



## Bargaining Support Guide

# Bargaining for Maternity Rights

A UNISON guide, produced by the Bargaining Support Group and Membership Participation Unit



# Contents

|  |           |
|--|-----------|
| <b>INTRODUCTION</b>                                    | <b>3</b>  |
| <b>WHAT THE NEW REGULATIONS SAY</b>                    | <b>4</b>  |
| JARGON BUSTER  | 5         |
| <b>THE CASE FOR GOOD MATERNITY PROVISION</b>           | <b>6</b>  |
| <b>HOW TO GO ABOUT IT</b>                              | <b>8</b>  |
| <b>KEY NEGOTIATING AREAS</b>                           | <b>10</b> |
| MATERNITY LEAVE AND PAY                                | 10        |
| AFTER MATERNITY LEAVE                                  | 15        |
| OTHER ISSUES   | 17        |
| <b>OTHER 'FAMILY FRIENDLY' RIGHTS</b>                  | <b>19</b> |
| <b>APPENDIX A - RESOURCES</b>                          | <b>20</b> |
| <b>APPENDIX B - SAMPLE SURVEY</b>                      | <b>22</b> |
| <b>APPENDIX C - MODEL MATERNITY POLICY</b>             | <b>23</b> |
| <b>APPENDIX D - MATERNITY RIGHTS FACTSHEETS</b>        | <b>25</b> |
| <b>APPENDIX E - MATERNITY RIGHTS BIS QUESTIONNAIRE</b> | <b>29</b> |



## Introduction

The law on maternity rights has changed several times over recent years, most recently on 1<sup>st</sup> April 2007. These changes include the extension of the period of maternity pay and the removal of the qualifying period of service for “Additional Maternity Leave”.

Maternity rights, either directly or indirectly, affect the vast majority of workers. The statutory level of state provision for maternity is inadequate and this makes it a crucial bargaining issue. This guide is designed to help branches and stewards bargain with employers for better maternity rights.

The guide details the main legal rights, and gives advice on organising and campaigning to win improvements from your employer. The main part of the guide takes you through the key negotiating areas, and gives advice, information on the legal situation, negotiating goals, and best practice for each point. A model maternity agreement containing this best practice is included in appendix C.

There is also an overview of other family friendly rights including adoption leave, maternity support leave and flexible working rights. Additionally there is information on national agreements and variations in the UK outside of England. A list of contacts and resources is included in appendix A to provide you with more information on specific topics.

The guide is mainly designed for collective bargaining, but there is information on individual rights in four factsheets in appendix D, which can be easily photocopied and given out to members.



## What the new regulations say

The regulations governing maternity leave and pay changed for women with an expected week of childbirth (EWC) on or after 1st April 2007

### The main statutory changes

The following changes in maternity rights will apply for women with an expected week of childbirth on or after 1st April 2007.

- The period of Statutory Maternity Pay will be extended from 26 weeks to 39 weeks for employees who qualify. To qualify an employee needs to have worked for the same employer for 26 weeks by the 15<sup>th</sup> week before EWC; and have average weekly earnings above £87 (for April 2007 – April 2008) or £90 (for April 2008 – April 2009).
- The qualifying period of service for “Additional Maternity Leave” will be removed entirely. Previously an employee had to have worked for an employer for 26 weeks before qualifying for AML.
- The required notice period of early return from maternity leave (given by the employee to the employer) has been increased from 28 days to 8 weeks
- The law has been clarified so that all women have a right to return to work after maternity leave, under the same pay and conditions, regardless of the size of the employer.
- Optional “keeping in touch days” have been introduced enabling a woman to work for up to 10 days during her maternity leave period.

### The main legal minimum rights from April 1<sup>st</sup> 2007

For more details of individual rights, please see the Maternity Rights factsheets in Appendix D.

#### Maternity Leave

- All employees must take a minimum of 2 weeks Maternity Leave (or 4 for factory workers).
- All employees are entitled to 26 weeks Ordinary Maternity Leave.
- All employees are entitled to 26 weeks Additional Maternity Leave after Ordinary Maternity Leave.

#### Maternity Pay

If you have worked for your present employer for 26 weeks by the 15<sup>th</sup> week before your baby is due, and you earn over £87 (for 2007/8) or £90 (for 2008/9) a week you are entitled to Statutory Maternity Pay (SMP) from your employer. This consists of:-

- Statutory Maternity Pay for 39 weeks
- The first 6 weeks of SMP are earnings related (90 per cent of your average weekly earnings with no upper limit). The remaining weeks are paid at the standard rate of £112.75 a week (April 2007/8 rates) or £117.18 (April 2008/9 rates).

### Discrimination

It is against the law for an employer to discriminate on the grounds of sex either directly or indirectly under the Sex Discrimination Act. It is specifically against the law to dismiss a woman or treat her less favourably for any reason connected to pregnancy, childbirth or maternity leave. A woman continues to be an employee throughout her maternity leave and if she is treated less favourably or dismissed during this period she can take the matter to an employment tribunal and claim sex discrimination and unfair dismissal. The Sex Discrimination Act covers a broad range of



employment rights including recruitment, promotion, training, work-related benefits, facilities and services, dismissal and any other detriment. The law also prohibits discrimination on the grounds of race, sex, disability and will also include sexual orientation, religion and age.

A recent development is the Gender Equality Duty which came into force in April 2007. This requires public authorities to promote gender equality and eliminate sex discrimination. Instead of depending on individuals making complaints about sex discrimination, the duty places the legal responsibility on public authorities to demonstrate that they treat men and women fairly. The duty will effect the pay and conditions for people working in the public sector because employers will be forced to address inequalities amongst their work-force. In the case of maternity rights this means public authorities would need to address issues such as poor return rates from maternity leave, and alter their policies and agreements accordingly to demonstrate they are complying with the duty.

### Case Study

In June 2005 three trainee midwives won a landmark legal victory when the Employment Appeal Tribunal ruled the government was wrong to cut the trainees' bursary payments when they took time off from training to have their babies. The decision led to a policy change by government meaning that student nurses and midwives no longer lose their NHS bursaries if they interrupt their courses to take maternity leave. Under new arrangements, students keep their bursaries for up to 45 weeks during maternity leave.

### Jargon buster

- AML - Additional Maternity Leave – the 26 weeks leave after Ordinary Maternity Leave.
- EWC - Expected Week of Childbirth – the week in which the baby is due. (This is also sometimes called the 'Expected Week of Confinement')
- MA - Maternity Allowance – those not eligible for SMP may be able to claim this payment.
- OML - Ordinary Maternity Leave – the 26 weeks leave all employees are entitled to.
- SMP - Statutory Maternity Pay – pay which employees with 26 weeks service receive.
- QW - Qualifying Week - this is the 15<sup>th</sup> week before the 'Expected Week of Childbirth'.



## The Case for Good Maternity Provision

Good maternity conditions mean that new mothers can take time off without financial worry and can concentrate on being a mum rather than worrying about how the bills will be paid. They mean that women can recover fully after the birth. The health and wellbeing of new mothers and babies is one of the most fundamental arguments for good maternity conditions whether that be pay, leave or time off to attend ante-natal classes.

A principle objective of paid maternity leave is "... to further promote equality of all women in the workforce", according to the International Labour Organisation. Although women only earn 81% of men's wages, good maternity pay is a way of tackling the persistent problem of pay inequity between men and women.

