

Pregnancy and Maternity Rights

The Law and Good Practice

A Guide for Employers



Equality Commission for Northern Ireland

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A Note about the Text

For ease of reference and use, the publication is divided into three main parts: Part 1, Part 2 and Appendices. The differences between the separate parts are as follows:

Part 1

(pages 3-6)

This Part is a guide to *good practice* and it is the most important part of the publication from a practical point-of-view. It describes the reasonably practical steps which the Equality Commission recommends that employers should take in order to promote equality of opportunity in employment for new and expectant mothers and to comply with the employment and anti-discrimination laws relating to pregnancy and maternity.

However, Part 1 does not describe in detail the underlying legal provisions and principles that regulate the subject and upon which the good practice recommendations are based. By contrast, those matters are described in Part 2.

Part 2

(pages 7-13)

This Part is quite legalistic and sets out and explains the underlying legal provisions and principles which underpin the good practice recommendations made in Part 1.

Appendices

(pages 14-30)

These contain some additional information such as notes about other sources of information and advice. More importantly, however, Appendix 1 sets out a *Model Maternity Policy*.

Part One

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- 1.1 Pregnant women and new mothers enjoy a wide but complex set of legal rights which regulate their relationship with their employers, and in some cases, their prospective employers.¹
- 1.2 These legal rights primarily exist-
- to protect their health and safety and that of their expectant or new-born children;
 - to preserve the contractual terms and conditions of employment that they would have otherwise enjoyed if they had not been pregnant;
 - to help them to attain a more satisfactory work/life balance following their children's births;
 - to protect them from unlawful discrimination, and
 - to generally promote their equality of opportunity in employment.
- 1.3 These employment rights are ultimately enforceable by taking complaints to the industrial tribunals.
- 1.4 The rights may be grouped into 3 broad sets and these will be discussed separately in Part 2 of this Guide. The 3 broad sets are-
- health and safety rights
 - statutory employment rights
 - rights under the *Sex Discrimination (NI) Order 1976*
- 1.5 The rights often overlap and complement one another in practice, so that employees will often be able to exercise rights from two or more of the sets simultaneously. For example, an employer's breach of an employee's rights under health and safety law or of their statutory employment rights may at the same time amount to unlawful discrimination on grounds of sex or pregnancy or maternity too.
- 1.6 You should never try to avoid these various legal duties by adopting the seemingly simple policy of refusing to employ any pregnant women, new mothers or women of child bearing age. Such a policy would certainly amount to sex or pregnancy or maternity discrimination and is likely to be unlawful.

¹ There is a corresponding set of rights for adoptive parents, but these are not the subject of this publication and will not be discussed further here. Nor does the publication deal with the paternity rights of new fathers such as the rights to take paternity leave and to receive paternity pay.

2. Basic Good Practice

- 2.1 The task of complying with the network of legal rights which employees enjoy can best be achieved if employers and managers understand their responsibilities, are committed to fulfilling them, and go about making decisions in a reasoned, consistent and fair manner. You should try to make this happen by establishing a framework or environment in which decisions can be made accordingly.
- 2.2 The Equality Commission strongly recommends that you take the following steps to set up such a framework or environment.

Step 1

2.3 Develop and implement the following policies-

- Maternity policy
- Equal opportunities policy²
- Harassment policy³
- Flexible working policy⁴

The Equality Commission has prepared a *Model Maternity Policy* to assist employers to draft their own policy. This can be found in Appendix 1 this Guide (see pages 14 to 28).

The Equality Commission has also separately published other guidance publications in relation to equal opportunities (including a model policy), harassment (including a model policy and procedure) and flexible working. It is strongly recommended that employers consider these other guides before developing and when implementing their own policies and associated procedures. Refer to the footnotes of this page for further information.

Step 2

2.4 Review recruitment and selection and career development procedures-

- to ensure that they are systematic, fair and objective.⁵
- to ensure when calculating her continuous length-of-service for any purpose for which this may be necessary (e.g. applying job selection criteria) that all of her periods of absence for pregnancy-

² Refer to Chapter 4 and Appendix 5 of the Equality Commission's publication *A Unified Guide to Promoting Equal Opportunities in Employment [ECNI, 2009]*.

³ Refer to Chapter 5 and Appendices 6 and 7 of the *Unified Guide*.

⁴ Refer to the Equality Commission's publication *Flexible Working: The Law and Good Practice – A Guide for Employers [ECNI, 2010]*.

⁵ This is a general good practice recommendation that is made not merely in respect to the treatment of new and expectant mothers, but to promote equality of opportunity for all persons and to prevent unlawful discrimination on any of the statutory non-discrimination grounds. For specific guidance on establishing or reviewing such procedures, refer to Chapters 10 to 12 of the *Unified Guide*.

related reasons and maternity leave are counted towards the sum (and not deducted from the sum);

- to ensure that you inform employees who are absent for pregnancy-related reasons or on maternity leave about training, promotional and other job opportunities that arise in the organisation during their absences and that you give them a fair and equal opportunity to apply.

Step 3

2.5 Review how pregnancy and maternity-related absences are handled-

You should ensure that how you deal with absences that are related to pregnancy or maternity leave do not cause unlawful discrimination. For example, it is likely to be unlawful to penalise an employee for taking pregnancy-related sickness absences or maternity leave when applying redundancy selection criteria, or when considering whether to take disciplinary action in relation to such absences.

