1 April 2007 the employee must have been working continuously for that employer at least 26 weeks up to the matching week to qualify for SAP. (See question on continuity of employment in our Discipline and grievance procedures FAQ).

- [Go to Discipline and grievance procedures FAQ](#)

The SAP period is 39 weeks at the same rate as standard statutory maternity pay (SMP), £117.18 from 6 April 2008 per week, or 90% of the employees average weekly earnings if this is less than £117.18 (**SMP rates are normally increased in April each year and for the April 2009 rates which were issued since this FAQ was updated see below***).

***For the April 2009 SAP and SMP rates see our Employment law at work data.**

- [Go to Employment law at work data](#)

Measures in the Work and Families Act 2006 intend to further extend the paid period to 52 weeks by the end of this Parliament - see our question below on future developments.

Continuous employment

It may be helpful to note that there is an inconsistency between the qualifying service requirement for provisions relating to maternity leave and pay, and adoption leave and pay. For maternity leave all pregnant employees are entitled to take up to 52 weeks maternity leave regardless of length of service with the employer. However, to qualify for SMP, SAP and adoption leave there is a qualifying service requirement of 26 weeks continuous employment.

The Department of Business, Enterprise and Regulatory Reform has published practical guidance on adoption pay. Information available on the HMRC website.

- [View BERR guidance](#)
- [Go to HMRC website](#)

Benefits

The position with respect to benefits during ordinary adoption leave (OAL) and additional adoption leave (AAL) echoes the position which applies during both periods of maternity leave. The historical distinction between the benefits available to employees on OAL and AAL has been removed in relation to an employee with whom a child is expected to be placed for adoption, where the placement is expected to occur on or after 5 October 2008 (or, in cases of overseas adoptions an adopter whose child enters Great Britain on or after that date).

The position now is that an employee taking AAL is, like an employee taking OAL, entitled to the benefit of (and bound by any obligations arising from) all the terms and conditions of employment which would have applied if the employee had not been absent. This does not include terms and conditions about remuneration. This means that employers should offer holiday entitlement and other contractual benefits such as company cars, gym membership, mobile phone use, and life and health insurance throughout the entire period of adoption leave. In addition under the Social Security Act 1989 employers must maintain 'employment related' benefits such as pension contributions for as long as paid adoption absence continues.

(As with maternity leave the basic historical position was that during the OAL period all contractual rights and benefits (with the exception of remuneration) continued to accrue. During the additional adoption leave (AAL) period the contract remained in existence, but there was no right to contractual benefits unless the employer so specified).

For further information which is applicable to benefits during adoption leave see the question above on what benefits must employers provide during ordinary and additional maternity leave.

- **Can an employee who already lives with their partner's children take adoption leave if they adopt those children?**

Under the Paternity and Adoption Leave Regulations 2002, the only form of leave available in these circumstances (and subject to certain qualifications) would be unpaid parental leave. The reason why the situation seems to be excluded is that the Regulations talk about being newly-matched with a child and this does not cover circumstances where a step-parent is adopting a partner's children.

- **One of our employees is adopting a child from overseas. Do the adoption provisions apply ?**

Yes, specific provision is made where a child is entering the UK for the purposes of adoption on or after 6 April 2003. There are qualifying conditions either:

- 26 weeks continuous service ending with the week in which Official Notification is received, or
- 26 weeks continuous service from commencement with the employer. (See question on continuity of employment in our Discipline and grievances at work FAQ)
- [Go to Discipline and grievance procedures FAQ](#)

'Official Notification' is notification in writing from the relevant domestic authority (usually the Department of Health) that it is prepared to issue a certificate to the overseas authority concerned with the adoption of the child, or has issued a certificate and sent it to that authority, confirming, in either case, that the adopter is eligible to adopt and has been assessed and approved as being a suitable adoptive parent.

The adopting parent (or one of them if a couple are adopting) will be able to take adoption leave and pay. Only one partner of an adopting couple may take the adoption leave; it is for the adoptive parents to decide. The other partner may be entitled to take paternity leave and pay.

