

MATERNITY POLICY

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Maternity Policy

1. Introduction

The purpose of this policy is to provide information and guidance on the Trust's Maternity Scheme which applies to all pregnant employees.

In doing so, it sets out provisions that relate to both current legislation and also the terms and conditions of service that apply to teaching and support staff.

This policy adopts the provisions of the nationally agreed Local Government Maternity Scheme (see NJC for Local Government Services Terms and Conditions for further details) and the Teachers Maternity Scheme (see Teachers Pay and Conditions of Service) for further details).

The Trust respect employees' personal gender identity and if an employee who identifies themselves as male becomes pregnant then any references to female gender in the policy will refer to them as well.

2. Definition

The following definitions are used in this policy and procedure:

"Expected week of childbirth" means the week, starting on a Sunday, during which the employee's doctor or midwife expects her to give birth.

"Qualifying week" means the 15th week before the expected week of childbirth.

"Childbirth" means the birth of a child or a still birth after a pregnancy lasting at least 24 weeks.

The term **"A Week's Pay"** for employees whose remuneration for normal working hours does not vary with the amount of work done in the period, is the amount payable by the Trust to the employee under the current contract of employment for working her normal hours in a week. Where there are no normal working hours, a week's pay is the average remuneration in the period of 12 weeks preceding the date on which the last complete week prior to maternity leave ended, excluding any week in which no remuneration was earned.

3. Advice and guidance

It is the Trust's policy to encourage open discussion with employees to ensure that questions and problems can be resolved as quickly as possible. As the maternity provisions are complex, if an employee becomes pregnant, she should familiarise herself with the Maternity Leave Entitlement and Procedures document and clarify the relevant procedures with the Trust to ensure that they are followed correctly.

4. Further information

Further information and guidance on maternity leave and benefits may be obtained from the organisations shown in Appendix 3.

5. Process

The process for notification of an employee's intention to take maternity leave is set out in the **Maternity Leave Entitlement and Procedure**.

Scope

- This policy applies to all employees of the Trust.
- The term 'employee' refers to any member of staff whether teaching or support staff employed to work by the Trust within a School or the wider Trust
- In other educational establishments, it is for the relevant body to decide whether or not it is appropriate to adopt this policy
- The term Headteacher refers to Headteacher/Executive Headteacher or CEO
- Changes in Employment Law or Educational Legislation may form part of the policy.

Maternity Leave Entitlement and Procedure

1. Introduction

The purpose of this document is to provide standard guidance on the statutory and contractual rights and obligations of employees who are pregnant or have recently given birth and gives details of the arrangements for antenatal care, pregnancy-related illness and maternity leave and pay.

The maternity provisions are complex, and the employee is encouraged to talk to her manager and Human Resources about her plans from an early stage to help both the manager and employee manage her work during pregnancy, her maternity leave and her return to work.

2. Notification

On becoming pregnant, an employee should notify her manager as soon as possible: There are health and safety considerations for the Trust and employee that need to be addressed as well as the employee's eligibility to maternity leave and pay.

By the end of the qualifying week, (see policy section 3 for definition) or as soon as reasonably practicable afterwards, the employee is required to inform her manager of:

- the fact that she is pregnant
- her expected week of childbirth
- the date on which she intends to start her maternity leave

The employee should complete the notification form in Appendix 1 and forward this to the CEO/Headteacher via her manager as soon as is reasonably practicable. This must be forwarded by the Trust to their Payroll Services at least 28 days before the leave begins.

A MATB1 form, which is a certificate issued by a doctor or midwife confirming the expected week of childbirth not more than 20 weeks prior to it, must be provided. The form must have either the doctor's name and practice address or the midwife's name and NMC registration number on it. **Employees should note that the Trust will be unable to make any payments of maternity pay unless the form is provided.**

The employee is permitted to bring forward her maternity leave start date, provided that she advises her manager in writing at least 28 days before the new start date or, if this is not possible, as soon as reasonably practicable. The employee may also postpone her maternity leave start date, provided she advises her manager in writing at least 28 days before the original proposed start date.

The Trust will respond in writing to the employee's notification of her leave plans within 28 days, confirming the last day of her maternity leave and the date on which

she is expected to return to work if she takes her full 52-week entitlement to maternity leave. If no such notification of the return date is given, the employee cannot be prevented from returning early and she is also protected against detriment or dismissal if she fails to return on the due date.

3. Antenatal care

All employees, regardless of their length of service or hours worked, have the right to reasonable time off work for antenatal care on full pay

Employees are required to provide evidence of pregnancy and antenatal appointments for example:

- A certificate from a registered medical practitioner, registered midwife stating the employee is pregnant; and
- An appointment card or some other document showing that the appointment has been made. Proof need not be provided for the first visit but the employee should still obtain her manager's permission to attend.

Antenatal care includes doctors' and hospital appointments and relaxation/parent-craft classes (where they have been recommended by a doctor, midwife or health visitor) where the latter cannot reasonably be arranged outside the employee's normal working hours.

The employee should endeavour to give her manager as much notice as possible of antenatal appointments and, wherever possible, try to arrange them as near to the start or end of the working day as possible.