Therefore, you should review the following policies and procedures-

- recruitment and selection procedures (see Step 2, above, for further information).
- absence management policy and procedure.⁶ Revise the policy and procedure so that you-
 - record pregnancy-related sickness absences and maternity leave absences separately from other types of sickness and other absences;⁷
 - when calculating an employee's continuous length-of-service for any purpose for which this may be necessary (e.g. applying seniority criteria in a redundancy selection exercise), count her periods of absence for pregnancy-related reasons and maternity leave towards the sum (and do not deduct them from the sum);
 - do not count pregnancy-related sickness absences when calculating an employee's total sickness record;
 - do not count time-off for ante-natal care or maternity leave when calculating an employee's other absences from work.

⁶ For general guidance on establishing or reviewing such procedures, refer to Chapter 17 of the *Unified Guide* and also to a publication by the Labour Relations Agency entitled *Advice on Managing Absence from Work [LRA, 2007]*.

⁷ It is also good practice to record disability-related sickness absences separately as well.

Step 4
2.6 **Set up systematic and objective procedures for implementing the policies**

For example, set up procedures for-

- complying with duties under health and safety law;
- granting employees' statutory and contractual employment rights, such as rights to time-off to attend for ante-natal care, maternity leave and pay; and
- considering employees' requests for flexible working arrangements and for implementing the decisions that are made.

Step 5
2.7 **Inform employees about the policies and procedures**

For example, include the policies and procedures in employees' handbooks, or on workplace intranets or notice boards.

Step 6
2.8 **Provide training to all managers**

The purpose of such training is to enable managers to understand their employer's legal responsibilities in relation to employees who are expectant and new mothers, and their own responsibilities under their employer's relevant policies and procedures.

Step 7
2.9 **Keep the policies and procedures under review**

It is good practice to monitor and review the effectiveness of employment policies and to assess their impact on the promotion of equality of opportunity. This should be done periodically; for example, every year or every 3 years or some other period, depending on what is appropriate for the employer.

1. Introduction

Part Two

- 1.1 As noted in Part 1, pregnant women and new mothers enjoy a wide range of employment rights. These rights will be described in more detail in this Part of the Guide.
- 1.2 These employment rights are ultimately enforceable by taking complaints to the industrial tribunals. The rights may be grouped into 3 broad sets as follows-
 - health and safety rights
 - statutory employment rights
 - rights under the *Sex Discrimination (NI) Order 1976*
- 1.3 The rights often overlap and complement one another in practice, so that employees will often be able to exercise rights from two or more of the sets simultaneously. For example, an employer's breach of an employee's rights under health and safety law, or of their statutory employment rights may at the same time amount to unlawful discrimination on grounds of sex or pregnancy or maternity too.
- 1.4 It is not intended to give a fully comprehensive and detailed explanation of the various employment rights here. Instead, this is a short guide to enable employers to see that the good practice recommendations made in Part 1 ultimately derive from statute law and associated case law. This is also intended to serve as a guide to "signpost" employers to other and better sources of information should they wish to learn more.

2. Health and Safety Legislation

- 2.1 The principal law for the purpose of this particular subject is the *Management of Health and Safety at Work Regulations (NI) 2000*.
- 2.2 In summary, the law requires employers to take account of the special position of new and expectant mothers and to conduct a risk assessment. This should take account of any risks where the worker may be exposed to any process, working conditions, or physical, chemical or biological agents which might adversely affect the health and safety of the worker or their baby. Risks should primarily be avoided by adopting prevention and control measures.
- 2.3 A failure to carry out risk assessments as required by the legislation may not only expose pregnant employees to unnecessary and avoidable health

and safety risks in the workplace and leave an employer vulnerable to actions for personal injury at common law or under health and safety law, but a failure may also amount to, or lead to other acts, of unlawful sex or pregnancy discrimination under the *Sex Discrimination (NI) Order 1976*.

The Health & Safety Executive for Northern Ireland

- 2.4 The best source of information about health and safety law and of advice and guidance about conducting risk assessments is the **Health & Safety Executive for Northern Ireland**. The Executive's contact details are set out in Appendix 3.

3. Statutory Employment Rights

- 3.1 The principal statute that provides enforceable legal rights to employees is the *Employment Rights (NI) Order 1996*, although it is also supplemented by a series of associated statutory regulations, such as the *Maternity and Parental Leave etc. Regulations (NI) 1999*.
- 3.2 Brief examples of the available rights are described below. These descriptions are merely summaries of the kinds of employment rights that employees may have. The summaries do not set out the full list or extent of the rights available. Nor do they describe the various qualifying criteria and exceptions that apply. Furthermore, the qualifying criteria and exceptions and the meanings of some of the relevant concepts are prone to change over time due to legislative changes or judicial interpretation. The best sources of information about these rights and developments are described below in paragraphs 3.11 and 3.12.
- 3.3 Also, these employment rights are merely the minimum levels of protection that employees are entitled to receive. Employers are free to provide their employees with contractual terms and conditions of employment that are more favourable than those provided by statute.
- 3.4 For the purposes of this Guide, the rights may be grouped into two broad sets: namely-
- rights related to pregnancy and maternity leave, and
 - rights to time-off to look after children

Rights related to pregnancy or maternity leave

- 3.5 All women employees who are pregnant or who are taking maternity leave are entitled to enjoy certain minimum statutory maternity rights. Additional

rights are also available to employees who satisfy certain qualifying criteria. For example, employees have, or may have (if qualifying conditions apply)-

- a right to take paid time-off for antenatal care;
- a right to take up to 52 weeks statutory maternity leave (i.e. 26 weeks of Ordinary Maternity Leave, followed by up to 26 weeks of Additional Maternity Leave);
- a right to receive Statutory Maternity Pay for up to 39 weeks, or, alternatively, Maternity Allowance;
- a right to benefit from up to ten “Keeping in Touch Days” during the maternity leave period;
- rights to employment protection, such as a right, if they return at the end of Ordinary Maternity Leave period, to return to the same job that they did previously and on the same terms and conditions.
- there is a similar, but slightly modified, right if they return at the end of the Additional Maternity Leave period;
- a right not to be unfairly dismissed, or selected for redundancy, on the grounds that they are pregnant or have exercised their statutory maternity rights.

