

STATUTORY MATERNITY PAY – 2007 CHANGES

The Statutory Maternity Pay rules are being changed to:

- Extend the Maternity Pay Period from a maximum of 26 weeks to a maximum of 39 weeks
- Enable the Maternity Pay Period to start on any day of the week in accordance with the date the woman gives in her notice to her employer of the day she wants her SMP to start. This will allow SMP to align with the start of the woman's maternity leave in all cases.
- Enable a woman to work for an employer paying her SMP for up to 10 days in her Maternity Pay Period (MPP) and to retain SMP for the week in which any such work is done.
- Enable the weekly rate of SMP to be divided by 7 so that it is easier for the weekly SMP payments to be aligned with the particular pay practice in the employment (if the employer so chooses).

All these **changes apply to women expecting babies due on or after 1 April 2007** It does not matter when the baby is actually born, the important date is when it was due. This is consistent with previous changes to SMP, for example the changes made to the SMP qualifying conditions in 1994 and more recently the extension of the MPP from 18 to 26 weeks in 2003.

The earliest we would anticipate a woman giving birth to a live child would be around the 22nd week of her pregnancy. If that baby was due on or after 1 April 2007 this would mean that the earliest date SMP might become payable under the new rules would be around mid to late November 2006.

In practice therefore, as with those earlier changes, two SMP schemes will run in parallel for a time because different rules will apply depending on when the woman expects her baby to be born. This is the fairest way of introducing such changes – it gives more certainty for both the woman and her employer who will know from the beginning of her pregnancy which rules apply to her.

The extension of the pay period from 26 to 39 weeks, enabling limited work in the pay period and enabling the weekly rate of payments to be divided by 7 also apply to Statutory Adoption Pay where the child is expected to be placed for adoption on or after 1 April 2007.

Dividing the weekly rate by 7 also applies to Statutory Paternity Pay for babies due on or after 1 April 2007.

The Maternity Pay Period

Length of the period

The Maternity Pay Period is to last for a maximum of 39 consecutive weeks. Only women expecting babies on or after 1 April 2007 will qualify for a 39

week MPP. Women expecting babies up to and including 31 March 2007 will continue to qualify for 26 weeks.

Start of the MPP

Currently where a woman has given her employer notice of the date she expects her SMP liability to begin, the MPP starts from the week following the week she ceased work in accordance with that notice – in practice the Sunday following the day she stopped work in accordance with that notice. The new rule, which applies only to women whose babies are due on or after 1 April 2007, enables the period to start on any day of the week as specified by the woman in the notice she gives to her employer. The woman is required to tell her employer when she wants her SMP to start and she must have stopped work in accordance with that notice. Prior to the start of her SMP she may have been absent from work for other reasons – perhaps she chose to take some annual leave before her SMP starts or she has been on sick leave. This will not affect her choice of when she wants her SMP to start.

In line with this “any day” start, where a woman actually resigns from her employment after the 11th week before her expected date of childbirth but before her MPP is due to start the MPP will start the day after the day her employment ends (instead of the Sunday after as now).

There is no change in the existing rules for the start of the MPP in cases of early birth (ie births which take place before the 11th week or before the date she wants her MPP to start) or where the woman is absent from work for a pregnancy related reason in the last 4 weeks of her pregnancy. In these cases the MPP already starts from “any day” and payroll systems may already provide for this. Thus the change simply extends the existing principles applied to early birth and pregnancy related absence cases to all women.

As is the case now for Statutory Adoption Pay and Statutory Paternity Pay and for SMP where the start of the MPP is triggered by an early birth or pregnancy related absence, “weeks” in the MPP will mean any period of 7 days. This means that where, for example, a MPP starts on Tuesday, “weeks” within that MPP will run from Tuesday through to the following Monday and so on throughout the MPP.

Split-week payments of SMP (the weekly rate of SMP divided by 7)

A woman expecting a baby on or after 1 April 2007 will be entitled to 39 consecutive weeks of SMP. SMP is due for whole weeks. In other words the woman is entitled (or not entitled) to a weeks payment of SMP. Just to be clear SMP is calculated, due and payable for whole weeks. The rule changes we have made will allow a particular weeks SMP to be split over two payment periods (eg two months salary).