Time off work for the father or partner of a pregnant woman to attend antenatal appointments

Fathers and partners of a pregnant woman are entitled to unpaid time off to attend up to two antenatal appointments. The time off is capped at six and a half hours for each appointment. This entitlement will also extend to employees who will become a parent through a surrogacy arrangement provided that they are expected to satisfy then conditions for and intend to apply for a Parental Order for the child.

Prior to agreeing the request, the Trust will require written confirmation from the employee that

- They are either the child's father, partner of the expectant mother or the parent to be via a surrogacy arrangement
- The purpose of the time off is to accompany the expectant mother to the antenatal appointment
- That the antenatal appointment concerned is on the advice of a registered medical practitioner or registered midwife, and
- The date and time of the appointment

The time off will be recorded as per the Trust's usual attendance recording arrangements.

4. The Health and Safety of a new or expectant mother

Risk Assessment

The Trust has a duty of care towards the Health and Safety of all employees and has specific duties to carry out a risk assessment of the workplace risks to new and expectant mothers.

As an employer, the Trust is required by law to assess all work activities for risks to the health and safety of its employees and others affected by their work activities. In particular, where there are women of childbearing age and the work is of a kind that could involve risk to a new or expectant mother or to that of her baby this assessment must take account of those risks. CEO/Headteachers must ensure that risk assessments for work activities under their control address these risks. In many instances this will be a matter of complying with the relevant Trust's Code of Practice covering the work activity. The risk assessment must, of course, be communicated to employees. This will ensure women will be aware of any risks to new or expectant mothers and the importance of notifying their manager as soon as they become pregnant and if they are attempting to become pregnant. The requirement to inform their manager as soon as they become aware of their pregnancy should be stressed to all employees.

A 'new and expectant' mother is defined as an employee who:

- is pregnant; or
- has given birth within the previous six months, (i.e. delivered a living child; or after 24 weeks of pregnancy, a still-born child); or
- is breast-feeding.

The Trust expects managers to have considered new and expectant mothers when undertaking risk assessments within their work area, as some women are not always aware of their pregnancy during the first few weeks. As soon as the employee notifies her manager of her pregnancy (and for a new mother as soon as she returns to work) a complete review (or revision as appropriate) of the risk assessment for expectant or new mothers must be undertaken. In order to meet this obligation, the onus is on the employee to notify her manager of the pregnancy as soon as she becomes aware of it.

Where the risk assessment identifies risks to new and expectant mothers and these risks are not avoided by the preventive and protective measures already in place, the following sequence of measures should be followed:

- (a) Alter her working conditions or hours of work, if it is reasonable to do so and would avoid the risk;
- (b) If this is not possible, identify and offer suitable alternative work that is available on the same rate of pay and existing, or not substantially less favourable, terms and conditions;
- (c) If no suitable alternative work is available, the employee should be suspended with full pay, until her maternity leave and pay commence. (If the

employee refuses an offer of suitable alternative work, the leave may reasonably be unpaid). This period of suspension would last until either:

(i) the date of the commencement of maternity leave which has previously been notified to the Trust

or

(ii) the beginning of the **fourth week** before the EWC).

Suspension will always be a last option, to be taken if none of the other options are available.

Employees must sign the risk assessment review to confirm that a review has taken place and appropriate measures taken to safeguard the employee's health and safety from any identified risks. Employees must be given access to risk assessment review/records.

Night Work

A pregnant night worker may provide a medical certificate stating her health and safety is at risk if she continues with night work. In this situation the employee should either be offered suitable alternative work during the day as a first option or be given paid leave.

Suitable Alternative Work

A medical opinion maybe sought from the Trust's Occupational Health Adviser as to the suitability of any alternative work identified.

An offer of suitable alternative employment, if available, should be made in writing to the employee even if she has indicated that she does not wish to consider other employment.

Offers of alternative employment in these circumstances will, by definition, be temporary. The right to return will apply to the original job, unless it is agreed otherwise.

Further Information

Should employees, managers, CEO or Headteachers require further information and guidance this may be obtained from their Health and Safety provider.

5. Entitlement to maternity leave

All pregnant employees are entitled to take up to 26 weeks' ordinary maternity leave and up to 26 weeks' additional maternity leave, making a total of 52 weeks. This is regardless of the number of hours they work or their length of service. Additional maternity leave begins on the day after ordinary maternity leave ends. However, entitlement is subject to the employee complying with the notification requirements shown in section 2.

Ordinary Maternity Leave (OML)

During the period of ordinary maternity leave, the employee's contract of employment continues in force and she is entitled to receive all her contractual benefits, except for salary. Instead, the entitlement to remuneration is based on the employee's entitlement to Statutory Maternity Pay (SMP) or Maternity Allowance (MA) and any entitlement to Contractual Maternity Pay (CMP). Any benefits in kind (e.g., lease car) will continue. Contractual annual leave will continue to accrue, and pension contributions will continue to be made.

Additional Maternity Leave (AML)

During the period of additional maternity leave, the employee's contract of employment remains in force and she is entitled to receive all her contractual benefits, except for salary. Any benefits in kind will continue and contractual annual leave entitlement will continue to accrue.

Salary will be replaced by SMP for the first 13 weeks of additional maternity leave if the employee is eligible to receive it. The remaining 13 weeks of additional maternity leave are unpaid.

Pension contributions will continue to be made during the period when the employee is receiving SMP or CMP but not during any period of unpaid additional maternity leave.

