



HR Frequently Asked Questions – Maternity Leave:

Q. What is the minimum provision I have to make for maternity leave?

Regardless of her length of service, your pregnant employee is entitled to take 26 weeks' ordinary maternity leave followed immediately by 26 weeks' additional maternity leave.

In order to take advantage of this right to maternity leave, your employee must notify you by the end of the 15th week before her expected week of childbirth of her pregnancy. She must also state her expected week of childbirth and the date on which she intends to start her maternity leave.

Q. Can your employee change the date on which she starts her maternity leave, even if she told you a different date previously?

Your employee has a right to change her mind about the start date as long as she notifies you of this at least 28 days before either the new date or the original date, depending on which falls earlier.

Q. How do I, the employer, determine an employee's right to statutory maternity pay?

If your employee is pregnant or has given birth, she is entitled to statutory maternity pay as long as her average weekly earnings are at least the lower earnings limit for national insurance purposes.

She must also have been continuously employed for a minimum of 26 weeks into the qualifying week (which is the 15th week before the expected week of childbirth) and must have stopped working for the employer paying her statutory maternity pay. Statutory maternity pay is payable for up to 39 weeks.

Q. Can my employee, who has not been employed by me for 26 weeks by the qualifying week, claim any financial assistance throughout her maternity leave?

If your employee has insufficient service to qualify for statutory maternity pay (SMP), she may still qualify for maternity allowance, paid by the Government. You will need to complete an SMP1 form for your employee who may then approach Job Centre Plus for more information. As general guidance, your employee may be entitled to Maternity Allowance if she has worked for any 26 weeks in the 66-week period before her baby was due. The 26 weeks do not have to be consecutive and any jobs in which she earned at least £30 per week can be counted as well as any weeks of self-employment. Maternity allowance is ordinarily paid for a maximum of 39 weeks.

Q. I have a suitably qualified employee who is about to go on maternity leave and yet wishes to apply for an internal vacancy. Do I have to consider her for the position even though she may not be able to start the new job for a whole year?

This is dangerous ground for employers. If you have a suitably qualified employee, who is about to go on maternity leave, but still wishes to apply for a job opening, she is entitled to be considered for the position even though she may not be able to start for a whole year. If you do not consider her for the post on the grounds of her imminent maternity leave, this would amount to an act of sex discrimination and you could be taken to employment tribunal.