

# Maternity and Adoption Leave: Your rights as an employee

Finding out you are pregnant is the start of an exciting journey for many, but it can also feel overwhelming with so many things to organise, particularly if you are working.

This guidance aims to help you know what steps to take and when, and your entitlements and options if you are a senior leader working in a school, academy or sixth form college in England.

This document has been written with English legislation in mind, but where relevant legislation is applicable in other areas the appropriate sections of the guidance apply.

It has been produced so that ASCL members who are pregnant or on maternity leave are aware of their entitlements. It will also be useful for ASCL members who manage staff who are pregnant or on maternity leave.

This guidance is provided for general information purposes only and does not constitute legal or professional advice. It represents ASCL's views, but you rely on them at your own risk. For specific advice relevant to your particular circumstances, please contact your employer's HR service or legal advisers.

Throughout this paper, some sections are colour-coded green, burgundy or red for members affected by the **Green Book**, **Burgundy Book** or **Red Book**, as appropriate.

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# Checklist

- Step 1** Inform your employer that you are pregnant and of your Expected Date of Delivery (EDD) or Expected Week of Childbirth (EWC). Statutory provision requires this to be done by the 15th week before the EWC. (14th week for Burgundy Book/28 days before absence for Green Book/15th week for Red Book).
- Step 2** Ensure a maternity risk assessment is completed by your employer in consultation with you, considering and incorporating any reasonable adjustments that may be necessary to keep you safe in your role.
- Step 3** Attend antenatal appointments as advised by your midwife/GP/nurse/registered medical practitioner. Remember you have a statutory entitlement to paid time off for these, including antenatal classes if they are recommended by your midwife/GP/nurse/registered medical practitioner. As a minimum, your partner is entitled to unpaid time off to accompany you to two appointments, up to 6.5 hours each time.
- Step 4** Obtain form MAT B1 from your midwife (after 20 weeks) and show it to your employer if they request it.
- Step 5** Consider options for maternity leave.
- Step 6** Inform your employer of your intended maternity leave start date. Your employer should assume that you will be taking 52 weeks. Complete necessary paperwork. Ensure you give the appropriate notice. (Burgundy Book: 21 days/Green Book: 28 days/Red Book: 28 days/Statutory: 15 weeks)
- Step 7** Teachers - ensure any discussions around performance management/pay progression take your maternity leave into account; objectives could/should be adjusted, and any pay progression should be awarded as if your absence did not take place. It may be appropriate to complete your review prior to you going on maternity leave, but it is not appropriate for your employer to use keep in touch (KIT) days for appraisal purposes.
- Step 8** Agree what contact there will be between yourself and your employer while you are on maternity leave and consider use of KIT days. Your employer should maintain reasonable contact with you while you are on maternity leave and ensure you are kept informed of any changes, including any promotion/job opportunities/reorganisations.
- Step 9** Start your maternity leave

If your baby is born before you had intended to start your maternity leave, then your leave will automatically start from the day your baby is born.

If you are absent due to pregnancy-related illness during the four weeks before your EWC this will automatically trigger the start of your maternity leave.

## Returning to work

You will already have indicated to your employer how much maternity leave you intend to take. However, you may wish to change your mind after your baby is born. Ensure you give the correct notice if you do wish to change. (Burgundy Book: 21 days/Green Book: 21 days/Red Book: 8 weeks/Statutory: 8 weeks).

## Key terms

Additional adoption leave (AAL)

Additional maternity leave (AML)

Average weekly earnings (AWE)

Expected date of delivery (EDD)

Expected week of childbirth (EWC)

Maternity allowance (MA)

Ordinary adoption leave (OAL)

Ordinary maternity leave (OML)

Statutory adoption pay (SAP)

Statutory maternity pay (SMP)

\*all figures quoted are correct as at August 2023

## Introduction

Staff employed in local authority schools or in academies who are subject to TUPE protection since conversion will normally have the **Burgundy Book** (teachers) or the **Green Book** (support staff) as part of their contract of employment. Academies and independent schools are able to set out their own maternity, paternity and adoption provisions, provided that they meet the statutory entitlements as a minimum. Many still follow the provisions of the **Green** and **Burgundy** Books. Teachers employed in sixth form colleges will normally have the **Red Book** as part of their contract of employment. Some independent schools also include national agreements as part of their contractual arrangements, in which case the relevant sections of this guidance will apply.

For those that do not adopt any of the national agreements, members should refer to the statutory provisions and any specific terms in their contract of employment. We recommend that you check with your employer what maternity, paternity and adoption provisions you are entitled to. If in doubt, members can contact the ASCL Hotline for advice: 0116 299 1122, [hotline@ascl.org.uk](mailto:hotline@ascl.org.uk).

ASCL's policy position is that all employers should offer the relevant provisions of the **Burgundy/Green/Red** Books as a minimum.

Due to improvements made to the statutory provisions, it may be that they are more favourable than the **Burgundy Red** or **Green** Book for certain elements. In this case, the statutory provisions take precedence (these are highlighted as footnotes).

## Section 1: Informing your employer that you are pregnant

- 1.1 Statutory provisions require that pregnant employees inform their employer of their pregnancy by the 15th week before the EWC.
- 1.2 However, bear in mind that rights such as the entitlement to take paid time off for antenatal care, risk assessments and protection from discrimination or dismissal won't take effect until an employer is made aware of a pregnancy. It may therefore be beneficial to inform the school of pregnancy at a relatively early stage.
- 1.3 When formally notifying the school or college, the following information will need to be given:
  - a) The fact of the pregnancy.

