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Introduction

This guide describes maternity rights, and explains what an employee may do if she feels she has been denied them. It gives general guidance only. It has no legal force and cannot cover every point and situation.


Copies of this Guide and the legislation can be downloaded from


The guide is written in general terms and is not intended to be a complete or authoritative statement of the law. It is impossible to provide a definitive statement of the law, which in any case is the function of the Employment 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.
## Terms and abbreviations used in this guide

<table>
<thead>
<tr>
<th>Term</th>
<th>Description</th>
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</thead>
<tbody>
<tr>
<td>ALR</td>
<td>Annual Leave Regulations 2007</td>
</tr>
<tr>
<td>AML</td>
<td>Additional Maternity Leave (see 4.2).</td>
</tr>
<tr>
<td>Associated employers</td>
<td>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.</td>
</tr>
<tr>
<td>Childbirth</td>
<td>The live birth of a child, or a still birth after a pregnancy lasting at least 24 weeks.</td>
</tr>
<tr>
<td>Compulsory Maternity Leave</td>
<td>See 4.3</td>
</tr>
<tr>
<td>DED</td>
<td>The Department of Economic Development</td>
</tr>
<tr>
<td>Expected week of childbirth</td>
<td>The week, beginning at midnight between Saturday and Sunday, in which it is expected that the baby will be born.</td>
</tr>
<tr>
<td>MA</td>
<td>Maternity Allowance (see 5.2)</td>
</tr>
<tr>
<td>MHSW Regulations</td>
<td>The Management of Health and Safety at Work Regulations 2003 (see 11.1)</td>
</tr>
<tr>
<td>OML</td>
<td>Ordinary Maternity Leave (see 4.1)</td>
</tr>
<tr>
<td>Tribunal</td>
<td>The Employment Tribunal (see 13).</td>
</tr>
<tr>
<td>Week of childbirth</td>
<td>The week, beginning at midnight between Saturday and Sunday, in which the baby is actually born.</td>
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</table>
1. What are the Statutory Maternity Rights?

**KEY FACTS**

**Maternity rights fall into four main categories:**
- time off for ante-natal care;
- maternity leave;
- Maternity Allowance; and
- protection against unfair treatment or dismissal.

**Health and safety protection**
- Employers are required by law to protect the health and safety of employees who are pregnant, have recently given birth or are breastfeeding. Health and safety protection on these grounds starts as soon as an employer knows an employee is pregnant. See Section 11 for further details.

**Sex discrimination**
- Women are also protected under legislation which outlaws unfair treatment, including dismissal, on grounds of their sex or because they are married. See Section 11 for further details.

1.1 More favourable contractual rights

The statutory maternity rights 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.

The Department of Economic Development (DED) welcomes and encourages this, where it accords with the priorities, needs and circumstances of the parties concerned. 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, making 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.
1.2 **Women excluded from the rights**

Most of the rights described in this guide apply only to employees and not to the self-employed or unemployed.

To qualify for time off for ante-natal care, or for maternity leave, a woman must be an employee, that is, she must work under a contract of employment (this includes public servants and others who are treated as working under a contract of employment);

To qualify for Maternity Allowance (MA) a woman must be (or have recently been) either an employed or self-employed earner and meet certain earnings and employment conditions.

The right not to be discriminated against on the ground of sex or marital status applies to all workers.

The 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 do NOT apply to certain special categories of worker, such as

- members of the Isle of Man Constabulary; and
- masters or crew members engaged in share fishing paid solely by a share of the catch.

Other restrictions are explained in the text where relevant.

1.3 **Part-time employees**

All the rights described in this guide apply to full-time and part-time employees, no matter how many hours they work, provided they satisfy any qualifying conditions, such as length of service.

1.4 **Women who work for more than one employer**

Women who work for more than one employer will be able to exercise their maternity rights separately in relation to each. Employees should be careful to follow the rules as to notification of the start of maternity leave for each employer.
2. Time off for ante-natal care

**KEY FACTS**

- All pregnant employees are entitled to time off for ante-natal care.
- All time off for ante-natal care must be paid at the employee’s normal rate of pay.
- Ante-natal care may include relaxation and parent craft classes, as well as medical examinations, if taken on medical advice.
- These rights apply regardless of the employee’s length of service.

2.1 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.

2.2 Payment 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 agreed terms and conditions of employment, or in the employee’s written statement of
particulars of her contract of employment. 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.

