

STATUTORY MATERNITY PAY – 2007 CHANGES - Q&A

THE MATERNITY PAY PERIOD

Length of the period

Q. When will the extension to 39 weeks apply from?

Women expecting babies on or after 1 April 2007 will qualify for a 39 week Maternity Pay Period.

Q. When is the earliest employers can expect claims from women who will be entitled to 39 weeks?

The earliest live birth for a baby due on or after 1 April 2007 is likely to be mid to late November 2006

Q. Does this mean that in the run up to April 2007 there will be some women who are entitled to 26 weeks SMP and others entitled to 39 weeks SMP?

Yes. It all depends on whether the baby was due up to and including 31 March 2007 or is due on or after 1 April 2007.

Q. Is the way in which SMP is calculated changing?

No.

Q. Is it right that the 39 week MPP will be longer than the ordinary maternity leave period?

Yes. The MPP will last for 39 weeks. The rules on maternity leave are changing so all pregnant women employees will be entitled to 26 weeks ordinary maternity leave followed by 26 weeks additional maternity leave. So, the MPP will cover the first 13 weeks of the additional maternity leave period.

Start of the Maternity Pay Period

Q. What exactly is the change to the start of the MPP?

The new rules will allow the MPP to start on any day of the week in accordance with the date the woman says she wants her SMP to start.

Q. How does this differ from what happens now?

Currently when a woman gives her employer notice of the day she expects his liability to pay SMP to begin, her MPP will start from the Sunday following the day she stopped work in accordance with that notice.

Q. When does this apply from?

This applies for women expecting babies on or after 1 April 2007.

Q. What about the rules that currently apply in the case of an early birth or absence because of a pregnancy related illness in the last 4 weeks of pregnancy. Are these changing?

No. These cases already have a MPP that can start on any day of the week.

Q. Does this change affect the way in which SMP is calculated?

No. The amount of SMP a woman is entitled to receive continues to be calculated as now and paid in respect of whole weeks.

Q. Does this mean that SMP will start from the day after a woman finishes work?

Not necessarily. A woman must tell her employer when she wants her SMP to start and, to start getting SMP, she must stop work in accordance with the notice she has given her employer. But she may have finished work and chosen to take some annual leave first and start her SMP immediately after her annual leave ends.

Q. What is a week?

In the Maternity Pay Period a “week” is any period of 7 days. For example if a woman wants her MPP to start on a Friday, “weeks” in her MPP will run from Friday through to the following Thursday and so on throughout her MPP. This definition of “week” only applies to weeks in the MPP and to the payments of SMP. It does not apply to any of the qualifying conditions – so, for example the expected week of childbirth still starts from a Sunday, as does the fifteenth week before the EWC.

SPLIT-WEEK PAYMENTS

Q. Why is the way in which SMP is calculated being changed?

It isn't. The way in which SMP is calculated, as a weekly amount, payable for complete weeks within the Maternity Pay Period is unchanged. What is changing is the way in which employers can chose to pay SMP if it helps them to align SMP payments with normal wage or salary payments.

Q. What exactly is the change?

The change allows a weekly payment of SMP to be split over two wage/salary payments. To achieve this the rules have been amended to allow a weekly payment of SMP to be divided by 7 therefore giving a daily amount. The

relevant number of days is then paid with each wage/salary payment. But the woman is still entitled to a whole weeks SMP.

Q. What if the weekly amount doesn't divide exactly by 7?

The regulations are being amended to provide for rounding of any payment of SMP which is made for part of a week. Any rounding should be done at the very end of any calculation ie divide by seven and multiply by number of days and then round.

Q. Rounding could result in more than the standard weekly rate being paid. Is this allowed?

Yes. It is acknowledged that in some circumstances the total paid for a particular week may exceed the weekly rate by one or two pence. Guidance will make it clear that this is acceptable.

Q. What should the employer's recovery be based on if more than the standard rate is paid for a specific week due to rounding?

Employers should recover the relevant percentage (92% or 104.5%) of whatever amount has been paid.

Q. If an employer pays part of a weeks SMP in one month and the remaining part of that week in the following month, what is recovered and when?

The employer is entitled to recover the relevant percentage of any payment of SMP so the employer should recover the SMP payments made in a month in the same way as he does now.

Q. Does an employer have to split payments?

No. The changes are being made simply to allow employers to split payments where it would be helpful for them to do so. They do not have to.

