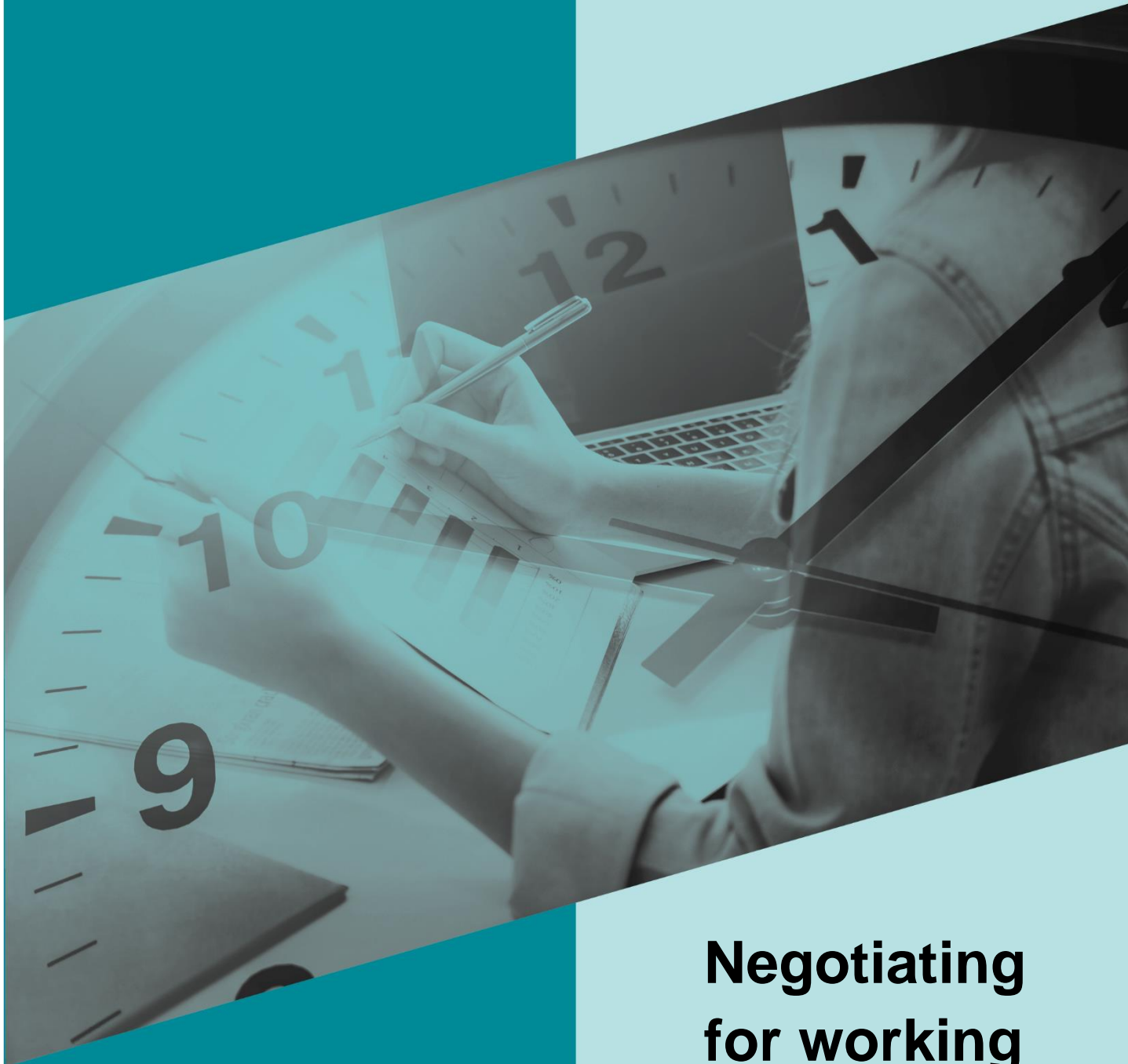


**Bargaining Support Group**



**Negotiating  
for working  
parents**

**UNISON**  
*the public service union*

## How to use this guide

This guide has the following sections that you can dip into as relevant in your workplace. The aim is to inform you for negotiations with employers on improving terms and conditions whilst ensuring that you are aware of the basic legal requirements and rights.

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If negotiators have any comments on this guidance or any experience of negotiations that could be usefully incorporated in the guidance, please contact Bargaining Support at [bsg@unison.co.uk](mailto:bsg@unison.co.uk)

Further guidance is available from bargaining support for branches and workplace reps [www.unison.org.uk/bargaining](http://www.unison.org.uk/bargaining)

Contact your regional education teams and / or LAOS to find out what training and resources are available to assist you with negotiating with your employer or promoting the issues in this guide with your members <https://learning.unison.org.uk>

## How branches can benefit from bargaining on rights for parents at work

Good family leave and pay benefits at work are undoubtedly an important area for negotiations with employers.

It affects the largest proportion of workers, whether they are mothers, fathers, or supportive partners, whether they are welcoming a new member of the family or caring for older children or adults.

### In work poverty for carers

The **Child Poverty Action Group (CPAG)** ([www.cpag.org.uk](http://www.cpag.org.uk)) report that there were 3.9 million children living in poverty in the UK in 2020-21. That's 27% of all children.

Work does not provide a guaranteed route out of poverty in the UK. 75% of children growing up in poverty live in a household where at least one person works.

49% of children living in lone-parent families are in poverty. Lone parents face a higher risk of poverty due to the lack of an additional earner, low rates of maintenance payments, gender inequality in employment and pay, and childcare costs.

Many people, whether out of necessity or choice rely on unpaid carers, mostly family members. As well as caring for adult dependants, members may be struggling with balancing their work commitments with caring for their children and grandchildren. Many unpaid carers, whether of adults or children, are being driven from the workforce unnecessarily.

As the 2018 **Coram Family and Childcare research report** 'Holding on or moving up' ([www.familyandchildcaretrust.org](http://www.familyandchildcaretrust.org)) funded by UNISON, states "there are nine million working parents in the UK... The majority (65%) of adults in Great Britain think that the government should do more to help parents and carers to balance work and care. The same proportion (65 %) think that employers should do more."

### A gendered issue

Women are roughly half of the UK workforce and 65% of public sector employees. Therefore fair maternity leave and pay, as well as all other types of family leave should be a particularly important issue for branches, workplace reps and their employers.

Families come in all shapes and sizes and it is important for family leave policies at work to take full account of this. Yet traditional cultural issues still affect the majority of workers.

Women are predominantly still seen as the primary care-givers, and men are still often the main breadwinners within the family. But this can impact on the choices made when taking advantage of the family leave and pay on offer from employers.

The 2017 **TUC** report '**Better jobs for mums and dads**' ([www.tuc.org.uk/research-analysis/reports/better-jobs-mums-and-dads](http://www.tuc.org.uk/research-analysis/reports/better-jobs-mums-and-dads)) found that "gender stereotypes are still rife in the workplace, with many employers viewing the mother as having the primary caring responsibilities. Employers under-estimate the childcare responsibilities that fathers have and would like to have."

More recently the **TUC** has highlighted how "research has shown that many of the underlying causes of the gender pay gap are connected to a lack of quality jobs offering flexible work. Due to the unequal division of unpaid care and the lack of flexible working in jobs, women often end up in lower paid part-time work."

2017 **Acas** ([www.acas.org.uk](http://www.acas.org.uk)) research '**Flexible working for parents returning to work: maintaining career development**' similarly highlights how "women who have taken a break for maternity, adoption or caring responsibilities may struggle to retain their career paths but fathers also can pay a 'parenthood penalty', forgoing not their careers and salary necessarily, but time spent with their child and families, as evidenced by low uptake by fathers of flexible working arrangements and even paternity leave..."

...In general, organisations are not consistent in their treatment of mothers and fathers when it comes to reminding them about opportunities for flexible working... One might interpret this difference in treatment of mothers and fathers as giving a signal from the employer about who they feel *should* be taking parental leave."

Maternity leave and pay is of obvious benefit to women.

But enhanced paternity leave (perhaps better called maternity support leave as it is available to all partners, not just fathers) and pay, as well as much better shared parental leave terms and other parental conditions above the statutory minimum, can help ensure that care-giving is not the sole responsibility of the mother.

Encouraging both parents to take an equal amount of parental leave following the birth of a child could help reduce maternity discrimination, lessen the on-going motherhood penalty as prime care-giver and also lessen the parenthood penalty identified for fathers.

Employers need also to be made aware that they are very likely to have many other types of carers working for them, whether they have told the employer or not.

As well as children and elderly parents, employees may be caring unpaid, for a friend or family member who due to illness, disability, a mental health problem or an addiction needs their help to live independently.

Employees often do not identify themselves as a carer, particularly when the support they give is for unpredictable, non-routine and unplanned situations, or when it is for a close family member or for someone not living with them.

### **Key facts about carers**

- According to the last Census in 2011, 6.5 million people in the UK are providing unpaid care (Census 2011).
- Every year, 4.3 million people became unpaid carers – 12,000 people a day.
- 58% of unpaid carers are women. Women are more likely to become carers and to provide more hours of unpaid care than men. More women than men provide high intensity care at ages when they would expect to be in paid work.
- One in seven carers in the UK are juggling work and care.
- Caring comes with additional costs that can have a significant impact on carers' finances and many carers suffer financial hardship. 44% of working-age adults who are caring for 35 hours or more a week are in poverty.
- On average, 600 people a day leave work to care.
- 75% of carers in employment worry about continuing to juggle work and care.
- 1 in 3 NHS staff provide unpaid care.
- Between 2010 and 2020, more than 1.9 million people in paid employment became unpaid carers every year.

*Source: Carers UK*

[www.carersuk.org/news-and-campaigns/press-releases/facts-and-figures](http://www.carersuk.org/news-and-campaigns/press-releases/facts-and-figures)

**Further details on bargaining on the rights for carers, focusing on workers with a responsibility for caring for adults, along with a model carers' policy, can be found in the bargaining support guide, '[Bargaining on Carers' Policies](http://www.unison.org.uk/carers-policies-guide/)'**

## Why negotiate on policies for working parents?

- i. Maternity and other family rights for working parents, either directly or indirectly, **affect the vast majority of workers**. This is the same for the members of your branch or workplace – perhaps it even directly affects you!
- ii. The statutory levels for maternity, adoption, shared parental and maternity support (paternity) pay are inadequate and so it makes it a crucial bargaining issue for branches and reps. Good terms and conditions for working parents mean that **new parents can take essential time off without financial worry** and can concentrate on their new family member rather than worrying about how the bills will be paid or if their job is secure.
- iii. It is crucial that the **health and wellbeing of new mothers and babies** are taken into account when considering how leave, pay, time off for ante-natal classes and risk assessments are implemented. Good maternity conditions enable the mother to fully recover from birth.
- iv. Working parents often experience unfair treatment at work and sadly mothers in particular have been shown to continue to experience pregnancy and maternity discrimination at work. By agreeing good family leave policies, the number of cases requiring steward representation could be reduced, **freeing up steward time**.
- v. The impact of taking time out from work due to caring responsibilities as well as lack of decently paid flexible work that fits with the availability of childcare, can be long-term throughout the career of a parent, significantly contributing to the gender pay gap. With mandatory gender pay reporting now in place for larger employers, improving family leave policies could be seen as a valuable part of any subsequent **gender pay gap action plan**.
- vi. Negotiating a good family leave policy will highlight how UNISON values its members and recognises the daily challenges of juggling childcare responsibilities and work commitments, which could result in an **increase in your branch's activist base**.
- vii. Agreeing successful policies for a wide range of workers can be a useful **recruitment and retention tool**, advertising the benefits of joining UNISON for all, as well as how UNISON reps have expert negotiation skills when dealing with employers.



## The basics of employment law rights for working parents

- It is automatically unfair to dismiss an employee or subject them to a detriment such as withholding a promotion or pay rise, for trying to take advantage of a statutory right such as family friendly leave and pay.
- An employee on maternity leave, adoption leave, maternity support (paternity) leave or shared parental leave is entitled to all their normal contractual and statutory employment rights except their wages (including childcare vouchers bought under a salary-sacrifice scheme). Instead of their salary, they have a right to statutory Maternity, Paternity, Shared Parental Pay or Adoption Pay, or better still, an enhanced contractual pay above the statutory minimum.
- Employees on family leave should continue to benefit from any pay rises and improvements to terms and conditions awarded during the leave period, and the leave period should be taken into account when assessing length of service for occupational pension purposes.
- Employer occupational pension contributions will continue throughout the paid leave period (whether the leave pay is statutory or contractual), but will usually stop during periods of unpaid leave.
- An employee on maternity leave, adoption leave or shared parental leave who is at risk of redundancy should be offered alternative employment.
- The employer should keep in touch with the employee on maternity leave, adoption leave or shared parental leave, and keep these employees fully informed and consulted if their role is under threat of redundancy, as well as keeping them up-to-date on promotion and job opportunities as if they were at work.
- Employees on maternity leave, adoption leave, shared parental leave, maternity support (paternity) leave, or parental leave, continue to accrue holiday, both statutory and contractual, during their leave.
- Paying wages in lieu of statutory holiday accrued is not allowed, although it is possible for any contractual holiday entitlement that exceeds the statutory entitlement.

## Maternity rights

For an overview of individual rights, please see the ‘Pregnancy: your rights at work’ guide [www.unison.org.uk/content/uploads/2017/05/24370.pdf](http://www.unison.org.uk/content/uploads/2017/05/24370.pdf) (last updated April 2017).

Further information from the UK government at [www.gov.uk/maternity-pay-leave](http://www.gov.uk/maternity-pay-leave)

Maternity rights are the same for all employees, full-time or part-time, whether on a fixed-term or temporary contract, or if they are apprentices. The rights are also the same for a birth mother who gives birth in a surrogacy arrangement.

Only employees are eligible, not the self-employed or temporary agency workers.

- It is automatically unfair to dismiss an employee or subject them to a detriment such as withholding a promotion or pay rise, for a reason connected with pregnancy, giving birth or taking maternity leave.
- An employee on maternity leave is entitled to all their normal contractual and statutory employment rights except their wages (including childcare vouchers bought under a salary-sacrifice scheme). Instead of their salary, they have a right to Statutory Maternity Pay, or any contractual maternity pay above the statutory minimum.
- However they should continue to benefit from any pay rises and improvements to terms and conditions awarded during the leave period, and the leave period should be taken into account when assessing length of service for occupational pension purposes.
- Employer occupational pension contributions will continue throughout the paid leave period (whether pay is statutory or contractual), but will usually stop during periods of unpaid leave.
- Employees on maternity leave accrue holiday, both statutory and contractual, during their leave. If they are unable to use up their full statutory annual leave entitlement before going on maternity leave, they should be allowed to carry it over after the maternity leave has ended even if it is the following holiday year.
- Employees on Ordinary Maternity Leave (i.e. up to 26 weeks’ leave) have a right to return to the same job they had before the absence.
- Employees on Additional Maternity Leave (i.e. during a further 26 weeks’ leave) have a right to return to the same job, but if that is not reasonably practicable, to another suitable and appropriate alternative job.

## **Maternity leave**

- All employees must take a minimum of 2 weeks maternity leave (or 4 for factory workers).
- All employees regardless of length of service are entitled to 26 weeks' Ordinary Maternity Leave.
- All employees regardless of length of service are entitled to 26 weeks' Additional Maternity Leave after Ordinary Maternity Leave.

## **Maternity pay**

If a woman has worked for her present employer for 26 weeks by the 15th week before their baby is due, and she earns on average £123 or more per week in the eight weeks before the 15th week, (lower earnings limit normally reviewed each April but continuing at £123 from April 2023) she is entitled to Statutory Maternity Pay (SMP) from her employer.

This consists of:

- Statutory Maternity Pay for 39 weeks
- the first 6 weeks of SMP are earnings related (90% of your average weekly earnings before tax, with no upper limit). The remaining weeks are paid at the standard rate of £156.66 per week a week (2022/23 rates, normally increasing every year in April, and expected to increase to £172.48 per week from 2 April 2023) or 90% of your average earnings if that is lower.

Women not eligible for Statutory Maternity Pay may get Maternity Allowance instead.

## **Giving notice**

The employee must give the employer notice as to when they plan to take statutory maternity leave in normal circumstances, at least 15 weeks before the start of the week in which the baby is due. The employer will then confirm when the 52 weeks of maternity leave will end.

Leave can start any time from 11 weeks before the start of the week the baby is due. If the employee is absent from work for a pregnancy-related reason in the 4 weeks before her maternity leave is due to start, the employer can require her to start the leave early. If the employee wants to return early before the full 52 weeks of maternity leave end, she must give the employer at least eight weeks' notice.

## **Risk assessments for new and expectant mothers**

Employers must undertake an individual health and safety risk assessment for staff who are pregnant, have given birth in the last six months or are breastfeeding. They must then implement appropriate measures to remove, reduce or control any risks identified.

If the risk cannot be avoided, then the woman's working conditions or hours should temporarily change, or she should be offered suitable alternative work on terms that are not substantially less favourable. If this is not possible, then the woman must be suspended from work whilst remaining on normal pay.

### **Antenatal care appointments**

All pregnant employees and eligible agency workers are entitled to take a reasonable amount of paid time off work for the purpose of receiving antenatal care, such as medical appointments or parenting classes (including travelling to and from the appointments) if they have been recommended by a doctor or midwife.

A partner (the baby's father or the mother's spouse, civil partner, or partner in an enduring relationship, or the parents of a child in a qualifying surrogacy arrangement) has the right to unpaid time off work to go to two antenatal appointments lasting no more than six and a half hours each.

### **Keeping in touch**

An employee can work or attend training for up to 10 Keeping in Touch (KIT) days during their maternity leave without it affecting their maternity pay. However they are voluntary and must be agreed by both the employer and the employee. They are separate to the reasonable contact that employers can make with employees during maternity leave.

Any extra pay above the Statutory Maternity Pay for these KIT days is to be negotiated.

### **Redundancy and reorganisation**

It is automatically unfair to dismiss an employee or select her for redundancy because she is pregnant or for any reason connected with her pregnancy.

Under the Maternity and Parental Leave Regulations 1999<sup>1</sup>, an employee on maternity leave who is at risk of redundancy (including those on fixed term contracts) should be offered any suitable alternative employment available. Failure to do so will also mean an automatically unfair dismissal.

The employee should be given priority with the offer over other employees if the vacancy is suitable, regardless of whether she is the best candidate. She should be offered the suitable vacancy without having to go through a competitive process such as a competitive interview.

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<sup>1</sup> In Northern Ireland, the law relating to maternity leave is governed by the Employment Rights (Northern Ireland) Order 1996 (SI 1996/1919) (NI16) and the Maternity and Parental Leave etc Regulations (Northern Ireland) 1999 (SR 1999/471), which implement identical provisions to those in force in the rest of the UK.

Suitable alternative work is identified as being both “suitable in relation to the employee and appropriate for her to do in the circumstances” and “its provisions as to the capacity and place in which she is to be employed, and as to other terms and conditions of her employment, are not substantially less favourable to her than if she had continued to be employed under the previous contract.”

The offer of the new role must be made before the end of her existing employment contract, and must start immediately so that there is no gap.

This special right with regard to redundancy does not apply to women who are pregnant but are not yet on maternity leave or have returned from maternity leave. It recognises the particular demands of childbirth on the employee and helps ensure their health, safety and welfare. Sometimes it may be in the woman’s best interests to go on maternity leave early in order to access these rights.

Failing to consult a woman who is on maternity leave over redundancies (including reasons, posts affected, alternatives, selection criteria, selection assessment and suitable alternative work) is likely to be pregnancy discrimination.

Employers who are carrying out redundancy selection must also avoid selection criteria that lead to sex, pregnancy or maternity discrimination. For example, all pregnancy-related absence or pregnancy-related performance issues must be disregarded, to avoid pregnancy discrimination. However, employers must also take care to avoid going further than reasonably necessary (eg inflating redundancy scores of a woman on maternity leave) to avoid sex discrimination against a male colleague.

A woman due to go on maternity leave has the right, along with all other staff, to be considered for other vacancies. Failure to consider her is likely to be pregnancy discrimination.

In October 2022, the government supported a Private Members Bill, ‘Protection from Redundancy (Pregnancy and Family Leave) Bill’, which would extend redundancy protection to pregnant women as well as new parents returning to work from a relevant form of leave.

When enacted, this would mean that the employers obligation to offer a suitable alternative vacancy where one exists would be extended, covering the period from when a woman tells her employer she is pregnant until 18 months after the birth. The 18-month window will also apply to Maternity Leave, Adoption Leave and Shared Parental Leave. The implementation date is yet to be confirmed.

## Adoption rights

Further information from the UK government at [www.gov.uk/adoption-pay-leave](http://www.gov.uk/adoption-pay-leave)

Adoption rights are the same for all employees, full-time or part-time, whether on a fixed-term or temporary contract, or if they are apprentices. Only one adopting parent can take adoption leave.

There are similar rights for employees whose child is born through a surrogacy arrangement and who have applied for, or intend to apply for, a parental order, as well as to parents fostering to adopt.

Only employees are eligible, not the self-employed or temporary agency workers.

- It is automatically unfair to dismiss an employee or subject them to a detriment such as withholding a promotion or pay rise, for trying to take advantage of a statutory right such as adoption leave.
- An employee on adoption leave is entitled to all their normal contractual and statutory employment rights except their wages (including childcare vouchers bought under a salary-sacrifice scheme). Instead of wages they have a right to Statutory Adoption Pay, or any contractual adoption pay above the statutory minimum.
- However they should continue to benefit from any pay rises and improvements to terms and conditions awarded during the leave period, and the leave period should be taken into account when assessing length of service for occupational pension purposes.
- Employer occupational pension contributions will continue throughout the paid leave period (whether pay is statutory or contractual), but will usually stop during periods of unpaid leave.
- The employer has a right to keep in touch with the employee on adoption leave and should keep these employees fully informed and consulted if their role is under threat of redundancy, as well as keeping them up-to-date on promotion and job opportunities as if they were at work.
- Employees on adoption leave accrue holiday, both statutory and contractual, during their leave.
- Employees on Ordinary Adoption Leave (i.e. up to 26 weeks' leave) have a right to return to the same job they had before the absence.
- Employees on Additional Adoption Leave (i.e. during a further 26 weeks' leave) have a right to return to the same job, but if that is not reasonably practicable, to another suitable and appropriate alternative job.