2.3 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 Employment 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 the provisions which protect women against dismissal on grounds of pregnancy or childbirth. See Section 3 below.

2.4 Complaints relating to time off

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 Employment Tribunal.

Further information about making a complaint to the Tribunal is given at Section 13.
3. **Protection against detriment or dismissal on grounds of pregnancy or childbirth**

**KEY FACTS - DETRIMENT**

- An employer must not subject an employee to unfair treatment at work because she:
  - is pregnant;
  - has given birth to a child;
  - has taken, or sought to take, OML or AML;
  - has taken, or sought to take, any of the benefits of OML;
  - does not return to work at the end of her leave in circumstances where her employer gives her insufficient or no notice of when it should end; or
  - has been suspended from work for health and safety reasons connected with her maternity (See Section 11).

- This protection applies regardless of the employee’s length of service.

### 3.1 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.

'Detriment' covers treating the woman worse than she was treated before the right starts; it also 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 below).

The right covers any detrimental treatment 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 and 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 —
  o did not properly notify her of the date it ended and she reasonably believed it has not ended; or
  o 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 6 for an explanation of the notification requirements.

3.2 Complaints about detrimental treatment

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

KEY FACTS – UNFAIR DISMISSAL

• It is unlawful for an employer to dismiss an employee, or select her for redundancy in preference to other comparable employees, for reasons connected with:
  - her pregnancy;
  - childbirth;
  - maternity suspension on health and safety grounds;
  - taking, or seeking to take, OML or AML; or
  - taking, or seeking to take, any of the benefits of OML.

• It is also unlawful to dismiss her for not returning to work at the end of her leave in circumstances where her employer gives her insufficient or no notice of when it should end.

• These rights apply regardless of the employee’s length of service.

• This protection applies only where the employer's action took place on or after 1st April 2007 (but see further below).
3.3 Dismissal during pregnancy or maternity leave

It is unlawful for an employer to dismiss an employee 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 and 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 —
  o did not properly notify her of the date it ended and she reasonably believed it has not ended; or
  o 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 6 for an explanation of the notification requirements.

3.4 Complaints about unfair dismissal

An employee dismissed or selected for redundancy in these circumstances is entitled to make a complaint of unfair dismissal to the Employment Tribunal (see Section 13).

Dismissal or selection for redundancy under these circumstances may also amount to unlawful discrimination on grounds of sex or marital status (see Section 12).

3.5 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 on grounds of sex or marital status. The Manx Industrial Relations Service can give further guidance on unfair dismissal – (see Annex B).
On dismissal an employee is entitled to her normal notice or payment in lieu of notice. If the dismissal is on grounds of redundancy, the employee may be entitled to a redundancy payment. In addition, a woman absent on OML or AML has the right, where a redundancy situation has arisen, to be offered a suitable alternative vacancy where one is available (see Section 10).

3.6 **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 Employment Tribunal.

Failure to provide a written statement of the reasons for the dismissal may also give rise to a claim for unlawful discrimination on grounds of sex or marital status.
4. Maternity leave

KEY FACTS

- To take advantage of maternity leave the employee must give her employer proper notification (see Section 6).

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

Ordinary maternity leave

- Every pregnant employee is entitled to at least 26 weeks’ OML. This applies regardless of length of service.

- The contract of employment continues during OML.

- During her OML period the employee must continue to receive all her contractual benefits, other than wages or salary.

Additional maternity leave

- An employee who has completed 26 weeks’ continuous employment by the beginning of the 14th week before the expected week of childbirth is entitled to 26 weeks’ AML.

- AML begins at the end of OML.

- The contract of employment continues during AML.

- Some terms of the employment contract continue during AML. The continuance of any other terms and conditions of the contract are a matter for agreement between the employer and the employee.

Other leave entitlements for parents

- Employees may also have rights to paternity leave, and leave for parents of disabled children, and a right to request flexible working patterns. For further information on these rights see Annex C.
4.1 **Ordinary maternity leave (OML)**

Every pregnant employee is entitled to a 26 weeks’ ordinary maternity leave (OML). This right applies regardless of an employee’s length of service.

4.2 **Additional maternity leave (AML)**

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' additional maternity leave (AML), which begins at the end of OML.

4.3 **Compulsory maternity leave**

An employee must not work for her employer immediately after 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 11) which prohibits the employee from working due to the fact that she has recently given birth.

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.

4.4 **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 6).

