



# **St Helens Borough Council**

## **Maternity Leave and Pay Guidance**

### **and Procedure for Staff**

#### **Introduction**

This guidance has been developed to provide further information about the Council's entitlement to Maternity Leave and Pay. It applies to all employees of St Helens Council. The purpose of this guidance is to inform you of your statutory and contractual rights in relation to maternity leave and pay, and also provides relevant information relating to other issues which may arise in connection with your maternity leave.

#### **Our Vision and Values**

The Council has co-designed a clear vision for workplace culture and worked together with employees to identify values and behaviours for everyone. These will be at the core of how we work together to deliver our services. Employees will be empowered to deliver new ways of thinking and new ways of working, encouraging innovation and creativity in a learning environment.

Our vision, values and behaviours are underpinned by our Bonds for Working Together at St Helens which outline what employees can expect from working at the Council and what is expected of them.

[Our Culture, vision, values, behaviours and Bonds for Working Together at St Helens](#)



## **Prior to Commencing Maternity Leave**

### **Antenatal Care and Time Off for Appointments**

#### **i) Mother**

Legal provisions exist which provide you, when pregnant, the right to take paid time off work for antenatal care. The right applies to employees of the Council.

Once you advise your line manager that you are pregnant, you are entitled not to be unreasonably refused paid time off work to attend antenatal appointments as advised by your doctor, registered midwife or registered health visitor. To be entitled to take time off for antenatal care, you are required to produce a certificate from your doctor, registered midwife or registered health visitor, stating that you are pregnant. Except in the case of your first appointment, you should produce evidence of the appointment, such as a medical certificate or appointment card, if requested to do so. You should endeavour to give your line manager as much notice as possible of antenatal appointments, and wherever possible try to arrange them as near to the start or end of your working day.

In addition to medical examinations, antenatal care may include relaxation and parent craft classes that your doctor, midwife or health visitor has advised you to attend.

#### **ii) Prospective Father or Mother's Partner**

If you are an expectant father or the partner of a pregnant woman (including same sex) legislation provides that you will be entitled to take unpaid time off work to accompany your pregnant spouse/partner to up to 2 of her antenatal appointments. 'Partner' includes the spouse or civil partner of a pregnant woman and a person (of either sex) who is in a long-term relationship with her. The amount of time off work is capped at 6.5 hours for each of the antenatal appointments. This right applies to all employees, irrespective of length of continuous service of employment.

You will also retain the right to request annual leave to attend any additional antenatal appointments, over and above the legal maximum of 2 unpaid appointments. Annual leave requests should be made in accordance with normal approval procedures. If you do not have an annual leave entitlement to utilise, for example if you are a Teacher, or employed on a term time only basis, special leave and leave of absence provisions will apply.

### **Health and Safety Risk Assessments**

The Council has a duty to take care of the health and safety of all employees and are required to carry out a risk assessment. The risk assessment assesses the workplace risks to women who are pregnant, have recently given birth or are breastfeeding where the work is of a kind that could involve a risk of harm or danger to her health and safety or the health and safety of her baby and the risk arises from either process, working conditions or physical, chemical or biological agents in the workplace.

If applicable, the Council will provide you with information as to any risks identified in the risk assessment. If the risk assessment reveals that you would be exposed to health hazards in carrying out your normal duties, the Council will take such steps as are reasonably necessary to avoid those risks, such as altering your working conditions. In some cases, this may mean offering you suitable alternative work (if available) on terms and conditions that are not substantially less favourable.

If it is not possible for the Council to alter your working conditions to remove the risks to your health and there is no suitable alternative work available to offer you on a temporary basis, the Council may suspend you from work on maternity grounds until such time as there are no longer any risks to your health. This may be for the remainder of your pregnancy until the commencement of your maternity leave. If you are suspended in these circumstances, your employment will continue during the period of the suspension and it will not in any way affect your statutory or contractual employment and maternity rights. You will be entitled to your normal salary and contractual benefits during the period of suspension, unless you have unreasonably refused an offer of suitable alternative employment.