- b) The expected week of childbirth.
  - c) For statutory provision only: the date on which the employee intends to begin their OML. This should be no earlier than the beginning of the 11th week before the EWC.
- 1.4 **Pregnant teachers** employed in local authority schools or in academies who are subject to TUPE protections or whose employers adopt the **Burgundy Book** are required to comply with the following:
- a) Notify the employer in writing, as soon as practicable but not later than 14 weeks (unless there is good cause) before the EWC that she wishes to be absent for maternity. If requested by the employer, she must produce a certificate from a registered medical practitioner or a certified midwife stating the expected week of childbirth.
  - b) Notify the employer at least 21 days before she wishes to start maternity leave, or as soon as is reasonably practicable:
    - (i) that she is pregnant
    - (ii) of her expected week of childbirth, by means of a medical certificate if the employer requests it
    - (iii) when she wishes to start leave, in writing if requested
- 1.5 **Pregnant teachers** employed in sixth form colleges, who are subject to TUPE protections or whose employers adopt the **Red Book** are required to comply with the following:
- a) Notify the employer in writing, as soon as practicable but not later than the end of the 15th week (unless there is good cause) before the EWC, that she wishes to be absent for maternity and the EWC. If requested by the employer, she must produce a certificate from a registered medical practitioner or a certified midwife stating the EWC.
  - b) Notify the employer at least 28 days before her absence begins, or as soon as is reasonably practical, of the date of the beginning of her absence which shall be no earlier than 11 weeks before the EWC, and that she intends to return to work with her employer (if that is her intention).
- 1.6 **Pregnant support staff** employed on NJC terms and conditions, subject to TUPE protections or whose employers adopt the **Green Book** are required to comply with the following:
- An employee shall notify her employing authority at least 28 days before her absence begins or as soon as is reasonably practicable:
- a) that she is pregnant
  - b) of the EWC
  - c) of the date of the beginning of her absence
- The employer can request that the notification of the beginning of the absence is given in writing and that the employee produces a certificate from a registered medical practitioner or a registered midwife stating the EWC.

## Section 2: Antenatal care

- 2.1 All pregnant employees have a statutory right to paid time off to receive antenatal care and the employer must pay their normal rate for this time off. This right is applicable irrespective of hours worked or length of service. You cannot be asked to make up the time missed elsewhere or to use annual leave.
- 2.2 Antenatal care is not restricted to medical examinations. It can include relaxation and parentcraft classes, provided that these are recommended by a registered medical practitioner, midwife or health visitor.

- 2.3 The father or pregnant woman's partner has the right to unpaid time off work to go to two antenatal appointments (capped at 6.5 hours per appointment). The employer is not entitled to request evidence of these appointments, but they can ask for a declaration from employees confirming their relationship with the mother and details about appointments.
- 2.4 ASCL's policy position is that employers should offer more than this minimum entitlement and allow them to attend all appointments with full pay wherever possible.
- 2.5 **Pregnant teachers** employed in local authority schools, in academies who are subject to TUPE protections or whose employers adopt the **Burgundy Book**, have the right to paid time off to attend antenatal care and must produce evidence of appointments if requested to do so by her employer.
- 2.6 **Pregnant teachers** employed in sixth form colleges, who are subject to TUPE protections or whose employers adopt the **Red Book** have the right to paid time off to attend antenatal care and must produce evidence of appointments if requested to do so by her employer.
- 2.7 **Pregnant support staff** employed on NJC terms and conditions, subject to TUPE protections or whose employers adopt the **Green Book** have the right to paid time off to attend antenatal care and must produce evidence of appointments if requested by her employer.

## Section 3: Pregnancy-related sickness

- 3.1 An employee should not be treated unfavourably because of a pregnancy-related illness and is entitled to sick pay. This means that all the usual conditions apply in accordance with the school or college's sickness absence policy. Acas advises that pregnancy-related absence should be recorded separately from other sickness absence and that employers should not count these absences towards any review or trigger points in their absence policies.
- 3.2 If an employee is off sick for a reason relating to their pregnancy in the four weeks before the EWC, this will automatically trigger the start of maternity leave.
- 3.3 **Pregnant teachers** employed in local authority schools, in academies subject to TUPE protections or whose employers adopt the **Burgundy Book** are subject to the following:

If in the early months of pregnancy a teacher is advised by an approved medical practitioner to absent herself from school because of the risk of rubella, she shall be granted leave with full pay, provided that she does not unreasonably refuse to serve in another school where there is no such undue risk.

Absence on account of illness which is attributable to the pregnancy, including absence on account of miscarriage, and which occurs outside the period of absence for maternity, shall be treated as ordinary absence on sick leave and shall be subject to the conditions normally governing such leave, provided it is covered by a doctor's statement. Acas advises that pregnancy-related absence should be recorded separately from other sickness absence and that employers should not count these absences towards any review or trigger points in their absence policies.

She must not remain at work if certified medically unfit to do so (taking into account the provisions of the Management of Health and Safety at Work (Amendment) Regulations 1994).

- 3.4 **Pregnant teachers** employed in sixth form colleges subject to TUPE protections or whose employers adopt the **Red Book** are subject to the following:

If in the early months of pregnancy a teacher is advised by an approved medical practitioner to absent herself from school because of the risk of rubella, she shall be granted leave with full pay, provided that she does not unreasonably refuse to serve in another school where there is no such undue risk.

Absence on account of illness which is attributable to the pregnancy, including absence on account of miscarriage, and which occurs outside the period of absence for maternity, shall be treated as ordinary absence on sick leave and shall be subject to the conditions normally governing such leave, provided it is covered by a doctor's statement. Acas advises that pregnancy-related absence should be recorded separately from other sickness absence and that employers should not count these absences towards any review or trigger points in their absence policies.

- 3.5 **Pregnant support staff** employed on NJC terms and conditions, subject to TUPE protections or whose employers adopt the **Green Book**:

The **Green Book** is silent on pregnancy-related sickness, so for these employees the statutory provisions as detailed in the opening paragraph of Section 3 apply.

## Section 4: Sickness and maternity leave

- 4.1 Maternity leave will not be taken into account for the calculation of the period of entitlement to sickness absence leave. If you become ill during your maternity pay period, you will be unable to claim sick pay. You may be able to claim Statutory Sick Pay after this time, provided you meet the qualifying conditions for it. We would expect employers to pay contractual sick pay where this is in place.

