

Employers Guide To Statutory Maternity Pay

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Statutory Maternity Pay and Leave: employer guide

1. Entitlement

This guide is also available in Welsh (Cymraeg) (<https://www.gov.uk/cyflogwyr-tal-absenoldeb-mamolaeth>).

Statutory Maternity Leave

Eligible employees can take up to 52 weeks' maternity leave. The first 26 weeks is known as 'Ordinary Maternity Leave', the last 26 weeks as 'Additional Maternity Leave'.

The earliest that leave can be taken is 11 weeks before the expected week of childbirth, unless the baby is born early.

Employees must take at least 2 weeks after the birth (or 4 weeks if they're a factory worker).

Statutory Maternity Pay (SMP)

SMP for eligible employees can be paid for up to 39 weeks, usually as follows:

- the first 6 weeks: 90% of their average weekly earnings (AWE) before tax
- the remaining 33 weeks: £151.97 or 90% of their AWE (whichever is lower)

Tax and National Insurance need to be deducted.

Use the [SMP calculator \(https://www.gov.uk/maternity-paternity-calculator\)](https://www.gov.uk/maternity-paternity-calculator) to work out an employee's maternity leave and pay.

Some employment types like agency workers, directors and educational workers have [different rules for entitlement \(https://www.gov.uk/statutory-maternity-pay-how-different-employment-types-affect-what-you-pay\)](https://www.gov.uk/statutory-maternity-pay-how-different-employment-types-affect-what-you-pay).

employers guide to statutory maternity pay

employers guide to statutory maternity pay is an essential resource for any UK business navigating the complexities of parental leave. Understanding Statutory Maternity Pay (SMP) is crucial for ensuring compliance with employment law and supporting employees during this significant life event. This comprehensive guide will walk employers through the eligibility criteria, calculation methods, payment procedures, and record-keeping requirements for SMP. We will delve into the employer's responsibilities, employee rights, and common scenarios, ensuring you have the knowledge to manage SMP effectively. From understanding the notification process to handling potential issues, this article serves as your

definitive resource for statutory maternity pay in the UK.

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Understanding Statutory Maternity Pay (SMP)

Statutory Maternity Pay (SMP) is a legal entitlement provided by the UK government to eligible employees who are pregnant. It is a weekly payment made by employers to employees who meet certain conditions. This payment is designed to provide financial support during maternity leave, allowing employees to take time off to care for their new baby. As an employer, understanding the intricacies of SMP is not just about compliance; it's about fostering a supportive and fair working environment. SMP is paid for a maximum of 39 weeks, with the first six weeks paid at 90% of the employee's average weekly earnings (before tax). Following this, the employee may receive a further 33 weeks of standard rate SMP or earnings-related SMP, whichever is lower.

The Purpose and Function of Statutory Maternity Pay

The primary purpose of Statutory Maternity Pay is to ensure that employees have a financial safety net when they take maternity leave. It enables new mothers to spend crucial time bonding with their newborns without the immediate pressure of lost income. Employers act as the conduit for this payment, deducting it through the payroll like any other wage or salary, and then reclaiming a portion of it from HMRC. This system is designed to alleviate the financial burden on businesses, particularly smaller ones, while ensuring employees receive their rightful benefits. Understanding its function is key to managing the process efficiently and empathetically.

Statutory Maternity Pay vs. Occupational Maternity Pay

It is vital for employers to distinguish between Statutory Maternity Pay and Occupational Maternity Pay. Statutory Maternity Pay is the legally mandated minimum payment that employers must provide to eligible employees. Occupational Maternity Pay, on the other hand, is a contractual benefit offered by some employers, often exceeding the statutory minimum. This could involve higher pay rates, longer periods of paid leave, or other enhancements. While SMP is a legal obligation, occupational maternity pay is a company policy. Employers must be clear about which scheme applies to their employees and communicate this effectively.

Eligibility Criteria for Statutory Maternity Pay

To qualify for Statutory Maternity Pay, an employee must meet a specific set of criteria. These requirements are set out by law and are non-negotiable for employers. Failure to assess eligibility correctly can lead to legal challenges and penalties. The key criteria revolve around employment status, earnings, and continuous employment.