## **Adoption leave**

- All employees regardless of length of service are entitled to 26 weeks' Ordinary Adoption Leave, although it is limited to one period, regardless of how many children are adopted as part of the same arrangement.
- All employees regardless of length of service are entitled to 26 weeks' Additional adoption leave after Ordinary Adoption Leave.

## **Adoption pay**

If an employee has worked for their present employer for 26 weeks by the week they are matched with a child, and they earn on average £123 or more per week in the eight week period leading up to the matching date (lower earnings limit normally reviewed each April but continuing at £123 from April 2023), they are entitled to Statutory Adoption Pay (SAP) from her employer.

This consists of:

- Statutory Adoption Pay for 39 weeks
- the first 6 weeks of Statutory Adoption Pay are earnings related (90% of your average weekly earnings with no upper limit). The remaining weeks are paid at the standard rate of £156.66 a week (2022/23 rates, normally increasing every year in April, and expected to increase to £172.48 per week from 2 April 2023) or 90% of your average earnings if that is lower.

## **Giving notice**

The employee must give the employer notice as to when they plan to take statutory adoption leave in normal circumstances, within seven days of being matched with a child by the adoption agency (the rules for overseas adoption are different). The notice must specify the date the child is expected to be placed for adoption and the date Ordinary Adoption Leave is to begin. The employer can ask for evidence of the adoption. The employer will then confirm when the 52 weeks of adoption leave will end.

Leave can start any time from 14 days before the date the child is expected to start living with the employee. If the employee wants to return early before the full 52 weeks of adoption leave end, they must give their employer at least eight weeks' notice. The returning employee is entitled to return to their job from before the absence, or where that is not possible, an alternative job that is suitable and appropriate. The terms and conditions must be no less favourable than those that would have applied had the employee been at work.

## **Time off for prospective adopters**

Once an adoption agency has confirmed that a child is expected to be placed for

adoption, the 'primary adopter' can take paid time off for up to five appointments, each lasting up to a maximum of six-and-a-half hours.

The 'secondary adopter' will qualify for unpaid time off for up to two appointments.

### **Keeping in touch**

An employee can work or attend training for up to 10 Keeping in Touch (KIT) days during their adoption leave. However they are voluntary and must be agreed by both the employer and the employee, such as for the normal contractual rate for the hours worked, or equivalent paid time off in lieu to be taken at a later date.

Any extra pay above the Statutory Adoption Pay for these KIT days is to be negotiated.

### **Redundancy and reorganisation**

It is automatically unfair to dismiss an employee or select them for redundancy because they are on or have asked to take adoption leave.

An employee on adoption leave who is at risk of redundancy should be offered any suitable alternative employment available. Failure to do so will also mean an automatically unfair dismissal. The employee should be given priority with the offer given over other employees if the vacancy is suitable, regardless of whether they are the best candidate. They should be offered the suitable vacancy without having to go through a competitive process such as a competitive interview.

The offer of the new role must be made before the end of their existing employment contract, and must start immediately so that there is no gap.

This special right with regard to redundancy does not apply to employees who are not yet on adoption leave or have returned from adoption leave.

Failing to consult an employee who is on adoption leave over redundancies (including reasons, posts affected, alternatives, selection criteria, selection assessment and suitable alternative work) is likely to be a breach of their right not to be subjected to a detriment for exercising their leave rights and, depending on the circumstances, may also be discriminatory.

In October 2022, the government supported a Private Members Bill, 'Protection from Redundancy (Pregnancy and Family Leave) Bill', which would extend redundancy protection to pregnant women as well as new parents returning to work from a relevant form of leave.

When enacted, this would mean that the employers obligation to offer a suitable alternative vacancy where one exists would be extended, covering the period from when a woman tells her employer she is pregnant until 18 months after the birth. The 18-month window will also apply to Maternity Leave, Adoption Leave and Shared Parental Leave. The implementation date is yet to be confirmed.



## Shared parental leave

Further information from the UK government at [www.gov.uk/shared-parental-leave-and-pay](https://www.gov.uk/shared-parental-leave-and-pay)

Instead of taking the full 52 weeks of maternity or adoption leave, the mother or the 'primary' adopter can choose to share 50 weeks of their leave with their partner through shared parental leave. Either the father/partner takes shared parental leave and pay and the mother stays on maternity leave and pay (although for a reduced period) or both parents can take shared parental leave and pay, as long as they qualify. However the mother must still take at least 2 weeks' maternity leave (4 weeks if they work in a factory), by law.

The parent (either partner/father, mother or both) taking shared parental leave must be an employee and must pass the 'continuity of employment test' and their partner must pass the 'employment and earnings test'.

To pass the continuity of employment test, the parent/s taking the shared parental leave must have worked for the same employer for at least 26 weeks by the end of the 15th week before their baby is due or their adoption match date, and still be working for the same employer at the start of each block of leave they take.

To pass the employment and earnings test, the other parent must have worked for at least 26 of 66 weeks up to the expected birth date or adoption match date and earned an average of at least £30 a week (the maternity allowance threshold which is remaining at £30 for 2023-24) in any 13 weeks.

- It is automatically unfair to dismiss an employee or subject them to a detriment such as withholding a promotion or pay rise, for trying to take advantage of a statutory right such as shared parental leave and pay.
- An employee on shared parental leave is entitled to all their normal contractual and statutory employment rights except their wages (including childcare vouchers bought under a salary-sacrifice scheme). Instead of wages they have a right to Statutory Shared Parental Pay, or contractual shared parental pay above the statutory minimum.
- However they should continue to benefit from any pay rises and improvements to terms and conditions awarded during the leave period, and the leave period should be taken into account when assessing length of service for occupational pension purposes.
- Employer occupational pension contributions will continue throughout the paid leave period (whether pay is statutory or contractual), but will usually stop during periods of unpaid leave.
- The employer should keep in touch with the employee on shared parental leave and keep these employees fully informed and consulted if their role is under

threat of redundancy, and keep them up-to-date on promotion and job opportunities as if they were at work.

- Employees on shared parental leave accrue holiday, both statutory and contractual, during their leave.
- Employees on shared parental leave have a right to return to the same job they had before the absence as long as the total leave with their partner taking maternity, paternity, adoption and shared parental leave, is not more than 26 weeks.
- Employees on shared parental leave where the total leave with their partner taking maternity, paternity, adoption and shared parental leave, is more than 26 weeks have a right to return to the same job, but if that is not reasonably practicable, to another suitable and appropriate alternative job.

### **Shared Parental Pay**

If Shared Parental Pay is to be claimed, the mother or 'primary adopter' must give notice to end their statutory maternity or adoption pay or maternity allowance.

The partner must earn on average £123 or more per week in the eight weeks before the 15th week, (lower earnings limit normally reviewed each April but continuing at £123 from April 2023).

Shared Parental Pay is paid throughout the period of leave at the standard rate of £156.66 per week a week (2022/23 rates, normally increasing every year in April, and expected to increase to £172.48 per week from 2 April 2023) or 90% of your average earnings if that is lower.

### **Giving notice**

The mother or primary adopter first gives 8 weeks' notice to her employer to cut short the statutory maternity or adoption leave.

The employee who is to take the shared parental leave must also give their employer at least 8 weeks' notice as to when they plan to take it. It must be signed by both parents and state the mother or primary adopter's entitlement to leave as well as how much leave each parent intends to take and when. The mother or primary adopter should also confirm in writing that they agree to the shared parental leave, and that their partner shares main responsibility for the care of the child and meets the employment and earnings test (see above).

It can start on any day of the week but can only be taken in complete weeks. It can take place at the same time as the mother or primary adopter is on maternity or adoption leave so both parents can be off work together.

It can be for one continuous period of time or split up into a maximum of three separate chunks of time or 'discontinuous' leave. However, an employer has the right to refuse to agree to the 'discontinuous' periods of shared parental leave,

although there must be a 14 day discussion period following any refusal. If there is no agreement, the employee is still entitled to take shared parental leave in a continuous block. Once an employee has become entitled to shared parental leave, they may give a written notice to vary that period of leave.

### **Keeping in touch**

An employee can work or attend training for up to 20 Shared Parental Leave in Touch (SPLIT) days. However they are voluntary and must be agreed by both the employer and employee.

Any extra pay above the Statutory Shared Parental Pay for these SPLIT days is to be negotiated.

### **Redundancy and reorganisation**

It is automatically unfair to dismiss an employee or select them for redundancy because they are on or have asked to take shared parental leave.

An employee on shared parental leave who is at risk of redundancy should be offered any suitable alternative employment available. Failure to do so will also mean an automatically unfair dismissal. The employee should be given priority with the offer given over other employees if the vacancy is suitable, regardless of whether they are the best candidate in the same way that applies to employees on maternity or adoption leave. They should be offered the suitable vacancy without having to go through a competitive process such as a competitive interview.

The offer of the new role must be made before the end of their existing employment contract, and must start immediately so that there is no gap.

This special right with regard to redundancy does not apply to employees who are not yet on shared parental leave or have returned from shared parental leave.

Failing to consult an employee who is on shared parental leave over redundancies (including reasons, posts affected, alternatives, selection criteria, selection assessment and suitable alternative work) is likely to be a breach of their right not to be subjected to a detriment for exercising their leave rights and, depending on the circumstances, may also be discriminatory.

In October 2022, the government supported a Private Members Bill, 'Protection from Redundancy (Pregnancy and Family Leave) Bill', which would extend redundancy protection to pregnant women as well as new parents returning to work from a relevant form of leave.

When enacted, this would mean that the employers obligation to offer a suitable alternative vacancy where one exists would be extended, covering the period from when a woman tells her employer she is pregnant until 18 months after the birth. The 18-month window will also apply to Maternity Leave, Adoption Leave and Shared Parental Leave. The implementation date is yet to be confirmed.

## Maternity support (paternity) leave

Further information from the UK government at [www.gov.uk/paternity-pay-leave](http://www.gov.uk/paternity-pay-leave)

A spouse, civil partner or partner can take one or two weeks' maternity support leave (often referred to as paternity leave) following the birth or adoption of a child as long as the leave is taken within 56 days of birth.

With the introduction of shared parental leave, there are some circumstances in which an employee will not be entitled to paternity leave. For example, it is not available if the employee has taken a shared parental leave in respect of the child, or has taken paid time off to attend adoption appointments, or has taken paternity leave as a result of the child being placed with a prospective adopter who is the employee's spouse, civil partner or partner.

It is automatically unfair to dismiss a qualifying employee because the individual took, or sought to take, paternity leave. An employee also has the right not to be subjected to any detriment by their employer because of reasons connected with the paternity leave.

### Paternity pay (maternity support pay)

If an employee has worked for their present employer for 26 weeks by the 15<sup>th</sup> week before the baby is due or the week the child is matched in adoption, and they earn on average £123 or more per week, (lower earnings limit normally reviewed each April but continuing at £123 from April 2023), they are entitled to Statutory Paternity Pay (SPP) from their employer.

It is paid at the standard rate of £156.66 per week a week (2022/23 rates, normally increasing every year in April, and expected to increase to £172.48 per week from 2 April 2023) or 90% of the employee's average earnings if that is lower.

### Giving notice

The employee must give the employer notice as to when they plan to take Statutory Paternity Pay by the 15<sup>th</sup> week before the baby is due, stating the expected week in which the baby is due (or relevant adoption dates), whether they want to take one or two weeks' leave and the date on which the paternity leave is to start. The employee can choose to vary the start date with 28 days' notice and must do so (as soon as reasonably practicable) where the child is not born or placed with the adopter on the original date chosen.

The employer can ask the employee to complete a self-certificate as evidence of their entitlement.

### Redundancy and reorganisation

It is automatically unfair to dismiss an employee or select them for redundancy because they are on or have asked to take paternity (maternity support) leave.

## Unpaid parental leave

Further information from the UK government at [www.gov.uk/parental-leave](https://www.gov.uk/parental-leave)

In addition to the leave entitlements above, qualifying employees with one year's service are entitled to up to 4 weeks' unpaid parental leave a year for each child under 18 years of age they have, or expect to have, responsibility for, up to a maximum of 18 weeks in total.

Leave must be taken in blocks of one normal working week unless the child is disabled, and 21 days' notice must be given to the employer. The right is a personal one and cannot be transferred from one parent to another.

### Redundancy and reorganisation

It is automatically unfair to dismiss an employee or select them for redundancy because they are on or have asked to take unpaid parental leave. An employee also has the right not to be subjected to any detriment for taking, or seeking to take, parental leave. Separately, a qualifying employee is entitled to complain that the employer unreasonably postponed a requested period of parental leave, or that the employer prevented (or attempted to prevent) the taking of parental leave.

## Flexible working

Further information from the UK government at [www.gov.uk/flexible-working](http://www.gov.uk/flexible-working)

All qualifying employees who have worked continuously for their present employer for 26 weeks can apply to work flexibly, such as by changing their hours, the times they work or requesting they work from home. The employer must seriously consider the written request and provide good reasons for rejecting it.

Employers will have to give a prescribed statutory reason for turning down any such request. By law, a request can only be turned down if:

- it will cost the business too much
- the employer cannot reorganise the work among other staff
- the employer cannot recruit more staff
- there will be a negative effect on quality
- there will be a negative effect on the business' ability to meet customer demand
- there will be a negative effect on performance
- there's not enough work for the employee to do when they've requested to work
- there are planned changes to the business, for example, the employer intends to reorganise or change the business and thinks the request will not fit with these plans.

Acas has produced a [Code of Practice](http://www.acas.org.uk/acas-code-of-practice-on-flexible-working-requests) on the topic [www.acas.org.uk/acas-code-of-practice-on-flexible-working-requests](http://www.acas.org.uk/acas-code-of-practice-on-flexible-working-requests)

An employee can complain about procedural failings by the employer, where a tribunal may award up to 8 weeks' wages. There may also be inter-related discrimination claims to consider too.

The [UK government's response to the consultation](#) on reforms to the Flexible Working Regulations, includes

- extending the right to request for employees from day one of their employment
- introducing a new requirement for employers to consult with the employee when they intend to reject their flexible working request
- allowing an employee to make two applications (rather than one) for a flexible pattern of work during any 12-month period
- requiring a decision period of two months in respect of a statutory flexible working request (rather than the current three)
- removing the existing requirement that the employee must explain what effect, if any, the change applied for would have on the employer and how that effect might be dealt with.

As yet, a date has not been announced for implementing the change.

However, on 28 October 2022, the UK government had confirmed that it would support the Employment Relations (Flexible Working) Bill, a Private Members' Bill.

### **Redundancy and reorganisation**

It is automatically unfair to dismiss an employee or select them for redundancy because they have made a statutory request to work flexibly.



## Parental bereavement leave

Further information from the UK government at [www.gov.uk/parental-bereavement-pay-leave](http://www.gov.uk/parental-bereavement-pay-leave)

The 'Parental Bereavement Leave and Pay Regulations' and 'The Statutory Parental Bereavement Pay (General) Regulations' came into effect on 6 April 2020 in England, Wales and Scotland.

In Northern Ireland, similar entitlements are covered in the 'Parental Bereavement (Leave and Pay) Act' as from 6 April 2022.

The day one right goes to employees who are:

- parents (either biological, adoptive or parent of a child born to a surrogate)
- or the partner of the child or baby's parent
- or carers with day-to-day responsibility for a child who has lived with them for at least 4 weeks

It provides one or two weeks' leave if the parent/carer loses a child under the age of 18, or suffer a stillbirth from 24 weeks of pregnancy.

The two weeks can be taken separately. The weeks are working weeks, so the length of the week is based on how many days a week the employee normally works.

Bereaved parents can take parental bereavement leave within 56 weeks of the date of the death of the child.

If the leave is within 56 days of the child's death, the employee must notify their employer as soon as it is "reasonably practicable" to do so. If the leave is more than 56 days after the child's death, the employee must give their employer at least one week's notice of their intention to take parental bereavement leave.

Employed parents with 26 weeks' service and who earn on average £123 or more per week (lower earnings limit normally reviewed each April but continuing at £123 from April 2023) in the eight weeks up to the week before the child's death are able to claim a statutory rate of pay for this period of bereavement. The weekly rate of statutory parental bereavement pay (SPBP) is £156.66 per week a week (2022/23 rates, normally increasing every year in April, and expected to increase to £172.48 per week from 2 April 2023) or 90% of average weekly earnings where this figure is less than the statutory rate.

There is also a proposal in Northern Ireland to extend this entitlement to qualifying bereaved parents who experience a miscarriage up to the end of 23 weeks of pregnancy, and to remove the requirement for 26-weeks' continuous employment to qualify for statutory parental bereavement pay.

## Time off for dependants

Further information from the UK government at [www.gov.uk/time-off-for-dependants](https://www.gov.uk/time-off-for-dependants)

All qualifying employees regardless of length of service are entitled to unpaid time off that is reasonable in the circumstances to take 'necessary action' to deal with unexpected or sudden events involving a dependant.

A dependant could be a spouse, partner, child, grandchild, parent, or someone who depends on you for care.

### Redundancy and reorganisation

It is automatically unfair to dismiss an employee or select them for redundancy because they are on or have asked to take emergency time off for dependants. A qualifying employee can also complain about suffering detriment in relation to exercising these rights.

In October 2022, the government supported a Private Members Bill, 'Carers' Leave Bill', which would extend redundancy protection to pregnant women as well as new parents returning to work from a relevant form of leave. If passed, the Bill will introduce a day one right to at least one week's unpaid leave a year for employees with caring responsibilities.

## Child Tax Credit and Child Benefit

[Child Tax Credit](#) and [Working Tax Credit](#) has been replaced by [Universal Credit](#) for most people. Universal Credit is due to be fully rolled out across the UK by the end of 2023.

For those that are still eligible for Child Tax Credit, it is paid direct to the main carer, and to families both in and out of work to help with the costs of bringing up children. The amount an employee gets depends on the size of their family (although in normal circumstances it only covers up to two children), their income and their family circumstances.

To qualify the child must be under 16 or under 20 if they are in approved education or training.

[Child Benefit](#) is money paid to parents or other people who are responsible for bringing up a child and is not means-tested (although if the parent or their partner earns more than £50,000 they may need to pay some back in tax). The 2023-24 weekly rate is expected to increase to £24 (from £21.80 in 2022-23) for the eldest or only child, and £15.90 (from £14.45 in 2022-23) for each additional child.

# What sort of support helps workers who are parents?

## Checklist for negotiators

1. **As a minimum, are all statutory entitlements for family leave and pay and rights in place and operating correctly?** (check against the basic entitlements listed above)
2. **Does the workplace culture take into consideration the needs of all workers with family commitments?** (see next section below for areas to consider)
3. **Does this include carers of adults?** (see UNISON's bargaining support guide, '[Bargaining on Carers' Policies](http://www.unison.org.uk/carers-policies-guide/)' [www.unison.org.uk/carers-policies-guide/](http://www.unison.org.uk/carers-policies-guide/) )
4. **Are the family pay entitlements offered by the employer more generous than the statutory pay** – in particular for maternity pay, but ideally also with adoption pay and shared parental pay mirroring enhanced maternity pay? Are the rates for maternity support (paternity) pay, parental bereavement pay and during parental leave also enhanced? (see section headed '[Enhanced pay and leave](#)' below for areas to consider)
5. **Are the paid family leave entitlements offered by the employer for a longer period than the statutory leave entitlement** – in particular for maternity leave, but ideally also with adoption leave and shared parental leave mirroring maternity leave? In addition is maternity support (paternity) leave extended? (see section headed '[Enhanced pay and leave](#)' below for areas to consider)
6. **Can family leave – maternity support (paternity) leave and parental leave in particular – be taken more flexibly than statutory entitlements?** (see the section headed '[Flexibility on how the leave is taken](#)' below for areas to consider)
7. **Are Keeping in Touch days for staff on maternity, adoption and shared parental leave at full pay?**
8. **Is some enhanced family pay and leave entitlements offered to all workers, regardless of their length of service or type of contract?** – in particular for those on maternity leave, but ideally also with adoption leave and shared parental leave mirroring maternity leave? Is this also the case for for maternity support (paternity) leave and parental leave? Or are these entitlements at least offered after a shorter period than the statutory qualification period? (see section headed '[Qualifying for family leave](#)' below for areas to consider)
9. **Is the employer committed to ending the use of insecure contracts offered to workers, so that all workers qualify for at least the statutory family pay and leave and protection?** Will the employer formally incorporate this objective into their gender equality strategies?
10. **Does the employer provide paid time off for [fertility treatment](#)?**
11. **Does the employer take account of [surrogate parents](#) in policies?**

12. **How are calculations made for family leave and pay for [term-time workers](#) and those on annualised contracts?**
13. **Do the terms and conditions of workers on family leave, in particular those on maternity leave but ideally mirrored for those on adoption and shared parental leave, continue throughout the period of leave?** (see section headed '[Maintaining full contract terms and conditions](#)' below for areas to consider)
14. **Is the health and safety of mothers fully taken into account in policies?** (see section headed '[Health and safety of mothers and the new baby](#)' below for areas to consider)
15. **Do redundancy and reorganisation policies in operation fully take account of the rights of workers on maternity leave?** Ideally are these rights mirrored for those on adoption and shared parental leave? And are pregnant workers still at work, or when returning to work also protected in anticipation of legislation backed by the UK government? (see section headed '[Redundancy during maternity and other family leave](#)' below for areas to consider)
16. **What sort of reception do workers get when they return to work after family leave**, including responses to flexible working requests, and with regard to breastfeeding and childcare needs? (see section headed '[Returning to work](#)' below for areas to consider).

## A supportive workplace culture

Uncertain working hours and short notice of shifts can make managing childcare responsibilities extremely difficult. It can particularly affect younger parents in insecure types of jobs (on zero hours contracts and in casual work for example).

Many couples are not eligible to take advantage of shared parental leave because one or other parent is not an employee, perhaps working as self-employed or studying. It could benefit more partners if these requirements were removed and all workers, regardless of length of service could use this type of leave, in line with maternity and adoption leave.

In addition, workplace parenting rights are based on the assumption that a child will have a maximum of two parents. But the possibility of more – for example a same sex couple and an involved donor parent – should not be ruled out.

