

TEACHERS' OCCUPATIONAL MATERNITY LEAVE SCHEME

1. This Scheme is the result of an agreement reached between the Management and Teachers' Sides of the Teachers' Salaries and Conditions of Service Committee (Schools). It reflects a number of changes to the rules concerning statutory and occupational maternity leave as a consequence of the Maternity and Parental Leave etc Regulations (NI) 1999 (as amended) and replaces the 2003 Teachers' Occupational Maternity Leave Scheme (TNC 2003/1).

2. The Work and Families (Northern Ireland) Order, and associated regulations, introduced a number of changes to the statutory maternity leave and pay arrangements with effect from 1 October 2006. These changes apply to all women whose expected week of childbirth (EWC) begins on or after 1 April 2007. This Scheme applies to those women whose EWC begins on or after 1 April 2007. For teachers whose EWC falls before 1 April 2007, TNC Circular 2003/1 applies.

Further Advice

3. Full guidance on maternity rights is available from the Working Parents and Carers page which is available to download from the Employment Rights page on the DEL website www.delni.gov.uk. Alternatively, hard copies are available from DEL's Employment Rights Branch, 39-49 Adelaide Street, Belfast BT2 8FD (Tel: 028 9025 7777).

4. Advice on the legal requirements in assessing risks in relation to new and expectant mothers' job activities is set out in the booklets A Guide for New and Expectant Mothers who Work and Expectant Mothers at Work – Guidance for Health Professionals, which are available to download from the Health and Safety website www.hse.gov.uk/mothers. Alternatively hard copies are available from the Health and Safety Executive (Tel: 01787 881165). Additional advice can be obtained from [Insert employing authority contact].

5. Full details of the Statutory Maternity Pay (SMP) and Maternity Allowance (MA) provisions are available to download from the Social Security Agency page of the Department for Social Development website www.dsdni.gov.uk. Alternatively hard copies are available from your local Social Security Office, the Benefit Leaflet Information Service (Tel: 0845 605 2020) or Incapacity Benefits Branch, Social Security Agency, Castle Court, Royal Avenue, Belfast, BT1 1SB (Tel: 028 9033 6000).

Enquiries

6. Any enquiries regarding the Scheme should be made to [insert employing authority contact]

Pension Position

7. Any enquiries regarding a teacher's pension position should be made to Teachers' Pensions Branch (Tel: 028 71 319000).

8. Where a teacher's contributable salary is reduced due to maternity leave, the teacher's contributions are based on the reduced rate of salary paid. Employer contributions during such a period of leave are paid on the rate of pensionable pay as if no reduction has been made.

9. From 1 April 2007 the facility to purchase additional service to cover periods of unpaid leave for pension purposes has been removed. However, teachers may now purchase additional pension in blocks of £250 up to a maximum of £5,000.

APPENDIX

OVERVIEW OF THE KEY FEATURES OF THE OCCUPATIONAL MATERNITY LEAVE SCHEME

ENTITLEMENT

| <u>Qualifying Service</u> | <u>Entitlement</u> |
|---|--|
| Less than 26 weeks' service. | <ul style="list-style-type: none"> • 26 weeks' Ordinary Maternity Leave; plus • 26 weeks' Additional Maternity Leave. • In most cases, Maternity Allowance for 39 weeks. |
| 26 weeks' continuous service leading into the 15 th week before Expected Week of Childbirth (EWC). | <ul style="list-style-type: none"> • 26 weeks' Ordinary Maternity Leave; plus • 26 weeks' Additional Maternity Leave. • 39 weeks' Statutory Maternity Pay. |
| 52 weeks' continuous service immediately prior to the beginning of the 11 th week before EWC. | <ul style="list-style-type: none"> • 26 weeks' Ordinary Maternity Leave; plus • 26 weeks' Additional Maternity Leave. • 39 weeks' Statutory Maternity Pay. • 18 weeks' Occupational Maternity Pay. |

THE PROCESS

Notification by Teacher

1. A teacher must complete Form TR160 not later than the end of the 15th week before the EWC (unless this is not reasonably practicable) and forward it together with Form MB1, or other medical evidence showing the EWC, to the school principal.

The earliest date maternity leave can commence is the beginning of the 11th week before the EWC.

Action by Principal

2. The principal will note the content of the TR160, date the form, have it countersigned by the Chair of the Board of Governors and forward it together with the MB1/or other medical evidence, immediately to Teachers Pay and Administration Branch at the Department of Education. It is essential that the TR160 is sent by the school principal to reach Teachers Pay and Administration Branch within one week of it being received from the teacher.

Action by Department Of Education

3. On receipt of the TR160 the Department of Education will:
 - write to the teacher, school and employing authority within 28 days of the date on which the school principal dated the TR160, confirming the dates of absence;
 - notify the teacher of her entitlements to leave and pay under the Scheme.