UNISON has a key role in improving maternity provisions above the legal minimum. The level of statutory maternity provision in Britain is still far from good enough, so it is vital to bargain for an occupational scheme that is better than the legal minimum.

### Equal pay

Research by the Cabinet Office Women's Unit estimates that the "mother gap" means mothers lose £140,000 over a lifetime as a result of having children – and this increases with the number of children. This is on top of the "female gap" that estimates women lose over £241,000 over a lifetime as a result of simply being women.

Whilst UNISON welcomes the improvements in maternity pay and leave, we recognise that there is still a long way to go before the provisions in the UK are in line with our European neighbours. Pregnant women are still significantly worse off than they would have been if they were not pregnant and at work. For this reason it is particularly important that Branch Officers try to negotiate terms and conditions on maternity that are better than the statutory minimum.

### Business case

Good maternity provisions are also good for employers, and the business benefits of flexible employment practices and good maternity pay and provisions have been well documented. Organisations which have introduced more 'family friendly' policies have seen their staff turnover rates fall.

The UK has the highest female employment rate of the major EU Countries, with 7 out of 10 working age women in employment. The participation of women in the labour market in the UK is essential to the success of the UK economy, and providing good maternity provisions is a key way of ensuring women return to work after having a baby and their skills and experience are not lost to the employer.

#### Sainsbury's

Found that their maternity return rate leapt from 42% to 84% after they introduced better maternity and family friendly policies for their 130,000 workers. With a workforce 70% female and 69% part-time, they also saw improvements in customer service, reduced turnover and absenteeism, increased motivation and increased loyalty and commitment from their staff.

The bottom line for employers is that if they offer good maternity leave provisions, women will be more positive and more committed to returning to work and turnover and training costs fall. Higher productivity, and improved morale, lower stress and sickness levels, and a greater number of applicants for vacancies are also benefits.

**Rank Xerox**

Found that improving maternity benefits and offering part time work to new mothers increased the numbers of skilled and experienced women returning to work from less than 20% to more than 80%. Over 5 years this programme resulted in a net return of over £1 million in savings in recruitment, training and productivity.

On top of this, there are benefits to employers which are harder to quantify. The effects of a good reputation, and being known as a family friendly, equal opportunity employer, have indirect benefits.

**Cost of Turnover**

|  |         |
|--|---------|
| Approximate number of pregnant women working per year                                    | 350,000 |
| Approximate number of women who return to work after giving birth                        | 240,000 |
| Percentage of women who returned to work   | 69%     |
| Recruitment and training costs per vacancy   | £3,500  |
| Recruitment saving costs if number of mothers returning to work increased by 10 per cent | £39m    |

source: Department of Trade and Industry, 2000 (Most recent available figures)

**Bargaining goals**

As there has been a substantial improvement in the legal minimum provisions, employers may try to change their schemes to be the same as the new law. However, you should try to negotiate better provisions than this, particularly if your existing scheme is better than the old legal minimum.

For example, Statutory Maternity Pay (SMP) is now paid for 39 weeks, rather than 26 weeks previously. If you used to get some pay for 28 weeks – 2 weeks more than the old legal minimum - you should now try to bargain for pay for at least 41 weeks – 2 weeks more than the new legal minimum.

It's important to remember that the basic maternity provision is not a gift from employers – the government compensates them for what they pay. Employers get back 92% of the SMP they pay out, or 104.5% for small employers. So if you used to get 2 weeks paid leave more than the legal minimum, your employer was paying for these two weeks. If you just get the legal minimum now, the government is paying for it all and your employer has just saved money on their maternity scheme. Instead, your employer should be using this money to improve the conditions of their employees with new babies.

This is also an opportunity to review your employer's **equal opportunities** policy and family friendly policy, or introduce one if it doesn't exist already.

Equality considerations need to be central to all employment practices and procedures. An employer who supports equalities will benefit because fairness at work and productivity go hand in hand. An equal opportunity employer operates in accordance with the law and good practice in eliminating unlawful discrimination and promoting equal employment opportunities.



## How To Go About It

Organisation is the key to effective negotiating. A strong union organisation means high levels of union membership, stewards in all areas, and an informed and consulted membership. If employers see low union density and a poor union organisation, it is harder to make your arguments stick.

### Where to start? Getting the information

You can't campaign and bargain for better maternity rights unless you know the facts of the situation. That means knowing the statutory maternity rights, getting a copy of your current maternity agreement (if there is one) and, most importantly, finding out what members think.

#### Getting the information on your workforce

You should spend some time getting detailed information on maternity issues in your workplace. If you have union recognition, you are entitled to bargaining information from your employer. This covers areas including earnings and hours, employee breakdown by age, gender, information on conditions of service, equal opportunities policies, welfare and safety. Some other background questions you may want to put to your employer are:

- How many women are there of childbearing age (15-45 years)?
- What proportion of women return to work after maternity leave?
- What are your employer's equal opportunities policies and agreements and do they conflict with current maternity rights provision?
- Are they actively recruiting staff and do they intend to do so in the future?

#### Consulting Members

When it comes to consulting members, you need to start by being clear about what kind of information you want and tailor your methods of gathering the information accordingly. Some suggested areas to consult on are:

- What are the priorities of your members?
- What problems does the current level of provision cause them?
- How many plan to have children?
- Can women afford to take an adequate amount of time off?
- Are there recruitment or retention problems?

One way of getting answers to these and other questions would be by setting up a working party on maternity provision. This can help identify the needs of the membership, suggest arguments for improving maternity provisions, and provide some enthusiastic people if you need to campaign on the issue. Even if members can't join a working party, they can talk to work colleagues about their maternity needs.

Questionnaires, informal meetings, electronic polls and one to one conversations are other ways of getting information from members. But whatever method you use, it is important that they see UNISON actively representing their views. Armed with this information you will be in a far better position to persuade your employer that improved maternity provision will benefit both employees *and* the organisation itself. There is a sample questionnaire in the appendix of this guide.



## Organising

Negotiations with employers on these issues can be used as a focus for recruiting and organising branches. It's not only a matter of getting an agreement with the employer but of raising the profile of the union and showing members that it is listening; of encouraging non-members to join; and of getting existing members more involved.

## After negotiating

At the end of negotiations, publicising the results of your bargaining is important to let workers know of their new rights. It's also an ideal recruitment opportunity and shows employees that the Union brings direct benefits to members, benefits which they just wouldn't have without UNISON involvement. Finally, please let the UNISON Bargaining Support Group know about your agreement, so we can add it to the Bargaining Information System and continue to spread best practice. The maternity rights questionnaire which provides the information that will be entered onto the BIS system can be found as an appendix to this guide.

Finally it is important to review your maternity rights agreement from time to time to see how well it is working. This will help you prepare for the next time you negotiate on this issue.



## Key Negotiating Areas

### Maternity Leave and Pay

#### Eligibility and qualifying period

Some legal rights, and often employer's maternity schemes, require a period of employment before they are available. However, maternity and parental rights should be seen as measures to protect and promote the health, safety and welfare of working parents and their children. As the labour market has changed, there are an increasing number of agency and temporary workers (often women and low paid), and they may never build up the amount of service necessary to claim these maternity provisions. For these reasons, it is important that contractual maternity schemes are open to workers from day one.

Reorganisations, mergers and transfers can mean that significant numbers of staff can lose maternity rights that were agreed under a different structure. Therefore, you should try to negotiate deals which covers staff who are reorganised in this way, as well as those who are directly employed.

