

**REVISED MATERNITY LEAVE AGREEMENT
(Teaching Staff, Music Instructors, Education Support Officers, Quality Improvement
Officers and Educational Psychologists)**

Effective in Midlothian from 25 January 2012

1. DEFINITIONS

- 1.1 **Expected Week of Childbirth (EWC)** refers to the period of seven days in which the childbirth is expected to take place.
- 1.2 **Maternity Pay Period** is the period of maternity leave (up to a maximum of the first 39 weeks) during which you may receive maternity payments (subject to certain conditions).
- 1.3 **Childbirth** is the birth of a living child, or after 24 weeks of pregnancy, the birth of a child whether living or stillborn.
- 1.4 **Week of Childbirth** is the week beginning with midnight between Saturday/Sunday in which the baby is born.
- 1.5 **Partner** is the husband or partner of the expectant mother, but not necessarily the baby's father.
- 1.6 **Post** for this purpose means the nature of the work which you are employed to do and the capacity and place in which you are employed.
- 1.7 **Statutory Leave** is annual leave that is accrued during your period of Maternity Leave up to a maximum of 28 days which must be taken immediately after your period of Maternity Leave.
- 1.8 **Occupational Leave** is annual leave that is accrued during your period of Maternity Leave up to a maximum of 12 days over and above your Statutory Leave entitlement.

2. MATERNITY LEAVE

All permanent and fixed term employees, regardless of length of service or the hours you work, will be entitled to 26 weeks' Ordinary Maternity Leave and 26 weeks' Additional Maternity Leave.

2.1 Ordinary Maternity Leave

All pregnant employees are entitled to 26 weeks' Ordinary Maternity Leave regardless of length of service, starting no earlier than the 11th week before the Expected Week of Childbirth. You may choose the length of Ordinary Maternity Leave up to a maximum of 26 weeks, but must take a minimum of 2 weeks immediately following childbirth (Compulsory Maternity Leave).

- 2.2 During Ordinary Maternity Leave, your contract of employment continues (unless it comes to an end for some other reason, e.g. end of fixed term contract) and you are entitled to the benefit of your normal terms and conditions of employment (see 'Other Benefits'), except for pay. For entitlement to Maternity Pay please see Section 4: Maternity Pay Entitlement.
- 2.3 **Additional Maternity Leave**
You are also entitled to Additional Maternity Leave. You may choose the length of Additional Maternity Leave, up to a maximum of 26 weeks. Any Additional Maternity Leave must be taken immediately after Ordinary Maternity Leave.
- 2.4 During Additional Maternity Leave your employment contract continues (unless it comes to an end for some other reason, e.g. end of fixed term contract).

3. QUALIFYING CONDITIONS

- 3.1 In accordance with National Conditions of Service, Maternity Leave will be granted if you meet all the following conditions:
- 3.1.1 You have completed a Notification of Maternity Leave form (attached as Appendix A) and, following discussion with your Line Manager, submitted it to Human Resources not later than 21 days, or as soon as is reasonably practicable, before you wish your maternity leave to start. The form includes confirmation:
- of pregnancy
 - the week your baby is expected to be born (Expected Week of Childbirth); or the actual date of the birth, if this has already occurred; and
 - the date you wish Maternity Leave to start.
- 3.1.2 You have provided Human Resources with a MATB1 maternity certificate from a registered medical practitioner or midwife stating the Expected Week of Childbirth

4. MATERNITY PAY ENTITLEMENT

- 4.1 **Maternity Pay Entitlements from 1 September 2010 for Employees with less than 26 weeks' continuous service**
- 4.1.1 If you have less than 26 weeks' continuous service by the beginning of the 15th week before the Expected Week of Childbirth you will have no entitlement to occupational maternity pay or to Statutory Maternity Pay. You may, however, be able to make a claim for Maternity Allowance. If you are not entitled to Statutory Maternity Pay the Human Resources Unit will return the MATB1 to you, enclosing form SMP1 which will advise you how to make a claim to the Department of Work and Pensions for Maternity Allowance (payable up to a maximum of 39 weeks).
- 4.2 **Maternity Pay Entitlements from 1 September 2010 for Employees with more than 26 weeks' continuous service**
- 4.2.1 If you have at least 26 weeks' continuous service by the beginning of the 15th week before the Expected Week of Childbirth you will be entitled to:
- 13 weeks at full pay (offset against any payments made by way of Statutory Maternity Pay or Maternity Allowance, where eligible).

