

MATERNITY RIGHTS - A GUIDE

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Government

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Terms and abbreviations used in this guide

AML	Additional Maternity Leave (see section 7.4)
Associated employers	Two employers are 'associated employers' if one is a company which the other directly or indirectly controls, or both are companies which are controlled by a third company or other person.
Childbirth	The live birth of a child, or a still birth after a pregnancy lasting at least 24 weeks.
Compulsory Maternity Leave	See section 7.2
DfE	The Department for Enterprise.
Employment Act	The Employment Act 2006
Equality Act	The Equality Act 2017
Expected week of childbirth	The week, beginning at midnight between Saturday and Sunday, in which it is expected that the baby will be born.
Maternity Allowance	See section 5
Maternity equality clause	See section 3.8
Maternity equality rule	See section 3.9
Maternity Leave Regulations	The Maternity Leave Regulations 2007
Maternity-related pay	See section 3.8
MHSW Regulations	The Management of Health and Safety at Work Regulations 2003 (see section 4.2).
OML	Ordinary Maternity Leave (see section 7.3)
Protected period	See section 3.5
Tribunal	The Employment and Equality Tribunal (see section 13)
Week of childbirth	The week, beginning at midnight between Saturday and Sunday, in which the baby is actually born.

Introduction

The Guide is intended for employers, employees and other workers¹. It describes employment rights relating to pregnancy and maternity and other connected rights and explains what a woman may do if she feels she has been denied them.

Maternity rights derive from a number of different sources —

(a) Rights under the Employment Act 2006 and the Maternity Leave Regulations 2007²

Statutory maternity leave and other specific rights relating to maternity are contained in Part VII (Leave for Family and Domestic Reasons) and other provisions of the Employment Act 2006 as well as in the Maternity Leave Regulations 2007, which are made under that Act. Rights include —

- time off for ante-natal care (see section 6);
- maternity leave (see section 7);
- suspension from work on medical grounds (see sections 4.4 to 4.7); and
- protection against unfair treatment or dismissal on grounds related to maternity etc. (see section 11).

(b) Protection from discrimination under the Equality Act 2017

Pregnancy and maternity, and sex, are protected characteristics under the Equality Act (see section 3).

As part of this protection, while a woman does not have a right to pay when she is on maternity leave, the Equality Act does provide some specific safeguards in respect of certain aspects of a woman's pay by means of a '*maternity equality clause*' and her occupational pension entitlements by a '*maternity equality rule*'. These are implied, respectively, into a woman's employment contract and the occupational pension scheme unless already expressly included (see sections 3.8 and 3.9 for further details).

Employers should take great care to ensure that their policies and practices concerned with pregnancy and maternity are lawful under the Equality Act (see section 3).

¹ For the distinction between employees and workers see section 1.1.

² The Regulations have been amended by the Maternity Leave (Amendment) Regulations 2007.

(c) Health and safety protection under the Management of Health and Safety at Work Regulations 2003

Employers are required by law to protect the health and safety of employees and other relevant persons who are pregnant, have recently given birth or are breastfeeding. Health and safety protection starts as soon as an employer knows an employee is pregnant (see section 4).

(d) The right to Maternity Allowance under social security legislation³

See section 5 for further details.

Some of the above rights overlap with each other, for example, an employer's failure to comply with the Maternity Leave Regulations may give rise to a complaint not only under those Regulations but also one of pregnancy and maternity discrimination under the Equality Act.

Copies of this Guide and the legislation can be downloaded from —

www.gov.im/categories/working-in-the-isle-of-man/employment-rights/guides-to-employment-rights/

Disclaimer

The guide is written in general terms and is not intended to be a complete or authoritative statement of the law. It is not possible to provide a definitive interpretation of the law, which in any case is the function of the Employment and Equality Tribunal and the High Court. Only the official wording of Acts, Regulations and Orders, and the interpretation given by the Courts, are authoritative.

No responsibility can be accepted for errors or omissions, or their consequences.

The guide was last updated in May 2019. It does not cover any changes after that date. Any earlier editions should be disregarded.

³ Sections 35 and 35A of the Social Security Contributions and Benefits Act 1992 as it has effect in the Island and the Social Security (Maternity Allowance) Regulations 1987.

1. Who is entitled to the rights in this guide?

1.1 Rights in the Employment Act and the Maternity Leave Regulations

Maternity rights in the Employment Act and Maternity Leave Regulations, such as rights relating to time off for ante-natal care, to maternity leave and to protection against detriment or unfair dismissal in connection with maternity leave, apply only to **employees**, that is persons who work under a contract of employment.

The rights apply to –

- full-time and part-time employees, no matter how many hours they work; and
- public servants and others who are treated as working under a contract of employment.

Employees who work for more than one employer may exercise their maternity rights separately in relation to each employment they have. Employees should be careful to follow the rules as to notification of the start of maternity leave for each employer.

The rights do not apply to –

- workers hired out by employment businesses ('agency workers' or 'agency temps') (other than any employees of the agency);⁴
- other 'atypical' workers such as casual workers;⁵
- the self-employed or unemployed;
- members of the Isle of Man Constabulary; or
- masters or crew members engaged in share fishing paid solely by a share of the catch.

1.2 Rights under the Equality Act 2017

The rights and protection afforded by the Equality Act apply not only to employees but also to persons who provide their services personally to organisations with whom they contract, such as casual workers, freelance workers, employment agency workers and some independent contractors.

⁴ Such workers must, however, take at least 2 weeks' compulsory leave after having a baby (see section 7.2).

⁵ Such workers must, however, take at least 2 weeks' compulsory leave after having a baby (see section 7.2).

1.3 Protection under the Management of Health and Safety at Work Regulations 2003

Employers are required to protect the health and safety at work of their employees and any other persons working in their undertaking, including new and expectant workers.

1.4 Qualifying periods

Some employment rights of employees depend on an employee having worked a qualifying period of continuous employment with the employer.

Except where indicated (e.g. sections 7.4, 7.11.2 and 7.11.3) none of the employment rights in this guide require a qualifying period.

1.5 Entitlement to Maternity Allowance

See section 5.

2. Statutory and contractual rights

Statutory employment rights in, for example, the Employment Act and the Equality Act, form a minimum standard of protection. Women and their employers (or their representatives) remain free to negotiate and agree more favourable arrangements on a voluntary or contractual basis.

Where an employer and employee have agreed different arrangements, an employee will always be able to claim a statutory right if that is better than that agreed to by her employer, and in the case of the rights conferred by the Maternity Leave Regulations, may make her choice on a term-by-term basis if she wishes. This means that an employee is not bound by an agreement which offers maternity arrangements which are not as good as the statutory rights.

3. Treatment of pregnancy and maternity etc. under the Equality Act – an overview

This section describes relevant rights under the Equality Act ('the Act' in this section).

3.1 Protected characteristics

The Equality Act protects people in work from being subjected to 'prohibited conduct' to do with the 'protected characteristics' of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.

Two of these characteristics are of particular relevance to the subject matter of this guide. They are the protected characteristics of –

- pregnancy and maternity (see section 3.5); and
- sex (see section 3.6).

3.2 Whom does the Act cover?

Rights under the Act apply not only to employees but also to persons who provide their services personally to organisations with whom they contract such as casual workers, freelance workers, employment agency staff and some independent contractors.

No qualifying period is required to enjoy any of the rights in the Equality Act.

3.3 What aspects of the employment relationship does the Equality Act cover?

Protection against discrimination covers all aspects of the employment relationship, including –

- recruitment and selection arrangements;
- a refusal to offer employment;
- the terms of employment offered;
- the terms of employment applied;
- access to opportunities for promotion, transfer or training or to benefits, facilities or services; or
- dismissal or other detriment (e.g. demotion).