4.5 **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.
4.6 Ordinary Maternity Leave - the contract of employment

4.6.1 Contract of employment

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

4.6.2 Terms and conditions

During OML an employee has a statutory right to continue to benefit from the terms and conditions of employment which would have applied to her had she been at work instead of on leave, except for the terms providing for her wages or salary. 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 4.8 for more details on holidays). However, while on maternity leave, she has no statutory right to continue to receive remuneration – i.e. any monetary salary or wages payable for her work.

Entitlement to wages or salary during maternity leave is a matter for negotiation and agreement between the parties concerned (or their representatives).

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 resuming work after OML is 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.

Whether an employee on maternity leave is entitled to a bonus depends on the type of bonus and the terms of the particular bonus scheme. If the employee would have been entitled to the bonus under her contract of employment if she had not been on maternity leave, her entitlement depends on whether the bonus is for past achievement (in which case it
must be paid in full) or for current work (in which case it may be reduced pro rata for the period of leave). The position is uncertain where the bonus is at the employer's discretion, and independent legal advice should be sought.

4.6.3 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.

4.7 Additional Maternity Leave - the contract of employment

4.7.1 Contract of employment

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

4.7.2 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.
- The employee is bound by any terms in her contract relating to:
  - disclosure of confidential information;
  - acceptance of gifts or other benefits;
  - 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). Employers must however ensure that their treatment of an employee during AML does not amount to sex discrimination.

An employee resuming work after AML is 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 absent.

An employee returning to work from AML is entitled to return with her seniority, pension rights and similar rights as they would have been if her employment prior to AML were continuous with the period of employment following it.

4.7.3 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 other statutory employment rights.

Unlike the period of OML, the AML period is not required to be counted for the purpose of assessing seniority, pension rights and other payments 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). In these circumstances the period of employment before the start of AML will be ‘joined up’ with the period of employment on her return to work as if they were continuous. Employers should however ensure that they are acting lawfully under the Employment (Sex Discrimination) Act 2000 (see Section 12).
4.8 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 (ALR).

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, under the ALR, 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.

4.8.1 Statutory leave under the Annual Leave Regulations

Some constraints apply to statutory annual leave. The ALR make no provision for carrying over statutory leave from one leave year to the next. So if a worker’s holiday rights are confined to those which she is granted by the ALR and she does not exercise the right to take annual leave within the appropriate leave year, then the statutory entitlement to paid holiday will be lost. Also the ALR make no provision for unused leave to be replaced with a payment in lieu, except where employment is terminated. (However, some workers may have more favourable contractual rights to carry over holiday entitlement to the next year, in which case leave could be carried forward, or payment could be made in lieu of untaken contractual leave). Employees who are only entitled to the statutory annual leave should bear this in mind when planning their annual leave.

Further information on statutory holiday entitlement can be found in the DED guide ‘Holidays and Holiday Pay’ (See Annex C).
4.9 Occupational Pension Schemes

4.9.1 Paid maternity leave or leave taken while a woman is receiving maternity allowance alone (OML or AML)

During periods of ‘paid maternity leave’ or leave taken while a woman is receiving Maternity Allowance alone – either OML or AML – an employer’s pension contribution should be calculated as if the woman is working normally and receiving the normal remuneration payable for doing so. ‘Paid’ maternity leave is when the employee is receiving contractual maternity pay or both contractual maternity pay and Maternity Allowance.

If the rules of the scheme require the employee to contribute towards her occupational pension her contribution should be based on the amount of contractual pay which is being paid to her1.

4.9.2 Unpaid ordinary maternity leave while a woman is also not entitled to Maternity Allowance

A woman on OML is entitled to benefit from her normal terms and conditions of employment other than remuneration.

Pension contributions are not remuneration so her occupational pension rights will continue to accrue during the OML period as if she was working normally. The level of pension contributions from the employer and employee will normally depend upon the precise nature of the pension scheme. But in non-contributory salary-related schemes (i.e. those financed solely by the employer) the pension rights must accrue as if the employee was working normally2.

4.9.3 Unpaid additional maternity leave while a woman is also not entitled to Maternity Allowance

For periods of unpaid maternity leave while a woman is also not entitled to Maternity Allowance during the AML period the question as to whether

1 Schedule 5 to the Social Security Act 1989 (as that Act of Parliament has effect in the Isle of Man) sets out provision governing occupational pensions during any period of paid maternity leave.