Changes to Start Date of Leave

4. A teacher may change the date of the start of her maternity leave providing she gives at least 28 days' notice to the principal, unless this is not reasonably practicable, who will immediately inform the Teachers' Pay and Administration Branch at the Department of Education.

Ante-natal Care

5. A pregnant teacher has the right to paid time off to attend ante-natal care and must produce evidence of appointments if requested to do so.

Still-birth And Death of a Baby

6. In the event of the death of the baby whilst the teacher is on maternity leave, or a still-birth after 24 weeks of pregnancy, the Scheme will apply. Statutory Maternity Pay will apply after the 25th week of pregnancy.

Any absence as a result of miscarriage or termination before 24 weeks shall be treated as ordinary absence on sick leave.

Sickness Trigger

7. Maternity leave will start automatically if a teacher is absent from work for a pregnancy related illness during the 4 weeks before the start of her EWC, regardless of when she has stated she actually wanted her maternity leave to start.

Returning To Work After Maternity Leave

8. It is assumed that a teacher will return to work on the date specified on TR160, as confirmed by the Department of Education, and no further notification of return to work is required.

However, a teacher who wishes to return to work before or after the specified date, whether from ordinary or additional maternity leave, must give 28 days' notice of the date on which she wishes to return to work.

Where it is not given the school can postpone her return to work for a period of up to 28 days. It is expected that this period will be kept as short as is feasible in the school's circumstances.

Where a teacher proposes to end her maternity leave before the end of the 26 weeks' ordinary maternity leave (either where stipulated on the TR160 or as subsequently changed) on a date that falls during a school vacation, she must submit a fit to resume certificate from her General Practitioner on the day before the commencement of duties.

Contact During Maternity Leave

9. The school may make reasonable contact with the teacher from time to time while she is on maternity leave in order to discuss, for example, arrangements for her return to work or to keep her informed of developments at the workplace. The school should not contact the teacher during the 2 week period commencing the date of the birth.

Keeping In Touch Days

10. A teacher may agree with the school to work for up to 10 keeping in touch (KIT) days during her maternity leave without losing SMP/MA or bringing her maternity leave to an end as a result. This provision is intended to help to ease the teacher's return to work. For the purposes of this arrangement "work" means any work done for the school under her normal contract of employment and may include training/baker days. In such circumstances, normal pay (abated by payments made by

way of statutory/occupational maternity pay) is payable for any KIT days worked. This provision is different to contact during maternity leave described in paragraph 9. Any KIT days worked under this provision must be by agreement between the teacher who is on maternity leave and the school. The school has no right to demand that any such KIT work is undertaken, and the teacher has no right to undertake such work.

Relationship With Sickness

11. Where a teacher is sick following her maternity absence with a non-maternity related illness the normal arrangements of the sick leave provisions will apply. Where the sick absence is maternity related and occurs during the 26 week Ordinary Maternity Leave Period, the provisions of the maternity leave scheme continue to apply.

Obligation On A Teacher To Return To Work

12. A teacher is obliged to return to her job for at least 13 weeks, including periods of school closure, as a qualifying condition to occupational maternity pay. Failure to do so will require a refund of occupational maternity pay. This requirement may be reduced or deferred at the discretion of the employing authority due, for example, to redundancy, a career break, parental leave, prolonged illness, or exceptionally due to other unavoidable cause.

Compulsory Maternity Leave

13. A teacher shall not work, or be permitted by her employer to work, during the 2-week period commencing with the date of childbirth. The school should not make contact with the teacher during this period.

Relationship To Other Family Friendly Provisions

14. Teachers should be aware of the content of the other family friendly provisions, for example:
 - Job-share Scheme
 - Career Break Scheme
 - Parental Leave Scheme
 - Paternity Scheme
 - Flexible Working Arrangements
 - Child Care Vouchers

Further information is available from **[insert employing authority contact]**

CONDITIONS OF SERVICE FOR SCHOOL TEACHERS IN NORTHERN IRELAND

OCCUPATIONAL MATERNITY LEAVE SCHEME

1. Effective Date

- 1.1 All of the new rights in respect of paid absence apply to pregnant teachers whose expected week of childbirth (EWC) falls on or after 1 April 2007.

2. To Whom This Scheme Applies

- 2.1 The occupational maternity leave scheme shall apply to all pregnant teachers regardless of the number of hours worked per week.

