

Parental Leave and Pay Guidance

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Parental Leave and Pay

Introduction

This policy applies to all Council employees (excluding teaching staff) and covers:

- Maternity leave and pay
- Adoption and surrogacy leave and pay
- Paternity and nominated carers leave and pay
- Shared parental leave and pay
- Parental leave (unpaid)

The statutory regulations applicable to an employee who is pregnant or employed during the post confinement period, and the variety of rights for parents are complex. The Council's policy aims to ensure these are fulfilled and any variance from these must therefore be robust to potential legal challenge. Where statutory obligations are not met the employee will have the right to make a claim to an Employment Tribunal.

The statutory rights also extend to:

- Time off for ante-natal care and adoption appointments
- Protection from dismissal by reasons of pregnancy or parental leave
- The right to return to work
- Protection on health and safety issues.

Policy & Management Guidelines

Maternity Leave & Maternity Pay

1. Maternity leave is available to all pregnant employees regardless of the hours worked. The amount of maternity pay awarded is dependent upon the employee's length of service.
2. **Initial Obligations on the Employee & the Council**
 - 2.1 The employee must notify the Council of her intention to take maternity leave by the end of the 15th week before her expected week of childbirth, unless this is not reasonably practicable. She must confirm:
 - that she is pregnant
 - the expected week of childbirth
 - the date that she wants to start maternity leave; this date can not be any earlier than 11 weeks before the expected week of childbirth.

AND

Provide a certificate from a registered medical practitioner or a certified midwife, confirming the expected week of childbirth.

- 2.2 Once notification has been received, the Council must write to the employee, within 28 days of the notice, confirming the expected date of return if she takes her full entitlement. The 28-day timescale is counted from receipt of the notification described in 2.1 above.
- 2.3 An employee will be able to change her mind about when she want to start her leave providing that she tells her employer at least 28 days in advance (unless this is not reasonably practical).

3. Maternity Leave

- 3.1 Maternity leave cannot start earlier than the 11th week before the expected week of childbirth.
- 3.2 All employees are entitled to 52 weeks **maternity leave**, regardless of their length of service. This is made up of:
 - 26 weeks ordinary maternity leave, and
 - a further 26 weeks additional maternity leave.

4. Commencement of Maternity Leave

- 4.1 Employees may not commence maternity leave earlier than 11 weeks before the expected week of childbirth. If the baby is born prematurely maternity leave begins the day after the birth.
- 4.2 Maternity leave will normally commence on the date confirmed by the employee in their notification. However, if she has not already started her leave this will be triggered by the birth of her child or a pregnancy related absence from the beginning of the 4th week before the expected week of

childbirth. Maternity leave and maternity pay will start on the following day.
4.3 The employee must not return to work sooner than two weeks after the birth.

5. Maternity Pay

Three different levels of payment apply dependent on an employee's service. To qualify for Statutory Maternity Pay (SMP) an employee must have been employed without a break for at least 26 weeks by the 15th week before the expected week of childbirth and have average weekly earnings at least equal to the lower earnings limit for National Insurance contributions.

5.1 An employee with **less than 26 weeks continuous service** at the end of the 15th week before the expected week of childbirth will receive:

- two weeks Parental Leave.
plus
- up to two weeks special paid leave.

If the employee does not qualify for SMP they may be able to claim Maternity Allowance (MA), using the claim form MA1. Further information on this option is available on the [gov.uk](https://www.gov.uk) website

5.2 An employee with **more than 26 weeks continuous service** at the end of the 15th week before the expected week of childbirth, **but less than 1 year's service as at 11 weeks before the expected week of childbirth** will receive:

- Week 1-6

9/10ths of normal pay, offset against any SMP received or MA received.

- Week 7-39

Standard rate of SMP or 9/10th of normal pay, whichever of these is the lower.

- Week 40-52

Unpaid.

5.3 An employee with **1 year's continuous service as at 11 weeks before the expected week of childbirth** will receive:

- Week 1-6

9/10ths of normal pay, offset against any SMP received or MA received.

- week 7-18, either:

a) Where the employee confirms their intention to return to work for at least three months after maternity leave, she will receive:

Half pay without deduction (note that the sum of half pay plus any SMP (or MA) cannot exceed the employee's full pay).

Should the employee subsequently not return to local authority employment for at least three months, this payment will be recovered.

b) Any employee not proposing to return to work for at least three months will receive:

Standard rate SMP (or MA) or $9/10^{\text{th}}$ of normal pay if this is less.

- Week 19-39

Standard rate SMP (or MA) or $9/10^{\text{th}}$ of normal pay if this is less.

- Week 40-52

Unpaid.

	Employee declares in writing that she intends to return to work after maternity leave, she will receive	Employee not intending to return to work for at least three months will receive
Weeks 1-6	9/10ths of normal pay, offset against any SMP received or MA received.	9/10ths of normal pay, offset against any SMP received or MA received.
Weeks 7-18	Half pay without deduction (note that the sum of half pay plus any SMP (or MA) cannot exceed the employee's full pay).	Standard rate SMP* (or MA) or $9/10^{\text{th}}$ of normal pay if this is less
Weeks 19-39	Standard rate SMP* (or MA) or $9/10^{\text{th}}$ of normal pay if this is less	Standard rate SMP* (or MA) or $9/10^{\text{th}}$ of normal pay if this is less
Weeks 40-52	No pay	No pay

*Note *this is a defined weekly rate, set annually by the government. Current rate can be found on gov.uk*

5.4 Payments made to an employee should also take account of the following:

- 'Normal pay' is used to describe the amount payable under the employee's existing contract of employment. Where there are no normal contractual hours worked, the average pay is calculated over the last eight weeks proceeding the final complete week - excluding any week in which no earnings occurred.