2 Section 79 of the Employment Act 2006 governs the position during a period of ordinary maternity leave when a woman does not receive contractual or statutory maternity pay, for example if she does not qualify for such payments, and accordingly the provisions of the 1989 Act do not apply.
or not occupational pension rights continue to accrue will depend on the rules of the scheme and if so, the conditions of any such accrual.

4.10 Complaints about terms and conditions during maternity leave

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 Employment Tribunal (see Section 13 for further details). Before taking any such action, however, 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, it may form the basis of a complaint to the Employment Tribunal.

Detrimental treatment of a woman in these circumstances may also give rise to a claim under the Employment (Sex Discrimination) Act 2000.

4.11 Other leave entitlements for parents

4.11.1 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 DED Guide 'Working Fathers: Rights to Paternity Leave' (see Annex C).

4.11.2 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 DED Guide 'Parents of Disabled Children: Parental leave' (see Annex C).

4.11.3 Right to request flexible working

Eligible employees (both fathers and mothers) have the right to request flexible working patterns – Further information is also available at Section
8 of this guide and in the DED Guide 'Flexible Working – the Right to Request and the Duty to Consider' (see Annex C).
5. **Pay during maternity leave**

5.1 **Contractual pay**

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.

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

5.2 **Maternity Allowance**

Women who meet the qualifying conditions based on their recent employment and earnings record may claim Maternity Allowance (MA) from the Treasury for up to 39 weeks.

MA 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 (see Appendix C).
6. The start of maternity leave

KEY FACTS

Notice for start of maternity leave

- To take advantage of the right to maternity leave an employee must notify her employer no later than the end of the 15th week before the week her baby is due or as soon as reasonably practicable:
  - that she is pregnant;
  - when the expected week of childbirth will be, by means of a medical certificate if her employer so requests;
  - when she intends her maternity leave to start, in writing if her employer so requests.

- The start of maternity leave must be no earlier than the 11th week before the expected week of childbirth.

- She can change her leave dates as long as she gives 28 days’ notice.

Employer’s acknowledgement

- An employer must notify the employee of the end date of her leave within 28 days of receiving her notification.

Start of maternity leave before the notified date

- An employee cannot normally start her maternity leave unless she has given her employer the required notice, except in the following circumstances:
  - If the employee gives birth before the date she has notified, or before she has notified a date, her maternity leave starts automatically on the day after the date of the birth. She must notify her employer as soon as is reasonably practicable of the date of birth.
  - If the employee is absent from work due to a pregnancy-related reason 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. She must notify her employer that she is absent from work wholly or partly because of pregnancy and of the date on which her absence for that reason began as soon as is reasonably practicable.
6.1 **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.

6.2 **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.

6.3 **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 7 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 of 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 3). 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 7).

6.4 The intended start date

The maternity leave period normally starts on the date which the employee has notified to 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 described below.

6.5 Absence due to childbirth before the intended start date

If the child is born before the date the employee has notified (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 rights 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.

6.6 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 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 may be entitled to complain of sex discrimination.

6.7 Dismissal or resignation before the intended start date

If an employee resigns or is dismissed before the date she has notified, or before she has notified a date, she loses the right to maternity leave. Dismissal will however be unfair if it is for a reason connected with pregnancy or childbirth.

6.8 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 he or she expects the employment to end when the original employee returns.
7. Return to work after maternity leave

KEY FACTS

Return to work before the end of OML or AML

- The employer must notify the employee of the date her leave will end.

- If the employee intends to return to work before the end of her OML or AML period, she must give her employer at least 28 days’ notice of her date of return unless her employer has failed to give her appropriate notification of the date of the end of her leave.

Return to work at the end of maternity leave

- An employee who does not qualify for AML does not have to give her employer advance notice if she intends to return to work immediately after the end of her OML period (which should be the date notified by her employer).

- An employee does not have to give her employer advance notice if she intends to return to work immediately after the end of her AML period (which should be the date notified by her employer).

- An employee must give the normal notice if she does not intend to return to work after her maternity leave.

7.1 The intended date of return to work after ordinary or additional maternity leave

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

- if she qualifies for AML, the first working day after the end of her 52 weeks’ ordinary and AML combined; 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 leave – see Section 6.
7.2 Return to work before the end of ordinary or additional maternity leave

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 6).

7.3 Return to work at the end of ordinary maternity leave

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.

7.4 Return to work at the end of additional maternity leave

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.

7.5 Sickness at the end of ordinary or additional maternity leave

Where an employee is unable to attend work at the end of her OML or additional maternity leave 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 take advice (from the Manx Industrial Relations Service, for example). In particular, they should be aware that the employee may be entitled to complain of sex discrimination if she is disciplined or dismissed in such circumstances.