3.4 Forms of prohibited conduct

General forms of prohibited conduct include the following (although there are exceptions) -

- **direct discrimination** – treating a person less favourably than others because of a protected characteristic. This includes an employer treating a worker less favourably –
 - because of the worker’s association with another person who has a protected characteristic except the protected characteristics of marriage and civil partnership or pregnancy and maternity; or
 - because the employer mistakenly thinks that the worker has a protected characteristic except the protected characteristics of marriage and civil partnership or pregnancy and maternity.

In most complaints of direct discrimination the complainant must compare his or her treatment with that of **a comparator**. A comparator is an actual or a hypothetical person who does not share the same protected characteristic as the complainant but whose circumstances are otherwise similar to that of the complainant.

- **indirect discrimination** – applying a provision, criterion or practice which places a person with a protected characteristic, except the protected characteristic of pregnancy and maternity, at a disadvantage to others and which cannot be justified.
- **harassment** – including –
 - engaging in unwanted conduct to do with a protected characteristic which has the purpose or effect of violating a person’s dignity or creating an intimidating, degrading, humiliating or offensive environment;
 - engaging in unwanted conduct of a sexual nature and the conduct has the same effect or purpose; or
 - engaging in unwanted conduct to do with sex or gender reassignment or of a sexual nature that has the same effect or purpose and then because the person rejects that conduct treating him or her less favourably than would otherwise have been the case.
- **victimisation** – subjecting a person to a detriment because he or she has –
 - brought legal proceedings about a protected characteristic;
 - given evidence or information in connection with such proceedings; or

- made an allegation that someone has broken the law on equality.

3.5 The protected characteristic of pregnancy and maternity

It is unlawful for an employer to subject a woman to unfavourable treatment related to the protected characteristic of pregnancy and maternity during the '**protected period**' as defined by the Act.

The protected period is the period of the pregnancy and any statutory maternity leave to which a woman is entitled (see section 7) or if she has no such entitlement (typically because she is not an employee) the period of 2 weeks beginning with the end of the pregnancy.

The Act states that it is unlawful discrimination to treat a woman unfavourably because of her pregnancy or a related illness, or because she is exercising, has exercised or is seeking or has sought to exercise her right to maternity leave.

The following points should be noted –

- Unfavourable treatment of a woman because of her pregnancy or maternity leave during 'the protected period' constitutes unlawful pregnancy and maternity discrimination and cannot be treated as direct sex discrimination.
- Any unfavourable treatment of a woman outside the protected period is to be regarded as taking place within the protected period if it implements a decision made within the protected period.
- As indicated at 3.4, it is not possible to bring a complaint of indirect discrimination in respect of the protected characteristic of pregnancy and maternity.
- Because of the wording of the Act ('unfavourable treatment' rather than 'less favourable treatment') it is not necessary for a complainant to have a comparator (see section 3.4).
- For the position regarding contractual pay and benefits and rights under an occupational pension scheme see sections 3.8 and 3.9 below.

3.6 The protected characteristic of sex

A person is protected against discrimination for being male or female.

The following points should be noted –

- Where it is not possible to bring a pregnancy or maternity related complaint because it is outside the protected period (see 3.5) it may be possible for a woman to bring a complaint of sex discrimination instead.

- Men cannot make a claim for sex discrimination in relation to any special treatment given to a woman in connection with pregnancy or childbirth, such as maternity leave or any additional sick leave which may be required.

3.7 Examples of pregnancy and maternity discrimination.

The Equality and Human Rights Commission's Code of Practice on Employment gives various examples of pregnancy and maternity discrimination. The Code states that, as examples only, it will amount to pregnancy and maternity discrimination to treat a woman unfavourably during the protected period for any of the following reasons –

- *the fact that, because of her pregnancy, the woman will be temporarily unable to do the job for which she is specifically employed whether permanently or on a fixed-term contract;*
- *the pregnant woman is temporarily unable to work because to do so would be a breach of health and safety regulations;*
- *the costs to the business of covering her work;*
- *any absence due to pregnancy related illness;*
- *her inability to attend a disciplinary hearing due to morning sickness or other pregnancy-related conditions; or*
- *performance issues due to morning sickness or other pregnancy-related conditions.*

The following are further examples of unlawful discrimination from the Code –

- *failure to consult a woman on maternity leave about changes to her work or about possible redundancy;*
- *disciplining a woman for refusing to carry out tasks due to pregnancy related risks;*
- *assuming that a woman's work will become less important to her after childbirth and giving her less responsible or less interesting work as a result;*
- *depriving a woman of her right to an annual assessment of her performance because she was on maternity leave; or*
- *excluding a pregnant woman from business trips.*

3.8 Treatment of maternity related pay etc.

While women on maternity leave have no right to pay for the duration of their maternity leave, the Act inserts a '**maternity equality clause**' into

a woman's contract (unless already expressly included) which deals with certain aspects of a woman's **maternity-related pay**, that is any pay to which a woman is entitled as a result of being pregnant or in respect of times when she is on maternity leave, and her pay when she returns to work.

The maternity equality clause deals with the following aspects of a woman's pay –

- the calculation of any contractual maternity-related pay;
- any bonus payments prior to or during maternity leave; and
- any pay increases following maternity leave.

The maternity equality clause has the following effects –

- any pay increase a woman receives or would have received had she not been on maternity leave must be taken into account in the calculation of her maternity-related pay;
- any pay or bonus related to time before the maternity leave starts, during compulsory maternity leave or after maternity leave ends must be paid without delay. So if a woman becomes entitled to a contractual bonus for work she undertook before she went on maternity leave, she should receive it when it would have been paid had she not been on maternity leave; and
- on her return to work a woman should receive any pay increases which would have been paid to her had she not been on maternity leave.

3.9 Treatment of occupational pension payments

The Act provides specific protection for women on maternity leave in respect of occupational pension entitlements.

An occupational pension scheme is treated as including a '**maternity equality rule**' if it does not have such a rule already; this is analogous to the maternity equality clause (see section 3.8). The effect of a maternity equality rule is to ensure that a woman on maternity leave is treated as if she were at work for pension purposes.

The rule provides that any term or discretion in a scheme which treats a woman on maternity leave differently from the way she would be treated if she were not on maternity leave is modified to remove the difference. The rule applies to a term or discretion relating to any of the following –

- scheme membership;

- accrual of scheme rights; and
- determination of benefits.

A woman must continue to accrue rights in an occupational pension scheme during –

- periods of Ordinary maternity Leave (see section 7.3), whether paid or unpaid, where the expected week of childbirth is on or after 30th September 2007; and
- paid periods of Additional Maternity Leave (see section 7.4).

But during unpaid period of Additional Maternity Leave employers are not required to continue to provide for the accrual of pension rights.

A woman's contributions to the scheme during maternity leave need be determined only by reference to the amount she is paid during maternity leave.

3.10 Treatment of contractual pay and benefits and non contractual pay and benefits

Separate procedures apply under the Act in respect of complaints about contractual pay and benefits and about non-contractual pay and benefits.

- The general pregnancy and maternity discrimination provisions prohibit discrimination in relation to non-contractual pay and benefits, such as promotion, transfer and training and in relation to offers of employment or appointment.
- The maternity equality clause provisions operate in relation to terms of a contract of employment and the terms of appointment to a personal or public office by the inclusion of an equality clause (see section 3.8) to modify terms governing maternity-related pay. Similarly the maternity equality rule provisions operate in relation to terms of an occupational pension scheme (see section 3.9).
- The maternity equality clause or rule, as the case may be, is the only means of redressing complaints of maternity or pregnancy in relation to pay so that such complaints cannot be brought as complaints of maternity and pregnancy discrimination.