- 26 weeks' Statutory Maternity Pay (provided your average weekly earnings are not less than the lower earning limit for National Insurance contributions liability). Statutory Maternity Pay is paid at the weekly standard rate or 90% of the employee's average weekly earnings, whichever is less.
- If your average weekly earnings are less than the National Insurance lower earnings limit, you have no entitlement to Statutory Maternity Pay. If this is the case the Payroll Section will return the MatB1 to you, enclosing form SMP1 which will advise you how to make a claim to the Department of Work and Pensions for Maternity Allowance (payable up to a maximum of 39 weeks).

4.2.2 Any further Additional Maternity Leave, i.e. weeks 40 to 52, will be unpaid.

4.2.3 You will be able to start to receive your SMP on any day of the calendar year.

4.3 Any previous employment with councils, employers listed in the Redundancy Payment (Local Government) (Modification Order 1990) (as amended) and any other employment deemed by the council to be relevant, shall be counted as continuous service (as defined in the Employment Rights Act 1996) subject to a gap in employment not exceeding one working week.

4.4 If you return to work, other than for 'Keeping in Touch' Days, before the end of your full Maternity Leave period then your maternity leave and maternity pay ceases and your accrued annual leave will be recalculated accordingly. You will receive your normal salary from the date of your return to work.

5. NOTIFICATION OF CHILDBIRTH

5.1 You should notify your Line Manager, as soon as is reasonably practicable, of the date of the birth of your child.

6. MATERNITY SUPPORT LEAVE AND PAY

6.1 Support leave of one week with normal pay will be granted to the spouse or partner or nominated carer of an expectant mother at or around the time of birth. The nominated carer is the person nominated by the mother to assist in the care of the child and to provide support to her.

6.2 Maternity Support Leave can be taken from the date of the child/children's birth or from another date after the birth/s.

7. REASONABLE CONTACT

7.1 Under the regulations, an employer and employee are allowed to make reasonable contact during maternity leave to discuss such issues as return to work, significant workplace developments and training opportunities. Such contact will not bring your maternity leave period to an end. (See also 'Keeping in Touch' Days in Section 22.)

8. RETURNING FROM MATERNITY LEAVE

8.1 You must not return to work within two weeks of your actual date of childbirth.

- 8.2 You have the right to return to the post in which you were employed under your original contract of employment and on terms and conditions not less favourable than those which would have been applicable if you had not been absent on Maternity Leave.
- 8.3 It will be assumed that you will return from Maternity Leave at the end of the 52 weeks' Maternity Leave to which you are entitled. If you wish to return earlier you must give your Line Manager and Human Resources at least 28 days' notice in writing of the date on which you intend to return.
- 8.4 The Council may postpone your return to work from Maternity Leave for a period of up to 28 days if you fail to give the required notice. The postponement cannot go beyond the date you originally indicated that your Maternity Leave would end.
- 8.5 With the exception of 'Keeping in Touch' Days, if you return to work for all or part of any week during the maternity pay period (ie up to the first 39 weeks of Maternity Leave) you shall not receive Statutory Maternity Pay or Maternity Allowance for the whole of that week.
- 8.6 Where it is not practicable, by reason of redundancy, for the Council to permit you to return to your post, you are entitled to be offered a suitable alternative vacancy where one exists.
- 8.7 Suitable alternative employment may also be offered in exceptional circumstances other than redundancy (e.g. a general reorganisation) in line with what would have occurred had you not been on Maternity Leave and where these circumstances necessitate a change in the post in which you were employed prior to your leave commencing.
- 8.8 If you are employed on a fixed term basis you will not have the right to return to your previous post where your contract would have expired during the Maternity Leave period but you will be entitled to all other provisions, provided you meet the criteria (where these are stated).