Rights to time-off to look after children

3.6 Many male and female employees who are parents of children, including new mothers returning to work following childbirth, have legal rights which may entitle them to take time-off work to look after their children. For example, employees have, or may have (if qualifying conditions apply)-

- a right to request flexible working arrangements;
- a right to take up to 13 weeks unpaid parental leave;
- a right to take a reasonable amount of unpaid time-off to deal with certain unexpected emergencies.

3.7 The right to request flexible working arrangements is particularly important. The right derives from *Article 112F of the Employment Rights (NI) Order* and associated regulations.

3.8 The *Article 112F* right is a procedural right: it requires the employer and employee to follow a prescribed procedure. The most important requirement of the procedure is that employers must give serious consideration to any requests they receive and may only reject a request on certain specified grounds.

Relationship of these rights to the *Sex Discrimination (NI) Order*

- 3.9 A failure by an employer to uphold any of these employment rights will leave the employer vulnerable to actions for breach in an industrial tribunal but, also, such breaches may also amount to unlawful sex or pregnancy discrimination under the *Sex Discrimination (NI) Order*.
- 3.10 Indeed, it is even possible, in principle, that an employer could lawfully reject a request from a female employee for flexible working arrangements under *Article 112F* (as described above), yet the same decision could amount to an act of unlawful sex discrimination under the *Sex Discrimination (NI) Order*. This is because the latter sets a higher and more stringent test for justifying a refusal to accede to a request.

Sources of information and guidance

- 3.11 The best sources of information and guidance about these statutory employment rights are (a) the Labour Relations Agency, and (b) the Department of Employment and Learning. Their contact details are set out in Appendices 2 and 3.
- 3.12 It is also recommended that employers consult and follow the guidance set out in the Equality Commission's publication on the subject of flexible working; namely, *Flexible Working: The Law and Good Practice – A Guide for Employers [ECNI, 2010]*.

4. The *Sex Discrimination (NI) Order 1976*

- 4.1 The *Sex Discrimination (NI) Order 1976* prohibits several different types of discrimination against job seekers and employees. It is not necessary to list all of the types here, but the ones that are most relevant to the subject-matter of this Guide are-
- discrimination against a woman on the grounds of her sex.
 - discrimination against a woman on the grounds that she is married.
 - discrimination against a pregnant woman (or, a woman who recently gave birth and is exercising a right to take statutory maternity leave) on the grounds that she is or was pregnant.
 - discrimination against a woman who is exercising, or has exercised, or is seeking to exercise a right to statutory maternity leave on the grounds that she is exercising, has exercised, or is seeking to exercise that right.
- 4.2 Discrimination may be *direct* or *indirect*. These concepts are explained below.

Direct discrimination

- 4.3 Direct discrimination is usually unlawful when it occurs because it cannot normally be lawfully justified. There are limited defences available to employers, but these usually arise where the employer has no option but to act as he did for compelling health and safety reasons. Such exceptions rarely occur in practice.
- 4.4 Direct discrimination is likely to occur in many circumstances and the following examples are only illustrations of the dangers-

An employer rejects a female job applicant's application at the shortlisting stage because she is a woman. Instead the employer only shortlists male applicants because he fears that a woman may later become pregnant and he knows that there is no risk of this happening with men.

An employer refuses to offer a job to a married woman but instead offers it to an unmarried woman. The employer does this because she fears that a married woman may be more likely than an unmarried woman to have children, or to seek time-off to look after children, or to get pregnant.

An employer refuses to offer a job to a woman because she is pregnant and is likely to go off on maternity leave shortly. In this example it is irrelevant whether the job is permanent or temporary in nature. The refusal to offer it on the ground that the woman is pregnant is unlawful discrimination in either case.

It is also irrelevant that the employer would also have refused to offer the job to any other person (male or female) who was likely to be soon off work for other non-pregnancy-related reasons (e.g. a man or woman who informed the employer that he/she would shortly have to go into hospital for an operation, or into prison to serve a sentence).

An employer refuses to carry out a health and safety risk assessment for a pregnant employee with the result that she is exposed to unnecessary and avoidable risks to her health.

An employer offers an opportunity for promotion to some of his staff. One of the selection criteria is that applicants must have 3 years continuous service in their current job. One woman has 3½ years relevant service if one also counts the 9 months she spent on maternity leave in the previous year. However, the employer refuses to count this time period in the reckoning and rejects her application because she does not meet the length-of-service criterion.

The refusal to count her time spent on maternity leave for the purpose of reckoning her length-of-service in relation to the promotion opportunity is unlawful discrimination.

A woman has worked for an employer for 9 months and in all that time the employer has never expressed any dissatisfaction with her conduct, work performance or time-keeping.

The woman becomes pregnant and she informs the employer of this. Three days later the employer initiates internal disciplinary proceedings against the woman alleging that her work performance and time-keeping are poor and below the expected standard. The employer later terminates her employment on these grounds.

The timing of the employer's action is suspicious and together with the fact that he had not previously expressed any discontent with her performance or time-keeping is very likely to raise an inference that the reason for it was not due to genuine concerns about her work performance or time-keeping but rather was because of her announcement that she was pregnant. In the event of a complaint to an industrial tribunal, the employer is likely to be at a considerable legal disadvantage almost from the start. He will have the heavy burden of proving that he genuinely acted for reasons relating to her performance and time-keeping and not because she was pregnant.