The Equality and Human Rights Commission's Code of Practice on Equal pay gives the following example which shows the distinction –

Example: *A woman who has been approved for a promotion tells her employer that she is pregnant. The employer responds that he will not now promote her because she will be absent on maternity leave during a very busy period. This would be pregnancy discrimination at work*

and any claim would be brought by the woman under those provisions of the [British] Equality Act.

However, if the same woman is promoted and her increased salary takes effect after the commencement of her maternity leave, her maternity-related pay will need to be recalculated to take account of the salary increase, and the salary increase will be payable to the woman on her return to work from maternity leave. If this does not happen, she can claim equal pay relying on the maternity equality clause provisions.

3.11 Non-contractual benefits relating to pay to women on maternity leave.

The Act has a specific exception relating to non-contractual payments to women on maternity leave. There is no obligation on an employer to extend to a woman on maternity leave any non-contractual benefit relating to pay, such as a discretionary bonus. For the purposes of this exception, 'pay' means a payment of money by way of wages or salary.

4. Statutory health and safety requirements

This section describes protection afforded to women by the Management of Health and Safety at Work Regulations 2003 ('the MHSW Regulations').

4.1 Coverage

The MHSW Regulations protect the health and safety of women of childbearing age including new and expectant mothers. The term 'new and expectant mothers' includes women –

- who are pregnant;
- who have given birth within the last 6 months; or
- who are breastfeeding.

The maternity suspension provisions described below apply to all three of these categories.

4.2 Risk assessment

All employers are required under the MHSW Regulations to assess risks to the health and safety of persons working in their undertakings including risks to new and expectant mothers and their children. New and expectant mothers may also be able to make a complaint under the Equality Act if their employer fails to carry out a risk assessment.

New and expectant mothers may be particularly at risk from different physical, biological and chemical agents, processes and working conditions. These risks will vary depending on the employees' health, and at different stages of pregnancy. Some of the more common risks are –

- Lifting/carrying of heavy loads;
- Standing or sitting for long lengths of time;
- Exposure to infectious diseases;
- Exposure to lead;
- Work-related stress;
- Workstations and posture;
- Exposure to radioactive material;
- Other people's smoke in the workplace;
- Threat of violence in the workplace;
- Long working hours; and
- Excessive noise.

Further information about agents, processes and working conditions that could present a risk to the health or safety of new or expectant mothers and the action employers should take to avoid any risk are available from the Health and Safety at Work Inspectorate (see Annex B).

If risks are identified by the assessment, information about them should be given to all women of childbearing age in the workplace. Employers should explain what they will do to make sure that new and expectant mothers are not exposed to the risks that could cause them harm. They should also inform them of the need to receive written notification of pregnancy/breastfeeding as early as possible. This action could be taken through employee representatives.

If an individual believes there is a risk to her health or safety, or to that of her baby, which her employer has not considered in the risk assessment, she should bring the risk to the attention of her employer or health and safety representative. If the employer discounts the risk, and the individual remains concerned, she may wish to discuss it with her doctor, or to get in touch with the Health and Safety Inspectorate to ask for advice.

4.3 Avoiding the risk

An employer who has identified a significant risk that could damage the health or safety of a new or expectant mother needs to decide what action to take. Some risks, for instance from chemicals, are already covered by specific health and safety regulations. In those cases employers should follow the requirements of those regulations. Generally, employers should try to remove the hazard or prevent exposure to the risk. If that is not possible the employer should take steps to reduce or remove the effect of the risk, for instance by providing aids to help with manual handling duties.

4.4 Removal of employees from risk

If, despite taking all reasonably practicable measures, there is still a risk that could jeopardise the health or safety of a new or expectant mother or her baby, then employers must follow a sequence of steps to remove any employee who is a new or expectant mother from the risk. The MHSW Regulations provide that employers need to do this when they have been told in writing that an employee is pregnant, has given birth within the previous 6 months or is breastfeeding.

The MHSW Regulations also allow for employers to request in writing a certificate from a registered medical practitioner, or a registered midwife, confirming that the employee is pregnant. Despite the requirement of

written notification of pregnancy, more general legal duties require employers to take any action necessary to protect a worker they know to be pregnant or breastfeeding whether or not formal notification has been received.

If there are no adjustments to her work, or alternative employment available, then the employee must be suspended from her work for as long as necessary to protect her safety or health and that of her child. The measures taken to avoid the risk must continue for as long as the risk exists.

4.5 Entitlements during maternity suspension

An employee on maternity suspension is entitled to be paid remuneration – that is, wages or salary – at her full normal rate for as long as the suspension continues. The only exception is where she has unreasonably refused an offer of suitable alternative work, in which case no remuneration is payable for the period during which the offer applies. If an employee has both a statutory right and a contractual right to remuneration during maternity suspension, such entitlements can be offset against each other. The employee continues to be employed during the maternity suspension period, which therefore counts towards her period of continuous employment for the purposes of assessing seniority, pension rights and other personal length-of-service payments, such as pay increments. Contractual benefits are also likely to continue as normal during the maternity suspension unless the employer and employee have mutually agreed to vary them.

Employers must also ensure that they are acting lawfully under the Equality Act and, where pension entitlement is concerned, under Schedule 5 to the Social Security Act 1989 (as that Act of Parliament has effect in the Island).

4.6 Complaints about remuneration during maternity suspension

An employee whose employer fails to pay her some or all of the remuneration due for any day of maternity suspension is entitled to make a complaint to the Tribunal.

Failure to suspend a pregnant employee on full pay in the absence of a suitable alternative post may also amount to discrimination under the Equality Act.

4.7 Dismissal on grounds related to maternity suspension

It is unlawful for an employer to dismiss an employee or to select her for redundancy in preference to other comparable employees, solely or

mainly because of a health and safety reason which could give rise to maternity suspension. In addition, an employee dismissed or selected for redundancy in these circumstances is entitled to make a complaint of unfair dismissal to the Tribunal.

5. Maternity Allowance

Women who meet the qualifying conditions based on their recent employment and earnings record may claim Maternity Allowance from the Social Security Division of the Treasury for up to 39 weeks.

Maternity Allowance is payable whether or not the employee is entitled to maternity pay under the terms of her contract of employment.

For more information see the Treasury leaflet MA 5 *A Guide to Maternity Allowance*.

For contact details of the Treasury see Appendix 2.

6. Time off for ante-natal care

This section describes the rights of pregnant employees contained in sections 43 and 44 of the Employment Act 2006.

6.1 The right to time off

All pregnant employees are entitled to time off to keep appointments for ante-natal care made on the advice of a registered medical practitioner or registered midwife. Ante-natal care is not restricted to medical examinations; for example it could include relaxation classes and parent craft classes, as long as these are advised by a registered medical practitioner or registered midwife.

Except in the case of her first appointment, the employee must be prepared to show her employer on request –

- a certificate from a registered medical practitioner or registered midwife confirming that she is pregnant; and
- an appointment card or some other document showing that an appointment has been made.

6.2 Payment of remuneration during time off

The employee should be paid at her normal hourly rate of pay by her employer during the period of time off. This rate is calculated by dividing the amount of a week's pay by the number of the employee's normal working hours in a week.

The normal working hours will usually be stated in the employee's written statement of particulars or contract. If working hours vary from week to week, they should be averaged over the previous 12 complete working weeks. If the employee has yet to complete 12 weeks' service, the average should be estimated in the light of what could be reasonably expected from the agreed terms and conditions of employment and from the work pattern of any fellow employees in comparable jobs.

