

## MATERNITY POLICY

### 1. Purpose

- 1.1 This policy sets out the rights and entitlements of employees who are pregnant and explains their entitlement to both statutory and additional maternity benefits (pay and leave).
- 1.2 No employee will be treated less favourably or dismissed because she is pregnant, absent on maternity leave, because she is breastfeeding or for any other reason connected with her pregnancy or maternity.
- 1.3 This policy sets out the requirements in relation to notification throughout the period from notification of pregnancy through to return to work.

### 2. Scope

- 2.1 This policy outlines the maternity rights, entitlements and obligations of employees and covers all categories of female employee, regardless of hours worked, length of service and the contract on which they are employed.
- 2.2 There are no qualifying criteria for maternity leave and this is a day one right. All employees are entitled to 26 weeks Ordinary Maternity Leave (OML), and a further 26 weeks Additional Maternity Leave (AML).

### 3. Definitions

- **Expected week of childbirth (EWC)** means the week, starting on a Sunday, during which the employee's doctor or midwife expects her to give birth.
- **Qualifying week** means the 15<sup>th</sup> week before the expected week of childbirth.
- **Compulsory Maternity Leave (CML)** means the 2 weeks from the date of childbirth and is counted as part of the OML period. By law, women are not allowed to work for these 2 weeks.
- **Ordinary Maternity Leave (OML)** lasts for 26 weeks, which may start any time from the 11<sup>th</sup> week before the Expected Week of Childbirth (EWC). All employees are entitled to OML.
- **Additional Maternity Leave (AML)** is available to all employees and continues from the day after the last day of OML for a further 26 weeks.
- **Average weekly earnings (AWE)** are calculated by averaging the employee's weekly pay in the period between the last normal pay day on or before the Saturday at the end of the qualifying week and the last normal pay at least 8 weeks before that date.
- **Keeping In Touch days (KIT)** Employees may, by agreement with their manager, do up to 10 days paid work under their contract of employment during the maternity leave period. Payment for KIT days will be dependent on when the days are taken. If a KIT day is taken during paid maternity leave, then payment will be the difference between the daily rate of maternity pay and the employee's actual daily rate of pay. If a KIT day is taken during a period of unpaid maternity leave then the employee shall receive their actual daily rate of pay. KIT days are based on a full or half days.
- **Occupational Maternity Pay (OMP)**. Additional pay, only payable to employees meeting the qualifying criteria.
- **Statutory Maternity Pay (SMP)** is the rate set by the government, subject to employees meeting the qualifying criteria.

#### 4. Key responsibilities

- 4.1 Managers should ensure that a pregnancy risk assessment for a new and expectant mother is carried out and appropriate actions are taken if required.
- 4.2 Employees must comply with this policy and the requirements for notification of and taking maternity leave. To support an employee's wellbeing, expectant mothers must inform the school / academy (in confidence if required) as soon as they know that they are pregnant.

#### 5. Rights of pregnant employees

- 5.1 All pregnant employees irrespective of hours worked and length of service have the following rights:
  - to compulsory maternity leave of 2 weeks
  - to Ordinary Maternity Leave (OML) of 26 weeks
  - to Additional Maternity Leave (AML) of 26 weeks
  - to return to work to the same or suitable job
  - to protection against discrimination, including victimisation, on the grounds of pregnancy, childbirth or maternity
  - to protection against dismissal for reasons wholly or partly relating to pregnancy, childbirth or maternity
  - to time off for antenatal care (on production of evidence of appointments if required)

#### 6. Time off for antenatal care – expectant mothers

- 6.1 Pregnant employees are entitled to take reasonable paid time off during normal working hours to receive antenatal care, although wherever possible appointments should be arranged at either the start or end of the working day.
- 6.2 Antenatal care includes appointments with a registered GP, registered midwife, registered nurse, hospital clinics, Parent craft and NHS classes.
- 6.3 Employees must advise their manager of the date and length of the absence as far in advance of the appointment as possible. Employees may be asked to produce the appointment card, or other confirmation of the appointment if requested to do so.
- 6.4 Normal salary will be paid for attendance at authorised antenatal appointments, including any time spent travelling to and from the appointment and employees will not be required to make the time up.

