



# Leigh-on-Sea Town Council

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Chairman: Cllr Pat Holden  
Vice Chairman: Cllr Carole Mulroney  
Town Clerk: Paul Beckerson



REPORT 1773/F&GP

## MATERNITY POLICY

### 1. Aim

The aim of this policy is to explain an employee's entitlements to maternity leave, statutory and occupational maternity pay and to explain the steps that need to be taken by an employee and the Town Clerk before and during maternity leave.

### 2. Scope.

This policy applies to all employees of Leigh-on-Sea Town Council on permanent, temporary and fixed term contracts, whose babies are due to be born on or after 1st April 2007 as shown on the MATB1 certificate and whose terms and conditions are set out in the Scheme of Conditions of Service of the National Joint Council for Local Government Services (the 'Green Book').

### 3. Key Information.

Employees within the scope of this policy are entitled to the following benefits:

- 52 weeks maternity leave, which must be taken as a continuous block.
- The right to return to their job or a similar job on terms and conditions no less favourable, at the end of their maternity leave
- Paid time off for antenatal care.
- Statutory maternity pay and/or occupational maternity pay, subject to meeting certain qualifying criteria.

These are explained in more detail throughout this document.

### 4. Entitlement to Maternity Leave.

All pregnant employees are entitled to 52 weeks maternity leave, regardless of their length of service or hours worked. This must be taken as a continuous block. The maternity leave is split into two parts, which attract different employment rights. The first 26 weeks leave is referred to as ordinary maternity leave (OML) the subsequent 26 weeks period is referred to as additional maternity leave (AML)

#### Employment rights during ordinary maternity leave (OML):

- During OML the employee is entitled to benefit from all their normal terms and conditions of employment with the exception of pay.

- This period is counted as continuous service for calculation of statutory employment rights, and other contractual payments relating to their length of service. This means the employee continues to accrue annual leave and this period is included in the calculation of entitlement to sick pay.
- On return from OML an employee is entitled to return to the same job on the same terms and conditions as before her leave began.
- If there has been a re-grading or pay award applied to her post during the period she was on OML then she is entitled to receive these benefits as if she hadn't been away.
- OML also includes 2 weeks compulsory maternity leave, which immediately follows the birth of the employee's baby and the employee is not permitted to work or return to work during this period.

### **Employment rights during additional maternity leave (AML)**

- The right to benefit from all normal contractual terms and conditions of employment in the ordinary maternity leave period does not necessarily continue throughout the additional maternity leave period.
- Continuity of employment is preserved through AML for the purpose of calculating entitlement to statutory employment rights (such as redundancy, unfair dismissal rights, and notice requirements).
- The period of AML will be treated by Leigh-on-Sea Town Council as continuous for the purpose of calculating contractual annual leave and contractual sick pay. This means the employee continues to accrue annual leave and this period is included in the calculation of entitlement to sick pay.
- However some benefits such as pensions will be different during the AML. If there is a period of unpaid maternity leave during this time that unpaid period of leave may not be treated as continuous service and instead the service before and the service after this additional maternity leave period will be joined together. Employees are given the option to make pensions contributions during such a period of unpaid leave so that the period counts in full for pension purposes. (see section 8 for further details).
- On return from AML the employee is entitled to return to the same job on the same terms and conditions before her leave as if she had not been absent. If this is not reasonably practicable then she should be offered a similar job on conditions that are no less favourable.