Overtime is counted as part of the normal working hours only if it is compulsory under the terms of the contract of employment.

If the employee is entitled to payment for time off both under her agreed terms and conditions and under the statutory right, entitlement under one will be set off against entitlement under the other.

6.3 Dismissal for asserting the right to time off

It is unlawful for an employer to dismiss an employee, or to select her for redundancy in preference to other comparable employees, solely or

mainly because she has sought to assert her statutory right to time off for ante-natal care. She may assert this right either by bringing proceedings in the Tribunal or by alleging in some other way that her employer has infringed that right. (It does not matter for this purpose whether or not the employee actually has the right, or whether or not it has actually been infringed, as long as she acts in good faith in seeking to assert it).

In addition, dismissal or selection for redundancy in these circumstances is likely to be unlawful under separate provisions which protect women against dismissal on grounds of pregnancy or childbirth as well as under the Equality Act.

See also section 13.5.1 below.

7. Maternity leave and other types of statutory leave

This section mainly describes the right of employees to maternity leave (compulsory maternity leave, Ordinary Maternity Leave (OML) and Additional Maternity Leave (AML)) in Part VII of the Employment Act and the Maternity Leave Regulations.

7.1 Remuneration during maternity leave

There is no statutory requirement for an employer to pay a woman while she is on maternity leave.

There is no equivalent to UK Statutory Maternity Pay in the Island.

There may, however, be a contractual or other arrangement in place about pay during maternity leave.

7.2 Compulsory maternity leave

An employer must not permit an employee or other worker to work for the 2 weeks immediately following childbirth. This period of compulsory maternity leave lasts–

- for 2 weeks from the date of childbirth; or
- until some later date, if there exists another statutory requirement (apart from any requirement to suspend her from work on maternity grounds under health and safety regulations (see section 4)) which prohibits the employee from working due to the fact that she has recently given birth.

Contravention of this requirement is an offence, punishable by a fine of up to £5,000, which should be reported to the Health and Safety at Work Inspectorate (see Appendix 2). A breach may also give rise to a claim for damages for any injury suffered.

If the compulsory maternity leave period falls later than 26 weeks after the start of OML the period of OML will continue until the end of compulsory maternity leave.

All the entitlements and conditions which apply during OML will continue throughout compulsory maternity leave.

7.3 Ordinary Maternity Leave

Every pregnant employee is entitled to 26 weeks' OML. This right applies regardless of an employee's length of service.

7.4 Additional Maternity Leave

An employee who, at the beginning of the 14th week before the expected week of childbirth, has completed 26 weeks' continuous employment with her employer is also entitled to a further 26 weeks' AML, which begins at the end of OML.

7.5 Notice requirements

In order to take advantage of the right to OML and AML (if she qualifies) the employee must give her employer the proper notification (see section 8).

7.6 Contractual rights to maternity leave

If an employee has a contractual right to maternity leave as well as the statutory right, she may take advantage of whichever is in any particular respect the more favourable to her.

7.7 OML – the contract of employment

7.7.1 Contract of employment

The contract of employment continues throughout OML unless either party to the contract expressly ends it or it expires.

7.7.2 Terms and conditions

During OML an employee has a statutory right to continue to benefit from all of the terms and conditions of employment which would have applied to her had she been at work instead of on leave, except for remuneration (i.e. any salary or wages payable for her work). This means that if, for example, holiday entitlement would normally accrue while the employee was at work, it must continue to accrue while she is on maternity leave (see section 7.9 for more details on holidays).

Further examples of contractual terms and conditions which women should continue to benefit from during OML are –

- participation in share schemes;
- reimbursement of professional subscriptions;
- the use of a company car or mobile phone (unless provided for business use only); and
- other “perks” such as health club membership.

An employee returning to work after OML is entitled to return to the job in which she was employed before her absence with her

seniority, pension rights and similar rights as they would have been if she had not been absent and on terms and conditions not less favourable than those which would have applied if she had not been absent. She is also entitled to benefit from any general improvements to the rate of pay (or other terms and conditions) which may have been introduced for her grade or class of work while she has been away as if she had not been away.

7.7.3 Continuous employment

The employee continues to be employed during her OML period, which therefore counts towards her period of continuous employment for the purposes of entitlement to other statutory employment rights (for example, the right to a redundancy payment).

It also counts for assessing seniority, pension rights and other personal length of service payments, such as pay increments under her contract of employment.

7.8 AML - the contract of employment

7.8.1 Contract of employment

The contract of employment continues throughout AML unless either party expressly ends it or it expires.

7.8.2 Terms and conditions

During AML a woman does not have a statutory entitlement to receive remuneration from her employer. In the absence of any agreement to the contrary, the terms and conditions of the employment contract which apply during AML are those set out below –

- The employee is entitled to benefit from her employer's implied obligation to her of trust and confidence.
- She is bound by her implied obligation of good faith to her employer.
- She is bound by any terms in her contract relating to –
 - disclosure of confidential information;
 - acceptance of gifts or other benefits; and
 - participation in any other business.
- She is entitled to receive whatever period of notice her contract provides for if her employment is terminated.

- She must give her employer the notice provided for by her contract of employment if she is terminating her employment.
- She is entitled to any contractual rights to compensation if she is made redundant.
- Any terms and conditions in the contract of employment relating to disciplinary or grievance procedures will continue to apply.

The continuation of any other terms and conditions is a matter for negotiation and agreement between the employer and employee (or their representatives).

An employee resuming work after AML has the same rights as someone returning from OML (see section 7.7.2) with two exceptions. She is entitled to return from leave to the job in which she was employed before her absence on terms and conditions not less favourable than those which would have applied had she not been absent.

Those exceptions concern –

- the treatment of seniority, pensions and similar rights (see section 7.8.3 below); and
- options open to an employer where reinstatement in the old job is not reasonably practicable (see section 10.5 below).

7.8.3 Continuous employment

The employee continues to be employed during her AML period, which therefore counts towards her period of continuous employment for the purposes of entitlement to statutory employment rights.

Unlike the period of OML, the AML period does not count for the purpose of assessing seniority, pension rights or other similar rights which are based on an individual employee's length of service – such as pay increases linked to length of service, (unless the employee's contract of employment provides for service to accrue during AML for the purposes of contractual benefits). Instead, the employee will be entitled to the rights that would have applied had the two periods either side of AML been continuous. So the employee's rights are preserved as they would have been at the beginning of the AML period.

However, the position may alter if the employee receives maternity-related pay during AML, in which case –

- a maternity equality clause will operate in respect of the woman's pay (see section 3.8); and
- a maternity equality rule will operate in respect of any occupational pension rights (see section 3.9).

7.9 Annual leave

Most employees have a contractual entitlement to paid annual leave. Employees who have no such contractual right have a right to 4 weeks' paid annual leave under the Annual Leave Regulations 2007.

Paid annual leave (both contractual and statutory) that would normally accrue while the employee was at work should continue to accrue during her OML. In contrast to OML, contractual holiday entitlement will not accrue during a period of AML unless the contract specifically provides for this.

However, statutory annual leave will continue to accrue during AML at the rate of 4 weeks per year.

An employee cannot take annual leave during her maternity leave, but subject to the usual arrangements with her employer, there is no reason why she cannot take a period of annual leave immediately before or after her maternity leave.

Further information on statutory holiday entitlement can be found in the DfE guide *'Holidays and Holiday Pay'*.