#### 7. Time off for antenatal care – others in a qualifying relationship

- 7.1 An employee who has a qualifying relationship with a pregnant woman or her expected child is entitled to take paid time off during working hours in order that they may accompany the woman when she attends antenatal care. Details on a Qualifying relationship are found at appendix 1.
- 7.2 Employees must advise their manager of the date and length of the absence as far in advance of the antenatal appointment as possible stating that:
  - the employee has a qualifying relationship with a pregnant woman or her expected child,
  - the time off is to be used to attend antenatal care
  - the appointment is made on the advice of a registered medical practitioner, registered midwife or registered nurse, and
  - the date and time of the appointment.

- 7.3 A qualifying employee is entitled to take paid time off to attend antenatal care on no more than two occasions in relation to a particular pregnancy. On each of those occasions, the maximum working time that may be taken is 6.5 hours. Any additional time granted by managers over and above the two occasions will be unpaid.

## 8. New and expectant mothers risk assessment

- 8.1 The Trust has a duty to take care of the health and safety of all employees and is required to carry out a risk assessment to assess the workplace risks to women who are pregnant
- 8.2 The risk assessment will be carried out by a responsible person within the school / academy.
- 8.3 If the risk assessment reveals that the employee would be exposed to health hazards in carrying out her normal job duties, reasonable steps will be taken to avoid these risks, such as altering the employee's working conditions. In some cases, this may mean offering the employee suitable alternative work (if available) on terms and conditions that are not substantially less favourable.
- 8.4 If it is not possible to alter the employee's working conditions to remove the risks to her health, and there is no suitable alternative work available to offer on a temporary basis, she may be suspended from work on maternity grounds until such time as there are no longer any risks to her health. This may be for the remainder of her pregnancy until commencement of her maternity leave.
- 8.5 If an employee is removed from work in these circumstances, her employment will continue during the period of the suspension and it does not in any way affect her statutory or contractual employment maternity rights. The employee will be entitled to her normal salary and contractual benefits during the period of suspension, unless she has unreasonably refused an offer of suitable alternative employment.

## 9. Maternity leave

- 9.1 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 right applies regardless of the number of hours worked or length of service. Additional Maternity Leave begins on the day after Ordinary Maternity Leave ends.

## 10. Ordinary Maternity Leave (OML)

- 10.1 All pregnant employees are entitled to take up to 26 weeks OML with effect from day one of employment, irrespective of the number of hours worked each week, provided that the employee continues to be employed and notifies their place of work in writing before the end of the 15<sup>th</sup> week before her Expected Week of Childbirth (EWC) (or where this is not possible as soon as reasonably practicable in order to qualify for Statutory Maternity Pay) of:
- her pregnancy; and
  - her expected week of childbirth, supported by a MAT B1 (where this is not available it may be forwarded at a later date, but in any case every effort should be made to submit this no later than 28 days before OML is due to commence). Failure to produce a MAT B1 will mean that The Trust is unable to start paying Statutory Maternity Pay; and
  - the date on which she intends to start her OML. This can be any date but no earlier than the beginning of the 11<sup>th</sup> week before the EWC.
- 10.2 The notification must be provided in writing to the Headteacher. A standard form is available.
- 10.3 The employee will receive a written response to her notification to take maternity leave which will be completed within 28 days of receiving the notification and which will state the

expected date of her return to work - assuming the employee will return at the end of the 52 week maternity leave period (see Additional Maternity Leave below) - and advising the employee that if she wishes to return earlier than the date stated, she must provide at least 21 days' notice of the date on which she intends to return.

