



Maternity Policy and Procedures

Date published	October 2021
Date adopted by School Governing Body	6 th June 2022

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In developing this policy for publication, NYHR has engaged and consulted with Unions and Professional Associations recognised for schools within the City of York.



1.0 Introduction

- 1.1 Government legislation sets down the minimum absence and pay entitlements for employees who are eligible for maternity leave and pay. In addition, the terms and conditions for teaching and support staff provide additional entitlements which are included within this policy and procedure.
- 1.2 This school is committed to promoting equality of opportunity for all employees and to avoid unlawful discrimination in employment. It is the school's intention that this policy will be fairly applied to ensure employees will not be discriminated against on the basis of their protected characteristics and, as such, will not impact disproportionately on any group or individual.

2.0 Scope

- 2.1 This policy applies to all expectant employees employed by the school regardless of the number of hours worked per week.
- 2.2 This maternity scheme also applies to employees in the unhappy event of their baby being stillborn after 24 weeks pregnancy.

3.0 Principles

- 3.1 This policy is based on the following principles:
- Compliance with the relevant equalities legislation, Maternity and Parental Leave etc. Regulations 1999 and Maternity and Parental Leave (amendment) Regulations 2002;
 - Compliance with equality principles and legislation;
 - Fair and consistent application across the school.

4.0 Initial Obligations on the Employee

- 4.1 Pregnant employees must provide written notification to the Headteacher by the 15th week before the baby is due, of when their maternity leave/pay is to start. Employees can change their mind about the date they wish Statutory Maternity Pay (SMP) to start but must still give at least 28 days' notice before their absence begins.
- 4.2 The written notification must include:
- (i) that they are pregnant;
 - (ii) the expected week of childbirth (EWC);
 - (iii) the date of the beginning of their absence;



(iv) whether it is their intention to return to work following maternity leave.

- 4.3 This notification must be accompanied by a certificate from a registered medical practitioner or a registered midwife stating the expected week of childbirth (form MAT B1). The earliest this certificate may be issued is 20 weeks before the week in which the baby is due. The school should receive the original MAT B1 from the employee but it is acceptable for a copy to be provided to the school's payroll provider.
- 4.4 Within 28 days of receiving the employee's notice the Headteacher must inform the employee, in writing, of their expected date of return assuming they will take their full entitlement. A sample letter for this purpose can be found in appendix A.

5. Health and Wellbeing

Antenatal Care

- 5.1 Pregnant employees have the right to paid time off to attend for antenatal care. Requests for time off to attend for antenatal care must be made in writing and include evidence of the appointment. Headteachers may ask employees to rearrange antenatal appointments for a more convenient time, but only if this is reasonable. When considering what is convenient, both the needs of the employee and the operational requirements of the school will be taken into account.

Health and Safety

- 5.2 Full consideration will be given to any health and safety implications for pregnant or breast-feeding employees identified through workplace risk assessments. An individual risk assessment (for new and expectant mothers) must take place and assess the job and working environment of the employee, examining any risks that might affect the employee or their unborn child. The risk assessment must be documented and a copy given to the employee. If any risks are identified, reasonable adjustments must be made which must be discussed and documented.
- 5.3 If the risks identified cannot be managed by making reasonable adjustments, and no suitable alternative work is available, the employer must suspend the employee on full pay as long as necessary to protect the health, safety and wellbeing of the employee and baby. In such cases, the school may take advice from its Occupational Health and/or Health and Safety advisors.



6.0 Maternity Leave Entitlement

- 6.1 All pregnant employees are entitled to take up to one year's (52 weeks) maternity leave, regardless of length of service.
- 6.2 Maternity leave will commence no earlier than 11 weeks before the expected week of childbirth or the day after childbirth if that is earlier.
- 6.3 For support staff, where an employee has more than one continuous service date i.e. they are a multiple post holder who started the posts on different dates, the continuous service date for maternity leave calculation purposes will be the earliest of the continuous service dates.
- 6.4 For teaching staff, entitlement to occupational maternity entitlements will be based on their continuous teaching service in line with the Burgundy Book.
- 6.5 An employee's maternity leave will start automatically if they are absent from work for a pregnancy related illness during the four weeks before the start of their EWC, regardless of when they have said they actually want their maternity leave to start.
- 6.6 Employees are obliged to take a minimum of 2 weeks' maternity leave as it is unlawful to allow an employee to return to work within two weeks of childbirth. This is called compulsory maternity leave and applies whether the baby was born living or is stillborn after 24 weeks of pregnancy. Headteachers must refuse any request to return to work within two weeks of childbirth.