9. OTHER CIRCUMSTANCES

- 9.1 If you have terminated your employment due to pregnancy or childbirth but your child dies during the period of what would have been your Maternity Leave you will be entitled to return to work where a suitable vacancy exists. There is no right to return to the same post at the same grade and salary as applied immediately prior to the termination of your employment. In these circumstances you must give 8 weeks' notice in writing of your intention to return to work.

10. GENERAL INFORMATION

Ante-Natal Care

- 10.1 You have a right to reasonable time off work, with pay, for antenatal care provided that you show evidence of your appointment(s) to your Line Manager. This right is irrespective of length of service or hours of work. Antenatal care includes hospital appointments relating to the pregnancy, GP/Midwife appointments and antenatal classes.

11. ILL HEALTH

- 11.1 If your Maternity Leave has not yet commenced and you are absent due to a pregnancy related illness and there are fewer than four weeks before your baby is due, your Maternity Leave will automatically be triggered on the day after your first complete day of absence.

- 11.2 If you are absent due to a non-pregnancy-related illness prior to your maternity leave starting, normal Sick Leave and Sick Pay entitlements will apply. (This includes absence due to miscarriage prior to the 24th week of pregnancy).
- 11.3 If you are sick during Maternity Leave the period shall not be treated as Sick Leave nor will Sick Pay be applicable, as Maternity Leave takes precedence.
- 11.4 If you are unable to return to work because of sickness, either after the Maternity Leave period has ended or at an earlier date previously notified as the return date, you must follow normal sickness absence notification and certification procedures. Sickness Allowances will be paid.

12. EARLY/LATE CHILDBIRTH

- 12.1 Where your actual date of childbirth is earlier or later than the Expected Date of Childbirth, Maternity Leave and Maternity Pay are unaffected, provided your baby is born after the Maternity Leave period has started.
- 12.2 If your baby is born before the expected start of Maternity Leave, your Maternity Leave period and any Maternity Pay shall be triggered automatically on the day after the date of birth. In this event, you must notify Human Resources of the date of birth in writing within 21 days of the birth, if reasonably practicable.

13. MISCARRIAGE/STILLBIRTH/NEONATAL DEATH

- 13.1 If you have a miscarriage prior to the 24th week of pregnancy you will not be entitled to Maternity Leave or Maternity Pay, but will be entitled to Sick Leave and Sick Pay in accordance with normal notification and certification procedures.
- 13.2 In the event of a stillbirth after 24 weeks of pregnancy, or neonatal death, you retain the right to Maternity Leave and to Maternity Pay in accordance with normal conditions.

14. ACCRUAL OF ANNUAL LEAVE DURING MATERNITY LEAVE

- 14.1 Annual leave will accrue during the period of ordinary and additional maternity leave.
- 14.2 A teacher or music instructor will accrue annual leave in accordance with Section 5, paragraphs 5.3 to 5.5, in *The SNCT Conditions of Service Handbook*. The annual leave of a full time teacher or music instructor is the balance of days beyond the working year of 195 days and excluding Saturday and Sundays and 'days of school closure'. Public holidays are included in this entitlement as is the Statutory Leave of 28 days. Assuming you will take your full leave entitlement of 52 weeks you will accrue 40 days' leave entitlement. (This entitlement will be adjusted for those taking a proportion of the full maternity leave entitlement or for those working part-time).
- 14.3 Education Support Officers, Quality Improvement Officers and Educational Psychologists will accrue leave in accordance with their Annual Leave Conditions of Service. (See *SNCT Handbook*, Section 5, paragraphs 5.12 to 5.15)
- 14.4 Maternity Leave shall either fall within one leave year or span two leave years. Statutory Leave (28 days for a leave year) will be provided by the Council and you must take this leave for each leave year spanned by your period of Maternity Leave.