7.6 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 DED guide ‘Isle of Man Employment Rights and Responsibilities – a Guide for Employers, Employees and Workers‘for more information (see Annex C).
8. Rights on and after return to work from maternity leave

KEY FACTS

Ordinary maternity leave

- An employee who resumes work after OML is entitled to return to the same job on the same terms and conditions as if she had not been absent, unless a redundancy situation has arisen.

Additional maternity leave

- An employee who returns to work after AML is also entitled to return to the same job on the same terms and conditions as if she had not been absent, unless a redundancy situation has arisen.

- If, however, there is some reason other than redundancy why it is not reasonably practicable for her employer to take her back in her original job, she is entitled to be offered suitable alternative work.

- Employees who wish to vary their working pattern on return from maternity leave have the right to request flexible working.

8.1 Return to work after ordinary maternity leave

An employee who resumes work after OML is entitled to return to the same job on the same terms and conditions of employment as if she had not been absent, unless a redundancy situation has arisen, in which case she is entitled to be offered a suitable alternative job (see Section 10)

An employee who is not given her job back at the end of OML is entitled to make a complaint of unfair dismissal to the Employment Tribunal (see Section 13).

8.2 Return to work after additional maternity leave

After AML an employee is entitled to return to work to the same job, on the same terms and conditions as if she had not been absent. However, if there is some reason why it is not reasonably practicable for her to return to the same job she should be offered a similar job on terms and
conditions which are no less favourable than her original job. This right varies where an employee works for a firm employing 5 employees or less. See below for the circumstances where dismissal at the end of AML will not be unfair.

8.3 **Return to work after ordinary maternity leave 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 DED guide *Parents of Disabled Children: Parental leave* (see Annex C).

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.

8.4 **Return to work after parental leave taken immediately after the end of additional maternity leave**

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.

8.5 **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 which is similar.
8.6 Offer of similar job after additional maternity leave

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;

- if the offer is not suitable, the employee may bring a complaint of unfair dismissal to the Employment Tribunal.

In all cases, employers should also ensure that transfers to alternative work are lawful under the Employment (Sex Discrimination) Act 2000 (see Section 12).

8.7 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. Employees with 6 month’s qualifying service may request flexible working in order to care for

- a spouse;

- a child who is under the age of 6;

- a child with a disability where the parents are in receipt of Disability Living Allowance;

- a parent; or
• a person who lives in the same house as the employee, otherwise than by reason of being, 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 DED guide 'Flexible Working – The Right to Request and the Duty to Consider’ (see Annex C).

There may be circumstances where a refusal to permit a woman to return to work part-time amounts to sex discrimination. Employees may complain of indirect sex discrimination if the proportion of women (or men) who can comply with a provision, criterion or practice imposed by their employer is considerably smaller than the proportion of men (or women) who can comply with it. For example, it may be more difficult for female employees to fulfil the requirement to work full time than it would be for male employees, because of their childcare responsibilities. In such circumstances an employer would have to show that there were objective reasons, which had nothing to do with her sex, for requiring her to work full-time. Further information on indirect sex discrimination is given at Section 12. Employees may wish to contact the Manx Industrial Relations Service for advice (see Annex B for contact details).
9. **Dismissal on or after return to work after maternity leave**

**KEY FACTS**

- An employee who is dismissed during OML or AML, at the end of maternity leave or after she resumes work, on the grounds that she has taken maternity leave or, in the case of OML, has claimed the benefits of maternity leave, may make a claim for unfair dismissal to the Employment Tribunal.

- Dismissal or other detrimental treatment due to these circumstances may also amount to unlawful sex discrimination.

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 is entitled to make a complaint of unfair dismissal to the Employment Tribunal. It is unlawful to dismiss in certain circumstances where an employee fails to return from her maternity leave on time because her employer has given inadequate or no notification of the end date of her leave.

Dismissal, selection for redundancy or other detrimental treatment in these circumstances may also amount to unlawful discrimination on grounds of sex or marital status (see Section 12).