- Pay awards received by Council employees.
- Employees on maternity leave are to be treated as though they were at work in respect of all other contractual benefits, e.g. car allowances.
- For the purpose of the maternity scheme, previous continuous service will include service with any public authority to which the Redundancy Modifications Order 1999 (as amended) applies.
- Employees are entitled to the same non-cash contractual benefits during additional maternity leave as they would have received during ordinary maternity leave.

6. Contact During Maternity Leave

6.1 Reasonable Contact

An employer and employee are encouraged to maintain reasonable contact during maternity leave to discuss issues such as the return to work. The employee should also be informed of other issues such as job vacancies, significant workplace developments and training opportunities. This degree of contact would not constitute 'work'.

6.2 Keeping In Touch Days

A woman can undertake up to ten days' work during her maternity leave without bringing her maternity leave to an end, these are referred to as "keeping in touch" or "KIT" days. Working for part of the day will count as one day towards this entitlement.

Work is defined as any work done under the contract of employment and may include training or any activity undertaken for the purposes of keeping in touch with the workplace. An employer cannot insist that a woman carries out any work and she is protected from suffering a detriment for refusing to do so. Equally, a woman cannot insist on being given any work to do.

Maternity Pay regulations state that maternity leave and entitlement to Statutory Maternity Pay must end if a woman works any more than the ten days allowed.

6.3 Establishing Keeping In Touch Days

An employee cannot carry out any work during the first two weeks following the birth of the child. However, at any other point during a period of maternity leave the employee and line manager may wish to reach an agreement that keeping in touch days will be worked. The ten-day entitlement can be broken up and taken as individual days, or split into a period of days depending on the activity to be completed and local arrangements. It should be noted that a woman's maternity leave would not be extended due to the fact that she has carried out some work during this period.

Keeping-in-touch days help to maintain contact during maternity leave and facilitate an effective re-induction to the workplace.

6.4 Pay for Work Undertaken During Maternity Leave

An employee will be paid normal pay for the keeping in touch days worked offset against any remaining entitlement to maternity pay.

7. Surrogate Mothers

7.1 Every pregnant employee has the right to 52 weeks maternity leave and to return to work at the end of this time. What the birth mother does after the child is born has no impact on the right to maternity leave.

7.2 Arrangements for maternity pay will be considered on a case by case basis.

Adoption Leave and Adoption Pay

1. Application

- Children may be adopted by couples who are married, civil partners or unmarried as well as by individuals. Where a couple are jointly adopting they can choose which of them will take adoption leave and pay and the other may take paternity leave and pay. If an individual is adopting they may take adoption leave and pay and their partner may be eligible for paternity leave and pay.
- To qualify for adoption leave and pay an employee must be 'newly matched' with a child for adoption by an approved adoption agency. Adoption leave and pay is not available in circumstances where the employee:
 - arranges a private adoption
 - becomes a special guardian or kinship carer
 - adopts a stepchild
 - adopt a family member or stepchild.
- Parents in a surrogacy arrangement who are entitled to and intend to apply for Parental Order under the Human Embryology and Fertilisation Act 2008 may be eligible for adoption leave and pay if each parent meets the normal qualifying conditions.

2. Initial Obligations on the Employee and the Council

Adopters must inform the Council of their intention to take adoption leave within seven days of being notified by their adoption agency that they have been matched with a child for adoption, unless this is not reasonably practicable. They will need to tell their manager:

- When the child is expected to be placed with them
- When they want their adoption leave to start
- And provide documentary evidence of their entitlement to adoption leave and pay¹. This must include:
 - the employee's name and address and that of the agency
 - the match date – e.g. the matching certificate
 - the date of placement – e.g. a letter from the agency.

¹ *Supplementary information applies to overseas adoptions including; the relevant UK authority's 'official notification' confirming the employee is allowed to adopt; and the date the child arrived in the UK.*

The Council must respond to the employee within 28 days confirming the expected date of return if the full entitlement to adoption leave is taken.

Adopters will be able to change their mind about the date on which they want their leave and (if applicable) adoption pay to start, providing they tell their manager at least 28 days in advance, unless this is not reasonably

practicable.

3. Adoption Leave

Adoption leave can commence from either:

- The date of the child's placement (whether this is earlier or later than expected), or;
- Up to 14 days before the date that the child is expected to start living with the employee¹.

Employees are entitled to 52 weeks' adoption leave consisting of 26 weeks' ordinary adoption leave and a further 26 weeks additional adoption leave.

Only one period of leave will be available irrespective of whether more than one child is placed for adoption as part of the same arrangement.

If the child's placement ends during the adoption leave period, the adopter will be able to continue adoption leave for up to eight weeks after the end of the placement.

¹ Different arrangements apply for overseas adoptions; e.g. adoption leave can commence when the child arrives in the UK or within 28 days of this date. The council will apply statutory entitlements.