- 10.4 The start of the period of OML may be changed subject to the employee providing notice of the variation at least 28 days before either the original start date or the new start date, whichever is the earlier.
- 10.5 Employees are required to notify their place of work, as soon as is reasonably practicable, of the date on which their baby was born.
- 10.6 Ordinary Maternity Leave will begin automatically if:
- the employee is absent from work, wholly or partly because of her pregnancy, after the beginning of the 4th week before the EWC, or
  - childbirth occurs
- 10.7 In either of the above cases, the employee must notify their place of work of the fact and reason/s for her absences or her childbirth (whichever is applicable) as soon as is reasonably practicable.
- 10.8 The earliest date on which OML can commence is the beginning of the 11th week before the EWC unless childbirth occurs at an earlier date, in which case OML will automatically begin on that earlier date. Maternity leave (OML or AML) can start on any day of the week.
- 10.9 There is no latest date on which OML can commence and the employee may work right up to the birth. However, the safety and well-being of the employee and the unborn baby is of primary concern and a certificate of fitness to work may be required if the employee wishes to remain at work for the period from the 6th week before the EWC. A registered GP or registered midwife must sign the certificate and if a charge is incurred this will be reimbursed.
- 10.10 At the end of the 26 weeks OML, the employee has an automatic right to return to the job in which she was employed under her contract of employment prior to the start of OML unless a redundancy situation has arisen (see below) or she wishes to commence AML.
- 10.11 An employee who exercises her right to OML is:
- entitled to the benefit of the terms and conditions of employment which would have applied had she not been absent, other than remuneration;
  - bound by any obligations arising under those terms of employment; and
  - entitled to return from OML to the same job in which she was employed before commencing maternity leave unless a redundancy situation has arisen or she wishes to commence AML.

## 11. Additional Maternity Leave (AML)

- 11.1 All pregnant women who qualify for OML are entitled to take AML. AML is an extended period of leave of 26 weeks taken immediately upon the expiry of OML thereby providing female employees with a maximum of 52 weeks' maternity leave.
- 11.2 Employees may return to work :
- at the end of the 52 week maternity leave period; or
  - at any time after the two weeks compulsory leave period and up to the end of the 52 week maternity leave period.
- 11.3 If the employee wishes to return at the end of the 52 week maternity leave period, she does not need to give notice of her return. If the employee wishes to return any time before the end of the 52 week maternity leave period, she must give at least 21 days' notice of the date on which she intends to return.

- 11.4 If an employee fails to give this notice her return to work may be postponed by 21 days, however the return cannot be postponed beyond the end of the original return date.
- 11.5 If, having notified her intended date of return, an employee wishes to vary that date, she must give notice of her new date of return at least 21 days before the original date of return or the new date, whichever is the earlier.
- 11.6 An employee who exercises her right to AML is:
- entitled to the benefit of the terms and conditions of employment which would have applied had she not been absent, other than remuneration,
  - bound by any obligations arising under those terms of employment
- 11.7 Following a period of AML, an employee will normally return to the same role. Where, in exceptional circumstances, this is not possible, it will be to a similar role which is both suitable and appropriate for the employee in the circumstances.

## **12. Maternity Pay**

- 12.1 Employees may be entitled to receive the following Maternity Pay during their period of maternity leave:
- Statutory Maternity Pay (SMP) is provided and paid on behalf of the State;
  - Occupational Maternity Pay (OMP) provided by and paid by The Two Counties Trust subject to meeting qualifying criteria.

## **13. Statutory Maternity Pay (SMP)**

- 13.1 During maternity leave the employee will cease to be paid her normal salary. To be eligible to receive SMP the employee needs to satisfy the following criteria:
- to have been continuously employed for at least 26 weeks ending with the 15th week (known as the qualifying week) before the EWC;
  - to be earning at least the Lower Earnings Limit for National Insurance contributions (based on an average of weekly earnings);
  - to still be pregnant at the 11th week before the EWC (excepting premature birth);
  - to have provided medical evidence of the date on which the baby is due (e.g. a MATB1 form or a letter from a registered GP or registered midwife stating that she is pregnant and the EWC as soon as this is available);
  - to have given due and timely notice of the date when maternity leave is to start (see above).
- 13.2 A female employee is still entitled to SMP if she leaves employment after the 15<sup>th</sup> week before the expected week of childbirth for a reason unrelated to the pregnancy provided that she satisfies the qualifying criteria.
- 13.3 If an employee does not qualify for SMP, she will be provided with form SMP1 'Why I cannot pay SMP', which explains why she does not qualify. The employee must provide this to the Department for Work and Pensions with her completed maternity allowance form in order to claim maternity allowance.

