



Engage MAT

Maternity Scheme – Teaching Staff

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Introduction

The scheme outlined in this policy and procedure document covers the benefits available for teachers on maternity leave.

national occupational scheme provisions (from the Burgundy book)
some locally agreed provisions

Schools and academies must comply with the statutory scheme. All schools must comply with the nationally agreed schemes and all academies, other than those who have formally moved away from the Burgundy book provisions, must also follow the national schemes. All schools must follow locally agreed provisions but [academies may choose whether these locally agreed provisions form part of their local policy \(other than for staff with TUPE protection\)](#).

Other school/academy policies may detail additional entitlements for the employee or employee's partner to maximise the time off they can have with their child. These additional entitlements include:

- shared parental leave
- paternity leave
- flexible working
- parental leave

1. Scheme application

The occupational maternity scheme shall apply to all pregnant teachers regardless of the number of hours worked per week. The scheme applies to all employees employed under teachers' terms and conditions of employment, for example qualified teachers, sessional tutors and unqualified teachers.

If you are unsure whether this scheme applies to you please contact Educator Solutions HR Services (01603 307760 or HRenquiry@educatorsolutions.org.uk).

2. Initial obligations on the teacher

To benefit from the scheme the teacher must:

- (a) Continue to be employed by the employer, (whether or not at work) immediately before the start of her absence.
- (b) Notify the employer in writing by completing *Maternity leave and pay form – teachers F208f* on HR InfoSpace, as soon as practicable, but not later than 15 weeks (unless there is good cause) before the expected week of childbirth (EWC) stating:
 - i. that she wishes to be absent for maternity
 - ii. that she is pregnant;
 - iii. the expected week of childbirth, by means of a medical certificate MATB1
 - iv. the intended date of the beginning of her absence

If requested by the employer, she must produce a certificate from a registered medical practitioner or a certified midwife stating the expected week of childbirth.

The beginning of the teacher's absence shall be no earlier than 11 weeks before EWC.

- (d) It will also be possible for the teacher to change the date her leave commences provided she gives 28 days' notice in writing.
- (e) Declare in writing, at the time of notification of her intended absence (under (b) above), that she intends to return to work with her employer (if that is her intention and if she is able to return to work with her employer).

- (f) Not remain at work if certified medically unfit to do so (taking into account the provisions of the Draft Management of Health and Safety at Work (Amendment) Regulations 1994).
- (g) Following the employees notification under sub para (c) the employer shall write to the teacher within 28 days of receiving the notice stating her expected date of return from Maternity leave.

3. Ante-Natal care

Any pregnant teacher has the right to paid time off to attend for ante-natal care and must produce evidence of appointments if requested to do so by her employer. Antenatal care is defined as visits to a registered Medical Practitioner, Midwife or Health Visitor. Antenatal care may include relaxation classes and parent craft classes.

Except for the first appointment, the school requires all employees to provide a certificate from a registered practitioner, midwife or health visitor confirming an appointment has been made.

The provision is different for partners. See the Trust's Paternity leave and pay scheme for further information.

4. Maternity leave and pay

The teacher is automatically entitled to a period of 26 weeks ordinary maternity leave and 26 weeks additional maternity leave regardless of her hours of work or length of service, where the appropriate notice has been given. This means she can remain on maternity leave for a total period of up to 52 weeks. She may receive maternity allowance (MA), statutory maternity pay (SMP) and/or occupational maternity pay (OMP) during this period depending on the eligibility criteria satisfied.

Statutory Maternity Pay (SMP)

SMP is paid by the employer on behalf of the Department for Work and Pensions. To get SMP an employee must satisfy all of the following conditions:

- (a) Have been continuously employed by their current employer for at least 26 weeks, at the start of the 15th weeks before the baby is due.
- (b) Have average weekly earnings of not less than the lower earnings limit for the payment of National Insurance contributions in the 26 weeks up to and including the 15th week before the expected week of confinement.

- (c) Still be pregnant at the 11th week before the week the baby is due or have had the baby by that time.
- (d) Have provided medical evidence of the date the baby is due at least 28 days before the maternity absence is due to start, and
- (e) Have stopped work.

If an employee is not entitled to SMP the Payroll Section will issue her with a form SMP1 explaining why she is not entitled to SMP and how she can claim for state maternity allowance from Job Centre Plus.

SMP is subject to PAYE, income tax and NI contributions.