4. Adoption Pay

Three different levels of payment apply dependent on the employee's service. To qualify for Statutory Adoption Pay an employee must have been employed without a break for at least 26 weeks ending with the week in which they are notified of having been matched with the child and have average weekly earnings at least equal to the lower earnings limit for National Insurance contributions. They must have also confirmed in writing their intention to return to work for a period of three months to receive occupational pay.

1. An employee with **less than 26 weeks continuous service** at the end of the week in which they are notified of having been matched with the child will receive:

- two weeks Parental Leave.

plus

- up to two weeks special paid leave.

2. An employee who has **more than 26 weeks but less than 1 years continuous service ending with the week in which they are notified of being matched with a child**, will receive:

- Week 1-6

9/10ths of normal pay, offset against any Statutory Adoption Pay received.

- Week 7-39

Standard rate of Statutory Adoption Pay or 9/10th of normal pay, whichever of these is the lower.

- Week 40-52

Unpaid.

3. An employee with **one years' continuous service ending with the week in which they are notified of being matched with a child** will receive:

- Week 1-6

9/10th of normal pay, offset against any Statutory Adoption Pay received

- Week 7-18, either:

a) Where the employee confirms their intention to return to work for at least three months after adoption leave, they will receive:

Half pay without deduction (note that the sum of half pay plus any Statutory Adoption Pay cannot exceed the employee's full pay).

Should the employee subsequently not return to local authority employment for at least three months, this payment will be recovered.

b) Any employee not proposing to return to work for at least three months will receive:

Standard rate Statutory Adoption Pay or 9/10th of normal pay if this is less.

- Week 19 – 39

Statutory Adoption Pay (SAP) or 9/10th of normal pay if this is less.

- Week 40 – 52

Unpaid leave.

5. Contact During Adoption Leave

Regulations provide that reasonable contact between the employer and employee is permitted and will not bring the adoption leave to an end.

The provisions for "keeping in touch" days mirror those set out for maternity leave (up to a maximum of 10 keeping in touch days).

6. Return to work after adoption leave

6.1 Adopters who intend to return to work at the end of their full adoption leave entitlement will not have to give any further notification to their employers.

6.2 Adopters who want to return to work **before** the end of their adoption leave period must give their employers eight weeks notice of the date they intend to return.

7. Parental leave & pay (adoption)

Following the placement of a child for adoption employees have the right to take paid leave to care for their new child or support the adopter. The principles applied to paternity leave and pay apply, (including an entitlement to two weeks paid leave) except:

- To be eligible the employee will be the adopter's spouse or partner (criteria related to the child's upbringing and service requirements still apply)
- Dates of leave will be determined by the child's placement.

Employees must provide a self-certificate which includes a declaration that the employee meets the eligibility conditions and provide the information specified above as part of the notice requirements.

Paternity and Nominated Carers Leave & Pay

1. Paternity leave is available to employees who are either a father to be or will share the responsibility with a partner for bringing up a child; this includes those who are adopting a child. Employees must satisfy the following conditions to qualify for paternity leave. They must:
 - have or expect to have responsibility for the child's upbringing
 - be the biological father of the child or the mother's husband or the mother's partner
 - have 26 weeks continuous service by the end of the 15th week before the expected week of childbirth or the end of the week in which the child's adopter is notified of being matched with the child.
2. Eligible employees are entitled to take either one week or two consecutive week's paternity leave. This leave can not be taken as odd / individual days. Employees must take their paternity leave within 56 days from the date of birth of the child, or the date of placement where adopting. Paternity leave cannot start before the birth of the baby.
3. Only one entitlement to leave is available to employees irrespective of whether more than one child is born as a result of the same pregnancy.
4. Paternity pay is set at one or two weeks paid leave.
5. The employee must provide the following information to their manager by the end of the 15th week before the expected week of childbirth:
 - confirmation of the expected week of childbirth, (supported by a copy of the MAT B1 maternity certificate) or if the birth has already occurred the date of birth (supported by the birth certificate).
 - the length of the leave requested.
 - the date that they expect their paternity leave to start.
 - confirmation that they will be responsible for the child's upbringing and will be taking time off to support the child's mother or care for the child.

An employee will be able to change their mind about when they want to start the leave providing that they tell their manager at least 28 days in advance (unless this is not reasonably practical).
6. An entitlement of one weeks paid leave is provided for the mother's nominated carer. A nominated carer is the person identified by the mother as the primary provider of support where personal circumstances mean this role cannot be fulfilled by the father of the child. To qualify for nominated carer's leave the mother must be a Southwark employee.
7. Requests for nominated carers leave must be made as early as reasonably practicable and supported by a copy of the mother's maternity certificate form, MAT B1. Nominated carers leave should be taken at or around the time of the birth, but must be within 26 weeks of the expected week of childbirth.

Shared Parental Leave and Shared Parental Pay

For the purpose of this guidance the following definitions apply: -

Mother: the woman who gives birth to a child or the adopter (the adopter means the person who is eligible for adoption leave and/or pay. They can be male or female).

Partner: the child's biological father or the partner of the mother/adopter. This can be a spouse, civil partner; or a partner who is living in an enduring relationship with the mother and the child.