**Are shifts agreed and rotas confirmed well in advance for workers so that they can plan ahead for childcare?**

**Are all workers regardless of length of service or rate of pay entitled to the family leave and pay provided by the employer?**

**Do family leave policies recognise that families do not necessarily consist of two parents and that there could be the potential for shared parental leave for example, to be shared between three parents?**

The 2017 **TUC** report '**Better jobs for mums and dads**' ([www.tuc.org.uk/research-analysis/reports/better-jobs-mums-and-dads](http://www.tuc.org.uk/research-analysis/reports/better-jobs-mums-and-dads)) highlights how the “workplace culture can actively discourage young parents from using their rights or asking their employer for support. Parents showed concern that doing so would negatively impact them at work by:

- jeopardising their job security if their manager views them as unreliable or a trouble maker
- jeopardising their relationships with their colleagues who may perceive them to be getting special treatment.”

**Does the employer actively promote the full range of its family friendly benefits to prospective employees, as well as new and existing workers?**

**Are line managers trained in operating the policies and understand their responsibilities?**

For example, **Standard Life Aberdeen** proudly announced on their website “a new, market-leading parent leave policy that sets a new precedent across businesses in the UK... We’re trying to make sure we’re positioning ourselves as a great employer.”

From 1 January 2020, all of their UK employees were entitled to:

- 52 weeks' leave
- 40 weeks of full paid leave regardless of gender, which includes parents who adopt or have a child by a surrogate
- The option to take these 52 weeks as one, two or three periods of leave, over two years from the birth or placement
- Additional paid leave if they have a pre-term baby.

The culture at work whilst on family leave and when returning from maternity or other forms of family leave also impacts on working parents.

2017 **Acas** research '**Flexible working for parents returning to work: maintaining career development**' showed that, for women on maternity leave, "enhancing maternity pay, encouraging limited but specific contact during a long break and supporting women to make the transition back into work are strategies which organisations can adopt to support women both during their break and after their return to work."

It is also important to ensure that whilst employees are on family leave they are kept up to date with what is happening in the workplace in terms of changes or restructuring, positions vacant, promotional opportunities, professional development opportunities and any other relevant information.

This ensures a smoother transition back into the workplace once the leave period has ended.

### **Do all employees on family leave continue to receive relevant newsletters and information regarding changes and development opportunities at work?**

The optional 'Keeping in Touch Days' for employees on maternity, adoption and shared parental leave enable employees to carry out work or attend training or team meetings.

The employer cannot demand that the employee undertakes the work and the employee is protected from detriment for undertaking or refusing to undertake such work. Any payment for these days made that are above the statutory or contractual pay for the family leave, has to be negotiated. But clearly payment at normal salary will help ensure participation.

### **Are Keeping in Touch days or part days worked by staff on maternity, adoption and shared parental leave at full pay?**

Unless you know about the uptake of any working parents policies, it is hard to gauge what is being used and where the problems are. This is particularly important if women may not be taking their full maternity leave entitlement because it is unpaid or low-paid.

A union branch could survey its members, but it is best to complement this with monitoring by the employer – which would also be good employment practice. It could perhaps be encouraged as part of a gender pay gap action plan.

There is also evidence from the TUC commissioned research in 2016 that there is a **'The Motherhood Pay Penalty'**

([www.tuc.org.uk/sites/default/files/MotherhoodPayPenalty.pdf](http://www.tuc.org.uk/sites/default/files/MotherhoodPayPenalty.pdf)) for working mothers (particularly for those who had children earlier in their lives) in comparison to similar women without dependent children. Therefore it is vital for agreements to continue to monitor terms and conditions, take-up of shared parental leave, access to flexible working, as well as retention and promotion of women who have returned from maternity leave, in order to help combat discrimination and unfavourable treatment.

**Is there comprehensive monitoring by the employer of the take-up of different parts of the working parents policies or agreements?**

**Is there an annual summary of this monitoring produced as part of a review of the policies' effectiveness?**

**Does it feed into wider equality monitoring within the workplace including any gender pay gap action plan?**

The terms of family leave schemes should be clearly defined so that the right is not confused with any other right.

For example parental leave is very different to the right to time off for dependants, sometimes more helpfully called emergency leave. Parental leave is designed to cover time off which has been planned in advance to care for a child, while time off for dependants is meant to be used in emergencies such as family illness or the breakdown of care arrangements.

**Are policies for family and other leave entitlements clear about their purpose in particular in relation to the health and wellbeing of staff?**



## **A supportive workplace culture – priority areas to consider for negotiations**

- Are all workers entitled to family leave and pay?
- Is the family leave paid at enhanced levels above the statutory minimum?
- Are these benefits promoted by the employer?
- Are managers trained in operating family leave policies?
- Do they keep in contact with workers on family leave?
- Are workers able to plan ahead for childcare within their shifts etc.?
- Are Keeping in Touch days at full pay?
- Does the employer regularly monitor and review family leave policies and take-up by staff?

## Enhanced pay and leave

### Maternity and adoption leave and pay

It's important to remember that the basic maternity provision is not a gift from employers – the government compensates them for what they pay. Employers get back 92% of the Statutory Maternity Pay (SMP) they pay out, or 104.5% for small employers.

But statutory pay for family leave for parents is low, and for mothers does not cover the full 52 weeks of maternity leave. This means a loss of income for 13 weeks, on top of all the additional costs of having a new member of the family. Parents can be hit hard by this sudden drop in income and financial pressures can force them back to work earlier than they would otherwise wish.

So a priority for any policy negotiations is achieving enhanced pay for family leave.

**Maternity Action** is calling on the government to increase statutory maternity, paternity, shared parental and adoption pay to the equivalent of the national minimum wage for a 35 hour week.

Their '[Cost of living on maternity leave survey](#)' [August 2022](#), paints a worrying picture of families under stress during pregnancy and their child's first year. Women reported being deeply worried about finances, relying on loans and credit cards, and struggling to pay for essentials. They spoke of the pressure which financial stress has placed on their relationship and the need to return to work before they and their baby are ready.

In Sweden, Norway and Iceland, new parents on leave receive 80% to 100% of their pay, leading to a take-up of the right of nearly 90%.

[XpertHR's](#) 2021 survey found that almost all organisations in the public sector that they contacted offered enhanced maternity pay.

Over 40% of employers asked offered full pay for longer than six weeks before reverting to the standard rate of Statutory Maternity Pay (SMP). Most commonly, the periods at full pay are 12 or 13 weeks. A substantial proportion of employers offer full pay for 26 weeks.

More than one organisation in 10 makes enhanced maternity pay available to employees from the start of their employment.

The [IDR](#) survey of maternity and paternity pay 2022 found that across the economy, employers who improve on the statutory provision typically offer full pay for 20.7 weeks.

In the public sector, most nationally agreed maternity schemes in the sectors where UNISON represents members are **six weeks at 90% of full pay, 12 weeks at half pay plus statutory maternity pay (SMP), 21 weeks on SMP and 13 weeks**

**unpaid.** This applies to local government NJC and SJC, youth and community workers, further education and probation staff.

One standout nationally agreed scheme in the public sector where UNISON represents members is the NHS England, NHS Northern Ireland, NHS Scotland, NHS Wales - Agenda for Change where members receive **eight weeks on full pay, 18 weeks on half pay plus Statutory Maternity Pay, to staff with one year of service.**

Police staff (in England and Wales) are now entitled to **26 weeks maternity and adoption leave on full pay.** In Scotland, police staff are entitled to 6 weeks at 90% of pay and 20 weeks at 50% of pay plus SMP and in Northern Ireland the entitlement is 18 weeks on full pay.

However, the list below shows how the private sector offers some of the best maternity pay schemes in the UK and a number of local agreements in the public sector have pushed rights well beyond the nationally agreed guidance. However qualifying periods do vary for these rights from none to 26 weeks to 1, 2 or even 3 years' service.

**39 weeks on full pay** – Crosscountry (drivers), Department for Digital, Culture, Media and Sport (DCMS), Government Actuary's Department, Hull Trains (drivers), MTR Elizabeth Line, Northern Trains Ltd, Unilever

**28 weeks on full pay** – Capital City College Group (CCCG), Department for Education (DfE), Historic England, United Colleges Group

**27 weeks on full pay** – Disclosure & Barring Service (DBS), NatureScot

**26 weeks on full pay** – Acas, AIB (formerly First Trust Bank), Aramark (BEIS), Argos, Arriva Rail London, Aviva, British Library, Cabinet Office, Cambridge University Press and Assessment, Centre for Environment, Fisheries and Aquaculture Science (CEFAS), Companies House, Competition & Markets Authority (CMA), Crown Prosecution Service (CPS), Defence Electronics and Components Agency (DECA), Department for Business, Energy & Industrial Strategy (BEIS), Department for Environment, Food and Rural Affairs (DEFRA), Department for Levelling Up, Housing & Communities (DLUHC), Department of Health & Social Care (DHSC), Diageo (Scotland), Dover Fuelling Solutions, Equality & Human Rights Commission (EHRC), Eurostar International, Food Standards Agency (FSA), Foreign, Commonwealth and Development Office (FCDO), Gangmasters and Labour Abuse Authority (GLAA), Government Legal Department, Health and Safety Executive (HSE), Imperial War Museum, ISS Facility Services (BEIS), Joint Nature Conservation Committee (JNCC), Land Registry, Medicines and Healthcare Products Regulatory Agency (MHRA), Met Office, M&G plc, National Archives, National Audit Office (NAO), Office for Nuclear Regulation (ONR), Office for Students, Office of Rail and Road, OFGEM, OFSTED, OFWAT (Water Service

Regulation Authority), Planning Inspectorate, Reckitt Benckiser, Royal Botanical Gardens Kew, Royal Mail Group, RSA Insurance Group, Sainsbury's (Retail), Scottish Enterprise, Scottish Prison Service (SPS), Serious Fraud Office (SFO), Sport England, Transport for Wales Ltd (cleaning services), Transport for London (TfL), UK Bulk Handling Services Ltd, UK Health Security Agency (UKHSA) previously Public Health England, UK Hydrographic Office (UKHO), Virgin Media O2, Wallace Collection, Welsh Government

**25 weeks on full pay** – British Museum

**24 weeks on full pay** – Freightliner Intermodal (Drivers,

**23 weeks on full pay** – Airbus UK, Santander UK

**22 weeks on full pay** – National Gallery, National Lottery Community Fund

**21 weeks on full pay** – SSE Joint Agreement

**20 weeks on full pay** – Virgin Money, Heathrow Airport (operative/managerial grades), Lloyds Banking Group, Natural History Museum, TSB, Victoria and Albert Museum

**19 weeks on full pay** – Glasgow Caledonian University, National Portrait Gallery

**18 weeks on full pay** – Atradius, BAE Systems Maritime, BT (NewGrid/WF2020 Grades), Glasgow University, Imperial College of Science, Technology and Medicine, ITV, National Museums Liverpool, Northern Ireland Civil Service, Scottish Fire & Rescue Service (Support Staff), Spirit Aerosystems (Europe), Ulster University, Walsall College, Waltham Forest College

[Source: [Labour Research Department \(www.lrd.org.uk\)](http://www.lrd.org.uk)]

In addition to schemes that offer periods on full pay well above the statutory minimum, there are those that offer extended periods on half pay, the majority with SMP on top:

**26 weeks on full pay and 13 on half pay** – Transpennine Express (drivers)

**14 weeks on full pay and 14 weeks on half pay** – RSPCA, Tesco (retail)

**13 weeks on full pay and 26 weeks on half pay** - Old Bushmills Distillery (Casa Cuervo)

**13 weeks on full pay and 13 weeks on two thirds (67%) pay** – Alliance Healthcare

**13 weeks on full pay and 13 weeks on half pay** – Leyland Trucks / Paccar parts, Oxford Brookes University, Pullman Rail

**12 weeks on full pay and 14 weeks on half pay** - Morrisons (retail and manufacturing)

**8 weeks on full pay and 18 weeks on half pay** – North West Ambulance Service

**8 weeks on full pay and 16 weeks on half pay** – Aberystwyth University, Dundee University

**8 weeks on full pay and 10 weeks on half pay** – Birmingham Metropolitan College, South and City College Birmingham

**6 weeks on full pay and 33 weeks on half pay** – Homes England, The Regulator of Social Housing

**6 weeks on full pay and 23 weeks on half pay** – Burnley College

**6 weeks on full pay and 12 weeks on half pay** – Cornwall College Group, East Coast College, Exeter College, Hull College

[Source: [Labour Research Department \(www.lrd.org.uk\)](http://www.lrd.org.uk)]

And there are schemes that offer a choice in how the leave is taken:

For example, **Glasgow University** offers a choice of 18 weeks at full pay (inclusive of SMP) or 9 weeks at full pay (inclusive of SMP) and 18 weeks at half pay (plus SMP).

[Source: [Labour Research Department \(www.lrd.org.uk\)](http://www.lrd.org.uk)]

Ideally adoption leave and pay should mirror maternity entitlement as much as possible, in the way that statutory entitlements are similarly mirrored. It could be seen as unfair if parents of adopted children do not benefit from the same terms, as if this form of parenthood is less valued within the workplace.

**Are all workers entitled to some enhanced maternity pay or adoption pay, regardless of their length of service?**

**If benefits are linked to length of service, is this period of time kept short (such as only the 6 month probationary period)?**

**Do all employees receive some enhanced pay throughout their maternity and adoption leave? Or at least through 39 weeks (mirroring the period of paid statutory leave)?**

**Is maternity and adoption pay on full pay for a minimum of 6 weeks (only a little more than the statutory requirement) and ideally for at least 26 weeks, if not 39 weeks or best of all the full 52 weeks?**

**If maternity and adoption pay is not on full pay throughout the leave period, will it still be on an enhanced rate, ideally at 90% of pay or at least half pay?**

## Is the period of leave available extended beyond the statutory 52 weeks?

### Shared parental leave and pay

Whilst ensuring that enhanced pay and benefits are available for both those who take maternity and adoption leave, it would also make sense and be fair to ensure that the pay entitlement for shared parental leave mirrors maternity and adoption entitlements.

Although case law (*Ali v Capita Customer Management Ltd* and *Hextall v Chief Constable of Leicestershire Police* tribunal cases) has shown that it cannot be considered direct or indirect sex discrimination to pay only statutory shared parental pay whilst maternity pay is enhanced, again, as with adoption pay, it would nonetheless be fairer for partners to benefit from a similar level of pay. It would also clearly signal to workers that the employer recognises the importance for all parents, regardless of gender or work role to be able to participate in their child's care and nurture.

Nearly two-fifths (37%) of respondents to the [IDR](#) survey of maternity and paternity pay 2022, enhance shared parental pay for co-parents and in most cases, this is on the same terms as their maternity policy.

**Acas, Aviva, Diageo (Scotland), Equality & Human Rights Commission (EHRC) and the Met Office** all offer 26 weeks shared parental leave at full pay, the same as offered for maternity leave.

Take-up continues to be extremely low for shared parental leave, perhaps highlighting the current rarity of enhanced pay, as well as the other concerns that partners may have in taking time out of the workplace to care for their child.

2018 University College London research '[Shared Parental Leave: Exploring Variations in Attitudes, Eligibility, Knowledge and Take-up Intentions of Expectant Mothers in London](#)' (<http://discovery.ucl.ac.uk/10056534/>) undertaken at two antenatal clinics in London showed that half of the parents asked, felt that it did not make financial sense for partners to take shared parental leave. Over a third of respondents thought it would have a negative impact on the father's career.

Recommendations from the 2016 TUC/IPPR research findings '[The Motherhood Pay Penalty](#)' ([www.tuc.org.uk/sites/default/files/MotherhoodPayPenalty.pdf](http://www.tuc.org.uk/sites/default/files/MotherhoodPayPenalty.pdf)) include "equal parenting roles so that women are not so held back at work... We need some better paid, fathers only (rather than shared) leave."

The biggest problem with shared parental leave is that it creates no new rights for parents. It requires mothers to transfer all but two weeks of maternity leave to their partner.

The law firm, [EMW](#) found in their analysis of HMRC figures from 2020 that only 2% of eligible couples made use of shared parental leave

The low take-up rates indicate that shared parental leave has not been a success, largely because of the transferable nature of the scheme. Ideally there should be individual rights to dedicated leave and pay for each parent of a child, to make the system simpler and fairer.

**Are all workers entitled to some shared parental leave, regardless of their length of service?**

**Are all workers entitled to some enhanced shared parental pay, regardless of their length of service?**

**If benefits are linked to length of service, is this period of time kept short (and shorter than the statutory period of 26 weeks)?**

**Is shared parental pay on full pay for a period mirroring maternity and adoption pay?**

### **Maternity support (paternity) leave and pay**

Similarly enhanced maternity support (paternity) pay is crucial to ensure that this limited leave opportunity is taken up by partners of mothers or partners of the 'primary' adopters.

The original intention behind paternity leave was to provide support for the mother immediately after the birth but society is changing - there is more emphasis on shared parental responsibility and there is also evidence<sup>2</sup> (in Sweden and the US) that children thrive better with the early involvement of both parents.

However, in the UK, mothers continue to shoulder the majority of the caring responsibilities including for a new-born baby. Two week's statutory paternity leave is insufficient to encourage shared involvement in parenting. In addition, currently fathers/partners can be deterred from taking paternity leave due to the impact on the family income.

Almost half of UK parents are dissatisfied with their employer's paternity leave packages, according to a 2022 study by Koru Kids and think tank [the Fatherhood Institute](#). Their survey found that 46% of parents did not feel their or their partner's paternity leave package was enough for their needs. The most commonly cited reason was not being given enough paid time off (73%), not sufficient pay (59%) and a lack of flexibility on returning to work (28%).

Eight in 10 parents felt unequal maternity and paternity policies reinforce traditional gender stereotypes, encouraging the mother to take on a 'homemaking role' while the father returns to work.

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<sup>2</sup> Maria C Huerta, Willem Adema, Jennifer Baxter, Wen-Jui Han, mette Lausten, RaeHyuk Lee and Jane Waldfogel (2017) Eur Journal Social Security

**XpertHR**'s 2021 survey found that enhanced paternity pay is offered by just over 60% of employers responding, but only 11% offer paternity leave for a longer period than the statutory entitlement of two weeks. Where a longer period of paternity leave is made available, this is most commonly an additional two weeks.

The **IDR** survey of maternity and paternity pay 2022 found that enhanced paternity pay is offered by 82% of respondents slightly less than offer enhanced maternity pay. Half of the employers in the sample simply increase statutory paternity pay to full pay for both weeks but some have adopted other approaches, such as offering full pay for a week, followed by a further week at the SPP rate. It is again rare for employers to improve on the two weeks of paternity leave to which eligible staff are legally entitled with only 14% doing so.

As part of the **Equality and Human Rights Commission 'Closing the gender pay gap'** research ([www.equalityhumanrights.com/en/publication-download/closing-the-gender-pay-gap](http://www.equalityhumanrights.com/en/publication-download/closing-the-gender-pay-gap)), their recommended actions include:

- “actively promote shared parental leave to staff
- consider enhancing the statutory minimum paternity leave – more generous and equal schemes operate in other countries and this has encouraged take-up among men
- incorporate flexibility into job design to encourage new parents to consider sharing caring responsibilities beyond the first year of their child's life.”

Employer maternity support (paternity) schemes are commonly based on full pay for either five or 10 days.

In the public sector, the Local Government NJC and police staff in Scotland have agreements based on five days on full pay, while the NHS permits 10 days on full pay.

The list below shows the terms of some of the best private and public schemes, along with examples of local agreements that improve on national terms.

**40 days' full pay:** NatureScot

**30 days' full pay:** Lloyds Banking Group, Nationwide Building Society, RSA Insurance Group

**25 days' full pay:** Santander UK

**20 days' full pay:** Alliance Healthcare, Argos, Axa UK, British Film Institute, Equality & Human Rights Commission (EHRC), HM Revenue & Customs, Reckitt Benckiser, RSPCA, Sainsburys, Tesco (retail)

**15 days' full pay:** Centre for Environment, Fisheries and Aquaculture Science (CEFAS), Competition & Markets Authority (CMA), Department for Education (DfE), Department for Environment, Food and Rural Affairs (DEFRA), Disclosure & Barring



Service (DBS), Food Standards Agency, Government Actuary's Department, Homes England, Joint Nature Conservation Committee (JNCC), MTR Elizabeth line, National Archives, National Portrait Gallery, Nexus (Tyne and Wear PTE), Norfolk Police Staff, Office of Rail and Road (ORR), OFSTED, Pladis (United Biscuits), Poundland (retail), The Regulator of Social Housing, Sport England, Suffolk Police Staff, Transpennine Express (Drivers), UK Health Security Agency (UKHSA) previously Public Health England, Unilever - Trafford Park (Manufacturing, Engineering & Technical)

**14 days' full pay:** Land Registry

**12 days' full pay:** Office for Nuclear Regulation (ONR)

**11 days' full pay:** Department for Digital, Culture, Media and Sport (DCMS)

**10 days' full pay:** Acas, ADA National College for Digital Skills, AF Blakemore, Airbus UK, Arriva Rail, Barclays Bank, Berkshire College of Agriculture, Best Food Logistics Shared User, Birmingham University (Support Staff), Bishop Auckland College, British Museum, Buckinghamshire College Group, Cabinet Office, Cheshire College - South and West, Co-operative Group Retail, Companies House, CrossCountry (Drivers), Darlington College, Department for Business, Energy & Industrial Strategy (BEIS), Dundee University, Edinburgh Napier University, Glasgow University, Harlow College, Health & Safety Executive, Heathrow Airport (operative/managerial grades), Historic England, Imperial College of Science, Technology and Medicine, ISS Facility Services (BEIS), ITV, Loughborough College, Met Office, Middlesbrough College, National Audit Office, National Lottery Community Fund, OFGEM, OFWAT, Oxford Brookes University, Parcellforce Worldwide, Preston College, Pullman Rail, Riverside Group/One Housing Group, RNN Colleges Group, Royal Mail Group, Scottish Prison Service (SPS), SMB Group, SSE Joint Agreement, TEC Partnership, United Colleges Group, Virgin Atlantic (Cabin Crew), XPO Logistics (Livingston) Warehouse

**5 days' full pay:** Action for Children, Activate Learning, Basingstoke College of Technology, Brentwood Borough Council, Bury College, Heart of Worcestershire College, Luminare Education Group, National Museums Liverpool, Nestle UK, North Lanarkshire Council, South Thames Colleges Group, Ulster University, York College

**Some organisations have agreed policies offering all parents an equal 52 weeks' leave** with the first 26 weeks fully paid: Diageo (Scotland), Aviva  
the first 20 weeks fully paid: TSB, Virgin Money

**Other organisations may extend the period of leave but provide less or no payment for the extra weeks:** BT (NewGrid/WF2020 Grades) 10 days at full pay inc SPP and 10 weeks unpaid, Cambridge University Press and Assessment

(CUPA) 10 days at full pay inc SPP and 5 days at the statutory rate, Morrisons (retails and manufacturing) 10 days at full pay inc SPP and 10 days at 50% pay

[Source: [Labour Research Department \(www.lrd.org.uk\)](http://www.lrd.org.uk)]

**Are all workers entitled to maternity support (paternity) leave, regardless of their length of service?**

**Are all workers entitled to some enhanced maternity support (paternity) pay, regardless of their length of service?**

**If benefits are linked to length of service, is this period of time kept short?**

**Is maternity support (paternity) leave on full pay?**

**Is maternity support (paternity) leave for longer than the statutory entitlement of two weeks?**

In addition to the amount of paid time off, it is valuable to negotiate flexibility in how it is taken.

