

Statutory Maternity Pay

Statutory Maternity Pay (SMP) may be payable by the employer to a pregnant employee who satisfies **all** of the following conditions. She must:

- have at least 26 weeks continuous employment with the employer that continues into the Qualifying Week (QW) i.e. the week that is 15 weeks prior to the Expected Week of Confinement (EWC)
- have average weekly earnings equal to or above the Lower Earnings Limit (LEL) for National Insurance purposes
- still be pregnant at the 11th week prior to when the baby is due, or have had the baby by that time
- have given the employer medical evidence of the date the baby is due, or where the baby is born early, within three weeks of the start of the Maternity Pay Period (MPP)
- have stopped working for the employer and must not work for the duration of the MPP
- have given you at least 21 days notice beforehand, of the date that the maternity absence is due to start.

MATERNITY PAY PERIOD

When you have determined that an employee qualifies for SMP from you, it is payable for up to 18 weeks and must be paid even if your employee does not intend to return to work for you after the birth of the baby.

The period for which SMP is payable is known as the 'Maternity Pay Period' (MPP). The MPP:

1. may start at any time from the start of the 11th week before the Expected Week of Confinement **and**
2. can continue for up to 18 weeks

Payment of SMP will cease for any week in which the employee undertakes work for the employer within the MPP. SMP lost in this way will be lost at the lower rate first.

If your employee works for you up to the birth, the MPP will commence from the Sunday following the birth.

If your employee is absent from work with a pregnancy related illness or confinement that falls on or after the start of the 6 weeks prior to the EWC, the MPP will commence on:

1. the Sunday following the first day of that absence or
2. the Sunday of the first week of absence where the employee has not done any work for you in that week

STATUTORY MATERNITY PAY ENTITLEMENT

When an employee becomes entitled to receive SMP from her employer she is entitled to receive 18 weeks of payment.

The first 6 weeks is paid at the higher rate, that is 90% of her average weekly earnings. This is then followed by a further 12 weeks at the lower rate. This is currently £62.20 per week for the 2001/02 tax year, rising to £75.00 per week for the 2002/03 tax year.

CALCULATION OF AVERAGE EARNINGS

The 'relevant period' to be used to calculate an employees average weekly earnings is the period between:

1. the last normal payday before the end of the qualifying week, (i.e. on or before the Saturday of the qualifying week itself) **and**
2. the last normal payday falling at least eight weeks before the payday at 1.

For example, your employee is paid monthly on the last day of the month. If your employee's qualifying week was Sunday 26th November to Saturday 2nd December the last normal payday would be Thursday 30th November. You then need to work back eight weeks from the 30th November, this will take you back to Thursday 5th October, and include any paydays that fall within this period, i.e. Tuesday 31st October.

To calculate the weekly average of the 2 payments i.e. 30th November and 31st October you should add the two figures together, multiply by six and then divide by 52 to give you a weekly average.

MEDICAL EVIDENCE

An employer must be given medical evidence of the date that the baby is due. This is normally the maternity certificate MATB1 which an employee can obtain from their doctor or midwife. SMP **must not** be paid to an employee until medical evidence has been provided. An employer **cannot** accept medical evidence that is provided by an employee more than 20 weeks before the week in which the baby is due. The date of issue is the date that the medical evidence has been signed by a doctor or midwife.

STATUTORY MATERNITY PAY RECOVERY

All employers are able to recover 92% of the gross SMP paid to an employee, but, where the employer is deemed a "Small Employer", the employer can recover 100% of the gross SMP paid plus an additional 5% for the 2001/02 tax year, reducing to 4.5% for the 2002/03 tax year. The additional element is to compensate for the employers' National Insurance contributions paid on the SMP.

To be deemed as a Small Employer, Class 1 National Insurance contributions (both employees' and employers') in the qualifying tax year must be equal to or less than £20,000, changing to less than £40,000 with effect from 6 April 2002. The qualifying tax year is the last complete tax year before each pregnant employee's qualifying week.

NON PAYMENT OF SMP

Where an employee does not qualify to receive SMP from you, you must complete the form SMP1, stating the reason that SMP is not due and pass it to the employee. The employee may then take the form to the Benefits Agency in order to claim Social Security Benefit (e.g. Maternity Allowance).

This fact sheet is an outline of the position at the time of writing.

It offers general guidance only and should not be regarded as a complete or authoritative statement of law.

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If you wish to adapt the fact sheet for your own internal use, you must contact the Helpline before doing so.

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