9.1 **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 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 Section 10);

- 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 Employment (Sex Discrimination) Act 2000 (see Section 12)

9.2 Dismissal on grounds unrelated to maternity leave

An employer may dismiss an employee on grounds largely or wholly unrelated to the fact that she has taken or availed herself of the benefits of maternity leave, unless the dismissal is unfair for some other reason or amounts to discrimination on grounds of sex or marital status. Further guidance on unfair dismissal can be found in the DED guide, 'Isle of Man Employment Rights and Responsibilities – A Guide for Employers, Employees and Workers’ (see Annex C). If the dismissal is on grounds of redundancy, the employee may be entitled to a redundancy payment, and further guidance can be found in the same guide.

9.3 Terms and conditions on or after return to work

9.3.1 Ordinary maternity leave

An employee returning to work after OML is entitled to have the same job and the same terms and conditions as if she had not been absent (unless a redundancy situation arose during her maternity leave – see Section 10).

An employee resuming work after OML is 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.

9.3.2 Additional Maternity Leave

An employee returning to work after AML is entitled to have the same job back on the same terms and conditions, except where a redundancy situation has arisen, or there is some other reason why it is not reasonably practicable for the employer to take her back in her original
job. In these circumstances she is generally entitled to be offered a similar job which has the same or better status and terms and conditions as the old job.

Unlike the period of OML, the AML period is not required to be counted for the purpose of assessing seniority, pension rights and other personal length-of-service payments (unless the employee’s contract of employment provides for service to accrue during AML for the purposes of contractual benefits). In these circumstances the period of employment before the start of AML will be treated as ‘joined up’ with the period of employment on her return to work as if they were continuous. An employee resuming work after AML is 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 absent.

9.4 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, in general, 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. It is however unlawful to discriminate against a woman on the grounds of sex in relation to her terms and conditions. It should also be noted that employees have a right to request flexible working hours – see above.

9.5 Complaints about variation of terms and conditions

An employee whose employer unilaterally makes detrimental changes to her terms and conditions of employment may obtain redress in the High Court by claiming damages for breach of contract. Legal aid is available for those who meet the qualifying criteria.

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 Employment Tribunal. Before taking any such action, however, an employee should take legal advice or consult the Manx Industrial Relations Service.
If the breach of contract amounts to an unauthorised deduction from the employee’s wages, this could also form the basis of a complaint to the Employment Tribunal. A breach of contract in these circumstances may also give rise to a claim under the equal pay provisions of the Employment (Sex Discrimination) Act 2000.

All these rights apply regardless of the employee’s length of service.
10. **Redundancy during maternity leave**

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 period without first complying with these requirements. An employee made redundant in these circumstances is entitled to make a complaint of unfair dismissal to the Employment 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.

10.1 **Entitlements on redundancy during maternity leave**

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 Employment Tribunal. The employee should also receive her normal notice entitlement, or pay in lieu of notice, the employee may additionally be entitled to a redundancy payment (see the DED guide, ‘Isle of Man Employment Rights and Responsibilities – a
11. Health and Safety

**KEY FACTS**

- Employers are required to protect the health and safety at work of all employees and others, including new and expectant mothers.

- When assessing risks in their workplace they should pay particular attention to risks that could affect the health or safety of new or expectant mothers or their babies.

- All reasonably practicable measures should be taken to prevent exposure to risks through removal of hazards or implementation of controls.

- Employers should inform their employees of any potential risks and the need to provide written notification that they are a new or expectant mother as early as possible.

- If a risk remains which could damage the health or safety of a new or expectant mother or her baby, employers should make sure she is not exposed to that risk.

- The ultimate action to avoid a risk to a new or expectant mother is to suspend her from work on maternity grounds, but before being suspended, she must be offered suitable alternative work, if any is available.

- A woman on maternity suspension must be paid her normal wages or salary by her employer for as long as the suspension lasts.

- It is unlawful for an employer to dismiss an employee because of a health and safety regulation which could give rise to maternity suspension.

- All these rights apply regardless of the employee’s length of service or hours of work.
This section concerns the protection of 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.

### 11.1 Risk assessment

All employers are required under the Management of Health and Safety at Work Regulations 2003 (MHSW Regulations) to assess risks to the health and safety of their employees and others including risks to new and expectant mothers and their children. New and expectant mothers may be able to claim unlawful sex discrimination 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
More details of 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 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.

11.2 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.

11.3 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.

They also provide 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 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 or that of her child. The measures taken to avoid the risk must continue for as long as the risk exists.

11.4 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 Employment (Sex Discrimination) Act 2000 and, where pension entitlement is concerned, under Schedule 5 to the Social Security Act 1989 (as that Act of Parliament has effect in the Isle of Man).