For example, **Exeter University** provides up to 6 weeks' maternity support leave on full pay (inc. SPP). Two of the six weeks have to be taken in one block as required under the statutory entitlement. These two weeks leave must be completed by day 56 (after the birth or placement of the baby/child). The other four weeks can be taken in the first six months after the child's birth/placement. This leave can be taken in blocks (a minimum of 1 week). All leave must be completed by six months after the birth/placement.

**Can maternity support (paternity) leave be taken more flexibly with separate weeks, part-weeks or even separate days possible?**

### **Parental leave and time off for dependants**

Similarly ensuring that parental leave and the separate right to time off for dependants (or emergency leave) are paid will help ensure that parents and carers are actually able to take-up these much needed benefits.

In March 2021, the **TUC** called for a new entitlement of 10 days' parental leave per year for each child, on full pay, in order to particularly help working Mums.

Similarly, **Working Families** in their '**Flexistability: Building back better for the UK's working families**' 2020 report, recommends the introduction of a new statutory right to ten days paid parental leave for all workers, that can be used irrespective of employment status and in an emergency as well as on a planned basis. They feel this would help mothers and fathers to balance work and care and ensure parents have more realistic financial options to deal with times of crisis like a breakdown in childcare arrangements.

Unless paid, take-up is low and too often, parental leave for older children is only considered when a parent has no other options, for example, when all maternity leave and annual leave has been exhausted and the parent still needs time off because a child is sick or the mother finds she is pregnant again and wants to bridge a period between two periods of maternity leave.

Too often parental leave is only taken by parents who can afford it or who need extended leave for family transition points or to care for a sick or disabled child.

One of the greatest barriers to parents accessing parental leave however is the lack of awareness on the part of both employers and parents.

However some organisations have agreements in place that provide some form of payment for part of the 18 week parental leave entitlement.

**3 weeks on full pay per year:** Welsh government

**2 weeks on full pay per year:** Balfour Beatty Rail Plant

**1 week on full pay per year:** National Lottery Community Fund, West Midlands Trains, Virgin Media O2 (VMO2) Technical, Engineering & Retail

[Source: *Labour Research Department* ([www.lrd.org.uk](http://www.lrd.org.uk))]

**Are workers made aware of their right to parental leave?**

**Is parental leave and time off for dependants on full pay?**

**Does your employer have a carers' policy with defined carers' leave and pay? (see the bargaining support guide '[Bargaining on carers' policies](http://www.unison.org.uk/carers-policies-guide/)' [www.unison.org.uk/carers-policies-guide/](http://www.unison.org.uk/carers-policies-guide/))**

**Is paid leave also provided for foster carers?**

**Can parental leave be taken more flexibly with separate weeks, part-weeks or even individual days or part-days possible?**

**Are longer periods than a block of four weeks within any one year possible, perhaps mirroring annual leave arrangements?**

For example, at **Glasgow Caledonian University** parental leave may be taken in single days or in complete weeks; at **Ulster University**, parental leave can be taken as half a day at a time.

### **Keeping in touch days**

Parents are unlikely to agree to participate in Keeping in Touch days unless they know that they will benefit, not only in being updated on work or a chance to get some training whilst they are on leave, but also from their normal salary rate for that time spent at work.

**Are Keeping in Touch days or part days worked by staff on maternity, adoption and shared parental leave at full pay?**

**Enhanced pay – priority areas to consider for negotiations**

- Are all workers entitled to some enhanced pay for family leave?
- Is maternity pay prioritised for enhancement?
- Do adoption pay and shared parental pay mirror maternity benefits?
- Is at least some of the family leave at full pay?
- If benefits are linked to length of service, is this period of time kept short?
- Is there at least some paid parental leave and paid time off for dependants?
- Are Keeping in Touch days at normal salary rate?

## Qualifying for family leave

Across the economy, there is roughly an even split among enhanced employer maternity and adoption pay schemes between those that demand 26 weeks' service (as is required for the statutory maternity, adoption and shared parental pay entitlement) and those that demand a year's service.

In the public sector, most nationally agreed maternity and adoption schemes in the bargaining groups where UNISON represents members require a year to qualify for the employer scheme, although some do require only 26 weeks' service.

However, major private sector organisations such as Aviva and Virgin Money, offer examples of schemes **where no qualifying period is required** to receive entitlement to maternity pay, even though Aviva and Diageo (Scotland) provide 26 weeks on full pay and Virgin Money provides 20 weeks on full pay.

**Exeter University** now provides 26 weeks' maternity pay at full pay for all staff regardless of length of service. This is the same for adoption pay and shared parental pay. Paternity (maternity support) pay is at full pay for 30 days and again does not require a qualifying period.

**TSB** offers a year's leave for all new parents with 20 weeks' leave at full pay for all staff without any qualifying period.

The qualifying period for statutory maternity support (paternity) leave and pay is 26 weeks. This is also the standard requirement across many employer schemes.

However, schemes based on **no qualifying period** have been achieved among the following employers:

AXA (UK), BAE Systems Maritime - Naval Ships, Glasgow (Scotstoun and Govan) Manuals, Basingstoke College of Technology, Berkshire College of Agriculture, Blackpool and the Fylde College, Brentwood Borough Council, Cambridge University Press and Assessment (CUPA), Edinburgh Napier University, Food Standards Agency (FSA), Glasgow Caledonian University, Glasgow University, Historic England, National Trust (England/Wales/NI), Nationwide Building Society, Royal Botanical Gardens Kew, Sheffield College, South & City College Birmingham, Sport England, Wallace Collection, Waltham Forest College, York College

**TUC analysis** ([www.tuc.org.uk/news/1-4-new-dads-missed-out-paternity-pay-over-last-12-months-says-tuc](http://www.tuc.org.uk/news/1-4-new-dads-missed-out-paternity-pay-over-last-12-months-says-tuc)) released in June 2018, found that one in four working fathers missed out altogether on maternity support (paternity) pay.

One reason was because they were self-employed although as the TUC point out "many of these dads may be 'bogus self-employed' – a tactic used by bad employers to deny staff basic rights at work." They also found that the other main reason these workers missed out on maternity support (paternity) leave and pay was because they had not been working for their current employer long enough.

The TUC believes that the government should give all new working fathers (and other partners) a right to statutory paternity pay and shared parental pay from day one in their job.

To qualify for statutory maternity, adoption, maternity support (paternity) and parental pay, it is necessary to be classified as a worker, which means that the main exclusions are those who are self-employed.

To qualify for statutory maternity, adoption, maternity support and shared parental leave, it is necessary to be classified as an employee. This is a stricter definition than that of a worker, which means that agency, casual and zero hours contract staff may have difficulties in meeting the criteria.

Employer schemes tend to mirror these qualification criteria.

**Do all staff regardless of whether they are employees, workers, agency, casual or zero hours contract staff benefit from some level of family leave and pay entitlement?**

**Is the employer's maternity, adoption and paternity (maternity support) pay schemes available to all staff regardless of length of service?**

**Or at least no longer than the statutory period of qualification i.e. 26 weeks?**

The statutory qualifying period for parental leave is a year. However, many employer schemes have been negotiated that eliminate a qualifying period or offer flexibility in interpreting the one year rule.

West Midlands Trains do not require a qualifying period for staff to benefit from parental leave.

**Is the employer's paid parental leave schemes available to all staff regardless of length of service?**

**Or at least no more than 26 weeks in line with other family leave qualification periods if set, but less than the statutory period of qualification?**

The criteria for parental leave restricts entitlement to parents named on the child's birth certificate or those who have obtained formal legal parental responsibilities.

However, negotiation can widen entitlement to anyone who can demonstrate that they are, or will be, the main carer for the child, or for a person who provides support to the main carer.

Parenting rights tend to be based on the assumption that a child will have a maximum of two parents, but the possibility of more (for example, a same sex couple and an involved donor parent) should not be ruled out.

**Is the entitlement to parental leave and pay widened to ensure it is available to anyone who can show that they are the main carer or person or persons who provide support to the main carer of a child?**

### **Fertility treatment**

One in six couples have difficulty conceiving and require specialist advice or treatment. This can be a stressful experience and fertility treatment programmes often have long waiting lists with the process itself sometimes stretching over several years. The Health and Safety Executive recommends that women should be given a reasonable number of paid or unpaid days' absence towards any fertility treatment.

Although there is no statutory right to paid or unpaid time off for fertility treatment, some enlightened employers have agreed to specific procedures for time off. In that way they can avoid any possible claim of sex discrimination.

Once the ovum is successfully implanted, pregnancy and maternity protections and benefits apply.

**Does the employer provide paid time off to attend fertility treatment, recording this separately from annual leave or sickness absence etc.?**

**Imperial College London** and **Brunel University London** each provide up to 5 days per year for fertility treatment.

**The Co-operative Group's** fertility treatment policy provides paid leave for staff to attend medical appointments while undergoing fertility treatment, including people using a surrogate. The time off is flexible and unrestricted, as the company says it cannot assume to know what people will need. The measures also extend to partners who accompany those going to appointments for fertility treatment, with paid leave for up to 10 appointments per cycle and for up to three cycles of fertility treatment.

### **Surrogacy**

Birth mothers under a surrogacy arrangement are entitled to all statutory maternity rights including leave and pay, regardless of what happens to the baby. However the European Court of Justice surprisingly did not extend this right to surrogate mothers who are not the biological mother, in a case championed by UNISON in 2014.

The Court of Justice of the European Union's judgement went against the advice of its own Advocate General in the case of *CD v ST (2014)*.

The court ruled that intended mothers whose babies are born through surrogacy arrangements are not entitled to paid leave equivalent to maternity or adoption leave. However the judgment crucially noted that European law sets minimum

standards and that nothing precludes individual member states from granting enhanced rights and protections under domestic law.

UNISON championed the case on behalf of their member, 'CD', a midwife-sonographer, whose baby was born by surrogate arrangement in August 2011. The case was referred directly from the Employment Tribunal in Newcastle-upon-Tyne to the Court of Justice following a claim of sex discrimination.

The case led to the UK government promoting laws allowing for Regulations to be made granting paid leave equivalent to adoption leave for eligible intended parents whose babies are born through surrogacy arrangements.

Under the UK's Children and Families Act 2014, surrogate parents who qualify (dependent on their acquiring or intending to acquire legal parenthood for the child and having parental responsibility through a parental order or adopting the baby through a registered adoption agency) have a statutory right to adoption leave and pay. They also have the right to take time off work to accompany the surrogate mother at up to two ante-natal appointments.

**Does the employer state that surrogate parents are entitled to adoption leave, pay and rights (for the primary carer) and maternity support (paternity) leave or shared parental leave, pay and rights for their partners?**

### **Term-time workers**

Term-time workers are in a special position and need careful consideration.

Term-time workers remain on a permanent contract but have unpaid periods of leave of absence during the school or college holidays. Pay is usually made by 12 equal monthly instalments (sometimes called annualised contracts). Although, as employees they are entitled to full maternity rights, many term-time workers may not be able to satisfy the qualifying conditions because of the special circumstances surrounding their work patterns.

One of the main problems term-time workers have in accessing statutory maternity pay (SMP) is in the condition that you must have earned on average an amount which at least equals the 'lower earnings limit'. The employer should take into account any gross earnings which are subject to tax and NI so this would usually include the holiday pay element.

However as many term-time workers' salaries are equalised over the year, the average weekly salary can often be less than this lower earnings limit per week (lower earnings limit normally reviewed each April but continuing at £123 from April 2023).

If their salary is not equalised out over the year and the term-time worker is not on an annualised contract, they could also run into problems. This is where the calculation period for SMP falls in a holiday period when they are not earning any money. For example, if the calculation period includes the long summer holiday, their average



weekly earnings will be based on 6 weeks when they have not been paid. Therefore it works out significantly less than their 'normal' pay and means they can fall short of the condition that you must be earning at least the lower earnings limit on average per week in the 8 weeks running up to the 15th week before the week their baby is due.

This 8-week period may vary slightly depending on how the term-time worker is paid (weekly, monthly or other periods) but generally the weeks used will fall around the fourth to sixth months of their pregnancy.

More generally, any woman who is earning less in the early part of her pregnancy (for example if she has been on sick pay or unpaid leave) is in a similar situation.

Best practice for enhanced maternity pay would be to ignore periods of unusually low earnings. The 8 week/2 month period should still be based on the period immediately before the 15th week before their baby is due, but if that includes statutory sick pay or contractual sick pay that is lower than normal wages, or unpaid leave or a period when work was not available, a woman's average weekly earnings should be based on the pay she would have received if she has an annual salary.

Alternatively it could be based on the period of 8 weeks/2 months immediately before this period of unusually low earnings, when she was working her normal hours.

Meanwhile, the government has recognised that calculations for normal weekly earnings in relation to statutory holiday pay may not have been fairly representative for atypical workers. From 6 April 2020, the holiday pay reference period increased from 12 weeks to 52 weeks discarding any weeks the worker did not earn pay, in order to calculate the average weekly pay.

This could perhaps strengthen the argument for a fairer approach to calculating normal weekly earnings in relation to maternity and other family leave pay.

**Maternity Action** in their '[Insecure Labour: the reality of insecure work for pregnant women and new mothers](#)' report of November 2020, call for the qualifying conditions for Statutory Maternity Pay be linked to earnings during a 12 week qualifying period for those with variable hours who may have weeks in which there was no work. This would align with the provisions in Section 224 of the Employment Rights Act 1996 on the calculation of average earnings and ensure that no account is taken of weeks in which no remuneration was paid.

**For the purpose of calculating the amount of statutory or enhanced maternity pay, how are normal weekly earnings calculated?**

**Will employers base maternity pay on the best paid 8 weeks or 2 months over the last year for term-time workers who are not on annualised contracts, and is this clearly stated in the policy?**

**Will employers exclude any periods an employee is on statutory sick pay or when she is on unpaid leave for the purpose of calculating contractual sick pay?**

**Where workers are on annualised contracts, will enhanced maternity pay be based on what they would be paid if they were not on an annualised contract?**

Careful attention also needs to be paid as to how annual leave entitlement is considered for term-time workers on annualised contracts (see also section on [term-time workers and annual leave](#)).

### **Parental bereavement leave**

Whilst parental bereavement leave is a day-one right there is a qualifying period of 26 weeks' service to be able to claim statutory pay.

Best practice would be to provide **full pay for periods of parental bereavement leave**. This has been agreed by a number of employers including Agriculture Wages (Wales) Order, Barclays Bank, Bassetlaw District Council, Cambridgeshire County Council, Dover Fuelling Solutions, East Coast College, National Audit Office (NAO), National Trust (England/Wales/NI), NHS England – Agenda for Change, NHS Wales – Agenda for Change, Rolls Royce, RSPCA, Scottish Borders Council. The majority of these employers also do not require a length of service in order to pay the leave.

Co-operative Group Retail (Customer Team Members/Post Office Counter Assistants) have also extended the period to 20 days' bereavement leave on full pay and Poundland (retail) provide 4 weeks' paid leave.

The NHS terms and conditions of service also recognises that employees who are eligible for the leave “may include grandparents who have had caring responsibilities for a child”. It also states that “there is no requirement for the child to be under 18 years of age.”

Ideally any parental bereavement leave policy will also consider staff who experience other forms of pregnancy loss, including miscarriage for special leave or compassionate leave.

**More information with a [Model pregnancy loss policy in the appendix](#).**

**Do all staff regardless of whether they are employees, workers, agency, casual or zero hours contract staff and regardless of their length of service benefit from parental bereavement leave of 2 weeks (perhaps included within the compassionate leave policy)?**

**Does the employer provide paid time off at full pay for this leave to all workers, and again is that regardless of length of service?**

**Is there similarly paid time off for other forms of bereavement or compassionate leave over a period of weeks?**

### **Qualifying for family leave – priority areas to consider for negotiations**

- Are all workers entitled to some family leave and pay regardless of length of service, or at least less than the statutory period of qualification?
- Are term-time workers and those on annualised contracts treated fairly in relation to entitlements?
- Is family leave and pay available to all employees, workers, agency, casual or zero hours contract staff?
- Is paid time off available for workers to attend fertility treatment?
- Are surrogate parents entitled to the same family leave as other types of parents?
- Is there paid parental bereavement leave in place and are staff aware of this new right?

## Flexibility in how the leave is taken

Unfortunately, statutory maternity support (paternity) leave and parental leave for non-disabled children must be taken in blocks of one week.

### *Rodway v South Central Trains*

In this case, the Court of Appeal stated that an employee who was disciplined for taking a day's unpaid parental leave had not suffered a detriment, as relevant parental leave had to be taken in blocks of a week under the Regulations and the application for taking just one day (that the employer opposed) was invalid.

However, negotiation could lead to increasing the flexibility of how the leave can be taken.

For example, at **Ulster University** staff may take individual days or half-days of parental leave.

In reality, the ability to have the flexibility to take an individual day's leave would not only benefit the parent but the workplace, where the odd day away can more easily be accommodated.

The 2017 **TUC** report '**Better jobs for mums and dads**' ([www.tuc.org.uk/research-analysis/reports/better-jobs-mums-and-dads](http://www.tuc.org.uk/research-analysis/reports/better-jobs-mums-and-dads)) recommends that parental leave is allowed to be taken in one day slots. "Young parents told us that it would be helpful if they could use this leave in shorter periods," the report states.

Employer schemes could mirror annual leave arrangements which can be taken in days or half days, or even allow for part-time working which then allows parental leave to be taken in the form of reduced hours.

These alternatives are both present in the *NJC local government agreement* in its Model Parental Leave Scheme. This states:

"4.1 Employing authorities shall be sympathetic to flexible parental leave-taking arrangements as requested by employees.

4.2 Parental leave may be taken:

- as a single block of up to 18 weeks
- as a number of shorter periods of a minimum of half a day
- in patterns which provide a part time or reduced hours working arrangement for a period of time equivalent to taking 18 weeks' leave as a single block."

Statutory arrangements also limit the amount of parental leave that can be taken to a maximum of four weeks in any one year, so negotiations can serve a useful purpose in removing or extending such limits, as has been negotiated in the NJC agreement.

**Is paternity (maternity support) leave and parental leave offered in half day and single day options, rather than just blocks of week as is the statutory entitlement?**

**Can paternity (maternity support) leave be taken within a year of the birth of the child rather than just the statutory period of within 56 days of the birth?**

**Can more than four weeks of parental leave be taken within one year?**

Although employees might plan to take a longer period of leave, they might decide that they want to return to work earlier. The required notice period of early return from maternity, adoption and shared parental leave (given by the employee to the employer) is at least 8 weeks. However, a family friendly employer would not need 8 weeks' notice to reorganise an earlier return to work and so this may be an issue that is also open to negotiation.

**Is the notice period that staff have to give for taking maternity, adoption and shared parental leave and in particular for returning early from maternity, adoption and shared parental leave, a shorter period than 8 weeks?**

The **Local Government National Agreement (England and Wales)** only requires 7 days' notification of return from Ordinary Maternity Leave, and 21 days from Additional Maternity Leave.

The 2017 **TUC** report '**Better jobs for mums and dads**' ([www.tuc.org.uk/research-analysis/reports/better-jobs-mums-and-dads](http://www.tuc.org.uk/research-analysis/reports/better-jobs-mums-and-dads)) noted that "the current notice period for taking unpaid parental leave is 21 days. This should be shortened to 5 days so parents can use this leave in conjunction with the right to time off for dependants, to make sure they can take care of their kids when they are sick."

**Is the notice period that staff have to give for parental leave shorter than the statutory requirement, ideally just 5 days?**

## **Flexibility in how the leave is taken – priority areas to consider for negotiations**

- Can paternity (maternity support) leave be taken in single day, half day options and within a longer period after the birth of the child?
- Can parental leave be taken in single day, half day options and can more than four weeks be taken in one year?
- Are notice periods for taking family leave shorter than the statutory requirements?

## **Maintaining full contract terms and conditions**

Although employees have a right to up to 52 weeks' maternity leave, there is a slight difference to their statutory entitlements during the 26-week period of Ordinary Maternity Leave, and the subsequent 26-week period of Additional Maternity Leave. Getting rid of this differentiation in contractual maternity leave entitlement may be an area for negotiation.

**Do employees on Additional Maternity Leave (from week 27 of their maternity leave period) benefit from the same terms and conditions of service as those on Ordinary Maternity Leave, including company car, medical insurance etc. if relevant?**

**Is this entitlement also mirrored in the adoption leave and shared parental leave schemes from week 27?**

An employee on maternity leave must be allowed to carry over their statutory holiday entitlement into the next year, if she is unable to take it outside of her maternity leave.

### *Gomez v Continental Industries del Caucho*

The European Court of Justice (ECJ) ruled that a pregnant worker does not have to take her annual leave during her maternity leave period, even if it coincides with a general shutdown of the entire factory.