### **5. Maternity Pay.**

There are two types of maternity pay and these have different qualifying criteria. An employee may qualify for none, one or both of the entitlements set out below. An employee's entitlement to maternity pay will be closely related to their length of service at certain key dates a number of weeks before the date the baby is due to be born (this date is stated on the MAT B1 certificate which is provided by a doctor or a midwife)

#### **Statutory Maternity Pay (SMP) – The basic statutory maternity pay scheme provided by the Government**

To be entitled to statutory maternity pay, 15 weeks before the expected week of childbirth (EWC) the employee must:

- Still be employed by Leigh-on-Sea Town Council
- Have at least 26 weeks continuous service with Leigh-on-Sea Town Council
- Have average weekly earnings that are not less than the lower earnings limit for national insurance contributions.
- SMP is paid for a total of 39 weeks. This is split into two levels of payment.
- For the first 6 weeks of maternity leave the payment of SMP equals 90% of the employee's **average** weekly earnings, this is known as higher rate SMP.
- For the subsequent 33 weeks employees are entitled to receive a fixed rate payment known as standard rate SMP. This fixed rate changes regularly and the prevailing rate can be found at this link [www.direct.gov.uk](http://www.direct.gov.uk)

SMP payments start when an employee begins her maternity leave. They will continue for a period of 39 weeks unless the employee returns to work before that time.

Employees who do not fulfil the qualifying conditions for SMP may be entitled to Maternity Allowance (MA) or other benefits, which are controlled and paid by the Department for Work and Pensions. Employees in this position will be given a form SMP1 by Pay and Employment Services to take to their Local Job Centre Plus.

### **Occupational Maternity Pay. (OMP) – An enhancement to the statutory scheme provided by Leigh-on-Sea Town Council**

To be entitled to OMP an employee must:

- Have one year's continuous local government service, at the 11th week before the EWC:  
and
- Return to local government service for a minimum period of 3 months at the end of her maternity leave. (If she does not she will be required to repay any half pay paid to her.)

Local government service for the purposes of this policy refers to service with an organisation that is covered by the Redundancy Payments (Modification) Order Act. Please click on the attached link to find out which organisations are covered by this order - <http://www.lge.gov.uk/lge/aio/54792> .

Occupational maternity pay is paid for a total of 18 weeks and is split into two levels of payment.

- 6 weeks at 90% of a weeks pay. (If the employee also qualifies for statutory maternity pay, and this amount is more than her SMP payment, then her OMP payment is **inclusive** of the SMP entitlement. The employee does **not receive both**.)
- Followed by 12 weeks at half pay. If the employee also qualifies for statutory maternity pay this payment is made in **addition** to half pay. (Employees who qualify for OMP and SMP will not receive more than full pay when the two are combined.)

Where an employee is entitled to both statutory and occupational maternity pay the entitlements will run concurrently.

An employee can choose to make the half pay last for longer by having it paid over 20 weeks at a rate of 3/10th of pay. The amount received overall is the same. If an employee is not sure whether they will return to work, they can ask for the half pay to be withheld until they have made a decision.

Employees **not** intending to return to work after maternity leave may be entitled to SMP and/ or only the first 6 weeks of OMP at 90% of a week's pay if they meet the qualifying criteria.

## **6. During Pregnancy**

### **Notifying Management.**

An employee who discovers she is pregnant should notify the Town Clerk as soon as is reasonably practicable. The purpose of this is to:

- Trigger the employee's entitlements during this part of pregnancy.
- To enable the Town Clerk to take steps to protect the health, safety and wellbeing of the employee and the unborn child.
- To enable the Town Clerk and the employee to start planning for her maternity leave.

The Town Clerk must respect an employee's wishes about how and when she would like to tell her colleagues that she is expecting a baby. However employees should also be aware that for health and safety and business planning reasons, the Town Clerk may need to advise other colleagues about the employee's pregnancy.

### **Ante Natal Care.**

Pregnant employees have the right to paid time off to attend antenatal care. This includes time off to attend regular appointments, antenatal classes and 'Parentcraft' and relaxation classes if these are recommended by a doctor or a midwife.

An employee is not required to provide evidence of her first appointment. However the Town Clerk may ask an employee to produce evidence of subsequent appointments.

### **Risk Assessments and Health and Safety.**

Once the Town Clerk has been notified that an employee is pregnant, they are responsible for carrying out a risk assessment and taking steps to minimise any identified risk for the employee or her unborn child in accordance with the Corporate Code of Practice for New and Expectant Mothers.