Continuous Employment Requirement

An employee must have been continuously employed by the same employer for at least 26 weeks ending with the Qualifying Week. The Qualifying Week is the 15th week before the expected week of childbirth. This means that at the point the employee informs their employer about their pregnancy and intended leave, they must have completed over half a year of continuous service. If an employee starts a new job during this period, they would not typically be eligible for SMP from the new employer.

Earnings Threshold for SMP

To be eligible for Statutory Maternity Pay, an employee must have earned, on average, at least the Lower

Earnings Limit (LEL) for National Insurance contributions in the eight weeks leading up to and including the Qualifying Week. The LEL is set annually by the government. Employers must check the current LEL figure to determine if their employee meets this crucial earnings threshold. If the employee's earnings fall below this limit, they will not qualify for SMP.

Giving Proper Notice of Pregnancy and Intention to Take Leave

Employees must provide their employer with specific notification about their pregnancy and their intention to take maternity leave. This notice must include the expected week of childbirth (EWC). The employee should also tell their employer the date they intend to start their maternity leave. Generally, this notice should be given at least 15 weeks before the EWC, although there can be exceptions in certain circumstances. Employers should have clear internal policies on how and when this notification should be given.

The Process of Claiming Statutory Maternity Pay

Claiming Statutory Maternity Pay involves a clear process that both the employee and employer must follow. This process ensures that payments are made correctly and that all necessary information is exchanged. Understanding these steps is vital for a smooth maternity leave experience.

Employee Notification and Information Required

The employee must inform their employer of their pregnancy and their intention to take maternity leave. They should provide their employer with the expected week of childbirth (EWC) and the date they wish their maternity leave to begin. Crucially, employees must also provide proof of pregnancy, typically through a MAT B1 certificate, which is issued by a doctor or midwife from the 20th week of pregnancy. This certificate confirms the EWC.

Employer's Role in Processing the Claim

Once the employer receives the MAT B1 certificate and the employee's notification, they must assess the employee's eligibility for SMP. If the employee is eligible, the employer will then proceed with calculating and paying the SMP. The employer is responsible for correctly calculating the weekly SMP amount based on the employee's earnings during the relevant period. They will also be responsible for any necessary deductions, such as tax and National Insurance contributions.

The Role of the SMP1 Form

If an employee is not eligible for Statutory Maternity Pay, the employer must provide them with an SMP1 form. This form serves as official notification that the employee does not qualify for SMP. The SMP1 form is important because the employee can use it to claim Maternity Allowance from the Department for Work and Pensions (DWP). Employers must complete and issue the SMP1 form promptly if the employee fails to meet the eligibility criteria for SMP, clearly stating the reasons for non-eligibility.

Calculating Statutory Maternity Pay: What Employers Need to Know

Accurately calculating Statutory Maternity Pay is one of the most critical responsibilities of an employer. Errors in calculation can lead to underpayment or overpayment, both of which have consequences. The calculation is based on the employee's average weekly earnings over a specific period.

Determining the Average Weekly Earnings (AWE)

To calculate SMP, employers must first determine the employee's Average Weekly Earnings (AWE). This is calculated by looking at the earnings in the eight weeks leading up to the end of the Qualifying Week. The total earnings from these eight weeks are then divided by eight to arrive at the AWE. It is important to note that certain types of pay, such as statutory sick pay or statutory adoption pay, should be excluded from this calculation. The relevant period must be the most recent eight weeks of employment before the Qualifying Week.

The Two-Tier Rate of SMP

Statutory Maternity Pay is paid at two different rates. The first rate is 90% of the employee's average weekly earnings (AWE), provided this amount is below the upper SMP earnings limit. This rate is paid for the first six weeks of maternity leave. After the first six weeks, the SMP rate changes to the standard rate or the employee's AWE, whichever is lower. The standard rate is a fixed weekly amount set by the government, which is updated annually. Employers must ensure they are applying the correct rate based on the period of leave.