The case clarified that under EU law, a worker must be able to take the paid annual leave to which she is entitled under the Working Time Directive (WTD) at a time other than her maternity leave, and where national law provides for a longer annual leave entitlement than the minimum laid down by the WTD, then her entitlement is to the longer period. If a woman was to lose her entitlement to statutory annual leave as a result of going on maternity leave, then it would most probably also amount to unlawful sex discrimination.

**Do all family leave schemes, not just maternity leave schemes allow for all contractual annual leave accrued during family leave to be carried over into the next holiday year, if the worker is unable to take it outside of their family leave?**

**Are public holidays also allowed to be accrued during family leave?**

**Do all family leave schemes encourage employees to plan in advance with their employer how they are going to take holiday to be accrued, such as at the end of the paid leave or to stagger a return to full-time working hours?**

**University of Warwick** asks employees to fill out a 'Maternity Leave Plan' when the employee notifies them that they are pregnant. The plan gives the employee an

opportunity to summarise their chosen maternity leave and pay options to give both them and the University a clear plan for their maternity requirements.

### **Term-time workers and annual leave**

More information on calculating annual leave for term-time workers can be found in the [bargaining guide on leave](#)

[www.unison.org.uk/content/uploads/2021/05/Bargaining-on-leave-0421-v2.pdf](http://www.unison.org.uk/content/uploads/2021/05/Bargaining-on-leave-0421-v2.pdf)

Statutory holiday entitlement for term-time workers was clarified in the case of **Harpur Trust v Brazel & UNISON**. In July 2022, the Supreme Court upheld the decision that Ms Brazel's employer was wrong to give her fewer days of annual leave than the legal minimum because she only worked during the school term.

From now on, all workers will be due the same legal minimum of 5.6 weeks (28 days for full-time employees), even if there are months during the year when they don't work. The holiday entitlement of term-time workers should not be pro rated to that of full-year workers. Leave must be paid at the rate of an ordinary week's wages (or if pay varies every week, then an average of all the weeks worked in a year).

Annual leave (both statutory and contractual/enhanced leave) continues to be accrued during family leave periods for term-time workers as for other workers. For example a woman who takes maternity leave must be able to take statutory annual leave entitlement at a time outside of her maternity leave, but any additional contractual leave must also be taken account of, perhaps with payment in lieu of the contractual leave accrued.

Minimum statutory leave entitlement is 5.6 weeks for a full-time worker and under the Working Time Regulations they cannot be replaced with payment in lieu except where the employment is terminated.

Therefore on return from maternity, adoption, paternity or shared parental leave, if a term-time worker working in education for example, is unable to use their full annual leave entitlement (including the amount accrued during family leave) within the school closure period, they should still be entitled to any remaining leave days during term-time.

In addition if it is not possible to take all the annual leave entitlement on return from family leave within that particular leave year, the employee should be allowed to carry over any balance to the following year.

In normal circumstances, term-time workers will only receive payment in lieu of holiday entitlement when they decide not to return to work following the family leave, but employers could also offer payment in lieu for any enhanced holiday entitlement above their statutory entitlement.

**Do all family leave schemes for term-time workers allow annual leave entitlement accrued during the family leave, to be taken during term-time if it cannot be taken within the school closure period?**



**Is this allowed for both enhanced (contractual) holiday in addition to statutory holiday entitlement?**

**If enhanced holiday entitlement cannot be taken during term-time, can the employee instead receive payment for it?**

Term-time workers on an annualised contract have a daily rate based on their working days and their paid holiday entitlement (which normally must be taken during the school or college closure periods). When the employee is actually on leave during the school or college closure, they continue to receive this same rate of pay, based on this daily rate.

Before the employee goes on maternity, adoption, paternity or shared parental leave, it will be necessary to determine whether they are owed any annual leave at the point they start the family leave.

**Before term-time employees on annualised contracts are due to start family leave, do employers properly assess how much annual leave they have already had or whether annual leave is due to them at that point?**

**If annual leave is due to them at the point they plan to start family leave, do employers allow the term-time employees to take it before the start of family leave or to carry it over for when they return?**

**If term-time employees on annualised contracts who are due to start family leave are found to have been already paid for annual leave that they have not yet taken, does the employer allow this amount to be offset against the annual leave yet to be accrued during their family leave?**

**If the employee is to be paid for annual leave owed to them (above the statutory entitlement), is this holiday pay based on their usual daily rate?**

## **Pension contributions and benefits**

Parents should not be penalised in their pension entitlements because of time spent in maternity, adoption, shared parental or paternity (maternity support) leave. Employees will remain a member of their workplace pension scheme, and they and/or their employer will continue to make contributions, unless they decide to stop contributing.

If the workplace pension scheme is a defined benefit scheme (such as a final salary scheme or career average revalued earnings (CARE) scheme) or a defined contribution or money purchase scheme, the employee will continue to accrue pension benefits, based on the level of their pensionable earnings before they started the leave. The employee on paid family leave continues to pay contributions into the scheme but only based on their actual earnings during the family leave.

If the employee takes a period of unpaid family leave after their paid leave, they do not need to continue contributing during this period. The employer may also stop

contributing, unless their contract of employment states otherwise. When they return to work, the employee (and their employer) may be able to pay extra contributions, depending on the scheme's rules.

**Will the employer agree to pay extra pension contributions for those periods of unpaid family leave?**

**Can workers who miss pension contributions due to being on unpaid family leave, 'buy' missing periods of service at a favourable cost once they return to work?**

**Better still can workers on unpaid family leave pay contributions based on notional pay (i.e. they are earning nothing so they pay nothing in) but still get full benefits?**

### **Maintaining full contract terms and conditions – priority areas to consider for negotiations**

- Can workers on maternity leave benefit from the same terms and conditions of service, including company car, medical insurance etc. throughout the 52 weeks' leave period?
- Is this entitlement mirrored in the adoption leave and shared parental leave schemes?
- Do all family leave schemes allow for accrued contractual annual leave to be carried over into the next holiday year?
- Are term-time workers and those on annualised contracts treated fairly in relation to the accrued annual leave entitlements?
- Is the issue of pension contributions addressed in family leave policies, so that workers do not miss out whilst they are on unpaid family leave?

## Health and safety of mothers and the new baby

### Risk assessments

An employer must consider the particular risks for women of childbearing age within their general risk assessments and remove any risk or prevent exposure to it.

Once an employer is informed that a worker is pregnant, is breastfeeding, or has given birth within the last six months, then it is a legal requirement that they must carry out **an individual risk assessment**. This includes for agency, temporary or zero hours or 'gig economy' workers.

In carrying out the individual risk assessment an employer must:

- Review their existing general risk management and controls for pregnant workers and new mothers
- Talk to the worker to see if there are any conditions or circumstances with their pregnancy that could affect their work
- Discuss any concerns they have about how their work could affect their pregnancy
- Consult with their safety representative or trade union if they have one
- Take account of any medical recommendations provided by their doctor or midwife.

The [Health and Safety Executive \(HSE\) guidance](#) also makes clear that employers should review the individual risk assessment as the pregnancy progresses or if there are any significant changes to a workers' activity or workplace.

If a risk cannot be removed, the employer must temporarily alter the woman's working conditions, offer her suitable alternative work (on the same or better terms and conditions) or suspend her on full pay for as long as necessary to protect her health and that of her child in line with the Management of Health and Safety at Work Regulations 1999.

### More information from the Health and Safety Executive (HSE)

[www.hse.gov.uk/mothers/employer/index.htm](http://www.hse.gov.uk/mothers/employer/index.htm)

In Northern Ireland there is a separate Northern Ireland Health and Safety Executive with guidance on [New and expectant mothers](#) ([www.hseni.gov.uk](http://www.hseni.gov.uk))

### From UNISON

Protecting the health and safety of pregnant workers and new mothers  
[www.unison.org.uk/content/uploads/2022/08/pregnancy-toolkit.pdf](http://www.unison.org.uk/content/uploads/2022/08/pregnancy-toolkit.pdf)

The HSE specifically states that pregnant women and new mothers should avoid sitting or standing for long periods, lifting or carrying heavy loads, using a workstation that causes posture issues, working long hours, shift work and night work, or working in stressful environments. Rest facilities should be provided for

pregnant women and nursing mothers, and they are entitled to more frequent rest breaks.

**Does the employer automatically carry out a risk assessment for all posts in relation to being carried out by a woman of childbearing age and the potential risk on pregnancy, and remove any risk or prevent exposure to it?**

**Do they undertake an individual risk assessment when notified that a worker is pregnant, and inform the woman of any risk in relation to their post and what was done about it?**

**Does the employer automatically carry out further risk assessments as the pregnancy progresses and when a woman returns from maternity leave?**

**Are appropriate changes to working patterns and rest facilities provided to pregnant or returning mothers?**

### **Antenatal care**

Antenatal classes are important to ensure the good health of both mother and baby, and to adequately prepare for caring for the child.

**Do employers ensure pregnant women get paid time off work at the normal hourly rate for antenatal care?**

**Is this entitlement for paid time off work at the normal hourly rate for antenatal care a contractual 'day one' right?**

**Will it include appointments with a doctor, midwife or health visitor, parent craft classes, and relaxation classes, as well as reasonable time needed to travel to the appointment?**

**Are those women working part-time or flexi-hours also entitled to this if their appointments fall within normal working hours?**

**Are partners provided with paid time off to attend antenatal care with the pregnant woman?**

### **Sickness during pregnancy**

An employer can ask a woman who is off work because of pregnancy-related sickness in the four weeks before her maternity is due to leave, to start her maternity leave early.

However, it would be helpful for any prospective mother to have odd days of pregnancy-related absence to be overlooked by the employer, so that the precious amount of paid maternity leave time to be spent with the new baby is not reduced because of the mother's sickness.

**Are women entitled to claim sick pay until the planned start of their maternity leave and so not need to start maternity leave until they choose to do so?**

**Or can they at least take a few days off sick within the four weeks before their maternity leave is due to start, without triggering the start day earlier?**

### **Premature births**

If babies are born prematurely (4 weeks early or more) then they take longer to develop and often cannot be left when the usual maternity period is over.

In addition, if babies are kept in hospital for some time for neonatal care, it may cause difficulties for working parents if a considerable amount of the maternity and perhaps even all of the maternity support (paternity) leave have been used up before the child is brought home.

[The Smallest Things premature baby charity](#) are asking employers to support parents of premature babies, to extend paid parental leave and to sign up to their [Employer with Heart Charter](#). It asks for employers to **extend maternity leave for mothers who give birth prematurely** (before 37 weeks' gestation) by the number of days a baby was born prior to their due date; **give partners the time they need to be with their baby in hospital**, receiving at least two weeks' paid compassionate leave on the birth of their premature baby; **support parents returning to work following the birth of a premature baby** with formal and informal flexible working patterns and offering additional paid or unpaid leave.

**Santander UK** offers additional paid leave for mothers of premature babies, making up the difference in time from the birth of the baby and 40 weeks gestation. A period of compassionate leave (up to two weeks' paid leave) is also available for staff whose partner has had a premature birth and whose baby requires a period of hospitalisation.

For premature births, **Virgin Money** offers an extra week of leave and pay for both parents for the number of weeks the child is born before the Expected Week of Childbirth (EWC).

In July 2022, the UK government gave its backing to the **Neonatal Care (Leave and Pay) Bill**, which is a Private Members' Bill. If enacted, it will provide an entitlement of up to twelve week's neonatal leave as a day one right, with statutory neonatal care pay for employees with 26 weeks' continuous service. However, it will not apply in Northern Ireland because the implementation of employment laws is devolved.

**Does the contractual maternity and maternity support (paternity) schemes start once the baby if born prematurely has come home?**

**Will the period between the birth and the start of maternity or maternity support (paternity) leave be treated as paid emergency or compassionate leave?**

**Alternatively will the employer allow an extra week of maternity leave for every week that the baby is born prematurely?**

## Stillbirths

Mothers who have a stillbirth after 24 weeks of pregnancy still legally qualify for full maternity rights. This also applies if the baby lives for a short period of time and there is a neonatal death (up to 28 days after the birth whenever that may be). Their partners also qualify for maternity support (paternity) leave and shared parental leave already booked.

In addition, both the mother and their partner may be eligible for Parental Bereavement Leave and Pay.

## Miscarriage

Women who miscarry before 24 weeks of pregnancy are only entitled to compassionate leave and, if appropriate, to sick leave, even though miscarriage at any time can be an emotionally traumatic experience.

The [Miscarriage Association](http://www.miscarriageassociation.org.uk) ([www.miscarriageassociation.org.uk](http://www.miscarriageassociation.org.uk)) highlights in [guidance for employers](#) that:

- “The behaviour and attitudes of employers and co-workers will affect how well women and their partners cope with miscarriage and how soon they feel able to return to work
- Supportive management of employees affected by miscarriage, including flexible working and leave arrangements, will enhance their motivation and commitment.”

The Association points out that miscarriage is relatively common, affecting one in four pregnancies. “Women are often physically unwell for sometime after miscarriage and pain and bleeding can continue for several weeks. Full physical recovery can take anything from days to weeks, even after an early miscarriage... The emotional impact of miscarriage varies enormously. It is always unpleasant but it can be devastating – for men as well as women.”

The [Miscarriage Association](http://www.miscarriageassociation.org.uk) also has information and a model template on developing a miscarriage or pregnancy loss policy.

[www.miscarriageassociation.org.uk/information/miscarriage-and-the-workplace/human-resources-hr-information-and-support/a-miscarriage-policy/](http://www.miscarriageassociation.org.uk/information/miscarriage-and-the-workplace/human-resources-hr-information-and-support/a-miscarriage-policy/)

**Further details and a [Model pregnancy loss policy](#) in the appendix.**

The employer should count any sick leave related to miscarriage as pregnancy-related and therefore it should be noted separately from other sickness absence. They must not use it against employees, for example, for disciplinary or redundancy purposes.

**Does the employer record any pregnancy-related sickness absence such as related to a miscarriage, separately from other other sickness absence?**

**Will the employer provide paid compassionate leave and/or unscheduled annual leave for employees who miscarry?**

**Will the employer also provide special extended leave in situations of multiple-births, or where the mother has postnatal depression, or where a parent dies or is seriously incapacitated within the first year of the child's life?**

**Will the employer agree to developing a pregnancy loss policy? ([Further details in the appendix.](#))**

### **Health and safety of mothers and the new baby – priority areas to consider for negotiations**

- Does the employer automatically carry out individual risk assessments when a worker is pregnant, as the pregnancy progresses and when a worker returns from maternity leave?
- Do employers ensure that all pregnant workers, regardless of length of service, or whether part time or on flexi hours, get paid time off work at full pay for antenatal care?
- Are partners provided with paid time off to attend antenatal care?
- Does sickness during pregnancy within the four weeks before maternity leave, not necessarily trigger an earlier maternity leave start date?
- If the baby is born prematurely or requires neonatal care or there are multiple births, do mothers and their partners have additional leave entitlements?
- Are parent workers who experience a pregnancy loss treated sympathetically with paid leave and any related sickness absence recorded separately as pregnancy-related?

## Redundancy during maternity and other family leave

**The Equality and Human Rights Commission research** published in 2016 found that around one in nine mothers (11%) reported that they were either dismissed; made compulsorily redundant, where others in their workplace were not; or treated so poorly they felt they had to leave their job; if scaled up to the general population this could mean as many as 54,000 mothers a year.

The House of Commons cross-party Women and Equalities Select Committee response to the **EHRC research** was that urgent action was required to reduce maternity discrimination: “We find it shocking that the number of new and expectant mothers feeling forced out of their job has nearly doubled in the past decade. ... We are persuaded that additional protection from redundancy for new and expectant mothers is required. The government should implement a system similar to that used in Germany under which such women can be made redundant only in specified circumstances. This protection should apply throughout pregnancy and maternity leave and for six months afterwards.”

Yet in spite of this call for additional protection, **Maternity Action** reported in 2017 in **‘Unfair redundancies: during pregnancy, maternity leave and return to work’** that some returners “are made redundant after requesting flexible working... Other women report redundancies on return to work which do not appear to be genuine.”

In addition, for some “changes that are proposed or made during maternity leave appear to be weakening their position in the workplace so although they may have been given an alternative role as the law requires, their new role is more vulnerable to redundancy in a future restructure.”

And more recently in June 2020, the **TUC** found that one in four pregnant women and new mums in their survey had experienced unfair treatment or discrimination at work including being singled out for redundancy or furlough during the COVID-19 pandemic. The survey is outlined in the TUC report, **‘Pregnant and precarious: new and expectant mums’ experiences of work during Covid-19’**.

Pregnant employees are currently protected against pregnancy discrimination but do not have the right to be given a suitable alternative role automatically if they are at risk of redundancy. They only get this right once they are on maternity leave.

This may cause particular confusion to both the employer and the employee when a redundancy process overlaps the start of a pregnant employee’s maternity leave, or may even lead employers bringing forward consultations.

In October 2022, the government supported a Private Members Bill, ‘Protection from Redundancy (Pregnancy and Family Leave) Bill’, which would extend redundancy protection to pregnant women as well as new parents returning to work from a relevant form of leave.



When enacted, this would mean that the employers obligation to offer a suitable alternative vacancy where one exists would be extended, covering the period from when a woman tells her employer she is pregnant until 18 months after the birth. The 18-month window will also apply to Maternity Leave and Shared Parental Leave. The implementation date is yet to be confirmed.

**Is the special protection for women on maternity leave who are at risk of redundancy whereby they are automatically offered suitable alternative employment, extended to pregnant workers from notification of their pregnancy in anticipation of the government's introduction?**

**And also to new mothers continuing for six months or longer after their return to work from maternity leave, again in anticipation of the government's introduction?**

**Are these protections also extended to those returning from adoption leave and shared parental leave?**

Employers must consult with all employees who are at risk of redundancy, including those who are absent from work. Therefore employers must make sure that employees on maternity, adoption, paternity (maternity support) and shared parental leave are not disadvantaged in a redundancy consultation.

**Do all family leave policies highlight the need for both the employer and employee to agree on the best way of keeping in touch before the leave starts and that a good record of all communications will be kept, particularly crucial if there should be a redundancy or reorganisation situation?**

**Does any redundancy and reorganisation policy clearly state that women on maternity leave will not be asked or expected to compete in any redundancy selection process, but will be offered a suitable alternative post if available?**

**Is this right extended to women as soon as they inform the employer that they are pregnant and for at least 6 months after their return to work, in anticipation of the government's introduction of this right?**

**Is this right also extended to workers on adoption leave and shared parental leave and for at least 6 months after their return to work?**

**Is it clear in the redundancy policy that if staff on maternity, adoption or shared parental leave attend any meetings about such vacancies, they are not interviews and are organised around the leave requirements?**

**Has 'suitable alternative employment' been agreed with the employer as meaning roles where the person at risk of redundancy meets the essential**

## **elements of the person specification or can be trained to meet those essential elements within three months?**

In the employment appeal tribunal (EAT) case, *Sefton Borough Council v Wainwright*, the council went through a restructure and combined two roles into one. The process took place during Ms Wainwright's maternity leave and the council invited both Ms Wainwright and the other affected employee to take part in an interview for the new role. However, she was unsuccessful and was subsequently dismissed on the grounds of redundancy. The EAT found that Ms Wainwright was automatically unfairly dismissed. The employee who is on maternity leave has the right to automatically be offered a suitable and appropriate alternative job as a priority over other potentially redundant staff, so should not be placed in the pool for selection or scored against set criteria.

Although employers have to offer suitable alternative employment if it is available in a normal redundancy situation, they must offer it automatically to employees on maternity leave.

## **Redundancy during maternity and other family leave – priority areas to consider for negotiations**

- Is the special protection for women on maternity leave who are at risk of redundancy extended to pregnant workers from notification of their pregnancy?
- Is it also extended to returning mothers for a period on return to work?
- Is it also extended to workers on other forms of family leave?
- Does the redundancy and reorganisation policy clearly specify these rights for those on maternity leave and other family leave?

## Returning to work

Some employers make maternity pay dependent on the employee working for a short period of service (usually 3 months) after they return from maternity leave. However enhanced maternity pay should be seen as part of the conditions of service and recognition of work already done, not work to come.

There are many good reasons why a woman may not want to return to work after bearing a child, or may change her mind after the birth. Women can be pressurised into returning to work for a short time for financial reasons when it is better for them not to. It also discriminates against workers on fixed term contracts, whose contracts would have expired by the end of maternity leave and would not be able to return to work.

Making a woman repay enhanced maternity pay if she does not return to work at the end of her maternity leave serves no real purpose.

Far better for workers is a bonus system that rewards women who do return to work.

Whatever the contractual maternity scheme says, the mother does not have to repay Statutory Maternity Pay (SMP) or Maternity Allowance if she does not return to work.

### **Is contractual maternity, adoption and shared parental pay non-refundable?**

#### **Does the employer instead offer a return to work bonus or some other sort of incentive?**

**XpertHR** maternity and paternity leave and pay survey 2021 found that it was relatively uncommon for organisations to offer a returners' bonus. The most common benefits available to assist an employee's return from maternity leave are flexible working or a phased return. Around one organisation in five provides coaching or mentoring support to returners.

The rate of change at workplaces is greater now than at any time in the past. Organisations, procedures and technology can all alter, sometimes substantially whilst a worker is on maternity, adoption or shared parental leave. Consequently, it is important that they are kept informed of changes whilst away and re-introduced back into the workplace in a sensitive manner.

### **Is there an induction programme or mentoring/buddy scheme for employees returning to work after maternity, adoption and shared parental leave, with perhaps also the option for a phased return to work over a few weeks if requested?**

For example, **London Borough of Hounslow** allows a phased return to work after maternity leave over 3 months.

## Flexible working

Bright Horizons' Client Employee Survey: Work & Family Snapshot 2022 asked respondents to select the top ways that employers support, or could support, them as working parents or carers. 9 in 10 (90%) employees selected 'positive approach to flexible working' as one of the top ways their employer could support them.

The **TUC** has called for a right to genuine flexible work, from the first day in a job, in order to particularly support working Mums.

**Maternity Action** in their '**Insecure Labour: the reality of insecure work for pregnant women and new mothers**' report of November 2020, also called for the right to request flexible working as a day-one right. They also wanted stronger rights to review the reasons for a refusal, so as to better facilitate flexible arrangements for those with childcare responsibilities, including retaining their existing contract rather than feeling compelled to move to an insecure contract in order to get flexibility.