## Section 5: Miscarriage and stillbirth

- 5.1 Sadly, not all pregnancies end with a healthy baby. In the tragic circumstances where a stillbirth occurs after 24 weeks, this is treated as childbirth, and an employee is entitled to maternity leave and other rights. A miscarriage or stillbirth prior to this stage is treated as sickness and therefore the sickness absence policy arrangements for that employee will apply. However, if a premature birth and death occur prior to 24 weeks and the birth is registered, then this is also classed as childbirth and again maternity and other rights would be applicable.
- 5.2 The new Parental Bereavement Leave and Pay Act gives all employed parents a day-one right to two weeks' leave if they lose a child under the age of 18, or suffer a stillbirth from 24 weeks of pregnancy. The leave is a day-one right, but employees must have 26 weeks of service at the time of the bereavement. Parental bereavement leave can be taken as a single block, or as two separate weeks and employed parents will have a window of 56 weeks to use the entitlement – which is intended to cover the first anniversary of the death. This leave is paid at £172.48\* per week or 90% of average weekly earnings (whichever is lower). We would expect employers to have reviewed their policies to incorporate this statutory minimum entitlement. We would also encourage them to include a contractual entitlement to full pay.

## Section 6: Maternity leave

- 6.1 Statutory Provision
- 6.2 You will qualify for statutory maternity leave if you are an employee not a worker and if you give your employer the correct notice. It does not matter how long you have been with your employer, how many hours you work or how much you get paid.
- 6.3 To qualify for statutory maternity pay you must:
- earn on average at least £123\* a week
  - give the correct notice and proof you are pregnant
  - give proof you are pregnant
  - have worked for your employer continuously for at least 26 weeks continuing in the 'qualifying week' – the 15th week before the expected week of childbirth.

- 6.4 Eligible employees can take up to 52 weeks' maternity leave. The first 26 weeks is known as Ordinary Maternity Leave (OML), the last 26 weeks as Additional Maternity Leave (AML).
- 6.5 The earliest leave can be taken is 11 weeks before the expected week of childbirth, unless the baby is born early. Employees must take at least two weeks' leave after the birth.
- 6.6 For **pregnant teachers** employed in local authority schools, in academies subject to TUPE protections or whose employers adopt the **Burgundy Book**:

The teacher must remain employed by the employer (whether at work or not) immediately before the start of her absence.

The beginning of the teacher's absence shall be no earlier than 11 weeks before EWC, and always start on a Sunday, except for the exceptions set out below:

- where the teacher is absent from work "wholly or partly because of pregnancy or childbirth" after the beginning of the 4th week before the EWC<sup>1</sup>. In these circumstances, maternity leave will be automatically triggered; and
- where the baby is born before maternity leave commences. In these circumstances, the date of childbirth should be regarded as the first day of maternity leave.

All teachers, irrespective of length of service, are entitled to remain absent for up to 52 weeks. A teacher will not be allowed to commence their absence earlier than 11 weeks before the EWC or to return to work earlier than two weeks after the day of childbirth.

Teachers who have completed not less than 1 year's continuous service as a teacher with one or more LAs at the beginning of the 11th week before the EWC shall have an entitlement:

- to 39 weeks' leave of absence with pay (as set out in Section 8.3)
- to take additional leave for up to 52 weeks counting from the beginning of the week (ie the Saturday/Sunday night) in which childbirth occurs.

Subject to the provisions above, the basic principle of the leave provisions is that teachers have a right to choose when to start their maternity leave.

- 6.7 **Pregnant teachers** employed in sixth form colleges subject to TUPE protections or whose employers adopt the **Red Book**:

The teacher must continue to be employed by the college (whether or not at work) until immediately before the start of her absence.

All teachers are entitled to 26 weeks' OML and 26 weeks' AML, i.e. teachers will be entitled to 52 weeks of leave in total. OML commences not earlier than 11 weeks before the EWC.

To choose when to start her maternity leave, except in the circumstances below when her maternity leave will be automatically triggered.

If she is absent from work 'wholly or partly because of pregnancy or childbirth' after the beginning of the 4th week before the EWC.

Where the baby is born before maternity leave commences. In these circumstances the day after the date of childbirth shall be regarded as the first day of maternity leave.

NB The teacher should notify the college as soon as is reasonably practicable that she has given birth or that she is absent wholly or partly because of pregnancy.

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<sup>1</sup> Statutory provision is more favourable in this instance, so the absence would not trigger the start of maternity leave until four weeks before the EWC.



- 6.8 For **pregnant support staff** employed on NJC terms and conditions, subject to TUPE protections or whose employers adopt the **Green Book**:

All employees are entitled to 26 weeks' OML followed by 26 weeks' AML, giving a total of 52 weeks' continuous leave, 'the maternity leave period'.

Maternity leave shall commence no earlier than 11 weeks before the EWC, or from the day following childbirth if that is earlier.

Within 28 days of receipt of the initial notification the employing authority will write to the employee informing them of the last day of their maternity leave and the expected date of their return.

## Section 7: Relationship with annual leave

- 7.1 An employee continues to accrue all their paid annual leave (including bank holidays where applicable) while on maternity leave. An employer must ensure that an employee is able to take all their annual leave at some point.
- 7.2 For **pregnant teachers** employed in local authority schools, in academies subject to TUPE protections or whose employers adopt the **Burgundy Book** this can be complicated. Teachers are entitled to a minimum of 28 days paid leave per year, but schools and academies as employers can direct this to be taken during school closure periods. Due to the number of school closure days in each academic year it is unlikely that there would not be sufficient time for these to be taken in the same/following academic year.
- 7.3 **Pregnant teachers** employed in sixth form colleges subject to TUPE protections or whose employers adopt the **Red Book**, this can be complicated. Teachers are entitled to a minimum of 28 days paid leave per year, but colleges as employers can direct this to be taken during college closure periods. Due to the number of college closure days in each academic year it is unlikely that there would not be sufficient time for these to be taken in the same/following academic year.
- 7.4 For **pregnant support staff** employed on NJC terms and conditions, subject to TUPE protections or whose employers adopt the **Green Book**, OML and AML shall be regarded as continuous service for the purposes of the National Joint Council's sickness and maternity schemes and annual leave. Annual leave continues to accrue during both ordinary and additional maternity leave.

## Section 8: Maternity pay

### Statutory Maternity Pay (SMP)

- 8.1 SMP for eligible employees can be paid for up to 39 weeks, usually as follows:
- the first six weeks: 90% of their average weekly earnings (AWE) before tax
  - the remaining 33 weeks: £172.48\* or 90% of their AWE before tax (whichever is lower). Tax and National Insurance need to be deducted.
- 8.2 If an employee is not entitled to SMP then employers should give the employee an SMP1 form so she can claim Maternity Allowance (MA).
- 8.3 For **pregnant teachers** employed in local authority schools, in academies subject to TUPE protections or whose employers adopt the **Burgundy Book**:

Payments for teachers who have less than one year's continuous service as a teacher with one or more LAs at the beginning of the 11th week before the EWC shall be their entitlement to Statutory Maternity Pay (SMP) only.