To qualify for statutory maternity pay women must have been employed for a continuous period of 26 weeks by the end of the **qualifying week** (which is the 15th week before the week in which the baby is due).

**AIM Try to negotiate a maternity scheme open to all women, irrespective of length of service. If this isn't possible, try to have some benefits available from day one.**

#### Department of Trade and Industry (DTI)

Gives 18 weeks maternity leave on full pay with no qualifying period.

#### ASDA

Gives 26 weeks maternity leave on full pay with no qualifying period.

#### Continuity of employment

It is an important principle that women are not disadvantaged for having children. Although pay is often at a reduced level other rights should not be affected. Although annual leave is automatically accrued during Ordinary Maternity Leave (OML), it is important that women are allowed to carry holidays over to the next 'leave year' if they are off work, and they should not be forced to use them up before their maternity leave begins.

**AIM Try to negotiate for non-pay contractual rights to continue throughout the whole of maternity leave – both OML and Additional Maternity Leave (AML) . This includes receiving leave, performance related pay benefits, incremental pay points, and seniority rights.**

**AIM Try to negotiate for accrued annual leave to carry over to the next 'leave year' if maternity leave spreads over two annual leave periods.**

#### Scion Group

Allows continued use of a company car throughout the entire period of maternity leave.

#### York University

Agrees that if a woman cannot take all of her annual leave entitlement in a particular leave year because of going on maternity leave, then she can carry it forward to the next leave year. If a



statutory or customary day falls during Ordinary Maternity Leave, she will be compensated with a day off in lieu for each of those days.

### **British Energy**

Allows employees to continue to accrue bonus during all of their maternity leave.

## **Antenatal care**

Antenatal classes are important to ensure the good health of both mother and baby, and to adequately prepare for caring for the child.

Employers cannot unreasonably refuse pregnant women paid time off work at the normal hourly rate for antenatal care. This right starts from day one of employment, and includes appointments with a doctor, midwife or health visitor; parent-craft classes, and relaxation classes. Sessions do not have to be booked outside of working hours. The woman may have to produce a certificate showing she is pregnant, or an appointment card (except for her first appointment).

### **AIM Try to negotiate that travelling time is included in paid time off for ante-natal care and classes**

### **NHS**

All health service employees are entitled to paid time off to attend ante-natal care appointments, including relaxation classes, visits to your GP and dentist, and to the Maternity Clinic. Women working part time or flexi-hours are still entitled to this if their appointments fall within normal working hours.

## **Maternity leave**

All pregnant employees are entitled to 1 year of maternity leave. (26 weeks of Ordinary Maternity Leave and an optional 26 weeks Additional Maternity Leave). This is regardless of how long they have worked for their employer, and how many hours a week they work.

However, many women are not able to take the up their full entitlement to AML because of the reduced wages they will receive. Sadly, financial pressures can force women back to work earlier than they would otherwise wish. It is important to take into account the fact that maternity pay can also have a significant impact on the practical application of maternity leave.

### **Edinburgh Council**

Employees with one year's continuous service by the beginning of the 11th week before the Expected Week of Childbirth are entitled to maternity leave for a period of up to 63 weeks, commencing no earlier than the beginning of the 11th week before the EWC.

**University of Warwick** asks employees to fill out a "Maternity Leave Plan Form" when the employee notifies them that they are pregnant. The plan gives the employee an opportunity to summarise their chosen maternity leave and pay options to give both them and the University a clear plan for their maternity requirements.

### **Land Registry**

Offers an unpaid career break of up to 5 years.

*Be Aware - A career break scheme typically requires the employee to resign, and this normally breaks continuity of employment which would affect length of service related rights. Make sure there is an explicit guarantee of reemployment at the end of a career break.*



## Maternity pay

Maternity pay is crucial in reducing the financial impact that pregnancy and child birth can have on the working lives of women.

The lower level of statutory pay is £112.75 a week, which is inadequate for most people's basic needs. Therefore it is important to get a contractual scheme that is better than the statutory minimum. Many employers give 18 weeks maternity leave on full pay, and government agencies (Countryside Agency, Highways Agency, National Consumer Council and others) and good private sector employers are moving towards 26 weeks full pay.

“Average weekly earnings” is your earnings averaged over the last 8 weeks, or 2 months if you are paid monthly. If you are not entitled to SMP, you may still be entitled to the Maternity Allowance social security benefit.

**AIM Try to negotiate that all women are entitled to some maternity pay, irrespective of their length of service. When there are length-of-service related benefits, try to keep the gap short (no more than 6 months to get full benefits).**

**AIM Try to negotiate for 26 weeks maternity leave on full pay.**

### NHS

NHS Contractual Maternity Pay is: full pay for the first 8 weeks, half pay plus any SMP or MA for the next 18 weeks and then 13 weeks SMP .

### College of North East London

After 52 weeks service, employees get 16 weeks maternity leave on full pay followed by 24 weeks on half-pay, or just 28 weeks on full pay.

### Ford

After 26 weeks service, women are entitled to 52 weeks maternity leave on full pay.

Term-time workers are in a special position and need special consideration. Because maternity pay is based on average weekly earnings over the 2 months or 8 weeks before the 15<sup>th</sup> week before the baby is due, this period can include the summer holidays. In this case, their average weekly earnings will be based on 6 weeks when they have not been paid. More generally, any woman who is earning less in the early part of her pregnancy (for example if she has been on sick pay) is in a similar situation. Secondly, if term-time worker's pay is averaged out over the whole year, it will include unpaid “holiday” time and appear much lower.

**AIM Try to negotiate that where the statutory calculation of maternity pay includes unpaid or low-paid time, maternity pay should be based the best paid 8 weeks or 2 months over the last year.**

### Local Government National Agreement (England and Wales)

Average pay is calculated over 12 weeks.

## Pensions

Everyone knows the importance of securing a decent occupational pension, and women should not lose out on pensions because they are on maternity leave.

The law says that whilst a woman is on paid maternity leave she should only contribute to the scheme based on her actual income, but will get benefits as if she was paying full contributions. In a



money purchase scheme this means that the employer has to pay the difference. The law does not say what should happen when she is on unpaid leave, and different pension schemes will interpret this in different ways.

**AIM** Try to negotiate that if a woman misses pension contributions due to being on unpaid maternity leave, she can 'buy' missing periods of service at a favourable cost once she returns to work.

**AIM** Try to negotiate that during unpaid maternity leave, employees pay contributions based on notional pay (i.e. they are earning nothing so they pay nothing in) but get full benefits.

### **The University of York**

Agreed that any period of Ordinary Maternity Leave and any other period of maternity leave for which pay is received, will count as pensionable service. The employee's pensionable salary will also be calculated for the purposes of pension scheme benefits as if she had not been absent on maternity leave: increments and pay rises will be included if they would have been received.

## **Redundancy**

If a woman's post becomes redundant during her maternity leave she is legally entitled to the offer of any suitable vacancy that exists in the organisation. She takes priority over other workers. If there is no suitable post the employers normal redundancy policy applies.

**AIM** Try to agree that if a woman's post becomes redundant during her maternity leave, she is entitled to a similar job on no less favourable terms and conditions, if one is available.

## **Notice to return to work**

Although women might plan to take a longer period of leave, they might decide that they want to return to work earlier.