Understanding the Lower Earnings Limit (LEL) and Upper Earnings Limit (UEL) for SMP

The calculation of SMP is directly impacted by the Lower Earnings Limit (LEL) and the Upper Earnings

Limit (UEL) for National Insurance contributions. An employee must earn at least the LEL in the eight weeks before the Qualifying Week to be eligible. For the calculation of the 90% rate, earnings above the UEL are disregarded. This means that if an employee's AWE is higher than the UEL, their SMP for the first six weeks will be capped at 90% of the UEL. Employers must stay informed about the current LEL and UEL figures.

Making Statutory Maternity Pay Payments

Once Statutory Maternity Pay has been calculated, employers must ensure it is paid to the employee correctly and on time. This involves integrating SMP payments into the regular payroll system.

Integrating SMP into Payroll

Statutory Maternity Pay is processed through the employer's payroll system in the same way as regular wages. SMP payments are subject to standard deductions for income tax and National Insurance contributions (though at different rates for employee NI). Employers need to ensure their payroll software is set up to handle SMP calculations and deductions accurately. The employee should receive payslips detailing the SMP payments and any deductions made.

Frequency and Timing of SMP Payments

SMP payments should be made on the usual pay dates that the employee would have received their wages. The payment frequency will typically align with the company's standard payroll cycle, whether that is weekly, fortnightly, or monthly. The first payment should be made by the end of the fourth week of the employee's maternity leave.

Reclaiming Statutory Maternity Pay from HMRC

Employers can reclaim most, if not all, of the Statutory Maternity Pay they pay to their employees from HMRC. The amount that can be reclaimed depends on the employer's National Insurance contributions in the relevant tax year. Small employers, those whose annual National Insurance contributions are below £45,000, can reclaim 103% of the SMP they pay. Larger employers can reclaim 93% of the SMP paid. Employers must keep accurate records to support their claims for reimbursement.

Record Keeping and Reporting Requirements for SMP

Maintaining thorough and accurate records is a legal requirement for employers when dealing with Statutory Maternity Pay. These records are essential for demonstrating compliance and for claiming reimbursement from HMRC.

Essential Records to Keep for SMP

Employers must keep records relating to SMP for at least three years after the end of the tax year in which the payment was made. These records should include:

- The employee's notification of pregnancy and intended start date of leave.
- The MAT B1 certificate or other acceptable proof of pregnancy.
- Details of the employee's average weekly earnings calculation.
- The period for which SMP was paid.
- The amount of SMP paid to the employee.
- Details of any deductions made.
- Copies of payslips issued to the employee showing SMP payments.
- Records of any SMP1 forms issued.

Reporting SMP Payments to HMRC

Employers must report SMP payments through their payroll submissions to HMRC, usually via Real Time Information (RTI). This means that when you run your payroll, the details of the SMP paid and any reclaimed amounts should be included in the regular submissions to HMRC. Accurate reporting ensures that HMRC has the correct information for tax and National Insurance purposes and for any associated claims.

Annual Reconciliation and Reporting

While SMP is reported through RTI throughout the year, employers may also need to consider annual reporting requirements. This can include details on year-end payroll summaries and potentially specific forms for claiming Employment Allowance or other schemes that might offset the cost of SMP. It's crucial to ensure that all relevant data is captured and reported accurately by the end of each tax year.

Common Scenarios and Employer Responsibilities

Navigating Statutory Maternity Pay can sometimes involve unusual circumstances or common issues that employers need to be prepared for. Understanding these scenarios ensures a consistent and fair approach.

Multiple Births and SMP

If an employee has a multiple birth (e.g., twins or triplets), they are still entitled to Statutory Maternity Pay. However, the entitlement is generally for a single period of 39 weeks, even if there is more than one baby. The employer's responsibility remains the same in terms of calculating and paying SMP, and the eligibility criteria do not change due to multiple births.

Maternity Leave During Notice Periods

If an employee's maternity leave period overlaps with their notice period, this can create complexities. Generally, an employee is entitled to SMP for the full duration of their maternity leave, even if they are also serving a notice period. However, the interaction between maternity pay and any redundancy or termination payments needs careful consideration to ensure compliance with employment law and HMRC guidance.