## **14. Amount of Statutory Maternity Pay (SMP) payable**

- 14.1 On satisfying the qualifying criteria for SMP this is payable for a maximum of 39 weeks.

- 14.2 Higher rate SMP is payable for 6 weeks and is calculated at 90 per cent of the AWE. This is the period between the last normal pay day before the Saturday at the end of the qualifying week and the last normal pay day at least 8 weeks before that date.
- 14.3 Lower rate SMP is payable for the remaining 33 weeks. The value of this payment is set by the government and reviewed from time to time. Where an employee's average weekly earnings are less than the lower rate of SMP, 90% of the average weekly earnings will be paid.
- 14.4 Payments of SMP will be made via the payroll on the same pay-day as the normal salary.
- 14.5 SMP is treated as earnings and therefore subject to normal PAYE deductions.
- 14.6 Payment of SMP commences on the day when maternity leave starts.
- 14.7 Payment of SMP cannot start prior to the 11<sup>th</sup> week before the employee's EWC.

## 15. Occupational Maternity Pay (OMP)

- 15.1 OMP is available for employees who have at least 52 weeks' continuous service at the start of the 11<sup>th</sup> week before the EWC and who are eligible for SMP. OMP is calculated using the same reference period as SMP.

Period	Teachers' entitlement	Support staff entitlement
First 4 weeks (1-4)	Full pay	90% of AWE
Next 2 weeks (5-6)	90% of AWE	90% of AWE
Next 12 weeks: (7-18)	Half pay based on AWE (OMP) plus SMP providing this does not exceed normal full pay	Half pay based on AWE (OMP) plus SMP providing this does not exceed normal full pay
Last 21 weeks(19-39)	SMP only	SMP only

- 15.2 If the employee does not return to work for a period of at least 13 weeks' service following the maternity leave period, she will be required her to refund the 12 weeks' OMP paid at 50% AWE, or if she has received less than 12 weeks' OMP at 50% AWE (because she has returned to work or left employment), the amount of OMP which she has been paid. SMP is not refundable as it is a statutory payment.
- 15.3 If the employee is unsure whether she intends to return to work after maternity leave she may elect to have the 12 weeks' OMP at 50% AWE withheld until her return to work. On her return to work the money will be paid to her on her first normal pay day after she returns, unless this is not reasonably practicable. If the employee leaves employment within the 13 week period, but after OMP based on 50% of AWE has been paid, then she will be required to refund the 12 weeks' OMP.

## 16. Maternity and pensions

- 16.1 The employee is only required to pay contributions on the amount of actual remuneration, or SMP, that she is in receipt of.
- 16.2 A woman who is a member of the Local Government Pension Scheme in receipt of remuneration, whether salary, or SMP, or both, will be treated as though she is working normally for the purposes of access to occupational pension scheme membership and benefits. If she does not qualify for SMP and receives no pay, then no contributions will be payable. The Trust will pay the normal contribution towards the pension scheme based on the salary that the employee would have received had she not gone on maternity leave, for the period of maternity leave whilst the employee is receiving any pay.

- 16.3 This period of service counts as reckonable for pension purposes. If the employee has any unpaid Additional Maternity Leave, it will not be reckonable for pension purposes.
- 16.4 Employees can opt to pay arrears of contributions in order for this period of unpaid leave to count but they would need to arrange this within 30 days of their return to work.
- 16.5 Where a teacher is absent on maternity leave and is a member of the Teachers' Pension Scheme, such absence is treated as pensionable employment as long as the teacher receives a salary. The following guidelines apply:
- Where a teacher takes maternity leave and then returns to duty, any period of maternity leave for which the teacher receives pay or SMP is classed as pensionable employment.
  - Both the employee and the Trust will pay contributions based on the amount of actual remuneration, or SMP, that she is in receipt of. Any period where the teacher receives no pay and no SMP does not count as pensionable employment and will be shown as excluded days.