An eligible employee may take adoption leave of up to 52 weeks in total and may be entitled to statutory adoption pay for up to 39 weeks of that period. An employee must inform their employer of the intention to take adoption leave within 28 days of receiving the Official Notification, or completing 26 weeks continuous service with the employer whichever is later. Adoption leave in these circumstances cannot begin until the child enters Great Britain and the latest adoption leave can commence is 28 days after that date of entry.

The Paternity and Adoption Leave (Adoption from Overseas) Regulations 2003 contain the relevant provisions. These Regulations extend the protection of the Paternity and Adoption Leave Regulations 2002 to employees who are adopting a child from overseas.

- **As a small employer we are concerned about the costs of maternity, paternity and adoption leave and pay. Can we reclaim them?**

Yes, small employers can reclaim costs in relation to statutory maternity, paternity and adoption pay.

The actual amount that an employer can recover will depend upon their annual National Insurance (NI) liability in accordance with the following table:

Financial Year	Employer's NI liability is:	Recover:
2003 - 2004	Less than £40,000	104.5% of monies paid

2003 - 2004	More than £40,000	92% of monies paid
2004 - 2008	Less than £45,000	104.5% of monies paid
2004 - 2008	More than £45,000	92% of monies paid

- **Are any future developments expected in the area of maternity, paternity and adoption leave and pay?**

Future developments in this area are dealt with under the headings below.

Family-friendly changes

Consultation on changes in the area of maternity, paternity and adoption leave and pay has been extensive and on-going. A ten-year childcare strategy was published in July 2004 followed by a consultation paper in February 2005. The Work and Families Act 2006 and accompanying Regulations have started implementing this strategy.

The Department for Business, Enterprise and Regulatory Reform (BERR) launched a further consultation which closed on 3 August 2007. This consultation focuses particularly on how the additional paternity leave and pay aspects will work in practice.

The outstanding provisions which are expected for babies due on or after April 2010 include the following:

Maternity changes

The most significant change is extending the 39 weeks statutory maternity pay (SMP) and statutory adoption pay (SAP) to 52 weeks. Therefore employers implementing their own contractual scheme will need to ensure that they incorporate provisions which are at least as generous by the time the new legislation comes into force by 2010. Some employers have chosen to offer paid contractual maternity leave for the full 52 weeks already, albeit with some extra 'tie in' contractual provisions designed to ensure the employee returns to work.

Paternity changes

The government has provided the outline of a system of additional paternity leave which will be available following the birth or adoption of a child. This is expected to come into force by 2010 to coincide with the increase in SMP to 52 weeks.

Additional paternity leave will be available in the 12 months following the birth or adoption of a child. The father figure (that is the child's father or the mother's partner with parental responsibilities, including those in a same sex partnership) will only qualify for additional statutory paternity pay if the mother returns to work before her SMP, maternity allowance (MA) or statutory adoption pay period expires. Regulations will specify how much of these periods must remain unexpired.

Points to remember include:

- This leave will probably be in addition to the current paternity leave entitlement that a father or partner has (that is two weeks within the eight weeks following the birth of the child or the child's placement for adoption).
- There will be an extension of entitlement to statutory paternity pay (SPP) for at least part of this additional leave.

- The mother and the father figure can effectively elect which of them should stay at home with the child during the first year.
- It is most likely that there will be a self-certification scheme whereby the mother and father figure certify themselves as eligible for the scheme without the need for the mother's employer or HMRC to be involved in the day to day eligibility aspects of the process.
- HMRC may conduct sporadic compliance checks on some employees and employers and issue sanctions in the form of financial penalties for those who abuse the system.
- The father figure has a maximum entitlement of 26 weeks to care for the child.
- The father figure will only qualify for additional SPP if the mother returns to work before her maternity pay period expires.
- Regulations will specify how much of the mother's SMP, SAP or MA period must remain unexpired.
- Additional SPP will not be payable in respect of a week during any part of which the recipient works for an employer.
- Keeping in touch (KIT) days – in order to improve communication between employers a father figure will be able to work for a number of days during their pay period without losing statutory payments or bringing their leave to an end in the same way as the KIT day system available to mothers.
- Paternity leave will also be extended to cover overseas adoptions.
- There are safeguards to protect a father's right to return to work.