Employee Returning to Work Early or Not Returning

If an employee decides to return to work earlier than planned, they must give their employer at least one week's notice of their intended return date. If they choose not to return to work, they are still entitled to the SMP they have been paid up to that point. Employers should not seek to reclaim SMP payments already lawfully made to the employee.

Employees on Fixed-Term Contracts

Eligibility for Statutory Maternity Pay for employees on fixed-term contracts depends on the length of the

contract and the continuous employment criteria. If a fixed-term contract is due to end during the maternity leave period, the employee may still be eligible for SMP up to the end of the contract, provided they meet all other eligibility requirements. If the contract is extended, they may continue to receive SMP.

When SMP is Not Applicable: Alternatives and Considerations

Not every employee will be eligible for Statutory Maternity Pay. In such cases, employers must be aware of the alternatives available to employees and their own responsibilities.

Maternity Allowance (MA)

If an employee does not qualify for Statutory Maternity Pay, they may be eligible for Maternity Allowance (MA). MA is paid by Jobcentre Plus, not by the employer. An employee can claim MA if they have been employed or self-employed for at least 26 weeks in the 66 weeks before their expected week of childbirth. They also need to have earned at least £30 a week for 13 of those weeks. Employers must provide the SMP1 form to employees who do not qualify for SMP, enabling them to claim MA.

Shared Parental Leave and Pay

It is important to note that Statutory Maternity Pay is distinct from Statutory Paternity Pay and Shared Parental Pay. While this guide focuses on SMP, employers should also be aware of the provisions for fathers or partners taking parental leave. These entitlements have their own eligibility criteria and calculation methods.

No Entitlement to Statutory Pay

In some instances, an employee may not qualify for SMP or Maternity Allowance. This is typically due to not meeting the earnings or employment duration requirements. In such cases, the employee would not receive any statutory pay during their maternity leave, but they still retain their right to take unpaid ordinary and additional maternity leave. Employers should ensure clear communication in these situations.

The Role of National Insurance in SMP

National Insurance contributions play a significant role in both eligibility for Statutory Maternity Pay and the employer's ability to reclaim payments. Understanding these links is crucial for accurate financial

management.

Employee National Insurance Contributions

As mentioned earlier, to be eligible for SMP, an employee must have paid National Insurance contributions and earned at least the Lower Earnings Limit (LEL) in the eight weeks leading up to the Qualifying Week. The rate of SMP paid is also influenced by earnings relative to the Upper Earnings Limit (UEL).

Employer National Insurance Contributions and Reclaiming SMP

The rate at which employers can reclaim SMP from HMRC is directly linked to their total annual National Insurance contributions. Small employers, whose annual NICs are below £45,000, receive a higher reimbursement rate (103%). This is to support smaller businesses in managing the costs associated with maternity leave. Larger employers can reclaim 93% of the SMP they pay. This system incentivises employers to comply with their obligations.

Employee Rights and Employer Obligations

The framework for Statutory Maternity Pay is built on a foundation of employee rights and corresponding employer obligations. Adhering to these ensures fair treatment and legal compliance.

The Right to Take Maternity Leave

All pregnant employees, regardless of how long they have been employed or their earnings, have the right to take up to 52 weeks of maternity leave. This leave can be taken in two parts: Ordinary Maternity Leave (the first 26 weeks) and Additional Maternity Leave (the next 26 weeks). Employees are entitled to return to the same job they held before their leave, on the same terms and conditions, unless genuinely redundant.

Protection from Discrimination and Unfair Dismissal

Employees on maternity leave are protected by law from discrimination and unfair dismissal. It is unlawful for an employer to dismiss an employee because they are pregnant or have taken maternity leave. Any decisions regarding promotion, pay, or job security must not be influenced by the employee's maternity status.

Information and Consultation Rights

Employees have the right to be informed about their SMP entitlements and the process for claiming it. Employers have an obligation to provide clear and accurate information, including details on pay calculations, leave entitlements, and return-to-work procedures. Consultation with employees about their maternity plans is also good practice.

The Impact of SMP on Other Employment Terms

Taking Statutory Maternity Pay and leave can affect various aspects of an employee's terms and conditions of employment. Employers need to be aware of these implications.