Indirect discrimination

- 4.5 Indirect discrimination may occur in situations where an employer is not directly subjecting a woman to unfavourable treatment because she is a woman, or pregnant or because she has exercised her rights to maternity leave. Rather, it may occur where the employer treats all employees or

job applicants equally and consistently in the same way, but where in doing so puts women at a particular disadvantage compared to men. The examples set out in paragraph 4.7 below will illustrate the concept.

- 4.6 Situations in which indirect discrimination may potentially occur are not necessarily, or automatically, unlawful. This is because employers may have a very compelling reason (e.g. perhaps a good business reason) for acting as they have and that reason outweighs the discriminatory effect that the action has against the woman, or women, who are adversely affected by it. Where the action or treatment can be objectively justified, it will not be deemed to be unlawful.
- 4.7 Indirect discrimination is likely to occur in many circumstances and the following examples are only illustrations of the dangers-

An employer requires all her staff to work between 9.00am and 5.00pm, 5 days per week, Monday to Friday, without exception.

This is likely to place women, especially women who have young children, at a particular disadvantage compared to men, even men who have children. As is well known, women tend to bear the greater share of their families' caring responsibilities. Therefore female employees are more likely to struggle to meet an employer's inflexible working system than male employees. Consequently, in this case, the system would have to be objectively justified or would otherwise be unlawful.

The classic example of the kind of case where an employer, such as the one described in the last example, might be put to the test of having to objectively justify an inflexible work regime is where a new mother on her return to work from maternity leave submits a request for flexible working arrangements (e.g. she wishes to work part-time hours).

A refusal by the employer either to consider or to accede to the request would leave him or her open to a complaint of indirect sex discrimination and/or for breach of the *Article 112F right to request flexible working* (see paragraphs 3.7 to 3.10 above for further information on this associated right).

Model Maternity Policy

A note to employers

This note is an introduction to the Model Maternity Policy but does not form part of it.

It is important to note some limitations of this Model Policy

Firstly, it is concerned with the rights and entitlements of women employees and job applicants in relation to pregnancy and maternity. However, it is not concerned with the corresponding rights and entitlements of men who are new fathers (i.e. it is not a “Model Paternity Policy”). It is also not concerned with the corresponding rights of new adoptive parents (i.e. it is not a “Model Adoptive Parents Policy”). But although this Model Policy does not deal with paternity and adoption issues, there is nothing to stop employers from developing and implementing policies to deal with these subjects. Indeed, it would be good practice for employers to do so. Such policies may be developed separately to a Maternity Policy, or incorporated in a joint Maternity, Paternity and Adoptive Parents Policy. It is ultimately for each employer to decide which format they wish to develop and implement.

Secondly, the Model Policy has been developed to meet the basic needs of employers, particularly smaller ones, to help them to comply with their minimum statutory obligations. So, for example, the Model Policy does not include references to the kinds of additional contractual benefits that some employers provide to their employees such as Occupational Pension Schemes, Contractual Maternity Pay Schemes, Childcare Voucher Schemes. Therefore, the Model Policy does not address the various contingencies that might arise in relation to these additional benefits. Employers who provide such additional benefits will need to amend the Model Policy to address these issues.

Therefore, the Model Policy should be used as a guide that can be adapted and applied as appropriate. Employers should make appropriate amendments to it to reflect their own particular circumstances, subject to the need to maintain and preserve employees’ minimum statutory rights.

The Model Policy starts after this point:

1. Statement of Policy

All managers and employees of the Company must comply with this policy.

We [*or, insert name or other noun as appropriate*] are committed to providing equality of opportunity in employment to all persons, including those of our employees and job applicants who are expectant or new mothers. This general commitment is described more fully in our Equal Opportunities Policy and in a number of other employment policies and procedures.

This Maternity Policy derives from our Equal Opportunities Policy. It is a source of information about the statutory and contractual employment rights that we owe to our job applicants and employees who are expectant and new mothers. It also

describes the procedures that we have established to ensure that we comply with those duties.

However, the policy's main purpose is to show that we recognise our legal responsibilities to such employees and job applicants and to express our commitment to fulfilling those responsibilities.

Accordingly, we are committed to:

- promoting equality of opportunity for those of our employees and job applicants who are expectant or new mothers;
- preventing unlawful discrimination against such persons;
- promoting a good and harmonious working environment for such persons;
- fulfilling our legal obligations under the employment rights and anti-discrimination laws;
- complying with this policy and our Equal Opportunities Policy and other associated policies.

2. To whom does this policy apply?

This policy applies to all job applicants to and employees of the Company who are expectant or new mothers.

[An employer may apply the policy to other categories of person where appropriate; for example: contract workers, partners, Directors or Board members, work placement trainees/students]

3. Implementation

This policy is fully supported by *[the Board, or other senior manager, etc.]* and has been agreed with *[insert name of recognised trade union(s), if relevant]*.

The *[HR Director, or other senior manager (specify who)]* has specific responsibility for implementing it.

To implement this policy, we will:⁸

- inform all employees about the policy;
- provide training about it to all managers and supervisors;

⁸ These steps are additional to the other steps which the Company has taken, or will take, in relation to implementing its Equal Opportunities Policy and other associated policies.

- review all of our other employment policies to ensure that they are consistent with the aims of this policy;
- keep the effectiveness of this policy under periodic review.

4. Unlawful discrimination and harassment

We are an equal opportunities employer. As such, we are committed to ensuring that no job applicant or employee is subjected to unlawful discrimination or harassment on the grounds that she is-

- a woman, or
- pregnant, or that she was pregnant, or may become pregnant, or
- taking, or that she has taken or may take maternity leave, or
- acting, or that she has acted or may act to enforce her rights under this policy, or the employment rights legislation, or under anti-discrimination legislation.