Payment of salary to a teacher who has completed not less than one year's continuous service as a teacher with one or more LAs at the beginning of the 11th week before the EWC, shall be in accordance with the provisions set out below and shall be made on the condition that she will be available, or able, to return to work for the required period specified in Section 9.

A teacher shall be entitled to maternity pay as follows:

- a) A teacher eligible for SMP will have the payments made in the first six weeks of absence offset against the payments made under b) and c).
- b) For the first four weeks of absence - full pay, offset against payments made by way of SMP or MA for employees not eligible for SMP.
- c) For the next two weeks of absence - 9/10ths of a week's salary, offset against payments made by way of SMP or MA for employees not eligible for SMP.
- d) For the next 12 weeks of paid absence, half pay without deductions except by the extent to which the combined pay and SMP (or, if not eligible for SMP, MA and any dependants' allowances) exceeds full pay.
- e) For the next 21 weeks, payment of SMP or MA, as appropriate.
- f) No pay for any remaining period of absence up to the date of return notified by the teacher.

In the event of the teacher not being available or being unable to return to her job for the required period, she shall refund such a sum after the first six weeks' payment as the employer at their discretion may decide. NB. This is discretionary, so the employer does not have to enforce this.

### What this means:

A teacher with one year or more service would receive:

Weeks 1-4	Full pay	First 4 weeks at full pay
Weeks 5-6	90% pay	Next 2 weeks at 90% of weekly pay
Weeks 7-18	50% pay	Next 12 weeks at half pay plus SMP
Week 19+	SMP or 90%	£172.48* or 90% of weekly pay (whichever is lower).

8.4 **Pregnant teachers** employed in sixth form colleges subject to TUPE protections or whose employers adopt the **Red Book**:

Teachers with at least one year's continuous service at the beginning of the 11th week before the expected week of confinement will be entitled to the following:

- Week 1-4 For the first four weeks, full pay (inclusive of payments made by way of SMP or Maternity Allowance).
- Week 5-6 For the next two weeks, 9/10ths of a week's pay (inclusive of the payments referred to above).
- Week 7-18 Where a teacher has declared in writing that she intends to return to work she will receive half pay without deduction except to the extent that the half pay plus SMP exceeds full pay. For teachers not returning to work, the payment will be the teacher's entitlement to SMP.
- Week 19-39 For the remaining 21 weeks the teacher will receive her SMP.
- Pay during AML: the initial 13 weeks of AML will be paid at the rate of SMP, the remaining 13 weeks will be unpaid.

## What this means:

A teacher with one year or more service would receive:

Weeks 1-4	Full pay	First 4 weeks at full pay
Weeks 5-6	90% pay	Next 2 weeks at 90% of weekly pay
Weeks 7-18	50% pay	Next 12 weeks at half pay plus SMP
Week 19+	SMP or 90%	£172.48* or 90% of weekly pay (whichever is lower). Initial 13 weeks of AML (weeks 26-39) at SMP, remaining 13 weeks (weeks 39-52) unpaid.

8.5 For **pregnant support staff** employed on NJC terms and conditions, subject to TUPE protections or whose employers adopt the **Green Book**:

- a) Payments for employees who have less than one year's continuous local government service at the beginning of the 11th week before the EWC shall be the employee's entitlement to SMP, where eligible.
- b) Payments for employees who have completed one year's continuous local government service at the 11th week before the EWC shall be as follows:
  - i) For the first six weeks of absence an employee shall be entitled to nine-tenths of a week's pay offset against payments made by way of SMP or MA for employees not eligible for SMP.
  - ii) An employee who declares in writing that she intends to return to work will for the subsequent 12 weeks' absence receive half a week's pay plus SMP, where eligible, without deduction except by the extent to which the combined pay and SMP (or MA and any dependant's allowances if the employee is not eligible for SMP) exceeds full pay. Alternatively, the equivalent amount (ie six weeks' pay) may be paid on any other mutually agreed distribution. For the remainder of the maternity leave period, the employee will receive their entitlement to SMP (currently 39 weeks in total), where eligible.
  - iii) For employees not intending to return to work payments during their maternity leave period following the first six weeks will be their entitlement to SMP (currently 39 weeks in total), where eligible.

## What this means:

An employee with one year or more service who is intending to return to work would receive:

Weeks 1-6	90% pay	First 6 weeks at 90% pay
Weeks 7-18	50% pay + SMP	Next 12 weeks at 50% pay plus SMP
Weeks 19-39	SMP	Next 21 weeks SMP £172.48*
Week 39+	No pay	No pay for any remaining period of absence up to date of return

An employee with one year or more service who is not intending to return to work would receive:

Weeks 1-6	90% pay	First 6 weeks at 90% pay
Weeks 7-39	SMP	Next 33 weeks at SMP
Week 39+	No pay	No pay for any remaining period of absence

## Section 9: Notice periods

9.1 Statutory provision requires that at least 15 weeks<sup>2</sup> before the baby is expected, you must tell your employer the date you want to start your maternity leave. You can change this with 28 days' notice (shorter notice can

be given if 28 days is not 'reasonably practicable'). Your employer must then confirm your leave, start and end dates in writing within 28 days. They should assume that you are taking 52 weeks unless you indicate otherwise. Employees can change their return-to-work date if they give the appropriate notice. (Burgundy Book: 21 days/**Green Book: 21 days/Red Book: 8 weeks**/Statutory: 8 weeks). If you do change the end date, your employer should write to you again to confirm this.

- 9.2 However, you should note that your employer cannot refuse maternity leave or change the amount of leave you want to take.
- 9.3 The school may require a pregnant employee to produce a MAT B1 certificate from a doctor or midwife, confirming the EWC. Please note that these can only be obtained from 20 weeks prior to the EWC.
- 9.4 If the employee wishes to claim SMP then this certificate will generally need to be provided no later than the end of the third week of the SMP period.
- 9.5 Payments made to the employee by way of SMP are not refundable.
- 9.6 For **pregnant teachers** employed in local authority schools, in academies subject to TUPE protections or whose employers adopt the **Burgundy Book** must declare in writing at the time of notification of her intended absence that she intends to return to work with her employer (if that is her intention and if she is able to return to work with her employer).

