



# Employment Guide: Statutory Maternity Leave

Note: This Employment Guide is intended to provide general guidance only. It does not constitute legal advice and should not be relied upon as doing so.

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## Overview

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The Maternity Leave and Adoption Leave (Guernsey) Ordinance, 2016, in force from 1 April 2016, gives the following statutory rights to pregnant employees whose due date is 7 August 2016 or later:

- basic leave of 12 weeks
- an enhanced period of 26 weeks leave for employees who have worked continuously for the same employer for at least 15 months
- a period of two weeks compulsory statutory leave (which forms part of the basic maternity leave)
- the right to return to her original job or a suitable alternative
- up to ten days keeping in touch days
- the right to time off for ante-natal appointments during working hours

In addition the partner of an employee who is entitled to basic maternity leave has a right to take two weeks maternity support leave, subject to certain conditions (see below).

## Basic Maternity Leave

### What is it?

An employee who is pregnant has the right to 12 weeks' basic maternity leave, regardless of her length of service or hours of work, if at least three months before her due date (or as soon as reasonably possible after that date) she notifies her employer in writing of:

- her pregnancy
- her due date
- the date she intends to start her maternity leave (which can be no earlier than eight weeks before her due date)
- the date she intends her maternity leave to end

In addition, if requested by her employer, the employee must provide a certificate from her doctor or midwife confirming her pregnancy and due date.

### **When does basic maternity leave start?**

The employee's period of maternity leave starts on the earliest of the following:

- the date notified to the employer in writing
- if, after notifying the employer, the employee asks to alter the starting date and the employer agrees to this
- the first day after the beginning of the sixth week before her due date if she is absent from work due to the pregnancy (i.e. pregnancy related illness)
- the day on which childbirth occurs

### **How long does the basic maternity leave last?**

The basic maternity leave lasts for 12 weeks or until the end of compulsory maternity leave.

## **Additional Maternity Leave**

### **What is it?**

A pregnant employee who has been continuously employed for fifteen months or more, at the beginning of the eleventh week before her due date, is entitled to an enhanced period of maternity leave.

### **When does the leave start and how long does it last?**

For those employees who qualify the leave runs for a period of 26 weeks starting with the date the basic maternity leave commenced.

### **Can an employer contact the employee to request confirmation of her return?**

An employer can ask for confirmation of the date of childbirth and whether the employee intends to return to work at the end of the additional maternity leave. This request can be made no earlier than 21 days before the end of basic maternity leave and must be made in writing. It must explain how the employee can work out when her additional maternity leave will end and that the employee may lose protection from unfair dismissal, discrimination or other detriment if she fails to respond within 21 days of receiving the request.

## **Compulsory Maternity Leave**

### **What is it?**

The primary intention of this leave is to protect the health and wellbeing of the mother. It is a period of two weeks from childbirth during which an employer must not permit an employee to work. The onus is placed on the employer to ensure that an employee does not work and a breach amounts to an offence with a maximum penalty of Level 5 on the Uniform Scale of Fines. The period of compulsory maternity leave forms part of the period of basic maternity leave.

## **Return after Maternity Leave**

### **Right to Return to Her Original Job or a Suitable Alternative**

#### **What does this mean?**

An employee returning from maternity leave is entitled to return to the job in which she was employed before her absence. The employee's seniority, pension rights and similar rights applying before her absence should apply on her return and her terms and conditions (including pay) should be no less favourable.

Where it is not reasonably practicable for an employer to permit the employee to return to her old job the employer can offer an appropriate and suitable alternative role.

#### **What happens if an employee wishes to return to work earlier than the end of her basic or additional maternity leave?**

The employee would need to give at least 21 days' notice of her return date. An employer can postpone the employee's return by 21 days if this notice is not given unless the maternity leave has come to an end.

## **Redundancy**

#### **What protection is there for an employee who is selected for redundancy on the grounds of pregnancy or in connection with maternity, maternity support leave or time off for ante-natal appointments?**

It is automatically unfair for an employee to be selected for redundancy on the above grounds. Employers should consider their redundancy procedures carefully and give due regard to the Code of Practice on Handling Redundancy.

#### **What happens if there is a redundancy situation during maternity leave?**

The right to return will not apply if the role is made redundant during an employee's maternity leave. However, if a redundancy situation arises, an employee on basic or additional maternity leave is entitled to be offered any suitable vacancy. This is effective from the termination of her previous contract and her continuity of service will be preserved. The work must be suitable and appropriate to her circumstances and the conditions must not be substantially less favourable than the previous contract.