- 4.1 Teachers with at least 26 weeks continuous service with their current employer at the beginning of the 15th week (known as the qualifying week) before the expected week of childbirth (EWC) and at least one year's continuous service as a teacher with one or more Local Authority (LA)¹ at the beginning of the 11th week before the EWC.

Teachers who satisfy these conditions will have the full statutory entitlements the full occupational entitlements.

The combined effect of these entitlements, provided the eligibility criteria are satisfied is:

26 weeks ordinary and 26 weeks additional maternity leave paid as follows:

- first 4 weeks of absence, full pay, inclusive of SMP or MA;
- next 2 weeks 90% of a week's salary, inclusive of SMP or MA;
- next 12 weeks, half pay plus flat rate SMP or MA;
- next 21 weeks, flat rate SMP or MA

The remaining 13 weeks of additional maternity leave will be unpaid.

- 4.2 Teachers with less than 26 weeks continuous service with their current employer at the beginning of the 15th week before the EWC, but at least one year's continuous service as a teacher with one or more LAs² at the beginning of the 11th week before the EWC.

Teachers who satisfy these conditions will have the full occupational entitlements, but will not be entitled to SMP (they may, however, be entitled to Maternity Allowance (MA)).

¹ Includes Academy service, where the Trust follows Burgundy Book conditions

² As above

Their entitlement, providing the eligibility criteria are satisfied is:

26 weeks ordinary and 26 weeks additional maternity leave paid as follows:

- first 4 weeks on full pay, inclusive of MA if eligible;
- next 2 weeks on 90% of a week's salary, inclusive of MA if eligible;
- next 12 weeks on half pay plus MA if eligible;
- next 21 weeks MA if eligible.

The remaining 13 weeks of additional maternity leave will be unpaid.

- 4.3 Teachers with at least 26 weeks continuous service with their current employer at the beginning of the 15th week before the EWC, but less than 1 years continuous service as a teacher with one or more LAs³ at the beginning of the 11th week before the EWC.

Teachers who satisfy these conditions will have the full statutory entitlements, will not qualify for the occupational entitlements.

Their entitlement, providing the eligibility criteria are satisfied is:

26 weeks ordinary and 26 weeks additional maternity leave paid as follows:

- first 6 weeks, higher rate SMP equal to 90% of a week's salary or MA if eligible;
- next 33 weeks, SMP at the lower rate or MA, if eligible.

The remaining 13 weeks of additional maternity leave will be unpaid.

- 4.4 Teachers with less than 26 weeks continuous service with their current employer at the beginning of the 15th week before their EWC and less than 1 years continuous LEA service at the beginning of the 11th week before their EWC.

Teachers who fall under these definitions will not qualify for any occupational entitlements. The statutory entitlement will be for 26 weeks ordinary maternity leave and 26 weeks additional maternity leave, for which SMP will not be payable. There may, however, be an entitlement to MA.

- 4.5 The basic principle of the leave provisions is that teachers have a right to choose when to start their maternity leave. The exceptions are:

- (i) where the teacher is absent from work “wholly or partly because of a pregnancy related reason or childbirth” after the beginning of the 4th

³ As above

week before the expected week of childbirth. In these circumstances, unless it is a very minor illness and she is expected to return within 1 or 2 days, maternity leave and pay will be automatically triggered the day after the first day of absence or childbirth; and

- (ii) where the baby is born early, before maternity leave commences, she must, if reasonably practicable, give notice of the date she had the baby within 28 days. In these circumstances, the day after the day of childbirth should be regarded as the first day of maternity leave and OMP and/or SMP will be paid from the day following the day of childbirth.
- (iii) If the baby is stillborn before the 24th week of pregnancy i.e. earlier than the 16th week before the expected week of birth, SMP/MA/OMP is not payable. Instead the sick pay scheme applies. If the baby is still born after the start of the 16th weeks before the expected week of childbirth then the provisions of the maternity scheme for leave and pay will apply, as it would for a live birth. It should be noted that if a baby survives for only an instant, it is a live birth not a stillbirth.

In these situations the employee must notify her employer in writing as soon as reasonably practicable that she has given birth or that she is absent wholly or partly because of pregnancy.

- 4.6 In the event of the teacher not being available, or being unable, to return to her job for the required period, she shall refund such sum after the first six weeks' payment as the employer at their discretion may decide. Payments made by way of SMP are not refundable.