Compulsory Maternity Leave

All employees must, by law take a compulsory two week leave period, commencing with the date of childbirth. During this two-week period the employee cannot work for the Trust in any capacity whatsoever. Compulsory maternity leave is part of the ordinary maternity leave period, not additional to it.

6. Commencement of maternity leave

An employee may not commence her maternity leave any earlier than 11 weeks before her expected week of childbirth (EWC), but can work up until the date of birth without losing out on any entitlement to SMP payments or suffering any reduction in payments.

Maternity leave will start on whichever date is the earlier of:

- the employee's chosen start date;
- the day after the employee gives birth; or
- the day after any day on which the employee is absent for a pregnancy-related reason in the four weeks before the expected week of childbirth.

If the employee gives birth before her maternity leave was due to start, she must notify her manager/CEO/Headteacher in writing of the date of the birth as soon as reasonably practicable.

7. Maternity pay

Maternity pay is made up of two separate elements:

Statutory Maternity Pay (SMP) is a state allowance which is paid through the employer (Payroll) or Maternity Allowance (MA) which is a state allowance administered by Jobcentre Plus and paid to employees who do not qualify for SMP; and

Contractual Maternity Pay (CMP) which is paid by the Trust where there is a contractual entitlement based on the Local Government Services (LGS) Conditions of Service or the Teachers Pay and Conditions of Service.

The qualifying conditions for SMP/MA and CMP are different. This means that whilst an employee may qualify for CMP they may not qualify for SMP/MA.

8. Statutory Maternity Pay (SMP)

Statutory maternity pay is payable for up to 39 weeks during maternity leave. An employee is entitled to SMP if:

- she has been continuously employed by the Trust for at least 26 weeks at the end of the qualifying week and she is still employed during that week;
- her average weekly earnings in the eight weeks up to and including the qualifying week are not less than the lower earnings limit for national insurance contributions;
- she is still pregnant 11 weeks before the start of the expected week of childbirth (or has already given birth);
- she provides a MATB1 form stating her expected week of childbirth;
- she gives the Trust proper notification of her pregnancy in accordance with the rules set out above; and
- She has stopped working for the Trust due to pregnancy/childbirth.

Where an employee in a school maintained by a local education authority moves to another school maintained by the **same** authority including maintained schools where the governors of the school rather than the local education authority are the employer this will not break continuity of service and will be regarded as the one employer for SMP purposes.

Statutory Maternity Pay (SMP) is payable as follows:

- For the first six weeks, SMP is paid at the higher rate, which is equivalent to 90% of the employee's average weekly earnings calculated over the period of eight weeks up to and including the qualifying week. For the purpose of calculating average weekly earnings, shift allowances and overtime payments are all included.
- The standard rate of SMP is paid for the remaining 33 weeks (or until the employee returns to work if this is sooner). This is paid at a rate set by the

Government for the relevant tax year, or 90% of the employee's average weekly earnings calculated over the period of eight weeks up to and including the qualifying week if this is lower than the Government's set weekly rate.

If the employee becomes eligible for a salary increase between the start of the original calculation period and the end of her maternity leave (whether ordinary maternity leave or additional maternity leave), the higher standard rate of SMP will be recalculated to take account of the employee's salary increase, regardless of whether SMP has already been paid. This means that the employee's SMP will be recalculated and increased retrospectively, and the employee may qualify for SMP if she did not previously. The employee will be paid a lump sum to make up any difference between SMP already paid and the amount payable as a result of the salary increase.

Statutory maternity pay is treated as earnings and is therefore subject to PAYE and national insurance deductions.

Payment of SMP cannot start prior to the 11th week before the expected week of childbirth. Statutory maternity pay can start from any day of the week in accordance with the date the employee starts her maternity leave.

SMP will start from the day following the birth, where this occurs before the employee starts her maternity leave, or the day following absence due to pregnancy after the start of the 4th week before the expected week of childbirth.

SMP is payable whether or not the employee intends to return to work after her maternity leave.

If the employee leaves her employment after the beginning of the 11th week before the expected week of confinement but before she has started to receive SMP, her SMP will be payable from the day after that on which her employment ended.

SMP payments are calculated and paid through the Trust's payroll system.

The maternity regulations require that payment of Statutory Maternity Pay ceases if; during the paid maternity period, the employee: (a) dies, (b) is taken into legal custody, or (c) commences work for another employer who did not employ them in the qualifying week but has employed them after the birth of the baby. Should any of these occur, the CEO/Headteacher must be informed immediately.

9. Maternity Allowance (MA)

Employees who are not entitled to SMP may be entitled to receive Maternity Allowance or other benefits payable by the Government. These are paid directly by Jobcentre Plus. The Trust's payroll provider will provide the employee with an SMP1 form if they are not entitled to SMP, to allow them to pursue a claim for Maternity Allowance. Further details on Maternity Allowance can be found on the gov.uk website.

The earliest date that MA can be paid is the start of the 11th week before the EWC.

10. Contractual Maternity Pay (CMP)

Local Government Services employees on National Joint Council terms and conditions of service. (Support staff i.e., Non-teaching employees)

(Please note that the maternity leave provisions for employees on Soulbury, Adult Education and Youth Worker conditions of service are governed by the Local Government Services (Green Book) for the purposes of contractual maternity pay).