3. Initial Obligations On The Teacher

- 3.1 To benefit from the scheme the teacher must:
- a. continue to be employed by the employing authority (whether or not at work) immediately before the start of her absence;
 - b. notify the school principal in writing using Form TR160 as soon as practicable but not later than the end of the 15th week before the EWC unless this is not reasonably practicable:
 - i. that she is pregnant;
 - ii. of her EWC, by means of a medical certificate from a registered medical practitioner or a certified midwife stating the EWC; and
 - iii. when she wishes her maternity leave to start.
 - c. give her school principal at least 28 days' notice of the date on which she wishes to start her maternity leave, or as soon as is reasonably practicable;

- d. a teacher may change the date on which she wishes her leave to commence provided she gives at least 28 days' notice, unless this is not reasonably practicable;
- e. declare in writing at the time of notification of her intended absence under paragraph 3.1.b. that she intends to return to her job (if that is her intention and if she is able to return to that job);
- f. within 28 days of the date on which the principal dated the TR160 the Department will write to notify the teacher of her expected date of return from maternity leave;
- g. not remain at work if certified medically unfit to do so (taking into account the provisions of the Management of Health and Safety at Work Regulations (Northern Ireland) 2000 (SR 2000 No 388).

4. **Ante-natal Care**

- 4.1 A pregnant teacher has the right to paid time off to attend ante-natal care and must produce evidence of appointments if requested to do so by her school.

5. **Rights of the Teacher to Maternity Leave**

- 5.1 All teachers, irrespective of length of service, are entitled to remain absent for up to 26 weeks' ordinary maternity leave and 26 weeks' additional maternity leave, and pay in accordance with paragraph 11. A teacher will not be allowed to commence their absence earlier than 11 weeks before the EWC or to return to work earlier than two weeks after the day of childbirth.
- 5.2 The beginning of the teacher's absence shall be no earlier than 11 weeks before EWC. The basic principle of the leave provisions is that teachers have a right to choose when to start their maternity leave. The exceptions are:
 - i. where the teacher is absent from work because of a pregnancy related illness, the maternity leave period starts automatically on the day after the first day of absence following the beginning of the fourth week before the EWC; and
 - ii. where the baby is born before maternity leave commences. In these circumstances, the maternity leave period starts automatically the day after the date of childbirth.

6. Subsequent Obligations On The Teacher

- 6.1 The teacher's subsequent obligation is to return to her job for at least 13 weeks (including periods of school closure) as a qualifying condition to occupational maternity pay. This requirement may be reduced at the discretion of the employing authority, or deferred, due to redundancy, a career break, parental leave, or prolonged illness. Exceptionally, this requirement may be reduced or deferred at the discretion of the employing authority due to other unavoidable causes. Failure to return to work for at least 13 weeks shall require a refund of occupational maternity pay in accordance with paragraph 11.3.
- 6.2 Where the Board of Governors agrees, a full-time teacher may return to work on a part-time basis for a period which equates to 13 weeks' of full-time service. Similarly, a part-time teacher may return to work on a different part-time basis for a period which equates to 13 weeks' part-time service relating to her previous contract.
- 6.3 The 13-week period (or part-time equivalent) starts from the date the teacher returns to work or the date during the school holiday on which the teacher is declared medically fit to be available to work.

7. Return To Work

- 7.1 Subject to sub-paragraph 7.2 below, a teacher's right to return to work is a right to return to the job in which she was employed under her original contract of employment and on terms and conditions not less favourable than those which would have been applicable to her if she had not been absent. "Job", for this purpose, means the nature of the work which she is employed to do and the capacity and place in which she is so employed.
- 7.2 Where it is not practicable by reason of redundancy to permit her to return to work in her job as defined in sub-paragraph 7.1, the teacher shall be entitled to be offered a suitable alternative vacancy where one exists, provided that the work to be done in that post is suitable to her and appropriate to the circumstances, and that the capacity and place in which she is to be employed and her terms and conditions of employment are not substantially less favourable to her than if she had been able to return to the job in which she was originally employed.

8. Notification Of Early Or Later Return to Work

- 8.1 A teacher must notify the school, in writing at least 28 days before the day on which she proposes to return, of the date of her intended return if this is before or after the date specified on the TR160. Where this

notification is not given, the school can postpone her return for a period of up to 28 days, but not to a date after the end of the maternity leave period previously specified.

- 8.2 Where a teacher proposes to end her maternity leave before the end of the 26 weeks' ordinary maternity leave (either where stipulated on the TR160 or as subsequently changed) on a date that falls during a school vacation, she must submit a fit to resume certificate from her General Practitioner on the day before the commencement of duties.

9. **Contact During Maternity Leave**

- 9.1 The school may make reasonable contact with the teacher from time to time while she is on maternity leave in order to discuss, for example, arrangements for her return to work or to keep her informed of developments at the workplace. The school should not contact the teacher during the 2 week period commencing the date of the birth.

