

March 2015

Maternity and parental rights for apprentices 2015

Apprenticeships are paid jobs with training. They are available across a wide variety of sectors. Apprentices have the same employment rights as employees during pregnancy and maternity leave. This information sheet gives an outline of your rights and benefits and tells you where you can get more detailed information.

Employment status

Apprentices have the same maternity rights as employees. You are usually an employee if the following arrangements exist at your work:

- your employer deducts tax and National Insurance from your pay
- your employer controls the work you do, when and how you do it
- your employer provides all the equipment for your work
- your employer is obliged to offer work and you are obliged to do it.

You can still be an employee if you work part-time or are on a fixed-term or temporary contract.

If you are not an employee, for example, because you are self-employed or doing casual work, you do not have the right to maternity leave but you may still get maternity pay and have other rights.

These rights apply to UK citizens and women from abroad who are living here. If you are entitled to be employed in the UK in the relevant week, you can claim Statutory Maternity Pay or Maternity Allowance if you meet the qualifying conditions.

This leaflet tells you your legal minimum rights. Your employer may give better rights than these, so you should always check your contract or ask your union or human resources department. If your employer does not give you these rights you should seek legal advice.

Rights during training

My learning provider has told me that I cannot have time off from my course?

Apprentices are protected under the Equality Act 2010 against less favourable treatment on the grounds of pregnancy and maternity leave. The Equality Act applies to universities and institutions providing further or higher education which means that they

must not discriminate against students on the grounds of pregnancy and maternity. Private training providers are also covered by the Equality Act and must not offer less favourable goods, facilities or services on the grounds of pregnancy or maternity. If your employer provides your training (even if it is delivered by an external trainer), your employer has a duty under the Equality Act to make sure that they are not treating you less favourably in the provision of training opportunities because of your pregnancy or maternity leave.

You should try to resolve the matter by talking to your training provider. If not you can make a written complaint using their complaints procedure. If you feel you have been discriminated against you should seek legal advice about making a claim. Some claims for discrimination in education have to be made in a County Court and there are strict time limits for making a claim.

Rights at work during pregnancy

Can I have paid time off for antenatal care?

Apprentices have the right to take reasonable time off for antenatal appointments, including time needed to travel to the clinic or GP, without loss of pay. You should let your employer know when you need time off. Your employer can ask to see your appointment card and a certificate stating that you are pregnant for all appointments apart from the first one.

Antenatal care can include parentcraft and relaxation classes. You may need a letter to show your employer from your GP or midwife, saying that these classes are part of your antenatal care.

What can I do if I am concerned about my health and safety?

If you are pregnant, have recently given birth or are breastfeeding, your employer must make sure that the kind of work you do and your working conditions will not put your

health or your baby's health at risk. To get the full benefit of this legal protection you must notify your employer in writing that you are pregnant or have recently given birth or are breastfeeding.

Your employer must consider the risks and take reasonable action to:

- remove or reduce the risks found.
- If there are still risks, your employer must alter your working conditions or hours of work to remove the risk.
- If this is not possible or would not avoid the risk, your employer must offer you a suitable alternative job without loss of pay or benefits.
- If this is not possible your employer must suspend you on full pay for as long as is necessary to avoid the risks.

If you do night work and your doctor advises that you should stop for health and safety reasons, you have the right to transfer to day work or, if that is not possible, to be suspended on full pay. You must provide a medical certificate.

For more information, see [Health and Safety during pregnancy and on return to work](#).

What happens if I am not well enough to go to work?

You can take sick leave in the normal way and you should notify your employer in the normal way. You should note that if you are off sick during approximately weeks 18 to 26 of your pregnancy and receiving Statutory Sick Pay your earnings will be lower than normal and this may affect your maternity pay (see the section on Maternity Pay).

You are protected from unfair dismissal and sex discrimination if you are off sick during pregnancy. Any pregnancy-related sickness absence must be recorded separately and should not be included in your total sickness absence for disciplinary or redundancy purposes. For more information see [Sickness during pregnancy and maternity leave](#).

What can I do if I am treated unfairly at work?