Employers implementing their own contractual paternity scheme now will need to ensure that they incorporate provisions which are at least as generous as the above, or be aware that they will have to change their contractual scheme again in a couple of years once the new provisions are in force.

The Department for Business, Enterprise and Regulatory Reform consultation referred to above considers how the scheme will work best in practice, particularly on whether the proposed:

- self-certification scheme will work (although this would keep the process straightforward for businesses, it would be partially reliant on trust between employers and employees, and
- checklists and new official forms would provide employers with the confidence to administer the scheme effectively themselves.

The Conservatives have also revealed their "flexible" proposals to allow parents to take up to a year's paid leave, and for them to divide it as they choose. Although the proposals have some similarity to the government's plans set out above, the differences include:

- Allowing the parents to decide for themselves how they split the 52 weeks leave.
- Allowing parents to take six months off work simultaneously and be paid double the rate of statutory maternity pay for that period.
- Where parents take the leave separately the Conservative plans involve fathers 'self certifying' to their employer that the mother will be returning to work at the start of the paternity leave, although employers would be allowed to demand proof.

Adoption

There will be further changes following the increase to paid adoption leave of 39 weeks for qualifying matches for adoption made on or after 1 April 2007. To mirror maternity pay these entitlements will also be extended up to 52 weeks by the end of the current Parliament.

Flexible working

For information on changes to flexible working rights see our Flexible working, parental rights and family friendly provisions FAQ.

- [Go to Flexible working, parental rights and family-friendly provisions FAQ](#)

Holiday entitlement

The Government has already increased the current statutory minimum holiday entitlement from four weeks to 24 days and this will increase to 28 days for someone working a five-day week (referred to in the legislation as 5.6 weeks). Many employers who provide paid time off for bank holidays in addition to the current four-week holiday entitlement will not need to implement any changes unless they wish to do so.

- [Go to Working Time Regulations FAQ](#)

European Commission proposal

Although there have been significant changes to the various maternity and paternity rights it appears that further changes may arise as a result of proposals for the revision of the Maternity Leave Directive (EC Directive 92/85/EEC) published by the European Commission in October 2008. Some of these proposals will have minimal impact in the UK, as the existing provisions are already more generous. A summary of the proposals appears below:

- Extension of the minimum length of maternity leave from fourteen to eighteen continuous weeks accompanied by a full salary during this period. (Maternity leave available in the UK already significantly exceeds this period. However the proposals for more pay may have an impact here.)
- Compulsory maternity leave of at least six weeks after childbirth. Women would also not be obliged to take some of their non-compulsory leave before childbirth. (Compulsory maternity leave is currently only two weeks after the birth in the UK and women in some Member States are obliged to take some of their non-compulsory maternity leave before childbirth).
- Women will be able to request written reasons for their dismissal in the six months after childbirth. (Currently women can only ask for these reasons if they are dismissed on maternity leave).
- The right to return to the same job or to an equivalent post and terms and conditions. (This reflects existing provisions in the UK).
- Obligations on employers to consider a mother's request to adapt her working patterns and hours. (This is similar to existing flexible working provisions in the UK).

The Commission is hoping that agreement on the revised Directive will be reached in 2009. Member States will then have two years to implement it into national law.

In the longer term the Commission would also like to improve other forms of family leave such as paternity, adoption and filial (dependence) leave.

Further information on the proposals is available on the Europa website.

- [Go to Europa website](#)

For details of developments since this update see our Recent developments section.

- [Go to Recent developments](#)

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