This assessment should be regularly reviewed throughout the pregnancy, to take account of changing risks as the pregnancy develops. This includes providing a suitable place to rest, whilst an employee is at work if she requests it.

If a risk cannot be avoided, changes to working conditions must be considered. Such changes might be to alter the employee's hours of work or to offer suitable alternative work.

### **Sickness absence during pregnancy**

If an employee is absent from work due to sickness (including pregnancy related sickness) during her pregnancy this will be counted as sick leave as normal and the usual sick pay provision will continue to apply. Pregnancy related sickness should be disregarded for the purposes of managing absence under the Capability Policy.

It is recognised that "morning sickness" is a common symptom of pregnancy and some employees find that it affects them at only at certain times of the day. Where business requirements permit, it may be possible for the employee and Town Clerk to agree to temporarily adjust her working times to accommodate this, and avoid the need for the employee to be absent from work.

The only exception to the above is when an employee falls sick for a pregnancy related reason during the final four weeks before her EWC. In these circumstances her maternity leave and pay will be triggered immediately and she must commence maternity leave.

Non-pregnancy related sickness during this period will be counted as sick leave as normal and the usual sick pay provisions will continue to apply.

## **7. Applying for maternity leave.**

Prior to applying for maternity leave, an employee should discuss her plans for commencing maternity leave with the Town Clerk, to enable them to make arrangements to cover her work whilst she is away.

The earliest time maternity leave can start is the beginning of the 11th week before the week the baby is due to be born in, but an employee can work up to the day the baby is born if she chooses.

An employee is encouraged to apply for maternity leave by the 15th week before the EWC. However the latest date an employee should apply for maternity leave is 28 days before she intends to commence maternity leave. This is done through completing form MAT/L1, which is attached at the end of this document. An employee may alter the date she wants her maternity leave to commence by following the notification periods set out below.

Once completed the employee should give the Town Clerk the MAT/L1 form and form MAT B1. The Town Clerk should take a photocopy for his/her own records, before both **original** documents are forwarded to Pay and Employment Services.

Maternity Pay cannot be paid until Pay and Employment Services receive the MAT B1 certificate.

### **Starting Maternity Leave earlier or later than notified.**

If the employee wishes to alter the planned date she wants her maternity leave to start she must notify the Town Clerk of the new date:

- 28 days before her maternity leave was originally due to start:
- or
- 28 days before the new date she wants to start her leave.

Whichever of these two deadlines is the earliest.

### **Babies born before planned maternity leave starts**

If an employee's baby is born before the date she has notified the Town Clerk that she intends to start maternity leave, her maternity leave will commence automatically the day after the birth. She must provide confirmation to the Town Clerk of date her baby was born as soon as is reasonably practicable.

## **8. During Maternity Leave.**

### **Pension Contributions**

During any period of paid maternity leave (including any period when only Statutory Maternity Pay is paid), an employee must continue to pay pension contributions on the actual pay they are receiving. Pension benefits will continue to accrue as if they were working normally on full pay.

If an employee intends to return to work after maternity leave, the employee can choose to pay contributions for any period of unpaid maternity leave beyond the maternity pay period so that the period of absence will count in full for pension purposes. The contributions will be calculated on the rate of pay that the employee was receiving immediately before she commenced the period of

unpaid maternity leave and will not be deducted until the employee returns to work. If an employee elects not to make contributions then the period will not count towards pensionable service.

Any additional voluntary pension contributions will remain payable throughout maternity leave. They are calculated on the rate of pay she would have received if she were not on maternity leave. The additional membership continues to accrue in full.

To make contributions to cover the unpaid period the employee must advise the ECC Pensions Team in writing within 30 calendar days of returning to work, that she wishes to make these contributions.

