

Chapter 12

Maternity leave and pay

This chapter sets out the statutory entitlements that are available to all female employees, and then goes on to give details of how this relates to salaried GPs.

Sections 1 to 4 of this chapter are relevant to salaried GPs and their employers.

Section 5 is relevant to GP employers.

1. Statutory entitlements

1.1 Compulsory maternity leave

It is a statutory requirement that an employee must not be allowed to work during the two weeks following childbirth.

1.2 Statutory maternity leave

1.2.1 Entitlement to statutory maternity leave

All employees are statutorily entitled to 52 weeks' maternity leave – made up of 26 weeks' ordinary maternity leave and 26 weeks' additional leave – regardless of how long they have worked for their employer.

1.2.2 Notification requirements

An employee must provide advance notification by the end of the 15th week before the expected week of childbirth (EWC) of all of the following:

- the fact that she is pregnant
- the expected date of childbirth (which can be found on the MATB1 form provided by the employee's registered doctor or midwife to confirm that she is pregnant)
- the date she intends her maternity leave to start (which must be no earlier than the start of the 11th week before the EWC).

If requested by the employer, the above notification must be in writing and the employee must produce a certificate from a registered midwife or medical practitioner confirming the EWC.

The EWC is a Sunday to Saturday.
For assistance in calculating the notification dates and maternity leave start dates, please contact the BMA.

Within 28 days of receiving notification, the employer must inform the employee of the end date of her maternity leave.

If the employee wishes to change her date of return from maternity leave, eight weeks' notice must be given to the employer.

1.2.3 Start of statutory maternity leave

Statutory maternity leave cannot start before the 11th week before the EWC. Within that limitation the employee can choose the date that the leave is to start.

But if the employee is absent from work wholly or partly due to pregnancy after the start of the fourth week before the EWC, then this will become the commencement date for maternity leave.

1.2.4 Returning from maternity leave

Employees returning from ordinary maternity leave (after the first 26 weeks of maternity leave) are entitled to return to their same job.

An employee who takes additional maternity leave (up to 52 weeks' leave in total with ordinary maternity leave) is entitled to return to the job in which she was employed before her absence. But if it is not reasonably practicable for the employer to permit her to return to that job, she is entitled to return to another job which is both suitable for her and appropriate for her to do in the circumstances. However any alternative job must be on terms and conditions which are no less favourable than those under her previous job.

1.3 Statutory maternity pay

1.3.1 Entitlement to statutory maternity pay

Those employees who are pregnant or who have just given birth will be entitled to receive statutory maternity pay (SMP) from their employer for up to 39 weeks if:

- they have worked continuously for their employer for at least 26 weeks ending with the qualifying week, which is the 15th week before the EWC; and
- their average weekly earnings in the 8 weeks up to and including the qualifying week (or the equivalent period if they are paid monthly) have been at least equal to the lower earnings limit for national insurance contributions, which is £95.00 per week as from 6 April 2009, (although they do not actually have to have paid any contributions); and
- they have notified their employer no later than the end of the 15th week before the EWC that they are pregnant; provided a copy of the Mat B1 certificate and confirmed the date when they intend to start taking leave, which should not be earlier than the 11th week before the EWC; and
- they must be employed after the start of the 15th week before the baby is due.

The following rates apply as from 6 April 2009:

- 90 per cent of average weekly earnings for the first 6 weeks
- a flat rate payment of £123.06 per week (due to increase from April 2010), or 90 per cent of average weekly earnings if less, for 33 weeks

1.3.2 Entitlement to fringe benefits during maternity leave

During the 52 weeks of maternity leave, employees are entitled to any fringe benefits (eg motor vehicle/travel allowance and bonus payments) granted under their employment contract.

This follows a recent change in the law, as prior to 5 October 2008 such benefits were not automatically available during the later 26 weeks (the additional maternity leave period).

1.4 Annual leave entitlements

See chapter 9, section 2 for details of how annual leave accrues during maternity leave.

2. Improving statutory provisions

The above statutory provisions regarding maternity leave and pay are the minimum that must be provided to a salaried GP. It is possible for employers to provide enhanced contractual provisions, and some such enhancements are available through the salaried GP model contract.

3. Maternity leave and pay for salaried GPs employed under the model salaried GP contract

3.1 General Whitley Council (GWC) Handbook provisions

Under the model salaried GP contract, salaried GPs are entitled to the provisions of section 6 of the GWC Handbook. This can be confusing since the GWC Handbook no longer applies to non-doctor NHS employees and is no longer being updated. Nevertheless it is still applicable in this context as it is explicitly referred to in the model salaried GP contract.

The last version of section 6 of the GWC Handbook was appended to the Department of Health's Advance Letter (GC) 1/2003 (which was replicated in a similar advance letter for Wales, Scotland and Northern Ireland). The text of this is reproduced at appendix C. Many of the relevant aspects are explained in this chapter.

When reading section 6 it is important to remember that it was written for NHS hospital doctors rather than salaried GPs. Also, it must be read in conjunction with paragraph 1.7 of the model contract (see below for more details). Furthermore the BMA's legal view is that where there is any inconsistency between the GWC Handbook requirements and the provisions of the model salaried GP contract, the model contract prevails.

