

## Small Business Briefing: FAQs on maternity leave and pay

Maternity leave and pay can be a legal minefield for employers, but it's an issue that most have to deal with at some time or another – whatever the size of their business.

XpertHR Small Business provides an overview of your employees' maternity rights, and arms you with the answers to some of the trickier issues – to help keep you out of the employment tribunals!

### How much maternity leave can employees take?

All pregnant employees, regardless of how long they've been working for you, are entitled to take a full year's maternity leave. This is made up of 26 weeks' "ordinary" maternity leave and 26 weeks' "additional" maternity leave.

### And do they all qualify for maternity pay?

No, to get statutory maternity pay, an employee must have been working for you for at least 26 weeks into the 15th week before the one when her baby is due. She must also have average weekly earnings of at least £102.

### When an employee tells me she's pregnant what do I have to do?

At least 15 weeks before the week her baby is due, she needs to tell you that she's pregnant, when her baby's due and when she wants to start her maternity leave. You then need to respond within 28 days, letting her know the date when her maternity leave will end.

### What's the earliest a woman can start her maternity leave?

The earliest she can start her maternity leave is 11 weeks before the baby is due (unless the baby is born prematurely before that).

### Can illness trigger the start of her maternity leave?

Yes, but only if she's off sick with a pregnancy-related illness in the four weeks before the week when her baby's due.

### Can she come back to work straight away after having her baby?

No, you mustn't let her come back until two weeks after the birth – four weeks if she works in a factory.

### Can I contact her while she's on maternity leave and ask if and when she plans to come back to work afterwards?

You can make informal enquiries, but she doesn't have to respond if she doesn't want to. If she plans to return to work after her full year of maternity leave, she can simply turn up to work on the day after her maternity leave ends. But, if she doesn't want to take her full year's leave, she must give you at least eight weeks' notice of the date when she wants to come back. If she doesn't want to return to work at all, she must give you the notice set out in her contract of employment.

For more information  
or to request a  
demonstration

Call **020 8652 8311**  
(quote "small business maternity")  
Email [smallbusiness@xperthr.co.uk](mailto:smallbusiness@xperthr.co.uk)  
Go to [book a demo form](#)

## What happens to her holiday entitlement during maternity leave?

It continues to accrue. All employees are entitled by law to at least 5.6 weeks' paid annual holiday – and your terms may be more generous. Maternity leave will usually span two holiday years, so it's best to ensure that your employee uses up all her holiday entitlement for the first of the two holiday years before she starts her maternity leave. When she returns to work during the next holiday year, you need to let her take her full yearly entitlement at agreed times during the year. It can mean a lot of time off, but that's what the law says!

## How much is statutory maternity pay and how long do I have to pay it for?

You need to pay it for 39 weeks, which means the last 13 weeks of your employee's maternity leave is unpaid. She is entitled to 90% of her average weekly earnings for the first six weeks, and then £128.73 for the remaining 33 weeks.

## Can I recover the statutory maternity pay that I pay out?

Yes, most employers can reclaim 92% of all statutory maternity pay that they have paid out from the Government. "Small employers" can reclaim 100% of all statutory maternity pay paid out, plus another 3% to compensate for the secondary national insurance contributions that are payable on statutory maternity pay.

**XpertHR Small Business has lots more answers to employers' questions on maternity leave and pay, including the following tricky issues.**

Click on the links to get the answers to these questions

- › [Do employees made redundant on maternity leave have any special rights?](#)
- › [If your employees get their annual pay increase while one of them is on maternity leave will this affect her maternity pay?](#)
- › [If you dismiss a pregnant employee for gross misconduct do you still have to pay her maternity pay?](#)
- › [You've got an employee off sick a lot during the early stages of pregnancy – how do you deal with this?](#)
- › [Your pregnant employee's job involves heavy lifting, and there's no lighter work for her to do – can you make her start her maternity leave early?](#)

## Request a demonstration

From the UK's most authoritative source of employment law guidance, XpertHR Small Business provides a practical online resource, direct phone access to employment lawyers and optional legal expenses insurance for small to medium employers.

If you would like to learn how XpertHR Small Business can help you:

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Email **smallbusiness@xperthr.co.uk**

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