### **Annual Leave**

Whilst an employee is on maternity leave her entitlement to annual leave still continues to accrue and her service is considered to be continuous for the purposes of calculating annual leave.

Employees continue to accrue annual leave during OML and AML. Employees are also entitled to accrue bank holidays during OML and AML. For part-time employees, accrual of bank holidays will be on a pro rata basis using the same principles as stated in the 'Green Book' (i.e. there will be a percentage reduction of entitlement to bank holidays depending on the employees contracted hours).

It is important that employees agree with the Town Clerk in advance how they intend to take their annual leave, as there is no right to carry over in to the next annual leave year more than the number of days stated in the employee's contract of employment.

With the prior agreement of the Town Clerk annual leave may be taken before the employee commences maternity leave, and/or immediately after maternity leave has finished. Annual leave cannot be taken during maternity leave.

### **Contact whilst on Maternity Leave**

Whilst they are on maternity leave the Town Clerk should maintain reasonable contact with the employee to keep her updated about developments at work and matters concerning her job. The Town Clerk and employee should agree the level and frequency of contact prior to the employee commencing maternity leave.

The Town Council has an obligation to keep an employee informed of any other information relating to her job that she would normally be made aware of if working. This may fall outside of the individual agreement referred to above.

### **Keeping in Touch Days**

Whilst on maternity leave an employee may not carry out any work, without bringing her maternity leave to an end. The only exception to this is the 'Keeping in Touch' Days.

To assist an employee with her return to work, she may by **mutual agreement** work up to 10 'Keeping in Touch' (KIT) days during the unpaid period of her maternity leave to help her prepare to return to work. A KIT day can be used to attend training sessions or meetings (providing these are related to the employee's job) as well as carrying out aspects of the employee's job. In exceptional circumstances a KIT day may be worked during the paid period of maternity leave.

There is no obligation for an employee to work a KIT day if it is offered, likewise an employee cannot insist that LTC provide them with a KIT day.

Any work done on a particular day is counted as using one KIT day. For example, if an employee agrees with the Town Clerk that she will attend a training course and the course lasts two hours, this is counted as using up one of her KIT days. Likewise another employee works a night shift although this stretches over two dates this is counted as one KIT day.

An employee working a KIT day will be paid their normal hourly rate of pay for the hours actually worked. Claims for payment must be made in writing and authorised by the Town Clerk. The employee must clearly state the date worked, and the actual number of hours worked on that day (lunch breaks are excluded). If a KIT day is worked during the paid period of maternity leave an employee will be paid their maternity pay, plus the hours worked. The total payment will be limited to no more than what they would receive for a normal full day's pay.

KIT days do not extend the period of maternity leave. Payment for KIT days will always be made in arrears at the next available payroll.

## **9. Returning to work.**

### **Returning to Work as Notified**

An employee does not need to give notice that she wishes to return to work if:

- she has elected to take the full 52 weeks maternity leave:

or

- when she applied for maternity leave, she specified an earlier return date and she returns on this date.

At the end of her maternity leave an employee is entitled to return to the job in which she was employed under her original contract of employment, and on terms and conditions not less favourable than those, which would have been applicable to her if she had not been absent.

The only exception to this is where a woman returns to work during or after her additional maternity leave, and it is not reasonably practicable for her to return to her old job. In this case she should be offered a similar job on terms and conditions no less favourable to her original job.

There is no automatic entitlement to return to work on a part time basis. However an employee is entitled to apply for a change in her working pattern/hours and to have this request seriously considered. Such a request should only be denied if there are clear business reasons. Please refer to the policy on Statutory Requests to work on a Flexible Basis for further information.

If an employee is not able to return to her old job for reasons of redundancy, she will be entitled to be offered a suitable alternative vacancy where one exists. Any such offer should be of work that is suitable and appropriate to the employee and this means the place, capacity and terms and conditions of employment must not be substantially less favourable than if she had been able to return to her original job.