It is against the law for your employer to treat you unfairly, dismiss you or select you for redundancy for any reason connected with pregnancy, childbirth or maternity leave, see [Pregnancy Discrimination](#) or [Discrimination during maternity leave](#).

If you are dismissed while you are pregnant or during your maternity leave, your employer must state the reason for your dismissal in writing. You must make a claim in an employment tribunal within three months. If you start a new job after 6 April 2012 you will need to have worked for your employer for two years to claim ordinary unfair dismissal but you can claim discrimination and automatic unfair dismissal on the grounds of pregnancy and maternity leave from day one of your employment. From 6th April 2014 you must contact ACAS Early Conciliation on 0300 123 11 00 before making a tribunal claim.

For more information, see [Dealing with problems at work](#).

All workers are protected against discrimination, dismissal or unfair treatment because of pregnancy or childbirth. It is also discrimination to dismiss you or treat you unfairly because you have taken maternity leave or exercised any of your maternity rights at work.

Maternity Leave

Who gets it?

Apprentices are entitled to take up to 52 weeks maternity leave from day one of their employment. It doesn't matter how many hours you work or how long you have worked for your employer.

You are entitled to maternity leave regardless of how early your baby is born. You are also entitled to maternity leave if your baby dies after the birth or is stillborn after the end of week 24.

What is Ordinary Maternity Leave (OML)?

OML is the first 26 weeks of maternity leave. If you return to work after 26 weeks' OML

you have the right to return to exactly the same job. You must give your employer the correct notice in order to qualify for maternity leave (see How to give notice below).

What is Additional Maternity Leave (AML)?

AML lasts for 26 weeks and starts on the day after the end of OML. If you return to work after AML you have the right to return to the same job but, if it is not reasonably practicable, your employer can offer a suitable alternative job on similar terms and conditions.

Do I have to tell my employer how much maternity leave I am going to take?

No, your employer should assume that you will be taking 52 weeks. If you decide not to take all of your maternity leave you should give 8 weeks' notice to return to work early (see 'Return to Work' below). If you only wish to take OML you should also give 8 weeks' notice to return to work at the end of OML.

When can I start maternity leave?

The earliest you can start your ordinary maternity leave is 11 weeks before your expected week of childbirth. This is when you are about 29 weeks pregnant, but you have to use the due date on your MAT B1 certificate which your midwife or GP will give you. Find the Sunday before your baby is due (or the due date if it is a Sunday) and count back 11 Sundays from there. It is up to you to decide when you want to stop work. You can work right up until the date the baby is born, unless:

- You have a pregnancy-related illness/absence in the last four weeks of your pregnancy. In this case your employer can start your maternity leave even if you are off sick for only one day. However, if you are ill only for a short time your employer may agree to let you start your maternity leave when you had planned, for example, if they have arranged maternity cover.
- Your baby is born before the day you were planning to start your leave. In this case leave will start on the day after the

birth and you should tell your employer as soon as you can that you have given birth.

How to give notice

When do I have to tell my employer I'm pregnant?

The latest time you can tell your employer that you are pregnant is the 15th week before your baby is due. There is nothing to say that you have to tell your employer any earlier although it may be to your advantage, for example, special health and safety rights during pregnancy and the right to paid time off for antenatal care apply when your employer knows you are pregnant. The law protects you from being dismissed or discriminated against on the grounds of pregnancy once your employer knows you are pregnant.

How do I work out the 15th week before my baby is due?

Find the Sunday before your baby is due (or the due date if it is a Sunday) and count back 15 Sundays from there. That is the start of the 15th week before your expected week of childbirth.

You should use the due date on the MAT B1 certificate which your midwife or GP will give you when you are about 20 weeks pregnant.

What am I entitled to during maternity leave?

You are not entitled to your normal pay during maternity leave but you may qualify for maternity pay (see next section). You are still entitled to your **statutory rights** (i.e. rights that apply by law to all employees in this country) throughout your maternity leave. For example, everyone has a legal right to 28 days paid annual leave whether they are on maternity leave or not.

Also, your employer must not discriminate against you by failing to consider you for opportunities such as promotion or a pay rise. For more information, if you are treated unfairly during maternity leave, see [Discrimination during maternity leave](#).

