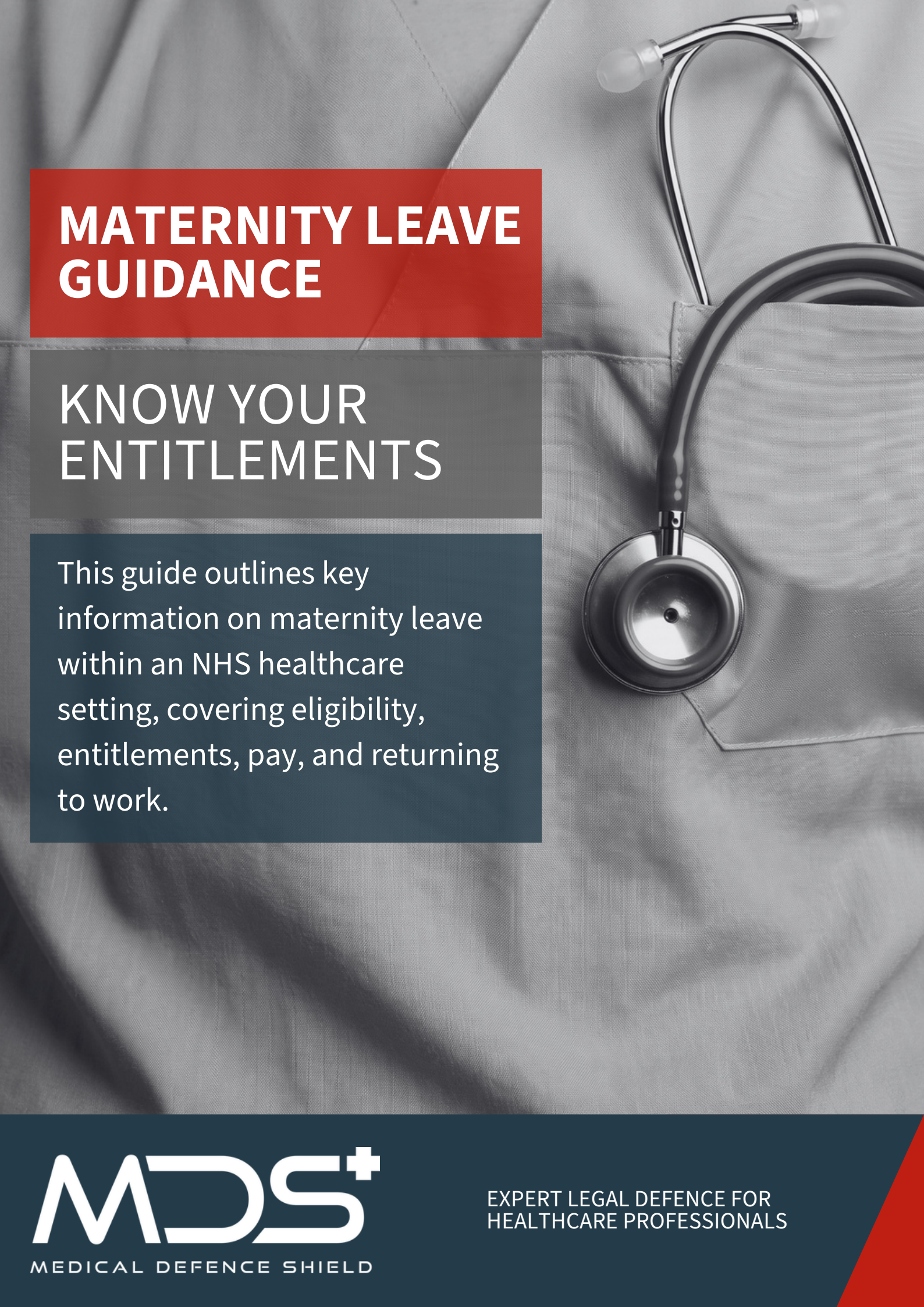




MATERNITY LEAVE GUIDANCE

KNOW YOUR ENTITLEMENTS

This guide outlines key information on maternity leave within an NHS healthcare setting, covering eligibility, entitlements, pay, and returning to work.