The teacher's subsequent obligation is to return to her job for at least 13 weeks (including periods of school closure) as a qualifying condition to occupational maternity pay. It is important to note that this requirement may be reduced at the discretion of the employer. The key point here is that this is discretionary and not mandatory, so ask to discuss this with your employer rather than just accepting that you must do this. There could well be unforeseen circumstances which prevent your planned return, and ASCL's policy position is that we would expect employers to be sympathetic towards these and consider waiving the requirement.

Where the employer agrees to the change but does not allow a reduced period of time, 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. For example, if she previously worked four days per week (0.8 FTE) and wanted to return to work for two days per week (0.4 FTE), she would need to return for 26 weeks working the new two days per week pattern (including periods of college closure).

However, if the employee was already working part-time and did not propose a change to her working pattern upon return, then the 13-week period would remain as is.

The 13-week period (or part-time equivalent) starts from the date the teacher returns to work or the date during the school holiday on which the teacher is declared medically fit to be available to work.

In the event of the teacher not being available, or being unable, to return to her job for the required period, she shall refund such sum after the first six weeks' payment as the employer at their discretion may decide. Again, the key point here is that this is discretionary and not mandatory, so ask to discuss this with your employer rather than just accepting that you must do this. There could well be unforeseen circumstances which prevent your planned return, and ASCL's policy position is that we would expect employers to be sympathetic towards these and consider waiving this requirement or at the very least make arrangements for a pro-rata repayment.

- 9.7 **Pregnant teachers** employed in sixth form colleges subject to TUPE protections or whose employers adopt the **Red Book**:

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<sup>2</sup> In this instance, the provisions of the Burgundy, Green and Red Books are all more favourable than general statutory provision, so they will take precedence. (Burgundy Book: 21 days/Green Book: 28 days/Red Book: 28 days/Statutory: 15 weeks).

Refund of Maternity Pay – in the event of a teacher not being available or being unable to return for her job for 13 weeks in accordance with conditions below, she shall refund such sum as the college at their discretion may decide. A teacher with at least one year's continuous service is, however entitled to retain the first six weeks' payment under this scheme.

- a) To return to her job for at least 13 weeks (including periods of college closure) as a qualifying condition to the maternity pay payable after six weeks' absence. This requirement may be reduced at the discretion of the college. The key point here is that this is discretionary and not mandatory, so ask to discuss this with your employer rather than just accepting that you have to do this. There could well be unforeseen circumstances which prevent your planned return, and ASCL's policy position would be that we expect employers to be sympathetic towards these.
- b) Where the college agrees, a full-time teacher may return to work on a part-time basis a period which equates to 13 weeks of full-time service. Similarly, where the college 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. For example, if she previously worked four days per week (0.8 FTE) and wanted to return to work for two days per week (0.4 FTE) she would need to return for 26 weeks working the new two days per week pattern (including periods of college closure).
- c) The 13-week period (or part-time equivalent) starts from the date the teacher returns to work or the date during the college holiday on which the teacher is declared medically fit to be available for work.

9.8 **Pregnant support staff** employed on NJC terms and conditions, subject to TUPE protections or whose employers adopt the **Green Book**:

Payments made by the authority during maternity leave under (ii) above shall be made on the understanding that the employee will return to local authority employment for a period of at least three months. This may be varied by the local authority on good cause being shown and, in the event of her not doing so, she shall refund the monies paid, or such part thereof, if any, as the employer may decide.

The key point here is that this is discretionary and not mandatory, so ask to discuss this with your employer rather than just accepting that you must do this. There could be unforeseen circumstances which prevent your planned return, and ASCL's policy position would be that we expect employers to be sympathetic towards these and consider waiving this requirement or at the very least make arrangements for a pro-rata repayment.

## Section 10: Right to return to work

- 10.1 Employees have the right to return to their job if they take only 26 weeks of Maternity or Adoption Leave or only 26 weeks of Shared Parental Leave (between both parents).
- 10.2 If the employee takes more leave they will have the right to their job or a similar job (if it's not possible to give them their old job).
- 10.3 Similar means the job has the same or better terms and conditions. If the employee unreasonably refuses to take the similar job the employer can take this as their resignation. Members who feel that the job they have been offered is not similar, or have any other concerns in this area, should contact the ASCL Hotline for advice.
- 10.4 For pregnant teachers employed in local authority schools, in academies who are subject to TUPE protections or whose employers adopt the Burgundy Book: subject to the sub-paragraph below, a teacher's right to return to work is a right to return to the job in which she was employed under her original contract of employment and on terms and conditions not less favourable than those which would have been applicable to her if she had not been absent. 'Job', for this purpose, means the nature of the work which she is employed to do and the capacity and place in which she is so employed.

Where it is not practicable by reason of redundancy for the employer to permit her to return to work in her job as defined above the teacher shall be entitled to be offered: a suitable alternative vacancy where one exists, provided that:

- the work to be done in that post is suitable to her and appropriate to the circumstances.
- the capacity and place in which she is to be employed and her terms and conditions of employment are not substantially less favourable to her than if she had been able to return to the job in which she was originally employed.

10.5 **Pregnant teachers** employed in sixth form colleges subject to TUPE protections or whose employers adopt the **Red Book**:

The teacher has the right to return to her own job after 26 weeks. After 52 weeks she also has the right to return to the same job unless there is a reason why it is not reasonably practicable for her to do so, in which case she should be offered a similar job on terms and conditions which are not less favourable than her original job.

Where it is not practicable, by reason of redundancy, for the college to permit her to return to work in her job, the teacher shall be entitled to be offered a suitable alternative vacancy where one exists, provided that:

- the work to be done in that post is suitable to her and appropriate to the circumstances
- that the capacity and place in which she is to be employed and her terms and conditions of employment are not substantially less favourable to her than if she had been able to return to the job in which she was originally employed

Where the teacher is unable to return to work due to sickness she will be regarded as having returned to work and the provisions of the sick pay scheme will apply.