The required notice period of early return from maternity leave (given by the employee to the employer) has recently been increased from 28 days to 8 weeks. However, a family friendly employer should not need 8 weeks notice to reorganise so that she can return to work and so this may be an issue that is open to negotiation.

**AIM** Try to negotiate a shorter notice period to return to work.

### **Local Government National Agreement (England and Wales)**

Only requires 7 days notification of return from Ordinary Maternity Leave, and 21 days from Additional Maternity Leave.

## **Keeping in contact**

It is important to ensure that whilst an employee is on maternity leave she is kept up to date with what is happening in the workplace in terms of changes or restructuring, positions vacant, promotional opportunities, professional development opportunities and any other relevant information. This ensures a smoother transition back into the workplace once the maternity leave period has ended.



Whilst on maternity leave a woman is entitled to pay increases (which can be delayed until their return to work); to be included in consultation processes; to apply for promotions; and receive coaching or training which she would have had were she not on maternity leave.

The changes introduced on 1<sup>st</sup> April 2007 included the introduction of optional “keeping in touch days”, enabling a woman to work for up to 10 days during her maternity leave period. Employees may, by agreement with their employer, do up to ten days’ work during the maternity leave period. Keeping in Touch days allow employees to actually carry out work for the employer for which they will be paid. The type of work that the employee undertakes on Keeping in Touch days is a matter for agreement between the two parties.

**AIM Try to negotiate to ensure that employees on maternity leave receive relevant newsletters and information regarding changes and development opportunities at work.**

**AIM Try to negotiate voluntary Keeping In Touch Days for women on maternity leave, with full pay for the day’s worked.**

**East of England Ambulance Service NHS Trust** has an agreement stating that employees can request up to 10 days’ work during her maternity leave without bringing it to an end or jeopardising her right to maternity pay. These days can be taken as individual days or block weeks. Where an employee chooses to work less than a full day, e.g. attending for a 2 hour training course, this is classed as using one of her 10 allocated ‘KIT’ days.

**Wirral Hospital NHS Trust** have taken advantage of the new provision for optional “Keeping in Touch Days” (KITDs). Employees can agree to working up to 10 days (under contract of employment) during maternity leave. Employees cannot be compelled to do any KITDs during maternity leave, but some employees are now able to keep contact with their work place including doing mandatory workplace training during maternity leave. Before the agreement mothers working any day of their maternity leave would lose a weeks statutory maternity pay.



## After Maternity Leave

### Assistance in returning to work

The rate of change at workplaces is greater now than at any time in the past. Organisations, procedures and technology can all alter, sometimes substantially, whilst a woman is on maternity leave. Consequently, it is important that employees on maternity leave are kept informed of changes and re-introduced back into the workplace in a sensitive manner.

**AIM Try to negotiate an induction programme for employees returning to work from Additional Maternity Leave, including a phased return to work over a few weeks if requested.**

#### London Borough of Hounslow

Allow a phased return to work, where women can return and work only 16 hours a week, building up to full-time over a period of 6 months. Women also have the right to return to work as a job-share, or change to job-share at the end of their phased return to work.

#### College of North East London

Gives women who have not returned to work following the birth of a child preferential status in applying for vacancies for up to five years after the birth.

### Breast feeding

The health benefits of breastfeeding babies are now well established, particularly in protecting them from infection during the first year of life. There is a legal duty on employers to make allowances for women who are breastfeeding.

They should provide suitable rest, meal and refreshment breaks for nursing mothers, such as a rest area (not a toilet) where they can express milk and facilities for storing milk such as a fridge. If a woman can't breastfeed because of working conditions then the baby's health is at risk.

Public sector workers have even clearer direct rights under European law, and "if a woman's work affects breastfeeding" then her employer must temporarily alter her working conditions or hours of work, or offer her alternative work.

**AIM Try to negotiate that your employer will provide full facilities to enable nursing mothers to breastfeed, and support adaptations to their working patterns to allow this. Time spent breastfeeding should be paid.**

#### Edinburgh Council

Where practicable, mothers have paid time off and access to private room and fridge and/or unpaid time off to visit workplace nursery (or other place in close proximity) to breastfeed their baby. This is normally available until child is one year old.

### Childcare

Childcare is often essential in enabling parents to reconcile work and family life, especially for lone parents who may have less family support and a lower income. Pre-tax childcare subsidy enables employers to subsidise nursery places for employees – see the UNISON guide in appendix A.

**AIM Try to negotiate a range of assistance for working parents, depending on their individual circumstances.**



### Scottish Court Service

Gives subsidised childcare vouchers and advice on nursery school provision.

### Edinburgh Council

Has discretionary leave for planned health care of a young child. Up to 10 days (5 paid) in the child's first 5 years are allowed to enable an employee to attend certain routine and planned medical appointments and developmental check-ups with their child.

## Flexible working

Women returning from maternity leave may want to adjust their working hours or job-share to help balance the demands of work and family. If a woman would be disadvantaged by not varying her hours, she does have legal protection. For example, an unjustified refusal by an employer to grant a variation on her hours may constitute indirect sex discrimination.

This could be because she cannot get full-time childcare; cannot afford full-time childcare; has to meet her children from school; suffers stress from working long hours, or because there is nobody else to share the additional childcare workload.

In addition, working parents of children under the age of six have the right to request flexible working arrangements from their employer, who has to give the request serious consideration.

**AIM** Try to negotiate that new parents have the right to work flexibly unless there would be serious detriment to the organisation. There should be a range of flexible working options, including job-share.

**AIM** In addition, try to negotiate that a woman returning to work after maternity leave should be able to return gradually over a period up to 4 weeks, and have flexible start and finish times at work for up to 6 months.

### Nationwide Building Society

Introduced a range of flexible working and family friendly policies to recruit and retain more motivated and committed employees. These included part-time working; job shares, home working, subsidised nursery places and childcare vouchers. The rate of return from maternity increased by 30%, and they saved £300,000 a year.

### Boots the Chemist

Introduced flexible working, and saw the number of women returning from maternity leave rise from 7% to over 50%.

## Repayment of maternity pay and a return to work bonus

Making a woman repay maternity pay if she does not return to work at the end of her maternity leave serves no real purpose. It makes maternity pay dependent on a short period of service (usually 3 months) after maternity leave, rather than seeing it as part of conditions of service and recognition of work already done. There are many good reasons why a woman may not want to return to work after bearing a child, or may change her mind after the birth. Women can be pressurised into returning to work for a short time for financial reasons when it is better for them not to. It also discriminates against workers on fixed term contracts, whose contracts would have expired by the end of maternity leave and would not be able to return to work. What is better is to have a bonus system, which rewards women who do return to work.

Whatever your contractual maternity scheme says, you do not have to repay Statutory Maternity Pay (SMP) or Maternity Benefit if you do not return to work.



**AIM Try to agree that maternity pay should be non-refundable, but to have a return to work bonus instead.**

#### **Environment Agency**

Has abolished its requirement for women to repay some maternity pay unless they return to work at the end of their maternity leave.

#### **Glaxo SmithKline (R & D)**

Have a return bonus of 12 weeks full pay on return to work after a minimum of 18 weeks maternity absence (pro-rated for less than 18 weeks) which is repayable if the employee leaves within 6 months.

## Other Issues

### **Health and safety**

Employers have a duty of care for their workers, and this specifically includes the health and safety of women of childbearing age. If an employee is pregnant, breastfeeding or has given birth in the last 6 months, the duty of care applies to the baby's health and safety as well.