FOR HEALTHCARE PROFESSIONALS

MATERNITY LEAVE GUIDANCE

A complete overview of your maternity entitlements

This guidance is designed to make employees aware of their rights and entitlements during, and following pregnancy.

If you feel that you are being denied your employment rights, please call our case manager on 0300 303 2442 in the first instance. They will arrange to put you in touch with one of our specialist advisors.

What is covered

■ Maternity leave and pay

■ Eligibility and notice

■ Your rights at work

■ Returning to work

Guide written by:
Employment Team



MDS
MEDICAL DEFENCE SHIELD

MATERNITY LEAVE GUIDANCE

PRINCIPLE: All employees will be entitled to **52 weeks maternity leave**.



ELIGIBILITY – NHS MATERNITY PAY SCHEME

An employee working full or part time will be entitled to paid and unpaid maternity leave under the NHS Maternity Pay Scheme if she has:

- 12 months' continuous service with one or more NHS employers at the beginning of the 11th week before the expected week of childbirth (EWC)
- notifies her employer in writing before the end of the 15th week before the expected week of childbirth of her intention to take maternity leave and of the date she wishes to start her maternity leave if this is not possible, as soon as is reasonably practicable
- intends to return to work with the same or another NHS employer for a minimum period of three months after her maternity leave has ended
- provides a MATB1 form from her midwife or GP giving the expected date of childbirth.

CONFIRMING MATERNITY LEAVE AND PAY

Following discussion with the employee, the employer should confirm in writing:

- Entitlements to paid and unpaid leave under the NHS Maternity Leave Scheme
- If the employee does not qualify under the agreement her statutory entitlements
- The expected return to work date based on the default position that she will take 52 weeks' paid and unpaid leave unless an earlier return date has been given by the doctor
- The length of any period of accrued annual leave which has been agreed (this may be taken following the end of the formal maternity leave period)
- If covered by the NHS Scheme the need for the employee to give at least 28 days' notice if she wishes to return to work before the expected return date.
- Otherwise, the statutory requirement is for 8 weeks notice of an early return to be given.

TIMING OF LEAVE

The employee must confirm the date on which she would like to commence maternity leave with her employer, however this does not necessarily have to be before the baby's expected due date. Therefore, if the employee wanted to start her leave as late as possible then she could give a start date after the baby's expected due date and commence leave on whatever date the baby arrives, as she will be required to take at least 2 weeks' maternity leave once the baby is born.

Nevertheless, maternity leave may in theory commence at any time in the 11 weeks before the EWC, provided the required notice is given. Early childbirth and maternity related sickness absence will affect this.

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PRE-TERM BIRTH

Where an employee's baby is born alive prematurely the employee will be entitled to the same amount of maternity leave and pay as if her baby was born at full term.

Where an employee's baby is born before the 11th week before the EWC, and the employee has worked during the actual week of childbirth, maternity leave will start on the first day of the employee's absence.

Where an employee's baby is born before the 11th week before the EWC, and the employee has been absent from work on certified sickness absence during the actual week of childbirth, maternity leave will start the day after the day of the birth.

Where an employee's baby is born before the 11th week before the EWC and the baby is in hospital the employee may split her maternity leave entitlement, taking a minimum period of 2 weeks' leave immediately after childbirth as is required, and the rest of her leave following her baby's discharge from hospital.

SICKNESS PRIOR TO CHILDBIRTH

If an employee is off work ill, or becomes ill, with a pregnancy-related illness in the 4 weeks before the week (Sunday to Saturday) that the baby is due. Maternity Leave will automatically start.

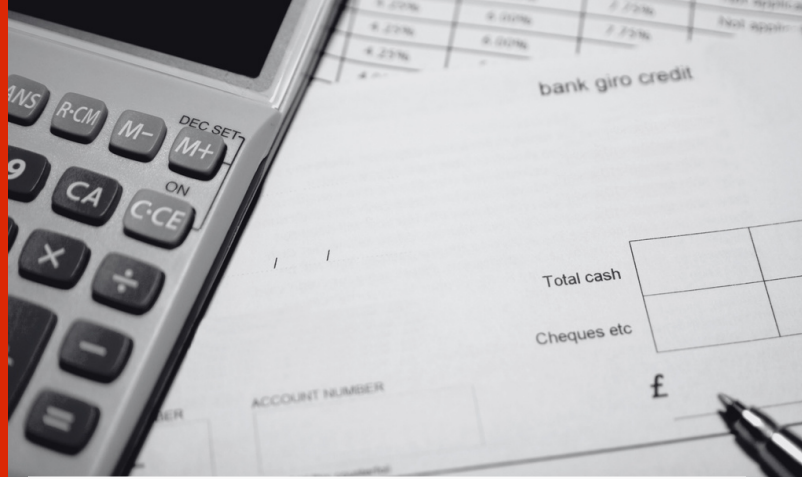
Absence prior to the last 4 weeks before the expected week of childbirth, supported by a medical statement of incapacity for work, or a self-certificate, shall be treated as sick leave in accordance with normal sick leave provisions.