An adopter or parental order parent in a surrogacy arrangement who takes adoption leave and/or pay may choose to end their adoption leave and pay early and opt into the shared parental leave and pay system in the same way as birth parents.

1. Shared Parental Leave (SPL) and Shared Parental Pay (ShPP) allows eligible mothers and adopters to volunteer to end their maternity leave and/or pay early and then use the untaken balance of leave and pay with the child's father or their partner as shared parental leave and pay. This enables eligible mothers, fathers, partners and adopters to choose how to share time off from work during the first year after their child is born or placed.

The employee has a statutory right to take the leave in a single continuous block, or to split the leave in up to three separate blocks. The employee must provide at least 8 weeks notice before a block of leave commences. The employer does not have to agree to the request to split the leave into distinct blocks.

Dependent upon length of continuous service a mother (or adopter) is entitled to maternity or adoption pay for up to 39 weeks. If this person gives notice to reduce their entitlement before they have received it, then any remaining weeks could become available to their partner as shared parental pay.

The rate for Shared Parental Pay (ShPP) is determined annually by the government. It is set at the same amount as Statutory Maternity Pay. Details on the current rate can be found [at gov.uk](https://www.gov.uk). Shared Parental Pay (ShPP) is paid at the current rate or 90% of average weekly earnings, if this is lower.

2. The eligibility conditions for shared parental leave are that:

- the employee has at least 26 weeks' continuous employment by the end of the Qualifying Week (15 weeks before the expected week of childbirth¹) and is still in employment by the week before the leave is to be taken
- the other parent must have worked in the UK (which includes self-employment) in at least 26 of the 66 weeks before the expected week of childbirth (or matched for adoption) and had average earnings of at least £30 per week during 13 of those weeks (not necessarily

continuously).

- each parent will need to give their employer at least eight weeks' notice before they can take SPL. They will also be required to give a non-binding indication of their proposed SPL plans i.e. how much they propose to take and in what pattern.

¹ An employee who is adopting, or who is the partner of an adopter, meets the continuity of employment test if he or she has been continuously employed by you for 26 weeks in the week in which the adopter is notified of having been matched with a child for adoption, and is still employed by you in the week before any shared parental leave is due to start. For a parental order parent in a surrogacy arrangement, the continuity of employment test is the same as that which applies to birth parents.

3. Entitlement to shared parental leave and shared parental pay:

- The mother is obliged to take two weeks compulsory maternity leave following the birth, or placement where adopting.
- Parents can share the remaining 50 weeks maternity leave and 37 weeks statutory maternity pay.
- Each parent may have up to 20 SPLIT ("shared parental leave in touch") days – these are similar to (and in addition to) KIT days that the mother may undertake during her maternity leave.
- Parents can take SPL at the same time or separately.
- Employees can ask to take SPL in separate blocks, each of not less than a week (which has been determined as any 7 day block). The employer does not have to agree to this and there will be a two-week discussion period in which the parties can try to agree arrangements. If they can't agree, SPL must be taken in one block but the employee can choose the start date.
- The same rights to return to work will apply as per maternity leave: each parent will have the right to return to the same job if they have taken not more than 26 weeks SPL; if they have taken more than 26 weeks SPL, they will have the right to return to the same job as far as reasonably practicable or to a suitable alternative.
- A father who takes SPL will have the same enhanced protection against detriment and dismissal that a woman has during her protected period.
- All of the above will also apply to adopting parents or parental order parents in a surrogacy arrangement who take adoption leave.

4. Initial Obligations on the Employee & the Council

The employee or their partner can only start Shared Parental Leave once the child has been born or adopted and the statutory minimum maternity leave or statutory minimum adoption leave has ceased. The mother or adopter must have returned to work, or given notice to curtail their maternity or adoption leave.

The employee (whether it is the mother/adopter or their partner) must provide notification that they are eligible for shared parental leave and/or statutory shared parental pay and that they intend to take this entitlement. They should also provide a copy of the child's birth certificate, or where adopting either the matching certificate or placement letter from the agency.

This notice of entitlement must be given at least 8 weeks before any shared parental leave or pay can be taken and include details on:

- Start and end dates of the mother's maternity leave
- The number of weeks that the mother or adopter has taken as maternity or adoption leave (or will have taken, where notice has been given to curtail the leave and pay on a specific future date)
- How much shared parental leave and pay each of the parents will be taking (this can be changed at a later date and the full allocation does not need to be used).
- How much Statutory Shared Parental Pay (ShPP) is being claimed (which will be 39 weeks less the amount of statutory maternity pay claimed).
- How much ShPP will be claimed by each parent (this can be changed at a later date and the full allocation does not need to be used).
- What will be the start and end dates for each period of the Shared Parental Leave that the employee intends taking.
- This notice must include a declaration from the employee's partner stating that they meet the statutory conditions for entitlement to Shared Parental Leave and pay.
- They should provide details of their name, address and National Insurance number, and also state that he or she gives their consent to our employee taking shared parental leave and/or pay and agreement that to process information provided by them.

The Council is not required to check whether the information provided by the other parent in their declaration is correct or whether they meet the employment and earnings test. There is also no requirement to contact the other parent or their employer.