7.10 Considerations arising from the Equality Act about remuneration and pensions

Under the Equality Act a 'maternity equality clause' is inserted into a woman's contract (unless already expressly included) which deals with certain aspects of a woman's pay. For further information see section 3.8.

Similarly an occupational pension scheme is treated as including a 'maternity equality rule' if it does not have such a rule already (unless already expressly included). For further information see section 3.9.

7.11 Other leave entitlements for parents

7.11.1 Paternity leave

Eligible employees can take up to 2 weeks' leave to care for the new baby and support the mother. For further information, see the DfE guide *'Paternity Rights – a Brief Guide'*.

7.11.2 Right to request flexible working

Eligible employees (both fathers and mothers) who have been continuously employed with their employer for at least 26 weeks have the right to request flexible working patterns in order to care for –

- a spouse or civil partner;
- a child who is under the age of 6;
- a child with a disability whose parents receive Disability Living Allowance;
- a parent; or
- a person who lives in the same house as the employee, otherwise than his or her employee, tenant, lodger or boarder, or a child who is over the age of 6 (who does not have a disability).

Employers are required to give such requests serious consideration. If the request is agreed, this will form a permanent change to the employee's terms and conditions to incorporate the new working pattern. For further information, see the DfE guide *'Flexible Working – The Right to Request and the Duty to Consider'*.

7.11.3 Parental leave

Employees (both mothers and fathers) who have completed one year's service are entitled to take up to 18 weeks' leave before the child's 18th birthday, if their child has a disability. For further information, see the DfE Guide *'Parental Leave for Parents of Disabled Children: a Guide'*.

8. The start of maternity leave – notification requirements etc.

This section describes rights and responsibilities in the Maternity Leave Regulations.

8.1 Advance notification

To claim maternity leave, an employee must notify her employer, no later than the end of the fifteenth week before the expected week of childbirth of –

- the fact that she is pregnant;
- the expected week of childbirth; and
- the date when she intends to start taking leave (in writing if her employer requests it), which must be a date no earlier than the beginning of the 11th week before the expected week of childbirth.

Women who fail to give the required notifications within the specified time limit may lose their right to start maternity leave on their intended start date. The time limits can be extended only in circumstances where it was not reasonably practicable for the notification in question to have been given any earlier, for example in the case of a very premature birth.

8.2 Change of leave dates

Once an employee has notified her employer of the date she wishes to start her OML, she can change this date as long as she notifies her employer of the new start date by whichever is the earlier of –

- 28 days before the date she originally intended to start her leave; or
- 28 days before the new date she wants to start her leave;

unless it is not reasonably practicable to do so, in which case she must notify her employer as soon as is reasonably practicable. The notification must be in writing if the employer requests it.

8.3 Employer's notification of end of leave

An employer who has had proper notification of the intended start date for maternity leave must in turn notify the employee of the date on which her leave will end. (The model letter at **Annex A** of this guide can be used.) If the employee is entitled to AML, the employer should calculate the end date on the assumption that she is taking it. (See section 9 for details of when the employee should be expected to return to work after maternity leave.)

The employer must notify the employee of the end date within 28 days of the employee's notification. If the employee changes the date her leave will start, the employer must notify her of the end date within 28 days of the start of her leave.

Employees who have not been properly notified as to when their leave is due to end and do not return to work on time may have protection against detrimental action and dismissal for this reason (see section 11). In addition, where an employee wishes to return early from her leave, she may not be obliged to comply with requirements to give notice of this if her employer has not told her when her leave should end (see section 9).

8.4 The intended start date

The maternity leave period normally starts on the date on which the employee has notified her employer as the date she intends it to start or, if she has changed this date, the most recent date notified. There are however some exceptions to this rule, which are set out below.

8.5 Absence due to childbirth before the intended start date

If the child is born before the date the employee has notified her employer of the intended start date for her maternity leave (or before she has notified any date), her maternity leave period starts automatically on the day after the date of the birth, even if this is before the beginning of the 11th week before the expected week of childbirth.

In order to preserve her right to maternity leave the employee must, as soon as is reasonably practicable, give her employer notice (in writing if requested) of the date of childbirth and, if she has not already given it, evidence of the date the baby was expected. Evidence of both the expected date and the actual date of birth can be provided together on the maternity certificate (Mat B1) issued by a doctor or midwife.

8.6 Absence for a pregnancy-related reason before the intended start date

An employee who is absent from work due to illness will normally be able to take sick leave until she starts maternity leave on the date notified to her employer as described above. If the illness is unrelated to her pregnancy she can remain on sick leave right up to the date of the baby's birth, or until the date she has notified her employer as the date on which she intends her maternity leave to start.

If, however, the illness is pregnancy-related, the maternity leave period starts automatically on the day after the first day of absence following the beginning of the 4th week before the expected week of childbirth. This

applies even if the day of absence is before the date the employee has notified as the date on which she intends her leave to start. In order to preserve her rights, the employee must as soon as reasonably practicable give her employer notice (in writing if requested) that she is absent from work wholly or partly because of pregnancy and of the date on which absence for that reason began.

Odd days of pregnancy-related illness may be disregarded at the employer's discretion if the employee wishes to defer the start of her maternity leave period.

The same arrangements apply if the employee's absence is for some other pregnancy-related reason. However, time off for attending ante-natal appointments in the 4 weeks before the expected week of childbirth will not trigger the start of leave (and the employee has the right to time off work to attend ante-natal appointments throughout her pregnancy).

If an employer uses pregnancy-related absences as a ground for disciplinary action, for decisions on redundancy decisions, or for taking any other detrimental action, the employer will be entitled to make a complaint of discrimination under the Equality Act (see section 3).

8.7 Dismissal or resignation before the intended start date

If an employee resigns or is dismissed before the date she has notified her employer as her intended start date, or before she has notified a date, she loses the right to maternity leave. Dismissal will however be unfair and will also constitute discrimination under the Equality Act if it is for a reason connected with pregnancy or childbirth.

8.8 Dismissal of a replacement

An employer who takes on a temporary member of staff to cover maternity leave should make it clear to that person that his or her employment is expected to end when the woman on maternity leave returns.

9. Return to work after maternity leave – notification requirements etc.

This section describes rights and responsibilities in the Maternity Leave Regulations.

9.1 The intended date of return to work after OML or AML

Unless otherwise notified, the date on which the employee returns to work will be –

- the first working day after the end of her 26 weeks' OML period; or
- the first working day after the end of her 52 weeks' OML and AML combined, if she qualifies for AML; or
- within any longer leave period allowed on a voluntary or contractual basis by her employer.

Her employer should have notified her of this date within 28 days of her notification that she is taking maternity leave – see section 8.

9.2 Return to work before the end of OML or AML

If the employee intends to return to work before the end date as notified to her by her employer (which will be the date her AML ends, unless she did not qualify for this, in which case it will be the date her OML ends) she must give her employer 28 days' notice of the date of her return. This notice does not have to be in writing.

Where an employee qualifies for AML, but only wishes to take the 26 weeks' OML, she must give her employer 28 days' notice of her return to work.

If the employee attempts to return to work earlier than the end of her OML or AML without giving her employer 28 days' notice, her employer may postpone her return until 28 days' notice has been given. The employer may not postpone her return to a date later than the end of her OML or AML.

An employee whose return has been postponed under these circumstances is not entitled to receive wages or salary if she returns to work during the period of postponement.

Exceptionally, the employee is not obliged to give 28 days' notice of her early return if her employer did not notify her properly of the date when her leave would end (see section 8.3).

9.3 Return to work at the end of OML

If an employee is entitled only to OML and intends to return to work immediately after the end of it, she does not have to give notice of her return.