10.6 **Pregnant support staff** employed on NJC terms and conditions, subject to TUPE protections or whose employers adopt the **Green Book**:

- a) Subject to (b) to return to the job in which she was employed under her original contract of employment and on terms and conditions not less favourable than those which would have been applicable to her if she had not been absent. 'Job', for this purpose, means the nature of the work which she is employed to do and the capacity and place in which she is so employed.
- b) Where it is not practicable, by reason of redundancy, for the authority to permit her to return to work in her job as defined in (a) above the employee shall be entitled to be offered a suitable alternative vacancy where one exists, provided that:
  - the work to be done in that post is suitable to her and appropriate to the circumstances
  - that the capacity and place in which she is to be employed and her terms and conditions of employment are not substantially less favourable to her than if she had been able to return to the job in which she was originally employed
- c) Suitable alternative employment may also be offered if exceptional circumstances other than redundancy (e.g. a general reorganisation), which would have occurred if the employee had not been absent, necessitate a change in the job in which she was employed prior to her absence.

The work to be done should be suitable to her and appropriate to the circumstances.

The capacity and place in which she is to be employed and her terms and conditions of employment should not be less favourable to her than if she had been able to return to the job in which she was originally employed.

## Section 11: Notification of return to work

11.1 Your employer should assume that you are taking the full 52 weeks' maternity leave. If you want to return to work earlier, statutory provision requires that you must give at least eight weeks' notice to return to work early. However, this is less in some of the national agreements, so please check the relevant sections below to see what is applicable in your situation. For example, some women return to work when their maternity pay ends after 39 weeks.

11.2 For **pregnant teachers** employed in local authority schools, in academies subject to TUPE protections, or whose employers adopt the **Burgundy Book**:

A teacher who qualifies for ordinary maternity leave shall notify the employer, in writing, at least 21 days<sup>3</sup> before the day on which she proposes to return of the date of her intended return if this is before the end of the 18 weeks' maternity leave. Where this notification is not given, the employer can postpone her return for a period of up to 21 days, or until the end of her 18 weeks if this is sooner.

In the case of a teacher entitled to additional leave, she shall notify the employer of the date of the child's birth. Where the teacher does not notify the employer, the employer may write to the teacher no earlier than 21 days before the end of the ordinary maternity leave period, asking her to confirm the date of birth and her intention to return to work. The letter must explain to the teacher how she determines when her additional maternity leave period will end and that she may be penalised for failing to respond to the letter. The teacher must respond within 21 days of receiving the request. If she does not, her employer may regard this as a disciplinary matter. The employer must then confirm the last possible date by which she must return.

A teacher who takes additional leave and who intends to return to work early shall notify the employer, in writing at least 21 days before the day on which she proposes to return, of the date of her intended return. Where this notification is not given, the employer can postpone her return for a period of up to 21 days.

Where a teacher is unable to return to work at the end of her period of maternity leave due to sickness, the sick pay scheme as set out in Section 4 of the **Burgundy Book** shall apply to such absence.

Notice provisions for pregnant teachers who do not intend to return to work are set out in below:

*"A woman expecting the birth of a child shall (unless there is good cause) give the employer at least 14 weeks' prior notification of the expected week of childbirth. Where a teacher intends to return to her teaching appointment after her absence for maternity and wishes to take advantage of the national maternity scheme for teachers applicable according to her length of continuous service, she should apply for maternity leave under the Maternity Leave provisions (see Section 6 of the Burgundy Book); where she does not so intend to apply, she shall notify her employer in writing that she wishes to terminate her appointment and this notification shall be given at least 21 days before such termination, or as soon as is reasonably practicable. In these circumstances her appointment shall terminate:*

- *either with the agreement of the teacher, or if because of her pregnancy she is incapable of doing her own or some other suitable work, at a date 11 weeks prior to the expected week of childbirth;*
- *or, at some other date less than 11 weeks"*

Following a return to work, the normal provisions for termination upon notice in the **Burgundy Book** apply.

11.3 **Pregnant teachers** employed in sixth form colleges subject to TUPE protections or whose employers adopt the **Red Book**:

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<sup>3</sup> In this instance, the provisions of the Burgundy Book are more favourable than general statutory provision, so the Burgundy Book will take precedence.

It will be assumed that a teacher will be returning at the end of OML or if she chooses to take AML, at the end of that period. If a teacher wishes to return earlier than this, they must give notice, in writing if requested, of:

- eight weeks in the case of OML
- eight weeks in the case of a teacher choosing also to take AML

Where the notice given is less than above, the college may delay the teacher's return to ensure the appropriate notice, but not beyond the end of the maternity leave period.

11.4 For **pregnant support staff** employed on NJC terms and conditions, subject to TUPE protections or whose employers adopt the **Green Book**:

Return before the end of the maternity leave period

- i) An employee shall notify the authority in writing if requested, at least 21<sup>4</sup> days before the day on which she proposes to return if this is before the end of the maternity leave period. Where the notice given is less than 21 days the employer may postpone the return to ensure 21 days' notice, but not beyond the end of the maternity leave period.
- ii) If an employee changes her mind about the day she proposes to return, she must give her employer 21 days' notice of the new date, if this is earlier than the original date she notified or if she is now proposing to return later than the original date, she must give notice of the new return date 21 days before the original return date.

All employees

- i) Where an employee is unable to return on the expected day due to sickness the absence will be covered by the sickness scheme in the normal way.
- ii) For an employee where, because of an interruption of work (whether due to industrial action or some other reason), it is unreasonable to expect her to return on the due date, she may instead return when work resumes, or as soon as reasonably practicable thereafter.

Return to Work: Flexible working arrangements See Sections 12-19.

## Section 12: Flexible working arrangements

12.1 You have the legal right to make a request for changes to your hours of work, days of work or place of work providing:

- you have been employed by your employer for at least 26 weeks by the time you make your request (unless your employer offers this as a day one right), and
- you have not made a request for flexible work in the last 12 months (whether it was granted or refused). Please note that the **Employment Relations (Flexible Working) Act 2023** received royal assent in July, and when the Act comes into force (expected in 2024) employees will benefit from new protections.

12.2 You are still employed during maternity, paternity or periods of parental leave, so any weeks of leave count towards your continuous employment.

