



Fioretti Trust

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Maternity Policy (Teaching Staff)

Approved by: Trust Board Date: May 2024

Last review: December 2023

Next review: December 2024

This policy supersedes all previous maternity policies for teaching staff



Summary

This section gives full details of matters relating to maternity, including maternity leave and maternity pay for teachers, together with guidance on applying the maternity leave scheme and statutory regulations.

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1. Occupational maternity leave scheme

The Birmingham Teachers' Maternity Leave Scheme has been adopted for teachers, because it is better than that in the Burgundy Book. Fioretti Trust has decided to adopt the Birmingham Scheme. The Scheme is being amended from 1st April 2014 to provide for payment to a teacher attending school for a Keeping In Touch (KIT) day. The amendment (in a new paragraph 6.7) will apply from that day to teachers in all community, community special, voluntary controlled and maintained nursery schools and centrally managed teaching services. It may apply to teachers in other schools in Birmingham according to decisions taken by those schools, either with effect from 1st April or subsequently.

The teachers' scheme also covers leave for adoption.

This scheme is for teachers who, having the appropriate length of service, intend to return to work after their maternity leave and to do so for the required minimum period. They provide some better benefits than the statutory minimum.

If teachers simply exercise their statutory rights to return without committing themselves to return for the minimum period specified in the occupational scheme they will only be entitled to statutory maternity pay and not occupational maternity pay.

2. Statutory maternity leave and pay

A summary of the statutory rights

A woman is entitled to take advantage of whichever right, statutory or contractual, is the more favourable to her, effectively mixing the contractual and statutory schemes. In recognition of this, contractual schemes have been amended from time to time to take account of new statutory rights.

3. How to arrange maternity leave

The employee should notify the Headteacher of her intention to take maternity leave, providing form MATB1 (from the employee's doctor or midwife). The Headteacher must contact the Trust's Central Team who will use the information on this form to ensure that the employee is provided with information on occupational and statutory maternity leave and pay as appropriate, and is notified of her entitlement according to her particular circumstances, and is informed of her obligations including what she has to do if she wishes to return early from maternity leave. The Headteacher will also ensure that payroll has the correct information for paying maternity pay.

If the employee becomes sick with a pregnancy related illness during the four weeks before the expected date of childbirth, maternity leave will start automatically on the day following the start of her absence. Where the baby is born before maternity leave starts, the day following the date of childbirth will be regarded as the first day of maternity leave.

4. Costs of maternity leave

Since 1st April 2013 schools meet the full costs of each maternity leave for their employees and Payroll continues to recover the 92% of Statutory Maternity Pay (SMP) on their behalf. Payroll does this by reducing the monthly National Insurance Contributions paid to HMRC by the value of 92% SMP. Schools have to meet the cost of the difference between full cost of the occupational maternity pay and the 92% SMP. Schools therefore continue to see only the 8% difference on their reports.

5. Resignation

Instead of taking maternity leave, employees who wish to care for their children full-time have the option of submitting their resignation. If they are uncertain about this before the birth they may indicate an intention to resign and defer the actual resignation until after the birth. There are various reasons for delaying a decision. For example, a mother's personal circumstances might change during pregnancy or maternity leave (her husband or partner might be made redundant, for example). For pension purposes it is also better to defer resignation until after the birth. Due regard must however be paid to requirements for normal notice periods.

6. Returning to work but not for the period required as a condition of occupational maternity pay

If an employee resigns before completing the minimum period for which she is required to return the authority exercises its discretion regarding repayment of maternity pay to allow her to retain a proportion of her maternity pay (over and above statutory maternity pay, which the employee is entitled to retain) corresponding to the proportion of the minimum period which she has completed. In exceptional circumstances the whole of the repayment may be waived. Enquiries should be directed to the Trust's Central Team in the first instance.

7. Successive pregnancies without returning to work

For a teacher who starts a second period of maternity leave before returning to work from the first period, the combined maternity leave is treated as a single period for the purpose of discharging the requirement to return to duty for the minimum period of thirteen weeks as defined in the scheme.

8. Compulsory maternity leave

There is a compulsory, statutory period of maternity leave for two weeks following the date of the birth (article 8.2 of the Pregnant Workers' Directive and the Maternity (Compulsory Leave) Regulations 1994, Statutory Instrument 1994/2479 reg.2).

9. Statutory Maternity Pay (SMP)

Statutory Maternity Pay is payable to employees who satisfy Government regulations even if they do not intend to return to work. If the employee's fixed-term contract ends during the SMP period the contract will not be extended or renewed and the employee will be offered the choice of receiving the remaining SMP on a monthly basis or receiving it as a lump sum on the termination of the contract. The payments will be subject to normal deductions.

For information on Statutory Maternity Pay (SMP)

Statutory maternity pay will be offset against occupational maternity pay to the extent that no employee receives more than the equivalent of full pay.

10. Sickness and maternity leave

Where an employee becomes sick with a pregnancy related illness during the four weeks before the expected date of childbirth, maternity leave will start automatically on the day following the start of her absence. Where the baby is born before maternity leave starts, the day following the date of childbirth will be regarded as the first day of maternity leave.

An employee who is taking maternity leave under the appropriate contractual scheme and who is not able to return on the date already specified as her date of return because of sickness will be treated as on sick leave if she produces a medical certificate.

The situation for a teacher who is not taking the benefits of the Birmingham scheme and relying simply on her statutory rights is complicated, and advice should be sought from the Trust's Central Team in the first instance.

11. Premature birth and stillbirth

Childbirth is defined as the birth of a living child, or a stillbirth after a pregnancy lasting at least 24 weeks. An employee is entitled to maternity leave for childbirth as so defined. Outside this definition an employee who miscarries may take sick leave as necessary.