9.4 Return to work at the end of AML

If an employee is also entitled to AML and intends to return to work immediately after the end of it, she does not have to give notice of her return.

9.5 Sickness at the end of OML or AML

Where an employee is unable to attend work at the end of her OML or AML due to sickness, the normal contractual arrangements for sickness absence will apply (for example, she should notify her employer of her sickness in the normal way).

If an employee cannot return to work because of a pregnancy-related illness, (for example post-natal depression), both employer and employee should seek advice about managing the situation (from, for example, the Manx Industrial Relations Service).

The employee may be entitled to make a complaint of discrimination under the Equality Act if she is disciplined or dismissed in such circumstances.

9.6 Employees who do not wish to return to work after maternity leave

An employee who does not wish to return to work after her OML or AML must give her employer the notice of termination required by her contract of employment or where there is none, the statutory notice. (See the DfE guide *'Isle of Man Employment Rights and Responsibilities – a Guide for Employers, Employees and Workers'* for further information).

10. Rights upon return to work from maternity leave etc.

This section describes rights and responsibilities principally in the Maternity Leave Regulations.

10.1 Rights on return to work after OML or AML

These are set out at 7.7 and 7.8.

10.2 Return to work after OML followed by parental leave

Employees who have a disabled child, and have completed one year's service with their employer, whether before or during a period of maternity leave, may be entitled to parental leave which may be taken immediately after OML. This is subject to the notice requirements for taking parental leave – for more information see the DfE guide *'Parental Leave for Parents of Disabled Children: a Guide'*.

An employee returning to work after OML followed by a period of parental leave of 4 weeks or less is entitled to return to her original job on the same terms and conditions as if she had not been absent. An employee who takes a period of parental leave of over 4 weeks immediately after the end of OML is entitled to return to the same job on the same terms and conditions as if she had not been absent, unless that is not reasonably practicable, in which case she is entitled to be offered a similar job.

10.3 Return to work after parental leave taken immediately after the end of AML

An employee who takes a period of parental leave in respect of a disabled child, immediately after a period of AML is entitled to return to her original job or, if it is not reasonably practicable for her to return to that job, to another which is similar.

10.4 Employees who return to work after 2 consecutive periods of maternity leave

It is possible that an employee who takes her full entitlement to maternity leave of 52 weeks may become pregnant while on leave and become entitled to another, consecutive period of leave without returning to work. An employee who takes 2 consecutive periods of maternity leave which include one or more periods of AML is entitled to return to her original job or, if this is not reasonably practicable, to another job which is similar.

10.5 Offer of similar job after AML

Where it is impracticable for the employee to be taken back in her original job, a similar job must be found for her. The new job must be such that –

- the work to be done by the employee is both suitable and appropriate for her to do in the circumstances; and
- the capacity and place in which she is to be employed and the other terms and conditions of her employment are no less favourable to her than if she had continued to be employed in her old job.

Note that –

- if the offer made is suitable and the employee refuses, she will have effectively resigned; or
- if the offer is not suitable, the employee may bring a complaint of unfair dismissal and/or of discrimination to the Tribunal.

In all cases, employers should also ensure that transfers to alternative work are lawful under the Equality Act (see section 3).

10.6 Variation of terms and conditions of employment

Any variation to the terms and conditions of employment, such as hours of work, must be agreed between the employer and the employee, unless the contract of employment specifically allows for changes without agreement. This means that an employer may not impose less favourable terms and conditions upon an employee who resumes work after maternity leave, and an employee in these circumstances may not in general demand more favourable terms and conditions.

If less favourable terms and conditions are imposed upon an employee she will be entitled to make a complaint of unlawful discrimination under the Equality Act.

It should also be noted that employees have a right to request flexible working hours (see below).

10.7 Return to work part-time after maternity leave and the right to request flexible working

There is no specific statutory right for a woman to change her working conditions, including hours of work, on return to work from maternity leave, unless this is provided for in her contract of employment.

However, certain employees with dependants have the right to request flexible working (see further at 7.11.2).

Employers should be mindful that a refusal to permit a woman to return to work part-time could give rise to a complaint of sex discrimination under the Equality Act (see section 3).

11. Protection against detriment and dismissal on grounds of pregnancy or childbirth

This section describes rights in the Employment Act and the Maternity Leave Regulations.

11.1 Detrimental Treatment

The right not to suffer detrimental treatment at work starts as soon as a woman has told her employer that she is pregnant and lasts up to the end of her OML or AML as appropriate.

'Detriment' means treating the woman worse than she was treated before the right starts; it includes denying her promotion, facilities or training opportunities which she would otherwise have been offered. It does NOT include dismissal or unfair selection for redundancy (which are covered by a separate right (see section 11.2)).

The right comprises any detrimental treatment of a woman for any of the following reasons –

- she is pregnant;
- she has given birth to a child;
- she has been required or recommended to stop her current work on the ground that she is pregnant, has recently given birth or is breast-feeding;
- she took, sought to take or availed herself of the benefits of OML;
- she took or sought to take AML;
- she failed to return on time after OML or AML because her employer —
 - did not properly notify her of the date it ended and she reasonably believed it had not ended; or
 - gave her less than 28 days' notice of the date it ended and it was not reasonably practicable for her to return on that date.

See section 8 for an explanation of the notification requirements.

An employee who has been unfairly treated for any of the above reasons is entitled to make a complaint of detrimental treatment to the Tribunal. See section 13 for further details.

11.2 Unfair dismissal

Subject to sections 11.3 and 11.4 below an employee who is dismissed during or after the end of a maternity leave period, or selected for redundancy in preference to other comparable employees, solely or mainly because she has taken maternity leave or availed herself of the benefit of the terms and conditions of employment to which she was entitled during that leave or for any of the reasons listed at section 11.1 is entitled to make a complaint of unfair dismissal and/or discrimination to the Tribunal.

11.3 Circumstances where a dismissal at the end of AML will not be unfair

An employee who is not given her job back, or offered a suitable alternative job, at the end of AML will not be regarded as unfairly dismissed under the Maternity Leave Regulations if the employer can show that –

- her original job was no longer available because of redundancy and there was no suitable alternative work available which could be offered to her (see further at section 12);
- it was not reasonably practicable (on grounds other than redundancy) for her to be taken back in her original job or a similar job, and an associated employer had offered her suitable alternative employment which she had either accepted or unreasonably refused; or
- it was not reasonably practicable for her to be taken back in her original job or to be offered a similar job and that the employer (together with any associated employers) employed only 5 people or less (including the employee herself) at the time when her AML period ended.

Employers should, however, ensure that they are acting lawfully under the Equality Act (see section 3).

11.4 Dismissal on grounds unrelated to pregnancy or childbirth

It is not unlawful for an employer to dismiss an employee who is pregnant or has given birth on grounds largely or wholly unrelated to her pregnancy or childbirth, unless the dismissal is unfair for some other reason or amounts to discrimination under the Equality Act.

On dismissal an employee is entitled to her normal notice or payment in lieu of notice. For the position regarding redundancy see section 12.

11.5 The right to a written statement of reasons for dismissal

An employee dismissed at any time during pregnancy or statutory maternity leave is entitled to receive from her employer a written statement of the reasons for her dismissal, regardless of whether or not she has requested one and regardless of her length of service.

If her employer unreasonably fails to provide a statement, or provides one that she considers inadequate or untrue, she may make a complaint to the Tribunal.

11.6 Equality Act

The Equality Act provides overlapping protection to employees who are subjected to dismissal, detriment or less favourable treatment on grounds of pregnancy and maternity.