- 14.5 If your maternity leave spans two leave years, you shall receive at the end of the first year a statement which indicates the leave taken to the commencement of the maternity leave, the leave accrued during the maternity period in that leave year (contractual entitlement minus leave taken) and the balance to be carried forward.
- 14.6 When you notify the Council of your intended date of return, the Council will issue a statement of your annual leave entitlement effective at that date, including any Statutory Leave which will require to be taken, in that leave year (where possible) on your return from Maternity Leave.
- 14.7 Where it is not practicable to take that Statutory Leave in full or in part, any balance will be carried forward into the next leave year but must be taken as leave. The timing of this leave shall take account of the needs of the service.
- 14.8 In the case of teachers and music instructors Statutory Leave should normally be taken in the term in which the return to work takes place or within the following term; in the case of Education Support Officers, Quality Improvement Officers and Educational Psychologists leave should normally be taken as soon as possible following the return to work.
- 14.9 The balance of annual leave – that is, any days beyond the statutory days (known as occupational leave) - in each leave year which accrues from the commencement of the period of Maternity Leave for teachers and music instructors can be directed to be taken during days of school closure. For this, payment is arranged in accordance with Section 5, Paragraph 5.7 of the SNCT Handbook of Conditions of Service and each day of leave paid in accordance with Section 1, Pay, paragraph 1.8 of the SNCT Handbook.
- 14.9.1 Should this direction occur, and occupational leave remain thereafter, it may
- be taken as pay in lieu of leave and paid at your normal rate of pay in the next available pay run after your maternity leave period concludes and any days of school closure have been taken. (Please note the leave payment in lieu is not superannuable); or
 - be taken as paid leave in the term in which the return to work takes place or within the following term with agreement of your Head Teacher / Line Manager; or
 - be taken as combination of both payment and leave with agreement of your Head Teacher / Line Manager.
- 14.10 Where utilising days of school closure is not possible or is considered inappropriate the options available are as described in 14.9.1 above.
- 14.11 All options are subject to agreement with the Head Teacher / Line Manager in considering the continuity of learning within the school.
- 14.12 In the case of education support officers, quality improvement officers and educational psychologists, occupational leave should normally be taken as soon as possible following the return to work.
- 14.13 In order to manage the arrangement and to allow for staffing arrangements to be planned it is essential that you discuss with your Head Teacher / Line Manager during the 28 day Statutory Leave period or proportion thereof your intention as to how you plan to utilise the 12 day occupational leave entitlement or proportion thereof.

- 14.14 If you give written notice to the Council that you do not intend to return to work at the end of your Maternity Leave period, the Council will make payment in lieu of leave accrued up until your date of resignation, in accordance with Section 5 of *The SNCT Handbook*.

15. PENSION

- 15.1 Pension contributions shall continue to be deducted at the normal rate for teachers during any period of paid Maternity Leave. Any period of unpaid Maternity Leave shall result in a break in service for pension purposes for those in the Teachers' Scheme. For employees who are in the Local Government Pension Scheme (Lothian Pension Fund), on returning to work after Maternity Leave you should contact the Payroll Section to advise whether you wish to pay the shortfall of pension and therefore eliminate the break in service.

16. CONTINUITY OF SERVICE

- 16.1 All authorised Maternity Leave will be regarded as continuous service whilst you remain in employment with Midlothian Council.
- 16.2 Maternity Leave shall count in full as credited service in the determination of salary placing in accordance with the salary placement regulations.
- 16.3 In the case of a teacher who returns to work following Additional Maternity Leave, the period from the end of paid maternity leave to the date of return to work shall also be credited in full.