We are committed to ensuring that no employee or job applicant is unlawfully discriminated against or harassed on any of these grounds in relation to-

- recruitment and selection
- opportunities for training, promotion or career development
- enjoyment of a good and harmonious working environment
- systems of work (such as hours, times and location of work)
- health and safety
- pay and benefits
- performance appraisal
- disciplinary action
- dismissal (including selection for redundancy)

We consider that acts of unlawful discrimination and harassment are acts of misconduct and we may take disciplinary action under our disciplinary procedures against the perpetrators of such acts.

5. Rights and procedures

In addition to their rights under anti-discrimination law, employees who are expectant or new mothers may, if they satisfy certain qualifying conditions, be entitled to benefit from a range of other employment rights which are not available to other employees, or job applicants, and which aim to protect them and to promote their equality of opportunity in employment. These rights are more fully discussed in this section.

In this section too we have also set out the procedures to be followed by employees and managers in relation to these rights.

[Note – the rights described in this section are the minimum level of protection that employees are entitled to receive under statutory employment rights legislation and employers may not reduce them, even with the agreement of the employees concerned. Employers are free to provide their employees with contractual rights that are more favourable than those provided by statute. If you intend to provide more favourable contractual rights, then the Maternity Policy should be amended to include references to the more favourable terms and conditions].

A. Notification of pregnancy

When to tell us

Ideally, an employee should inform us as soon as possible that she is pregnant. This is in her best interests as it will enable us to deal quickly with the health and safety issues that may arise, such as carrying-out a health and safety risk assessment at the earliest possible date.

If an employee delays telling us that she is pregnant, it is nevertheless very important that she tells us the news **by no later than the end of the 15th week before her expected week of childbirth, or as soon as reasonably practicable afterwards.**⁹ This is necessary so as to ensure that she will qualify for some important statutory rights, such as the right to take statutory maternity leave, which depend on such notice being given.

How to tell us

The notification must be made in writing. The written notice must include the following information:

- a statement that the employee is pregnant,
- the expected week of childbirth, and
- the date on which she intends to start her maternity leave.¹⁰

It is the employee's right to choose when she wishes her maternity leave to start, although she may only choose a date that falls after the beginning of the 11th week before the expected week of childbirth (i.e. not before week 29 of an expected 40 week pregnancy).

Other information

An employee must also provide us with a maternity certificate (form MATB1) from a registered doctor or midwife.

⁹ Another way to express the phrase "end of the 15th week before the expected date of childbirth" is to say "the end of week 25 of an expected 40 week pregnancy".

¹⁰ After submitting her notice, an employee may later change the date on which she intends to start her maternity leave, so long as she gives us proper notice. Refer to section F below on Maternity Leave for information on how and when to do this.

B. Health and Safety

This section of the policy applies to pregnant employees and to employees who have returned to work within 6 months of giving birth and employees who are breastfeeding after their return to work.

If such an employee has any concerns about her health and safety relating to her condition, she should immediately contact her [*line manager, or the HR Manager (specify who)*] to discuss them.

Risk Assessments

In addition, the Company affirms that it will comply with its duties under the *Management of Health and Safety at Work Regulations (NI) 2000*. In particular:

- We will carry out general health and safety risk assessments as required and when doing so we will take special account of the risks that may affect the health and safety of employees who are expectant or new mothers.
- After an employee has informed us that she is pregnant, or that she is within 6 months of the birth, or that she is breastfeeding, we will immediately:
 - carry out a specific health and safety risk assessment to identify any particular risks in her work that may affect her, or her baby;
 - provide her with information as to any relevant risks that were identified in that risk assessment;
 - attempt to avoid or remove those risks, or if that cannot be done
 - temporarily alter her working conditions or hours of work, if possible, or
 - offer her suitable alternative work, if available, on the same terms and conditions as before.
- If we cannot avoid or remove the risks in any of these ways, we may have to suspend the employee from work on maternity grounds until such time as the risk is avoided or removed. She will be entitled to receive her normal statutory and contractual terms and conditions of employment, including her salary or wages, during the period of suspension, unless she has unreasonably refused an offer of suitable alternative employment.

Rest facilities

Again, we affirm that to comply with health and safety law we will provide suitable rest facilities for employees who are pregnant or who are breastfeeding.

[NOTE: The following part (in italics) applies where employees work at night. It may not be relevant to all employers and may be deleted if appropriate.]

Employees who work at night

Where an employee who is pregnant, or who is within 6 months of the birth, or who is breastfeeding and who works nights provides a medical certificate from a registered doctor or midwife which states that it is necessary for her health and safety that she should not work at night for a specified period then we will-

- offer her suitable alternative daytime work on the same terms and conditions as before; or if no such work is available we shall*
- suspend her from work for so long as is necessary. She will be entitled to receive her normal statutory and contractual terms and conditions of employment, including her salary or wages, during the period of suspension, unless she has unreasonably refused an offer of suitable alternative employment.*

C. Time-off during pregnancy for ante-natal care

After an employee has informed us that she is pregnant, she will be entitled to take time-off during her normal working hours to receive ante-natal care.

What is ante-natal care?

Ante-natal care includes regular medical appointments and also relaxation classes and parentcraft classes. In all cases, however, the care must be something that the employee has been advised to receive by a registered doctor, registered midwife or registered health visitor.