11.5 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 Employment Tribunal. Failure to suspend a pregnant employee on full pay in the absence of a suitable alternative post may also amount to sex discrimination.

11.6 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 which could give rise to maternity suspension. An employee dismissed or selected for redundancy in these circumstances is entitled to make a complaint of unfair dismissal to the Employment Tribunal.
12. Sex discrimination

12.1 Protection against sex discrimination

The purpose of the Employment (Sex Discrimination) Act 2000 (referred to as ‘the Act’ throughout the rest of this section) is to confer protection against discrimination on grounds of sex (that is, discrimination between men and women) and on grounds of being married. (Whereas the Act protects both men and women against discrimination this section of the guide only concerns discrimination against women).

Sex discrimination is unlawful in a comprehensive range of employment situations, including recruitment, treatment while at work and dismissal. ‘Employment’ for these purposes means employment under a contract of service or apprenticeship or a contract personally to execute any work or labour. It covers self-employed persons who enter into a contract to work personally.

Women who are pregnant, have recently given birth or are breastfeeding may have certain additional protections under the Act. It would be up to the Employment Tribunal to decide whether this less favourable treatment constituted discrimination under the Act. It is not unlawful under the Act for an employer to discriminate by affording more favourable treatment to women in connection with pregnancy or childbirth.

12.2 Direct and indirect discrimination

The Act defines two kinds of discrimination, generally referred to as direct and indirect. Direct sex discrimination arises where a person treats a woman, on the ground of her sex, less favourably than he treats, or would treat, a man. Indirect sex discrimination consists of treatment which is neutral in formal terms as between men and women but is in practice discriminatory because it has a disproportionate detrimental effect on one sex.

Indirect sex discrimination occurs where an employer applies a condition or requirement equally to women and men as a means of deciding who should be given a benefit, or selected for some form of less favourable treatment, but the provision, criterion or practice:

- is such that it would be to the detriment of a considerably larger proportion of women than of men;
- cannot be shown by the employer to be objectively justifiable irrespective of the sex of the person to whom it is applied; and
• is to the detriment of the woman in question.

Objective justification will be shown if the condition or requirement corresponds to a real need on the part of the employer, and is appropriate and necessary to achieving that objective.

A woman who believes that she has been discriminated against on grounds of sex or because she is married is entitled to make a complaint to the Employment Tribunal. Assistance can be sought from the Manx Industrial Relations Service (see Annex B).
13. Complaints to the Employment Tribunal

Complaints about infringement of the rights described in this guide should normally be made to the Employment Tribunal. Exceptions are indicated in the text where relevant.

13.1 Time limits

Complaints to the Tribunal about infringement of the rights described in this guide must normally be made within 3 months of the date on which the infringement in question occurred – for example, the date of the appointment for ante-natal care, in the case of a complaint about unreasonable refusal of time-off, or the date of dismissal in the case of a complaint of unfair dismissal. An extension of the time limit can be granted only in exceptional circumstances, where the Tribunal is satisfied that:

- it was not reasonably practicable for the complaint to have been made any earlier; or
- in sex discrimination cases only, that it is just and equitable in all the circumstances for an extension to be granted.

A questions procedure can be used to establish the facts in a sex discrimination case. The questionnaire can be served on an employer before bringing a complaint to the Tribunal, but not more than 3 months after the date of the treatment complained of. Where a complaint has already been made to the Tribunal, a questionnaire may still be served, provided the leave of the Tribunal is obtained. The employer is not obliged to respond, but if the employer refuses to respond, or responds evasively, the Tribunal can draw inferences from that. This could include an inference that the reason for the failure to respond properly was because the employer’s action was discriminatory. The questions and any responses can be admitted as evidence before the Tribunal.

13.2 Settling a dispute

It is good practice for an employee who believes that she is entitled to make a complaint to the Employment Tribunal to first seek to resolve the dispute by mutual agreement with her employer – through the business’s own grievance or appeals procedure, where one exists. She or her employer, or both, 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 time limit 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.

13.3 **Procedure for making a complaint to the Employment Tribunal.**

An employee 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 Employment Tribunal will notify the respondent and the Industrial Relations Officer, who may attempt to reach a conciliated settlement. If conciliation is not possible or fails, the Employment Tribunal will hear the case. 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 wants to be represented – whether by a lawyer or by someone else such as an official of a trade union, a relative or a friend – this is permitted.

13.4 **Remedies**

13.4.1 **Remedies for unreasonable refusal of time off for ante-natal care**

If 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 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.