An employer must conduct a risk assessment for any women of childbearing age, and this should happen whether or not the woman requests it. They must remove any risk or prevent exposure to it, and inform the woman of the risk and what was done about it. If risk cannot be removed, they must temporarily alter the women's working conditions, offer her suitable alternative work (on the same or better terms and conditions) or suspend her on full pay. The Health and Safety Executive (HSE) states that pregnant women and new mothers should avoid lifting heavy loads; working in stressful environments; or working at unsuitable workstations. Rest facilities should be provided for pregnant women and nursing mothers.

**AIM Try to negotiate for a second risk assessment to be automatically carried out when a woman returns from maternity leave. Appropriate changes to working patterns and rest facilities should be provided.**

### **Sickness**

A woman may be ill with a pregnancy related illness for a very short time in the 4 weeks before the birth of her child. It is unfair that her maternity plans should be disrupted because of a short illness. It could also be disruptive to the employer to automatically start maternity leave before it was planned.

If a woman is absent from work wholly or partly because of pregnancy related illness in the last 4 weeks of their pregnancy then the employer can automatically start your maternity leave. This also means that their Statutory Maternity Pay begins at this time.

**AIM Try to negotiate that women do not need to start maternity leave until they choose to do so, and are entitled to claim sick pay until the planned start of their maternity leave.**

*Be Aware – If a woman is sick through a pregnancy related illness within 4 weeks of the EWC, her Statutory Maternity Leave and Pay will start automatically.*



## Monitoring

Unless you know about the uptake of a maternity policy, it is hard to gauge what is being used and what any problems are. This is particularly important if women may not be taking their full leave entitlement because it is unpaid or low-paid. A union branch can survey its' members, but it is best to complement this with monitoring by the employer – which is also good employment practice.

**AIM** Try to negotiate for comprehensive monitoring, by the employer, of the take up of different parts of the maternity agreement. Have an annual summary of this produced as part of a review of the agreement's effectiveness.

## Fertility treatment

One in six couples have difficulty conceiving and require specialist advice or treatment. This can be a stressful experience and fertility treatment programmes often have long waiting lists with the process itself sometimes stretching over several years.

**AIM** Try to negotiate reasonable time off for fertility treatment, as paid time off if possible.

### East Hertfordshire District Council

Gives employees reasonable time off to undertake fertility treatment.

### Glaxo SmithKline (Research and Development)

Will consider requests for discretionary leave for employees who are undergoing fertility treatment.

## Still births and premature births

If babies are born prematurely (4 weeks early or more) then they take longer to develop and often cannot be left when the usual maternity period is over. This can also cause difficulties if babies are kept in hospital for some time, so that much of the maternity leave has been used up before the child is brought home.

Mothers whose babies are born alive but prematurely or stillborn after the 24<sup>th</sup> week still legally qualify for full maternity rights. Women who miscarry are entitled to sick leave. There are no separate legal provisions for premature babies.

**AIM** Try to negotiate the contractual maternity scheme to start once the baby has come home, and for the period between the birth and the start of maternity leave to be treated as paid compassionate leave.

**AIM** Alternatively, try to negotiate for an extra week of maternity leave for every week that the baby is born prematurely.



## Other 'Family Friendly' Rights

Working parents are also entitled to a number of other 'family friendly' rights. Below are the minimum legal rights, and many places have bargained for better arrangements. Paternity, adoption and flexible working rights were introduced in April 2003, as was Child Tax Credit. UNISON has guides to negotiating on these issues - see appendix A in this guide.

### Paternity leave / Maternity support leave

Partners of new mothers with responsibility for the upbringing of the child are entitled to take 2 weeks paternity leave (also known as maternity support leave), which must end not later than 8 weeks after the birth of the child. Paternity leave is paid the same as the lower rate of Statutory Maternity Pay - £112.75 a week (April 2007/8 rates) or 90% of average earnings if that is lower. To be entitled to take paternity leave, employees must have 26 weeks service with their employer by the 15<sup>th</sup> week before the baby is due.

### Adoption leave

Adoption leave is similar to maternity leave. When a child is adopted, the employee who adopts them, or one member of a couple who adopt, is entitled to Ordinary Adoption Leave of 26 weeks followed by 26 weeks of Additional Adoption Leave. Like Statutory Maternity Pay, Adoption Pay is paid for 39 weeks and according to the same rate as SMP. That rate is £112.75 a week (April 2007/8 rates) or 90% of average earnings if that is lower. The person taking adoption leave must have 26 weeks service. The partner of the person taking adoption leave is usually entitled to paternity leave. **There is no provision yet for legal rights regarding foster care.**

### Parental leave

Employees with 'parental responsibility' and who have one year's service have the right to take up to 13 weeks unpaid parental leave up to their child's fifth birthday. In the case of adoption this leave can be taken up to 5 years from the child's placement, or the age of 18 if that is sooner. Parents of children with disabilities can use their parental leave up to the age of 18.

### Time off for dependants

Employees have got the right to 'a reasonable period of time' off work to deal with an emergency involving a dependant. This can relate to illness, childcare arrangements, birth or death, and applies to partners, children, parents and people who live with you as part of your family.

### Flexible working

The parents of young or disabled children have the right to request flexible working arrangements. Employees who are parents of children aged under six, or of disabled children aged under 18, can apply to vary their working arrangements, and employers have a duty to consider such requests seriously.

### Child tax credits

The Child Tax Credit, paid direct to the main carer, incorporates the child elements of Working Families' Tax Credit, Disabled Person's Tax Credit and the Children's Tax Credit. It also incorporates elements from Income Support and Jobseeker's Allowance. 9 out of 10 families with children will be eligible for Child Tax Credit, which is paid in addition to Child Benefit. There is also a higher payment available for families with at least one child under one year old (the baby element), and for families with children with a disability.



## Appendix A - Resources

UNISON and other organisations have produced materials which can help you with negotiating on maternity issues and other family friendly policies.

Unison has produced a number of guides, and to order these please quote the stock number when you contact UNISON Communications, UNISON, 1 Mabledon Place, London, WC1H 9AJ. They are also on the UNISON Bargaining Zone – [www.unison.co.uk/bargaining/zone](http://www.unison.co.uk/bargaining/zone).

### Collective Bargaining

The UNISON “**Bargaining Information System**” is a database of agreements and information on organisations. It has the latest information about agreements on maternity provision, union recognition, pay and many other issues. It also allows you to compare agreements across service group and region. Contact the Bargaining Support Group 1, Mabledon Place, London, WC1H 9AJ, e-mail: [bsg@unison.co.uk](mailto:bsg@unison.co.uk).

“**Local Bargaining, a guide for UNISON negotiators**”, from UNISON, is a guide to negotiating at a local level and using it to organise union members. It can be downloaded here: <http://www.unison.org.uk/acrobat/11251.pdf>. Stock number 1801.

Equal Opportunities Commission (EOC) promotes sex equality, and produces research and guides on equality related issues. It's guides tend to be aimed more at employers than employees, but are useful reading. EOC **Helpline** is 08456 015 901. Website is [www.eoc.org.uk](http://www.eoc.org.uk)

### Childcare

Daycare Trust is a childcare charity working to promote high quality affordable childcare. They have information and advice on a variety of childcare options. 21, St. George's Road, London, SE1 6ES. They have a **childcare hotline** which provides free information and advice for parents 020 7840 3350.

“**Pre-Tax Childcare Subsidy - a UNISON Guide**”, from UNISON, is A guide to the Inland Revenue scheme where money goes direct from your wages to pay for childcare at an employers nursery scheme. Stock number 2062. You can also download the document here: <http://www.unison.org.uk/acrobat/14001.pdf>

### Health and Safety

Health & Safety Executive (HSE) produces a 16 page health and safety “**Guide for new and expectant mothers who work**”, available online at [www.hse.gov.uk/pubns/indg373.pdf](http://www.hse.gov.uk/pubns/indg373.pdf) or free from HSE books on 01787 881165. You can download the document here: <http://www.hse.gov.uk/pubns/indg373.pdf>

Trade Union Congress (TUC) has a fortnightly on-line bulletin on flexible working and work-life balance called “**Changing Times**”. You can subscribe to it or it's on the website [www.tuc.org.uk/changingtimes](http://www.tuc.org.uk/changingtimes).



## Other recent legal rights

“**Negotiating Parental Leave**” from UNISON, is a guide to negotiating pre-arranged time-off to care for children. Stock number 1759.

“**Negotiating Time off for Dependants**” from UNISON, is a guide to negotiating time off for emergencies that involve children and other dependants. Stock number 1795.

The UNISON **Paternity Support/Maternity Support Leave Factsheet** can be downloaded here: <http://www.unison.org.uk/acrobat/B903.pdf>

## Individual Rights

Working Families – [www.workingfamilies.org.uk](http://www.workingfamilies.org.uk) - is the UK's leading work-life balance organisation. It supports and gives a voice to working parents and carers, whilst also helping employers create workplaces which encourage work-life balance for everyone. Working Families supports parents, carers and their advisers by providing advice on a free legal helpline, (0800 013 0313), through outreach work and a range of free factsheets.

Directgov – for information on parental rights and for the tailored interactive guidance on employment rights ('TIGER') guide to maternity rights – [www.direct.gov.uk](http://www.direct.gov.uk)

## Flexible Working

There are a number of organisations providing advice on **flexible working**, including Employers for work-life balance ( [www.employersforwork-lifebalance.org.uk](http://www.employersforwork-lifebalance.org.uk) ) and Flexibility ( [www.flexibility.co.uk](http://www.flexibility.co.uk) ).

## For Help and Advice

If you require specific advice or assistance in negotiating with your employer please contact your regional officer or regional women's officer.

For general advice on maternity pay and conditions call **UNISONdirect** on **0845 355 0845**.



## Appendix B – Sample survey

### UNISON Maternity Survey

|  |   |
|--|---|
| <b>General questions</b>   |   |
| Sex  | Male / Female   |
| Age  | ___ years   |
| Hours you work per week?   | ___ hours   |
| How long have you worked here?   | ___ years ___ months  |
| How many children do you care for?   | ___ children  |
| Of these, how many are of pre-school age?  | ___ children  |
| Have you, or do you plan to, foster or adopt a child?  | Fostered <input type="checkbox"/> Adopted <input type="checkbox"/>            |
| <b>If you have any children, or are planning to have children:</b>   |   |
| How much time did you / are you (delete as appropriate) planning to take off work during maternity?  | ___ months  |
| How much of this was / will be paid leave?   | ___ weeks   |
| Did you / will you return to your job after maternity?   | Yes / No  |
| If No, would / will better maternity provision have made / make a difference?  | Yes / No  |
| Do you have other people who help / will help to care for children on a daily basis?   | Yes / No  |
| <b>Please tick the 3 most useful improvements to the current maternity scheme:</b>   |   |
| <input type="checkbox"/> More time off for antenatal care and classes  | <input type="checkbox"/> More paid paternity / maternity support leave        |
| <input type="checkbox"/> More time off for fertility treatment   | <input type="checkbox"/> Financial and other help with childcare              |
| <input type="checkbox"/> Longer maternity leave  | <input type="checkbox"/> Flexible working when you return from maternity      |
| <input type="checkbox"/> More paid maternity leave   | <input type="checkbox"/> Opportunity for a career break after maternity leave |
| <input type="checkbox"/> Longer paternity / maternity support leave  | <input type="checkbox"/> Other (Please specify) _____                         |
| <b>Comments</b>  |   |
| What can your employer do to make the workplace more supportive to working parents? This can include time before, during and after having your baby. |   |
|  |   |



## Appendix C - Model Maternity Policy

### 1. Statement of Intent

No employee will be treated less favourably or dismissed because she is pregnant, absent on maternity leave, because she is breastfeeding or for any other reason connected with her pregnancy or maternity.

[ ... employer ... ] is working towards being an equal opportunity employer, and as part of this anonymously monitors the take-up of the provisions in this policy and will make the results available to staff on an annual basis.

### 2. Eligibility

This maternity scheme is open to all employees, including part-time and temporary workers, regardless of hours worked or length of service.

### 3. Health and Safety

The health and safety of employees who are pregnant or new mothers and their babies is very important. All female employees of child bearing age will have a risk assessment when they start work, and new mothers returning to work will have a second risk assessment. Please tell us you are pregnant as soon as you feel able, because until you tell us we cannot take steps to protect your health and safety. We will provide rest facilities and make appropriate changes to your working patterns if necessary.

### 4. Notice

You inform you manager in writing, by the end of the 15<sup>th</sup> week before the baby is due (or as soon as practically possible), that:

- 1) You are pregnant, and present a copy of your Maternity Certificate (MATBI).
- 2) What the expected date of birth of the baby is.
- 3) When you want your maternity leave to start (the earliest this can be is the 11<sup>th</sup> week before the baby is due).
- 4) When you want your maternity pay to start.

We will write to you within 28 days and tell you when you are due to return to work if you take all of your maternity leave. If you wish to change the date you wish your maternity leave and pay to start on, you must give 28 days notice. If your baby is born before you planned your maternity leave to start, your leave will start on the actual date of birth of your baby.

### 5. Antenatal Care and classes

You are entitled to reasonable paid time off during working hours for antenatal care, including travelling time. This includes medical appointments, as well as relaxation and parent-craft classes on the recommendation of a doctor, registered health visitor or registered midwife. After your first appointment, you must produce a doctor's certificate, confirming that you are pregnant, and written proof of appointments. The partner of a pregnant woman is also entitled to paid time off to attend antenatal appointments.

### 6. Sickness during pregnancy or maternity leave

If you are sick during pregnancy, [ ... employer ... ] normal sickness policy applies. You do not automatically have to start your maternity leave because you are sick. If you are ill during maternity leave, you are not entitled to sick pay but may be able to claim incapacity benefit from the DSS. If you are sick once you have ended your maternity leave and returned to work, then [ ... employer ... ] normal sickness policy applies.

### 7. Fertility treatment

Employees will be granted reasonable paid time off to attend appointments for fertility treatment.

### 8. Stillbirths

Mothers whose babies are stillborn after the 24<sup>th</sup> week of pregnancy still qualify for all the rights described in this policy.

### 9. Premature babies

If a baby is born prematurely (more than 4 weeks early), your maternity leave will start once the baby has come home, and you will be given paid compassionate leave for the period between the birth and the start of maternity leave.



### **10. Your rights during maternity leave**

Your continuity of employment is preserved during the whole of your maternity leave, and, except for pay, you are entitled to the benefit of your normal terms and conditions during this period. You will retain use of any company car which you normally have access to; you will retain continuity of service for any profit-related pay; you will be entitled to any pay rises awarded while you are on leave; and holidays will continue to accrue during this period. If you cannot take all your annual leave during the leave year because you are on maternity leave, you can carry it over to the next leave year.