12. Maternity leave and annual leave

Employees on maternity leave accrue their normal leave entitlement during their maternity leave.

Teachers who return to work will be able to take any outstanding annual leave for both the previous and current years during the school holidays on their return. This is because teachers have only statutory, rather than a contractual, leave entitlement and periods of school closure are long enough to cover two years' statutory leave entitlement in one year.

A teacher who does not return to work and who has been unable to take her annual leave entitlement, or has only taken part of it, during her period of maternity leave is entitled to payment instead of leave which has not been taken and payment will be made in respect of leave not taken. Teachers are required to take their annual leave during periods of school closure, so any school holidays falling before or after the period of maternity leave will count towards the leave already taken. For the purposes of statutory annual leave under the Working Time Regulations, it has been agreed locally that the teachers' leave year runs from 1st September to 31st August. The Working Time (Amendment) Regulations 2007 improved the statutory annual leave entitlement for employees, increasing it to 28 days (or 5.6 weeks) in April 2009.

The same arrangements apply to bank holidays. The teacher is entitled to them.

13. Teachers moving jobs during maternity leave

A teacher who comes to Birmingham from another authority during her maternity leave will be allowed to continue her maternity leave and will receive payments according to the Birmingham scheme for such part of her maternity leave as may be outstanding.

14. Maternity leave and pension contributions

Unpaid maternity leave does not count as reckonable service for pension purposes. Since January 2007 teachers have not been able to pay contributions on unpaid leave but they can buy additional pension. If a teacher does not return to work after maternity leave and submits her resignation her pensionable employment will end on the date on which she leaves or the date on which her maternity pay ends, whichever is the earlier. Teachers in these circumstances who wish to accumulate as much pensionable service as possible should therefore be advised to defer resignation until the end of their Statutory Maternity Pay period, but in that case they will have to repay occupational maternity pay in excess of the Statutory Maternity Pay. Those who do not wish to accumulate pensionable service may resign part way through their paid maternity leave and will continue to receive Statutory Maternity Pay if eligible, but without pension contributions being deducted after the date of resignation.

15. 'Keeping in touch' days

Women may spend up to ten 'keeping in touch days' at work during their maternity leave or adoption leave (outside the two weeks after the birth) without interrupting that leave. The arrangement must be by mutual agreement; the employer is not obliged to offer the opportunity and the employee has no right to come into work without her employer's consent. Part of a day counts as one of the ten days.

Women on maternity or adoption leave have to be paid in accordance with that part of their terms and conditions of employment dealing with maternity pay. From 1st April 2014 the maternity leave scheme for teachers will provide for payment for keeping in touch days, by increasing their pay to the equivalent of normal full pay for each full Keeping In Touch day. The amendment to the Birmingham Teachers' Maternity Leave Scheme will apply from 1st April 2014 to teachers in community, community special, voluntary controlled and maintained nursery schools and centrally managed teaching services. It may apply to teachers in other schools in Birmingham according to decisions taken by those schools, either with effect from 1st April 2014 or subsequently.

When attending work for a Keeping In Touch day, therefore, a teacher should continue to receive any statutory and occupational maternity or adoption pay to which she is entitled, and, if covered by the new provision in the Birmingham Teachers' Maternity Leave Scheme, such additional pay as may be necessary to ensure that she receives normal full pay for the Keeping In Touch day. This will be calculated, in accordance with the Working Time Regulations, as 1/260 of annual salary. If the teacher works only for part of the day the appropriate proportion of the day will be paid, so it will be for the school to notify Payroll of that proportion.

16. Ante-natal care including risk assessments

Sections 55 and 56 of the Employment Rights Act 1996 provide that an employee who is pregnant and who has, on the advice of a registered medical practitioner, registered midwife or registered health visitor, made an appointment to attend at any place for the purpose of receiving ante-natal care, is entitled to be permitted by her employer to take time off during her working hours to enable her to keep the appointment. The time off is paid leave at the normal rate of pay. If a part-time employee's ante-natal appointments happen to fall on one of her working days, she should therefore be given paid leave of absence on that day. The Government has ruled that ante-natal care may include not only medical examinations but also relaxation and parentcraft classes. It does not cover pregnancy tests. If requested to do so by the employer, the employee must produce documentary proof of the appointment (other than the first appointment during the pregnancy). Under the Education (Modification of Enactments relating to Employment) (England) Order 2003 the Authority remains responsible for implementing this statutory right.

For advice on the health and safety of new and expectant mothers see risk assessments for pregnant women.

From 1st October 2014 prospective fathers, partners of pregnant women, or eligible intended parents in cases of surrogacy have the right to time off to attend up to two ante-natal appointments, lasting up to six and a half hours each. Partners do not have to be the biological parent of the child. The law is silent on pay and therefore time off for this purpose is unpaid. As with any time off, employees must apply in advance and in this particular case can be asked for a declaration that they are eligible for the time off and a statement of the appointment details. They cannot be asked to produce the appointment card, because this is the property of the mother.

17. Fertility treatment

Some employees undergoing fertility treatment will have their absence covered by a medical certificate, so such absence should be treated as sick leave. Others may be required to attend for hospital appointments, the timing of which will be determined by the hospital and for which leave of absence should be given in the same way as for hospital appointments generally. Paid leave of absence should also be given for attendance at a prescribed course of medical treatment. Advice on particular cases may be obtained from the Employee Relations Team. A ruling on a case before the European Court of Justice in 2008 established that action taken against an employee absent for IVF treatment was sex discrimination.