Q. Can women insist on daily payments?

No. SMP remains a weekly payment payable for complete weeks.

Q. Does this mean that part weeks can be paid – for example if the woman starts work for a new employer in the middle of a week?

No. SMP is only due and payable for complete weeks and the woman is either entitled or not entitled to SMP for a complete week. The change simply allows for the splitting of a weeks payment.

Q. What happens if an employer pays say 3 days SMP at the end of a month and no further payment is due as the woman either returns to

work or starts work for a new employer? Does this mean that a recovery is due?

From April 2007 women will be required to give 8 weeks notice if they intend to return to work before the end of their maternity leave. If a woman returns to work mid way through a week during her MPP she will not be entitled to SMP for that week if she has used up her "KIT" days. Given the notice she is required to give for leave, and if she returns to work before the end of her MPP and maternity leave, an overpayment should not occur. If, however, the woman resigns with little notice and takes up employment with a new employer, the employer responsible for paying SMP will, as now, need to deal with any overpayment of SMP to the woman /adjusting over-recovery of SMP with HMRC.

Q. When does this apply from?

For women expecting babies on or after 1 April 2007

KEEPING IN TOUCH DAYS

Q. What are Keeping in Touch days?

Keeping in Touch days will allow a woman to do some limited work under the terms of her contract of service for the employer paying her SMP without losing her SMP for the week in which such work is done.

Q. Who can benefit from KIT days

Only women whose babies are due to be born on or after 1 April 2007

Q. What happens now if a woman works during her MPP?

Currently if a woman does any work, no matter how little, for the employer paying her SMP she will lose the whole weeks SMP. If she worked for even half an hour she would lose a full weeks SMP.

Q. Why is this being introduced?

Employer and employee representatives told us that the current rules discourage women from undertaking activities that could help both them and their employers and which might help ease their eventual return to work. This is particularly important as the period of paid maternity leave available to women is increasing.

Q. Is there any restriction on the number of KIT days a woman can work?

Yes. Women will be able to use a maximum of 10 KIT days.

Q. What happens if a woman exceeds 10days?

Once a woman has used up her KIT days she will once again lose a weeks SMP for any week in which she works under her contract of service for the employer paying her SMP.

Q. What happens if a SMP week contains the last KIT day and also another day or days of work for the employer paying SMP?

If a week in the MPP contains only KIT days, SMP will continue to be paid for that week. However, if a week contains the last of the KIT days and also another day of work for the employer paying SMP, the woman will, once again lose that weeks SMP.

Q. Is there any restriction on when the kit days can be used?

The SMP rules place no restrictions on when KIT days can be used. However, maternity leave regulations prohibit a woman working for the two weeks immediately following the birth.

Q. Is there any restriction on what KIT days can be used for ?

No. This is entirely a matter between a woman and her employer. KIT days can only be taken where both the woman and her employer agree that it would be beneficial. Neither side is able to insist that KIT days are worked.

Q. Will women be paid contractual pay for any KIT days they work?

If a woman does some work under her contract of service for the employer paying her SMP it is reasonable for her to expect contractual payment for the work done. The amount of any payment will be for the woman and her employer to agree.

Q. How does any contractual pay for KIT days affect SMP?

No change has been made to the SMP offset rules so the employer can, as now, count any contractual pay due for an SMP week as meeting (or counting towards) their SMP liabilities for the same week. Or, conversely, counting SMP due for a week as going towards their contractual pay obligations for the same week.

Q. If a woman returns to work for the employer paying her SMP before the end of her MPP and has not used all of her KIT days, can the employer regard those first days of the return to work as KIT days and so continue to pay SMP and be reimbursed for those days if they are within the MPP?

The purpose of "KIT" days is to allow a woman to do the odd days work (up to 10) during her MPP to keep in contact with her employer during her maternity leave. The old rule where a woman lost SMP for a week if she did any work

for the employer paying her SMP actively discouraged women from undertaking activities that could help them and their employer and ease their return to work.

However we have deliberately kept the change to the SMP regulations simple not specifying how or when "KIT" days might be used. The intention is to allow women, where it is helpful to them and their employers, to take advantage of KIT days. The consequence of keeping these changes as simple as possible means that if a woman does go back to work before the end of her MPP the employer can, if they choose, continue to pay SMP (and recover the relevant amount) for any complete weeks of SMP that are due.