12.3 Your employer should have a policy which covers flexible working and includes information on how to make a request. The Department for Education has also published flexible working resources including a guidance document 'Flexible Working in Schools' which includes advice for teachers.

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4 In this instance, the provisions of the Green Book are more favourable than general statutory provision, so the Green Book will take precedence.



## Section 13: Contact during maternity leave

- 13.1 During maternity leave, an employer may make reasonable contact with an employee, and in the same way, an employee may make contact with her employer.
- 13.2 Before you go on maternity leave, your employer or line manager should have a meeting with you to talk about how you would like to stay in touch.
- 13.3 While you are on maternity leave, your employer should tell you about:
- any jobs that are being advertised
  - any promotion opportunities
  - if they're planning redundancies or reorganisation
- 13.4 You can also agree what other things you would like to hear about, for example, staff bulletins or information about staff social events. You should agree how you would like to be in contact, for example by email, phone or KIT days and how often you would like the contact to be.

## Section 14: Keeping in touch (KIT) Days<sup>5</sup>

- 14.1 KIT days are intended to facilitate a smooth return to work for women returning from maternity leave. Before going on leave, the employer and the employee should discuss and agree any voluntary arrangements for keeping in touch during the employee's maternity leave. An employee may work for up to ten KIT days during OML or AML without bringing her maternity leave to an end. An employee may not work during the two weeks of compulsory maternity leave immediately after the birth of her baby.
- 14.2 The work can be consecutive, or not, and can include training or other activities which enable the employee to keep in touch with the workplace. Any such work must be by agreement and neither the employer nor the employee can insist upon it.
- 14.3 Employers are recommended to adopt policies for KIT days that have regard to DTI guidance (Maternity Entitlements and Responsibilities: A guide - babies due on or after 1 April 2007) and therefore should include arrangements for payment for working on these days.
- 14.4 ASCL's policy position is that we would expect these to be paid at normal contractual pay. To calculate a day's pay for teachers, the FTE equivalent salary should be divided by 195 days.
- To calculate a day's pay for support staff, the FTE equivalent salary should be divided by 260 days.
- If the pro-rata salary is used for part-time roles, then the number of days should be pro-rated by the same proportion.
- It is important to note that this payment can be offset against statutory payments, for example SMP, so we advise that you check with your employer whether this is the case to ensure that you are fully aware of any financial implications. We would encourage employers to ensure that employees working KIT days do not suffer any financial detriment.
- 14.5 Each occasion worked is classed as a KIT day, so for example, the ten days cannot be split into 20 half days. However, this does not mean that a full day must be worked, simply that any amount of work undertaken on one day counts as a full KIT day. KIT days could also be used to work part of a week and as such could assist in facilitating a gradual return to work or to enable a woman to attend a conference, undertake a training activity or attend a team meeting, for example.

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<sup>5</sup> Sections a-c are taken from the Green/Red Books, there is no reference to KIT days in the Burgundy Book but as these are statutory provisions they are applicable to all pregnant employees.

- 14.6 However, DfE Guidance states that “schools should not require teachers to use Keeping in Touch (KIT) days for the purposes of appraisal.”
- 14.7 It is important to note that if you work more than ten KIT days your maternity leave and pay automatically end by law.

## Section 15: Health and safety in the workplace

- 15.1 Employers have a duty to assess the workplace risks posed to new or expectant mothers or their babies and, where necessary and reasonable, alter working conditions to avoid any significant risk.
- 15.2 The Workplace Regulations require employers to provide suitable rest facilities for workers who are pregnant or breastfeeding. The facilities should be suitably located (see Section 16.3) and where necessary should provide appropriate facilities for the new or expectant mother to lie down.
- 15.3 While teaching does not bring any specific risks, considerations may include lifting or carrying books or equipment, handling chemicals or work-related stress.
- 15.4 Support staff roles may be different, for example, school business leaders may be required to visit areas of the school site which may not be safe for pregnant women, or a trust Chief Operating Officer may have to travel frequently between multiple schools. An expectant/new mother risk assessment should highlight anything like this and include details on how they will be managed safely.
- 15.5 Once informed in writing of an employee’s pregnancy, employers should then have regular health and safety discussions with them, completing an individual risk assessment in consultation with them. This should take into account any advice they have received from their doctor or midwife and should be reviewed regularly. If any risks identified cannot be reduced or removed the employer must:
- temporarily adjust working conditions and/or working hours and if that is not possible
  - offer suitable alternative work (at the same rate of pay and on terms no less favourable than the original role).
- 15.6 If neither of these options are possible, an employer must suspend the employee from work on paid leave until their maternity leave begins or it is safe for them to attend work. The employee must be provided with the outcome of the risk assessment and the reason why the risk could not be removed.
- 15.7 For **pregnant support staff** employed on NJC terms and conditions, subject to TUPE protections or whose employers adopt the **Green Book** consideration must be given to any health and safety implications for pregnant or breast-feeding employees identified in the Workplace Risk Assessment carried out in accordance with Part 2, Paragraph 4 of the **Green Book**.
- 15.8 Although this is not explicitly referenced in the **Burgundy** or **Red** Books, we recommend all employers do this for all staff.

## Section 16: Breastfeeding

- 16.1 Before returning to work, it helps to let your employer know in writing that you are breastfeeding. They can then complete a risk assessment in consultation with you and consider whether there are any specific risks to you for as long as you are breastfeeding.
- 16.2 There are few direct risks to breastfeeding but you should seek advice if you work with dangerous substances, such as organic mercury.
- 16.3 Employers are legally required to provide a space for mothers who are breastfeeding to lie down and rest if they need to; HSE guidance states that toilets are not a suitable space for this.

- 16.4 There is, however, no legal right, for your employer to provide breastfeeding breaks at work, but it would be good practice for them to do so. Furthermore, they must meet their obligations to employees who breastfeed under legislation that applies to health and safety, flexible working and discrimination. This means your employer should make sure you don't feel unfairly treated because you are breastfeeding.
- 16.5 For example, the risk assessment could identify risks associated with not having a break, eg mastitis. If these risks were identified then a break would be a reasonable way of mitigating the risk, failure to mitigate against the risk could constitute sex discrimination.
- 16.6 The Health and Safety Executive has produced FAQs which employers should refer to if a facility for breastfeeding is requested.