5. Taking shared parental leave and pay

- Shared parental leave and pay cannot begin any earlier than two weeks after the birth (or placement where adopting) and must be taken within 1 year of the birth or the date that the child was placed with the family (i.e. the day before the child's first birthday or the first anniversary of the placement of an adopted child).
- Shared parental leave must be taken in complete weeks and may be taken either in a continuous period, which an employer cannot refuse, or in a discontinuous period, which the employer can refuse. If a request for discontinuous leave is refused then the total amount of leave requested in the notice will automatically become a continuous block unless it is withdrawn.
- The provisions for maternity pay entitle an employee with at least one year's service to 12 weeks at "half pay without deduction" between weeks 7 – 18 of their maternity leave. This payment is subject to the

employee returning to local authority employment for at least three months. Where an employee opts to end their maternity leave early and take shared parental leave instead, the three month qualifying period will start from the date that shared parental leave commences.

6. Changing shared parental leave plans.

- Leave arrangements that have been notified can be changed where agreed by both parents through a notice to vary the agreed leave. 8 weeks' notice must be given. An employee can give notice to end a period of leave earlier or later than previously notified, or to aggregate a number of discontinuous weeks into a single block using a variation notice.
- A notice to vary agreed leave counts towards the statutory cap of 3 notifications to book leave.

7. Terms and conditions during Shared Parental Leave

- The contract of employment does not change and employees are entitled to receive all their contractual benefits, except for salary. Any staff benefits continue and contractual annual leave and sickness payment entitlement continues to accrue.
- Pension contributions will continue to be made during any period when the employee is receiving ShPP but not during any period of unpaid SPL. Employee contributions will be based on actual pay, while the organisation's contributions will be based on the salary that the employee would have received had they not been taking SPL.
- The employee can agree to work or attend training for up to 20 days during SPL without bringing their period of SPL to an end or impacting on their right to claim ShPP for that week. These are known as "Shared Parental Leave In Touch" (SPLIT) days. Any work carried out on a day or part of a day shall constitute a day's work for these purposes and the employee will receive full pay for any day worked. The shared parental leave period is not extended due to SPLIT days being taken during this period.
- The employee must be advised in writing of the end date of any period of SPL. The employee is expected to return on the next working day after this date, unless they notify the organisation otherwise. If they are unable to attend work due to sickness or injury, the organisation's normal arrangements for sickness absence will apply.

Parental Leave (Unpaid)

1. Employees can take up to 18 weeks unpaid parental leave to look after their child's welfare. This can be taken up to the child's 18th birthday.
2. Parental leave shall be granted to others with parental responsibilities including; foster parents, adoptive parents prior to placement, grandparents with a significant parenting role, special guardianship and step-parents.
3. The employee must make every attempt to give as much notice as possible with a minimum of seven days' notice in writing before the day on which they propose to take the leave.
4. Parental leave may be granted to employees who have not given the required notice in special circumstances at the discretion of the employer. Such discretion shall not be unreasonably withheld.
5. Every attempt will be made by the Council to avoid postponement. In any event leave shall not be postponed for more than three months, apart from exceptional circumstances, and cannot be where employees in the particular circumstances outlined below have requested parental leave:
 - Following maternity leave, if a block of parental support leave is taken as one block of leave following maternity leave, an employee should not be required to refund monies paid under this section unless she does not return to local authority employment for a period of at least three months after the end of the parental leave period.
 - At the time of adoption.
6. The taking of parental leave may be postponed in circumstances where the service would be unduly disrupted if the employee took leave during the period identified in his/her notice. In this case, the employing authority must permit the employee to take a period of leave of the same duration and beginning on a date determined in consultation with the employee no later than three months after original start date notified. Managers should discuss the request for leave with the employee with a view to coming to agreement over an alternative. This could be:
 - A different pattern of leave – e.g. part time rather than full time.
 - A shorter or longer period of leave.
 - Alternative dates within the three-month period.
7. Following consultation and not more than seven days after the employee's notice was given to the Council, the manager must give the employee notice in writing of the postponement which states the reason for it and specifies the date on which the agreed period of leave will begin or end.
8. Managers shall be sympathetic to flexible parental leave-taking arrangements requested by employees. Parental leave may be taken:
 - As a single block of 18 weeks
 - As a number of shorter periods of a minimum of half day

- In patterns which provide a part time or reduced hours working arrangement for a period of time equivalent to taking 18 weeks as a single block.
9. Employees on parental leave shall have the right to return to the job as provided to those on maternity leave. Appropriate arrangements for re-induction and training should be made to those employees who return to work after a period of extensive parental support leave.
 10. Time taken, as parental leave shall be treated as continuous service for the purpose of the employment contract and for the accrual of benefits.
 11. Employees who fall sick during a period of parental leave and who give the employing authority the relevant notification shall be entitled to pay under the sickness scheme and this period shall not count towards their parental leave entitlement.