Odd days of pregnancy-related illness during this period may be disregarded if the employee wishes to continue working until the maternity leave start date previously notified to the employer.

CHANGING THE MATERNITY LEAVE START DATE

If an employee subsequently wants to change the date from which she wishes to start her leave, she should notify her employer at least 28 days beforehand or, if this is not possible, as soon as is reasonably practicable. This should be 28 days before the date she originally intended to start her leave or 28 days before the new maternity leave start date, depending on whichever date is earliest.

MATERNITY LEAVE GUIDANCE



STILL BIRTH

Where an employee's baby is born dead after the 24th week of pregnancy the employee will be entitled to the same amount of maternity leave and pay as if her baby was born alive.

MISCARRIAGE

Where an employee has a miscarriage before the 25th week of pregnancy normal sick leave provisions will apply as necessary.

PAID MATERNITY LEAVE

Maternity Pay is calculated on average earnings paid for 2 months prior to the Qualifying week which is the 15th week before the EWC. This is based on the rules used for calculating statutory maternity pay (SMP) entitlements, subject to the following qualifications:

In the event of a pay award or annual increment being implemented before the paid maternity leave period begins, the maternity pay should be calculated as though the pay award or annual increment had effect throughout the entire SMP calculation period. If such a pay award was agreed retrospectively, the maternity pay should be re-calculated on the same basis.

In the event of a pay award or annual increment being implemented during the paid maternity leave period, the maternity pay due from the date of the pay award or annual increment should be increased accordingly. If such a pay award was agreed retrospectively, the maternity pay should be re-calculated on the same basis.

In the case of an employee on unpaid sick absence or on sick absence attracting half pay during the whole or part of the period used for calculating average weekly earnings in accordance with the earnings rules for SMP purposes, average weekly earnings for the period of sick absence shall be calculated on the basis of notional full sick pay.

AMOUNT OF PAY

Where an employee intends to return to work the amount of contractual maternity pay receivable is as follows:

- For the first 8 weeks of absence, the employee will receive full pay, less any SMP or maternity allowance (MA) (including any dependants allowances) receivable
- For the next 18 weeks, the employee will receive half of full pay plus any SMP or MA (including any dependants allowances) receivable providing the total receivable does not exceed full pay
- Together, these first 26 weeks of maternity leave will constitute Ordinary Maternity Leave (OML). The next 26 weeks of maternity leave will constitute Additional Maternity Leave (AML)
- For the next 13 weeks (that being, the first 13 weeks of AML), the employee will receive any SMP or MA that they are entitled to under the statutory scheme

By prior agreement with the employer this entitlement may be paid in a different way, e.g. a combination of full pay and half pay or a fixed amount spread equally over the maternity leave period.

MATERNITY LEAVE GUIDANCE



UNPAID CONTRACTUAL MATERNITY LEAVE

Employees will also be entitled to a further 13 weeks' unpaid leave, bringing the total leave to 52 weeks. These final 13 weeks of maternity leave will fall within AML.

HEALTH AND SAFETY OF EMPLOYEES PRE & POST BIRTH

Where an employee is pregnant, has recently given birth or is breastfeeding, the employer should carry out a risk assessment of her working conditions. If it is found, or a medical practitioner considers, that an employee or her child would be at risk were she to continue with her normal duties, the employer should provide suitable alternative work for which the employee will receive her normal rate of pay. Where it is not reasonably practicable to offer suitable alternative work, the employee should be suspended on full pay.