### **Sickness Absence During Pregnancy**

If you are absent from work during pregnancy owing to sickness, you will receive your normal statutory or contractual sick pay in the same manner as you would during any other sickness absence provided that you have not yet begun ordinary maternity leave. If, however, you are absent from work due to a pregnancy-related illness after the beginning of the fourth week before your expected week of childbirth, your maternity leave will start automatically.

If you are absent from work wholly or partly because of pregnancy during the four weeks before the expected week of childbirth, you must notify your line manager and People Management in writing of this as soon as reasonably practicable

## **Entitlements To Maternity Leave and Pay**

## **Maternity Leave**

All pregnant employees (regardless of length of service) have the right in law to take up to 26 weeks' ordinary maternity leave and up to a further 26 weeks' additional maternity leave and to resume work afterwards. You are therefore entitled to a total period of 52 weeks' maternity leave. Additional maternity leave follows on immediately from the end of the period of ordinary maternity leave.

If you take maternity leave you have the right to return to work at any time during either ordinary maternity leave or additional maternity leave (except during the first two weeks from the day of childbirth, when a period of compulsory maternity leave applies), subject to you following the correct notification procedures as set out below.

Ordinary maternity leave can start at any time after the beginning of the 11<sup>th</sup> week before your expected week of childbirth (unless your child is born prematurely before that date in which case it will start earlier). Maternity leave will start on whichever date is the earlier of:

- your chosen start date;
- the day after you give birth; or
- the day after any day on which you are absent for a pregnancy-related reason in the four weeks before the expected week of childbirth.

If you give birth before your maternity leave was due to start, you must notify People Management in writing of the date of the birth as soon as reasonably practicable.

The law requires you to take a minimum of two weeks of maternity leave immediately after the birth of the child, as outlined above.

## **Maternity Pay**

In order for you to qualify for Statutory Maternity Pay (SMP), certain eligibility criteria must be satisfied. In addition to Statutory Maternity Pay, you may also qualify for Occupational Maternity Pay (OMP).

Entitlement to Occupational Maternity Pay will be dependent on your individual length of continuous local government service, whilst the amount of Occupational Maternity Pay will be determined by reference to your terms and conditions of employment.

## **Legal Position**

If you have been continuously employed by the Council for at least 26 weeks at the end of your qualifying week and are still employed during that week, you will qualify for Statutory Maternity Pay, providing that:

- you are still pregnant 11 weeks before the start of the expected week of childbirth (or have already given birth);
- you have provided a MAT B1 form stating your expected week of childbirth; and
- your average weekly earnings are not less than the lower earnings limit for national insurance contributions. The lower earnings limit is set by the Government at the start of each tax year.

'Qualifying week' means the 15<sup>th</sup> week before the expected week of childbirth.

Statutory Maternity Pay is payable for up to 39 weeks, with the first six weeks payable at 90% of your average weekly earnings. The remaining 33 weeks is payable at a rate set by the Government for the relevant tax year, or at 90% of your average weekly earnings, if this figure is lower than the Government's set weekly rate. SMP is treated as earnings and is therefore subject to PAYE and national insurance deductions.

Payment of Statutory Maternity Pay cannot start prior to the 11<sup>th</sup> week before your expected week of childbirth. It can start from any day of the week in accordance with the date you commence your maternity leave.

Statutory Maternity Pay is payable whether or not you intend to return to work after your maternity leave.

If you are not entitled to receive Statutory Maternity Pay from the Council, you may be entitled to receive Maternity Allowance payable directly by the Government. If you are not entitled to Statutory Maternity Pay, People Management will provide you with an SMP1 form to allow you to pursue a claim for Maternity Allowance with the Department for Work and Pensions (DWP).