5. Subsequent obligations on the teacher

- 5.1 The teacher's subsequent obligation is to return to her job for at least 13 weeks (including periods of school closure) as a qualifying condition to occupational maternity pay after 6 weeks' absence (see paragraph 6 below). This requirement may be reduced at the discretion of the employer (see paragraph 7 below for entitlement to pay).
- 5.2 Where the employer agrees, a full-time teacher may return to work on a part-time basis for a period which equates to 13 weeks of full-time service. Similarly, where the employer agrees, a part-time teacher may return to work on a different part-time basis for a period which equates to 13 weeks' part-time service relating to her previous contract.

- 5.3 The 13 week period (or part-time equivalent) starts from the date the teacher returns to work or the date during the school holiday on which the teacher is declared medically fit to be available for work.
- 5.4 If the teacher does not return to work, or fails to complete the 13 week obligation period (or part-time equivalent) she will normally be required to repay any 12 weeks half pay paid to her.

6. Right to return to work

- 6.1 Subject to sub-paragraph 6.2 below, a teacher's right to return to work is a right 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. "Job", for this purpose, means the nature of the work, which she is employed to do and the capacity and place in which she is so employed.
- 6.2 Where it is not practicable by reason of redundancy for the employer to permit her to return to work in her job as defined in sub-paragraph 6.1 above, the teacher shall be entitled to be offered a suitable alternative vacancy where one exists, provided that the work to be done in that post is suitable to her and appropriate to the circumstances, and that the capacity and place in which she is to be employed and the terms and conditions of employment are not substantially less favourable to her than if she had been able to return to the job in which she was originally employed.
- 6.3 Returning to work on a part-time basis
Some women wish to return to work on reduced hours after their period of maternity leave. There is no automatic right to do this but women do have a right to request it. See *Flexible working guidance (G204)* on HR InfoSpace for further information. Employers have a statutory duty to give such requests full consideration and have an obligation to formally respond to the request. It follows that Headteachers should assess the practicalities of allowing a return on this basis and not unreasonably refuse it. Headteachers will be required to justify any decision not to allow such a return.

7. Exercise of the right to return to work

- 7.1 If she wants to, the teacher can return to work before the end of her full maternity leave entitlement period. An employee needs give no further notice of her date of return unless she wishes this to be earlier than the natural end of the 52-week (one year) period. In the event of wishing to return earlier she must give at least 21 days notice to her employer.

- 7.2 In cases where the notice given is less than this, the employer can postpone the return to ensure the minimum period above, as long as this does not go beyond the end of the maternity leave period. Any postponement is conditional upon the employee having been issued with the required notice of expected date of return within the 28 day limit (see 2 (g)). Where no early or prior notice of a date of return is given the employee will be expected to return to work at the end of the 52 week maternity leave period.
- 7.3 Where a teacher is unable to return to work at the end of her period of maternity leave due to sickness, the sick pay scheme as set out in section 4 of the Conditions of service for school teachers (Burgundy book) shall apply to such absence.
- 7.4 A teacher is able to return from maternity leave during a school holiday period, providing she has met any conditions as outlined in this scheme and is medically fit to do so.
- 7.5 If a teacher decides **before** she goes on maternity leave that she is not going to return to work and therefore not receive OMP, the teacher should notify her Headteacher/Principal in writing that she wishes to terminate her appointment. Notice should be given at least 21 days before she wishes her employment to come to an end, or as soon as is reasonably practicable. The appointment shall then terminate:
- Either with the agreement of the teacher, or if because of her pregnancy she is incapable of doing her own or other suitable work, at a date 11 weeks prior to the EWC
 - Or, at some other date less than 11 weeks.

If the teacher decides **after** she has gone on maternity leave that she is not going to return to work she should give contractual notice in the usual way. However, the Headteacher can agree with the teacher to shorten the notice period, avoiding the teacher potentially having to return to work for a short period of time when this might not be practicable or the intention of the teacher. The teacher should give as much notice as possible. In these circumstances, where OMP has already been paid the teacher will be subject to para 5.4.

- 7.6 As a matter of good practice Headteachers are advised to maintain reasonable contact with their employees throughout their maternity leave, to let them know of changes occurring in the workplace and to keep informed about changes to the employee's plans. There should be no pressure put on the employee to return sooner than the 52 weeks maternity leave period. It is the prerogative of the employee to decide if she will return earlier. This contact with the employee does not count towards the 10 KIT days.

