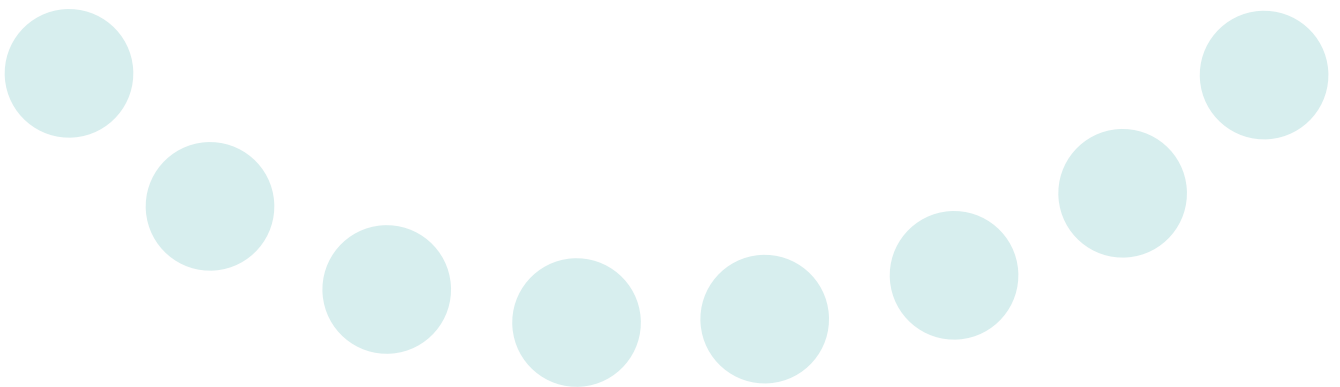


Hinckley & Bosworth  
Borough Council

# MATERNITY POLICY

May 2017



## **MATERNITY PROCEDURE – MAY 2017**

### **1) Introduction**

This document outlines the policy and provisions to which employees may be entitled during maternity leave. This includes periods of leave and pay for a specified period subject to eligibility, the retention of certain contractual benefits and a right to return to work.

This policy and any associated documentation will be reviewed on a regular basis. The Council reserves the right to make changes as required in line with changes in employment legislation. Significant changes will be subject to the appropriate process of consultation.

### **2) Eligibility**

In order to exercise rights to maternity leave and if eligible, maternity pay employees must advise the Council that they are pregnant at least 28 days before the absence begins or as soon as is reasonably practicable also advising:

- Notify in writing of the fact that you are pregnant
- Provide a MATB1, signed by a Doctor or Midwife (this is usually issued around the 26<sup>th</sup> week of pregnancy)
- the expected week of childbirth (EWC)
- of the date of the beginning of your absence.

Within 28 days of receipt of the initial notification HR will write to you informing you of the last day of your maternity leave and the expected date of your return.

### **3) Maternity Leave**

Irrespective of length of service or hours of work, employees are entitled to 26 weeks ordinary maternity leave followed by 26 weeks additional maternity leave, a total of 52 weeks continuous leave, 'the maternity leave period.'

Maternity leave shall commence no earlier than 11 weeks before the expected week of confinement, or from the day following childbirth if that is earlier.

Any employment period during maternity leave will not be treated as a break in service.

Employees who are absent due to a pregnancy related illness during the four weeks before the start of the expected week of confinement will begin maternity leave at that time rather than at a later date nominated by the employee.

Maternity leave will commence on the actual date of birth if this is earlier than the notified leave date.

### **4) Maternity Pay**

Payments for employees who have less than 1 year's continuous local government service at the beginning of the 11<sup>th</sup> week before the EWC shall be entitled to Statutory Maternity Pay (SMP), where eligible.

Payments for employees who have completed 1 year's continuous local government service at the 11<sup>th</sup> week before the EWC shall be as follows:

- Weeks 1 – 6: Entitled to 90% of a weeks pay off set against payments made by way of SMP or Maternity Allowance for employees not eligible for SMP

- Weeks 7 – 18: Where an employee has declared in writing her intention to return to work, she will receive half a weeks pay plus SMP, where eligible, without deduction except by the extent to which the combined pay and SMP (or MA and any dependent's allowances if the employee is not eligible for SMP) exceeds full pay. Alternatively the equivalent amount (i.e. 6 weeks pay) may be paid on any other mutually agreed distribution.
- Weeks 19 – 39: For the remaining 20 weeks the employee will receive SMP entitlement, where eligible.

For employees not intending to return to work payments during their maternity leave period following the first 6 weeks will be their entitlement to SMP (currently 39 weeks in total), where eligible.

Payments made by the authority during maternity leave weeks 7 – 18 as above shall be made on the understanding that the employee will return to local authority employment for a period of at least 3 months, which maybe varied by the council on good cause being shown and, in the event of her not doing so, she shall refund the monies paid, or such part thereof, if any, as the authority may decide. Payments made to the employee by way of Statutory Maternity Pay are not refundable.