Arranging appointments and giving advance notice

We would ask employees to try, so far as is possible, to arrange for their ante-natal care appointments to be held as close to the start or end of the working day. We would also ask employees to provide their line managers with plenty of advance notice of their appointments. Please provide as much notice as possible. Except in the case of their first ante-natal care appointment, employees should also provide evidence of their appointments. Acceptable evidence will be a medical certificate or an appointment card or letter.

Payment during time-off

Employees will continue to receive their normal pay during any periods of authorised time-off that they take to attend for ante-natal care.

D. Sickness absences during pregnancy

This part of the policy deals with pregnancy-related sickness absences that occur during the period before employees go off on statutory maternity leave.

Recording the absences and other implications

We will record such absences separately from non-pregnancy-related sickness absences and they will not be counted as part of an employee's normal sickness absence record. Also, no disciplinary or dismissal proceedings will be taken against employees on the basis of such absences. Nor will employees suffer any penalty or detriment as a result of such absences in relation to any other aspect of their employment; for example, they will not be penalised for such absences in the event that we ever have to apply length-of-continuous-service or attendance record criteria in a redundancy selection exercise.

Absences during the 4 weeks before the expected week of childbirth

If an employee is absent due to pregnancy-related illness during this period (i.e. beginning week 36 of an expected 40 week pregnancy), her maternity leave will begin automatically on the first day after the beginning of her absence.

Sick pay

[NOTE: The content of the following part will depend on whether or not the employer operates a contractual sick pay scheme. Employers should choose the particular option that is appropriate to their own circumstances.]

Option 1 – During their sickness absences, employees will receive the normal benefits that all our employees are entitled to receive under our Company's Sick Pay Scheme.

Option 2 – We do not operate a Company Sick Pay Scheme. During their sickness absences, employees will receive Statutory Sick Pay in the normal way, provided that they satisfy the relevant eligibility criteria.

E. Discussion meeting before maternity leave starts

An employee's line manager will meet with her prior to the start of her maternity leave to-

- provide her with information about her entitlements under this policy;
- discuss the ways, means and circumstances in which we may keep in contact with her to share information during the maternity leave period;
- discuss the employee's plans for after her return to work (for example, whether she might wish to work part-time or under some other flexible working pattern);
- discuss any other concerns the employee may have.

F. Maternity Leave

Statutory maternity leave

All pregnant employees are entitled to take **up to 52 weeks** statutory maternity leave, or as much of that period as they wish to take (subject to a short period of compulsory maternity leave). Employees are entitled to take the full 52 weeks period of statutory maternity leave regardless of their length-of-service or their hours of work.

The 52 weeks entitlement to statutory maternity leave are made up of 26 weeks of *Ordinary Maternity Leave* immediately followed, without a break, by up to 26 weeks of *Additional Maternity Leave*.

Compulsory maternity leave

[NOTE: The content of the following part will depend on whether or not the employees work in a factory. Employers should choose the particular option that is appropriate to their own circumstances.]

Option 1 (factory workers) – Employees must take at least 4 weeks maternity leave immediately following the births of their babies.

Option 2 (non-factory workers) – Employees must take at least 2 weeks maternity leave immediately following the births of their babies.

Compulsory maternity leave forms part of the Ordinary Maternity Leave period.

Procedure for taking maternity leave

To be entitled to take statutory maternity leave employees must give us proper notice. The procedure to be followed is described above in section A of this policy: “Notification of pregnancy”. As part of that procedure employees are required to tell us the date on which they intend to start their maternity leave.

It is the employee’s right to chose when she wishes her maternity leave to start, although she may only choose a date that falls after the beginning of the 11th week before the expected week of childbirth (i.e. not before week 29 of an expected 40 week pregnancy).

An employee may later change the intended start date of her maternity leave by giving us notice 28 days in advance of the new start date.

After receiving an employee’s “notification of pregnancy”, we will calculate when her 52 weeks maternity leave period is due to end and we will send her written notice of the date. We will do this within 28 days of receiving the “notification of pregnancy”.

Starting maternity leave

The maternity leave period will normally start on the chosen start date that the employee indicated in her “notification of pregnancy”, or if she later changed it then on that other date.

If an employee does not start her maternity leave prior to the birth of her child, for example where the child is born prematurely, then the leave period will start automatically on the day after the birth of the child when the period of compulsory maternity leave begins.

The start date will also begin earlier than expected if during the 4 weeks before the expected week of childbirth the employee is absent due to pregnancy-related illness. In those circumstances, her maternity leave will begin automatically on the first day after the beginning of her absence.

G. Contact during maternity leave

We reserve the right to keep a reasonable level of contact with employees during their maternity leave periods in order to share information. For example, we may need to contact employees to discuss their plans for after their return to work in order to put in place any special arrangements that may need to be made.

Furthermore, we will keep employees informed about any organisational developments or career development opportunities that may arise within our Company during their maternity leave periods. For example, we will send employees notices of any opportunities to apply for training or promotion.

We affirm that we will not contact employees during the statutory maternity leave period in order to apply pressure on them to return to work before they are ready to do so.

“Keeping-in-Touch Days”

In addition to the circumstances described above in respect of keeping in contact to share information, employees may also, with our agreement, make use of up to 10 special “*Keeping-in-Touch Days*” (or, “KIT Days”).

KIT Days could be used to enable an employee to attend staff meetings, training courses, conferences or any other work activity. Also, when using a KIT Day, it will not be necessary for an employee to attend for an entire work shift. A “day” for this purpose has a no fixed meaning and it could mean anything from a short meeting to an entire work shift of normal duration. It is ultimately a matter for the employee to agree with us how the “days” may be used and how long they will last.

An employee's statutory maternity leave period does not end if she attends work on any of the 10 KIT Days. Nor does the use of KIT Days affect her entitlement to Statutory Maternity Pay.