Headteachers will need to inform payroll when an employee's maternity leave ends, even if they are not returning to work straight away e.g. due to being on sick leave.

Customers whose payroll provider is Norfolk County Council can do this by email. It will ensure the employee is paid correctly.

Academies: hrncceexternals@norfolk.gov.uk

Please include the date of return from maternity leave and if there are any changes e.g. changes to hours.

8. Relationship with sickness

Maternity leave will not be taken into account for the calculation of the period of entitlement to sickness leave.

9. Definitions

- 9.1 For the purpose of this scheme, a week's pay shall be treated as the amount payable to the teacher under the current contract of employment. If there are significant variations in the teacher's salary, the average salary over the 12 weeks preceding the date of absence shall be treated as a week's salary.
- 9.2 Confinement means the birth of a living child, or the birth of a child whether living or dead after 24 weeks of pregnancy.
- 9.3 Nothing in the above provisions shall be construed as providing rights less favourable than statutory rights.

10. Other absences

- 10.1 If in the early months of pregnancy a teacher is advised by an approved medical practitioner to absent herself from school because of the risk of rubella, she shall be granted leave with full pay, provided that she does not unreasonably refuse to serve in another school where there is no such undue risk.
- 10.2 Absence on account of illness which is attributable to the pregnancy, including absence on account of miscarriage, and which occurs outside the period of absence for maternity, shall be treated as ordinary absence on sick leave and shall be subject to the conditions normally governing such leave, provided it is covered by a doctor's statement.

11. Keeping in Touch Days

- 11.1 Keeping in Touch (KIT) Days are a statutory entitlement where the individual may work for up to 10 days during their maternity leave without the loss of statutory maternity payments for that week, or their maternity leave being terminated. Both parties must be in agreement of any such work – the individual cannot be required to attend a KIT day, nor is the employee entitled to a KIT day if there is no practicable reason for them to attend the workplace i.e. work activities, training, INSET day, etc. A KIT day cannot take place during the first two weeks following the birth of a child (compulsory maternity leave).
- 11.2 KIT days do not have to be consecutive and can be used for work activities, training or any other activity such as a staff meeting or INSET day, that enables the employee to keep in touch with the workplace. Working for part of a day will count as one day's work. Employees who attend a KIT day will be paid their contractual salary for that day⁴ and any SMP entitlement may be offset against the employee's actual earnings.

A day's contractual pay is calculated by full-time equivalent annual salary + any contractual allowances (annualised) x 1/365.

The *Keeping in touch (KIT) days claim form (F208b)* on HR InfoSpace can be used to make the claim.

12. Teachers' Pension Scheme

Employees who are a member of the Teachers' Pension Scheme, pension contributions will be payable on all payments made to them in the form of SMP, SAP and OMP (but not MA). Service will be counted as reckonable for pension purposes during any paid employment. Service will not count for pension during unpaid adoption/maternity leave. Employees should contact Teachers' Pensions direct if they wish to make voluntary contributions during their period of unpaid maternity leave or if they require guidance regarding this matter.

13. Any Other Provisions

Notice provision for pregnant teachers who do not intend to return to work are set out in paragraph 7 of Section 3 of the Conditions of service for school teachers (Burgundy book). Following a return to work, the normal provisions for termination upon notice in paragraphs 2 and 4 of Section 3 (Burgundy book) shall apply.

⁴ ⁴ KIT days in schools are funded by the central maternity budget, managed by the LA. Academies and Free schools must fund KIT days from their own budget.

It is an employee's responsibility to tell their employer if they go outside the European Economic Area (EEA) or are taken into legal custody. In this event any entitlement to SMP/SAP will automatically cease. In these circumstances, should they come back into the EEA or are released from custody, they will not be eligible to receive SMP/SAP.

Employees should not undertake any other paid employment with your employer during adoption/maternity leave.

14. Contractual benefits

Excess travel

If an employee is receiving excess travel payments, please see the school's Excess mileage policy for further information on what will happen to these payments once they start maternity leave.

Salary sacrifice arrangements

Employees should be aware that if they are participating in a salary sacrifice arrangement e.g. childcare vouchers, or thinking of doing so, payments for maternity pay may be affected due to reductions in national insurance contributions and income tax.