These provisions also apply to an employee who is breastfeeding if it is found that her normal duties would prevent her from successfully breastfeeding her child.

KEEPING IN TOUCH (KIT) AND KIT DAYS

It is a requirement of the NHS Maternity Pay Scheme for the employer and employee to discuss and agree any voluntary arrangements for keeping in touch during the maternity leave period. This should include:

- any voluntary arrangements that the employee may find helpful to help her keep in touch with developments at work and nearer the time of her return, to help facilitate her return to work
- keeping the employer informed of any developments that may affect her intended date of return

KIT days have been introduced to help make it easier for employees when it is time to return to work after a period of maternity leave. KIT days may be used for training or other activities that enable the employee to keep in touch with the workplace. However, they are not compulsory and any such work must be by agreement and neither the employer nor the employee can insist upon them.

An employee may work for up to a maximum of 10 KIT days, excluding the first two weeks of compulsory maternity leave immediately after the birth of the baby, without bringing her maternity leave to an end.

Any days of work will not extend the maternity leave period, but will be paid at the employee's basic daily rate for the hours worked, less appropriate maternity leave payments.

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RETURN TO WORK

An employee who intends to return to work at the end of her full maternity leave will not be required to give any further notification to the employer, although as mentioned above, if she wishes to return early then she must give at least 28 days' notice.

SICKNESS FOLLOWING THE END OF MATERNITY LEAVE

In the event of illness following the date the employee was due to return to work normal sick leave provisions will apply as necessary.

FAILURE TO RETURN TO WORK

If an employee who has notified her employer of her intention to return to work for the same or a different NHS employer in accordance with the regulations fails to do so within 15 months of the beginning of her maternity leave, she will be liable to refund the whole of her maternity pay, less any SMP, received.

If there is no right of return to be exercised because the contract would have ended if pregnancy and childbirth had not occurred the repayment provisions set out above will not apply.

In cases where the employer considers that to enforce this provision would cause undue hardship or distress, the employer will have the discretion to waive their rights to recovery.

EMPLOYEES NOT RETURNING TO NHS EMPLOYMENT

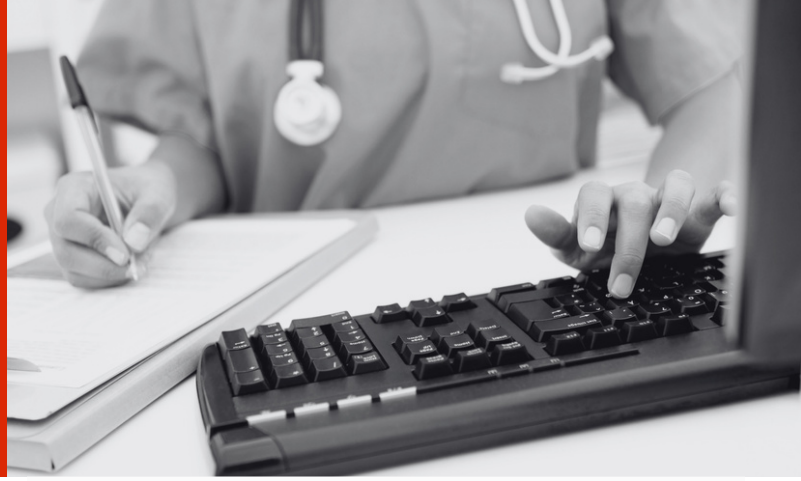
An employee who satisfies the required eligibility conditions but who does not intend to return to work with the same or another NHS employer for a minimum period of three months after her maternity leave is ended, will be entitled to pay equivalent to SMP, which is paid at 90% of her average weekly earnings for the first 6 weeks of her maternity leave and to a flat rate sum of £172.48 or 90% of her average weekly earnings (whichever is lower) for the following 33 weeks.

EMPLOYEES WITH LESS THAN 12 MONTHS' CONTINUOUS SERVICE

If an employee does not satisfy the eligibility conditions for contractual maternity pay she may still be entitled to SMP.

SMP will be paid regardless of whether she satisfies the eligibility conditions above. If her earnings are too low for her to qualify for SMP, or she does not qualify for another reason, she should be advised to claim MA from her local Job Centre Plus or social security office.