10. **Keeping In Touch Days**

- 10.1 A teacher may agree with the school to work for up to 10 keeping in touch (KIT) days during her maternity leave without losing SMP/MA and OMP entitlements or bringing her maternity leave to an end as a result. Normal full pay, abated by any payments made under paragraph 11, is payable for any days worked. Although working for part of a day will count as one of the 10 KIT days, any entitlement to payment will be calculated using the net hours actually worked.
- 10.2 This provision is intended to help to ease the teacher's return to work. It is different to contact during maternity leave described in paragraph 9. For the purposes of this arrangement "work" means any work done for the employer under her normal contract of employment and may include training or any activity undertaken by the teacher for the purposes of keeping in touch with the workplace. Any KIT days worked under this provision must be by agreement between the teacher who is on maternity leave and her employer. The employer has no right to demand that any such KIT work is undertaken and the teacher has no right to undertake such work.
- 10.3 Any days' work carried out under paragraph 10 shall not have the effect of extending the total duration of the maternity leave.

11. **Maternity Pay**

11.1 A teacher who has less than 52 weeks' continuous service as a teacher with one or more employing authority at the beginning of the 11th week before the EWC shall only receive any entitlement to Statutory Maternity Pay (SMP) or Maternity Allowance (MA).

11.2 A teacher who has completed not less than 52 weeks' continuous service as a teacher with one or more employing authority at the beginning of the 11th week before the EWC shall receive maternity pay as follows on the condition that she will be available, or able, to return to work for the required period specified in paragraph 6:

- a. a teacher eligible for SMP will have the payments made in the first 6 weeks of absence offset against the payments made under b. and c. below;
- b. for the first 4 weeks of absence - full pay, offset against payments made by way of SMP or MA for employees not eligible for SMP;
- c. for the next 2 weeks of absence - 9/10ths of a week's pay, offset against payments made by way of SMP or MA for employees not eligible for SMP;
- d. half pay for the next 12 weeks of the absence. If the teacher is also entitled to either SMP or MA she will be entitled to receive these payments in addition to half salary. There will be no deductions unless the combined half salary and SMP or MA exceeds full salary;
- e. a further 21 weeks at SMP;
- f. no pay for any remaining period of absence up to the date of return notified by the teacher.

11.3 In the event of the teacher not being available, or being unable, to return to her job for the required period, she shall refund such sum after the first 6 weeks' payment as the employing authority at its discretion may decide. Payments made by way of SMP are not refundable.

12. **Relationship with Sickness**

12.1 Where a teacher is sick following her maternity absence with a maternity related illness during the 26 weeks' ordinary maternity leave period, the provisions of the Scheme shall continue to apply. In this case statutory sick pay and occupational sick pay are not payable.

- 12.2 Where a teacher is sick following her maternity absence with a non-maternity related illness, the provisions of the sick leave scheme shall apply.
- 12.3 Maternity leave will not be taken into account for the calculation of the period of entitlement to sickness leave.

13. **Definitions**

- 13.1 For the purpose of this scheme, a week's pay shall be treated as the amount payable to the teacher under the current contract of employment. If there are significant variations in the teacher's salary, the average salary over the 12 weeks preceding the date of absence shall be treated as a week's salary.
- 13.2 Childbirth means the birth of a living child, or the birth of a child whether living or dead after 24 weeks of pregnancy.
- 13.3 Nothing in the above provisions shall be construed as providing rights less favourable than statutory rights.

14. **Other Absences**

- 14.1 If in the early months of pregnancy a teacher is advised by an approved medical practitioner to absent herself from school because of the risk of rubella, she shall be granted leave with full pay, provided that she does not unreasonably refuse to serve in another school where there is no such undue risk.
- 14.2 Absence on account of illness which is attributable to the pregnancy, including absence on account of miscarriage, and which occurs outside the period of absence for maternity, shall be treated as ordinary absence on sick leave and shall be subject to the conditions normally governing such leave, provided it is covered by a Doctor's statement.

15. **Other Provisions**

- 15.1 Continuous service is not broken by school holidays provided that the teacher continues to be employed up to the start of a holiday period and resumes work immediately after it whether or not with the same employing authority.
- 15.2 A period of maternity leave shall count for the purposes of the award of any points awarded for experience to which the teacher may be entitled.

16 **Compulsory Maternity Leave**

- 16.1 A teacher shall not work, or be permitted by her employer to work, during the 2-week period commencing with the date of childbirth.

17. **Protection from Detriment and Dismissal**

- 17.1 Teachers will be protected from suffering detriment or unfair dismissal for reasons related to taking, or seeking to take, maternity leave. Teachers who believe they have been treated unfairly may invoke the Grievance Procedure. However, if the matter is not resolved, as an exception to the normal rules of the Grievance Procedure, the teacher may complain to an industrial tribunal.