## **Contractual Position**

### **All Employees other than those employed as Teachers**

#### **Less than a year's service**

If you have less than a year's local government service at the 11<sup>th</sup> week before the expected date of childbirth you will not qualify for Occupational Maternity Pay. In these circumstances, you may still be entitled to Statutory Maternity Pay provided that you (i) will have been continuously employed by the Council for at least 26 weeks at the end of the 15<sup>th</sup> week before your expected week of childbirth (and remain employed during that week), and (ii) that your average weekly earnings are not less than the Lower Earnings Limit (LEL) for national insurance contributions.

Further advice regarding whether you qualify for SMP can be obtained from People Management.

#### **More than a year's service**

If you have more than a year's local government service at the 11<sup>th</sup> week before the expected date of childbirth you will qualify for Occupational Maternity Pay. There are two options available in respect of Occupational Maternity Pay:

#### **Option A**

Option A provides you with 18 weeks' Occupational Maternity Pay as well as any Statutory Maternity Pay to which you may also be entitled.

- 6 weeks at 9/10ths of average weekly earnings, followed by
- 12 weeks at half pay plus Statutory Maternity Pay (if eligible), followed by
- 21 weeks of Statutory Maternity Pay (if eligible), followed by
- up to 13 weeks of unpaid leave.

Where you are entitled to receive both Statutory and Occupational Maternity Pay, the total amount of maternity pay payable to you will not exceed the Occupational Maternity Pay element. Further advice regarding this is available from the Human Resources Section.

If you choose Option A, you will be required to return to your post at the end of the maternity leave period for a minimum of 13 weeks.

Where you receive the half pay element of Occupational Maternity Pay, and subsequently fail to return to work for the required period of 13 weeks, you will be required to repay the half pay element to the Council.

## **Option B**

Option B provides you with the following maternity pay:

- 6 weeks at 9/10ths of average weekly earnings, followed by
- 33 weeks of Statutory Maternity Pay (if eligible), followed by
- up to 13 weeks of unpaid leave.

If you choose Option B, there is no requirement for you to return to your post at the end of the maternity leave period. You may wish to choose this option if you intention to return to work following maternity leave is unknown at the commencement of the maternity leave.

Where you choose Option B, and subsequently return to work following the period of maternity leave, you will be entitled to receive 12 weeks' half pay as if you had chosen Option A. In these circumstances you would need to remain in your post for a minimum of 13 weeks to retain the right to the half pay element.

## **All Teachers Employed In Accordance With The Conditions of Service for School Teachers in England and Wales**

### **Less than a year's service**

If you have less than a year's local government service at the 11<sup>th</sup> week before the expected date of childbirth you will not qualify for Occupational Maternity Pay. In these circumstances, you may still be entitled to Statutory Maternity Pay provided that you (i) will have been continuously employed by the Council for at least 26 weeks at the end of the 15<sup>th</sup> week before the expected week of childbirth (and you remain employed during that week), and (ii) that your average weekly earnings are not less than the Lower Earnings Limit for national insurance contributions.

Further advice regarding whether you qualify for SMP can be obtained from the People Management.

### **More than a year's service**

If you have more than a year's local government service at the 11<sup>th</sup> week before the expected date of childbirth you will qualify for Occupational Maternity Pay. There are two options available in respect of Occupational Maternity Pay:

## **Option A**

Option A provides you with 18 weeks' Occupational Maternity Pay as well as any Statutory Maternity Pay to which you may also be entitled.

- 4 weeks at full pay, followed by
- 2 weeks at 9/10ths of average weekly earnings, followed by

- 12 weeks at half pay plus Statutory Maternity Pay (if eligible), followed by
- 21 weeks of Statutory Maternity Pay (if eligible), followed by
- up to 13 weeks of unpaid leave.

Where you are entitled to receive both Statutory and Occupational Maternity Pay, the total amount of maternity pay payable to you will not exceed the Occupational Maternity Pay element. Further advice regarding this is available from People Management.

If you chose Option A, you will be required to return to your post at the end of the maternity leave period for a minimum of 13 weeks.