Childcare vouchers

Where the teacher is in receipt of childcare vouchers via salary sacrifice they can either:

- suspend their childcare vouchers during maternity leave.
- continue to receive childcare vouchers during maternity leave providing their occupational maternity pay covers the cost of the vouchers.

The provision of childcare vouchers will be suspended if a teacher's occupational maternity pay does not cover the cost of providing their childcare vouchers. Statutory Payments such as Statutory Maternity Pay cannot be exchanged for childcare vouchers.

Teachers' Pension Scheme

Pension contributions will be payable on all payments made to you in the form of SMP, SAP and OMP (but not MA). Service will be counted as reckonable for pension purposes during any paid employment. Service will not count for pension during unpaid maternity leave. Please contact Teachers' Pensions direct if you wish to make voluntary contributions during your period of unpaid maternity leave or if you require guidance regarding this matter.

Pregnancy and unfair dismissal

It is automatically unfair to dismiss a woman:

- for a pregnancy or pregnancy related reason
- at the end of her general maternity leave because she has given birth or a related reason
- after her general maternity leave because she has availed herself of maternity benefits
- within 4 weeks from the end of her general maternity leave where she is covered by a medical certificate
- where a requirement to suspend on health and safety grounds is the main reason for the dismissal
- where she is prevented from exercising her right to return because of redundancy and she is not offered a suitable alternative vacancy where it is available.
- she is made redundant during her maternity leave and is not offered available suitable alternative employment.

In the above circumstances, employees will be entitled to bring unfair dismissal claims regardless of the hours they work or their length of service.

Where a woman is dismissed at any time during her pregnancy or maternity leave she is entitled to be provided with written reasons for her dismissal (whether requested or not).

However, employers are not prevented from dismissing employees for reasons unconnected to their maternity leave (e.g. for redundancy or misconduct reasons). Where a dismissal would have occurred regardless of the fact that the employee is on maternity leave, such a dismissal will not be automatically unfair. The fairness will be judged according to the reasonableness of the employer's actions. Employees will need two years' service to make an unfair dismissal claim in these circumstances.

Special considerations also apply to redundancy during pregnancy or maternity leave. Where redundancy occurs during the period of paid maternity leave (i.e. the first 39 weeks of leave), the employee is entitled to be offered any existing suitable alternative employment. Suitable alternative employment means work that is suitable for the employee and appropriate for her to do in the circumstances and on terms and conditions, which are not substantially less favourable, than those under her previous contract. The offer must be made before the existing contract comes to an end, to take effect immediately on the ending of the original contract. A trial period will be applicable where redeployment has occurred due to redundancy.

Where the redundancy would take effect in a period of unpaid maternity leave employees retain their right to return within the 52-week period. It is the responsibility of Headteachers to ensure that employees who are absent from work on maternity leave are kept consulted on any restructuring within their departments. This means that regardless of whether the contract of employment continues, women can exercise their right to return. Where redundancy means there is no job for them to return to, the employee is entitled to be offered any existing suitable alternative to coincide with her date of return to work i.e. the end of her period of maternity leave or earlier if she gives 21 days notice of the wish to return before this. As a result of this it is advisable to delay any redundancy dismissal until the employee reaches her date of return. It is only where no suitable alternative vacancy exists at this time that notice is given and a redundancy payment made.

Please contact Educator Solutions HR Services for more information (01603 307760 or HRenquiry@educatorsolutions.org.uk)

15. Health and Safety

Appropriate risk assessments should be undertaken and health and safety implications considered to ensure the pregnant employee can continue to work safely and all aspects of health and safety requirements are complied with.

16. Data protection

When managing an employee's maternity leave and pay, the school processes personal data collected in accordance with its data protection policy. Data collected from the point at which an employee informs the school that they plan to take maternity leave is held securely and accessed by, and disclosed to, individuals only for the purposes of managing their maternity leave and pay. Inappropriate access or disclosure of employee data constitutes a data breach and should be reported in accordance with the school's data protection policy immediately. It may also constitute a disciplinary offence, which will be dealt with under the school's disciplinary procedure.

17. Associated documents

- New and expectant mothers policy P640
- Guidance on assessing risks for new and expectant mothers G640
- Maternity leave and pay form (MP1) – teachers F208f
- Keeping in touch (KIT) days claim form F208b
- Staff return form F231o
- Flexible working guidance G204