When you are on maternity leave, you will pay pension contributions based on the actual pay you receive, but receive credit as if you paid contributions based on your normal pay. If necessary, [ ... employer ... ] will increase our pension contributions to cover any shortfall. We will send you copies of any organisation newsletters whilst you are on leave, and keep you informed of any changes and development opportunities. If your job is made redundant during maternity leave you will be entitled to a similar job on no less favourable terms and conditions, if one is available. Otherwise, the normal redundancy policy applies.

### **11. Maternity leave and maternity pay**

You are entitled to 26 weeks ordinary maternity leave on full pay. After this, you are also entitled to optional Additional Maternity Leave of 26 weeks. You are entitled to 52 weeks of maternity pay, the first 18 weeks of which will be on full-pay and the remainder will be paid at the statutory rate. At the end of your maternity leave, you are entitled to a career break of up to 5 years, at the end of which you can return to a job at a comparable level to your current one.

### **12. Return to work**

You are entitled to return to the same job at the end of Ordinary Maternity Leave, or to a comparable one with no less favourable pay and conditions at the end of Additional Maternity leave. Women returning from maternity leave will receive a £300 "Returner's Bonus", which is repayable if you leave within 6 months. If you return to work after taking Additional Maternity Leave, we will arrange a re-induction programme for you. You are entitled to phase your return to work over 4 weeks and vary your start and finish times to accommodate childcare responsibilities for the first 6 months.

If you intend to return to work early, before the end of your full maternity leave (including Additional Maternity Leave), then you need to notify us. This is 7 days notice if you are returning before the end of Ordinary Maternity Leave, or 21 days notice if you are returning before the end of Additional Maternity Leave. If you do not intend to return to work then your maternity pay is unaffected, but you need to give us notice of your resignation in the normal way. Please give us as much notice as possible.

### **13. Flexible Working**

We recognise the importance of a good work-life balance, and you are entitled to apply to change your working patterns to work flexibly. We will not refuse this unless there would be serious detriment to the organisation.

### **14. Breastfeeding**

We will provide facilities to enable you to breastfeed your child, and support adaptations to your working pattern to allow this. Time which you spend breastfeeding or expressing milk will be paid.

### **15. Keeping in Touch Days**

You can request, entirely at your own discretion, to carry out up to 10 days' work during your maternity leave without bringing it to an end or jeopardising the right to maternity pay. These will be called "keeping in Touch Days". Employees will be paid equivalent to full pay for KIT days worked.



## Appendix D1 – under 26 weeks continuous employment

The following rights apply to pregnant employees who have worked for their employer for less than 26 weeks before the 15<sup>th</sup> week before the expected week of childbirth (EWC).

This fact sheet provides basic details about the new Maternity Rights which came into force on 1<sup>st</sup> April 2007. It is not an authoritative statement of the law. For more information please see UNISON's Guide "Negotiating Maternity Pay and Conditions"

### **Length of Maternity Leave**

- You will be entitled to 26 weeks Ordinary Maternity Leave and 26 weeks Additional Maternity Leave (which is optional) regardless of length of service.

### **Maternity Pay**

- If you have worked less than 26 weeks with your employer before the 15<sup>th</sup> week before the expected week of child birth, you will not be entitled to statutory maternity pay.
- You may be entitled to Maternity Allowance (MA) if:
  1. You have been employed for at least 26 weeks out of the 66 week period running up to and including the week before the week your baby is due.
  2. You have been earning on average £30 a week or more.
- Where these requirements have been satisfied the you will be entitled to be paid MA at the flat rate of £112.75 (April 2007- April 2008 rates) per week (or 90% of average weekly earnings if this is less) for 39 weeks.

**You do not have to repay Maternity Allowance if you decide not to return to work.**

### **Notice of Intention to Take Maternity Leave**

- You must notify your employer that you intend to take maternity leave by the end of the 15<sup>th</sup> week before your EWC, unless this is not reasonably practicable.
- You must tell your employer:
  1. That you are pregnant.
  2. The week your baby is expected to be born.
  3. When you want your maternity leave to start.

### **Returning to Work after Maternity Leave**

- If you intend to return to work at the end of your full maternity leave entitlement you do not have to give further notification to your employer.
- If you want to return to work before the end of your maternity leave you need to give your employer 8 weeks notice of the date you want to return.
- If you decide not to return to work at the end of your maternity leave you need to give your employer notice as set out in your contract of employment as if you were resigning.

**UNISON seeks to negotiate agreements with employers that improve on the statutory minimum rights. You should check with your local branch for more information and details of national and local agreements.**



## Appendix D2 – 26 weeks or more continuous employment

The following rights apply to pregnant employees who have worked for their employer for at least 26 weeks by the 15<sup>th</sup> week before the expected week of childbirth (EWC) and are earning over the “National Insurance Lower Earnings Limit” (£87 for 2007/08)

This fact sheet provides basic details about the new Maternity Rights which came into force on 1<sup>st</sup> April 2007. It is not an authoritative statement of the law. For more information please see UNISON's Guide “Negotiating Maternity Pay and Conditions”

### **Length of Maternity Leave**

- You are entitled to 26 weeks ordinary maternity leave and 26 weeks additional maternity leave (which is optional) regardless of length of service.

### **Maternity Pay**

- You will be entitled to statutory maternity pay paid at 90% of average earnings for 6 weeks and £112.75 per week (April 2007 – April 2008 rates) for the remaining 33 weeks or 90% of average weekly earnings if this is less).

**You do not have to repay Statutory Maternity Pay if you decide not to return to work.**

### **Notice of Intention to Take Maternity Leave**

- You must notify your employer that you intend to take maternity leave by the end of the 15<sup>th</sup> week before your EWC, unless this is not reasonably practicable.
- You must tell your employer:
  1. That you are pregnant.
  2. The week your baby is expected to be born.
  3. When you want your maternity leave to start.

### **Returning to Work after Maternity Leave**

- If you intend to return to work at the end of your full maternity leave entitlement you do not have to give further notification to your employer.
- If you want to return to work before the end of your maternity leave you need to give your employer 8 weeks notice of the date you want to return.
- If you decide not to return to work at the end of your maternity leave you need to give your employer notice as set out in your contract of employment as if you were resigning.

**UNISON seeks to negotiate agreements with employers that improve on the statutory minimum rights. You should check with your local branch for more information and details of national and local agreements.**



## Appendix D3 – Maternity Rights – Term Time Workers

The following factsheet applies to term time workers only.

This fact sheet provides basic details about the new Maternity Rights which came into force on 1<sup>st</sup> April 2007. It is not an authoritative statement of the law. For more information please see UNISON's Guide "Negotiating Maternity Pay and Conditions"

Term-time workers remain on a permanent contract but have unpaid leaves of absence during the school or college holidays. Pay is usually made by equal monthly instalments.

As an employee, you are entitled to full maternity rights subject to certain qualifying conditions. The problem is that many term time workers won't be able to satisfy those conditions because of the special circumstances surrounding their work patterns.