The charity, **Gingerbread** has also highlighted the problems for single parents. "A lack of flexibility forces many single parents to work fixed hours in order to balance work and childcare commitments. This lack of flexibility means single parents are not only unable to work additional hours, but they are also blocked from training and the socialising aspect of some jobs – key factors associated with limiting opportunities for progression."

Enabling more employees to work flexibly or part-time may allow staff of all levels and pay grades, both men and women to take on the responsibilities of childcare. Along with this, there needs to be a commitment from employers to tackle gender inequality within their workforce.

2017 **Acas** ([www.acas.org.uk](http://www.acas.org.uk)) research '**Flexible working for parents returning to work: maintaining career development**' demonstrates that "creating equality around leave for birth, adoption or caring responsibilities, creates a culture where requesting flexible working also becomes more gender neutral, especially where the business case rather than the reason for the request is the basis for the decision."

**Does the employer grant all new parents the right to work flexibly unless they can show it would have a serious detriment to the organisation?**

**Are there a range of flexible working options on offer, including job-share?**

The **TUC** report '**The Motherhood Pay Penalty**' also suggests that "it should be possible to request a temporary change to terms and conditions [under a granted request for flexible working] so that parents can react to temporary changes in circumstances."

**Are employees returning to work after maternity, adoption or shared parental leave able to return gradually over a period of 4 weeks (for example), and have flexible start and finish times at work for up to 6 months (for example)?**

## **Breastfeeding**

When a mother returns to work after maternity leave, it does not mean she has to stop breastfeeding. Mothers do need to notify their employer that they are breastfeeding, but making this process at work simple, straightforward and commonplace as possible may encourage more women to breastfeed.

The health benefits of breastfeeding babies are now well established, with WHO (the World Health Organisation) recommending continuing breastfeeding a child up to the age of two years or beyond. There is a legal duty on employers to make allowances for women who are breastfeeding and there is also special health and safety protection.

Employers must give the women information on any risks identified in a risk assessment and what action has been taken. They should also provide suitable rest, meal and refreshment breaks for nursing mothers, such as a private rest area (not a toilet) where they can express milk and facilities for storing milk such as a fridge. If a woman cannot breastfeed because of working conditions then the baby's health is at risk.

**Are employees on maternity leave aware of their rights with regard to breastfeeding and is there a breastfeeding policy in place?**

**During their maternity leave, are employees encouraged to request to continue to breastfeed on their return to work, so that suitable arrangements can be ready in place, and also to ensure that the request is made during the 'protected period' in relation to any pregnancy discrimination?**

**Does the employer provide full facilities for mothers to breastfeed and do they support adaptations to their working patterns to allow this?**

**Is time off for breastfeeding breaks paid?**

**As the subject can be regarded as sensitive, is there a female manager available to discuss issues around breastfeeding at work with returning employees?**

**The Public Health Agency in Northern Ireland has a sample policy on supporting breastfeeding employees**  
[www.publichealth.hscni.net/publications/sample-policy-supporting-breastfeeding-employees-0](http://www.publichealth.hscni.net/publications/sample-policy-supporting-breastfeeding-employees-0)

## Childcare

Childcare is often essential in enabling parents to reconcile work and family life, especially for lone parents who may have less family support and a lower income.

**Bright Horizons' Client Employee Survey: Work & Family Snapshot 2022** found that the employees they surveyed were placing higher priority on family life. They concluded that “the provision of care solutions, both shortnotice and day-to-day ongoing care, has a very strong positive impact on areas as wide-ranging as wellbeing, loyalty, engagement, productivity, parental leave return and career progression.”

But working parents with young children are still spending a huge proportion of their salary on childcare.

Around one in three (32%) working parents with pre-school children spend more than a third of their wages on childcare, according to a **TUC poll** published in March 2022. Black and disabled working parents were found to be particularly likely to spend more of their income on childcare bills, probably because they are disproportionately in low-paid work.

**Coram Family and Childcare 2022 research** found that childcare costs had risen once again by 2.5% for those aged under two, a year on year trend that has been seen over the 21-year lifespan of their annual survey. They also found an increased number of local authorities saying that there was not adequate provision to meet the demand for early years and primary school children.

The expense and lack of provision means that many working parents will have to take unpaid leave or reduce their hours, with working mums often the ones having to make those difficult decisions.

The **TUC recommends** that employers either provide more direct subsidy for childcare costs to employees or provide on-site childcare facilities to help address the increasing pressure on working parents.

In particular the TUC highlights the need for: “**Subsidised, affordable childcare** from as soon as maternity leave finishes. This would enable parents to continue working and mean mums don't continue to have to make that choice between having a family and a career. There is currently a real gap in childcare support for one-year-olds until government assistance kicks in at age 2 or 3.”

**Working Families'** recommendations for employers in relation to supporting workers with childcare costs include:

- On-site nursery
- Access to back-up childcare

- Offer childcare vouchers via salary sacrifice or a childcare subsidy/allowance through payroll
- Offer local childcare deals, through partnerships with local providers
- Offer flexible working options and consider all requests fairly
- Information on available employer-provided childcare
- Access to information on local childcare provision
- Information on paying for childcare and, if appropriate, how you support this as an employer.

Some employers offer childcare vouchers towards approved childcare costs for parents, often known as a 'salary sacrifice' scheme, which means that parents do not have to pay tax on some of their childcare costs.

However from October 2018, childcare vouchers were no longer available to new applicants as the government introduced Tax Free Childcare. This aims to help eligible parents in work with the cost of their approved childcare. The government adds £2 for every £8 paid for childcare, up to a maximum of £2000 per child per year (or £4000 per year if the child is disabled). Workers cannot get Tax-Free Childcare at the same time as claiming Working Tax Credit, Child Tax Credit, Universal Credit or childcare vouchers.

Old childcare voucher schemes may be continuing at workplaces but these childcare vouchers under a salary sacrifice scheme are considered as 'wages', which means that employees are paid less in their wages but are given the vouchers instead. It also means that the employer does not have to continue to provide them to the employee during maternity leave if only statutory maternity pay is due, or alternatively the amount could be deducted from any enhanced contractual maternity pay.

**Does the employer subsidise childcare costs for working parents when they return from maternity, adoption or shared parental leave? And whilst the employee is on family leave?**

For example, [Chelsea and Westminster Hospital NHS Foundation Trust](#) offers a combination of flexible working, childcare vouchers and discounts at local nurseries. It also provides a childcare subsidy scheme, which covers all forms of registered childcare including after-school and breakfast clubs through a subsidy of up to £200 per month. Additionally it has negotiated subsidised holiday playscheme places at a cost of just £14 per day, per child.

[The University of Oxford](#) runs five nurseries. In addition, it also offers places at nine community nurseries across Oxfordshire. They offer a total of 465 FTE places for eligible staff and students, 332 of which are in the University's own nurseries.

## **Returning to work – priority areas to consider for negotiations**

- Is the pay provided for all family leave non-refundable?
- Does the employer offer a return to work bonus?
- What support is there for workers returning to work after longer periods of family leave?
- Are all new parents granted the right to work flexibly if they wish?
- Is there a breastfeeding policy in place which includes taking account of appropriate facilities and breaks needed?
- Does the employer support workers with childcare costs whilst they are on family leave and when they return to work?



## Further information

### **Maternity Action** [www.maternityaction.org.uk](http://www.maternityaction.org.uk)

The UK's leading charity committed to ending inequality and improving the health and well-being of pregnant women, partners and young children – from conception through to the child's early years.

### **Working Families** [www.workingfamilies.org.uk](http://www.workingfamilies.org.uk)

The UK's leading work-life balance organisation. The charity helps working parents and carers and their employers find a better balance between responsibilities at home and work.

### **Coram Family and Childcare** [www.familyandchildcaretrust.org](http://www.familyandchildcaretrust.org)

Working to make the UK a better place for families by bringing together what they learn from their on the ground parent-led programmes and their research to campaign for solutions that parents want and need. They focus on childcare and early years.

### **Gingerbread** [www.gingerbread.org.uk](http://www.gingerbread.org.uk)

The charity supporting single parent families to live secure, happy and fulfilling lives.

### **National Childbirth Trust** [www.nct.org.uk](http://www.nct.org.uk)

The UK's largest parent charity providing accurate, impartial information so that they can decide what's best for their family.

### **Employers for Childcare** [www.employersforchildcare.org](http://www.employersforchildcare.org)

A charity encouraging employers to implement family friendly policies in the workplace.

### **Health and Safety Executive (HSE)** [www.hse.gov.uk/mothers](http://www.hse.gov.uk/mothers)

Providing useful information on what employers must consider if they have any new or expectant mothers in their workplace.

### **TUC** [www.tuc.org.uk/union-reps/family-friendly-work](http://www.tuc.org.uk/union-reps/family-friendly-work)

Guidance on family friendly work for workplace reps from the Trades Union Congress.

### **There for You** [www.unison.org.uk/get-help/services-support/there-for-you/](http://www.unison.org.uk/get-help/services-support/there-for-you/)

UNISON members experiencing financial and emotional difficulties can contact UNISON's welfare charity, There for You, which provides a confidential advice and support service for members and their dependants.

For an overview of individual maternity rights from **UNISON**, please see the **'Pregnancy: your rights at work'** guide  
[www.unison.org.uk/content/uploads/2017/05/24370.pdf](http://www.unison.org.uk/content/uploads/2017/05/24370.pdf)

**'Flexible working: making it work'** guide for UNISON branch officers or stewards highlights potential areas of concern and offers advice on negotiations relating to flexible working.  
[www.unison.org.uk/content/uploads/2014/09/On-line-Catalogue225422.pdf](http://www.unison.org.uk/content/uploads/2014/09/On-line-Catalogue225422.pdf)

**Protecting the health and safety of pregnant workers and new mothers:** a toolkit for UNISON trade union reps  
[www.unison.org.uk/content/uploads/2022/08/pregnancy-toolkit.pdf](http://www.unison.org.uk/content/uploads/2022/08/pregnancy-toolkit.pdf)

UNISON'S **'Bargaining on carers' policies'** guidance for negotiating for better support for workers with caring responsibilities with a model policy.  
[www.unison.org.uk/carers-policies-guide/](http://www.unison.org.uk/carers-policies-guide/)

Contact your **regional education teams and / or LAOS** to find out what training and resources are available to assist you with negotiating with your employer or promoting the issues in this guide with your members <https://learning.unison.org.uk/>

## Putting the case to employers – what they can gain

**Coram Family and Childcare research report** ‘Holding on or moving up’ ([www.familyandchildcaretrust.org](http://www.familyandchildcaretrust.org)) identifies that “in general, business gains will be to do with:

- Keeping someone in the workforce now
- Knowing that someone will be returning to the workforce in the future
- Attracting or retaining staff who do not currently provide care, but think that they might in future
- Attracting customers on the basis that they are an ethical business.”

### Reduce sickness absence

As the 2017 **TUC** report ‘**Better jobs for mums and dads**’ ([www.tuc.org.uk/research-analysis/reports/better-jobs-mums-and-dads](http://www.tuc.org.uk/research-analysis/reports/better-jobs-mums-and-dads)) found “the daily grind of managing childcare with work responsibilities has inevitable consequences. Many parents reported an adverse impact on their health. Trying to juggle work and childcare led to parents feeling anxious, stressed, tired and guilty that they couldn’t give their best to either their children or their employer.”

Inadequate parental schemes that force an early return to work can often carry a hidden cost in days lost through sickness absence as the parent struggles to cope with the demands of work and caring for a young child.

A significant proportion of the employees of **West Dunbartonshire Council** (winner of the **Working Families** best employer in the public sector 2017) are parents or carers, and the council offers a wide range of practical support.

It provides paid bereavement leave and offers flexibility through carers’ leave, ‘buy or bank’ leave, paid disability leave and personal days. They were the first Scottish local authority to adopt the ‘Happy to Talk Flexible Working’ strapline, and now ask prospective employees if they wish to work flexibly and which hours they would prefer.

The Council saw an average absence fall of 20% from October 2015 to September 2016. Stress absence was down 33% over the same period and there was a 14 % reduction in vacancies. The Council believes the new approach to employee flexibility has contributed significantly to this.

### More returners and better staff recruitment and retention

Organisations that have introduced more ‘family friendly’ policies have seen their staff turnover rates fall.

The private sector offers examples of dramatic benefits to employers from adopting improved policies for parents, as highlighted by [Working Families](#) in their 2022 best practice awards:

**Macfarlanes LLP**'s policy support for mothers includes a dedicated HR contact allocated to support mothers throughout their parenting journey. A parental transition coaching programme provides support to parents and line managers of parents. There are a range of flexible working arrangements available to help employees balance work and family responsibilities, including part-time, compressed hours, job-shares, remote working and term-time hours, with 15% of women at the firm working flexibly. The success of the initiatives in creating a working environment that supports working mothers is evident in that in 2021 82% of mothers were still in the workplace one year after they returned from maternity leave.

For **People Untapped**, flexibility is a fundamental part of their way of working. Many of the team work part time, and employees are autonomous in managing their workload based on business objectives. Where cumulative hours exceed standard hours, employees are paid overtime or can use the time flexibly to suit their needs.

Jobs are advertised as being remote and flexible and are listed on flexible working recruitment platforms. Flexible working is formalised in contract, with core hours stipulated and the requirement to attend team days and business meetings communicated at the outset of the recruitment process, ensuring an alignment in expectations.

Under this leadership model with a flexible approach to working, the business has experienced significant growth, even during the pandemic. There is a high employee retention rate, matched by the levels of client satisfaction and retention, due to committed and motivated employees providing a quality service.

Good family leave conditions ensure more returners from maternity leave and better staff recruitment and retention without necessarily having to offer other financial incentives or rewards.

Yet, according to 2019 [analysis by the Mumsnet website](#), large employers rarely publish their parental leave policies for all to see. The Mumsnet survey of 1,000 parents and prospective parents revealed that keeping these policies hidden has an enormous impact on those returning to work or looking to switch jobs.

The UK has one of the highest female employment rates of the major EU Countries, with more than 6 out of 10 working age women in employment. The participation of women in the labour market in the UK is essential to the success of the UK economy, and providing good maternity provisions is a key way of ensuring women return to work after having a baby and their skills and experience are not lost to the employer.

According to McKinsey Global Institute's 2016 report 'The Power of Parity', encouraging women's participation in the labour market, ensuring they are protected

from discrimination and can work when they want to work, could add as much as £150 billion pounds to the UK economy.

Loss of staff carries a heavy financial burden, with the average cost of recruitment standing at £6,000 for senior managers and £2,000 for other employees as estimated back in 2017,<sup>3</sup> in addition to the time necessary to rebuild the skills and experience that are key to providing quality services.

Currently, a third of women do not return to work following childbirth. One simple action that the employer can take to encourage women to return to work earlier from maternity leave, is by supporting breastfeeding at work, and this could also help women avoid health problems such as mastitis.

**Unibail-Rodamco-Westfield** was the winner of the **Working Families** Best for All Families 2022 award. From day one their employees can benefit from informal working from home and core hours arrangements, and can request formal flexible working arrangements should they wish. Enhanced leave policies address all types of family circumstance, including menopause, transitioning at work, surrogacy, and pregnancy loss at any stage of gestation. These are available regardless of tenure, position or individual circumstance. Tailored support for employees and line managers is given around family and wellbeing policies and processes. HR provide 121 coaching for line managers when supporting employees through specific challenging circumstances.

### **Help ensure staff focus on work when at work**

Parental rights are key to enabling staff to combine work and coping effectively with childbirth, the demands of raising a child over the first year or integrating an adopted child into a family. Those rights should enable parents to be free from the stress of financial worries and sure of their ability to resume a stable career.

**Timewise**, the flexible working consultancy notes that “it’s often assumed that flexible workers are less engaged and less productive than their full-time peers. In fact, the opposite is true.

The CIPD research during the COVID-19 lockdown, ‘**Embedding new ways of working**’ showed that two thirds of the employers they surveyed, reported that homeworkers were more or as productive as they were when in the workplace, as well as benefiting from improved focus (38%).

“Employers who say that productivity has not been affected or improved as a result of the shift to more homeworking refer to an increased ability to meet targets, more focused work time and a better work–life balance as key drivers...

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<sup>3</sup> CIPD, Resource and Talent Planning 2017

Some employers also reported a greater focus on tasks and more streamlined ways of communication as key advantages of the new way of working.”

The report from the Institute for Employment Studies on their major research project ‘[Working from Home under COVID-19 lockdown: Transitions and Tensions – January 2021](#)’ similarly highlighted productivity positives about working from home. Nine in ten (88.4%) employees asked felt they had got at least as much, if not more, work done at home as in the office.

The research project also [reported](#) that “Interviewees commonly spoke of their relief at not commuting, and of the financial savings achieved. However, the time gained was of more value... Employees were liberated from dashing between commitments in different locations. They had more autonomy over their time to craft their own jobs and to spend more quality time with families. Organisations too benefited, as more employee time was invested in jobs, even if this was on a more flexible schedule. These gains translate across to the productivity scores reported.”

### **Avoid discrimination**

The impact of taking time out from work due to caring responsibilities as well as lack of well paid flexible work that fits with the availability of childcare, can be long-term throughout the career of a parent, particularly on women. This burden on the individual can significantly contribute to the gender pay gap. With mandatory gender pay reporting now in place for larger employers, improving family leave policies could be seen as a valuable part of any subsequent gender pay gap action plan.

Employers should be aware that discrimination may also arise, if the employee is subjected to a detriment for a reason relating to having ‘given birth to a child’ including, for example, if a request to breastfeed is made while the employee is pregnant or on maternity leave (and therefore being within the ‘protected period’).

As the [Coram Family and Childcare research report](#) ‘Holding on or moving up’ ([www.familyandchildcaretrust.org](http://www.familyandchildcaretrust.org)) highlights:

“Care is an equality issue. The majority of parents who take time out of the workplace, and of carers for adults, are women. If it is difficult to balance work and care, it is largely women’s incomes that suffer both at the time of caring, and in the future because of the propensity of those who return to work to work fewer hours, restricted career progression and gaps in pension contributions.”

Workplace agreements that improve on statutory parental rights can also contribute toward raising the profile of the issue, ensuring that pregnancy and maternity in the workforce is managed more positively and that unlawful discrimination and disadvantage can be avoided.

This will also mean that potentially costly and time-consuming grievance hearings and employment tribunal cases can be avoided, along with all the bad feeling and

mistrust felt by other staff and potential applicants when they hear of these issues associated with the employer.

### **Improve performance**

Well-designed, good practice working parents' policies that, for example do not force an early return after childbirth carrying all the associated anxiety and stress for parents, can pay off for the employer through improved morale and productivity that raises service standards.

The work situation on return is also key. As 2017 research from [Acas](https://www.acas.org.uk) ([www.acas.org.uk](https://www.acas.org.uk)) '**Flexible working for parents returning to work: maintaining career development**' states: "The business case for flexible working has been around since the development of the right to request, with plenty of examples of reduced costs and increases in employee loyalty and productivity, if the right balance is achieved."

Employees given the choice to work flexibly are likely to be more engaged with their work. The Acas research has found that motivating and engaging employees "generate 43% more revenue than disengaged employees... decrease employee turnover... and improve performance."

### **Improve recruitment**

More generous parental packages can assist in the recruitment of high quality staff and have a particularly important role in attracting a more diverse workforce. In the public sector, this can be linked to the organisation's legal requirement under the Equality Duty to advance equality of opportunity.

The bottom line for employers is that if they offer good maternity and other parental leave provisions, workers (women in particular) will be more positive and more committed to returning to work. Inevitably therefore turnover, recruitment and training costs will fall.

On top of this, there are benefits to employers which are harder to quantify. The effects of a good reputation, and being known as a family friendly, equal opportunity employer have indirect benefits, not only to encourage potential employees and keep existing ones, but with the wider public.

## Model family leave and pay policy

### (incorporating maternity leave, maternity support (paternity) leave, adoption leave, shared parental leave, and parental leave)

The following model policy can be used in the workplace to help support parents.

Please note that the text in square brackets [...] indicates where you need to complete information specific to your workplace, or else are notes for you to consider in relation to your negotiations.

## Policy Statement

**[Name of employer]** recognises that employees with parental responsibilities may find it difficult at times to balance inflexible work practices alongside caring responsibilities and it is our policy to support these employees.

**[Name of employer]** recognises that parental responsibilities can be unpredictable, demanding and impact on the parent's health and wellbeing, and we aim to provide as much support as is reasonably practicable for individuals.

**[Name of employer]** is committed to developing a workplace culture that supports employees with parental and other caring responsibilities in order to help them balance their working and caring commitments, and continue to be effective in their job, in order to help us recruit and retain these employees.

**[Name of employer]** will not treat any employee less favourably or dismiss them because they are pregnant, absent on maternity, maternity support (paternity), shared parental, adoption, surrogacy or parental leave, or for any other reason connected with family leave.

**[Name of employer]** will not tolerate discrimination, victimisation or harassment on the basis of a person's caring responsibilities or connected with pregnancy or maternity (including breastfeeding), and we aim to give working parents and carers the same recruitment and career opportunities.

This policy is part of **[name of employer]**'s commitment to family friendly working, and it seeks to benefit the welfare of individual members of staff; retain valued employees; improve morale and performance and enhance the reputation of **[name of employer]** as an employer of choice.

## Scope of Policy

This policy applies to all staff who are employed at **[name of employer]** including part-time and temporary workers, regardless of hours worked or length of service ***[this could be negotiated in line with good practice employers where there is no qualifying period for leave and pay. Alternatively at least aim to keep this period of time short and no longer than any statutory period of qualification]***



***i.e. 26 weeks. Negotiate for at least maternity, adoption, maternity support (paternity) and shared parental leave and pay to require no qualifying period.]***

This policy is supported by and developed with the trade unions representing the employees.

**Maternity leave and pay** is available to you if you are a new mother, including if you are a birth mother who gives birth in a surrogacy arrangement.

**Adoption leave and pay** is available to you if you are the primary adopter of a child and adopt from the UK or a recognised overseas adoption agency. It is also available to you if you are a surrogate parent, the primary carer and have acquired or intend to acquire legal parenthood for the child and have parental responsibility through a parental order, and also if you are fostering for adoption.