In accordance with School Teachers' Conditions of Service, where your employer agrees, if you are a full-time teacher you may return to work on a part-time basis for a period which equates to 13 weeks of full-time service. Similarly, where your employer agrees, if you are a part-time teacher you may return to work on a different part-time basis for a period which equates to 13 weeks part-time service relating to your previous contract.

Where you receive the half pay element of Occupational Maternity Pay, and subsequently fail to return to work for the required period of time, you will be required to repay the half pay element to the Council.

## **Option B**

Option B provides you with the following maternity pay:

- 4 weeks at full pay, followed by
- 2 weeks at 9/10ths of average weekly earnings, followed by
- 33 weeks of statutory maternity pay (if eligible), followed by
- up to 13 weeks of unpaid leave.

If you choose Option B, there is no requirement for you to return to your post at the end of the maternity leave period. You may wish to choose this option if your intention to return to work following maternity leave is unknown when you commence maternity leave.

If you choose Option B, and subsequently return to work following the period of maternity leave, you will be entitled to receive 12 weeks' half pay as if you had chosen Option A. In these circumstances the employee would need to remain in her post for a minimum of 13 weeks to retain the right to the half pay element. In accordance with School Teachers' Conditions of Service, where the employer agrees, a full-time teacher may return to work on a part-time basis for a period which equates to 13 weeks of full-time service. Similarly, where the employer agrees, a part-time teacher may return to work on a different part-time basis for a period which equates to 13 weeks part-time service relating to her previous contract.



## Procedure

### Notification Requirements

There are a number of notification requirements with which you are required to comply, in terms of both the amount of notice to be given and the form in which such notice should be provided. Further details can be found below.

### Commencement of Maternity Leave

On becoming pregnant, you should notify your line manager as soon as possible. This is important as there are health and safety considerations for the Council.

In all cases, other than if you are employed as a Teacher, at least 28 days prior to commencement of maternity leave, or as soon as is reasonably practicable, you are required to inform the Council in writing of:

- the fact that you are pregnant;
- your expected week of childbirth; and
- the date on which you intend to start your maternity leave.

If you are employed under the Conditions of Service for School Teachers in England and Wales you are required to provide the information as outlined above at least 21 days' prior to commencement of maternity leave, or as soon as is reasonably practicable.

You must also provide a MAT B1 form, which is a certificate from a doctor or midwife confirming the expected week of childbirth. The form must have either the doctor's name and address or the midwife's name and registration number on it. Please note that People Management will be unable to process any statutory or occupational maternity payments if the MAT B1 form has not been provided.

You are permitted to bring forward your maternity leave start date, provided that you advise your line manager and People Management in writing at least 28 days before the new start date or, if that is not possible, as soon as reasonably practicable. You may also postpone your maternity leave start date, provided that you advise the Council in writing at least 28 days before the original proposed start date or, if that is not possible, as soon as reasonably practicable.

People Management will formally respond in writing to your notification of your leave plans within 28 days, confirming the date on which you are expected to return to work if you take your full 52-week entitlement to maternity leave.

If it is not possible for you to give the required amount of notice, for example if your baby arrives early, you should tell People Management as soon as reasonably practicable.

### Return to work following Maternity Leave

You may return to work at any time during ordinary maternity leave or additional maternity leave, provided that you give the appropriate notification. Alternatively, you may take your full period of maternity leave entitlement and return to work at the end of this period.

If you wish to return before the full period of maternity leave has elapsed, you must give at least 21 days' notice in writing to People Management of the date on which you intend to return. As well as being a contractual provision in accordance with both the NJC Terms and



Conditions of Service and the Conditions of Service for School Teachers, this notice requirement ensures that there is sufficient time for People Management to reinstate your normal salary arrangements.

### **Employment Rights during Maternity Leave**

During ordinary maternity leave and additional maternity leave, all terms and conditions of your contract except normal pay will continue. Salary will be replaced by statutory maternity pay or occupational maternity pay if you are eligible.