Maternity pay cannot be paid any earlier than the eleventh week before the expected week of confinement, even if you have stopped work by that date.

Employees that cease employment before the qualifying week will not qualify for maternity pay.

All maternity pay is subject to the usual deductions for Income Tax and National Insurance.

## 5) Definitions

### (a) A Week's Pay

The term “ a week's pay” for employees whose remuneration for normal working hours does not vary with the amount of work done in the period, is the amount payable by the council to the employee under the current contract of employment for working her normal hours in a week. Where there are no normal working hours, a week's pay is the average remuneration in the period of 12 weeks preceding the date on which the last complete week ended, excluding any week in which no remuneration was earned.

### (b) Childbirth

Childbirth means the live birth of a child, or a still birth after a pregnancy lasting at least 24 weeks

## 6) Benefits during Maternity Leave

During maternity leave all contractual terms, conditions and benefits are preserved with the exception of the employee's salary.

If an employee has entered into a salary sacrifice their 'average weekly earnings' is calculated using the amount of earnings actually paid to them during the relevant period. For employees that are already taking childcare vouchers when their SMP is being calculated (this is calculated on the 8 week period between weeks 17-25 of the pregnancy) then their SMP maybe affected. Employees may choose to come out of the scheme during this period and then re-join the scheme afterwards.

The value of an employee's childcare vouchers provided during an employee's 'Maternity Pay Period' cannot be deducted from their SMP. If an employee is taking childcare vouchers at the point at which they go onto maternity leave and in receipt of contractual maternity pay, then their salary sacrifice can continue (at the same level) until they revert to SMP where the vouchers will cease until they return to work.

For voluntary deductions such as trade union subscriptions, employees are advised to contact their local union office to ascertain what is required to maintain membership during their maternity leave.

## **7) Pension Scheme**

Maternity leave is a statutory right. Therefore, in maternity cases, pension contributions are taken on the actual pay received.

For further details regarding your pension whilst on maternity leave please contact Leicestershire County Council Pensions on 0116 3057663 or go to [www.leics.gov.uk/pensions](http://www.leics.gov.uk/pensions)

## **8) Essential Car User Allowance (higher mileage rate user status)**

Employees that are eligible for higher mileage rate user will retain this entitlement for the duration of their maternity leave. However, there will be no entitlement to any fuel benefit for this period.

## **9) Annual Leave**

The employee will continue to accrue both statutory and contractual holiday entitlement during all maternity leave. If the employee has any accrued but unused holiday entitlement before starting maternity leave, she should be encouraged to take it prior to maternity leave commencing. Wherever possible, employees should take all of their holiday prior to the end of the holiday year.

## **10) Health & Well-being**

### **a) Ante-natal Care**

Any pregnant employee has the right to paid time off to attend for ante natal care and must produce evidence of appointments if requested.

### **b) Health and Safety**

Consideration must be given to any health and safety implications for pregnant or breast-feeding employees identified in the workplace risk assessment. Managers must inform the Health & Safety Officer immediately they are aware of an employee's pregnancy to enable the risk assessment to take place as soon as possible.

## **11) Contact during Maternity Leave**

Employees should agree with their manager, the extent to which they wish to be kept up to date with the work situation during maternity leave e.g. receiving bulletins, home visits etc. Employees should be advised of any relevant promotion/ job opportunities which arise during maternity leave.

Employers are able to remain in reasonable contact with an employee during her leave to keep her informed of issues such as job vacancies, significant workplace developments,

training opportunities, and to discuss issues such as their return to work. This would not constitute work and would therefore not be including as the 10 keeping in touch days.

## **12) Keeping in touch days (KIT) / working during maternity leave**

- a) Keeping in touch (KIT) days are intended to facilitate a smooth return to work for employees returning from maternity leave. Before going on leave, the manager and the employee should discuss and agree any voluntary arrangements for keeping in touch during the employee's maternity leave. An employee may work for up to 10 KIT days during Ordinary Maternity Leave or Additional Maternity Leave without bringing her maternity leave to an end. An employee may not work during the two weeks of compulsory maternity leave immediately after the birth of her baby.
- b) The work can be consecutive or not, and can include training or other activities which enable the employee to keep in touch with the work workplace. Any such work must be by agreement and neither the employer nor the employee can insist upon it.
- c) Any work carried out on any day constitutes a day's work. Employees will receive contractual pay for the day offset against any SMP/ OMP. Any KIT day taken from week 19 onwards will not be subject to a reduction of occupational maternity pay if an employee has elected to take the 12 weeks half pay at a later date than weeks 7-18 and any work done does not have the effect of extending the total duration of the Statutory Maternity Leave period. For this purpose "work" includes any training or other activity undertaken to assist the employee keeping in touch with the workplace.