3.2 Maternity leave under the model contract

In line with the statutory requirements, a salaried GP is entitled under the model salaried GP contract to 12 months of maternity leave.

3.3 Maternity pay under the model contract

Under the model salaried GP contract, a salaried GP will be entitled to contractual maternity pay provided that she has 12 months of continuous NHS service (see below for a definition of NHS service) at the beginning of the 11th week before the expected week of childbirth. If this condition is met, the pay will be:

- for the first eight weeks of absence, full pay less any SMP or MA receivable
- for the next 14 weeks, half of full pay plus any SMP or MA receivable provided the total amount does not exceed full pay
- the next four weeks of SMP or MA depending on eligibility. However, under the statutory rules the salaried GP will now receive SMP or MA depending on eligibility for the next 17 weeks in total (even though the GWC refers only to the next four weeks) since SMP or MA is now available for up to 39 weeks in total.

With the prior arrangement of the employer the entitlement may spread differently across the maternity leave period.

To receive the above benefits the salaried GP must provide the employer with the following notification requirements:

- of her intention to take maternity leave
- of the date she wishes to start her maternity leave
- that she intends to return to work with the same or another NHS employer for at least three months after her maternity leave has ended
- a MATB1 form from her midwife or GP giving the expected date of childbirth.

Such notification must be provided before the end of the 15th week before the expected week of childbirth (or if this is not possible, as soon as is reasonably practicable thereafter).

If the salaried GP wishes to change her maternity leave start date, she should notify the employer at least 28 days beforehand (or if this is not possible, as soon as is reasonably practicable beforehand).

3.4 Improving the maternity pay terms

When the model salaried GP contract was introduced in April 2004 the maternity provisions were consistent with hospital doctors. However, since then hospital doctors have received the following enhanced maternity pay arrangements:

- for the first eight weeks of absence, full pay less any SMP or MA receivable
- for the next 18 weeks, half of full pay plus any SMP or MA receivable provided that the total receivable does not exceed full pay
- 13 weeks' SMP or MA depending on whether they meet the eligibility criteria.

This is more advantageous in that it provides an extra four weeks at half of full pay plus any SMP or MA that is due. Salaried GPs employed under the model contract and their employers may wish to renegotiate an improvement in their maternity terms to reflect this more favourable provision.

3.5 Continuous NHS service for contractual maternity pay purposes

The BMA's legal view is that paragraph 1.7 of the model salaried GP contract means that previous service as a GP principal/provider, salaried GP and/or locum should be classed as NHS service. Work for a PCO and NHS hospital certainly counts as NHS service. APMS or private work as a GP should also count as NHS service, since our legal view is that the employer of a salaried GP or the contract that a locum GP is working under is not a relevant factor provided that the GP was performing primary medical services.

However, as this has not been tested in a court of law it is not possible for anyone to give a definitive view on this.

Paragraph 1.7 reads:

‘NHS Employment means the total of the periods of employment by a National Health Service Trust, Primary Care Trust, Strategic Health Authority or Special Health Authority, or any of the predecessors in title of those bodies or the equivalent bodies in Wales, Scotland and Northern Ireland, together with the total of the periods during which the practitioner provided or performed Primary Medical Services.’

As noted in section 3.1, the BMA’s legal view is that when a provision of the GWC Handbook is inconsistent with the model salaried GP contract the provisions of the model contract will prevail. With this in mind, the GWC Handbook states that NHS GP locum work does not count as NHS service while paragraph 1.7 of the model contract includes GP locum work as such service. Thus our legal view is that this particular part of the GWC Handbook should not be incorporated into the maternity provisions for salaried GPs, and so all GP locum work will count as NHS service provided that there has been no substantive break in NHS service in the previous 12 months.

Therefore, when calculating whether a salaried GP has the required 12 months of continuous NHS service to qualify for contractual maternity leave, their previous NHS service as detailed above is counted along with the time that the salaried GP has spent with their current employer. This is with the proviso that there has not been a break in service (ie where no NHS or primary care work has been undertaken) in the preceding 12 months. However, the following breaks in service are disregarded (but do not count as service):

- break in service of three months or less
- absence due to maternity, paternity or adoptive leave (paid or unpaid)
- employment under the terms of an honorary contract
- up to 12 months abroad as part of a definite programme of postgraduate training on the advice of the Postgraduate Dean or College or Faculty Advisor in the specialty concerned

- up to 12 months (exceptionally extended by a further 12 months at the discretion of the employer) of voluntary service overseas with a recognised international relief organisation.

If there has been a break in service which is not disregarded, then the calculation of the continuous service must start again.

3.6 Entitlements to contractual benefits

As with the statutory entitlement, under the model contract the salaried GP is entitled during the 52 weeks of maternity leave to all of her contractual rights (except remuneration which is covered by the arrangements set out above).

Thus any entitlement to car allowance payments continues, and annual leave and CPD entitlement also accrue during this time.