Suitable alternative employment may also be offered where there are other exceptional circumstances other than redundancy that necessitate a change in the job in which she was previously employed and would have occurred had the employee not been absent.

### **Returning to work earlier or later than originally notified**

If an employee wishes to return to work earlier than she originally notified she should discuss this with the Town Clerk as soon as possible. If she is in her OML she should confirm her intention in

writing and this must be given to the Town Clerk 7 days before she intends to return, this period is extended to 21 days if she is in her additional maternity leave period.

Where an employee gives less than the required notice period, her return may be postponed to allow for the required 7 or 21 days notice, but not beyond the end of the maternity leave period.

If an employee wants to take more maternity leave than she anticipated she should discuss this with the Town Clerk as soon as possible. She must notify the Town Clerk in writing no later than 8 weeks before she was due to return and advise of the new return to work date. Maternity leave cannot be extended beyond 52 weeks.

#### **Return to work is delayed because of sickness absence.**

If an employee is unable to return to work due to sickness at the end of her maternity leave period, she should notify the Town Clerk through the normal sickness absence reporting procedure. She will be required to provide medical certificates as normal. This absence will be treated as sickness absence and the usual sick pay provisions will apply.

#### **Taking annual leave or parental leave immediately following maternity leave**

An employee can agree with the Town Clerk to take annual leave (or parental leave) immediately following the end of maternity leave. The Town Clerk needs to ensure that they have maintained proper records and the Wage Service Providers are informed so they can record the absence appropriately and ensure accurate pay calculations.

#### **Return to work is delayed due to an interruption to work by industrial action or other unforeseen circumstances not related to the employee.**

If an employee is prevented from returning to work at the end of her maternity leave because of industrial action or other unforeseen circumstances not related to the employee, she may instead return to work when work resumes, or as soon as is reasonably practicable thereafter.

#### **Risk assessments and Health and Safety on Return from Maternity Leave**

The Town Clerk is responsible for carrying out a second risk assessment where an employee returns to work within 6 months of giving birth or if they continue to breastfeed upon their return. The rights and responsibilities outlined previously in 'Risk Assessments and Health and Safety' still apply.

Employees intending to continue breastfeeding upon return to work must notify the Town Clerk as soon as possible so that appropriate arrangements can be organised. The Health and Safety Executive recommends employers to provide a safe, healthy and private environment for breastfeeding mothers to express and store milk. The Town Clerk should accommodate this where reasonably practicable and safe (toilet facilities are not suitable for this purpose).

### **10. Problems arising during pregnancy**

Although the majority of pregnancies progress without any problems, premature births, miscarriages or very rarely stillbirth do occur from time to time.

The following information provides guidance should any of these circumstances arise.

#### **➤ Premature Birth**

The premature birth of a baby can be a difficult time for employees who are either the parents or close relatives. Time off for the mother will be in accordance with this Maternity Policy with maternity leave commencing the day after the birth of the baby.



Requests for time off from other family members will only affect a small proportion of employees at any one time. It is nonetheless important to handle each case with sensitivity. Leave for this purpose is likely to be covered by the variety of leave provisions in Work Life Balance section of the HR guide. Flexible working options could also be considered.

➤ **Miscarriage and Stillbirth**

The miscarriage or stillbirth of a baby, regardless of when it occurs is bereavement and the employee may experience a variety of emotions. They will require understanding from the Town Clerk and colleagues.

The stillbirth or death of a baby before the 24th week of pregnancy is classed as a miscarriage and any absence following the miscarriage would need to be covered by a sickness certificate if the employee is absent for more than 7 calendar days.

A stillbirth from the 24th week of pregnancy onwards is classed as a 'birth' and the full provisions of this maternity policy in terms of pay and leave will apply.

**11. Maternity and unfair dismissal provisions**

All employees are protected against unfair dismissal for reasons of pregnancy or childbirth, regardless of hours worked or length of service.

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