Contractual Maternity Pay (CMP) is made up of two separate elements:

- a) The first 6 weeks of absence is paid at 90% of the employee's normal pay, offset against payments made by way of SMP or MA;

and

- b) where the employee declares in writing that she intends to return to work, for the next 12 weeks of absence (Weeks 7 – 18) each week is paid at half (50%) of the employee's normal pay, **in addition** to payments by way of SMP/MA (as long as the SMP/MA plus CMP does not exceed an employee's normal pay, in which case normal pay will be reduced accordingly.)

This is then followed by SMP (subject to entitlement) for Weeks 19 to 39.

For LGS employees the 12 weeks half pay (i.e., the equivalent amount) may be paid at the employees request over any other mutually agreed distribution period e.g. spread over 20 weeks to coincide with the payment period for the lower rate SMP.

Both (a) and (b) above are subject to qualifying conditions as detailed below.

CMP can start at any time between the 11th week before the EWC and the date that the child is born.

Where a baby is born before the 11th week before the EWC, CMP will start from the day that the baby is born.

Qualifying Conditions for CMP - Local Government Services employees (Support staff)

To qualify for CMP an employee must have at least one year's continuous service as at the beginning of the 11th week (i.e., the Sunday) before the EWC. In Community schools, this includes any schools maintained by Southend-on-Sea Borough Council and additionally, return to employment with any local authority. In Foundation schools it will only apply where the employee returns to work at the school where she was employed when her maternity leave commenced. The second element of CMP (i.e., 12 weeks at half (50%) of normal pay) is conditional upon the employee returning to work with the school for a period of at least 3 months based on their contractual hours prior to/during maternity leave. In Community schools, this includes any schools maintained by Southend-on-Sea Borough Council and additionally, return to employment with any local authority. In Foundation schools it will only apply where the employee returns to work at the school where she was employed when her maternity leave commenced. Should the

employee not do so, she will be required to refund this element of CMP. Payments made by way of SMP are not refundable.

For employees not intending to return to work payments from Week 7 will only be the employee's entitlement to SMP, where eligible.

Employees with less than one year's continuous local government service at the 11th week before the EWC have no entitlement to CMP.

Employees on Teachers Pay and Conditions of Service

Contractual Maternity Pay (CMP) for teachers is made up of three separate elements:

(a) the first 4 weeks of absence is paid at full pay (100%) of the employee's normal pay, or average weekly earnings if higher, offset against payments made by way of SMP or MA;

and

(b) for the next 2 weeks (Weeks 5 – 6) of absence each week is paid at 90% of the employee's normal pay, or average weekly earnings if higher, offset against payments made by way of SMP or MA;

and

(c) for the next 12 weeks (Weeks 7 – 18) of absence each week is paid at half (50%) of the employee's normal pay **in addition** to payments by way of SMP/MA (as long as the SMP/MA plus CMP does not exceed an employee's normal pay, in which case normal pay will be reduced accordingly).

This is then followed by SMP (subject to entitlement) for Weeks 19 to 39.

(a) (b) and (c) above are subject to qualifying conditions as detailed below.

CMP can start at any time between the 11th week before the EWC and the date that the child is born.

Where a baby is born before the 11th week before the EWC, CMP will start from the day that the baby is born.

Qualifying Conditions for CMP - Teachers

To qualify for CMP the teacher must have completed not less than 1 year's continuous service as a teacher. . In Community schools, this includes any schools maintained by Southend-on-Sea Borough Council and additionally, return to employment with any local authority. In Foundation schools it will only apply where the employee returns to work at the school where she was employed when her maternity leave commenced. The teacher is also required to be available, or able (intend), to return to work with her employer for the required period, i.e., at least 13 weeks (including periods of school closure) following her maternity leave.

Employees with less than one year's continuous service (as above) at the 11th week before the EWC have no entitlement to CMP.

11. Repayment of contractual half pay (LGS 'NJC and Teachers Terms and Conditions of Service employees)

Payments in respect of contractual half pay i.e., 12 weeks at 50% are made on the understanding that the employee will return to work with the Trust for the required period. In Community schools, this includes any schools maintained by Southend-on-Sea Borough Council and, additionally, in the case of employees on NJC Terms and Conditions of Service, return to employment with any local authority. In Independent schools it will only apply where the employee returns to work at the school where she was employed when her maternity leave commenced. This period will be at least 3 months in the case of employees on NJC conditions (Green Book) and 13 weeks in the case of teachers subject to Teachers Pay and Conditions of Service (Burgundy Book). This period includes school closure periods.

Where an employee reduces their hours of work upon return to work, e.g., from full time to part time hours, or an existing part-time employee returns on reduced part time hours, their entitlement to retain the 12 weeks at half pay will remain unaffected, provided they return to work for the minimum period of 3 months (13 weeks in the case of teachers subject to School Teachers' Pay and Conditions of Service) based on their contractual hours prior to/during maternity leave. For example, an employee on NJC conditions of service works 37 hours per week before starting maternity leave. When she returns to work, she requests to reduce her working hours to 18.5 hours per week and the request is granted. She will then have to work for at least 6 months in order to retain the half pay element of her maternity pay.

Any leave (parental, unpaid or annual) or Career Break taken at the end of maternity leave would not constitute a return to work. However, if an employee returns to work then takes annual leave within the 3 months/13 weeks this will still constitute a return to work i.e., the 3 month/13 week period will not be extended.