We affirm that we will not force any employee to use any KIT Days. An employee may freely and without penalty turn down any request we may make for her to attend the workplace for a KIT Day. Similarly, we may also freely reject any request that an employee makes to use a KIT Day.

H. Maternity Pay

[Note: The content of this section is most appropriate for those employers who do not operate a contractual maternity pay (CMP) scheme, i.e. where employees will only receive Statutory Maternity Pay. Employers who do operate a CMP scheme will need to make appropriate amendments to the policy to address that subject].

Normal salary or wages and other contractual benefits

During the statutory maternity leave period employees will not be entitled to receive their normal salaries or wages.¹¹ However, employees will continue to be entitled to enjoy other benefits that they are normally entitled to under their contracts of employment (see section J for further information).

Statutory Maternity Pay

Employees who satisfy certain eligibility criteria will be entitled to receive **up to 39 weeks** Statutory Maternity Pay ("SMP") during their maternity leave.

SMP is subject to deductions for tax and National Insurance contributions.

The SMP rates are as follows-

- the first 6 weeks: at 90% of the employee's average weekly earnings.¹²
- the remaining 33 weeks: at the *lesser* of (a) the Government's set SMP rate for the relevant year, or (b) 90% of the employee's average weekly earnings.

We affirm that we will review employees' SMP entitlements to take account of any retrospective pay rises that may affect the calculations. For example, if a retrospective pay rise would have increased an employee's average weekly

¹¹ However, in certain exceptional circumstances employees may be entitled to receive all or part of any bonuses that we might pay to staff during or in respect of the maternity leave period. Entitlement to a bonus payment will depend on various factors such as the type of bonus (i.e. is it discretionary or non-discretionary?) and on the purpose and terms of the bonus payment.

¹² The calculation period for this purpose is the 8 weeks up to and including the 15th week before the expected week of childbirth (i.e. between weeks 18 and 25 of an expected 40 week pregnancy).

earnings in the relevant calculation period (see footnote 12) then she will receive a lump sum payment to make up any difference.

Procedure for receiving SMP

To be entitled to receive SMP eligible employees must give us proper notice. The procedure to be followed is described above in section A of this policy: “Notification of pregnancy”.

As part of that procedure employees are required to tell us the date on which they wish to start receiving their SMP. Employees may only choose a date that falls after the beginning of the 11th week before the expected week of childbirth (i.e. not before week 29 of an expected 40 week pregnancy).

After receiving an employee’s “notification of pregnancy”, we will calculate the rates of SMP that she will be entitled to receive and we will send her written notice of these.

Eligibility for SMP

In addition to the notice requirements described above, an employee is only eligible to receive SMP if-

- she has worked for us for a continuous period of at least 26 weeks before the end of the 15th week before the expected week of childbirth (i.e. before the 25 week of an expected 40 week pregnancy).
- her average earnings in the relevant calculation period (see footnote 12) are not less than the Lower Earnings Limit for National Insurance contributions.

I. Maternity Allowance

Employees who are not eligible to receive SMP may alternatively be entitled to receive Maternity Allowance. This is a benefit paid by the Social Security Agency (“SSA”). Employees should contact the SSA for further information on how to claim the benefit.

To claim Maternity Allowance, employees will need a form entitled *SMP1*. This form has to be completed by us. We undertake to complete the form for any employee who needs it. Employees should contact...*[the Human Resources or Finance Department – insert the name or title of the appropriate person or department.]*

J. Continuation of service and of contractual terms and conditions during the statutory maternity leave period

Continuous length-of-service

An employee's contract of employment will continue throughout any periods spent on statutory maternity leave (i.e. during both *Ordinary* and *Additional Maternity Leave*). Furthermore, for the purpose of calculating her continuous length-of-service for any purpose for which this is necessary (e.g. benefits related to seniority, job selection criteria, redundancy selection criteria, pension rights), all of her periods of absence for pregnancy-related reasons and maternity leave will count towards the sum. These periods will not be deducted from the sum.

Terms and conditions of employment

An employee's normal contractual terms, conditions and benefits will continue to apply throughout the entire period she spends on statutory maternity leave (i.e. during both *Ordinary* and *Additional Maternity Leave*), except for those terms relating to her salary and wages.

Thus, for example, employees will still be entitled to benefit from our contractual obligation of trust and confidence and will continue to owe us an obligation of good faith.

[Optional – It is recommended that employers insert an extra paragraph here to illustrate the extent of this issue with examples appropriate to their organisation. For example, if employees' normal contractual terms entitle them to enjoy various benefits during the normal course of their employment then they will also be entitled to enjoy them during the course of any periods spent on statutory maternity leave. Thus, if an employee's contract of employment normally entitles her to receive "non-pay" benefits such as life assurance; private medical insurance; living accommodation; private (i.e. non-business) use of a mobile phone, computer or car; gym membership, then she will be entitled to continue to receive these benefits during the entire statutory maternity leave period.]

Holiday entitlement

An employee's holiday entitlement (i.e. both statutory entitlements and any additional contractual entitlements) will also continue to accrue during the entire statutory maternity leave period.

Holiday entitlement cannot be taken during the statutory maternity leave period itself. However, employees may, with our agreement, take all or some of their entitlement in advance of their starting maternity leave, or all or part of it after their maternity leave ends.

K. Procedure for returning to work after maternity leave

Return after 52 weeks

Employees are entitled to take up to 52 weeks statutory maternity leave. As noted above in section F, after receiving an employee's "notification of pregnancy", we will calculate when her 52 weeks maternity leave period is due to end and we will send her written notice of the date.

We will normally expect employees to return to work on the said dates. We would ask employees to give us advance notice of whether they intend to return on those dates or not.