Pension Contributions During Maternity Leave

Pension contributions should generally continue during maternity leave, with the employee's contribution usually calculated based on their actual maternity pay (SMP or occupational pay). The employer's contribution should also continue, based on the employee's notional rate of pay or the rate applicable before the leave commenced, depending on the pension scheme rules. Employers must ensure they adhere to the specific rules of their pension scheme.

Holiday Entitlement Accrual

During ordinary and additional maternity leave, employees continue to accrue holiday entitlement. This means that when an employee returns to work, they should have their full entitlement of holiday accrued during their absence. Employers cannot generally exclude periods of maternity leave from holiday accrual calculations. Any holiday taken during maternity leave needs to be managed according to company policy.

Impact on Performance Reviews and Salary Increases

Maternity leave should not negatively impact an employee's performance review or their eligibility for salary increases. Any performance appraisal conducted during or immediately after maternity leave should take the absence into account. Similarly, if a pay review or salary increase was due during the maternity leave period, the employee should generally receive it as if they were still at work, or have it applied upon their return.

Keeping Up-to-Date with SMP Regulations

Employment law, including regulations surrounding Statutory Maternity Pay, is subject to change. Employers must commit to staying informed to maintain compliance.

Sources for Reliable SMP Information

The most reliable sources for information on Statutory Maternity Pay are official government websites, such as GOV.UK and HMRC. These sites provide up-to-date guidance on eligibility, calculations, and employer responsibilities. Professional bodies and HR advisory services also offer valuable resources and support.

The Importance of Regular Review of Policies

Employers should regularly review and update their internal maternity policies and procedures to reflect current legislation and best practices. This ensures that employees receive accurate information and that the company remains compliant with its legal obligations. A well-documented and accessible policy is essential for clarity.

Frequently Asked Questions

What is the eligibility criteria for an employee to claim Statutory Maternity Pay (SMP)?

To be eligible for SMP, an employee must have worked for the employer continuously for at least 26 weeks before the 15th week of their expected week of confinement (EWC). They must also earn at least the Lower Earnings Limit (LEL) in the 8 weeks leading up to the 15th week before the EWC and provide sufficient notice of their intention to take leave and claim SMP.

What is the duration and rate of Statutory Maternity Pay?

Statutory Maternity Pay is paid for up to 39 weeks. For the first 6 weeks, employees receive 90% of their average weekly earnings before tax. For the remaining 33 weeks, they receive the standard rate of SMP, or 90% of their average weekly earnings if that amount is less than the standard rate.

When should an employee notify their employer about their pregnancy and intention to take maternity leave and claim SMP?

An employee must give their employer at least 15 weeks' notice before their EWC. This notice should include the date they intend to start their maternity leave. While not legally required for SMP, it's good practice for employees to also inform their employer of their pregnancy as early as possible.

How do employers calculate an employee's average weekly earnings for SMP purposes?

Employers calculate average weekly earnings by taking the total earnings in the 8 weeks immediately before the 15th week before the EWC and dividing it by 8. Any weeks where the employee earned less than the Lower Earnings Limit (LEL) are disregarded and the calculation is based on the remaining weeks.

What are the employer's responsibilities regarding SMP payments?

Employers are responsible for calculating and paying SMP to eligible employees. They can recover some or all of the SMP paid from HMRC through their PAYE payments. Employers must also provide employees with a 'Maternity Certificate' (Mat B1) from their doctor or midwife confirming the pregnancy and expected week of childbirth.

What happens if an employee's earnings fluctuate significantly in the 8 weeks before the relevant period for SMP calculation?

If earnings fluctuate, the calculation still focuses on the 8 weeks prior to the 15th week before the EWC. Weeks where the employee earned less than the Lower Earnings Limit are disregarded and the calculation is based on the remaining weeks. It's crucial to use the correct 8-week period regardless of fluctuations.

Can an employer refuse an employee's SMP claim if they meet the eligibility criteria?

No, an employer cannot refuse an employee's SMP claim if they meet all the eligibility criteria and have provided the necessary notice. If an employer incorrectly refuses SMP, the employee can appeal the decision to an employment tribunal.

