

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:

- Be liable to Class 1 National Insurance contributions
- Have at least 26 weeks continuous employment with the employer that continues into the Notification Week (NW), ie 15 weeks prior to the Expected Week of Childbirth (EWC)
- Have average weekly earnings equal to or above the Lower Earnings Limit (LEL) for National Insurance purposes (£84 per week in 2006/07)
- 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 the employer at least 28 days notice beforehand, of the date that the maternity absence is due to start

MATERNITY PAY PERIOD

If an employee satisfies the qualifying conditions for SMP, it is payable for up to 26 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 commence at any time from the start of the 11th week before the Expected Week of Confinement; *and*
- 2 can continue for up to 26 weeks

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

The MPP always starts on a Sunday unless it is triggered by:

- an early birth; or
- a pregnancy related illness

For an early birth the MPP will commence from the day following the birth.

If your employee is absent from work with a pregnancy related illness or confinement that falls within 4 weeks of the start of the EWC, the MPP will commence on the day after the first complete day of absence from work.

STATUTORY MATERNITY PAY ENTITLEMENT

The first 6 weeks is paid at 90% of her average weekly earnings. This is then followed by a further 20 weeks at *either* (for 2006/07) £108.85 per week, or 90% of average earnings, whichever is the lesser amount.

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 Notification Week, (ie on or before the Saturday of the notification 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 Notification Week was Sunday 24th November to Saturday 30th November the last normal payday would be Friday 29th November. You then need to work back eight weeks from the 29th November (which will take you back to Friday 4th October) and include any paydays that fall within this period, ie Thursday 31st October.

To calculate the weekly average of the 2 payments, ie 29th 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.

The Alabaster Judgement

From 6th April 2005, if a pay rise takes effect at any time from the beginning of the 'relevant period' (see above) to the end of the employee's maternity leave, the employer must recalculate the average earnings as if the pay rise had been effective from the beginning of the relevant period. Arrears of SMP will then need to be paid to the employee.

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. 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.

SMP *must not* be paid to an employee until medical evidence has been provided.

STATUTORY MATERNITY PAY RECOVERY

In general, 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 4.5% in respect of compensation for the employers' National Insurance Contributions paid on the SMP.

To be deemed as a Small Employer for SMP paid in the 2006/07 tax year, Class 1 National Insurance contributions (both employees' and employers') in the last complete tax year before the employee's Notification Week must be equal to or less than £45,000.

The method of recovery is to simply subtract the amount to be recovered from payments over to HMRC in respect of PAYE and National Insurance Contributions.

If there are insufficient monies from which to make the deduction, ie where the employer expects to pay out more in SMP than they will have to pay to HMRC for the same period, then an application to the HMRC Accounts Office can be made for advance funding.

NON PAYMENT OF SMP

Where an employee does not qualify to receive SMP, the employer must complete form SMP1, stating the reason that SMP is not due and pass it to the employee. The employee should then be referred to the Department for Work and Pensions (DWP) in order to claim 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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