Time off for Appointments

Ante Natal Care

1. Any pregnant employee has the right to paid time off to attend ante-natal care arranged on the advice of a registered medical practitioner, midwife or health visitor. This is subject to the production of an appointment card or other such documentation confirming that an appointment has been made. Time off must take account of any necessary travelling arrangements.
2. The employee's right to paid time off to attend relaxation classes, or other classes in preparation for the birth, (e.g. parent craft), is less clear in employment law. If the employee can show evidence that attendance is on the recommendation of a registered medical practitioner, midwife or health visitor, paid time off would be reasonable. If, however, attendance is simply a matter of personal choice there is no obligation to give paid leave. In such circumstances, and where attendance is necessary during working hours, it would be reasonable for the Manager to agree annual/flexi leave, or a separate arrangement allowing attendance with lost time made up at a later date.
3. An employee must be pregnant to qualify for the right to ante-natal care. There is no requirement to give paid leave to an employee who wishes to accompany their partner attending ante-natal care, though sympathetic consideration should be given to allow people to use annual leave or flexi leave for example. Expectant fathers, and partners of pregnant women, have a statutory right take unpaid time off to attend up to two ante-natal appointments with the expectant mother. The time to attend each appointment is limited to 6.5 hours. A request to attend the appointment should be put in writing, confirming that the purpose of the time off is to attend the ante-natal appointment and that they qualify on the basis of their relationship with the mother or child.

Adoption appointments

1. An employee who has been notified by an adoption agency that a child is to be placed for adoption with them is entitled to take paid time off during their working hours to attend appointments, such as having contact with the child or meeting with the child's social worker or current carer, up to the date of the placement of the child.
2. Where a couple are adopting jointly, only one of them is entitled to take paid time off.
3. The person taking paid time off should be asked to sign a declaration that they have elected to exercise the right to paid time off.
4. The employee is entitled to take time off of up to six and a half hours on up to five occasions. This limit applies irrespective of the number of children being adopted as part of the same arrangement.

5. Appointments must have been made by or at the request of the adoption agency. The employer can ask the employee to provide a document showing that this is the case, and giving details of the date and time of the appointment.
6. Where a couple are adopting jointly, the employee who has not elected to take paid time off to attend appointments can elect to take unpaid leave. This right is however, limited to only two occasions of up to six and a half hours.
7. Intended parents in a surrogacy case who meet the conditions set out under the Human Embryology and Fertilisation Act 2008 will also have the right to unpaid leave to attend up to two ante natal appointments.

Premature Births and Miscarriages

1. Where a baby is born prematurely, special paid leave arrangements will be granted to cover the period up to the 11th week before the expected date of childbirth. The Council's normal maternity conditions will apply thereafter.
2. If the baby dies or is still born after 24 weeks' pregnancy the maternity scheme applies, as noted above. Where this occurs before the 24 weeks, (miscarriage), sympathetic consideration should be given to the award of special leave.
3. If the mother dies before the end of her maternity leave or pay period, then her partner will still be able to access shared parental leave in the same way that they would have been able to had the mother curtailed her maternity leave and pay/allowance before her death. The full amount is available (up to 50 weeks shared parental leave and up to 39 weeks shared parental pay) less the number of weeks of maternity leave (or statutory maternity pay or maternity allowance) taken by the mother prior to her death.

Right to Return to Work

1. The Right to Return

The employee has the right to return to the job in which they were employed under their original contract on terms and conditions not less favourable than those that would have been applicable if they had not been absent.

Where the employee receives 12 weeks maternity pay at half pay (applies to employees with at least one year's continuous service) they are required to return to work for a minimum of three months. Should the employee leave before this period expires the half pay element will be repayable. In other circumstances where the contract ceases during this period advice should be sought from HR staff on the requirement for repayment (in redundancy or dismissal situations for example).

2. Exercising the Right to Return to Work

- It will be assumed that the employee will be returning to work at the end of their 52 weeks Maternity Leave. If an employee wishes to return earlier than this they must give 21 days notice.
- In accordance with the conditions of service, a delay in the return to work date may occur where there is an interruption of work (due to industrial action, or some other reason).
- An occasion where an employee is sick on the expected date of return is still classed as a return to work under the maternity leave regulations. The period of sickness should be notified in the same way as any other period of sickness and the absence recorded against the employee's sickness record.

3. Reorganisations and Redundancy

In certain circumstances it is not possible for an employee to return to their original job after maternity leave because of re-organisation or redundancy. Case law has improved protection for women on maternity leave and it is essential that any re-organisation, or potential redundancies, affecting an employee on maternity leave takes account of the following:

- Appropriate consultation on proposed re-organisations or redundancy must still be undertaken with employees on maternity leave. This will normally require special arrangements to ensure that an individual is not disadvantaged through her isolation from the normal communication systems;
- Where selection is used for either re-organisation or redundancy it is essential that the criteria be critically examined so that it does not disadvantage the person on maternity leave. For example, sickness absence in the pre-maternity leave period or involvement in occupational assessment when the employee has been on long term absence through maternity;

- Where an employee is made redundant while on maternity leave she retains her right to return to work and must be informed of suitable vacancies during the maternity leave period. It is suggested therefore that where redundancies occur during maternity leave termination is suspended until such time as the return to work date at which time the person must again be offered any suitable vacancies before redundancy is confirmed.
- Where redundancy occurs before maternity leave commences but after the qualifying week for SMP purposes, (i.e. the end of the 15th week before the expected week of childbirth), statutory maternity pay as well as any redundancy is payable.
- These same levels of protection apply to employees on adoption leave or shared parental leave.