## Section 17: Adoption leave

- 17.1 Statutory Adoption Leave (SAL) is 52 weeks. It is made up of:
- 26 weeks of Ordinary Adoption Leave (OAL)
  - 26 weeks of Additional Adoption Leave (AAL)
- 17.2 Only one person in a couple can take adoption leave. The other partner could take paternity leave instead.
- 17.3 To qualify for SAL, you must:
- be an employee
  - give the correct notice
  - give proof of the adoption or surrogacy - if your employer asks you for it
- 17.4 If you qualify for adoption leave, you can also receive paid time off work to attend five adoption appointments after you have been matched with a child. Joint adopters can elect a primary adopter and a secondary adopter, the primary adopter can attend the adoption appointments as detailed above, and the secondary adopter is entitled to unpaid time off for two appointments. No additional time or appointments are allowed if you are adopting more than one child.

## Section 18: Adoption pay

- 18.1 Statutory Adoption Pay (SAP) is paid for up to 39 weeks. The weekly amount is:
- 90% of your average weekly earnings for the first six weeks
  - £172.48\* or 90% of your average weekly earnings (whichever is lower) for the next 33 weeks
- 18.2 It's paid in the same way as your wages (for example monthly or weekly). Tax and National Insurance will be deducted.
- 18.3 To qualify for SAP you must:
- have been continuously employed by your employer for at least 26 weeks by the week you were matched with a child
  - earn on average at least £123\* a week (before tax)
  - give the correct notice
  - give proof of the adoption or surrogacy
- 18.4 The **Burgundy Book** states that the employer may at their discretion extend to adoptive parents the relevant postnatal sections of this scheme.

- 18.5 The **Red Book** states that colleges may wish to introduce their own adoption leave schemes, which could confer similar rights to those available under the occupational maternity schemes.
- 18.6 The **Green Book** recommends that employers introduce adoption leave schemes for employees adopting children.
- 18.7 Many employers extend their maternity scheme to apply to adoption, so you should check with your employer for clarification if you are adopting or intending to adopt. You may get more pay if your employer has an adoption pay scheme. Your employer cannot offer you less than the statutory amount.
- 18.8 ASCL's policy position is that we would strongly urge all employers to mirror their maternity provisions to adoptive parents and to include this as a contractual entitlement to all employees. If this is the case, the notice periods for maternity will apply.

## Section 19: Pregnancy and maternity discrimination

- 19.1 The Equality Act 2010 makes it unlawful to discriminate against someone, or treat them unfairly, because of pregnancy or maternity.
- 19.2 There are two main types of pregnancy and maternity discrimination - unfavourable treatment and victimisation.
- 19.3 Unfavourable treatment
- 19.4 Employees are protected against unfavourable treatment because of pregnancy or maternity. This means an employee or job applicant must not be disadvantaged because of their pregnancy or maternity. For example, they must not:
- be subjected to unfair treatment because of pregnancy or maternity
  - suffer disadvantage because of pregnancy or maternity through the employer's policies, procedures, rules or practices
  - suffer unwanted behaviour because of pregnancy or maternity.
- 19.5 There is no need for an employee to compare treatment to how someone else is treated.
- 19.6 This protection also means that treatment which impacts on an employee negatively because of pregnancy or maternity may be discriminatory even though other staff are treated the same way.
- 19.7 This is particularly key with pay progression. Pregnant teachers should check their employer's pay and appraisal policies for how this is dealt with. The DfE states that pay progression should be awarded as if the absence (maternity leave) did not take place. Any members who have concerns about their pay progression in relation to maternity leave should contact the ASCL Hotline.
- 19.8 Victimisation
- 19.9 Victimisation is when an employee suffers what the law terms a 'detriment' - something that causes disadvantage, damage, harm or loss, due to situations such as:
- making an allegation of discrimination
  - supporting a complaint of discrimination
  - giving evidence relating to a complaint about discrimination
  - raising a grievance concerning equality or discrimination
  - doing anything else for the purposes of (or in connection with) the Equality Act, such as bringing an employment tribunal claim of discrimination.

19.10 Victimization can also occur because an employee is suspected of doing one or more of these things, or because it is believed they may do so in the future.

## Section 20: Statutory guidance

20.1 GOV.UK Maternity Pay and Leave [www.gov.uk/maternity-pay-leave](http://www.gov.uk/maternity-pay-leave)

20.2 GOV.UK Maternity Pay and Leave: employer guide [www.gov.uk/employers-maternity-pay-leave](http://www.gov.uk/employers-maternity-pay-leave)

20.3 GOV.UK Adoption Leave and Pay [www.gov.uk/adoption-pay-leave](http://www.gov.uk/adoption-pay-leave)

20.4 Conditions of Service for Teachers in England and Wales (Burgundy Book) Revised June 2023  
<https://tinyurl.com/y376xjdw>

20.5 Staff in Sixth Form Colleges: Teaching Staff: Conditions of Service Handbook (Red Book)  
<https://tinyurl.com/y6ddjot8>

20.6 NJC National Agreement on Pay and Conditions of Service (Green Book)  
[www.local.gov.uk/local-government-terms-and-conditions-green-book](http://www.local.gov.uk/local-government-terms-and-conditions-green-book)

20.7 DfE Equalities considerations as part of the appraisal and pay determination process  
<https://tinyurl.com/tq4yo7r>

20.8 HSE New and Expectant Mothers [www.hse.gov.uk/mothers/law.html](http://www.hse.gov.uk/mothers/law.html)

## Section 21: Non-statutory guidance

21.1 ACAS Maternity Rights [www.acas.org.uk/index.aspx?articleid=1753](http://www.acas.org.uk/index.aspx?articleid=1753)

21.2 National Childbirth Trust (NCT) Advice on breastfeeding and returning to work  
[www.nct.org.uk/life-parent/work-and-childcare/returning-work/breastfeeding-and-returning-work](http://www.nct.org.uk/life-parent/work-and-childcare/returning-work/breastfeeding-and-returning-work)

21.3 Maternity Action <https://maternityaction.org.uk/>

21.4 DfE Flexible Working in Schools [www.gov.uk/government/publications/flexible-working-in-schools](http://www.gov.uk/government/publications/flexible-working-in-schools)

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