7.0 Maternity Pay

Statutory Maternity Pay

- 7.1 Employees who have less than 1 year's continuous local government service at the beginning of the 11th week before the EWC will be paid Statutory Maternity Pay (SMP) for 39 weeks, at the applicable rates, subject to meeting SMP qualification criteria.
- 7.2 To qualify for SMP, the employee must:
- Have 26 weeks' continuous service with the employer assessed at the 15th week before the week the baby is due.
 - Have average weekly earnings in the eight weeks up to and including the qualifying week at or above the lower earnings limit for the payment of National Insurance contributions.



- 7.3 SMP is payable for 39 weeks, the first six weeks of which will be paid at 90% of average weekly earnings and the remainder at the lower statutory level (or 90% of the average weekly earnings if this is less than the lower level).

Occupational Maternity Pay

- 7.4 Employees who have completed 1 year's continuous local government service at the 11th week before the EWC will be paid Statutory Maternity Pay (SMP) for 39 weeks, at the applicable rates subject to meeting SMP qualification criteria, and are also entitled to receive the following Occupational Maternity Pay:
- (i) **Support staff** – 6 weeks at 90% of a week's pay offset against payments made by way of SMP or Maternity Allowance (MA) for employees not eligible for SMP.
Teaching staff – 4 weeks at 100% and 2 weeks at 90% of a week's pay offset against payments made by way of SMP or Maternity Allowance (MA) for employees not eligible for SMP.
 - (ii) **All staff** – 12 weeks at half pay in addition to SMP where the employee has confirmed their intention to return to work for the required period following maternity leave. The combined payment of SMP and OMP (Occupational Maternity Pay) will not exceed normal basic pay. As an alternative, the same sum (normally equivalent to 6 weeks full pay) may be spread over the following 20 weeks. For example, 3/10th's pay for the following 20 weeks of the ordinary maternity leave period. The final option is for the employee to request that their OMP is held over until after they have returned to work and fulfilled the obligations associated with OMP.
- 7.5 For employees not intending to return to work, payments during the 33 weeks subsequent to (i) above will be the employee's basic entitlement to SMP only. This will be either the current lower rate of SMP or 90% of average earnings based on the qualifying weeks, whichever is the lower amount.
- 7.6 Following 39 weeks SMP all absence on maternity leave, will be unpaid.
- 7.7 Payments made by the school during maternity leave under (ii) above, will be made on the understanding that the employee will return to local Government employment for a period of at least three months and, in the event of them not doing so, they will refund all the monies paid. (Please note that if an employee leaves part way through their obligation period the full amount is still repayable and is not pro rata down). If an employee returns to work on reduced hours, they must remain in local Government employment proportionally longer than the three months described above i.e. a full time employee returning to work half time will be required to return to work for six months etc. Payments made to the employee by way of SMP are not refundable. If an employee does not receive OMP payments under (ii) above, as there was no written undertaking



that they were going to return to work, and they subsequently return to work for three months (pro rata as above), the payment will be made in a lump sum after this time.

- 7.8 Employees who do not qualify for SMP may qualify for Maternity Allowance (MA). They will be sent an SMP1 form by the school's payroll provider which explains why they do not qualify for SMP.
- 7.9 Maternity pay is subject to deductions for income tax, National Insurance and pension. Employees will continue to pay pension contributions at a reduced rate whilst they are receiving maternity pay. There will however be a break in their pensionable service for periods of unpaid maternity leave.
- 7.10 Under the terms of the Local Government Pension Scheme, members may elect to buy back this period and should make this request within 30 days of returning to work. This request should be submitted in writing to the employee's line manager or the school's payroll provider.
- 7.11 Under the terms of the Teachers' Pension Scheme, members are not able to buy back periods of unpaid maternity leave.

8.0 Right to return to work

- 8.1 Subject to the provisions below, employees have the right to return to the job in which they were employed under their original contract of employment and on terms and conditions not less favourable than those which would have been applicable to them if they had not been absent. "Job", for this purpose, means the nature of the work which they were employed to do and the capacity and place in which they were so employed.
- 8.2 Where it is not practicable by reason of redundancy for the school to permit the employee to return to work in their job as defined above, the employee is entitled to be offered a suitable alternative vacancy where one exists, provided that the work to be done in that post is suitable for them and appropriate to the circumstances, and that the capacity and place in which they are to be employed and their terms and conditions of employment are not substantially less favourable to them than if they had been able to return to the job in which they were originally employed.
- 8.3 Suitable alternative employment may also be offered in exceptional circumstances other than redundancy e.g. a general re-organisation, which would have occurred if the employee had not been absent, necessitating a change in the job in which they were employed prior to their absence. The work to be done, and terms and conditions of employment, should not be less favourable to the employee than if they had been able to return to the job in which they were originally employed.



9. Exercise of the right to return to work

- 9.1 Employees wishing to return earlier than 52 weeks must provide at least eight weeks' notice (56 days) of the date of their early return. If an employee wishes to change that date to an earlier date, they must give at least eight weeks' notice of the earlier date. However, if an employee wishes to change the date of their early return from maternity leave to a **later date**, they must give at least eight weeks' notice ending with the **original date** of their early return. In a case where an employee fails to provide the required eight weeks' notice, their return to work may be postponed by up to eight weeks (but not beyond the end of their maternity leave period).
- 9.2 Where an employee is unable to return on the expected day due to sickness, the absence will be covered by the school's sickness scheme in the normal way.
- 9.3 For an employee where, because of an interruption of work (whether due to industrial action or some other reason), it is unreasonable to expect a return on the due date, they may instead return when work resumes, or as soon as reasonably practicable thereafter.
- 9.4 Employees wishing to change their working pattern or hours, either temporarily or permanently, on their return to work should discuss this with the Headteacher as soon as practicable. All employees, with qualifying service, have a statutory right to request flexible working. Further information is available in the school's Flexible Working Procedure.

10. Contact during Maternity Leave

- 10.1 Headteachers and employees are entitled to make reasonable contact with each other while the employee is on maternity leave. For example, a Headteacher may contact the employee to discuss whether or not their planned date of return to work has changed or is likely to do so, or to discuss any flexible working arrangements that would make their return to work easier.
- 10.2 Headteachers/line managers must keep in regular contact with employees when they are on maternity leave. The nature and regularity of such contact should be agreed between the parties before the commencement of maternity leave and should not be excessive or intrusive.
- 10.3 Headteachers must also inform employees who are on maternity leave of any proposed significant changes to the staffing structure of the school or how the work is arranged/carried out.



- 10.4 Employees may work during their maternity leave for up to ten days (known as 'keeping-in-touch' days) without bringing their maternity leave to an end. During such work the employee will receive their contractual hourly rate minus any maternity pay they may be in receipt of. Both the Headteacher and the employee must agree if a KIT day is to be worked. The employee cannot be required to work any KIT days if they do not wish.

11. Relationship with Sickness and Annual Leave

- 11.1 Maternity leave will not be treated as sick leave and will not therefore be taken into account for the calculation of the period of entitlement to sickness leave.
- 11.2 Paid maternity leave and authorised unpaid maternity leave shall be regarded as continuous service for the purposes of the sickness scheme and annual leave.
- 11.3 Normal restrictions apply to the carrying over of annual leave from one leave year to the next. Leave may only be carried over where it has not been possible for it to be taken for an unforeseeable reason. Employees are not able to carry over annual leave from one year to the next simply because being on maternity leave prevented them from taking it. Employees and line managers should discuss annual leave arrangements at an early stage to determine the arrangement that will apply.
- 11.4 In addition to continuing to accrue annual leave throughout the entirety of their maternity leave, support staff are also entitled to take compensatory time off for any public holiday that falls during their period of maternity leave, either before or after their maternity leave. These may only be carried forward from one leave year to the next where it has not been possible for them to be taken for an unforeseeable reason. Employees and line managers should discuss and plan for compensatory time off for public holidays at an early stage.
- 11.5 Teaching staff have a statutory entitlement to 5.6 weeks paid leave per annum which should be taken either before or after the maternity leave period during school closure periods. 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 outstanding annual leave, the teacher will be allowed to carry over any balance to be taken during school closure periods within the following leave year.



APPENDIX A - Model letter for line managers to acknowledge notification of maternity leave.

Date:

Dear [*name of employee*],

Congratulations and thank you for telling me about your pregnancy and the date that your baby is due. I am writing to you about your maternity leave and pay.

As we have discussed, you are eligible to 52 weeks' maternity leave.

Given your chosen start date of [*insert date*], your maternity leave will end on [*insert date*].

If you want to change the date your leave starts you must, if at all possible, tell me at least 28 days before your proposed new start date or 28 days before [*insert date leave starts*] (your original start date), whichever is sooner.

If you decide to return to work before [*insert date leave ends*], you must give me at least eight weeks (56 days) notice.

As we discussed, you have/have not [*delete as appropriate*] declared in writing that you intend to return to work. This, coupled with your length of service entitles you to [*delete as appropriate*]:

Statutory Maternity Pay (SMP) only, subject to qualification.

A four-week period of full pay, plus

Statutory Maternity Pay (SMP) subject to qualification + 12 weeks (84 days) half pay.

If you decide not to return to work you must still give me proper notice. Your decision will not affect your entitlement to SMP but it will mean that you are required to re-pay any half pay that you received.

If you have any questions about any aspect of your maternity entitlement please do not hesitate to get in touch with me. I wish you well.

Yours sincerely,