Performance Management

1. All employees participate in the Council's performance management scheme and the achievement of stated objectives and targets by an individual over an agreed period might lead to reward, e.g. the award of an increment or other positive outcome (participation in particular training). It is essential that pregnant employees and those who have taken shared parental leave or adoption leave should not be disadvantaged. In applying the scheme therefore:
2. The period over which targets and objectives are assessed may be reviewed; with an assessment period of less than a year.
3. Targets must be realistic. For example, following leave the manager and employee should work together on re-inducting the employee to the workplace and outputs may differ during this period.
4. Where practical the manager and employee may complete an assessment immediately prior to commencement of leave where it is known that the absence will span the normal end of year assessment period.
5. On occasions, the award of an increment may be dependent or influenced by the achievement of an overall team target. It is essential that the employee is not treated less or more favourably than other employees within the team through a period of absence that is related to pregnancy or parental / adoption leave.
6. Pregnancy related sickness absences should be discounted when considering an employee's sickness absence in the award of an increment.

Health & Safety

1. Regulations 3 and 16 of The Management of Health & Safety Regulations 1999 place responsibility on the employer to assess the risks to their workers and others who may be affected by their work or business. This includes risk assessments for new and expectant mothers.
2. Once an employee has given notice that she is pregnant, has given birth within the previous six months or is breast-feeding, the employer must undertake a risk assessment and then review periodically, advising the employee of any hazards identified and the preventative and protective measures to be taken.
3. The Occupational Health Service can give assistance to managers in identifying sickness absence that is pregnancy related and providing information on an employee's medical fitness in undertaking specific tasks.
4. If it is not possible to eliminate all significant risks or, where necessary, adjust working conditions, the employee should be offered alternative duties on terms and conditions no less favourable than would normally apply. In extreme cases it may be necessary to place the employee on special paid leave for as long as necessary to protect their health and safety.
5. If the employee works at night and has a medical certificate stating that it is necessary for her health and safety that she should not be at work for any period of such work identified in the certificate, the employer must consider the alternate controls listed at point 3 above. Alternative duties or special paid leave may need to be pursued immediately as a short-term temporary measure in response to the circumstances presented. A referral should be made to the Occupational Health Service for advice upon the employee's fitness to undertake the specific circumstances of her employment before continuing these arrangements for an extended period.
6. Please refer to the Council's Health and Safety manual or contact your departmental Health and Safety Manager for further advice.

Extended Employment Break

An employment break is an extended break that begins with an intention to resume work at an agreed date in the future. To qualify for an employment break an individual must have one year's continuous service as at 11th week before the expected week of childbirth.

The employment break scheme allows for a break of up to three years, but for maternity reasons this can be extended to four or five years from the date that the maternity leave commences.

For payroll and taxation purposes, the person will be considered a leaver (not returning after maternity leave) and be sent a P45 in the normal way. Payment during maternity will be as described in the section Maternity Leave & Pay:

Week 1-6

- 9/10ths of normal pay, offset against any SMP received or MA received.

Plus week 7-39

- Standard rate SMP (or MA) or 9/10th of normal pay if this is less.

An employment break does not count as reckonable continuous service and will not count in length-of-service pensions calculations. People may, however, 'buy back' service for pension purposes on their return, under the Local Government pension scheme a break of up to 36 months can be bought back. Where individuals decide to take a break for more than 3 years they **must** seek advice from the Pensions Service on the impact to them and their future pension entitlements before any final decision is taken. **This will be the individual's responsibility.**

On return from an employment break, previous Southwark service will be recognised along with a future service for the purposes of annual leave, sick pay and maternity leave, as long as **no paid employment has been undertaken in the intervening period.**

See the Council's [Guide to Flexible Working](#) for more information.

Questions & Answers

Recruitment

- Q. An applicant informs me after her successful interview that she is pregnant. Assuming it may be 8 more weeks before all clearances are received she is unlikely to work for more than 4 weeks before her maternity leave. Can I withdraw the offer of employment on the basis of her non-availability for work and the cost to my business unit?**
- A. No. You may however discuss with the applicant her entitlements to maternity leave and pay to resolve whether the first day of service should practically commence after the birth of her child.

Employment status

- Q. A member of my staff on an 18 months limited engagement contract has notified me of her intention to go on maternity leave. Her current contract will be due to expire 5 weeks into her maternity leave. Do I terminate her contract at the end of the 18 month limited engagement?**
- A. You are advised to seek advice from your HR staff to look at the specific circumstances and employee's contractual position. The decision whether to extend the contract must, however, be separate from the employee's absence on maternity leave. Difficulties will result where the contract of the employee is not extended and you engage another on a limited engagement basis.

Commencement & Return from Maternity Leave

- Q. An employee has submitted a sickness certificate, 3 weeks before her expected week of childbirth. Do I record this as sickness absence?**
- A. If the sickness absence is pregnancy related then maternity leave is deemed to have commenced. If you are in doubt of whether this may be pregnancy related seek advice from the Occupational Health service.
- Q. An employee has advised me that she is fit enough to continue working until her expected week of childbirth. Can I insist that she must leave before her expected week of childbirth?**
- A. No, if an employee remains fit and well you cannot trigger her maternity leave. If, however, the employee suffers from a pregnancy related illness at any time after the 4th week before the expected week of childbirth her maternity leave will be deemed to have commenced.
- Q. I have received no contact from my employee during her maternity leave, and I wish to confirm whether to extend the temporary member of staff. Can I require her to confirm her date of return?**
- A. It is recommended that before an employee goes on maternity leave the

manager & employee agree what and how to communicate during her absence, indeed reasonable contact during maternity leave is permissible. It must be assumed, however, that the employee will return at the end of her additional maternity leave. The only requirement on the employee is that she must confirm her date of return, if she intends to return before taking her full entitlement to maternity leave. Consideration may therefore need to be given to extend the temporary member of staff up to the possible date of return.