## **17. Maternity Allowance**

- 17.1 Maternity Allowance may be payable by the Government where there is no entitlement to SMP.
- 17.2 Should there be no entitlement to SMP the form SMP1 will be completed and issued to the employee along with any medical evidence, such as a MATB1 form, for the employee to claim a Maternity Allowance
- 17.3 Employees entitled to neither SMP nor Maternity Allowance, who find that their income during their maternity leave falls short of their needs may be able to claim other benefits from the Department for Work and Pensions.

## **18. Circumstances in which SMP is lost**

- 18.1 If during the period the employee is paid SMP, she does any of the following then her entitlement to SMP may cease:
- is taken into legal custody (i.e. detained by the police, usually arrested or imprisoned); or
  - starts work for another employer after her child is born.

## **19. Working and contact during maternity leave**

- 19.1 Where both parties agree it would be beneficial, an employee can carry out up to 10 days work during her maternity leave, without bringing her maternity leave to an end. These days are known as "keeping in touch days".
- 19.2 The work carried out on such days may include training or any activity that allows the employee to keep in touch with her department/workplace.
- 19.3 The Trust will not be obliged to offer, nor will the employee be obliged to attend, work whilst on maternity leave and the employee will not suffer any detriment if she refuses to work.
- 19.4 Work must not be carried out during the 2 week compulsory leave period.
- 19.5 Any days worked do not extend the total duration of the maternity leave period.
- 19.6 Any work undertaken under the "keeping in touch" arrangements will be paid at the

normal daily rate of pay. Where maternity pay is being paid and this is less than the normal daily rate, the pay will be topped up to the normal daily rate. Where no pay is being received, the full normal daily rate will be paid at the next available pay date. Keeping in Touch days may be taken as full or half days.

- 19.7 Shortly before an employee's maternity leave starts, the manager will discuss the arrangements for her to keep in touch during maternity leave, should she wish to do so. The Trust reserves the right in any event to maintain reasonable contact with the employee from time to time during the maternity leave. Contact may include discussions about plans to return to work, special arrangements to be made, training, or simply to update on developments at work during the absence.

## **20. The right to return to work**

- 20.1 Employees will have been formally advised of the date on which she is expected to return to work at the end of the Additional Maternity Leave period. The employee is expected to return on this date unless she notifies otherwise.
- 20.2 Employees who wish to return to work earlier than the expected date must give at least 21 days' notice of the date of early return in writing. If an employee fails to do this, her place of work may postpone her return by 21 days or until the end of the additional maternity leave period if that occurs earlier.
- 20.3 Employees who return to work immediately after a period of OML will normally return to the same job in which they were employed before the start of their absence.
- 20.4 If, for health reasons, the employee was performing a different job from the one which they are normally employed to do, they may still be required to undertake the different job on their return from OML if there remains a risk to their health.
- 20.5 Employees who return to work from a period of AML are entitled to return to the same job in which they were employed before the start of their absence or, where this is not possible, another job which is both suitable and appropriate for them in the circumstances, and on terms and conditions no less favourable than those to which the employee would have been entitled had she not been absent.
- 20.6 Employees may request to return to work on a different working pattern, for example a change in the hours or weeks of work or working times. Such requests should be made in accordance with the Flexible Working Policy.
- 20.7 If industrial action or any other interruption of work makes it unreasonable for the employee to return to work from maternity leave on the date on which she intended to do so, she may instead return as soon as work resumes.
- 20.8 An employee will not return to work from maternity leave on the date on which she intended to do so if she is medically unfit to do so. In such cases the sickness policy applies from the original intended date of return.
- 20.9 An employee will not return to work from maternity leave on the date on which she intended to do so if she is taking a period of parental leave. Employees should refer to the parental leave policy for details of this provision.

## **21. Shared parental leave**

- 21.1 Shared parental leave enables mothers to commit to ending their maternity leave and pay at a future date, and to share the untaken balance of leave and pay as shared parental leave with their partner. Please refer to the shared parental leave policy.



## 22. Annual leave - support staff

- 22.1 Support Staff who have an annual leave entitlement accrue bank holidays and annual leave during maternity leave and will normally agree the period when this will be taken either before they commence maternity leave, or for a paid period prior to returning to work. Employees should normally discuss and agree how and when they will take their annual leave entitlement before maternity leave commences.
- 22.2 Support staff employed on term-time only contracts are paid the proportionate amount of annual leave with their salary each month and this forms part of their maternity pay calculation and therefore there is no further accrual of annual leave during their period of maternity leave.