How do I give notice for maternity leave and pay?

To get maternity leave you must give your employer the following information in or before the 15th week before your baby is due (if your employer asks you to, you must put it in writing):

1. that you are pregnant
2. the expected week of childbirth
3. the date on which you intend to start your maternity leave

If you want to change the date you start your maternity leave, you must give your employer notice of the new date at least 28 days before the new date or the old date, whichever is the earliest. If there is a good reason why that is not possible, tell your employer as soon as you reasonably can.

To get Statutory Maternity Pay (see next section) you must give your employer 28 days notice of the date you want to start your pay. You must give your employer a copy of your maternity certificate (form MAT B1) stating your expected week of childbirth which your midwife or GP will give you when you are about 20 weeks pregnant. You can give notice for leave and pay together in the 15th week before your baby is due.

Once you have given notice, your employer must write to you within 28 days and state the date you are expected to return from maternity leave.

If you cannot give notice by the 15th week before you are due (for example because you have to go into hospital unexpectedly), you must give notice as soon as you reasonably can.

Maternity Pay

What is Statutory Maternity Pay (SMP)?

SMP is paid for 39 weeks to women who qualify for it. Your employer pays it to you and then claims most or all of it back from HM Revenue and Customs (HMRC). You can get it even if you do not plan to go back to work or you are dismissed or made redundant (after the 26th week of pregnancy). You do not have to pay any SMP back if you do not return to work.

If you are a woman from abroad you are entitled to SMP if you meet the qualifying conditions. SMP is not classed as 'public funds' and will not affect future immigration applications.

Who gets SMP?

You get SMP if:

- you have been employed by the same employer for at least 26 weeks by the end of the 15th week before the expected week of childbirth (which is approximately the 26th week of pregnancy). In other words you need to have started the job before you got pregnant, and
- you are still employed in the same job in the 15th week before your baby is due – even if it's only for one day that week - or you are off sick or on holiday, and
- you actually receive at least £112 per week on average in the eight weeks (if you are paid weekly) or two months (if you are paid monthly) up to the last pay day before the end of the 15th week before your baby is due.

To get SMP you must give the correct notice to your employer (see 'How to give notice' above). If you are not sure if you are entitled to SMP, ask anyway. Your employer will work out whether or not you qualify for SMP and if you do not qualify they will give you form SMP1 to explain why. You should then check to see if you can get Maternity Allowance (see 'Maternity Allowance', below).

If your employer is not sure how to work out your SMP or how to claim it back, they can ring the HMRC Employers' Helpline on 0300 200 3200 for advice. For more information on maternity pay, see [Maternity pay questions](#).

How much is SMP?

SMP is paid at two rates: for the first six weeks you get 90% of your average pay. After that you are paid £139.58 per week, or 90% of your average earnings if that is lower, for 33 weeks.

The average is calculated from the pay you actually received in the eight weeks or two months up to the last pay day before the end of the qualifying week.

Your employer pays your SMP in the same way as your salary is paid. They deduct any tax and National Insurance contributions.

When can I get SMP?

As with maternity leave, the earliest you can start your SMP is 11 weeks before the expected week of childbirth. You can work right up until the date the baby is born, unless:

- you have a pregnancy-related illness/absence in the last 4 weeks of your pregnancy or
- your baby is born before you have started your maternity leave.

Your SMP will usually start on the same day as your maternity leave. If your maternity leave and pay is triggered by one of the reasons above, your SMP will start as follows:

- if you are off sick with a pregnancy-related illness in the last four weeks of pregnancy, your SMP will start on the day after your first day of absence from work. So, if you phone in sick on a Wednesday, your SMP period will start on Thursday.
- if you give birth before the start of your maternity leave, your SMP will start on the day following the actual date of birth.

You can work for the employer who pays your SMP for up to 10 days during your

maternity leave without losing any SMP (see 'Keeping in Touch' days). But, if you do more than 10 days' work, you cannot get SMP for any week in which you work – even for part of a week.

Do I still get SMP if my job ends after the 15th week before my baby is due?