## **13) Right to Return To Work**

- (a) Subject to (b) to return to the job in which the employee was employed under her original contract of employment and on terms and conditions not less favourable than those which would have been applicable to her if she had not been absent. "Job", for this purpose, means the nature of the work which the employee is employed to do and the capacity and place in which she is so employed.
- (b) Where it is not practicable by reason of redundancy for the council to permit the employee to return to work in her job as defined in (a) above the employee shall be entitled to be offered a suitable alternative vacancy where one exists, provided that the work to be done in that post is suitable to her and appropriate to the circumstances, and that the capacity and place in which she is to be employed and her terms and conditions of employment are not substantially less favourable to her than if she had been able to return to the job in which she was originally employed.
- (c) Suitable alternative employment may also be offered if exceptional circumstances other than redundancy (e.g. a general reorganisation), which would have occurred if the employee had not been absent, necessitate a change in the job in which she was employed prior to her absence.

The work to be done should be suitable to her and appropriate to the circumstances and the capacity and place in which she is to be employed and her terms and conditions of employment should not be less favourable to her than if she had been able to return to the job in which she was originally employed.

## **14) Exercise of the Right to Return to Work**

### **(a) Return before the end of the maternity leave period**

(i) An employee shall notify the council in writing if requested, at least 21 days before the day on which she proposes to return if this is before the end of the maternity leave period. Where the notice given is less than 21 days the employer may postpone the return to ensure 21 days' notice, but not beyond the end of the maternity leave period.

(ii) If an employee changes her mind about the day she proposes to return, she must give her employer 21 days' notice of the new date, if this is earlier than the original date (see 14 (a)(i)) she notified or if she is now proposing to return later than the original date, she must give notice of the new return date 21 days before the original return date.

### **(b) All employees**

(i) Where an employee is unable to return on the expected day due to sickness the absence will be covered by the sickness scheme in the normal way.

(ii) For an employee where, because of an interruption of work (whether due to industrial action or some other reason), it is unreasonable to expect her to return on the due date, she may instead return when work resumes, or as soon as reasonably practicable thereafter.

### **(c) Return to work - Flexible Working arrangements**

(i) Employees who wish to make a flexible working request e.g. change in hours, please refer to our Flexible Working Policy. The needs of breastfeeding employees should be taken into account.

## **15) Compulsory maternity leave**

Employees are not permitted to return to work within:

- Two weeks (for office based employees) after the birth of the baby or;
- Four weeks (for other employees) after the birth of the baby, subject to a risk assessment

An employee returning to work before the end of the ordinary maternity leave may be asked to produce a 'fit note' to ensure the employee is fit for work.

## **16) Transfer of remaining maternity leave to spouse/ partners**

Where an employee returns from maternity leave early, any remaining untaken ordinary maternity leave/ additional maternity leave may be transferred to the parents spouse/ partner, up to a maximum of 26 weeks.

Please refer to our Paternity Procedure for further details.

## **17) Not returning to work**

If the employee does not want to return to work at the end of the maternity leave this must be confirmed in writing with a minimum notice period as stated within the contract of employment.

Employees do not have to return to work at the end of the leave in order to receive statutory maternity pay provided contractual notice is given.

If the employee decides not to return to work following maternity leave, she will be paid for holiday entitlement accrued during maternity leave (statutory and contractual). Equally if the employee resigns rather than returning to work following maternity leave, and at that time she has taken more holiday than she has accrued during the current holiday year, she will be required to repay the equivalent of the excess holiday taken.

If the employee confirms that she would be returning to work and later decide not to, **where the employee has received ordinary maternity pay then she will be required to repay the 12 weeks half pay.** The employee could however return to work for a period of at least 3 months at the same number of hours as she worked before commencing her maternity leave and not have to repay anything.

It is possible to defer payment of the 12 weeks ordinary maternity pay until the employee knows for certain what she wants to do. If she then decides not to return to work, she would not have to pay anything back. It is advisable that the employee discusses this option with a member of Human Resources as it may have tax and national insurance implications.

If an employee does not return to work, the last day of service will be classed as the last day actually worked.

#### **19) Relationship with Sickness and Annual Leave**

- a) Maternity leave will not be treated as sick leave and will not therefore be taken into account for the calculation of the period of entitlement to sickness leave.
- b) Ordinary maternity leave and additional maternity leave shall be regarded as continuous service for the purposes of the National Joint Council's sickness and maternity schemes and annual leave. Annual leave continues to accrue during both ordinary and additional maternity leave.

#### **20) Illness following Maternity Leave**

Should circumstances arise whereby an employee does not return to work on the expected notified date due to her illness, normal absence procedures will apply.

#### **21) Miscarriages and Still Births**

In the unfortunate event that a baby is still born or miscarried after the 24<sup>th</sup> week into a pregnancy, the employee is entitled to the remainder of her maternity leave and pay.

The employee or the employee's family may feel the need for extra support following a still birth or miscarriage. This is normally provided through the midwife/ health visitor or the GP Surgery. Support is also available through the following organisations:

The still birth and neonatal death charity (SANDS) – [www.sands.org.uk](http://www.sands.org.uk) 0207 4365581.

The Miscarriage association – [www.miscarriageassociation.org.uk](http://www.miscarriageassociation.org.uk) 01924 20079