

Community
Legal Service



COVENTRY LAW CENTRE

EMPLOYMENT

WORK AND FAMILY

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Who Is Covered?

Most of the rights described in this leaflet apply only to employees and not the self-employed. The scope of this leaflet does not cover any benefits that you may be entitled to, you are advised to seek further advice if you believe that you are eligible for maternity benefits or tax credits. Coventry City Council run a benefits advice line on 024 76832000.

Time Off For Ante-Natal Care and Maternity Leave

All pregnant employees are entitled to time off for ante-natal care, they are entitled to time off to keep appointments for ante-natal care made on the advice of their GP, a registered midwife or a registered health visitor. Equally, if further help is advised by a GP, midwife or health visitor then it could also include appointments for relaxation classes or parent craft classes. To comply with this an employee must have an appointment card or some other documentation showing that an appointment has been made with one of the above.

During any period of time off the employee should be paid at her normal hourly rate of pay. Along with the other rights described in this leaflet, it is unlawful for an employer to dismiss an employee or select her for redundancy in preference to other comparable employees on the basis that she has sought to assert a statutory right to time off for ante-natal care.

Protection From Suffering Detriment At Work

An employee who is pregnant or has recently given birth to a child should not be subject to detriment for those reasons. Many of the incidents described also amount to sex discrimination.

It is unlawful for an employer to dismiss an employee during her pregnancy, or her ordinary or additional maternity leave or to select her for redundancy in preference to other comparable employees, solely or mainly because she is pregnant or has given birth, or for any other reason connected with her pregnancy or child birth.

Equally, an employee should not be subject to detriment or dismissed on the basis that she does not return from her maternity leave on time because her employer has not properly notified her of the date it ends and she reasonably believes it hasn't ended, or her employer has given her less than 28 days notices of the date it ends and it is not reasonably practicable for her to return on that date.

Any employee who is dismissed as a result of being pregnant is automatically entitled to a written statement of reasons for her dismissal regardless of her length of service.

Complaints about unfair dismissal (as with any of the other areas described in this leaflet) can be made to an Employment Tribunal.

Maternity Leave

All pregnant employees are entitled to at least 26 weeks ordinary maternity leave and this applies regardless of length of service. However, some contracts of employment can provide more generous terms than those described. It is also important to note that the contract of employment continues during ordinary maternity leave. Equally, if there are any other contractual benefits which are due to the employee (other than wages or salary) these must continue during the period of maternity leave.

An employee who has completed the minimum of 26 weeks continuous employment by the beginning of the 14th week before the expected week of childbirth is entitled to 26 weeks additional maternity leave. Likewise, the contract of employment continues during additional maternity leave.

Paternity Leave and Pay

Parents are entitled to take up to 13 weeks unpaid parental leave, and new fathers are also entitled to take up to 2 weeks paid paternity leave on the birth or adoption of a child. The maximum statutory paternity pay at the moment is £100 per week.

The right only applies to employees who have been continuously employed for at least 26 weeks ending with the 15th week before the expected week of birth.

To enforce the right the employee must give his employer notice of his intention to take paternity leave specifying the expected week of the child's birth, the length of the absence (either 1 week or 2 consecutive weeks) and the date on which the employee has chosen his leave to begin. The notice must be given to the employer, it is suggested that the notice is given in writing and it should be given to the employer in or before the 15th week before the expected birth or, if that is not possible, as soon as is reasonably practicable.

A similar provision applies to an employee who is adopting a child under the age of 18.

Rights To Return Following Childbirth

The employer must notify the employee of the date that her leave will end. However, this will usually be either the first working day after the end of her 26 weeks ordinary maternity leave period, or if she qualifies for additional maternity leave the first working day after the end of her 52 weeks ordinary and additional maternity leave combined. If the employee intends to return to work before the date her employer notified her of, she must give her employer 28 days notice of the date of her return. She does not need to give this notice in writing. An employee who does not qualify for additional maternity leave does not have to give her employer advance notice if she intends to return to work immediately after the end of her ordinary maternity leave period.

An employee does not have to give her employer advance notice if she intends to return to work immediately after the end of her additional maternity leave period. If an employee wishes to resign after the birth of her child she must give the normal notice required by contract or if there is no contractual provision then a minimum of one week's notice.

The general position is that an employee who returns to work after ordinary maternity leave is entitled to return to the same job on the same terms and conditions as if she had not been away.

Flexible Working

A parent with responsibility of a child under the age of 6 (or under the age of 18 if the child is disabled) may request flexible working arrangements and time off to take care of their children. If a parent, foster parent or guardian wishes to make an application for flexible working they must have been continuously employed for a minimum of 26 weeks at the time of their request.

It is important to note that the employer does not have to agree to the request for flexible working and that alterations to working arrangements may result in less favourable terms and conditions. Equally, any change agreed under this arrangement may become permanent.

It is possible to apply for a change to hours of work, times of work, and place of work. However, it is essential that the application is made in writing and is dated. It must also state whether you have made any previous applications to your employer (stating the dates of any previous applications). The application must give a detailed proposal (and demonstration of) how, in your view, the change you are requesting will not adversely affect your employer's business. You must show reasons why you have considered that the affects of your proposed working pattern will not have a detrimental affect on the wider work place. It must also state the date on which you wish the proposed changes to begin.

You can only make one request in any twelve month period. The latest point for making an application is no later than 14 days before your child reaches his/her 6th (or 18th) birthday.

If your employer agrees to the request, they should notify you within 28 days. Their response should also include the contract variation that has been agreed and the date on which the new arrangements will begin.

Your employer may suggest that you hold a meeting to discuss the proposal. If so, the meeting should be held within 28 days of the request.

Your employer can refuse to vary a contract on "business grounds" these are:

- Burden of additional costs
- Detrimental effects on ability to meet customer demand
- Inability to re-organise work among existing staff
- Inability to recruit additional staff
- Detrimental impact on quality
- Detrimental impact on performance
- Insufficient work during periods when employee proposes to work
- Planned structural changes

The employer must provide an explanation why the business reason they give is sufficient, but they do not have to justify their refusal.

An employee can appeal against a decision, but they must do so within 14 days of receiving the refusal letter. Again, you must set out your reasons in writing and make sure the letter is dated. You should receive a response within 14 days.

Methods of Redress

The method of enforcing any of the rights set out in this leaflet is by making an application to an Employment Tribunal. In all of the cases described, a complaint must be made within 3 months of the incident that is being complained of, or in the case of dismissal 3 months from the date of the termination of contract.

If you believe that you have grounds to complain to a Tribunal, Coventry Law Centre runs a telephone advice line on 024 76253169 on Tuesdays and Thursdays between 10:00am and 12:00noon.