## **Is Maternity Leave Paid or Unpaid?**

There is no statutory obligation on employers to provide paid maternity leave and it is a decision for the employer to make as to whether to provide for paid maternity leave. However, the Conditions of Employment (Guernsey) Law, 1985 (as amended) requires that the terms and conditions must include a section on maternity leave, maternity pay and the employee's right to return to her job.

Employees may be able to claim maternity benefit and further information is available by contacting Social Security.<sup>1</sup>

## Keeping in Touch Days (KIT)

### What is it?

An employee can work for her employer for a period of up to ten days during maternity leave (with the exception of the compulsory maternity leave) without altering or bringing the period of maternity leave to an end. This return can be for one continuous period or a series of separate days providing this does not exceed ten days in total. The employee should give one month's notice (or such notice that is reasonably possible) to her employer of return for KIT days. She is entitled to the same rate of pay and allowances that she was receiving prior to taking maternity leave.

## Maternity Support Leave

### What is it and who can take this leave?

Maternity support leave is a period of two weeks which is available to the partner of an employee who is entitled to basic maternity leave. It starts on the day the child is born or on the discharge from hospital of mother or baby (or mother and baby). To qualify, the partner must have 15 months continuous service at the beginning of the eleventh week before the employee's due date. 'Partner' is defined as the birth mother's spouse or co-habiting partner unless she nominates another person in writing.

## Time off for Ante-Natal Appointments

### What does this mean in practice?

An employee is entitled to take time off during working hours for ante-natal care. This includes medical examinations, appointments with a midwife, ante-natal classes or parent craft classes. To qualify the appointment must be on the advice of a doctor, midwife, health visitor or district or community nurse.

If requested by her employer, the employee must provide a certificate from a doctor or midwife confirming the pregnancy and an appointment card or document showing the appointment has been made. This does not apply to the first appointment.

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<sup>1</sup> Social Security has been directed to report back to the States with regard to proposal for funding changes to social security benefits

## Protection against unfair dismissal, sex discrimination

### What does this mean?

Employees have the right not to be dismissed or on the grounds of pregnancy or any reason connected to her pregnancy and any dismissal on these grounds would be automatically unfair. In addition, under the Ordinance, it is considered to be automatically unfair to dismiss an employee if:

- the employee had given birth after 24 weeks of pregnancy
- the employee took or sought to take maternity leave, maternity support leave or time off for ante natal appointments

It is unlawful to discriminate against a person on the grounds of sex, marital status or gender reassignment. The Ordinance also makes it unlawful to discriminate against a woman who:

- has given birth after 24 weeks of pregnancy
- has given notice of the intention to be absent from work on maternity leave
- is returning to work after maternity leave
- where she gives notice of her intention to attend an ante-natal appointment (and is entitled to take time off to attend that appointment)

An employee also has the right not to suffer a detriment for taking, or seeking to take, maternity support leave or adoption support leave.

### Checklist for Employer's Maternity Policy

Employers are advised to have a maternity policy which meets the statutory requirements of the Ordinance as follows:

- check the maternity policy to ensure that leave entitlements meet the proposed statutory entitlements:
  - two weeks compulsory leave after childbirth
  - up to 12 weeks basic leave (which is inclusive of compulsory leave)
  - additional leave which would bring the total leave to 26 weeks (for employees with more than 15 months service at the 11<sup>th</sup> week before their due date)
- state the employee's right to return to her original job or a suitable alternative
- consider adding a requirement to provide a certificate of pregnancy and proof of ante-natal appointments
- ensure that notification periods for employees and response times for employers are noted within the policy and comply with the Ordinance
- ensure that time off for ante-natal visits is provided for
- provide for "keeping in touch" (KIT) days

- check or create a redundancy policy to ensure that employees on maternity leave are treated in accordance with the Ordinance
- check or create maternity support leave provisions to ensure they comply with the Ordinance
  - two weeks leave for employees with more than 15 months service at the 11<sup>th</sup> week before employee's due date
- where partners are seeking to take maternity support leave consider including a requirement in the policy for written confirmation of the nomination from the birth mother
- train line managers to ensure that they are aware of the provisions of the Ordinance and do not apply less favourable treatment to any employee seeking to exercise their rights

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## Contact Information

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### For further advice

- Check [www.gov.gg/employmentrelations](http://www.gov.gg/employmentrelations)
- Email [employmentrelations@gov.gg](mailto:employmentrelations@gov.gg)
- **Contact the Employment Relations Service**, Edward T Wheadon House, Le Truchot, St Peter Port, Guernsey, GY1 3WH
- **Call us on** 01481 732583