Return to work before the end of the 52 weeks

Employees may, if they wish, return to work before the end of the normal 52 weeks statutory maternity leave period.

If employees wish to return early, they should give us 8 weeks advance notice of the return date. If we do not receive the appropriate notice, we may postpone an employee's return until the full 8 weeks notice period has passed (although we may not postpone a return to work beyond the normal 52 weeks statutory maternity leave period).

Return to work after the end of the 52 weeks

Employees may sometimes return to work after the normal 52 week statutory maternity leave period expires. This may occur where the employee is sick or injured, in which case our normal sickness absence policy and procedures will apply; or where we have given the employee permission to take a leave of absence, such as permission to take accrued holidays or a period of unpaid "parental leave" or other unpaid "special leave".

L. Rights on returning to work after maternity leave

As noted above in section F, the 52 weeks entitlement to statutory maternity leave are made up of 26 weeks of *Ordinary Maternity Leave* ("OML") immediately followed by up to 26 weeks of *Additional Maternity Leave* ("AML").

An employee's right to go back to her old job on her return from maternity leave may vary depending on whether she returns to work following OML or AML.

Returning before or at the end of the OML period

If an employee returns to work before or immediately at the end of the OML period, she is entitled to return to the same job that she held prior to her maternity leave and on the same terms and conditions of employment that she had as before.

An exception to this rule may apply where the employee's job no longer exists due to redundancy. See section M for further information on what will happen in that situation.

Returning before or after the end of the AML period

If an employee returns to work before or after the end of the AML period, she is entitled to return to the same job that she held prior to her maternity leave and on the same terms and conditions of employment that she had as before, unless there is a reason why it is not reasonably practicable for her to return to it.

If it is not reasonably practicable for her to return to her old job, she will instead be offered a similar job on terms and conditions that are no less favourable to those which she had in her old job.

An exception to this rule may apply where the employee's job no longer exists due to redundancy. See section M for further information on what will happen in that situation.

M. Redundancy situations during maternity leave

If during her maternity leave the employee's job has become redundant then it will not be practicable for her to return to the same job as before. If this occurs, then the employee will instead be offered a suitable alternative vacancy, if one is available.

A suitable alternative job may not necessarily be on the same terms and conditions as those previously enjoyed by the employee, but it will not be on terms and conditions that are substantially less favourable. Employees who are offered alternative employment may have a four-week trial period in which to assess whether it is suitable.

If we cannot offer an employee suitable alternative employment, we may then have to terminate her employment on the grounds of redundancy. In such a situation our normal redundancy procedures will apply; for example, in relation to providing notice of dismissal and in calculating redundancy payments.

If an employee unreasonably refuses to accept an offer of suitable alternative employee, either before, during or after a trial period, we may then have to terminate her employment, and she may forfeit her right to receive a redundancy payment.

N. Sickness absence after the maternity leave period expires

If an employee is not able to return to work after the end of her maternity leave due to sickness or injury, whether pregnancy-related or not, our normal sickness absence policy and procedures will apply.

O. Flexible working

This Maternity Policy is associated with our Flexible Working Policy, both of which derive from our Equal Opportunities Policy.

On their return from maternity leave employees will normally be entitled, subject to the matters discussed in sections L and M, to return to the same working arrangements (i.e. working hours and times and place of work) that they had before they went off on maternity leave. Thus, an employee who worked full-time will be entitled to return to full-time employment, and an employee who worked part-time will be entitled to return to the same arrangements of her part-time employment.

Returning employees who previously worked full-time and who wish to change to a flexible working pattern to accommodate their caring responsibilities will have no absolute and automatic right to obtain such a change to their working arrangements.

However, as noted in our Flexible Working Policy, we are committed to providing flexible working arrangements for our employees, and to providing non-discriminatory treatment to those employees who avail of such arrangements, or who wish to avail of them.

Therefore, returning employees who wish to change to a flexible working pattern (or, a different flexible working pattern) have the right to apply for such a change. We welcome and encourage such applications and affirm that we will give them serious consideration in accordance with the principles and criteria laid down in our Flexible Working Policy and its associated procedures.

Useful Publications

Publications by the Equality Commission

The following publications are available to download, free-of-charge, from the Equality Commission's website: www.equalityni.org

- A Unified Guide to Promoting Equal Opportunities in Employment
- Flexible Working: The Law and Good Practice – A Guide for Employers

Publications by the Department of Employment and Learning

The following publications are available to download, free-of-charge, from the Department's website: www.delni.gov.uk

- ER16: Maternity rights - a guide for employers and employees
- ER24: Time off for dependants
- ER25: Parental leave: a guide for employers and employees
- ER34: Rights to paternity leave and pay
- ER35: Adoptive parents: a guide for employers and employees
- ER36: Flexible working: a guide for employers and employees

Publications by the Labour Relations Agency

The following publications are available to download, free-of-charge, from the Agency's website: www.lra.org.uk

- Advice on Recruitment, Selection and Induction
- Advice on Managing Absence from Work
- Advice on Handling Redundancy

Publications by the Health and Safety Executive for Northern Ireland

The following publications are available to download, free-of-charge, from the Executive's website: www.hseni.gov.uk

- Legal Framework of Health & Safety at Work in Northern Ireland
- Guide to Workplace Health & Safety
- Risk Assessment Simplified

Useful Contacts

Equality Commission for Northern Ireland

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7 – 9 Shaftesbury Square
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Labour Relations Agency

Website: www.lra.org.uk
Email: info@lra.org.uk

LRA Belfast Office:
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LRA Londonderry Office
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028 7126 9639

Health & Safety Executive for Northern Ireland

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