If 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.

13.4.2 **Remedies for unfair dismissal**

If the Tribunal finds that the employee was unfairly dismissed or selected for redundancy, it can order the employer to reinstate her in her old job or to re-engage her in a similar one, if that is what she wants. If she is reinstated or re-engaged, her continuity of employment will be preserved. If neither reinstatement nor re-engagement is practicable, or if the employee does not want to return to work for the employer, the Tribunal will instead make a cash award of compensation to be paid to the employee by the employer. If the Tribunal has ordered reinstatement or re-engagement and the employer fails to comply with that order, further compensation will be awarded.
13.4.3 Remedies for sex discrimination

If the Tribunal finds that a person has been discriminated against, it may make an order declaring the rights of the parties, an order requiring the employer to pay the complainant compensation and a recommendation that the employer take action to remedy the discrimination within a specified time.
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. (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

<table>
<thead>
<tr>
<th>Role or (where apparent) the name of organisation and contact details</th>
<th>Functions</th>
</tr>
</thead>
</table>
| **Benefits**  
The Treasury  
Markwell House  
Market Street  
Douglas  
IM1 2RZ  
Tel.: +44 1624 685105  
Fax: +44 1624 685120  
Email: generalbenefits@gov.im  
- Maternity Allowance,  
- Paternity Allowance,  
- Adoption Allowance, and  
- other family benefits. |
| **Employment Legislation Policy**  
Legislation Manager  
Department of Economic Development  
St Georges Court  
Upper Church Street  
Douglas  
IM1 1EX  
Tel.: 682371  
Email: emplaw@gov.im  
| **Employment Tribunal**  
The Clerk to the Employment Tribunal  
Tribunals Office  
Isle of Man Courts of Justice  
Deemsters Walk  
Bucks Road  
Douglas  
IM1 3AR  
Tel.: 685941 (Mon - Fri 9 a.m. to 5 p.m.)  
Fax.: 685573  
Email: tribunals@gov.im  
Web: [http://www.gov.im/registries/Tribunals/employ.xml](http://www.gov.im/registries/Tribunals/employ.xml) | The Clerk can be contacted where a claim to the Employment Tribunal has already been made.  
Persons contemplating making a claim to the Employment Tribunal may wish to seek further advice from the Manx Industrial Relations Service (see below for contact details). |
| **Health and Safety at Work Inspectorate**  
| Environment Safety and Health Directorate  
| Department of Environment Food & Agriculture  
| Thie Slieau Whallian  
| Foxdale Road  
| St. John's  
| IM4 3AS  
| Tel.: 685881 / 313626 (for urgent matters)  
| Email: [Worksafe.defa@gov.im](mailto:Worksafe.defa@gov.im)  
| **Manx Industrial Relations Service (MIRS)**  
| 5th Floor  
| Victory House  
| Prospect Hill  
| Douglas  
| IM1 1EQ  
| Tel.: 672942  
| Fax.: 687050  
| Email: [iro@ir.gov.im](mailto:iro@ir.gov.im)  
| Web: [www.mirs.org.im/](http://www.mirs.org.im/)  | Provision of guidance and advice for both employers and workers on employment rights.  
| Contact point for persons contemplating making a claim to the Employment Tribunal.  
| For assistance in resolving disputes between employers and workers; MIRS has certain statutory conciliation functions. |
Annex C: Selected Publications


- ‘Isle of Man Employment Rights and Responsibilities – A Guide for Employers, Employees and Workers’
- Isle of Man Employment Rights: a Summary (also in Polish)
- Flexible Working – The right to request and the duty to consider
- Adoption Rights – A guide for employers and employees
- Paternity Rights – A guide for employers and employees
- Parental Leave for Parents of Disabled Children - A Guide for Employers and Employees
- Holidays and Holiday Pay

Manx Industrial Relations Service

Copies of the following guides can be downloaded from https://www.mirs.org.im/guides-and-forms/

- Guide to Redundancies
- A Guide to Conciliation (also in Polish)

Treasury (Social Security Division)

Copies of the following guides can be downloaded from the Social security Division website at https://www.gov.im/about-the-government/departments/treasury/social-security-division/

- Benefits and Contributions Guide
- MA 5 A Guide to Maternity Allowance
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 to the Department might further improve future editions? Please e mail your feedback to emplaw@gov.im
Employment law developments

You can find out about developments to employment law on the following page of the Department of Economic Development website:
