



Pregnant during maternity leave (expecting again)

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January 2023

This information sheet explains your rights and benefits if you are on maternity leave and you are pregnant again.

Rights to maternity leave for your new pregnancy

All employees are entitled to 52 weeks maternity leave for each pregnancy. There is no qualifying period for maternity leave and you are still treated as an employee throughout your maternity leave.

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to take two consecutive periods of maternity leave.

If you are employed or were employed until recently you are likely to qualify for some form of maternity pay for your next maternity leave. If your earnings are high enough in approximately weeks 18 to 26 of your pregnancy you can get Statutory Maternity Pay. If you don't qualify for SMP you can claim Maternity Allowance instead, see the section below on maternity pay.

Am I entitled to another period of maternity leave for my next baby?

Yes, you are entitled to a further period of up to 52 weeks' maternity leave for your new pregnancy. It does not matter how many periods of maternity leave you have taken or whether they overlap or not.

When can I take my new maternity leave?

Firstly, work out the date you are due back at work from your current period of maternity leave. You need to think about whether you want to take your full 52 week entitlement, if not, you must give at least eight weeks' notice if you wish to return early.

Secondly, decide when you would like to start your next period of maternity leave. The earliest you can start your next period of maternity leave is the beginning of the 11 week before the week your baby is due. It is up to you to decide when you wish to start your next maternity leave and you should give your employer notice of the date you wish to start your leave by the 15 week before your baby is due.

If your current maternity leave ends before the 11 week before your next baby is due or before the date you wish to start your next maternity leave you will have to return to work for the time in between unless you take another type of leave, see next question. It is up to you to decide what you wish to do but be sure to follow the correct notice requirements for both periods of maternity leave.

I do not want to have to return to work in between my current and next period of maternity leave. Can I take any other leave?

If your current maternity leave ends before the earliest date you can start your next period of maternity leave there may be other types of leave you can take so that you do not have to return to work in between.

Vou could take Derental Leave, providing you give your employer at

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per parent, per child. It should usually be taken in blocks of a week, up to four weeks a year, but your employer may allow you to take more. Parental Leave is usually unpaid, unless your employer offers paid leave, so check whether this affects your next period of maternity pay, see next section. You should also check below on your rights to return to work following consecutive periods of maternity/Parental Leave. See our information sheet Time off for working parents for more information on Parental Leave. Note: Parental Leave is different from shared parental leave.

- You may have accrued some annual leave. You are entitled to at least 28 days paid leave a year (pro-rata if you work part-time), this may include paid Bank Holidays. Annual Leave continues to accrue during maternity leave. You should discuss your annual leave with your employer to be sure that you take as much leave as possible in the year in which it accrues otherwise you may not be able to carry forward all your annual leave or you may return to work with a lot of annual leave still to take.
- If you are not well enough to return to work in between both periods of
 maternity leave, you are entitled to take sick leave as normal and you
 should follow your employer's normal sickness reporting procedures.
 You should check your sick pay entitlement carefully because if you are
 only entitled to Statutory Sick Pay (SSP), you may not be entitled to this
 straight after taking a period of unpaid maternity leave. If you receive
 SSP during sick leave, you should check your maternity pay position
 carefully as SSP may affect your entitlement to maternity pay for your
 next baby.

You should discuss your options with your employer and be sure to give the correct notice for each type of leave. Your employer is entitled to turn down a request for annual leave, for example, if too many employees want to take leave at the same time. Your employer can also postpone a period of Parental Leave where the employer can show that the business would be unduly disrupted but your employer should not refuse annual leave or Parental Leave because of your pregnancy or maternity leave. If you are treated unfairly, see Discrimination during maternity leave.

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Maternity pay

How much is maternity pay?

SMP is paid for 39 weeks. You get 90% of your average earnings for the first six weeks. You then get a flat rate of £172.48 per week (from April 2023 – April 2024) for 33 weeks or 90% of your average earnings if you earn less than £172.48.

If you do not quality for SMP you may be able to claim Maternity Allowance (MA) from the Jobcentre Plus.

MA is paid for 39 weeks at the flat rate of £172.48 or 90% of your average earnings if you earn less.

Can I get Statutory Maternity Pay for my next baby?

You will quality for Statutory Maternity Pay (SMP) if:

- you have been employed by the same employer for at least 26 weeks th
 by the end of the 15 week before your baby is due, and
- you are still employed in the same job in all or part of the 15th week before your expected week of childbirth. You are still counted as being employed if you work full-time or part-time or if you are absent on maternity leave, annual leave, sick leave or you are registered as an agency worker and no work was available, and
- you actually receive at least £123 (before tax) per week (April 2023 –
 April 2024) in earnings, on average in the eight weeks (if you are paid
 weekly) or two months (if you are paid monthly) up to the last pay day
 before the end of the 15 week before your baby is due.

Do I need to be back at work after the end of my previous maternity leave in order to qualify for maternity pay for my next baby?

You do not have to return to work between periods of maternity leave (see section on maternity leave above) but your maternity pay may be affected if you are not receiving normal earnings in the calculation period for maternity pay for your next baby – see next question.

Are my earnings high enough to qualify for Statutory Maternity Pay for my payt haby?

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£123 per week (April 2023 – April 2024) on average during the calculation period. The calculation period for SMP is the eight weeks (if you are paid weekly) or two months (if you are paid monthly) before the end of the 15 week before your expected week of childbirth.

How to find the 15th week before the your expected week of childbirth

Find the Sunday immediately before the day your baby is due and count back 15 weeks. If your baby is due on a Sunday, count back 15 weeks from your due date.

If you are paid weekly, your SMP will be based on your average earnings in the 15 week before your expected week of childbirth and the previous seven weeks. If you are paid monthly you find the last monthly pay day immediately before the end of the 15 week before your expected week of childbirth and the one before that.

Example 1 – how to work out your calculation period

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Expected week of childbirth: 27 August – 2 September 2023

th 15 week before: 14 – 20 May 2023

Calculation period:

If paid weekly: Week of 14 – 20 May 2023 and previous seven weeks

If paid monthly on the 28th of each month: 28 March and 28 April's earnings

Example 2 - how to work out your calculation period

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Fynected week of childhirth: 11 - 17 February 2004

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15th week before: 29 October – 4 November 2023

Calculation period:

If paid weekly: Week of 29 October – 4 November 2023 and previous seven weeks

If paid monthly on 30 th of each month: 30 September and 30 October's earnings

What counts as earnings?

'Earnings' includes sick pay, holiday pay and any bonuses or commission that form part of your normal wages or salary. 'Earnings' does not include Maternity Allowance.

If you are receiving SMP (for your current maternity leave) during the calculation period for your next period of SMP, SMP counts as 'earnings' for calculating your average earnings for your next maternity leave. Therefore, if you are receiving SMP of more than £123 per week during your calculation period you will qualify for SMP the second time around.

If your average earnings during the calculation period are lower than £123 per week (April 2023 – April 2024), you will not qualify for SMP from your employer but you are likely to be able to claim

Maternity Allowance, see below.

I am on unpaid leave during most of the calculation period so I don't think I will get any maternity pay?

If the calculation period falls during all or part of the last 13 weeks of your unpaid maternity leave or your average earnings are below £123 per week (April 2023 – April 2024) you will not quality for SMP. If you do not qualify for SMP, your employer must give you form SMP1 explaining why you do not qualify and you can apply for Maternity Allowance, see below.

How do I find out if I will get SMP for my next baby?

For help with working out whether you qualify for SMP for your next baby

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the 15" week before your baby is due. You must give your employer notice of the date that you want to start your next maternity leave and your MATB1 maternity certificate and ask your employer to calculate whether you qualify for SMP.

Your employer can get help from the HMRC Employers Helpline on 0300 200 3200 if they are not sure. Make sure your employer knows they can claim reimbursement for the SMP they pay you and they can get advance payment if they need it: https://www.gov.uk/recover-statutory-payments

What can I do if my employer refuses to pay SMP or cannot pay it?

If your employer refuses to pay SMP, pays the wrong amount or goes into liquidation, you can contact the HMRC Statutory Payments Disputes Team on 0300 322 9422, see Where to go for more help. They will make a formal decision on your entitlement and order your employer to pay it. If your employer does not pay your SMP or has gone into liquidation, HMRC will pay it directly.

If you are not entitled to SMP, you can claim Maternity Allowance instead.

Maternity Allowance

Can I claim Maternity Allowance for my next baby?

If you cannot get SMP, you may be able to claim Maternity Allowance. You can get Maternity Allowance if:

- you have been employed for at least 26 weeks (not necessarily in a row) in the 66 weeks before your expected week of childbirth (this can include periods on maternity leave as you are still employed during maternity leave), and
- you need to find 13 weeks (not necessarily in a row) in which you earned over £30 per week on average.

You should send in payslips for the 13 weeks in which you earned the most in order to get the maximum Maternity Allowance of £172.48 per week (April 2023 – April 2024).

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employed see this.

As the test period is 66 weeks before the week your next baby is due you may be able to use earnings from before your current maternity leave or weeks in which you were receiving Statutory Maternity Pay.

Earnings includes holiday pay, sick pay, Statutory Maternity Pay, Statutory Sick Pay and any other payments that form part of your salary or wages. You can add together earnings from more than one job. Unfortunately you cannot include previous periods of Maternity Allowance as earnings.

Employed and self-employed work counts for Maternity Allowance. This includes full or part-time work. You can still apply for Maternity Allowance if you are currently unemployed as long as you completed at least 26 weeks of employment in your test period.

You continue to be 'employed' by your employer during maternity leave so you can count previous periods of maternity leave when calculating your entitlement to a further period of maternity leave and pay.

How do I work out the 66 week test period?

A calculator for working out the 66 week test period is available online here:

https://secure.dwp.gov.uk/check-your-maternity-allowance-dates/date-baby-due

Example 1 – 66 week test period

Expected week of childbirth: 27 August – 2 September 2023

Start of 66 week test period: 22 May 2022

Example 2 – 66 week test period

Expected week of childbirth: 11 – 17 February 2024

Start of 66 week test period: 6 November 2022

How do I claim Maternity Allowance?

If you are still employed you should ask your employer to work out if you

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form SMP1 you should contact the HMRC Employees Helpline but do not delay applying for MA while you are waiting for it.

You can apply for Maternity Allowance once you are at least 25 weeks pregnant.

You can apply for Maternity Allowance at your local JobCentre Plus or phone the JobCentre Plus claim line on 0800 055 6688 and ask for form MA1. You can also find the form online here: https://www.gov.uk/government/publications/maternity-allowance-claim-form

For more information on claiming Maternity Allowance, see <u>Maternity Pay</u> Questions.

My Maternity Allowance has been refused as I was on maternity leave and not working for 26 weeks during the 66 week test period. Is that correct?

No, it is not correct. You do not need to have *worked* for 26 weeks but you need to show that you were *employed* for at least 26 weeks in the 66 weeks before your baby is due. You can count weeks on maternity leave (whether paid or unpaid) in order to meet the employment condition for claiming

Maternity Allowance for your next baby.

You are considered to be employed if you have a contract of employment (it does not need to be in writing), including a zero hours' contract, or you are registered with an agency. You are still employed during weeks of sick leave, annual leave or maternity and parental leave.

If you are refused Maternity Allowance because you were on maternity leave in your 66 week test period you can telephone MA Claims on 0800 169 0283 and ask for a mandatory reconsideration (review) within 28 days or as soon as you are able to and refer them to the section from the Maternity Benefits decision-makers guide below.

DWP Decision-makers Guide to Maternity Allowance

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Employment condition

62516 The employment condition is that the claimant has been

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weeks in the 66 weeks immediately before the EWC. This 66 week period is known as the test period. A week means a whole week or any part of a week. For employed earners, this is satisfied as long as a contract of employment exists or a contract to provide services.

62517 A woman who is on statutory maternity leave is in gainful employment, so that DMG 62516 is satisfied, even if that maternity leave is unpaid. This is because the woman

- 1. continues to have contractual rights other than pay pertaining to her employment such as membership of any pension scheme she belongs to during unpaid leave and
- 2. can accrue paid holidays.

However, a woman who is on unpaid leave for another reason (for example a career break) is not engaged in employment.

My employer pays occupational maternity pay. Can I get it for my next pregnancy?

If your employer pays occupational maternity pay (over and above the SMP amount), you will need to check the terms of your contract or maternity policy to see if you qualify. Your employer cannot refuse to pay SMP if you qualify for it for your next baby, however, it is up to your employer to decide on the terms and conditions for qualifying for any additional occupational maternity pay that they provide.

Rights to return to work after two periods of maternity leave

Do I have the right to return to my job after a second period of maternity leave?

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whether you take all your leave consecutively (immediately after each other) or with gaps in between. The table below sets out your rights to return after consecutive periods of leave. You will be counted as having returned to work in between periods of leave if you returned to work after your leave came to an end or you gave notice to end it early. You will also be counted as having returned to work if you were on annual leave or sick leave. It does not matter how long you returned to work, even if you return to work for one day it will count as a break in your leave.

If you take any shared parental leave (SPL) you will have to add up the total number of weeks of maternity leave and shared parental leave in order to work out your rights on return to work from a period of shared parental leave. For more information on shared parental leave, see the information sheet Shared parental leave and pay.

Right to return to the same job	Ordinary Maternity Leave (OML) (maternity leave of 26 weeks or less) Parental Leave of four weeks of less
	OML plus Parental Leave of four weeks or less (or Parental Leave of four weeks or less followed by OML)
	SPL where your total leave adds up to 26 weeks or less on aggregate (you have to include any periods of SPL and maternity leave taken in respect of this baby).
Right to return to the same job or, where it is not reasonably practicable, to a suitable	OML plus Additional Maternity Leave (AML) (maternity leave of more than 26 weeks)
	Parental Leave of four weeks or more
	OML plus Parental Leave of four weeks or more

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period of OML or Parental Leave of any length
OML/AML followed immediately by OML/AML

SPL where your total leave adds up to more than 26 weeks on aggregate (including any periods of SPL and maternity leave taken in respect of this baby)

You should note that if you take OML and AML for your first pregnancy, immediately followed by a second period of OML, you do not have the right to return to exactly the same job as you normally would following OML. If the second period of OML is immediately after a previous period of AML, your rights on return are the same as when you are returning from AML. If you return to work for a day or more in between the first AML and second OML you will have the right to return to exactly the same job.

If you return to the same job, you are entitled to receive the same terms and conditions that applied immediately before your leave began. If you are offered a suitable alternative job, you are entitled to be offered similar terms and conditions that are not substantially less favourable than your terms and conditions in your previous job. Throughout OML/ AML and Parental Leave your seniority, pension and other service-related rights should remain as they would have been if you had not been absent from work.

If you are not allowed to return to the same job or you are not offered a suitable alternative job on similar terms and conditions, you may have a claim for unfair dismissal, detriment and/or maternity discrimination. For more information, see Dealing with problems at work.

What should I do if I decide not to return to work?

You should resign in the normal way, giving your employer as much notice as possible and at least the notice required by your contract. You do not have to return to work for your notice period. You are still entitled to receive your SMP or Maternity Allowance for up to 39 weeks, even if your job has ended, and you do not have to repay any SMP/MA if you decide

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Can I reduce my hours if I return to work after a second period of maternity leave?

The laws gives all employees the right to ask for flexible work. You can make a request at any time, providing you have been employed for at least 26 weeks. You can only make one request a year. You should make your request about three to four months before you wish the change to take place.

Information and application forms can be found on the government website https://www.gov.uk/flexible- working.

Any change to your hours of work will normally be permanent, unless you and your employer specifically agree to a temporary change. If you want to reduce your hours for a few months to ease your return to work, you must make sure that this is agreed with your employer from the outset.

You need to think carefully about what type of flexible work you want (e.g. part-time or working from home) and how it would fit in with your job. Your employer must seriously consider your request and can only refuse for certain business-related reasons e.g. where it would have a detrimental effect on customers or on performance. Your employer should consider how you can do your current job more flexibly. If your employer refuses your request you can appeal and you should seek advice from one of the organisations listed below. See the information sheet *Child friendly working hours* for more information.

Benefits for families

Are there any benefits I can claim?

Once your baby is born you can claim Child Benefit. Families in receipt of Child Benefit will be subject to a high earner child benefit charge if one or more parent earns over £50,000.

If you are already claiming Child Tax Credit and/or Working Tax Credit you may be able to claim an additional amount for a new baby. The first £100 per week of SMP and all of Maternity Allowance is ignored as income for tax credits purposes so you may be entitled to more help during your maternity pay period. You should get advice **before** making a new claim

Get free advice

Credit Helpline on 0345 300 3900 or see: www.gov.uk/child-tax-credit /already-claiming

You may be able to claim Universal Credit if you are on a low income or you have a new baby and you are not receiving Child or Working Tax Credit. SMP is treated as earnings and is partially disregarded under Universal Credit rules but all of Maternity Allowance is treated as unearned income and is deducted from a Universal Credit award. For more information on Universal Credit, see: www.gov.uk/universal-credit

You can get help with Universal Credit claims through the free national Help to Claim service: England: <u>0800 144 8444</u>, Wales: <u>0800 024 1220</u>, Scotland: <u>0800 023 2581</u>

For an online benefits calculator, see www.betteroffcalculator.co.uk

If you or your partner are receiving Income Support, income-based Jobseekers Allowance, Universal Credit or Child Tax Credit you may be entitled to a Sure Start Maternity Grant (England/Wales/NI) or Best Start Grant (Scotland).

For more information on benefits for families, see: <u>Money for Parents and Babies</u>.

This information sheet was produced in January 2023. It is very important to get up-to-date advice as law and guidance changes.

This guide is for information purposes only and should not be treated as legal advice. You are strongly advised to get personal legal advice about the individual circumstances of your case.

Where to go for more help

Maternity Action

For information on maternity and parental rights at work and benefits, see: www.maternityaction.org.uk

Maternity Rights Advice Line:

Nationwide (except London) – 0808 802 0029

Get free advice

London (if you live or work in a London borough) – 0808 802 0057

For opening hours see: https://maternityaction.org.uk/advice-line/

ACAS

For advice on employment rights or for Early Conciliation if you are thinking of making a tribunal claim

www.acas.org.uk

Helpline: 0300 123 11 00 (offers telephone interpreting service)

Citizens Advice

For information about your rights see: www.citizensadvice.org.uk

You can telephone the national Citizens Advice phone service on 03444 111 444

You can get help with Universal Credit claims through the free national Help to Claim service: England: <u>0800 144 8444</u>, Wales: <u>0800 024 1220</u>, Scotland: <u>0800 023 2581</u>

For more information on how to find your local Citizens Advice Bureau, see:

https://www.citizensadvice.org.uk/about-us/contact-us/contact-us/contact-us/contact-us/

Civil Legal Advice

If you are eligible for legal aid you can get free legal advice on 0345 345 4 345 (offers translation service). To check your eligibility see www.gov.uk/civil-legal-advice

To search for specialist legal advisers or solicitors in your area see: https://find-legal-advice.justice.gov.uk/

Get free advice

Equality Advisory Support Service

Help and advice on discrimination and human rights www.equalityadvisoryservice.com

Helpline: 0808 800 0082 Mon - Fri 9am - 7pm, Sat 10am - 2pm

Textphone: 0808 800 0084

Equalities and Human Rights Commission (EHRC)

For information and advice about discrimination law www.equalityhumanrights.com

For information for employees and employers about pregnancy and maternity rights in the workplace see: www.equalityhumanrights.com/about-us/our-work/key-projects/managing-pregnancy-and-maternity-workplace

GOV.UK

The government's online information service www.gov.uk

Jobcentre Plus

To make new telephone benefit claims or request claim forms, including Maternity Allowance and Sure Start Maternity Grant: 0800 055 6688 Mon – Fri 8am – 6pm

For ESA/JSA/Income Support claims: 0800 169 0310 Mon – Fri 8am – 6pm

For Maternity Allowance claims: 0800 169 0283 Mon – Fri 8am – 6pm

For Sure Start Maternity Grant claims: 0800 169 0140 Mon – Fri 8am – 6pm/For Best Start Grant claims in Scotland: 0800 182 2222

Universal Credit helpline – for new claims and existing online claims: 0800 328 5644. Mon – Fri 8am – 6pm

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HM Revenue & Customs (HMRC)

Tax Credit Helpline: 0345 300 3900 Mon – Fri 8am-8pm, Sat 8am-4pm,

Sun 9am -5pm

Child Benefit: 0300 200 3100 Mon - Fri 8am-8pm, Sat 8am-4pm

For queries about Statutory Maternity Pay, Adoption Pay, Paternity Pay and Shared Parental Pay:

Employees helpline 0300 200 3500

Employers helpline 0300 200 3200

HMRC Statutory Payments Disputes Team

If you cannot resolve a dispute about your SMP, you can ask HMRC for a formal decision on your entitlement. You can also ask HMRC to pay your SMP if your employer has refused to pay, has dismissed you to avoid paying SMP or has gone into liquidation. This includes disputes about Statutory Maternity Pay/Adoption Pay/Paternity Pay/Shared Parental Pay/Parental Bereavement Pay or Statutory Sick Pay

See: https://www.gov.uk/guidance/statutory-pay-entitlement-how-to-deal-with-disagreements

Telephone: 0300 322 9422

You can also write to the Statutory Payments Disputes Team at HM Revenue and Customs, PT Operations, Statutory Payments Dispute Team, BX9 1AN.

Insolvency Service Helpline

You can currently only contact the Insolvency Service online.

For what you can claim if your employer goes out of business, see: https://www.gov.uk/your-rights-if-your-employer-is-insolvent

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Law Centres Network

To find out if there is a Law Centre in your area telephone 020 3637 1330 or see: www.lawcentres.org.uk/

Turn2us

Online benefits calculator and grant search www.turn2us.org.uk

More Maternity Action information sheets

Rights during pregnancy

Pregnant at work 2021

Pregnancy Discrimination

Time off for antenatal care

Health and safety during pregnancy and return to work

Resigning from your job during pregnancy and maternity leave

Changing jobs or more than one job

<u>Pregnant during maternity leave</u> (when you are expecting again)

Premature births – rights to maternity leave and pay

Miscarriage stillbirth and neonatal death – rights to time off and pay

Maternity pay and benefits

Maternity Pay Questions

Money for Parents and Babies

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Maternity and parental leave

Rights during maternity leave and return to work

Keeping in touch during leave

Shared Parental Leave and Pay

Time off for Working Parents

Asking to change your working hours or go part-time

Child friendly working hours

Redundancy, dismissal and discrimination

Pregnancy Discrimination

Rights during maternity leave and return to work

Redundancy during pregnancy, maternity and parental leave

Dealing with problems at work

Health and safety, breastfeeding and sickness

Sickness during pregnancy maternity leave and return to work

Health and safety during pregnancy and return to work

Postnatal depression and depression during pregnancy

<u>Childbirth injuries – rights at work and benefits for new mothers</u>

Breastfeeding on return to work

Breastfeeding while out and about

Self-employed, agency and zero hours work

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Maternity and parental rights if you are self-employed

Changing jobs or more than one job

Zero hours contracts – maternity and parental rights

Apprentices – maternity and parental rights at work

Fathers and partners, including same sex partners

Rights at work for fathers and partners

Shared Parental Leave and Pay

Child friendly working hours

Time off for Working Parents

Dealing with problems at work

Adoption or surrogacy

Adoption leave and pay

Time off and pay for parents-surrogacy

Shared parental leave and pay – adoption

Money for Parents and Babies

Available at www.maternityaction.org.uk

Maternity Action

Unit 4, Wells House, 5-7 Wells Terrace, London N4 3JU

Get free advice

Office telephone: 020 7253 2288

Office email: info@maternityaction.org.uk

Media enquiries: media@maternityaction.org.uk or call 07913381208.

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