Yes, you can still get SMP as long as you are employed in the 15th week before your baby is due and you meet the normal qualifying conditions stated above. It does not matter if you are off sick or on holiday in that week. Once you have qualified for SMP, you are entitled to receive it for the full 39 weeks even if you are made redundant, you leave your job or a fixed term contract comes to an end at any time after the 15th week before your baby is due or during your maternity leave.

Maternity Allowance

What is Maternity Allowance?

Maternity Allowance (MA) is paid by your local Jobcentre Plus for 39 weeks. You may be able to get MA if you do not qualify for SMP from your employer, for example, because you started a new job when you were already pregnant, your earnings are too low or you are self-employed. You can also claim MA if your baby is due on or after 27 July 2014 and you are the spouse or civil partner of a self-employed person and you help in their business.

If you are a woman from abroad you are entitled to Maternity Allowance if you meet the qualifying conditions. Maternity Allowance is not classed as 'public funds' and will not affect future immigration applications.

Who gets MA?

You can claim MA if:

- you have been employed for at least 26 of the 66 weeks before the expected week of childbirth, and
- you can find 13 weeks (not necessarily in a row) in which you earned over £30 per week on average.

You should choose the weeks in which you earned the most. You can add together earnings from more than one job. **Both employed and self-employed work counts for Maternity Allowance.**

If in doubt, ask your local Jobcentre Plus for form MA1 and make a claim or phone the JobCentre Plus claim line on 0800 055 6688. They will work out whether you can get the benefit. If you are not entitled to MA, they should automatically use the same claim form to check whether you can get Employment and Support Allowance instead (see 'Employment Support Allowance', below).

The earliest you can claim MA is 15 weeks before your baby is due and the earliest it can be paid to you is 11 weeks before you are due. You should put in your claim form as early as possible and notify Jobcentre Plus of the date you intend to stop work.

How much is Maternity Allowance?

Maternity Allowance is paid at £139.58 per week, or 90% of your average pay if that is lower, for 39 weeks.

For more information on maternity pay, see [Maternity pay questions](#).

Employment and Support Allowance (ESA)

What is ESA?

ESA (formerly Incapacity Benefit) is a weekly allowance which can be paid to pregnant women who do not qualify for Statutory Maternity Pay or Maternity Allowance. You do **not** have to complete a Work Capability Assessment. It is also possible to get ESA if you are incapable of working because of illness or disability.

Women from abroad who have 'no recourse to public funds' as a condition of their visa are not entitled to ESA. ESA is classed as public funds.

Who gets ESA?

You get ESA if you have paid or been credited with enough National Insurance

contributions during the last three tax years that do not overlap the current calendar year. Your Jobcentre Plus adviser will work out whether you can get the benefit. If in doubt, claim.

To claim ESA, use the claim form for Maternity Allowance (see 'Maternity Allowance', above). If you are not entitled to MA, the Jobcentre Plus should check automatically to see if you can get ESA.

When is ESA paid to pregnant women?

ESA can be paid from six weeks before your baby is due until two weeks after your baby is born. The rate of ESA varies according to your circumstances. ESA is £73.10 per week if you are over 25 or a single parent over 18

Return to work

Do I have to give notice of my return from maternity leave?

You do not need to give any notice of return if you are going back to work at the end of 52 weeks' maternity leave. You simply go to work on the day that you are due back.

If you want to return to work before the end of your maternity leave, you must give your employer at least 8 weeks' notice of the date you will be returning. If you do not give this notice and just turn up at work before the end of your maternity leave, your employer can send you away for up to 8 weeks or until the end of your leave, whichever is earlier.

If you or your partner want to take shared parental leave, you must give 8 weeks' notice. See [Shared parental leave and pay](#) for more information.

The law does not allow you to work for two weeks after childbirth and this period is known as Compulsory Maternity Leave. You will not be allowed to return to work during this time.

What happens when I go back?

If you go back to work after OML, you have the right to return to exactly the same job.

If you go back to work after AML, you also have the right to return to exactly the same job. But, if your employer can show that it is

not reasonably practicable for you to return to the same job, for example, because the job no longer exists, you have the right to be offered a suitable alternative job on very similar terms and conditions.

What happens if I need more time off work?