If an employee does not return for a period of at least 3 months/13 weeks, there is no entitlement to the half pay and it will have to be repaid unless there are exceptional circumstances. Payments made to the employee by way of SMP are not repayable.

In exercising the above discretion, HR advice should be taken to ensure consistency. Payment of the half pay in the first instance would only have been made if the employee intended to return to work. Discretion would therefore only be triggered in the light of events occurring/circumstances changing after that declared intention. This could include the personal circumstances of the individual and/or operational requirements of the employing service.

An employee who is unsure whether she will return to work can elect to receive the 12 weeks at half (50%) pay in a lump sum when she returns to work (or at any point whilst she is on maternity leave and decides that she will return). In these cases, an employee must still work for 3 months/13 weeks to retain the 12 weeks at half (50%) pay.

12. Contact during maternity leave

The CEO/Headteacher and employee can make reasonable contact during maternity leave, to discuss such issues as the return to work. This will not constitute 'work' and will not count towards the 10 Keep in Touch, (KIT) days that the employee is allowed to work during her maternity leave. Such contact will not bring the maternity leave period to an end.

The CEO/Headteacher should ensure that the employee is kept up to date regarding any key changes or developments within their workplace whilst on maternity leave e.g., change of manager, change of team structure. Some employees may also wish to receive other information whilst on maternity leave, depending on their personal preference e.g., training opportunities. The manager should, therefore, discuss this with the employee prior to their leave in order to get the balance right between keeping the employee informed whilst not overwhelming her with information whilst on leave.

Employees also have the right, if they so wish, to be kept up to date regarding job vacancies advertised during their leave within the Trust whilst on maternity leave. The manager should therefore clarify with the employee, if she wishes to receive a regular update of Job vacancies within the Trust.

Where the employee wishes to receive an update of Trust vacancies, the CEO/Headteacher should arrange this.

13. Working during maternity leave and 'keep in touch' days

Keep in touch (KIT) days are intended to facilitate a smooth return to work for women returning from maternity leave. Before going on leave, the manager and employee should discuss and agree any voluntary arrangements for keeping in touch during the employee's maternity leave.

Except during the first two weeks after childbirth, an employee can agree to work for the Trust for up to 10 days during either ordinary maternity leave or additional maternity leave without that work bringing the period of her maternity leave to an end and without loss of maternity pay. However, an employee will lose her maternity pay for any week in which she does any further work. Work is defined as any work done under the contract of employment and may include training or any activity undertaken for the purposes of keeping in touch with the workplace. These are known as 'keep in touch' days. Any work carried out on a day shall constitute a whole day's work for these purposes.

In most cases an employee will be paid for any work she does under the contract. Issues to take into account will include the nature of the work and its duration. Maternity pay may be offset for the day against any pay due. These matters should be discussed and clearly agreed before any work is undertaken, and managers should consult their HR provider where consideration is given to pay less than the employee's usual rate of pay. It is expected that in most cases the employee will receive her normal rate of pay for the day worked offset by any maternity payment, even if only part of the day is worked. The Keeping in touch form can be seen in

appendix 4. Alternatively, days off may be given on the employee's return to work subject to agreement between the employee and her manager.

An employee's maternity leave will not be extended due to the fact that she has carried out some work during this period.

The manager cannot insist that an employee carries out any work during this period and the employee is protected from suffering a detriment or being dismissed for refusing to do so. Equally, an employee cannot insist on being given any work to do.

14. Returning to work

The employee will have been formally advised in writing by the Trust of the date on which she is expected to return to work if she takes her full 52-week entitlement to maternity leave. The employee is expected to return on this date unless she notifies her Headteacher/CEO otherwise. If she is unable to attend work at the end of her maternity leave due to sickness or injury, the Trust's normal arrangements for sickness absence will apply. In this case, late return without prior authorisation will be treated as unauthorised absence.

While the employee is under no obligation to do so, it would assist her Headteacher/CEO if she confirms as soon as convenient during her maternity leave that she will be returning to work.

If the employee decides not to return to work after maternity leave, she must give notice of resignation as soon as possible and in accordance with the terms of her contract of employment. If the notice period would expire after maternity leave has ended, the Trust may require the employee to return to work for the remainder of the notice period.

Notice of early return to work

If the employee wishes to return to work earlier than the expected return date, she must give her Headteacher/CEO at least 21 days' notice of her date of early return, preferably in writing. If she fails to do so, her Headteacher/CEO may postpone her return to such a date as will give the Trust 21 days' notice, provided that this is not later than the expected return date.

Altering an early return date

If the employee wishes to alter the date she intends to return where she has already notified her Headteacher/CEO of an early return date, she must give the following notice:

- 21 days before the new date if she wishes to return earlier
- 21 days before the original return date if she wishes to postpone her return

Postponement of return by employee

An employee does not have the right to postpone/extend the return to work date beyond her entitlement to maternity leave. However, 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.

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.

The general right to return

An employee has the 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 (subject to paragraph below). "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 Trust to permit the employee's return to work in her job as defined above, the employee is entitled to be offered suitable alternative employment (where available) provided that the work in the alternative post is:

- suitable to her; and appropriate to the circumstances; and
- 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 were able to return to her original job prior to maternity leave.

