

TENBURY TOWN COUNCIL



Maternity Policy

July 2017

1.0 Who this Scheme Applies to

1.1 This occupational maternity scheme applies to all pregnant employees at Tenbury Town Council whose employment falls within the scope of the NJC for Local Government Service.

2.0 Initial Obligations on the Employee

2.1 The statutory scheme requires a woman to provide notification of pregnancy and leave to her employer by the end of the 15th week before the expected week of childbirth (EWC). It will be possible to change the date her leave commences provided that she gives 28 days' notice.

2.2 **However**, Tenbury Town Council requests the following:

- Written confirmation of the date maternity leave is due to start and expected date of return. This should be at least 28 days before the start date.
- That the employee produces a certificate (MATB1) from a registered medical practitioner or registered midwife stating the EWC.

The employee can start to receive her Statutory Maternity Pay (SMP) on any day of the week provided she has specified the date in her notice and she starts her leave on that day. If she leaves her employment before she has started to receive SMP, but after the 11th week before EWC, she will receive her SMP entitlement from the day after her leaving date.

2.3 The Town Clerk must reply to this notice within 28 days giving the employee notice of the expected date of return from Maternity Leave. This will vary depending on the employee's entitlement to maternity pay and their individual circumstances. The minimum compulsory maternity leave is 2 weeks (this period is set for health and safety reasons) and the maximum is 52 weeks.

3.0 Maternity Leave

3.1 Maternity Leave is a single continuous period made up of 26 weeks Ordinary Maternity Leave (OML) followed immediately by 26 weeks Additional Maternity Leave (AML). During both OML and AML the contract of employment continues and the employee continues to receive all her contractual benefits except salary.

All female employees (regardless of service) will be entitled to the maximum 52 weeks maternity leave.

4.0 Start of Maternity Leave

4.1 If an employee's maternity leave has not already started it will be triggered by the birth of the child, or pregnancy-related absence from the beginning of the

4th week before the expected week of childbirth (EWC). The earliest date that Maternity Leave can start is the beginning of the 11th week prior to EWC.

- 4.2 In both these situations the employee must notify the Town Clerk (in writing) as soon as is reasonably practicable, that she has given birth or that she is absent wholly or partly because of pregnancy.

5.0 Maternity Pay

- 5.1 Employees with less than 1 year's continuous service at the 11th week before EWC will be entitled to SMP. This will be 6 weeks at 9/10ths followed by 33 weeks at £140.98 per week or 90% of the pay whichever is lower. SMP is paid the same way as an employee's wages (e.g. monthly). Tax and National Insurance will be deducted.

To qualify for SMP employee's must:

- Have 26 weeks' service by the end of the 15th week before the EWC and
- Have average weekly earnings, for the 8 week period ending in the 15th week before the EWC, of not less than the Lower Earnings Limit (£113).

If an employee is not entitled to SMP they must be given a SMP1 by the Town Clerk so that they can claim Maternity Allowance (MA) from the Benefits Agency.

Employees with at least 1 year's continuous service at the 11th week before EWC will be entitled to the following:

Weeks 1 – 6 - 9/10th of a week's pay (offset against payments made by way of SMP or MA).

Weeks 7 – 18 – Where an employee has declared in writing that she intends to return to work she will receive 12 weeks at half pay without deduction except to the extent that half pay plus SMP (or MA and any dependant's allowances if the employee is not eligible for SMP) exceeds full pay. This is paid on the understanding that a woman will return to local authority (not just current authority) employment for at least 3 months at the end of her maternity leave period. For employees not intending to return payment will be the employee's entitlement to SMP.

Weeks 19 – 39 – The employee will receive her SMP entitlement only for the remaining 21 weeks. Statutory Maternity Pay can start on any day of the week.

- 5.2 Average weekly earnings take into account what the employee has earned in the eight week period ending with the Qualifying Week (QW). Therefore, bonuses, pay awards and other ad-hoc payments which fall in that period count in the calculation of SMP.

6.0 Keeping In Touch Days

- 6.1 The woman can do up to 10 days work during her maternity leave without bringing her maternity leave to an end or the loss of SMP. Working for part of a day will count as one day. Working for any more than the 10 days will result in the woman losing her SMP for any week in which she does any further work.

Work is defined as any work done under the contract of employment and may include training or any activity undertaken for the purpose of keeping in touch with the workplace.

- 6.2 Any such work is by arrangement with the Town Clerk who will keep a record of the number of days work undertaken during the maternity leave. The Town Clerk cannot insist on the woman undertaking any such work and likewise the woman cannot insist on being given any work to do.
- 6.3 An employee will normally be reimbursed for 'Keeping in Touch Days' in the form of Time Off in Lieu (TOIL). However, in certain circumstances, payment for such work can be made and will be at the contracted hourly rate of pay for the hours worked, which will be offset against the SMP entitlement for that day.

7.0 Reasonable Contact

- 7.1 The Town Clerk and employee are allowed to make reasonable contact during maternity leave to discuss such issues as the return to work, significant workplace developments and training opportunities. This does not constitute work and would not count towards the 10 days. Such contact does not bring the maternity leave to an end.

8.0 Returning to Work

- 8.1 It will be assumed, unless previously notified otherwise, that an employee will be returning at the end of Additional Maternity Leave (52 weeks). If an employee wishes to return earlier than this they must give written notice of at least 21 days.
- 8.2 In the event of her not returning to work, the woman will refund the monies paid, or a proportion, as the authority may decide. SMP paid to the woman in these circumstances is not refundable.

9.0 Right to Return to Work

- 9.1 Subject to paragraph 9.2, a woman has the opportunity to return to the job in which she was employed under her original contract of employment and on terms and conditions not less favourable than those which would have been applicable to her if she had not been absent. A “job”, for this purpose, means the nature of the work which she is employed to do and the capacity and place in which she is employed.
- 9.2 Where it is not practicable by reason of redundancy for the authority to permit her to return to work in her job as defined in paragraph 9.1 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 in the job in which she was originally employed.
- 9.3 Suitable alternative employment may also be offered in 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. The employee must return with her seniority, pension rights and similar rights as they would have been if they had not been absent, regardless of whether AML has been taken.
- 9.4 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 notified day, she may instead return when work resumes, or as soon as reasonably practicable thereafter.
- 9.5 For an employee where no date of return has been notified and there is an interruption of work (whether due to industrial action or some other reason) which makes it unreasonable to expect her to return to work before the end of the maternity leave period and in consequence she does not notify a date of return, she may exercise her right to return by giving at least 7 days written notice to the authority that she intends to return at any time before the end of 14 days from the end of the interruption.

10.0 Ante-Natal Care

- 10.1 Any pregnant employee has the right to paid time off to attend ante-natal classes and must produce evidence of appointments.

11.0 Relationship with Sickness and Annual Leave

- 11.1 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.
- 11.2 If an employee is sick before the beginning of the 4th week before the EWC the absence will be treated as sickness provided it is covered by self-certification or where appropriate a doctor's note. If an employee is sick after the 4th week before the EWC and the sickness is wholly or partly due to the pregnancy she will automatically be required to commence maternity leave. If the sickness is not attributable to the pregnancy she can continue to receive sickness pay until the notified date for commencement of maternity leave.
- 11.3 Maternity leave shall be regarded as continuous service for the purposes of the NJC sickness scheme and annual leave.
- 11.4 Annual leave and bank holidays continue to accrue during paid and unpaid maternity leave. In all circumstances, the employee should be encouraged to take all pro rata leave entitlement up to their maternity leave starts, and any form of leave accrued during maternity leave to be taken before returning to work; i.e. maternity leave ends and accrued annual leave begins.

In the event that there may be insufficient time available to take the annual leave entitlement within the same leave year, annual leave can be carried over into the next year in order to manage the situation.

- 11.5 Where due to sickness the employee is unable to return from maternity leave on the expected date this will still be classed as a return to work and not a postponement of return. The period of sickness must be notified and certified in the same way as for any other period of sickness. Sickness will be recorded and monitored in the usual way.
- 11.6 Where an employee is certified as sick during maternity leave, there is no right of payment of contractual sick pay as this is deemed to be "salary" (as covered in Section 3 – Maternity Leave), and maternity pay will continue to be paid.

12.0 Health and Safety Protection

- 12.1 The Town Clerk will include any specific risks to females of childbearing age when conducting a risk assessment for his/her employees. Some of the more common risks might be:
- Moving and handling
 - Standing or sitting for long periods of time
 - Exposure to infectious diseases
 - Threat of violence at work
 - Long working hours
 - Work related stress.

A specific risk assessment will need to be conducted for the pregnant employee's post, taking into account relevant advice from the GP or midwife. Risk Assessments will be reviewed as soon as the employee notifies the Town Clerk that she is pregnant.

- 12.2 The nursing mother will need to inform the Town Clerk in writing if she intends to continue to breastfeed after returning to work. The Town Clerk will need to conduct a further risk assessment with advice where appropriate and to discuss this with the employee.

13.0 Definitions

13.1 Termination

The word termination in this context means still birth, miscarriage or abortion after a pregnancy lasting less than 24 weeks.

13.2 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 authority 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.

- 13.3 Nothing in the above provisions shall be construed as providing rights less favourable than statutory rights.

Review of Policy

The policy will be reviewed at regular intervals in conjunction with changes to legislation that may impact upon it.

A Quick Reference to Calculating Maternity Pay and Leave

Length of Service	Employees Intention	Leave Entitlement	Maternity Pay Provisions
Less than 26 weeks service at the 15 th week before the EWC	Returning to work <hr/> Not returning to work	52 weeks leave <hr/> Not applicable	No entitlement to SMP or OMP. <hr/> Need SMP1 to enable employee to claim from Benefits Agency.
Over 26 weeks service with HCC but less than 12 months service at the 15 th week before EWC & average earnings in last 8 weeks = to lower earnings limit.	Declared in writing that returning to work <hr/> Not returning to work	52 weeks leave <hr/> Not applicable	Entitlement to payment under SMP: First 6 weeks of absence at 9/10 th of average full pay, followed by 33 weeks SMP only. <hr/> Weeks 1 – 6 at 9/10ths of pay Weeks 7 – 39 SMP only.
Over one year's continuous service at the 11 th week before the EWC.	Returning to work <hr/> Not returning to work	Maximum of 52 weeks leave (i.e. commencing anytime from the 11 th week before the EWC) <hr/> Not applicable	Entitlement to payments under SMP and OMP for 39 weeks. First 6 weeks of absence , 9/10ths of average full pay under SMP or OMP; Next 12 weeks absence, half pay *plus flat rate SMP (provided this does not exceed the normal full pay) *or at any other mutually agreed distribution or paid in full on return to work. A further 21 weeks at SMP only. A further 13 weeks additional leave unpaid to follow on immediately after ordinary/additional maternity leave. <hr/> Entitlement to payments under SMP and OMP; First 6 weeks of absence at 9/10 th of average full pay under SMP or OMP; Next 33 weeks of absence flat rate SMP equivalent to standard rate SSP or 90% of earnings whichever is the lower.

APPENDIX 1

Statutory Maternity Pay (SMP)

1.0 Abbreviations and Terms

The following abbreviations and terms are used in these notes:

SMP	Statutory Maternity Pay
MPP	Maternity Pay Period
EWC	Expected Week of Childbirth
QW	Qualifying Week: the 15 th week before the EWC

2.0 Who Qualifies for SMP?

2.1 To qualify for SMP you must meet **all** the following conditions:

- i. At the 15th week before the expected week of childbirth (EWC) to have been continuously employed by the Authority for at least 26 weeks. This is the Qualifying Week (QW).
- ii. Have average weekly earnings, for the eight week period ending with the Qualifying Week, of not less than the Lower Earnings Limit.
- iii. Still be pregnant, or have given birth, in the 11th week before the EWC.
- iv. You must give the Authority at least 28 days notice of absence, and produce form MATB1 obtained from a registered medical practitioner or midwife.
- v. To have stopped work.

2.2 If all of the above conditions are met you will be entitled to 39 weeks pay, even if you are not returning to work. SMP is paid at two rates:

- i. For the **first 6 weeks** of absence, at higher rate SMP – **9/10th of average weekly earnings**;
- ii. The **next 33 weeks** of absence SMP is paid at a fixed, flat rate which is reviewed annually. Currently, it is set at **£140.98 per week** or **90%** of average weekly pay whichever is lower.

3.0 Average Weekly Earnings

Average weekly earnings take into account what you have earned in the eight week period ending with the Qualifying Week (QW). Therefore, bonuses, pay awards and other ad-hoc payments which fall in that period count in the calculation of SMP.

4.0 The Maternity Pay Period (MPP)

The MPP is the period throughout which SMP is payable. It is a period of 39 weeks, which starts the day after you start your maternity leave which cannot be earlier than the 11th week before the EWC. However, should you have the baby before this; SMP will start on the following day.

Maternity leave can commence any time between the 11th before the EWC and the birth of the baby (unless certified medically unfit to remain at work).

5.0 Non Entitlement to SMP

If any of the following apply you will **not** be entitled to SMP:

- i. If you travel outside the EC at anytime during the maternity pay period.
- ii. If you are taken into legal custody at anytime during the maternity pay period.
- iii. If you give late notification to claim SMP without acceptable reason for doing so.
- iv. If you begin work during the maternity pay period after childbirth, for a different employer than the employer for whom you were employed at any time during the QW. Statutory Maternity Pay will end on the Saturday of the week before you start work with the different employer.

6.0 Maternity Allowance

If you do not qualify for SMP you may be entitled to Maternity Allowance, paid by the Benefits Agency (DSS). You must have been employed or self employed in at least 26 of the 66 weeks ending with the week before the EWC.

7.0 Maternity Pay and Sick Pay

If you are absent with a pregnancy related illness in the four weeks before the EWC this will trigger maternity leave and therefore maternity pay.

8.0 Entitlement to SMP if an employee is not returning after Maternity Leave.

The SMP Regulations make it clear that, providing you qualify for SMP, the employer is liable to pay SMP even if you are not returning to work after you have had your child.

9.0 What if the child is stillborn or dies?

An employee is still entitled to SMP if she has a stillbirth after 24 weeks of pregnancy or if her child dies.

10.0 Availability of Further Information

These Guidance Notes are intended solely as brief details of the basic ground rules of the Statutory Maternity Pay scheme.

If you are unsure or unhappy about any particular point relating to your own position you should seek guidance from the Town Clerk.