This means that, while sums payable by way of salary will cease, all other benefits will remain in place. For example, holiday entitlement will continue to accrue.

### **Keeping in Touch (KIT) Days**

You may work for up to 10 days without bringing the period of maternity leave to an end, but work during maternity leave will not have the effect of extending the maternity leave period beyond the legally prescribed maximum period of 52 weeks. These days are referred to as 'Keeping In Touch' (KIT) days.

If you undertake any work whilst on a KIT day, payment will be received at the normal rate of pay for the day, inclusive of any statutory maternity pay (SMP) due for that day. You are under no obligation to work during maternity leave, and the Council is under no obligation to offer work.

In addition to KIT days, the Council is entitled to make reasonable contact with you during maternity leave. This may be to discuss your plans to return to work, or perhaps any changes in the workplace. You are also entitled to make reasonable contact with the Council, for example, to discuss any arrangements for your return to work.

### **Annual Leave**

During the period of maternity leave you will continue to accrue annual leave and bank holidays in line with your contractual provisions. Where a period of maternity leave spans two leave years, you should aim to take the leave entitlement from the first leave year prior to commencing maternity leave. Leave entitlement from the second leave year will be available for you to use upon return from maternity leave.

Where you carry over leave from one leave year to the next as a result of a period of maternity leave, you will be required to use the carried over amount of leave within 3 months of your return from maternity leave.

### **Pension**

Pension contributions will continue to be made by the Council during the period when you are in receipt of pay, including Occupational Maternity Pay, Statutory Maternity Pay or Maternity Allowance, but not during any period of unpaid maternity leave.

You are able to continue to make your own individual pension contributions during a period of maternity leave. Further details regarding pension payments during maternity leave are available from People Management.

### **Right to return to role following Maternity Leave**

In accordance with employment legislation, you have the right to resume working in the same job if returning to work from ordinary maternity leave (after 26 weeks' maternity leave).

If you return to work after a period of additional maternity leave, that is, following a period of maternity leave which lasts for a duration of between 27 and 52 weeks, you are legally entitled to return either to the same job or, if this is not reasonably practicable, to another suitable job that is on terms and conditions not less favourable.

The Council's practice generally is to allow you to return to your own job following maternity leave, irrespective of the amount of maternity leave taken. The only exception to this will be in cases where a Service Review has been undertaken whilst you have been on maternity leave and your original post no longer exists. In these circumstances the provisions contained within the Council's Organisational Change and Transformation Policy will apply. If you decide during maternity leave that you do not wish to return to work, you should give written notice of resignation to the Council as soon as possible and in accordance with the terms of your contract of employment.

### **Right to request flexible working**

Full consideration will be given to requests from employees who wish to change their working pattern. You should submit your request as far in advance of your desired start date as practicable, to allow adequate time for your request to be fully considered and, where appropriate, the necessary arrangements put in place.

Further information about the right to request flexible working and the process involved can be obtained from People Management.

### **Childcare Vouchers**

From 4 October 2018, childcare voucher schemes closed to new applicants. You may be able to get tax-free childcare instead.

You can keep getting vouchers if you've joined a scheme and your salary has been adjusted before the scheme closed in October 2018, as long as:

- you stay with the same employer and they continue to run the scheme
- you do not take an unpaid career break of longer than a year

### **Employment rights in a redundancy situation**

Further information regarding employment rights in a redundancy situation is contained within the Council's Organisational Change and Transformation Policy and is also available from People Management.

### **Baby Welcome Policy**

This policy is intended for Council employees and members of the public. It acknowledges the Council's commitment to creating a supportive environment for nursing parents and is safe and comfortable for a breastfeeding mother and her child. Further details about the Policy can be found on the Council's Intranet or by contacting People Management.

### **Further Information**

Any questions relating to this guidance and procedure, can be obtained from People Management.