Suitable alternative employment may also be offered in exceptional circumstances other than redundancy (e.g., a general reorganisation), which would have occurred if the employee had not been absent, and necessitates a change in the job in which she was employed prior to her absence. The alternative job should be:

- suitable to the employee and appropriate to the circumstances; and
- to the capacity and place in which she is to be employed; and
- on the terms and conditions of employment not less favourable to her than if she had been able to return to the job in which she was originally employed.

See also Section 16 which covers dismissal protection and redundancy.

Postponement of return by the Trust

If the employee wants to return before the end of her maternity leave and does not give 21 days' notice of her intended early return to work, the Trust has the right to postpone her return to ensure 21 days' notice – but any postponement must not extend beyond the end of the maternity leave.

Flexible working

An employee who worked full-time prior to her maternity leave has no automatic right to return to work on a part-time basis or to make other changes to her working patterns.

Employees, who have parental responsibility for a child, are living with the child and are expected to have responsibility for bringing up the child aged 6 or under or a disabled child under 18 have a statutory right to **request** to work flexibly, subject to satisfying certain eligibility criteria. Further details and application forms may be found in the Trust's Flexible Working Policy and Procedure.

Advice and support are available from Human Resources on all aspects of flexible working.

15. Other employment Information

Pension Scheme

Local Government Pension Scheme - Local Government Services (Green Book) employees

If the employee is a member of the Local Government Pension Scheme and intends to return to work, she will pay pension contributions on the pay received for the whole period of OML and the paid period of AML. Although the amount of contributions reflects the actual maternity pay received during the period, the period of paid maternity leave will count in full for pension purposes. If the employee returns to work at the end of the paid maternity leave period, she will recommence paying contributions on her rate of pay upon return and her pensionable service will be regarded as continuous.

If a member goes on maternity leave, they must pay standard pension contributions on any pay they receive, including any statutory maternity pay.

If a member is on *ordinary maternity leave* and is not entitled to receive any pay for all or part of that period of leave then for pension purposes they are treated as if they had paid contributions on the pay, they would have received but for the absence.

If the member is still on leave after the end of the *ordinary maternity leave* and is not receiving any pay then they can pay contributions in respect of the unpaid period (i.e. any unpaid period after the end of the *ordinary maternity leave*). The election to pay those contributions should be made within 30 days of returning to work or ceasing employment (or such longer period as the employer allows). The contributions should be based on the rate of pay on the day before they went onto no pay (including any statutory maternity pay).

Further information and guidance on pensions may be obtained from the organisations shown in Appendix 3.

Teachers' Pension Scheme employees

For employees who are members of the Teachers' Pension Scheme, during any **paid** maternity leave period deductions for pensions contributions based on pay received will continue automatically. These pension contributions cease when the teacher's maternity pay period ceases during AML.

If an employee does not return to work following her period of **paid** maternity leave, she should contact Teachers' Pensions to discuss the options that may be available to her. Contact details are shown in Appendix 3.

Further information and guidance on pensions may be obtained from the organisations shown in Appendix 3.

Continuous Service

Maternity leave will be regarded as continuous service for the purpose of the Trust's sickness and maternity schemes and annual leave.

Training and development

If an employee is undertaking training and development, she may need to discuss how this will be affected by her maternity leave with her manager or CEO/Headteacher. In some circumstances it may be possible to continue with a college course or an employee may need to arrange to have time out until they return to work.

Trade Union subscriptions

If an employee is a member of a Trade Union and her subscription is automatically deducted from her pay this will continue whilst she is on paid maternity leave. These deductions cease when an employee enters a period of unpaid maternity leave. If she subsequently returns to work following a period of unpaid leave the subscriptions deductions will recommence automatically. The employee is advised to discuss the implications on trade union membership with the relevant union.

Sickness absence

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

If the employee is absent from work wholly or partly because of pregnancy during the four weeks before the expected week of childbirth, she must notify her Headteacher in writing of this as soon as reasonably practicable.

Annual leave

Annual leave entitlement will accrue, in accordance with the contract of employment, while the employee is on maternity leave.

Annual leave entitlement is a matter that should form part of planning for an employee's maternity leave. The Headteacher should arrange a meeting with the employee prior to her maternity leave to discuss how this aspect will be treated. The employee's annual leave entitlement should be confirmed in the meeting.

Staff who are employed in schools are generally not able to take leave during school term time and therefore will be unable to take leave immediately before or after maternity unless it coincides with school closure periods. However, their entitlement to leave is met during the first weeks of the school closure periods - in the case of teaching staff this will be the 5.6 week statutory entitlement including statutory bank and public holidays (pro rata). Support staff will be entitled to their pro rata leave and will also be entitled to time off in lieu of bank holidays.

Where the return from maternity leave is so close to the end of the leave year that there is not enough time to take all her annual leave entitlement, an employee must be allowed to carry over any balance of her leave to the following leave year. An employee can be required to take this during the remaining periods of school closure after the annual leave for that leave year has been accommodated. Support staff who work less than 52 weeks per year will be paid for this period unless annual leave is granted during school opening times. For support staff who work 52 weeks per year the paragraph above for support staff will apply with leave being taken either in school closure periods or term time as agreed with the Headteacher/CEO and with no extra payment. For staff who are employed under School Teachers' Pay and Conditions this will be taken in school closure periods (there is no payment).