17. OTHER ALLOWANCES

- 17.1 Whether you are receiving maternity pay/allowance or not you will remain entitled to receive the benefit of payments of other allowances (e.g. car user allowance, first aid allowance, etc) for the duration of both Ordinary Maternity Leave and Additional Maternity Leave.

18. RISK ASSESSMENTS

- 18.1 Head Teachers / Line Managers should ensure appropriate risk assessments are conducted during pregnancy, in the immediate period after returning to work and during any period of breastfeeding. You are encouraged to discuss any potential health and safety risks in carrying out your normal duties with your Head Teacher / Line Manager. A copy of the Risk Assessment form for completion by you and your Line Manager is attached (Appendix B).

19. JOB VACANCIES

- 19.1 Whilst on Maternity Leave you should access the My Job Scotland recruitment portal for any vacancies arising whilst you are off work.

20. RESIGNATION

- 20.1 If you have advised that you do not intend to return to work following Maternity Leave, it will be assumed that you have resigned with effect from the end of the period of Ordinary Maternity Leave, unless an alternative resignation date is provided in writing.
- 20.2 If you have advised that you intend to return to work following Maternity Leave and then decide not to return you must resign, giving the normal period of notice in writing as required by your contract.
- 20.3 If your resignation takes effect during the paid period of Maternity Leave this may affect your entitlement to payment.

21. BREASTFEEDING

- 21.1 If you are still breastfeeding following your return to work, Midlothian Council will:
- carry out a risk assessment to identify risks to you as a breastfeeding mother or to your baby.
 - provide somewhere for you to rest.
- 21.2 You should provide your Head Teacher / Line Manager with written notification that you are breastfeeding, ideally before your return to work.

22. 'KEEPING IN TOUCH' DAYS

- 22.1 If you wish, you can work up to 10 days with normal pay during your Maternity Leave under your contract of employment without bringing your maternity leave to an end. Normal pay will be an amount inclusive of SMP or Maternity Allowance, as appropriate. 'Keeping in Touch' Days do not have to be worked consecutively and are useful if you would like to simply keep in touch, attend a particular event or take up a training opportunity. Working for part of a day will count as one 'Keeping in Touch' day worked. (Refer to paragraph 22.3 below for information on pay for part-days worked once SMP, SAP or Maternity Allowance is no longer being paid)). You will not lose any SMP for working up to 10 days. Should you carry out any further work you would lose your SMP. (See paragraph 4.4 above)
- 22.2 'Keeping in Touch' days are not a requirement and they are subject to agreement by you and your Head Teacher / Line Manager to both the activity and the timing. More detailed advice can be found in MNCT 08/03.
- 22.3 Where SMP, SAP or Maternity Allowance are no longer being paid, normal contractual pay will be paid for such days (as set out in the SNCT Handbook, Part 2, Section 1, Pay) as well as payment for accrued leave (Part 2, Section 5, Annual Leave). Where the period worked is less than a full day, you shall be paid an hourly rate with payment of accrued leave on a pro rata basis.

23. ENQUIRIES

- 23.1 If you have any enquiries please contact your Head Teacher / Line Manager in the first instance or Human Resources at Midlothian House or the MNCT Joint Secretary, Teachers' Side.

24. RELATED DOCUMENTS

Job Share Scheme
Flexible Working Policy

NOTIFICATION OF MATERNITY LEAVE (Teaching Staff)

To be completed by all pregnant employees in consultation with their Line Manager and sent to Human Resources no later than 21 days before you wish to commence your Ordinary Maternity Leave. Before completing this form you should read carefully the information contained in the Maternity Leave Agreement and may if you wish talk to your Line Manager or someone from Human Resources.

