

Practice Management Forum

Maternity Rights and the Law

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Abstract. *This article outlines the main points relating to Maternity Rights and the law. It emphasises the wisdom of being knowledgeable of these aspects, and ensuring they are understood by relevant members of staff.*

Key words: Maternity leave, Maternity absence, Statutory Maternity Pay (Employer, Employee.)

Every employer, and for that matter every female employee of child-bearing potential, should be familiar with the broad outline of the law relating to this topic. Failure to do so, could result in an expensive law suit, or, at least, unnecessary anxiety.

Maternity rights infringe on an acutely sensitive area; they have changed, and are still continuing to change as a result of European law. Ignorance of the law is not a valid excuse so heaven help the unfortunate employer who is not well informed in this matter!

The purpose of this article is not to convey a detailed account of every situation that might arise. Details are being constantly up-dated, so my recommendations are as follows:

- Obtain the latest (and make sure it is the latest!) booklet entitled 'Maternity Rights' from your local employment or job centre.
- Telephone your solicitor who can apply the meaning of the law to a particular instance.
- Contact your local National Insurance Inspector who will (if mine was anything to go by) be delighted to visit your practice and spend time explaining how Statutory Maternity Pay operates and how it would apply in your particular situation.

In addition:-

- If you are a member, 'phone the BDA and ask for advisory sheet D9 entitled 'Employees' Maternity arrangements and Pay' which explains in detail what you have to do.
- Another possible source of information is ACAS who run a telephone helpline manned by experts who can answer any question put to them.

Basically, Maternity Rights centre on the employer and the employee doing the right things at the right time. This article attempts to uncover these obligations:-

Obligations on the part of the employer

The employer must ensure that the employee is granted special entitlements, which are:-

- Time off for antenatal care.
- Protection against unfair dismissal on maternity-related grounds.

- Maternity leave (not to be confused with maternity absence).
- Maternity absence.
- Maternity benefits.

Time off for antenatal care

Pregnant employees are entitled to time off for antenatal care, which must be paid at her usual rate of pay.

This antenatal care includes medical examinations, relaxation instruction and parent-craft classes.

These rights apply regardless of how long she has been employed, or, the number of hours a week she works.

Protection against unfair dismissal on maternity-related grounds

It is unlawful to dismiss an employee because she is pregnant, or has given birth, or for any other reason connected with her pregnancy or childbirth, or on the grounds of sex or marriage.

These rights also apply regardless of how long she has been employed, or, the number of hours a week she works.

Maternity leave

Pregnant employees are entitled to 14 weeks maternity leave, during which time she must receive all her contractual benefits (time taken off as maternity leave counts as accrued days for holiday or pension purposes) **except** her wages.

Maternity leave may not start before 11 weeks prior to the expected week of childbirth and, again, these rights apply regardless of how long she has been employed, or, the number of hours a week she works.

Maternity absence (not to be confused with Maternity Leave)

An employee, part-time or full-time, only qualifies for this if she has worked continuously for two years up to the beginning of the 11th week before the expected week of childbirth.

Unlike maternity leave, with maternity absence there is no legal obligation on the employer to continue to provide normal terms and conditions.

Maternity absence starts from the *end* of maternity leave and lasts for 28 weeks from when the baby was born.

Thus, if she qualifies, an employee could have 14 weeks MATERNITY LEAVE *plus* 28 weeks MATERNITY ABSENCE. Total period: 42 weeks, or, 10 months!

Maternity benefits

These centre on **Statutory Maternity Pay (SMP)** the features of which are:-

- SMP last for a maximum of 18 weeks
- It can start no earlier than 11 weeks prior to the expected week of childbirth
- It is only granted to employees who have worked continuously for more than 6 months prior to what is termed 'The Qualifying Week' which is the 15th week before the expected week of childbirth.
- It is only granted to employees earning over £58 (this is the current minimum wage that attracts National insurance contributions.) Employees earning less might be eligible for Maternity Allowance. (Advice regarding this would need to be sought elsewhere.)
- SMP is worked out as being 90% of the employee's salary for the first 6 weeks, and a flat rate for the remaining 12 weeks. This 'flat rate' is currently £52.50 a week.
- Small employers (such as dental surgeons) can recover all the SMP plus an additional 5% for administering the system.
This is done by the employer deducting the correct sum from the employees PAYE tax and National Insurance return which is submitted to the Revenue every month.
- SMP is a weekly benefit, and is only payable for whole weeks in which the employee is not at work receiving a salary. If she works and receives a salary for only a fraction of her normal time, she will lose SMP for the whole of that week.
- SMP is paid in the same way and at the same time as normal wages i.e. cheque monthly, or cash weekly etc.

Obligations on the part of the employee

As well as the employer having to do the right things at the right time, so does the employee. Thus:-

To receive the benefit of maternity leave and/or SMP

The employee must:-

- Tell her employer she is pregnant, and reveal the expected week of childbirth.
- Present a medical certificate, such as the form MAT B1, as proof of pregnancy. The employer cannot start paying SMP until this has been received.
- Say if she intends returning to work after her period of maternity *absence* (always providing she qualifies for maternity absence in the first place!)
- Say when she intends starting her period of maternity *leave* and/or receiving SMPay.
- These notifications must be conveyed at least 21 days before maternity *leave* is taken.

NB:- An employee loses the right to maternity leave, but not to Statutory Maternity Pay if either

- 1 She resigns before starting her maternity leave or
- 2 Is dismissed before starting her maternity leave (NB. this dismissal will be regarded as unfair if it is maternity related)

The right to return to work after a period of maternity leave

- 1 An employee does NOT have to give her employer advance notice if she intends returning to work immediately after finishing her statutory maternity leave.
- 2 An employee may return to work BEFORE the end of the statutory maternity leave period, but must give at least SEVEN DAYS NOTICE first.

If an employer does not permit an employee to return to work when she is entitled, then she is regarded as having been dismissed and the dismissal will have been unfair.

The right to return to work after a period of Maternity absence

An employee may only have the right to return to work after her period of maternity absence if:-

- She qualified for maternity absence in the first place!
- She informed her employer at least 21 days before taking her maternity LEAVE of her intent to resume work after her period of maternity ABSENCE
- An employee returning to work during or at the end of her period of Maternity ABSENCE must give at least 21 days of notice in writing. She is entitled to resume working before the end of her Maternity ABSENCE, providing she gives the proper notice.

If an employer does not permit an employee to return to work when she is entitled, then she is regarded as having been dismissed and the dismissal will have been unfair **UNLESS THE EMPLOYER EMPLOYS FEWER THAN SIX MEMBERS OF STAFF**. Thus there is an important exemption for very small businesses and this would include most orthodontic practices. Bear in mind though, that the magic number of 5 must include the employee concerned as well as any part-time members of staff including even the cleaner (unless she is employed by a separate company, or is self-employed.)

Conclusion

Ignorance of the law is defence. My advice therefore is to become familiar with it, make sure your staff are familiar with it, and either build these points into their employment contracts, or have information available in the office where it is easily accessible. When a member of staff becomes pregnant, she will know before you! Make sure she knows the full facts before well-wishers proffer their own blend of advice to both you and her. Her co-operation is vital and the way to encourage it is to make it known that you are familiar with the rules and intend to play by them.