**Shared parental leave and pay** is available to you if you are the mother, a newborn's father, the partner of an expectant mother at the time of the birth (or shortly after), the partner of the primary adopter, or the partner of the primary carer in a surrogacy arrangement and have acquired or intend to acquire legal parenthood for the child and have parental responsibility through a parental order.

**Maternity support (paternity) leave and pay** is available to you if you are a newborn's father, the partner or the nominated carer of an expectant mother at the time of the birth (or shortly after) or an individual who adopts, or the partner of the primary carer in a surrogacy arrangement and have acquired or intend to acquire legal parenthood for the child and have parental responsibility through a parental order.

**Parental leave and pay *[if paid, if not this could be one of your priorities for negotiation]*** is available to you if you have a child under the age of 18 years.

Paid leave is available to you to attend appointments for **fertility treatment**. More details to be found in the '**Paid leave for medical appointments policy**' at ***[include a link or signpost to the appropriate policy]***. If you are sick as a result of the fertility treatment, then ***[name of employer]***'s normal sickness policy applies. However any sickness related to fertility treatment will be noted separately and will not be used in relation to any disciplinary or capability procedures.

Carers leave and pay is available to you if you care, unpaid, for a friend or family member who due to illness, disability, a mental health problem or an addiction needs your help to live independently. More details can be found in the '**Carers leave policy**' at ***[include a link or signpost to the appropriate policy]***.

Paid ***[if paid, if not this could be one of your priorities for negotiation]*** emergency leave is available to you to deal with unexpected issues at short notice relating to you or your family or someone you care for. More details to be found in the '**Emergency leave policy**' at ***[include a link or signpost to the appropriate policy]***.

Paid ***[if paid, if not this could be one of your priorities for negotiation]*** compassionate leave is available to you if you have lost a member of your family or someone you care for. If you have lost a child under the age of 18, you are entitled to at least 2 weeks' paid compassionate leave. ***[This reflects the Parental Bereavement entitlement where at least statutory pay will be due – although you could negotiate flexibility as to the length of leave and the pay given ideally at full pay rate.]***

Mothers who miscarry or experience pregnancy loss before the 24th week of pregnancy and their partners are also entitled to paid compassionate leave. More details to be found in the 'Pregnancy loss leave policy' at ***[include a link or signpost to the appropriate policy. [Further information in the appendix.](#)]***

Any sick leave related to miscarriage will be noted separately from other sickness absence and as pregnancy-related, and will not be used in relation to any disciplinary or capability procedures.

Mothers whose babies are stillborn after the 24th week of pregnancy still qualify for all maternity rights (see below).

## **Responsibilities of managers – general principles**

Line managers should ensure that all employees are aware of this policy and understand their own and the employer's responsibilities. Training on issues affecting working parents and carers will be provided to all managers.

Line managers should encourage employees to disclose that they have parental and other caring responsibilities by initiating discussion around parents and carers' issues and highlighting the support available.

Line managers (with the support of HR where requested) should discuss the support options available for employees who are parents and carers and encourage them to access the support offered.

Line managers should consider sympathetically all requests for support and will not discriminate against those employees who are parents and/or have caring responsibilities. All employees must be treated fairly and consistently. Employees need to be confident that they will not be treated less favourably if they take-up any support available to parents and carers.

***[Name of employer]*** will take seriously and investigate any complaints of discrimination, harassment or victimisation, using the agreed procedures and respecting confidentiality.

All requests for support for parents and carers must be dealt with confidentially and in accordance with the data protection policy.

Line managers will support employees in informing their colleagues about the situation if appropriate.

## Responsibilities of employees – general principles

Employees are encouraged to inform their manager as soon as they feel able if they are pregnant so that **[name of employer]** can take steps to protect their health and safety.

All employees are encouraged to inform their manager as soon as possible if they are currently or expectant parents or care for someone and need any support, so that they can best balance work and care commitments.

Employees should report any instances of harassment, victimisation or discrimination experienced because of their parental and caring responsibilities.

If an employee is found to have harassed, victimised or discriminated against another employee in relation to their parental and caring responsibilities, then they will be seen as having committed a disciplinary offence.

## Maternity leave and pay

All employees and workers, **[this would be an ideal scenario that it is made available to workers as well as employees]** regardless of length of service, who are new mothers, are entitled to up to 52 weeks' maternity leave and pay. This also includes a birth mother who gives birth in a surrogacy arrangement.

It is a statutory requirement to take at least 2 weeks' maternity leave after the birth of the child.

### Stillbirths and miscarriages:

Mothers whose babies are stillborn after the 24th week of pregnancy still qualify for all maternity rights.

Mothers who miscarry before the 24th week of pregnancy (including those affected by ectopic and molar pregnancy) will be given **paid compassionate leave**. More details to be found in the '**Pregnancy loss leave policy**' at **[include a link or signpost to the appropriate policy. [Further information in the appendix.](#)]**

### Notice for when maternity leave will start:

Employees and workers who are pregnant, by the end of the 15<sup>th</sup> week before the baby is due (or as soon as practically possible) must provide a copy of their Maternity Certificate (MAT B1) and following details in writing to their line manager:

- the expected date of birth of the baby,
- when they want their maternity leave to start (the earliest this can be is the 11<sup>th</sup> week before the baby is due),
- when they want their maternity pay to start.

**[Name of employer]** will confirm the date when the maternity leave will end within 28 days of this notification.

If employees and workers wish to change the date that their maternity leave and pay start on, they must give 28 days' notice in writing to their manager. ***[You may wish to negotiate a shorter notice period for changing the start date.]***

If their baby is born before the planned date for their maternity leave to start, their leave will normally start on the actual date of birth of your baby.

### **Babies who require neonatal care including premature babies :**

If their baby requires neonatal care or is born prematurely (more than 4 weeks early), their maternity leave will start once the baby has come home, and the employee or worker will be given **paid special leave** for the period between the birth and the start of maternity leave. More details to be found in the '**Special leave policy**' at ***[include a link or signpost to the appropriate policy].***

### **Maternity pay entitlement:**

All employees and workers, regardless of length of service, are entitled to maternity pay ***[alternatively try to negotiate a shorter qualification period than the statutory period of 26 weeks]*** at the rate of 26 weeks at full pay and 26 weeks at half pay. ***[This rate of maternity pay may be aspirational, but negotiating an enhanced rate in line with good practice employers above the statutory minimum made available to workers as well as employees, should be a priority for all workplaces, and ideally covering all staff regardless of length of service. Particular care must be given when considering how maternity pay is calculated for term-time workers and those on annualised contracts.]***

Enhanced maternity pay will be offset against statutory maternity pay.

### **Health and safety:**

The health and safety of employees and workers who are pregnant or new mothers and their babies is very important. The workplace risk assessment must consider any risks to female employees of childbearing age, to new and expectant mothers.

Once notified that an employee or worker is pregnant, breastfeeding or has given birth within the last six months, line managers will ensure that an individual workplace risk assessment is undertaken to see if any new risks have arisen. Further individual risk assessments will be undertaken as the pregnancy progresses and when the worker returns to work after maternity leave.

Line managers will ensure that rest facilities are provided and make appropriate changes to the employee's working patterns if necessary.

### **Multiple births**

Where there is a multiple birth, **paid special leave** may be considered in addition to maternity leave entitlements, in order to best support the health and wellbeing of the mother and babies. More details to be found in the '**Special leave policy**' at ***[include a link or signpost to the appropriate policy].***

### **Antenatal care and classes:**

All employees and workers are entitled to reasonable paid time off during working hours for antenatal care, including travelling time. This includes medical appointments, as well as relaxation and parenting classes on the recommendation of a doctor, registered health visitor or registered midwife.

After their first appointment, their manager may ask employees or workers to produce an appointment card to confirm their arrangements.

A partner of a pregnant woman (the baby's father or the mother's spouse, civil partner, or partner in an enduring relationship, or the parents of a child in a qualifying surrogacy arrangement) is also entitled to paid time off to attend antenatal appointments.

### **Sickness during pregnancy or maternity leave:**

If employees and workers are sick during pregnancy, **[name of employer]**'s normal sickness policy applies. However any sickness related to pregnancy including miscarriage will be noted separately and will not be used in relation to any disciplinary or capability procedures.

You do not automatically have to start your maternity leave because you are sick. ***[This could be negotiated in line with good practice employers where employees are not forced to start their maternity leave and pay. Alternatively, try to negotiate that they can at least take a few days off sick within the four weeks before their maternity leave is due to start, without triggering the start day earlier.]***

If the employee or worker is sick during maternity leave, they are not entitled to sick pay but will continue to receive maternity pay.

If the employee or worker is sick once they have ended their maternity leave and they have returned to work, then **[name of employer]**'s normal sickness policy applies.

### **Redundancy during pregnancy or during maternity leave or on return to work:**

If an employee's job is made redundant during their pregnancy (once they have informed their employer), during their maternity leave or within 6 months of their return to work, they will be entitled to a similar job on no less favourable terms and conditions, if one is available.

The employee will be given priority over other employees if the vacancy is suitable, without having to go through a competitive process such as a competitive interview. Otherwise, the normal redundancy policy applies.

***[This right is currently only available to women on maternity leave. However the government has confirmed it plans to extend this right to pregnant workers, and new parents for a time after they return to work.]***

### **Other employee rights during maternity leave:**

Continuity of employment is preserved during all of maternity leave, and, except for pay, employees are entitled to the benefit of their normal terms and conditions during maternity leave.

They will retain use of any company car which they normally have access to; they will retain continuity of service for any profit-related pay; they will be entitled to any pay rises awarded whilst they are on leave; holiday entitlement including public holidays will continue to accrue during this period. If an employee cannot take all their annual leave during the leave year because they are on maternity leave, they can carry it over to the next leave year. ***[You may need to negotiate the entitlement to carry over contractual as well as statutory annual leave entitlement. Care must be taken in particular in relation to term-time workers and those on annualised contracts in calculating their entitlement.]***

When an employee is on maternity leave, they will pay pension contributions based on the actual pay they receive, but receive credit as if they paid contributions based on their normal pay. If necessary, ***[name of employer]*** will increase its pension contributions to cover any shortfall.

***[You may need to negotiate that employees on Additional Maternity Leave (from week 27 of their maternity leave period) benefit from all the same terms and conditions of service as those on Ordinary Maternity Leave, including company car, medical insurance etc. as listed above and as relevant to your workplace.]***

#### **Staying in contact and keeping in touch days:**

***[Name of employer]*** will send employees and workers copies of any organisation newsletters or e-bulletins whilst they are on maternity leave, and keep them informed of any changes and development opportunities.

Managers may make reasonable contact with employees and workers during their time off on maternity leave, for example to notify them about team development or job opportunities, or to discuss their return to work. Managers will discuss arrangements for staying in contact with employees and workers before the start of their maternity leave.

In addition employees can request, entirely at their own discretion but with the agreement of their manager, to carry out up to 10 days' work or attendance at meetings or training during their maternity leave without bringing it to an end or jeopardising the right to maternity pay. These will be called 'Keeping in Touch Days'. Employees will be paid equivalent to their full pay for Keeping in Touch Days worked offset against any statutory or contractual maternity pay made for the same day.

***[This full pay rate rather than just maternity pay will need to be negotiated.]***

#### **Returning to work:**

Employees and workers who intend to return to work early, before the end of their full maternity leave (including Additional Maternity Leave), need to notify ***[name of***

**employer].** There is 7 days' notice for employees and workers returning before the end of Ordinary Maternity Leave (the first 26 weeks), or 21 days' notice for employees returning before the end of Additional Maternity Leave (the additional 26 weeks). ***[This will need to be negotiated down from the statutory notice period of eight weeks' notice to return early.]***

Employees and workers who do not intend to return to work after maternity leave need to give notice of their resignation in the normal way. Their maternity pay will be unaffected. Please give ***[name of employer]*** as much notice as possible.

### **Employee rights on return to work:**

Employees are entitled to return to the same job at the end of maternity leave. However if this is not reasonably practicable for employees on Additional Maternity Leave (i.e. up to a further 26 weeks' leave after Ordinary Maternity Leave) then they are entitled to return to another suitable and appropriate alternative job.

Employees who return to work after taking Additional Maternity Leave, will receive a re-induction programme. They are entitled to phase their return to work over 4 weeks and vary their start and finish times to accommodate childcare responsibilities for the first 6 months. ***[This sort of support when returning could be negotiated and these are examples of some good practice.]***

***[Optional suggested inclusion]*** Women returning from maternity leave will receive a returner's bonus of £ ***[amount]*** or equivalent to ***[number]*** weeks full pay, ***[amount to be negotiated but it needs to be substantial to be a positive incentive]*** which is repayable if you leave within 6 months. ***[This might be one approach to encourage employees on maternity leave to return to work rather than penalise those who do not return].***

### **Breastfeeding:**

***[Name of employer]*** will provide facilities to enable employees and workers returning from maternity leave to breastfeed their child including providing facilities for storing milk in a fridge, and support adaptations to their working pattern to allow this. Time that employees and workers spend breastfeeding or expressing milk will be paid. More details to be found in the '**Breastfeeding policy**' at ***[include a link or signpost to the appropriate policy]***.

## **Adoption leave and pay**

All employees and workers, ***[this would be an ideal scenario that it is made available to workers as well as employees]*** regardless of length of service, who are the primary adopter of a child and who adopt from the UK or a recognised overseas adoption agency and have obtained a certificate of adoption are entitled to up to 52 weeks' adoption leave and pay.

Adoption leave and pay is also available to employees and workers if they are a surrogate parent and primary carer, and have acquired or intend to acquire legal

parenthood for the child and have parental responsibility through a parental order, as well as to employees and workers fostering for adoption.

Only one adopting parent in a couple can take adoption leave.

### **Notice for when adoption leave will start:**

In normal circumstances, employees and workers must give written notice as to when they plan to take statutory adoption leave, within seven days of being matched with a child or as soon as possible if seven days is not reasonably practicable, providing the following details in writing to their line manager:

- confirmation that they have been matched
- the date when the child is to be placed with them
- when they want their adoption leave to start (the earliest this can be is 14 days before the date when the child is expected to start living with them)
- when they want their adoption pay to start.

**[Name of employer]** may ask for evidence of the adoption such as the 'matching certificate' (or the 'official notification' i.e. permission from a UK authority that you can adopt from abroad) and will confirm the date when the adoption leave will end within 28 days of this notification.

If employees and workers wish to change the date that their adoption leave and pay start on, they must give 28 days' notice in writing to their manager. ***[You may wish to negotiate a shorter notice period for changing the start date.]***

### **Adoption pay entitlement:**

All employees and workers, regardless of length of service, are entitled to adoption pay ***[alternatively try to negotiate a shorter qualification period than the statutory period of 26 weeks]*** at the rate of 26 weeks at full pay and 26 weeks at half pay. ***[This rate of adoption pay may be aspirational, but negotiating an enhanced rate in line with good practice employers above the statutory minimum and in line with maternity pay, available to workers as well as employees, should be a priority for all workplaces, and ideally covering all staff regardless of length of service. Particular care must be given when considering how adoption pay is calculated for term-time workers and those on annualised contracts.]***

Enhanced adoption pay will be offset against statutory adoption pay.

### **Pre-adoption appointments:**

All employees and workers are entitled to reasonable paid time off during working hours for pre-adoption appointments with social workers and other agencies, including travelling time.

The partner of the primary adopter is also entitled to paid time off to attend adoption appointments.



### **Sickness during adoption leave:**

If employees or workers are sick during adoption leave, they are not entitled to sick pay but will continue to receive adoption pay.

If employees or workers are sick once they have ended their adoption leave and they have returned to work, then **[name of employer]**'s normal sickness policy applies.

### **Redundancy during adoption leave or on return to work:**

If an employee's job is made redundant during their adoption leave or within 6 months of their return to work, they will be entitled to a similar job on no less favourable terms and conditions, if one is available.

The employee will be given priority over other employees if the vacancy is suitable, without having to go through a competitive process such as a competitive interview. Otherwise, the normal redundancy policy applies.

***[This right is currently only available to women on maternity leave. However the government had confirmed it plans to extend this right to pregnant workers and to new parents for a time after they return to work.]***

### **Other employee rights during adoption leave:**

Continuity of employment is preserved during all of adoption leave, and, except for pay, employees are entitled to the benefit of their normal terms and conditions during adoption leave.

They will retain use of any company car which they normally have access to; they will retain continuity of service for any profit-related pay; they will be entitled to any pay rises awarded whilst they are on leave; and holiday entitlement including public holidays will continue to accrue during this period. If an employee cannot take all their annual leave during the leave year because they are on adoption leave, they can carry it over to the next leave year. ***[You may need to negotiate the entitlement to carry over contractual as well as statutory annual leave entitlement. Care must be taken in particular in relation to term-time workers and those on annualised contracts in calculating their entitlement.]***

When an employee is on adoption leave, they will pay pension contributions based on the actual pay they receive, but receive credit as if they paid contributions based on their normal pay. If necessary, **[name of employer]** will increase its pension contributions to cover any shortfall.

***[As with maternity leave, you may need to negotiate that employees on Additional Adoption Leave (from week 27 of their adoption leave period) benefit from all the same terms and conditions of service as those on Ordinary Adoption Leave, including company car, medical insurance etc. as listed above and as relevant to your workplace.]***

### **Staying in contact and keeping in touch days:**

**[Name of employer]** will send employees and workers copies of any organisation newsletters or e-bulletins whilst they are on adoption leave, and keep them informed of any changes and development opportunities.

Managers may make reasonable contact with employees and workers during their time off on adoption leave, for example to notify them about team development or job opportunities, or to discuss their return to work. Managers will discuss arrangements for staying in contact with employees and workers before the start of their adoption leave.

In addition employees can request, entirely at their own discretion but with the agreement of their manager, to carry out up to 10 days' work or attendance at meetings or training during their adoption leave without bringing it to an end or jeopardising the right to adoption pay. These will be called 'Keeping in Touch Days'. Employees will be paid equivalent to their full pay for Keeping in Touch Days worked offset against any statutory or contractual adoption pay made for the same day.

***[This full pay rate rather than just adoption pay will need to be negotiated.]***

#### **Returning to work:**

Employees and workers who intend to return to work early, before the end of their full adoption leave (including Additional Adoption Leave), need to notify **[name of employer]**. There is 7 days' notice for employees and workers returning before the end of Ordinary Adoption Leave (the first 26 weeks), or 21 days' notice for employees and workers returning before the end of Additional Adoption Leave (the additional 26 weeks). ***[This will need to be negotiated down from the statutory notice period of eight weeks' notice to return early.]***

Employees and workers who do not intend to return to work after adoption leave need to give notice of their resignation in the normal way. Their adoption pay will be unaffected. Please give **[name of employer]** as much notice as possible.

#### **Employee rights on return to work:**

Employees are entitled to return to the same job at the end of adoption leave. However if this is not reasonably practicable for employees on Additional Adoption Leave (i.e. up to a further 26 weeks' leave after Ordinary Adoption Leave) then they are entitled to return to another suitable and appropriate alternative job.

Employees who return to work after taking Additional Adoption Leave, will receive a re-induction programme. They are entitled to phase their return to work over 4 weeks and vary their start and finish times to accommodate childcare responsibilities for the first 6 months. ***[This sort of support when returning could be negotiated and these are examples of some good practice.]***

***[Optional suggested inclusion]*** Primary adopters returning from adoption leave will receive a returner's bonus £ **[amount]** or equivalent to **[number]** weeks, ***[amount to be negotiated but it needs to be substantial to be a positive incentive]*** which is repayable if you leave within 6 months. ***[This might be one approach to***

**encourage employees on adoption leave to return to work rather than penalise those who do not return].**

## **Shared parental leave and pay**

All employees and workers, ***[this would be an ideal scenario that it is made available to workers as well as employees]*** regardless of length of service, who are the mother, a new-born's father, the partner of an expectant mother at the time of the birth (or shortly after) or the partner of the primary adopter, or the partner of the primary carer in a surrogacy arrangement and have acquired or intend to acquire legal parenthood for the child and have parental responsibility through a parental order, are entitled to up to 50 weeks' shared parental leave and pay. ***[This would be an ideal scenario that it is made available to workers as well as employees and that there is no length of service for eligibility, but alternative qualifying periods could be negotiated, shorter than the statutory period of 26 weeks and regardless of the average weekly earnings of the partner or 'secondary adopter'.]***

Shared parental leave can take place at the same time as the mother or primary adopter is on maternity or adoption leave so that both parents can be off work together. It is up to the mother or primary adopter to decide whether they wish to continue on maternity leave or opt to take shared parental leave.

Shared parental leave can start on any day of the week but can only be taken in complete weeks. It can be for one continuous period of time or split up into a maximum of three separate chunks of time or 'discontinuous' leave. ***[You may wish to negotiate with the employer for potentially more than three blocks of leave and that notifications to cancel or vary booked shared parental leave are not included within the three notifications. You may also wish to include the possibility of part-weeks so as to increase flexibility for the worker.]***

***[Name of employer]*** has the right to refuse to agree to the 'discontinuous' periods of shared parental leave, although there must be a 14 day discussion period following any refusal. ***[The ideal scenario would be that 'discontinuous' leave is always acceptable and this could be negotiated with the employer, or at least to be clear about why it may be refused.]***

If there is no agreement, the employee is still entitled to take shared parental leave in a continuous block.

### **Notice for when shared parental leave will start:**

Employees or workers on maternity or adoption leave who decide to opt for shared parental leave will be required to end their maternity or adoption leave in line with the amount of shared parental leave to be used, and should give notice for their early return to work as stated under 'Maternity leave and pay' and 'Adoption leave and pay' above.

Employees or workers who are the partner or 'secondary adopter' must give 8 weeks' notice as to when they plan to take it. ***[You may wish to negotiate a shorter notice period for the start date.]*** If the baby is born before their expected due date, employees or workers must give notice of shared parental leave or to vary leave already booked as soon as is reasonably practicable and this will not count as one of the three notifications. ***[Amend this should you have negotiated the possibility of more than three notifications.]***

This notice must be signed by both parents and state the mother or primary adopter's entitlement to leave as well as how much leave each parent intends to take and when. The mother or primary adopter should also confirm in writing that they agree to the shared parental leave.

The earliest shared parental leave can start is after 2 weeks' compulsory maternity leave following the birth of the child has been taken by the mother, or after 2 weeks' adoption leave has been taken by the primary adopter.