To achieve this the rules have been amended to allow the weekly payment of SMP to be divided by 7 and thus into amounts corresponding to a day. This is intended to make it easier for employers to align SMP payments with the pay

practice in the employment. For example where a SMP pay week is split between two calendar months, the relevant number of days can be paid with each salary payment – two sevenths with the May salary, five sevenths with the June salary. What this does not mean is that SMP is a daily payment. A woman cannot be entitled to one days SMP in the same way that a person can be entitled to one days Statutory Sick Pay. A woman will be entitled to up to 39 weeks SMP. Even if she returns to work before the end of her MPP (eg in the middle of an SMP pay week) she will only be entitled (or not entitled) to receive whole weeks of SMP.

Where a weeks payment of SMP is split (to fit in with the monthly pay practice for example) and the amount due includes fractions, then, as now, payments should be rounded to the next whole number of pence.

The regulations are being amended to specifically provide for rounding of any payment of SMP which is made for part of a week. Where such a payment is made therefore the employer may recover the relevant percentage against that sum. It may be that such rounding will result in an amount being paid which exceeds the standard rate by a penny or two. This is acceptable and guidance will make it clear that the employer may recover the relevant percentage of whatever sum has been paid.

The regulations only make specific provision for the timing of SMP payments following a HMRC decision on the employer's liability to pay. The employer is therefore free to pay SMP in any way he chooses except that SMP cannot be paid in kind or by way of the provision of board and lodging or services or other facilities. This frees the employer to decide for himself the best way of making statutory payments. The usual practice is for the employer to pay SMP in the same way that other payments of remuneration are made to employees within the organisation or business.

Keeping in Touch days

Currently a woman will lose a weeks SMP if she does any work (however little) in a maternity pay week under her contract of service for the employer paying her SMP.

The introduction of 10 (ten) "Keeping in Touch" (KIT) days will allow a woman to do a limited amount of work under their contract during the MPP for the employer paying them SMP and retain her SMP for that week. Any work done under her contract on any day will count as a whole KIT day. In other words if the woman attends work for a one hour training session for example she will have used one of her KIT days. There are no restrictions on when KIT days can be used for SMP although the maternity leave regulations prohibit a woman from working for two weeks after childbirth. So it is entirely a matter for the woman and her employer how and when KIT days are used during her maternity pay period.

Once those days have been used up, the woman will once again lose a weeks SMP for any week in which she does any work under her contract of

service for the employer paying her SMP. So, to be clear, if a “week” in the Maternity Pay Period contains only “KIT” days, SMP will be retained. If a “week” contains, for example, the last of the “KIT” days and also another day or days of work for the employer paying SMP, the woman will once again lose that weeks SMP.

There are no changes to the rules where the woman works for someone else during the MPP. If a woman starts work or returns to work after the baby is born, for an employer who did not employ her in the qualifying week (the 15th week before the EWC), then the employer’s liability to pay SMP ends from the start of the SMP pay week in which the woman began such work. If however she works for another employer, who employed her in the qualifying week, either before or after the birth, the employer paying SMP to her should carry on paying it.

If a woman does some work under her contract of service for the employer paying her SMP, it follows that the woman will be entitled to contractual pay for the work done. The amount of pay is a matter for agreement between employer and employee but the minimum that must be paid for the week in which the KIT day falls is the SMP rate the woman is entitled to for that SMP week.

No change has been made to the normal SMP offset rules so that, as now, the employer will count any contractual pay due for an SMP week as meeting his or her SMP liabilities for the same week. Or, conversely will count SMP due for a week against his or her contractual pay obligations for the same week.

So let us be clear that when a woman chooses to take advantage of a KIT day she retains her SMP for that week where currently she would lose it. The minimum she must receive therefore is her SMP and the normal offset rules will apply.

For example, if a woman earns £50.00 for a KIT day, under the current regulations she would simply receive £50.00 for that week – having lost her SMP as she had done work under her contract. Under the new Regulations she will now be able to retain her SMP, although the £50.00 earned will be offset against this, meaning she will receive £108.85 for the week. If she works for three KIT days in the same week and earns £150.00 she will receive £150.00 – her SMP being offset, as now, against contractual pay paid for the same week. In both cases the employer will be able to reclaim the normal amount of SMP from the Government.

Because the basis on which KIT days are worked is by agreement between employer and employee, they can agree that a woman will be paid any amount for a week in excess of the SMP rate to reflect the additional work done. It is therefore very important that both parties are clear how contractual payment for KIT days will work, and how much pay the woman will receive in respect of that week.

The interaction between SMP and any contractual pay due for the same week has not been changed. Payrolls will already be used to paying contractual pay (perhaps bonuses or arrears of pay) to women in receipt of SMP and deciding whether those payments are due for the same week as an SMP payment.