Q. An employee has advised me that she wants to work for a number of days during her maternity leave period without bringing her entitlement to SMP to an end or ending her maternity leave? Is this possible?

A. Yes. A woman is allowed to work for ten days during her maternity leave period. This can be broken up or taken as a period of days depending on the arrangement you make with each other. She cannot however, insist on being given any work to do. Please remember to review her risk assessment when she returns for a keeping in touch day.

Q. What should I do if an employee wishes to return to work before the end of the period of her unpaid maternity leave?

A. In these circumstances the employee must give at least 21 days notice of her return,

Q. How soon after the birth can an employee return from maternity leave?

A. While it is difficult to envisage that difficulties will occur, under employment law an employee is prohibited from returning to work within two weeks from the date of childbirth (note, this also applies where a child is still born after 24 weeks of pregnancy).

Terms & Conditions

Q. How do I calculate the annual leave entitlement for an employee on maternity leave?

A. The employee is entitled to benefit from the terms and conditions she would have received if she had not been absent through maternity leave, excluding pay. A woman continues therefore to accrue annual leave during her absence in the same way as if she was at work.

Q. How does maternity leave and maternity pay effect the employee's participation in the Local Government Pension Scheme?

A. The employee will continue to make the normal contribution rate during her period of paid leave, e.g. she will make the normal contribution rate based on half pay, etc. This period is then counted as full time service for the calculation of future pension entitlements.

No contributions are paid where the employee is on unpaid maternity leave. On return to work employees are given the option to buy back the service. If this option is pursued, payments will be at the normal contribution rate,

i.e. the level received immediately prior to the commencement of nil pay. This period would then be counted as full time service for the calculation of future pensions entitlements.

Q. Do special conditions apply on calculating continuous service where an employee terminates her employment for maternity reasons?

Where an employee returns to local government service following a break for maternity reasons, the previous service is taken into account when calculating: sickness entitlements and maternity leave. This is provided that the break in service does not:

- i) exceed eight years, and;
- ii) no permanent full time paid employment has intervened.

The same rule exists for calculating annual leave except the eight years time limit does not apply.

Nominated Carer's Leave

Q. I have received an application for nominated carer's leave, in respect of another member of my staff who is due to go on maternity leave. Should I agree this?

- A. The pregnant employee must provide appropriate justification to you in writing why the carer's role needs to be provided by this specific employee.

Performance Management

Q. A member of my staff will only return from maternity leave for the last 3 months of the financial year. Shall we wait until 1 April to set a work plan?

- A. No, all staff are included in the performance management scheme. Council procedures have established over many years the need to discuss with an employee returning from maternity leave the resumption of her duties and any training/ development she requires as part of re-induction to the workplace. The performance management system enables this to be completed in a structured and comprehensive way.

Qualifying conditions for shared parental leave and pay

Q. Who is eligible for shared parental leave?

- A. Working parents who share the main responsibility for caring for their child are able to opt into the shared parental leave system. Only employees are entitled to shared parental leave. Agency workers, self-employed parents, or parents who are not employed, are not entitled to shared parental leave.

Q. Do both parents always qualify for shared parental leave?

- A. Sometimes both parents will qualify for shared parental leave. Sometimes only one parent will qualify. Where both the mother and the child's father/mother's partner are both employed and both qualify for shared parental leave, then they must agree

between them how many weeks of leave each of them will take and each must notify their employer of the number of weeks that they have decided each employee will take.

Q. Can adopters and parents whose child is born through a surrogacy arrangement access the shared parental system?

- A. Shared parental leave and shared parental pay may also be available for adoptive parents or parents whose child is born through a surrogacy arrangement if they are entitled to adoption leave and/or statutory adoption pay.

Q. When can the father or mother's partner access the shared parental leave and pay system?

- A. The father or mother's partner can only access the shared parental leave and pay system when the mother ends, or commits to end at a future date, her maternity leave and pay/allowance. Where a mother is not entitled to maternity leave (because, for example, she is self-employed or an agency worker or has recently become unemployed), and she is entitled to statutory maternity pay or maternity allowance, a mother can create shared parental leave for her employed partner by ending, or committing to end on a given date, her statutory maternity pay or maternity allowance.

Employees who have more than one job and want to access shared parental leave & shared parental pay

Q. What happens if the employee has 2 jobs?

- A. If the employee is the child's mother and is entitled to maternity leave the council and also from another employer she must bring forward the date on which her maternity leave and/or pay periods end with both the council and her other employer(s). Shared parental leave and/or pay can only be created if the mother gives all of her employers who are liable to give her maternity leave or pay notice at the same time.

If the employee (whether the mother or the partner) meets the criteria for shared parental leave and shared parental pay in his or her employment with the council, he or she can take leave and pay from the employment with the council. If the employee also meets the criteria for shared parental leave and pay from another job as well, then they can take the leave and pay from the other employer as well.