Public holidays

If public holidays fall during maternity leave the employee will be entitled to any time in lieu that they would have been due had they not been on maternity leave. Any entitlement to days in lieu of public holidays should be added to the annual leave entitlement and arrangements to take the leave should be made as for annual leave.

Teachers do not have a contractual entitlement to paid leave on public or bank holidays. The May Day Bank Holiday is the only bank holiday that falls during term time. For the purposes of annual leave, the May Day Bank Holiday will be classed as a school closure which counts against the statutory annual leave entitlement.

Salary sacrifice schemes

Salary sacrifice schemes will continue to operate during the full period of maternity leave where the employee continues to satisfy the conditions of the scheme. However, employees should be aware that, where such a scheme is in operation, their average weekly earnings calculation for both SMP and CMP will be based on the lower salary and amended benefit provision. The salary sacrifice arrangement could therefore adversely affect the amount of maternity pay or reduce the employee's average weekly earnings to below the lower earnings limit for national insurance contributions, meaning that the employee will not be entitled to maternity pay. Employees are advised to contact their scheme provider for further information regarding suspending or leaving the scheme before or during the maternity leave period.

16. Dismissal Protection

Unfair Dismissal

It is automatically unfair to dismiss a woman where the reason or principal reason for dismissal is because the employee is pregnant or for any other reason connected with her pregnancy. There is no minimum service or working hours' requirement.

Fair Dismissal

An employee may be fairly dismissed for reasons unconnected to her pregnancy or maternity leave where the dismissal would have occurred regardless of the fact that the employee is pregnant/on maternity leave and where a fair process is followed leading to that dismissal

Redundancy

Where a woman cannot be offered her old job back because of redundancy, the Trust is under a statutory duty to offer the employee any suitable available existing alternative employment policy. Failure to do so will render the dismissal automatically unfair. It is essential, therefore, that where restructuring/redundancy arises any employees on maternity leave are included in the consultation/selection process.

Where alternative employment is offered it must be suitable for the employee and appropriate for her to do in the circumstances. It must also be on terms and conditions that are not substantially less favourable than those under her original contract of employment. The offer must be made before the original contract comes to an end and it must take effect immediately on the ending of the original contract, or within 4 weeks.

Where a suitable vacancy does exist, the employee must be offered the post in preference to anyone else who is also at risk of redundancy.

Where it is not possible to offer alternative employment on the above basis the employee will be entitled to a redundancy payment providing, they meet the qualifying criteria.

There may be situations where the employee still wishes to pursue alternative employment options, albeit, at a lower grade (with the Trust's Pay Protection provisions applicable at that time) as an alternative to redundancy but care needs to be taken to ensure that all opportunities for alternative employment at a comparable grade have been explored.

The right to return to work (and related protection against a detriment) comes into existence as soon as the employee provides notification of her pregnancy and intention to take maternity leave.

If an employee's job becomes redundant in her absence the Trust is obliged to offer any available suitable alternative employment, even if she has not yet confirmed her intention to return to work, i.e., the assumption is that an employee will return to work following maternity leave unless she indicates otherwise.

An employee who is made redundant after the 15th week before the EWC retains any entitlement to SMP.

An employee who is to be made redundant and would normally be entitled to contractual maternity pay (CMP) retains the right to receive CMP (based on any payments due to her up to the cessation date of her contract of employment) as if she had been returning to work.

An employee given notice of redundancy during her maternity leave is entitled to receive full pay during her period of notice. However, where this notice period (or part of it) coincides with any paid maternity leave period, the maternity pay due (whether contractual or SMP) is subsumed within the paid notice i.e. the employee's pay should not exceed their normal full pay whilst under notice.

Where the employee's contract of employment ceases before all SMP payments are made, the Trust is responsible (under SMP regulations) for paying any remaining weeks of SMP payments due.

An employee will be entitled to a redundancy payment only if she meets the service qualifications for such payments.

17. Other leave associated with maternity

Paternity and Maternity Support Leave

Paid paternity leave is available for working fathers/partners as well as adoptive fathers/partners. Further details may be found in the Trust's policy for Paternity and Maternity Support leave, along with details for the leave which may be available to nominated carers.

Shared Parental Leave

An employee may be able to end their maternity or adoption leave to allow their partner to take time off to care. Further details can be found in the Shared Parental Leave Policy.

Maternity Leave Notification

This completed form notifies the CEO/Headteacher of your intention to take Maternity Leave and you must return it to the School Office Manager/HR as soon as is reasonably practicable This must be forwarded by the Trust to Schools Payroll Services no later than 28 days before the commencement of your leave. Please complete your details below, decide the Contractual Options you wish to take and delete those not applicable, signing both parts of the form to confirm your information and decisions. Schools Payroll Services will determine your entitlements to SMP and Contractual Maternity Pay.

To: The CEO/Headteacher (name of school/team): _____

Your full name (capitals please): _____

Job title: _____ Payroll Number: _____

Department and/or Team: _____

Line manager: _____

Home Address: _____

Expected delivery date: _____

I intend to take maternity leave commencing on: _____

Signed: _____ Date: _____

(continued)

CONTRACTUAL OPTIONS:
Please DELETE those not applicable

- (i) I elect to have my contractual maternity pay (12 weeks at half pay) paid to me over 12 weeks
- (ii) I elect to have my contractual maternity pay (12 weeks at half pay) paid to me spread over 33 Weeks.
- (iii) I elect to have my contractual maternity pay withheld until such time as I have completed 3 months of normal duties (based on my contractual hours prior to/during maternity leave) from the date of my return to work.