Less favourable treatment of workers other than employees, (who have far less extensive employment rights than employees) may also give rise to challenges under the Equality Act (see section 3).

11.7 Further information

The Manx Industrial Relations Service can provide further guidance on any of the above matters (see Annex B).

Further guidance on unfair dismissal can be also found in the DfE guide, *'Isle of Man Employment Rights and Responsibilities – A Guide for Employers, Employees and Workers'*.

12. Redundancy

This section describes rights in the Employment Act and the Maternity Leave Regulations.

12.1 Fairness of reason for making employee redundant

Any redundancy will be unfair if –

- the employee has not been offered any suitable alternative vacancy where one exists (see section 12.2 below); or
- it is for a reason which would make a dismissal unfair (see section 11).

12.2 Requirement to offer any suitable, alternative vacancy

If a redundancy situation arises during an employee's OML or AML which makes it impracticable for the employer to continue to employ her under her original contract of employment, she is entitled to be offered (before that contract ends) a suitable alternative vacancy, where one is available. This includes a vacancy with an associated employer or with a successor to the original employer. The new contract must take effect immediately on the ending of the original one and must be such that –

- the work to be done by the employee is both suitable and appropriate for her to do in the circumstances; and
- the capacity and place in which she is to be employed and the other terms and conditions of her employment are not substantially less favourable to her than if she had continued to be employed under the original contract.

It is unlawful for an employer to make an employee redundant during OML or AML without first complying with these requirements. An employee made redundant in these circumstances is entitled to make a complaint of unfair dismissal to the Tribunal.

If the employer has a suitable alternative vacancy available but fails to offer it to the employee, the redundancy dismissal will be regarded as an unfair dismissal.

If the employer offers the employee a suitable alternative vacancy and she unreasonably refuses it, she may forfeit her right to a redundancy payment.

12.3 Requirement for written statement etc.

If an employee on OML or AML is made redundant, whether lawfully or unlawfully, her maternity leave period comes to an end.

The employee is entitled to receive from her employer a written statement of the reasons for her dismissal, regardless of whether or not she has requested one, and regardless of her length of service. If her employer fails to provide a statement, or provides one that she considers to be inadequate or untrue, she may make a complaint to the Tribunal.

The employee should also receive her normal notice entitlement, or pay in lieu of notice as well as any redundancy payment and any other payments due.

12.4 Equality Act

The Equality Act provides overlapping protection to employees who are made redundant on the ground of pregnancy or maternity or for reasons connected to any other protected characteristic (see further at section 3).

12.5 Further information

The Manx Industrial Relations Service can provide further guidance on redundancy (see Annex B).

See also the DfE guide, '*Isle of Man Employment Rights and Responsibilities – a Guide for Employers, Employees and Workers*' and the Manx Industrial Relations Service's *Guide to Redundancies*.

13. Complaints to the Employment and Equality Tribunal and other remedies

This section describes rights in the Employment Act, the Maternity Leave Regulations and the Equality Act.

13.1 The Employment and Equality Tribunal

Most complaints about infringement of the rights described in this guide should normally be made to the Employment and Equality Tribunal.

13.2 Settling a dispute

It is good practice for an employee or other worker who is considering making a complaint to the Tribunal to first seek to resolve the dispute by mutual agreement with her employer – through the employer’s own grievance or appeals procedure, where one exists.

She or her employer or both of them may also seek assistance from the Manx Industrial Relations Service (see Annex B) to resolve the dispute whether or not a complaint has already been made to the Tribunal.

However, it should be noted that the relevant time limit (see section 13.4 below) for making a complaint to the Tribunal will still apply and will not be extended to allow for the fact that attempts have been made to settle the dispute in advance of making a complaint to the Tribunal.

13.3 Procedure for making a complaint to the Tribunal.

An employee or other worker who wishes to make a complaint to the Tribunal should contact the Manx Industrial Relations Service who can issue her with a claim form. On receipt of the claim form, the Clerk to the Tribunal will notify the respondent and an Industrial Relations Officer, who may attempt to reach a settlement without the need for a hearing (‘a conciliated settlement’). If conciliation is not possible or fails, the case will be listed for a Tribunal hearing.

Tribunal hearings are conducted informally and in a way which makes it easy for the parties to present their own case if they wish to do so. However, if either party wishes to be represented – whether by an advocate or by someone else such as an official of a trade union, relative or a friend – this is permitted.

13.4 Time limits

An application to the Tribunal must be presented within the applicable time limit, which may vary according to the particular statute and right.

13.4.1 Complaints about rights under the Employment Act and Maternity Leave Regulations

Complaints to the Tribunal about infringement of the rights under the Employment Act 2006 the Maternity Leave Regulations which are described in this guide must normally be made within 3 months of the date on which the contravention of a right occurred, for example –

- in the case of a complaint about unreasonable refusal of time-off for ante-natal care, the date of the appointment;
- in the case of a complaint of unfair dismissal, the date of dismissal.

The Tribunal can only grant an extension of the time limit in exceptional circumstances, where it is satisfied that it was not reasonably practicable for the complaint to have been made before the end of the 3 month period.

13.4.2 Complaints about rights under the Equality Act

Most complaints to the Tribunal about infringement of the rights under the Equality Act which are described in this guide must normally be made within 3 months of the date on which the contravention of a right occurred, for example –

- In the case of an employer disciplining an employee due to morning sickness or other pregnancy-related conditions, the date the employee was disciplined.

The Tribunal has discretion to extend time limits in cases under the Equality Act where it considers it is just and equitable to do so.

The usual time limit relating to a **breach of a maternity equality clause** (see section 3.8 or a **maternity equality rule** (see section 3.9) is 6 months beginning with the last day of employment.⁶

13.5 Remedies

13.5.1 Remedy for refusing to allow an employee time off for ante-natal care etc.

An employee who has been unreasonably refused time off for ante-natal care, denied her normal rate of pay during such time off or dismissed for seeking to assert the right to time off, is entitled to make a complaint to the Tribunal.

Where the Tribunal finds that the employee was unreasonably refused time off for ante-natal care, it will order the employer to pay her an amount equal to the amount she would have received had she been

⁶ The limit can be longer in certain types of cases where, for example, an employer has deliberately concealed relevant information from the worker.

allowed time off. No deduction will be made from the award to take account of any wages or salary received by the employee for working during the period when she should have been allowed time off.

Where the Tribunal finds that the employee was allowed time off but did not receive her normal rate of pay during that period, it will order the employer to pay the money, or the balance of the money, due to her.

13.5.2 Remedies for unfair dismissal under the Employment Act/Maternity Leave Regulations

Dismissal of an employee, for certain reasons connected with pregnancy, childbirth or maternity leave (see section 11.1) is automatically unfair irrespective of her length of service with the employer.

If the Tribunal finds that the employee was unfairly dismissed, it may make an order for the employee's reinstatement, i.e. that the employee be treated for all purposes as if he or she had not been dismissed or an order for the employee's re-engagement, i.e. that the employee be re-engaged by the employer in a comparable job, if that is what the employee wants.

If the employee is reinstated or re-engaged, her continuity of employment will be preserved. If neither reinstatement nor re-engagement is practicable, or if she does not want to return to work for the employer, the Tribunal will instead make an award of compensation to be paid to the employee by the employer calculated as follows –

- a **basic award** of one week's pay, capped at a maximum of £540 a week, for each completed year of continuous employment, up to the effective date of termination (subject to reduction if that date was after the employee's 64th birthday);
- a **compensatory award** based on the employee's loss, including any expenses reasonably incurred in consequence of the dismissal and any other benefits including pensions that might reasonably have been expected but for the dismissal. The award must not exceed £56,000 except in certain specific cases; and
- a **compensation for injury to feelings award**, if the Tribunal thinks it just and equitable, up to a fixed maximum of £5,000.