3.7 Returning to work after maternity leave

It is a requirement of keeping the maternity pay that the salaried GP must return to work within 15 months of the beginning of her maternity leave. Failure to do so will mean that the salaried GP is liable to refund the whole of her maternity pay, less any SMP, received.

3.7.1 Returning to the same employer

If the salaried GP returns to the same employer after maternity leave, there is no requirement on the salaried GP to repay the contractual maternity pay.

3.7.2 Returning to another practice

It has been a grey area as to whether a salaried GP who goes on maternity leave and returns to another GP practice would be required to repay her maternity pay, less any SMP, to her original employer. The BMA's legal advice that the wording of the model salaried GP contract (reading paragraph 1.7 of the model contract and the GWC maternity provisions together) is likely to mean that if a salaried GP goes on maternity leave and returns to another GP practice or NHS employer then she is entitled to retain her full maternity pay from her original employer.

The box below outlines our lawyers' difficulties in giving this advice.

The model salaried GP contract refers to the maternity provisions in GWC section 6. Historically, the GWC when drafted was not intended to apply to GP practices; hence, when interpreting the definition of NHS employer for maternity pay purposes, there is a difficulty.

If the definition of NHS employer under GWC did not refer to GP providers as employers, then under GWC paragraph 5.2.3 a salaried GP would not be entitled to paid and unpaid maternity leave even if she returned to the same employer. This is clearly nonsensical. Furthermore, GWC part C (which refers to continuous service) carves out a definition of NHS employer and implies that this definition, which excludes GP providers, does not apply elsewhere in the document.

Due to the imprecise nature of the drafting of GWC and the lack of a clear definition of NHS employer, it would be reasonable in the circumstances to revert to the definition in paragraph 1.7 of the model contract (which recognises working for a GP practice as NHS employment) and include GP providers in the definition of an NHS employer for the purposes of maternity.

4. Maternity leave and pay for salaried GPs not employed under the model salaried GP contract

GPs who are not employed under the model salaried GP contract must receive at least the statutory maternity provisions as set out under section 1 above. As noted in section 2 it is possible for the statutory provisions to be improved upon as part of the contract of employment. It is good employment practice for employers to offer enhanced maternity pay provisions, and both employers and salaried GPs may wish to use the model salaried GP contract (including recognition of previous NHS continuous service in determining eligibility for maternity pay) as a benchmark for these enhancements.

5. Locum reimbursement to the practice

5.1 Reimbursement available to a GMS practice

Under the Statement of Financial Entitlements (SFE) a GMS practice is entitled to apply to its PCO for locum reimbursement while its salaried GP (a performer) is on maternity leave. The amount of locum reimbursement for 2009-10 is up to £978.91 per week for the first two weeks and then up to £1,500 per week for the next 24 weeks, although the PCO is able to use its discretion to reimburse more. This locum reimbursement is normally only available if the practice hires a locum GP to cover the work of the salaried GP on maternity leave.

Practices are advised to inform their PCO in advance of the pending maternity leave and to seek confirmation of the level of reimbursement available.

5.2 Reimbursement available to non-GMS practices

It is expected that PMS practices will have the benefit of locum reimbursement included in their contract for services with the PCO. It is important for the practice to check the contract, including the extent and level of locum reimbursement available. Practices should contact the BMA for advice if the contract with the PCO is unclear.

- provided with relevant and necessary telephone contact numbers
- awareness of practice appointment systems and on-call arrangements
- awareness of internal practice management systems
- location of emergency drugs
- procedures for reporting significant events
- panic button location and protocol for reporting violent incidents
- meet other members of the primary health care team.

Note: The list is not exhaustive and is meant to be tailored to meet the retainer scheme GPs individual requirements.

Section C: Categories defined as NHS employment

1. NHS Employment is defined as the total periods of employment by a National Health Service Trust, Primary Care Trust, Strategic Health Authority or Special Health Authority, or any of its predecessors in title of those bodies or the equivalent bodies in Wales, Scotland and Northern Ireland, together with the total periods during which the practitioner provided or performed Primary Medical Services.
2. Notwithstanding clause 1 above, a break in service is disregarded as continuity of service (but not counted as a period of NHS Service) when it falls into one of the following categories:
 - (a) employment under the terms of an honorary contract;
 - (b) a period of up to 12 months spent abroad as part of a definite programme of postgraduate training on the advice of the Postgraduate Dean or College or Faculty Advisor in the specialty concerned;
 - (c) a period of voluntary service overseas with a recognised international relief organisation for a period of 12 months which may, exceptionally, be extended for a further 12 months at the discretion of the employer which recruits the employee on her return;
 - (d) absence on an employment break scheme in accordance with the provisions of Section 6, part C of the Whitley Council Handbook;

- (e) absence on maternity leave (paid or unpaid) while in NHS service.

Section D: Job plan

The job plan should reflect the BMA job planning guidance (see chapter 8 of the Salaried GP handbook for more details).

Section E: Duties

It is suggested that the Retainee and Practice discuss proposed duties and estimates of the time that would reasonably be taken to perform those duties. It is subject to at least an annual review and amendment by mutual agreement.