I understand and agree, that if I do not return to work in the Trust, or in the case of maintained schools, any school or local authority, recognised for this purpose, for at least 3 months (based on my contractual hours prior to/during maternity leave), I am obliged to repay to my employer the 12 weeks contractual half pay received, or a proportion of this as determined by my employer. I also agree to refund to my employer the monetary value of any annual leave I have taken which is in excess of the annual leave I have accrued up to the date of termination.

Signed: _____ Date: _____

Please attach your **MAT B1 form** and (if applicable) **Local Government Pension Scheme** (Appendix 2) form and return them all to the CEO/Headteacher/school office/HR enveloped "STAFF CONFIDENTIAL".

**Local Government Pension Scheme
Declaration Regarding Unpaid Additional Maternity Leave of
Absence**

Please complete your details below, decide the options relating to payment of pension contributions for period of maternity absence (Regulations 17&18 of Local Government Pension Scheme Regulations 1997) you wish to take and delete those not applicable, signing the form to confirm your decisions. The completed form will be forwarded by the Trust to Payroll Services at the Civic Centre who will action your decisions as appropriate and advise of the amount due.

Name of Trust/School: _____

Your full name (capitals please): _____

Job title: _____ Payroll Number: _____

**PAYMENT OF PENSION CONTRIBUTION OPTIONS:
Please COMPLETE Declaration A or B**

A. Yes, I agree to pay Pension contributions for the maximum period of my leave of absence without pay. (If agreeing option A, delete the payment method that you wish to not apply and delete option B)

I wish payment to be made: -

- i) By a lump sum remittance to the Borough Council at the conclusion of my absence from my first salary.
- ii) By a deduction from salary, after resumption of duty, over a suggested period of _____ months.

B. No, I do not wish to pay Pension contributions for the period of my leave of absence without pay exceeding the first 30 days.
(If agreeing option B, delete option A)

If opting for Option B, I understand that the unpaid period after 30 days will not count as pensionable service.

(continued)

(Please note that if you are still on leave after the end of the *ordinary maternity leave* and you are not receiving any pay then you can pay contributions in respect of the unpaid period (i.e. any unpaid period after the end of the *ordinary maternity leave*). The election to pay those contributions **should be made within 30 days of returning to work or ceasing employment** (or such longer period as the employer allows). The contributions should be based on the rate of pay on the day before you went onto no pay (including any statutory maternity pay). Further information and guidance on pensions may be obtained from the list of organisations shown in Appendix 3.)

Signed: _____ Date: _____

Please attach your **Maternity Pay Provision Form** and **MAT B1 form** and return them all to the CEO/Headteacher/school office enveloped "STAFF CONFIDENTIAL".

Useful sources of help and information

Maternity rights in the workplace

For tailored information on maternity rights visit the website www.direct.gov.uk/employment .

Department for Work and Pensions

For further information on Statutory Maternity Pay and details of other benefits that may be available visit their website www.dwp.gov.uk .

Working families

This organisation provides advice and information on work-life balance. Visit their website www.workingfamilies.org.uk for further information.

Local Government Pension Scheme

If you require any information about your pension or have any concerns about your membership or benefits you should contact your local pension fund administrator.

Essex County Council
Pensions Services
County Hall
Chelmsford
Essex CM11 1LX

Or contact the Member Service Team on 01245 431912

You may also visit their website www.essexcc.gov.uk/pensions

Further information can be found on the Local Government Pensions website www.lgps.org.uk .

Teachers' Pensions

Teachers' Pensions administers the pension scheme on behalf of the DfE.

If you require any information about your pension please contact:

Capita Teachers' Pensions
Mowden Hall
Darlington
DL3 9EE
Tel: 0845 6066 166

Further information can be found on the Teachers' Pensions website www.teacherspensions.co.uk .

HM Revenue & Customs

HM Revenue & Customs have responsibility for the administration of income tax and national insurance contributions.

For further information visit their website www.hmrc.gov.uk where you will also find details of your nearest local office.

National Childbirth Trust

The trust is a charity for pregnancy, birth and parenting. Further information can be found on their website www.nct.org.uk .

PAYMENT FOR 'KEEPING IN TOUCH DAYS'**AUTHORITY FOR PAYMENT FORM**

Members of staff who are on maternity or adoption leave, may by mutual agreement with their Line Manager/CEO/Headteacher can come into work for up to 10 days during their leave (with the exception of the first two weeks after the baby is born), without it affecting their maternity or adoption pay. This form should be used to claim payment for such days worked.

Section 1. To be completed by the member of staff	
Name:	Department/School:
Payroll ID number:	Number of days/hours* worked:
Date(s) worked:	Total number of 'KIT' days worked to date:
From: To:	
Signed:	Date:
Section 2. To be completed by Line Manager/Headteacher (or nominee)	
I confirm that the above named member of staff has worked the number of hours stated above, and authorise payment to be made at the appropriate rate.	
Signed:	Date:
Name:	Extension Number:

Trust/Schools may return their form directly to Payroll, Civic Centre, Victoria Avenue, Southend on Sea, Essex, SS2 6ER.