13.5.3 Remedies for detriment under the Employment Act / Maternity Leave Regulations

Where a claim of detriment, that is action short of dismissal for certain reasons connected with pregnancy, childbirth or maternity leave (see section 11.1), is successful, the Tribunal makes a declaration, and may

award compensation of an amount which it considers just and equitable, having regard to the employer's infringement and the employee's loss.

The maximum amount of compensation that can be awarded to an employee who has suffered a detriment is the sum of the basic award and the compensatory award (see section 13.5.2) that could be awarded on a finding of unfair dismissal.

13.5.4 Remedies for discrimination in relation to non-contractual pay and benefits under the Equality Act

Where a claim of discrimination in relation to non-contractual pay and benefits (such as promotion, transfer and training) (see section 3.10) under the Equality Act is successful the Tribunal has three possible remedies –

- a declaration as to the rights of the complainant and in what respect the respondent or any other person has acted unlawfully;
- an award of compensation to the complainant. The total award must not exceed the sum of the compensatory award and the injury to feelings award which might be awarded in a case of unfair dismissal (see section 13.5.2 above) but an individual component of such an award of compensation (e.g. the injury to feelings award) may exceed the limit in the Employment Act 2006); and
- an appropriate recommendation to benefit the complainant and remove or reduce the effect of the discrimination.

In a case of indirect discrimination (see section 3.4), where the Tribunal is satisfied that the provision, criterion or practice was not applied with the intention of discriminating against the complainant the Tribunal must not make an order for compensation without first considering whether to make a declaration or recommendation.

13.5.5 Remedies in relation to discriminatory terms of a contract of employment etc.

Where a breach of a maternity equality clause (see section 3.8) is upheld by the Tribunal, the Tribunal may –

- make a declaration as to the rights of the woman and her employer in relation to the claim brought; and
- order the employer to pay arrears of pay or damages to the woman who brought the claim. The basic period for calculating arrears is two years from the date a claim is made.

13.5.6 Remedies in relation to discriminatory terms of an occupational scheme

Where a breach of an equality clause or rule (see section 3.9) with respect to a term on which the pensioner member is treated is upheld, the Tribunal may –

- make a declaration as to the rights of the woman and her employer in relation to the claim brought; and
- order the employer to pay arrears of pay or damages to the person who has brought the claim. In a standard case, the basic period for calculating arrears is two years from the date a claim is made.⁷

Where the Tribunal makes a declaration about the terms on which a member of an occupational pension scheme must be treated, the employer must provide such resources to the scheme as are necessary to secure that person's rights without further contribution by her or any other members.

13.5.7 Breach of contract claims

If an employee on maternity leave is denied the benefit of the terms and conditions of employment to which she is entitled, she may obtain redress through the High Court by claiming damages for breach of contract, just as if she were still at work.

If the breach of contract is so serious that the employee is obliged to resign, this may be treated as 'constructive dismissal', and she may be entitled to make a complaint of unfair dismissal to the Tribunal (see section 11.2). Before taking any such action, however, it is recommended that an employee should take legal advice or consult the Manx Industrial Relations Service (see Annex B).

If the breach of contract amounts to an unauthorised deduction from the employee's wages, this may form the basis of a complaint to the Tribunal.

13.5.8 Further information

The Manx Industrial Relations Service can provide further guidance on any of the above matters (see Annex B).

⁷ Special provision is made for claims involving concealment and other circumstances.

Annex A: Model letter for employers to acknowledge notification of maternity leave

This letter should be used when only the statutory levels of leave are provided. (The employer must respond within 28 days of receipt of the employee's notification.)

Date:

Dear [*name of employee*],

Congratulations and thank you for telling me about your pregnancy and the date [xx/xx/xxxx] that your baby is due. I am writing to you about your maternity leave.

As we have discussed, you are eligible for 26 weeks' OML/52 weeks' maternity leave (26 weeks' OML plus 26 weeks' AML) [*delete as appropriate*]. Given your chosen start date of [*insert date*], your maternity leave will end on [*insert date*].

If you want to change the date your leave starts you must, if at all possible, tell me at least 28 days before your proposed new start date or 28 days before [*insert date leave starts*] (your original start date), whichever is sooner. If you decide to return to work before [*insert date leave ends*], you must give me at least 28 days' notice.

[*Insert details of any contractual pay offered during maternity leave*].

As your employer I want to make sure that your health and safety as a pregnant mother are protected while you are working, and that you are not exposed to risk. I have already carried out an assessment to identify hazards in our workplace that could be a risk to any new, expectant, or breastfeeding mothers. Now you have told me you are pregnant I will arrange for a specific risk assessment of your job and we will discuss what actions to take if any problems are identified. If you have any further concerns, following this assessment and specifically in relation to your pregnancy, please let me know immediately.

If you decide not to return to work you must still give me proper notice. If you have any questions about any aspect of your maternity entitlement please do not hesitate to get in touch with me. I wish you well.

Yours sincerely

Annex B: Where to find further information

<i>Body</i>	<i>Function</i>
<p>The Manx Industrial Relations Service (MIRS)</p> <p>Ground Floor Imperial Buildings Bath Place Douglas Isle of Man IM1 2BY</p> <p>Tel.: 672942 E-mail: iro@mirs.org.im Web: www.mirs.org.im</p>	<p>Industrial Relations Officers (IROs) provide advice and guidance about employment rights and help to settle disputes between employers and workers.</p> <p>IROs will also attempt to promote a settlement where a complaint has been made or could be made to the Tribunal.</p>
<p>The Employment and Equality Tribunal</p> <p>The Clerk to the Employment and Equality Tribunal The Office of the Tribunals' Centralised Administration Isle of Man Courts of Justice Deemsters Walk Bucks Road Douglas IM1 3AR</p> <p>Tel.: 685941 (Mon - Fri 9 a.m. to 5 p.m.) Fax: 685573 Email: tribunals@gov.im Web: www.courts.im/court-procedures/tribunals-service/tribunals/</p>	<p>This is the appropriate contact point where a claim to the Tribunal has been made.</p> <p>(MIRS (see above) should be contacted where a claim has not been made or is being considered.)</p>
<p>Health and Safety at Work Inspectorate</p> <p>Environment Safety and Health Directorate Department of Environment Food & Agriculture Thie Slieau Whallian Foxdale Road</p>	<p>For guidance and enforcement in respect of health and safety issues.</p>

<p>St. John's IM4 3AS Tel.: 685881 / 313626 (for urgent matters) Email: Worksafe.defa@gov.im Web: www.gov.im/hswi/</p>	
<p>Benefits The Treasury Markwell House Market Street Douglas IM1 2RZ Tel.: +44 1624 685105 Fax: +44 1624 685120 Email: generalbenefits@gov.im Web: www.gov.im/categories/benefits-and-financial-support/</p>	<p>For information on Maternity Allowance and other family benefits.</p>
<p>Isle of Man Government Legislation website www.legislation.gov.im/cms/</p>	<p>For current versions of Isle of Man Acts.</p>
<p>Department for Enterprise website www.emplaw.gov.im</p>	<p>For information on employment rights, including various guides and Codes of Practice.</p>

Feedback

How helpful was this guide to you? Did it answer your questions? Was it detailed enough? Was it clear? Does it contain any typographical errors? Do you have any comments or suggestions as to how the Department might further improve future editions? Please email your feedback to emplaw@gov.im

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Version 2