#### **Shared parental pay entitlement:**

All employees and workers, regardless of length of service, are entitled to shared parental pay ***[alternatively try to negotiate a shorter qualification period than the statutory period of 26 weeks]*** at the rate of 26 weeks at full pay and 24 weeks at half pay. ***[This rate of shared parental pay may be aspirational, but negotiating an enhanced rate in line with good practice employers above the statutory minimum, mirroring that available to maternity entitlement would be a priority for all workplaces, and ideally covering all staff regardless of length of service. Particular care must be given when considering how shared parental pay is calculated for term-time workers and those on annualised contracts.]***

Enhanced shared parental pay will be offset against statutory shared parental pay.

#### **Sickness during shared parental leave:**

If the employees and workers are sick during shared parental leave, they are not entitled to sick pay but will continue to receive shared parental pay.

If the employees and workers are sick once they have ended their shared parental leave and they have returned to work, then ***[name of employer]***'s normal sickness policy applies.

#### **Redundancy during shared parental leave or on return to work:**

If an employee's job is made redundant during their shared parental leave or within 6 months of their return to work, they will be entitled to a similar job on no less favourable terms and conditions, if one is available.

The employee will be given priority over other employees if the vacancy is suitable, without having to go through a competitive process such as a competitive interview. Otherwise, the normal redundancy policy applies.

***[This right is currently only available to women on maternity leave. However the government had confirmed it plans to extend this right to pregnant workers, and to new parents for a time after they return to work.]***

#### **Other employee rights during shared parental leave:**

Continuity of employment is preserved during all of shared parental leave, and, except for pay, employees are entitled to the benefit of their normal terms and conditions during shared parental leave.

They will retain use of any company car which they normally have access to; they will retain continuity of service for any profit-related pay; they will be entitled to any pay rises awarded whilst they are on leave; and holiday entitlement including public holidays will continue to accrue during this period. If an employee cannot take all their annual leave during the leave year because they are on shared parental leave, they can carry it over to the next leave year. ***[You may need to negotiate the entitlement to carry over contractual as well as statutory annual leave entitlement. Care must be taken in particular in relation to term-time workers and those on annualised contracts in calculating their entitlement.]***

When an employee is on shared parental leave, they will pay pension contributions based on the actual pay they receive, but receive credit as if they paid contributions based on their normal pay. If necessary, ***[name of employer]*** will increase its pension contributions to cover any shortfall.

***[As with maternity and adoption leave, you may need to negotiate that employees from week 27 of their shared parental leave period benefit from all the same terms and conditions of service as those on weeks 1 to 26, including company car, medical insurance etc. as listed above and as relevant to your workplace.]***

#### **Staying in contact and keeping in touch days:**

***[Name of employer]*** will send employees and workers copies of any organisation newsletters or e-bulletins whilst they are on shared parental leave, and keep them informed of any changes and development opportunities.

Managers may make reasonable contact with employees and workers during their time off on shared parental leave, for example to notify them about team development or job opportunities, or to discuss their return to work. Managers will discuss arrangements for staying in contact with employees and workers before the start of their shared parental leave.

In addition employees can request, entirely at their own discretion but with the agreement of their manager, to carry out up to 20 days' (shared between the mother or 'primary' adopter, and the partner or 'secondary' adopter) work or attendance at meetings or training during their shared parental leave without bringing it to an end or jeopardising the right to shared parental pay. These will be called 'Shared Parental Leave in Touch (SPLIT)' days. Employees will be paid equivalent to their

full pay for SPLIT days worked offset against any statutory or contractual shared parental pay made for the same day. ***[This full pay rate rather than just shared parental pay will need to be negotiated.]***

#### **Returning to work:**

Employees and workers who need to vary or cancel a period of shared parental leave, need to notify ***[name of employer]*** and give 21 days' notice. ***[This will need to be negotiated down from the statutory notice period of eight weeks' notice to vary or cancel booked shared parental leave. You may also wish to negotiate an agreement that any notification to cancel or vary booked shared parental leave does not count towards the total three notifications provided under statutory entitlement, unless you have already negotiated the possibility of additional blocks of discontinuous leave.]***

Employees and workers who do not intend to return to work after shared parental leave need to give notice of their resignation in the normal way. Their shared parental pay will be unaffected. Please give ***[name of employer]*** as much notice as possible.

#### **Employee rights on return to work:**

Employees are entitled to return to the same job at the end of shared parental leave. However if this is not reasonably practicable for employees where the amount of shared parental leave is more than 26 weeks, then they are entitled to return to another suitable and appropriate alternative job.

Employees who return to work after taking more than 26 weeks shared parental leave, will receive a re-induction programme. They are entitled to phase their return to work over 4 weeks and vary their start and finish times to accommodate childcare responsibilities for the first 6 months. ***[This sort of support when returning could be negotiated and these are examples of some good practice.]***

### **Maternity support (paternity) leave and pay**

All employees and workers, regardless of length of service, who are a new-born's father, the partner or the nominated carer of an expectant mother at the time of the birth (or shortly after) or of an individual who adopts, or the partner of the primary carer in a surrogacy arrangement and have acquired or intend to acquire legal parenthood for the child and have parental responsibility through a parental order, are entitled to up to 10 days' leave and pay. ***[This would be an ideal scenario that it is made available to workers as well as employees and that there is no length of service for eligibility but alternative qualifying periods could be negotiated, shorter than the statutory period of 26 weeks by the 15<sup>th</sup> week before the expected week of childbirth, and regardless of average weekly earnings.]***

***In addition, you may wish to negotiate more flexibility in how the leave is taken, rather than as the statutory 2 consecutive weeks – with separate weeks allowed, perhaps even part-weeks or days.***

***You may also want to negotiate the possibility of extending the period of paid leave beyond two weeks, as an alternative for those who do not want to take-up shared parental leave.]***

### **Stillbirths and miscarriages:**

Fathers, partners or nominated carers of expectant mothers at the time of the birth (or shortly after), or partners of the primary carers in surrogacy arrangements and have acquired or intend to acquire legal parenthood for the child and have parental responsibility through a parental order but whose babies are stillborn after the 24th week of pregnancy still qualify for all maternity support (paternity) rights.

If the baby is miscarried before the 24th week of pregnancy, fathers, partners or nominated carers will be given **paid compassionate leave**. More details to be found in the ‘**Pregnancy loss leave policy**’ at *[include a link or signpost to the appropriate policy. [Further information in the appendix.](#)]*

### **Notice for when maternity support leave will start:**

Employees and workers must give notice by the end of the 15<sup>th</sup> week before the baby is due (or as soon as practically possible) and must provide the following details in writing to their line manager using the self-certificate:

- the expected date of birth of the baby,
- when they want their maternity support leave to start (the earliest this can be is from the date of the child’s birth and the latest this can be is 56 days after the birth) ***[ideally try to negotiate that the latest it can be is extended to up to one year after the birth]***
- when you want your maternity support pay to start
- whether you want to take one or two consecutive weeks’ maternity support leave ***[or non-consecutive weeks or part-weeks or days as appropriate and as negotiated in your workplace.]***

If employees and workers wish to change the date that their maternity support leave and pay start on, they must give 28 days’ notice in writing to their manager. ***[You may wish to negotiate a shorter notice period for changing the start date.]***

### **Babies who require neonatal care including premature babies and multiple births:**

If their baby requires neonatal care or is born prematurely (more than 4 weeks early), or where there is a multiple birth, **paid special leave** may be considered in addition to maternity support leave entitlements, in order to best support the health and

wellbeing of the mother and baby. More details to be found in the '**Special leave policy**' at *[include a link or signpost to the appropriate policy]*.

#### **Maternity support pay entitlement:**

All employees and workers, regardless of length of service, are entitled to maternity support pay *[alternatively try to negotiate a shorter qualification period than the statutory period of 26 weeks]* at full pay. *[This rate of maternity support (paternity) pay may be aspirational, but negotiating an enhanced rate in line with good practice employers above the statutory minimum should be a priority for all workplaces, and ideally for all staff regardless of length of service. Particular care must be given when considering how maternity support pay is calculated for term-time workers and those on annualised contracts.]*

Enhanced maternity support pay will be offset against statutory paternity pay.

#### **Antenatal care and classes:**

The partner of a pregnant woman, and a person entering into a surrogacy arrangement who has acquired or intends to acquire legal parenthood for the child and have parental responsibility through a parental order, are entitled to reasonable paid time off during working hours to attend antenatal appointments.

The partner of the primary adopter is entitled to reasonable paid time off during working hours to attend pre-adoption appointments.

#### **Employee rights during maternity support leave:**

Continuity of employment is preserved during all maternity support leave, and, except for pay, employees are entitled to the benefit of their normal terms and conditions during maternity support leave.

They will retain use of any company car which they normally have access to; they will retain continuity of service for any profit-related pay; they will be entitled to any pay rises awarded whilst they are on leave; and holiday entitlement including public holidays will continue to accrue during this period.

When an employee is on maternity support leave, they will pay pension contributions based on the actual pay they receive, but receive credit as if they paid contributions based on their normal pay. If necessary, *[name of employer]* will increase its pension contributions to cover any shortfall.

*[Name of employer]* will send employees and workers copies of any organisation newsletters or e-bulletins whilst they are on maternity support leave, and keep them informed of any changes and development opportunities.

#### **Employee rights on return to work:**

Employees are entitled to return to the same job at the end of maternity support leave.



## Parental leave and pay

All employees and workers, regardless of length of service, who have parental responsibility for a child can take-up to 18 weeks' paid parental leave for each child born or adopted who is under the age of 18.

***[This would be an ideal scenario that it is made available to workers as well as employees and that there is no length of service for eligibility but alternative qualifying periods could be negotiated, shorter than the statutory period of one year. ]***

Parental leave may be taken:

- as a single block of up to 18 weeks
- as a number of shorter periods of a minimum of half a day
- in patterns that provide a part time or reduced hours working arrangement for a period of time equivalent to taking 18 weeks' leave as a single block.

***[This example above of how parental leave can be taken is agreed in the national NJC local government Model Parental Leave Scheme. You may wish to negotiate similar flexibility in how the leave is taken rather than just in blocks of weeks, so including part-days, individual days and longer periods than the maximum block of four weeks in any one year under statutory entitlement (unless the child is disabled). Alternatively it could mirror annual leave arrangements.]***

**Notice for when parental leave will start:**

Employees and workers must give notice of at least 21 days before the intended start date for leave. ***[You may wish to negotiate a shorter notice period. Often it may not be practical for a parent to give this amount of notice, particularly if it is only for a day or two's leave. 5 days' notice might be more realistic for workers. Alternatively you could seek a provision that the employer or line manager will give sympathetic consideration to requests for parental leave without full notice.]***

**Pay during parental leave:**

All employees and workers, regardless of length of service, are entitled to their full pay during parental leave. ***[Paid parental leave throughout the 18 weeks may be aspirational, but negotiating at least some weeks – for example 4 weeks of full pay per year in line with good practice employers such NHS Scotland-Agenda for Change – should be a priority for all workplaces, and ideally for all staff regardless of length of service.]***

## Other support for working parents

- a) Flexible working (including options for flexitime, compressed hours, homeworking, job-sharing, part-time working, term-time working, annualised hours, shift-swapping, voluntary reduced time **[amend as appropriate]**) – more details to be found in the ‘**Flexible working policy and procedure**’ at **[include a link or signpost to the appropriate policy]**.
- b) **Unpaid extended parental leave** **[this could be negotiated so ideally not entirely unpaid, perhaps in line with any long-term sickness absence pay with a provision for periods of reduced pay before being completely unpaid or if unpaid in line with any specified periods of sabbatical offered to staff]** – where the leave requested by an employee with parental responsibilities is for an extended period, such as when the child is recovering from a serious illness or is terminally ill, additional unpaid leave up to a period of 6 **[or more as negotiated]** months in total will be provided.

Any situation where an employee requires more than 6 months off will be considered sympathetically and practical, feasible alternatives considered, such as flexible hours and/or working at home.

Members of staff wishing to apply for extended parental leave should apply in writing to their line manager in the first instance with full reasons for the request and length of anticipated absence. Any difficult to resolve situations should be referred to the HR department for advice and support.

**[Name of employer]** will provide temporary staff cover wherever possible, where there is a lengthy absence due to caring responsibilities.

- c) **Other arrangements** – the needs of employees with parental responsibilities may be very simple and may not require time out of the workplace, but may require other arrangements, such as (but not limited to):
- i. the need to leave work on time
  - ii. the need to have access to a telephone during the day in a private space
  - iii. information made widely available including on the staff intranet of external sources of support.

Confidential support is available for individual employees from the **employee assistance programme** and this may include counselling if appropriate, in addition to practical information and advice. **[include a link or signpost to further information.]**

## Trade union involvement

Consultation will take place with the recognised trade union on the implementation, development, monitoring and review of this policy.

Union reps will be given training equal to that of managers and supervisors and sufficient time to carry out their duties.

## Review and monitoring

**[Name of employer]** will ensure that all new employees, supervisors and managers will receive induction on the policy.

Adequate resources will be made available to fulfil the aims of this policy. The policy will be widely promoted, and copies will be freely available and displayed in **[name of employer]'s** offices and through the staff intranet **[amend as appropriate to your workplace]**.

This policy will be reviewed jointly by unions and management, on a regular basis.

## Further information

**Working Families** [www.workingfamilies.org.uk](http://www.workingfamilies.org.uk)

**Acas** [www.acas.org.uk](http://www.acas.org.uk)

**Health and Safety Executive: Protecting pregnant workers and new mothers**  
[www.hse.gov.uk](http://www.hse.gov.uk)

## Signatories

This agreement is made between **[name of the employer]** and UNISON, a registered trade union.

This agreement comes into force on:

Date:.....

This agreement will be reviewed on:

Date:.....

SIGNED ..... for **[name of the employer]**

Date .....

SIGNED ..... for UNISON

Date .....

## Appendix – model pregnancy loss policy

It is crucial that staff members who experience pregnancy loss are dealt with sympathetically in the workplace. It should be recognised that such a loss at whatever stage in the pregnancy can severely affect individuals.

But women who miscarry before 24 weeks of pregnancy are only entitled to compassionate leave and, if appropriate, to sick leave, even though pregnancy loss at any time can be an emotionally traumatic experience.

The employer should count any sick leave related to a pregnancy loss such as through miscarriage, ectopic pregnancy or abortion as pregnancy-related and therefore it should be noted separately from other sickness absence and not count towards any trigger points. The employer should not use it against employees, for example, for disciplinary or redundancy purposes.

After any pregnancy loss, the employer should ideally provide special leave or compassionate leave to support both the woman and her partner.

For example, law firm Kingsley Napley has formalised a policy that offers paid time off work to all staff affected by pregnancy loss.... Similar policies have recently been introduced by Monzo and Channel 4.

Source: [Personnel Today, 7 June 2021](#)

However, it is worth remembering, as [Ros Bragg, Director of Maternity Action](#) warns “Women are well-aware of the high levels of discrimination and unfair treatment meted out to mothers at work and are very cautious about disclosing their pregnancies as a result. Until the government takes action to reduce the incidence of discrimination, many women who miscarry will be too fearful to disclose their circumstances, even where designated leave is available.”

### **The following model policy can be used in the workplace to help support parents.**

Please note that the text in square brackets [...] indicates where you need to complete information specific to your workplace, or else are notes for you to consider in relation to your negotiations.

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#### **Policy Statement**

**[Name of employer]** aims to facilitate an open, understanding working environment.

**[Name of employer]** is committed to supporting anyone experiencing pregnancy loss, including (but not limited to):

- Miscarriage: the spontaneous loss of pregnancy until 24 weeks of gestation
- Stillbirth: the loss of a baby after 24 weeks, before or during birth.

- Abortion: a medical or surgical procedure to end a pregnancy.
- Ectopic pregnancy: when a fertilised egg implants and grows outside of the uterus.
- Molar pregnancy: a rare form of pregnancy in which a non-viable fertilised egg implants in the uterus and will fail to reach full term
- Neonatal loss: the loss of a baby within the first 28 days after they are born, often caused by premature births or genetic disorders.

The policy covers topics and issues that some staff members may find difficult or upsetting. You may have experienced your own pregnancy loss or be an expectant parent managing someone that has experienced a loss. If this is the case, you may need to speak to HR or your own line manager for advice or to direct you to the relevant part of the guidance.

### **Scope of policy**

This policy applies to all staff who are employed at ***[name of employer]*** including part-time and temporary workers, regardless of hours worked or length of service ***[this could be negotiated in line with good practice employers]***.

This policy is supported by and developed with the trade unions representing the employees.

### **Responsibilities of managers – general principles**

Line managers should ensure that all employees are aware of this policy and understand their own and the employer's responsibilities. Training on issues affecting parents will be provided to all managers.

Line managers (with the support of HR where requested) should discuss support options available for employees experiencing pregnancy loss and encourage them to access the support offered.

Line managers will consider all requests for support sympathetically and will not discriminate against those employees who are experiencing pregnancy loss. All employees must be treated fairly and consistently. Employees need to be confident that they will not be treated less favourably if they take up any support available.

All requests for support for staff experiencing pregnancy loss must be dealt with confidentially and in accordance with the data protection policy.

Line managers will support employees in informing their colleagues about the situation if appropriate.

***[Name of employer]*** will take seriously and investigate any complaints of discrimination, harassment or victimisation, using the agreed procedures and respecting confidentiality.

### **If the loss occurs at work**

A pregnancy loss may happen at work. Managers may not be aware that an employee is pregnant: she is not obliged to tell her manager of her pregnancy until 15 weeks before her estimated due date, or as soon as is reasonably practicable after then (approximately 6 months pregnant).

If an employee suspects that she has started to lose her baby she may have bleeding, severe abdominal pain, and may be faint or collapse. She may be very distressed and panicked, embarrassed and frightened.

Managers can help by ensuring that the employee has very quick access to a toilet, and if required, calling her preferred contact or colleague to assist her in getting home or to hospital or a first aid room. In severe cases, you may need to call an ambulance.

If a woman's partner, relative or close friend is told of the loss while at work, they may need to leave at short notice to provide practical and emotional support.

### **Responsibilities of all employees – general principles**

**[Name of employer]** encourage employees to inform their line manager that they are experiencing pregnancy loss at an early stage to ensure that the necessary support can be arranged.

Employees who do not initially feel comfortable discussing the issue with their direct line manager may find it helpful to have a confidential conversation with **[such as a named person within HR with appropriate training.]**

**[Name of employer]** encourages employees to speak to their GP when they are experiencing pregnancy loss and to get appropriate medical support.

Employees should report any instances of harassment, victimisation or discrimination experienced because of their pregnancy loss.

If an employee is found to have harassed, victimised or discriminated against another employee in relation to their pregnancy loss, then they will be seen as having committed a disciplinary offence.

### **Pregnancy loss leave and pay**

All employees who have been affected by a pregnancy loss (including partners and partners of the primary carers in surrogacy arrangements and have acquired or intend to acquire legal parenthood for the child and have parental responsibility through a parental order) are entitled to a minimum of two weeks' leave on full pay.

If employees continue to be sick after the pregnancy loss leave has ended, **[name of employer]**'s normal sickness policy applies. However any sick leave related to

pregnancy loss will be noted as pregnancy-related separately from other sickness absence and will not be used in relation to any disciplinary or capability procedures.

### **Stillbirth**

Mothers whose babies are stillborn after the 24th week of pregnancy still qualify for all maternity rights. More details to be found in the **‘Maternity leave and pay policy’ at [include a link or signpost to the appropriate policy].**

Fathers, partners or nominated carers of expectant mothers at the time of the birth (or shortly after), or partners of the primary carers in surrogacy arrangements and have acquired or intend to acquire legal parenthood for the child and have parental responsibility through a parental order but whose babies are stillborn after the 24th week of pregnancy still qualify for all maternity support (paternity) rights. More details to be found in the **‘Maternity support leave and pay policy’ at [include a link or signpost to the appropriate policy].**

### **Other support available**

Employees are entitled to paid time off to attend medical appointments (or to accompany their partners) relating to pregnancy loss.

Confidential support is also available for individual employees from the **employee assistance programme** and this may include counselling if appropriate, in addition to practical information and advice. **[include a link or signpost to further information.]**

It is recognised that in any future pregnancy, additional scans and monitoring may be required and this will be accommodated. Requests by partners for additional time off to attend further scans or other antenatal appointments will also be accommodated wherever possible.

Further details on attending antenatal care appointments can be found in the **‘Maternity leave and pay policy’ at [include a link or signpost to the appropriate policy]**, and for partners of pregnant women in the **‘Maternity support leave and pay policy’ at [include a link or signpost to the appropriate policy].**

### **Trade union involvement**

Consultation will take place with the recognised trade union on the implementation, development, monitoring and review of this policy.

Union reps will be given training equal to that of managers and supervisors and sufficient time to carry out their duties.

### **Review and monitoring**

**[Name of employer]** will ensure that all new employees, supervisors and managers will receive induction on the policy.



Adequate resources will be made available to fulfil the aims of this policy. The policy will be widely promoted, and copies will be freely available and displayed in **[name of employer]'s** offices and through the staff intranet **[amend as appropriate to your workplace]**.

This policy will be reviewed jointly by unions and management, on a regular basis.

### Further information

The Miscarriage Association

[www.miscarriageassociation.org.uk/](http://www.miscarriageassociation.org.uk/)

SANDS

[www.sands.org.uk](http://www.sands.org.uk)

The leading stillbirth and neonatal death charity in the UK.

Tommy's

[www.tommys.org](http://www.tommys.org)

Provides trusted pregnancy and baby loss information and support.

Petals

<https://petalscharity.org/>

The baby loss counselling charity.

Arc

[www.arc-uk.org/](http://www.arc-uk.org/)

Providing non-directive information and support before, during and after antenatal screening.

Ectopic Pregnancy Trust

[www.ectopic.org.uk](http://www.ectopic.org.uk)

Providing information, education, and support to those affected by ectopic pregnancy

### Signatories

This agreement is made between **[name of the employer]** and UNISON, a registered trade union.

This agreement comes into force on:

Date:.....

This agreement will be reviewed on:

Date:.....

SIGNED ..... for ***[name of the employer]***

Date .....

SIGNED ..... for UNISON

Date .....