You cannot stay off work after your maternity leave has ended as you will lose your right to return to work if you do not go back at the end of your OML or AML.

If you need more time off you could:

- ask your employer if you can take annual leave immediately after your maternity leave. Note that paid holiday continues to accrue during maternity leave so you may have some holiday owing to you.
- Ask your employer if they will agree to a further period off work. You should ask your employer to confirm this agreement in writing and to confirm that you will have the right to return to the same job.
- Take some Parental Leave at the end of your maternity leave. For more information, see [Time off for working parents](#). You must give 21 days' notice to take Parental Leave and it is usually unpaid unless your employer offers paid Parental Leave.
- If you cannot return because you are ill you can take sick leave as long as you follow your employer's sickness procedures. For more information, see [Sickness during pregnancy and maternity leave](#).

What should I do if I do not want to go back to work?

You should resign in the normal way, giving the notice required by your contract or the notice period that is normally given in your workplace. If you do not have a contract or nothing has been said you should give a week's notice.

You do NOT have to repay any of the SMP you received.

You can normally continue on the same apprenticeship programme even if you change employer but you should seek advice from your learning provider.

Can I go back part-time?

You have the right to ask for part-time or flexible hours and your employer has a duty to seriously consider your request. Your employer must have a good business reason for refusing. If you or your partner want to work part-time or to change your hours, see [Child-friendly working hours](#).

My maternity leave ends soon and I'm pregnant again. What rights will I have?

You will be entitled to maternity leave for your new baby and you may also qualify for SMP or Maternity Allowance.

For more information, see [Pregnant during Maternity Leave](#).

Other rights and benefits for parents

Shared parental leave

If your baby is due on or after 5th April 2015, you and your partner are entitled to shared parental leave and pay if you both meet the qualifying conditions and give the correct notice. If you qualify for maternity leave and pay and your partner qualifies for paternity leave and pay and you are still employed, you will both be able to take shared parental leave. You can take it separately or together. See [Shared parental leave and pay](#) for more information.

Paternity leave

Apprentices have the same rights to paternity leave and pay as other employees. Fathers and partners (including same sex partners) have the legal right to take two weeks off at the birth if they qualify. For more information, see [Time off for working parents](#).

Parental Leave and time off for dependants

Apprentices are entitled to Parental Leave (this is different from the new right to shared parental leave) in the same way as other

parents. Parents are entitled to take up to 18 weeks unpaid parental leave per parent per child, until the child's 18th birthday.

Parents are also entitled to unpaid emergency leave to care for a dependant who falls ill, gives birth or is injured. The leave can also be used if there is a sudden problem with arrangements for care of the dependant e.g. if your childminder falls ill. For more information, see [Time off for working parents](#).

Benefits

All pregnant women and new mothers are entitled to free prescriptions and free NHS dental care. Once your baby is born you will also be entitled to claim Child Benefit. Families with one or more parent earning over £50,000 will be subject to a high earner child benefit charge. If you are on a low income you may be able to get more help. For more information about the benefits you could claim, see [Money for Parents and Babies](#).

This information sheet was produced in March 2015. Benefit rates apply from April 2015 to April 2016. It is always important to get up-to-date advice.

Where to go for more help

Maternity Action

Advice on maternity rights and benefits for UK citizens and foreign nationals
www.maternityaction.org.uk
Helpline 0845 600 8533

ACAS

For advice on employment rights or for Early Conciliation if you are thinking of making a tribunal claim
www.acas.org.uk
Helpline: 0300 123 11 00 (offers telephone interpreting service)

Citizens' Advice

For information about your rights and to find details of local advice bureau
www.citizensadvice.org.uk
Factsheets available in English, Welsh, Bengali, Gujarati, Punjabi, Urdu and Chinese

The CAB is currently developing a national advice phone service. If you live or work in Wales call 08444 77 20 20. For England, call 08444 111 444 or check your local bureau's contact details as it is not available in all areas yet.