## 23 Annual Leave – Teachers

- 23.1 Teachers do not have a contractual entitlement to annual leave; they do however have a statutory right under the Working Time Regulations to a minimum leave entitlement of 28 days (5.6 weeks inclusive of Bank Holidays). This is not an entitlement to annual leave on top of the current school closure arrangements.
- 23.2 A teacher who takes maternity leave must be able to take the 28 days statutory annual leave outside of her maternity leave. This annual leave will be offset by any period of school closure during the leave year in question i.e. both before and after the maternity leave period.
- 23.3 Where return from maternity leave is so close to the end of the leave year that there is not enough time to take statutory leave it can be carried forward to the following leave year and be taken during the remaining periods of school closure at a time which is agreed with the Headteacher.
- 23.4 Pay in lieu of annual leave not taken can only be made where the employment terminates i.e. only if a teacher does not return to work following maternity leave.

## 24. Failure to comply with notice requirements

- 24.1 If an employee fails to give the required notice of her pregnancy, EWC and the date on which she intends to start her OML, or gives that notice late in circumstances where it was reasonably practicable for her to give it in time, she may lose her right to OML.
- 24.2 If an employee starts her maternity leave without giving the required notice or provide a MATB1 without good reason, she will be treated as being on unauthorised absence.

## 25. Redundancy during maternity leave

- 25.1 If the employee is unable to return from maternity leave to their original job because of redundancy which would have occurred whether or not the employee had been absent, she will be entitled, where there is a suitable available vacancy, to be offered alternative employment.
- 25.2 This alternative employment should be offered before the end of the employee's employment under her original or "old" contract. The new contract will take effect immediately on the ending of the old contract. Every effort will be made to ensure that the terms and conditions of the new contract are not substantially less favourable than the terms and conditions of the old contract.

## 26. Early births

- 26.1 If the baby is born early but after the employee has started to receive SMP, it will continue to

be paid. If the employee has not yet started to receive SMP it will be triggered by childbirth.

## 27. Still births and Miscarriage

- 27.1 In the tragic event of stillbirth, the employee is entitled to the leave and pay arrangements in this policy if the child is born after the 24th week of the pregnancy.
- 27.2 Individual due care and consideration will be given to the employee in these circumstances in relation to returning to work.
- 27.3 In the very sad and distressing case of a miscarriage prior to 24 weeks' of pregnancy, consequent absence will be treated as sick leave and sick pay arrangements will apply for that period.

## 28. General

- 28.1 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 period, provided that she has not yet begun ordinary maternity leave. If, however, the employee is absent from work due to a pregnancy-related illness after the beginning of the fourth week before her expected week of childbirth, her maternity leave will start automatically.
- 28.2 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 the Headteacher of this fact as soon as possible.
- 28.3 Maternity leave is not treated as sick leave and is not therefore taken into account when calculating any period of sick leave entitlement
- 28.4 If an employee is certified by a doctor as unfit to return to work at the end of the period of maternity leave, the period of absence will be treated as sick leave.
- 28.5 Periods of maternity leave are regarded as continuous service for the purpose of calculating entitlements to employment benefits.

## 29. General Data Protection Regulation

- 29.1 All data within this policy will be processed in line with the requirements and protections set out in the General Data Protection Regulation.

### Appendix 1

A person has a qualifying relationship with a pregnant woman or her expected child if:

- the person is the spouse or civil partner of the pregnant woman,
- the person, being of a different sex or the same sex, lives with the woman in an enduring family relationship but is not a relative of the woman,
- the person is the father of the expected child,
- the person is a parent of the expected child by virtue of section 42 or 43 of the Human Fertilisation and Embryology Act 2008, or
- the person is a potential applicant for a parental order under section 54 of the Human Fertilisation and Embryology Act 2008 in respect of the expected child.

### Document management

Review cycle:	Every 2 years
Next review due:	May 2020
Policy owner	Head of Human Resources
Approving body:	Board of Trustees
Equality Analysis completed:	July 2017