One of the main problem term time workers have in accessing statutory maternity pay (SMP) is in the condition that you must have earned over £87 per week (for 2007/08). As many term time workers salaries are equalised over the year the average weekly salary can often be less than £87 per week and they therefore won't qualify for SMP. For example if a term time worker is earning £3800 per year for 40 weeks work but this is averaged out over 52 weeks, her average weekly earnings will be £73 per week which falls short of the qualifying amount. However if average weekly earnings are only calculated with regard to weeks worked she would qualify as average earnings would be £95 per week.

Even if your salary is not equalised out over the year, you can run into problems. This is where the calculation period for SMP falls in a holiday period when you aren't earning any money. Therefore your average wage works out significantly less than your 'normal' pay. This means you can fall short of the condition that you must be earning £87 on average per week in the 8 weeks running up to the 15th week before the week baby is due. This 8 week period may vary slightly depending on how you are paid (weekly, monthly or other periods) but generally the weeks used will fall around the fourth to sixth months of your pregnancy.

Where you do qualify for maternity leave, please see our other factsheets "26 weeks or more continuous employment" or "under 26 weeks continuous employment" for further details of entitlements.



## Appendix D4 – Maternity Rights – Agency Workers

The following rights apply for pregnant agency workers.

This fact sheet provides basic details about the new Maternity Rights. It is not an authoritative statement of the law. For more information please see UNISON's Guide "Negotiating Maternity Pay and Conditions"

If you work for an agency you will most likely be classified as either an employee or a worker. It is important that you determine your employment status as it will affect your eligibility for maternity rights.

The following would indicate that you are an employee of the agency;

- You have worked continuously for the agency for some time you and would expect to continue there unless dismissed
- Your terms and conditions are entirely directed by the agency
- Your agency deducts tax and National Insurance from your pay
- Your agency provides all the equipment for your work

The following would indicate that you are a worker

- You can choose whether to accept an assignment or not
- You can arrange your own work hours
- Your agency deducts tax and National Insurance from your pay

### Classed as an Employee

If you are classed as an employee of the agency or company you have been placed in then you are entitled, subject to certain qualifying conditions, to full maternity rights. Please see our other fact sheets for further details.

### Classed as a Worker

You will not be entitled to maternity leave.

You will be entitled to statutory maternity pay (SMP) as long as your agency deducts tax and National Insurance from your earnings through PAYE (or would do if you earned enough).

To get SMP you must also;

- Have worked for the same agency in each of the 26 weeks ending with the qualifying week ( start of the 15<sup>th</sup> week before the week the baby is due)
- Still work for the agency in all or part of your qualifying week
- Earn at least £87 per week on average in the eight weeks (if paid weekly) or two months (if paid monthly) up to the last pay day before the end of the qualifying week

SMP is paid at 90% of average earnings for 6 weeks and £112.75 per week for the remaining 33 weeks (or 90%) of average weekly earnings if this is less.

As a worker you will not be entitled to paid time off for antenatal care, however your agency should agree to let you have time off to attend appointments. As a worker you will not have the right to return to the same job.



## Appendix E

| CONTACT DETAILS  |  |
|--|--|
| <b>Employer</b>  |  |
| <b>Branch</b>  |  |
| <b>Name and UNISON position of officer providing information</b><br>We may have to seek clarification on responses to certain questions. |  |
| <b>Contact e-mail or address</b>   |  |
| <b>Contact phone number</b>  |  |

There is no qualifying period of service for Statutory Maternity Leave. For Statutory Maternity Pay, the qualifying period is 26 weeks by the 15th week before the week the baby is due.

**Maternity Leave:** The statutory *minimum* is 52. This is made up of 26 weeks Ordinary Maternity Leave and 26 weeks optional Additional Maternity Leave.

**Maternity Pay:** The statutory *minimum* length of Maternity Pay is 39 weeks. The minimum rate is 90% of a woman's average weekly earnings for the first six weeks, followed 33 weeks at a flat rate of £117.18 (April 2008-2009 rates) or 90% of earnings if that is less. The flat rate is subject to review every April.

| MATERNITY LEAVE AND PAY   |   |
|---|---|
| Does an Agreement exist?  | Yes <input type="checkbox"/> No <input type="checkbox"/> Not Known <input type="checkbox"/>   |
| Bargaining Level  | <input type="checkbox"/> Local Agreement<br><input type="checkbox"/> National Agreement<br><input type="checkbox"/> Local variation on a National Agreement |
| Operative date (dd/mm/yyyy)   |   |
| Is the provision of Maternity Leave above Statutory?  | <input type="checkbox"/> (Tick for YES)   |
| Is there a qualifying period of service for your scheme?<br>(For example, workers might qualify for an above statutory scheme if they have worked for the employer for a year.) | <input type="checkbox"/> (Tick for YES)<br>Please give details: _____ Weeks   |

Continued overleaf



|  |  |
|--|--|
| Under your scheme, what is the total number of weeks available for maternity leave?              | _____ Weeks  |
| How many weeks of maternity leave is paid at <b>full pay</b> or at least 90% of full pay?        | _____ Weeks  |
| How many weeks of maternity leave is paid at <b>half</b> the rate of pay?                        | _____ Weeks  |
| How many weeks of maternity leave are paid at the flat rate <b>statutory</b> maternity pay rate? | _____ Weeks  |
| Which of the following are also covered in your agreement?                                       | <input type="checkbox"/> Time off for ante-natal appointments<br><input type="checkbox"/> Keeping in touch days<br><input type="checkbox"/> No qualifying period for maternity pay |
| Comments   |  |

| <b>BARGAINING GROUP</b>   |  |
|---|--|
| <b>Either</b> enter your local or company bargaining group  |  |
| <b>Or</b> select your <b>national</b> bargaining group from the following (tick ONE box only)   |  |
| <p><i>Higher Education</i></p> <input type="checkbox"/> New Uni & Colls APT&C Staff<br><input type="checkbox"/> New Uni & Colls Manual Staff<br><input type="checkbox"/> New Uni academic & related<br><input type="checkbox"/> Old Uni academic & related<br><input type="checkbox"/> Old Uni clerical & related<br><input type="checkbox"/> Old Uni computer ops<br><input type="checkbox"/> Old Uni manual & ancillary<br><input type="checkbox"/> Old Uni technical staff<br><input type="checkbox"/> Non-academic Higher Education Staff | <p><b>Local Government</b></p> <input type="checkbox"/> Local Government Single Status<br><input type="checkbox"/> Local Government Craft<br><input type="checkbox"/> Local Government Chief Officers<br><input type="checkbox"/> Scottish Local Government<br><input type="checkbox"/> Scottish Local Government Chief Officers<br><input type="checkbox"/> Probation Staff<br><input type="checkbox"/> Youth & Community Workers<br><input type="checkbox"/> Further Education<br><input type="checkbox"/> Sixth Form Colleges<br><input type="checkbox"/> Meat Hygiene Service<br><input type="checkbox"/> Rent Service |
| <p><i>Health</i></p> <input type="checkbox"/> Agenda for Change   |  |
| <p><i>Police</i></p> <input type="checkbox"/> Police Support Staff<br><input type="checkbox"/> Scottish Police Support Staff  |  |
| <i>Other</i>  |  |
| Other (state below)   |  |





## Your Comments

Send copies of maternity agreements to Bargaining Support Group, 1, Mabledon Place, London, WC1H 9AJ, e-mail [bsg@unison.co.uk](mailto:bsg@unison.co.uk)

UNISON welcomes comments from negotiators on the booklet. Either write or e-mail the Bargaining Support Group, at the above address.