Full Name:			
Home Address:			
		Post Code:	
Home Tel No:		Work Tel No:	

Employee No:		Division:	
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Line Manager Name:		Line Manager Extension No:	
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1.	“My expected week of childbirth starts on ..”	Date:	/ /
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2.	Doctor / Midwife’s certificate (MatB1)	<input type="checkbox"/> Attached	<input type="checkbox"/> To Follow
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3.	“I wish to start my Maternity Leave on ..”	Date:	/ /
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MATERNITY PAY

If you have at least 26 weeks’ service at the beginning of the 15th week before the Expected Week of Childbirth, in addition to 13 weeks at full pay (offset against Statutory Maternity Pay*), you are entitled to 26 weeks’ further Statutory Maternity Pay.

RISK ASSESSMENT FOR PREGNANT WORKERS OR NEW MOTHERS			
DIVISION		SECTION/UNIT/DEPT	
LOCATION		DATE OF ASSESSMENT	

<p>Risk Assessment: are any pregnant or new mothers exposed to any of the following risks which may affect the health and safety of themselves or the new or unborn child? Enter 'yes' (✓), 'no' (x) or 'not applicable' (-) in the box provided.</p>	
<p>PHYSICAL AGENTS</p> <p>Is there exposure to shocks, vibration or movement which may be harmful? <input type="checkbox"/></p> <p>Is there manual handling of loads where there is a risk of injury? <input type="checkbox"/></p> <p>Is there exposure to uncomfortable and prolonged movement and postures (including prolonged standing)? <input type="checkbox"/></p> <p>Is there exposure to ionising radiation? <input type="checkbox"/></p> <p>Are there extremes of heat or cold? <input type="checkbox"/></p> <p>Is there a risk from travelling either from posture or fatigue? <input type="checkbox"/></p> <p>Is there exposure to excessive noise levels? <input type="checkbox"/></p> <p>Is there the potential for impact from a moving object or pupil? <input type="checkbox"/></p>	

<p>BIOLOGICAL AGENTS</p> <p>Is there a risk of exposure to any harmful biological agents e.g. HIV, typhoid, Weil's disease etc?</p> <p>Is there a risk of exposure to rubella or other human (particularly childhood) disease?</p> <p>Is there a risk of exposure to animal disease?</p>	<p><input type="checkbox"/></p> <p><input type="checkbox"/></p> <p><input type="checkbox"/></p>
<p>CHEMICAL AGENTS</p> <p>Is there a risk of exposure from</p> <p>Carbon monoxide?</p> <p>Lead?</p> <p>Asbestos?</p> <p>Chemical agents of known dangerous properties?</p> <p>Mineral oils?</p>	<p><input type="checkbox"/></p> <p><input type="checkbox"/></p> <p><input type="checkbox"/></p> <p><input type="checkbox"/></p> <p><input type="checkbox"/></p> <p><input type="checkbox"/></p>
<p>WORKING CONDITIONS</p> <p>Although working with DSE is not perceived as a risk to pregnant women or new mothers, the council's policy is to offer alternative work to concerned women.</p> <p>Does the employee work with DSE?</p> <p>Has alternative work been made available by request?</p> <p>Is the employee exposed to excess stress and/or fatigue?</p>	<p><input type="checkbox"/></p> <p><input type="checkbox"/></p> <p><input type="checkbox"/></p> <p><input type="checkbox"/></p>

<p>Does the employee have access to adequate rest facilities?</p> <p>Does the employee work excessive hours?</p> <p>Is the employee required to work alone?</p> <p>Is the employee required to work at heights?</p> <p>Is the employee exposed to potential risks of violence at work?</p>	<p><input type="checkbox"/></p> <p><input type="checkbox"/></p> <p><input type="checkbox"/></p> <p><input type="checkbox"/></p> <p><input type="checkbox"/></p>
<p>FURTHER ACTION</p> <p>Is any further action required?</p> <p>If 'YES', give details below</p>	<p><input type="checkbox"/></p>
<p>ASSESSMENT CARRIED OUT BY: SIGNATURE(S):</p> <p>DATE</p>	