Civil Legal Advice

If you are eligible for legal aid you can get free legal advice on 0845 345 4 345 (offers translation service). To check your eligibility see www.gov.uk/civil-legal-advice

To search for specialist legal advisers or solicitors in your area see find-legal-advice.justice.gov.uk

Equalities and Human Rights Commission (EHRC)

For information and advice about discrimination law
www.equalityhumanrights.com
The EHRC helpline for advice and information is run by the Equality Advisory Support Service. The contact numbers for the new service are:

Phone: 0808 800 0082
Textphone: 0808 800 0084

Mon.- Fri. 9am – 8pm

Sat. 10am – 2pm

GOV.UK

The government's online information service
www.gov.uk

JobCentre Plus Claim Line

Telephone benefit claims, including Maternity Allowance,
0800 055 6688 Mon.– Fri. 8am – 6pm

Insolvency Service Helpline

What you can claim when your employer goes out of business: www.gov.uk/your-rights-if-your-employer-is-insolvent/claiming-money-owed-to-you
Companies House 0303 1234 500
Redundancy payments enquiry line 0330 331 0020
Payments of SMP/SAP/SPP/ShPP or Statutory Sick Pay 03000 560 630

HM Revenue & Customs

For queries about Statutory Maternity Pay, Statutory Adoption Pay, Statutory Shared Parental Leave and Statutory Paternity Pay: Employee's helpline 0300 200 3500 Employer's helpline 0300 200 3200

For detailed guidance for employers on SMP, SAP, SPP and Statutory Sick Pay see www.gov.uk/government/collections/statutory-pay

Statutory Payments Dispute Team

Claims for Statutory Maternity, Paternity, Shared Parental and Adoption Pay when employer is insolvent or refuses to pay.
Room BP 3202, Benton Park View, Longbenton, Newcastle upon Tyne, NE98 1YS.
Tel. No. 03000 560 630

Working Families

For information and advice on benefits and rights at work, see
www.workingfamilies.org.uk
Helpline 0300 012 0312

More Maternity Action information sheets

[Pregnant at work](#) – a brief guide to your rights to maternity leave and pay

[Rights at work for fathers and partners](#) – a brief guide to rights for fathers and partners

[Shared parental leave and pay](#) – new rights to share leave and take leave more flexibly

[Time off for working parents](#) – rights to paternity leave, parental leave and time off in an emergency

[Child friendly working hours](#) – rights to ask for changes in your working hours to fit with your childcare or other caring responsibilities

[Money for parents and babies](#) – benefits and tax credits for working and non-working families

[Maternity pay questions](#) – how to qualify for Statutory Maternity Pay, Maternity Allowance and Employment and Support Allowance.

[Rights for parents with more than one job](#) – rights for parents working more than one job

[Redundancy during pregnancy and maternity leave](#) – your rights if you are made redundant

[Keeping in touch during leave](#) – a guide to working KIT days during maternity and adoption leave and SPLIT days during shared parental leave

[Dealing with problems at work](#) – a guide for new parents and parents-to-be on how to deal with problems at work

[Pregnancy discrimination](#) – what is pregnancy discrimination and what you can do about it

[Discrimination during maternity leave](#) – what you can do about discrimination during maternity leave

[Pregnant during maternity leave](#) – your rights if you become pregnant again whilst still on maternity leave

[Resigning during pregnancy and maternity leave](#) – what to do if you wish to resign

[Breastfeeding on return to work](#) – your rights if you wish to continue breastfeeding on return to work

[Sickness during pregnancy and](#)

[maternity leave](#) – rights and benefits during sick leave

[Health and safety during pregnancy and on return to work](#) – health and safety protection for new and expectant mothers

[Breastfeeding in public places](#) – your right to breastfeed when you are out and about

[Agency workers](#) – maternity and parental rights and benefits

[Apprentices](#) – maternity and parental rights and benefits

[Adoption leave and pay – rights for parents](#)

[Time off and pay for parents in surrogacy arrangements](#)

[Polish language information](#) - rights at work for mothers, fathers and partners.

[Spanish language information](#) – your rights at work

[Maternity rights for migrants](#) – information on rights and benefits for refugees, those with indefinite leave to remain, asylum seekers, refused asylum seekers, women with no recourse to public funds, undocumented women, trafficked women, and entitlement to free NHS maternity care

Available at www.maternityaction.org.uk