What are the implications for employers if they miscalculate or fail to pay SMP correctly?

Miscalculating or failing to pay SMP correctly can lead to financial penalties from HMRC, including interest charges. Employees may also have grounds to claim unpaid SMP through an employment tribunal,

potentially including compensation for distress and inconvenience.

Is there a way for employers to check if an employee is eligible for SMP before committing to payments?

While employers must make the SMP payments if an employee appears eligible, they can ask the employee for proof of pregnancy and the expected week of childbirth (e.g., the Mat B1 form). If there's genuine doubt about eligibility after receiving the required notice and documentation, employers can contact HMRC for guidance.

Additional Resources

Here are 9 book titles related to an employer's guide to statutory maternity pay, each starting with "i":

1. Informed Employer: Your Maternity Pay Compass

This practical guide navigates the complexities of statutory maternity pay (SMP) for employers. It breaks down the eligibility criteria, calculation methods, and payment processes in a clear and accessible manner. You'll find step-by-step instructions for completing the necessary forms and understanding your legal obligations throughout the maternity leave period. This book aims to demystify SMP, ensuring compliance and fostering positive employee relations.

2. Implementing SMP: A Manager's Handbook

Designed for line managers and HR professionals, this handbook focuses on the practical implementation of statutory maternity pay within your organization. It covers communication strategies with employees, managing return-to-work discussions, and dealing with common queries. The book provides templates and checklists to streamline administrative tasks and ensure fair treatment. Mastering these practical aspects is crucial for a smooth maternity leave process and employee retention.

3. Insight into Maternity Leave Legislation for Employers

This authoritative resource offers deep insights into the legal framework surrounding statutory maternity pay. It examines the key pieces of legislation, including their historical context and current implications for businesses. The book clarifies employer responsibilities, employee rights, and the penalties for non-compliance. Understanding the legal underpinnings is essential for robust policy development and risk management.

4. Instructional Guide: Navigating SMP Compliance

This user-friendly guide provides clear instructions on how to achieve and maintain compliance with statutory maternity pay regulations. It details the reporting requirements to relevant government bodies and the correct procedures for record-keeping. The book highlights common pitfalls to avoid and offers best practices for managing SMP administration efficiently. Adhering to these instructions will safeguard your business and support your employees.

5. Illustrated Guide to Maternity Pay Administration

With clear visuals and easy-to-follow diagrams, this book illustrates the entire process of administering statutory maternity pay. It visually breaks down eligibility checks, the calculation of average weekly earnings, and the payment schedule. The book also includes flowcharts for common scenarios, making complex processes understandable. This visual approach is ideal for busy employers seeking a quick grasp of SMP procedures.

6. In-Depth Analysis of Maternity Pay Entitlements

This comprehensive text delves into the nuances of statutory maternity pay entitlements for both employees and employers. It explores different pay structures, the impact of additional weeks of leave, and how to handle situations involving shared parental leave. The book provides case studies illustrating various scenarios and their resolutions. Gaining this in-depth understanding is vital for accurate and equitable SMP administration.

7. Information for Employers: Maternity Pay Essentials

This essential resource covers all the fundamental information employers need to know about statutory maternity pay. It explains who qualifies for SMP, how to calculate it, and the timeline for payments. The book also touches upon related topics such as paternity leave and parental leave, providing a broader context. This is a must-have for any employer looking for a solid foundation in maternity pay matters.

8. Integral Policies: Maternity Pay for Your Business

This book focuses on the development and implementation of integral HR policies related to maternity pay. It guides employers in creating clear, compliant, and supportive policies that align with statutory requirements. The book offers examples of policy wording and discusses how to communicate these policies effectively to staff. Strong internal policies are key to consistent and fair SMP management.

9. Integrated Approach to Maternity Pay Management

This guide promotes an integrated approach to managing statutory maternity pay, linking it to broader HR strategies. It explores how effective SMP management can enhance employee morale, productivity, and retention. The book offers advice on integrating SMP processes with payroll systems and performance management frameworks. Taking an integrated view ensures that maternity pay is handled not just as a compliance issue, but as a strategic HR function.

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