MATERNITY LEAVE GUIDANCE



FIXED TERM CONTRACTS OR TRAINING CONTRACTS

Employees subject to fixed-term or training contracts which expire after the 11th week before the expected week of childbirth, and who satisfy the required conditions, shall have their contracts extended so as to allow them to receive the 52 weeks, which includes paid contractual and statutory maternity leave and the remaining 13 weeks of unpaid maternity leave.

Absence on maternity leave (paid and unpaid) up to 52 weeks before a further NHS appointment shall not constitute a break in service. Employees on fixed-term contracts who do not meet the 12 months' continuous service condition set out above may still be entitled to SMP.

ROTATIONAL TRAINING CONTRACT

Where an employee is on a planned rotation of appointments with one or more NHS employers as part of an agreed programme of training, she shall have the right to return to work in the same post or in the next planned post, irrespective of whether the contract would otherwise have ended if pregnancy and childbirth had not occurred. In such circumstances the employee's contract will be extended to enable the practitioner to complete the agreed programme of training.

OTHER INFORMATION ANTENATAL CARE

Pregnant employees have the right to paid leave for ante-natal care and relaxation and parent craft classes.

POST-NATAL CARE AND BREASTFEEDING MOTHERS

Women who have recently given birth should have the right to paid time off for post-natal care. Employers are required to undertake a risk assessment and to provide breastfeeding women with suitable private rest facilities, and should consider requests for flexible working arrangements to support breastfeeding women at work.

CONTRACTUAL RIGHTS

During maternity leave (both paid and unpaid) an employee retains all of her contractual rights except remuneration.

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INCREMENTS

Maternity leave, whether paid or unpaid, shall count as service for annual increments and for the purposes of any service qualification period for additional annual leave.

ACCRUAL OF ANNUAL LEAVE

Annual leave will continue to accrue during maternity leave, whether paid or unpaid. Where the amount of accrued annual leave would exceed normal carry over provisions, it may be mutually beneficial to both the employer and employee for the employee to take annual leave before and/or after the formal (paid and unpaid) maternity leave period. The amount of annual leave to be taken in this way, or carried over, should be discussed and agreed between the employee and the employer.

PENSIONS

Pension rights and contributions shall be dealt with in accordance with the provisions of the NHS Superannuation Regulations.

CONTINUOUS SERVICE

For the purposes of calculating whether the employee meets the 12 months' continuous service with one or more NHS employers qualification set out above, the following provisions shall apply.

NHS employers includes health authorities, NHS Boards, NHS Trusts, primary care trusts and the Northern Ireland Health Service a break in service of three months or less will be disregarded (though not count as service). The following breaks in service will also be disregarded (though not count as service):

- employment under the terms of an honorary contract
- employment as a locum with a general practitioner (GP) for a period not exceeding 12 months
- a period of up to 12 months spent abroad as part of a definite programme of postgraduate training on the advice of the postgraduate dean or college or faculty adviser in the specialty concerned
- a period of voluntary service overseas with a recognised international relief organisation for a period of 12 months, which may exceptionally be extended for 12 months at the discretion of the employer which recruits the employee on her return absence on an employment break scheme in accordance with the provisions of the hospital terms and conditions of service absence on maternity leave (paid or unpaid) as provided for above.

Employment as a trainee with a general medical practitioner in accordance with the provisions of the Trainee Practitioner Scheme shall similarly be disregarded and will count as service.

Employers have the discretion to count other previous NHS service or service with other employers.

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UNIVERSITY OR HONORARY CONTRACTS

Doctors holding university and NHS honorary contracts will be subject to the maternity leave scheme that is in operation at their place of employment. A university contract, with or without an NHS honorary contract, does not count as continuous service under the NHS maternity scheme. However, where an employee has a university contract with an NHS honorary contract this period of employment will not constitute a break in service although it cannot be counted towards service for the purposes of further maternity leave.

UNFAIR DISMISSAL

Regardless of length of service or hours of work it is unlawful for an employer to dismiss an employee or to select her for redundancy, solely or mainly because she is pregnant or has given birth, or for any other reason connected with her pregnancy or childbirth.

DEFENCE BODY SUBSCRIPTIONS

Don't forget to contact your defence body as special arrangements may apply whilst absent on maternity leave.